



China IPR News for U.S. Industry January 28, 2009

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PATENTS

1. Chinese Patent-Law Revision Passed: On December 27, 2008, the National People's Congress passed the revisions to the Patent Law. The new Patent Law will go into effect on October 1, 2009. (Source: http://www.sipo.gov.cn/sipo2008/yw/2008/200812/20081227_435527.html, December 23, 2008.)

2. Revision of Patent-Examination Guidelines: In order to reflect the third revision to the Patent Law and the Implementing Regulations of Patent Law, on December 4, 2008, the State Intellectual Property Office announced that it will revise its "Patent Examination Guidelines." (Source: *China IP News*, December 10, 2008, Page 1.)

3. Beijing High Court Upholds Invalidation of Merck Patent: The Beijing High Court has upheld a lower court ruling which affirmed a patent invalidation decision of the Patent Reexamination Board (PRB) of the State Intellectual Property Office (SIPO). In 2004, Henan Topfond Pharmaceutical, Ltd. ("Topfond") obtained approval from China's State Food and Drug Administration to manufacture "Finasteride," a drug which treats male hair loss. Shortly before manufacturing and distributing the product, Topfond discovered that Merck, in 1994, had filed a patent application in China concerning the process for making the drug. In 2002, SIPO granted the patent. On June 18, 2004, Topfond filed to invalidate Merck's patent with the PRB. The PRB invalidated Merck's patent. Merck appealed the decision to the Beijing No.1 Intermediate Court and the Beijing High Court. Both courts affirmed the PRB's decision to invalidate Merck's patent. (Source: *China IP News*, December 17, 2008, Page 12.)

4. Microsoft Unsuccessful in Attempt to Invalidate Chinese Patent: In 2007, Zhongyi Electronics, Ltd. sued Microsoft for patent and copyright infringement concerning its "Zhengma" font. Microsoft filed to invalidate Zhongyi's patent with the Patent Reexamination Board (PRB) of the State Intellectual Property Office. The PRB upheld Zhongyi's patent. Microsoft appealed to the Beijing No. 1 Intermediate Court, which dismissed the case on November 21, 2008. (Source: *China IP News*, November 26, 2008, Page 5.)

5. SIPO and Guangdong Provincial Government to Cooperate on IPR Protection: On December 29, 2008, Mr. Tian Lipu, Director General of the State Intellectual Property Office, and Mr. Huang Huahua, Governor of Guangdong Province, agreed to cooperate on protecting IPR. One of the ten goals of the proposed joint effort is to build the Guangzhou High-Tech Development Park into a model enclave which honors and protects the IPR of those who work there. The agreement is effective for five years, and can be renewed. Yearly meetings will be held to review results, and to plan future cooperation. (Source: *Guangzhou Daily News*, December 30, 2008.)

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6. Chinese State-Owned Enterprises Claim Gains in Using Legitimate Software in 2008: On

December 9, 2008, at a joint conference between the State-Owned Assets Supervision and Administration Commission and the National Copyright Administration of China (NCAC), Chinese representatives claimed that most central-government-administered state-owned enterprises (SOEs) are running only legitimate software on their computers. Supposedly, 109 of the leading SOEs expected to be using only licensed software by the end of 2008.

In 2008, 113 SOEs had planned to spend RMB 160 million (approximately USD \$23,391,000) on licensed software, but the final expenditure was only RMB 45 million (approximately USD \$6,579,000). The SOEs have promised to appropriate more money for licensed software in 2009. Additionally, they have agreed to implement a better management system for software assets in an attempt to ensure the use of legitimate software in the operations of the major SOEs and their immediate subsidiaries.

Vice Minister Yan Xiaohong of NCAC stated that, in the last two years, the Chinese Government has been successful in promoting the use of legitimate software. He claimed that 6,100 of the 7,600 enterprises (approximately 80%) were using legitimate software by the end of 2008. Separately, the central and local governments reported inspecting 3,900 enterprises, and arresting 570 infringers. (Source: *China IP News*, December 12, 2008, Page 1.)

