
Article By

Aaron Wininger

Schwegman, Lundberg & Woessner, P.A.
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On March 29, 2022, the China National Intellectual Property Administration (CNIPA) released the second batch of intellectual property administrative law enforcement Guiding Cases (Guiding Cases No. 6-8) (中国国家知识产权局). This batch of cases has general guiding significance for the identification and punishment of repeated patent infringement, how to reuse recycled beer bottles in compliance with intellectual property laws and regulations, and the judicial
confirmation of the administrative mediation agreement for patent infringement disputes. In order to facilitate the correct understanding and application of local intellectual property administrative protection law enforcement agencies, and to better refer to and implement them when handling similar cases, CNIPA, on July 4, 2022, has interpreted and explained the selection process, guiding significance, and key points of the cases in detail. Discussion of Guiding Case VI re repeated patent infringement (6“三維包裝機傳動機構”“三維包裝機傳動機構”) follows:

As explained by CNIPA:

**Basic case**

On December 7, 2017, Ruian Haoyun Machinery Co., Ltd. complained to Wenzhou Intellectual Property Office that Guo had infringed the utility model patent of “three-dimensional packaging machine transmission” (patent number ZL201620913636.X). On November 12, 2018, Wenzhou Intellectual Property Office made an administrative ruling, ordering Guo to stop the production and sale of infringing products, and Guo did not appeal via filing an administrative lawsuit. On July 1, 2019, Ruian Haoyun Machinery Co., Ltd. complained to Wenzhou Intellectual Property Office again that the similar products produced and sold by Guo infringed the same patent right.

On September 4, 2019, Wenzhou Intellectual Property Office made an administrative ruling, ordering Guo to immediately stop the infringement and destroy the infringing products. Guo refused to accept and filed an administrative lawsuit. On March 24, 2020, the Intermediate People’s Court of Ningbo City, Zhejiang Province rejected Guo’s claim. Guo withdrew his appeal to the Supreme People’s Court. On February 26, 2021, Wenzhou Intellectual Property Office opened a case for investigation into Guo’s alleged repeated infringement of the same patent right. According to relevant administrative rulings and judgment documents, it was determined that the infringement committed by Guo constituted repeated infringement.

Guo’s repeated infringement of the patent right owned by Ruian Haoyun Machinery Co., Ltd. constitutes repeated infringement under Article 51 of the “Zhejiang Patent Regulations.” According to Article 46 of the regulations, the Wenzhou Municipal Market Supervision and Administration Bureau ordered Guo to stop the infringement and imposed an administrative penalty of 65,000 RMB on him.

**Understanding & Application**

**I. Selection Process and Guiding Significance**

The case was submitted by the Zhejiang Provincial Intellectual Property Office to the State Intellectual Property Office. According to the “Regulations of the State Intellectual Property Office on the Guidance of Intellectual Property Administrative Enforcement Cases (Trial)”, after review and selection, expert review, and deliberation by the Case Guidance Working Committee, the case has significance in the identification and regulation of repeated patent infringements and may serve as a guiding case. In March 2022, the case was reviewed and approved at an executive meeting of the CNIPA and released in the second batch of guiding cases.
This case is the application of the relevant provisions on repeated patent infringement. Repeated patent infringement is a typical intentional infringement. The infringer’s subjective intention and fault are obvious, which objectively causes greater economic losses to the patentee, and damages the order of fair competition in the market to a greater degree, and should bear heavier legal liabilities. However, the determination of repeated patent infringement is a complex legal issue, involving the determination of infringement, the comparison of different infringements, etc., and sometimes it is necessary to see through the illusion that the actual infringer has only “put on a front.”

The current “Patent Law of the People’s Republic of China” and “Regulations for the Implementation of the Patent Law” do not provide for repeated patent infringement. Article 20 of the “Measures for Administrative Law Enforcement of Patents” stipulates that for repeated infringement, the patent management department may directly make a decision to order the immediate cessation of the infringement upon request. At present, Beijing, Tianjin, Hebei, Zhejiang, Fujian, Henan, Hubei, Guangdong, Chongqing, Sichuan, Guizhou, Xinjiang and other provinces (autonomous regions and municipalities) clearly stipulate in their local regulations that administrative penalties can be imposed for repeated patent infringement.

The Guiding Case accurately applies local regulations, and clarifies the determination standards and administrative penalty procedures for repeated patent infringement. For the case where the respondent does not stop the infringement after the administrative ruling or judicial ruling takes effect, and continues or infringes the same patent right again, the provisions on repeated patent infringement may be applied to regulate, that is, the patent management department shall punish the party for repeated infringement of the same patent right. After making an administrative ruling, the department in charge of patent enforcement can impose administrative penalties on repeated patent infringements in accordance with local regulations. The guiding case effectively protects the initiative of the right holders in innovation, helps maintain the market competition order, and at the same time reflects the important role of local regulations in China’s official legal sources, which is of great significance for further improving and perfecting China’s patent legal system.

II. Interpretation and explanation of the main points of the case

The main points of this Guiding Case are as follows: if the perpetrator infringes the patent rights of others, but does not stop the infringement after the administrative ruling or judicial ruling takes effect, and continues or commits the infringement again on the same patent right, it can be directly determined to be repeated according to local regulations and violations are subject to administrative penalties. Usually, the following factors need to be considered when determining repeated patent infringement.

