

China's IP  
in foreign eyes

All over Africa, in its clogged cities and fast-changing towns and villages, buildings are painted in Tecno blue and billboards offer the allure of the Tecno brand. What is Tecno, you may ask? Tecno is an Africa-specific brand created by Transsion, a Shenzhen-based handset manufacturer. Last year, Transsion sold more than 100m handsets. (*China is cornering Africa's e-commerce market, by Financial Times*)

在非洲各地,无论是拥堵的城市还是快速变化的乡镇村庄,许多建筑都被涂成“TECNO蓝”,广告牌上也展示的是TECNO品牌的广告。这也是总部位于深圳的手机制造商传音打造的一个专门面向非洲的品牌。去年,传音手机在非洲的销量超过1亿部。(中国正在“围拢”非洲电商市场,金融时报)

## Comment:

In recent years, the number of patent infringement affairs of Chinese companies has shown obviously ascending trend in their push abroad. So they should build up the patent portfolio according to their own business and beef up IP protection.

## 点评

近年来,随着中国企业“走出去”步伐加快,知识产权纠纷也越来越多。企业在走向国门的同时要做好知识产权布局,加强知识产权保护。



The evolving nature of China's biotech industry, especially when it comes to the "biologic" drugs has become a hotbed of cancer therapy innovation. About half of the biggest, global biopharma IPOs last year occurred in China. This presents a major shift for China. In the past, China, traditionally, had been much more focused on the generic market. That's changing. They want to go from becoming just a manufacturer to a true innovator. (*How China Is Transforming the Biotech Industry: Brainstorm Health, by Fortune*)

中国生物科技产业正在不断发展,特别是在已成为癌症疗法创新温床的生物医药领域。去年,全球最大规模的生物医药首次公开募股(IPO)有一半左右都发生在中国。这代表中国的生物医药产业正发生重大改变。过去,中国更专注于仿制药市场,但这种情况正在改变。中国希望从单纯的药品制造国转变为真正的药品创新者。(中国正如何改变生物科技产业,财富)

## Comment:

Chinese companies must attach importance to patent protection, so as to achieve breakthrough in biotechnology sector, which not only gives a good protection for IPR-reliant products, but also effectively competes with domestic and foreign competitors.

## 点评

中国在生物科技领域要实现突破,重视专利保护必不可少,这不仅对自主研发产品形成了良好保护,也对国内外竞争对手实现有效抗衡。(李倩)

Shanghai tightens screw on IP protection as Import Expo nears  
第二届进博会知识产权保护工作有力推进

"China's door will never be closed. It will only open wider." At the first China International Import Expo (CIIE) a year ago, the keynote speech delivered by President Xi Jinping displayed China's confidence and conviction in further opening-up to the world.

Over the past year, relevant government agencies in Shanghai have reinforced advanced IP protection even by international standard relying on the best practices gained at the inaugural CIIE. Member units of the Shanghai IP Joint Committee strengthened coordination and allocation of duties, protecting IPRs at all possible angles. Since its launch on August 1, the 100-day IPR protection campaign for the second CIIE has borne fruit. Enforcement agencies on the citywide aggressively cracked down on all types of IP infringements and prepared on-site services and relevant logistics in great detail, fostering a sound climate for IP protection in Shanghai.

Since August 1, the city has investigated and handled 151 trademark infringement cases, imposed over 1.2 million yuan in fines, transferred one case to police, and handled two cases of faking patent identity; inspected 23

geographical indications (GIs) and GI products; inspected market over 600 vendors/times.

Per Rui Wenbiao, Director General of Shanghai Intellectual Property Office (SHIPO), Shanghai is running the Operation Iron Fist 2019 featuring IPR enforcement, reinforcing efforts to handle patent infringement cases in which foreign and private enterprises are involved, gathering efforts in coordinating enforcement in e-commerce, synchronize enforcement online and offline and delivering heavy blows to severe patent infringements. Meanwhile, SHIPO has strengthened guidance and training to elevate the versatility of law enforcement officials and intensified protection of CIIE-related key trademarks and commodities in major parts and fields, imposed hard sanctions against trademark infringements, enhanced the standardized use of special marks of GI products and struck hard blows to using the name, logo and mascot Jinbao of the Expo without permission and selling fake CIIE merchandises and other IP violations.

