Compilation © 2014 Pacific Rim Law & Policy Journal Association

SUPREME PEOPLE'S COURT ANNUAL REPORT ON INTELLECTUAL PROPERTY CASES (2012) (CHINA)

Translated by Shudan Zhu [†]

Abstract: Beginning in 2008, the Supreme People's Court of China started publishing the Annual Report on Intellectual Property Cases each April. By summarizing and reviewing intellectual property cases recently decided, the annual reports cover legal issues of general guidance that are selected to reflect adjudication standards and methods, as well as legal policies endorsed by the Supreme People's Court. This translation includes all 34 cases and 37 legal issues as set forth in the 2012 Annual Report, touching on patent law, trademark law, copyright law, competition law, and litigation procedure. Although China is not a common law country, these cases still provide the lower courts with important guidance when deciding similar cases.[1]

I. INTRODUCTION

In 2012, the Supreme People's Court accepted 359 new intellectual property cases of various types and issued decisions in 366 cases. The Supreme People's Court's 2012 decisions on intellectual property ("IP") and competition cases reflect the following characteristics and trends.[2]

1) The growth in IP cases slowed and the total number of cases accepted by the courts leveled off.
2) The number of new and difficult cases continued to increase, while the number of cases involving the technical aspects of fact-finding, delineation of legal boundaries, and gap-filling grew.
3) The field range of patent cases grew.
4) The net worth and market value of the technologies in the cases increased.
5) The legal questions presented became more complex.

[†] Juris Doctor expected 2014, University of Washington School of Law; Master of Science, Ohio State University Department of Molecular Genetics. The translator would like to thank Justice Zhu Li, Professor Dongsheng Zang, Annamarie Larson, Melody Young, Qiuwen Xu, and the *Pacific Rim Law & Policy Journal* editorial staff for their support. The original Chinese version of this report can be found at Supreme People's Court, Intellectual Property Cases Annual Report (April 25, 2012), http://www.court.gov.cn/xwzx/yw/201304/t20130425_183640.htm.

[1] The abstract was written by Justice Zhu Li of the Supreme People's Court of China, Intellectual Property Division, and translated by Shudan Zhu.

[2] The translator added numbers for clarity purposes. In addition, the translator added the following footnotes to supply relevant facts and the procedural history of specific cases.

6) Difficult cases were a larger percentage of the total number of cases in IP.
7) A large number of patent civil cases involved rules of claim interpretation.
8) Many of the administrative patent cases involved a determination of inventiveness.
9) The percentage of trademark cases remained relatively stable. Most of these cases involved a conflict of rights, especially the administrative trademark cases.
10) The number of copyright cases involving emerging fields such as the Internet, software, and animation continued to increase. The market value of the products at stake also increased.
11) Unfair competition cases regarding disputes over network technologies, new business models, and counterfeit actions also increased.

This annual report summarizes thirty-four of the typical IP and competition cases decided by the Supreme People's Court in 2012 and thirty-seven legal issues of general guidance. These cases and issues reflect adjudication standards and methods as well as legal policies endorsed by the Supreme People's Court in deciding innovative, difficult, and complex IP and competition cases.

II. PATENT CASES

A. *Civil Patent Cases*

1. *Method for Defining Technical Features Set Forth in Claims*

In *Zhang Qiang v. Dayi Industry & Trade Co.*,[3] the Supreme People's Court noted that during the process of defining technical features set forth in a patent claim, a technical unit that is capable of realizing a relatively independent technical function should generally be defined as a single

[3] Zhang Qiang yu Dayi Gongmao Gongsi Deng Qinfan Zhuanli Quan Jiufen An (张强与大易工贸公司等侵犯专利权纠纷案) [Zhang Qiang v. Dayi Indus. & Trade Co et al.], CIVIL APPLICATION FOR RETRIAL NO. 137 (Sup. People's Ct. 2012). As the patent owner of "Multifunctional Program-Controlled Boxing Training Equipment," plaintiff Zhang Qiang brought a patent infringement claim against Dayi Industry & Trade. *Id.* The patent specification read: "There are five targets in the panel located on the head, chest, and abdomen." *Id.* The allegedly infringing product had nine targets in its panel. *Id.* The Intermediate People's Court dismissed Zhang Qiang's claim, reasoning that the number of targets (five or nine) was a single technical feature. *Id.* The Supreme People's Court reversed. *Id.*

technical feature. The Court noted that it is inappropriate to define multiple technical units that are capable of realizing multiple technical functions as a single technical feature.

2. Permissibility of Modifying the Clear Meaning of Claims Using Specification

In *Wuxi Longsheng Co. v. Xi'an Qinbang Telecommunication Material Co.*, [4] which involved patent infringement of Xi'an Qinbang Telecommunication Material Co.'s "production method of composite tape for metallic screens," the Supreme People's Court noted that when persons having ordinary skill in the field can determine the meaning of the claims, but the specification does not state the meaning of terms used in the claims, the claims should be construed according to the understanding of a reasonable person in the field. The specification should not serve as the basis for rejecting the content set forth in the claims. However, when obvious errors exist in the expression of specific terms used in the claims, and reasonable persons in the field can definitely, directly, and indisputably rectify the meaning of the terms according to the specification and drawings, the claims should be construed in light of the revised meaning.

3. Dimension Parameters Obtained from Measurements in Drawings Cannot Be Used to Limit the Scope of Patent Protection

In *Shenzhen Shinning Electronic Co. v. Amphenol Co.*,[5] the Supreme People's Court noted that the dimension parameters obtained not from the claim, but solely from measurements in the drawings of a patent, generally cannot be used to limit the scope of patent protection.

---

[4] Xi'an Qingbang Gongsi "Jinshu Pingbi Fuhedai Zhizuo Fangfa" Zhuanli Qinquan An (西安秦邦公司"金属屏蔽复合带制作方法"专利侵权案) [Wuxi Longsheng Co. et al. v. Xi'an Qinbang Telecomm. Material Co. et al.], 3 CIVIL RETRIAL NO. 3 (Sup. People's Ct. 2012). This case involved the interpretation of a phrase in plaintiff Xi'an Qinbang Telecommunication Material's patent claim: "make the surface of the plastic film form an uneven and rough face which is 0.04-0.09 millimeters thick." *Id.* The Supreme People's Court found that there was no obvious error in Xi'an Qinbang's patent claim, and "0.04-0.09 millimeters" should refer to the thickness of the uneven and rough face, instead of referring to the surface itself. *Id.*

[5] Shengling Gongsi yu Anfeinuo Dongya Gongsi Qinfan Shiyong Xinxing Zhuanli Quan Jiufen An (盛凌公司与安费诺东亚公司侵犯实用新型专利权纠纷案) [Shenzhen Shinning Elec. Co. v. Amphenol Co.], CIVIL APPLICATION FOR RETRIAL NO. 1318 (Sup. People's Ct. 2011). As the patent owner of a patent entitled "Small Computer System Bidirectional Interfaced Connector," plaintiff Amphenol brought a patent infringement claim against defendant Shenzhen Shinning Electronic. *Id.* The patent claim defined a technical feature that included the positioning grooves and snap-fit of an end cap with a trapezoidal framework. *Id.* However, the patent claim did not set a limit to the thickness of the positioning grooves nor the left side of the trapezoidal framework. *Id.*

4. *Interpretation of Operating Environment*

In *Shimano Inc. v. Ningbo Sunrun Industry & Trade Co.*,[6] the Supreme People's Court noted that operating environments set forth in patent claims should be regarded as necessary technical features, and should have the effect of limiting the scope of protection defined by the claims. The extent of the limitation should be determined on a case-by-case basis. Generally, such limitations should be interpreted to require the subject matter be able to operate in such environments. However, an exception may be made in cases where persons having ordinary skills in the art conclude that the subject matter can only operate in such environments after reading the claims, the specification, and the patent prosecution documents of the patent.

