

China's IP
in foreign eyes

The WIPR (WIPO's 2013 World IP Report) shows that in China, R&D expenditures as a proportion of GDP have risen rapidly since around 1977, from just below 0.8% to approximately 1.3% in 2010. The much-discussed National IP Strategy does not just seek to make China a leader in scientific research; one of its aims is the creation of world-renowned brands. (How China bucking the trend on R&D spending, by Managing Intellectual Property)

世界知识产权组织近日发布的“2013年世界知识产权报告”显示,自1977年以来,中国研发支出占国内生产总值的比重迅速上升,从低于0.8%上升至2010年的约1.3%。报告讨论最多的国家知识产权战略的实施,不仅是使中国成为科研领域的领导者,还要将目标锁定在打造世界知名品牌。(“中国如何引领R&D支出趋势”,知识产权管理网站)

Comments:

Innovation requires more than just spending money, of course. We noticed that China's IP environment is improving. China is becoming a more and more attractive place among international companies for R&D, as China has been dedicating more and more resources and strategies toward achieving its goal.

点评:

目前,中国进一步加大对知识产权保护力度,知识产权环境在不断地完善。随着中国朝着创新目标致力于资源和战略整合的努力,中国正在成为一个对跨国公司研发越来越有吸引力的目的地。

China to further strengthen IPR protection

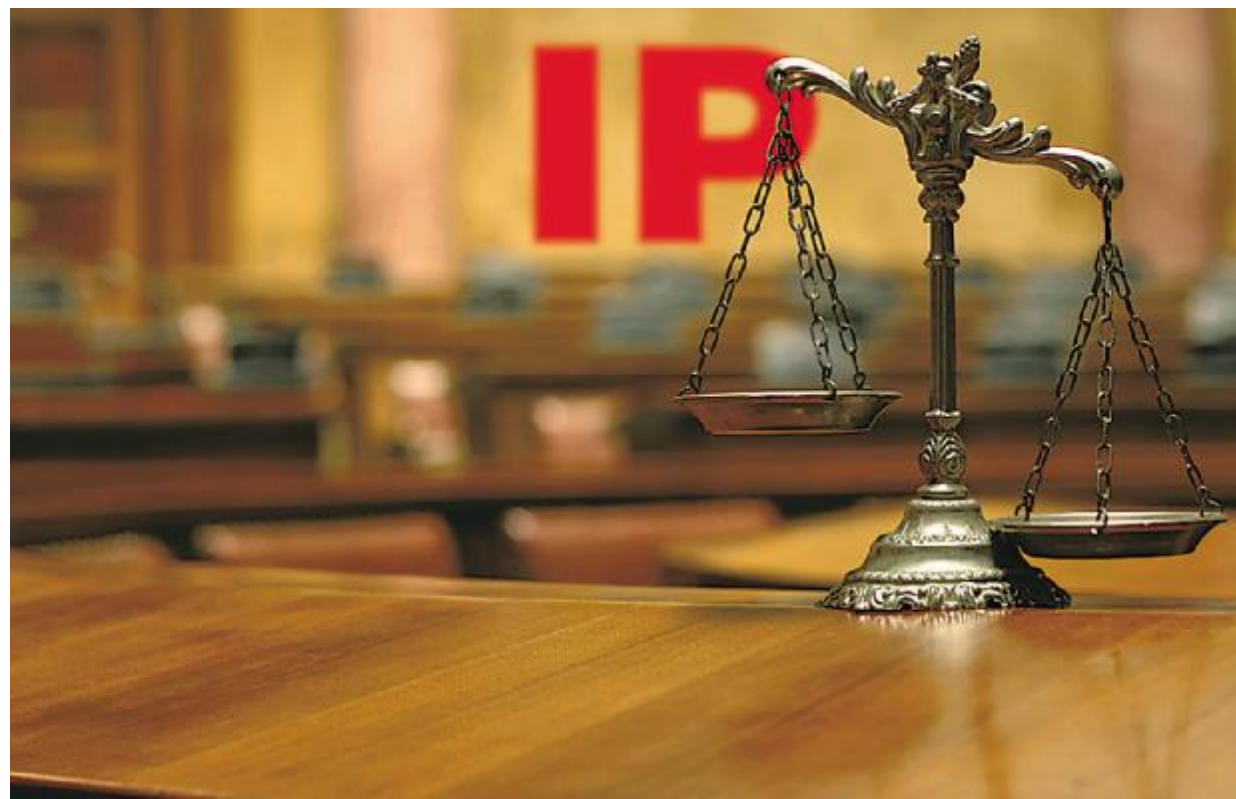
最高人民法院副院长奚晓明在“第一届亚太知识产权论坛”上表示——

中国法院切实加大知识产权保护力度

On November 16 and 17, in Suzhou Jiangsu province, the 1st Asia-Pacific IPR Forum, hosted by Renmin University, was held, attracting more than 200 IPR scholars from America, Canada, Japan, Korea and China. Xi Xiaoming, deputy chief justice from the Supreme People's Court, addressing the forum emphasizing that the courts nationwide have adopted series of measures to strengthen IPR protection, which is also the basic policy orientation and purpose of IPR judicial protection system.

According to Xi, based on years of IPR judicial practical experiences, China has gradually developed a sound policy system of IPR judicial protection, and has ensured the basic judicial policy of strengthening protection. Xi says that efforts should be striven to ensure implementation of law system, and the judges should take effective actions to apply more severe punishment and lower protection costs. To do so, courts nationwide have adopted series of effective measures, which have been divided into the following steps:

