

W&B Legal Newsletter

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Spotlights

The Latest from Watson & Band

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Chambers and Partners 2021 Asia-Pacific Guide Published: Watson & Band Ranked in IP Litigation Area Again

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CNIPA Revises and Issues Guidelines for Patent Examination

Intellectual Property

CAC Seeks Comments on Scope of Personal Information Required for 38 Types of Apps
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Two Authorities Seek Comments on Interim Administrative Measures for Online Small Loans Business

Monopoly and Competition

SPC Issues Judicial Interpretations of Evidence in Civil Intellectual Property Lawsuits
SPC Issues Supplementary Arrangement Concerning Mutual Enforcement of Arbitral awards between Mainland and Hong Kong

INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 pro-fessionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Zhengzhou, Chengdu, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department re-sponsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

Watson & Band Awarded as an “Outstanding Trademark Agency for the Year 2020”

On the evening of December 4, the 12th China International Trademark and Brand Festival (the “Festival”) had its grand reception party and award ceremony at the Greenland International Exhibition Center in Nanchang, Jiangxi. At the ceremony a series of awards of the Festival were presented. The final award winners of “Outstanding Trademark Agencies for the Year 2020”, which was organized by the China Trademark Association, were also announced. Shanghai Watson & Band Intellectual Property Agent Ltd. was honored to be one of the winners.

The evaluation program for said “Outstanding Trademark Agencies for the Year 2020” was launched in early July. After submissions and nominations, preliminary review and selection and follow-up strict assessment by expert panels in accordance with the rules, the name list of finalists was published in late November. Finally Watson & Band was honored to appear on the list of final winners and received the award for “Outstanding Trademark Agencies for the Year 2020”.



Chambers and Partners 2021 Asia-Pacific Guide Published: Watson & Band Ranked in IP Litigation Area Again

On December 15, 2020, the international authoritative legal rating agency Chambers and Partners officially published the 2021 Asia-Pacific Guide (exclusive of Corporate/Commercial Regional Ranking). Watson & Band is again top ranked in the IP Litigation area for its outstanding performance and good reputation within this practice area.

Watson & Band has been taking the lead in the IP Litigation area in Chambers and Partners Asia-Pacific Guide for years. Watson & Band’s IP litigation team received good news in recent years: our cases were selected by the Supreme People’s Court, the local Higher People’s Courts, the IP Courts, the former Patent Reexamination Board, the National Intellectual Property Administration and the China Trademark Association as Top/Typical Cases of the Year. Besides, Watson & Band’s IP services were also well recognized by other domestic and international legal media or rating agencies.



Chambers and Partners Asia-Pacific Guide is one of the most authoritative legal ranking guides in the world. It aims to honor both domestic and international law firms with outstanding performance in key countries and areas within the Asian-Pacific Region. This award reflects the remarkable achievements that the firm enjoyed over the past year including outstanding performance, distinguished development strategies and superb customer service.

CNIPA Seeks Comments on Proposals for Revisions to Implementing Rules of the Patent Law

China National Intellectual Property Administration (“CNIPA”) recently issued the *Proposals for Revisions to the Implementing Rules of the Patent Law (Draft for Comment)* (the “*Draft for Comment*”) to seek comments from all sectors by January 11, 2021.

The *Draft for Comment*, presented in the form of a comparison table, is revised mainly in two aspects: (i) the supporting provisions on the revision of the *Patent Law*; and (ii) the relevant provisions perfected based on practical needs. In particular, the supporting revisions to the Patent Law in the *Draft for Comment* mainly touch on five aspects such as “relevant clauses on the patent term extension, the time for the request involving the extension of patent authorization term, circumstances of unreasonable delay caused by the applicant, requirements for the term extension of drug patents, the scope of drug and the scope of protection, etc.” Revisions that are made based on practical needs mainly cover seven aspects such as “related clauses in connection with the patent cooperation treaty, involving inclusion of references and restoration of priority”.

(Source: China National Intellectual Property Administration)

CNIPA Revises and Issues Guidelines for Patent Examination

The China National Intellectual Property Administration (“CNIPA”) recently issued the Announcement on Revising the Guidelines for Patent Examination (the “Announcement”), with effect from January 15, 2021.

According to the Announcement, the revisions are aimed to actively respond to the demands of rapid economic and technological development for examination rules, and to improve the quality and efficiency of patent examination. The Announcement sets out seven revisions to “Section 3.5, Chapter 10, Part II,” “Section 4.2.3, Chapter 10, Part II” and other provisions of the original *Guidelines for Patent Examination*. Among others, the *Announcement* revises “the composition shall be drafted as the function-defining or use-defining type” and “In certain fields, such as the field of alloys, the intrinsic properties and/or uses of the invented alloy usually shall be specified” in the last paragraph of Section 4.2.3, Chapter 10, Part II of the original *Guidelines for Patent Examination* to read “the composition usually needs to be drafted as the function-defining or use-defining type” and “In certain fields, such as the field of alloys, the intrinsic functions and/or uses of the invented alloy usually shall be specified,” respectively.

