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Global Vision

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# Supreme Court's Opinion on Parts or Features That Are Likely to Attract Attention in Design Infringement Case

**According** to the “Directions for Patent Infringement Determination” ( “Directions” ) revised in 2016, the general procedure for design patent infringement determination involves a two-part test: (1) determining the scope of a design right, and (2) comparing the determined scope with the allegedly infringing object. The comparison between the design at issue and the allegedly infringing object can be further divided into two steps, which are (1) deciding whether the articles to which the two designs apply are identical or similar, and (2) determining whether the appearances of the two are identical or similar. In particular, the determination of similarity in appearance is a matter of subjective judgment. In a recent design infringement case—which was found to be non-infringing in the first instance court and was reversed as infringement in the appellate court—the Supreme Court remanded the case to the Intellectual Property and Commercial Court ( “IPC Court” ) with a different opinion.

Regarding the determination of similarity in appearance, the Directions state that, rather than focusing on the differences in detail, the comparison shall be conducted in a manner of “overall observation and comprehensive determination” and from the viewpoint of “an ordinary consumer” when purchasing products. To be more specific, the first step is to perform an observation of the overall content presented by each view in the drawings of the design at issue and the corresponding features of the allegedly infringing object. Next, an ordinary observer should focus on the “parts or features that are likely to attract ordinary consumers’ attention” and should combine said features with other features to form an “integrated visual impression” of the allegedly infringing object. If the features that are different from those of the design at issue do not sufficiently affect the overall visual impression of the allegedly infringing object, it should be determined that their appearances are similar to each other. In the determination procedure, “parts or features that are likely to attract attention” is an uncertain legal concept. The Directions further

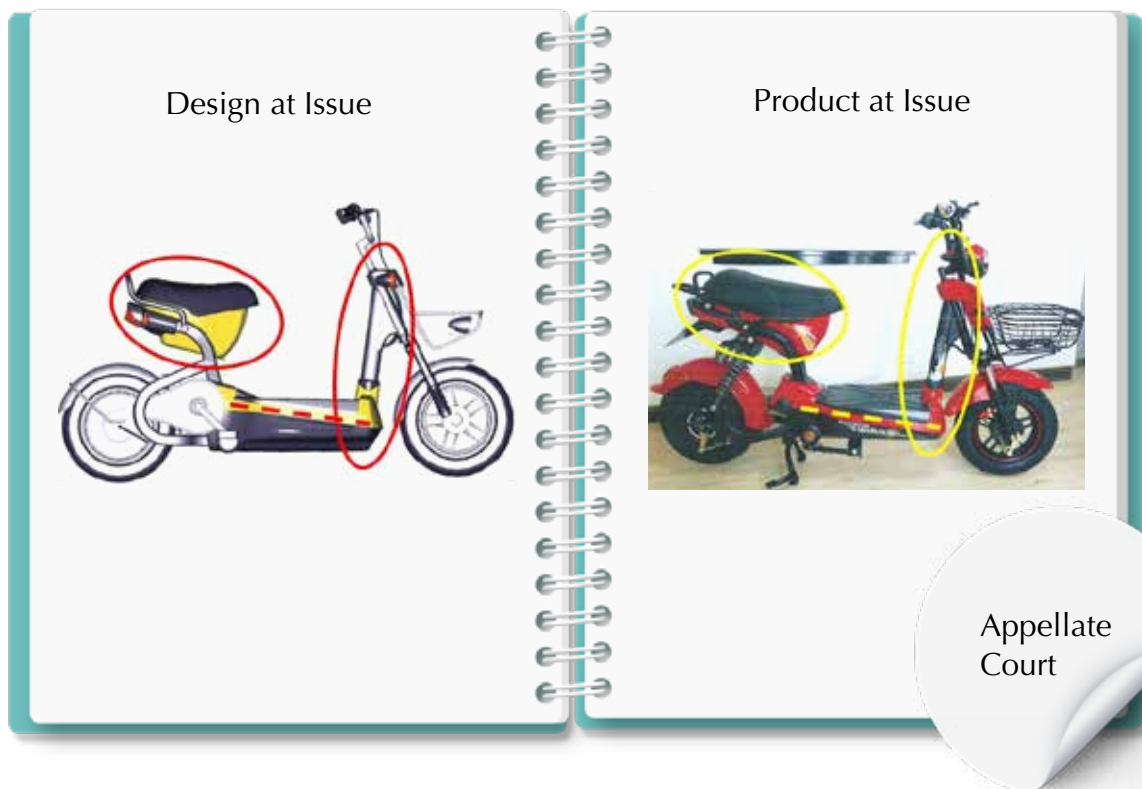




define the concept as “features of the design at issue that are clearly different from the prior art” or “parts that can easily be seen when in use.” The following case shows how the concept is applied to infringement determination in practice.

