NEWSLETTER

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QUARTERLY

PANAWELL INTELLECTUAL PROPERTY

Cover: Interior of office block where Panawell locates

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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.

2020 Global Innovation Index released

The 2020 Global Innovation Index (GII) has been jointly released by the World Intellectual Property Organization, Cornell University, the INSEAD and the 2020 GII knowledge partners of the Confederation of Indian Industry, 3DEXPERIENCE Company Dassault Systèmes and the Confederation of National Industry of Brazil, with the following features: Covid-19 Pandemic's Expected Impact on Global Innovation; Annual Ranking Topped by Switzerland, Sweden, USA, UK and Netherlands; and China Ranked 14th again, Leading Middle-income Economies.

The COVID-19 pandemic is severely pressuring a long-building in worldwide innovation, likely hindering some innovation activities while catalyzing ingenuity elsewhere, notably in the health sector, according to the 2020 GII.

In its associated annual ranking of the world's economies on innovation capacity and output, the GII shows year-on-year stability at the top, but a gradual eastward shift in the locus of innovation as a group of Asian economies – notably China, India, the Philippines and Vietnam – have advanced considerably in the innovation ranking over the years.

The top ten are Switzerland, Sweden, United States, United Kingdom, Netherlands, Denmark, Finland, Singapore, Germany, and Republic of Korea, joining the top ten for the first time (Singapore ranked 8th). The top 10 is dominated by high-income countries. China ranks the 14th, and remains the only middle-income economy in the top 30.

The 2020 global innovation rankings: Switzerland (Number 1 in 2019), Sweden (2), United States of America (3), United Kingdom (5), Netherlands (4), Denmark (7), Finland (6), Singapore (8), Germany (9), Republic of Korea (11), Hong Kong (China) (13), France (16), Israel (10), China (14), Ireland (12), Japan (15), Canada (17), Luxembourg (18), Austria (21), and Norway (19).

In terms of the two core indicators of innovation input and output, China has performed considerably well this year as in the last year. China, making the 6th-ranked innovation output with its 26th-ranked innovation input, has achieved innovations comparable with such high-income economies as the Netherlands, United Kingdom, and United States.

China has established itself as an innovation leader, with high ranks in important metrics including patents, utility models, trademarks, industrial designs, and creative goods exports. At the same time, China's rankings in terms of R&D investment and market maturity have risen. In terms of global brand value indicators, China's ranking exceeded expectations, ranking 17th. Among the world's 5,000 leading brands, 408 are from China with a total value of US$16 trillion, and 9 of them are among the top 25 in the world.

It is worth noting that China's innovation quality in

middle-income economies has remained the first for eight consecutive years. In terms of quality of higher education institutions, China ranks third, with Tsinghua University, Peking University, and Fudan University among the top 50 universities in the world. In terms of innovation internationalization, China also showed an excellent performance: homogeneous patents account for 10% of China's innovation quality score, which is much higher than the average 4% of the middle-income economies. Among the world's top technology clusters, 17 are located in China. China is expected to continue to lead the emerging markets and developing economies to bridge the world's innovation divide.

(Source: official website of WIPO)

Academician Chen Wei's Team Granted Patent for Their Covid-19 Virus Vaccine

On August 11, the China National Intellectual Property Administration (CNIPA) notified the applicants, the Academy of Military Medical Sciences of the Academy of Military Sciences PLA China and CanSino Biologics Inc. of patenting the application No.202010193587.8 entitled "A Recombinant Novel Corona Virus Vaccine with Human Reproduction Defect Adenovirus as Vector" filed on March 18, 2020.

One of the inventors of this invention patent is Academician Chen Wei, a research fellow at the Military Medical Sciences Institute of the Academy of Military Sciences PLA China, who has recently been awarded the national honorary title of "People's Hero". When the pandemic hit, she received order, at the critical time, to go to Wuhan urgently to undertake scientific research, and infection prevention and control. The patented vaccine is one of the important achievements of her team. Just within a very short period of 20 days from January 26 when they went to Wuhan to carry on vaccine research and development, Chen Wei's team achieved phased results in their R&D, and filed the Chinese patent application on March 18.

Under the Measures for Administration regarding Patent Prioritized Examination, for a patent application that is of great significance to the national or public interest and requires prioritized examination, the applicant may request prioritized examination. On February 15 this year, the General Administration for National Market Supervision, the State Food and Drug Administration, and the CNIPA jointly issued the Ten Articles on Work and Production Resumption, which clearly provide that patent applications and trademark registration applications relating to prevention and treatment of novel coronary pneumonia (Covid-19 infections) shall be eligible for prioritized examination at request. It only took less than 5 months from receipt of the application to issuance of the patent grant notification for this vaccine to be patented.

(Source: official website of CNIPA)

CNIPA PPH Request Statistics

As of December 2019, the CNIPA has launched Patent Prosecution Highway (PPH) pilot project with 28 national or regional intellectual property offices. These countries and regions are the United States, Germany, Russia, Finland, Denmark, Mexico, Austria, Republic of Korea, Poland, Canada, Singapore, Portugal, Spain, United Kingdom, Sweden, Israel, Hungary, Egypt, Chile, Czech Republic, Eurasian Patent Office, Malaysia, Iceland, Argentina, Japan, the IP5 Offices (including the European Patent Office/Japan/Korea and the United States), Brazil, and Norway.

