



IP Guide



China Established the Punitive Damages System for IP Infringement

On October 22th, 2019, Premier Li Keqiang signed the Decree No. 722 of the State Council, which officially promulgated *the Regulation on Optimizing the Business Environment* (hereinafter referred to as *the Regulation*). *The Regulation* will be in force from January 1st, 2020.

Aiming at numerous of intellectual property infringement issues in recent years, Article 15 of the Regulation has clearly regulates that “the nation establishes a punitive damages system for intellectual property infringement, promotes the establishment of a mechanism for rapid and coordinated protection of intellectual property rights, improves the diversified settlement mechanism of intellectual property disputes and the assistance mechanism for protecting intellectual property rights, and strengthens the protection of intellectual property rights. The nation continues to deepen the reform of trademark registration and patent application facilitation, so as to speed up trademark and patent prosecution.”

We herewith refer to the punitive damages system for patent right infringement listed in the Draft of the 4th Amendment of China’s Patent Law. In accordance with the Article 72, the amount of compensation for patent right infringement shall be determined according to the actual losses suffered by the right holder, the profits the infringer has earned or the exploitation fee of that patent under a contractual license. For willful infringement, if serious, the multiplied amount of compensation may be determined within the range from one to five times of the amount determined by the above-mentioned principles. Where it is difficult to be calculated, the people’s court may award the damages from RMB100, 000 Yuan to RMB 5,000,000 Yuan (about USD14, 300-714,000) in light of such factors, as the type of the patent right, the nature and the circumstances of the infringing act.

Newsletter from Tee & Howe Intellectual Property Attorneys

Address: Suite 5-12, 5th Floor, Tower W1, The Tower Offices,
Oriental Plaza, No.1 East Chang'an Avenue, Dongcheng District,
Beijing 100738, China
Tel:(86 10) 8529 5526
Fax:(86 10) 8529 5528
Email:teehowe@teehowe.com
Website:www.teehowe.com

Wechat Account QR Code:



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