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中国国际贸易促进委员会专利商标事务所

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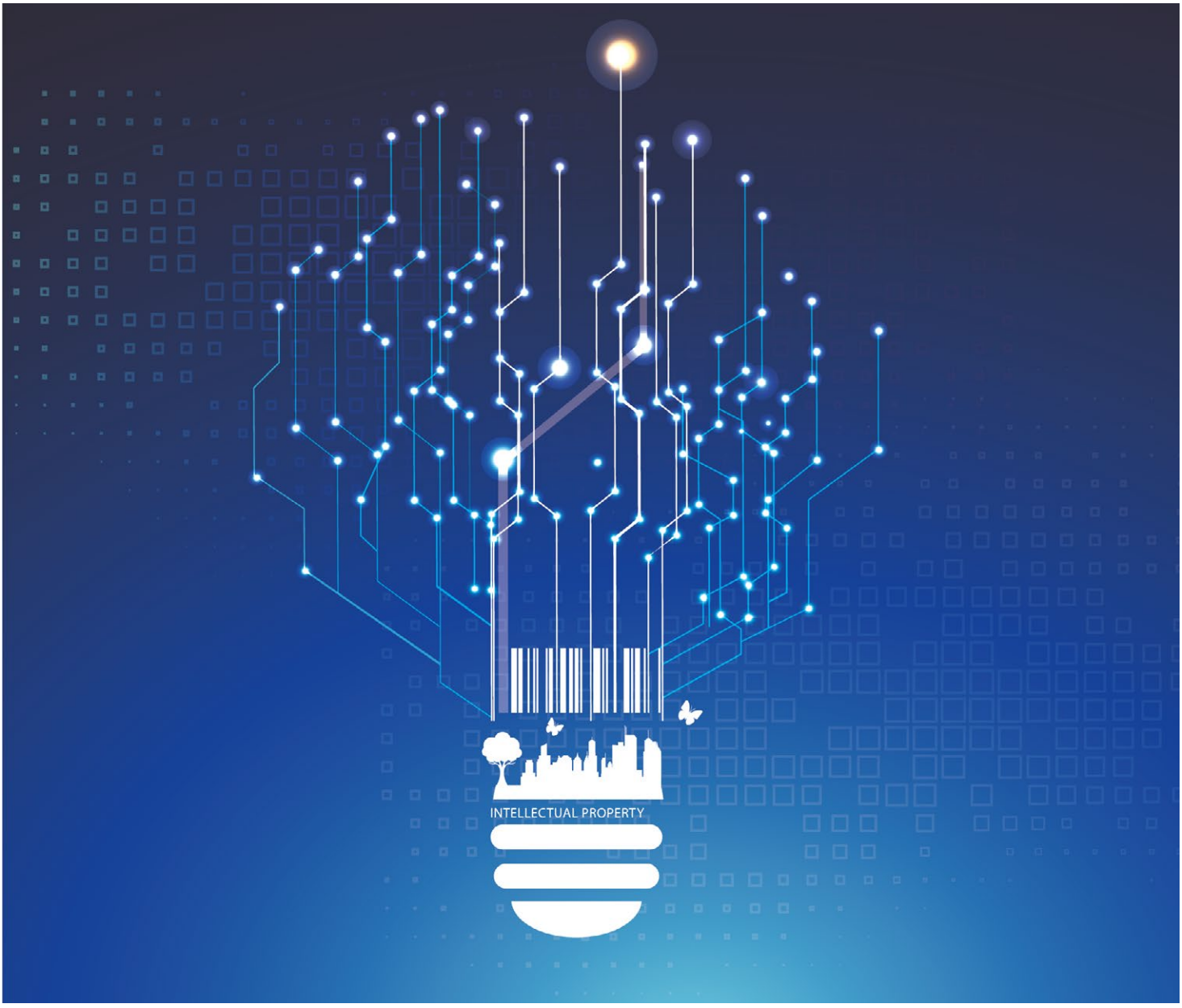
Newsletter



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Address: 10/F, Ocean Plaza, 158 Fuxingmennei Street, Bejing 100031, China
Tel: +86-10-66412345 / 68516688 Fax: +86-10-66415678 / 66413211
Website: www.ccpit-patent.com.cn
E-mail: mail@ccpit-patent.com.cn

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Hao Ma-the name you should know in China IP scene

Hao Ma, the name of the president of CCPIT Patent and Trademark Law Office, is on the list of "the names you should know in China IP scene" by Asia IP for obvious reasons: he holds the helm of the oldest IP Law firm in China, and is the president of the first non-governmental organization devoted to the progress of IP while also serving as the main non-governmental consultative institution of the World Intellectual Property Organization (WIPO).

Mr. Ma became the first Chinese to be elected president to the International Association for the Protection of Intellectual Property (AIPPI) in 2016, marking China's influence in IP matters internationally. With the planned hosting of the World Intellectual Property Conference 2020 in Hangzhou, Mr. Ma not only represents the heightened communication and cooperation between China and the world, but also serves as the face of China in the increasingly connected space of IP legislation and enforcement.

Mr. Ma's place as president of CCPIT Patent and Trademark Law Office also puts him at the forefront of China IPR enforcement facing the corporate world. A granddaddy in IP litigation in China, CCPIT has been involved in many landmark cases like the invalidation case against a design patent for Volkswagen in 2014, and is the cradle for many now-influential practicing Chinese lawyers.

2018 BIPF

i n Chengdu, China

In conjunction with the 10th Heads Meeting of BRICS IP Offices hosted by SIPO in Chengdu, China on March 26 and March 27, 2018, the 10th BRICS IP Forum (BIPF) was held on March 28.

This forum was hosted by CCPIT Patent and Trademark Law Office and IP Service Center of China Council for the Promotion of International Trade, co-organized by China (Sichuan) Pilot Free Trade Zone Service Center of CCPIT and China Council for the Promotion of International Trade Sichuan Council, and supported by DANIEL Legal & IP Strategy (Brazil), Gorodissky & Partners (Russia), Remfry & Sagar (India) and Von Seidels (South Africa). Mr. Zhimin He, deputy Commissioner of SIPO (the State Intellectual Property Office of the People's Republic of China) and Mr. Luiz Otávio Pimentel, the President of INPI (the National Institute of Industrial Property of Brazil) attended the Forum together with 180 participants from government departments, courts, industries, and IP law firms of China, Brazil, Russia, India, South Africa and Japan.

Mr. Zhimin He, Mr. Luiz Otávio Pimentel and Mr. Vladimir Biriulin, representative of BIPF addressed the audience at the Opening, which was moderated by Mr. Zhongqi Zhou, Senior Advisor of CCPIT Patent and Trademark Law Office. Mr. He said that IP cooperation of BRICS countries requests broad involvement of practitioners of law and industry. In addition to adopting various ways to implement the concept of providing better services to BRICS IP users and the public, the joint statement signed by BRICS IP Offices also indicates that we should support the exchanges and cooperation on capacity building of IP service personnel among BRICS countries and among user groups including IP service departments and other relevant agencies.

The program for this Forum is designed for the IP owners and lawyers who wish and are ready to do business in the respective BRICS countries. It is focused on specific IP hot issues, such as PPH among BRICS IP Offices and IP5, the latest development of patent and trademark enforcement in China, protection of GUI in BRICS countries, protection of well-known marks in India and other BRICS countries.

