NEWSLETTER

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QUARTERLY

PANAWELL & PARTNERS LLC

Cover: Interior of office block where Panawell locates

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Panawell & Partners, LLC (Panawell), founded in 2003, is an IP boutique firm licensed by the State Intellectual Property Office (SIPO) and the State Administration for Industry and Commerce (SAIC) of the PRC to provide both domestic and overseas clients with full spectrum of services in all fields of intellectual property rights (IPR).

State Intellectual Property Office of China Restructured

On March 23, 2018, it was announced that the State Intellectual Property Office of China would be restructured. The restructured State Intellectual Property Office will be re-organized by integrating the former State Intellectual Property Office, the former part of State Administration for Industry and Commerce with the responsibility for trademark administration, and the former part of General Administration of Quality Supervision, Inspection and Quarantine with the responsibility for administration of geographical indication of origin. The restructured SIPO will be led by the newly-established General Administration for Market Supervision.

(Source: Xinhua News Agency)

Patent Certificates Simplified

On February 22, 2018, the State Intellectual Property Office of China released Administrative Notice No. 257 Relating to Composition of Patent Certificates and Certified Copies Thereof, simplifying the composition of patent certificates and certified copies thereof with grant document not attached any more. According to the Notice, in respect of patents bearing the grant announcement date from March 2, 2018 (including the date) to April 24, 2018 (excluding the date), the Patent Certificate issued by SIPO includes the cover page of grant document; and as for patents bearing the grant announcement date after April 24, 2018 (including the date), SIPO will adopt the new version of Patent Certificate and any certified copy thereof. In the new-version Patent Certificate and certified copy thereof there will be no grant document, and there will be added information of grant announcement date and the patentee's address. Both the old and new versions of Patent Certificates and certified copies thereof will be of the same legal effect and validity. Unless otherwise provided for, issued old version of Patent Certificates and certified copies thereof will not be exchanged for the new version.

From the grant announcement date, patentee and the public may find and obtain relevant grant documents from SIPO's official website http://epub.sipo.gov.cn.

(Source: official website of SIPO)

Chinese Patent Right Extendable to Cambodia

In September, 2017, the Commissioner of the State Intellectual Property Office of China signed, with the Cambodian Ministry of Industry and Handicraft, the Memorandum of Understanding on Intellectual Property Cooperation, affirming that valid Chinese invention patents are effective for protection upon registration in Cambodia, and that Chinese invention patents that are granted and kept valid by SIPO, and have their filing dates after January 22, 2003 are all qualified to be effective for protection.

When filing an application for a valid Chinese invention patent to be effective for protection in Cambodia, applicants need to submit a request form, granted patent specification and patent registry certified by SIPO, English and Khmer translation of the grant document, and any other necessary document. Once examined as eligible, the patent is granted protection in Cambodia, and enjoys the same relevant filing date and term of protection as in China, that is, twenty years from the Chinese date of filing.

(Source: Xinhua News Agency)

IP Administration Certification Measure Took Effect

To regulate the intellectual property rights administration certification activities, improve their effectiveness, and reinforce supervision in this regard, the IP Administration Certification Measures entered into effect as of April 1, 2018. It was formulated jointly by the Certification and Accreditation Administration of China and the State Intellectual Property Office under the Chinese patent law, trademark law, copyright law, and related administrative regulations such as the Certification and Accreditation Regulation and Certification Organization Administration Measures. The Measure will regulate the activities of certification organizations to certify that the intellectual property management systems of, and the intellectual property-related services by, legal entities and other organizations comply with the relevant national standards and technical norms and specifications.

(Source: official website of SIPO)

Statistics of Patent Filings and Grants in China in 2017

According to the statistics released by the State Intellectual Property Office, in the year of 2017, SIPO received 3,697,845 applications filed for invention, utility model and design patents, increasing 6.7% of those filed in the same period of the year before. Of all these applications, 1,381,594 received applications were filed for invention patents, 1,687,593 for utility model patents, and 628,658 for design patents, increasing respectively 3.2%, 14.3% and -3.3% of those filed in the same period of the previous year.

Moreover, of all the applications filed for invention patent in the year of 2017, 1,245,709 were filed by Chinese applicants, increasing 3.4% and accounting for 90.2%; 135,885 by overseas applicants, increasing 1.8% and accounting 9.8%.

