AFD China
INTELLECTUAL PROPERTY LAW OFFICE

Newsletter
June, 2023

Table of Contents

China-France PPH Pilot Program Launched on June 1

According to news released by China National Intellectual Property Administration (CNIPA) , the China-France Patent Prosecution Highway (PPH) pilot program was launched with a duration of five years from June 1, 2023 to May 31, 2028. PPH is a fast channel for patent examination between different countries or regions, and accelerates patent examination through cooperation among patent offices. Since the first PPH pilot program was launched in November 2011, CNIPA has established PPH cooperation with patent offices in 31 countries and regions.

http://www.chinaipmagazine.com/en/news-show.asp?id=12756

Trial Run of Online Software Copyright Registration in China Starts from June 1

Trial run of online software copyright registration in China will start from June 1, according to a notice released by the Copyright Protection Center of China(CPCC) on May 25. From June 1, applicants will fill in the registration application information and upload the relevant application documents online, with no need to submit or mail the registration application materials to the copyright Center. Software copyright registration applications submitted before June 1 are still handled as before.

http://www.chinaipmagazine.com/en/news-show.asp?id=12751

Alibaba Hit with 50M yuan for Infringing NetEase's Copyright

The Guangzhou Internet Court has ordered an Alibaba Group unit that developed the hit mobile game "Three Kingdoms Tactics" to pay NetEase Inc 50 million yuan ($7.2 million) in compensation over copyright infringement, according to a statement from NetEase. Ejoy, the Alibaba subsidiary behind the hugely popular strategy game, said on microblogging site Weibo that it would appeal the decision of the Guangzhou Internet Court, and that the game will continue to operate. It is reported that "Three Kingdoms Tactics" is Alibaba's most profitable game, earning more than $1.97 billion from player spending since launching in 2019. The fine, if upheld through the appeal, would be one of the heftiest issued by a court in China involving video games.

http://www.chinaipmagazine.com/en/news-show.asp?id=12752

China Regulator Fines Two Pharma Firms 320 Million yuan for Monopolistic Behaviour

On May 28, China's market regulator said it had fined two pharmaceutical companies 320 million yuan for entering into a monopolistic deal and abusing dominant market position. The State Administration of Market Regulation (SMAR) fined Grand Pharmaceutical 136 million yuan and confiscated 149 million yuan of "illegal revenue" and fined Wuhan Healcare Pharmaceuticals 4.13 million yuan and confiscated slightly over 30 million yuan of its revenue.

http://www.chinaipmagazine.com/en/news-show.asp?id=12754

CNIPA Commissioner Hosts Heads of Office Meeting with Rospatent Head

Shen Changyu, Commissioner of the CNIPA held a meeting with Yury Zubov, Head of the Federal Service for Intellectual Property (Rospatent) in Beijing on May 24. The two sides updated each other on the latest development of IP work, shared their practical experience and exchanged comments on profound cooperation in the future.

Shen said that the CNIPA has paid attention to the cooperative partnership with the Rospatent. The two sides' efficient and practical cooperation under bilateral and multilateral frameworks in the past few years has harvested rich fruits. On the occasion of Russian Prime Minister Mikhail Mishustin's visit to China, our offices signed a joint letter of intent to extend the pilot program of the PPH witnessed by the leaders of the two countries. This positive result of our cooperation will give both Chinese and Russian innovators more convenience and eventually better serve innovative development of the two countries. The CNIPA is looking forward to further enhancing communication with the Rospatent and advancing China-Russia IP cooperation.

Zubov congratulated China on its achievements in the IP field and highlighted that the CNIPA and Rospatent have always been an important cooperative partners. The Rospatent would like to take advantage of the signing of the joint letter of intent to elevate the IP cooperation between China and Russia to a new level and fuel the economic development of the two countries. Russia is striving to expand the use of IP pledge financing as well as advocate technology transfer and commercialization, and has been following China's progress in these fields very closely. He looked forward to more communication in this regard and more sharing of best practices between the two offices in the future.

Principals responsible for relevant departments of the CNIPA and Rospatent also attended the meeting.

http://english.cnipa.gov.cn/art/2023/6/1/art_1340_185499.html

CNIPA Deputy Commissioner Meets Ambassador of Greece to China in Beijing

Lu Pengqi, Deputy Commissioner of the CNIPA met Evgenios Dimitrios, Ambassador of Greece to China in Beijing on May 22.

