

華中科技大學
Huazhong University of
Science and Technology

Development of Chinese Patent System

– From the International Perspective

Conference Celebrating the 50th Anniversary of CEIPI

– Perspective for the Intellectual Property System in a Globalized World

Prof. Yu Xiang

Strasbourg, France

27-28th November, 2014

Chinesisch-Deutsch-Institut für Geistiges Eigentumsrecht

Chinese-German Institute for Intellectual Property

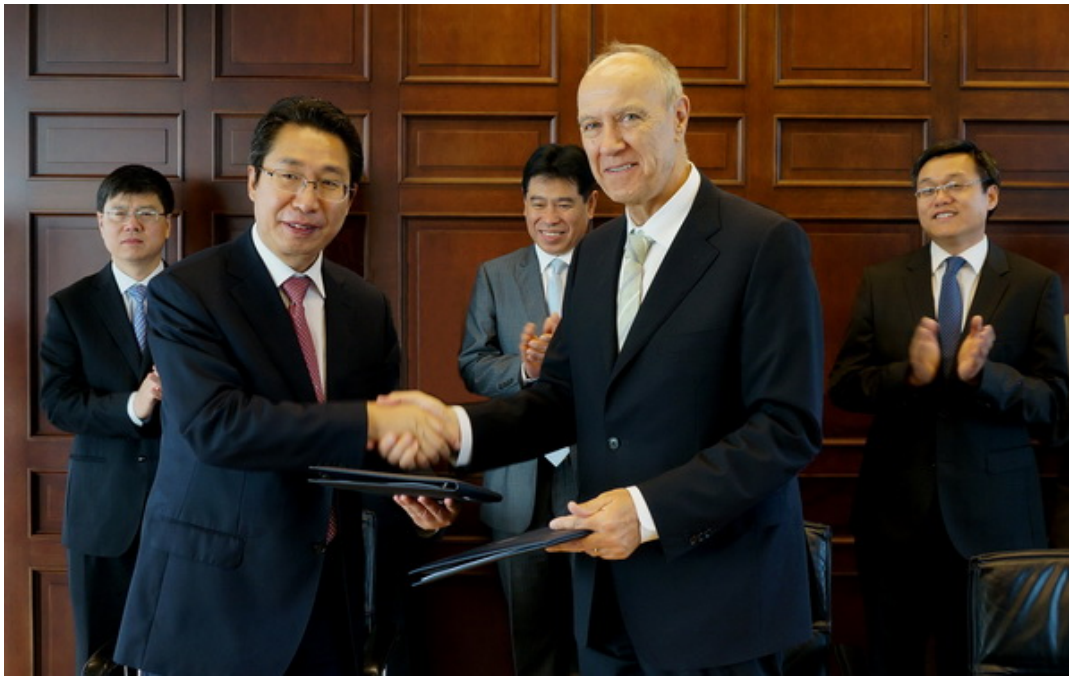
中德知识产权研究所

Chinese-German Institute for Intellectual Property

Francis Gurry (WIPO) & Shen Changyu (SIPO Commissioner) signed Framework Cooperation Agreement for 2014-2015, Oct. 2014, Geneva.

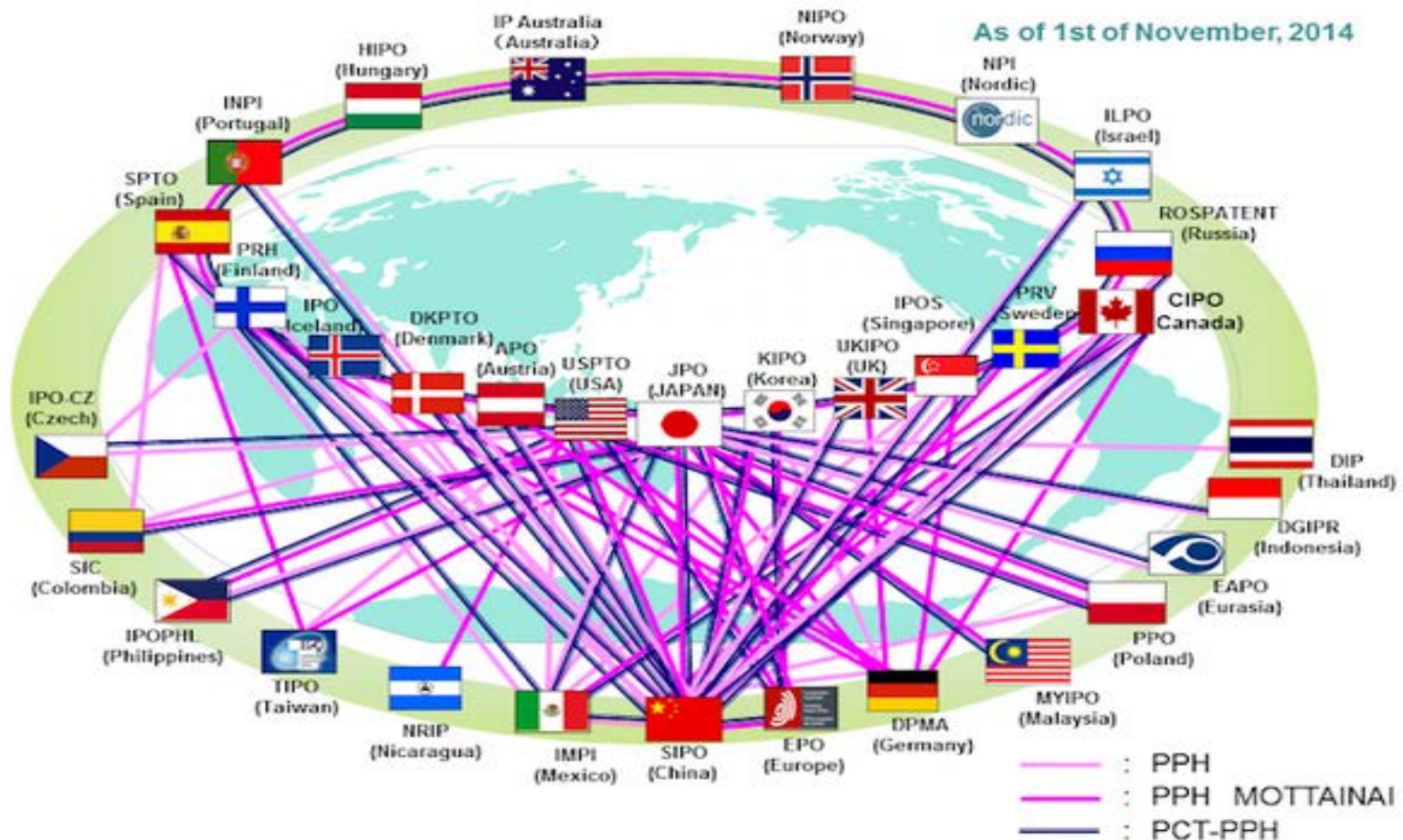
Shen Changyu (SIPO) & Benoît Battistelli (EPO) signed cooperation working plan for 2015, (Brussels, Nov. 12, 2014)

