AFD China
INTELLECTUAL PROPERTY LAW OFFICE

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EPO-CNIPA Joint Communiqué: Chinese applicants may continue to designate EPO as ISA

Nationals and residents of the People's Republic of China can continue to select the European Patent Office as their International Searching Authority (ISA) for their international patent applications filed in English under the Patent Cooperation Treaty (PCT). Following the agreement between the EPO and the China National Intellectual Property Administration (CNIPA), the pilot will be extended by one additional year until 30 November 2023 and up to a further 3000 applications.

This decision is based on the positive evaluation of the pilot which has been running since 1 December 2020. Interest in this pilot has been remarkable with active participation from over 270 applicants - including universities, research institutes and private individuals. In particular, both local and international companies based in China showed a strong interest in obtaining timely patent protection in Europe. By having their international searches carried out by the EPO, pilot participants benefit from both more legal certainty prior to entering the European phase and faster prosecution of their Euro‑PCT applications.

The pilot also enables PCT applicants who are nationals or residents of the People's Republic of China and whose international search was performed by the EPO as ISA to file a request for international preliminary examination with the EPO.

CNIPA Commissioner Dr Shen Changyu commented: "The pilot has been widely participated since its launch and provides convenience for applicants in acquiring IP protection in Europe. The extension of the pilot is one of the important fruits of the comprehensive strategic cooperation between the CNIPA and the EPO. We look forward to the continuous improvement of the pilot in the future, and better serving the IP application and protection for users. "

EPO President António Campinos greeted this development, stating, "This pilot is another tangible result of our strategic cooperation with CNIPA and it gives a useful alternative to all PCT applicants in China who are interested in the European market. We welcome the extension of this pilot as it will create more time and opportunities for users to evaluate the expected benefits in the examination phase before the EPO."

https://www.epo.org/news-events/news/2022/20220916.html

Invention Patents in China Have Reached up to 4.081 Million as of September 2022

On October 9, CNIPA held a regular press conference to release its newest achievements in the IP field within the past decade. At the press conference, Hu Wenhui, deputy director of the CNIPA, stated that Intellectual property is playing an increasingly significant role in driving innovation in China. During the past decade, the CNIPA has authorized 3.953 million patents, with an average annual growth rate of 13.8%, and

35.563 million registered trademarks, with an average annual growth rate of 25.5%. As of September 2022, invention patents in China have reached up to 4.081 million.

http://www.chinaipmagazine.com/en/news-show.asp?id=12664

China Ranks First in Terms of Nine Indicators in the Global Innovation Index 2022 Report

At the regular CNIPA press conference held on October 9, Hu Wenhui, deputy director of the CNIPA pointed out that China moves up 1 spot and ranks 11th among the 132 economies featured in Global Innovation Index (GII) 2022, having steadily gained in the rankings during the past decade and risen by 23 places. Besides, China ranks first in 9 of the 81 individual indicators used by GII 2022 and boasts 2 of the world's top 5 science and technology clusters – Shenzhen-Hong Kong-Guangzhou (2nd) and Beijing (3rd), which indicates the accelerated growth of innovation into a powerful engine for high-quality development.

http://www.chinaipmagazine.com/en/news-show.asp?id=12665

IQiyi Wins 2 Million Yuan in Unfair Competition Lawsuit against Illegal Account Leasing

Recently, the Beijing Intellectual Property Court awarded 2 million Yuan to IQiyi Technology Co., LTD. (hereinafter referred to as iQiyi) after founding that Anhui Blade Network Technology Company (hereinafter referred to as Blade company)'s iQiyi account leasing service had constituted unfair competition. According to report, Blade company had provided iQiyi membership account leasing services in its operating platform and obtained high profits, which had caused huge losses to iQiyi and constituted unfair competition. The first-instance court held that Blade company, which made use of the extensive users base of iQiyi, and took advantage of the intention of some users to obtain improper interests, violated the principle of good faith and constituted unfair competition and ordered Blade company to compensate iQiyi for economic loss of 2 million yuan and reasonable expenses of 30,000 yuan. Blade company appealed to the Beijing Intellectual Property Court, which ruled that Blade's appeal request could not be upheld, and the court did not support it.

http://www.chinaipmagazine.com/en/news-show.asp?id=12672

SUPPLEMENTARY ISSUE

Global Innovation Index's Global Science & Technology Clusters: East Asia Dominates Top Ranking

Four of the world's five biggest science and technology clusters are located in East Asia – one in Japan, two in China, one in Republic of Korea and the fifth in the United States – according to an early release from the 2022 edition of WIPO's Global Innovation Index (GII).

Each year, the GII ranks the top-level innovative capacity of around 130 countries and economies around the world. In a pre-release ahead of its official September 29, 2022, global launch, the Global Innovation Index "Science and Technology Cluster" chapter looks to the ground to identify the highest local concentration of science and technology development.

Tokyo-Yokohama is the biggest cluster, followed by the Shenzhen-Hong Kong-Guangzhou (China and Hong Kong, China), Beijing (China), Seoul (Republic of Korea) and San Jose-San Francisco (United States) clusters.

