

China's IP
in foreign eyes

Although inventors in the United States filed more applications than in any other country, China looks set to take the top place this year or next, after a meteoric rise over the past quarter century. China had introduced an equivalent of the U.S. Bayh-Dole Act, ensuring that patents taken out on government-sponsored research were being used, which may have had an influence on Chinese universities' attitude towards commercialising their research. (Huawei leads Asian domination of U.S. patent applications in 2018, Reuters)

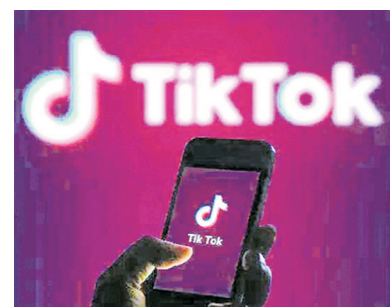
尽管美国发明人提交的PCT国际专利申请量位居全球首位,但从近25年的趋势看来,中国将在未来的一两年间取代美国的创新地位。中国已经采取了类似美国《拜杜法案》的政策措施,由政府推动专利转化实施,确保研究出来的专利能有效运用。这或将激励中国的高校更加积极地推动专利研究成果商业化。(华为引领2018年亚洲各国PCT国际专利申请,路透社)

Comment:

Chinese universities are benefited from the extremely strong emphasis on patents utilization and commercialisation driven by the government, playing a critical role in pushing China from the world's second largest country of patent applications to a real IP powerful house.

点评

当前,在政府的有力促进下,中国高校正积极推动专利的实施和市场化运作,推动中国由知识产权大国向知识产权强国迈进。



One of China's most valuable startups, which uses pop music for its flagship video app, could soon be in a tight spot as its licensing deals with music companies start expiring later this month, according to people with knowledge of the talks. ByteDance Ltd.'s TikTok and Douyin apps allow users to add snippets of music to their own videos—a process that depends on licenses from the three major music companies that collectively control about 80% of music globally. (Music Deals for ByteDance's TikTok and Douyin Are Close to Expiring, the Wall Street Journal)

由于和唱片公司达成的授权协议将于本月底时候陆续到期,中国高估值初创公司字节跳动可能很快面临困境,因为这家公司的主打产品TikTok和抖音这两个视频软件允许用户在自制的视频中添加流行音乐。这种使用方式使得该公司受制于掌控全球音乐市场大约80%份额的三大唱片公司,其需从后者手中获得版权方能正常使用。(字节跳动视频软件音乐版权将到期,华尔街日报)

Comment:

Many startups in China did not recognize the importance of copyright and other IPRs, which would affect the development of those companies directly. Chinese startups should pay more attention to IP to avoid risk in development.

点评

对许多初创公司而言,版权等知识产权的重要性往往没能得到正确认识,以致在公司发展壮大过程中出现掣肘。中国初创公司应加倍重视知识产权以御风险。(孙迪)

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China Inspires Innovation-Driven Ice-Snow Industry

中国企业:抢抓机遇做强“冰雪经济”

China shall implement brand strategies and develop a band of reputable, influential, competitive snow sports companies, according to the *Opinion on Taking 2022 Beijing Olympic Winter Games as Opportunity to Facilitate Snow Sports*, which was issued by the General Office of the CPC Central Committee and the State Council recently. Concerted efforts are also encouraged to be made to support companies to develop some high-tech snow sport products with self-reliant IPRs.

"Although China's snow industry started late, the success of winning the bid of the Winter Games has brought orders worth billions of yuan for snow-ice makers," said a relevant principal of Fujian Snowman Group. From 2004, the group started developing its own screw expander, and began to file patent applications mainly in the field of expander-compressors. "With the adjustment of our core business and strategic direction, we integrated our financial and patent strategy, dramatically improving our competitiveness and accelerating our development," said the principal.

Although the Games offer exciting possibilities for China's snow sport industry, Chinese companies cannot disregard their gap in essential technologies and patent portfolio with the industry leaders worldwide. Out of 44 brands analyzed by a third party during the 2018 Winter Games in Pyeongchang, only three are (Lining, Anta, 361°) from China. "The snow sports industry is greeted by a crucial strategic opportunity as more and more people participate in snow sports in China. The industry, however, is not strong in branding and exclusive strength," said Ding Shizhong, the President and CEO of Anta Group. "China shall innovate and develop ice-snow equipment manufacturing, and inspire growth of brands. In parallel, national standards compatible with the international ones shall be formulated to upgrade product quality and specifications," Ding suggests.

