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AFD China Continued Receiving Positive Feedbacks in the 2020 Client Satisfaction Survey

With a record-high response rate to our 2020 client satisfaction surveys, the overall satisfaction score hit 94 out of 100 points. Our services were described as having "fast response", "knowledgeable recommendations" and "very happy experience".

We would like to thank each and every one of our clients who answered to this survey. We will take your suggestions and turn them into better actions.

AFD China will continue to improve our abilities to provide satisfactory and reliable services in the future.

<http://afdip.com/index.php?ac=article&at=read&did=3645>

AFD China Assisted Clients Won the Gold and Silver Prize of the China Patent Awards

On July 14, 2020, the 21st China Patent Awards were announced. AFD China's clients won one gold prize and one silver prize. We are honored to have assisted in full course from drafting, filing to granting of the awarded patents. We would like to take this opportunity to thank our clients for their trust and support along the way. Congratulations!

<http://afdip.com/index.php?ac=article&at=read&did=3659>

State Council Releases Legislative Work Plan for 2020

China's State Council released its legislative work plan for 2020. A total of 16 draft laws, including the revision to the Copyright Law, are proposed for deliberations by the National People's Congress Standing Committee.

Additionally, other IP-related legislative projects regarding administrative review, foreign investment law, clinical research and translational application of new biomedical technologies, are also covered by the annual work plan.

<http://english.ipraction.gov.cn/article/ns/202007/317055.html>

Draft Revision to Patent Law Submitted to NPC Standing Committee

The draft revision to the Chinese Patent Law was submitted to an ongoing session of the Standing Committee of the National People's Congress, China's top legislature, for a second review. It was first read in December 2018.

One of the highlights of this draft is to add patent protection for partial design of a product, which aligns with internationally-accepted practice.

To reflect the Phase One Agreement between China and the USA, an article regarding patent term compensation was included for delays in examination which is not attributable to the applicant.

Also, a new article was introduced to address the good faith principle. That is, patentees cannot use their patents to exclude or restrict competition. Where there is patent abuse, it needs to be governed by the Anti-Monopoly Law.

The draft is open for public opinion until August 16, 2020.

<http://english.ipraction.gov.cn/article/ns/202006/316045.html>

CNIPA Issues Criteria on Determining Trademark Infringement

The China National Intellectual Property Administration (CNIPA) issues the Criteria on Determining Trademark Infringement, to provide guidelines on trademark enforcement, unify enforcement practice and enhance protection of trademark exclusive rights.

The Criteria contains 38 Articles, dealing with trademark use, same goods, similar goods, identical trademarks, similar trademarks, readily confusing, sales exemption, conflict of right, application of stay of trial, determination of right holder, among other things.

<http://english.cnipa.gov.cn/news/officialinformation/1149793.htm>

China Sees Stable Intellectual Property Development in H1

The CNIPA revealed that more than 683,000 invention patent applications were filed, and a total of 217,000 invention patents were granted, in China in H1 of 2020.

About 229,000 Chinese companies applied for patents, witnessing an increase of 32,000 compared with the same period last year.

Huawei Technologies has been granted 2,722 invention patents in China in H1 of 2020, taking the leader's position among Chinese mainland companies, followed by OPPO with 1,925 and BOE Technology Group with 1,432 patents.

By the end of June, the number of valid invention patents in China had reached 1.996 million. The average ownership of invention patents had also reached 14.3 patents per 10,000 people.

The number of valid trademarks had reached 27.414 million.

The scale of using geographical indications has gradually expanded. In H1, 322 companies were approved to use geographical indications, comparing to 116 approved in the same period last year.

<http://english.ipraction.gov.cn/article/ns/202007/317102.html>

China Initiates 16th Special Campaign of Combating Online Copyright Infringement and Piracy Nationwide

Recently, a special nationwide action codenamed Sword Net 2020 campaign was jointly launched by the National Copyright Administration, Ministry of Industry and Information Technology, Ministry of Public Security and Cyberspace Administration of China, unveiling the curtain to crack down on online copyright infringement and piracy for the 16th time since 2005.

The campaign will last four months, from June to October, and focus on

- protection of audiovisual works
- cracking down severely on infringements including illegal filming and recording in cinemas, pirating activities in the short video field, and the spread of pirated film and television works through streaming media platform
- supervision of e-commerce platforms, social media platforms, knowledge-sharing platforms, and online literature, animation, cloud services, app markets and online advertising.

