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From ideas to impact: enhancing patent transfer in Chinese universities

Eddie Zheng, Partner at Corner Stone & Partners, highlights the challenges and progress in patent transfer and transformation at Chinese universities in light of the introduced policies to promote the commercialization of research.

CTC Legal Media

2024 in Review

As we enter a new year, we asked our Editorial Board to share their insights on the key takeaways from 2024 that will shape important developments in IP practice for 2025 and beyond.

The following overviews highlight significant developments in intellectual property law across various jurisdictions, showcasing the dynamic landscape of patents and trademarks:

Canada's Patent Office plans new regulations for patent term extensions starting January 1, 2025, following a court ruling against generic companies. In China, digital intelligence is transforming trademark legal services, boosting efficiency for practitioners. The German Federal Court clarified that non-infringing activities can still lead to damages claims in patent infringement cases. The European Commission expressed concerns about the Munich court's interpretation of SEP licensing negotiations, emphasizing balanced assessments regarding implementer behavior.

In India, the Delhi High Court sided with Pioneer Overseas Corporation in a plant variety infringement case, upholding breeders' rights and the importance of scientific evidence. Japan is handling a case where a plaintiff alleges infringement of a breast augmentation patent, with the Intellectual Property High Court set to rule on its validity and the definition of "production." The UK patent litigation market remained active in 2024, focusing on life sciences, technological advancements, and FRAND disputes, with significant rulings expected on mRNA patents and AI patentability.

Lastly, recent US Supreme Court decisions may limit the USPTO and Copyright Office's rulemaking powers, leading to more judicial scrutiny and litigation challenges.

We would like to take this opportunity to thank our Editorial Board for their continued support and hard work throughout the year. Please visit page 6 to familiarize yourself with each member's profile.

If you would like to learn more about our Editorial Board or apply for 2026, please visit www.patentlawyermagazine.com/editorial-board-applications/

A review from Canada

Noel Courage, Smart & Bigger

In the renegotiated free trade agreement between Canada, the US and Mexico (2018), there was a requirement to create patent term extension for patent office examination and processing delays. This is a benefit to patent owners. Such patent term extensions have existed in US patent law for many years, but are totally new in Canada. In May 2024, the Canadian Patent Office published proposed regulations for patent term extension due to patent office delays. Prior patent Act amendments had set out the framework and now these draft regulations fill in proposed details.

The regulations provide process and fee amounts for applying for an additional term. They also set out rights to apply for reconsideration of an additional term, and for maintaining the patent during the additional term. The proposed amendments are expected to come into force on January 1, 2025, and the date the first eligible patents may receive an additional term is December 2, 2025. Typically, CIPO has been making very little amendments to published draft Patent Act regulations, so it is quite likely that the final regulations will be similar to those published.

In other news in favor of patent owners, the Federal Court of Appeal has dismissed two appeals finding that generic companies induced infringement of claims to a dosing regimen. The generic companies had attempted to assert that they would not infringe a patent for Janssen's paliperidone palmitate because they were not requesting approval for the patented 75 mg strength syringe.

A review from China

Gang Hu, China Patent Agent (H.K.) Ltd.

In 2024, the world is facing greater challenges and uncertainties. But life and work still need to continue. As the French writer Alexandre Dumas said, all human wisdom is contained in two words: waiting and hope. During this year, a noteworthy trend in China is that the impact of digital intelligence on trademark legal services has attracted wider attention within the industry. The so-called digital intelligence refers to the ability to use digital technology and data-driven methods to achieve intelligence, automation, and optimized decision-making. It combines technologies such as artificial intelligence, big data analysis, and machine learning to provide deeper insights and intelligent decision support for enterprises through the collection, organization, and analysis of large amounts of data. On the one hand, the application of digital intelligence has replaced many basic tasks in the trademark legal services industry, reducing human errors and improving efficiency. On the other hand, the wave of digital intelligence has also brought new formats, scenarios, and technologies to the trademark legal services industry. These matters have profoundly changed the traditional industry landscape. For example, to improve the efficiency and accuracy of trademark similarity comparison and analysis by applying new technologies such as artificial intelligence and big data; to use the tamper-proof nature of blockchain technology to track and fix evidence of trademark and copyright infringement more effectively on the Internet; to provide customers with market trend analysis and brand strategy planning services through big data analysis. It can be said that in the era of digital intelligence, the emergence of new formats and scenarios has provided more business opportunities and development space for China's trademark legal service industry. At the same time, it also urges trademark practitioners to continuously learn and master new technologies in order to actively adapt to the development needs of the industry.