■ Europe and China in strategic partnership for patents

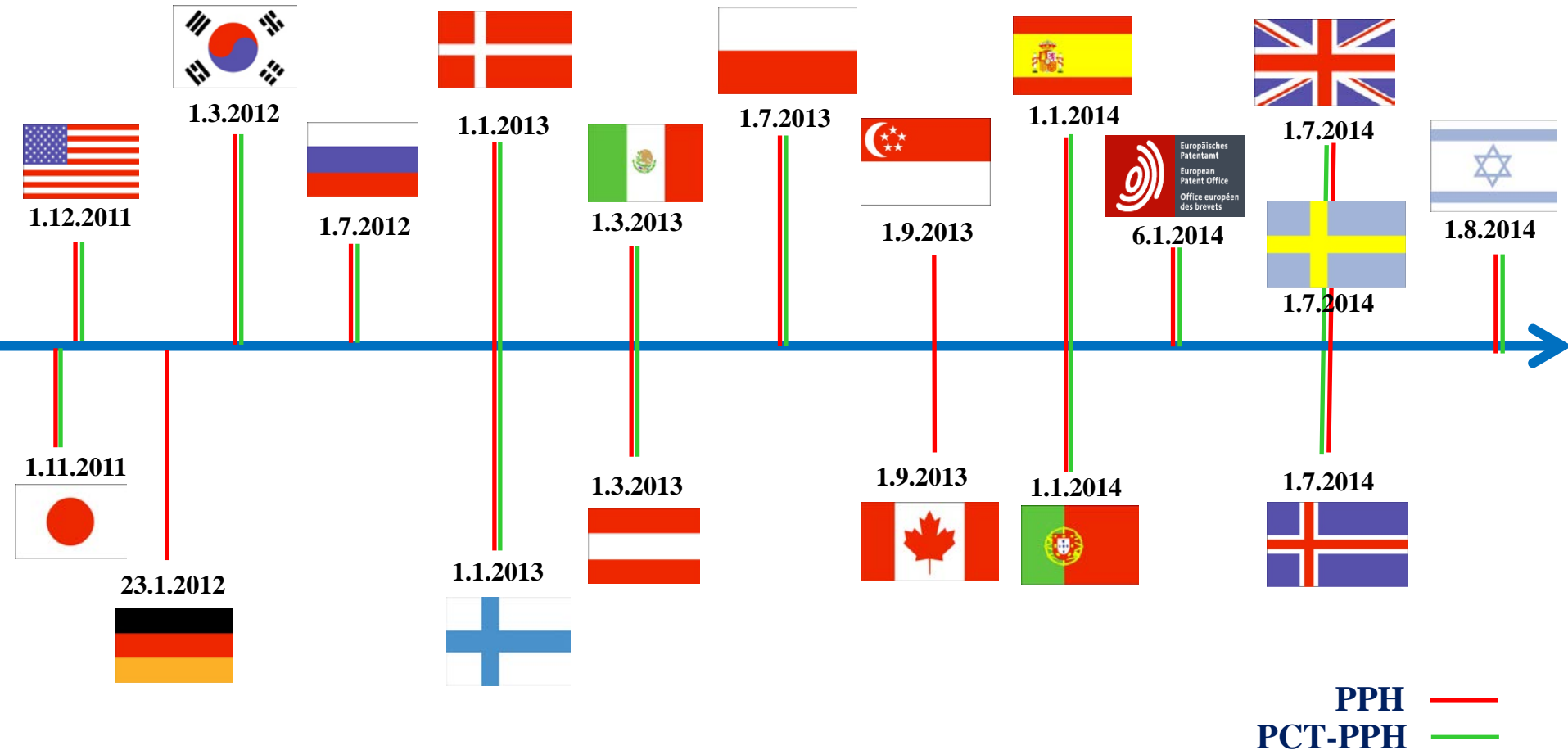


I. PPH between SIPO and other Patent Offices

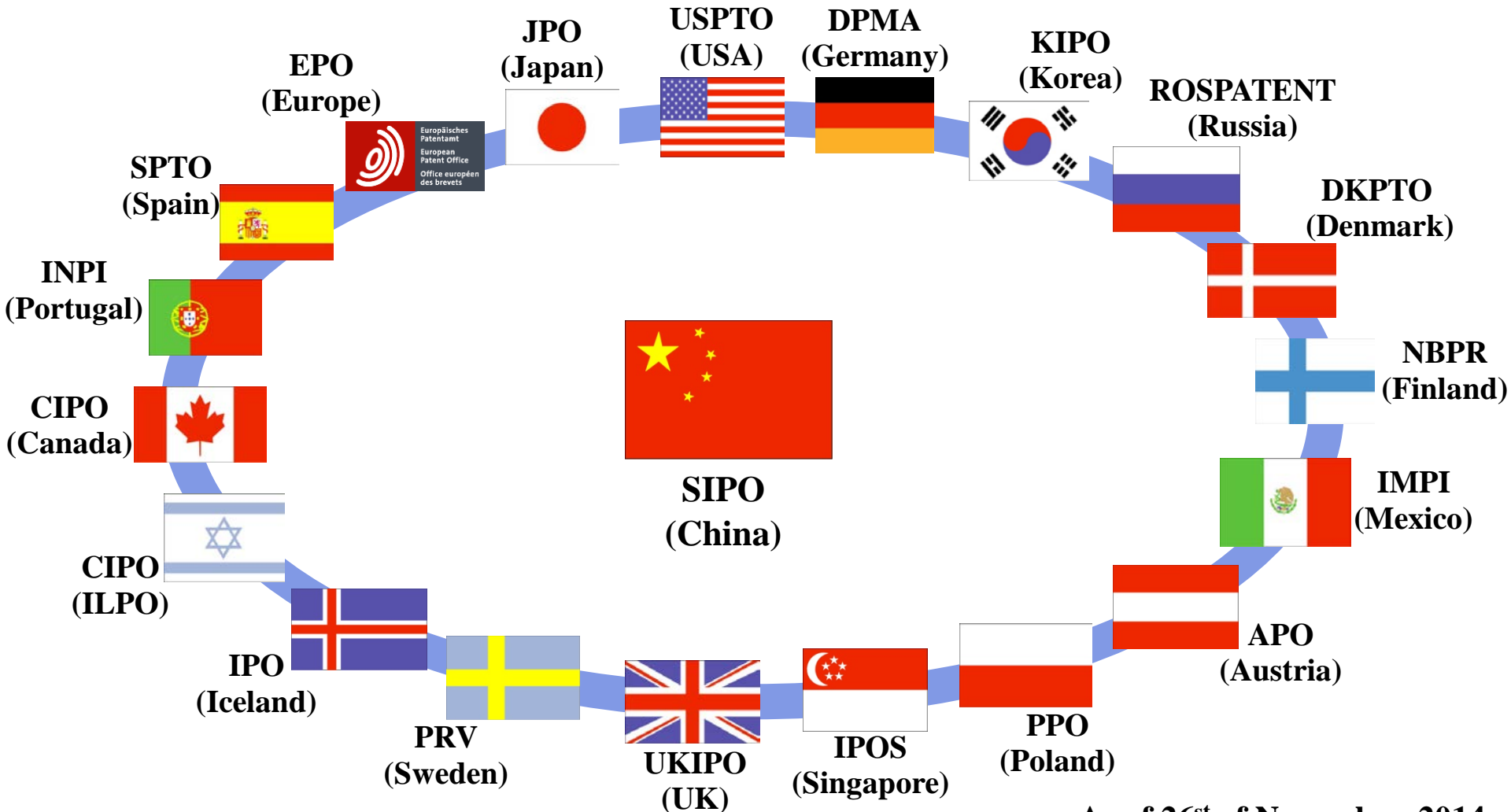
I. Expanding PPH Network



PPH: Development in China

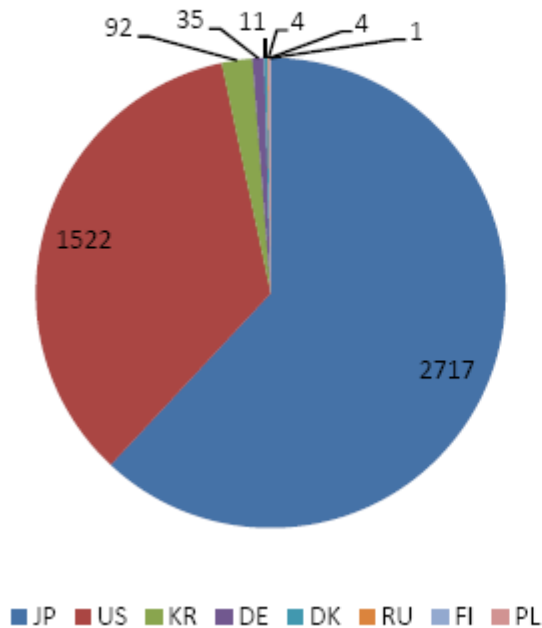


