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China Releases New Judicial Interpretation Draft on Patent Law

Supreme People's Court of China released the draft of the Second Edition of Judicial Interpretation on Patent Infringement Dispute Cases Trial (hereinafter referred to as the Draft).

The symposium to hear the public advice about the Draft was held recently in Beijing. Over 40 representatives from central authorities, courts, intermediary institutions and enterprises took part in the discussion.

Some issues such as the measures of infringement litigation on obvious invalid patent, the definition of general consumer in design patents infringement cases, the provisions on indirect infringement and the defense on implement standard patent infringement and so on, are especially striking.

For example, Article 5 of the Draft goes that, when the patent specification conflicts to the patent claims, the court shall make the judgment based on the claims if it is clearly recorded, otherwise the court shall directly dismiss the indictment. And the third paragraph of the article goes that, when one of the parties managed to prove that the

patent was requested for invalidation based on the reasons above before the adjudication, the court may make an abatement of action.

In the second paragraph of Article 17 in the Draft, which relates to design patent infringement cases, "customers" is amended to "the direct buyers of the alleged infringement product".

Article 25 in the Draft goes that, it is a tort to provide generally products specially used for patent products to people unlicensed or unobligated without permission.

http://english.sipo.gov.cn/news/iprspecial/201411/t20141113_1031182.html

China Published Judicial Interpretation about Intellectual Property Courts

On November 3, the Supreme People's Court of China published the judicial interpretation about the jurisdiction of intellectual property courts. According to the judicial interpretation, all of the three intellectual property courts of Beijing, Shanghai and Guangzhou and the higher people's courts of the three cities will have jurisdiction over both civil cases and administrative cases.

There are eight articles in the judicial interpretation, mainly concerning the

jurisdiction levels, like exclusive jurisdiction, territorial jurisdiction, and appellate jurisdiction and so on. According to the judicial interpretation, terms hereinafter comes under the jurisdiction of intellectual property courts: first instance civil and administrative cases concerning patent, plant variety, layout design of integrated circuit, technology secret and computer software; administrative suits about copyright, trademark and unfair competition against departments of the State Council, or governments at or above the county level; civil cases about well-known trademark.

In addition to this, the Intellectual Property Court of Guangzhou has jurisdiction over the whole Guangdong Province about first instance civil and administrative cases concerning patent, plant variety, layout design of integrated circuit, technology secret, computer software and civil cases about well-known trademark. The Intellectual Property Court of Beijing has exclusive jurisdiction over intellectual property right authorization and verification.

Besides, on November 6, the first intellectual property court in China started operation in Beijing. With the 25 judges appointed by the Standing Committee of Beijing Municipal People's Congress, the court will hear all civil and administrative IP legal disputes in the city, but intermediate courts will continue handling their unfinished IP cases.

http://english.sipo.gov.cn/news/iprspecial/201411/t20141114_1032002.html

China Regulates Use of Trademarks

China is considering elimination of trademarks that copy names of well-known brands or figures in a bid to curb right infringement.

The courts will uphold the Patent Review Committee's decision to nullify trademarks that are the same or similar to well-known places and trademarks already in use, according to a judicial interpretation released recently by the Supreme People's Court to solicit public opinion.

The courts will also reject individual applications for a large number of trademarks, said the document, which is also aimed at unifying trial standards for the courts when dealing with trademark disputes.

The behavior of using public figure's names as trademarks without their permission can not be allowed, so is the behavior of using the names of the dead without getting approval from their inheritors.

Trademarks that are the same with or similar to the Chinese name of China will also be banned, and those including the nation name will also not get approved if their registration may lead to "abuse of the national name," it said.

<http://www.chinaipmagazine.com/en/news-show.asp?id=7372>

First Anti-Monopoly Case Shed Lights on the Application of the Chinese Antitrust Law

Recently, the Supreme People's Court heard the first anti-monopoly case of China, which closed a four year battle between the Chinese web giants Qihoo and Tencent.

In 2010, Tencent released an anti-virus program similar to Qihoo's. In response, Qihoo started blocking some of Tencent's QQ services. Then Tencent created uncompatibility and forced its users to uninstall Qihoo's products. Accordingly, Qihoo sued Tencent under China's antitrust law.

