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CNIPA issues Guidelines for Estimation of Royalties for Patent Open License (Trial Version)

On October 14, 2022, in order to thoroughly implement the State Council's deployment on "establishing and improving the patent open licensing system and operation mechanism", promote the smooth implementation and efficient operation of the patent open licensing system, guide patentees to scientifically, fairly and reasonably estimate the royalties for patent open license, and promote market-oriented pricing and licensing, the China Intellectual Property Administration (CNIPA) issued the Guidelines for Estimation of Royalties for Patent Open License (Trial Version).

The Guidelines include three parts: general provisions, estimation methods and operational steps, which may be referenced by relevant parties. For example, when patentees are making patent open license declarations and determining the standards and methods for payment of patent open license royalties, when licensees are seeking open licensed patents, or when intellectual property agencies are carrying out services relating to patent open licenses, they may refer to the Guidelines if needed.

Patent open license royalties can be estimated by making reference to the revenues which has been earned from the exploitation of the patent by the patentee itself, the royalties which has been charged for licensing the patent for exploitation, the statistics on the royalties for patent licenses in the same industry, or common worldwide royalty rates, or by using asset-valuation approaches. The Guidelines also describe in detail the operational steps for open licensing of patents.

See the following link for the full text of the Guidelines:

http://www.cnipa.gov.cn/art/2022/10/24/art_75_179776.html

SPC issues Provisions on Several Issues Concerning the Jurisdiction of Foreign-Related Civil and Commercial Cases

On November 15, 2022, the Supreme People's Court (SPC) issued the *Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases*, which will come into force on January 1, 2023.

The Provisions determines that ordinary first-instance foreign-related civil and commercial cases shall be under the jurisdiction of basic-level people's courts. Intermediate people's courts have jurisdiction over foreign-related civil and commercial cases with high-value subject matters (and meantime the specific criteria on high-value subject matters in various localities are determined), foreign-related civil and commercial cases in which the facts are complicated or in which there is a large number of persons on one party, and other foreign-related civil and commercial cases that have a significant impact in their jurisdictions. The Higher People's Courts have jurisdiction over first-instance foreign-related civil and commercial cases in which the value of the subject matter is more than RMB 5 billion (inclusive) or which have a significant impact in their jurisdictions.

Meantime, it is clarified that the Provisions does not apply to foreign-related maritime disputes, foreign-related intellectual property disputes, foreign-related ecological environment damage compensation disputes, or foreign-related environmental civil public interest litigation cases.

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

<https://www.court.gov.cn/fabu-xiangqing-379181.html>

Features of IP Trials of the People's Courts in 2021

Qin Yuanming, chief Judge of the Third Division of Civil Trial of the SPC, highlighted at the 12th CIPIAF the features of IP trials of the People's Court in 2021 in the following aspects.

Qin firstly pointed out that the people's courts have been improving the quality and efficiency of case trials. In 2021, the people's courts accepted up to 642,968 IP-related cases, an annual increase of around 20% year by year since 2013. Among the accepted cases, many are with significant social impact. The

people's courts demonstrated confidence and determination to protect IP rights and maintain fair market competition by taking effective measures to reduce the burden of proof on the right holders and increasing the amount of compensation through applying punitive damages to IP infringement. According to statistics, punitive damages have been applied in 895 cases in 2021 by the people's courts. Meanwhile, litigation procedures have been simplified to shorten the trial cycle in some small-amount cases to improve efficiency.

Another achievement is the courts' continuous effort to clarify the judgment standards and improve the judicial protection mechanism. In 2021, the SPC issued a series of relevant legal documents to make some regulations and provisions on pharmaceutical patent linkage system, judicial review, case acceptance and jurisdiction, judgment standards, as well as the disputes over new plant varieties. The "Interpretation of the SPC's Application of the Anti-unfair competition Law" was also issued in this March to cope with unfair competition acts arising increasingly in the internet area in recent years.