Cooperative Partners of SIPO

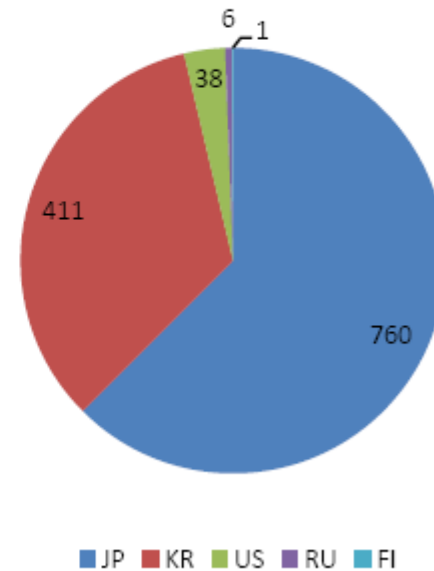


Number of PPH Requests in SIPO

PPH: 4386

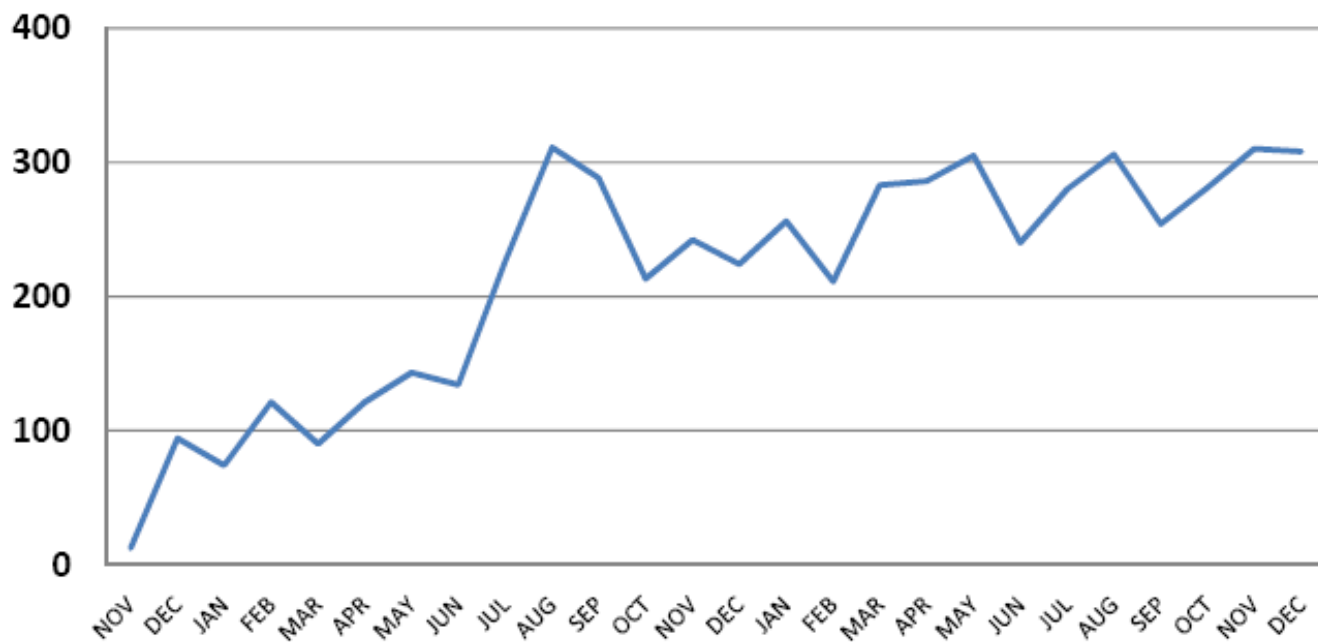


PCT-PPH: 1216



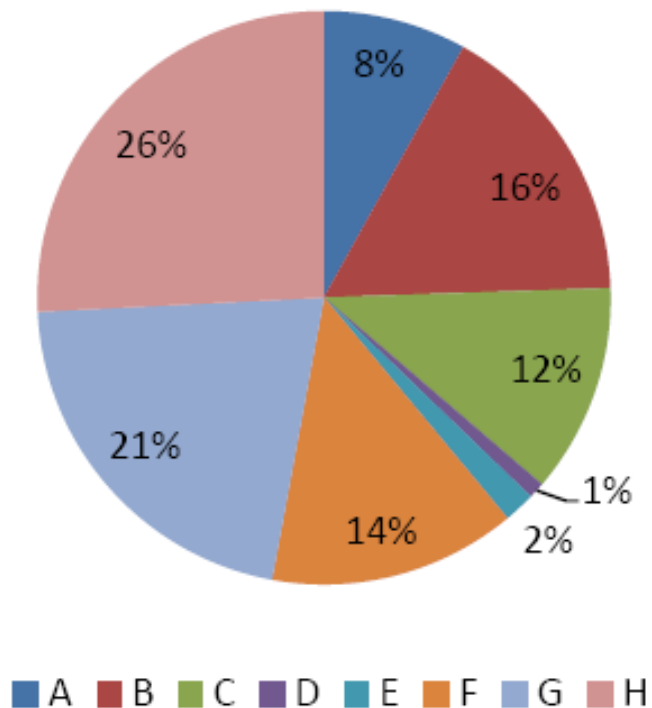
As of 31st of December, 2013

Number of PPH Requests in SIPO per month



