AFD China
INTELLECTUAL PROPERTY LAW OFFICE

Newsletter
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The Informative User Guide for the View and Drawing Requirements of Designs Released

Since 2015, the Industrial Designs 5 (ID5) offices have been engaged in ongoing cooperation in the field of industrial design. These collaborative efforts aim to enhance mutual understanding, raise public awareness of design protection, and provide better services to users worldwide.

The Informative User Guide for the View and Drawing Requirements of Designs is a joint project led by the China National Intellectual Property Administration (CNIPA) and the European Union Intellectual Property Office (EUIPO). By comparison and summarizing the view and drawing requirements of designs of the ID5 offices, the Guide provides a comprehensive overview in both text and visual formats. This resource serves as a valuable reference for innovators.

For more project outcomes, please visit the official website: https://id-five.org.(Translated from CNIPA Website Chinese Version)

Appendix 1: Original English Version of the Informative User Guide for the View and Drawing Requirements of Designs.

Appendix 2: Chinese Reference Translation of the Informative User Guide for the View and Drawing Requirements of Designs

https://english.cnipa.gov.cn/art/2025/7/14/art_1340_200599.html

AFD China is Selected for Inclusion in the First Batch of Patent Agencies for the Targeted Service Ssafeguard Program

Recently, the All-China Patent Agents Association (ACPAA) announced the first batch of patent agencies selected for the targeted service safeguard program. Thanks to its solid professional capabilities, excellent industry reputation, and unwavering commitment to high-quality service, AFD China was successfully selected as one of the 986 agencies for the program. This honor serves as both recognition and encouragement of our firm's service capabilities.

This selection of agencies for the targeted service safeguard program is a significant initiative by the ACPAA to respond to the national innovation-driven development strategy and to improve industry service quality. The evaluation process followed rigorous standards, requiring applicants not only to participate in ACPAA-led initiatives promoting high-quality industry development and to comply with the industry service convention, but also to sign the "Commitment to Safeguarding High Quality of Patent Applications through Targeted Services". These multiple requirements demonstrated the high expectations placed on the professional competence and sense of responsibility of the selected agencies.

As a professional agency with many years of expertise in the field of intellectual property, AFD China has always placed service quality at the core of its work. Over the years, we have adhered to the service philosophy of "professionalism, precision, and efficiency", providing timely and high-quality patent agency services to numerous innovators and assisting in the transformation of high-level invention-creations into high-quality patents. By signing the "Commitment to Safeguarding High Quality of Patent Applications through Targeted Services", we have further raised our service standards, underscoring our determination to put the concept of high-quality industry development into practice.

Being selected this time is not only a high affirmation of our past work, but also a motivation for our future development. We will take this opportunity to continuously strengthen our service capabilities, strictly abide by the undertakings in the Commitment, proactively accept public oversight, and repay the trust of our clients and the society with even higher standards of service. At the same time, we will closely follow the national innovation-driven development strategy, deeply engage with the wave of high-quality industry development, and continue to enhance the precision and professionalism of our services, thereby providing stronger intellectual property safeguard for high-level invention-creations, and making greater contributions to the flourishing development of China's patent industry.

Shen Changyu Leads Delegation to Attend the Sixty-Sixth Series of Meetings of the Assemblies of the Member States of WIPO and Delivers General Statement

On July 8, the Sixty-Sixth Series of Meetings of the Assemblies of the Member States of the World Intellectual Property Organization (WIPO) convened in Geneva, Switzerland. Hu Heping, Executive Deputy Head of the Publicity Department of the Communist Party of China (CPC) Central Committee, and Shen Changyu, Commissioner of the CNIPA, attended the meetings. On behalf of the Chinese government delegation, Shen delivered a general statement.

Shen provided an overview of China's latest developments in the field of intellectual property (IP). He emphasized that the Chinese government attaches great importance to IP work and is vigorously advancing the building of an IP powerhouse country to provide strong support for high-quality development. In 2024, China successfully hosted the Third Belt and Road High-Level Conference on Intellectual Property, which saw active participation from various parties and resulted in a number of practical outcomes.

Shen expressed appreciation for WIPO's achievements over the past year and congratulated the successful conclusion of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge and the Riyadh Design Law Treaty (RDLT). He called on WIPO to continue improving the global IP service system and include Chinese and other United Nations official languages in the Madrid and Hague Systems, so as to better meet the needs of global innovators. Shen also expressed hopes that WIPO would play a

greater role in promoting global sustainable development and fostering innovation and cooperation in frontier fields such as artificial intelligence.

The Chinese government delegation was composed of representatives from CNIPA, the Publicity Department of the CPC Central Committee, the Ministry of Foreign Affairs, the Permanent Mission of China to the United Nations Office at Geneva, and the Intellectual Property Department of the Government of the Hong Kong Special Administrative Region. The China Council for the Promotion of International Trade (CCPIT) and the ACPAA attended the meetings as observers.

https://english.cnipa.gov.cn/art/2025/7/18/art_1340_200664.html

Shen Changyu Holds Bilateral Meeting with WIPO Director General Daren Tang

On the morning of July 7 local time, during the Sixty-Sixth Series of Meetings of the Assemblies of the Member States of the WIPO, Shen Changyu, Commissioner of the CNIPA, held a bilateral meeting with WIPO Director General Daren Tang in Geneva, Switzerland. The two sides had an in-depth exchange of views on topics including China's latest developments in intellectual property (IP), artificial intelligence, and bilateral cooperation.

Shen noted that under the guidance of President Xi Jinping's congratulatory letter to a commemorative event marking the 50th anniversary of cooperation between China and WIPO, bilateral collaboration has deepened and yielded a series of practical outcomes. China congratulated WIPO on the successful conclusion of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge and the RDLT. China will remain committed to constructive participation in the development of international IP rules under the framework of WIPO, advancing the global IP governance system towards greater fairness and equity.

Tang stated that in recent years, international patent applications through the Patent Cooperation Treaty (PCT), designs contained in applications filed with the Hague System, and international trademark applications filed under the Madrid System from Chinese applicants have maintained strong growth momentum, reflecting the country's dynamic innovation landscape. He expressed hope that the two sides will further deepen cooperation in improving the global IP service system, leveraging AI to empower IP, and enhancing the role of IP in development, jointly advancing the development of the global IP governance system.

https://english.cnipa.gov.cn/art/2025/7/18/art_1340_200686.html

Shen Changyu Leads Delegation to Attend the 8th UK-China Intellectual Property Symposium

Shen Changyu, Commissioner of the CNIPA, led a delegation to the United Kingdom recently upon invitation to attend the 8th UK-China Intellectual Property Symposium and delivered a keynote speech.

Shen noted that as two major global economies, China and the United Kingdom share great potential for cooperation in the field of intellectual property (IP). He highlighted that the Symposium, which has been held for several consecutive editions, has become a flagship platform for deepening bilateral exchanges and cooperation in IP, playing an important role in advancing the development of IP systems in both countries. Shen expressed hope that the two sides will continue to deepen collaboration to benefit more IP users, and better serve technological innovation and economic development in both nations.

