NEWSLETTER

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QUARTERLY

PANAWELL INTELECTUAL PROPERTY

Wishing you peace, joy and happiness through Christmas and the coming year.

Panawell & Partners

Chinese Public Holidays in 2026

1. New Year's Day, Jan. 1 to 3, 2026
2. Spring Festival, Feb. 15 to 23, 2026
3. Qingming Festival, Apr. 4 to 6, 2026
4. Labor Day, May 1 to 5, 2026
5. Dragon Boat Festival, Jun. 19 to 21, 2026
6. Mid-Autumn Festival , Sept. 25 to 27, 2026
7. National Day, Oct. 1 to 7, 2026

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Panawell Intellectual Property, consisting of Panawell & Partners, LLC and Panawell & Partners Law Firm, provide full spectrum of services in all fields of intellectual property rights, such as patent, trademark, copyright, computer software, anti-unfair competition, trade secrets, custom protection, domain name, license, assignment, enforcement, administrative and civil litigation, IP consulting and management.

Electronic Patent Documents to Be Filed in XML Format from 2026 in China

The China National Intellectual Property Administration (CNIPA) released, on November 12, 2025, the Notice on Full Implementation of Filing Patent Electronic Documents in Extensible Markup Language (XML) Format, which clearly states that starting from January 1, 2026, patent applications, reexamination requests, invalidation requests, and related procedures filed or handled electronically shall be in XML format, and the CNIPA's E-Filing system will no longer accept patent documents in non-XML formats such as PDF or WORD.

Except for nucleotide or amino acid sequence listings which shall follow the WIPO ST.26 standard, all XML format documents should comply with the data standards released by the CNIPA. The data standards, XML format conversion tool, and user manuals are available in the Tool Download Section of the official E-Filing website http://cponline.cnipa.gov.cn.

The Notice also mentions that applicants, petitioners and agencies should strengthen quality management and conscientiously fulfill their obligations to check documents, to ensure that the XML documents filed are accurate and complete. In cases any error in the documents is caused by the conversion process to XML format, remedies may be feasible provided that sufficient evidences can be presented to the CNIPA.

(Source: Official Website of the CNIPA)

Newly Amended Guidelines for Patent Examination to Take Effect on January 1, 2026

On November 10, 2025, the CNIPA announced the Order No. 84, namely the Decision on Amendments to the Guidelines for Patent Examination ("Guidelines" hereinafter), and the newly-revised Guidelines is scheduled to take effect on January 1, 2026.

The amendments cover twenty-three chapters across the five major parts of the Guidelines, and are listed below.

1. Amendments to Section 4.1.2 "Inventors" in Chapter One of Part I

1) Amended the first paragraph as follows: Rule 14 of the Implementing Regulations of Chinese Patent Law stipulates that, an "inventor" refers to a person who has made inventive contribution to the essential features of an invention. Fake or wrong inventors shall not be listed. During the patent examination process, examiners generally do not check whether the inventors listed in the application comply with this provision, unless there are evidences indicating that the listed inventors do not meet this requirement.

(2) Amended the second paragraph to the following: Inventors shall be natural persons. The identification information of all inventors shall be filled in the Request Form of patent application, and the information filled shall be true and correct. Names of organizations, collectives, or artificial intelligences shall not be listed in the Request Form as inventors. For example, on the Request Form, inventors shall not be written as "×× Research Group" or "Artificial Intelligence ××".

2. Amendments to Section 4.1.6 "Patent Agencies and Patent Agents" in Chapter One of Part I

(1) Added the new provision: Patent agencies shall verify the applicant's identification information and contact details in the Request Form.

(2) Added the provision taken from the Regulations on Patent Agency: Patent agencies and patent agents shall not apply for patents or request invalidation of patents in their own names.

3. Amendment to Section 6.2 "Claiming Priority" in Chapter One of Part I

Added the new provision: If the parent application claims priority, but the applicant did not declare the claim of that priority in the request form when filing a divisional application, the divisional application shall be deemed not to have claimed the priority, and the examiner shall issue the Notification of Priority Deemed Not to Have Been Claimed.

4. Amendments to Section 6.2.2 "How to Handle the Same Invention-Creation" in Chapter Three of Part II

Amended the final paragraph as follows: For the same applicant who, on the same day (referring only to the application date), files both a utility model patent application and an invention patent application for the same invention-creation, according to Rule 47 of the Implementing Regulations of the Patent Law, it is required to indicate at the time of filing that the other patent application has been filed for the same invention-creation. If no such indication is made, it shall be handled under the provisions of Article 9.1 of the Patent Law, which states that only one patent can be granted for the same invention-creation.

If an indication is made and the invention patent application undergoes examination without any grounds for rejection being found, the applicant shall be notified to declare abandonment of the utility model patent within a specified time limit. If the applicant declares abandonment, a decision to grant the invention patent shall be issued, and the abandonment of the utility model patent shall be published and become effective together with the announcement of grant of the invention patent. If the applicant does not agree to abandon, the invention application shall be rejected; if the applicant fails to respond within the time limit, the

invention application will be deemed withdrawn. If the applicant abandons an already granted utility model patent, a written declaration of abandonment of the utility model patent shall be submitted when responding to the office action. At this time, for the invention patent application that meets the conditions for grant and has not yet been granted, a notice of allowance shall be issued, and the written declaration of abandonment of the aforementioned utility model patent shall be transferred to the relevant examination department for registration and publication by the Patent Office, indicating in the announcement that the utility model patent will be terminated from the grant date of the invention patent.

5. Amendments to Section 6.4 "Inventiveness" in Chapter Four of Part II

Amended as: Whether a patent application possesses inventiveness is related to the claimed invention. Therefore, the assessment of inventiveness of the application should be based on the technical solution defined in the claims. When determining inventiveness, the evaluation should be conducted on the technical solution as a whole as defined in the claims, that is, assessing whether the technical solution as a whole is inventive, rather than assessing whether a particular technical feature possesses inventiveness. Technical features that contribute to the prior art, such as those creating unexpected technical effects or overcoming technical prejudice, should be included in the claims; otherwise, even if stated in the description, they will not be considered when evaluating the inventiveness. Features that do not contribute to solving the technical problem, even if included in the claims, generally do not impact the inventiveness of the technical solution.

【Example】

An invention relating to a camera aims to solve the technical problem of achieving more flexible shutter control. This technical problem is addressed by improving the relevant mechanical and circuit structures inside the camera. After the examiner pointed out that the claims lacked inventiveness, the applicant added features to the claims, including the shape of the camera body, the size of the display screen, and the position of the battery compartment. The description does not indicate any connection between these newly added features and the solution to the technical problem. These added features are either conventional components implied by the claimed subject matter itself, or are obtainable by a person skilled in the art based on their common technical knowledge and routine experimental methods. The applicant has not provided evidence or sufficient reasoning to show that these technical features bring any further technical effect to the claimed invention. Therefore, the above technical features do not contribute to solving the technical problem and do not impart the inventiveness of the claimed invention.

6. Amendments to Section 6 "Provisions Related to Examination of Patent Applications Containing Algorithm Features or Business Rule and Method Features (the original title of the Section)" in Chapter Nine of Part II

(1) Amended the title of this section as: Provisions related to Examination of Patent Applications Involving Artificial Intelligence, Big Data, and Other Features Containing Algorithm Features or Business Rule and Method Features.

(2) Amended Section 6.1 as: Examination shall be directed at the claimed solution, that is, the solution defined in the claims, and if necessary, the content of the description shall also be examined. During examination, technical features should not be simply separated from algorithm features or business rule and method features; instead, all content of the claims should be considered as a whole, analyzing the technical means involved, the technical problem solved, and effects achieved.

(3) Added Section 6.1.1 "Examination According to Article 5.1 of the Patent Law": For invention patent applications that include algorithm features or business rule and method features, if the data collection, label management, rule setting, recommendation decisions, etc., contain content that violates the law, public morals, or harms the public interest, the patent shall not be granted under the provisions of Article 5.1 of the Patent Law.

(4) Added a new provision to Section 6.2: Invention patent applications containing algorithm features or business rule and method features shall not be granted patent if they violate the law, social morality, or harm public interests. Additionally, two cases have also been added to illustrate the applicable scenarios of this provision.

(5) Amended the first paragraph of Section 6.3.1 as: The description of a patent application for an invention containing algorithmic features or business rule and method features should clearly and completely describe the solution adopted by the invention to address its technical problem. Based on the inclusion of technical features, the solution may further include algorithmic features or business rule and method features that functionally support each other or interact with each other. If the invention involves the construction or training of an artificial intelligence model, it is generally necessary to clearly describe in the description the essential modules, hierarchies, or connections of the models, as well as the specific steps and parameters required for the training; if it involves applying an artificial intelligence model or algorithm in a specific field or scenario, it is generally necessary to clearly describe in the description how the model

or algorithm is combined with the specific field or scenario, how the input and output data of the algorithm or model are set to indicate their intrinsic relationships, and so forth, so those skilled in the relevant technical art can implement the solution of the invention based on the content stated in the description.

7. Addition of Section 7 "Provisions Related to Examination of Invention Patent Applications Containing Bitstreams" in Chapter Nine of Part II

The new section goes as follows: In the application fields such as streaming media, communication systems, and computer systems, various types of data are generally generated, stored, and transmitted in the form of bitstreams. This section aims to provide specific provisions on the examination of invention patent applications containing bitstreams as the claimed subject matter, as well as on the drafting of descriptions and claims, in accordance with the Patent Law and its Implementing Regulations.

