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China and Kazakhstan Sign Memorandum of Understanding and Cooperation in the Field of Intellectual Property

Under the joint witness of Chinese President Xi Jinping and Kazakh President Kassym-Jomart Tokayev, the China National Intellectual Property Administration (CNIPA) and the Ministry of Justice of the Republic of Kazakhstan exchanged the Memorandum of Understanding (MoU) and Cooperation between the National Intellectual Property Administration of the People's Republic of China and the Ministry of Justice of the Republic of Kazakhstan during the second China-Central Asia Summit. Under the MoU, the two sides will further deepen cooperation in the field of intellectual property and promote mutual development. The MoU has been included in a list of deliverables of the second China-Central Asia Summit.

https://english.cnipa.gov.cn/art/2025/7/3/art_1340_200415.html

Shen Changyu Leads Delegation to the Second China-Central Asia Heads of Intellectual Property Office Meeting

On June 17, the second China-Central Asia Heads of Intellectual Property Office Meeting was held in Astana, Kazakhstan. Shen Changyu, Commissioner of the CNIPA, Botagoz Zhakselekov, Vice Minister of the Ministry of Justice of the Republic of Kazakhstan, Islambek Moydinov, First Deputy Director of the State Agency for Intellectual Property and Innovation under the Cabinet of Ministers of the Kyrgyz Republic, and Mirzo Ismoilzoda, Director of the National Center for Patents and Information (NCPI) of the Republic of Tajikistan, led their respective delegations to attend the meeting. The World Intellectual Property Organization (WIPO) also sent representatives to attend the meeting as observers.

The meeting reviewed the achievements of China-Central Asia cooperation in intellectual property (IP) over the past two years and held in-depth discussions on future collaboration. The Joint Statement of the Second China-Central Asia Heads of Intellectual Property Office Meeting was adopted during the

meeting, identifying four priority areas for future cooperation: legal and regulatory frameworks and strategic planning, improvement of the business environment, enhancement of capacity building, and deepening of digital cooperation. The outcomes of the meeting have been included in a list of deliverables of the second China-Central Asia Summit.

Shen stated that China and the Central Asian countries attach great importance to IP work, and share tremendous potential for cooperation. With greater confidence and more pragmatic actions, China is willing to share its experience in advancing the development of the IP system, contributing the strength of IP to jointly building a closer China-Central Asia community with a shared future.

During the visit in Kazakhstan, the delegations also attended an IP seminar on supporting business development and improving patent service quality, hosted by the Ministry of Justice of Kazakhstan. Shen also held bilateral talks with Yerlan Sarsenbayev, Minister of Justice of the Republic of Kazakhstan.

https://english.cnipa.gov.cn/art/2025/7/3/art_1340_200413.html

IP Regulator Enhances Steps to Help Chinese Companies Going Global

China has been continuously enhancing its intellectual property services for domestic enterprises going global, particularly assisting them in strengthening overseas planning around key core technologies, an official from the country's top IP regulator said.

Guo Wen, spokeswoman for the China National Intellectual Property Administration, told a news conference on Friday that they have set up 77 IP protection centers nationwide to better serve innovators and further bolster business environment.

These centers provided strong guidance to enterprises on optimizing their overseas layout of key core technologies from January to May. Simultaneously, they helped businesses improve risk monitoring for cross-border e-commerce and overseas trademark registration, with services of overseas dispute response and consultation 1,137 times, according to Guo.

During the period, these centers also handled 38,000 IP rights protection cases filed by innovative entities, completing them on average within two weeks, she noted.

"We'll further advance the establishment of these centers to leverage swift and coordinated protection in supporting high-quality economic development," she added.

As of May, China had 4.97 million of valid invention patents, she said, noting that "the figure has shown the vibrant creativity of China's innovation".

She added that the administration will persist in enhancing the efficiency of patent examination, while also motivating innovators to enhance the quality of their patents.

<http://chinaipr.mofcom.gov.cn/article/centralgovernment/202506/1992201.html>

CNIPA Deputy Commissioner Attends the Closed-Door Policy Meeting on Intellectual Property at the Sixth Qingdao Multinationals Summit

The Sixth Qingdao Multinationals Summit was held on June 19. Chen Dan, Member of the Leading Party Members Group and Deputy Commissioner of the CNIPA, attended the opening ceremony and delivered a speech at the Closed-Door Policy Meeting on Intellectual Property (IP) during the summit.

The meeting emphasized that CNIPA has thoroughly implemented the decisions and plans of the Central Committee of the

Communist Party of China (CPC) and the State Council, and has continuously advanced efforts to strengthen IP protection for foreign enterprises. It has improved top-level design over IP protection work, strengthened communication channels with foreign enterprises, and boosted the effectiveness of IP protection and services, yielding positive results. Going forward, CNIPA will further improve its dialogue and communication mechanisms with foreign enterprises, proactively address their IP protection needs, and continue to enhance the quality and efficiency of its work, aiming to create a better innovation and business environment for foreign enterprises in China.

During the meeting, officials from CNIPA's relevant departments introduced IP protection policies and achievements, and engaged in in-depth discussions with representatives from foreign enterprises on related issues.

https://english.cnipa.gov.cn/art/2025/6/27/art_1340_200327.html

SUPPLEMENTARY ISSUE

Determination of the Relevance Between a Patent Technical Solution and an Inventor's Primary Duties or Assigned Tasks at Their Former Employer, and the Admissibility of Reimbursement for Reasonable Enforcement Expenses in Ownership Disputes

In disputes over patent application rights or patent ownership, even if the inventors recorded in the patent or patent application documents were not directly responsible for the research and development of the relevant technology at their former employer, their ability to access, control, or obtain related technical information by virtue of their job responsibilities and authority at the former employer cannot be disregarded. In this circumstance, it is incorrect to simply deny the relevance between the technical solution of the disputed patent or patent application and the inventors' primary duties or assigned tasks at their former employer solely because another individual at the former employer was directly responsible for the R&D of that technology.

Disputes over patent application rights or patent ownership generally do not fall within the scope of legal disputes for which reasonable enforcement expenses may be awarded. If the plaintiff requests the defendant to bear such expenses, the court will typically not support such a claim.

Zhejiang A Company, Zhejiang B Company, and Chengdu C Company (collectively, the "Plaintiffs") sued that around 2016, nearly forty technical employees of Chengdu C Company left to join Shanghai S Company and its affiliates. Shanghai S Company and its affiliates subsequently filed over twenty patent applications listing Natural Person X and other five former employees of Chengdu C Company, and other non-former employees, such as Natural Person Y, as inventors, thereby infringing upon their legitimate rights. The Plaintiffs initiated over twenty lawsuits concerning patent application rights and patent ownership. The present case involves the technical solution of the invention patent application titled "Battery Pack Heating Device and Battery Pack Heating Method", which is relevant to X's primary duties and assigned tasks at Chengdu C Company. The Plaintiffs requested the court to confirm that the patent application right belongs to Zhejiang A Company and Zhejiang B Company, and to award compensation for reasonable expenses incurred in protecting their rights.

Shanghai S Company and X argued that Zhejiang A Company and its affiliates lacked technical expertise in electric vehicle research and development, and that storage batteries and power batteries belong to entirely distinct technical fields with different technological pathways. Therefore, X's job responsibilities and tasks at his former employer were unrelated to the technical solution of the disputed patent application. The three Plaintiff companies' claim for compensation of reasonable expenses incurred in protecting their rights lacked legal basis.

