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AFD Awarded Leading Patent Agency of 2017-2018

In February 2019, the Beijing Patent Attorneys Association finished the yearly assessments and announced the winners of Excellent Patent Agencies and Attorneys of 2017-2018. AFD China Intellectual Property was once again honored with the award. This was the third time that we garnered the title.

This year's awards for agencies were for the first time categorized into different types – “leading agency” and “innovation agency” in trying to better reflect the characteristics and advantages of the agencies. AFD was awarded with the name “leading agency” in recognition of our comprehensive, spot-on and one-stop services.

AFD has been committed to catering IP needs of various clients - large companies, medium-sized enterprises, and small and micro entities that require more attention to establish and implement IP operations. To formulate satisfactory services, we form competent teams and allocate resources cross the departments. Our value-added services, such as patent counseling, training, and analysis receive extensive praises, particularly from companies that are driven by R&D and innovation and have less experience in IP identification, protection, and utilization.

We thank every client for their understanding and support. We will continue sticking to our service philosophy “treating clients with integrity and achieve through trust and reliable output”. We look forward to growing with you for many years to come.

Investment Law Stresses Better IPR Protection

China's national legislature passed the Foreign Investment Law, which will become effective on Jan 1, 2020.

The law stipulates that the government shall protect the intellectual property rights of foreign investors and foreign-invested enterprises.

Premier Li Keqiang has said the government will introduce a series of supporting regulations and directives to protect the rights and interests of foreign investors. In this respect, he has vowed revisions to the laws on IPR protection and the introduction of a mechanism of punitive compensation to ensure that all infringements of intellectual property will be seriously dealt with.

By the end of 2018, about 960,000 foreign-invested enterprises had been set up in China, with the accumulated foreign direct investment exceeding \$2.1 trillion, according to China's Ministry of Commerce.

<http://english.ipraction.gov.cn/article/News/201903/20190300214668.shtml>

China Concludes 42 Percent more IPR Cases in First Trials in 2018

Chinese courts at all levels concluded 288,000 cases related to intellectual property rights (IPR) of first instance in 2018, up 41.8 percent year on year, a work report of the Supreme People's Court (SPC) said on March 12.

A tribunal for IPR-related cases was set up at the SPC last year to further strengthen the judicial protection of IPR, according to the report available to news media.

More efforts were put into the construction of the intellectual property courts in Beijing, Shanghai and Guangzhou, as well as 19 tribunals for IPR-related cases to improve the legal environment for technological innovation, it said.

Procuratorates across the country had also strengthened judicial protection of IPR last year, having supervised the handling of 32 major IPR-related cases, according to the work report of the Supreme People's Procuratorate on Tuesday.

A total of 8,325 people were prosecuted by procuratorates for criminal acts such as infringement of patent rights and trademark rights in 2018, up by 16.3 percent on a yearly basis, the report said.

<http://english.ipraction.gov.cn/article/News/201903/20190300213927.shtml>

China Announces Results of Special Action 2018 on Copyright

According to a statement issued by the National Copyright Administration (NCA), the 2018 Jianwang Operation removed 1.85 million links to infringing content online. Authorities also investigated 544 online copyright violations, including 74 criminal cases, targeting primarily on online videos. The investigations resulted in the removal of 570,000 infringing works.

The 2018 results come after increased efforts to strengthen IP enforcement in the country. In December, Chinese authorities announced a range of new punishments for IP violations. In January, WIPO reported that political advisers and businesses had called for increased efforts to improve China's IP protection regime. Advisers suggested new measures including the establishment of IP protection as a university discipline.

The statement also indicated that the NCA will look to pursue another "special action" in the coming year. The NCA said it was seeking the involvement of rights holders, copyright alliances and organizations, and authorities responsible for copyright enforcement.

<http://www.chinaipmagazine.com/en/news-show.asp?id=10507>

Alibaba Released New Measures to Protect IPR Against Fake Products

By the end of February, Alibaba officially revealed its "IPR protection brain" or the anti-fake core technology at its press conference of digital economic governance system. It was learned that in order to work with other social communities for the combat of counterfeits, Alibaba developed 12 iterative anti-fake black technologies.

