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CNIPA Releases Guidelines for Protection of Intellectual Property Rights During Exhibitions

On July 20, 2022, the China Intellectual Property Administration (CNIPA) released the Guidelines for Protection of Intellectual Property Rights During Exhibitions, which aims to further implement the comprehensive strengthening of protection of intellectual property rights and standardize the management of intellectual property protection during exhibitions.

The Guidelines specifies the guidance and management functions that the intellectual property management department of the place where an exhibition is held should play before, during and after the exhibition; clarifies the main work of the workstation set up at the exhibition; enumerates the obligations of the exhibitors as well as the methods and channels for right holders to safeguard their rights.

See the following link for the detailed text of the Guidelines:

http://www.cnipa.gov.cn/art/2022/7/22/art_75_176738.html

CNIPA Concluded the First Batch of Administrative Adjudication Cases of Major Patent Infringement Disputes

The amended patent law, which came into effect on June 1, 2021, gives new power to the CNIPA, allowing it to hear major patent

disputes of national significance upon the request of patentees or stakeholders. Recently, CNIPA concluded its maiden trial, handing out decisions on two cases, both involving infringement of Patent No. ZL201510299950.3, owned by the Germany-based Boehringer-Ingelheim.

After deliberating on whether the cases were admissible as major patent disputes, whether the pharmaceuticals in question listed on the internet in multiple provinces (autonomous regions and/or municipalities) fell into an offer for sale or exceptions to infringement prescribed in the patent law, and some other central issues, CNIPA made a ruling within the required time limit.

In the next step, CNIPA plans to keep comprehensively enhancing IP protection mandated by the Party Central Committee and the State Council, use its power authorized by law to try major patent disputes, give full play to the advantages of professional and rapid administrative adjudication, effectively maintain a fair market order, and protect the legitimate rights and interests of patent owners and the public.

<http://english.ipraction.gov.cn/article/ns/202208/381399.html>

The National Pilot Work on Innovation in Trade Secret Protection Kicked Off

On July 14, the Launching Meeting on National Pilot Work on Innovation in Trade Secret Protection was held in Hangzhou City, Zhejiang Province. The decisions and

deployments of the CPC Central Committee and the State Council was implemented, the national pilot work on innovation in trade secret protection was mobilized and deployed, and the pilot work on innovation was formally kicked off at the meeting. Gan Lin, Deputy Director of the State Administration for Market Regulation (SAMR) attended and addressed the meeting. Wang Wenxu, Vice Governor of Zhejiang Province attended the meeting and delivered a speech. It was required at the meeting that all localities should follow the "Work Plan on the National Pilot Work on Innovation in Trade Secret Protection" and focus on the key tasks in 6 areas, including strengthening institutional innovation, improving working mechanisms, strengthening supervision and law enforcement, improving service guarantee systems, benchmarking international economic and trade rules, and fostering a holistic approach, thus promoting reforms and innovation in practice.

<http://english.ipraction.gov.cn/article/ns/202207/380787.html>

IPR Policy Seen as Confidence Booster

Policies that China recently adopted on strengthening the protection of intellectual property rights could increase confidence of foreign companies in China, an IP industry expert says.

"China's five-year plan on improving IPR protection may help instill confidence in a market that is too large to dismiss lightly," said Mei Gechlik, founder and chief executive of the website Sinotalks.

Gechlik was referring to a five-year plan adopted last year by the Supreme People's Court (SPC) for the judicial protection of IPR.

"It could boost confidence in the Chinese market because it clearly identifies the goal to improve 'the state of judicial protection of intellectual property rights' by 2025 through various measures, including the development of 'the intellectual property adjudication

guidance system to which Guiding Cases serve as guides'," said Gechlik, founder and former director of the China Guiding Cases Project at Stanford Law School.

China's SPC has issued more than 30 intellectual property-related Guiding Cases over the past decade. The "impressive guiding principles stated in those Guiding Cases allow one to feel optimistic about the accomplishment of the 2025 Goal," Gechlik said.

For example, Guiding Case No.113 has established clear principles to allow a foreign natural person (the basketball player Michael Jordan) to seek protection of any specific name used by "the relevant public" in China to refer to the person so long as specific conditions are met.

"These principles help combat malicious registration of celebrities' names as trademarks," Gechlik said.

Last year several moves were made to strengthen IPR protection in China, such as the Outline of Construction of an IP Powerhouse Country (2021-35), which sets out targets for China's IPR protection system.

