

W&B Legal Newsletter

2017 October Vol. 5

Spotlight

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- W&B Awarded the 2017 “Star of Innovation” for Family Wealth Management at the Asia Fortune Forum
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Introduction

Watson & Band has flourished into a full-service law firm with more than 250 professionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

Watson & Band Law Offices

Established in 1995, Watson & Band Law Offices is one of the oldest partnership law offices in China. Headquartered in Shanghai, our firm maintains multiple branch offices in Beijing, Harbin, Wuxi and Hong Kong. Our cooperative firms spread over all major cities in China and abroad.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates a branch office in Beijing. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department responsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

Contact Us

Shanghai Office

Address: 26th Floor, The Center, No.989 Changle Road, Shanghai 200031 P.R.C.

Tel: (86-21) 5292-1111;
(86-21) 6350-0777

Fax: (86-21)5292-1001;
(86-21) 6272-6366

E-mail: mail@watson-band.com.cn ; mail-ip@watson-band.com.cn

Beijing Office

Address: 5C, D Block, Fuhua Mansion, No. 8 North Chaoyangmen Street, Dongcheng District, Beijing 100027 P.R.C.

Tel: (86-10) 6625-6025

Fax: (86-10) 6445-2797

E-mail: beijing@watson-band.com.cn ; mail-ip@watson-band.com.cn

Hong Kong Office

Address: Room 2004, Kinwick Center, 32 Hollywood Road, Central District, Hong Kong

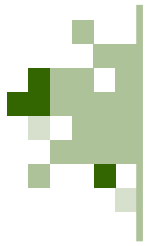
Tel: (86-21) 5292-1111*123; 852-3197-0091

Harbin Office

Address: Room A2, Madi-er Shopping Center No.37 West Badao Street, Daoli District, Harbin 150010 P.R.C.

Tel: (86-451) 8457-3032;
(86-451) 8457-3032

E-mail: harbin@watson-band.com.cn



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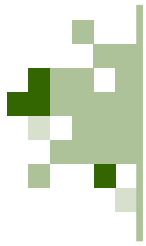
Dear Readers,

Thank you for your attention to our W&B Newsletter. We publish this special journal with great excitement because we have so many achievements to share with you during this “golden autumn”. To name just a few of them, Partner George Fu delivered brilliant commentary on the Anti-Unfair Competition Law and related enforcement strategies at the special legal training session for the FMCG (Fast-Moving Consumer Goods) industry meeting on August 25th; Partner Shenmin Xu published his masterpiece, Patent Litigation Practice in China, based on his 40 plus years of experience in the patent industry; our family wealth practice was awarded the 2017 Star of Innovation for Family Wealth Management at the Asia Fortune Forum; and our branch office for W&B IP Agent Ltd. was established in the ancient western China city of Lanzhou.

We also made progress in our traditionally strong practices such as intellectual property law, entertainment law and dispute resolution. In addition to winning the MPAA lawsuits, we obtained an injunction in an IP enforcement lawsuit for a world-famous luxury brand. Furthermore, our legendary performance representing JUKI Corporation twice before the Supreme People’s Court caused the case to be selected as one of the Top 10 Cases of 2016 by the Patent Reexamination Board.

Entering the final quarter of 2017, with the enactment of the amended General Provisions of Civil Law and the increasingly strong calls within China’s academic legal circles for incorporating a special chapter for intellectual property rights into the General Provisions, we will track China’s legislative developments together for you. We thank you for sticking with us all this time.

MuLe Li Partner CMO
m.le.li@watson-band.com.cn



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Watson & Band Events

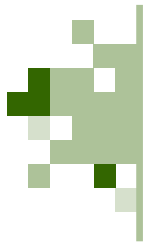
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Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by State Intellectual Property Office, China Trademark Office, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

Latest on Watson & Band

We're Joining the Silk Road——Announcing the Establishment of Watson & Band's Gansu Subsidiary

In August 2017, Watson & Band Intellectual Property Agency Ltd. (hereinafter referred to as “Watson & Band”) established its Gansu subsidiary.

Gansu province is located at a key point on the Silk Road, and is surrounded by the famous Hexi Corridor that connects it with the Central Plains and the Western regions. It is not only a conduit to the Central Plains that spreads culture and commerce to the Western regions; it is also one of the most brilliant pearls on the continental expanse of China. Even now, the geographical position of Gansu and its Hexi Corridor remains significant for its Eurasian transnational railway, a critical passage-way from central and western Asia to Rotterdam in the Netherlands, as well as a prominent corridor from the Central Plains to Xinjiang province. These attributes endow Gansu with a unique natural strategic value.

In the midst of the economic cooperation among the “One Belt and One Road” countries, Gansu is becoming a part of the modern Silk Road and is developing very rapidly in the fields of technology, transportation, business, etc. Watson & Band's Gansu subsidiary is ready to seize this opportunity with its dedication to leaping forward and offering its professional intellectual property services to diverse Gansu enterprises utilizing its inbound and outbound intellectual property legal experience.

W&B Named an “Integrity Trademark Agency” for 2014 and 2015

In 2017 Watson & Band was again named an Integrity Trademark Agency in Shanghai for 2014 and 2015. The award winners were assessed, elected and announced by the Shanghai Trademark Association in May of this year.

Since the Shanghai Trademark Association began issuing this award in 2006, Watson & Band has appeared on each year's list of winners. Nevertheless, we never rested on our laurels; instead, we have continued to adhere to the philosophy of “Integrity, Strategy, Professionalism and Dedication” ever since our founding, attaching great importance to our clients and exerting our utmost effort to safeguard our clients' interests. The philosophy of integrity that we have always upheld is highly consistent with the requirements issued to trademark agencies by the Trademark Association. Our trademark agency service, known for its integrity, has been well-recognized and praised by both the Trademark Association and our clients.