<http://english.cnipa.gov.cn/news/officialinformation/1149872.htm>

SUPPLEMENTARY ISSUE

Designer Brand Supreme Defeats Squatter in All Forums

The Beijing High People's Court recently made a final judgment on the dispute between the US-based Chapter Four Company, which runs the apparel brand "Supreme" and Supreme Company over No. 17076038 trademark "Supreme and its figure" (trademark in dispute). Beijing High held that the trademark in dispute of Supreme Company and No. 14108746 trademark "Supreme" (reference trademark) of Chapter Four constitute similar marks used on similar goods such as clothing, upholding the TRAB (Trademark Review and Adjudication Board under the former State Administration for Industry and Commerce) ruling and rendering the trademark in dispute invalid.

The reference trademark filed for registration on March 4, 2014, has undergone trademark rejection and review proceedings, and was eventually approved for registration on January 21 this year, certified to be used on Class 25 goods such as clothing and hats (head-mounted).

The trademark in dispute was filed by Anglo-American Brand International Limited on May 29, 2015, certified to be used on Class 25 goods such as apparel and was approved for transfer to USNYC Inc. on May 20, 2018. It was transferred to Supreme Company on November 13 2018.

On October 20, 2017, Chapter Four lodged an invalidation request to the former TRAB over the trademark in dispute, claiming that the reference trademark constitutes a well-known trademark used on goods including clothing and hat (head-mounted), and the trademark in dispute and the reference trademark constitute similar trademarks used on the same or similar goods which damaged their previous copyrights, and the trademark in dispute was obtained by "other improper means for registration" prescribed by the Chinese Trademark Law.

On December 27, 2018, the TRAB held that the goods such as clothing on which the trademark in dispute was certified to be used have similar function and use with the reference trademark on which the reference mark was certified to be used, so they constitute similar marks used on the same or similar goods. The registration and use of the trademark in dispute does not damage the prior copyright of the reference trademark. The Anglo-American Brand Company has applied for the registration of the "Supreme" trademark on multiple classes. The trademark in dispute is deemed registered by other improper means. In summary, the former TRAB ruled that the trademark in dispute was declared invalid.

The disgruntled Supreme Company brought the case to Beijing IP Court, who held that the trademark in dispute and the reference trademark constitute similar marks used on the same or similar goods and the original applicant Anglo-American Brand Company registered the trademark by other improper means. The trial court rejected the Supreme Company's complaint.

Supreme Company then appealed to Beijing High People's Court.

Beijing High held that the coexistence of the two marks can easily mislead the relevant public to believe that the two marks originate from the same subject or that their providers have a specific connection, which constitutes similar trademarks used on the same or similar goods. In view of the fact that the case has determined that the application for registration of the trademark in dispute violates the relevant provisions of the Chinese Trademark Law, the Court will no longer comment on whether the trademark in dispute violates the relevant provisions of "other improper means for registration". In this connection, the appellate court denied Supreme Company's appeal and upheld the first-instance judgment.

<http://english.ipraction.gov.cn/article/tc/202007/318068.html>

Discussion on Inventorship

With the rapid development of science and technology, the protection of innovations is increasingly attracting attention from countries all over the world. In response, a greater number of enterprises and individuals are filing patent applications to protect their invention-creations worldwide. Invention-creations are the fruits of intellectual labor, in which the "human" plays a critical role, because it is inventors who first conceived the idea of invention-creations.

Before discussing inventorship, we should first clarify the definition of "inventor" in the patent law. According to Rule 13 of the *Implementing Regulations of the Patent Law of the People's Republic of China*:

"Inventor or designer means any person who makes creative contributions to the substantive features of an invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organizational work, or who only offers facilities for making use of material and technical means, or who only takes part in other auxiliary functions, shall not be considered as inventor or designer".

For example, in the course of designing a house, the person who only provided paper and a pen is not thus a designer.