5. *Interpretation of Close-Ended Claims*

In *Shanxi Zhengdong Taisheng Pharmaceutical Co. v. Hu Xiaoquan*,[7] which involved an "injection of adenosine triphosphate disodium magnesium chloride" patent infringement, the Supreme People's Court noted that close-ended claims should generally be interpreted as excluding components or steps not indicated by the claims. Close-ended composition claims should generally be interpreted to include the indicated components and exclude other components; a typical level of impurities is allowed, but auxiliary materials are not considered as impurities.

6. *Application of the Doctrine of Equivalents in Close-Ended Infringement Claims*

In the aforementioned patent infringement case regarding "injection of adenosine triphosphate disodium magnesium chloride," the Supreme

---

[6] Zhushi Huishe Daoye yu Richeng Gongsi Qinfan Faming Zhuanliquan Jiufen An (株式会社岛野与日骋公司侵犯发明专利权纠纷案) [Shimano Inc. v. Ningbo Sunrun Indus. & Trade Co.], CIVIL RETRIAL NO. 1 (Sup. People's Ct. 2012). As the owner of a patent entitled "Rear Derailleur Bracket," plaintiff Shimano brought a patent infringement claim against defendant Ningbo Sunrun Industry & Trade, alleging the rear derailleur bracket and rear shifter of Ningbo Sunrun's products shared the same structural features as Shimano's patent claim. *Id.* Ningbo Sunrun claimed it had not applied those features on bicycles, thus its products did not fall within the patent's scope of protection regarding operating environments. *Id.*

[7] Hu Xiaoquan "Zhushe Yong San Lingsuan XianGan Er Na Lühuamei" Zhuanli Qinquan An (胡小泉"注射用三磷酸腺苷二钠氯化镁"专利侵权案) [Shanxi Zhengdong Taisheng Pharm. Co. v. Hu Xiaoquan], CIVIL RETRIAL NO. 10 (Sup. People's Ct. 2012). As the owner of a patent entitled "Adenosine Triphosphate Disodium Magnesium Chloride Freeze-Dried Powder," plaintiff Hu Xiaoquan brought a patent infringement claim against defendant Shanxi Zhengdong Taisheng Pharmaceutical. *Id.* The main issue in this case was whether the phrase "do not include other components" as specified in the patent claim should be interpreted as not including supplemental components. *Id.*

People's Court further clarified whether the doctrine of equivalents applied when determining infringement in close-ended claims. The Supreme People's Court noted that by employing a close-ended claim, the applicant has clearly indicated that he or she excludes from the scope of protection those components or method steps currently not delimited, and that those components or method steps should not once again be included under the doctrine of equivalents.

7. *Application of the Doctrine of Prosecution History Estoppel in Situations of Partial Invalidation of a Patent*

In *Zhongyu Electronic (Shanghai) Co. v. Shanghai Nine Eagles Electronic Technology Co.*,[8] the Supreme People's Court noted that the doctrine of prosecution history estoppel generally applies when an applicant, through modifications or statements of opinion, has disclaimed certain technical solutions. If independent claims have been declared invalid, yet the patent rights are still maintained based on dependent claims and no disclaimers have been made by the patent applicant, it is inappropriate to apply the doctrine of prosecution history estoppel to the dependent claims solely on this basis.

8. *Allegations of Patent Infringement Involving Vague Scopes of Patent Protection Should Not Be Supported*

In *Bai Wanqing v. Chengdu Nanxun Service Center and Tianxiang Co.*,[9] the Supreme People's Court noted that accurate delimitations on the

---

[8] Zhongyu Gongsi yu Jiuying Gongsi Qinfan Shiyong Xinxing Zhuanli Quan Jiufen An (中誉公司与九鹰公司侵犯实用新型专利权纠纷案) [Zhongyu Elec. (Shanghai) Co. v. Shanghai Nine Eagles Elec. Tech. Co.], CIVIL RETRIAL NO. 206 (Sup. People's Ct. 2011). Plaintiff Zhongyu Electronic was the patent owner of a patent entitled "One Kind of Steering Engine." *Id.* The third patent claim included diverter strips made of silver film, and in Shanghai Nine Eagles' allegedly infringing product, the strips were made of gold-plated copper film. *Id.* The Intermediate People's Court decided that no infringement occurred because the technical solution of the allegedly infringing product was a simple combination of existing technologies and common knowledge and it was reasonable to infer Zhongyu Electronic abandoned its right to patent protection for materials other than silver film. *Id.* The Supreme People's Court overturned, ruling that because Zhongyu Electronic's first and second patent claims did not specify silver film, the court could apply the doctrine of equivalents to expand the scope of the patent's protection to materials other than silver. *Id.*

[9] Bai Wanqing yu Nanxun Zhongxin, Tianxiang Gongsi Qinhai Shiyong Xinxing Zhuanli Quan Jiufen An (柏万清与难寻中心、添香公司侵害实用新型专利权纠纷案) [Bai Wanqing v. Chengdu Nanxun Serv. Ctr. and Tianxiang Co.], CIVIL APPLICATION FOR RETRIAL NO. 1544 (Sup. People's Ct. 2012). As the patent owner of "Anti-Electromagnetic Pollution Suit," plaintiff Bai Wanqing brought a patent infringement claim against defendant. *Id.* The Intermediate People's Court decided that the evidence was insufficient to prove the allegedly infringing product fell into the scope of Bai Wanqing's patent because the patent did not clarify the standard to differentiate between high and low permeability and Bai Wanqing

scope of patent protection should be a prerequisite to a finding of patent infringement. In cases where patent rights have vague scopes of protection, the court should not find infringement by an allegedly-infringing technical solution.

9. *Means of Examination And Method for Comparison in Prior Art Defense*

In *Taizoys Machinery Co. v. Yancheng Greater Machinery Co.*,[10] the Supreme People's Court noted that in examining a prior art defense, the proper method is to compare the allegedly-infringing technical solution and the prior art. If the two are not found to be identical, the claims of the patent at issue may be used as a reference to ascertain the technical feature of the allegedly-infringing technical solution and then determine whether the technical feature or its equivalents have been disclosed by the prior art.

10. *Classification of Products in Design Patent Protection*

In *ARC International Co. v. Lan Zhi Yun Glass Craft Factory*,[11] the Supreme People's Court noted that the classification of products with regard to design patents should be based on the intended use of products in their independently existing forms and their ability to be sold separately. The scope of design patent protection is restricted to designs of products falling under identical or closely related classes of products.

