

Optimization and improvement of the compulsory transfer system of registered trademarks -- Comments on the relevant provisions of the Revised Draft of the Trademark Law (Draft for Comment)

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Abstract: In order to effectively deal with and control malicious trademark squatting, China's Trademark Law of the People's Republic of China (draft for Comments) introduced the compulsory trademark transfer system, and made comprehensive provisions on the scope of application, procedure norms and review conditions of the system. The system of compulsory trademark transfer gives the squatting person the right to request the national intellectual property administrative department to transfer the registered trademark to him. The system is more direct in protecting the legitimate rights and interests of the prior right holder and dealing with the problem of malicious trademark squatting, and can effectively improve the fairness and efficiency of trademark management. The above provisions provide a basic legal framework for the compulsory trademark transfer system, but on the whole, its standard design is still slightly rough. We should further clarify the independence of the compulsory transfer system, reasonably set the time limit of the forced transfer, and extensively cover the various possible scenarios of malicious squatting, so as to improve the practical application effect of the system and better serve the modernization process of the trademark rule of law in China.

Keywords: Trademark Law, Malicious Squatting, Forced Transfer System, Trademark Management

1. Foreword

Malicious trademark registration refers to "improper registration in violation of the principle of good faith and the prohibitive provisions of law, harming the public interests or the legitimate interests of others, with the intention to obtain the 'right' of a registered trademark".^① It not only destroys the normal commercial trademark registration system and management order, but also undermines the fair environment of the market economy. Although China's trademark Law has set up the system of application approval, objection registration, withdrawal or invalidation announcement to regulate malicious squatting, but the above means still can not effectively curb the problem of malicious trademark squatting, nor can it fully protect the interests of the squatting people. Released on January 13, 2023, the trademark law of the People's Republic of China revised draft (draft) "(hereinafter referred to as the" draft "), in order to further strengthen the trademark management, suppress the wind of squatting, added the provisions of the squatting trademark compulsory transfer, give be squatting more direct legal relief. Article 45 to Article 47 of the Draft for Soliciting Opinions clearly put forward the specific provisions of the compulsory transfer of registered trademarks, which provides the basic legal framework for the construction of the forced trademark transfer system. However, on the whole, the standard design is still slightly rough, which needs to be further discussed and optimized.

2. Certificate of the Compulsory Transfer System of Malicious Registered Trademarks

The registered trademark transfer system is a measure to regulate malicious trademark registration and create a good trademark order. The introduction of the system will inevitably have a certain impact on the existing regulated malicious trademark transfer registration system, so it is necessary to make

^① Wu Handong, Interpretation of conceptual System and Standard Application Analysis of Malicious Trademark Registration, Modern Law, No.1,2023, p. 18.

the value judgment of the system in advance.

2.1. Rational analysis

The intellectual property system pursues the balance of interests. Although it entrusts the owner of intellectual property to monopolize the right of use, in order to restrict the right, it should also meet the reasonable demand of the public for intellectual products on the premise of ensuring the exclusive rights of intellectual property.^[1]The system of compulsory trademark transfer plays an important role in balancing the interests of various subjects. According to whether the object is specific in the trademark squatting cases, it can be divided into two categories: squatting for specific subjects and squatting for non-specific subjects.^[2]Among them, the robber does not need any economic investment to register the trademark of the specific subject, and grabs the reputation accumulated on the trademark and the prior trademark rights and interests or other prior interests of others. The trademark squatting not for a specific subject refers to that the squatting person himself does not register the public symbol resources for the purpose of use, waiting for the price and harming the social public interests. Under the compulsory transfer system of the registered trademark, the registrant has the right to directly apply for the transfer of the registered trademark to his own name, so as to help the trademark applied for registration earlier to gain a more favorable position in other trademark disputes. The forced transfer of trademark squatting not only strengthens the crackdown on malicious squatting behavior, but also helps to maintain the trademark order and create a good business environment.

