

CHINA REPORT INTELLECTUAL PROPERTY

2012 年 7 月 11 日 July 11, 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

崖卫国

Cui Weiguo

China's IP in foreign eyes

he report, the Global Innovation Index 2012 (GII), notes a need for the BRIC countries to invest further in their innovation capabilities to live up to their expected potential. China's performance on the key knowledge and technology outputs pillar is outpaced only by Switzerland, Sweden, Singapore, and Finland. In the Global Innovation Efficiency Index, China and India lead the top 10 league of countries. (Release of the Global Innovation Index 2012: Switzerland Retains First-Place Position in Innovation Performance, by

www.ag-ip-news.com)
2012 年全球创新指数 (GII)报告指出,"金砖四国"仍然需要加大投人提高其创新能力以实现预期的发展潜力。中国在关键知识和技术输出方面的表现良好,仅落后于瑞士、瑞典、新加坡和芬兰。在全球创新效率指数报告中,中国和印度居于全球排

significant number of high-level technology executives appear to believe Silicon Valley's days as the world's those surveyed by the audit, tax and advisory firm (KPMG), 44 percent believe it's likely that the "technology innovation centre of the world," now in Silicon Valley, will shift to another country in the next four years. The most likely choice among respondents is China. China's growing tech capabilities have become a major concern in Washington D.C.. The country's innovation efforts were the subject of a hearing in May by the U.S.-China Economic and Security Review Commission. (Silicon Valley's top threat is China, by Macworld)

日前,在一项由审计、税务和咨询公司(即毕马威公司)所做的调查中,44%的受访者认为,在未来4年中,"世界技术创新中心"很可能从目前的硅谷转移到另一个国家,而中国

urrently, the newly revised Measures for the Compulsory Licensing for Patent Implementation entering into force, which has become a concern of overseas' pharmaceutical companies. Kajal Bhardwaj, a legal expert from India who is working on health, HIV and human rights trade laws, said China's move was well within the limits of international trade agreements. "It is very encouraging that China is seeking to ensure that this right... is reflected in its legal regime on intellectual property." she added. (China changes patent law in fight for cheaper drugs, by

日前,中国最新修订的《专利实施强制许可办法》正式施行,此举备受国外企业的关注。对此,健康、艾滋病和人权贸易法律领域的印度法律专家卡加·布哈瓦吉表示,中国此举

17!
Kexin
果
Guo

名前十位的第一和第二。(《2012 年 全球创新指数发布:瑞士继续居创新 绩效排名首位》,全球知识产权专业 新闻)

Comment:

The report that ranks 141 countries/economies on the basis of their innovation capabilities and results is a reminder that innovation is becoming critical of competition and a sustainable economic growth. How to deal with that challenge will determine the destiny of competiveness for all players. China has achieved huge success but still a long way to catch up.

点评:

全球创新指数报告以创新能力和成果为指出,对全球 141 个国家和经济体进行了排名,再次表明了创新正在成为竞争和实现经济可持续增长的关键。如何应对这一挑战,将决定所有参与竞争者的未来命运。中国在创新方面取得的成绩有目共睹,但与发达国家相比还有很长的路要走。

成为受访者最多的选择。中国日益增长的高科技能力已成为美国首都华盛顿的主要关注点,其为提升创新能力所做的努力曾是今年5月美中经济与安全审查委员会举行的听证会的主题。(《中国成为硅谷的最大威胁》,澳大利亚麦克世界杂志)

Comment:

The survey proved that Chinese no longer sleep on dominance of just cost-based commodity production. They are here to grab a piece from innovation-based economic competition. Unseating Silicon Valley as the world innovation hub is not a walk in the park. It is a grinding task requiring strenuous efforts.

点评:

这项调查表明了中国不再仅仅 满足于主导低成本商品生产,同时也 希望在以创新为基础的经济竞争中 赢得先机。我们知道取代硅谷成为世 界创新中心并非易事,这还需要时间 的考验和无数的努力。

完全在《与贸易有关的知识产权协议》(TRIPS协议)的限制内,"这是非常令人鼓舞的,中国正在寻求途径确保强制许可符合知识产权法律制度。"(《中国为获廉价药品修订专利法律》,路透社)

Comment:

China's move is very important for the public health. The aim of patent law is to encourage innovation and facilitate public technology progress. The over-protection of patent right, however, is aganist public interests. In the practice, the establishment of compulsory licenses will give a better balance between patentee and public.

