

China's IP
in foreign eyes

NetEase Cloud Music announced a new "Music Talent" initiative to leverage its competitive edge as a community to connect, inspire and engage quality content creators to cater to the country's booming music industry. Music Talent is a new concept incubated and developed by NetEase Cloud Music aims to support and grow the Music Talents on the platform who create derivative music content, such as music videos, radio podcasts. The initiative demonstrates NetEase Cloud Music's ongoing emphasis on content creation, especially the exploration of diverse forms of high-quality and high-value content generation. (NetEase Cloud Music Announces New Initiative to Foster the Growth of Derivative Music Content Creators, by PR Newswire)

日前,网易云音乐发布“音乐达人”战略。该战略旨在充分利用已有优势构建国内音乐达人聚集地,以适应国内正在蓬勃发展的音乐产业。网易云音乐提出的“音乐达人”概念,指的是具备一定影响力的音乐衍生内容创作者,如短视频、广播播客等。该战略体现了网易云音乐一直以来对内容创作,尤其是开发不同形式的优质生成内容的重视。(网易云音乐发布音乐达人战略,美通社)

Comment:

In a bid to meet the diverse demands of users, NetEase Cloud Music has been attaching great importance to high-quality copyright contents through multiple methods. The launch of Music Talent initiative will help the platform attract more users.

点评

为了满足用户多元化需求,网易云音乐持续注重以多种方式打造优质版权内容。此次音乐达人战略的推出,将进一步助力网易云音乐平台获得更多用户的青睐。



Recently, AutoX, an Alibaba-backed startup, announced it had rolled out fully driverless robotaxis on public roads in Shenzhen. The company said it had become the first player in China to do so, notching an important industry milestone. The company released a video of its mini-van-the Fiat Chrysler Pacifica-navigating on its own through the city's downtown area, showing passengers getting in and loading a package into the backseat. It also depicts the car navigating around loading trucks, veering past pedestrians, and performing a U-turn. (Self-driving robotaxis are taking off in China, by CNN)

日前,中国自动驾驶汽车初创企业Auto X宣布在深圳公开道路推出中国首批全无人驾驶车队。该公司公布的视频显示,中国用菲亚特-克莱斯勒公司的多用途车型Pacifica进行无人驾驶测试,其中包括示意乘客进车以及把行李放入后座等功能。该视频也展示该车在遇上装卸货车时如何反应,在路人经过时如何自动转向以及如何进行急转弯。(中国自动驾驶汽车技术正迅速发展,美国有线电视新闻网)

Comment:

AutoX has been developing self-driving technologies through innovation and IP portfolio. Its rolling out of fully driverless robotaxis showcases the company's great capacities in the area.

点评

Auto X等中国企业通过创新技术、知识产权布局等方式在自动驾驶领域不断深耕。此次无人驾驶车队的推出,表明中国企业在自动驾驶领域强大的创新能力。(熊花平)

Focus on the Amended patent law ③
聚焦:新修改的专利法看点梳理(三)

Spotlight V/看点五:

Are there any changes on improving the design system?

此次专利法修改在完善外观设计相关制度方面进行了哪些修改?

Chinese companies are getting better in designing in the past few years and design applications filed in China are spiking to a world high now, both begging for heightened protection. The amendment improves the design system to cater such need.

First, partial design is under protection now. When making new product designs, designers sometimes create all-new, revolutionary ones. On more occasions, they just make minor touches to some part of current designs. Innovation on a part of a current design is an important type of product design. Partial design is already patentable in the U.S., Japan, Europe, the Republic of Korea and other major patenting destinations. With an increasing number of Chinese companies are venturing out, their need for design protection at these places is also on the rise. Protection of partial design aligns with such need and international practice, enabling Chinese companies to better maneuver under different legislations, survive and excel in overseas markets.

Second, protection term of design patents is extended. The new term is 15 years, fitting Chinese companies' need for filing overseas and innovators' diversified needs on protection term and pave way for China's accession to the Hague Agreement concerning the International Deposit of Industrial Designs.

Third, domestic priority is available for design patent. If a design application of the same subject is filed within



6 months from the date on which the initial application was filed, the applicant may claim priority of the initial application. This will lower filing costs and afford design applicants an opportunity to further improve their designs and change protection scope.

近年来,中国企业的设计水平和能力不断提高,中国外观设计申请量也大幅提升,已居世界首位,加强外观设计保护的呼声日益强烈。为满足企业的实际需求,此次专利法修改进一步完善了外观设计相关制度。

一是增加局部外观设计保护。在设计创新的实践中,设计师有时候会做出具有颠覆性的产品整体设计,但更多时候是对产品的某些局部进行改良性的设计创新,对产品局部的设计创新都已经成为产品设计的重要方式。同时,美国、日本、欧洲、韩国等主要国家和地区均对局部外观设计予以保护,随着中国企业不断“走出去”,企业在境外获得外观设计保护的需求明显增加。保护局部外观设计,符合企业需求,符合国际通行做法,可以使中国企业更好地利用规则,进一步开拓国际市场,提高国际竞争力。

二是延长外观设计专利保护期限。将外观设计专利保护期限延长为

15年,以满足中国企业向外申请的需,满足创新主体对保护期限的多元化需求,也为中国加入《工业品外观设计国际注册海牙协定》创造条件。

三是增加外观设计专利申请国内优先权制度。明确申请人自外观设计在国内第一次提出专利申请之日起六个月内,又就相同主题在国内提出专利申请的,可以享有优先权,从而降低申请成本,给予外观设计申请人进一步完善设计、调整保护范围的机会。

Spotlight VI/看点六:

Any new provisions to inspire innovation in pharmaceutical industry?

