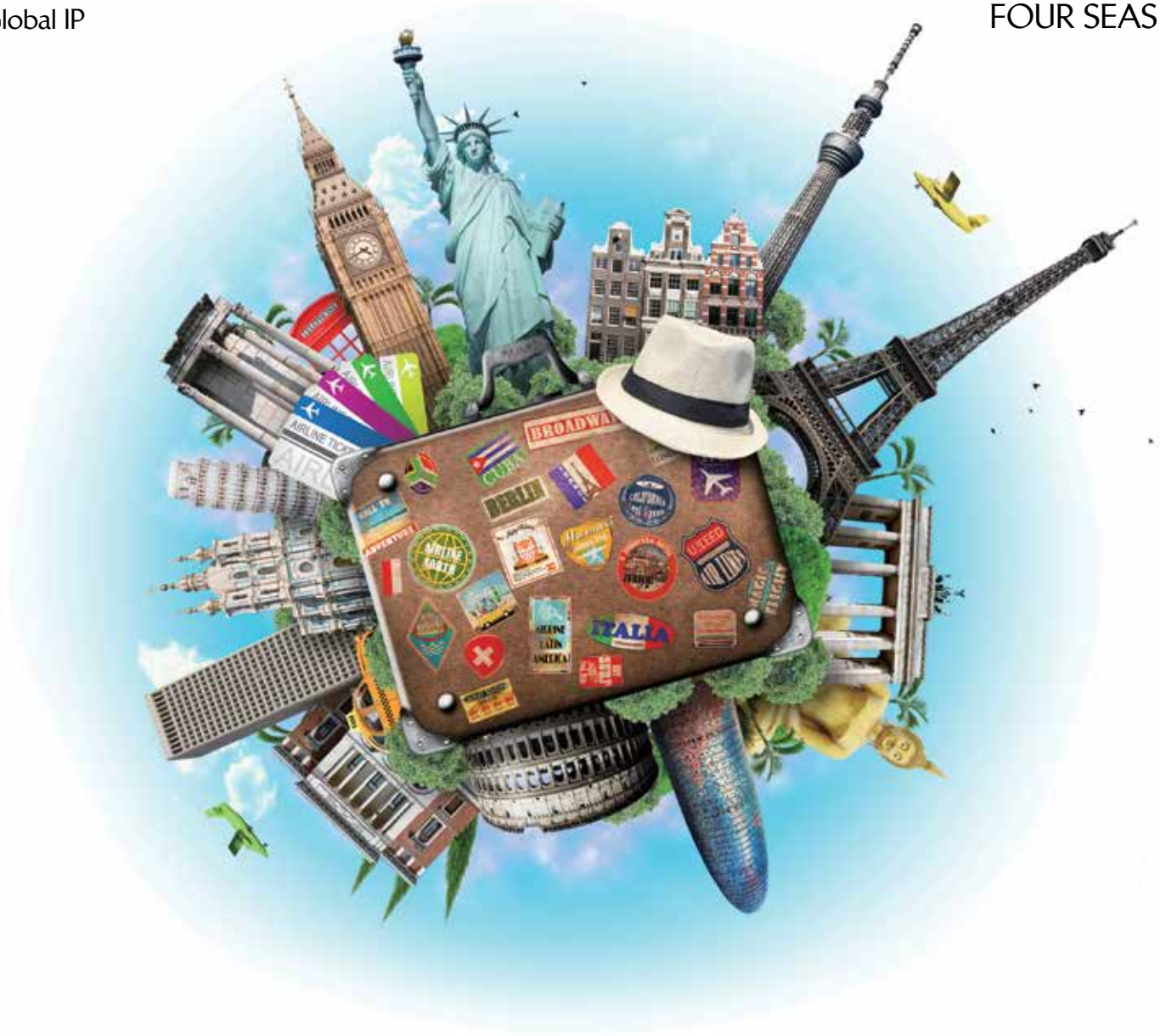

瀛寰“知”略
IP world tour

知识产权及其保护仍然是活跃于海外的中国投资者的关键。罗凯茵为你概述世界知识产权热点

Intellectual property rights and protection remain a vital sector for Chinese outbound investors. Joanna Law stops off at some global IP hotspots

不论你的目光停留在世界的哪个地区，那里肯定会有涉及知识产权的纠纷。窃取智慧结晶的情况并不稀奇，但对于面向海外的投资者，重要的是了解投资目的市场的法律体系，了解确保公司的宝贵知识产权在当地受到保护的必要合规事项。

随着中国海外投资持续增长，企业对于商标、专利、知识产权保护以及监管合规应该做到未雨绸缪。在欧洲，欧盟的商标改革是热门话题，但有些中国公司存在误解，以为欧盟区域内对于知识产权是整体划一的。这是比较普遍但可以避免的问题。

No matter where you look in the world, it's a certainty that a dispute is ongoing over someone's intellectual property (IP). The theft of ideas is nothing new, but just as important to those investing abroad is knowledge of the legal system they are about to move into, and what compliance is necessary to ensure their company's valuable IP is protected in that jurisdiction.