In proportion to population, the Cambridge cluster in the United Kingdom and the Eindhoven area in the Netherlands/Belgium are the most S&T-intensive clusters, followed by Daejon in the Republic of Korea, San Jose-San Francisco and Oxford, UK.

Local innovation clusters are critical to the vibrancy of national innovation ecosystems, so identifying them will help us understand where and how innovation is happening, and promote innovative activity as a powerful catalyst for jobs, investments, and growth.

Aside from the long-identified clusters of excellence in the U.S., Europe, Japan and the Republic of Korea, we see new S&T hotbeds in East Asia, particularly in China, but also in other middle-income economies, including in Brazil, India, Iran, Türkiye, and elsewhere.

In other findings:

•In the US, top clusters are San Jose-San Francisco, Boston-Cambridge and New York City, while in Europe the leaders are Paris, London and Cologne.

•For the first time, China has as many top S&T clusters as the United States, with 21 apiece. Germany hosts 10 clusters and Japan claims five.

•The largest increases in the 2022 cluster ranking compared to the previous year came from three Chinese clusters -Zhengzhou (+15 positions), Qingdao (+12) and Xiamen (+12), Berlin (+4) in Germany, Istanbul (+4) in Türkiye, Kanazawa (+4) in Japan, Ankara (+3) in Türkiye, Daegu (+3) in the Republic of Korea and Mumbai (+3) in India.

About GII Science and Technology Clusters

Science and technology clusters are established through the analysis of patent-filing activity and scientific article publication, documenting the geographical areas around the world with the highest density of inventors and scientific authors.

WIPO locates and ranks science and technology clusters through a geocoding method, mapping addresses and names pulled from documents to a 96% accuracy.

The GII science and technology clusters are one element in the larger GII, which takes the pulse of the most recent trends in global innovation. The report ranks the innovation ecosystem performance of economies around the globe each year, while highlighting innovation strengths and weaknesses and particular gaps in innovation metrics. To capture as complete a picture of

innovation as possible, the GII comprises around 80 indicators, including measures on the political environment, education, infrastructure and knowledge creation of each economy.

The GII can be used to monitor performance and benchmark developments against economies within the same region or income group classification.

http://english.ipraction.gov.cn/article/ns/202209/382638.html

SPC: Reasonably Allocating the Burden of Proof in Patent Infringement Cases to Safeguard Patentees' Legitimate Rights

The Supreme People's Court of China (SPC) recently concluded a patent infringement case, confirming that where a defendant failed to present sufficient evidence on the legitimate source of the infringing product, the statements made by the defendant in its marketing and publicity materials could be used as a basis for determining its manufacture of the infringing product.

In this case, the plaintiff in the first instance (the appellant in the second instance) was the exclusive licensee of the invention patent titled "scissor-type expansion bolt", and in the first instance, the plaintiff claimed that the defendant's (the sued infringer) manufacture, sale and offer for sale of the sued infringing product infringed its patent, and requested the court to order the defendant to stop the infringement and compensate for its economic losses. The plaintiff conducted a notarization of the process of purchasing the sued infringing product on the defendant's website and submitted relevant physical evidence. The court of first instance determined that the defendant's sale of the product constituted an infringement and ordered the defendant to stop the sale and compensate for the plaintiff's economic losses, but the court did not determine the defendant's infringement in manufacturing the product.

Unsatisfied with the first-instance judgement, the plaintiff appealed to the SPC, arguing that the sued infringer claimed itself as a manufacturer in its publicity materials and made detailed introduction about the structure, components and application environment of the sued infringing product, and specifically labeled the plaintiff's trademark on the sued infringing product when selling online, which could prove that the sued infringer had committed the act of manufacturing the sued infringing product. The sued infringer argued that the sued infringing product was purchased from an outsider.

After trial, the SPC held that: "Under normal circumstances, if a sued infringing product has been clearly marked with information such as the name and trademark of the production enterprise, etc., based on which the identity of the manufacturer can be determined, then in the absence of sufficient evidence to the contrary, the enterprise that labels such information for public attention may be determined as the manufacturer of the sued infringing product as defined in the Patent Law. However, if the labeled information contradicts other evidence on file and is not sufficient for determining the identity of the manufacturer, and the sued infringer provides relatively sufficient rebuttal evidence, the determination shall be made on the basis of the facts ascertained in the case." In this case, the sued infringer's business scope included fastener manufacturing, that is, it had the qualification and ability to manufacture the sued infringing products, and its trademark was marked on the pictures of the sued infringing products shown on the sales webpage of its online store, and slogans such as "factory direct selling" and "shortening the distance from factory to buyers" were used on the webpage. Based on the relevant evidence on file, it can be preliminarily proved that the sued infringer had manufactured the sued infringing products. The sued infringer argued that the sued infringing product was not manufactured by it but was purchased from someone else and had a legitimate source, and meantime it provided WeChat

chat records as evidence. However, the content of the chat records did not reflect the details of the transaction, and no other transaction vouchers were provided, so the evidence submitted by the sued infringer was insufficient to overturn the determination that the sued infringing product was manufactured by it. In view of the above, the SPC determined that the sued infringer had committed acts such as manufacturing the sued infringing product, and accordingly the SPC changed the first-instance judgement, ordered the sued infringer to stop the infringing acts such as manufacturing, selling, and offering for sale, and increased the amount of damages.

