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PRESS RELEASE

Law Application On Genetic Resources

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China's Patent Law revised in 2008, introduces a new stipulation that "No patent right shall be granted for any invention-creation which is completed on the basis of genetic resources of which the acquisition or use breaches the stipulations of related laws and regulations" (Article 5 Paragraph 2). The purpose of the new stipulation is to regulate the act of acquiring and using genetic resources by way of violating the Convention on Biological Diversity and the related stipulations of China's laws, making inventions by employing genetic resources and filing applications for patent rights on those inventions. That is, no patent right shall be granted for such inventions. In order to ensure the implementation of this stipulation, the revised Patent Law introduces a further stipulation that "an applicant who files a patent application for an invention-creation completed on the basis of genetic resources shall in the patent application document indicate the direct and original source of the genetic resources; the applicant unable to indicate the original source of the genetic resources must provide an explanation" (Article 26 Paragraph 5).

Regarding law application on genetic resources, the new Implementing Regulations of the Patent Law have no particular stipulations. However, the Implementing Regulations define genetic resources: "The term genetic resources in the Patent Law means any material of human, animal, plant, microbial or other origin containing functional units of heredity and having actual or potential value" (Rule 26). The Implementing Regulations also define "invention-creation which is completed on the basis of genetic resources" as follows: "An invention-creation which is completed on the basis of genetic resources in the Patent Law refers to an invention-creation which is completed by using the hereditary function of the genetic resources". It should be pointed out that the definition of the genetic resources given by the Implementing Regulations is substantially the same as that given by the Convention on Biological Diversity, and is about equal to the understanding of this term by researchers in this field. The explanation of "an invention-creation which is completed on the basis of genetic resources" by the Implementing Regulations emphasizes that it must be an invention-creation that is completed by using the "hereditary function" of the genetic resources. In other words, an invention does not belong to an invention-creation that is completed on the basis of genetic resources if it is made by using merely functions of some material other than the hereditary function, although the material satisfies the definition of the genetic resources.

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Obviously, these stipulations in the Implementing Regulations further delimit the application of the stipulations of the Patent Law related to the protection of the genetic resources, and provide more specific guidelines for patent examining practices in this field.

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