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Elektroplast AS
Intellectual Property
In China

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Abbreviations And Explanations

CNY - Chinese Yuan

EP - Elektroplast AS

Guanxi – Is described as relationship and is maybe the most important aspect of Chinese culture. To have a good “Guanxi” with someone means that you can expect to exchange favors with each other (Kristoffersen)

IIC - Indigenous Innovation Campaign

IP - Intellectual Property

IPR – Intellectual Property Rights

JV - Joint Venture is a contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise (WebFinance)

Mianzi - “Mianzi” means face or façade. The Chinese “Mianzi” is a status description of your reputation, prestige and honor (Kristoffersen)

WR - Wikborg, Rein & Co

WFOE – Wholly foreign-owned enterprise

Executive Summary

The purpose of this project is to provide Elektroplast AS with information on how to protect their IP when producing in China. Currently they produce their product through a 50/50 JV in Nanchang, Jiangxi province. In addition, they have an international sales company in Shanghai with a 51% share.

The internal analysis consist both an ACE model and a VRIO analysis. The purpose of the ACE model is to determine if EP has the capabilities to produce and market their product in China. If they do not have those capabilities, they should not risk losing control of their IPR to Chinese companies. The VRIO analysis is a framework that could clarify which resources the company should focus on and which could be improved. Both analysis will indicate what EP lack of resources and capabilities; both the production partner and sales partner should complement EP in the collaboration.

For the external analysis a Porter's five forces and a PESTEL analysis have been used. The Porter's five forces shows the attractiveness of the industry, which gives an indication of how attractive it would be to copy EP's product. The PESTEL gives an insight of how the macroeconomic environment of China affects innovation and IP theft.

Further analysis show that the cultural roots from the times of Confucius has affected Chinese industry to follow the "best", which in reality leads to copying industry leaders. China is today the world's leading country in number of patents filed, however these numbers are somewhat misleading. Research show that a considerable amount of patents is "tweaks" of foreign technology.

With this in mind, it was of interest to learn more about how the Chinese IP laws of China could protect IPR. Unfortunately, the fines for stealing technology are far too low to prevent IP theft. In addition, it is of interest to find out if effective contracts can prevent IP theft. To a degree, one can see that a well-prepared contract with the JV partner can prevent opportunistic behavior. Non-compete clauses in employee contracts are possible to prevent them from stealing IP.

Since EP currently produces their product with a JV partner, a large amount of the analysis is about at Chinese JVs. A good relationship based on trust should be an

effective way of avoiding opportunistic behavior, a Chinese would most likely not steal from someone in his or her personal Guanxi. Effective communication, managing management/talent, quick response to changes and aligning priorities are ways to make a JV successful. Many Chinese JVs are not successful and one should be prepared for ending the partnership and have a solid backup plan.

Companies who steal technology are likely to export their products in the future. China is the largest exporter of counterfeit products. P&Gs products are sold in East Asia under the same brand name.

The recommendation is that EP should protect their technology using both the IP laws of China and by making solid contracts with its JV partner and employees. Since the punishment for IP theft and breach of contract are not strong enough actions to protect IPR, it is listed two alternatives for future production. A JV partner becoming a future competitor is a considerable risk of collaboration. Starting up a WFOE is as a safer way of protecting IPR. The advantages and disadvantages of both alternatives are listed, and the conclusion is that EP should continue the JV. The reason is the internal analysis, which shows that EP do not have the resources or capabilities to both produce and market in China.

Since companies stealing technology most likely try to export the product in the future, it is recommended that EP protect their product internationally. Solberg's 9 Strategic Windows have been applied to show which markets EP should focus on. Based on the external and internal analysis, EP should "consolidate their position in established markets". It is therefore recommended that EP focus on selling their products in current markets, and never let a stealer of technology get a solid impasse in those markets.

The final recommendation is to be prepared for breakup of the JV in Nanchang. A backup plan with details of where and who to produce with should be in place before a breakup.

1.0 Introduction

1.1 Elektroplast AS:

EP was established in 1984 with headquarters in Bærum (Dodson), Norway. Their field of expertise is on thin warm floor elements made with nanotechnology. EP has over 20 years of experience. They have gradually expanded their market within Scandinavia, to Turkey, Italy, Great Britain and East Europe. The past years EP has also established a subsidiary company in Mainland China with headquarter in Shanghai. There they have joined a JV with a Chinese partner where they own 50/50 of the manufacturing facility in Nanchang. Their Chinese partner has a license to sell the product all over China except for Shanghai; where EP has the right to sell the product. Outside of China, EP has the full right to sell the product.

History:

The self-regulated heat elements have been sold in the open market since 1988 and together with different components; where the core product is EP Warmfloor System.

The idea of heating mats with electrical leading plastic came from the offshore industry. When they discovered how little energy was needed to heat up the material, short after they were used for commercial purposes. The product has since then improved though some of their first installations are still being used today. EP is doing continuous research and development to secure even better quality and attributes. Today they have more efficient and environmentally friendly products with high durability compared to 20 years ago.

The product:

EP Warmfloor System is currently the only product sold in China.

The system is made of thin polymer warm floor elements with nanotechnology that are easy to adjust. Tailor made for every room; it is very safe and has low energy consumption. The heating-mats are self-regulating that will adjust itself between 25 and 27 degrees. When the temperature in the room rise, the resistance in the material increase and the energy consumption decrease. In addition to this, EP has two other products they sell in Europe.

1.2 Problem Definition:

When EP started production in China 6 years ago, it was through a subcontracting agreement with a partner in Hangzhou. Due to several disagreements, EP chose to end the collaboration and find a new partner. Today EP has a 50/50 JV with a Chinese manufacturer in Nanchang, Jiangxi province.

Through the subcontracting agreement with their former partner, EP has created a competitor with an almost identical product. When manufacturing with a partner in China, it is a risk one must consider. The aim of this thesis is to examine *“How EP can secure their intellectual property rights, when sharing key technology is a crucial part of a successful joint venture”*.

The analysis will mainly focus on Intellectual Property (IP) theft and the role of EP's Joint Venture partner in relation to that.

2.0 Internal Analysis:

2.1 ACE Model:

The goal of the ACE model is to analyse EP's internal abilities to succeed in the Chinese market. This will show what EP brings into the collaboration, and the weaknesses that a partner should fulfil.

2.1.1 Attitudes:

Market Orientation: Low

EP has created a good product from good engineering and technology, not their orientation to the market. They are looking for markets to fit the product, rather than products to fit the market.

Willingness To Take Risks: Good

Entering the Chinese market is proof of willingness to take risks. After a failed partnership EP has joined a JV with a Chinese partner, hence they are certainly willing to take risks.

Opportunity Seeking: Good

EP constantly seeks opportunities in new countries, as in Japan and South Korea. The authors of this paper have been working at EP for several months with the sole purpose of researching for potential markets. They are showing signs of

eagerness to seek new opportunities through; looking at potential partners, finding cheaper and more effective ways of producing and investing in innovation.

Delegation: Good

The management at EP wants a flat organisation structure where everyone contributes with his or her own thoughts and are able to work independently. In general this has positive effects for the ability to succeed in international markets. However, Chinese employees tend to prefer a hierarchical structure where they rely on strict working procedures and little room for independent decision-making.

Attitudes Towards Foreign Cultures: Medium

The management and employees at EP have a great deal of respect for foreign cultures. Open mindedness towards general Chinese cultural traits has been reflected through socializing during Chinese business dinners.

2.1.2 Competence:

Market Information As Leadership Tools: Low

The newly opened international office in Shanghai and the JV factory in Nanchang has been time consuming; this has lead to time and resources being used towards administrative and organisational activities. This has affected the use of market information negatively.

Marketing Mix:

In the marketing mix it is listed different questions and answers to analyse EP's floor heating system based on the four P's; Product, Price, Place and Promotion.

Product: High

- *What needs does the product satisfy?*

The core function of the product is to heat floors in a price-efficient way in order to maintain a warm and stable temperature in the house/apartment. It is healthy and safe, and the quality reflects the price.

- *What are the features of the product?*

A high quality product that is self-regulating, in addition it is healthy, safe and cost effective. The product easy to install, it can be cut to desired lengths that makes it simple to adjust for different rooms, is durable and long lasting.

- *How is the physical product?*

The innovative product is made of electrically conductive plastic that is thin and light. This makes it both easy to handle and transport. It is mounted to a transformer at the end, done by an electrician.

- *What is the name of the product?*

EP Warmfloor System.

- *How is it differentiated compared to the competitors?*

That the electrically conductive plastic is self-regulative is unique. This makes it a very practical, long lasting and energy efficient product that is difficult for competitors to match.

