

China's IP  
in foreign eyes

Wandering the streets of Shanghai to admire the architecture, the head of one of the largest U.S. consumer banks recently found himself surrounded by a gaggle of teenagers. Entranced by their phones, they hardly made way for the banker. The teens were messaging, shopping and sending money back and forth, all without cash. Instead, they were using Alipay and WeChat. The future of consumer payments may not be designed in New York or London but in China. (Why China's Payment Apps Give U.S. Bankers Nightmares, by Bloomberg News)

漫步上海街头,美国最大消费银行之一的负责人发现自己被困在一群青少年中,他们被各自的智能手机迷住。这些年轻人发信息、购物、转账,所有这些行为都没有现金参与,而是使用支付宝和微信。可以说,消费支付的未来,可能不是在纽约或伦敦,而是在中国。(为何中国的支付App给美国银行家带来噩梦,彭博社)

## Comment

Convenient operation is people's first impression of mobile payment, followed by strong social interaction and gradual improvement of security coefficient. Thanks to innovative models and products, mobile payment can quickly open up market in China and go global.

## 点评

操作便捷是人们对移动支付的第一印象,其次是社交性强、安全系数逐渐提升。移动支付能够在中国迅速打开市场,并且走向世界,凭借的正是创新的模式和产品。



"The American products are simply uncompetitive in the China market," said Kai-fu Lee, who is now chief executive of Sinovation Ventures, a venture capital firm focused on Chinese technology. Even if internet titans from the United States could operate in China, he said, the local competition means they would have a hard time thriving. Also, young Chinese these days would rather work for national champions like Alibaba or Tencent. (Why American Tech Companies Struggle in China, by the New York Times)

"美国产品在中国市场根本就没有竞争力。"中国科技风投公司创新工场首席执行官李开复说。他表示,即使来自美国的互联网巨头能在中国运营,当地的竞争也会让它们举步维艰。此外,现在中国的年轻人更愿意在阿里巴巴或腾讯这样的本土科技公司工作。(为什么美国科技公司在中国举步维艰,纽约时报)

## Comment

China has made outstanding achievements in internet sector in recent years. The cashless payment, shared bikes and self-service store have not only changed our life dramatically, but also showcased the charm of innovation.

## 点评

近年来,中国在互联网领域的创新可谓成果显著。无现金支付、共享单车、无人售货店等一批创新产品的出现,极大地方便了人们的生活,也让创新的魅力无处不在。(柳鹏)

## China-US Trade Talk Confirms Cooperation in Intellectual Property

中美就经贸磋商发表联合声明,强调加强知识产权合作,专家指出——

## 加强知识产权保护 夯实对外开放基础

"The two sides highly valued intellectual property protection and agreed to promote cooperation in this regard." On May 19, China and the United States issued a joint statement on economic and trade consultations in Washington, highlighting the IP issue again. "The two nations will continue strengthening mutual investment cooperation and deepening bilateral cooperation on intellectual property rights protection. It is beneficial for the two countries, but also stability and prosperity of global economic trade," noted Liu He, President Xi Jinping's Special Envoy, Member of the Political Bureau of the Central Committee of the Communist Party of China (CPC), Vice Premier of the State Council and Chinese Initiator of the China-US Comprehensive Economic Dialogue.

In his keynote speech at the recent Boao Asia Forum Annual Conference 2018, President Xi transmitted Chinese firm stand and distinct attitude on strengthening IP protection to the world. Actually, items related to IP protection were listed in the achievements of multiple recent U.S.-China Strategic and Economic Dialogues. Besides, the first Belt and Road IP cooperation document between China and international organizations titled *Agreement on Enhancing "Belt and Road" Intellectual Property Cooperation between the Government of the People's Republic of China and the World Intellectual Property Organization* was also included in outcomes of the Belt and Road Forum for International Cooperation.

"In view of the current trend, we must cooperate in IP for innovation and trade globalization. During communication and cooperation with other countries in the world, China repeatedly stressed the role of IP. It is our in-



ent need for development and a display of our confidence", said Liu Haibo, researcher of Institutes of Science and Development, Chinese Academy of Science. Presently, Chinese technological and scientific resource and strength is improving economic competitive power toward faster, better and larger through mapping in the world.

It is noticeable that China will promote revision of related laws and regulations including the Patent Law, according to the statement. In recent years, the State Intellectual Property Office(SIPO) is always actively perfecting IP law system in line with latest social development, striving for "law is revising and suitable with the time", including fourth overall revision of patent law, deepening research on IP protection system for innovations under new format and new field, and launching IP basic law research on the background of corpus of civil law.