From November 2011 to December 2013

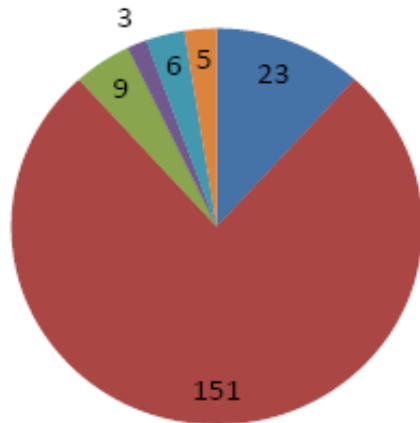
Percentage of PPH Requests in SIPO on the basis of IPC



As of 31st of December, 2013

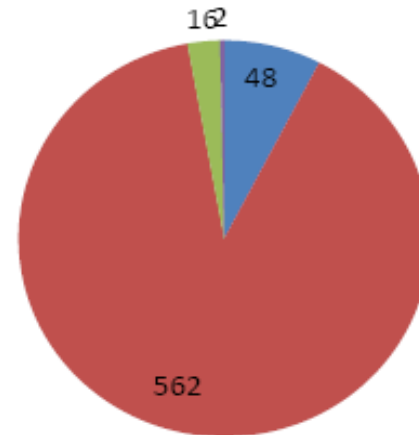
Number of PPH Requests by Chinese Applicants to other Patent Office

