

China's Supreme People's Court Clarifies Conditions Needed to Prove Patent Infringement Lawsuit Filed in Bad Faith

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In a decision decided August 10, 2023 and partially published January 9, 2024, the Supreme People's Court (SPC) clarified when a patent infringement lawsuit is determined to be in bad faith. The Supreme People's Court held that the following elements should be satisfied for determining an intellectual property rights action is brought in bad faith: (1) the action brought obviously lacks a right basis or factual basis; (2) the plaintiff is aware of the fact; (3) the action has caused harm to others; (4) there is a causal relationship between the action brought in bad faith and the result of harm.

The court of first instance found that: on January 20, 2016, an unnamed company in Hunan was granted an invention patent entitled "A Preparation Method of Mogroside Extract Suitable for Industrial Production." On May 9, 2018, a company in Guilin issued an Announcement on Obtaining the Acceptance by the China Securities Regulatory Commission (CSRC) of a Company's Application for Public Share Placement. On July 13, 2018, the Hunan company filed a lawsuit with the court against the Guilin Company for infringement upon its patent right by producing, selling and promising to sell a series of products of momordica glycosides (Mogroside V), i.e. No. 3843. In this case, Hunan company claimed that the Guilin company blatantly produced, sold, and promised to sell a series of Mogroside sweeteners (Mogroside V) products in large quantities without licensing, and the sensory requirements, physical and chemical indicators, heavy metal content, and microbial control, among others, in the product inspection report were highly consistent with the products prepared with the Hunan company's patented process, which infringed upon the patent right of the Hunan company, and requested the Guilin Company to cease the infringement and compensate for the losses. In August 2018, the CSRC received a notice from the Hunan company, and was informed of relevant information on a patent infringement lawsuit filed by the Hunan company and invalidation attempts by the Guilin company. On May 20, 2019, after learning that the court had dismissed its application for investigation and evidence collection, the Hunan company filed an application for withdrawal of action, requesting the court to withdraw the action in case No. 3843, which the court did.

The SPC explained that in this case, first, it is difficult to determine that a lawsuit filed by the Hunan company obviously lacked a basis of rights or factual basis. The Hunan company had made a preliminary judgment on whether the Guilin company committed patent infringement, and as the right holder of the patent in question, it had the right to file a lawsuit when it was found that there was a possibility of patent infringement. The lawsuit in Case No. 3843 filed by the company had preliminary facts and legal basis, and its lawsuit was reasonable, and was not a blind lawsuit without any law or

factual basis.

Second, it is difficult to conclude that the Hunan company filed the lawsuit No. 3843 with obvious bad faith. The two parties in this case had patent administrative disputes before Case No. 3843. The Guilin company twice filed invalidation requests with the China National Intellectual Property Administration (CNIPA) for the Hunan company's patent. The Hunan company filed a lawsuit and related reports before the Guilin company went public. It is difficult to deny that this behavior is an act to protect its rights and has a certain degree of reasonableness.

Third, the Hunan company's report to the China Securities Regulatory Commission did not fabricate facts or make things out of thin air, and it did not violate legal provisions. The failure of the Guilin company to promptly disclose relevant information related to the lawsuit was partly due to the fact that when the Hunan company reported it to the China Securities Regulatory Commission, the Guilin company had not actually received the complaint and other materials for Case No. 3843, but the report was made after Case No. 3843 was accepted.

Fourth, the Hunan company submitted an application to withdraw the lawsuit to the court of first instance on May 20, 2019. This was a restriction on its own right to sue, which is hardly inappropriate. The fact that the Hunan company reported, sued and then withdrew the lawsuit cannot be used to conclude that the lawsuit was not to protect its own rights but to infringe on others rights. In summary, it is not enough to conclude that the lawsuit filed by the Hunan company in Case No. 3843 was a malicious lawsuit. Therefore, the appeal was dismissed and the original judgment was upheld.

The case no. is ?2021???????1353? and the full original announcement is available [here](#) (Chinese only).

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