

IP Brief

Beijing

Beijing IP office recently held a modern agricultural IPR forum to promote modern agricultural development during the 2015 Beijing International Agricultural and Agriculture Products Exhibition.

北京

近日, 2015北京国际农业农产品展览会成功举办。该展会还举办了现代农业知识产权论坛, 探讨加强农业知识产权运用之道。

Anhui

Recently, the Wuhu branch under State IPR aid (Anhui) center was launched. The branch was designed to provide IPR analysis and pre-warning service for major R&D projects, trade and economic exchanges, investment and technology transfer etc. Also, it will provide IPR aid to those who fail to cover the cost for IPR disputes.

安徽

日前, 中国(安徽)知识产权维权援助中心芜湖分中心正式挂牌, 该中心为重大研发、经贸、投资和技术转移活动提供知识产权分析论证和预警服务, 为不能支付知识产权纠纷处理和诉讼费用的辖区内公民与法人提供一定的知识产权维权援助服务。

Sichuan

Thousands of entrepreneurs came to Chengdu, Sichuan Province to attend a venture forum recently. After the forum, the startup union of Chengdu was established.

四川

近日, 上千名来自全国各地的创业者齐聚四川省成都高新区天府新谷, 参加“蓉创之夜——众创中国, 论道成都”活动。活动中, 成都市众创空间联盟正式成立。

Fujian

Fujian recently released an action plan on implementing the 2025 China-Made. By 2020, the province will allocate a fund of more than three trillion yuan to promote technological transformation of enterprises, and facilitate 60% large-scaled enterprises to complete new round of technological upgrading.

福建

近日, 福建省发布了《福建省实施〈中国制造2025〉行动计划》, 提出了争取到2020年, 全省企业技术改造累计完成3万亿元以上, 推动60%规模以上工业企业完成新一轮技术改造。

Guangxi

Guangxi Zhuang Autonomous Region has recently carried out the 2015-2020 IPR implementation strategy plan. According to this paper, as of 2020, Guangxi will establish a perfect IPR system for creation, commercialization, protection, administration and service.

广西

近日, 广西壮族自治区人民政府办公厅印发了《广西深入实施知识产权战略行动计划(2015—2020年)》, 文件提出到2020年, 全区要建立较为完善的知识产权创造、运用、保护、管理和服务体系。

Xinjiang

Latest statistics show that Xinjiang Uyghur Autonomous Region has filed 5,412 patent applications in the first half year, 4,559 of which were granted, up 49.46% and 82.87% respectively.

新疆

最新统计数据显示, 今年上半年, 新疆维吾尔自治区专利申请量达到5412件, 专利授权量达到4559件, 分别比去年同期增长了49.46%和82.87%。

Efforts should be made to contain malicious trademark registration

今年上半年中国工商部门查处恶意抢注商标案5000件, 同比增长190%

遏制商标恶意抢注刻不容缓

Latest news from State Administration for Industry and Commerce of the People's Republic of China (SAIC) show that 5,000 malicious trademark registrations have been handled in the first half of this year, up 190% than the last year. Meanwhile, statistics from this news press show that 1,826 malicious trademark registrations have been handled in 2013, up 127.4%.

Currently, China adopts first-to-file principle. In this system, the right to the grant of a trademark lies with the first person to file a trademark application for protection, regardless of the date of actual usage. This means a trademark that has successfully registered will defeat a trademark that has long been in use in China for a longer time but has not obtained registration. In some western countries, the first-to-use principle is adopted. The trademarks could be approved to those who could demonstrate that they have used the trademarks earlier than other applicants. But in China, to win malicious trademark registration cases, the right holders should not only demonstrate that they are first to file, but also have to demonstrate that other applicants' applications are of the subjective malicious breaching of law. Says professor Yao Huanqing from Renmin University.

"Building brand awareness is a gradual progress and each step should be protected by law," says Dong

Baolin, a researcher from the Supreme People's Court. According to Dong, the current trademark law system mostly focuses on protecting the well-know trademarks, and ordinary marks without social awareness haven't gained enough protection. Besides, Chinese law system hasn't established trademark-recovering rules, as a result, Chinese enterprises have to file trademarks on all the Classes to prevent malicious trademark registrations. Due to the factors above, trademark registrations are artificially high and malicious trademark registrations are occurring. If the companies plan to expand the business scope, they have to obtain a warrant from other applicants or file a new mark.

