AFD China
INTELLECTUAL PROPERTY LAW OFFICE

Newsletter
May, 2026

Table of Contents

AFD China is Again Included in the List of Recommended Reputable IP Firms for 2026 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 2026 by the Capital Intellectual Property Services Association (CIPSA), making the fourth 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 aims to promote a healthy IP industry, foster a culture of good faith, protect the rights of members and the public, and ensure that IP service providers act honestly and comply with professional standards.

Since its establishment, AFD China has been committed to the core value of achieving sustainable success through building trust. By adhering to the principle of honest service, we have earned the trust and recognition of our clients. Our consistent inclusion in this prestigious list since 2023 underscores our outstanding performance and commitment to trustworthy 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. We will continue to uphold high standards of integrity and do our part to encourage a responsible, well□regulated IP services sector.

AFD China Wins Three Awards at the 2026 China IP Awards

Recently, Asia IP magazine announced the winners of its 2026 China IP Awards across various categories.

AFD China has been recognized by clients for its efficient and tailored intellectual property services. This year, the firm not only retained its title as the **Technology, Media & Telecoms**

Firm of the Year, but also received two new honors for the first time: **IP Transactions Firm of the Year** and **IP Portfolio Management Firm of the Year**.

The China IP Awards evaluate each firm based on its standout cases over the past year, overall performance, and client feedback. AFD China's continued win in the TMT category reflects client recognition of the protection and enforcement strategies we provide in this field. Meanwhile, the newly awarded IP Transactions and IP Portfolio Management categories demonstrate the firm's expanding scope of services and its ability to respond to client needs across multiple dimensions.

AFD China extends its sincere thanks to all clients for their trust and support. Going forward, we will continue to focus on your needs, work closely as a team, and tailor our strategies to each client and each case, helping you protect your intangible assets and supporting your innovation and growth.

China Issues New Judicial Interpretation on Punitive Damages for IP Infringement

The new interpretation refines the legal standards for punitive damages based on experience gained since the previous rules were issued in 2021. It aims to make the rules more practical, unify court decisions, and offer clearer guidance for rights holders and the market.

Key clarifications in the new interpretation include the following:

First, it provides more detailed rules for determining when a defendant's conduct is "intentional" or "serious". For example, it treats as "intentional" a situation where a defendant, after settling with the plaintiff and agreeing to stop the infringement, later commits the same or a similar act. It also gives a clearer definition of "making a business out of infringement".

Second, it offers clearer methods for calculating the base amount for punitive damages. If the base amount is based on the defendant's illegal gains or profits, courts may refer to operating profits. If the defendant makes a business out of infringement, sales profits may be used. Statutory damages cannot serve as the base for punitive damages.

Third, it clarifies how the multiplier for damages should be determined. Courts must take into account any administrative or criminal fines already imposed for the same infringing act, even if the plaintiff does not request it.

The Supreme People's Court (SPC) expects these rules to help impose meaningful penalties on serious IP infringers, thereby fostering a legal environment that supports innovation and high quality development.

2026 National Intellectual Property Publicity Week Launched in Beijing

On April 20, the main event of the 2026 National Intellectual Property Publicity Week was held in Beijing. Running from April 20 to 26, this year's campaign is themed "Strengthening IP Protection in Emerging Fields to Accelerate the Development of New Productive Forces."

Throughout the week, the campaign will highlight the important role of intellectual property in protecting inventions, promoting industrial innovation, encouraging creative expression, and building brands. A special focus will be placed on IP protection practices in emerging fields and the close connection between IP and people's daily lives.

Speaking at the main event, officials noted that China has made new progress in IP development, successfully concluding the 14th Five Year Plan period (2020-2025). With the rapid rise of emerging technologies and industries, there is a growing need for stronger IP protection in these fields. Improving relevant legal frameworks will be key to supporting high quality economic development.

In a video message, the Director General of the World Intellectual Property Organization pointed out that this year's World IP Day theme is "IP and Sports: Ready, Set, Innovate!" He explained that patents, designs, trademarks, and copyright not only drive technological development in sports and help build brands, but also protect sports broadcasts and social media content. The protection and management of IP assets have become an essential part of the sports industry.

During the event, ten practical measures were announced to make IP services more accessible and business friendly. These include integrated processing, smart Q&A services, on demand examination, overseas protection support, and diversified dispute resolution. Representatives from emerging technology companies and an Olympic athlete jointly called for stronger IP protection in emerging fields.

