

## China's IP law enforcement steadily improved 中国知识产权系统执法能力稳步提升

After years of development, China's patent administrative enforcement has made remarkable achievement, holding up the blue sky for the nation's intellectual property industry. From January to December of 2013, the national patent administrative enforcement cases totalled 16,227, up 79.9% year on year, including 5,056 patent dispute cases (4684 of which were patent infringement dispute cases), up 101.4% year on year; and 11,171 investigating counterfeit patent cases, up 71.5% year on year.

"While becoming more and more innovative, Chinese companies are more and more aware of and demanding for IP protection." As to the reason of the increasing number of the patent administrative enforcement case, an official from the Patent Administration Department of the State Intellectual Property Office explained.

In 2013, among the 4,684 patent infringement cases, 362 were foreign related cases, accounting for 7.7%, slightly increased compared to the 90 (4.0%) cases of 2012 (see Chart 1). "China's intellectual property system protects the legiti-

mate rights and interests of both domestic and foreign right holder. Overall, the majority of patent infringement dispute claimants are domestic, whilst foreign patent holders increasingly try to maintain their rights through more convenient and efficient administrative methods." said the official.

Among the 5,056 patent disputes cases received in 2013, 562 regard to invention patent, accounting for 11.1%; utility model patent cases are 1,665, accounting for 32.9%; design patent cases are 2,829, accounting for 56.0% (see Chart 2). "From the structure of the patent type, Chinese patent disputes are dominated by utility model and design patent cases. The structure is relatively associated with the granting structure of those three types of patents. Besides, being more convenient and efficient, administrative way suits better for design and utility model patent dispute cases." said the official.

"Intellectual property system patent administrative enforcement has made great achievements, but there is still room to improve considering the needs of patent protection from the main bodies of mar-

ket and innovation." The official said, to combat malicious infringement, group infringement, repeated infringement and acts of counterfeiting patents, is an important duty of the government. It can be predicted, that with the patent protection legal system is becoming more adequate, the main bodies of the market and innovation have been building stronger confidence on patent protection, and the quality of patent granting will continue to be improved. (by Wang Yu/ Guan Jian)

本报记者 王宇  
通讯员 关健

经过多年发展,中国专利行政执法工作已取得了显著成效,为中国知识产权事业发展撑起了一片蓝天。2013年1月至12月,中国专利行政执法办案总量达1.6227万件,同比增长79.9%。其中,专利纠纷办案5056件(其中专利侵权纠纷办案4684件),同比增长101.4%;查处假冒专利案件1.1171万件,同比增长71.5%,办案力度逐年加大。

"随着中国企业创新能力的提升,专利保护意识不断增强,维权需求也愈加强烈。"对于全国知识产权系统专利行政执法办案量增长的原因,国家知识产权局专利管理司有关负责人做了如上表示。

2013年,中国受理的4684件专利侵权纠纷案件中,涉外专利侵权纠纷案件362件,占7.7%,同比2012年的90件(占4.0%)略有增长(见图1)。“中国依法保护国内外权利人的合法权益。总体来看,绝大多数专利侵权纠纷请求人仍为国内的权利人。同时,来自国外的专利权人也愈加重视通过便捷、高效的行政途径进行维权。”该负责人表示。

2013年,中国受理的5056件专利纠纷案件中,发明专利案件为562件,占11.1%;实用新型专利案件1665件,占32.9%;外观设计专利案件2829件,占56.0%(见图2)。“从专利结构类型看,中国专利纠纷案件呈现出以实用新型和外观设计专利案件为主的特点。产生这种结构的原因与中国三种专利的授权结构有一定关联。此外,外观设计与实用新型专利侵权纠纷更适合采用便捷、高效的行政途径予以解决。”该负责人介绍。

“全国知识产权系统专利行政执法办案工作取得了较大成效,但是与中国市场主体、创新主体的专利维权保护需求相比还需继续努力。”该负责人表示,坚决打击恶意侵权、群体侵权、反复侵权与假冒专利行为是政府的重要职责。随着中国专利保护法律制度建设进一步完善,创新主体、市场主体对专利保护的信心将不断增强,专利授权质量也将持续提升。

图1:专利侵权纠纷案件中,外请求人比例统计  
Chart 1: Proportion of domestic and foreign claimants in patent disputes