BRICS IP Forum provides a platform for all the participants to learn more about the latest developments of intellectual property policy and law in BRICS countries, which will be an invaluable tool to guide people who wish to do business in the BRICS countries.

New ICC report – "Design Protection for Graphical User Interfaces"

The ICC report on design protection for graphical user interfaces (GUIs) is now available. The International Chamber of Commerce (ICC) is the world's largest business organization with a network of over 6 million members in more than 100 countries.

GUIs and other forms of digital designs become increasingly important and valuable in the digital economy. The report was conceived as a practical tool for businesses, with information on prosecution and enforcement aspects of GUI designs from different countries and regions, and on issues for companies to address when developing their GUI design filing strategy. It also proffers issues for policy makers to consider in reviewing design systems to make protection of GUIs more effective and efficient.

The report was first presented at the 39th session of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), in late April 2018 in Switzerland.

CCPIT Patent and Trademark Law Office has been supporting the drafting of the report in connection with the China's section.

The State Intellectual Property Office of China will be restructured

The fourth plenary session of the first session of the thirteenth National People's Congress was held in the morning of March 13, 2018. Yong Wang, a State Councilor, illustrated the reform plan of institutional restructuring of the State Council, according to which the State Intellectual Property Office will be restructured.

The details as follow:

The restructuring of the State Intellectual Property Office. Intensifying the creation, protection and application of intellectual property rights is an important approach to accelerate the establishment of an innovation-oriented country. To solve the problem of separate management and repeated law enforcement on patent and trademark, as well as to improve the intellectual property management system, the Reform Plan proposes to restructure the State Intellectual Property Office by integrating the duties of the State Intellectual Property Office, the duties of the State Administration for Industry and Commerce in the area of trademark management and the duties of the State Administration for Quality Supervision, Inspection and Quarantine in the area of geographical indication of origin, which will be supervised by the State Administration for Market Regulation. The major duties of the restructured State Intellectual Property Office include protection of intellectual property rights, acceleration of the establishment of a protection system for intellectual property rights, registration/grant and administrative adjudication of trademarks, patents and geographical indications of origin and supervision of law enforcement over trademarks and patents. The market supervision comprehensive enforcement team takes the duties of trademark and patent law enforcement.

SIPO changed its name to CNIPA

The past two years have witnessed great progress in China's intellectual property area with the pilot reform in the comprehensive management of intellectual property and the restructuring of the State Intellectual Property Office. China has realized the integrated management of patent, design, trademark, geographical indication of origin and the layout designs of integrated circuit, which, in turn, has greatly improved the management efficiency of intellectual property.

In accordance with the restructuring plan approved by the 13th National People's Congress, the State Intellectual Property Office of China (SIPO) was renamed China National Intellectual Property Administration (CNIPA) on August 29, 2018. CNIPA will not subordinate to the State Council, but under the supervision of the newly established State Administration for Market Regulation. In his message to the "One Belt, One Road" High-Level Meeting Conference of August 28, 2018, Xi Jinping, the president of China, pointed out that China will unswervingly strengthen the protection of intellectual property right by establishing a sound environment for business and innovation to protect the IP rights of all enterprises. China is ready to strengthen dialogue and expand cooperation with all participants to achieve a win-win result in advancing the protection and application of intellectual property rights for the benefit of all people.

The 2018 High Level Conference on IP for Countries along Belt and Road highlights inclusiveness, development, cooperation, and mutual benefit

The Conference, co-organized by the National Intellectual Property Administration (CNIPA) of China (previously SIPO), National Copyright Administration, Ministry of Commerce, People's Government of Beijing Municipality and the World Intellectual Property Organization (WIPO) was held in Beijing on August 28. This conference focuses on inclusiveness, development, cooperation and mutual benefit. Participants discuss how to beef up IP cooperation among the countries along the Belt and Road to support the development of IP community.

Chinese State Councilor Yong Wang opened the Conference with a keynote speech. Mr. Yong Wang wished that IP cooperation among countries and regions along the Belt and Road become more extensive, intensive and pragmatic, and expedite the formation of a new innovation pattern by making better use of IP system in a bid to stimulate innovation and boost IP protection and utilization. Concerted efforts are supposed to be made to improve IP laws and regulations, enhance IP examination quality and efficiency, and establish an IP protection climate featuring openness, transparency, impartiality and efficiency, making greater contribution to innovative development and economic prosperity in the region. WIPO Director General Francis Gurry appreciated Chinese government's efforts in promoting such cooperation among the Belt and Road countries and valuable support China has shown for the work of WIPO. "WIPO is willing to make joint efforts with all other countries to reinforce communication and cooperation, and make concerted efforts to boost global IP system building and promote IP development and economy prosperity among those countries," said Gurry.

CNIPA Commissioner Changyu Shen, Senior Minister/Minister of Industry and Handicraft of Cambodia Cham Prasidh, China's Assistant Minister of Commerce Chenggang Li, Eurasian Patent Organization (EAPO) President Saule Tlevlessova delivered their keynote speech respectively.

Shen made three proposals to beef up IP cooperation among the participating countries. The first is to join hands to facilitate such cooperation to a higher level. The second is to improve IP infrastructure. The third is to harden IP protection.

Representatives of IP administrations, international and regional organizations and embassies in China from nearly 60 countries along the Belt and Road and 300 guests from the members of inter-ministerial meeting on implementation of National IP Strategy of State Council, domestic IP system, businesses, IP services and academic circles participated in this conference. During the conference, participants shared comments on the importance of IP in capacity upgrading for industries and facilitating the economic development for the Belt and Road countries, development of global IP systems and joint strategies to face new challenges in the digital era——laws, policies and enhanced cooperation, inspiring innovation through enhanced commercialization and utilization of IP as key intangible asset. In addition, participants also exchanged views on strengthening the protection of IP and exploring for country specific IP protection models to create a favorable business climate, IP protection in the areas of genetic resources, traditional knowledge and folklore——national experience on laws and best practice, and sustained multilateral cooperation in IP in support of innovation and creativity.

"The conference makes the anticipated result and it has formed a broad consensus on deepening IP cooperation for countries along the Belt and Road," Junchen Liu, Secretary of Party Committee and Deputy Commissioner of CNIPA, said in his speech at the closing ceremony. Liu wished all countries involved join hands and make greater contributions to the common development and prosperity.

(from the website of CNIPA)

New policies for innovative drugs in China

An executive meeting of the State Council of China was held on April 12, 2018 and presided by Premier Mr. Keqiang Li. According to the meeting, a series measures will be taken to encourage the importation of innovative medicines into Chinese market, to enhance intellectual property protection, and to lower medicine price. The measures include the exemption certain medicines from customs duty, the reduction of drug price, the expedition and optimization of the process for authorization on the commercialization of imported innovative medicines, the enhancement in intellectual property protection, and the augmentation in quality monitoring.

It is worth noting that, the enhanced measures in intellectual property protection is exciting for innovative medicines and pharmaceutical companies. The data exclusivity period for innovative chemical medicines is 6 years at maximum, and medicines of the same species will not be authorized to commercialize within this period. In addition, a maximum of 5 years' compensation of patent term will be offered for innovative new medicines which are applied for commercialization in domestic and oversea markets simultaneously.

