

# Stanford University - Peking University

## Internet Law & Public Policy Conference

The U.S. & Chinese Patent Systems:  
The New Dialectics of Innovation?

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\* the views expressed herein are of the panelist only, and not his employer

# The U.S. Marketplace

- The U.S. is well-known for entrepreneurship and innovation in technology
  - "Big ideas are born and grow here first"
- The U.S. is a big marketplace for high end technology products and services
- Expanding Chinese firms don't always face a warm welcome
  - Huawei - 3Com & 3Leaf acquisitions blocked
  - ZTE and Huawei prevented from supplying Sprint 4G network
  - But, compare Alibaba (Auctiva, Vendio) ...

# The U.S. Patent System

- Patents enshrined in the U.S. Constitution
  - Article 1, Section 8(8) - "To promote the progress of science and useful arts ..."
- U.S. Patent system currently known for:
  - NPEs
  - software patent proliferation
  - secondary marketplace innovation
  - big damages
  - high stakes operating company disputes
  - ITC: a new gatekeeper at customs

# The Chinese Marketplace

- Rapidly expanding economy across all sectors
  - Market reforms combined with technology investment and entrepreneurship stoking big opportunity boom
- China is a growing marketplace for high end technology products and services with huge upside potential
- Expanding foreign firms don't always face a warm welcome ...

# The Chinese Patent System

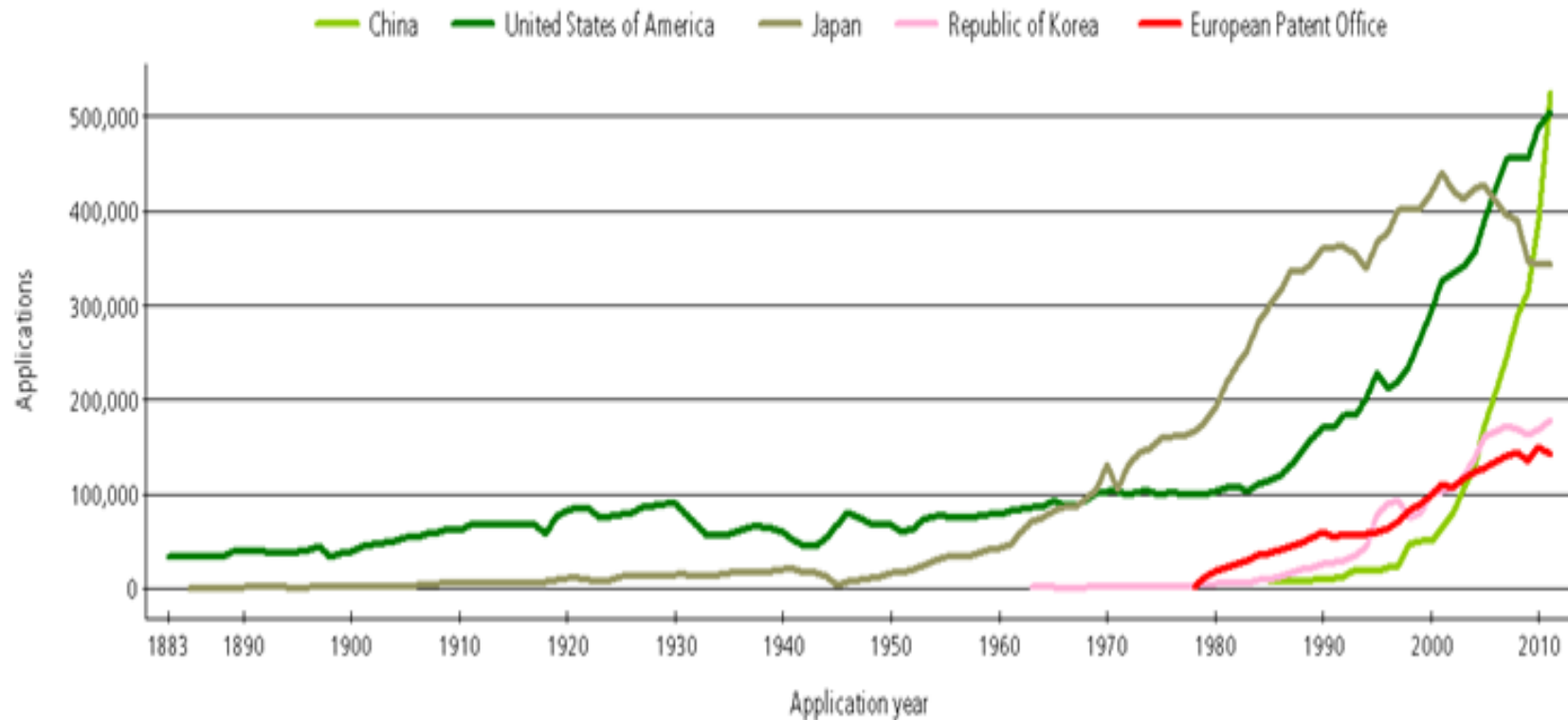
- The Chinese Government has been pushing to strengthen its patent system, home grown innovation and the competitiveness of Chinese companies
- Stated goals of the National Patent Development Strategy (2011-2020) are “encouraging innovation and promoting economic development” in the unique context of a “socialist market economy”
- Chinese Patent system currently known for:
  - growth and proliferation across all technologies
  - high number of litigations
  - low damages (but upward trend)
  - uncertainty over quality and consequences ...

