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**AFD China was once again recommended by IAM Patent 1000**

Recently, world-renowned IP business media platform Intellectual Asset Management (IAM) released the 2022 edition of IAM Patent 1000. AFD China was again recognized as a leading firm in the listing. Since 2016, this has been the sixth time AFD China was listed among the best IP law firms in China (silver band), and our president Ms. Xia Zheng was once again identified as a leading patent attorney.

IAM Patent 1000 conducts an evaluation of patent practitioners in various jurisdictions around the world each year. After several months of surveys and interviews, IAM identifies the leading patent firms and professionals based on a comprehensive evaluation of their services, business scopes, teams, typical cases, clients, associated partners, recent development and growth momentum.

The surveys pay special attention to the development of the firms in the past 12 months, so as to fully understand the measures taken by different firms to respond to and adapt to the policies and market changes of various countries. During the surveys, IAM not only focuses on the characteristics of each firm, but also gets close to their business practice, giving the firms time to fully express and explain themselves.

We can never make such good achievements in patent prosecution without our clients' trust or support over the years. Taking this opportunity, we would like to express our sincere gratitude to all of our clients. These achievements not only show the client's recognition of our services and but also strengthen our determination to keep providing targeted services for our clients. We will continue to adapt to changes in the market and in the laws, enhance our professional capabilities, and improve the client's satisfaction by providing them with tailored patent services.

Adhering to the principles of "honesty and faith", as always we will spare no efforts in helping our clients safeguard their intangible assets.

**China and Cambodia launch a Design Recognition Project**

On August 18, 2022, the China National Intellectual Property Administration issued an Announcement No. 497, officially launching a design recognition project, under which Cambodia will expedite the review of eligible relevant Chinese design applications.

According to the Memorandum of Understanding between the China National Intellectual Property Administration (CNIPA) and the Ministry of Industry, Technology and

Innovation of Cambodia on Design Cooperation and the Announcement of Cambodia on Regulations and Procedures for Accelerating the Recognition Registration of Industrial Designs under Industrial Designs Cooperation with China National Intellectual Property Administration, applicants who have filed design applications with the Ministry of Industry, Technology and Innovation of Cambodia can request the accelerated recognition registration of the filed design applications by using the results of the examination conducted by the China National Intellectual Property Administration.

For requesting the accelerated recognition registration, the applicant needs to submit an application form, a copy of the granted Chinese design patent document, and an English translation and a Khmer translation of the specification recited in the Chinese design patent.

In addition, no fee is required for requesting the accelerated recognition registration of relevant design applications in Cambodia.

For the detailed text of the Announcement No. 497, please see the following link and the attachments therein:

[https://www.cnipa.gov.cn/art/2022/8/24/art\\_74\\_177483.html](https://www.cnipa.gov.cn/art/2022/8/24/art_74_177483.html)

### **China's IP Protection Wins Recognition of Foreign Enterprises: Survey**

Foreign enterprises are growing increasingly satisfied with China's intellectual property (IP) protection, a survey released by the industry watchdog showed Tuesday.

Social satisfaction with the country's IP protection last year show a record high of 80.61 out of 100 points, according to the survey released by the CNIPA.

Zhang Zhicheng, an official with the administration, highlighted that joint ventures and foreign-funded enterprises showed

scores of 4.52 points and 2.36 points higher than the figures for 2016, respectively.

The official attributed the high level of satisfaction to stronger legislation, more effective law enforcement and more efficient IP examination.

The year 2021 marks the 10th consecutive year that the administration has performed such a survey. The respondents, mainly IP holders, professionals and the general public, are invited to grade an array of IP issues, including law enforcement, management and services.

Noting that foreign enterprises enjoy equal treatment with their Chinese counterparts, Zhang said that the number of patents and trademarks granted to foreign applicants in 2021 increased by 23 percent and 5 percent year on year, respectively.

"The growth fully demonstrates foreign enterprises' recognition of China's IP protection," said Zhang.

