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### **AFD China Selected as Branding IP Service Agency of Beijing**

AFD China is officially a Branding IP Service Agency of Beijing now, after two rounds of strict evaluation organized by the Beijing Intellectual Property Office.

We enrolled in the brand fostering program in 2015. With two years of hard work and unremitting efforts, we are qualified to the title in November 2017. Our success cannot be achieved without our clients' trust. Thank you.

<http://afdip.com/index.php?ac=article&at=read&did=3135>

### **WIPO Report Reflects China's Surging IP Demand**

The World Intellectual Property Indicators 2017, released by the World Intellectual Property Organization on Dec 6, found that China leads in innovation by quantity.

As shown by WIPI, China's State Intellectual Property Office (SIPO) received the highest number of patent applications, a record total of 1.3 million, more patent applications than the combined total for the United States of America, Japan, the Republic of Korea and the European Patent Office (EPO)

The world's total number of international applications via the Patent Cooperation Treaty grew by 7.2 percent to about 233,000 in 2016 - the fastest increase since 2011 and the seventh consecutive year of growth. China ranked No 3 among PCT filers worldwide in 2016, after the US and Japan.

In the field of trademarks, yearly applications increased by 16.4 percent to about 7 million in 2016 globally, marking the seventh consecutive year of growth. With roughly 3.7 million applications, China continued to become the largest trademark filer last year, followed by the US and Japan.

With a surge of 94.7 percent, the country was pushed up from eighth largest origin in 2015 to fourth largest filer of Madrid international applications in 2016.

Worldwide industrial design applications grew by 10.4 percent to almost 1 million in 2016, more than half of them from China.

About 16,510 plant variety applications were filed worldwide in 2016, a rise of 8.3 percent from 2015 - the largest increase in annual filings in 15 years. China ranked No 2 with more than 2,900 filings, after the Community Plant Variety Office of the European Union.

[http://english.sipo.gov.cn/news/iprspecial/201712/t20171214\\_1321239.html](http://english.sipo.gov.cn/news/iprspecial/201712/t20171214_1321239.html)

### **China Pursues Tough Stance on IPR Infringement**

China is set to impose severe punishments in intellectual property right (IPR) infringement and counterfeiting cases.

"Penalties for IPR infringements will be increased and the cost of safeguarding such rights will be lowered," according to a statement following a State Council executive meeting. "Quick and low-cost ways of safeguarding IPR must be expanded," the statement said.

At the same time, the government plans to establish a punitive fine system for property right infringements and step up law enforcement and judicial protection.

Data from the SIPO showed that in the first half of 2017, there were 15,411 national patent administrative law enforcement cases, an increase of 23.3 percent from the same period a year ago.

In addition, IPR protection will be improved using real-time monitoring, Internet tracing of sources, and online identification of infringements, according to the statement.

Focus will be put on IPR infringements in online shopping and foreign trade, and more will be done regarding fake or shoddy goods.

Meanwhile, the government will make compensation if companies suffer losses due to the government's bad faith.

With strong and effective property rights protection, China will raise the confidence of market participants to invest and start businesses, the statement said.

<http://www.chinaipr.gov.cn/article/centralgovernment/201711/1913830.html>

### **Trademark Examination Will Accelerate by the End of 2018**

According to the recent Opinions of the State Administration for Industry and Commerce, time for trademark examinations will be reduced by the end of 2018. The details are:

- the period of issuance of acceptance notification of trademark registration application will be shortened to 1 month;
- the period of examination of trademark registration will be shortened to 6 months;
- the period of examination of trademark transfer will be shortened to 4 months;
- the period of examination of trademark modification or renewal will be shortened to 2 months; and

-the delay period of trademark search will be shortened to 2 months.

<http://www.chinaipr.gov.cn/article/centralgovernment/201712/1914522.html>

### **Chinese Breeders Now Have Easy Access to Applying for International Variety Rights**

International application platform for plant variety right was launched in Beijing in November 2017, through which Chinese breeders can not only apply for plant variety rights protection with plant variety protection offices in different countries and regions but also provide convenient approaches for the introduction of foreign fine varieties.

On January 2017, International Union for the Protection of New Varieties of Plants (UPOV) established electronic application system of plant variety rights (PRISMA), which is utilized by 16 countries like China, Argentina, Australia, Chile and other countries. Languages including Chinese, English, French, German, Spanish, Norwegian, Romanian and Osmania can be used to apply for the plant variety rights of potato, soybean, lettuce, apple and rose. Besides, foreign breeders can apply for the variety rights protection of lettuce and rose in China.