# The question concerning patents & innovation

- Do patents really "promote innovation" in the Information Technology sector?
- Is it enough that patents function as the "scaffolding" for business relationships in technology marketplaces?
- *Do patents, as the "currency of innovation," need to promote innovation in order to serve innovation and commercial success?*

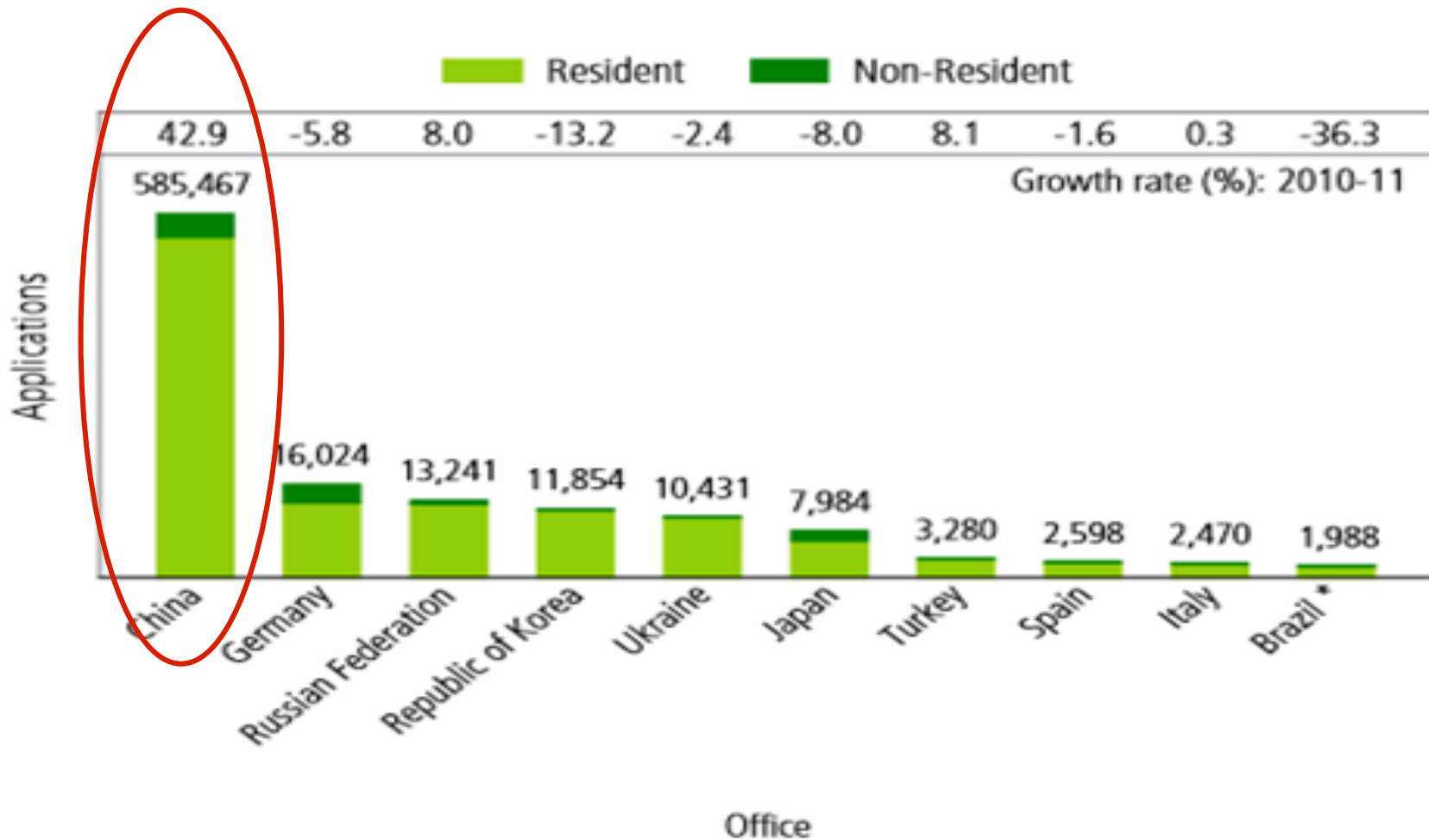
# Invention patent applications skyrocket

