

Top IP developments and predictions across Asia-Pacific

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Our reflections and predictions

We look back at the top developments over the last 12 months in Intellectual Property (**IP**) and we look to the future by offering our top predictions for the coming year for businesses operating across Asia Pacific (**APAC**) with an emphasis on mainland China, Hong Kong and Singapore.

Over the last year, we have seen the continuous and rapid development of IP systems in APAC jurisdictions, including the reciprocal enforcement of IP judgments between Hong Kong and mainland China and innovative Chinese court decisions on FRAND rates and the copyright of AI-generated images. Over the coming year, we expect further development in IP and more attention to be paid to IP compliance issues in emerging areas.

Our experts will be closely monitoring these developments and predictions during the course of the year, providing regular updates and analysis through free platforms such as our eAlert service, Law-Now, LinkedIn at 'CMS Asia Pacific' and on WeChat at 'CMS Asia'.

For now, we hope you find our reflections on 2023 and our predictions for 2024 both interesting and helpful as you plan for the year ahead.

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Top IP developments of 2023



Mainland China

Chinese court issues landmark judgment in OPPO v. Nokia global FRAND rate case

On 13 December 2023, the Chongqing First Intermediate People's Court issued a first instance judgment in the case filed by OPPO against Nokia over royalties for standard essential patents (**SEPs**). This landmark decision confirmed global fair, reasonable, and non-discriminatory (**FRAND**) licensing rates for Nokia's portfolio of 2G, 3G, 4G and 5G SEPs, and is the first Chinese court decision setting global FRAND rates and the first to address 5G SEP rates.

While confidential data was redacted in the publicly announced decision, the key conclusions are clear. Specifically, the court determined FRAND royalties per handset for:

5G multi-mode mobile phone single unit licence fee:

- First Territory: USD 1.151
- Second Territory (including Mainland China) and Third Territory (other countries): USD 0.707

Single unit licence fee for 4G multi-mode handsets:

- First Territory: USD 0.777
- Second Territory (including Mainland China) and Third Territory (other countries): USD 0.477

The court rulings are much lower than Nokia's proposed uniform rate of EUR 3/unit for 5G patent licensing.

This is the first Chinese court decision setting global FRAND rates and the first Chinese decision to address specifically 5G SEP rates. Following this decision, the Supreme People's Court (**SPC**) of China set a low rate in another case for six Chinese SEPs related to the Adaptive Multi-Rate Wideband (AMR-WB) standard. The SPC ordered OPPO to pay Advanced Codec Technologies LLC (**ACT**) RMB 15,390,527 (around USD 2.165 million) or USD 0.008 per unit, with an average licensing fee of around USD 0.0013 per unit for each patent. ACT had initially sued OPPO requesting RMB 342 million (around USD 48.1 million).

Beijing Internet Court recognises copyright in AI-generated images

On 27 November 2023, the Beijing Internet Court issued a decision recognising copyright in AI-generated images. The plaintiff used the AI tool Stable Diffusion to generate the image involved in the case and publish it on a Chinese social media platform. The defendant used the image generated by the plaintiff's AI to accompany an article on another platform, and the plaintiff sued. The Court held that the artificial intelligence-generated image involved in the case met the requirements of "originality", reflecting a human's original intellectual investment and should be recognised as works that should be protected by copyright law. This decision is contrary to the main viewpoints of AI-generated content copyright in the UK and US.

This court decision may be linked to the fact that the plaintiff directly set up the AI model involved in the case and selected the images involved in the case. The images were directly generated based on the plaintiff's intellectual investment and reflected the plaintiff's personalised expression. Therefore, the plaintiff is the owner of the images involved in the case and owns the copyright of the images involved.

China to upgrade status of the China National Intellectual Property Administration

On 7 March 2023, China released the 2023 State Council Institutional Reform Plan, which removes the China National Intellectual Property Administration (**CNIPA**) from the State Administration of Market Regulation (**SAMR**), thus making it a top-level agency under the State Council. The SAMR will continue its enforcement of IP rights while receiving professional guidance from the CNIPA in relevant enforcement work. This restructuring signifies a division of responsibilities and a collaborative approach to the management and protection of IP in China at the national level, and highlights China's commitment to promote and safeguard IP development.

