



China Updates

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In response to our clients' needs for up-to-date information on the evolving legal and business environment in China, Lee and Li presents our monthly China Updates to assist our clients in understanding the latest legal and economic trends of China.

Lee and Li has provided legal services across the Greater China Area (Mainland China and Taiwan) longer than any other firm. In addition to decades of rich experience in legal services covering all disciplines, we have established the Greater China Strategic Alliance (L&L-Leaven, Attorneys-at-Law in Shanghai and Lee and Li - Leaven IPR Agency Ltd. in Beijing), providing our clients with the benefits of efficient and professional managing of legal and patent matters in the Greater China Area.

It is widely recognized by our clients that Lee and Li's integrated legal perspective and unparalleled expertise in cross-strait services significantly reduce the time and effort that many companies expend seeking trustworthy Chinese lawyers. Misunderstanding and communication costs arising out of cultural differences in legal practices between the cross-strait legal systems are avoided as well.

I. Law Updates

Provisions Promulgated by the Supreme People's Court on Several Issues Concerning Hearing of Cases Involving Review of Arbitration Take Effect on January 1, 2018

On December 26, 2017, the Supreme People's Court promulgated two sets of provisions, the Relevant Provisions of the Supreme People's Court on Issues concerning Reporting and Approving Cases Involving the Review of Arbitration, and the Provisions of the Supreme People's Court on Several Issues Concerning Hearing of Cases involving Review of Arbitration (hereinafter collectively "Arbitration Provisions"). The Arbitration Provisions provide common procedures for various types of arbitration cases under review (including confirming the validity of an arbitration agreement and the recognition and enforcement of arbitral awards). Major points of the Arbitration Provisions include those related to:

(1) Court of Competence Jurisdiction:

Jurisdiction to review the validity of an arbitration agreement is granted to the intermediate people's court or the special courts located in the areas where the arbitration institution, where the arbitration agreement was entered into, or at the domicile of the applicant or the respondent.

(2) Appealable Rulings:

The parties are allowed to appeal the court's ruling on dismissal of the case, rejecting the application, or the objection to jurisdiction in review of arbitration cases.



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(3) New System for Reporting and Approving Arbitration Cases Under Review:

The Arbitration Provisions respectively set review and approval system for foreign-related and non-foreign-related arbitration cases. The purpose of the review and approval system is to prevent the occurrence of mistakes in foreign-related, or Hong Kong, Macao, or Taiwan-related arbitration case. For cases concerning the invalidity of an arbitration agreement, or concerning the revocation of, or decision not to recognize or enforce, an arbitral award granted under a foreign jurisdiction, or Hong Kong, Macao, or Taiwan-related cases, the court at the lower level shall file the application for approval with the court at the higher level, level by level, until the review by the Supreme People's Court. In contrast, non-foreign-related cases are generally reviewed by the higher people's court.

Relevant Provisions of the Supreme People's Court on Issues concerning Reporting and Approving Cases Involving the Review of Arbitration (In Chinese):

<http://www.court.gov.cn/fabu-xiangqing-75862.html>

Provisions of the Supreme People's Court on Several Issues Concerning Hearing of Cases involving Review of Arbitration (In Chinese):

<http://www.court.gov.cn/fabu-xiangqing-75872.html>



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II. Case Updates

Criminal Case Regarding Trade Secrets Misappropriation

This case is one of the model cases released by the Supreme People's Court ("SPC") in the first volume of model cases regarding the legal protection of enterprises' properties and interests.

A technology company (the "Complainant") owns certain trade secrets related to its research and development, manufacture, and sale of reverse osmosis membranes ("RO membranes"). The Complainant had adopted confidentiality policies and entered into NDAs with its employees. Under such policies and NDAs, the Complainant explicitly identified certain types of management information and technical materials, including supply chain information, customer lists, technical know-how, manufacturing processes, to be kept strictly confidential and protected as the company's trade secrets. However, Mr. Peng (the "Defendant"), who is a supplier of the Complainant, incorporated a new company with Mr. Ye, a member of the Complainant's upper management team. The new company manufactured products similar to those manufactured by the Complainant through the use of the Complainant's trade secrets disclosed by Mr. Ye, thus causing the Complainant an economic loss of RMB 3.75 million. The Intermediate People's Court of Guiyang Municipality ("Intermediate Court") ruled that the Defendant has infringed the Complainant's trade secrets, and therefore was sentenced to a fixed-term imprisonment of four years with a fine of RMB 20,000. The Higher People's Court of Guizhou Province upheld the Intermediate Court's ruling and the ruling thus became final.



