HARAKENZO
INTELLECTUAL PROPERTY LAW

Newsletter

June 2006

HARAKENZO
WORLD PATENT & TRADEMARK
PATENT LAW FIRM

JAPAN

TOPIC

RESULTS OF SURVEY ON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CHINA IS ANNOUNCED

The Ministry of Economy, Trade and Industry (METI) announced the results of the "survey on infringement of intellectual property rights in China" that was carried out in March-April. This survey focused on how the Chinese judicial and administrative authorities treat infringement of intellectual property rights. This is the second survey, starting from last year.

The Chinese government included, in "11th 5-year plan", enhancement of protection of intellectual property, and is intensifying, with self-initiative, protection of intellectual property by, for example, opening 50 intellectual property rights report centers all over the country. However, the number of infringements of intellectual property rights is still not few. Therefore, a written survey was conducted to 198 Japanese companies mainly among those who (i) have been doing business in China or (ii) have business relationships with China. The survey target period is years 2004-2005, and 115 companies responded (ratio of respondents: 58%).

Among the 115 companies, 28 companies responded that "they have not encountered infringement of intellectual property rights." The other 87 companies (76%) are considered to have encountered infringement of intellectual property rights. Only 52 companies (60%) out of the 87 companies have utilized administrative, criminal, and/or civil remedy procedures.

The most utilized remedy procedure is punishment by the administrative organ. There were 2314 cases in 2005 where investigation was demanded to seek for punishment. This is 682 cases more (i.e., 42% increase) than that in the previous year. The number of cases where investigation was actually conducted is 2213. In other words, 95.6% of the total cases was actually investigated by the Administrative authorities. Details of administrative measures are as follows: "confiscation and disposal of imitation goods" in 383 cases (106 cases more than the previous year), which is the greatest number of cases; "suspension of manufacturing and sales" in 219 cases (92 cases more than the previous year); and "administrative penalty (fine)" in 191 cases (68 cases more than the previous year). All of the above administrative measures increased in number significantly, compared to the previous year. In contrast, confiscation of illegal gain was executed only in 11 cases, and disposal and confiscation of manufacturing facilities was executed only in 19 cases.

With regard to execution by the Chinese authorities against infringement of intellectual property rights, an inquiry was made on whether there had been "cases where the execution seemed to be inappropriate" according to the Chinese Law system. In 2004, 21 companies (25%) out of 85 companies, among valid respondents, responded that there had been cases where the execution seemed to be inappropriate. In 2005, 22 companies (27%) out of 82 companies responded that there had been "cases where the execution seemed to be inappropriate". Details thereof are as follows: (1) defects in the systems: 7 cases; (2) protectionism of local: 7 cases; (3) lack of cooperation between organizations: 3 cases; and (4) other problems regarding reactions of the Chinese authorities and staff members: 7 cases.

The report concluded on the basis of the above results that "the Japanese companies have been suffering serious damages although the Chinese government has enhanced regulations against infringement of intellectual property rights, and therefore it is demanded to further enhance regulations and develop the law system, including revision of the criminal action standards."

GUIDELINE OF PRIOR USER'S RIGHT SYSTEM (CASE REPORT) IS PUBLISHED

The Japan Patent Office (JPO) published a guideline of the prior user's right system, "For Smooth Utilization of the Prior User's Right System", which is useful for strategic know-how management.

As worldwide competition has become fiercer and fiercer, it has become important for the companies to make strategic decisions as to whether the techniques they have developed should be applied for obtaining a patent right, which is subject to publication of the technique, or conceal the techniques as know-how. This guideline was made by the JPO on the basis of the results of discussions by the experts who are members of the committee, with reference to court decisions, common theories, actual circumstances of companies and the like. The guideline was formulated for the purpose of smooth utilization of the prior user's right system.

According to the prior user's right system, in the case where a person has been commercially working the invention or has been making preparations at the time before filing of the patent application by another person, the person is allowed to continue the working, as an exceptional case, although that another person obtains the patent right. Most of the patent systems of major nations worldwide allow the prior user's right system. In the Japanese Patent Law, the system is set forth under the Section 79 of the Patent Law.

The guideline describes, first, the outline and the purport of the prior user's right system, and then operation of the Section 79 of the Patent Law, with reference to the court decision. The guideline specifically describes exemplary evidences that are necessary for proving the prior user's rights, such as "technique-related documents" (e.g., research note, technical achievement report, design drawing, product specification), and "business-related documents" (e.g., business plan, business commencement decision, estimation bill, invoice, daily report of operations in factory, product catalogue). The guideline also describes in detail exemplary concrete methods for enhancing weight of evidence, such as "utilization of the authentication system" (e.g., date when the procedure is established, factual experiment authenticated document), "utilization of time-stamp by private-sector and digital signature", and "utilization of the postal system".

PARTIAL REVISION OF DESIGN LAW AND ELSEWHERE IS PROCLAIMED

The METI and the JPO announced that the "draft revision of a part of the Design Law and elsewhere", which had been endorsed by the Cabinet, was approved, enacted, and published as Law.

The revised law includes (i) enhancement of protection of right with regard to creation of design and establishment of brand (trademark), and (ii) enhancement of regulations against imitation goods, such as prevention of distribution, importation, and exportation of imitation goods.

The revised Design Law includes, for example, (i) extension of term of registered design right (extended to 20 years, which is currently 15 years, from the date of registration), and (ii) expansion of the subject of protection with regard to the design of operation screens of, for example, intelligent home appliances. On the other hand, the revised Trademark Law includes a system for protection of a trademark used by retailers and the like, as a service trademark, for the purpose of (i) enhancement of the convenience of business persons and (ii) harmonization with the worldwide systems.

Please Contact us if You have any Comments or Require any Information.

Please acknowledge that the purpose of our column is to providegeneral information on the field of intellectual property,and that the description here does not represent our legal opinion on a specific theme.

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