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Client Satisfaction Survey 2019-2020

In line with our commitment to continuous improvement, we are looking to examine our performance in the past year. We would be grateful if you could click

<https://www.surveymonkey.com/r/MJTMD76>

to respond to our online questionnaire.

It should take about 10 minutes of your time to complete. This client survey will run from now until June 30.

By participating in this survey you will be making an important contribution helping us to improve and to serve you better.

Thank you very much!

AFD China Ranked Again in 2020 IAM Patent 1000

We are delighted to share that AFD China Intellectual Property was once again ranked as a leading patent prosecution firm in the 2020 edition of the IAM Patent 1000.

AFD was recommended because of our “efficient, clear, cost-sensitive and responsive” services. Our president Mrs. Xia Zheng was recommended as a leading practitioner for being “very reliable, extremely responsible and extraordinarily competent and knowledgeable”.

<http://afdip.com/index.php?ac=article&at=read&did=3642>

SPC Published Several Juridical Interpretations for Public Comment

In June, the Supreme People's Court (SPC) of China published several documents for public comments:

- Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Cases Infringing on Trade Secret Infringements
- Reply on Issues Concerning the Application of Laws Related to Infringement Disputes Concerning Internet Intellectual Property
- Guiding Opinions on Adjudication of IPR Disputes in Cases Involving E-Commerce Platforms

<https://www.chinacourt.org/article/detail/2020/06/id/5289821.shtml>

- Several Provisions on Evidence in Civil Proceedings Relating to Intellectual Property
- Opinions on Increasing Sanctions for Intellectual Property Infringement

<http://www.court.gov.cn/zixun-xiangqing-236421.html>

- Interpretation on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property (III)

http://www.spp.gov.cn/spp/xwfbh/wsfbt/202006/t20200617_465491.shtml

Patent Filings Rebound After Virus Halted Work

From January to April, the number of patent applications on the Chinese mainland was 1.32 million, an increase of 5.7% year-on-year. Wherein, the number of patent applications in February dropped by 33.2% compared with the same period in 2019. But it rebounded quickly in March, with a year-on-year growth of 10.5%. In April, the growth rate accelerated to 15.7%.

An 8.1% increase in patent filings by domestic enterprises was observed in the first four months of 2020. Out of the 65,000 enterprises on the Chinese mainland that applied for invention patents, about 29,000 are in high-tech industries, accounting for 44.6%.

The number of patent filings by domestic pharmaceutical and medical enterprises grew faster still. Around 9,000 invention patents were filed between January and April, up 8.4% year-on-year and 9% points higher than the overall growth rate.

The new-generation information technology sector was also a driving force behind the growth. Its proportion to the total domestic filings of invention patents increased by 1.8% points during those four months, compared with the same period of 2019.

Telecommunication giant Huawei and internet company Tencent reported a 35.2% and 178.9% surge in invention patent applications, respectively.

<http://english.ipraction.gov.cn/article/ns/202006/313753.html>

Financing Via Pledging IPs Booms in China in First Quarter

In the first quarter of 2020, patent and trademark pledge financing grossed 33.7 billion yuan, up 15.5%, and the number of pledge items reached 1,633, up 13.8%, revealed at a press conference of China National Intellectual Property Administration

(CNIPA), summarizing tremendous growth in both number of projects and value of loans during the period mostly hit by the coronavirus pandemic.

Plenty of more mature patterns of IP pledge financing has been explored and the efficiency of the transfer and use of IP has been enhanced year by year. According to the statistics released by CNIPA, in 2019, patent transfer, licensing and pledge are done 307,000 times, up 21.3%; the total number of patent and trademark pledge financing logged at 151.5 billion yuan, up 23.8%; the transaction volume of IP-related technology contracts amounted to 928.69 billion yuan, up 137.7%.

<http://english.cnipa.gov.cn/news/officialinformation/1149566.htm>

EU Businesses Recognize Marked Improvement in IP Legislation and Enforcement in China

On June 10, the European Union (EU) Chamber of Commerce in China, in cooperation with Roland Berger, released its European Business in China Business Confidence Survey 2020.

The report reveals that IP protection has long been among major concerns for European companies operating in China or looking to enter the market. When it comes to the impact of IPR on R&D, two-thirds of respondents rate the effectiveness of China's IP protection laws and regulations as either "excellent" or "adequate".

Statistics showed that China has seen marked improvement in both IP legislation and enforcement, which is the highest rate of positive sentiment since 2012.

The survey inquired 1,308 eligible entities, with 626 respondents completing the survey, and achieved a response rate of 47.9%.

<http://english.cnipa.gov.cn/news/iprspecial/1149646.htm>

SUPPLEMENTARY ISSUE

A Brief on SPC's Drafted Provisions on Several Issues Concerning the Hearing of Administrative Cases on the Granting of Patent Rights (I)

The Provisions is about law application in administrative lawsuits against patent validity issues, i.e. those brought by a patent applicant against a decision on reexamination or by a patentee/petitioner against a decision on invalidation declaration.