The current provisions of the Trademark Law regulating the malicious squatting of trademarks distinguish between the absolute and relative causes that shall not be registered as trademarks. Under absolute reasons, after the trademark registration is rejected or invalid, others usually cannot apply for the registration of the same trademark. Under the relative reasons, the right holder or interested party with a certain prior rights and interests (hereinafter referred to as the "squatting person") raises the objection or invalidation request, and finally only makes the decision of nonregistration or invalidation, this way cannot fully protect the rights and interests of the registrant. Because according to the current system of trademark objection or invalidation, in addition to the trademark law in article 30,31 of the same trademark applicant can obtain trademark registration, other circumstances even if objection or invalid successful legal consequences is only the specific application was rejected or invalid trademark, registered trademark as does not exist, was registered people cannot directly obtain the trademark. The establishment and implementation of the compulsory transfer system of registered trademarks, starting from the principle of efficiency, can reduce the operation and implementation cost of the intellectual property system to a large extent on the basis of ensuring that the behavior of knowledge creation can maximize the benefits, so as to realize the optimal allocation and application of resources.

2.2. Necessity analysis

The current trademark law has registered trademark more comprehensive regulation, mainly reflected in article 32 "regulation trademark malicious squatting of general terms", article 13 "well-known trademark squatting regulation", article 15 "agent representative and interest squatting regulation", article 4 and article 49 "not for the purpose of using malicious squatting regulation", and article 7, article 10, article 44 "regulation trademark malicious squatting supplement, out clause". However, the legal consequences of malicious trademark squatting are only the rejection of the trademark registration, the cancellation of the registered trademark squatting and the invalid declaration of the registered trademark squatting. Only the trademark that should not be registered is recovered, and the malicious squatting person is not required to bear the legal liability corresponding to the degree of malice.[®] In order to obtain the registered trademark, the registered person must apply for registration again, and it is still uncertain whether the trademark registration can be obtained finally. Registered trademark compulsory transfer system gives the holder in addition to the application objection and declared invalid a more favorable way, apply for compulsory transfer can be directly transferred to be registered trademark name, realized from the trademark objection or invalid to apply for trademark registration and to step, contribute to the efficient operation of trademark management.

2.3. Feasibility analysis

The 1958 Paris Convention, as amended in Article 62, clearly stipulates the special protection of

[®]Wei Lili. Inspection and improvement of the legislation regulating malicious trademark squatting [J]. Journal of Henan University (Social Science Edition), 2019 (3): 64-69.

well-known trademarks. Although there is no direct mention of the compulsory transfer of registered trademarks, this clause also provides the legal basis for member states to combat malicious registration and protect the infringement of well-known trademarks.^③ Accordingly, member States may establish corresponding institutions in the light of their own legal environment and actual market conditions to realize the purposes of the Convention.^{[3]④} In article 7 of Article 6, where the agent / representative steals a trademark, the real owner of the trademark shall have the right to apply for objection or invalidation, and may directly request the transfer of the registered trademark to himself. Since then, the EU Trademark Regulations, the EU Trademark Directive and the EU member states have stipulated in their trademark legislation that the trademark owner can directly apply for the compulsory transfer of the trademark when the agent / representative registered the trademark.^[4] In addition to the trademark system, the right holder may also request compulsory transfer in the case of domain name squatting.

2.3.1. The agent / representative squatting transfer rules for reference

Paragraph 1 of article 6 of the Paris convention 7 trademark owner can request the agent / representative registered trademark is directly transferred to his name the significance of the provisions is that " relative to the first agent / representative registration is invalid, and registered in his name, the transfer can make the trademark owner in a better position, because through the transfer, its obtained based on the earlier application for registration, it is particularly important for against a third party."The Paris Convention does not take the compulsory trademark transfer system as an obligation to require its member states to reflect the system in their domestic laws, but gives its member states considerable independent choice. However, influenced by its influence, many countries or laws have written the compulsory trademark transfer system into the domestic trademark law. For example, Article 8, paragraph 3 of the EU Trademark Regulations stipulates that the agent / representative shall not register the trademark without the consent of the trademark owner.^{⑤⑥} In addition, article 21 provides for the transfer of a special type of the EU trademark registered in the agent without the authorization of the owner, and the trademark owner has the right to request the transfer of the EU trademark to his name unless the agent or representative can justify his actions.^⑦

