

News from PR China

Editor's note: Due to the diligent efforts of new Editorial Advisory Board member, Yang Zhiping, the following contributions from her colleagues at Chengdu Branch of National Science Library, Chinese Academy of Sciences, PR China – Wang Chun, Tian Yajuan, Wang Luyao and Zheng Ying – have been provided. Michael Blackman.

A. Advances in PR China's Intellectual Property Rights (IPR) Protection in 2006

1. To improve the IPR protection efforts, Ministry of Justice, Ministry of Culture, State-owned Assets Supervision and Administration Commission of the State Council, the Propaganda Department of the CPC Central Committee, as well as State Council Information Office freshly joined the National IPR Protection Working Group of PR China in 2006 (hereinafter referred to as the "Working Group").

The Working Group, set up by State Council of PR China in 2004 under the purpose of further strengthening the leadership of IPR protection undertaking, was originally constituted by thirteen members who are in charge of 12 IPR-related agencies including the Ministry of Public Security, the Ministry of Information Industry, the Ministry of Commerce, the Customs General Administration, the State Administration for Industry and Commerce, the General Administration of Quality Supervision, Inspection and Quarantine, the National Copyright Administration, the State Administration of Food and Drug, the State Intellectual Property Office, the Legislative Affairs Office of State Council, the Supreme People's Court and the Supreme People's Procuratorate.

The main task of the Working Group is to be responsible for promoting the construction of laws and regulations on IPR protection, setting up trans-departmental coordination mechanism of law enforcement on IPR protection, as well as dealing with the linkage of administrative law enforcement and criminal justice, joint supervision on the disposal of major IPR infringement cases and instructing localities and departments on IPR protection.

With five departments newly enlisted, the Working Group will further coordinate and unify the mechanism of PR China's IPR protection efforts and make it more efficient and healthier.

2. To better protect the IPR, resolutely punish and combat various infringement and other illegal activities, the

National IPR Protection Working Group Office, in conjunction with other relevant departments, formulated "PR China's Action Plan on IPR Protection 2006" (hereinafter referred to as the "Action Plan").

Focusing on major issues in relation with PR China's IPR protection efforts, the Action Plan clearly defines PR China's tasks in IPR protection in 2006. It covers 4 major areas: trade mark, copyright, patent and import and export, which are subdivided into 9 areas: legislation, law enforcement, mechanism building, propaganda, training and education, international communication and cooperation, promoting business self-discipline, services to right holders, and subject research. A major part of PR China's IPR protection tasks in 2006 have been finished on schedule, except some other legislation projects.

3. The Action Guidelines for Protecting Intellectual Property Rights (from 2006 to 2007) was issued and carried out in 2006. It focused on significantly upgrading the law enforcement capability and efficiency, closely linking administrative law enforcement with criminal justice, effectively stemming IP-violation related illegal behaviors and crimes, boosting the consciousness and capabilities of IP creation, management, operation and protection of enterprises, institutes, universities, as well as the social public, so as to push forward the new development of the long-term mechanism of IPR protection.

4. During the Eleventh "Five-Year" Plan period (2006–2010), development programs in Intellectual Property Cause have been put into the list of State Special Plans for the first time and have been considered the center process in upgrading and optimizing the industrial structure as well as transferring the economic growth mode.

5. The State Intellectual Property Strategic Guidelines was also begun to be formulated in 2006 and expected to be published in the first half of the year 2007. In this document, IPR protection and Initiative Innovation have been highly emphasized and put to the same strategic level as the development of economy, science and technology, culture and social work in PR China.

(http://www.sipo.gov.cn/sipo/xwtdt/ywtdt/2007/200701/t20070126_130913.htm; <http://bz.b.mofcom.gov.cn/aarticle/gywm/200410/20041000295820.html>; <http://sbj.saic.gov.cn/english/show.asp?id=460&bm=sbyw>; <http://sbj.saic.gov.cn/english/show.asp?id=462&bm=sbyw>; http://news.xinhuanet.com/fortune/2007-04/25/content_6023682.htm)

Wang Chun

B. CAS Formulate Scientific Research Commandment so as to Respect and Protect IPR

Recently, the Chinese Academy of Sciences (abbr. CAS) convened a press conference and issued formally to the public *Declaration of Scientific Concept* and *CAS Measures for Strengthening the Construction of the Scientific Research Behavior Criteria*. In these documents, CAS defined six basic guidelines of CAS's scientific research behavior, including the respect to IPR protection, the connotation of scientific misconduct, its identification criterion as well as processing procedure.

