

China's IP  
in foreign eyes

South-East Asian countries need to embrace the science and innovation that will allow them to reach the next stage of development and be globally competitive - and must closely follow China's progress, according to a forthcoming OECD report. According to Gernot Hutschenreiter of the OECD's Directorate for Science, Technology and Industry, China is heavily investing in both research and development and in skills and knowledge, and is now slowly starting to produce its own industrial components, whereas it used to import them. (OECD: South-East Asian innovation should look to China, by ScidevNet)

世界经合组织即将发布的一项报告称, 东南亚国家必须重视科学和创新, 以适应下一阶段的发展并具备全球竞争力——而且必须密切关注中国的发展。世界经合组织有关专家称, 中国目前正大量投资于技术和知识的研究及开发, 并慢慢开始自行生产曾经依赖进口的工业原件。(《经合组织: 东南亚创新应该着眼于中国》, 科学与发展网络)

Comment:

China is playing a key role in South-East Asian's rapidly changing development and in increasing competition with other countries in the region. Other countries would be in a better position to profit from interacting with a "rising China" if they were to increase their innovation capacity, including putting more effort into research and development.

点评:

中国在东南亚地区的迅速发展扮演着日益重要的角色。如果其他国家和中国一样更加关注研发并提升其创新能力, 那么他们将从与“崛起的中国”的更多互动中获利。

(by Correspondent Wang Weiwai from Canada)

(本报通讯员汪玮玮发自加拿大)

Baochi pays 2 million yuan to BMW in compensation

“丰宝马丰”因攀附“宝马”付出代价 200 万元

The Beijing Supreme people's Court recently sealed a trademark dispute between German car maker BMW, individual surname Li and Beijing Fangtuo Company. After the judgment of first instance, BMW got some compensation of 530,000 yuan. As the company held that it is so difficult to ascertain the profit gained by the defendant, it still claimed a compensation of 2 million yuan, which was accepted by Beijing Supreme People's Court.

Century Baochi company, founded in November 2009, was authorized to use the mark No. 4719183 “丰宝马丰 FENGBAOMAFENG and design” from November 25, 2009 to May 29, 2017 for business expansion by Century BMW in April 2010.

On January 1, 2010, the Century Baoma Group and Baochi Company authorized Li, one of the defendant in the case, to operator 丰宝马丰 brand clothes at a shopping center in Chaoyang District, Beijing. In December, 2009, Li signed a franchise agreement with Baochi Company to distribute 丰宝马丰 products.

In the first-instance trial, BMW held that it has obtained the trademark of BMW, 宝马, and blue and white design trademark in China, covering automobile, clothes and shoes, and Century Baochi constituted trademark infringement on the ground of using the blue and white design of trademark similar to BMW trademark in clothes, clothing label. Baochi Company argues that it has no evidence to prove that the infringement products sold by Li were from the company.

Moreover, the court found that Century Baochi company ex-



ploited the name of “世纪宝马集团”(Century Baoma Group) in its products and ads, which was indeed confusing and misleading. The act was propelled by mercenary motives to tie itself to BMW's goodwill and constituted unfair competition.

After the judgment of first-instance, both the plaintiff and defendant appealed to Beijing Supreme People's court. BMW held that the defendant gained immensely from distribution of infringement goods, and should pay 2 million yuan for compensation. Baochi Company argues that it has no evidence to prove its infringement action, and it also has a right to mark the name of trademark owner Century Baoma Group.

“In a bid to prove that the defendant has gained financially from infringement, and the amount of compensation is too low, BMW has provided abundant new evidences to the court. These evidences include infringement products labeled with trademark in question distributed by Baochi Company in Shanxi

province, and some infringement products worthy of 10 million yuan seized by Shanxi industry and commerce administration in a special campaign on protecting the trademark of BMW,” said Ma Qiang, the lawyer of Beijing Junhe Law Firm.

