

## Speech for SIPO

Having the good fortune of renewing old friendships is a rare and cherished opportunity. In the several years that have passed since M-CAM first visited China, many great developments have occurred and the world has been transformed. Some transformations have been for the better, and some have been for the worse. In the midst of all of these changes, it is important to acknowledge that the value of friendship has only increased and it is because of this value that we stand here today.

I wish to offer my heart-felt thanks to our dear friend, President Liu Yanhuai, the new President of the Beijing East Linden Science and Technology Corporation, Ltd who, since our early interactions with the State Intellectual Property Office of the Peoples Republic of China, has remained a friend and has continued to keep lines of communication open with us. Her leadership at SIPO and her new role at Beijing East Linden Science and Technology Corporation have been the source of commitment that has lead us to make this historic visit to announce our intentions to bring M-CAM and its patent risk management systems to China in a formal way.

In the three years since our first meetings in China, much has changed. SIPO has changed. As the State Council realized the growing importance of global intellectual property right development and harmonization, SIPO was challenged to build an infrastructure that would insure the protection of IPR both within China but also to protect Chinese interests in the global marketplace. SIPO rose to this challenge in a number of ways. From the convening of conferences in which global perspectives could be shared to instituting new training and support systems for patent application and examination in China, SIPO has emerged as a growing force in the international pursuit to build quality controls in the global IPR infrastructure. As was highlighted during the April 2004 workshop co-sponsored with the Organization for Economic Cooperation and Development (OECD), the Chinese government, at the highest levels, is resolute in its commitment to insure that China benefits from a well-constructed, globally respected, IPR system.

In the three years since our first meetings in China, M-CAM has changed as well. While we had just inaugurated our global M-CAM DOORS™ system in 2000, many of the patent quality challenges that were surfaced by our technology were deemed to be highly disruptive in the United States and European systems. In the years following, we have seen our technology emerge as the global standard for assessing the business impact of patents – both for good and bad. We have been deployed in India to facilitate the first technology transfer commercialization project between rural economic development initiatives in India with an international corporation. We have supplied information to challenge patents that have inappropriately blocked global generic drug competition. We have worked with governments

around the world on the protection of traditional knowledge and have actively worked to identify and interdict the ignorance of such traditional knowledge within the U.S. and European patent regimes. We have enabled the United States Treasury Department to enforce standards on the use of patents in corporate tax shelters and have provided the infrastructure for reformed accounting, tax, insurance, banking and trade programs in the United States, Denmark, the European Union, Australia and other parts of the world.

It is in this context that M-CAM's business growth has brought us back to China. We see several factors that make our business presence in China a great opportunity now.

First, we see that the Chinese economy is continuing its progress towards the development of proprietary manufacturing and services. This development necessitates greater access to information and a global perspective on the efforts of others. Competitive intelligence is essential to remain competitive and, with unrivaled abilities to integrate and interrogate vast amount of unstructured data, M-CAM is positioned to assist Chinese industry and policy makers with critical information acquisition and analysis.

Second, an emerging trend in China is the inclusion of technology transfer licenses as a part of commercial contracts for both public and private sector transactions. With the growing practice of seeking technology transfer and licensing deals with major corporations such as GE, Motorola, Siemens, Mitsubishi Heavy Industries, Intel, Alstom SA and others, Chinese business and government agencies need to be able to know the quality and uniqueness of the technology being acquired. While there was a time when the assumption that "proprietary" actually meant that someone had a unique position, recent studies by M-CAM, the United States Federal Trade Commission, and others have now empirically proven that patented technology doesn't mean that someone else doesn't have the same technology. Therefore, to fully benefit from the technology transfer, M-CAM will work with Chinese industry to review the value of the technology transfer deals BEFORE they are signed to make sure true value is being transferred and to also ensure that the right, critical technology components are fully transferred in the transactions. Whether it is magnetic transportation systems from France or power generation turbines from the U.S., Chinese government and industry leaders need to know that they are getting all the technology that is needed to fulfill the business objectives in the growing technology transfer environment.

Third, M-CAM's technology is ready for adaptation for the Chinese market. While M-CAM's unstructured data analysis programs, built on our linguistic genomics architecture, is unrivaled in the speed and accuracy of its performance, there are many opportunities to build solutions that will directly meet the needs of the Chinese government and industry. It is because of this that M-CAM was honored to enter into a business discussion with the East Linden Science and Technology Corporation Ltd. We believe that

there is a great opportunity to localize the M-CAM DOORS™ technology in a way that makes it both accessible to, and user-friendly for, China. Working directly under President Liu's leadership, M-CAM will look forward to bringing the next generation patent risk management systems to this market.

