

China's IP in foreign eyes

Innovation is a key driver of China's economy. It has been for years, and the government is putting money behind it. Chinese companies are increasing research and development spending by up to 20% a year. Meanwhile, R&D spending in the United States is growing at about 1% to 4%. The investment is paying off for China. The country is now home to some of the world's most innovative companies. (Joe Biden is wrong, China does innovate, by CNN)

创新是推动中国经济发展的主要动力, 中国政府不遗余力地推动创新, 中国企业的研发投入每年增长近20%。但与此同时, 美国的研发投入每年只有1%至4%的增长。这些投入已见成效, 中国已成为许多全球最具创新性公司的大本营。 ("拜登错了, 中国确实在创新", 美国有线电视新闻网)

在短时期内, 中国不会马上取代美国成为世界上最具创新力的国家, 中国还需要在许多方面继续跟进。但美国副总统拜登却无疑大大低估了中国的创新能力。美国企业已充分认识到: 中国人每天都在为创新而努力。



Tired of dragging your suitcase through busy airports? Here comes a solution: ride on it and hunk your way through. He Liangcai, a Chinese private entrepreneur, recently obtained a patent for a product that turns a regular suitcase into a rechargeable scooter. According to reports, Mr. He spent over 10 years to break through the technology issues, such as how to develop the right kind of wheels. (Chinese Inventor Builds a Scooter That Doubles As a Suitcase, by Wall Street Journal)

厌倦了在拥挤的机场拖着你的旅行箱? 现在有了新的解决方案: 骑在旅行箱上, 一路鸣笛而过。中国民营企业家贺亮才最近拥有了一件能将普通旅行箱变为电动摩托车的专利。据报道, 贺亮才花了超过10年的时间攻克技术难题, 例如如何选择适用的轮子。 ("中国人发明载人旅行箱摩托车", 华尔街日报)

把一个手提箱变成电动车并不是件容易的事。贺亮才的这个想法最初源于一件在机场被遗忘的行李。而这件小小的发明, 却代表了创新精神正在中国广泛扩散。 (by Correspondent Wang Weiwei from Canada) (本报通讯员汪玮发自加拿大)

China suspends anti-monopoly investigation against IDC 中国中止对美国IDC公司涉嫌垄断的调查

Recently, China's National Development and Reform Commission (NDRC) announced a suspension of the anti-monopoly investigation against InterDigital Group of Companies (IDC). It is generally believed in the industry that the case has relationship with the royalty dispute between IDC and Huawei Technologies Co., Ltd. (Huawei).

IDC and Huawei have been negotiating about royalties of 2G and 3G patents since Sep. 2008, but still not reach to an agreement so far. In July 2011, to force Huawei to accept its offer, IDC filed a patent infringement lawsuit to Delaware District Court, claiming that Huawei and some other companies infringed its 7 patents in 3G wireless devices manufacturing. IDC ask the International Trade Commission (ITC) to launch a "337 investigation" to United States against those defendants on the same day, requesting IDC to release an Exclusion Order and Cease and Desist Order.

At the end of 2011, Huawei filed a lawsuit against IDC to Shenzhen Intermediate People's court, claiming reparation of 20 million Yuan. Huawei requested an order from the court based on FRAND rules, to stop IDC's price monopoly, including excessive pricing, discriminatory pricing, implementing tie-in sales, imposing unreasonable trading and refusal to deal.

The court held that, IDC did have excessive pricing and discrimi-



natory pricing in the negotiation about exploiting criterion related patents with Huawei; IDC's using its patents market ascendancy to bundle unessential patents, appeared to be abuse market ascendancy. Based on these facts, the court held that IDC should stop its monopoly infringement and pay a loss of 20 million Yuan to Huawei. The case was affirmed by Guangdong Higher People's Court.

In 2013, NDRC began an anti-monopoly investigation against IDC. The investigation showed that IDC was suspected to abuse its ascendancy in wireless communication standard essential patent market, including setting in unfair high price of royalty to Chinese companies, asking for free licenses from Chinese companies' patents, and bundle unessential patents with essential patents, etc.

According to an official of

the Anti-monopoly Law of China, Article 45, in consideration that the measures IDC promised to implement could eliminate suspended monopoly, enable Chinese companies practice in fair competition, and restore the order of market competition. NDRC would supervise IDC to keep its promises. If IDC withdraw the promises or else, NDRC will restart the investigation. (by Zhao Jianguo/Zhu Wenming)

NDRC, during the anti-monopoly investigation, IDC actively cooperated with the investigation, reached to a settlement with Huawei about royalty and other clauses, and promised to negotiate with other Chinese companies according to the settlement with Huawei. In March 2013, IDC submitted an application to suspend the investigation, promising to implement measures to eliminate its suspected monopoly, including stop setting discriminatory charge to Chinese companies, stop bundling unessential patents with essential patents, stop asking for unreasonable free licenses from Chinese companies' patents, and stop using lawsuit to force Chinese companies to accept its unfair clauses, etc. After thoroughly review, NDRC made the decision to suspend the investigation.