Another feature that distinguishes Watson & Band from other trademark agencies is that our trademark team, which is comprised of lawyers, trademark agents and other legal professionals, is able to provide clients with comprehensive legal services covering all proceedings from the granting of trademark rights to confirmation and enforcement of the rights.





Latest on Watson & Band

W&B Awarded the 2017 “Star of Innovation” for Family Wealth Management at the Asia Fortune Forum



On September 12th, 2017, the 2017 International Private/Family Wealth Management – China Billboard Award Ceremony of the Asia Fortune Forum was held at the Shanghai Wanda Reign Hotel. Watson & Band won first place in the 2017 Star of Innovation for Family Wealth Management Billboard. Our Senior Partner, Fang Tan, attended the ceremony and received the trophy on behalf of our firm.

Over the past five years, W&B’s family wealth management practice group has represented over 80 entities including private banks, trust companies, insurance companies, wealth management companies, family offices, university MBA or EMBA projects, fortune forums, and round table or MDRT meetings of the insurance industry, based on which W&B has been named a Top Law Firm in the Private Wealth Industry by the prominent legal rating agency LEGAL BAND. Our services in this respect mainly include:

- Resolution of disputes in major litigation involving marriage and inheritance, including divorce or divestiture of shareholders of listed companies and divestiture of shares; disputes involving equity inheritance; divorce proceedings of well-known artists or pop stars or the litigation of large inheritances; divorce or succession proceedings involving foreign factors or complex marriage and family relationships.
- Design of family wealth and inheritance plans, including separation planning for pre-marital and post-marital property; separation planning for enterprise assets and family property; design of plans for family wealth inheritance; design of plans for family enterprise transfers; overall wealth solutions for domestic and overseas family trusts; estate planning; insurance planning and public charities; and
- Legal counsel for families and private counsel for HNWIs (i.e. high net worth individuals); providing individuals or families with wealth management and inheritance planning; related legal services.



W&B Attends the 8th Patent Annual Information Conference in Beijing

The 8th Patent Information Annual Conference (PIAC) was recently held in Beijing. W&B’s Senior Partner Shenmin Xu, Managing Partner Jun Yang, Partner Jianguo Huang, Partner Mule Li, Vice General Manager of W&B IP Agent Ltd., Yingcong Xu, and colleagues from our Beijing Office attended the meeting.

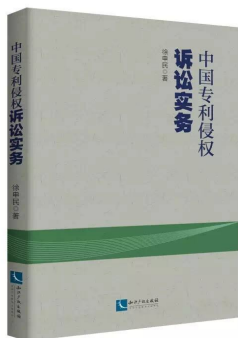
With the number of attendees approaching 7,000, the 8th PIAC gathered stars from various fields including government officials, enterprise elites and academics. Centering on the theme “Patents: Facilitating the Development of the Real Economy”, the W&B delegation held heated discussions with colleagues within the industry concerning new developments and trends in China’s patent industry.

W&B was also invited to join the “Internet+” Alliance for Intellectual Property Protection. The Alliance, initiated by the China Intellectual Property Publishing House, is designed to provide a service communication platform for IP rights owners and IP-related practitioners. W&B has long dedicated itself to encouraging, protecting and facilitating the development of the creative industry. Now that it is a member of the Alliance in the “Internet+” environment, W&B will continue promoting and providing enterprises and rights owners with a new IP-protection model featured by comprehensive, one-stop, authoritative, objective and convenient services based on digital authentication technology.

Latest on Watson & Band

Beijing: Launch of Partner Shenmin Xu's New Book — “Patent Infringement Litigation Practice in China”

On September 6th, 2017, W&B Senior Partner Mr. Shenmin Xu was invited along with the W&B delegation to attend the 8th PIAC hosted by China Intellectual Property Publishing House LLC at the China National Convention Center. Mr. Xu also attended a press conference that the PIAC organizer held for his new book, Patent Infringement Litigation Practice in China.



As a founding partner of Watson & Band, Mr. Xu has accumulated incredibly comprehensive practical experience and has also accumulated profound professional achievements in the field of intellectual property rights, particularly in patent litigation. In his keynote speech at the conference, Mr. Xu reviewed a number of important “firsts” in his patent law career.

His first patent application was filed on April 1st, 1985.

He represented a client in his first patent infringement action in 1990.

He represented a client in his first patent invalidation petition in 1991.

Two even more noteworthy achievements are his successful representation of (i) the first patent infringement action in China that was filed by a Japanese company against a Chinese company, and (ii) the first patent infringement action in China between two foreign companies. In 2004, Mr. Xu brought his Japanese-written guidance book on patent litigation in China to a neighboring country, Japan. From that book, Japanese companies learned about the great importance that China places on intellectual property rights as well as its determination to strengthen their protections. The book serves as an important reference for IP practice in Japanese companies.

W&B has long been on the list of top-ranking providers of IP-related legal services in China because of its outstanding performance in IP-related litigation. In particular, W&B has accumulated a wealth of pioneering experience in patent litigation. During his provision of routine legal services for his clients, Mr. Xu discovered that a great number of patent infringement disputes in China were rooted in a considerable gap in the overall awareness of patent protection between Chinese companies and large multinational companies. Furthermore, such disputes could also be attributed to the strong professionalism involved in IP litigation and the absence of systematic theories despite the ready availability of books on patent infringement litigation practice. Mr. Xu supplemented the theoretical summary with refined briefs of landmark cases in the book Patent Infringement Litigation Practice in China. This book represents a triumph of the philosophy of “learning by doing”.