In the year of 2017, SIPO granted a total of 1,836,434 patents for invention, utility model and design, increasing 4.7% of those granted in the same period the year before. Of all the patents granted, patents for invention, utility model and design were respectively 420,144, 973,294 and 442996, increasing 3.9%, 7.7% and -0.7% of those granted in the same period of the previous year. Of all the invention patents, 326,970 were granted to

Chinese applicants, increasing 8.2% and accounting for 77.8%; 93,174 to overseas applicants, increasing -8.7% and accounting for 22.2% of the total of grants.

In 2017, SIPO received altogether 50,674 PCT international applications, increasing 12.6% of those received in the same period of the previous year.

(Source: official website of SIPO)

Trademark Office to Simplify Application Materials, Streamline Working Processes, and Shorten Examination Time

On February 7, 2018, the Trademark Office of State Administration for Industry and Commerce released the administrative notice to further simplify or reduce application materials, streamline relevant working processes, and shorten the time for examination on trademark registration examination, trademark recordal change and trademark renewal as follows:

1. From today on, where applicants apply for registration of trademarks of color combinations or colored patterns or designs, they, when filing their applications for trademark registration, do not have to submit black-and-white drafts of the trademark patterns or designs. If these materials are needed in the follow-up examination, the Trademark Office will notify the applicants to separately supplement them.

2. From today on, when an applicant, filing a request in paper form for change of recordal of several trademarks under his name, may provide only one copy of identification document and one copy of power of attorney, in addition to one copy of proof document for the change as originally prescribed. The applicant should indicate, in the request for recordal of change, the specific application where said identification document, power of attorney and proof document can be found, and the power of attorney should cover all the trademarks concerned.

An applicant, filing requests for registration, assignment, renewal, cancellation, license recordal, correction, and re-issue of registration certificate of a plurality of trademarks simultaneously, may refer to the preceding provision.

3. From today on, an applicant, applying for change of the registrant's name and address in several trademarks of Madrid international registration under his name, may file just one application for recordal of the change. Applicants, assigning several trademarks of Madrid international registration under his name, say to the same assignee, may file just one application for the assignment.

4. From February 9, 2018, the present preliminary examination process and substantive examination process in relation to recordal of change are integrated into one, and from April 1, the present preliminary examination process and substantive

examination process in relation to trademark renewal will be combined. After the integration and combination, the process to issue notification of non-acceptance of request and notification of acceptance of request during the preliminary examination will be cancelled, so as to drastically improve examination efficiency.

5. From February 14, 2018, when an applicant filing his application online for recordal of change in several trademarks under his name, the online application system will automatically bring the filled-in application information and the uploaded documents into the next application, so as to reduce repeated information filling-in and document uploading and to make the online application more efficient and more convenient.

6. From April 1, 2018, the Trademark Office will finalize its first examination on request for recordal of change within one month from the date of receipt thereof, and from June 1, 2018, it will finalize its first examination on request for trademark renewal within one month.

(Source: official website of Trademark Office)

Several Present Legal Issues Requiring Attention in Trial of IP Cases

In April 2017, the Beijing Higher Court's Intellectual Property Tribunal had developed some specific opinions to cope with some common issues in the trial of IP cases on the basis of its in-depth research.

The opinions on technical cases are as follows:

(Continued from the issue of December 2017)

4. Issues of Determination of Contents of Disclosure in Drawings

The drawings, called engineers' language, function to graphically add illustration to the verbal part of the description to enable one to directly and graphically construe each and every technical feature and the entire technical solution of an invention or utility model. Under the Guidelines for Patent Examination, only the technical features that can be directly and undoubtedly identified or determined from the drawings are what have been disclosed, while anything that is guessed from the drawings or any dimensions and their relationship that are not verbally explained or can be derived only from measurement in the drawings should not be deemed to be. To date, determination of contents of disclosure in the drawings in patent-related administrative cases mainly involve two circumstances: one where an invention or utility model carrying drawings is used as a reference to invalidate a patent in suit; and two where the drawings of an invention or utility model as a prior design are compared with a design in suit. In the former circumstance, contents a person of ordinary skill in the art can directly and undoubtedly determine in the drawings can be used as the contents as disclosed in the reference, but in respect of the drawings lacking verbal explanation, technical features a person skilled in the art cannot directly and undoubtedly determine

determine are improper to be used as technical features disclosed in the reference. In the latter circumstance, the drawings are all contents of the prior design. The verbal part of the description may be used to interpret the drawings, but it can only be used to explain the visually observable part of the drawings. In other words, for what is hard to be visually observed, the words in the description should not be used to give additional explanation. It should be emphasized that in an invention or utility model case, where the contents of disclosure of the drawings are involved, the drawings should be judged from the perspective of a person of ordinary skill in the art; and in a design case, where the contents of disclosure of the drawings are involved, the drawings should be judged from the perspective of an average consumer.

