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Holiday Notices

The offices of Chinese authorities and our firm AFD China will be closed from February 4, 2019 (Mon) through February 10, 2019 (Sun). We will work on February 2 (Sat), 2019 & February 3 (Sun), 2019 with limited capacity.

The E-filing Service of the Hong Kong Intellectual Property Department will be suspended from 1 February 2019 to 14 February 2019. During the suspension period, the HKIPD will only accept forms and correspondences to be submitted through hand delivery.

AFD China Joins the China Intellectual Property Development Alliance as A Committee Member

We applied for membership of the China Intellectual Property Development Alliance in 2018 and were approved as a member recently after series of reviews and permits. In addition, we became a committee member on certification advisory services of the Alliance.

AFD has committed to assisting clients to identify, protect, and utilize their intellectual property assets over years and has also been looking for opportunities for domestic and foreign clients to establish IP cooperation.

By joining the national-level platform, AFD will have better visions and resources on patent operation and utilization and thus bring more benefits to our clients.

<http://afdip.com/index.php?ac=article&at=read&did=3318>

CNIPA: to Resolutely Curb the Malicious Squatting and Hoarding of Trademarks

It is said that the irregular acts of trademark application will be under tight examination and crackdown.

According to the latest statistics released by the Trademark Bureau of National Intellectual Property Administration of China (CNIPA), China had 5.507 million trademark applications from January to September, 2018, up 39.8% year on year. As of the end of September, the number of valid registered trademarks reached 17.981 million. However, despite the large volume of trademark application, the use rate of trademark remains relatively low.

An official of CNIPA said, “the acts of filing trademark applications in large quantities as a method of making profits have devastated the sound operation of China’s trademark system, seriously hindered the normal business activities of market players, and harmed the market order of fair competition, hampering the healthy economic development.”

Recently, the Trademark Bureau of CNIPA refused over 16,000 trademark applications in accordance with Article 4 of the Trademark Law. The official indicated that the Trademark Bureau will conduct tight supervision on those illegal application acts in the work of trademark examination, opposition and refusal by curbing and cracking down on malicious registration and hoarding of trademarks.

<http://english.ipraction.gov.cn/article/News/201812/20181200208601.shtml>

Customs to Launch Special Campaign on Fighting Infringement

The General Administration of Customs has announced that it will launch a special campaign to fight infringements upon intellectual property rights this year with a focus on foreign-funded companies. The move is part of the efforts to improve the country's business environment, customs officials said. Government data showed that Chinese customs nationwide seized 44,500 shipments of counterfeited goods worth 200 million yuan (\$29.4 million) involved in foreign trade last year.

<http://english.cnipa.gov.cn/news/officialinformation/1135625.htm>

Key Indicators of IP Make Steady Progress in 2018

According to the statistics of the CNIPA, in 2018, granted invention patents in China totaled 432,000, 346,000 of which were from domestic applicants. Huawei (3,369), Sinopec (2,849) and OPPO (2,345) ranked as the top three patentees. In 2018, CNIPA received 55,000 PCT applications, up 9.0%; 52,000 of which were from local applicants, up 9.3%. The pendency for high-value patent examination was shrunk by 10% with a 52% reduction in complaints against patent examination.

In 2018, the number of registered trademarks in China was 5.007 million and China housed 18.049 million valid registered trademarks. Also in 2018, there were 6,594 Madrid international trademark applications. As of the end of 2018, the valid Madrid international trademark applications from China were 31,000, up 23.5%. In 2018, the concluded trademark applications were 8.043 million and the average examination pendency for trademark registration was curtailed below 6 months. The time spent for hearing trademark rejection review cases was reduced within 7 months.

In 2018, there were 67 geographical indication (GI) products under protection, 961 registered GI trademarks and 223 businesses certified to use GIs. In 2018, CNIPA also received 4,431 registered applications of layout designs of integrated circuits, up 37.3%; 3,815 of which were certified, up 42.9%.

<http://english.ipraction.gov.cn/article/News/201901/20190100210401.shtml>

Patent Research Report: China Delivers in Tightening Protection and Utilization

The CNIPA recently conducted searches to evaluate the patent protection and utilization in 2018. The result turned out that 10.6% of patentees encountered patent infringement in 2018, lowest since 2012. About 2.1% of patentees were engaged in patent infringement litigation, and 71.1% of plaintiffs obtained compensation, up 9.3% year on year. In terms of patent utilization, the implementation and industrialization rate of China's valid invention patents were 48.6% and 32.3% respectively in 2018. 79.7% of company patentees believed patent was indispensable for them to gain ground or stay ahead in their line of business.