- *How is the product branded?*

It is branded as a quality brand from Norway, famous for its harsh cold climate. The attribute to the country of origin gives the brand image credibility as a floor heating company.

EP has a high-quality product made of an innovative electrically conductive plastic that is safe and cost effective, in addition to be practical and easy to deal with.

Price: **Medium**

- *Is the customer price sensitive? Will a decrease or increase have any immediate effect on the sales?*

Chinese tend to be quite price sensitive, they are more concerned about the price than the quality of the product itself. An increase in price would therefore have a negative effect on the sales. A decrease on the other hand could be a way to attract more customers and increase the sales but not necessarily because of the extensive need of knowledge.

- *How is the price compared to the competitors?*

The price is high compared to the competitors. EP's product is an investment that is durable and long lasting, and this distinguishes them from their competitors.

The investment costs are high but the operating costs are lower, this makes EP's product profitable over time. However, Chinese tend to think in short term and that may be a disadvantage in the Chinese market.

Place: **Low**

- Where do the buyers find the product?

A common way to reach the buyers in China are through attending trade fairs and arranging events. At the moment contractors are mainly the buyers of the product.

- How can the company access the right distribution channels? What do the competitors do?

Through own network, by using JV partner's contacts and their network. Trade fairs and events are great possibilities to get in contact with new customers and broaden the network. As mentioned, China is very relationship focused and this is usually the best and most effective way to gain market shares. Many of the competitors are selling better-known products that need less education and can therefore also go through the retail market.

The contractors are primarily the purchasers of floor-heating products because of the customer's lack of product knowledge. It is therefore important to attend trade fairs and events to develop a broad network. EP is very dependent on their partnership in Nanchang, the different partners and their network.

Promotion: **Low**

- How can you get your marketing messages to your target market? Is it favourable to use TV, billboards, radio etc.?

In China it is very effective to use TV as a part of the marketing strategy. This is very costly, and for a small Norwegian company like EP it is too expensive.

Billboards and radio is not likely to be effective enough on a specific customer group like this, so strengthening the public relations is probably the ideal promotion for EP. As mentioned China has a relationship-focused culture, therefore the "word of mouth" effect is very dominant and effective way of promotion. Attending trade fairs and events to give away brochures and flyers with information, and at the same time demonstrate the product is most likely the best way to inform the customers.

- When is the best time to promote the product? Is there any seasonality in the market?

There is a larger need for floor heating in the winter, when selling to the retail market it could have a larger effect with marketing these months. Selling to contractors, which are EPs focus, the needs are the same all year, and there is therefore no seasonal effects.

- How do the competitors promote their products?

The biggest threats are mainly suppliers of air conditioning solutions. They will have the same situation regarding contractors. Towards private customers it is different though. The air conditioning solution is also a very sought after product during summer times because it can also cool the air. This makes their promotion less seasonal and they can pursue the retail market, where the product is more common.

In China it would be wise to focus the promotion on different trade fairs and events rather than commercial channels. By this EP can get in direct contact with the customer and sell their product that needs demonstration and explanation. This way it is also easier to build relationship and trust.

Language and culture: **Good**

In the JV, both the language and culture is quite good in the sense that they have Chinese and Norwegian employees. This is an advantage for the company because there will not occur any language nor culture obstacles throughout the process for production and sales in China.

Negotiation skills: **Medium**

The sales personnel at the company are Chinese, this makes it much easier for them to negotiate and come to an agreement on China terms. Previous sales shows that EP are doing quite well but because they are in the start-up phase they need improvements.

2.1.2 Embodiment:

- Is the entire organisation engaged in the operations in China?

Both the subsidiary company in Shanghai and the parent company shows interest in the Chinese operations, when it comes to production and the market. The

management and employees in Shanghai have their focus on the market in Shanghai on a daily basis. Representatives from the office in Norway have been to Shanghai and Nanchang to show support of the project and experience first hand about EP's operations in China.

2.2 VRIO

To analyse EP's internal resources and determine the competitive advantages, the VRIO-framework has been used. This is a framework that will clarify which resources the company should focus on and which could be improved, to benefit in the future.

2.2.1. Tangible Resources: Competitive Parity

Valuable: **Yes**

At this time EP is based in the top floor of an office building together with a number of banks in "Song Hua Jiang Rd". The building has offices with good size, a great view to a surrounding park, in an area that contains most of what you need in a short distance. This is something that creates a good first impression and adds a value to the company. EP is also a part owner of the factory in Nanchang with a 50% share, an important asset for the company. It gives them a closer control on the manufacturer and makes it easier for them to ensure good routines and practices in the production. It is positive for the relationship and communication between the two parties, something that prevent opportunistic behaviour. Further this cooperation will secure a better access and distribution of the product. The ownership is seen as a great value to EP.

Rare: **No**

Although the offices are good and could help the company exploit opportunities, the location is not very central and therefore not considered rare. An office in the heart of Shanghai, "Huai Hai Rd" for instance, would have given the company a different, more quality expression that could create a competitive advantage in a relationship country like China. The joint venture company in Nanchang is also difficult to see as rare. Even though the cooperation is a valuable asset, there are a large number of manufacturers that do productions like these.

Costly to imitate: **No**

If the office building was in the most central part of Shanghai they could be difficult to imitate. If you look at offices further away from these areas it is very possible to find decent standards at a relatively cheap price. The factory in Nanchang is also fairly easy to imitate. Competitors with a certain amount of market and cultural knowledge can easily imitate both the good relationship and the partnership.

Organization: **No**

The office would benefit from a better utilization. With a neater and more stylish decoration, the quality expression would have been raised and the value better captured. An office in more central areas could have contributed positively and a better-looking interior could give an improved impression. In Nanchang the good partnership secures a good collaboration between the two parties and sales are rising. Since EP has not reached high enough sales numbers yet, the manufacturer is still not producing at their full capacity; the organization is because of this not exploiting to their maximum potential.

2.2.2 Human: Sustained Competitive Advantage

Valuable: **Yes**

The Chinese division is mainly build up by 5 people. They are Knut, Melissa, Dan, Ying and Sun Yu. Knut is the founder of EP and has over 20 years experience from the floor heating industry. His experience comes mainly from Scandinavia, but some of the experiences come from Europe through distributors and other businesses. Knut is an educated engineer and is the inventor of the technology that EP uses. Knut's education and knowledge is essential for EP. This gives EP a big step ahead in research and development that is important in this industry.

Dan and Ying are partners in EP. Dan is a former student at BI Norwegian Business School and Fudan University. He is the youngest person in the organization and obtains theoretical and practical knowledge about marketing and business in China. By having a young person like Dan in the organization, it benefits the working environment and complements the elder generation's vision and attitudes. Ying has a PhD in Biotechnology from Fudan University. Ying and Deputy General Manger Melissa are native Chinese employees in EP. Melissa is

according to Knut, a “people person”. She reads people and understands their personality very good. They are both considered very valuable and necessary to EP and their investment in China. By involving Chinese natives in the company, EP has a great advantage. This helps the company with negotiation and network building.

Rare: **Yes**

Knut’s broad expertise and long experience from the heating industry is unique. Very few people hold the same competence as Knut and it takes years to build this. Ying and Melissa both have backgrounds from business. Ying is a successful Stressless distributor in China, something that won him the “Top-notch Innovative Talent” award by Shanghai Yangpu District Government in both 2006 and 2009. This gives him an insight in the Norwegian consumer goods and a great asset when cooperating with EP. Melissa’s interpersonal characteristics help EP to know the partners and customers in a good and personal way. This is very positive especially when knowing the importance of Guanxi.

Dan, as mentioned is the youngest member of the management and has good theoretical knowledge. He also holds important experience from being an operational manager at a international fast-food chain in Norway, and entrepreneurial skills from starting his own marketing company only 18-years old. Furthermore he is starting to build himself a large and important network in both Norway and Shanghai.

Costly to Imitate: **Yes**

In China labour force is cheap, so hiring Chinese people to work in China is easy to imitate. However, the technological background and expertise that Knut has, is hard to get. It takes years of research and development to get this kind of knowledge, and together with the great complementation of colleagues they make a good team.

Organization **Yes**

EP is definitely doing a deliberate and smart choice by having two native Chinese people working in the management. This is done by letting Melissa and Ying represent the company in meetings with customers, partners and at conferences.

These are actions that give a better communication and credibility in the Chinese market, and have already generated a certain amount of sales. The way Dan is represented at the Norwegian Business Association events is also important for the company. This gives EP strong ties in the Norwegian network in Shanghai and China.