5. Issues Requiring Attention in Examination of Designs

There were not very many design-related administrative cases in 2016, but there were two issues that require our attention. One is the basis for the extent of protection of a design patent. Under Article 59, paragraph two, of the Patent Law, the extent of protection of the design patent shall be determined by the design incorporated in the product shown in the drawings and photographs. Where errors exist in the drawings or photographs in the grant document of a design patent, say where an printing error renders the drawings or photographs in the grant document erroneous, the error shall be corrected under the law in time, and the corrected drawings or photographs are the basis on which the scope of protection of the design patent is determined. If an interested party raises opposition to the drawings or photographs in the grant document, the court shall look into the files and check the records to find out or ascertain the facts. Two is the issue of burden of proof in connection with the "design space". The Supreme Court has, in the Interpretation of Several Issues Relating to Application of Law to Adjudication of Cases of Disputes Arising from Infringement of Patent Rights (II), officially introduced the concept of design space. It should be said that introduction of the design space is of more important function in judging design-involved administrative cases. The Supreme Court's preceding provision of the judicial interpretation on design space also applies. However, it should be noted in the adjudicative practice that as the size of a design space is more subjectively determined, interested parties shall be allowed to sufficiently adduce evidence by means of distribution of the burden of proof, and in the judgment shall be shown or revealed the judge's cognitive process of forming the size of the design space. In addition, in the course of calculating damages for infringement of a design, the Supreme Court's judicial policy of "well-arranged proportion" should be closely followed, and the calculation should be made according to what proportion the involved design takes in the profits the product has made, and the damages should not be awarded by taking all the profits into account when awarding the damages.

6. Issue of Whether Numerical Range of Claims Are Supported

As to whether a patentee's summarizing a wider numerical range from a narrower one as presented in the description complies with Article 26, paragraph four, of the Patent Law that "the claims shall be determined on the basis of the description" it does not conform to the practical circumstance to indiscriminately, simplistically hold it conforming or contrary to the law provision. The determination should be made with account taken of the following factors: a) the knowledge and capability of a person of ordinary skill in the art and the extent of development of the technology in the art; b) the technical problem and solution thereto as stated in the description and the technical teaching they have given; c) presence of specific interpretation or explanation of the numerical range in the description, and possibility for the numerical range, as a whole, in the claim to solve the technical problem and achieve the expected effect; and d) likelihood for the selection of the numerical range to represent the invention's improvement of the background technology. If a person of ordinary skill in the art is, taking account of all these factors, enable to determine that the wider numerical range is what a person of ordinary skill in the art can derive or summarize from what the description has sufficiently disclosed, and the wider numerical range as a whole, can solve the technical problem and achieve the effect as stated in the description, then it is possible to view the wider numerical range to be supported by the description, and complies with the provision of Article 26, paragraph four, of the Patent Law, otherwise the law provision should be strictly followed.

7. Issue of Whether Patent Invalidation Requesters' Qualification Should Be Limited

Article 23, paragraph three, of the Patent Law provides: "A patented design shall not conflict with any lawful right another party had obtained before the date of filing of the patent." Under Article 45 of the Patent Law, any entity or individual may request the Patent Reexamination Board to invalidate the patent right. The Guidelines for Patent Examination have clearly limited the requesters to prior right owners or interested parties. In practice, there is a view that since the Patent Law and its associated Implementing Regulations do not limit the qualification of invalidation requesters, the preceding provision of the Guidelines for Patent Examination, which conflicts with the upper-level law, should not be applicable, This being the case, should the qualification of a requester for invalidation of a design patent on the basis of a prior right be limited? We are of the view that in case like this the invalidation requesters should be subjectively qualified to be the prior right owners or interested parties because the prior-secured lawful right under Article 23, paragraph three, of the Patent Law is a private right in the civil law, which is irrelevant to the public rights. According to the attributes of a private right, whether to claim

remedies against an infringement is the right of the right owner or interested party, and no one else is entitled to make the claim on his behalf. Where a granted design patent overlaps with the subject matter of a prior lawful right, if the right owner does not make his claim, there is no conflict of rights at all. Allowing any entity or individual to file request with the PRB for invalidation of a patent is likely to go against the free will of the right owner. Also, any party who can prove that he is a prior right owner or an interested party is entitled to request, under Article 23 of the Patent Law, to invalidate a design patent, which does not contradict with Article 45 of the Patent Law. Besides, it is clearly provided in Article 45 of the Trademark Law that where a registered trademark infringes another party's prior right, only the prior right owner or an interested party is allowed to request the Trademark Review and Adjudication Board to declare the registered trademark invalid. This is a provision of the same nature.