Throughout the publicity week, government agencies and local authorities across the country will carry out awareness activities on IP, fostering a culture that respects knowledge, values innovation, upholds integrity and fair competition.

China Releases 2025 Typical Cases on Patent Reexamination and Invalidation

China's National Intellectual Property Administration (CNIPA) has released ten typical cases from 2025 involving patent reexamination and invalidation. These cases were selected because they are highly relevant, widely discussed, and provide useful guidance on how patent rules are applied in practice.

Case 1: "A Method for Preparing Heterologous Triploid Scallops" (Reexamination)

The patent office overturned an earlier rejection.

The decision clarifies how to assess technical effects in aquaculture patents and what counts as common general knowledge in the field. This is particularly important for protecting innovation in marine seed industry and supporting ocean related industries.

Case 2: "A Pharmaceutical Composition for Treating Cerebrovascular Diseases" (Invalidation)

The patent was maintained.

The decision explains how to evaluate the reliability of experimental data submitted by the patentee. It also examines whether a specific combination of drug ingredients at a particular ratio produces a synergistic effect beyond what each ingredient does alone. The case provides practical guidance for drafting high quality biopharmaceutical patents.

Case 3: "Nucleoside Phosphoramidate Prodrugs" (Invalidation)

The patent was maintained.

The decision clarifies that the claimed compounds include not just one specific chemical structure but multiple possible three dimensional spatial configurations. It also provides a detailed discussion on how to assess inventiveness for pharmaceutical compounds. This case shows how

invalidation proceedings can support and strengthen the protection of high value pharmaceutical patents.

Case 4: "Polymorphs of C MET/HGFR Inhibitors" (Invalidation)

The patent was maintained.

Starting from the fundamental principle that patents are granted in exchange for full disclosure of the invention, the decision accepted additional experimental data submitted by the patentee after filing. It found the patent inventive. The case systematically explains the standards for accepting supplementary experimental data in the pharmaceutical and chemical fields, a common issue in drug patent disputes.

Case 5: "Bottle" (Design Patent Invalidation)

The patent was declared completely invalid.

When read together with a related case on a label design, this case illustrates how the same design feature may carry different weight when applied to different products. A certain design element might be highly distinctive on one product but not on another. The decision is a typical application of the "overall observation and comprehensive judgment" principle used when assessing design patents.

Case 6: "Offset Decoding Device, Offset Encoding Device, Image Filtering Device" (Invalidation)

The patent was partially invalidated.

The decision explains how to interpret the scope of protection of patent claims in validity proceedings. It also carefully identifies what the genuine innovative contribution of the patent is in the video coding field, distinguishing it from what was already known.

Case 7: "Method, Apparatus, Device, and Storage Medium for Generating Dynamic Images Based on Audio" (Invalidation)

The patent was maintained.

In applying the three step method for assessing inventiveness, the decision fully considered factors such as the specific application scenario and the method used to train the AI model. The case provides guidance on patent examination standards in the field of artificial intelligence and its various sub sectors.

Case 8: "Method and Device for Adjusting Wireless Network" (Invalidation)

This case is the first of its kind where an invalidation request was rejected for violating the principle of good faith.

The decision makes it clear that invalidation requests must have a genuine purpose, that is, to correct improperly granted patents. Requests made for other reasons, such as harassing a competitor or delaying litigation, are considered an abuse of the system and will be rejected. This case helps maintain fair market competition and prevents misuse of the invalidation process.

Case 9: "Optical Imaging System" (Invalidation)

The patent was declared completely invalid.

The case involves the use of software to reproduce prior art and calculate certain technical parameters. The decision examines the software from four angles: the source of the software, its

type, its function, and whether it can be properly operated in the relevant context. It provides a clear framework for assessing whether computer generated calculations are reliable enough to be used as evidence in patent disputes. It also offers guidance on how parties should present such evidence.

Case 10: "A Metallographic Preparation Method for Tungsten Zirconium Alloy" (Reexamination)

The request for reexamination was rejected.

The decision explains that content generated by large language AI models, such as ChatGPT, is not reliable evidence for proving what was already known before a patent application was filed. This is because AI generated content is influenced by many factors, including the data used to train the model, the algorithm design, and how the user asks the question. Therefore, such content cannot accurately represent the knowledge level of a person skilled in the art at the time of filing.

China Releases 2025 Typical Cases of Patent Administrative Protection

The CNIPA has released ten typical cases of patent administrative protection from 2025.