In addition, the people's courts have strengthened communication and cooperation with administrative departments to promote IP protection. A mediation mechanism was well established at all levels between the people's courts and the administrative departments, with entrusted mediation cases reaching more than 20,000 before litigation. Besides, the SPC has strengthened communication with the CNIPA and the National Anti-monopoly Bureau by taking joint efforts to combat infringement and counterfeiting.

Qin also noted that the people's courts have been strengthening the judicial protection of anti-monopoly and anti-unfair competition. Currently, a judicial interpretation on anti-monopoly is being drafted.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12683>

CNIPA Invalidated 20 Trademarks of the Fast Food Brand "Zhen Gongfu"

Recently, the CNIPA has invalidated 20 trademarks owned by the fast food brand "Zhen Gongfu". The CNIPA ruled that the disputed trademarks are almost the same as Bruce Lee's portrait and classic action, which may easily cause confusion, and were therefore invalid. In August, the 210-million-yuan dispute over trademarks between Zhen Gongfu and Bruce Lee Enterprise was heard in the Shanghai No.2 Intermediate People's Court. The case has not been ruled on yet. A representative for Zhen Gongfu said whether the 20 trademarks that were declared invalid violated the Trademark Law remains to be decided by the court.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12681>

Tencent Won Record 32.4 Million Yuan in Copyright Dispute with TikTok

Recently, the Xi'an Intermediate People's Court ordered TikTok to pay Tencent more than 32.4 million yuan after founding that video clips of "the worm valley" released on the TikTok Platform have infringed Tencent's exclusive broadcasting right. The court held that a large number of users on the TikTok platform have infringed the works involved, and although TikTok has taken measures to reduce the number of infringing works, the infringement has not been effectively contained. The court ruled that TikTok has helped the infringement, and should immediately delete, filter, and intercept the infringing videos, and compensate Tencent for the economic losses and reasonable expenses of more than 32.4 million yuan, a record-high compensation of similar cases in China. It has also been the highest compensation awarded

to Tencent for film and television copyright infringement, according to report.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12680>

Shen Talks with EAPO President Online on Development and Cooperation

Shen Changyu, Commissioner of the CNIPA, held a video conference with Grigory Ivliev, President of Eurasian Patent Office (EAPO), on the two organizations' latest developments and future cooperation, on September 16.

Shen congratulated Ivliev on his appointment as the EAPO President. He recalled the two organizations' established cooperative ties, which have delivered pragmatic results in IP laws and policies, talks between examiners, patent prosecution highway (PPH) and other cooperative items under the Belt and Road Initiative. Shen said he was looking forward to strengthening communication, deepening pragmatic cooperation, better serving the innovators and helping companies expand their business in the Eurasian market.

Ivliev echoed the remarks of his Chinese counterpart, affirming the positive ties and palpable fruits of the cooperation. He said the cooperation has not only advanced the development of the two IP systems but also boosted the economy in the region. Ivliev said he too was looking forward to further collaboration in PPH, Patent Cooperation Treaty (PCT) and other international IP issues, which would in turn promote innovative development of both parties.

https://english.cnipa.gov.cn/art/2022/10/19/art_1340_179473.html

China to Build up More GI Protection Demonstration Areas

29! That is the number of national GI (geographical indication) protection demonstration areas (GI areas) to be set up in

the next three years, according to a 2022 list announced in October by the CNIPA.

"The 29 areas of this year are diverse in product types, reputable and profitable," a CNIPA principal elaborates that the GI products from the 29 areas cover agricultural, forest products, traditional Chinese medicine materials as well as food and handicrafts. They are both diverse in product types and famous. Zhenjiang Vinegar, Xinyang Maojian Tea, Liuzhou Luosifen (river snails rice noodles) are all popular brands in China and even worldwide.

When the GI power directs inward, it assists rural revitalization. When it points outward, it helps exploring markets overseas. The 29 areas do not only represent GI products vital for rural revitalization, but products mutually recognized for protection under the China-EU GI protection and cooperation agreement.