8. Some Issues Requiring Attention after the Amended Guidelines for Patent Examination Come Into Effect

On April 1, 2017, the SIPO's Decision on the Amendment of Guidelines for Patent Examination was officially put into implementation. This Amendment has been made by SIPO to address the hot issues drawing wide attention from the IP community after the amendment was made to the Guidelines for Patent Examination as of 2014. While the Guidelines for Patent Examination are only the SIPO's departmental regulations, they are part of the legal bases or benchmarks referred to and followed in hearing patent-related administrative cases. It is no denying, however, that the Guidelines for Patent Examination are of great significance in hearing patent-related administrative cases. For this reason, issues as the following require our attention in hearing these cases.

a) Attention should be paid to the issue of application of the Guidelines for Patent Examination. How to apply law is part of a judge's basic professional training. In a patent-related administrative case, the judge should examine, on his own, the issue of law application involved in the administrative decision in suit, including, among other things, the issue of the applicable version of the Guidelines for Patent Examination. At the work plan meeting held last year, I highlighted the issue, so I am not going to repeat here. Since several aspects of provisions in the present amended Guidelines for Patent Examination tend to be loosened, hence, in terms of law application of the Guidelines for Patent Examination, we should follow both the principle of "non-retroactivity" set forth in Article 93 of the Legislation Law and the principle of "favorable retroactivity" provided for in the same law provision. Putting the two provisions together, we get the familiar principle of "following the old and favorable rules". The loosened parts of the present amendment to Guidelines for Patent Examination mainly involve a series of issues about technical solutions relating to innovation of

business models, inventions relating to computer programs, testing data supplemented after the date of filing, and the ways of amendment to patent documents in the invalidation proceedings. Therefore, in future hearing of patent-related administrative cases, although a decision in suit was made before April 1 this year, we should pay attention to the above-mentioned "favorable retroactivity". According to the amended Guidelines for Patent Examination, the new Guidelines for Patent Examination should apply to patent applications or patent rights that can be granted or kept valid.

b) Issue of Whether Amendment to Technical Solution Goes beyond Scope of Disclosure

The present Amendment to the Guidelines for Patent Examination allows patentees to make amendment in more ways than before in the invalidation proceedings, deleting "combination of claims", and adding two ways of "further defining the claims" and "correcting obvious errors". It is further provided that by "further defining the claims" is meant "adding, to a claim, one or more technical features presented in other claims to narrow down the extent of protection". It should be pointed out that loosening ways of amendment in the invalidation proceedings has met the demand of the industrial community, and conforms to the practical situation in China.

In recent years, the number of cases involving amendment going beyond scope of initial disclosure has drastically decreased, which has a lot to do with the court's efforts to rectify the PRB's stringent examination practice and the improved quality of patent drafting. In the judicial practice, to determine amendment going beyond scope of disclosure in the judicial practice, it is necessary to differentiate cases of reexamination of application refusal and those of patent invalidation. The rules on allowable amendment in phases of substantive examination and reexamination are relatively more loosened, but more stringent in the invalidation phase so long as it is not detrimental to the requirement of disclosure of the claims. According to the court's opinions developed in the "Jiangsu Simcere case", if a patentee's amendment has limited and narrowed down the scope of claims and it is explicitly stated in the description, this is generally not held contrary to Rule 68 of the Implementing Regulations of Patent Law as of 2001. This principle established in the case is still of positive significance today. We believe that while the Guidelines for Patent Examination have loosened to allow more ways to make amendment in the invalidation proceedings, enumeration of them can only list some common ways of amendment, and cannot cover other circumstances. When an invalidation requester's way of amendment is not one of the four ways as listed in the Guidelines for Patent Examination, it should be determined under the above provisions of the Implementing Regulations of Patent Law. For example, addition to the claims one or more technical features of a complete technical solution presented in the description, shall be considered

as supported by the description, and as complying with the above provisions of the Implementing Regulations of Patent Law. Anyway, the above enumerative provisions of the Guidelines for Patent Examination represent a detailed list of the above provisions of the Implementing Regulations of Patent Law, and individual cases should be heard and decided under the above provisions of the Implementing Regulations of Patent Law.