1. Patent Infringement Dispute Involving a Clutch Device, Shanghai

This case involved the interpretation of "offering for sale." The ruling held that an offer to sell is not established when the only communication is a purchase request from a buyer. This provides useful guidance for similar cases.

2. Patent Infringement Dispute Involving Encoding Methods and Devices, Guangdong

This case involved a standard essential patent. The authorities carefully assessed whether the parties had followed the fair, reasonable, and non-discriminatory principle during pre-litigation negotiations. Based on this assessment, the parties were guided to reach a settlement that respected both the value of the patent and market rules.

3. Patent Infringement Dispute Involving a Diabetes Drug, Shandong

This case centered on whether a specific crystalline form of a drug was manufactured or used during production. The authorities gathered evidence from multiple sources to build a complete chain of evidence, allowed the parties to fully cross-examine the evidence, and made an infringement determination based on that foundation. This approach efficiently resolved a technically complex patent dispute.

4. Series of Patent Infringement Disputes Involving Equipment for Transferring Molten Metal, Sichuan

These cases involved complex technical comparisons and factual determinations. After on-site inspection and evidence collection, with the assistance of technical investigation officers, the authorities quickly established the technical facts and issued administrative rulings within a short period. This efficient and professional process protected the legitimate rights of the patentee.

5. Utility Model Patent Infringement Dispute Involving a Brush Handle Insertion Guide Device, Anhui

This case demonstrated the efficient coordination between administrative adjudication and patent validity proceedings. Through a circuit hearing mechanism, the CNIPA issued a decision on-site maintaining the validity of the patent. The enforcement authority then quickly made a ruling based on that decision, fully illustrating the advantage of fast track administrative protection.

6. Series of Design Patent Infringement Disputes Involving a Motorcycle, Chongqing

In this case, based on evidence discovered at an exhibition, the same claimant filed handling request disputes against two companies located in different districts within Chongqing Municipality. The authorities provided coordinated guidance to both districts, ensuring uniform case handling standards and improving efficiency.

7. Series of Design Patent Infringement Disputes Involving a Phone Holder, Fujian and Other Provinces

This case involved a series of cross-regional patent infringement disputes. Relying on a cross-regional collaborative protection mechanism, authorities from four provinces worked together, collecting and fixing evidence in a unified manner and handling the cases in parallel. This approach resolved the entire series of disputes within three months.

8. Design Patent Infringement Dispute Involving a Pipe Fitting, Zhejiang

During the handling of this case, the authorities successfully connected administrative mediation with arbitration. The parties reached a settlement quickly, and the compensation agreement was confirmed through arbitration, efficiently resolving the dispute.

9. Utility Model Patent Infringement Dispute Involving a Scorpion Breeding Device, Henan

This case involved the cross regional transfer of a patent administrative ruling case. After receiving the transferred materials, the accepting authority accurately determined the infringing facts and issued an administrative ruling, promptly stopping the infringing activity and effectively reducing the patentee's enforcement costs.

10. Counterfeiting of a Utility Model Patent for a Drainage Pipe, Jiangsu and Another Province

This case involved cross provincial joint evidence collection. Authorities from two provinces conducted a joint investigation, fixed key evidence, and built a complete chain of proof. Based on this, they established the facts, completed the case quickly, and imposed administrative penalties in accordance with the law.

China Releases 2025 Typical Cases of Trademark Administrative Protection

The CNIPA has released ten typical cases of trademark administrative protection from 2025.

1. Series of Bad Faith Fillings of the DEEPSEEK Trademark, Guangdong

This case involved brand protection for a technology company in an emerging field of innovation. The CNIPA rejected the bad faith trademark applications and issued a public notice. Authorities at the provincial, city, and district levels responded quickly, cracking down on the practice of piggybacking on popular terms and supporting the development of the artificial intelligence industry.

2. Use of a Deceptive  **Mark as a Trademark, Chongqing**

This case involved the continued illegal use of a registered trademark after it had been declared invalid because it was deceptive. The authorities investigated and severely punished the illegal use, effectively cleaning up the market and guiding businesses toward lawful and proper trademark use

3. Infringement of the LULULEMON and Other Registered Trademarks, Guangxi

The enforcement authorities seized physical inventory from offline stores, conducted in depth investigations into online sales channels, and took action against both online and offline infringement. They also initiated coordination between administrative enforcement and criminal justice, sending a strong deterrent message against infringing activities.

