

This is an ad-hoc newsletter to inform UK stakeholders of recent developments in the Chinese IP environment. The content is collected from publically available sources, where information is often available in Chinese only. Please feel free to forward this newsletter, and contact Leo.Zhuang@fco.gov.uk to be added to/removed from the distribution list. A pdf version is available on the [Embassy's IP webpage](#)



Intellectual
Property
Office



British Embassy
Beijing



Department for
International Trade

China IP Newsletter (August 2020)

POLICY & GOVERNMENT

China released second deliberation draft of amended Copyright Law

On 17 August 2020, China's National People's Congress released the second deliberation draft of the Copyright Law amendment for public comment. The latest draft removed the concept of 'using copyright abusively' in Article 4, updated the definition of works, further clarified ownership of copyright in audiovisual works, and recognised that reproduction right includes digital format. The draft also reintroduced the articles deleted from the previous draft that provide for interim injunctions, property and evidence preservation. Some changes proposed in the first draft stayed such as the 5 million RMB maximum statutory damages and the availability of punitive damages of up to five times actual damages. Comments can be submitted [here](#) by 30 September.

SPC issued guidance on searching for precedents when dealing with similar cases

On 27 July, the Supreme People's Court (SPC) issued a 'Guiding Opinions Concerning Strengthening Search for Similar Cases to Standardise the Application of Law'. The objective is to streamline how laws are applied, ensure more consistent judgements and enhance the judiciary's credibility. It outlines in which cases it is applicable to search for precedents and how the searches should be conducted. It also outlines new requirements and tasks for judges, such as producing a report on their searches, responding to litigants' reference to certain cases, etc. The guidance calls for courts at all levels to actively search for precedents for certain cases, and to explore the development of a database for all their judgements. More [here](#) in Chinese.

CNIPA issued three guidelines relating to administrative patent enforcement

On 21 July, China National Intellectual Property Administration (CNIPA) released three guidelines for trial implementation in relation to patent administrative enforcement:

- Guidelines for Handling Administrative Mediation of Patent Disputes
- Guidelines for Handling Passing-off of Patent and Regulating Use of the Patent Marking
- Guidelines for Patent Administrative Reconsideration and Litigation Response

The three documents, with a total of 220,000 words, will serve as a handbook for enforcement officers when dealing with patent disputes. The guidelines set out mediation procedures for different types of disputes, including ownership and remuneration disputes; outline examination standards for

determining patent pass-off; provide details on evidence, hearing process, and time limit of administrative review. Read full text [here](#) in Chinese.

China commits to further facilitating trade mark registration process

On 21 July, the State Council issued the Implementing Opinions Regarding Further Optimizing Business Environment and Providing Better Services to Market Entities. In this document, CNIPA is tasked to further increase trade mark registration efficiency, update its trade mark database more frequently, improve smart trade mark search functions and develop an automatic comparison check of device trade marks. In addition, China commits to further reduce the cycle of opposition and review of refusal. Currently, the average trade mark examination time is 4 months and 11 days. CNIPA aims to further reduce the time to less than four months by end of 2020. More [here](#) in Chinese.

SPC calls for enhanced copyright protection with draft Opinions

The SPC has recently released the Opinions on Reinforcing the Protection of Copyright and the Rights Relating to Copyright (Draft for Comment) for public comments. The draft Opinions require effectively reinforcing the protection of rights in emerging fields by adapting to the technological development of the Internet, artificial intelligence, big data and other high-tech fields; properly hearing new types of cases involving live streaming of sports events and online games in accordance with the law, and promoting the standardised development of emerging forms of business. Comments should be submitted by 20 September 2020. Read full announcement [here](#) in Chinese.

Beijing IP circuit tribunal was established

On 23 July, an intellectual property circuit tribunal was established at the Beijing IP Protection Centre inaugurated by Beijing High Court and Beijing IP office. Courts of all levels in Beijing can use the circuit tribunal to conduct on-site or remote trials that involve IP cases. By leveraging the existing trial mechanism and resources, the circuit court aims to reduce the cost of litigation and promote use of online litigation service, improving both the convenience and efficiency of protecting IP. More [here](#) in Chinese.

