

CHINA REPORT INTELLECTUAL PROPERTY

2012年10月31日 October 31, 2012

星期三出版 Published on Wednesday 中文主编:吴 辉 Chinese Editor-in-Chief: Wu Hui

英文审校:胡玉章 English Reviser: Hu Yuzhang

Cui Weiguo

China's IP in foreign eyes



Technologies Co Ltd, sixth-biggest maker of mobile phones, is looking to its smartphones to outpace global growth rates and drive a consumer gadgets business that will rival its flagship telecoms gear in revenue. Huawei plans to carve out a global brand in smartphones, taking the fight to Samsung Electronics Co Ltd and Apple Inc, particularly in China, expected this year to become the world's biggest smartphone market. In a recent media interview, Huawei's deputy chairman Hu Houkun said the company aimed to be the global No.3 smartphone vendor, with 15 percent market share by 2015, up from around 5 percent currently. (Huawei sees smartphones leading growth in consumer devices, by Reuters)

华为技术有限公司, 作为全球

第六大手机制造商,目前正努力使 其智能手机销售量超过全球手机销 量的平均增长率,并引领着消费类 电子产品的发展, 使其销售额能够 与华为目前一流的电信产品相媲 美。华为计划建立一个能与三星和 苹果这样的品牌相抗衡的全球性智 能手机品牌, 尤其是在今年有望成 为全球最大智能手机市场的中国。 在最近一次媒体采访中, 华为副董 事长胡厚昆表示, 华为的目标是成 为全球第三大智能手机供应商,市 场份额由目前的 5%增加到 2015 年 的 15%。(《华为看好智能手机消费 市场》,路透社)

Huawei, as well as its local rival ZTE, has recently become the brightest Chinese business star all over the world, thanks to its constant technological advancement and global expansion. However, as to smartphones, branding remains a major challenge. Traditionally, they have been selling their products to the lower-end of the market, so moving up the value chain to command a premium for the phones and the brand definitely seems to

点评:

华为,以及其中国当地竞争对手 中兴,由于不断的技术创新和全球扩 张,近来已成为世界上耀眼的中国企 业明星。然而,在智能手机领域,品牌 建设,对他们而言,仍是一个巨大的 挑战。一直以来,他们的产品主要销 售到低端市场,因此,向产业链上游 移动,使其产品和品牌获得更多附加 值,是其当务之急。



hina is experiencing an explosion of innovation, in part because the government has recognised that R&D is the best way to avoid the middle-income trap. This occurs when developing countries, relying on low-cost labour and existing technologies, stall in terms of productivity growth and become unable to further improve their incomes. In 2010, Chinese expenditure on R&D was \$149.3 billion. In 2011 it rose to \$174 billion, and the latest estimates for 2012 suggest a final spend of \$199 billion. China's R&D spend is now larger than Germany, France and the UK combined. Its annual increase in spending is larger than Australia's total annual R&D spend. (Australia must link up with China on R&D, by Financial Review)

中国正迅速提升其创新能力, 部分原因是因为其政府已经认识 到研发是避免落入中等收入陷阱 的最有效办法。中等收入陷阱是指

依靠廉价劳动力和现有技术的发 展中国家,因生产力停滞而无法进 一步改善其国民收入。2010年,中 国的研发支出为 1493 亿美元, 2011 年上升为 1740 亿美元,根据 最新预测,2012年,这一数字将达 到 1990 亿美元。中国的研发投入 目前已经超过了德国、法国和英国 的总和,其每年增加的研发投入多 于澳大利亚的年度研发投入。(《澳 大利亚必须在研发方面与中国合 作》,金融评论)

There's no doubt that the themselves to be China's partners. No wonder that nowadays more and businesses are actively establishing new partnerships with China, the world's second-largest economy and the new innovation center.

毫无疑问,全世界都将受益于中 国的创新所带来的技术进步。对于竞 争者而言,与其扮演被动的接受者的 角色,不如成为积极的合作伙伴。这 就是如今越来越多的政府、大学和企 业都在寻求与中国——世界第二大 经济体和新兴创新中心建立合作伙 伴关系的原因。

(by Correspondent Weiwei from Canada)

whole world will benefit from the technological advances that China's innovation brings. Instead of being passive recipients, they'd better turn and more governments, universities

(本报通讯员汪玮玮发自加拿大)

Chinese writers claim 10M yuan from App Store

中国作家剑指苹果侵权 索赔逾千万元

eijing No 2 Intermediate People's Court began hearing a high-profile case on Oct. 11, in which eight Chinese writers sued the US electronics giant Apple Inc. (Apple) for copyright infringement. The writers, all well-known names in China including Li Chengpeng, Murong Xuecun, claimed the electronics giant sold electronic versions of their books on its online Apple Store (App Store) without proper authorization and demanded 10 million yuan in damages for infringing the copyrights of their 34 works. Prior to the trial, Apple requested to hold the trial closed to the public by citing trade secret reasons but was rejected by the court.