<http://english.ipraction.gov.cn/article/ns/202209/382321.html>

### **Suing Grey and Black Industry for Unfair Competition, Tencent Awarded 5 Million Yuan**

Tencent sued Qixiao Company and ZhiEn service for unfair competition, claiming that the two defendants had developed softwares including WeChat Business Screenshots King to generate WeChat and QQ dialogue as well as red packet screenshots and charged VIP membership fees. The Beijing Intellectual Property Court recently ordered the two defendants to compensate Tencent for 5 million yuan and related expenses in accordance with the Anti-unfair Competition Law. This is a typical case that applies to the "top compensation" rule stipulated in Article 2 of China's Anti-Unfair Competition Law. According to the financial books of the defendant, the software transaction flow involved was as high as tens of millions. The

court made the final judgment based on evidence of infringement and external reports, the defendant's advertising fees, membership fees and other profits.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12644>

### **Apple, HTC and ZTE Win in US Patent Infringement Case**

According to Reuters, the U.S. Court of Appeals for the Federal Circuit on Wednesday affirmed a win for Apple Inc, HTC Corp and ZTE Corp against allegations that imports of their devices infringe wireless-technology patents. The companies' smartphones, smart watches, tablets and other LTE-capable devices do not violate INVT SPE LLC's rights in two patents originally owned by Panasonic, the Court said. INVT is a patent-holding company affiliated with investment funds managed by Fortress Investment Group LLC, a SoftBank Group Corp subsidiary. INVT filed a complaint against Apple, HTC and ZTE at the U.S. International Trade Commission in 2018, accusing their devices that comply with the LTE wireless standard of infringing its patents, and sought a ban on imports of the allegedly infringing devices. The commission ruled for the device makers in 2020. A three-judge Federal Circuit panel upheld the decision Wednesday.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12648>

### **CNIPA Concluded the First Batch of Administrative Adjudication Cases of Major Patent Infringement Disputes**

The amended patent law, which came into effect on June 1, 2021, gives new power to the CNIPA, allowing it to hear major patent disputes of national significance upon the request of patentees or stakeholders. Recently, CNIPA concluded its maiden trial, handing out decisions on two cases, both involving infringement of Patent No.

ZL201510299950.3, owned by the Germany-based Boehringer-Ingelheim.

After deliberating on whether the cases were admissible as major patent disputes, whether the pharmaceuticals in question listed on the internet in multiple provinces (autonomous regions and/or municipalities) fell into an offer for sale or exceptions to infringement prescribed in the patent law, and some other central issues, CNIPA made a ruling within the required time limit.

In the next step, CNIPA plans to keep comprehensively enhancing IP protection mandated by the Party Central Committee and the State Council, use its power authorized by law to try major patent disputes, give full play to the advantages of professional and rapid administrative adjudication, effectively maintain a fair market order, and protect the legitimate rights and interests of patent owners and the public.

<http://english.ipraction.gov.cn/article/ns/202208/381399.html>

### **China Approves 2,439 GI Products**

By the end of June, China has approved 2,493 geographical indication (GI) products and seen 6,927 GI trademarks registered including collective trademarks and certification trademarks, according to Zhang Zhicheng, head of the IPR Protection Department of the CNIPA. He also added that the CNIPA will step up the level of legalization for GI, perfect the GI's management system, enrich the cultural connotation of GI, and reinforce foreign collaboration, to give full play to the role of GI protection in improving people's life quality and promoting a high-quality development.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12652>

## SUPPLEMENTARY ISSUE

### **AFD China Recognized as a Recommended Firm in Patent Prosecution and Patent Contentious by Asia IP**

Recently, renowned intellectual property magazine Asia IP announced the result of its annual patent survey, wherein AFD China was recognized as a recommended firm for its outstanding performance in patent prosecution and patent contentious. Especially, AFD China was honored as a Tier 1 Firm in patent contentious. The result of this survey has been published in the September issue of Asia IP.