The court found through trial that: X was employed by Chengdu C Company in a product technology position starting from April 2, 2014, primarily responsible for the research and development of storage battery systems, electronic and electrical appliances, and air conditioning systems. After obtaining approval to leave his former employer on May 23, 2016, X took up a position at an affiliated company of Shanghai S Company. Shanghai S Company was established on December 1, 2016, and filed the disputed patent application on July 10, 2017, listing X and Y as inventors.

The first-instance court rendered a civil judgment dismissing the claims of Zhejiang A Company, Zhejiang B Company, and Chengdu C Company. The three Plaintiffs appealed, arguing that Shanghai S Company should compensate them for the reasonable expenses incurred in stopping the infringement.

On December 14, 2023, the Supreme People's Court issued a final civil judgment: 1) Revoking the civil judgment of the first-instance court; 2) Confirming that Zhejiang A Company and Zhejiang B Company are co-owners of the disputed invention patent application right; 3) Dismissing the other claims of Zhejiang A Company, Zhejiang B Company, and Chengdu C Company.

The court's effective judgment held that:

To start with, the filing date of the disputed patent application was July 10, 2017. However, as early as May 17, 2017, staff from a Beijing patent and trademark agency had already communicated with Y, the other inventor of the patent application, regarding the technical solution and suggested improvements. X left Chengdu C Company on May 23, 2016, which is less than one year before the aforementioned communication between the patent agency staff and Y. Within one year of departure from his former employer, X participated in the research and development of 13 patents related to electric vehicle batteries. Therefore, it was highly probable that the disputed patent application was developed within one year of X's departure from Chengdu C Company.

Additionally, the technical solution of the disputed patent application was relevant to X's primary duties or assigned tasks at his former employer. First, as early as around 2015, Zhejiang A Company and its affiliates had invested substantial resources in the development of pure electric vehicle technologies. Through internal efforts and collaboration with technical partners, they conducted joint research on automotive control systems, drive systems, power battery packs and battery management systems, and vehicle chassis technologies. Second, before X left Chengdu C Company, Zhejiang A Company and its affiliates had already established technical reserves in traditional fuel vehicles, hybrid vehicles, and electric vehicle batteries, with research directions including electric vehicle power battery technologies, and had accumulated certain technical expertise. Third, electric vehicle power batteries are a type of storage battery, where high-voltage storage batteries serve as power sources for electric vehicles. Storage batteries and power batteries are not independent or unrelated fields. The disputed patent application involves a "battery pack heating device and method," while X's position at his former employer was in the technical department's product technology role, primarily responsible for the research and design of air conditioning, storage battery systems, and electronic and electrical appliances. His primary duties involved temperature control of battery packs using air conditioning or liquid cooling, which belongs to the technical field of automotive battery temperature control, as does the disputed patent application, which involves using fuel heaters for battery pack heating. The underlying technical principles are similar, demonstrating clear relevance. Third, during his tenure at the former employer, X not only directly participated in research related to electric vehicle batteries but also accessed and mastered technical information of storage batteries, power batteries, battery pack cooling, and heat exchange provided by colleagues, product suppliers, and technical partners through extensive email communications and interactions with colleagues. Therefore, the development of the technical solution in the disputed patent application was inseparable from X's primary duties at his former employer and closely related to the technical information he obtained through those duties. Thus, the disputed patent application was highly relevant to X's duties at Chengdu C Company. Moreover, Y, the other inventor listed in the patent application, also had the capability to develop the technical solution of the disputed patent application.

In summary, X was one of the actual inventors of the disputed patent application. The technical solution of the patent application belongs to the invention-creation developed within one year of X's departure from his former employer and is related to X's primary duties or assigned tasks at the former employer. Since the patent application also listed another inventor, and X was only one of the actual inventors, the court confirmed that Zhejiang A Company and Zhejiang B Company are co-owners of the patent application right. As this case is a dispute over the

ownership of patent application rights, the court did not support the Plaintiffs' claim for compensation in reasonable expenses incurred in protecting their rights.

(2022) Zui Gao Fa Zhi Min Zhong No. 2436

Comprehensive Determination of Secrecy and Confidentiality in Trade Secret Cases

The Supreme People's Court concluded a case involving an on-the-job technical professional who invested and established a separate company, "cloning" relevant business operations to infringe upon the trade secrets of his employing company. The court revised the original ruling, recognizing both relevant technical and operational information as trade secrets. Based on the evidence presented, the court determined that the employee and his newly established company jointly committed acts of trade secret infringement.

Chongqing A Company (hereinafter referred to as "Company A") filed a lawsuit with the court of first instance, accusing that Natural person X, one of its technical management personnel, had invested in and established Chongqing B Company (hereinafter referred to as "Company B") during his employment with Company A. X violated confidentiality obligations by disclosing Company A's technical secrets and operational information to Company B. Company B then used this information to manufacture identical adjustor products, which were then sold to Tianjin C Company, one of Company A's distributors, for use with coatings. Meanwhile, Company B utilized domestic substitute raw material information disclosed by X to preemptively sign sole agency agreements with manufacturers, and subsequently sold these materials to Company A at a high price for profit. Company B, aware of X's infringement of Company A's trade secrets, knowingly used such information, thereby constituting joint infringement with X. Company A sought injunctive relief against X and Company B to cease using its trade secrets and demanded compensation for damages and reasonable expenses.

Upon trial, the court of first instance held that neither the technical nor operational information claimed by Company A constituted trade secrets, and accordingly dismissed all of Company A's claims. Dissatisfied with this ruling, Company A appealed.

The Supreme People's Court, in its second-instance judgment, clarified that when a trade secret right holder initiates litigation against the alleged infringement on its trade secret, it bears the initial burden of proof regarding the key facts that constituting unfair competition by infringing trade secret. In determining whether a trade secret is "not generally known to the public," the right holder should not be required to provide excessively stringent proof distinguishing its claimed trade secrets from public information. Where the right holder provides preliminary evidence proving the secrecy of technical information (e.g., by demonstrating the organization of technical personnel to process and compile the relevant technical information), or offers a reasonable explanation or justification for why the claimed technical secret is "not generally known to the public," such evidence may suffice for a preliminary determination that the secrecy requirement is met. Once the right holder has presented preliminary evidence, if the alleged infringer claims that the technical secret in question is publicly known, they shall submit evidence to substantiate such defense, rather than merely raising a negative plea. When determining whether the trade secret owner has implemented corresponding confidentiality measures, the assessment shall generally focus on two aspects. The first assessment shall be whether the right holder has provided evidence demonstrating that they have taken objective measures reflecting their intent to maintain secrecy. However, such confidentiality measures do not need to meet an excessively stringent standard, nor must they strictly correspond to each specific item of confidential content

on a one-to-one basis. The second assessment shall be made on the infringer's specific role, managerial responsibilities, and other relevant factors. These shall be considered from the perspective of a dutiful confidentiality manager (bona fide secret keeper), and their confidentiality obligations shall be comprehensively evaluated in accordance with the proper conduct as defined under Article 2 of the Anti-Unfair Competition Law.