2.3.2. Practice of domain name squatting and transfer

Compulsory transfer of rights have become a common rule for resolving global domain name disputes. The Uniform Domain Name Dispute Resolution Policy (UDRP), established by the Internet Name and Number Address Allocation Agency (ICANN), stipulates how to remedy the owner in the event of malicious domain name squatting. If the domain name in dispute is the same or misleading approximation to the trademark or service mark held by the complainant, and the complainant has no legitimate right or legal interest in the domain name and is malicious for the registered use of the

^③ Article 6, ii., of the Paris Convention

(1) The countries of the Union undertake that, as permitted by the law of the country, shall, or make a copy of the trademark, at the request of the parties, the use of the use of the same or the same goods, trademark reproduction, copy or translation, refuse or cancel the registration, and prohibit the use. These provisions should also be used when the main part of the trademark constitutes the copy or imitation of the above well-known trademark and is easy to cause confusion.

(2) A request for the cancellation of the trademark shall be allowed for a period of at least five years from the date of registration. The States of the Union may prescribe a period during which a request must be prohibited.

(3) No time limit shall be set for the request for cancellation of registration or prohibition of a trademark with malicious registration or use.

^④ Article VI. VII of the Paris Convention

(1) If the agent or representative of the trademark owner of a country of the Union, in his own name, applies to the owner of the trademark against the application or requests the cancellation of the registration, or, as permitted by the law of the State, may request the transfer of the registration to him unless the agent or representative justifies his act.

(2) If the owner of the trademark is not authorized to use it, he shall have the right to oppose the use of the trademark by his agent or representative on the basis of meeting the provisions above and (1).

(3) National legislation may provide a reasonable time for a trademark owner to exercise the rights prescribed in this Article.

^⑤ G.H.C.Bodenhausen, Guide to the Application of the Paris Convention, BIRPI, 1969, p.126.

^⑥“REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL” Article 8 3. Upon opposition by the proprietor of the trade mark, a trade mark shall not be registered where an agent or representative of the proprietor of the trade mark applies for registration thereof in his own name without the proprietor's consent, unless the agent or representative justifies his action.

^⑦“REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL” Article 21

1. Where an EU trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's authorisation, the latter shall be entitled to demand the assignment of the EU trade mark in his favour, unless such agent or representative justifies his action.

2. The proprietor may submit a request for assignment pursuant to paragraph 1 of this Article to the following:

(a) the Office, pursuant to Article 60(1)(b), instead of an application for a declaration of invalidity;

(b) a European Union trade mark court ('EU trade mark court') as referred to in Article 123, instead of a counterclaim for a declaration of invalidity based on Article 128(1).

domain name, it constitutes malicious squatting.^⑤ In accordance with article 4, paragraph 9, on the "relief measures", the obligee of the trademark or service mark may request to revoke the domain name or transfer it directly to the obligee.^[5]

Under the influence of UDRP, in 1999, the United States passed the Anti-Domain Insquatting Consumer Protection Act (ACPA), which stipulated the regulation of trademarks and natural names as domain names. For trademark squatting, "if a person in a lawsuit brought by the trademark owner has a malicious intent to profit from the trademark, and has registered, traded or uses a domain name, (I) the domain name is significant and similar to the domain name; (II) the trademark and the domain name is similar to or diluted with the trademark; or (III) is protected by article 706 (involving Red Cross marks) or Title 36 Article 220506 (involving Olympic symbols)." "In the case of a name of a natural person," Any person who registers a domain name containing another surviving name or similar in substance and confusion, without the consent of the surviving person, and has a specific intention to sell the domain name for profit, shall be liable in a civil action." For these two kinds of infringement cases, the trademark owner or natural person can apply for injunctive relief, which includes the cancellation of the domain name or the forced transfer of the domain name to the plaintiff.