In fact, those experts' views coincidentally match the contents of *Opinion*, which aim to foster market players, implement brand strategy and build a number of sizable industry-concentrated areas, and develop a group

of powerful ice-snow businesses. As the Beijing Winter Olympics approaches, China's ice-snow industry is bound to flourish and grow a full industry chain, making great contributions to the leapfrog development of China's snow sports business. (by Cui Jingsi)

本报记者 崔静思

近日,中共中央办公厅、国务院办公厅印发了《关于以2022年北京冬奥会为契机大力发展冰雪运动的意见》(下称《意见》)。其中明确提出,实施品牌战略,发展一批具有较高知名度和影响力、市场竞争力较强的冰雪产业企业;同时还强调,支持企业开发科技含量高、拥有自主知识产权的冰雪运动产品。

"中国的冰雪产业起步较晚,但随着北京冬奥会的申办成功,一下子带来了数十亿元的造雪制冰设备需求,让国内制冰企业迎来了发展良机。"福建雪人股份有限公司有关负责人在接受本报记者采访时介绍,雪人股份自2004年起开始研发、制造螺杆膨胀机,其专利布局集中在各类膨胀压缩机及其相关设备上。"随着核心业务和企业战略方向的调整,雪人股份采取了资本战略实施与专利战略推进同步进行的策略,有效提升了

企业的核心竞争力,实现了快速发展。"该负责人说。

然而,在看到发展前景的同时,中国相关企业也需要正视在冰雪产业领域和国际领先厂商在核心技术和专利积累方面的实力差距。在2018年平昌冬奥会期间,根据第三方统计编制的《冬奥品牌价值榜》显示,在总共44个品牌中,中国只有李宁、安踏和361°三个品牌入围。安踏集团董事长兼CEO丁世忠在接受本报记者采访时表示,中国参与冰雪运动的人口持续稳步增长,冰雪产业发展进入非常关键的战略机遇期。但冰雪产业自主品牌较少,核心竞争力不足。丁世忠建议,中国要创新发展冰雪装备制造业,扶持拥有自主品牌的冰雪用品企业发展,同时还应结合相关国际技术标准,尽快针对性出台冰雪运动装备的国家

技术标准,提高产品质量和标准要求,支持冰雪运动装备自主品牌建设。

实际上,业界的这些观点也与此次印发的《意见》不谋而合。《意见》明确提出,积极培育市场主体,实施品牌战略,推动建立一批产业规模较大的冰雪产业集聚区,发展一批具有较高知名度和影响力、市场竞争力较强的冰雪产业企业。相信随着北京冬奥会的临近,以此次《意见》的印发为契机,中国的冰雪产业能够不断蓬勃发展,产业链日益完备,为实现中国冰雪经济的跨越式发展提供有力助力。



Dongting (Mountain) Biluochun Tea

洞庭(山)碧螺春茶

Dongting (Mountain) Biluochun Tea is a green tea produced in Dongting Mountain by Taihu Lake in Suzhou City of Jiangsu Province, which is made from the tender shoots and leaves of traditional tea trees by unique process. It has the characteristics of fine, curly, snail-like, long-lasting tender fragrance, delicious taste and sweet aftertaste.

Dongting Mountain belongs to the north subtropical temperate monsoon

climate zone. It is located in the hilly and mountainous areas of Western Suzhou. Affected by the Taihu Lake and its surrounding terrain, it is warm and humid with distinct seasons. There has high content of organic matter and phosphorus in the soil, which is suitable for tea cultivation. Tea-fruit intercropping is the characteristic cultivation method of Biluochun Tea. Tea trees are the main plant in tea garden. The coverage rate of intercropping is

25% - 35% of the woods and fruit trees.

The picking time of fresh leaves of Dongting (Mountain) Biluochun Tea is from the spring equinox to the grain rain. The unique color, fragrance, taste and shape style of Biluochun Spring is formed by picking fresh leaves, tea green removing at high temperature, hot kneading and shaping, rubbing pellets and drying with gentle fire.

(Courtesy of the IP Protection Department of CNIPA)

洞庭(山)碧螺春茶产于江苏省苏州市太湖洞庭山,是采自传统品种茶树的幼嫩芽叶,经独特工艺加工而成的绿茶,具有纤细多毫、卷曲呈螺、嫩香持久、滋味鲜醇、回味甘甜的品质特征。

洞庭山属北亚热带湿润季风气候带,位于苏州西部丘陵山区,受太湖及周边地形影响,温暖湿润,四季分明,土壤中有有机质、磷含量较高,适宜茶树栽培。茶果间作是碧螺春茶的特色栽培方式,茶园中以茶树为



主,嵌种覆盖率达25%-35%的林木和果树。

洞庭(山)碧螺春茶鲜叶采摘时间为春分前后至谷雨,经过鲜叶拣剔、高温杀青、热揉成形、搓团显毫、文火干燥等工序制成,形成碧螺春色、香、味、形俱美的独特风格。

(中国国家知识产权局知识产权保护司供稿)

BMW Knocks Local Candy Maker Off Free-ride of Trademark

宝马在华成功阻止商标“搭车”

The German company BMW had a rift with Guangdong Tianma Fruit Drinking Company over the 宝马 trademark (note: Chinese translation of BMW). Beijing High People's Court made the decision recently.