Alibaba and the law enforcement organs in 31 provinces as well as thousands of global brand owners to cooperate on anti-fake efforts offline. 3,544 pieces of clues related were transferred to the law enforcement organs nationwide and assistance were given to capture 3,559 case-involved suspects. 2,879 hideouts of counterfeiting were destroyed, valued at nearly 10 billion yuan in total.

According to Alibaba's annual IPR protection report, 96% of suspected IPR infringement links were canceled as soon as they got online, the links of IPR infringement cancelled by Alibaba's platform decreased 67%; 96% of IPR complaints were handled within 24 hours, the complaints from brand owners were reduced by 32%; the links of suspected counterfeits reported by consumers were down 70%; the number of IPR infringement cases required by administrative law enforcement organs for coordinated investigation decreased 64%; only 1.11 out of 10,000 orders were suspected of involving fakes, down again 26% as compared to the same period of the previous year.

<http://english.ipraction.gov.cn/article/News/201903/20190300213497.shtml>

Chinese Company Huawei Tops WIPO Patent Applications

China's tech giant Huawei topped the list in corporate patent applications at the World Intellectual Property Organization in 2018, WIPO said on Tuesday.

The telecom behemoth last year made a record number of 5,405 published Patent Cooperation Treaty applications, followed by Mitsubishi Electric (2,812), Intel (2,499), Qualcomm (2,404) and ZTE (2,080).

The PCT system provides applicants invention protection in 152 contracting countries with a single application, according to WIPO.

The United States last year contributed the highest number of PCT filings at 56,142, followed by China at 53,345 and Japan at 49,702. For the first time filers in Asia contributed more than half (50.5 percent) of all international patent applications, then Europe (24.5 percent) and North America (23.1 percent).

For educational institution applications, the University of California ranked first with 501 patent applications, while Chinese universities for the first time reached the top 10 ranking, including Shenzhen University (third with 201 applications), South China University of Technology (fourth with 170 applications), Tsinghua University (seventh with 137 applications) and China University of Mining and Technology (10th with 114 applications).

Digital communication had the largest share (8.6 percent) of published PCT applications, and computer technology (8.1 percent) and electrical machinery (7 percent) took the second and third spot, respectively. Transport recorded the highest growth rate (11.3 percent) among top 10 technologies in terms of application shares, WIPO said.

<http://english.cnipa.gov.cn/news/iprspecial/1136665.htm>

Group of Chinese LED Producers Forces Ultravision to Withdraw 337 Allegation

Recently, based on the unconditional withdrawal application of Ultravision Technologies, LLC, the US International Trade Commission (ITC) announced to terminate the investigation under the Section 337 of the U.S. Tariff Act on 11 Chinese LED producers who were accused of infringing Ultravision's patents of module LED display panels and components, ending an epic battle that had sparked industry-wide attention.

In March 2018, a list of 11 Chinese companies were alleged by Ultravision for having violated Section 337 of the U.S. Tariff Act of 1930 and Ultravision requested the ITC to issue a general exclusion order, a limited exclusion order and a restraining order. In May 2018, on the request of Ultravision, ITC decided to launch an investigation.

The Chinese companies then hired U.S. lawyers, who immediately analyzed and evaluated the situation after receiving the complaint. Working closely with legal, IP, sales and tech teams of the pertaining companies, they evaluated the patents in question, alleged products and devised defense strategies. All these moves enabled the Chinese companies a step ahead in the entire litigation proceedings.

On November 27, 2018, Ultravision filed a motion to ITC to withdraw the investigation. On January 31, 2019, the administrative judge of ITC approved the motion in a preliminary ruling (Order No.29). On February 21, ITC issued the final ruling to terminate the investigation and cease reexamination of preliminary ruling made by the said administrative judge, scoring a victory for the Chinese companies prevailed in this case.

<http://english.cnipa.gov.cn/docs/2019-03/20190314092901328214.pdf>

SUPPLEMENT ISSUE

CNIPA: ROUGHNECK Denied TM Registration for Negative Meaning

In an English- Chinese dictionary, roughneck means rude, or a rude fellow, or a noisy and rude fellow. But does it matter for trademark registration? A U.S. firm specialized in making safety gloves attempted to register ROUGHNECK and was denied for its negative meaning, forcing the firm to dive all the way into the system for justice.

