

# CHINA REPORT INTELLECTUAL PROPERTY

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英文审校: 胡玉章 English Reviser: Hu Yuzhang

Cui Weiguo

# China's IP in foreign eyes



he proportion of China's personal computers with pirated software installed fell to 77 percent in 2011, a new record low and a decrease of 15 percentage points since 2003, according to 2011 BSA Global Software Piracy Study released by the Business Software Alliance (BSA) on Tuesday. The result represents a steady improvement over the past few years. In 2003, the piracy rate stood at 92 percent, according to the report. (Report: China's software piracy rate falls to new low - of 77%, by www.zdnet.com)

根据商业软件联盟日前公布的



he Chinese government has dealt a strong blow against intellectual property crime, penalizing counterfeiter Shang Yajun for copyright infringement and the sale of illegally manufactured registered trademarks. The 1st Intermediate People's Court of Beijing upheld the Haidian District Court's decision that sentenced months imprisonment, representing the longest-ever criminal sentence in China for selling and distributing counterfeit software products, according to a press release by Microsoft. (China Takes Action to Stop Software Counterfeiting, byAG-IP News)

中国日前做出了一项打击知识 产权犯罪强有力的举动:严厉惩处侵

2011年全球软件盗版研究报告, 2011年中国个人电脑软件盗版率下 降到77%,比2003年下降了15个百 分点,并创自该年以来的新低。该报 告表明了过去几年来中国软件盗版 状况的持续改善。该报告显示, 2003年中国软件盗版率高达92%。 (《报告称中国软件盗版率下降到新 低点:77%》,至项网)

### Comment:

China aims to strengthen the protection of intellectual property rights and have bared fruits over the years. The BSA report recognized China's progress in promoting software legalization initiatives. However, compared to the 77%, the average software piracy rate worldwide in 2011 was much lower than 42% and the number was 60% in Asia Pacific. There's still plenty of room to improve.

#### 点评:

近些年,中国致力于加强知识产权保护并已取得了明显的成效。商业软件联盟的报告承认了中国在推动软件正版化方面的进步。但比起中国的77%,2011年世界平均软件盗版率低于42%,亚太地区也只有60%,中国还有很大的提升空间。

犯版权并销售非法制造的注册商标标识的造假者商亚军。根据微软公司发布的新闻稿,北京市第一中级人民法院维持了北京市海淀区法院对商亚军做出的7年零6个月刑罚的判决。这是迄今为止中国对销售盗版软件行为做出的刑罚时间最长的刑事判决。(《中国采取行动制止软件盗版》,全球知识产权专业新闻)

### Comment:

This case has set a precedent and an exemplary role for similar cases, demonstrating the fact that judicial authorities in China have been increasing the penalties for piracy, and reflecting the full-fledged efforts of Chinese dedicated IPR crime prosecutors.

### 点评:

这个案例为类似案件的审理树立了一个可供参照的先例,证明了中国司法部门已加大对盗版的刑事处罚力度,也反映了中国为打击知识产权犯罪所做出的积极有效的努力。

(by Correspondent Wang Weiwei

from Canada) (本报通讯员汪玮玮发自加拿大)

# Rehau polymers prevails in a trademark dispute "瑞好"商标之争 德国瑞好如愿

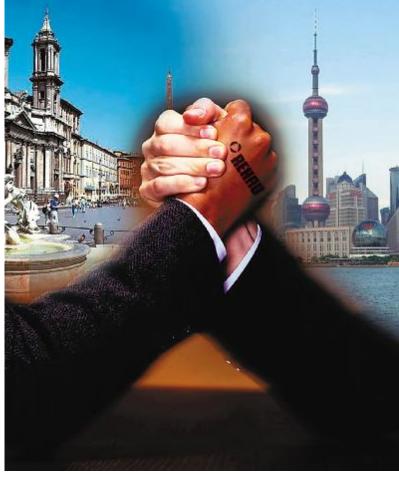
he Shanghai No. 1 Intermediate People's Court recently entered the final decision for a trademark dispute raised by Rehau China, ordering the defendant Shanghai Ruihao Pipeline Co., Ltd. to indemnify 380,000 yuan in damages. Rehau China ended this four-year legal battle on a triumphant note.

Established in August 2002, Rehau China is a leading system and service provider for polymer-based solutions and its main products cover polyethylene floor heating pipes. The company made itself known as REHAU, Rehau floor heating systems and German Rehau floor heating systems. Founded in March 2007, Shanghai Ruihao is a local company with its business covering pipelines, pipe fittings, electric wires, water cycle equipments, hardware appliances etc.