---

did not prove that the allegedly infringing products' permeability reached the "high" limit claimed in the patent. *Id*.

[10] Zetian Gongsi yu Geruite Gongsi Qinfan Shiyong Xinxing Zhuanli Quan Jiufen An (泽田公司与格瑞特公司侵犯实用新型专利权纠纷案) [Taizoys Mach. Co. v. Yancheng Greater Mach. Co.], CIVIL APPLICATION FOR RETRIAL NO. 18 (Sup. People's Ct. 2012). As the patent owner of a patent entitled "Direct Hydraulic Swing Arm Cutting Hydraulic Control Device," plaintiff Taizoys Machinery brought a patent infringement claim against Yancheng Greater Machinery. *Id*. The Higher People's Court decided that the shape and the connecting direction of the solenoid valve in Yancheng Greater Machinery's product did not fall within the scope of patent protection in this case because the patent claim does not set definitions on these technical features. *Id*.

[11] Gongjian Guoji yu Lanzhiyun Chang Qinfan Waiguan Sheji Zhuanli Quan Jiufen An (弓箭国际与兰之韵厂侵犯外观设计专利权纠纷案) [ARC Int'l Co. v. Lan Zhi Yun Glass Craft Factory], CIVIL APPLICATIONS FOR RETRIAL NO. 41 AND NO. 54 (Sup. People's Ct. 2012). As the owner of two design patents entitled "Tableware with Stickers (Lemon)" and "Cutlery with Stickers (Apple)," plaintiff ARC brought patent infringement claims against manufacturer Lan Zhi Yun Glass Craft Factory and exporter Shenzhen Singwider Trading, separately. *Id*. Shenzhen Singwider Trading's exports were detained in customs on suspicion of multiple international design patent violations. *Id*. The exports had lemon and apple patterns very similar to ARC's patents, even though the apple patterns on the defendant's product were a different color. *Id*.

11. Determination of Invalidation Date Pursuant to Article 47, Section 2, of the PRC Patent Law

In *Shaanxi Dongming Agricultural Technology Co. v. Shaanxi Qinfeng Agricultural Machinery Group*,[12] the Supreme People's Court held that pursuant to Article 47, Section 2, of the PRC Patent Law, the decision issuance date for a patent invalidation petition should be used as the invalidation date of a patent right.

III. ADMINISTRATIVE PATENT CASES

12. Claims Should Be Construed to Ensure that the Scope of Protection Is Consistent with the Scope of the Specification's Disclosure

In *Dongguan Jiachang Toy Co. v. New Leader Battery (Deqing) Co.*,[13] which involved the invalidation of the utility model patent of "mercury alkaline coin-shaped batteries," the Supreme People's Court noted that when claims are construed according to the specification and drawings, the specification should serve as the basis for ensuring that the scope of protection is consistent with the scope of disclosure.

---

[12] Dongming Gongsi yu Qinfeng Gongsi Qinhai Shiyong Xinxing Zhuanli Quan Jiufen An (东明公司与秦丰公司侵害实用新型专利权纠纷案) [Shaanxi Dongming Agric. Tech. Co. v. Shaanxi Qinfeng Agric. Mach. Grp.], CIVIL RETRIAL NO. 110 (Sup. People's Ct. 2012). As the patent holder of a patent entitled "Mini Crawler-Type Farm Machine," plaintiff Shaanxi Qinfeng Agricultural Machinery Group brought a patent infringement claim against defendant Dongming Agricultural Technology. *Id.* In response, on September 8, 2010, Dongming Agricultural filed a patent invalidation request with the Patent Reexamination Board. *Id.* On March 9, 2011, the Intermediate People's Court ordered Dongming Agricultural's deposits to be frozen pursuant to Shaanxi Qinfeng's infringement claim, but the order was not executed until March 16, 2011. *Id.* On March 15, 2011, the Patent Reexamination Board made its decision in response to Dongming Agricultural's request and declared Shaanxi Winfeng Agricultural's patent invalid. *Id.* The Patent Reexamination Board published its decision on March 25, 2011. *Id.*

[13] "Wu Shuiying Jianxing Niuxing Dianchi" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An (无水银碱性钮形电池"实用新型专利权无效行政纠纷案) [Dongguan Jiachang Toy Co. v. New Leader Battery (Deqing) Co. et al.], IP ADMINISTRATIVE RETRIAL NO. 29 (Sup. People's Ct. 2012). A group of plaintiffs, including New Leader Battery, were the patent owners of a patent entitled "Mercury Alkaline Button Cell." *Id.* Dongguan Jiachang Toy requested the Patent Reexamination Board invalidate the patent in this case. *Id.* The Patent Reexamination Board declared the patent invalid on the basis of lack of inventiveness. *Id.* New Leader Battery brought administrative proceedings against the Patent Reexamination Board. *Id.* The Supreme People's Court determined that the specification of the patent only focused on identifying another material that could replace the use of mercury in forming an insulating layer between zinc and other materials and did not specifically explore the possibility of improving the structure of the negative plate of a battery. *Id.* For this reason, the Court rejected the patent owner's assertion that the negative plate of the battery as set forth in claim 1 specifically referred to an electroplated structure. *Id.*

13. Determination and Consideration of Technical Fields of Prior Art in Determining the Inventiveness of A Utility Model Patent

In *Patent Reexamination Board of SIPO v. Zhao Donghong*,[14] which involved the invalidation of the utility model patent "dynamometer," the Supreme People's Court held that in evaluating the inventiveness of a utility model patent, emphasis should generally be placed on comparing the patent with prior art within the patent's same technical field. However, if prior art has clearly disclosed relevant technical suggestions, the prior art that falls under similar or related technical fields can also be considered. Similar technical fields generally refer to fields that are close to the function and actual use of the product in the utility model patent, while related technical fields generally refer to the functional fields where the technical feature that distinguishes the utility model patent from prior art has been used.

14. Determining the Inventiveness of New Crystal Compounds

In *Boehringer Ingelheim Pharma GmbH & Co.KG v. Patent Reexamination Board*,[15] which involved the invalidation of the invention patent for "tito bromide monohydrate crystal," the Supreme People's Court held that "compounds of similar structures" in the Guidelines for Patent Examination refer only to compounds with identical basic core structures or basic rings. [The compounds] do not refer to a comparison of the compound's microscopic crystal structure itself. In determining the inventiveness of a new crystal compound, not all changes to microscopic

---

[14] "Woli Ji" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("握力计"实用新型专利权无效行政纠纷案) [Patent Reexamination Bd. of SIPO v. Zhao Donghong et al.], IP ADMINISTRATIVE APPLICATION FOR RETRIAL (Sup. People's Ct. 2011). Zhao Donghong and Zhang Ruyi owned a patent entitled "Dynamometer." *Id*. A third party requested that the Patent Reexamination Board invalidate this patent on the basis of lack of inventiveness. *Id*. The Board declared the patent invalid. *Id*. On appeal, however, the Supreme People's Court maintained that utility patents require a lower level of creativeness compared to invention patents. *Id*. Thus, when lacking clearly disclosed related technical suggestions, the Court refused to consider a reference disclosing a portable digital display electronic scale when determining inventiveness of the patent because they do not belong to the same technical fields. *Id*.