A review from Germany

Stefan Schohe, Schohe

Non-infringing activities are commonly considered safe harbors regarding patent claims. As the German Federal Court of Justice (FCJ) held in two recent decisions (X ZR 30/21 of Nov 14, 2023 and X ZR 104/22 of May 7, 2024), this is not entirely true for damages. Also non-infringing activities may cause a claim for damages and the provision of related information and accounting.

In the first case, leasing agreements related to infringing machines continued beyond the lapse of the patent and the defendant provided consumable material for these machines before and after the lapse. The FCJ acknowledged a claim for the provision of information and accounting. It held that damages serve to compensate for the unlawfully seized and exploited market opportunity provided by the patent and the infringer had to return any profits for which the infringement was causal due to the specific features of the patented product. This extends to profits from a long-term lease after the lapse of the patent and to revenues from the sale of consumable materials.

In the second case, the defendant offered the installation of a patented machine in Sweden, where the patent had lapsed, from Germany. The court held that although the later installation in Sweden was not a patent infringement, the related profit was the consequence of an infringing offer and contributed to the damages as the offer was made from Germany and not in Sweden.

In both decisions, the court emphasized that only the profit due to the specific features of the patented product had to be returned, but nevertheless granted an unrestricted claim to information and accounting to enable the patentee to determine the extent of damages.

Even non-infringing activities can be the subject of damages claims if related to patent infringement, and an unrestricted claim for accounting and information will be granted if this is conceivable. Information and accounting may be a value, even if related damages turn out to be small or non-existent.

A review from Germany

Dr. Claudia Tapia, Ericsson

In *Huawei v ZTE*[1], the CJEU established a framework for license negotiations of SEPs, available on FRAND terms. The European Commission (EC), in its recent Amicus Brief for *HMD v. VoiceAge*[2], raised concerns that the Munich court may have misinterpreted this framework by overemphasizing the implementer's conduct when deciding on whether to grant an injunction. The EC advocates for courts to evaluate the SEP user's willingness to obtain a FRAND license[3] based on their initial declaration, even if subsequent actions reflect bad faith. If this interpretation were adopted, SEP owners could more frequently find themselves negotiating in a vacuum. They would have to make FRAND offers without vital information, typically shared under an NDA in good faith negotiations. This would undermine the CJEU framework, which is designed to foster good faith licensing negotiations. In light of this, the Munich court will probably continue issuing injunctions in clear instances of bad faith regardless of the implementer's initial declaration – such as against implementers refusing to negotiate or delaying counteroffers for over a year. As the Bundesgerichtshof (Federal Court of Justice) noted in *Sisvel v Haier*, when bad faith behavior is established, the existence of a FRAND offer will typically not be decisive, as it does not impact the party deemed unwilling to negotiate.

As some implementers increasingly adopt sophisticated strategies to postpone negotiations and devalue FRAND, distinguishing between willingness and unwillingness becomes less straightforward. In these scenarios, courts are likely to consider the SEP owner's FRAND offer to the necessary extent, alongside both parties' overall conduct throughout negotiations. Such an approach would help courts determine if adjustments to the standard for assessing the implementer's behavior are necessary while ensuring a balanced outcome.

__Disclaimer__: Dr. Claudia Tapia, LL.M is Head of Global IPR Policy Research & Academic Relations at Ericsson and President of 4iP Council. The views expressed in this article are those of the author alone and do not necessarily represent the views or positions of Ericsson, any of its affiliates, or any employee thereof, or the views or positions of 4iP Council or any of its supporters.

