

China’s Supreme People’s Court Releases Summary of the Supreme People’s Court’s Annual Report on Legal Application in Intellectual Property Cases (2023)

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On April 24, 2024, China's Supreme People's Court (SPC) released the Summary of the Supreme People's Court's Annual Report on Legal Application in Intellectual Property Cases (2023) (最高人民法院知识产权案件法律适用问题年度报告(2023)摘要). The annual report “sorts out the following 41 legal application issues from the intellectual property cases concluded by the Supreme People’s Court in 2023.” While not black letter law in the common law sense, the judgements may be intended to be influential among lower courts.

最高人民法院知识产权案件 法律适用问题年度报告（2023）摘要

2023年，最高人民法院坚持以习近平新时代中国特色社会主义思想为指导，全面贯彻党的二十大精神，深入贯彻习近平法治思想，深刻领悟“两个确立”的决定性意义，不断增强“四个意识”、坚定“四个自信”、做到“两个维护”，深化知识产权审判理念变革，充分发挥审判职能作用，坚持把“公正与效率”工作主题落到实处，奋力书写服务和支撑中国式现代化的新篇章。本年度报告从最高人民法院2023年审结的知识产权案件中梳理出下列41个法律适用问题。

As explained by the SPC:

1. Determination of liability for cessation of infringement when patent rights are transferred in patent infringement proceedings

?Case No.?

?2022???????1923?

?Judgement Summary?

During the trial of a patent infringement dispute case, if the original patentee transfers the patent rights involved in the case, his qualifications as a litigation subject will not be affected. If the people's court determines that the alleged infringement constitutes infringement, it shall support the original patentee's request to stop the infringement in accordance with the law, unless the alleged infringer can prove that it has obtained permission from the current patentee.

2. Identification of equivalence of numerically limited technical characteristics

?Case No.?

?2021???????985?

?Judgement Summary?

For technical features in invention or utility model patents that are limited by numerical values or continuously changing numerical ranges, it is not appropriate to absolutely exclude the application of the principle of equivalents, but they should be strictly limited. When the numerical values or numerical ranges with differences use basically the same technical means to achieve substantially the same functions and achieve substantially the same effects, and those skilled in the art can associate them without creative work; at the same time, comprehensive consideration must be given to the technical field and invention type, claim amendments and other relevant factors, if it is determined that the relevant technical features are equivalent and do not violate the public's reasonable expectations for the scope of protection of the claims and can fairly protect the patent rights, they can be determined to constitute equivalent technical features.

3. The impact of the validity of patent rights on the trial of patent ownership dispute cases

?Case No.?

?2021???????2312?2395?

?Judgement Summary?

Even if the patent application is rejected or the patent right is declared invalid, the party without fault can still claim separate legal relief from the party at fault based on the determination of the ownership of invention-creation rights in cases involving patent application rights or patent ownership disputes. Therefore, in cases involving disputes over patent application rights or ownership of patent rights, if the patent application involved is rejected or the patent right is declared invalid, the people's court can still continue the trial based on the specific circumstances of the case.

4. Determination of the infringing product being warned when the specific product is not specified in the infringement warning

?Case No.?

?2022???????1744?

?Judgement Summary?

Where the patent right holder's infringement warning fails to specify the specific products to which it refers, the people's court may, within the scope of products that the warned party has been negatively affected by the warning and in light of the litigation claims of the warned party, reasonably determine the specific product scope that shall be tried in a case on dispute over non-infringement upon patent right.

5. Whether the patent for the compound and the patent for the composition containing the compound are registrable patent types

?Case No.?

?2023???????????

?Judgement Summary?

The types of registrable patents for a chemical drug as prescribed in the Measures for the Implementation of the Mechanism for the Early Resolution of Drug Patent Disputes [patent linkage] shall be the patent of the compound with the active ingredient of the drug, the patent of the drug composition containing the active ingredient, and the patent for the use of the medicine in the former two. On the basis of the existing compound expressed by the molecular structure, the compound patent which expresses the crystal structure by the crystal cell parameter and the like, the composition patent which contains the compound and the pharmaceutical application patent of the former two are not yet the types of registered patents as prescribed in the Measures for the Implementation of the Mechanism for the Early Stage Settlement of Disputes over Pharmaceutical Patents.

