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Working Measures for Foreign Transfer of Intellectual Property Rights (Trial)

* Translated by Beijing East IP

In order to implement the overall national security concept, improve the national security system, maintain national security and major public interests, and standardize the order of foreign transfer of intellectual property rights, the present Measures is formulated in accordance with relevant laws and regulations such as national security, foreign trade, and intellectual property rights.

1. Examination Scope

(1) The foreign transfer of intellectual property rights under the present Measures such as patent rights, exclusive right of layouts of integrated circuit designs, computer software copyrights, new plant variety rights, etc. involved in activities such as technological exports, mergers and acquisitions of domestic enterprises by foreign investors, shall be examined in accordance with the present Measures. The said intellectual property rights include its application rights.

(2) The said foreign transfer of intellectual property rights under the present Measures means that a Chinese entity or individual transfers the intellectual property rights in its territory to a foreign company, individual or other organization, including the change of the right holder, the change of the actual controller of the intellectual property rights and the exclusive license for the intellectual property rights.

2. Examination Content

(1) The impact of the foreign transfer of intellectual property rights on China's national security.

(2) The impact of the foreign transfer of intellectual property rights on the capabilities of innovation and development for the core and key technologies in China's key areas.

3. Examination Procedures

(1) Examination of the foreign transfer of intellectual property rights involved in technology exports

- i) In technology export activities, when the exported technologies belong to the export-restricted technologies that are explicitly prohibited by the Chinese government in the export-restricted export technology catalogue, the involved intellectual property rights such as patent rights, exclusive rights to layout-design of integrated circuits, and computer software copyrights, shall be subject to examine.
- ii) After the local competent department of trading receives the Application for China Restricted Export Technology submitted by a technology exporter, if it involves the foreign transfer of intellectual property rights such as patent rights and exclusive rights in the layout design of integrated circuits, the relevant materials shall be transferred to the local administrative department of intellectual property. By receiving the

relevant materials, the local intellectual property management department shall examine the intellectual property rights to be transferred and issue a written opinion to the local competent department of trading and report to the intellectual property competent department of the State Council for the record.

- iii) The local competent department of trading shall make an examination decision based on the written opinion issued by the intellectual property management department and in accordance with the "Regulations on the Administration of Import and Export of Technology of the People's Republic of China" and other relevant provisions.
- iv) Where the foreign transfer involves computer software copyrights, the local competent department of trading and the local science and technology competent department shall conduct the examination in accordance with the relevant regulations such as "Regulations on the Administration of Import and Export of Technology of the People's Republic of China" and the "Regulations on the Protection of Computer Software". Where the computer software copyrights to be transferred abroad have been registered with a computer software registration authority, the local competent department of trading shall timely notify the computer software registration authority the results of the examination. If it is examined and identified as untransferable, the computer software registration authority shall not proceed the change of ownership registration after receiving the notice.
- v) Where the foreign transfer involves new plant variety rights, the competent department of agriculture and the competent department of forestry shall conduct the examination in accordance with their responsibilities in accordance with the relevant regulations such as "Regulations on the Protection of New Plant Varieties of the People's Republic of China". The examination shall focus on the impact of the new plant variety rights to be transferred on China's agricultural security, especially food security and seed industry security.

(2) Examination of the foreign transfer of intellectual property rights involved in the security examination of the acquisition of domestic enterprises by foreign investors.

- i) When a security examination organization for foreign investment conducts a security examination of a merger or acquisition of a domestic enterprise by a foreign investor, if examination content is in the scope of security examination of the merger and acquisition and involves the foreign transfer of intellectual property rights, the security examination organization for foreign investment shall transfer the relevant materials to the relevant competent department for consultation according to the type of the intellectual property to be transferred. Where the patents and exclusive rights to layout designs of integrated circuits are involved, the competent department of intellectual property of the State Council shall be responsible for the examination; where the copyrights of computer software are involved, the competent department of the state copyright shall be responsible; and where the new plant variety rights are involved, the competent department of agricultural under the State Council and the competent department of forestry under the State Council shall be responsible, respectively.
- ii) The relevant competent department shall promptly examine and issue written opinion to foreign investment security examination organization. The foreign investment security examination organization shall refer to the written opinion issued by the relevant competent department and make an examination decision in accordance with the relevant regulations.

4. Other matters

- (1) The relevant competent departments shall formulate the examination rules and clarify examination materials, procedures, deadlines, and responsibilities.
- (2) After the final examination decision on the foreign transfer of intellectual property rights is made and the change of intellectual property rights is involved, the two parties for the transfer shall proceed the formalities for change in accordance with relevant laws and regulations.
- (3) The staff of the relevant competent departments shall be confidential to the trade secrets of both parties of the foreign transfer of intellectual property rights.
- (4) Where the foreign transfer of intellectual property rights involves the security of national defense, it shall be handled in accordance with the relevant provisions of the State, and the present Measures shall not be applicable.
- (5) The present Measures shall be implemented on the date of issue.