Undoubtedly, what mentioned above is good news for pharmaceutical companies. But the specific rules on how to determine the duration of the data exclusivity period and patent term extension are not available. We will keep you informed of the updates in the future.

With the availability of these measures, it is expected that more innovative medicines will be imported into China, and the intellectual property protection for innovative medicines will be enhanced.

Please find the specific information announced by the official authority.

1. Exemption from customs duty

China will exempt all normal medicines including anti-cancer medicines, alkaloid medicines with anti-cancer effect, and Chinese traditional medicine with actual import from customs duty, and to realize a zero customs duty for all anti-cancer medicines.

2. Reduction of drug price via comprehensive measures

Comprehensive measures will be explored. Manners include, for example, centralized purchasing the category of medical insurance, research on oversea online channels, and the like, so as to make the public realize that the price for urgent desired anti-cancer medicines is significantly reduced.

3. Expediting the commercialization of imported innovative medicines

Application for clinical trials will be amended from the manner of authorization to duly default approval. Chemical medicines will be imported with the support of testing results of enterprises, and compulsory testing by batch is not necessary any more.

4. Enhancement in intellectual property protection

The data exclusivity period for this period. In addition, a maximum of 5 years' compensation of patent term will be offered for innovative new medicines which are applied for commercialization on domestic and oversea markets simultaneously.

5. Augmentation in quality monitoring

Quality monitoring of imported medicines will be enhanced. Inspection on the oversea manufacturing sites of imported medicines will be augmented. Severe measures will be taken towards the activities of manufacturing or selling false medicines.

Opinions on Several Issues in Enhancing Reform and Innovation in Hearing Intellectual Property Cases

The Opinions on Several Issues in Enhancing Reform and Innovation in Hearing Intellectual Property Cases issued by the "Two Offices" (the General Office of the CPC Central Committee and the General Office of the State Council) on Feb. 6, 2018, was released in full text.

Intellectual property protection is a basic means to stimulate innovation, a basic guarantee for the motive force of innovation, and a core element of international competitiveness. The judicial work in relation to IPRs of the people's courts, which is related to the implementation of the innovation-driven development strategy, to the economic, social and cultural development and prosperity, and to the two overall situations home and abroad, is of a great significance to the building of a country with powerful intellectual property, science and technology in the world. In order to deepen the implementation of the innovation-driven development strategy and the national intellectual property strategy, to strengthen the creation, protection and application of intellectual property, to crack down the institutional and mechanism-related obstacles that restrict the development of judicial protection of intellectual property rights, and to bring in full play the function and effect of the judicial protection of intellectual property rights in stimulating and protecting innovation, promoting scientific and technological progress and social development, the following opinions are raised:

I. Overall requirements

(i) Guiding ideology

By comprehensively implementing the spirit of the 19th CPC National Congress with the Xi Jinping Thought on Socialism with Chinese characteristics for a new era as a guidance, firmly establishing the "four consciousness", pushing forward the overall layout of "five in one" and coordinately enhancing the strategic layout requirements of "four Comprehensives" and closely centering around the goal of "making the people feel fair and just in every judicial case", we shall uphold the principles of justice for people and judicial justice, gradually deepen the reform in hearing IP cases, bring in full play the leading role of judicial protection of intellectual property, establish such a concept that to protect intellectual property is to protect innovation, optimize the environment of ruling by law for scientific and technological innovation, and promote the implementation of the innovation-driven development strategy, so as to provide a firm judicial support for the realization of the "two centennial goals" and the building of country with powerful

intellectual property, science and technology in the world.

(ii) Basic principles

- Adhering to overall positioning. By viewing from the national strategic level, closely centering around the development situations of the party and the country, and actively adapting to the new changes in the international situation, we shall strengthen the top-level design of the overall, institutional and fundamental issues concerning the long-term development of judicial protection of intellectual property rights, and reform and improve the IP judicial protection system and institution.

- Adhering to a problem-oriented principle. In the light of the judicial needs of the people, we shall study countermeasures and set out to address difficult problems and shore up areas of weakness, with regard to the key areas and weak links affecting and constraining the development of judicial protection of intellectual property rights, and further promote the IP judicial protection level.

- Adhering to reform and innovation. We shall emancipate the mind and seek truth from facts, follow the law of judicial work, stimulate innovation in innovative manners, protect innovation in innovative manners, and resolve problems and difficulties confronted in IP judicial reform in a reformed thinking, so as to let the reform and innovation become a power source for sustainable and healthy development of IP judicial protection.

- Adhering to an open development principle. By both basing on our national conditions and respecting the international rules, and learning the successful experience in the international judicial protection of intellectual property rights, we shall actively construct a new model of judicial protection of intellectual property rights with Chinese characteristics, and continuously enhance our leadership in the rules of international governance of intellectual property rights.

(iii) Reform objectives

With the perfection of the IP litigation system as a basis, the reinforcement of the IP court system construction as a focus, and the enhancing of the IP trial team buildup as a guarantee, we shall constantly improve the quality and efficiency of hearing IP cases, enhance the judicial protection of intellectual property rights, effectively restrain the acts of infringement on intellectual property rights, further promote the judicial credibility and international influence in the field of intellectual property, and accelerate the progress of modernization of the judicial system and the judicial capability in relation to IP cases.

II. Improving the IP litigation system

(i) Establishing rules of evidence in litigation conforming to the characteristics of intellectual property cases

According to the intangible, temporal and geographical characteristics of intellectual property, we shall perfect the evidence preservation system, bring in play the role of an expert assistant, properly enhance the investigation and evidence collection of the people's courts to the authority, and establish a litigation mechanism of stimulating the parties concerned to positively and actively proffer evidence. We shall bring in full play the role of notarization in fixing evidence in intellectual property cases in multiple manners. We shall reinforce the construction of a litigation credit system in the field of intellectual property, explore to establish rules of evidence discovery and of exclusion of evidence obstruction, reasonably allocate the burden of proof, appropriately mitigate the burden of proof on a right holder, and set out to crack down the problem of "hard proof" for the holders of intellectual property rights.

(ii) Establishing an infringement compensation system that reflects the value of intellectual property

1. Adhering to such a value orientation that intellectual property creates values and right holders shall enjoy interest returns. We shall bring in full play the role of social organizations and intermediate agencies in the value assessment of intellectual property, establish a judicial determination mechanism of infringement damages with the respect of intellectual property and the encouragement of innovative application as a guidance, with the realization of the market value of intellectual property as a guideline, and with compensation as a primary

tool and punishment as an auxiliary tool, and set out to crack down the problem of "low compensation" in IP infringement lawsuits.

2. Enhancing the punishment of illegal acts of IP infringement and reducing the costs in safeguarding rights. Where there are circumstances of repeated infringements, malicious infringement and other serious infringement circumstances, we shall effectively restrain and deter the IP infringement acts by enhancing the compensation according to law, raising the compensation amount, and asking the losing party to afford the costs for safeguarding rights, so as to make the infringers to pay a heavy price. We shall work hard to create a legal atmosphere in which there is no courage or intention to perform infringement, so as to realize a historic conversion to strong protection of intellectual property rights.

