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QUARTERLY

NEWSLETTER

PANAWELL INTELLECTUAL PROPERTY



At the beginning of 2021, the entire world and all industries were severely impacted and challenged by 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 2022 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 2022

1. New Year's Day, Jan. 1 to 3, 2022
2. Spring Festival, Jan. 31 to Feb. 6, 2022
3. Tomb-Sweeping Day, Apr. 3 to 5, 2022
4. Labor Day, Apr. 30 to May 4, 2022
5. Dragon Boat Festival, Jun. 3 to 5, 2022
6. Mid-Autumn Festival, Sep. 10 to 12, 2022
7. National Day, Oct. 1 to 7, 2022

Panawell & Partners LLC

December 2021



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.

04 INSIGHT

- China Issued the Guidelines for Building a Powerful Country with Intellectual Property Rights (2021-2035)
- CNIPA Revised Patent Pledge Registration Measures
- CNIPA Start Charging the Official Fees of PCT International Applications in CNY
- The Way of Issuing Chinese Trademark Registration Certificates Adjusted
- China Approved the Marrakesh Treaty

08 SOLUTION

- An Overview of the Amendments to Guidelines for Patent Examination (Draft for Comments) Relating to Partial Designs

12 CASE

- Can the Receipt Date of Patent Documents Be Regarded as the Publication Date of the Prior Art? What Is the Relationship Between Technical Effect and Combined Enlightenment in the Technical Solution of a Pharmaceutical Patent?

14 TIPS

- Can a negative patent evaluation report still be used in patent infringement litigation or administrative complaint?
- How to prevent disclosure or abuse of evidence involving trade secrets submitted in civil or administrative litigation?

China Issued the Guidelines for Building a Powerful Country with Intellectual Property Rights (2021-2035)

China has recently issued a 15-year plan on the development of intellectual property rights, entitled "Guidelines for Building a Powerful Country with Intellectual Property Rights (2021-2035)". The plan is a blueprint with detailed targets and measures for the country to embark on a journey to strengthen its intellectual property undertakings, clearly setting up new targets of China's IPR works on protection, application, services level and international cooperation.

According to the plan, the efforts to build a powerful country with IPR will achieve remarkable results by 2025, and China's IPR competitiveness will rank among the top in the world by 2035, with a completed IPR system, prosperous growth in IPR-driven innovation and a better social environment for an IPR culture, speeding up China's journey from an IP-importation country to innovation country, and from a quantity-focused IP system to quality-focused.

(Source: Xinhua News Agency)

CNIPA Revised Patent Pledge Registration Measures

In recent years, the work on patent pledge registration has been faced with new situations and new requirements in China. First, the central

government has made clear plan, requiring for "processing electronic pledge registration applications entirely online", "implementing the notification and commitment system in the examination and approval of trademark and patent pledge registration", and "improving the administration system for intellectual property pledge registration, and transfer and licensing filing". Second, the financial institutions and innovators have demanded streamlined procedures for, and improved provision of, patent pledge registration services. Third, the Procedures for the Registration of Pledge of Registered Trademark Exclusive Rights have been harmonized.

The CNIPA promulgated the revised Patent Pledge Registration Measures in Announcement No. 461, (hereinafter referred to as the Measures) on November 15, 2021, which came into effect on the day of promulgation. The former Measures (announced in Commissioner's Order No. 56) was procedurally repealed.

The Measures purport to provide enterprises and the public with more standardized, convenient, and efficient patent pledge registration services, promote patent pledge financing, boost transfer and exploitation of intellectual property rights to fully deliver the value of such rights. The CNIPA is responsible for the patent right pledge registration.

Main amendments to the Measures are as follows:

1. Promoting the committed pledge registration procedures. When going through the relevant

procedures for patent pledge registration, one can choose to use the "relevant letter of commitment signed by the party" to replace such proofs as the "identification certificate, change certificate and/or cancellation certificate"; and the CNIPA will enhance supervision, adopting measures to penalize those for their untrustworthiness and false commitment. (Articles 7, 13, 14 and 20 of the Measures)

2. Making more patent pledges registrable. First, the provision of the former Measures that a patent pending in the invalidation proceedings is not registrable has been changed into one that interested parties who still declare that they are willing to accept the risks and continue to go through their registration after being notified are allowed to register; second, under the new provisions of the Civil Code, registration is allowed where the pledge contract stipulates that the patent right belongs to the pledgee when the debt performance period expires when the pledgee is not paid; and third, to follow the mature practice, if the utility model for which pledge registration is requested is the same as an invention-creation filed for patenting as an invention on the same day, the interested party who still declares that he is willing to accept the risks and continue to go through his registration after being notified is allowed to register. (Article 11 of the Measures)

3. Shortening the time for registration-oriented examination. First, the examination time has been shortened from the former stipulated 7 working

days to 5 working days, and 2 working days for applications filed online (Article 10 of the Measures); and second, the examination time regarding pledge registration change and cancellation procedures has been clearly specified as the same as the preceding. (Articles 13 and 14 of the Measures).