As Baochi Company brought economic losses to BMW, the court also fined the company 100,000 for its infringement. (by Yang Qiang)

本报记者 杨强

备受业内关注的德国宝马股份公司(下称宝马公司)诉广州世纪宝服饰实业有限公司(下称广州宝服饰公司)、销售“丰宝马丰”品牌服装的李某以及北京方拓商业管理有限公司(下称方拓公司)侵犯商标权及不正当竞争案终审有了结果。日前, 北京市高级人民法院对该案作出终审判决。“丰宝马丰”因攀附“宝马”付出代价 200 万元。

据了解, 一审审结后, 宝马公司获得包括经济损失和诉讼费在内的赔偿共计 53 万元。然而, 宝马公司认为由于取证难度大, 无法确切查明被告方利润所得, 但其所得超过 50 万元是显而易见的事实, 该公司仍坚持其

200 万元的赔偿主张, 并最终获得北京市高级人民法院终审判决支持。

成立于 2009 年 11 月 24 日的广州宝服饰公司, 于 2010 年 4 月 26 日获得案外人在中国香港地区注册的德国世纪宝马集团(下称世纪宝马集团)的授权许可, 自 2009 年 11 月 25 日至 2017 年 5 月 29 日, 有权使用第 4719183 号“丰宝马丰 FENGBAOMAFENG 及图”商标。

2010 年 1 月 1 日, 世纪宝马集团、广州宝服饰公司与案被告之一李某签订授权书, 主要内容为世纪宝马集团、广州宝服饰公司授权李某为世纪宝马集团在北京朝阳区方恒购物中心经营“丰宝马丰”品牌男装产品, 有效期至 2010 年 12 月 31 日止。据李某表示, 2009 年 12 月, 其曾与广州宝服饰公司签订加盟合同, 开始销售广州宝服饰公司的“丰宝马丰”产品。

据宝马公司一审起诉称, 该公司在中国注册的商标有“BMW”、“宝马”以及蓝白相间的圆形标识等, 核定使用商品已涵盖机动车辆、服装、鞋等。广州宝服饰公司生产并由李某在方拓公司下属商场销售的“丰宝马丰”服装, 已侵犯该公司商标权, 而且三名被告

“搭便车”的主观恶意明显, 已对宝马公司商标、商誉造成巨大损失。对此, 广州宝服饰公司表示, 并无进货单据证明李某所销售的被诉侵权商品源自该公司。

一审法院还认为, 广州宝服饰公司在服装吊牌、网站等处使用“德国世纪宝马集团股份有限公司”的企业名称, 意在利用宝马公司的商誉从事经营活动牟取非法利益, 已构成不正当竞争。

一审判决作出后, 宝马公司和广州宝服饰公司均上诉至北京市高级人民法院。据了解, 宝马公司认为广州宝服饰公司的侵权获利巨大, 其提出的 200 万元赔偿数额应得到全额支持。广州宝服饰公司则认为该案并无证据证明其有侵权行为, 而且其有权标注授权权利来源和商标所有人世纪宝马集团的企业名称。

据宝马公司案代理人、北京市君合律师事务所律师马强表示, 为证明广州宝服饰公司通过侵权行为获得巨大利润, 并证明原审判决确定的赔偿数额过低, 宝马公司向二审法院提交了大量的新证据。据马强介绍, 新证据包括广州宝服饰公司在山西省大量发展特许经营加盟店并销售印有涉案侵权标识的服装、鞋产品; 山西省工商行政管理局开展的保护宝马公司注册商标专项行动中, 查处的价值上千万元的侵权产品。

此外, 记者还了解到, 二审法院作出终审判决的同时, 还作出一份民事制裁决定书, 认为广州宝服饰公司的侵权行为给宝马公司造成了较大经济损失, 应受到处罚, 并决定对其罚款 10 万元。

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Development of China's Utility Model Patent System (Part 3)

State Intellectual Property Office of the P. R. China

Suzhou Touchstone International Medical Science Co., Ltd. is a high-tech company which emphasizes medical technology R&D, innovation and production. Its main products are mid and high end surgical operating instruments which are exported to various countries in Europe and North America. The company owns 297 utility model patents. Its most representative utility model patent—"surgical binding instrument rotary cutter head" completely changed the traditional design of stapler. It eased the strict requirements for materials and manufacture, reduced operation costs and improved the reliability and success rate of surgery.

Suzhou Haixin Mechanical & Electrical Equipment Co., Ltd. has been devoted to researching and producing anti-static products. The company insists in technology innovation and focuses on indigenous IP development and protection. The company now owns over 50 utility model patents. After nine years' efforts, it gradually forms a large-scale production base for anti-static equipments and provides high quality services to the world at affordable prices through internet. It is the designated supplier of some famous companies such as KONICA MINOLTA, SONY, and NIKON.