7.1 Examination of Claimed Subject Matter

7.1.1 Examination under Item (2) in Article 25.1 of the Patent Law

If the subject matter of a claim relates only to a pure bitstream, the claim falls under the rules and methods of mental activities as stipulated in Article 25.1(2) of the Patent Law, and is not a patentable subject matter. For example, "a bitstream, characterized in that it includes syntax element A, syntax element B, ...".

If a claim, apart from its title, is limited entirely by content that only involves a pure bitstream, the claim falls under the rules and methods of mental activities stipulated in Article 25.1(2) of the Patent Law and is not a patentable subject matter. For example, "a method for generating a bitstream, characterized in that the bitstream includes syntax element A, syntax element B, ...".

7.1.2 Examination under Article 2.2 of the Patent Law

In the field of digital video encoding and decoding technology, video data is typically encoded into a bitstream through a video encoding method, and the bitstream is decoded back into video data through a video decoding method. If a specific video encoding method that generates a bitstream falls under the technical solutions referred to in Article 2.2 of the Patent Law, then the methods for storing or transmitting the bitstream defined by this specific video encoding method, as well as the computer-readable storage media that store the bitstream, can achieve optimized allocation of storage or transmission resources. Therefore, the storage or transmission methods and the computer-readable storage media defined by this

specific video encoding method fall under the technical solutions described in Article 2.2 of the Patent Law and are patentable subject matter.

7.2 Drafting of the Description and Claims

7.2.1 Drafting of the Description

The description of an invention patent application that includes bitstream generated by a specific video encoding method should provide a clear and complete explanation of that specific video encoding method, sufficient for a person skilled in the relevant art to implement it. If the claimed subject matter involves methods for storing or transmitting the bitstream, as well as computer-readable storage media for storing the bitstream, the description should also provide corresponding explanations to support the claims.

7.2.2 Drafting of the Claims

Invention patent applications that include bitstreams generated by a specific video encoding method can be drafted as claims for a storage method, a transmission method, and a computer-readable storage medium. These types of claims should generally be based on the claims for the specific video encoding method that generates the bitstream and can be drafted by referencing the claims of the specific video encoding method or by including all the features of that specific video encoding method or by including all the features of that specific video encoding method.

8. Amendments to Section 4.4 "Animal and Plant Varieties" in Chapter One "Applications Not to Be Granted Patent" of Part II

Amended the first paragraph as: Animals and plants are living entities. According to Article 25.1(4) of the Patent Law, animal and plant varieties are not patentable. The term "animal" in the Patent Law does not include humans; it refers to organisms that cannot synthesize on their own and must rely on consuming natural carbohydrates and proteins to sustain their life. The term "plant varieties" in the Patent Law refers to plant populations that have been artificially bred or discovered and improved, with consistent morphological traits and biological characteristics, and relatively stable genetic traits. Animal and plant varieties are protected by laws and regulations other than the Patent Law; for example, new plant varieties are protected under the Regulations on the Protection of New Plant Varieties.

9. Amendments to Section 9 "Examination of Invention Patent Applications in the Field of Biotechnology" in Chapter Ten of Part II

(1) Amended the second paragraph as: The definition of the term "animal" applies to the

the provisions of Section 4.4 of Chapter One in this Part. The term "plant" refers to organisms that can sustain themselves by synthesizing carbohydrates and proteins from inorganic substances such as water, carbon dioxide, and salts through photosynthesis, and that generally do not move. The aforementioned animals and plants can be classified at any taxonomic level, such as kingdom, phylum, class, order, family, genus, and species.

(2) Amended the last two paragraphs of Section 9.1.2.3 as: Wild plants found in nature that have not been technologically processed and occur naturally belong to the scientific discoveries stipulated in Article 25.1(1) of the Patent Law and are not patentable. However, when wild plants are artificially bred or improved and have industrial applicability, the plants themselves do not fall within the scope of scientific discoveries. According to the definition of "plant varieties" described in Section 4.4 of Chapter One in this Part, plants obtained through artificial breeding or improvement of discovered wild plants, as well as their reproductive material, are not considered "plant varieties" if they do not have uniform morphological characteristics and biological traits or relatively stable hereditary properties in their populations, and hence they do not fall within the scope as stipulated in Article 25.1(4) of the Patent Law.

(3) Amended Section 9.1.2.4 as: Transgenic animals or plants are animals or plants obtained through biological methods such as recombinant DNA technology in genetic engineering. If they still fall within the scope of "animal breeds" or "plant varieties" as defined in Section 4.4 of Chapter One of this Part, according to Article 25.1(4) of the Patent Law, they shall not be patented.

10. Amendments to Section 5.2.3.2 of Chapter One "Preliminary Examination on Chinese National Phase of International Applications" in Part III

For cases where "the applicant of the later application enjoys priority because of assignment, donation, or other forms of transfer of rights from the applicant of the earlier application", unless the applicant has already made a compliant declaration of priority in the international phase, he shall submit the corresponding supporting documents. The supporting documents must be signed or stamped by all applicants of the earlier application.

11. Amendments to Section 7.3 "Other Special Fees" in Chapter One of Part III

Deleted the provision that "if the nucleotide and/or amino acid sequences are provided as a separate section of the description exceeding 400 pages, the sequence list shall be calculated based on 400 pages".

12. Amendments to Section 1 "Patent Fees" in Chapter Two of Part V

Added a provision on "additional application fees": for sequence listings submitted in a computer-readable format that comply with the prescribed format, the number of pages will not be counted.

13. Regarding the Amendments to Section 6.2 "Contents of Decisions" in Chapter One of Part IV "Reexamination and Invalidation Request Examination"

(1) Changed "Examination decisions include…" to "Examination decisions usually include…".

(2) Deleted the statement "For reexamination decisions that revoke rejection decisions, the cause-of-action section can be simplified or omitted".

14. Amendments to Section 2.1 "Principle of Non Bis in Idem" in Chapter Three "Examination of Invalidation Requests" of Part IV

Amended the first paragraph as: For a patent involved in an invalidation request that has already been decided upon, a subsequent invalidation request based on the same or substantially the same grounds and evidence shall not be accepted or examined.

15. Amendments to Section 3.2 "Eligibility of Invalidation Petitioner" in Chapter Three of Part IV

Added the new item (2) to the circumstances where the request for invalidation will not be accepted: the invalidation request is not a true expression of the petitioner's own will.

16. Amendments to Section 3.3 "Scope, Grounds, and Evidence for Requests for Invalidation" in Chapter Three of Part IV

Amended item (3) as: After the Reexamination and Invalidation Department has made a decision on a request for invalidation of a patent, a subsequent invalidation request based on the same or substantially the same grounds and evidence shall not be accepted, except in cases where the said grounds or evidence were not considered in the previous decision due to time limits or for other reasons.

17. Amendments to Section 4.6 "Amendments to Patent Documents in Invalidation Proceedings" in Chapter Three of Part IV

Added the new Section 4.6.4 "Submission of Amendments": When a patentee amends the claims, complete replacement pages and an amendment comparison table shall be submitted. If a patentee submits multiple amended texts during the examination procedure for the same invalidation request, and all comply with the provisions of Section 4.6.3 of this Chapter, the last submitted

amended text shall prevail, and the other amended texts shall not be used as a basis for examination.

18. Amendments to Section 4.2.1 "Circumstances Where Interested Parties May Request Refund" in Chapter Two of Part V

(1) Added the following circumstances:

- Before the Patent Office issues a notice that a patent application has entered the substantive examination stage, if the patent application is deemed withdrawn, a divisional application is deemed not filed, or a request to withdraw the patent application has been approved, the applicant or payer may request refund of the substantive examination fee already paid.

- The patentee or the payer may request refund of the annual fees paid after the patent has been terminated, or after the decision to declare the patent entirely invalid has been published.

- After the procedure for requesting the restoration of rights has been initiated, if the Patent Office decides not to restore the rights, the requestor or the payer may request refund of the fees paid for the restoration.

(2) Deleted Section 4.2.1.2 "Circumstances Where the Patent Office Makes Refund on Its Own Initiative".

19. Amendments to Section 8 "Order of Examination" in Chapter Seven of Part V

(1) Added a new paragraph to Section 8.1: At the applicant's request, a patent application may be examined at different speeds as needed, e.g. prioritized examination, expedited pre-examination, or deferred examination.

(2) Added the new Section 8.3 "Expedited Examination": For patent applications submitted after pre-examination by a national-level intellectual property protection center or an expedited rights enforcement center, if they meet the relevant requirements for the expedited examination, they can be examined expediently.

20. Amendments to Section 1.3.2.6 "Patent Term Compensation" in Chapter Eight of Part V

Amended as: The items published for patent term compensation include the main classification number, patent number, application date, grant date, original patent expiry date, and current patent expiry date. The items published for pharmaceutical patent term compensation include the main classification number, patent number, application date, grant date, drug name and approved indications, original patent expiry date, and current patent expiry date.

21. Amendments to Section 1.3.2.7 "Effectiveness, Modification, and Cancellation of the Recordation

of Patent License" in Chapter Eight of Part V.

Amended as: The items published upon the effectiveness of the recordation of a patent license include the main classification number, patent number, recordation number, licensor, licensee, title of invention, application date, publication date, grant date, type of license (exclusive, sole, normal), and recordation date. The items published upon modification of the recordation of a patent license include the main classification number, patent number, recordation number, modification date, modification items (type of license, licensor, licensee), and the contents before and after the modification. The items published upon cancellation of the recordation of a patent license include the main classification number, patent number, recordation number, licensor, licensee, and the date of contract recordation cancellation.