(Source: China National Intellectual Property Administration)

NPC Standing Committee to Amend Copyright Law for Implementation as of June 1, 2021

The *Decision on Amending the Copyright Law of the People's Republic of China* (the “*Decision*”), which was adopted at the 23rd Session of the Standing Committee of the 13th National People's Congress (“NPC”) recently, will come into force as of June 1, 2021.

In accordance with the *Decision*, the amended *Copyright Law* has improved the provisions on the protection for cyberspace copyright, greatly raised the upper limit amount of statutory compensation for infringement and defined the principles of punitive compensation. Particularly, if the circumstance of intentional infringement is serious, punitive compensation in an amount between one time and five times the compensation amount may be claimed. If it is difficult to calculate the actual losses of the right holder, the illegal gains of the infringing party or the royalties, the court will rule to grant compensation in an amount between CNY500 and CNY5,000,000 as per actual circumstances of the infringement. As is clearly specified in the *Decision*, the amended *Copyright Law* adjusts the definition of “work”, and amends “a cinematographic work or a work created by a process analogous to cinematography” under the prevailing law into “an audiovisual work”. The amended *Copyright Law* also intensifies law enforcement means of regulatory departments and so on.

(Source: www.npc.gov.cn)



SPC Reinforces Protection of Copyright and Defines Rules on Signature Presumption

Recently, the Supreme People's Court (“SPC”) issued the *Opinions on Reinforcing the Protection of Copyright and Copyright-related Rights* (the “*Opinions*”).

The *Opinions* point out that, a natural person, legal person or unincorporated organization who affixes its signature to a work, performance or sound recordings in an usual way shall be presumed to be the copyright owner of the work, performance or sound recordings or the holder of copyright-related rights, except where there is sufficient evidence to the contrary to disprove it. Meanwhile, the *Opinions* call for the need to attach great importance to the new development needs of the Internet, artificial intelligence, big data and other technologies, accurately define the types of works in accordance with the copyright law, grasp the identification standards for works, and legally and properly hear the cases involving the live streaming of sports events and online games and data infringement, so as to promote the standardized development of emerging business forms. In addition, the *Opinions* also specify the issues such as advancing the pilot program of separating complicated cases from simple ones, destroying the infringing copies and the related materials and tools, fully compensating the right holders for the losses caused, accurately identifying the infringement intent, and guiding the parties concerned in initiating lawsuits in good faith.

(Source: Supreme People's Court)

CNIPA Further Improves Certification Quality of Implementation of Standards for Enterprise Intellectual Property Management System

The General Office of the China National Intellectual Property Administration (“CNIPA”) recently issued the *Circular on Further Improving the Certification Quality of the Implementation of Standards for Enterprise Intellectual Property Management System* (the “Circular”).

The *Circular* touches upon contents of four aspects, including: (1) effectively raising the awareness of enterprises to independently carry out high-quality certification of the implementation of standards; (2) continuously optimizing the supply of high-standard certification service for the implementation of standards; (3) actively creating a policy environment for high-quality certification of the implementation of standards; and (4) striving to create a comprehensive service carrier for high-level certification of the implementation of standards.

In particular, the *Circular* calls for regarding the examination of the effectiveness of the implementation of standards as important content of the internal audit of an enterprise and the external audit by a certification body, and conducting a monitoring and evaluation of the changes in the quality of intellectual property rights and the improvement of benefits before and after the implementation of standards to realize the change from “focusing on form” to “focusing on effect”.

The *Circular* also stipulates that passing the certification of implementation of standards for intellectual property rights shall not be deemed as an important condition for applying for other intellectual property projects to mandatorily require enterprises to carry out the standards implementation certification in disguised form. Meanwhile, it is not allowed to set policy thresholds by placing mandatory conditions such as early establishment of certification bodies and large market scale to form a monopoly and affect fair competition.

(Source: China National Intellectual Property Administration)

SPC Seeks Comments on Judicial Interpretations on Trial of Patent Civil Cases Involving Review and Approval of Marketing of Drugs

The Supreme People’s Court (“SPC”) recently drafted the *Provisions on Several Issues concerning the Application of Law in the Trial of Patent Civil Cases Involving the Review and Approval of Marketing of Drugs (Draft for Comment)* (the “*Draft for Comment*”) for public comments. Collection of comments has ended by this date.

According to the *Draft for Comment*, where a patentee or an interested party applies for behavior preservation in the litigation stated in Article 76 of the *Patent Law*, requesting that a drug marketing authorization applicant be prohibited from manufacturing, utilizing, offering for sale of, selling or importing the patented drug within the validity period of the relevant patent rights for production and commercial purposes or from being about to do so, it shall provide a guarantee; otherwise, the court shall reject the application. The *Draft for Comment* stipulates that a party concerned has the obligation to keep confidential the trade secrets of other parties concerned that are obtained during the litigation, and that those who disclose without authorization, use or allow others to use the aforesaid trade secrets shall bear civil liability in accordance with the law. In addition, the *Draft for Comment* also provides clarity on such matters as the jurisdiction, case filing, and suspension of litigation.

