

Amended Patent Law Draft to Be Submitted for NPC Deliberation in 2018

中国专利法修订草案将提请审议

The State Council Legislation Plan for 2018 was released recently.

The Plan specified that, in order to act upon new development philosophy and construct a modern economy system, four drafts of laws including the amended Patent Law would be submitted to the Standing Committee of the National People's Congress (NPC) for deliberation while 11 lower-hierarchy Regulations including the Patent Representation Regulation would commence their formulation and amendment.

With the rapid economic and social development in China, strengthening IP protection and improving self-reliant

innovation ability has become the inherent need for accelerating transformation of the mode of economic development and implementing innovation-driven development strategy. For adapting new demands for new changes of economic and social development to strengthen IP creation, protection and application, further improvement of the patent law system, solving the outstanding issues in patent protection, effectively safeguarding the legal interests of patent holders, boosting confidence of innovative players in patent protection, and thoroughly stimulating innovation vitality of the society at large, the State Intellectual Property Office

(SIPO) launched the preparation work for the fourth head-to-toe amendment of the Patent Law in the second half of 2014 and shaped a draft based on extensively-collected comments. The Draft was later reported to the State Council in July 2015, and was examined by the Legislative Affairs Office (LAO). In December 2015, LAO started its only process of inviting comments from the public and did research on it.

The current Patent Representation Regulation was issued and implemented by the State Council in 1991, and has been playing an important role in regulating patent representation activities and safeguarding the interests of

clients. The Regulation needs to be amended to meet the development of society. The Regulation was listed on the tier-1 to-do list of the State Council Legislation Plan for five straight years from 2012 to 2016. In February 2016, the State Council issued a decision, eliminating the proceedings of local IP authorities' approval of establishment of a patent firm, a rule under the Patent Representation Regulation. In a bid to avoid any discrepancy between the separately-amended rules as such and the Regulation, the State Council lined up the amendment of the Regulation high on its agenda.

本报综合消息 《国务院2018年立法工作计划》近日公布。

《计划》明确,为贯彻新发展理念,建设现代化经济体系,提请全国人大常委会审议专利法修订草案等4部法律草案,制定修订专利代理条例等11部条例。

据了解,随着中国经济社会的快速发展,加强知识产权保护、提高自主创新创新能力,成为加快转变经济发展方



式,实施创新驱动发展战略的内在要求。为适应经济社会的新变化对加强知识产权创造、保护、运用的新要求,进一步完善专利法律制度,解决专利保护中的突出问题,切实维护专利权人的合法权益,增强创新主体对专利保护的信心,充分激发全社会的创新活力,中国国家知识产权局于2014年下半年启动了专利法第四次全面修改的研究准备工作,在广泛征求意见的基础上形成《专利法修订草案(送审稿)》,于2015年7月上报国务院,由国务院法制办进行审查。2015年12月,国务院法制办就送审稿面向社会公开征求意见,并于此后积极开展研究论证工作。

据介绍,现行《专利代理条例》由国务院于1991年颁布实施,为规范专利代理行为、维护委托人权益发挥了重要作用。但随着社会主义市场经济体制的建立和完善,其内容与现实情况严重脱节,制约了专利代理行业发展,亟需修改。2012年至2016年,《专利代理条例》修改连续5年被列入国务院立法工作计划一档项目。2016年2月,国务院发布决定,涉及取消依据《专利代理条例》规定的专利代理机构设立审批的地方初审,同时要求做好取消事项的后续衔接工作,加强事中事后监管。为避免相关改革措施与现行法规脱节,国务院加快了《专利代理条例》的修改进程。



Photo News

SIPO Commissioner Shen Changyu shared comments on the issues of talent training, patent examination, data exchange and automation with the visiting African Intellectual Property Organization (OAPI) Director General Denis L. Bohoussou on March 19 in Beijing. After giving a brief introduction on the latest development of China's IP work, Shen said that a sound IP cooperation has been maintained

between SIPO and OAPI with the joint efforts of two sides. Shen looks forward to working closely with OAPI and promoting the bilateral cooperation to a new height. Bohoussou highly appreciated the outstanding achievements China has made on IP in recent years. He said that OAPI is ready to learn from SIPO and wish to reinforce cooperation in many aspects, so as to promote S&T and cultural exchange between China and Africa.

