

China's IP
in foreign eyes

The research firm Sanford Bernstein estimates that auto manufacturing capacity in China will rise 22 percent over the next two years, bringing it to 28.8 million cars, minivans and sport utility vehicles annually. That is almost equal to the American and European markets combine. (*Automakers Expanding in China May Soon Face Weakening Demand, by the New York Times*)

据调研公司桑福德·伯恩斯坦估计,在未来两年内,中国汽车产能将增长22%,每年可生产2880万辆轿车、小型货车和运动型多功能车。这几乎相当于美国和欧洲市场的总和。(外资车企在华扩张,面临产能过剩风险,《纽约时报》)

Comment

Compared with foreign automakers expanding capacity in China, the domestic automakers gradually grew up by relying on independent innovation and IPRs. They had the strength which competes with foreign automakers. With the rise of national brands of automobiles, the consumers will have more choice while buying automobiles.

点评

与外资车企在华扩大产能不同,中国自主品牌汽车依靠自主创新,注重知识产权的积累,逐渐成长起来,并具备了与外资企业抗衡的实力。随着自主品牌的崛起,消费者将更多地选择中国自主品牌汽车。



Part of the push for better patent protection comes from emerging giants like Huawei Technologies Co., which compete globally and see a thick patent portfolio as crucial to selling overseas without drawing lawsuits or paying high royalties. More patents have led to more enforcement. Chinese officials said they handled 35,844 patent infringement or counterfeit cases last year, nearly four times as many as in 2012. (*Stronger Chinese Patent Laws Also Help U.S. Companies, by the Wall Street Journal*)

得益于与日俱增的专利保护力度,华为公司等中国企业正迅速充实其专利资产,以避免在“走出去”时陷入专利诉讼或遭遇巨额专利许可费用。而越来越多的专利也推动执法越来越强。去年,中国知识产权系统处理了3.5844万件专利侵权假冒案件,是2012年的近4倍。“中国愈发强劲的专利保护惠及美国企业”,《华尔街日报》

Comment

In recently years, China has been intensifying punishment for patent infringement and counterfeit, improving patent protection mode characterized with both administrative law enforcement and judicial protection, which complement each other's advantages through organic coordination. These measures improve foreign companies' confidence in China.

点评

近年来,中国加大了专利侵权行为惩治力度,推动专利保护法治化,完善行政法和司法保护两条途径优势互补、有机衔接的专利保护模式,有效提振了外国企业对中国市场的信心。(柳鹏)

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Three tips for Chinese pharmaceutical companies going global 中国药企“出海”带好三个“药方”

Qianjiang Yong' an Pharmaceutical Co., Ltd (hereinafter referred to as Yong' an Pharmaceutical) was sued for patent infringement in the United States recently, which triggered wide attention from international pharmaceutical industry. The company has occupied nearly half of the global market share of taurine. In recent years, Chinese pharmaceutical companies have been facing with more patent lawsuits in overseas market. Zhu Song, partner of Ruyakherian LLP said, "Chinese pharmaceutical companies should evaluate the risks of patent infringement in target markets at regular intervals and make strategy beforehand while strengthening the patent layout in order to avoid latent risks of lawsuits."



Zhu Song added that Yong' an Pharmaceutical may opt to settle with the plaintiff after making analysis of the patent in dispute. If failed, the company would select patent attorneys which are familiar with both Chinese and the US markets to respond to the lawsuit, evaluate the possibility of patent infringement and formulate the litigation strategy accordingly. Mei Lei, partner of Mei & Mark LLP, suggested that the company pursue "inter partes review" (IPR) before the Patent Trial and Appeal Board (PTAB) of the US Patent and Trade-

mark Office, requesting the examination of validity of patent rights in dispute. "IPR is a strategy that most enterprises would like to adopt to cope with patent infringement in the US. It has many advantages. Firstly, the period is short which enables the company to get the judgment within one year after the IPR is declared. Secondly, the possibilities of success is high. According to the US Patent Law, the patent right of the patent in dispute is at first defaulted valid in patent cases heard by US federal district courts. However, in IPR proceeding, the patent right is not defaulted valid and is highly possible to be declared invalid; thirdly, the cost is lower ranging from

US \$300,000 to US \$500,000." said Mei Lei. Overseas market is of vital importance to Chinese pharmaceutical companies aiming for global market. If Yong' an Pharmaceutical loses the lawsuit, its products might be forbidden to enter the US market which will be a heavy toll on the company. It was best to be fully prepared beforehand. Zhu Song suggested Chinese pharmaceutical companies follow a three-step strategy to prevent the risk of patent infringement. The first step is to make an evaluation of the risk of patent infringement before entering target market; the second step is to keep an eye on the patent

layout in target market; the final step is to learn from the experience of other Chinese companies which have been succeeded in going global. He noted that Chinese companies should not only conduct patent layout on technologies in use but also on technologies that are yet to be used, laying a foundation for promoting the follow-up products.