"It is obvious to all that China is delivering IP protection without difference and discrimination to foreign investors and achieves remarkable success," said Xu Chunming, Director of Intellectual Property Institute of Shanghai University. Indiscriminate IP protection for innovation entities from both home and abroad is helpful for constructing fair and open business environment, naturally winning thumbs-up from enterprises at home and abroad, and attracting floods of foreign investment. As shown by survey report for satisfaction with IP protection 2017 issued by SIPO, the satisfaction index gap between state-owned, foreign-funded, joint-ventured and private-operated enterprises is getting closer according to results from 2015-2017, and satisfaction for foreign-funded and joint-ventured enterprises is higher than average level.

Meanwhile, more and more Chi-

nese enterprises are emerging in international markets with the advancement of the Chinese innovation engine. In 2017, China filed 51,000 international patent applications via PCT, valuating to be No.2 in the world. "As emphasized by president Xi Jinping, 'China hopes foreign governments will also improve protection of Chinese IPRs', symbolizing the stand of strengthening IPR protection of China and showcasing the reciprocal principle in IPR international protection." In the view of Xu, it needs joint efforts from countries to build business environment for fair competition and construct inclusive, balanced and effective IP international rules, improving cooperation and win-win to achieve common development. (by Sun Di)

本报记者 孙迪

"双方高度重视知识产权保护,同意加强合作。"5月19日,中美两国在华盛顿就双边经贸磋商发表联合声明,知识产权的议题再次受到了各方的重点关注。"双方还将继续加强相互投资和深化知识产权保护领域的合作。这不仅有利于中美两国,也有利于全球经济贸易的稳定繁荣。"当天,习近平主席特使、中共中央政治局委员、国务院副总理、中美全面经济对话中方牵头人刘鹤表示。

前不久,在博鳌亚洲论坛2018年年会开幕式上的主旨演讲中,习近平主席再次向世界传递了中国依法严格保护知识产权的坚定立场和鲜明态度。实际上,历数近年来的中美战略与经济对话,知识产权保护的相关内容多次被双方列入成果清单。此外,在"一带一路"国际合作高峰论坛成果清单中,中国政府与国际组织签署的首个有关"一带一路"知识产权合作的首个文件——《中华人民共和国政府和世界知识产权组织加强"一带一路"知识产权合作谅解备忘录》也被列入其中。

"从今天的形势来看,创新全球化

和经贸全球化要求知识产权必须走合作之路。中国在与世界各国的交流合作中,反复强调知识产权的作用,既是自身的发展需要,也是中国表达自信的体现。"中国科学院科技战略咨询研究院研究员刘海波表示,当前,中国科技创新资源和科技创新力量正在通过全世界布局,更快、更好、更大幅度提升经济竞争力。

值得关注的是,此次发表的联合声明还提出,中方将推进包括专利法在内的相关法律法规修订工作。在采访中记者了解到,近年来,中国国家知识产权局始终根据社会发展需要,积极完善知识产权法律体系,努力做到"法与时转,治与时宜",包括积极推进专利法的第四次全面修改,深化新业态新领域创新成果知识产权保护制度研究,开展民法典背景下的知识产权基础性法律研究等。

"中国切实对外商给予无差别、无歧视的知识产权保护,成效有目共睹。"上海大学知识产权学院院长许春明表示,一视同仁依法保护中外创新主体的知识产权,营造了公平开放的营商环境,自然赢得中外企业一致好评,吸引着外资不断涌入。中国国家知识产权局发布的2017年知识产权保护社会满意度调查报告也显示,从2015年至2017年的调查情况看,国有、外资、合资、民营企业的满意度得分差距变小,外资企业、合资企业满意度总体上高于平均水平。

与此同时,伴随着不断迈进的中国创新脚步,越来越多中国企业也在国际市场崭露头角。2017年,中国通过《专利合作条约》(PCT)途径提交的国际专利申请达5.1万件,跃升至全球第二位。"习近平主席专门强调'希望外国政府加强对中国知识产权的保护',这体现了中国加强知识产权保护立场,彰显了知识产权国际保护的平等原则。"在许春明看来,营造公平竞争的营商环境,需要各国共同努力,构建普惠包容、平衡有效的知识产权国际规则,促进合作共赢,实现共同发展。

## Commercial Use (or Not) Test May Cost Easyhome its One Trademark

## 居然之家丢了一件“居然之家”商标?

Beijing Easyhome Investment Holdings Group, with over 220 stores peppered in 29 provinces in China after two decades of operation, is bothered by a trademark trouble.

Recently, Ruling on trademark review administrative dispute over No.3862356 "Easyhome&eh figure" trademark (trademark in dispute), Beijing High People's Court rejected the appeal from Easyhome, revoking the decision made by the Trademark Review and Adjudication (TRAB) allowing registration of the trademark in dispute and ordering TRAB to take a de novo look at the case.

