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CNIPA Held Meetings to Discuss Tasks Deployment in 2019

On February 12, the National Intellectual Property Administration (CNIPA) held a meeting to deploy the key works in 2019.

According to the information released, the CNIPA will

- further clarify the “timetable” and “road map” of key tasks implementation and strengthen accountability, particularly trying to meet the National IP Plan’s requirements of shortening the trademark and patent examination time in 2019.

- make efforts on IPR protection, coordination in the revision of the Patent Law, faster establishment of an IPR system, improvement of the identification and IPR infringement criteria of trademark rights and patent rights, and establishment of a unified identification system for geographical indications.

- improve IPR application, deepen the reform of IPR-related equity distribution, give a play to the role of the IPR operational platform, promote the development of IP-intensive industries, implement the project of GI application and promotion and facilitate the targeted poverty alleviation.

- improve the level of IPR public service, deepen the reform of “distribution management”, work well on integrating of the basic information and resource platforms for IPR, and accelerate the establishment of national IP data center and information public service platform projects.

- deepen international cooperation on IPR, realize the operation of the first-batch WIPO technical innovation support centers,

strengthen the multilateral and bilateral regional cooperation along the “Belt and Road” and with small countries and better support the country’s opening-up.

- intensify talent cultivation, enhance comprehensive support capabilities and provide strong support for talents in career development.

<http://english.ipraction.gov.cn/article/News/201902/20190200212333.shtml>

China's Service Trade Volume Hit Historic Height in 2018, with Imported IPR Loyalties Grow at a High Rate

In 2018, China’s service import and export volume hit the historic height, with the structure continuously being optimized and the quality significantly improved.

Among which, the imported IPR royalties saw significant growth and the demands for high-end productive services and the export competitiveness grew in the same pace. Specifically, in 2018, the imported IPR royalties stood at 235.52 billion yuan, up 22% year on year; the export reached 36.8 billion yuan, up 14.4%. The export of technical service registered 115.35 billion yuan, up 14.4% year on year while the import volume totaled 83.92 billion yuan, up 7.9% over the same period last year. This demonstrates the thriving demand of China for the high-end productive services and the competitiveness in the high-end productive service export is also improving.

<http://english.ipraction.gov.cn/article/News/201902/20190200212049.shtml>

IPR Cases Handled by Beijing Higher Court Increased by 55.1% in 2018

On January 18, the 2nd Session of 15th Beijing Municipal People's Congress held the 4th plenary meeting. Kou Fang, President-in-act gave a work report on behalf of Beijing Higher People's Court. Kou indicated that in 2018, Beijing Higher People's Court handled 57,086 cases of IPRs, up 55.1% year on year.

In 2018, in order to enhance the protection of core technology and cutting-edge technology, Beijing Higher People's Court heard 1341 patent-related cases; handled 14,061 trademark-related cases; the role of IPR judgment in guiding and safeguarding the cultural innovation should be exerted. 38,378 cases of copyrights were closed. Also, Beijing Higher People's Court handled 560,415 civil and commercial cases.

In terms of improving doing business environment, in 2018, Beijing Higher People's Court devised the Implementation Opinion on Fully Leveraging the Judicial Functions and Providing Judicial Safeguard for Improving In-depth Doing Business Environment. 247,915 cases about disputes of sales and leasing contracts and 535 cases of bankruptcy and compulsory liquidation were closed. Among which, the bankruptcy reorganization case of Huadu Chicken Co., Ltd. helps the company with their industrial upgrading, and the bankruptcy reorganization case of BIT - ZTE Technology Co., Ltd. was included in the national Ten Typical Bankruptcy Cases of Courts.

<http://english.ipraction.gov.cn/article/News/201901/20190100210705.shtml>

Top 10 Countries with the Most Influential Brands in 2018

China's State Grid, Tencent, Haier, Huawei, Tsingtao, Sinochem and Air China are among a total of 38 Chinese brands that made a list of the world's 500 most influential brands,

according to consulting and research firm World Brand Lab.

The ranking, published annually since 2004, was based on three key indicators – market share, brand loyalty and global leadership – for more than 20,000 brands worldwide.

As the 2018 edition of the World's 500 Most Influential Brands showed, the US had 223 brands, retaining top position; and France and the UK ranked second and third with 43 and 42 brands respectively.

Here are the top 10 countries with the most influential brands in 2018.

