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Bilateral PDX Program between SIPO and USPTO Ends in August 2018

Effective September 1, 2018, electronic retrievals of priority documents between the United States Patent and Trademark Office (USPTO) and the State Intellectual Property Office of China (SIPO) will be managed via the World Intellectual Property Organization (WIPO) Digital Access Service (DAS), in accordance with the WIPO DAS agreement established on April 20, 2009.

The direct electronic priority document exchange (PDX) program between the USPTO and the SIPO implemented by on October 8, 2014 will end then.

<http://www.sipo.gov.cn/zfgg/1131094.htm>

China to Setup Technical Support System against IP Infringement

China is looking to establish a technical support system to detect, monitor and track evidence of intellectual property (IP) infringement and counterfeiting by 2020.

According to a working plan on IP protection with Internet Plus technology that was issued and made public by the SIPO, the system will feature the creation of several basic databases, including one with core information of IP authorization files. They will also include a database on IP infringement judgments to support artificial intelligence learning, as well as another on IP transfer permits and on major IP products and services.

As another part of the support system, an intelligent detection system will be set up to identify and track evidence of IP infringement and counterfeiting. Its work will involve a list of products and enterprises prone to IP infringement, based on big data analysis.

The detection system will be connected to other management systems, such as those for law enforcement, to provide online assistance and guidance for handling cases, according to the plan.

<http://www.chinaipr.gov.cn/article/centralgovernment/201808/1924999.html>

China Busy in Mapping AI Patents

China was the country with the most number of patents published in artificial intelligence (AI), slightly edging the United States and Japan, according to the "China's AI Development Report 2018" released by China Institute for Science and Technology Policy at Tsinghua University. These three countries combined account for 74% of the world's total of AI patents published.

In 2017, the market value of China's AI Industry reached 23.7 billion yuan, up 67% year on year. There are 1,011 companies engaging in this line of business, second only to the U.S. number of 2,028.

IBM, Microsoft and Samsung are the front-running patent applicants globally while China State Grid, an up and coming startup in the past five years, immediately follows at No.4 Technology in the globe.

China's AI patent filings concentrate on data processing system and data information

transmission. Research institutes/universities and companies split the list of most prolific AI patent owners almost down the middle, holding 52% and 48% of the top 30 posts respectively. China published the largest number of AI research papers as well as highly cited papers. China is home to 18,232 AI technology research talents, accounting for 8.9% of the world's total and second only to the U.S. (13.9%).

Unlike foreign peers' performance, Chinese companies are behind research institutes/universities in terms of patent filings. Even top IT giants Baidu, Alibaba and Tencent are overwhelmed by their foreign peers such as IBM, Microsoft, Samsung and Google in AI patents and papers.

China's strength is in application while still underdeveloped in AI essential technologies, such as hardware and algorithms. The report advises that China shall strengthen basic research of AI, encourage collaboration between research institutes/universities and industry, empower companies to become the major force of innovation, participate in the construction of the AI global governance mechanism, etc.

<http://english.sipo.gov.cn/docs/2018-08/20180801082157162184.pdf>

IPR Mediation and Conciliation Agencies Start to Work

The SIPO has identified 29 agencies as IPR-related mediation and conciliation organizations for the initiation of capacity building in the next two years.

The agencies are mainly consist of the people's mediation committee for IPR disputes under Patent Protection Association of China, the People's Mediation Committees, arbitration committees, IPR protection aid centers, IPR protection centers, in 14 provinces, autonomous regions and municipalities.

The SIPO further plans to establish 100 IPR arbitration and mediation organizations in the next three to five years.

<http://www.chinaipr.gov.cn/article/centralgovernment/201808/1924685.html>

Chinese Applicants' Performance on Japanese Patents in 2017

From the Japan Patent Office's Annual Report 2018, we read that

- Number of Japanese patent applications filed by Chinese applicants was more than double what it was 5 years ago.
- Huawei ranked No. 4 with 667 patent applications and was the only Chinese company that made into top 10.
- It took about 9.4 month for Japanese patent applications to receive the first Office Action and about 14.6 month to receive the examination decision, while those in China were 16.9 and 22.0 month.

