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**AFD China Recommended by ASIA IP for Outstanding Patent Services**

The reputable intellectual property magazine Asia IP announced the result of its annual patent survey. Because of its outstanding performance in “Patent Prosecution” and “Patent Contentious”, AFD China was recognized as one of the best patent firms in the survey.

The result was also published in the monthly issue of Asia IP magazine and the 2020 Asia IP Profiles handbook.

**Our President Ms. Xia Zheng Selected as One of the Leading Intellectual Property Service Talents in Beijing**

In November 2020, the Capital Intellectual Property Service Association announced the list of Beijing's leading intellectual property service talents. Our president Ms. Xia Zheng was honored to be one among them.

The selection evaluated each candidate's practicing ability from multiple dimensions, such as the breadth of technical fields, professionalism, team building and management abilities, client satisfaction, honors and awards, and publications, etc, which in combination fully reflected the capability level that a leading talent should presents.

**China Passes Law Amendment to Strengthen Copyright Protection**

An amendment to the copyright law to strengthen copyright protection was passed by China's top legislature on November 11 after a third deliberation.

The amendment, adopted after a vote at the end of the 23rd standing committee session of the 13th National People's Congress (NPC), is expected to strengthen the protection of the copyright holders, raising the ceiling of statutory damages from 500,000 yuan (around 75,500 U.S. dollars) to 5 million yuan.

It also created a compensation floor of 500 yuan for violators of the copyright law.

It is widely believed that the revisions, with the introduction of punitive damages, will serve as a stronger deterrent against copyright infringement.

According to the amendment, in the process of litigation, the alleged infringers who claimed irresponsibility should produce evidence of obtaining permission from the copyright holder.

Some adjustments in expression were made in the law, including changing "citizens" to "natural persons" and "other organizations" to "unincorporated organizations" so as to make the amended copyright law more consistent with other civil laws in expression.

The amendment adds that the authorities shall have the power to inquire of the parties concerned, investigate illegal acts, conduct on-site inspections, consult and copy relevant materials and seal up and detain relevant places and goods during investigations.

It states that the reproductions of infringements should be destroyed upon the request of the obligees other than in exceptional cases.

The amendment adds that the materials, tools and facilities mainly used for the reproductions of infringements should be destroyed without any compensation.

The latest amendment will come into force on June 1 2021.

<http://english.ipraction.gov.cn/article/ns/202011/327618.html>

### **Invention Patent Applications of China up 11.2%**

The number of invention patent applications on the Chinese Mainland exceeded 1.23 million during the first 10 months of 2020, up 11.2 percent year-on-year, according to the National Intellectual Property Administration (NIPA).

China also saw 55,000 applications filed via the World Intellectual Property Organization's Patent Cooperation Treaty System accepted during the 10-month period.

China's total amount of intellectual property pledge financing hit 166.4 billion yuan (about \$25.16 billion) during the 10-month period, a year-on-year increase of 35 percent, and is likely to exceed 200 billion yuan for the whole year.

In the first eight months of 2020, the country's import and export volume of intellectual property royalties reached \$29.13 billion, up by 4.2 percent year-on-year, of which the export volume was \$5.58 billion, an increase of 26.4 percent year-on-year.

<http://english.ipraction.gov.cn/article/ns/202011/327615.html>

### **China's AI-Related Patent Filings Register Double-Digit Growth**

China received more than 30,000 patent filings on artificial intelligence (AI) in 2019, an increase of 52.4 percent over the previous year. It published a total of 28,700 papers on AI, an increase of 12.4 percent over the previous year.

In 2019, 180 universities were approved to offer undergraduate programs on AI, and 11 universities, including Peking University, have set up AI colleges or research institutes.

The Beijing-Tianjin-Hebei region, Yangtze River Delta, and the Guangdong-Hong Kong-Macao Greater Bay Area have become key engines for AI development, with the number of AI enterprises accounting for 83 percent of the country's total.

[http://english.cnipa.gov.cn/art/2020/10/26/art\\_1347\\_153726.html](http://english.cnipa.gov.cn/art/2020/10/26/art_1347_153726.html)

### **Chinese police crack over 11,000 cases involving counterfeit products in 2020**

Public security organs in China have cracked more than 11,000 criminal cases involving intellectual property rights infringements and fake products so far this year, the Ministry of Public Security said on Nov 9, 2020.

More than 1,400 of the cases involve production and sales of fake goods through online stores, live-streaming promotions and other channels, according to the ministry.

In a case cracked in August, more than 40 suspects, including a live-streamer with over 1 million followers, were arrested by Shanghai police. Fake goods worth more than 50 million yuan (about \$7.6 million) were involved in the case.

