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5 Ways US Cos. Can Benefit From China's Stimulus Plan

Law360, New York (November 20, 2009) -- China's aggressive \$586 billion stimulus plan has increased its domestic consumption and jump-started China's economic recovery.

In the third quarter, China's economy, driven by spending and a rise in bank lending, expanded to 8.9 percent, improving from 7.9 percent in the second quarter.

Rarely known, however, is the fact that U.S. innovations can also benefit from China's stimulus plan. This article unveils five ways to do so.

As a preliminary matter, one must understand first why China is interested in U.S. innovations and what U.S. innovations are in demand.

China is interested in U.S. innovations because the United States is the leader in technology innovations.

The United States is one of the strongest brands and a symbol of technological excellence, at least for Chinese businesses and consumers.

Consequently, even in China's automobile market, Chinese consumers generally favor U.S. cars over Japanese cars, in contrast to their U.S. peers.

It did not come as a surprise, therefore, when in recent years Chinese companies launched a shopping spree to purchase ailing U.S. companies, despite strong opposition from U.S. politicians.

For example, in 2008, Chinese consumer electronics giant Huawei Technologies offered to purchase 3Com, but that sale was derailed by U.S. national security concerns.

Also, this year, a littleknown Chinese machinery company, Sichuan Tengzhong Heavy

Industrial Machinery Co., offered to acquire General Motors' iconic Hummer brand, and the deal is currently pending.

Naturally, Chinese companies are most interested in technologies related to consumer electronics and other consumer products. Not only do Chinese companies seek to acquire technologies in tangible form, but they also actively seek to acquire intangible IP rights.

In fact, an increasing number of Chinese companies, assisted by China's stimulus plan, are seeking to purchase patents, especially in consumer electronics.

Presently, they are trying to boost their own patent arsenals for defensive purposes, after years of ignorance of IP management, in case their competitors accuse them of patent infringement in the U.S.

For many U.S. companies — whether cash-strapped or profit-minded — cash-rich Chinese companies' urgent quest for IP rights provides rare opportunities to extract value from U.S. innovations.

Interestingly, both U.S. and Chinese IP rights are of great value to Chinese companies for defensive purposes.

Even if a Chinese company gets hammered with a patent infringement lawsuit by a non-Chinese competitor in the U.S., and does not have any strong U.S. patent to counter the lawsuit, having a Chinese patent in the same technology allows the Chinese company to sue the competitor for patent infringement in China.

Because China is such a lucrative consumer market, often the competitor cannot afford losing or having setbacks in China, thus becoming more agreeable to resolving the global patent disputes amicably.

Depending on their respective business goals, then, U.S. companies and their Chinese peers may structure IP deals in various ways to benefit both parties. This article covers five common ways U.S. innovations can benefit from China's stimulus plan.

First, U.S. companies may choose to sell U.S. IP rights that are not part of their core businesses to Chinese companies. Amid this global recession, many companies are shifting their business strategies, focusing on core businesses.

It does not mean, however, that their investment on innovations in other areas cannot be

recouped or rewarded.

Chinese companies often asked us to help them locate and acquire well-drafted patents in areas from digital processing to telecommunications. These Chinese companies all have excellent cash positions, making them attractive buyers.

Second, U.S. companies may consider creating a joint venture in the U.S. with their Chinese counterparts as partners.

In some cases, Chinese companies may be willing to purchase or become major shareholders in U.S. companies, based partly on the U.S. companies' IP assets.

For many hi-tech start-ups in the U.S., not only will teaming up with a Chinese partner improve their chances of survival, but such a partnership may also provide them a shortcut to China's lucrative consumer market.

Third, U.S. companies may consider selling Chinese IP rights to their innovations to Chinese companies.

Frequently, U.S. companies obtain patents in China and other countries to protect their innovations abroad.

If U.S. companies prefer not to sell U.S. IP rights for any reason, selling or licensing Chinese IP rights may be a good option, especially if the U.S. companies do not have the capability or plans to enter the Chinese market.

Fourth, U.S. companies may consider creating a joint venture with their Chinese partners in China.

This approach may be more attractive than creating a joint venture in the U.S. in certain situations. Specifically, the Chinese government at all levels has policies in place to support the joint ventures that bring leading technologies to China.

If the right technologies are in place, these joint ventures have been known to receive millions of dollars in incentives from the central and/or local governments of China.

Fifth, U.S. companies may attract venture capital for China-related hi-tech projects.

Because of the recession, venture capital and private equity firms have become more reluctant to provide funding for start-up companies in the U.S.

China-related projects, however, continue to attract investment from both the U.S. and China.

Specifically in China, government-backed investment funds, such as Chinese Social Security Fund, have excess cash waiting to be invested in the right technologies.

Finally, while this article does not address U.S. export control laws, U.S. companies must consider the implications of such laws before transferring technologies to China.

As China's economy leads the recovery from this global recession, U.S. innovations can also benefit from China's \$586 billion stimulus plan.

U.S. companies, however, must have the technologies that are in demand in China. U.S. companies must also know how to navigate through many complex political and cultural aspects of doing business in China or with Chinese partners.

If advised properly, both U.S. and Chinese companies can benefit from the cross-border IP transactions.

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