<http://afdip.com/index.php?ac=article&at=read&did=3263>

Government to Ramp up Crackdown on Counterfeit Goods

The State Administration for Market Regulation intends to step up efforts to crack down on the illegal practices of producing and selling counterfeit goods, targeting fake-/inferior-quality commodities, infringements on trademarks, false and illegal advertising, etc.

It also urged operators of online trading platforms to fulfill their legal obligations, protect the legitimate rights and interests of trademark owners and consumers, and actively cooperate with market regulatory authorities to carry out special rectification. The online trading platforms that fail to fulfill their legal obligations will face strict punishment.

<http://www.chinaipr.gov.cn/article/centralgovernment/201808/1924993.html>

SUPPLEMENT ISSUE

AFD China Case Study - Change of Bibliographic Data after Deemed Withdrawal of a Patent Application

Usually, after a patent application is deemed as withdrawn, the applicant will take no further action, because giving up the prosecution is a deliberate choice that the applicant makes based on the evaluation on patentability, technology development, business strategy, budget or other factors.

In most cases, it won't be a matter whose name is written on the withdrawn patent application as the right is invalid and not restorable. However, in some cases, the withdrawn patent application will be used as the priority for the applicant or his successor in title to file application(s) in another country for the same invention with an effective date of filing as early as that of the withdrawn patent application. In the situation, the name which is officially recorded at the Patent Office does matter. Only where that of the withdrawn patent application is identical to that of the subsequent foreign applications, successfully be claimed the priority and so did the filing of the subsequent applications.

The State Intellectual Property Office of China (SIPO) does not have specific rules whether change of bibliographic data after a case being deemed withdrawn can be made or not. It normally takes a stance as cautious and strict as possible on such an issue and does not approve so. In a recent case, we found that it is not that unchallengeable.

The patent application being briefed was used to establish priority application. After receiving the application number from the SIPO, the applicant did not pay the application and publication fees and let go of the case. The patent application then went deemed withdrawn. This patent application was later assigned, as a part of the assignment portfolio, from the applicant to another company which planned to use it to be the basis for subsequent patent filings in foreign countries. The assignee company then submitted a request to record itself as the applicant of the case with the SIPO. The examiner rejected the request with a Notification of Request Deemed not Made with the ground that "[t]he application is not in force, thus [the SIPO will] not process the change of bibliographic data". As mentioned above, if the assigned company were not the recorded applicant, the subsequent foreign applications which would claim priority of this application could not pass the formality check due to the inconsistency of the name of the applicants.

The assignee company did not satisfy with this result. It took our advice to file a request for administrative review to the SIPO with the argument that the issuance of the Notification of Request Deemed not Made lacks legal grounds. The right to file and prosecute a patent application exists regardless of the legal status of the patent application; it is objective and should not be deprived. If the bibliographic data were not updated to reflect the name of the assignee company, whose right to file subsequent foreign applications, particularly, the right to priority claiming, could not be executed.

We further argued that regardless of whether a patent application will serve as priority for subsequent patent applications, it is necessary to record the assignment of the patent application. Because it is what actually happens and should not be blocked merely by formality/procedural conduction. If the SIPO did not approve such recordal, not only the interests of the assigner and the assignee would be affected but also the public would be misled since information available for

them was not correct. For patent applications which are not in force, applicants still enjoys some rights in relation to the patent application, such as the right to claim priority of it, the right to request to obtain a certified copy of it, the right to request to obtain the file history of it and so on. Therefore, it makes sense to record bibliographic changes with the SIPO for a patent application which is not in force. The legal status of the patent application/patent should not be an obstacle to prevent the applicant from executing such rights. Otherwise, it would give rise to unfair restriction and damage to the execution of right of a legitimate right owner.

