NEWSLETTER

2020.12

QUARTERLY

PANAWELL INTELECTUAL PROPERTY

At the beginning of 2020, the entire world and all industries were severely impacted and challenged by the sudden outbreak of the coronavirus pandemic. To our great relief, you are with us facing the once-in-a-century disaster, and together we have endured and overcome the hard time.

With the advent of the 2021 new year, we would like to express our heartfelt thanks and warm greetings to you for your kind support to us, and wish you all a prosperous and happy New Year!.

MERRY CHRISTMAS

HAPPY NEW YEAR

Chinese Public Holidays in 2021

1. **New Year's Day, Jan. 1 to 3, 2021**
2. **Spring Festival, Feb. 11 to 17, 2021**
3. **Tomb-Sweeping Day, Apr. 3 to 5, 2021**
4. **Labor Day, May 1 to 5, 2021**
5. **Dragon Boat Festival, Jun. 12 to 14, 2021**
6. **Mid-Autumn Festival. Sep. 19 to 21, 2021**
7. **National Day, Oct. 1 to 7, 2021**

Panawell & Partners LLC

December 2020

TABLE OF CONTENTS

Panawell Intellectual Property, consisting of Panawell & Partners, LLC and Panawell & Partners Law Firm, provide full spectrum of services in all fields of intellectual property rights, such as patent, trademark, copyright, computer software, anti-unfair competition, trade secrets, custom protection, domain name, license, assignment, enforcement, administrative and civil litigation, IP consulting and management.

Amended Copyright Law to Enter into Force on June 1, 2021

On November 11, the Decision on Amending the Copyright Law was passed at the 23rd Meeting of the Standing Committee of 13th National People's Congress, and the amended Copyright Law will enter into force as of June 1, 2021, which has improved the provisions relevant to the copyright protection in cyberspace particularly by greatly increasing the maximum statutory damages for infringement and specifying the punitive damages principles, thus further supporting creators to safeguard their legitimate rights and interests.

The major dilemma in the current copyright protection is "gains not worth the losses." Responding to this, the amended Copyright Law has set forth a series of punitive measures to greatly increase infringement costs. On willful infringement with serious circumstances may be imposed the punitive damages ranging from one to five times the amount of damages. Where it is difficult to calculate the actual losses of the right holder, the illicit income of the infringer or the royalties, the court should, according to the circumstances of the infringement, award the damages at the amount of not less than 500 yuan and not more than 5 million yuan.

To address the problem that the supervision administrative agencies' enforcement methods are too few and too lenient, the amended Copyright Law has stipulated that, when investigating and punishing an alleged infringement of a copyright and a right related to the copyright, the competent copyright authorities may inquire the interested parties, and look into the circumstances related to the alleged illegal acts; conduct on-site inspection of the interested parties' venues and articles involved in such acts; consult and copy the relevant contracts, invoices, account books and other relevant materials; and seal up such venues or detain the articles.

The amended Copyright Law has also redefined the term "works," changing the expression of "cinematographic works and works created by methods similar to film making" in the current Copyright Law into "audio-visual works," which means that the copyright protection will have an even wider scope of coverage, and the new categories of works like network short videos will be accorded the enhanced legal protection. Moreover, the amended Law also specifies that in order to protect the copyright and the rights related thereto, the right holders are allowed to take technical measures.

(Source: official website of CNIPA)

Draft Revision of Implementing Regulations of Patent Law and Second-Batch Draft Revision of the Guidelines for Patent Examination Released

To harmonize with the amended Patent Law, the China National Intellectual Property Administration

has initiated the preparatory work on revising the Implementing Regulations of Patent Law and the Guidelines for Patent Examination, and come up with the suggestions for the revisions, which have been explained and released for comments of those interested from all walks of life in the society.

(Source: official website of CNIPA)

Supreme Court Releasing Several Provisions on Intellectual Property Civil Procedure Evidence

On November 16, 2020, the Supreme Court released the Several Provisions on Intellectual Property Civil Procedure Evidence (hereinafter "the Intellectual Property Evidence Provisions"), which have taken effect as of November 18, 2020.