The Outline and the country's 14th Five-Year Plan (2021-25) for National Economic and Social Development have accelerated the process of intellectual property protection in China, said Zhang Xuan, an executive of IP House, a Chinese IP data provider, at a recent seminar hosted by the University of California, Berkeley.

The law made an important change from protecting products to protecting designs, which is more in line with international industrial design rules, Zhang said.

<http://english.ipraction.gov.cn/article/ns/202207/380134.html>

SUPPLEMENTARY ISSUE

The 23rd China Patent Award was Released –AFD China’s Clients Won Three Excellence Awards

On July 22, 2022, the winners of the 23rd China Patent Award were announced by the China Intellectual Property Administration (CNIPA). The China Patent Award is co-organized by the China Intellectual Property Administration and the World Intellectual Property Organization (WIPO), and the winners are decided according to the China Patent Award Evaluation Method.

The China Patent Award is intended to encourage inventions and creations, foster a culture of innovation, and improve the quality of patents. The awards given this year include 30 China Patent Gold Awards, 10 China Design Gold Awards, 60 China Patent Silver Awards, 15 China Design Silver Awards, 791 China Patent Excellence Awards, and 52 China Design Excellence Awards. Among the patents winning the gold awards, 19 are from colleges, universities, research institutes and design institutes, which fully demonstrates the important role played by Chinese universities and research institutes etc. in the field of innovations, and some of these patents are co-owned by institutes and companies, which shows that China has been attaching great importance to patent enforcement and that innovations are constantly being transformed into productivity. Among the gold award winners, there is also a patent relating to coronavirus detection kit and a patent relating to coronavirus vaccine using adenovirus as vector, which highlights the efficiency and determination of our country in the fight against the coronavirus.

This year, three excellence awards were given to our client’s patents. We are honored to have assisted in the full course from drafting, filing to granting of the award-winning patents. Taking this opportunity, we would also like to thank our clients for their trust and support along the way.

SPC’s Newly Concluded Case: Small Patent, High Compensation

Recently, the Intellectual Property Tribunal of the SPC concluded a dispute over infringement of a utility model patent.

In this case, the first-instance court held that the defendants did not constitute patent infringement and ruled to reject the patentee’s litigation claims. Then the patentee filed an appeal before the SPC. After trial, the SPC changed the first-instance judgment and ordered the defendants (hereinafter “appellees”) to stop infringement, and fully supported the patentee’s claim for damages of CNY 2.5 million by using the business performance publicly declared by the appellees as the basis for the calculation of compensation, which effectively safeguarded the legitimate rights and interests of the patentee.

In the second instance, the patentee submitted evidence to prove that the appellees had jointly carried out the act of manufacturing, selling, and offering for sale the sued infringing products, for example, the appellee declared that their cumulative construction area had reached more than 2 million square meters (the technology used in the construction fell within the scope of the patentee’s utility model patent), and the appellees had publicized and displayed relevant construction cases through brochures and their official website, and they publicized and displayed relevant construction projects through posting Moments on WeChat on February 24, 2019.

Based on the above facts, the patentee claimed that the average amount of the sued infringing product used in each square meter was about 5 pieces, the unit price of the patented product was CNY3.57, CNY3.27, and a reasonable profit margin, etc., so the amount of infringement damages

was CNY2.5 million. The appellees argued that the declaration of 2 million square meters was exaggerated advertising, the relevant construction cases were actually their partners' cases, and the relevant projects did not use the sued infringing product. However, the appellees did not submit valid counter-evidence to prove their actual construction volume, nor did they submit the anchor bolt they actually used, so their claims were not tenable.

Taking into account various factors, such as the appellees' business scale, the long duration, wide scope and obvious malice of the appellees' infringement, the lawyer fees and notary fees and other reasonable costs incurred by the patentee for safeguarding its rights, the SPC fully supported the patentee's claim for damages of CNY 2.5 million (including a reasonable fee of CNY 24,000 for safeguarding its rights) according to law.

The SPC's judgment in this case, by showing that small patents can also gain high compensation, highlights the judicial orientation of people's courts toward strengthening the protection of intellectual property rights and increasing the intensity of damages, and effectively guides market entities to follow the principle of good faith and respect others' innovative achievements in business activities.