At the conference, Mr. Xu’s review of his patent law career and his overview of current and future patent infringement litigation practice in China deeply impressed the audience and prompted an enthusiastic response. During the following interactive Q&A session, Mr. Xu provided simple but to-the-point answers to profound questions such as his practice experience and legislative developments in the P.R.C. patent law. The audience all greatly benefited from the atmosphere of the conference.

Finally, with assistance from the organizer, Mr. Xu drew a lottery for books to be given as gifts to lucky audience members, and he autographed all books sold on the event. With that, the new book launch reached a successful conclusion.



Watson & Band Holds a Successful China Law Salon Session Entitled “Dos and Don’ts of Drafting Patent Application Documents from a Patent Infringement Litigation Perspective”

On the afternoon of September 22nd 2017, the sixth “China Law Salon” of 2017 was held at W&B offices, entitled “Dos and Don’ts on Drafting of Patent Application Documents from a Patent Infringement Litigation Perspective”. The speaker was Mr. Yingcong Xu, patent agent and Vice General Manager of Watson & Band Intellectual Property Agency Ltd.

Mr. Xu illustrated and clearly explained several do’s and don’ts in drafting patent application documents using a number of patent cases, his colleagues’ experiences and his experience gained in years of practice. Those dos and don’ts include searches for novelty and inventiveness, as well as tips on drafting specifications, claims and consistent wording. Mr. Xu cited and analyzed patent infringement cases handled by W&B for Juki Corporation against CHNKI Precision Sewing, selected as one of the Top 10 Cases of the year by the Supreme Court, to illustrate in detail how inconsistent wording in patent applications can hinder patent enforcement and trigger future patent infringement litigation.

Watson & Band Presents China Law Salon Session Entitled “Risk and Compliance Governance under the New Environmental Protection Law”

On the afternoon of August 31st, 2017, the fifth “China Law Salon” of 2017 was held at W&B offices, entitled “Risk and Compliance Governance under the New Environmental Protection Law”. The speaker was Ms. Yiwen Qian, attorney at law from W&B’s Commercial Division.

On April 24th, 2014, the Eighth Plenary of the Twelfth NPC Standing Committee voted on the revised draft of the Environmental Protection Law and agreed on January 1st, 2015 as the official date of execution of the law. The new Environmental Protection Law is referred to as “the strictest environmental protection law in history” due to new features such as per diem fines, sealing and seizure, as well as administrative detention and other beefed-up sanctions. At the same time, the law places more responsibility on the government for environmental protection, so that local governments are obliged to balance economic development and environmental protection. A new chapter is devoted to “Information Disclosure and Public Engagement”, in which public interest litigation over environmental issues is approved as an effective channel for the public to participate in the environmental protection supervision process.

In the first half of 2017, Jiangsu Province publicized 25 typical violations of Environmental Protection Laws. Over 5,000 such cases were accepted and investigated in the province, and penalties amounted to 340 million RMB, for an annual growth rate of 46 and 26 percent, respectively. In a joint investigation and prosecution by the Environmental Protection Bureau and the police, 224 criminal environmental pollution cases were processed and 477 suspects were arrested, representing an increase of 131% and 82%, respectively, over the same period last year. (Excerpt from People.cn Jiangsu Channel. Original title: Over 5,000 Environmental Protection Law Violations Under Investigation; Fines Exceed 340 Million RMB)

The Environmental Protection Law and legal compliance in day-to-day operations has become an important topic for every enterprise. Violation of the Environmental Protection Law could subject an enterprise to extremely high penalties, and executives and key personnel can be held criminally liable. Prosecution can also deal a heavy blow to the painstakingly built reputation that an enterprise enjoys. Most importantly, violation of the Environmental Protection Law can result in irreversible damage to the planet, the home upon which we all depend.



Watson & Band and LCOUNCIL Hold Seminar on General Problems of Unfair Competition Regarding Fast-Moving Consumer Goods and Retail Establishments

On the afternoon of August 25th, 2017, LCOUNCIL and Watson & Band Law Offices jointly presented a seminar on Fast-Moving Consumer Goods (FMCG) and retail establishments entitled “A Discussion of General Problems of Unfair Competition in Advertising Infringement and False Publicity”. Mr. Frank Qian, attorney-at-law and W&B Executive Partner, extended a warm welcome on behalf of W&B to the enterprise legal representatives who attended.

Our legal peers from Nike, Toto, Fast Retailing, Starbucks, Honeywell, Dazzle Fashion, Clarins and other world-famous brands in FMCG and retailing discussed pertinent issues with W&B lawyers throughout the lecture and performed case analyses of general problems in advertising infringement, false publicity, commercial defamation and commercial bribery in compliance with anti-unfair competition regulations. After the case analyses Mr. George Fu, founding partner of Watson & Band Law Offices, provided insightful comments on corporate legal teams’ reactions and solutions to unfair competition disputes.

After the seminar, LCOUNCIL and W&B hosted a sunset cocktail party to celebrate the first anniversary of its relocation. At the party, legal representatives got together with W&B lawyers in a relaxed and vibrant environment to savor fine food and wines and appreciate the stunning Shanghai skyline.

Strategy Sharing: Offense and Defense in Business Advertising

In a lecture entitled “Offense and Defense in Corporate Commercials” W&B partner Ms. Cathy Wu shared her views on practical issues with corporate legal representatives based on her rich experience in advertising compliance. Ms. Wu noted that the implementation of the new Advertising Law has brought about severe challenges to the FMCG and retail industries. On one hand, acts involving unfair competition, such as false publicity and advertising infringement, are subject to administrative punishment; on the other hand, they involve collaborative work, indiscriminate lawsuits and claims from professional litigators. In 2016, Shanghai looked into 2,802 cases of various types involving false or illegal advertising involving fines and confiscations of an aggregate 85.56 million RMB, which represent an increase of 37% and 46%, respectively, compared to last year. Both of these figures are record highs.



