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**China's 2026 IP Publicity Week: Emerging Field Protection Takes Center Stage**

From April 20 to 26, 2026, China will hold its annual National Intellectual Property Publicity Week. The event is organized by a committee led by three national agencies: the China National Intellectual Property Administration (CNIPA), the Publicity Department of the CPC Central Committee, and the State Administration for Market Regulation (SAMR). More than 20 central government bodies are participating, including the Supreme People's Court (SPC), the Ministry of Commerce, the Ministry of Industry and Information Technology, the General Administration of Customs, and others.

The theme of this year's Publicity Week is "Strengthening IP Protection in Emerging Fields to Accelerate the Development of New Productive Forces." The focus will be on IP creation, protection, management, and use in emerging fields such as artificial intelligence, new energy, and biotechnology, as well as China's participation in international rule-making in these areas.

During the event, participating agencies will run educational and promotional activities based on their respective responsibilities. These will include a summary of key IP achievements from 2021 to 2025, as well as practical examples of how IP protection affects public welfare, such as fighting counterfeiting and protecting consumer rights. Organizers have also emphasized that the activities should be practical, low-cost, and avoid unnecessary formalities.

The event will take stock of China's IP progress under its current five-year plan (2021–2025) and help shape planning for the next five-year period (2026–2030). It will also present China's IP policies and its direction on protecting IP in emerging fields to audiences at home and abroad.

**China Issues 2026 IP Enforcement Plan**

On April 10, 2026, China released its annual IP enforcement work plan. The plan focuses on making IP protection faster and stronger, with several key points of interest for foreign businesses.

Trademark Crackdown

China is moving to amend its Trademark Law to fight bad-faith filings and trademark hoarding. This is good news for brand owners who have long struggled with squatters.

### SEP Dispute Rules

New administrative rulings for standard essential patent (SEP) disputes are being developed. This could offer a faster and cheaper alternative to court litigation for companies in telecom, automotive, and IoT sectors.

### Patent Dispute Help

A three level administrative ruling system (national, provincial, and city) will be strengthened to help resolve patent disputes more quickly.

### Cross-Border Support

China will step up assistance for companies facing overseas IP risks, including Section 337 investigations, cross-border e-commerce lawsuits, and foreign trademark squatting.

### Tech Focus

Faster patent examination will be available for emerging fields like artificial intelligence and other strategic technologies.

China is pushing for more efficient and effective IP enforcement, with special attention to emerging industries and cross-border disputes. This offers foreign businesses a more predictable and supportive environment to protect their innovations and brands in China.

## **Chinese Seed Industry IP Court Cases Included in UPOV Database for the First Time**

Recently, the official website of the International Union for the Protection of New Varieties of Plants (UPOV) added a new section featuring judicial protection cases related to China's seed industry. This is the first time UPOV has published such cases from China. A total of nine cases were released, covering civil, administrative, and criminal matters. The plant varieties involved include major grain crops such as corn, rice, and wheat, as well as cash crops like peppers and pears. These cases address key issues in seed industry IP protection, such as determining infringement, calculating damages, protecting breeding results, coordinating administrative and judicial protection, and applying criminal penalties for seed-related violations.

### 1. High Damages Deter Infringement

A new corn variety, referred to as "Variety A," was created by crossing a female parent line ("Parent X") with a male parent line ("Parent Y"), which was already in the public domain.

The plant variety rights for Parent X and Variety A were owned by Company A and Research Institute B, respectively. Research Institute B signed a licensing agreement with Company C, allowing Company C to sell Variety A seeds for a certain period. Company A later sued Company C, claiming that after the license ended, Company C continued to use Parent X to produce Variety A seeds without permission. Company A sought damages of CNY 49.52 million and also asked that Research Institute B be held jointly responsible.

The court of first instance ruled that Company C needed to obtain permission again from the rights holder of Parent X after the contract ended. However, since Company C had already invested significant resources in producing Variety A seeds, the court decided that instead of banning production, Company C should pay compensation to Company A. Company C was ordered to pay CNY 49.52 million in damages and legal costs, with Research Institute B responsible for up to CNY 3 million of that amount.

