



## 中国外商投资企业协会优质品牌保护委员会

QUALITY BRANDS PROTECTION COMMITTEE OF CHINA ASSOCIATION OF ENTERPRISES WITH FOREIGN INVESTMENT

This monthly E-newsletter is released at the end of each month to update people who pay attention to QBPC and China IP Issues over QBPC activities and developments in the Chinese IP field. This edition is composed of QBPC News and IP News.

Please feel free to forward this newsletter. A PDF version is available on the QBPC Website: [qbpc.org.cn](http://qbpc.org.cn)

### QBPC News

#### QBPC's Participation in the 140<sup>th</sup> INTA Annual Meeting

From May 19 to May 23, Jack Chang, QBPC Chairman, Liu Fei, QBPC Executive Director, and other members and staff participated in the 140<sup>th</sup> Annual Meeting on behalf of QBPC in Seattle. QBPC set up a booth in the exhibition area for the second time. QBPC's image brochures, banner, and billboard were displayed on the site to educate the public on QBPC and Intellectual Property Rights awareness.

On May 20, INTA and QBPC co-hosted a workshop on *China E-Commerce Law: What Does it Mean for Protecting Intellectual Property Online*. QBPC Chair Jack Chang made a presentation titled *The Impact of E-Commerce Law on IP Protection-QBPC in Action*. Mr. Chang introduced the legislation process of the *E-commerce Law*, which was officially formulated in 2015, and then solicited the public comments on the draft three times. QBPC and its members have continuously put forward suggestions on IPR involved in clauses of the *E-Commerce Law*, including definitions of responsibilities and obligations

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of IP right holders, infringers, and e-commerce platforms in trademark infringement and fake product sales, as well as law enforcement intervention. Mr. Chang explained the reasons and overall goodwill of QBPC participating in the recommendations for legislation: to avoid discouraging the endeavors of e-commerce platform operators in governance; to reduce the difficulty and costs of IP right holders in rights protection and avoid collisions with the policies that will reduce the cost of rights protection; and to cut down on the burden of law enforcement administration and the people's court. For pictures and more information, please visit:

<http://www.lolwww.cn/view.php?id=3071&cid=92>

### **The 2017-2018 QBPC Annual Meeting on Top Ten Cases in IP Protection and Model Cases Bridging Administrative and Judicial IP Enforcement Announcement Was Held**

Now in 2018, QBPC is 18 years old. It hosted the 2017-2018 QBPC Annual Meeting on Top Ten Cases in IP Protection and Model Cases Bridging Administrative and Judicial IP Enforcement Announcement in Beijing on June 8, 2018. Over 300 people attended the meeting.

George Chu, Chairman of the Seventy-Fifth Anniversary of The United Nations; Yuan Gaoqiang, Vice Chair of the China Association of Enterprises with Foreign Investment; Zhang Jingli, Deputy Director General of the Economic Crime Investigation Department of Ministry of Public Security of PRC; Li Weiwei, Deputy Director of IP Protection Division, Investigation and Supervision Dept. of the Supreme People's Procuratorate of the PRC; Xie Xinhong, Deputy Director of IP Division of the Department of Policy & Legal Affairs, General Administration of Customs of the PRC; Günther Marten,



Minister Counsellor and IP Attaché of EUIPO; David Bennett, IP Counsellor of Australian Embassy Beijing; Tom Duke, IP Attaché of the British Embassy Beijing; Markus Richter, Counsellor Intellectual Property Rights and Legal Affairs of Embassy of the Federal Republic of Germany; and Duncan Willson, IP Attaché of US Patent and Trademark Office of the US Embassy Beijing, addressed the guests and members at the meeting. Jack Chang, Chairman of QBPC, gave the welcoming remarks to kick off this event. Mr. Chang discussed QBPC's achievements over the last eighteen years, and how QBPC has played a huge part within IP protection around the world. He continued his speech by expressing his gratitude towards all of those who take part in the fight against infringement, since without them, QBPC would not be as successful as it is today. After acknowledging the attendance of his good friend George Chu, Chairman of the Seventy-Fifth Anniversary of the United Nations, and IP Attaches from various embassies in Beijing, he asked the IP community for their continuous hard work in order to help China move faster into the better commercial rule of law which will ultimately benefit the entire world.

