

China's IP in foreign eyes

Chinese Academy of Social Sciences in Beijing released the "G20 National Innovation Competitiveness Development Report (2011-2013)" Beige Book on 3rd. It shows Chinese national innovation competitiveness improves fast, ranked eighth among G20 countries and becomes the only developing countries into the top 10. (G20 National Innovation Competitiveness Report: China Ranked Eighth, by Daily Economic)

中国社会科学院近日在北京发布了《20国集团(G20)国家创新竞争力发展报告(2011-2013)》黄皮书。该黄皮书显示,中国国家创新竞争力快速提高,在G20国家中名列第八,成为进入前十名的唯一的发展中国家。《G20国家创新竞争力报告》显示:中国排名第八,每日经济。

Comment:

The ranking is showing that China has made significant results by implementing the strategy of scientific and technological innovation, which effectively improved the national innovation competitiveness. Moreover, China has accomplished much in intellectual property strategy, which has helped implementing of innovation-driven development strategy, promoting the construction of an innovative country.

点评:

20国集团国家创新竞争力的排名,显示了中国实施科技创新战略已经取得了显著成效。不仅如此,中国在运用知识产权战略上也取得很大成就,有力地促进了创新驱动发展战略的实施和创新型国家的建设。



For months now, Apple has lost ground in the Chinese tablet and smart phone market to competitors such as Samsung and Lenovo. And now local manufacturers that make accessories for the iPad and iPhone are starting to inch away from Apple. (In China, a slow shift away from Apple's iPhone, iPad, by The Christian Science Monitor)

几个月来,在与三星、联想等强大对手的竞争中,苹果公司在中国平板电脑和智能手机市场频频失地。如今,为iPad和iPhone生产配件的本土制造商们也开始渐渐离开与苹果公司的距离。《中国缓慢疏远苹果iPhone和iPad》,基督教科学箴言报。

Comment:

In the Chinese market, Apple product is no longer the only fashionable star followed by consumers. While Samsung and Lenovo leading the market, many local brands are rising. Taking Xiaomi Company as an example, its market value has reached 10 billion dollars, and it has attracted former Google Android CEO. By providing low prices and high quality hardware, Chinese local brands become more and more competitive.

点评:

在中国市场,苹果手机已不再是消费者追捧的唯一对象。在三星、联想依然领跑的同时,众多本土品牌百家争鸣。例如小米公司,其市值已上百亿美元,并吸引到谷歌安卓前总裁加盟。依靠低廉的价格与良好的硬件配置,中国本土品牌正变得越来越有竞争力。

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

# New Trademark Law will take force on next May 1st

## 新修改的中国商标法明年5月1日起施行

驰名商标不得用于广告宣传、法定赔偿额上限提至300万元等成为关注焦点

On August 30, the 4th meeting of the 12th National People's Congress Standing Committee passed the amendment to the trademark law, which will come into force on May 1st, 2014. The revised Trademark Law added that sound could be registered as a trademark and a trademark application could be submitted by way of data message, and raised the compensation ceiling for trademark infringement to 3 million yuan. Moreover, well-known trademarks shall not be used in promotions or advertising. All these mean a more convenient registration and a fairer market.

The draft changed clauses regarding the examination time limit for trademark registration to make it more efficient, and improved the opposition system. The new law also offers protection for well-known trademarks, strengthened the protection of the trademark right, and regulating the registration and use of trademark. The new law added that trademark agencies are not allowed to accept entrustment if they know or should know that their clients are conducting a malicious registration or infringing on the trademark rights of others.

Professor Tao Xinliang, dean of the Intellectual Property (IP) Institute of Shanghai University, said to the CIP news journalist that it took lots of time and effort to

formulate the new law, which changes clauses regarding problems in the market such as the complex

registration procedures, long examination period as well as frequent malicious registration.

Well-targeted, practical and forward-looking, the new law sets a milestone for China's IP legislative

work.

The trademark law was formulated in 1982, and was revised twice in 1993 and 2001 respectively.