c) Issue of Whether Testing Data Supplemented by Patent Applicants/Patentees After Date of Filing Are Acceptable During the Patent Right Determination Proceedings

The Chapter of the Guidelines for Patent Examination Relating to Examination in the Chemical Field has been amended by deleting the content that "testing data supplemented after the date of filing should not be considered", and by accepting and examining testing data supplemented after the date of filing, with a condition added for accepting testing data supplement this way: the technical effect proved with the supplemented testing data should be what a person of ordinary skill in the art can derive from the disclosure made in the patent application. This provision has changed the former conservative, rigid practice, and better balanced the relations between the first-to-file principle and protection of interests of patentees.

According to the preceding provisions, following points should be clarified. First, the technical effect proved with the supplemented testing data should be clearly stated in the patent application as filed, the facts proved therewith should not go beyond the scope of disclosure of the application documents as initially filed, and they should not be used to prove new technical facts. Second, the benchmarks for accepting testing data later supplemented by patent applicants/patentees are consistent, whether it is to be used to rectify insufficient disclosure in the description, or to prove the inventive step of a patent involved. Third, while provisions concerning the contents of supplemented testing data are set forth in the Chapter of the Guidelines for Patent Examination Relating to Examination in the Chemical Field, they also apply to the other technical fields. Forth, the testing data are acquired under the test condition, with the equipment and through the testing means existing before the date of filing of the patent involved.

d) In the absence of sufficient and justifiable reasons, it is undue to negatively comment on provisions of the Guidelines for Patent Examination

The Guidelines for Patent Examination, a set of departmental rules and regulations formulated by SIPO on the basis of the Patent Law and its associated Implementing Regulations, include the bases and standards for the patent administrative authorities under the State Council, the PRB included, to perform their administrative duty under the law, and interested parties should abide by them in related affairs of patent administration and administrative adjudication, such as patent

application and invalidation. Under Article 63, paragraph three, of the Administrative Procedure Law, the Court shall refer to rules and regulations in hearing administrative cases. For this matter, so long as the Guidelines for Patent Examination are not contrary to the provisions of the Patent Law and the Implementing Regulations of the Patent law, the Court should refer to and apply them. The dividing line between the administrative and judicial authorities should be duly respected. Unless an interested party, in addition to bringing an administrative lawsuit against an administrative decision under Article 20 of the Supreme Court's Interpretation of Several Issues Relating to Application of the Administrative Procedure Law, requests examination of an abstract administrative action in the Guidelines for Patent Examination, it is undue to examine and negatively comment on any specific provision of the Guidelines for Patent Examination. If a related provision of the Guidelines for Patent Examination indeed conflicts that of an upper-level law and the administrative respondent's action does not violate the latter, it is possible to directly point out, in the judgment, the administrative respondent's action does not violate the upper-level law provision, and revoke the decision in suit accordingly. For example, in the aforesaid Jiangsu Simcere case, the PRB held that the patentee's amendment made during the invalidation proceedings had been made in a way other than those allowed in the invalidation proceedings under the Guidelines for Patent Examination, and the Court directly concluded that the patentee's amendment to the claims of the patent did not violate the infringement remedies, and is a right owner's or interested party's right, and any other party is not entitled to make the claim on his behalf. Where a granted design patent overlaps the subject matter of a prior lawful right, if the right owner does not make any claim, there would be no conflict of rights at all. Allowing any other entity or individual to file with the PRB request for invalidation of the patent is likely to run against the right owner's will. Also, any party who can prove that he is a prior right owner or an interested party is entitled to request, under Article 23 of the Patent Law, to invalidate a design patent, which does not contradict with Article 45 of the Patent Law. Besides, it is clearly provided in Article 45 of the Trademark Law that where a registered trademark infringes another party's prior right, only the prior right owner or an interested party is allowed to request the Trademark Review and Adjudication Board to declare the registered trademark invalid. This is a provision of the same nature. (To be continued.)

(Source: IP Tribunal of the Beijing Higher Court)

Copyright Protection of Lecture Notes and Teaching Materials

- Comments on Typical Copyright Case Heard by the Beijing Intellectual Property Court

Lecture notes or class handouts and teaching materials, carriers of teaching activities and subject matter legible for copyright protection, include, among other things, knowledge and information to be disseminated to countless students, and entail intellectual achievements by educational workers and diligent efforts by related publishers. To be more specific, a set of lecture notes or teaching materials include both the rights its author has acquired from his creating activities, and the rights a publisher and any other interested party of the work enjoy from their creative work.