In 2001, the Supreme People's Court of China adopted the Interpretation on Several Issues Concerning the Application of the Law to the Trial of Civil Dispute Cases involving Computer Network Domain Names (No.24,2001), which also stipulated the relief for the compulsory transfer of domain name squatting. If the plaintiff requests that the defendant's domain name be owned by him, the people's court may, order the plaintiff to register and use the domain name according to the specific circumstances of the case. In practice, the plaintiff may hold the judgment to the domain name registration management authority to handle the domain name transfer related procedures, and if necessary, the people's court may issue a notice of assistance in execution.^[6]

3. Problems existing in the design of the compulsory transfer system of malicious registered trademarks in the Draft

Article 45 to Article 47 of the Draft for soliciting opinions make a comprehensive standard design for the compulsory transfer system of malicious registered trademarks in terms of the scope of application, procedure norms and examination conditions. The draft for soliciting opinions gives the prior right holder the right to apply for the compulsory transfer of registered trademarks. Within five years from the date of registration of the trademark, the prior right holder and the interested party have the right to request the invalidation of the trademark. For the specific circumstances, the prior right holder may apply for the transfer of the registered trademark to his own name. Although the prior holder and interested per capita have the right to request the trademark invalidation, but to the specific circumstances registered others trademark, only before the right holder can apply for the registered trademark transfer to his name, namely only the prior holder has the right to apply for trademark transfer, so the reason and the Paris convention of the provisions of article 6 of the 7.^⑥ In article 6 of the Paris Convention, the term of transferred rights is "proprietor", translated into Chinese as "owner", which has the same meaning as "prior right holder" in the draft for Comments. It is undeniable that the system of compulsory trademark transfer gives the squatting person special relief for trademark transfer, which can curb the chaos of trademark registration to a certain extent. However, there are still the following problems in the draft system.

3.1. The scope of application of compulsory trademark transfer is limited

The draft article 45 in addition to the Paris convention of article 6 of seven agent representatives and interest registered behavior rules for the registered trademark compulsory transfer applicable situation, also into the well-known trademark registered behavior and registered has a certain influence on trademark behavior, but the current "trademark law" article 31 trademark approximate excluded from the applicable compulsory transfer. Such regulation is as far as possible in malicious factors more cybersquatting situation applicable compulsory transfer system, but in recent years in the judicial

^⑤See Yang Yu. The relationship between the ruling of domain name dispute agency and domain name civil litigation [J]. Legal applicable, 2006 (9): 62.

^⑥"Paris Convention for the Protection of Industrial Property" Article 6septies: If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.

practice of cybersquatting approximate trademark cases, the "malicious" degree is not called "slight", simply to malicious cybersquatting approximate trademark behavior excluded from applicable compulsory transfer system is not reasonable.[®] Although our country "trademark law" article 4, the provisions of the trademark registration behavior article 3 and the trademark review guide are specified the concept of "malicious" and the standard, but still by the judge independent malicious factors, in specific cases to determine whether cybersquatting trademark compulsory transfer, "draft" need not malicious squatting approximate trademark behavior excluded.^[1] Article 23, Paragraph 1 of the Provisions of the Supreme People's Court on Several Issues concerning Hearing Administrative Cases of Trademark Authorization and Confirmation, equate "malicious" with "knowing or should know",^{[1][7][12]} It is also identified as a subjective cognitive state. When trying malicious trademark squatting cases, the court often regards the subjective malice of the squatting person as an important factor in the trial of similar trademark squatting cases. Therefore, in the case of registered similar trademarks, "malicious" is an important factor for its consideration, and the draft for Comments should not exclude malicious squatting of similar trademarks from the application of compulsory transfer of registered trademarks.