<http://english.cnipa.gov.cn/news/iprspecial/1135611.htm>

The Value Added of China's Copyright Industry Exceeded 6 Trillion Yuan

A recent survey showed that from 2013 to 2017, the industrial value added of China's copyright industry increased from 4272.593 billion yuan to 6081.092 billion yuan, up 42%. Its share in the national economy grew from 7.27% to 7.35%. The value added of key copyright industry reached 3815.59 billion yuan, taking up 4.61% of the national GDP, up by 0.03% points from that of previous year. In particular, the fast-growing key copyright sectors are digital information technology, mobile gaming and online audio-visual.

<http://english.ipraction.gov.cn/article/News/201901/20190100209404.shtml>

SUPPLEMENT ISSUE

Updates on China's Specialized IP Courts and Tribunals

China's National Intellectual Property Strategy Outline promulgated in 2008 proposed "to improve the trial system for intellectual property and optimize the allocation of judicial resources". Driven by this vision, China has been exploring the specialization of adjudication for IP rights in the past decade.

By the end of 2014, three specialized IP courts were formed in Beijing, Shanghai, and Guangzhou – the leading metropolises of the country. From 2017, eighteen specialized IP tribunals were successively set up. In October 2018, the Standing Committee of the People's National Congress approved the Pilot Program of the Supreme People's Court on the establishment of an IP-specialized (appellate) tribunal which will begin operation on January 1, 2019 to hear appeals in civil and administrative cases of technology-related intellectual property disputes nationwide. At this point, a system of specialized IP adjudication is put in place.

Infrastructure

Responding to the call of specialization, these IP courts and tribunals have centralized and exclusive jurisdiction over technology-related IP matters highly technical and complex.

The three specialized IP courts, namely, Beijing, Shanghai, and Guangzhou Intellectual Property Courts, have independent public judicial body and operate as intermediate courts in the hierarchy of the Chinese judicial system. The courts house build-in divisions usually comprising a case filing chamber, several tribunals, a technical research office, and a judicial police team. Eighteen specialized regional IP tribunals located in the capital or important cities of fifteen provinces are subordinate to the local Intermediate People's Courts. The specialized IP tribunal sitting in the Supreme People's Court becomes the exclusive appellate venue for the technology-related IP lawsuits.

A specialized IP court usually has 20-30 judges and a specialized regional IP tribunal has 12 to 15. The majority of the judges have a graduate degree or above, some came from a mixed background of law and technology, some majored in intellectual property during college years, and quite a few of the judges have more than 10 years of IP trial experience.

Specific IP jurisdiction

Intellectual property cases are generally classified into three categories based on the involvement of technology: technology-related IPRs refer to patents, new plant variety, layout design of integrated circuits, know-hows, and computer software; general IPRs refer to those such as copyrights, trademarks, technology contracts, unfair competition, franchise contracts; the rest IPRs involves antitrust and recognition of well-known trademarks (referred hereinafter as "other").

The specialized IP courts and regional tribunals mainly adjudicate first-instance administrative cases in connection with "technology-related" and "other" categories, and civil cases of the categories where the value of the subject matter of action is within certain level (usually less than 200 million yuan where the domiciles of both parties are in the territorial jurisdiction, or less than 100 million yuan where the one party's domicile is not in the territorial jurisdiction or where a foreign, Hong Kong, Macao or Taiwan party is involved). Where the value of the subject matter is beyond the certain level, the civil case shall be tried at the superior Higher People's Court. For "general" cases, regulations vary from place to place, and the level of court is essentially determined based on the value of the subject matter.

In addition to the above rules, the Beijing Intellectual Property Court also has exclusive jurisdiction over the following IP administrative cases of first-instance: (1) refusing to accept the decisions made by organs of the State Council regarding allowance or validity of IP rights including patents, trademarks, new plant varieties, and layout-design of integrated circuits; (2) refusing to accept the decisions made by organs of the State Council regarding compulsory license compulsory license fees or rewards involving patents, new plant varieties, layout-design of integrated circuits; and (3) refusing to accept other administrative acts made by organs of the State Council regarding the authorization and confirmation of allowance or validity of IP rights.

