

Overview of Recent Development of Chinese IPR Legislation

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I. Overview of Chinese IPR legislation

- A rudimentary basic framework of IPR legal system was formed in the period from the end of 1970s to 1990s.
- The IPR legal system was basically formed after 1990s until the end of the 20th century.
- Since the beginning of the 21st century, efforts were made to establish the IPR legal system which suits China's economic development level and internationally-accepted rules and which cover a complete range of aspects.
- In recent years, the amendment of the Trademark Law for the third time was finished and a new round of amendment of the Copyright Law and the Patent Law is going on.

II. Amendment of the Trademark Law for third time

- Process of amendment:
- Promulgated in August 1982 and took effect as of March 1, 1983
- Amended for the first time in February 1993 and for the second time in October 2001.
- Amended for the third time in August 2013 and took effect as of May 1, 2014.

II. Amendment of the Trademark Law for Third Time

- Main content of amendment:
- (I) Facilitating application for registered trademark
- 1. Increase marks with respect of which an application can be filed for a registered trademark, cancel visibility requirements and add the provision that sound can be registered as trademark
- 2. Definitely accept application on the “one form and multiple category” mode.
- 3. Add trademark office’s procedures for description or correction of application content requirements
- 4. Improve trademark objection system, clearly put forward the objector and grounds, and simplify the procedures.
- 5. Increase time limit for trademark examination and appraisal.

II. Amendment of the Trademark Law for Third Time

- (II) Maintain the market order of fair competition
- 1. Add the principle of honesty and credibility in trademark registration and use.
- 2. Improve well-known trademark protection system and prohibit use of Chinese characters meaning “well-known trademark” in commercial publicity and other events.
- 3. Strengthen protection of trademarks of prior use and prohibit rush-registration of trademarks used earlier by others, and add the trademark co-use system.
- 4. Clearly stipulate that use of trademark as enterprise name is regulated by anti-unfair competition law.
- 5. Differentiate invalidation and cancellation of registered trademark and establish the registered trademark invalidation system.

II. Amendment of the Trademark Law for Third Time

- (III) Strengthen protection of exclusive right to use trademark
- 1. Increase types of infringement of exclusive right to use registered trademark, bring in confusion standard, and add contributory infringement.
- 2. Enhance administrative punishment upon infringement upon trademark, clarify range of fines, and impose heavier punishment upon willful infringement.
- 3. Improve the trademark infringement damages system, add punitive damages, increase statutory compensation amount, and reduce right holder's burden of proof

III. Amendment of the Copyright Law for Third Time

- Process of amendment:
- Promulgated in September 1990 and took effect as of June 1, 1991.
- Amended for the first time in October 2001 and partly amended in February 2010.
- Comprehensive amendment for the third time. In December 2012, the National Copyright Bureau requested the State Council to review the Draft Amendment of Copyright Law (draft for review). In June 2014, the Office of Legislative Affairs made the draft for review available to the public to seek for opinions.

III. Amendment of the Copyright Law for Third Time

- Main amendment suggestions in the draft for review:
- (I) About the copyright right system
- 1. Adjust the objects copyright and relevant rights and stipulate 16 types of works.
- 2. Integrate the content of copyright and relevant rights. Integrate 17 rights of copyright into 13 rights, add right of renewal and performer's right of hire, and the right of producers of sound recording to receive remuneration for other's use of their sound recording works through performance and playing.
- 3. Adjust the attributes of copyright and relevant rights to reflect the "autonomy of will" principle of the party involved.

III. Amendment of the Copyright Law for Third Time

- (II) About exercise of copyright.
- 1. Add the copyright and relevant right registration system.
- 2. Add the special license contract and transfer and right registration system.
- 3. Adjust the statutory license system, reduce 5 statutory copyright licenses to 3, and clearly specify the applicable conditions of statutory license.
- 4. Add the orphan works use system.
- 5. Strengthen the collective management of copyright system, grant the collective management organization the extended management function and the forced management function regarding right of renewal and statutory license.

III. Amendment of the Copyright Law for Third Time

- (III) About copyright protection.
- 1. Generally stipulate liabilities for tort.
- 2. Add network service provider's liabilities for tort.
- 3. Improve the infringement damage compensation system, increase statutory compensation, and reduce right holder's burden of proof.
- 4. Strengthen administrative punishment, increase fine amount, and add law enforcement means of copyright administration authorities.

IV. Amendment of the Patent Law for Forth Time

- Process of amendment:
- Promulgated in March 1984 and took effect as of April 1, 1985
- Amended for the first time in September 1992, for the second time in August 2000, and for the third time in December 2008.
- Amendment for the forth time: In January 2013, the State Intellectual Property Office requested the State Council to review the Draft Amendment of Patent Law (draft for review). In July 2015, a new draft amendment was formed and resubmitted to the State Council for review. In October 2015, the Office of Legislative Affairs made the draft for review available to the public to seek for opinions.

IV. Amendment of the Patent Law for Forth Time

- Main amendment suggestions in the draft for review:
 - (I) About acquisition and maintenance of patent.
 1. Strengthen protection of design patent and expand the objects of protection from whole to part design and extend term of protection to 15 years.
 2. Modify the scope of and attribution of relevant rights in service invention-creations.
 3. Expand the restrictions on patent obtained from atomic nucleus conversion-related invention from product to methodology.
 4. Add patent review and invalid procedure ex officio examination system.

IV. Amendment of the Patent Law for Forth Time

- (II) About patent protection.
- 1. Strengthen administrative punishment upon patent infringement.
- 2. Enhance patent administration authorities' mediation for patent infringement compensation amount. An application may be filed with a court for execution of reconciliation agreement.
- 3. Add indirect infringement liabilities, including the circumstances of joint infringement and inductive infringement.
- 4. Add network service provider's infringement liabilities.
- 5. Improve the infringement damage compensation system, add punitive compensation, increase statutory compensation amount, and reduce patentee's burden of proof.

IV. Amendment of the Patent Law for Forth Time

- (III) About patent implementation and use
- 1. Add the principle of preventing patent abuse.
- 2. Add the license of course system.
- 3. Add the standard essential patent implied license system.

Special notes

- According to provisions in the Legislative Law, amendment of law generally goes through three stages, i.e. drawing up a draft for review by competent administrative authority, proposing a motion by State Council after review, and adoption by Standing Committee of the National People's Congress after review. At present, the amendment of the Copyright Law and that of the Patent Law are in the stage of review by State Council, where the interested parties have many different opinions on the amendment suggestions included in the draft for review, and the Office of Legislative Affairs is making studies jointly with relevant parties based on the opinions sought for. Everybody is welcome to pay attention to the amendment of the Copyright Law and that of the Patent Law, actively give comments and suggestions, and make studies in this regard together with us.