4. Infringement of a Liquor Mark and Other Registered Trademarks, Anhui

This case involved the cross-regional production and sale of counterfeit liquor. Administrative and judicial authorities worked together efficiently and coordinated their actions across regions. They successfully dismantled a cross-regional criminal network involved in producing and selling counterfeit liquor, and simultaneously imposed administrative penalties on downstream distributors, achieving a full chain enforcement.

5. Infringement of the  Registered Trademark, Shanghai

This case involved an atypical form of trademark infringement known as reverse passing off. By accurately identifying the infringing facts, the case provided a vivid illustration of the prohibition set forth in Article 57 of the Trademark Law, which forbids removing a registered trademark and putting the relabeled goods back into the market.

6. Infringement of the 德力西电气 Registered Trademark, Shanxi

This case involved reverse coordination between criminal justice and administrative enforcement. Based on a recommendation from the procuratorate, the administrative authorities promptly launched an investigation. Without compromising public electrical safety, they supervised the phased removal of counterfeit goods by the party concerned. Because the party had engaged in repeat infringement, the authorities imposed a heavy penalty.

7. Unauthorized Use of the Registered Trademark Symbol ® on a Shop Sign, Fujian

This case involved the legal requirements for displaying the registered trademark symbol "®" on a shop sign. The party used the symbol on its shop sign even though it had not obtained a trademark registration for its services. The authorities addressed this violation and clarified the relevant principles set out in the guidance on the application and use of service class trademarks.

8. Series of Infringements of the  and Other Trademarks through WeChat Store Sales, Zhejiang

This case involved trademark infringement through sales on a WeChat Store platform. The enforcement authorities discovered the case through an online investigation, initiated coordination with criminal justice, and traced the infringement upstream to suppliers and downstream to distributors, dismantling the entire network of counterfeit production and sales.

9. Infringement of the CHANEL and Other Registered Trademarks, Jiangsu

The enforcement authorities discovered this case during a routine inspection of a logistics facility. They targeted a complete infringement supply chain that was highly concealed and operated across regions through a networked structure. The successful enforcement sent a strong

deterrent message against similar infringements in rural areas and at the edges of cities, where enforcement is often weaker.

10. Infringement of the 祺丰 and Other Registered Trademarks, Xinjiang

This case involved reverse coordination between criminal justice and administrative enforcement. Based on a recommendation from the procuratorate and considering the circumstances of the conduct, who benefited, and who had management responsibility, the administrative authorities correctly identified the company as the infringing party and imposed administrative penalties. This achieved the result of imposing liability even where no criminal penalty was imposed.

2026 IP5 Deputy Heads of Office Meeting Held Online

Recently, the 2026 IP5 Deputy Heads of Office Meeting was held online. Zhang Zhicheng, Deputy Commissioner of the CNIPA, led the Chinese delegation to the meeting.

The meeting reviewed the progress of various working group activities as well as achievements of the roadmap for emerging technologies and artificial intelligence. Participants also approved a project on the exchange of statistical data related to frontier technology patents. The five offices agreed to further take industry needs in emerging technologies and artificial intelligence into account in their future cooperation, and reached consensus on the revised IP5 Vision Statement. In addition, the five offices reached principled agreement on optimizing the working mechanisms of the IP5 Deputy Heads of Office Meeting and various working groups.

https://english.cnipa.gov.cn/art/2026/5/20/art_1340_206443.html

SUPPLEMENTARY ISSUE

Supreme Court Ruling on Patent Infringement: Should Molds for Infringing Products Be Destroyed? And How?

The SPC issued a final judgment in a dispute over the infringement of an invention patent. The Court held that where the patentee can prove or reasonably demonstrate that it is highly probable that the infringing manufacturer possesses or controls a mold specifically used to manufacture the infringing product, and the manufacturer fails to submit sufficient evidence to rebut such, the court may order the litigation claim for destruction of the mold. In addition, to effectively prevent continued infringement, the judgment imposed a monetary penalty for delay on the infringer.

[Factual Background]

Individual A was the patentee of the invention patent in suit. A filed a lawsuit alleging that Company B had manufactured, sold, and offered for sale products falling within the scope of the patent without authorization, which constituted infringement, and after receiving a cease and desist letter, Company B continued to sell the infringing products, causing substantial economic harm to the patentee. A requested the court to order Company B to immediately cease its infringing activities, including manufacturing, selling, and offering for sale the accused products, to remove online sales links, to destroy its inventory of infringing products and the molds used to manufacture them, and to pay a total of CNY 800,000 in economic damages and reasonable enforcement expenses. Company B argued that the accused product did not fall within the scope of the patent.

