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China's Supreme People's Court issued Several Provisions on the Jurisdiction over First-Instance Trial of Civil and Administrative Cases Involving Intellectual Property

<https://www.court.gov.cn/fabu-xiangqing-355871.html>

On April 20, 2022, China's Supreme People's Court (SPC) issued Several Provisions on the Jurisdiction over First-Instance Trial of Civil and Administrative Cases Involving Intellectual Property ("Provisions"), which has come into effect since May 1, 2022.

It is clearly stipulates in the Provisions that the first-instance trial of civil and administrative cases involving the ownership of and infringement disputes and monopoly disputes over invention patents, utility model patents, new plant varieties, integrated circuit layout designs, technical secrets and computer software are subject to the jurisdiction of intellectual property courts, intermediate people's courts of places where people's governments of provinces, autonomous regions or municipalities directly under the Central Government are situated, and intermediate people's courts determined by the SPC; the first-instance trial of civil and administrative cases involving the ownership of and infringement disputes over design patents and the identification of well-known trademarks are subject to the jurisdiction of intellectual property courts and intermediate people's courts.

See the following link for the full text (in Chinese) of the Provisions:

SPC OKs Quanzhou IP court

An intellectual property (IP) court will be established in the Quanzhou Intermediate People's Court (IPC) in East China's Fujian province, according to an approval document released by the SPC.

The document said first instance IP related civil and administrative cases within Quanzhou's jurisdiction that involve patents, new plant varieties, layout designs of integrated circuit, technical secrets, ownership of computer software and recognition of well-known trademarks, as well as first instance IP related civil, administrative and criminal cases beyond the jurisdiction of Quanzhou's grassroots courts, will all be within the jurisdiction of Quanzhou IPC.

The document was issued as a reply to the motion of establishing an IP court in Quanzhou, submitted by the National People's Congress (NPC) deputies from Quanzhou during the fifth session of the 13th NPC held in March.

Quanzhou will become the third city in Fujian province to host an IP court, said an official from the Quanzhou IPC.

Over the years, Quanzhou has pioneered multiple innovative measures in its efforts to build a national independent innovation demonstration zone, which has resulted in significant progress in its innovation capacity

and need, as well as judicial protection over intellectual property rights. From 2017 to 2021, courts in Quanzhou concluded 16,000 IP related cases, accounting for 27 percent of the total number of concluded cases in the province.

The establishment of the Quanzhou IP court will better meet the rising need and lower the cost of IPR protection, expand Quanzhou's influence on IP judicial protection as a key city along the Maritime Silk Road, and will be conducive to strengthening protection of private enterprises' innovation achievements.

<http://english.ipraction.gov.cn/article/ns/202204/376155.html>

China Stresses Need to Curb Malicious IPR-related Prosecutions

China will crack down on malicious prosecutions related to intellectual property rights, a senior official from CNIPA said on Friday.

Malicious prosecutions interfere with the normal operations of the IPR system, damage public interests and waste national administrative resources, CNIPA head Shen Changyu said at the 2022 High-level Forum on China IP Protection.

He stressed the need to crack down on and regulate malicious prosecutions and promote balanced IPR protection.

Balanced protection means maintaining the balance between strict IPR protection and the prevention of IPR abuse, and the balance between encouraging innovation and protecting public social interests.

He Xiaorong, vice president of the SPCt, pledged at the forum to make efforts to build a healthy, orderly and fair environment for IPR protection.

<http://english.ipraction.gov.cn/article/ns/202204/376148.html>

Chinese Courts Handle More than 640,000 IPR Cases in 2021

People's courts across China handled 642,968 cases involving intellectual property rights (IPR) in 2021, of which 601,544 were concluded, said an official with the country's SPC.

The numbers of cases handled and concluded have grown by 22.33 percent and 14.71 percent respectively from 2020, said SPC official Lin Guanghai.

Punitive compensation was given as part of the sentence in 895 cases, Lin added.