Giant, a leading Taiwan-based bicycle manufacturer, accused Laike Co., Ltd. of infringing its design right ( “Electric Bicycle” , patent no. TW D133389). As shown in the figure below, the first instance court found that the main feature of the design at issue was the “a” shape consisting of the rear end and the top of the seat tube, which gave a strong visual impression that the seat and the storage space under the seat were “floating” ; in contrast, the product at issue gave an impression of stability, which arose from the “D” shape consisting of the seat tube and the shock absorber and from the feature comprising the connection from the top of the tube to the rear wheel through the shock absorber. Therefore, the two appearances were found not to be similar to each other.





However, Giant turned the tables in the second instance. The appellate court held that the main feature was the “frame” of the electric bicycle. From the perspective of cost and practice in the art, the appellate court suggested that the frame of a two-wheeler such as a bicycle or motorcycle is the key component in determining a model and is also the main criterion for consumers to identify the model. The features comprising the frame were most likely to attract ordinary consumers’ attention. They were clearly different from the prior art and were also found to be similar to the product at issue in the first instance. The appellate court ruled that other features were relatively insignificant in the visible area and were located mainly at the front and the rear ends; thus, it was decided that they were negligible in the overall visual impression of the bicycle. As a result, the appellate court found that the product at issue was similar to the design at issue and was infringing.

The issue was brought to the Supreme Court. The Supreme Court firstly compared the design at issue with the cited prior art, and found that the differences in terms of design features are obvious and were not disclosed in the cited prior art. The features of the design, rather than being restricted to the frame only, have given the design at issue an overall smooth, coordinated and balanced visual impression. Furthermore, the differences between the design at issue and the product at issue were located in places where an ordinary consumer could easily identify them when purchasing and using the product. Based on the principle of “overall observation and comprehensive determination” , the Supreme Court questioned the appellate court’ s holding that the product at issue was similar to the design at issue on the grounds that the differences only occupied a small portion of the overall visual area and were mainly located at the front and rear ends. The case was remanded to the IPC Court.



In this case, the Supreme Court asserted that the appellate court not only failed to consider the “features of the design at issue that are clearly different from the prior art” but also improperly excluded the features contained in the design at issue when determining the “parts that are visible when used,” and thus made an incomplete analysis in determining the “parts or features that are likely to attract attention.”

In fact, the Supreme Court' s opinion on the determination of “parts or features that are likely to attract attention” was based on the definition given in the Directions. However, the Directions, published by Taiwan Intellectual Property Office (TIPO), are an administrative ruling that is not subject to legislative procedures and thus has no effect in terms of influencing the court' s discretion. In the past, the courts did not have a clear standard regarding the determination of design patent infringement. This case concurred with the rules set out in the Directions that, in the determination of similarity, design features that are different from the prior art shall be given more weight. In other words, when interpreting the scope of a design right, the court shall firstly consider the features that are clearly different from the prior art. Then, instead of focusing on every detail of the accused product, the court should compare the design at issue with the accused product as a whole.

In summary, unlike the infringement comparison for trademarks or copyrights, the novelty and creativeness of a design at issue should be given more weight in order to properly interpret the design right, and any features that constitute the design should not be excluded. This tripartite method of comparison also echoes the spirit of the Patent Act, namely to encourage, protect and utilize the creation of designs so as to promote industrial development.

# OPPO v. Nokia: China's Court Again Ruled it Holds Jurisdiction over a Dispute Involving the Global FRAND Rate on a SEP License

**Oppo** Mobile Telecommunications Corp., Ltd. ( “OPPO” ) is a leading Chinese consumer electronics manufacturer with major product lines in smart phones, audio devices and power banks, among others. In November 2018, OPPO's Guangdong headquarters and the Chongqing subsidiary entered into an agreement for a patent license with the Nokia Corporation and Nokia Technology (Beijing) Co. In 2021, upon the renewal of the license, a dispute arose between the two parties regarding the royalty rate for Standard Essential Patents ( “SEPs” ). OPPO, the licensee, sued Nokia, the licensor, in Chongqing People's First Intermediate Court, with the aim of determining the rate. Nokia contested the Chongqing Court's lack of specific jurisdiction over the dispute. The Chongqing Court ruled in favor of OPPO; OPPO subsequently appealed.

