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**AFD China is again included in the List of Recommended Reputable IP Firms for 2025 by Capital Intellectual Property Services Association**

AFD China has once again been honored to be included in the List of Recommended Reputable IP Firms for 2025 by the Capital Intellectual Property Services Association (CIPSA), making the third consecutive year of this recommendation.

The CIPSA, in accordance with relevant regulations, conducted a public collection and review process, as well as a council meeting to compile the List of Recommended Reputable IP Firms for 2025. This list is to promote the healthy development of the intellectual property industry, cultivate a good social credit environment, safeguard the legitimate rights and interests of members and the public, guide intellectual property service industry practitioners to be honest and trustworthy, and standardize their practice.

Since its establishment, AFD China has always regarded "trust" as its core value, adhering to the cornerstone of honest service, and thus, earning the trust and praise from

clients. Our consistent inclusion in this prestigious list since 2023 underscores our outstanding performance and commitment to honest services. This renewed recognition not only further validates our long-standing integrity and professional services but also serves as motivation to uphold these principles and strive for excellence. Moving forward, we will continue to uphold a work attitude of integrity and provide our clients with more professional and high-quality intellectual property services. At the same time, we will continue to contribute our efforts to maintaining a good social credit environment and promoting the healthy development of the intellectual property service industry.

**Efforts Strengthened to Protect Trademarks**

China's top intellectual property regulator has rejected 63 trademark applications attempting to capitalize on the popularity of DeepSeek, a chatbot similar to ChatGPT.

The China National Intellectual Property Administration (CNIPA) announced the

decision on Tuesday and published a detailed list of rejected applicants on its website. The applications involved either the name or logo of DeepSeek, an artificial intelligence company based in Hangzhou, Zhejiang province.

As DeepSeek gains attention at home and abroad for its AI reasoning models, the administration said it has received trademark applications from businesses and individuals through IP agencies.

"These agencies were suspected of providing illegal services with the clear intention of 'riding the wave' of AI popularity to seek improper benefits," the administration said, adding that it has taken a strong stance against malicious trademark registrations.

"Our crackdown on such misconduct has continuously intensified in an effort to maintain the order of trademark registration, foster a favorable business environment, support technological self-reliance and promote high-quality development," it said.

Malicious trademark registrations are applications that violate the principles of legitimacy and good faith, including trademark squatting, appropriation and imitation, infringement of others' prior rights, misuse of public resources and mass or repeated registrations in bad faith.

China has been strengthening efforts to curb such registrations nationwide. Earlier this year, the administration guided major livestreaming and e-commerce platforms to protect IP rights while selling authorized products related to the 9th Asian Winter Games.

Shen Changyu, commissioner of the administration, said at a recent news conference that China has set standards for agencies providing trademark and patent registration services to improve the quality of the applications as the number of applicants continues to grow.

On Monday, Rui Wenbiao, head of the Shanghai Intellectual Property Administration,

said the city had more than 2.78 million valid registered trademarks in 2024, a 6.7 percent increase from the previous year. He said Shanghai has established a sound system for protecting key trademarks.

"We have also set up credit profiles for patent and trademark agencies to better stimulate innovation and contribute to a favorable business environment," Rui said.

More measures will be introduced to improve the quality of intellectual property services to further advance China's high-quality development and high-level opening-up, he added.

<http://chinaipr.mofcom.gov.cn/article/centralgovernment/202502/1990612.html>

### **In January 2025, AFD China partnered with the Capital Intellectual Property Services Association for the seventh time to fund impoverished rural students**

On the vast territory of our motherland, the issue of education in remote areas has always been the focus of social concern. Although the children there face numerous difficulties such as resource scarcity and information isolation, their desire for knowledge and their hopes for the future never fade. To help these students in adversity and enable them to enjoy equal educational opportunities, a charitable initiative aimed at assisting disadvantaged students in remote areas is quietly unfolding, with the hope of breaking geographical barriers and lighting up a beacon for the children in remote areas to pursue their dreams.

The Capital Intellectual Property Services Association has been paying close attention to the learning and living conditions of disadvantaged school-age children in Xingwen County for many years, hoping to gather collective strength to support the children in completing their studies, acquiring

skills, and creating possibilities for their future through their own hands. Such acts of spreading warmth and love make us feel the power of unity. We are also honored to be part of this "boat of love". 2024 marks the seventh year that AFD China has participated in the "Light Up Wisdom" student aid project. Among the 90 children planned to be aided, our firm continues to sponsor seven children whom we have been helping for five consecutive years.

Earlier this year, we were delighted to receive a letter of thanks from the Association:

On that distant yet hopeful land, every contribution is an investment in the boundless potential futures of struggling students in remote areas. We deeply understand that educational equity is the cornerstone of social progress, and for those children in remote, resource-scarce regions, the light of knowledge is the guidance they yearn for most. We hope that through our collective efforts, we can build a bridge to their dreams, giving them the opportunity to leave the mountains and embrace a wider world.

Looking ahead, we eagerly anticipate seeing more children from remote areas thrive under the nourishment of love and knowledge and become significant forces driving social progress. Meanwhile, we will continue to focus on the educational issues in remote areas, working together with compassionate fellows to ensure that every heart eager to learn is answered and that the sunshine of education reaches every corner.

Let us join hands to create a sky of hope for the children in remote areas and jointly write a social chapter that is more equitable, inclusive, and filled with love.

### **In January 2025, AFD China and China Changjiang River Charity Foundation Joined Hands Again to "Let the Swan Fly"**

For many years, AFD China has been participating in the "Let the Swan Fly" charity project, supporting the Yanjing Little Swan Public Welfare School by providing funds for the purchase of related materials. Those funds are used to buy textbooks, books, school supplies, teaching aids, cultural and sports equipment, rice, flour, oil, and other necessities, as well as to cover transportation and travel allowances for volunteer teachers. We hope these resources will enable the children to study without any worries.

In 2024, the educational work of the Little Swan Public Welfare School advanced steadily throughout the year, with teaching tasks successfully completed. The school also participated in more volunteer activities, broadening the students' horizons and opening up wider perspectives for them. Meanwhile, the programming education outreach program in rural Henan achieved fruitful results once again. The number of rural primary schools participating in the programming classes increased from 11 in 2023 to 15 in 2024. In June 2024, students from the school once again participated in the "National Youth Information Literacy Competition" which is on the whitelist of nationwide competitions for primary and middle school students. After intense preliminary and semi-final competitions, 11 students made it to the national finals, among whom 8 won awards, including 2 first prizes, 2 second prizes, and 4 third prizes.