Both Company C and Research Institute B appealed. The appeals court upheld the damages but removed Research Institute B's joint liability. Company C then appealed to the Supreme Court, which rejected the appeal.

The law does not prohibit using protected varieties for breeding or research. However, when a new variety is commercialized, if its production requires repeated use of a protected parent variety, permission from the parent variety's rights holder is still required. This decision helps protect the rights of variety owners while encouraging the development and spread of improved seeds.

## 2. Full Support for Rights Holder in Rice Variety Case

Company D held an exclusive license for a rice variety called "Variety B." Company E, without permission, sought out potential buyers and sold unlabeled seeds of Variety B. Company D sued Company E for infringement and asked the court to order Company E to stop selling the seeds and pay CNY 3 million in damages.

Company E argued that it only provided information to farmers who wanted to trade leftover seeds among themselves and did not actually sell the seeds.

The court of first instance rejected this argument, noting that Company E's actions did not qualify as legal trading of leftover seeds by farmers at a local market. Considering the circumstances, the court applied punitive damages and ordered Company E to pay CNY 3 million in total.

Company E appealed, but the Supreme Court upheld the original ruling.

This case clarified that organizing sales through online platforms under the guise of farmers or large grain growers does not shield infringers from liability. Company E sold unlabeled, illegal seeds without the required license, which is a serious violation of seed laws. Punitive damages were applied at a rate of more than double the base amount, resulting in a total award three times the compensatory amount. The court fully supported the rights holder's claim.

## 3. Serious Cases Lead to Criminal Liability

Individual X was the legal representative of Company F. In 2017, Company F processed and packaged seeds it had bred or bought from others, labeling them under the name "Variety C." The company tried to register the variety but failed due to quality issues.

In December 2018, Company F sold 3,500 containers of Variety C seeds to Company G for a total of CNY 2.45 million. Company G then had farmers plant 1,626 of those containers. In July 2019, farmers reported abnormal plants, and both yield and quality were severely affected. Tests showed the seed purity was only 63.4%, far below the national standard of 95% and the 96% stated on the label. The seeds were officially classified as low-quality. The actual yield was much lower than the amount claimed on the label.

After the incident, Individual X voluntarily surrendered to the police. The court found that Company F and Individual X had committed the crime of producing and selling counterfeit or substandard products. Individual X received a reduced sentence due to his voluntary surrender and repentant attitude. The court ordered Company F to pay a fine of CNY 2.45 million and sentenced Individual X to 11 years in prison along with a fine of CNY 1.23 million.

Cases involving low-quality seeds for cash crops like peppers and peanuts are increasing. These cases not only affect farmers' incomes but also impact the food supply. In this case, the company and its leader knowingly sold low-quality seeds with false claims about yield and purity. The court treated the case seriously and imposed strict penalties.

These three cases are among the first batch of Chinese seed industry IP protection cases published by UPOV. A representative from China's Supreme Court said that judicial protection for seed industry IP is continuing to strengthen. The Supreme Court plans to release a sixth batch of typical cases soon and will continue recommending cases to UPOV, sharing China's experience with the global community.

### **China's Top Court Highlights Key Cases to boost Northeast Economic Revival**

China's SPC on Tuesday unveiled eight landmark cases aimed at supporting the economic revitalization of the northeastern region, emphasizing the role of judicial measures in maintaining market order and fostering a favorable business environment.

Northeast China, historically the nation's industrial heartland, comprises the provinces of Liaoning, Jilin, and Heilongjiang. The region is undergoing a transformation to combat economic stagnation and outdated industries by modernizing its industrial base, attracting new businesses, and improving infrastructure. The goal is to evolve into a dynamic economic zone, leveraging the region's strategic location and resources for sustainable growth.

During the 15th Five-Year Plan (2026-2030), the Supreme Court underscored the importance of regional development, pledging to enhance the competitiveness of market entities and support the establishment of a modern industrial system through improved case handling.