In September, the Supreme People's Court ( “SPC” ) made a ruling to affirm the Chongqing Court's decision that a Chinese court possesses jurisdiction over the case to set a global FRAND royalty rate.<sup>1</sup>

The case came down to three questions, as outlined below:

1

**Whether a Chinese court had jurisdiction over this case.**

The SPC concluded that China was the main licensing territory of the SEPs in dispute, the territory where a license negotiation took place, the reasonably foreseeable territory for the performance of the license agreement, and one of the main territories of SPE implementation. This means that, according to the SPC, China has sufficiently close territorial nexus regarding the present dispute. Accordingly, China has the legitimate jurisdiction.

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<sup>1</sup> Ruling: (2022) SPCIPCivilJurdFinal-No.167

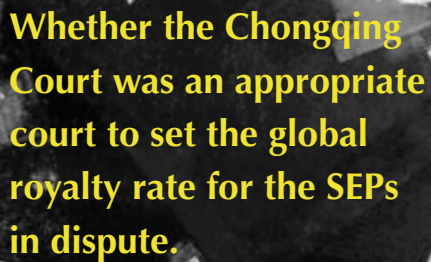
More specifically, the SPC explained that the present case was a contract and infringement dispute arising out of the clause of fair, reasonable and nondiscriminatory ( “FRAND” ) licenses for the SEPs. Both parties in the dispute—OPPO and Nokia Beijing Technologies—were in fact Chinese entities. At the time of renewal of the old license, and in a bid to incorporate some new SEPs, OPPO and Nokia carried out negotiation conferences mainly within China. Furthermore, in the statement from Nokia, it was clearly revealed that Chinese patents accounted for 46% of the SEPs in the license package. Considering also Nokia’s FRAND commitment, it was logically conceivable that China would be one of the primary places of implementation of the license should OPPO demand that Nokia fulfill the licensor’s obligation.

2

**Whether the Chongqing court was an appropriate forum to exercise such jurisdiction.**

The OPPO Chongqing Company established in the Yubei District of Chongqing is involved in the development, manufacture, use and sale of cell phone products. Apparently, the municipality of Chongqing was one of the primary places of implementation of the SEPs in dispute. The SPC therefore concluded that the Chongqing People’s First Intermediate Court, being lawfully assigned the territorial jurisdiction, has territorial nexus in the dispute. Hence, attempts by Nokia to push for a case transfer to a Beijing court were groundless.



3

**Whether the Chongqing Court was an appropriate court to set the global royalty rate for the SEPs in dispute.**

As mentioned previously, Chinese patents make up the majority of SEP packages in dispute. Among many other factors, the SPC indicated that China is more closely linked with the license territorially than other countries. The licensing terms of the SEPs are adjudicated by the Chinese on a global scale, which is not only conducive to understanding OPPO' s implementation practices but also makes the enforcement of court judgments easier and more convenient. According to the SPC, therefore, Nokia' s argument that it is improper for the Chongqing court to adjudicate such civil disputes over licensing terms on a global scale was unsubstantiated.

In addition, Nokia attempted to challenge the Nokia Beijing entity' s litigation status so that the case would not be brought into Chinese jurisdiction. In particular, the legal representative of Nokia' s Beijing entity participated as an individual in the license negotiations. Nokia argued that this person' s participation in the negotiations is not the same as that of the Nokia Beijing entity itself. Of course, this argument was denied by the SPC because a company' s legal representative has the mandate or capacity to act on behalf of the company in an ordinary commercial role and, the SPC explained, the counterparty' s interest of trust is worthy of protection.

In light of the foregoing analysis, the SPC upheld the Chongqing Court' s decision and dismissed the appeal. The Chongqing Court lawfully has jurisdiction in this case, that is, to set the global FRAND royalty rate for a SEP license.