PPH: 197



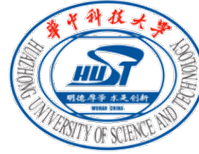
■ JP ■ US ■ KR ■ CA ■ DE ■ RU

PCT-PPH: 628



■ JP ■ US ■ KR ■ RU

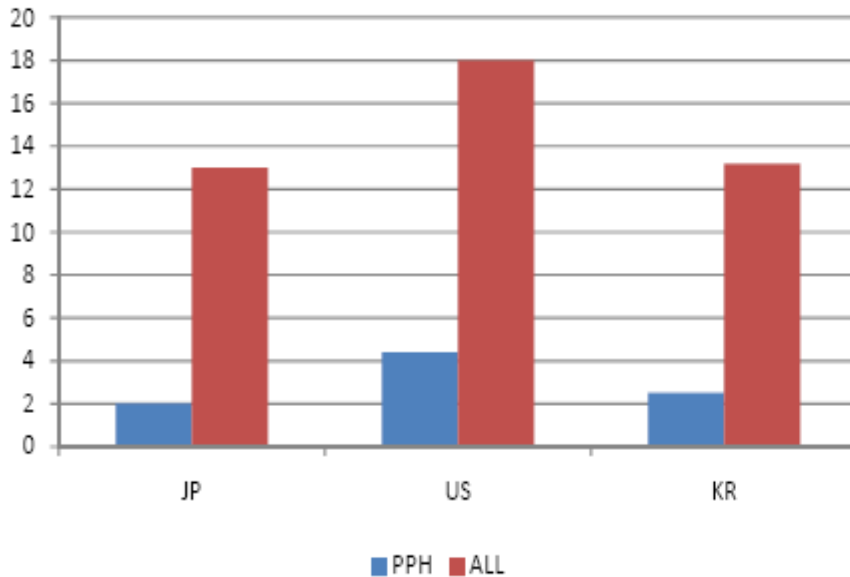
As of 31st of December, 2013



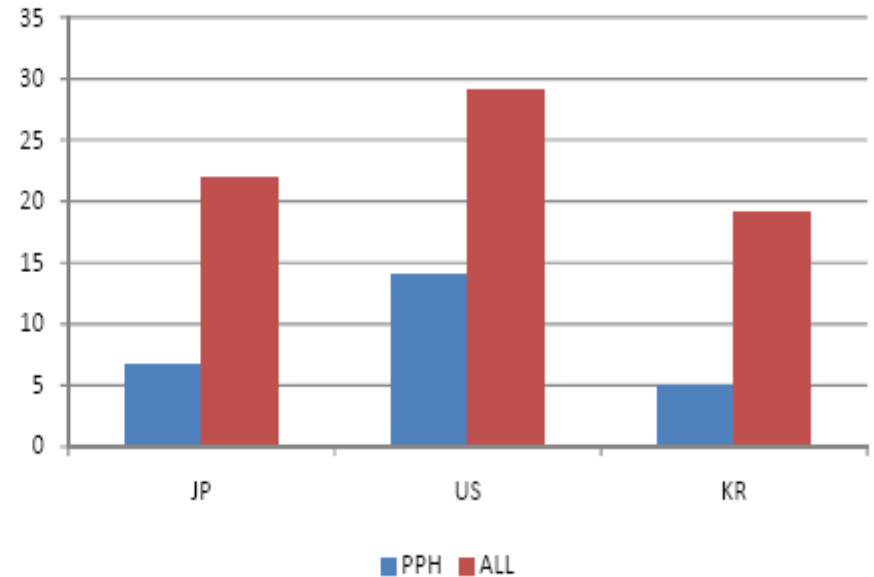
Implications to International Patent System