With China outbound investment still on the increase, forewarned is forearmed on trademarks, patents, IP protection and regulatory compliance. In Europe, the EU's trademark reforms are a hot issue, while a mistaken belief by Chinese companies

中国公司在欧洲获得专利保护处于有利的位置

Chinese companies are really well placed to obtain patent protection in Europe

在位于北美地区的美国，社交媒体以及网络侵权正为商标带来严峻挑战，而加拿大最高院在 AstraZeneca v Apotex 案中的准予审理裁定也被人们热议。

亚太地区仍然面临一贯的问题。在台湾，主要的知识产权问题是通过法院对专利权的执行。在新加坡，对于《注册外观设计法》的修订可能会促进公司在产品设计特点上寻求可以注册的保护。

在非洲，改革偶尔发生，其中法律的草拟和修订是尼日利亚和肯尼亚的热点问题。而在位于拉丁美洲的巴西，商标专利局正因积压的案件感到晕头转向。以下提出的新动态将会重点关注全世界不同地方影响知识产权发展的重要改变。

that EU territories are unitary in the IP field is a common but avoidable problem.

On the North American front, social media and online infringements are creating major trademark challenges in the US, while a Canadian Supreme Court's leave to hear Astra Zeneca's appeal in the *AstraZeneca v Apotex* case is on everyone's lips. The case revolves around the validity of an AstraZeneca patent.

Asia-Pacific is brimming with issues as always, and in Taiwan major IP problems exist in enforcing patent rights before the courts. In Singapore, meanwhile, proposed changes to the Registered Designs regime may enhance the ability of companies to seek registrable protection over design features of products. In Africa, reform is sporadic, with proposed and amended laws in Nigeria and Kenya, respectively, a hot topic. And in Latin America, Brazil is struggling with a backlog at the Brazilian Patent and Trademark Office that is a major problem for inbound foreign businesses. In regional blocs, the following update highlights significant changes affecting IP around the world.

欧洲 Europe

对于所有欧盟国家，去年一系列的商标改革是重要的发展。在 2015 年 4 月，欧盟和欧洲委员会关于《欧盟商标法》以及《欧盟商标指令》达成协议。在 2015 年 12 月 15 日，欧洲议会正式批准改革，改革在 2016 年 3 月 23 日生效。申请商标的程序、产品和服务的指定使用方式将会改变，新的收费系统也将会引入。

其中一项基本改变是在用词上："区域商标"（Community Trade Marks）将会被称为"欧盟商标"（EU trademarks），"欧洲内部市场协调局"将会被称为"欧盟知识产权局"。

随着新收费制度的引入，各公司应该注意到，官方申请及更新程序需要的收费出现缩减。以往，以单一类别的费用申请三个类别的商标注册是可行的，但这次改革会改变这个情况。"这个费率是为了抑止恣意在三个类别申请商标的申请人。续展费将会显著减少。这对商标所有人来说肯定是个好消息，"意大利 Rapisardi Intellectual Property 律师事务所驻米兰国际事务经理 Alberto Giordano 表示。

商品与服务的分类是另外一项关键的变化，相关规定变得更为严厉，并认可溯及既往的效力。"对于商品和服务所寻求的保护，

Last year, the trademark reform package was a significant development for all members of the EU. In April 2015, the European Commission and the European Council reached an agreement concerning the Community Trade Mark Regulation and the Trade Marks Directive. On 15 December 2015, the European Parliament officially approved the reform, which went into force on 23 March 2016. The procedure for filing a trademark application and the manner of designating goods and services will undergo changes, and a new fee system will be introduced.

One fundamental change will be the terminology, with Community Trade Marks to be called EU trademarks, and the Office for Harmonization in the Internal Market to be called the EU Intellectual Property Office.

With the new fee system, companies should note a reduction in the official filing and renewal fees. Previously, claiming three classes for the price of one was feasible, but the reform will alter this. "The ratio is to discourage applicants filing trademarks in three classes just for the sake of it," says Alberto Giordano, international affairs manager of Rapisardi Intellectual Property in Milan. "The renewal fees will be substantially reduced and this is certainly good news for TM owners."

The classification of goods and services is another crucial development, with stricter rules with retroactive effect. "Goods and services for which protection is sought must from now on be identified by the applicant with sufficient clarity and precision," says Benjamin Martin-Tardivat, a lawyer with trademark and design expertise from Witetic Law Firm in Paris.

Chinese individuals or companies that hold an EU trademark registration applied for prior to 22 June 2012, and that cover the so called "heading text" in a certain class, need to verify whether the listed goods or services cover their specific interests, says Michiel Haegens, head of the trademarks and designs department at V.O. Patents & Trademarks in The Hague, Netherlands.

Paula Sailas, a partner and manager of trademark services at Berggren in Helsinki, Finland, says the classification process may

现在起申请人必须以充足的清晰度以及准确度加以说明，”法国律师事务所 Witetic Law Firm 驻巴黎律师 Benjamin Martin-Tardivat 表示。他有商标以及外观设计的经验。

持有在 2012 年 6 月 22 日前申请的欧盟注册商标以及在特定类别涵盖所谓“标题文本”的中国个人或公司申请人，需要确认列出的产品或者服务是否明确涉及他们的具体权益，荷兰专利事务所 V.O. Patents & Trademarks 驻海牙商标及外观设计部门主管 Michiel Haegens 提到。

芬兰 Berggren 集团驻赫尔辛基合伙人兼商标服务经理 Paula Sailas 说，最近一些变化给分类带来了不确定性，而且不同商标部门、法域在处理案件上有不同的操作，这可能让分类过程变得更复杂。