According to the court' s announcement, the Chongqing First People' s Court held the trial for the main suit of the Nokia/OPPO dispute on October 27, 2022.<sup>2</sup>

The Nokia/OPPO case constitutes the second ruling by a Chinese court to confirm its jurisdiction over a dispute concerning the determination of a global SEP license rate, following the Sharp/OPPO case in October 2020 by the Shenzhen Intermediate People's Court and in August 2021 by the Supreme People's Court.<sup>3</sup>

From the Sharp/OPPO and Nokia/OPPO cases at least, one may draw a provisional conclusion that courts will evaluate several territorial factors in determining whether a patent-related dispute has a nexus with China. The places where the patent was granted, where the patent was implemented, where the license agreement was enforced, where the license was negotiated, where the license agreement was performed, and where property could be seized or enforced are all factors that a court would investigate. If any of these places are in China, given that the core issue concerns the global royalty rate, it is highly likely that a court would proactively rule to hold specific jurisdiction as China has a nexus with the dispute.

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<sup>2</sup> <https://finance.sina.com.cn/tech/tele/2022-10-24/doc-imqqsmrp3573993.shtml>

<sup>3</sup> Ruling: (2020) SPCIPCivilJurdFinal-No.517

# New Trademark Distinctiveness Examination Guidelines Released

**Trademark** styles are becoming more diverse and overarching, while the average consumer's perceptions and ideas towards trademarks are gradually evolving. With the aim of enhancing examination transparency and consistency, TIPO has revised the trademark examination guidelines with respect to distinctiveness, providing a number of illustrative examples of both allowance and rejection. The revisions came into effect on September 1, 2022.<sup>1</sup> A summary of the revised paragraphs is given below.

## Words (Section 4.1)




Words in foreign languages may bear their inherent definition. If the word or combination of words falls outside customary usage of the designated products or services, nor does its creation adhere to grammatical norms, it is not considered to be a description of a product or service. Hence, such a word mark is distinctive. For example, "**BRISK HEAT**" is used on liquid heaters and reservoir heaters. The word "brisk"—defined as "active and energetic"—is often used to describe an individual's personality. The combination of "brisk" and "heat" suggests a novel concept. Thus, "Brisk Heat" is considered to have distinctiveness.

Notably, the question of whether a combination of descriptive words is distinctive depends on the combined words as a whole. For example, "**ZEROBURN**"—combining "zero" meaning none and "burn" meaning to incinerate—takes on a somewhat fanciful meaning when appearing on batteries and chargers. On the contrary, "**JuiceLatte**" on beverages, "**Fuel-Cell**" on batteries, and "**Quick & Shine**" on laundry detergents are not registrable because they remain descriptive after combination.

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<sup>1</sup> <https://reurl.cc/del3DD>






### **Latin Letters (Section 4.2)**

A single letter, even if colored or framed, usually lacks distinctiveness; examples include “A” widely used on products of premium quality, “S, M, L, XL” referring to outfit sizes, “C” referring to a computer programming language, and “g” used as a weight unit. However, a specially designed or stylized letter that is able to function as a source indicator is deemed to be distinctive. Allowable examples are “”—for automobiles, motorbikes, and their parts, “”—comprising a letter Z and a butterfly graphic for cosmetics and bath kits, and “”—combining a letter D with an enclosed letter B for luggage and leather bags.






Abbreviations and acronyms that refer to a business organization or names of new and emerging products or services are not considered distinctive; examples of these are “TFT,”—short for “thin-film transistor” and used on liquid crystal monitors, and “CC,”—short for “color control” or “color corrector” and used on cosmetics. However, acronyms that are created by the applicants themselves and are not ordinarily known in the industry are allowable. Examples include “IBM” and “HARP”—short for “High Aspect Ratio Process”.

Combinations of letters and numbers make up another popular group of trademarks. Serial number “No.1” , temperature “98°C” and chemical formula “H<sub>2</sub>O” are somewhat descriptive. Many such combinations are often seen in the industrial fields of automobiles, bicycles, machinery, hardware, hand-held devices, wearables, cameras and sports





equipment. Standardized formats or types—such as model numbers “QX50” or “NX300”—do not serve the function of determining the source of products and are thus not deemed to be distinctive. It is advisable to present more evidence upon application to support the claim for distinctiveness. Rejected applications included “” on televisions—meaning four times full HD resolution—and “”—as merely a cell phone model. By contrast, those not referring to commercial specifications, models, makes, or types of a designated product or service may have distinctiveness; examples include “” on cosmetics, “” on clothing, and “” on household detergent, the latter being homophonically similar to “extremely clean” in Mandarin Chinese.