The first instance court found that the accused product fell within the scope of the patent and ordered Company B to stop infringing and to pay A CNY 80,000, including reasonable enforcement expenses. With respect to A's request to destroy Company B's inventory and manufacturing molds, the first instance court found that A had not provided sufficient evidence that Company B possessed such inventory or molds and therefore denied that request. Both A and Company B appealed.

During the second instance proceedings, Company B admitted that molds were used to manufacture the accused product but claimed that they were not in its possession or control but rather were held by a contract manufacturer. After being instructed by the second instance court, Company B failed to submit evidence supporting this claim.

[Judgement]

The SPC affirmed the first instance court's finding of infringement and the order to stop the infringing activities. However, the Court modified the judgment, ordering that Company B destroy the dedicated molds used to manufacture the accused product under judicial supervision or in the presence of A. The Court also increased the damages award CNY 300,000, including reasonable enforcement expenses, and imposed a monetary penalty for delay on Company B.

1) With respect to whether Company B possessed the molds and whether destruction should be ordered, the second instance court held that based on factors such as the nature and characteristics of the accused product, Company B's business scope and its online promotional materials, new evidence submitted by A in the appeal, and Company B's own admissions, it was highly probable that dedicated molds existed for the manufacture of the accused product. Company B argued that the molds were held by a third party, and it shall accordingly bore the burden of proving that claim. Having failed to do so after being instructed, the court found that the

molds were in Company B's possession and control. Because the continued existence of the molds presented a real risk of continued infringement and further harm, it was necessary to take effective and reasonable measures to fully and effectively stop Company B's infringing activities. Therefore, the court granted A's appellate request to order Company B to destroy the molds.

2) With respect to enforcement of the destruction order, the second instance court held that after receiving A's cease and desist letter, Company B failed to respond and continued the infringement. During the second instance proceedings, after being instructed, Company B also failed to comply with its litigation obligations by refusing to provide specific information about the molds. This raised a real risk that Company B might continue to infringe, either directly or through third parties, after the judgment took effect. To effectively and specifically prevent continued infringement and further harm, and to compel Company B to comply with its legal obligations, the court ordered Company B to hand out and destroy the dedicated molds under judicial supervision or in A's presence within a specified period. The court further ordered that if Company B failed to comply without justifiable reason, it would be required to pay a daily monetary penalty for delay to A.

[Significance]

This decision is significant in several respects. First, it clarifies the analytical framework for determining whether to order the destruction of molds used to manufacture accused products in patent infringement litigation. Second, by imposing a monetary penalty for delay, it strengthens the court's ability to compel compliance with a judgment, effectively deterring continued infringement and preventing further harm. Lastly, it reflects a strong judicial commitment to robust patent protection, demonstrating the court's effort to achieve both a just legal outcome and a meaningful practical result. This decision provides important reference and guidance for the handling of similar cases.

(2024) Zui Gao Fa Zhi Min Zhong No. 403

Standards for "Sufficient Disclosure" in Microbe Genetic Engineering Patent Cases

In an administrative appeal case, the SPC clarified that in the field of microbe genetic engineering, when a patent involves an engineered strain obtained through gene overexpression, the description may be considered sufficiently disclosed if (1) the synthesized product has a clear connection to known strains or processes that can demonstrate the feasibility of the technical solution; and (2) a person skilled in the art can reasonably expect the technical effects based on existing knowledge, or if the patent specification provides experimental data sufficient to prove those effects.

This case involves a review decision on an invalidation request against a microbe related invention patent. The facts are briefly summarized as follows.

The patent in question is titled "Engineered Sphingomonas, Its Construction Method, and Applications." Company A was the patent owner. Individual X filed a request to invalidate the patent. In response, the CNIPA issued a decision maintaining the validity of the patent.

X disagreed and filed a lawsuit with the first instance court, arguing that the patent specification did not sufficiently disclose the invention, violating the provisions of Article 26, Paragraph 3 of the Patent Law. X requested the court to revoke the decision and order the CNIPA to issue a new one.

