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China Ranked 10th for PCT Filings in 2005

2006-03-09

According to the statistics about PCT filings in 2005 published by the World Intellectual Property Organization (WIPO), China ranked the 10th by filing 2,452 PCT applications, surpassing Canada, Italy, and Australia.

However, China still needs to devote more efforts to catch up with the developed countries in PCT filings. The number of China's PCT applications only accounts for 1.8 percent of the total amount, far behind the United States that filed 45,111 applications and Japan with 25,145 applications and German with 15,870. In addition, only one enterprise from China, Huawei Technologies, was on the list of the top 50 applicants in 2005, ranking 37; while 17 of the top 50 applicants were from the United States, 15 from Japan, and 8 from German.

China Issued 2006 Action Plan on IPR Protection

2006-03-10

To better protect the IPR, resolutely punish and fight against various infringement and other illegal activities, the State Office of Intellectual Property Protection, in conjunction with other relevant departments, formulated "China's Action Plan on IPR Protection in 2006" (hereinafter as the Action Plan).

The Action Plan covers 4 major areas - trademark, copyright, patent, and import and export - and involves the IPR protection plans and arrangements of 11 departments, including the Ministry of Public Security, the Ministry of Information Industry, the

Ministry of Commerce, the Ministry of Culture, the General Administration of Customs, the State Administration for Industry and Commerce, the General Administration of Quality Supervision, Inspection and Quarantine, the National Copyright Administration, the State Food and Drug Administration, the State Intellectual Property Office, and the Legislative Affairs Office of the State Council. The Action Plan covers 9 areas such as legislation, enforcement, publicity, training and education, international communication and cooperation. etc.

According to the Action Plan, in 2006, 17 laws, regulations, rules and measures relating to trademark, copyright, patent and customs protection will be drafted, formulated and revised; 6 judicial interpretations will be drafted, improved and revised.

In terms of enforcement, 7 special campaigns such as the "Eagle", "Sunshine" and "Blue Sky" will be launched. The special campaign named "Eagle" by the public security organs will continue its efforts in fighting against trademark infringement. The series of the special campaigns named "Sunshine," jointly carried out by the public security organs and the departments of culture, will target at illegal audio-video products and enterprises involved in copyright infringement, with a stress on putting down those legally registered stalls which sell or lease out infringing audio-video products. To effectively keep down IPR infringement at exhibitions and create a good environment for fair competition, the special campaign named "Blue Sky" will concentrate on protection for trademarks, patents and copyrights, and related departments are the Ministry of Commerce, the General Administration of Customs, the State Administration for Industry and Commerce, the National Administration for Copyright, the State

Intellectual Property Office, the China Council for the Promotion of International Trade, and the State Office of Intellectual Property Protection. The "Blue Sky" campaign will also disseminate 100,000 brochures and discs in order to help the public understand the "Measures for the Protection of Intellectual Property at Exhibitions" and trainings will be provided on how to protect IPR at exhibitions. The copyright administrations will start inspection and examination to prevent the revival of those illegal websites or organizations involved in copyright infringement on the Internet.

In addition, the government is going to establish a long-term mechanism and carry out specific measures including a complaint-receiving service center and publication of law enforcement statistics. In order to raise the public's awareness of IPR protection, a total of 21 IPR training courses will be organized for the "Project of Training Thousands of IPR Personnel." In terms of the international exchanges and cooperation related to IP, 19 exchange and cooperation activities will be carried out focusing on legislation, trademark, copyright, patent and customs protection, 7 of which will be between China and the United States. Other measures will be made to improve enterprises' awareness of IPR protection, innovation and intellectual property protection, and service for rightholders.

Online IPR Judgments and Decisions Available to the Public

2006-03-12

On March 10, 2006, China's Supreme People's Court announced that the website of "China IPR Judgments and Decisions" (<http://ipr.chinacourt.org>) were available to the public.