Our ability may be limited, but we feel immense happiness in helping those children access better learning resources and witnessing their excellent achievements.

We hope to light the lamp of knowledge for those children and even more so, to plant the seeds of dreams in their hearts. Every heartwarming act of kindness demonstrates great love and social responsibility. We firmly

believe that every contribution will be transformed into the power of knowledge, inspiring the supported students to forge ahead on their future paths, change their destinies through knowledge, give back to society, and pass on love.

In the future, let us join hands and continue to pay attention to and support education, building bridges to dreams for more children in need. We look forward to witnessing the growth and transformation of every supported student and even more, hope that this relay of love can inspire more social forces to participate in the project, creating a positive atmosphere of caring for impoverished students, so that the light of love and knowledge can illuminate every corner.

### **In February 2025, AFD China Continued to Fund Rehabilitation of Children with Cerebral Palsy through the Phoenix Public Welfare Program**

As time goes by, we bid farewell to 2024 gently and embrace the dawn of the new year, with dreams shining ahead and warm memories behind. We wonder how the cerebral palsy child we sponsored has recovered in the past year and what he has gained.

In 2024, the little boy we sponsored, Guo Haozhe, underwent more rehabilitation training. After 11 months of unremitting efforts, his hamstring muscle tone was adjusted to Grade II and his iliacus-psoas muscle tone was also adjusted to Grade II; his standing and walking postures improved, though he still suffered from insufficient muscle strength in his lower limbs, leading to an unstable gait while standing and walking. In terms of learning, he could concentrate for a longer time, maintain focus during class, and made progress in reading comprehension, able to read an entire article fluently. In terms of daily life, he could feed himself and dress and undress independently. He could also

complete household chores such as sweeping the floor and wiping tables.

Zhuangzhuang, who has just turned 14, not only trained himself hard but also kept encouraging younger children, helping them actively participate in their rehabilitation. He hopes more younger children can learn to walk like him. He also vows to train harder to walk more steadily and go further. Zhuangzhuang said he would definitely work hard on his rehabilitation to become a useful person to society!

During the summer vacation of 2024, Zhuangzhuang returned to his hometown and noticed that the roads were still dirt paths, the house remained a brick building, and the bed was still hard. He emotionally expressed that without everyone's help, he wouldn't have been able to come to the Chenguang Rehabilitation Center to learn to walk, nor would he have had the opportunity to study music and art. He couldn't imagine what he might have become without this support. He is grateful for everyone's assistance that has given him a new lease on life! In 2025, we initiated a donation campaign to continue raising funds for Zhuangzhuang's rehabilitation training and living expenses for the year. A total of 91 caring colleagues from our firm donated to support him. The funds raised will be used to cover his rehabilitation, nursing, accommodation, and other expenses for this year.

You are not only participants but also promoters. At this warm and hopeful moment, we express our heartfelt gratitude once again to all our caring colleagues!

The Phoenix Public Welfare Program needs everyone's attention and support! We look forward to joining hands with you to build a bridge of love between people. We are here waiting for you! At this new starting point, let's joyfully embrace the next splendid journey together.

**CNIPA Deputy Commissioner Meets with  
InterDigital CEO**

Hu Wenhui, Deputy Commissioner of the CNIPA, met in Beijing with Liren Chen, President and CEO of InterDigital recently. The two sides held in-depth discussions on intellectual property (IP) protection and application, technology standardization, and the latest practices regarding standard essential patents (SEPs).

Hu emphasized that IP is a key factor in optimizing the business environment and is increasingly gaining attention from both Chinese and foreign enterprises. He stated that the Chinese government has always taken a clear stance on strengthening IP protection, aiming to provide a fair, transparent, and predictable innovation environment for Chinese and foreign enterprises. Looking ahead, the CNIPA will continue to communicate with rights holders worldwide with an active and open attitude.

Chen commended China's efforts in fostering a more open and fair IP protection environment and a good business environment. He expressed hope to maintain channels of communication with the CNIPA.

[https://english.cnipa.gov.cn/art/2025/3/6/art\\_1340\\_198013.html](https://english.cnipa.gov.cn/art/2025/3/6/art_1340_198013.html)

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## SUPPLEMENTARY ISSUE

### **Judgment on the Disclosure Date of Prior Designs**

In the absence of corroborating evidence, the "date of production" indicated on the nameplate of a prior design as physical evidence generally cannot be directly determined as the "disclosure date through sale" or the "disclosure date through use."

Fujian A Company is the patentee of the design patent for a fully automatic block forming machine (T10VA). On August 20, 2020, Company B in Gaotang County requested the CNIPA to declare the patent entirely invalid, citing as a primary reason that the patent did not comply with the provisions of Article 23, Paragraphs 1 and 2 of the Patent Law as amended in 2008. On April 26, 2021, the CNIPA issued a decision on the case, stating: Upon verification, Evidence 6 shows no apparent formal defects. Based on Evidence 6, it can be confirmed that there was a block forming machine in a production workshop near the village committee of a village in Hebei Province. Regarding the date of production of the machine, since the nameplate on the machine is technically detachable, and in the absence of other corroborating evidence such as sales contracts, invoices, delivery notes, warranty cards, or maintenance records, it is difficult to ascertain a definitive correspondence between the information on the nameplate and the machine itself. Therefore, the date of production of the machine cannot be determined solely based on the nameplate. Consequently, the design of the block forming machine shown in Evidence 6 cannot be considered a prior design for this patent. Company B's argument regarding using Evidence 6, in combination with other evidence, to assess whether the patent complies with Article 23, Paragraph 2 of the Patent Law, was deemed invalid. As a result, the CNIPA decided to uphold the validity of the patent.

The first-instance court issued an administrative judgment dismissing Company B's claims. Dissatisfied, Company B filed an appeal. On September 14, 2023, the Supreme People's Court issued a final administrative judgment, dismissing the appeal and upholding the original judgment.

The effective judgment of the court held that Article 23, Paragraph 4 of the Patent Law stipulates: "The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad." The phrase "known to the public" refers to a state where the design is available for public access at their wish, regardless of whether the public has actually known it. Means of making a design available to the public include "publication" and "other forms of disclosure" (such as use, sale, or exhibition). In this case, whether the design of the machine in Evidence 6 could be considered a prior design for the patent involved two issues: 1) whether the nameplate on the machine could be accepted as credible evidence, and 2), if the nameplate were accepted, whether the date of production "August 29, 2014" recorded on the nameplate could be identified as the date the machine's design was made known to the public.

