

China's IP in foreign eyes



Apple Inc's rank in China's smartphone market, which is set to become the world's largest this year, fell to No.6 in the third quarter as it faced tough competition from Chinese brands...

国际数据公司 IDC 日前表示, 由于来自中国品牌的激烈竞争, 苹果公司今年第三季度在中国智能手机市场的排名, 从预计的第一位下降至第六位...

Comment:

As local Chinese brands are becoming increasingly innovative, a lot of global brands are being displaced by them. It is not impossible for Chinese brands to surpass international brands.

点评:

随着中国本土品牌的不断创新, 许多全球顶级品牌正在逐渐被中国本土品牌所取代。中国企业超越国外企业已势不可挡。

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

Wang Qishan: China has made significant achievements in IPR protection

王岐山在第 23 届中美商贸联委会上指出

中方在知识产权保护等方面取得明显进展

On December 19, Chinese Vice Premier Wang Qishan, attends the 23rd Session of China-US Joint Commission on Commerce and Trade (JCCT), held in Washington, DC.

with positive results. The U.S. side said it will promote the export of high-tech products to China, timely handle China's item applications, actively enhance Sino-US IPR cooperation...

美国华盛顿闭幕。中国国务院副总理王岐山表示, 中美作为最大的发展中国家和最大的发达国家, 进一步加强经贸合作, 对两国乃至全球经济均至关重要。

据悉, 经过双方努力, 此次中美商贸联委会取得了积极成果。美方表示, 将努力促进高技术产品对华民用途和民用户的出口, 及时处理中方提出的物项申请...



The trademark "丽仕" constitutes similarity with "力士" 法院一审认定“丽仕”与“力士”近似

Recently, the trademark dispute over "丽仕" (the same pronunciation as "力士" with registration No. 5210730) between Unilever (China) Co., Ltd. and the natural person Ma Jihui arouses wide public concerns.

The trademark "丽仕", certified to be used in category 3 including the goods of shampoo as well as cosmetics, was applied for by Ma Jihui in March 2006, and registered in September 2009.

Meanwhile, Unilever made a request for revoking the registration of "力士" in April 2010, which was supported by TRAB in October

2011. The disgruntled Ma then appealed to the Beijing No.1 Intermediate People's Court.

Dissatisfied with the court's ruling, Ma continued his appeal, and we will follow the development of the case. (Xie Huangdong)

本报讯 快消巨头联合利华(中国)有限公司(下称联合利华公司)与自然人马继辉因“丽仕”(注册号为第5210730)商标引发的争议备受瞩目。日前, 该案有了新进展。北京市第一中级人民法院(下称北京一中院)一审认定马继辉持有的“丽仕”商标与联合利华公司在先使用并享有较高知名度的“力士”、“力士 LUX”等商标构成近似商标。

维持国家工商行政管理总局商标评审委员会(下称商评委)原撤销“丽仕”商标裁定结果的一审判决。

据介绍, 自然人马继辉于2006年3月在商标国际分类第3类洗发水、化妆品等商品上提出“丽仕”商标注册申请, 并于2009年9月确权。2010年3月, 马继辉将联合利华公司投诉至安徽省合肥市当地工商局, 认为该公司使用“力士”为商标生产、出口相关商品, 侵犯其“丽仕”商标专用权。

2010年4月, 联合利华公司对上述“丽仕”商标提出争议撤销申请。

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2011年10月, 商评委就该争议案作出撤销“丽仕”商标的裁定。对于商评委的裁定, 马继辉表示不服, 随即向北京一中院提起行政诉讼。

马继辉已对一审判决结果提出上诉, 本报将继续对此案予以关注。(谢环东)

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Development of China's Utility Model Patent System

State Intellectual Property Office of the P. R. China

Preface

Utility model patent system constitutes an important part of Chinese patent system. The purpose of the system is to protect small inventions and creations, which play a unique role in China's patent protection system.

Though starting at a comparatively late stage, China's utility model patent system has experienced rapid developments. The system is in compliance with the basic principles of the international conventions and consists with the practices of most countries.

The utility model patent system has made remarkable achievements in China. It promotes not only the implementation of the patent system, but also the economic, scientific and technological development of the country. Meanwhile, it also gives effective protection to foreign patented technologies and interests of foreign enterprises in China.

China attaches great attention to the quality of utility model patents and active measures have been taken for that purpose.