The promulgation of the Intellectual Property Evidence Provisions is an important measure taken by the Supreme Court in its efforts to implement the policy laid down by the CCP Central Committee, and the new development concepts, serve the high-quality development, and strengthen the judicial protection of intellectual property rights. The Intellectual Property Evidence Provisions, problem targeted, following the general provisions concerning civil procedure evidence, and responding to the characteristics and reality of intellectual property litigation, have spelt out the provisions on all the conspicuous issues, such as evidence submission, evidence preservation, judicial appraisal, and trade secret protection in intellectual property-related civil litigation, appropriately lightened the burden of proof on the right holders, and boosted the construction of the integrity system for intellectual property litigation. The promulgation and implementation of the Intellectual Property Evidence Provisions will also play an important role in addressing the difficulty in evidence adduction in intellectual property-related civil litigation, lowering enforcement costs, improving the quality and efficiency of the judicial protection of intellectual property, and promoting the construction of a market-oriented, law-governed internationalized business environment.

(Source: official website of the Supreme People's Court)

CNIPA-SAIP PPH Program Started on November 1

According to the Cooperation Agreement between China National Intellectual Property Administration (CNIPA) and Saudi Authority for Intellectual Property (SAIP) on Patent Prosecution Highway, CNIPA-SAIP PPH Pilot Program will be launched with duration of three years from November 1, 2020 to October 31, 2023. After the start of the pilot program, Saudi applicants can submit a PPH request with CNIPA and Chinese applicants can submit a PPH request with SAIP in accordance with the corresponding procedures.

(Source: official website of CNIPA)

CNIPA-EPO Pilot Program Started on December 1

A two year pilot program between CNIPA and European Patent Office (EPO) under the Patent Cooperation Treaty started on December 1, 2020, which would enable PCT international applications submitted to CNIPA as receiving office to select EPO as their international searching authority, but only for PCT applications filed in the language of English. The pilot program would also be open to PCT applications in the name of Chinese applicants filed with the PCT International Bureau as receiving Office, and limited to a total of 2,500 applications in the first 12 months and 3,000 applications in the second 12 months.

The international search fee of EPO is EUR1775 currently, which shall be directly paid to EPO by the applicants. The corresponding fees charged by international search authority, such as search surcharge, opposition fee, late transmittal fee, etc., shall be paid directly to EPO in accordance with the fee standards and requirements of EPO. PCT applicants who are nationals or residents of China and whose international search was performed by EPO shall also file a request for international preliminary examination with the EPO. Fees charged by the international preliminary examination authority, e.g. handling fee (EUR183 currently), preliminary examination fee (EUR1830 currently), late payment fee and opposition fee, shall be directly paid to EPO in accordance with the fee standards and requirements of EPO.

EPO has always been known for its high-quality search. Through the pilot program, besides the international search performed by CNIPA, Chinese applicants will have additional option to obtain the international search report and written opinions established by EPO based on their specific demands. The EPO will provide an applicant with a clear evaluation of their inventions' patentability and so with a solid basis for taking timely and informed decisions as to whether or not to enter the various national/regional phases under the PCT, in particular the European phase. In addition, with an ISR and a WO/ISA from the EPO, if Chinese applicants wish to accelerate the prosecution of their EP patent applications, they can enter the European phase earlier, request early processing and have their patent applications examined without supplementary European search.

(Source: official websites of CNIPA & EPO)

China Becoming World AI Patent Filings Leader

In 2019, China, surpassing the USA for the first time ever, had become the world leader in filing as much as 110,000 applications for artificial intelligence (AI) patents.

Since this year, one third of the global 5G network technologies have hailed from China, with obviously leading advantages in the related patent filings, in which Huawei is the leader and ZTE ranks third.