Dong says that in a bid to avoid malicious trademark registrations, the administrative could take some measures, for example, they could launch investigations against those who have filed a large number of trademark registrations, but haven't commercialized those marks.

It is worth noting that the newly revised trademark law has added some terms to curb malicious trademark registrations, for example, the law clearly forbid applicants file others' trademarks as enterprise name, the applicants are banned to file the already used trademarks as their own marks, malicious trademark registrations are strictly forbidden by the agents, otherwise they will be punished by the law.



Inside watchers agree that the newly revised trademark law will promote healthy growth of trademark registration by hindering improper filings.

(by Zhu Wenming/Su Jie)

本报记者 祝文明

实习记者 苏杰

近日, 中国国家工商行政管理总局召开新闻发布会, 介绍了今年上半年中国工商部门市场监管的基本情况, 其中查处恶意抢注商标案件5000件, 同比增长190%。另外, 根据工商部门公布的数据, 2013年中国查处商标抢注案件1826件, 同比增长127.4%。如何遏制商标恶意抢注, 这是摆在业界面前的一道难题。

据业内人士介绍, 中国商标注册实行的是申请在先原则, 行政机关审查商标注册申请一般只审查有无在先申请或者注册、有无违反禁用条款等, 并不会主动去审查在先使用的情况。“某件‘商标’被抢注一定是因为其之前还没有成为注册商标, 不能将其作为‘权利’来保护。这实际上是权利和利益的边界, 权利由法律明确规定, 有明确边界和排他性, 法益则不然。欧美一些国家在商标注册上遵从使用在先原则, 权利人只需举证自己在先使用即可, 如抢注他人已经使用的标识很有可能因违背善良风俗被驳回。而在中国, 权利人如主张他人恶意抢注, 需要举证‘主观恶意’, 这种举证往往是很困难的。”中国人民大学知识产权学

院副教授姚欢庆在接受中国知识产权报记者采访时表示。

最高人民法院知识产权司法保护研究中心学术委员会委员董葆霖在接受本报记者采访时表示, 商标知名度的积累是一个由低到高的过程, 每个过程都应该受到法律的保护, 但在实践中, 目前中国将保护重点更多地放在了对于驰名商标的保护上, 而对一般知名度的商标保护略显不足, 这为商标抢注埋下隐患。目前, 中国没有制定防御商标的制度, 一些企业为防止商标被抢注, 不得不把一件商标在45个商标类别中全部注册, 由此导致商标申请注册量虚高。此外, 由于没有防御商标制度, 导致了一些企业间出现相互抢注的行为, 企业若想扩大商品经营范围就要购买或更换商标, 这可能在一定程度上也影响了经济的可持续发展。针对商标恶意抢注问题, 董葆霖建议, 对于那些注册了成百上千件商标而又长期不使用的企业, 可能存在较大的抢注嫌疑, 行政机关应该进行有针对性的调查, 并采取一定措施加以防范。

据悉, 中国新修改的商标法针对遏制恶意抢注已经作出了一系列调整与改变, 明确规定禁止将他人注册商标用作企业字号, 禁止抢注因业务往来等关系明知他人已经在先使用的商标, 禁止商标代理机构代理具有抢注情形的商标注册申请等, 还首次引入了惩罚性赔偿制度。业内人士表示, 修改后的商标法对商标注册进行了规范, 虽然每年中国商标申请量达到百万件, 但有一部分不符合规定的商标注册申请可通过权利人提起异议等方式被阻拦下来。

China's first IPR agency listed on "new three board" market  
中国首家知识产权服务机构在新三板成功挂牌

Sichuan Chaofan IPR Agency was recently listed on the "new three board" market, making itself the first IPR agency listed on the "new three board" market in China. Chaofan's stocks could be transferred or purchased.

Chaofan's listing has attracted great attention. An inside-watcher says that the capital market will help Chaofan accelerate its business transformation to Internet+. Also, it will play a guiding role in promoting IPR industry development.

According to a representative from Chaofan company, the reason why Chaofan can be listed is because they

have three great advantages, namely, perfect service system, professional talents, thorough planning to provide Internet+ service. "Listed on the 'new three board' is of great significance to enterprise and industry development," says Han Jin, one of the representatives from Chaofan. Currently, Chaofan is at the turning point of business transformation to Internet+ and needs sustained financial support. After being listed on the "new three board" market, the capital market will provide favorable financing environment and potential future development. For the industry development, Chaofan will play a modeling role in

promoting industry innovation and service innovation.