Lu said that the Chinese government has attached great importance to IP work. The plan on institutional reform of the State Council this year has improved the management mechanism for intellectual property rights by adjusting the CNIPA into an institution directly under the State Council to upgrade IPR creation, application, protection, management and service. China and Greece have been maintaining friendly exchanges in the IP field for an extended period of time. Further deepening communication and cooperation will better serve innovative development of the two countries and offer more efficient IP services to both enterprises. During the meeting, Lu highlighted China's measures in beefing up IP protection and application, upon the request of the Greek side.

Dimitrios said that Greece and China, both as ancient civilizations, have a good understanding of each other. Greece appreciated China's high-quality development in the IPR field and positively assessed China's IPR achievements. Greece is willing to work with China in deepening cooperation and bearing more positive fruits.

CNIPA principals responsible for the International Cooperation Department also attended the meeting.

http://english.cnipa.gov.cn/art/2023/6/1/art_1340_185498.html

Vivo Exits the German Market after Nokia Enforces Injunction

Chinese smart phone maker vivo has exited the German market after losing a patent court case against Nokia, according to Foss Patents. It is reported that the company has made an announcement on its website, which reads “At this point, vivo products are unfortunately unavailable in Germany. Accordingly, no product information is available on our German website...” In April, the German District Court of Mannheim granted Nokia an injunction against vivo. vivo said then in an official announcement stating that it is prepared to suspend its sales and marketing activities in Germany in the event Nokia would enforce the injunction. However, it is predicted by Foss Patent that chances are not big that vivo will accept Nokia’ s preferred licensing terms since “vivo generates only a tiny portion of its worldwide sales in Germany”.

http://www.chinaipmagazine.com/en/news-show.asp?id=12757

China’s Antitrust Regulator Imposed Fines of 784 Million Yuan in 2022

China’s antitrust regulator concluded 187 monopoly cases in 2022, with fines of 784 million yuan, according to the Report on China’s Anti-monopoly Law Enforcement (2022) released by the SMAR on June 9.

Among the 187 monopoly cases, 18 cases of monopoly agreement were filed and investigated, of which 16 were concluded; 13 cases of abuse of dominant market position were handled, with fines of 166 million; 92 cases of abuse of administrative power to exclude and restrict competition were investigated, of which 73 were concluded.

http://www.chinaipmagazine.com/en/news-show.asp?id=12759

Apple Faces Trademark Battle to Use "Vision Pro" Name in China

According to news on June 13, Apple may be forced to change the name of its new mixed reality headset in China unless it can come to an agreement with Huawei, which already owns the "Vision Pro" trademark in the country. The trademark was originally granted to Huawei on May 16, 2019, and gives the company exclusive rights to its use in China from November 28, 2021 to November 27, 2031. Huawei actively uses the trademark in China, and offers a number of products under the Vision name, including smart TVs and smart glasses. If Apple intends to sell its headset in China and call it Vision Pro, it may have to enter into negotiations with Huawei to release the trademark for a price. Apple has said it plans to launch the Vision Pro headset in the United States early next year, with the product set to become available in "more countries" later in 2024.

http://www.chinaipmagazine.com/en/news-show.asp?id=12762

SUPPLEMENTARY ISSUE

AFD China Won China IP Awards 2023

Recently, the reputable intellectual property magazine Asia IP released its China IP Awards 2023, announcing the winning Chinese law firms in each practice area.

AFD China, by virtue of its outstanding IP expertise in the fields of pharma, biotech and life sciences as well as its timely, high-quality and targeted services offered to the clients, was lauded by its clients and once again honored by Asia IP as “Pharma, Biotech & Life Sciences Firms of the Year”.

The China IP Awards are designed to honor outstanding law firms with presence in China for their high-standard services in trademark, patent and copyright work. Asia IP’s evaluation system covers objective data in various aspects such as each law firm’s comprehensive strength, number of applications, number of granted patents, size, etc., and particularly focuses on the key cases handled by each law firm in the preceding 12 months, taking into account the value they created for clients and the size and influence of their relevant clients. The investigation team also conducts research worldwide to assess each firm's business capabilities, professional level, and overall quality from multiple dimensions, thereby ultimately determining the award recipients. Thus, the China IP Awards are highly objective and authoritative.