During the visit, Shen held bilateral talks with Adam Williams, Chief Executive of the Intellectual Property Office of the United Kingdom (UKIPO). The two sides exchanged

in-depth views on the latest developments in their respective IP systems, Standards Essential Patents (SEPs), IP finance, and future cooperation, and reached important consensus.

The delegation also visited the Chinese Embassy in the United Kingdom, where they exchanged views on China-UK IP cooperation. In addition, they visited Chinese innovation-driven enterprises operating in the United Kingdom to better understand their needs and the status of IP protection in the local context.

https://english.cnipa.gov.cn/art/2025/7/18/art_1340_200663.html

CNIPA Deputy Commissioner Meets with Michael Hart, President of AmCham China

Recently, Lu Pengqi, Deputy Commissioner of the CNIPA, met in Beijing with Michael Hart, President of the American Chamber of Commerce in China (AmCham China), and representatives of member companies.

Lu noted that the development of China's intellectual property (IP) system is inseparable from the attention and support of foreign chambers of commerce and IP right holders operating in China. He emphasized that CNIPA has always adhered to the principles of fairness and impartiality, ensuring equal treatment and protection for both domestic and foreign right holders. CNIPA will continue to take an open and proactive approach to listen to opinions and suggestions of foreign-funded enterprises on the development of China's IP system, and remain committed to fostering a sound innovation environment.

Hart noted that AmCham China and its member companies highly appreciate China's achievements in IP protection. The Chamber will continue to serve as a bridge to promote further exchanges and cooperation between China and the United States in the field of IP. After the meeting, Hart presented CNIPA with the 2025 American Business in China White Paper.

https://english.cnipa.gov.cn/art/2025/7/18/art_1340_200662.html

Shen Changyu Holds Bilateral Meetings with Heads of IP Offices from Multiple Countries and Regions and Attends BRICS Heads of IP Offices Meeting

From July 7 to 9 local time, during the Sixty-Sixth Series of Meetings of the Assemblies of the Member States of the WIPO, Shen Changyu, Commissioner of the CNIPA, held bilateral meetings with the heads of intellectual property (IP) offices from Singapore, Hungary, Spain, France, Denmark, Australia and Morocco, as well as the EUIPO and the African Intellectual Property Organization (OAPI) in Geneva, Switzerland. Shen also participated in the Informal Ministerial Policy Dialogue hosted by WIPO and attended the BRICS Heads of Intellectual Property Offices Meeting.

In bilateral meetings, Shen exchanged views on issues of mutual interest and reached a series of important consensuses. He emphasized that the Chinese government attaches great importance to IP work and is committed to building an efficient and integrated IP governance system. Over the past year, China has made new progress in IP legislation, creation, examination, utilization, protection, services, and international cooperation, continuously optimizing its environment for innovation and creativity. Moving forward, China is willing to work with all parties to enhance communication and deliver better services for global IP users. All counterparts expressed their willingness to further deepen cooperation with China and exchange views on areas such as IP talent training, public services, pledge financing, trademark and geographical indication protection, and the application of artificial intelligence in IP examination. During the meetings, Shen signed bilateral

memorandums of understanding on cooperation respectively with the heads of the Hungarian Intellectual Property Office and the OAPI, and signed a memorandum of understanding on the Patent Prosecution Highway (PPH) cooperation with the General Director of the Moroccan Office of Industrial and Commercial Property (OMPIC).

On July 7, WIPO held the Informal Ministerial Policy Dialogue under the theme "Shaping the Future of Innovation." Shen participated and delivered a speech in which he shared CNIPA's practical experience in exploring IP protection rules related to artificial intelligence and leveraging AI tools to enhance IP management efficiency, which was warmly received by attendees.

On July 8, Shen attended the BRICS Heads of Intellectual Property Offices Meeting. He noted that in recent years, IP BRICS cooperation has expanded with the addition of five new members, significantly enlarging its circle of friends and strengthening its global influence. He expressed hope that the IP BRICS offices would continue to build on this positive momentum, achieve more fruitful outcomes, and better serve IP users. During the meeting, BRICS members held in-depth discussions on the latest progress of joint projects and preparations for the next BRICS Heads of Intellectual Property Offices Meeting, reaching important consensus on future cooperation.

https://english.cnipa.gov.cn/art/2025/7/18/art_1340_200687.html

Top Court Boosts Protection for Private Sector Innovators

The Supreme People's Court (SPC), China's top court, issued a guideline on Friday, requiring all courts to strengthen their protection for innovators in the private sector.

The 25-article guideline, aimed at implementing the Private Sector Promotion Law, emphasizes equal protection for various economic entities participating in market competition, and calls for improvements in the quality of handling high-tech intellectual property cases and providing strong judicial support for key sectors and core technologies.

The guideline reveals that China will draft rules for handling disputes over data rights to promote the efficient circulation and transaction of data elements. It also urges Chinese courts to play their role in guiding the healthy and orderly development of the artificial intelligence industry.

The Private Sector Promotion Law, which has been in effect since May 20, is the country's first fundamental law in this field, marking a milestone in bolstering the growth of the private economy and boosting the confidence of entrepreneurs.

While ordering courts nationwide to strictly enforce the law by better handling cases related to emerging businesses and new technologies, the guideline also mandates them to combat corruption within private companies with the same level of severity as graft within State-owned enterprises.

Furthermore, actions that undermine fair competition and disrupt market order should be addressed in a timely manner, the guideline said, calling on judges to focus more on the issue of overdue payments to private economic entities.

https://chinaipr.mofcom.gov.cn/article/centralgovernment/202508/1992694.html

SUPPLEMENTARY ISSUE

Adjudication of Drug Patent Linkage Cases When the Originator Drug's Technical Solution Falls Outside the Protection Scope of Patent Claims

In drug patent linkage litigation cases, if the parties are in dispute over whether the technical solution of the originator drug falls within the protection scope of the relevant patent claims, the People's Court shall examine the issue. If the court determines that the technical solution of the originator drug does not fall within the protection scope of the patent claims asserted by the patentee or an interested party, it shall rule to dismiss the case.

Corporation A filed two lawsuits, claiming its ownership of two invention patents (hereinafter "Patent 1" and "Patent 2"). It accused that: the "Tocilizumab Injection" (hereinafter the "Disputed Biosimilar"), for which Company B filed a registration application, was approved by the National Medical Products Administration (NMPA) for use in combination with methotrexate (MTX) to treat rheumatoid arthritis (RA). The marketing authorization holder of the Disputed Originator Drug had registered and publicly disclosed the relevant patent information of the Disputed Patents on the Patent Information Registration Platform for Marketed Drugs, wherein tocilizumab is the medical reference product (MRA) specified in the claims of the Disputed Patents. Company B used the Disputed Biosimilar in combination with MTX for RA treatment, and the Disputed Biosimilar shared identical dosage and administration with the Disputed Originator Drug. Therefore, the technical solution of the Disputed Biosimilar fell within the protection scope of Claims 1–9 of Patent 1 and Claims 1–5 of Patent 2. Furthermore, in both its patent declaration on the Patent Information Registration Platform for Marketed Drugs and its email correspondence with the originator drug's marketing authorization holder, Company B contended that the Disputed Patents should be declared invalid; in other words, Company B admitted that the technical solution of its Disputed Biosimilar for which registration was sought fell within the protection scopes of Claims 1–9 of Patent 1 and Claims 1–5 of Patent 2. Accordingly, Corporation A requested the court to determine that the Disputed Biosimilar's technical solution fell within the protection scopes of Claims 1–9 of Patent 1 and Claims 1–5 of Patent 2.