(by Feng Fei)

本报记者 冯飞

占据全球牛磺酸市场份额近半壁江山的中国浙江永安药业股份有限公司(下称永安药业)近日在美国被诉专利侵权,引发国际制药行业高度关注。近年来,中国医药走向国际市场的步伐逐渐加快,遭遇的专利诉讼也逐渐增多。美国路乾律师事务所合伙人、律师朱松在接受本报记者采访时建议:“中国药企在加强专利布局的同时,应定期对目标市场开展专利侵权风险评估,并在进军目标市场前做好规避设计,以避免潜在的诉讼风险。”

朱松向本报记者介绍:“永安药业在对涉案专利进行分析后,可以选择是否与被告进行和解,如果无法达成和解协议,永安药业应选择熟悉中国和美国的专利律师积极应诉,评估永安药业牛磺酸产品构成侵权的可能性,并有针对性地制定诉讼策略。”

除了和解与积极应诉之外,美国美科律师事务所主管合伙人梅雷在

接受本报记者采访时建议,永安药业还可以通过美国专利商标局专利审查与上诉委员会提出双方复审请求(IPR),请求审查涉案专利的专利权的有效期。“IPR程序是大部分企业在美国遭遇专利诉讼时通常采用的应对策略,其具有诸多优势,一是周期短,立案1年后就能拿到判决书;二是成功率高,根据美国专利法,在美国联邦地区法院审理的专利诉讼中,涉案专利的专利权首先被默认为有效,而在IPR程序中,涉案专利的专利权没有被默认为有效,其被宣告无效的可能性很大;三是成本低,大都在30万美元至50万美元之间。”梅雷介绍。

海外市场对于“走出去”的中国药企至关重要。此次永安药业一旦败诉,其产品有可能会被禁止进入美国市场,这将是致命打击。避免陷入诉讼漩涡的最好方式就是未雨绸缪。那么,对于走向国际市场的中国药企来说,应如何预警专利侵权风险?朱松建议,中国药企应该分三步走,第一步是企业进入目标市场前就开展专利侵权风险评估,分析目标市场专利的权利要求保护范围,提前做好规避设计;第二步是进入目标市场后,持续密切关注目标市场的专利布局情况;第三步是借鉴学习中国其他行业成功“走出去”企业的经验。“不仅要针对已经投入使用的技术开展专利布局,还应针对目前未投入使用的技术在潜在的目标市场开展专利布局,为后续产品推广打下基础。”朱松表示。

China strengthens management on patent administrative enforcement certificates 中国进一步加强专利行政执法证件管理

Recently, the State Intellectual Property Office of PRC (SIPO) issued the Measures on Management of Certificates and identifications for Patent Administrative Enforcement (Trial) to implement the management system on certificates and qualifications for patent enforcement personnel and regulate patent administrative enforcement.

According to the measures, the certificates for patent administrative enforcement should be managed in a unified way and on a level-to-level basis

across the nation. While enforcement personnel are performing their duties, they should carry and take the initiatives to show the certificates for patent administrative enforcement and use the certificates in the enforcement areas identified by the certificates and within the term of validity.

SIPO is responsible for the application, picking-up, checking, issuance, verification and supervision of certificates for patent administrative enforcement personnel across the country. The applicants should take the on-

the-job training organized either by SIPO or by the department in charge of patent work upon the approval of SIPO and shall pass the related qualification examination as well.

SIPO will organize and carry out annual review of certificates for patent administrative enforcement among all levels of patent offices in order to further improve the quality of the enforcement. The personnel who meet the requirement will be incorporated into the database of the enforcement personnel. (by Sun Di/ Wang

Zhichao/ Guan Jian)

本报讯 近日,中国国家知识产权局印发《专利行政执法证件与执法标识管理办法(试行)》,贯彻落实专利行政执法人员持证上岗和资格管理制度,规范专利行政执法行为。

根据《办法》,专利行政执法证件实行全国统一规范、分级管理制度。专利行政执法人员在履行专利行政执法职责时,应当随身携带并主动出示专利行政执法证件,并在证件载明的执法区域内和有效期内使用专利行政执法证件。

据悉,国家知识产权局负责全国专利行政执法人员证件的申领、核发、核检、监督等工作。申领专利行政执法证件人员应参加国家知识产权局组织或者经国家知识产权局同意后由管理专利工作的部门组织的专利行政执法人员上岗培训班,并通过专利行政执法资格考试。