According to the official, NDRC made the decision based on

深圳中院经审理认为, IDC在与华为公司就标准必要专利许可使用的谈判过程中, 存在过高定价和歧视性定价的行为。同时, 该公司在与华为公司谈判的过程中, 利用其必要专利授权许可市场条件下的支配地位, 将必要专利与非必要专利搭售, 属于滥用市场支配地位的行为。深圳中院据此判令 IDC 立即停止针对华为公司垄断民事侵权行为, 赔偿华为公司经济损失 2000 万元。此案后经广东省高级人民法院终审维持原判。

2013 年, 中国发改委启动了对 IDC 的反垄断调查。经调查, IDC 涉嫌滥用无线通信标准必要专利市场的支配地位, 实施垄断行为, 包括: 对中国企业设定不公平的高价许可费、要求中国企业将所持有的专利向其进行免费反向许可、将非标准必要专利和标准必要专利进行捆绑许可等。

中国发改委有关负责人表示, 在反垄断调查期间, IDC 积极配合调查, 与中国华为公司就专利许可费和其他条款达成和解协议, 同时表示将参照对华为公司的许可条件与中国其他企业进行专利许可谈判。2014 年 3 月, IDC 向中国发改委提交了中止调查申请, 提出了消除涉嫌垄断行为后果的具体措施, 主要包括: 不对中国企业收取歧视性的高价许可费、不将非标准必要专利与标准必要专利进行捆绑许可、不要对中国企业将专利向其进行免费反向许可、不直接寻求通过诉讼方式迫使中国企业接受其不合理的许可条件等。中国发改委经审查, 作出了上述中止调查的决定。同时, 中国发改委还将严格监督 IDC 切实履行承诺, 如果 IDC 未履行承诺或者有其他法定情形, 中国发改委将恢复调查。

据了解, 自 2008 年 9 月起, IDC 与华为公司就涉及 2G、3G 领域的部分标准必要专利的许可使用费进行谈判, 但迟迟没有达成一致。2011 年 7 月, IDC 突然向美国特拉华州法院提起专利侵权诉讼, 指责华为公司、诺基亚公司、中兴通讯公司等制造 3G 无线设备时侵犯其所拥有的 7 件专利, 同日向美国国际贸易委员会 (ITC) 起诉上述被告侵犯其专利权, 请求 ITC 启动 "337 调查" 并发布全面禁止进口令、暂停及停止销售令。

2011 年底, 华为公司以 IDC 为被告, 向深圳市中级人民法院提起诉讼, 请求法院基于国际通行的公平、合理、无歧视 (FRAND) 原则, 判令 IDC 立即停止在与华为公司谈判过程中存在的价格垄断行为, 包括过高定价、歧视性定价、搭售、附加不合理交易条件和拒绝交易等行为, 并赔偿经济损失 2000 万元。

China changes PAQE registration method 今年中国专利代理人资格考试有新变化

The 2014 National Patent Agent Qualification Examination of China (PAQE) has been opened for registration since May 27th. According to the official of Legal Affairs of State Intellectual Property Office of China (SIPO), there are some specific works improved this year for the candidates' convenience. According to the official, there

are three main changes. Firstly, the register requirements are relaxed, first-year masters with science and engineering college diploma or above can take the exam this year. Secondly, the registration time is prolonged to three weeks, from May 27th to June 16th, while the registration qualifications on-site review time is from June 3rd to June

24th. Thirdly, the amount of test site is increased from 20 to 23, Shijiazhuang, Nanchang and Kunming is newly added to test site cities. (by Zhao Jianguo) 本报讯 5月27日, 2014年中国专利代理人资格考试报名工作正式启动。中国国家知识产权局条法司有关负责人表示, 与往年相比, 今年的考试在报名条件、报考时间和考点

安排等方面都有些新变化, 更加方便考生的报考。据该负责人介绍, 今年考试的新变化主要体现在 3 个方面: 一是报考条件进一步适度放宽, 在高等院校理工科专业毕业或具有同等学力的基础上, 将去年 "高等院校理工科专业在读硕士研究生学习期满两年的视为从事过两年以上科学技术工作" 改为 "高等院校在读硕士研究生学习期