(iii) Promoting reform of adjudication manners conforming to the law of IP litigation

We shall further bring in play the leading role of judicial protection of intellectual property rights, strengthen the judicial review of IP administrative acts in accordance with law, and promote the consistency between the standards of administrative enforcement and the standards of judicial protection in relation to intellectual property rights. We shall strengthen the research and application of judicial big data, perfect the IP case guidance system, improve the adjudication manners, promote the shunting of complicated and simple IP cases, practically enhance the convenience and timeliness of IP judicial remedy, and set out to crack down the problem of "long cycle" in hearing IP cases.

III. Strengthening the construction of intellectual property court system

(i) Establishing and perfecting the specialized IP court system

1. In accordance with the requirements of the "Outline of National Intellectual Property Strategy", by seriously summarizing the basic rules and experience of IP cases, reinforcing the analysis of current situations as well as the research and judgment of international trends, from the strategic height of building a country with powerful intellectual property and great power of science and technology in the world, we shall study to establish a national level IP case appeals hearing mechanism, to effectuate specialized hearing, centralized jurisdiction, intensive procedure and professionalization of staffs of related IP cases, and radically solve the institutional difficulties restraining scientific and technological innovation such as the inconsistent judgment scales of intellectual property cases and the complex litigation procedures.

2. By comprehensively summarizing the experience in setting, running, building and developing Beijing, Shanghai and Guangzhou IP courts, we shall set forth measures that can be replicated and promoted, and implement them in accordance with legal procedures. We shall further improve the specialized court system conforming to the law of IP judicial protection, and effectively satisfy the judicial needs of scientific and technological innovation for specialized hearing of intellectual property rights.

(ii) Exploring the off-site hearing mechanism of trans-regional IP cases

By adequately integrating the superior judicial resources of the Beijing-Tianjin-Hebei courts, and exploring a centralized jurisdiction of technical IP cases in the Beijing-Tianjin-Hebei areas by Beijing Intellectual Property Court, we shall adequately bring in play a unique role of specialized hearing of intellectual property cases in the aspect of promoting the innovation-driven development of Beijing-Tianjin-Hebei, and provide a firm judicial support for Beijing-Tianjin-Hebei to form a coordinated innovation community, and realize economic transformation and scientific development.

(iii) Improving the human, finance and material support system of IP courts

1. We shall establish a dynamic adjustment mechanism of judges of the IP courts by

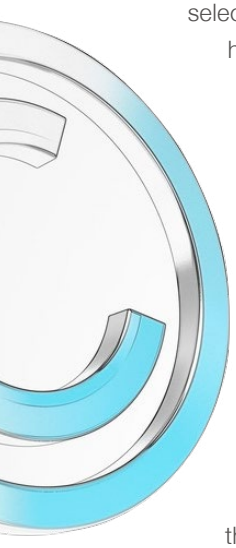
combining classified management, target training, tracking assessment and timely adjustment. We shall dynamically adjust the number of judges, resolve unbalance between judges and cases and enhance the judicial efficiency according to the accepted amount, the growth trend and the difficulty of the cases.

2. We shall perfect the funding support mechanism, identify the basis for the IP courts to purchase social services and promote standardization of the financial work of the IP courts according to the affiliation relation and operational practices of the IP courts.

IV. Strengthening the buildup of the IP trial team

(i) Enhancing the training and selection of IP trial talents

1. On the premise of maintaining a stable IP trial team, we shall establish diversified forms of personnel exchange mechanisms among IP courts, among specialized IP trial institutions, and among superior and inferior courts, and make plans to select and assign IP judges having a high comprehensive quality, an outstanding expertise, and training potential to hold a position or take a temporary post in relevant party or government organs. We may openly select IP judges from legislators, lawyers and law experts, and further stimulate the positivity, activity and creativity of the IP trial team.



2. By enhancing the pertinence and effectiveness of the training, improving the ideological and political qualities, professional buildup and expertise level of the IP trial team, and strengthening foreign exchanges and cooperation, we shall strive to create a group of IP trail talents with a firm political stance, a perspective of the overall situation, proficiency in law, acquaintance in technology and a global outlook.

(ii) Strengthening the construction of technical investigator team

By exploring to select and manage technical investigators according to a manner such as appointment, refining the selection conditions, the appointment types, the duty scopes, the management modes and the training mechanisms, and standardize the admissibility examination of technical investigation comments, we shall adequately bring in play a positive role of a technical investigator in effectively ascertaining technical facts and improving the IP trial quality and efficiency, and reinforcing the neutrality, objectivity and scientificity in determining technical facts.

V. Strengthening the organizational leadership

(i) Reinforcing organization and implementation

The relevant regions and departments shall attach great importance to the IP judicial work of people's courts, and take it as an important content for promoting comprehensively deepening of the reform, comprehensively administering of the country according to law and thoroughly implementation of the innovation-driven development strategy and national intellectual property strategy, so as to practically reinforce the organizational leadership. We shall formulate implementation regulations in no time, identify the departments of responsibility, determine the schedule and route chart, and ensure that various operational requirements are timely and effectively put into practice.

(ii) Strengthening the operational support

The relevant regions and departments shall seriously implement the requirements of the CPC Central Committee on bringing in full play the leading role of IP judicial protection, make an overall coordination and allocation of the existing judicial resources of the people's courts and relevant trial forces, provide a favorable support and backup for the IP judicial work of the people's courts in the aspects of funding support and material equipment, and vigorously promote a standardized, specialized, professional and international buildup of the IP trial team.

(iii) Improving the relevant laws and regulations

We shall positively promote the revision work of the relevant laws such as the Law on the Organization of the People's Courts, the Patent Law, the Copyright Law and the related Procedural Laws, study and formulate the special procedure law that conforms to the law of trial of IP cases, and strengthen the legalization and institutionalization of specialized trial organizations, litigation jurisdictions, evidence rules, trial procedures and adjudication manners of IP case.

Tips for foreign applicants to utilize prioritized patent examination

By Weiwei Han, Qi Liu

Prioritized patent examination, being an effective way in shortening examination cycle, benefiting patent applicants, and may contribute to economic development, is often called a "green path". Since the State Intellectual Property Office of China (hereafter referred to as "SIPO") issued an "Administrative Regulations of Prioritized Patent Examination" (hereafter referred to as "Regulations") which took effect as of August 1, 2017, more and more domestic and foreign patent applicants are taking advantage of this prioritized patent examination system. Till the end of 2017, 29 patents entered the procedure of prioritized patent examination in front of the Reexamination Board of SIPO, and two design patents survived invalidations. Further, according to the statistics available at the website of Zhongguancun State Intellectual Property Model Park which represents Beijing Intellectual Property Office to preliminary review on the qualification for prioritized patent examination in Beijing area, 1,090 applications met the criteria and passed preliminary examination. And as far as the authors know, some applications have been granted with a patent by utilizing this green path.

The majority of applications entering this system are domestic ones. Foreign applicants also possess the desire to make use of and pass this "green path". In this article, we will introduce the recent update on prioritized patent examination and advise how foreign applicant may apply this system.

Which option(s) may be applicable by foreign applicants?