Furthermore, this Plan proposes additional organisational changes, such as the reorganisation of the Ministry of Science and Technology and the establishment of a new National Data Administration under the National Development and Reform Commission.

SAMR releases new anti-monopoly rules on IP

The SAMR has revised and introduced the Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude or Restrict Competition, which came into effect on 1 August 2023.

Based on the original provisions formulated in 2015, this provision focuses on improving the definition of abuse of intellectual property rights to exclude or restrict competition, improving the rules for determining the use of the exercise of intellectual property rights to implement monopolistic behaviour, and strengthening the regulation of typical and special monopolistic behaviour in the field of intellectual property rights. The issuance of this provision also means that China's anti-monopoly regulatory framework after the amendment of the Anti-Monopoly Law is basically complete.

Hong Kong

Hong Kong and the Mainland commit to reciprocal enforcement of intellectual property judgments

Hong Kong and Mainland China commit to reciprocal enforcement of intellectual property judgments under the new Mainland Judgments (Reciprocal Enforcement) Ordinance that went into effect in January 2024. This expands the scope of enforceable court judgments beyond the previous 2006 Arrangement that only covered commercial disputes.

The new ordinance allows reciprocal enforcement of judgments regarding specified IP rights including copyright, trade marks, geographical indications, industrial designs, patents, integrated circuit layout-designs, confidential information, and plant variety rights.

The ordinance will apply to IP-related judgments on contractual disputes, infringement issues, and certain IP damages, but excludes determinations of standard essential patent fee rates, infringement of standard and short-term patents, and IP validity rulings.

A key change in the ordinance is the removal of the requirement for parties to agree on exclusive jurisdiction. This facilitates parties' choice of appropriate jurisdictions to pursue IP claims irrespective of formal contracts.

Memorandum of Understanding signed between Hong Kong and the Philippines

On 8 December 2023, the Hong Kong Intellectual Property Department (**IPD**) and the Intellectual Property Office of the Philippines (**IPOPHL**) signed a Memorandum of Understanding (**MOU**) to increase cooperation between the organisations in the field of intellectual property.

The MOU establishes a framework to promote collaboration between Hong Kong and the Philippines surrounding IP awareness, creation, protection, utilisation, management, trading and commercialisation.

The signing of the MOU aligns with the National 14th Five-Year Plan to develop Hong Kong into a regional IP trading centre and the IPD's wider efforts to strengthen cooperation with IP authorities in jurisdictions beyond Hong Kong. The most recent MOU is similar to MOU agreements signed with Mexico in 2015, Australia in 2019, and Mainland China in 2023.

Singapore

Enactment of Copyright (Collective Management Organisations) Regulations 2023

On 31 October 2023, the Ministry of Law (MinLaw) and the Intellectual Property Office of Singapore (IPOS) published the new Copyright (Collective Management Organisations) Regulations 2023, which sets out the finalised regulations that all Collective Management Organisations (CMOs) must comply with, after considering feedback received during the public consultation that ended on 4 January 2023. Some of the changes made in the finalised regulations include expanding the classes of 'excluded persons' that are not considered CMOs and providing an alternative to publishing a list of every work and performance in the CMO's portfolio. The new regulations will take effect on 1 May 2024, giving CMOs six months to implement changes in order to be compliant with the new regulations.

Singapore Court of Appeal's first decision on the GIA

For the first time, the highest appellate court in Singapore considered the operation and interpretation of certain sections in the Singapore Geographical Indications Act 2014 (GIA) in the case of *Consorzio di Tutela della Denominazione di Origine Controllata Prosecco vs Australian Grape and Wine Incorporated* [2023] SGCA 37. The Court of Appeal's decision focused on the interpretation of section 41(1)(f) of the GIA, which prohibits the registration of a geographical indication (GI) if it contains the name of a plant variety and is likely to mislead the consumer about the true origin of the product. The Court of Appeal held that "Prosecco", the GI in question, was objectively the name of a grape variety but based on the evidence presented to the court, it was unlikely that Singapore consumers would be misled about the true geographical origin of the "Prosecco" product (i.e. northeast region of Italy). The Court stated that consumer surveys would have been a more direct way of proving that consumers would be misled instead of relying heavily on advertising materials to try to prove this contention.