4. Providing better registration-related services. First, the channel for registration has been broadened, making it clear that interested parties can do it online (Article 6 of the Measures); second, the procedures and requirements for the inspection or copying of the patent pledge registration documents have been explicated to facilitate interested parties to search them (Article 16 of the Measures); and third, where, within the patent pledge period, there occurs suspended patent ownership due to disputes over the patent, or preservation measures taken regarding the patent, the CNIPA should promptly notify the pledgee, giving him early warning of possible loss of the patent in time (Article 19 of the Measures).

(Source: official websites of CNIPA)

CNIPA Start Charging the Official Fees of PCT International Applications in CNY

According to the "Memorandum of Understanding on the Remittance of Patent Cooperation Treaty (PCT) Fees" signed between the CNIPA and WIPO,

since December 1, 2021, CNIPA has started to charge the international phase fees for PCT applications in CNY in accordance with the CNY standard published by WIPO, and the fee will no longer be converted to Swiss franc standard.

1. CNY Standard

Fee Standard of PCT International Applications (CNY)	
Filing Fees Charged on behalf of WIPO	
international application containing no more than 30 pages	9260
per page from the 31 st	100
e-filing reduction (PDF)	1390
e-filing reduction (XML)	2090
Handling Fee Charged on behalf of WIPO	1390

Every year, WIPO will publish the fee standard for the next year, and in principle, the CNY Standard will remain valid for one year. If the standard needs to be adjusted due to excessive exchange rate fluctuations, it will be announced separately.

2. Fees Applicable to the CNY Standard

The filing fees of PCT international applications filed with CNIPA on or after December 1, 2021, and the handling fee of international preliminary examination requests received on or after December 1, 2021.

(Source: official websites of CNIPA)

The Way of Issuing Chinese Trademark Registration Certificates Adjusted

On October 9, 2021, China National Intellectual Property Administration (CNIPA) issued Announcement No. 453 to adjust the current way of issuing trademark registration certificates.

1. As of January 1, 2022, trademark registration certificates generated from registration and other kinds of trademark applications will be issued in electronic form. For trademark applications submitted in paper form, "Notice of Obtaining a Trademark Registration Certificate" will be issued and the registrant can obtain an electronic trademark registration certificate by logging in <http://sbj.cnipa.gov.cn/> according to the specified website address and extraction code provided in the notice; for trademark applications submitted in electronic form, the registrant could log in the Trademark Online Service System to obtain an electronic trademark registration certificate.

2. A transitional period from October 15 to December 31, 2021 has been set. For trademark applications submitted in paper form, "Notice of Obtaining a Trademark Registration Certificate" will be issued and the registrant could obtain an electronic trademark registration certificate by logging in <http://sbj.cnipa.gov.cn/> according to the specified website address and extraction code provided in the notice and, at the same time, the paper trademark registration certificate also will

be issued; for trademark applications submitted in electronic form, the way of issuing trademark registration certificate remains unchanged for the time being.

(Source: official websites of CNIPA)

China Approved the Marrakesh Treaty

On October 23, 2021, the 31st session of the Standing Committee of the 13th China National Congress (NPC) adopted the Decision of the NPC Standing Committee on the Ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (hereinafter referred to as "the Treaty").

The Marrakesh Treaty is a historic treaty in the international copyright system. It is one of the treaties administered by the World Intellectual Property Organization, signed in Marrakech, Morocco on June 27, 2013, effective on September 30, 2016. According to data of WIPO, more than 80 WIPO members (covering nearly 110 countries and regions) have accessed to the Marrakesh Treaty. The treaty aims to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled (VIPs), to guarantee the equal rights of persons with print disabilities to enjoy works and access to education. It is the world's first and so far the only human rights treaty in the field of copyright.

