

Newsletter



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In this issue

➤ **Fast Growth Continues For Trademark Applications In the First Three Quarters**

China trademark application remained growing at fast pace during the first three quarters of 2016 and hit 2.649 million pieces by the end of the period, up 25.2% vs. last year; meanwhile applications filed online increased to 78.8% of the total volume, up 10%. The industry structure has also been found improved and there is a steady growth in the average ownership of valid trademark by market entities, with every 7.1 market entities own one valid trademark. More noticeable results of the reform of simplifying trademark registration process are coming forth gradually. (Source: China Industry & Commerce News)

➤ **National New & High Tech Zones Lead Patents Granted**

Recently, the “National New & High Tech Zones Innovation Capacity Evaluation Report of 2016” was published in Beijing. According to the report, there were 147 New & High Tech Zones as of the end of 2015, which were at a steady pace with improved startup models and innovation capacities.

According to the report, in 2015 the companies in National New & High Tech Zones were found with 2.7 times R&D investment and 14.6 times R&D professionals density above the national average respectively. As for the innovation output, the invention patents granted per 10,000 persons and the numbers of valid patent in National New & High Tech Zones are 8.9 times and 8.5 times of the national average respectively. By volume, the amount of patents granted per 10,000 professionals in the National New & High Tech Zones is 1.9 times of that in Silicon Valley in 2015, which reflects the innovation efficiency achieved in the National New & High Tech zones is comparable to international counterparts. (Source: China IP News)

➤ **SIPO-EPO Heads Meeting Held in France**

On September 30, Heads of SIPO and EPO met in Paris, France. SIPO Director Mr. Shen Changyu and EPO President Mr. Benoit Battistelli attended the meeting and jointly signed the Work Plan of SIPO-EPO on Bilateral Co-operation 2017. During the meeting, in-depth discussions were held on topics of cooperative projects such as CPC classification, exchange of patent data, EPOQUE and personnel training. (Source: SIPO.gov.cn)

Cases in Spotlight

➤ E-Commerce Platform Found with Joint Liability for Patent Infringement

Zaigle company is the right owner of “an infrared heating cooking device” invention patent, which was granted on November 5, 2014. Zaigle believed the grills sold by Yongkang Jinshide company (“Jinshide”) on Tmall (www.tmall.com) infringed on the above-mentioned patent, and Tmall didn’t take any effective measures upon receipt of their complaint about the infringement, so that Tmall shall be held jointly liable for the infringement. Zhejiang Jinhua Municipality Intermediate People’s Court agreed that Jinshide’s products had infringed on Zaigle company’s patent right, and toward the complaint materials submitted by Zaigle, which are compliant with Tmall’s format requirements, Tmall only issued a decision of “approval failed” without rendering proper examination neither taking any necessary measures to prevent losses from expanding, therefore, Tmall shall bear the joint liability with Jinshide for the expanded part of losses. Jinshide shall stop selling the infringing products immediately and pay an indemnity of 150,000 yuan for Zaigle company’s economic losses, including the 50,000 yuan to be paid by Tmall for joint liability.

In disagreement, Tmall appealed to Zhengjiang Higher People’s Court. However, the first instance ruling was sustained because the Higher Court found Zaigle’s complaint being compliant with all the essential requirements prescribed by the Tort Law of China so that it is an effective notice. It’s proper to hold Tmall accountable for the shared liability for the losses expanded after they received the complaint and failed to take any necessary measures.

This case relates to the determination of liability borne by Internet platforms in regards of sales of patent infringing products. Since patent infringement cannot be easily identified, the second instance ruling mentioned that the “necessary measures” defined in the Tort Law are not limited to deletion, shielding and link disconnection, instead, this shall be determined by combining the examinations of the nature of the infringed right, the specific circumstances of infringement and technical means. Nevertheless, it is critically necessary to deliver the complaints to the party at complaint, and Tmall was found “not taking necessary measures” because of this. This case has referred to the “notice, counter-notice” mechanism in copyright field, so as not only to protect the right owners, but also to prevent abusive use of complaints,

taking into account of balancing the interests of the right owners and the party at complaint and promoting the positive development of E-commerce platform businesses.

RSMK news

➤ Patent Report of Tianjin Institute of Industrial Biotechnology

On November 9, 2012, Li Ji, the company's intellectual property consultant, went to Tianjin Institute of Industrial Biotechnology for a patent lecture exchange. The seminar communicated on effective protection methods of biological patents. It also discussed the issue of patent protection of the species patent and the staff of the Institute.