3.2. The "nested" program setting is not reasonable

Article 45-47 of the draft adds procedural rules to article 45-47, establishing the review procedure mechanism of compulsory trademark transfer, including the review subject, review conditions and relief of review results, in order to improve the efficiency of the review. The subject of examination is the intellectual property administrative department of The State Council, which makes a ruling on the transfer of the registered trademark 12 months from the date of receiving the application. The examination conditions include the three necessary conditions: the establishment of the reason for the trademark transfer, no other invalid reasons, and the transfer is not easy to cause confusion or other adverse effects. If there are other invalid reasons, or the transfer is easy to cause confusion or other adverse effects, the trademark shall still be ruled invalid. It can be seen that the intellectual property administrative department of The State Council increases the attention to the social and public interests when reviewing the application of the compulsory transfer of registered trademarks according to law. The main reason is that trademark squatting not only seriously interferes with trademark registration and damages the interests of relevant right holders, but also has a certain impact on the legitimate rights and interests of consumers. The content of the review reflects the concern between the balance of public interests and the protection of private rights in this round of law revision.

Article 45, paragraph 2 of the draft also adds a relief for the result of the review. If the party is not satisfied with the ruling of the transfer of the registered trademark, it may file a lawsuit with the court within 30 days, giving the parties a reasonable relief way. In addition, if the lawsuit is not filed, the ruling shall take effect and be announced, and the applicant shall enjoy the right of exclusive right to use of the trademark from the date of the announcement. According to this regulation, the starting point of the validity of the forced trademark transfer is the date of the announcement, which is not the same as the validity principle of the invalidation of the invalidation system.

The draft for "invalidation and revocation of registered trademarks" does not place "compulsory transfer of registered trademarks", "invalidation" of "and" revocation " in an equal position, which inevitably causes confusion in application. According to the first paragraph of Article 46 of the draft, the invalidation of the trademark is the principle, while the trademark transfer is an exception. The cause of the trademark transfer overlaps with the cause and the application procedure to a certain extent. After receiving the application from the intellectual property administrative department under the State Council, the party shall notify the parties concerned in writing and submit the defense within a time

[®] Under the trademark review guide outline the first chapter 3.7 regulation: " in this guide, except otherwise provided, malicious refers to the trademark applicant or trademark agency or in other trademark matters, through certain behavior, obviously violate the principle of good faith, knowing or should know its behavior in violation of the law, hinder public order, damage the public interests or infringe the rights of others, but in order to seek improper interests, still implement the corresponding behavior, and the pursuit or let the consequences of subjective psychological state."

¹¹ The Supreme People's Court on the trial of trademark authorization approval administrative cases of article 23 paragraph 1: "the first user claims the trademark applicant by improper means to register the first use and have certain influence of the trademark, if the first use of trademark has a certain influence, and the trademark applicant knowing or should know the trademark, can assume to constitute a " improper means first registration ". However, the trademark applicant provides evidence to prove that it has not used the goodwill of the trademark first."

¹² In Jordan case, for example, the Supreme People's Court believes that Jordan knowing Jordan in the field of basketball enjoy long-term, widespread popularity and the word "Jordan" registered as a trademark, easy to cause the public to link the two, damage the Jordan's name rights, that Jordan's trademark registration has subjective malice. See Beijing No.9 Intermediate People's Court (2014) No.1 Zhongxing (Knowledge) Administrative Judgment No.9163.

limit. The intellectual property administrative department of the State Council shall make a ruling of the transfer of the registered trademark within a certain period of time. If the party is not satisfied with the ruling, the party concerned may bring a suit in a people's court. Therefore, the examination of trademark transfer according to the procedure of trademark invalidation declaration can indeed save administrative resources to a certain extent. However, because "trademark transfer" is essentially to maintain trademark registration, it cannot coexist with "trademark invalid" at the same time, and cannot be simply nested into the "trademark invalid" system.