目前法律清晰规定颜色和声音可以构成有效的商标，当事人很有必要认真考虑新的规定，意大利律师事务所 Sena and Tarchini Law Firm 驻米兰创始人兼高级合伙人 Giuseppe Sena 说。

很多法律人士正在密切关注统一专利。Cabinet Beau de Loménie 律师事务所驻巴黎合伙人 Aurélia Marie 表示，“全新的法院以及欧洲专利许可制度”预计会在 2017 年到来。

欧洲与中国专利体系的相似性会带来一定好处。“中国公司在欧洲获得专利保护处于有利的位置，比来自世界很多其他国家的公司都要好得多，”英国麦仕奇集团驻曼彻斯特合伙人兼专利律师 David Robinson 说。

be complicated by the fact that the recent changes have caused some uncertainty regarding classification, and that different trademark bureaus and jurisdictions have varying practices in handling cases.

And since the law now expressly provides that colours and sound may constitute a valid trademark, it is also necessary to carefully consider the new rules, says Giuseppe Sena, founder and senior partner at Sena and Tarchini Law Firm in Milan.

Many legal practitioners are paying close attention to the unitary patent. Aurélia Marie, a partner at Cabinet Beau de Loménie in Paris, says a “totally new court and European patent grant system” are being anticipated by 2017.

That the European and Chinese patent systems are similar provides its advantages. “Chinese companies are really well placed to obtain patent protection in Europe – moreso than companies from many other countries around the world,” notes David Robinson, a partner and European patent attorney at Marks & Clerk in Manchester, UK.

However, while it is true that the legal system in the field of intellectual property rights (IPR) is fairly advanced in the EU, uncertainties remain.

“Given the number of changes made in these reforms, Chinese companies should seek specialist advice on how their existing rights, and their future rights, will be affected in the EU,” says Jennifer Guild, a trademark lawyer at Ashfords in Bristol, UK.

现实情况是，无论是市场情况还是商标实务和法律，欧盟不同成员国之间都可能有明显的不同

The reality is that the markets, as well as trademark practice and laws, may differ remarkably within the EU between the different member states

尽管欧盟在知识产权领域的法律体系是相当领先的，但不确定性仍然存在。“考虑到这些改革中的众多变化，中国公司应该寻求专家意见，了解他们现有权利以及潜在权利会在欧盟受到什么影响，”Ashfords 律师事务所驻布里斯托商标律师 Jennifer Guild 表示。

现存的不确定性凸显了尽职调查的重要性，Potter Clarkson 律师事务所驻诺丁汉合伙人 Charlotte Crowhurst 表示，进入欧洲市场的中国公司经常会遇到一些涉及其他公司知识产权的问题。在进入欧洲市场之前，中国公司应该进行分析，以了解它所可能侵犯的属于第三方的知识产权。

很多中国公司误认为欧盟区域内的知识产权领域是统一的，这可能会产生不必要的问题。“现实情况是，无论是市场情况还是商标实务和法律，欧盟不同成员国之间都可能有明显的不同，”爱沙尼亚 RestMark Metida 专利代理有限公司驻塔林欧洲商标律师 Kaie Puur 说道。

“数据显示，大多数当事人仍然是来自中国的，”德国霍夫曼·艾特勒专利律师事务所驻慕尼黑合伙人 Holger Stratmann 说，“在进入欧洲市场之前，中国制造商以及出口商等当事人有必要采取适当措施避免他们的产品被扣押甚至被随之销毁，”Holger Stratmann 补充说。

欧盟由 28 个成员国组成，除了统一的制度，每个国家有其独特的国家商标法规。因此，了解一家公司有哪些品牌和注册商标是重要的，Clarion Solicitors 律师事务所驻利兹合伙人 Leigh Martin 说，企业需要了解这些品牌和商标曾在哪些国家被使用过，以及在哪些欧盟国家最好在拓展业务前取得自由实施，这些是很重要的。

在俄罗斯，诉讼费用返还情况的不断好转是中国公司应该注意的重要因素。Patentus 律师事务所驻莫斯科合伙人 Dmitry Markanov 说，法院过去常常会毫无理由地大幅压低胜诉方所要求返还的法律费用，“现在的趋势是，诉讼费用常常会全额或者大部分返还。这给予了权利人更有效的权利保护，”他说。

在意大利，知识产权财政体系旨在将更有效的税务优惠政策提供给任何在这个国家发展知识产权和产品或者将其商业化的公司。意大利的“专利盒体系”是一个对受知识产权保护的产品产生的利润进行税务减免的可选择制度。“这样的可选择制度目标是吸引现存于海外的无形资产，支持无形资产在意大利的维护以及发展，并支持对意大利研发活动的投资，”Trevisan & Cuonzo 律师事务所驻米兰高级合伙人 Julia Holden 说。

今年，《商业秘密指令》的生效预计会为意大利带来重要的改变。该指令的目标是“协调不同国家防止不当使用商业秘密的法律，这样公司能在全球市场充分利用商业秘密并与特别的商业伙伴分享商业秘密，”Bonelli Erede Pappalardo 律师事务所驻米兰合伙人 Giovanni Guglielmetti 说。

Existing uncertainties highlight the importance of due diligence. Charlotte Crowhurst, a partner at Potter Clarkson in Nottingham, UK, says Chinese companies entering the European market often encounter issues relating to IP owned by other companies. Prior to entering the European market, analysis should be conducted so that the Chinese company is aware of any third party IP that it may infringe.

