

China's IP
in foreign eyes

In coronavirus-hit China, demand for virtual office tools from Alibaba and Tencent is surging as the world's largest work-from-home experiment gets into full swing. Alibaba's DingTalk is the most download free app in China's iOS App store, followed by Tencent Conference. DingTalk has been particularly swift in spotting the emerging need in the education sector. Last week, it rolled out a slew of new features for classroom settings, including live-streaming lessons that can have as many as 302 participants and an online testing and grading system. (Tencent, Alibaba Apps Find Fans in Virus-Affected Schools, Bloomberg)

日前,新型冠状病毒在中国的爆发使家庭办公模式全面铺开,人们对阿里巴巴与腾讯开发的虚拟办公工具的需求日益增长。在中国的手机应用商店中,阿里巴巴的智能移动办公平台钉钉是下载量最多的免费软件,紧随其后的网络课程、在线测试以及评分系统等。(腾讯、阿里巴巴推出云办公助力学校战疫,彭博社)

Comment:

Tencent and Alibaba have in past years steadily built out their office apps with self-independent IP. The development of the office apps will help to fight against the virus in China's Schools.

点评

近年来,腾讯与阿里巴巴一直致力于研发具有自主知识产权的办公软件。这些办公软件的开发将有助于减少此次疫情对中国学校的影响。



The Great Ruler, a drama currently being released by iQIYI, has achieved domestic and international acclaim following its premiere on January 30, adding to the string of success achieved by its comic and animation counterparts. The novel itself has developed a substantial fanbase as it has regularly topped Baidu's online novel rankings since its publication. IQIYI has created IP-based franchise around it by adapting it into an original drama series, a comic series and an animation series. (iQIYI Original Drama Series "The Great Ruler" Release Met with Acclaim in Overseas and Domestic Markets, PR Newswire)

自1月30日开播以来,爱奇艺的电视剧《北灵少年志之大主宰》受到了海内外观众的一致好评。这是其原著小说以喜剧、动画形式改编后取得的又一成功。该小说自发行以来多次在百度线上小说排行榜中夺得榜首。爱奇艺购买了小说的版权,将其改编成原创电视剧、喜剧以及动画片。(爱奇艺原创电视剧《北灵少年志之大主宰》受海内外观众认可,美通社)

Comment:

IQIYI is committed to the development of its IP supply chain through its capabilities in animation, comics and etc. Going forward, IQIYI will continue releasing more IP-based works to help unleash the full potential of creative IPs based on the success of the drama.

点评

依靠在打造动画、喜剧等方面的优势,爱奇艺一直致力于开发版权供应链。凭借相关小说版权的成功开发,相信爱奇艺未来将播放更多优秀版权作品,助力创新作品释放更大潜力。(熊花平)

FICPI Ex-President: China's IP system to improve at its current pace

“中国知识产权制度不断完善”

——访国际知识产权律师联合会前会长巴斯蒂亚·科斯特

Recently, the former President of the Bureau of Federation of International IP Attorneys (FICPI) Bastiaan Koster shared comments on China's IP protection in an interview with China Intellectual Property News.

According to him, IP was his connection to China. His experience with China dated back to 2009 when he visited the country for the first time. At the time he was involved in FICPI. In the five years to follow, every year he joined the FICPI delegation to the meeting with the then State Intellectual Property Office of China. During the period 2012 to 2015, he served as President of FICPI. "During this period, I could see how the IP system was continuously improved and that much thinking went into how to do in best in such a large country like China. I noticed during these meetings with All-China Patent Agents Association and also engaging with Chinese patent and trademark attorneys professionally is the rapid increase in quality and depth in Chinese IP firms," said Koster.

"Having an IP system that is developing as fast and to the magnitude of the IP system in China is obviously not easy and comes with challenges. One of the issues is to maintain the balance between output (number of filings) and quality," said Koster. "In view of the strong economy in China there is a huge demand for patents and trademarks. Another challenge is education for individuals and companies as to the role of IP. I believe every company should have a thorough understanding what the end goals are of having IP rights and an IP portfolio."

In Koster's eyes, many people have no idea about IP system in China. When he tells them that China has one

of the most sophisticated IP Offices and files the most patents and trademarks in the world, it came as a surprise to them. To process the large number of patents, utility patents and trademarks annually being filed in China is no easy task. Starting with having sufficient IP attorneys, enabling IP firms, having a very strong administrative system to deal with IP applications and a strong Court system to deal with enforcement. The government of China has done an excellent job to ensure that the rapid growth in the IP system takes place at all levels. In his experience China is one of the few countries having judicial enforcement measures for IP infringement. He therefore believes that the negative comments some people hear about the IP system in China is often based on incorrect perceptions and not on facts.

"Given the success story of the IP system in China and the very short time it was obtained, I am confident that the IP system will continue to improve at its current pace. The rest of the world can be assured that their IP rights will be well protected and enforceable in China," according to Koster.

