

China releases new judicial interpretation draft on Patent Law 中国专利侵权纠纷司法解释征求意见稿引发关注

A few days ago, the Supreme People's Court of China released the draft of the Second Edition of Judicial Interpretation on Patent Infringement Dispute Cases Trial (hereinafter referred to as the Draft), which attracted widespread attention from the public. In the Draft, some issues such as the measures of infringement litigation on obvious invalid patent, the definition of general consumer in design patents infringement cases, the provisions on indirect infringement and the defense on implement standard patent infringement and so on, are especially striking. Recently, the Intellectual Property Court under the Supreme People's Court held a symposium to hear the public advice about the Draft in Beijing. Over 40 representatives from central authorities, courts, intermediary institutions and enterprises took part in the discussion.

In recent years, the validity of the patent challenges the trial in patent infringement cases. Article 5 of the Draft goes that, when the patent specification conflicts to the patent claims, the court shall make the judgment based on the claims if it is clearly recorded, otherwise the court shall directly dismiss the indictment. And the third paragraph of the article goes

that, when one of the parties managed to prove that the patent was requested for invalidation based on the reasons above before the adjudication, the court may make an abatement of action. Accordingly, Dong Zheng, the Deputy Director of the Department of Treaty and Law under the State Intellectual Property Office of China, spoke highly of the paragraph as it could guide the parties timely to file the request for invalidation if the defects mentioned above happened.

Since it is difficult to define "customers" in the design patent infringement cases, the second paragraph of Article 17 in the Draft defines it as "the direct buyers of the alleged infringement product". Professor Feng Xiaoqing, Dean of the Intangible Asset Management Research Center under China University of Political Science and Law, holds that the definition might cause ambiguity, and still need further improvement. As well as Judge Ma Yunpeng from Beijing Second Intermediate People's Court, argued that the definition of judicial interpretation of patent law in 2009 is more appropriate.

The confirmation of the indirect infringement is always an issue in patent infringement trial. Article 25 in the Draft goes that, it is a tort to pro-

vide generally products specially used for patent products to people unlicensed or unobligated without permission. Zhang Yan, the Chief Inspector of Intellectual Property Law of Asia-Pacific Region of IBM appreciated the article. Zhang considered that it would solve some existing problems both in the Patent Law and the Tort Law, and was helpful to protect the legitimate rights and interests of the patentee.

Aiming at the standard patent infringement, Article 27 in the Draft indicates that the related patentee shall not violate the principle of fair, reasonable and non-discriminatory. Ai Hong, a legal consultant of AstraZeneca Pharmaceutical Company, held that the implementation of this principle required both the patentee and the licensee were out of goodwill, and a restriction mechanism to the potential malicious licensee was needed.

After issuing the Interpretation on Patent Infringement Dispute Cases Trial in December 2009, China gets good effect on protecting the interests of the patentee in accordance with the law and encouraging innovation of science and technology. In solving emerging problems in the patent cases trial during the last five years, the Supreme People's Court of China re-

leased the Draft. During a whole month for advice and suggestions, the Draft has successfully grabbed hot discussion and wide attention from the public.

(by Zhao Shimeng)

日前, 中国最高人民法院发布了《最高人民法院关于审理侵犯专利权纠纷案件适用法律若干问题的解释(二)》(公开征求意见稿)(下称征求意见稿), 引发社会各界广泛关注。其中, 对于专利权明显无效时侵权诉讼的处理、外观设计侵权案中一般消费者的界定、关于间接侵权的规定和实施标准专利侵权的抗辩等焦点问题的新司法解释尤为引人关注。近日, 最高人民法院知识产权审判庭在北京召开专利侵权司法解释(二)征求意见稿座谈会, 来自中央有关部门、法院、中介机构、企业的代表40余人就征求意见稿中相关问题进行了热烈讨论。

近年来, 在专利权纠纷案件中, 专利的有效性往往对法院的审判提出挑战。征求意见稿第五条中针对当专利说明书与权利要求书内容冲突时, 提出权利要求记载文字含义清楚时以权利要求为准, 权利要求含义不明时直接驳回起诉的解释, 并在该条第三款载明“当事人举证证明在专利侵权诉讼的裁判作出前无效宣告请求人基于上述事由请求专利复审委员会宣告该专利权无效的, 人民法院可以裁定中止诉讼”。对此, 中国国家知识产权局条法司副司长董璋



认为, 第五条第三款的规定可以引导当事人在涉案专利可能存在上述缺陷时及时提起专利权无效宣告请求, 是十分有必要的。

针对外观设计专利侵权案件中难以界定“消费者”的情况, 征求意见稿第十七条第二款将其限定为“被诉侵权产品的直接购买者”。对此, 中国政法大学无形资产研究中心主任冯晓青认为, 该定义可能引发歧义, 仍需再完善; 北京市第二中级人民法院法官马云鹏则认为, 延续2009年专利司法解释的定义更为妥当。

间接侵权的相关判定一直是专利侵权案件审判实务中的热点。征求意见稿第二十五条提出未经专利权人许可将专门用于专利产品的产品“提供给无权实施该专利的人或者依法不承担侵权责任的人实施”属于侵权行为。对此, IBM亚太地区知识产权法律总监表示赞赏, 认为此解释解决了现行专利法和侵权责任法中存在的一些问题, 维护了专利权人

的合法权益。针对近年来频发的标准专利侵权行为, 征求意见稿第二十七条提出, 相关专利权人不得违反公平、合理、无歧视的原则。阿斯利康医药公司法律顾问艾宏认为该原则的实施需要权利人和被许可人双方均非恶意, 认为仍需要对潜在的被许可人的恶意制约机制。

