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Laos Recognizes Patent Examination Results Made by China

The National IP Administration of China (CNIPA) issued the Announcement No. 307, formally announcing that as of April 29, 2019, patent applicants who own valid Chinese patents may request accelerated decisions on patents in Laos for patent applications which they have filed with the Department of Intellectual Property (DIP), Ministry of Science and Technology of Lao People's Democratic Republic under the cooperation between CNIPA and DIP.

Applicants may file the request before the grant of the Lao patent application and after the grant of the Chinese patent, preferably after the expiration of a 32 month period starting from the filing date (priority date prevails if exists), otherwise, the documents submitted will be treated as the copy of the report on search or examination by another authority provided in Article 41 of the Law of Intellectual Property of Laos.

Another requirement goes with the protection scope where the Chinese patent and the Lao patent application are related and the claims of the Lao application are the same as one or more claims in the corresponding Chinese patent application granted by the CNIPA.

Once the request is approved, the DIP will grant the patent under the Cooperation for facilitating Patent Grant of Laos-related patent application as soon as possible without written notification to the applicant.

<http://afdip.com/index.php?ac=article&at=read&did=3384>

China Ranked 3rd Most Notable Improvement in Doing Business 2019 Among Economies

China edged into top 20 for the first time at Global Innovation Index 2018 rankings as showed by Global Innovation Index 2018 by the World Intellectual Property Organization (WIPO). World Bank also marked China 3rd among the Economies with the Most Notable Improvement and topped the East Asia and Pacific region in Doing Business 2019.

Regarding IPR protection, China has a unique system combining administrative law enforcement and judicial protection.

In 2018, both routes have been significantly enhanced: the administrative law enforcers nationwide investigated and handled 215,000 cases about IPR infringement and counterfeiting, among which 77,000 were patent infringement cases, 31,000 were trademark-related violation cases and over 2,500 were about copyright infringement and piracy cases. The Customs system investigated and confiscated 47,200 batches of exported and imported IPR infringing goods in total, containing 24.8 million worth of IPR infringing goods. The public security authorities cracked over 19,000 cases of IPR infringement and counterfeiting. The procurators approved the arrest of 5,627 persons involved in 3,306 criminal cases of IPR infringement. The number of concluded cases at the courts nationwide hits 320,000, up 41.6% compared with the previous year.

<http://english.cnipa.gov.cn/news/officialinformation/1139340.htm>

IP Intensive Services See Strong Export Growth

Data from the Ministry of Commerce show that China's intellectual property-intensive services registered high growth in exports during the first quarter of 2019. This reflects improved competitiveness in the service industry and high quality of trade in services. During the time, Chinese companies obtained service outsourcing contracts worth 289.22 billion yuan (\$42.03 billion), up 4.4 percent year-on-year, and foreign trade in cultural products reached \$19.69 billion, up 7%.

<http://english.cnipa.gov.cn/news/iprspecial/1139217.htm>

Supreme People's Court Launches Database to Aid IPR Judgments

China's Supreme People's Court (SPC) has launched a big data platform to help the country's judges handle cases related to intellectual property rights (IPR), the first of its kind targeting a specific area of ruling launched by the SPC.

The database provides judges with free content including relevant laws, cases, rulings, opinions and books that are needed in handling IPR-related cases.

With 1.1 million items of data and an IPR knowledge atlas, the database offers smarter and more precise search services.

<http://english.ipraction.gov.cn/article/News/201905/20190500218056.shtml>

The Customs Seized 16.54 Million Items of IPR Infringing Goods in Q1

In the first quarter of this year, the customs nationwide seized 4,612 batches of IPR-infringing goods for import and export, up 49% year on year; 16.54 million items of such goods were detained, valued at 41.05 million yuan. Among the goods seized, 4,323 batches were delivered via post, accounting for 93.7% of the total.

In Q1, the General Administration of Customs approved 2,714 applications for registration of customs IPR protection, up 11.3% year on year.

<http://english.ipraction.gov.cn/article/News/201905/20190500218385.shtml>

China Leads 5G Patent Race

According to a report by IPlytics, an authorized patent data company, Chinese companies topped the list for most 5G Standards-Essential Patents (SEP) applications in communication systems by the end of April, 2019 accounting for 34% of the world's total.

