

# 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 establishment of the patent linkage system in China and the gazetting of the Hong Kong Copyright (Amendment) Ordinance 2022. 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 2022 and our predictions for 2023 both interesting and helpful as you plan for the year ahead.

## Contact us

### Mainland China



**Nick Beckett**

Managing Partner,  
Beijing & Hong Kong Offices

**T** +86 10 8527 0287 / +852 2533 7818

**M** +86 186 1842 8030 / +852 9756 5043

**E** [nick.beckett@cms-cmno.com](mailto:nick.beckett@cms-cmno.com)



**Lily Li**

Associate

**T** +86 10 8527 0259

**M** +86 186 1828 1418

**E** [lily.li@cms-cmno.com](mailto:lily.li@cms-cmno.com)

### Hong Kong



**Jonathan Chu**

Partner

**T** +852 2533 7832

**M** +852 9731 3793

**E** [jonathan.chu@cms-cmno.com](mailto:jonathan.chu@cms-cmno.com)



**Candy Tong**

Senior Associate

**T** +852 2533 7835

**M** +852 6900 1378

**E** [candy.tong@cms-cmno.com](mailto:candy.tong@cms-cmno.com)

### Singapore



**Sheena Jacob**

Partner

**T** +65 6422 2851

**M** +65 9365 8660

**E** [sheena.jacob@cms-holbornasia.com](mailto:sheena.jacob@cms-holbornasia.com)



**Denise Loh**

Senior Associate

**T** +65 6422 2815

**M** +65 9630 2789

**E** [denise.loh@cms-holbornasia.com](mailto:denise.loh@cms-holbornasia.com)

# Top IP developments of 2022



# Mainland China

## CNIPA: Patent infringement in China effectively curbed

On 28 December 2022, the China National Intellectual Property Administration (**CNIPA**) held a press conference releasing the 2022 China Patent Survey Report and 2022 China Intellectual Property Development Status Evaluation Report.

In the press conference, the CNIPA spokesperson indicated that the overall effectiveness of China's patent transfers and transformation is steadily improving and that the environment for intellectual property protection continues to be optimised. First, the proportion of patentees who have encountered patent infringement is at a historically low level in 2022. Second, after enterprises encounter patent infringement, there are more ways to protect their rights. Third, the proportion of high-amount compensation for patent infringement is generally on the rise.

## First litigation case under China's patent linkage system

On 5 August 2022, the Supreme People's Court issued its decision in the case between Chugai Pharmaceutical Co., Ltd. (i.e. the **Plaintiff**) and Wenzhou Haihe Pharmaceutical Co., Ltd. (the **Defendant**). The court ruled that the generic drug in question did not fall within the protection scope of the patent right owned by the Plaintiff and ruled to dismiss the Plaintiff's appeal.

On 15 April 2022, the Beijing IP Court announced the first instance judgment on the dispute between Chugai Pharmaceutical Co., Ltd. (the Plaintiff) and Wenzhou Haihe Pharmaceutical Co., Ltd. (the Defendant), to confirm whether the generic drug applied for registration by the Defendant fell into the scope of protection of the Plaintiff's patent right, in which the court held that the generic drug in question in this case did not fall within the protection scope of the patent right in question in this case, and ruled to dismiss the Plaintiff's litigation claims.

The Plaintiff then filed an appeal with the Supreme People's Court. On 5 August 2022, the Supreme People's Court issued the second instance decision of the case. The Supreme Court also ruled that the generic drug in question did not fall within the protection scope of the patent right owned by the Plaintiff, and ruled to dismiss the Plaintiff's appeal.

This case is the first litigation case after China established its patent linkage system. This case provides valuable judicial experience for determining generic drug declarations and notification obligations under patent linkage system. While these cases differ from typical patent infringement disputes, they offer early resolution of drug-patent disputes. Meanwhile, the final court decision was made within the nine-month waiting period, indicating that such early dispute resolution will not bring excessive time and litigation costs for both generic and innovative companies. Overall, this case highlights the benefits of China's patent linkage system and its potential to streamline dispute resolution in the medical industry.

The final court decision was made within the nine-month waiting period, which means the court proceedings did not cause an extra waiting period for the drug's marketing.

## Intellectual property infringement and remediation measures get more attention

In the Opinions on Providing Judicial Services and Protection for Promoting Consumption issued by the Supreme People's Court (**SPC**) on 27 December 2022, the SPC states that the punitive compensation system for intellectual property infringement should be strictly implemented to effectively curb intellectual property infringement, promote the output and application of scientific and technological innovation achievements by strengthening judicial protection, and help build strong science and technology in the nation.