3.3. The time of compulsory trademark transfer is not clear

According to the provisions of Article 45 of the draft on "relative reason invalidation and trademark transfer", the provision of "invalidation" is obviously limited by five years, and there is no time limit in the description of the provisions of "trademark transfer". Therefore, from the perspective of the text, "trademark transfer" is not also subject to the five-year period of "invalidation", that is to say, the trademark owner can apply for the compulsory transfer of trademark registration at any time, which will obviously lead to the imbalance of interests between the robber and the registered person. For the squatting people, after obtaining the exclusive right to use the trademark, they will invest in the market and carry out commercial publicity. In this process, the squatting people may file the application for compulsory transfer at any time, resulting in the possibility of expecting the initial investment, and may even bear the heavy price of losing all their money alone. In addition, the forced trademark transfer will also affect the interests of the relevant public. The squatting person continues to use the registered trademark for a long period of time, which has accumulated goodwill and a certain popularity on the trademark, and the relevant public has also established a considerable reasonable trust in the brand. And be registered people not apply for trademark compulsory transfer as soon as possible, idle in exercise their rights, so that at destruction is registered trademark has been established in the market stability at the cost of the exercise of their rights, objectively will increase the possibility of consumer confusion misidentification, is not conducive to maintaining market stable operation order and public interest protection.

4. Suggestions on the optimization of the compulsory trademark transfer system in China

At present, the normative design of the compulsory trademark transfer system in the draft is still slightly rough on the whole. Whether the expression of the system itself or the connection with other systems, the system is inappropriate. If the system is to be established, the relevant regulations still need to be improved.

4.1. Optimization of the existing system design itself

4.1.1. The necessity of a separate establishment

It can be seen from the relevant statements of the draft for Comments that the bureau did not set up a separate procedure for the compulsory transfer of registered trademarks, but mixed it into the invalidation system. However, there are differences and even conflicts between the compulsory trademark transfer system and the invalidation system in the principle of effectiveness, the purpose of establishment and the content of examination, etc. If the two systems are simply mixed, it is easy to cause confusion in application.

First of all, the effective starting point of "trademark transfer" and "invalidation" is different. The invalidation of trademark is the invalidation from the beginning, and the effect of the forced trademark transfer system is that "the applicant enjoys the exclusive right to use the trademark from the date of announcement". Therefore, nesting the "trademark transfer" system into the "invalidation" system will destroy the effectiveness principle of trademark invalidation. Secondly, there are also great differences in the purpose of the two systems. The system of invalidation system set up the purpose is to correct the trademark registration procedure, pay more attention to the trademark is legal, reflects the maintenance of the value of justice and order, and the purpose of squatting trademark forced transfer system set up more from protect the registered rights and improve the efficiency of the administrative perspective of trademark, reflects the maintenance of efficiency value.^[8] Finally, "trademark transfer" system on the review content more broad than "invalidation", according to the revised draft article 1 the provisions of article 46, the trademark forced transfer on the review of the relevant provisions of the invalidation clause, and the trademark transfer whether will lead to confusion or other adverse effects to review, to

consider the trademark forced transfer whether will affect the interests of the relevant public.

The fifth revision of China's Trademark Law aims at solving its own problems in practice. On how to set up the compulsory trademark transfer system separately, we can learn from the EU Trademark Regulations revised by the European Union in 2016 under a similar background. Based on the concern about its own huge surplus, in order to benefit its member states, the EU revised and adjusted the identification standards of trademark infringement, strengthened the protection of trademark rights, in order to promote the development of the trademark system. In article 21 of the Regulations, it is added that the relevant right holder shall directly apply to the EU Intellectual Property Office or the EU Trademark Court for the trademark registration, without the need for trademark invalidation.¹³ This means that, as an independent system, the compulsory trademark transfer can replace the invalidation of trademarks. Therefore, China's trademark law should also separate the compulsory trademark transfer system from the invalidation system, and delete the description of "other reasons that should be declared invalid" in paragraph 1 of Article 46 of the Draft for Comments. The cause of trademark invalidation includes both the cause of absolute invalidation and the cause of relative invalidation, and only the invalidation based on absolute grounds can be examined according to its authority. Therefore, the draft for Comments should not include the compulsory trademark transfer procedure initiated by the right holder directly into the scope of the examination according to its authority.

