



MMLC Group  – *China Update*

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We are pleased to announce that Matthew Murphy has been listed in this year's World Trademark Review top 1000 trademark lawyers. The publication is available at www.worldtrademarkreview.com.

Legal News

Intellectual Property

Foreign Brand Owners Increase Filings and Enforcement Actions in China

According to statistics released by the Chinese Trademark Office, foreign brand owners make up over 500,000 of the trademark registrations

currently registered in China. In 2010, these foreign brand owners accounted for more than 99,000 trademark infringement actions in China involving administrative actions.

The Chinese Trademark Office is currently promoting its enforcement activities and the successes that foreign brand owners have had in China – one case of note is that involving Disney - Disney apparently won a trademark

infringement case against a manufacturer of children's clothing (using the Disney mark) in Guangdong Province in 2010 and received RMB500,000 (US\$78,125) in compensation from the infringer. Under the Chinese Patent Law, a court can award damages of up to RMB500,000 even where no evidence of loss or an account of profits is put forward to the court.

Stronger Administrative Protection of Patent Rights

Since 2001, the Patent Bureaus have not had the power to enforce compensation orders regarding patent infringement cases in China – they continued to mediate settlements, but could not make such mediations binding. This meant that patent owners often chose to take their patent infringement cases to the courts in China, in search of damages awards. However, Patent Bureaus have continued to be a popular choice in enforcement matters, as they can act quickly and efficiently to stop infringing activities, and can also assist in gathering evidence that will be crucial in seeking final orders and damages awards in the courts.

The State Intellectual Property Office adopted the Patent Administrative Enforcement Rules on 29 December 2010 – these rules clarified that the Patent Bureaus and Intellectual Property Offices can investigate infringements and gather evidence to assist a complainant. As Chinese courts often hesitate to issue pretrial orders to preserve evidence which must be provided by the claimant to prove the infringement and consequential damages in courts proceedings, the Patent Bureaus will continue to be popular as a first port of call in many patent (including design patents) infringement cases in China.

Tax Deductions for IP Procurement – Hong Kong

The Hong Kong Government published the Inland Revenue (Amendment) (No.2) Bill 2011 (the "Bill") on 25 February 2011 proposing to amend various provisions of the Inland Revenue Ordinance (Cap. 112) (the "IRO").

Presently, tax deductions are granted only to capital expenditure incurred on the purchase of patent rights and rights to “know-how” (defined in the IRO as any industrial information or technique likely to assist in the manufacture or processing of goods or materials). The Bill seeks to grant tax deduction to capital expenditures incurred in the purchase of a copyright works, registered designs and registered trademarks. In addition, the Bill proposes to clarify that legal expenses and valuation fees incurred in IP acquisitions, can also be claimed as tax deductions. The Bill also proposes to remove the "use in Hong Kong" condition, so that tax relief will be granted without regard to whether the purchased IP rights will be used in Hong Kong.

Ericsson to sue ZTE over patent breaches

Ericsson, one of the world's largest mobile telephony equipment manufacturers has filed lawsuits against Chinese telecommunications firm, ZTE, in the United Kingdom, Italy and Germany, alleging that ZTE has violated its patents relating to second and third generation wireless technologies known as GSM and WCDMA.

Sentence Handed Down Ford Secrets Theft

Xiang Dong Yu, an engineer who worked at Ford for 10 years, has admitted copying thousands of Ford's confidential documents

with details on engine-transmission systems and electrical-power supply, before leaving to work for a Chinese competitor in 2008. Mr. Yu was sentenced to over 5 years of imprisonment on April 12 and will be deported to China after his release. Mr. Yu may also be subjected to proceedings in China under China's strict trade secrets laws.

Tax

Property Investment Tax in Taiwan

To curb the surging housing prices in Taipei and other major cities, Taiwan's parliament approved a special tax on real estate investments and luxury goods on April 15.

If the plan is finally approved by President Ma Ying-jeou who already said he supports the tax, a 10% capital gains tax will be levied on any investment properties sold within two years of their purchase, rising to 15% if the property is sold within one year.

