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Updated Outline of the Chinese Patent System

Our Outline of the Chinese patent system has been updated according to the third amendments of Patent Law, which was adopted on December 27, 2008 and will be effective on October 1, 2009. Please click here: http://www.afdip.com/article_patent_new.htm for more detailed information.

Amendment of Implementation Regulations of Patent Law to be Considered

On February 27, the draft amendment of "Implementation Regulations of Patent Law of People's Republic of China" was submitted to the State Council for consideration.

The Implementation Regulations are supporting administrative rules and regulations for the Patent Law, and is of great significance for the enforcement of Patent Law and operation of patent system.

Now the State Council is soliciting public opinions by March 31, 2009. Legislative Affairs Office of the State Council will revise the draft

and propose to the State Council for approval.

The amendment will be enacted after deliberation of State Council.

(Source: SIPO.gov.cn)

27,876 IPR Cases Judged in 2008

On March 10, the third plenary session for the second meeting of the Eleventh National People's Congress was held at the Great Hall of People to listen to the work reports of the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP).

Over the past year, the national courts at all levels closed 27,876 IPR cases, with an increase of 32.58%.

President of SPC Wang Shengjun said, courts at all levels should provide judicial protection for independent innovation, implement the "Outline of National Intellectual Property Strategy", organize thematic activities on IPR protection and establish a good image of IPR judicial in China.

He urged related organs to improve the jurisdiction system for well-known trademark cases, standardize the admission requirements

for trademark, trade name dispute cases, seriously punish criminal acts of IPR infringement, expand the scope of judicial protection and intensify IPR protection.

The courts will also improve the IPR trial mechanism, enrich the trial force, increase the number of mid-level and grassroots IPR courts, and explore the new model of comprehensive IPR protection.

(Source: ipr.gov.cn)

Patent Law Enforcement by Administrative Authorities in 2008

In 2008, IP administrations nationwide deepen the special IP law-enforcement actions. From January to December, 2008, local IP administrations totally accept 1,092 cases of patent infringement, and investigate 59 cases of patent imitations and 601 cases of patent counterfeits. The IP administrations nationwide totally dispatch 17,056 law enforcers to inspect commercial sites for 7,671 times, investigate 2,110,822 commodities, transfer 21 cases to departments such as the public security departments, accept 11 cases transferred from other departments, conduct 327 inter-departmental law-enforcement collaborations and 262 inter-regional law-enforcement collaborations.

The characteristics of the patent law-enforcement work in 2008 are as follows:

I. The number of cases shows the trend of going up compared with previous years. The number

of cases of patent infringement accepted in 2008 increases by 10.8 percent compared with 2007, and the number of cases of patent imitations investigated also rises by 84.4 percent during the same period of time.

II. Law-enforcement collaboration goes up. Compared with 2007, the numbers of inter-departmental law-enforcement collaborations and inter-regional law-enforcement collaborations grow by 14.7 percent and 12.4 percent respectively.

III. Disputes of patent infringement account for the major part of all the cases of patent disputes. Of the 1,126 cases of patent disputes accepted in 2008, 1,092 are disputes of patent infringement, much higher than the 34 cases of other patent dispute.

IV. Cases of patent infringement mainly involve patents of model utility and design. Of the 1,092 cases accepted, 20 percent involve patent of invention, 40 percent are patent of model utility and 40 percent are patent of design.

V. The claimers of patent infringement disputes are mainly from inside China. All the cases accepted involve 1,042 claimers from the Chinese mainland, accounting for 95.4 percent of the total.

VI. Cases of patent disputes other than patent infringements are mainly disputes of right ownership. In the 34 cases of other patent disputes, 30 are disputes of patent application rights and the ownership of patent rights.

VII. The proportion of patent passing off is comparatively small, only 59 throughout the year.

VIII. Law-enforcement activities are more active. A total of 17,056 law enforcers are involved in law-enforcement activities in 2008. The number of commercial sites inspected grows by 50 percent compared with 2007, and the number of commodities inspected also rises by 38 percent. (Source: *SIPO.gov.cn*)

56,634 Trademark Infringement Cases Handled by Administrative Authorities

SAIC (Stat administration for industry and commerce) investigated 56,634 trademark infringement cases in 2008, including 45,492 domestic cases and 11,142 foreign-related ones, total up 12.55 percent from 2007, up 13.74 percent and 7.97 percent, respectively. Fines from the cases reached 467 million yuan (68.3 million U.S. dollars), up 11.92 percent from the previous year, while 137 trademark-related criminal cases and 145 suspects were handed over to judicial organs, according to the SAIC.

Specifically, industry and commerce authorities across the country handled 5,858 cases infringing the trademark rights of Olympic symbols last year.