China signed the treaty on June 28, 2013. In order to ratify the treaty, China has made great efforts to amend the copyright law. There was a certain gap between the previous Copyright Law, Regulations on Protection of Information Network Transmission Right and the requirements of the treaty, so relevant legislation must be adjusted. This is also one of the important reasons that China has not ratified the treaty for a long time after signing the treaty in 2013.

In November 2020, the draft amendment to China's Copyright Law was finally passed, which included adaptive amendments to the Marrakesh Treaty, and the amended Copyright Law was officially implemented on June 1, 2021. The revised Copyright Law stipulates: "providing published works to persons with print disabilities in a barrier-free way that they can perceive, without the permission of the copyright owner, and no payment to them, however, the author's name or title and the title of the work should be specified, and the normal use of the work must not be affected, and could not unreasonably impairs the legitimate rights and interests of copyright owners".

The ratification of the Treaty fully demonstrates China's human rights protection in the field of copyright, and provides a large and convenient accessible book resource for the print disabled persons.

(Source: official websites of National Copyright Administration)

An Overview of the Amendments to Guidelines for Patent Examination (Draft for Comments) Relating to Partial Designs

Ms. Yingming YUAN, Patent Attorney, Panawell & Partners

Since its creation in China in 1984, the Patent Law, going through three amendments though, has been taking overall product designs as the subject matter of design patent protection. Article 2, paragraph four, of the Patent Law as of 2008 stipulates that “designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application”. The Guidelines for Patent Examination as of 2010 also provides that a partial design of a product that cannot be divided or cannot be sold and used separately is not patentable (a case of the subject matter excluded from patentability as design patent). However, with the promulgation of the Patent Law amended in 2020, China has officially included partial designs into patentability, and partial designs have since become subject matter of protection under the Patent Law. At the same time, amendment to the Guidelines for Patent Examination is underway. On August 3, 2021, the Draft Amendments to the Guidelines for Patent Examination 2021 (draft for comments) was released. It is believed that the partial design patent system, to be put in place

soon, will further motivate innovations. Following is an overview of the part of amendments made in the draft for comments relating to partial designs.

1. Definition of Partial Design

The partial design shall refer to a new design of partial shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application. To seek patent protection of an indivisible part of a product, an application is to be filed in relation to the partial design as is the case with "a carved seatback", "an automobile tire tread" and etc.

Circumstances, however, are also specified where the partial design patent should not be granted.

(1) Anything that is not possible to form a relatively divisible independent part in the product or to form a partial design of a relatively complete design unit, for example, the contoured line of a cup handle, or an irregular part of a spectacle lens that is arbitrarily intercepted.

(2) Partial designs for which patent protection is sought are only designs of the pattern or combination of the pattern and color on the surface of a product, such as a pattern on the surface of a motorcycle.

2. Name of the Product Incorporating Partial Design

In applying for a partial design patent, the part to be patented and the overall product in which it is a

part should be indicated in the name of the product, as is the case with "a car door" and "a cellphone camera".

3. Pictures or Photographs of Partial Designs

Rule 27.2 of the proposed new Implementing Regulations of Patent Law (which has not come into effect yet) stipulates that when applying for a partial design patent, the applicant should submit a view of the whole product and indicate what to be patented in both dashed and solid lines or in any other way.

The view of the whole product should clearly show the product's partial design to be patented and its position and proportion within the product. If the part to be patented includes a three-dimensional shape, the view submitted should include a three-dimensional view that clearly shows the part.

The view to be included in the submitted views should clearly distinguish the part to be patented from the other parts. When the solid and dashed lines are used to indicate the content to be patented, the solid lines show the part to be patented, and the dashed lines the other parts. Other methods can also be used to indicate what to be patented, for example, a translucent layer of a single color is used to cover the parts that are not to be patented. When necessary, dotted lines should be used to indicate the dividing line between the part to be patented and the other parts of the partial design.

It needs be pointed out here that using hatching to

show the shape of the design is still not allowed, and the picture shall not have unnecessary lines or marks like center lines and size lines.

3. Brief Description of Partial Design

Article 64.2 of the Patent Law stipulates that the scope of protection of the design patent shall be based on the design of the product as shown in the pictures or photographs, and a brief description can be used to explain the design of the product shown in the pictures or photographs.

Under Rule 28 of the current Implementing Regulations of Patent Law, the brief description of a design shall indicate the title and use of the product incorporating the design and the essential feature of the design, and designate a drawing or photograph which best shows the essential feature of the design.