"The interest of this year's area construction is in rural revitalization. The 29 areas span 15 middle and western provinces, hosting three national key rural revitalization go-to counties. Their GI products boast high economic value. Inside these areas, 874 companies are using GI special symbols, generating combined annual earnings of 58.94 billion yuan. Wine in Helan Mountain East Region and Huanggang Wickerwork are among the high value-added products," the principal adds.

The construction of GI areas is under way to graduate once mere local specialties to profitable industries: in Ningxia, the 'purple industry' realized by Wine in Helan Mountain East Region has given a sense of wellbeing to the western population; in Guangxi, the 'influencer industry' fed by Liuzhou Luosifen has unlocked the code to wealth for the southern border province. Piloted by these demonstration areas, more and more villages nationwide are invoking the GI toolkit to become affluent, painting an infinite picture of rural revitalization.

https://english.cnipa.gov.cn/art/2022/10/19/art_1340_179473.html

China Has Concluded 2.738 Million IP Cases of First Instance since 2013, with an Average Annual Growth Rate of 24.5 Percent

At the third press conference of the Press Center for the 20th National Congress held on October 19, He Rong, deputy secretary of the leading Party group of the SPC and vice president in charge of daily work, pointed out that China has concluded 2.738 million IP cases of first instance since 2013, with an average annual growth rate of 24.5 percent. Besides, He said that China has been intensifying and widening judicial protection to cover patent, trademark, copyright, trade secrets, integrated circuit layout design, new plant varieties, geographical indications, as well as unfair competition, anti-monopoly and other related fields.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12673>

59.77 Million Pieces of Goods Suspected of IPR Infringement Detained by GACC from January to September 2022

On October 26th, the General Administration of Customs, China (GACC) introduced on its website the IPR law enforcement outcomes by Chinese customs for the first three quarters in 2022.

From January to September, the customs nationwide detained a total of 59.77 million pieces of goods in 40,000 batches suspected of IPR infringement. GACC also approved 16,424 filings of IPR information for customs protection of IPRs.

GACC continues to enhance IPR protection by carrying out the "Longteng Action 2022" for overall IPR protection, "Lanwang Action 2022" for IPR protection at mailing channels, "Jingwang Action 2022" for IPR protection of goods at export and transshipment, etc., so as

to maintain strict crackdown upon trade of infringement goods, consolidate unified deployment and coordination as well as to further improve the efficacy in law enforcement of crackdown on IPR infringement and counterfeiting at import and export.

<http://english.ipraction.gov.cn/article/ns/202211/383659.html>

In addition, they will be allowed to submit case-related materials and read relevant documents online, which can "provide more convenience for them, giving them easier access to litigation services," he added.

https://english-ipraction.samr.gov.cn/NEWS/art/2022/art_b0c8f94c5373465db7961a584375806d.html

Beijing's IPR Court Looks to Improve Case Handling

The Beijing Intellectual Property Court has stepped up efforts to improve efficiency in the handling of administrative cases regarding trademarks after seeing a rapid growth of such disputes over the past few years.

Since the court was set up in November 2014, it has witnessed the number of trademark-related administrative cases increase from some 5,500 in 2015 to more than 18,000 last year, with an average annual growth of about 25 percent, Song Yushui, vice-president of the court, said on Tuesday.

To meet demand and improve work efficiency, the court has developed a pilot program to streamline procedures related to the handling of IPR-related administrative disputes in August last year. With this program, simple cases with clear facts and strong evidence can be resolved quickly, even before litigation begins, according to Song.

To ensure quality while accelerating case handling, the court has established a team specializing in separating simple disputes from complicated ones, and has also arranged for judges to educate litigants about the streamlined procedures, said Yi Jun, chief judge of the court's case filing division.

Litigants can decide whether they want to resolve disputes through the program, he said.

SUPPLEMENTARY ISSUE

In October, 2022, AFD China partnered with the Capital Intellectual Property Services Association for the fifth time to fund impoverished rural students

If someone asks me what makes life warm, my answer would be "love", e.g. care between family members, snuggling between lovers, regards from friends, and selfless help and support from strangers. No matter whether in a natural disaster or in an epidemic, there are always people who, braving daunting risks, work non-stop to help deliver supplies and assistance to those in need. With deep gratitude, we also hope to do what we can to help more people improve their living conditions. Especially, for those children who grow up in remote mountainous areas, we hope that with our support, they can have more freedom of choice in the future.