AFD China has been participating in the annual surveys of Asia IP for years. In recent years, we have also been strengthening our services in patent litigation and contentious. When training our team members, we always ask them to persist in the principle of "thinking from the point of view of legislative intent" and proactively try to reason from different angles to help clients safeguard their rights and interests to the greatest extent. Our ranking of a tier 1 firm in patent contentious this year is a great recognition of our work and services.

We would like to express our sincere gratitude to all our clients who have been accompanying and trusting us, as well as all our colleagues who have been growing and forging ahead together with AFD China. Without your support, AFD China could never grow into one of the top firms in China. We will always stay true to our original aspiration and keep improving our services to adapt to the changing needs of the market, thereby providing timely, satisfying and targeted patent services to our clients.

### **SPC: Parties Involved in Infringement Lawsuits Are Encouraged to Voluntarily Make Commitments on Compensation for Future Benefits**

Recently, the Intellectual Property Tribunal of the Supreme People's Court (SPC) concluded an appeal case involving a dispute over infringement on a utility model patent against which an invalidation procedure had also been initiated, and for the first time, under the circumstance that an administrative procedure for confirming the right of the involved patent had been initiated, the SPC actively guided the parties concerned to voluntarily make a commitment on compensation for future benefits, and ruled to dismiss the appeal case in view of the stability of the involved patent.

Through this case, the SPC hopes to show that where the stability of a patent involved in a patent infringement lawsuit is in doubt or in dispute, based on the consideration of fairness and good faith, the parties concerned can voluntarily make a promise or statement of compensation for relevant future benefits, and no matter whether people's court finally continues the trial and makes a judgment, rules to suspend the litigation, or rules to dismiss the lawsuit, the interests of both parties can be effectively balanced.

The SPC hopes that the court of first instance, when hearing a patent infringement case, can also take the initiative to make relevant explanations to the parties and actively try similar practice.

In this case, the patentee, i.e. the plaintiff, owned another related utility model patent, in addition to the utility model patent involved in this case. The two utility model patents have basically identical technical features, except that one of the patents adopts a "USB plug connector" and the other adopts an "AC plug connector and a power adapter used with it". Before the first-instance trial of this case, the other patent had been declared invalid (the invalidation decision had taken

effect). For the patent involved in this case, the patentee requested the court of first instance court to order the alleged infringer to stop the infringement, destroy the infringing products and molds in inventory, and compensate for the patentee's economic losses and reasonable expenses incurred in safeguarding its rights. The alleged infringer argued that the related another patent had been declared invalid, and the patent involved in this case also did not meet the conditions for allowance, and thus its conduct did not constitute infringement. The court of first instance held that the alleged infringer's patent invalidation defense was tenable and thus rejected all the litigation claims of the patentee. Unsatisfied with the ruling of the first-instance court, the patentee appealed to the SPC.

During the second-instance trial, the alleged infringer submitted a request before the CNIPA for invalidation of the patent involved. The SPC held that in a patent infringement case, with respect to a specific challenge or defense raised by an alleged infringer against the stability of the patent, the people's court may conduct a limited examination on whether the patentee has the basis for properly and reasonably exercising the right of action, but cannot make a determination or judgment on the validity of the patent per se. The first-instance court's analysis and judgement on the stability of the patent involved was not obviously inappropriate, but there was no legal basis for the first-instance court to directly determine that the defendant's patent invalidation defense was tenable and reject the patentee's litigation claims based on such determination.

As mentioned above, the patent involved in this case and the related patent are both utility model patents that were granted without substantive examination, and the difference in the technical features between the two patents only lies in that one adopted a USB plug and the other adopted an AC plug and the power adapter used with it. Further, the two patents were filed on the same day under the dual-filing strategy, and under the circumstance that the related patent had been declared invalid by the CNIPA and the alleged infringer had also submitted a request for invalidation against the patent involved in this case before the CNIPA, there is a high possibility that the patent involved in this case may also be declared invalid, and thus the patent involved in this case is obviously not stable enough.