What rights do inventors and designers have in the process of patent prosecution? Article 6 of the *Patent Law of the People's Republic of China* explicitly stipulates that "For a non-service invention-creation, the right to apply for a patent belongs to the inventor or designer. After the application is approved, the inventor or designer shall be the patentee"; Article 16 explicitly stipulates that "The entity that is granted a patent right shall award to the inventor or designer of a service invention-creation a reward and, upon exploitation of the patented invention-creation, shall pay the inventor or designer a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded"; Article 17 stipulates that "the inventor or designer shall have the right to state in the patent document that he is the inventor or designer"; while Article 72 stipulates that "Where any person usurps the right of an inventor or designer to apply for a patent for a non-service invention-creation, or usurps any other right or interest of an inventor or designer prescribed by this Law, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority at a higher level".

From the above provisions, it can be seen that an inventor's rights and interests mainly include three aspects, namely the right to:

1. Apply for a patent for non-service inventions and to enjoy the patent right after grant;
2. Be named as inventor; and

3. Receive rewards and remuneration for service inventions. Infringement of the inventor's legitimate rights and interests will be subject to corresponding administrative penalties.

When it comes to inventorship, regardless of whether the invention is a service invention or not, the inventor has the right to state that he is the inventor in the application documents, requests, certificates and other patent documents. This right is a natural right and, like the nature of "author", it is generated upon completion of the invention-creation. Therefore, if the inventor finds out in the course of patent prosecution that he is not named as an inventor, he may require the adding of his name into the "inventor list" through such procedures as a change of bibliographical data. Of course, the inventor or designer may choose whether to enjoy or waive this right. It should be allowed for the inventor or designer to voluntarily waive their inventorship. However, to avoid any dispute arising therefrom in the future, a written statement of waiver shall be made and signed by the inventor or designer.

In practice, a problematic situation often arises when a service patent application is filed after the inventor has left the job: should he still be named as inventor? As a natural right, inventorship shall be automatically bestowed on the inventor. As long as the inventor does not make an explicit statement of abandonment, the inventor's name should be specifically indicated in the inventor list of the application; otherwise it deprives the inventor of their inventorship. Generally, such indication of inventorship will not cause any burden or trouble. However, as an increasing number of patent applications are filed overseas, inventors' signatures may be required in the application process according to the requirements of different countries. Sometimes it is difficult to find the inventors who have changed jobs, let alone have them sign the corresponding documents. In some cases the costs to obtain inventors' signatures are relatively high and the inventors often do not fully cooperate. However, if the inventorship is not specified, the applicant may have to bear the expenses of such uncontrollable risks. So, how to solve such situations?

To avoid such uncertainty, contingency plans should be prepared in advance. The following are several tips which we think may help:

1. At the onset of making the service invention (i.e. when the project commences) or at the latest when the project is completed, a project document shall be drawn up internally. This document should analyze the invention-creation, and indicate the main contributors and the personnel assisting in its realization. Further, this document should be signed and confirmed by the technical director, the chief officer and other related company personnel, and then kept in the company files.

2. The relevant employee could be asked to sign a statement before leaving their position of employment, clearly stating the service invention he/she participated in, and ensuring that he/she will still sign necessary legal documents for the company after their employment ceases. This could also ensure that the company will be informed in a timely manner when his/her contact information is changed, so that he/she can be reached in time, and if he/she cannot be found after exhausting all available contact methods, he/she will be deemed to have abandoned the inventorship.

3. When the relevant employee ceases to be employed, he/she should be asked to confirm whether they are prepared to waive their inventorship. If yes, ask him/her to sign a waiver statement, and thereby the statement mentioned in above point 2 is no longer needed. All the above-mentioned statements should be kept in the company files.

The legal personnel of the company shall design corresponding legal documents according to specific business scenarios, both to ensure the smooth development of subsequent business and to avoid the above risks.

It is hoped that the above-mentioned tips can help successfully solve such problems of enterprises and protect the interests of inventors more comprehensively and completely.

A name is an important symbol of a person's existence, and can bear the ardent expectations of the elders, accumulating the person's successes and failures in life. After death, a person's name may be forgotten over time or may be long remembered. Either way, it is a starting point of others' memories of a person and is thus worth cherishing. No matter long or short, elegant or ordinary, it is hoped that every name can be put to good use.

Note: The Chinese version of this article has been published on AFD China's official Wechat account at <https://mp.weixin.qq.com/s/sn-TnET5xBD8V23ZIHUaDQ>