State market regulator welcomes new leader

A couple of personnel changes in the IP space were announced recently. Firstly, the State Administration for Market Regulation (SAMR), the country's market regulator with authority over anti-monopoly and IP administrative enforcement, now has a new minister: Mr Zhang Gong. Mr Zhang has been a member of Beijing's top-level leadership since 2007, and was Beijing executive vice mayor between June 2017 and October 2018. The former head of SAMR, Xiao Yaqing, now serves as the minister at the Ministry of Industry and Information. Secondly, vice president of SPC Luo Dongchuan, who previously presided the IP tribunal, takes on a new role as the Secretary of the Political and Legal Committee in Fujian province. Read more [here](#) in Chinese.

CASES

Chinese Dyson counterfeiters get jail terms and fines

The Shanghai Pudong People's Court announced on 28 July 2020 guilty verdicts for four defendants for the crime of producing and selling counterfeit Dyson hair dryers. The court sentenced the principal offender Fang to six years imprisonment and fined him RMB 5 million (approx. £551,000) for the crime of counterfeiting registered trade marks. According to investigators, Fang's company sold 19,000 fake Dyson hairdryers, with sales amounting to over RMB 13.5 million. In total, 35 defendants have been sentenced with penalties and fines ranging from eighteen months to six years in prison and total fines of RMB 10.1 million. This is said to be the first counterfeiting case brought by Dyson against trade mark infringers in China. Dyson had their trade mark approved and registered in China back in 2010. More [here](#) in English.

Chinese AI company files £1.1 billion patent infringement lawsuit against Apple

Recently, Chinese AI company Shanghai Zhizhen Intelligent Network Technology, also widely known as inventor of Xiao-I, sued Apple for patent infringement claiming an estimated RMB 10 billion (approx. £1.1 billion) in damages. The patent infringement dispute between Zhizhen and Apple dates back to June 2012, when Zhizhen claimed that Apple's Siri app infringed its patent for a voice recognition software called "Xiao-i Robot". In 2015, the Beijing High Court ruled that the patent owned by Zhizhen didn't "comply with the provisions of the Patent Law". However, in the most recent retrial judgement made by SPC on 28 June, the court upheld the validity of the patent. Read more about the case [here](#) in English.

Chinese company fined RMB 1 million for broadcasting La Liga matches online

Shanghai Pudong People's Court recently concluded a first-instance judgement that La Liga Spanish football matches constitute what the Chinese Copyright Law calls "works created by a process analogous to cinematography". This therefore grants the games copyright protection. In 2018, PPTV Juli sued Xingan Yisou, a Shenzhen-based technology company, for copyright infringement of La Liga matches, in which PPTV Juli claimed the ownership of exclusive rights over the 2015-16 and 2016-17 La Liga season, including to communicate to the public, live broadcast and retransmit through any means. The Shanghai court holds that the sports events in dispute were recorded on a certain medium hence met the requirement of fixation. The defendant, albeit an internet service provider, did not fulfil the review duty and should be held liable for infringement. The court awarded PPTV RMB 1 million in damages. The case is currently still under appeal. More [here](#) in Chinese.

STATISTICS

Public security bureaus across the country have cracked 4,700 counterfeiting cases this year

Since the Ministry of Public Security (MPS) formed the Bureau of Food, Drug and Environment Crime Investigation in June 2019 to combat IP infringement and counterfeiting crimes, the department has launched a series of special campaigns codenamed 'Kunlun'. According to MPS, Chinese police have dealt with over 4,700 counterfeiting cases so far this year involving food and drug, auto accessories, home appliances and children's products. 3,100 suspects were arrested for manufacturing and trading counterfeit and shoddy anti-epidemic supplies and drugs. More [here](#) in Chinese.

CNIPA reports on design patent filing in 2019

In July, CNIPA released a featured report on design patent filings in 2019. According to the report, China received 712,000 design patent applications in 2019, of which around 20,000 were filed by foreign applicants (about 2.8%). CNIPA received 21,000 requests for design patent evaluation reports in 2019, an increase of 13.5% compared with 2018. The top three sources of foreign applications are the US (4,433), Japan (3,949), Korea (3,089). The United Kingdom ranked the 8th with 569 applications. Read full report [here](#) in Chinese.

If you would like any further information on any of the above matters or to discuss Embassy support for your company in China please contact Leo Zhuang (Leo.Zhuang@fco.gov.uk).