According to the PPH statistics provided by the CNIPA, by the end of December 2019, the CNIPA had received 37,265 PPH requests, including 27,448 regular PPH requests and 9,817 PCT-PPH requests.

Applicants used the Japan Patent Office's work results in 16,423 cases, the U.S. Patent and Trademark Office's work results in 12,461 cases, the European Patent Office's work results in 4,697 cases, the Korean Intellectual Property Office's work results in 2,416 cases, the German Patent and Trademark Office's work results in 360 cases, and the United Kingdom Intellectual Property Office's work results in 202 cases.

It took an average of 2.3 months from filing a PPH request with the CNIPA to issuing the first office action, and 10.3 months to granting a patent or to closing a case in rejection, with one OA issued on the average.

According to the PPH statistics provided by the various national patent offices, PPH requests for use of the work results of CNIPA were filed in 8,353 cases, of which 5,245 PPH requests were filed with the US Patent and Trademark Office, 805 with the European Patent Office, 767 with the Japan Patent Office, and 650 with the Korean Intellectual Property Office, 76 in Germany, and 94 in the United Kingdom.

(Source: official websites of CNIPA & JPO)

Draft Amendment to the Copyright Law Submitted for Second Review

On August 8, the Draft Amendments to the Copyright Law of the People's Republic of China (hereinafter referred to as the Draft Amendments) was submitted to the Standing Committee of the National People's Congress for the second review. The Draft Amendments have, responding to a number of hot issues in connection with the rule of law, made improvement in terms of the definition and classification of works, deleting the provisions prohibiting abuse of right that affects normal dissemination of works and concerning legal liabilities thereon, and adding provisions relevant to the protection of copyright in audiovisual works.

It is made known that the Draft Amendments have further amplified the definition and classification of works, with amendments made along the line to the

effect that "for the purpose of this Law, the term 'works' refers to the intellectual achievements in the fields of literature, art and science that are original and expressible in a given form".

In terms of the improved protection of audiovisual works, the Draft Amendments distinguish the ownership of copyright in audiovisual works on the basis of that submitted for the first review. For example, to the Draft Amendments for the second review have been added the provisions, on the basis of those relating to "cinematographic works and TV drama works", that for other audiovisual works, if they constitute joint works of co-authorship or service works, the ownership of copyright therein shall be determined under the relevant provisions of this Law; for those that do not constitute joint works or service works, the ownership of the copyright therein shall be agreed upon between the producer and the author, and the producer enjoys the copyright if there is no agreement or the agreement is not clear, but the author enjoys the right of authorship and the right to receive remuneration. A producer who uses an audiovisual work specified in this paragraph exceeding the scope of contract or industry practice shall obtain permission from the author.

In addition, in response to copyright abuse, the Draft Amendments harmonize with the laws of the Civil Code and Anti-Monopoly Law, with the expression "shall not abuse the right to affect the normal dissemination of the works" and provisions relating to the legal liabilities in the first review Draft Amendment deleted. Moreover, to better balance the protection of copyright and public interests, the Draft Amendments are intended to appropriately expand the scope of the statutory fair use of related works without the copyright owner's authorization and without remuneration paid thereto.

(Source : China Intellectual Property News)

Amendments to Patent Law to Enhance Design Protection and Stimulate "Micro-Innovation"

In the rapidly changing Internet age, "micro-innovation" is becoming a new fulcrum to instigate changes in the industry, but innovators face the difficulty in patent protection. The partial design patent system newly added to the Amendments to the Chinese Patent Law (which was passed on October 17, 2020 and will come into effect on June 1, 2021) is expected to become the "terminator" of all the preceding difficult problems.

Article 2 of the amended Patent Law stipulates: "The design means any new design of the whole or partial shape, pattern, or their combination or the combination of the color, shape, or pattern, of a product that creates an aesthetic feeling and is fit for industrial applications." The important point of the amendments lies in the addition of "whole or partial..." to the paragraph, which means that partial design innovations are to be included in the protection under the patent law.

Partial Design Protection Urgently Needed

In recent years, Chinese enterprises have gradually become more capable of making designs, which is increasingly vital in enhancing their product market competitiveness. Compared with subversive overall product designs, partial designs are gradually becoming an important way of product design creation.

What is a partial design? In plain terms, it is an innovative design for a certain part of a product, e.g. the mouth of a glass cup, the knob of a microwave oven. Partial design protection is an extension of the protection for a whole design, but not all parts of a product design are eligible for protection as partial designs.

As early as 1976, the United States established a partial design protection system, which was subsequently introduced in nations and regions, such as Japan, Republic of Korea, and the European Union. Addition of this system to the fourth amendments to the Patent Law in China precisely purports to meet the urgent needs of innovators for partial design protection.