点评:

中国这一举动对公共健康很重要。专利的立法宗旨在于鼓励创新,促进社会技术进步。但如果对专利权过度保护的话,就不利于公共利益。在实践中,强制许可的设立,将更好地平衡专利权人与社会公众的利益。

(by Correspondent Wang Weiwei from Canada)

m Canada) (本报通讯员汪玮玮发自加拿大)

Apple settles iPad trademark case with \$60m iPad 商标之争尘埃落定

苹果向唯冠支付 6000 万美元

S technology giant Apple Inc (Apple) has settled a lingering dispute with a local technology company concerning the use of the iPad trademark for the California-based tech giant's popular tablets computers in the Chinese mainland.

According to Guangdong High People's Court, Apple has ended their long-running iPad name dispute in China with Proview with a \$60 million settlement. The mediation letter was sent to both sides and came into effect on June 25. A request has been made by Shenzhen Intermediate Court to the State Administration for Industry and Commerce on July 2 to transfer the iPad name from Proview Shenzhen to Apple.

Long-running dispute

US technology giant Apple Inc (Apple), IP Application Development Limited and Shenzhen Proview S&T company have been entangled in a drawn-out legal battle for many years.

IP Application Development Limited intended to buy Proview's worldwide rights to the trademark for the iPad name in different countries in August 2009 from British Proview Company.

The Proview Taiwan unit eventually signed a trademark transfer agreement on December 23 2009 that IP Company obtained ten registrations of the "iPad" trademarks through assignment, including the trademarks for the Chinese market for 35,000 pounds.

IP Application Development
Limited then sold the ten
trademarks for "iPad name" to
Apple for 10 pounds in February
2010.

However, Proview Technology (Shenzhen) says the sale did not cover the trademark's use in China, where it owns the iPad name. Apple then asked Shenzhen Proview to change the two ownership registration and encountered brush-off. Shenzhen Proview held the trademarks right for the Chinese market did not belong to Taiwan Proview and the sale did not cover the trademark's use in China, where it owns the iPad name.

The case was heard by Shenzhen Intermediate Court in



May 2010. The court held the Taiwan Proview could not represent the Proview Shenzhen to sign the agreement and Apple also could not furnish the new evidence to proof. The case was rejected by the court in its first-instance decision. Then the two disgruntled companies brought the case to the Guangdong High People's Court.

Guangdong High People's
Court heard the case on February
29 of this year. The two sides
launched out into a violent debate
over the case. After careful
investigation and analysis, the
collegial panel maintained the
settlement is the best way for both
sides to achieve maximum mutual
benefit. The two sides signed the
mediation agreement to end their
long-running iPad name dispute in
China with a \$60 million
settlement.

Win-win outcome

The settlement is unsurprising.
Apple will be soon to obtain the "iPad" trademarks in China's mainland. It's a good news for Apple because the settlement cleared the last obstacle for the new iPad entering the mainland market and the money will be used to pay Proview's debts.

For Apple, the settlement with 60 million USD can help it seize huge market opportunities in China. Otherwise, Apple might not have been able to sell its new popular tablet computers in the Chinese mainland which contributed over 20% of Apple's revenues. For the company's benefit, it is a good deal to exchange money with time on the trademark case.

The settlement with 60 million

USD also helps Proview Shenzhen use the money to cover its debts and the interests of its creditors to be better protected.

Many IPR experts conclude that the settlement with 60 million USD embodied the values of trademark of iPad. The settlement allowed Apple to get on with selling its popular tablet computers in one of its most important markets which showed the importance of trademark in competing for enterprises. For the judicial trial, the settlement might be principal solution for trademark disputes involving foreign entities.

(by Xiang Li)

本报记者 向利

沸沸扬扬持续了两年的唯冠科技(深圳)有限公司(下称唯冠)和苹果有限公司(下称苹果)iPad商标纠纷日前以和解收场。

根据广东省高级人民法院的通报,在法院的调解下,唯冠与苹果达成和解,苹果支付6000万美元一揽子解决iPad商标纠纷。6月25日,广东省高院就向双方送达了民事调解书。7月2日,深圳市中级人民法院向中国国家工商行政管理总局商标局送达了将涉案iPad商标过户给苹果公司的裁定书和协助执行通知书。这意味着,苹果最终将获得iPad中国大陆商标权。

持续的纠纷

在中国市场, iPad 商标到底归苹果还是唯冠?这个问题苹果、英国 IP 申请发展有限公司 (下称 IP 公司)与唯冠已经纠缠了多年。

2009年8月,英国IP公司向 英国唯冠公司提出收购唯冠在各 国登记注册的所有 iPad 商标的意 愿。后经多次辗转,谈判主体变成 IP公司与台湾唯冠公司。双方于同 年12月23日签署商标转让协议, 约定转让标的为 10 件 iPad 商标, 其中包括深圳唯冠公司在中国大 陆注册的涉案的商标,转让对价为 3.5 万英镑。

