

China's IP  
in foreign eyes

Xiaomi, the Chinese gadget maker that has become one of the world's largest smartphone companies, has picked Hong Kong to list its shares in what is widely expected to be a major initial public offering. The company stumbled two years ago as other Chinese companies, like Huawei and Oppo, began turning out phones at competitive prices. Since then, Xiaomi has refurbished its lineup and begun an expansion into India and other new markets. (Xiaomi, a Chinese Start-Up, Picks Hong Kong for a Major I.P.O., by the New York Times)

中国电子设备制造商小米选择香港作为上市地点,外界普遍认为这将成为小米一次规模巨大的首次公开募股。小米目前已经成为了世界上最大的智能手机公司之一。两年前,当华为和Oppo等中国公司以极具竞争力的价格推出手机时,小米遭遇挫折。此后,小米重新整合了阵容,并开始向印度和其他新兴市场扩张。(小米申请在港上市,纽约时报)

## Comment

Amidst the changeable global market, the Chinese smartphone producer should not regard its cheap price of the products as competitive power. Instead, they should beef up R&D to build cut-edging technology on the basis of constantly innovation.

## 点评

在风云变幻的国际市场,中国手机生产商不应再将低廉的价格优势视为竞争力,而应努力加强研发水平,依靠创新,提高技术优势,打造核心竞争力。



"Anywhere they play in Bangkok, I'll be there," said Warin Nithihiranyakul, 73, a dedicated fan of the Sai Yong Hong Chinese Opera troupe for more than 10 years. They are part of a shrinking community of people that has formed around Chinese opera in Thailand. They are preserving a cornerstone of culture heritage dating to the Tang Dynasty, making it one of the oldest dramatic art forms in the world. (We Don't Perform for People, We Perform for the Gods, by the Wall Street Journal)

“不管他们在曼谷的什么地方演出,我都会去看。”73岁的瓦林·尼西尼亚库说道。十多年来,他一直是赛荣丰潮剧团的忠实粉丝。这个剧团是在泰国传播中国传统潮剧的一个小团体。近年来,这种艺术形式的受众正在不断缩小。他们在保存这种文化遗产的基石。潮剧可以追溯到唐朝,是世界上古老的戏剧艺术形式之一。(中国潮剧在泰国,华尔街日报)

## Comment

As an international rule and system, IP can break down many geographical limitations. Thanks to the IP protection, the intangible cultural heritage has obtained a universal amulet.

## 点评

非物质文化遗产在世界各地的传播,离不开各国对知识产权的保护。在国际知识产权的保护下,非遗必将传承久远。

(柳鹏)

## IPR Protection Requires All Countries on Board

Interview with SIPO DG for Protection and Coordination Zhang Zhicheng

## 知识产权保护需各国携手同行

——访中国国家知识产权局保护协调司司长张志成(下篇)

For years, Chinese IPR protection practice has always been in line with international norms and rules, strengthening bilateral and multilateral cooperation with other countries and regions, coordinating cross-border joint law enforcement operations to crack down on IPR infractions. In 2017, China and the U.S. successfully solved the June 7 cross-border IPR infringement case. Customs from China and U.S. worked together to target selected goods on multiple occasions. Customs from China and Russia also launched joint operations on goods circulation through mail and courier services.

China and the U.S. are important IPR partners. Both countries are now technology manufactures for the world. In 2017, the U.S. interests acquired 24,000 Chinese patents, ranking the second among all foreign countries while the U.S.-based Qualcomm was the most prolific foreign user. Across the Pacific, China obtained 11,000 patents in the U.S., qualifying for top 5 foreign countries. In the meantime, China filed the second most number of 51,500 patent applications via the Patent Cooperation Treaty (PCT), tracing only the U.S.

China opposes running trade protection in the disguise of IPR protection

According to Zhang, IPR disputes between Chinese and U.S. companies is not a bit more unusual than those between the U.S. and companies of other origins. This is just another day of operation for IPR system, which shall be treated reasonably, evaluated properly, improved and solved through cooperation. As a matter of fact, China has open and effective lanes for resolving IPR disputes, whether through adminis-

trative or judicial avenues. Unsubstantiated accusation of pilfering IPRs is irresponsible and will serve no good course. China treats all companies, foreign and domestic on equal footing and renders the same protection to safeguard the lawful rights of all holders.

For instance, in the Qualcomm case, the concerning Chinese court rejected all pleas from Shanghai Genitop (Note: Company's Chinese name literally the same with Qualcomm) and secured Qualcomm's legitimate rights in China. In another case earlier this year, Shanghai Customs discovered that 34 million yuan worth of the U.S.-based VEECO products imported through Shanghai Pudong International Airport was suspected of infringing a patent of Advanced Micro-Fabrication Equipment Inc. (Shanghai). After being sanctioned by the customs, VEECO approached the Chinese patentee for negotiation and eventually reached a settlement deal blanketing the global market.

