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CNIPA Handlings during the Coronavirus Epidemic

China's National Intellectual Property Administration (CNIPA) has opened its service windows since February 3, 2020. However, applicants are advised to use online service for their IP needs regarding such as patents, trademarks and layout designs of integrated circuits during the epidemic.

Regarding patent works, the CNIPA asks for electronic filings and processing. If a patent application has already been submitted in paper form, a papery-to-electronic application request may be filed, then after approval, the relevant procedures may be handled, via an electronic application client.

Regarding trademark works, 24 services such as application for registration, change in bibliographic information, renewal, right transfer, and fee payment may be done via online system. In addition, where a service must be handled at the local trademark acceptance windows or in the hall of the trademark examination and cooperation centers outside Beijing, the parties should obey the work notice issued by local relevant institutions during the epidemic prevention and control.

Regarding layout designs of integrated circuit, new applications and intermediate documents could be filed via online application platform. Users who hold an account on the online patent application system can readily use the same user information for works layout designs of integrated circuit.

Anyone who fail to meet a legal or specified deadline and cause the loss of any of the above IP rights, may apply for extension within two months since the elimination of the barrier to the exercise of the rights, with related evidentiary materials being submitted.

For your information, our firm has resumed work and been providing uninterrupted service since February 3, 2020. Should you need any assistance, please do not hesitate to contact us.

<http://afdip.com/index.php?ac=article&at=read&did=3533>

SPC Releases Guidance for Court Hearings, Judgment Enforcement amid Epidemic

According to the newly-issued guidance by the Supreme People's Court for court hearings and judgment enforcement amid the novel coronavirus outbreak:

With respect to the hearing of civil cases, the guidance upholds the concepts of equally protecting the legal rights and interests of all litigants under the law, calling on courts to proactively guide litigants in resolving their disputes through mediation.

As for the issue of judgment enforcement, the guidance demands enforcement measures against units or individuals undertaking the task of epidemic prevention and control as well as the sites, equipment, materials and funds being used for this purpose.

No property preservation measures like sealing off, freezing, detaining and

transferring or compulsory enforcement measures should be taken against funds or materials explicitly dedicated to epidemic prevention and control, according to the guidance.

With respect to litigation processes, the guidance stresses that hearings that should be adjourned during the epidemic must be adjourned. Those meeting the conditions for suspension must be suspended, as must their enforcement.

Litigants' legal rights and interests in postponed matters must be fully protected in light of the actual situations, said the guidance. For urgent cases, the hearings must be held with precautionary measures in place or, if possible, by video.

<http://english.ipraction.gov.cn/article/News/202002/2020020239655.shtml>

CNIPA to Cease Issuing Paper Patent Certificates from March 3, 2020

According to the recently issued Announcement on Matters Related to Electronic Patent Certificates and Electronic Seals of Electronic Patent Application Notices (Decree No.349):

As of March 3, 2020, the CNIPA will issue electronic patent certificates for electronic patent applications through the patent electronic application system, instead of paper patent certificates. Right owners of electronic patent applications may request for a paper patent certificate through the electronic patent application website (<http://cponline.cnipa.gov.cn>).

From February 17, 2020, the CNIPA will no longer use the seal of "Patent Application Acceptance of the CNIPA" but the seal of "Patent Examination of the CNIPA", in notifications issued prior to preliminary examination.

<http://www.cnipa.gov.cn/zscqgz/1145855.htm>

China Continues to Shorten Patent Review Period

By the end of 2022, the processing time for an invention patent application will be cut to about 16.5 months and for a high-value patent 13.8 months. The average time for processing a trademark application will be reduced to within four months, the fastest worldwide, according to a statement by the CNIPA).

China has attached greater importance to increasing the efficiency of patent review. Last year, the average processing time for trademark registration was shortened to 4.5 months, compared with six months in 2018, and the processing time for high-value patents examination was reduced by more than 15 percent to 17.3 months.