Jiang Zhipai, Chief Justice of the 3rd Civil Tribunal of the Supreme People's Court, introduced that the

website provides IPR judgments and decisions for search. The public can search an IPR judgment or decision by inputting the case number, cause of action, name of court, litigants, or date of document.

Up to now, almost all the IPR judgments and decisions in force in 2005 have been uploaded to the website. In future courts throughout China, under the direction of the Supreme People's Court, will upload IPR judgments and decisions in time, except those involving privacies or confidences.

According to Wan E'xiang, Vice-President of the Supreme People's Court, online publication of IPR judgments and decisions would help to improve the fairness and transparency of the court rulings. The public can judge the reasoning of the judges by reviewing the judgments and decisions on the website.

In addition, the Supreme People's Court would also take a new measure in 2006, i.e. judges are required to answer questions from litigants after the service of judgments or decisions. If the litigants are not satisfied with or doubt about the judgment or decision, the judge needs to make detailed explanation on the reason for such ruling. With this measure, the communication between litigants and judges may get easier.

The First Cyber-Game Copyright Infringement Case in Shanghai Concluded

2006-03-13

Recently the first cyber-game copyright infringement case in Shanghai was concluded at the Putuo District People's Court. You Tangcun, one of the defendants, was sentenced to a three-year imprisonment with a three-year reprieve and a penalty of 40,000 RMB. The other criminal suspect, Ye Weilong, was still at large.

You Tangcun, from China's Jiangxi Province, was a technical engineer at a NetBar and met Ye Weilong at work. When they found that many players to the NetBar were addicted to the cyber-game "Mir 3," they got the idea of making money by copying the famous cyber-game.

From August to September 2004, without the permission of Guangzhou Optisp Communications Development Co. Ltd.- the copyright holder and the sole legal operator of "Mir 3" in Mainland China, they illegally modified several unimportant programs of seven copies of "Mir 3" and named their edition of software as "Legend of Emperors." Later, they purchased and rented two web hosts with domain names. Then, by renting seven servers in Shanghai and Yiwu, they set up terminal servers to issue the game "Legend of Emperors" on the Internet and provide download services to the players.

During the four-month operation of their terminal servers on the Internet from January to May 2005, their cyber-game "Legend of Emperors" attracted about 2,000 times and brought them an illegal income of more than 500,000 RMB.

In February 2005, the Shanghai Branch of Guangzhou Optisp Communications Development Co. Ltd. reported the case to the public security organs in Shanghai after finding out that "Legend of Emperors" was almost the same as "Mir 3." After test by Shanghai Software Testing Center and appraisal by Shanghai Gongxinyang Intellectual Property Judicial Appraisal Agency, the software of "Legend of Emperor" was approximately identical to "Mir 3."

On May 25, 2005, when You Tangcun was arrested in Yiwu, he confessed everything to the public

security organs.

According to the Putuo District People's Court, this cyber-game copyright infringement case was listed as one of the ten IPR infringement cases by China's Ministry of Public Security in 2005.

Case of Retailing Pirated Discs in Qingdao Concluded

2006-03-16

On January 26, 2006, Shibe District People's Court in Qingdao held a trial on the city's first case of retailing pirated discs. The defendant Wang Kenan, convicted of illegal business operation, was sentenced to a seven-year imprisonment with a penalty of 60,000 RMB.

In the 1990s, the defendant started selling pirated discs in Qingdao and gradually developed his illegal business operation from retail to wholesale. During that period, his pirated discs were seized by local public security organs and administrations of press and publication for several times. On September 13, 2005, the police arrested Wang when he was wholesaling pirated discs to a purchaser.

According to the investigations by the court, since 2003, Wang had purchased a large number of pirated discs from other cities. He wholesaled those pirated discs to many stalls or peddlers in Qingdao at low prices – 3 RMB for a DVD and 1.7 to 2.3 RMB for a CD of pirated software.

After Wang was arrested, the police officers and the inspectors from local administrations of press and publication searched his residence and the apartment he rented, seizing more than 34,000 pirated discs. Then the police tracked down 15 stalls and peddlers who purchased pirated discs from the defendant and seized about 70,000 pirated discs. All the seized discs were illegal

audio-video products and pirated software.

