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Chinese C919 Airliner is Rolled-out Patent Application 101 -US to China Version



嘉权通讯

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IP Update

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Chinese C919 Airliner is Rolled-out

Comac (China Commercial Aircraft Corporation of China Ltd) rolled out the first C919 at its new plant next to Shanghai Pudong International Airport on Nov. 2., announcing that it planned to make the first flight in 2016. The event signified the completion of assembly of the main body and the electronic system, marking its full preparation for ground test, a closer step toward flight test.

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With a capacity of 158 seat (mix) / 168 seats (economic section only) / 174 seats (high density) and range of 4,075km, maximum range of 5,555km, C919 features the latest international aerial standard developed since 2008. By now, the Comac C919 has garnered 517 orders from 21 international and domestic airlines.

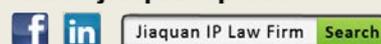
The C919 is one of the strategic projects building China into an innovator technological powerhouse. In the past six years, thousands of professionals from China and abroad have contributed to the initial design. The C919 uses cutting-edge supercritical wings, which reduce resistance as well as oil consumption. So far, the Commercial Aircraft Corporation of China Ltd. (Comac), manufacturer of the C919, has resolved over 100 technical problems for the design of the plane and applied for 170 patents.

BIP Asia 2015

Jiaquan IP Law Firm was invited to attend BIP Asia Forum in HK from 3rd Dec - 4th Dec. Jointly organized by the HKSAR Government, Hong Kong Trade Development Council and Hong Kong Design Centre, BIP Asia Forum brings IP professionals and business leaders from all over the world to discuss the latest developments in the IP world, and to explore business collaboration opportunities.



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Patent Application 101 -US to China Version

Generally, the US applicants file patent applications in China under the Paris Convention or PCT. In this article, we will introduce the formality matters at the filing stage of these applications.



Applications under the Paris Convention:

Filing Deadline: 12 months from the priority date, late filing of Chinese translation is not possible

Application Type: invention patent/utility model/both invention patent and utility model

*In China, invention patent is equivalent to utility patent in the US. With regard to utility model, it can be simplified as an invention with less strict requirement in inventiveness compared to utility patent. Utility models enjoy a protection period of 10 years and substantive examination is not required. Generally, a utility model shall be granted in half a year from filing.

*When a patent application enters into China under Paris Convention, the applicant may choose to file A. an invention patent application, B. a utility model application or C. both on the same day. It is not possible for applications under PCT to file both kinds of applications. However, if the applicant chooses both, the utility model shall be abandoned after the invention patent is granted. It is helpful for an applicant who is seeking a fast granted patent.

Documents Required for Filing:

- 1) Power of Attorney (simply sign, scanned copy is sufficient)
- 2) Certified Copy of the Priority Document

It is not required when the document is available in the Priority Documents Exchanging System between the USPTO and the SIPO.

- 3) Assignment

According to the Filing Receipt of the priority application, if the applicant of the US priority application is an individual while that of the CN application is a company, an assignment is required. On the other hand, if the applicant listed in the Filing Receipt is a company, the same as the CN application, an assignment is not required.

Official Filing Receipt: one to three days after filing

Substantive Examination: The request for substantive examination shall be filed within three years from the earliest priority date. The application will enter into the examination stage a little earlier if examination is requested upon filing.

Applications under PCT:

Filing Deadline: 30 months from the earliest priority date (a two-month grace period is possible), late filing of Chinese translation is not possible

Application Type: invention patent/utility model

Either an invention patent or a utility model can be chosen when an applicant nationalizes a PCT application into China.

Documents Required for Filing: Power of Attorney only

Official Filing Receipt: about one month after filing, Official Filing Receipt will not be issued if the PCT application has not been published by WIPO

Substantive examination: The request for substantive examination shall be filed within three years from the earliest priority date.

Other Tips (applicable for both Paris Convention way and PCT way):

A. Filing Amended Claims

There are altogether three opportunities that amended claims could be filed:

- 1) upon filing;
- 2) when filing the request for substantive examination;
- 3) within three months after receipt of the Notice of Entering into Substantive Examination Stage.

B. Filing Divisional Application

The applicant could file divisional applications at any time after receiving the Official Filing Receipt and before paying the allowance fees of the original application.

China with up to 10 Million Registered Trademarks

From People's Daily

In the Chinese Trademark Festival of 2015 in Haikou, Mr. Junchen LIU, the Deputy Director of the SAIC (State Administration for Industry and Commerce), announced that the amount of registered trademarks in China had reached up to 10.04 million.

Mr. LIU thought the following reasons made the dramatic increase in the amount:

1. *The New Trademark Law* taken into effect from 1 May 2014 simplified the trademark application and examination;
2. The government provided a healthy environment for development of brands;
3. The online database and e-filing system made trademark application and protection more convenient.

Mr. LIU also said the government would try every effort to take down illegal practice such as trademark infringement and they would work out projects to make sure trademark rights well protected.