[15] "Xiuhua Ti Tuoping Dan Shui Hewu Jingti" Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An ("溴化替托品单水合物晶体"发明专利权无效行政纠纷案) [Boehringer Ingelheim Pharm. GmbH & Co.KG v. Patent Reexamination Bd.], ADMINISTRATIVE APPLICATION FOR RETRIAL NO. 86 (Sup. People's Ct. 2011). Boehringer Ingelheim owned a patent entitled "Tito Bromide Monohydrate Crystal." *Id*. Third party CTTQ requested that the Patent Reexamination Board invalidate the patent based on lack of inventiveness. *Id*. The Board declared the patent invalid and the Supreme People's Court sustained. *Id*. The Court reasoned that the "Tito Bromide Monohydrate Crystal" covered by the first claim had the same core chemical structure as two tito bromide compounds disclosed by references, despite their potential differences in physical structures. *Id*. The Court also concluded that the unexpected technical effect later provided by the patent owner was not disclosed in the original specification thus should not be considered in the determination of inventiveness. *Id*.

crystal structure necessarily leads to prominent substantive features and notable progress. [Rather,] they must be considered in connection with any unexpected technical effects they introduce.

15. *Timing and Method for Considering Commercial Success in Determining Inventiveness*

In *Patent Reexamination Board of SIPO v. Hu Ying*,[16] which involved invalidation of the utility model patent of "female family planning operation type-B ultrasound monitoring," the Supreme People's Court held that generally, commercial success can only be taken into account after use of the "Three Step Method" has become too difficult in finding inventiveness in a technical solution or such technical solution has been found not inventive. The consideration of commercial success is subject to a strict standard, and a finding of inventiveness is only permissible if the technical improvement over the prior art directly accounts for its commercial success.

16. *The Content of Structural Drawings of a Product Disclosed in a Reference Can Be Determined in Light of Its Structural Features and Common Knowledge*

In *Zhenjiang City Yingfang Plastics Electrical Co. v. Guangdong Kejin Nylon Pipeline Products Co.*,[17] which involved the invalidation of the utility model patent of "one type of flanged, cast nylon pipes," the Supreme People's Court noted that when references only disclose structural drawings

---

[16] "Nüxing Jihua Shengyu Shoushu B Xing Chaosheng Jiance Yi" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("女性计划生育手术 B 型超声监测仪"实用新型专利权无效行政纠纷案) [Patent Reexamination Bd. of SIPO v. Hu Ying], IP ADMINISTRATIVE RETRIAL NO. 8 (Sup. People's Ct. 2012). Hu Ying was the owner of a patent entitled "Female Family Planning Operation B-Mode Ultrasound Monitoring." *Id.* Third party Emperor Medical requested that the Patent Reexamination Board invalidate the patent. *Id.* The Supreme People's Court invalidated the patent at issue because the evidence provided by the patent owner regarding sales to the National Health and Family Planning Commissions failed to meet the strict commercial success standard. *Id.* Under this standard, the inventiveness of the patent at issue must directly account for the commercial success of the marketed product. *Id.*

[17] "Yi Zhong Dai Falan de Zhuxing Nilong Guandao" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("一种带法兰的铸型尼龙管道"实用新型专利权无效行政纠纷案) [Zhenjiang City Yingfang Plastics Elec. Co. v. Guangdong Kejin Nylon Pipeline Prod. Co.], IP ADMINISTRATIVE RETRIAL NO. 25 (Sup. People's Ct. 2012). Guangdong Kejin Nylon Pipeline Products was the patent owner of a patent entitled "One Type of Flanged, Cast Nylon Pipe." *Id.* Zhenjiang City Yingfang Plastics Electrical requested that the Patent Reexamination Board invalidate the patent based on lack of inventiveness. *Id.* The Board declared the patent invalid. *Id.* However, the Supreme People's Court maintained that although first reference did not specifically refer to the cylindrical projection disclosed in its drawings as a flange, a person having ordinary skill in the field would be able to understand its function as that of a flange. *Id.* For this reason, the Court did not prohibit a finding that the cylindrical projection served as a flange, reversing the Board. *Id.*

and contain no textual descriptions, the meaning of the drawings can be determined in light of its structural features and the common knowledge held by persons having ordinary skill in the field.

17. *Standard for Determination If a Technical Feature Set Forth in a Claim Has Been Disclosed by Reference*

In *Patent Reexamination Board of SIPO v. Beijing Jerrat Springs Damper Technology Research Center*,[18] which involved the invalidation of the utility model patent "quick-in, slow-out elastic dampening buffer," the Supreme People's Court noted that in order to determine whether a technical feature set forth in a patent claim has been disclosed in a reference, not only is it required that the reference contain the corresponding technical feature, but it is also required that the function of the disclosed technical feature be substantively identical to the function of the technical feature set forth in the claim.

18. *Addressing Claim Drafting Errors When Determining Whether a Specification Provides Support for the Claim*

In *Hong Liang v. Patent Reexamination Board of SIPO*,[19] which involved invalidation of the utility model patent "precision rotating

[18] "Kuai Jin Man Chu Xing Tanxing Zhuni Ti Huanchong Qi" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("快进慢出型弹性阻尼体缓冲器"实用新型专利权无效行政纠纷案) [Patent Reexamination Bd. of SIPO v. Beijing Jerrat Springs Damper Tech. Research Ctr.], IP ADMINISTRATIVE APPLICATION FOR RETRIAL NO. 3 (Sup. People's Ct. 2012). Beijing Jerrat Springs Damper Techonology Research Center was the patent owner of a patent entitled "Quick-In, Slow-Out Elastic Dampening Buffer." *Id.* Third party Jin Zi Tian He requested that the Patent Reexamination Board invalidate this patent. *Id.* The Board declared the patent invalid, reasoning that a one-way flow-limiting structure in the patent was anticipated by a cited reference. *Id.* The Supreme People's Court, however, disagreed. *Id.* The Court decided that the function of the one-way flow-limiting structure as disclosed in the patent at issue was to reduce resistance during the compression stage and increase resistance during the returning stage in order to protect the device and reduce noise. *Id.* By contrast, the function of the one-way valve as disclosed in the reference was to ensure the return of the piston to its original position. *Id.* Thus, the finding that the one-way flow-limiting structure in the patent at issue has been impliedly disclosed by the reference was without merit. *Id.*

[19] "Jingmi Xuanzhuan Buchang Qi" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("精密旋转补偿器"实用新型专利权无效行政纠纷案) [Hong Liang v. Patent Reexamination Bd. of SIPO], IP ADMINISTRATIVE RETRIAL NO. 13 (Sup. People's Ct. 2011). Hong Liang was the patent owner of a patent entitled "Precision Rotating Compensator." *Id.* Song Zhanggen requested that the Patent Reexamination Board invalidate this patent. *Id.* The Board declared the patent invalid. *Id.* The abstract and the description of the patent at issue provided: "another end of [an] outer tube is connected to [an] extension tube, with space forming between them." *Id.* By contrast, the embodiment part of the specification provided: "outside of the outer tube is the extension tube, which has a radius equal to the inner radius of the inner tube, with proper space (1-10 mm) forming between the extension tube and the inner tube." The Supreme People's Court overturned the Board's decision, holding that a person having

compensator," the Supreme People's Court noted that drafting errors in claims do not necessarily lead to the determination that a specification fails to support the claim. If obvious errors exist in the claims and persons having ordinary skill in the field can determine the only correct meaning in light of the specification and drawings, then the technical solution under protection should be defined according to a revised understanding of the claims [based on the understanding of ordinary persons in the field]. Based on this [understanding], the determination of whether the specification provides support for the claim should be carried out.

