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Administrative Measures on List of Serious Violators in the Patent Field for Joint Punishment (Trial) Issued

The National Intellectual Property Administration of China (CNIPA) released the Administrative Measures Concerning the List of Serious Violators in the Patent Field for Joint Punishment (trial) (shortened as the Administrative Measures) to blacklist individuals and organizations that severely violate patent-related laws and regulations. The names of the blacklisted will be published online. They will face various punishments.

The Administrative Measures include 27 articles in 5 chapters. It is scheduled to take effect on Dec 1, comes in response to a memorandum of understanding signed by 38 government departments in November 2018.

<http://english.ipraction.gov.cn/article/News/201910/20191000230984.shtml>

Regulations on Trademark Application and Registration to Come into Force from December 1

On October 17, the State Administration for Market Regulation (SAMR) holds a press conference, centering around the theme of "broadening the market access and optimizing the business environment". It was learned at the press conference that the Regulations on Trademark Application and Registration (thereinafter shorted as "Regulations") had been released by SAMR as the 17th decree and will take into force from December 1.

Qin Yizhi, Deputy Head of SAMR indicated that SAMR and CNIPA will take into

consideration both the execution of Trademark Law and Regulations to continuously push forward the reform of trademark registration facilitation and to crack down on various illegal acts disrupting the order of trademark administration, in a bid to create a market environment favorable to fair competition and good faith.

As was learned, the Standing Committee of National People's Congress approved the decision to revise the Trademark Law and will come into force from November 1 this year. In order to put in place the regulations of higher-level laws, the Regulations released this time include 19 articles and intend to regulate the acts of trademark application and registration in four aspects.

<http://english.ipraction.gov.cn/article/News/201910/20191000230769.shtml>

China Drives Overall Growth in Demand for Intellectual Property

Global patent applications in 2018 saw a ninth straight yearly increase, with China driving the overall growth in demand for intellectual property (IP) rights, the World Intellectual Property Organization (WIPO) said on Oct 16.

"Asia continues to outpace other regions in filing activity for patents, trademarks, industrial designs and other intellectual property rights that are at the center of the global economy," said WIPO Director General Francis Gurry.

"China alone accounted for almost half of all the world's patent filings, with India also registering impressive increases. Asia has become a global hub for innovation," he added. According to WIPO's annual World

Intellectual Property Indicators report, innovators across the globe filed 3.3 million patent applications in 2018, up 5.2 percent for a ninth straight yearly increase, while global trademark filing activity rose to 14.3 million and that for industrial designs reached 1.3 million.

China's National Intellectual Property Administration (CNIPA) received the highest number of patent applications in 2018, a record 1.54 million applications that amounts to 46.4 percent of the global total and is similar in magnitude to the combined total of the offices ranked two through 11, the report said.

In addition, China's relevant office received 5,760 plant variety applications in 2018, up 29 percent on 2017 and accounting for over a quarter of the plant variety applications filed worldwide.

Meanwhile, the US maintained its primacy in patent applications filed in export markets, said the report.

<http://english.ipraction.gov.cn/article/News/201910/20191000230398.shtml>

Trademark Reform Improving Business Environment

A new round of trademark registration reform focused on improving quality and efficiency is having a positive impact on the country's business environment, according to a senior official from the National Intellectual Property Administration.

At present, the average time it takes to register a trademark has been reduced to five months in China, putting the country at the forefront of the world. Public services around trademarks are more efficient and convenient than ever before,

The time it takes to file a trademark is expected to be further shortened, and the construction of a modern trademark registration system will be accelerated, according to the trademark office's work plan.

Du Hongyu, an official from the Trademark Office at NIPA, said at a recent meeting in Shanghai that the trademark office has stepped up its work in the front-end process, and cracked down on malicious registrations.

In 2018 alone, some 100,000 abnormal trademark applications were rejected.

In the first nine months of this year, more than 32,000 abnormal applications for trademark registrations were rejected, government data show. With the trademark reform, enterprises' awareness of trademark protection has significantly improved.

According to NIPA, during the nine-month period, the number of trademark applications in China reached 5.7 million, and the cumulative number of effective registered trademarks reached 24.16 million. It means there is one registered trademark for every five market entities, Du said.

Meanwhile, the number of trademark applications from foreign enterprises in China reached 193,000, an increase of 12.5 percent year-on-year.

<http://english.ipraction.gov.cn/article/News/201910/20191000230910.shtml>

Regulation Targets E-Commerce Disputes

A new regulation targeting patent disputes in the e-commerce sector took effect in early September in Beijing, a city home to major online shopping portals in China, including JD, Gome and Dangdang.

The move is aimed at preventing infringements and accelerating the process of dealing with disputes, according to the Beijing Intellectual Property Office. Local enforcement officials said the rollout will enable them to reduce the period of settling online patent disputes from three months to 45 days.