ENFORCEMENT

7. Apple Takes a Bite Out of Trademark Counterfeiter in Shenyang: U.S. electronics manufacturer Apple, Inc. has prevailed in a trademark-counterfeiting case in Shenyang, Liaoning Province. Apple, Inc. discovered that New Apple Concept Digital Technology Co., Ltd. (“New Apple Concept”), a Shenzhen-based company, used a design mark similar to Apple, Inc.’s registered trademarks on various products, packaging, promotional materials and on its website. Allegedly, New Apple Concept also used a design mark similar to Apple’s registered “iPod” mark on products and packaging. In March 2008, Apple, Inc. instituted suit against New Apple Concept in Shenyang’s Intermediate People’s Court, alleging trademark infringement and unfair competition. The Court found in favor of Apple, Inc., and ordered New Apple Concept to pay damages in the amount of RMB 400,000 (approximately USD \$58,500). (Source: *China IP News*, December 10, 2008, Page 12.)

GENERAL IPR NEWS

8. Supreme People’s Court to Study IPR Policies and Its Effect on China’s Economy: On December 10, 2008, Judge Kong Xiangjun, the Vice President

of the Intellectual Property Tribunal of the Supreme People’s Court (SPC), stated that the SPC will study how to adjust patent, trademark, and other IPR judicial policies to enhance the nation’s competitiveness and mitigate the effect of the global financial crisis on China’s economy.

Judge Kong addressed China’s strategic goals of increasing judicial punishment for IPR infringement, lowering the cost of protecting IPR, and raising infringement penalties as a deterrent measure. He discussed the concept of full compensation, using flexible and diversified methods for calculating damages, and utilizing all available litigation tools, including pre-trial provisional measures, to stop infringement. He stated that judicial policies help steer the direction of judicial protection from a macro perspective, and regulate the trial and judgment from a micro perspective. The Judge stressed the importance of introducing judicial policies that are consistent with the country’s overall development situation, including its politics, economy, society, and culture. He said that the SPC must find legal methodologies to stop IP infringement while, at the same time, safeguarding the public interest, and protecting enterprises and social stability. In closing, Judge Kong announced that the SPC will issue “Opinions on Implementation of National Intellectual Property Strategy by the People’s Courts” in 2009. (Source: *China IP News*, December 12, 2008, Page 2.)

9. Supreme People’s Court Issues Opinions on Providing Judicial Safeguards and Legal Services for Maintaining Financial Security and the Economy: On December 4, 2008, the Supreme People’s Court issued “Several Opinions on Providing Judicial Safeguards and Legal Services for Upholding State Financial Security and Comprehensive, Concerted Sustainable Development of the Economy,” which addresses judicial issues associated with the current shifting economic environment. In order to protect the development of China’s national economy, the “Opinions” call for creating a series of essential technologies and branded products with “self-reliant IPRs” through scientific advancement and innovation. (Source: *China IP News*, December 10, 2008, Page 12.)

10. China Customs Assists Domestic Chinese Brands: To protect China’s economy during the current economic crisis, the General Administration of Customs of China has promulgated ten measures, which help support domestic enterprises exporting abroad, and also further strengthen Customs IPR protection of domestic Chinese brands. China Customs has trained its staff in identifying infringing goods and has expedited the handling of cases. Customs also has developed a system to confirm IP rights in advance, allowing domestic Chinese enterprises swift Customs clearance.

Separately, on December 8, 2008, the Shanghai branch of China Customs seized counterfeit motorcycle parts from Nigeria bearing the trademark of Jincheng Company, a Nanjing-based motorcycle manufacturer. It was the third seizure of parts in 2008 for Shanghai Customs, preventing Jincheng from losing approximately RMB 3 million (about USD \$438,552). (Source: Chinese Ministry of Commerce website, December 24, 2008, http://news.ipr.gov.cn/ipr/news/info/Article.jsp?a_no=258458&col_no=1016&dir=200812.)

11. Overseas IPR Early-Warning Project for Beijing Enterprises: On December 17, 2008, 13 Beijing enterprises, 11 IP agencies, and several intellectual property protection associations signed the implementation protocol for the “Beijing Enterprises Overseas IPR Early Warning and Contingency Fund Project.” The project is designed to support IP protection abroad for Beijing enterprises. (Source: *China IP News*, December 19, 2008, Page 2.)

12. SIPO Vice President – “All IPR Should be Protected in Accordance with the Law”: In December 2008, at the National Intellectual Property Office Annual Meeting on Enforcement Work, Vice President Zhang Qin of the State Intellectual Property Office (SIPO) said “All the legal intellectual property rights granted in China should be protected in accordance with the law, no matter whether it is a local or foreign right holder.” He stated that 23 Chinese provinces enacted local regulations for patent protection. Additionally, based on the provincial cooperation system, several cross-regional boards for patent enforcement were established in 2008, including, the Yangtze River Delta region, the pan-Pearl River Delta region, and the Bo Hai Coastal Region.