In a notable case, a Jilin resident surnamed Wei applied for a design patent similar to the packaging of a local rice company, despite the company holding an existing patent. After the CNIPA invalidated his patent, Wei sued the company twice. The company then filed a countersue, accusing Wei of infringing on its legitimate rights.

The Jilin High People's Court found that the company had secured the packaging patent at least five years before Wei's application, concluding that his patent filing was improper and his lawsuits were malicious. The court ruled in favor of the company, ordering Wei to pay 60,000 yuan (\$8,688) in compensation.

The Jilin court emphasized the importance of protecting intellectual property and encouraging innovation while preventing the misuse of litigation rights to harm business reputations and disrupt market order.

The Supreme Court highlighted this case as a significant intellectual property ruling in the agricultural sector, defending the grain industry's brand and market order and safeguarding national food security. The decision provides clear guidance on distinguishing between legitimate rights protection and abuse of rights, balancing innovation protection with fair competition.

<https://chinaipr.mofcom.gov.cn/article/centralgovernment/202604/1995659.html>

### **2026 National IP System Conference on International Cooperation Held in Fujian**

Recently, a national intellectual property system conference on international cooperation was held in Fuzhou, Fujian Province. The meeting reviewed the major achievements in IP international cooperation during the 14th Five-Year Plan period, analyzed the current situation, and outlined key priorities for 2026. Zhang Zhicheng, Deputy Commissioner of the CNIPA, attended the meeting and delivered a speech. Officials from relevant departments of the Ministry of Foreign Affairs of China were present to provide guidance.

Attendees of the meeting fully recognized the progress made in IP international cooperation over the past five years. The meeting emphasized the importance of thoroughly studying and implementing Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, serving the country's overall diplomatic strategy, and better coordinating international cooperation and competition in the field of IP, so as to support high-level opening-up through high-quality IP international cooperation.

During the meeting, officials responsible for the IP offices of Tianjin, Shandong, Chongqing, Shaanxi, and Fujian delivered exchange speeches. Officials from relevant departments and affiliated units of CNIPA, as well as representatives from local IP offices, attended the meeting.

[https://english.cnipa.gov.cn/art/2026/4/13/art\\_1340\\_205729.html](https://english.cnipa.gov.cn/art/2026/4/13/art_1340_205729.html)

### **China Boosts Medical Innovation for Public Health**

China will accelerate the development of core medical technologies and innovative drugs targeting common and complex diseases, including cardiovascular conditions, as part of its effort to harness science for better public health, officials and experts said on Tuesday.

They made the remarks at a World Health Day event in Beijing. Observed annually on April 7, this year's theme — "Together for Health, Stand with Science" — reflects the World Health Organization's call for global collaboration and support for science.

Shen Hongbing, director of the National Disease Control and Prevention Administration, said China's average life expectancy rose to 79.25 years in 2025, with major health indicators ranking among the top of upper-middle-income countries.

Key factors contributing to the country's health progress include the promotion of healthy lifestyles, improvements in grassroots healthcare services and insurance coverage, as well as advances in medical innovation and the deployment of smart and digital tools.

"A number of innovative drugs with independent intellectual property rights and high-end medical equipment are reaching the market at an accelerated pace," Shen said. "The universal health system is becoming increasingly digital, and the application of artificial intelligence-powered tools in the health field has sped up."

Shen added that the nation will continue to accelerate breakthroughs in key core technologies and high-end pharmaceutical and medical device products, improve support systems for biomedical innovation, and promote the rapid transformation of scientific discoveries into accessible health services.

Ji Xunming, president of the Chinese Academy of Medical Sciences, said the nation's medical researchers have achieved notable results in medical innovation, including the development of artificial musk and other substitutes for scarce natural ingredients, as well as the creation of a domestically produced artificial heart — using magnetic levitation technology — that has enhanced the nation's capacity to treat heart failure.

Ji said the academy will intensify fundamental research on major diseases while building strong medical innovation teams.

"As cardiovascular disease remains the leading cause of death and disability in the nation, we will continue planning the establishment of new institutes focused on aging and health and intelligent

medicine, while strengthening medical research on chronic diseases and other key areas," he said.