The first instance court dismissed X's claims. It found that the patent specification described the process for obtaining the final recombinant strain MH-10. The process involved steps such as gene amplification, plasmid ligation, and conjugative transfer, all of which were conventional techniques that a person skilled in the art would know. Based on the starting strain deposited with the administrative department for patent under the State Council and a commercially available starting plasmid, a person skilled in the art using ordinary technical skills could reproduce the patented method and obtain the recombinant bacterial strain. There was no evidence suggesting any obstacle that would prevent reproduction.

X appealed to the SPC. He argued that based solely on the method described in the patent specification, the stable acquisition of a viable engineered Sphingomonas strain MH-10 cannot be ensured. Genetically engineered bacteria are inherently genetically unstable and prone to phenomena such as loss, rearrangement, and modification of recombinant plasmids. Thus, the patent cannot definitively provide the strain MH-10, nor can it confirm that the fermentation product is Sanzan Gum. Consequently, the patent specification is insufficiently disclosed regarding the construction of the engineered strain MH-10 and the confirmation that the fermentation product is Sanzan Gum. As a result, it fails to enable a person skilled in the art to carry out the invention and obtain the expected product.

The SPC dismissed the appeal in the second instance and affirmed the first instance court's decision. The SPC held that the patent clearly provides the nucleotide sequences of key genes, the deposit number of the designated host strain, and describes the primer sequences, as well as the strain and plasmid information in the specification. The Examples provide detailed records of operations such as plasmid construction and conjugative transfer. The framework map of the recombinant plasmid is clear, and the culture medium formulations including carbon sources, nitrogen sources, and inorganic salt concentrations, as well as culture parameters such as temperature and pH value, are disclosed. The starting biological material strain and the plasmid are readily accessible. Based on the deposited starting strain and the commercially available plasmid, combined with the gene sequences, operating steps, and culture conditions described in the patent, a person skilled in the art, using conventional technical means, is able to stably and reproducibly construct the engineered strain MH-10 with the expected characteristics. Therefore, the technical solution of the patent is reproducible.

Regarding whether the fermentation product was indeed Sanzan Gum with the expected properties, the second instance judgment, through an analysis of the strain's relevance, the effect of gene overexpression, and the predictability of the technical effect, determined that a person skilled in the art could reasonably infer that the fermentation product of the obtained engineered strain MH-10 is Sanzan Gum. Through the origin of the strain, the mechanism of engineering modification, the optimization of fermentation processes, product functionality tests, and cross-verification with prior art, a complete chain of evidence has been established, sufficient to confirm that the fermentation product of the engineered strain MH-10 is Sanzan Gum, as well as its technical effects. In summary, the patent discloses the deposited strain, specifies the gene sequences, discloses the source and construction method of the plasmid as well as the culture medium and conditions, thereby enabling the reproducibility of the technical solution and the confirmation of the fermentation product. Furthermore, the technical effects are in line with the reasonable expectations of a person skilled in the art. Therefore, the patent meets the criteria for sufficient disclosure of the specification as required.

The final judgment in this case sets a clear benchmark for the judicial determination of "sufficient disclosure" in the field of microbial genetic engineering patents. The SPC systematically reviewed the completeness and enforceability of the technical information across key aspects, including gene sequences, strain deposit, plasmid construction, fermentation processes, and product

verification. It determined that the technical solution is stably reproducible. Furthermore, through analyses of strain relevance, gene expression, and the predictability of the technical effects, the Court established a complete evidentiary chain to confirm the identity of the fermentation product, thereby precisely grasping the examination principles for patents in the biotechnology field. This case not only clarifies the disclosure standards that the specification must meet but also provides important guidance for the drafting and validation of patents related to genetically engineered strains and biological fermentation.

(2024) Zui Gao Fa Zhi Xing Zhong No. 1241

Application of the Research Exemption and Infringement Determination in Pesticide Patent Disputes

The SPC issues a final judgment in a dispute over infringement of a pesticide patent

[Factual Background]

This case involves a dispute over the infringement of an invention patent for a pesticide. The patentee, Company A, had obtained pesticide registration for the related TC (TC) in 2010. During the term of the patent in suit, the alleged infringers, Company B and Company C, had been engaging in acts of manufacturing and using pesticide products falling within the scope of protection of the patent. They did so primarily to obtain the test data necessary for registering their own generic versions of the pesticide and its formulations. In addition, they also manufactured and supplied the TC to several other companies to assist them in conducting pesticide registration tests, which enabled those third parties to obtain dozens of pesticide registrations. After obtaining registration for the generic TC, Company B and Company C also engaged in offering for sale of their products at exhibitions and on various online platforms.

