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China Has Ceased Issuing Paper Patent Certificates

According to the CNIPA announcement 427 released February 11, 2022, the China National Intellectual Property Administration (CNIPA) would no longer accept requests for paper patent certificates of e-filed patent applications from March 1, 2022.

The authenticity of the e-certificate can be verified through China patent electronic application system.

https://www.cnipa.gov.cn/art/2022/2/11/art_74_173171.html

Trademark Examination and Trial Guide Responded to Public Concerns

Recently, the Trademark Office of CNIPA issued four policy interpretations of the Trademark Examination and Trial Guide (hereinafter referred to as the "Guide"), interpreting key issues in the formulation of the Guide from the aspects of the examination and trial of a bad faith application for trademark registration for a purpose other than use, signs that may not be used as trademarks, distinctiveness of trademarks and well-known trademark so as to facilitate the public and trademark practitioners to better understand the Guide and respond to public concerns.

It is understood that the addition of the chapter "A Bad Faith Application for

Trademark Registration for a Purpose Other Than Use" in the Guide aims to adapt to the revision and improvement of the Trademark Law, and resolutely crack down on the bad faith application for trademark registration for a purpose other than use. The Guide adds an elaboration on concepts related to distinctiveness of trademarks to urge trademark examiners to better grasp the connotation and denotation of distinctiveness of trademarks, and to more accurately determine whether a trademark is distinctive and whether it can be registered, so as to ensure that the consistency of the implementation of the standards and the correctness of the examination conclusions to improve the quality of the examination; and also to remind applicants to choose more distinctive signs when applying for registration of trademarks.

The revision of the "Examination and Trial of Signs that May not be Used as Trademarks" in the Guide adheres to a right political direction, fully absorbs and draws on the theory of trademark right granting and verification, practices the latest achievements, and insists on safeguarding the unity of national interests, social public interests, and legitimate rights and interests of citizens, and summarizes the practical experience of cracking down on trademark registration that endangers our national interests, social public interests and public order. In the Guide, a well-known trademark should be recognized according to the principle of "need-based recognition", which aims to clarify that the

well-known trademark will be recognized if it is necessary for "handling the case" and not for other reasons. In the practice of trademark right granting and verification, the implementation of the principle of "need-based recognition" should adhere to protection orientation and result orientation. The recognition of well-known trademarks should not only adhere to "if it is necessary for handling the case" and "conform to statutory requirements", but also meet "exhaustion of other remedies" and other preconditions.

<http://english.ipraction.gov.cn/article/ns/202203/373292.html>

CNIPA: Subsidiary Companies not Eligible as Respondents in Administrative Patent Cases

The CNIPA on February 23 confirmed companies' subsidiaries as ineligible to be respondents to answer petitions in administrative patent cases, in the country's top IP authority's reply to the Zhejiang Intellectual Property Administration published on its official website.

The CNIPA identifies the Civil Procedure Law of the People's Republic of China (PRC) as the governing law of all administrative patent cases. As a procedural law, the Civil Procedure Law is supposed to be compatible with the Civil Code of the People's Republic of China as a substantive law, which became effective on January 1, 2021.

There are provisions for the rights and obligations of legal persons and unincorporated associations in the Civil Code. Companies' subsidiaries are not classified as unincorporated associations and are held responsible for civil liability in two manners. With Article 14 of the Company Law of the People's Republic of China taken into consideration as well, companies' subsidiaries are ineligible to function as legal persons to

answer petitions in administrative patent cases.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12435>

China to Strengthen Regulation on Seed Production: Agricultural Ministry

China will strengthen regulation on seed production and operation, in order to create a healthy and orderly environment for the domestic biobreeding industrialization, according to a regulatory plan on agricultural genetically modified organisms (GMOs) by the Ministry of Agriculture and Rural Affairs.

According to the plan, the ministry will ramp up regulation on seed production bases and seedbed-like fields, implementing more frequent testing during the seedling stage, in a bid to prevent the production of illegal genetically modified seeds.

Moreover, the ministry will strengthen the sampling of genetically modified components during seed processing, and strictly punish illegal processing, so as to prevent the illegal seeds from entering the market.

The plan also states that the ministry will improve the management and step up the validation of genetically modified varieties including soybean, corn and cotton.

The ministry noted that it will strengthen the review of foreign traders, domestic traders and processing enterprises, strictly prohibiting the change of use of imported agricultural GMOs, to ensure that all will be used for raw material processing.