Education is of vital importance to educating our younger generation and improving national quality, and lecture notes and teaching materials are important carrier of the teaching activities. On the one hand, lecture notes and teaching materials carry intellectual achievements and creative work by the educational workers and publishers; and on the other hand, they are used to perform the important mission to disseminate knowledge and information. The two aspects of lecture notes and teaching materials exactly embody the important dividing line between the dichotomy of ideas and expressions, and comments on originality. Following is this writer's comments on a recent copyright cases involving lecture notes and teaching materials decided by the Beijing Intellectual Property Court.

Case: Li Xiuchun et.al. v. Beijing Weishizhixin Education Consultation Co., Ltd., a case of copyright dispute (i.e. Judgment No. Jing 73 Civil Final 472/2016)

The basic facts of the case: Li Xiuchun and You Chengye claimed their copyright in the KA Hope Point Intensive Training Class Calculus Lecture Notes, KA Hope Point Intensive Training Class Linear Algebra, KA Hope Point VIP Refined Small Intensive Class Lecture Notes (I and II) and KA Hope Point Sprint Class Lecture Notes (the five involved books for short). The Beijing Weishizhixin Education Consultation Co., Ltd. (the WECC for short) put these five books apart and put the contents thereof into homework, key to the homework and PPT files, and then sold, by receiving pre-payment, them to its students through emails, with QQ group download, and on the website of taobao.com. The activities had infringed Li Xiuchun's and You Chengye's copyright. The WECC argued that the use of the 75 involved solutions to math problems in the homework and key to the homework was fair use for teaching purposes, and all the materials had been taken from published reference books.

The first-instance Court rejected the plaintiffs' litigant claims and concluded, citing Article 5 (3) of the Copyright Law (which provides that “this Law shall not be applicable to: i. laws, regulations, resolutions, decisions and orders of state administrative agencies; other documents of the legislative, administrative or judicial nature; and

their official translations; ii. news on current affairs; and iii. calendars, numerical tables and forms of general use, and formulas), that the involved math problems and their solutions lacked originality. Dissatisfied with the first-instance court decision, the plaintiffs appealed to the Beijing Intellectual Property Court, which also rejected the appeal and sustained the original court decision.

In the case, the Beijing IP Court analyzed, in great detail, whether the involved math problems constituted "works" in the sense of the Copyright Law. The Beijing IP Court pointed out that on the one hand, "the involved math problems or questions, which were deduction and application of mathematical formula, were not formula per se, the first-instance Court erred in applying the provision of Article 5 (3) of the Copyright Law, and confused the concepts of formula with problems deducted or derived from application of formula"; and on the other hand, "the involved 44 math problems, being typical examples in the postgraduate math entrance exams and composed, in a simple form, mainly of math symbols, letters and digital number, were basic deduction and application of higher mathematic formula; they specifically embodied transformation, to an extent, among equation or algebraic variable coefficient, constant or structure in the problems on the basis of the mathematic formula to examine calculus beginners' knowledge of, and ability to use, the relevant formula; while the involved mathematic problems showed some intellectual judgment of and selection by Li Xiuchun and You Chengye, the judgment and selection were regular transformation based on the mathematic formula, did not reach the height of basic creativity, and lacked originality".

As for the involved solutions to the math problems, the Beijing IP Court, also concluded, upon analysis, that "they do not constitute works in the sense of the Copyright Law, either; the solutions Li Xiuchun and You Chengye claimed as original were deducted or derived from the Tyler formula to enable students to solve the problems through calculating the results by memorizing a particular branch of the Tyler formula, so as to directly replace the coefficients in the problems, and change these coefficients into calculation among the simple power function. The idea underlying the solutions somewhat differed from the regular idea of solution, but the idea applied to the solutions fell within the domain of ideas, and protection of the idea would result in monopoly thereof, which would not be conducive to the development of science; hence it was not eligible for protection under the Copyright Law; the solution to a problem corresponding to the idea was expressions thereof, most of which were combination of numbers, letters and mathematic symbols, or one of the words, numbers and letters, such as 'x=0 is removable discontinuity' and 'defining x<0', and it, limited by the expressions per se, was the only or a limited form; for these reasons, they should be deemed as ideas illegible for copyright protection; besides, the few isolated words were extremely brief, like Squeeze Theorem, L'Hôpital's Rule,

Leibniz Formula, Both Sides Differential, and etc., which were not original as they were mostly general formula or terms in calculus calculation".

