

# CHINA REPORT

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# INTELLECTUAL PROPERTY

# China's IP in foreign eyes

erman Chancellor Angela Merkel said China would increasingly come to share Western concerns over intellectual property as its own firms engaged more in research and development and became more innovative. Heinz Zimmer, head of the Association for Electrical, Electronic and Information Technologies, said China was catching up in the area of industrial innovation and would take the leading position in some sectors by the end of the decade. (Opportunity and challenge in China-Germany trade push, by Reuters)

德国总理默克尔说,随着中国公 司越来越多地投身于科研开发并更 具创新性,中国社会将越来越关注知 识产权。电气、电子和信息技术协会 的负责人海因茨·齐默说,中国正在 工业创新领域赶超,有望于10年后

uawei Technologies Co. will increase its research-and-development

spending nearly 20% this year to \$4.5 billion. The Chinese company said that it will look to increase its business in the faster-growing mobile-device and enterprise-network markets to meet a target of 15% to 20% revenue growth for this year. (Huawei Plans 20% Rise in R&D Spending, by Wall Street Journal)

华为技术有限公司今年的研发 开支将增加近20%,达45亿美元。该 公司表示将在增长更快的移动设备 和企业网络市场增加其业务,以实现 今年的收入增长 15%至 20%的目标。 (《华为 R&D 支出计划增长 20%》, 华尔街日报)

处于领先地位。(《中德贸易推进中的 机遇与挑战》,路透社)

Although the German have affirmed the technological development and the progress of intellectual property protection in China, compared to "Made in Germany" that which is associated with high quality and highly technological products, "Made in China" generally still stands for lower-quality goods in the international market. For Chinese companies, there is a lot to learn from their German competitors in terms of sophisticated technology and managerial expertise.

尽管德国人对中国科技发展和知 识产权进步予以肯定,但与"德国制 造"象征着高品质和高科技相比较, "中国制造"总体而言在国际市场上仍 处于产业链低端。对于中国企业,在先 进的技术和管理经验方面, 还有很多 需要向德国同行学习的地方。

As one of China's dominant innovators, Huawei has become something or even a concern of western business world. However, we have to notice that Huawei is not a sole case. More and more Chinese entities are creating intellectual property of their own and becoming more willing to protect it.

作为中国占主导地位的创新者之 一, 华为已经成为备受西方商业世界 关注的对象。华为并不是唯一的案例。 越来越多的中国企业正在创造知识产 权的奇迹。(by Correspondent Wang Weiwei from Canada)

(本报通讯员汪玮玮发自加拿大)



# "慕司"identified as generic name "慕司"被认定为通用络称

he word Mousse's meaning in Chinese is custard and what is the translation of Mousse in Chinese? Beijing Higher People's Court rendered its final decision on trademark registration of "Mousse".

Fujian Jinjiang Weili food Co., Ltd (Weili) applied for "慕司" as a registered trademark, during the publication period, Dongguan Xuji food Co., Ltd (Xuji) took the view the " 慕 司 " was the English transliteration of the mousse and the generic name of milk products, fruit salad and jelly. The Trade Mark Office under the State Administration for Industry and Commerce then then denied the disputed trademark registration.

Weili then sought legal remedy for reversal before the Trademark Review and Adjudication Board (TRAB), also under the State Administration for Industry and Commerce (SAIC). TRAB held the evidence of submitted by Xuji failed to prove the trademark of " 慕司 " enjoyed high reputation and was widely used on the jelly and other products. TRAB then approved registra-

tion of "慕司" after deliberation. Xuji brought the case to Beijing No.1 Intermediate Court Presented new evidences. The new evidence was admitted by the court for their value in offering con-

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sumers' understanding of the meaning of "慕司" the trademark, and the court identified " 慕司 " as generic name. So the trademark in was revoked. The disgruntled Weili and TRAB then appealed to the Beijing Higher People's Court, which would later make the decision above. (by Yang Qiang)

本报讯 英文"mousse"的中文 含义系指奶油冻,但其中文音译名称 是"慕斯"还是"慕司",抑或两者均 可? 近日,北京市高级人民法院的一 份终审判决书给出了答案。

据了解,该案源于福建省晋江市 味力食品有限公司(下称味力公司)申 请的一件"慕司"商标。在该商标公示期 内,东莞徐记食品有限公司(下称徐记 公司)对该商标提出异议,称该商标是 英文"mousse"的音译,直接表示了其申 请指定使用商品牛奶制品、水果色拉、 果冻等的特点,系商品的通用名称。国 家工商行政管理总局商标局依此裁定 不予核准该商标注册。