22. Amendments to Section 1.2.1 "Contents of the Patent Certificate" in Chapter Nine of Part V

Added the last paragraph: For national phase applications or divisional applications, the names of inventors/designers and applicants put on the patent certificate, as of the patent application date, refer to the names of inventors or designers and the names or titles of applicants at the time the international application enters Chinese national phase or at the submission date of the divisional application.

23. Amendments to Section 2.2.1 "Reasonable Delays in the Grant Process" in Chapter Nine of Part V

Added a new circumstance of reasonable delay that cannot be calculated for patent term compensation: Reexamination proceedings to revoke a rejection decision based on new grounds stated or new evidence submitted by the applicant. Moreover, the amended Guidelines have provided examples regarding the examination standards and drafting of application documents that include algorithm features or business rule and method features, as well as the drafting of claims for applications related to bitstreams.

(Source: official website of CNIPA)

CNIPA Launched New Trademark E-Filing System

The Trademark Office of the China National Intellectual Property Administration (CNIPA) has officially launched, on October 20, 2025, a new trademark E-Filing system, which is designed mainly to optimize the users management, add mobile terminal functions, and enhance various business processing capabilities.

(1) Optimizing Users Management

The upgraded online trademark filing system is

integrated with the unified identity authentication system of the National Intellectual Property Public Service Platform. Once logged on, users can handle multiple services, including trademark, patent and geographical indication according to their permission levels, without the need to switch between different systems, thus achieving unified management of users. At the same time, to facilitate case management and submission for users and agencies, the new system has added functions such as search, temporary storage, and batch submission, which has greatly improved the business processing efficiency.

(2) New Mobile Terminal Functions.

The CNIPA Trademark Office has also launched online service mini program, which mainly functions for QR code authentication, application status inquiry, electronic document reception, fee payment, and electronic invoice download.

(3) Newly Launched Services

With the new system launched, on top of the existing services, online processing has been added for applications for, among others, review of refusal to register a trademark, review of cancellation of a registered trademark, review of invalidation of a registered trademark, trademark pledge registration, and cancellation of applications for registration of a generic name for goods or services as a trademark. The Trademark Office is committed to gradually expanding the scope of online trademark services in the future to further enhance the efficiency of online trademark services.

(Source: official website of CNIPA)

China's Trademark Law to Be Amended Soon

On January 13, 2023, the CNIPA released the Draft Amendments to the Chinese Trademark Law for public comments. Three years later, the State Council held, on November 14, 2025, a meeting to discuss and, in principle, approved the Draft Amendments to the Trademark Law, deciding to submit the Draft to the Standing Committee of the National Congress for review. The State Council meeting highlighted the need to boost trademark management and protection according to the law and to fully leverage trademarks in promoting economic and social development.

Although the contents of the Draft Amendments are yet to be publicized, the upcoming amendments to the Trademark Law will, according to the previously released CNIPA's draft for public comments, mainly focus on the following aspects: strengthening the trademark use obligation system;

establishing the basic principle of prohibiting duplicate registration; further regulating malicious trademark registration and introducing civil liability for malicious squatting; establishing a system for compulsory transfer of maliciously squatted trademarks; introducing a system for counterclaims in malicious litigation; clarifying the scope of trademark exclusive rights, improving provisions on descriptive use, and expanding legitimate use scenarios such as good-faith use of one's own name, designation, address, and indicative use.

(Source: official website of CNIPA)

China Ranks Among Top 10 in the Global Innovation Index 2025 for the First Time

On September 16, 2025, the World Intellectual Property Organization (WIPO) released the Global Innovation Index 2025 Report (hereinafter referred to as the "Report"). Switzerland, Sweden, the United States, the Republic of Korea, and Singapore ranked among the top five, while the United Kingdom, Finland, the Netherlands, Denmark, and China secured positions six through ten. Switzerland retained its top position for the 15th consecutive year, and China entered the top ten for the first time. Over the past 18 years, China has climbed 25 positions, becoming the 1st middle-income economy to rank the top ten.

Since its initial launch in 2007, the Global Innovation Index (GII) has been published annually. Based on a set of 78 indicators, it provides metrics for measuring innovation performance and ranks the innovation ecosystems of nearly 140 economies. The 2025 GII is calculated as the average of two sub-indices: the innovation input sub-index, which includes five key pillars—institutions, human capital and research, infrastructure, market sophistication, and business sophistication; and the innovation output sub-index, comprising two pillars—knowledge and technology outputs, and creative outputs.

The shifts in rankings of the top 15 countries in the GII from 2021 to 2025 are shown below:

From a regional perspective, Southeast Asia, East Asia, and Oceania (SEAO) remain a key driver of global innovation, with six economies from the region ranking among the top 25 globally. Among them, the Republic of Korea (4th) and Singapore (5th) continue to lead, demonstrating strong performance in corporate research and development (R&D), education, and innovation infrastructure. In addition to entering the top ten in the overall ranking, China has also made significant progress in both innovation input and output. China's innovation input ranking rose to 19th globally, while its innovation output ranking climbed to 5th globally, achieving a "dual improvement" in both dimensions.

Year	GII Position	Innovation Inputs	Innovation Outputs
2020	14th	26th	6th
2021	12th	25th	7th
2022	11th	21st	8th
2023	12th	25th	8th
2024	11th	23rd	7th
2025	10th	19th	5th

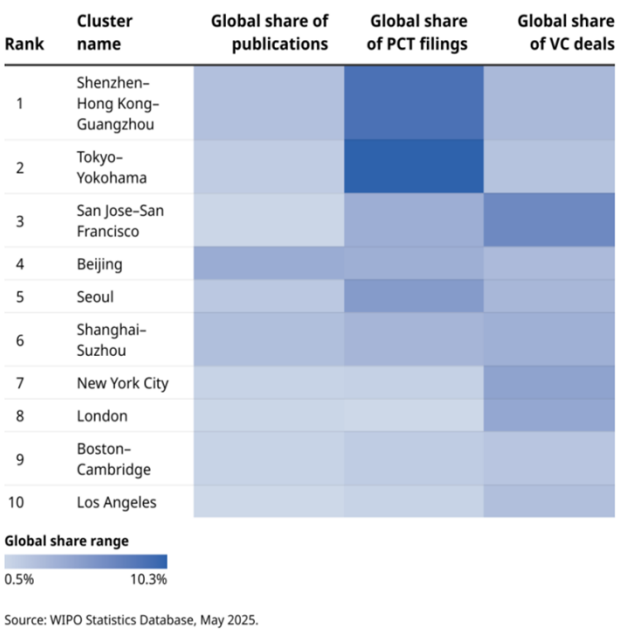
Furthermore, China ranks among the global leaders in several intellectual property-related sub-indicators. Among them, China ranks first globally in indicators such as the number of domestic industrial design applications, utility model applications, and trademark applications per unit of GDP, as well as the proportion of creative goods exports in total trade. It ranks second globally in indicators such as the number of domestic invention patent applications per unit of GDP, the development of industrial clusters, and the proportion of business-funded R&D expenditure. China also maintains its position as the world's second-largest in terms of total brand value. In 2025, the total value of Chinese brands among the world's top 5,000 brands reached 1.81 trillion US dollars.

The GII also assesses the world's top 100 innovation clusters annually. In 2025, the evaluation of the top 100 global innovation clusters was based not only on the two indicators used in previous years—the location of inventors listed in PCT international applications and the location of inventors in published scientific articles—but also, for the first time, included a new indicator: the location where venture capital deals are executed.

In the 2025 global innovation cluster ranking released by the GII, Shenzhen-Hong Kong-Guangzhou ranked first in the world, followed closely by Tokyo-Yokohama. This indicates that Shenzhen-Hong Kong-Guangzhou demonstrated stronger performance in venture capital transactions compared to Tokyo-Yokohama. These two clusters have made significant contributions to global scientific publications and patent outputs,

together accounting for nearly one-fifth of the world's PCT patent applications filed. San Jose-San Francisco in the United States, Beijing in China, Seoul in South Korea, and Shanghai-Suzhou in China ranked third, fourth, fifth, and sixth, respectively. Among the top 100 global science and technology clusters, China accounted for 24, securing the top position globally for the second consecutive year.

Figure 1 Top 10 innovation clusters, and their footprint, 2025



Source: WIPO Statistics Database, May 2025.

(*Source: official website of WIPO)*

Strategic Approaches to Resolving Patent Licensing Disputes in China

Ms. Jane Zhenzhen Wang, Partner, Panawell & Partners

Patent licensing stands as one of the core driving forces behind technological innovation. It enables licensors to monetize their inventions while facilitating the refinement of technologies through practical implementation, and provides licensees with access to advanced technologies, mitigation of infringement risks, and improvement of market competitiveness. However, patent licensing, like all complex commercial arrangement, is prone to disputes. Within the framework of China's intellectual property laws and practice, resolving patent licensing disputes requires a nuanced understanding of legal structure, procedural pathway, and strategic consideration. As practitioners, we frequently encounter disputes arising from issues like royalty calculation and payment, scope of licensing, validity and enforceability challenges, technology implementation, and recordal of license. Successfully navigating these conflicts demands not only legal expertise, but also a grasp of China's unique enforcement realities and negotiation dynamics. This article explores viable approaches for both parties when negotiations reach an impasse, referencing the guidance on patent licensing provided by the China National Intellectual Property Administration (CNIPA), and examines strategies to achieve mutually beneficial outcomes.