19. Determination of a Functional Design Feature and Its Implications

In *Patent Reexamination Board of SIPO v. Zhang Dijun*,[20] which involved the invalidation of the design patent of "logical programming switches (SR14)," the Supreme People's Court noted that a functional design feature means a design feature that in the eyes of ordinary consumers of the design product is solely defined by its specific functions without regard to any aesthetic considerations. The standard for determining whether something is a functional design feature does not turn on the fact that no alternatives exist due to functional or technical restrictions, but rather on the fact that in the eyes of ordinary consumers, said design feature is only defined by specific functions without regard to any aesthetic considerations. The functional design feature generally does not have significant influence on the overall visual effect of the design.

20. In Determining Inventiveness, Conditions for Accepting Additional Experimental Data Submitted After the Application Date

In *Takeda Pharmaceutical Co. v. Patent Reexamination Board of SIPO*,[21] which involved the invention patent "pharmaceutical compositions used to treat diabetes," the Supreme People's Court noted that when

---

ordinary skill in the field would be able to ascertain the correct meaning of the phrase "with space forming between them" and could ascertain the space formed between the inner tube and the outer tube. *Id.*

[20] "Luoji Biancheng Kaiguan (SR14)" Waiguan Sheji Zhuanli Quan Wuxiao Xingzheng Jiufen An ("逻辑编程开关（SR14）"外观设计专利权无效行政纠纷案) [Patent Reexamination Bd. of SIPO v. Zhang Dijun], IP ADMINISTRATIVE RETRIAL NO. 14 (Sup. People's Ct. 2012). Zhang Dijun was the patent owner of a patent entitled "Logical Programming Switches (SR14)." *Id.* Third party Cixi Xinlong Electronics requested that the Patent Reexamination Board invalidate this patent. *Id.* The Board declared the patent invalid. *Id.* Plaintiff Zhang Dijun brought administrative proceedings against the Board. *Id.* The Supreme People's Court determined that the design patent at issue disclosed a similar visual design to that disclosed by a prior design patent. *Id.* The Court made this determination because the distribution of the pins of the patent product were mainly directed by the design considerations of compatible printed circuit boards rather than aesthetic effects. *Id.*

determining inventiveness, if the applicant submits comparison experimental data after the application date to prove unexpected technical effects realized by the technical solution of the patent, such data can only be accepted if the technical effects to be proven were clearly disclosed in the original application.

21. Circumstances Considered by the Patent Re-Examination Committee in Reissuing a Decision

In *Cao Zhongquan v. Patent Reexamination Board of SIPO*,[22] which involved the utility model patent of an "oil retention device for cutting and grinding helical gear," the Supreme People's Court held that when issuing a court order to void or partially void a particular administrative action, the decision whether to order the administrative body to reissue an administrative action should be decided on a case-by-case basis.

---

[21] "Yong Yu Zhiliao Tangniao Bing de Yaowu Zuhe Wu" Faming Zhuanli Quan Xingzheng Jiufen An ("用于治疗糖尿病的药物组合物"发明专利权行政纠纷案) [Takeda Pharm. Co. v. Patent Reexamination Bd. of SIPO et al.], ADMINISTRATIVE RETRIAL NO. 7 (Sup. People's Ct. 2012). Takeda Pharmaceuticals was the owner of a patent entitled "Pharmaceutical Compositions Used to Treat Diabetes." *Id*. Hai Sike Pharmaceuticals and the Chongqing Institute of Pharmaceutical Industry requested that the Patent Reexamination Board invalidate this patent. *Id*. The Board declared the patent invalid. *Id*. The Supreme People's Court held that the counterevidence—submitted by the patent owner to prove unexpected effects when using pioglitazone and glimepiride in drug combination—should not be considered in determination of inventiveness of the patent at issue. *Id*. The Court reasoned that the original application failed to disclose the advantages and disadvantages of adopting various drug combinations. *Id*.

[22] "Caijian Ji Modao Jigou Zhong Xie Chilun Zu de Baoyou Zhuangzhi" Shiyong Xinxing Zhuanli Quan Wuxiao Xingzheng Jiufen An ("裁剪机磨刀机构中斜齿轮组的保油装置"实用新型专利权无效行政纠纷案) [Cao Zhongquan v. Patent Reexamination Bd. of SIPO], ADMINISTRATIVE RETRIAL NO. 7 (Sup. People's Ct. 2012). Cao Zhongquan was the owner of a patent entitled "Oil Retention Device for Cutting and Grinding Helical Gear." *Id*. Third party Shanghai Jing Kai Garment Machinery requested that the Patent Reexamination Board invalidate the patent. *Id*. The Board declared the patent invalid based on a lack of inventiveness. *Id*. The Supreme People's Court overturned and ordered the Board to re-examine its invalidation decision because the Board did not consider the arguments and evidence presented by Cao Zhongquan. *Id*.

IV. TRADEMARK CASES

A. Civil Trademark Cases

22. A Registered Trademark Restored After Wrongful Cancellation Should be Regarded as Having Continuous Existence

In *Qingdao Haiyang Welding Material Co. v. Qingdao Xinyuan Welding Material Co.*,[23] the Supreme People's Court noted that a trademark that has been restored after a wrongful cancellation should be regarded as having had continuous existence. Others who use this trademark without permission have committed infringement, except for third parties who have used this trademark in good faith belief of its cancellation.

23. Determination of Fair Use of a Trademark by an Authorized Dealer

In *Sichuan Yibin Wuliangye Group v. Jinan Tianyuan Tonghai Co.*,[24] the Supreme People's Court noted that an authorized dealer has not committed trademark infringement when he or she [1] has in good faith used a trademark for the purposes of indicating his or her status as an authorized dealer or for advertising and promoting the products of the trademark holder, and [2] has not impaired the identification function of the trademark.[25]

---

[23] Haiyang Gongsi yu Qingdao Xingyuan Gongsi Deng Qinfan Shangbiao Quan Jiufen An (海洋公司与青岛鑫源公司等侵犯商标权纠纷案) [Qingdao Haiyang Welding Material Co. v. Qingdao Xinyuan Welding Material Co.], CIVIL RETRIAL NO. 9 (Sup. People's Ct. 2012). In 2005, plaintiff Qingdao Haiyang Welding Material ("Haiyang") brought a trademark infringement claim against defendant Qingdao Xinyuan Welding Material ("Xinyuan") for continuing to use Haiyang's trademark after the expiration of their license agreement. *Id*. The Supreme People's Court ruled in favor of Xinyuan because in 2003, Haiyang's agent sent a request to cancel its registered trademarks. *Id*. In 2007, Haiyang brought another lawsuit, asserting that the cancellation of its registered trademarks were invalid since the requests for cancellation were sent by an agent and the cancellation was not its intention. *Id*. The court held that since Haiyang's trademarks were wrongfully cancelled, these trademarks were actually still valid. *Id*.

