

Study on “Made in China” Intellectual Property Issues Abroad

Dai Yunlei

China Jiliang University, Zhejiang, Hangzhou, 310018, China

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Abstract: With the development of economic globalization, since China’s reforming and opening for 30 years, China has the rapid economic growth, and the international trade is increasing, and China’s status in international trade has undergone the tremendous changes. From 1980 to China’s change of joining WTO, during this period the simple agricultural and sideline products have been exported to the world factory, and China manufacturing has continued to appear in the markets all over the world. The world economy becomes an indispensable part of China, and the international trade begins to miraculously conquer the world. However, it is undeniable that the “Made in China”, lacks the core technology competence, mostly its products are modeled and the technologies are introduced. The intellectual property issues receive much concern. We introduce the transformation process of “Made in China” in the international trade status and the intellectual property issues we encounter in this process in the paper. We summarize the protection methods of “Made in China” independent intellectual property and how we should deal with it and other strategies when we encounter the patent disputes in the paper.

Introduction

Since China’s reform and opening up, China has the rapid economic steady development. After China has joined WTO, the import and export trade in our country even has transformed from the intensive processing manufacturing industry to the new and high-tech export. “Made in China” is no longer just a simple materials for processing. Many products with the intellectual property in our country have been exported to the foreign market or we can directly make use of our own technology to build factories in foreign countries.

At the same time, because “Made in China” goods with the independent intellectual property cause the serious impact on overseas similar products, in addition compared with the overseas enterprises Chinese enterprises’ legal consciousness is relatively weak, this kind of “Made in China” goods are often refused everywhere in overseas.

From the traditional clothing, shoes and hats, toys and hardwares to the innovative household appliances, computers, mobile phones and softwares, the different kinds of products with the sign of “Made in China” travel far away across the sea to go to every corner of the world. According to the authority statistics, it shows that China has become the biggest producer of steel ingot, chemical fiber, motorcycles, washing machine, refrigerator, air conditioner, color TV, computer and mobile phone in the world. The scale of China’s manufacturing industry ranks fourth among countries, and ranks only second to the United States, Japan, Germany. It is an undisputable fact that China is becoming “a global manufacturing center”. However, it is equally indisputable fact is that China is becoming the object whom the powerful manufacturing country takes the intellectual property as the weapon to snipe intensely.

At the same time the two big core technical standards which are vital to “Made in China” are chased and jammed by the intellectual property powers once again. Thus, it can be seen that how to use the reasonable, lawful and effective means to escort for the overseas tour of “Made in China”

becomes a question which we have to consider with the economics in our country at present stage.

The Present Situation of “Made in China”

Intellectual property, in its original meaning it means “intellectual property right” for short, that is to say, it is the sum total of various rights in accordance with the law for people’s achievements created by their intellectual activities, people’s marks and reputations in their operation and management activities and others. However, at the present stage “Made in China” is faced with the metamorphosis period of developing from having no independent intellectual property to having the independent intellectual property. This special period brings a lot of embarrassments and problems for “Made in China”. Among them, the most important part is the independent intellectual property protection problem of “Made in China”.

1. The Metamorphosis of “Made in China”

(1) “Made in China” before the Economic Crisis in 2008

China’s manufacturing industry is “big but not strong”. The export of China’s manufacturing industry only has led the world in quantity, but it has only lagged far behind the world on the quality. The reason for this is that the development of the manufacturing industry in our country has depended too much on the material resources input, with the rapid development of manufacturing industry, at the same time it also has brought the heavy costs, such as the excessive resources and energy consumption and the serious environmental pollution. In my opinion, the main reason of causing this situation can be seen as follows.

First, the manufacturing industry has acted as the world processing plant for a long time and has mainly accepted the customers’ materials for processing. This makes China’s manufacturing industry remain at the end of the world manufacturing industry chain for a long time.

Second, the manufacturing industry has lacked the independent intellectual property and the international brand. Before 2008, China’s manufacturing industry still lagged behind the average level of the world in many key technologies. At the same time, many important links has the relatively high degree of dependence for the external technology. In addition, 90% of China’s export goods have the original equipment manufacturer. Overseas enterprises mainly value China’s cheap labor and cheap land rent.

(2) “Made in China” after the Economic Crisis in 2008

Influenced by the international financial crisis, in 2008 the domestic macroeconomic situation in our country changed, and it was followed by a drop in the economic growth, and the domestic enterprises experienced a severe test. At the same time, the financial crisis not only put forward the urgent demands and challenges for the upgrading of the manufacturing industry in our country but also brought the opportunities and conditions for the upgrading of the manufacturing industry in our country. If “Made in China” wants to change plight and change image, it must shift model to carry out the industrial upgrading so as to transform from “Made in China” to “Created in China”.

