

China's IP  
in foreign eyes

China is emerging as a leader in the use of legal technology, as it seeks to modernise its justice system to address the country's shortage of skilled and experienced lawyers. According to new figures from Thomson Reuters, the number of patents related to legal technology, or "lawtech", filed globally has risen more than fourfold over the past five years, from 202 in 2013 to 933 last year. More than half — 51 percent — were filed in China last year, while 23 percent were filed in the US and 11 percent in South Korea. (China leads the way in legal technology patents, new figures show, Financial Times)

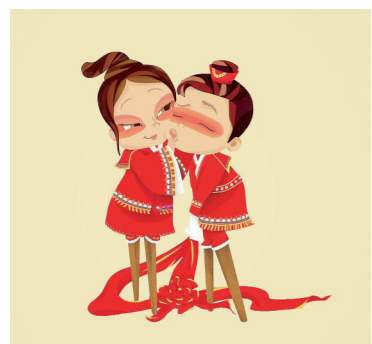
伴随中国寻求方法来解决专业律师不足的问题,以实现司法系统的现代化,这个国家也真正成为法律科技革新领域的领跑者。汤森路透最新数据显示,过去5年,全球法律科技领域相关专利的申请数量增加了3倍多,从2013年的202件增加至去年的933件。其中,51%是由中国提交的,美国提交数量占比23%,韩国提交数量占比11%。(中国成为法律科技领域专利申请的领跑者,金融时报)

## Comment:

China's leading position in filing application in "lawtech" sector proves its constantly improved IP creation capability. Through the operation of contract automation and other related patents, it is conducive for China to modernise its justice system, improve the efficiency of legal services and maximize the value of IPRs.

## 点评

中国在法律科技领域专利申请的领先证明了其知识产权创造能力不断提升。运用现代化的司法辅助技术,有利于中国更好地探索现代化司法裁判模式,提高法律服务效率,实现知识产权价值最大化。



Centuries-old tradition: China's stilt. For centuries it be present at major events including New Year celebrations, important birthdays and funerals. But as China modernizes, the stilt walkers are facing a new challenge: keeping their audience interested. So troupes has gradually been working on some new moves, and for inspiration they looked to the Internet. They got this new style from these videos online showing street dance moves. (China's street-dancing stilt walkers risk safety in exchange for thrills, CNN)

中国高跷有着数百年的历史。几百年来,它出现在各种重大活动中,包括新年、寿诞和葬礼。但随着中国不断推进现代化,高跷的表演者们正面临新的挑战:迎合观众的兴趣。如今,表演团队开始在互联网上寻找灵感,研究一些新动作,创造用高跷表演街舞动作的新艺术形式。(中国街头高跷表演者的惊险挑战,美国有线电视新闻网)

## Comment:

Innovation makes Chinese traditional cultures more dynamic. In a bid to keep national culture alive, Chinese folk artists explore the integration of Stilt Art and Pop Dance through Internet and stick to cultural inheritance and innovation during the inheritance of Chinese Stilt.

## 点评

创新让中国传统文化更具活力。在中国高跷艺术的传承和发展过程中,中国民间艺人通过互联网获取资讯,尝试将高跷艺术与潮流舞蹈融合在一起,坚持文化传承与创新并举,让民族文化绵延不断。(刘娜)

## China's IP Protection Measures to Improve Business Environment

## 中国知识产权保护制度日臻完善

As shown by statistics from China National Intellectual Property Administration (CNIPA), 148,000 invention patent applications from foreign applicants were received in 2018, up 9.1%. Foreign applicants filed 244,000 trademark registration applications, up 16.5%. "At present, the improved IP system and strengthened IP protection are providing close protection to IPRs of foreign enterprises in China, vigorously boosting technological communication and cooperation between Chinese and foreign businesses," a principal from CNIPA's Strategic Planning Department said.

In recent years, relevant laws and regulations concerning IP protection have been fine-tuned. China is advancing the fourth top-to-bottom revision of the Patent Law, focusing on the pressing issues encountered during patent protection and utilization in recent years. On December, 2018, the Standing Committee of the National People's Congress (NPC) completed the initial deliberation of the revision draft. One of the highlights is installing punitive damages to elevate the cost of infractions. During the same month, 38 central government agencies of China together issued the Memorandum of Cooperation on Joint Punishment on Seriously Dishonest Parties

in the IP (Patent) Field, setting up the punishment mechanism for those exercising serious breach of trust in the patent field and strengthening oversight during and after the event.

On January 1st, 2019, IP Tribunal under the Supreme People's Court was founded in Beijing, establishing the national-level trial mechanism for IP appeals. Since 2009, China has put in place 16 IP tribunals in Tianjin, Nanjing, Suzhou, Wuhan, Xi'an and other larger cities. In 2014, specialized IP courts were established in the top-tier cities including Beijing, Shanghai and Guangzhou, making responsible for IP cases from nearby areas. China has become the most prolific country in terms of trying IP cases, particularly patent cases, in the entire world, protecting the legitimate rights of both Chinese and foreign parties impartially in accordance with the law.