Statistics do not lie. Effective IPR protection in China translates into tons of interests for foreign right holders every year. In 2001, China paid US\$1.9 billion in royalties for using IPRs to foreign interests. That number skyrocketed to US\$28.6 billion in 2017 and the relevant China-foreign deficit dwelled over US\$20 billion with China eating the red. A relevant survey echoes the above view by revealing that foreign corporate right holders are more satisfied with IPR protection in China than an average corporate right holder in the past three consecutive years.

Enhancing IPR protection requires both China and the U.S. on board. "China is strongly opposed to abuse of IPR rules, unilateralism and protectionism. We are even more opposed to run-



ning a clandestine operation of trade protection in the disguise of IPR protection and could not stand stressing rights only while evading obligations, or cocooning oneself in a world of 'I, me, myself' and turning a blind eye to established international rules," said Zhang, "China is willing to work with the international community to secure the multilateral trade mechanism and keen to build an open, inclusive, balanced and effective international IPR system."

(by Jiang Jianke, People's Daily)

多年来,中国知识产权保护实践始终与国际通行做法相互衔接、相互促进,不断加强与其他国家和地区的多双边知识产权跨部门合作,协调开

展跨境联合执法行动,共同打击知识产权侵权行为。2017年中美合作成功侦破“7·7”跨国侵犯知识产权案;中美两国海关数次开展针对往来重点商品的联合执法行动;中国与俄罗斯海关开展邮递快件渠道知识产权保护联合执法行动。

中美互为核心的知识产权合作伙伴。当前,中美两国都是全球技术生产者。2017年美国获得2.4万件中国专利授权,排名第二。美国高通公司成为2017年获得中国专利授权最多的外国企业。2017年中国在美国获得的专利授权1.1万件,总量跻身前五。同时,中国通过《专利合作条约》途径提交的专利申请受理量已达5.1万件,仅次于美国,跃升至全球第二位。

中国反对以保护知识产权之名行贸易保护之实

张志成认为,中美企业之间存在知识产权纠纷,美国企业和外国企业间同样存在知识产权纠纷。这是知识产权制度运营的客观反映,应理性看待,正确评估,通过双方合作来改进和解决问题。实际上,无论是行政还是司法途径,中国解决知识产权纠纷的渠道是畅通的,效果是良好的。无端指责别人“盗窃”知识产权是不负责任的,也是毫无帮助的。中国对中外企业一视同仁、同等保护,致力于确保中外权利人的合法权益不受侵害。

例如,在“中美高通”案中,中国法院驳回“上海高通”诉“美国高通”全部诉讼请求,保护了美国高通在华合法权益。今年初,上海海关在执法中发现,美国 VEECO 公司涉嫌侵犯中微半导体设备(上海)有限公司专利权的设备从上海浦东国际机场进口,货值高达3400万元。通过海关行政执法,VEECO公司主动与中国专利权人展开谈判,最终达成了双方满意的全球范围相互授权的和解协议。

统计表明,中国有效的知识产权保护每年都给国外权利人带来巨大利益。2001年,中国对外支付知识产权使用费为19亿美元,2017年达到286亿美元,中国知识产权跨境交易逆差超200亿美元。调查表明,在华外资企业权利人对中国知识产权保护的态度近3年均高于全国平均满意度。

加强知识产权保护需中美携手同行。“中国坚决反对滥用知识产权规则,坚决反对单边主义、保护主义的做法,更反对以保护知识产权之名行贸易保护之实,不赞成只强调权利保护而不谈相关义务,或只强调自身利益而把多边协议的相关原则抛诸脑后的做法。”张志成表示,中国愿意和国际社会一道有效维护多边贸易体制,致力于同包括美国在内的世界各国努力构建开放包容、平衡有效的知识产权国际制度。(蒋建科)

本文摘自《人民日报》

## Despite Relentless Efforts, Swiss Firm Unable to Rescue TM Rejected on Similarity

## “艾利尔”商标注册申请在华被驳

It all began with the rejection of the No.17971918 “艾利尔” trademark application of Alere Switzerland GMBH, requesting to be certified on the products of medical apparatus. The rejection was made upon the prior No.6044562 trademark “艾利”. Alere then engaged in an all-out operation to regain what it believed was its.

Recently, Beijing High People's Court made a final judgment to reject the Alere's appeal and uphold the rejecting decision of the Trademark Review and Adjudication Board (TRAB).

Alere filed the registration application for the trademark in dispute on September 24, 2015, requesting to be certified on Class 10 with the products of diagnostic apparatus and injectors for medical purposes.

Trademark Office (TMO) rejected the trademark registration application on July 7, 2016 on the ground that the trademark in dispute and cited trademark had constituted similarity on the similar products.

