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.

Panawell Will Participate in 2023 AIPPI Conference in Istanbul

The 2023 Conference of the International Association for the Protection of Intellectual Property (AIPPI) will be held in Istanbul from October 22 to 25, 2023. Panawell will send its partners Mr. William Wenquan YANG and Mr. Eric Bo LI to attend the conference. They will also meet participating clients, and, after the conference, go to visit our clients in German and Switzerland.

CNIPA Released Guidelines for Deferred Examination of Invention Patent Applications

The China National Intellectual Property Administration (CNIPA) has released the Guidelines for Deferred Examination of Invention Patent Applications, which elaborate the benefits of deferred examination, no official fee to be charged the timing to request deferred examination, how long the examination can be deferred, the way to file requests for it, and other matters requiring attention.

(Source: official website of CNIPA)

CNIPA Released Typical Cases of Abnormal Patent Application

To follow China's 14th Five-Year Plan for Protection and Use of Intellectual Property and to promote high-quality development of IP undertakings, the CNIPA has severely cracked down on abnormal patent applications and agency behaviors, especially on acts of fabricating and plagiarizing patent applications, imposed administrative penalties on multiple patent agencies that acted for filing abnormal patent applications in violation of the regulations, and included them in a list of serious violations and lack of credibility in market supervision and administration.

To consolidate the work results, warn actors of abnormal patent applications, and enhance improvement of the quality of patent applications, some typical cases found in the process of cracking down on abnormal patent application have been publicized. These typical cases fall into three categories: 1) patent agencies filing plagiarized or fabricated patent applications, 2) patent agencies using made-up address and contact information when filing patent applications; and 3) organizing fabrication of patent applications for illegal trading.

(Source: official website of CNIPA)

Provisions on Prohibiting Abuse of Intellectual Property Rights to Eliminate and Restrict Competition Released

To implement the amended Anti-Monopoly Law and effectively prevent and stop abuse of intellectual property rights to eliminate and restrict competition, China's State General Administration

for Market Supervision and Administration (SGAMSA) has amended the Provisions on Prohibiting Abuse of Intellectual Property Rights to Eliminate and Restrict Competition, which went into force on August 1, 2023. The Provisions have reinforced the rules of the anti-monopoly system in the field of intellectual property, enhanced the rationality, relevance and effectiveness of the system, harmonized with the related anti-monopoly guidelines, and further refined and improved the specific provisions. The amended Provisions consist of 33 articles, of which 1 article is retained, 18 amended, and 14 added, mainly featuring the following three aspects: 1) strengthening anti-monopoly supervision and intellectual property protection; 2) maintaining fair competition and boosting innovation and development; and 3) balancing the development interests of IP right holders and users.

(Source: official website of SGAMSA)

Supreme Court Ruled to Support Compensation to Siemens CNY 100 Million

Recently, China's Supreme Court has ruled in the case of trademark infringement and unfair competition dispute between the appellant the Ningbo Qishuai Electric Co., Ltd. (Qishuai) and the appellees Siemens AG (Siemens) and Siemens (China) Co., Ltd. (Siemens China), with the appeal dismissed and the original first-instance ruling upheld.

The first-instance ruling in the case ordered Qishuai to immediately cease and desist from the infringement on the exclusive right to use the trademark involved in the case and unfair competition, that is, Qishuai was to stop using the name "Shanghai Siemens Electric Appliances Co., Ltd." on the washing machines it made and marketed, product packaging, product brochures, contract documents, and website pages; Qishuai and others pay Siemens and Siemens China CNY 100 million in compensation of their damages and CNY 163,000 for their reasonable expenses.