(Source: the China Intellectual Property News)

Court Distinguishes Right from Wrong in Dispute over Identical "威视VISION" Trademarks

Recently, the Beijing Higher Court has made the final decision in the unfair competition case arising from trademark infringement between the Nuctech Company Limited (hereinafter "Nuctech") and Shanghai Taihong Vision Security and Port Equipment Co., Ltd. (hereinafter "Taihong"), dismissing Taihong's appeal, upholding the Beijing Intellectual Property Court's first-instance ruling that Taihong's use of the trademark device containing the word "威视VISION" (with the word "威视" pronounced "weishi" in Chinese) and manufacturing, marketing and promotion of the goods bearing "太弘威视TAIHONGVISION" device had infringed Nuctech's exclusive right of to use the trademarks No. 1341322 of "威视 威视" and No. 6989335 "威视 NUCTECH" (the same Chinese characters), and its acts constituted a case of unfair competition. Accordingly, the Higher Court ordered Taihong to cease and desist from using the trademark containing the word "威视VISION", change its business name, publish a statement to eliminate the ill influence, and pay the damages at a total amount of 3 million yuan in compensation of Nuctech's economic losses and reasonable expenses.

3-Million-Yuan Damages Awarded in First-Instance Ruling

Nuctech, incorporated in 1997 and originating from the renowned Tsinghua University, is a high-tech business dedicated to provision of security inspection products and solutions used widely in the Customs, railway system, and fields of environmental security and public security.

Taihong was incorporated in 2012, with its business scope covering R&D, marketing and manufacturing of public security equipments and devices, and R&D, technology transfer of, and technical consultation on, communication equipment and related products.

Nuctech claimed that it was the legitimate proprietor of the involved "威视VISION" trademarks, which it applied for in 1998, and had been using ever after and which were once recognized as well-known trademarks in Beijing. Prolonged extensive publicity and use had made the "威视VISION" trademarks strikingly visible and highly reputable, with the brand value constantly increasing in the security inspection industry.

Nuctech argued that the defendant Taihong's use of "威视(VISION)" trademark in its business activities infringed its exclusive right to use the involved trademarks, and the defendant's unauthorized use of the word "威视VISION" in its business name constituted a case of unfair competition. Accordingly, Nuctech filed a lawsuit with the Beijing Intellectual Property Court, requesting the Court to order Taihong to cease and desist from using the trademark containing the word, change its business name, publish a statement to eliminate the ill influence, and pay

damages for the infringement at the amount of 5 million yuan in compensation of its losses.

Responding to Nuctech's allegations, Taihong argued that it began to use the trademark No. 12125350 " TAIHONG VISION 太弘威视 " as it enjoyed the exclusive right to use it after it had officially registered it, and its use of the trademark did not constitute trademark infringement and unfair competition; that the plaintiff's trademarks and the words "TaihongVISION" it had used were obviously different, and the coexistence of them would not cause confusion and misunderstanding on the part of the relevant sector of the public; and that the word "威视(VISION)" was not originally created by the plaintiff, and others had also registered trademarks containing the word, and as a result, it had become a general name of goods of security inspection equipment, and the plaintiff had no right to prohibit others from legitimately using it.

The Beijing Intellectual Property Court held that the main visible part of the mark used by Taihong contained the entire registered trademarks or the main visible parts thereof, without producing any meaning different from said trademarks, and they constituted similar marks; and that Taihong's evidence was not adequate enough to prove that "威视(VISION)" had become the general name of the products of security inspection equipment, and Nuctech's brand name "威视(VISION)" had a certain repute and influence used in respect of goods of security inspection equipment, and that Taihong's use of the trademarks and brand name containing "威视(VISION)" infringed on Nuctech's exclusive right to the involved trademarks and constituted a case of unfair competition. Accordingly, the Court ruled that Taihong cease and desist from using the trademark containing the word "威视(VISION)", change its business name, and publish a statement in a notable place on the front page of its official website for six consecutive months to eliminate the ill influence, and pay Nuctech for the damages at the total amount of 3 million yuan in compensation of its economic losses and reasonable expenses.

