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AFD China Intellectual Property Named as a “Tier 1” Patent Firm by Asia IP

Asia IP has ranked AFD China Intellectual Property’s patent practice in China in Tier 1 in the categories of “Patent Prosecution” and “Patent Contentious” work in its annual rankings. The rankings were published in the monthly issue of Asia IP magazine and the 2019 Asia IP Profiles handbook.

The Patent Survey comprises patent news, analysis, and lists the top firms for patent work across Asia. This was the fourth year that we participated in the ranking survey and the first time we were recognized as a top tier firm.

We achieved this top ranking with the significant support of our clients and for our dedication to implementing strategies that protect, advocate for, and defend our clients’ valuable IP assets. We would like to thank you all for your continued trust.

<http://asiaiplaw.com/article/35/3302/>

Draft Regulations on the Implementation of the Foreign Investment Law Released for Public Opinions

The draft implementation regulations for the new Foreign Investment Law of the PRC, drawn up by the Ministry of Justice and a number of other State Council ministries, was posted online to solicit public opinions.

According to the draft, China will push to establish a fast-track Intellectual Property (IP) protection mechanism; improve mechanisms

to resolve IP disputes through multiple means and to provide assistance; and increase IP protection for foreign investors and enterprises.

A system of punitive compensation for IP infringements will be set up.

The draft also made detailed stipulations to ban the use of administrative measures that force foreign investors or enterprises to transfer technology.

Administrative entities and their staff are required to keep strictly confidential foreign-invested enterprises’ business secrets they are privy to in the course of performing their duties, according to the draft.

Members of the public can submit their opinions through letters, emails, or on the Ministry of Justice’s website by Dec. 1, 2019.

The Foreign Investment Law is slated to take effect on the first day of 2020.

<http://english.ipraction.gov.cn/article/News/201911/20191100231723.shtml>

New Rules to Sanction Trademark Filing Irregularities in Force from Dec. 1

The State Administration for Market Regulation (SAMR) announced the enactment of the Rules on Regulating Trademark Filing Acts, which will be in force from December 1. The Rules are intended to better implement the Trademark Law, the latest amendment of which took effect on November 1, 2019.

The Rules have 19 specific provisions aiming to regulate trademark filing acts in four ways:

- 1) Setting up a centralized provision on trademark filing and registration acts that violate the principle of good faith; providing specific guidelines for representation services of trademark firms;
- 2) Listing the factors taken into consideration for examining malicious trademark filing acts and illegal representation acts; elevating operability and transparency of trademark examination;
- 3) Sanctioning malicious trademark filing acts and illegal representation acts; setting up a trebling of fines for illegal gains of the malicious trademark applicant and no more than 30,000 yuan; setting up a maximum 100,000 yuan fine threshold on trademark firms aiding malicious trademark filing and suspension of services if offense is deemed aggravated; and
- 4) Streamlining trademark filing routes and procedures and making the system easier to use for applicants; elevating administration services.

<http://english.ipraction.gov.cn/article/News/201911/20191100231720.shtml>

CNIPA to Blacklist Patent Violators

The National Intellectual Property Administration of China (CNIPA) has rolled out a regulation to blacklist individuals and organizations that severely violate patent-related laws and regulations. The names of those blacklisted will also be published online and face various punishments. The regulation, scheduled to take effect on Dec 1, comes in response to a memorandum of understanding signed by 38 government departments in November 2018.

<http://english.cnipa.gov.cn/news/iprspecial/1143269.htm>

Top 10 Chinese Companies in AI Intellectual Property

The Chinese tech company Huawei took the crown as the most competitive company in China in terms of artificial-intelligence-related intellectual property, followed by internet heavyweights Tencent, Baidu, Xiaomi and Alibaba, according to a report jointly released by IP service website Wtoip.com and the Hurun Research Institute.