Graphical user interface innovators urgently need a partial design protection system. In recent years, mobile Internet companies have been proactive in the field of GUI innovation. Under the current laws and regulations in China, a GUI must be bundled with some specific product, and protected with the product as a whole, thus excluding many partial innovations from patentability. The partial design protection system, if put in place, will undoubtedly greatly boost design innovation as the system not only satisfies the need for harmonization with the international standards, but also responds to the objective needs imposed by the current economic and technological developments. With the system, applicants would no longer have to file multiple design patent applications relating to different combinations of overall shape and partial designs of different products, which is beneficial to reduce the cost for developing a patent portfolio. More importantly, the system effectively addresses the problem caused by infringers plagiarizing others' partial design points, and helps curb infringements, thereby conducive to maintaining a sound market competition order and fostering a good innovation environment.

Protection Term Globally Harmonized

"The term of the design patent is fifteen years." Compared with the current patent law, the Amendments extend the term of protection for the design patent by 5 years. This move is considered to be part of the preparation to make China ready to accede the Hague Agreement Concerning the International Registration of Industrial Designs (the Hague Agreement). To date, the Hague Agreement, which has established a system for the international registration of industrial designs, stipulates that when the international registration has been renewed, the term of protection in the designated contracting parties shall be at least 15 years from the date of the international registration.

Extending the term is one of the measures to enhance the IP protection. As some designs with certain features usually have a long life cycle. For example, parts of automobiles, household appliances or some products for daily use with significant design features generally have a long product life. Only by giving right holders a reasonable term of protection for their designs, is it possible to better balance the interests of innovators and the public.

With the added partial design protection system and extended term of protection for the design patents, the relevant amended provisions of the Patent Law will increasingly improve China's design protection system, and help broaden the scope of design protection, reinforce the protection for design innovation, and allow innovators to persistently innovate without infringement concerns.

(Source : China Intellectual Property News)

Latest Development of FinFET Patent Infringement Lawsuit: Chinese Academy of Sciences v. Intel

Recently, the Reexamination and Invalidation Department (RID) of the Patent Office of CNIPA orally heard a case involving a request for invalidation of the invention patent No. 201110240931.5. The invalidation requester of the case is Intel China, and the patentee is the Institute of Microelectronics of the Chinese Academy of Sciences (IMECAS). The news has drawn widespread attention in the industry as the patent infringement case involves a claim made by IMECAS for damages amounting to 200 million yuan from Intel.

200 Million yuan Claimed and Intel Repeatedly Filed Invalidation Requests in Vain

FinFET, called Fin Field-Effect Transistor in Chinese, is widely used to manufacture integrated circuits. The patent involved was entitled "semiconductor device structure, method for manufacturing the same, and method for manufacturing Fin" and filed by IMECAS on August 22, 2011.

In February 2018, IMECAS sued Intel China, Dell China, and Beijing JD Century Information Technology Co., Ltd. in the Beijing Higher Court as it found that the Intel's Core series processors had infringed the patent right, requesting Intel to desist from the infringement, pay 200 million yuan in compensation of its damages, and bear the litigation expenses, while requesting the Court to issue a sales injunction. Currently, the case is under further trial.

Intel has filed multiple requests for invalidation of the patent in China and U. S.

In March 2018, Intel filed a request for invalidation of the patent involved with the Patent Reexamination Board (PRB) of the former State Intellectual Property Office. On January 31, 2019, PRB issued a Decision, dismissing Intel's request

and keeping the patent involved valid. In July 2020, Intel once again filed a request for invalidation of the patent with RID, which has orally heard the invalidation request.

Regarding the US patent counterpart to the patent involved, Intel twice filed invalidation requests with the US Patent and Trademark Office (USPTO) respectively in September 2018 and March 2019, and both requests were rejected. Intel refused to accept the results, and again in April 2019 and November 2019, it requested the USPTO for reexamination and petitioned its Precedent Opinion Panel (POP) to challenge the USPTO's review decision. In January 2020, the USPTO rejected Intel's reexamination request filed in April 2019, and in June 2020, the US Patent Trial and Appeal Board (PTAB) rejected Intel's request for reexamination.

Regarding Intel's request for invalidation, the USPTO made its decision on the US patent counterpart, which is of relevance. However, even counterpart patents are often varied in scope of granted protection in different countries, so are the main trial authorities; hence it is impossible to assume that the results of the Chinese and American invalidation procedures must be consistent. After China's invalidation decision was made, both parties to the litigation should comprehensively analyze the case and litigation objectives, including the invalidation decision, the possibility to win non-infringement defenses, etc. Settlement is still possible between the two parties.

Will the two parties litigate in the U. S.? The trend of patent litigation globalization is evident, Intel should have considered this when it initiated the invalidation proceedings in the United States. While potentially large amount of damages would be awarded there, preparations are complicated, and expenses high, patentees would usually make careful analysis and take precautions before litigating.