2.2.3 Organizational Capabilities: Competitive Parity

Valuable: **Yes**

According to Thomas Sorensen in Innovation Norway the most common entrance strategy in all industries in China, with 78%, is wholly foreign owned enterprises. EP though, has used JV. This is a common strategy when companies cannot afford their own factories, a development that has changed recent years because of better economy in the business. However, this does not mean that the cooperation EP currently have is poor. Because of better quality on the producers in China the trend is now that more companies are going back to choosing JV. (Bosshart, Luedi and Wang)

So far EP and their partner have built a relationship based on trust and mutual gain that seems to run well. Getting a partner in China may not be very difficult, but to find one who give you stability and trust is very valuable. On the other hand, Knut feels that the working environment at the factory can be better. There have been several instances where workers have been working up to 14 hours a day, which is not accepted by EP. The workers need to be continuously educated on how to use equipment and how to use it in the right way to ensure productivity and safety. Over time it should be a change in attitudes to ensure a better working environment. However, compared to other factory's in China, the working environment at EP's factory can be considered as good.

Rare: **No**

EP has a stable and good partnership with the Chinese partner in Nanchang. They have developed mutual trust with each other and the value of it is continuously increasing. But to establish a partnership like the one EP and Nanchang has is not seen as rare at this moment. It is a common entrance strategy for a small firm going to China and there is nothing extraordinary with the partnership yet.

Imitate: **No**

As mentioned EP have a JV, a strategy that has been a trend in China and is on its way back. There can be some difficulties with achieving the necessary trust and stability on a long-term perspective, but imitating this is not seen as very costly.

Organization: **Yes/No**

Melissa currently holds the position as deputy General Manager. Dan and Ying are co-owners with a total share of 49% of the sales company in Shanghai. Knut is the major shareholder and inventor of the technology EP is producing and selling. In addition, they also have the newly appointed Sales Representative Sun Yu. The delegation of tasks is good and effective. People are used where they have their main competence and they work seemingly well together. Although Knut has the final word, Dan, Ying and Melissa have important and very necessary contributions.

Knut is active at the factory in Nanchang. He wants to contribute to the working environment, how things are done, use the proper tools and take responsibility for the safety issues that may occur. This is not optimal. Knut has a status among the Chinese workers since he is the Norwegian owner of the company and optimally this should have been delegated. It can be unusual for a Chinese worker to see the CEO contribute in the production line, and this could cause Knut to lose respect as the top leader.

2.2.4 Reputation: Competitive Disadvantage

Valuable: **No**

EP is in the starting phase of the business in China and due to this; its branding and customer relation is not well established yet. The partner in Nanchang on the other hand has good customer relations and supply network, this helps EP and is one of the advantages with a JV. It makes it easier when getting to sales, production and negotiations.

Rare: **No**

EP has not yet established reliable networking resources and is therefore not particularly rare. The Chinese partner however is starting to build a good network

that helps EP in China. The brand EP is Norwegian, and usually the Norwegian brands are known for its good quality. This can be an advantage in the future when EP is expanding as a company. Knut wants EP to be known for its quality and professionalism.

Costly to imitate: **No**

When foreign companies enter the Chinese market, many of them are well informed about of the IP laws. Through the interview with JZMC the authors got a glimpse of how complex and difficult these laws and regulations are. This makes it easier for a Chinese company to steal the name, and this is exactly what happened to EP. When EP entered the Chinese market six years ago, they got a partner that in the later years copied EP's products and stole their brand name. Because of this, they have to call themselves EPWarm in China.

Organization: **No**

Guanxi is very important in China, to establish a good relation takes time. A Norwegian mind-set is that everybody working for a company represents the brand name; this mind-set is not entirely the same for China. As for the future plans they should build trust to the Chinese so their relations will grow stronger and more valuable.

2.2.5 Innovation and Creativity: Sustained Competitive Advantage

Valuable: **Yes**

30 years back, Knut and his brother came up with this innovative way to exploit plastic that is leading electricity in a way that no one had done before. This has been used for a number of equipment throughout the years, such as solar panels, keyboards, for floors heating and the development of very thin televisions. Therefore it has been, and still is, a very valuable innovation.

Rare: **Yes**

It is rare to the extent that EP does not have a real competitor that is able to produce exact the same product at the same quality as they do. On the other hand, as mentioned above, there has been used the same technique to make other products that does not have anything to do with floor heating. Knut has many

ideas where he can use the same recipe in different sectors such as for example health care. It is therefore a rare and special product that is difficult to match and can be used in assorted ways.

Costly to imitate: **Yes**

It is both costly and complicated to imitate EP's product. Several people and companies that have tried to imitate the products but failed because of the unique quality of the product Knut has invented.

Organization: **Yes**

EP has the JV in Nanchang that is producing the product under close supervision. Several precautions are taken to prevent the JV from taking advantage of the knowledge EP has shared. They are continuously doing research and trying to improve the innovation, the product is getting better, and harder to copy. Creativity comes from the good mixture of experienced, fresh thinking and knowledgeable employees. Observing this from how sales-events are arranged in Nanchang for instance. This is therefore an organization that is capturing the value of their innovation and creativity.

Nr	Resources	Valuable?	Rare?	Costly to Imitable?	Possible to exploit by Organization?	
	• Tangible, physical	Yes	No	No	No	Competitive Parity
	• Human – competence, experience, trust, MC skills, practices and procedures	Yes	Yes	Yes	Yes	Sustained Competitive Advantage
	• Organizational Capabilities – systems, cultural, work environment, processes	Yes	No	Yes	No	Competitive Parity
	• Reputation – Customer relations, brand name, reputation (quality, reliability)	No	No	Yes	No	Competitive Disadvantage
	• Innovation and Creativity – Development, innovation, adaption, technical and scientific skills	Yes	Yes	Yes	Yes	Sustained Competitive Advantage

(Kunnskapssenteret) (Strategic Management Insight)

Regarding the tangible resources, EP has no advantage or disadvantage with their office in “Song Hua Jiang Rd”. The same goes for the organizational capabilities. Although the company has good locations and an organization of employees that have a valuable partnership in Nanchang, this is not seen as extraordinary and has no competitive advantage at the moment.

EP has their sustained competitive advantage in human resources and innovation and creativity. There is a good mixture of experienced, fresh thinking and knowledgeable employees. Knut holds a great experience and technological knowledge that is essential for the company’s existence and further development. The composition of Ying, Dan, Melissa and Sun Yu make a good team of skilled people within business and marketing. They all hold a broad and important competence that complement Knut and his technology. There is a deliberate and well-composed constellation of people in the company, this is difficult for the competitors to match.

When it comes to the innovation and creativity EP has an advantage. The innovation itself is unique and a quality product. The recipe is closely protected and improved and Nanchang is the manufacturer under close supervision. Several people and companies have tried to use the same technology without luck. This is a sustained competitive advantage that EP has to exploit further.

Standing out as a competitive disadvantage is the company’s relations and reputation. EP is in a start-up phase in China and has not built a good enough brand nor network yet. Nanchang and their network is growing, the product are starting to find its way to the customers. This will better the reputation. Knowing the importance of relationship and “word-of-mouth” effect in China is one of the main focuses to improve in the years to come. Keep on building trust and relationship to its customers and expand the network further.

3.0 External Analysis

3.1 Porter's Five Forces

The analysis is concentrated on the market of floor heating in China. The goal is to find out how competitive the industry is, that will indicate how attractive it would be to enter the industry. If the industry is not very attractive, the threat of IP thefts regarding EP's products will most likely be smaller.

3.1.1 Industry Rivalry:

There are two main categories of floor heating, hydronic and electrical. Where 95% of the 20 billion RMB market is covered by hydronic systems, according to Knut. Due to energy efficiency in electric heating government regulations will most likely lead to a larger proportion of electrical systems. Electrical systems can be divided into three categories; heating cables, foil elements and self-regulating plastics that EP produces. There is only one competitor on self-regulating systems, which is EP's former production partner.

There are hundreds of floor heating producers in the market, both Chinese and foreign companies. The largest rivals are Chinese; however, their systems are simple compared to the international companies. The proportion of electrical system is expected to reach 15% of the total floor heating market. A market increase from one billion to five billion is possible for the electrical systems in five years.

Conclusion: **Moderate intensity** due to many competitors, but in a rapidly growing market. This could increase competition in the future. More companies might want to enter the market because of its attractive growth.

3.1.2 Threat Of Substitutes:

Every product with the intention of heating a room is a substitute of EP's product. Dual function AC, electric radiators and gas ovens are some of the substitutes on the market. These products often have a lower installation price than floor heating, and are a threat in the price sensitive Chinese market. Dual function AC's also have the advantage of having both heating and cooling in the same product, which is very attractive in many Chinese cities with a cold winter and warm summers.

The AC is an important threat, but it has higher operating costs, less comfortable heating and gives less healthy room environment with dry air and dust.