下一步,国家知识产权局将组织开展2016年度全系统专利行政执法证件年检工作,将检验合格人员纳入全系统执法人员数据库,进一步提升执法办案工作质量。(孙迪 王志超 关健)

Blizzard safeguards the copyright of World of Warcraft in first instance 《魔兽世界》一审获赔600万元

Blizzard Entertainment Co., Ltd (hereinafter referred to as Blizzard Entertainment) jointly with Shanghai EaseNet Network Technology Co., Ltd (EaseNet) filed two lawsuits against Chengdu Qiyou Limited (Seven Games), Beijing Fenbo Times Internet Technology Co., Ltd (Rekoo) and Guangzhou Dongjing Computer Technology Co., Ltd (UCWeb) to Guangzhou IP Court for copyright infringement and unfair competition in two separate cases. The plaintiff argued that the game "Everyone Warcraft: War of Draenor" (formerly known as Chieftain Thrall: The expedition of Warcraft) produced by Seven Games copied the image of hero and beast in World of Warcraft and used the name and decoration similar with World of Warcraft. The plaintiff sought injunction and 10 million yuan in damages.

The Court took the cases and ruled that the three defendants to stop infringement and compensated 6 million yuan in damages.

The Court held that, the alleged infringing game had the same character with that in "World of Warcraft: Warlords of Draenor" which constituted similarity. The Seven Games copied "World of Warcraft: Warlords of Draenor" and did not sign its name without permit which infringed the plaintiff's rights of reproduction and signature. The Rekoo provided downloading services to the public via internet which infringed the plaintiff's right of communication through information network.

With respect to the amount of damages, the court ruled that the three defendants compensate 4 million yuan in damages considering the popularity of World of Warcraft, the quantity of infringing works and actual sales revenue generated on the platform of Apple by these defendants.

In an unfair competition case, the plaintiff argued that "Everyone Warcraft: War of Draenor" used the special name of World of Warcraft, decoration and special name of game roles

without authorization; the Seven Games used ambiguous language such as "warCraft mobile game" in its promotion of the game which constituted false publicity. Therefore, unfair competition was constituted. The Court upheld the claims of the plaintiff and ruled the defendants to compensate 2 million yuan for economic losses.

Recently, some of the defendants appealed. The case will enter the procedure of second-instance.

(by Jiangxu/ Xiao Shengcheng)

本报记者 姜旭
通讯员 肖晟程

因认为成都七游科技有限公司(下称七游公司)出品的《全民魔兽:决战德拉诺》游戏(原名《酋长萨尔:魔兽远征》)抄袭了《魔兽世界》游戏中的英雄和怪兽形象,使用了与《魔兽世界》系列游戏相似的名称、装潢,涉嫌构成著作权侵权和不正当竞争,暴雪娱乐有限公司(下称暴雪公司)联合《魔兽世界》在中国的运营方上海网之易网络科技发展有限公司

(下称网之易公司),将《全民魔兽:决战德拉诺》出品方七游公司、运营方北京分播时代网络科技有限公司(下称分播公司)以及提供游戏下载的广州市动景计算机科技有限公司(下称动景公司)分两案诉至法院,请求法院判令三被告停止侵权行为、共赔偿经济损失1000万元。

广州知识产权法院对两案合并审理后,于近日作出一审判决,判决三被告停止相关侵权行为,两案共计赔偿600万元。

法院在判决书中指出,被告游戏与《魔兽世界:德拉诺之王》游戏中的人物形象特征相同,构成实质性近似。七游公司未经原告许可,复制了《魔兽世界:德拉诺之王》且未署名,侵犯了其复制权和署名权;分播公司通过网络向公众提供被诉游戏的下载服务,侵犯了原告其作品享有的信息网络传播权。

在赔偿数额上,法院依据《魔兽世界》系列游戏的知名度、侵权作品的数量以及三被告在苹果公司平台上的实际销售收入等因素,判决三被告共赔偿两原告经济损失400万元。



在并案审理的不正当竞争案中,原告认为,《全民魔兽:决战德拉诺》擅自使用了《魔兽世界》系列游戏的特有名称、装潢以及游戏角色的特有名称;分播公司在宣传被诉游戏时使用了“魔兽手游”等带有歧义的语言,涉嫌构成虚假宣传,三被告共同实施了不正当竞争行为。法院支持了原告请求,判决三被告共赔偿两原告经济损失200万元。

目前,该案部分被告已经提起上诉,本案将进入二审程序。

