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SPC Promulgates Judicial Interpretation for Patent Infringement

The Supreme People's Court (SPC), on December 28, released a Judicial Interpretation of The Supreme People's Court on Application of Law in Adjudicating Patent Infringement Cases which became effective on January 1, 2010. The interpretation includes, among other things, the determination of protection scope of invention and utility model patents, the principle of determining designs patent infringement, the application of prior art defense and prior use defense, and determination of the non-infringement action, providing a standard for trying patent infringement case. Article 7 of the interpretation provides that the court would adopt the all elements rule to determine the infringement, that is, the people's court should first examine the technical elements in the claims when determining whether the alleged technical solution falls within the protection scope. In addition, the interpretation further improved the application of the doctrine of equivalents in judging patent infringement. (Source: SIPO)

Tort liability Law Passed, Several Relieves to Protect IPR Infringed

On December 26, Tort Liability Law of the People's Republic of China was passed at the 12th Meeting of the Standing Committee of the 11th National People's Congress. According to the prescriptions, copyrights, patent rights, exclusive rights for trademark are all protected as legal rights and benefits of civil subject, and tort liabilities mainly include ceasing the infringing act, eliminating the effects of the act, making an apology or paying compensation for damages and so on. Deputy Director of Law Committee of the National People's Congress Wang Shengming told the reporter that, the tort liability law is a supplement and consummation to related intellectual property laws, and once infringements to intellectual property rights happened, the related laws on intellectual property are preferential, and then tort liability law would be considered.

Most considered "Article 36"

In recent years, internet infringements on intellectual property rights accepted by all courts across the country are increasing in evidence, involving fields of trademark, copyright, unfair competition and several others. The scope for

the infringements is enlarging with more and more new problems emerging. Thus, the Article 36 of the Tort Liability Law attracts mostly.

According to the Article 36, any web user or service provider who infringes others' civil rights and benefits shall undertake the tort liability, and meanwhile, the law specifies the forms of liability for both: once infringements by web users happened, the infringed party has the right to inform the web service provider to delete, shield, cut the links and other necessary measures; web service provider who hasn't take necessary measures after the information shall bear joint liability with the web user; web service provider who find users use the web service to infringe others' civil rights and benefits but hasn't taken any measures shall bear joint liability with the user.

(Source: [IPR in China](#))

PUMA Prevails in Trademark Infringement Case

Rudolf Dassler Sport AG, Puma's trademark holder prevails in a trademark infringement case against two Chinese Sporting Goods companies on trademark infringement.

In December 2008, Rudolf Dassler filed a lawsuit against two Chinese Sporting Goods companies for trademark infringement in Beijing No. 1 Intermediate People's Court. In December 2009, the Court affirmed the infringement of the PUMA trademark, ordering them to cease infringement and compensates Rudolf Dassler 50,000 yuan and 10,000 yuan respectively in damages.

(Source: [BJGY. CHINACOURT.ORG](#))

China Governmental Department Captures 65 Million Illegal Publications

It is disclosed by related principal of the department in charge of combating illegal publications that, China governmental departments captured 65.958 million various illegal publications, among which pirated publications accounting for above 86%.

The principal of the department Mao Xiaomao introduced that, the captured illegal publications include the publications violating a ban, pornographic publications, pirated publications and illegal newspapers and periodicals. The department also investigated a illegal discs' product line and banned 15,000 pornographic websites.

According to statistics, from January to October 2009, the courts in the whole country have totally accepted 1,400 pieces of said cases and condemned 1,580 suspects.

(Source: [IPR in China](#))

Search Report Inquiry Service Launched by SIPO

SIPO has provided the service of "search report inquiry" since 1st Jan 2010. Inquiry system of search report is the platform of searching, viewing and downloading the search report of Chinese invention patents provided for examiners of USPTO, JPO, EPO and KIPO. The data cover the search reports of Chinese intentions from 2006 till now. Examiners from the above four patent offices are allowed to review

details of family patents and search reports and download patent search report in PDF format.

The search report data provided by the system are updated once a week and patent family data once two weeks.

(Source: [IPR in China](#))

China's IP Enforcement Acquires Palpable Advancement

Sources from the December 21 national IP enforcement meeting said that the IP administration across the country has made great progress in IP enforcement: the Thunderstorm and Skynet campaigns continue to advance; 41 local IP offices join the 5-26 Project, and the national IP enforcement assistance centers amount to 61.

According to SIPO deputy commissioner Gan Shaoning, during the national campaigns from April 26 to May 26, the local administrative authorities waged campaigns to combat frauds relating to patent, in particular group and repeated infringements, which seriously curbed patent frauds and effectively upheld the legitimate rights and interests of right holders and the public.

IP administrations nationwide this year put more emphasis on bolstering enforcement by all possible means. As of now, there are two groups of 26 units as protection focal bases.

(Source: [IPR in China](#))

State Council Approves Implementation Rules of Patent Law

The executive meeting of the State Council held On December 30, 2009 discussed and approved "Determination on Revising 'Implementation Rules of Patent Law of the People's Republic of China' (Draft)". Draft consummates the secrecy examination system for applying patents abroad for inventions which are finished in China, supplies and elaborates patent application process and authorization conditions, defines requirements on disclosing inherited resources information and administrative penalty on fake patents. The meeting defined that the draft will be implemented by the State Council after further revision.

Commissioner of State Intellectual Property Office Tian Lipu presented the meeting and made explanation on related problems.

(Source: [IPR in China](#))

China's Patent Examination Capability Rapidly Increased

Latest statistics show that this year from January to October, there were totally 712,300 cases of patent applications, a 12% increase compared with the same period last year.

Recently, SIPO Deputy Director He Hua said in the interview:

In recent years, we enjoyed a relative high closing rate among all patent examination cases. For example, from 2001 to 2008, the closing rate for invention patent examination increased by 30% annually. This year from January to

October, more than 150,000 invention patent examination cases were closed, which was a 40.9% year-on-year increase. The number exceeded the total cases closed in 2008. It's forecasted that about 200,000 cases would be closed in invention patent substantive examination.

Moreover, it takes shorter time to conduct the patent examination. For example, in 2001, it used to take 53 months for an invention application to be closed for the first time since the day it entered the substantive examination process. Now the time required dropped to 25.8 months in 2008. This year from January to October, the process for invention patent further shortened to 25 months on average. Patent of utility model examination process shortened from 11 months to 6.1 months; industrial design patent examination process also saw a huge cut on the processing time, from 9.5 months in 2008 on average to 7.2 months this year; Reexamination of patent application and invalidation of patent right also required less time from 15 months in 2005 to 8.2 months this year.

He Hua expressed that SIPO had always given their priority to the improvement of the quality of the patent examination. After a series of intensive research and discussion on the institution and mechanism of the quality management of the examination, we established a scientific and legitimate quality management system, with a quality testing team of 50 senior

examiners. This effort had improved the public's satisfaction with the patent examination.

As one of the world top 5 patent offices, SIPO exchanged ideas with other offices on examination services and launched various forms of cooperation with patent organizations from countries or regions in the America, Oceania, Asia, and Africa. Managing Intellectual Property magazine highly commended SIPO's increasing efficiency while maintaining a good quality over the examination services.

He Hua expressed that SIPO would focus its attention on strengthening its examination capability through continued effort in the engagement of electronic information technology's application to increase its efficiency and to vigorously promote patent examination to serve the country, innovation subjects and the public.

(Source: [IPR in China](#))