Company B contended that neither Patent 1 nor Patent 2 qualified as a "relevant patent" under Article 76 of the Patent Law and thus Corporation A lacked standing to bring the lawsuits pursuant to said provision, and the lawsuits should be dismissed.

Upon trial, the court found that Corporation A had registered the relevant information of Patent 1 on the Patent Information Registration Platform for Marketed Drugs. The type of patent registered was "biologic product patent for medical use", and the registered claims were claims 10–18. For Patent 2, Corporation A had also completed registration on the Patent Information Registration Platform for Marketed Drugs. The type of patent registered was "biologic product patent for medical use", and the registered claims were claims 7–12.

To demonstrate that the Disputed Originator Drug fell within the protection scopes of the Disputed Patents, Corporation A submitted the drug's prescribing information.

In the "Indications" section, the following was stated:

"Rheumatoid Arthritis (RA): For treatment of moderate to severe active RA in adult patients with inadequate response to disease-modifying antirheumatic drugs (DMARDs). Tocilizumab is to be used in combination with methotrexate (MTX) or other DMARDs."

In the "Dosage and Administration" section, the following was stated:

"The recommended adult dosage of tocilizumab is 8mg/kg administered by intravenous infusion every 4 weeks, which may be used in combination with MTX or other DMARDs."

In the “Clinical Trials” section, the following was stated:

"Patients received either tocilizumab or placebo at 4 or 8mg/kg every 4 weeks, in combination with a stable dose of MTX (10-25mg weekly)."

According to the Patent Information Registration Platform for Marketed Drugs, the NMPA accepted Company B’s application for registration of the Disputed Biosimilar on December 8, 2021. The product was filed as an injectable formulation (80mg/4ml), with the Disputed Originator Drug designated as its reference listed drug. In relation to the Disputed Patents, Company B submitted a Type 4.1 Declaration on the Patent Information Registration Platform for Marketed Drugs.

The court of first instance confirmed in its civil rulings that the technical solution of the Disputed "Tocilizumab Injection" Biosimilar fell within the protection scopes of Claims 1–9 of Patent 1 and Claims 1–5 of Patent 2. Following the rulings, Company B filed two appeals, arguing that: Claim 1 of Patent 1 and Claim 1 of Patent 2 did not qualify as "patents related to a drug pending registration" under Article 76 of the Patent Law. Corporation A therefore lacked standing to bring the lawsuits. On July 28, 2023, the Supreme People’s Court issued two civil judgments, overturning the first-instance rulings and dismissing Corporation A’s lawsuits.

The court's final judgments held that: the second-instance proceedings should first examine whether Corporation A had the legal standing to initiate the lawsuits under Article 76 of the Patent Law. Litigation filed pursuant to Article 76(1) must concern disputes arising from patents related to a drug pending registration. Such litigation does not address ordinary infringement disputes; rather, its purpose is to proactively resolve potential patent conflicts between originator drug patent holders and applicants for generic chemical drugs, biosimilars, or traditional Chinese medicine equivalents during the drug review and approval stage, before commercial production and marketing might lead to patent disputes. Only when the technical solution of the originator drug itself falls within the protection scope of the patent claims, can litigation initiated by the patentee or interested parties be deemed as having a proper right basis under Article 76(1) of the Patent Law. This is the legislative intent underlying this type of litigation as provided for in the Patent Law.

Rule 2(1) of the Provisions of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Civil Cases involving Patent Disputes Related to Drugs of Which Applications for Registration are Filed (hereinafter referred to as the Judicial Interpretation of Patent Disputes Related to Drugs) further stipulates:

“For the purposes of Article 76 of the Patent Law, ‘relevant patent’ means a patent subject to the specific connection measures issued by the relevant administrative department under the State Council for the resolution of patent disputes during drug marketing approval and drug marketing application.”

And, Measures for the Implementation of the Mechanism for Early Settlement of Drug Patent Disputes (Interim) (hereinafter referred to as the Measures) are the “specific connection measures” referred to in the above provision.

Rule 2(1) of the Measures stipulates that: the marketing authorization holder of a drug shall register on the Patent Information Registration Platform for Marketed Drugs the relevant patent information for drugs that are registered and marketed within China; and these Measures

shall not apply to drugs for which relevant patent information has not been registered on the China's Patent Information Registration Platform for Marketed Drugs. "

Rule 4(1) of the Measures further specifies that the content for registration shall include "correspondence between the drug and relevant patent claims."

It is thus clear that the "relevant patent" as referred to in Article 76(1) of the Patent Law presupposes registration on the Patent Information Registration Platform for Marketed Drugs, and the patents registered on the Patent Information Registration Platform for Marketed Drugs must be patents related to drugs that are registered and marketed within China, and the registered content shall include the correspondence between the drug and the relevant patent claims. In other words, according to the specific provisions of the Judicial Interpretation of Patent Disputes Related to Drugs and the Measures, the fact that the originator drug's technical solution falls within the protection scope of the patent claims is also a necessary condition for the patentee or an interested party to file a lawsuit under Article 76 of the Patent Law. However, neither the Patent Law nor the Judicial Interpretation of Patent Disputes Related to Drugs stipulates that raising an opposition against the registered patent information is a necessary condition for bringing a lawsuit under Article 76 of the Patent Law.

Since, under the current system, the marketing authorization holder of a drug may independently register patent information on the Patent Information Registration Platform for Marketed Drugs, and the registered patent information is not subject to examination, when there is a dispute between the parties as to whether the technical solution of the originator drug falls within the protection scope of a patent in dispute, the People's Court shall examine this issue during the trial. If it is determined that the technical solution of the originator drug does not fall within the protection scope of the patent claims asserted by the patentee or an interested party, the court shall rule to dismiss the lawsuit. In these two cases, Company B clearly argued in the original trial that the technical solution of the Disputed Originator Drug did not fall within the protection scope of Claims 1–9 of Patent 1 or Claims 1–5 of Patent 2. Therefore, this should be examined to determine whether the lawsuits filed by Corporation A met the conditions for filing.