I. License Contract

The single most critical tool for preventing and resolving disputes is an explicit, effective and enforceable license contract. Parties shall plan ahead by thoroughly considering potential contentious issues during contract drafting, and addressing them through clear contractual provisions to prevent future disputes.

According to *the Measures for Recordal of Patent License Contracts* promulgated by the CNIPA on 27 June 2011, parties entering into a patent license contract may use the standard contract template formulated by the CNIPA, and if other contract forms are adopted, they shall comply with the provisions of the Contract Section of the Civil Code. The current Standard Patent License Contract Template was released by the CNIPA on 27 June 2023, together with the Guidelines on common issues and dispute-prone matters in patent licensing.

1. Royalty Calculation & Payment

Common payment methods include free, fixed fee, milestone-based payment, and commission fee payment based on sales or profits.

For the fixed fee payment, aside from a one-time payment, installment payments are also an option. For the licensee, installment payment can alleviate financial pressure, incentivize the licensor to provide reliable post-license training, and allow for early termination in case of breach to minimize losses.

By milestone-based payment, the licensee shall pay fees upon achieving predefined milestones. Where the development and production process of the patented product is long-term and uncertain (e.g. pharmaceutical patents), milestone-based payments (e.g. partial payment upon obtaining marketing approval for a drug) can mitigate risks associated with product development failure.

Commission fee payment may include an upfront fee, sales-based royalties, or profit-based royalties. To minimize disputes over subsequent calculations, the contract should clearly define the definition of net sales or net profits, the sales entity (e.g. if sales are made through the licensee's subsidiaries, the scope of "affiliates" shall be specified in the license contract), basis for calculation, scope of deduction, and audit rights (including which party bears audit costs and how discrepancies are handled).

2. Scope of Licensed Rights

(1) Licensed Territory

In addition to explicitly defining the licensed region, parties may consider including conditional clauses for territory expansion. Where the patented technology may be involved in multiple countries, the licensee may propose to extend the license to cover corresponding patent family members in relevant jurisdictions.

(2) Licensed Activities

Judicial practice indicates that when a licensor grants a specific right under a patent to a licensee, it may implicitly extend to related rights. For example, unless otherwise agreed, granting the "right to sell" may implicitly include the "right to offer for sale" and the "right to use". For method patents, granting the "right to use" may imply the "right to manufacture". Additionally, where academic institutions act as licensors, the agreement may stipulate that the license shall not restrict the licensor's use of the patented technology for non-commercial academic research.

(3) Technology Improvement

Both parties may improve the licensed technology after execution of the contract. So it is necessary to first clarify whether either party may modify the patented technology and make a precise definition of "improvement". Further, regarding the improvement made by the licensor, the contract should specify whether the licensee automatically obtains rights to such improvements without additional fees; and for the improvement made by the licensee, terms should address whether the licensor retains patent application or license rights and whether cross-licensing applies.

3. Patent Validity & Enforceability

To mitigate risks arising from patent termination, invalidation, or rejection of patent applications, the licensee may consider adding clauses like "if the licensed patent undergoes invalidation proceedings, the licensor shall obtain the licensee's consent before amending or narrowing the claims", and "the royalties shall not be paid

when the patent is declared invalid but the related lawsuit is still pending.

To mitigate risks arising from third-party infringement litigation, the license contract should clearly define which party is responsible for defending against third-party infringement claims, allocation of litigation costs, and liability for damages in case of an adverse ruling. In practice, parties may agree that one party takes the lead in litigation while the other provides necessary support.

Moreover, from the licensee's perspective, the prerequisite for taking any action related to patent validity or enforceability is the right to be informed of the patent's legal status. Thus, the contract should require the licensor to promptly notify the licensee of any official correspondence from the CNIPA or the courts, indicating changes, or potential changes, to the patent's validity or enforceability.

4. Technology Implementation

For the licensee to effectively implement the patented technology, the licensor's provision of technical documentation alone is sometimes insufficient - personnel training and technical guidance are typically required as well. Consequently, patent license contracts usually specify the licensor's technical support obligations, including the manner in which technical services and training will be provided, standards for such services, and cost allocation arrangements.

Furthermore, licensees may request that licensors assume responsibility for the outcomes of technical assistance. For instance, contracts may include provisions where the licensor guarantees the licensee's successful production of licensed products, and achievement of specified production efficiency or quality standards. In such cases, licensors must exercise particular caution in drafting these clauses. While fulfilling their obligations reasonably and thoroughly, they should structure the language to avoid assuming excessive liability.

5. Obligations to Record the License

Recording the license contract with the CNIPA strengthens the establishment and protection of rights, and helps reducing potential disputes. But the recordal procedure is quite complicated, and requires extensive documentation such as supplementary declarations by both parties. Moreover, the CNIPA imposes different deadlines for updating recordation when licenses undergo modifications, extensions or terminations. Therefore, the license contract shall stipulate that both parties are responsible for recording and updating the license before the CNIPA within the prescribed timeframe, and use commercially reasonable efforts to complete the recordal of license.

6. Other Special Concerns of Each Party

If one party has particular concerns regarding certain special matters, these may be incorporated

into the contract using enforceable language.

Here is an example - Peking University's patent licensing agreement with a biotechnology company, which is one of the "2024 Outstanding Cases of Patent Industrialization" listed by the CNIPA. Peking University made technological development in the ultrahigh spatiotemporal resolution miniaturized two-photon microscope, and built a high-value patent portfolio. It entered into an exclusive licensing agreement with a biotech company, which included an upfront payment of CNY 2.3 million, and royalties based on sales. According to the university, they added clauses regarding the scope and term of license to the contract, which provided flexibility for adjustments during implementation; and to achieve the goals of technology commercialization and research development, the license contract should incorporate specific terms to impel the licensee to sufficiently practice the technology. This partnership enables the licensor to find and address technical problems during the commercialization of patented technologies, while accelerating the licensor's research and development activities. By the end of 2023, the licensed technology had generated approximately CNY 230 million in economic values.

II. Informal Resolution

Not every dispute must proceed to formal proceedings. Strategic pre-action steps can be also effective and efficient:

1. Internal Review: Gather all relevant communication, records and documentation, to gain a comprehensive understanding of the disputed matter, for the purposes of prioritizing and planning the claims one can assert, preparing for the arguments the opposing party may insist or compromise, and anticipating possible outcomes of such disputes in view of latest cases and making contingency plans.

Preparing documentation may involve contractual audit. For example, where the core dispute pertains to payment issues, audit procedures will become necessary, subject to strict compliance with stipulated auditing scope. Audit findings serve to resolve factual disputes, supporting settlement negotiation and potential legal proceedings.

2. Communication & Demand Letters: Formal written notice may specify the factual particulars of the alleged breach, the contractual provisions violated, supporting evidence, and remedial demands. The wording must be meticulously drafted to mitigate risks of defamation claims.

3. Good Faith Negotiation: Most disputes can be solved in candid and friendly negotiation, through which the parties can explore creative solutions and reach mutually beneficial agreement.

III. Formal Resolution

1. Administrative Mediation for Open License

Introduced through the 2020 Patent Law amendments, China's open licensing system allows

patentees to voluntarily submit a written statement to the CNIPA declaring their willingness (with specified royalty payment method and standard) to license their patents to any entity or individual, and any interested party to obtain the license simply by notifying the patentee and paying royalties according to the published terms. As a supporting measure for implementing the open licensing system, the CNIPA issued and implemented the *Interim Measures for Mediation of Patent Open Licensing Disputes* on 2 July 2024, and included a dedicated chapter of "Administrative Mediation of Patent Open Licensing Disputes" in the *Measures for Administrative Adjudication and Mediation of Patent Disputes* which took effect on 1 February 2025.

Under the administrative mediation process, where disputes arise between parties regarding an open license and the parties voluntarily agree to mediation, they shall submit a written request to the CNIPA; then the CNIPA shall complete the mediation within 30 working days from acceptance of the request (extendable if necessary), and during mediation, parties should truthfully state the facts of the dispute and submit all relevant evidence; finally, if the dispute is resolved through mediation, a mediation agreement may be drafted and retained by the parties and the CNIPA.

2. Arbitration & Mediation

It is not rare to seek voluntary arbitration and mediation through institutions like the CIETAC, local arbitration institutions, or court-annexed mediation programs. Chinese courts also strongly encourage mediation, which often yields faster, cheaper, and more satisfactory outcomes. Binding arbitration results are typically as enforceable as court rulings.

3. Litigation

If negotiation and mediation fail, legal proceedings will become necessary. Courts can award damages for breach of contract (including unpaid royalties and litigation costs), specific performance (e.g. to cease or perform an act), and even termination of the contract. Documentary evidence is particularly crucial in the litigation process, so it will be imperative to compile and safeguard all types of correspondence, all contracts, technical and financial documentation, and related evidentiary materials. Where critical evidence faces potential destruction, parties may petition the court for pre-trial evidence preservation measures.

Conclusion

Patent licensing disputes in China are complex and manageable, although no universal remedy exists for such issues. The likelihood of successful resolution is contingent upon precautionary measures, such as a well-drafted license contract, circumspect documentation, and sufficient communication. Consensual dispute resolution mechanisms, notably negotiation and dialogue, are recommendable and can preserve valuable business relationship. But if all these means fail,

parties can leverage the carefully chosen arbitration institution or the court to achieve resolution and justice. The Chinese patent system provides various options for solving a license dispute, and parties shall take a strategic, step-by-step approach to a satisfactory resolution and win-win outcome.

