

## **Table of Contents**

China Revises Regulations on Protection of New Plant Varieties.....	1
The 18th IP5 Heads of Office Meeting Held in Tianjin .....	1
The 25th China Patent Award was Released – AFD China's Client Won a Patent Excellence Award .....	2
China Unveils Roadmap to Boost Evolution into IP Powerhouse.....	2
China to Establish New fast IPR Protection Service Center to Foster Innovation .....	2
Shen Changyu meets with UAE Ambassador to China Hussain bin Ibrahim Al Hammadi in Beijing.....	3
CNIPA Deputy Commissioner Meets with MyIPO Deputy Director General in Beijing .....	4
Legally Applying the Doctrine of Estoppel to Prevent Patentees from Receiving "Duplication of Benefits" .....	5
Supreme Court Intellectual Property Tribunal Issues First Judgment with Enforcement Conditions.....	7
Calculation of Patent Infringement Damages for Non-Publicly Sold Products.....	8
Presumption and Calculation of Losses Suffered by Business Operators Due to Horizontal Monopoly Agreements .....	11
The Impact of Dishonest Conduct in Legal Proceedings on Determining Reasonable Enforcement Expenses.....	12
Determination of Commonly Recognized Conventional Designs in Assessing Originality of Integrated Circuit Layout Designs .....	14
Administrative Handling Methods for Non-compliant Patent Divisional Applications .....	15
Determination of Disclosure of Technical Secrets .....	17

## **China Revises Regulations on Protection of New Plant Varieties**

BEIJING -- China on Thursday unveiled revised regulations to strengthen the protection of rights to new plant varieties and to encourage innovation in the seed industry.

Premier Li Qiang has signed a State Council decree to promulgate the new regulations, which are set to take effect on June 1.

New plant varieties refer to those that are artificially bred or developed from discovered wild plants, characterized by novelty, distinctness, uniformity and stability, and assigned an appropriate denomination, according to the regulations.

Like patents, copyrights and trademarks, rights to new plant varieties fall under the category of intellectual property rights.

The new regulations include stipulations on implementing the Essentially Derived Variety (EDV) system, specifying that authorities will release the EDV implementation scope and assessment guidelines and clarify the conditions required for testing bodies.

The protection period for woody and vine plants has been extended from 20 to 25 years, and for other plants from 15 to 20 years.

China implemented regulations on the protection of new varieties of plants in 1997. This marks the third revision of the regulations.

<http://chinaipr.mofcom.gov.cn/article/centralgovernment/202505/1991646.html>

## **The 18th IP5 Heads of Office Meeting Held in Tianjin**

The 18th IP5 Heads of Office Meeting was held in Tianjin from May 27 to 28. The meeting was hosted by the China National Intellectual Property Administration (CNIPA). CNIPA Commissioner Shen Changyu presided over the meeting. António Campinos, President of the European Patent Office (EPO), Ono Yota, Commissioner of the Japan Patent Office (JPO), and Kim Wan Ki, Commissioner of the Korean Intellectual Property Office (KIPO) each led their respective delegations to the meeting. Tsuyoshi Isozumi, Senior Director of the World Intellectual Property Organization (WIPO), attended as an observer. The Meeting of the IP5 Heads of Office with IP5 Industry was also held.

[https://english.cnipa.gov.cn/art/2025/6/5/art\\_1340\\_199989.html](https://english.cnipa.gov.cn/art/2025/6/5/art_1340_199989.html)

**The 25th China Patent Award was Released – AFD China's Client Won a Patent Excellence Award**

On May 28, 2025, the winners of the 25th China Patent Award were announced by the CNIPA. The China Patent Award is co-organized by the China Intellectual Property Administration and the WIPO, and the winners are decided according to the China Patent Award Evaluation Method.

The China Patent Award is intended to encourage invention-creations, foster a culture of innovation, and improve the quality of patents. The awards given this year include 30 China Patent Gold Awards, 10 China Design Gold Awards, 60 China Patent Silver Awards, 15 China Design Silver Awards, 607 China Patent Excellence Awards, and 47 China Design Excellence Awards. The patents winning the gold awards relate to various technical fields, including pharmaceutical biology, digital communications, energy development, electronic information, machinery applications, etc., which reflects the important role played by innovations in promoting the development of various industries and highlights China's strength and determination in building an innovative nation.

This year, a Patent Excellence Award was given to our client's patent. We are honored to have assisted in the full course from drafting, filing to granting of the award-winning patent. Taking this opportunity, we would also like to thank our clients for their trust and support along the way.

Our sincere congratulations go to the award-winning client. Here we also wish all our clients even greater and more eye-catching achievements in their respective fields in this year. May wisdom play a more significant role in both production and daily life, and may advanced technologies be harnessed to bring prosperity and well-being to our nation and its people. We are also willing to work with you to

contribute to the development of the intellectual property industry and to the growth of our nation's economy.

**China Unveils Roadmap to Boost Evolution into IP Powerhouse**

BEIJING -- China has revealed a roadmap aimed at promoting efforts to build itself into an intellectual property (IP) powerhouse, according to the CNIPA on Thursday.

The newly released 2025 Promotion Plan for Intellectual Property Powerhouse Construction clearly defines 118 specific tasks across seven key areas, including improving IP systems and strengthening IP protection.

A NIPA official stated that the plan focuses on three institutional upgrades -- refining IP laws and regulations, optimizing core IP policies, and establishing rules for emerging fields and specialized technologies.

IP protection efforts will be intensified through strengthened judicial safeguards, upgraded administrative protection, and multi-party collaboration, the official added.

The plan also prioritizes expanding public IP services and fostering growth in IP-related service industries, the official emphasized.

<http://chinaipr.mofcom.gov.cn/article/centralgovernment/202505/1991643.html>

**China to Establish New fast IPR Protection Service Center to Foster Innovation**

BEIJING, May 11 (Xinhua) -- China's network of fast intellectual property rights (IPR) protection service centers is set to expand, as a new national-level center has this week been approved for establishment in the innovation hub of Shenzhen, the country's top IP regulator said.

The new center will be based in the city's Futian district, a central business area that is

home to over 2,000 fashion industry enterprises and features an industrial cluster valued at 120 billion yuan (about 16.6 billion U.S. dollars).

According to the CNIPA, the center will offer local enterprises expedited IP services for their design patent applications -- ensuring timely protection of their innovations and preventing imitation or infringement by competitors.

The processing period from application submission to patent authorization can be reduced to within three months through the services provided by this center, the CNIPA told Xinhua. Generally, it takes around six months for a design patent to complete the process from application to authorization.

Design is a major patent type in China. Latest data showed that 638,000 design patents were authorized in China in 2023. The country also ranked first in the world in terms of international design patent applications in 2024.