In 2008, Rehau discovered that Shanghai Ruihao spread a great deal of advertisements on their website, which highlighted RUI-HAO (same pronunciation as the Rehau in Chinese) and the figures similar to their registered trademarks. On July 29 the same year, Shanghai Administration for Industry and Commerce Jiading Office seized a batch of plastic pipeline and cardboard for packaging printed with trademark of RUIHAO. At the end of 2008, the Jiading Office imposed a fine of 20,000 yuan on Shanghai Ruihao on the ground of false advertising and ordered an in-

Rehau Company then brought the case to the Shanghai Minhang District People's Court and sought injunction.

The court entered into the first-instance judgment on this trademark dispute, ordering the defendant to cease infringement and indemnify 380,000 yuan in damages.



Disgruntled Shanghai Ruihao then appealed to the Shanghai No.

1 Intermediate People's Court.

The court held that the case is a trademark usage dispute. Despite Shanghai Ruihao registered the RUIHAO and its figure on Class 11 commodities, but not in the class concerning floor heating pipeline which Rehau has registered its trademark in. As a result their claim that they haven't used the disputed trademark on the floor heating pipeline was rejected by the court. During the trial, the court held that the trademark of RUIHAO and its figures in orders could lead confusion and misunderstanding among the public and the defendant highlighted the word "瑞 好" in their advertisements.

in their advertisements.

Based on the affirmation

above, the Shanghai No. 1 Intermediate People's Court affirm the original judgment.

本报记者 温 航

### (by Wen Hang)

日前,随着上海市第一中级人民法院(下称上海一中院)终审判决的作出,德国瑞好在中国的关联公司(下称德国瑞好中国公司)与上海瑞好管业有限公司(下称上海瑞好公司)关于"REHAU"与"瑞好"之间历经 4 年的商标纠纷终于尘埃落定。德国瑞好最终如愿以

据介绍,德国瑞好公司于 2002年8月成立了德国瑞好中国公司。公司主营聚乙烯为主的地暖塑料管,并以突出"REHAU"、"瑞好地板采暖系统"、"德国瑞好地板采暖系统"、等字样进行宣传。成立于 2007年3月的上海瑞好公司则是一 家以管材、管件、电线电缆、水循环设备、五金电器等为经营范围的本地企

2008年5月,德国瑞好中国公司发现上海瑞好公司在其网站页面上发布大量不实宣传信息,且其在一些媒体上刊登的宣传内容与德国瑞好中国公司网站上发布的宣传内容相同,突显了"瑞好+RUIHAO"上下组合结构的图形商标以及"瑞好RUIHAO"商标。同年7月29日,上海市工商行政管理局嘉定分局(下称嘉定分局)在上海市扣押了上海瑞好公司一批印有"RUIHAO"商标的塑料管和印有"RUIHAO"字样的包装硬纸板商品。2008年年末,嘉定分局以上海瑞好公司存在虚假宣传行为,责令其停止违法行为并罚款2万元。

在通过行政程序追究上海瑞好公司责任的同时,德国瑞好中国公司还通过司法程序来维护自身权利。 2011年4月,德国瑞好中国公司向上海市闵行区人民法院提起民事诉讼,要求上海瑞好公司停止侵害其商标享有的独占使用权等侵权行为。

上海市闵行区人民法院一审判令上海瑞好公司赔偿德国瑞好中国公司经济损失 38 万元,并停止对德国瑞好中国公司享有的注册商标独占使用权的侵害。

上海瑞好公司不服,于 **2011**年年底向上海一中院提起上诉。

上海一中院经审理认为:上海瑞 好公司虽在第11类商品上注册使用 了"瑞好+RUIHAO"上下组合结构 的图形商标,但其注册前后在地暖管 上的使用不仅超越了自身核定使用 商品的类别,也落入了德国瑞好中国 公司相关商标独占使用权的范围,故 不存在据以提出抗辩的权利基础;上 海瑞好公司认为其并未在地暖管上 使用"瑞好+RUIHAO"上下组合结 构的图形商标的主张, 法院不予支 持。在上海瑞好公司使用的"瑞好+ RUIHAO"上下组合结构的图形商 标和"RUIHAO"商标是否会导致相 关公众对双方当事人的地暖产品来 源产生混淆和误认方面,法院对此持 肯定态度;法院据此认定上海瑞好公 司突出使用了"瑞好"字号。

基于对上述争议的认定,上海一中院近日作出终审判决,驳回上海瑞好公司的上诉,维持原判。

### 14TH China patent award candidates for public scrutiny 第十四届中国专利奖初审合格项目进入公示期

hen the applications for the 14th China patent award first started on February this year, the event has attracted extensive attention and the award review office has evaluated and pre-examined 620 patent projects. Public could check and review these projects published on the official website

of SIPO or on the CIP News. The review is from May 25 to June 8.