Conclusion: Because of easier and cheaper installation and the strong position of some substitutes, the threat is considered **high**.

3.1.4 Threat Of New Entrants:

Starting up production of a competing product is not a big issue; the problem lies in the delivery structure of the market, which is divided into two categories. The first one, houses and apartments are delivered as empty constructions where the owner is responsible for purchasing the inventory. Thousands of contracting companies execute that work, and EP's product has to be sold through that system. A great amount of resources must be spent for an international company to get an impasse in the business with a large enough scale as they desire.

The project market, consisting of residential complexes, offices and the public sector will be easier to target for a large international company. However, the prices are strongly pressured and a large capacity is required. There are not a lot of unoccupied market shares, which makes it harder if new entrants do not have a unique product. Brand awareness is not essential, but Chinese customers often perceive western products as better in terms of quality.

Threat of new entrants: **Low**, because a lot of resources and capacity is required to enter the market and there are not free market shares unless the technology is unique.

3.1.5 Bargaining Power Of Customers:

As mentioned above the market is separated mainly in two sectors. The project sector in particular purchase large quantities at a time and have many suppliers to choose from. Switching supplier before each project would not bring any considerable switching costs. The contracting companies may not order the same amount of products for each purchase. However, they can easily switch supplier between each purchase if they are not satisfied with the delivered product.

Conclusion: The customers have **strong** bargaining power.

3.1.6 Bargaining Power Of Suppliers:

There are relatively few suppliers of EP's inputs of production, but there are frequently new developments that can change the situation. The cost related to switching are high because it takes months of testing to make sure the input meets the expected requirements.

Conclusion: **Strong** bargaining power.

3.1.7 Conclusion Of The Model:

The industry has moderate intensity, strong substitutes, and strong bargaining power of both customers and suppliers that in total points to a little attractive industry. Entering the industry will have a low level of profitability. Therefore the threat of being copied in this industry is small, based on the Porter's Five Forces model.

3.2 PESTEL Analysis

3.2.1 Political:

The Chinese government is trying to detach them from relying on the Western technology through the government arranged "Indigenous Innovation Campaign" (McGregor). This campaign was implemented in 2006, but it has just recently come to the global attention. Supporting regulations for Chinese technology has started to pour out of bureaucracies in Beijing. The Chinese government hopes that through more domestic Chinese innovations and technology, they can solve their infrastructure, environmental and social issues.

The "Indigenous Innovation Campaign" encourages Chinese enterprises to cooperate with Western companies, research facilities and universities. This means that the Chinese government is interested in new technology, such as EP's floor heating technology, to enter China. This could lead to new laws and regulations in the future that make it easier for EP to do business in China, but it could also mean that the Chinese government is promoting technology theft. The campaign defines indigenous innovation as "enhancing original innovation through co-innovation and re-innovation based on the assimilation of imported

technologies.” (McGregor) This plan is considered by several foreign technology companies to promote and become a blueprint for technology theft on a huge scale.

3.2.2 Economic:

(Trading Economics)

China GDP Per Capita: The GDP per capita in China has been increasing at an immense pace from just \$1122 in 2000 to \$3348 in 2012. \$3348 is just 27% of the world average GDP per capita, but the rapid growth of GDP per capita in China tells us that the Chinese population is getting significantly financially stronger.

Currency: The USD-CNY rate increased from 6,16 in February to 6,21 in March this year. The Chinese Yuan had an average of 6,99 from 1981-2014, so on that basis currency is weak at this point. The Chinese currency was stable at about 8,6-8,7 from 1995 until the middle of 2005. Then the currency had a steady fall to 6,8 in 2008 where it flattened out and stayed stable until 2010 when it kept on decreasing to 6,05 in January of 2014. Now the trend has changed and the USD-CNY currency has gone up in both February and March to, as mentioned, 6,21 in the end of March.

Unemployment Rate: According to the Ministry of Human Resources and Social Security of the PRC, the unemployment rate in China have been 4,1% the last 2 years up until January of 2014.

Average Yearly Wage: The average yearly wage in China was in 2012, 46 769 CNY, which is a huge improvement during the past years.

Inflation: Inflation in China was at 2% in February of 2014, which is more than 1% lower than February last year and the lowest recorded inflation rate in 13 months.

The average wage in China is increasing, the inflation is at a favourable percentage rate, the unemployment rate is very low, the currency to USD is strong

compared to 10 years ago and the average yearly GDP per capita is increasing at a rapid and steady pace. These are clear signs of increased financial wealth for the Chinese population. A result of this could be that the Chinese prefer to buy less counterfeit products because they are cheap, and instead buy the real product from the patent owner. This is because they are more conscious about quality than price compared to what they were in the past. The increased wages in China has made it more expensive to produce there. Due to this, for a company to start copying a product and sell it would be significantly more expensive than it was just a few years ago. The stronger the CNY is the more import and less export it will be in China. An appreciation of the CNY makes it less likely for a Chinese company who sells stolen/copied products to expand in to international markets.

3.2.3 Sociocultural:

China is a high power distance culture and according to “The Hofstede Center”, Chinas PDI (Power Distance Index) is 80, this is very high compared to the average in Asia, which are 64. (The Hofstede Centre) What this means is that when working together with a Chinese business partner you need to be aware of how they perceive you as a leader. A Chinese business partner would expect you to show your superiority towards your employees and that they would respect you as a leader. They would also expect you to have a good control in all matters of your business and not delegate much responsibility towards your employees. A Norwegian business approach (Low Power Distance) could damage your reputation towards the Chinese partner.

To have a good working relationship with the Chinese partner you need to understand that in China, Guanxi is very important. A contract in China is not as binding and assuring that you have a well working relationship as it is in Norway. You need to form some sort of friendship with your Chinese partner to make sure he takes you seriously and want to continue doing business with you. The normal way to do this is through business dinners, gifts such as alcohol and tobacco, and regular contact.

3.2.4 Technology

R&D

As a rising economy, the research and technical development has become a major topic in China. On world basis China is the second largest country in the world regarding money spent on R&D, second to the USA. By being one of the world leaders on R&D, China has a large technological capital and has a large potential in R&D in the years to come.

Incentives

China has for over ten years been providing different tax incentives regarding R&D and innovation (KPMG). This activity group has become a major focus for the Chinese government after the implementation of the “Indigenous Innovation Campaign” and the commitment is huge compared to other countries. The commitment was recently extended to 2018.

Patent

In 2011 China passed the USA in the number of patent applications for the first time (Thomson Reuters / Reuters). According to World Intellectual Property Organization (WIPO), the world number of patent application was 2.14 million in 2011. 526 000 of these applications came from China. This is more than twice the number in 1995. This is a sign of growth of technological innovations in China. Huawei Technologies is a Chinese information technology manufacture and they stood alone for 1831 application of total amount.

3.2.5 Environmental:

China is currently the world’s largest energy consumer and the pollution in China is immense. China is often viewed to promote domestic economic growth at any cost, but this is not the reality. The Chinese government has set a goal that 15% of all electricity should come from renewable sources within year 2020, and it is budgeted 3,4 trillion CNY to the green sector in the period of 2012 to 2017. There is also R&D tax incentives to companies who produce green technology. (NZ Herald)

Due to the high focus on green technology over the past few years and the years to come, this could lead to a higher interest from Chinese companies to steal green technology from Western companies. Companies with energy efficient products are now more prone to technology theft due to this.

3.2.5 Legal:

Patent laws in China are regulated by SIPO, State Intellectual Property of China. In China there are 3 types of patents: Invention, Utility Model and Design Patent. (China IPR, SME Helpdesk) Invention patents last for 20 years and is granted for new and inventive technical solutions for a product, such as major improvements on already existing products or new ways of producing it. According to JZMC, when applying for an invention patent it will take at least two to three years before you can get the patent granted. To make sure your product is protected during this period you should apply for a utility model patent in the meantime which usually only takes one year to be granted. When your invention patent is granted you will have to drop your Utility Model Patent.

Utility Model patents last for 10 years and covers new solutions of shape and structure of a product that do not meet the higher inventiveness level required for an invention patent. It takes about one year to get the patent granted.

Design patent last for 10 years and covers new designs of products such as shape, pattern, colour and etcetera. A design patent covers the look of the product that makes it recognizable. Design patent usually takes about one year to be granted.