Launch of new Intangibles Disclosure Framework

Following from the public consultation that was concluded in February 2023, the new Intangibles Disclosure Framework (IDF) was launched in September 2023 to help enterprises manage and commercialise their intellectual property. The IDF was a public-private initiative and is among the first in the world to help businesses by providing a framework on disclosing and communicating the value of their intangible assets (IA). The disclosure principles are anchored in four pillars: (1) Strategy (how IAs contribute to the business's overall corporate strategy); (2) Identification (how businesses should categorise their IA); (3) Measurement (assessing the performance of an enterprise's IA); and (4) Management (helping enterprises identify, assess and manage risks and opportunities related to their IA).

IPOS study and report on blockchain and intellectual property

The Intellectual Property Office of Singapore (IPOS) conducted a study in parallel with the Swiss Federal Institute of Intellectual Property (IPI) to explore the implications of blockchain technology and its interactions with the Singapore IP ecosystem. The results of the study were published in a report, which highlighted two key steps to strengthen the nexus between the blockchain and IP sectors – strengthening connectivity and awareness among IP and blockchain stakeholders, and developing interoperable blockchain infrastructure and standards. It is hoped that this study and report will encourage growth and collaboration between the IP and blockchain sectors.

Top IP predictions for 2024

Mainland China

China's State Council releases Amended Implementing Regulations of the Patent Law

On 20 January 2024, the Amended Implementing Regulations of the Patent Law issued by China's State Council went into effect. The Implementing Regulations explain how several provisions of China's amended Patent Law of 2021 will be implemented.

The main changes include:

- minimum inventor remuneration for service inventions is raised to RMB 4,000 for invention patent and RMB 1,500 for design and utility model;
- patent term adjustment must be requested within three months from being granted and is calculated as follows:
 - a. after four years from application date;
 - b. after three years from the date of filing the request for examination; and
 - c. minus the unreasonable delay from the applicant
- patent term extension for pharmaceutical patents is calculated by deducting five years from the interval between the date of filing of the patent application and date of licensing of the drug;

- in patent invalidation proceedings, the patentee may amend the claims, and the manner of amendment is no longer limited, as long as it does not expand the scope of protection of the original claim, and is no longer limited to the merger, deletion and other modifications to the claims.

According to a 16 January 2024 press conference held by the State Council Information Office, 25.5% fewer utility models were granted in 2023 versus 2022 and design patent grants were also down 11.5%. In contrast, invention patent grants rose 15.4%. Invention patent applications are substantively examined while utility models and designs only undergo a preliminary examination. The year 2024 may show a continuing downward trend for utility models since the amended Patent Examination Guidelines, which went into effect on 20 January 2024, introduce a preliminary examination of utility models for inventiveness.

CNIPA releases supporting regulations for Patent Law

In addition to the Amended Implementing Regulations, the China National Intellectual Property Administration (**CNIPA**) announced several supporting regulations, including regulating the act of applying for patents, patent examination guidelines and administrative review matters relating to patent term extension and patent open licensing.

The introduction of this batch of regulations is a refinement of the key points found in the fourth amendment to the Patent Law in June 2021, which will, together with the Patent Law, continue to improve China's patent system. Cases and judicial interpretations related to these regulations are expected in 2024.

SEP Anti-Monopoly Guidelines to be issued soon

China's legislative basis for regulating the abuse of Standard Essential Patent (**SEP**) is the Patent Law, the Antimonopoly Law, the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws to the Trial of Disputes over Infringement of Patent Rights (II), the Anti-Monopoly Committee of the State Council's Anti-Monopoly Guidelines in the Field of Intellectual Property Rights and the latest Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude or Restrict Competition issued on 29 June 2023. On 30 June 2023, the General Administration of Market Supervision (**GAMS**) issued the Anti-Monopoly Guidelines in the Field of Standard-Essential Patents (Solicitation of Opinions) (i.e. SEP Anti-Monopoly Guidelines (Draft for Opinion), Guidelines Draft for Comment).