4.1.2. Clear the schedule

The period of the application for compulsory transfer of trademarks shall correspond to the time of invalidation. According to the Trademark Law of China, the trademark right holder must declare the invalidation within five years from the date of trademark registration. The purpose of establishing this period is to encourage the original right holder or the relevant interested party to take the necessary legal action to seek relief within the prescribed time, and to prevent the formation of wider recognition of the disputed trademark after more than five years. Untimely relief may undermine the long-term stability of the trademark system.^[9]In the case of trademark squatting, the registered trademark will have a high popularity through the registered trademark, and the relevant public will also establish a specific connection between the trademark and the registered trademark. Therefore, the period of the registered trademark to claim the rights should be specified in the compulsory transfer system of the registered trademark. On the one hand, for the sake of fairness, it is conducive to guarantee the reasonable expectation of the registrant to bear risks within a certain period of time and maintain the stability of the trademark market order; on the other hand, it urges the right holder to claim their rights as soon as possible, so as to avoid the right holder lying on the power to sleep, and increase the burden of judicial relief. In view of the similarities between the compulsory transfer system of registered trademarks and the invalidation system, it can be set with reference to the time limit of the invalidation request.

4.1.3. Expansion scope of application

The draft for soliciting opinions should include malicious squatting of similar trademarks in the scope of application of compulsory transfer of registered trademarks. According to the draft of documents, the revision will involve malicious factors more well-known terms, agent representative and interest registered clause, first registered trademark has certain influence all into the category can apply for compulsory transfer, though so for malicious registration approximate trademark behavior is not enough attention. In 2021, Fujian province higher people's court announced the judicial protection of intellectual property rights in the top ten cases, there is a "Emerson electric company v. Xiamen and beauty spring and other unfair competition disputes" is a typical case of malicious registration approximate trademark, in this case, the plaintiff Emerson registered since 1994 and 1998 in China and widely used "In Sink Erat or" and "love" is easy trademark, and has significantly in 2010. However, since 2010, the defendants Xiamen Angel Company and Xiamen Haina Baichuan Company have begun to apply for similar trademarks of "AiShiyi" related goods and services. Although Emerson has filed objections, review and administrative litigation, it cannot prevent the defendant's infringement. Before the lawsuit, the defendant had applied for 48 trademarks identical or similar to Aiyi in 14 categories. After hearing the trial by Xiamen Intermediate People's Court and Fujian Provincial Higher People's

¹³Specific visible to its English original text: Where an EU trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's authorization, the latter shall be entitled to demand the assignment of the EU trade mark in his favour, unless such agent or representative justifies his action. The proprietor may submit a request for assignment pursuant to paragraph 1 of this Article to the following: (a) the Office, pursuant to Article 60(1)(b), instead of an application for a declaration of invalidity; (b) a European Union trade mark court ('EU trade mark court') as referred to in Article 123, instead of a counterclaim for a declaration of invalidity based on Article 128(1).

Court, it was determined that the actions of the two defendants were malicious registration of similar trademarks and constituted unfair competition. This case highlights that the malicious factors is also significant in dealing with similar trademark registration cases, so such circumstances should be considered in the applicable provisions of compulsory transfer.

5. Conclusion

In the new stage of the new era, we must pursue high-quality development. In 2023, the State Intellectual Property Office issued the Annual Work Guidelines on Promoting the High-quality Development of Intellectual Property Rights (2023), emphasizing that quality is regarded as the core of the progress of the intellectual property cause, and promoting the reform of the trademark law. The release of the draft clearly reflects the firm will to promote the high-quality development of the socialist market economy. The compulsory transfer system of trademark squatting provides the squatting people with the right to directly transfer the registered trademark, saves the time and funds needed for re-registration, and enhances the protection of the squatting persons. It is very important to curb malicious squatting, promote the high-quality development of intellectual property rights and maintain the honest competition in the market. In order to improve the practicability of the system of compulsory transfer of registered trademark, it is suggested to refer to foreign legislative experience and domestic practice in the fifth revision of the Trademark Law, take the transfer of compulsory transfer of registered trademark as a right, and clarify the specific time limit of the request and expand the scope of application, so as to ensure the effective implementation of the system.

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