As shown by sbj.saic.gov.cn, the cited trademark was filed by a U.S. firm Avery Dennison Cooperation on May 11, 2007 and approved to be registered on November 28, 2009, certified on Class 10 with the medical apparatus and instruments. In 2016, the cited trademark was transferred to another U.S. firm CCL label, INC.

The disgruntled Alere lodged a request to the TRAB for review on July 22, 2016. TRAB made a negative decision on April 11, 2017.

Refusing to accept the TRAB decision, Alere sought justice at Beijing IP Court.

At the Court hearing in the first stance, Alere made clear it has no objection to similarity of the two products. However, Alere claimed that it has objection to similarity of the two trademarks and submitted copies of a coexistence agreement with the cited trademark holder.

After hearing, Beijing IP Court held that the trademark in dispute and cited trademark constituted similarity in characters formation, calling and meaning. The agreement submitted by Alere could not support the registration of the trademark in dispute as the trademark in dispute and cited trademark shared high similarity. Therefore, the Court rejected Alere's request in the first stance.

Alere then appeded Beijing High People's Court.

Beijing High held that the pure character trademark “艾利” was completely contained in the pure character trademark “艾利尔”. Both of them constituted similarity in character formation, calling and meaning.

With regard to the trademark coexis-

tence agreement, Beijing High noted that the copies did not pass lawful notarization. Meanwhile, in the case of high similarity between the trademark in dispute and cited trademark, had the trademark in dispute was approved to be registered, it would damage the interests of consumers, who were also one of the stakeholders in existence. Hence the agreement from Alere could not become the reason for registration of the trademark in dispute.

In this connection, the Court dismissed the appeal of Alere.

(by Wang Guohao)

因遭遇在先获准注册的第6044562号“艾利”商标(下称引证商标),美艾利尔瑞士公司(ALERE SWITZERLAND GMBH)在医疗器械类产品上提出注册第17971918号“艾利尔”商标(下称诉争商标)的申请被驳回。随后,美艾利尔瑞士公司在华展开了一场权属追索。

近日,北京市高级人民法院作出终审判决,驳回了美艾利尔瑞士公司的上诉,商标评审委员会(下称商评委)作出的驳回诉争商标注册申请的复审决定最终得以维持。

据了解,诉争商标由美艾利尔瑞士公司于2015年9月24日提出注册申请,指定使用在医用诊断设备、医用注射器等第10类商品上。

经审查,商标局于2016年7月7日作出商标注册申请驳回通知,以诉争商标与引证商标构成使用在类似商

品上的近似商标为由,决定驳回诉争商标的注册申请。

中国商标网信息显示,引证商标由美国艾弗雷丹尼逊公司(AVERY DENNISON CORPORATION)于2007年5月11日提出注册申请,2009年11月28日被核准注册,核定使用在第10类医疗器械和仪器商品上。2016年,引证商标经核准转让予美国丝艾包装公司(CCL LABEL, INC.)。

美艾利尔瑞士公司不服商标局作出的驳回决定,于2016年7月22日向商评委申请复审。2017年4月11日,商评委作出复审决定,驳回诉争商标的注册申请。

美艾利尔瑞士公司不服商评委作出的复审决定,随后向北京知识产权法院提起行政诉讼。

据悉,在一审庭审中,美艾利尔瑞士公司明确表示对诉争商标指定使用商品与引证商标核定使用商品构成类似商品没有异议,但主张诉争商标与引证商标不构成近似商标,并提交了与引证商标持有人达成的共存协议复印件。

经审理,北京知识产权法院认为,诉争商标与引证商标在文字构成、呼叫、含义上近似,构成近似商标。诉争商标与引证商标近似度极高,美艾利尔瑞士公司提交的商标共存协议不能成为诉争商标获准注册的当然理由。据此,法院一审判决驳回美艾利尔瑞士公司的诉讼请求。

美艾利尔瑞士公司不服一审判决,继而向北京市高级人民法院提起上诉。



对于诉争商标与引证商标是否近似,北京市高级人民法院认为,诉争商标为纯文字商标“艾利”,引证商标为纯文字商标“艾利”,引证商标完整包含于诉争商标,二者在文字构成、呼叫、含义上近似,构成近似商标。

关于商标共存协议,北京市高级人民法院指出,美艾利尔瑞士公司提交的共存协议为复印件,并未经过公证认证。同时,诉争商标与引证商标近似度极高,在此种情况下,如果考虑到商标共存协议的因素允许诉争商标注册,将会损害共存关系的利害关系人之一——消费者的利益,故美艾利尔瑞士公司提交的商标共存协议不能成为诉争商标获准注册的当然理由。

综上,北京市高级人民法院判决驳回美艾利尔瑞士公司上诉,维持一审判决。(王国浩)



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