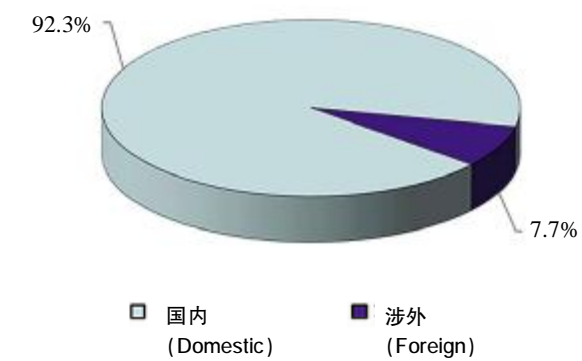
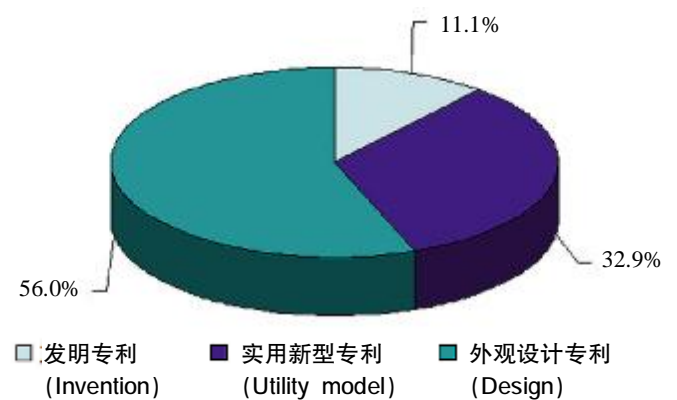


图2:专利纠纷案件中三种专利分布统计  
Chart 2: Proportion of three types of patent in patent disputes



制图:王宇 (by Wang Yu)



## Male model vs. Benz, Benz won the first instance 男模诉奔驰广告片侵权案一审被驳

Recently, Beijing Chaoyang District People's Court made the first instance decision on the case of male model Gao Jian suing Mercedes-Benz (China) sales Ltd. (hereinafter referred to as Benz) for infringement of performers rights. The court found that Benz's action didn't constitute an infringement and dismissed the claims of Gao Jian.

Gao Jian alleged that in June 2011, he did the car commercial audition shooting for his contracted company. By the end of 2012, he found that Benz was using the audition shooting in its official website. Gao Jian believed that such acts of Benz infringed his performers rights, so he sued Benz to the court requesting 320,000 yuan as the compensation of his economic loss and reasonable expenses.

Benz argued that it had obtained Gao Jian's authorization and paid the remuneration, so it requested the court to dismiss the plaintiff claims.

The court found that in 2010, Benz and BBDO Advertising Co., Ltd. (hereinafter referred to as BBDO) reached an agreement and Benz commissioned BBDO to produce promotional films. The agreement expressly agreed that all the work products based on the agreement belonged to Benz, except for the existing rights of the third parties. Afterwards, BBDO subcontracted the work to Shanghai Qian Ding Advertising Company Limited (hereinafter referred to as Qian Ding).

Eventually, Qian Ding and Jin Tong Zi Ye (Beijing) Culture Communication Co., Ltd. (hereinafter referred to as Jin Tong Zi Ye) signed



a model contract and hired Gao Jian as a model. After the shooting, Qian Ding paid 60,000 yuan to Jin Tong Zi Ye for Gao Jian's labor and portrait rights.

The court believed that as a product produced in the similar way as film making, the copyright belonged to the producer. According to the agreement between Benz and

BBDO, Benz can be identified as the producer. As the performer Gao Jian only had the right to be paid under the contract but had no right to advocate rights of performers. Moreover, Gao Jian agreed to act in the commercial and Qian Ding who was responsible for shooting had paid Gao Jian and the two didn't have any other agreement based on his rights of performers. Therefore, the court didn't support his requests.

Gao Jian didn't agree with the first trial decision and claimed to appeal. CIP News will follow the development of this case.

(by Hu Shuyang/Liu Qiqi)  
本报讯 近日,北京市朝阳区人民法院就男模高健诉奔驰-奔驰(中国)汽车销售有限公司(下称奔驰汽车销售公司)侵犯表演者权一案作出一审判决,认定奔驰汽车销售公司

不构成侵权,驳回了高健的诉讼请求。

高健诉称,2011年6月,其为签约公司进行了汽车广告片的试镜拍摄。2012年底,其发现奔驰汽车销售公司在官方网站等使用了该试镜汽车广告片。高健认为,奔驰汽车销售公司的上述行为侵犯了其享有的表演者权,故诉至法院,请求判令被告赔偿其经济损失及合理支出共计32万余元。

奔驰汽车销售公司辩称,其已取得高健的授权,并已支付报酬,请求法院驳回原告诉求。

法院经审理查明,2010年,奔驰汽车销售公司委托天联广告有限公司(下称天联公司)制作宣传影片。双方在协议中明确约定基于协议的所有工作产品,除第三方既有权利外,均属奔驰汽车销售公司所有。此后,天联公司将广告片制作转包给上海千鼎广告有限公司(下称千鼎公司)。千鼎公司与金童子(北京)文化艺术传播有限公司(下称金童子)签订