A wrongly held belief by many Chinese companies that EU territories are unitary when it comes to IP may also cause avoidable problems. “The reality is that the markets, as well as trademark practice and laws, may differ remarkably within the EU between the different member states,” says Kaie Puur, European trademark lawyer at RestMark Metida patent agency in Tallinn, Estonia.

“Statistics show that the majority still originates from China,” says Holger Stratmann, a partner and expert in IP litigation at Hoffmann Eitle in Munich. “It is essential for Chinese manufacturers and exporters alike to take appropriate steps before entering the European market to prevent their products from being detained and – subsequently – destroyed.”

The EU comprises 28 countries, each with its own national trademark regulations, in addition to the unitary system. Therefore, while it is important to understand what brands and registrations a business owns, Leigh Martin, a partner at Clarion Solicitors in Leeds, UK, says it is crucial to learn in which countries there has been trademark use, and in which EU countries a freedom-to-operate opinion may be wise to obtain before expanding a business there.

In Russia, the increasing recovery of court expenses is a major factor that Chinese companies should note. Dmitry Markanov, a partner at Patentus in Moscow, says the courts used to substantially reduce the claimed legal fees of the winning party with no explanation. “Now the trend is that the litigation expenses are usually recovered in full, or in a major part. This allows for the more effective protection of rights which is good for proprietors,” he says.

In Italy, the IP fiscal regime aims to provide a tax incentive to any company that develops and commercializes IPR and products in the country. The Patent Box regime is an optional system that provides tax relief on revenue generated from products covered by IPR. “Such an optional system aims to attract intangible assets currently held abroad, supporting the maintenance and/or development of intangible assets in Italy and supporting investment in R&D activities in Italy,” says Julia Holden, a senior partner at Trevisan & Cuonzo in Milan.

This year, a key change in Italy is expected when the Trade Secrets Directive comes into effect. The target of the directive is to “harmonize the existing diverging national laws on protection against the misappropriation of trade secrets, so that companies can exploit and share their trade secrets with privileged business partners across the internal market,” says Giovanni Guglielmetti, a partner at Bonelli Erede Pappalardo in Milan.

Giovanni Guglielmetti 说。

从 2016 年 4 月 28 日起，英国政府将会对工业应用艺术作品延长著作权保护的时间限制。目前，著作权受保护的期限为 25 年，不同于一般的著作权期限（一般为作者的寿命外加 70 年）。“因此，之前由于超出著作权期限而不会侵犯著作权的物品，如果没有获得许可，将会侵犯著作权，” Bristows 律师事务所驻伦敦高级律师 Gregory Bacon 说。

中国公司必须注意的是，与中国不同的是，在英国没有注册版权这一选项。“我们会强烈建议中国公司在尽职调查过程中，要求对方全面披露已注册及未注册的知识产权的全部详细情况，” Mills & Reeve 律师事务所驻诺里奇合伙人兼知识产权负责人 Alasdair Poore 说。

葡萄牙在去年完成了批准《统一专利法院（UPC）协议》的法律程序。UPC 的优势仍有争论空间，而一些欧盟国家拒绝批准这个协议。不过，值得建议的是，中国公司应密切关注该协议在葡萄牙的执行动态，以及在欧盟的总体情况，因为它很有可能对专利诉讼有重要的影响，Abreu & Associados 律师事务所驻 Armadas 知识产权律师 João Gonçalves de Assunção 说。

此外，值得注意的是，葡萄牙和中国之间签有“专利审查高速路”协议（PPH 协议），该协议自 2014 年开始，目前仍然有效，直到 2018 年 12 月 31 日为止。

From 28 April 2016, the UK government will extend the term limitation on copyright protection for industrially exploited artistic works. The copyright term for such items is 25 years, different from the general copyright term, which is the life of the author plus 70 years. “As a result, items that previously would not infringe copyright for being out of copyright will do so if no licence is obtained,” says Gregory Bacon, a senior associate at Bristows in London.

What Chinese companies must pay attention to is that unlike China, there is no obligation to register copyright in the UK. “We would strongly recommend that Chinese companies ask for details of both registered and unregistered IP rights to be fully disclosed as part of the due diligence process,” says Alasdair Poore, a partner and head of IP at Mills & Reeve in Norwich, UK.

Portugal completed legal procedures last year for ratification of the Unified Patent Court (UPC) Agreement. The advantages of the UPC are debatable, and some EU countries refused to ratify this agreement. Still, it is advisable that Chinese companies follow closely the developments of its implementation in Portugal, and generally in the EU, since it is likely to have a major impact in patent litigation, says João Gonçalves de Assunção, an IP lawyer at Abreu & Associados in Armadas.