After the collegial panel of the second instance explained the possible handling manners for the stability of the patent involved in this case in accordance with the law, the parties voluntarily made a commitment to compensate for corresponding future benefits. The core of the patentee's commitment is that when the patent is declared invalid, the patentee will return all the actual earnings about the infringement to the alleged infringer and pay corresponding interests; the core of the alleged infringer's commitment is that when the patent is maintained, the alleged infringer will pay the patentee all the compensation payable for the infringement, along with corresponding interests. In view of the above circumstances, the SPC ruled to reject the patentee's appeal by making reference to the provisions of paragraphs 1 and 2 of Article 2 of the Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Dispute Cases (II). The patentee may file a separate lawsuit and claim its rights in accordance with the alleged infringer's commitment on compensation for benefits after an examination decision to maintain the patent involved has been issued by the CNIPA and has taken legal effect.

Handling the case in this way not only protects the litigation rights of the parties, but also fully considers fairness and good faith, and saves litigation resources and costs.

Please see the following link for the details of the case:

<https://ipc.court.gov.cn/zh-cn/news/view-2014.html>

### **SPC: Technical Features Should be Interpreted in Combination with the Purpose of the Invention**

Recently, China's SPC concluded a second-instance patent infringement case, in which the SPC interpreted the technical features in combination with the purpose of the invention, and finally rendered a judgment contrary to the first instance, ruling that the infringement was not established.

The patent involved in this case is a utility model patent entitled "Notebook with USB disk", wherein the technical feature recorded in claim 1 is "one end of the USB disk is inserted into the other end of the nose belt in a plug-in mode, and the other end of the USB disk is magnetically connected to the metal buckle". In the alleged infringing product, a circular magnet piece is embedded in a leather compartment on the front side of the notebook, and one end of the nose belt is fixed to the back of the notebook, and the other end is connected to a metal containment part, and the end of the metal containment part has another circular magnet piece, which can be magnetically connected to the magnet piece on the front side of the notebook, so that the nose belt snaps the notebook; the end with connecting finger of the USB disk is inserted into the above metal containment part, and the other end of the USB disk is also magnetic, and when the USB disk is inserted into said metal containment part, the other magnetic end of the USB disk is magnetically connected to the end of the metal containment part.

The patentee believed that the alleged infringing product falls within the protection scope of its claims and constitutes infringement, so the patentee initiated a lawsuit, requesting the court to order the alleged infringer to immediately stop the infringement, to compensate for the patentee's economic losses and reasonable expenses for safeguarding rights, and to immediately destroy the mold for manufacturing the infringing product and destroy the infringing product in stock. After trial, the court of first instance held that in the alleged infringing product, a magnet is configured in the metal containment part on the front end of the nose belt, and the magnet could be magnetically connected to either the magnet on the USB disk or the metal buckle on the notebook, but this technical feature is an additional technical feature of the alleged infringing product. After the magnet in the metal containment part on the front end of the nose belt is removed from the alleged infringing product, the insertion and extraction of the USB disk in the alleged infringing product would not be affected, and the magnet on the USB disk could still be magnetically connected to the metal buckle, and therefore the alleged infringing product completely covers all the technical features of claim 1 of the patent involved and falls within the scope of protection of claim 1 of the patent involved in the case. The court of first instance also held that the prior art defense claimed by the alleged infringer could not be established, and ordered it to immediately stop the infringement and compensate the patentee for economic losses of CNY 100,000 and reasonable expenses of more than CNY 30,000 for rights protection.

Unsatisfied with the first-instance ruling, the alleged infringer appealed to the SPC. During the second instance, the judge held that in claim 1 of the patent involved, the technical features "one end of the USB disk is inserted into the other end of the nose belt in a plug-in mode, and the other end of the USB disk is magnetically connected to the metal buckle" should be understood as a whole. Neither the technical feature "one end of the USB disk is inserted into the other end of the nose belt in a plug-in mode" nor the technical feature "the other end of the USB disk is magnetically connected to the metal buckle" can be used as an independent technical means to achieve the corresponding function, and by connecting the two ends of the USB disk to the metal buckle and the nose belt respectively, these technical features of claim 1 of the patent involved make the USB disk a necessary part of the snapping process. The invention purpose of the patent involved is that when the USB disk is removed, the nose belt cannot directly snap the