The Beijing IP Court's analysis clearly shows that when evaluating math problems and solutions, the Court seems to have followed a different line of reasoning. For the former, the key of the Court's analysis lies in originality. It was concluded that although the authors had made some intellectual judgment and selection, the judgment and selection were regular transformation based on the mathematic formula, and were not original; and for the latter, the Court made its evaluation by way of dichotomy of ideas and expressions, holding that the solution to the problems corresponding to the idea, limited by the expressions, per se, was the only or a limited form. For this writer, however, the issues of problems and solutions here as involved in the lecture notes in suit were practically based on one point, namely the involved math problems mainly involved deduction and operation of the mathematic formula. In form, both the problems and solutions thereto were greatly limited by mathematic language, and they had a very limited space of expression available, so their originality was very hard to be identified.

The case, one of the very few involving copyright dispute over mathematic problems and their solutions, is of some guiding significance. However, it needs to be pointed out that the involved mathematic problems of calculus are "deduction, combination and application on the basis of math formula, which, relatively brief as a whole, are shown in a way of combination of numbers and mathematic symbols". The mathematical problems somewhat differ from the math word problems often found in the compulsory education. The involved mathematical problems greatly rely on mathematic formula and deduction thereof, and involve typical examples. Besides, the authors' selected deduction and transformation usually fall within the domain of regular replacement, and were very much limited in ways of expression, and hard to be found original. The math word problems often found in the compulsory education usually describe the contents such as application site and background raised in the math problems, so as for the problems to be combined with the reality to better lead students to understand the relevant math problems; hence, there is relatively greater space of selection and expression. This writer believes that it is rather biased to hold, according to the Court decision made in the case under this study, that all this type of mathematical problems are not original and, hence do not constitute works in the sense of the Copyright Law.

Another point worth our attention is that in the second-instance proceeding, the plaintiffs not only claimed that the defendant had infringed their copyright in 44 problems and 75 solutions to separate problems, but also claimed that it had infringed their copyright in the works of compilation, namely the Intensive Training Class Calculus Lecture Notes and Sprint Class Lecture Notes. Since they did not made the claim in the

first-instance proceeding, the Beijing IP Court did not substantively deal with them under Article 328 of the Supreme Court's Interpretation on Application of the Civil Procedure Law (which provides that "in the second-instance proceeding, where the former plaintiff adds an independent litigant claim or the former defendant makes a counterclaim, the second-instance court may mediate in relation to the added litigant claim or counterclaim according to the principle of voluntariness of the parties; where mediation fails, the parties are notified to bring another lawsuit; where both parties agree on the second-instance court hearing the claim in the case, the second-instance court may make its decision on all the claims or counterclaims"). This writer is of the opinion that under Article 14 of the Copyright Law (which provides that "a work created by compilation of several works, parts of works, data that do not constitute a work or other materials and having originality in the selection or arrangement of its contents is a work of compilation; the copyright in a work of compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works"), even if the involved word problems and their solutions did not constitute works in the sense of the Copyright Law, the selection and arrangement of the word problems and their solutions in the lecture notes involved careful selection and unique arrangement, which revealed the authors' creative labor, it is possible for these lecture notes to constitute works of compilation in the sense of the Copyright Law, and to be eligible for copyright protection to an extent. However, any success in accusing a defendant infringing a plaintiff's copyright in work of compilation, here the works of lecture notes, involves two critical and difficult points. One, it needs to be considered whether the involved lecture notes indeed possess originality. Claimed originality in a work of compilation is embodied mainly in the selection and arrangement of its contents. As a case in point, in Ming Fang v. Shandong University Press and Ding Haidong, a case of dispute over copyright infringement (i.e. Judgment No. Minshengzi 363/2013), the Supreme Court compared the two involved textbooks in terms of title, preface, goal of teaching, table of contents, type set, language style, as well as their structures in terms of the form and number of units and topics used, lexical design used in activities in the same items and the layout, shape and color of the illustrations of the same origin, and found the two textbooks obviously different in compiling layout and specific structure or composition, which allowed them to have achieved different effect of expression. Accordingly, it was finally concluded that the allegedly infringing textbook was an independent work. Specifically about the case under this study, this writer holds that the involved lecture notes, as carrier of the plaintiffs' teaching activities, surely involved, to an extent, selection and arrangement in the selected examples, arrangement and compiling layout. Whether the selection and arrangement constitute the authors'