Ms. Wu suggested that as a precaution, enterprises should pay attention to compliance investigations of advertising as a part of their routine operations, and they should distinguish between reasonable metaphorical exaggeration and false advertising. In response to indiscriminate lawsuits from professional litigators, enterprises should promptly preserve evidence and raise reasonable doubt. If an enterprise enters an administrative complaint proceeding or a lawsuit, it may protect its legal rights and interests by using defenses based on appropriate defendants, jurisdiction, burden of proof, calculation of advertising costs and procedural non-compliance. The attending legal representatives identified with Ms. Wu’s analysis and provided positive feedback.

Actual Combat Simulation: Exercise and Interaction based on Actual Cases of Commercial Defamation and False Publicity

After Ms. Wu’s presentation, the captioned LCOUNCIL Workshop offered an additional presentation entitled “Actual Combat Simulation: Exercises and Interactions Based on Actual Cases”, to equip corporate legal teams for better integration of theory and practice. The session was led by Mr. Xiaobo He and Yizhou Liu, both W&B Partners, each of whom led a group of listeners acting as Party A and Party B to simulate real cases and discuss related issues.

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After the discussion, a number of representatives voiced their opinions in a lively atmosphere from which everyone benefited. Mr. Fu noted in his commentary that compared to other IP disputes, disputes over unfair competition involve more challenges and a greater negative impact on infringement rulings. He said that corporate legal teams should ensure that corporate managers realize the importance of compliance instead of focusing exclusively on crisis response. To achieve this, W&B lawyers as well as other professional law practitioners in China must provide solid legal support and assistance for corporate legal affairs and compliance.



Beautiful Sunset, Lovely Peers

This seminar was enlivened by enthusiastic interactions between the attending corporate representatives and the speakers. During the tea break and the cocktail party, legal directors from multinationals in retailing and FMCG exchanged ideas and interacted with other attending representatives concerning their actual internal circumstances.

After the seminar, W&B arranged a special sunset cocktail mixer in the ring-shaped leisure area on the 26th floor to celebrate the first anniversary of W&B relocation and successful cooperation with LCOUNCIL. Peers from the legal industry got together with W&B lawyers in a relaxed and active environment to savor fine food and wine and to enjoy a gorgeous night view of the Shanghai skyline.

This event also attracted the attention of the press and was covered or reprinted by China Net, Caijing, Kunxun and other media outlets. Watson & Band has won wide recognition from various sectors of the public as well as its domestic and international clients for its triumphs over difficulties and hardships and for its steady approach based on its motto “Integrity, strategy, professionalism and dedication”, through its solid professional skills and experience, and through its focus on client needs and social responsibility.

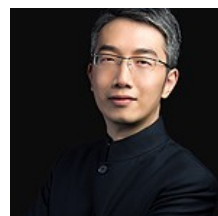
Please follow us on our WeChat public account for more activities and meetings sponsored by Watson & Band.

If you have any problems on Competition & Anti-Trust Law, please contact



Xiaobo He
Partner Attorney

Xiaobo.he@watsonband.com



Xiaosu Zhu
Partner Attorney

Xiaosu.zhu@watsonband.com

Compliance Management

Brief introduction to Cyber Security Law of the People's Republic of China

By Zhuoya Wang

Cyber Security Law of the People's Republic of China (hereinafter referred to as “CSL”) has come into effect on June 1, 2017. As the first comprehensive legislation regarding cyber security, it will exert a constructive effect on corporate compliance management of network operation. Under the CSL and its complementary measures, enterprises should concentrate on formulating internal security management systems and operation instructions. To be more specific, we would like to provide the following suggestions for the reference of our clients:

1. Determine the person in charge of cyber security

According to the CSL, enterprises, i.e. network operators, are required to set up specified postings and professionals for cyber security. The person in charge is deemed as directly liable person who may assume individual responsibility and suffer certain punishment after the occurrence of cyber security incident. Besides, the relevant information about the aforementioned personnel arrangement should also be provided when the company intends to apply for the telecommunication licenses or handle some administrative affairs such as network register records.

2. Strengthen the management of the information released by its users

A network operator shall establish scrutiny system for the released information. If it uncovers any information that is prohibited by laws and administrative regulations, it shall immediately cease transmission of such information, and take measures such as deletion to prevent dissemination of such information. The operator shall also keep relevant records, and report the case to the competent authority.

3. Enhance protections for personal information and privacy

Protections for personal information and privacy come under the spotlight in today’s China. The newly-enacted “General Rules of the Civil Law” recognizes that natural persons' personal information shall be protected by law, which provides the legal foundation for personal information protection. On its basis, the CSL underscores the corporate obligations of protecting personal information in the following two aspects.

1) General provisions for personal information protection

Network operators shall collect and use personal information by announcing rules for collection and use, expressly notifying the purpose, methods and scope of such collection and use, and obtain the consent of the person whose personal information is to be collected. Network operators are by no way to collect any personal information that is not related to the services it provides and to disclose, tamper with or destroy personal information that it has collected, or disclose such information to others without prior consent of the person whose personal information has been collected.

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Network operators shall take technical and other necessary measures to ensure the security of personal information it collects, and to protect such information from disclosure, damage or loss. In case of disclosure, damage or loss of, or possible disclosure, damage or loss of such information, the network operator shall take immediate remedies, notify the users in accordance with the relevant provisions, and report to competent authorities.

