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Chinese Court Issues FRAND Determination in Nokia-Oppo Dispute

According to news on December 4, Chongqing No.1 Intermediate People's Court recently made a first-instance judgment on OPPO's lawsuit against Nokia in a dispute over standard essential patent (SEP) royalties. Previously, OPPO requested the Chongqing No.1 Intermediate People's Court to determine the global FRAND rates for the Nokia SEP portfolio, and promised to accept the rates decided by the Chinese court. This is reportedly the first FRAND global rate decision in OPPO-Nokia global patent dispute starting in July 2021, but the details of the trial have not been made public. OPPO said in a statement on its official website “OPPO welcomes the recent judgment by the Chongqing First Intermediate People's Court in the dispute over FRAND royalties for Nokia's standard essential patents. OPPO is willing to comply with and execute the court's decision regarding the global FRAND licensing fees for Nokia's patents, hoping to actively resolve the patent licensing fee dispute with Nokia. OPPO is hoping Nokia can also comply with and execute the Chongqing court’s decision.” Starting from 2021, Nokia and OPPO have filed mutual lawsuits across many countries around the world.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12836>

CNIPA and JPO Finish Report of Comparative Study on AI-Related Inventions

In recent years, there have been rapid technological advances in the area of "AI-related inventions" which have resulted in significant increases in AI-related patent applications. The China National Intellectual Property Administration (CNIPA) and the Japan Patent Office (JPO) have jointly conducted a comparative study on AI-related inventions and finished the related report, with the aim of providing applicants insights into AI-related examination criteria and practices.

The report comprises of two parts, examination rules, regulations and guidelines and study of example cases. The part of examination rules, regulations and guidelines elaborately introduces the two offices' examination criteria on eligible subject matter, novelty, inventive step, enablement requirement/sufficiency of disclosure, claims supported by the description. The part of example case study selects 16 typical cases, comparing and analyzing the two offices' examination processes and outcomes.

http://english.cnipa.gov.cn/art/2023/12/8/art_1340_188934.html

Shen Changyu Holds Talks with UKIPO Chief Executive

Shen Changyu, Commissioner of the CNIPA recently held talks with the visiting Adam Williams, Chief Executive of the Intellectual Property Office of the United Kingdom (UKIPO). The two sides had profound conversations in trademark, artificial intelligence, standard essential patents and other IP issues as well as future cooperation and signed the 2024 work plan for the two offices.

Shen said that the Chinese government has been attaching great importance to IP protection and President Xi Jinping has given important instructions on it for several times. The two offices have maintained good momentum for cooperation. He looked forward to achieving rich and practical results from the cooperation between the two offices, allowing the results to better serve the technology innovation and economic development of the two countries and benefit more IP users.

Williams highly appreciated China's palpable results achieved in IP work, particularly the "China speed" in establishing and improving its legal system and the latest application of artificial intelligence in the IP field. He looked forward to conducting further discussion about the issues of common concern and sharing beneficial practices to each other.

CNIPA principal officials responsible for relevant departments also attended the meeting.

https://english.cnipa.gov.cn/art/2023/11/29/art_1340_188780.html

China IP Protection Sees Increasing Foreign Enterprises Satisfaction Rate

China has seen increasing foreign enterprises satisfaction rate with its IP protection, said Shen Changyu, Head of CNIPA, at a press conference held on November 18. Shen

introduced that up to now, China has established IP cooperation with more than 80 countries, regions and international organizations. China has also launched Patent Prosecution Highway (PPH) pilot programs with 32 countries, including the United States, The United Kingdom, France, Germany and Japan. Meanwhile, more than 4,600 foreign investment and joint ventures were registered with the national Intellectual Property Protection Center and the Rapid Rights Protection Center. Survey shows that foreign enterprises satisfaction rate with China's IPR protection has steadily increased in recent years, reaching 79.11 points last year.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12832>

Shanghai Maichilin Hit with 10 Million Yuan Verdict for Infringing Michelin Trademark

Chinese chain restaurant operator Shanghai XNG Holdings Ltd unit Shanghai Maichilin (“米芝莲” in Cantonese) was hit with a 10 million yuan verdict for trademark infringement of French tyre manufacturing company Michelin (“米其林” in Chinese), the Hubei Higher People's Court ruled last Saturday.

The Hubei Higher People's Court upheld the lower court's decision that Shanghai Maichilin should immediately stop the infringement of the exclusive right of Michelin's trademarks and compensate Michelin 10 million yuan.

Michelin is a French multinational tyre manufacturing company. Since the 1980s, Michelin has successively registered in China the trademarks of "MICHELIN" and "米其林", which were used for wheels, tires, inner tires, as well as for providing goods and services such as hotel and restaurant address information.