SPC on Thursday released a white paper on Chinese courts' IPR-related judicial protection in 2021. According to the white paper, the courts are seeing an increasing amount of IPR cases related to the internet, with more and more new and complicated legal issues involved.

The courts have been taking active measures to streamline the process of handling lawsuits and ease the burden of rights holders, said Lin.

<http://english.ipraction.gov.cn/article/ns/202204/375706.html>

Seed ID Technology Helps Better Protect IPRs of Owners

A new independently developed method to identify seed varieties at the molecular level is being applied to help detect counterfeits and quickly clarify the intellectual property owners of imported germ plasm resources, experts said.

The method, called MNP marker, can obtain identifications for crop varieties with much higher efficiency and 99.98 percent accuracy, said Peng Hai, head of the research team at Jiangnan University in Wuhan, Hubei province.

Using the method, a person can identify 1,033 markers of rice cultivars. The efficiency is a

thousand times higher than traditional identification methods, Peng told Chutian Metropolis Daily, a news portal based in Hubei.

Last year, Yazhou Bay Seed Laboratory in Sanya, Hainan province, introduced the MNP marker method developed by Peng's team.

The lab was established in May last year to cultivate seed varieties with robust performances and break scientific bottlenecks in the seed industry.

Peng Jun, deputy director of the laboratory, said researchers used the method during molecular testing to clearly identify seed varieties.

"It provided important technical support for confirming and protecting intellectual property rights and will play a role in the global market," he said.

Although China has made achievements in the seed industry in recent years, it still faces challenges cultivating good varieties and solving the homogenization problem of seed resources.

Peng Jun said it may take agronomists more than 10 years to cultivate a variety, but sometimes others make "little modifications" to existing varieties to create counterfeit ones so they can own new IPRs.

"The MNP marker can identify the seed variety and distinguish essentially derived varieties from counterfeits, encouraging scientists' innovation in the seed industry," he said, adding it can authenticate crop varieties including rice, corn, tomato and watermelon.

By using an MNP-fingerprint database, seed breeding companies can decide whether to give up on less innovative varieties and adjust their research to avoid unnecessary investment.

As well as technologies, the revised Seed Law, which took effect on March 1, has also strengthened protection of new plant varieties and seed-related intellectual property rights,

according to Yang Heqing, an official from the NPC's Standing Committee's Legislative Affairs Commission.

The revised law establishes a system of essentially derived varieties that are distinct from, but retain the basic characteristics of, the original varieties.

The law clarifies that though authorization and new plant variety rights can be sought for essentially derived varieties, the owners of the original varieties should agree with and charge for their commercial use, Yang said.

The punishment for those who intentionally infringe on the rights of holders of new plant varieties has been increased to further protect the legitimate rights of the IPR owners, he added.

<http://english.ipraction.gov.cn/article/ns/202205/376781>

[.html](#)

SUPPLEMENTARY ISSUE

Judgement on the First Drug Patent Linkage Lawsuit in China is issued

On April 15, 2022, the Beijing Intellectual Property Court publicly pronounced a first-instance judgment on a dispute between the plaintiff Chugai Pharmaceutical Co., Ltd. and the defendant Wenzhou Haihe Pharmaceutical Co., Ltd. over whether Haihe's drug falls into the protection scope of Chugai's patent. After trial, the Court held that Haihe's generic drug does not fall into the protection scope of the patent at issue and ruled to reject the plaintiff's litigation claims.

This case is the first drug patent linkage lawsuit in China since the newly amended Patent Law came into force.

Case Brief:

The plaintiff is the patentee of the Chinese patent no. 200580009877.6, titled ED-71 preparation (the patent at issue), and is also the marketing authorization holder of the relevant marketed patent drug "Eldecalcitol Soft Capsules", which is mainly used for treating osteoporosis. The plaintiff registered the above-mentioned drug and the patent at issue on the Chinese Marketed Drug Patent Information Record Platform. The plaintiff found that the defendant filed an application with the state food and drug administration authorities for the marketing authorization of a generic drug named "Eldecalcitol Soft Capsules", and also made a Category 4.2 statement on the Chinese Marketed Drug Patent Information Record Platform on the above-mentioned generic drug, stating that its generic drug did not fall within the protection scope of relevant patent right.