Comprehensive strength, innovation - as well as technological maturity of enterprises - were major factors for the evaluation. More than 500 mainstream Chinese artificial intelligence companies were evaluated under quantitative analysis, the report said.

Computer vision, intelligent robots, language recognition and natural language processing were the most represented three fields for companies on the top 100 list.

Here are the top 10 Chinese companies in AI intellectual property competitiveness in 2019:

No 1 Huawei
Score: 100
Industry: Comprehensive artificial intelligence

No 2 Tencent
Score: 99.7
Industry: Comprehensive artificial intelligence

No 3 Baidu
Score: 94.5
Industry: Comprehensive artificial intelligence

No 4 Xiaomi
Score: 90.8
Industry: Intelligent terminal platform technology

No 5 Alibaba
Score: 88.8
Industry: Comprehensive artificial intelligence

No 6 Hikvision
Score: 85.3
Industry: Computer vision

No 7 iFlytek

Score: 81.4

Industry: Language recognition and natural language processing

No 8 Sogou

Score: 81.1

Industry: Intelligent terminal platform technology

No 9 State Grid

Score: 79.7

Industry: Intelligent grid

No 10 TAL

Score: 79.3

Industry: AI and education

<http://english.ipraction.gov.cn/article/News/201911/20191100233273.shtml>

IP Legal Cases on the Rise in Beijing

Beijing has seen an increase in the number and variety of intellectual property disputes over the past five years after the city strengthened efforts to protect IP rights.

The Beijing Intellectual Property Court reported in early November that it had filed 72,681 IP cases covering patents, copyright, trademarks and unfair competition, since its establishment on Nov 6, 2014. Over that period, there has been a 26 percent average annual increase in IP cases.

Of the total, 21 percent involved foreign litigants from 90 countries and regions across the world. Of those, 30 percent related to litigants from the United States and 15 percent related to nations involved in the Belt and Road Initiative, according to the court's statistics.

The number of foreign-related disputes is still on the rise "which shows Beijing and our country has had a deep integration with the world's economy," said Wang Jinshan, President of the court.

"Not only Chinese enterprises but also some transnational corporations came to us to solve problems when finding their IP rights were

harmed," he said. "It means foreign companies have attached importance to the Chinese market and more have trusted Chinese justice to protect their IP rights. It reflects that Chinese enterprises' awareness of IP protection has been enhanced."

As China's first court specializing in handling IP disputes, the court has taken measures to improve the quality of hearings, such as inviting 75 specialists to investigate technical issues in 1,953 cases, he added.

In 2014, IP courts at the intermediate level were also established in Shanghai and Guangzhou, Guangdong province. In January this year, the Supreme People's Court opened a national-level IP court in Beijing.

<http://english.cnipa.gov.cn/news/iprspecial/1143537.htm>

China and France Join Hands to Cooperate on Geographical Indications

On November 6, Chinese President Xi Jinping and French President Emmanuel Macron jointly witnessed the signing of the Protocol on Cooperation between CNIPA and MAA and INAO on Geographical Indications of Agriculture and Food at the Great Hall of the People in Beijing. CNIPA Commissioner Shen Changyu, French Minister of Agriculture Didier Guillaume and INAO Director General Marie Guittard signed the Protocol on behalf of the respective competent authorities for geographical indications of the two countries. The signing of the Protocol marks a new chapter of cooperation between the two countries in geographical indications of agriculture and food.

The signing of the Protocol highlights China's new achievements in international cooperation in protecting geographical indication products, as well as China's firm standpoint on and attitude towards stepping up efforts in IP protection including geographical indication products.

<http://english.cnipa.gov.cn/news/officialinformation/1143744.htm>

SUPPLEMENTARY ISSUE

SPC: Honda Awarded Injunction, Damages for Export-only Infringing Products

Recently, the Supreme People's Court of China made a final judgment on a trademark dispute between Honda Motor Company and Chongqing Hengsheng Xintai Trade Company, Chongqing Hensim Group, ordering the defendants to immediately cease infringement of Honda trademarks and indemnify Honda 300,000 yuan in damages.