Previously, the court ruled Qihoo to pay a fine and post a public apology. As the last time, the Supreme People's Court dismissed all of Qihoo's claims too.

First Mobile Internet Monopoly Case Undergoing

The Beijing No 2 Intermediate People's Court will hear "the first monopolization suit in China's mobile Internet business", in which smartphone app maker Beijing Emiage Technology Co sued anti-virus software maker Qihoo 360.

The plaintiff said it had developed an electronic business card management system with patents, but part of its functions was blocked by a product of Qihoo, which has been installed on 70 percent of smartphones in China.

It claimed the defendant "suppressed the development of patents by domestic app makers".

<http://www.chinaipmagazine.com/en/news-show.asp?id=7358>

China Vows to Combat International Standard Piracy

The International Standard Organization (ISO) recently expressed the acknowledgement to China for its efforts on international standard copyright protection.

According to GuoHui, the leader of Discipline Inspecting of Standardization Administration of China (SAC), in fighting against international standard piracy, the SAC would take two ways to deal with the problem. On one hand, SAC will cooperate with ISO to explore the extending and publishing system suitable for Chinese market to extend the international standard marketing and distribution; on the other hand, it will build a long-term mechanism of fighting against international standard piracy through the cooperation with the Supreme People's Procuratorate, the Supreme People' Court, and the Ministry of Public Security.

http://english.sipo.gov.cn/news/iprspecial/201411/t20141114_1032003.html

Nearly Two Thousand Illegal Websites Shut Down to Protect Copyrights

China is now facing a situation where online rights protection is baffled with the constant emergence of new technologies such as P2P,

IPTV, WeChat, micro blogs, media players and top boxes, which enable a large number of unauthorized use of copyrighted contents.

In the last ten years, the National Copyright Administration together with other authorities dealt with 4,241 cases on online infringement, closed 1,926 illicit websites, confiscated 1,178 servers and devices, fined 7.83 million yuan and transferred 322 cases to judicial departments.

http://www.chinaipr.gov.cn/newsarticle/news/governme nt/201411/1844498_1.html

Chinese National Copyright Trade Center Established in Shanghai PFTA

National Copyright Administration of China officially approved to establish the first National Copyright Trade Center in Shanghai pilot free trade area (PFTA), also being the first one in the Yangtze River Delta region.

In recent years, Shanghai witnessed a rapid development regard to copyright industry. In 2012, the added value of the copyright industry in Shanghai exceeded 200 billion yuan for the first time, among which, the added value of the core copyright industry accounted for 61.5%. Industry insiders believe that the establishment of the National Copyright Trade Center in Shanghai PFTA will further motivate the copyright industry in the PFTA as well as Shanghai as a whole.

http://english.sipo.gov.cn/news/iprspecial/201411/t2014 1115_1032400.html

2014 China Trademark Festival Successfully Closed

On November 10th 2014, the three-day China Trademark Festival was successfully concluded. The Festival attracted around 5,000 related talents and professionals, such as experts, scholars and government officials around the world as well as the officials from WIPO, who gathered in Suzhou discussing the implementation of trademark strategies, and exploring the way to accelerate the internationalization of Chinese brands. During the Festival, China Brand Exposition, an important composition, attracted nearly 150,000 visitors in three days by having over 560 exhibitors. The exposition achieved field sales of 5 million yuan, and online sales of 150 million yuan, with exhibitors contributing orders of nearly 100 million yuan.

http://english.sipo.gov.cn/news/iprspecial/201411/t2014 1115_1032389.html

China IP Index 2014 Edition Released

China IP Index 2014 Edition was recently released. The index notes that top five provinces and municipalities in terms of comprehensive intellectual property strength are Beijing, Jiangsu, Shanghai, Guangdong and Zhejiang, with Beijing ranking the first place for several consecutive years. Tianjin, Shandong, Liaoning, Fujian and Chongqing are also named in the top ten list.

http://english.sipo.gov.cn/news/iprspecial/201411/t2014 1114_1031799.html