In 2019, more than 1.4 million invention patent applications were filed in the country, with 453,000 invention patents granted. The total number of effectively registered trademarks surpassed 25 million, according to the CNIPA.

High-value patents have been acquired mainly in the fields of artificial intelligence, mobile communications, high-speed railways and biomedicine.

Furthermore, the CNIPA has so far approved the establishment of 26 centers nationwide to solve the proof-providing difficulties and reduce the processing time and cost of intellectual property rights protection, the statement said.

<http://english.cnipa.gov.cn/news/iprspecial/1146059.htm>

Top 10 Largest Global Patent Holders from China

Although Samsung tops IFI's total global rankings with most patents currently held, the total number of US-granted patents for Chinese mainland companies increased by 34 percent in 2019, the strongest growth among major economies.

Hon Hai Precision Industry Co Ltd from China's Taiwan and Huawei Investment and Holding Co Ltd from Chinese mainland are the top two leading Chinese companies with the most patents in the global arena, according to IFI 250: Largest Global Patent Holders, the global patent assets report which ranks the world's largest owners of active global patents by parent company including subsidiaries.

The top 10 largest global patent holders from China are as follows:

- Hon Hai Precision Industry Co Ltd
- Huawei Investment and Holding Co Ltd
- Taiwan Semiconductor Manufacturing Co TSMC Ltd
- BOE Technology Group Co Ltd
- Lenovo Group Ltd
- TCL Corp
- MediaTek Inc
- ZTE Corp
- Tencent Holdings Ltd
- Chinese Academy of Sciences

<http://english.ipraction.gov.cn/article/News/202002/200200238200.shtml>

Huawei Files Lawsuit against Verizon for Patent Infringement

Huawei is suing U.S. telecommunications company Verizon for patent infringement. Huawei's Chief Legal Officer, Song Liuping, announced the initiation of legal proceedings earlier today at the company's headquarters in Shenzhen.

The tech behemoth, according to a press release posted on its website, has filed lawsuits against Verizon in the United States District Courts for the Eastern and Western Districts of Texas. Song said Huawei is seeking compensation for Verizon's use of patented technology that is protected by 12 of Huawei's U.S.-registered patents.

"Verizon's products and services have benefited from patented technology that

Huawei developed over many years of research and development," said Song.

The press release outlines some of the communication equipment provider's re-investment figures into R&D, stating that 10 to 15 percent goes to this field. It adds that the "company has spent more than 70 billion U.S. dollars on R&D in the past decade," resulting in "80,00 patents worldwide" and "10,00 patents in the United States alone."

Huawei says it previously negotiated with Verizon for a "significant period of time" and that a detailed list was provided to Verizon showing how the U.S. firm was infringing Huawei's patents.

"We share these innovations with the broader industry through license agreements," added Song. "Unfortunately, when no agreement can be reached, we have no choice but to seek a legal remedy."

Often seen as the leading company in 5G technology, the company says that over the past 20 years it has worked extensively with major patent holders in the telecommunications industry, "signing more than 100 license agreements with major ICT (information and communication technology) vendors in the United States, Europe, Japan and South Korea."

This is the latest legal action that Huawei has filed in the United States, coming just two months after the company filed a lawsuit against the Federal Communications Commission.

<http://english.ipraction.gov.cn/article/TypicalCases/2002/20200200238466.shtml>

SUPPLEMENTARY ISSUE

Beijing High Rejects Novartis' Trademark Registration of "Alcon"

Novartis' final hope of registering its No.22991917 "Alcon" trademark (trademark in dispute) dimmed recently. Filed on March 20, 2017, requesting certified to be used on Class 9 goods including contact lens, the Swiss firm's application would later be denied by the former Trademark Office of the State Administration for Industry and Commerce (TMO) on the grounds of its similarity with No. 4875585 trademark "Aicon" (reference trademark).