The court of final-instance held that the No.6115886 宝马 trademark (trademark in dispute) of Tianma company constituted similarity with BMW's No.673219 BMW and its figure and No.663925 BMW trademark (cited trademark) when used on the same or similar products. In this connection, the court revoked the decision upholding the registration of the trademark in dispute made by the Trademark Review and Adjudication Board (TRAB) and asked TRAB to revisit the case.

The trademark in dispute was filed for registration by Tianma company in June 2007, and would be certified to be used on Class 30 products including chocolate and sweets in January 2010.

In April 2014, BMW filed for revocation of the trademark in dispute, alleging that trademark has diluted the famous 宝马 and BMW trademark used on automobiles. In parallel, the trademark constituted similarity with its prior cited trademarks when used on the same or similar product. In addition, the trademark in dispute also infringes the trade name of BMW and its subsidiaries in China. Tianma copies and imi-

tates the trademark of BMW in bad faith.

After examination, TRAB made a decision in April 2015, claiming that the trademark in dispute did not constitute similarity with cited trademark when used on the same or similar product. The trademark in dispute did not copy, imitate and translate the trademark of BMW, which did not impair the right of well-known mark status nor damage the prior trade name of BMW. In this connection, the TRAB upheld the registration of trademark in dispute. BMW then brought the case to Beijing IP Court.

After examination, Beijing IP Court held that the trademark in dispute constituted similarity with cited trademark when used on the same or similar product, and it was not necessary to invoke the well-known mark provision in the Chinese Trademark Law. So the Court revoked the TRAB decision made in its first instance ruling, and ordered TRAB to make a new decision. TRAB then brought the case to Beijing High People's Court.

The Court held that the BMW trademark has enjoyed reputation among the relevant public, and some people has recognized BMW as 宝马 in China, so if both the trademarks appeared in the market, it may cause confusion among the public about the origin of



product with those trademarks, or can be easily mistaken for there was some certain relationship with the providers, which constituted similarity when used on the same or similar product. There was no need to invoke the provision on protection of well-known mark. In this connection, the Court affirmed the judgment. (by Wang Guohao)

围绕着“宝马”二字,德国“宝马”与中国“天马”产生了一场纠葛。近日,随着北京市高级人民法院终审判决的作出,双方纷争告一段落。

北京市高级人民法院认为,广东天马果业有限公司(下称天马公司)的第6115886号“宝马”商标(下称诉争商标)与德国宝马股份公司(下称宝马公司)的国际注册第673219号“BMW及图”商标及国际注册第663925号“BMW”商标(下称引证

商标)构成使用在相同或类似商品上的近似商标。至此,原商标评审委员会(下称原商标评审委)对诉争商标予以维持的裁定被撤销,而且需针对宝马公司就诉争商标所提无效宣告请求重新作出裁定。

据了解,诉争商标由天马公司于2007年6月提出注册申请,2010年1月被核准注册使用在巧克力、糖果等第30类商品上。

2014年4月,宝马公司针对诉争商标向原商标评审委提出撤销申请,主张诉争商标系对其注册在汽车等商品上的驰名商标“宝马”与“BMW”的淡化,而且诉争商标与其在先注册的引证商标构成使用在相同或类似商品上的近似商标;同时,诉争商标还侵犯了宝马公司及其在华子公司的商号权,天马公司具有抄袭和摹仿宝马公司的主观恶意。

经审查,原商标评审委于2015年4月作出无效宣告请求裁定认为,诉争商标与引证商标不构成使用在相同或类似商品上的近似商标,诉争商标不构成对宝马公司商标的恶意复制、摹仿和翻译,不致损害宝马公司的驰名商标权益,未损害宝马公司的在先商号权。据此,原商标评审委裁定对诉争商标予以维持。宝马公司不服原商标评审委所作裁定,随后向法院提起行政诉讼。

北京知识产权法院经审理认为,诉争商标与引证商标构成使用在相同或类似商品上的近似商标,该案没有适用中国商标法中驰名商标条款的必要。据此,法院一审判决撤销原商标评审委所作裁定,并判令原商标评审委重新作出裁定。原商标评审委不服一审判决,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,宝马公司的“BMW”商标在相关公众中已经具有一定的知名度,在中国相关公众中“BMW”已经与“宝马”之间建立对应关系,诉争商标与引证商标共存于市场上,容易使相关公众对其标识的商品来源产生混淆或者误认为其提供者之间存在特定联系,构成使用在相同或类似商品上的近似商标,故无需另行适用中国商标法中有关驰名商标保护的规定。据此,法院判决驳回原商标评审委上诉,维持一审判决。(王国浩)

