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Part I: News on Legislation and Policies

- **【Legislation】** *PRC Foreign Investment Law was formally reviewed and passed*

On March 15, *PRC Foreign Investment Law* was passed at the second meeting of the 13th National People's Congress. This is the first basic law in the field of foreign investment. It will be implemented in 2020-01-01. Articles 21 and 22 of the law make clear provisions on issues such as intellectual property protection and technology transfer that are of common concern to foreign investors.
- **【Policies】** *The PRC National Intellectual Property Administration stressed the need to fully reduce the patent review cycle*

On March 7, The PRC National Intellectual Property Administration convened a special mobilization deployment meeting to improve the quality of patent examination and review efficiency. At the meeting, it was emphasized that to take multiple measures, including reducing the review cycle, steadily improving the quality of examinations, promoting the quality of applications and other aspects of efforts to promote patent review, improve quality and efficiency, so that innovative entities can quickly obtain stable and reliable patent authorization, and promote innovation into real industry benefits.
- **【Policies】** *The government work report proposes to comprehensively strengthen intellectual property protection and improve the punitive damages system for intellectual property infringement*

In this year's two sessions, Premier Li Keqiang pointed out in his government work report that it is necessary to comprehensively strengthen intellectual property protection, improve the punitive damages system for intellectual property infringement, to promote invention, creation and transformation. The report also pointed out: to fully respect and trust scientific research personnel; to further increase the proportion of indirect funds for basic research projects, to carry out pilot projects for the use of *contracting system* for project funding;

to vigorously eliminate the annoyance, and enable researchers to focus on learning and innovation. It is also necessary to punish academic misconduct, strengthen the construction of scientific ethics and study style.

- **【Policies】** *Update on Classification Table of Similar Goods and Services for trademark.*

On March 27th, the Trademark Office of the PRC National Intellectual Property Administration, issued a message: in order to implement the requirements for trademark registration facilitation reform, and further facilitate applicants, the Trademark Office regularly updates *the Classification Table of Similar Goods and Services* and published it to the public. The names of acceptable goods and services in the second quarter have been published in the China Trademark Network Trademark Enquiry and Trademark Online Service System. Applicants can check and fill in the online.

- **【Policies】** *China and Hungary extend the China-Hungary PPH pilot indefinitely*

The PRC National Intellectual Property Administration and the Hungarian Intellectual Property Office jointly decided that the China-Hungary PPH pilot will be extended indefinitely from March 2019, and the relevant requirements and procedures for submitting PPH requests in the two offices will remain unchanged. According to the Memorandum of Understanding between the State Intellectual Property Office of China and the Hungarian Intellectual Property Office on the Patent Prosecution Highway, the China-Hungary PPH pilot was launched on March 1, 2016 for a period of three years.

- **【Policies】** *State Council executive meeting: comprehensively strengthen intellectual property protection and promote credit supervision*

On March 26, Premier Li Keqiang presided over the State Council executive meeting. The meeting pointed out that it is necessary to comprehensively strengthen intellectual property protection, promote credit supervision, and create a dynamic, fair and orderly market. And it is necessary to promote fair supervision, correct the problem that government supervision is not in place, and that the main responsibility of enterprises is not implemented. Establish a huge compensation and fine system in the fields involving people's life and health, and severely punish enterprises and responsible persons who have serious consequences in violation of laws and regulations.

- **【Policies】** *The National Intellectual Property Administration, PRC released the first batch of pilot projects and typical cases of IPR construction*

On March 28th, the National Intellectual Property Administration, PRC issued a notice to copy and promote the first batch of pilot projects and typical cases of IPR construction. There are a total of 30 pilot experience and typical cases of replication promotion, among which 10 are promoted in the transformation and

application of intellectual property rights, 8 are in strict protection of intellectual property rights in the business environment, and 6 are in the transformation and upgrading of the industry supported by intellectual property. Besides, there are 6 items in constructing IP-powerful country.

- **【Policies】** *The approval of No. 001 document of the Science and Technology Innovation Board was announced, and the science and technology enterprises will change the “IP” into “capital”.*

On March 22nd, the Science and Technology Innovation Board, which is regarded as the Chinese version of Nasdaq, announced the approval of No. 001 document. Unlike traditional boards, Science and Technology Board pays more attention to the innovation capability and core patent technology of the enterprise. As a concentrated expression of the core competitiveness of enterprises and the ability of scientific and technological innovation, intellectual property rights will surely become one of the key factors in determining whether enterprises can be listed on the Science and Technology Innovation Board.



Part II: Law-enforcement

- **【Enforcement】** *Government crackdown on trademark infringement and counterfeiting after 3·15*

On March 15th, the Makeup-native Egg incident was exposed at the 3·15 column this year. A company turned the trademark "fresh native" eggs into "fresh native eggs", and the "good native" eggs became "good native Eggs", the ordinary eggs are labeled "native eggs" through word games. In response, the market regulatory authorities in many places have acted to inspect and seal up the enterprises involved.

- **【Enforcement】** *The National Intellectual Property Administration, PRC issued 18 patent agency disciplinary decisions*

On March 28th, The National Intellectual Property Administration, PRC issued 18 *Patent Agency Disciplinary Decisions*, and relevant responsible persons of various agencies were also given corresponding punishments, including the revoked Patent Agent Qualification Certificate, warnings, etc.



Part III: Case Overview and Comments

- **【Case】** *The first case of the Supreme Intellectual Property Court*

On March 27, the Supreme Intellectual Property Court held a public hearing on the appellant Xiamen Lucas Auto Parts Co., Ltd., Xiamen Fuke Auto Parts Co., Ltd. v. the appellee Valeo Cleaning System Company, and the original defendant

Chen Shaoqiang (Infringement of patent disputes concerning inventions). The court dismissed the appeal and upheld the first-instance judgment of the Shanghai Intellectual Property Court. This is the first case that publicly opened since the Supreme IP Court was officially established on January 1 this year.