Novartis then pled for a review at the former Trademark Review and Adjudication Board (TRAB), also under the former SAIC, arguing that the trademark in dispute and the reference trademark are not similar and are not used on the same or similar goods; the trademark in dispute has laid claim to a certain amount of reputation, and its co-existence with the reference trademark does not cause confusion and misidentification among consumers; other trademarks in similar cases have been approved for registration; the reference trademark is pending revocation, making itself vulnerable.

On August 15, 2018, the former TRAB decided that, as of the trial, the reference trademark had still been valid; the trademark in dispute and the reference trademark were similar in calling, letter composition among other things, making them similar trademarks used on the same or similar products, in this case, glasses and contact lenses; the evidence submitted by Novartis was not sufficient to prove that the trademark in dispute, after being put into use, had generated reputation distinct from the reference trademark, and other trademarks' registration precedents cannot be the basis for preliminary assessment of the trademark in dispute. Therefore, the former TRAB decided to reject the application for registration of the trademark in dispute.

Novartis then brought the case to the Beijing IP Court, noting that it has filed an application for review of the trademark revocation on the grounds that the reference trademark has not been used for three consecutive years, and is now in the midst of a first-instance trial; the reputation of No.721035 trademark "ALCON" and No.3632075 trademark "Alcon", both registered by Novartis, has been extended to the trademark in dispute, and the coexistence of the two trademarks does not cause any confusion; the two trademarks differ greatly in terms of font, overall complexion and pronunciation.

Beijing IP Court held that, as of the conclusion of the trial, the reference trademark is still valid and legal; the trademark in dispute and the reference trademark are similar; the evidence of the reputation of the prior trademarks submitted by Novartis is not sufficient to prove the trademark in dispute can be distinguished from the reference trademark, and other trademarks' registration precedents cannot automatically trigger the registration of the trademark in dispute. The Court dismissed Novartis' claim in the first instance on May 17, 2019.

Novartis then appealed to the Beijing High People's Court, arguing that the trademark in dispute was a continuation registration of its previously registered No. G1088618 trademark "ALCON" (hereinafter referred to the basic trademark). The Court held that the trademark in dispute and the reference trademark are similar trademarks used on the same or similar products; as of the conclusion of the trial, the reference trademark is still a valid registered prior trademark. Novartis' argument is groundless that the trademark in dispute should be approved for registration just because its basic trademark has been approved for registration; the situation where other

trademarks are approved for registration is not a natural basis for the trademark in dispute to be approved for registration. In this connection, the Court rejected the appeal of Novartis and upheld the trial Court judgment.

<http://english.cnipa.gov.cn/docs/2020-02/20200219090017732210.pdf>

BBC Awarded 1 Million Yuan in First-instance Judgment

Recently, Beijing Haidian District People's Court made a first- instance judgment on a trademark infringement and unfair competition disputes between the British Broadcasting Corporation (BBC) and Beijing Aiyuba Technology Co., Ltd. The Court held that Aiyuba's unauthorized use of the "BBC" logo constituted trademark infringement and unfair competition, ordering it to cease infringement and indemnify BBC 1 million yuan in damages and reasonable expenses.

BBC claimed that it enjoys exclusive rights of three registered trademarks including No. G918771 "BBC", and that the trademark in dispute and its corporate name "BBC" have a high reputation in China. Aiyuba unauthorizedly used the "BBC" logo on two websites, one WeChat public account, and five mobile apps developed by it, infringing BBC's exclusive right of the registered trademarks. In parallel, the unauthorized use of the British Broadcasting Corporation and its abbreviation "BBC" had caused the public to mistakenly believe that the goods and services provided by Aiyuba had a specific association with BBC, which constituted unfair competition. Therefore, BBC sued Aiyuba at Haidian Court, requesting the Court to order Aiyuba to cease infringing BBC's trademarks and indemnify 1 million yuan in damages and reasonable expenses.