6. Identification and handling of misuse of intellectual property rights

?Case No.?

?2023????????235?

?Judgement Summary?

The principle of good faith shall be followed in the exercise of intellectual property rights, and the lawful rights and interests of others shall not be damaged. When an intellectual property right is infringed upon, the right holder may exercise the right to sue according to law, but the right to sue shall also be exercised under the principle of good faith, in good faith, and in a prudent manner. Where an right holder intentionally abuses intellectual property rights by such means as "inducing infringement," "trapping to obtain evidence," "misleading and conciliating," and "suing twice on the same matter," the people's court shall take effective measures to regulate the abuse of intellectual property rights according to the law, and may, based on the circumstances and according to the Official Reply of the Supreme People's Court on Issues concerning Defendants' Claim for Compensation for Reasonable Expenses on the Ground of Plaintiff's Abuse of Rights in Intellectual Property Right Infringement Lawsuits, order the right holder to bear the reasonable litigation expenses of the opposing party.

7. Determination of claim waiver modification

?Case No.?

?2021???????44?

?Judgement Summary?

1. Disclaimer amendment generally refers to the introduction of negative technical features when amending the claims, excluding specific protection objects from the scope of protection of the original claims, thereby limiting the scope of protection of the original patent claims. It usually only applies to such limited circumstances as a patent application would lose novelty due to partially overlapping conflicting applications, or loses novelty due to accidental preemption of the prior art, or excludes for non-technical reasons subject matter not protected by the Patent Law.

2. Any waiver of amendment shall also be in conformity with Article 33 of the Patent Law. In the specific judgment, the contents disclosed in the original claims and the description, the contents waived from protection, the contents retained after waiver, and the relationship among the three shall be taken into full account. If the person skilled in the art is able to determine that the contents retained after modification have been directly or implicitly disclosed in the original claims or description, the modification shall comply with Article 33 of the Patent Law.

8. Novelty Judgment of Invention Patents for Uses of Known Chemical Products

?Case No.?

?2022???????788?

?Judgement Summary?

Where any new purpose as defined in the patent for invention on a known use of chemical products only describes from different angles or verifies by different methods the technical effects of the chemical products that have been ascertained by the technicians in the field prior to the application date, the so-called new purpose does not constitute a technical feature different from the existing technology.

9. Judgment of novelty and creativity of utility model patents including method features

?Case No.?

?2021???????422?

?Judgement Summary?

If the method limitations of a utility model patent claim contain not only the shape and structure of a product, but also the manufacturing method of the product, and when judging the novelty and creativity thereof, can provide a product with a certain shape and structure, such method features can limit the scope of protection of the patent right for utility model. When judging novelty and

inventiveness, the specific shape and structure caused by the method should be compared with the shape and structure of the prior art, instead of comparing the method itself with the method of the prior art.

10. The impact of obvious errors in claim drafting on whether the scope of protection is clear

?Case No.?

?2022???????858?

?Judgement Summary?

If a person skilled in the art can determine after reading the claims and description that there are obvious errors in the drafting of the claims, and can determine the only correct answer, in principle, the scope of protection of the claims should be deemed to be clear. If a party only claims that the scope of protection of a claim is unclear based on the existence of this obvious error, the people's court will not support it.

11. Legal consequences of patent agencies and patent attorneys requesting invalidation of patent rights in the name of others

?Case No.?

?2022???????716?

?Judgement Summary?

Where a patent agency or a patent agent requests invalidation of a patent right in the name of another person, it constitutes a material violation of the provision of Article 18 of the Patent Agency Regulation that a patent agency or patent agent shall not request invalidation of a patent right in its own name, and the people's court may transfer the evidence of the suspected violation to the relevant authority for handling according to the law.

12. The plaintiff's qualifications of parties involved in patent ownership disputes in patent confirmation administrative disputes

?Case No.?

?2022???????836?

?Judgement Summary?

Where, after the administrative department for patent has invalidated all or part of a patent, the party claiming the right in a patent ownership dispute case files a patent confirmation administrative lawsuit, it may be determined that it constitutes a potential interested party for the review and decision on the alleged request for invalidation, and it is inappropriate to simply rule and dismiss the lawsuit on the ground that the plaintiff lacks standing. Where the party claiming whether it constitutes an appropriate patent confirmation administrative lawsuit depends on the outcome of the patent

ownership dispute case trial, and the patent ownership dispute has not been substantially settled, the trial of the patent confirmation administrative lawsuit may be suspended as needed.