Regarding the technical information at issue, Company A sought protection for precise quantitative composition data of its adjustor product series. X failed to provide sufficient evidence proving that the specific composition data could be directly obtained through reverse engineering, nor did he submit evidence of actually conducting such reverse engineering for obtaining such specific composition data. Therefore, the specific composition data claimed by Company A were not generally known or readily accessible to relevant industry personnel at the time of infringement, i.e., not generally known to the public and constituting trade secret.

As for the operational information regarding domestic substitute raw materials, Company A had undertaken efforts on raw materials localization to reduce production costs. Through numerous testing, it identified domestic manufacturers producing raw materials qualified for replacing imported raw materials and established corresponding technical standards. To achieve such, Company A inevitably incurred necessary substantial operational costs in the process. No evidence indicated that this localization information had been publicly known. Company A required employees, including X, to maintain confidentiality obligations regarding the company's technical data and business channels by means such as signing confidentiality clauses in employment contracts, and implementing the Employee Handbook and Computer Usage Policy. Particularly, as a core technical employee, X should have recognized the commercial value of such information as important business secrets of Company A and was accordingly bound by confidentiality obligations. Based on the totality of evidence, the court concluded that the domestic substitute raw material and relevant operational information constituted trade secrets.

During his employment with Company A, X invested in, established, and effectively controlled Company B, violating confidentiality obligations by disclosing and permitting Company B to use the technical information of the adjustor and the operational information of the domestic substitute raw material of Company A. With full awareness of X's role as an employee of the right holder, Company B utilized these trade secrets to manufacture and sell adjustor products to Tianjin C Company, effectively "cloning" Company A's products and business operations, thereby infringing upon the technical secrets of Company A's adjustor. Plus, combining evidence on file, it can be further established that X and Company B jointly infringed upon Company A's domestic substitute raw material operational information. Company B and X were thus held jointly liable for their collaborative acts of infringement.

After comprehensive consideration of factors including the nature of the trade secrets, commercial value, R&D costs, degree of innovation, competitive advantages gained, the infringers' subjective fault, nature and circumstances of the infringement, and the profit statements made by Company B's legal representative during police interrogation, the second-instance court ordered X and Company B to cease infringement and jointly compensate Company A for damages of CNY 2.1 million plus reasonable expenses of CNY 200,000.

This case further clarifies the specific criteria for determining whether technical secrets are "not generally known to the public" and whether reasonable confidentiality measures have been taken. Moreover, despite the right holder's failure to preserve the alleged infringing products, the court comprehensively evaluated all evidence and concluded that the defendant had engaged in the infringement of the trade secrets in question. The ruling holds reference value for adjudicating similar cases in the future.

(2022) Zui Gao Fa Zhi Min Zhong No. 2581

Determination of Retroactivity of Patent Invalidation Decision When Multiple Alleged Infringers Fulfilled Compensation Obligations at Different Times in Patent Infringement Litigation

The Supreme People's Court concluded a utility model patent infringement dispute concerning the determination of the retroactive effect of a patent invalidation decision (declaring the patent invalid) on prior effective infringement judgments, where multiple alleged infringers has fulfilled their compensation obligations at different times.

Natural person X, as the patentee of the utility model patent titled "Foldable Stand for Mobile Terminal" (the patent at issue), claimed that the phone stand manufactured and sold by Dongguan A Company and Shenzhen B Company and sold by Fuzhou C Company fell into the protection scope of his patent. He filed a lawsuit before the court, requesting to order these three companies to stop the infringement, destroy inventory, and compensate his economic losses and reasonable expenses for the protection of his rights, totaling CNY 150,000.

Upon trial, the first-instance court found that the alleged infringing technical solution fell into the protection scope of the patent at issue. However, the evidence on file could not prove that the alleged infringing products were from Shenzhen B Company or manufactured by it, and the court presumed that the alleged infringing products sold by Fuzhou C Company were manufactured and sold by Dongguan A Company. Accordingly, the first-instance court ruled Dongguan A Company to stop infringing, destroy inventory, and compensate X CNY 30,000 for his economic losses and reasonable expenses, and Fuzhou C Company to compensate X CNY 2,000 for his reasonable expenses.

No party concerned appealed against the first-instance judgment. Later, Dongguan A Company petitioned a retrial before the Supreme People's Court on the ground that the patent at issue was announced as invalid by an invalidation decision issued by the CNIPA.

During retrial, the Supreme People's Court found that: The CNIPA issued an invalidation decision announcing the patent at issue invalid on November 14, 2022, and the parties concerned did not initiate administrative lawsuits to the people's court within the legally stipulated term. The first-instance court accepted X's compulsory execution application on February 18, 2022, and disbursed to him CNY 2,000 on March 29, 2022, which was the proceeds of enforcement of Fuzhou C Company. On April 2, 2022, the first-instance court issued a Consumption Restriction Order to Dongguan A Company, and Dongguan A Company paid its proceeds of enforcement, i.e. CNY 30,000, to the first-instance court on October 31, 2024, to remove the consumption restriction measures to get refinancing. On December 25, 2024, X received these proceeds of enforcement.

In the examination of the retrial application and during the retrial proceedings, the Supreme People's Court explained the legal effect of the invalidation decision to X multiple times and informed him of the situation where Dongguan A Company could not refinance due to the consumption restriction measures. However, X explicitly expressed his rejection to revoke his compulsory execution application relevant to the first-instance judgment.

In the retrial, the Supreme People's Court determined that, given that according to Article 47(1) of the Patent Law, the patent announced invalid is deemed to be non-existent from the beginning,

the benefits obtained by the right holder based on the patent belongs to unjust enrichment and shall be returned. However, to safeguard existing orders, Article 47(2) of the Patent Law justified the unjust enrichment that had been performed before the patent was announced invalid. Additionally, the provision of Article 47(2) and Article 47(3) restricted the said justifiable scope following the principle of fairness. In this case, the invalidation decision against the patent at issue had taken into effect, so the patent at issue was deemed to be non-existence from the beginning. X's accusation of infringement could not stand due to lack of the basis of the rights, and his claims should have been refused. The first-instance court, upon X's requests, had completely executed the payment obligation of Dongguan A Company and Fuzhou C Company, as confirmed in the first-instance ruling. As for the proceeds of enforcement from the two alleged infringers, the people's court may recover the proceeds either upon the parties' request or ex officio and may order X to return the principal plus interest that he had obtained.

First, in the circumstance that the patent at issue had been announced invalid, despite repeated explanation by the court, X still resolutely refused to revoke the Compulsory Enforcement Application against Dongguan A Company, causing Dongguan A Company being compelled to pay the proceeds of enforcement to remove consumption restriction measures imposed on them, which further led to the subsequent recovery procedures. X's conduct was obviously not in conformity with litigation integrity. Second, Dongguan A Company paid the proceeds of enforcement to the first-instance court after the invalidation decision of the patent in question was issued, i.e., the relevant enforcement happened after the issuance of the invalidation decision, causing the case not to fall under the situation where the invalidation decision has no retroactive effect on the effective patent infringement judgment as stipulated by Article 47(2) of the Patent Law. However, Fuzhou C Company had paid the proceedings of enforcement before the issuance of the relevant invalidation decision. If the court applied provisions of Article 47(2), the relevant invalidation decision would not have retroactive effect on the proceeds of Fuzhou C Company. Therefore, it can cause an issue where, compared to Dongguan A Company, Fuzhou C Company's proactive fulfillment of their responsibility in the first-instance judgment could bring adverse impact on their legal rights and interests, i.e., causing the proceedings of enforcement that they should not have paid unable to be recovered, which was obviously unfair. Article 47(2) of the Patent Law, intending to safeguard the stability of social and economic orders, stipulated exceptions to the performed or executed patent infringement judgments, meditation letters, decisions, enforcement licensing, and assignment contracts, exempting them from being revoked due to the retroactivity of the patent invalidation decision. However, as to patent infringement judgments involving multiple alleged infringers, if the only reason to distinct whether to apply this provision is the timing difference of the enforcement of the infringers' compensation obligations - where the proactive performers bear the adverse impact of not recovering the proceedings of enforcement - it could objectively encourage negative performance, delayed performance, and even non-performance. This is unfavorable for patent protection and also undermines the construction of the integrity of the litigation system. Under this circumstance, the court should, based on the principle of fairness, proactively apply Article 47(3) of the Patent Law to launch the recovery proceedings and fairly protect the legitimate rights of all parties concerned.