China has always placed a priority on ensuring food security. On February 22, China's central authorities released the No.1 central document, an important indicator of policy priorities for the year, vowing to ensure food security by holding the people's rice bowl firmly in its own hands.

As part of efforts to ensure food self-sufficiency, a push for breakthroughs in key

agricultural technologies such as seed sources is among the key takeaways of the policy document.

The country's action plan for vitalizing the seed sector would be implemented in a comprehensive way, per the document, pledging to strengthen intellectual property rights protection in the seed sector, among other moves to advance progress on agricultural seed sources.

<http://english.ipraction.gov.cn/article/ns/202203/373269.html>

China's Civil Procedure Law Amended 4th Time to Simplify Proceedings

The 4th amendments to the Civil Procedure Law of the People's Republic of China were passed at the 32nd session of the 13th Standing Committee of the National People's Congress (NPCSC) of the PRC on December 24, 2021 and came into effect on January 1, 2022.

The amendments consist of 7 new provisions and 26 amended provisions. The necessity of the amendments has been triggered mainly by the Pilot Reform of Civil Proceedings for the Separation of Complicated Cases from Simple Ones which was decided by the NPC and became effective on December 28, 2019 and has been implemented by the Supreme People's Court of the PRC (SPC) since January 15, 2020.

13 terms were amended to be compatible with the Civil Code of the PRC effective on January 1, 2022. For example, "holidays" were changed to "statutory holidays" in the updated version of the Law.

Of note are the amendments to the five procedures in terms of judicial confirmation of mediation, small claims cases, single judge courts, online litigation, and starting dates of the applications for enforcement.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12430>

Chinese Government Work Report Highlights IP Protection and Use in 2022

The Fifth Session of Thirteenth National People's Congress opened on March 5. On behalf of the State Council, Chinese Premier Li Keqiang delivered a government work report.

According to the report, China will further beef up IPR protection and application, build up digital industries such as integrated circuits and facilitate intangible cultural heritage protection, make the most of the legacy of the Beijing 2022 Winter Olympics.

The report puts forward that China boosted the development of national laboratories and promoted implementation of major science and technology programs. China reformed and refined the management of central government funding for scientific and technological research, increased the proportion of indirect expenses for research projects, and gave institutes more decision-making power over their research. China continued the additional tax deduction for R&D expenses and increased this deduction to cover 100 percent of such expenses for manufacturing enterprises. Intellectual property right protection was strengthened. Weak links in the industrial chains of key industries were reinforced and upgraded. Digital and smart technologies were adopted in traditional industries at a faster rate, and emerging industries maintained good momentum for development.

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China will accelerate development of the Industrial Internet, build up digital industries such as integrated circuits and artificial intelligence, and enhance China's technological innovation and supply capacities for key software and hardware. China will improve governance of the digital economy and realize the potential of data as a factor of production, to further stimulate economic development and enrich people's lives.

China will protect and use cultural artifacts and ancient manuscripts more effectively and better preserve and pass on Chinese intangible cultural heritage. China will make the most of the legacy of the Beijing 2022 Winter Olympics. China will see that more sports venues and facilities are built close to people's homes and promote extensive public fitness activities, according to the report.

<http://english.ipraction.gov.cn/article/ns/202203/373476.html>

French Auto Supplier Valeo Wins \$800,000 from Chinese Patent Infringers

China's Shanghai Intellectual Property Court on February 23 ruled in favor of Valeo Vision Belgique SA in a patent infringement lawsuit against two Chinese companies Zhuhai Winner Auto Lamp Manufacturing Co., Ltd. and Shanghai Jinxi Automobile Sales Service Co., Ltd..

Valeo is a French global automotive supplier founded in 1923 and headquartered in France, listed on the Paris Stock Exchange. Valeo Vision Belgique SA is its Belgium-based subsidiary founded in 2006. Valeo Vision filed

an application for the patent ZL201380038365.7 related to a light beam emitting device, and a headlight, in particular for a motor vehicle, including the said device with the CNIPA in 2013, which was granted by the agency in 2018.

Valeo Vision filed a lawsuit in 2020 against Zhuhai Winner and Shanghai Jinxi with the Shanghai Intellectual Property Court accusing them of manufacturing and distributing headlights infringing Valeo Vision's patent ZL201380038365.7, seeking 7 million yuan (\$1.1 million) in damages and 350,000 yuan (\$55,000) in reasonable expenses.

Zhuhai Winner filed a request with the CNIPA to invalidate the patent's claim 1 it was accused of infringing. In April, 2021, the CNIPA affirmed that the patent was valid after patent owner Valeo Vision had amended the patent's descriptions.