The efficient services that will be offered by the Futian center will help attract more fashion design talent to the district, enhance their design competitiveness, and support the innovative growth of local small and medium-sized fashion enterprises -- ultimately driving high-quality development, the CNIPA noted.

China currently has 48 national-level fast IPR protection service centers, focusing on small commodities and packaged consumer goods in county-level industrial clusters that have a fast product update cycle and strong demand for design protection. Such centers have been built in places like Yiwu in east China, a hub for small commodities, and south China's Shantou, renowned as the "toy capital" of China.

<http://chinaipr.mofcom.gov.cn/article/centralgovernment/202505/1991652.html>

### **Shen Changyu meets with UAE**

#### **Ambassador to China Hussain bin Ibrahim Al Hammadi in Beijing**

On May 7, Shen Changyu, Commissioner of the CNIPA, met with Hussain bin Ibrahim Al Hammadi, Ambassador of the United Arab Emirates (UAE) to China, and his delegation in Beijing. The two sides held in-depth discussions on the latest developments and bilateral cooperation in the field of intellectual property (IP).

Shen noted that China and the UAE are comprehensive strategic partners, with close economic, trade, and people-to-people exchanges. In May 2024, under the witness of the two heads of state, the two sides signed their first memorandum of understanding on IP cooperation. In September 2024, during the Third Belt and Road High-Level Conference on Intellectual Property, the two sides conducted productive exchanges. China is willing to work with the UAE to advance practical cooperation in IP, injecting new momentum into bilateral exchanges in the economy, science and technology, and culture.

Hussain bin Ibrahim Al Hammadi stated that, under the strategic guidance of the two heads of state, UAE-China cooperation has made significant progress across various fields. The UAE attaches great importance to IP as a key driver of innovative development, and highly appreciates China's rapid progress and achievements in the field of IP. He expressed the UAE's desire to further deepen IP cooperation with China and achieve mutual benefit and win-win outcomes.

[https://english.cnipa.gov.cn/art/2025/5/14/art\\_1340\\_199665.html](https://english.cnipa.gov.cn/art/2025/5/14/art_1340_199665.html)

**CNIPA Deputy Commissioner Meets with  
MyIPO Deputy Director General in Beijing**

On May 12, Lu Pengqi, Deputy Commissioner of the CNIPA, met in Beijing with a delegation led by Mr. Sh. Arifin bin Sh. Mohd Noor, Deputy Director General of the Intellectual Property Corporation of Malaysia (MyIPO).

Lu noted that China and Malaysia enjoy a long-standing friendship. During President Xi Jinping's state visit to Malaysia in April this year, intellectual property (IP) cooperation was included in the Joint Statement Between the People's Republic of China and Malaysia on Building a High-level Strategic China-Malaysia Community with a Shared Future. President Xi Jinping witnessed the exchange of a memorandum of understanding on IP cooperation between CNIPA and MyIPO, fully reflecting the great importance both governments attach to IP. Lu expressed hope that the two offices would further enhance mutual understanding and trust, and work together to elevate bilateral cooperation to a new height.

Mr. Arifin highly praised China's achievements in IP development and expressed his hope that the two offices would strengthen the sharing of experience, broaden areas of cooperation, and achieve concrete results through more pragmatic cooperation projects.

During the visit, experts from both sides also engaged in in-depth discussions on topics such as the patent information services platform and patent searching on traditional Chinese medicine.

[https://english.cnipa.gov.cn/art/2025/5/21/art\\_1340\\_199770.html](https://english.cnipa.gov.cn/art/2025/5/21/art_1340_199770.html)

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## SUPPLEMENTARY ISSUE

### **Legally Applying the Doctrine of Estoppel to Prevent Patentees from Receiving "Duplication of Benefits"**

The Supreme People's Court stated in a utility model patent infringement dispute that: The scope of patent protection should correspond to the technical contribution and level of innovation. The patent examination records serve as an important evidence for interpreting claims, reasonably determining the scope of protection, and subsequently assessing infringement. Specific grounds cited in relevant patent invalidation decisions for recognizing the inventiveness of claims and maintaining their validity, as well as the patentee's observations regarding the claims during the patent invalidation proceedings, all belong to the examination records of the patent involved. When determining whether the accused infringing product falls within the protection scope defined by the claims, these factors should be duly considered to prevent inconsistencies between the determination standards for maintaining patent validity and the standards for assessing infringement, thereby avoiding the patentee's "double recovery of benefits."

In this case, Shenzhen A Company is the owner of a utility model patent titled "A Mobile Phone Number Plate Mounting Stand" (hereinafter referred to as "the patent") and sought protection for Claims 2 and 3. Shenzhen A Company accused that Dongguan B Company, without authorization, manufactured, sold, and offered to sell products identical to the patent, which constituted patent infringement. The first-instance court found that the technical solution of the accused infringing products sold and offered for sale by Dongguan B Company fell within the scope of protection of the patent, but the defense of legitimate source was upheld. The first-instance court ruled that Dongguan B Company must immediately cease selling and offering to sell products infringing the patent and compensate for reasonable costs for rights protection. Both Shenzhen A Company and Dongguan B Company appealed the judgment after it was announced.

The Supreme People's Court, during the second instance, found that: The CNIPA issued Invalidation Decisions Nos. 55861 and 562751 on May 5, 2022, and July 11, 2023 (during the second instance of this case), respectively, maintaining the validity of Claims 2-5 and 7-9 of the patent. Decision No. 55861 stated: "The patentee submitted an observation arguing that the patent employs a seesaw that rotates at both ends, eliminating the need for the need for the combination of springs, fixed buckles and the fixed groove, with the seesaw partially accommodated in the base's groove." "From the known structure of the seesaw, it can be understood that the middle of the seesaw's convex portion is pivotally connected to the rotating shaft, allowing the entire seesaw to rotate around this shaft, causing both ends of the seesaw to rise and fall. By partially inserting the convex portion into the groove, the seesaw cooperates with the groove, with the upper parts of both ends exposed outside the groove in the elevated high position and the lower parts located inside the groove in the lowered low position, enabling the number plate disposed on the side of the seesaw's ends to be displayed or hidden by the groove. Relying on gravity, the seesaw can maintain stability in a state where one end is elevated and the other is lowered, with one end necessarily remain in a high position protruding outside the groove, meaning the seesaw is 'partially accommodated' in the groove." "The patent adopts a seesaw structure, which, by its inherent working principle, achieves rotation and maintains a stable state with one end elevated and the other lowered." This decision has already taken legal effect. Decision No. 562751 stated: "Regarding essential technical features, the patentee argued that the seesaw in the patent relies on gravity to display or hide and maintain stability, while magnets or increased friction are technical means adopted for enhanced stability and are not essential technical features."