Accordingly, the Supreme People's Court determined in the retrial to revoke the first-instance judgment, dismiss all of X's litigation claims, and order X to return the proceedings of enforcement and pay the damages caused by occupation of funds to Dongguan A Company and Fuzhou C Company within seven days from the retrial judgment taking effect.

This retrial specified that in patent infringement litigation involving multiple alleged infringers who fulfilled their compensation obligations before and after the issuance of a patent invalidation decision respectively, the application of Article 47 of the Patent Law should be guided by both its

legislative intention and the principle of fairness. The court shall correctly determine the retroactive effect of the invalidation decision on the infringement judgment and avoid simply and rigidly taking the enforcement time as the only judgment standard for enforcement recovery.

(2024) Zui Gao Fa Zhi Min Zai No. 1

Handling of Ownership Disputes after PCT Application is Terminated

Even when a PCT application's legal effect has terminated in all PCT members including China, a party claiming to enjoy the patent application right still has litigation interests to initiate an ownership dispute against the published PCT applicant, and the people's court may examine such claims.

Group A claimed in litigation that: Wuxi B Company filed a patent application for an invention with the CNIPA on May 30, 2016, which was published on August 24, 2016. Group A initiated litigation over ownership of the patent application against Wuxi B Company in May 2018, claiming the said invention patent application belonged to Group A. The judgment, which has taken effective, has confirmed that this invention patent application belonged to Group A. Later, Group A found that Wuxi B Company filed another PCT application for an invention patent (the PCT application at issue), which was identical to the invention patent application in the previous case, regarding their background techniques, abstracts, claims, descriptions, and drawings, i.e. they are an identical technical solution. Therefore, Group A requested to rule the PCT application at issue to be owned by them.

Wuxi B Company argued that: The dispute over the ownership of patent application rights is an action for declaratory judgment, which must involve litigation interests for judicial relief. However, at the time of this lawsuit, the legal effect of the PCT application at issue has been terminated in all PCT members, including China. Thus, the confirmation on the ownership of the PCT application right at issue no longer has any impact on its current or future legal status, and the requests of Group A no longer entail substantive interests. Therefore, Wuxi B Company requested to dismiss the lawsuit of Group A.

The first-instance court found that Wuxi B Company filed an application for an invention patent with the CNIPA on May 30, 2016, and the application was published on August 24, 2016. Group A filed a lawsuit over the ownership of the patent application against Wuxi B Company in May 2018, claiming the above-mentioned invention patent application right to belong to Group A. The first-instance court made a civil judgment confirming that the above-mentioned invention patent application right belonged to Group A. Wuxi B Company was dissatisfied and appealed. The second-instance court rejected the appeal and upheld the original judgment.

Wuxi B Company filed the application for the invention patent at issue with the CNIPA on May 30, 2016, and filed a PCT application with WIPO on June 12, 2016 based on the basically identical claims, description, and drawings, claiming the invention patent at issue as priority. Later, WIPO published this PCT application, including its four drawings, which are identical to the four drawings in the description of the invention patent application in the previous case. The PCT application at issue entered the European regional phase on July 17, 2017, was published by the EPO on January 17, 2018, and was deemed withdrawn on January 11, 2019. In addition, it entered the U.S. national phase on July 19, 2017, was published by the USPTO on July 18, 2019 with the same applicant and inventors as those of the PCT application at issue, and was granted on February 9, 2021. It did not enter the Chinese national phase.

The first-instance court made a civil judgment on September 13, 2022, determining that the PCT application for the invention patent at issue belonged to Group A. Wuxi B Company was dissatisfied and filed an appeal, arguing that the PCT application at issue had been terminated in all PCT members, including China, meaning that Group A's request no longer held substantive interests, so their lawsuit requests should be rejected. On June 28, 2023, the Supreme People's Court issued a final judgment, rejecting the appeal and upholding the original judgment.

The Court's effective judgment determined that Group A had litigation interests in the declaratory lawsuit over the ownership of the PCT application at issue.

The dispute in this case was a declaratory lawsuit. The purpose of such action is to confirm the existence or specific status of a disputed civil legal relationship and specific legal facts between the parties, thereby clarifying the legal relationship between the parties and stabilizing their legal status. To initiate a declaratory lawsuit, there must be a litigation interest, i.e., a legal interest requiring judicial relief or protection. For the plaintiff, when their rights or legal status are unassured in reality, and a judicial judgment is an appropriate and necessary remedy to resolve such unassured status, they have interests for a declaratory lawsuit.

In this case, above all, this case could cause unassured status in reality where Group A's legitimate rights and interests are damaged.

First, a PCT application is a patent application filed according to Patent Cooperation Treaty. PCT application right can bring benefits to the applicant, such as convenience in procedures. Prior to the termination of its legal effect, a PCT application retains a reasonable expectation of potential patent grants by foreign or regional patent offices, which can bring certain actual benefits to the right holder. Others who file a PCT application without patentee's permission may cause infringement of rights and interests against the patentee.

Second, a PCT application includes international and national phases separately. According to Rule 22 in Patent Cooperation Treaty, the applicant should file duplicates and the translation of the international application to all designated offices within 30 months from the priority date, and pay the national fees. The Treaty also stipulates the applicable deadline for the PCT application to enter into national phases, and that members may excuse the delay according to the grounds allowed by their local laws. In this case, according to the provisions in Chinese Patent Law and its Implementation Regulations, the legal effect of the PCT application at issue was terminated in China for not having entered into Chinese National Phase within the prescribed deadline, but it cannot be precluded that it may be substantively examined and granted in other countries and regions. Even if the PCT application at issue has been terminated in all PCT members, and the possibility for it to be granted has been extinguished, the right holder can still seek for remedy for the loss of procedural convenience benefits and relevant damages in reality thereby incurred.

Third, documents of the PCT application at issue have been recorded in WIPO and published on its website, and the published applicant is Wuxi B Company. This application information is inconsistent with the information in the effective judgment that has determined the patent application right of the invention at issue belonged to Group A. As the two cases belong to the same invention and creation, the inconsistency in the published information put the legal status of the owner of the invention and creation in an uncertain state, which could lead to misunderstanding of the owner of the invention and creation by the relevant public, damaging the goodwill and legitimate rights and interests of the right holder.

Therefore, the confirmation on the legal status of Group A in this case is a basis for Group A to claim its relevant factual or future legal rights and interests. The uncertainty of the ownership of

the PCT application at issue caused the unassured status in reality where Group A's legal rights and interests are damaged.