The award review office has finished an overall and comprehensive inspection on legal status and authorization announcement date of the patent projects, completeness and effectiveness of the materials, qualification of recommend units

and the quota etc. the pre-examined projects are on the list to be reviewed by the public.

As of now, China has successfully hosted 13 awards. And the event started to be held annually from every two-year since 2010 and the gold medals for gold was added. Right now, the China patent award

is playing an active role in inspring innovation and taking a lead in enhancing capacity for independent innovation. (by Chen Jianming)

本报讯 记者从中国专利奖评审办公室获悉,第十四届中国专利奖评选活动自今年2月启动以来,得到了社会各界的广泛关注,目前已经通过初审的专利项目为620个。自

2012 年 5 月 25 日起,这 620 个专利项目在国家知识产权局政府网站以及《中国知识产权报》等媒体上进行公示,公示期截止到 2012 年 6 月 8 日。

中国专利奖评审办公室根据《关于评选第十四届中国专利奖的通知》的要求,对申报项目的法律状态和授权公告日、申报材料的完备性和有效性、推荐单位资格及分配的名额数量

等信息进行了全面的审查。通过初审 的项目目前进入公示环节。

据介绍,自 2010 年起,中国专利 奖评选工作由原来的两年一届调整为 每年一届,并增设了"中国外观设计金 奖"。历经此前 13 届评选的沉淀和积 累,中国专利奖对于激发全社会的创 新热情,增强我国自主创新能力起到 了重要的示范和导向作用。(陈建明)

# Using of licensed software soared in 2011

《2011年度中国软件盗版率报告》发布,报告显示

# 去年中国正版软件的使用数量明显增加

he year 2011 witnessed a remarkable advancement in using licensed software with the amount of licensed software installed on the computer increase by the annual rate of 20%, according to the 2011 China Software Piracy Survey issued recently and all these

责任编辑	向 利
Executive Editor	Xiang Li
英文翻译	姜旭
Translator	Jiang Xu

achievements were attributed to Chinese government's concentrated efforts to advance the special campaign against IPR infringement and

counterfeiting.

The survey shows that the amount-based piracy rate dropped to 11.8%, less than that of 2010. The charged software-based piracy rate dropped from 41% in 2010 to 38% in 2011. Piracy rate of all types of software dropped to varying degrees. Piracy rates of applications for information security, offices and

operating system dropped from 45%, 59% and 25% in 2010 to 39%, 55% and 24% in 2011 respectively.

With the downward trend of piracy rate, the survey group offered proposals to promote healthy development of software industry that policies to be formulated to encourage and popularize usage of authorized software, price strategy to be drawn up to promote applications upgrading, effective measures to be adopted to support developing

novel business model, promoting domestic software industry development and the healthy competition among the industry, propaganda and education to enhance IPR awareness among the public should be strengthen

(by Wang Kang and Feng Fei) 本报讯 近日,互联网实验室发 布《2011 年中国软件盗版率调查报 告》。报告显示,由于软件正版化工作 的不断推进及打击侵犯知识产权和 制售假冒伪劣商品专项行动的深入 开展,去年中国正版软件的使用数量 明显增加,年内平均每台电脑安装的 正版软件套数增加了近 **20%**。

研究结果显示,按全部安装计算机软件计算,2011年中国数量盗版率为11.8%,比2010年略有下降;按应付费软件计算,数量盗版率由2010年的41%下降至38%。各类软件的数量盗版率均保持不同程度的下降趋势,其中,信息安全类软件由45%下降为39%,办公软件由59%下降为55%,操作系统由25%下降为24%。

针对软件盗版行为的变化趋势,课题组提出以下建议:制定推广 使用正版通用应用软件的针对性政



策;引导常用软件升级换代产品的 提定价策略;采取有效措施支持软 件运营服务等新型商业模式;扶持 国产软件企业,促进良性竞争;加强 针对软件用户知识产权保护的宣传 教育。 (王 康 冯飞)

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