

CPI's Asia Column Presents:

Overview of Intellectual Property Policy and Law of China in 2017

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As China's economic development enters into a new normal of speed change, structure optimization, and dynamic conversion, intellectual property has become an important bridge and link for transformation of scientific and technological achievements to actual productivity, and also China has entered into the period of strategic opportunity to changing from a big country of intellectual property to a powerful country of intellectual property. Under the further drive of "mass entrepreneurship and innovation" tide, it has become a national priority to build an intellectual property protection and application mode with Chinese characteristics. To carry out the goal to accelerate the construction of powerful country of intellectual property deeply and comprehensively, in January 2017, the State Council printed and distributed the National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan, which became a general guiding principle document of strategic construction of powerful country of intellectual property, aiming to deepen the reform in the intellectual property field, get through the full chain of national intellectual property innovation, application, protection, management and service, improve the intellectual property protection, and strengthen the international influence of China's intellectual property, trying to achieve decisive results in important fields and key points of intellectual property of China by 2020, with intellectual property protection and application abilities improved greatly.

I. With the print and distribution of National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan, the overall strategy of China's intellectual property protection and application in the new era is arranged.

In January 2017, the State Council printed and distributed the National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan, which is a guiding document to implement a series of important deployments made by the Party Central Committee and the State Council on intellectual property work, and carry out and accelerate the construction of powerful country of intellectual property under the new situation comprehensively and deeply. Following the basic principles "adhere to innovation as leadership, adhere to overall planning and coordination, adhere to green development, and adhere to opening-up and sharing", this planning is expected to complete the goal of intellectual property strategy action plan by 2020 on time, and built a group of powerful provinces and cities of intellectual property, therefore, providing a powerful guarantee for promoting the mass entrepreneurship and innovation, laying a firm foundation for constructing a powerful country of intellectual property, and realizing the significant improvement of intellectual property protection environment, full manifestation of intellectual property application benefits, and great improvement of intellectual property comprehensive ability.

The primary task mentioned in the National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan is "to deepen the reform in the intellectual property field, actively research and explore the intellectual property management system innovation, and make efforts to make breakthrough achievements in the important fields and key areas." Concretely speaking, by establishing the innovation drive evaluation system with intellectual property as important content, promote the incorporation of intellectual property products into the national economic accounting, and include the intellectual property index in the national economy and social development assessment system; strictly carry out the intellectual property protection, accelerate the formulation and amendment of intellectual property laws, rules and judicial interpretations, build a new pattern of intellectual property protection including judicial adjudication, criminal justice, executive law enforcement, rapid rights protection procedure, mediation and conciliation, industry self-regulation, and social supervision, and deepen the regional coordination and international cooperation of intellectual property protection; promote the efficient utilization of intellectual property; highlight the leading role of intellectual property in scientific and technological innovation and emerging industry cultivation, develop the intellectual property intensive industries greatly, perfect the patent navigation

industry development work mechanism, and develop the intellectual property appraisal work deeply; and strengthen the transformation of intellectual property with a high technology content.

In the National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan, key deployment work and major special projects of intellectual property protection and application have been developed further, and to perfect the intellectual property legal system has become the top priority. It's pointed out in this planning that, we should accelerate the construction of intellectual property laws and regulations, such as accelerate the formulation and amendment of Patent Law, Copyright Law and supporting regulations, and Regulations on Protection of New Varieties of Plants, etc.; improve the intellectual property-related legal systems, search and perfect the intellectual property protection system of business model and practical works of art. In addition, it is needed to further improve the intellectual property protection level, especially, develop the role of juridical protection of intellectual property, strengthen the criminal protection of intellectual property, enhance the construction of intellectual property administrative law enforcement system, strengthen the intellectual property protection of import and export trade, strengthen the intellectual property protection in the traditional advantageous fields, strengthen the intellectual property protection in new fields and new business forms, and strengthen the intellectual property protection in the field of people's livelihood. It is required to improve the quality efficiency of intellectual property, mainly focus on the intellectual property work of improving the patent quality efficiency, carrying out the trademark strategy, building high-quality copyright, and strengthening the intellectual property quality in areas such as geographical indication, new plant varieties, and layout designs of integrated circuits, and drive the industrial upgrading and development as well as intellectual property opening-up and cooperation. In the key special projects, it is mainly required to strengthen the construction of intellectual property transaction operation system, for example, innovate the financial service of intellectual property and strengthen the intellectual property collaboration application by improving the public service platform of intellectual property transaction operation; improve the public service ability of intellectual property, construct the public service platform of intellectual property information, and strengthen the public service system construction of intellectual property as well as the intellectual property service supervision. In addition, it is required to strengthen the intellectual property talent cultivation system construction, optimize the intellectual property talent growth system, establish the talent discovery and evaluation mechanism, and also strengthen the intellectual property culture construction, increase the intellectual property publicity, and carry out the intellectual property education popularization plan.

