

Exposure on Forth Amendment of Patent Law of the People's Republic of China

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ABSTRACT

At present, the forth revision of Chinese patent law is paid close attention to all over the world. The forth version protocol of Chinese patent law was published by SIPO in 3th April 2014, this article include some changes and hot topics in forth revision of Chinese patent law. These changes and topics could provide some new information's about trend of Chinese patent forth version and new patent protection suggestions to all over the world.

Keywords: *Chinese patent law; Forth amendment*

INTRODUCTION

The forth version Chinese patent law is paid attention to all over the world from 2014 to now. At present, The forth version of Chinese patent law is in the first round-the second examination step and two checked drafts have been finished. The fourth revision of the patent law has been arranged for the legislative work plan of the State Council in 2017. People all over the world raise some questions about patent protection in China: First, the change of the scope and period of patent protection ;Second, the status of general patent protection after implementation of patent law forth revision.

According to some public questions and suggestions from SIPO on forth revision of Chinese patent law, this article studies function and purpose, hot topics, contents and trends of Chinese patent law forth revision. At last, this paper summarizes the patent protection proposals after the fourth amendment of the patent law of China [1].

FUNCTION AND PURPOSE OF PATENT LAW FOURTH AMENDMENT

First: to increase patent protection; The patent law fourth amendment put forward the corresponding measures on questions which are raised by patent holder, such as: difficult proof, long cycle, high cost, low compensation and inefficiency, improve law enforcement efficiency, reduce the cost of patent rights, and create a fair and equitable, standardized and

transparent legal and market environment. Second: to promote patent implement; The patent law fourth amendment perfect the regulation of duty invention, solve the outstanding problems of creation, management and usage in patent , improve and perfect patent technology transformation mechanism to encourage innovation and promote the implementation and application of patent[3].

Third: to build a service government; The patent law fourth amendment divide national and local patent administrative department functions, and promote the transformation of government functions, divide into the power of administrative approval and administrative licensing on patent management department, emphasize the duties on patent information in providing public services and promoting the patent application of the patent management department.

Fourth: to perfect patent examination, enhance patent quality; In order to the convenience of the applicant, improve patent quality, the patent law fourth amendment optimize the patent application, examination and reexamination and invalidation procedure, increase the design of national priority system, perfect the relevant provisions of the priority requirements, make explicit on the patent reexamination and invalidation procedure principle, prolong the term of appearance design protection.

Fifth: to perfect patent agency institution; The patent law fourth amendment set provisions of

the basic practice standards for patent agent lawyer, patent agency, distinct legal status of the self-discipline patent agency organization, make explicit on the patent management department responsibility for encouraging and regulating the patent information market services.

THE PUBLICATION TRACKING OF PATENT LAW FOURTH AMENDMENT

The State Intellectual Property Office were asked for public opinions about the notice of soliciting comments on the draft amendment to the People's Republic of China patent law on the official website of the State Intellectual Property Office on 10 August 2012. The official website of the State Intellectual Property Office issued a revised draft of the patent law in 3 April 2014 and was opened the special electronic mailbox in 22 September 2014. The official website of the State Intellectual Property Office issued notice about the fourth revision of the patent law for public consultation, Comparison the provisions of the revised draft of the People's Republic of China Patent Law and description of the revised draft of the People's Republic of China Patent Law in 1 April 2015. The official website of the State Intellectual Property Office issued questions and answers on the background and content of the fourth revision of the patent law and some job invention problems in 24 April 2015. The official website of the State Intellectual Property Office issued the decision in on the amendment of the administrative law enforcement measures for patents and explanation of amendments to the administrative law enforcement method of patent in 29 May 2015. The legal office of the State Council issued public consultation on the revised draft of patent law in 2 December 2015. The official website of the State Intellectual Property Office issued cracking down on counterfeit patent infringement and establishing the rights mechanism of e-commerce in 6 January 2016, standardizing the agency market and the development of service innovation in 13 January 2016, in-depth exchange meeting of experts and scholars in 20 January 2016 and lecture on legal learning in 29 January 2016. The official website of the State Intellectual Property Office issued job inventions need single independent law in 5 April 2016. The official website of the State Intellectual Property Office issued question and answer about the tort liability of network service provider in 20 July 2016. The intellectual property rights are the common topics of the representative on the National People's Congress and the Chinese people's Political Consultative

Conference in 5 March 2017. The Standing Committee of the National People's Congress (NPC) had been invited to review the revised draft of the patent law and the amendment of the patent agency Ordinance that had been included in the 2017 legislative work plan of the State Council on notice issued in 22 March 2017. The official website of the State Intellectual Property Office issued question and answer about protection system for partial appearance design in 1 April 2017. The official website of the State Intellectual Property Office issued the prelude to the activities of the enterprise forum modified by the Patent Law in 5 May 2017 and the enterprise appealed for the punishment of patent infringement by law in 28 July 2017 and can the amendment of the patent law clear the law enforcement right at the county level? in 18 August 2017 and so on.

