

China's IP
 in foreign eyes

In December 2001 when China joined the WTO, the government was keen to transition from being a manufacturing-based economy to an innovation-based economy. This large step forward (as opposed to great leap) would be fuelled by expanding China's domestically owned intellectual property. (*Why China is a leader in intellectual property, The Conversation*)

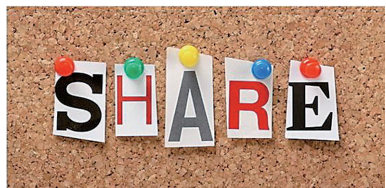
自2001年12月加入世界贸易组织以来,中国政府迫切希望推动中国制造向中国创造转变。这一目标将通过增强中国的知识产权实力来实现。(为什么中国是知识产权领域的领导者,对话网)

Comment

The Chinese government always attaches great importance to IPR protection. Thanks to a series of effective measures to protect the legitimate rights and interests of innovators, the world has witnessed China's determination in strengthening IPR protection.

点评

中国政府始终高度重视知识产权保护工作,通过一系列行之有效的措施,切实保护创新者的合法权益,让世界看到了中国加强知识产权保护的决心与成效。



In many ways, smart ride-sharing conveys the essence of China's IoT transformation: It draws on Chinese traditions while integrating advanced technologies in novel and unexpected ways. I was struck by signs all around that China is no longer a tech imitator — it has matured into a tech innovator, solidifying its place as an IoT leader. (*What We Can Learn From China About IoT, by Forbes*)

智能共享出行体现出了中国物联网在交通领域的成就:用新颖的方式将先进技术与中国人的传统习惯进行融合。中国不再是一个技术模仿者,它已发展为一个拥有成熟技术的创新型国家,并正在逐步巩固其物联网领导者的地位。(关于物联网,美国能向中国学什么?福布斯)

Comment

Innovation is the primary force driving development. Based on its innovation power, China is becoming the leader in many fields around the world. As the basic guarantee of protecting innovation, IPRs effectively promote innovation and socio-economic development.

点评

创新是引领发展的第一动力。凭借科技创新,中国在众多领域正成为全球技术的领导者。知识产权作为激励创新的基本保障,有力促进了创新和经济社会发展。(李倩)

China to Scrutinize Transfers of IPRs Concerning National Security to Foreign Entities

中国印发《知识产权对外转让有关工作办法(试行)》

将对涉及国家安全的知识产权对外转让行为进行审查

Transfers of IPRs concerning national security to foreign interests is explicitly regulated after the recent release and instant effectiveness of the *Measures on Transfers of IPRs to Foreign Entities (Trial)* by the Office of the Chinese State Council.

In an effort to enforce the concept of national security, improve relevant system, safeguard national security, vital public interests and regulate transfers of IPRs to foreign interests, the *Measures*, based on the laws and regulations pertaining to national security, foreign trade and IPRs, provides details on the scope, content, protocols of security scrutiny.

Under the *Measures*, transfers of IPRs concerning national security to foreign interests during technology export and mergers/acquisitions of domestic companies by foreign investors shall be scrutinized. The kinds of IPRs under scrutiny include acquired rights of patents, layout designs of integrated circuit, software copyrights and new varieties of plants and the application



rights thereof. The acts of transfers include change of right holders, change of actual controllers of IPRs and exclusive licenses of IPRs. The scrutiny focuses on the impact of the transfers

upon the country's national security and innovative strength of essential technologies of key technological fields.

Two types of scrutiny protocols are

provided by the *Measures*. The first type governs transfers of IPRs concerning national security to foreign interests during technology export. The scrutiny shall be performed by relevant authorities competent for administration of the specific kind of IPRs in question. The second type relates to transfers of IPRs concerning national security to foreign interests during mergers/acquisitions of domestic companies by foreign investors. The scrutiny shall be done by a centralized security scrutiny agency after hearing comments from relevant IPR authorities.

(Chinese Version from Xinhua, March 29)

新华社北京3月29日电 日前,国务院办公厅印发《知识产权对外转让有关工作办法(试行)》(下称《办法》),明确了涉及国家安全的知识产权对外转让相关规定,该办法自印发之日起试行。

为贯彻落实总体国家安全观,完善国家安全制度体系,维护国家安全和重大公共利益,规范知识产权对外转让秩序,依据国家安全、对外贸易、

知识产权等相关法律法规,制定《办法》,分别对审查范围、审查内容、审查机制和其他事项进行了规定。

《办法》规定,对技术出口、外国投资者并购境内企业等活动中涉及国家安全的知识产权对外转让行为进行审查。审查类型包括专利权、集成电路布图设计专有权、计算机软件著作权、植物新品种权等知识产权及其申请权。转让行为包括权利人的变更、知识产权实际控制人的变更和知识产权的独占实施许可等三种主要情形。审查内容包括知识产权对外转让对中国国家安全和重要领域核心关键技术创新发展能力的影响。