II. With the print and distribution of Promotion Plan of Deeply Implementing the National Intellectual Property Strategy to Accelerate the Construction of Powerful Country of Intellectual Property of 2017, the work of construction of powerful country of intellectual property has been detailed further.

In middle 2017, Promotion Plan of Deeply Implementing the National Intellectual Property Strategy to Accelerate the Construction of Powerful Country of Intellectual Property of 2017 was printed and distributed, to further detail the key tasks and work measures of intellectual property strategy of the year 2017. This promotion plan mainly focuses on comprehensive promotion mainly from five aspects, including, deepening the reform in the intellectual property field, strictly protecting the intellectual property, promoting the intellectual property creation and application, deepening the international exchange and cooperation of intellectual property, and strengthening the organization implementation and safeguard.

Deepening the reform in the intellectual property field: Firstly, promote the intellectual property management system and mechanism reform, and actively research and explore the intellectual property management system and mechanism reform; further propel the national pilot area and demonstration area construction of concentrated development of intellectual property service,

determine the place of pilot reform, do well in supervision, urging and inspection as well as the assessment work of reform advancement in the pilot area, and timely summarize the successful experience of reform promotion. Secondly, reform and improve the significant policy of intellectual property, for example, actively promote the implementation of China National Economic Accounting System (2016), perfect the accounting methods of research & development, computer software, and other intellectual property products, and explore the accounting methods of intellectual property products like database, entertainment, literature, and artwork original. Establish the innovation-driven development evaluation system with intellectual property as important content, and publish the annual report of intellectual property development. Finally, deepen the reform “streamline administration, delegate power and optimize the service” in the service industry of intellectual property. Carry out the reform measures of further relaxing the patent agent access, strengthen the trademark agency supervision, strengthen the supervision over centralized copyright management organization as well as foreign copyright institution, and standardize their various activities regarding copyright, to promote the further integration of copyright social organization resources.

Strictly protecting the intellectual property: It is mainly required to perfect the laws, regulations and rules, actively promote the legislation in each field, develop the special governance in key field, and strengthen the daily supervision and law enforcement, for example, amend the Patent Law, Copyright Law, and Regulations on Protection of New Varieties of Plants. In addition, it is also required to strengthen the long-term protection mechanism construction, by propelling the full coverage of organs and computers of software genuine inspection by government agencies, promote the software genuine use and management work guideline, and expand the domestic software application pilot range.

Promoting the intellectual property creation and application: By implementing the patent quality promotion work, optimize the patent statistical index system and various patent-related self-service policies, develop the centralized examination pilot of patent application in key advantageous industries, perfect the invention patent examination quality guarantee case sharing mechanism, strengthen the quality guarantee system construction and external feedback mechanism of examination quality, and improve the professional guidance system, to increase the intellectual property creation quality. In terms of strengthening the comprehensive application of intellectual property, it is required to perfect the scientific and technological achievements transformation support mechanism, accelerate the implement of national guidance fund of scientific and technological achievements transformation, and perfect the national intellectual property operation platform system. Develop the guiding role of intellectual property operation funds in key industries, and promote the realization of trademark acceptance and registered trademark mortgage registration work facilitation reform. In addition, the work of strengthening the intellectual property information utilization is mainly to build the patent navigation work system by promoting the patent navigation projects. Promote the layout of pilot project, release the layout development report and the report of intellectual property situation in key industries, and construct the basic public service platform of information service.

In the promotion plan, deepening the international exchange and cooperation of intellectual property is taken as a key, and it is mainly required to strengthen the overseas layout and risk prevention and control of key industries and improve the external cooperation level of intellectual property. Overseas layout and risk prevention and control of key industries are realized mainly by developing the research on intellectual property environment and timely publishing the intellectual property system information of the destination of external investment. Strengthen the construction of overseas intellectual property maintenance assistance mechanism, perfect the mechanism of communication with competent authorities of industries as well as chambers of commerce and industry associations, and continue to set up the intellectual property service stations for Chinese enterprises in the international fairs (expositions), to provide the guide of intellectual property for the enterprises’ “going-out”, and assist to settle the intellectual property disputes encountered by Chinese enterprises at abroad. Encourage

the social capital to set up the overseas intellectual property protection assistance service funds for Chinese enterprises, select the overseas and foreign intellectual property protection service assistance organizations, and promote the settlement and development of “China’s time-honored” enterprises at abroad. To improve the external cooperation level of intellectual property, it is required to mainly strengthen the cooperation and exchange with world intellectual property organization, world trade organization, and other related international organizations, and actively promote the cooperation in intellectual property of countries along the “the Belt and Road Initiative” and BRICS countries. By use of the overseas exchange activity platform of intellectual property, expand the international influence of Chinese brands, and improve the effect of foreign intellectual property work. Set up the intellectual property academic education program to assist the developing countries, and develop the intellectual property academic education and short-term training facing the developing countries. Expand the ways for enterprises to take part in the formation and amendment of international and regional intellectual property rules. Promote the domestic service organizations and industry alliances to strengthen the cooperation and exchange with the related overseas organizations.