Easyhome filed a registration application for the trademark in dispute in December 2003 and obtained approval on November 20, 2005. The trademark was certified to be used on the products of Class 11, including aquarium heaters, lights for vehicles, hair dryers, automatic watering installations and furnace grates, etc.

The trademark in dispute was challenged by the Gemrany-based ALDI GMBH 10 years later. In 2015, ALDI lodged a revocation application to the Trademark Office (TMO), claiming that Easyhome did not make commercial use of the trademark in dispute in a true, effective and public way on the certified products during March 9,



2012 and March 8, 2015 (designated period), and requested TMO to revoke its registration.

After examination, TMO made a decision on November 14, 2015 to sustain the registration of the trademark in dispute. Then ALDI brought the case to TRAB.

In June 2016, TRAB held that the evidence submitted by Easyhome could prove commercial use in a true, effective and public way on certified products. Therefore, it also greenlighted its registration.

The Disgruntled ALDI then took the case to Beijing IP Court for administrative lawsuit.

Beijing IP Court held that the photos of the products presented by Easyhome are not admitted to prove the use of the trademark in dispute. Meanwhile, the authenticity of the evidences can not be verified as it was reused by Easyhome. Hence, Beijing IP Court revoked the review decision by TRAB, and ordered TRAB to make a new decision.

This led to Easyhome seeking justice at Beijing High.

After hearing, Beijing High held that there is a legal basis for ALDI to request for revoking the registration of the trademark in dispute while there is no legal basis for Easyhome alleging ALDI's malice in requesting the revocation. In view of that there was no specified objection for Easyhome towards first-instance court's non-admission of its evidences, Beijing High affirmed relevant ruling.

In this connection, Beijing High rejected Easyhome's appeal for lacking facts and legal basis and upheld the judgment of the first stance.

(by Wang Guohao)

本报记者 王国浩

成立近20年来,北京居然之家投资控股集团有限公司(下称居然之家)已在中国29个省(市)地区开设220多家门店,然而近期却遭遇了一件商标烦心事。

近日,针对居然之家公司防御性注册的第3862356号“居然之家 Easy-

home及eh图形”商标(下称诉争商标)而展开的商标撤销复审行政纠纷一案,北京市高级人民法院作出终审判决,驳回了北京居然之家投资控股集团有限公司(下称居然之家公司)的上诉,商标评审委员会(下称商评委)所作对诉争商标予以维持注册的复审决定被撤销,商评委需重新作出决定。

据了解,诉争商标由居然之家公司于2003年12月提出注册申请,2005年11月20日被核准注册,核定使用在水族池用加热器、车辆灯、电吹风、自动浇水装置、壁炉等第11类商品上。

在诉争商标核准注册10年之后,遭遇德国爱尔多有限两合公司(下称爱尔多公司)提出撤销申请。据了解,2015年,爱尔多公司针对诉争商标向商标局提出撤销注册申请,主张爱尔多公司于2012年3月9日至2015年3月8日期间(下称指定期间),居然之家公司未就诉争商标在其核定商品上进行真实、有效、公开的商业使用,据此请求商标局撤销诉争商标的注册。

经审查,商标局于2015年11月14日作出决定,对诉争商标的注册予以维持。爱尔多公司不服,向商评委申请复审。

2016年6月,商评委作出复审决定认为,居然之家公司提交的证据能够证明居然之家公司于指定期间内对诉争商标在其核定商品上进行了真实、有效、公开的商业使用。据此,商评委决定对诉争商标予以维持注册。

爱尔多公司不服商评委作出的上述复审决定,随后向北京知识产权法

院提起行政诉讼。

北京知识产权法院经审理认为,居然之家公司提交的产品的照片不能作为证明诉争商标使用的证据。同时,居然之家公司对相关证据进行重复使用,对其真实性不予确认。据此,法院一审判决撤销商评委作出的复审决定,并判令商评委重新作出决定。

居然之家公司不服一审判决,向北京市高级人民法院提出上诉。

经审理,北京市高级人民法院认为,爱尔多公司依据规定申请撤销诉争商标的注册有法律依据,居然之家公司关于爱尔多公司的申请撤销行为具有恶意的上诉理由没有法律依据。鉴于居然之家公司明确表示对于一审判决关于其提交的证据不能证明诉争商标于指定期间在核定商品上进行了有效使用的认定不持异议,法院对于一审判决的相关认定予以确认。

综上,北京市高级人民法院认为居然之家公司的上诉理由缺乏事实和法律依据,据此判决驳回其上诉,维持一审判决。



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