

Chinese IP Updates

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1. CNIPA's latest statistics

In 2020, the China National Intellectual Property Administration (CNIPA) examined 8.784 million new national trademark applications, up by 6.43% over the previous year. The average duration of examination has been shortened to four months. Registration duration has been shortened to seven to eight months. The validly registered trademarks have added up to 30.17 million and the registered GIs have totaled 6085.

Since 2018, the CNIPA has rejected more than 150K trademark applications filed in bad faith or for hoarding purpose.

2. China lifts max imprisonment of IP criminals from 7 to 10 years

On 26 December 2020, the Chinese Congress released the 11th amendment of the Criminal Law, which will come into effect on 1 March 2021, with highlights relating to IP summarized below.

- Under Article 213, the trademark protection has been extended from goods to services. Although the protection covers services, the amendment has further clarified the issue in the law.
- Under Article 213, protection of copyright has been extended to cover the copyright-related rights.
- The maximum imprisonment in serious scenarios for the following five crimes has been extended from 7 to 10 years. On the other hand, surveillance and detention, namely the freedom-limiting penalty lighter than imprisonment, have been abolished.
 - 1) Counterfeiting registered trademarks;
 - 2) Selling goods bearing counterfeited registered trademarks;
 - 3) Illegally manufacturing or selling illegally manufactured identifications of registered trademarks;

- 4) Crime of infringement on copyright; and
- 5) Crime of infringement on trade secrets.

In general, the penalty has become heavier. We expect that the amendment will be more deterrent to the infringers and can better protect the legitimate IPRs in China.

3. LEGO copyright infringer imprisoned 6 years and fined CNY90M in Shanghai

On 29 December 2020, the Shanghai High People's Court finally sustained the first-instance court's ruling that the prime culprit infringing Lego's copyright is to be imprisoned six years and fined CNY90 million. Other eight accessory criminals were sentenced to imprisonment ranging from three years to four years and ten months and fines ranging from CNY0.2 million to CNY4.5 million.

The criminals were found out to have copied Lego's 663 copyrighted toys, with an illegal turnover of CNY330+ million and unsold stock of CNY30 million. As Denmark and China are both members of the *Berne Convention for the Protection of Literary and Artistic Works*, China is obliged to protect Lego's copyright.

Had the infringement happened after 1 March 2021 when the newly amended Criminal Law comes into effect, the imprisonment and fines could be heavier. However, the fine was not awarded to Lego. If it would, Lego is entitled to file a civil lawsuit to claim damage.

4. SPC updates 18 interpretations relating to IP

In 2020, the Chinese Congress made the first Civil Code and amended the Patent Law. In 2019, the Trademark Law was amended. In 2018, the Chinese Trademark Office and Chinese Patent Office merged and formed the current China National Intellectual Property Administration (CNIPA). The Civil Procedural Law and the Administrative Procedural Law were also amended in recent years. Accordingly, the Supreme People's Court (SPC) decided on 23 December 2020 to amend its 18 judicial IP interpretations to keep up with the developments.