Claim 1 of Patent 1 should be interpreted as defining the use of MRA and methotrexate (MTX) for the production of a specifically packaged drug combination product for the treatment of rheumatoid arthritis. However, the Disputed Originator Drug is a tocilizumab injection, and only in its prescribing information was it stated that it may be used in combination with methotrexate; that is, it involves only a single substance and does not constitute a specifically packaged drug combination product. Therefore, it certainly did not fall within the protection scope of Claims 1–9 of Patent 1. The "use of a recombinant humanized anti-human interleukin-6 receptor monoclonal antibody MRA and methotrexate (MTX) for the production of a combination of MRA and MTX for treating rheumatoid arthritis" in Claim 1 of Patent 2 should likewise be interpreted as defining the use of MRA and MTX for the production of a specifically packaged drug combination product for the treatment of rheumatoid arthritis. However, the Disputed Originator Drug is a tocilizumab injection, and only in its prescribing information was it stated that it may be used in combination with MTX; that is, it involves only a single substance and does not constitute a specifically packaged drug combination product. Therefore, it certainly did not fall within the protection scope of claims 1–5 of Patent 2. Accordingly, Corporation A's lawsuits did not comply with the provisions of Article 76(1) of the Patent Law and shall be dismissed.

(2023) Zui Gao Fa Zhi Min Zhong Nos. 2 and 3

Determination of "Related Patents" in Article 76(1) of the Patent Law; the Way for Generic Drugs Applicants to Make a Declaration When the Product Only Differs from the Registered Original Drugs in Specifications

A patent corresponding to the generic drugs that have been marketed in China and registered on the Patent Information Registration Platform for Marketed Drugs constitutes the "related patent" referred to in Article 76, Paragraph 1 of the Patent Law.

If a patent corresponding to an original drug that only differs from the generic drug in specifications has been registered on the Patent Information Registration Platform for Marketed Drugs, the generic drug applicant should, in principle, make a declaration in accordance with the registered patent related to the original drug.

Company A is the patentee of the invention patent involved in the case. The protection scope of the patent involved in the case covers all dosage forms of drugs containing the active ingredient of palbociclib, including palbociclib capsules and palbociclib tablets.

On June 30, 2021, Company A registered the patent involved in the case as a patent related to palbociclib capsules in three specifications of 75mg, 100mg and 125mg on the Patent Information Registration Platform for Marketed Drugs (hereinafter referred to as the Patent Information Registration Platform), and the registered claims are 1-4. The original drug “palbociclib” with specifications of 25mg and 125mg and dosage form of tablets were approved for marketing in China on August 10, 2022. On September 6, 2022, Company A registered the patent involved in the case as a patent related to palbociclib tablets with the specifications of 25mg and 125mg on the Patent Information Registration Platform, and the registered claims are 1-4.

Pharmaceutical Company B filed an application for registering the generic drug Palbociclib tablets with three specifications of 75mg, 100mg and 125mg and the dosage form being tablets on the Patent Information Registration Platform. The National Medical Products Administration accepted the registration on April 12, 2022. In response to the patent involved in the case, Pharmaceutical Company B made a Type 1 Declaration on the Patent Information Registration Platform, that is, there is no relevant patent information of the generic drug on the Patent Information Registration Platform.

Company A filed a lawsuit and claimed: the Type 1 Declaration made by Pharmaceutical Company B was false and inaccurate. Pharmaceutical Company B had filed an invalidation request against the patent involved in the case, so its true intention was a Type 4.1 Declaration. Company A requested to confirm that the technical solution of the generic drug involved in the case that Pharmaceutical Company B applied for registration fell in the protection scope of claims 1-4 of the patent involved in the case.

Pharmaceutical Company B argued that: for the palbociclib tablets with specifications of 75mg and 100mg that were applied for, there were no corresponding generic drugs or the related patents published on the Patent Information Registration Platform. For the palbociclib tablets with specifications of 125mg that was applied for, the related patent was published later than the time of its declaration. In addition, its invalidation request and the administrative litigation against the patent involved in the case was filed before the implementation of China’s drug patent linkage system, and also earlier than the application date of the generic drugs in question. Therefore, Company A's opinion that its declaration on the patent in question should be a Type 4.1 declaration lacked basis. Therefore, Company B had factual and legal basis for making a Type 1 Declaration, and Company A's lawsuit did not meet the statutory conditions.

The first instance court made a civil ruling to dismiss Company A's lawsuit. Company A was dissatisfied and appealed, claiming that: "The generic drugs" are not limited to drugs approved for marketing, and the applicant for generic drugs should make a declaration for each "related drug patent" corresponding to the generic drugs registered on the Patent Information Registration Platform. The case is special, as the patent involved in the case has been registered on the Patent Information Registration Platform, and the technical solution of the generic drug fell within the protection scope of the patent. Pharmaceutical Company B, while knowing the above facts, made the Type 1 Declaration, so the Declaration was untrue and inaccurate, and in essence belonged to the Type 4.1 Declaration. The Supreme People's Court made three final civil rulings on September 20, 2023: dismissing the appeal and upholding the original ruling.

The court's effective judgment held that:

First, from the perspective of system interpretation, Article 2 of the Implementation Measures for Pharmaceutical Patent Disputes stipulates that the holder of a drug marketing authorization should register "the relevant patent information of drugs registered and marketed in China" on the Patent Information Registration Platform; Article 4, paragraph 1 stipulates that the specific content to be registered includes "the corresponding relationship between the drug and the relevant patent claims". It can be seen that the patents registered according to the Implementation Measures for Drug Patent Disputes should correspond to the drugs that have been marketed in China. Article 6, paragraph 1 of the Implementation Measures for Drug Patent Disputes further stipulates that "when a chemical generic drug applicant submits an application for drug marketing authorization, it shall make a declaration for each drug patent related to the generic drug in accordance with the patent information disclosed on the Patent Information Registration Platform for Marketed Drugs". When interpreting "each drug patent related to the generic drug" in this Article, the above interpretation principle shall continue to apply, and the relationship between "generic drug" and "related drug patent" should meet the conditions of such a corresponding relationship stipulated in the above Article 4, paragraph 1, and the patent claims with such a corresponding relationship have been registered on the Patent Information Registration Platform. Therefore, the "generic drugs" here should refer to the generic drugs that have been marketed in China, and the "related drug patent" should refer to the patents registered on the Patent Information Registration Platform corresponding to the generic drugs that have been marketed in China.

Secondly, from the perspective of purpose interpretation, the early resolution mechanism for drug patent disputes established by Article 76 of the Patent Law and the Implementation Measures for Drug Patent Disputes is a special mechanism that takes into account the interests of original drug patent holders, generic drug applicants and the general public. It is not the only way to resolve drug patent disputes. In principle, the scope of drug patents subject to this special mechanism shall not be expansively interpreted. If, according to Company A's understanding, "relevant patents" are interpreted as any patent that may be included on the Patent Information Registration Platform, it may inappropriately increase the burden on generic drug applicants to determine the type of the declaration, affecting the smooth and effective operation of the mechanism.

Finally, the invalidation request and administrative litigation filed by Pharmaceutical Company B against the patent involved in the case were both earlier than the implementation of China’s drug patent linkage system and the application date of the generic drug involved in the case. Therefore, the above-mentioned behavior cannot be interpreted as a Type 4.1 Declaration of the patent involved in the case by subsequent laws, judicial interpretations and administrative regulations.