Shanghai has paved an expressway of IP protection for Chinese and foreign exhibitors and purchasers from afar in the midst of attacking IP in-

fringements. During the Expo, SHIPO will open an IP service window to fast-track review of patents relating to exhibited merchandises; Shanghai Customs will establish a special two-level window at the main import-export ports and the CIIE to meet enterprises' requirements of going through customs and safeguarding legal rights specially and directly; Procuratorates in Shanghai will set up a task force to specially manage the IP-related cases and carry out special litigation supervision on criminal cases related to CIIE. Many measures have been made to build an IP environment with legal, stringent, fast and equal protection for businesses and customers and merchants from home and abroad.

CIIE is not just a six-day fad but a long-term work in progress of China to face the world and future and facilitate common development in 365 days. The second CIIE will flourish in Shanghai in just about 20 days. An open China with sound business environment will be presented to the world once again. (by Sun Di/Nie Li)

本报记者 孙迪 通讯员 聂莉

"中国开放的大门不会关闭,只会

越开越大。”一年前的首届中国国际进口博览会(下称进博会)上,习近平主席的主旨演讲掷地有声,向世界展示了高水平开放的中国进一步开放的底气与信念。

一年来,上海各界在坚持首届进博会好做法的基础上,加强国际高标准知识产权保护。上海市知识产权联席会议各成员单位加强分工协作,履职尽责、各守一方,全方位开展知识产权保护工作。自8月1日第二届进博会知识产权保护百日行动启动以来,已取得了阶段性成果,全市各单位严厉打击各类侵犯知识产权违法行为,积极筹备进博会期间的驻点服务和保障工作,营造了上海知识产权保护良好氛围。

8月1日以来,上海市共查处商标侵权案件151件,罚款120万余元,移送公安案件1件,查处假冒专利案件2件;检查地理标志及地理标志产品23件;检查市场600余户次。

上海市知识产权局局长芮文彪介绍,上海有序开展2019年知识产权执法“铁拳”行动,加大涉外、涉民营企业专利侵权纠纷办案力度,突出建立电子商务领域执法维权协作调度工作机制,推进线上线下一体化整治,保持对情节严重专利侵权行为的“高压打击态势”。同时,上海市知识产权局加强指导培训,提升人员综合执法能力,强化对涉进博会重点商标、

重点商品、重点环节、重点领域的整治保护,严厉查处商标违法行为,强化地理标志产品专用标志规范使用,严厉打击未经许可擅自使用进博会名称、标识、吉祥物“进宝”,销售假冒进博会特许商品和其它侵犯知识产权的违法行为。

上海各单位在让各类侵犯知识产权行为“无路可走”的同时,也为远道而来的中外参展商、采购商铺就了知识产权保护保护的“高速公路”。上海市知识产权局将在第二届进博会期间,开设进博会知识产权服务窗口,受理参展商品专利优先审查服务;上海海关在各主要进出口口岸和进博会展会设立二级进博会服务专窗,专人专岗面对面对接企业的通关和维权需求;上海市检察院设立进博会检察官办案组,对进博会知识产权案件采用专门标识、专门报送、优先处理一体化模式,开展涉进博会刑事案件专项诉讼监督……各单位多措并举,努力为全国企业和客商构筑依法保护、严格保护、快速保护、平等保护的知识产权环境。

进博会不是6天的一时火爆,而是中国365天面向世界、面向未来、促进共同发展的长远考量。再过20天,第二届进博会将在上海华丽绽放,再一次向世界展示一个开放的中国,营商环境好山好水好风光,开放共赢条条大路都宽敞。



## Gannan Navel Orange

## 赣南脐橙



Ganzhou in Jiangxi is located south to the subtropical zone, featuring a typical subtropical moist climate. The warm weather, abundant rainfall, and distinctive seasons provide ideal growing conditions for navel oranges. The gentle slope with deep and fertile soil that is rich of a variety of trace elements is conducive to grow fruit plants.