2) Specific provisions for personal information and important data to be transmitted abroad

According to the CSL, the operator of a key information infrastructure shall store personal information and important data collected and generated during its operation within the territory of the PRC. Where such information and data have to be provided abroad for commercial purpose, security assessment shall be conducted pursuant to the measures developed by the Cyberspace Administration of China (hereinafter “CAC”) together with competent departments of the State Council, unless otherwise provided for in laws and administrative regulations, in which such laws and administrative regulations shall prevail.

Concerning the above provision, we would like to highlight three points as follows:

- Not all network operators are required to store personal information and important data within the territory of the PRC. It is “the operator of a key information infrastructure” that may be imposed the territorial limitation and undertake security assessment for such transmission. The specific scope and security measures for key information infrastructure shall be developed by the State Council, which should be evaluated on a case-by-case basis.
- Not all personal information and data collected by the operator of a key information infrastructure are subject to the abovementioned territorial restriction. The scope of such restriction is the personal information and important data collected and generated during its operation within the territory of the PRC. However, the definition of “important data” is not yet clarified in the Law, which gives wide discretion to judges and the relevant authorities in legal practice.
- With regard to security assessment on personal information and important data to be transmitted abroad, the CAC announced a Notice on Seeking Public Comments on the Measures for the Security Assessment of Personal Information and Important Data to be Transmitted Abroad (hereinafter the “Notice”) on April 11, 2017. In light of the Notice, the state cyberspace administration shall conduct overall coordination for security assessment for the data to be transmitted abroad and an industrial authority or regulator shall take charge of the security assessment for the data to be transmitted abroad in respect of the industry.

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4. Establish real-name authentication mechanism for network users

Enterprises collect network data mainly by virtue of the online registration and utilization of the users. In order to guarantee the legitimacy of the data source, it is essential for network operators to conduct the users' identity verification. Therefore, the CSL stipulates that network operators are bound to require users to provide real-name identity information.

5. Reserve the cyber-related data and logs

Network operators are required to perform the obligations of maintaining the network data. The reservation timescale varies in different cyber-related laws and regulations, but mostly the minimum period is deemed as no less than six months.

6. Conduct due diligence on network security prior to a transaction

In practice, where an enterprise intends to conduct due diligence on network security of the target company, it may review the compliance and integrity of the relevant mechanism in such aspects as its personnel arrangement for cyber security supervision, protection of personal information and cross-border transmission of network data, etc.

In conclusion, where the company is the deemed operator of the critical information infrastructure, it may need to adjust its network security framework from these above aspects and enhance the cyber security protection so as to ensure full compliance with the CSL. In addition, it is also essential for such company to closely follow any subsequently released legislation in this respect.

Author: Zhuoya Wang



If you have any problems on compliance management in China, please contact us.



Frank Qian
Executive Managing Partner
Attorney
Frank.qian@watsonband.com



Ze Gao
Partner Attorney
Ze.gao@watsonband.com



Cathy Wu
Partner Attorney
cathy.wu@watsonband.com

Chinese Sports and Entertainment Business

Greenland Shenhua Football Club Engages W&B as Its Permanent Legal Counsel

Shanghai Greenland Shenhua Football Club (hereinafter “Shanghai Greenland Shenhua FC”), approved by the Greenland Group, engaged Watson & Band as its permanent legal counsel. Once again, our special service mode featuring “management by a specific department, establishment of a specific team, contact with a specific person and detailed division of a specific field” brought us the opportunity to serve another respected client.

To ensure top-quality services, Watson & Band established a special team of eight lawyers, including our Managing Partner (i.e. the legal representative of the firm) and other Senior Partners; Our team members are capable of practicing in various fields in civil and commercial law, company law, intellectual property law, sports law and criminal law. They include directors and members of special committees of the Shanghai Bar Association, and all of them are either certified as Chinese tax agents, admitted to the New York Bar Association, or qualified in China as patent/trademark agents. The team, backed by the entire firm, will provide Greenland Shenhua FC with comprehensive legal services.

Shanghai Greenland Shenhua FC, formerly known as Shanghai Shenhua FC, was established on December 10th, 1993 and has operated as a reputable professional football club in China’ ever since. It has enjoyed membership in China’s top football league since its establishment, and it has won championships in both the Class A League and the FA Cup. In February 2014, Greenland Group formally acquired Shanghai Shenhua FC, and the club changed its name to Shanghai Greenland Shenhua FC.

As the legal service provider for Shanghai International Film Festival, Shanghai International Arts Festival, MPA and SMG, W&B boosts extensive and intensive professional experience in China’s culture and entertainment industry. Please contact us for any legal need for your cultural or performance activities in China.

IP Litigation

W&B's Represents JUKI Corporation in Case Selected as a 2016 Top 10 Case by Patent Reexamination Board

In April 2017, the series of patent infringement cases that W&B represented for JUKI Corporation was selected as one of 2016's Top 10 Cases by the Patent Reexamination Board. A journalist from the China Intellectual Property News, Ning Lou held a special interview with W&B Senior Partner Mr. Shenmin Xu about these cases.

Background

JUKI Corporation is an internationally renowned professional manufacturer of industrial and household sewing machines. The "JUKI" branded sewing machines it manufactures, featuring leading technology, superb quality and aesthetic designs, are sold at home and abroad, and are popular among consumers worldwide, including consumers in China. JUKI Corporation has adhered to its pursuit of high product quality and its company spirit of "Mind & Technology", and it has maintained its technological lead within the sewing machine manufacturing industry based on its extensive investments in scientific research.

On January 28th, 2003, JUKI Corporation filed an application with SIPO for an invention patent entitled, simply, "A Sewing Machine". After an examination, on June 10th, 2009 SIPO granted Patent Number ZL03103421.7 and named JUKI Corporation the patentee.