First, regarding the credibility of the nameplate on the machine, the contested decision held that since the nameplate is technically detachable, and in the absence of other corroborating evidence such as sales contracts, invoices, delivery notes, warranty cards, or maintenance records, it was difficult to establish a definitive correspondence between the information on the nameplate and the machine. Additionally, Fujian A Company argued that the information on the nameplate was contradictory and that counterfeit block forming machines were prevalent, and it had not sold such equipment to Hebei Province. The court, however, ruled that the nameplate on the machine should be accepted as credible. On one hand, the facts regarding which entity sold the machine to another and which entity currently possesses and uses it are unrelated to the credibility of the nameplate. In other words, sales contracts, invoices, and delivery notes are irrelevant to

determining the authenticity of the nameplate. On the other hand, although the nameplate is technically detachable, considering that the nameplate is a form of an identification marker for large machinery and is designed to be permanently fixed in terms of installation location and fixation methods, it is difficult to remove and replace it without leaving traces, which is different from machine components that are consumables and require replacement. Moreover, regarding the allocation of the burden of proof, Company A should bear the burden of proof if the nameplate has been removed and replaced, however, Company A did not provide any evidence or a reasonable explanation regarding this issue throughout the invalidation proceedings, the first-instance trial, and the second-instance trial. Furthermore, regarding Fujian A Company's claim that they did not sell block forming machines to Hebei Province and that the manufacture serial number (T10A) on the nameplate contradicted the equipment model (T10VA), the court noted that machinery is movable property and can be legally transferred. Thus, even if Fujian A Company did not sell this model of machine to Hebei, this alone does not prove that the machine in Evidence 6 was counterfeit. As for the alleged contradiction between the manufacture serial number (T10A) and the equipment model (T10VA), the full manufacture serial number was T10A14015, indicating a different format rule for manufacture serial numbers compare to equipment models, but the shared element "T10" is consistent. Yet, Fujian A Company did not provide evidence or a reasonable explanation regarding how they produced nameplates for its block forming machines or how manufacture serial numbers were assigned. In summary, in combination with Fujian A Company's admission during the second-instance trial that it had been selling T10VA block forming machines on the market since 2014, the nameplate on the machine should be accepted as credible.

Second, regarding whether the date of production "August 29, 2014" recorded on the nameplate could be identified as the date the machine's design became known to the public, Company B argued on appeal that the date of production on the nameplate is the publication of the machine's design. However, the court held that the concept of "date of production" primarily pertains to Product Quality Law, and is used for warranty period calculations and carries no specific legal significance in Patent Law. It cannot be simply equated to the "disclosure date through sale" or the "disclosure date through use" and must be assessed based on the specific cases.

In this case, the T10VA block forming machine is a large piece of equipment that requires transportation, assembly, and other processes after manufacture before its design can be fully presented and available to the public at their wish. Therefore, on one hand, the date of production on the nameplate does not indicate that the block forming machine had been assembled and presented in its complete form by that date, so it cannot be deemed the "disclosure date through sale." On the other hand, the filing date of the patent is December 26, 2014, and Company B provided no evidence proving that the machine in Evidence 6 was assembled and put into use before the patent's filing date. Thus, the date of production on the nameplate cannot be deemed the "disclosure date through use." Consequently, based on the totality of evidence in this case, the date of production "August 29, 2014" recorded on the nameplate cannot be determined as the date the machine's design was made known to the public.

In conclusion, the design of the machine in Evidence 6 cannot be considered a prior design for this patent in the invalidation proceedings.

(2022) Zui Gao Fa Zhi Xing Zhong No. 393

**Reasonable Allocation of Burden of Proof in Determining the "Secrecy" of Technical Secrets; Innovative Injunction Order for Unlisted Public Companies to Issue Public Announcement**

The Supreme People's Court made a final judgment on the appeal filed by the Appellant Company A against the Appellees Natural Person X, Company B, Company C, and Natural Person Y regarding a dispute involving infringement of technical secrets. This case reasonably allocated the burden of proof in determining secrecy, and ultimately reversed the judgment to find the Appellees liable for infringing the technical secrets in question, ordering them to bear joint liability for infringement and applying punitive damages accordingly. Meanwhile, the judgment in this case proactively explored the specific ways for unlisted public companies to bear the responsibility to cease infringement. The infringing parties actively fulfilled the relevant obligations after the judgment, bringing a conclusion to this five-year-long technical secret dispute.

X, a shareholder of Company A, held the technical secrets of the manufacturing process of a synthesizing resin which replaced emulsifiers (also known as emulsions) with nano materials and water-based anti-corrosive coatings made with this synthetic resin. X had signed a confidentiality agreement with Company A. From 2014 to 2015, Company A introduced water-based rust-resistant coating products to the market. In 2016, Company A learned from Company B's annual report that X had transferred relevant technology to Company B for CNY 5.1 million, contributing to increased revenue from "rust-resistant emulsion" and "water-based rust-resistant coating" at Company B. Company A alleged that X violated the confidentiality agreement by transferring the involved technology without consent and filed a lawsuit with the first-instance court, claiming that X, Company B, Company C (a subsidiary of Company B), and Y (the actual controller of Company B at the time) collectively infringed Company A's technical secrets, seeking cessation of infringement, apology, and joint compensation for economic losses and legal expenses from the defendants.

The first-instance court held that: Company A's technical information was neither sufficient nor clear, and there was evidence suggesting potential public knowledge of the information. Despite bearing the burden of proof regarding the secrecy of the technical information, Company A still explicitly insisted on not applying for an appraisal to determine whether the claimed technical information was "not known to the public." As a result, the Court ruled that Company A should bear the legal consequences of failing to provide sufficient evidence, and dismissed all of Company A's claims. Dissatisfied with the ruling, Company A filed an appeal.

In the second instance, the Supreme People's Court held that: 1) The technical information claimed by Company A was specific and clear, and had been used to produce products that were subsequently launched into the market. X had a confidentiality obligation concerning the formula content in the aforementioned information, which involved preparing emulsions and coatings using nano materials (excluding nano material-related technology) instead of emulsifiers. In determining whether the technical information possessed secrecy, the burden of proof should be reasonably allocated in accordance with the law, taking into comprehensive consideration the evidence provided by all parties, particularly the formation process of the technical information in question, whether the right holder submitted evidence demonstrating the implementation of corresponding confidentiality measures, whether there was preliminary evidence proving that the alleged infringer had committed the infringing act, and whether the alleged infringer submitted sufficient rebuttal evidence. Where the right holder's evidence complies with the provisions of Article 32(1) of the Anti-Unfair Competition Law as amended in 2019, and the alleged infringer had ample opportunity to submit rebuttal evidence, it is inappropriate to simply dismiss the right holder's claim regarding the secrecy of the technical information solely on the ground that the