- ◆ **Expeditious Examination**
- ◆ **Reduction of Cost**
- ◆ **Higher Grant Rate**
- ◆ **Learn from Each Other and Share Experience**

Expeditious Examination

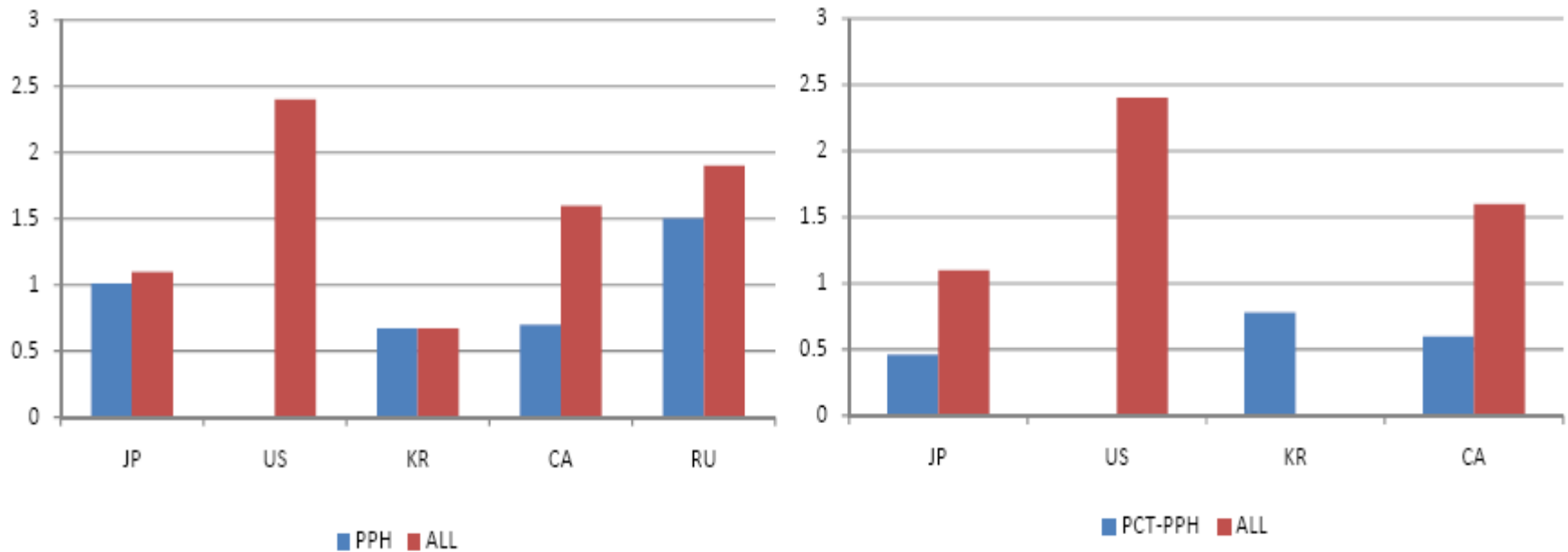


**Average Period from PPH Request to
First Examination Notice (Month)
Jul-Dec 2013**



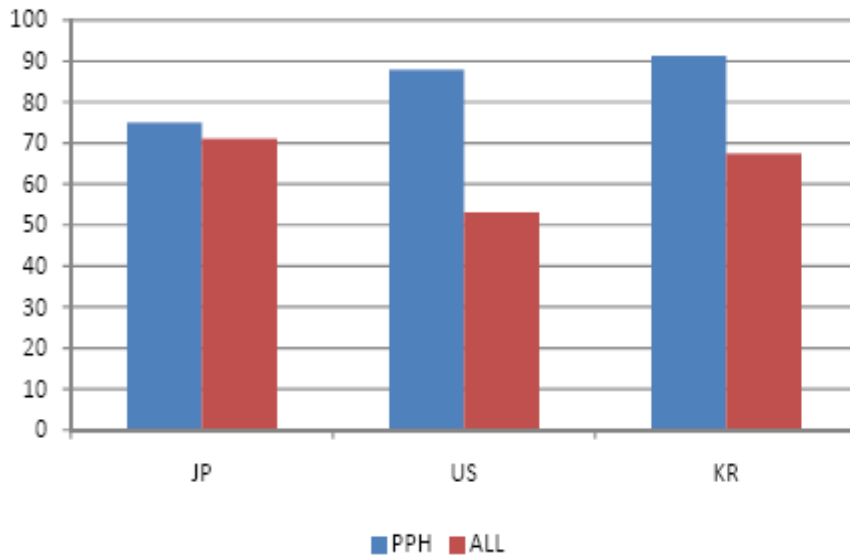
**Average Period from PPH Request
to Final Decision (Month)
Jul-Dec 2013**