Concerned about this disadvantaged group, the Capital Intellectual Property Services Association has been raising funds to support the living and study expenses of school-age children in Xingwen County for several consecutive years. This is the fifth year that AFD China has participated in this "Light Up Wisdom" project launched by the Association, and among the 79 children to be sponsored this time, 7 children have been subsidized by AFD China for three consecutive years.

It is comfortable to drift down the steam, while it requires more courage and perseverance to swim against the stream. We hope that these children will have the ability to fly against the wind, i.e. change the trajectory of their life with the power of knowledge and create more unforeseen "miracles" in the foreseeable future. We also hope that with our efforts, we can plant the seeds of love in their hearts, so that when they grow up, they can give back to the society and become knowledgeable, loving and aspiring people.

We will continue to care about the children in need and help them get through the most difficult stage of their life, thereby fulfilling our social responsibility as a Chinese enterprise. We are glad that we have the ability to keep joining charity activities. As the saying goes, great things may be done by mass effort, so we hope that more and more people will join such charity activities and work together with us to create a warm and caring society.

Charity is like race walking which doesn't need strong explosive strength but requires constant endurance. The "Light Up Wisdom" project is not for fame or fortune, but to provide support for those children to chase their dreams. Those children are like little birds, and what we do is to provide transparent and invisible wings for them to fly bravely against the wind and rain toward a bright future.

CNIPA formulates and issues a *Promotion Plan for In-depth Implementation of the Opinions on Strengthening Intellectual Property Protection*

In order to thoroughly implement the spirit of President Xi Jinping's important speech at the 25th group study session of the Political Bureau of the 19th CPC Central Committee, fully implement the decision-making and deployment of the Central Committee and the State Council on strengthening intellectual property protection, implement the "Opinions on Strengthening Intellectual Property Protection" with high standards, adhere to strict protection, overall coordination, key breakthroughs, and equal protection, promote the overall improvement of protection capacity and level, and strongly support the construction of an intellectual property power, the CNIPA formulated a promotion plan for implementation of the "Opinions on

Strengthening Intellectual Property Protection". The plan was officially released on October 28, 2022.

The Plan specifies the timetable for the formulation and revision of IP-related laws and regulations at the next stage; emphasizes the importance of continuously improving examination capacity and puts forward specific requirements for shortening the examination period; strengthens the use of newly promulgated laws and regulations, judicial interpretations, departmental rules, etc. in practice; strengthens enforcement against infringement of intellectual property rights; includes important measures for deepening the reform of the intellectual property protection system and mechanism; and also makes detailed plans for promoting international cooperation and competition in the field of intellectual property rights, safeguarding national security in the field of intellectual property rights, and strengthening the supply of resources and organizational guarantees for intellectual property protection.

The following is a summary of the aspects most relevant to practice:

- Study and discuss key issues related to basic intellectual property laws, and form a draft of basic intellectual property laws (to be completed by the end of December 2025 and continuously promote thereafter)
- Promote the revision of the *Implementing Regulations of the Patent Law of the People's Republic of China* and the revision of *Guidelines for Patent Examination* (to be completed by the end of December 2022)
- Revise the *Measures for the Implementation of Administrative Penalties for Copyright*, the *Trial Measures for Voluntary Registration of Works*, the *Measures for the Registration of Copyright in Computer Software*, and the *Measures for the Administrative Protection of Internet Copyright*, and formulate the *Interim Provisions on the Registration of Copyright in Military Computer Software* and relevant provisions on providing works to persons with print disabilities in an accessible manner (to be completed by the end of December 2025)
- Formulate the *Regulations on the Protection of Copyright in Folk Literature and Artistic Works* and promote its promulgation (to be completed by the end of December 2025 and continuously promote thereafter)
- Form a draft revision of the *Regulations of the People's Republic of China on the Protection of New Varieties of Plants* (to be completed by the end of December 2022)
- Formulate the *Regulations on the Protection of Traditional Knowledge of Chinese Medicine* and promote its promulgation (to be completed by the end of December 2022 and continuously promote thereafter)
- Revise the *Several Provisions on the Regulation of Acts of Applying for Patents* (to be completed by the end of December 2022)
- Promulgate the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Intellectual Property Infringement* to further clarify the standards for the application of laws to crimes of intellectual property infringement (to be completed by the end of December 2023)
- Formulate and promulgate the *Opinions of the Supreme People's Procuratorate on Comprehensively Strengthening Intellectual Property Procuratorial Work in the New Era* (completed by the end of June 2022)