13. Identification of trademark infringement entities on WeChat public accounts and official websites

?Case No.?

?2022??????146?

?Judgement Summary?

Where it is difficult to prove that the operator of the public account of WeChat or official website in question is the alleged infringer, but there is evidence that the public address or the logo, products and content promoted by the official website all point to the alleged infringer, and the alleged infringer is the actual beneficiary of the act, the people's court may determine that the alleged infringer has promoted the alleged infringing product through the public address or official website.

14. Application of discretion in determining the amount of compensation under the obstruction of evidence rule

?Case No.?

?2022??????146?

?Judgement Summary?

Where the alleged infringer impedes producing evidence, the people's court shall, when determining the amount of compensation by referring to the claims of the right holders and the evidence provided by them, comprehensively and objectively examine the relevant evidence, take into comprehensive consideration the time and quantity of the alleged infringement, the subjective malice of the alleged infringer and other factors, and the alleged infringer's description of the production scale, scope and circumstances may be an important reference for determining the amount of compensation.

15. Factors to consider in punitive damages multiples

?Case No.?

?2022??????209?

?Judgement Summary?

Where, knowing the popularity and influence of the registered trademark or trade name of another entity, a large number of trademarks similar to the registered trademark of another person are still used to conduct the same business, it shall be determined that such trademarks have subjective malice in confusing the source of commodities and freeriding on the popularity of another person; where the alleged infringer infringes upon a large scale, involves a wide area, and has made huge profits from the infringement, it shall be determined that such acts are serious infringement circumstances. The aforesaid subjective malice and the seriousness of the infringement

circumstances shall be taken as an important factor for the people's court to determine the multiple of punitive damages.

16. Principle of on-demand identification of well-known trademarks

?Case No.?

?2023??????29?

?Judgement Summary?

The determination of a well known trademark is a legal confirmation of objective facts concerning the status of a trademark in individual cases. The judicial determination of a well known trademark shall follow the principle of determination on demand. It is only necessary to determine a if a trademark is well known when there needs to be a legal determination of an alleged infringement upon the trademark right or unfair competition.

17. The accused infringer in bad faith does not have a protectable interest.

?Case No.?

?2022??????313?

?Judgement Summary?

In a trademark infringement lawsuit, the accused infringing logo was once a registered trademark, but was later revoked by the trademark administrative department. Whether the accused infringer has a reliable interest because the trademark has been approved for registration should be taken into consideration. If the accused infringer knows that the basis for trust is illegal or is obviously illegal and still performs corresponding acts, his subjective attitude cannot be called good faith, and his so-called interest should not be protected.

18. Determination of three-year non-use defense in trademark infringement litigation

?Case No.?

?2022??????313?

?Judgement Summary?

In a trademark infringement lawsuit, where the accused infringer raises a defense on the ground that the holder of the exclusive right to use the registered trademark has not used the registered trademark, the right holder shall be liable to prove the fact that the trademark involved in the case has been used in the previous three years. In particular, the "previous three years" shall be postponed three years from the date of prosecution. The right holder only needs to provide evidence to prove that he has committed the act of using the trademark within the 3 years. The extent of use of the trademark involved in this case affected the scope of protection, but it was not a factor determining whether the alleged infringer should be liable for compensation.

19. Determination of trademark usage in the licensed processing relationship

?Case No.?

?2022??????313?

?Judgement Summary?

To determine whether the trustee's trademark affixing behavior during the licensed processing process constitutes trademark use, the production and circulation links of the goods cannot be separated. If the licensed processed goods have entered the circulation field and the relevant public identifies the entrusted processor from the affixed mark, the act of affixing it can be regarded as trademark use, and the licensee is the trademark user.

20. Conditions for establishment of legal source defense in trademark infringement cases

?Case No.?

?2022??????274?275?276?277?278?

?Judgement Summary?