1. Provisions of Local Regulations on Repeated Patent Infringement

China’s formal sources of law include the Constitution, laws, administrative regulations, local regulations and administrative rules. Article 72 of the Legislation
Law of the People’s Republic of China provides that the people’s congresses and their standing committees of the provinces, autonomous regions, and municipalities directly under the Central Government may, in light of the specific conditions and actual needs of their respective administrative areas, formulate local regulations, provided that such regulations do not contravene the Constitution, the law and administrative rules and regulations. Under Article 73 (2) of the Legislation Law of the People’s Republic of China, except for the matters prescribed in Article 8 of the Law, for matters on which the state has not developed laws or administrative regulations, the provinces, autonomous regions, municipalities directly under the Central Government, and district cities and autonomous prefectures may first develop local regulations in light of their specific circumstances and actual needs. Article 12 of the Administrative Punishment Law of the People’s Republic of China provides that administrative punishments other than restriction of personal freedom and revocation of business license may be created in local regulations.

According to the abovementioned provisions, if the Patent Law of the People’s Republic of China and the Detailed Rules for the Implementation of the Patent Law do not explicitly prescribe the infringement act involving repeated patents, the local regulations may provide for the determination and punishment of the repeated patented infringement. For example, Article 51 of the Patent Regulations of Zhejiang Province provides that the repeated infringement referred to in these Regulations means that the same tortfeasor once again infringes upon the same patent right of another person after the People’s Court or the administrative department for patent affairs has determined, according to law, that the same tortfeasor has infringed upon the patent right of another person and made a ruling or decision. Where Article 46 of the Patent Regulations of Zhejiang Province provides that there is any act of repeated infringement prescribed in Paragraph 1 of Article 22 of these Regulations, the administrative department for patent shall order the infringer to stop the infringement, confiscate the illegal gains and may, in addition, impose a fine of not less than 2 times but not more than 4 times the illegal gains; if there are no illegal gains, he/it may be fined up to 200,000 RMB.

2. Judgment of the relevant elements of the former behavior and the latter behavior

If the infringing subject of the former act (or the first infringement act) and the latter act are the same, the latter act may be determined as repeated patent infringement in light of the circumstances of the case. If the infringing subjects of the former act and the latter act are different, but the actual controllers are the same or the actual controllers have a specific relationship, or the infringing subjects of the former and latter acts have mixed legal person personalities or other related relationships in the sense of company law, there may also be the possibility of identifying a later act as repeated patent infringement, which requires a judgment based on the specific circumstances of the case.

The current “Patent Law of the People’s Republic of China” stipulates five types of infringing acts that should be regulated, namely manufacture, use, offering for sale, sale and import. In the case that both the former act and the latter act belong to the infringement act of implementing the patent without the permission of the patentee, the infringer has subjective intention, and the specific type of act does not need to
be considered when determining the repeated patent infringement. For example, if the former act involves the manufacture and sale of a patented product, and the latter act involves the use of the patented product, the latter act can still be identified as repeated patent infringement.

3. Determination of the starting time for repeated patent infringement

The Reply of the CNIPA on Issues Related to Repeated Patent Infringement (2021133) pointed out that when the enforcement procedure of the court for the first infringement is terminated, or the time limit for the right holder’s application for enforcement by the court expires, which can be identified as the end of the administrative and judicial procedures related to the first infringement, and subsequent infringements are repeat infringements.

For a case involving administrative adjudication on patent infringement disputes, Article 53 of the Administrative Compulsion Law of the People’s Republic of China provides that where the party concerned neither applies for administrative reconsideration, institutes an administrative action, nor performs per an administrative decision within the statutory time limit, the administrative agency does not have the right to administrative enforcement but may, within three months upon expiration of the time limit, apply to the people’s court for enforcement in accordance with the provisions of this Chapter. Under Article 158 of the Interpretation of the Supreme People’s Court on the Application of the Administrative Litigation Law of the People’s Republic of China (20181), where, after an administrative authority makes an award for a civil dispute between equal parties as authorized by law, the parties neither file a lawsuit nor perform the award within the statutory time limit, and the administrative authority making the award fails to apply to the people’s court for enforcement within the time limit for application for enforcement, the obligee, his heir or the successor to the rights as determined in the effective administrative award may apply to the people’s court for enforcement within six months. For civil cases involving patent infringement, the Civil Procedure Law provides that “the period for applying for enforcement shall be two years.” If the patent administrative department or patentee applies to the people’s court for compulsory enforcement within the aforesaid statutory period, the enforcement procedure of the people’s court has been concluded, or if the patentee fails to apply to the court for compulsory enforcement within the statutory period, the said procedure may be determined as concluded.

In this case, Wenzhou Intellectual Property Office made an administrative ruling on November 12, 2018, ordering Guo to stop the production and sale of infringing products. Thereafter, Guo did not file an administrative lawsuit within 15 days from the date of the administrative ruling, nor did he perform the administrative decision. On July 1, 2019, Ruian Haoyun Machinery Co., Ltd. complained to Wenzhou Intellectual Property Office again that the similar products produced and sold by Guo infringed the same patent right. According to the relevant provisions of the “Administrative Compulsory Law of the People’s Republic of China” and “Interpretation on the Application of the “Administrative Litigation Law of the People’s Republic of China” (20181)”, the time for the end of the legal procedures related to the first infringement has exceeded the time limit. On September 4, 2019, Wenzhou Intellectual Property Office made an administrative
ruling. Subsequently, Guo filed an administrative lawsuit, and the first-instance judgment dismissed Guo’s claim. After Guo appealed and withdrew the case, the first-instance judgment took effect. Accordingly, the Wenzhou Municipal Intellectual Property Office determined that Guo’s action constituted repeated patent infringement according to the relevant administrative rulings and effective judgments, and the Wenzhou Municipal Administration for Market Supervision imposed an administrative penalty on him and a fine of 65,000 RMB.

This case is the specific application of the Patent Law of the People's Republic of China, the Implementing Regulations of the Patent Law, and especially the specific application of local regulations on the identification and punishment of repeated patent infringements. It can better safeguard the legitimate rights and interests of patentees, and is conducive to creating a better business environment and innovation environment.

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