- Formulate and issue the *Specification for Electronic Deposit Business Services in the Notary Industry (Trial Version)* (to be completed by the end of December 2023)
- Research and formulate a guide manual for trademark administrative enforcement of laws, carry out in-depth research, actively solve the difficult problems in trademark administrative enforcement of laws, further improve the rules for investigation and evidence collection, and standardize the calculation of illegal business turnover (to be completed by the end of December 2023)
- Revise and improve the national standards for enterprise intellectual property management norms (to be completed by the end of December 2025)
- Promote the revision of the *Measures for the Protection of Intellectual Property Rights at Exhibitions* (to be completed by the end of December 2023)
- Formulate and issue the *Guidelines for the Protection of Intellectual Property Rights in Cross-border E-commerce* (to be completed by the end of December 2022)
- Formulate and issue the *Guidelines for the Protection of Intellectual Property Rights at Exhibitions* (to be completed by the end of December 2022)
- Carry out research on the reform of design system (to be completed by the end of December 2025)
- Promote the reform of the utility model system and introduce examination on the obvious lack of inventiveness (to be completed by the end of December 2025)
- Continuously improve patent and trademark examination ability, reduce the examination period of invention patents to 16.5 months or less, keep the examination period for trademark registration stable at 7 months under normal circumstance, and keep the average period for substantive examination of Madrid territorial extension applications stable at 4 months (to be completed by the end of December 2022 and continuously promote thereafter)
- Compile examination guidelines for the protection of new varieties of agricultural plants, complete the acceptance of more than 7,000 applications for agricultural plant variety rights and the granting of more than 3,000 cases, and shorten the examination period by 15 days; establish a management system for the protection of new varieties of forest and grass plants, and promote the intelligentization and facilitation reform of examination and granting of rights of new varieties of forest and grass plants (to be completed by the end of December 2022)
- Formulate and issue guiding opinions on doing a good job in combating infringement and counterfeiting in the new era (to be completed by the end of December 2022)
- Promulgate a number of provisions on the jurisdiction of first-instance civil and administrative intellectual property cases, optimize the jurisdictional layout of technical cases, and further improve the cross-regional trial mechanism for intellectual property cases (to be completed by the end of December 2023 and continuously promote thereafter)
- Formulate the *Opinions on Strengthening the Judicial Protection of Intellectual Property Rights in Chinese Medicine* to promote the inheritance, innovation and development of Chinese medicine (to be completed by the end of December 2022)