(by Liu Peng / Xiong Huaping)

日前,国际知识产权律师联合会前会长巴斯蒂亚·科斯特接受了中国知识产权报记者专访,就中国知识产权保护发表了一些看法。

在科斯特看来,知识产权是连接他与中国的一条纽带。2009年,他跟随国际知识产权律师联合会代表团第一次来到中国,访问了中国国家知识产权局。在之后的5年里,他每年都会访问中国国家知识产权局。2012年至2015年,他成为国际知识产权律师联合会会长。“在这段时间里,中国知识产权制度不断得到改善,我也

看到了,在中国如此大的国家,知识产权要做得这么好,需要花很多心思。在与中华全国专利代理人协会的交流中,我深切地感受到,中国知识产权代理机构在服务质量 and 深度上都有了迅速提升。”科斯特说。

“中国知识产权制度在快速发展的同时,也面临着一些挑战。如何维持专利申请数量与质量之间的平衡就是挑战之一。”科斯特说,“鉴于中国繁荣的经济,其本身就需大量的专利和商标等知识产权。此外,如何提升社会公众以及企业的知识产权意识也是中国面临的挑战。中国企业也需要了解自己拥有知识产权以及进行知识产权布局的最终目的是什么。”

科斯特说,一些人对中国知识产权制度最新发展还缺乏了解。当他介绍中国拥有世界最成熟的知识产权行政机构和全球最多的专利商标申请量时,这些人感到非常不可思议。每年对大量专利申请以及商标注册申请进行审查不是一件易事。但是,中国已经拥有数量充足的代理机构以及行之有效的行政体制来应对知识产权申请数量日益增长的挑战。同时,中国也建立了强大的司法体系来保障执法。可以说,中国已经努力确保知识产权制度在社会各层面得到实施。科斯特说,在他印象中,中国是为数不多的对知识产权侵权行为采取司法强制措施的国家之一。在他看来,国际上关于中国知识产权制度方面的负面评价通常是基于错误的认知,并非基于客观事实。

“鉴于中国知识产权制度的成功实践及其在较短时间内取得的显著成绩,我相信中国知识产权制度在未来仍将得到不断的完善。全球知识产权权利人可以确信,他们的知识产权在中国将获得很好的保护和有效的实施。”科斯特表示。

(柳鹏 熊花平)



Bastiaan Koster is an accomplished patent attorney and trade mark practitioner. As past president of the International Federation of Intellectual Property Attorneys (FICPI) and the South African Institute of Intellectual Property Law (SAIPL), he brings significant experience to the table. Bastiaan is the partner responsible for the day-to-day management of Von Seidels, a boutique intellectual property law firm based in Cape Town, South Africa. He is also in charge of the department in the firm responsible for filing patent applications in South Africa which emanate from overseas applicants.

Bastiaan's formal training in electronic engineering (pre-law), coupled with extensive experience in matters relating to Plant Breeders' Rights, has stood him in good stead when it comes to understanding and working with matters of a broad technical nature and their integration with commercial issues.

Taken together with his natural acumen for the law and his noteworthy experience in IP registration, administration, enforcement and litigation, Bastiaan's approach makes him a highly qualified member and much-valued partner in the Von Seidels team.

Due to Bastiaan's comprehensive experience in intellectual property matters, he consults with a wide range of clients on the strategic management of their intellectual property portfolios. In his long-standing involvement in FICPI, he has acquired a deep understanding of current global IP issues.

巴斯蒂亚·科斯特是一位优秀的专利律师、商标代理人。他曾担任国际知识产权律师联合会及南非知识产权法协会会长,为知识产权领域贡献了宝贵的经验。现在,他是南非开普敦冯·塞德尔知识产权法律事务所的合伙人,主要负责该事务所日常事务的管理。同时,他也在该事务所负责代理来自世界各地的专利申请业务。

科斯特曾经接受过电子工程(法律预科)培训,他在处理植物育种者权利相关事宜方面有着丰富的经验,也擅于处理技术与商业结合的问题。

在法律方面,科斯特拥有一双敏锐的“慧眼”,他在知识产权申请、管理、执法、诉讼方面拥有宝贵的经验,这些优势使他成为冯·塞德尔事务所团队中资历深厚的一位重量级成员。

由于在处理知识产权事宜方面拥有丰富的阅历,科斯特曾经为很多专利代理人讲授了他在知识产权布局策略管理方面的专业知识。在国际知识产权律师协会的长期任职,也使科斯特对当今全球性的知识产权问题具有深刻的见解。

Beijing High rejects Novartis' TM registration of "Alcon"

瑞士诺华有限公司申请注册“Alcon”商标未果

Novartis' final hope of registering its No.22991917 "Alcon" trademark (trademark in dispute) dimmed recently. Filed on March 20, 2017, requesting certified to be used on Class 9 goods including contact lens, the Swiss firm's application would later be denied by the former Trademark Office of the State Administration for Industry and Commerce (TMO) on the grounds of its similarity with No. 4875585 trademark "Aicon" (reference trademark).

Novartis then pled for a review at the former Trademark Review and Adjudication Board (TRAB), also under the former SAIC, arguing that the trademark in dispute and the reference trademark are not similar and are not used on the same or similar goods; the trademark in dispute has laid claim to a certain amount of reputation, and its co-existence with the reference trademark does not cause confusion and misidentification among consumers; other trademarks in similar cases have been approved for registration; the reference trademark is pending revocation, making itself vulnerable.