据了解, 中国自2009年12月发布《关于审理侵犯专利权纠纷案件适用法律若干问题的解释》以来, 在依法保护专利权人利益、激励创新等方面取得了良好的效果。针对5年来的专利司法实践中涌现的出新问题, 最高人民法院再次起草有关专利侵权判定标准的司法解释, 以确保专利法的正确实施, 细化和统一专利审判标准。征求意见稿意见征求期达1个月, 社会公众对该司法解释将对中国专利司法工作带来的新进展予以关注。

(赵世猛)

Patent operation realizes the Chinese dream 专利运营让梦想成真

Years ago, Chinese companies had to pay 41 US dollars as the patent license fee when exporting 1 color TV to the US, which dominated the main profit of the export. "We must change the heavy burden like this." Said Tian Weiping, Executive Vice General Manager of China Color TV Union Technology Co., LTD. (CTU). Actually, Tian sowed a seed of dream deep in his heart: to advance Chinese entrepreneurs' step of going abroad through the patent operation.

In March 2007, ten Chinese color TV companies including TCL, CHANGHONG and KONKA, jointly founded CTU, marking the start of the patent pool of Chinese color TV. As one of the leaders of the company, Tian started his dream. "We organized and promoted the patent license negotiations, fought for a reasonable price. And around the joint innovation, we promoted the construction of the patent pool and made full use of our own patents independently." Tian Weiping said.

In 2010, CTU signed new patent license agreement with Thomson Co., changing the payment of patent license fee into annual fee pattern and reducing the fee. At the same time, CTU organized experts to retrieval and analysis the related patents in foreign countries, and found some patents were expired or the ownership was not clear, timely put forward the request for invalidation of patent right to the relevant authorities and achieved success. In recent four years, CTU successfully saved nearly 3 billion RMB Yuan of color TV patent license fee.

In recent years, CTU set up its own color TV patent information database and built Chinese color TV patent information service warning public platform while operating the patent



pool. The patent information database included over 10,000 global patents on color TV. Through the database, China's color TV enterprises can realize fast retrieval, playing an important role in infringement prevention, patent licensing negotiations and overseas market exploration. "Hope Chinese enterprises could go faster and better on the way of going abroad under our efforts." Tian said.

(by Zhao Jianguo)

本报记者 赵建国

曾几何时, 中国企业向美国每出口1台彩电需缴纳专利许可费41美元, 这几乎占据了企业出口的大部分利润。“这么沉重的负担必须改变。”从那时起, 在中彩联科技有限公司(下称中彩联)常务副总经理田卫平的心里, 就埋下了一颗梦想的种子——通过专利运营, 让中国企业加快步伐“走出去”。

2007年3月, TCL、长虹、康佳等10家中国彩电企业共同创立了中彩联, 中国企业彩电专利池开始正式运营。作为中彩联的主要负责人之一, 田卫平的梦想种子开始发芽。“我们组织和推进了专利许可谈判, 争取合理的许可价格, 同时围绕联合创新, 推进专利池建设, 推广自主研发专利的运用。”田卫平说。

2010年时, 中彩联与美国彩电专利大户汤姆逊公司成功签订了新的专利许可协议, 使汤姆逊公司的专利

许可费用由以往的按彩电台数计算方式改为“年费制”模式, 降低了专利许可费的额度。与此同时, 中彩联还组织专家检索和分析外方彩电相关专利, 发现其中的部分专利过期或权属不清, 及时向有关部门提出了专利权无效宣告请求并取得了成功。近4年来, 中彩联成功使中国彩电企业节省专利许可费近30亿元。

近年来, 中彩联在维护好专利池的同时, 还建立了自己的彩电专利信息数据库和中国彩电专利预警信息服务公共平台。其中, 专利信息数据库已囊括全球主要彩电专利1万余件, 使中国彩电企业可实现快速检索, 在规避侵权、专利许可谈判、开拓海外市场等方面发挥了重要作用。“希望通过我们的努力, 使中国企业在‘走出去’的道路上走得更快更好。”田卫平坦言。



英文翻译	李 铎
Translator	Li Duo
责任编辑	柳 鹏
Executive Editor	Liu Peng
实习编辑	孙 迪
Practice Editor	Sun Di



Photo News

On Oct. 29th, The 2014 Temple Fair of Shanghai Style Culture Impression was closed in the Yuyuan Square. During the 15-day temple fair, numbers of classic traditional Shanghai-style goods attracted eyes of tourists from home and abroad. (by Zhong Hua)

10月29日, 2014上海印象海派文化庙会会在豫园中心广场圆满落幕。在为期半个月的庙会上, 琳琅满目的老上海经典商品备受中外游客青睐。 钟 华 摄影报道

China's IP in foreign eyes

If you want to understand how China innovates, look no further than its hyper-competitive market for smartphones. Now Chinese firms are selling their handsets abroad in ever-greater numbers and a battle is set to be fought that will reshape the global marketplace for handsets. (Chinese phone makers are preparing to take on the world, by Business Insider)

如果你想了解中国是如何创新的, 竞争激烈程度超乎想像的智能手机市场便可见一斑。现在, 中国企业正在国外销售越来越多的手机, 全球手机市场格局正在重建, 智能手机市场即将掀开战斗的序幕。“中国手机



制造商备战全球市场”, 商业内幕网站)

Comment: Innovation and intellectual prop-

erty are the source of development. The transition from imitation to innovation is happening now at a breathtaking pace in Chinese smart phone firms. The situation that Chinese smart phones getting expending market shares all over the world is the best proof.

点评:

创新与知识产权是企业发展的不竭动力。中国的智能手机企业正在以惊人的速度实现着从模仿到创新的转变, 中国智能手机逐步抢占全球市场便是最好的例证。

(by Correspondent Wang Weiwei from Canada)
(本报通讯员汪玮发自加拿大)