The time is right. All those who are familiar with patents know that the rate of allowance of bad patents is growing too fast. With large backlogs for examination in their offices, the United States, Europe, and Japan, have failed to uphold a quality standard. Two years ago, under pressure from the U.S. Congress and having taken bold leadership on his own, former USPTO Director James Rogan told Congress that the patent system in the United States was "in crisis". Current Director, John Dudas, has repeated this concern. SIPO has the ability to adopt practices built on innovation, rather than copying those practices that led to the crisis facing the trilateral offices. Due to the nature of patents, they know that classification and keyword systems do not work – yet, they fail to adopt new strategies that do work. They know that the current system for re-examination and opposition is inefficient and places an inappropriate burden on the public – yet, they fail to support legislation that would place the burden of disclosure on the patent applicant. In short, SIPO can make a decision not to match the quality from the trilateral agreement countries but to EXCEED them. That's right, together we can do in China what we just launched in India – namely, a use of M-CAM DOORS™ that will actually make the quality of patent examination and application in China better than the quality from the legacy leaders. SIPO is challenged to build itself into a system that works for China – we are here to help.

Inventors, or agents acting on their behalf, draft patent applications and then send them to a state-sanctioned patent office where the patent is examined for novelty and obviousness. While differing in actual practice, most countries subscribe to a basic expectation that a patent must contain something that has not been described in writing or commercially distributed prior to the application date. At present, there are approximately 45,000,000 patents and patent related documents in the world. To put that number in context, patents represent a fractional percentage of all written documents in the world. As a point of reference, a user of the Google search engine will note that the company indexes the contents of several billion web pages. In the space of several hours (approximately 20 hours in the U.S.) a patent examiner at a patent office must determine that the patent application complies with the laws governing patentable subject matter and review "all relevant" documents covering the material disclosed in the invention. Further, an examination should also include a review of commercial use – a review that relies on the subjective awareness of the individual examiner of all products in a market. This process is entirely subjective and is performed without any auditable standard. When the U.S. Patent Office instituted a "second set of eyes" examination process for certain patent classifications, the disallowance rate doubled. Despite its experience, this second opinion diligence has been deemed economically

impossible to deploy across all patent classifications. In the meantime, the public should be happy to accept that national and international monopolies can be granted based on the decision of one person.

Historically, intellectual property has been viewed as the domain of the esoteric professional – attorneys, patent agents, courts, and the intelligentsia. As such, the practice of obtaining patents has operated with minimal governmental or private sector scrutiny. Patent offices in the United States, Europe, Japan and the rest of the global economy member states, have incrementally transformed from the protectors of the public against inappropriate monopolies to the facilitators of patent propagation. Not surprisingly, as most patent offices garner their revenue from application and maintenance fees paid by users of the system, the incentive to minimize the granting of patents, to ensure that only quality monopolies are granted, is contrary to the very economics that sustains the offices. The growing use of patents as litigation avoidance instruments rather than their statutory basis as an enhancement to the public good is but one evidence of this abandonment of the foundations of an effective patent system. Budgets for patent enforcement or defense litigation, not patents themselves, are the modern determinant of monopoly interest. While a select group of domain experts benefit from the ambiguity surrounding patents, corporations, financial institutions, the investing public, and governments are beginning to realize that the long suspected degradation in the quality of the governmental oversight required to regulate the granting of monopolies has actually become an impediment, not an enablement of business.

As evidenced by the recent study conducted by the United States Federal Trade Commission; numerous white papers developed by the Danish Patent Office and the European Commission; and, most recently, in the U.S. Congress 2004 Appropriations Bill, patent quality (a topic once deemed too ethereal to assess) has become a global business and legislative priority. Why? And how should this legislative sea change impact the way you manage innovation risk?

The time is right for us to be here. The time is right for China to choose a pathway that will lead it into a knowledge economy where traditional knowledge, technical literature and global patents inform the patent examination and granting process. The time is right for Chinese businesses and governmental agencies to adopt systems that will prevent the problems facing systems that now are impairing business and financial growth in the U.S. and Europe. The time is right for holding forth a standard to the government and to business that says that China can lead the way in the 21<sup>st</sup> Century to build the patent systems that will be the gold-standard for the world. Rather than catching up, let's work together to embrace a future that is defined by accountability, quality, and excellence. M-CAM is here and looks forward to working with East Linden Science and Technology Corporation Ltd to build a lasting presence in China.

Thank you.