味力公司随后向国家工商行政 管理总局商标评审委员会(下称商评 委)申请复审。商评委则裁定认为,涉 案证据无法证明"慕司"一词已为行 业内生产者在果冻等商品上广泛使 用,难以认定"慕司"为行业内使用的 通用名称,并裁定核准该商标注册。

徐记公司据此向北京市第一中 级人民法院起诉商评委并提交了新的 证据。据悉,一审法院审理后对这些证 据予以了采信,并认为这些证据虽然 未在评审阶段提交,但其均涉及相关 消费者对"慕司"商标含义的理解。 法院对此可以依职权进行判断。据 此,一审法院认定"慕司"系通用名 称,判决撤销商评委裁定。随后,商评 委和味力公司均提出上诉。日前,该 案已经北京市高级人民法院终审并 判决"驳回上诉,维持原判"。(杨 强) 我们不能永远待在全球产业链低端 China can't always dwell at able solution has ever been dethe lower end of the global vised", according to the report. industrial chain", said SIPO "Their quick fix is to smash Created in China and to rejuvenate the good old Made in China, welding

Commissioner Tian Lipu. "We may settle for trading our own resources and labor force for a fraction processing fee. But that is not in the best interest of the country. In light of the challenges, how to materialize our objective in innovation with determination is a serious topic for every Chinese," Tian addressed the 2012 National IP Publicity Week, responding to a U.S. media report named Gave Mercantilist China Some Rough Treatment.

田力普回应美媒文章:

According to this article, before 2006, China actively encouraged foreign direct investment through a vast array of incentives, many of which could be labeled as mercantilism and lack of fairness. While the consequences of China's mercantilist policies might not have always been good for the U.S. economy, and especially for many production workers in traded sectors, U.S. multinational corporations benefited from access to a low-cost production platform. And Americans in their role as consumers benefited from lower-cost goods. While China occasionally engaged in policies that brought complaints from U.S. industry, by and large the United States was satisfied with the relationship. In 2006, that began to change. China made the strategic decision to shift to a new development model that focused on helping Chinese firms grow by moving up the value chain and gaining global market share, often at the expense of foreign firms.

"There is no sign that China would give up innovative mercantilist voluntarily. Although the successive U.S. administrations remained open in dialogues, no viChina at the lower end of the global industrial chain. China, in the process of making cheap goods, suffers real environmental and resource consequences. We elect to compete by taking over knowledge vantage points through self-generated innovations. They say nay ",said

Tian: China can't always dwell at the

lower end of the global industrial chain

In fact, the core of the U.S. national policy is to protect its own innovations, seize vantage points and gain revenues through knowledge creation, knowledge trade and high-value-added knowledge products, which is their edge over the rest of the world. Defending such edge is vital for their incessant dwarfing the rest of the world.

"Knowledge creation and vantage points are reflected by IPRs. Consequently, they dominate and influence the word in patent, trademark and copyright industry", according to Tian.

"China can't engage in OEMs forever as the industrialized countries wish, becoming their employee and assuming the consequences of their industrial restructuring and relocation. We need to flex our mind muscles. Of course, this requires a solid cultural and social ambience and a well-oiled legal system on top of the participation of the general population", said Tian.

### (by Xiang Li) 本报记者 向 利

日前,中国国家知识产权局局长 田力普针对一篇名为《对重商主义的 中国来硬的》美媒文章在 2012 年全 国知识产权宣传周发表演讲时表示, "我们不能永远待在全球产业链的低

端。把自己的资源、劳动力拿出去换 取一些低廉的加工费用,也能发展, 但最后算总账,对中国不是最有利 的。面对这种挑战,我们如何坚定不 移地把创新目标变为现实,这对每一 个中国人来说都是一个严肃的问

该文章称,2006年前中国通过 系列措施鼓励外国直接投资,其中 许多带有重商主义和不公平色彩,尽 管重商主义政策带来的后果并不总 是有利于美国经济,但是,美国公司 仍因获得低成本制造平台而获益良 多,美国人作为消费者也从低价商品 中受惠,总的说来美国对这种关系是 满意的。这种局面从 2006 年开始发 生改变,中国做出战略决策,转向创 新的发展模式,帮助中国企业在价值 链的上游攀升并获得全球市场份额, 这些通常是以外国公司为代价。