The Ruling Upheld in Second-Instance Procedure

Dissatisfied with the first-instance ruling, Taihong appealed to the Beijing Higher Court, arguing that the alleged mark and the two involved registered trademarks were not similar; the involved trademarks " 威 视 (VISION)", with low distinctiveness, were used in respect of goods of security equipment as suggestive description pointing to the goods of "security equipment"; and that Taihong had not used the alleged mark in bad faith, and its act would not cause confusion and misunderstanding on the part of the relevant sector of the public.

Upon hearing the appeal, the Higher Court held that the alleged mark and the involved trademarks respectively constituted similar trademarks used in respect of the same or similar goods; Taihong was incorporated, and registered and used the alleged mark later than Nuctech, which had a certain repute and influence in the industry, so it

should be made aware of Nuctech's "威视(VISION)" and its use of it; and Taihong failed to avoid using it in its production and business operation, so it was difficult to say that its use was in good faith subjectively, and it objectively infringed Nuctech's exclusive right to use the involved trademarks.

Additionally, the Court pointed out that Taihong, as a peer business in the industry of security inspection equipment, chose the same word "威视(VISION)" as an integral part of its business name, and registered and used it under the condition where Nuctech 's "威视(VISION)" brand had acquired certain repute and influence in the industry, and had the intention to subjectively take a ride with the reputation of another party's well-known brand in the market, and accordingly, Taihong's said act constituted a case of unfair competition.

On top of this, the Higher Court pointed out that it was not undue for the Court of first instance to have determined the damages at the amount of 3 million yuan in compensation of the inflicted economic losses and reasonable expenses after taking comprehensive account of the factors, such as the involved trademarks, the honor certificates awarded to Nuctech, and Taihong's use of the alleged mark and its brand name containing "威视(VISION)" in advertising and publicity. In conclusion, the Beijing Higher Court decided to have dismissed the appeal, and upheld the first-instance Ruling.

(Source: the China Intellectual Property News)

An Overview of 2020 Fourth Amendment to Chinese Patent Law

Ms. Wenwen DU, Patent Attorney, Panawell & Partners

On October 17, 2020, the Decision of the Standing Committee of National People's Congress on Amending the Patent Law of the People's Republic of China was adopted at the 22nd Meeting of the Standing Committee, and the amended Patent Law will enter into force as of June 1, 2021.

The current Patent Law, effective as of April 1, 1985 and amended three times respectively in 1992, 2000 and 2008, has been playing a vital role in encouraging and protecting invention-creations and in boosting innovation. The recently adopted Amendment is the fourth one to the Patent Law.

To date, China is in a critical period of changing its development mode, optimizing its economic structure, and transforming its growth dynamics. Strengthened protection of intellectual property and improved ability to make proprietary innovations are required for accelerating the economic growth and making China a stronger nation through proprietary innovation. In order to cope with the new situation, new requirements, new problems, and new challenges, China has amended, for the fourth time, the Patent Law in 2020, with amendments made to the Patent Law mainly in the following three aspects: 1) strengthening the protection of legitimate rights and interests of patentees, including increased amount of damages for patent infringement, better worked-out burden of proof, amplified pre-litigation preservation measures, enhanced administrative protection of patents, added principle of good faith, and newly-introduced provisions concerning the system compensating for the term of patents, and the procedure for early resolution of drug patent disputes; 2) boosting exploitation and utilization of patents, including further improved service invention system, incorporated open patent license system, and reinforced patent transfer services; and 3) improving the patent grant system, including the further improved design protection system, extended novelty grace period applicability, and improved patent evaluation report system. Following are an overview and analysis of the amendments to the Patent Law:

I. Infringement Costs Increased and Patentees' Legitimate Rights and Interests Protected

1. System for Punitive Damages for Serious Willful Infringement Incorporated

This involves Article 71 of the amended Patent Law: "In the case of willful infringement of the patent right, with serious circumstances, the damages may be determined at an amount between one and five times that as determined using the above method."