The trademarks have then been recognized as well-known trademarks by China's trademark authorities.) Since "MICHELIN" sounds like "Maichilin" in Cantonese, Michelin

successively registered several trademarks of "MICHELIN" and "米芝莲" in China's Hong Kong Special Administrative Region in 1990 and 2009.

Shanghai Maichilin, founded in 2013, used the unauthorized "米芝莲" trademark as its enterprise name and shop signboard and offered franchise services. According to the latest statistics released on its official website, Shanghai Maichilin has opened 500 chain stores in 150 Chinese cities.

Michelin believed that Shanghai Maichilin had violated its exclusive right to use the "米芝莲" trademark and the unauthorized use of the trademark as its brand name constituted unfair competition.

Michelin filed a lawsuit with the Wuhan Intermediate People's Court to stop the infringement and seek compensation for its losses.

Wuhan Intermediate People's Court ruled in the first instance:

Shanghai Maichilin shall immediately stop using the logo of "米芝莲" and "米芝蓮" in its business activities and stop using "米芝莲" as its enterprise name; its changed enterprise name shall contain no same or similar character to "米芝莲", "米其林" or "MICHELIN"; Shanghai Maichilin shall compensate Michelin for economic loss of 10 million yuan and publish a statement in China Intellectual Property News to eliminate the repercussions.

Shanghai Maichilin then appealed the first instance decision to the Hubei Higher People's Court.

Last Thursday, the Hubei Higher People's Court ruled in favor of Michelin by upholding the first instance judgment.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12831>

Meituan's Mobike Patent Survives the Challenge of its Rival Didi Bike-sharing Unit Qingju

A utility model patent of Chinese on-demand services giant Meituan's Mobike has partially survived the challenge of its rival Didi bike-sharing unit Qingju, according to an announcement released by the CNIPA on November 8.

The disputed Mobike patent ZL201721171878.7, entitled "seatpost clip assembly and vehicles", involves the seat height adjustment technology, a very important function for shared bike.

It is reportedly the second time that the Mobike patent has been challenged by Qingju. In April 2019, the CNIPA invalidated the patent, declaring all the patent rights invalid.

Mobike filed an appeal to the Beijing Intellectual Property Court but was rejected by the court.

Mobike then appealed to the Supreme People's Court (SPC), where claim 1 of the patent was declared creative in a determination made in 2021. But the SPC didn't make public further details about its reasoning.

Based on this determination, the SPC remanded the case to CNIPA. CNIPA made its announcement on November 8, declaring part of its patent rights invalid.

Relevant reports suggest that as competition grows increasingly fierce between the two rivals, they have filed several patent infringement lawsuits against each other, involving at least 8 patents. Up to now, most of the patents have been invalidated, with the above disputed patent seeing the most rounds of battles.

<http://www.chinaipmagazine.com/en/news-show.asp?id=12830>

SUPPLEMENTARY ISSUE

AFD China Once Again Recommended as a Leading Firm in Non-Contentions Intellectual Property (Tier 3) by The Legal 500

On November 15, 2023, The Legal 500, a world-renowned guide to law firms, released its Asia Pacific 2024 edition, in which AFD China was once again ranked as a leading firm in Tier 3 for its outstanding performance in non-contentions intellectual property. Xia Zheng, the founder of AFD China, Mingzhao Yang, the president of AFD China, Hong Long, the domestic patent officer of AFD China, and Jingjing Wu, the management officer of Trademark and Legal Department of AFD China, were also specially recognized for their rich experiences and achievements in the relevant fields.

The Legal 500 is committed to providing open, fair, impartial and objective assessment of the strengths of law firms in various practice areas across the world, so as to offer its users reliable information on law firms. The evaluation continuously improves and expands the dimensions of assessment in order to comprehensively evaluate the participating firms. It listens to the voices of corporate clients and professionals in related fields, thereby making the final rankings which fully demonstrate the comprehensive strength of each firm.

Since our participation in the Legal 500's rankings, our firm has been continuously recommended on this list. In recent years, we have focused on the development of our team and talents, resulting in several core management personnel making their debut on the list. These achievements would not have been possible without the continued trust or support from our clients, as well as adherence to management regulations by all of our colleagues. Here we would like to express our deepest gratitude to all clients and colleagues. We are committed to providing high-quality service platforms for our clients and aiding in the protection of intellectual property rights for businesses.

In recent years, digitization and intelligentization have been constantly influencing people's daily lives and every work process. We have also been making continuous efforts to fully understand and utilize relevant technologies, constantly optimizing workflow to improve work efficiency and accuracy, and continuously enhancing service quality. We aim to enable clients to enjoy the dividends brought by technological changes and societal progress. We also hope to achieve mutual benefits and win-win outcomes with our clients during this process, while continuously growing and developing together.