文章同时也指出,没有迹象表明 中国自动放弃创新重商主义,尽管美 国历届政府都通过对话保持接触,但 是没有利于问题的解决。田力普对此 评议说:"它的解决办法就是中国不 去创新,回到过去美国人认为满意的 状态中。即出口加工贸易站在全球产 业链的低端,生产廉价产品,付出环 境、资源代价。我们要转向通过自主 创新去竞争,抢占知识生产制高点, 美国人不答应。"

事实上,美国的国家政策是保护 本国创新,在全球占据制高点,靠知 识生产,知识贸易,高附加值的知识 产品获取收入,这是其竞争优势。未 来一段时间,美国要继续处在领先位 置,必须保持这个优势地位,这是美 国成为全世界最强大国家的原因。

"知识产权创造、运用这个制高 点实际是通过知识产权来体现出来 的,所以可以看到美国的专利、商标, 或者说著作权相关产业发展都是全 球最发达的,而且影响着世界各国。" 田力普指出。

田力普同时表示,中国不能永远 像发达国家希望的那样只搞出口加 工,为他们打工,承接他们的产业结 构调整和产业转移,而是要发挥自己 的民族创造力,这就需要一个良好的 文化氛围和社会环境,需要一个良好 的法律体制,更需要全社会民众的参

# Major changes in national patent attorney examination 中国专利代理人资格考试作出较大调整

n its recently-issued notice on national patent attorney examination, SIPO makes an overhaul in the upcoming 2012 examination. Key changes include ease of qualification for registration, registration time, verification of diplomas and streamlined formalities for residents from Hong Kong, Macao and Taiwan.

## I. Registration

From 2012 onwards, current master candidates with a sci-tech major after two school years and current doctor candidates with a sci-tech major are deemed having two-year actual working experience in sci-tech. a This change opens door for graduate master or doctor candidates nearing graduation or graduated masters and doctors having worked for less than two years.

II. Verification of Diplomas Under the notice, diploma can be used as educational qualifications. The candidates who apply for

application with diplomas issued by a Hong Kong, Macao, Taiwan or foreign university shall be verified by the designated center under the Ministry of Education.

III. Registration period

The notice bring the registration period ahead from late June to June 4 and June 19. Meanwhile, screening of registration materials was also advanced to June 11-June 29 (July 6 for Beijing site).

IV. Facilitate for Hong Kong, Macao and Taiwan candidates

In a bid to facilitate Hong Kong, Macao and Taiwan candidates' application, relevant candimay choose Beijing, Guangzhou and Fuzhou as their examination site through online registration and shall comply with relevant protocols. Candidates residing in Hong Kong or Macao may choose IPR offices in their regions and go through check there. In parallel, the notice explicitly allows Hong Hong, Macao and Taiwan candidates to use traditional full-form Chinese characters when answering. (by Zhao Jianguo)

## 本报记者 赵建国

日前,中国国家知识产权局发 布了《关于 2012 年全国专利代理人 资格考试的有关事项公告》,对 2012年全国专利代理人资格考试有 关事项作出较大调整,调整内容包 括报名条件放宽、报名时间提前、学 历认证有新规定、港澳台居民报考 更方便等。

调整一:报名条件放宽 从 2012 年起,全国专利代理 人资格考试的报名条件新调整的 重要内容为:高等院校理工科专业 在读硕士研究生学习期满 2 年的 以及高等院校理工科专业在读博 士研究生,视为从事过2年以上科 学技术工作。在读硕士或博士研究 生需提供就读院校的学籍证明。这 标志着更多即将毕业的硕士或博 士研究生以及理工科专业硕士或 博士研究生毕业未满 2 年且有志

于从事专利代理工作的,均可报名 参加考试。

## 调整二:学历认证有新规定

关于学历认证方面,新增了学位 证书可以单独作为学历证明。持香 港、澳门特区及台湾地区或者国外高 等学校学历(学位)证书报名的,其学 历(学位)证书须经教育部留学服务 中心认证。

## 调整三:报名时间提前

报名时间由原来的 6 月下旬提 前到6月4日至6月18日,报名材 料查验时间也相应由原来的 6 月底 提前到 6 月 11 日至 6 月 29 日(北京

### 考点至7月6日)。 调整四:港澳台居民报考更方便

为了进一步方便香港、澳门特区 及台湾地区居民报考,考生均可以通 过网报选择北京、上海、广州或者福 州考点报名并遵守相应的程序参加 查验和考试,居住在香港或澳门的考 生可以选择就近到香港或澳门的相 应知识产权管理机构接受查验。同 时,还明确香港、澳门特区及台湾地 区考生可以在考试中采用繁体汉字 作答。

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