Focus of debate

The plaintiff the Writers Rights League (WRL) abandoned its earlier claim in shutting down the service of App Store. One of the writers, Li Chengpeng, demanded Apple to immediately stop the infringement, remove the unlicensed electronic books from its App Store and run a statement of apology on the store's homepage for 30 consecutive days on top of over 300,000 yuan in damages.

The WRL held that Apple, without the plaintiff's permission, uploaded the works in question itself or through contractors to the App Store, allowing the public to download while profiting from such actions. The actual number of downloads is huge, causing significant economic loss to the plaintiff.

torney rejected the writers' requests, arguing that the App Store was operated by a subsidiary based in Luxembourg. The operators in Luxembourg and developers of the infringing application were the actual defendants, not Apple. In addition, the defense attorney claimed there would be no violations after Apple pulled the works in question off the shelves of the App store, and therefore there is no need for dam-

A lingering copyright scuffle

According to the WRL representative Bei Zhicheng, in July of last year, over 20 leading Chinese writers saw applications involving unlicensed electronic versions of their books available for downloading at the App store without their authorization. A group of writers including Han Han, Murong Xuecun, Nanpai Sanshu and Mai Jia then established the WRL to join forces to collectively file a lawsuit against Apple for infringing upon their copyrights. The WRL first claimed compensation of more than 23 million yuan involved 13 writers



and 59 books. The eight writers in this case were asking for 10 million yuan on 34 books, according to the court documents.

Apple filed the objection to the jurisdiction in the case in May of this year. The court dismissed the objection on the ground that a lawsuit brought for an infringing act shall be under the jurisdiction of the people's court located in the place where the infringing act took place or where the defendant had his domicile and this also applied to internet copyright cases. According to the evidence the plaintiff provided, the computer terminals uploading the infringing work to network were located in Dongcheng district of Beijing, so Beijing No 2 Intermediate People's Court had jurisdiction over the case.

Compensation standard should be

"The compensation was calculated according to the writers' average remuneration of 1000 yuan per thousand words." the writers' lawyer Wang Guohua said, "Actually, most of them could sell their works at 3000 to 4000 yuan for each thousand words to publishing houses. The money was not enough to

compensate for falling book sales." "If the case occurred in foreign countries, much higher compensation might be demanded by writers. Courts in China usually de-

cide the amount of compensation according to a copyright rule made by the National Copyright Administration in the 1990s, which is much lower than current market price." a senior IPR lawyer, Liu Lili, pointed

transnational IP cases, the improvement of Chinese copyright laws and the step-up of the fight against IP infringement seem to be urgent and necessary." both Wang and Liu (by Jiang Xu)

本报记者 姜 旭

10月11日,备受关注的中国作 家维权联盟诉苹果应用程序商店(下 称苹果商店)侵犯著作权案在北京市 第二中级人民法院 (下称北京二中 院)开庭。此次开庭涉及李承鹏、慕容 雪村等 8 位作家共计 34 部作品,索 赔金额超过1000万元。开庭前,苹果 公司提出因涉及商业秘密,请求不公 开开庭审理,被法院驳回。

双方激辩争议焦点

在庭审中,原告中国作家维权 联盟放弃了之前提出的关闭苹果 商店的诉讼请求。以作家李承鹏为 例,他请求法院判令苹果公司立即 停止侵权,在苹果商店中删除涉案 作品,并在该商店首页连续 30 日 刊登致歉声明,赔偿经济损失 30 万余元。

原告认为,苹果公司未经许可, 通过自行上传或与开发者分工合作 等方式,将原告享有著作权的涉案作 品上传至苹果商店,并通过该商店向

社会公众提供下载阅读服务,获取经 济利益,其行为已构成对原告著作权 的侵犯。而且涉案作品销售数额巨 大,给原告造成了巨大的经济损失。

苹果公司的代理律师则辩称,苹 果公司不是此案的适合被告,涉案苹 果商店等并非由其经营。苹果商店的 经营者应为位于卢森堡的苹果公司 子公司,故苹果公司与涉案被控侵权 行为无关,而且由于涉案图书是由第 三方上传,因此,需要追加苹果公司 子公司和第三方为共同被告。此外, 苹果公司已经对相关作品进行了删 除,故不存在侵权行为,亦无需承担 赔偿等相关责任。

版权纷争由来已久

中国作家维权联盟执行人贝志 城在接受中国知识产权报记者采访 时介绍,该起跨国官司源自去年7月 份,韩寒、慕容雪村、南派三叔、麦家 等 20 多位作家发现自己近百部文学 作品在未经任何授权的情况下,在苹 果商店上销售或者供社会公众免费 下载。在双方交涉未果的情况下,上 述作家组成联盟采取集体诉讼的方 式,对苹果提起诉讼。今年10月份提 起的首批诉讼涉及13位作家、59部 作品、2300多万元的索赔金额。此次 开庭审理的案件涉及8位作家的 34 部作品,索赔金额超过 1000 万