We could not have won this award without the trust and support of our clients. It is your affirmation that drives us to turn challenges into opportunities for growth. Our successful winning of this award also owes to the efforts and persistence of our colleagues. It is our unwavering pursuit of quality work that enables us to continually improve service quality and client satisfaction, turn introspection and reflection into daily work standards, and propel our firm's services to new heights.

We will continue to prioritize the interests of our clients and provide steadfast protection for your intangible assets with our solid professional skills, sincere service attitude, and flexible work style.

SPC clarifies trial guidelines for cases involving claims of patent ownership based on infringement of trade secret

In May 2023, the Intellectual Property Tribunal of the Supreme People's Court (SPC) concluded three patent ownership disputes related to "tire molding machines." The judgments clarified the trial guidelines for cases involving claims of patent ownership based on infringement of trade secret.

The three patents in question were two invention patents and one utility model patent owned by the appellee. The appellant claimed that they had developed and used the involved technology and had protected it as a trade secret, and the appellee's behavior of applying for and obtaining the grant of patents for the technology constituted an infringement of the appellant's trade secret, and requested the court to rule that the three patents in question shall be owned by the appellant.

The first-instance court held that the appellant failed to prove that the appellee had conducted illegal acts of acquiring the prior technology claimed by appellant as trade secret. Therefore, the court rejected the appellant's claims in all three cases. The appellant then filed an appeal, arguing that the first-instance court improperly allocated the burden of proof and that it had demonstrated

that the technology involved in the cases was essentially the same as its prior technology and the appellee had the potential to access and indeed accessed such prior technology.

In the second-instance ruling of the SPC, it was determined that the appellant's prior technology constituted a trade secret and it had been proven that the appellee had the opportunity and means to access the prior technology before filing their patent applications, the technical solutions of the patents in question were essentially the same as the prior technology, and such prior technology constituted the substantive contents of the technical solutions of the patents in question. Under such circumstances, although the appellee claimed to have independently developed the technical solutions of the patents in question, the evidence they submitted only consisted of research conclusions and lacked procedural technical information reflecting the complete development process of the technology. As a result, the appellee's claim of independent development could not be substantiated, nor could it be demonstrated that they made a creative contribution to the substantive features of the patents in question. Therefore, the appellee's defense argument about their legal rights to the patents in question was deemed lacking factual and legal basis. Thus, based on the evidence presented by both parties, it was concluded that the appellee had obtained the appellant's prior technology through unfair means and subsequently applied for and obtained the grant of the patents in question. Thus, the ownership of the three patents should be awarded to the appellant. The first-instance judgment of the three cases was revoked accordingly.

The SPC also pointed out that when a trade secret owner uses trade secret infringement as the basis for claiming the ownership of a patent, the court should examine whether the patent documents disclose the trade secret or whether the patented technology uses the trade secret as an essential part of its technical solution. When determining whether the patent documents disclose the trade secret, if the trade secret owner provides evidence to prove that the technical solutions disclosed in the patent documents are the same or essentially the same as their claimed trade secret and the accused patentee had access or opportunity to obtain the trade secret before the filing date of the patent, it is generally presumed that the patentee obtained the trade secret through unfair means and disclosed it. If the patentee claims that they independently developed the disputed technology or obtained it from legitimate sources, they shall bear the burden of proof; if the patentee can provide sufficient evidence to support their claim, they can refute the presumption that they obtained the trade secret through unfair means and disclosed it and demonstrate their lawful ownership of the disputed patent. Otherwise, if the accused patentee fails to prove their claim, and the trade secret claimed by the trade secret owner constitutes an essential part of the patented technology, the trade secret owner shall be deemed to have legal rights to the disputed patent.

https://ipc.court.gov.cn/zh-cn/news/view-2370.html

SPC Further Clarifies the Rules for Determining Technology Secret Infringement

In May 2023, the Intellectual Property Tribunal of the SPC concluded an appeal case involving disputes over technology secret infringement, in which the SPC fully supported the right holder's claim for compensation for economic losses and reasonable expenses and further clarified the rules for determining technology secret infringement.

