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Guideline against IP Monopolies Released for Public Comment

The National Development and Reform Commission released the Guideline against Monopolies Resulting from Misuse of Intellectual Property Rights on December 31, 2015 for public review. The soliciting for comments ends on January 20, 2016.

The guideline stipulates protocols between market operators with or without competitive relations, and covers eight possible conditions including cross-licensing, joint research and development and price limits. The guideline also defines the determination regarding misused market dominance. It will better the clarify situations such as for last year's Qualcomm case, where the US smartphone chipmaker was fined 6 billion yuan for violating China's anti-monopoly law.

Another highlight in the guideline is considered to be the introduction of market share criteria. Accordingly, protocols that do not greatly exclude competition can be forgiven. It will provide companies with clearer rational expectations and reduce their compliance costs.

http://english.sipo.gov.cn/news/iprspecial/201601/t20160106_1225627.html

State Council Issues Opinion Calling for Expanding IP Measures

In late December, the State Council issued the Opinion on Accelerating the Building of IP Power under New Conditions, vowing to thoroughly implement national IP strategy, deepen reform in IP key areas, carry out more rigid IP protection, promote the development in new technology, new industry and new commercial formats, enhance industrial internationalization development level, safeguard and encourage mass entrepreneurship and innovation.

By 2020, decisive achievements will be made in IP key areas and links, the environment for entrepreneurship and innovation will be further improved, getting a new advantage in global IP competition, laying a solid foundation for China to be a world-class IP power with Chinese characteristics.

According to the Opinion, the following aspects are aimed to be strongly improved in the next a few years.

China will accession to the Hague Convention (for industrial designs) and Marrakesh Treaty (for copyright). But UPOV '91 (for new plant variety) is not mentioned although the Opinion

states China will improve the protection for new plant varieties. Regarding trade secrets, China will promote completion of trade secret law and regulations.

China will also promote the development of IP intensive industries, and provide further expense tax deduction policy.

China will also continue improving IP prosecution and relevant regulations regarding IP infringement and abuse.

http://english.sipo.gov.cn/news/official/201512/t20151230_1223428.html

China Promises to Facilitate Patent Filing and Prosecution

Chinese authorities recognize that protecting intellectual property is crucial if the country is to see the boom in entrepreneurship and innovation that they hope will prop up the economy.

Accordingly, the State Council promised on December 23th, 2015 that the government would simplify and cheapen application procedures for patents. There is an urgent need to quicken the process of patent examinations as China faces surging numbers of applications. A total of 2.36 million patents were accepted last year, a surge from less than one million in 2009.

At the same occasion, the State Council promised to provide more financial support for IPR protection and start blacklisting offenders.

<http://www.chinaipr.gov.cn/article/centralgovernment/201512/1884013.html>

IP Operation Funds for Key Industries Launched

At the start of the New Year, two government-backed IP funds have been launched in Beijing and Sichuan. With a total planned capital of 1 billion yuan and 700 million yuan respectively, the funds will focus on supporting the operation of IP in key industries with existing core technologies and cutting-edge technology or having industry prospects for nearly coming time.

Beijing Key Industry IP Operations Fund is the largest IP operations fund in domestic, with the duration of 10 years. The first phase of investment by Beijing Key Industry IP Operations Fund (400 million yuan) is already in place, focusing on mobile Internet and bio-pharmaceutical industries, mainly start-ups or growing enterprises which have core patents and patent portfolio of high value, good market prospects and high growth, or intellectual property operation institutions with the appropriate characteristics of industries

Sichuan IP Operations Fund was set up jointly by the central government, Sichuan Province government and the governments of Chengdu, Deyang and Mianyang. It will be used on various aspects of IP cultivation, transformation, industrialization and operations, major overseas IPR disputes, international standards formulation, patent navigation, and alliance construction.

<http://www.chinaipr.gov.cn/article/centralgovernment/201601/1884871.html>

Dissenting Opinions First Written in Beijing IP Court's Ruling

Ernest Borel (Far East) Co. Ltd. filed an administrative lawsuit with the Beijing Intellectual Property Court against the Trademark Review and Adjudication Board and the third party Shenzhen Yibolu Health Technology Co. Ltd for trademark invalidation dispute. Ernest Borel claimed the disputed trademark of Yibolu violated its prior existing copyright of the design of "love couple". The panel did not form a unified opinion over the question whether Ernest Borel's prior trademark registration and subsequent copyright registration of the design together can confirm its copyright ownership, where minority opinion believed that the provided evidence has sufficiently proved that point. But both the majority and minority opinions agreed that the design belonged to Ernest Borel. Ultimately the case was ruled based on the majority opinion but mentioned the minority opinion in the final ruling.

It is the first time in history minority/dissenting opinion was included in the ruling of an administrative lawsuit regarding intellectual property rights. According to the general practice in China, such opinion is only recorded in the collegiate record of the panel which is not available for the public to access.

<http://finance.chinanews.com.cn/gn/2015/12-15/7671593.shtm>

China Continues to Top Patent Application List and Dealt with Increasing Number of IPR Infringement Cases

China handled more patent applications for inventions than any other country for the fifth year running in 2015. The country had over 1.1 million patent applications last year, up 18.7 percent year on year.

About 359,000 invention patents were authorized, 263,000 of which were granted to domestic applicants, 100,000 more than in 2014. That brought the number of invention patents owned by every 100,000 Chinese to 6.3.

Of all the invention patents authorized in 2015, 60.5 percent went to Chinese enterprises, an annual increase of 4.1 percentage points. China's top oil-refiner Sinopec obtained 2,844 patents, the most among all Chinese firms, followed by telecom giants ZTE and Huawei.

In addition statistics reveal that from January to November 2015, IP organs across the country handled nearly 4,000 patent infringement and counterfeiting cases in E-commerce area during the Lightning Action carried out by State Intellectual Property Office of China. In the 2011-2015 period, the SIPO has dealt with a total of about 87,000 cases of IPR infringement.

<http://www.chinaipr.gov.cn/article/centralgovernment/201601/1884890.html>

http://english.sipo.gov.cn/news/official/201512/t20151230_1223427.html