The Supreme People's Court, in its second-instance judgment, held that the scope of patent protection should correspond to the technical contribution and level of innovation. The patent in this case is a utility model, and based on the entire content disclosed in the patent's description and drawings, its structure is not complex. Whether considering the fundamental "seesaw" principle or the patent description's recitation of "under the influence of gravity, unless acted upon by an external force, the seesaw remains in a state with one end elevated," these concepts are common knowledge in daily life. Although Claim 2 was recognized as inventive in the relevant invalidation decision by CNIPA, its degree of innovation is evidently very limited, and thus, the scope of protection should not be excessively broad, leading to a disproportionate outcome.

The specific reasons cited by CNIPA in the relevant invalidation decisions for recognizing the inventiveness of Claim 2 of the patent and maintaining its validity, as well as the patentee's observations regarding Claim 2 during the patent invalidation administrative proceedings, all belong to the examination records of the patent involved. When determining whether the accused infringing product falls within the protection scope defined by Claim 2, these factors should be duly considered to prevent inconsistencies between the determination standards for maintaining patent validity and the standards for assessing infringement, thereby avoiding the patentee receiving "duplication of benefits." During the patent invalidation administrative proceedings, the patentee made observations regarding Claim 2, such as: "The patent adopts a seesaw that rotates at both ends, eliminating the need for the combination of springs, fixed buckles, and a fixed groove," "the seesaw's inherent working principle enables rotation and maintains a stable state with one end elevated and the other lowered," and "magnets or increased friction are technical means adopted for enhanced stability and are not essential technical features." Invalidation Decision No. 55861 recognized that the patent's seesaw, by its inherent working principle, achieves rotation and maintains a stable state with one end elevated and the other lowered, and thus Claim 2 of the patent was inventive. Invalidation Decision No. 562751 further determined that the inclusion of magnets was not an essential technical feature for solving the technical problem addressed by the patent, and consequently maintained its validity. Accordingly, when determining whether the accused infringing product falls within the scope of protection defined by Claim 2, the patentee's observations during the invalidation proceedings should be duly considered. In this case, the accused infringing product relies on a positioning stabilization structure to stabilize the seesaw in a state with one end elevated and the other lowered. Compared to the seesaw in the patent, which maintains stability "solely by its own gravity," the accused infringing product, which "relies on a positioning stabilization structure (including a spring) to maintain stability," does not possess the same or equivalent technical features. Therefore, it should be concluded that the accused infringing product does not fall within the scope of protection defined by Claims 2 and 3 of the patent and does not constitute infringement. Dongguan B Company's defense invoking the doctrine of estoppel was upheld. The Supreme People's Court, in its second-instance judgment, revoked the first-instance judgment and ruled to dismiss all claims of Shenzhen A Company.

The positive significance of this case lies in urging patentees to adhere to the principle of good faith when exercising their rights, preventing patentees from receiving "duplication of benefits" by unfair means, such as narrowing the scope of patent protection during patent invalidation administrative proceedings to maintain patent validity while later expanding the interpretation of the scope of protection during infringement litigation.

(2023) Zui Gao Fa Zhi Min Zhong No. 607

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## **Supreme Court Intellectual Property Tribunal Issues First Judgment with Enforcement Conditions**

For some time, there has been an increasing number of patent invalidation administrative procedures being suspended due to property preservation measures taken against patent rights, adversely affecting the adjudication and rulings in related patent infringement civil cases. In certain cases, the suspension of patent invalidation procedures was essentially caused by the patentee's own actions, preventing the accused infringer from defending through invalidation proceedings and resulting in a significant imbalance of interests between the parties.

In a utility model patent infringement dispute, the Supreme People's Court clarified that when the patent invalidation proceeding is suspended for property preservation measures, preventing an invalidation decision from being issued before the second-instance judgment in the infringement lawsuit, the court may, based on the specific circumstances, impose necessary conditions on the enforcement of the effective judgment. This includes adding conditions for the enforcement of court rulings such as "cessation of infringement" and "compensation for damages" as subject to necessary conditions, and setting the CNIPA upholding the patent claims' validity after examination as a prerequisite for executing the second-instance judgment. This judgment represents a constructive exploration in judgment enforcement and has positive significance in preventing patentees from unjustly benefit from suspended invalidation procedures, curbing litigation misconduct by patentees, expediting dispute resolution, and better balancing the interests of all parties.

Shenzhen A Company (the "patentee") owned a utility model patent titled "An Anti-Gravity Droplet Humidifier"(the "Patent") with 9 claims. It sued Shenzhen B Company for manufacturing, selling, and offering to sell allegedly infringing products that fell within the protection scope of Claims 2, 3, and 5–8 of the Patent. Shenzhen A Company also sued Natural Person X, who is the legal representative of Company B, for him receiving turnover of the infringing products via his personal Alipay account without settlement with Shenzhen B Company. The first-instance court ordered Shenzhen B Company and X to immediately cease the infringement, destroy inventory, and jointly compensate for economic losses and reasonable legal costs. Shenzhen B Company appealed the rendered judgment, arguing that the accused products implemented prior art and that the case should be suspended pending the outcome of the patent invalidation proceedings.

The Supreme People's Court, in its second-instance review, found that Shenzhen B CompanyB, along with multiple third parties, respectively filed invalidation requests with the CNIPA, asserting that Claims 1–9 of the Patent lacked inventiveness and submitted specific grounds and supporting evidence. On the other hand, Company C, a third-party, sued the patentee before Shenzhen's Longhua District Court for a private loan dispute, alleging unpaid debts. Upon Company C's petition, Longhua District Court issued a property preservation order against the Patent. To enforce this order, the CNIPA imposed preservation measures on the Patent from January 10, 2023, to January 10, 2026. Company C and the patentee later settled the loan dispute, with Longhua Court issuing a mediation agreement stipulating that the patentee should pay Company C CNY 300,000 in three installments by August 1, 2026, and Company C should apply to lift the property preservation measures within 5 working days upon the receipt of all payments. Due to the property preservation, all invalidation proceedings against the patent were suspended by the CNIPA.

The Supreme Court found that the accused infringing products fall within the protection scope of Claims 2, 3, and 5–8 of the Patent. While the prior art defense against Claims 2, 3, and 5–7 succeeded, such defense against Claim 8 cannot be sustained. Thus, Shenzhen B Company was

liable to cease infringement and compensate for the economic losses as well as reasonable expenses incurred.

Regarding enforcement, the second-instance judgment noted that the Patent involved is a utility model patent, which underwent no substantive examination. In this regard, filing an invalidation request against the utility model patent is a critical defense strategy for the accused infringer. The invalidation proceedings were suspended because of property preservation orders against the Patent, which prevented an invalidation decision from being issued prior to the second-instance judgment of the patent infringement lawsuit. Although the property preservation of the Patent was triggered by a dispute between the patentee and a third party, under the legal relationship between the patentee and the accused infringer, the clear obligation to timely lift the property preservation measures lied with the patentee. The accused infringer shall not bear any potential adverse consequences resulted therefrom. Meanwhile, the people's courts must also prevent bad-faith conduct whereby patentees deliberately cause the suspension of invalidation proceedings through their own actions, so as to safeguard litigation integrity.