The Regulations prescribes that, if a Chinese patent application measures up one of the six options as follows, it would be qualified to request the prioritized examination:

1. It involves the national key development industries, including but not limited to energy conservation and environment protection, new generation of information technology, biotech, high-end equipment manufacturing, new energy, new materials, new energy vehicles, intelligent manufacturing;

2. It involves the key development industries of which is encouraged by the provincial governments and prefecture-level city government;

3. It involves the fields of technologies relating to internet, big data, cloud computing and that technologies or products evolve rapidly;

4. The patent applicant or the applicant requesting re-examination gets everything ready to implement or has already started to implement, or has shown that a third party is

implementing its invention-creation;

5. It should be the first filing in China and be claimed as the priority for the filing a patent application in another country or region on the same subject matter;

6. Other situations that has significant interests for China and the public, and therefore need to be examined as a priority.

For pure foreign applicants (which intends to mean that all the applicants are outside China), the most probable way for a foreign application is Option 5. Namely, for the first-filing Chinese patent applications, the foreign entities would feel free to request the prioritized examination, given that they have their creation-invention or designs firstly filed in China and claim the first-filing Chinese patent application to other countries or regions.

Options 1 and 3 are also possible for pure foreign applicants. If the invention belongs to the technical fields exemplified in Option 3, it is able to enter into prioritized examination. As for whether an invention belongs to national key development industries, it is suggested to check documents issued by the government, for instance, "the guidance catalogue of the strategic emerging industries and key products & service" issued by Chinese National Development and Reform Commission, which may be updated annually. Further, SIPO also issued a “Catalog of Industries Mainly Supported by Intellectual Property” (2018 version) on January 17, 2018, which may serve as a reference.

If the invention of a patent application has been implemented or is going to be implemented, or it has a risk of being infringed in the future, for instance, competitors are manufacturing the product covered by the application, option 4 may work. This may provide some rescue for inventions having prospects on the market.

On the other hand, a Chinese patent application jointly owned by both a Chinese and a foreign entity shall also enjoy the prioritized examination, so that all the sufficient documents for requesting the prioritized examination can be in good preparation by the Chinese co-owner. In practice, foreign applicants with Chinese subsidiaries or affiliates, given that their Chinese applications/patents belong to any of the applicable situations, may take this measure to accelerate the examination. In case of the joint applicants, the request for the prioritized examination shall be consented by all the co-applicants.

In addition, for an invalidation case, prioritized examination may be initiated:

(1) if it involves a patent infringement case, the parties in action have already requested the local patent department to settle, or submit the case to the court, or request the arbitration mediation organization for arbitration and mediation; or

(2) the patent to be invalidated has significant interests for China and the public.

In recent years, foreign patentees are active in enforcing IP rights in China. A fast decision made by the Reexamination Board may favor the enforcement. As reported by the Reexamination Board, in the two invalidation cases which were examined via prioritized examination, decisions were issued in around two months from receipt of the request for prioritized examination. This is a good sign for patentees, especially when the patents are stable and of great value on the market.

Procedures and documents requested for filing a request for prioritized examination

The prerequisite for a Chinese patent application to be qualified for prioritized examination is that the application shall be an e-filing case, and the application has been published and entered into substantive examination. By taking different options, the documents requested may differ to some extent. Take an invention patent as an example.

No matter which option to adopt, one common document requested is a request form. Some basic information shall be included in the form, including application number, type of invention, name of the petitioner, contact person as well as the phone number and address of the contact person. Further, the ground for prioritized examination shall be indicated. If the above option 5 is applied and if the Chinese application is the first filing application of a PCT application, the PCT application number shall be laid out. If other options other than option 5 is chosen, the opinion of the recommendation authority shall be provided. Last but not the least, information on supporting materials, such as prior art references, shall be set forth in the request form.

Other common documents are prior art references relevant to the Chinese patent application. It is worth noting that the prior art references are used to facilitate the examiner to accelerate the examination. For patent documents, only the documentation serial numbers and published date, indicating the relevant paragraph or picture numbers are sufficient; and for the non-patent documentation, such as magazines or books, it is suggested providing the full pages or the relevant pages.

Besides the request form, other supporting materials would be requested.

For instance, other relevant supporting documents, which refers to the documents proving that the case falls into one of the situations described in the Regulations. Some examples are listed in the form below.

Option Number	Document	Purpose
1 or 3	an introduction made by the applicant	explaining that the technologies in the Chinese patent applications belongs to the key industries, the technologies or the products regulated in Rule 3
4	the product photos, the product catalog, the product manual etc; the sale contract, the supply agreement, the purchase invoices and other documents	proving the applicant has already prepared to implement the Chinese patent case; proving the trade and sale of the products, in order to prove that the applicant has already started to implement the Chinese patent case or there would be potential infringement upon the Chinese patent case
5	the Official Filing Receipts of other national or regional filings	proving the first-filing Chinese patent case is claimed as the priority for other national or regional filings. In case that the first-filing Chinese patent applications is claimed as the priority for the PCT application, the PCT application number in the Requesting forms is sufficient.

Timelines for prioritized examination

Bearing the critical timelines in mind may help better utilization of the system and monitor the progress. Some important timelines have been listed in the table below for reference (only for patent (application)).

	Substantive Examination	Reexamination or Invalidation
*Acceptance	about 3 – 5 working days	No specific time limit; as soon as possible
First Office Action	within 45 days from date of Official Receipt of the Request for prioritized examination	
Time for Responding to a Notification	within 2 months, without mailing period	same as an ordinary application/patent
#Duration	within one year	within 7 months (for reexamination)

*Acceptance: time from receiving the request for prioritized examination as well as the documents in support to permit or reject prioritized examination;
#Duration: time from the receipt of a request for prioritized examination to make a final decision

In conclusion, the prioritized examination is an effective way for foreign applicants to obtain a patent in a significantly shortened period, and also beneficial for patent owners who desires to enforce patents in an expedited manner.

Medical use: questions of novelty

By Weiwei Han

When a substance with a diagnostic or therapeutic effect per se has been available in the prior art, it will become more important to effectively protect the medical use of the substance, particularly in a jurisdiction (such as China) where diagnostic or therapeutic methods are not patent-eligible.

Medical use inventions may be drafted in the format of Swiss-type use claims. Specifically, if an invention involves the discovery of the therapeutic use of substance X, or treatment of a certain new disease using X, a medical use claim may be drafted in a format such as “use of substance X for the manufacture of a medicament” or “use of substance X for the manufacture of a medicament for treating a disease”.

Even though the “substance” and “disease” are essential in such a claim, there may be additional features therein, including a new dosage regimen such as a new mode, route, usage amount and interval of administration, and subject to be treated. It has been long debated whether these features would make a claimed technical solution patentable if both the “substance” and “disease” are known in the art. Some recent cases have illustrated these issues.

Case study

The most influential case was ruled on by the Supreme People’s Court. The independent claim 1 of the patent-in-suit is directed to the use of daptomycin for the manufacture of a medicament for treating a bacterial infection in a patient without resulting in skeletal muscle toxicity, where a dose for the treatment is 3 to 75 mg/kg of daptomycin once every 24 hours to 48 hours. Features of administration dose and administration interval are included in the claim.

The Supreme People’s Court held that “this kind of (Swiss-type) claim binds the making behaviour of a manufacturer who makes a drug for a certain use, so the technical features of the claims should be analyzed from the perspective of process claims”.