<http://english.cnipa.gov.cn/news/iprspecial/1142535.htm>

SUPPLEMENT ISSUE

Fischertechnik Prevails in Copyright Case though Established Models Fail Work Test

Shanghai IP Court recently made a final ruling on a copyright infringement and unfair competition case between the Germany- based Fischertechnik GmbH Company and Shanghai Dongfang Training Aid Company/Shanghai Yaxun Intelligent Robot Company, ordering the two defendants to cease infringing copyright of Fischertechnik's figure works and 30 model works. In parallel, the Court also awarded 500,000 yuan in damages, the maximum amount of statutory damages under the Chinese Copyright Law.

The Fischertechnik Model which contains various kinds of components was launched to the market in January 2004 by Fischertechnik GmbH, one of the members of Fischer Group. Fischertechnik GmbH held that the established 30 drawings of static models and 102 components and assemble steps in installation manual can be deemed as sketches protected by the Chinese Copyright Law, while the established 30 static models can be deemed as three-dimensional works.

Fischertechnik GmbH found that the creative model- a combination of structural and mechanical principle produced by the two defendants was an utter imitation of Fischertechnik GmbH's model, violating its authorship right, reproduction right and publication right. Fischertechnik then sought an injunction and damages of one million yuan.

The two defendants argued that drawings of the static models, components and assembly steps of Fischertechnik's model were limited in expression, which cannot be protected by the law. The 30 established static models were just intermediate processes, but not three-dimensional works. So no infringement was constituted.

The Court of first-instance held that the drawings of the static models, components and assemble steps can be deemed as figure work, while the static model cannot be regarded as work. Consequently the Court ordered an injunction and 160,000 yuan in damages.

The disgruntled Fischertechnik GmbH then brought the case to Shanghai IP Court.

"There are two controversies in the case. The first is whether the established static model deemed as model work. The second is whether the products in question distributed by the two defendants infringed the copyright of 30 model works," said the presiding judge Shang Jiangang. The Court of first instance held that it cannot be deemed as work because the three- dimensional model has not come into shape. In this case, the three- dimensional shape can be deemed as model work, but not art work or three-dimensional work. Although the two defendants did not copy the model works directly, they used the copyright in producing and distribution of products in question. In this regard, they violate the copyright of the right holder. In this connection, the IP Court made the above final decision.

<http://english.cnipa.gov.cn/docs/2019-10/20191016090657779177.pdf>

Some of Tesla's Denied TM Registrations Resuscitated by Beijing High

Tesla, a renowned American electric vehicle brand, sought trademark registration of its namesake trademark on goods including batteries, and was denied for both TESLA and Tesla with figure were squatted.

Tesla Motors then engaged in an all-out operation for recourse of right. At the end of September this year, Beijing High People's Court supported some of Tesla's claims in its final judgment, revoking the first- instance decision and the reexamination decision of rejecting the registration application of No. 17635965 TESLA trademark (trademark in dispute) made by the Trademark Review and Adjudication Board (TRAB) of the former State Administration for Industry and Commerce (SAIC).

The trademark in dispute was filed for registration by Tesla to SAIC's Trademark Office (TMO) on August 11, 2015, and would be approved to be used on Class 9 goods including battery chargers, batteries, accumulators, transformers and distribution boxes.

TMO rejected the registration application of the trademark in dispute on the ground that No. 17635965 Tesla trademark (trademark in dispute), used on battery chargers, batteries and accumulators and No. 11485034 Tesla trademark (No.1 cited trademark), No. 4767161 TESLA trademark (No.2 cited trademark), No.11899344 TESLA trademark (No.3 cited trademark), No.G888438 Tesla and its figure (No.4 cited trademark) have constituted similarity on similar goods.

The disgruntled Tesla lodged a request to the TRAB for review. On June 28, 2017, TRAB said no as well, rejecting the registration application of the trademark in dispute.

Not ready to call it a day, Tesla sought justice at Beijing IP Court.

After hearing, Beijing IP Court held that the trademark in dispute and the cited trademarks constituted similarity on similar goods. The evidence Tesla had provided could not prove that the trademark in dispute and the company had established a unique association and would not confuse relevant public. Accordingly, the Court rebuffed Tesla's request in its first-instance decision.

Tesla then appealed to Beijing High People's Court.

Beijing High held that when being used on battery chargers, batteries and accumulators, the trademark in dispute and four cited trademarks do not constitute similarity on similar goods. But on all other designated goods, the trademark in dispute is found having constituted similarity on similar goods with No.2 cited trademark, No.3 cited trademark, No.4 cited trademark. The Court then revoked the first- instance judgment and the reexamination decision.

<http://english.cnipa.gov.cn/docs/2019-10/20191023102503847197.pdf>