[24] Wuliangye Gongsi yu Tianyuan Tonghai Gongsi Qinfan Shangbiao Zhuanyong Quan Ji Bu Zhengdang Jinzheng Jiufen An (五粮液公司与天源通海公司侵犯商标专用权及不正当竞争纠纷案) [Sichuan Yibin Wuliangye Grp. v. Jinan Tianyuan Tonghai Co.], CIVIL APPLICATION FOR RETRIAL NO. 887 (Sup. People's Ct. 2012). As the trademark holder of the text, graphics, and phonetic spelling of a registered trademark, plaintiff Sichuan Yibin Wuliangye Group ("Sichuan") brought trademark infringement and unfair competition claims against an authorized dealer, Jinan Tianyuan Tonghai ("Jinan"). *Id*. On September 16, 2010, and November 3, 2010, Jinan used the text and graphics of Sichuan's trademark in Jinan's newspaper advertisements. The Supreme People's Court rejected the infringement and unfair competition claims, finding that Jinan used the trademark in good faith as an authorized dealer of Sichuan's goods.

[25] The translator elected to enumerate the clauses to clarify the elements in the ruling by the Supreme People's Court for English readers. The original text does not enumerate the clauses as indicated in this translation.

24. Proper Use of a Conglomerate Trademark by a Member Enterprise in Its Business Activities Does Not Constitute Trademark Infringement

In *Jiangsu Myande Food Machinery Co. v. Jiangsu Muyang Group*,[26] the Supreme People's Court noted that a member enterprise that properly uses a conglomerate trademark in its business activities for the purpose of indicating its member status has not committed trademark infringement.

B. Administrative Trademark Cases

25. Determining the Significance of a Three-Dimensional Trademark Application that Uses Partial Appearance of a Product

In *Hermes Italie S. P. A. Co. v. Trademark Appeal Board of SAIC*,[27] the Supreme People's Court noted that a trademark application's use of the partial three-dimensional shape of a product—a shape that is usually inseparable from recognizing the product as a whole and could not be used independently—is likely to be regarded by the public as part of the product rather than trademark. However, the application should not be rejected for the above-mentioned reason if [1] the product itself possesses distinctive exterior characteristics that distinguish it from the appearance of other products belonging to the same category, or [2] the applicant can prove that by using the mark, the appearance of the product sufficiently associates it

[26] Mai'ande Gongsi yu Muyang Jituan Gongsi Qinhai Zhuce Shangbiao Zhuanyong Quan An (迈安德公司与牧羊集团公司侵害注册商标专用权案) [Jiangsu Myande Food Mach. Co. v. Jiangsu Muyang Grp.], CIVIL RETRIAL NO. 61 (Sup. People's Ct. 2012). As the exclusive trademark holder of the text and graphics in its registered trademark "MUYANG," plaintiff Jiangsu Muyang Group ("Jiangsu Group") brought trademark infringement and unfair competition claims against defendant Jiangsu Myande Food Machinery ("Food Machinery"). *Id*. Jiangsu Group's Vice President Xu Bin was also chairman of Food Machinery's board. *Id*. On April 19, 2003, Jiangsu Group's five board members signed an agreement allowing any board member to register and invest in a new company as long as they contributed ten percent of the new company's shares to the other board members. *Id*. The agreement also allowed the newly-registered company to use the "MUNYANG" trademark as long it paid royalties to Jiangsu Group. *Id*. The Supreme People's Court rejected the trademark infringement and unfair competition claims because of this agreement. *Id*.

[27] Aimashi Gongsi yu Shangbiao Pingsheng Weiyuanhui Shangbiao Bohui Fushen Xingzheng Jiufen An (爱马仕公司与商标评审委员会商标驳回复审行政纠纷案) [Hermès Italie S. P. A. Co. v. Trademark Appeal Bd. of SAIC], IP ADMINISTRATIVE APPLICATION FOR RETRIAL NO. 68 (Sup. People's Ct. 2012). Plaintiff Hermès was the owner of a trademark entitled "three-dimensional graphics." *Id*. On March 27, 2003, Hermès applied to the Trademark Appeal Board of SAIC for a territorial extension of its trademark. *Id*. The Trademark Appeal Board rejected the application based on a lack of distinctive features. *Id*. Hermès brought administrative proceedings against the Trademark Appeal Board. *Id*.

with the specific provider.[28]

26. Determination of Adverse Effects of a Trademark Registration Using the Name of a Deceased Famous Person

In *Guizhou Meijiuhe Brewing Co. v. Trademark Appeal Board of SAIC*,[29] the Supreme People's Court noted that when registering a trademark using the name of a well-known and influential person in another related field, if there is likely association of the quality of said product with that of the production techniques of the well-known goods related to the famous person, which in turn leads to consumer confusion, then a finding of adverse effects is permissible, and the trademark should be cancelled.

V. COPYRIGHT CASES

27. Computer Font Database of Chinese Characters

In *Beijing Founder Electronics Co. v. The Computer Technology Consulting (Shanghai) Co.*,[30] which involved the copyright infringement case of "Beijing Founder Lanting Font Database," the Supreme People's Court noted that the computer font databases of Chinese characters, comprised of font frame building instruction code, font frame dynamic adjustment data instruction code, and relevant data should be protected as a computer program and not as a work of fine art under copyright law.

---

[28] The translator elected to enumerate the clauses to clarify the elements in the ruling by the Supreme People's Court for English readers. The original text does not enumerate the clauses as indicated in this translation.

[29] Guizhou Meijiuhe Gongsi yu Shangbiao Pingshen Weiyuanhui, Li Changshou Shangbiao Zhengyi Xingzheng Jiufen An (贵州美酒河公司与商标评审委员会、李长寿商标争议行政纠纷案) [Guizhou Meijiuhe Brewing Co. v. Trademark Appeal Bd. of SAIC], IP ADMINISTRATIVE APPLICATION FOR RETRIAL NO. 11 (Sup. People's Ct. 2012). On October 14, 2005, plaintiff Guizhou Meijiuhe Brewing Co. was approved as the trademark holder of the text and graphics in its registered trademark "Li Xingfa" (the name of a national famous brew-master in Guizhou). *Id*. On November 15, 2006, the son of Li Xingfa requested a withdrawal of the application. *Id*. The Trademark Appeal Board withdrew the trademark registration. *Id*. Plaintiff brought administrative proceedings against the Trademark Appeal Board. *Id*.

