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AFD China's Clients Won the 22nd China Patent Award

The winners of the 22nd China Patent Award were announced by the China Intellectual Property Administration (CNIPA) in late June. One Gold Prize and one Excellence Prize were given to our client's patents. We are honored to have assisted in full course from drafting, filing to granting of the award-winning patents. Taking this opportunity, we would also like to thank our clients for their trust and support along the way.

<http://afdip.com/index.php?ac=article&at=read&did=3895>

AFD China Recognized as a Recommended Firm in Trademark Prosecution by Asia IP

Recently, renowned intellectual property magazine Asia IP announced the result of its 2021 Trademark Survey, which has been published in the May issue of Asia IP. In this survey, AFD China was ranked as a Tier 2 firm for its outstanding performance in trademark prosecution.

<http://afdip.com/index.php?ac=article&at=read&did=3894>

New Regulations Promote Drug Patent Linkage System

In July, the State Drug Administration and the CNIPA jointly issued the Measures for the Implementation of the Early Settlement Mechanism for Drug Patent Disputes (for Trial

Implementation), and the Supreme People's Court (SPC) promulgated the Provisions on Several Issues Concerning the Application of Law for Hearing Civil Cases of Patent Disputes Related to Drug Applications for Registration. These documents provide specific operational guidelines for the newly established early settlement mechanism for drug patent disputes.

The Measures has 16 articles, covering relevant platform construction and information disclosure system, patent right registration, generic drug patent declaration, judicial and administrative linkage mechanism, drug review and approval classification and the corresponding processes, and possible market exclusivity for first generic drugs.

The relevant drug patents covered by this early resolution mechanism of drug patent disputes include: patents for compounds of active ingredients of chemical drugs, patents for drug compositions containing active ingredients and patents for pharmaceutical uses of chemical drugs (excluding drug substances); patents for compositions of Chinese medicines, patents for extracts of Chinese medicines and patents for pharmaceutical uses of Chinese medicines; patents for sequence structures of active ingredients and patents for pharmaceutical uses of biological products. The relevant patents do not include patents on intermediates, metabolites, crystalline forms, preparation methods, detection methods, etc.

If a patent owner or interested party disagrees with the patent statement of a chemical generic drug registration application, they may file a lawsuit with the people's court or request an administrative ruling from the patent administration department of the State Council within 45 days from the date of disclosure of the drug marketing authorization application by the State Drug Evaluation Agency on whether the relevant technical solution of the drug application falls within the scope of protection of the relevant patent right. The State Council's drug administration department sets a 9-month waiting period for chemical generic drug registration applications.

The SPC's Provisions has 14 articles, explaining the court's jurisdiction over such disputes, the specific cause of action, the material requirements for a suit, the exercise of the right to sue, the linkage of the administrative and judicial procedures, acceptable defenses, protection of trade secrets in litigation, behavior preservation, counter-compensation for failure to sue, service of process, etc.

We will review the policies in more details in future issues of our newsletter.

A quick look of the official documents in Chinese is available at

<https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210703223942131.html>

<http://www.court.gov.cn/fabu-xiangqing-311791.html>

China Sees Stable Intellectual Property Growth in H1

China reported a stable trend in intellectual property development in the first half of this year.

A total of 339,000 invention patents were authorized in the first six months, the CNIPA revealed at a press conference.

By the end of June, the number of valid invention patents from China had reached

3.324 million, while the number on the Chinese mainland stood at 2.454 million, up by 23% year-on-year.

In the first half of 2021, the number of valid registered trademarks reached 33.548 million, up by 22.4% year-on-year.

In addition, 87 geographical indication products were approved by the administration.

A total of 13,800 cases of administrative adjudication on patent infringement disputes were filed nationwide in the January-June period, during which a total of 107.4 billion yuan (about \$16.6 billion) was raised through the pledge financing of patents and trademarks.

China has been witnessing a climbing trend in the intellectual property rights review. By the end of June, the average review period of invention patents had shortened to 19.4 months, while the high-value patent review period shortened to 13.4 months.

<http://english.ipraction.gov.cn/article/ns/202107/349359.html>

Foreign Companies File More Patent Applications in China

Foreign enterprises have displayed greater confidence in China's business environment, as the number of patent applications submitted by foreign companies continues to grow steadily this year.

In the first half of 2021, a total of 54,000 patents were granted to foreign applicants, a year-over-year increase of 30 percent.

The number of trademarks registered by foreign applicants in China reached 90,000 in the first six months, an increase of 7.5 percent over the same period last year, read the statement, noting that applications for invention patent and trademark registration from the US applicants increased by 35 percent and 8.9 percent respectively.

The rising patents applications in an indication that foreign enterprises are confident in China's business environment and they are willing to carry out commercial activities and developing intellectual property in the market.

<http://english.ipraction.gov.cn/article/ns/202107/349358.html>

China Tops World in AI Patents

China ranks first in the world in the number of artificial intelligence (AI) patents, according to Xiao Yaqing minister of Industry and Information Technology.