According to the Draft for comment of amended Patent Examination Guidelines, where a partial design patent is applied for, the brief description shall also meet the following requirements:

- (1) Where a partial design to be patented is indicated in a method other than the combination of solid and dashed lines, the part to be patented shall be specified in the brief description.
- (2) If dotted lines are used to indicate the dividing line between the part to be patented and the other parts, it shall be specified in the brief description if necessary.
- (3) When necessary, the use of the partial design to

be patented shall be specified and shall correspond to that indicated in the product name.

(4) The designated picture or photograph that best shows the main point of the design should contain the partial design to be patented.

4. Requirements on Divisional Applications Relating to Partial Designs

(1) If the parent application is the partial design of a product, it is not allowed to file a divisional application for the whole or any other partial design.

(2) If the parent application relates to the overall design of a product, it is not allowed to file a divisional application for any part of it. For example, if a patent application is filed for the design of a motorcycle, it is not allowed to file a divisional application for the design of a spare part or component of the motorcycle.

5. Requirements on Similar Designs

Under the current patent rules, an application for the design patent shall be limited to one design only, but it is allowable to file one application for two or more similar designs of one product.

According to the Draft for comment of amended Patent Examination Guidelines, it is allowable to file one application for two or more partial designs of the same product that are not connected if they are related in terms of function or design and deliver a specific visual effect. For example, the design of two temple bars of a pair of eyeglasses

and the design of the four corners on a cellphone.

Under normal circumstances, if overall observation shows that the other designs and basic design have the same or similar design features and the two differ in partial subtle changes, customary design of this type of product, repeated arrangement of design units, and regular changes of the partial design in the overall position and/or proportional relationship of the design, or only changes in color elements, the two are generally considered similar.

6. Applicants' Voluntary Amendment

For an applicant's voluntary amendment, the examiner should first check whether the amendment is filed within two months from the application date. For any amendment exceeding two months, if the amendment eliminates the defects in the original application document and renders the application patentable, the amendment will be acceptable. For unacceptable amendment, the examiner should notify the applicant that the amendment is deemed not filed. However, the following amendments are not considered to have eliminated the defects in the original application documents, and a Notification of Amendment Deemed Not to Have Filed shall be issued on the ground that the time limit for voluntary amendment has been two months overdue: (1) amending an overall design into a partial design; (2) amending a partial into an overall design; and (3) amending a partial design in the same overall product into another partial design.

7. Amending Defects Pointed out in OAs

Regarding amendments made to defects as pointed out in an Office Action, the examiner should examine whether the amendments exceed the scope shown in the original pictures or photographs and whether the amendments are made in direction to the defects pointed out in the OA. If the amendments filed by the applicant exceed the scope shown in the original pictures or photographs, the examiner should issue an OA to notify the applicant that the amendments are contrary to the provision of Article 33 of the Patent Law. If the applicant's statements or amendments still do not comply with the provision, the examiner may decide to reject the application.

Moreover, if the amendments comply with the provisions of Article 33 of the Patent Law, the defects in the original application documents are eliminated, and would render the application patentable, it is possible for the amendments to be deemed as those made to the defects as pointed out in the OA, and the application documents amended as such should be acceptable.

However, when the following circumstances occur, even if the amendments do not exceed the scope of original pictures or photographs, they shall not be regarded as amendments made to the defects as pointed out in the OA, and they are not acceptable:

- (1) amending an overall design into a partial design;
- (2) amending a partial design into an overall design;
- and (3) amending a partial design in the same overall product into another partial design.

With the development of the industry, product designs are becoming more subtle and refined, which makes it more and more difficult to innovate overall designs of mature products. Partial designs then have gradually become an important form of design innovation. For this reason, innovative designers have an increasingly strong demand for patent protection of their partial designs. Therefore, in response to the demands of the innovators, Article 2.4 of the newly amended Patent Law has clearly included partial designs of products into patentability. Starting from June 1, 2021, applicants are allowed to file design patent applications with the CNIPA to seek protection for the parts of their products. As the Implementing Regulations of Patent Law is now still under amendment, starting from June 1, applicants can temporarily file their partial design patent applications in paper or in electronic form offline. The CNIPA will examine the applications once the newly amended Implementing Regulations of Patent Law and the supporting Guidelines for Patent Examination come into effect.

Author:

Ms. Yingming YUAN

Ms. Yuan received her bachelor degree of engineering in 2010 and her master degree of engineering in 2013 from the China University of Mining and Technology. Ms. Yuan joined Panawell in 2013, specializing in patent search, drafting, prosecution, reexamination and counseling in the technical field of mechanics.

