INTA Comments on the Draft Amendment to the Patent Law of the People’s Republic of China

January 2019

The International Trademark Association (INTA) appreciates the opportunity to contribute to the draft amendment of China’s patent law.

INTA is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation. INTA’s members are more than 7,200 organizations from 191 countries, including 151 in China. The Association's member organizations represent some 31,000 trademark professionals and include brand owners from major corporations as well as small and medium-sized enterprises, law firms and nonprofits. There are also government agency members as well as individual professor and student members. Further information about our Association can be found at www.inta.org.

The below input is submitted in the format provided for this purpose. Our comments are essentially based on INTA’s Model Design Law Guidelines which establish the set of baseline standards by which INTA evaluates and comments on new designs legislation, treaties, or regulations, around the world. We hope you will find our comments helpful.

I. 总体评价 / General Comments

Support to China’s accession to the Hague Agreement on Designs

INTA applauds the decision and efforts by the Chinese authorities to join the Hague Agreement Concerning the International Registration of Industrial Designs (the “Hague Agreement” or the “Agreement”).

In accordance with its Board Resolution, INTA encourages countries to accede to the Hague Agreement. The Hague System, established under the Agreement, allows industrial designs to be protected in multiple countries or regions with minimal formalities. In line with its core mission of promoting harmonization of trademark and related rights, INTA supports the Hague System.
## II. Specific Suggestions / Detailed Suggestions

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<td>Article 2</td>
<td>(...) “Design” means any new design of the shape, the pattern, or their combination, or the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application</td>
<td>In the first draft amendment to the Patent Law (2015), the definition of design in Article 2 appeared to allow protection for not only an overall product design, but also for protection of part of a design. In accordance with INTA’s Model Design Law Guidelines, we support protection of partial designs. Indeed, many products may have quite generic appearances in their entireties, and it should be possible to register only the design of the part of the product that is new. Efforts made in relation to improvement of parts of designs should be protectable and the rights should be enforceable regardless of the</td>
<td>Revert to the previous wording proposed for the definition of a design in Article 2, which allows protection of partial designs: “Designs mean, with respect to the overall or part of a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application.” Article 2 should also be amended to permit the use of broken lines to indicate parts of the design for which protection is not being sought. Allowing the use of broken lines would help to show those parts of the design for which</td>
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<td>Article 43</td>
<td>The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models</td>
<td>According to our Model Design Law Guidelines, INTA supports a term of protection of at least 15 years from application. The term may be made</td>
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shall be ten years, and the duration of patent right for designs shall be fifteen years, counted from the date of filing. Up of renewals after multiple shorter periods (for example, three terms of five years). A minimum 15-year term of protection is consistent with the Hague Agreement, which INTA supports.

Therefore, INTA commends the China authorities for extending the duration of design patents’ protection from 10 to 15 years.

INTA stands ready to support the Chinese authorities in the efforts towards reviewing the design-related provisions of the Patent Law. We hope you will find our comments useful. Should you wish to further discuss any of the points we have raised or additional issues, please contact Seth Hays, INTA Chief Representative Officer, Asia-Pacific, at shays@inta.org and Carolina Oliveira, Policy Officer - Europe and Staff Liaison for INTA’s Designs Committee at coliveira@inta.org.

Sincerely,

Etienne Sanz de Acedo
Chief Executive Officer
International Trademark Association