



An Unconventional Approach to Intellectual Property Protection: The Case of an Australian Firm Transferring Shipbuilding Technologies to China

Sara L. McGaughey Peter W. Liesch
Duncan Poulson

Risks associated with the dissipation of intellectual property rights of foreign firms transferring technology to China have received some attention in the academic and professional, trade-based literature. An innovative Australian manufacturer and designer of large, high-speed catamaran ferries (INCAT) recently entered into a joint venture with a Hong Kong-based partner (AFAI) to manufacture ferries in China, without any formal, institutional protection of its proprietary knowledge. Key findings uncovered through an in-depth analysis of this case include the identification of novel bundles of firm-specific resources and capabilities that sustain a firm's intellectual property and, ultimately, its competitive advantage in the face of dissipation risks, and a combinative competency of the firm in creating these bundles. This study illustrates a case in which the conventional means of protecting intellectual property need not always be followed to best ensure the firm's retaining its competitive positioning in foreign markets.

One aspect of firm internationalization that is increasingly attracting the attention of firms, governments, and academics is the risks associated with

Sara L. McGaughey, School of International Business, The University of New South Wales, Sydney 2052, Australia. Tel: +61-2-9385-5801; e-mail: s.mcgaughey@unsw.edu.au

Peter W. Liesch, Graduate School of Management, The University of Queensland, St. Lucia Queensland 4072, Australia

Duncan Poulson, School of Management, University of Tasmania, P.O. Box 252-16, Hobart Tasmania 7250, Australia

the dissipation of a firm's technology and know-how in foreign market operations. This is often cited as an issue of particular concern to foreign enterprises entering countries which have had a history of infringement of intellectual property (IP) rights, including China (Ding, 1997; Vanhonacker & Pan, 1997). At the forefront of the Big Emerging Markets, China represents an attractive market to foreign enterprises (Cui, 1998). Since the early 1980s, the

Chinese 'open door' policy has enabled greater flexibility for foreign business activities in China, with the importation of technology and know-how being a primary focus of the Chinese government's policies (Chen, 1995). Indeed, China's modernization programs, popularized since 1977 by Deng Xiaoping, have recognized the critical importance of imported technology transferred from foreign corporations and governments (Tackaberry, 1998). This same philosophy remains today. To facilitate the importation of technology from abroad, it has often been argued that strong IP protection is necessary. The willingness of technology-rich foreign firms to transfer technology to less-developed nations has arguably been jeopardized by the threat of dissipation of IP rights embedded in their products and processes (de Bruijn & Xianfeng, 1993), although in some quantitative studies the variables chosen to capture the importance of IP protection are insignificant (Ball, Rong, & Pearson, 1993; Vanhonacker & Pan, 1997).

Although China was accepted as a member of the World Intellectual Property Organization in 1980, the introduction of China's patent law in April 1985 was viewed as vulnerable to one-sided interpretation by a number of foreign firms (Chen, 1995). Furthermore, while respect for *individual* property rights is deeply rooted in the individualism (Hofstede, 1994) of many Western cultures and nations, the collective and group-oriented Confucian and Marxist heritages of China are at odds with such a belief (Zeller, 1999), adding to the

perceived risks for foreign technology-based firms operating in China. Deng and colleagues (1996) identify China, in particular, as having weak IP rights legislation, a very weak level of enforcement and a very weak overall level of protection, when compared with other developing Asian economies such as Indonesia, Malaysia, and the Philippines. Protection of foreign firms' technologies has, however, been strengthened by Memorandums of Understanding on IP protection between China and a number of her trading partners. China has also recently demonstrated an increased commitment to international standards in trade-related areas including IP protection, as is evidenced by its substantive compliance with the requirements of the GATT Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights and efforts to gain membership of the World Trade Organization (WTO).

Although IP issues have not been a major sticking point in the negotiations concerning China's entry into the WTO, China's accession to the WTO is likely to be viewed as a positive step towards mitigating the perception that remains among many technology-oriented organizations that there is a high risk of dissipation of one's proprietary know-how in China. Indeed, China's 1996 APEC Individual Action Plan outlines a number of strategies designed to enhance the protection of IP rights should it gain access to WTO by 2000, including improvements in administrative enforcement, the strengthening of judicial tools and efforts to further enhance public awareness of IP right protection. Nonetheless, the ongoing per-

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