(by Liu Peng/Zeng Jia)
 3月19日,中国国家知识产权局局长申长雨在京会见了非洲知识产

权组织总干事德尼·L·伯乌苏一行,双方就人才培养、专利审查、数据交换、自动化等领域的合作进行了交流和探讨。申长雨简要介绍了中国知识产权工作最新进展。他表示,在双方的共同努力下,中非建立并长期保持着良好的知识产权合作关系,期待在未来进一步深化双方合作,巩固合作成果,将合作推向新的高度。伯乌苏赞赏近年来中国知识产权事业发展取得的成就,并希望借鉴中国成功经验,在更多领域加强合作,不断拓展合作的深度与广度,促进中非科技经济文化交流。

柳鹏 曾嘉 摄影报道

China's IP in foreign eyes

It has been hailed for centuries in China as a cure for coughing, but Pipa Tangjiang - a sweet tasting syrup that was first discovered in the Qing dynasty - has failed to make much of an impact abroad. But now the herbal remedy is riding a wave of popularity in the United States thanks to New Yorkers' love of sharing new health-care fads. (*The Chinese herbal cough syrup that has taken New York by storm*, by The Daily Telegraph)

枇杷止咳糖浆作为一种治疗咳嗽的药品,在中国流传已久。这种带有清甜味道的糖浆,自清朝诞生以来,在国外并没有产生巨大的影响。而如今,得益于美国纽约市民喜欢分享新的理疗保健的习惯,枇杷止咳糖浆在美国正掀起一波热潮。(《纽约大意为震动的中国中药止咳糖浆,每日电讯报》)

Comment

Pipa Tangjiang represents a typical traditional Chinese medicine and the crystallization of Chinese people's wisdom. In recent years, traditional Chinese medicine has successfully entered overseas market and well received by people all over the world. In this process, we should beef up IP protection by filing the international patent application, thus contributing to the development of global health fairs.

点评

枇杷止咳糖浆是中医药的代表,是中国人民智慧的结晶,是中国的名片。近年来,中医药成功走向国门,受到全世界人民的普遍欢迎,在“走出去”的过程中,中国药企需通过提交国际专利中请等方式为原创中医药知识撑起知识产权保护伞,从而让我国中医药为全球健康事业的发展添砖加瓦。

(李倩)

Denmark-based STARK Prevails in Trademark Dispute

丹麦家乐事成功撤销“蓝山”商标

Six years is what it took for the Denmark-based STARK Group to go toe-to-toe with a Dongguan (Guangdong) company over a trademark and the persistence of the Danish company eventually paid off. Lanshan Industrial Company from Dongguan, Guangdong Province were involved in a six-year dispute around.

Recently, Beijing High People's Court revoked the judgment of the first instance dismissing the claim from Lanshan, the Dongguan company and revoking the registration of No.4658838 trademark "Lanshan" (Note: English translation is "Blue Mountain") on the ground that it had failed to prove effective prior use within the designated period.

According to file, the relevant registration application of the trademark in dispute was furnished by a natural person surnamed Fan on May 16, 2005 and was approved on September 14, 2008, certified on Class 21 products including manually-operated coffee grinders. On September 30, 2008, Fan signed a trademark licensing agreement with Lanshan Foods Company, permitting use of the trademark in dispute.

On July 24, 2012, STARK petitioned to the Trademark Office (TMO) under SAIC to withdraw the application of the trademark in dispute on the ground that it was not used in the three consecutive years between July 24, 2009 and July 23, 2012 (designated period). After examination, TMO withdrew registration of the trademark in dispute on November 21, 2013.