To date, what basically governs the damages award or determination in the civil law is the "fill in" doctrine. However, considering the difficulty in evidence adduction in the field of intellectual

Property and the innovation-encouraging mechanism, the "punitive damages" system has been incorporated in the amended Patent Law. Now, the "five times" as now adopted in China is the highest multiple globally, which indirectly demonstrates China's resolve to strengthen the protection of intellectual property, and to fight infringements.

2. Amount of Statutory Damages Increased

This involves Article 71 of the amended Patent Law, with the original amount of damages "between 10,000 yuan and less than 1 million yuan" changed into "more than 30,000 yuan and less than 5 million yuan".

Both the minimum and maximum of the awarded amounts of damages have been revised, which once again shows China's determination to increase the infringement costs and strengthen the protection. In particular, more severe punishment would be imposed on acts with legitimate sources of products difficult to prove or on acts of willful infringements.

3. Burden-of-Proof System Better Worked out to Address Difficulty in Evidence Adduction

This again involves Article 71 of the amended Patent Law: "In order to determine the amount of damages, the people's court may order the infringer to provide account books and information related to the infringement when the right holder has adduced evidence with due diligence and the account books and related information are mainly in the hands of the infringer; where the infringer refuses to provide or provides false accounting books, the people's court may determine the amount of damages with reference made to the claims by, and based on the evidence from, the right holder."

4. Term of Design Patent Extended

Article 42 of the amended Patent Law reads: The term of the patent right for design is changed into 15 years.

This amendment creates conditions for China to accede to the Hague Agreement on the International Registration of Industrial Designs, and meets the needs of innovators for filing international applications. China's accession to the Hague Agreement would make it possible for domestic applicants to file their design patent applications directly with the International Bureau of the World Intellectual Property Organization or in a specific form for the China National Intellectual Property Administration CNIPA to transfer them thereto. The applicants only need to file one application, which is equivalent to filing multiple applications in the designated member states at the same time. This will greatly simplifies the procedural requirements for one applicant to seek protection of his designs in multiple nations.

5. Patent Term Compensation System Introduced

This involves Article 42 of the amended Patent Law, with addition of this paragraph: "Where the invention patent is granted 4 years after the date of

filing for a patent for invention and 3 years after the date of request made for substantive examination, the Patent Administration Department under the State Council shall, at the request of the patentee, compensate for the term of the patent to offset the unreasonable delay caused in the patent grant procedure, unless the unreasonable delay was caused for reasons on the part of the applicant. In order to compensate for the time used for the regulatory review and approval of a new drug for marketing purposes, the Patent Administration Department under the State Council shall, at the request of the patentee, grant compensation for the term of the patent for the new drug-related invention that has been approved for marketing in China. The compensated term shall not exceed 5 years, and the entire term of the patent shall not exceed 14 years after the new drug is approved for marketing."

Since the term of a patent is calculated from the date of filing, especially for the invention patent, the prolonged time for examination indirectly shortens the term of the patent. For this reason, it is necessary to put in place a system to compensate for the patent term. In addition, the amendment also specifically provides for compensating for the term of drug patents. On the one hand, a drug is usually developed in prolonged time and at high cost, so it is highly dependent on the patent protection; and on the other, drugs are closely related to public health. As far as the general public are concerned, too long a term would delay their access to low-cost drugs. To strike a balance, the principles relating to the types of the compensable drugs, and the compensable time, and compensation upon request are specified in the amended provisions.

6. Procedure for Early Resolution of Drug Patent Disputes Added

This involves Article 76 of the amended Patent Law, with the first paragraph added, which reads: "Where, in the process of regulatory review and approval of a drug for marketing purposes, the drug marketing authorization applicant and the relevant patentee or interested party run into dispute over the patent right relating to the drug applied for registration, the relevant parties can sue in the people's court for a ruling on whether the drug-related technical solution applied for registration falls within the scope of protection of another person's drug patent. The drug regulator under the State Council may decide whether to suspend the review of the related drug for marketing in accordance with an effective ruling made by the people's court within the prescribed time limit." Also added to Article 76 are paragraphs 2 and 3.