#### **Graphics (4.4)**

Some purely informative graphics to deliver necessary information linked to the products or services themselves—such as “    ” on cellphones to indicate resistance against water, stain, coldness, shock, etc.—are descriptive. Graphics reflecting trending events or current viral sensations are generally not considered to be distinctive. Examples include “”, which is a graphic representing a line-judging result by the badminton Hawk-Eye system and which has become popular due to a gold medal-winning match in the Summer Olympic Games, being used on masks, sports equipment and smart cards.



#### **Geographical terms or logos indicative of geographical sources (4.5)**







If the name of a nation is combined with other terms or graphics to generate a novel concept deviating from the descriptive meaning of the nation name itself, it may be

considered distinctive; examples are “  ” on travel services, “ **美國天籟** (Angel voice of the USA)” on hearing-aid devices, and “  ” on exotic restaurant services. On the contrary, “ **PURE JAPAN MADE** ” on OTC drugs and baby foods is merely descriptive and therefore lacking in distinctiveness.

In addition, marks that are likely to mislead the public as to the nature, quality or place of origin of the goods or services are not registrable as trademarks according to Article 30(1)(8) of the Trademark Act. This often occurs with marks bearing geographical names; this is because certain geographical names that have a favorable reputation in some industrial fields, or which are notable in some designated products or services in the market, may be influential in customers’ decision making. In light of this, at least two factors are pertinent for evaluation: (1) the connection between the product/service and the place of origin and (2) the possibility of misleading customers as to the origin of the product/service.

#### **First name, last name, and portrait of a person (4.6)**



The use of another person’ s portrait, notable name, stage name, title, etc., for trademark registration applications requires the person’ s approval by default. Generally a name is distinctive, for example “  ”—an autograph of a name used on processed meat products—and “  ”—the stage name of an influencer in a creative font used on online streaming services. However, “ **里科太**<sup>2</sup> ”—referring to a famous YouTuber but which failed to obtain her approval prior to the application — is not registrable.

Portraits of the applicant—such as “”, “” and “”—are highly distinctive. However, in order to protect personal rights, the portrait of another person is not registrable due to anticompetitive concerns. Rejected examples are “” (Steve Jobs) on consumer electronics, “” (Albert Einstein) on culinary tools, and “” (Deng li-jun; died singer) on business consultation and beauty services.

#### **Name of a company, store, group, organization, and domain (4.9)**

The full name or the domain name of a company does not have distinctiveness because it only provides information as to the type or Internet domain of a service/organization. In the interests of preserving trademark integrity, no changes may be made to the trademark and its designated goods or services after the filing of an application. Hence, in order to avoid any instance of a trademark as a whole failing to indicate the source owing to any changes in the full name or the domain name after filing or transfer of company ownership, the informative content cannot be disclaimed but must be removed before filing or upon official request.

#### **Religious graphics, terms, and folklore cultural logos (4.10)**

Buddhist swastikas, Taoist Baguas, Christian crosses, Islamic star and crescents, etc. do not serve the function of indicating the origin of products and services and are therefore not deemed distinctive. However, other creatively designed logos may sometimes be considered distinctive, for example, “” (Matsu; Chinese goddess) used on personal hygiene, and “” used on gemstones and jewelry.

# Taiwan Offers A Huge Tax Benefit to Boost Semiconductor and Other High-tech Investments

**Last Thursday**, the TW government approved a draft bill to institute a new Article 10-2 of the Statute for Industrial Innovation. Being analogous to the US CHIPS and Science Act, this new law aims to create tax incentives for high-tech companies investing in Taiwan. High-tech companies making R&D contributions to the semiconductor industry will enjoy a 25% credit against corporate income tax for their investments. It is hoped that, should parliament pass the law in the next month, it will come into effect on 1 January 2023 at the earliest.

More precisely, to reinforce international competitiveness in the area of scientific technology, for companies engaging in technical innovation and “situated in a key position in the international supply chain” , 25% of their annual expenditure for advanced R&D activities can be credited against the corporate income tax for the same year if (1) they are in compliance with the environmental and labor laws, (2) their investments meet a certain threshold, (3) the ratio of R&D expense to income (R&D density) reaches a certain scale, and (4) the applicable effective tax rate is not lower than 15%. However, the credits shall be capped at 30% of the payable corporate income tax for the year.