On April 1, 2014, the transfer of

the trademark in dispute to Lanshan was approved by TMO. Then Lanshan requested the Trademark Review and Adjudication Board (TRAB) for review on December 20 of the same year, and submitted exhibits including its business licenses and copies of sales receipts of products in an effort to prove its actual use of the trademark in dispute during the designated period.

On January 21, 2015, TRAB made a ruling to cancel the trademark in dispute, holding that the exhibits furnished by Lanshan were either its own handiwork or could not be substantiated by other verifiable exhibits, unable to prove use of the trademark in dispute during the designated period.

Lanshan then brought the case to Beijing IP Court, which gave a nod to Lanshan's exhibits, admitting actual use of the trademark in dispute on the products of small manually-operated bean grinders. As manually-operated coffee grinders were similar with the class of products certified.

Accordingly, Beijing IP Court made the first-instance judgment, revoking the decision made by TRAB and ordered TRAB to make a new decision. The disgruntled TRAB then appealed to Beijing High People's Court.

After hearing, Beijing High held that Lanshan failed to prove actual use of the trademark in dispute on small manually-operated bean grinders, and they were not part of the certified products even actual use was taken into consideration. Therefore, the use of Lanshan could not be clearly connected with the products certified, and the public could

not associate the trademark in dispute with the products certified. In fact, the trademark in dispute could not complete the mission of distinguishing the source of the products.

In this connection, Beijing High revoked the judgment of the first instance and rejected the request from Lanshan.

(by Wang Guohao)

本报记者 王国浩

围绕第4658838号“蓝山”商标(下称诉争商标),丹麦家乐事集团公司(下称家乐事公司)与广东省东莞市蓝山实业有限公司(下称蓝山公司)展开了一场近6年的商标纠纷。

近日,北京市高级人民法院终审撤销一审判决,并驳回了蓝山公司的诉讼请求,诉争商标最终由于无法证明在指定期限内进行了有效使用而被撤销。

据了解,诉争商标由范某于2005年5月16日提出注册申请,2008年9月14日被核准注册,核定使用在手工操作的磨咖啡器等第21类商品上。2008年9月30日,范某与东莞市蓝山食品有限公司(下称蓝山食品公司)签订商标使用许可协议,许可蓝山食品公司使用诉争商标。

2012年7月24日,家乐事公司以诉争商标在2009年7月24日至2012年7月23日期间(下称指定期间)连续3年不使用为由,向国家工商行政管理总局商标局提出撤销诉争商标注册的申请。经审查,商标局于2013年11月21日作出撤销诉争商标注册的决定。

据悉,2014年4月1日,诉争商标经商标局核准转让予蓝山公司。蓝山公司不服商标局作出的撤销决定,于同年12月20日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,并提交了其营业执照、产品销售凭证复印件等证据,用以证明其于指定期间对诉争商标进行了实际使用。

2015年1月21日,商评委作出复审决定,认为蓝山公司提交的证据或为自行制作或无其他证据佐证,不足以证明诉争商标在指定期间的使用,决定撤销诉争商标。

蓝山公司随后向北京知识产

权法院提起行政诉讼。北京知识产权法院认为,蓝山公司提交的证据,能够证明诉争商标于指定期间内在小木手摇磨豆机商品上进行了使用,由于手摇磨豆机与手工操作的磨咖啡器等诉争商标核定使用的其他商品属于类似商品,故诉争商标在上述商品上的注册亦应予以维持。

综上,北京知识产权法院一审判决撤销商评委作出的相关复审决定,并判令商评委重新作出决定。商评委不服一审判决,向北京市高级人民法院提起上诉。

北京市高级人民法院经审理认为,蓝山公司提交的证据不足以证明诉争商标在小木手摇磨豆机商品上的实际使用,即使考虑存在实际使用,但手摇磨豆机并非诉争商标的核定使用商品。因此,蓝山公司的使用行为不能明确指向诉争商标核定使用的商品,相关公众无法将诉争商标与其核定使用的商品建立联系,诉争商标客观上不能起到区分商品来源的作用。

综上,北京市高级人民法院裁定撤销一审判决,驳回蓝山公司的诉讼请求。



EXPRESS

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