By taking over the appellate jurisdiction currently hold by the provincial and municipal High People's Courts, the IP tribunal of the Supreme People's Court will have exclusive jurisdiction over: (1) appeals of first-instance decisions and rulings issued by local high people's courts, IP courts and intermediate courts in relation to infringement, ownership disputes, or administrative rulings for invention and utility model patents, new plant varieties, layout-design of integrated circuits, technical secrets, computer software or antitrust cases; and (2) appeals of first-instance administrative decisions of Beijing IP Court for reexamination and invalidation regarding patents (Note: including designs), new plant varieties, layout-design of integrated circuits, know-hows, computer software, or antitrust cases.

It is also worth noting that the Beijing, Shanghai, and Guangzhou Intellectual Property Courts and the IP tribunal of the Supreme People's Court only adjudicate civil and administrative IP cases but not criminal cases, whereas the specialized regional IP tribunals adopt the "three-in-one adjudication" mode, that is, they have integrated jurisdiction over civil, administrative and criminal IP cases.

Cross-regional jurisdiction

Except for the specialized IP courts in Beijing, Shanghai and the regional IP tribunals in Tianjin and Shenzhen which only have jurisdiction over local IP cases, all other specialized IP tribunals have cross regional jurisdiction. The "single center" model is adopted in provinces such as Sichuan, Hubei and Anhui, where the specialized regional IP tribunal sits in an Intermediate People's Court in the capital city of the province to adjudicate technology-related and other IP cases throughout the province; while in Jiangsu, Zhejiang and Shandong provinces, two specialized regional IP tribunals ("dual center") were set up with divided jurisdiction covering the whole province.

Moreover, it is proposed in the Opinions on Several Issues on the Reform and Innovation in the Field of Intellectual Property Adjudication promulgated in early 2018 that the juridical system will continue to "explore the mechanism of long-distance adjudication under cross-regional IP jurisdiction" and "fully integrate the advanced judicial resources of courts in Beijing Municipality, Tianjin Municipality, and Hebei Province and explore to give Beijing Intellectual Property Court centralized jurisdiction over technology-related IP cases in these places", which indicates that the Beijing Intellectual Property Court is likely to obtain cross-provincial jurisdiction in the future.

List of Specialized Intellectual Property Courts and Tribunals

Date of Establishment	Name	Jurisdiction
2014.11.6	Beijing Intellectual Property Court	Beijing Municipality
2014.12.28	Shanghai Intellectual	Shanghai Municipality

Property Court			
2014.12.16	Guangzhou Intellectual Property Court	Guangdong Province, except Shenzhen City	Guangdong Province
2017.12.26	Shenzhen Intellectual Property Tribunal	Shenzhen City	
2017.1.9	Chengdu Intellectual Property Tribunal	Sichuan Province	
2017.1.19	Nanjing Intellectual Property Tribunal	Cities of Nanjing, Zhenjiang, Yangzhou, Taizhou, Yancheng, Huaian, Suqian, Xuzhou, and Lianyungang	Jiangsu Province
2017.1.19	Suzhou Intellectual Property Tribunal	Cities of Suzhou, Wuxi, Changzhou, and Nantong	
2017.2.22	Wuhan Intellectual Property Tribunal	Hubei Province	
2017.8.30	Hefei Intellectual Property Tribunal	Anhui Province	
2017.9.8	Hangzhou Intellectual Property Tribunal	Cities of Hangzhou, Jiaxing, Huzhou, Jinhua, Quzhou, and Lishui	Zhejiang Province
2017.9.8	Ningbo Intellectual Property Tribunal	Cities of Ningbo, Wenzhou, Shaoxing, Taizhou, and Zhoushan	
2017.9.28	Fuzhou Intellectual Property Tribunal	Fujian Province	
2017.9.28	Jinan Intellectual Property Tribunal	Cities of Jinan, Zibo, Zaozhuang, Jining, Taian, Laiwu, Binzhou, Dezhou, Liaocheng, Linyi, Linyi, and Heze	Shandong Province
2017.9.30	Qingdao Intellectual Property Tribunal	Cities of Qingdao, Dongying, Yantai, Weifang, Weihai, and Rizhao	
2018.2.24	Xi'an Intellectual Property Tribunal	Shaanxi Province	
2018.3.1	Tianjin Intellectual Property Tribunal	Tianjin Municipality	
2018.3.1	Changsha Intellectual Property Tribunal	Hunan Province	