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Extract of Annual Report on Issues of Law Application by Chinese Courts in IP Cases (2024)

On April 21, 2025, China's Supreme Court (SPC) released the annual report on the issues of law application in intellectual property (IP) cases, sorting out 43 law application issues identified from the IP cases concluded by courts nationwide in 2024.

I. Patent Case Trials

1. Qualitative Determination of Patent Evaluation Reports in Patent Infringement Cases

【Case No.】 SPC Civil Re-Trial No. 244

【Ruling Summary】 In patent infringement dispute cases, the patent evaluation report can be used as a piece of evidence in the court proceedings. However, the validity of the involved patent should still be assessed based on the patent grant text and the effective decisions of the administrative authority. In case where a patentee files an infringement lawsuit based on a valid patent, it should not be concluded that the patentee lacks the basis to exercise the right of action solely because the patent evaluation report makes a negative conclusion that the patent does not meet the statutory grant conditions, even with the lawsuit dismissed.

2. Consistency of Patent Infringement Determination in Related Cases

【Case No.】(2023) SPC IP Civil Final 740

【Ruling Summary】 For the same non-infringement defenses involving the same allegedly infringing products, the same patent and the same cause of action, the determination of related cases should remain consistent to prevent conflicting rulings. Even if the alleged infringer does not appeal after the first-instance ruling, the second-instance court can, based on the findings related to the same cause of defense established in the effective or valid ruling in another case, lawfully reverse the ruling and determine that the accused infringer's relevant defenses are equally valid.

3. Ruling on Conditions for Performance and Interest on Debts During Delay of Performance

【Case No.】 (2024) SPC IP Civil Final 370

【Ruling Summary】 In cases where the patent invalidation proceedings are suspended due to property preservation measures taken in relation to the patent at issue, causing the China National Intellectual Property Administration (CNIPA) unable to make a decision on the invalidation request before the ruling in the patent infringement litigation is made, the Court may, based on the specific circumstances of the case, make corresponding arrangements for the performance of obligations as determined in the ruling, including, among other thing, imposing necessary conditions on the enforcement of judgments such as cessation of infringement and compensation for damages. For instance, the court may condition the enforcement of the judgment on the patent being maintained valid by the CNIPA, and also arranging

for the accrued interest on the debt during the period, in order to reasonably balance the interests of all parties involved.

For rulings with conditions for performance, the interest on the debt during the delay in performance can also be ruled on simultaneously, that is, after the condition for the performance of the obligations is met, interest shall be calculated from the date the effective ruling is rendered until the performance condition is met, based on the loan market quotation interest rates published by the National Interbank Funding Center for the same period (i.e., simple interest); if the monetary payment obligation remains unfulfilled after the performance condition determined by the ruling is met, the interest on the debt during the delay in performance shall be paid at a double rate.

4. Handling of Patent Infringement Rulings After Decisions are Made Declaring the Patent Invalid

【Case No.】(2024) SPC IP Civil Re-Trial No. 1

【Ruling Summary】 The performance or execution actions taken after the decision to declare a patent right invalid do not fall under the circumstance described in Article 47.2 of the Patent Law, which states that the invalidation decision does not have retroactive effect on the effective patent infringement ruling. Generally, the executing court should order the applicant for execution to return the property and its fruits or interest obtained from the executed party in the execution reversal procedure. The court may also order the return in the retrial ruling as deemed appropriate.

In cases of patent infringement rulings involving multiple alleged infringers, if the differing execution time of the damages obligations of the different alleged infringers lead to varying applications of Article 47.2 of the Patent Law, which violates the principle of fairness, the court may handle the matter pursuant to the provisions of Article 47.3 of the Patent Law.

5. Handling of Type 1 Declaration Made by the Generic Drug Applicant Before Patent Information Registration

【Case No.】 (2023) SPC IP Civil Final 1593

【Ruling Summary】 If the holder of the drug marketing authorization correctly registers the patent information within the specified time limit, but the generic drug applicant has made a Type 1 declaration before the registration of the patent information, the holder of the drug marketing authorization shall have the opportunity to request the generic drug applicant to in a timely manner for a change in their declaration type within a reasonable time limit. If the generic drug applicant applies for changing his or its Type 1 declaration to a Type 4 declaration, or refuses to apply for a change within a reasonable time limit, or applies for a change to another incorrect declaration, the court shall accept and conduct substantive hearings on the patent linkage litigation initiated by

the patentee.

6. Handling Changes in Pharmaceutical Technology Solutions in Cases of Pharmaceutical Patent Linkage Disputes

【Case No.】 (2023) Jing 73 Civil First instance 855

【Ruling Summary】 In a drug patent linkage dispute, the court should use the solutions reviewed by the drug evaluation and approval authority regarding whether the drug can be approved for market as the basis for determining whether it falls within the scope of the patent protection. The applicant for drug marketing approval should promptly and truthfully inform the court of any changes to the solution that would impact the determination of whether it falls within the scope of patent protection, otherwise, he should bear adverse consequences under the law.

7. Determination of Inventorship of Use Patent

【Case No.】 (2022) Su 05 Civil First instance 925

【Ruling Summary】 A use invention patent is an invention made by discovering, based on a known compound, its new uses. The core of such a patent is not the known compound itself, but the discovery and application of the new use of the known compound. If development of the invention concept of "new use of an old drug" plays a key role in the R&D activities, those who contribute significantly to the development of the invention concept, the formation of specific solution, or substantial improvements and stages of research and development can be considered inventors.

8. Environmental Feature Identification and Infringement Determination

【Case No.】 Hu 73 IP Civil First instance 223

【Ruling Summary】 The features of the usage environment can be identified based on the title of the invention, the subject matter of the invention, and the descriptions in the claims related to installations, along with a comprehensive assessment of the content of the specification. When considering whether the accused technical solution possesses the relevant usage environment features of the patent claims in question, it is not required that the alleged infringing product necessarily has components related to the usage environment features, as long as the alleged infringing product can be applied in the usage environment defined by these features.

9. Unpatentable Inventions Related to Sacrificial Houses that Violate Social Ethics and Impair Public Interests

【Case No.】 (2023) SPC IP Administration Final 2

【Ruling summary】 The patent system is designed to protect invention-creations that promote advancement of technology and development of economy and society. So-called "invention-creations" that have no substantial benefits for these purposes should not be granted patent right. The understanding and application of the specific

provisions, including Article 5.1 of the Patent Law, should be based on the legislative purpose stipulated in Article 1 of the Patent Law. Even if certain sacrificial items do not fall into the category of superstitious funeral goods, they are still likely to violate social ethics or harm public interest as stipulated in Article 5.1 of the Patent Law.

10. Deletion of Claims in the Oral Hearing of Patent Invalidation Case

【Case No.】 (2022) Supreme Court IP Administrative Final No. 870

【Ruling Summary】 During the oral hearing of a patent invalidation case, when the CNIPA believes that the amendments to the claims are not acceptable, the patentee shall be allowed to delete the unacceptable claims, and the remaining acceptable claims will be the basis for examination. Regardless of whether the deletion is proposed orally during the hearing or submitted in writing by the patentee, the CNIPA should generally accept it; if the replacement page is not submitted during the hearing, the CNIPA may require the patentee to submit it within a certain time limit. If the replacement page is not submitted within the specified time limit, it will be regarded as the patentee not having amended the claims, and the invalidation case will be examined accordingly.

11. Determination of Whether the Claimed Design Has Been Clearly Shown or Presented

【Case No.】 (2024) Supreme Court IPAdministrative Final 672

【Ruling Summary】 If based on the general knowledge level and cognitive ability of the average consumers, and taking into account the patent view, usage status view, and the general common sense, the design depicted in the design patent drawings still has multiple design possibilities, then it can be concluded that the design patent documents fail to clearly show the design of the claimed.

II. Trademark Case Trials

12. Factors to Consider in Determining Infringement of Geographic Indication Certification Trademark Rights

【Case No.】 (2024) SPC Civil Re-Trial 21

【Ruling Summary】 Determining whether an action constitutes infringement upon geographic indication certification trademark rights requires consideration of the following factors: (1) whether the allegedly infringing goods meets the criteria for using the geographic indication trademark, namely whether the goods originates from a certain specific region; (2) whether the allegedly infringing goods has the specific quality characteristic of the geographic indication products; and (3) whether the alleged infringement is likely to cause confusion among the relevant sector of the public regarding the origin and specific quality characteristic of the goods.

13. Determination of Prior-Trademark-Use Defense

【Case No.】 (2024) SPC Civil Re-Trial No. 218

【Ruling Summary】 The application of the defense

of prior trademark use requires balancing the interests between the prior trademark user and the exclusive right proprietor of the registered trademark. For a prior user who has used in good faith a trademark that is the same as or similar to another person's registered trademark in respect to the same or similar goods and has a certain influence, he has the right to continue using it within the original scope. However, if the prior use is earlier than the filing date of the trademark but later than the registered user uses the trademark, and there exist the circumstances where evidence shows that the prior user knew or should have known about it, it is inappropriate to recognize the validity of the defense of prior use.

14. Proper Use of Scenic Spot Names

【Case No.】 (2024) SPC Civil Re-Trial No. 123

【Ruling Summary】 For the use of the mark solely to refer to the name of a scenic spot, or to explain and describe the relevant content and characteristics of a scenic spot, which does not exceed the necessary limits, if the relevant sector of the public exercises general attention and combines it with daily life experience, it will not cause confusion about the source of the goods or services. The use constitutes a legitimate and reasonable use of the mark and does not constitute trademark infringement.