Gannan navel orange is characteristic of large-sized fruit, orange to orange-red bright color, clean and beautiful, succulent taste, strong sweet aroma and seedless. The edible rate of Gannan navel orange is not less than 70%.

The annual output of Gannan navel oranges reaches millions of tons. Ganzhou has become the first largest navel orange planting area in the world, the

third largest navel orange producing area in the world and the largest navel orange producing area in China. Gannan navel orange will be picked on November 6, 2019. The implementation of geographical indication product protection has strongly promoted the sustained, rapid and healthy development of Gannan navel orange industry. (Courtesy of the IP Protection De-

partment of CNIPA)

江西赣州地处中亚热带南缘,属典型亚热带湿润气候,四季分明,雨热同季,适合脐橙生长。赣南丘陵山地坡度平缓,土层深厚,土壤肥沃,富含果树生长的微量元素。

赣南脐橙的特点包括:果大形正,橙至橙红色,色泽鲜艳,光洁美观,肉质脆嫩化渣,浓甜芳香,无籽,可食率不低于70%。

据统计,赣南脐橙年产量达百万吨,赣州市已成为脐橙种植面积世界第一、年产量世界第三、中国最大的脐橙主产区。2019年赣南脐橙将于11月6日开始采摘,实施地理标志产品保护有力地推进了赣南脐橙业的持续、快速、健康发展。(中国国家知识产权局知识产权保护司供稿)

Fischertechnik prevails in copyright case though established models fail work test  
德国一公司在华赢得知识产权纠纷案

Shanghai IP Court recently made a final ruling on a copyright infringement and unfair competition case between the Germany-based Fischertechnik GmbH Company and Shanghai Dongfang Training Aid Company/Shanghai Yaxun Intelligent Robot Company, ordering the two defendants to cease infringing copyright of Fischertechnik's figure works and 30 model works. In parallel, the Court also awarded 500,000 yuan in damages, the maximum amount of statutory damages under the Chinese Copyright Law.

The Fischertechnik Model which contains various kinds of components was launched to the market in January 2004 by Fischertechnik GmbH, one of the members of Fischer Group. Fischertechnik GmbH held that the established 30 drawings of static models and 102 components and assemble steps in installation manual can be deemed as sketches protected by the Chinese Copyright Law, while the established 30 static models can be deemed as three-dimensional works.

Fischertechnik GmbH found that the creative model-a combination of structural and mechanical principle produced by the two defendants was an utter imitation of Fischertechnik GmbH's model, violating its authorship right, reproduction right and publication right. Fischertechnik then sought an injunc-

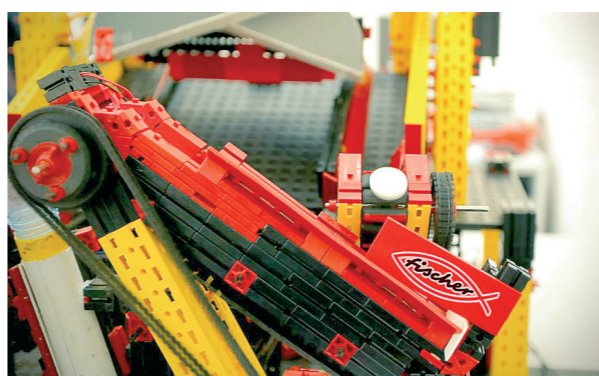
tion and damages of one million yuan.

The two defendants argued that drawings of the static models, components and assembly steps of Fischertechnik's model was limited in expression, which can not be protected by the law. The 30 established static models were just intermediate processes, but not three-dimensional works. So no infringement was constituted.