In 2012, Qishuai obtained the right in the registered SIMBMC trademark, with approval to use the same in respect of goods, such as washing machines and other electrical appliances. As was shown, the trademark examiner did not determine that SIMBMC was similar to the widely known Siemens' SIEMENS trademark. However, in the process of marketing and product promotion, Qishuai not only used the SIMBMC trademark, but also used the words of "Shanghai Siemens Electric Co., Ltd.", which was claimed by Qishuai as its corporate name registered in Hong Kong, an act which had made many consumers mistakenly think that "SIMBMC and Siemens are one and the same". In addition, Qishuai also claimed that "German Siemens only makes drum machines, and Shanghai-based Siemens specializes in wave turbines", which further increased the price and sales of SIMBMC wave washing machines.

In 2017, Siemens China and Siemens filed a lawsuit

against Qishuai on the grounds of trademark infringement and unfair competition. Upon hearing the case, the court found that the first two letters and the first syllable of SIMBMC and SIEMENS were the same, and when consumers saw SIMBMC used together with the name "Shanghai Siemens Electric Co., Ltd.", it was easy for them to mistakenly believe that SIMBMC was a trademark of Siemens, thus causing damage to Siemens' trademark rights, constituting trademark infringement, and held Qishuai liable to pay Siemens and Siemens China CNY 100 million in compensation of their damages and CNY 163,000 for their reasonable expenses.

In 2018, Qishuai stopped selling SIMBMC wave washing machines nationwide, and destroyed all booth light boxes and materials related to SIMBMC, but filed an appeal out of dissatisfaction with the damages of CNY 100 million awarded by the court.

In July 2023, the Supreme Court ruled to have dismissed the appeal and upheld the original ruling. Qishuai and others were still required to pay Siemens CNY 100 million for the damages, and CNY 16,3000 for the reasonable expenses.

(Source: the IP Finance and Baidu News)

Statistics of Patent and Trademark Filings in China in 2022

According to the CNIPA's 2022 Annual Report, the major data of patent filings, patent grants, valid patents, trademark filings, trademark registrations, and valid trademark registrations in China in 2022 are tabulated as follows:

Patent Filings in 2022

Region of Applicant	Invention	Utility Model	Design	Total
China Mainland	1452433	2939585	775418	5167436
Hong Kong	1076	701	1153	2930
Macau	155	66	19	240
Taiwan	10941	3787	1073	15801
Overseas	154663	6514	17055	178232
Japan	45259	1464	3471	50194
United States	43090	1575	4835	49500
Korea	18262	1035	2021	21318
Germany	15218	647	1573	17438
France	4969	334	690	5993
Switzerland	4491	143	689	5323
Netherlands	3224	208	317	3749
United Kingdom	2779	81	513	3373
Sweden	2670	83	313	3066
Italy	1844	146	612	2602
Singapore	1382	164	228	1774
Israel	1281	36	77	1394
Denmark	1158	21	178	1357
Canada	1084	45	111	1240
Austria	996	34	41	1071
Finland	906	41	93	1040
Australia	651	43	298	992
Belgium	787	31	76	894
Spain	480	22	164	666
Ireland	496	8	27	531
Cayman Islands	404	33	63	500
Barbados	301	13	63	377
India	317	13	12	342
Luxembourg	232	6	83	321
New Zealand	226	31	64	321

Patent Grants in 2022

Region of Patentee	Invention	Utility Model	Design	Total
China Mainland	688664	2790739	708051	4187454
Hong Kong	711	802	892	2405
Macau	45	61	21	127
Taiwan	6171	4447	599	11217
Overseas	102756	8106	11344	122206
Japan	33301	2043	2219	37563
United States	25497	1892	2183	29572
Germany	11248	926	1241	13415
Korea	10464	1046	1474	12984
France	3348	359	685	4392
Switzerland	2755	188	683	3626
Netherlands	2097	219	237	2553
Sweden	1943	125	209	2277
United Kingdom	1655	121	295	2071
Italy	1333	196	512	2041
Cayman Islands	1822	13	47	1882
Singapore	631	195	164	990
Denmark	637	42	173	852
Austria	711	54	68	833
Finland	668	80	70	818
Canada	642	60	70	772
Australia	406	86	229	721
Israel	564	48	65	677
Belgium	534	50	50	634
Ireland	356	18	19	393
Spain	230	25	118	373
Norway	240	13	39	292
India	179	12	23	214
Luxembourg	153	6	37	196
New Zealand	111	27	38	176