Trend in invention patent application for top five offices



# The looming utility model problem

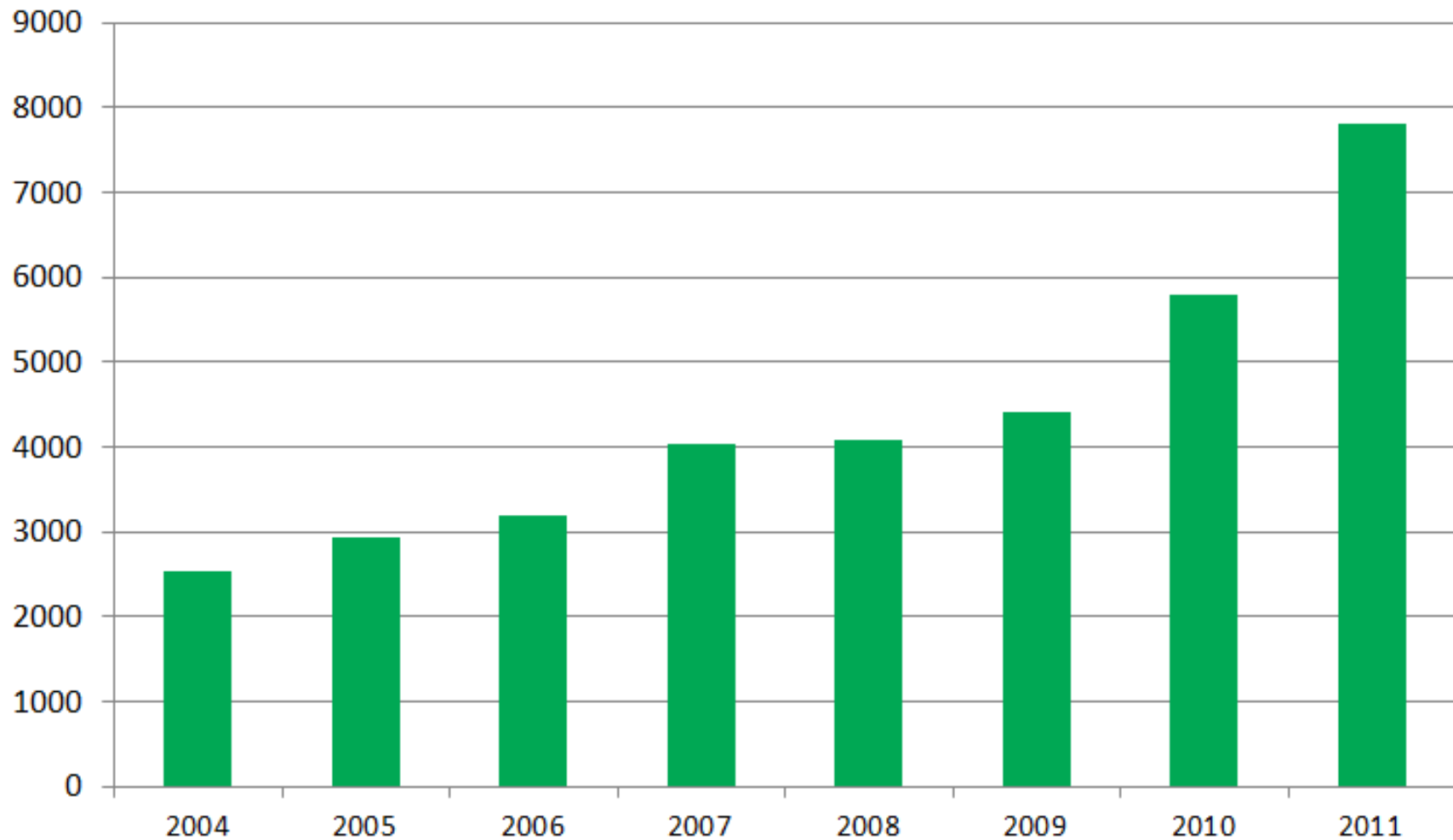
Utility Model applications for top 10 offices, 2011





# Litigations are rising annually

Patent lawsuits filed in China



# Key questions as we move forward

- How will patent proliferation in China be used in industrial and trade policy over time?
- Will a growing secondary market for Chinese patents primarily benefit local companies, foreign companies or large NPEs?
- Will the Chinese Government tamp down on Troll activity? Or itself foster secondary market activity?

# Conclusions

- Patent proliferation in itself will not promote innovation and there are danger signs that it may promote negative behaviors and impede innovation in China
- A patent system properly balanced with competition laws and market-driven economic development policies will best promote and protect innovation