



Llinks Client Alert – Commercial IP

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Shanghai · Beijing · Shenzhen · Hong Kong · London

LLINKS
Law Offices
通力律师事务所

I. Legislation

1. National Intellectual Property Administration sought public consultation for *Amendments to Rules to Regulate Patent Application filing (Draft)*

On May 6th 2021, the National Intellectual Property Administration (“NIPA”) promulgated the *Amended Draft of the Rules on Patent Related Activities (Draft)* (the “**Draft**”), to seek public consultation. Compared to the *Rules on Patent Application Regulation* (NIPA No. 75, the “**Rules**”), the Draft supplements and better defines abnormal patent application activities, and specifically stipulates the review procedures for abnormal patent applications, and updates relevant measures for abnormal patent applications, which better achieves the legislative purpose of patent law, and regulates the patent application activities.

2. NIPA published *Rules on the Participation of Technical Investigator in Administrative Adjudication on the Infringement of Patents and Integrated Circuit Layout Designs. (Provisional)*

Following the requirement to bring technical investigators into intellectual property administrative law enforcement cases pursuant to *Opinions to Enhance Intellectual Property Protection*, NIPA enacted the *Rules on the Participation of Technical Investigator in Administrative Adjudication on the Infringement of Patents and Integrated Circuit Layout Designs. (Provisional)*, (the “**Rules**”) which had been published on May 7th 2021. The Rules stipulates the applicable cases, the positions and responsibilities of technical investigators, scope of selection, management methods and effective date, to effectively enhance the technical support in infringement disputes administrative adjudication, and improve the ability and level of judgment in intellectual property infringement cases.

3. The SPC Released the Rules of Online Litigation of People’s Court

On June 16th, 2021, the Supreme People's Court (the “**SPC**”) released the *Rules of Online Litigation of People’s Court* (“the **Rules**”), which will take effect on 1st August 2021.

The Rules cover the legal effect, basic principles, application scope and conditions of online litigations, as well as procedural rules for main sector of online litigations, from online case filing through online judgment announcement as well as online enforcement, which give clear guidance for all parties on how to conduct particular litigation activities online. The Rules for the first time established the basic principles for online litigations, confirmed the legal validity of electronic documents and clarify its examination rules, determine the scope of validity of block-chain evidence and clarify its review standards, establish comprehensive rules and procedures applicable to online hearings, confirm the legal validity of online asynchronous trials, and

refine the rules of electronic service. The Rules is of great and far-reaching significance to further standardize online litigation and to protect the litigation rights of the parties.

Links Comments:

Firstly, the Rules clarify the application scope of online litigations. In principle, all kinds of civil, administrative, non-litigious and enforcement procedural cases may, subject to the consent of the parties, be heard online pursuant to its nature, complexity and evidence, provided that the court has corresponding technical capabilities and conditions.

Secondly, the Rules specify the main procedural rules for online litigations, including online identity authentication procedures, the manner in which the evidence is submitted, online hearing rules and service mechanisms.

Lastly, the Rules specifically provide protections on the online litigation data and information. Unless otherwise publicly disclosed by the court according to applicable laws, anyone is not allowed to disclose, disseminate or use the online litigation data and information in violation of laws and regulations.

4. The National Intellectual Property Administration promulgated the *Standards for Trademark Review and Adjudication (Draft for Comment)*

On June 11, 2021, the National Intellectual Property Administration promulgated the *Standards for Trademark Review and Adjudication (Draft for Comment)* (the "**Standards (Draft)**") for public comments.

In order to deepen the reformation to "Streamline the Administration, Delegate Power, and Improve Regulation And Upgrade Services" in the field of intellectual property rights, optimize the innovation environment and the business environment, adapt to the amendment to the Trademark Law, the implementation of the Civil Code and the introduction of the relevant laws and regulations, the National Intellectual Property Administration revised the standards and procedures for trademark review and adjudication, and finally released the newly revised Standards (Draft).

Links Comments:

In March 1983, the Trademark Office created the *Standards for Trademark Review*. Following the first amendment to the *Trademark Law* in February 1993, the Trademark Office further created the *Rules for Trademark Review* in December 1994. Later, following the second amendment to the *Trademark Law* in October 2001, the Trademark Office and Trademark Review and Adjudication Board collectively enacted and

promulgated the *Standards for the Trademark Review and Adjudication Standards*. With the promulgation of the Civil Code and the amendment to the *Trademark Law*, the *Trademark Review and Adjudication Standards*, as an important reference for trademark review, is necessary to be revised accordingly. In the current Trademark Review and Adjudication Standards, the standards are simply divided into two parts, namely "Trademark Review Standards" and "Trademark Adjudication Standards". While the Standards (Draft) added a new part, which is the Formality Review and the Other Administrative Issues Part, and the second part is the Trademark Review and Adjudication Part.

This amendment made two major improvements: firstly, it added the standards for the formality review and the other administrative issues; secondly, it revises and improves the standards of trademark review and adjudication.

5. Shanghai Intellectual Property Administration Promulgated the *Several Opinions on the Protection of Intellectual Property Rights in E-commerce in Shanghai (for Trial)*

On June 8th 2021, Shanghai *Intellectual Property Administration Promulgated the Several Opinions on the Protection of Intellectual Property Rights in E-commerce in Shanghai (for Trial)* ("**Opinions**")

The opinions specifically focus on the obligations of e-commerce platform operators, including establishing a mechanism for handling intellectual property complaints, establishing a valid access control system for platform users, and an inspection and monitoring system for operators using platforms and information on products or services published by them. An operator of an e-commerce platform shall adopt effective technical methods to filter and intercept links of suspected infringing goods that are labeled with words such as "high-quality counterfeit", "counterfeit" and "pirated", as well as links of infringing products that are for sale again after being reported and determined as an infringement product. Where a business operator on the platform repeatedly and intentionally infringes intellectual property rights, the e-commerce platform operator must take measures to terminate its transactions and services.

