Patent Public Advisory Committee
Quarterly Meeting
Office of Policy and International Affairs Update

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Topics To Be Discussed

• China Update

• ID5 Industrial Design Forum

• USPTO’s Conference on Artificial Intelligence (AI)
China updates

• Patent law amendments
  – National People’s Congress (NPC) issued new patent law amendments for public comment

• Memorandum of Cooperation issued by the National Development and Reform Commission (NDRC) with 38 agencies
  – Ties certain acts related to patent applications and infringement to China’s social credit system

• Judicial developments
  – Establishment of national IP Appellate Court

• Section 301 investigation and WTO case update
New patent law amendments

• Issued by the National People’s Congress this month for public comment; comments due on February 3, 2019

• Most significant changes from the previous December 2015 draft
  • New provision for patent term restoration due to marketing approval delays
  • Does not provide provision to pave the way for a patent linkage regime
  • Does not provide protection for partial designs
  • Further expansion of administrative patent enforcement
  • New provision to deal with online enforcement of patent infringing products
  • Enhanced statutory damages for patent infringement
Memorandum of Cooperation issued by the National Development and Reform Commission (NDRC)

- MOC issued by the NDRC on December 4, 2017, signed by 38 government agencies in joint effort to strengthen punishment of IP infringement
- Outlines six types of “dishonest conduct” and 38 disciplinary measures
  - Dishonest conduct includes repeated patent infringement, abnormal patent applications and providing false documents, and refusing to execute administrative decisions according to the law
  - Disciplinary measures include restricting the company’s access to financial tools, government resources, and access to social benefits and travel
Judicial developments

- New National Appellate IP Court established within the Supreme People’s Court (SPC) in Beijing
  - Designated a pilot for now
  - Nationwide jurisdiction over appeals of patent and other complex technical IP cases
  - Jurisdiction: appeals of first-instance court decisions regarding invention or utility model patent, new plant varieties, integrated circuits layout designs, technical secrets computer software and anti-monopoly cases; appeals of administrative cases from the specialized IP courts
  - No jurisdiction over trademark, commercial secrets and non-software copyright cases, or IP related criminal cases (unless these cases also include anti-monopoly claims)
  - SPC’s existing IP tribunal still remains – cases from new appellate IP court can be retried there
Growing need for industrial design forum

- Continued growth in industrial design applications across the world
- Greater access to international industrial design protection through the Hague Agreement
- Need for greater convergence and consistency in policies and practices from jurisdiction to jurisdiction
Launch of ID5

2015 ID5 was launched at the USPTO

- EUIPO
- JPO
- KIPO
- SIPO
- USPTO
- WIPO (observer)

ID5 website: www.id-five.org

90% of global industrial design filings
USPTO strategic objective for ID5

- A key mechanism for implementing global best practices benefiting U.S. innovative design applicants by effectively and efficiently protecting their designs across the globe
  - Ensuring effective industrial design protection exists for designs in all technologies
  - Furthering consistency in design registration/examination policies and practices
  - Enhancing global efforts to identify the needs of the design community through stakeholder outreach and information sharing
2018 – Achievements & results

• Electronic Priority Document Exchange (WIPO DAS)

• First of its kind comparative studies for users
  – Eligibility
  – Grace period*
  – Partial design*
  – New Technological/Emerging Designs (GUI, icons, etc.)*

• Improvements to global design system
  – Japan - Grace period shift to 12 months
  – China – Enhanced consideration of partial design
2019 – What’s Next at ID5?

• All five offices complete implementation of WIPO DAS*

• ID5 Joint Recommendation on Design Formality Practices (DLT)*

• Additional project highlights:
  – Analysis of underlying economic factors effect on design filings
  – 3-D printing and design
  – Admissibility of internet information as novelty defeating disclosures
  – Comparative study on design remedies (begins 2020)*

* USPTO conceived, proposed and led ID5 initiatives
ID5 website: www.id-five.org
USPTO AI Conference

• Six panels covered AI policy issues relating to patents, trade secrets, copyright, trademark, IP enforcement, and international perspectives
• Patent panel explored the following for AI inventions:
  – Desired scope of eligibility
  – Adequacy of written description/enablement
  – Inventorship
  – Assessment of the level of ordinary skill in the art
• Panels included speakers from corporations, governments, law firms, and academia
USPTO AI Conference

14 entities showcased exhibitions of their respective AI technologies during the conference.
Questions and Comments

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