The Opinions also proposed to rectify sham litigation, litigation in bad faith, abuse of litigation rights and other dishonest litigation in the field of intellectual property in accordance with the law, and actively create a good rule of law environment for the majority of market players in technology research and development and scientific and technological innovation. The judicial protection of key core technologies and original innovation achievements of relevant small and medium-size enterprises should be increased, and market players should be supported and guided to enhance their core competitiveness through technological progress and scientific and

technological innovation. The Opinions clarify that copyright protection for cultural and creative products should be strengthened, and the creation of cultural and creative products should be encouraged.

## China sees steady growth in trade mark and patent applications in 2022

On 16 January 2023, the spokesperson for CNIPA released statistical data on patent and trade mark grants (but not filings), revealing that the number of utility models granted dropped over 10% while invention patent grants increased almost 15%. In terms of trade marks, 6.177 million trade marks were registered throughout the year and 5,827 applications were received for domestic applicants for the Madrid international registration of trade marks.

The spokesperson also stated that the number of foreign intellectual property rights in China has grown steadily. By the end of 2022, the effective number of foreign invention patents in China will reach 861,000, a year-on-year increase of 4.5%, involving 58,000 foreign companies, which is an increase of 2,000 from the previous year. There were 2.03 million valid foreign registered trade marks in China, a year-on-year increase of 5.9%.

# Hong Kong

## Hong Kong Copyright (Amendment) Ordinance 2022 gazetted and the Marrakesh Treaty now applies to Hong Kong

The Copyright (Amendment) Ordinance 2022 updating Hong Kong's copyright regime to strengthen copyright protection in the digital environment was gazetted on 16 December 2022 and will come into operation on 1 May 2023. The Amendment Ordinance will strengthen Hong Kong's IP protection regime and ensure that it keeps current with the times and international norms, encourages creativity and technological development, and meets local social and economic development needs.

The Amendment Ordinance does the following:

1. introduces an exclusive technology-neutral communication right for copyright owners in step with the current technology environment;
2. introduces criminal sanctions against infringing activities relating to the new communication right;
3. revises and expands the scope of copyright exceptions, which is expected to facilitate online learning and operations in libraries, museums and archives, allows media shifting of sound recordings and the use of copyright works in certain common activities on the internet, etc.;
4. introduces "safe harbour" provisions for online service providers, offering them reasonable protection while combating online piracy in order to provide incentives for these providers to co-operate with copyright owners; and

5. introduces two additional statutory factors in civil cases related to copyright infringements that courts can consider when assessing whether to award additional damages to copyright owners.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled has also come into force in Hong Kong.

The Marrakesh Treaty is an international agreement facilitating access to published works for people who are blind and visually impaired. The application of the Marrakesh Treaty formalises the application of international standards in Hong Kong and enables visually impaired residents to enjoy better access to copyright works.

The copyright legislation of Hong Kong is now fully in compliance with the standards under the Marrakesh Treaty.

## Hong Kong passes proposal to implement the arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters

The Hong Kong Legislative Council passed the highly anticipated Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (**MJREO**) on 26 October 2022. The MJREO implements the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by Courts of the Mainland and of the Hong Kong Special Administrative Region

signed on 18 January 2019, otherwise known as the REJ Arrangement. Once the MJREO takes effect, it will remove the requirement for an exclusive jurisdiction agreement before the parties can benefit from the Hong Kong and Mainland court's reciprocal recognition of Hong Kong and Mainland court judgments.

The REJ Arrangement covers judgments concerning intellectual property rights, but is subject to certain exceptions. The specific scope of judgments involving intellectual property rights covered or excluded (as the case may be) by the REJ Arrangement are as follows:

1. judgments ruling on contractual disputes involving IPRs are covered;
2. judgments ruling on tortious claims for infringement of IPRs are covered, except for infringement of invention patents and utility models in the Mainland and infringement of standard patents (including "original grant" patents) and short-term patents in Hong Kong;
3. judgments ruling on the licence fee rate of standard essential patents in both the Mainland and Hong Kong are excluded; and
4. ruling on the validity, establishment or subsistence of IPRs is not recognised or enforced under the REJ Arrangement. However, a ruling on liability based on such rulings and which complies with the relevant requirements of the REJ Arrangement, shall be recognised and enforced.

## Hong Kong adopts Nice Classification

On 1 January 2023, the Hong Kong Trade Marks Registry (**TMR**) adopted the Nice Classification, 12th Edition, 2023 Version, designated NCL(12-2023), which was adopted to classify goods and services under the Trade Marks Ordinance (Cap. 559). Some revisions made by the 12th Edition will affect the TMR's cross-search list and reclassify goods and services of trade mark registration in accordance with the 12th Edition. As a result, the chapters on Classification and Cross Search List have been revised.