Trade/Customs

Revised Procedures for Processing Trade Goods

The General Administration of Customs announced the "Decision to Revise the PRC Customs Processing Trade Goods Supervision and Administrative Procedures (II) (Order 195)" on 1 November 2010 which increases standardization in the industry of processing trade. According to Order 195 which is effective from 5 December 2010:

- Processing trade goods may not be mortgaged without Customs authorization.
- Enterprises must separately manage and

store processing trade goods at specific locations registered with Customs and may not change the location without Customs approval.

- Operating enterprises seeking to use outsourced processing must provide Customs with a cash deposit or bank guarantee in an amount equivalent to the Customs and value-added tax payment otherwise payable in relation to the goods involved if:
 - the outsourced processing crosses customs locations (e.g., the outsourced processor is in a locality under the jurisdiction of a different customs house from the processing trade enterprise);
 - the outsourced processor performs the entire work process;
 - the outsourced processing goods are not directly returned to the processing trade entity, but are exported; and
 - the operating enterprise or the outsourced processor is subject to an ongoing investigation on suspicion of smuggling or violating regulations, but the processing trade goods are not subject to the investigation.
- Processing trade goods must be used exclusively for processing trade activities.
- Bonded and non-bonded materials may be interchanged only:
 - in urgent circumstances with prior customs authorization;
 - where such interchange is limited to the same enterprise, the same types of good with the same specifications and in the same quantities; and
 - where goods are not interchanged for profit-making reasons.

Energy

China Suspends New Approvals Nuclear Projects

According to a statement on the website of the State Oceanic Administration (“SOA”), China has suspended new approvals for certain types of nuclear projects that are to be positioned close to oceans and inlets. It is not clear when the State Council will resume the approvals process but projects already under construction will not be affected by the State Council's ruling, according to sources at the SOA and State Council. Most of China’s established nuclear power plants are located in coastal regions due to the plants’ need for unrestricted water access for cooling their reactors.

China Drafting New Rules for Small Wind Farm Projects

China's National Energy Bureau (“NEB”) is drafting new regulations to cool down the overheating wind power development sector. Under the new rules, estimated to be promulgated in the first half of this year, China's local governments will lose their powers to approve wind farm projects smaller than 50MW – in such cases, the NEB needs to provide approval. For wind farm projects larger than 50MW, the approval from the NDRC will still be required.

NGOs

New Rules Recognize Four Categories of NGOs

This year, the Chinese government relaxed its registration rules for four categories of non-governmental organizations.. NGOs can

now register directly with the Civil Affairs Bureau rather than find a government department "patron" before being registered. However, the definition of each category has not been clarified.

Health

Regulation to Prevent Abuse of Antibiotics

A regulation will be made by China's health authority to prevent the overuse of antibiotics. According to an official with China's Ministry of Health (“MOH”), the regulation will divide antibiotics into three categories: restricted and unrestricted antibiotics, and those under “special management”. In the past, the Chinese have depended on traditional medicine for curing illnesses in most cases, but increasingly so, China’s doctors and hospitals are leaning towards prescribing antibiotics for the treatment of diseases.

Employment/Labor Law

Pressure for employee representation and collective bargaining is sweeping China

The Standing Committee of the Shanghai Municipal People's Congress promulgated the Shanghai Employee Representative Council Regulations on 23 December 2010. Under the regulations which will take effect on 1 May 2011, all employers in Shanghai with more than 100 employees should establish employee representative councils and consult the council on:

- business development plans;
- annual management and operational results;
- important business decisions;
- the adoption of, or amendments to,

important company rules or policies; and

- decisions on significant matters that have a direct bearing on employees' immediate rights and interests.

The Guangdong government has issued the fourth draft of Regulations on Democratic Management of Enterprises which says that:

- private companies may (as opposed to 'must' in the third draft) establish employee representative council or employee assembly meeting systems; and
- employee representation on the board of directors is required only in certain state-owned enterprises, not in private companies and foreign-invested enterprises.

The All-China Federation of Trade Unions (ACFTU) announced its working plan in January 2011 to focus on Fortune 500 companies and cover collective bargaining of 60% of all types of enterprise by the end of 2011. The Beijing branch of the ACFTU will target for collective bargaining, enterprises that:

- pay the minimum wage;
- have achieved increased profits, but have not raised wage levels in line with wage increase guidelines published by the local government;
- pay wages that are at a rate below the previous year's average market wage;
- pay wages that are at a rate obviously below the average in the company's district or industry; or
- are involved in a high number of labor disputes.