In summary, the "related patents" referred to in the paragraph 1 of Article 76 of the Patent Law should be understood as patents registered on the Patent Information Registration Platform corresponding to the generic drugs that have been marketed in China. Since the patent involved in the case is not a patent registered for the corresponding palbociclib tablets that have been marketed in China, it does not belong to the "related patent" of palbociclib tablets. Therefore, Company A's lawsuit does not meet the conditions stipulated in Article 76 of the Patent Law and should be rejected.

Furthermore, although in China's current drug management system requires separate applications and different approved batch numbers for chemical drugs that only differ in specifications, generic drugs of the same dosage form may use original drugs of different specifications as reference preparations, and use the data demonstrating consistency in quality and efficacy with the reference preparations as the basis for registration. Therefore, when the original drug that differs from the generic drug only in specifications has been registered on the Patent Information Registration Platform, the generic drug applicant should, in principle, make a declaration in accordance with the relevant patents registered under other specifications of the generic drug registered on the Patent Information Registration Platform.

(2023) Zui Gao Fa Zhi Min Zhong Nos. 1233, 1234, 1235

Balancing Interests in Cases of Questionable Patent Validity

In an appeal case concerning a utility model patent infringement dispute, the Supreme People's Court clarified that for patents with questionable stability, courts may adopt interest-balancing measures, such as appropriately extending the enforcement period of an effective infringement judgment or requiring a compensation commitment for future benefits, so as to reconcile procedural justice with substantive fairness and promote genuinely valuable invention creations.

Company A is the patentee of a utility model patent entitled "A Sound-Absorbing and Sound-Insulating Barrier Board" (hereinafter referred to as the patent). It claimed that an insulation and protection facility for a certain highway section (hereinafter referred to as the accused infringing products) manufactured and sold by Company B fell within the protection scope of the patent. Company A filed a lawsuit demanding that Company B ceases the infringement and compensates for economic losses of CNY 1 million and reasonable enforcement expenses of more than CNY 50,000.

Upon trial, the court found that the CNIPA had issued a "Utility Model Patent Evaluation Report" on the patent in question, with a preliminary conclusion that none of the claims of the patent possessed inventiveness and thus did not meet the conditions for patent grant. After comparison, the court of first instance determined that the technical solution of the accused infringing products fell within the protection scope of the patent in question, and that Company B had manufactured and sold the accused infringing products. Accordingly, the first-instance judgment ordered Company B to immediately cease its infringing acts and to compensate Company A for economic losses and reasonable enforcement expenses totaling more than CNY 250,000.

Company B, dissatisfied with the decision, filed an appeal.

During the second-instance proceedings, Company A confirmed that the patent evaluation report had been requested by itself before the CNIPA and that the report was issued before the filing of this lawsuit. Regarding the issue that the evaluation report indicated that the patent was of questionable stability, Company A explicitly declined to make a commitment to compensate Company B for potential benefits if the patent is legally invalidated in future proceedings.

Company B also confirmed that it did not intend to file a request for invalidation against the patent with the CNIPA, and did not assert a prior art defense in this case either.

The Supreme People's Court, in its second-instance judgment, held that the principle of prohibition of abuse of rights is a specific embodiment of the principle of good faith, and is also a fundamental rule in exercising civil rights. When exercising patents, patentees must also abide by the principle of good faith and must not abuse their rights to the detriment of the public interest or the legitimate rights and interests of others. The legal basis for a patent infringement lawsuit is a lawful and valid patent. However, once a patent is granted, any entity or individual may file an invalidation request against the patent. A stable right basis is a reasonable prerequisite for determining liability in a patent infringement lawsuit. If a patentee, despite being aware that the validity of the patent for which protection is sought is questionable, persists in filing or refusing to withdraw a patent infringement lawsuit, and such a patent is subsequently declared invalid and ultimately causes harm to another party's legitimate rights and interests, such conduct may constitute abuse of rights. Although under China's current legal system, the validity of a patent is determined by the patent administrative authority under the State Council, if the people's court, in a patent infringement lawsuit, merely relies on the fact that the patent in question has not yet been declared invalid and simply rules based on the presumption that the patent is still valid, while turning a blind eye to doubts about the patent's stability and the potential harm this could cause to others' rights, it would in essence violate the principle of fairness and would not help encourage truly valuable inventions. Therefore, when the people's court determines, after trial, that the validity of the patent is in doubt in a patent infringement lawsuit, it may adopt certain interest-balancing measures. For example, the court may actively inform the alleged infringer that they may legally file an invalidation request and suspend the infringement proceedings accordingly after such a request is filed. The court may also guide both the patentee and the alleged infringer to make future benefit compensation commitments to each other, depending on whether the patent is eventually invalidated or upheld. In addition, depending on the specific conditions of the case, the court may appropriately extend or adjust the deadline for performing obligations under an effective judgment that affirms infringement and liability, so as to prompt the alleged infringer to timely initiate the invalidation procedure against the patent in question and proactively seek legal remedies to protect their rights.

Before filing the present lawsuit, Company A had already become clearly aware, through a patent evaluation report, that the validity of the patent was questionable. After the court's explanation, Company A explicitly stated its refusal to make a future benefit compensation commitment to Company B if the patent is declared invalid in accordance with the law, which violates the principle of good faith. Company B, after being informed by the court, also explicitly stated that it would not consider filing a patent invalidation request, which is a passively neglect to lawfully pursue remedies for the protection of its own rights. If this case were to simply uphold the first-instance ruling based solely on the current infringement findings, Company A could obtain damage payments immediately after the 10-day performance period (specified in the ruling) expires. However, even if the patent is later declared invalid, Company B might not be able to obtain a substantive remedy. To reflect substantive fairness and procedural justice, the second-instance judgment has decided to extend the period for performing the monetary payment obligation determined in the first-instance ruling to one year. This both gives Company B an opportunity to seek remedies through the patent invalidation procedure and prevents it from passively neglecting to lawfully pursue remedies for the protection of its own rights in a way that would harm Company A's interests. At the same time, if Company B still fails to act within the one-year performance period or if the patent is upheld as valid after undergoing the invalidation review process, then Company B shall be required to compound interest on the outstanding amount from the expiration date of the specified performance period.

The second-instance judgment in this case adheres to the judicial concept of protecting good faith and actively innovates interest-balancing measures in infringement cases where the stability of the patent is questionable It effectively prevents abuse of patents by the patentee while also urging and guiding the alleged infringer to lawfully seek remedies, thereby truly reflecting the institutional value of the Patent Law in enhancing innovation capacity and promoting technological advancement and socio-economic development.