Firstly, the courts have increased compensation for IPR violations. On statistical methods, the right holders have been given more choices and rights to choose the



compensation calculation methods. Implementation of evidence spoliation system has been intensified, under which, even if the violators have refused to provide evidences for illegal income without just reasons, the right holders will be ruled in favor for the compensation they require. This mechanism has been introduced in the newly amended trademark laws, and is recognized

in trials for patent disputes and copyright cases. System of compensation based on discretion has been strengthened. Judges have been given more power to decide the compensation based on the objective facts and evidences, no maximum and minimum under the current law frame.

Secondly, China's courts have adopted effective measures on light-

ening righters' burden of proof, no more blindly abide strictly by the principle that "who propose, who proof". (by Wei Xiaomao)

本报讯 11月16日至17日,由中国人民大学主办的“第一届亚太知识产权论坛”在江苏省苏州市举行,来自中国、美国、加拿大、日本、韩国等的专家学者共200余人参加了此次论坛。最高人民法院副院长奚晓明在会上表示,加强保护是中国当前知识产权

司法保护的基本定位和取向,中国法院采取了一系列具体措施加大知识产权保护力度,切实实现加强保护的成果。

奚晓明表示,结合多年来的知识产权司法实践经验,确定了“加强保护、分门别类、宽严适度”的基本司法政策,初步形成了比较完善的知识产权司法政策体系。其中,加强保护要求切实保障法律体系的有效实施,要求法官在行使司法裁判权时应以有利于加强保护为出发点,要求在法律范围内采取有效措施,加大司法惩处力度和降低维权成本。在加强保护的导向下,中国法院采取了一系列具体的司法政策,以加大对知识产权的保护力度。

中国法院加大知识产权损害赔偿力度。在损害赔偿方法上,尊重权利人的选择权,允许权利人选择对其有利、证明方便的损害赔偿计算方法;强化举证妨碍制度的运用,在侵权人持有侵权获利证据但无正当理由拒不提供的情况下,根据案件具体情况推定权利人关于损害赔偿数额的诉请成立,这一制度在新修订的商标法中被首次引入,专利、著作权等知识产权领域均可以参照适用;加强裁量性损害赔偿制度的适用,在一定事实和证据的基础上,根据案情运用裁量权酌定公平合理的赔偿数额,不受法定赔偿最高和最低限额的限制。其次,中国法院采取措施切实减轻权利人的举证负担,机械适用“谁主张谁举证”的举证责任分配规则。