According to a report on China's AI development released earlier this year, nearly 390,000 AI patent applications were filed in China over the past 10 years, accounting for 74.7 percent of the world total. The report was jointly released by three institutions including the Chinese Association of Artificial Intelligence.

<http://english.ipraction.gov.cn/article/ns/202107/348787.html>

2020 Patent Transaction Statistics Released

According to the 2020 China Intellectual Property Financing Index Report, last year China witnessed active patent transactions involving a total of 237,773 patents. The top ten market players each bought at least one thousand patents.

Advanced New Technologies Co., Ltd tops the list with a purchase of 7,261 patents which were then transferred to the Ant Group (an affiliate company of the Alibaba Group) at the price of RMB 12.2 billion. Alibaba, China National Petroleum Corporation, Beijing Automotive Group Off-road Vehicle, Goertek Optical Technology, Guangdong Power Grid, Apple, NIO, Haier, Comba Telecom Systems, also made into the list.

http://www.iprdaily.cn/news_28452.html

CNIPA Appoints Technical Investigators for Administration Protection on IPR

The CNIPA has recently appointed 35 technical investigators for administrative protection on IPR in line with the requirements of the Interim Regulations on Investigation into Infringement Cases on Patents and Integrated Circuit Designs for Administrative Arbitration. Based on the recommendations from the relevant departments of the Patent Office, the Administration identified the 35 technical investigators, who come from a wide range of technical fields, such as machinery, electricity, communication, pharmaceuticals and biology, chemistry, optoelectronics, materials and designs.

Following the appointment, the technical investigators will receive relevant training sessions organized by the CNIPA and be designated to take part in the administrative arbitration process for IPR infringement cases involving patent and integrated circuit designs.

<http://english.ipraction.gov.cn/article/ns/202106/347978.html>

CNIPA Amends the Patent Pledge Registration Measures

The CNIPA has reviewed the current Patent Pledge Registration Measures and proposed a few amendments in the released Proposal on Revision of the Patent Pledge Registration Method (Draft for Soliciting Comments). The draft is now open for comments till August 10, 2021.

The main contents of the amendments include shortening the examination time, introducing an online processing channel and procedures thereof, and improving the scope of the examination and the communication therein. The draft is available only in Chinese at

https://www.cnipa.gov.cn/art/2021/7/20/art_75_165978.html

CNIPA and EPO Collaborate to Simplify Patent Application Process

The CNIPA and the European Patent Office (EPO) have reached a consensus that from July 1, 2021, there will be no need to submit a copy of the prior application search report made by the CNIPA when a European patent application or a Patent Cooperation Treaty (PCT) application claiming priority from an earlier application in China filed with the EPO enters the European phase. Refer to the website of the EPO.

<http://english.ipraction.gov.cn/article/ie/202107/348728.html>

SPC Clarifies Compensation for Plaintiff's Abuse of Rights in IPR Infringement Lawsuits

The Shanghai High People's Court requested the SPC to clarify the issue of reasonable fees requested by the defendant in an IPR infringement lawsuit on the basis of the plaintiff's abuse of rights (Shanghai High Court [2021] No. 215), and obtained the following comments: in intellectual property infringement litigation, the defendant submits evidence to prove that the plaintiff's suit constitutes an abuse of rights according to law and damages its lawful rights and interests, and requests the plaintiff to compensate for reasonable attorney's fees, transportation costs, accommodation costs and other expenses paid for the litigation, the people's court shall support it according to law. The defendant may also sue the plaintiff separately for the above reasonable costs.

<http://www.court.gov.cn/fabu-xiangqing-307061.html>

SPC Issues New Judicial Interpretation to Enhance Protection of Plant New Variety Rights

The Supreme People's Court (SPC) recently issued the Provisions on Several Issues

Concerning the Application of Law to the Trial of Cases Involving Disputes over Infringement of New Plant Variety Rights (II), which has come into effect on July 7, 2021.

This new judicial interpretation has five highlights:

- it extends the scope of protection, clarifies that the object of variety right protection is not restricted by the breeding method, and extends the scope of variety right protection to the act of promising to sell and to help infringement links such as acquisition, storage, transportation, processing and treatment for others' infringement;

- it enhances the protection, improves the timeliness and effectiveness of judicial protection, introduces punitive compensation;

- it reduces the burden for protection, stipulates situations where the burden of proof can be shifted in a proper manner, provides availabilities for order for production of documents and consequences for evidence obstruction.

- it explains the principles, clarifies the exemption of scientific research, exhaustion of rights and legal source defense; protects the right of farmers to self-propagation and self-use in accordance with the law while prevents the abuse of "farmers' privilege" to implement infringement.

- it standardizes the identification process, and clarifies the selection of appraisers, identification methods and conditions of re-identification.

<http://www.ipraction.gov.cn/article/gzdt/ywdt/202107/348395.html>