4.0 SWOT Analysis:

	HELPFUL	HARMFUL
INTERNET	<u>Strengths</u>	<u>Weaknesses</u>
	-Leading technology	-Market competence
	-Energy efficient products	-Limited resources and capacity to control operations in China
	-Technology hard to imitate	-Sharing of valuable technology is essential to produce in China
	-International experience	
	-Knowledge of Chinese culture	
EXTERNAL	-Sales office in China	
	<u>Opportunities</u>	<u>Threats</u>
	-Government encourages green technology	-«Indigenous innovation campaign» may increase IP theft
	-Increased focus on effective IP laws	-Ineffective IP laws
	-Stronger purchasing power	-Low penalties for IP theft
	-WTO pressures China to improve IP rights	-Increasing production costs

5.0 Conclusion And Plan Of Action:

Chinese companies are constantly stealing or copying foreign intellectual property, and the current IP laws and government regulations are not strong enough to protect IP rights. Further it will be analysed, how Chinese IP laws, contracts and other regulations can be used to most effectively protect EP's technology. Other aspects such as trust, communication, mutual gain and cultural understanding may also be important in order to protect the technology. It is also of interest to look at why Chinese companies do copy, what the consequences of copying are and if there are any positive effects for EP that other companies try to copy them. The current JV is not necessarily the ideal situation and it will therefore be wise to look into how one should handle a failed partnership.

6.0 Methodology

6.1 Research Questions:

- 1) *Where does the tendency of copying or stealing Intellectual property originate?*
- 2) *How capable are Chinese companies of innovating own technology?*
- 3) *How can a company protect themselves from IP theft using Chinese IP laws?*

- 4) *How can trust prevent IP theft from EPs JV partner?*
- 5) *How can contracts prevent IP theft?*
- 6) *How can a JV be managed to make it run effectively?*
- 7) *What happens when or if a JV partnership ends? How should one prepare?*
- 8) *What are the consequences associated with IP theft?*
- 9) *Are there any positive aspects?*
- 10) *Will a copycat competitor focus on its domestic market or may they attack the international market as well?*

6.2 Research Design

An explorative design has been chosen to perform the analysis, the reason for that is the lack of knowledge about the research questions and aim. Both secondary sources combined with interviews have been used.

6.3 Data Collection:

6.3.1 Primary Data:

There have been performed qualitative interviews. The interview objects are Bo Hui from JZMC Patent and Trademark Office, Thomas Sørensen from Innovation Norway, Dan Bjørke from NorVisdom, Xiaomin Qu from Wikborg Rein & Co and Knut Irgens.

These interview objects have been chosen because they have the required expertise in the fields of interest to gain information. An interview with a Norwegian company who have experienced IP theft in China would have been ideal. However, it was not possible to find any companies who were willing to share such information.

6.3.1 Secondary Data:

The information gathered was mostly from the Internet. The information available on China is limited. Regulations on media, lack of statistics and falsified material from the government are some of the reasons why finding data about China is difficult. The amount of reliable information is increasing due to easing

government regulations and the number of professionals working in or with China. The issue of IPR in China is of special interest of anyone who seeks business in the country and therefore the number of research and articles on the matter is quite good.

7.0 Findings

7.1 Where does the tendency of copying or stealing Intellectual property originate?

Because of frequent problems with plagiarism and enforcement of IPR, an increasingly recurring topic in China, they have for a long time been in the global community's attention.

Many will claim that the copy culture originates from their historical background that has been brought into the teaching system. China has an education tradition characterized by memorizing and reciting with minimal focus on source reference. This can in many ways be traced back to the mentality of Confucius and his followers.

In the analects of Confucius it is written that he would rather reproduce than create. The Master said, "A transmitter and not a maker, believing in and loving the ancients, I venture to compare myself with our old P'ang." (Confucius) The respect for the elders and their works was significant and imitation of good role models was said to be the basis of moral virtue. These characteristics disappeared for many centuries, but after influence from Taoism and Buddhism, it was again prevailed under the Song dynasty in the 11th century. The philosopher Zhu Xi played a major part in this development when he introduced repeating and memorizing again, a teaching method that ruled from the 12th century until the middle of the 20th century. Zhu Xi believed that by reading and reciting you should acquire the necessary knowledge, the ideal student should memorize the text by heart. The texts was said to represent the truth on the morality and society, the persons who knew these by heart knew the codes for right behaviour and would therefore be able to use this for success in their daily life.

Although the teaching institutions not always agreed on this philosophy during the next centuries, they were controlled by the Chinese government and did not have the same autonomy as European institutions to change the development. Not until the latter part of 18th century when the last dynasty fell and China became a republic, there were some changes. Several universities were established, universities with more power than the former teaching institutions. An agreement on trademark was established between China, Japan, USA and Great Britain, and once the Nationalist Party was founded in 1928 they set up a copyright-law inspired by Japanese and German legislation.

This trend continued throughout the 19th century and is constantly evolving. Even though this has made the foreigners more protected in theory, there are several indications that China's political leadership has difficulty letting go of cultural traditions that let them control social knowledge. This makes the implementation of IPR difficult and can be an explanation on why the nation often is seen as little entrepreneurial and creative, something that stimulates plagiarism instead of innovation. (Tvedt)

7.2 How capable are Chinese companies of innovating own technology?

The State intellectual property office of China published its "National Patent Innovation Strategy" in November 2010, which outlines the plans for future innovation. The plan was to register two million patents each year by 2015 (Dodson). China became the number one patent filer of the world in 2011, surpassing Japan and the USA which indicates that China is truly on its way to becoming an innovation nation (Thomson Reuters / Reuters). See technology in the PESTEL for patent figures.

However, these numbers are somewhat misleading. Research by Anil Gupta and Hayin Wang shows that Chinese institutions are far less creative than these numbers suggest. The study shows that the vast majority of patents are "tweaks" to current innovations, which is common in utility model patents. Only innovation patents are true patents for new innovation. The goal was an even distribution between the two types of patents. A more telling evidence of Chinese innovation ability is the numbers from the three international patent offices of Japan, EU and the USA. In 2008 OECD cited 473 Chinese patents approved by these three

nations, where it was 14,399 from the USA, 14,525 from Europe and 13,446 from Japan. This shows that Chinese companies are far from meeting international innovation standards. (Dodson)

The government has provided attractive incentives for companies in China to file patent applications, regardless of whether a patent was eventually granted. "The idea of subsidizing patents is not bad in itself, however it is a blunt instrument because you get high figures for filings, but it does not tell you anything about the quality of the patents filed," said Elliot Papageorgiou, a Partner and Executive at law firm Rouse Legal (China). (Thomson Reuters / Reuters)

7.3 How can a company protect itself from IP theft using Chinese IP laws?

Patent:

As shown in the PESTEL analysis there is three types of patents in China, Innovation Patens, Utility Model Patents and Design Patents. China follows a first-to-file system for patents, which means that the patent that is first filed, is granted even though the filers are not the original investors.

Patents are filed with China's State Intellectual Property Office (SIPO) in Beijing; they are responsible for foreign and domestic examination of supervision and patens. SIPO offices at the provincial and public level are responsible for administrative enforcement of the patent complaints.

Trademark:

China's Trademark Law was first adopted in 1982 and adjusted in 1993 and 2001. In October 2001 the current Trademark Law went into effect, and on September 15th 2002 the implementing regulations were activated. The changes of the new Trademark Law extended registration to certification marks, collective marks, and three-dimensional symbols, as required by TRIPS. As mentioned under Patent, China has a 'first-to-file' system that requires no evidence of prior use or ownership, this leaving registration of popular foreign marks open to third parties. In the past, it has occurred that the China Trademark Office has cancelled Chinese trademarks that were unreasonably registered by local Chinese agents or customers of foreign companies.

Foreign companies seeking to distribute their products are recommended to register their trademarks at the China Trade Office. Furthermore, they are also advised to register Chinese language versions in addition to Internet domain names in order to not get copied. As with patent registration, foreign parties must use the services of approved Chinese agents when submitting the trademark application. However, foreign attorneys or the Chinese agents must prepare the application. Recent alterations to the Implementing Regulations of the Trademark Law allow local branches or subsidiaries of foreign companies to register trademarks directly without use of a Chinese agent.

Copyright:

China's Copyright Law was established in 1990 and revised in October 2001. The new implementing rules came into force on September 15, 2002. Contrary from trademark protection and patent, it is not required registration for protection for copyrighted works. China allows protection to people from countries belonging to copyright international conventions or mutual agreements of which China is a member. To establish evidence of ownership, copyright owners may wish to register voluntarily with China's National Copyright Administration (NCA), in case enforcement actions become necessary.

Preventing Copying:

There are various precautions EP could have done to prevent the possibility of being copied. Many foreign firms entering the Chinese market, 78% according to Innovation Norway interview, have decided to be a wholly owned company with the ability to manufacture products, rather than entering a JV. This is due to the comprehensive control over access to the know-how and technology. An in-house manufactures that is produced in modules where a significantly amount of the technology is stored rather than outsourcing, is a brilliant way to prohibit technology leakage. Another way to avoid technology leakage is to divide the manufacturing process into many smaller operations located in discrete areas and locations. Employees will be shielded from witnessing the entire process and therefore unable to recall and copy the product completely.