(魏小毛)

TouchPal settles with Nuance in 337 investigations

在与世界输入法行业巨头美国 Nuance 公司之间的知识产权对抗中,上海触宝科技取得压倒性胜利,迫使对方提出和解——

“触宝”入美:天堑变通途



Haier is recognised globally for reliability and marketing know-how. Mr. Zhang also defied Chinese notions of how to expand overseas. He wanted the firm to learn how to meet the demands of the world's most sophisticated consumers. By listening closely to demanding consumers, his firm's fast and frugal engineers came up with clever products. (Haier and higher, by The Economist)

海尔的领导者张瑞敏敢于挑战中国公司拓展海外市场的传统理念。他希望公司能够了解如何满足世界上最成熟的消费者的需求。通过仔细倾听他们的需求,海尔反应迅速的工程师们创造出了设计巧妙的产品。(“海尔,追求卓越”,经济学家杂志)

Comments:

In an industry ranking of last year, Haier was judged the eighth most innovative firm worldwide, ahead of Amazon among others, in a ranking last year. Haier's innovation strategy is unconventional, but the results have been breathtaking.

点评:

在去年一项行业排名中,海尔在全球最具创新力的公司排名中位居第八,领先于亚马逊等全球知名企业。海尔的创新战略一直标新立异,其取得的成果也令人赞叹。

As the CEO of Shanghai CooTek, an emerging mobile device software provider, Wang Jiali and his team have just went through a patent dispute with Nuance, the globally recognized mobile phone input software manufacturer. In December 2012, Nuance filed 337 investigations on the ground of patent infringement under US International Trade Commission (ITC) against CooTek. Months later, ITC ruled in favor of CooTek, no infringement instituted. Nuance negotiated actively with CooTek, and a settlement achieved.

This victory patent dispute let Wang Jiali more confident to explore American market. "The case came after a failed acquisition of CooTek, being Nuance's competitor is just a reflection of our potential strength." Quoted Wang Jiali.

Founded in 2008, CooTek dedicates itself to improving the usability, functionality and overall value of mobile devices via the innovative software. Before started his own business, Wang Jiali joined Microsoft in 2005 as a project manager, being responsible for Windows server and tools development and designing. In the past decade, Nuance has developed into a mobile phone input software supplier giant, by merger and acquisition of small-sized input software companies and has possessed numbers of patent in this field.

However, the former paralleled two companies came to face to face confrontation. On December 17, Nuance filed a patent infringement suit against CooTek under

Delaware district court and claimed compensation. Three days later, Nuance brought the case to the ITC and requested 337 investigation on CooTek and issue general exclusion order, on the ground that Nuance's 5 patents have been violated.

In the following days, Wang Jiali and his legal team worked out a set of rigorous coping plan. Yin Qingyu the team leader told CIP News that in order to win the case, there are 3 key points to breakthrough. "Nuance's patents in the case are invalid, CooTek's products are rightful, CooTek's business doesn't involve import and the Nuance has no industry in US," says Yin. After thorough consideration and argument, the legal team decided to prove Nuance's patents are invalid and CooTek's are clean. "One of the most important thing to do is to find out the already published documents," Yin says.

Wang Jiali decided not to sit in silence but fight in full strength. "Innovation capacity and IPR awareness among domestic enterprises have been enhancing progressively, they start to play positive role in international IPR disputes. For those who determined to explore the overseas markets, IPR should always be the priority on the company agenda. CooTek is not the first one being investigated by ITC and will not be the last one. The only way out is to fight back." Says Wang Jiali.

On January 25, 2013, ITC initiated the 337 investigations. On March 18, CooTek presented convincing documents to ITC. Nuance dropped charge of one patent infringement on May 8.