Reduction of Cost

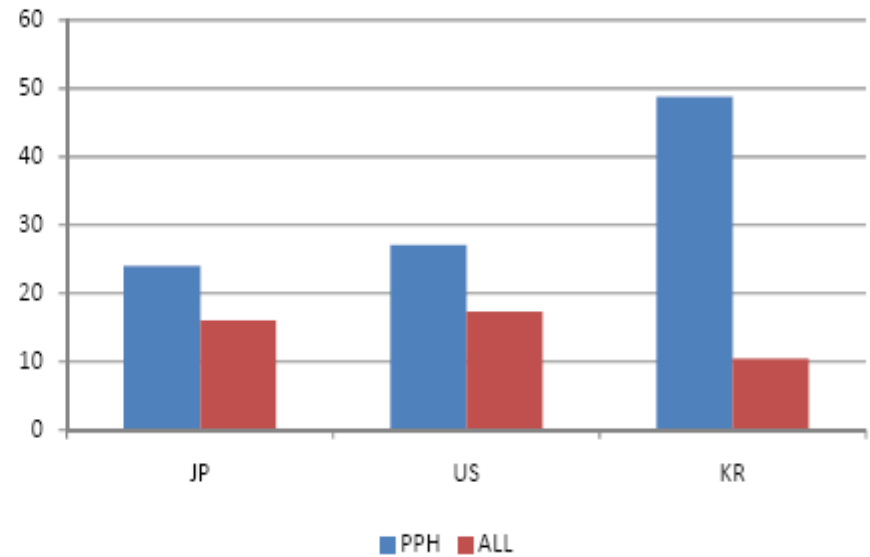


Average Number of Examination Notices
Jul-Dec 2013

Higher Grant Rate



**Grant Rate
Jul-Dec 2013**



**Grant Rate after First Notice
Jul-Dec 2013**

Thinking & Discussion

- Important role of the IP5: Standard suggestion?
& Training program for patent examiners?



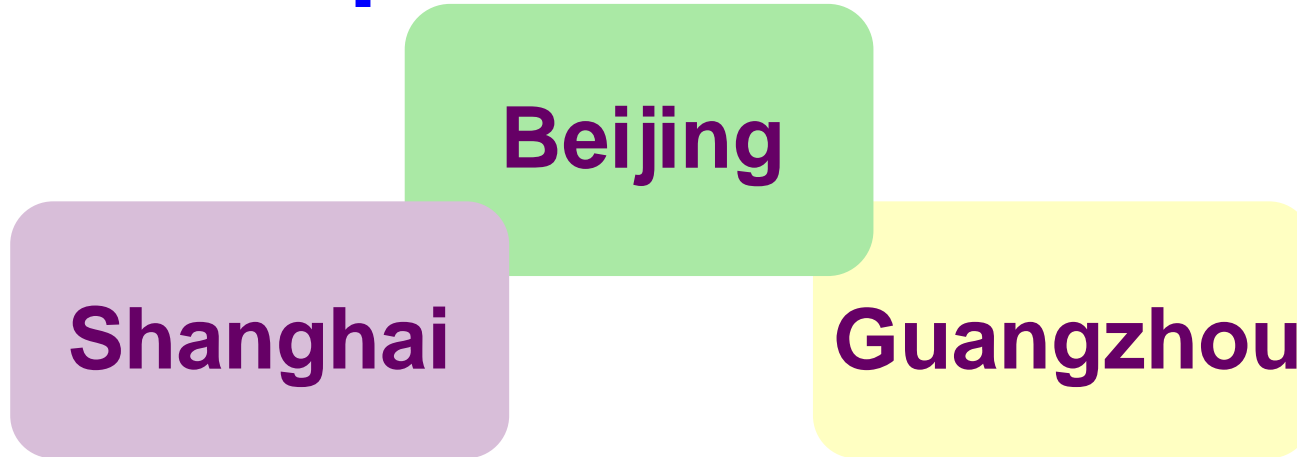
- Position of WIPO: Standard making?
- PCT + PPH: Work together & Support each other?
- Towards "world patent granting system"?

II. IP Courts in Mainland China Background

- On August 31, 2014, the “Decision of the National Standing Committee of the People’s Congress” regarding the establishment of specialized IP courts in Beijing, Shanghai and Guangzhou was passed
- On November 6, 2014, China's first intellectual property court has been officially opened in Beijing



Three specialized IP Courts



Why these three cities?

- These three cities are economic developed, the demand of the judicial protection is higher.
- **Almost half of China's IP disputes are brought in these three places.**
- Courts in these three places already have had specialized tribunals focusing on IP cases.