Chinese tech giant Huawei has taken a leading role by owning 15% of SEP patents, according to the report Who Is Leading the 5G Patent Race?

Three industrial leaders from China were included in the top 10 list of 5G SEP family owners, with Huawei taking the crown, and ZET Corp and China Academy of Telecommunications Technology grabbing fifth and ninth places, respectively.

Different from 3G and 4G technologies, 5G technology will impact various industries and stimulate the emergence of many new products, services and industries.

The automotive sector will most likely be one of the first industries to rely on 5G, connecting vehicles to other vehicles, roadsides, traffic lights, buildings and the internet to process data across cars or in the cloud, according to the report.

As 5G technology has integrated various industries and technologies, the number of 5G Standards-Essential Patents applications surged to more than 60,000 globally by the end of April, the report said.

<http://english.ipraction.gov.cn/article/News/201905/20190500218638.shtml>

SUPPLEMENT ISSUE

Revisions to Trademark Law and Anti-Unfair Competition Law (2019)

On April 23, 2019, the president of the People's Republic of China, Jinping Xi, signed the Order of the President No. 29 and issued the revisions to the Trademark Law of the People's Republic of China and the Anti-Unfair Competition Law.

This has been the fourth revision to the Trademark Law since its adoption on August 23, 1982 and the second revision of the Anti-Unfair Competition Law since its adoption on 2 September 1993.

This second revision to the Anti-Unfair Competition Law has come into force since the date of its publication (April 23, 2019), while the fourth revision to the Trademark Law shall go into effect as of 1 November, 2019.

In order to help you better understand the content of the amendments to the two laws, we hereby make a summary and brief analysis of the amended articles of the laws for your reference.

Amendments to the Trademark Law

1. Article 4(1)

Before the amendments	After the amendments
Any natural person, legal person or other organization, intending to acquire the exclusive right to use a mark for his goods or services in his production and business operations, shall apply for registration of the mark to the Trademark Office.	Any natural person, legal person or other organization, intending to acquire the exclusive right to use a mark for his goods or services in his production and business operations, shall apply for registration of the mark to the Trademark Office. A bad-faith application for registration of a trademark not intended for use shall be rejected.

[Remarks]

This Article specifically prescribes that bad-faith applications for trademark registrations shall be rejected, and thus provides protection for the use value of trademarks through legislation and avoids the abuse of application rights which may damage others' rights and interests, reflecting the role of laws in restricting social behaviors.

2. Article 19(3)

Before the amendments	After the amendments
If a trademark agency knows or shall know that the trademark for which the client intends to apply belongs to the circumstances provided in Article 15 and Article 32 of this law, the trademark agency shall not accept the entrustment.	If a trademark agency knows or shall know that the trademark for which the client intends to apply belongs to the circumstances provided in Article 4 , Article 15, and Article 32 of this law, the trademark agency shall not accept the entrustment.

[Remarks]

Based on the amendment to the Article 4(1), this Article specifically prescribes that trademark agency shall not handle bad-faith applications for trademark registrations on behalf of others.

3. Article 33

Before the amendments	After the amendments
The prior right owner or any interested party	The prior right owner or any interested party

may, within three months from the date of publication, files an opposition against an accepted and published application for registration of a trademark, if he finds that the application stands in violation of the provisions of Article 13, paragraph two or three, Article 15, Article 16, paragraph one, Article 30, Article 31 or Article 32 of this law, or any person finds that the application stands in violation with the provisions of Article 10, Article 11, or Article 12 of this law. If no opposition is filed within the specified period, the trademark shall be registered, a certificate of registration shall be issued, and the registration shall be published.

may, within three months from the date of publication, files an opposition against an accepted and published application for registration of a trademark, if he finds that the application stands in violation of the provisions of Article 13, paragraph two or three, Article 15, Article 16, paragraph one, Article 30, Article 31 or Article 32 of this law, or any person finds that the application stands in violation with the provisions of **Article 4**, Article 10, Article 11, Article 12, or **paragraph 4 of Article 19** of this law. If no opposition is filed within the specified period, the trademark shall be registered, a certificate of registration shall be issued, and the registration shall be published.

*Article 19(4): Except the application for the registration of trademark relating to its agent service, the trademark agency shall not apply for the registration of any trademarks.