It added: “As for the features only relating to how to use a medicament, such as administration dose, administration interval and the like, if these technical features are not directly related to the procedure of manufacture of themedicament, they substantially belong to specific courses of

administering the medicament to the human body after the procedure of manufacture of the medicament has been carried out and the medicament has been obtained, and are not directly and necessarily associated with the procedure of manufacture of medicament.

"These technical features merely present in the course of administration are not technical features in the procedure of manufacture of medicament, and do not have any limiting effect on the procedure of manufacture of medicament per se."

More case law

In May 2018, the Patent Reexamination Board (PRB) made an invalidation decision to further illustrate how the subject to be treated may influence the novelty of a second medical use claim.

The patent-in-suit is directed to the medical use of an antibody. Specifically, independent claim 1 in the patent reads "use of an anti-CD20 antibody in the preparation of a medicament for the treatment of relapsed B-cell lymphoma in a human patient, wherein the patient has relapsed following treatment with an anti-CD20 antibody".

The feature "the patient has relapsed following treatment with an anti-CD20 antibody" defines the subject to be treated and was considered a distinguishing feature. According to the PRB, when evaluating the novelty of a medical use invention, if the feature on the subject of administration in the claims is merely

embodied in the course of medication, the feature does not influence the procedure of manufacture of the medicament, nor does it lead to differentiation of the treated indication from that disclosed in the prior art.

In this case, the feature of the subject of administration cannot make the medical use invention novel.

The PRB further discussed the examination of medical use claims in a more general sense. According to the PRB, medical use claims are recited in the format of "use of substance X in the preparation of a medicament for treating a disease" or the like.

In the prior art, there is a document that only describes the use of substance X in the treatment of said disease. As it necessarily requires the preparation of substance X as a drug during the treatment of the disease with substance X, the prior art document essentially implicitly discloses the technical characteristics of the preparation of substance X into a drug.

Even if the document does not include the literal description of substance X as a drug, such a document still destroys the novelty of the invention. In another invalidation decision made by the PRB in March 2018, the opinion was similar.

The decisions of the Supreme People's Court and the PRB show that a new dosage regimen such as a new mode, route, usage amount and interval of administration, as well as subject to be treated, usually does not have limitative effects on the Swiss-type claim and thus is not patentable in China.

That is, unless it changes the indication to be treated or the structure of the drug such as composition, amounts of any ingredient, and unit dose or dosage form. To distinguish an invention from the prior art, an applicant may envisage including features which may affect the manufacture process of a medicament in the claims and descriptions.

What evidence is needed to obtain high damages

By Deqiang Zhu

For a patent right holder, when infringement is found, it is always considered how to stop it and how to get damages. While stopping the infringement should be the primary object, damages play a very important role in deciding the acts of enforcing the patent right against counterfeiting.

Infringement upon a patent right causes economic losses to the patent right holder. In China, the determination of the amount of damages is stipulated in Article 65 of the Chinese Patent Law. According to this Article, four ways may be taken to determine the amount of damages to be awarded to the claimant in a patent lawsuit:

1) determine the amount of damages on the basis of the actual losses incurred to the patentee as a result of the infringement;

2) determine the amount of damages on the basis of the gains which the infringer has obtained from the infringement;

3) determine the amount of damages by reference to the multiple of the royalties for the patent involved in the patent lawsuit;

4) determine the amount of damages, by taking into account such factors as the type of patent, nature and particulars of the infringement, etc., within a range of no less than 10, 000 RMB but no more than 1 million RMB.

Two points should be noted regarding the determination of damages. One is that the four ways mentioned above should be considered in sequence in priority. In other words, if the way first mentioned can be effective to determine the damages, the way or ways following it need not to be considered. Only when it is difficult to determine the damages based on the first mentioned way, the following mentioned way(s) may be taken in the determination of the damages. Another point is that the damages should include the reasonable expenses that the patent right holder has paid for stopping the infringement.

In a patent lawsuit, the claimant bears the burden of proof. This also applies to the determination of damages. To be more exact, the claimant should provide evidence to prove what is claimed is based on evidence. For any of the four ways to determine damages evidence is necessary. For example, if the claimant claims an amount of damages that is determined in accordance with the first way, evidence for proving the amount of the actual losses incurred to the patentee as a result of the infringement should be submitted. Suppose a patent right holder encounters a drop of sales of their product incorporating the patent due to the launching into market of the infringing products,

the patent right holder may submit the amount of the drop of pat products and the profit per patented product as evidence to prove the actual losses due to the infringing acts. Sometimes a claimant is not willing to provide the evidence to prove their actual losses even if it can be collected. This may be because such evidence may include some confidential business secret information and the claimant is not willing disclose it.

An alternative may be to determine the patent right holder's losses by multiplying the amount of sales of infringing products by the profit per patented product if it is difficult to determine the amount of reduction of sales of the patented product of the patent right holder. This method is effective in proving damages. It has been used successfully in the invention patent infringement case between Beijing Watch Data Co., Ltd. and Hengbao Co., Ltd.
In the case, Beijing Watch sued Hengbao for their USBKEY product's infringement upon the patent for invention of Watch. On December 8, 2016, Beijing Intellectual Property Court issued the first instance judgement (2015) Jing Zhi Min Chu No. 441 and awarded the plaintiff damages of 49 million RMB. From the judgement, it can be known how this method has been used. In this case, the Court issued a Ruling for evidence preservation, according to which the defendant Hengbao is ordered to provide financial documents recording financial data concerning the accused infringing products USBKEY. Hengbao refused to provide effective financial documents recording data. The Court also issued Investigation Letters to entities such as Bank of China and China Financial Certification Center Co., Ltd., who uses the accused infringing products, to collect evidence. On the basis of the written testimony provided by these entities, the Court determined that the amount of the accused infringing products as sold by the defendant is 4.8142 million. The plaintiff also provided financial documents showing the figures of prices and the profit rates of their patented product USBKEY, on the basis of which the plaintiff claims that the profit of their patented product is 10 RMB, which is lower than the average profit of the product according to the plaintiff's calculation. On the basis of the amount of the accused infringing product and the profit of the patented product, the profit amounts to 48.142 million RMB. The plaintiff also alleges that the defendant also sold the accused infringing products to other entities in addition to those who received the Investigation letters from the Court, and that this brought the defendant at least 2 million RMB as profit. The defendant Hengbao objected to the calculation of profits by the plaintiff. The Judgement says considering the defendant did not follow the Court's Ruling for Evidence Preservation to provide relative financial documents recording the relative data which are held by them, it is presumed that the relative data as alleged by the plaintiff is unfavorable to the defendant and the plaintiff's allegation is supported. Adding this 2 million to 48.142 million, the total amount is about 49 million RMB, which is claimed by the plaintiff. Then Beijing IP Court determined 49 million RMB as the total amount of damages as claimed by the plaintiff.

If no evidence can be submitted to prove the actual losses of the patent right holder, it would be difficult to determine the damages in accordance with the first way and the second way would be considered. When the claimant requests to take the second way to determine the damages, the amount of the gains which the infringer has obtained from the infringement upon the patent involved in the patent lawsuit should be proven. When the claimant requests to take the second way to determine the damages, the amount of the gains which the infringer has obtained from the infringement upon the patent involved in the patent lawsuit should be proven.The evidence for this may include the illegal profit that has been brought to the infringer by the infringing acts. The plaintiff may may try to collect information of the infringer's amount of sales of infringing products and the profit rate of the infringing product.

