



EXCO MEETING, CAPE TOWN

13 & 18 APRIL 2015

COUNTRY REPORT	
TITLE:	Country report for <i>China</i>
DRAWN UP BY:	<i>David Cheng</i>
TABLED TO:	FICPI delegates
PURPOSE:	For information and consideration
SNIPPET:	News from and activities of the FICPI national group in <i>China</i> since the Barcelona ExCo in November 2014.

SECTION A: ACTIVITIES OF FICPI ASSOCIATION/SECTION

The information supplied in Section A will remain confidential on FICPI's website after the ExCo (will require a password).

SECTION B: CHANGES IN LAW

Information supplied under Sections B and C will be published on FICPI's website after the ExCo and will be available to the public.

B1. LEGISLATION

1. Please provide details of any changes to IP legislation (patent, trade mark, design and other) in your country implemented or due to be implemented since you reported last in October 2014.

This bill for amendments to the Chinese Patent Law at present is going through the public hearing, and then will be submitted to the Legal Office of State Council this year.

Drafted amendment to the Patent Law (2014). Amendment proposed includes:

1. Further clarify the responsibility of SIPO in Law. (Article 3)
2. Definition of service invention (Article 6)
3. Definition of contract invention for filing (Article)
4. Entity owner of the patent applicant must give reward to inventor (Article 16)
5. Diagnosis method and treatment method for breeding animal are patentable. (Article 25)
6. Six month Internal priority for design is acceptable (Article 29)
7. Re-examination Board will examine others by itself except for the request for re-examination or invalidation.(Article 41, Article 46)
8. Term of design will be fifteen years from filing date.(Article 42)
9. Local IP Offices will have power to confiscate and destroy infringed product as well as components , tools, model, equipment and the like that are only used for production of infringed product or and usage in infringed process. (Article 60)



10. Enforcement can be applied to the court when mediation contract is settled down (Article 60).
11. Local IP Office will be given more power to stop patent infringement, particularly compensation can be given to the patentee during administrative procedure of a patent right.(Article 60)
12. Court can order infringer to disclose its account books and documents related to the infringement action before court during the litigation if the account books and the said documents are controlled by himself in order to calculate compensation for the infringement. (Article 61)
13. Administrative penalty for passing off patent is between 1 time and five time of illegal income in total if illegal income is over RMB50,000.00.(Article 63)
14. Intentional infringement is in penalty of two or three time of the compensation (Article 65)
15. Network provider will have joint liability with network user if he knows or should know the infringement action. (Article 71)
16. No-licensed person or entity is forbidden to work as a patent attorney (Article 72)
17. Service-invention Inventor can negotiate with his state-owned R & D institutions or universities to explore or license the patent .(Article 78)
18. Open licence of a patent is established.(Article 79)
19. A patent owned by patentee who attends establishment of a State-Standard and does not disclose his patent related to standard and necessary patent will be deemed to licence to the exploiting person who carries out this patent. (Article 82).

B2. MAJOR CASES

2. Please provide brief details of any new case law in the field of patents, trademarks, design or other IP of general interest.

Know-How:

Eli Lilly and Eli Lilly (China) R&D Co. Vs HUANG Mengwie (Shanghai No 1 Intermediate Court 2013)

Utility Model Patent:

Zhongshan Longcheng Daily Commodity Co Ltd Vs Hubei Tongba Children Product Co Ltd (Supreme Court 2013 Mintizi No.116)

Medical Use Patent:

Cubist Pharmaceuticals Vs Re-Examination Board, SIPO. Supreme Court holds that dosage patent is not acceptable for medical use.

Trade Secret: (criminal case)

Infringement of Trade secret case: Jiangxi Aster Electronic Technology Co Ltd, Zhongshan Aster Graphics Company Ltd, YU, Zhinghong, LUO, Shihe, LI, Yinghong and XIAO Wenjuan (Intermediate Court of Zhuhai, Guangdong 2013)



B3. OFFICIAL PRACTICE

3. Please provide details of any changes in official patent and trade mark office practice which would be of general interest to other members.