15. Determination of Damages Based on Infringement Profits as the Primary Criterion When Supported by Evidence

【Case No.】 (2023) SPC Civil Re-Trial 178

【Ruling Summary】 Article 63 of the Trademark Law stipulates the order of application for calculating damages. When determining the amount of damages, the court should prioritize the actual loss of the rights holder, the profits obtained by the infringer from infringement, and reasonable licensing fees as methods of calculation. Only when it is difficult to determine the actual loss, infringing profits and licensing fees, should statutory damages be applied.

16. Determination of Whether Retail Services and Services of "Promotion for Others" Constitute Similar Services

【Case No.】 (2022) Su Civil Final 356

【Ruling Summary】The retail services provided by sellers of goods to end consumers are highly similar to the service of "promotion for others" in Class 35 in purpose, content, method, and target customers. Where, during the retail service provision, unauthorized use of the same mark as the trademark for "promotion for others“ in Class 35 can easily lead to confusion among the relevant sector of the public regarding the source of the services, it should be determined as trademark infringement.

17. Calculation of the Contribution Rate of Marks and Application of Punitive Damages in Drug Trademark Infringement Cases

【Case No.】 (2021) Su 05 Civil First Instance 437

【Ruling Summary】 In a drug or pharmaceutical

trademark infringement case, it is necessary to comprehensively consider factors such as the macro development trends in the pharmaceutical field, the micro perspective of consumers purchasing the drug, the different thresholds for entering the specific pharmaceutical industry, the technical distinctions between the original drug and generic drug, as well as the reputation of the pharmaceutical company itself, in order to reasonably determine the contribution rate of the involved mark to the profits of the allegedly infringing drug.

Where the alleged infringer, as a shareholder of the rights holder and an operator in the same industry applied, after the shareholding relationship had terminated, for registration of a mark similar to the rights holder's trademark for use in respect of the same goods, and has not stopped the alleged infringement even after an administrative ruling has determined that the trademark should be declared invalid, and the involved drugs are highly alerting and easily confused, and the infringement is likely to endanger personal health, which falls under the circumstance of "malicious infringement of trademark rights with severe circumstances" as stipulated in the Trademark Law, the punitive damages can be applied under the law.

18. Determination of Distinctiveness of Design of Goods Filed for Trademark Registration

【Case No.】 (2024) Supreme Court Administrative Appeal No. 5449

【Ruling Summary】 In case where the disputed trademark application in the form of the design of goods, if the applicant fails to provide sufficient evidence to prove that through its actual use, the relevant sector of the public has been able to identify the disputed trademark as a sign for the source of the goods, and not just the design thereof, then the disputed trademark lacks distinctiveness.

19. Determination of Trademark Registration Harming Others' Prior Domain Name Rights

【Case No.】 (2024) Supreme Court Administrative Re-Trial No. 244

【Ruling Summary】 To determine that the registration of the disputed trademark damages the prior domain name rights of another party, the following conditions must be met: the domain name was registered first and has a certain degree of reputation, the goods/services provided by the domain name operator are the same as or similar to those in respect of which the disputed trademark is approved to be used, and the disputed trademark is identical with or similar to that domain name, which is likely to cause confusion among relevant consumers. Evidence of advertising and use related to the goods or services provided by the domain name operator can serve as factual evidence to determine whether it has a certain degree of reputation.

20. Application of Article 44 of the Trademark Law "Obtained Registration by Other Unfair Means"

【Case No.】 (2024) Supreme Court Administrative

Re-Trial No. 88

【Ruling Summary】 When determining whether the disputed trademark falls under the circumstance of "obtaining registration by other improper means" as stipulated in the first paragraph of Article 44 of the Trademark Law, it is not appropriate to conclude that it falls under "obtaining registration by other improper means" solely based on the number of trademarks filed by the applicant for registration reaching a certain scale or number. If it can be proved that the applicant has a genuine intention to use the disputed trademark or has actually put the trademark into commercial use, and the application for the disputed trademark is reasonable or legitimate, then it generally should not be determined as constituting the situation referred to in the preceding Article.

21. Determination of Goods of Approved Use in Cases of Trademark Cancellation Due to Non-Use for Three Consecutive Years

【Case No.】 (2024) Supreme Court Administrative Re-Trial No. 51

【Ruling Summary】 Where the goods in respect of which the disputed trademark is actually used is not of the standard name of the goods listed in the Classification of Goods and Services for the Purposes of Registration of Marks, but if they are essentially the same as the approved goods in respect of which the trademark is used, or if the actual goods in respect of which the trademark is used fall under a subcategory of the approved goods, then it can be determined as use in respect of the approved goods. Changes to the Classification of Goods and Services for the Purposes of Registration of Marks after the registration of the disputed trademark do not impact the above determination.

22. Determination of Whether Acts on a Game Live Streaming Platform Constitute the Service of "Promoting for Others"

【Case No.】 (2024) Jing Administrative Final 6099

【Ruling Summary】 Game live streaming platforms leverage their own traffic and user resource advantages to promote cooperative games through game live streaming, offering game downloads and forums, and organizing promotional activities, so as to increase the download and recharge rates of the cooperative games and allow the platforms to earn revenue sharing from the games, which can be determined as providing planning and promotion services for the sales of goods or services of others, thus constituting the service of "promotion for others" in Class 35 of the Classification of Goods and Services for the Purposes of Registration of Marks.

III. Copyright Cases Trials

23. Works of Applied Art Can Be Protected as Fine Art Works Under the Copyright Law

【Case Number】(2023) SPC Civil Re-Trial No. 40

【Ruling Summary】 For models or designs possibly combining practical use and artistry, one can choose to protect them as works under the

copyright law or as designs under the patent law, with each protection focusing on different aspects. When claiming copyright protection, according to the existing system arrangements of the copyright law in China, it is necessary to determine whether the claimed work meets the formal requirements of a work of art and whether it possesses the substantive element of originality, without the need to establish a separate type of works outside of works of art or to raise additional requirements for originality.

24. Exhaustion of rights to distribute computer software

【Case No.】 (2022) SPC Civil Final 1460

【Ruling Summary】 If computer software must be used in conjunction with specific hardware, the rights holder's sale of hardware and computer software together can be deemed as distributing the software in the form of a tangible medium. The principle of exhaustion of distribution rights may apply as appropriate. After the buyer pays a reasonable price, he obtains ownership of the original or copies of the software and have the right to use it himself or transfer his use to others. Restrictions imposed by the rights holder on the scope of use and resale of the aforementioned software do not automatically bind buyers who have no contractual relationship with the rights holder or third parties who legally acquire the original or copies of the software from that buyer. However, the buyer or third party may not copy the software without authorization, unless for the purpose of lawful use, nor may they use the software copies after transferring the original or copies of the software.

The owner of legally copied software must not provide modified software to any third party without permission, which mainly refers to situations where the modified software is used as the main subject matter of a transaction without the permission of the software copyright owner. If the main subject matter of the transaction is hardware and the software is only used to support the hardware, usually, there is no need to obtain permission from the software copyright owner for the transfer of ownership of the modified software that occurs due to the transaction of the associated hardware.

25. Determination of Substantial Similarity of Works of Fine Art

【Case No.】 (2019) Jing 73 Civil First Instance 1376

【Ruling Summary】 When determining whether a work of fine art constitutes substantial similarity, it is generally necessary to consider the visual characteristics of the work from the perspective of an ordinary observer, and to evaluate the artistic expression embodied in the entire work in terms of compositional elements, form of expression, and overall visual effect. If the two works only differ slightly overall, such that an ordinary observer would tend to overlook these differences unless deliberately looking for them, they can be considered substantially similar. When comparing

a large number of copyrighted and infringing works, all relevant works can be considered as a whole, and factors such as the author's creative experience, methods, and style should be considered to comprehensively determine whether infringement has occurred.

26. Determination of Whether a Screenwriter Who Withdraws Midway from a Film or Television Script Project is Entitled to the Right of Authorship

【Case No.】 (2020) Jing 0108 Civil First Instance 39696

【Ruling Summary】 Whether a screenwriter who withdraws midway from the creation of a film or television work can enjoy the right of authorship as a screenwriter in that work should be comprehensively determined based on factors such as the terms of the screenwriting contract they signed, whether the work uses the original content created by the screenwriter, and whether the proportion of used work makes a substantial contribution to the film or television work. When the screenwriting contract does not explicitly stipulate the exercise of the right of authorship as a screenwriter upon termination, if the proportion of original content created by the screenwriter used in the work reaches a level that constitutes a substantial contribution to the work, it should be recognized that the screenwriter enjoys the right of authorship as such.

27. Determination of Copyright Infringement by In-Vehicle System Content Providers

【Case No.】(2023) Jing 0491 Civil First Instance 11731

【Ruling Summary】 The operator of a video platform is liable for infringing the right of communication over the information network for the act of providing infringing videos on its in-vehicle application network server. If the operator of the in-vehicle system software participates in the launch, display, and promotion of the video platform's in-vehicle application and provides subscription services, it is considered a participant and beneficiary of the provision of the works involved and should bear joint liability with the video platform under the law.

28. Implementing Unified Algorithm Aggregation to Enhance Network Service Providers' Duty of Care

【Case No.】 (2022) Hu 0115 Civil First Instance 29412

【Ruling Summary】 When determining whether a video sharing platform constitutes aiding and abetting copyright infringement, attention should be paid to distinguishing the neutrality of the technology itself from the non-neutrality of its application. If a platform collects a large number of infringing short videos using copyrighted works as connecting points, organizes them under a certain topic or category, and then presents them uniformly to all users, this act contains the platform's subjective intent. Implementing such an algorithm to aggregate content uniformly increases the duty of care for network service providers and, in turn, impacts the determination

of whether they should be considered aware of the infringement.