In addition, the judgment in this case was necessary and proper.

In the circumstance where the PCT application has been accepted, the actual rights holder may request a change of applicant in accordance with WIPO rules within a certain period of time. However, in this case, as the PCT application at issue has exceeded the deadline prescribed in Rule 92-2 of the Patent Cooperation Treaty Implementing Regulations for change recording procedures with the International Bureau, it was no longer possible to change the applicant based on the rights holder's request, and there were no other remedies available. If Group A was indeed the actual owner of the PCT application right at issue, its true legal status cannot be reflected in the applicant information published by WIPO. Also, before the ownership of the PCT application right at issue was determined by an effective judgment, Group A could not seek other remedies in its own name to protect its legitimate rights and interests. Under this circumstance, confirming the ownership of the PCT Application right by judicial means can help determine the true legal status of the parties involved and facilitate a thorough resolution of current or future disputes, providing protection and relief to the actual rights holder. In this case, the PCT application at issue had been granted a patent in the United States, and Group A was unable to change the rights holder by filing an application in the US national phase. Therefore, in this case, it was necessary and appropriate for Group A to seek relief for the ownership of the US patent.

(2023) Zui Gao Fa Zhi Min Zhong No. 428

Establishment of Horizontal Monopoly Agreement Concluded and Implemented by API Operators and Determination of Penalty Proportions

The Supreme People's Court issued a final judgment in an anti-monopoly case concerning administrative penalties and administrative reconsideration against API (active pharmaceutical ingredient) operators who formed and implemented a horizontal monopoly agreement. In the judgment, the first-instance ruling, the contested administrative penalty decision, and the contested administrative reconsideration decision were maintained.

Wuzhou A Company, Jiangsu B Company and Suzhou C Company were the only three companies in China that produced the API camphor when the alleged monopoly conducts happened. Wuzhou A Company and Suzhou C Company produced synthetic camphor, and Jiangsu B Company produced natural camphor. In March 2018, Wuzhou A Company and Suzhou C Company signed a contract and a supplementary agreement, agreeing that Suzhou C Company entrusted Wuzhou A Company to produce the industrial-grade synthetic camphor, while Suzhou C Company assisted Wuzhou A Company to expand the market of the API camphor to reach a higher market share. The supplementary agreement further linked the increment of market share of Wuzhou A Company to the entrusted process price paid by Suzhou C Company, and also agreed that if the average sales price of the API camphor was lower than a certain price, both parties should re-negotiate the relevant terms in the contract manufacturing agreement. In addition, the three companies also reached a mutual understanding to refrain from price wars and maintain stable pricing levels through WeChat communications, phone calls, and meetings during pharmaceutical exhibitions. During trading, all three of them exchanged market intelligence about API camphor, coordinated sales prices, and communicated and negotiated the quotations provided to downstream finished pharmaceutical production enterprises that were their common clients.

In September 2019, Market Supervision Administration of Jiangsu Province launched investigations on the three companies after receiving clues of monopoly, and made an administrative penalty decision on May 31, 2021, determining that Wuzhou A Company reached and performed a monopoly agreement with Suzhou C Company to segment the market, and reached and performed monopoly agreement with Suzhou C Company and Jiangsu B Company to fix or change product prices. Thus, the authority ordered Wuzhou A Company to stop the illegal conducts, confiscated illegal earnings, and imposed a fine of 5% of the previous year's sales revenue. Wuzhou A Company was dissatisfied and requested a reconsideration before the State Administration for Market Regulation (the SAMR). The SAMR made an administrative reconsideration decision on November 16, 2021, maintaining the alleged administrative penalty decision.

Dissatisfied, Wuzhou A Company filed an administrative lawsuit, requesting to cancel the contested administrative penalty decision and the administrative reconsideration decision. The first-instance court ruled to dismiss its claims.

Wuzhou A Company, dissatisfied with the first-instance decision, appealed, claiming that: The chemical compositions of synthetic camphor and natural camphor are different, so they are two different types of API and the three companies involved in the case do not qualify as competitors. The contract manufacturing agreement and supplementary agreement were signed for Suzhou C Company to entrust Wuzhou A Company to process the industrial-grade camphor, and were not monopoly agreements. Wuzhou A Company did not have the intention to reach a monopoly agreement, nor did it implement any monopoly conduct. The fine of 5% of the previous year's sales revenue imposed by Market Supervision Administration of Jiangsu Province to Wuzhou A Company was too heavy, comparing to the 3% and 1% on Suzhou C Company and Jiangsu B Company.

In the second instance, the Supreme People's Court determined that: In this case, the natural camphor and the synthetic camphor shared the basically identical usage, quality test channels, and sales channels. Downstream finished pharmaceutical production enterprises can seamlessly substitute one for the other, i.e. they had strong substitutability of demand. Therefore, natural camphor and synthetic camphor should be classified within the same relevant product market. The three companies involved in this case are three independent entities producing and selling the API camphor in the domestic market. The production and sales of the natural camphor and the synthetic camphor are relatively closely substitutable, so the three involved companies are competitors in the domestic API camphor market.

Wuzhou A Company and Suzhou C Company signed a supplementary agreement to transfer the original API camphor clients and market shares of Suzhou C Company to Wuzhou A Company, under the normal performance of API camphor contract manufacturing agreement, which affected the natural transformation of the market share of the API camphor under the normal market competition status. It also allowed the operators with competition relationship re-distributed product sales market that they had operated independently through negotiation, which constitute a conduct segmenting the sales market of API camphor. The supplementary agreement also agreed that if the average sales price of the API camphor was lower than a certain price, the parties should re-negotiate relevant terms in the entrusted process contract, which was to link the entrusted processing conditions of the industrial-grade synthetic camphor with the market price of the API camphor and restrict the independent pricing authority of operators. By signing and performing the supplementary agreement, Wuzhou A Company and Suzhou C Company reached and performed a horizontal monopoly agreement segmenting the sales market and fixing product price.

The three involved companies also precluded and restricted the price competition between operators through meetings, WeChat, and phone calls, which broke the competition order of the domestic API camphor market. In addition, in the trade with downstream finished pharmaceutical production enterprises, the three companies quoted those downstream enterprises based on the prices that had been negotiated among them, compelling the downstream enterprises to accept the price intervened by negotiations. Therefore, the three involved companies reached and performed a horizontal monopoly agreement fixing or changing product price.

The act of segmenting the sales market and fixing product price conducted by Wuzhou A Company and Suzhou C Company overlapped with the pricing synergy acts conducted by the three involved companies. While, the supplementary agreement confirmed the goal to fix the API camphor's price, the pricing synergy conduct formed a broader pricing collusion and further strengthened the anti-competition effect caused by eliminating price competition, which severely damaged the benefits and interests of the downstream finished pharmaceutical production enterprises and terminal consumers.