[Remarks]

This Article adds statutory grounds for trademark oppositions. Specifically, bad-faith applications for trademark registrations as well as applications for trademark registrations filed by trademark agencies (except those applications relating to their agent service) are included as grounds for trademark oppositions, which enhances the protection for the holders of prior rights and interest parties, and also emphasizes the role of social supervision.

4. Article 44(1)

Before the amendments	After the amendments
Where a registered trademark stands in violation of the provisions of Article 10, Article 11, or Article 12 of this Law, or the registration of a trademark has been acquired by fraud or any other unfair means, the Trademark Office shall declare the registered trademark invalid; any other organization or individual may request the Trademark Review and Adjudication Board to declare such a registered trademark invalid.	Where a registered trademark stands in violation of the provisions of Article 4 , Article 10, Article 11, Article 12, or paragraph 4 of Article 19 of this Law, or the registration of a trademark has been acquired by fraud or any other unfair means, the Trademark Office shall declare the registered trademark invalid; any other organization or individual may request the Trademark Review and Adjudication Board to declare such a registered trademark invalid.

[Remarks]

Bad-faith applications for trademark registrations as well as applications for trademark registrations filed by trademark agencies (except those applications relating to their agent service) are added as grounds for trademark invalidations.

5. Article 63(1)

Before the amendments	After the amendments
The amount of damage for infringement of the exclusive right to use a registered trademark shall be assessed on the basis of the actual losses suffered by the right holder because of the infringement; where it is difficult to determine the actual losses, the	The amount of damage for infringement of the exclusive right to use a registered trademark shall be assessed on the basis of the actual losses suffered by the right holder because of the infringement; where it is difficult to determine the actual losses, the

<p>amount may be assessed on the basis of the profits the infringer has earned because of the infringement. Where it is difficult to determine the losses the right holder has suffered or the profits the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of using the registered trademark under a contractual license. Where the infringement of the exclusive right to use a registered trademark is committed in bad faith and the circumstance is serious, the amount of damage shall be more than one time but less than three times of the amount assessed by referring to the above calculation. The amount of the damage shall also include the reasonable expenses of the right holder incurred for stopping the infringing act.</p>	<p>amount may be assessed on the basis of the profits the infringer has earned because of the infringement. Where it is difficult to determine the losses the right holder has suffered or the profits the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of using the registered trademark under a contractual license. Where the infringement of the exclusive right to use a registered trademark is committed in bad faith and the circumstance is serious, the amount of damage shall be more than one time but less than five times of the amount assessed by referring to the above calculation. The amount of the damage shall also include the reasonable expenses of the right holder incurred for stopping the infringing act.</p>
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[Remarks]

This amendment increases the compensation for infringing the exclusive right to use a trademark and thus also raises the cost of breaking the law, thereby restraining infringing acts.

6. Newly added Article 63(4) and 63(5)

Before the amendments	After the amendments
None	<p>In examining trademark dispute cases, the people's court shall, at the request of the rights holder, order the destruction of goods bearing counterfeit registered trademarks, except in special circumstances; order the destruction of materials and tools mainly used to manufacture goods bearing counterfeit registered trademarks, without compensation; or, in special circumstances, order the prohibition of the aforementioned materials and tools from entering commercial channels, without compensation.</p> <p>Goods bearing counterfeit registered trademarks shall not enter commercial channels after only removing counterfeit registered trademarks.</p>

[Remarks]

This newly added Article is a provision about how to deal with goods bearing counterfeit registered trademarks. Infringing goods as well as materials and goods used to manufacture infringing goods shall be destroyed, and if necessary, the aforementioned materials and tools shall be prohibited from entering commercial channels. Thus, this provision prevents goods bearing counterfeit registered trademarks from entering the markets, infringing the rights and interests of consumers, and disrupting the normal order of the markets. This is also a supplement to the administrative penalties such as confiscation of illegal gains and confiscation of illegal property, aiming to better protect the legitimate rights of the right holders.

7. Article 68(1.3)

Before the amendments	After the amendments
(3) To violate the provisions of Article 19 paragraph 3 or 4.	(3) To violate the provisions of Article 4 , or paragraph 3 or 4 of Article 19.

8. Article 68(4)

Before the amendments	After the amendments
None	Where an application for registration of a trademark is filed in bad faith, administrative penalties such as a warning or a fine shall be imposed according to circumstances; where a trademark lawsuit is filed in bad faith, punishment shall be imposed by the people's court according to law.