Valid Chinese Patents at the End of 2022

Region of Patentee	Invention	Utility Model	Design	Total
China Mainland	3279847	10745581	2693564	16718992
Hong Kong	6161	4698	6956	17815
Macau	246	292	309	847
Taiwan	65199	30598	7241	103038
Overseas	860735	54092	123442	1038269
Japan	304564	16880	28311	349755
United States	207299	11990	27433	246722
Germany	90967	5914	12739	109620
Korea	76785	5461	15963	98209
France	28481	2208	5489	36178
Switzerland	23017	1592	5628	30237
Netherlands	20111	914	2460	23485
Sweden	14207	566	2475	17248
United Kingdom	12610	791	3817	17218
Italy	11028	978	4354	16360
Cayman Islands	11236	568	1824	13628
Singapore	5916	2027	1115	9058
Finland	7064	430	748	8242
Canada	6477	399	788	7664
Denmark	5854	263	1212	7329
Austria	5968	272	491	6731
Australia	3096	445	1589	5130
Belgium	4202	211	470	4883
Israel	3585	225	525	4335
Ireland	2650	141	224	3015
Spain	1823	149	880	2852
Luxembourg	1532	70	411	2013
Norway	1473	56	200	1729
British Virgin Islands	742	233	429	1404
India	1071	78	188	1337

Trademark Filings, Registrations in 2022, and Valid Trademark Registrations at the End of 2022

(Source: official website of CNIPA)

Region of Applicant	Filings	Registrations	Valid Registrations
China Mainland	7213533	5896190	39636373
Hong Kong	79068	95456	812605
Macau	1551	1267	9813
Taiwan	9855	8785	183308
Overseas	211954	175472	2029812
United States	51288	43124	438403
Japan	24426	22138	268065
Germany	16387	12400	191453
United Kingdom	17583	15291	145578
Korea	14783	12776	135300
France	10109	7677	116242
Italy	6854	5806	88101
Switzerland	7904	6318	82311
Australia	6473	4903	52422
Singapore	6536	6781	42684
Netherlands	3598	3016	39962
British Virgin Islands	2268	2393	36483
Cayman Islands	2261	1595	31007
Canada	3721	2987	28574
Spain	2570	1957	25964
Sweden	2959	2432	23821
Russia	2635	1634	21234
Denmark	2383	1631	18997
Austria	1292	1137	15053
Finland	1290	1180	15025
Thailand	1349	1172	14479
Belgium	1435	1120	14435
New Zealand	1496	1219	13863
Malaysia	1451	1293	13762
Turkey	953	658	8509
Luxembourg	643	355	8434
Poland	841	697	7050
Ireland	768	707	6825
Norway	851	670	6402
Israel	894	656	5814

Differences in Protection of Patent and Trade Secret

Ms. Cynthia Yahui CHANG, Trademark Attorney, Panawell & Partners

In the process of production and operation, an innovative technology owned by an enterprise is its core competitiveness, distinguishing it from other enterprises. The protections afforded to this innovative technology by laws around the world, China included, are mainly patents and trade secrets, which respectively correspond to the Patent Law, and the Trade Secret Protection Law or Anti-Unfair Competition Law.

A patent is a monopoly property right publicized, examined and granted by a special state authority or agency. Under the Chinese law, the subject matters under the patent protection include inventions, utility models and designs, which refer to new technical solutions developed in relation to products and processes, technical solutions with practical utility for the shape, structure or their combination of products, and new designs with both aesthetic and industrial applications of product designs.

Trade secrets, including business secrets and technical secrets (the following discussion will be focusing on technical secrets, also known as the "know-how"). Technical secrets include technology-related structures, raw materials, formulas, samples, models or styles, propagation materials of new plant varieties, processes, methods or their steps, algorithms, data, computer programs and their related documents, which are not known to the public and have commercial value after the right holder has taken corresponding measures to keep them confidential.