In addition, it should be noted that the PPH (Patent Prosecution Highway) agreement between Portugal and China, which began in January 2014, is still in force and is valid until 31 December 2018. “Under this agreement, the applicant of a patent request has the right to accelerate the decision process in any of the institutes

ACI
American Conference Institute
Business Information in a Global Context

C5 Group has made some dynamic strides in the past 30 years. It is time for our brand to match this

备有免费中英同声传译设备
Free Chinese - English translation provided during the conference

June 15 - 16, 2016 | **The Langham Shanghai, Xintiandi** | Shanghai

EARN CLE & CPE CREDITS

9TH CHINA FORUM ON ANTI-CORRUPTION
第九届中国反腐合规论坛

Register Today!
AmericanConference.com/AntiCorruptionChina

Keynote Address:

Nicola Bonucci
Director and Accession Coordinator
Directorate for Legal Affairs
OECD (Paris)

Plus Benefit from
Interactive Working Groups, June 17, 2016

A Compliance Officer and Legal Counsel Roundtable: How to Elevate Compliance Function in the Company, Get Internal Support, Effective Communications and Career Management

B A Complete And Practical Guide To Effective Third Party Management

Exclusive Faculty of Senior Industry Speakers:

- GSK
- Tyco
- Google
- HP
- Caterpillar
- Marriott International
- Philips (China) Investment
- Anheuser-Busch InBev China
- GM China
- Dell
- Schneider Electric
- China Dover
- VMware
- Bosch
- Johnson & Johnson
- General Electric
- Baxter Healthcare
- Texas Instruments
- Porsche Motors
- Agilent Technologies
- MSD
- Pfizer
- Bruker Daltonics
- IBM
- Hilton
- Microsoft
- Celanese

The 2016 Conference Features New Panels Based on Recent Enforcement Activity and Where Companies Face the Most Risk:

- How to Transition Global Compliance Strategies to Policies and Controls That Meet Chinese Government Expectations
- Former US DOJ and UK SFO Prosecutors Speak on Executive Liability post Yates Memo
- Internal Investigations Think Tank: Senior In-House Counsel Discuss How to Effectively Structure the Investigation
- Crisis Management: What is an Effective Strategy Once you Receive an Investigation Request or Are Subject to a Dawn Raid from Chinese Authorities
- How First DPA under UK Bribery Act Will Affect Companies in China: Status Update on SFO Enforcement Trends
- Navigating Bribery Risks in Project Bidding and Public Procurement
- Mitigating Complex and Hidden Risks in Sponsorship and Donation Activities
- How to Engage Your Sales, Business Development and Marketing Team in Your Compliance Initiatives

LEAD SPONSOR

EY 安永
Building a better working world

SPONSORS

凯拓 KILPATRICK TOWNSEND & STOCKTON LLP
Steptoe STEPTOE & JOHNSON LLP
ROPES & GRAY
MINTZ GROUP
FANGDA PARTNERS 方達律師事務所
MAYER·BROWN JSM
Akin Gump STRAUSS HAUER & FELD LLP 美国艾金·朗波律师事务所

Register Now
44 20 7878 6888 (Europe)
or 1 416 926 8200 (USA)
AmericanConference.com/AntiCorruptionChina

a C5 Group Company
Business Information in a Global Context

“根据这个协议，假如至少一项提交的申诉被认为是在双边协议下被认为是可授予专利的，专利申请人有权要求任何相关机构加快审理过程——例如葡萄牙工业产权局以及国家知识产权局，”Raul Cesar Ferreira 律师事务所驻里斯本律师 Patricia Rodrigues 表示。

在西班牙，新《专利法》在 2015 年 7 月通过，预计会在 2017 年 4 月 1 日生效。目前，有超过 90% 的申请人选择不接受实质审查。新法的通过预计会让授予程序以及审查变成强制程序。马德里 ABG Patentes 律师事务所合伙人 Enric Carbonell 说，这次改革的目的是“促进该体系的主要使用者，即西班牙投资者，可以快速获得权属许可，因为有 95% 通过国家渠道进行许可的专利是源自西班牙本土的”。

involved – [the INPI (Portuguese Industrial Property Institute) and SIPO (State Intellectual Property Office)] – provided that at least one of the claims presented has been considered as patentable by the institute involved in the bilateral agreement,” says Patricia Rodrigues, a lawyer at Raul Cesar Ferreira in Lisbon.

In Spain, a new Patent Law was approved in July 2015 and scheduled to come into effect on 1 April 2017. Currently, more than 90% of applicants opted not to have their applications subjected to substantive examination. The new law envisages one granting procedure and examination is compulsory. Enric Carbonell, a partner at ABG Patentes in Madrid, says the objective of this reform is “to facilitate the rapid grant of strong titles by Spanish inventors, the main users of the system, as more than 95% of the patents granted via the national route are of Spanish origin”.

非洲 Africa

在 2015 年 3 月 11 日，津巴布韦成为马德里协定的一员，马德里协定是马德里体系对国际商标注册的两个条约之一。在这个协定下，个人或者公司可以确保商标在多个国家通过单一办事处的、单一语言的一次申请获得保护，费用也是一次性的、单一货币的。“这个系统让后续商标的管理更简便，因为这让修改或者更新过程一步到位变得可能。因为津巴布韦和中国都是成员国，这个协定就可以适用，”津巴布韦 MawereSibanda 律师事务所合伙人 Alec Muza 说。

同时，在尼日利亚，立法机构正在对草拟中的《工业产权法案 (2006)》(IPCOM 法案) 展开辩论。这个法案寻求协调涉及知识产权保护以及管理的不同代理机构，预计该法案在今年将会完成立法。Jackson Etti & Edu 律师事务所律师 Nkem Isiozor 表示，尼日利亚主要的知识产权问题包括：欠佳的档案系统；过时的知识产权法律法规；商标专利外观设计登记处领导层的不稳定；以及登记处的官僚瓶颈。