(Source: Supreme People’s Court)

CAC Seeks Comments on Scope of Personal Information Required for 38 Types of Apps

The Cyberspace Administration of China (“CAC”) recently issued the *Scope of Personal Information Required for Common Types of Mobile Internet Applications (Draft for Comment)* (the “*Draft for Comment*”) for public comments.

The *Draft for Comment* stipulates the scope of personal information required for 38 common types of Apps such as map navigation Apps, online car-hailing Apps, and instant messaging Apps. In particular, the *Draft for Comment* stresses that as long as a user gives consent to the collection of his or her personal information required for an App, such App shall not refuse the user’s installation and use. Meanwhile, a total of 12 types of Apps, including online live streaming Apps, online audio and video Apps, short video Apps and browser Apps, shall provide basic functional services without collecting personal information. The *Draft for Comment* also points out that the personal information required for a total of 24 types of Apps, such as online car-hailing Apps, instant messaging Apps, online community Apps, online game Apps and investment and financial management Apps, shall include the mobile phone number or other real identity information of the registered user (App providers may provide a variety of options and the users may choose one of them).

(Source: Cyberspace Administration of China)



Two Authorities Seek Comments on Interim Administrative Measures for Online Small Loans Business

Recently, the China Banking and Insurance Regulatory Commission (“CBIRC”) and the People’s Bank of China (“PBC”) formulated and issued the *Interim Administrative Measures for Online Small Loans Business (Draft for Comment)* (the “*Draft for Comment*”) for public comments. Collection of comments has ended by this date.

The *Draft for Comment* covers the highlights as follows: (1) clarifying the definition and regulatory system of online small loans business; (2) defining the conditions to be met for operating online small loans business in terms of registered capital, controlling shareholders and Internet platforms; (3) standardizing business operation rules, and putting forward relevant requirements for online small loans’ amount, loan uses, joint loans, and loan registration; (4) urging small loan companies which operate online small loans business to strengthen their business management, standardize equity management, capital management and protection of consumers’ rights and interests, legally collect and use customer information, and not to induce borrowers to incur excessive debts; (5) clarifying the regulatory rules and measures, urging the regulatory authorities to improve the effectiveness of supervision and investigate the legal liability for violations of laws and regulations; and (6) specifying the arrangements for rectification of the stock business and the transition period.

(Source: China Banking and Insurance Regulatory Commission)



SPC Issues Judicial Interpretations of Evidence in Civil Intellectual Property Lawsuits

The Supreme People's Court ("SPC") recently issued the *Several Provisions on Evidence in Civil Intellectual Property Lawsuits (the "Provisions")* for implementation as of November 18, 2020.

The *Provisions*, comprising 33 articles, mainly improve the systems of evidence submission, proof obstruction, evidence preservation, judicial evaluation and other aspects. Among others, the *Provisions* state that, where the party who bears the burden of proof applies in writing to the people's court for ordering the opposing party controlling the evidence to submit the evidence, and if the grounds for application exist, the People's Court shall make a ruling and order that party to submit the evidence. Where the People's Court legally requires a party to submit the relevant evidence, but such party refuses to submit without justified reasons, or submits false evidence, destroys the evidence, or performs other acts that render the evidence useless, the People's Court may presume that the opposing party's claim on the issues to be proved under the said evidence is tenable. Meanwhile, the People's Court, in evidence preservation, shall minimize the damage to the value of the subject matter of preservation and the impact on the regular production and operation of the evidence holder under the premise of effective preservation of the evidence. The *Provisions* also specify the confidentiality measures that the People's Court may take, and the subjects whose access to relevant evidence shall be restricted.

(Source: Supreme People's Court)

SPC Issues Supplementary Arrangement Concerning Mutual Enforcement of Arbitral awards between Mainland and Hong Kong

Recently, the Supreme People's Court ("SPC") issued the *Supplementary Arrangement Concerning Mutual Enforcement of Arbitral awards between the Mainland and the Hong Kong Special Administrative Region (the "Supplementary Arrangement")*. Articles 1 and 4 of the *Supplementary Arrangement* shall come into force as of the date of issuance, while the effective date of Articles 2 and 3 will be announced by the SPC after the Hong Kong Special Administrative Region finishes relevant procedures.

The *Supplementary Arrangement* mainly revises the following aspects: (1) "Recognition" procedures are clearly stipulated, and the application of laws is unified, as for the mainland courts have different opinions on whether arbitral awards of Hong Kong are enforceable only upon recognition. (2) The scope of mutual recognition and enforcement of arbitral awards is expanded. Concerning the arbitral awards of Hong Kong which are applied for recognition and enforcement, it is stipulated that the application for recognition and enforcement of arbitral awards filed pursuant to the Hong Kong Arbitration Ordinance can be filed with the mainland people's courts. (3) It is provided that an applicant can apply for the enforcement of an arbitral award with courts of the mainland and Hong Kong at the same time. (4) Relevant provisions on preservation measures before or after courts accept applications for recognition and enforcement are added.

(Source: Supreme People's Court)