These cases involved 34.84 million yuan (5.09 million U.S. dollars) in value, with a total fine of 29.76 million yuan. (Source: *ipr.gov.cn*)

11,474 Trademark Complaints Handled by Administrative Authorities

With intensive publicity of industrial and commercial administrative organs, the awareness of trademark protection in the whole society has been remarkably enhanced. In 2008, the industrial and commercial departments investigated and dealt with 11,474 trademark complaints, exceeding 10,000 for the first time.

It is learnt that in 2008 industrial and commercial administrative organs at all levels have dealt with 11,474 trademark complaints, accounting for 20.26% in the trademark-related cases. 10,124 cases were involved with infringement or counterfeiting, accounting for 88.23% of the total number. 3490 cases were foreign-related complaints, accounting for 30.42%.

The provincial rank is listed as follows: Guangdong with 1,561 cases ranked at the first place, followed by Zhejiang, Beijing, Fujian, Hebei and Henan. The complaints investigated by the above-mentioned six provinces amounted 6,176, taking 53.83% in the national total. (Source: *ipr.gov.cn*)

China to enact Intangible Cultural Heritage Protection Law

China's first "Intangible Cultural Heritage Protection Law" is expected to be enacted in the near future, which will provide legal basis for ICH protection.

When attending the forum on productive protection of intangible cultural heritage, Vice

Minister of Culture (MOC) Zhou Heping said that China will soon promulgate the first special law for ICH protection. Now it has entered the legislative process.

He said the Chinese government will continue to take a variety of measures to protect intangible cultural heritage, including effective use of legal means and foreign experiences.

It is learnt that the Legislative Affairs Office of the State Council started to make investigations and preparations on ICH legislation in 2007. The legislative plan of 11th National People's Congress also listed ICH protection law as one of the 64 legislative projects last year.
(Source: *jpr.gov.cn*)

100 Plants

Yunnan province in Southwest China developed over 100 products in varieties in 2008 such as Chinese rose, cornice, chrysanthemum, gerbera, 11 of which earned the right of new plant variety. More than 80 percent of the nation's intellectual property rights of new plant varieties in fresh flowers are from the southwestern province.
(Source: *China Daily*)

8 Shops Shut Down

Eight more shops in Beijing's famous Silk Street Market (SSM) have been ordered to close for seven days after they were found selling fake goods last month. It is the third time that the management of the market, which is well known as a place to buy cheap designer knock-offs,

has resorted to this punishment, according to SSM General Manager Wang Zili.
(Source: *China Daily*)

Survey: Hong Kong People Increasingly Aware of IP

People in Hong Kong have been increasingly aware of intellectual property rights protection over the recent years but new challenges emerge with the ever increasing penetration of the Internet, a latest survey showed.

The survey, commissioned by the Intellectual Property Department of the Hong Kong Special Administrative Region (HKSAR) government with its results released Thursday, found 96.3 percent of the respondents considered it necessary to protect intellectual property rights.

The results also suggested that the percentage of respondents who knew IP included copyright, patents, trademarks and registered designs increased to 91.6 percent in 2008, compared with 84.7 percent in 2005.

"Since such surveys started in 1999, public awareness of IP rights has significantly improved," Director of Intellectual Property Stephen Selby said at a press conference.

The percentage of the respondents who would often or sometimes buy pirated or counterfeit goods was also down to 8.6 percent from 15 percent in 2005.

But the survey also found that challenges were emerging in the protection of intellectual property rights with the penetration of the Internet.

Only 40.7 percent of the respondents considered "buying a genuine CD and converting it to MP3 for personal use" an infringing act, although doing so could result in civil liability."

About 80 percent of the respondents agreed that it was morally wrong to download files from unauthorized websites, but 78.6 percent of the Internet users said they would not pay for legal downloading from authorized websites.

About 47 percent considered it inconvenient to buy online, the survey showed.

"While it is encouraging to see that awareness of intellectual property among Hong Kong people is increasing, we need to focus on new trends," Selby said.

The HKSAR government put out a TV announcement last year promoting the No Fakes Pledge scheme and found it effective. It will continue to put out publicity messages on TV and other media, he said.

(Source: SIPO)

25 GI Products

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) announced recently the latest group of products protected as geographical indications.

Changxing Japanese snakegourd seed, Xinjiang

Hami melon, Aksu Jujube and Xuchang dried bean curd sticks are among the 25 products.

(Source: China Daily)

14 Challenges

The number of patent cases against Google worldwide rose to 14 last year, from 11 in 2007 and three in 2006. The company wants to curb that growth by fighting rather than settling lawsuits, said Catherine Lacavera, Google's senior litigation counsel.

(Source: China Daily)