notebook, so as to remind the user that the USB disk is left behind, and thus achieve the effect that the USB disk is not easily lost. In contrast, in the alleged infringing product, the notebook can be snapped by using the nose belt without using the USB disk, and the USB disk is only inserted into the metal containment part at the end of the nose belt and magnetically connected to the metal containment part; when the USB disk is removed, the snapping of the notebook will not be affected, and thus it cannot achieve the effect of reminding the user that the USB disk is left behind and lost, and accordingly cannot achieve the invention purpose of the patent involved. Therefore, the means, functions and effects of the corresponding technical features of the alleged infringing product are obviously different from those of the above-mentioned disputed technical features of claim 1 of the patent involved, and the alleged infringing product cannot achieve the inventive purpose of the patent involved, and thus the two are neither the same nor equal, so the alleged infringing technical scheme does not fall within the scope of protection of claim 1 of the patent involved. Accordingly, the second-instance court changed the first-instance judgement and ruled that the infringement was not established.

The second-instance judgment of this case makes it clear that the technical features of a patent should be interpreted according to the recitation of claims, in combination with the overall understanding achieved by a person skilled in the art after reading the claims and the description, and for the interpretation, one should not only consider the technical means used in the technical features, but also consider the technical problems solved and the functions and the effects achieved by the technical means, in combination with the purpose of the invention. As can be seen, this case provides some guidance on how to reasonably determine the scope of protection of the claims of a patent and how to accurately determine an infringement.

<https://ipc.court.gov.cn/zh-cn/news/view-2020.html>

### **Growing Patents Show Better IPR Protection**

China's increasingly strong protection of intellectual property rights over the past decade has attracted more foreign enterprises to do business in the country, contributing greatly to opening-up, an IPR regulator said.

"In the past 10 years, we've strengthened efforts in protecting IPR nationwide, and we've always given equal protection to every enterprise, no matter whether it is Chinese-funded or foreign-funded," Zhang Zhicheng, spokesman for the CNIPA, said at a news conference on Tuesday (Sept. 6).

Last year, the number of invention patents applied for by foreign entities and authorized by Chinese IPR administrations saw a 23-percent increase year-on-year, while trademarks registered by foreign entities also increased by 5 percent compared with that in 2020, he said.

"The figures fully demonstrate that our IPR protection environment has been approved by those foreign entities," he said.

Since the 18th National Congress of the Communist Party of China in 2012, government agencies, including the administration, have attached great importance to IPR-related affairs, with various measures taken in IPR protection.

The awarding of punitive damages to those who have their IPR infringed upon has been highlighted in the country's Civil Code, a fundamental law for regulating civil activities, and punishments for IPR violators have been increased in the revised Criminal Law.

A few laws focusing on IPR, such as the Patent Law, the Trademark Law and the Copyright Law, have also been amended in recent years.

"These moves mean our country has been strongly protecting innovators and deterring violators through legislation," Zhang said.

In the past decade, the State Administration for Market Regulation has intensified supervision of IPR violations, organizing its branches nationwide to strictly inspect infringements involving trademarks, patents and geographical indications.

Last year, the branches dealt with more than 50,000 cases regarding trademark or patent infringements, "which contributed a lot to protecting the legitimate rights of IPR owners and building a better innovation environment", said Wang Songlin, an official responsible for IPR inspection from the administration.

Considering counterfeit goods are more frequently discovered online, he said the administration will increase inspection in cyberspace and coordinate with more stakeholders to combat IPR infringements.

"We'll provide more training for our workers to improve their professionalism and quality in handling cases," he added.

<http://english.ipraction.gov.cn/article/ns/202209/382322.html>

### **CNIPA's Newly-Vested Adjudication Power over Patent Infringement Disputes Presents Welcomed Options to Patentees**

"The CNIPA's first batch of patent enforcement rulings shows it's more than capable of handling technical cases," the UK-based Managing IP magazine leads with this sentence in an article of its August edition.