The SEP Antitrust Guidelines (Exposure Draft) is divided into four parts: General Provisions, Monopoly Agreements Involving SEPs, Abuse of Dominant Market Position Involving SEPs, and Concentrations

of Operators Involving SEPs. The Exposure Draft contains more specific provisions on the requirements for information disclosure in the standard-setting process, the procedures and requirements for good-faith negotiations, and the determination of market dominance involving SEPs. The guidelines are expected to be issued this year.

Trade mark registration shifting from quantity to quality

According to recently released statistics from the CNIPA, China's trademark registrations fell 29% in 2023 versus 2022, which equates to a decrease of 1.7945 million trade mark registrations year-on-year. Foreigners registered 3.1% of the trade marks, which is up from 2.9% in 2022 but a decrease in absolute numbers of 40,696 registrations from 2022 for 134,776 registrations.

Several factors may be at play, including the crackdown of malicious trade mark applications, a slowing economy (trade mark filings may be considered a leading economic indicator) and the end of lockdowns in the fourth quarter of 2022, resulting from a wave of COVID-19 infections, which resulted in a slowdown in the filing and examination of trade mark applications due to worker absences. In China's shift from quantity to quality, stricter trade mark scrutiny and a stronger crackdown on irregular trade mark applications are expected in the future.

Hong Kong

Proposed Fee Reduction for the Designs Registry

On 5 January 2024, the HKSAR government published in the Registered Designs (Amendment) Rules 2024 for reducing the fee level of the services of the Registry specified in the Schedule to the Registered Designs Rules (Cap. 522A) in the Gazette. These Amendment Rules have been tabled with the Legislative Council for negative vetting and, subject to completion of the necessary legislative procedures, will come into effect on 1 March 2024.

The Amendment Rules reduce the fee level for the Designs Registry's services specified in the Schedule to the Registered Designs Rules (Cap. 522A). The reduction of fees is one of several policy measures under the Chief Executive's 2023 Policy Address to promote the further development of intellectual property trading.

Hong Kong to become a regional intellectual property trading centre

Pursuant to the Policy Address in 2023, the HKSAR government plans to leverage the advantages in legal, taxation and professional services to develop Hong Kong into a regional intellectual property trading centre. The proposals to expedite this development include the following:

- Enhancement of the IP legal regime: In May 2023, the latest amendment to the Copyright Ordinance came into force to strengthen copyright protection in the digital environment. It is expected that the Hong Kong Intellectual Property Department (IPD) will conduct consultation in 2024 to explore further enhancement of the Copyright Ordinance regarding protection for AI technology development.
- Implementation of the "patent box" tax incentive: The IPD is expected to introduce a bill into the Legislative Council in the first half of 2024 to reduce the tax rate for qualifying profits derived from patents from the existing 16.5% to 5%, with a view to encourage R&D activities, and the transformation and commercialisation of patented inventions.
- Plan for regulatory arrangements on patent agent services: There is plan for the HKSAR government to discuss the introduction of regulatory arrangements for local patent agent services with stakeholders. These arrangements would cover professional qualification requirements and registration, as well as the regulatory model and framework with the aim of enhancing service quality and nurturing talent.
- Boost trading of local original works: Regarding the trading of local original works, the Hong Kong Trade Development Council (HKTDC) has plans to enrich the Hong Kong International Film and TV Market, Hong Kong International Licensing Show, Hong Kong Book Fair, and its

Asia IP Exchange portal with more trading elements, such as more business-matching activities and providing additional market information on IP trading and professional support services (e.g. legal, mediation and arbitration, accounting, valuation, etc.) in order to strengthen support for local original works to exploit Mainland and international markets.

Pursuant to 2024 Hong Kong budget, the HKSAR government hopes to reduce the tax rate for profits derived from intellectual property to 5%. The HKSAR government has also earmarked HKD45 million to set up and operate a support centre related to a programme of the World Intellectual Property Organisation, which aim to provide services such as patent search and promotion IP trading.