(by Jiang Boping)

本报讯 8月30日,十二届全国人大常委会第四次会议审议通过了中国商标法修正案,新修改的商标法自2014年5月1日起施行。其中,新修改的商标法规定申请人可以把声音作为商标申请注册,可以通过数据电文方式提交注册申请,驰名商标不得用于广告宣传,并将法定赔偿额上限提至300万元等成为亮点。

这次对商标法的修改内容主要包括以下六个方面:一是增加关于商标审查时限的规定;二是完善商标注册异议制度;三是厘清驰名商标保护制度;四是加强商标专用权保护;五是规范商标申请和使用行为,禁止抢注他人商标,维护公平竞争的市场秩序;六是规范商标代理活动。

上海大学知识产权学院院长陶鑫良教授在接受本报记者采访时说,商标法修正案是“十年磨一剑,辛苦不寻常”。当前实务中存在着商标注册程序比较繁琐、商标确权时间过长、恶意注册商标的现象比较多、商标侵权行为尚未得到有效遏制等方面问题,新修改的商标法针对这些问题,做了相应规定,具有很好的针对性、实用性和前瞻性,对于中国知识产权法治建设具有里程碑式的意义。

据了解,现行商标法于1982年制定,此后于1993年和2001年进行了两次修改。

(姜伯平)



SIPO Commissioner Tian Lipu met USPTO Acting Director Teresa Rea at Beijing on September 9. Tian said that the cooperation between the two sides is crucial to the development of innovation of two countries and the world. He hopes that under the leadership of Rea, such cooperation would be enhanced to a new level.

(by Yang Shen/Liu Peng)

9月9日,中国国家知识产权局局长田力普(右)在京会见了来访的美国专利商标局代理局长特瑞萨·瑞。田力普表示,中美两局之间的合作至关重要,肩负着推动两国创新以及全球创新发展的重任。他希望美国专利商标局在特瑞萨·瑞的领导下,进一步深化双方的合作。

本报记者 杨申 柳鹏 摄影报道

# Huntsman won the patent "war" at first-instance

## 化工染料行业爆发跨国专利战 亨斯迈公司一审胜诉

Recently, Shanghai No.1 Intermediate People's Court heard the case, ruled Shanghai Colva's two dyestuffs "Colva super black LC-G" as well as "Colva Super Black LC-R" infringing Huntsman's subsidiary's invention patent "Azo dyestuff with its production methods and applications", and ordered Shanghai Colva to stop the infringement and pay ¥400,000 in damages.

In September, 2007, Huntsman initiated the lawsuit in China. It sued Shanghai Colva in the Shanghai No.1 Intermediate People's Court, alleging Shanghai Colva had infringed its invention patent "Azo dyestuff with its production methods and applications" (Patent No. ZL00106403.7) and should stop the infringement and pay ¥500,000 in damages. As far as Huntsman's concerned, the two kinds of dyestuffs "Colva super black LC-G" as well as "Colva Super Black LC-R" that Shanghai Colva manufactured and sold fell into the claims of its invention patent and hence constituted patent infringement.

During the trial, the court, according to Huntsman's requirement, commissioned Shanghai Science and Technology Consulting Centre to identify whether there was equivalence in technical characteristics between Shanghai Colva's two dyestuffs and Huntsman's invention patent. On February 5, 2010, the Analysis and Testing Center of Shanghai Institute of Organic Chemistry, Chinese Academy of Sciences, commissioned by the Shanghai Science and Technology Consulting

Centre, issued an "analysis report" which confirmed the main ingredients of Shanghai Colva's dyestuffs were as same as those of Huntsman.

However, the Shanghai Science and Technology Consulting Centre did not submit the "analysis report" to the court. Hence, the court terminated the cooperation with it on May 11, 2012, and commissioned Beijing Guo Ke Intellectual Property Judicial Appraisal Center (Beijing Guo Ke) to make a new identification on July 3, 2012, according to the "analysis report" that the Analysis and Testing Center of Shanghai Institute of Organic Chemistry had released.

On November 16, 2012, Beijing Guo Ke issued its appraisal opinion, which confirmed there was equivalence in technical characteristics between Shanghai Colva's two dyestuffs and Huntsman's invention patent.

During the lawsuit, the Shanghai Colva raised objection to the test technique that the aforementioned accreditation agencies had adopted. As for this, the court held that the accreditation agencies had the right to choose the suitable test technique according to their knowledge and the case. The plaintiff as well as the defendant, however, had no right to define the test technique. Considering there was no other ways to test, the sample comparison test technique the accreditation agencies adopted was common in organic chemistry. Moreover, the sample comparison test technique had realized the goal of identification—to determine the structure of the products involving infringement.

Hence, the court dismissed Shanghai Colva's objection.

Meanwhile, Shanghai Colva also questioned the result of the test, which was rejected by the court due to insufficient evidence. Finally, the court accepted the appraisal opinion that Beijing Guo Ke issued.