The provisions in the current Draft assemble unsettled issues observed in recent years, such as assessment of inventive step, lack of support, insufficient disclosure, post-filing experimental data, design examination, etc. The Draft provides additional explanations or guidance to the application of patent law in administrative lawsuits to help unify judicial standards and standardize judicial acts.

On the procedural side, the Draft sets forth treatments to violations of statutory procedures, manners of sentencing, rules of evidence, etc.

- Among them, Article 24 clarifies that the petitioner who is entitled to request to declare a design patent invalid should not be limited to a prior legal right owner or interested party, resolving the misunderstanding occurred in current practice.
- In addition, it is worth noting that Article 28, which is intended to curtail the working flow, specifies that if the court finds that the reasons to invalidate the claims in the decision at issue are untenable, it shall revoke or partially revoke the decision without requesting the CNIPA to make a new invalidation on the claim(s).

The Draft also reflects China's determination to continuously improve the environment of patent protection. For example, Article 5 provides the legal consequence if a patent applicant or patentee violates the good-faith principle by falsifying or fabricating the technical contents in a patent application. This will be conducive to curbing abnormal applications and improving the quality of patents.

It is noted that the Provisions are scheduled to be formally introduced in August 2020.

Full text of the Draft in Chinese can be found at

<http://www.court.gov.cn/zixun-xiangqing-227631.html>

Court Supports FAULHABER by Revoking Eponymous TM Squatted by Ex-business Partner

Recently, progress has been made in the dispute between the German company DR.FRITZ FAULHABER GMBH&CO.KG (FAULHABER) and ASIMEN TECHNOLOGY (HK) CO., LIMITED (ASIMEN). Beijing High People's Court upheld FAULHABER's claim and held that the No. 10791093 "FAULHABER" trademark (the trademark in dispute) registered by ASIMEN Company and the No. G735551 "Faulhaber" trademark and No. G1032589 "FAULHABER & Figure" trademark " (the reference marks) constitute similar trademarks used on similar goods, rejecting the decision of upholding the registration of the trademark in dispute made by the Trademark Review and Adjudication Board (TRAB) under the former State Administration of Industry and Commerce.

The trademark in dispute was submitted for registration by ASIMEN Company on April 18, 2012, certified to be used on Class 7 goods such as electronic industrial equipment and electrostatic industrial equipment on July 28, 2015, with the exclusive right valid from June 28, 2013 to June 27, 2023. FAULHABER lodged an invalidation request of the trademark in dispute on September 18, 2015, asserting that the trademark in dispute is similar with its previously registered reference trademark while being used on similar goods, and the registration of the trademark in dispute by ASIMEN constitutes the situation squatting the trademark that has been used and has a certain influence by improper means provided in Article 32 of the Chinese Trademark Law; in addition, there was a business relationship between ASIMEN and FAULHABER. Therefore, its application for registration of the trademark in dispute violates Article 15 of the Chinese Trademark Law.

On May 24, 2016, the former TRAB upheld the registration of the trademark in dispute, holding that the trademark in dispute and the reference trademarks are not similar marks used on similar goods. FAULHABER then brought the case to Beijing IP Court. The IP Court later held the goods on which the trademark certified to be used belong to an entire industrial machine while the goods on which the reference mark certified to be used are machine parts. These marks differ greatly in function, use, production department, sales channel, consumption target and the relevant public generally do not think that there is a specific association which is easy to cause confusion, so the trademark in dispute and the reference trademarks are not similar marks used on similar goods; the goods sold in China by FAULHABER before the registration date of the trademark in dispute are not the same or similar goods as the goods on which the trademark in dispute certified to be used, so the registration of the trademark in dispute does not violate Articles 32 and 15 of the Chinese Trademark Law. In this connection, the trial Court rejected FAULHABER's claims on November 26, 2018.

FAULHABER refused to buy the first- instance judgment and then appealed to Beijing High People's Court. Beijing High held that the goods on which the trademark in dispute certified to be used are the same or have certain association with the goods on which the reference trademarks are certified to be used in terms of function, use, production department. Meanwhile, taking into account the similarity of the trademark in dispute and the reference trademarks and that there is a business relationship between FAULHABER and ASIMEN before the registration of the trademark in dispute, the subjective intention of registering the trademark in dispute cannot be regarded as justified. If the trademark in dispute and the reference trademarks are allowed to co-exist in the marketplace, the relevant public may easily confuse the source of the goods, so these marks constituted similar trademarks used on similar goods. In this connection, Beijing High revoked the first- instance judgment and the original TRAB decision.