[30] "Beida Fangzheng Lanting Ziku" Zhuzuo Quan Qinquan An ("北大方正兰亭字库"著作权侵权案) [Beijing Founder Elecs. Co. et al. v. The9 Computer Tech. Consulting (Shanghai) Co. et al.], CIVIL APPEAL NO. 6 (Sup. People's Ct. 2010). Plaintiff Beijing Founder Electronics Co. ("Beijing Founder") is the copyright owner of "Beijing Founder Lanting Font Database." *Id*. Blizzard owned a copyright on the online game "World of Warcraft." *Id*. It authorized defendant The9 Computer Technology Consulting (Shanghai) ("The9") to finish the game's Chinese localization and to facilitate the operation of the game's online network in mainland China. *Id*. Beijing Founder brought a copyright infringement claim against The9 for using the Lanting font database in the localization. *Id*. The Supreme People's Court in Beijing ordered The9 to cease and desist and compensate Beijing Founder RMB 1.45 million for its economic losses and fees. *Id*.

28. Copyright Protection of an Individual Chinese Character Generated on a Computer Using a Chinese Character Database

In the aforementioned copyright infringement case *Beijing Founder Lanting Font Database*, the Supreme People's Court also clarified the issue of copyright protection for individual Chinese characters. The Supreme People's Court held that when an individual Chinese character generated on a computer uses a Chinese character database that meets the originality requirement under copyright law, it is entitled to protection under copyright law as a work of fine art. However, [the copyright] cannot be relied on to exclude others from using the characters for expression and communication.

29. Responsibilities of Internet Service Providers in "Notice and Takedown" Programs

In *Zhejiang Fanya Electronic Business Co. v. Beijing Baidu Netcom Science and Technology Co.*,[31] which alleged the copyright infringement of Beijing Baidu Netcom Science and Technology Co.'s MP3 search engine, the Supreme People's Court held that when multiple proper notifications have been submitted by a copyright holder, and an Internet Service Provider ("ISP") has knowledge of the infringement, the ISP should not disregard the notifications later sent by the copyright holder simply because the later notifications fail to meet certain requirements. Instead, the ISP should actively contact the copyright holder to discuss what proper actions should be taken. Those failing to take proper actions in a timely manner should be held liable for increased losses caused by continuation of the direct infringement.

---

[31] Baidu Gongsi MP3 Sousuo Yinqing Qinhai Zhuzuo Quan Jiufen Shangsu An (百度公司 MP3 搜索引擎侵害著作权纠纷上诉案) [Zhejiang Fanya Elec. Bus. Co. v. Beijing Baidu Netcom Sci. and Tech. Co. et al.], CIVIL APPEAL NO. 2 (Sup. People's Ct. 2009). Plaintiff Zhejiang Fanya Electronics ("Zhejiang") brought a copyright infringement claim against a group of defendants including Beijing Baidu Netcom Science and Technology. *Id*. Zhejiang alleged that the defendants offered its copyrighted works—through channels such as the search box, music box and lyrics snapshot—without authorization. *Id*. Zhejiang sent a lawyer's letter to defendants listing all of the infringed copyrighted musical works with the authors' information and copyright registration numbers. *Id*. The letter did not specifically mention the links to each copyrighted musical work. *Id*. The defendants took action in response to prior requests, but did not disconnect the links to the musical works. *Id*. Although Zhejiang was partially at fault for failing to specifically request takedown of the links, the Supreme People's Court still awarded Zhejiang damages, reasoning that the defendants failed to act as a responsible public search engine provider. *Id*.

VI. COMPETITION CASES

30. Specific Models of a Product That Have Actually Acquired Distinctiveness By the Origin of the Product Should Be Entitled to Protection

In *Yueqing Wanshun Electrical Equipment Co. v. Hebei Baokai Electrical Equipment Co.*,[32] the Supreme People's Court noted that specific models of a product that have acquired distinctiveness, indicating the origin of the product, should be entitled to protection under unfair competition law.

31. The Name of a Well-Known Group of People and the Name of Their Artistic Works May Be Entitled to Protection under Unfair Competition Law

In *Zhang Chang et al. v. Zhang Tiecheng*,[33] which involved the unfair competition dispute over "Clay Figurine Zhang," the Supreme People's Court noted that the name of a specific group of well-known persons of great commercial value should be entitled to legal protection. When a specific name for the artistic works (or craftsmanship) of this group is used as the name of their goods, the name may be entitled to legal protection under unfair competition law because of the specific name's well-known goods (or services).

32. Factors to Consider in Determining Whether a Term Is Generic

In the aforementioned unfair competition case "Clay Figurine Zhang," the Supreme People's Court noted that a generic term does not possess the function of indicating the origin or provider of the goods. When determining

[32] Wanshun Gongsi, Shenzhen Baokai Gongsi yu Hebei Baokai Gongsi Bu Zhengdang Jingzheng Jiufen An (万顺公司、深圳宝凯公司与河北宝凯公司不正当竞争纠纷案) [Yueqing Wanshun Elec. Equip. Co. et al. v. Hebei Baokai Elec. Equip. Co.], CIVIL APPLICATION FOR RETRIAL NO. 398 (Sup. People's Ct. 2012). Plaintiff Hebei Baokai Electrical Equipment ("Hebai Bokai") brought an unfair competition claim against a group of defendants including Yueqing Wanshun Electrical Equipment. *Id*. Hebei alleged that the defendants appropriated Hebai Bokai's term "BK" to refer to defendants' low-voltage electrical products. *Id*. The Intermediate People's Court ruled in favor of Hebei Baokai. *Id*. The court reasoned that because Hebei Bokai's product model registration certificate specified "BK" as the company code, it had already achieved sufficient distinctiveness in indicating the origin of the product. *Id*.

[33] "Niren Zhang" Bu Zhengdang Jingzhen Jiufen An ("泥人张"不正当竞争纠纷案) [Zhang Chang et al. v. Zhang Tiecheng et al.], CIVIL RETRIAL NO. 113 (Sup. People's Ct. 2010). During the Qing Dynasty, certain clay figurines were called "clay figurine Zhang" after a famous craftsman Zhang Mingshan. *Id*. Descendants of Zhang Mingshan brought trademark infringement and unfair competition claims against defendant Zhang Tiecheng for infringing plaintiffs' exclusive right to their registered trademark "clay figurine Zhang." *Id*. The Intermediate People's Court ruled in favor of plaintiffs. *Id*.

if the "business (or goods) + surname" is a generic term, factors to be considered include whether the name used is the only one available, whether the person indicated by the name or the origin of the good's name is specific, whether the name used a literary comparative technique, as well as other factors.

33. Associated Contractual Duty Cannot Constitute the Means for Preserving a Trade Secret

In *The Liquidation Team for Zhangjiagang Henli Machinery Co. v. Jiangsu Guotai International Group Guomao Co.*,[34] the Supreme People's Court noted that the associated contractual duty of confidentiality based on the principle of good faith does not reflect the subjective desire of a trade secret holder to take actions to preserve the secrecy of the information, and cannot constitute a means for active protection of the trade secret.

34. Coexistence of Business Names Using the Same Geographic Element

In *Fujian Baisha Fire Control Worktrade Co. v. Nanan Baisha Fire-Fighting Equipment Co.*,[35] the Supreme People's Court noted that a village name is a public resource. If business operators within the village use the village name as part of their businesses' registered names, and a certain degree of distinction among those business names exists, the operator of a later registered business, who does so in good faith and does not cause public confusion, should not be found to have committed unfair competition.