Vice President Zhang announced that the “Thunderstorm” IPR enforcement campaign against patent infringement, and the “Sky Net” IPR enforcement campaign to prevent patent fraud would continue in 2009. Separately, SIPO also plans to establish 100 national IPR assistance centers in China, and has encouraged municipalities also to build the same. (Source: *China IP News*, December 19, 2008, Page 1.)

13. Shanghai Court Becomes China’s First Anti-Monopoly Tribunal: On December 22, 2008, the Shanghai No.2 Intermediate People’s Court became China’s first tribunal specializing in anti-monopoly cases. According to judicial officials, the court will hear mostly civil and administrative cases. Civil anti-monopoly cases will include matters involving monopoly agreements, abuse of dominant position, market concentration excluding or restricting

competition, and IPR abuse excluding or restricting competition. Administrative anti-monopoly cases may consist of reviewing administrative actions of anti-monopoly authorities when addressing the above acts. The two-in-one tribunal is expected to enhance unified application of laws as well as trial efficiency. (Source: *China IP News*, December 31, 2008, Page 12.)

14. Pearl River Delta to Become “Technological Innovation Lab” for Asia: The National Development and Reform Commission has announced China intends to make the Pearl River Delta a “significant innovation center” in the Asia-Pacific region by 2020. The plan is as follows: By 2012, three to five high-technology industrial clusters will be established, generating more than RMB 100 billion (USD \$14.62 billion) in aggregate industrial output. By 2012, the expectation is that the Pearl River Delta region will generate 600 patent applications per one million people annually, with priority given to independent technological innovation. In addition, it is projected that a high-tech industrial cluster encompassing biology, wireless telecommunications, and advanced internet networks will be established by 2012, generating more industrial momentum for the region. With the shift towards high-technology industries, the Commission predicts that inefficient, energy-consuming sectors, such as paper-making and manufacture of household appliances, textiles, garments, and Chinese herbal medicine, gradually will be phased out. The central and the local governments are to work together to create 100 provincial technology research-and-development alliances, and establish research institutes and units affiliated with universities, to help bring research results into the production line. (Source: Chinese Ministry of Commerce website, January 9, 2009, http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=261478&col_no=925&dir=200901.)

Events

Webinar on Thursday, February 5, 2009 at 3:30pm-4:30pm EST - What Does the Third Amendment to China's Patent Law Mean to You?: The third amendment to China's patent law was passed on December 27, 2008. The law will go into effect on October 1, 2009. Please join Benjamin Bai, partner in Jones Day's Houston and Shanghai offices, in discussing recent amendments to the patent law, including expanding the scope of compulsory licensing, double patenting and the disclosure of genetic resources.

Webinar on Monday, February 9, 2009 at 1:00pm-2:00pm EST - Recording your Intellectual Property Rights with Customs: Many SMEs have registered their trademarks in China. However, they

have yet to record such registrations with Chinese Customs. Please join us as Johnny Xie, Head of International Exchange Department of the Shanghai Customs College, walks us through the steps on how to record with the General Administration of Customs and the steps that Chinese Customs takes in seizing goods suspected of being infringing. After Mr. Xie's presentation, Janelle Gordon, Attorney-Advisor at the U.S. Customs & Border Protection, will explain the recordation process in the US.

Webinar on Tuesday, February 17, 2009 at 1:00pm-2:00pm EST - Practical Tips on Supervising IPR Law Suits in China: There are many considerations for US companies before they file suit in China to enforce their intellectual property rights. Picking the right local counsel is just one. Please join us as Dave Yeskey, Director of the Legal Department at Microchip Technology Inc., describes the lessons he has learned in supervising civil litigation in China. This webinar is more interactive than usual as Mr. Yeskey is willing to answer questions from other business people and in-house counsel who have not worked in China.

The programs are free. Only a phone line and a computer with an Internet connection are necessary. **To register for one or all of the February programs, please send your contact information and the list of webinars you wish to attend to ChinaIPR@mail.doc.gov.** Registration confirmation and dial-in/log-in instructions will be sent to you before the program. To learn more about the webinar series, please go to http://www.stopfakes.gov/events/china_webinar_series.asp