No 1 US Representative brands: Google, Amazon, Apple, Coca-Cola

No 2 France Representative brands: L'Oreal, Louis Vuitton, Chanel, Cartier, Dior

No 3 UK Representative brands: Vodafone, BP, HSBC

No 4 Japan Representative brands: Canon, Sony, Toyota, Panasonic

No 5 China Representative brands: State Grid, Tencent, Haier, ICBC

No 6 Germany Representative brands: BMW, Mercedes-Benz, Volkswagen, Audi

No 7 Switzerland Representative brands: Nestle, Credit Suisse, Rolex, UBS

No 8 Italy Representative brands: Gucci, Prada, Ferrari, Fiat

No 9 Netherlands Representative brands: Shell, Philips, Heineken

No 10 South Korea Representative brands: Samsung, Hyundai, SK Holdings

No 10 Sweden Representative brands: IKEA, H&M, Electrolux, Absolut Vodka

<http://english.ipraction.gov.cn/article/News/201901/20190100211082.shtml>

SUPPLEMENT ISSUE

CNIPA: Israeli Company Takes down Local Distributor Tampering with Trademark-ed Products

In November 2016, Shanghai Minhang District Market Supervision Office received a complaint from the Israel-based Bermad Company, the trademark owner of "伯尔梅特BERMAD", accusing Shanghai Bermad Control Valve Company of manufacturing and selling valve products infringing its registered trademark right, and requesting sanctions from the Office.

After investigation, the Shanghai firm was found having purchased the red fire valve and blue pressure reducing valve with the "BERMAD" trademark through the proper distribution channel at relatively low prices from 2014 to 2016. The following act makes the company culpable when it changed the color of the valve into green which is supposed to be the color of a digitally controlled electro- hydraulic valve. The Shanghai firm also removed the gaskets of the purchased valve products and replaced them with gaskets purchased elsewhere. After the retrofitting moves, the perpetrator sold 64 units of counterfeit green electro- hydraulic valves for 1,464,275 yuan. Adding the 17 unsold units still sitting at a warehouse, the total value of goods in question is 1,870,838 yuan. Such retrofitting and selling acts are a clear violation of Article 57 of the Chinese Trademark Law. Accordingly, Shanghai Minhang District Market Supervision Office invoked Article 60 of the same law to impose injunction on the Shanghai firm, seize 17 units of infringing valve products and penalize 5.61 million yuan.

Impact of the Case

In this case, the Shanghai firm not only changed the color of the valve, but also replaced its key components, leading to the change of the product's original function and use, which shall be deemed as a substantial change to the original product. The company even sold the modified products in the name of the trademark owner. The act shall be deemed as trademark infringement. Penalty- wise, this is the biggest trademark violation case ever dealt by Shanghai Industry and Commerce administration as well as market regulatory authority. The successful investigation and handling of the case fully reflects that Shanghai market supervision authority's determination and competence in IP protection, preserving the fine image of China's resolve in IP protection.

<http://english.cnipa.gov.cn/docs/2019-02/20190213095214357101.pdf>

Administrative Measures for Prioritized Examination of Patent

We received many inquiries recently about prioritized examination of patents. To help you understand such processes in China, we provide the following interpretation of the CNIPA's administrative measures in related.

Patent cases for which Prioritized Examination can be requested

1. patent cases under the following stages or procedures
 - invention patent applications under substantive examination;
 - utility model and design patent applications;
 - reexaminations of invention, utility model and design patent applications; and
 - invalidations of invention, utility model and design patents.

2. patent cases relating to any of the following fields/situations

(1) for examination or reexamination of patent applications

- nationally prioritized industry, such as energy conservation and environment protection, new generation information technology, biology, high-end equipment manufacturing, new energy, new materials, new energy vehicles, intelligent manufacturing, etc;
- industry encouraged by the provincial government or municipal government in cities with districts;
- the field of internet, big data, and cloud computing, etc. and its technique or product has a fast update speed;
- applicant has got ready for exploiting or has already exploited the invention-creation for which the patent application is seeking protection in China, or there is evidence proving that others are exploiting the invention-creation in China;
- the application was first filed in China and then filed in other countries or regions; or
- the application has great significance to the national interest or public interest.

(2) for invalidation of patents

- where the patent under invalidation proceeding is involved in infringement disputes, and parties concerned have asked local IP offices for administrative operations, instituted legal proceedings before courts, or asked for arbitration; or
- where the invalidation case has great significance to the national interest or public interest.