Patents are accessible to the public. To obtain patent protection, the applicant is required to file a patent application and disclose the technological information he claims. When a patent application passes the preliminary examination and is published by the special authority, anyone can access the claims, description and drawings of the patent application to get to understand the technical content therein.

Technical secrets are kept secret. The most important thing for technical information to be recognized as a technical secret is the fact that the right holder has taken measures to keep it confidential so that the technical information would not be accessible in or from any public channel.

Patents are exclusive. The right holder has the exclusive or monopoly rights over its patented technology within a certain period of time and country/region, and no other person is allowed to obtain a patent for the same or similar technology, or exploit the right holder's patented technology without his permission, unless the other person has used it before the right holder files his patent application and continues to use it within the same scope.

Technical secrets are non-proprietary. For a technical secret, the same technical information is

also accessible to, or obtainable by, others through legal means, such as independent research and development, or reverse engineering to dissect and analyze the right holder's products obtained from the market or other legal channels, and infer the technical information contained in the products. If another person obtains the same or similar technical information as the right holder in the above way, rather than obtaining the technical information from the right holder by improper means, such as theft, coercion or inducements, the trade secrets of the right holder would not be considered to be infringed, and the other party may jointly use the same or similar technology or technical information with the right holder.

The above distinguishing characteristics determine the differences in the protection of the patent and trade secret.

I. Difference in Scope of Protection

Patentable technical information must meet the explicit law requirements, including provisions requiring inventions and utility models to possess novelty, inventive step and industrial applicability. Designs are not existing designs, are clearly different from existing designs or combinations of existing design features, and are not subject matter that are not patentable under the laws and regulations. Only technologies that are originally developed by the right holder and significantly different from the prior arts/designs are patentable, while it is possible for any technical information designed or developed by the right holder in the course of production and operation, having commercial value, with measures taken to keep it confidential to be his trade secret.

Trade secrets do not require novelty and inventive step other than the practical and economic value of the protected technical information. In other words, it is possible for any technical information to be protected as a trade secret, even if it is not patentable for lack of sufficient inventiveness.

II. Difference in Ways to Seek Protection

To patent a technology requires drafting and filing an application, going through examination and getting grant and registration before the patent authority, which, in China, may take about half a year for a utility model/design patent or about 3 to 5 years for an invention patent. Trade secret protection, on the other hand, does not require application or examination, and a trade secret is protected as such once developed or designed.

III. Difference in Term of Protection

The term of a patent varies from country to country depending on their respective law provisions. In China, after a patent is granted, the term of the invention patent is 20 years, the term of utility model 10 years, and that of the design 15 years, but the right holder needs to pay the annual fee to maintain the protection of the patent, otherwise the patent right will be terminated. In addition, territorially, Chinese patents can only be protected within China, and the right holder must also seek the patent right in other countries/regions to obtain

protection there.

So long as the technical information is kept confidential, it is possible to be always protected as a trade secret, and the right holder does not need to deliberately seek a right for it in a region to claim that some infringer there has infringed his trade secret.

IV. Difference in Burden of Proof in Enforcement

In the event of infringement, the patentee only needs to provide the patent certificate issued by the patent authority, supplemented by the proof of payment of the patent annuity (and a positive patent evaluation report for utility model or design patent) to prove the existence and validity of the patent right and obtain protection relief. For a trade secret, the right holder needs to provide a large amount of evidence to prove that the technical information involved was designed or developed, legally owned, and kept confidential by him, and his burden of proof is much higher than that of the patentee. In practice, the right holder is required to make appraisal and provide appraisal report to determine that the technological information he claims is a technical secret and show its scope of protection.

V. Difference in Constitution of Crime and Criminal Liability

First of all, the Criminal Law mainly punishes acts of counterfeiting patents and trade secret infringement with serious circumstances, as well as the acts of theft, espionage, buying or illegally trade secrets for foreign entities.