2018.3.2	Zhengzhou Intellectual Property Tribunal	Henan Province
2018.7.5	Nanchang Intellectual Property Tribunal	Jiangxi Province
2018	Changchun Intellectual Property Tribunal*	Jilin Province
2018	Lanzhou Intellectual Property Tribunal*	Gansu Province
by the end of 2018	Intellectual Property (Appellate) Tribunal of the Supreme People's Court	Nationwide

*only appeared in the report of the Supreme People's Court "Continue to Move through the Innovation Road - a summary of the intellectual property trial work of the people's courts since the Reform and Opening-up" published in December 2018.

Functions and effects

Specialized IP adjudication organs, especially the IP Courts, have successfully launched a number of exploratory and pilot measures and obtained valuable experiences for the judicial reform regarding intellectual property protection.

One of the significant progresses is the increase of compensation awarded in IPR infringement case. The specialized IP Courts are trying to order or support compensation more comparable to the value of the IPRs and establish new mechanisms involving third party appraisal organizations, clarifying burden of proof, introducing new elements into the compensation.

In 2016, the Beijing Intellectual Property Court awarded the plaintiff in USBKey patent infringement case with 49 million yuan compensation and supported the plaintiff's claim on another 1 million yuan lawyer's fees; in the "QiangGu" trademark infringement case the plaintiff's claim to 10 million yuan compensation was fully supported. In the past 12 months, the Shanghai Intellectual Property Court issued a first-instance judgment ordering the defendant of a software copyright case to stop the infringement and compensate the plaintiff a total of 1505 million yuan for economic losses and reasonable expenses; the Guangzhou Intellectual Property Court awarded a compensation of more than 10 million yuan in 10 cases and a compensation between 1 million and 10 million yuan in 111 cases; the Beijing Intellectual Property Court also set a legal precedent by imposing a fine of 1 million yuan on perjury in the Travel Vhannel vs. Love Virtue copyright infringement case. These rulings have encouraged the IPR holders and resulted in more aggressive claims in the recent pending cases, Huawei vs. Samsung (80 million yuan), Polarity vs. Beijing Xiaoyu (100 million yuan), Qualcomm vs. Meizu (520 million yuan), and Apple vs. Qualcomm (1 billion yuan).

By introducing diversified technical fact-finding mechanisms with the help of technical assistance, judicial authentication, and expert consultation, the specialized IP Courts sought for ways to improve effectiveness of technical investigation and ensure the neutrality, objectivity and scientific reliability in the process. Statistics showed the three IP Courts employed 61 technical investigators; they provided opinions in over 1000 cases in the first three year since the establishment of the specialize IP Courts; and the number has grown quickly in 2018, where 448 cases tried by the Guangzhou Intellectual Property Court alone involve technical investigators.

The specialized IP Courts further pursued to increase the convenience of temporary remedy for a party whose right has been infringed. They executed preliminary injunctions and preservations on properties, activities and evidence. By the end of 2017, the three IP Courts had ruled to support 638 injunction and preservation cases of various kinds, including 79 pre-litigation and 559 during litigation.

The specialized IP Courts also worked hard to enhance productivity and efficiency by centralizing the trials, streamlining the procedures, and simplifying certain documents. At present, the average adjudication time of a case tried by the Guangzhou Intellectual Property Court is less than 50 days, and the average time for simple patent cases of first-instance has been reduced to 3 to 4 months. The average adjudication time of foreign-related IP cases handled by the Beijing Intellectual Property Court is 4 months, while that in major European countries is about 18 months. The Shanghai Intellectual Property Court further explored diversified mechanisms for dispute resolution to greatly shorten the duration of a case and signed cooperation agreements with 13 mediation organizations and industrial associations. It also expanded the pre-trial mediation to a boarder scope. As a result, it has successfully concluded 85 cases before trial, accounting for 29.2% of cases which entered into mediation.

Summary:

According to the court conference on intellectual property adjudication, China will continue improving its IP environment through great efforts on specialization of intellectual property adjudication, centralization of jurisdiction, simplification of procedures, and professionalization of juridical personnel. By 2020 the intellectual property court system will cover the entire country. Enterprises and other intellectual property rights holders are encouraged to pay attention to the developments of the judicial reform, in order to make good use of the rules for safeguarding your rights and interests.

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