<http://english.ipraction.gov.cn/article/tc/202006/315077.html>

Beijing High Awards VOLVO Well-known Mark, Upending Free Rider

VOLVO is a well-known automobile brand from Sweden. After finding a Shenzhen-based telecom company's VOVO trademark similar to its own, the Swedish company waged a nullity war.

According to a recent decision made by Beijing High People's Court, Shenzhen Lingjuli Communication Technology Company's No.10443545 VOVO trademark (the trademark in dispute) is found similar with VOLVO's No.1981782 VOLVO, No.5102989 VOLVO and its figure (the cited trademarks) when used on the same or similar products. In this connection, the Court rejected Lingjuli's appeal, and upheld the decision invalidating the registration of the trademark in dispute made by the Trademark Review and Adjudication Board (TRAB) under former State Administration of Industry and Commerce.

According to files, Lingjuli filed the application for registration of the trademark in dispute on January 19, 2012, requesting certified to be used on Class 9 products including notebooks and other products.

On June 2, 2016, VOLVO lodged an invalidation request to the former TRAB asserting that the trademark in dispute is similar with the cited trademarks while being used on the same or similar products. On December 30, 2016, TRAB nullified the trademark in dispute.

Lingjuli then brought the case to Beijing IP Court, arguing that there is no similarity between the contending marks for differences in character combination and pronunciation. In addition, the cited trademarks have not been used actually by VOLVO on certified products, therefore the registration of the trademark in dispute would not cause confusion among the relevant public.

Beijing IP Court held that there exist significant differences between the trademark in dispute and the cited trademarks in overall visual effects, so similarity was not constituted. In parallel, the evidence showed that although VOLVO had enjoyed high reputation on automobiles, VOLVO had not yet used the cited trademarks on certified products. So the relevant public would distinguish between them because they had already known the VOLVO mark. In this connection, the Court revoked the decision made by the TRAB, and ordered it to make a de novo decision.

The disgruntled VOLVO then appealed to Beijing High People's Court. After hearing, the appellate court held that the trademark in dispute and the cited trademarks only differ by one measly letter, while they also are similar in character combination and pronunciation. So the similarity was constituted under the general examination standard. The court of the first instance ruled that VOLVO mark enjoyed high reputation on automobile products. Conversely, the IP Court held the relevant public may distinguish between the trademark in dispute and the cited trademarks. This is the wrong application of the established examination rules and shall be rectified. In this connection, Beijing High made the decision in favor of VOLVO.

<http://english.ipraction.gov.cn/article/tc/202006/313747.html>

Beijing IP Court Denies Infringement Claims of RIMOWA in Suitcase Decoration Dispute

Beijing IP Court made a final judgment on a suitcase decoration dispute between RIMOWA GmbH, a Germany-based company, and a person surnamed Duan, denying all of claims of RIMOWA.

Kofferfabrik Paul Morszeck, the predecessor company of RIMOWA specialized in manufacturing suitcases, was established in Cologne, Germany in 1898 and changed its name to RIMOWA in 1941, manufacturing suitcases designed with grooved stripes and a combination of five unique decoration design elements including cornerite, metal strip, rivet and locked groove.

In 2014, RIMOWA found that the suitcases sold by Duan, a person from China, copied its products in overall silver appearance and multiple design details. RIMOWA sued at Beijing Dongcheng District People's Court on the grounds that Duan infringed its unique decoration right and breached unfair competition rules, requesting the court to order Duan to stop selling the alleged infringing products, publish a statement and remove ill effects and indemnify 150,000 yuan in damages and 50,000 yuan in reasonable costs.

Duan argued that the suitcases manufactured by RIMOWA do not belong to well-known goods and its elevated grooves design is not unique. The evidence RIMOWA provided cannot prove that its suitcases are famous in China and familiar to the relevant public. In addition, RIMOWA's suitcases cannot play a role in distinguishing the source of goods. Therefore, the suitcases sold by her cannot cause confusion among the relevant public.

Dongcheng Court held that the decoration of both RIMOWA's and Duan's suitcases' are comprised of the five design elements of the elevated-grooves design and there are some similar features. In addition, RIMOWA's suitcases are well-known in China and familiar to the relevant public, belonging to the famous goods provided in the Chinese Anti-Unfair Competition Law. There exists competition between RIMOWA and Duan. Accordingly, Dongcheng Court made a first-instance judgment, ordering an injunction, 70,000 yuan in damages and reasonable costs.

Duan then brought the case to Beijing IP Court.

After hearing, Beijing IP Court held that the relevant public will not relate the decoration of suitcases with certain product providers. On top of that, it cannot be determined that Duan sold the alleged suitcases in bad faith nor be proved that the act of Duan constituted unfair competition. Besides, the evidence cannot prove the suitcases manufactured by RIMOWA are well-known among the relevant public. In the connection, Beijing IP Court revoked the first-instance judgement and denied all of claims of RIMOWA.

<http://english.ipraction.gov.cn/article/tc/202006/313355.html>