29. Determination of Infringement Liabilities of Generative AI Service Providers

【Case No.】 (2024) Zhe 0192 Civil First Instance 1587

(2024) Zhe 01 Civil Final 10332

【Ruling Summary】 When a service provider offers generative AI technology services, whether it constitutes aiding infringement should be considered comprehensively, with account taken of the factors such as the service provider's profit model, the popularity and influence of the copyrighted work, the obviousness of the infringement, the level of development of AI technology, the feasibility and cost of alternative designs to prevent harm, the necessary measures that can be taken and their effectiveness, and the impact of assuming infringement liability on the industry. The standard for determining fault should be adjusted dynamically, keeping the service provider's duty of care at a reasonable level that corresponds to their information management capabilities.

Generative AI services are only subject to regulation under the anti-unfair competition law when they violate the principles of good faith and recognized business ethics, disrupt market competition, or harm the legitimate rights and interests of other operators or consumers.

30. Determination of Direct Infringement by Cloud Storage Service Providers and the Necessary Measures to Be Taken

【Case No.】 (2024) (2022) Yue Civil Re-trial 59

【Ruling Summary】 The "identical file merging and storage" technology adopted by cloud storage service providers does not alter the source of the work. To determine whether a cloud storage service provider has substituted a third party in providing the downloaded works to users, it shall be verified whether actual content data is transmitted between the cloud storage and third-party nodes during the download. If the content data is entirely transmitted from third-party nodes to the cloud storage, the cloud storage serves merely as a download tool and does not constitute direct infringement of the right to communicate works to the public via information networks.

For users sharing infringing works, cloud storage service providers should take necessary measures to stop the ongoing infringement, prevent other similar infringing acts, and prevent the occurrence of acts like infringement. For works that are not highly popular and whose infringement is not serious, disconnecting the infringing link and disabling the 'share' function of the file pointed to by the infringing link can generally deliver the aforementioned prevention and deterrent effects.

IV. Adjudication of Competition Cases Trial

31. Determination of Business Names with Certain Influence

【Case No.】 (2023) SPC IP Civil Final 418

【Ruling Summary】 Whether it constitutes a "trade name with certain influence" as stipulated in Article 6 (2) of the Anti-Unfair Competition Law should be determined based on the starting time of the use of the allegedly infringing trade name and by comprehensively considering the factors such as the extent to which the relevant sector of the public in China is aware of it, the time, region, quantity, and target of product sales, the duration, degree, and geographic scope of publicity, and whether the logo is protected. If the alleged infringer was already aware that someone else had prior use of the trade name, it can be regarded that the market reputation of the prior trade name has reached the alleged infringer.

32. Overall Assessment of Acts Infringing Technical Secrets and Bearing of the Specific Civil Liability for Stopping the Infringement

【Case No.】 (2023) SPC IP Civil Final 1590

【Ruling Summary】 For cases involving organized, planned, and large-scale recruitment of talents and technological resources from other companies that lead to alleged technical secret infringement, the Court should conduct an overall analysis and make a comprehensive judgment. If the alleged infringer produces products related to the technical secret in question in a period significantly shorter than the reasonable time required for independent development, and the alleged infringer had the means or opportunity to access the technical secret, then due to the high likelihood of infringement, the burden of proof on the technical secret holder regarding the act of technical secret infringement should be further reduced, and it can be directly presumed that the alleged infringer has engaged in acts infringing the technical secret. If the alleged infringer denies committing the technical secret infringement, they should provide evidence to refute it.

To effectively prevent and deter infringements and enhance the enforceability of rulings, the court, when determining the specific manner of bearing civil liability for stopping the infringement, may base this on the rights holder's specific claims regarding the liability to stop the infringement, or, if necessary, may directly determine the specific manner, content, and scope of stopping the infringement exofficio; full consideration should be given to the nature of the protected rights, the severity of the infringement, especially the current harm caused by the infringement and the likelihood of continued future infringement, with an emphasis on assessing the necessity, reasonableness, and enforceability of taking specific measures to protect those rights.

Depending on the specific circumstances of the case, specific measures to stop the infringement of technical secrets may include: ceasing the use of the technical secrets involved to manufacture products independently or entrust others to manufacture related products, and stopping the sale of products manufactured using the technical secrets involved; without the consent of the true right holder, infringers shall not implement, or

authorize others to implement, transfer, pledge, or otherwise dispose of or utilize the patents applied for using the illegally obtained technical secrets, including maliciously abandoning patent rights; under the supervision of the court or in the presence of the right holder, destroy or hand over to the technical secret rights holder any carriers containing the technical secrets involved that are held or controlled by the infringer or related units and personnel; through public announcements and/or internal notifications, inform company shareholders, senior management, relevant employees, affiliated companies, and upstream and downstream businesses that may have access to the technical secrets involved to actively cooperate in complying with the court's orders to cease infringement, and provide clear guidance on the company's internal intellectual property compliance operations; individually notify employees who have left the technical secret rights holder and joined the infringer or its affiliated companies, other personnel of the infringer or its affiliated companies responsible for or involved in the relevant R&D (including relevant senior management), and upstream and downstream businesses that possibly have access to the technical secrets involved, of the relevant requirements to cease infringement, and have them sign confidentiality and non-infringement commitment agreements regarding the trade secrets involved.

To ensure that the ruling is enforced promptly and comprehensively, the court may, based on specific circumstances of the case, take into account factors such as the nature and circumstances of the infringement, the potential damage and negative impact from failure to fulfill relevant non-monetary obligations such as stopping the infringement, and the need to enhance the deterrent effect of the ruling. The court may also clarify the standard for calculating the late performance fee for non-monetary obligations involved in the ruling. The standard can be calculated on a daily or monthly basis, or as a one-time fixed amount, depending on the circumstance.

33. Determination of trade secret infringement and liability therefor

【Case No.】(2022) SPC IP Civil Final 1592

【Ruling Summary】 If the alleged infringer, based on his prior acts of infringing trade secrets, has illegally obtained and used the trade secrets, and the evidence submitted by the rights holder preliminarily proves that the alleged infringer would commit such acts again, and the alleged infringer cannot provide sufficient evidence to refute this, it can be determined that the rights holder's claim regarding the alleged infringer's continued infringement of trade secrets is valid.

If an employee, during his tenure at the original company, establishes a company and participates in acts of infringing trade secrets through off-the-record shareholding by his spouse or any other third party, the employee and the company constitute joint infringers and should be held jointly liable.

If computer software and specific data have a one-to-one correspondence and cannot be used separately, and the existing evidence is sufficient to determine the alleged infringer has used the specific data, it can also be determined that he has simultaneously used the computer software.

If there is no evidence proving that the rights holder neglected to claim his rights or tolerated the infringement, for an alleged infringer who claims, based on the statute of limitations, that his liability for infringement damages should only be calculated for the three years prior to the filing of the lawsuit, the court will not support such a claim.

34. Determination of Illegality of Ticket-Snatching Software

【Case No.】 (2024) Jing 0101 Civil First Instance 4607

【Ruling Summary】 Ticket-snatching software uses technological means to provide users of a target platform with unfair advantages in purchasing tickets, undermining the platform's ticketing rules, harming the platform's competitive interests, as well as the legitimate rights and long-term interests of consumers, and disrupting the market order of fair competition. It should be determined as constituting unfair competition.

35. Determination of Unfair Data Use

【Case No.】 (2023) Hu 0114 Civil First Instance 13000

【Ruling Summary】 The rights holder obtains users' consent to collect, use, organize, and store relevant information, and has aggregated it into a data set based on platform user information and content information of works. The rights holder enjoys the property rights in relation to this data, including lawful control, use, and operation. The alleged infringer without authorization, used technological means to obtain non-public data and displayed it on a website they operated, thereby conducting paid transaction services. Their method of obtaining and using such data exceeds the reasonable limits and violates business ethics, disrupts market competition, and is unfair.

36. Determination of Non-Public Nature of Technical Secrets

【Case No.】 (2022) E 01 Civil First Instance 70

【Ruling Summary】 Technical information for each individual step or partial parameter may already exist in the public domain, but a complete technical solution combining multiple steps and parameters that is not widely known within the industry can still be protected as a technical secret. Whether it constitutes a technical secret should be strictly examined based on the criteria for technical secrets, rather than assessed by the standards of novelty and inventiveness provided for in the patent law.

37. Standards for Determining Validity of Technology-Neutral Defense

【 Case Number 】 (2024) Yu 0192 Civil First Instance 2546

【Ruling Summary】 In the cases involving online

unfair competition dispute, if the operator uses technology neutrality as a defense, the determination standard should be whether the manner of technology use is legitimate and whether it has substantially non-infringing uses. The use of neutral technology that bypasses or overrides the will of the online platform users and the technical settings of the platforms is considered unfair; the operator must prove that it is a substantially non-infringing use; otherwise, it should be deemed to have subjective fault and held correspondingly liable for infringement.

38. Intertwined Agreements Involving Concerted Refusal to Deal Constitute Horizontal Monopoly Agreements

【Case No.】 (2023) SPC Court IP Civil Final 653

【Ruling Summary】 When multiple operators collude to boycott another operator that is in a competitive relationship, it usually not only requires reaching a horizontal agreement to jointly resist transactions but also necessitates using vertical arrangements with upstream and downstream operators to ensure or strengthen the achievement of the anti-competitive effect of the joint boycott. Such vertical arrangements are an important component or means of the joint boycott conducted by operators in competitive relationships and generally do not affect the determination that the joint boycott constitutes a horizontal monopoly agreement.