(2022) Zui Gao Fa Zhi Min Zhong No. 2833

Record-High Damages Awarded in Plant Variety Infringement Case; Conditions Clarified for Expanding Detection Sites in Variety Identity Determination

The Supreme People's Court issued a final judgment in a plant variety infringement case, clarifying that when determining variety identity using molecular marker methods, any expansion of detection sites must strictly follow relevant standards and protocols. Such expanded detection is only justified if the following conditions are met: 1) the number of different sites between the sample in question and the control sample must be fewer than, but close to, the critical value; 2) the additional detection sites must exhibit sufficient genetic polymorphism and stability; there must be a strong correlation between the associated genes and phenotypes; the reliability of such correlation must be scientifically evaluated and verified; and functional markers tightly linked to specific traits must have been developed.

The case involved the maize plant variety "NP01154," owned by a French company. Company A, an affiliate of the French company, holds the exclusive license to the variety. Company A alleged that seven approved hybrid maize varieties produced and sold by Company B were derived from "NP01154" as a parent variety without authorization. It sought an injunction against further infringement, punitive damages of CNY 160 million, and reimbursement of CNY 200,000 in reasonable legal expenses.During the first instance, Company A submitted four detection reports showing that the parent variety "YZ320" of the accused infringing varieties differed from "NP01154" by only one site, arguing that this supported a finding of infringement. In response, Company B submitted detection reports claiming that four out of five additional sites showed differences, contending that the two varieties were distinct.

The first-instance court accepted Company B’s detection report, concluding that “YZ320” and the authorized variety “NP01154” were not the same, and dismissed all of Company A’s claims. Company A appealed, seeking a full reversal and support for its original claims.

The Supreme People’s Court, on appeal, held that the application of expanded site detection in accordance with Article 23 of the Provisions (II) of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Cases Involving Disputes over Infringement upon Rights of New Plant Variety must satisfy the prerequisite conditions for additional detection. In addition, the selection of additional detection sites must strictly comply with relevant standards and specifications to ensure that the inclusion of such additional detection sites enhances the accuracy of identification. Specifically, the implementation of expanded detection sites and the performance of additional detection must be based on the premise that the number of different sites between the sample to be tested and the control sample is fewer than, but close to, the critical value. Additionally, the additional detection sites must exhibit sufficient genetic polymorphism and stability; there must be a strong correlation between the associated genes and the phenotype, and the reliability of this correlation must have been thoroughly evaluated and validated scientifically. Furthermore, functional markers closely linked

to the trait must have already been developed. Otherwise, expanding the number of detection sites is neither necessary nor scientifically valid. In principle, the sites selected for additional detection should already be widely used for analyzing genotype differences between strains and varieties and should be recognized or accepted within the field for determining variety authenticity and purity. Upon review, the Court found that Company B's detection report did not meet these judicial requirements or the standards for molecular marker detection of plant varieties. The report lacked the necessary prerequisites for expanding site detection in additional detection and did not provide sufficient evidence that the tested variety contained the specific markers in question, rendering the report unpersuasive.

Additionally, Company B's argument that the accused infringing varieties were glutinous-type maize while "NP01154" was regular maize, and that they are therefore of different varieties, was found to lack factual basis. The available evidence demonstrated that the parent varieties (specifically the male parent variety) of the seven allegedly infringing hybrid maize varieties were identical to the authorized variety. Therefore, Company B's actions constituted an infringement of the "NP01154" variety rights. Company B's infringement was intentional, involving seven officially approved hybrid varieties, lasting over five years, and spanning a planting area of 8,243.4 mu (approximately 1,360.16 acres), qualifying as serious infringement and justifying the application of punitive damages. The second-instance court overturned the first-instance ruling and ordered Company B to immediately cease all infringing activities related to the "NP01154" variety and to pay Company A over CNY53.34 million in economic damages, plus CNY200,000 in reasonable expenses for rights enforcement.

In order to thoroughly implement the Supreme People's Court's Opinions on the Coordinated Operation of Case Filing, Trial and Enforcement Work in People's Courts, the second-instance judgment in this case has further specified detailed measures regarding the assumption of civil liability for infringement, particularly with respect to requiring Company B to cease infringement: First, the court ordered Company B to cease using parent varieties such as "YZ320" that are identical to "NP01154" for producing hybrid maize seeds, and to cease selling the infringing seeds. Second, Company B was ordered to destroy the reproductive capacity of the infringing seeds under court supervision or in the presence of Company A, with possible assistance from agricultural authorities to prevent the infringing seeds from entering the market. Third, Company B is required to notify relevant entities including its shareholders and affiliated companies of this judgment and the cessation requirements, and to have them sign non-infringement commitment letters. The judgment further stipulates that failure to perform the aforementioned cessation obligations within the specified time limit shall result in statutory delay penalties: refusal to comply with the first requirement shall incur a daily penalty of CNY100,000; refusal to comply with the second requirement shall incur a daily penalty of CNY50,000; and refusal to comply with the third requirement shall incur a daily penalty of CNY20,000.

After the judgment was announced in court, Company B promptly and proactively fulfilled all the obligations imposed in the appellate judgment, including paying full compensation and reasonable expenses on time.

This case marks the highest damages award to date in a plant variety infringement case. By accurately identifying the nature of the infringing conduct and applying punitive damages accordingly, the judgment signals a clear judicial stance on strengthening intellectual property protection, particularly for plant variety rights. Additionally, by detailing specific obligations for ceasing infringement and setting clear standards for delay penalties on non-monetary obligations, the ruling ensures timely and thorough enforcement, allowing the prevailing party not only to win in court but also to achieve the benefits of victory in practice. Importantly, this decision is the first to clarify the conditions for expanding detection sites when using molecular marker methods to

determine variety identity, offering clear guidance on assessing the necessity and scientific validity of such detection, and serving as an important reference for resolving similar disputes in the future.

(2021) Zui Gao Fa Zhi Min Zhong No. 337

Invalidation Examination on Variety Rights Upon Application; Examination and Determination of Distinctness of Variety Rights

In the invalidation examination on new plant variety rights initiated upon application, the invalidation requester must file an invalidation request with evidence, and the Plant Variety Review Board generally only reviews the invalidation grounds clearly put forward by the invalidation requester.

The distinctness of a new plant variety requires that the propagation materials of the variety have characteristics obviously different from the varieties that existed before the application date. In invalidation proceedings, the invalidation requester must identify the known varieties for comparison with the granted variety and provide evidence such as molecular markers or field tests to demonstrate that there is no distinct difference between them.

Hubei A Company is the variety rights owner of a new maize plant variety named "FL218" (hereinafter referred to as the variety in question). On December 14, 2020, Guizhou B Company requested the Plant Variety Reexamination Board under the Ministry of Agriculture and Rural Affairs to declare the "FL218" variety right invalid. The main grounds are that the "FL218" variety had been massively produced and sold before the application date and that it did not have novelty. On December 3, 2021, the Plant Variety Reexamination Board made an invalidation decision on the variety right (hereinafter referred to as the disputed decision), holding that the variety in question had not lost its novelty, and that the existing evidence could not prove that the variety in question had lost its distinctness, so the validity of the variety right in question was maintained. Guizhou B Company was dissatisfied and filed a lawsuit, requesting to revoke the disputed decision and order the Plant Variety Reexamination Board to make a decision anew.