With rich patent portfolio, IMECAS Instituted Multiple Lawsuits

In the field of FinFET, IMECAS had a relatively rich patent portfolio. The FinFET field patent survey conducted in 2015 by LexInnova, a foreign patent consulting company, showed that IMECAS was ranked 11th in terms of patent filings in the field, and evaluated as the first in terms of quality thereof. In the field of integrated circuits, the data of the IMECAS Integrated Circuit Leading Process Research and Development Center showed that the Center had a total of 1475 invention patent filings in China and overseas (including 389 foreign invention patent applications filed), of which 932 had been patented (including 333 foreign granted invention patents). These patents covered all the main technical fields of integrated circuit manufacturing technologies, such as FinFET, high-k metal gate (HKMG), and source-drain technologies, to mention just a few.

The preceding case is by no means the first patent litigation instituted by IMECAS in the field of integrated circuit.

In October 2019, because Lenovo Beijing and Beijing Jiayun Huitong Technology Development Co., Ltd. used the third-generation Intel Core microprocessor in their manufactured and marketed products that infringed its patent rights, IMECAS sued them in the Beijing Intellectual Property Court.

Also in October 2019, due to alleged patent infringement, IMECAS sued Intel and Beijing Digital China Co., Ltd. in the Beijing Intellectual Property Court, requesting the court to order the defendants to desist from the infringement, pay for its damages, and prohibit the sale of the allegedly infringing products.

(Source : China Intellectual Property News)

Decision on Amending the Patent Law of China

The 22nd Meeting of the Standing Committee of the Thirteenth National People's Congress decided to have amended the Patent Law of China as follows:

1. The fourth paragraph of Article 2 is amended, which reads: "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."

2. The first paragraph of Article 6 is amended, which reads: "An invention-creation that is made to perform the tasks assigned by one's employer or is mainly completed by using the material and technical conditions of the employer is a service invention-creation. The right to apply for a patent for the service invention-creation shall be owned by the employer, and after the application is approved, the employer is the patentee. The employer can dispose of the right to apply for patents and the patent rights for service inventions-creations in accordance with the law to promote the exploitation and utilization of related inventions-creations."

3. Article 14 is changed into Article 49.

4. Article 16 is changed into Article 15, with a paragraph added as the second paragraph thereof: "The nation encourages employers granted patent rights to implement property right incentives, offering equity, options, dividends, etc., to enable inventors or designers to reasonably share the benefits of innovations."

5. An article is added as Article 20: "Patents shall be applied for and the patent rights exercised by following the principles of good faith. The patent rights shall not be abused in jeopardy of the public interest or the legitimate rights and interests of others. Where abuse of the patent rights 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."

6. Deletion is made of "and its Patent Reexamination Board" in paragraph 1, Article 21.

Paragraph 2 of Article 21 is amended, and reads: "The Patent Administration Department of the State Council shall strengthen the construction of a patent information public service system, publish patent information in a complete, accurate and timely manner, provide basic patent data, publish patent gazettes on a regular basis, and promote the dissemination and utilization of patent information."

7. An item is added to Article 24 as the first item: "(1) Where it is disclosed for the first time for the purpose of public interest when a state of emergency or an extraordinary situation occurs in the nation."

8. The fifth item of the first paragraph of Article 25 is amended, and reads: "(5) Nuclear transformation methods and substances obtained by nuclear transformation methods".

9. The second paragraph of Article 29 is amended, and reads: "Where an applicant files a patent application relating to the same subject matter with the Patent Administration Department of State Council within twelve months from the date when he filed an application for patent for an invention or a utility model for the first time in China, or within six months from the date when he filed an application for a patent for a design for the first time in China, the applicant may enjoy priority."

10. Article 30 is amended, and reads: Where an applicant claims priority for a patent for invention or utility model, he shall make a written statement at the time of application, and a copy of the patent application filed for the first time within 16 months from the date when the first application was filed. Where an applicant claims priority for a design patent, he shall make a written statement at the time of application, and a copy of the patent application filed for the first within three months. Where an applicant fails to make a written statement or fails to submit a copy of the patent application within the time limit, it shall be deemed that the priority has not been claimed."

11. Article 41 is amended, and reads: "A patent applicant who is dissatisfied with a decision made by the Patent Administration Department of the State Council on rejection of an application may request the Patent Administration Department of the State Council for reexamination within three months from the date of receipt of the decision. After reexamination, the Patent Administration of the State Council shall make a reexamination decision, and notify the patent applicant.

Where a patent applicant who is dissatisfied with the reexamination decision made by the Patent Administration Department of the State Council may bring lawsuit in the People's Court within three months from the date of receipt of the notification."

12. Article 42 is amended, and reads: "The term of invention patent is 20 years, the term of utility model patent is 10 years, and the term of design patent is 15 years, all counted from the date of filing .

Where the invention patent is granted four years after the date of filing for a patent for invention and three years after the date of the request made for substantive examination, the Patent Administration Department of the State Council shall, at the request of the patentee, compensate the term of the patent for the unreasonable delay caused in the examination process, unless the unreasonable delay was caused 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 putting it on the market, the Patent Administration Department of the State Council shall, at the request of the patentee, grant compensation for the term of the patent for the new drug-related invention patents that have been approved for marketing in China. The compensated term shall not exceed five years, and the total term of the patent shall not exceed 14 years after the new drug is approved for marketing."

