

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 (May 2022)

### POLICY & GOVERNMENT

#### **Chinese IP authority releases work plan for an open patent license pilot program**

On 11 May, the China National Intellectual Property Administration (CNIPA) issued a work plan to launch an open patent license pilot program, running from May to November 2022. The open licensing system was introduced in the amended Patent Law to boost the commercialisation of patents. The plan requires that by the end of this year, over 1,000 patents will have been licensed through the open licensing program with over 100 higher education institutions, research organizations, and state-owned enterprises (SOEs) involved as main participants. The pilot program is to be implemented in eight major provinces and municipalities, including Beijing, Shanghai, Shandong, Jiangsu, Guangdong etc., where the local IP offices will be required to build a licensing information publication platform and function as brokers between patent owners and licensees. [Read CNIPA Work Plan for the Pilot Program of Patent Open License in Chinese](#)

#### **CNIPA announces 50 research projects on patents**

On 5 May, the CNIPA published a list of research projects in the field of patents that will be carried out in 2022. The list discloses 50 research subjects, covering a variety of areas such as patent examination mechanisms, legislation amendment, digitised operation, artificial intelligence (AI), green technology etc. Specifically, there will be research on patent examination rules for algorithms in the digital economy, research on essentiality checks in standard essential patents (SEP) in telecommunication, research on a standalone law for designs, research on the criteria of 'obvious inventiveness' in the examination of utility model patents, and research on the patents regarding carbon capture, utilisation, and storage technology. The projects will be undertaken by a range of organisations, including departments in China's Patent Office, regional patent examination centres, universities, and research institutions. [Read CNIPA list of patent research projects in 2022 in Chinese](#)

#### **First foreign patent agencies given approval to open representative offices**

On 20 May, the CNIPA announced that the first three foreign patent agencies have been given approval to establish in China, including two French firms and one American firm, following the administrative measures issued in January 2022. The two French firms will open in Guangzhou in southern China and the American firm will open in Suzhou, nearby Shanghai. Their China offices can provide consultation and patent prosecution services in areas and regions where foreign patent firms are legally permitted to practice (except China), e.g. helping Chinese companies apply for patent protection in other countries. However, as per the measures, they are prohibited from practicing on Chinese patent matters

such as patent prosecution, invalidation, or other legal work, and are not allowed to hire registered Chinese patent agents. [Read details of the three foreign patent agencies from CNIPA in Chinese](#)

### **CNIPA publishes procedural guides for patent invalidation and review of refusal requests**

On 11 May, the CNIPA published a guide for requesting review of patent application rejections and a guide for requesting patent invalidation with the Patent Office. The guides contain information related to the procedural matters during an invalidation/review of refusal process such as the time limit for initiating the requests, the types of evidential material required, grounds for the actions, circumstances where a review of refusal/invalidation request will not be granted, the eligibility for priority examination, as well as the official fees for the process. The guides state that if applicants miss the statutory 3-month time limit for review due to force majeure or other justifiable reasons, they may request for restoration of rights in accordance with Article 6 of the Implementing Regulations of the Patent Law. Read the [guide for requesting review of patent application rejections](#) and [the guide for requesting patent invalidation in Chinese](#)

### **CNIPA released research report on IP development in China's e-commerce industry**

On 29 April, the CNIPA IP Development and Research Centre published the 2021 Report on the Development of IP in China's E-Commerce Industry. According to the report, China's e-commerce sector made new breakthroughs in IP rights governance and cross-border e-commerce IP protection. Technology-based anti-counterfeiting measures are gradually becoming systematic and more efforts are being made by platforms to improve IP protection rules. In 2021, more e-commerce platforms used big data technology to carry out proactive prevention and control of suspected infringing goods, covering processes and scenarios such as the opening of online shops, listing of products, marketing activities, and consumer reviews. However, the report pointed out that with the import and export volume of cross-border e-commerce continuously growing and the scale of platforms expanding, many IP problems are still challenging such as parallel imports. [Read CNIPA 2021 report on IP development in China's e-commerce industry in Chinese](#)

