



# IP NEWSLETTER

5 Nov., 2008 Vol. 21 | NO.107

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## • **337 Investigations in the U.S.**

### · Recent Section 337 Complaints

On October 22, 2008, Masai Marketing & Trading AG and Masai USA Corp filed a complaint with the International Trade Commission of United States (ITC) requesting an investigation under Section 337 of the Tariff Act of 1930 regarding Certain Active Comfort Footwear. The proposed respondents are: RYN Korea Co., Ltd., Seoul, Korea; Walkingshoesplus.com, Los Angeles, California; and Feet First Inc., Boca Raton, Florida.

## • **IP Strategy of Enterprises**

### · China's Flat Panel TV Industry Needs IPR Strategy

The Research Report on China's Color TV Market for the first three quarters of 2008 indicates that 'product cannibalization' is the main competitive problem for the panel TV industry. Therefore, price wars remain as the only form of competition in this industry.

To overcome this situation, experts advise the industry to develop core technologies, acquire independent intellectual property and unite against IPR infractions.

It is estimated that display terminal products sold in China account for about 30% to 60% of global sales. However, the core technologies such as LCD (liquid crystal) panel have always relied on importation.

## • IP Cases

### • Bilski Decision Unlikely to Alter Business Method Patents Value

On October 30, 2008, a divided Court of Appeals for the Federal Circuit ruled in *In re Bilski* that to be patentable under 35 U.S.C. § 101, a process must (1) be tied to a particular machine or apparatus; or (2) transform a particular article into a different state or thing (“the machine-or-transformation test”).

#### Background:

Bernard L. Bilski and Rand A. Warsaw (collectively “the applicants”) filed their patent application on April 10, 1997. They appealed the final decision of the Board of Patent Appeals and Interferences (“Board”) sustaining the rejection of all eleven claims of their U.S. Patent Application.

In essence, Bilski’s claim is for a method of hedging risk in the field of commodities trading that, by their own admission, does not limit any procedural step to any specific machine or apparatus. The majority Court held that “the Applicants’ process as claimed does not transform any article to a different state or thing...Purported transformations or manipulations simply of public or private legal obligations or relationships, business risks, or other such abstractions cannot meet the test because they are not physical objects or substances, and they are not representative of physical objects or substances.” Therefore, the Court ruled that Bilski’s claims were unpatentable under 35 U.S.C. § 101.

## • **Trade News**

### • The Judicial Protection of IPR Month Starts

Recently, the Supreme People's Court deemed November 2008 the month of strengthening judicial protection of intellectual property rights (IPR). This program aims to raise public awareness of IPR protection and spark enthusiasm for innovation.

During this period, IPR courts across the country will hold press conferences, hold public trial IPR cases during a centralized period and release typical cases.

The State Council released *Outline of the National Intellectual Property Strategy* in June 2008. The outline requires strengthening the judicial protection of IPR.

## • **IP Cooperation**

### • The 13th Session of WIPO-IGC Conference Was Held

Recently, Chinese delegates attended the 13th session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) conference held in Geneva.

The conference agenda included (1) adoption of the last conference report; (2) approval of observer; (3) folk arts; (4) traditional knowledge; (5) genetic resources and (6) work in the future. Members differ on many IGC agenda items, and negotiations could not lead to substantial progress in such a short period.