No

B4. PROPOSALS FOR CHANGES

4. Please provide details of any proposed changes in IP laws or practice and indicate if your National Association/Section is involved in providing comments to such changes.

Would it be of assistance to have input from the CET on any proposed changes?

Newly drafted amendment to the Patent Law in English is preparing now. After finished, I will provide CET it.

SECTION C: OTHER INFORMATION

Please provide details of any other information pertaining to your country or region that would be of general interest to FICPI members and other IP practitioners browsing FICPI's website.

No

C1. QUALIFICATION AND THE RIGHT TO REPRESENT CLIENTS BEFORE A COURT

- 1.1 Please describe the qualification process for becoming a patent attorney in your country/region.

In China, due to the amendment to the Civil litigation Law, besides attorney, now patent attorney who is permitted or qualified by supreme court can represent client before court for patent infringement cases.

- 1.2 Has the patent attorney qualification process changed in any way in the past 5 years?

This is only changed last year.

- 1.3 Does qualification as a patent attorney permit you any right of representation before any Court in your country?

Yes

- 1.4 If so are there any special requirements or restrictions?

ACPAA is responsible for submission to the Supreme court in China to get qualification for patent attorneys.

- 1.5 Are qualified lawyers in your country permitted to work in the patent field without any further qualification?

No. Lawyer must pass examination for patent attorney at first.

If so are there any restrictions on what they may do?

Lawyer must have technical background and can take exam. Otherwise the answer is NO.

If so, please describe those restrictions.

- 1.6 Please describe what privilege attaches to patent attorney communications including any



restrictions.

In China, there is no clear regulation or content in the law relating to privilege for patent attorney.

- 1.7 Please describe the qualification process for becoming a trade mark attorney in your country/region.

No qualification process to be a trademark attorney in China.

- 1.8 Has the trade mark attorney qualification process changed in any way in the past 5 years?

No

- 1.9 Does qualification as a trade mark attorney permit you any right of representation before any Court in your country?

No

If so are there any special requirements or restrictions?

No

- 1.10 Are qualified lawyers in your country permitted to work in the trade mark field without any further qualification?

Yes.

If so are there any restrictions on what they may do?

They do prosecution and litigation in trademark field.

If so, please describe those restrictions.

- 1.11 Please describe what privilege attaches to trade mark attorney client communications including any restrictions.

- 2 In China, there is no clear regulation or content in the law relating to privilege for trademark attorney.

C.2 CET AND PEC SPEAKERS

- 2.1 Would your National Section/Association be interested in obtaining assistance from FICPI, through either the CET Work and Study Group or the Professional Excellence Commission (PEC), in providing speakers for seminars organized by your national group in your county?

Yes, of course.

- 2.2 If your group does, or in the future might, require such assistance, please identify topics that might be of interest to your members, with a view to raising FICPI's profile and providing added value from membership of FICPI in your country.

We shall have IP Symposium in November this year, so we need speakers from FICPI concerning:

1. How foreign attorney evaluate new Chinese trademark Law? Any inconvenient practice? Any suggestion practically? FICPI or FICPI member has any consideration on the Chinese



trademark system or case?

2. New trends in trademark in Europe?
3. What requirement do an IP attorneys need during a litigation in China? Or FICPI member's comment on the patent or trademark litigation in China
4. What is future of second medical use? Can present second medical use patent is really effective in Europe or any other country by European-style (Swiss type or product style claim). It is necessary to harmonize the claim style for second medical use internationally?

C.3 TOPICS OF INTEREST

- 3.1 Please list three IP topics that are of particular interest to you and/or your national section members.

1. How foreign attorney evaluate new Chinese trademark Law? Any inconvenient practice? Any suggestion practically? FICPI or FICPI member has any consideration on the Chinese trademark system or case?
2. New trends in trademark in Europe.
3. What is future of second medical use? Can present second medical use patent is really effective in Europe or any other country by European-style (Swiss type or product style claim). It is necessary to harmonize the claim style for second medical use internationally?

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