China has a lot of technology-oriented SMEs like Suzhou Touchstone and Haixin who protect

their technological innovations and strengthen their market competitiveness effectively by utility model patents. Utility model patents provide powerful protection for a company's innovation during its starting-up stage and paves the way for company's future development.

3.5 China's Utility Model Patent System Greatly Promotes Patented Technology Transfer

Comparing with invention patent, utility model patent is relatively simple and easier to implement. The cost of buying a utility model patent or obtaining its exclusive right or sole license for exploitation is cheap and more acceptable for SMEs. Moreover, utility model examination period is shorter and thus get right granted faster. This implies that it can make the technology be known to the public and ushers it into the technology trade channel within the shortest time.

According to investigations, by the end of 2011, the valid utility model patents that maintained for more than 3 years account for 52.8% of the total, among which 12.9% maintained for over 6 years. From 2006 to 2010, the implementation rate of utility model patent was above 60%. Among the implemented utility model patents, the percentage of self-implementation by the patentees was over 90%. The long maintenance period and the relative high rate of implementation indicate that utility model patents

not only contain comparatively high technology but also play an important role in promoting economic prosperity.

Most of China's utility model patents have been utilized in real manufacturing and the implementation rate of utility model patents is higher than that of invention patents (less than 60%).

3.6 The Utility Model Patent System Matches China's Current Development

The utility model patent system has made remarkable achievements in China because China introduced advanced foreign experiences based on its practical situation. The history of IP systems development in the world proves that IP system can only promote science and technology innovation and economic growth when it matches a country's development level and continuously adapts to the future development.

Since the introduction of reform and opening up policy, China has made great economic developments, and significantly enhanced its innovative capability in science and technology. At present, China is committed to establish an innovative country and promote the transformation from factor-driving to innovation-driving. It regards enhancing indigenous innovation capacity as the core issue for changing economy development mode and adjusting economic structure, so as to steadily improve China's innovative capability

in science and technology.

However, as a developing country, China is still low in general innovative capacity. It is a learning country of big gap with the developed countries. The present innovative activities in China are mainly surrounding innovation, simple technology improvements and re-innovations. Most indigenous technologies are the results of improvements or transplants of the existing technologies or related technologies. The market life of those technologies is often short and their technology level is relatively low. Therefore, the utility model patent system is still one of the important IP systems to encourage invention-creations and promote economic developments in China.

Applying for utility model patents has become an important means of SMEs in implementing IP strategy and promoting indigenous innovations. More and more SMEs in China are taking utility model patent application as an important approach to own their indigenous IP rights. Utility model patents are becoming their important intangible assets and a useful tool for SMEs to participate in market competition.

4. China is Making Efforts to Improve the Quality of Utility Model Patents

China has been attaching great importance to the quality of utility model patents. The revised patent

law further raised the standard of granting utility model patents, providing the legal support for improving its quality.

In recent years, SIPO has also taken effective measures to constantly improve the examination quality management system and the quality of utility model patents while adhering to the principle of examination in accordance with the law.

(1) Establish and complete an office department division three level examination quality management system to further strengthen internal management such as target management and process control. The office adopts effective measures to ensure the consistency of utility model patent examination standard.

(2) Reinforce the momentum to crack down the abnormal patent applications as plagiarism of prior art and repetitive applications, and strengthen the examination for those low-quality utility model patent applications which are obviously lack of novelty or belong to repetitive patenting.

(3) Carry out endorsement system by division director (director general) of the examination department. The notifications regarding obvious substantive defects of utility model patent applications have to be reviewed and issued by division director (director general).

(4) Set up external patent examination quality feedback system, collecting opinions through website,

hotline, emails and letters, and accepting public supervision and complaints relating to patents examination work including utility model patent examination.

Conclusion

In the past over 20 years, the utility model patent system has been developed and improved continuously and remarkable achievements have been made. However, the history of the system is short and there is still room for further improvement.

For a long period in the future, continuing to implement the utility model patent system will be a practical choice of China based on its national situation. We believe that the utility model patent system in China will keep improving with the development of the country's economic and social developments and its enhancement of innovative capacity.

China will, as always, strengthen the examination for utility model and enhance the quality of related patents in accordance with the law. In the meantime, China will earnestly perform its obligations according to international IP treaties and conventions, strengthen IP international cooperation and contribute to a more balanced and efficient development of utility model patent system globally. (The end)

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