## HKIPD revamps websites

The Hong Kong Intellectual Property Department (**HKIPD**) has launched its revamped websites to assist the public in obtaining information on IP matters. The sites have been redesigned with simplified layout and a clear structure (including responsive web design), which will enable automatic scaling of the interface according to the user's device and will provide users with an optimal browsing experience.



# Singapore

## Public consultation on draft regulations for collective management organisations

The Ministry of Law and Intellectual Property Office of Singapore (**IPOS**) launched a public consultation between 7 November 2022 and 4 January 2023 on the draft regulations for collective management organisations (**CMOs**). The draft regulations are intended to contain the licensing conditions that CMOs must comply with under the mandatory class licensing scheme set out in Part 9 of the Copyright Act 2021 and procedures relating to the regulation of CMOs. The mandatory class licensing scheme for CMOs under the Copyright Act 2021 has not yet been brought into force.

## Public consultation for Intangibles Disclosure Framework to increase transparency and commercialisation of intangibles

The Accounting and Corporate Regulatory Authority and IPOS have launched a public consultation for an Intangibles Disclosure Framework, which is a framework to assist businesses in disclosing and communicating their intangible assets (e.g. technologies, brands, data, trade secrets and other intellectual property) for the purpose of commercialising such intangibles. The public consultation ran from 14 December 2022 to 28 February 2023.

The proposed Intangibles Disclosure Framework outlines the key principles and recommended disclosures that a business should consider when providing information about its intangibles, with the aim of facilitating informed assessments of businesses and their financial prospects.

## Singapore High Court grants injunction blocking 99 domain names associated with illegal streaming sites

On 20 September 2022, the Asia Video Industry Association's Coalition Against Piracy (**CAP**) announced that 99 more domain names associated with illegal streaming sites have been blocked by Internet service providers under the terms of a dynamic site-blocking injunction first granted by the Singapore High Court in February 2022. The injunction was originally granted to block 30 illegal streaming sites and about 150 associated domain names. The blocking of the additional domain names was made on behalf of CAP members, BBC Studios, Discovery Communications, LaLiga, the Premier League and TVB International, and effectively prevents illegal streaming sites from circumventing the original court order by blocking associated domains that the sites would redirect to.

# Top IP predictions for 2023



# Mainland China

## China issues draft amendment of the Trade Mark Law focusing on reducing malicious trade mark registration

On 13 January 2023, China's National Intellectual Property Administration (**CNIPA**) issued the Draft Amendment to the Trade Mark Law of the People's Republic of China (Draft for Comment). Many of the amendments focus on reducing malicious registrations of trade marks and also introduces a system to force the transfer of maliciously "squatted" trade marks.

The newly amended Trade Mark Law, which is likely to be implemented in 2023, aims to further reduce the malicious registration of trade marks, including clarifying the specific circumstances of malicious application for trade mark registration, establishing a system of forced transfer of maliciously squatted trade marks and strengthening credit supervision and credit punishment, etc.

## Supporting implementation rules and examination guidelines of amended Patent Law to be implemented gradually

On 31 October 2022, the CNIPA released a draft of the Patent Examination Guidelines for public comments. On 5 January 2023, the CNIPA released the Interim Measures for Handling Relevant Examination Operations for the Implementation of the Amended Patent Law, which came into effect on 11 January 2023. The Interim Measures cover design patents, grace periods, patent term adjustment, patent term extension, and other areas.

In addition, as mentioned in the Interim Measures, the conduct of a number of reviews is subject to detailed provisions in the implementation of the newly revised Implementation Rules of the Patent Law. We expect that in 2023 more guidelines, rules and opinions will come into effect to enable better implementation of the amended Patent Law in practice.

## Number of administrative and judicial cases on drug patents set to grow in 2023

After two rounds of trials before the Beijing Intellectual Property Court and the Supreme People's Court, the decision in the first litigation case after China established a patent linkage system was issued in 2022.

In addition to the litigation cases, data from the drug patent information registration platform shows that as of the end of March 2023, 1,204 drugs have submitted patent information for public disclosure, and 4,403 generic drugs have submitted patent declarations. The high number of patent declarations made by generic drug manufacturers indicates the early resolution mechanisms for drug patent disputes are gaining more attention and being better utilised. In 2022, the Beijing IP Court concluded 44 drug patent linkage cases, while the China IP Administration (the **CNIPA**) made 35 administrative rulings on drug patent linkage disputes, which involved 22 patents. Looking ahead, the patent linkage system is expected to continue its evolution in 2023 with a stronger emphasis on improving patent information disclosure, as well as the coordination between administrative rulings and court judgments, which will lead to a more robust and efficient drug patent protection system in China.