right holder did not apply for judicial appraisal. Based on a comprehensive analysis of the evidence on record, the technical information claimed by Company A possessed secrecy prior to the accused infringement and constituted a technical secret protected by the Anti-Unfair Competition Law. 2) The evidence provided by Company A demonstrated that it had implemented confidentiality measures for the claimed technical secrets. Furthermore, the evidence indicated that the "nano material technology for emulsion synthesis and the technology for emulsion synthesis and coating formulation using such nano materials" transferred by X to Company B was highly related to the technical secrets claimed by Company A, as both involved the use of nano materials as surfactants to prepare emulsions. Within less than two months of acquiring the relevant technology, Company B, in collaboration with Company C, launched new anti-rust emulsion and water-based anti-rust coating products, and Company B paid X the corresponding contractual consideration. This preliminary evidence reasonably indicated that the technical secrets claimed by Company A had been infringed. When requested by the second-instance court, Company B failed to provide effective evidence proving the lawful origin of the technology it used. Y, through Company B that he actually controls, established Company C with X. Despite being aware of his confidentiality obligations to Company A, X transferred the technology containing technical secrets to Company B, which was controlled by Y, and permitted Company B and Company C to use it. X, Company B, Company C, and Y were subjectively at fault and jointly engaged in acts infringing the technical secrets owned by Company A, constituting joint infringement. 3) As an unlisted public company quoted on the National Equities Exchange and Quotations, Company B, which illegally obtained and used another party's technical secrets, causing significant losses, had an obligation to disclose the circumstances of this lawsuit in accordance with the law, effectively prevent further infringement and the expansion of damages, and provide necessary risk warnings to public investors. 4) As to infringement acts occurred between 2016 and the end of June 2019 as claimed by Company A, for the infringement between 2016 and April 22, 2019, the compensation amount was determined to be CNY 2 million. For the infringement between the effective date of the amended Anti-Unfair Competition Law (April 23, 2019) and June 30, 2019, punitive damages may be applied, where the compensation basis was determined to be CNY 200,000, and a one-time punitive multiplier was applied. Accordingly, the total compensation amounted to CNY 2.4 million, and reasonable litigation expenses of CNY 50,000 were also supported. 5) To ensure that all accused infringers promptly and fully cease their infringing acts, a delay penalty of CNY 10,000 per day was imposed for any delay in fulfilling the non-monetary obligations under this judgment.

In this case, by correctly applying the provisions of Article 32(1) of the Anti-Unfair Competition Law regarding the burden of proof for trade secrets, and comprehensively considering the evidence presented by all parties, the court lawfully revised the judgment to recognize the existence of a technical secret, thereby safeguarding the legitimate interests of the rights holder. Punitive damages were appropriately assigned for infringement liabilities, and a directive for the unlisted public company to issue an announcement about disclosing the circumstances of the litigation was issued. This judgment also made proactive and constructive explorations in defining the specific implementation of civil liability for ceasing infringement and the calculation standards for delay penalties for non-monetary obligations. This fully demonstrates the stringent protection of intellectual property rights.

(2022) Zui Gao Fa Zhi Min Zhong No. 2775

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## **Determination of Protection Subject of the Exclusive Right of Layout Design and its Commercial Utilization**

The Supreme People's Court (SPC) solved an appeal case over the infringement of the exclusive right of an integrated circuit layout design, which involved the judgment of protection subject of the exclusive right of the layout design that does not contain an active component and the determination of commercial utilization of the layout design.

Company A filed a lawsuit claiming that through public research, it found that there were product manuals of the alleged infringing chip online, containing the watermark of Company B, and that the content of manuals was completely copied from the product specifications of its chip enjoying the layout-design right (the protected layout design). By comparing the layout design of the accused infringing chip to the protected layout design, it found that the layout design of the accused infringing chip manufactured and sold by Company B is completely identical to the protected layout design. Thus, Company A deemed that Company B's infringement caused major damages to Company A and requested the Court to order Company B to immediately cease the infringement of Company A's exclusive right to the integrated circuit layout design, destroy the accused infringing products, and compensate Company A for economic losses. Company B argued in the first instance that Company A's exclusive right to the protected layout design does not comply with the relevant provisions of the "Regulations on the Protection of Layout-Designs of Integrated Circuits" (hereinafter referred to as the "Layout Design Regulations") and should be revoked. Firstly, based solely on the 12 layers submitted by Company A, it is not possible to present the three-dimensional configuration of the active component, which does not comply with the provisions of Article 2, Paragraph 2 of the Layout Design Regulations. Secondly, the application date of the protected layout design is October 24, 2017, and the commercial utilization time of the chip corresponding to the protected layout design is earlier than October 24, 2015, i.e. two years before the application date, which does not comply with Article 17 of the Layout Design Regulations. Thirdly, all of the 9 original points claimed by Company A cannot be established, and the protected layout design lacks originality.

The first-instance court found that the layout design is owned by Company A and filed on October 24, 2017. The registered sample of the layout design has 12 layers in total, and the first-instance court obtained the electronic layout design of Company A from the CNIPA. Company B recognized that the accused infringing chip was a chip product produced by it, and confirmed that the layout design of the accused infringing chip was basically the same as the layout design that Company A registered in the CNIPA. However, Company B argued that the layout design of the accused infringing chip was achieved through reverse engineering.

The first-instance court held that: When determining whether the accused act constitutes infringement, the first step is to determine the protection scope of the protected layout design. The protected layout design should meet the three-dimensional configuration for layout designs being components and circuits and have at least one active component. The layout design submitted by Company A for registration does not contain any active components and does not meet the basic definition of layout design. Although the layout design has obtained exclusive rights and is still in a valid state, it cannot be the subject of exclusive rights to the layout design, nor be protected by exclusive rights to the layout design because it does not belong to a three-dimensional configuration of components and circuits for performing certain electronic functions. Therefore, the court ruled to dismiss the lawsuit request of Company A.

Company A was dissatisfied and filed an appeal.

The SPC additionally found in the second instance that Suzhou C Company submitted an "Explanation on Chip Commissioned Processing Units" to the first-instance court, which recorded that Suzhou C Company delivered 25 batches of protected layout design chip wafers to Company A from March 24, 2014 to October 13, 2015. Even if the batches required for the tape-out stage are excluded, and other batches are calculated based on the industry practice of 25 wafers per batch and 7000 chips per wafer, the total number of chips should be around 3 million.

