

OVERVIEW ON INTELLECTUAL PROPERTY PROTECTION NOTES IN CHINA DURING THE COVID-19 OUTBREAK

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COVID-19 has swept across the globe causing massive disruption to businesses everywhere. While the impact of COVID-19 on other parts of the world continues to increase, China's economic activity is now gradually returning to "business as usual". This note will give an overview on the measures taken by the Chinese authorities in relation to IP during the period of COVID-19 outbreak in China and will shed light on what businesses should be aware of in terms of IP protection during this unprecedented time.

Time-out Period Mechanism

The P.R.C Tackling Emergency Affairs Law, the P.R.C Patent Law, the P.R.C Trade Mark Law, the P.R.C Regulations on Protection of Layout Design of Integrated Circuits and other relevant regulations have provided for a time-out mechanism to be applied in certain situations to prevent the expiration of statutory time limits due to circumstances outside relevant parties' control. During the outbreak of COVID-19, the China National Intellectual Property Administration ("**CNIPA**") issued the No. 350 Announcement to confirm that where a party had missed a stipulated deadline as a result of delay caused by reasons related to COVID-19, leading to the termination of relevant IP rights, the party could apply for restitution of those rights.

For patent and layout design of integrated circuits ("**LDIC**") rights, an affected party can apply for restitution of their rights within 2 months from the date of removal of the obstacle (e.g. a medical reason or restrictive measures related to COVID-19), or at the latest within 2 years from the date of expiration of the time limit. The application is free but the party must submit together with the application form evidence confirming the COVID-19 related reason for delay.

For trademarks, if a party is unable to progress trademark related matters due to issues related to COVID-19, the relevant time period will be suspended from the date on which the obstacle arose until the date it is removed, unless otherwise provided by law. If the trademark is terminated due to the obstacle, a party can request restitution of the trademark within 2 months from the date of removal of the obstacle or at the latest within 2 years from the date of expiration of the time limit, as with LDIC rights. On 27 March 2020, CNIPA announced that the No. 350 Announcement is applicable to all parties located in other countries and regions who are affected by COVID-19. In other words, foreign parties can benefit from the time-out mechanism as well.

With regards to court procedure, Article 83 of P.R.C Civil Procedural Law provides that if a party fails to meet a deadline due to a force majeure or another justified reason, the party can apply for an extension of the deadline within ten days after the obstacle is removed. The People's Court shall then decide whether to grant the extension.

Online application for registration and online litigation service

For IP application for the IP rights which can only be obtained via registration, such as patents, trademarks and LDIC, the CNIPA has an existing online application system for registration and has encouraged parties to submit their applications online and submit relevant documents by post rather than in person to reduce physical contact.

For IP litigation, filing cases via the online system or by post has become more common. During the outbreak of COVID-19, such off-site filing is preferred by parties. By way of illustration, it was reported that from 3 February to 28 February 2020, the Beijing IP Court reviewed 207 cases that were filed online and 1506 cases that were filed by post, which constitutes a 15% and 700% increase (respectively) compared to the figures reported for the same period last year.

However, with regards to hearing trials, online hearings are not common in China. However, the Supreme People's Court issued the No. Fa [2020] 49 Notice Concerning Strengthening and Regulating the Online Litigation Work during the Period of COVID-19 Epidemic Prevention and Control Period (the "No.49 Notice") to encourage the courts to use digital means where appropriate for proceedings. In particular, it points out that courts should consider the technical requirements of the case, the specific situation and the parties' willingness to proceed with an online hearing. Where the parties disagree with the

method of online hearing or there are circumstances such as certain technical obstacles, where parties' identities or originals of the documents have to be verified in person, or where alleged infringing products would have to be examined, the hearing would not be conducted online.

Rejection of COVID-19 related trademark with negative influence and green channel of IP rights application and IP rights pledge

Similar to trademark laws in many countries, the P.R.C Trade Mark Law rejects trademark registrations that are adverse to the public interest. During the outbreak of COVID-19, applicants tried to apply for trademarks for "Huo Shen Shan" and/or "Lei Shen Shan"; two hospitals built specially to treat COVID-19 patients in Wuhan city, as well as "Li Wen Liang" a doctor who passed away due to infection of COVID-19.

The China Trademark Office deemed that applications of above-mentioned marks were made in bad faith in relation to COVID-19, contrary to Article 10 (8) of the P.R.C Trade Mark Law^[1] and that the applications should therefore be refused. Some of the applicants proactively withdrew their applications of the above-mentioned marks. Furthermore, a number of the trademark agents who represented the applicants for the above-mentioned marks were fined a sum of RMB 100,000 (approx. USD 14,000).

On the other hand, however, it is recognised that applications for certain IP rights that seek to improve the state of affairs during the COVID-19 outbreak deserve preferential treatment. In the document Ten Measures to Support Resumption and Production of Enterprises issued by the State Administration for Market Regulation, National Medical Products Administration and Administration and CNIPA, it is stressed that parties applying for patents and trademarks concerning protection against COVID-19 may apply for prioritised and/or expedited examination.

Advice for dealing with IP protection during the COVID-19

In light of the above-mentioned points, we set out below some preliminary advice in terms of IP protection in China in response to the COVID-19 outbreak.

Firstly, bear in mind that due to the first-to-file IP system in China, parties shall apply for

the relevant IP rights as soon as possible. If COVID-19 influences the process of filing, applicants will have to apply the time-out mechanism to secure their rights. Please note that this mechanism is also applicable to foreign parties affected by COVID-19 in their own countries or regions.

Secondly, where applicable, try to use online filing systems and/or postal services. In addition, it is noteworthy that some of China's courts are willing to explore the possibility of online hearings which is a very new development.

If one is planning to apply for patents or trademarks which genuinely relate to COVID-19, don't forget to apply for prioritised and/or expedited examination to try to obtain the registered IP rights as quickly as possible.

[1] Article 10 (8) of the P.R.C Trade Mark Law^[1] provides that: "[T]he following signs shall not be used as trademarks: ... (8) Those detrimental to socialist morality, or having other adverse influences."

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