13. "The Patent Reexamination Board" in Articles 45 and 46 is amended into "the Patent Administration Department of the State Council".

14. The title of Chapter 6 is revised into "Special License for Patent Exploitation".

15. An article is added as Article 48: "The Patent Administration Department of the State Council and the patent administrative department of the local governments shall, in conjunction with the relevant departments at the same level, take measures to strengthen the public service related to patent, and promote the exploitation and use of patents."

16. An article is added as Article 50: "Where the patentee voluntarily declares in writing to the Patent Administration Department of State Council that he is willing to license any entity or individual to exploit his patent, and clarifies the methods and standards for payment of the license fees, the Patent Administration Department of State Council shall make an announcement and deliver open licensing. Where an open licensing statement is made for a utility model or design patent, a patent right evaluation report shall be provided.

Where a patentee withdraws an open license statement, the withdrawal shall be submitted in writing, and announced by the Patent Administration Department of State Council. The open license statement withdrawn by way of announcement shall not affect the validity of any open licenses granted earlier."

17. An article is added as Article 51: "Any entity or individual that wishes to exploit an open-licensed patent shall notify the patentee in writing, and obtains the patent exploitation license after paying the license fees according to the announced licensing fee payment methods and standards.

During the exploitation period of an open license, the patentee's patent annuity will be reduced or exempted accordingly.

The patentee who delivers an open licensing may grant a general license after negotiating with the

licensee on the license fees, but shall not grant a exclusive license for the patent."

18. An article is added as Article 52: "Where parties have disputes over the exploitation of an open license, the parties shall resolve them through negotiation; and where they are unwilling to negotiate or negotiation fails, they may request the Patent Administration Department of State Council for mediation, or bring lawsuit in the Court."

19. Article 61 is changed into Article 66, and the second paragraph thereof is amended, and reads: "Where a patent infringement dispute involves a utility model patent or a design patent, the court or the patent administration department may request the patentee or interested party to produce a patent evaluation report issued by the Patent Administration Department of State Council after search, analysis and evaluation of the relevant utility model or design as evidence for the trial or treatment of the patent infringement dispute; the patentee, interested party or alleged infringer may also take the initiative to produce a patent evaluation report."

20. Article 63 is changed into Article 68, and amended, and reads: "Anyone who counterfeits a patent shall, in addition to bearing the civil liabilities under the law, be ordered by the patent enforcement agency to make corrections and the patent enforcement agency shall publicize the act, confiscate the illegal income, and may impose a fine of less than five times the illegal income; where there is no illegal income or the illegal 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."

21. Article 64 is changed into Article 69, and reads: "The agency responsible for patent enforcement shall, based on the evidence it has obtained, investigate and deal with alleged patent counterfeiting, and have the authority to take the following measures: (1) inquiring the relevant parties and investigating the circumstances related to the alleged illegal act; (2) conducting on-site inspections of the venues where the parties allegedly committed illegal acts; (3) consulting, and making copies of, contracts, invoices, account books and other relevant materials related to the alleged illegal acts; (4) inspecting products related to alleged illegal acts; and (5) sealing up or seizing products that evidence proves that they are of counterfeited patents.

When the patent administrative agency handles a patent infringement dispute at the request of the patentee or an interested party, it may take the measures listed in items (1), (2), and (4) of the preceding paragraph.

When the agency responsible for patent enforcement and the patent administrative agency exercise the functions and powers stipulated in the preceding two paragraphs under the law, the interested parties shall provide assistance and cooperation, and shall not refuse or obstruct."

22. An article is added as Article 70: "The Patent Administration Department of State Council may handle patent infringement disputes that have significant national impact at the request of patentees or interested parties.

A patent administrative agency of a local government shall handle patent infringement disputes at the request of the patentees or interested parties, and may combine and handle cases of infringement of the same patent within the administrative area; for cases of cross-regional infringement of the same patent, one may request the patent administrative agency of the local government at a higher level to deal with the matter."

23. Article 65 is change into Article 71, which reads: "The amount of damages for patent infringement shall be determined according to the actual losses suffered by the right holder because of the infringement or the income made by the infringer because of the infringement; if the losses suffered by the right holder or the income obtained by the infringer is difficult to determine, it shall be reasonably determined with reference made to the multiple of the patent license fees. For any willful infringement of the patent right, with serious circumstances, the amount of damages more than one time and less than five times be awarded using the above methods.

Where it is difficult to determine the losses suffered by the right holder, the income obtained by the infringer, and the patent license fee, the court may determine to award more than 30,000 yuan and less than 5 million yuan based on factors, such as the type of patent right, the nature of the infringement, and the circumstances of the case.

The amount of damages should also include the reasonable expenses paid by the right holder to stop the infringement.

In order to determine the amount of damages, the court may order the infringer to provide account books and information related to the infringement when the right holder has tried his best to provide evidence and the account books and information related to the infringement are mainly in the hands of the infringer; where the infringer refuses to provide or provides false accounting books and materials, the court may refer to the claims of the right holder and the evidence provided to determine the amount of damages."