In addition to R&D activities, 5% of the total investments that reach a certain amount for the procurement of brand-new devices and equipment for operating advanced processes can also be credited against the corporate income tax for the same year. This credit shall also be capped at 30% of the payable corporate income tax for the year.



The total combined tax credits from the above-mentioned R&D investments and equipment procurements shall be further capped at a ceiling of 50% of the payable corporate income tax for the year.

The new tax clause is not permanent. It will be effective from 1 January 2023 at the earliest to 31 December 2029.

The specific definitions of some of the terminologies as well as the conditional requirements for the above new tax clause—such as the threshold of R&D expenses—are subject to the government's further interpretations and new auxiliary regulations.

The new tax clause is not limited to domestic firms. Foreign companies established in Taiwan with an R&D hub or subsidiary entity meeting the above-mentioned requirements are also eligible for the new tax benefit.

Other than the semiconductor industry, enterprises whose business involves, for example, electric vehicles, 5G communication or low-orbit satellites may all enjoy this tax benefit should they meet the same requirements.

## Taiwan IP Office will Issue Electronic Certificates for Patents and Trademarks Starting in January 2023



**Going** green has been a part of the government' s continuing efforts for modernization and sustainable development. For cutting down both paper usage and delivery costs and meanwhile enhancing the IP right holder' s convenience in document management, the Taiwan IP Office will start to offer patent and trademark certificates in electronic form from the beginning of next year. Particularly, the applicant will have the option to choose either a paper or an electronic certificate upon paying issue fees. By opting for the electronic format, the applicant may still request a paper copy if later needed (but not vice versa).

To summarize in short, after receiving a notice of issuance, the applicant is required to download the e-certificate in six (6) months from a specific webpage or in five (5) days via the E-SET platform (an electronic document delivery system). The e-certificate is issued as an encrypted PDF document with security measures. There will be a QR code on each e-certificate. By uploading the e-certificate to TIPO or scanning the QR code, one may quickly verify the document' s authenticity or even see the latest legal status of the associated patent/trademark right. In addition to grant, an e-certificate is also available upon re-issuance, recordation of patent assignment, inheritance, and trust.

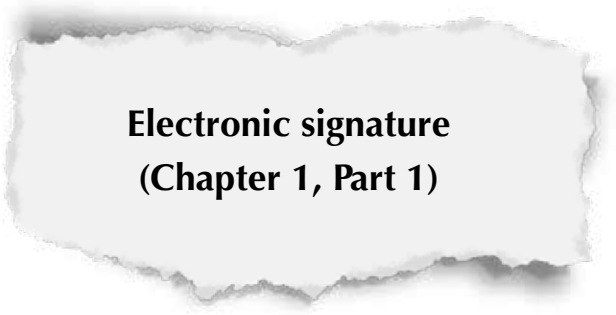
More information and implementation regulations in detail in this regard may follow as the e-certificate approaches an official launch.

# TIPO Amended Part One of the Patent Examination Guidelines regarding Application Procedures and Management

**In** view of the constant updating of legal interpretations and the issuance of recent judicial judgements in the field of intellectual property, TIPO has reviewed its Patent Examination Guidelines (PEG) to ensure that it maintains consistency with these changes. Part Two of the PEG regarding the substantive examination for invention patents was revised in the first half of 2022. Subsequently, in the latter half of 2022, TIPO promulgated the amendments to the Part One - the procedural section of the PEG. These changes came into effect on December 1, 2022.

The amendments introduce a number of illustrative examples in some chapters to reflect the updates to judicial practices. Moreover, the use of electronic signatures is encouraged in an effort to simplify formality requirements, and there has been some paraphrasing and several minor changes to wording in some chapters.

A summary of the principal revisions is outlined below.



## **Electronic signature (Chapter 1, Part 1)**

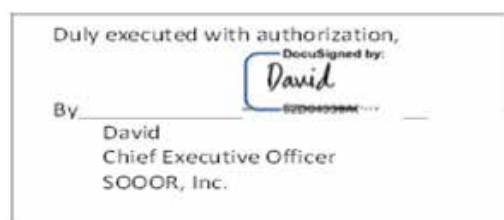
Electronic signatures have become increasingly popular recently in various business activities and engagements with governmental agencies. TIPO had already accepted the use of e-signatures for some time; with these changes, written recognition of e-signatures on documents submitted to TIPO (such as powers of attorney or assignments) is now officially included in the PEG. Going forward, provided that an e-signature can be verified and compared, TIPO assumes authenticity and thus will accept any documents bearing said e-signatures. In case of any suspicion regarding authenticity, TIPO may request submission

of a supplementary authenticity certificate or a paper copy of the same document with a hand-written signature. Examples of admissible and inadmissible e-signatures are provided.