The appellant (plaintiff in the first instance) is the owner of the technology secret involved in the case. Three individuals involved in the case successively worked for the appellant and the appellee (defendant in the first instance). The appellant completed the design drawings of the product in question in July 2012 and sold the product from 2013 to 2014. The appellee completed

design drawings of a similar product in April 2016 and sold the related product. In March 2001, the appellant established a confidentiality system for technical documents; all the three individuals signed a "Confidentiality Agreement" with the appellant, and the drawing borrowing records from the appellant showed that all the three individuals once borrowed the drawings.

The appellant believed that the appellee obtained its product-related technical drawings, technical documents and other technology secrets by employing the three individuals (key technical personnel), and then manufactured and sold a large number of infringing products. Therefore, the appellant filed a lawsuit, requesting that the court order the appellee to immediately stop the infringement, and order the appellee and one of the individuals to jointly compensate the appellee for economic losses of CNY 500,000 and reasonable expenses of CNY 230,000 caused by the infringement. During the first trial, the appellant provided 29 pages of evidence drawings, including general drawings, component drawings, and part drawings, and claimed that the entire set of drawings constituted a technology secret.

The first-instance court held that the appellant failed to provide specific contents of the secret-related technical solution or technical features contained in the claimed entire set of drawings, and did not explain the specific contents, steps, or implementation methods that could constitute a technology secret. Without clear specific content of the main secret points in the entire set of drawings claimed by the appellant, and without clear differentiation from well-known information technology, it was impossible to judge and confirm whether the relevant technical information claimed by the appellant constituted a technology secret. Additionally, the appellant did not provide evidence proving the infringement methods or means used by the appellee and the individual, and failed to clarify or prove whether the appellee and the three individuals obtained its production technical drawings and how they obtained the drawings. The first instance court dismissed the appellant's lawsuit. The appellant was dissatisfied and appealed to the SPC.

The SPC held that the appellant submitted a whole set of 29-page product drawings and claimed that the collection of all specific technical information recorded in the whole set of drawings constituted its technology secret, so the contents of the technology secret claimed by the appellant were clear, and the court should, based on this, examine whether the technical information claimed by the appellant had secrecy, value, and confidentiality, and further examine whether the counterparties adopted improper means to obtain, disclose, use the drawings, etc. In this case, all the three individuals had worked for the appellant, and two of them were the drawing designers and reviewers with the opportunity to obtain the drawings. After stopping working for the appellant, all the three individuals went to work for the appellee, and one of them also admitted during the first trial that he had given the product drawings involved to the appellee for use. After a comparison of the drawings submitted by the appellant and the appellee, it was found that although the contents of the drawings were complex, they were highly similar and the errors in the drawings were also the same. Therefore, the appellant’s claim was relatively credible, i.e. the appellee's drawings were modified based on the appellant's drawings. Further, the appellee was unable to provide proof of a legitimate source for its drawings, such as self-development or reverse engineering, and thus it could be determined that the appellee improperly obtained and used the appellant's technology secret. The court ruled in favor of the appellant's claim for compensation for economic losses of CNY 500,000 yuan and reasonable expenses of CNY 230,000, and supported the appellant's appeal request that the appellee should destroy the files, drawings, and electronic data containing the appellant’s technology secret.

The SPC believes that the infringement of technology secrets can be determined based on direct evidence and can also be presumed based on indirect evidence. In general, technology secret infringement is not conducted openly, so the right holder has difficulty knowing the exact source of the information used by the accused infringer. Based on the specific circumstances of the case

or known facts and daily life experience, the right holder can use indirect evidence to prove that the accused infringer used improper means to obtain, disclose, and use the technology secret. Presumption of facts can adopt the "contact + substantial similarity - lawful source" rule, which means that the right holder of the technology secret proves that the accused infringer had the conditions to obtain its technology secret, the technical information used by the accused infringer is identical or substantially similar to the right holder's secret technical information, and the accused infringer cannot provide or refuses to provide evidence of a legitimate source for the technical information they used, such as self-development or reverse engineering. The ruling of this case clarifies that the right holder can claim that the collection of specific technical information recorded in all of its drawings constitutes a technology secret, and the court can determine based on the "contact + substantial similarity - lawful source" rule that the accused infringer obtained, disclosed, and used the technology secret through improper means. This reflects the judicial orientation of effectively solving the difficulties in providing evidence for technology secret protection, thereby strengthening the protection.

See the following link for the details of the case:

https://ipc.court.gov.cn/zh-cn/news/view-2382.html