## CNIPA and 16 departments jointly promote high-quality development of intellectual property services

On 27 December 2022, the CNIPA, together with 16 other departments including the Development and Reform Commission, the Department of Science and Technology, the Department of Industry and Information Technology, etc., issued the Opinion on Accelerating a High-quality Development of the Intellectual Property Service Industry.

The Opinion sets out 27 specific requirements and task initiatives in six areas, including promoting the IP service industry to assist in the high-quality development of trade, optimising IP agency services, accelerating the cultivation of professional IP advisory bodies and strengthening government supervision and social oversight. In 2023, it is expected that a number of complementary measures will be implemented.

# Hong Kong

## **Hong Kong to be developed as a regional IP trading centre**

The Hong Kong (HKSAR) Chief Executive announced in its latest Policy Address that the Government will develop Hong Kong into a regional IP trading centre by leveraging the institutional advantages of Hong Kong's legal and IP protection system, which includes:

1. strengthening protection of IP rights – to complete the preparatory work for implementing the international trade mark registration system and to roll out a pilot project with the China National Intellectual Property Administration (CNIPA) to enable Hong Kong applicants to enjoy prioritised examination of qualified patent applications in the Mainland. The medium-term goal is to conduct a review of the registered designs regime in 2024. Hong Kong will also enhance the substantive examination capability of patent examiners under the original grant patent system and develop a talent pool with a view to acquiring institutional autonomy in conducting substantive patent examination by 2030.
2. build capacity – the target is to provide IP training for 5,000 personnel across different industries within the current term of the Government.

3. promote widely – Hong Kong will promote its IP trading and professional services through various activities, including the Hong Kong Trade Development Council's Business of IP Asia Forum organised annually. The HKTDC will also enhance its Asia IP Exchange portal next year to facilitate different sectors to further explore commercial opportunities in IP trading.

## **Hong Kong prepares for Madrid Protocol**

On 19 June 2020, Hong Kong gazetted the Trade Marks (Amendment) Ordinance, preparing for the application of the Madrid Protocol. Under the Madrid Protocol, foreign trade mark owners in member countries can apply to the International Bureau of the World Intellectual Property Organisation to register their trade marks in other signatory trade mark offices. Hong Kong trade mark owners will also be able to apply for their trade marks in Hong Kong and designate other member countries where they would like their marks registered.

Hong Kong is expected to adopt the Madrid system governed by the Madrid Protocol in 2023/2024 at the earliest.

## **Hong Kong applicants can request priority in examination of patent applications**

On 1 January 2023, to further implement the PRC's decision to promote the construction of the Guangdong-Hong Kong-Macao Greater Bay Area and to support HKSAR residents in protecting intellectual property rights in the Mainland more conveniently and effectively, the China National Intellectual Property Administration (CNIPA) has launched a pilot programme whereby Hong Kong applicants (permanent residents of HKSAR, companies incorporated under the Companies Ordinance of HKSAR and other HKSAR legal entities or organisations) filing invention patent applications in the Mainland that meet the relevant criteria can request prioritised examination of their applications by the CNIPA.

# Singapore

## **“Persons Unknown” orders and proprietary injunctions granted over crypto assets**

In the past year, new issues were brought before the Singapore High Court in the *CLM v CLN* [2022] SGHC 46 and *Janesh s/o Rajkumar v Unknown Person* [2022] SGHC 264 in relation to applications for proprietary injunctions against “persons unknown” (i.e. unknown defendants) for cryptocurrency assets and NFTs. These cases are part of a growing body of cases in Singapore and around the world dealing with the proprietary nature of crypto assets as well as procedural and jurisdictional issues in disputes arising from the world of Web3. It is expected that we will see more cases of a similar nature being decided by the Singapore courts that may also bring about new developments in intellectual property law in the area of crypto assets.

## **IPOS extends IP acceleration programme to April 2024**

The Intellectual Property Office of Singapore (**IPOS**) has extended the SG IP FAST programme, which supports the acceleration of patent applications in all technology fields, to April 2024 with a doubled annual cap of 120 patent applications. Under the SG IP FAST programme, straightforward patent applications can be granted in six months and applicants with patent applications accelerated under the programme can request acceleration of their related trade mark and registered design applications. Singapore will likely continue to roll out initiatives in support of its aim to strengthen Singapore’s position as a global intangible asset and intellectual property hub, as set out in the Singapore Intellectual Property Strategy 2030.





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