In the interview with Knut, he said there has been less copying of his products than he speculated when he first started evolving EP. The reasons for this are still

unknown but it might have to do with the product's slowly increasing popularity. If EP's products were at the stage where it could compete with other warming element to the same degree as coal and hydronic heat in China, there would be a larger amount of copying of their products.

Precautions one can take to protect them from IP theft is to file a patent invention that lasts for 20 years, register their trademark both in English and Chinese, internet domain in addition to establish evidence of ownership. Looking away from the laws, EP should establish a good network and Guanxi that will prevent theft. In the interview with Xiaomin from WR, she said that the most important challenge as a foreign in China is to build Guanxi because people within the same Guanxi are less likely to steal from each other. According to JZMC, they recommend that foreign companies take patent on their products in their home country before taking the product in to China and applying for a patent there. This will make the company save time so that they do not have to draft the whole patent when applying in China. The major drawback in patent rights in China is when your product is covered under a specific category, and a competitor makes an identical product as you but manage to get it covered under a different patent category; you cannot file a lawsuit against them.

Organization:

In 1998, State of Intellectual Property Office was established to implement IPR protection and the Patent Office became a part of it. The purpose was to enforce China's IP enforcement by integrating copyright, trademark and patent offices under one authority. However, today the Copyright Office is currently under the State Administration for Public and Press and the Trademark office falls under the authority of the State Administration for Industry and Commerce. At the local government levels, local IPR's personnel assisted by police from the local Public Security Bureau will carry out enforcement of IPRs.

Special Intellectual Property courts have been established in some cities and provinces to handle infringement of IPRs more efficiently. The intellectual property courts in Shanghai, Fujian, Hainan, Beijing and Guangdong, have been separated from the economic division, in the Higher People's Court. Nationwide there were about 100,000 intellectual property rights cases in total in 2013,

according to a work report by the Supreme People's Court. This is a great increase over the average of 55,600 between 2008 and 2012. According to experts, the rise indicated an improved awareness of IP and more violation cases. In addition, there has been filed criminal charges from prosecutors all over China against more than 8,800 suspects for violations of copyrights, trademark, trade secret laws and patent.

7.4 How can contracts prevent IP theft?

EP and the partner in Nanchang currently hold a JV contract. The contract states that EP is the owner of the technology, but the Chinese partner can produce and sell the products in China. The partner must pay a percentage of every sale to EP and have no rights to licenses the technology further to any third parties. The Western culture has mostly been respecting the laws of a contract. The contract is considered as high valued paper and should not be violated. If it is violated, the party that is violating should pay some kind of compensation to the other part. However, the Chinese culture in general does not have the similar view on a contract that the Western people have. Chinese people have a reputation for not "abiding" to a contract or to change terms after its signed by both parties. According to Xiaomin Qu in WR, the terms are often regarding payment and quality of the products. She further explains that Chinese authorities, Chinese companies and WR will always try to prevent going to the court. This is time consuming and costly for all parties and will be an unnecessary noise for all involved.

When developing a JV contract with a Chinese partner, it is important that the contract is carefully designed. Especially if the JV is for a project or is scheduled to end for a specific set of time. It is essential that terms regarding how confidential information will keep being protected; how shared or private IP will be unblended, who will be responsible for successor for the JV when it ends, what happens with customer lists and different trade secrets within the organization. Using a non-compete clause in the contract can prevent some of these questions. It can for instance be used against employees and prevent them exploiting confidential information from the company when leaving the organization. This means that the employee cannot enter the same type of profession for a competitor or start with trade that is in competition with the former employer. When a person

has signed a contract that includes a non-compete clause, it can be harder to get a new job later. Therefore it is always some kind of compensation. In China, this is normally 40% of the average salary for a period of time, at maximum of 24 months. After this, the employee is free to get a new job for a competitor or start its own business.

By the findings above, it is clear that contracts can prevent IP theft. Xiaomin Qu also confirms this and says if a disagreement occurs, it is rarely about the contract or violating of terms included. According to her, it has more often to do with poor business communication between the parties. They need to understand each other's differences and try to accept the various business cultures.

7.5 How can trust prevent IP theft from a JV partner?

There tend to be differences between Chinese and Western culture in the perception of trust. Chinese use trust as a social credit rating and is gained through time. There are several incidents where JV partnership has failed and the causes of this have been theft within Trademark, IP and copying. Trust in business should be defined in term of three main elements – goodwill, contractual compliance and competence. (Sako) If these are fulfilled then reciprocity will follow through the JV.

There are crucial facts that need to be prepared before entering a JV. Norwegian companies need to understand their Chinese partner both through culture and the way they do business (Innovation Norway). They have to gain knowledge around their partner's aim and goal when joining JV; the key aspect is communication. Xiaomin Qu from WR said in the interview that as long as the two parties communicate and come to an agreement without any blank spots there should be no problems with theft from the JV partner in the future. If there are points that are left untouched and the JV ends, the probability for problems affecting and harming the foreign company arise.

Chinese often do business with friends and family, and can be sceptical towards "strangers". Therefore Guanxi needs to be built over time. A foreign company has to build relations before they can expect anything else from a future partner. Many Norwegian companies do not realize the importance of network and Guanxi

before handling a business deal. They are because of this often offended by deals not being fixed the first or second time they meet with a potential Chinese partner. It is crucial for them to understand the culture before entering the market.

Difference between work life and private life is not always well defined in China. Most activities are done together with their Guanxi regardless of the time or the day. Doing business is hence a lifestyle. Norwegian companies doing business or having a JV in the Chinese market must therefore invest time in the partner and build a good friendship. As long as the foreign companies follow the norms and anticipations of the Chinese business culture the partner will show reciprocity and conflicts and theft will be reduced.

7.6 How can the Joint Venture be managed effectively?

According to Xiaomin Qu at WR, JV partnerships in China often experience a troublesome start. However, after calming down and discussing issues, the operations will normally run smoothly. Several sources have listed similar key points for a successful JV, some of them are: effective communication, managing management/talent, quick response to changes and aligning priorities. (Bosshart, Luedi and Wang) (Hart)

A key to overcome disagreements is communication. It is important to listen to the other party as well as clearly communicating your own interest in a way that they will understand. Of course, this is easier said than done, especially during heated disagreements where you feel that there are no way you can understand each other.

Aligning priorities is important, regardless of where the joint venture is located; companies spend too little time building a shared understanding of its future business, the markets it will compete in, and how it will evolve over time.

Differences of opinion that are deeply rooted in competing expectations of future performance can affect the joint venture's strategy and focus and eventually lead to its failure (Bosshart, Luedi and Wang). Looking at the production in Nanchang, EP and its partner often experience disagreements in terms of quality, both in production and in the final product. An example is the transformer used to provide electricity to the floor heating. The Chinese insist that a local Chinese transformer is good enough, while Knut at EP wished for a more reliable European product.

The European is more expensive, but will most likely lead to a profit in a long run, due to a more reliable floor heating and satisfied customers. By explaining this to his partner, he was able to convince that they should use the European one. On the other hand, the Chinese knows far more about the local market and therefore has a better understanding of the customer needs. That means that EP must take in to consideration what the Chinese say, and adapt to local standards.

Managing management or talent can be crucial to maintain control in the JV. Both board and executive positions have to be allocated between the partners and their functions and decision rules will have to be carefully specified to establish the balance of power. Most literature on this matter focus on companies with the resources and leading profiles to attract the biggest talents, who most likely have a pool of opportunities lined up for them. Having key management positions in the JV is important for small or medium sized enterprises as well. “If you can’t afford to send a full-time manager to China to help run the business, then you shouldn’t be investing in China at all” (Chris Devonshire-Ellis and Richard Hoffmann, Chinabriefing.com)(Thomson Reuters / Reuters). However, with the increasing number of talented Chinese managers, there are several advantages of hiring locals to represent the company in a JV. Culture, language, local market knowledge, lower salary and other expenses are several reasons why local talent might be a wise choice.

In a JV, and especially in China, one must always be prepared for changes in the situation. Although there is many people involved when reporting to managers in Chinese companies, once they make their decision, they execute it quickly. Direct and effective lines of reporting is advised in order to handle changes quickly, “Some of the more successful multinationals we’ve observed provide for direct reporting lines to their CEOs” (Bosshart, Luedi and Wang). Since the situation of a JV can dramatically change, one should be prepared for exit.