III. Comprehensive amendment work of laws and regulations in the intellectual property field is started, to help to realize the strategy of powerful country of intellectual property.

Intellectual property protection and application are not separated from the top design construction and perfection of legal system, and the key of institutional guarantee of the construction of powerful country of intellectual property lies in the perfection of basic laws like Patent Law, Trademark Law, and Copyright Law as well as the formulation and detailing of corresponding supporting laws and regulations. In 2017, with the promulgation and specific promotion of National Planning of Intellectual Property Protection and Application during the 13th Five-year Plan, the amendment and perfection of laws and regulations have been put on the agenda. In addition, the laws and regulations related to the procedures of intellectual property application, declaration of avoidance have also started a new mileage.

In terms of legislation, the basic laws and regulations in the intellectual property field have started the procedure of amendment. The fourth amendment work of Patent Law is in progress intensively. The third amendment of Copyright Law has also been developed in succession, new amendments have been published to the whole society for the purpose of seeking for opinions, and all sectors of society have deeply discussed the controversial problems in the amendments. According to the amendment progress of Patent Law and Copyright Law, the revision of supporting regulations and departmental rules like Implementation Regulations of Patent Law, Patent Examination Guideline, and Implementation Regulations of Copyright Law will be promoted timely. In addition, China has also actively promoted the revision work of Regulations on Protection of New Varieties of Plants, as well as the legislative process of Biogenetic Resources Acquisition Management Regulations and Human Genetic Resources Management Regulations, taken part in the revision of Olympic Insignia Protection Regulations, and promulgated the Explanation to Several Problems in Application of Laws about Examining the Intellectual Property and Competition Dispute Behavior Security Cases. In addition, other supporting laws and regulations related to intellectual property protection have been improved and detailed gradually. For example, in patent implementation, Beijing Higher People's Court has published the revised Guideline for Patent Infringement Judgement, such Guideline is the most comprehensive normative document of infringement judgment published by Chinese court, and gives specific provisions in six parts, including determination of patent and utility model patent protection scope, infringement judgment of invention and utility model patent rights, determination of appearance design patent protection scope, infringement judgment of appearance design patent, recognition of infringing act, and infringement defense.

In terms of judicature, the release of guiding cases by the Supreme People's Court, establishment of cross-regional juridical tribunal of intellectual property, and the development of pilot work have all manifested China's determination and confidence to strictly protect the intellectual property. By promoting the "three-in-one" trial work of civil, administrative and criminal cases, drive the cross-regional management of partial intellectual property cases by the intellectual property tribunals of intermediate people's courts in Nanjing, Suzhou, Wuhan and Chengdu, to actively promote the perfection of intellectual property case appeal mechanism. Strengthen the construction of professional forces of procuratorial organs to handle the intellectual property cases, strengthen the guide to new cases handling in the intellectual property field, and focus on investigating and handling a group of criminal cases of intellectual property infringement in serious situation and with a bad influence.

In terms of enforcement of law, it is required to strengthen the administrative law enforcement work of intellectual property protection. Provide the innovators with a more convenient right-defending channel by improving the way of law enforcement, increasing the judicial efficiency, and strengthening the investigation of source of counterfeiting, repeated infringement, willful infringement, and group infringement. In terms of law enforcement mechanism, by perfecting the joint law enforcement and cross-regional law enforcement collaboration mechanism of intellectual property, it is required to actively develop the special projects of law enforcement, mainly investigate the infringement cases which are cross-regional, in a large scale, and have a strong social reflection, promote the trans-departmental, trans-disciplinary, and cross-regional collaboration in law enforcement, and strengthen the handover of suspected criminal cases. In addition, strengthen the trademark brand protection, standardize and effectively protection the business secrets, improve the public service level of consumer goods trademarks, and continue to promote the software genuine work in government organs and enterprises. Develop the joint law enforcement with related international organizations and overseas law-enforcing departments. Strengthen the intellectual property law enforcement and protection work in the fields of superstore, exhibition, e-commerce, and import & export. Establish and perfect the online law enforcement and case handling system of patent and copyright. Perfect the report and complaint mechanism of fighting against the infringing fake goods. Innovate in the rapid right safeguard mechanism of intellectual property. Perfect the administrative law enforcement supervision of intellectual property, and strengthen the law enforcement and right safeguard performance management. Strengthen the intellectual property protection of exhibition. Strengthen the performance evaluation to strict intellectual property protection, and continue to develop the investigation on social satisfaction with intellectual property protection. Establish the multiple solution mechanism of intellectual property disputes, and strengthen the construction of intellectual property arbitration institution and dispute mediation organization.

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