1 https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A62013CJ0170
2 https://competition-policy.ec.europa.eu/antitrust-and-cartels/national-courts/amicus-curiae-observations_en
3 https://caselaw.4ipcouncil.com/guidance-national-courts

A review from India

Pravin Anand, Anand & Anand

On Sept 20, 2024, the Delhi High Court ruled in *Pioneer Overseas Corporation v. M/s Evercrop Agro Science & Star Agrotech Pvt. Ltd.* (CS(COMM) 759/2024), a significant case addressing plant variety infringement under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FR Act). This law grants breeders exclusive rights over the registration, production, and commercialization of plant varieties. Any unauthorized use constitutes infringement, under S.64 of the Act, entitling the aggrieved party to injunctive relief, damages, and restitution.

Plaintiff, whom I represented, alleged infringement of its maize variety 'P3355' and parent lines and sought an injunction, damages, and an account of profits. Defendant No. 1 conceded Pioneer's rights and agreed to cease the infringing activities, while Defendant No. 2 disclaimed involvement. Consequently, the court ruled in favor of the plaintiff, granting injunctive relief, but Pioneer waived its claims for costs and damages.

This ruling strengthens breeders' rights under the PPV&FR Act, signaling that courts will likely grant swift interim and permanent injunctions to protect breeders' exclusive rights.

Moreover, the case may shape future jurisprudence by promoting more rigorous enforcement of breeders' rights while addressing the delicate balance between innovation and farmers' rights. Courts may more carefully delineate between permissible non-commercial use by farmers and unauthorized commercial exploitation of protected varieties.

The reliance on scientific evidence, such as DNA fingerprinting and molecular markers, is likely to play a more significant role in future plant variety infringement cases. Courts may develop a structured framework for weighing expert testimony and scientific evidence such that disputes are resolved based on solid, scientific proof of infringement.

While not a member of the UPOV Convention, India's legal framework under the PPV&FR Act is aligned with its principles; future Indian jurisprudence may increasingly follow international norms.

A review from Japan

Osamu Yamamoto, Yuasa & Hara

The procedure of calling for third-party opinions, the Japanese version of *amicus curiae*, was introduced on April 1, 2022, in patent and utility model infringement suits. In the second case, relating to cosmetic medical technology, the Intellectual Property High Court (IPHC) issued a request for opinions with a deadline of September 6, 2024.

Claim 1 of the plaintiff's patent JP No. 5186050 is "A composition for promoting subcutaneous tissue increase, characterized in that the composition comprises autologous plasma, basic fibroblast growth factor (b-FGF) and fat emulsion." Note that, currently, an invention for treating a human is not patentable subject matter, and it is therefore obligatory to try to obtain patent rights for an invention of a "product," even if it is essentially a method invention.

The plaintiff claimed that the hematopoietic breast augmentation surgery performed by the defendant at the clinic constituted patent infringement and demanded compensation for damages. One of the disputed issues at the Tokyo District Court (TDC) was whether the defendant had produced the "composition" for promoting subcutaneous tissue increase, as recited in Claim 1, which contains autologous plasma.

The TDC denied patent infringement. The plaintiff appealed to the IPHC.

The IPHC issued a request for opinions on the issues including: (1) "Should the patent be invalidated by an invalidation trial as being "an industrially inapplicable invention" under Article 29(1) of the Patent Act?" and (2)" In case the appellant uses the drug containing some of the ingredients as recited in Claim 1, and uses the drug containing the rest of the ingredient as recited in Claim 1 separately for surgery, and all of them are mixed in the body of the subject, does the surgery by the appellant constitute "production" of the "composition" of the invention?."

We expect that an IPHC decision will be issued next year. Considering the development and diversification of medical-related technologies and related businesses, it is strongly expected that the Patent Act will be amended to address the issues by expanding the scope of patentable subject matter and clarifying the exemption for physicians' acts.

A review from the UK

Sarah Taylor, Pinsent Masons

The UK patent litigation market remained buoyant in 2024, with courts delivering accessible and considered decisions, reflecting evolving socioeconomic and technological issues.