It is known that China issued Regulations of China on Protection of New Varieties of Plants in 1997 and joined UPOV on April 23, 1999. The applications for new variety rights of plants witness a constant increase over the past 20 years. The number of applications in 2016 reached near 3,000, stably ranking the first among UPOV member states.

China and Europe signed the Strategic Cooperation Agreement on Protection for New Variety of Plants to carry out 3-year cooperation regarding system construction, examination process, variety test technology, and exhibition and so on, of protection on new variety of plants.

<http://www.chinaipr.gov.cn/article/patents/201712/1914773.html>

## SUPPLEMENTARY ISSUE

### **Introduction to Strategic Handling of Divisional Applications**

The division application system is designed for the situation where a patent application contains more than one inventions/utility models/designs. The applicant may submit divisional application(s) based on the initial application to have each application represent only a single invention concept.

In this article, we will go over the basic information of the divisional application system so as to allowing you to make full use of the system when needed.

#### **Why apply for a divisional application?**

The patent applicant, if wishes to seek protection for the contents in the initial application or the contents to which patent right is not granted in the initial application, may, before the expiration of the prescribed period of time, file a divisional application on the aforesaid contents. Contents to which patent right is not granted can be the claims pointed out by the examiner as lacking unity, or the claims not accepted by the examiner in the initial application. By filing a divisional application, such claims can have another chance for examination.

For a divisional application based on the initial application, the initial application date may be retained and the priority date may be retained if priority has been claimed. That is to say, the application date of a divisional application generally is consistent with the initial application. The filing date of the initial application is the start of protection of patent right after the divisional application is granted; and if priority is claimed, the cut-off date for examination of novelty and inventiveness in the substantial examination should be in accord with the priority date of the initial application.

What are the general requirements for filing a divisional application?

- (1) The divisional application may not change the type as filed by the initial application.
- (2) The filing number and the date of filing of the initial application shall be indicated in the filing request of the divisional application.
- (3) The divisional application does not go beyond the scope of disclosure contained in the initial application.
- (4) The divisional application shall be filed in the prescribed time limit.

#### **When can a divisional application be filed?**

Pursuant to the provisions of the Guidelines for Patent Examination, the applicant shall file the divisional application within two months from the receipt date of the notification to grant the patent right to the initial application (i.e. the time limit for responding to the notification and completing the formalities for granting). For the initial application that the examiner has issued a rejection, the applicant may submit a divisional application within three months from the receipt date of the decision rejecting the initial application, regardless of whether an application of reexamination for challenging the rejection is filed; the applicant also may file a divisional application after the request for reexamination is made or during the administrative lawsuit if not satisfied with the decision of the reexamination.

In fact, as long as an initial patent application is still pending / no final decision has taken effect, the applicant may initiate a divisional application based on it. Accordingly, applicants who wish for a fast grant of patent right and a full scope of protection may consider adopting such a prosecution manner that he can narrow the scope of protection as far as to obtain the grant of the patent right for the initial application, and file a divisional application for the contents which were discarded previously. Once granted with patent right, the divisional application will have the same effect as the initial application.

### **Further divisional applications**

Further or cascading divisional patent applications are allowed in China on some certain occasions.

Pursuant to the provisions of the Guidelines for Patent Examination, where the applicant needs to file a further divisional application based on a divisional application, the time limits for filing of the further divisional application shall be calculated from the initial application, which is explained in the above section. If the time limits cannot be met, the further divisional application shall not be allowed, except in the situation that the divisional application on which the further divisional application will base lacks unity and the further divisional application is filed upon the examiner's opinion.

That is to say, in general, if the time limit for filing a divisional application for the initial application has passed, filing further divisional application(s) also shall not be allowed. However where the examiner, in the examination of a divisional application, points out unity problem in the divisional application in an Office Action or issues the Notification of Filing Divisional Application(s), the applicant can file a further divisional application based on the such notifications.

Furthermore, in practice, the time for filing the additional divisional application is in accord with the time limit for responding the notification, although it is not explicitly stipulated in relevant law and regulations.

It is suggested that the applicant, when filing a divisional application, seek for protection of the scope as broad as desired and consider the possibility or necessity of filing further divisional application(s) to try to secure the coverage. Where the applicant thinks of filing further divisional application(s), it is advised that he includes claim(s) having obvious unity problem so as to reserve an opportunity of it being pointed out by the examiner and thus to have the chance to file further divisional application(s).