Drugs, on the one hand, require patent protection, and, on the other, are required to go through the regulatory review and approval for marketing purposes under the varied standards. Examination of a drug for patenting purposes, for example, assesses its novelty, inventive step, etc., while regulatory review and approval of a drug for marketing purposes mainly scrutinizes its safety.

However, for example, for a generic drug, in theory, it is marketable upon approval by the drug regulator, but infringement risks are still likely. For this reason, the added paragraph is meant to solve disputes of the nature in advance, that is, to allow the drug to be judged as to whether it is infringing or not before it is put into production.

7. Administrative Patent Protection System Improved

This involves Article 68 of the amended Patent Law: "Anyone who counterfeits a patent shall, besides civilly liable under the law, be ordered by the patent enforcement agency to make corrections and the patent enforcement agency shall publicize the act, confiscate illicit income, and may impose a fine of less than five times the illicit income; where there is no illicit income or the illicit income is less than 50,000 yuan, a fine of less than 250,000 yuan may be imposed; and where a crime is constituted, criminal liabilities shall be imposed under the law." The paragraph added to Article 71 of the Patent Law is also relevant.

This amendment has increased the multiple of penalty for counterfeiting patent. At the same time, it is further specified that infringement cases fall within the jurisdiction of the patent administrative department within the intellectual property regime, and cases of counterfeiting patents of a joint law enforcement team, with the two types of cases different in nature handled by different authorities.

8. Principles concerning Good Faith and Right Abuse Prohibition Specified

This concerns Article 20 of the amended Patent Law: "Patents shall be applied for and the patent right exercised or enforced by following the principles of good faith. The patent right shall not be abused in jeopardy of the public interests or the legitimate rights and interests of others. Where abuse of the patent right to exclude or restrict competition constitutes a monopolistic act, it shall be dealt with under the Anti-Monopoly Law of the People's Republic of China."

Patent protection involves two stages: the patent application stage and patent enforcement stage. In the former, there sometimes arise acts of application for improper purposes and acts of filing applications by improper means, which not only wastes social resources, but also lowers the quality of patent applications in China. The amendments made along the line highlight that the principle of good faith should also be observed in the patent application stage with a view to prohibiting acts of improper application.

II. Patent Exploitation and Utilization Promoted and Patent Public Services Enhanced

1. Service Inventions-creations Improved and Employers' Service Invention-creation Disposal Right Clarified

This involves Article 6 of the amended Patent Law: "An employer can dispose of the right to apply for patent and the patent right for service invention-creations under the law to promote the exploitation

and utilization of related invention-creations. Article 15 of the Patent Law is also relevant here.

The current Patent Law does not clearly specify how employers should dispose of the patent right, but some employers are restricted by other laws, such as those concerning supervision of the state-owned assets. It is possible to deem the above amendment to be a reaffirmation, that is, the Patent Law further clarifies that employers can dispose of it under the law. The way to do so depends on particular employers under specific circumstances. Amendments made in this regard are meant to further stimulate inventors' enthusiasm to create and motivate them to innovate.

2. Open Patent License System Launched

Articles 50, 51 and 52 of the amended Patent Law are involved here. "Where a patentee voluntarily declares in writing to the Patent Administration Department under the State Council that he is willing to license any entity or individual to exploit his patent, and specifies the methods and standards of royalties payment, the Patent Administration Department under the State Council shall make an announcement for the open license. Where an open licensing statement is made for a utility model patent or design patent, the patent right evaluation report shall be provided. During the execution of an open license, the patentee's patent annuity shall be reduced or exempted accordingly."