See the following link for the original text about the case:

<https://ipc.court.gov.cn/zh-cn/news/view-2000.html>

2022 H1 IP Statistics: Confidence of Foreign Investors Boosted in Doing Business in China

As of the end of June this year, market entities from more than 200 countries or regions owned valid registered trademarks in China, among which those from the United States, Japan, Germany, United Kingdom and South Korea had the largest numbers, showing foreign investors are more confident in doing business in China. Overseas grant of China's invention patents is showing a positive development trend. More and more IPRs are developed independently by China, especially in the fields of emerging technologies including digital economy. The new progress made indicating China's interactions with the rest of the world in IP captured prevalent attention at a SCIO (State Council Information Office) press conference on IP statistics of the first half of 2022 on July 12.

"Generally speaking, IP development in China is moving forward at a steady pace with better quality," said Hu Wenhui, Deputy Commissioner of the CNIPA. This year, CNIPA has adhered to the principle of seeking progress in stability, launched a number of policies and measures to help enterprises out of difficulties while inspiring their innovation vitality. These policies and measures have led to positive results. IP data reveal steady trend of IP development, robust innovation vitality of domestic enterprises, more inclusive financing by pledging patent and trademark as collaterals, expanded geographical indication industry, and ramped-up patent reserves in the fields of emerging technologies.

Policies launched to help enterprises out of difficulties

Since the outbreak of the COVID-19 pandemic, operations of small and micro enterprises and self-employed households/people in catering, culture, tourism and other industries have been affected. To help enterprises out of difficulties, CNIPA, in May this year, issued the Notice on Accelerating the Launch of More Effective IP Policies to Promote Steady and Healthy Economic Growth, listing 12 specific measures in four aspects so as to provide strong support for steady and healthy economic growth.

The CNIPA has postponed the collection of annual patent fees, so as to directly alleviate the financial burden on market entities; made mechanisms of priority examination of patents, rapid examination of application for trademark registration, and pilot for rapid settlement of disputes in IP Protection Center; worked harder to publicize and promote the Hague Agreement, and encouraged innovators to upgrade the efficiency of making global layout of design; continued to provide financing service to enterprises in industrial park with IP as pledges, so as to upgrade financing support for SMEs; carried out "IP Service Travel Campaign" and opened IP service tools to market entities free of charge. With these measures, IP policies are put into effect in a more speedy and effective way, so as to boost the confidence of market entities to innovate.

Hard work got paid off. Data reveal that in 2022 H1, applications for patents, trademarks and other IPRs in China remained at a stable growth rate. CNIPA received 33,000 PCT international patent applications, and Chinese applicants submitted 353 international design applications via the Hague Agreement. CNIPA received 2,699 applications from Chinese users for Madrid international registration of trademarks and approved 2,239 market entities to use special GI symbols.

Open wider to promote cooperation and win-win

As more and more Chinese innovators go abroad to participate in international competition and cooperation, topics such as "how to obtain overseas patent rights for invention" and "how to ensure cross-border protection of IP" became a focal point of the press conference.

"Overseas grant of Chinese patents for invention has shown a positive trend, heralding a good start in the 14th Five-Year Plan period," said Ge Shu, Director General of CNIPA's Strategic Planning Department. The 14th Five-Year Plan for Protection and Use of IP in China included the number of overseas-granted patents for invention as a major indicator, so as to guide market entities to pay greater attention to the development of overseas patents. According to the data, in 2021, Chinese users obtained 46,000 patents after substantive examination in major countries and regions, up 14.1% year-on-year.

Emerging technology fields including digital economy constitute an important source of overseas patent reserves of Chinese applicants. "The Chinese market entities are using the international IP system to intensify the efforts of protecting overseas IPRs, in particular in fields including digital technologies and biotechnology," said Ge. As of the end of 2021, there were 977,000 valid patents for invention in the core industry of digital economy, accounting for 35.2% of all valid invention patents in China. Taking AI as an example, in 2021, China obtained 57,000 AI invention patents combined from the world's five major IP offices in China, the United States, Europe, Japan and South Korea, with an average annual growth of 38.5%.

"Next, CNIPA will continue to tap the potential of IP policies and provide better services to help prevent and control the COVID-19 pandemic, and boost economic growth," said Hu.

