

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



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## China IP Newsletter (August 2022)

### POLICY & GOVERNMENT

#### **China issues regulations to make published works accessible to persons with print disabilities**

On 9 August, the National Copyright Administration of China (NCAC) issued Interim Provisions on Providing Works to Persons with Print Disabilities in an Accessible Way, to further promote the effective implementation of the Copyright Law and the Marrakesh Treaty. The regulation defines that 'persons with print disabilities' include visually impaired persons and persons who cannot read normally due to visual defects, perceptual impairments, and physical disabilities. The regulation also requires that the production and provision of accessible format versions shall comply with the designation of the author's name or title, the title of the work, the use of works from legal sources, and the respect of the integrity of the work. In addition, they should also abide by the management regulations and standards of publishing, film, radio and television, online audio-visual, and other related industries. [Read full text of the NCAC interim provisions in Chinese](#)

#### **CNIPA publishes interpretation of Criteria for Judging Trade Mark Infringement**

On 15 June 2020, the China National Intellectual Property Administration (CNIPA) published its first guidelines for the administrative enforcement of trade marks: the 'Criteria for Judging Trade Mark Infringement'. To ensure effective implementation of the Criteria and help law enforcement officers accurately understand the meaning of the provisions, the CNIPA published the interpretation of Criteria on 12 August 2022 which clarified the terms and applicable conditions in the process of administrative enforcement. Each article in the Criteria is explained in detail and many case studies are provided. New scenarios of trade mark use are provided in one article which says when examining whether the words/logos used on websites, instant messengers, social network platforms, applications, QR codes and other new forms of expression constitute 'use of trade marks', the law enforcement department should consider whether the relevant mark can function as identifying the source of goods or services. [Read CNIPA interpretation of the Criteria for Judging Trade Mark Infringement in Chinese](#)

#### **China to strengthen intellectual property right authentication**

On 27 July, the CNIPA issued the Guiding Opinions on Strengthening the Intellectual Property Authentication. The Opinions envision that, by 2025, a relatively complete administrative mechanism for intellectual property authentication work will be formed, and the IP authentication organisations reach a reasonable scale, covering broad technical fields. To this end, the Opinions set forth eight key tasks, including clarifying work duties, improving standard systems, and strengthening institutional development. The Opinions call for focusing on the authentication work for patents, trade marks, geographical indications, and designs of integrated circuit layouts, and resolving specialised factual

issues in IP disputes. Separately, the China Intellectual Property Society (CIPS) recently developed a number of standards for patent and trade mark authentication as well as a standard for managing IP authentication work. [Read CNIPA guiding opinions on strengthening IP authentication in Chinese](#)

### **CNIPA to regulate trade mark agency services provided by platforms**

Recent media reports that the CNIPA has established a special working group to supervise and guide trade mark application practice at platform-based trade mark agencies such as Aliyun (trade mark registration service by Alibaba), Baidu Cloud, Huawei Cloud, and Tianyancha. While these platform-based trade mark agencies bring innovative technologies and convenience to customers, there have been irregularities in their business practices, contributing to mass bad-faith filings in recent years. By placing the working group with the platforms, the CNIPA aims to improve the quality of their services through organising workshops on the latest trade mark examination policies and helping them establish rules and mechanisms to manage malicious filings. So far, two platform-based trade mark agencies (names undisclosed) have been supervised by the working group. [Read media reporting of the CNIPA working group in Chinese](#)

### **CNIPA issues first patent infringement decisions against generic drug makers**

On 11 August, the CNIPA announced it had concluded its first administrative patent infringement litigation case. China's amended Patent Law, which took effect in June 2021, allows CNIPA to hear major patent disputes with national significance upon request from stakeholders. The CNIPA has now issued its first decisions in two suits filed by German pharmaceutical firm Boehringer-Ingelheim for infringement of its patent 'ZL201510299950.3'. The patent covers the active ingredient of the drug Linagliptin, which is used for treating diabetes. In the dispute between Boehringer Ingelheim and HEC, Boehringer Ingelheim alleged that HEC infringed the patent in 24 provinces. Accordingly, the CNIPA found these cases were within its authority because the cases affected multiple provincial administrative regions. The CNIPA also found the products manufactured and sold by the defendant used the invention covered the plaintiff's valid patent, therefore constituting infringement of patent rights. [Read CNIPA announcement of the first patent infringement rulings in Chinese](#)