Open license, as one important legal system, is designed to promote patent transfer and exploitation. The core function of the system is to encourage patentees to make their patents accessible to the society, linking supply with demand, promoting patent exploitation, and delivering the value of patents. Based on the national conditions in China and the mature international experience, the amendments have provided for the open license declaration, the procedural elements for such licenses to take effect, the procedures through which licensees can obtain open licenses, their rights and obligations, and the corresponding dispute resolution roadmap, and in this way the information asymmetry between the suppliers and the customers of patented technologies is to be addressed through government's public service provision, so that all entities and individuals have easy access to patent licenses at lower transaction costs and higher patent transfer efficiency. To date, the open license system (or known as the of-course license system) has been introduced and implemented in such developed countries as, the United Kingdom, France and Germany, and in some developing countries like Thailand, Brazil, and India.

3. Patent-related Public Services Enhanced

This involves Article 21 of the amended Patent Law: "The Patent Administration Department under the State Council shall enhance construction of public patent information service system, publishing patent information in a complete, accurate and

timely manner, providing the basic patent data, publishing patent gazettes on a regular basis, and promoting the dissemination and utilization of patent information". Article 48 of the amended Patent Law is also relevant here.

The above-mentioned amendments will make it possible for more nationwide attention to be attached to the relevant public and social service provisions.

III. Patent Grant System Amplified and Patent Examination Quality Improved

1. Partial Designs Protected

This involves paragraph 4 of Article 2 of the amended Patent Law, which provides that "the design refers to a new design of the overall or partial shape, pattern or their combination, and the combination of the color, shape, and pattern of a product, which is aesthetically pleasing and suitable for industrial applications".

This amendment will meet the needs of innovators, and address the limited protection of design as a whole. It also keeps in line with the trend of international developments in the intellectual property protection, and helps Chinese businesses "go international". To date, partial designs are protected in such major countries and regions as the United States, Japan, Europe, and the Republic of Korea.

2. Novelty Grace Period Granted under More Circumstances

To Article 24 of the amended Patent Law has been added the paragraph "where it is disclosed for the first time for public interest in case of national emergency or under extraordinary circumstances".

The amendment adds the circumstance of "the first disclosure for public interest in case of national emergency or under extraordinary circumstances" as a case of novelty-loss exception. The addition not only meets the practical needs of the ongoing COVID-19 pandemic fight, but also facilitates future application in other emergency or extraordinary situations.

3. Patent Evaluation Report System Improved

This involves Article 66 of the amended Patent Law. With more interested parties eligible for requesting evaluation reports on utility model and design patents, patentees, stakeholders or alleged infringers may also produce, on their own, the patent evaluation reports.

4. Design Patent Application Domestic Priority System Put in Place

This involves Article 29 of the amended Patent Law, under which the system of domestic priority for design patent applications has been put in place. It is clearly provided that where an applicant files a patent application relating to the same subject matter within 6 months from the date when he filed an application for a patent for design for the first time in China, the applicant may enjoy priority, thus reducing the application costs and giving design applicants an opportunity to further improve their

designs and adjust the scope of protection claimed.

5. Priority Texts Filing Procedure Optimized

This involves Article 30 of the amended Patent Law, under which the time limit for filing priority documents of patent applications for invention and utility model shall be changed from 3 months from the date of filing under the current Patent Law to 16 months from the earliest priority date, allowing applicants longer time to file their priority documents.

By the end of this year or early next year, the CNIPA will have subsequently released the Implementing Regulations of the Patent Law and the Patent Examination Guidelines adaptively revised, and issue the transitional measures worked out, under the amended Patent Law.

Author:

Ms. Wenwen DU

Ms. Du, graduated from Beijing University of Technology in 2016 with a master's degree in material forming and control engineering, joined Panawell in 2017, and has been engaging ever since in drafting and prosecuting Chinese and international patent applications, conducting patent search, and offering consultation in the field of mechanics.

How to Deal with Rejections on Trademark Applications Designating China under Madrid Agreement Made by Trademark Office Invoking Article 22 of Chinese Trademark Law?

In practice, when a foreign applicant designates China through the Madrid international trademark registration system, the Chinese Trademark Office often issues, by invoking Article 22 of the Chinese Trademark Law, a provisional rejection notification, rejecting or partially rejecting the application for its extended territorial protection in China on the ground that "some goods/services are not acceptable for trademark registration in China".