Business News

Finance

US\$3 Trillion – China Forex Reserves

China's forex reserves reached US\$3.04 trillion at the end of March, nearly triple those of the next largest holder of reserves, Japan, second-place Japan, who has US\$1.1 trillion in forex reserves. New yuan-denominated loans hit US\$342.83 billion in the first quarter of 2011, as stated on the website of the People's Bank of China.

SEC Concerned with Reverse Mergers

The US Securities and Exchange Commission said on April 4, that it is investigating backdoor (or reverse) mergers with dormant shell companies, made by Chinese companies over the last 12 months or so. According to Luis Aguilar, the SEC commissioner, there has been a surge in large Chinese private companies merging with listed shell companies, with a growing number of them being found to be suffering from serious accounting deficiencies – some are even completely fraudulent enterprises. Delistings and prosecutions are expected later this year.

Real Estate

House Prices Decline Beginning to Cool

On a month-on-month basis, new property prices decreased in 12 of the 70 major cities in March. In March, prices of second-hand houses declined in 16 cities, 12 more than in February. New property prices in March in

Beijing remained at the same level as in February, however sales volume levels are down.

Resources/Energy

China Copper Demand to Recover

As Chinese buyers consume existing stocks of copper, Charlie Sartain, who runs the Zug, Switzerland-based company's copper business, said on April 4, that copper demand in China may grow by 6 percent this year, outstripping supply. These sorts of concerns have led Chinese trading and commodities companies to pursue acquisitions in order to secure copper supplies for the foreseeable future – the most notable being Minmetals pursuit of Equinox.

China is now the Largest Manufacturer of Turbines and Modules

China's investment in renewable energy has increased by 39% year on year, to US\$54.5 billion. China is now the world's largest manufacturer of wind turbines and solar modules.

Food Industry

Potential 15% Yearly Growth of Seafood Industry

More than 10,000 companies in the seafood production industry in China make it the largest seafood producer in the world. Seafood purchases currently account for 40 percent of the restaurant industry's variable costs and the industry will see more than 15 percent growth every year for the foreseeable future, said Zhu Changliang, Vice-Chairman of the Seafood

Branch at the All-China Federation of Industry and Commerce.

Most of the companies in the US\$45.9 billion industry are small companies, according to Tang Zhongcheng, a partner at Shenzhen Co-Win Venture Capital Investment Ltd, which invested in the nation's first and only listed seafood company, Zhanjiang GuoLian Aquatic Products Co., Ltd. It is expected that significant consolidation in the industry will occur over the next few years.

Nestle to be the Biggest Shareholder of Yinlu Foods

Nestle, the world's largest food company which has been operating in China for more than 20 years, has agreed to take a 60 percent stake in China's Yinlu Foods Group for an undisclosed price. Readers may recall that China's Anti-Monopoly Bureau (“AMB”) rejected Coca Cola's plan to purchase China Huiyuan Juice Group on anti-trust concerns. It will be interesting to see how this transaction is handled by the AMB.

Technology

Baidu to Prevent Piracy in Online Library

Baidu Inc., China's largest Chinese online-search provider, said on March 24 that it will use new copyright-recognition technology to prevent sharing of pirated content on its online document-sharing platform. According to Baidu spokesman Kaiser Kuo, the new technology will automatically reject future problematic uploads of copyright-infringing content and control the spread of copyright-infringing content. Authors and

publishers have welcomed the move but are concerned as to how effective this technology will be and how easy it will be to circumvent the measures.

Automotive

SAIC to launch MG sedan in UK

State-owned SAIC Motor company will launch the MG6, a four-door “fastback” sedan as early as July this year and will produce the car in Birmingham. Currently, SAIC is seeking the possibility of either setting up its own sales channels or utilizing the US carmaker's existing network with General Motors. SAIC acquired a 1% stake in General Motors for US\$500 million in 2010.

Chery Aims at Becoming a Global Player

Chery, China's largest private automaker, plans to sell 5,000 cars in Australia this year with a hope to become a global auto player eventually. Chery shipped 91,986 vehicles overseas last year, mainly to Eastern Asia, Latin America and the Middle East.

This update is aimed at keeping our clients informed of developments in Greater China. Whilst every care has been taken to ensure the accuracy of this update, it should not be relied upon before individual advice is obtained. The MMLC Group is an international legal and corporate advisory group.