7.7 What happens when or if a JV partnership ends? How should one prepare?

“In a market as dynamic as China’s, partnership terms negotiated today might be ineffective in a few years, and even strong partners may struggle to survive” (Bosshart, Luedi and Wang)

There are several reasons why JVs do not work, relevant for this paper is the case from September 2009 where Danone Group of France ended their JV with Wahaha Group. The dispute erupted in 2007 when Danone accused their partner of secretly operating parallel companies producing similar products as the JV Company, which is one of the most common concerns for foreign companies entering a JV in China. After two years of difficulties, they came to the agreement that Wahaha would buy out Danone from its 51% share of the JV. After the failed JV, Danone have bought shares in Mengniu dairies, one of Chinas leading dairy producers. However, troubles continue to arise, such as food safety scandals.

(Barboza)

It is not possible to simply leave the JV, both parties must agree on the terms of ending the partnership. The parties should agree the grounds that might trigger termination in advance. Termination because of a deadlock is an example.

Termination might also be triggered if the joint venture fails to meet certain sales or market shares, or to obtain certain quality certifications (Hart). Termination on the grounds of the JV partner secretly producing similar products outside of the JV as in Danone's case may be an effective trigger to protect IP rights. In the event of ending a JV, it is also wise to have a backup plan. Both a list of potential new partners, or looking at the possibility of starting up wholly owned production is wise to have prepared in advance of a failed venture. This will help to save valuable time when starting up new production at another location.

7.8 What are the consequences associated with IP theft?

IP theft damages companies through the costs of IP protection, brand damage, loss of revenue and decreased incentives to innovate because of potential theft.

When a product becomes successful and the sales are good, there will most likely be several incidents of companies stealing the technology to get their share of the sales. In most cases, according to WR, the company who are being sued for IP theft usually gets a fine of 200 000 CNY. Companies who steal technology could earn substantially more than that, and a fine of 200 000 CNY would probably not stop them from IP theft.

Brand damage is an issue. When the cooperation between EP and their first partner in China ended, the Chinese ex-partner stole EP's technology and their

trademark. Now the Chinese former partner is selling the same product as EP and they have the right in China for EP's logo.

If a competitor were to steal technology from EP and they became successful and managed to gain a significant market share, it would have a major negative impact on the revenue of EP. It would not only have a negative impact on EP's revenue, but EP would also have to use more resources on marketing to avoid that the competitor gained too much of the market share from them. A good example of a western company experiencing IP theft in China is the incident with the Norwegian company, Eltek. They filed a lawsuit against a major Chinese company in 2012 due to an infringement on Eltek's IP rights, even though the financial amount involved in the IP theft was relatively small. As mentioned before, WR does not recommend filing lawsuit against IP theft that does not have a major impact on the company. Eltek filed the lawsuit as a matter of principle because it is in their universal code of conduct. The result of the lawsuit has not been made available for public view yet. (Eltek)

7.9 Are there any positive aspects with IP theft?

There are mostly negative aspects related to IP theft and for most companies it is preferred to avoid IP theft as much as possible. Still, there are some positive aspects of IP theft as well that can help companies. EP is a small company with limited resources to promote and teach potential customers about their products. Companies that steal and resell EP's products are helping EP in educating their potential customers about their products and why they should buy them. IP theft also put pressure on the owners of the original product to always stay ahead of their competition and produce a better product. This can encourage innovation.

7.10 Will a copycat competitor focus on its domestic market or will they attack the international market as well?

"China has now become a leading exporter in a growing global market for counterfeit products." (Kan)

Since China is the world's leading counterfeiting superpower, there is little evidence that shows the copycat competitors will not attack the international market in addition to the Chinese market. Around 70% of all Chinese manufactured goods are exported, and from 2008 to 2010 approximately 70% of all counterfeits globally came from China. (Kan) This number is quite dangerous

for foreign companies established in China making a great effort to prevent copying. An example of a company being copied and then the products being exported to other countries is P&G. A significant amount of fake P&G products were exported to East Asian countries, this affected P&G's international reputation. Chinese brands and industries suffer from untrustworthiness due to counterfeiting and because of this many foreigners do not rely on products from China. This harms China's economic development, the drive for modernization and industrialization.

It is difficult to address what competitors might do in the future, or even if any threatening copying competitors exist at all. But after looking at the Chinese market trend, if EP's products get to the point where they are being copied directly from other companies, they should be aware of the probability of getting driven out of the market.

8.0 Discussion And Recommendations:

It is now possible to give EP concrete recommendations on how they most effectively can protect their IP rights using laws, contract and other non-legal matters. In the problem definition, ("How EP can secure their intellectual property rights, when sharing key technology is a crucial part of a successful joint venture") there is also focus on a successful JV. Therefore, it is necessary to give some guidelines on how to get the most out of the Chinese partner in terms of both production and sales in the Chinese market.

The recommendations are listed in several steps where the first part is mainly focusing on protecting IP rights and finally how to get the most out of the JV production in order to reach its market goals:

8.1 Protect Intellectual Property Rights Using Patents Laws

The first thing EP has to keep in mind is that in China there is a first-to-file system. This means that for any product or product-parts EP wish to have a patent on they need to apply for a patent, right away and not delay it. By being proactive in the patent application process, EP can prevent competitors from getting patent on their products due to the first-to-file system. When EP applies for a patent, they should follow JZMC's recommendation to apply for the invention patent first since it gives the widest and longest protection of their product. The time it takes

to get the invention patent granted is two to three years. In this period JZMC recommended that EP apply for a utility model. This will give EP's product some protection during the time it takes to get an invention patent.

JZMC recommended that EP should apply for patents in Norway before applying for a patent in China. This is to save time and make the whole process of getting an invention patent in China faster. According to Knut, EP should not apply for a patent on their plastic compound used in the floor heating elements. The reason for this is because the patent will be accessible for other companies and it will describe in detail the components of the plastic compound. Other companies could then use this patent as a recipe for their copy of EP's product.

8.2 Make Solid Contracts

Concise and detailed contracts are crucial for developing a good partnership and still keep control of IP in China. No matter if it is a JV contract, with an employee or an agent, it is important that clear agreements should be shaped. The agreements should be protective for both parties. This will make the partnership more secure and trustworthy. EP should always remember that Western and Chinese cultures might have a different perspectives of what a contract is. A contract is viewed as a legal and valued document in both cultures, but Chinese may see it as easier to discuss terms even after it is signed.

EP's biggest advantage is that they have developed a strong technology, and the knowledge EP has acquired is hard to both copy and acquire by others due to lack of experience. In a JV contract it should be stated that EP would always be the only owner of the technology and production method used, especially after a JV is done. It should be clear that continued use of the production method, producing and selling the products is an illegal tramp of IPR. If terms are broken, there should be several consequences. Consequences regarding broken terms can be effective for both parties to protect the contract and maintaining a good relationship. Consequences can be regarding compensations claims, fines and monetary damages.

For employees in EP to do their job, it is essential to have access to confidential information regarding products, technology, and customer list and trading secrets. To prevent employees to expose this kind of information to other competing companies, EP should establish non-compete contracts. This means that if a

employee leave EP, the person is not allowed to share information, secrets or start working at other competitive company's for a maximum of 24 months

8.3 Two Strategic Choices

Patent laws and making solid contracts is not enough to protect IP rights. The organisational of production is also relevant in terms of IP protection. Therefore, it is wise to consider if one should continue JV or start their production.

8.3.1 Alternative 1: Wholly Foreign Owned Enterprise:

There are several advantages with a wholly foreign owned enterprise that makes it an alternative worth considering.

Advantages:

- EP can uphold its independent strategies without considering a partner.
- Total management control.
- Shareholder liability is limited to invested capital.
- Easier to terminate than a JV
- *Better protection of Intellectual property*
(Huang)

Disadvantages:

- Limited access to government support.
- No partner who contributes with
 - Supplier network
 - Customer network
 - Market insight
- Steep learning curve.
- Investment of minimum 15 000 US dollars, this is a minimum that differs between regions, and the minimum in Shanghai is 150 000 US dollars.
(Huang)

8.3.2 Alternative 2: Continue Joint Venture in Nanchang:

Advantages:

- The use of local partner's existing workforce and facilities.
- Existing channels for sales and distribution.
- Use of a partner's network to build good relationships; avoid red tape and other bureaucratic complexities.
(Canada)

Disadvantages:

- Conflicting interests with partners.
- Merging different management styles.
- *Risk of creating a competitor.*

(Canada)

8.3.3 Conclusion: Continue Joint Venture

After comparing the advantages and disadvantages of the two alternatives, the author's advice is to continue the JV based on the following reasons. Based on the internal analysis, EP does not have the competence or resources necessary to start up a WFOE production and market its products in China at the same time. Even though the risk of creating a potential competitor is large when having a JV, the advantages weigh up for it. In addition, with today's arrangement, the JV partner is responsible for sales in Mainland China except for Shanghai, which EP most likely would not be able to do without ruining other operations of the company. If a WFOE were to be chosen, it would have been a costly investment and it would take time and resources from EP's management that would be harmful to other activities. The WFOE would have been solely a production company to produce for Shanghai and EP's markets in Europe. Sales in other parts of China would not have been recommended.