<http://english.ipraction.gov.cn/article/ns/202207/380389.html>

Five SMEs Win Inaugural WIPO Global Awards, Two From China

The inaugural Global Awards of the WIPO were recently handed out to five small and medium-sized enterprises (SMEs) from the Netherlands, Singapore, China and Japan, two of which are Suzhou Raycan and Shanghai Shylon from China, making China the winningest country at the program's debut. What has made these Chinese SMEs bright stars? What are the secret weapons of the Chinese innovators? Keeping these questions in mind, China Intellectual Property

News interviewed WIPO China Office Director Liu Hua as well as one of the jurors for the event and the winning enterprises, hoping to reenact the innovation scenes behind the winning Chinese SMEs.

Fresh Award, Global Selection

The inaugural Global Awards celebrates SMEs, which constitute the backbone of the worldwide economy and recognizes those that have used IP rights to develop commercial solutions that have made a positive contribution to society, economically, socially, or culturally."In a bid to ensure fairness, impartiality, preciseness and inclusiveness, a diverse, independent seven-person international (Peru, Nigeria, Jordan, China, U.S., Estonia, Singapore) jury with expertise in IP, innovation and commerce and with geographical representation was invited and formed by the WIPO,"Liu says.

As a renowned international cooperation expert, Dong Songgen, Vice President of China International Cooperation Association of SMEs (CICASME) was one of the invited jurors. "Since December 2021, the international jury had received a total of applications from 272 enterprises of 62 countries. After over half-year stringent evaluation, jurors picked 20 finalists, six of which are from China. Two out of five eventual winners are from China, showing our enterprises' strength to the world and making us a double winner in both the number of finalists and winners," Dong recalls.

"In recent years, SMEs' development has been heeded by China, lending tangible support in finance and education. Governmental assistance in protection and use evidently has made SMEs' innovative activities more dynamic and robust, Dong adds, SMEs are the most dynamic entities in economic development in China. Government agencies' continued issuance of effective policies and measures have inspired them to use IP tools to build their brands and enforce their rights and interests, unleashing their full strength in technological innovation in economic development.

Policy Support, High-Flying SMEs

"Global tourism, dining, transportation and many other sectors have been hit hard during the pandemic. In the meantime, innovative activities in some sectors like biotech, telemedicine and mobile payment are advancing fast in the opposite direction. Some Chinese SMEs are performing very well," Liu says, in an era that the entire country is embracing entrepreneurship and innovation, the refinement of the Chinese IP system prepares rich soil and nutrients for SMEs' innovation development.

Founded in 2009, Raycan has filed patent applications in the U.S., Germany, Japan and other countries and obtained over 100 patents, covering its self-generated, full Digital PET (Positron Emission Tomography) for high definition and precise quantification of human medical imaging technology. "As a 'small but focused' company, we have won multiple honors like China Patent Gold Medal," General Manager Chen Fang introduces, Raycan dedicates to sharing its innovative results with relevant sectors by licensing, constantly exports technology and products backed by Invented-in-China, self-reliant IPs, strives to become a national brand with international competitiveness.

Since 2010, Shylon has been in architectural lighting, using totally LED technology (over 100 patents acquired), dedicated to the design, production and marketing, and was honored "Technologically Advanced Small and Medium-sized Enterprises of 2021" by the Ministry of Industry and Information Technology. "Our LED landscape light, through the self-developed ZOOMNEO algorithm auto focus technology, the high-precision spectral measurement testers and color calibration algorithms, have cleared many outstanding hurdles in the industry," Wei Min,

Shylon's General Manager for International Business, affirms the company's undivided attention to R & D and innovation, low carbon emission and environment protection. IP protection allows the company to go even further without incidents.

"Right now, SMEs have become one of the most dynamic economic elements of the innovation economy in China, and kept on supplying power for the country's construction of an innovation-driven country," Liu nods to China's active involvement in IP norm setting under the WIPO framework, which fits SMEs and other Chinese innovators' need in integrating into international development and offer a business-friendly environment and policy assurances for their engagement in international competition.

<http://english.ipraction.gov.cn/article/ns/202207/380719.html>

Patent Commercialization Activities at Chinese Universities Skyrocket in Past Decade

"Chinese universities' technology production rate and commercialization efficiency have been soaring in the past decade," said Lei Chaozi, Director General of the Science and Technology and Information Technology Department of Ministry of Education (MOE) recently at MOE's eighth briefing of a series featuring subjects like '1+1' and 'Education in Decade'.