<http://afdip.com/index.php?ac=article&at=read&did=3132>

### **Application of Evidence in the Process of Requesting Invalidation of a Patent**

Pursuant to PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA, any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability. Any design for which patent right may be granted shall not be a prior design, nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing. Any common technique or design is not patentable.

In China, utility model and design patent applications only need to go through preliminary examination, while invention patent applications also need to go through substantive examination, but due to the complexity of specific techniques and the limitation of prior art search, inevitably

there are some patent applications which do not meet the patent eligibility requirements getting granted. As a result, the PATENT LAW provides the procedure for declaring the patent right invalid: starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA and its Implementing Rules, it or he may request the Patent Reexamination Board of State Intellectual Property Office to declare the patent right invalid.

Pursuant to Rule 65 of IMPLEMENTING REGULATIONS OF THE PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA, "Anyone requesting invalidation or part invalidation of a patent right in accordance with the provisions of Article 45 of the Patent Law shall submit a request and the necessary evidence in two copies. The request for invalidation shall state in detail the grounds for filing the request, making reference to all the evidence as submitted, and indicate the piece of evidence on which each ground is based."

From the above regulations, it can be seen that in the invalidation process, the evidence and the explanation of the evidence are very important. Then, when should the petitioner submit the evidence and how to choose the evidence?

#### **Time for submitting evidence**

After a request for invalidation of patent right is accepted by the Patent Reexamination Board, the person making the request may add reasons or supplement evidence within one month from the date when the request for invalidation is filed. Additional evidence or amendment and supplement on the original evidence, which are submitted after the specified time limit may be disregarded by the Patent Reexamination Board.

#### **How to choose evidence**

The lack of novelty and/or inventiveness is the most often used reason and also a critical reason for requesting invalidation. In the process of invalidation, it is necessary to make full use of the evidence document and to extract useful information from the evidence document so as to prove that the technical scheme for which protection is sought in the involved patent has no novelty or inventiveness and thus should be declared invalid.

#### Let us look at the following example and see what kind of inspiration it can give us.

The involved patent claims a joint for reinforcement connection, and the independent claim of the patent defines three angle ranges between the components of the joint. In the invalidation proceedings, none of the evidence documents provided by the invalidation petitioner has clear literal records of a specific value or range associated with the above-mentioned angle. However, after measuring, one can find that the angle value shown in the accompanying drawings of the evidence completely falls within the above three angle ranges defined in the involved patent. Thus, in the invalidation request and during the oral hearing, the petitioner measured the angle after amplifying the corresponding part in the drawings of the evidence to the extent equivalent to that of the patent involved and clearly showed the result of the measurement in the form of an image file. By comparing the angle shown in the evidence with the angle of the patent involved, the petitioner proved that the angle of the patent involved has been disclosed by the evidence. In addition, with respect to the above three angle ranges, the petitioner also provided a written testimony of experts in the art at the time of making the invalidation request to further prove that the angle ranges claimed in the patent involved are conventional choices in the art.

In the final invalidation decision, the collegial panel did not directly admit the angle measurement results of the petitioner and also did not directly admit the experts' written testimony submitted by the petitioner on the grounds that "the subject determining whether an invention has inventiveness is a person of ordinary skill in the art in the sense of the patent law, but not an expert in the art". However, the collegial panel finally identified the angle ranges of the patent involved as conventional choices in the art, and thus after examination, they decided to declare all the claims in the patent involved invalid.

### **Inspiration from the case**

First, we can make full use of the drawing information (including the angles, characteristics, values, etc.) in the evidence documents, and present such information visually in the form of image files.

Second, the evidence accumulation and language intensification may affect the decision of the collegial panel on the case. It is possible to increase the the collegial panel's impression by repeated providing evidence and intensifying the language. Therefore, for invalidation cases, sometimes even if the viewpoints expressed by the petitioner cannot be fully admitted by the collegial panel, but through the evidence accumulation and language intensification, it is possible for the petitioner to have a certain impact on the outcome of the cases when the collegial panel makes decisions.

Therefore, when submitting an invalidation request, the petitioner must give full play to the subjective initiative, carefully study the relevance between the involved patent documents and the reference documents, and fully exploit any evidence that can support the request for the invalidation of the involved patent. Even if there is no direct evidence, indirect evidence established by deduction should also be submitted. The evidence can be in varied forms and can be in the form of visual images. In the course of the request, the petitioner should repeatedly and comprehensively stated his/her viewpoints and thereby enhance the examiners' impression and their acceptance of the petitioner's grounds for the invalidation request, so as to strive for review result in favor of the petitioner.

<http://afdip.com/index.php?ac=article&at=read&did=3098>