此次专利法修改有哪些更好地鼓励医药产业创新的新规定?

There are several provisions added in the amendment to enhance protection of pharmaceutical patents and inspire innovation of the industry.

First, the supplementary patent certificate (SPC) system is established. With advancement of the pharmaceutical industry in China and companies' increasing input in R&D and ever-im-

proving innovation capacity, a new system is required to fuel innovators' desire to develop new drugs. In the meantime, in an effort to accelerate foreign new drugs' entry into the Chinese market, improve drugs' accessibility, safeguard public health, it is necessary to establish the supplementary patent certificate system to make up the time consumed for market approval of new drugs. Upon patentees' request, a supplementary patent term may be granted to the invention patents of the new drugs having gained market approval in China. SPC lasts for up to a maximum of five years and is designed to provide for up to a maximum of 14 years patent monopoly on marketed drugs.

Second, an early-stage resolution proceeding is in place for drug patent disputes to solve potential patent disputes as early as possible before market launch of drugs. Such avenue available for interested parties to solve disputes may better balance interests between patentees, generic drug makers and the public, provide better access to drugs and safeguard public health.

此次专利法修改在加强药品专利保护、鼓励医药领域创新方面增加了相关规定。

一是新增了关于药品专利期限补偿的规定。现阶段,随着中国医药产业的发展,药企对创新药品的研发投入和创新能力逐步提高,需要相应的制度设计来保障其从事新药研发的积极性。同时,为促进国外新药能够尽早在中国上市,提高药品可及性,保障公共健康,有必要立足中国国情,借鉴相关国家和地区经验,建立药品专利期限补偿制度,即为补偿新药上市审评审批占用时间,对在中国获得上市许可的新药相关发明专利,应专利权人的请求给予专利权期限补偿。补偿期限不超过五年,新药批准上市后总有效专利权期限不超过十四年。

二是新增了药品专利纠纷早期解决程序,以在相关药品上市前,尽

早解决潜在的专利纠纷。为相关当事人提供可供选择的纠纷解决途径,可以更好地平衡专利权人、仿制药企业和社会公众利益,提高药品可及性,保障公共健康。

Spotlight VII/看点七:

Are there any changes to respond to the Covid-19 pandemic?

为应对新冠肺炎疫情,专利法是否有相关修改?

To be in a better position to take on the pandemic and other states of emergency and extraordinary situations, facilitate timely use of relevant inventions in treating diseases, tackle public health problems, respond to innovators' need in loosening the exception to lack of novelty, the amendment adds

'When the state of emergency or extraordinary situation arises in the country, publish for the first time for the public interest'. This accommodates the current need for controlling the pandemic as well as leaving leeway for future states of emergency or extraordinary situations. (by Sun Di)

为更好地应对疫情防控等紧急状态和非常情况,促进相关发明创造在疾病治疗等方面的及时应用,解决公众健康问题,回应创新主体放宽不丧失新颖性例外规定的需,此次专利法在不丧失新颖性例外的适用情形中增加“在国家出现紧急状态或者非常情况时,为公共利益目的首次公开”。这样既能满足当前抗击疫情的实践需要,还能今后在其他紧急状态或者非常情况下的适用留有空间。(孙迪)

Creaddict invalidates TM by proving registration by fraud
科迪特公司在华成功无效“REDLINE”商标

Recently, Beijing High People's Court made a final judgment on a trademark invalidation administrative dispute over No.8397269 trademark REDLINE (trademark in dispute), holding that the trademark in dispute was registered by means of deception and upholding the first-instance judgment.

The trademark in dispute was filed for registration to the Trademark Office (TMO) under the former State Administration for Industry and Commerce (SAIC) by a person surnamed Chen on June 17, 2010, and would be certified for use on Class 14 goods including watches and clocks on July 7, 2011. On December 6, 2016, the trademark in dispute was transferred to Shanghai Yiquan Trading Company after cleared by the TMO. According to No. 1695 issue of the Notice on Revocation of Registered Trademarks and No. 1772 issue of the Notice of Trademark Correction published respectively by China National Intellectual Property Administration on May 13, 2020 and December 6, 2020, the trademark in dispute was revoked for registration on all goods on the grounds that it was not in actual use for three consecutive years.