HOT TOPICS ON CHINESE PATENT LAW FOURTH AMENDMENT

Duty Invention

Duty invention system that adjusts the right attribution and interest distribution system of job creation results, which directly influences and determines the initiative of inventors and their companies in technological innovation and transformation.

There are outstanding problems on duty invention in China, mainly in the following two questions: First, the existing laws and regulations are the lack of maneuverability; second is the practice phenomenon on the company against the inventor's rights and interests which dampen the enthusiasm of the inventor. For example, in some enterprises, trademark infringement is still very serious.

The outline of the national medium and long term plan for the development of talent (2010 - 2020) is clearly proposed to formulate regulations on job technical achievements and perfect the attribution of the achievements of science and technology and intellectual property and protect the legitimate rights and interests of the creator.

Some opinions of the Central Committee of the Communist Party of China on deepening the reform of institutional mechanism to accelerate the implementation of innovation driven development strategy also clearly put forward to improve the benefit proportion of the backbone and the main inventors, improve the reward system, and improve the dispute arbitration and legal relief system for the job inventions

Patent Agency Market

Patent agency service is not only related to the interests of the principal, but also has an important influence on the public interest and the normal order of the society. The total quantity of Chinese patent agency is about 1256, total quantity of patent agent lawyer is about 12626. Chinese patent agency act invention patent, utility model patent and design patent application for a total quantity of 153300, accounting for 64.9% of the total amount of the patent application. A lot of people do not have patent agency qualification in patent agency which affect patent writing quality, and damage the reputation of the patent agency. However, the relevant laws and regulations are not set, leading to the lack of legal basis for the management of such violations. Based on the reality of China and fully using the experience of legislation at home and abroad, it is clear that regulation of illegal behavior is not only conducive to the development of patent agency industry, but also provides a strong guarantee for the good situation of entrepreneurship and innovation.

Infringement of E-Commerce

In the process of providing network services, especially on the business platform, there are a lot of patent infringement disputes. Such as Ali group receive the notice and decision on the patent was infringement, then take some necessary measures to be their daily working. But there is no basis for the current operating guidelines.

The sale of patent infringement products on the platform of e-commerce should be severely hit. It is not enough to fight the law enforcement of patent infringement in the field of electric business, and the legal liability of the e-commerce platform is not clear. With the rapid development of internet technology and the expansion of the scale of electronic commerce, there are more and more violations of patent rights under the network environment. In the patent law, it is imperative to define the legal responsibilities of the network service providers, and request the network service providers to bear legal obligations that match their capabilities. By perfecting laws and regulations, strengthening patent protection in the field of electric business and patent protection in new formats, new fields, new models and new technologies, solving new contradictions and new problems that are needs of the construction of the rule of law and innovation and building a

strong intellectual property powers. In the field of e-commerce, the phenomenon of counterfeiting patents, as a provider of network services, should pay attention to the discrimination of business sales qualifications within the scope of reasonable obligations of e-commerce platform.

CONTENTS AND TRENDS OF CHINESE PATENT LAW FOURTH AMENDMENT

About Design

The protection periods extend to 15 years; the content of protection is the overall or partial shape of the product; the domestic priority is 6 months [2].

Increasing partial shape of the product protection system is an objective requirement for the development of design innovation. Partial shape of the product protection system can protect the design of the product DNA, thus making the design patent as a whole has enough recognition in the market. "Partial" refers to the inseparable part of the whole. Partial appearance protection is an extension of the overall protection, but not any part of any design can be used as the protection object of partial appearance design.

In addition to the overall design requirements of protection object, "partial design" included in the patent law protection, at least should exclude the following two situations: first, if the design does not occupy a certain space, it can not constitute "partial design", such as the surface of the product of a non closed contour line; two, request the protection of the "local" should be relatively complete and independent. Besides, spare parts, which can be separated from the whole product, can be protected by the whole product, and can also be protected by partial appearance design.

The Scope of Patent Protection

Methods of diagnosis and treatment of diseases involve cultured animals. With the rapid development of aquaculture and livestock breeding in China, the level of scientific and technological innovation in these two fields has been continuously improved. In 2014 and 2015, the central No.1 documents put forward to carry out the scale culture of livestock & poultry and the healthy aquaculture of aquatic products. The voice of patent protection for the disease diagnosis and treatment of aquaculture, livestock and poultry is increasing. In order to encourage the innovation and development of

animal breeding industry, comply with the development trend of the international patent system, we should give patent protection to the diagnosis and treatment of cultured animal diseases.