In parallel, China continues efforts in enabling administrative enforcement and judicial protection to complement each other and link with each other more efficiently. In 2018, IP authorities nationwide organized special trademark and patent law enforcement campaigns including "Suyuan (tracing the origin)" "Jinghua (purifying)" and "Leiting (thunder)", handling 77,000 patent infringement/counterfeit cases, up

15.9%; and 31,000 trademark law violations with proceeds of 550 million yuan. In 2018, China reestablished the CNIPA. Trademark and patent law enforcement were assumed by one market enforcement force, beefing up the strength of enforcement. To the end of 2018, there were 43 IPR protection centers and IPR rapid right enforcement centers. The general public was more satisfied with IP protection according to a census.

In the new age, China is striding toward the establishment of a sound business environment along with the rest of the world.

(By Yang Liu)

## 本报记者 杨柳

中国国家知识产权局公布的数据显示,2018年,国外在华发明专利申请量达到14.8万件,较上年增长9.1%;国外在华商标申请量为24.4万件,较上年增长16.5%。“当前,中国知识产权制度建设日益完善,知识产权保护力度不断加大,为国外企业在华的知识产权提供了有效保障,极大地促进了中外技术交流合作。”中国国家知识产权局战略规划司有关负责人表示。

近年来,中国知识产权保护相关法律法规不断完善。正在进行的专利法第四次修改,着眼于近年来专利保护和实施运用中存在的突出问题。2018年12月,全国人大常委会完



成对专利法修正案(草案)的首次审议,建立侵权惩罚性赔偿制度,提高侵权违法成本是此次修法重点之一。同样在2018年12月,中国38个部门和单位联合印发《关于对知识产权(专利)领域严重失信主体开展联合惩戒的合作备忘录》,建立了知识产权(专利)领域严重失信行为联合惩戒机制,强化事中事后监管。

2019年1月1日,中国最高人民法院知识产权法庭在北京揭牌成立,建立了国家层面的知识产权案件上诉审理机制。自2009年以来,中国共设立了天津、南京、苏州、武汉、西安等16个知识产权法庭。2014年,中国在北京、上海、广州设立了专门的知识产权法院,跨区域管辖专利等知识产权案件。据了解,中国已经成为世界上审理知识产权案件尤其是专利

案件最多的国家,依法平等保护中外当事人合法权益。

与此同时,中国不断完善行政保护和司法保护两条途径优势互补、有机衔接的知识产权保护模式。2018年中国组织开展“溯源”“净化”“雷霆”等商标、专利执法专项行动,查处专利侵权假冒案件7.7万件,同比增长15.9%;查处商标违法案件3.1万件,案值5.5亿元。2018年,中国重新组建国家知识产权局,商标、专利执法由市场监管综合执法队伍承担,执法力量得到整合与加强。截至2018年底,知识产权保护中心和快速维权中心达到43家,知识产权保护社会满意度进一步提升。

立足新时代,中国正与世界一道,在营造良好营商环境的道路上阔步前行。



## West Country Farmhouse Cheddar

## 西乡农场切德(奶酪)



West Country Farmhouse Cheddar is the cheese made from cow's milk with creamy yellow color, and in either a cylinder shape or in a block form. After natural ripening, it has a nutty, full and rounded flavor with a hint of sharpness. China has implemented the geographical indications products protection for West Country Farmhouse Cheddar since May 2011.

Since the fifteenth century, West

Country farmhouses have been famous for cheese manufacturing. West Country Farmhouse Cheddar may only be produced within the county boundaries of Dorset, Somerset, Devon and Cornwall in Britain. The milk used in the manufacture of the cheese predominately comes from cows raised by cheese producers and cows raised on farms in designated area.

West Country Farmhouse Cheddar is still produced according to the original

method using the skills and traditions handed on in the area. The starter culture and chymosin were added to the milk. After coagulation, the clotted milk and whey were separated. The clotted milk was manually turned over, stacked and chopped. Then the clotted milk was fully mixed with salt and pressed into a mould. The pressed cheese needs to be sealed and packaged, and the maturity period of fermentation needs more than nine

months. (Courtesy of the IP Protection Department of CNIPA)

西乡农场切德(奶酪)由牛奶制成,呈乳黄色圆柱形或块状硬质,经自然成熟具有坚果风味,口味饱满。2011年5月起,中国对西乡农场切德(奶酪)实施地理标志产品保护。

自15世纪以来,英国西乡地区的农场以奶酪制作而闻名。西乡农场切德(奶酪)产自英国多塞特郡、萨默塞特郡、德文郡和康沃尔郡。用于制作西乡农场切德(奶酪)的牛奶主要

产自保护区区域内奶酪生产者自家饲养的奶牛和农场养殖的奶牛。

西乡农场切德(奶酪)的制作采用了当地传统制作方法和工艺。将发酵剂培养物和凝乳酶素加入到牛奶中,牛奶凝固后将凝乳块和乳清分离,人工翻转、堆砌、切碎凝乳块,再加盐充分拌匀,放入模具中压制成型。压制后的干酪需要密封包装,发酵成熟需要9个月以上。