The article highlights some of the impacts on the IP community made by this new mission of the CNIPA. One of them is "The latest rulings also show the CNIPA won't shy away from industry issues. For example, the office settled a longstanding problem in the drug patent litigation space."

Since the CNIPA started hearing patent disputes with a significant nationwide effect on June 1, 2021, it has concluded the first batch of patent infringement cases within four months (not inclusive of staying time). "These rulings epitomize the efficiency of patent administrative protection, presenting fresh options for patentees and the general public to enforce their lawful right and stop infringement in a timely fashion," says Zhang Zhicheng, director general of CNIPA's IP protection department.

#### *Handling patent disputes more efficiently*

The amended Chinese Patent Law came into effect on June 1, 2021. The newly-added Article 70.1 provides that the patent administrative department of the State Council may handle patent infringement disputes that have a significant nationwide impact at the request of the patentee or interested party, vesting a centralized power of handling major patent infringement disputes to CNIPA from the legislative level.

"Our office took execution of this authority very seriously and immediately formulated relevant norms and protocols with an aim to make full play of the quickness of administrative adjudication and our technical strength and eventually defend the right and interest of patentees in a timely manner," says Zhang.



One of the major norm-setting tasks is drafting and implementation of the Measures for Administrative Adjudication of Major Patent Infringement Disputes. Even back during the days of the amendment of the patent law, the CNIPA researched intensively on building a specific system of trying patent infringement dispute while taking into account of previous experiences of local IP administrations. The Measures was then shaped and became effective on June 1, 2021.

Recently, the CNIPA handed out decision on two cases, both involving infringement of patent No.ZL201510299950.3, owned by the Germany-based Boehringer-Ingelheim. After deliberating on whether the cases were admissible as major patent disputes, whether the pharmaceuticals in question listed on the internet in multiple provinces (autonomous regions and/or municipalities) fell into on offer for sale or exception to infringement prescribed in the patent law, and some other central issues, CNIPA made a ruling within the required time limit.

"The trials of the first batch of cases brought attention to difficult problems in IP protection, wasted no time in making decisions that awarded remedies similar to injunctions. The CNIPA's technical background played no small part in accomplishing all these. It is safe to say the real efficiency shown by our administrative protection has made us popular universally," says Zhang.

#### *Protecting innovations timely*

Administrative adjudication of patent infringement disputes, as one of the major ways in patent administration protection, has been proven to be efficient, cheap and transparent in procedures. The resolution of these cases tests our established system and in return, gives fresh "samples" for refining the system.

According to Zhang, these case may have set templates in many aspects of hearing major patent disputes, like opening a case, oral hearing procedure, conditions for staying cases, enforcement and disclosure, which will certainly have a strong bearing on future trials of similar cases.

The high efficiency of trial and transparent procedure impresses the patentees involved. "At any stage of the trial, whether case-opening or hearing, the adjudicators emanated technical prowess and efficiency. The verdict orders the infringers to cease all infringing acts immediately, effective nationwide, which shows the meaningful strength of administrative rulings, defends us patentees' lawful right and regulates the market order." comments a Boehringer-Ingelheim executive.

"In our planned next steps, with attention, precision and pursuit of excellence, we will resolve a series of cases that may become typical examples and spark interest, which will consequently deter infringing acts. In parallel, we have to upgrade our own skills in trying these cases, advocating the establishment of a system that brings technical investigation officers into play, improving checking and verification systems and ramping up technical support for trying these cases," at the end of the interview, Zhang looks into the future. "China will weave a tighter and sturdier IP protection network, advance inter-agency coordination, uphold a market order of fair competition and secure a climate for innovators and businesses to fly."

[http://english.cnipa.gov.cn/art/2022/9/7/art\\_2829\\_178520.html](http://english.cnipa.gov.cn/art/2022/9/7/art_2829_178520.html)