● Can the Receipt Date of Patent Documents Be Regarded as the Publication Date of the Prior Art?

● What Is the Relationship Between Technical Effect and Combined Enlightenment in the Technical Solution of a Pharmaceutical Patent?

[Cause of the Case]

Administrative dispute over the request for invalidation of an invention patent.

[Interested Parties]

Chia Tai Tianqing Pharmaceutical Group Co., Ltd. (plaintiff, invalidation requester)

China National Intellectual Property Administration (defendant)

Gilead Sciences Co., Ltd. (third party, patentee)



[Patent at Issue]

Patent No. 01813161.1, entitled "nucleotide phosphonate analog prodrugs and their screening and preparation methods".

[Basic Facts of the Case]

The administrative lawsuit was initiated by Chia Tai Tianqing Pharmaceutical Group Co., Ltd. (Tianqing) against the China National Intellectual Property

Administration (CNIPA) over an invention patent invalidation request, with Gilead Science Co., Ltd. (Gilead) as the third party. The plaintiff Tianqing filed a request with the defendant CNIPA to invalidate Gilead's invention patent No. 01813161.1, and after the defendant made the decision not to invalidate the patent, the plaintiff was dissatisfied with the decision, and filed a lawsuit in the Beijing Intellectual Property Court (BIPC) within the statutory time limit. After accepting and hearing the case, the BIPC ruled to have dismissed the plaintiff's claim, and upheld the decision of the defendant.

[The Case in Brief]

On December 3, 2019, the CNIPA made the Decision No. 42586 (i.e. the decision at issue) upon examination of the request filed by Tianqing for invalidation of Gilead's invention patent No. 01813161.1 entitled "nucleotide phosphonate analog prodrugs and the screening and preparation method" (this patent). In the decision, the CNIPA found the Tianqing's claim not tenable, and kept this patent valid.

Dissatisfied with the decision, the plaintiff Tianqing sued in the BIPC within the statutory time limit, claiming that the evidence provided by it constituted the prior art of this patent and that the claims of the patent lacked inventive step, arguing that the decision at issue was erroneous, and requesting the BIPC to revoke the decision and order the defendant to make a new invalidation decision. The CNIPA and Gilead argued that the

decision was made with clearly ascertained facts and application of the correct law, and requested BIPC to reject the plaintiff's claims under the law.

[Main Points of BIPC Ruling]

1) The receipt date of patent document cannot be naturally taken as the publication date of prior art.

In this case, the plaintiff took the statements made by the third party Gilead in response to the OA and its amendments made to the claims in the EP0719273A1 application procedure as parts of the evidence constituting the prior art of the patent at issue. Although this patent document was received by the European Patent Office (EPO) on March 22, 1999, and Article 128 (4) of the European Patent Convention stipulates: "After publication, the relevant application and the later European patent are available for consultation at request unless there are other applicable restrictive conditions stipulated in the Implementing Regulations". However, it cannot be determined, only under this provision, that the document is in a state of being available for public consultation on the date of receipt. In the litigation, the plaintiff submitted its related mails to the EPO, inquiring about the publication time of the document. As the mails showed, the EPO could not determine the specific publication time, as it used the expression, such as "at least not earlier than 2003" and "it is very likely to be released to the public before 2001". **Given the facts that the key to determining the prior art lies in the publication date of the technical solution and that there was**

no evidence proving the publication date of the document in the case, the plaintiff's claim of the document constituting the patent's prior art was not established; hence not supported by BIPC.

2) Relationship Between Technical Effect and Combined Enlightenment

The technical problem actually solved by Claim 1 of this patent relative to the closest prior art was to obtain an anti-HIV prodrug with enhanced antiviral activity, high plasma stability, and selective enrichment in target tissues in vivo. Although Tianqing advocated the use of two combination methods to comment on the inventive step of Claim 1, neither of the references relating to the two combination methods involved the selective enrichment effect in target tissues in vivo. As for the other two technical effects, although Evidence 3 mentioned antiviral activity and plasma stability effects, and Evidence 6 mentioned plasma stability effects, both were in vitro tests, not in vivo tests as covered by this patent, which showed that **the references did not give technical enlightenment on how to simultaneously had the three technical effects of "enhanced antiviral activity, high plasma stability, and selective enrichment in target tissues in vivo". Therefore, those skilled in the art had to work inventively to obtain the technical solution of Claim 1 on the basis of the references, and Claim 1 possessed inventive step, so did the other claims for the same reason. Accordingly, the BIPC ruled to have dismissed the plaintiff's claims.**

(Source: official website of BIPC)

Can a negative patent evaluation report still be used in patent infringement litigation or administrative complaint?