On August 15, 2018, the former TRAB decided that, as of the trial, the reference trademark had still been valid; the trademark in dispute and the reference trademark were similar in calling, letter composition among other things, making them similar trademarks used on the same or similar

products, in this case, glasses and contact lenses; the evidence submitted by Novartis was not sufficient to prove that the trademark in dispute, after being put into use, had generated reputation distinct from the reference trademark, and other trademarks' registration precedents cannot be the basis for preliminary assessment of the trademark in dispute. Therefore, the former TRAB decided to reject the application for registration of the trademark in dispute.

Novartis then brought the case to the Beijing IP Court, noting that it has filed an application for review of the trademark revocation on the grounds that the reference trademark has not been used for three consecutive years, and is now in the midst of a first-instance trial; the reputation of No. 721035 trademark "ALCON" and No. 3632075 trademark "Alcon", both registered by Novartis, has been extended to the trademark in dispute, and the co-existence of the two trademarks does not cause any confusion; the two trademarks differ greatly in terms of font, overall complexion and pronunciation.

Beijing IP Court held that, as of the conclusion of the trial, the reference trademark is still valid and legal; the trademark in dispute and the reference trademark are similar; the evidence of the reputation of the prior trademarks submitted by Novartis is not sufficient to prove the trademark in dispute can be distinguished from the reference

trademark, and other trademarks' registration precedents cannot automatically trigger the registration of the trademark in dispute. The Court dismissed Novartis' claim in the first instance on May 17, 2019.

Novartis then appealed to the Beijing High People's Court, arguing that the trademark in dispute was a continuation of its previously registered No. G1088618 trademark "ALCON" (hereinafter referred to as the basic trademark). The Court held that the trademark in dispute and the reference trademark are similar trademarks used on the same or similar products; as of the conclusion of the trial, the reference trademark is still a valid registered prior trademark. Novartis' argument is groundless that the trademark in dispute should be approved for registration just because its basic trademark has been approved for registration; the situation where other trademarks are approved for registration is not a natural basis for the trademark in dispute to be approved for registration. In this connection, the Court rejected the appeal of Novartis and upheld the trial Court judgment. (by Wang Guohao)

日前,围绕第22991917号“Alcon”商标(下称诉争商标)展开的商标申请驳回复审行政纠纷一案有果。诉争商标由瑞士诺华有限公司(下称诺华公司)于2017年3月20日提出注册申请,指定使用在第9类的隐形眼镜商品上。经审查,原中国国家工商

行政管理总局商标局(下称原商标局)以诉争商标与第4875585号“Aicon”商标(下称引证商标)构成使用在同一种或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。

诺华公司随后向原中国国家工商行政管理总局商标评审委员会(下称原商评委)申请复审,主张诉争商标与引证商标未构成使用在同一种或类似商品上的近似商标,而且诉争商标经使用已具有一定知名度,与引证商标并存不会导致消费者产生混淆、误认;其他类似该案的商标已获准注册;引证商标处于撤销复审程序中,在先权利尚不确定。

2018年8月15日,原商评委作出复审决定认为,截至该案审理时,引证商标仍为在先有效的商标;诉争商标与引证商标在呼叫、字母构成等方面相近,并存使用在眼镜和隐形眼镜等商品上,构成使用在同一种或类似商品上的近似商标;诺华公司提供的证据不足以证明诉争商标经使用已产生可与引证商标相区分的知名度,而其他商标的注册情况不能成为诉争商标应获得初步审定的当然依据。综上,原商评委决定对诉争商标的注册申请予以驳回。

诺华公司继而向北京知识产权法院提起行政诉讼称,其已对引证商标以连续3年不使用为由提起撤销复审申请,现在正处于一审诉讼中;诺华公司在先注册的第721035号“ALCON”商标和第3632075号“Alcon”商标的知名度已经延续到诉争商标上,诉争商标与引证商标共存不会造成任何混淆;诉争商标与引证商标在字

体、整体视觉、读音方面区别明显。

北京知识产权法院经审理认为,截至该案审理时,引证商标仍处于有效合法的存续状态;诉争商标与引证商标构成近似商标;诺华公司提交的在先商标的知名度证据不足以证明诉争商标可与引证商标相区分,其他商标的注册情况不能成为诉争商标应当准予注册的当然理由。法院于2019年5月17日一审驳回诺华公司的诉讼请求。

诺华公司继而向北京市高级人民法院提起上诉,并主张诉争商标系其在先注册的第G1088618号“ALCON”商标(下称基础商标)的延续性注册。法院经审理认为,诉争商标与引证商标构成使用在同一种或类似商品上的近似商标;截至该案审理时,引证商标仍为有效注册的在先商标;诺华公司主张依据其基础商标在先获准注册、诉争商标亦应被核准注册的理由缺乏法律依据;其他商标获准注册的情形并非诉争商标应予核准注册的当然依据。综上,北京市高级人民法院终审驳回诺华公司的上诉请求,维持一审判决。(王国浩)

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