Such rejections are only applicable to goods/services that are explicitly prohibited under the Trademark Law and the relevant regulations in China. Goods like "slot machines, gambling machines", and services such as "retail, wholesale, sales, gambling, virtual currency, and postal services", are among the list.

Upon receipt of a provisional rejection notification, a foreign applicant can generally resort to the following two remedies: 1) applying for rejection review while filing, with the WIPO, a defined goods/service application (the MM6 form); or 2) abandoning the rejection review, and re-designating China after filing a defined goods/service application with the WIPO (but the applicant would, in this case, lose his application date advantage due to the later re-designation of China).

The defined goods/services filed by a foreign applicant with WIPO shall not exceed those listed in the application as originally filed, and any exceeding goods/services will not be accepted by the Trademark Office. As a case in point, the Trademark Office rejects the item of "retail", and the applicant narrows it down to "sales promotion for others". However, the Trademark Office would consider "retail" and "sales promotion" two different concepts, and "promoting sales for others" exceeding the scope of "retail" per se; hence, the Trademark Office would still notify that it is not a registrable service.

Congratulating Dr. Wenhui LI on Winning 2021 Baruch S. Blumberg Prize

On November 12, 2020, the Hepatitis B Foundation (based in Pennsylvania, the U.S.A.) announced Dr. Wenhui Li, a Chinese scholar, winner of the 2021 Baruch S. Blumberg Prize for discovering the receptor of hepatitis B virus invading liver cells in recognition of his outstanding contribution to promoting hepatitis B research and medical treatment.

The Baruch S. Blumberg Prize represents the highest honor awarded to individuals who have made significant contribution to the hepatitis B research and treatment. Also among the laureates of the Prize are Dr. Thomas Starzl, pioneer in the field of liver and organ transplantation and winner of the 2012 Lasker Prize for Clinical Medicine; Harvey Alter, laureate of the 2020 Nobel Prize in physiology or medicine for the discovery of hepatitis C virus; and Dr. Anna Lok, President of the American Liver Research Association in 2017.

Dr. Baruch Blumberg, winner of the 1976 Nobel Prize in physiology or medicine for his discovery of hepatitis B virus and co-founder of the Hepatitis B Foundation, passed away in 2011, and the Baruch Blumberg Institute, the Foundation's research institute, was named after him.

Dr. Wenhui Li is a senior researcher of the Beijing Institute of Biological Sciences and professor of Tsinghua Institute of Multidisciplinary Biomedical Research (NIBS/TIMBR). After receiving his Ph. D. from Peking Union Medical University in 2001, he was engaged in post doctoral research and worked as a lecturer at Harvard Medical School in Boston. In 2007, he joined the Beijing Institute of Biological Sciences, and began to focus his research on hepatitis B and hepatitis D virus infections, which has eventually led to his discovery that NTCP (sodium taurocholate cotransporter), a cholic acid receptor with rich expression in the liver, is the functional receptor of hepatitis B virus and hepatitis D virus.

We hereby congratulate Dr. Li on his winning the 2021 Baruch S. Blumberg Prize, the highest honor awarded by the Hepatitis B Foundation, and thank him for his outstanding contribution to promoting the development of hepatitis science and medicine.

Panawell & Partners LLC, long-time intellectual property legal service provider of the Beijing Institute of Biological Sciences and an agency entrusted with executing and filing Dr. Li's Chinese patent applications, are deeply honored to have the chance to work with him and provide him our legal service.

Back Cover: Exterior of office block where Panawell locates

PANAWELL & PARTNERS LLC
Addr：1002-1005, 10th Floor, China Life Tower
16 Chao Yang Men Wai Street, Chaoyang District
Beijing 100020, China
Tel：(86 10)85253778
Fax：(86 10)85253671
Code：100020
E-mail：mail@panawell.com
Website: www.panawell.com

Editor: Jane Wang
Lan Wang
Shute XU
Translator: Jane Wang
Yujing Zhang
Yazhi Zhao
Dan Jin
Layout: Shunshun Dong