Taking into account the court's findings on the prior art defense in this case and the specific invalidity grounds and evidence submitted by multiple petitioners against Claim 8 of the patent in the invalidation administrative proceedings, the second-instance court determined there is a substantial likelihood that Claim 8 would be declared invalid. The eventual invalidation decisions may significantly impact both the adjudication of the related infringement case and the enforcement of this judgment. Notably, the patentee - solely due to its own actions - unreasonably prolonged the property preservation measures against the Patent until 2026 through settlement terms, thereby obstructing the invalidation proceedings. This conduct would inevitably create a significant imbalance between the parties' interests. Accordingly, the second-instance judgment set the CNIPA's final determination maintaining the validity of the asserted claims as the prerequisite of its enforcement. Furthermore, the judgment specifies the interest accrual mechanism for delayed payment: After the enforcement condition is met, from the judgment service date until payment is made within the prescribed period, interest shall accrue at the Loan Prime Rate (LPR) published by the National Interbank Funding Center; post-deadline payments shall incur doubled interest for the delinquency period.

(2024) Zui Gao Fa Zhi Min Zhong No. 370

### **Calculation of Patent Infringement Damages for Non-Publicly Sold Products**

The objective of patent infringement damages is to restore the patentee, as much as possible, to the position they would have been in had the infringement not occurred, thereby maintaining incentives for innovation. For products that are not publicly sold, since damages cannot be directly calculated based on market sales, the court may, depending on the specific circumstances of the case, use products from the most directly profit-generating stage related to the implementation of the patented technical solution as a reference for calculating infringement damages.

Guangdong A Company filed a lawsuit claiming that: It is the patentee of the invention patent titled "Riveting Mold for Fastening the Cover of a Magnetron" (the "Patent"). Zhongshan B Company, without authorization, manufactured and used riveting molds that infringed the Patent for production and business purposes, which demonstrates clear subjective malice and has caused severe economic losses. Therefore, Guangdong A Company requested the court to rule that: Zhongshan B Company immediately ceases the infringement of the patent, including stopping the manufacture and use of the infringing riveting molds, destroying the accused



infringing products in use and in inventory, as well as the specialized equipment and molds used to produce them, and compensating Guangdong A Company for economic losses of CNY 10 million and reasonable litigation expenses of CNY 200,000.

Zhongshan B Company argued: The Patent involved did not comply with legal requirements; the structure of the accused infringing product differed from that of the Patent and thus did not constitute infringement; the Patent played a minimal role in magnetron production, and magnetrons themselves were low-value components, so Guangdong A Company's claimed damages were excessive and lacked factual basis.

The first-instance court found after trial: Four notarization documents from 2020 showed that Guangdong A Company purchased multiple models of microwave ovens from Zhongshan B Company's stores on Taobao and JD.com on October 27 and 28, 2020, among other dates. The magnetrons used in these microwave ovens were all produced by Zhongshan B Company.

The first-instance court issued a civil judgment to dismiss all of Guangdong A Company's claims. Dissatisfied, Guangdong A Company appealed. The Supreme People's Court rendered a final civil judgment on October 7, 2023 to: 1) Revoke the first-instance civil judgment; 2) Zhongshan B Company shall immediately cease manufacturing and using the riveting molds that infringe Guangdong A Company's invention patent and destroy the molds; 3) Zhongshan B Company shall, within ten days of the judgment taking effect, compensate Guangdong A Company for economic losses of CNY 10 million; 4) Zhongshan B Company shall, within ten days of the judgment taking effect, pay Guangdong A Company CNY 200,000 for its reasonable litigation expenses; and 5) All other claims of Guangdong A Company are dismissed.

The court's effective judgement held: In this case, Guangdong A Company claimed that calculated based on its actual losses, the damages should be CNY 10 million. The calculation method was: Profit per magnetron sold by Guangdong A Company × Sales volume of magnetrons by Zhongshan B Company × Technical contribution rate of the Patent. Specifically: Guangdong A Company asserted that its magnetrons were sold for no less than CNY 70 each, with a cost of CNY 26.94, yielding a profit of CNY 43.06 per unit. Zhongshan B Company sold 4,494,585 magnetrons from 2018 to October 2020. The technical contribution rate of the Patent was 10%. Thus,  $CNY\ 43 \times 4,494,585 \times 10\% = CNY\ 19,326,715$ , which exceeded Guangdong A Company's claimed actual losses of CNY 10 million. Zhongshan B Company argued that the accused infringing product was not the magnetron itself but a processing mold used to rivet the magnetron cover, which contributed minimally to the overall value of the magnetron. Therefore, Guangdong A Company's damages claim and calculation method lacked legal basis. The court's analysis on this issue is as follows:

A. Whether the actual losses of Guangdong A Company can be calculated based on the profit and sales volume of magnetron products

First, the objective of patent infringement damages is to restore the patentee, as much as possible, to the position they would have been in had the infringement not occurred, thereby preserving incentives for innovation.

Second, when the accused infringing product is not publicly sold on the market, its value generally cannot be directly calculated based on market sales.

Third, businesses achieve profits by providing products to the market to trade, meaning profits are ultimately achieved through market transactions. Therefore, using the most directly profit-generating link in market transactions as the basis for calculating economic losses is causally justified.

In this case, the accused infringing riveting mold is a processing tool for magnetron production and does not enter the market itself. There is also no evidence showing that alternative technical solutions for such a mold exist on the market, making its market value indeterminable. Under these circumstances, considering the objectives of the patent infringement damages system and the fact that the riveting mold is an essential production tool for manufacturing magnetrons, it is reasonable to use the magnetron—the product in the most directly profit-generating link—as the basis for calculating Guangdong A Company's actual losses.

**B. Calculating losses based on the sales profit of Guangdong A Company's magnetrons and the sales volume of Zhongshan B Company's magnetrons**

A patentee's actual losses can generally be calculated by multiplying the reduction in sales volume of the patented product by the profit per unit. If the total reduction in the patentee's sales volume cannot be determined, the total sales volume of the infringing products on the market multiplied by the profit per patented product may be deemed the losses suffered by the patentee due to the infringement.

