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Updates on the Coming Amendments to the Patent Law

The draft amendment to the Patent Law of China was approved at a State Council executive meeting this month, presided over by Premier Li Keqiang, and will be submitted to the top legislature - the Standing Committee of the National People's Congress - to become law.

The draft aims to strengthen the crackdown on intellectual property rights (IPR) infringement by substantially raising compensation for victims, and fines for violators, clarifying the responsibilities for online service providers.

In the meantime, inventors and designers will receive a reasonable share of profits brought by patents they made when serving employers.

For example, the draft raises the fine range for violators from a minimum of 100,000 yuan (\$14,490) to 5 million yuan when the loss to patent holders, and the benefits gained by violators, cannot be determined. The current fines range from 10,000 yuan to 1 million yuan.

In many cases of IPR infringement in China, the average compensation is usually around several hundred thousand yuan, and it was rare to see 1 million yuan awarded in compensation, according to figures by the Supreme People's Court.

This is the fourth amendment to China's patent law since 1984, with the latest revision in 2008. In March, Shen Changyu, head of the National IP Administration (CNIPA), said the amendment would be accelerated this year.

<http://english.cnipa.gov.cn/news/iprspecial/1134491.htm>

Supreme Court OK's Emergency Orders on IPRs

The Supreme People's Court issued a judicial explanation on Dec. 13 to help courts more promptly stop infringements upon intellectual property rights. The document aims to clarify when IP owners can apply for quick court orders to stop infringements without a lawsuit or before a lawsuit is closed. An immediate court order can apply to such "emergencies" in cases when rightful owners' confidential business information is about to be illegally published or one's privacy rights are about to be violated and, without an immediate court order to stop the infringement, damage will be caused.

<http://english.cnipa.gov.cn/news/officialinformation/1134684.htm>

Sanctions Targeted Serious Breach of Trust in Patent Field

The National Development and Reform Commission (NDRC), the country's top economic planner, along with 37 other government agencies, issued a joint memorandum on penalties for serious breaches of intellectual property rights (IPR).

The release of the memorandum, one of the most detailed documents on IPR protection issued by China, signals a further step by China to strengthen IPR protection.

The penalties include restricting capital support from the government, tightening examination of government fund applications or reducing the scale of support, as well as limiting subsidies and social security funds to companies that have breached IPR.

Serious breaches include repeated infringement of patents or applying for patents in an "improper" way. Other outlawed practices include providing false documents and patent attorneys registering certificates in patent agencies in exchange for dividends without actually doing the work.

The memorandum assigned specific tasks to different government agencies. For example, the People's Bank of China, the central bank, has been told to include bad IPR-related records of entities to its financial database and online credit system.

The memorandum also set a short deadline for the implementation of the joint crackdown efforts.

<http://english.ipraction.gov.cn/article/News/201812/20181200206918.shtml>

Rising Number of Foreign Corporations Seek Judicial IPR Protection in China

According to the newly released "China IPR Indexes Report 2018", judicial protection for intellectual property rights was increasingly sought in China by foreign entities, as the IP protection environment significantly progressed over the past decade; fairer outcomes were delivered to foreign corporations as they may be awarded more in compensation and have a better chance at winning cases in China.

The Report shows that the amount awarded and percentage of lawsuits won have both risen in trademark and patent suits. The percentage of cases won of trademark suits in 2018 reached 83.3%. In trademark suits in 2018, 91.7% of claimants hired lawyers. The average award was 26.4% of amount of that claimants requested. There were also some significant cases with big-amount awards.

More foreign corporations are resolving to tackle their IPR complaints using legal rather than administrative means.

<http://english.ipraction.gov.cn/article/News/201812/20181200207832.shtml>

China's Core AI Industry to Exceed \$145b by 2030

The value of China's core Artificial Intelligence (AI) industries could exceed 1 trillion yuan (\$145.47 billion) by 2030, with that of AI-enabled industries more than 10 trillion yuan, a latest report by Bloomberg Intelligence said.

Titled "China's great tech leap forward", the report said that China's push to commercialize AI technologies, supported by the rollout of the world's biggest 5G network, could position the country as a global leader for technology and innovation.

AI-related industries may exceed 6 percent of China's GDP by 2030, according to the report.

Bloomberg analysts also said in the report that the country's abundance of data may fuel the acceleration of the industry. China's breakneck pace of consumer-lifestyle digitization potentially gives researchers unique access to Chinese-language data generated by its 1.4 billion people as they go about their daily activities both online and offline.

According to Tsinghua University, private funding for Chinese AI-related companies in 2017 totaled \$27.7 billion, equivalent to 70 percent of global investments in the industry.

Data showed China's cumulative venture-capital investments in AI startups had already caught up with the United States by 2016.

Ling, also the lead analyst of the report, said the top-down support is an important factor apart from the multi-faceted user data and the funding available in China to the industry's fast development.

He added that China's potential dominance in AI by 2030 may be led by developments in transportation, corporate services, health care, and finance.