On June 2013, engineers from CooTek gave detailed explanations to Nuance's attorney about the functions and operational principles of CooTek's product TouchPal. On July 15, Nuance dropped three other patent violation charges, and then seeks settlement.

"I must say that all the team are satisfied of this final end. The settlement not only saves up the expensive legal costs, but also removes the barriers access the American markets. It's a wise choice to stand up and fight back." Says Wang Jiali. In his eyes, one thing to solve the IPR dispute is to choose a professional legal team.

(by Zhu Wenming)

本报记者 祝文明

“收购不成,就起诉我们侵权。能成为世界巨头的目标,侧面说明了我们的实力。对于最终结果,我们感到非常满意。”11月11日晚,上海汉翔信息技术有限公司(下称触宝科技)CEO 王佳梁面对中国知识产权报记者娓娓道来,谈他们与输入法行业世

界第一美国 Nuance 公司之间的知识产权纠纷,言语间透着几分自豪。这份自豪来源于不久前,美国国际贸易委员会(下称 ITC)对 Nuance 公司以触宝科技专利侵权提起的“337 调查”案作出裁决判决,认定触宝科技的大分部产品不侵犯 Nuance 公司的专利权。随后, Nuance 公司主动提出并与触宝科技达成了和解,从而为触宝科技的输入法产品进入美国市场扫清了障碍。

据了解,2012年12月,输入法领域冉冉上升的新星企业触宝科技遭遇 Nuance 公司的阻击,触宝科技先是于2012年12月17日在美国德州拉维州法院提起侵权诉讼,称触宝科技侵犯其专利权,并提出赔偿要求。3天后即12月20日,又向 ITC 提出“337 调查”申请,指控触宝科技侵犯其 5 件专利权,要求 ITC 发布普遍排除令,禁止触宝科技的产品进入美国。

在随后很短的时间里,触宝科技的应诉团队迅速制定了一套周密的方案,并一步步开始落实。首席律师印庆余告诉中国知识产权报记者,仅从诉讼本身来说,此案中针对 Nuance 公司在 ITC 提起的“337 调查”案,有 3 个突破点可供选择,包括提

对方专利无效、自身产品不侵权、进口行为不存在及对方没有美国国内产业。经过讨论分析,他们最终确定将应诉重点放在对方专利无效和自身产品不侵权这两点上。而要论证对方专利无效,最重要的工作就是要找到涉案专利之前已经公开的对比文献。

“伴随着国内企业创新能力和专利意识的增强,国内企业在国际知识产权纠纷中的弱势地位正在逐渐改变。对于把目标瞄准海外的中国创业者来说,知识产权则是绕不过的坎儿,触宝科技既不是第一家遭遇 ITC 调查的公司,也不会是最后一家。确定应诉,源于我们对自己的产品不侵权的自信。”王佳梁说。

ITC 于 2013 年 1 月 25 日针对此案开始启动调查,到 3 月 18 日,触宝科技应诉律师团队给出了令人信服的对比文件。印庆余说,在向 ITC 提交对比文件后不到 2 个月,即 2013 年 5 月 8 日, Nuance 公司即提出放弃其中 1 件专利的侵权指控。

到了 2013 年 6 月,触宝科技的工程师在质证过程中向 Nuance 公司的律师详尽解释了触宝产品的功能和工作方式。7 月 15 日, Nuance 公司聘请的技术专家在其专家报告中直接放弃了针对触宝大部分产品的另外 3 件专利的侵权指控。几天之后, Nuance 公司主动提出了和解意向,得到了触宝科技的积极回应。

“我们对和解协议的内容感到非常满意,不仅节省了高昂的诉讼费,还为我们的产品进入美国扫清了障碍。回过头来看,当时决定应诉,是一个非常正确的选择。”王佳梁认为,选择一个优秀的律师团队也是他们此次成功化解知识产权纠纷的关键因素之一。