Therefore, the plaintiff filed a lawsuit with the Beijing Intellectual Property Court pursuant to Article 76 of the newly amended Patent Law, requesting confirmation on whether the generic drug "Eldecalcitol Soft Capsules" for which an application for registration was filed by the defendant fell within the protection scope of the patent at issue.

After trial, the Beijing Intellectual Property Court held that the technical scheme used by the defendant's generic drug was neither the same as nor equivalent to the technical scheme of claim 1 of the patent at issue, so the technical solution did not fall within the protection scope of claim 1 of the patent at issue; since claims 2-6 are dependent claims of claim 1, where the technical scheme of the defendant's generic drug did not fall within the protection scope of claim 1, it also did not fall within the protection scope of claims 2-6. Therefore, the plaintiff's claim that the defendant's generic drug falls within the protection scope of claims 1-6 of the patent at issue was not tenable, and thus the court dismissed the case.

The plaintiff expressed in court that they would file an appeal, while the defendant expressed that they accepted the first-instance judgement.

Judge's Comments:

We know that if pharmaceutical companies do not make a profit by selling drugs, they will lack the motivation for research and development, then no new drug will be developed and people will not have no good drugs. However, if the price of new drugs is too high, people will not afford to use them when they get sick; instead, high-quality generic drugs which have low R&D costs and thus have low prices are often affordable for people. Therefore, it is necessary to balance the interests of original drug developers and generic drug enterprises, so that people can have good and cheap drugs. The "drug patent linkage system" is precisely a "legal prescription" given by the Patent Law to solve the above problems.

On June 1, 2021, the newly amended Patent Law came into force, in which a new Article 76 was added to provide a resolution mechanism for disputes over patents relating to drugs for which applications for registration are filed, thereby officially establishing China's drug patent linkage system. Later, China's SPC released the Provisions on Several Issues concerning the Application of Law in the Trial of Civil Cases involving Patent Disputes Related to Drugs for Which Applications for Registration are Filed, which provided detailed stipulations on the dispute resolution mechanism and determined that lawsuits relating to drug patent linkage are subject to the jurisdiction of Beijing Intellectual Property Court.

The Judge in charge of the above case expressed that the significance of drug patent linkage system is not only to enhance original drug developers' judgment of the certainty of drug market, encourage their continuous investment (in R&D of new drugs) and promote the innovation and development of the industry, but also to confirm the marketing risk of generic drugs in advance for generic drug enterprises, avoid the rush marketing of generic drugs and the high amount of possible litigation compensation caused thereby, and thus promote the high-quality development of generic drugs. By balancing the interests of original drug developers and generic drug enterprises, the accessibility of drugs are maximized, so as to allow the Chinese people to have good and cheap drugs.

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China to introduce Marrakech Treaty

Visually impaired to get more access to copyrighted reading materials

The visually impaired in China will have better access to reading materials, including foreign texts, as the Marrakech Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, takes effect on May 5.

The document will become active three months after China delivered its ratification papers to the World Intellectual Property Organization (WIPO) on Feb 5.

The only international human rights treaty on copyright currently has 88 signatories, according to the WIPO.

It imposes a set of mandatory limitations and exceptions on traditional copyright laws to benefit people who are visually impaired, who have reading or learning disabilities or who are unable to hold or manipulate a book.

Under the treaty, authorized entities will be permitted, without the authorization of the copyright holder, to make an accessible copy of a work for exclusive use on a nonprofit basis.

The treaty also set rules on international exchanges to enable foreign texts to be offered in accessible formats to beneficiaries or authorized entities.

China participated in the drafting and advocacy process and signed the treaty on June 28, 2013, when it was adopted in Marrakech. It entered into force on September 30, 2016.