Our opinions were eventually supported by the SIPO. The Notification of Request Deemed not Made was reversed after the administrative review, which held that the Notification lacks legal basis, since no provision in the Patent Law, Implementing Regulations on the Patent Law and Guideline for Patent Examination stipulates that examiners should reject a request for recording change(s) of bibliography data where a patent application or patent is not in force. Although in common situation, it loses significance to record bibliography data change of a patent application/patent since it is not in force. But this case was quite different because whether the assignment is recorded or not would substantially affect the assignee company's right. In order to ensure the assignee company's right to file subsequent foreign applications and claim the present application as a priority, it is necessary to update the bibliographic information to keep it up with the actual right owner, i.e. the assignee company.

<http://afdip.com/index.php?ac=article&at=read&did=3265>

Adidas Partially Blocks Use of Its Clover Trademark's Chinese Namesake

Around a trademark consisting of "clover" Chinese characters, pinyin and figure, Germany-based Adidas and Fujian Putian Tianya Trading Company (Tianya) were entangled in a battle in China. The Beijing High People's Court recently made a final judgment and rejected Tianya's appeal, holding that the evidence was not be enough to prove the No. 6363717 trademark "Clover Sanyecao and its device" (the trademark in dispute) was used on children's wear, gymnastics suits, clothing, and infant clothing, and the registration on the remaining goods.

The trademark in dispute was originally filed by Shenzhen Silicon Valley Yingke Technology Company (Silicon Valley Yingke Company) in November 2007, and was approved for registration in March 2012, certified to be used on Class 25 goods including clothing, caps, etc.

In 2015, Adidas filed a revocation application with the Trademark Office (TMO) against the trademark in dispute, claiming that the trademark in dispute was in no use for three consecutive years from December 14, 2012 to December 13, 2015 (hereinafter referred to as the designated period) and its registration should be revoked.

According to evidence, Silicon Valley Yingke Company signed a trademark licensing contract with Shenzhen Yingshang Fashion Company (herein after referred to as Yingshang Company) in 2012, permitting the latter to use the trademark in dispute on Class 25 goods. From February 19, 2015 to April 17, 2015, Yingshang Company signed a purchasing contract on "Clover" brand garments with 6 companies, agreeing that the specification of the product name was "Clover san ye cao brand clothing".

The TMO made a decision to uphold the registration of the trademark in dispute in July, 2016. Adidas was disgruntled and applied for re-examination with the TRAB. Upon approval of the TMO, the trademark in dispute was transferred to Tianya Company in December, 2016.

The TRAB held in March 2017 that the evidence furnished by Tianya and Silicon Valley Yingke Company could prove that the trademark was in real, legal and effective use in children's wear, gymnastics suits, clothing, and infant clothing during the specified period. The use of the trademark on clothing cannot be deemed as the use on socks, gloves (clothing), ties, belts, scarves and therefore the registration on these goods should be revoked. Accordingly, the TRAB decided to uphold the registration of the trademarks on children's wear, gymnastics suits, clothing, and infant clothing, and the registration on the remaining goods was revoked.

Adidas did not buy the TRAB decision and brought case to the Beijing Intellectual Property Court. After hearing, the Beijing IP Court made a first-instance judgment, revoking the review decision made by the TRAB, and ordered the TRAB to make a new decision. Tianya Company refused to call it a day and went on appeal to the Beijing High People Court.

After hearing, Beijing High held that although Silicon Valley Yingke Company submitted the "Clover" brand clothing purchasing contract and invoice signed by Yingshang Company and six enterprises, the above-mentioned evidences were named "Clover san ye cao brand clothing" which could not prove the use of the trademark in dispute. In this connection, the court finally dismissed Tianya's appeal and upheld the first-instance judgment.

<http://english.sipo.gov.cn/docs/2018-08/20180815082646833160.pdf>