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Via Email: dailiguanli@cnipa.gov.cn

Re: "Notice on Soliciting Public Opinions on the "Model Text of Patent Agency Contract (Draft for Comments)" and Other Regulations" (September 24, 2024)

Dear China National Intellectual Property Administration:

The Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the solicitation of opinions on the *Model Text of Patent Agency Contract (Draft for Comments) and Other Regulations* ("Draft") published on September 24, 2024.

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

IPO's vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO's mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

IPO recognizes the importance of the objective of the Draft to formulate and promote model texts of intellectual property service contracts and other work arrangements, which should help parties identify issues that they might address in such arrangements. While the templates are guidelines and, when used, will be modified as appropriate to reflect the agreements between the parties, IPO appreciates the efforts from the China National Intellectual Property Administration (CNIPA) to try to promote practices for client and attorney working relationships to maximize understanding and minimize potential disputes. In light of the relatively short timeline for comments, IPO

cannot analyze and provide comments on each element of the Draft, but has identified a few priority areas where it believes its comments might be most helpful during the process of finalizing the Draft.¹

General Comments

As a preliminary comment, IPO is supportive of the steps being taken by CNIPA to provide clarity to the responsibilities and expectations of clients and the patent/trademark agencies. Our comments set out below with respect to certain articles are primarily directed to seeking clarity in the measures on particular issues to enhance fairness of treatment, flexibility, and operability.

Urgency Fee for Trademark Agencies

In the patent agency draft template contract, it is possible to collect urgency fees (article 6.3). However, a similar article does not exist in the trademark agency draft template contract. As a trademark is also an important intellectual property asset, IPO suggests adding a similar article to allow collection of an urgency fee to the trademark agency draft template contract.

Format of Submission

In the patent agency draft template contract, article 3.14 recites that XML is the preferred format of submission. However, this format has not been widely used by many applicants, and many applicants have experienced various issues in XML submissions to other patent offices. To improve flexibility, IPO suggests revising this article to recite "using any electronic format acceptable to the CNIPA for submission of the relevant document, preferably in XML document format."

The Timing of the Start of Work

The draft template contracts (patent article 5.2; trademark article 5.1) recite that the deadline of the agency to finish a piece of work counts from the date when the agency receives complete materials, or receives full payment from the client according to the contract, whichever is later. While this test certainly would help resolve the issue many agencies have in getting paid in full and in good time, in many cases it would not be practical, particularly with respect to clients who have a high volume of work. To improve operability and flexibility, IPO suggests revising the relevant article to state "the date when the agency receives complete materials and (i) the agency has received full payment from the client according to the contract or (ii) the agency has received the amount of down

¹ IPO notes that its comments are suggestions for CNIPA's consideration in creating templates and should not be interpreted as providing legal advice to those who choose to use the templates.

payment according to the contract or (iii) the client has made sufficient deposits according to the contract."

IPO thanks the China National Intellectual Property Administration for its attention to IPO's comments submitted herein, and welcomes further dialogue and opportunity to provide additional comments. IPO has enclosed this letter as translated herewith.

Sincerely,

A handwritten signature in black ink that reads "Krish Gupta". The signature is written in a cursive, flowing style.

Krish Gupta
President

Enclosure