Life sciences disputes continue with increasing demands on health budgets. The courts heard battles over mRNA patents that underpin Covid vaccines, with Pfizer/BioNTech's reliance on Moderna's pledge not to enforce its rights against Covid vaccine manufacturers determined to be an unusual partial infringement defense[1]. Biosimilar disputes have featured, with the High Court revoking[2] Janssen's European patent, allowing Samsung to launch its biosimilar ustekinumab product.

UK courts led the debate on AI patentability. While the Court of Appeal (CoA) ruled[3] that that Emotional Perception's artificial neural network music recommendation tool did not make a technical contribution and was not patentable, the discussion will continue with an appeal to the Supreme Court.

The UK continues to be a busy FRAND litigation forum. The CoA's landmark ruling that Lenovo should pay royalties for all past sales, but that the trial judge's reasoning in determining the per-unit royalty rate was flawed likely due to the length of time it took to deliver the decision, has led to expectations of shorter periods from trial to judgment, particularly with a backdrop of speedy UPC decisions.

The UK courts' willingness to navigate complex international landscapes in FRAND disputes again came into focus. The CoA refused Lenovo's conditional PI application[5], it being merely to induce Ericsson to not enforce injunctions in Brazil and Colombia, and granted Xiaomi an interim license, with Panasonic found to be using parallel UPC and German proceedings to coerce Xiaomi into accepting less favorable terms. The consequent stay of the parallel UPC proceedings highlights the interplay with UK actions. As the number of disputes with both UK and UPC proceedings increases *(Abbott v. Dexcom; Advanced Cell Diagnostics v. Molecular Imaging)*, this interaction will become more important, with the UK maintaining a leading strategic role in multi-jurisdictional disputes.

1 *Pfizer & BioNTech v. Modernatx {2024} EWHC 1965 (Pat) & Modernatx v. Pfizer & BioNTech {2024} EWHC 1648 (Pat)*
2 *Samsung Bioepis v. Janssen Biotech {2024} EWHC 1984 (Pat)*
3 *Comptroller v. Emotional Perception {2024} EWCA Civ 825*
4 *InterDigital v. Lenovo {2024} EWCA Civ 742*
5 *Motorola & Lenovo v. Ericsson {2024} EWCA Civ 1100*
6 *Panasonic v. Xiaomi {2024} EWCA Civ 1143*

A review from the USA

Mark G. Bloom, CLP®, RTTP™, NSABP Foundation, Inc.

2024

Although not IPR cases *per se*, the US Supreme Court's decisions in *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Dept. of Commerce*[1] could have far-reaching consequences for the administrative frameworks governing the USPTO and the US Copyright Office. In these decisions, the Court considered the limits of agency authority to statutory interpretation and rulemaking, addressing critical issues related to the separation of powers and the degree of deference afforded to administrative bodies.

The rulings potentially narrow the scope of discretion for agencies such as the USPTO and the Copyright Office, signaling a shift toward more rigorous judicial scrutiny of their rulemaking and adjudicative functions. Central to the Court's analyses was whether these agencies can extend their authority beyond clearly defined statutory boundaries, with implications for how administrative bodies interpret and apply IP law.

These rulings may prompt the USPTO to reevaluate its approach to rulemaking, particularly when navigating complex areas like patent eligibility, *inter partes* reviews, and trademark disputes. If courts adopt a more aggressive stance in reviewing agency decisions, the USPTO could face increased litigation risks and procedural challenges. The decisions also raise questions about how the office might adapt its operations to ensure that new rules and guidelines withstand judicial scrutiny.

The Copyright Office may encounter heightened legal challenges when establishing new regulations or enforcing its interpretations of copyright law. The opinions suggest that courts will closely examine the statutory basis for agency actions, potentially curbing the Office's ability to introduce flexible interpretations of the Copyright Act. This could affect initiatives such as modernizing digital copyright enforcement and expanding protections for emerging technologies.

These two cases set a precedent that limits the latitude of administrative agencies, likely leading to a more constrained, judicially overseen regulatory environment at the USPTO and Copyright Office.

1 *Loper Bright Enterprises v. Raimondo, Secretary of Commerce, et al., No. 22-451 and Relentless, Inc., et al. v. Department of Commerce, et al., No. 22-1219.*