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The CNIPA Releases Top Ten Patent Reexamination and Invalidation Cases of 2022

On April 25, 2023, the China National Intellectual Property Administration (CNIPA) released the top ten patent reexamination and invalidation cases of 2022, including eight invention patent invalidation cases, one utility model patent invalidation case, and one design patent invalidation case.

The cases, which involve artificial intelligence, standard essential patents, gene engineering drugs, traditional Chinese medicine compound preparations, new energy, etc., provide in-depth interpretations of typical and cutting-edge legal issues, such as the evaluation standards for inventive step in new fields and new industries, the application of "secrecy review" clauses, the judgment on conflicts between design patents and trademark rights, and the determination of priority rights.

The original text of the notification may be found at the following link:

https://www.cnipa.gov.cn/art/2023/4/26/art_3207_184728.html

SAIP Designates CNIPA as PCT ISA/IPEA

Under a letter of intent on Patent Cooperation Treaty (PCT) cooperation between the CNIPA and the Saudi Authority for Intellectual Property (SAIP), since May 1, 2023, the CNIPA has become the PCT International Searching Authority (ISA)/ International Preliminary Examining Authority (IPEA) for international patent applications in English or Arabic (attached with English translation) issued by nationals or residents in the Kingdom of Saudi Arabia, which has been officially affirmed by the World Intellectual Property Organization (WIPO).

Relevant details will be published on the PCT Gazette and relevant PCT legal documents.

http://english.cnipa.gov.cn/art/2023/5/15/art_1340_185075.html

Mercedes Sued Lenovo for Infringing its Three-pointed Star Trademark

Mercedes-Benz Group AG filed a federal trademark lawsuit in the US District Court for the Eastern District of North Carolina last Tuesday against Lenovo Inc., alleging unlicensed usage of the three-pointed star in Lenovo's Legion series of personal computers. Mercedes calls the Legion logo "confusingly similar" to its logo, as both feature a three-pronged star enclosed in a circle. According to

court documents, this is detrimental to Mercedes because the two products travel in the "channels of commerce that overlap," referencing Mercedes' usage licenses with e-sports and gaming companies. Mercedes said it "seeks injunctive and monetary relief for trademark infringement, dilution, and unfair competition."

<http://www.chinaipmagazine.com/en/news-show.asp?id=12745>

IP Services Assist China's Sci-tech Self-reliance Drive: Official

China's intellectual property services have supported the country in moving faster toward greater self-reliance in science and technology, a senior IP official said April 24.

Shen Changyu, head of the CNIPA, said the administration has offered high-efficiency patent acquisition in major scientific research programs and sent IP specialists to enterprises, universities, and institutions in the fields of chips, new energy, and biomedicine.

The administration has intensified efforts in building national fast IP protection centers, providing "one-stop" services for quick IP review, verification, and protection. It established national and local sub-centers across the country to offer guidance to Chinese entities on resolving overseas IP disputes.

Targeting key fields and technological frontiers, the IP administration has built patent information service platforms for 13 industries, including chips and rare earth, Shen added.

According to the latest ranking published by the WIPO, China moved up to 11th place in the 2022 Global Innovation Index. Shen said the remarkable progress was inseparable from strong IP protection.

https://english-ipraction.samr.gov.cn/NEWS/art/2023/art_26912be0b67d4ecd9bd081c914644b17.html

CNIPA Commissioner Meets French Agriculture Minister in Beijing

Shen Changyu, Commissioner of the CNIPA, met visiting Marc Fesneau, Minister of the Ministry of Agriculture and Food Sovereignty of the French Republic in Beijing on April 7.

Shen said that China and France have maintained close cooperation in geographical indication (GI) for a long time. The implementation of the Agreement between China and EU on Protection and Cooperation of GIs and a protocol on agriculture and food GI cooperation between CNIPA, French Ministry of Agriculture and Alimentation and French National Institute of origin and quality (INAO), have offered all-around and effective protection for two countries' high-quality GI products to enter each other's market. China is willing to deepen communication with France in GI, discuss the best practices in GI determination, administration, protection and promotion, expand the breadth and depth of bilateral GI cooperation and boost the trade development of both GI products.

Fesneau appreciated China's efforts in implementing the China-EU GI agreement and the China-France GI protocol. He said intensifying GI cooperation is in line with the common interests of France and China, helping to increase the income of people working in relevant industries and develop the rural economy. France is willing to share its experience and practice in GI legal framework and administration with China and advance the trade development of GI products together.