The SPC holds that although the 12-layer layout design submitted by Company A does not contain active components, it shows the three-dimensional configuration relationship between active components and circuits, thus clarifying its interface with active components. In the case of using standardized components from wafer factories, the protected layout design can already achieve the corresponding circuit functions. Therefore, it can be deemed that the protected layout design belongs to a three-dimensional configuration of a circuit with two or more components, at least one of which is an active component, and all or part of them are interconnected.

Rule 17 in the Layout Design Regulations stipulates that where no application for the registration of any layout-design has been filed with the intellectual property administration department of the State Council within two years from the date on which it was first commercially exploited anywhere in the world, the intellectual property administration department of the State Council shall refuse to register such a layout-design. In this case, Company A continuously commissioned Suzhou C Company to manufacture chips containing the protected layout design from March 24, 2014 to October 13, 2015. Based on the numbers of commissions and chip quantities, it is evident that the number of commissions exceeded the requirements for tape out. Therefore, it should be determined that the protected layout design was put into commercial use before October 24, 2015. The layout design registered by Company A cannot be protected in this case due to serious defects in its right.

The second instance judgment of this case has a certain reference value for further clarifying the trial ideas of integrated circuit layout design infringement cases and is also conducive to the development of the chip industry and the orderly competition of related enterprises in good faith.

(2022) Zui Gao Fa Zhi Min Zhong No. 2133

### **The Effect of the Coordination Relationship between the Distinguishing Technical Features and Other Technical Features on Judgment of Improvement Motivation**

When determining inventiveness, if there is a coordination relationship between the technical features in the claimed technical scheme that is distinguishing from the closest prior art and other technical features, and the distinguishing technical features produce the technical effects and solve technical problems based on technical effects produced by other technical features, but the corresponding technical features in the closest prior art cannot produce the same technical effect based on its invention purpose and invention conception, the personnel skilled in the art usually would not have the motivation to improve the prior art, and so the claimed technical scheme is not obvious to those skilled in the art.

Zhenjiang A Company is the patentee of the utility model patent for a heat dissipation substrate and a sealed PTC thermistor heater (the disputed patent). On January 3, 2020, the natural person X filed an invalidation request against the disputed patent. The CNIPA made the examination decision on the invalidation request on July 9, 2020, holding that claim 1 in the disputed patent possesses inventiveness and the disputed patent is maintained. X was

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

The first-instance court held that based on evidence 1 and their knowledge and capability in the art, those skilled in the art could obtain Claim 1 in the disputed patent without inventive work. Claim 1 in the disputed patent does not possess inventiveness. Therefore, the court made a first-instance administrative judgment as follows: 1) the challenged examination decision on invalidation request made by the CNIPA is revoked; and 2) the CNIPA is requested to make an examination decision on invalidation request anew. Zhenjiang A Company filed an appeal. The SPC made a final administrative judgment as follows: 1) the first-instance administrative judgment is revoked, and 2) X's lawsuit claims are rejected.

The effective judgment of the Court held that if there is a coordination relationship between the distinguishing technical features and other technical features, and the technical effects produced by the distinguishing technical features and technical problems solved are based on the technical effects produced by other technical features, but the corresponding technical features in the closest prior art cannot produce the same technical effect based on its invention purpose and invention conception, the personnel skilled in the art would not have the motivation to improve the prior art, the claimed technical scheme is not obvious to those skilled in the art.

The technical feature in claim 1 in the disputed patent distinguishing from evidence 1 is that "outer walls on the left and right sides of the cavity are the groove-shaped structures extending along the length direction of the cavity". According to the description of the disputed patent, the inner surfaces on both sides of the accommodating cavity between the positioning ribs are outwardly protruding curved surfaces, and when the cavity is pressed, the side walls of the cavity are deformed outwardly under force, and the groove-shaped structure provides deformation space. Therefore, the technical effect brought by the groove-shaped structure to the disputed patent is closely related to the spatial requirement of the outward deformation of the cavity sidewall generated by the aforementioned outwardly protruding curved surfaces. Accordingly, the technical problem actually solved by claim 1 in the disputed patent over evidence 1 is to provide the outward deformation space when the cavity is pressed. However, according to the description of evidence 1, the technical problem to be solved by evidence 1 is the uneven force on the aluminum tube in the width direction when pressing the aluminum tube, due to the overlapped position space of the overall PTC heating core in the aluminum tube, which may cause the PTC heating core to not be in the middle position in the width direction when pressing the aluminum tube. To maintain PTC heating core in the middle of the aluminum tube in the width direction, positioning bars are provided on the sidewalls in evidence 1 to limit the movable space of PTC heating core in the width direction of the aluminum tube.

If the sidewalls in evidence 1 overall are outwardly protruding during pressing, the positioning bars will definitely move outside, which enlarges the distance between the positioning bars and the PTC heating core, as well as the movable space of the PTC heating core in the aluminum tube. This will make it hard to keep the PTC heating core in the middle of the aluminum tube in the width direction, which is against the invention purpose of evidence 1. Considering that the outer surface of evidence 1 is an inwardly concave curved structure, although the inner surface of the cavity between the positioning bars is an outwardly protruding curved surface, it will not produce the technical effect of outward deformation after the sidewall of the cavity is subject to force, and therefore, there wouldn't be the problem that accommodation space is needed after the sidewall is deformed outwardly. The personnel skilled in the art wouldn't have the motivation to make an improvement based on evidence 1 by arranging groove-shaped structures on both sides of the outer wall to provide accommodation space for outward deformation. The prior art neither discloses the groove-shaped structure in claim 1 of the disputed patent, nor does it

provide a technical teaching, and there is no evidence proving that providing a groove-shaped structure on the outer wall of the cavity is a technical means easily conceived by those skilled in the art. In conclusion, the prior art does not provide a teaching to apply the distinguishing features to evidence 1 to solve its existing technical problem.

(2021) Zui Gao Fa Zhi Xing Zhong No. 1226

**Selling Infringing Seeds Using “White Bags” Lead to Treble Punitive Damages;  
Shareholder with Financial Commingling with the Company Held Joint Liable**

The Supreme Court made a final ruling in a dispute over the infringement of plant variety. Regarding the infringing party producing and selling propagating materials of the authorized variety without the right holder’s authorization and using “white bags”, the Supreme Court established the compensation basis by applying a multiple of the license fee and imposed treble punitive damages. In addition, the shareholder whose personal finance was commingled with the finance of the infringing party was ruled to bear joint liability. Subsequently, the infringing party proactively paid the compensation as per the effective ruling, and this case was properly resolved.