Honda, a Japanese multinational giant specializing in motorcycle production, obtained registration for trademarks No. 314940 HONDA, No.1198975 H and its figure and No.503699 HONDA and its figure in China, from the Trademark Office of the former State Administration for Industry and Commerce. In June 2016, China Customs in Ruili seized outbound motorcycles affixed with the trademark HONDAKIT, which were manufactured by Hensim Group with the authorization of Meihua Company and applied for export by Hensheng Xintai Company, a subsidiary of Hensim Group.

In September 2016, Honda asserted that the two companies had infringed its trademark right and filed the case to the Intermediate People's Court of Dehong Dai and Jingpo Autonomous Prefecture in Yunnan Province, seeking an injunction against the defendants and three million yuan in damages. The defendants argued that they were authorized by Meihua to manufacture the products in question and to use the HONDAKIT trademark. No infringement was established.

The Court held that the two defendants used HONDAKIT and its figure on motorcycle hoods, engine covers and nameplates while protracting the size of the HONDA part, which led to infringement of the plaintiff's trademarks. Accordingly, the Court made its first-instance decision, ordering an injunction against the two defendants and 300,000 yuan in damages.

The Hensim Group and the Hengsheng Xintai company then appealed to the Yunnan High People's Court in 2017 and requested the Court to revoke the first-instance judgment and deny Honda's claims. The two defendants argued that the products involved in the case were all planned for export to Myanmar and did not enter the Chinese market. No infringement was established.

After the hearing, the appellate court held that the two defendants did not infringe the exclusive trademark right of Honda and revoked the first-instance decision.

The disgruntled Honda appealed to the Supreme People's Court.

The Court held that the products in question belonged to the original equipment manufacturer (OEM) and were likely to circulate back to the Chinese market despite being bound for overseas markets. With the growth of the Chinese economy, an increasing number of Chinese consumers tend to travel abroad and may have access to these OEM products and be confused by their origin. In this connection, the first-instance ruling Court ascertained the facts clearly. The Court then revoked the second-instance decision and upheld the first-instance one in its final judgment, ordering the two defendants to cease infringement and indemnify Honda 300,000 yuan in damages.

<http://english.cnipa.gov.cn/docs/2019-10/20191030100152305283.pdf>

Beijing High: Rolls-Royce Invokes Well-known Mark Privileges to off Similar Marks

Recently, the Beijing High People's Court wrapped up the trademark dispute between Rolls-Royce Motor Cars and Guangdong Konbom Technology & Industrial Company with its final-instance judgment, holding that some of Konbom Company's registered trademarks No.14355333 and No.14355334 保劳斯, No.14355335 and No.14355336 保莱斯, No.14355337 and No.14355338 宝劳斯 and No.14355339 and No.14355340 宝莱斯 (trademarks in dispute) and the well-known trademark No.4979295 劳斯莱斯 (the cited trademark) (i.e., the official Chinese translation of 'Rolls-Royce') constituted similarity on the same or similar goods. Further, the court held that the trademarks in dispute prejudiced the interests of Rolls-Royce as the owner of the well-known trademark. Therefore, the decision to uphold the trademarks in dispute made by the Trademark Review and Adjudication Board (TRAB) of the former State Administration for Industry and Commerce (SAIC) was revoked and it needed to make a de novo one.

Trademarks in dispute were filed for registration by Konbom in April 2014, and would be certified for use on goods such as cars and car tyres in 2016.

Rolls-Royce lodged an invalidation request with the TRAB, alleging that the cited trademark had been well-known to the public before the filing date of the trademarks in dispute, enabling its establishment as a well-known trademark. They further maintained that the trademarks in dispute constituted similarity on the same or similar goods with the cited trademark and may confuse the public, causing prejudice to the company's interests.