As participants in the intellectual property industry, we hope to contribute our efforts in building China into an innovative nation.

The Supreme Court Instructs that the Deadline for Accepting the Filing of a Lawsuit can be Calculated from the Date When Administrative Litigation was Initiated by the Same Entity Prior to the Change of its Entity Name

In November 2023, the Intellectual Property Court of the SPC issued a ruling on an administrative dispute regarding the rejection of Corporation M's invention patent application, clarifying that filing an administrative lawsuit using a pre-change entity name in special circumstances is considered an action by the same entity with a changed name. Since the administrative lawsuit was filed

within the statute of limitations, the court instructed the first-instance court to accept the case for trial.

Corporation E, a US company, officially changed its name to Corporation M on July 1, 2016. This case involves invention patent application No. 201410489310.4, titled "Chromium-Free Acid Solution for Plastic Surface." When the CNIPA issued the reexamination decision on July 16, 2019 (hereinafter referred to as the sued decision), Corporation E had not applied for a change of bibliographic data although it had already changed its name. As a result, the patent applicant and the petitioner for reexamination recorded in the sued decision were still Corporation E. On November 26, 2019, Chinese lawyers appointed by Corporation E filed an administrative lawsuit with the Beijing Intellectual Property Court in the name of Corporation E.

The first-instance court determined that the administrative lawsuit filed by the lawyers on November 26, 2019 in the name of Corporation E which did not exist in reality did not comply with legal provisions. The court considered February 26, 2020, i.e. the filing date of the administrative lawsuit filed in the name of Corporation M, as the initial filing date. However, by that time, the statutory time limit for filing a lawsuit had already expired. Therefore, the court rejected the case filed by Corporation M.

The SPC, in its second-instance ruling, held that Corporation M and Corporation E were the same entity, with only a change in name. Although Corporation M did not record the change of its name with the CNIPA at the administrative examination stage, resulting in inconsistencies of names between the plaintiff and the reexamination petitioner and patent applicant, and failed to explain the company's name change within the statutory time limit for filing a lawsuit, considering that this case involved a foreign-related matter and the relevant documentary proof of the party's identity needed to go through notarization and certification procedures, it was reasonably justified that in the absence of documentary proof of identity, the party filed the administrative lawsuit before the first-instance court using the previously used name to avoid exceeding the time limit for filing a lawsuit. Furthermore, the party submitted proof of the name change before the deadline for submitting notarization and certification documents had expired, which sufficiently proved that both the previous and current names referred to the same entity. Therefore, the act of filing the lawsuit in the name of Corporation E on November 26, 2019 should actually be deemed as an action of Corporation M, and the filing time did not exceed the statutory time limit for filing a lawsuit under the Patent Law. Thus, their right to sue should be protected.

The judgment result of this case demonstrates that the SPC, in accordance with the law, supports the claims of foreign rights holders, further highlighting the judicial concept of equal protection for Chinese and foreign parties. At the same time, when examining the qualifications of the plaintiff in administrative litigation, the principle of "substance over form" is followed to firmly avoid issues such as "mechanical justice" or "procedural formalism", and to ensure that judicial decisions align with the "inner law" that reflects the perceptions of the people, rather than being purely based on textual interpretation.

<https://ipc.court.gov.cn/zh-cn/news/view-2640.html>

Holiday Notice 2024

Please kindly be informed of the Chinese public holidays in 2024 as well as the working-day adjustment as follows:

Holiday/ Working-day Adjustment	Date	Office status
New Year Day Holiday	Jan 1, 2024	closed
Chinese New Year Holiday (Spring Festival Holiday)	Feb 10- Feb 17	closed
Adjusted Working days	Feb 4 (Sunday) Feb 18 (Sunday)	<i>open</i>
Qingming Festival Holiday (Tomb Sweeping Day)	Apr 4 – Apr 6	closed
Adjusted Working day	Apr 7 (Sunday)	<i>open</i>
Labor Day Holiday	May 1 - May 5	closed
Adjusted Working days	Apr 28 (Sunday) May 11 (Saturday)	<i>open</i>
Dragon Boat Festival Holiday	Jun 10	closed
Mid-Autumn Festival Holiday	Sep 15 – Sep 17	closed
Adjusted Working day	Sep 14 (Saturday)	<i>open</i>
Chinese National Day Holiday	Oct 1 – Oct 7	closed
Adjusted Working days	Sep 29 (Sunday) Oct 12 (Saturday)	<i>open</i>

The CNIPA and our firm will close during the holidays and you may check if any important deadlines in 2024 fall in the holidays.