<http://english.ipraction.gov.cn/article/News/201812/20181200207317.shtml>

SUPPLEMENT ISSUE

CNIPA: Court Rejected Auchan Trademark Application of Trademark Agency

Many shoppers are familiar with the France-based shop Auchan. What is little known is that this international retail giant has been entangled in a trademark dispute with a local trademark agency over the trademark "欧尚" (Note: official Chinese translation of Auchan).

The other protagonist, Caiyuan Trademark Agency, located in Tai'an and established on November 10, 2003, Shandong, is a bona fide firm representing clients in trademark matters. On June 17, 2011, Caiyuan filed for the registration of the trademark in question with the Trademark Office (TMO), requesting certified to be used on Class 29 goods including processed betel nut, soy milk (milk substitute), vegetable salad, jelly, processed melon seeds, dried edible fungi and tofu products.

On May 20, 2012, the TMO preliminarily approved and published the trademark in question.

Within the statutory opposition period, Auchan lodged an opposition request to the TMO on August 20, 2012, claiming that the trademark in question and its previously registered trademark "欧尚" constituted similar trademarks and Caiyuan Office maliciously squatted its prior trademark which carries certain reputation, and infringed its namesake trade name.

After examination, the TMO made an opposition ruling on October 22, 2013, holding that the reason for opposition proposed by Auchan is groundless and approved registration of the trademark in question. The disgruntled Auchan then sought review at the Trademark Review and Adjudication Board (TRAB) on November 15 of the year instant.

On January 30, 2015, the TRAB made a reexamination decision, holding that Caiyuan is a trademark agency, and the designated goods on which the trademark in question is used are beyond the scope of its trademark agency services, a clear violation of "the trademark agency shall not apply for registration of other trademarks except for trademark registration for its agency services", prescribed by Article 19(4) of the Trademark Law. In this connection, the TRAB rejected the registration of the trademark in question.

Caiyuan then filed a lawsuit to Beijing Intellectual Property Court, claiming that the clause is a newly-added provision in the current trademark law passed on August 30, 2013. According to the principle of non- retroactivity, this provision shall not bind the trademark in question.

After hearing, Beijing IP Court held that the trial of the relevant right to sue and the party qualification should be applied by the now-obsolete trademark law after second amendment. The trial of the other issues in the case, however, should be tried by the current legislation, meaning that Caiyuan's act of registering trademark in its own name should be subject to the restrictions provided in Article 19, paragraph 4 of the current Trademark Law of China. As a trademark agency, Caiyuan did not abide by laws and administrative regulations, and did not maliciously squat other people's trademarks by taking advantage of the status of another party's trademark, a knowledge gained through the very line of work it engages in. Such act violated the trademark administration order of the nation while failing the principle of good faith and clearly violating the abovementioned provision. The trademark in question shall not be approved for registration. On December 27, 2017, Beijing IP Court rejected Caiyuan's claim.

Caiyuan then appealed to Beijing High People's Court. The Court affirmed the original judgment.

<http://english.cnipa.gov.cn/docs/2018-12/20181205085234203181.pdf>

CNIPA: 'SWISSGEAR' Trademark Rejected by Beijing Court in Final Decision

Wenger S.A.'s filed an application for registration of "SWISSGEAR" trademark registration in China, in September 2007, to be used on Class 25 products including clothes and wallet, then was rejected successively by the Trademark Office (TMO) and Trademark Review and Adjudication Board (TRAB), both under the former State Administration for Industry and Commerce. The company then launched an administrative lawsuit to court.

Recently, Beijing High People's Court rejected the appeal from Wenger S.A., upholding the disapproval ruling of No.6272275 trademark "SWISSGEAR" (trademark in dispute) registration.

Within the period of statutory objection, Fuzhou Cross- Ocean Trading Co., LTD lodged an opposition application. In June, 2013, TMO made a decision that the trademark in dispute was similar to the country name of SWISS and was unfit to be used as trademark. Accordingly, TMO rejected the registration of the trademark in dispute. The disgruntled Wenger pled the TRAB for reexamination and submitted the evidences including "SWISSGEAR BY WENGER" trademark registration certificate in Switzerland and a notarial certificate on July, 11, 2013.

TRAB held that "SWISS" in the trademark in dispute was similar to the country name of Switzerland and rejected the registration. In addition, the mere registration of "SWISSGEAR BY WENGER" trademark in Switzerland did not mean the Swiss government had agreed the registration of the trademark in dispute. As a result, TRAB made a disapproval ruling of the registration of the trademark in dispute. Wenger S.A. then brought the case to the IP court.

Beijing IP court held that the trademark in dispute constituted the similarity to the name of Switzerland and the registration of "SWISSGEAR BY WENGER" trademark in Switzerland could not be recognized as Switzerland government's permission of the registration in China. On this ground, Beijing IP court dismissed the appeal in the first instance. Wenger S.A then appealed to Beijing High People's Court.

After hearing, Beijing High People's Court held that the registration of the "SWISSGEAR" trademark in Switzerland was unable to prove the permission of Switzerland government. Without the direct evidence of the Switzerland government's agreement to its registration in China, the trademark in dispute could not be used as a trademark.

Accordingly, Beijing High denied its final ruling against Wenger S.A. and upheld the first-instance decision.

<http://english.cnipa.gov.cn/docs/2018-12/20181207091841530223.pdf>