In 2011, it came to JUKI's attention that the "CHNKI" branded and CLK-1900DS model sewing machine manufactured by CHNKI Precision Sewing Machine Co., Ltd. (hereinafter "CHNKI Company"), and the "MAQI" branded and LS-T1900ASS model sewing machine manufactured by Zhejiang MAQI Sewing Machine Co., Ltd. (hereinafter "MAQI Company"), both fell within the scope of protection of its patent rights. In response, JUKI conducted investigation and evidence collection and filed patent infringement lawsuits with the Shanghai No.2 Intermediate People's Court and the Shanghai No.1 Intermediate People's Court, respectively.

On August 9th, 2012, CHNKI Company and MAQI Company each filed petitions with the Patent Reexamination Board (hereinafter the "PRB") for an invalidity declaration against all patent claims upon which the lawsuits were based. CHNKI Company and MAQI Company asserted that Claims 1~4 of the patent are unclear and therefore do not comply with Rule 20.1 of the Detailed Implementing Rules of the Patent Law; and furthermore, that Claims 1~4 are not supported by the patent description and therefore do not comply with Article 26.4 of the P.R.C. Patent Law; consequently, it asserted, all of the claims of the patent should be declared invalid.

After accepting the petitions filed by CHNKI Company and MAQI Company, the PRB conducted a joint examination of the two cases.

On November 13th, 2012, the PRB held an oral hearing. In Invalidity Decision No.20220 issued on February 26th, 2013, the PRB upheld the validity of Patent No. ZL03103421.7. On April 25th, 2013, in objection to this decision, CHNKI Company filed an administrative lawsuit with the Beijing First Intermediate People's Court.

On February 20th, 2014, the Beijing First Intermediate People's Court issued the (2013) Yi Zhong Zhi Xing Chu Zi No.2268 administrative judgment in which the court upheld the PRB's decision.

On March 20th, 2014, in objection to the administrative decision, CHNKI Company filed an appeal with Beijing Higher People's Court. On March 25th, 2015, the Beijing Higher People's Court issued Administrative Judgment (2014) Gao Xing Zhong Zi No.1584 in which it dismissed CHNKI Company's appeal and upheld the original judgment.

On December 17th, 2015, the Supreme People's Court issued administrative ruling (2015) Zhi Xing Zi No.223, in which it dismissed a retrial petition filed by CHNKI Company.

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History of Patent Infringement Lawsuits Involving CHNKI Company

On September 30th, 2011, JUKI Corporation filed a patent infringement lawsuit against MAQI Company et. al with the Shanghai No.1 Intermediate People's Court.

On March 20th, 2012, Beijing Guoke Intellectual Property Judicial Appraisal Center issued the Guo Judicial Appraisal Opinion Ke Zhi Jian Zi [2012] No.13, in which the allegedly infringing product was found to incorporate all of the technical features disclosed in Claims 1 ~3 of the patent.

On July 16th, 2012, the Shanghai No.1 Intermediate People's Court issued Civil Judgment (2011) Hu Yi Zhong Min Wu (Zhi) Chu Zi No.183, in which the court held that the allegedly infringing product fell within the scope of protection of the patent and therefore infringed it. MAQI Company was ordered to stop the manufacture and sale of the allegedly infringing sewing machine, compensate JUKI Corporation for its economic losses in the amount of RMB 100,000, and bear the appraisal cost of RMB 70,000.

On July 23rd, in objection to the civil judgment, MAQI Company filed an appeal with the Shanghai Higher People's Court. On September 17th, 2012, the Shanghai Higher People's Court issued Civil Judgment (2012) Hu Gao Min San (Zhi) Zhong Zi No.81, in which the court dismissed the MAQI Company's appeal and upheld the original judgment.

In February 2014, JUKI Corporation applied for compulsory enforcement against MAQI Company. The enforcement process has already been concluded.

Enforcement Experience

Claim 1 of the patent discloses four related terms, namely, "first cam", "second cam", "cam mechanism" and "cam component", as well as an uncommonly used technical term "inactive interval".

With respect to these terms, CHNKI Company and MAQI Company assert that Claim 1 is unclear and does not conform to Rule 20.1 of the original Implementing Rules of the Patent Law (which rule was later incorporated as Article 26.3 in the 2009 amended version of the P.R.C. Patent Law), because (i) the correlations between the four terms "first cam", "second cam", "cam mechanism" and "cam component" are unclear and the correspondence is unspecified and (ii) the concept "inactive interval" is not clearly defined.

In addition, CHNKI Company and MAQI Company assert that the three subjects "said driving cam component", "tangent connection component" and "foot-lift connection component", as disclosed in Claim 1 of the patent, should be paratactic and therefore all of them should be construed as having an "inactive interval", which is not disclosed in the description. Consequently, Claim 1 cannot be supported by the description and does not conform to Article 26.3 of the original P.R.C. Patent Law (which was later renamed Article 26.4 of the 2009 amendment of the P.R.C. Patent Law).

After explanations by the patentee, the PRB ruled on the assertion by CHNKI Company and MAQI Company that Claim 1 is unclear and does not conform to Rule 20.1 of the original Implementing Rules of the Patent Law. Its reasoning appears below:

1. Although different technical terms including "first cam", "second cam", "cam mechanism" and "cam component" are used in Claim 1 of the patent, it can be unambiguously determined (based on the logical relations between the said terms as disclosed in Claim 1, the disclosure in Lines 9~11 of Page 11 and the corresponding drawing in the description) that the term "said driving cam component" disclosed in Claim 1 refers to the "cam mechanism" composed by the "first cam" and the "second cam". Further, in combination with Lines 2~4 from the bottom of Page 11 of the description, it can be unambiguously determined that the "inactive interval" is provided for the "cam mechanism" of the patent.