据贝志城介绍,今年5月份,苹 果公司向法院提起管辖权异议。北京 二中院经审理认为,根据中国法律的 相关规定,针对侵权行为提起的诉讼 由侵权行为地或被告住所地人民法 院管辖,这对网络著作权侵权纠纷案 件同样适用。诉讼中,原告提供的侵 权证据显示,发生侵权行为的计算机 终端位于北京市东城区,因此北京二 中院对该案拥有管辖权,遂驳回了苹 果公司对案件管辖权提出的异议。

判赔标准有待提高

对于 1000 万余元的赔偿要求, 中国作家维权联盟的有关代理律师。 北京市中闻律师事务所合伙人王国 华在接受记者采访时表示,这是考虑 到当前立法的实际情况,按照侵权作 品每千字稿酬 1000 元计算的。这些 作家中,很多人目前的稿酬已经达到 每千字 3000 元至 4000 元, 甚至更 高,因此即便是1000万余元的赔偿 金额,仍远不足以弥补苹果公司给中 国作家造成的损失。

长期关注此案的知识产权领域 律师、北京赛普优国际知识产权代理 有限公司总经理刘历励表示,国外对 知识产权侵权赔偿具有惩罚性,一旦 发现侵权行为,就会判赔远超过实际 损失的高额赔偿金,而国内只是对损 失进行补偿。"目前法院对此类案件 赔偿金额的判决标准,主要依据中国 国家版权局上世纪90年代制定的每 千字 100 元的稿酬规定。即使按照司 法实践, 法定赔偿达到 50 万元这一 最高额度,也远不符合当前市场现 状。"刘历励表示。

王国华和刘历励均认为,目前涉 外知识产权案件审理难度比较大,取 证和立案都比较困难。随着涉外知识 产权案件的增加,中国还需要进一步 完善相关法律法规,加大打击侵犯知 识产权行为的力度。

INUMBERS

3.5 trillion yuan

China's "12th Five-Year Plan on Forestry Science and Technology Development" is officially released. First time in history, the plan proposed the number of forestry patents should be doubled over that of the 11th Five-Year Plan and the output value of emerging-industry should reach 3.5 trillion yuan.

3.5 万亿元

近日,中国《林业科学和技术发

展"十二五"规划》正式发布,其中首 次提出了"十二五"林业专利数量比 "十一五"增加1倍、林业新兴产业产 值达到 3.5 万亿元的目标。

According to the National Development and Reform Commission, the West-to-East Gas Pipeline Project has generated more than 100 independent IPRs after ten-year con-

日前,记者从中国国家发展和改 革委员会获悉,西气东输工程建设 10年来,已拥有自主知识产权 100余

20%

Liaoning Province issued "Opinions on Accelerating Technological Innovation". According to the document, Liaoning Province should keep 20% annual growth rate in invention patent applications and patents and the possession of the effective invention patents per 10 thousand heads should rise to 6.7.

日前,辽宁省出台了《关于加快 推进科技创新的若干意见》。意见要 求,今后5年,辽宁省发明专利申请 量和授权量年均增长 20%以上,每万 人口有效发明专利拥有量达到

6.7 件。 350 million

Shanghai recently introduced the "Incentive Mechanism for Software and Integrated Circuit Designers". In accordance with the document, up to 2017, Shanghai will annually award 350 million yuan to more than 20,000 designers for developing software and integrated circuit products with independent

3.5 亿元

日前,《上海市软件和集成电路 企业设计人员专项奖励办法》出台。 按照该规定,至2017年,上海市每 年将安排 3.5 亿元,奖励开发出自主 知识产权软件和集成电路产品的设 计人员,预计每年奖励人员达2万

4,200

In recent years, Chongqing IP Office constantly strengthens the IPR work of equipment manufacturing industry. According to the city's further goal, the patents of equipment manufacturing industry should reach more than 4,200, the output value of patented products should be more than 80 billion yuan, and the profit margins of patented products should be doubled compared with those of 2011.

近年来, 重庆市知识产权局不 断加强该市装备制造业知识产权 工作,力争到 2015年,装备制造业 专利授权量达到 4200 件以上,专利 产品产值达到 800 亿元以上,专利 产品利润率较 2011 年增长 1 倍以

责任编辑	柳鵬
Executive Editor	Liu Peng
实习编辑	孟逸君
Practice Editor	Meng Yijun
英文翻译	茹 果

社址:北京市海淀区蓟门桥西土城路 6 号 邮编:100088 电邮:cipnews@vip.sina.com 编辑中心:82803936 采访中心:82803956 办公室:82803009 发行部:82034385 广告部:82034358 印刷:解放军报印刷厂