In this case, the total reduction in Guangdong A Company's magnetron sales could not be determined. Therefore, the losses can be calculated based on the total sales volume of the infringing products multiplied by the profit per patented product. Additionally, according to an appraisal report from a related criminal case, Zhongshan B Company sold a total of 4,494,585 magnetrons from 2018 to October 2020, and the unit cost of Guangdong A Company's self-developed magnetrons was CNY 26.94 per unit. In the absence of counterevidence from Zhongshan B Company, these facts are confirmed. Based on the export and sales records submitted by Guangdong A Company, its claim that the selling price of its magnetrons was no less than CNY 70 per unit is factually supported and thus affirmed.

**C. The technical contribution rate of the Patent**

The Patented relates to a technical solution for riveting the upper cover of a magnetron, which is one step in the magnetron production process. By using this Patent, the common issue of loose riveting in prior art solutions is avoided, reducing defect rates and improving production quality and efficiency. Considering the importance of the Patent to magnetron production, Guangdong A Company has reasonably distinguished other intellectual property rights related to the magnetron product. Its claim of a 10% technical contribution rate for the Patent is relatively reasonable. Moreover, Zhongshan B Company did not provide any effective rebuttal to this allocation.

**D. Using sales profit as the basis for calculation**

According to relevant judicial interpretations, for infringers whose business is entirely based on infringement, damages may be calculated based on sales profits. Determining whether an infringer operates entirely on infringement involves both subjective and objective considerations. If objectively, the infringer has actually engaged in infringing activities, which constitute its main business and primary source of profit, and subjectively, the infringer knowingly committed the infringement, they may be deemed as having operated entirely on infringement.

In this case, Zhongshan B Company's infringing activities were its main business—closely tied to the manufacture and sale of magnetrons—and formed its primary profit source. Furthermore, based on the effective criminal judgment and the facts ascertained in the second-instance trial, Employee X, the sole person responsible for Zhongshan B Company's magnetron R&D, was a core technician in Guangdong A Company's magnetron division during the patent prosecution period, and should have been aware of the Patent. Combined with Zhongshan B Company's failure to provide any technical source evidence during the proceedings, it can be reasonably

inferred that Zhongshan B Company subjectively knew that its actions constituted infringement but proceeded regardless. Thus, Zhongshan B Company belongs to an infringer operating entirely on infringement, and damages may be calculated based on its sales profits.

Overall, the calculation method for Guangdong A Company's claimed losses is supported. Given that Guangdong A Company only sought compensation of CNY 10 million, this claim is also upheld.

(2022) Zui Gao Fa Zhi Min Zhong No. 1584

### **Presumption and Calculation of Losses Suffered by Business Operators Due to Horizontal Monopoly Agreements**

The Supreme People's Court rendered a final judgment in a horizontal monopoly agreement case, establishing that where a business operator enters into or performs contracts with a party to a horizontal monopoly agreement concerning the goods or services covered by the monopoly agreement during its implementation or within a reasonable period after termination, the operator shall be presumed to have suffered losses due to the horizontal monopoly agreement in the absent of rebutting evidence.

In March 2017, Company A, a construction company, signed a commercial concrete (i.e., ready-mix concrete (RMC)) sales contract with Company B, a concrete company, under which Company B was to supply RMC to construction projects designated by Company A. The contract stipulated the unit prices for different grades of RMC. In August 2018, Company B sent a price adjustment notice to Company A, proposing an increase in prices. Company A disagreed with the adjustment and demanded Company B to continue supplying concrete at the originally agreed prices in the contract. In September 2018, the two parties signed a supplementary agreement, raising the unit prices for all grades of RMC by CNY 90 per cubic meter on top of that in the original contract. After the supplementary agreement took effect, Company B supplied a total of 5,192.5 cubic meters of RMC to Company A by April 2020, and Company A paid for the concrete at the increased prices. In June 2021, a local market supervision authority issued an administrative penalty decision, finding that Company B and Company C, a building materials company, had reached and implemented a horizontal monopoly agreement between April 2014 and March 2019 to fix the prices of RMC and divide the sales market. During this period, only Company B and Company C were actually producing and selling RMC in the region. In April 2023, Company A filed a lawsuit, claiming that Company B's implementation of the horizontal monopoly agreement had caused it losses and seeking compensation.

The court of first instance held that Company B participated in reaching and implementing a horizontal monopoly agreement to fix the price of commercial concrete and divide the sales market for RMC, which deprived Company A of its bargaining power and right to choose RMC. It was highly probable that this caused losses to Company A. The court determined that the losses should be calculated based on the price difference between the increased price and the originally agreed price, ordering Company B to compensate Company A for losses totaling CNY 467,325 (i.e., CNY 90 per cubic meter multiplied by 5,192.5 cubic meters). Company B appealed, arguing that Company A did not prove its losses were caused by the accused horizontal monopoly agreement and that the supplementary agreement has specified that the price increase was due to rising raw material costs.

The Supreme People's Court, in its second-instance judgment, held: The sales contract and supplementary agreement between Company A and Company B were signed and performed

during the implementation of the horizontal monopoly agreement between Company B and Company C. These contracts were influenced by the accused monopoly agreement from the outset and were not concluded or performed under normal, fair market competition conditions. The price increase borne by Company A was a direct result of Company B's implementation of the alleged monopoly agreement. Under these circumstances, it was reasonable to presume that Company A suffered losses due to the monopoly agreement.

Regarding the calculation of losses, since the competitive market price for RMC or substitute goods in the relevant market could not be ascertained, and there was no evidence showing that Company B had ever offered prices formed through free market competition before or after the implementation of the monopoly agreement, the prices stipulated in the original contract and supplementary agreement were both part of the "fixed prices" under the monopoly agreement. Given that Company A only claimed losses based on the price difference between the supplementary agreement and the original contract, the first-instance court's calculation of the direct economic losses - at least equal to the total price difference (CNY 90 per cubic meter multiplied by 5,192.5 cubic meters, totaling CNY 467,325) - was appropriate.

Company B argued that the price increase was wholly or partially due to non-monopolistic factors such as rising raw material costs. However, it bore the burden of proving the existence of such non-monopolistic factors or demonstrating the coexistence of monopoly and non-monopolistic factors, as well as reasonably distinguishing their respective impacts on the transaction prices. Failing to do so, Company B is obligated to bear the adverse consequences of insufficient evidence. Company B did not provide evidence in the regard, nor did it distinguish or explain the extent to which monopolistic factors (as opposed to non-monopolistic factors) contributed to the damages. The first-instance court's calculation of the losses based on the increase in the unit price of the traded goods was appropriate. Accordingly, the appeal was dismissed, and the original judgment was upheld.

This judgment clarifies the presumption of losses for business operators contracting with the party to horizontal monopoly agreements during the implementation period and specifies the burden of proof and legal consequences when the party to the monopoly agreement claims price increases are due to non-monopolistic factors. It reduces the evidentiary burden and difficulty of proof for plaintiffs in horizontal monopoly disputes, thereby actively safeguarding the legitimate rights and interests of victims of monopolistic conduct.