If it is difficult to determine the gains which the infringer has obtained from the infringement, the claimant may try to prove the amount of the royalties for the patent involved in the patent lawsuit. If the claimant once licensed the patent to a third party, the license fee may be referred to.

In many patent infringement cases, it is difficult for the claimant to provide evidence that is necessary for proving the relative damages to be determined in the three ways first mentioned and damages have to be determined in the fourth way, i.e. to be determined by the collegiate bench between 10 thousand and 1 million RMB.. Even though this way is taken, it does not mean no evidence is needed. To provide sufficient evidence is always critical to have the court awarded as high amount of damages as possible. The evidence may be those to prove for example the nature and particulars of the act of infringement, the willfulness of the infringer, the long period of the infringement, the repeating of infringement, the infringement by group of numerous entities, the amount of distributors or sellers and the areas in which the infringing products are sold, etc. below is an example of the application of statutory damages. This is a case about infringement upon a design patent claiming a design of a can for milk powder, in which Abbott (Shanghai) Trading Company sued several entities who manufactured and sold cans of rice powder. This case is one of the top ten typical intellectual property cases in Beijing court system. In this case the Court awarded the amount of 1 million RMB which is the upper limit of the statutory damages. According to the judgement of this case (2014) Chao Min (Zhi) Chu No. 28014, which was issued by the Court of Chaoyang District of Beijing, the Court considers the numerous channels of selling the infringing products, the infringer's subjective fault among other factors, in deciding the damages. According to the judgement, the plaintiff can still purchase the infringing products from the market two months after the service of the preliminary injunction ruling, which shows that the amount of sales of the infringing products is huge on the one hand, and shows that the defendants have series subjective fault on the other hand. The defendant was not satisfied with this case and appealed. Beijing Intellectual Property Court adjudicated the case in the second instance and maintained the judgement in the first instance.

It is not rare that a patent right holder will have difficulty in collecting evidence for proving infringement and damages in particular. Two main special legal measures may be considered in trying to seek support from the court in collecting evidence. The Civil Procedural Law provides the court's responsibility and authority to collect evidence for some particular circumstances. One of the circumstances is that the evidence cannot be collected by a party and its litigation representative for some objective reasons and the evidence is deemed by the court as necessary for trying a case. In such case, in which the court investigates and collects evidence, the relevant entities and individuals should not refuse to provide the evidence. If the relevant parties refuse to provide evidence they hold, it will be deemed that the evidence is unfavorable to them and the plaintiff's allegation will be supported, like what happened in the case between Watch and Hengbao as mentioned above.

There is also a court's procedure of evidence preservation, which may be utilized by a patent right holder if it is difficult for them to collect evidence by themselves. If any evidence may be extinguished or hard to obtain at a later time, a party may, in the course of an action, apply to the court for evidence preservation, and the court may also take preservation measures on its own initiative.

If any evidence may be extinguished or hard to obtain at a later time, if the circumstances are urgent, an interested party may, before instituting an action or applying for arbitration, apply for evidence preservation to a court at the place where the evidence is located or at the place of domicile of the respondent or a court having jurisdiction over the case. It can be imagined that if such particular measures can be utilized effectively it will be hopeful to not only stop infringing acts but also get high damages to have the IP right protected effectively.

Effective GUI protection in China

By Xiaojun Guo

Beijing Qihu Technology and Qizhi Software (Beijing) (the plaintiffs) are the owners of a Chinese design patent called "Computer with graphical user interface (GUI)", granted on November 5, 2014.

The plaintiffs sued the software company Beijing Jiangmin New Science Technology in April 2016 at the Beijing Intellectual Property Court, claiming direct infringement and contributory infringement.

The accused infringing product is an anti-virus software named Jiangmin Optimization Expert, which was provided by the defendant and freely downloadable from the internet. On December 25, 2017, the court made its first instance decision and rejected the plaintiff's claims.

With regard to the direct infringement claim, the court based its opinions on article 59 of the Chinese Patent Law and article 8 of the Judicial Interpretation issued by the Supreme Court in 2009.

Article 59 provides: "The extent of protection of the patent right for design shall be determined by the design of the product as shown in the drawings or photographs."

Article 8 provides: "Where a product of the same or similar ategory with the product incorporating the patented design applies a design identical or similar to the patented design, the courts shall determine that the design accused of infringement falls within the scope of protection of the patent right as provided in article 59.2 of the Patent Law."

These provisions require the

court to apply a "two-prong" test in finding design patent infringement:

(1) the accused infringing product and the product incorporating the patented design shall be identical or similar (the "product prong");

and (2) the design for the accused infringing product and the patented design shall be identical or similar (the "design prong").

The court found in this case the accused product (software) and the product incorporating the patented design (a computer) are in different categories. Since the "product prong" was not met, the court didn't opine on the similarity between the two designs.

Contributory infringement

The statutory definition of contributory infringement is found within the Tort Liability Law and article 21(1) of the Judicial Interpretation, issued by the Supreme Court in 2016.

The article reads: "Where a party, knowing that certain products are the materials, equipment, parts and components or intermediate items, etc, specifically for the exploitation of a patent, without consent of the patentee and for business purposes, provides such products to another party committing patent infringement, the people's court shall side with the right holder claiming that the party's provision of such products is an act of contributory infringement as provided in article 9 of the Tort Liability Law."

The court held that a prerequisite for a contributory infringement is that the design patent is implemented by the users (refer to Xidian Jietong v Sony Mobile Communications [China] where the Beijing Intellectual Property Court ruled that as long as the plaintiff can show that the patented invention has been implemented, the contributing party shall be liable for his conduct).

In this case, the users only downloaded the accused software on their own computers and did not make, offer to sell, or sell computers with the accused software. Since direct infringement was not found, the court rejected the indirect infringement claim.

To back their contributory claim, the plaintiffs needed to show the court that a computer identical with or similar to the patented design has been made or sold. In addition, they would have to demonstrate that the accused software is used specifically for infringing conduct according to article 21(1).

Eligibility of GUIs

A GUI became an eligible subject matter for design patent protection in May 2014, after the State Intellectual Property Office (SIPO) amended the Guidelines for Patent Examination. After the amendment, a GUI, when combined with a device, is eligible for design patent protection, while an uncombined GUI is not eligible.

SIPO intended the amendment to offer certain protection to GUIs if the GUI design patents are properly drafted. However, adhering to the "two-prong" test under the existing patent law framework in China makes it difficult to enforce a GUI design patent. To effectively enforce a GUI design patent, certain changes will have to be made to the law.

Some have called for the introduction of a "partial design" system in China to enhance protection of designs including GUIs. The "partial design" system would certainly enhance the protection of a GUI by claiming the GUI itself while showing the additional features in broken lines.

In the jurisdictions where a partial design is eligible for protection, the claimed design features are normally shown in solid lines and the design features not claimed are shown in broken lines or dashed lines.

However, in the present case, even if the design patent claims only the GUI itself, the plaintiffs still cannot prevail, since the accused products and a computer fall within different categories of products.