Anhui A Company was granted exclusive rights to implement the disputed plant variety in Anhui Province on May 24, 2019, and was entitled to protect the right in its own name. Anhui A Company entrusted B Company in Lixin County to produce seeds from September 20, 2019, to June 30, 2020, and subsequently committed B Company to sell propagating materials of the authorized variety. During the cooperation, Anhui A Company charged B Company at a rate of CNY0.20/kg as a licensing fee for utilizing the variety, with B Company using package bags supplied by Anhui A Company at a price of CNY1/bag. In September 2021, Anhui A Company uncovered unauthorized sales of propagating materials of the disputed variety using “white bags” by B Company in Anhui Province and collected relevant evidence. In addition, a natural person X, a 50% shareholder in B Company, funneled revenues into his personal bank account. Meanwhile, X, representing B Company, signed contracts with Anhui A Company and performed business multiple times, during which he used his personal bank account, which is also used for his daily finances, to receive B Company’s revenue. Anhui A Company filed a lawsuit to the first-instance court against the infringement of the plant variety, requesting to order B Company and X to stop the infringement and to bear the joint liability of punitive compensation.

The first-instance court determined that B Company constituted the infringement and that X was performing his duty, so the court ordered B Company to stop the infringement and to compensate Anhui A Company for economic loss and reasonable expenses. Anhui A Company and B Company both were dissatisfied and filed appeals.

In the second instance, the Supreme Court determined that, despite being aware of Anhui A Company’s exclusive rights to use the disputed variety in Anhui Province, B Company proceeded to produce and sell propagating materials of the variety using “white bags” without Anhui A Company’s authorization. The court also deemed that B Company’s sale of the authorized variety with package bags without any signs and labels constituted a serious infringement circumstance warranting punitive compensation. The basis of punitive compensation can be calculated with reference to a reasonable multiple of the license fee. The second-instance judgment specified that, in the licensed use of the variety, the licensor customarily supplies package bags bearing the variety name, and since the variety name involved in the seeds labels on package bags is closely linked to the variety license, charging for package bags that indicate the variety name is also an important means to achieve the economic benefits of the variety rights. In determining the license fee of the variety, right holders can include charges for the package bags alongside the

agreed license fee to form the overall license fee. In this case, the parties mutually agreed upon the license fees based on seed weight, which can reflect the economic benefits of the variety in a relatively objective manner, and can be considered in determining the compensation in this case. Based on the inspected infringement scale, B Company should have paid CNY40000 to Anhui A Company for using the variety and CNY13000 for the package bags, totaling CNY53000. Given the unauthorized nature of the production and sale in question, which is different from the license agreed via negotiation under normal market setting, the license fee shall be raised slightly. The second-instance court determined twice the license fee, amounting to CNY106000, as the compensation basis. In addition, considering the severe circumstance where B Company used “white bags” to sell the infringing seeds and B Company’s dishonesty with state the scale of its alleged infringement during the legal proceedings, the court imposed treble damages as a punitive compensation. Consequently, the second-instance court ordered B Company to compensate Anhui A Company economic loss of CNY424000 and reasonable expenses of CNY10000.

X, who holds 50% share in B Company and is the brother of fellow shareholder Y, exercises full control alongside Y over B Company. In the long-term cooperation between B Company and Anhui A Company, X used his personal bank account multiple times to conducted transactions with Anhui A Company and also used this account for his daily use, intermingling personal finance with B Company’s finance. In addition, X did not provide any evidence to prove that B Company recorded the payments made to X in its financial records or other facts that exclude the financial commingling. After comprehensively considering said factors, the commingling of finances between X and B Company occurred, leading to an abuse of the independent status of B Company, which could severely damage the creditor’s interests. Therefore, X shall bear joint responsibility.

In this case, a reasonable multiple of the license fee served as the basis of punitive damages, which is a refined implementation of a punitive compensation measure in the variety protection and a full performance of the deterrence of this measure in the variety protection. Meanwhile, the second-instance court ordering the shareholders whose personal finance was commingled with the company’s finance to bear the joint responsibility is favorable for encouraging market entities to conduct their operations in compliance with the law.

(2022) Zui Gao Fa Zhi Min Zhong No. 1742

### **Determination of Implicit Restricted Trading by Public Utility Operators**

The restricted trading behavior prescribed by the Anti-Monopoly Law can be explicit and direct or implicit and indirect. In the event that an operator with a dominant market position is a public utility operator for water supply, power supply, or gas supply or belongs to other operators with statutory market exclusivity, which allows it to cast greater influence on market competition, if in relevant transactions, the operator exclusively recommends specific trading objectives or solely discloses information about specific trading partners, based on which it is difficult for the transaction counterparty to choose other operators for transactions, it usually can be preliminarily deemed that restricted trading has been essentially implemented.

In a dispute over abusing dominant market position between the Appellant Weihai A Company and the Appellee Weihai B Group, Weihai A Company, a real estate developer in Weihai City, Shandong Province, filed a lawsuit to the court of first instance requesting Weihai B Group to

compensate its damages caused by Weihai B Group's abusing its dominant market position and reasonable expenses.

In the first instance, the court held that Weihai B Company has a dominant market position in water supply and the construction and management of sewage facilities in the urban district of Weihai City, but the existing evidence cannot prove that it has restricted trading. Thus, the court rebutted the legal requests of Weihai A Company. Weihai A Company, dissatisfied with the judgment, appealed to the SPC.

The SPC, deeming that Weihai B Group implemented restricted trading behaviors, revoked the first-stance judgment on June 23, 2022, and ruled Weihai B Group to compensate reasonable expenses that Weihai A Company incurred for investigating and preventing the monopoly behaviors.

In the second instance, the SPC held that trading restriction behaviors banned by Item 4 of Paragraph 1 of Article 17 of the Anti-Monopoly Law refer to the operator with market dominance restricting the transaction counterparty to only trade with it or operators designated by it through direct means or implicit means, such as setting transaction conditions. Such trading restriction behaviors damage the legal rights and interests of the counterparty and break normal marketing orders and competence mechanisms. In this case, Weihai B Group implemented monopoly behaviors of restricting trading. Detailed analysis is as follows:

First, Weihai B Group provided a Service Guide for Water Supply and Drainage Business of Municipal Water Group with the intention and contents of restricting transactions. When determining whether an operator restricts the transaction counterparty to exclusively trade with it or operators designated by it, the key is whether the operator essentially restricted the transaction counterparty's freedom to choose. The trading restriction behavior can be explicit and direct or implicit and indirect. In the event that an operator with a dominant market position is a public utility operator for water supply, power supply, or gas supply or belongs to other operators with statutory market exclusivity, which has characteristics of both market operation and industrial management, it could cast greater influence on market competition. If in relevant transactions, the operator exclusively recommends specific trading objectives or solely discloses information about specific trading partners, based on which the transaction counterparty can hardly choose other operators, it usually can be preliminarily deemed that restricted trading has been essentially implemented.