Parties eligible for requesting for Prioritized Examination

1. for examination or reexamination of patent applications, the request for Prioritized Examination:

- shall be approved by all applicants of patent application or all petitioners of reexamination.

2. for patent invalidation cases, the request for Prioritized Examination:

- shall be approved by all petitioners of the invalidation request or by all patentees of the patent being invalidated; or
- shall be filed by the local IP offices, courts or arbitral organization handling the corresponding infringement disputes of the patent involved.

Documents that we need for requesting Prioritized Examination

1. for examination of patent applications

- instruction of requesting for Prioritized Examination;
- information of prior art or prior design and the relevant supporting documents; and
- except for patent applications first filed with CNIPA and then filed in other countries or regions, Prioritized Examination request shall be signed or sealed by relevant department

of the State Council or the provincial-level intellectual property office with comments of recommendation;

2. for reexamination of patent applications or invalidation of patents

- instruction of requesting for Prioritized Examination;
- relevant supporting documents; and
- except for reexamination of patent applications which have gone through Prioritized Examination during the substantive or preliminary examination procedure, Prioritized Examination request shall be signed or sealed by relevant department of the State Council or the provincial-level intellectual property office with comments of recommendation.

Duration of prioritized examination

CNIPA determines which Prioritized Examination request can be approved according to factors, such as, examination capacity of each technical field, the number of patents granted in the last year and the number of pending patent applications in the current year.

Where CNIPA approves the Prioritized Examination request:

- for invention patent applications, CNIPA shall issue the First Office Action within 45 working days from the date on which the request for Prioritized Examination is approved and finish the examination within one year from the date on which the request Prioritized Examination is approved;
- for utility model and design patent applications, CNIPA shall finish the examination within 2 months from the date on which the request for Prioritized Examination is approved;
- for patent reexamination cases, the Patent Reexamination Board of CNIPA shall finish the reexamination within 7 months from the date on which the request for Prioritized Examination is approved; and
- for invalidation cases against invention and utility model patents, the Patent Reexamination Board shall finish the invalidation case within 5 months from the date on which the request for Prioritized Examination is approved; and for invalidation cases against design patent, the Patent Reexamination Board shall finish the invalidation case within 4 months from the date on which the request for Prioritized Examination is approved.

Obligation of the parties whose request for Prioritized Examination is approved

- for invention patent applications, the party shall respond to Office Actions within 2 months from the date on which the corresponding Office Action is issued;
- for utility model and design patent applications, the party shall respond to notifications within 15 days from the date on which the corresponding notification is issued.

Cease of Prioritized Examination

CNIPA will cease Prioritized Examination and handle the case under normal procedure once any of the following situations occurs:

1. for examination

- where the applicant makes voluntary amendments to the application documents after the request for Prioritized Examination is approved;
- where the applicant does not respond to office actions/notifications within the prescribed time limit;
- Where the applicant submits fake materials; or
- Where the application is found to be abnormal application.

2. for reexamination and invalidation

- where the applicant of reexamination fails to reply within the prescribed time limit, i.e. no request for extension of time can be requested;
- where the petitioner of invalidation cases files supplementary evidence and grounds after the request for Prioritized Examination is approved;
- where patentee amends the Claims in ways other than deletion after the request for Prioritized Examination is approved;
- where reexamination or invalidation proceedings are suspended;
- where examination on the present case must rely on the examination results of other cases; or
- where the case is regarded complex or complicated, and obtains approval for cease from the director of Patent Reexamination Board.

Comments

Comparing with the Measures of 2012, Prioritized Examination is now applicable for more cases in terms of patent application types and procedures. For example, Prioritized Examination used to be applicable only for invention patent application, but the coverage expands to all types of patent applications as well as reexamination and invalidation cases in the 2017 version.

To overseas applicants, if the invention is conceived in China and the first patent application for the invention is filed with CNIPA and then filed in other countries or the right of foreign companies is aggrieved and safeguard of their right shall rely on the grant of a patent or the results of reexamination and invalidation, they may try requesting Prioritized Examination to accelerate the examination process.

The acceleration of the examination process also requires the applicant's full support and cooperation, such as not making voluntary amendments to the examination basis through any methods after the request for Prioritized Examination is approved, responding to official actions/notifications within the prescribed time limit, and etc. If any of the conditions under which Prioritized Examination shall be ceased is found, the cases will be returned back to general procedure.

<http://afdip.com/index.php?ac=article&at=read&did=3051>