Martin Taylor, the WHO representative to China, said that over the past century, science has transformed human health, including the eradication of smallpox, the development of novel cancer therapies, and transforming HIV into a manageable chronic condition.

He pointed to key health threats at present, including acute health emergencies, noncommunicable diseases that account for more than 70 percent of the global disease burden, antimicrobial resistance, climate change, and rising mental health issues.

"China's long tradition of valuable knowledge and science positions it as a key global player in developing solutions for future health challenges," he said.

He added that the WHO looks forward to partnering with China to generate health solutions and build a healthier future for all.

<https://chinaipr.mofcom.gov.cn/article/centralgovernment/202604/1995756.html>

### **Exhibition Promotes Folk Art Creativity under Copyright Protection**

An exhibition focused on the preservation and innovation of Chinese folk art under copyright protection opened in Beijing this week.

Featuring a diverse collection of exhibits, case studies, and interactive experiences, the event — organized by the Copyright Society of China — offers an in-depth perspective on how copyright laws and protective measures preserve the rich heritage and foster the creative evolution of folk art in China.

The exhibition will gradually showcase the achievements of pilot regions across the country. Currently, the spotlight is on contributions from Jiangsu province.

Organizers said the exhibition will also be used to conduct seminars on folk art copyright and educate the public about copyright matters, aiming to enhance copyright protection in the sector and promote high-quality development in the industry.

<https://chinaipr.mofcom.gov.cn/article/centralgovernment/202604/1995663.html>

## SUPPLEMENTARY ISSUE

### **Judicial Characterization of the Nature of Preservation Application: Label vs. Substance**

The SPC, in an appeal of disputes over liability for damages caused by a behavior preservation application, held that: While property preservation aims to ensure the effective enforcement of the judgment taken effect, behavior preservation aims to, in addition to safeguarding the judgment enforcement, avoid causing any losses or further expanding losses. In the case that the applicant files an application purported to be for property preservation, yet with the intention to restrain the alleged infringer's export conduct through measures granted by the people's court, such a preservation application shall be characterized, in essence, as an application for behavior preservation.

The case is related to a patent infringement dispute and is hereby introduced as follows:

Company C is the patentee of Invention Patent I and Invention Patent II (hereinafter referred to as "patents at issue") and had licensed the two patents at issue to Company B in a manner of exclusive licensing.

Company A declared the export of 679 pieces of steel wire mesh. On the grounds that such steel wire meshes infringe the patents at issue, Company B first requested that Customs inspect and detain such products and then filed a lawsuit with the court requesting that Company A be ordered to stop infringing and compensate for the losses. Meanwhile, Company B filed an application for property preservation, requesting the court to confiscate and impound such products that had been detained by the Customs.

Company A paid a counter-guarantee deposit to the Customs for the aforementioned detained goods. Subsequently, Company B filed the lawsuit with the court requesting that Company A be ordered to stop infringing and compensate for the losses. In the lawsuit, the patents at issue were declared completely invalid by the CNIPA, and the invalidation decisions were upheld by the SPC in second trials.

Company A filed a lawsuit within the first-instance court on the grounds that Company B's application for property preservation was incorrect. The first-instance court ruled that Company B compensate Company A for payment for goods and related losses.

The first-instance court held that the focus of the dispute in this case lies in whether the application for property preservation filed by Company B was incorrect and whether Company B should compensate for losses claimed by Company A. In the lawsuit, Company B already knew that an incorrect property preservation application may cause risks for compensation. In addition, when Company A proposed to pay the guarantee deposit to the Customs and later during the litigation, to pay the counter-guarantee deposit with property worth of equivalent amount, Company B could have achieved the purpose of preservation by applying for preserving the equivalent amount of money or other properties, but it still insisted on not agreeing to remove the preservation measures on the seized goods, claiming that if the court removed the preservation measures, Company A was bound to export the alleged infringing goods abroad causing greater losses to Company B. Based on Company B's behaviors and claims mentioned above, its application for detaining the alleged goods contained more purposes than to solely ensure the enforcement of effective judgment, which is the systematic purpose of property preservation. Thus, Company B has made a mistake therein. Company B's behavior of filing a preservation application also caused actual losses to Company A, and it shall bear the civil compensation liability correspondingly.