In China, the crime of counterfeiting a patent refers to acts of illegal business operation with an amount of more than CNY 200,000 or an amount of illegal income of more than CNY 100,000, causing direct economic loss of more than CNY 500,000 to the patentee, or acts of counterfeiting other people's two or more patents with an illegal business amount of more than CNY 100,000 or an amount of illegal income of more than CNY 50,000. It is a serious act, and the criminal liabilities under the Chinese Criminal Law is fixed-term imprisonment of not more than three years or criminal detention, and a fine, or a fine alone. If an organization commits a crime, in addition to the criminal punishment imposed on the person in charge and other persons directly responsible, the organization will also be fined.

The crime of infringement of a trade secret refers to acts causing the amount of loss to the right holder of trade secrets, or the amount of illegal income due to infringement of trade secrets up to more than CNY 300,000, or acts directly causing the right holder of trade secrets to go bankrupt or close up his business due to major business difficulties, with serious circumstances, and the criminal liabilities shall be fixed-term imprisonment of not more than three years, and a fine, or a fine alone. Where the amount of loss caused to the right holder of trade secrets or the amount of unlawful income due to infringement of trade secrets is more than CNY 2.5 million, it will be deemed to

have caused particularly serious consequences, and the law provides for a maximum sentence of 10 years' imprisonment and a fine. If an organization commits a crime, in addition to the criminal punishment imposed on the person in charge and other persons directly responsible, the organization will also be fined.

Patents and trade secrets have their own characteristics and special uses, trade secrets have wider scope of protection, while patents have more specified scope of protection. In practice, the right holder may first adopt strict confidentiality measures to keep and separately put his key technologies that he will use for a long time, that is critical to the competitiveness of his products, and that are not easy for others to imitate or derive through reverse engineering. The right holder may also make additional confidentiality-related agreements or clauses when signing contracts with employees or business partners that have access to such technical secrets, and impose certain non-compete restrictions on the departure of important technical personnel to prevent disclosure of the technical secrets. Second, the right holder may apply for patents for his original and breakthrough technologies, so as to make a full use of the advantages of the patents. After a patentee is granted a patent, he may use or license others to use his patented technology to seek economic benefits and competitive advantages.

Author:

Ms. Cynthia Yahui CHANG

Ms. Chang received her LL.B. Degree from Southwestern University of Political Science and Law in 2020, received LL.M. from Boston University School of Law in 2022. Ms. Chang joined Panawell in 2023, and focused on trademark registration and IP litigation, customs recordals, IP infringement online complaints and investigations.

Beijing Intellectual Property Court Released 10 Typical Cases of Patent Examination and Grant

On May 30, 2023, the Beijing Intellectual Property Court (BIPC) released 10 typical cases of patent examination and grant, and the following are the first five cases.

Case 1: Theracos Sub's Supplementary Experimental Data Case

Case Ref.: (2018) Jing 73 Administrative First Instance No. 2626

The technical effects of technical solutions in the field of pharmaceuticals are often not visually confirmable, and may need to rely on experimental data for verification, so submission of supplementary or additional experimental data has always been a matter of great concern in the trial of such cases. As to how to determine the acceptable scope of supplementary experimental data, the ruling rendered in the case held that whether the experimental data supplemented were acceptable, or whether the technical effect as stated in the description was only an assertion, depended on whether the technical effect was technical contribution made by the applicant before the patent application date, and whether it was possible for the public to identify the effect when it was informed of the invention. The experimental data supplemented by the applicant was finally accepted in the case, which is of guiding significance to fully protecting the legal rights and interests of the original pharmaceutical enterprises and greatly stimulating the enthusiasm of the pharmaceutical industry in making innovations.

Case 2: The First GUI Design Invalidation Case in China

Case Ref.: (2017) Jing 73 Administrative First Instance No. 9397

The graphical user interface (GUI) refers to the user interface of computer operating environment displayed graphically, and a user can achieve information interaction and operation control with the computer software with the help of GUI. Where the underlying technology is relatively mature, how to improve user interaction mode and user operation experience has become a new innovation and growth point. This case, which is groundbreaking, is the first case of the kind in China to apply the substantive provisions of paragraph two of Article 23 of the Patent Law to a GUI design. The ruling represents an active exploration of the specific application of the existing design provisions to GUI, a new type of subject matter under the design protection, and will serve as a reference standard for courts to hear cases of the kind in the future.