2010年2月,IP发展公司又以10英镑的价格将上述10件iPad商标转让给苹果公司。之后,苹果公司要求深圳唯冠公司变更涉案两个商标权属的注册登记时遭到拒绝。深圳唯冠公司称,台湾唯冠公司无权处分深圳唯冠公司商标,其从未将涉案商标转让给苹果公司。双方遂引发争议。

2010年5月,苹果公司率先起诉深圳唯冠,要求确认 iPad 商标在中国大陆的所有权。双方正式诉诸深圳市中级人民法院。深圳市中级人民法院一审认为,订立转让合同的台湾唯冠公司无法代表深圳唯冠公司,苹果公司也无法提供证据证明上述表见代理成立,并以此为由驳回 IP公司、苹果的诉讼请求。后两公司不服向广东省高级人民法院提起上诉。

问,东省高级人民法院提起上诉。 广东省高级人民法院今年2月 29日公开开庭审理了此案。双方庭 审辩论十分激烈。庭后,承办案件的 合议庭经过认真严谨的分析合议认 为,为使纠纷双方利益最大化,调解 是最佳选择。因均有调解意愿,双方 确认以6000万美元一揽子解决有关 iPad 商标权属纠纷,并签署了调解协 议。

双赢的结局

和解的结果并不出人意料。 若执行顺利,苹果不用多久就可以在中国大陆将 iPad 商标收揽旗下。和解似乎是个双方都能接受的结果,苹果扫清了在中国销售 iPad 的商标障碍,唯冠则获得了一大笔收入以偿还其债务。

分析此次苹果付出的 6000 万美元,舆论认为从商业利益上看,苹果仍将获得不错的回报。此前,由于iPad 商标争议迟迟不决,导致苹果在中国这个占其全球收入 20%的地区投放新一代 iPad 产品处于尴尬的两难境地。此案的解决意味着新一代 iPad 在中国上市扫清了法律障碍,除了意味着高利润的新产品,在市场上摆脱这种悬而未决的状态对苹果及其经销商显然也是一个重大利好。

对唯冠来说,6000 万美元对其解决债务危机作用明显。同时,其债权人利益也因此而得到保障。

知识产权业内人士认为,此案中 6000 万美元的和解费用体现了iPad 商标的价值,苹果用 6000 万美元换市场也意味着商标等知识产权在企业经营中的重要性。从司法审判角度看,和解的方式或将成为涉外商标权权属纠纷解决的主要路径。

Beijing

China's patent documentation (invention) was incoportated into PCT minimum documentation on July 1. As of June 27, China has cumulatively issued 3.5 million invention patent documentations since China issued its first one in September 10, 1985.

北京

7月1日,中国专利文献(发明专利)正式纳入《专利合作条约》(PCT)最低限度文献。据悉,自1985年9月10日中国出版第1件专利文献以来,截至2012年6月27日,中国发明专利公开和授权文献量已累计约350万件。

Fujian

The fouth group of CEO IP training delegation of Fujian High-tech companies went to Taiwan for training and exchange re-



cently. Some relevant experts of Taiwan introduced the IP operation and competition.

福建

日前,福建省第四期高新技术企业 CEO 知识产权培训考察团赴中国台湾地区开展知识产权培训及交流活动。其间,中国台湾地区有关专

家介绍了知识产权的运营自由、优势竞争等。

Shandong

The third Asian Beach Games came to a close in Haiyang, Shandong province recently. During the game, the province formulated special protection regulations to step

up IPR protection.

山东

近日,第三届亚洲沙滩运动会在 山东省海阳市闭幕。在亚沙会举办期 间,山东省制定了专门的保护条例, 加强了对知识产权的保护力度。

Sichuan

The Sichuan government recently issued a guide opinion on stepping up innovaton and facilitating S&T commercialization, requiring to contribute 50% to the province's economic growth and generate more than 1.5 trillion yuan in High-tech industries.

ण ॥

近日,四川省出台《四川省人民政府关于加强自主创新促进科技成果转化的意见》,提出到2015年,科技进步对经济增长的贡献率力争达到50%,全省高新技术产业实现总产值1.5万亿元以上。

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 记者部:82803956 编辑部:82803936 办公室:82803009 发行部:82034385 广告部:82034358 印刷:解放军报印刷厂