Accordingly, the court rendered at first-instance decision that the dyestuffs "Colva super black LC-G" as well as "Colva Super Black LC-R" that Shanghai Colva manufactured and sold without Huntsman's permission infringed Huntsman's invention patent right "Azo dyestuff with its production methods and applications", and ruled Shanghai Colva immediately stopped the infringement and paid ¥400,000 in damages to Huntsman. In addition, the test fee ¥100,000 as well as the appraisal fee ¥82,000 should also be paid by Shanghai Colva.

After the trial, a person in charge of Huntsman told to the CIP journalist that they will continue to take legal action against infringers to protect their IPRs. Up to now, Zhejiang Longsheng had not made response to our interview.

Now, the case is at second instance. We will continue to follow the development of the case.

(by Pei Hong / Zhu Wenming)

### 本报记者 裴宏 祝文明

日前,上海市第一中级人民法院经一审审理后,认定上海科华公司制造、销售“科华超级黑 LC-G”“科华超级黑 LC-R”染料的行为侵犯了亨斯迈公司子公司的“偶氮染料及制备方法”发明专利,判令上海科华公司立即停止侵权并赔偿亨斯

迈公司经济损失40万元。

2007年,亨斯迈公司在中国首次提起专利诉讼。当年9月,亨斯迈公司以侵犯其“偶氮染料及制备方法”发明专利(专利号 ZL00106403.7)发明专利为由,将上海科华公司起诉至上海一中院,请求法院判令上海科华立即停止侵权并赔偿经济损失50万元。亨斯迈公司认为,上海科华公司制造、销售的“科华超级黑 LC-G”“科华超级黑 LC-R”染料落入其拥有的上述专利的权利要求1-7.9的保护范围,构成专利侵权。

上海一中院受理该案后,根据亨斯迈公司的申请,委托上海市科技咨询服务中心就被控侵权产品“科华超级黑 LC-G”和“科华超级黑 LC-R”染料落入其拥有的上述专利的权利要求1-7.9的技术特征是否相同作出鉴定结论。2010年2月5日,中国科学院上海有机化学研究所分析测试中心接受上海市科技咨询服务中心的委托,出具“分析测试报告”,确认检测产品与对照品主成分相同。

但这份“分析测试报告”迟迟没有提交给上海一中院。因此,2012年5月11日,上海一中院终止与上海市科技咨询服务中心相关委托鉴定事宜,并于同年7月3日委托北京国科知识产权司法鉴定中心根据中国科学院上海有机化学研究所分析测试中心出具的“分析测试报告”,判定“科华超级黑 LC-G”“科华超级黑 LC-R”两个样品所含技术特征与亨斯迈公司的发明专利“偶氮染料及制备方法”发明专利权利要求1-7.9的技术特征是否相同或者等同。

2012年11月16日,北京国科知识产权司法鉴定中心出具司法鉴定意见书,确认两者技术特征相同。

案件审理过程中,上海科华公司对上述鉴定机构采用的检测方法的科学性提出了异议。但上海一中院认

为,对于确定采用何种检测方法判断涉案被控侵权产品是否落入原告专利权利要求的保护范围应由鉴定机构依据其专业知识,并结合案件具体情况予以确定,而不应由双方当事人对检测方法提出要求。在不具备采用其他方法进行分析检测的情况下,检测机构采用的参比样检测方法也是有机化学领域的常用检测方法。本案鉴定的目的在于确定被控侵权产品的结构,该检测方法实质上已经实现了确定结构的检测目的。因此,上海科华公司提出的异议并不成立。

上海科华公司还对检测结论提出质疑,但上海一中院认为其相关主张不足以证明检测结论不正确。法院对北京国科知识产权司法鉴定中心依据“分析测试报告”出具的《司法鉴定意见书》予以采信。

据此,上海一中院作出一审判决,认定上海科华公司未经亨斯迈公司许可,以生产经营为目的,实施的制造、销售“科华超级黑 LC-G”“科华超级黑 LC-R”行为侵犯了亨斯迈公司“偶氮染料及制备方法”发明专利,判令上海科华公司立即停止侵权,并赔偿亨斯迈公司经济损失40万元。另外,该案产生的检测费10万元、鉴定费8.2万元,均由上海科华公司负担。

该案宣判后,亨斯迈公司有关负责人对本报记者表示,他们将持续对侵权人采取法律措施,以维护自身知识产权。截至记者发稿时止,上海科华公司的母公司浙江龙盛集团股份有限公司没有对本报记者的采访作出回应。

目前,该案正在二审中。本报将继续关注案件进展。

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