24. Article 66 is changed into Article 72: "Where a patentee or interested party has evidence to prove that another person is performing or is about to perform an act that infringes the patent right and hinders the realization of the right, which, if not stopped in a timely manner, will cause irreparable damage to his or its legitimate rights, he may apply to the court for property preservation, for order to take certain actions or to prohibit certain actions before the lawsuit."

25. Article 67 is changed to Article 73: "In order to stop infringement, the patentee or interested party may request the court for evidence preservation

before lawsuit in case the evidence is likely to be lost or is difficult to obtain in the future."

26. Article 68 is changed into Article 74: "The statute of limitations for patent infringement is three years, counted from the date the patentee or interested party knows or has reason to know about the infringement and the infringer.

Where a patent is used with the appropriate royalties not paid after the publication of the invention patent application and before the grant of patent right, the statute of limitations for the patentee to request the payment of royalties is three years, counted from the date when the patentee knows or has reason to know that others use the invention. However, where the patentee knew or had reason to know before the date of grant of the patent right, it shall be calculated from the date of grant of the patent right."

27. An article is added as Article 76: "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 have disputes over the patent right relating to the drug applied for registration, the relevant parties can bring lawsuit in the court, requesting for a ruling to be made on whether the drug-related technical solution applied for registration falls within the scope of protection of another person's drug patent right. The drug regulatory authority under the State Council may decide whether to suspend the review of the related drug for marketing in accordance with the effective judgment of the court within the prescribed time limit.

Applicants for drug marketing authorization and relevant patentees or interested parties may also request the Patent Administration Department of State Council for administrative rulings to be made on disputes over patent rights relating to the drug applied for registration. The drug regulatory department of State Council shall, in conjunction with the Patent Administration Department of State Council, formulate specific measures for the connection of patent dispute resolution in the phase of drug marketing license approval and drug marketing license application, and submit them to the State Council for approval for implementation."

28. Article 72 is deleted.

29. Article 73 is changed into Article79, and Article 74 into Article 80, with "administration penalty" changed into "penalty".

This Decision will come into effect as of June 1 2021.

The Patent Law of the People's Republic of China shall be adoptively revised, with the order of articles rearranged, and re-promulgated in accordance with this Decision.

Hot Issues in Draft Copyright Law Amendments

Ms. Teresa Xijun ZHANG, Attorney-at-Law, Panawell & Partners

China's legislature successively released the Amendments to the Copyright Law (Draft for First Review) on April 30, 2020 and those for the second review (Draft for Second Review) on August 17, 2020. This author will be examining the hot issues in the deliberations or review of the two Draft Amendments.

I. Definition of Works

Current Law	Article 3 For the purpose of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are created in the following forms: (1) Written works; ... (9) Other works as provided for in the laws and administrative regulations.
Draft for First Review	Article 3 For the purpose of this Law, the term "works" refers to the intellectual achievements in the fields of literature, art and science ***that are original and reproducible in a tangible form***, including: (1) Written works; ... (9) Other works as provided for in the laws and administrative regulations.
Draft for Second Review	Article 3 For the purpose of this Law, the term "works" refers to the intellectual achievements in the fields of literature, art, and science ***that are original and expressible in a given form***, including: (1) Written works; ... (9) ***Other intellectual achievements of the characteristics as required of works***.

The definition of the works in the Draft for First Review is exactly consistent with the current Implementation Regulations of the Copyright Law. In the Draft for Second Review, the definition of the works was revised as "the term 'works' refers to the intellectual achievements in the fields of literature, art, and science that are original and expressible in a tangible form". With the rapid development of network technology, the form of expression of works has already exceeded the traditional "reproduction in a tangible form". The Draft for Second Review revised it into "expressible in a given form", which not only eliminates the ambiguity of the phrase "reproducible in a tangible form", but also caters to the development of the times.

In the Draft for Second Review, revision has also been made of the embracive paragraph "other works as provided for in the laws and administrative regulations" into "other intellectual achievements of the characteristics as required of works", which means that it is possible to allow the courts to determine new types of works according to specific circumstances in trial of a case. While this will leave room for emerging types of works in the future, and avoid making law provisions lagging behind the times, lack of uniform standards will lead to uncertainty in the types of works and unlimitedly expanded scope of works.

II. Abuse of Rights

To Article 4 of the Draft for First Review was added the clause that copyright proprietors and copyright

-related right holders, exercising their copyright or copyright-related rights "shall not abuse the right to affect normal dissemination of works", and to Article 50 the clause on "administrative liabilities for abuse of copyright". However, the two clauses were deleted from the Draft for Second Review.

After the Draft for First Review was released, the newly added clause prohibiting abuse of rights has drawn widespread attention. Most experts and scholars argued that the design of the "prohibition of abuse of rights" clause is unjustifiable, and suggested deleting them for two reasons: 1) cases of copyright abuse by copyright proprietors are rare in China, and the current copyright law has put in place the fair use, statutory license, and compulsory license systems that have restricted the possibility for copyright proprietors to abuse of their rights; and 2) due to the difficulty in determining incident of abuse and for lack of uniform standards, in practice, the provision prohibiting the abuse of rights is likely to be abused, and will hinder the normal exercise of the rights by copyright proprietors.