Recently, Beijing High People's Court made the final ruling to reject the appeal from RINGERS TECHNOLOGIES LLC, upholding the review decision made by the former Trademark Review and Adjudication Board (TRAB) on rejecting No.20611408 trademark application ROUGHNECK (trademark in dispute).

The trademark in dispute was filed by RINGERS on July 12, 2016, requesting to be certified on the products of Class 25 such as gloves (garments), ski gloves and mittens.

After examination, the Trademark Office (TMO) rejected the application based on the ground that ROUGHNECK was detrimental to socialist morals or customs, or had other unhealthy influences. RINGERS then lodged a review request to the TRAB on May 7, 2017, had no luck there either, and then brought the case to Beijing IP Court.

Beijing IP Court held that ROUGHNECK was translated as rude, a rude fellow and a noisy and rude fellow in Chinese. Rude contains the meaning of violent, cruel and brutal, mainly used to characterize people's language and behaviors, usually carrying negative meanings in most contexts. If it was certified to be used on the products as a trademark, it would depart from the generally-accepted positive social morals and customs and generate unhealthy influences. Meanwhile, as trademark prosecution might come to different conclusions as facts being considered may differ from one another, the other successful registrations of ROUGHNECK could not be considered as solid evidence to secure the registration of the trademark in question. Hence, the Court dismissed the request from RINGERS at the first instance.

The disgruntled RINGERS then appealed to Beijing High People's Court. Beijing High held that those detrimental to socialist morals or customs, or having other unhealthy influences could not be used as trademarks according to the Chinese Trademark Law. Socialist morals or customs means living and behavior principles and standards for Chinese people in common and popular positive customs and habits within a certain period. Unhealthy influences means negative influences caused by characters, figures and other components to public interests and orders in Chinese politics, economy, culture, religion and races.

On whether the trademark in dispute was detrimental to socialist morals or customs, or having other unhealthy influences, Beijing High sided with Beijing IP Court.

In this connection, the Court upheld the review decision made by former TRAB and affirmed the judgment at first instance.

<http://english.cnipa.gov.cn/docs/2019-03/20190320091023170156.pdf>

Beijing Higher Court: No Protection of Thermos Beyond Registered Class

Over the No. 6241095 (TILIR THERMO VOGUE trademark), the U.S.- based Thermos Company had a rift with Ningbo Kefeng Daily Necessities Manufacturing Company.

Kefeng Company filed the registration of the trademark in dispute to the Trademark Office (TMO) and would obtain the official approval to use the trademark on Class 21 goods such as temperature retention bottles and food insulation containers on February 14, 2010.

On December 4, 2015, Thermos launched an invalidation request against the trademark in dispute to the former Trademark Review and Adjudication Board (TRAB), claiming that its previously- registered No. 688940 "膳魔师" (note: Chinese translation of Thermos) trademark (the reference mark) on stainless pots, temperature retention bottles, hot water bottles constitutes a well- known trademark and the trademark in dispute is a copy and imitation of its well-known trademark. Kefeng Company maliciously have registered a bunch of trademarks with the word "THERMO" and obtained the registration of the trademark in dispute by deception or other improper means.

After examination, the former TRAB believed that the evidence submitted by Thermos cannot prove that the reference trademark had been well- known before the date of registration of the trademark in dispute and these two marks are quite different

in logo. The trademark in dispute did not copy and imitate the reference trademark. Kefeng didn't obtain the registration of the trademark in dispute by deception or other improper means. In this connection, the former TRAB upheld the registration of the trademark in dispute.

Thermos then brought the case to Beijing Intellectual Property Court.

The IP Court held that there is a big difference between the trademark in dispute and "THERMOS" and words "膳魔师". Thermos has not submitted sufficient evidence to prove that Kefeng maliciously applied for the registration of the trademark in dispute and failed to prove that the reference trademark had been well-known. Therefore, the trademark in dispute does not constitute imitation and translation of the reference trademark.

On November 28, 2017, the IP Court rejected the complaint of the Thermos in the first- instance judgement. The disgruntled Thermos then appealed to Beijing High People's Court. After hearing, Beijing High nodded with the trial court on the same ground, rejecting the appeal from Thermos and upholding the first- instance judgment.

<http://english.cnipa.gov.cn/docs/2019-03/20190306145302202070.pdf>