CNIPA principals responsible for the International Cooperation Department, Department of Treaty and Law and Intellectual Property Protection Department also attended the meeting.

http://english.cnipa.gov.cn/art/2023/4/11/art_1340_184586.html

IPR Disputes Got More Attention from Chinese Courts Last Year, Official Says

Chinese courts focused more on solving intellectual property disputes concerning new technologies and major industries in 2022 as they sought to adhere to the nation's development strategy and promote innovation, an official from China's top court said.

Last year, courts nationwide paid more attention to dealing with IP-related cases involving medicines and seeds, with greater efforts to maintain market order by better handling lawsuits regarding monopolies and unfair competition, according to Tao Kaiyuan, vice-president of the Supreme People's Court (SPC), the country's top court.

Tao discussed the handling of IP-related cases at a news conference on Thursday, noting that the Chinese courts have been working to attach greater importance to handling lawsuits relating to major and emerging industries.

She revealed that courts across the country heard more than 520,000 IP-related disputes last year, with an increase in cases involving technologies.

While requiring courts at all levels to continue improving the quality of their IP-related work, she added that the top court has also coordinated with government departments, including the Ministry of Commerce, the Ministry of Cultural and Tourism and CNIPA, to jointly strengthen IP protection by increasing information sharing.

"We'll actively participate in formulating and amending laws and regulations concerning trademarks and geographical indications to help improve the country's IP legal system," said Lin Guanghai, chief judge of the top court's No 3 Civil Adjudication Tribunal, a division that specializes in handling IP cases.

"We'll also give stronger protection to the legitimate rights and interests of well-known works and characters in the works by strictly abiding by the Trademark Law and the Anti-

Unfair Competition Law, in a bid to maintain the order of trademark registration and the market as well as to reduce the cost of rights protection for IP owners," he said.

In addition, the top court will strengthen efforts to build databases consisting of IP experts and technical investigators to ensure the professionalism of IP-related case handling and promote talent training, he added.

https://english-ipraction.samr.gov.cn/NEWS/art/2023/art_d9e45b4da4634afc99878a8f4d3aad70.html

Qingtian Truck Lodges Counterclaim against its Chinese Rival Pony.ai over Trade Secret Dispute

Chinese self-driving solution provider Qingtian Truck has lodged a counterclaim against its rival Pony.ai over a trade secret dispute, according to an announcement released by the company on Wednesday. Qingtian Truck said in the announcement that Pony.ai's trade secret claim against Qingtian is groundless and Qingtian has filed a lawsuit against Pony.ai's unfair practice. Pony.ai sued Qingtian at the Beijing Intellectual Property Court last July, accusing Pan Zhenhao and Sun Youhan, former employees of Pony.ai who founded Qingtian later, of infringing its trade secret related to the developing, testing and application of autonomous driving technology. Pony.ai sought RMB 60 million from Qingtian for the alleged infringement.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12744>

China's Computer Software Copyright Registrations Increases to 1.835 Million

A total of 1.835 million computer software copyrights were registered across China in 2022, above one million for the fifth consecutive year and making the total number of software registrations in the past decade rising to 10 million, according to the 2022

National Computer Software Copyright Registration Analysis Report published by the Copyright Protection Center of China (CPCC) on Wednesday. The report also pointed out that compared with 2012, the number of annual registered software has increased by 12 times. In addition, in 2022, the annual average growth rate of the registrations of artificial intelligence and big data software in the country increased by more than 50 percent and exceeded 35,000, an increase of 32 times and 45 times respectively compared with the initial registrations of the two types of software.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12743>

China Takes Commanding Lead in EV Charging Patents

Chinese companies have submitted more patent applications related to electric vehicle charging and battery swapping than rivals from any other country, achieving strides in key technologies to make the experience faster and more convenient, according to the news by NIKKEI Aisa. Chinese businesses filed 41,011 patent applications in these areas from 2010 to 2022, Tokyo-based analytics company Patent Result reports. Few Chinese companies ranked high individually. But the sheer number of players in the field meant they together filed roughly 50% more applications than Japanese companies, which came in second with 26,962. Germany followed with 16,340, the U.S. with 14,325, then South Korea with 11,281.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12747>

SUPPLEMENTARY ISSUE

SPC: Infringers still shall Make Compensation after Infringing Seeds are Sterilized

In March 2023, the Intellectual Property Tribunal of the SPC concluded three related cases involving disputes over infringement of plant variety rights. The cases focused on how to determine compensation liability after the infringing seeds were sterilized. The rulings of the three cases affirmed that unauthorized production of propagation materials of authorized varieties constitutes an infringement of others' variety rights, and where after the infringers fulfill their obligation of taking sterilization measures, the variety rights holder demands compensation for losses incurred, such claims should be supported.