Aiyuba argued that BBC did not actually use the trademarks in mainland China, and its use of the words and logos did not infringe the plaintiff's exclusive right to use the trademark. In addition, the radio, television and news programs run by BBC are different from the English language content of Aiyuba and they are not competitors. In addition, the British Broadcasting Corporation is not commercially used as a trade name in mainland China, which is not subject to "trade name" prescribed in the Chinese Unfair Competition Law.

Haidian Court found that the use of the word "BBC English" on the website, WeChat public account, and mobile phone apps by Aiyuba Company should be regarded as use in the sense of trademark law. The distinctive part of the relevant logo used by Aiyuba Company is "BBC" and the overall visual effect is similar to the trademark in dispute, which constitutes trademark infringement. Although BBC is mainly engaged in broadcasting, it also provides learners with audio and other materials. There is a competitive relationship between the two parties. In addition, the BBC's trade name and its abbreviation BBC belong to the "trade name" provided in the Chinese Unfair Competition Law, and have a certain influence on Chinese English learners. Therefore, the Court held that the related acts of Aiyuba Company constituted unfair competition.

It is reported that Aiyuba has appealed.

<http://english.cnipa.gov.cn/docs/2020-02/20200204215143821188.pdf>

What Legal Hurdles Will A Patent Application of Coronavirus Cure Face?

As researchers in the pharmaceutical industry seek to contain the novel coronavirus epidemic, Tao Xinliang, honorary dean of the Intellectual Property Institute of Shanghai University, shares with China Daily his insights into related patent issues.

Can a new patent be filed for an old drug due to novel use?

When it is found that a patented drug can be used for another medical use, it is a common practice worldwide to file a new patent based on the novel use. The filing is in compliance with laws and regulations.

Such applications are called second medical use patents. Under the current legal framework in China, as well as in other major countries and regions, second medical use patents can be granted when they meet certain requirements.

Globally, it is a thorny issue to provide medicine with patent protection. This is due to the lengthy research and development, heavy investment and high risks involved.

Thus the design of the patent system for the pharmaceutical industry needs to consider the balance of interests between business and the public.

Technical improvements to products and methods can be patented. According to rights claims, patents can be categorized into product inventions and method inventions. A new use patent falls into the second category.

Based on existing medicines, further research on such aspects as medicine types, dosages, production procedures and new uses are encouraged worldwide.

Legal systems in most countries provide protection for newly discovered uses of patented medicines, as they have proved to be a boost for the healthcare industry.

Novel use of medicines often comes as a surprise to pharmaceuticals companies and researchers. Aspirin is an exemplary case. The fever reducer and pain reliever has been found helpful in preventing cardiovascular and cerebrovascular diseases.

Will a second medical use patent be granted?

Filing an application is just the first step toward seeking protection under the patent system. Whether it will be granted or not depends on if it is proved to be useful, novel and non-obvious.

Out of a host of applications, only some can be granted. It is no exception with second medical use patents.

According to China's Patent Law, a filing needs to go through a series of administrative procedures, including preliminary examination and substantive examination.

At the latter stage, examiners will review whether filers have each provided a clear and complete statement of their technological solutions. They will also check the requirements of being useful, novel and non-obvious.

A filing will be rejected in the absence of sufficient details of experiment data or due to the lack of creativeness in the second medical use.

How does a second medical use patent work?

If a second medical use patent is granted, its owner needs to cross-license intellectual property to gain the authorization for the medicine's product patent.

Generally, a second medical use patent is a spinoff of its related medicine product patent. Their relationship is similar to that between basic patents and improvement patents. Gaining a new use patent does not necessarily follow that it can be used directly. The patentee needs to gain the authorization of the basic patent holder, or the owner of the medicine patent, who also needs to be authorized for the new medical use.

Facing the novel coronavirus outbreak, public safety and health are top priority. Government agencies, patentees, innovators and pharmaceuticals are being called on to join hands to advance medicine R&D and share research data.

<http://english.cnipa.gov.cn/news/iprspecial/1146057.htm>