In this case, Weihai B Group has a dominant market position in water supply facility construction in the urban district of Weihai City, Shandong Province. Meanwhile, it is not only the sole operator providing public water supply service in the urban district of Weihai City, but also bears the public utility management responsibility of auditing and accepting water supply facilities. When Weihai B Group carries out water supply and drainage business, its exclusive indication of contacts and information about itself and its subsidiaries, without informing or reminding the transaction counterparty of other qualified water supply and drainage implementation companies in option, implicitly restricts that only the design and construction units that it designates can handle the design and construction of water supply and drainage system in newly construction projects, in other words, it may cause the transaction to inwardly worry that if they do not use the designated design and construction units, they may encounter with inconvenience in water supply facility auditing, acceptance, and other management procedures. Therefore, Water B Group may be deemed as having a subjective intention and having provided relevant objective content to restrict transactions.

Secondly, the alleged monopoly acts of Weihai B Group have an actual effect of restricting and limiting competition. Based on the existing evidence in this case, Weihai B Group can be deemed as having market dominance in the urban water supply construction market in the urban district of Weihai City, and its market power in the said market inevitably affects the water supply facility construction market. Its behavior of only disclosing contacts and information about itself and its subsidiaries when accepting the municipal business of water supply and drainage not only excludes and limits other qualified design and construction companies' equal opportunity to attend the market competition in the urban water supply facility construction market in the urban district of Weihai City, but also deprived the freedom to choose of the real estate developer with new projects having water supply and drainage demands, which causes that Weihai B Group intensively accepts large quantity of water supply and drainage design and construction business in water supply facility construction market in the urban district of Weihai City, resulting in more evidently effect of anti-competition.

Thirdly, Weihai B Group lacks justifiable reasons and accordance. Urban public water supply services, having public utility characteristics, on the one hand, have higher requirements on quality and security, and on the other hand, naturally have monopoly characteristics due to the government's designation as the sole enterprise for operation. However, the water supply construction market, which closely relates to water supply service, is open to competition. In principle, any party that meets qualification requirements and follows the relevant technical standards and regulations of the state shall be allowed to enter the market for fair competition. Weihai B Group not only has market dominance in the water supply construction market in the urban district of Weihai City, but also as a public utility company, is the exclusive urban water supply service provider in the urban district of Weihai City and bearing the management responsibility of water supply municipal services such as auditing and accepting water facility. When it and its subsidiaries attend the competition in the water supply facility construction market in the urban district of Weihai City, it bears a higher level of special attention obligation of not excluding or limiting competition. When indicating contacts and information about itself and its subsidiaries in the Service Guide, Weihai B Group shall simultaneously list information of other qualified enterprises in the same way or indicate that users that need water supply and drainage services have the full freedom to choose other operators via other explicit and reasonable ways. Weihai B Group claimed that its indicating of information of itself and its subsidiaries in the Service Guide was to provide convenient services, but not to restrict trading. However, as analyzed above, its relevant behavior has essentially excluded or limited other operators from attending the competition in the water supply facility construction market in the urban district of Weihai City. Thus, this claim of Weihai B Group can hardly be established and is not supported.

(2022) Zui Gao Fa Zhi Min Zhong No. 395

### **Anyone Who Abuse the Right to Sue Shall Bear the Counterparty's Reasonable Litigation Expenses**

The SPC made a final ruling on the case of invention patent infringement and the damages caused by malicious intellectual property litigation between the Appellant Zhuhai A Company and the Appellees Shanghai B Company and Shanghai C Company, where the negative response behavior of Zhuhai A Company after the appeal was handled as the withdrawal of the appeal, and at the same time, Zhuhai A Company was ordered to bear the reasonable expenses incurred by the other party in the second-instance litigation on the basis of the first-instance judgment.

Zhuhai A Company acquired the invention patent in the case through assignment in 2017. In 2021, Zhuhai A Company filed this lawsuit, requesting Shanghai B Company and Shanghai C



Company to immediately stop the infringement and to jointly compensate for economic losses and reasonable expenses. Shanghai B Company filed a counterclaim, believing that Zhuhai A Company abused its patent, and requested to compensate losses such as attorney fees and notarization fees caused to it by malicious litigation. After trial, the first-instance court held: First, Zhuhai A Company had sued Shanghai B Company and Shanghai C Company based on the same patent and the same alleged infringing product in a previous case in 2019. The alleged infringement claimed by Zhuhai A Company in this case occurred before the judgment of the previous case. The structure and model of the alleged infringing product are the same as those in the previous case, and the production date is also earlier than the production date in the previous case. Therefore, Zhuhai A Company has no right to file this lawsuit again. Secondly, when Zhuhai A Company filed the previous case, it was aware of the existence of the infringement alleged in this case and had already made claims in the previous case, but did not submit the physical object of the alleged infringing product in this case. In the absence of evidence to prove that Shanghai B Company and Shanghai C Company have continued the infringement or committed new infringements, Zhuhai A Company's re-filing of this lawsuit evidently violates the principle of good faith and constitutes the abuse of rights. Based on this, the first instance court ruled to dismiss Zhuhai A Company's lawsuit, support the counterclaim of Shanghai B Company, and order Zhuhai A Company to compensate for the loss of attorney fees. Zhuhai A Company, dissatisfied with the first instance judgment, filed an appeal.

After accepting the case, the SPC served the court summons to Zhuhai A Company twice, but it did not appear in court to participate in the lawsuit, while Shanghai B Company and Shanghai C Company did. Shanghai B Company spent the litigation agency fees and necessary transportation expenses on the second-instance litigation activities and explicitly claimed Zhuhai A Company to afford the above-mentioned additional reasonable expenses.