The court held that the defendant had committed the crime of illegal business operation by selling illegal publications and audio-video products for profits. At the court the defendant admitted his guilt and said he would not appeal against the decision.

Louis Vuitton Sued MEN Shopping Center for Trademark Infringement and Unfair Competition

2006-03-21

Recently Louis Vuitton Malletier Co. Ltd. sued Chaowai MEN Shopping Center, located in Chaoyang District of Beijing, for trademark infringement and unfair competition. The Beijing 2nd Intermediate People's Court has held a trial on the case.

Louis Vuitton Malletier Co. Ltd., with a registered trademark "LV," is a world famous manufacturer of trunks, bags, wallets and other popular leather products. According to the notarial document submitted by Louis Vuitton, more than 20 stalls on the B1 floor of Chaowai MEN Shopping Center sold counterfeit products bearing the trademark "LV." Louis Vuitton believed that Chaowai MEN Shopping Center not only infringed their exclusive right to use the trademark, but also constituted unfair competition. Louis Vuitton requested that Chaowai MEN Shopping Center should stop infringement, make a public apology, and compensate 1,220,000 RMB for Louis Vuitton's financial loss and litigation expense.

The defendant argued that it only rent stalls to the retailers who sold counterfeit Louis Vuitton products, instead of selling the counterfeit goods. Thus it could not agree to the claims of the plaintiff.

Criminals Convicted of Copyright Infringement for Selling Pirated Audio-video Products

2006-03-22

Recently Nanjing Xuanwu District People's Court held a trial on a case of selling pirated audio-video products. Convicted of copyright infringement for selling pirated audio-video products, Xia Changsheng was sentenced to a one-year imprisonment with a penalty of 10,000 RMB, and He Tao a ten-month imprisonment with a penalty of 8,000 RMB. It was the first case that criminals were convicted of copyright infringement since the promulgation of the "Interpretation Concerning Several Issues on the Specific Application of Law for Handling Criminal Cases of Intellectual Property Rights Infringement" in November 2004.

In May 2004, Xia Changsheng and He Tao rented a residence in Nanjing to sell pirated discs. On June 20, 2005, during an inspection by Xuanwu Substation of Nanjing Public Security Bureau and Nanjing Municipal Bureau of Culture, Xia and He were arrested when selling pirated discs and 23,175 pirated discs seized, including pirated audio-video products, software, and pornographic video products.

The court held that Xia and He committed copyright infringement by distributing audio-video products and software for profits without the authorization of copyright owners, and also committed illegal sales of pornographic articles for profits.

Honda's Patent for Design of CR-V Declared Invalid

2006-03-23

On March 18, 2006, Hebei-based Shuanghuan Auto announced that China's State Intellectual Property Office has made a decision on March 7, 2006, declaring Honda's patent for design invalid, which

means that Honda's outer design of CR-V would not be protected by China's IP laws.

In September 2003, before Shuanghuan's S-RV came into the market, Honda Motor (China) Investment Co. Ltd. claimed there was a great similarity in outer design between S-RV and Honda's CR-V. Honda contacted Shuanghuan and requested they cease the manufacture of the S-RV. In response, Shuanghuan said that they made a claim of "non-infringement declaration" to Shijiazhuang Intermediate People's Court on October 16, 2003, to protect their rights.

On December 13, 2004, Shijiazhuang Intermediate People's Court announced that, according to the response from the Supreme People's Court, the two cases, in which Honda sued Shuanghuan for IPR infringement and Shuanghuan sued Honda for a declaration of non-infringement, would be heard separately in Shijiazhuang and Beijing. In the meantime, Shuanghuan applied to State Intellectual Property Office for invalidation of Honda's patent for design of CR-V.

After two years examination on March 7, the Patent Reexamination Board held that Honda's patent for design of CR-V is similar to its design that has been publicly disclosed, which is not in accord with Article 23 of the Patent Law of P. R. China. Thus the Patent Reexamination Board declared invalidation of Honda's patent right for design (No. 20013195239).