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2. Although a technical feature not in compliance with the common usage of the Chinese language appears with the definition “inactive interval”, based on the description and the appended patent drawings (e.g. Line 4 from the bottom of Page 11 to Line 3 on Page 12 in the description, and Fig. 3 and Fig. 6), it can be unambiguously concluded that the “inactive interval” in this patent means the “period between the end of the tangent and the beginning of the foot-lift”.

As disclosed by the prior art referenced in the technical background section of this patent, a sufficient time delay is required between the end of the tangent and the beginning of the foot-lift, and such time delay requires a controlled deceleration of the engine. This patent actually utilizes the “inactive interval” between the end of the tangent and the beginning of the foot-lift as an alternative solution for the sufficient time delay achieved by controlling the engine deceleration in the prior art, so as to achieve a shortened cycle period.

With respect to the assertion by CHNKI Company and MAQI Company that Claim 1 cannot be supported by the description and does not conform to Article 26.4 of the P.R.C. Patent Law, the PRB held that:

Combining the disclosure in the technical background section and the embodiments and appended drawings in the description (e.g. Line 4 from the bottom of Page 11 to Line 3 of Page 12 in the description, and Fig. 3 and Fig. 6) of this patent, as disclosed in the prior art, a sufficient time delay is required between the end of the tangent and the beginning of the foot-lift, and such time delay requires the control of deceleration of the engine. On the other hand, this patent actually utilizes the “inactive interval” between the end of the tangent and the beginning of the foot-lift as an alternative solution to the sufficient time delay achieved by controlling the engine deceleration in prior art, so as to achieve a shortened cycle period. Consequently, there is no issue concerning the existence of several “inactive intervals”.

After the PRB issued a decision on March 25th, 2013 that upheld the validity of this patent, CHNKI Company filed an administrative lawsuit with the Beijing First Intermediate People’s Court on basically the same grounds, and it petitioned the court to overturn the decision. The court held that the grounds upon which the decision rested were valid, and it therefore issued a judgment upholding the administrative decision. CHNKI Company, in objection to the said trial judgment, appealed the case to the Beijing Higher People’s Court, which dismissed the appeal after an examination. CHNKI Company petitioned the Supreme People’s Court for a retrial, which petition was ultimately dismissed.

In the appellate judgment issued by the Beijing Higher People’s Court and the retrial judgment by the Supreme People’s Court, it was further held that it can be unambiguously determined based on the inherent logic of Claim 1 and the disclosure in the description and the appended drawings that the “said driving cam component” refers to the “cam mechanism” composed of the “first cam” and the “second cam”, and thus there is no issue of unclear reference as asserted by CHNKI Company. The “inactive interval” refers to the period between the end of the tangent and the beginning of the foot-lift, during which period the cam mechanism, even if activated by the driving engine, will not transmit any driving power to either the tangent mechanism or the foot-lift mechanism. The term “inactive interval” expresses such a clear meaning that an ordinary person skilled in the art will be able to precisely define its scope using a combination of the description and the appended drawings. Consequently, both courts maintained the validity of the patent.

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Comments on the Invalidity Review Decision

The more a claim discloses, the narrower its scope of protection will be. For this reason, when applying for a patent, the technical features disclosed in a claim are usually written in a concise manner in order to obtain the broadest scope of protection. It thus becomes a common practice within the industry to interpret and construe a claim with the aid of the description and the appended drawings. Article 59.1 of the P.R.C. Patent Law provides that the scope of protection of an invention or a utility model patent shall be subject to the content disclosed in the claims, and the description and appended drawings can be used to interpret the content of the claims.

In terms of Claim 1 in this case, as mentioned above, it is indeed difficult to determine the correlations between the “cam mechanism”, the “said driving cam component” and the “inactive interval” merely based on the literal meaning of the technical features disclosed in Claim 1. Such difficulty explains why the invalidity review decision in this case used the description and the appended drawings to interpret the content disclosed in Claim 1. The invalidity review decision in this case, having survived an administrative trial, appeal and retrial, reveals that:

It is legally acceptable to use the description and the appended drawings to interpret the disputed content in the claim; and it is appropriate and consistent with reality to draw such the conclusion reached by the decision based on the logical relations disclosed in the claims and the description.

Enforcement Experience

This case has undergone all of the proceedings of a patent infringement case including a patent infringement lawsuit, an invalidity review and an administrative action. During these proceedings, any defect in the claim might have resulted in invalidation of the patent in part or in full, or may have led to the finding of non-infringement in favor of the opposing party during litigation proceedings. For these reasons, it is of great importance to fully prepare before a patent infringement action is initiated, including analyses of the validity of the patent and the alleged infringement. After taking this case, we first conducted a careful and comprehensive analysis of the validity of the involved patent, and on that basis, we followed up with a further analysis of the infringement.

The validity analysis first involves a search of relevant prior art, the results of which are then used to analyze whether such resultant prior art is likely to impair the novelty and/or inventiveness of the patent in this case, and whether there exists any other factor that may affect the validity of the patent, for example, whether the claim is unclear or cannot supported by the description, as actually occurred in this case. The patent involved in this case is a Chinese patent owned by a foreign company. When a foreign company applies for a Chinese patent based on patent application documents drafted in accordance with certain foreign legal systems, it will inevitably encounter a translation of the text. After translating such application documents into the Chinese language, it becomes a common issue encountered by foreign companies in their patent enforcement actions in China for difficulties to arise in reading the application documents due to the differences between the drafting style and the literal expressions.