## **JUDICIAL UPDATES**

### **Beijing IP Court issues handbook that helps litigants present evidence in software disputes**

On 25 August, the Beijing Intellectual Property Court issued a bilingual handbook that provides guidance on how parties present evidence in civil cases involving computer software copyright. It clarifies that once the plaintiff has provided preliminary evidence that the defendant has accessed the claimed software and the alleged infringing software is substantially similar to the claimed software, the burden of proof should pass to the defendant to provide the source programs of the alleged infringing software. If the defendant refuses to provide the source programs or the source programs provided by the defendant are not accepted, the plaintiff may assert to compare the object programs of the claimed software with those of the alleged. The comparison of the source programs and the object programs may be conducted by an authentication institution or by the two litigating parties under the supervision of the court. [Read Beijing IP Court bilingual handbook in Chinese and English](#)

### **Hangzhou procuratorate issues guidelines for judging trade secret criminal cases**

On 15 August, the Hangzhou Binjiang District prosecutor's office published guidelines for reviewing trade secret criminal cases. It is the first guidelines of this sort in Zhejiang Province that sets out the rules and principles in a comprehensive and systematic manner. The guidelines confirmed the fundamental steps for judging a trade secret case, which involve confirming the content of the secrets claimed by the plaintiff, examining the three elements of a trade secret i.e. 'secrecy, value and protective measures', reviewing infringement claims (access and similarity) and non-infringement defences, and severity of the infringement. The guidelines also clarified that the claims proven in criminal proceedings can be recognised in the corresponding civil case unless there is sufficient evidence to the contrary to overturn the facts found in the criminal judgment or ruling. Lastly, to prevent the 'secondary disclosure' of secrets in the legal proceedings, the guidelines provide six measures such as limiting access to

documents to designated persons. [Read full text of the Hangzhou guidelines for judging trade secret criminal cases in Chinese](#)

## CASE

### **Supreme court's final decision upheld first-instance ruling in China's first patent linkage case favouring Chinese generic company**

On 19 August, the judgment of the second trial in the case of Chugai Pharmaceutical v. Wenzhou Haihe Pharmaceutical, to confirm whether the dispute falls within the scope of patent protection, was made public on the China Judgement Online portal. It was the first patent linkage 'Category IV' ruling in China. The first instance ruling, handed down on 15 April 2022, declared that the Chinese generic product did not fall within the scope of Roche Chugai Pharmaceutical's patent claims covering Eldecacitol, a drug for osteoporosis. Upon review of the case, the Supreme People's Court (SPC) upheld the first-instance ruling in favour of the Chinese generic drug maker Wenzhou Haihe Pharmaceutical. The case took 8 months and 28 days from the formal acceptance by the Beijing Intellectual Property Court on 8 November 2021 to the final judgment of the second instance on 5 August 2022, just within the 9-month period specified in the Patent Law to stay the drug approval process. It is a milestone in the implementation of China's pharmaceutical patent linkage system. [Read full judgement of the case in Chinese](#)

### **Chinese Basketball Association sues Bilibili for copyright infringement**

On 23 July, the Beijing High People's Court upheld the ruling in favour of the Chinese Basketball Association (Beijing) Sports in a jurisdictional challenge made by the two operators of Bilibili – Shanghai Magic Electric Information Technology and Shanghai Kuanyu Digital Technology, who had been sued by CBA Sports for unauthorised streaming of CBA basketball matches. In the original trial, CBA Sports claimed that it was subjective and intentional infringement for Bilibili to provide the on-demand rights of CBA games on a large scale, and Bilibili was suspected of abetting and inducing its users to upload videos of CBA games. CBA Sports also claimed that Bilibili violated unfair competition law, asking for RMB 406 million (~£50.3 million) in damages. The Beijing High Court found the RMB 406 million claim was within the cap of RMB 5 billion (~£620 million) in jurisdictional standards of an intermediate court and affirmed the Beijing IP Court had the jurisdiction to adjudicate the case. Next, the lower court will judge the merits of CBA's claim. Read [full judgement](#) and [media coverage of the CBA copyright infringement case in Chinese](#)

## STATISTICS

### **35.4% of China's invention patents were commercialised in 2021**

According to the China Patent Survey Report 2021 published by CNIPA, in 2021 the commercialisation rate of China's effective invention patents was 35.4%, 0.7 percentage points higher compared to the previous year. The rate has risen continuously over the past three years, which been stable at over 30% for the five years. Businesses have a higher commercialisation rate at 46.8%, an increase of 1.9 percentage points compared with the previous year while universities and research institutions have patent commercialisation rates of 22.8% and 25.8% respectively. The data also shows that the average return from the commercialisation of university invention patents exceeds the average level of those from businesses by 32.5%. [Read CNIPA China Patent Survey Report 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@fcdo.gov.uk](mailto:Leo.Zhuang@fcdo.gov.uk)).