Company B, dissatisfied, appealed to the SPC.

The SPC rejected Company B's appeal.

The SPC holds that the focus of the dispute over the second instance of this case is (I) the nature of the preservation application filed by Company B and (II) whether Company B's preservation application was incorrect and whether it should compensate the losses claimed by Company A.

The SPC held in the second trial that Company B's preservation application for the alleged goods and the preservation measures taken by the people's court shall be deemed to conform to the nature of behavior preservation. Main reasons are as follows:

First, the Customs' detention and seizure of the alleged goods was in accordance with Company B's application, and the purpose of such measures of detaining the goods alleged to infringe the intellectual property rights was to prevent such alleged infringing goods from being exported. Therefore, the Customs' detention measure in itself has a nature of behavior preservation.

Additionally, after filing the patent infringement lawsuit with the court, Company B filed the application for property preservation later on the same day, requesting to confiscate and impound the alleged goods that had been detained by the Customs. After the Court issued the preservation order, Company A applied to remove the preservation measures on the seized goods by providing other properties as a guarantee deposit, but Company B submitted twice, objecting to the removal of the preservation measures. Company B argued that the provisions of removing preservation measures by providing guarantees do not apply to this case as the preserved goods in this case are the alleged infringing goods, which not only have the property attribute, but also have an infringement attribute, and that once the preservation measures are lifted, Company A would export the alleged infringement goods causing greater damages to Company B. Such opinions indicate that Company B's preservation application for the alleged goods mainly aimed to prevent Company A's export through preservation measures taken by the people's court. Such a preservation application is actually a continuation of its detention request filed within Customs and substantively aims to have the people's court prevent the export of the alleged goods. Moreover, the property to guarantee effective enforcement of the valid judgment shall be the debtor's legal properties. If such goods are identified as infringement products, they are illegal products and cannot serve the function of guaranteeing the effective enforcement of the valid judgment by their nature as property. Therefore, Company B's claim that the preservation application it filed was a property preservation application conflicts with its claim that such goods are infringing products. Accordingly, although Company B filed the preservation application in the name of property preservation, substantively, such an application shall be a behavior preservation application.

Finally, laws and judicial interpretations all stipulate different conditions for removing the property preservation measures and behavior preservation measures. In a property dispute, if the party under preservation or a third party requests to remove the preservation measures by providing an abundant and effective guarantee, the people's court shall rule to approve the request, whereas the behavior preservation measures taken by the people's court generally wouldn't be removed because of the guarantee provided by the respondent, unless the applicant agrees. Company A has submitted a sufficient guarantee deposit to Customs for the alleged goods and applied in the lawsuit to provide other properties in exchange for the removal of preservation measures. However, Company B, based on its cognition that the alleged goods are both property and the alleged infringing products, insisted on solely preserving the alleged goods and refusing to remove the preservation, resulting in the first-instance court not removing the preservation on the alleged goods. Such relevant facts also correspond to the preservation application filed by

Company B and the preservation measures taken by the first-instance court thereafter, in their nature, were behavior preservation.

Behavior preservation and property preservation both belong to the litigation preservation system and have the purpose of safeguarding the enforcement of future judgments. Their difference lies in that, in addition to ensuring the enforcement of judgments, behavior preservation also serves the purpose of avoiding causing losses or expanding losses, whereas property preservation solely focuses on the smooth enforcement of a future judgment. Where the applicant files a preservation application under the name of property preservation with the intention to request the counterparty to do or not do something by the court's measures, such an application shall be deemed as behavior preservation. The accurate determination of the nature of the preservation is a prerequisite for the subsequent division of liabilities for damages. The court, in the trial, shall make the judgment in accordance with the core intention of the application, but not solely based on the name of the application. The examination approach in this case may provide references to similar applications.