The trial court ruled for the plaintiff and ordered two defendants to pay 5 million yuan (\$790,000) in damages and 350,000 yuan (\$55,000) in reasonable expenses to the plaintiff.

The case docket no. is (2020)沪73知民初1372号, whose English transliteration is 1372, first instance (初), civil case (民), (2020) Shanghai Intellectual Property Court.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12441>

SUPPLEMENTARY ISSUE

China's Supreme People's Court Affirms that New Evidence could be Submitted in Administrative Cases Involving Patent Granting and Confirmation

Through the judgment (2021) Zui Gao Fa Zhi Xing Zhong No. 93, the SPC affirmed that new evidence submitted by the patent applicant or patentee in an administrative case involving patent granting and confirmation should generally be considered by the people's courts, thereby clarifying which type of evidence submitted by a patentee, an applicant or an invalidation petitioner in litigation proceedings should be examined.

This case is an appeal case filed against the Examination Decision on Invalidation Request ("invalidation decision") issued by the CNIPA. The appellant (i.e. the plaintiff in the first trial) is the patentee of invention patent No. 03135523.4, entitled "Medicine Automatic Packaging and Metering Device", the appellee (i.e. the defendant in the first trial) is the CNIPA, and the third party in the first trial is the invalidation petitioner.

In the first instance, in order to prove that its patent was inventive, the appellant provided seven new pieces of evidence to prove that during the invalidation examination proceeding, the CNIPA misunderstood the distinguishing technical features of the claims in the patent, chose the wrong prior art, and underrated the social contribution and commercial value of the patent. However, the court of first instance held that:

"A patent administrative case is to examine the legality of an administrative act made by the CNIPA and therefore should be based on the evidence on which the CNIPA made the administrative act, that is, the evidence submitted by the patentee or invalidation petitioner in the invalidation proceeding. As for the evidence newly submitted by the plaintiff in the first-instance litigation, these evidence documents were not submitted in the invalidation proceeding, and the plaintiff also did not give a reasonable explanation for not submitting them until in the litigation proceeding. Since these evidence documents are not the basis on which the CNIPA made the sued invalidation decision, they should not be used as a factual basis for the court to examine whether the sued invalidation decision is in conformity with the law, and thus should not be accepted. Therefore, the CNIPA's decision to invalidate the patent was upheld".

In the second instance, the appellant argued that the first-instance court's not considering the evidence was a procedural mistake, and it held that supplementary evidence 1-4 were about well-known common knowledge used to explain the concept of a specific technical term (to prove that its patent was inventive). The parties concerned have the right to correct, at any time, the interpretation of the technical knowledge made in the sued invalidation decision based on the well-known common knowledge in the art. Such well-known common knowledge evidence are in fact part of the knowledge of those skilled in the art and are not new evidence. Secondly, supplementary evidence 5-7 are formed after the sued invalidation decision was made and can prove the social contribution and commercial value of the technical scheme of the involved patent.

Regarding whether the relevant evidence should be examined, the SPC affirmed in the second-instance judgment that,

"Pursuant to Provisions of the SPC on Several Issues Concerning the Application of Law in the Trial of Administrative Cases Involving Patent Granting and Confirmation (I), where a patent applicant or a patentee submits new evidence in an administrative case involving patent granting and confirmation to prove that the patent application should not be rejected or the patent should remain valid, the People's Court shall generally examine such evidence. The administrative litigation procedure involving patent granting and confirmation is a judicial remedy procedure set

up for the parties who are not satisfied with the administrative decision on the patent granting and confirmation. In order to prove the tenability of their claims, in the course of the litigation the parties are likely to provide new evidence that they have not provided in the administrative procedure. Where a patent applicant or a patentee provides evidence at this stage to prove that the patent application should be granted or that the patent should be valid, the people's court shall generally examine it because the patent applicant or patentee no longer has any other remedy channels or measures. Where the invalidation petitioner provides new evidence in an administrative case involving patent confirmation to prove that the patent should be declared invalid, the people's courts generally do not examine it because the invalidation petitioner may submit a separate request for invalidation and the relevant evidence has exceeded the examination scope of the administrative invalidation decision. However, the invalidation petitioner may submit evidence that does not involve new facts or new reasons, evidence relating to the level of knowledge and cognitive ability of a person skilled in the art or a general consumer, as well as rebuttal evidence for rebuttal, etc, for examination. In the absence of a substantive examination of the seven pieces of supplementary evidence submitted by the appellant, the court of first instance did not accept the evidence merely on the grounds that the evidence were not the basis on which the CNIPA made the sued invalidation decision and thus should not be used as a factual basis for the court to examine whether the sued invalidation decision is in conformity with the law. The court of first instance was incorrect in not considering the evidence, and this court hereby corrects the mistake."