### The cases selected this year feature the following four characteristics:

1. The cases are relevant to the peoples' lives: refurbished second-hand cell phones, fake scanners or refurbished/re-assembled worn-out parts, fake medicine for tumors with the original packaging but without the necessary active ingredients, etc. The cases show that the rampant application of defective or used originals, parts, or packages occurs frequently in counterfeit goods, found during the practice of anti-counterfeiting crimes campaign. The remedy results of the cases exemplify the resolution, and the favorable effect of criminal and judicial organizations fighting such crimes and maintaining the people's property value and safety.

2. They are models of cross-border anti-counterfeiting cooperation: the counterfeiting dens in various Southeast Asian countries export large amounts of fake products to China. Due to this, Chinese and foreign policemen have carried out international police cooperation to jointly fight against the distribution of counterfeit goods. As displayed by these cases, IP protection has increased regionally and globally,



and the governments of all countries, the international organizations, right holders, and all parties concerned have worked, and must continue to work, hard together. The cases also reveal the determination and performance of the Chinese government regarding the normalization of international law enforcement cooperation.

3. Multiple successful cases have been fighting trademark infringement and unfair competition: the law enforcement and judicial organizations, as well as the right holders, fight against the criminals and infringers. Then, they effectively provide multiple classic cases in the aspects of the criminal protection of color trademarks, administrative order for the renaming of the infringing enterprises, civil compensation worth millions of Yuan, and display references for the future IP protection practices.

4. The Model Cases Bridging Administrative and Judicial IP Enforcement are all IPR border protection cases that include cooperation between the Customs and Public Security organizations: said cases are significant achievements for promoting an effective linkage between administrative law enforcement and criminal justice. The cases sufficiently show that the right holders highly recognize the IP protection of China Customs and administrative and criminal law enforcement bridge between Customs and Public Security organizations in fighting against exported fake products.

The case selections and announcement events for these seventeen years deeply show the close cooperation between government and enterprises in IP protection. China-based IP protection of foreign-invested enterprises has attracted more attention and obtained more support from government organizations. Because of their hard work, the foreign invested enterprises have given affirmation to the Chinese government, increasing their recognition from the international society. The 2017-2018 Annual Top Ten Cases in IP Protection and Model Cases Bridging Administrative and Judicial IP Enforcement is only a snapshot of IP protection work in China. It continues to display the assertion and gratitude toward IP protection staff who stay true to the mission, work hard together, and continue to make progress, truly reflecting the central and local governments' support and promotion of IP protection. The case selections and announcement events in the last seventeen years provide more practical experience for QBPC members; provide precious experience for in-depth cooperation between the government and enterprises; provide typical cases for IP protection law enforcement and judicial and academic research



activities; provide a platform for exchange and communication between China and the international community; and make active contributions to the development of IP protection in China. For pictures and more information, please visit:

<http://www.lolwww.cn/show.php?id=312>

<http://www.lolwww.cn/view.php?id=3070&cid=92>

## IP News

### [China to Promote Utilization of Foreign Investment](#)

国务院关于积极有效利用外资推动经济高质量发展若干措施的通知

国发〔2018〕19号

The State Council released on June 15, 2018 a *circular on measures to effectively utilize foreign investment and promote high-quality development of the economy*. The steps include lowering market threshold, deepening administrative reform, promoting high-quality investment, creating a high-standard business environment, optimizing investment layout, and enhancing the role of national development zones, according to the circular. To ease market access in a large scale, the nationwide practice of pre-established national treatment and the negative list on foreign investment will be improved.

The special administrative measures on foreign investment nationwide and in free trade pilot zones, known as “negative list”, will be revised and published before July 1, 2018, aiming to enhance opening-up in an all-around way. The Circular also stressed the further opening-up in the financial sector, services sector and sectors such as agriculture, mining, and manufacturing. It called for efforts to ease restrictions on setting up foreign financial institutions, revise regulations related to Qualified Foreign Institutional



Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII), develop the market of crude oil futures, and attract overseas traders in iron ore future trading.