III. Types and Ownership of Audiovisual Works

Current Law	Article 3 For the purpose of this Law, the term "works" ... (6) Cinematographic works and works created by a method similar to those used to produce films; …
Draft for First Review	Article 3 For the purpose of this Law, the term "works"... (6) ***Audiovisual works***; …
Draft for Second Review	Article 3 For the purpose of this Law, the term "works" ... (6) ***Cinematographic works, TV drama works, and other audiovisual works***; …

Current Law	Article 15 The copyright in cinematographic works and works created by a method similar to those used to produce films shall be enjoyed by producers, but play writers, directors, photographers, lyricists, composers and the like shall have the right of authorship and the right to receive remuneration under contract signed with producers.
Draft for First Review	Article 15 The copyright in the ***audiovisual works*** shall be enjoyed by the audiovisual work ***producers who organize the production and assume responsibility***, but the play writers, directors, photographers, lyricists, composers and the like shall have the right of authorship and the right to receive remuneration under contract signed with audiovisual work producers.
Draft for Second Review	Article 17 The copyright in the ***cinematographic works and TV drama works in the audiovisual works*** shall be enjoyed by the ***producers who organize the production and assume the responsibility***, but the play writer, director, photographer, lyricist, composer and the like shall have the right of authorship and the right to receive remuneration under contract signed with producers. ***If audiovisual works other than those specified in the preceding paragraph constitute joint works or service works, the ownership of the copyright shall be determined under the relevant provisions of this Law; if they do not constitute joint works or service works, the ownership of copyright shall be agreed upon between the producer and author, and if there is no agreement or the agreement is not clear , it is enjoyed by the producer, but the author shall have the right of authorship and the right to receive remuneration. Producers who use the audiovisual works specified in this paragraph beyond the scope of contract or industry practice shall obtain permission from the author.***

In the **Draft** for First Review, the wording "cinematographic works and works created by a method similar to those used to produce films" were revised into "audiovisual works," and their copyrights were enjoyed by the producers of audiovisual works who organize production and assumed responsibility. This revision makes many short video and online video producers believe that their works will receive the same protection as cinematographic works.

In the Draft for Second Review, the wording "audiovisual works" was revised into "cinematographic works, TV drama works, and other audiovisual works," and the ownership of rights was distinguished:

1. The copyright of the cinematographic works and TV drama works are enjoyed by producers who organize production and assume responsibility; and

2. For other audiovisual works, it is necessary to find out whether they are joint works or service works before ownership of the rights is determined.

The audiovisual works are divided into cinematographic works, TV drama works and other audiovisual works, and producers of audiovisual works are required to first identify the type of their works when determining the ownership of copyright. However, types of video nowadays are quite varied, and hard to classify. For example, are micro-movies are cinematographic works? Are TV documentaries and variety shows other audiovisual works? Or can they be classified as TV drama works? For this reason, the concepts of these three audiovisual works need to be clearly defined by the supporting administrative regulations, otherwise it will render application of the law difficult.

IV. Joint Works

Current Law	Article 13 Where a work is created jointly by two or more co-authors, the copyright in the work shall be enjoyed by these co-authors. Co-authorship may not be claimed by anyone who has not participated in the creation of the work. If a work of join authorship can be separated into independent parts and exploited separately, each co-author shall be entitled to independent copyright in the parts that he has created, provided that the exercise of such copyright shall not prejudice the copyright in the join work as a whole.
Implementing Rules of the Current Copyright Law	Rule 9 Where a join work ***cannot be used separately***, its copyright shall be jointly enjoyed by all the co-authors, and exercised by consensus; where consensus cannot be reached, and there is no justified reason, no party shall prevent any other party from exercising other rights other than ***assignment***, but the income shall be reasonably distributed to all co-authors.
Drafts for First and Second Review	Article 13/14 For a work jointly created by two or more co-authors, the copyright shall be jointly enjoyed by the co-authors, and exercised by consensus; where consensus cannot be reached, and there is no justified reason, no party shall prevent any other party from

Drafts for First and Second Review	exercising other rights other than ***assignment, exclusive license and pledge***, but the income shall be reasonably distributed to all co-authors. Those who have not participated in the creation shall not be co-authors. If a work of join authorship can be separated into independent parts and exploited separately, each co-author shall be entitled to independent copyright in the parts that he has created, provided that the exercise of the copyright shall not prejudice the copyright in the join work as a whole.

The current copyright law only stipulates how to exercise copyright in joint works that can be used separately. Rule 9 of the Implementing Rules of Current Copyright Law specifies how to exercise the copyright in indivisible joint works. The draft amendments follow the provisions of the Implementing Rules, with variations made. First, the prerequisite of "indivisible use" has been deleted, that is, for joint works, it is no longer necessary to distinguish whether they are divisible or not, and the rights therein shall be exercised under this Article. Second, beside assignment, exclusive license and pledge have been added to the list of restricted acts since, in copyright transactions, exclusive license and pledge will also significantly impact the rights of the right holders. It is necessary to reach an agreement, and any party shall not exercise the rights alone.