In November 2020, the Standing Committee of the NPC, China's top legislature, passed a comprehensive amendment to the Copyright Law after nearly 10 years' preparation, and the revised law was enacted in June last year.

It added provisions applicable to the treaty, demonstrating that the country had taken a substantial step toward ratification and implementation, said Yang Yang, an associate research fellow at the Assistive Technology Research Institute at the China Braille Press in Beijing and chief author of a report about the treaty's implementation.

For example, the amendment extended beneficiaries of copyright exceptions from the visually impaired using Braille to people with dyslexia and other reading disabilities. It also expanded the number of ways people can benefit, from transliteration and publication of a work in Braille to any accessible means.

With the necessary legal conditions and institutional preparation in place, the Standing Committee of the NPC ratified the treaty in October.

Yang said the treaty has a broad definition of accessible formats that enjoy copyright exceptions, which will likely lower costs for publishing houses as they seek to gain access to more works, and beneficiaries will have more ways to satisfy their needs. At the same time, beneficiaries of the treaty are obliged to protect copyright by not sharing content to reassure copyright holders.

She added that the National Copyright Administration is working to formulate implementation rules for the treaty in China.

"I expect the implementation of the treaty will meet our reading needs," said He Chuan, vice-chairman of the China Association of the Blind.

He stressed that by definition, the treaty involves not only formal publications, but other materials publicly available in any media.

<http://english.ipraction.gov.cn/article/ns/202204/375587.html>

China's SPC issued Top 10 Intellectual Property Cases and Top 50 Typical Intellectual Property Cases for 2021

On April 21, 2022, the SPC released the top 10 IP cases and 50 typical IP cases in Chinese courts in 2021. The cases involve patent infringement, trademark infringement, copyright infringement, computer software copyright infringement, new plant variety infringement, unfair competition, infringement of technical secrets, monopoly, etc., covering all fields of intellectual property rights. Through the publication of these typical precedents, the SPC aimed to clarify trial rules and provide guidance for subsequent trial practice.

The trial rules established by the Top 10 IP cases involve the following aspects:

1. Examination of trademark prior use right defense:

The purpose of the prior use right defense system is to protect the interests of bona fide prior user in continuing to use its business marks of certain influence within the original scope, which is an important embodiment of the principle of good faith in the field of trademark law.

2. Determination of the amount of damages for trade secret infringement:

In determining the amount of damages for trade secret infringement, various factors such as the commercial value of the technical secret involved, the severity of the infringement circumstances,

and the defendant's refusal/acceptance to enforce the people's court's ruling on behavior preservation should be comprehensively considered, so as to increase the cost of infringement and effectively protect the core technology of important industries.

3. Criteria for the application of horizontal monopoly exemptions:

Horizontal monopoly agreements that violate the Anti-Monopoly Law should be nullified, and the scope of nullification is not limited to the terms of the horizontal monopoly agreements, but also includes the terms that are closely related thereto and have no independent existence and the terms that serve the implementation of the horizontal monopoly agreements.

4. Determination of infringement on new plant variety:

Organizing the sale of unauthorized seeds of new plant variety through the internet information platform and covering up the sale in the name of "farmers", "large family farms" or other business entities is determined as infringement on new plant variety rights, and punitive damages can be applied in accordance with law.

5. Burden of Proof in invention infringement cases:

The party that transfers or destructs pre-litigation preserved evidence (key evidence) shall bear the legal consequences of obstructing evidence preservation, which has important practical value for appropriately reducing the burden of proof on right holders in accordance with law and guiding the concerned parties to provide evidence initiatively, proactively, comprehensively and honestly.

6. Determination of infringement on copyright of acrobatic works:

Copyright ownership can be determined based on the relevant contract, and if the original expressive part of a work is substantially similar to that of a copyrighted work, it constitutes copyright infringement.