[Remarks]

Article 68 sets forth provisions about administrative and judicial penalties imposed on trademark agencies for violation of the Law. The above two amendments specify that where a trademark agency files bad-faith applications for trademark registrations on behalf of its clients, it shall also be punished.

Amendment to the Anti-Unfair Competition Law

1. Article 9

Before the amendments	After the amendments
<p>An operator shall not commit the following violations of trade secrets:</p> <p>(1) obtaining the trade secrets of the right holder by theft, bribery, fraud, coercion or other improper means;</p> <p>(2) disclosing, using or allowing others to use the trade secrets obtained by the aforementioned means;</p> <p>(3) disclosing, using or allowing others to use the trade secrets in violation of the agreement or in violation of the right holder's requirements for keeping the confidentiality of trade secrets.</p>	<p>An operator shall not commit the following violations of trade secrets:</p> <p>(1) obtaining the trade secrets of the right holder by theft, bribery, fraud, coercion, electronic intrusion or other improper means;</p> <p>(2) disclosing, using or allowing others to use the trade secrets obtained by the aforementioned means;</p> <p>(3) disclosing, using or allowing others to use the trade secrets in violation of the confidentiality obligations or in violation of the right holder's requirements for keeping the confidentiality of trade secrets;</p> <p>(4) instigating, tempting, and helping others to violate confidentiality obligations or to violate the right holder's requirements for keeping the confidentiality of trade secrets to acquire, disclose, use or allow others to use the right holder's secrets.</p> <p>Natural persons, legal persons and unincorporated organizations other than an operator committing the illegal acts listed in the preceding paragraph shall be deemed to have infringed on trade secrets.</p>

<p>If a third person knows or should know that the employee, former employee or other unit or individual of the trade secret right holder has implemented the illegal acts listed in the preceding paragraph and still obtains, discloses, uses or allows others to use the trade secret, it shall be deemed to infringe the trade secret.</p> <p>The term “trade secrets” as used in this Law refers to commercial information such as technical information, business information and etc. that are not known to the public, have economic value and for which reasonable efforts to maintain secrecy have been made by the right holder.</p>	<p>If a third person knows or should know that the employee, former employee or other unit or individual of the trade secret right holder has implemented the illegal acts listed in the paragraph 1 of this Article and still obtains, discloses, uses or allows others to use the trade secret, it shall be deemed to infringe the trade secret.</p> <p>The term “trade secrets” as used in this Law refers to commercial information such as technical information, business information and etc. that are not known to the public, have economic value and for which reasonable efforts to maintain secrecy have been made by the right holder.</p>
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[Remarks]

This Article sets forth the definition of violation of trade secrets. Amending “agreement” to “confidentiality obligation” is helpful for people to recognize and determine what is an agreement, and clearly indicating “confidentiality obligations” is helpful for the right holders to provide proof in the future.

The acts of instigating, tempting, and helping others to violate confidentiality obligations or to violate the right holder’s requirements for keeping the confidentiality of trade secrets to acquire, disclose, use or allow others to use the right holder’s secrets are added as violations of trade secrets. Thus, tougher punishments are imposed on upstream law-breakers, and helps instigators and tempters are also deemed as infringers and shall be punished, which reflects judicial justice and fairness. Adopting the concept that “all instigators are principal criminals” as used in the criminal law, this Article cuts off illegal acts at the source.

2. Article 17

Before the amendments	After the amendments
<p>Where an operator violates the provisions of this Law and causes damage to others, he shall bear civil liability according to law.</p> <p>Where the legitimate rights and interests of an operator are damaged by unfair competition, he may file a lawsuit in the people’s court.</p> <p>The amount of compensation for an operator who is harmed by unfair competition is determined according to his actual loss suffered from the infringement; if the actual loss is difficult to calculate, it shall be determined according to the benefit obtained by the infringer due to the infringement. The amount of compensation should also include reasonable expenses paid by the operator to stop the infringement.</p>	<p>Where an operator violates the provisions of this Law and causes damage to others, it shall bear civil liability according to law.</p> <p>Where the legitimate rights and interests of an operator are damaged by unfair competition, it may file a lawsuit in the people’s court.</p> <p>The amount of compensation for an operator who is harmed by unfair competition is determined according to his actual loss suffered from the infringement; if the actual loss is difficult to calculate, it shall be determined according to the benefit obtained by the infringer due to the infringement. The amount of compensation should also include reasonable expenses paid by the operator to stop the infringement. Where an operator maliciously infringes the trade secrets and in case of serious acts, the amount of</p>