V. Special Service Works

Both the Drafts for First and Second Review deem service works created by staff of newspapers, periodicals, news agencies, radio stations, and television stations as special service works, that is, the copyrights, except the right of authorship, in the works created by staff of the above-mentioned employers as the work they do to complete the their work assignment are owned by their employers, without requiring that the works are created mainly by using the material and technical conditions of legal or non-legal entities.

VI. Damages System

In current judicial practice, most intellectual property rights holders, copyright holders included, find it difficult to provide sufficient evidence to prove their actual losses or the infringers' illicit income in the court proceedings. As a result, court cases of the kind finally end with the statutory damages awarded, which are only 500,000 yuan at the maximum under the current copyright law. The low-cost infringement and high-cost enforcement have forced many right holders to give up enforcement, and endure damage caused because of infringement.

To the now amended Copyright Law has been added a method for "determining the amount of damages with reference made to the royalties where the right holders' actual damage or infringers' illicit income is difficult to calculate"; and the provision that for willful infringement of copyright or copyright-related right with serious circumstances, damages more than one time and less than five times the amount of the statutory

damages are possibly determined with the preceding method. This clarifies the principle of punitive damages; and increases the maximum statutory compensation from 500,000 yuan to 5 million yuan, thus, greatly enhancing the copyright protection, and help address the problem of low-cost infringement and high-right enforcement.

In addition, to harmonize with the trademark law now in force and in response to the "difficulty in producing evidence", the amended Copyright Law has added the provision that "where a right holder has fulfilled the necessary burden of proof and the infringement-related account books and materials are mainly in the hands of the infringer, the court, to determine the amount of damages, may order the infringer to provide the account books and materials related to the infringement; where the infringer does not provide or provide false account books, materials, etc., the court may determine the amount of damages with reference made to the claims made and the evidence provided by the right holders". This provision, making it less difficult and costly for right holders to adduce evidence, will better protect the legitimate rights and interests of right holders.

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Ms. Zhang received her degree of bachelor of laws and degree of Bachelor of Arts in English from Minzu University of China in 2010. She joined Panawell as legal assistant in March 2011. Ms. Zhang specializes in counseling, computer and copyright registration, and domain name registration.

Does CNIPA Accept Electronic Signature?

Electronic signature means the data in electronic form contained in and attached to a data message to be used for identifying the identity of the signatory and for showing that the signatory recognizes what is in the message. In China Electronic Signature Law was launched in 2004 and revised in April 2019, with the aim to standardize acts of electronic signature in civil activities.

However, at present China National Intellectual Property Administration typically will not accept the documents with electronic signature, because the examiners of CNIPA can hardly check and determine the authenticity of electronic signature.

That is to say, in respect of the formality documents like power of attorney and assignment to be filed with CNIPA, the party concerned shall execute them by signing by hand or affixing his official seal. A scanned copy of these executed documents would be acceptable to the CNIPA.

Panawell Set up Domestic Business Department

With a view to further broadening the domestic market, responding to domestic clients' rapidly growing patent filings, meeting their demands for better patent quality, and providing domestic clients with a full-range services covering patent application exploration, strategic arrangement, drafting, filing, patent grants and subsequent enforcement, Panawell has decided to set up the Domestic Business Department headed by partner Mr. Bo LI within the original corporate structural framework to provide better customer-tailored execution services to our domestic clients.

Mr. Li, graduated from Shenyang Pharmaceutical University in 1999 with a bachelor's degree in microbial pharmacy, from the same University with a master's degree in medicinal chemistry in 2002, from the China University of Political Sciences and Law with a master's degree in law in 2010, worked as an examiner for the State Intellectual Property Office from August 2002 to July 2007. From Sept. 2005 to Oct. 2006, he concurrently served as a juror of the Intellectual Property Tribunal of Beijing No. 1 Intermediate Court. He has been working for Panawell since August 2007, and is now a partner of the Firm.

Mr. Li is mainly engaged in drafting patent applications, writing OA replies, analyzing infringement in reexamination and invalidation cases, administrative litigation, infringement lawsuits, making patent strategy, and providing consultation services in the fields of medicine, biology, chemistry, chemical engineering and materials. From his long and diverse practices, he has acuminated extensive experience in substantive examination of a large number of invention patent applications, and in prosecution in many reexamination and invalidation cases. On top of this, he has participated as a juror in the trial of cases of intellectual property disputes in administrative and civil lawsuits involving patent, trademark, copyright, and unfair competition. Working as a patent attorney, he has executed a large number of domestic and foreign patent applications, and represented clients in many patent invalidation cases, administrative and infringement lawsuits. More importantly, he is richly experienced both in theory and practice in patent strategy formulation and consultation.

Back Cover: Exterior of office block where Panawell locates

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