2016年度/专利复审无效行政裁决 一台缝纫机，两上最高法

本报通讯员 姜宇

缝纫机领域专利纠纷由来已久，2016年度/专利复审无效行政裁决中，有一起名为“缝纫机”的专利侵权纠纷案引起了广泛关注。

2013年，浙江杭州一缝纫机制造企业向国家知识产权局申请发明专利，名称为“一种缝纫机”。该专利在2014年12月获得授权。2015年，该企业向国家知识产权局提出无效宣告请求，请求宣告该专利无效。国家知识产权局受理后，经审查认为该专利权利要求1不具备新颖性，遂于2016年12月作出无效宣告决定。该企业不服，向北京知识产权法院提起行政诉讼。法院经审理认为，该专利权利要求1不具备新颖性，遂判决维持国家知识产权局的无效宣告决定。该企业不服，向最高人民法院提起上诉。最高人民法院经审理认为，该专利权利要求1不具备新颖性，遂驳回上诉，维持原判。

此案在知识产权界引起了广泛讨论。有人认为，该专利权利要求1的保护范围过于宽泛，容易导致权利滥用。也有人认为，该专利权利要求1的保护范围合理，符合专利法的规定。此案最终由最高人民法院作出终审判决，维持了国家知识产权局的无效宣告决定。

此案不仅涉及专利权的保护，还涉及专利权的无效宣告。在专利侵权纠纷中，被告往往会提出专利无效的抗辩。如果专利无效，那么侵权指控自然也就不成立了。因此，专利无效宣告在专利侵权纠纷中具有重要的地位。

此案也反映了专利审查的严格性。国家知识产权局在审查专利时，必须严格按照专利法的规定进行审查。对于不具备新颖性的专利，应当予以无效宣告。这有助于维护专利制度的严肃性和权威性。



缝纫机专利侵权案

发明专利对于界定权利要求保护范围的影响

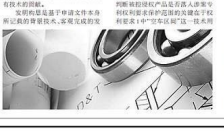
姜宇

发明专利对于界定权利要求保护范围的影响，是专利法中的一个重要问题。在专利侵权纠纷中，如何界定权利要求的保护范围，往往成为争议的焦点。

发明专利的保护范围，是由权利要求书来界定的。权利要求书是专利文件的重要组成部分，它明确了专利权的保护范围。在专利侵权纠纷中，法院需要根据权利要求书的字面含义，结合说明书和附图，来界定权利要求的保护范围。

发明专利对于界定权利要求保护范围的影响，主要体现在以下几个方面：首先，发明专利的技术方案通常具有较高的创造性，这有助于法院在界定权利要求保护范围时，更加准确地理解权利要求的含义。其次，发明专利的说明书和附图通常较为详细，这有助于法院在界定权利要求保护范围时，更加全面地了解发明的技术方案。最后，发明专利的权利要求书通常具有较高的法律确定性，这有助于法院在界定权利要求保护范围时，更加准确地适用法律。

在专利侵权纠纷中，法院在界定权利要求保护范围时，应当充分考虑发明专利的特点。对于发明专利，法院应当更加注重对权利要求书字面含义的理解，同时也要结合说明书和附图，来全面理解发明的技术方案。只有这样，才能准确地界定发明专利的保护范围，维护专利权人的合法权益。



发明专利对于界定权利要求保护范围的影响

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During our analysis of the validity of the patent in this case, we already noted the potential grounds upon which CHNKI Company might base its invalidation petition, and thus we fully prepared for the potentially controversial content and the ability of the description to interpret such content. After identifying the potentially controversial content and identifying that it can be clearly interpreted, and after becoming convinced through infringement analysis that the allegedly infringing product falls within the scope of protection of the patent, we initiated a patent infringement action on behalf of JUKI Corporation.

Due to accurate predictions of the difficulties that might be encountered during a patent invalidity review and a patent infringement action, as well as sufficient preparation for the execution of countermeasures to such difficulties, our client ultimately prevailed.

If you have any problems on Intellectual Property Litigation in China, please contact us.



Shenmin Xu Senior Partner
Attorney at Law
Patent Attorney
 Shenmin.xu@watsonband.com



George Fu Senior Partner
Attorney at Law
Patent Attorney
 George.fu@watsonband.com



Jianguo Huang
Attorney at Law
Partner
 Jianguo.huang@watsonband.com



Yizhou Liu
Attorney at Law
Partner
 Yizhou.liu@watsonband.com

Dispute Resolution

W&B Successfully Obtained an Injunction for a World Well-known Clothing Brand

W&B has made great progress in a recent trademark enforcement action on behalf of a world-renowned clothing brand against a party infringing its trademark rights in Shenzhen.

The infringing party in this case is involved in both offline sales in its physical shop and online advertising via its WeChat public account. It also fabricated a so-called “Chief Designer” to deceive consumers in an attempt to make its counterfeits appear authentic. In order to curb this series of infringing acts, W&B attorneys Yizhou Liu and Mengfei Yu petitioned the court for an preliminary injunction based on their rigorous investigation and evidence collection activities against the infringing party and its conduct. The court ultimately approved the petition and issued a ruling demanding that the infringing party cease its wrongful conduct.

In its ruling, the court held that since the respondent opened a counterfeit shop to sell the infringing products and conducted false advertising in an attempt to pass off the applicant’s brand and trademarks as its own, its bad faith is obvious and its conduct very likely constitutes both infringement of the applicant’s trademarks and unfair competition. Furthermore, since such conduct is continuing and even expanding, irreparable damages will be caused to the applicant’s legitimate rights and interests if this conduct is not promptly curbed. In response to the infringing party’s full-blown infringement via its physical shop and its WeChat public account, Yizhou Liu and Mengfei Yu skillfully detonated their “secret weapon” as soon as the court docketed the case – the injunction, which successfully curbed the infringement and prevented the adverse influence from further expanding, thereby protecting its client’s interests.

Your Reliable Disputes Specialist — Watson & Band Law Offices