II. Jurisdiction

1. Developer of "WeChat Automatic Red Packet Grabbing" Program was Ordered to Compensate More Than 4.5 Million for Unfair Competition.

Recently, the developer of the "WeChat Automatic Red Packet Grabbing" software program has been ordered to compensate Tencent for economic losses at the amount more than RMB 4.5 million for unfair competition. The "WeChat Automatic Red Packets Grabbing" program developed and operated by Shenzhen



Zhangshangyuanjing Technology Co., Ltd. allows the user to “grab” a red packet in Wechat automatically without opening the Wechat app. Beijing Intellectual Property Court held that the defendant's program hindered and disrupted the normal operation of the "grabbing a red packet" function legally provided by WeChat operator by using technical means. The defendant has violated the principle of good faith and business ethics, and such acts constituted an unfair competition.

2. Douyin is Sued in the First Case of Trademark Right Infringement in Live Streaming

Recently, Beijing Haidian Court has declared the judgement in the first trademark infringement case on live streaming platform in China. In that case, Saishi Trading (Shanghai) Co., Ltd.(“**Saishi**”) found that Laizhou Hongyu Arts & Crafts Co., Ltd.(“**Hongyu**”) was selling handbags containing the words "AGATHA" and its specific logos on the Douyin platform. Saishi then brought an action for trademark infringement against Saishi and Bytedance.

The Beijing Haidian Court considered the following factors: the trademark's design, the scope of use of the trademark and goods in question, the infringing logo used on price tags, the fact that the company had not sub-licensed the trademark to a third party, and the fact that Hongyu had not submitted sufficient evidence to prove that its behavior was in compliance with the Trademark Law. The court decided that Hongyu has infringed Saishi’s trademark by selling the products on Douyin. Meanwhile, the court decided that sales on live streaming E-commerce platform are special activities and the examination to them shall not be too harsh. The court further decided that Bytedance, the operator of Douyin, is an E-commerce platform operator. However, considering that Bytedance had performed timely pre-examination, sent reminders, and took actions afterwards, it was found that Bytedance had fulfilled its reasonable duty of care.

III. Law Enforcement

1. Shanghai Intellectual Property Administration published *Enforcement Proposal on Special Action against Trademark Squatting Acts*.

On May 6th 2021, Shanghai Intellectual Property Administration released and published the *Enforcement Proposal on Special Action against Trademark Squatting Acts*(the“**Proposal**”), and decided to launch a special action against trademark squatting acts since then. The Proposal pointed out that the keys to the special action are to strike down the trademark squatting acts as well as other acts which intend to acquire illegal benefits, disturb the order of trademark registration and management, and cause relative severe negative effect in public, and to require to enhance organization and leadership. The Proposal also requires to



strengthen law enforcement act, improve information delivery, aiming at regulating trademark registration filing.

2. The CNIPA Issued a Notice on Deepening the Reform of Government Functions in the Field of Intellectual Property Rights for Better Innovation and Business Environment

On May 10th, 2021, the China National Intellectual Property Administration issued *A Notice on Deepening the Reformation to "Streamline the Administration, Delegate Power, and Improve Regulation and Upgrade Services" in the Field of Intellectual Property Rights for Better Innovation and Business Environment* (the "**Notice**"). The Notice requires reduction in the time spent for trademark and patent examination, upgrade in the quality of trademark and patent applications, improvement in the efficiency of public services for IPR, further enhancement of the capability to protect IPR, strengthening of the supervision on IP services and promotion of the transformation of IPR, so as to promote the high-quality development of IPR and to optimize the innovation and business environment.

IV. Overseas

1. Ericsson and Samsung Have Reached an Agreement on Global Patent Licenses

On May 6th, 2021, Ericsson announced that Ericsson and Samsung have reached a long-term agreement on global patent licenses between the two companies, including patents relating to all cellular technologies. The cross-license agreement covers sales of network infrastructure and handsets from January 1, 2021. Furthermore, Ericsson and Samsung have agreed on technology cooperation projects to advance the mobile industry in open standardization and create valuable solutions for consumers and enterprises.

2. EU's New Copyright Rules Entered into Force

EU member states are obliged to “bring into force the laws, regulations and administrative provisions necessary to comply with” the *Directive on Copyright in the Digital Single Market* (the “**Directive**”) by June 7th 2021’. The Directive intends to protect the innovations in this digital age, and to improve the transparency of internet platforms, including the transparency of advertising revenue, data accessing and recommendation algorithm. The Directives protects the freedom of speech of EU users and rights of content creators. The Directives also improves the copyright rules on research, education and cultural heritage, providing wider opportunities for users to use copyrighted materials for these purposes.



Furthermore, on June 4th, 2021, EU Commission also published its Guidance on Article 17 of the Directives (“**Guidance**”). The Guidance clarified the new rules in online content-sharing platform. According to Article 17, online content-sharing service providers (OCSSPs) are responsible for all uploads made on their platforms, obliged to demonstrate best efforts to prevent infringing user-upload. Otherwise, the OCSSPs will be held directly liable for the infringing materials uploaded by users. The Guidance provides for practical instructions in relation to Article 17, to help the market players better comply with the Directives.

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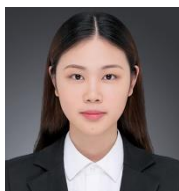
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