The first-instance court issued an administrative ruling dismissing the lawsuit filed by Guizhou B Company. The company appealed the ruling. On December 24, 2024, the Supreme People's Court issued the final judgment dismissing the appeal and upholding the original judgment.

The court's effective judgment held that there were three points of dispute in this case: first, whether the procedure of the disputed decision was legal; second, whether there was any error in determining the novelty of "FL218" in the disputed decision and the first-instance ruling; and third, whether there was any error in determining the distinctness of "FL218" in the disputed decision and the first-instance ruling.

A. Examination on the Invalidation Grounds in This Case

After a variety right is granted, any entity or individual may file an invalidation request against the granted variety right, and the Plant Variety Review Board is granted to directly initiate invalidation proceedings on its own authority. In invalidation proceedings initiated upon request, the Plant Variety Review Board, in principle, is solely responsible for examining whether the granted variety meets the authorization requirements based on the evidence and reasons presented by the invalidation requester. It is not obligated to undertake a comprehensive examination on whether the granted variety meets all authorization requirements of the variety right. For invalidation

examinations initiated upon application, the applicant should submit a written invalidation request and state relevant evidence and reasons. The Plant Variety Review Board will only examine the grounds relevant to novelty, distinctness, uniformity, and stability of the variety right in the invalidation request. If the invalidation request meets the requirements, the Board will forward the invalidation request and related evidence to the variety right holder for their comments. If the invalidation requester does not raise the grounds for invalidation in the invalidation request, but instead raises them in other evidentiary materials or explanations of the circumstances, the Plant Variety Review Board should notify the applicant to make rectifications to the invalidation request or to clarify it in writing within a specified time limit, and hear the observations of the variety right holder on the invalidation grounds; if the invalidation requester fails to make rectifications or clarification within the time limit, it shall be deemed that the grounds have not been raised. In this case, in the invalidation request submitted by Guizhou B Company, the grounds for invalidation of "FL218" were that it lacked novelty, and it did not explicitly claim that "FL218" lacked distinctness. In the examination procedures involved in the case initiated upon application, the Plant Variety Review Board conducted an examination on whether "FL218" had distinctness without requiring the Guizhou B Company to rectify or clarify the grounds for invalidation, which constituted a procedural flaw. Considering that the Guizhou B Company claimed that "FL218" did not have distinctness during the first and the second instance, and Hubei Company A also agreed to examine whether "FL218" had distinctness during the invalidation proceedings and administrative litigation, the disputed decision was not flawed in protecting the right of the variety right holder to reply and listening to the opinions of the variety right holder, and thus, did not constitute a procedural violation.

B. Judgment on Novelty

First, the witness testimony provided by the Guizhou B Company lacked probative value. Second, Guizhou B Company failed to fulfill its initial burden of proof regarding the facts at issue. Finally, Guizhou B Company's claim that the relevant hybrid had been approved and marketed for many years prior to the application date of "FL218," which causes "FL218" to lose its novelty, is also untenable. The challenged decision and the first-instance ruling's judgment on the novelty of "FL218" are correct.

C. Judgment on Distinctness

The distinctness of a new plant variety emphasizes the significant differences in traits between the propagating material of the variety and known varieties prior to the application date. In invalidation proceedings, the invalidation requester must identify the known varieties in relation to the granted variety and provide evidence - such as DNA identification or field testing - to demonstrate that there is no significant difference between the granted variety and the known varieties . The burden of proof of such facts rests with the invalidation requester. First, in determining the distinctness of a new plant variety, it is necessary to first identify the prior known variety and establish a fixed comparison target. Guizhou B Company claimed that "FL218" was not significantly different from its three parent varieties. However, it did not provide evidence proving that the three parent varieties were varieties that had already been announced as having passed the preliminary examination of their variety rights application, had passed variety examination, or had been commercially applied before the application date of "FL218." In other words, Guizhou B Company failed to prove that the three parent varieties were the known varieties of "FL218." Second, the evidence submitted by Guizhou B Company was not supported by other evidence, and therefore had low probative value. Based on the information available on the granted varieties "Eyu 16," "Heyu 808," and "Xinzhongyu 801," and their parental varieties, "FL218" differs from its three parental varieties in names and codes, and is bred by a different breeder. Guizhou B Company lacked preliminary evidence proving they are the same variety or

lacks significant distinction. Therefore, Guizhou B Company failed to meet its burden of proof in this case and cannot prove that "FL218" lacks distinctness. The disputed decision and the first-instance ruling's determination that "FL218" possesses distinctness are correct and are upheld.

(2024) Zui Gao Fa Zhi Xing Zhong No. 627

Coordination of Patent Infringement Determinations in Related Cases

The Supreme People's Court issued a final judgment in a utility model patent infringement dispute. The case emphasizes that, for related cases involving the same allegedly infringing product, the same patent, and the same non-infringement defense, the determination should be consistent to avoid conflicting judgments. Even if the alleged infringer did not appeal the after first-instance judgment, the second-instance court can, based on the established ruling in another case that the same defense was valid, legally reverse the judgment and affirm that the alleged infringer's defense is also valid.

In this case, Dongguan Company A, the patentee of an utility model patent entitled "A Deep Ultraviolet Air Drying Toothbrush Disinfection Case" (hereinafter referred to as the patent in question), claimed that a department store was selling and offering for sale a toothbrush case model DB805 (hereinafter referred to as the alleged infringing product) on the 1688 platform without authorization, and the product fell within the scope of protection of the patent in question, constituting infringement. The Dongguan Company requested to order the department store to cease the infringement and compensate for economic losses and reasonable expenses totaling CNY 50,000. The department store argued that the alleged infringing product were a dropshipping item sold on the 1688 platform, supplied by Shenzhen Company B as a third-party. The alleged infringing products had a legitimate source of acquisition, and the department store had no intention to infringe, and therefore should be exempted from liability for compensation.

After trial, the court of first instance held that the alleged infringing products fell within the scope of protection of the patent in question, constituting infringement. Yet, the court found the department store's legitimate source defense valid, exempting it from the damages liability, but it should bear some reasonable expenses. Accordingly, the first-instance court ordered the department store to immediately cease selling or offering to sell the alleged infringing products and to compensate Dongguan Company A CNY 2,000 for its reasonable expenses incurred to stop the alleged infringing activities. The Dongguan Company was dissatisfied and appealed, arguing that the department store's legitimate source defense was untenable and requesting a revision of the judgment to uphold all of its claims. The department store did not appeal.

