



INTERNATIONAL  
**TRADE**  
ADMINISTRATION

## China IPR News for U.S. Industry October 8, 2008



**Disclaimer:** The China IPR News for U.S. Industry is a summary of publicly available information prepared by the United States Government and is intended for informational purposes only. The views and opinions expressed herein do not state or reflect those of the United States Government. The China IPR News for U.S. Industry may contain material subject to copyright; further reproduction and distribution shall be conducted in accordance with applicable copyright rules.

China IPR News for U.S. Industry is compiled by USPTO-China staff with support of the U.S. Mission IPR Task Force, the International Trade Administration, Office of China Economic Area and other colleagues in Washington, DC and in industry.

Subscription: If you would like to be added or deleted from the distribution list, or have questions, comments, or requests, please send to: [Chinaiprnews@mail.doc.gov](mailto:Chinaiprnews@mail.doc.gov). Kindly indicate in the subject line: "China IPR News for U.S. Industry". Past issues are available at [http://www.export.gov/china/archive\\_ipr\\_news.asp](http://www.export.gov/china/archive_ipr_news.asp)

\*\*\*\*\*

**ON-LINE REGISTRATION NOW OPEN:  
The Ambassador's IPR Roundtable;  
Beijing, China  
November 6 and 7**

REGISTER BEFORE OCTOBER 10 TO RECEIVE  
\$50 EARLY-BIRD DISCOUNT!!

<http://www.buyusa.gov/china/en/iprroundtable.html>

The seventh and final annual IPR Roundtable of Ambassador Clark T. Randt, Jr. will be held in Beijing on Thursday and Friday, November 6 and 7. This year's focus will be on new Chinese IPR legislation, resulting strategies, and the implications for U.S. businesses. In June, China announced its National IPR Strategy. On August 1, China's new Anti-Monopoly Law took effect. Revisions of

China's patent, trademark, and copyright laws are all underway. The Sino-U.S. Joint Commission on Commerce and Trade (JCCT) IPR Working Group has re-convened. The annual Ambassador's IPR Roundtable will provide a forum to examine these developments and their impact on doing business in China. It again will provide a venue for U.S. businesses to tell the Ambassador directly what role the United States Government should be playing to support rights holders in China.

The registration fee includes admittance to the evening reception on Thursday, November 6, and the luncheon and all IPR Roundtable sessions on Friday, November 7. Early-bird registration is only \$228. Save \$50 off the \$278 participation fee if you register and pay by October 10. From October 11 to 31, the fee for on-line registration is \$278. On-site registration, at \$308, may be available, only if space permits. The U.S. Embassy retains final approval over all registrations.

### PATENTS

**1. Supreme People's Court Clarifies Infringement when Patents are Part of Standards:** In a reply ("dafu," 答复) to a patent-infringement matter, the Supreme People's Court (SPC) clarified the significance of a patent when it is included in the setting of standards. If a patent registrant participated in standards setting or agreed to incorporate his/her patent into a national, regional, or industry standard, the court held that another's use of the patent would not constitute infringement of that patent. The use of a patent to determine a standard would be regarded as authorizing the use of the patent by others during the implementation of that standard. According to the SPC, the patent holder still could collect royalties, but those royalties would be markedly lower than royalties not related to standards. Jiang Zhipei, the Chief Judge of the SPC's IPR tribunal, said that this was the SPC's second reply ("dafu") about the "patent and standard" issue. The first reply ("dafu") denied that incorporation of a patent in a standard

constituted disclosure to the public. (Source: <http://www.chinaipr.com.cn/file/2008073013379.html>, July 30.)