Regional High-level Conference on IP Protection and the 2nd Cross-Border IP Protection Forum

The National 14th Five-Year Plan provides support to Hong Kong to develop into a regional IP trading centre. In line with this, in March 2024, Hong Kong Customs will host the Regional High-level Conference on IP Protection to bring together IP experts and business stakeholders from across the Asia Pacific region to share best practices and exchange experience on IP protection strategies. There will be a session dedicated to "government-to-business partnership" at the Conference, which will provide a platform for business stakeholders to share their expertise, engage in dialogues and jointly develop innovative strategies to protect IP in multiple ways.

Furthermore, Hong Kong Customs is expected to sign a Memorandum of Understanding (**MOU**) with the Quality Brands Protection Committee (**QBPC**) (優質品牌保護工作委員會) at the Conference on 14 March 2024, which is subordinate to China Association of Enterprises with Foreign Investment (**CAEFI**) (中國外商投資企業協會) under the Ministry of Commerce. Founded in 2000, QBPC has a membership of over 200 foreign invested companies with renowned brands. Entering into a MOU with QBPC promotes their joint efforts in combating IP crimes through enhanced communication and cooperation, and fosters cross-boundary IP trading to further consolidate Hong Kong's position as a regional IP trading centre.

On 15 March 2024, in collaboration with QBPC, the 2nd Cross-Border IP Protection Forum will take place immediately after the Conference. Mainland and overseas officials, as well as other stakeholders, will have the opportunity to share experience and further cooperation in cross-border anti-counterfeiting, which is essential in the development of Hong Kong as a regional IP trading centre.

Singapore

Mediating IP or Technology Disputes

In 2023, the pilot WIPO-Singapore ASEAN Mediation Programme (**AMP**) was launched to increase the accessibility of mediation for businesses in their IP or technology disputes. Under the AMP, businesses can benefit from subsidised mediation of up to SGD 8,000 for each mediation case in order to resolve their IP or technology disputes. The AMP is an initiative by the WIPO and the Intellectual Property Office of Singapore (**IPOS**) under the WIPO-Singapore Government Memorandum of Understanding. Interested parties can apply for AMP funding by making a request to the WIPO Centre until 31 December 2024.

In November 2023, the AMP saw its first successful mediation case, which involved the use of trade marks without consent or a valid license. A settlement agreement between the parties was reached within a day. More IP disputes are expected to be mediated in 2024 given IPOS's emphasis on alternative resolution processes to resolve IP disputes and the availability of funding options for mediation.

Simplified process for intellectual property claims takes effect in Singapore

In May 2023, the Singapore High Court adjudicated for the first time on the new simplified process for intellectual property claims, which took effect in Singapore from April 2022. This purpose of introducing this process is to save parties costs and time by expediting the management of intellectual property disputes.

The claimant in *Tiger Pictures Entertainment Ltd v. Encore Films Pte Ltd* [2023] SGHC 138 opted for the simplified process while the defendant opposed this approach and argued that the simplified process was not applicable in this case. The Court decided that this case was suitable for the simplified process by taking into account that the dispute concerned an intellectual property right, the relief sought was would unlikely go above SGD 500,000, and the matter not involve complex issues. This decision acknowledged Singapore's commitment to increase the accessibility of justice in IP disputes that can be traditionally expensive and time-consuming. The simplified process is particularly useful for smaller businesses who may not have the resources for prolonged IP disputes. More businesses are expected to use this process in the coming years.

New features to the Singapore IPOS Digital Hub

In the start of 2024, the Intellectual Property Office of Singapore (IPOS) introduced two new features to the IPOS Digital Hub, the e-services portal for users in Singapore: (1) a trade mark registrability advisor – this is an automated advisor that is designed to point out some of the more common and obvious registrability issues (such as the distinctiveness of the proposed mark and similarity with earlier marks) to the user before they apply for their trade mark; and (2) a trade mark classification recommender – this feature helps to recommend trade mark classes to the users to assist them in classifying their goods and services into the appropriate trade mark class.

These changes are aimed at providing a smarter and more seamless intellectual property experience when using the IPOS Digital Hub and we can expect individuals, who may not have intellectual property advisors to guide them on the registration process and requirements, to take advantage of these new features when applying for a trade mark. This may encourage more individuals to apply for trade mark protection in Singapore. These new features also underscore how automated technologies are being adopted by Singapore to improve and refine existing processes.



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