7. Determination of unfair competition of click farming:

Organizing click farming for profits and helping business operators carry out false commercial publicity causes the relevant data of the business platform to be inaccurate, and affects the credit evaluation system, and therefore violates the principles of fairness, good faith and business ethics and constitutes unfair competition.

The top 10 cases also include a new type of case which involves copyright protection of open source software, as well as a criminal case involving copyright infringement. These cases fully reflect the SPC's determination to severely crack down on infringements and protect and promote fair competition in the market, and also reflect the continuous exploration of new situations and new issues in the process of intellectual property protection in China's judicial practice.

See the following link for the full text (in Chinese) about the cases:

<https://www.court.gov.cn/zixun-xiangqing-355881.html>

Designers Worldwide to Benefit from China's Entry to the Hague System in Effect

On May 5, the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement) entered into force in China.

On the effective day, a total of 49 Chinese enterprises submitted 108 international applications for design patents. The CNIPA received 58 international applications for design patents. As of 5:30

PM Geneva Time, the WIPO had received 50 international applications for design patents directly from Chinese applicants. Lenovo (Beijing) Co., Ltd., GEMT Technology (Shanghai) Co., Ltd. and Beijing Xiaomi Mobile Software Co., Ltd. pace all applicants via the CNIPA route while WIPO's data suggests Shenzhen Smoore Technology, Dreame Innovation Technology and Shenzhen TCL Digital Technology are the most prolific Chinese filers.

China is shifting quickly from "Made in China" to "Created in China". Chinese enterprises going global are paying closer attention to protect their product designs with IP, which in turn generates more demand for design protection. WIPO's statistics indicates around 1.4 million design applications were filed worldwide in 2020 with the CNIPA being the busiest destination hauling in half of the total. In 2021, global innovators submitted over 67 million international applications for design patents in the Hague system, and applications from China ranked among the top 10.

In response to the constantly evolving need of innovators, CNIPA had been tweaking its practice dynamically while closely following the developments of the Hague system and moving the process of accession. Under the principle of "conforming to the Hague Agreement, make the system easy to use for users, refraining from drastic practice changes and hooking up with international procedures", CNIPA made preparations regarding examination standards, application and examination procedures, office actions and system requirements, ironed out accession details in multiple rounds of negotiations with the International Bureau of WIPO, aiming to offer potent support for the submission and examination of international applications for design patents.

On the effective day, Midea Small Domestic Appliances (SDA) submitted three international design applications to the CNIPA. "Midea could only use the Hague system through its oversea R&D centers," said She Yan, IPR head at Midea SDA. "We can do it directly via the CNIPA, significantly contracting our filing formalities."

"The Hague Agreement gives us Chinese innovators a simple and efficient route for international design registration and protection. It makes it easier for centralized management of design inventory and patent assets," said Guo Zhenpeng, Midea's chief IP counsel. "In the meantime, it sharply cut our cost in oversea patent planning, easing the burden of us Chinese innovators when venturing out."

"China's accession to the Hague Agreement meets the demand of Chinese innovators for international development, and motivates them to join international competition through persistent R&D and innovations," said Ren Shengce, Director of the Innovation and Competition Research Center, Shanghai International College of Intellectual Property, Tongji University. He believed that the Hague Agreement would attract more advanced technologies and brilliant ideas to China from abroad, expedite the development of Chinese innovators in fields such as international mass consumer goods and creative design, and make Chinese ideas, Chinese design and China-made products glow with radiance in the world.

According to Xiong Wencong, an Associate Professor at the Law School, Minzu University of China, China's accession to the Hague Agreement is an obvious reflection of its deep engagement in global IP governance under the WIPO framework. The Agreement in effect means China's full integration into the major international systems in terms of patents, trademarks, copyrights and designs, which meets China's demand for expanding international IP cooperation and enhancing international IP competitiveness, and pronounces China's firm stance to open wider to the outside world, expand international cooperation and uphold multilateralism.

https://english.cnipa.gov.cn/art/2022/5/11/art_1340_175533.html