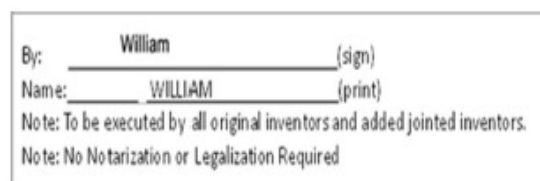
**Admissible:**

an e-signature presented in such a way that there is no difference from a wet signature.



**Not admissible:**

an e-signature presented as if it were a printed text so that its authenticity in terms of being an individual's signature is questionable.



**Applicant  
(Chapter 3, Part 1)**

It is stressed in the amended paragraph that, when the IP authority cannot ascertain consistency in terms of the identity of the names in the documents of the application forms for name changing and in the corroborative documents or other documents submitted



simultaneously, the application day and the assignment day shall be the date on which the applicant is finally ascertained. Furthermore, when different applicants are merged to become one entity and supporting documents and statements reveal the same to be true, name changing shall be permitted since the applicants have kept consistency in terms of identity. (SAC-108-Appeal-No.1169).

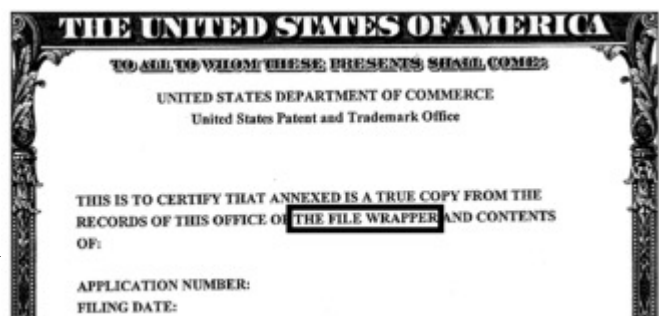
## Priority (Chapter 7, Part1)

Several examples of unacceptable priority documents are provided in the amendment.



Failed Example 1:

a full text photocopy of the file wrapper of a US patent application.



The full copy includes all documents relating to a patent application, including those not part of the application such as a product catalog. Treating this file wrapper as a priority document essentially enlarges the scope of the first-filed application. In addition, the full text copy does not constitute evidence to demonstrate whether the applicant has truthfully obtained a priority document from a lawful foreign patent authority.



### Failed Example 2:

a filing receipt of a patent application accompanying a photocopy of a patent specification.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: USPTO, P.O. Box 108  
Alexandria, Virginia 22304-1080  
Internet: www.uspto.gov

APPLICATION NUMBER	FILING DATE	ORIGIN	UNIT	FILED BY	ATTY DOCKET NO.	FILE CLAIM	IND-CLAIM
	08/17/2020						

BOSTON, MA 02110

CONFIRMATION NO.  
**FILING RECEIPT**

Date Mailed: 08/17/2020

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF FIRST INVENTOR, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection.

A filing receipt contains a limited amount of information. It shows the name of the applicant and the title of the invention at the time of filing as well as an assigned application number and the filing date. Without any manifestation of a first-filed application, it cannot be used in conjunction with a photocopy of the patent application to serve as a priority document.



### Failed Example 3:

a filing receipt of a design patent application under the Hague Agreement accompanying a photocopy of a design patent specification.

Application for International Registration

WIPO | HAGUE  
The International Design System

**ACKNOWLEDGEMENT OF RECEIPT THROUGH E-FILING** Page 1 of 4

Thank you for using the E-Filing platform.  
The details of your international application are listed below; if there is any problem with the data appearing below, we recommend you immediately try using our "Serials/Hague" service available at <http://www.wipo.int/hague/en/contact>, indicating the date and reference of your E-filing.

**E-FILING DATE AND REFERENCE**

Date: 08/17/2021  
Reference: WIPO1 6

**DETAILS OF THE APPLICANT(S)**

Applicant 1  
Name: Greg

The reason for rejection is similar to that of the previous example. Notably, a priority document under the Hague Agreement accepted by TIPO shall bear a statement reading "CERTIFIED TRUE COPY OF THE HAGUE APPLICATION."