Yes, it can, because:

- 1) Under Article 66.2 of the current Chinese Patent Law, a patent evaluation report is only used as evidence for hearing and resolving patent infringement disputes by the court or the China National Intellectual Property Administration; it is not a necessary condition for filing a patent lawsuit or request;
- 2) Under the Guidelines for Patent Examination, the patent evaluation report is not an administrative decision; and
- 3) under Article 45 of the Patent Law, the validity of a patent is only determined by the CNIPA in the patent invalidation proceedings.

Therefore, a negative patent evaluation report is by no means a decision on the invalidation of a patent; hence, the court or the CNIPA has no legal basis in the process of resolving patent infringement disputes, nor can it directly reject a plaintiff's lawsuit or a requester's request, or suspend an infringement lawsuit or administrative procedure just because the patent evaluation report is concluded negatively. In practice, there are cases where patents are ultimately maintained valid in the invalidation proceedings while the patent evaluation

report is negative, or vice versa.

According to the relevant judicial interpretations, in an infringement lawsuit, a utility model or design patentee can provide a patent evaluation report voluntarily or do so in a timely manner as so required by the court, otherwise, one who unjustifiably fails to do so would bear the possible adverse consequences of lawsuit due to the court's suspending the lawsuit or ordering him to do so.

In addition, if a negative patent evaluation report is received, the patentee can request the CNIPA to make correction if certain conditions are met. The correction is justified by the presence of obvious errors in application of the law and in ascertainment of the facts on which the conclusion is based.

How to prevent disclosure or abuse of evidence involving trade secrets submitted in civil or administrative litigation?

Recently, we have received a client's complaint that a piece of evidence he provided to the court and the opposing party in a civil lawsuit including the price of its imported products was posted online by the opposing party, who hyped up the client for exuberant profits.

This issue involves trade secrets as price of imported products falls within the scope of trade secrets. It is known that trade secrets, part of

business information or technological information with commercial value, can be easily disclosed, used or abused by others, including competitors of the owner of the information.

In civil or administrative proceedings, evidence provided by a party to the court possibly involves his trade secrets, and the evidence may be disclosed, used or abused after the other party or other related persons obtain it, which would cause damages to the right holder of the trade secrets. Therefore, a party providing evidence involving trade secrets shall take reasonable legal precautions, e.g. requesting the court to take confidentiality measures, or seeking the court's consent to hide away or cover the trade secrets or confidential information that are not related to the lawsuit to protect its business secrets.

Article 21 of the Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets promulgated by the Supreme Court on September 10, 2020 stipulates that, for evidence and materials involving a party's or outsider's trade secrets, where the party or outsider applies in writing to the court for taking confidentiality measures, the court shall take the necessary confidentiality measures in such litigation activities as evidence preservation, exchange and cross-examination, entrusted appraisal, inquiries, and court hearings. Anyone who violates the requirements of the confidentiality measures by disclosing trade secrets without authorization or using them outside litigation activities or allowing

others to use the trade secrets accessed or obtained in litigation shall bear civil liabilities under the law. Where the circumstances provided for in Article 111 of the Civil Procedure Law are constituted, the court may take compulsory measures under the law. Where one's act constitutes a crime, he shall be held criminally liable.

Article 26 of the Several Provisions Concerning Evidence in Civil Litigation Involving Intellectual Property Rights promulgated by the Supreme Court on November 16, 2020 stipulates that if the evidence involves trade secret or other business information that needs to be kept confidential, the court shall require the relevant litigation participants, before they have access to the evidence, to sign a confidentiality agreement, make confidentiality commitment, or order them, with such legal instruments as court rulings, not to disclose, use or allow others to use the secret information that they came into contact with during the litigation in the case for any non-litigation purpose. The applying party restrictively defines the scope of persons having access to the evidence as mentioned in the preceding paragraph, and the court shall approve it if deeming necessary upon review.

According to these judicial interpretations and the Unfair Competition Law, beside prior precautions, duty of prudent attention and effective legal measures, the right holders of trade secrets or confidential information can and shall take legal measures against any violation of the above-mentioned laws and rules to protect their interests.

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