(2024) Zui Gao Fa Zhi Min Zhong No. 456

### **The Impact of Dishonest Conduct in Legal Proceedings on Determining Reasonable Enforcement Expenses**

Where an alleged infringer engages in dishonest conduct in legal proceedings, such as making false statements, such behavior may be taken into consideration by the People's Court when determining the amount of the rights holder's reasonable enforcement expenses.

US Company A, as the patentee of the invention patent titled "Endoglucanase STCE and Cellulase Preparation Containing the Same" (hereinafter "the Patent"), accused that Company B, a biotechnology firm, had engaged in offering for sale and selling products infringing the Patent, while Company C, a pharmaceutical company, had manufactured, used, offered for sale, and sold infringing products. Accordingly, Company A petitioned the court to order: 1) both companies to immediately cease patent infringement; 2) Company B to destroy all unsold infringing products and Company C to destroy both equipment specialized in manufacturing the infringing goods and

unsold infringing inventory; and 3) both companies to jointly compensate CNY 18.5 million for economic losses plus 4) CNY 1.5 million for reasonable enforcement costs.

Company B argued in its defense that: The accused infringing products it sold were purchased from Company C, that is, legally sourced; the accused infringing technical solutions did not fall within the scope of protection of the Patent; the accused infringing products were no longer in stock; Company A's claimed damages and calculation method lacked basis; and, Companies B and C had neither the intent nor conduct of joint infringement.

Company C argued in its defense that: The technical solutions of the accused infringing products did not fall within the scope of protection of the Patent; the accused infringing products were no longer in stock; and, Company A's claimed damages lacked factual and legal basis.

However, the court found through trial that: During the second instance, Company C admitted that two models of the accused infringing products fell within the scope of protection of claims 1 and 11 of the Patent. Both defendants provided inconsistent statements regarding the sales process and technical specifications of two additional product models. Regarding the distribution process for neutral cellulase products: Following execution of sales contracts with downstream customers, Company B would prepare customized letters of entrustment reflecting customer requirements and forward the letters to Company C. Company B explained that, as a enzyme preparation manufacturer based in Hunan Province with extensive technical staff, it had capitalized on this competitive advantage to gradually establish a distribution partnership with Company C beginning in April-May 2016. Under this arrangement, Company B would fully distribute Company C's feed enzyme preparations and textile enzyme preparations.

The court of first instance rendered a civil ruling, which ordered: 1) Company B and Company C to immediately cease infringement of the subject patent upon the judgment's effective date; 2) Company C must, within ten days of the judgment taking effect, compensate Company A CNY 10 million in economic losses plus CNY 1 million in reasonable costs, with Company B bearing joint and several liability for up to CNY 7.5 million of this amount, while 3) dismissing all other claims by Company A. Dissatisfied with the ruling, Company A appealed the inadequate damages award, Company B appealed on grounds of legitimate product sources, and Company C appealed the excessive damages determination. On December 14, 2023, the Supreme People's Court issued its final judgment as the following: 1) affirming the first item (the injunction) of the first-instance ruling; (2) revoking the second and third items (the damages and costs award) of the first instance ruling; 3) ordering Company B and Company C to jointly pay CNY 18.5 million in damages and CNY 1.5 million in reasonable costs within ten days of judgment effectiveness; while 4) rejecting Company A's other appeals; and 5-6) denying all appeals by Company B and Company C respectively.

The court's final judgment affirmed that the accused technical solutions fell within the scope of the Patent's protection, thereby establishing infringement. With respect to reasonable enforcement costs, the Supreme Court made the following determinations: First, Company A properly submitted corresponding documents for proving its claimed expenses, including CNY 25,130 for notarization fees, CNY 1,698 for translation services, and CNY 30,000 for testing fees, all of which were deemed necessary evidentiary costs and should be accordingly supported. Second, all other reasonable costs claimed by Company A were attorney fees, for which it provided billing statements as proof. The submitted billing statements should be valid proof of actual expenses, considering their consistency with standard business practices in Company A's home jurisdiction. Third, this case involved substantial evidence and relatively complex facts, with the infringement exhibiting certain concealment characteristics and strong technical specificity, all of which justified elevated legal fees beyond typical litigation matters. Fourth, Company B and Company C had



made multiple inconsistent statements during the litigation process – some constituted false statements – which objectively increased the workload of Company A's litigation representatives. Therefore, the Supreme Court concluded that the amount of attorney fees in Company A's claimed enforcement costs is in a reasonable range and accordingly granted the entire amount of CNY 1.5 million, modifying the initially awarded sum in the first-instance judgement which it found to be insufficient.

(2021) Zui Gao Fa Zhi Min Zhong No. 2480

### **Determination of Commonly Recognized Conventional Designs in Assessing Originality of Integrated Circuit Layout Designs**

The Supreme People's Court recently concluded an appeal case involving an administrative dispute over the cancellation of an integrated circuit layout design. On top of clarifying the assessment of originality of the disputed layout design, the Court further elaborated on the criteria for determining commonly recognized conventional designs in layout designs.

The case concerned an integrated circuit layout design titled "Lithium Battery Protection Chip with Integrated Controller and Switching Transistor for Single-Chip Negative Electrode Protection" (hereinafter referred to as the "Subject Layout Design"), owned by Company A.

Company B filed a petition to the CNIPA requesting the cancellation of the exclusive rights to the Subject Layout Design, arguing that it did not comply with Article 4 of the Regulations on the Protection of Layout-Designs of Integrated Circuits (hereinafter referred to as the "Layout Design Regulations"). CNIPA issued a decision (hereinafter referred to as the "Contested Decision") maintaining the validity of the exclusive rights to the Subject Layout Design. Dissatisfied, Company B filed a lawsuit with the First-Instance Court, contending that the Points of Originality 1–4 of the Subject Layout Design were entirely part of prior layout designs and thus lacked originality. Company B argued that the only difference between Evidence 6 and the Points of Originality 1–4 of the Subject Layout Design was the substitution of a power PMOS transistor with a power NMOS transistor. Since the manufacturing processes for NMOS and PMOS transistors were essentially identical, their layout designs were also substantially the same. The minor differences in details did not constitute the originality of the Subject Layout Design, and replacing a PMOS transistor with an NMOS transistor was a conventional technical means in the field. Therefore, the Subject Layout Design did not meet the requirements of Article 4 of the Layout Design Regulations, and Company B requested the revocation of the Contested Decision and an order for CNIPA to issue a new decision.