On December 21, 2016, the France-based Creaddict Company lodged an invalidation request to SAIC's Trademark Review and Adjudication Board (TRAB), asserting that Chen submitted a false license of self-employed busi-

nessman to the TMO as part of the registration application documents to gain registration for the trademark in dispute, which violated Paragraph 1 of Article 41 of the Chinese Trademark Law.

According to a government information notification made by Chaoyang Branch of the former Beijing Administration for Industry and Commerce on October 12, 2016 and submitted by Creaddict to the TRAB, the business license information of Chen, the owner of the trademark in dispute, could not be found in company registration databases.

On February 6, 2018, the TRAB held that under Paragraph 1 of Article 41 of the Chinese Trademark Law, the trademark in dispute was registered by deception and made a decision to invalidate the trademark in dispute.

The disgruntled Yiquan company then brought the case to Beijing IP Court, claiming that the evidence cannot prove the trademark in dispute was applied for registration by Chen through means of deception, its ownership of the trademark in dispute was gained by legitimate procedure, the company did not know what Chen had done and its legitimate rights should be protected.

Beijing IP Court rebuffed Yiquan Company's request on March 15, 2019, holding that the trademark in dispute was registered by means of deception.

Unwilling to just move on, Yiquan Company then appealed to Beijing High People's Court.

Beijing High held that the false application file submitted by Chen wrongly informed the TMO and the registration seriously distorted the trademark registration order, constituting the circumstance that the trademark in dispute was registered by means of deception under Paragraph 1 of Article 41 of the Chinese Trademark Law. The evidence Yiquan provided cannot prove it had paid corresponding consideration for the use of the trademark in dispute. The transfer of the trademark in dispute would neither change the fact that the trademark in dispute was registered by means of deception nor affect the evaluation whether the registration of the trademark in dispute ran counter to Paragraph 1 of Article 41 of the Chinese Trademark Law. In this connection, the Court rejected Yiquan's appeal and upheld the first-instance judgment. (by Wang Guohao)

围绕第8397269号“REDLINE”商标(下称涉案商标)引发的商标权无效宣告请求行政纠纷案,北京市高级人民法院日前作出终审判决,认定涉案商标系以欺骗手段取得注册,维持了一审判决。

据了解,2010年6月17日,陈某某向原中国国家工商行政管理总局商标局(下称原商标局)提交涉案商标的注册申请,2011年7月7日被核准注册使用在手表、钟等第14类商品

上。2016年12月6日,涉案商标经原商标局核准转让给上海亿券贸易有限公司(下称亿券公司)。根据中国国家知识产权局分别于2020年5月13日与12月6日发布的第1695期《注册商标撤销公告》、第1772期《商标更正公告》显示,涉案商标因连续3年不使用,在全部商品上的注册已被撤销。

2016年12月21日,法国科迪特有限公司(下称科迪特公司)针对涉案商标向原中国国家工商行政管理总局商标评审委员会(下称原商评委)提出无效宣告请求,主张陈某某在申请注册涉案商标的过程中,伪造了虚假的个体工商户营业执照,作为申请文件向原商标局提交,以骗取涉案商标的注册,违反了商标法第四十一条第一款规定。

根据科迪特公司向原商评委提交的原北京市工商行政管理局朝阳分局于2016年10月12日作出的政府信息公开告知书载明,经查询企业登记数据库,负责人为涉案商标原注册人陈某某的营业执照信息未查得,科迪特公司申请获取的政府信息不存在。

2018年2月6日,原商评委作出裁定认为,涉案商标的注册构成商标法第四十一条第一款规定所指以欺骗手段取得商标注册的情形,据此裁定对涉案商标予以无效宣告。

亿券公司不服原商评委所作裁定,在法定期限内向北京知识产权法院提起行政诉讼,主张在案证据不足以证明涉案商标原注册人陈某某通过弄虚作假手段取得涉案商标的注册;亿券公司通过正当合法手续善意获得涉案商标的所有权,且亿券公司

对涉案商标原注册人陈某某的行为并不知情,对亿券公司的合法权益应予保护。

北京知识产权法院以涉案商标系以欺骗手段取得注册为由,于2019年3月15日一审判决驳回了亿券公司的诉讼请求。

亿券公司继而向北京市高级人民法院提起上诉。

北京市高级人民法院经审理认为,涉案商标原注册人陈某某以虚假的个体工商户营业执照作为申请文件向原商标局提交涉案商标注册申请,导致原商标局陷入错误认识而使涉案商标获准注册,该行为严重扰乱商标注册秩序,属于商标法第四十一条第一款规定所指以欺骗手段取得注册的情形;亿券公司提交的证据不足以证明其取得涉案商标已支付相应代价并对涉案商标进行了使用,涉案商标权利转让的事实不会改变涉案商标系以欺骗手段取得注册的违法性质,不影响对于涉案商标是否违反商标法第四十一条第一款规定的判断。综上,法院终审驳回亿券公司的上诉请求,维持一审判决。(王国浩)

英文翻译	熊花平
Translator	Xiong Huaping
责任编辑	柳 鹏
Executive Editor	Liu Peng