The briefing reveals, in the recent decade, patents granted to Chinese universities boosted from 69,000 in 2012 to 308,000 in 2021, up 346.4% while the grant rate (note: total grants out of total applications) rose from 65.1% to 83.9%. Patent transfer/licensing agreements vaulted from over 2,000 to over 15,000. Monetary value of patent commercialization amounted to 8.89 billion yuan from 820 million yuan, up a whopping 10 times. It is no small feat that patent-related quality, efficiency and capacity trending up simultaneously.

Universities, as main forces for fundamental research and cradle for major technological breakthroughs, have become a vital component to underpin the educational, technological, economic and social development in China. In an effort to motivate them to work with enterprises on transferring and commercializing their IPRs and technological findings, the government has launched multiple measures and paid dividends, evidenced by palpable progress made by universities in commercialization.

"To start a new era, we would positively follow through the cooperation among industries, universities, and research institutes, and build bridges between schools and enterprises, projects, and cities' development, to facilitate the building of national strategic scientific and technological force, and to serve for the construction of international talent center and innovative development and the realization of the autonomy in science and technology area," Lei said.

Implementing Open Licensing for University-Developed Patents

IP is a pivotal carrier for universities' innovative fruit and plays a central role in bridging innovation with market and productivity. Hence, recently, for more efficient transformation from universities to enterprises about their IPRs and scientific and technological achievements, MOE, Ministry of Industry and Information Technology, and CNIPA have jointly released a circular about organizing and carrying out the action of incubating partnership between universities and enterprises for collaborative innovation, aiming at organizing and propelling more than 1,000 colleges to aid more than 10,000 enterprises to achieve high-quality development.

"For effectively utilizing IP, school-enterprise cooperative action would propel the implementation of open licensing in college-developed patents," indicated by a principal from CNIPA's Intellectual Property Utilization Promotion Department.

Under the circular, to promote stable implementation and efficient operation, CNIPA has convened special sessions to deploy implementation of patent open licensing and has allocated two detailed schemes to its own departments and local IP authorities respectively, with an aim to mobilize over 100 colleges to participate a pilot program and eventually involve over 1,000 patents as of the end of 2022, and endeavour to improve the efficiency of patent commercialization. Currently, 13 provinces have issued accompanying plans for the pilot program, six of which have looped in 77 universities to cull and publish open licenses for 3,375 patents that were pushed to 19,000 micro, small and medium-sized enterprises (SMEs) with matching need, leading to conclusion of 587 licensing agreements.

"Next, CNIPA will publish the recorded information of the concluded patent license agreements and formulate a suggested national standard on patent evaluation, giving instructions on pricing of open licensing and stimulate both the suppliers-universities and research institutes and the buyers -SMEs for a better chance of materializing the innovation findings," added the same principal.

Promoting Patent Commercialization Program

On top of implementation of open licensing of college-developed patents, CNIPA will also organize various universities to actively participate in the patent transformation program, to lower SMEs' cost in technology acquisition and prompt the technology to materialize into practical productivity.

This commercialization program was launched jointly by the Ministry of Finance and CNIPA in March 2021, which inspires commercialization of college-developed patents, educates universities to polish their mechanisms in allocation of IP-generated profits; with support from University IP and technology transfer centers, Industrial IP operation centers intensively announces supplying information of patent related technologies; makes patent/technology connection between universities and state-owned enterprises and SMEs to improves their practical ability in patent commercialization. Furthermore, the Ministry of Finance and CNIPA would aid in building a green channel in the provinces that have implemented this program, about processing related patent transfer, licensing and pledging for SMEs. Patent transfer/licensing involving universities/research institutes happened 27,000 times in 2021, up 33% year-on-year, twice faster than the growth rate of all patent transfer/licensing activities while 24,000 times or 89% out of the 27,000 times were transactions made with SMEs.

The principal from the Intellectual Property Utilization Promotion Department further expressed that this program also proposed various explorative mechanisms, involving IP ownership sharing, profit right transferring for instruction on handling the ownership and profit allocation issues. In addition, it was encouraged to refer the guideline for formulating IP related terms in industries-universities-research institutes cooperation agreement, to prevent risk of IP disputes.

Li Shunde, Professor with Law Research Institute of the Chinese Academy of Social Sciences, said in an interview that universities-enterprises cooperative action would make universities to fully play the key role in fundamental research and make enterprises principal role in innovative development. Additionally, it would support SMEs growing into the vital cradle for innovative creation, then providing powerful assistance for deepening the implementation of innovation-oriented development strategy.

http://english.cnipa.gov.cn/art/2022/8/3/art_2829_176992.html