在尼日利亚还存在对于知识产权不合适或者如同虚设的政府监管，Inns Law Firm 律师事务所驻阿布贾合伙人 Okey Onyekanma 说。“[在尼日利亚] 密切留意知识产权免受侵权或者其他不当使用的责任几乎都在所有人身上。”

在肯尼亚，对《著作权法》的修订草案在一月公布，其中有规定对著作权侵权资料通过电子平台传播时网络服务提供商 (ISP) 的责任进行了定义。

尽管这个修订案阻止网络服务提供商错误撤走内容，但如果有人针对有效的内容撤销通知发出反对通知，网络服务提供商的角色究竟是如何并不是十分清晰，Anjarwalla & Khanna Advocates 律师事务所驻内罗毕首席律师 Shem Otanga 说。

On 11 March 2015, Zimbabwe became part of the Madrid Protocol, one of two treaties comprising the Madrid System for international registration of trademarks. Under the protocol, individuals or businesses can be ensured protection for their marks in multiple countries through the filing of one application with a single office, in one language, with one set of fees, in one currency. “The system simplifies the subsequent management of the mark, since it is possible to record further changes or to renew the registration through a single procedural step. As both Zimbabwe and China are members, this applies,” says Alec Muza, a partner at MawereSibanda in Zimbabwe.

Meanwhile, in Nigeria, lawmakers are fighting over the proposed IPCOM Bill (the Industrial Property Bill, 2006). The bill seeks to harmonize the various agencies involved in IPR protection and administration, and it is anticipated that the bill will be passed into law this year. Major IP problems exist in Nigeria, says Nkem Isiozor, an associate at Jackson Etti & Edu in Lagos state, including: poor record keeping systems; archaic IP laws; instability at leadership level at the Trademark, Patents and Designs Registry; and bureaucratic bottlenecks at the registry.

There is also inadequate or practically non-existent government monitoring of IPR in Nigeria, says Okey Onyekanma, a partner of Inns Law Firm in Abuja. “It is more or less the responsibility of an IPR owner to keep surveillance over its IP rights to avoid infringement and other abuses,” he says.

In Kenya, proposed amendments to the Copyright Act were published in January, with provisions that define the scope of liability of internet service providers (ISPs) for copyright infringing material transmitted through digital platforms. However, while the proposed amendments protect ISPs from wrongful take-down of content, it is unclear what an ISP’s role would be when a counter notice is issued in response to a valid take-down notice, says Shem Otanga, a principal associate at Anjarwalla & Khanna Advocates in Nairobi.

Anne Kiunuhe, a partner and head of IP at the same firm, says Kenya is also facing a lack of statutory protection for trade secrets

[在尼日利亚]密切监视知识产权……责任几乎都在所有人身上

It is more or less the responsibility of an IPR owner to keep surveillance over its IP rights

同一家律所合伙人兼知识产权负责人 Anne Kiunuhe，说，肯尼亚同样面临商业秘密以及新商业模式所受法律保护不足的问题。“建议萌生创新想法的商业创新者事先有所准备，与获知其创新想法的商业主体签署非竞业、保密、非披露协议，”她说。

and novel business models. “It is recommended for commercial innovators who come up with innovative ideas for business to prepare and enter into non-compete, confidentiality and non-disclosure agreements with any commercial entities that they disclose their innovations with,” she says.

北美与南美 North and South America

WilmerHale 律师事务所驻波士顿合伙人 Joseph Mueller 说，美国法院会继续调整应对专利侵权的救济方式体系。“这个领域的法律发展对于所有与美国有直接或者间接商业往来的公司来说都是重要的，”他说。对于创新企业，强大的专利救济可以帮助保护他

Joseph Mueller, a partner at WilmerHale in Boston, says courts in the US continue to refine their approach on structuring remedies for patent infringement. “The development of the law in this area is important to all companies that have direct or indirect engagement with the US,” he says. For innovative companies, strong patent remedies can help protect their investments in R&D. For imitative companies, strong remedies can mean higher exposure and greater risk arising from selling potentially infringing products.

Meanwhile, many legal experts agree that social media and online infringement create major trademark challenges in the US. “Trademark owners face a complicated situation online because they must balance the need for an online presence, and the benefits of having their brands discussed by consumers, with the need to control the use of the brands and stop confusing and infringing uses of their trademarks,” says Brett Heavner, an attorney at Finnegan Henderson Farabow Garrett & Dunner in Washington DC.