On March 20, Zhu Linjie, spokesman for Honda China, said that Honda would institute administrative proceedings within three months. According to Zhu, Honda would first request to cancel this decision by the Patent Reexamination Board, and then request to uphold the patent right for the new design of CR-V.

In response, Shuanghuan said that they had anticipated Honda's reaction and might appear as a third party in the proceedings.

Fourteen Enterprises Punished for Illegal Compact Disk Copying

2006-03-27

Fourteen illegal compact disk enterprises copying video and audio products throughout China have been punished as part of the nation's efforts to intensify its protection of the intellectual property right (IPR), a senior press official said yesterday.

Sun Shoushan, spokesman of the General Administration of Press and Publication (GAPP), introduced GAPP and public security departments have examined 48 compact disk copying companies in 18 provinces and municipalities over the past few months. Licenses of six companies in Henan and Guangdong provinces and Chongqing Municipality were suspended in a nationwide crackdown campaign starting in January; eight other companies in Beijing and Guangdong Province were ordered to halt production while being investigated. Its crackdown on piracy demonstrates the administration's strong determination to carry out IPR protection.

The compact disk copying sector has grown rapidly over the past two decades as more investment entities, including State-owned, private and foreign companies, have entered the industry. Most of the enterprises are well aware of IPR protection and operate their businesses in line with the laws and regulations. However, problems still exist in IPR protection within the country.

According to Sun, in the second half of this year, the administration would take steps to promote technological development and transformation, as

well as marketing, to help the industry continue to grow.

IP Complaint-Receiving Office Set up at Beijing International Gifts and Housewares Exhibition

2006-03-28

At the 13th Beijing International Gifts & Housewares Exhibition held from March 22-25, 2006, an IP complaint-receiving office was set up by the Beijing Intellectual Property Office to handle IP disputes during the exhibition.

The complain-receiving office received a total of seven complaints about patent infringement, and they were already settled under the mediation of enforcement officials. The exhibitors cleared the items that were suspected of patent infringement. For instance, a patentee named Chen Shi settled the dispute with Fujian Ren'ai Gifts Co. Ltd. (hereinafter as Ren'ai) through the efforts of officials at the complaint-receiving office, Ren'ai agreed to stop the distributions of materials of its infringing products.

In spite of the efforts made by the office, problems still arose regarding the protection of IPR at this exhibition. The Beijing Intellectual Property Office advised that, in future, sponsors of exhibitions should attach more importance to the protection of patents, especially for patents for designs.

Danish Clothing Company Sues EachNet for Selling Counterfeit Goods

2006-03-29

In May 2005, a Danish clothing company, Aktieselskabet Af 21 November 2001, sued eBay EachNet, one of China's largest e-commerce website, for selling its products without authorization. On March 27, 2006, the Shanghai 1st Intermediate People's Court heard the case.

In March 2004, Aktieselskabet Af 21 November 2001, which owns the trademarks ONLY, VERO MODA and JACK&JONES, first found that more than 3,000 items of ONLY and VERO MODA were sold on the website at a low price. Some stores on eBay EachNet claimed to be an "ONLY Supermarket" and "VERO MODA Franchise." However, except one designated Chinese distributor in Tianjin, they had never authorized any other individual or enterprise to produce, distribute or sell its brands in China. They contacted eBay EachNet, but were ignored. Then the plaintiff collected screen pages from the website containing their products under the supervision of a notary, and also purchased an ONLY shirt and bag from the website. The commodities purchased were proved to be fake by the designers of Aktieselskabet Af 21 November 2001.

In May 2005, the Danish company filed a suit with the Shanghai 1st Intermediate Court, requesting eBay EachNet to stop the sales of counterfeit clothing and asking for a public apology from eBay EachNet and a compensation of 200,000 RMB.

In response, eBay EachNet said that they were not involved in any transactions, but simply permitted registered users to published information of dealings on their website.