2. The Competitive Advantage of “Made in China” in Overseas

Because the role of “Made in China” is a cheap factory for a long time, in this manufacturing process Chinese enterprises also have accumulated a certain manufacturing technology. “Made in China” is also continually expand and grow, and at the same time it still keeps some cost advantages, such as the cheap labor force, the preferential land rent cost, etc.

Of course, when “Made in China” transforms from the original equipment manufacturer to “Made in China(Created in China)”, at the same its most prominent competitive advantage is that exempting the previous expensive use fee of patented technology, this dramatically reduces the production cost of “Made in China”, in addition with the geographical advantages of cheap labor

power and others, the price competitive advantage of “Made in China” is obvious among the similar products in overseas.

3. “Made in China” Issues encountered Overseas

Just as the words mentioned above, because having acted as the original equipment manufacturer for a long time, even though decades of painstaking efforts have made “Made in China” finally get rid of the current situation without the core technology and being controlled by others for everything, after all, in the short term, it is difficult to completely get rid of the shadow of the original cooperative enterprise products both in the appearance design or the patented technology of “Made in China”. Therefore, when “Made in China” with the independent intellectual property enters the overseas market to compete with the similar products, it is difficult to avoid being questioned by the overseas enterprises about the intellectual property, and even causing the legal disputes.

1. The trademark and appearance of “Made in China”

The trademark and appearance are the two aspects which is said to be accused of infringement in the easiest way. In my opinion, there are three main reasons for causing the disputes about the trademark and appearance of “Made in China”.

(1)The trademark and appearance are considered as the same or similar aspect of goods in the easiest way. Even we don’t need to have the professional knowledges. As the ordinary consumers, after they have some comparison with the two goods, they all may say from their hearts, “ How can the two goods be so similar?” Even we don’t mention the professional persons.

(2) Because of the limitation of the function usage mode, it is difficult for a type of goods to have a big breakthrough in appearance design. So it leads to that the similar products on the market are mostly the same, such as TV, mobile phone, tyre, etc.

(3)Because Chinese manufacturers have the experience of original equipment manufacturer for a long time, it is difficult to avoid that when they design by themselves they will imitate the appearances of original equipment manufacturer products unconsciously. This is also the inevitable thing.

2. The Patent Technology of “Made in China”

As for the patent technology of “Made in China”(The patent technology mentioned here is mainly the utility model patent and the invention patent.), except for a large number of fake products, the issues about patented products with China’s independent research and development in overseas are mainly concluded as the following two points.

(1)Because the Paris Convention has stipulated the mutual independence principle of patents and trademarks in the various countries. That is to say, the various countries protect the interests of the patent owners or the trademark owners registered within China respectively. Therefore, in most of the time “Made in China” ignores to apply for a patent in overseas, then the patents are anticipated to be registered by some people who have an ulterior motive. When this product enters the market, it will be told to have the infringement fact. So this product has to be withdrawn from the market or be paid the expensive patent use fee.

(2)Besides the above problems, because the expenses on this kind of highly professional lawsuits of conducting the intellectual property in overseas are very high. Therefore, some super-large enterprises in overseas still make use of their own abundant capital strengths and attempt to drag down the Chinese enterprises by the patent lawsuit so as to achieve the purpose of continuing to occupy the market.

Conclusions

The research and development ability of China's technological enterprises is slight low. They don't have the dominant ability themselves, and their own lifeblood is grasped in somebody else's hands. Even somebody else sneezes, we will catch a cold." Under this situation, the additional value which they can create is very limited. The deeper level of our country's science and technology enterprises is, the more apparent the disadvantages of lacking its core technology.

The industrial upgrading of many science and technology enterprises in our country is not the "upstream vertical upgrading" of developing toward upper reach in fact. But it is the diversity of horizontal direction. With the change of the market, we can constantly look for the next industry to use the technology at the same level to cut into it. The appliances enterprises in our country are the living examples. After the single kind home appliance enterprises develop and grow, they start to enter other home appliances category. Originally they want to take these new products as the new growth point of their own development. But when they enter the new products market they encounter the same market conditions with the original products. This kind of diversity seems to break out of an encirclement, and in fact it is surrounded by these industries. It is like getting enmeshed in a web of their own spinning and it is unable to extricate themselves.

"Made in China" has already begun to develop from the pure processing with the original low level to the high-end manufacturing with the independent intellectual property. It will be followed by more and more intellectual property disputes. How to prepare well before enter the market and how to let "Made in China" with the China's independent intellectual property walk well and smoothly become the problems which Chinese enterprises and countries have to think about. In this respect, the case of TOLLEA group has provided a very good enlightenment to us. That is to say, as long as we have the adequate preparation and good coping style, "Made in China" can completely stand in the market with the intellectual property trade barriers in overseas everywhere.

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