The administrative reform will be deepened for foreign investment facilitation, according to the Circular. Provincial-level governments will be entitled to review registration and modification of foreign-invested enterprises investing less than \$1 billion in sectors included in the negative list. Local governments were encouraged to carry out integrated approval procedures, and review enterprises' registration, filing in one platform. Capital use of foreign-invested enterprises, foreign talents' work in China, and their exit and entry will be easier than before, according to the circular. Efforts should be made to attract foreign investors with advanced technologies and management experience, support their participation in the construction of the free trade port in Hainan province, and strengthen the leading role of pilot free trade zones in attracting foreign investment, the Circular stated. It also encouraged foreign-invested enterprises to reinforce R&D, put more capital in advanced technologies, and participate in a merger and acquisition in China. The Circular also stressed measures to protect intellectual property rights (IPR) and other rights, including lifting the upper limit of IPR infringement compensation, strictly cracking down on illegal activities such as business secret invasion and trademark squatting, and prohibiting compulsory technology transfer. For a better layout of foreign investment, it encouraged foreign-invested enterprises in western and northeastern regions to expand financing channels through issuing bonds and urged cutting logistic costs through a full range of measures. Also, the government will support the development of key border areas and the establishment of international cooperation zones in western regions which will play a leading and exploratory role in utilizing foreign capital. **[Provided by The State Council of the People's Republic of China]**



[SPC to Provide Clarity on Several Issues Concerning the Trial of Administrative Cases with Respect to Granting and the Confirmation of Patent Rights](#)

[最高法院拟明确审理专利授权确权行政案件若干问题](#)

The Supreme People's Court ("SPC") has recently issued the *Provisions (I) on Several Issues Concerning the Trial of Administrative Cases with Respect to Granting and Confirmation of Patent Rights (Draft for Comment)* (the "Draft for Comment") to seek public opinions by July 1, 2018.

The Draft for Comment deals with the scope of cases to be heard, interpretations of claimed rights, application of legal provisions concerning entities involved in granting and confirmation of patent rights, types of rulings, evidence rules, etc. The Draft for Comment provides that where there is evidence proving that the patent applicant or the patent right owner goes against the principle of good faith to maliciously forge or falsify relevant technical content, such as specific implementing methods, data, and charts in instructions and attached graphs thereto, and the party concerned claims accordingly that the instructions are not in line with provisions of the third item under Article 26 of the *Patent Law* and thus relevant claimed rights shall be announced invalid, and such a claim shall be supported by the court. Moreover, the Draft for Comment expressly states that, where modifications made by the patent applicant to instructions or attached graphs thereto have been clearly recorded into the original instructions, attached graphs and documents prepared for the claimed rights or could be directly and undoubtedly accepted by technical personnel in the related field, the court shall rule that these modifications conform to provisions of Article 33 of the Patent Law. [\[Provided by LexisNexis China\]](#)



[SIPO Provides Clarity on Matters Concerning Applications for Patents and Trademarks During the Transition Period of the Institutional Overhauls](#)

[国知局明确机构改革过渡期专利商标等申请事项](#)

The State Intellectual Property Office ("SIPO") has recently issued the Announcement on Relevant Matters Concerning Unifying the Use of Seals and Documents for Applications for Patents and Trademarks During the Transition Period of the Institutional Overhaul (the "Announcement").

The Announcement clearly states that, beginning on midnight of June 8<sup>th</sup>, 2018, "trademark registration certificates", "announcements for the acceptance, approval and examination of geographical indications of origin", "patent certificates", and "certifications for registered layout designs of integrated circuits" will be all stamped with the SIPO's official seal. Processes and format of relevant documents, involved in formalities for the application, acceptance, examination, objection, review and administrative proceedings concerning trademarks, formalities for the application, acceptance, examination, re-examination, invalidity announcement, administrative reconsideration and administrative proceedings regarding patents, and formalities for the application, acceptance, examination, registration and revocation with respect to layout designs of integrated circuits, will remain unchanged at the time being. Administrative reconsideration formalities for trademarks and the format of documents concerned will remain the same as well on a temporary basis. [\[Provided by LexisNexis China\]](#)



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QBPC was established in 2000. About 200-member companies are members of QBPC by 2018.

QBPC is a member-driven industry organization focusing on improving IP Legal framework and enforcement in China.

QBPC is a reliable partner that you may work together with.

QBPC is a bridge between international community and China.



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