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Getting Intellectual Property Right

By Andrea Lyn Van Benschoten, Web Editor, Manufacturing.net
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As the globalization of manufacturing continues, few issues have raised as much concern as intellectual property rights, particularly as it relates to China. Indeed, the United States spars with the World Trade Organization on a regular basis over China's lack of successful IP enforcement.

According to the U.S. government, approximately 20 percent of all consumer products in the Chinese market are counterfeit. Several factors play into this abuse in China, such as local government corruption and limited enforcement resources. The Chinese government is aware, however, that the country's lack of IP enforcement is potentially deterring foreign investment. When China first applied for membership in the World Trade Organization (WTO), their lack of IP protection proved to be a major stumbling block.

Director of the Center for International Industry Competitiveness, George T. Haley, breaks out the issue of IRP into two distinct categories: product technology and process technology.

"If you have a proprietary technology in your process, that would be a greater loss than a loss of product," Haley said. "The ROI on processes is much greater."

The WTO looks at Intellectual Property rights in two distinct areas: copyrights and industrial property.

Copyrights are related to authors of literary and artistic works, which can include books, music, films, sculptures and computer programs. The general life of a copyright is approximately 50 years after the author's death.

Industrial property includes trademarked symbols (such as company logos), which can last forever, as well as trade secrets, product design and inventions covered by patents. It is this category that is the most important to manufacturers, as inventors can be given the right to prevent others from using their developments unless it is approved and payment negotiated to the inventor.

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China has begun to take steps to aid in IP enforcement by establishing 50 reporting centers throughout the country. Recently, chocolate maker Ferrero Rocher won a suit against a Chinese company that was manufacturing a counterfeit version of one of its products. According to the U.S. Chamber of Commerce, China was the top source of counterfeit products seized at the U.S. border with 68 percent of all seizures in 2005 originating from China.

In a report to the President and Congress on the coordination of IP enforcement by the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), plans are underway to expand its IP attaché program in China to help combat infringement through the Commerce Department. The U.S. government is also working to stop IP infringement in China by developing a five-point strategy for a more coordinated approach to protect American businesses.

"Protecting the ideas and technology of U.S. businesses is a critical task, and it is clearly on the front burner for the Bush Administration," said Commerce Secretary Carlos Gutierrez in a statement about the recently released report. "We are devoting more time and resources to keep the pressure on the bad guys."

Counterfeit Auto Parts

One industry that has been particularly hard hit is the auto parts industry, which estimates it's losing \$12 billion per year to counterfeiting. According to the U.S. Federal Trade Commission, domestic corporations could hire an additional 250,000 American workers if sales of counterfeit parts were eliminated.

Brian Duggan, Director of Trade and commercial Policy for the Motor and Equipment Manufacturers Association (MEMA), said that it has been difficult to come up with an accurate estimate of losses.

"There isn't a lot of good, consistent data on this crime," Duggan said. "You can't count the sale you didn't make."

According to Duggan, the hardest hit areas are in service and repair parts. One way the issue comes to light is a marked swell in warranty claims.

"A batch of fake products were out there and got installed, so the warranty claims increase," Duggan said. "The manufacturer makes good on the claim because they want to protect their reputation. Now they lost the sale and are absorbing the cost of the repair and the replacement."

Duggan also pointed out that some fakes are easier to point out than others, and can also lead to safety concerns, citing the difficulty in detecting fake brake fluid and motor oil.

"It's a real safety issue," Duggan said.

What Can Be Done?

The MEMA is in its third year of hosting brand protection groups that meet around the world. The groups meet four times a year and share information about how to combat the problem.

"In Brussels, counterfeit goods are coming from Russia," Duggan said. "It is a loss of business."

Haley suggests breaking down the manufacturing process into components, then sending those components to a separate company for assembly. This protects the technology from infringement by isolating each specific process to a different manufacturing facility.

According to Haley, companies should look for provinces that have a proven track

& Development **NEW** record when it comes to IPR enforcement.

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"The coastal region, from Hong Kong to Beijing, has the best track record," Haley said, noting the recent infrastructure investments in Shanghai due to the upcoming 2008 Olympics. "Locate suppliers and plants in the provinces that have good IRP track records."

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The NIPLECC, established in 1999, has been developing programs to protect IPR, such as developing Strategy Targeting Organized Piracy (STOP!) education programs for small and medium-sized businesses, with a focus on China. A website has also been developed, www.stopfakes.gov, to specifically deal with IP issues.

"If technology is crucial to your current and future success, it doesn't make sense to risk it," Haley said.

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