The first instance court held that the acts of manufacturing, using, and supplying the patented pesticide product to others, carried out by Company B and Company C in the course of obtaining pesticide registration from the national pesticide administrative authority for themselves and for others, did not unreasonably harm the legitimate interests of the patentee. The first instance court found that such acts constitute infringement “for production or business purposes” as stipulated in the patent law. However, the first instance court did find that the acts of offering for sale constituted infringement. Accordingly, the first instance court ordered Company B and Company C to pay CNY 300,000 in damages and CNY 200,000 in reasonable enforcement expenses. Both the patentee, Company A, and the alleged infringers, Company B and Company C, appealed.

[Judgement]

The SPC, on second instance, held as follows.

In this case, the acts of manufacturing and using the accused product that Company B and Company C carried out to obtain registration for their own generic TC and formulations were directly aimed at generating the test data required by the pesticide administrative authority for such registration. If generic pesticide manufacturers were not permitted to manufacture or use the patented product during the patent term to generate the test data needed for regulatory approval, the result would be that generic pesticides could not lawfully enter the market for a considerable period after the expiration of the patent term. This would effectively extend the patent term in an unreasonable and disguised manner, harming the public interest and defeating the legislative purpose of the patent law. Therefore, when a generic pesticide manufacturer, for the purpose of supplying the test data necessary to apply for pesticide registration, engages in limited

manufacturing and use of an accused product that falls within the scope of a patent, and does so without unreasonably harming the normal exploitation of the patent or the legitimate rights of the patentee, such acts may be exempted from patent infringement under the research or scientific experiment exemption. They are not considered patent infringement.

However, the acts of Company B and Company C in manufacturing and providing pesticides to third parties for registration testing purposes were carried out with the intent to obtain improper commercial benefits. These acts exceeded the reasonable limits of the "research exemption" under patent law, harmed the legitimate rights and interests of the patentee, and thus constituted infringement of the patent in question. Furthermore, Company B and Company C offered the accused product for sale through exhibitions and multiple online platforms during the term of the patent, which directly affected the normal commercial exploitation of the patented product and also constituted patent infringement.

Based on these findings, the court reversed the first instance ruling on these issues and found that Company B and Company C's acts of manufacturing the patented product and supplying it to others constituted patent infringement. The court increased the damages award to CNY 600,000 plus CNY 200,000 in reasonable enforcement expenses.

[Significance]

This judgment clarifies that the manufacture and use of a patented pesticide product to generate test data necessary for obtaining one's own pesticide registration may fall within the research exemption. It also clarifies that supplying the patented product to third parties for their registration tests, as well as acts of offering the product for sale, constitute patent infringement. The decision strikes a reasonable balance between protecting patents and safeguarding the public interest.

(2023) Zui Gao Fa Zhi Min Zhong No. 1511

Determination of Separate Sale of Parts and Contributory infringement

The SPC held, in an infringement case, that where an alleged infringer sells component parts separately, and those parts can, through simple combination by others, for a product that falls within the scope of protection of the patent at issue, it may generally be determined that the alleged infringer had knew such parts were specially used for implementing the patent, and has, without the patentee's authorization, supplied such parts to others with the intention of production and business, thereby enabling others to infringe the patent, such conduct constitutes contributory infringement, and the alleged infringer shall be held liable.

The invention patent involved in the case is titled “dental handheld device” and owned by Japanese Company A.

Company A filed a lawsuit with the first-instance court, claiming that Company B manufactured, sold, offered to sell the alleged infringing products of the CX235C6-22 handheld device and the C-PUMA motor, and that Company C sold and offered to sell the said alleged infringing products.

Company B argued that the alleged infringing product, the CX235C6-22 handheld device, at least has no technical feature of the driving unit and dental treatment tool involved in claims 1, 2, 4, and 5 of the patent at issue. The CX235C6-22 handheld device does not match the rotation speed ratio that is preset in the C-PUMA motor, and in the user handbook of the C-PUMA motor, Company B has requested users, in a manner of safety warning, to use the motor in the scope mentioned in the handbook, which forbids users from using the two products in combination.

Company B has not marketed that the motor can be used with the CX235C6-22 handheld device in combination, and has not informed consumers that the motor can match the handheld device. Therefore, the alleged infringing product does not fall within the scope of protection of the patent at issue. Company C argued that the alleged infringing product was purchased from Company B, and that it did not know that the alleged infringing product was an infringing product, and that it did not manufacture the alleged infringing product, nor has it sold the alleged infringing product. Where Company A pretended to be a client and purchased the product of a designated type, Company C should not bear the compensation liability.