unique expression still needs to be prudently evaluated according to the factors, such as the compiling practice and common compilation of lecture notes of the same kind. Two, it needs to be considered whether the plaintiffs can prove that the defendant had plagiarized their works. As mentioned above, originality in a work of compilation is embodied mainly in the selection and arrangement of its contents. In the present case, the defendant used the problems and solutions respectively in the homework and key to homework, which inevitably rendered, to an extent, them somewhat different from the involved lecture notes in the overall arrangement and compiling layout, and was likely to affect the judgment of whether the act had infringed the copyright in works of compilation. Under Article 47 (5) of the Copyright Law, plagiarizing a work of another person is infringing, and acts of plagiarism includes plagiarizing another person's work or words, and use them as one's own. A plagiarizer may plagiarizes another person's entire work or a part of it. In Huang Tianyuan v. Inner Mongolia University Press, an appellant case of dispute over copyright infringement, the Guangxi Autonomous Region Higher Court expressed that "plagiarism is found infringing not because the plagiarized part constitutes an independent work, but because it is part of the contents of another person's copyrighted work". Accordingly, how to determine that the plagiarized part is part of the contents of another person's copyrighted work is likely to be critical in a case. For this writer, under the pre-condition that originality in a work of compilation is embodied mainly in the selection and arrangement of its contents, if a plagiarized part or the way the accused infringer uses the plagiarized part still reflects the unique expression in terms of the selection and arrangement in the involved lecture notes, it is possible to determine that the "plagiarized part" is "part of the contents of another person's copyrighted work", and infringement should be determined.

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Mr. Guo received his B.Eng. degree in Automation Science from Beijing University of Aeronautics and Astronautics in 2010, and then turned to study intellectual property law and received his LL.B from Renmin University of China in 2012 and his LL.M in intellectual property law from The John Marshall Law School in 2014.

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What are SIPO's Requirements on Applicants and Agents of PCT International Applications?

To file a PCT international application with the State Intellectual Property Office of China, there shall be at least one applicant for at least one designated state who meets one of the following conditions: i) a citizen/entity of China mainland, ii) a citizen/entity of Hong Kong, Macao or Taiwan, or iii) a foreign citizen/entity having a regular residence/business site in China.

In practice, with the aim to meet the aforesaid requirement, foreign entities sometimes may arrange a Chinese inventor to be designated as applicant for one specific country where they would hardly enter into the national phase.

Moreover, where all the applicants are citizens/entities of Hong Kong, Macao, Taiwan or foreign counties, a patent agent registered at SIPO shall be appointed for handling the PCT international application.

How to Distinguish "Recordal of Change of Trademark" from "Assignment of Trademark"?

It is known that the procedure of "recordal of change of trademark" is one for trademark registrants to change records like name, address, agent and designated goods/services, while that of "assignment of trademark" is one for the rightholders to assign, to other parties according to their own will, their trademark rights. The two differ in the presence of changed proprietorship of the trademark right.

In practice, however, the exclusive right to use a registered trademark would be transferred for reasons other than assignment, which is known as "trademark transfer". As a special form, trademark transfer takes place mainly under one of the following circumstances: i) inheritance due to death of a natural person; ii) cancellation of a privately-owned business; iii) enterprise merger and acquisition; iv) enterprise liquidation; v) enterprise restructuring; and vi) judicial enforcement.

To handle trademark transfer, beside submitting the request form and business license necessary for handling usual trademark assignment, the interested party receiving the exclusive right to use a registered trademark should also provide effective certifying document or legal instrument.

Panawell Set up Patent Search Department

To meet our domestic and overseas clients' needs for all sorts of search and analysis, Panawell has recently set up the Patent Search Department, which, with its operation scope covering prior art search and analysis, patentability search and analysis, patent invalidation search and analysis, patent infringement analysis, patent alarming analysis, patent portfolio search and analysis, patent exploration analysis, technology route map analysis, theme-oriented patent search and analysis, patent search of specific industry, competitors' patent analysis, IP-related due diligence investigation, and FTO search and analysis, will provide our clients with top services of multi-dimensional, professional search, assessment, and analysis. The Patent Search Department will make use of all available professional databases to accomplish search and analysis projects independently or in cooperation with professional officers of the State Intellectual Property Office of China, and offer a wide range of patent search training programs on an irregular basis.

Back Cover: Exterior of office block where Panawell locates

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