(by Feng Fei)

本报讯 日前, 四川超凡知识产权服务股份有限公司(下称超凡股份)在新三板(全国中小企业股份转让系统)正式挂牌, 成为中国首家在新三板挂牌的知识产权服务机构。挂牌之后, 超凡股份的股票可以公开转让。

作为首家新三板的知识产权服务机构, 超凡股份备受业界的广泛关注。有专家指出, 超凡股份进入资本市场会加快其向“互联网+”转型的步伐, 并为知识产权服务行业的快速发展起到示范效应。

超凡股份信息披露负责人韩瑾



在接受中国知识产权报记者采访时, 超凡股份之所以能在新三板成功挂牌, 主要有三大优势, 即完善的服务体系、专业的人才队伍、打造“互联网+”知识产权服务。知识产权服务机构在新三板挂牌对于企业和行业发展具有积极影响。从企业内部看, 目前, 知识产权服务机构正

在向“互联网+”转型, 超凡股份在转型过程中需要大量资金支持。在新三板挂牌后, 超凡股份正式进入资本市场, 拥有一个宽松的融资环境, 将获得更大的发展空间。从行业角度看, 在国家鼓励“创新创业”的“双创”环境下, 知识产权服务行业也亟需创新。” (冯飞)



L'Oreal prevails in trademark case  
欧莱雅在华维权一审有果

L'Oreal Cosmetics Group recently brought a lawsuit against three face-washer companies for infringing its invention. Shanghai No.1 Intermediate People's Court held the case, and ruled the above three companies cease infringement and paid 1 million yuan for economic losses and 230,000 yuan for reasonable costs.

The Hong Kong-based company, one of the defendants, alleged that the patent in dispute does not meet the requirement of creativity, so the patent should be invalid. The Hangzhou company held that it has obtained written authorization of distribution and sales of face-washer from Hong Kong company, so the Hong Kong company should be held legally responsible. Besides, it had stopped sell-

ing of the products after it was served in the lawsuit, so it has not intended to infringe the invention patent of L'Oreal, and such infringement shall not be constituted.

At the first trial, the court held that three companies infringed L'Oreal's invention patent as it boast same technical characteristics. The Hong Kong company and Shanghai company belong to entrusting party and entrusted party, and both two companies infringed the patent right of L'Oreal Group for their roles in production and sale of infringement products. The Hangzhou company's action of selling infringement products in online shopping site also violated L'Oreal's patent right.

Shanghai No.1 Intermediate People's Court made its first-instance

rule, ordering the three companies cease infringement and paid 1 million yuan for economic losses and 230,000 yuan for reasonable costs, and rejected other claims of L'Oreal Company.

(by Li Xiao)

本报讯 欧莱雅(法国)化妆品集团公司(下称欧莱雅公司)以3家生产、销售某款洗脸机产品的厂家侵犯其发明专利为由向法院提起诉讼。近日, 上海市第一中级人民法院审结了此案, 判令3家生产、销售涉案产品的公司停止侵权行为, 并连带赔偿欧莱雅公司经济损失100万元及合理费用23万元。

被告之一香港某公司辩称, 欧莱雅公司的涉案专利不符合专利法关于创造性的要求, 应属无效专利。被告之二杭州某公司辩称, 其通过香港某公司书面授权对该款洗脸机进行运营和销售, 理应由香港某公司承担

相应法律责任, 且接到诉讼后已经停止产品销售, 故其不存在侵权故意, 不构成侵权行为, 不应承担赔偿责任。

一审中, 经过庭审对比, 法院认为被控侵权产品的相应技术特征与欧莱雅公司涉案专利技术特征相同, 构成专利侵权行为。此外, 法院认为香港某公司与上海某公司是委托方与被委托方的关系, 两者均实施了制造、销售侵犯欧莱雅公司专利权产品的行为。法院同时认定, 杭州某公司曾在购物网站销售过被控侵权产品, 且与相关网站有商务合作, 构成侵权。

据此, 上海一中院作出一审判决, 判令3家侵权公司立即停止侵犯欧莱雅公司享有的发明专利权, 并连带赔偿其损失100万元, 支付欧莱雅公司为制止侵权行为所支出的合理费用23万元, 驳回欧莱雅公司的其他诉讼请求。(李潇)



英文翻译	姜旭
Translator	Jiang Xu
责任编辑	王璐
Executive Editor	Wang Lu