Duty Invention

The duty invention is just about completing the task of the company, remove the provision that an invention is completed mainly by material of company. If there is no prior agreement, the right to apply for a patent belongs to the inventor. Award does not set money limits [10].

The draft regulations on the job invention will be legislate alone. In real life, the relationship between the inventor and the enterprise is a contract agreed by the law and protected by the law. In the framework of this relationship, the inventor carries out the R & D work of the enterprise arrangement. Inventors feel that they get paid much less than their own inventions and make contributions to enterprises, and the problems caused by such bad feeling cannot be solved from the existing labor or labor relations framework. The regulations on the job invention is to provide an institutional arrangement for the inventor to solve the above problems and troubles [6].

Patent Protection

Authorized by the Patent Management Department

Patent management department have rights to investigate and deal with intentional infringement of patent rights which disturb the market order, such as group and repeated infringement. Patent management department may seal up or detain intentional infringement patent and fake patent product which there are some evidences to prove [4].

Authorized by the Patent Administration Department

Patent administration department under the State Council is responsible for market supervision and management of patents, investigating significant impact on patent infringement ;construction of patent information publication service system, and promoting the dissemination and use of patent information and according to the law granting the patent agent qualification, approval of patent agency. When the infringement is established, the administrative department may order the infringer to stop the infringing act immediately and may confiscate

and destroy the infringing products, parts, tools, equipments which are used for manufacturing of infringing products or usage the method of tort. The patent administrative departments of the local governments above the county level shall be responsible for the patent work within their respective administrative areas, carry out patent administrative law enforcement, investigate and deal with patent infringement and counterfeiting, and provide the publication service for the patent.

When the patent administration departments identify the establishment of intentional infringement acts which disturb the market order, it may order the infringer to stop the infringing act immediately and may confiscate and destroy the infringing products, parts, tools, equipments which are used for manufacturing of infringing products or usage the method of tort.

Illegal business amount is more than fifty thousand RMB, it may be punished between one times and five times of illegal business amount. If there is no illegal business amount or below illegal business amount of fifty thousand Yuan, it could take a fine below two hundred and fifty thousand Yuan.

Other Relevant Patent Departments

Research and development institutions set up by the State Council, colleges and universities since obtaining patent right within a reasonable period of time, did not put it into effect or make necessary preparations for implementation of the transfer and did not permit others to implement, in the premise of not changing the ownership of the patent, the inventor or designer can negotiate with them to implement or permit others to implement their patent, and enjoy the corresponding rights and interests in accordance with the agreement.

Sentenced the Amount by Court

For intentional infringement of the patent, court may enhance the compensation to two or three times of illegal business amount, according to the circumstances, scale and damage consequence of tort.

Patent License

There is an of-course license for utility model and design with a statement of patent holder, it shall provide a report on the evaluation of the patent right. The announcement refers to patent holder wish to permit anyone to implement patent and explicit licensing fees, the patent administration department under the State

Council will public the announcement [6].

SEP

The patent holder who participate in SEP, it is regarded as permission the patent technology to implement. Licensing fees will be negotiated by both parties; When the two sides cannot reach an agreement, the local patent administrative departments make adjudication.

Patent Pledge

During the period of pledge, if the pledge of patent value is significantly reduced, the mortgagee would request the mortgagor to provide thing pledged. The pledgor shall not provide a guaranty; the pledge can dispose of the pledged patent.

Punishment

A warning shall be given by patent administrative departments, when the parties refuse or obstruct exercising of their functions and powers. The public security organs shall be given the administrative punishment, when it constitutes a violation of Public Security Administration [5]. Network service provider knows or should know that the network users to use its network services provided by the infringement of the patent right, but does not remove, shield, disconnect the infringing product links and other necessary measures to stop timely. Network service shall bear joint liability with the network user [7]. If the patent owner or interested party has proof to prove the network users use the network services to infringe their patent right, the network service provider may notify the network service provider to take the necessary measures in the preceding paragraph to stop it. The network service provider has not taken the necessary measures in time after receiving the qualified and effective notice, the network service provider shall bear joint liability with the network user to the expanded the damage[8]. Without the permission of the patent administrative department under the State Council, no entity or individual may engage in patent agency for business purposes. In violation of the provisions, the patent administrative department shall be ordered to stop the illegal act and may also impose a fine according to the circumstances [9].

CONCLUSION

Local protection suggestions:

- To the pledgor: When the pledgor shall not

provide a guaranty, the pledge can dispose of the pledged patent.

- To the inventor: Award amount of inventor is decided by company.
- International protection suggestions:
- According to SEP new provisions, international commercial company or people could make use of SEP and do not worry license fee.
- The international network user must pay attention to network service patent infringement, when the trade is in process on network.
- The international patent could apply methods of diagnosis and treatment of diseases involving cultured animals and design in China.

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