Layout Design corresponding to Points of Originality 1–4 should be considered as a whole. Even though PMOS and NMOS transistors were structurally symmetrical and functionally interchangeable, in the three-dimensional configurations and layout hierarchies in integrated circuit layout designs, it is not appropriate to consider the two as freely or simply interchangeable. Thus, the evidence on record was insufficient to prove that the layout design corresponding to Points of Originality 1–4 as a whole constituted a commonly recognized conventional design. Thus, the Subject Layout Design possessed originality. Accordingly, the First-Instance Court dismissed Company B's claims.

Dissatisfied with the first-instance judgment, Company B appealed to the Supreme People's Court.

In the second instance, the Supreme People's Court ruled that the rights holder's observation on originality served as a reference for determining the originality of the layout design. While such an observation might describe or summarize the originality from different perspectives, it might not necessarily include descriptions of three-dimensional configurations. When evaluating the originality of the right holder's designated portions, the examiner should take the rights holder's observation on originality into consideration and treat the specific three-dimensional configurations of components and interconnects within those portions as the assessment basis. The development of an integrated circuit layout design from abstract concepts to physical implementation can be divided to different levels, which typically includes logic design, circuit design, and layout design. The design concepts, principles, and methods at each level vary, leading to multiple possible choices for conventional designs at each level. Commonly recognized conventional designs in integrated circuit layout designs refer to designs that layout designers and integrated circuit manufacturers can obtain from textbooks, technical dictionaries, technical manuals, generic standards, or common modules in the field of layout design, as well as designs that are easily conceived based on fundamental design principles. Therefore, when determining whether a layout design qualifies as a commonly recognized conventional design in integrated circuit layout designs, the technical references and application objects used as basis should be limited to the more specific level of layout design, rather than the more abstract levels of logic design or circuit design. In layout designs, NMOS and PMOS transistors achieve different conductive channels based on the doping types of active regions, source contacts, and drain contacts, and are not merely symmetrical or replicative. Their implementation requires creating differently doped regions, leading to differences in manufacturing processes and layouts, with notable variations in area and impedance. Even if replacing NMOS for PMOS transistors in a circuit schematic is easy to think of, layout designers must consider not only the adaptation of the overall circuit and adjustments to connection relationships but also the selection of components. For instance, even the same type of transistors can have multiple layout expressions, let alone different types of transistors. In this case, Evidence 6 and the Subject Layout Design differed not only in the choice of MOS transistors but also in the number of corresponding layout layers and their connection relationships with other components. The NMOS transistor in the Subject Layout Design included an additional deep well layer compared to the PMOS transistor in Evidence 6, and the source, drain, and gate connections of the NMOS transistor and those of PMOS transistor were respectively different. These differentiated transistor layout designs reflected comprehensive considerations of various factors. Company B's existing evidence was insufficient to prove that replacing the PMOS transistor in Evidence 6 with the NMOS transistor in the Subject Layout Design constituted a commonly recognized conventional design in the field of integrated circuit layout designs. Accordingly, the Contested Decision and the first-instance judgment were upheld.

The second-instance judgment in this case clarified the determination of originality in integrated circuit layout designs and the criteria for assessing commonly recognized conventional designs. It provides reference value for further clarifying the adjudication approach in administrative disputes over the cancellation of integrated circuit layout designs, particularly in the determination of commonly recognized conventional designs.

(2024) Zui Gao Fa Zhi Xing Zhong No. 469

### **Administrative Handling Methods for Non-compliant Patent Divisional Applications**

The Supreme People's Court ruled on an appeal case involving a Notification that Divisional Application Deemed Not to Have Been Filed and an administrative reconsideration, in which the

Court clearly identified the examination subject in administrative reconsideration cases, and further clarified how administrative authorities should determine the appropriate handling method when a patent divisional application does not meet legal requirements.

On March 7, 2020, Company A filed a utility model patent application with the CNIPA. Subsequently, on October 11, 2020, Company A filed a divisional application based on the original application. On March 22, 2021, CNIPA issued a Notification that Divisional Application Deemed Not to Have Been Filed, citing non-compliance with Rule 42 of the Implementing Regulations of the Patent Law as the basis for rejection. Company A contested the Notification and filed an application for administrative reconsideration with the CNIPA. Following review, the CNIPA upheld its original position, concluding that the specific embodiments in both the original and divisional applications were substantively identical, and the distinctions between their claims represented conventional technical means within the field. Dissatisfied with the reconsideration decision, Company A filed an administrative lawsuit with the court of first instance.

The court of first instance held that since the specific embodiments of the original application and the divisional application were identical, and the distinctions in their claims merely constituted common technical means in the field, the divisional application and the original application did not present two or more independent and distinct invention-creations. Consequently, the divisional application did not meet the statutory requirements for division, and both the Notification that Divisional Application Deemed Not to Have Been Filed and the reconsideration decision were legally valid. Furthermore, the Notification in this case did not amount to a substantive rejection due to non-compliance with grant conditions and therefore did not trigger the hearing principle under the Patent Examination Guidelines. Additionally, because the deficiencies in the divisional application could not be overcome through rectification, the CNIPA's issuance of the Notification under the principle of procedural efficiency—to ensure timely examination—was procedurally appropriate. Accordingly, the court dismissed Company A's claims. Company A, dissatisfied with the first-instance judgment, filed an appeal.

The Supreme People's Court, in its second-instance ruling, held: Under Rule 42(1) and (2) of the Implementing Regulations of the Patent Law, if a patent application includes two or more inventions, utility models, or designs, the applicant may file a divisional application with the patent administrative department before the expiration of the stipulated time limit. If the patent administrative department finds that a patent application is not in conformity with the provisions of Article 31 of the Patent Law or Rules 34 or 35 of its Implementing Regulations, it shall invite the applicant to amend the application within a specified time limit; if the applicant fails to make any response after the expiration of the specified time limit, the application shall be deemed to have been withdrawn. According to the examination rules of the divisional application in Patent Examination Guidelines, if a divisional application fails to meet formal legal requirements, it should be handled by issuing a Notification that Divisional Application Deemed Not to Have Been Filed or a Notification that Divisional Application Deemed to Have Been Withdrawal. Where a divisional application is found non-compliant with the provisions of either Rule 42 or Rule 43 of the Implementing Regulations of the Patent Law, it should be handled following the rejection procedures. Under the hearing principle, before issuing a Decision of Rejection, the examiner must notify the applicant of the facts, reasons, and evidence supporting the rejection, providing at least one opportunity to present arguments and/or amend the application. Based on these provisions, in this case, since the CNIPA determined that the divisional application did not meet the provisions of Rule 42 of the Implementing Regulations, it should have rejected the application and allowed the applicant to present arguments and/or amend the claims. Instead, the CNIPA directly issued a Notification that Divisional Application Deemed Not to Have Been Filed, which does not comply with the above rules.