- Guide the application of the *Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Patent Disputes Related to Drugs of Which Applications for Registration are Filed* (to be completed by the end of December 2023)
- Continuously carry out special actions for the supervision of the intellectual property agency industry to consolidate the high-pressure situation of cracking down on illegal agency behavior; carry out pilot work on the management of intellectual property agency credit evaluations (to be completed by the end of December 2025)
- Promote the establishment of intellectual property protection centers, and establish and improve mechanisms for the rapid handling of intellectual property disputes (to be completed by the end of December 2025)
- Comprehensively strengthen the system of informing right holders of litigation rights and obligations in criminal cases of intellectual property infringement (to be completed by the end of December 2022)
- Establish and improve the judicial confirmation system for administrative mediation agreements requested by the parties for intellectual property disputes (to be completed by the end of December 2023 and continuously promote thereafter)
- Implement the *Implementation Measures for Early Resolution Mechanism for Drug Patent Disputes (Trial Version)*, and strengthen the construction of early resolution mechanism for drug patent disputes (to be completed by the end of December 2023 and continuously promote thereafter)
- Improve the directory of technical investigators for administrative protection of intellectual property rights, and guide and promote the establishment of technical investigator system in various localities; organize and carry out training on the competence of technical investigators (to be completed by the end of December 2025)
- Implement strict access registration, strengthen the supervision and management of intellectual property-related judicial appraisal institutions and evaluators; explore the establishment of a technical appraisal center for agricultural plant variety disputes; strengthen capacity building for the appraisal of intellectual property infringement, and organize and carry out the work of recommending and recordation of intellectual property appraisal institutions; promote pilot inspections and appraisals for patent and trademark infringement disputes, formulate a series of national standards for intellectual property appraisal norms, and optimize methods for assessing infringement damages (to be completed by the end of December 2025)
- Promote the construction of national intellectual property protection demonstration zones, select and determine several national intellectual property protection demonstration zones, and create a highland for intellectual property protection (to be completed by the end of December 2025)
- Promote the project approval and establishment of the National Copyright Dispute Mediation Center (to be completed by the end of December 2023)
- Carry out national pilot projects for innovation in trade secret protection (to be completed by the end of December 2024)

- Promote the project approval and establishment of the National Agricultural Plant Variety Testing Center (to be completed by the end of December 2023)
- Promote the establishment of the China International Intellectual Property Arbitration Committee (to be completed by the end of December 2025)
- Strengthen the capacity building of state-level overseas intellectual property dispute response guidance center and its sub-centers, promote the construction of overseas intellectual property dispute response guidance mechanism for key industries, and guide enterprises to actively respond to overseas intellectual property disputes (to be completed by the end of December 2024)
- Conduct IP training for Chinese intangible cultural heritage inheritors (to be completed by the end of December 2022)

http://www.cnipa.gov.cn/art/2022/10/28/art_75_179971.html

Decade of Innovation Sees Invention Patents Soar

The rapid growth of patents and trademarks in the past decade demonstrates the vitality of the national innovation, Hu Wenhui, deputy head of the National Intellectual Property Administration told a news conference on Sunday (Oct. 9).

From 2012 to September, the administration granted 3.95 million patents, with an average annual increase each year of 13.8 percent, bringing the number of valid patents to over 4.08 million.

During the same period, more than 35.56 million trademarks were registered, an increase of an average of 25.5 percent per year, he said.

"Those figures mean that IPR has developed quickly in the past 10 years, playing an important role in stimulating creativity and energizing innovators," he added.

Ge Shu, head of the administration's strategic planning department, praised the achievements. "The growth of patents has benefited from the country's stronger IPR protection and better application in recent years, and further consolidated the status of our innovation power around the world."

While the creation and storage of high-value patents have improved, the vitality of businesses has also been promoted, he said.

As of July, companies nationwide owned more than 2.08 million valid patents, of which, about 64 percent were in high-tech companies, according to Ge.

He said that patents for digital technology have grown fast in the past few years, adding that the top three areas for digital patents have been computers, measurements and communication.

"We'll further improve the quality of patents and accelerate the review time of IPR-related applications to fully stimulate innovation in all walks of life and promote the high-quality development of society and the economy," he added.

As the country has stepped up efforts to create and protect IPR, it has also given people easier access to IPR-related services.

"Patent application and trademark registration can be done online, and we've also established stations nationwide to provide more convenience to people in handling IPR-related affairs," said Wang Peizhang, head of the NIPA's public service department.

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 work, with various measures taken in IPR protection.

The awarding of punitive damages to those who have their IPR infringed has been highlighted in the Civil Code, a fundamental national law for regulating civil activities, and punishments for IPR violators have become harsher under the revised Criminal Law.

China has amended several laws related to IPR, such as Patent Law, Trademark Law and Copyright Law, and has issued plans to promote IPR development.

<http://english.ipraction.gov.cn/article/ns/202210/383383.html>