模特合约,聘请高健担任模特。拍摄后,千鼎公司向金童子支付了高健的劳务费,肖像权使用费6万元。法院经审理认为,该广告片属于以类似摄制电影的方法创作的作品,此类作品的著作权由制片人享有,根据奔驰汽车销售公司与天联公司等协议,可以认定奔驰汽车销售公司系涉案广告片的制片人。高健作为该作品中的表演者,其仅享有依合同获得报酬的权利,无权对其在广告片中的表演单独主张表演者权,并且参演涉案广告片征得了高健本人同意,具体负责涉案广告片拍摄的千鼎公司已经向代表高健的经纪公司支付了报酬,双方也未对高健基于其表演的权益作另行约定。因此,高健主张奔驰汽车销售公司侵犯其表演者权的诉讼请求,法院不予支持。

宣判后,高健表示不服一审判决,将提起上诉。本报将继续关注该案进展。  
(胡殊阳 刘奇琦)



## Every baby deserves a "Goodbaby" 让全世界孩子拥有“好孩子”

"Let all the babies in the world have a 'Goodbaby' - it is our dream." In a sunny spring day, He Xinjun, the vice president of Kunshan Goodbaby Child Products Co., Ltd. (hereinafter referred to as Goodbaby) and the reporter are walking side by side, in the largest kingdom of baby carrier in the world, amazed by the colorful fashionable products.

"Intellectual property has been an important basis of the development of the company. Each baby carrier of ours has at least six patents." Pointing to a white color, sci-fi styled stroller, He Xinjun introduces, "This is a new self-designed patented product which fits the needs of customers from Europe and America. It's also a

showpiece of our oversea R&D centre."

"If there was no intellectual property, it would never be 'Goodbaby' of today." He Xinjun says, over years, Goodbaby has established an intellectual property management system, integrated the organizations, set up a specialized team. Besides, according to the market, it has extended the patent R&D and management to overseas. The company's R&D investment is more than 4% of its revenue. The investment and capability of innovation makes it one of the top companies in the world.

In the past three years, the company has filed more than 2,000 patent applications, including more than 10% Chinese invention patent

applications and 16 PCT applications. Up to now, the company has nearly 6,000 Chinese patents. Based on its leading intellectual property work, the company is not only one of the first national demonstration enterprises of intellectual property rights, but also in the forefront of the industry.

Since the first "Goodbaby" was made in 1989, after 25 years' efforts, the company has fulfilled its dream of going overseas. In the industry of children's durable products all over the world, Goodbaby is the number one having the most patents and registered trademarks. "Our dream is to become the leader of the industry based on increasing intellectual property improvement." He Xinjun says, Good-

baby has become a well-known company in the industry. The next goal is to make itself the biggest and most valuable supplier in the world.

(by Zhao Jianguo)  
本报记者 赵建国

"让全世界的孩子都能拥有'好孩子',就是我们的梦想。"正值春暖花开、阳光明媚的季节,昆山好孩子儿童用品有限公司(下称好孩子公司)副总裁贺新军与记者一起,穿行在这个当今世界最大的童车生产王国里,一辆辆款式新颖、五彩缤纷的童车令人目不暇接。

"知识产权一直是好孩子公司立足和发展的重要支柱。在好孩子公司的每一款童车上,都至少包括6件专利。"贺新军指着一款乳白色,造型颇有些科幻感觉的婴儿车向记者

介绍,"这是根据欧美客户需求自主设计的专利产品,也是好孩子公司在海外设立技术研发机构的创新成果。"

"没有知识产权就没有好孩子公司的今天。"贺新军谈到,好孩子公司建立了一系列知识产权管理制度,健全了知识产权管理机构,设立了知识产权管理专职人员,还根据市场的需要,将专利研发与管理工作的延伸到了海外,好孩子公司在技术研发方面的资金投入超过年销售收入的4%,创新投入及创新能力均居业界前列。

近3年来,好孩子公司累计提交国内外专利申请超过2000件,其中中国发明专利申请超过10%。通过《专利合作条约》(PCT)途径提交国际专利申请16件。截至目前,好孩子公司拥有中国专利近6000件。在知识产权工作领先的基础上,企业不仅

成为第一批国家级知识产权示范企业,而且市场销量也始终站在行业前沿。

从1989年生产第一辆童车,历经25年的风雨磨砺,"好孩子"童车成功实现"走出去"。在世界儿童用品行业,好孩子公司拥有专利数量第一,注册商标数量第一。"在知识产权能力不断提升基础上把企业做大做强,是我们的梦想。"贺新军表示,好孩子公司已经逐渐成长为全球儿童用品业界的知名企业,下一个目标就是做全球婴幼儿用品行业最大、最有价值的供应商。

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