《办法》明确了两种审查工作机制。一是对于技术出口中涉及国家安全的知识产权对外转让审查,按照知识产权的不同类型进行归口管理,由相应的国家主管部门按照职责进行审查。二是对于外国投资者并购境内企业安全审查中涉及的知识产权对外转让审查,由相关安全审查机构根据拟转让的知识产权类型,征求国家相关主管部门意见,并按照有关规定作出审查决定。

Court Rules Alleged Trademark's Used on Dissimilar Products

美国蒂芙特阻击上海帝芙特商标注册未果

Seven years is what it took for the U.S.-based Tea Forte Company to go toe-to-toe with Shanghai Difute (Note: Same spelling with Tea Forte in Chinese) Tea Company over a trademark and the persistence of the U.S. company failed to pay off.

Recently, Beijing High People's Court rejected the appeal of Tea Forte and upheld the judgment of the first instance. The Trademark Office (TMO) under the State Administration for Industry and Commerce would clear the registration of No.7863542 figure trademark accordingly.

The trademark in question was filed by Shanghai Difute for registration on November 26, 2009, certified to be used on Class 30 products including flour and condiment. On November 6, 2010, TMO made the preliminary examination and published the trademark in dispute.

On January 25, 2011, Tea Forte lodged an opposition application to TMO, claiming that the trademark in dispute constituted similarity with No.5914681 figure trademark and No.5914683 'F and figure' trademark,

and No.5914845 'F and figure' trademark and No.956073 figure trademark on similar products. In parallel, the trademark in dispute infringed the prior copyright of cited trademark. The trademark in dispute shall not be registered and refrain from using as Difute filed the trademark in question under its own name and without permission from Tea Forte, considering it was in business with the U.S. company.

After examination, TMO made a decision to approve the registration of the trademark in dispute. Tea Forte filed a review application to Trademark Review and Adjudication Board (TRAB) which would also greenlight the registration. The disgruntled Tea Forte then brought the case to Beijing No.1 Intermediate People's Court.

The court held that the trademark in dispute neither constituted similarity with cited trademark used on similar products, nor infringed the prior copyright of Tea Forte. In parallel, Tea Forte failed to prove that agency relationship was entrusted between the two sides.

After the appeal was rejected by Bei-

jing No.1 Intermediate People's Court, Tea Forte then brought the case to Beijing High People's Court.

Beijing High held that it did not constitute similarity between flour, condiment and tea and tea bag, so the registration of trademark in dispute should maintain.

Accordingly, Beijing High made the final judgment to reject the appeal from Tea Forte and upheld the decision of the first instance.

(by Wang Guohao)

本报记者 王国浩

围绕着一件图形商标,美国蒂芙特公司(下称美国蒂芙特)与上海帝芙特茶业有限公司(下称上海帝芙特)展开了历时近7年的商标纷争。

近日,北京市高级人民法院终审判决驳回美国蒂芙特上诉,维持一审判决。中国国家工商行政管理总局商标局(下称商标局)最终对第7863542号图形商标(下称诉争商标)予以核准注册。

据了解,诉争商标由上海帝芙特于2009年11月26日提出注册申请,指定使用在第30类面粉制品、调味品商品上。2010年11月6日,商标局对

诉争商标初步审定并公告。

2011年1月25日,美国蒂芙特针对诉争商标向商标局提出异议申请,主张诉争商标与其在先第5914681号图形商标、第5914683号“F及图”商标、第5914845号“F及图”商标、国际注册第956073号图形商标(下称引证商标)构成使用在类似商品上的近似商标;同时,诉争商标损害了美国蒂芙特对引证商标的标志享有的在先著作权;此外,上海帝芙特与美国蒂芙特存在商业上的往来,上海帝芙特以自己名义申请诉争商标,未经美国蒂芙特授权,诉争商标应不予核准注册并禁止使用。

经审查,商标局于2012年9月18日裁定诉争商标予以核准注册。美国蒂芙特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,但其主张未能获得支持,继而向北京市第一中级人民法院提起行政诉讼。

北京市第一中级人民法院经审理认为,诉争商标与引证商标未构成使用在类似商品上的近似商标,亦未损害美国蒂芙特享有的在先著作权。同时,美国蒂芙特提交的在案证据不能证明上海帝芙特为美国蒂芙特的代理人或者代理人的利害关系人,美国蒂芙特关于诉争商标的申请注册是未经授权以其名义将其“F及图”的商标进行注册的主张缺乏事实依据。

北京市高级人民法院认为,面粉制品、调味品商品与茶、袋茶等商品未构成类似商品,故诉争商标的申请注册未构成中国商标法前述规定的不予注册并禁止使用之情形。

综上,北京市高级人民法院终审判决驳回美国蒂芙特上诉,维持一审判决。



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 Strengthen Protection of Intellectual Property

塑造良好营商环境
 Foster Harmonious Business Environment

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