The plaintiff in the original trial was the variety rights holder of hybrid corn seeds named "Yufeng 303" and "Zhongke Yu 505". The defendants (multiple individuals in multiple cases), without authorization, bred "Yufeng 303" corn seeds on 207 mu of land and bred "Zhongke Yu 505" corn seeds on 64 mu and 110 mu of land respectively in Liangzhou District, Wuwei City, Gansu Province. Upon the plaintiff's request, the Comprehensive Agricultural Law Enforcement Team of Wuwei City, Gansu Province, sterilized the infringing corn seeds after the corn ears reached maturity. The plaintiff believed that the defendant's behavior infringed its plant variety rights and filed a lawsuit seeking compensation.

The first-instance court held that although the defendants had committed an act of infringement, the infringement had ceased, and the plaintiff failed to provide evidence proving its loss incurred due to the infringement or the profits the defendants had obtained from the infringement; considering that the infringing seeds had already been sterilized and could no longer enter the market as propagation materials, the defendants' infringement did not result in any damage to the plaintiff, and thus the plaintiff's claim for compensation was not supported. Based on the investigation, evidence collection and verification, etc. which had been made, the first-instance court ordered each defendant in the three cases to bear the reasonable costs of CNY 5,000 paid by the plaintiff for preventing the infringement.

The SPC in the second instance determined that the defendants, without authorization, produced corn seeds of the involved varieties for commercial purposes, thereby infringing the plaintiff's variety rights, and thus should bear liabilities for the infringement according to law. Adopting sterilization measures and compensating for damages are both specific manners for assuming infringement liabilities and are not mutually exclusive. Adopting sterilization measures is a specific way to stop the infringement, and it is not only one of the manners for assuming administrative liability, but also one for assuming civil liability. The infringers' adoption of sterilization measures does not preclude their liability to compensate for losses. The defendants' large-scale production of the infringing corn seeds had occupied the market space of the variety rights holder, including the seed and commodity grain market scale that the variety rights holder could have achieved. Although the infringing corn seeds which could be used as propagation materials did not ultimately flow into the seed market due to sterilization, it did not mean that the variety rights holder did not suffer loss due to the reduction of its market share. Although taking sterilization measures against the infringing propagation materials can prevent further damages, it cannot avoid losses from occurring. Therefore, the defendants' infringement has caused losses to the variety rights holder, and thus should bear compensation liabilities. After comprehensively considering the sales prices of the involved varieties, the nature and circumstances of the infringement, and the fact that the infringing seeds had been sterilized, the SPC ordered the defendants to pay the plaintiff CNY 212,000, CNY 69,000, and CNY 115,000, respectively, to compensate for the plaintiff's economic losses and reasonable costs of rights protection.

The rulings of the above three cases clarify the applications of the liability to take sterilization measures and the liability to compensate for losses, and the rules that infringers should assume compensation liability even after the infringing propagation materials are sterilized, thereby protecting the legitimate interests of variety rights holders in accordance with the law and embodying the judicial concept of strengthening the protection of plant variety rights.

Details of the cases may be found at the following link:

<https://ipc.court.gov.cn/zh-cn/news/view-2247.html>

SPC Clarifies that Providing Propagation Materials for Seed Production under Contract and Repurchasing the Seeds does not Constitute a Sales Act that would Lead to Loss of Variety Novelty

In April 2023, the Intellectual Property Tribunal of the SPC concluded the first administrative case regarding confirmation of plant variety rights, clarifying the judgment criteria for loss of novelty of a claimed variety due to sales. The ruling affirmed that where a breeder provides breeding materials for seed production under contract and agreeing to repurchase the seeds, such act does not constitute an act of sale that would lead to loss of variety novelty.