(2024) Zui Gao Fa Zhi Min Zhong No. 917

### **Determination of “Joint Use” in Patent Infringement**

The SPC ruled in a patent infringement case that where a party manufactures the infringing products and supplies them to others for use, and further profits from purchasing and reselling products that those others produced using the said infringing products, such manufacturer shall be deemed, in addition to the manufacturing act, to have engaged in mutual utilization and cooperation with others, which constitutes “joint use” as stipulated by the Patent Law.

This article relates to a dispute over the infringement of a utility model patent. The case is introduced as follows:

Natural person X is the patentee of a utility model patent named “dumping machine” (hereinafter referred to as the patent at issue), and has granted an exclusive license to Factory A for implementation. Since January 2019, Company B has started to manufacture the accused infringing product, “the turnover machine”, and supplied to a third party, Company C, for their use. Company B also profited from reselling the intact package bags collected from Company C.

On August 23, 2019, X filed a lawsuit against Company B and Company C on the grounds that they jointly conducted such infringement acts of manufacturing and using the accused infringing product (hereinafter referred to as the “prior case”). The first-instance court issued a civil ruling to order Company B to stop manufacturing and Company C to stop using the accused infringing product; order Company B to compensate X for his economic losses of RMB 150,000 that he suffered from January 1 to May 20, 2019. This ruling was upheld by the SPC in the second trial of the prior case.

The effective judgment of the prior case has already determined that Company B's manufacturing and selling of the accused infringing product constitutes infringement and has ordered Company B to compensate X for its infringement act from January to May, 2019, which amounts to RMB 150,000. Since this effective ruling only examined the compensation for the infringement act from January to May, 2019, Company B did not cease the infringement act during the trial of the prior case. Therefore, X and Factory A filed a lawsuit with the first-instance court, requesting an order for Company B to compensate X for his economic losses incurred from June 2019 to August 2020 and compensate his reasonable expenses for safeguarding his patent.

The first-instance court made a civil ruling ordering Company B to compensate X for his economic losses of RMB 450,000 incurred from June 1, 2019 to August 31, 2020.

Factory A and X, dissatisfied, appealed on the grounds that the compensation amount determined in the first instance was inappropriate.

The SPC made the judgment to reject the appeal and uphold the original ruling.

The effective judgement made by the SPC holds that the focus of this case is 1) whether Company B should bear the infringement liability during the period from June 2019 to August 2020 and 2) the amount of compensation.

In this case, the cooperation mode between Company B and Company C is that: Company B manufactures the accused infringing product and provides it to Company C for use free of charge. Company C uses the accused infringing product to collect turnover bags and sells such turnover bags back to Company B. Company C profits from selling turnover bags, and Company B earns the price difference between recycling and reselling turnover bags. Under this cooperation model, Company B and Company C mutually make use of each other and cooperate through their acts. Company B's licensing to Company C to use the accused infringing product and Company C's direct use of the accused infringing product constitute the "joint use" act as prescribed by the Patent Law. Based on the facts found in this case, the accused infringing products remained at Company C until August 18, 2020. As Company B manufactured the accused infringing product without the patentee's authorization and authorized Company C to use the accused infringing product through the aforementioned cooperation model, Company B's manufacturing and use of the product both constitute infringement, and Company B shall bear the corresponding liability for infringement. Given Company B's manufacturing act has been determined and evaluated in the effective judgement of the prior case, according to the relevant claims made by Factory A and X, in this case, it is hereby identified that Company B's use of the accused infringing product from June 1, 2019 to August 31, 2020 has caused losses to the patentee and that Company B should bear the corresponding liability for infringement.

In this case, Company B was responsible for manufacturing the infringing product, and Company C was to use it for free. In their cooperation, the patented product was used as a production tool without the patentee's authorization. This case presents a clear identification of "joint use" and the corresponding liability and has a meaning of reference for similar cases.