Case 3: Monsanto's Biological Sequence Patent Reexamination Case

Case Refs.: (2017) Jing 73 Administrative First Instance No. 2601 & (2020) SPC IP-related Administrative Final Instance No. 172

Biotechnology is one of the most rapidly developing high-techs in recent years. For biotechnology companies, new gene or protein sequences are their core products, and the potential support of biological sequence patents is a matter of widespread concern in the industry. Claim 1 of this case involves both "homologous limitation" and "sequence components + function" qualifications. With the objective analysis made of the scope of protection of the claims, the ruling comprehensively considered the technical background in the relevant field, the records of specific embodiments in the description and other evidence in the case, and finally determined that the experimental data in the description were insufficient to verify the technical effect claimed. This case has guiding significance for judges to hear such cases and for the industry to draft relevant claims.

Case 4: Flame Retardant Patent Reexamination Case

Case Refs.: (2016) Jing 73 Administrative First Instance No. 6698 & (2020) SPC IP-related Administrative Final No. 97

The Guidelines for Patent Examination revised in 2006 changed the criterion for assessing the novelty of a compound from "mentioning + possible to manufacture → destroying novelty" (2001) into "mentioning → destroying novelty, except for not obtainable access" (from 2006 to the present). The change in the above rules directly leads to a change in the burden of proof as far as the compound patent applicants are concerned. It is undoubtedly extremely difficult for them to prove negative facts, and the burden of proof placed on them should not be too demanding. At the same time, however, the standard of proof should still be within a reasonable range, that is, take the knowledge and ability of those skilled in the art as the basic criteria, together with the prior art. This case has clarified the point, holding that the applicant should not inflexibly focus on the raw materials and methods mentioned in the cited prior art, and the scope of proof should cover the prior art and raw materials that are possible to be used by those skilled in the art within the scope of reasonable knowledge. In this case, the specific defects pointed out in the applicant's submitted evidence are of guiding significance for clarifying the parties' burden of proof under the relevant circumstances.

Case 5: Ligagliptin Crystalline Form Patent Invalidation Case

Case Ref.: (2022) Jing 73 Administrative First Instance No. 12232

As an essential part of pharmaceutical patent portfolio, crystal form patents are of great importance to both original research and generic drug companies. For this reason, the number of crystal form patent applications and disputes has shown a significant upward trend in recent years, and the relevant rules for patent examination and grant have also attracted widespread attention in the industry. This case involved the issue of novelty

determination of patents relating to crystal forms of known compounds. The ruling concluded that if the contents in the description of the patent were confirmation of the fact that existed before the filing date of the patent, because the fact was available to the relevant sector of the public before the filing date of the patent, the fact should be taken into account even if it was presented in the description, unless the fact was proved by the patentee to be erroneously presented. The issues of novelty determination and allocation of the burden of proof involved in the case are of great guiding significance for the order and scope of information disclosure of related patents within the corporate patent portfolio.

To Be Continued ...

(Source: official website of BIPC)

Panawell's 2023 Company Trip to Tianjin

On the final days of September, Tianjin's autumn air is crisp, and the clear blue sky and the Haihe River passing through the metropolitan area are intertwined. We embarked on a well-prepared trip to Tianjin at the afternoon of September 22nd, to go on a trip to feel the romance of Tianjin's autumn.

Upon arriving in Tianjin in the afternoon, we went to a typical crosstalk teahouse in Xiaoliyuan in the old city area. Tianjin's teahouse crosstalk is known as the purest of the art. For not only the actors on the stage have good entertaining skills, the audience is also a group of cheering and supporting comedians. Tianjin people's innate humor has produced batches of fine crosstalk masters. At the teahouse, we were so overwhelmed by the artistic charm of the crosstalk comedians' skill to be unconsciously integrated into it, enjoying the interaction of laughter aroused by their performance, with instant revelation of the memories of generations of Tianjin carried on by the art and the profound cultural imprint. At this point, our fatigue from day's work and long journey to the city was suddenly dispersed.

