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AFD China Accredited as the AAAAA-level (Top Tier) Patent Firm in Beijing

On the capital intellectual property service meeting held by Beijing Intellectual Property Office on March 14, 2018, AFD China Intellectual Property Law Office has been accredited with the title of AAAAA-level Patent Agency and awarded the certificate and medal.

The AAAAA-level title refers to top tier performer according to the local standard DB22/T 2239-2015. Firms cannot receive such accreditation at the first-time evaluation. Our level was improved after further standardization and refining of our work flow in the past months from being accredited as AAAA in 2016.

Through objective, fair and transparent evaluation, only 14 IP firms are selected as AAAAA-level patent agency, 25 are named lower-level patent agencies.

<http://afdip.com/index.php?ac=article&at=read&did=3189>

IP News from China's Two Sessions

Amended Patent Law Draft to Be Submitted for NPC Deliberation in 2018

The State Council Legislation Plan for 2018 was released recently. The Plan specified that four drafts of laws including the amended Patent Law would be submitted to the Standing Committee of the National People's

Congress (NPC) for deliberation while 11 lower-hierarchy Regulations including the Patent Representation Regulation would commence their formulation and amendment.

The current amendments specify the role of administrative management over infringement particularly willful infringements with actions such as confiscating the infringing products and equipment, imposing fines, mediating the amount of compensation (A60-61). The calculation of fines and compensations for infringement has been further specified and raised (A60, 66). The administrative department is also allowed to make a ruling on disputes over matter-of-course license or permission of an implementer of a national standard to use patented technology (A84, 85). The amendments also introduce new provisions regarding good faith principle for applying for patent and exercising patent rights (A14), joint and several liability of indirect infringers or internet service provider for e-commerce (A62-63), willful infringement (A60, 67, 68), credit record on the protection of patent rights to be setup and incorporated into the national credit database (A74), and the matter-of-course license of right (A82).

<http://english.sipo.gov.cn/news/officialinformation/1120816.htm>

Punitive Damages to Be Awarded for Stronger IPR Protection

The introduction of a punitive damages system for intellectual property rights violation has won huge acclaim among industry

insiders after Premier Li Keqiang proposed the move in his Government Work Report for the year. Such punitive damages would involve compensation that exceeds the plaintiff's actual loss, creating a greater deterrence against such violations.

The current compensatory damages system, aims only to cover the losses of the rights owners. "We will see that the strong protection of property rights and the fluid flow of production enable a significant increase in market dynamism and public creativity," Premier Li said in his report.

Zhou Qiang, head of the Supreme People's Court, said in his work report that the judicial authorities will use the punitive damages system in future trials to resolve the problem that rights violation incurs low costs while defending IP rights brings about high costs. Courts nationwide have heard about 683,000 IP-related cases over the past five years. An observer said that the compensation in lawsuits involving IP infringement has been rising gradually in the past two years, after the Beijing Intellectual Property Court - the country's first dedicated IP court - decided to sharply increase compensation in 2016.

<http://english.sipo.gov.cn/news/officialinformation/1120708.htm>

China to Restructure the State Intellectual Property Office

China plans to restructure the State Intellectual Property Office to strengthen protection of intellectual property rights, according to the State institutional reform plan of the State Council.

The office will incorporate part of functions of the State Administration for Industry and Commerce (SAIC), and the General Administration of Quality Supervision, Inspection and Quarantine, to solve problems including separated administration and overlapping enforcement. The new agency will be responsible for facilitating the construction of an IPR protection system, and

the registration and administrative adjudication of trademarks, patents and geographical indications.

At the same time, Shen Changyu, director of the State Intellectual Property Office, made the remarks at the annual session of the national legislature that the Office will treat domestic enterprises and international ones, big companies and small firms, State-owned companies and private sectors, equally, to provide protection over their intellectual properties, to help create a better business environment. Shen also said that the Office will speed up review and protection process, more IPR centers will be established this year to allow right owners to safeguard their rights more efficiently with lower cost.

<http://english.sipo.gov.cn/news/officialinformation/1120654.htm>

Substantial Improvement Achieved in China's IPR Environment

Recently, U.S. Chamber Global Innovation Policy Center (GIPC) released the 2018 International IP Index, which indicated that China ranked 25th among the 50 economies with the score of 19.08, up two positions as compared to the ranking in 2017.

The report believed that China is achieving substantial progress in building the IPR environment oriented towards the 21st century.

In particular, first, the reform in patents and copyrights enhanced its protection and law enforcement results; second, the governments and law enforcement organs of various levels attached more importance to IPR; third, the awareness of research institutions and individuals in IPR protection and their capability in utilizing them had been enhanced.

The report also pointed out that China still has weakness in barriers in IPR market access and commercialization.

<http://english.ipraction.gov.cn/article/News/201803/20180300176277.shtml>

Chinese Companies File More Overseas Patent Applications

Chinese companies obtained 11,241 more U.S. patents in 2017, up 28%, making China, for the very first time, a top five country in the department of owning U.S. patents. The number of U.S. patents obtained by Chinese companies increased by ten-fold in the last decade, according to statistics issued by a U.S. research institute. Among the 320,000 patents granted by the United States Patent and Trademark Office in 2017, 3.5% of which were obtained by Chinese companies. The local U.S. companies claimed ownership to 148,139, accounting for 46% of the total.