Through this case, it can be seen that in the examination of new evidence in administrative litigation, the SPC proceeded from the perspective of protecting the litigation rights of the parties, comprehensively considered the efficiency of the litigation and judicial costs, and fully protected the parties who no longer had any other judicial remedy channels or measures.

In February 2022, AFD China and China Changjiang River Charity Foundation Joined Hands Again to "Let the Swan Fly"

AFD China has been committed to helping children in need and caring about their health, education and living condition. "Let the Swans Fly" is a charity project that provides financial support for Yanjing Little Swan Public Welfare School. By providing funds, we help the school purchase sufficient teaching aids, cultural and sports equipment, learning supplies, daily necessities, etc., to ensure that the children have sufficient educational resources.

Although the Covid-19 epidemic more or less affected the work of the school, the school head, teachers and students still managed to overcome various difficulties and successfully completed the teaching and learning tasks. The "Let the Swans Fly" project has vigorously developed volunteer teaching in He'nan province and trained a group of computer programming teachers in rural areas. Although these teachers are not highly educated, they are the backbone of rural education, because they have been teaching in the rural areas for decades, and with a deep love of their hometown, they are willing to put in more effort for the children there.

The "Let the Swan Fly" project also pays special attention to some children whose parents or middle-aged guardians are seriously ill, have died or have re-married. Those children not only face financial difficulties, but also have to struggle with psychological trauma. The school not only offers them a variety of fee reductions, but also provides dormitories for some of them. In order to take care of these children and provide a more favorable growth environment for them, the school has arranged a female teacher with more than 30 years of teaching experience as the dormitory

supervisor. Under her guidance and help, the children have gradually opened their hearts and become more and more vivacious.

In February, 2022, AFD China provided funds again for the school to purchase textbooks, learning supplies, teaching aids, cultural and sports equipment, daily necessities, etc. and to subsidize the round trip fares of volunteer teachers in summer and winter vacations. Through this little effort, we hope we could help lay a foundation for the children there to embrace a bright future.

As described in the verse from an ancient Chinese poem, “Spring silkworms spin till death, running out of yearning thread; Burning candles weep, till no more tears they can shed”. Nowadays people often use the traditional metaphors of “silkworms” and “candles” to praise teachers and describe their selfless long-term serving and dedication. In modern society which is full of material desires, it takes great love and courage for these teachers to dedicate themselves to public welfare education. We hope to let these teachers know that many people have seen their efforts, many people care about them, and many people are willing to join them and work with them to care for and help the children.

Not only children and education need such schools and teachers, but the society also needs such schools and teachers. We are willing to be a strong supporter of them. As they move forward without hesitation to continue the noble cause of education, we are also more determined to support them.

Charity is a long journey without an end, in which some people may join in at a certain point, and some people may leave at a certain point, but there will always be people who keep on going. We hope that on the way forward, we will always have old friends and also meet some new friends, and together we will let warmth and love become the eternal themes in our life.

Guangzhou IP Court's Top 10 Exemplary Cases of 2021

China's Guangzhou Intellectual Property Court on Feb. 22 released the list of top 10 exemplary cases of enforcing rights of scientific and technological innovators.

Shenzhen TPOWER Semiconductor Co., Ltd. v. Foshan Blue Rocket Electronics Co., Ltd., Shanghai Gcore Integrated Circuit Design Co., Ltd.

Case summary: The court found that Blue Rocket and Gcore infringed the layout design of an integrated circuit developed by TPOWER and ordered the two defendants to pay 3 million yuan (\$470,000) in damages to the plaintiff.

Jining Luohe Network Technology Co., Ltd. v. Guangzhou Wanyou Network Technology Co., Ltd., Shenzhen Guanzhunhang Technology Co., Ltd., Shenzhen Aositan Technology Co., Ltd., Xiangyun Industrial (Shenzhen) Co., Ltd.

Case summary: Luo Di developed the source code of an application called VirtualApp (VA) to be hosted on GitHub.com under the third version of the GNU General Public License (GPLV3). The GPL is a series of widely used free software licenses that guarantee end users the four freedoms to run, study, share, and modify the software. Luo Di stopped updating the code on GitHub.com in December 2017 and assigned the code to plaintiff Luohe which he is a shareholder of for commercial use. Defendant TPOWER developed some paid WeChat-compatible applications using Luo Di's source code hosted on GitHub.com. The court found that TPOWER violated the GPL by abusing the free source code owned by Luohe and ordered it to pay 500,000 yuan

(\$79,000) in damages to the plaintiff. The claims against the other three defendants serving TPOWER as payment collectors of its paid applications were dismissed.