In the second instance, the Supreme People's Court found that on May 26, 2021, Dongguan Company A purchased DB805 toothbrush case from the third party Shenzhen Company B. On September 26, 2021, the Dongguan Company filed a separate patent infringement lawsuit with the Shenzhen Intermediate People's Court of Guangdong Province (hereinafter referred to as the Shenzhen Intermediate Court), alleging that the Shenzhen Company's sale of the DB805 toothbrush case infringed the patent in question. In this case, the Shenzhen Company filed a patent conflicting application defense, arguing that it did not infringe the patent in question. Meanwhile, it also submitted a utility model patent, entitled "A Toothbrush Case with a Fan" (Patent No. 736), as evidence in its conflicting application defense. The Shenzhen Intermediate Court found the Shenzhen Company's conflicting application defense valid and issued a first-instance judgment on November 10, 2022, dismissing the Dongguan Company's claims. The Dongguan Company appealed the ruling. The Supreme People's Court issued a final judgment on May 31, 2024 (Judgment No. 662), dismissing the appeal and upholding the original judgment.

Dongguan Company A and the department store both confirmed that the alleged infringing products in this case were identical to those in Judgment No. 662. In the second instance of this case, the department store argued that the alleged infringing products used the technical solution disclosed in the conflicting application and also submitted Patent No. 736 as evidence in its conflicting application defense.

In the second instance, the Supreme People's Court held that: The court of second instance should conduct its hearing based on the parties' appeal. However, based on the facts ascertained by the court of second instance, if the first instance judgment violates legal prohibitions or harms national interests, social public interests, or the legitimate rights and interests of others, the court of second instance should rectify the judgment based on the facts and in accordance with the law. In this case, the department store, after receiving an order from Dongguan Company A, placed an order with the third party Shenzhen Company B. Shenzhen Company B then shipped the alleged infringing products directly to Dongguan Company A, the buyer. The alleged infringing products were sourced from the Shenzhen Company. Although the department store did not appeal, it filed a conflicting defense based on Patent No. 736 during the second instance. Given the effective Judgment No. 662 made by the Supreme People's Court and the close relevance of its findings to this case, this case should be examined based on the facts and in accordance with the relevant findings of Judgment No. 662. Judgment No. 662 determined that Patent No. 736 disclosed the technical solution of the alleged infringing product in that case, and the conflicting application defense in that case was established. Furthermore, the alleged infringing product in that case is identical to the alleged infringing product in this case. Therefore, in the absence of contrary evidence sufficient to overturn the effective Judgment No. 662, the conflicting application defense raised by the department store should be confirmed as valid, and the alleged infringing product sold by the department store in this case does not constitute infringement. The Supreme People's Court's second-instance judgment vacated the first-instance judgment and dismissed all claims of the Dongguan Company.

The second instance of this case accurately applied the provisions of Article 321, Paragraph 2 of the "the Supreme People's Court’s Interpretation on the Application of the Civil Procedure Law", which stipulates that "if a party has not made a request, the case shall not be heard, except where the first instance judgment violates the prohibitive provisions of the law or harms the national interests, social public interests, or the legitimate rights and interests of others." This ensured the consistent and coordinated judgment standards and results of related patent infringement cases, substantially resolved disputes, and achieved the consistency of legal and social effects.

(2023) Zui Gao Fa Zhi Min Zhong No. 740

Determination of the Alleged Infringing Technical Solution

In patent infringement cases, where the evidentiary embodiment of the alleged infringing product submitted by the patent holder lacks certain components that presented in the product images publicly exhibited by the alleged infringer, the People's Court may determine the relevant technical features of the alleged infringing technical solution through an assessment of such component’s structure, installation positions, combination relationship, technical effect, and practical installation feasibility.

Finnish Company A claimed: they are the patentee of an invention patent entitled "Screening, Crushing, or Mixing Bucket" (hereinafter referred to as the patent in question). Anhui Company B's manufacture, sale, and offering for sale of buckets incorporating all technical features described in claim 1 of the patent in question constituted patent infringement. Pursuant to applicable laws, the Anhui Company must cease infringement, compensate for losses, and pay punitive damages. Natural person X, who assisted the Anhui Company in committing the alleged infringing acts, constitutes joint infringement and should bear joint liability. Finnish Company A therefore requested the following orders: 1. The Anhui company must immediately cease the alleged infringing acts, including but not limited to cessation of manufacturing, use, sale, and offering for sale, and destroy the infringing inventory, as well as specialized molds and equipment; 2. The Anhui Company and X must jointly compensate the Finnish Company for economic losses and reasonable expenses totaling CNY 1 million.

The Anhui Company argued that the alleged infringing technical solution did not fall within the scope of protection of the patent in question. Even if their acts were deemed as infringement, the compensation and reasonable expenses claimed by the Finnish Company were excessive.

X argued that the alleged infringing product was independently designed by Anhui Company Band did not infringe the patent in question. X lacked the subjective intent and objective conduct to commit joint infringement and should not be held liable.

The court found that during the second-instance trial, all parties to the case presented technical comparisons. The Anhui Company argued that the alleged infringing technical solution lacked four technical features, including a fender. The parties concerned confirmed that the alleged infringing product, preserved in evidence by the first-instance court, differed only in the fender/cover from the images of the alleged infringing product displayed by the Anhui Company at exhibitions and in brochures, which were obtained and notarized by the Finnish Company. The former lacked the fender, while the latter had the fender/cover. Other than this difference, the remaining technical features of the two products were identical. The Finnish Company stated that, according to its customers' feedback, without the fender, components such as the working drum would need replacement approximately every three months, whereas with the fender installed, the bucket's service life could reach up to 10 years.

The court of first instance issued a civil ruling ordering Anhui Company B to cease infringement and compensate Finnish Company A for economic losses and reasonable expenses totaling CNY 360,000. Both the companies were dissatisfied and appealed the ruling separately. On September 27, 2024, the Supreme People's Court issued a final judgment, overturning the first-instance ruling and ordering Anhui Company B to cease infringement and compensate Finnish Company A for economic losses of CNY 551,250 and reasonable expenses of CNY 100,000.

The court's effective judgment held that the alleged infringing technical solution possesses all the technical features of claim 1 of the patent in question and falls within its scope of protection.

Regarding the third technical dispute raised by the Anhui Company, i.e., the alleged infringing product lacks the fender and corresponding features:

First, although the Anhui Company claims that the cover in the notarized photo is not a fender, based on the overall bucket structure and the cover's position within the bucket, the cover can prevent some crushed material from entering the gap between the working drum and the hopper shell when the bucket in the notarized photo is operating. This means that the cover objectively functions as a fender, and it being named as a cover does not create a substantial difference from the fender in the patent in question. Second, although the Anhui Company claims that the alleged infringing product in the first-instance court's evidence preservation lacks a fender, the

evidence clearly shows that the bucket shell has mounting screw holes, which are technically capable of mounting a fender. Lastly, the alleged infringing product in the first-instance court's evidence preservation may not be the final product. The final product should be the screening and crushing bucket product displayed by the Anhui Company in brochures and exhibitions. However, the screening and crushing bucket products displayed by the Anhui Company in brochures and at exhibitions are both equipped with fenders as shown in both photos and real products. Moreover, the alleged infringing product, which was preserved as evidence by the first-instance-court, also has screw holes reserved on the bucket frame plate for mounting fenders. The alleged infringing product has the fender and corresponding features described in claim 1 of the patent in question.

(2024) Zui Gao Fa Zhi Min Zhong No. 550