For online sales, generally it is difficult to prove the acts of manufacturing infringing products. Regarding such fact, in this case the SPC reasonably allocated the burden of proof by transferring the burden of proof to the sued infringer and asking the sued infringer to provide sufficient evidence on the legitimate source of the infringing product under the condition that the sued infringer had the qualification and ability to manufacture the infringing product and claimed itself as a manufacturer in its publicity materials, thereby effectively helping the patentee safeguard its rights and interests in accordance with the law.

https://ipc.court.gov.cn/zh-cn/news/view-2045.html

Concrete Measures Uplifts IP Commercialization to New Heights

"Efficient transactions of IPRs fuel orderly circulation of innovative resources and elements as well as optimization of configurations while speeding up the release of innovative energy," Heng Fuguang, spokesperson and deputy director general of the CNIPA announced at a press conference on IPR commercialization and use in Beijing on August 24, "We are obviously seeing more dynamic IPR transactional activities on top of faster release of innovative energy. Financial packages serving IPRs inject capital to market players, lending robust support to their monetary needs. Benefits generated by IPR use also booms, exerting a more pronounced role in assisting quality development of economy."

Principals from the CNIPA's promotion of IPR use department, science/technology and information technology department of the Ministry of Education (MOE), science/technology department of the Ministry of Industry and Information Technology, laws and regulations department of the China Banking and Insurance Regulatory Commission (CBIRC) attended the press conference revealing the latest developments and achievements of IPR commercialization and use.

Boom of IPR operations

In 2021, patent assignment and licensing activities registered at 420,000, up 15% compared with the year before. The total import/export value of IPR royalties nationwide amounted to 378.3 billion yuan with the growth rate of export hitting 27.1%, 10.5 percentage points higher than that of import, painting a scenario "simultaneous growth of both export and import while export prevails".

According to Lei Xiaoyun, director general of the CNIPA's promotion of IPR use department, the CNIPA has been building an IPR operation system by endorsing establishment of 33 IPR operations platforms (centers), which brings together IPR buyers and sellers, and provide support for deals and transactions. The CNIPA also partnered with the Ministry of Finance (MOF) in building operations platforms, rearing institutes, allocating funds and executing programs in key cities.

Lei also brought attention to some specific programs done by the CNIPA, such as refinement of the IPR evaluation system, design of a national standard for patent evaluation, continued publication of statistics on patent royalty rates of recorded licensing agreements and formation of a system detecting prices of IPR deals. The CNIPA also joined hands with the MOF to implement a special program on patent commercialization while demanding local administrations to bond patent open-licensing pilot programs with patent commercialization programs and to integrate with IPR operations of universities and enterprises.

Patent commercialization surging at universities and research institutes

Even when IPR transactions are generally very dynamic in China, patent commercialization at universities and research institutes still stands out with their rapid growth. Statistics show patent assignment and licensing activities hit 27,000 last year, up 33.4% - a rate head and shoulders above the averages of all other types of innovators. Some 30% of the patents in question fall into strategic emerging sectors, becoming "the source of running water" for commercialization of high-value patents.

Lei Chaozi, director general of the MOE's science/technology and information technology department said his ministry has invoked two tools to accelerate transformation of universities' scientific and technological findings to real-world productivity, namely "upgrading quality of research findings" and "strengthening policy incentives". Regarding "upgrading quality of research findings", the MOE stresses whether the findings have catered the needs of industry and enterprise production and solved the outstanding problems bothering enterprises. Regarding "strengthening policy incentives", most universities have raised their compensation percentage to 70% while some even adopt an over 90% rate.

IPR financing bringing "real money"

"Although the economy softened in the first half of the year, financing through pledging patents and trademarks as collaterals amounted to 162.65 billion yuan, up 51.5% compared with the same period of the last year. Among all projects, the number of generalized preferential projects with loan cap under 10 million yuan reached 7,345, up 112% and effectively easing the financial worries of a raft of SMEs," Heng said measures like financing through pledging IPRs, operations funds, securitization effectively provides capital security for market players, giving its share of contributions to the central government's objectives in achieving social security.

Financing through pledging patents and trademarks as collaterals amounted to 309.8 billion yuan in 2021 while scoring a 40%+ growth for the second consecutive year. What is behind the feat is constant optimization and upgrade of the relevant service system and capacity. Li Hanyang, director general of the CBIRC's laws and regulations department said its satellite offices issued support policies with relevant agencies on financing through pledging IPRs. Some banks voluntarily reached out to IPR administrations, concluded comprehensive strategic cooperation agreements with them, and set up joint innovation labs dedicated to the cause while commercial banks were encouraged to make "bold and willing" decisions when lending loans.

http://english.cnipa.gov.cn/art/2022/9/14/art_2829_178705.html