(2023) Zui Gao Fa Zhi Min Zhong No. 1477

### **Judicial Assessment of Usage Limitations' Impact on the Novelty of Product Claims**

The SPC pointed out in an administrative appeal that, for product claims containing a subject name with usage limitation, the usage limitation must be considered when determining the scope of protection. However, its actual limiting effect depends on the impact on the product itself claimed for protection. If the usage limitation imposes no impact on the claimed product or equipment, but only describes their use or way of use, the usage limitation generally does not substantively affect the assessment of novelty or other relevant determinations.

This case involves an invalidation decision. The case circumstance is introduced as follows:

Company A is the patentee of the invention patent involved in this case (hereinafter referred to as "this Patent"), which is titled "Removable Integrated Thrombus Device Clot". Claim 1 of this Patent is:

1. A self-expanding device for removing thrombus in blood vessels (hereinafter referred to as Feature A), the self-expanding device comprising:

a mesh structure containing a first set of multiple grids, the mesh structure has a proximal end and a distal end, wherein the distal end of the mesh structure is configured to be implanted in at least a portion of the thrombus, thereby forming an integrated thrombus device mass that can be removed from the occlusion site of the patient (hereinafter referred to as Feature B);

a conical portion comprising a second set of multiple grids, the conical portion is arranged towards the proximal end of the mesh structure; and a connection point, where the conical portions converge, and the connection point is located at the proximal end of the conical portion; wherein

the self-expanding device is preformed to adopt a volume-expanding form, wherein, in said volume-expanding form, the self-expanding device is configured in the form of a longitudinally open tube that tapers toward the connection point.

Company B and Company C filed invalidation requests against this Patent separately. Their major evidence was Evidence 1.1: A US patent document involving a medical implant with a rollable matrix structure.

The CNIPA issued the Decision on the Examination of Request for Invalidation (hereinafter referred to as the challenged decision), deeming claims of this Patent as not being practical, novel, or inventive and thus declared this Patent entirely invalid.

Company A, dissatisfied, filed a lawsuit with the first-instance court, requesting to revoke the challenged decision and order the CNIPA to make a decision anew.

The first-instance court issued an administrative ruling to revoke Company A's litigation claims. The first-instance court held that: Feature A is a usage feature and does not imply structural changes between the patented product and Evidence 1.1, i.e. Feature A does not have a substantive impact on the self-expanding device itself. Such usage feature does not function as a limitation, and is only a description of the use or way of use of the self-expanding device. Thus, Feature A shall not be considered when examining the novelty and inventiveness. Feature B is a limitation on the functionality or effect of the distal end of the mesh. Where a claim contains a technical feature defined by a function limitation, such feature shall be understood as covering all embodiments for achieving the recited function. The scope of protection of the technical solution contained in claim 1 of the Patent fully covers the self-expanding device of Evidence 1.1. Thus, claim 1 of this Patent lacks novelty over Evidence 1.1.

Company A, dissatisfied, filed an appeal. The SPC made an administrative judgement to reject the appeal and upheld the original judgement.

The effective judgement made by the SPC holds that:

**(I) Impact of Feature A in Claim 1 on the determination of the novelty**

For product claims containing a subject name with usage limitation, the usage limitation must be considered when determining the scope of protection. However, its actual limiting effect depends on the impact on the product itself claimed for protection. If the usage limitation imposes no impact on the claimed product or equipment, but only describes their use or way of use, the usage limitation generally does not substantively affect the assessment of novelty or other relevant determinations..

In this case, Feature A in Claim 1 is the subject name “A self-expanding device for removing thrombus in blood vessels,” which includes a usage limitation, so its effect on the claimed product shall be considered in the novelty and inventiveness assessment. Company A claimed in the first instance that this usage limitation implies structural differences between the product and Evidence 1.1, including those in their net structure, connection joints structure, tensile strength, connection mechanism, working form, physical characteristics requirements, and so on. In the second instance, Company A further argued that Evidence 1.1, as a medical implant, must be detachable at the connection point where tapered sections met, whereas the patented device for thrombus removal is not detachable at the connection point. However, neither argument establishes a necessary structural difference between the thrombus removal device and the medical implant. For example, whether the connection point in this Patent is detachable has no inseparable corresponding relationship with the thrombus removal function. Description of this Patent also clearly discloses that Evidence 1.1 may “be combined herewith as a whole through reference”, which indicates that the overall structure of Evidence 1.1 may be incorporated into this Patent. Therefore, Company A’s claim that Feature A implies a structural limitation distinguishing the claimed device from Evidence 1.1 is not sufficiently supported.