Upon examination, the first-instance court found that: Company B sold multiple types of bending machines, such as the C-PUMA brushless micro-motor and the CX235C6 dental pneumatic motor handheld device. Company B's website presents a product display page for "C235C6 planting bending machine" under the category "dental handheld device" and displays an advertising phrase "A magical tool necessary for minimally invasive tooth extraction is now freshly available" on a page under the category "electronic motor" followed by a product introduction: "magical tool set for minimally invasive tooth extraction" contains "the C-PUMA brushless micro-motor and a handheld tool for extracting tooth from 45° elevation angle(1:4.2)", in which the "C-PUMA brushless micro-motor" is introduced to have "extensive speed regulation function" and can match with different dental handheld devices according to different uses, and its speed range varies from 100 to 200000 r/min.

The first-instance court held that the alleged infringing product consisting of the CX235C6-22 handheld device and the C-PUMA motor falls within the protection scope covered by claims of the disputed patent claimed by Company A, and that Company B and Company C were ruled to stop infringing and compensate.

Company B was dissatisfied and appealed.

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

The court holds in the effective judgment that: During the first instance, Company B acknowledged that it had manufactured the C-PUMA motor and the CX235C6-22 handheld device that Company A purchased from Company C. Company C did not object to its own selling behavior. Company B posted pictures of the CX235C6-22 handheld device on its website, but did not provide any special notice of the type of motor with which the handheld device should be used. The existing evidence proves that Company B has manufactured the CX235C6-22 handheld device and offered it for sale on its website, and that Company A also managed to purchase this product.

Claim 1 of the disputed patent discloses the following:

the driving unit is connected to the proximal end of the handle, causing the driving unit to resist the proximal bias of the spring device and press the stop pin towards the distal side, resulting in the spring device being compressed and the distal end of the stop pin being extended from the distal surface of the handle to engage with the blocking device. The connection of the distal end of the stop pin and the blocking device prevents relative rotation between the neck and the handle, while the separation of the driving unit from the proximal end of the handle causes the stop pin to be released from the pressure applied by the driving unit, allowing the stop pin to slide towards the proximal side under the proximal bias of the spring device, and the said stop pin disengage from the blocking device."

It can be seen that the disputed patent does not limit the specific structure of the driving unit。 Instead, it only limits that the driving unit needs to function as a compressing stop pin; that is,

under the technical solution of claim 1 of the disputed patent, the handheld device is a specialized component, while the driving unit is a general purpose component. In accordance with the facts acknowledged by both parties concerned, the dental handheld device must be used with a motor as a driving unit in order to function properly. Company B did not provide a reasonable explanation for selling the CX235C6-22 handheld device alone without offering the matching motor. This means that after purchasing the CX235C6-22 handheld device, the user is bound to seek for a motor that matches its rotation speed to achieve the same technical methods, functions, and effects as those of the technical solution of the disputed patent. Therefore, even if Company B claimed that the C-PUMA motor and the CX235C6-22 handheld device shall not be used together, its behavior of manufacturing and selling the CX235C6-22 handheld device constitutes contributory infringement. This conclusion is in accordance with Rule 21(1) of the Explanation of Several Questions on Law Application in the Examination of Patent Infringement Dispute Cases (II), which stipulates that an enterprise that specializes in producing medical tools and apparatus is deemed to to be aware that the relevant products are materials, equipment, parts, or intermediates for implementing a patent. When such an enterprise provides these products to others for production or business purpose without the patentee's permission, it infringes the patent and constitutes contributory infringement. Therefore, Company B shall bear the infringement liability.

The determination in this case effectively cracks down on behaviors that infringe a patent by supplying individual parts. It specifies that selling components separately selling cannot exempt a party from infringement liability. The judgment of this case indicates that the intensity of the patent protection does not depend on how an infringer technically segments its products, but on the substantive extent to which the behavior harms the innovation. In highly specialized industries, the producers' professional knowledge of how a product is intended to be used serves as an important judgment basis of whether it has the requisite awareness. When a producer supplies core parts that are specifically designed to implement a patented invention, such conduct may fall into the scope of contributory infringement. This rule provides a clear boundary for manufacturing and business activities in professional fields such as medical tools and apparatus, with a significant precedential value.

(2022) Zui Gao Fa Zhi Min Zhong No. 1673