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SUBJECT: **Report on Chinese patent reform**
PURPOSE: INFORMATION

Brief of Amendments of Patent Law

Background of the Amendments

First Patent Law became effective on April 1, 1984, first Amendment of Patent Law was in 1992, and second Amendment of Patent Law was in 2000. Through years of practice, the Chinese patent system has been gradually developing, and administrative and judicial system for patent protection have been enhancing. Filing and granting of patent applications have been increasing for last five years by rate of 22.8%/year (filing), 15.2%/year (granting), and by June of 2006, patent applications received by SIPO reached 3 million. It has taken 15 years to reach the first 1 million, 4 years to reach the second 1 million, but only 2 years and 3 months to reach the third 1 million.

Reasons to Make Amendments

1. Lack of real inventions - the most utility model and design patents granted even in the world, which leads to unstable patent rights
2. Enforcement is not sufficient and quick
3. No regulations against the abuse of patent rights
4. National IP strategy has been determined
5. Meet international standards for patent protection - Trips Agreements for patent compulsory license

Preparation of the Amendments

1. Collect written Opinions from society
2. The first draft of amendments available for Public in Internet to get feedback
3. Visit Japan and U.S.
4. The second amendments are drafted then

Concepts to Make Amendments

1. To encourage innovation and creation
2. To provide quick and smooth means for public to obtain and enforce patent rights
3. To balance the interests between patentee and public
4. To enhance the competitive capability of private companies
5. To build a harmonious society

Proposals from the SIPO

The tenet of Legislation is:

1. To balance the interests between patentees and public
 - Provide quick and sufficient protection for patentees
 - Prevent patentees from the abuse of patent rights
2. To coordinate developments between China and international standards
 - Learn advanced experience from developed countries
 - Make the laws match with current situation of China
3. To maintain stability and availability of laws
 - Keep basic characteristics of the law
 - Do not amend those articles which might not be clearly described but not to bring impact for implementation
 - Only amend those which are hard to be implemented and lead conflict with others

4. To build a creative and innovative country

Reform Administrative Approval

1. Abolish the rule requiring that firms for representing foreign clients shall be approved by the SIPO
2. Abolish the rule requiring that foreign filing shall entrust Chinese firms
3. Add new article to require that patent administrative offices shall promulgate patent information
 - SIPO's website is browsed 100,000 times a day
 - Patent documents are downloaded 2 million pages a day from SIPO's website

Adscription and Management of Patent Rights

1. The firm which makes research entrusted by government entitles the concerned patent right
2. Right and obligation for joint patentees
3. With reference to international standards, any applications to be filed in foreign countries shall be approved by SIPO, otherwise, its Chinese patent application shall not be approved

Standards to Grant Patent Rights

1. Adopt absolute novelty – anywhere be publicly used
2. Require to disclose the source of heritage resources: inventions from Illegally obtained heritage resources shall not be protected

Design Patent System

1. Narrow the subject matter of design patents: exclude print work and its combination from design
2. Apply interference and obviousness to design patent
3. Allow correlated designs to be filed as one application
4. Require search report rendered by SIPO before litigation
5. Require brief description of design patent applications

Protection of Patent Rights

1. Offer to sale constitutes infringement for design patents
2. Improve administrative enforcement
 - Administrative fine to infringers
 - Administrative offices are assigned power to investigate
3. Further define the calculation of damages
4. Reasonable costs for stopping infringement shall be paid by infringers
5. Request for evidence preservation prior to litigation is allowed in accordance with Civil Law
 - Decision shall be made by court within 48 hours
 - Bond is required with the Request

Public Interests and Patent Abuse

1. Improve requirements on compulsory license with reference to
 - Paris Convention for Protection of Industry Property
 - Declaration on TRIPS Agreement and Public Health by WIPO
 - Conditions applied to compulsory license
2. Ruling on litigation in bad faith
 - Allow defendants to make non-infringement arguments based on prior art
 - Defendants may request damages if it is proved that the party which initiates the litigation in bad faith
3. Limitation of actions
 - Right to take action against infringement becomes null over three years of limitation of actions without justified reasons
 - Patentee loses its right to take actions against the defendant if he has recognized and/or given tacit consent to the defendant
4. Non-infringement activities

Public Comments Adopted to the Amendments

Public opinions taken by the Amendments:

- Definition of employees invention and individual invention
- On filing patent applications made in China in foreign countries
- Clarify “application right for patent” into “application for patent”
- On doctrine of equivalent and estoppels
- On administrative enforcement
- On indirect infringement