In this case, the appellant held that the respondent's corn variety had lost its novelty since its propagation materials were provided by the respondent to another company for seed production (while the respondent agreed to repurchase the seeds) in 2008, which was more than one year before the respondent applied for variety protection on December 9, 2009. Therefore, the appellant filed an invalidation request against the respondent's plant variety rights with the Plant Variety Reexamination Board. The invalidation decision affirmed the respondent's variety rights. Then, the appellant filed a lawsuit at the Beijing Intellectual Property Court. The first instance dismissed the lawsuit, and then the appellant appealed to the SPC.

The SPC in the second instance held that the existence of an act of sale is a crucial factor in determining whether a variety in respect of which variety rights are applied for meets the novelty requirement. Pursuant to Article 14 of the Regulations on the Protection of New Varieties of Plants, for a new plant variety in respect of which plant variety rights are applied for, acts of sale that lead to the loss of novelty mean that the breeder gives propagation materials to others for transactional purposes while relinquishing his/her own rights to dispose of such materials. Where a breeder provides propagation materials of a variety to others for seed production under contract and it is agreed that the seeds produced will be returned to the breeder, then the breeder essentially retains the right to dispose of such materials, which does not result in loss of variety novelty unless otherwise stipulated by law. Although the entrusted party held and used the propagation materials for a certain period, they had no right to dispose of them or engage in activities contrary to the terms of the production contract. Therefore, the breeder did not relinquish his own rights to dispose of such materials, and his providing propagation materials for seed production under contract and repurchasing the seeds did not constitute sales of propagation materials. The evidence presented by the appellant in this case was insufficient to prove loss of novelty of the variety concerned, and therefore the SPC ruled to reject the appeal and uphold the original ruling.

Through a reasonable interpretation of sales act under law, the SPC in this case has established legal protection for breeders who apply for variety protection after providing propagation materials

for seed production under contract during the research and development process, safeguarding variety rights for innovative breeding achievements and thus effectively stimulating breeding innovation. This case was recently selected into the third batch of people's courts' typical cases of judicial protection of intellectual property rights in seed industry.

Details of the case may be found at the following link:

<https://ipc.court.gov.cn/zh-cn/news/view-2300.html>

Legal Support, Reduced Costs Promised for IPR

While pledging to give stronger legal support to well-known works, Chinese courts are also determined to maintain the order of registered trademarks, so as to reduce the protection costs for IP rights' owners, an official from China's top court said.

"We'll make greater efforts to protect the legitimate rights and interests of names and characters in popular works, so as to improve the quality and effectiveness of IP protection," Lin Guanghai, chief judge of No 3 Civil Adjudication Tribunal, a division that specializes in handling IP cases with the SPC, said on Thursday.

He said that the move is to implement an IP cooperative protection guideline jointly issued by the top court and the CNIPA in February, calling for all courts to strictly abide by the Trademark Law and the Anti-Unfair Competition Law to help innovators reduce their costs in protecting IP rights.

Two days before the judge made the remark, the country's prolific fairytale writer Zheng Yuanjie announced that he will no longer claim the intellectual property rights of the 673 trademarks that he considered have been used without his authorization.

"I'll keep writing, but I'll no longer publish new works, because it's difficult to protect the IP rights," the 68-year-old author said in a "farewell letter" posted on his account on microblogging site Sina Weibo.

He claimed that his characters' names were improperly registered by companies for trademarks, and in the past 21 years, he's only won a few cases.

The letter quickly went viral online, arousing a heated discussion on IP protection among the public. As of press time, a topic with the hashtag "Zheng Yuanjie Farewell Letter" on Weibo had been viewed more than 16.5 million times.

To help reduce the cost of protecting IP rights and improve the efficiency of handling IP-related cases, Beijing courts have taken action.

"We've worked with IP government agencies, industrial associations and professionals since last year to jointly deal with IP disputes through mediation, in a bid to strengthen IP protection and focus on solving complicated problems in this regard," said Kou Fang, president of the Beijing High People's Court.

A total of 56,803 IP-related disputes were successfully resolved last year under the joint mediation working pattern, he added.

Data released on Thursday by the country's top court showed that Chinese courts accepted more than 520,000 IP-related lawsuits last year.

Also last year, courts nationwide took the initiative to serve the country's strategies and promote innovation-driven development, with stronger IP protection given to major sectors and emerging industries, including new technologies, according to Tao Kaiyuan, vice-president of the top court.

https://english-ipraction.samr.gov.cn/NEWS/art/2023/art_f135b8d6ab114fb08b46d9d40e03b4a4.html