TRAB held that the evidence proved that the cited trademark enjoyed a high reputation before the filing date of the trademarks in dispute. Considering the differences in character formation and pronunciation, the trademarks in dispute did not constitute reproduction and imitation of the cited trademark. In addition, goods such as the adhesives for tyres attached with the trademarks in dispute were different from the goods such as cars attached with the cited trademark in terms of function and usage. Registration and use of the trademarks in dispute had not confused the relevant public. Therefore, the TRAB upheld the trademarks in dispute.

The disgruntled Rolls-Royce then brought the case to the Beijing IP Court.

The Beijing IP Court held that the trademarks in dispute, approved to be used on goods such as car tyres, constituted similarity on the same or similar goods with the cited trademark when used on car tyres. The interests of Rolls-Royce as the owner of the well-known trademark would be harmed though trademarks in dispute did not constitute similarity on the same or similar goods when used on adhesives for tyres. Accordingly, the IP Court rebuffed the decision made by the TRAB at the first instance and ordered it to make a new one.

The TRAB then appealed to the Beijing High People's Court. After hearing, Beijing High held that the IP Court ascertained the facts clearly and applied the law correctly and upheld the first-instance ruling accordingly.

<http://english.cnipa.gov.cn/docs/2019-11/20191113143653375656.pdf>

Beijing High: Jaguar Wins 7-year Trademark Battle in China

Jaguar, the world-renowned car brand of Britain's Jaguar Land Rover (JLR), was entangled in a fierce dispute over the Jaguar trademark's registration and use on beer and other commodities with a Hunan-based company. After seven years, the dispute ended on a triumphant note for JLR. The Beijing High People's Court rejected the appeal of the Hunan Jaguar Brewing Technology Company (Hunan Jaguar) and ruled that No. 9573951 trademark "Jaguar" (trademark in dispute) was registered by other improper means, upholding the ruling to invalidate the trademark in dispute by the Trademark Review and Adjudication Board (TRAB) of the former Administration for Industry and Commerce (SAIC) of China.

The trademark in dispute, originally filed by the Absolute Bull (Germany) Brewing Company in 2011 to the Trademark Office of the former SAIC for registration and would be approved for registration on Class 32 goods such as beer and water (beverages) in 2012. In 2014, Absolute Bull filed an application for the transfer of the trademark in dispute to the former Trademark Office. On April 6, 2015, the trademark in dispute was approved to be transferred to the Hunan Jaguar Company. Shortly after the application for the transfer of the trademark filed by Absolute Cattle, JLR lodged an invalidation request to the TRAB against the trademark in dispute.

On March 28, 2015, the TRAB invalidated the trademark in dispute. Hunan Jaguar did not accept the decision and subsequently brought the case to the Beijing IP Court.

The Beijing IP Court ruled that Absolute Cattle's trademark was obtained by other improper means. Accordingly, the court rejected the complaint of the Hunan-based Jaguar Company in its first-instance judgment.

The Hunan-based company was disgruntled with the trial court's judgment and appealed to the Beijing High People's Court.

Beijing High held that the appellant applied for the registration of trademark in dispute with an intention of plagiarizing and imitating others' trademark. The court further held that the act not only damaged the legitimate rights and interests of others, but also corrupted the normal order of trademark registration administration which is detrimental to fair competition. The transfer of the trademark in dispute to Hunan Jaguar by the appellant is also suspected of evading legal recourse. The trademark in dispute is subject to other improper means of obtaining registration. In parallel, it was found that Hunan Jaguar lacked a sufficient factual basis to prove that the trademark in dispute had enjoyed certain popularity after extensive use, and even if the trademark was actually used, the registration had been obtained by improper means and such use lacked a legal basis. In making this connection, the Court held that the reason for the appeal of the Hunan Jaguar Company could not be established and affirmed the original judgment.

<http://english.cnipa.gov.cn/docs/2019-11/20191106134437803563.pdf>