Comments: This case is not only the first case heard by the Intellectual Property Court of the Supreme People's Court, but also the first "partial-judgement" case judged by the Shanghai Intellectual Property Court in its first instance. The use of "partial-judgment" and allowing the "partial-judgment" to be appealed separately greatly improves the trial efficiency of intellectual property cases and safeguards the legitimate rights and interests of the obligee. At the same time, the case demonstrates the determination of Chinese judiciary to unify the criteria for judging intellectual property cases, to protect innovation, to protect intellectual property rights holders at home and abroad equally, and to help create a good business environment for international trade.

- **【Case】** *The service provided by Tik Tok that authorize Duo shan login rights of wechat/QQ users was called off*

On March 20, Tianjin Binhai New District Court issued its ruling in the case of Tik Tok, Duo Shan, suspected of using user data illegally, demanding that Tik Tok immediately stop using user's avatar and nickname originating from Wechat/QQ open platform when recommending friends to Tik Tok users, and immediately stop providing authorized login service of Wechat/QQ open platform to Duo Shan users. Unauthorized acquiring avatars and nicknames of Wechat/QQ user through Tik Tok have also been banned.

Comments: The focus of this case is whether the user's nickname and avatar data on Wechat/QQ open platform belong to users or Tencent company, and whether they belong to personal privacy. What kind of rights does Tencent enjoy to user's Avatar nickname? The current ruling is only an action-preservation ruling, and we will continue to pay attention to this case.

- **【Case】** *Landwind X7 plagiarizes the Land Rover Aurora case was sentenced*

On March 13, 2019, the People's Court of Chaoyang District, Beijing, handed down a first instance judgment in two cases: the plaintiff Jaguar Land Rover Co., Ltd. v. the defendant Jiangling Holdings Co., Ltd. and the Beijing Dachang Lufeng Automobile Sales Co., Ltd. in case of unfair competition and copyright infringement. In the case of unfair competition disputes, Chaoyang Court decided that Jiangling Company should immediately stop the unfair competition, eliminate the impact and compensate Jaguar Land Rover Company for its economic losses and reasonable expenses, and Dachang Lufeng Company should immediately stop the unfair competition. In the case of copyright infringement, Chaoyang court did not support the claim of Jaguar Land Rover

Company that Jiangling Company and Dachang Land Wind Company infringed the copyright of their works and rejected the claim of Jaguar Land Rover Company.

Comments: In this case, although the designer of Rover Aurora is Jaguar Land Rover, the failure to apply for a patent for the design promptly makes it more difficult to defend the rights in the future, so the company can only seek the protection of anti-unfair competition law and copyright law. (In the judgment, the court did not recognize that Rover Aurora's appearance is protected by copyright law as an applied art. But it acknowledges Jaguar Land Rover's claim for anti-unfair competition. This case enlightens enterprises to apply for patent in time and as soon as possible. Before applying for patent right, they should protect the novelty of non-applied patent. At the same time, since design patents do not need substantive examination, it is easy to cause invalidation disputes of patents. Enterprises should also properly collect and preserve evidence and actively seek other protection such as anti-unfair competition law.

- **【Case】** *Compensate standard in Southern Weekly v. Sina case is 1000-yuan 1000 word*

On March 21, *Southern Weekly* announced that 76 cases of the first batch of rights suits initiated for illegal reprinting of articles, were successful in their first instance and had come into force. The verdict was awarded a total of 365,800 yuan according to the standard of 1000-yuan 1000 word.

Comments: The production cost of news products is becoming more and more expensive. From planning to completion, a report condenses the hard work and sweat of journalists. Regarding the copyright of press releases, China's Copyright Law and relevant regulations stipulate that current news is not protected by copyright law, but "current news" only refers to "simple factual news". Many other news genres, such as communication, commentary and cartoon, containing the ideological and emotional expression of the completion of news works, which constitute works in the copyright law, are protected by copyright law. For a long time, the domestic media did not attach great importance to the copyright of news works. This case and the previous case of illegal reprinting of headlines today show that the media's efforts to protect their copyright are increasing. Enterprises should pay attention to avoiding the risk of infringement when disseminating, forwarding and utilizing news media works. On the other hand, the standard of 1000-yuan 1000 word is conservative, and "punitive damages" has not yet been implemented in copyright legislation.

- **【Case】** *Jiang Xiaobai Trademark Invalidated Case*

On March 30, Jiang Xiaobai's official micro-blog issued a statement on the "Jiang Xiaobai" trademark. It said that since 2011, Jiang Xiaobai has registered more than 100 "Jiang Xiaobai" trademarks in China and can continue to use

them according to law. All Jiang Xiaobai products are normally sold. Last November, the Beijing Higher People's Court ruled that Jiangxiaobai Trademark, No. 10325554 in Category 33 (which is the core category of trademark registration for liquor enterprises), was invalid. Jiangjin Liquor Factory, who applied for the invalid procedure, was the producer of "Xiaojiangbai" liquor and was an early partner of "Jiangxiaobai" brand. It is reported that Jiang Xiaobai Company has applied for more than 1000 trademarks, including hundreds of "Jiang Xiaobai" words. This invalid is only one of them, which has no effect on the products of Jiang Xiaobai Company in the market.

Comments : In recent years, trademark disputes such as Wang Laoji and Gardobao, Red Bull of Thailand have occurred frequently. The trademark war is related to the survival of enterprises. Enterprises should prepare for trademark strategy as soon as possible, especially when looking for partners, they should make clear the ownership of intellectual property rights, to avoid possible trademark disputes in the future.

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