们在研发上的投资。对于模仿他人的公司，强大的救济意味着销售潜在侵权产品会带来更大的曝光度以及更大的风险。

很多法律专家认为，社交媒体以及网上侵权会在美国造成艰巨的商标保护难题。“商标所有者在网络上面对复杂的局面：一方面他们需要品牌在网络上出现，引起消费者的讨论；另一方面，他们又需要控制品牌的使用，防止商标被混淆使用或权利受侵犯。他们必须在两者间权衡利弊，”Finnegan Henderson Farabow Garrett & Dunner 律师事务所驻华盛顿律师 Brett Heavner 说。

在加拿大，2016 年 3 月 10 日最高法院允准了 AstraZeneca 因不满 AstraZeneca v Apotex 案裁决而提出的上诉请求。该案专利涉及到 AstraZeneca 所宣传的商标名为 Nexium 的埃索美拉唑产品。案件核心是“承诺法则”。“在加拿大法院对于承诺法则适用不一的情况下，这个案件令人激动。我们希望最高法院能对如何诠释承诺专利效用及如何应用合理预期测试提供指导，”Deeth Williams Wall 律师事务所驻多伦多律师 Chen Junyi 说。

最近知识产权领域出现的主要变化与《跨太平洋伙伴关系协定》（TPP 协定）的规定有关，预计会给医药专利以及数字创新带来影响。“TPP 协定可能会增加世贸组织《与贸易有关的知识产权协定》中所描述的权利与义务，”Moeller IP Advisors 律师事务所商标驻布宜诺斯艾利斯律师 Laura Moreno Sosa 说。

在巴西，David Do Nascimento 律师事务所驻圣保罗合伙人

In Canada, the Supreme Court on 10 March 2016 granted leave to hear AstraZeneca's appeal in *AstraZeneca v Apotex*. The patent at issue relates to esomeprazole, which is being marketed by AstraZeneca under the trade name Nexium. Central to the appeal is the promise doctrine. "This is very exciting in light of the inconsistency in the Canadian courts' application of the promise doctrine. We hope the Supreme Court will provide guidance on how the patent's promised utility should be construed, and on the application of the sound prediction test," says Junyi Chen, an associate at Deeth Williams Wall in Toronto.

Recent key changes that have surfaced in the IP field relate to provisions in the Trans Pacific Partnership (TPP) Agreement, where impacts on pharmaceutical patents and digital innovation are expected.

"The TPP Agreement is likely to increase rights and obligations outlined in the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)," says Laura Moreno Sosa, a trademark lawyer at Moeller IP Advisors in Buenos Aires.

In Brazil, Marcello Do Nascimento, a partner at David Do Nascimento in Sao Paulo, says the backlog at the Brazilian Patent and Trademark Office is a major problem. "We have faced several situations where the local distributor or importer of our client has filed the trademark application in Brazil prior to the client, causing the necessity of proceeding with complex oppositions

Marcello Do Nascimento 提到，案件在巴西商标专利局的积压是主要的问题。“我们遇到数次以下的情况，我们客户的分销商或者进口商在我们客户之前在巴西提交了商标申请，让客户必须进行复杂的异议程序，进而严重延缓其在巴西取得商标注册，”他说。

在墨西哥，因为《墨西哥工业产权法》并没有规定商标异议制度，目前对于实施这样制度的法案正在国会中审议。由于加入 TPP 协定，墨西哥的工业产权法预计会有很多相关变化。“最为相关的一些改变将会与地理标志相关。这会在我国受到保护。还涉及注册集体商标、证明商标的可能性，以及非传统商标如声音和气味等，”Olivares 律师事务所驻 San Angel 合伙人 Daniel Sánchez 说。

阿根廷法律体系中与异议制度相关的显著变动是 2015 年 12 月 23 日公布的第 27.222 号法。Palacio & Asociados 律师事务所驻布宜诺斯艾利斯律师 Diego Palacio 说，根据新法，申请人必须在异议通知到期后一年限期内向商标局提交证明。

对于工业外观设计法的修订法案目前仍然悬而未决，国会仍在对其进行讨论。

BRDA Abogados 律师事务所驻利马合伙人 Gonzalo Barreda 说，侵权仍然是秘鲁的一大难题。此外，人们对于知识产权的意识也是问题。“我们建议来自中国的潜在客户，如果秘鲁对于他们业务是重要的国家，他们就需要注册他们的知识产权并请求预警服务，以保护他们在我国的知识产权。”

and significant further delay in obtaining the registration in our country,” he says.

In Mexico, since the Mexican Industrial Property Law (IPL) does not provide a trademark opposition system, a bill to implement one is being discussed in the Congress. Regarding entrance to the TPP, many relevant changes are expected in the IPL. “Some of the most relevant changes will be related to geographical indications, which noe will be protected in our country, the possibility to register collective and certification, as well as non-conventional trademarks regarding sounds and scents,” says Daniel Sánchez, a partner at Olivares in San Angel.

A notable change in Argentina’s legal system in connection with the opposition system is Law No. 27.222, published on 23 December 2015. Diego Palacio, an attorney at Palacio & Asociados in Buenos Aires, says that under the new law, applicants must submit evidence to the Trademark Office before the one-year term from notification of the opposition is due.

A bill is also pending on changes to the law on Industrial Design, which is still under discussion at the national congress.

Gonzalo Barreda, a partner at BRDA Abogados in Lima, says infringements continue to be an issue in Peru. People’s lack of awareness of IPR is also a problem. “Our advice to potential clients from China would be that, if Peru could be an important country for their business, they need to register their IPR and also request a vigilance service in order to protect their IP in our country,” he says.