---

[34] Hengli Gongsi Qingsuan Zu yu Guomao Gongsi, Yuyang Gongsi Qinhai Shangye Jinying Mimi Jiufen An (恒利公司清算组与国贸公司、宇阳公司侵害商业经营秘密纠纷案) [The Liquidation Team for Zhangjiagang Henli Mach. Co. v. Jiangsu Guotai Int'l Grp. Guomao Co. et al.], CIVIL APPLICATION FOR RETRIAL NO. 253 (Sup. People's Ct. 2012). The Liquidation Team for Zhangjiagang Henli Machinery ("Zhangjiagang Henli") brought an infringement claim against defendant Jiangsu Guotai International for using its trade secrets. *Id*. Zhangjiagang Henli alleged that the information regarding Retailers NM Co. and consignee AC Co. as written in contracts constituted trade secrets and Jiangsu Guotai was liable for allowing other parties to use Zhangjiagang Henli's trade secrets. *Id*.

[35] Fujian Baisha Gongsi yu Nan'an Baisha Gongsi Qinfan Qiye Mingcheng (Shanghao) Quan Ji Bu Zhengdang Jinzheng Jiufen An (福建白沙公司与南安白沙公司侵犯企业名称（商号）权及不正当竞争纠纷案) [Fujian Baisha Fire Control Worktrade Co. v. Nanan Baisha Fire-Fighting Equip. Co.], CIVIL APPLICATION FOR RETRIAL NO. 14 (Sup. People's Ct. 2012). Plaintiff Fujian Baisha Fire Control Worktrade ("Fujian") owned the text and graphics of the registered trademark "YUAN HONG." *Id*. Fujian brought an unfair competition claim against defendant Nanan Baisha Fire-Fighting Equipment Co. ("Nanan") for trying to register a trademark on "Baisha." *Id*. Both companies originated from a same collective enterprise in Baisha Town, Nanan City. *Id*. The Supreme People's Court found for Nanan, reasoning that both companies registered as "Baisha" for deep historical reasons and thus Nanan's registration attempt was in good faith. *Id*.

VII. INTELLECTUAL PROPERTY LITIGATION PROCEDURE AND EVIDENCE

35. The Location Where the Goods in Question Were Used by Consumers and Thereafter Seized Does Not Fall Under the "Impounding and Seizure Location" on Which Jurisdiction is Determined

In *Rizhao Jintong Vehicle Manufacturing Co. v. Shenyang Jinbei Vehicle Manufacturing Co.*,[36] the Supreme People's Court held that the "location of impounded and seized goods in question," referred to in Article 6 of the Supreme People's Court *Explanation of Several Legal Interpretation Issues of Civil Trademark Disputes,* does not include the location where the goods in question were used by consumers and thereafter seized.

36. Jurisdiction of Requests for Declaratory Judgment and Patent Infringement Cases Based on the Same Facts

In *Honda Motor Co. v. Shijiazhuang Shuanghuan Automobile Co*.,[37] which involved the design patent jurisdiction dispute of Honda Motor Co. and Shuanghuan Automobile Co., the Supreme People's Court held that requests for declaratory judgment regarding patent infringement and other patent infringement cases filed in different courts, but based on the same facts shall be transferred and tried [in the same jurisdiction]. With respect to territorial jurisdiction, the court of the later filing shall transfer the suit to the court of the earlier filing. With respect to subject-matter jurisdiction, generally the court at the inferior level shall transfer the case to the superior court based on the principle of "higher court prevails over lower court."

[36] Jintong Gongsi yu Jinbei Gufen Gongsi, Jinbei Jituan Gongsi Qinfan Shangbiao Zhuanyong Quan Jiufen Guanxia Quan Yiyi An (金通公司与金杯股份公司、金杯集团公司侵犯商标专用权纠纷管辖权异议案) [Rizhao Jintong Vehicle Mfg. Co. v. Shenyang Jinbei Vehicle Mfg. Co. et al.], CIVIL RETRIAL NO. 109 (Sup. People's Ct. 2012). Plaintiff Shenyang Jinbei Vehicle Manufacturing ("Shenyang Jinbei") brought a trademark infringement claim against defendants Rizhao Jintong Vehicle Manufacturing and Jintong Vehicle Manufacturing. *Id*. Defendants claimed the court lacked jurisdiction. *Id*. The Supreme People's Court ruled in favor of defendants, reasoning the Shenyang Jinbei's interpretation would invite forum shopping. *Id*.

[37] Bentian Zhushi Huishe yu Shuanghuan Gongsi Qinfan Waiguan Sheji Zhuanli Quan Jiufen Guanxia Quan Yiyi An (本田株式会社与双环公司侵犯外观设计专利权纠纷管辖权异议案) [Honda Motor Co. v. Shijiazhuang Shuanghuan Auto. Co.], CIVIL APPEAL NO. 1 (Sup. People's Ct. 2012). Plaintiff Honda Motor Company brought a patent infringement claim in Beijing's Supreme People's Court against defendant Shijiazhuang Shuanghuan Automobile Company. *Id*. The Supreme People's Court transferred this case to the Intermediate People's Court of Shijiangzhuang (Hebei Province), where it was incorporated into another pending case based on similar facts. *Id*. Honda withdrew the case and successfully refiled in the Higher People's Court of Hebei Province. *Id*.

37. Prerequisites for a Patent Administration Department to Accept a Petition for Patent Infringement Dispute Resolution

In *Jiangsu Institute of Microbiology Co. v. Fuzhou Neptunus Fuyao*,[38] the Supreme People's Court noted that if petitioners brings a lawsuit on the same or relevant patent infringement, and the possibility exists of creating conflicting results, the administrative departments charged with patent administration cannot accept a petition for patent infringement dispute resolution, regardless of whether the cases involve the same parties.

---

[38] Wei Shengwu Gongsi yu Fuyao Gongsi, Liaoning Sheng Zhishi Chanquan Ju Deng Zhuanli Qinquan Jiufen Chuli Jueding An (微生物公司与福药公司、辽宁省知识产权局等专利侵权纠纷处理决定案) [Jiangsu Inst. of Microbiology Co. v. Fuzhou Neptunus Fuyao et al.], IP ADMINISTRATIVE APPLICATION FOR RETRIAL NO. 99 (Sup. People's Ct. 2011). The original plaintiff, AGCO, brought a patent infringement claim against a group of defendants including Fuzhou Neptunus Fuyao. *Id*. Jiangsu Institute of Microbiology Company was added as a third party. *Id*. Jiangsu Institute owned a patent entitled "Pharmaceutical Preparation Containing 1-N-ethylgentamicin C1a or its salts and its Preparation Method" and requested that the Liaoning Intellectual Property Office investigate the administrative dispute regarding Jiangsu Institute's patent. *Id*. The Supreme People's Court referenced Section 1, Article 5 of the "Patent Administrative Enforcement Measures (2001)," which provided that a party can request a patent administrative authority to settle a patent infringement dispute only if no party has brought a relevant patent infringement lawsuit to a non-administrative court. *Id*.