Beijing IP Court

Departments

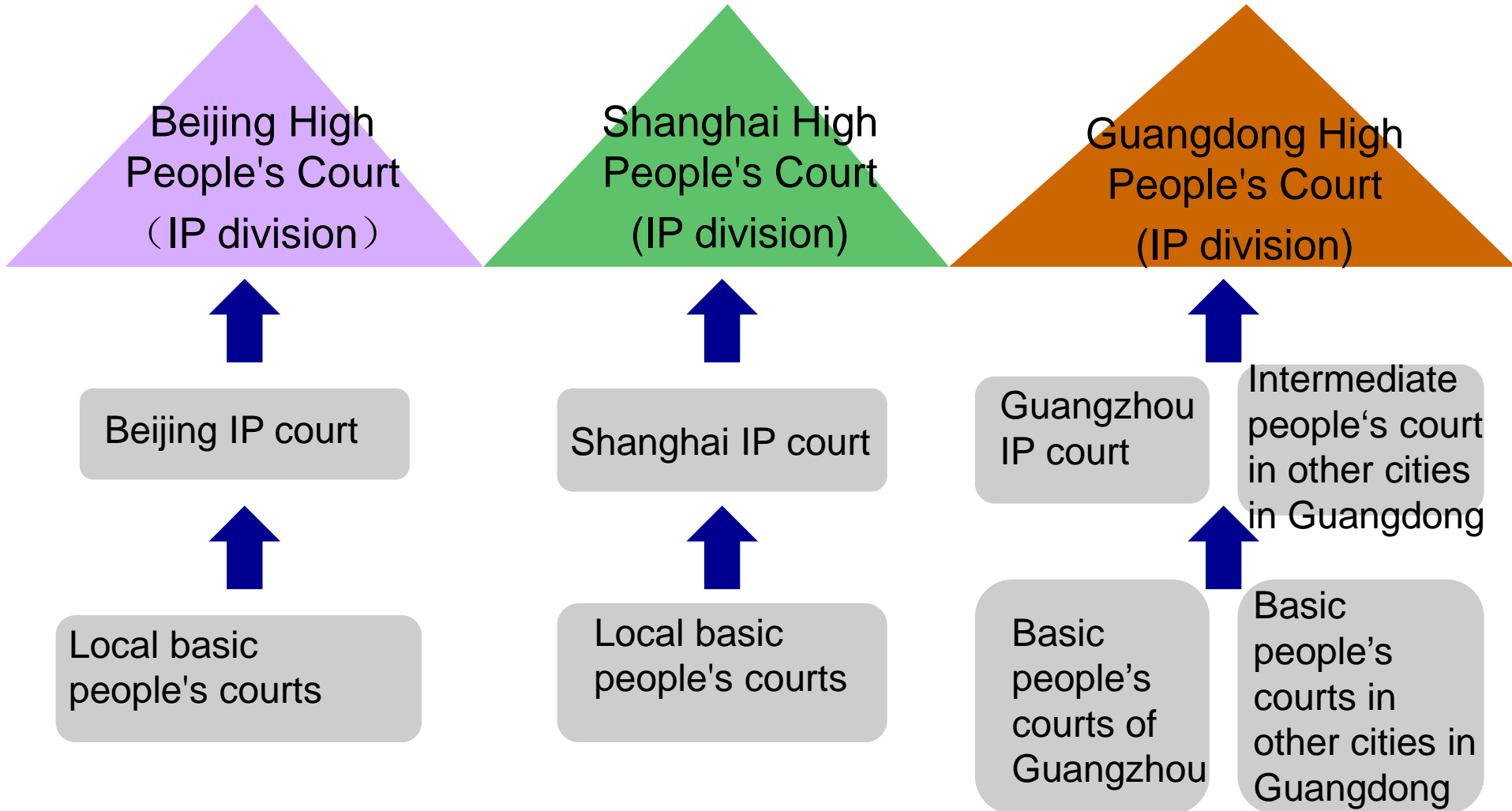
- 4 Trial courts
- 1 general affairs office
- 2 Judicial auxiliary institutions

Personnel

- 22 judges (4 chief judges, no deputy chief judges)
- 15 judicial administrative personnel
- 51 judicial assistants

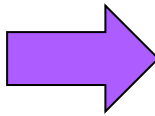
Jurisdiction

- Supreme Court Regulation (Oct. 27, 2014)



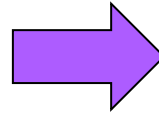
General First Instance Jurisdiction

Jurisdiction of IP courts for first instance of IP cases

- 1、 **Civil and administrative cases** which are technically complex  Patents, Know-How, new plant varieties, integrated circuit layout designs, computer software
- 2、 **Administrative cases**, to the **administrative actions done** by the departments under the State Council or Governments above county level, related **copyright, trademark or unfair competition.**
- 3、 Civil cases involving the **well-known trademarks**

General Appellate Jurisdiction

Appeal cases from the basic level court in their respective cities over **civil and administrative IP cases**



Trademark, copyright, technology contracts, unfair competition

Exclusive First Instance Jurisdiction

The Beijing IP Court has exclusive jurisdiction for the first instance over **administrative cases on appeals to the administrative decisions made by SIPO**



Key points on jurisdiction

- 'IP Court' has just the **same level as intermediate courts** in Chinese judicial hierarchy
- **Appeals** to the first instance decisions made by a IP court will be **judged by the high court** of the province or city where the IP court is located.
- Jurisdiction for IP cases **in other provinces and municipalities** directly under the Central Government has not be changed.

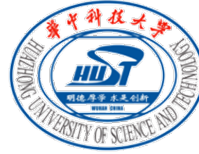
The significance of building specialized IP Courts in China

- Specialization
- Helps to unify judge standards for IP cases and improve the quality of judicial protection of IPR
- Specialty team of judges can efficiently, consistently and effectively handle IP cases



Thinking & Discussion

- Implementing TRIPS, Arts 41, 42 etc. +
stimulated by IP right holders inside of China.
- Norms for specialized IP courts and judges
should be required by international IP Law (say
TRIPs)?
- Is China's freedom to re-structure its IP court
system an important example of national flexibility
offered by the broad standards required by TRIPs?



Thank you !

Merci !

谢谢 !

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Chinese-German Institute for Intellectual Property

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