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The key issue of this case is whether the Defendant's conduct constitutes misappropriation of the Complainant's trade secrets. Pursuant to Article 219 of the Criminal Law of China, "if a person knowing or should have known that other person(s) acquire the trade secret through wrongful means, discloses, uses, or allows other person(s) to use the trade secret shall constitute infringement of trade secrets." The Intermediate Court held that the Defendant knew Mr. Ye obtained the Complainant's trade secrets, including customer information, know-how and manufacturing processes, through wrongful means and that the Defendant had used the Complainant's trade secrets to manufacture and sell RO membranes. The Defendant knowingly misappropriated the Complainant's trade secrets, causing substantial damages to the Complainant. Accordingly, the Defendant's conduct shall constitute infringement of trade secrets.

According to the case comments provided by the SPC, the legislative purpose behind the severe punishment imposed under criminal law for infringement of trade secrets is to provide strong protection toward trade secrets, in order to promote corporate integrity, fair competition, and provide a sound legal environment for the business development and operation of enterprises.



Case Updates

III. Economic Updates

1. Tencent, JD.com, Suning, and Sunac announce a major investment in Wanda Commercial

In January 2018, Tencent, JD.com, Suning, and Sunac collectively made a RMB 34 billion investment in Wanda Commercial Properties Co. (“Wanda Commercial”), the world's largest commercial properties enterprise. Wanda Commercial's Wanda Plaza develops shopping centers, which offer leisure, dining, retail, financial, hotels and residential functions, throughout China. These investors have purchased 14 percent of Wanda Commercial's equity stake, of which Tencent's investment of RMB 10 billion represents a 4.12 percent stake, while Suning and Sunac each invested RMB 9.5 billion to acquire a 3.91 percent stake respectively, and JD.com's investment of RMB 5 billion represents a 2.06 percent stake in Wanda Commercial.

The move presents Wanda Commercial with an opportunity to reposition its business, taking advantage of the online traffic of Tencent, Suning and JD.com and its own huge offline business resources to conduct multi-faceted integration of service in areas such as online business, user data, mobile payment, consumer finance, warehousing and logistics, and cloud services to create a new business model that combines online and offline consuming patterns.

2. Qualcomm unites with Chinese smartphone manufacturers to launch its “5G Pioneer” initiative in the absence of Huawei

Qualcomm is now actively strengthening its ties with Chinese partners. On January 25, 2018, Qualcomm announced its “5G Pioneer” initiative on stage and is expected to launch super-high-speed 5G mobile devices in 2019. Its Chinese smartphone partners including Xiaomi, Oppo, and Vivo, as well as ZTE and Lenovo all participated in the event.



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Notably, China's largest mobile phone producer, Huawei, is not among Qualcomm's cooperation partners. Currently, many end products of Huawei, particularly its flagship mobile phone products, use Huawei's own Kirin chips. Huawei has announced that its 5G Kirin chip is under development and will launch new its own 5G mobile phone products in the second half of 2019.



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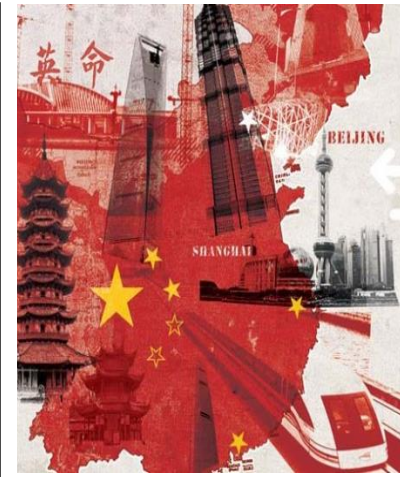
IV. IP Updates

China State Intellectual Property Office Releases 2017 Patent Summary

Official statistics from China's State Intellectual Property Office (SIPO) reveals a total of 1.38 million applications for invention patents were filed in 2017. The figure represents a 14.2 percent rise over the previous year. 420,000 patents were issued out of all applications.

The top 10 enterprises with the largest Chinese invention patent portfolio in 2017 are State Grid Corporation of China (3,622), Huawei Technologies Co., Ltd. (3,293), China Petrochemical Corporation (2,567), BOE Technology Group Co., Ltd. (1,845), ZTE Corporation (1,699), Lenovo (Beijing) Co., Ltd. (1,454), Zhuhai Gree Electric Appliance Co., Ltd. (1,273), Guangdong Opal Mobile Communications Co., Ltd. (1,222), PetroChina Natural Gas Co., Ltd. (1,008), and Semiconductor Manufacturing Systems (Shanghai) Co., Ltd. (862).

In 2017, 5,608 patent applications filed by the countries of the Belt and Road were published, an increase of 16.0% over the same period of the previous year. The Belt and Road countries have filed a total of 4,319 patents applications in China, an increase of 16.8% over 2016.



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The China Updates content on Chinese law and regulations is meant to provide an overview of the latest legal developments in China. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted on or relied upon without specific legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.

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