Guangdong Oppo Mobile Telecommunications Corp., Ltd., Shenzhen Unit of Guangdong Oppo Mobile Telecommunications Corp., Ltd. v. Sisvel International S.A., S.I.SV.EL. (Hong Kong) Ltd.

Case summary: Oppo filed a lawsuit against Sisvel before the Guangzhou Intellectual Property Court and claimed that Sisvel abused its dominance by charging an excessive licensing fee for its standard-essential patents (SEPs). Sisvel alleged that it had already sued Oppo in the UK to confirm the reasonableness of its licensing fee, and, to avoid overlapping jurisdiction over the same issues, only the UK court had jurisdiction over the case. In dismissing Sisvel's appeal, the SPC of China held that UK lawsuits could not deprive Chinese courts of jurisdiction since the parties' jural relationships, facts and grounds in the two cases were not exactly the same. The Chinese courts could claim jurisdiction also because the infringement lawsuits filed by Sisvel in the UK might directly, substantively and significantly eliminate or restrict Oppo's participation in market competition in China. This case clarified the jurisdiction rules over antitrust disputes in the context of SEP.

Huawei Technologies Co., Ltd. v. Jabil Circuit Electronics (Guangzhou) Co., Ltd., SolarEdge Technologies (China) CO., Ltd., Guangzhou SolarEdge Machinery Technical Consulting Co., Ltd.

Case summary: The court found that Israel-headquartered SolarEdge's Shanghai-based subsidiary and Guangzhou-based subsidiary infringed plaintiff Huawei's patent for solar inverters by commissioning Jabil to manufacture and export infringing products and ordered the three defendants to pay 50 million yuan (\$7.9 million) in damages to Huawei.

Milliken & Company v. Xuzhou Haitian Petrochemical Co., Ltd., Dongguan Aimili Plastic Technology Co., Ltd.

Case summary: The court found that defendants Haitian and Aimili didn't infringe plaintiff American industrial manufacturer Milliken & Company's patent ZL201180068470.6 for lack of evidence.

Anthura B.V., Kunming Anthura Horticulture Co., Ltd. v. Guangzhou Panyu Keyi Agriculture Technology Development Co., Ltd.

Case summary: The court found that the anthurium variety defendant Keyi cultivated didn't infringe the anthurium variety plaintiffs Netherlands-based Anthura and its Kunming-based subsidiary had patented. The court agreed to deploy the results of the DNA-based testing and distinctness, uniformity, and stability (DUS) assessments submitted by the plaintiffs as evidence.

Shanghai Tongling New Energy Technology Development Co., Ltd. v. Foshan Baiteli Agriculture Ecological Technology Co., Ltd.

Case summary: The court found that plaintiff Tongling was entitled to the fund of 900,000 yuan (\$140,000) it had advanced at the request of defendant Baiteli when the co-development cooperation was terminated between the two parties. The court ordered the defendant to refund the advanced payment to the plaintiff and dismissed the plaintiff's additional claim of 1.5 million yuan (\$240,000) as compensation for its share of the work in the co-development.

Guangzhou Fullriver Battery New Technology Co., Ltd. v. He

Case summary: The court found defendant He, an ex-employee of plaintiff Fullriver, stole the company's patent for a technology for lithium batteries for e-cigarette devices. The court ordered the defendant to pay 300,000 yuan (\$47,000) in damages to the plaintiff.

Dongguan Kaihua Electronic Co., Ltd. v. Tongfang Co., Ltd., Tongfang International Information Technology (Suzhou) Co., Ltd., Dongguan Jingdong Lisheng Trading Co., Ltd.

Case summary: The court found the doctrine of equivalents didn't apply in this case and the notebook computers the three defendants manufactured and distributed didn't infringe the plaintiff's patent ZL201610802371.0.

LeDiamond Opto Corporation v. Zhongshan Mago Lighting Co., Ltd.

Case summary: The court found defendant Mago acted with malice and intentionally infringed Taiwan-based LED manufacturer LeDiamond's patent ZL201420776830.9 repetitively and punished the defendant under the terms of punitive damages of the Civil Code of the People's Republic of China as punitive damages provisions were absent from patent law before June 1, 2021.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12421>