8.4 Focus On Mutual Gain

Make sure that both parties feel that they have the same amount of gain from the JV is important in order to have a successful business. EP's most important goal with the JV is to produce the best possible products for all of its markets in a safe and sustainable way. The Chinese partner's most important goal is to produce the greatest amount possible and sell as much as they are able to, in the Chinese market. EP should absolutely be firm principle of quality first in production, because these products are supposed to hold a high international standard and is important for EP's profile as a high quality producer.

To meet the goals of the partner, EP can allow or even encourage their partner to set up parallel production to meet their desire of large volume sales. Through a royalty agreement on sales from parallel production, EP is able to make a profit on their IP, in a situation that most likely will be a reality in the future. If this

strategy succeeds, EP will meet their goal of producing quality through the JV and the Chinese partner will reach their goal of manufacturing for the rest of the Chinese market. EP will also get to profit from the sales.

The JV is a production company, and the Chinese partner has the right to sell in China. The market selection for EP in Shanghai and international markets is explained using Solberg's 9 Strategic Windows.

8.5 Solberg's 9 Strategic Windows

The role of market selection lies in the International Sales Office in Shanghai, Elektroplast International CO., Ltd. The idea of this company is to cover the Shanghai and international markets.

Considering if EP should expand further into Asian markets has to be based on the company's ability to internationalize and how global the industry is.

The different types of heating solutions are common and known to the customers. Especially north of the equator the need for a heating source is necessary during the winter season. However, in the Asian countries there are many competitors, and the majority of customers are using hydronic-heating system and dual function systems that have both the heating and cooling function.

The Chinese market is huge and complex, with several markets within the market. EP has entered this with a product that is innovative and new to the buyers. It is a time consuming process to educate the different consumers, and it will take years to capture significant market shares with a product like this. Therefore this is characterized as an isolated multi local market.

The VRIO-framework concluded that EP has built a small, but strong organization with experienced and knowledgeable employees. There is definitely international and domestic competence in the company. Together with a unique innovation that is, and must be in the future, well protected, there is an ability to internationalize. Still, the ACE-model revealed that the market orientation is low. How the Chinese market was chosen seem rather random, that they to some degree are trying to get the product to fit the market, not the market to fit the product. Also with the settling in period for both the Shanghai sales office and the factory in Nanchang, the market information as a leadership tool is not good enough yet. Another thing that weighs against the ability to internationalize is the lack of relations and

reputation, described as a competitive disadvantage in the VRIO. There is still a job to do in China; therefore EP is characterized with a medium ability to internationalize.

From this the conclusion is that on this point EP should consolidate their position in established markets. The Chinese market is large, divided and has a great potential. The surrounding markets can be difficult and time consuming to infiltrate, so with resources EP has today the main focus should be Shanghai and its established markets in Europe.

The company's ability to internationalize	High	Seek new business areas	Prepare globalizing	Strengthen your global position
	Medium	Consolidate position in established markets	Consider expansion into new markets	Seek global alliances
	Low	Stay in your domestic market	Seek niches in international markets	Prepare possible acquisitions
		Multi local	Potentially global	Global
		The Industry globalism		

(Solberg)

8.6 Be Prepared For Breakup

Even though the recommendation is to continue and maximise the JV, EP should have a backup plan. The findings in the analysis tell that a Chinese JV is an unsecure business arrangement that can change quickly. In the event of drastic changes or the results of the collaboration falls short of expectations, it is wise to have prepared alternatives. If the JV, and the reason cannot be related to common JV disadvantages, a new JV may be considered. A list of potential partners should be prepared if possible.

However, the JV fails due to typical JV disadvantages; the best idea would be a WFOE. When a production facility is establish, it might be an idea to re-evaluate EP's market strategy in China. As the analysis of EP's internal resources and capabilities suggest, in the view of Solberg's 9 Strategic Windows Model, the textbook answer would be to consolidate their position in established markets.

When or if EP increases its capability to internationalize, they may seek new potential markets.

We believe that these recommendations will help EP to protect their IPR in China. And it will hopefully help them to optimize their collaboration with the JV partner in Nanchang. However, the reader should be aware of the limitations of this project.

9.0 Research Limitations

- It was not possible to get an interview with a Norwegian company who has experienced IP theft in China.
- An interview with the JV partner in Nanchang would have been helpful, but this may have led to suspicions of EP's motives.
- Lack of secondary information about the industry in China, we have relied Knut Irgens knowledge.
- Information on enforcement of IPR in China is limited; it is therefore difficult to see how effective the IPR rights are in reality.

10.0 Appendix

10.1 Interview Questions For Knut

I hvilken grad mener du de ansattes kunnskaper både innad i bedriften og utad i markedet er? Er det noe som burde forbedres, eventuelt hvilke tiltak må til?

Tror du ferdighetene, erfaringene og holdningene til de ansatte kunne vært bedre, i så fall i hvilken retning?

Mener du dere har gode kunderelasjoner? Hvis ja, hvordan hjelper dette dere med salget i markedene?

Er du fornøyd med systemene, rutineene og arbeidsmiljøet dere har per nå?

Merkevaren Elektroplast, mener du den har et sterkt navn i Kina? Eventuelt hva er planene for å styrke denne?

Er produktet lett kopierbart eller mener du dere har et fortrinn på dette feltet?

Hvordan er dere i forhold til pris, har dere et konkurransefortrinn her eller er dere dyrere enn konkurrentene? Hvordan stiller du deg i forhold til dette?

Mener du dere utnytter de materielle ressursene optimalt?

Er teknologiske kompetansen lett å kopiere for ingeniører, i så fall er dette noe du ser på som en trussel?

Hvordan er det angående salget i Kina?

Hvordan mener du dere bruker markedsverktøy?

Hvordan er deres forhandlings kunnskap og hvordan går dere fram?

10.2 Interview Questions For Xiaomin Qu – WR

How are contracts enforced?

How effective are the contracts?

How does the Chinese perceive contracts?

What happens if there is a dispute/contract breach?

What are the key aspects of a JV contract?

Is contract law the same all over China?

Does it matter where the conflicting companies are established?

Do you have any examples of international firms that have been in court and lost even though they were legally correct?

Is it possible to have a non-compete clause in a Chinese contract, and how effective is it?

Has indigenous innovation made Chinese companies able to make their own innovations rather than copying from others?

How has the indigenous innovation campaign affected the protection of the technology for foreign companies?

What are the advantages and disadvantages of JV for Chinese and foreign companies?

How much does your network affect you if a company was to sue another company?

Has the Nobel Peace Prize had any effect on lawsuits between Norwegian companies and Chinese?

How has WTO affected Chinese contract law?

How should one prepare for ending of JV partnership?

10.3 Interview Questions For Thomas Sørensen – Innovation Norway

Hvordan finner norske bedrifter kinesiske samarbeidspartnere?

Hvilke samarbeidsform er mest vanlig?

Hva er de største utfordringene norske bedrifter møter ved å ha kinesiske samarbeidspartnere?

Hvordan går dere fram for å beskytte norske bedrifter i forhold til kopiering?

Har dere noen eksempler på bedrifter som har kommet utfor plagiering?

Hvordan ble dette håndtert?

I hvilken påvirkning har Nobels Freds Pris på norske bedrifter og Norge i Kina?

Hvilken tiltak mener dere norske bedrifter bør gjøre for å unngå plagiering?

Hva vil dere anbefale norske bedrifter som har tenkt å etablere seg i Kina?

Hvordan vil dere gå frem med denne anbefalingen?

10.4 Interview Questions For Bo Hui - JZMC

What are the key aspects regarding patent laws in China?

How are they enforced? How effective is the law about the patent deal?

What are the criteria for a brand to not be copied and being well known?

What actions can a Norwegian firm take to prevent plagiarism from a Chinese partner?

Can thrust within the joint venture prevent opportunistic behaviour?

Are there any regional differences regarding patent laws? Does it make any difference where the business is established?

Do you have any example of international firms that have been in court and lost even though they can prove their case?

What are your future prospects about IPR in China?

How has WTO affected IPR in China?

Regarding joint ventures how does IPR apply?

How has a small Norwegian company been affected by the Nobel Peace Prize?

Through joint venture and indigenous innovation policy, what are the benefits for China and disadvantages for foreign companies?

How important is your network when going in to court?

How are contracts formed and how are they dealt with if they are violated?

If the dispute is resolved in HK or England, how will Chinese government react to this and enforce it?

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