<http://english.sipo.gov.cn/news/iprspecial/1120042.htm>

Similar trend was observed in EP patent filing as well. The latest listing shows a 16.6 percent year-on-year growth in the number of patents filed by Chinese companies in Europe. The total number of patents filed by enterprises from all nations grew by 3.9 percent. Huawei has topped the European Patent Office's 2017 patent-filing league table for the first time. Other Chinese companies that filed a large number of patent applications in 2017 included the telecoms company ZTE, e-commerce company Alibaba, mobile phone maker Xiaomi, and automotive maker BYD.

<http://english.ipraction.gov.cn/article/News/201803/20180300176958.shtml>

Patent Certificates No Longer Containing Patent Pamphlets

On February 22, 2018, State Intellectual Property Office released an announcement informing that patent certificates and the duplicates thereof will not include patent pamphlets as of April 24, 2018.

Starting from the date of grant announcement, the patentee and the public could browse and download the corresponding patent pamphlet at the Chinese patent publication and grant announcement platform

(<http://epub.sipo.gov.cn>) of the State Intellectual Property Office.

The State Intellectual Property Office will adjust the composition of patent certificate and the duplicates thereof in the following three steps:

For the patents granted during the period from March 2, 2018 (including the day) to April 24, 2018 (excluding the day), the patent certificates will comprise the first page of the certificate and the title page of the patent pamphlets.

For the patents granted after April 24, 2018 (including the day), the patent certificates and their duplicates will adopt a new version, i.e. they will no longer contain patent pamphlets but will include the grant announcement number and the address of the patentee.

Please be advised that the old version and the new version of patent certificates and their duplicates have the same legal effect. For patent certificates and their duplicates that have been issued in the old version, the State Intellectual Property Office will not issue a new version thereof as replacement, unless otherwise stipulated.

<http://afdip.com/index.php?ac=article&at=read&did=3177>

Cambodia to Recognize Chinese Patents in Landmark Agreement

The Cambodian government will soon recognize Chinese patents as effective for protection in its own territory, according to SIPO's news conference on March 2.

Whether from abroad or not, owners of invention patents granted in China can register with the Cambodian authorities. The policy will be applied to Chinese patents that were applied for after Jan 22, 2003 and remain valid are eligible to apply under the policy. The eligible candidate patents do not include utility models and industrial designs.

Cambodian authority will check the application materials without the need to conduct a substantive review, before granting a patent. The materials include a registration form, a patent specification issued by SIPO and other patent documents in English and Khmer, the official language of Cambodia. Once the Chinese patent is recognized in Cambodia, its protection will last for the same time span as in China.

China is also exploring other options in international cooperation to increase IP work efficiency, including the Patent Prosecution Highway program. To date, SIPO has agreed such programs with its counterparts in 27 countries and regions.

<http://english.sipo.gov.cn/news/iprspecial/1120609.htm>

SAIC: Well-known Trademarks Cannot Be Used for Company Promotion

On March 1, the State Council Information Office held a press conference to deepen the reform on commercial system. Zhang Mao, Head of SAIC said that it is clearly provided in the Trademark Law that well-known trademarks that well-known trademarks belong to legal concepts instead of honorary sign of products, so they cannot be used for company promotion or propaganda.

According to the 500 Valuable Brands selected from World Brand Laboratory, China had 37 trademarks in the list, up by 1.5 times as compared to that in 2013.

<http://english.ipraction.gov.cn/article/News/201803/20180300176509.shtml>

SUPPLEMENT ISSUE

SIPO Ruling Could Reshape Tech Standards Policies

Legal battles among leading giants set scene for new licensing environment

A recent decision by the Patent Reexamination Board of the State Intellectual Property Office on a standard essential patent in the television industry has once again set the spotlight on a string of legal wrangles that first hit the headlines last year.

Standard essential patents are required in industrial technical standards, meaning an upcoming court ruling could have a major impact on patent license fees and future industrial policies.

Guangzhou Digital Rise Co Ltd filed patent complaints against major electronics manufacturers Tianjin Samsung, Hisense and Skyworth in Beijing and Guangdong province in 2017, claiming combined damages of hundreds of millions of yuan.

Digital Rise developed a multi-channel digital audio coding technology called Digital Rise Audio, with proprietary intellectual property. The Guangzhou-based company has filed 52 applications for invention patents in China and abroad relating to its DRA technology, with 25 of them already granted, according to its official website.

The DRA technology was published as an international standard for digital audio interface by the International Electrotechnical Commission in 2010 and was adopted as a necessary audio standard in the Specification for National Digital Television Receiver, also known as the DRA audio standard, in 2011, the company said.

In July 2017, Digital Rise initiated legal procedures with the Beijing Intellectual Property Court against Skyworth and its subsidiary Skyworth-RGB Electronics, as well as home appliance retailer Gome.