Regarding whether the principle of procedural efficiency could justify issuing the Notification, the Supreme People's Court held: First, under the Implementing Regulations of the Patent Law and the Patent Examination Guidelines, there is no discretion in selecting handling methods—only strict adherence to the prescribed procedures based on the application's circumstances. Second, the principle of procedural efficiency, as defined in the Patent Examination Guidelines, requires examiners to improve efficiency and shorten the review process where compliant with regulations. In this case, issuing the Notification might have improved efficiency but deprived the applicant of the right to present arguments and amend claims, violating both the law and the true intent of procedural efficiency.

This case's emphasis on procedural propriety helps better protect the legitimate rights and interests of patent applicants.

(2023) Zui Gao Fa Zhi Xing Zhong No. 382

### **Determination of Disclosure of Technical Secrets**

If the alleged infringer provides technical secret information or its carrier to specific or non-specific entities, causing the technical secret to escape the control of the rights holder and become known to others, the People's Court may determine such conduct as constituting disclosure of the technical secret.

In early 2000, U.S.-based Company A developed the "Digital Analogue Knowledge System" (DAKS System). Beijing A1 Company, an affiliate of Company A, was authorized by Company A to use the DAKS System and to pursue legal actions when the DAKS System-related intellectual properties are infringed. In this case, Company A and Beijing A1 Company claimed the technical parameters and engineering data within the DAKS System software (i.e., the technical information at issue) as the trade secret. Wherein, Secret Point 1 was "474 technical parameters (database fields) used to define oil and gas reservoir attribute information in the DAKS System database containing 1,339 oil and gas reservoir data," and Secret Point 2 was "474 technical parameters (database fields) used to define the attribute information of each oil and gas reservoir and their corresponding engineering data in the DAKS knowledge system database containing 1,339 oil and gas reservoir data." From 2009 to 2012, Natural person X was employed by Beijing A1 Company. After leaving Beijing A1 Company, X developed the IRBS System software, which was alleged to contain technical information substantially identical to the technical information at issue in this case. In August 2017, X transferred the IRBS System software to Daqing B Company for a fee of CNY 3.5072 million. Daqing B Company then deployed and operated the system on the website of its wholly-owned subsidiary, Beijing B1 Company. Given these actions, X, Daqing B Company, and Beijing B1 Company were found to have jointly infringed upon the trade secrets at issue. Consequently, Company A and Beijing A1 Company filed a lawsuit, seeking a court order X, Daqing B Company, and Beijing B1 Company to cease the infringement and bear corresponding liability for damages.

On December 27, 2021, the first-instance court rendered its civil ruling, ordering: 1) Beijing B1 Company, Daqing B Company, and X to immediately cease using or permitting any third party to use the technical information at issue owned by Company A and Beijing A1 Company from the effective date of the judgment; 2) Beijing B1 Company and Daqing B Company to jointly compensate Company A and Beijing A1 Company for economic losses totaling CNY 2 million plus reasonable expenses of CNY 600,000 within ten days of the judgment's effective date; and X to be held jointly and severally liable for CNY 1 million of this total amount; and 3) to dismiss all remaining claims by Company A and Beijing A1 Company. Dissatisfied with this ruling, X, Daqing

B Company, and Beijing B1 Company filed an appeal. The Supreme People's Court issued its final judgment on December 4, 2023, dismissing the appeal and upholding the first-instance judgment.

The court's effective ruling holds that X had engaged in acts of obtaining, using, and permitting others to use the trade secrets at issue. As for whether Daqing B Company and Beijing B1 Company had committed acts of infringing the trade secrets, the analysis is as follows:

First, Daqing B Company failed to exercise sufficient due diligence during the negotiation and signing of the share purchase agreement for the transfer of the IRBS System software copyright with X. The DAKS database involves a large database composed of technical parameters and engineering data from numerous oil and gas reservoirs worldwide, yet the creator of this database was merely an individual, X. As a professional enterprise specializing in oilfield exploration and development data processing, Daqing B Company should have reasonably doubted X's technical capabilities and the legality of the source of the parameter data in the IRBS System. Had Daqing B Company conducted necessary investigations, it would not have been difficult to discover the close connection between X's former employer "CCAP" and the "C&C" in the English abbreviation of Company A. Furthermore, given the high similarity in function, effect, and purpose between the IRBS System software and the DAKS System software, Daqing B Company should have been further alerted to the legality of the source of the relevant parameter data in the IRBS System software. However, Daqing B Company did not conduct further investigations, particularly neglecting to pay attention to the details disclosed in X's resume, and proceeded with the significant transaction of acquiring assets through stock purchase. From the perspective of a reasonable person, it cannot be concluded that Daqing B Company had exercised sufficient due diligence regarding the compliance of this transaction.

Second, after X joined Daqing B Company, Daqing B Company still did not fulfill its obligation to verify the relevant details in X's resume. In the two annual reports released by Daqing B Company in 2016 and 2017, the records of "X's work experience from 2006 to 2016" were clearly inconsistent. Given this anomaly, Daqing B Company, as a listed company, should have questioned whether X had made honest statements, but it failed to conduct further extended investigations into X's personal history. Due to Daqing B Company's failure to conduct necessary extended investigations into X's work experience during this period, it was unable to reasonably suspect whether there was any inherent connection between the IRBS System software and Beijing A1 Company's DAKS System software or whether the allegedly infringing information in the IRBS System software might have been obtained by X through improper means from Beijing A1 Company. Therefore, Daqing B Company's claim that it was defrauded by X and was unaware of the source of the IRBS System software held by X was rejected.

Finally, X contributed the copyright of the IRBS System software to Daqing B Company as a technology investment. Daqing B Company acquired the copyright of the IRBS System software on July 5, 2017, and signed a "Software Product License Agreement" with an oilfield research institute for the IRBS System software on April 24, 2018. Beijing B1 Company is a wholly-owned subsidiary of Daqing B Company. Although the arbitration award submitted by Daqing B Company and Beijing B1 Company during the second instance determined that X had not delivered the complete source code of the IRBS System software to the two companies, this determination was insufficient to prove that Daqing B Company and Beijing B1 Company had not actually used the allegedly infringing information in the IRBS System software. When Daqing B Company should have known that X had infringed the trade secrets of US-based Company A and Beijing A1 Company, it still acquired the copyright of the IRBS System software from X, signed the "Software Product License Agreement" in the name of Daqing B Company, and added IRBS System-related web plugins and login page links to the product introduction page on Beijing B1



Company's website. These business operation activities objectively created a risk of disclosure, whereby the allegedly infringing information in the IRBS System software (which was actually the trade secrets involved in the case) could be accessed or obtained by specific or non-specific members of the public.

Based on the above analysis, it should be determined that Daqing B Company and Beijing B1 Company jointly engaged in acts of disclosing, using, and permitting others to use the trade secrets involved in the case.

(2022) Zui Gao Fa Zhi Min Zhong No. 901