<http://english.ipraction.gov.cn/article/ns/202011/327365.html>

## SUPPLEMENTARY ISSUE

### **CNIPA-EPO Pilot for ISA Files**

China National Intellectual Property Administration (CNIPA) and European Patent Office (EPO) launched a two-year pilot on December 1, 2020 aiming to give nationals or residents of the P.R. China the option of selecting the EPO as their International Searching Authority (ISA) and as their International Preliminary Examining Authority (IPEA) when filing international patent applications in English under the PCT. The pilot is of particular relevance to Chinese applicants who intend to enter the European phase in the following three aspects:

**Basis for decision making** The international search report issued by EPO will provide a sound basis for taking an informed decision on whether or not to enter the European phase and subsequent national phases.

**Procedural economy** Applications with an international search report issued by EPO will not have to undergo a supplementary European search upon entry into European phase, which will expedite the prosecution of the application by up to 12 months.

**Cost efficiency** Without the need of a European search, there is also no need to pay corresponding search fee, and moreover, if the EPO as IPEA has established an international preliminary examination report, the European examination fee payable in that phase will be reduced by 75%.

Under the pilot, CNIPA and the International Bureau (IB) of WIPO as the receiving offices will accept a total of 5500 international applications during the two 12-month phases: 2500 during the first phase and 3000 during the second phase.

### **Highlights of China's Patent Law Fourth Amendment**

#### **1. Intensified Compensation for Infringement**

Compensations for infringement have seen major changes in four aspects: calculation of the compensation, punitive compensation, statutory compensation and burden of proof.

##### **Calculation**

Calculation based on the actual loss of the patentee caused by the infringement and that based on the profits the infringer has earned because of the infringement are now equally preferred for compensation quantification. Where these two ways of calculation are difficult to apply, the

compensation shall be reasonably determined with reference to the multiple of the exploitation fee of that patent under a license.

### **Punitive Compensation**

For serious intentional infringement, punitive compensation is introduced: the amount of compensation ranges from one to five times the amount of losses suffered by patent holders, profits earned by infringers or the multiple of the exploitation fee. The introduction of punitive compensation means serious intentional infringement will be imposed a tougher penalty.

### **Statutory compensation**

Statutory compensation will still be issued as compensation where preferred calculations are not viable for lack of evidence. The minimum limit of statutory compensation increases from RMB 10,000 to RMB 30,000 (approx. USD 4,500) and the maximum limit from RMB 1 million to RMB 5 million (approx. USD 760,000).

### **Burden of proof**

Another modification is spoliation of evidence on the infringer's side being taken into consideration. In patent infringement, generally the right holder shall bear the burden of proof and shall endeavor to present evidence. On such a basis, the revised Law provides that where accounts and materials in relation to the infringing act are mainly in control of the infringer, the court may order the infringer to provide the accounts and materials; where the infringer does not provide the evidence or provide false accounts and materials, the court may quantify the compensation amount considering the right holder's claim and evidence provided. Therefore, the burden of proof on the plaintiff is to some extent alleviated.

## **2. Patent Term Compensation System**

The newly revised Patent Law launches protection term compensation system for invention patent which stipulates protection term adjustment for loss of term caused by patent examination and, laying particular emphasis on drug, patent term extension for delays caused by regulatory review and approval.

### **Patent term adjustment**

Patent term will be adjusted to compensate for the unreasonable delays because of patent examination conducted by the patent administration department where the invention patent is granted later than four years after filing and three years after the date of request for substantive

examination. Term loss caused by delays on the side of the applicant will not be compensated. This amendment requires a higher efficiency in patent examination, which may benefit inventions with a short product life cycle.

### **Drug patent term extension**

The patent relating to a new drug approved for marketing in China may be granted a maximum five-year patent term extension by the patent administration department as a compensation for the time taken by regulatory review and approval; and the total effective patent term after the drug is approved for market launch shall not exceed 14 years. While their scope, in particular the definition of “new drugs” remains to be clarified, these provisions embody enhanced protection for original drugs, whose regulatory review and approval can take far longer time than generic drugs.

### **Applicability**

It should be noted that both the adjustment and supplement are granted only in the request of the patentee. Meanwhile, for drug patent, the adjustment and the supplement should be simultaneously applicable for they are directed to different procedural delays but it remains to be specified by further regulations and interpretations.

## **3. Partial Design Patentable & Protection Extended**

Design patent witnesses two crucial revisions in the newly amended China Patent Law, which will significantly impact on the design patent prosecution and protection as of 1 June 2021, the effective date of the new rules. Please be advised of the following changes:

### **Partial design patentable**

Partial design is allowable now pursuant to the new rules. As of 1 June 2021, IP owners can file design patent applications for protecting their partial designs. This is a great development of Chinese IP system. We look forward to a new protection environment of design patents.

### **Design patent term is extended to 15 years**

For design patents filed on or after 1 June 2021, the patent term will be extended from 10 years to 15 years from the filing date. This is a signal that China is under the preparation for joining the Hague Agreement, an international treaty that streamlines global design patent applications but requires a 15-year patent term.