Digital Rise alleged the companies infringed two of its audio decoding patents, both related to the DRA technology, and claimed 192.2 million yuan (\$30.35 million) in damages.

In the ensuing lawsuits, Hisense, Tianjin Samsung, Gaochuang Electronics (Suzhou) and Shenzhen Suning Cloud Commercial Sales Co Ltd were added to the list of infringers.

In response, Tianjin Samsung filed a patent invalidation request with the Patent Reexamination Board, concerning the audio decoding patent involved in the cases. The board recently decided to void Digital Rise's patent.

Skyworth has also filed an invalidity request with the board for another patent, the audio coding and decoding system, pending final ruling.

Digital Rise and the electronic manufacturers cooperated prior to turning to legal action, which probably came about because they failed to agree on new license deals after the previous one expired. As such a crucial patent has been voided, Digital Rise is likely to be driven into an unfavorable situation in the ongoing legal procedures. At the same time, for others that have already acquired licenses to use the patented technology, the licensing cost could be adjusted.

<http://english.ipraction.gov.cn/article/News/201803/20180300179018.shtml>

IP Protection for Mobile Applications (APPs)

Since the advent of mobile era, smartphones have become an indispensable part of our daily life. Statistics show that Chinese people rank the second in the world, in terms of the amount of time spent on mobile phones, with an average of three hours per day.

Apart for basic functions, mobile applications (APPs) play a vital role in the daily use of a mobile phone. APPs help us live a much convenient life. We check the weather, buy tickets, order meals, watch videos and live broadcasting, get navigation, or pay bills from our mobile devices.

Being an APP proprietor, it is worth thinking of seeking IP protection for your APPs. And here is some advice we would like to share with you.

1. Seeking copyright protection

- 1) apply for software copyright registration for the source codes and files once your APP is developed;
- 2) apply for work copyright registration for original images, music, words, scripts, etc. of the APP.

In practice, one may claim his/her copyright without registering the copyright. Still, it is highly recommended to obtain such certificates, which are strong documentary evidence that can help you initiate quick actions of enforcement and reduce the difficulty in evidence collection and preservation.

2. Seeking trademark protection

- 1) apply for trademark registration for the name, abbreviate name, alias name, etc. of your APP;
- 2) apply for trademark registration for the logo and icon used by the APP itself, symbolic and signature icons or the combination of icons and words frequently shown in the APP.

Please note that the trademark applied for registration shall be identical to what is used. It will make the trademark easy to be identified and remembered by consumers, and it will also help with potential enforcement in the future such as collecting acceptable use evidence of the trademark. Meanwhile, when applying for trademark for mobile APPs, we highly recommend registering the trademark in Class 9 (digital and electronic goods), Class 38 (telecommunication services), Class 42 technological services and research and design relating thereto), and other classes which relate to the services or goods the APP offers. The more comprehensive scope the registration covers, the more likely you will defeat potential passing off/counterfeit and the better reputation you may obtain for the APP and your business.

3. Seeking patent protection

- 3.1 file invention patent application for the APP combining with the hardware on which the APP is loaded;

It is explicitly stipulated in the latest revision of the Guidelines for Patent Examination that “program” can be a part of apparatus claims and be protected in a patent application. That is, invention relates to computer program can be protected in a patent, and it is allowed to draft claims in the form of “medium + computer program flow”. According to such regulation, one can seek patent protection for mobile APPs by combining the APP with mobile devices on which the APP is.

For example, the claims can be drafted in this form: “a *** device, including a processor and a memory, the memory stores instructions that can be executed by the processor, the following steps are implemented when the instructions are executed by the processor...”; the title of the invention can be written in the way such as “a method of implementing *** and the devices thereof”.

Please be advised that novelty and high level of inventiveness are required for invention patent applications. Trivial technology improvement or an APP executed through a commonly known hardware, network, and etc. may not be deemed as a technical feature and thereby may not be considered having inventiveness.

3.2 file design patent application for product containing graphical user interface (GUI)

Mobile APPs are used on mobile terminals and displayed in the form of GUI, and the function of the product is achieved through man-machine interaction. According to the relevant regulations of the Patent Law of China, GUIs are eligible for design patent applications and thus one may file design patent application to seek protection for mobile APPs. In comparison with non-GUI design patent application, special requirements are applied to GUI design patent applications with respect to the title, drawings and photos, and brief specification

A. graphical interface, application software interface, software user interface and etc. shall be submitted together with the product, and cannot be separated from the product;

B. “interface” shall be a key word and included in the title, and the design patent application shall be named in the way such as “**** interface of mobile phone”;

C. the figures in a design patent application shall clearly indicate the field of the product in which the GUI is used; and clearly display the design of the GUI and its size, position and proportionate relationships in the product. For example, when filing a GUI design patent application, one can submit a front view of the product (including the mobile phone) and some changing state views of each level/dynamic pattern of the GUI (not including the mobile phone);

D. in the brief specification, one shall illustrate the application of the GUI, the position of the GUI in the product, the way of man-machine interaction, the changing status etc.

<http://afdip.com/index.php?ac=article&at=read&did=3175>