Where a person skilled in the art can determine that technical solutions that are substantively identical can be applied to the same technical field to solve the same technical problems and achieve the same expected effect, such technical solutions should not be deemed as constituting different invention or utility model simply because their uses are different.

In this case, first, the usage limitation in Feature A is a limitation on treatment use. Under Article 25.1(iii) of the Patent Law, diagnoses and treatment methods of diseases shall not be granted a patent. Where the only difference between a medical device product claim and the prior art lies in the treatment method, granting a patent on this basis would raise ethical and moral concerns, such as restriction the freedom of medical practitioners. Therefore, a limitation on the treatment method shall not be considered as a feature that has a substantive impact on the examination of novelty and inventiveness of a product claim. Company A argued that the use of a medical device shall be protected with reference to medical use claims. However, medical devices and pharmaceutical products are different and cannot be directly compared. The use of medical devices usually cannot be protected with reference to medical use claims. Finding a new use of a pharmaceutical product based on a different mechanism when it is applied to different diseases in human bodies is not analogous to applying a medical device to a human body in a different physical way for different diseases. Therefore, the use of a medical device usually cannot be granted protection with reference to medical use claims.

Second, Evidence 1.1 has disclosed all structural features of claim 1 in this Patent, and a person skilled in the art, based on their general cognition, may confirm that the technical solutions of Evidence 1.1 and this Patent may be applied to the same technical field to solve the same technical problems, and achieve the same expected effect. This is further supported by other reference documents cited in the comments on inventiveness in the challenged decision. Therefore, Company A’s relevant appealing grounds are neither tenable nor supported.

## **(II) Impact of Feature B in Claim 1 on the judgement of novelty**

For product claims containing usage features, it should be considered whether such usage feature implies that the claimed product has a particular structure and/or component. If the usage is dictated by the product’s intrinsic feature and the usage feature does not imply any change in the product’s structure and/or component, the product claims limited by such usage feature generally lacks novelty over the product disclosed in a reference documents. The same principle

also applies to the assessment of inventiveness regarding whether such technical features are identical.

In this case, feature B in Claim 1 (i.e. the distal end of the mesh structure is configured to be implanted in at least a portion of the thrombus, thereby forming an integrated thrombus device mass that can be removed from the occlusion site of the patient) does not imply any change in the product structure. Based on similar reasons as those mentioned in the analysis on Feature A, Feature B cannot affect the assessment of novelty of this Patent either.

In view of above, where neither Feature A and Feature B can affect the novelty assessment of this Patent, and Evidence 1.1 has disclosed all structural features specifically limited by Claim 1, technical solution in Claim 1 and that of Evidence 1.1 have constituted substantively identical technical solutions, and a person skilled in the art can confirm that the two substantively identical technical solutions may apply to the same technical field to solve identical technical problems, and achieves the same expected effect. Therefore, Claim 1 has no novelty over Evidence 1.1.

This case clarifies the examination standard of usage features contained in claims of medical device products, which is: Usage limitation has a imitating effect only when it imposes an impact on the product itself. If the limitation merely describes a treatment use and does not imply any structural change, it does not affect the novelty assessment. Specifically, treatment usage limitation shall not serve as a basis for grant, so as to avoid ethical problems such as restriction the freedom of medical practitioners. When the prior art has disclosed all structural features and the person skilled in the art can confirm that the two technical solutions apply to the same technical field to solve the same problems and achieve the same effect, they constitute substantively identical technical solutions even if their usages are different. Consequently, the product claim lacks novelty. This judgment provides clear guidance to drafting and invalidation examination of medical device patents, and also represents the value orientation that the Patent Law, which encourages genuine technological innovation and prevents abuse of rights.

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