The six basic guidelines are as follows:

1. Researchers should abide by the civil moral code of the People's Republic of China; and should
2. Abide by the principle of honesty, so as to seek truth from facts during the process of data collection and analysis, research achievement publication; should be responsible for the efficiency and veracity of research data.
3. Abide by the principle of openness, so as to publish information concerning research process and achievement under the basis of protecting state secrets and protecting IPR.
4. Abide by the principle of equity, so as to be frank and impartial when evaluating achievements of competitors and cooperators, and admit failures and mistakes of scientific results in a proper way. Any immoral and illegal behavior for blocking competitors' scientific work should be avoided.
5. Respect IPR. When publishing results, those innovatively contributing to and responsible for the scientific achievements should enjoy copyrights and should not be excluded from the author list if no written consents provided by themselves. Acknowledgement should be written generally for such persons and organizations as data-collecting research assistants, supporters, facility-providing organizations, and so on.
6. Abide by the principle of announcement and evasion. In such activities as research, investigation, publication, release to the media, materials and facilities supply, application granting, employment and promotion, when possible conflicts of interests happen, related personnel have the obligation to announce persons and organizations that have direct or indirect interests relationship with them, involving possible influences for other persons' interests caused in such conflicts, and as well evasion should be adopted when necessary.

The purpose of issuing these two documents mentioned above is to develop the scientific spirit and ideology, emphasize the social responsibility and behavior criterion of research, and in addition, push forward the innovation and development of CAS itself. CAS President LU Yongxiang, who is also chairman of the Presidium of Academic Divisions of CAS, said that perfect regulations and systems

powerfully guarantee the construction of the harmonious academic environment. These two documents along with other already enforced regulations will form a comparatively complete scientific criterion system for scientific research.

(http://www.sipo.gov.cn/sipo/xwdt/ywdt/2007/200702/t20070227_141156.htm)

Tian Yajuan

C. The Third Amendment to Patent Law

Since the Chinese Patent Law went into effect on April 1st 1985, two amendments was taken respectively in 1992 and 2000. In April 2005, the State Intellectual Property Office of PR China initiated the third amendment to the Patent Law, and then the over-70,000-character draft amendment was published on the web site of the State Intellectual Property Office for public advice and suggestions at home and abroad in August 2006. On December 27 2006, the Patent Law Amendment Bill was submitted to the State Department of PR China for deliberation.

The main contents of the proposed amendment include seven major aspects:

1. About the legislative purpose of the Patent Law. At present, one of our country's strategic goals is to build an innovation-oriented country. To achieve this goal, the legislation should fully demonstrate that requirement; therefore, in the first item of the Patent Law, appropriate changes has been done, that "promote economic and social development" and "meet the needs of an innovation-oriented country development" have been inserted into the first item of the Patent Law as the legislative purpose.

2. About the measures of deepening the administrative reform, including the removal of the designated foreign-related patent agency, the abolishment of the provision about that the Chinese organizations or individuals must entrust Chinese patent agencies when applying for a foreign patent, the accession of the responsibilities of the patent administrations' disseminating patent-related information.

3. About the rights for patent application, as well as the ownership and management of the patent application rights. Firstly, these involve the ownership of inventions achieved in the state-funded research projects, and then the specific definition of the rights and obligations among the part assignees. Secondly, the improvement of approval procedures for inventions achieved in PR China and applied for as a foreign patent is also involved.

4. About the criteria of granting a patent, including the adoption of the criterion of absolute novelty, the abolishment of geographic limitations for existing technology and designs, and the addition of the provision about protection of genetic resources and disclosure of origin of genetic resources.

5. About Further improvement of the design-patent-related system, including the appropriate limitations of protected object extent of granting design patents, the elevation of material conditions for granting a design patent, proposition of design patent applications to the design-related combined application, the establishment of the search report system for design patents, and the improvement of the provision about the protection extent of the design patent.

6. About the protection of patent rights, including the provision that others will not be allowed to sell design patent products without permission, the intensification of administrative law enforcement over patent, further clarification of IPR-related violation compensation amount, and the addition of the provision about evidence preservation before trial.

7. About defending the legal rights and interests of the public and deterring the abuse of patent rights. Here is included further improvement of compulsory license system, the addition of the provision about the existing technology defenses and holding out the malicious lawsuits, the addition of the supplementary provisions about and related rights invalidation, the improvement of the provision about the acts which are not to be treated as patent infringement.

(<http://www.sipo.gov.cn/sipo/zxft/dsczlfxf/>)

Wang Luyao

D. IPR Trial Work Summarization Five Years after PR China's Entry into WTO

1. It is already five years since PR China's entry into WTO and it is also a quite unusual period for PR China's IPR trial work as this work has withstood various tests in the transition period after entering WTO and initially formed an IPR justice protection system basically adapting the needs of state development. Currently, it is a historically new point of beginning for PR China's IPR trial work and retrospect and summarization is quite necessary.

"It is a developing and unusual five-year for IPR trial work of Chinese courts." Said vice president Chao Jianming from the Supreme People's Court of PR China on the *Conference of IPR trial work of Chinese courts*, hold in Wuxi, Jiangsu Province.