China Launched a Trademark Protection Project for Shanghai Disneyland

From *Xinhuanet*

Shanghai Disneyland Park and its holiday resort are expected to open in spring 2016. The SAIC (the State Administration of Industry and Commerce) has launched a national project to protect the exclusive trademark right of Disney and the project will last for almost a year from now on to October of 2016.

Areas as follows are included in the project:

1. "core area" - area within 7 s.q.km of the Disneyland Park and the holiday resort;
2. "sub area" - other districts of Shanghai and the eastern China;
3. large and medium size cities and the major tourist cities;
4. internet platforms

Related departments about these areas shall monitor all products, services and activities about the Disney trademark in fields of souvenir production, product distribution, trademark labeling, advertisement, online selling, etc.

The industry and commerce department as well as the supervision department shall organize activities such as seminars, trainings and media publications to enhance the sense of Disney trademark protection of the public. At the same time, they shall work with the e-commerce businesses and search engine operators to build up a long term protection system for the Disney trademark.



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China Practice

Defense of Legitimate Source in Patent Infringement Litigation

By Jiaqi LIANG of Jiaquan IP Law Firm

Summary of Case

The plaintiff in this case is Zhongshan LuoJia Electric Appliance Co., Ltd which is specialized in making power lines and silicone droplights. The plaintiff discovered that the defendant was infringing two of his patents about silicone droplights and entrusted Jiaquan to initiate the litigation.

Investigator of Jiaquan bought the alleged infringing products from the defendant with witness of the notary. Then patent attorneys, Mr. Jiaqi LIANG and Mr. Jianming FENG made technical comparison between the alleged infringing products and the patent at issue and affirm that the products fell into the protection scope of the patents. As such, Jiaquan filed a lawsuit on behalf of the plaintiff. Argument provided by the defendant is that his subsidiary Company A bought the infringing products from Company B as ordered by the plaintiff and they got them legally. To support the argument, he provided evidence as follows:

1. Sales contract between Company A and B (no company seal is included);
2. Delivery note of the order (the receiver is Company A and no company seal is included);
3. Bank account confirmation letter of Company B (the bank account belongs to an individual);
4. Bank slip (both parties are individuals);
5. Testimony of the staff of the defendant.

Attorneys of Jiaquan stated that the evidence could not prove the legitimate source and presented cross-examination:

1. Evidence submitted was between Company A and B, and the plaintiff as well as the defendant were not involved. The defendant stated that Company A was his subsidiary and submitted testimony of his staff for proof. However, the testimony should not be accepted as evidence to prove this statement. As such, the evidence submitted had nothing to do with the litigation;
2. Even though Company A was a subsidiary of the defendant, the contract and delivery note submitted did not contain any company seal. They did not meet the requirement to be submitted before the court as evidence in China;
3. The delivery note submitted only showed the name of the product, without any picture. It could not prove that the product involve in the delivery note was the infringing product;
4. Both parties showed in the bank slip as submitted were individuals and the plaintiff as well as the defendant were not involved in it, so that it could not be used as evidence to this litigation.

At last, the court disapproved the defendant's argument of legitimate source since all evidence submitted was proved defective in cross-examination.

Legal Basis

The Patent Law of the People's Republic of China

Article 70 Where an entity or individual, for the purposes of production and business operation, utilizes, offers to sell or sells a patent infringing product without knowing that such a product is produced and sold without licensing from the patentee, he/she shall not be liable for compensation provided that the legitimate source of the product can be proved.

Comments

Legitimate source refers to the fact that the utilizer or seller buys the infringing product in legal ways at reasonable price and is able to provide relevant evidence for proof. In this case, the defendant could not provide sound evidence and his legitimate source could not be supported. Legitimate source is a very important defense in patent infringement litigation and we according to our experience are giving our suggestions in providing such evidence:

a. legitimacy of the seller

It is not easy to prove the legitimacy if the product is sold by an entity without business certificate or an individual. As such, buying products from legally standing entities will be the best choice. When signing a contract in a deal, be sure to ask for the seller's business certificate or other documents to prove the same.

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b. sales contract

A sales contract with detailed information about the product, for example the picture, is required for each deal. Also, the contract shall be well executed by both parties. A company seal is critical for a China entity. It is common for a foreigner to make a deal with an order bill but without a formal contract. Let alone the formal execution with a seal or a signature. It would be very dangerous when it comes to litigation in China because courts in China will not see it as strong evidence.

c. bank slip and invoice

When making a transfer through a bank, be sure to include the company names of both parties and indicate what the transfer is for. With regard to an invoice, name and model of the product should be included.

d. product description and guarantee card

When buying a product, the product description and the guarantee card shall be attached and the producer information will be included in these documents.

In case of possible patent infringement litigation, please be sure to have the above documents well prepared. They are sound evidence to prove legitimate source.



Jiaqi LIANG | Patent Attorney

Mr. Liang graduated from South China Normal University majoring in communication engineering, and obtained the bachelor degree. He joined Jiaquan in 2011. He has rich working experience and professional technical background. He is familiar with the process of patent application, and has been focused on and specialized in patent application in electronic circuits, computer science, communication network, LED and semiconductor related areas. At the same time, he provides professional analyses and searching services for clients.



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