In this case, Wuzhou A Company obviously enjoyed benefits from said two monopoly conducts, because compared to 2017, its market share in 2018 grew by 59.2% and its sales price grew by 46.0%. In the meanwhile, the evidence on file has shown that Wuzhou A Company repeatedly delayed investigation procedures and made untrue statements during the investigation of Market Supervision Administration of Jiangsu Province and Wuzhou A Company also failed to prove the existence of circumstance where they should be punished in a mild or mitigated manner. In comparison, during the investigation, Suzhou C Company and Jiangsu B Company proactively admitted illegal facts, cooperated with the law enforcement institution to find out facts, and adopted self-check and correction measures, mitigating the damages of the illegal acts. Thus, they met the circumstance of mild punishment. Therefore, the determination of whether Wuzhou A Company conducted multiple monopoly acts, the level of benefits it obtained from the monopoly acts, and whether it met the circumstance of mild punishment was distinctively different from those of Suzhou C Company and Jiangsu B Company. The fines of 1%, 3%, and 5% the previous year's sales revenue imposed by Market Supervision Administration of Jiangsu Province to Jiangsu B Company, Suzhou C Company, and Wuzhou A Company respectively were within the administrative penalty scope as prescribed by law, and the differentiated fine proportions adapted to the nature, circumstance and damaging consequences of the three involved companies, as well as the roles in the monopoly acts, investigation cooperation situations, acts to eliminate illegal conducts' consequences of the three companies, which matched with the principle of proportionality in penalty.

Accordingly, the Supreme People's Court determined the contested administrative penalty decision and the contested administrative reconsideration decision on Wuzhou A Company's reaching and performing of monopoly acts were without legal impropriety, and the fine proportions made were legal and appropriate, so Wuzhou A Company's claims did not stand. The Supreme People's Court dismissed Wuzhou A Company's appeal and maintained the original ruling.

This case is an important practice of anti-unfair competition law enforcement in the API industry. This judgment has a positive effect on standardizing the competition acts of API enterprises and safeguarding basic livelihood. It also has exemplary significance for the people's court to supervise and support the law enforcement by anti-monopoly administrative department and to commonly maintain a fair competition in the API market.

(2023) Zui Gao Fa Zhi Xing Zhong No. 30

Admissibility of Drug Patent Linkage Litigation Arising from Drug Registration Applications Filed During the "Transition Period"; Conditions for Filing a Drug Patent Linkage Lawsuit

For patent disputes arising from drug registration applications filed after the implementation of the Patent Law but before the implementation of the Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes, the parties concerned may file a lawsuit in accordance with Article 76(1) of the Patent Law. Even if the relevant transitional measures have not yet taken effect, rendering the parties objectively unable to submit the required materials, this shall not affect the People's Court's acceptance of the case in accordance with the law.

According to Article 76(1) of the Patent Law, the following conditions must be met for a party to file a drug patent linkage lawsuit: 1) the lawsuit is initiated during the review and approval process for drug marketing; 2) the plaintiff is either the drug marketing authorization applicant or the relevant patentee or an interested party; 3) the lawsuit arises from a dispute over a patent relating to the drug for which a registration application is filed; 4) the lawsuit seeks to determine whether the drug-related technical solution falls within the scope of protection of the drug patent. Additionally, patentees and interested parties filing such lawsuits must base their claims on legally valid patents.

Japan-based Corporation A filed a lawsuit, claiming to be the patentee of an invention patent for a certain drug (hereinafter referred to as "the patent") and requested confirmation that the technical solution of a generic drug submitted by Hebei B Company (hereinafter referred to as "the generic drug") fell within the protection scope of claims 1–9 of the patent. Although the application for the generic drug was accepted on June 30, 2021 - before the implementation of the Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes - Japanese Corporation A had already registered the information of the patent in question on the patent information platform on June 21, 2021, and the platform disclosed the information of the patent in question for the first time on June 28, 2021. Furthermore, Hebei B Company refused to undertake to refrain from seeking marketing approval for the generic drug during the protection period of the patent, which could be construed as its assertion that the generic drug did not fall within the patent's protection scope (equivalent to submitting a Type IV declaration).

Hebei B Company argued that Japanese Corporation A's lawsuit lacked the Type IV declaration explicitly required by laws and regulations and thus did not meet the filing conditions stipulated in the judicial interpretation on drug patent disputes, rendering the case inadmissible. Hebei B Company submitted its application for generic drug marketing approval before the implementation of the Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes. At that time, the patent information platform was not yet officially operational and had not disclosed any patent information. Therefore, Hebei B Company was unaware of the patent and, even if it was aware of such information, it could not have made a Type IV declaration under the Measures for a patent not yet disclosed on the platform. Accordingly, under the principle of non-retroactivity of laws, the Measures should not apply to this case. Even if the Measures were applicable, since the patent information platform contained no relevant information about the patent when Hebei B Company filed its application, it was impossible for Hebei B Company to make a Type IV declaration.

After trial, the court found the following facts: Regarding the patent in question, Japanese Corporation A registered relevant information on the patent information platform on June 21, 2021. This registered information was publicly disclosed on the platform on June 28, 2021. The National

Medical Products Administration (NMPA) received the registration application for the generic drug submitted by Hebei B Company on June 23, 2021. On June 30, 2021, the Center for Drug Evaluation (CDE) of the NMPA accepted the application. Concerning the patent in question, Hebei B Company did not submit any patent declaration on the registration platform. On July 14, 2021, Japanese Corporation A sent a "Patent Notice Letter" to Hebei B Company, explicitly stating that the generic drug for which Hebei B Company filed a registration application fell within the protection scope of its patent and requesting that Hebei B Company respond by July 21, 2021 and undertake not to seek marketing approval for their generic drug during the patent's protection period. The letter further stated that if no response was received by the deadline, it would be deemed that Hebei B Company considered the generic drug not to fall within the patent's protection scope. Hebei B Company did not respond to this notice. On May 18, 2021, the CDE published a "Notice on Public Testing of the Patent Information Registration Platform for the Mechanism for Early Settlement of Drug Patent Disputes" on its official website. On June 25, 2021, the CDE issued a "Pre-Notice on the Conclusion of Testing for China's Patent Information Registration Platform for Marketed Drugs", along with the "User Operation Guide for China's Patent Information Registration Platform for Marketed Drugs".

On November 25, 2022, the court of first instance rendered a civil judgment, confirming that the technical solution of the generic drug fell within the protection scope of claims 1–9 of the invention patent in question. Following the judgment, Hebei B Company appealed, arguing that: Applying the drug patent linkage system to this case violated the principle of non-retroactivity of laws; the first-instance judgment's determination that the case was equivalent to a Type IV declaration was evidently unfair; the request for Hebei B Company to undertake to refrain from infringement during the patent's term lacked legal basis. On March 14, 2023, the Supreme People's Court issued a final judgment, dismissing the appeal and upholding the original ruling.

The court's legally effective judgment held that:

(1) Regarding Legal Basis for Filing the Lawsuit in This Case

Article 76 of the Patent Law does not stipulate that the application of Paragraph 1 is contingent on the implementation of the specific transitional measures mentioned in Paragraph 3. In the absence of such stipulation, the effective date of the law should govern the effective date of its specific provisions. Furthermore, Paragraph 1 of Article 76 grants parties the right to sue, while Paragraph 3 pertains to the transitional measures linking drug marketing approval procedures with patent dispute resolution. Whether these transitional measures have been formulated and implemented should not affect the parties' right to sue. Although Article 76 alone does not fully establish the drug patent linkage system, the completeness of the system does not impede the law's application once it takes effect. When applying the law in specific cases, courts shall adhere to legislative intent and purpose, respecting the litigation rights granted to parties by law. In principle, the effective date of the law should not be de facto altered on these grounds. Therefore, for generic drugs registered after the Patent Law took effect but before the implementation of the Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes, parties may file lawsuits under Article 76(1) of the Patent Law, irrespective of whether the Measures have been implemented or the conditions stipulated therein have been met.