亚太地区 Asia-Pacific

在台湾，主要的知识产权问题在于知识产权法院对专利权的执行，台北的道法法律事务所创始人蔡清福说：“不论是关于争议产品、权利主张、保护商标效力还是确认被诉侵权方的财务能力，专利人需要认真准备证据。”

律师提醒到，台湾并没有签署《专利合作协议》，也不是马德里协定的成员。在以上两者都不适用的情况下，申请者因此需要在申请提交的全球日程中尽早开始台湾方面的提交手续。“时间控制是重要的，”圣岛国际专利商标联合事务所驻台北合伙人刘法正说。

马来西亚准备加入马德里协定而且正在修订能符合 TPP 协定的法律。“知识产权是 TPP 协定期待达到协调目标的领域之一，以符合国际标准，”盛律师事务所驻吉隆坡合伙人 Jyeshta Mahendran 说。“马来西亚现有知识产权法律预计会出现一些变化，以在 TPPA 通过后符合其规定。”

特别是，“官方收费预计同时会出现增加，”麦仕奇律师事务所董事兼专利律师 Chris Hemingway 表示。

在新加坡，新加坡律政部及新加坡知识产权局正在审议注册

In Taiwan, major IP problems exist in enforcing patent rights before the IP court, says C F Tsai, founder of Deep & Far attorneys-at-law in Taipei. “The patentee needs to carefully prepare the evidence, either in respect of the accused product, or in the claim construction, or safeguarding the validity, or ascertaining the financial power of the accused infringer.”

Lawyers warn that Taiwan is neither a signatory to the PCT, nor a member of the Madrid Protocol. With the absence of both, applicants therefore need to launch their Taiwan filing at an earlier stage of their global filing agenda. “Time control is important,” says Frank Liu, a senior partner at Saint Island International Patent & Law Offices in Taipei. Malaysia is poised to join the Madrid Protocol and is amending its laws for compliance with the TPPA. “IPR is an area where the TPPA is expected to meet this objective of harmonization in order to meet international standards,” says Jyeshta Mahendran, a partner at Shearn Delamore & Co in Kuala Lumpur. “Malaysia will expect to see some changes to its existing IP laws in order to conform to the TPPA provisions once the TPPA is ratified.” In particular, “a simultaneous increase in official fees would not be unexpected”, says Chris Hemingway, director and patent attorney at Marks & Clerk in Kuala Lumpur.

In Singapore, the Ministry of Law and the Intellectual Property Office of Singapore are in the midst of reviewing changes to the Registered Designs regime. Stanley Lai, SC, a partner and head of IP at Allen & Gledhill, says proposed changes include allowing colour to be specified in the application as one feature of a novel design. “The changes potentially enhance the ability of companies, including Chinese companies, to seek registrable protection over design features of products,” he says.

Daniel Poh, a partner at Marks & Clerk’s Singapore office, says Chinese applicants should be aware of Singapore customs enforce-

外观设计制度的变动。艾伦格禧律师事务所合伙人兼知识产权负责人 Stanley Lai 说，拟定中的修订将包括，让颜色作为外观设计申请中新颖设计的一项要素。“这些改变将会提升公司（包括中国公司）对于产品外观特点寻求可注册保护的能力，”他说。

麦仕奇律师事务所新加坡办公室合伙人傅子健说，中国申请人应该意识到新加坡海关执法的情况。目前，对于涉嫌侵犯知识产权的产品的海关执法限于商标以及著作权侵权案中，并未拓展到专利侵权中。“期待依靠这样的执法程序的中国公司应该考虑知识产权在新加坡保护的各方面，以将海关执法的有效性最大化，”他说。

当考虑到澳大利亚市场时，考虑运用适合当地的英语商标对于中国入市者来说很关键，戴维斯·格林森·凯夫事务所驻墨尔本合伙人 Mark Robert 说。“如果一个商标是中国商标的简单音译，或者表达的意思在中国易于被接受，它并不一定是在澳大利亚最合适的商标，”他说。

澳大利亚《版权法》在 2015 年修订。权利人有权要求法院禁止开放澳大利亚以外侵犯版权的网址。“已经有案件测试了上述新的禁令救济的界限以及效力，而且这个领域将会快速发展，”Banki Haddock Fiora 律师事务所驻悉尼律师 Eli Fisher 说。

最近几年，澳大利亚海关的查扣制度还有一些立法变化。这些变化让澳大利亚海关可以采取行动扣押被指侵犯知识产权所有人著作权或者商标的物品。■

ment. Currently, customs enforcement of suspected IPR-infringing goods is limited to trademark and copyright infringements, and does not extend to patent infringement. “Chinese companies who may wish to rely on this enforcement procedure should consider all aspects of the IPR protection in Singapore in order to maximize the effectiveness of customs enforcement,” he says.

When considering the Australian market, it is crucial for a Chinese entrant to consider adopting an English-language trademark that appeals locally, says Mark Robert, a partner at Davies Collison Cave in Melbourne. “A mark that is a simple transliteration of a Chinese mark, or that conveys a theme that is positively received in China, may very well not be the most suitable mark in Australia,” he says.

The Australian Copyright Act was amended in 2015. A rights holder is now entitled to ask the court to block access to online locations outside Australia, where the online location infringes. “There are cases already being brought to test the boundaries and efficacy of the new injunctive relief referred to above, and this area will develop quickly,” says Eli Fisher, a lawyer at Banki Haddock Fiora in Sydney. There have also been some legislative changes made to the Australian Customs seizure regime in recent years, allowing Australian Customs to seize items that are allegedly infringing an IP owner's copyright or trademark. ■