满一年的视为从事过两年以上科学技术工作", 欢迎广大具有理工科本科以上学历的在读硕士研究生一年级学生报考; 二是报考时间延长为 3 周, 从 5 月 27 日至 6 月 16 日, 报名资料现场查验时间为 6 月 3 日至 6 月 24 日; 三是考点在去年 20 个的基础上经过调整, 新增增加石家庄、南昌、昆明等 3 个考点, 考点总数达到 23 个。 (赵建国)



TRAB affirmed Qiaodan's trademarks 乔丹体育 80 件商标获准维持注册

While the bubbling lawsuit of rights of the name "Jordan" between American basketball player Michael Jordan and Chinese company Qiaodan Sports Co., Ltd in Jinjiang of Fujian Province (hereinafter referred to as Qiaodan) is still in trail, the two parties got a verdict of trademark dispute recently. The Trademark Review and Adjudication Board of China (TRAB) dismiss the objection against 80 trademarks including No. 3148047 trademark "乔丹" and No. 3148050 "QIAODAN" trademark and No. 3028870 figurative trademark.

Qiaodan started to use "Qiaodan" as trade name since 2000 and registered at Quanzhou Administrative Bureau for Industry and Commerce later. Qiaodan uses "乔丹" and its figure as main registered

trademarks and registers over 130 defensive trademarks during the years.

Nike International Ltd., having long term relationship with Michael Jordan, filed objections to 8 defensive trademarks separated in 2002 and 2007 but all of them were rejected. Nike International Ltd. requested reviews about 7 of them but the requests were all rejected.

TRAB held that the harmful effects Jordan claimed was based on the premise of confusingly similarity between the trademark and his name. "QIAODAN" and "乔丹" are different from "Michael Jordan" and "迈克尔·乔丹". Besides, as Jordan is a common name in English, it is hard to identify corresponding relationship between "Jordan" and Michael Jordan. Generally considered, it

cannot be decided that the relationship between "QIAODAN" and Michael Jordan is more closed than "QIAODAN" and Qiaodan. Based on these facts, TRAB rejected Michael Jordan's objection and affirmed the trademarks. (by Wang Guohao)

本报讯 曾引发业界热议的 "飞人乔丹" 诉 "乔丹体育" 侵犯其姓名权一案目前仍未有果, 而围绕第 3148047 号 "乔丹" 商标、第 3148050 号 "QIAODAN" 商标及第 3028870 号图形商标等 80 件商标, 美国前职业篮球运动员迈克尔·乔丹与福建省晋江市的民营体育品牌乔丹体育股份有限公司 (下称乔丹体育公司) 之间的商标纠纷近日被中国国家工商行政管理总局商标评审委员会 (下称商评委) 裁定涉案商标全部维持注册。

据了解, 乔丹体育公司自 2000 年起开始使用 "乔丹" 文字作为

其商号, 后经福建省泉州市工商行政管理局登记注册。乔丹体育公司的产品主要使用的注册商标为中文 "乔丹" 文字及图形商标, 其先后注册了 130 余件防御性商标。

记者了解到, 在商标注册过程中, 与迈克尔·乔丹有长期合作关系的美国耐克国际有限公司于 2002 年及 2007 年先后针对乔丹体育公司注册的 8 件防御性商标提出异议, 在未获支持后, 耐克国际有限公司就其中 7 件商标向商评委申请复审, 但后均被驳回。

对此, 商评委认为, 迈克尔·乔丹所主张的不良影响的产生应以争议商标与其姓名存在混淆近似为前提。争议商标中的 "QIAODAN" 和 "乔丹" 与迈克尔·乔丹姓名中的 "Michael Jordan" 及其中文译名 "迈克尔·乔丹" 存在一定区别, 并且 "乔丹" 为英美普通姓氏, 难以认定该姓氏与迈克尔·乔丹之间存在当然的对应关系; 相较于乔丹体育公司对其商



标的使用, 同时从双方使用的广泛性、持续性、唯一对应性等方面综合考虑, 不能认定 "乔丹" 二字与迈克尔·乔丹之间的对应关系已强于乔丹体育公司。据此, 商评委认定争议商标难以构成误导公众、扰乱市场秩序等不良影响, 裁定迈克尔·乔丹的撤销理由不成立, 对上述争议商标予以维持。 (王国浩)

Table with 2 columns: Role and Name. Rows include: 英文翻译 (柳鹏), Translator (Liu Peng), 责任编辑 (王璐), Executive Editor (Wang Lu).