(2) Regarding Specific Conditions for Filing the Lawsuit in This Case

Although Japanese Corporation A filed this lawsuit after the judicial interpretation on drug patent disputes (the "Interpretation") took effect, the materials required for filing the lawsuit under the Interpretation were all formed according to the transitional measures. As previously stated, for patent disputes arising from drug registrations filed after the Patent Law took effect but before the

implementation of the Measures, parties may sue under Paragraph 1 of Article 76. If parties were objectively unable to submit materials formed according to the so-called transitional measures because such measures had not yet taken effect, their right to sue should not be affected. Otherwise, the effective date of Paragraph 1 of Article 76 would be de facto postponed until after the Interpretation took effect. Thus, in such cases, whether the lawsuit meets the stipulated filing conditions should be assessed under Article 76(1) of the Patent Law and Article 122 of the Civil Procedure Law. Moreover, since generic drug applicants had no statutory obligation to make declarations regarding the referenced patents under such circumstances, the concept of a "Type IV declaration" should not be introduced when determining whether the lawsuit meets filing conditions.

According to the provisions of Article 76(1) of the Patent Law, a lawsuit must meet the following conditions: 1) the lawsuit is initiated during the review and approval process for drug marketing; 2) the plaintiff is either the drug marketing authorization applicant or the relevant patentee or interested party; 3) the lawsuit arises from a dispute over a patent relating to the drug for which a registration application is filed; 4) the lawsuit seeks to determine whether the drug-related technical solution falls within the scope of protection of the drug patent. Additionally, patentees and interested parties filing such lawsuits must base their claims on legally valid patents. Regarding the condition of "dispute over a patent relating to the drug for which a registration application was filed", since Article 76(1) explicitly states that the litigation for such dispute shall seek to determine whether the technical solution related to a drug for which a registration application is filed falls within the drug patent's protection scope, such dispute naturally refers to a disputes over whether the technical solutions related to the drug for which a registration application is filed fall within the protection scope of a drug patent. However, where a declaration mechanism for generic drug applicants has not yet been established, patentees or interested parties may file lawsuits under Article 76(1) of the Patent Law for such disputes without requiring prior expression of intent by the generic drug applicant. Whether an actual dispute exists between the parties regarding whether the product falls within the protection scope of the drug patent is a matter for examination during the substantive trial phase.

In this case, the patent in question was valid, and Japanese Corporation A, as the patentee, filed the lawsuit during the generic drug's review and approval process, seeking confirmation that the generic drug's technical solution fell within the patent's protection scope. This met the filing conditions under Article 76(1) of the Patent Law. Additionally, the lawsuit filed by Japanese Corporation A complied with the requirements of Article 122 of the Civil Procedure Law.

(2023) Zui Gao Fa Zhi Min Zhong No. 4

Failure to Timely Notify the People's Court of Patent Claim Amendments - Penalty Imposed!

The Supreme People's Court concluded a dispute over infringement of an invention patent, dismissed all litigation claims of the patentee, and issued a penalty decision against the patentee for "intentionally making false statements and obstructing the court's trial." In this case, the patentee amended the claims during the administrative patent invalidation proceedings, and such amendments were accepted by the CNIPA. However, the patentee failed to promptly inform the court of first instance of amendments to the claims, which led the court of first instance to mistakenly render its ruling based on the claims prior to amendment. This ultimately resulted in the ruling of first instance being overturned and revoked by the court of second instance.

Accordingly, the court of second instance rejected the patentee's request to withdraw the lawsuit and imposed a fine of RMB 150,000.

The basic facts of the case are as follows: Company A, the patentee, filed an application for an invention patent (hereinafter referred to as the patent) with the CNIPA, which was granted on November 24, 2020. Company A claimed that the accused infringing product manufactured by Company B contained all the technical features of Claims 1 and 2 as published in the grant announcement of the patent, and therefore fell within the scope of protection of the patent. Consequently, Company A filed a lawsuit with the court of first instance, requesting that Company B and Company C (the distributor of the accused infringing product) be ordered to cease manufacturing, selling, and offering for sale the accused infringing product, and to compensate for losses. The court of first instance, using Claims 1 and 2 as published in the grant announcement of the patent as the basis for comparison, found that the accused infringing technical solution contained all the technical features of Claim 1 as published in the grant announcement and therefore fell within the scope of protection of the patent, constituting infringement. On January 4, 2023, the court of first instance rendered its ruling, ordering Company B to cease infringement and to compensate Company A for economic losses and reasonable expenses for rights protection totaling RMB 100,000.

Following the first-instance ruling, Company B, dissatisfied, filed an appeal with the Supreme People's Court, arguing that the claims of the patent at issue had been amended during the first-instance proceedings and that the accused infringing technical solution did not fall within the scope of protection of the amended claims.

The Supreme People's Court, in the second instance, found that after the first-instance court held the trial, two third parties filed invalidation requests against the patent at issue with the CNIPA. On July 25, 2022, and September 26, 2022, respectively, Company A submitted observations and amended claims to the CNIPA, incorporating the additional technical feature of Claim 6 (as published in the grant announcement) into Claim 1 of the grant announcement to form a new Claim 1, deleting Claim 6 of the grant announcement, and making corresponding adaptations to the numbering and references of other claims. On October 14, 2022, the CNIPA held an oral hearing and announced on the spot that it accepted the amended claims submitted by Company A. The two third parties then withdrew their requests for invalidation, respectively, on October 25 and November 4, 2022, based on Company A's aforementioned amendments to the claims of the patent. On November 14, 2022, the CNIPA issued its decision on the invalidation requests, maintaining the validity of the patent at issue on the basis of the patentee's amended claims; this decision has then become effective. The first-instance court, however, conducted its infringement comparison based on the claims as published in the grant announcement and rendered its ruling on January 4, 2023, finding that Company B had committed patent infringement and ordering it to bear civil liability.

The Supreme People's Court held that, upon comparison, the accused infringing product did not possess the additional technical feature of the original Claim 6 and therefore did not fall within the protection scope of the amended Claim 1, meaning that Company B did not constitute infringement. During the first-instance proceedings of this case, Company A amended the claims of the patent during the administrative patent invalidation proceedings, and the CNIPA accepted the amended claims on the spot at the oral hearing held on October 14, 2022. Company A was clearly aware of the fact that it had amended the claims in the invalidation proceedings and that such amendments had been accepted by the CNIPA. The scope of protection of the amended claims had undergone a substantive change, which had a significant impact on the infringement lawsuit filed by Company A based on the patent. However, up until the first-instance court rendered its ruling on January 4, 2023, Company A did not inform the first-instance court of this

basic fact, resulting in the first-instance court erroneously adjudicating the case based on the relevant claims prior to amendment (i.e., the claims as published in the grant announcement). In this case, once the CNIPA announced its acceptance of the amended claims, the amendments took effect, and the scope of protection of the patent should be based on the amended claims. Company A should have informed the first-instance court of this fact within a reasonable period after the CNIPA announced its acceptance of the amended claims. There was no such issue as Company A's so-called difficulty in submitting the amended claims that had come into effect. During the second-instance proceedings, Company A also did not provide any reasonable explanation in this regard. Company A's conduct clearly violated the principle of good faith, constituting concealment of basic facts of the case, which amounted to "intentionally making false statements and obstructing the trial by the People's Court." This directly led to the first-instance ruling being overturned and revoked, and the circumstances were relatively serious. Therefore, the second-instance court imposed a penalty on Company A, the patentee, in accordance with the law.