After dinner, we boarded a cruise ship to the Haihe River, the mother river of Tianjin, which had witnessed the long history of the city's developments. With the sparkling light stirring up by the cruise ship, everyone enjoyed the night scene of the streamer, with lights on both sides of the river brightly shining and the atmosphere tranquilizing. Moving along, we seemed to be witnessing the constant changes on both sides of the River.

Early the next morning, many cycled to Tianjin's famous Five Avenues, which, as the saying goes, hold half of the city's history. Along the Avenues stand more than 2,000 buildings of famous foreign classic architectural style built in the twenties and thirties of the last century, including more than 200

former residences of modern and contemporary celebrities. The cluster of buildings, forming the most complete Western-style building complex in China, is known as the unique "Museum of Architecture of All Nations". Riding along the street, we could not only feel the imprint left by history, but also experience the architectural beauty of these small western-style buildings. Autumn layered the green of summer, and sycamore and ginkgo began to compete to show the colors of early autumn. The separated dopamine shops, bookstores and cafes were relaxing and refreshing.

In the afternoon, we continued to visit the Jixian Great Cave located on the outskirts of Tianjin. The Great Karst Cave, remnant of the Yanshan Mountains, was formed about 1.2 billion years ago along the middle and upper Proterozoic strata, with the cave stone widely open to the sky. Here are full of stalactites and wall flow stones of amazing shapes. Outside the cave we also saw beautiful sights and perfect sunshine. Having found a natural place, away from the hustle and bustle, we walked along one road forward, delivering miracles, and growing up and older together.

Provisions of Drafted Patent Examination Guidelines on Incorporation by Reference and Priority Restoration

According to the "Amendments to Patent Examination Guidelines (Draft for Further Comments)" released by CNIPA on October 31, 2022, the applicant of Chinese invention or utility model application will be allowed to utilize the incorporation by reference and priority restoration procedures as follows, after the amendments to the Implementing Regulations of Patent Law and the Patent Examination Guidelines are officially announced.

1. Incorporation by Reference

Where a part of the claims/description of a Chinese patent application is missing or incorrectly filed, the missing or correct part may be incorporated by reference to the priority application, with the initial Chinese application date retained.

Specifically, if the applicant claims priority to an earlier application at the filing of Chinese application and requests to supplement part of the claims/description by reference to the priority application, he may make a Declaration for Incorporation by Reference at the filing of Chinese application, and submit a Confirmation Letter for Incorporation by Reference and the supplementary documents within 2 months from the Chinese application date or within the deadline as prescribed in a Notification to Make Rectification. In the Confirmation Letter for Incorporation by Reference, it shall be clarified where the supplemented part of application documents locates in the certified priority document or Chinese translation thereof (the Chinese translation of whole priority document will be required, if the priority application is in a foreign language).

2. Priority Restoration

Where a Chinese application is filed more than 12 months later than the application date of earlier application, the applicant may file a request for restoration of priority claim no later than 14 months from the priority date, given that the Notification of Passing Preliminary Examination has not been issued to the Chinese application. To request for restoration of priority, the applicant may file a request form, pay restoration fee and priority fee, and submit a certified copy of priority document (an assignment of priority right will be further needed, if the applicant of priority application is different from that of the Chinese application).

In respect of a Chinese national phase application, where the request for priority restoration is accepted by the PCT receiving office during the international phase, there may be no need to make the request for priority restoration before the CNIPA; while the request for priority restoration is not filed during the international phase or accepted by the PCT receiving office, the applicant may make the request for priority restoration with justified reasons before the CNIPA no later than 2 months from the Chinese national phase entry date.

Back Cover: Exterior of office block where Panawell locates

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