**2. American Rights Holder Flexsys Loses Section 337 Investigation against China's Sinorgchem:** In February 2005, Flexsys America LP filed a complaint with the U.S. International Trade Commission (ITC) against Sinorgchem Co. and others for patent infringement concerning components of rubber anti-oxidants. Flexsys and Sinorgchem are competing manufacturers of chemical rubber products. Flexsys sought a limited exclusion order under Section 337, barring the importation into the U.S. of Sinorgchem's 4-ADPA as well as 6PPD made from Sinorgchem's 4-ADPA. Flexsys also filed a civil patent-infringement case before the U.S. District Court for the Northern District of Ohio, asking \$20 million in damages from Sinorgchem. On February 17, 2006, the ITC ruled that Sinorgchem infringed Flexsys' patents, and issued a limited exclusion order. Sinorgchem appealed the order to the U.S. Court of Appeals for the Federal Circuit (CAFC). On December 31, 2007, the CAFC reversed the ITC's decision and dismissed the exclusion order. Flexsys requested reconsideration of the CAFC's decision and applied for a retrial. On April 14, 2008, the CAFC allowed its ruling to stand, rejecting the retrial application. (Source: China IP News, August 20, 2008, Page 5.)

**3. USPTO Issues Over 1,000 Patent and Trademark Registrations to Mainland Chinese Applicants in FY 2007:** According to the "United States Patent and Trademark Office [USPTO] Performance and Accountability Report for Fiscal Year 2007," for the first time, the USPTO issued to applicants from Mainland China 1,139 patents and 1,020 trademark registrations, up 31.2% and 46.3% respectively, year on year. The increase in patent grants moved China up from 15th to 14th place, with the increase in trademark registrations moving China from 11th to 9th place. (Source: China IP News, August 20, 2008, Page 12.)

#### PLANT-VARIETY PROTECTION

**4. Plant-Varieties-Protection Filings Exceed 5,000:** According to the Office of the Protection for the New Varieties of Plants under the Ministry of Agriculture, as of July 31, 2008, China has received 5,099 applications for plant-variety protection, granting protection to 1,746. Chinese research institutes, companies, and individuals filed 95% of these applications. The top four provinces, which total 35% of the applicant pool, are Sichuan, Shandong, Henan and Jilin. Traditional field crops remain the preeminent type of variety, accounting for nearly 90% of the applications. With nearly 100 applications, the Netherlands is the top foreign user

of the system. (Source: China IP News, August 20, 2008, Page 12.)

#### ENFORCEMENT

**5. Convictions in New York for Selling Counterfeit Colgate Toothpaste from China:** In Brooklyn, New York, on August 21, two individuals and two corporations pled guilty to charges of trafficking in counterfeit Colgate toothpaste, admitting to transporting 518,028 tubes of counterfeit product worth an estimated retail value of USD \$730,419. The individuals each face up to ten years in prison, a fine of USD \$2 million, and three years of supervised probation following release from prison. The two corporate defendants each may be fined up to USD \$5 million, forced to pay restitution, and subject to five years of organizational probation. According to lab tests conducted by the FDA and Colgate-Palmolive, the counterfeit toothpaste lacked fluoride, and contained dangerous microorganisms as well as diethylene glycol, a sweet-smelling and -tasting poisonous additive used as coolant for internal combustion engines. Diethylene glycol also is used to impart moisture to counterfeit health-care products. Between May 2006 and March 2007, the defendants imported seven shipments of counterfeit toothpaste from China. (Source: <http://www.usdoj.gov/opa/pr/2008/August/08-crm-738.html>.)

#### GENERAL IPR NEWS

**6. China's State Intellectual Property Office to Establish 32 IPR Protection and Assistance Centers Nationally:** The State Intellectual Property Office (SIPO) has announced that it will open 32 IPR Protection and Assistance Centers in 16 provincial-level and 16 municipal-level intellectual property offices. After these 32 centers are opened, there will be 42 such outlets across the country. In November 2007, SIPO issued its "Guidance Opinion on Engaging in the Work of IPR Protection and Assistance," which included opening several IPR Protection and Assistance Centers throughout China. SIPO's IPR Protection and Assistance Centers are different from the Ministry of Commerce's (MofCOM) IPR Complaint Centers. Several years ago, MofCOM established 50 IPR Complaint Centers (知识产权举报投诉中心). These centers remain under the supervision of MofCOM's Market Order Rectification and Standardization Office. However, the functions of the SIPO and MofCOM centers differ. For example, MofCOM's centers can handle all kinds of IPR complaints, not just those limited to intellectual-property infringement, as is the case with SIPO's outlets. (Source: China IP News, August 20, 2008, Page 1.)

\*\*\*\*\*