1. China's Utility Model Patent System Is Kept Improving

China's utility model patent system was established at the time when Chinese patent system was founded and it constituted an im-

portant part of the whole system. Since the implementation of Chinese Patent Law on April 1, 1985, it stated clearly that China provided protection for 3 kinds of inventions and creations including inventions, utility models and designs. Along with the improvement of Chinese Patent Law, China's utility model patent system also kept improving.

China's utility model patent system gives protection for small inventions and creations which complement the invention patent. The duration of protection for utility model is 10 years with the same legal effect as invention patent. The right holders can prevent others from any commercial use of the inventions which are protected by utility model without permission.

1.1 The Establishment and Development of China's Utility Model Patent System

When the system was firstly established, China was comparatively weak in capacity for science and technology innovation. The inventions and creations made by many SMEs were technically low, and the majority of the innovative outputs were small inventions and creations. Though these small inventions and creations were not as creative as invention patents in technological sense, they also contributed to the scientific technology advancement, economic and society development of the country and

should be given appropriate protection. China's utility model patent system was set up to protect this kind of inventions and creations.

In 1985, the Implementing Regulations of the Chinese Patent Law prescribed that "in patent law, 'utility model' means any new solutions relating to the shape, the structure, or the combination of a product, which is applicable for practical use." According to the Patent Law in 1985, the duration of utility model patent was 5 years and could be extended for 3 years.

The revised Patent Law of 1992 further strengthened the protection of utility model, and its protection duration was extended to 10 years. At the same time, the renewal procedure of patent right was abolished. After this revision, the protection duration of utility model patent was in consistency with that commonly adopted by most countries.

The revised Patent Law since 2000 added utility model search report system targeting at novelty, inventiveness and applicability of the utility model after granting. This revision had taken full consideration of related principles in TRIPs agreement and provided a judicial remedy for utility model patent applicants and parties involved in disputes of patent right confirmation.

The revised Patent Law since 2008 allowed the same applicant to

apply for a utility model patent and an invention patent with the same invention creation. The scope of preliminary examination was appropriately expanded and quality of patented utility models was further enhanced. Utility model search report was replaced by patent right evaluation report and the evaluation scope was enlarged.

In order to regulate utility model patentee's utilization of his right, the revised Patent Law prescribed that the people's courts or the administrative authorities might request the utility model patentee, who filed patent infringement case before them, to submit patent right evaluation report made by SIPO.

The revised Patent Law also introduced prior art defense system to patent infringement litigations. If the party charged with infringement could prove that the related technology implemented by himself was a prior art before the filing date, the court or the administrative authority could decide directly that the charges were not supported.

1.2 Features of China's Utility Model Patent Examination

China's utility model patent examination goes through two stages: preliminary examination and preliminary examination with evaluation (search) report. In accordance with Chinese patent law, utility model patent application can be

granted a patent right if there is no reason for rejection was found during preliminary examination.

Preliminary examination system lasted from April 1985 to June 2001. Examination for utility model patents during the period included formal defects examination and obvious substantive defects examination. Formal defects examination consists of the completeness of application documents, fee payment, applicant's qualification, bibliographic data, requirements for publication and etc. Obvious substantive defects examination consists of subject matter as patentable, novelty, inventiveness, unity, the claims clarity and conciseness/support from the description, the description's clarity and completeness and etc. so as to ensure the quality of utility model patents. Preliminary examination is stricter than formal examination system.

Preliminary examination with evaluation (search) report system was carried out since July of 2001, and it is the system in use today. In addition to the formal defects examination and the obvious substantive defects examination of the preliminary examination system, the utility model patent right evaluation report system was set up. The report evaluates the stability of a utility model patent, compensates and perfects the preliminary examination system. U-

tility model patentees or stakeholders may request SIPO to make a utility model patent right evaluation report and give objective assessment to its stability. This can be used as an evidence of right stability when the people's court deals with patent infringement disputes.

2. China's Utility Model Patent System Is in Conformity with That of Most Countries

At present, there are 57 countries, regions or organizations implementing utility model system throughout the world. There is no specific international treaty for utility model except some general regulations in the Paris Convention. China's utility model patent system conforms to the principles like national treatment, independent protection and priority prescribed in the Paris Convention.

The fact of lacking a unified international treaty results in differences in protected subject matter, novelty, inventiveness and procedure for substantive examination among the countries with utility model system. China's utility model patent system though not completely the same with that of other countries, its practices are basically in conformity with the rest of the world.

(to be continued. The Chinese edition seen page 5 published on December 21, 2012.)