The SPC held that since the Appellant Zhuhai A Company refused to appear in court without a justifiable reason after being summoned by the summons, this case should be treated as the appeal having been withdrawn. The first-instance judgment took effect after the second-instance ruling was served, including the content of the determination that Zhuhai A Company constituted the abuse of patent. Based on this, Zhuhai A Company should compensate Shanghai B Company for the reasonable expenses paid for this litigation. Although Shanghai B Company did not appeal, it clearly claimed in the second instance that Zhuhai A Company should bear the additional expenses incurred during the second instance. This claim and the claims of compensation request in the counterclaims against the first instance are both based on the fact that Zhuhai A Company abused its rights. Given the circumstance where the first-instance court ruled to dismiss Zhuhai A Company's legal requests and support Shanghai B Company's counterclaims, Zhuhai A Company should execute its legal right to sue more proactively after filing the appeal. However, in the written appeal, Zhuhai A Company did not mention any substantive reasons for believing that there are errors in factual determination or law application in the first-instance judgment, except for the reasons such as "the first-instance court did not form a trial record", "the first-instance court refused to provide the audio and video materials of the trial when it applied", and "local protectionism". In addition, Zhuhai A Company could have exercised its litigation rights by having its legal representative or entrusted litigation agent participate in the litigation and explain the specific reasons for the appeal, but refused to appear in court to participate in the litigation after the court served the subpoena in accordance with the law. Based on the above facts, Zhuhai A Company did not exercise its litigation right actively and properly and constituted a continuous abuse of its rights in the second instance, which actually increased the burden on Shanghai B Company. Based on this, the SPC made a final ruling that the case should be treated as Zhuhai A Company has withdrawn its appeal, and at the same time, Zhuhai

A Company should pay the reasonable expenses that Shanghai B Company spent on the second instance.

The final ruling of this case clearly stated that if a party concerned abuses its patent and causes direct losses to the counterparty in the litigation, in order to reduce unnecessary litigation, the people's court may, based on the claims of the counterparty without fault, order the party abusing its rights to bear the reasonable expenses incurred by the other party in the litigation. The handling of this case highlights the judicial concept of protecting integrity, guiding the parties concerned to conduct litigation in good faith, and preventing the abuse of rights.

(2023) Zui Gao Fa Zhi Min Zhong No. 203

### **Using Preferential Prices during the Cooperation Directly as the Base of Punitive Damages is Inappropriate**

The SPC concluded a case involving the infringement of computer software copyright, where on the grounds that using preferential prices during the cooperation directly as the base of punitive compensation is inappropriate, the court changed the judgment and fully supported the punitive damages claim of the software right holder involved.

In this case, Guangzhou A Company, as the software copyright holder, signed an "OEM Cooperation Agreement" with Anhui B Company on February 10, 2015, agreeing that Anhui B Company is its only OEM partner in Anhui Province and has the right to exclusively represent and sell Guangzhou A Company's software involved in the case in Anhui Province. Guangzhou A Company allowed Anhui B Company to OEM the software at a price of 30% of the current market quotation of the software during the cooperation period. In the market quotation scheme, the software was divided into "price for singleton" and "price for cluster", and the latter mode was further divided into "standard version", "professional version" and "flagship version". For the "standard version", the number of branch authorizations is 1, for the "professional version", the number is 10, and for the "flagship version", the number is 20. Regardless of the type, a licensing fee of CNY5,000 is required for each additional branch authorization. On February 9, 2020, the two parties terminated their agency relationship. Thereafter, Guangzhou A Company found that during and after their cooperation period, without its authorization, Anhui B Company arbitrarily cracked the registration and authorization functional modules of the software and sold to multiple users who were not authorized by Guangzhou A Company. Guangzhou A Company believed that the behavior of Anhui B Company constituted a malicious infringement of its software copyright, so it instituted legal procedures requesting to order Anhui B Company to stop the infringement and compensate for economic losses and punitive damages totaling CNY800,000 (including reasonable expenses).

The court of first instance held that, although there was no evidence, in this case, to prove the losses suffered by Guangzhou A Company and the profits made by Anhui B Company due to the alleged infringement, it can be seen from the content of the agreement signed by and between the two parties that they clearly agreed that the price of branch authorizations added to the software was calculated at 30% of the market quotation, which can be regarded as the base for calculating the copyright license fee. Therefore, the base for the infringement damages to be paid by Anhui B Company can be determined concerning the amount of the license fee agreed in the aforementioned agreement and comprehensively considering the type of copyright, the nature of the infringement by Anhui B Company, the sales scale and consequences, and punitive damages can be applied at a level of more than one time but less than five times of this base. Accordingly,

the court ordered Anhui B Company to immediately stop the infringement and compensate for the losses and reasonable expenses totaling CNY400,000.

Both parties were dissatisfied and appealed. The SPC upheld the first-instance judgment to stop the infringement and ruled that Anhui B Company fully compensates CNY800,000 (including reasonable expenses).

In the second instance, the SPC held that when determining the base of punitive damages, on the one hand, it is necessary to avoid directly using the preferential transaction price reached by the parties in normal contract scenarios based on their autonomy and true intentions as the standard for calculating compensation for infringement by a transaction party against the counterparty in the infringement scenario. The agreement in question stipulating that "the cooperative price system refers to 30% of the current market quotation" is an agreement reached by both parties on the preferential transaction price under the premise that Guangzhou A Company and Anhui B Company maintain a normal cooperative relationship. After Anhui B Company committed infringement intentionally and continuously, which caused the broken-down of the base of mutual trust between the two parties, if the infringement damages that it should bear according to law are still calculated based on the preferential price agreed in the previous agreement, it evidently lacks the contractual base and also is contrary to the true intention of the infringed party to promise the above preferential transaction price. On the other hand, determining the base of punitive damages should ensure the effectiveness of the punitive damages system's function of remedying the intellectual property rights holders, punishing intellectual property infringers, and deterring potential intellectual property infringers. When determining the base of punitive damages, the first-instance judgment used the preferential price agreed under the normal cooperation scenario as the base for calculating the copyright license fee, which didn't fully consider the above two aspects. It could not fully achieve the purpose of setting up the intellectual property punitive damages system, but can easily induce moral risks. In the first instance, Guangzhou A Company confirmed that the number of branch authorizations opened by Anhui B Company without its permission was 70. The annex to the agreement clearly stipulated that each new branch under the "cluster model" needed to pay a licensing fee of CNY5,000. The amount of licensing fees that the Guangzhou A Company failed to collect due to the infringement in question was CNY350,000 (CNY5,000 /unit × 70 units = CNY350,000). This amount was the actual loss that can be proven caused to Guangzhou A Company by the infringement in question, which can be used as the base of punitive damages in this case. According to the degree of subjective fault of Anhui B Company in the infringement and the severity of the infringement in this case, the multiple of punitive damages in this case can be determined to be four times. Therefore, even without considering the reasonable expenses claimed by Guangzhou A Company, Guangzhou A Company can already claim CNY1.4 million (CNY350,000× 4 = CNY1.4 million) in punitive damages against Anhui B Company for economic loss compensation alone. Therefore, the claim amount of CNY800,000 (including reasonable expenses) claimed by Guangzhou A Company in this case should be fully supported.

The judgment in this case has certain reference significance for giving full play to the function of the intellectual property punitive damages system and implementing the judicial concept of strictly protecting intellectual property rights.

(2022) Zui Gao Fa Zhi Min Zhong No. 1033