(中国国家知识产权局知识产权保护司供稿)

## Trademark "ZARA" Gains Cross-Class Protection in China

## ZARA 商标在中国获跨类保护

No.9770523 "ZARA" trademark application was filed by one individual surnamed Pan for the trademark to be used on Class 43 services including restaurants and cafeterias. On August 18th, 2013, Inditex did not buy the decision for the opposition proceedings made by the Trademark Office (TMO) and sought a review at the former Trademark Review and Adjudication Board (TRAB). Inditex claimed that its "ZARA" trademark has been extensively registered in China and gains high popularity after long, wide use and promotion. The copying and imitation of the trademark in dispute would easily cause confusion, mislead the public and prejudice its interests. Inditex pleaded for enjoining the registration of the trademark in dispute. Pan argued that "ZARA" was not a group of exclusive Latin letters and many trademarks containing the name "ZARA" had been registered. Pan thought that the trademark in dispute does not constitute the similar marks used on the same or similar goods and the registration and use of the trademark in dispute would not violate the interests of Inditex.



The former TRAB held that the evidences provided by Inditex could prove the "ZARA" trademark had been familiar to the relevant consumers after long-time and extensive promotion before the application of the trademark in dispute. Considering that many international renowned designer brands in clothing and cosmetics tend to have products in multiple lines of industries, co-existence of the trademark in dispute and "ZARA" trademark would

broaden the protection scope for famous, creative and popular well-known trademarks registered in China so as to curb the act of selling goods by freeriding or hitting the edge ball.

第9770523号ZARA商标(下称被异议商标)由潘某提出商标注册申请,申请使用在第43类餐馆、自助餐吧等服务上。2013年8月18日,蒂则诺公司(下称蒂则诺公司)不服商标局此前作出的商标异议裁定,继而向原商评委提出商标异议复审申请。其认为"ZARA"商标已在中国大量注册,经长期宣传使用,具有较高知名度和影响力,被异议商标是对"ZARA"驰名商标的抄袭和攀仿,易误导相关公众,损害蒂则诺公司利益,请求不予核准被异议商标注册。潘某答辩认为,"ZARA"英文并非专属拉丁字母,且存在诸多含有该英文的商标获准注册,被异议商标与蒂则诺公司在先注册商标未构成使用在同一种或类似商品上的近似商标,因此,被异议商标的注册和使用不会侵犯蒂则诺公司的利益。

## Impact of the Case

In terms of the well-known trademarks in China used across multiple industries, the protection range should be adapted to its popularity. The case has

broaden the protection scope for famous, creative and popular well-known trademarks registered in China so as to curb the act of selling goods by freeriding or hitting the edge ball.

第9770523号ZARA商标(下称被异议商标)由潘某提出商标注册申请,申请使用在第43类餐馆、自助餐吧等服务上。2013年8月18日,蒂则诺公司(下称蒂则诺公司)不服商标局此前作出的商标异议裁定,继而向原商评委提出商标异议复审申请。其认为"ZARA"商标已在中国大量注册,经长期宣传使用,具有较高知名度和影响力,被异议商标是对"ZARA"驰名商标的抄袭和攀仿,易误导相关公众,损害蒂则诺公司利益,请求不予核准被异议商标注册。潘某答辩认为,"ZARA"英文并非专属拉丁字母,且存在诸多含有该英文的商标获准注册,被异议商标与蒂则诺公司在先注册商标未构成使用在同一种或类似商品上的近似商标,因此,被异议商标的注册和使用不会侵犯蒂则诺公司的利益。

原商评委经审理认为,申请人提交的证据可以证明在被异议商标申请注册前其"ZARA"商标已在中国进行了持续广泛的宣传,为相关消费者熟知。被异议商标"ZARA"与蒂则诺公

司在服装商品上具有较高知名度的"ZARA"商标完全相同,且国际上知名的服装、化妆品等品牌逐渐流行跨领域跨行业经营。若被异议商标与蒂则诺公司商标并存于市场,易导致相关消费者误认为其为同一市场主体提供的系列商标或商标之间存在特定关联,进而损害驰名商标所有人的利益,故被异议商标的申请注册已构成中国商标法第十三条第三款规定所禁止之情形。

## 借鉴意义:

对于已在中国注册的驰名商标,在跨类商品上确定其保护范围时,应注意与其驰名程度相适应。为制止他人恶意借驰名商标的声誉打擦边球、傍名牌,此案对于在中国已注册的知名度较高、独创性较强、为普通大众熟知的驰名商标,适度放宽了保护范围。



英文翻译	熊花平
Translator	Xiong Huaping
编辑	邹碧颖
Editor	Zou Biying