#### Failed Example 4:

a certificate of a registered  
Community Design.



From a quick glance at the formality appearance, it may be easily mistaken for a priority document. However, an EUIPO application for design registration shall read “...an exact copy of the application for a registered...”

### **Deposit for biological material (Chapter 8, Part 1)**

The Patent Act requires the applicant—before or on the same day of filing—to make a deposit of a microorganism which is the subject matter or the used bio-material relating to a patent application. But instead of making a deposit in Taiwan, the applicant may alternatively make such a deposit in a facility in a foreign country with which TIPO has entered into a reciprocal agreement, and then submit a deposit receipt to TIPO within 16 months of the priority date. However, if said depository facility in a reciprocal country does not hold the status of an International Depository Authority as per Article 7 of the Budapest Treaty, the proof of the foreign deposit submitted later to TIPO shall include not only the deposit receipt from said facility but also a report capable of supporting the viability of the deposited microorganism. Without a viability report, TIPO will deny the foreign deposit on the grounds of being incomplete.

# Chinese Court Defined NFTs as Virtual Assets

**The** Hangzhou Internet Court in the Zhejiang Province recently decided in a contractual dispute case that a non-fungible token (NFT) is a virtual asset. Moreover, the transaction of such a digital commodity is subject to the regulatory rules in the E-commerce Law of the People's Republic of China.

In February of 2022, the plaintiff buyer ordered an “NFT digital collection”—a blind box for a limited edition of an art work—for about CNY 1,000 or USD 150 during a shopping spree event organized by an e-commerce platform. The platform (or the seller), however, did not transfer the ordered NFT immediately. Ten days later, the seller canceled the deal and forcibly refunded the plaintiff. In a fit of anger, the plaintiff buyer sued for a breach of the deal and claimed losses amounting to CNY 100,000 or about USD 15,000.

The defendant seller alleged that, before the transaction started, it had made the buying terms quite clear, stating that it would mandatorily conduct real-name authentications by verifying the last several digits of the buyer's cellphone number along with their ID number.

This was aimed at curbing abnormal activities involving the use of snap-up robots and ensuring that each buyer only purchases one NFT. Since the plaintiff's personal information did not match that at the time the order was made, the defendant subsequently canceled the order. In order to end this deal in a fair manner, the defendant returned the payment to the plaintiff accordingly.

The court found that at the time of purchase, the plaintiff had failed to provide real personal information which was required as per a number of terms in the contract. The defendant's advertisement for the sale of the NFT equated an invitation for offer. When the plaintiff buyer made a selection as to which blind box of NFT to buy, the advertisement became an offer made to the plaintiff by the seller. Subsequently, when the buyer's order submission was completed, this was deemed to be a promise to the seller. At this point, a contract was established, which bound both parties to abide by any related terms within it.





The sale announcement, which constituted a part of the contract, clearly specified that valid personal information is required to make a successful order. In response to inaccurate personal information being entered in the electronic order form, the platform is entitled to terminate the contract. In the transaction at issue, the fourth digit of the cellphone number and the sixth digit of the ID number which the plaintiff had provided were not able to be authenticated. The defendant therefore exercised its contractual right to cancel the order and refunded the plaintiff.

The defendant was lawful in terminating the contract; thus, the court overruled the plaintiff's claim for CNY 100,000. The case was dismissed.

According to the judgment, an NFT collection is vested with the common characteristics of a physical property, including its value, scarcity, disposability and tradability, as well as the particular characteristics that are unique for a virtual property, such as its being intangible and technical.

An NFT digital collection is a virtual artwork, the court emphasized. As an original expression of the creator's artistic presentation, it shares the value of being intellectual property. Meanwhile, as formed between the nodes based on the consensus in the blockchain, it is a digital commodity possessing unique characteristics.

Furthermore, unlike with the purchase of tangible products, the NFT in the present case was traded on the Internet. In essence, this particular trade as a means of digital information exchange is a kind of a business event to sell virtual goods. As an e-commerce activity, it shall be subject to the regulations of the E-Commerce Law of the People's Republic of China.

Notably, the legitimacy of a contract termination clause in a standardized agreement entitling an NFT seller to unilaterally terminate the contract shall be determined on a case-by-case basis. The court in the above dispute supported the NFT seller's termination of the contract on the grounds of anti-fraud management and protection of consumers.



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