### **New draft implementing regulations propose key changes for pharmaceuticals in China**

On 9 May, the National Medical Products Administration (NMPA) published the draft amendments of Implementing Regulations of the Drug Administration Law for public consultation. The draft regulations provide a comprehensive regulatory framework governing the entire lifecycle for the management of pharmaceuticals. They cover drug research and registration, the system for approving and monitoring market authorisation holders, and patent linkage. The draft regulations propose to delete the 'new drug' in Article 77 which is defined to be new to the Chinese market, which is inconsistent with a State Council document requiring that a new drug has never been marketed in either China or overseas, i.e. the drug must be new globally. Once amended, the definition of 'new drug' will be consistent across legislative documents including the patent term extension for new pharma patents set out in Article 42.3 of the Patent Law (2021) and the proposals in the Draft Patent Examination Guidelines (2021). [Read NMPA draft Implementing Regulations of the Drug Administration Law in Chinese](#)

## **JUDICIAL UPDATES**

### **Beijing IP Court issues a guide for filing new cases online**

As China continues to implement the 'Dynamic Zero' Covid policy, work of the courts has increasingly switched to being carried out online, including the filing of legal cases and even conducting court hearings. To adapt to new remote working practices, the Beijing Intellectual Property Court (BJIPC) issued a guide on 17 May that aims to inform the public on how to file a court case online. At present, four channels are available to log a case with the court, including the [Beijing Court e-Litigation Platform](#), the People's Court Online Service APP, [the People's Court Lawyer Service Platform](#), as well as [Jing Zhi Online](#) which is a web portal for Beijing-based agents only and provides a special entrance for filing review of trade mark application rejections and pre-registration of foreign-related administrative cases. Functions of the platforms vary – some platforms are for agents/lawyers while others are available to the litigation parties. Certain platforms allow the filing of civil cases only and others provide filing services for both civil and administrative cases. [Read full BJIPC guide on filing case online in Chinese](#)

## INDUSTRY NEWS

### **Litigation data reveals trade mark disputes make up over 70% IP cases involving foreign companies**

On 27 April, the IP House, a Chinese company specialising in providing IP legal data analysis, published a report that reviewed all IPR litigation by foreign-related enterprises in China that took place during 2018-2021, based on both civil and administrative IP judgments in China. The report shows that the number of foreign-related IPR litigation cases saw a significant rise reaching 12,562 in 2020, up 104.03% from 2018 but dropped to 6,685 in 2021. 41% of the IP disputes were resolved in the first instance proceeding with no appeal. Over 70% of IPR litigation involving foreign-related enterprises in China from 2018-2021 are trade mark related cases, with Class 25 (clothing, shoes and hats) being the most disputed category of goods. The foreign litigants come from 99 countries with the US being the largest country of origin followed by Korea and the UK. Foreign parties are predominantly plaintiffs in the vast majority of the civil cases and the IP right owners in most administrative proceedings. [Read Analysis of IPR Litigation of Foreign Companies in China 2018-2021 in Chinese \(paywall\)](#)

## CASE

### **China concludes the first web crawler case in the field of short-video platforms**

On 10 May, after a public prosecution by the Liangxi District Procuratorate, the court sentenced the defendant to 1.5 years in prison for providing computer software that illegally extracted data from short video platforms, the first online 'crawler' case in this field in China. The software that the defendant sold, called Huiyi Huike, uses web crawler technologies to invade the servers of short video platforms and extract User Identification (UID), signatures, and comments etc. Using 'web crawlers' as a technical means is not illegal in itself, but because the software in this case circumvented security measures and broke through the computer information systems, it amounted to the crime of 'electronic intrusion'. [Read media coverage of the case in Chinese](#)

### **China concludes its first Non-fungible Token IP infringement case**

On 22 April, the Hangzhou Internet Court published a decision on the first Non-fungible Token (NFT) IP infringement case in China, which found that the professional NFT platform BigVerse infringed the copyright of another platform, Qice, who had acquired a worldwide exclusive license for the popular "Fat Tiger" series of digital images. The artwork concerned is a cartoon tiger receiving a vaccine shot. Qice argued in court that BigVerse should bear the duty of examination of potential IP infringement on NFT digital works before they are published on its platform. The court held that the vetting obligations of an NFT platform should be relatively higher than traditional e-commerce platforms because the underlying technology of NFTs was built to create a trustworthy ecosystem for all parties to a transaction, hence it is critically important for an NFT platform to ensure there are no obvious flaws in the copyright ownership of the underlying work of an NFT. The court ordered BigVerse to compensate Qice to the amount of RMB 4,000. [Read media coverage of the NFT case in Chinese](#) and [one analysis in English](#)



(The subject NFT digital work in this case)

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)).