<p>Where an operator violates the provisions of Articles 6 and 9 of this Law, if the actual loss suffered by the right holder due to the infringement and the benefit obtained by the infringer due to the infringement are difficult to determine, the people's court shall award the right holder compensation of less than three million yuan in light of the circumstances of the trade secret infringement.</p>	<p>compensation shall be more than one time but less than five times the amount determined according to the aforementioned method. The amount of compensation shall also include reasonable expenses paid by the operator to stop the infringement.</p> <p>Where an operator violates the provisions of Articles 6 and 9 of this Law, if the actual loss suffered by the right holder due to the infringement and the benefit obtained by the infringer due to the infringement are difficult to determine, the people's court shall award the right holder compensation of less than five million yuan (RMB) in light of the circumstances of the trade secret infringement.</p>
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3. Article 21

Before the amendments	After the amendments
<p>If an operator violates the provisions of Article 9 of this Law and infringes on trade secrets, the supervision and inspection department shall order it to stop the illegal act, and impose a fine of more than 100,000 yuan but less than 500,000 yuan; if the circumstances are serious, the fine shall be more than 500,000 yuan and less than three million yuan.</p>	<p>If an operator or other natural person, legal person or unincorporated organization violates the provisions of Article 9 of this Law and infringes on trade secrets, the supervision and inspection department shall order it to stop the illegal act, confiscate illegal gains and impose a fine of more than 100,000 yuan (RMB) but less than one million yuan (RMB); if the circumstances are serious, the fine shall be more than 500,000 yuan (RMB) and less than five million yuan (RMB).</p>

[Remarks]

Based on the status quo of social development, the amendments to the above two Articles aim to increase the cost of infringements and illegal acts, enlarge the scope of illegal acts for which punishment may be imposed, enhance the intensity of punishment, and restrain the expansion of unfair competitions.

4. Newly added Article 32

Before the amendments	After the amendments
<p>None</p>	<p>In the civil proceeding of infringement upon the trade secret, where the obligee of trade secrets has provided preliminary evidence showing that the obligee has taken measures to keep its trade secrets confidential, and has reasonably proved that the trade secrets have been infringed, the suspected infringer shall prove that the trade secrets claimed by the obligee do not belong to the trade secrets prescribed in this Law.</p>

	<p>Where the obligee of trade secrets has provided preliminary evidence showing that the trade secrets have been infringed and has also provided one of the following evidences, the suspected infringer shall prove that it does not have any act of trade secret infringement:</p> <ol style="list-style-type: none"> 1) evidence certifying that the suspected infringer has access to or has chance to obtain the trade secrets and that the information used by the suspected infringer is essentially identical with the trade secrets; 2) evidence showing that the trade secrets have been disclosed or used by the suspected infringer, or face the risk of being disclosed or used by the suspected infringer; 3) other evidence showing that the trade secrets have been infringed by the suspected infringer.
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[Remarks]

This newly added Article further specifies the burden of proof on the obligees of trade secrets, i.e. they only need to provide preliminary proofs. Through inclining the burden of proof toward suspected infringers, this Article avoids the obligees from losing the first chance to protect their rights due to difficulty in providing proofs, and thus offers better protection for the obligees and maintains the public order and good customs.

Laws and regulations are a kind of social norm designed to adjust social relations, and any social norm is determined by the material basis. With the continuous development of social economy, social contradictions are constantly changing, people's need for the protection of rights is also increasing, and thus the construction of the socialist system of laws with Chinese characteristics also needs to be constantly adjusted and improved. The amendments to the Trademark Law and the Anti-Unfair Competition Law fully reflect the adaptation of the laws to new situations and problems in the social and economic order. China endeavors to fully safeguard national interests, social interests and the interests of the people through "scientific legislation", and strives to promote the process of "good laws and good governance", so as to achieve the "Two Centenaries Goals" in the judicial field.

Hope the above information may be of help to you. Should you have any question about the above matter, please feel free to contact us. Thank you.

<http://afdip.com/index.php?ac=article&at=read&did=3382>