

## Cross-Strait (Taiwan & China) IPR agreement signed

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On June 29, 2010, the Cross-Strait (Taiwan & China) Agreement on Intellectual Property Right Protection and Cooperation was signed in China. The content of the agreement contains consensus that was reached on the following points: mutual recognition of priority rights for patents, trademarks and plant varieties; mutual protection of variety rights; certification of published audio/visual works owned by Taiwanese right holders in China will be conducted by Taiwanese-designated agencies; establishment of cooperative mechanisms to combat cross-strait piracy and counterfeiting and prevent malicious squatting of well-known trademarks and illegal labeling of Taiwanese-grown fruit on China. The goal of these measures is to provide stronger assurances of IPR protection for businesses and individuals between Taiwan & China. The agreement also establishes a platform for direct communication between IP administrative bodies in Taiwan and China, marking a new milestone in IPR protection and exchange between Taiwan Strait.

With the signing of the cross-strait IPR agreement, Taiwan and China will observe mutual recognition of priority rights to patents, trademarks and plant varieties within the spirit of WTO principles. Due to the lack of clarity on this matter as formerly written in Article 28 of the Patent Act, Article 4 of the Trademark Act and Article 17 in the Plant Variety and Plant Seed Act, amendments have been made to each of these articles. The Patent Act amendment contains new language stating that patent applicants claiming priority rights shall declare, in the written application, the foreign country or WTO member territory in which the corresponding application was filed, and shall also submit the documents issued by the foreign country or WTO member territory government evidencing the acceptance of said foreign application. The Trademark Act amendment consists of a similar addition and is now written in the following manner: "An application of trademark, which was filed in a country or WTO member territory mutually recognizing priority right with Taiwan and was registered in pursuance to the domestic legislation of that country, may claim priority right in Taiwan...The priority right applicant shall submit a certified copy of the application admitted by the said foreign country or WTO member territory." The amended Plant Variety and Plant Seed Act now states that applicants for plant variety rights in Taiwan may claim priority rights on the basis of the applicant's first application for a plant variety right duly filed in a foreign country or WTO member territory, as long as priority rights are mutually recognized between Taiwan and the foreign territory and the Taiwanese application is filed within a specified time period.

Now, IP authorities from both Taiwan and China underwent necessary adjustments of internal operations. Upon conclusion of these changes, both sides agreed to commence mutual acceptance of priority right claims for patents, trademarks, and plant varieties as of November 22, 2010. Priority right claims for first applications may be accepted retroactive to September 12, 2010 (enactment date of the Cross-Strait Agreement).

With respect to the designation of groups or organizations to handle cross-strait copyright authentication services, China has stated that, once all necessary administrative steps are completed, the Taiwan Association for Copyrights Protection may commence operation as the authentication authority for all relevant Taiwanese-produced audio-visual works.

The successful implementation of this agreement will result in more direct, effective and prompt solutions for Taiwanese IP rights holders facing protection obstacles in China. The agreement will also increase national competitiveness by enhancing the innovation, application, management and protection of IP rights in Taiwan.

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