The key is to step out of the cage of "product incorporating the design" in finding design patent infringement. As long as a patented design can be applied on a product, no matter if it's the same category or a different category, the "product prong" of the test should be met. This will allow a trans-category protection of a design patent.

Alternatively, at least for 2D designs, there should be no product-category limitation in finding design patent infringement, in light of the fact that a 2D design can be readily applied on any 2D or 3D products.

Prior public use is not a necessary element in recognizing bad faith

By Cuicui Liang

"OEM" (Original Equipment Manufacturer) is a kind of production mode that many foreign enterprises are keen on. As the name implies, the trademark owners do not produce themselves, but entrust other manufacturers to do so. Many foreign companies have chosen to cooperate with Chinese manufacturers in order to reduce costs, but they did not think of registering trademarks in China before cooperating. It is usually the case that after the breakdown of the cooperative relationship, it was found that the trademark had already been registered by manufacturers, and the position was very passive. The case shared by this article encounters this situation.

The disputed trademark is "CHOPPIES" with the number of 12035146, and the registered goods include "hair lotions, cakes of toilet soap, laundry bleach, laundry detergent, soap, antibacterial hand soap, cleaning preparations, dishwashing liquid, toilet cleaners; cosmetics". The registrant is a Chinese company, who was the manufacturer of CHOPPIES washing powder. The real trademark owner (Botswana company) of the CHOPPIES trademark entrusted a Hong Kong company as an intermediator, who received the manufactured products marked CHOPPIES from the Chinese company and sold them exclusively to Botswana.

The Chinese company was essentially Botswana company's manufacturer, though Botswana and the Chinese company did not have direct business dealings and all business was conducted through the Hong Kong company. All products processed by the Chinese company were exported to Botswana. Botswana company did not make public sales in mainland China.

Botswana company requested for invalidation of the registered trademark arguing that he is the real right owner of the mark "CHOPPIES", which has been registered in many countries including Botswana on washing powder. As the OEM manufacturer, the Chinese company should have known Botswana company's trademark, and thus the disputed trademark was registered in bad faith.

At issue before the Court is whether the indirect business relationship belongs to the "specific relationship" of Article 15 (2) of the Trademark Law? Is the use in the form of OEM "prior use"? Beijing Intellectual Property Court held a positive attitude.

Article 15 (2) of the China Trademark Law provides: Where a trademark for which a registration is applied is identical or similar to an early used trademark of another party that is not registered, in respect of the same or similar goods, and where the applicant being of contract, business or other relationship except the relationship referred to in the preceding paragraph, is fully aware of the existence of the trademark owned by the other party, the trademark shall not be registered, if the other party raises an opposition. According to this provision, the following four elements shall be satisfied:

1. The disputed trademark and the cited mark are similar or identical;

2. The goods they cover are similar or identical;

3. The disputed parties have specific relationship;

4. The cited mark has been prior used in China.

The trademarks involved in this case are the same and the goods are similar, so we will not discuss these two elements here. Our focus is whether Botswana and the Chinese companies have such a "specific relationship" that the Chinese company knew the existence of Botswana's trademark before filing the application. In the present case, the court deems this indirect business relationship as a kind of business relationship under the provision of the Chinese Trademark Law, because the evidence provided by Botswana clearly shows that Chinese company knew the existence of Botswana's trademark. Almost all of the correspondences between the Hong Kong company and the Chinese company were copied to Botswana, in which the Chinese company explicitly praised Botswana for its products as perfect and provided Botswana company with a product package marked "CHOPPIES" for Botswana's confirmation. It can be seen that the Chinese company undoubtedly knows that CHOPPIES trademark belongs to Botswana.

Whether public use of the trademark in China is an additional necessity in this case? The Court's answer is "NO". The court made a conclusion based on comparison of several articles of the trademark law, namely Article 13 (2) (protection of unregistered well-known trademarks), Article 15 (1) (protection of trademarks registered by agents or representatives) and (2) (protection of trademarks filed by specific parties), Article 32 (protection of trademarks enjoying certain reputation through use). It is logical that, the scope of protection, the degree of protection, and the requirements for use shall be proportionate. Article 13 (2) provides the largest protection scope based on low standard about similarity of trademarks and goods, so the requirement for use is the highest. Article 15 (1) only protects those whose trademarks are filed by the agents or representatives, so the protection scope is the smallest. Hence, the requirement for use shall be certainly the lowest. Article 15 (2) and Article 32 are among them. From another point of view, the requirement for use shall be proportionate to the defense range. The smaller the defense range is, the lower the requirement for use shall be. This seems to be rationale. If the use of the cited trademark is sufficient to prove the applicant knew the cited mark before application, that is enough. In the subject case, Botswana has used its trademark in the form of OEM, through which the Chinese company obviously knew its trademark. Therefore, such use should have satisfied the prior usage requirements.

A dominant view is that public use of the trademark in the Chinese Mainland is a necessary element when applying Article 15 (2) of the Chinese Trademark Law. However, this provision aims to prevent the bad-faith registrations of those who have specific relation with the trademark owner so as to protect the fairly competitive market. If public use is a must, we are afraid that fairness cannot be achieved in certain situations similar to the subject case. Beijing Intellectual Property Court made a bold attempt for this aim. For the first time the court broke the dominant view, and canceled the bad faith registration of the OEM manufacturer.

CCPIT Patent and Trademark Law Office

Beijing Headquarter Office

10/F, Ocean Plaza
158 Fuxingmennei Street
Bejing 100031, China
TEL: +86-10-66412345
FAX: +86-10-66415678 / 66413211
E-mail: mail@ccpit-patent.com.cn

New York Office

One Penn Plaza, Suite 4425
New York, NY 10119, U.S.A.
TEL: +1-212-8682066
FAX: +1-212-8682068
E-mail: NewYork@ccpit-patent.com.cn

Tokyo Office

3F, Sankaidou Building
1-9-13 Akasaka, Minato-ku
Tokyo, 107-0052, Japan
TEL: +81-3-5572-6686
FAX: +81-3-5572-6687
E-mail: tokyo@ccpit-patent.com.cn

Munich Office

Theresienstr. 152
D-80333 Munich, Germany
TEL: +49-89-4801092
FAX: +49-89-4471589
E-mail: munich@ccpit-patent.com.cn

Madrid Office

Calle del Principe de vergara 13,
5°D, 28001, Madrid, Spain
FAX: +0034 910 66 3553
E-mail: madrid@ccpit-patent.com.cn

Hong Kong Office

Unit 9, 34/F., Office Tower
Convention Plaza
No.1 Harbour Road, Hong Kong
TEL: +852-25231833
FAX: +852-25231338
E-mail: HongKong@ccpit-patent.com.cn

Shanghai Office

18/ F, Crystal Century Mansion
567 Weihai Road, Jingan District
Shanghai 200041, China
TEL: +86-21-62888686
FAX: +86-21-62883622
E mail: shanghai@ccpit-patent. com. cn

Guangzhou Office

Suite 1112-13, CITIC Plaza
233 Tianhe N. Road
Guangzhou 510613, China
TEL: +86-20-38770278/38770272/38770262
FAX: 86-20-38770297
E-mail: guangzhou@ccpit-patent.com.cn