The Court of first-instance held that the drawings of the static models, components and assemble steps can be deemed as figure work, while the static model can not be regarded as work. Consequently the Court ordered an injunction and 160,000 yuan in damages.

The disgruntled Fischertechnik GmbH then brought the case to Shanghai IP Court.

"There are two controversies in the case. The first is whether the established static model deemed as model work. The second is whether the products in question distributed by the two defendants infringed the copyright of 30 model works," said the presiding judge Shang Jiangang. The Court of first instance held that it can not be deemed as work because the three-dimensional model has not come into shape. In this case, the three-dimen-



sional shape can be deemed as model work, but not art work or three-dimensional work. Although the two defendants did not copy the model works directly, they used the copyright in producing and distribution of products in question. In this regard, they violate the copyright of the right holder. In this connection, the IP Court made the above final decision. (by Sun Fanghua/Chen Yingying)

本报记者 孙芳华

通讯员 陈颖颖

近日,上海知识产权法院对费希尔技术有限公司(下称费希尔技术公司)起诉上海东方教具有限公司(下称东方教具公司)、上海雅讯智能机器人科技有限公司(下称雅讯科技公司)侵犯著作权及不正当竞争纠纷上诉案作出终审判决,在一审法院判令二被告立即停止侵犯费希尔技术公司享有的

涉案图形作品著作权的基础上,还判令二被告应立即停止侵犯涉案30种模型作品著作权。此外,二审法院还提高了赔偿金额,按著作权法定赔偿的上限,顶格判令二被告共同赔偿原告经济损失等50万余元。

费希尔技术公司系德国慧鱼集团旗下成员之一,于2004年1月推出了慧鱼创意组合模型(下称权利商品),该权利商品内含多种拼装组件。费希尔技术公司认为,内附的安装说明书中载有已搭建完成的30种静态模型展示图样以及102幅拼装步骤图及组件拼装示意图,构成著作权法规定的示意图,而搭建完成的30种静态立体造型构成立体作品。

费希尔技术公司发现,东方教具公司与雅讯科技公司共同生产并对外销售“创意组合模型-结构与机械原理组合”(下称涉案商品),涉案商品完全模仿并抄袭了权利商品,涉嫌侵犯了费希尔技术公司享有的署名权、复制权及发行权等。于是,费希尔技术公司将两家公司共同起诉至法院,并索赔100万元。

二被告共同辩称,权利商品静态模型展示图样、拼装组件展示图例和组件拼装步骤图,其表达形式非常有限,不应受著作权法保护。费希尔技术公司所主张权利的30种搭建完成的静态模型仅仅是一个中间过程,并非立体作品,无法获得著作权法的

保护,故不构成侵权。

一审法院审理后认为,涉案静态模型展示图、拼装组件展示图及组件拼装步骤图构成图形作品,而静态模型不构成作品。其次,涉案静态模型侵权行为的认定,并非美术作品或立体作品。最后,被控侵权人虽然自己没有直接复制模型作品,但是其在商业性制造、销售被控商品的过程中行使了著作权人对模型作品的复制权,因此,二被告侵犯了著作权人对模型作品的复制权。综上,二审法院对一审判决部分内容进行了改判。

一审判决后,费希尔技术公司不服,向上海知识产权法院提起上诉。

“该案有两大争议焦点:一是搭建完成状态下的立体静态模型是否属于模型作品;二是两被告对外提供涉案商品是否侵犯涉案30种模型作品的著作权。”该案主审法官商建刚对本报记者表示,首先,一审法院认为,立体造型没有搭建完成,因此尚未构成作品。其次,涉案认定立体造型构成模型作品,而非美术作品或立体作品。最后,被控侵权人虽然自己没有直接复制模型作品,但是其在商业性制造、销售被控商品的过程中行使了著作权人对模型作品的复制权,因此,二被告侵犯了著作权人对模型作品的复制权。综上,二审法院对一审判决部分内容进行了改判。



英文翻译 柳鹏

Translator Liu Peng

责任编辑 李倩

Executive Editor Li Qian