This judgment clarifies that, after amending claims, a patentee shall adhere to the principle of good faith, promptly and proactively inform the People's Court hearing the patent infringement case of the relevant situation, and assist the court in ascertaining the basic facts according to law. If the patentee conceals such facts without justifiable reasons, thereby constituting "intentionally making false statements and obstructing the trial by the People's Court," the People's Court may impose a penalty in accordance with the law.

(2023) Zui Gao Fa Zhi Min Zhong No. 1295

Examination and Determination of Registrable Patent Types in Drug Patent Linkage Litigation: Whether Compound Patents Characterizing Crystalline Structures and Composition Patents Containing Such Compounds are Patent Types Eligible for Registration

In drug patent linkage dispute cases, when the parties concerned have a disagreement over whether the patent in question falls within the types of patents that can be registered, the people's court shall examine the issue. The lawsuit filed by a party pursuant to Article 76(1) of the Patent Law must be a lawsuit arising from a dispute related to a patent concerning the drug for which marketing authorization is being sought. If the patent claimed by a party does not fall within the types of patents eligible for registration as provided in the *Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes*, the people's court shall rule to dismiss the lawsuit.

According to the *Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes*, the types of patents that can be registered for chemical medicinal products are: pharmaceutical active ingredient compound patents, patents for pharmaceutical composition containing active ingredients, and patents for medical use of the foregoing two types. Patents for crystalline compounds characterized by crystal cell parameters, which are based on a prior disclosed compound defined by its molecular structure; composition patents containing such crystalline compounds; and medical use patents for these two categories, do not yet fall within the types of patents eligible for registration under the Measures.

Company A filed a lawsuit, claiming to be the holder of an invention patent for a certain drug used to treat diabetes (hereinafter referred to as the patent-in-suit). It has registered Claim 9 as published on the grant announcement on the Patent Information Registration Platform for

Medicinal Products Marketed in China (hereinafter referred to as the Patent Information Registration Platform), and this claim was linked to its approved original drug (hereinafter referred to as the original drug). Company B submitted an application to the National Medical Products Administration for marketing authorization of a generic drug referencing the original drug as the reference registered drug, and made a Type 4.1 declaration, i.e. the patent linked to the original drug that had been registered on the Patent Information Registration Platform should be announced invalid; the application has been accepted. Company A believed that the generic drug fell within the scope of protection of Claim 9 of the patent-in-suit, and requested the court to confirm such.

Company B argued: Claim 9 of the patent-in-suit essentially protected a polymorph patent, which did not fall within the types of patents specified in Article 2 of the Judicial Interpretation on Drug Patent Disputes, and therefore Company A had no right to file the lawsuit under Article 76 of the Patent Law.

Upon trial, the court found the following: The patentee of the invention patent-in-suit is Company A, and the patent is currently valid. The contents of Claims 1 and 9 are as follows:

“1. A crystalline structure of a compound of formula Ia... wherein its powder X-ray diffraction pattern is as shown in FIG. 1.”

“9. The use of the crystalline structure according to Claim 1 in the preparation of a medicament for treating diabetes, insulin resistance, hyperglycemia... or diabetic complications in mammals.”

The relevant patent claim registered by Company A on the Patent Information Registration Platform is Claim 9 of the patent-in-suit, and the type of patent registered is a chemical medical product patent for medical use. Company A holds the marketing authorization for the original drug. On November 29, 2021, the National Medical Products Administration accepted Company B's registration application for the generic drug, for which the original drug is the reference registered drug. For the patent-in-suit, Company B made a Type 4.1 declaration on the Patent Information Registration Platform.

The court of first instance rendered a civil ruling confirming that the technical solution of the generic drug fell within the scope of protection of Claim 9 of the patent. Company B appealed on the grounds that Claim 9 of the patent-in-suit constitutes a polymorph patent, which did not fall within the types of patents that can be adjudicated under drug patent linkage cases. On June 14, 2023, the Supreme People's Court issued its final ruling: 1) The civil ruling of the first instance court is revoked; 2) Company A's lawsuit is dismissed.

The court's effective judgment held that a lawsuit filed under Article 76(1) of the Patent Law must be a dispute arising from a patent related to the drug for which marketing authorization is being sought, and the patent claimed by the party must be relevant to the drug registration application. Since, under the current system, a marketing authorization holder can independently register patent information on the Patent Information Registration Platform, and the registered patent information is not subject to examination, the people's court shall examine whether the patent-in-suit falls within the patent types eligible for registration during the course of hearing the case if the parties dispute this issue. Article 2 of the Judicial Interpretation on Drug Patent Disputes further clarifies that the determination of registrable patent types should be conducted in accordance with the *Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes*.

Article 5 of the *Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes* stipulates that: “The types of patents falling under the drug patent linkage system are patents for the active pharmaceutical ingredient (API) compound of chemical drugs, patents for

drug compositions containing the active ingredient, and medical use patents.” The scope covered by these three registrable patent types should be comprehensively determined: First, this article indicates that not all compound patents and composition patents are registrable. If the “medical use patent” is interpreted without any limitation while the chemical compound and composition patents are subject to restrictions, it would lead to a situation where a medical use patent corresponding to a non-registrable chemical compound or drug composition could nonetheless be registered. This clearly runs counter to the intent of restricting the first two patent types and is also inconsistent with the drafting logic of the normative document. Interpreted in light of the overall wording, the types of patents that may be registered under the Measures should be: patents for active pharmaceutical ingredient compounds, patents for drug compositions containing the active ingredient, and medical use patents for these two categories. Second, the early resolution mechanism for drug patent disputes is not the sole pathway for resolving such disputes, and the scope of drug patents applicable to this special mechanism should not, in principle, be expanded by broad interpretation. Patents for crystalline compounds, which are further characterized by crystal cell parameters, space groups, crystal XRPD patterns (data), solid-state NMR spectra (data), and so forth, based on a prior disclosed compound expressed in terms of its molecular structure, as well as composition patents containing such compounds, should not be included within the scope of patents for the active pharmaceutical ingredient compounds or drug compositions containing the active ingredient as specified in the Measures. Lastly, the *Interpretation of the Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes (Trial)* published by the national administrative authority that formulated the Measures explicitly states that “relevant patents do not include patents for intermediates, metabolites, polymorphs, methods of preparation, testing methods, etc.” This can serve as an important reference for interpreting the types of patents that may be registered.

In this case, Claim 1 of the patent-in-suit seeks to protect a crystalline structure whose specific technical features are defined by the powder X-ray diffraction pattern shown in Figure 1. The content of Claim 9 is the specific use of this crystalline structure, and does not constitute a medical use patent for an API compound or a drug composition containing the active ingredient. Therefore, the claim registered by Company A does not fall within the three types of patents specified in Article 5 of the *Implementation Measures for the Mechanism for Early Settlement of Drug Patent Disputes*, and Company A has no standing to file the present lawsuit under Article 76 of the Patent Law. Accordingly, the lawsuit should be dismissed.

(2023) Zui Gao Fa Zhi Min Zhong No. 7