This conference is very special; though called a conference, nevertheless, its scale is second only to the President's Conference on the Chinese court system. President Cao's report, titled *All-around Strengthening IPR Trial Work, so as to Provide Powerful Justice Safeguard for Building an Innovative Country and Constructing A Harmonious Society*, summarized past IPR trial work of Chinese courts, analyzed situations ahead, clarified major tasks in 2007 and the near future, and proposed very profound and comprehensive requirements for correctly guiding IPR trial

work. His report received coherent accolades from presidents, presiding judges and judges from the Supreme People's Court, high courts and intermediate courts of regions, as well as IPR scholars. They all regarded this report as high-level and theoretically deep, deserving to be read carefully.

2. Increase in the number of cases of IPR trial

"Over the past five years, courts at all levels have creatively developed IPR trial work, stepped to a higher level, initially formed a IPR justice protection system basically adapting the needs of state development, withstood various tests during the transition period after PR China's entering into WTO, and been sufficiently approved by the Standing Committee of the National People's Congress." indicated by President Cao, "Now it is a historically new point of beginning for IPR trial work of Chinese courts."

According to the statistics of the Supreme People's Court, during the past five years 2002–2006, the number of first trial civil cases accepted and settled by municipal courts throughout PR China has greatly increased, respectively up to 54,321 and 52,437; and the number of second trial civil cases accepted and settled was 13,170 and 12,700, respectively. In 2006, there were 14,219 first trial civil cases accepted and 14,056 settled by municipal courts throughout PR China, and the growths this year are the increases of 5.92% and 4.95%, respectively over last year. Among them, 2686 and 2652, respectively concern patent cases, 2521 and 2378 trademark cases, 5719 and 5751 copyright cases, 681 and 668 cases of technology contract, 1256 and 1188 cases of unfair competition, while 846 and 844 other IPR cases. 2686 and 2652 were second trial civil cases accepted and settled by municipal courts throughout PR China in 2006 and the decreases this year are 13.74% and 12.07%, respectively over last year.

From 2002 to 2006, first trial foreign-related IPR civil cases were up to 931, with an average increase of 48.29% per year. Among them, 353 were accepted and settled in 2006 with an increase this year of 52.16% over last year. Moreover, according to a recent preliminary statistics, from January to October in 2006, Chinese courts accepted and settled, respectively 533 and 308 first trial IPR civil cases of various forms of enterprises.

The IPR trial field has been notably expanded. Cases concern temporary measures before litigation, network copyright, network domain name, renowned trademark identification, new plant species and so on. Disputes concern integrated circuit layout design, folk literature, geographical indications, confirmation of no IPR violation, Special Permission contract, anti-monopolization and so on.

"The sustainable great increase in the number of IPR cases and continuous expansion of trial field not only indicate the fast development of PR China's IPR protection cause, but also reflect fierce demand and sufficient trust of the public to IPR justice protection." said President Cao.

Courts at all levels also intensified relief in litigations as well as civil sanction, and strengthened IPR justice pro-

tection. From 2002 to October in 2006, Chinese courts has accepted 430 cases of pre-trial application for temporary injunction, and settled 425, with the actual rate of adjudication 83.17%; accepted 642 cases of pre-trial application for evidence preservation, and settled 607, with the actual rate of adjudication 92.67%; accepted 218 cases of pre-trial application for property conservation, and settled 208, with the actual rate of adjudication was 96.07%.

3. Promoting the quality of cases of IPR trial

“Settlement rate of first trial IPR civil trial increased from 72.82% in 2002 to 78.36% in 2006. Rate of appellation decreased to 40.67% in 2006.” said President Cao, “This fully indicates that comparatively great improvement has taken place in PR China’s IPR trial quality and clear promotion has appeared in the level of IPR justice protection.”

The courts at all levels have properly operated procedural law and substantive law correctly and continuously promoted quality and efficiency of the trial of IPR cases. Besides data mentioned above, President Cao also showed that the rate of amendment and remand of second-trial IPR civil cases decreased from 23.90% in 2002 to 14.52% in 2006; and the rate of retrial decreased

from 1% in 2002 to 0.27% in 2006. Courts at all levels emphasize mediation as well, from 2002 to 2006, the recalling lawsuit rate of mediated in first trial IPR civil cases was relatively higher, up to 52.57%. The quality of Judge documents making was also ameliorated at large.

In order to meet the requirements of trial work and PR China’s entry in WTO, since 2001, the Supreme People’s Court totally constituted and amended 18 IPR-related justice interpretations concerning patent, trademark and copyright, etc., and clarified detailed principles and criteria concerning IPR protection in a series of guiding documents. Furthermore, the Supreme People’s Court has expanded the scope of jurisdiction courts in a proper way. Now, there are 62, 38 and 43 intermediate courts that respectively have jurisdiction in patent, new plant species and integrated circuit layout design cases. 17 primary courts have been authorized to accept and settle part of IPR civil cases.

(http://www.sipo.gov.cn/sipo/xwdt/mtjj/2007/200702/t20070215_135182.htm)

Zheng Ying