39. Judicial Review Standards for Concentrations of Undertakings That Have or May Have the Effect of Eliminating or Restricting Competition

【Case No.】 (2024) Jing 73 Civil First Instance 5180

【Ruling Summary】 For concentration of operators that have or are likely to have the effect of eliminating or restricting competition, prohibition is not the preferred remedy. Instead, to make a decision, a comprehensive assessment should be made based on the specific circumstances of the case. If the operators involved in the concentration propose a plan of additional restrictive conditions as commitments, the plan should be evaluated for its effectiveness, feasibility, and timeliness, and then assessed to determine whether it can effectively mitigate the adverse impact of the concentration of the operators on the competition.

V. New Plant Variety Cases Trial

40. Examination of Burden of Proof for Variety Identicality and Appraisal Methods

【Case No.】 (2022) SPC IP Civil Final 1362

【Ruling Summary】 When conducting identicality appraisal or testing between the authorized variety and the allegedly infringing variety, the variety right holder shall make every effort and diligently provide evidence for the test samples of the allegedly infringing variety and the control samples of the authorized variety used for the appraisal or testing, exercise reasonable care, ensure clear sourcing, proper preservation, and a trustworthy inspection process, in accordance with the

requirements of appraisal or testing.

In cases of infringement of new plant variety rights, the court shall examine whether the molecular marker method used for variety identicality appraisal is scientific and reliable. If the national or industry standards for molecular marker detection methods for a specific plant variety are yet to be established, qualified appraisal agencies and experts could refer to other relevant national or industry standards to issue their appraisal opinions. If their appraisal method can scientifically and accurately distinguish different varieties, with sufficient scientific basis and reproducibility, such appraisal opinions may be adopted as part of the evidence to determine whether the characteristics and traits of the allegedly infringing material are identical with those of the authorized variety.

VI. Integrated Circuit Layout Design Cases Trial

41. Determination of Protected Subject Matter of Layout Design and Its Commercial Use

【Case No.】 (2022) SPC IP Civil Final 2133

【Ruling Summary】 Even if a layout design does not contain active elements, if it shows the three-dimensional configuration relationship between active elements and circuits, thereby clearly defining the interface with the active elements, and delivers the corresponding circuit functions to be realized when other standardized elements are used, it can be considered that the layout design is of the "three-dimensional configuration of two or more elements, at least one of which is an active element, and some or all interconnecting circuits", and is a subject matter of the protected exclusive layout design rights. After the layout design is completed, testing via wafer fabrication is indeed required to check and verify performance. However, if the number of chips commissioned for manufacture containing the layout design significantly exceeds what is necessary for test wafers, and in the absence of evidence to the contrary, the rights holder's claim that the layout design has not been commercially utilized will not be supported.

VII. IP Litigation Procedures and Evidence

42. Limitations of Forum Non Conveniens on Jurisdictional Transfer

【Case No.】 (2024) SPC Civil Jurisdiction 152

【Ruling Summary】 Except in cases of violation of hierarchical or exclusive jurisdiction, if a party does not raise an objection to jurisdiction and responds to the suit, it is not advisable to transfer the case even if the court receiving the case believes it lacks jurisdiction.

43. Conditions for issuing anti-injunction (enforcement) order

【Case No.】 (2024) SPC IP Civil Final 914 & 915

【Ruling Summary】 If a standard implementer applies to an overseas court for an injunction (or enforcement order) against a standard-essential patent (SEP) holder who has filed a patent infringement lawsuit in a Chinese court, and the

SEP holder subsequently applies to the Chinese court handling the patent infringement case for a counter-injunction (or counter-enforcement) order, the court, after preliminary examination, may approve the SEP holder's counter-injunction (or counter-enforcement) application if the SEP holder has fulfilled their fair, reasonable, and non-discriminatory licensing commitments during licensing negotiations, and the standard implementer has shown obvious fault and intent to improperly obstruct the SEP holder from exercising their legitimate rights to advance case proceedings and enforcement in the Chinese court.

(Source: official websites of SPC)

CNIPA Raises Trademark Formal Examination Standards

Recently, the CNIPA has become stricter in reviewing power of attorney documents related to trademark applications, as well as the qualification documents of trademark applicants or registrants. To better meet the Trademark Office's requirements, we would like to make the following proposals:

1. If the name of the signer on the power of attorney is not clearly identifiable by the examiner, the Trademark Office will require the applicant to make corrections and provide a new power of attorney carrying a clearly written signature. To comply with the new requirements of the Trademark Office, we recommend that foreign applicants clearly print the signer's name next to the signature when signing the document, so as to help the examiner to verify it easily.

2. The date of signing needs to be filled in the power of attorney.

3. Domestic applicants or registrants are required to stamp the copy of the business license provided, with their official seals.

2026 Public Holidays in Mainland China, Hong Kong, Macao, and Taiwan

The China National Intellectual Property Administration (CNIPA), the Intellectual Property Department of Hong Kong (HKIPD), the Economic and Technological Development Bureau of the Macao Special Administrative Region Government (DSEDT), and the Taiwan Intellectual Property Office (TIPO) have determined the holiday arrangements for 2026, which are summarized as follows for reference by patent and trademark applicants.

China National Intellectual Property Administration (CNIPA)

Event	Public Holidays
New Year's Day	1-Jan to 3-Jan
Spring Festival	15-Feb to 23-Feb
Tomb Sweeping Day	4-April to 6-April
Labor Day	1-May to 5-May
Dragon Boat Festival	19-Jun to 21-Jun
Mid-Autumn Festival	25-Sep to 27-Sep
National Day	1-Oct to 7-Oct

Intellectual Property Department of Hong Kong (HKIPD)

Event	Public Holidays
The first day of January	1-Jan
Lunar New Year's Day	17-Feb
The second day of Lunar New Year	18-Feb
The third day of Lunar New Year	19-Feb
Good Friday	3-Apr
Good Friday Holiday	4-Apr
Easter Monday	6-Apr
The day Following Ching Ming Festival	7-Apr
Labour Day	1-May
The Birthday of the Buddha	25-May
Tuen Ng Festival	19-Jun
Hong Kong Special Administrative Region Establishment Day	1-Jul
The day following the Chinese Mid-Autumn Festival	26-Sep
National Day	1-Oct
Chung Yeung Festival	19-Oct
Christmas Day	25-Dec
The first weekday after Christmas Day	26-Dec

Economic and Technological Development Bureau of the Macao Special Administrative Region Government (DSEDT)

Event	Public Holidays
New Year's Day	1-Jan
Lunar New Year's Day	17-Feb
The second day of the Lunar New Year	18-Feb
The third day of the Lunar New Year	19-Feb
Good Friday	3-Apr
The Day before Easter	4-Apr
Ching Ming Festival	5-Apr
Labour Day	1-May
The Buddha's Birthday (Feast of Buddha)	24-May
Tung Ng Festival (Dragon Boat Festival)	19-Jun
The Day following Chong Chao (Mid-Autumn) Festival	26-Sep
National Day of the People's Republic of China	1-Oct
The Day following National Day	2-Oct
Chong Yeung Festival (Festival of Ancestors)	18-Oct
All Soul's Day	2-Nov
Feast of Immaculate Conception	8-Dec
Macao S.A.R. Establishment Day	20-Dec
Winter Solstice	22-Dec
Christmas Eve	24-Dec
Christmas Day	25-Dec

Event	Exemption for Civil Servants
Lunar New Year's Eve	16-Feb (Afternoon)
New Year's Eve	31-Dec (Afternoon)

Event	Compensatory Rest Days for Civil Servants
Compensatory rest day for the Day before Easter	6-Apr
Compensatory rest day for Cheng Ming Festival	7-Apr
Compensatory rest day for the Buddha's Birthday (Feast of Buddha)	25-May
Compensatory rest day for the Day following Chong Chao Festival	28-Sep
Compensatory rest day for Chong Yeung Festival (Festival of Ancestors)	19-Oct
Compensatory rest day for Macao S.A.R. Establishment Day	21-Dec

Taiwan Intellectual Property Office (TIPO)

Public Holidays	
1-Jan	Thursday
16-Feb to 20-Feb	Monday to Friday
27-Feb to 28-Feb	Friday to Saturday
3-Apr to 4-Apr	Friday to Saturday
5-Apr to 6-Apr	Sunday to Monday
1 May	Friday
19-Jun	Friday
25-Sep	Friday
28-Sep	Monday
9-Oct	Friday
10-Oct	Saturday
25-Oct	Sunday
26-Oct	Monday
25-Dec	Friday

Panawell Attended 2025 FICPI World Congress & ExCo Meeting

From October 12 to 17, 2025, the World Congress of the International Federation of Intellectual Property Attorneys (FICPI) was grandly held in Naples, Italy. Our partners, Mr. William Yang and Mr. Richard Wang, attended this major event.

During the conference, Mr. Yang and Mr. Wang actively participated in various exchange activities, engaging in friendly and in-depth communications with intellectual property lawyers from around the world. The two lawyers shared their professional insights and successful experience in practice and introduced our firm's comprehensive, professional, one-stop legal services in the field of intellectual property.

FFICPI is an independent international non-governmental organization composed of practicing intellectual property lawyers with an aim to enhance the highest professional standards in the global intellectual property field, strengthen international cooperation and communication among its members, and provide a professional, independent voice on the development of international laws and policies impacting the intellectual property sector.

Back Cover: Exterior of office block where Panawell locates

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