In trademark infringement litigation, the legal source defense must meet both subjective and objective requirements. The objective requirement is that the alleged infringing goods were lawfully obtained by the seller, and the subjective requirement is that the seller did not know or could not have known that the alleged infringing goods constitute infringement. The subjective and objective requirements are interrelated and inseparable, and the proof of the objective requirement is more important than the subjective requirement and has a presumptive effect. When reviewing the aforementioned subjective and objective requirements, the People's Court shall comprehensively consider factors such as the seller's market position, rights holder's rights protection costs, and market transaction habits, and make reasonable requirements for the seller's burden of proof. The business scale, professional degree, market trading habits, etc. of the seller may be taken as evidence for determining its reasonable duty of care. Where the evidence provided by the seller from a lawful source is equivalent to its duty of care, it may be presumed that the seller is subjectively unaware of the infringing goods it sells.

21. Determination of the reasonableness of claims for compensation of reasonable expenses in batch rights protection cases

?Case No.?

?2022??????274?275?276?277?278?

?Judgement Summary?

Under the circumstances that the defense of legitimate sources is established and rights holders defend its rights, the people's court shall, by comprehensively considering the alleged tort circumstances, subjective factors of tort sellers, evidence provided by rights holders on reasonable

expenses, and other specific circumstances, return to the legislative intent of the defense system of legitimate sources, and determine the reasonableness of rights holders' claims for compensation for reasonable expenses.

22. The owner of the trademark right shall not prohibit others from using the name of the raw material of the product for legitimate purposes.

?Case No.?

?2022??????238?

?Judgement Summary?

When a registered trademark contains the main raw materials of the product, the trademark owner has no right to prohibit others from using it properly. When judging whether it constitutes fair use, factors such as the distinctiveness of the registered trademark, market practices of related products, and the specific use methods of other operators must be comprehensively considered.

23. Determination of trademark use behavior in withdrawal cases

?Case No.?

?2023??????10?

?Judgement Summary?

The goods actually used by the disputed trademark do not belong to the standardized trade names approved for use. When determining whether the goods are actually used in the category of goods approved for use, the judgment should be based on the function, purpose, production department, sales channel, consumer group of the goods, and comprehensive determination such as consumption habits, production models, industry business needs, etc. should be considered.

24. Evidence of overseas use alone is not enough to determine “prior use and certain influence”

?Case No.?

?2023??????2567?

?Judgement Summary?

Trademark rights are territorial, and their scope of rights, protection content and protection period are all limited by the geographical scope. The mere use of a trademark in other countries or regions does not constitute “prior use and certain influence” as stipulated in Article 32 of the Trademark Law.

25. Reasons for trademark invalidation newly added by the parties during the litigation stage should not be included in the scope of review

?Case No.?

?2023??????331?

?Judgement Summary?

In the administrative litigation for trademark invalidation request, the determination of whether the China National Intellectual Property Administration's ruling is legal or not should be based on the request of the party when the ruling is made. The reasons for trademark invalidation added by the party during the litigation stage should not be included in the review of whether the ruling being sued is legal. scope of consideration.

26. Determination of trademark lacking distinctive features

?Case No.?

?2023??????1053?

?Judgement Summary?

The key to determining whether a trademark in dispute is distinctive depends on whether the relevant public can recognize the mark as a mark indicating the source of goods or services. The people's court may make a comprehensive judgment based on the cognitive habits of the relevant public in the field of goods or services designated for use of the trademark, as well as the actual use conditions of the industry to which it belongs.

27. Application of the principle of “case dismissal” in administrative cases involving well-known trademarks

?Case No.?

?2023??????1725?

?Judgement Summary?

Where, on the ground of reproduction, imitation or translation of a well known trademark, any objection to the disputed trademark or review of any objection is not supported by the trademark administrative department, and the relevant procedures have been terminated, thereafter, the applicant files another request for the declaration of invalidation on the basis of the same facts and reasons without any reasonable cause, which constitutes “dismissal of all cases.”

28. Judgment of infringement when hotels and B&Bs provide on-demand services for film and television works

?Case No.?

?2023??????711?

?Judgement Summary?

When providing on-demand services of film and television works, hotels and residential houses

neither put the film and television works in the information network nor provide the member accounts and passwords of the relevant broadcasting software. Their only installation of the film and television broadcasting equipment purchased through legal channels in the guest rooms does not constitute infringement.

29. Judgment of the basis of the legal rights of the enterprise name

?Case No.?

?2022??????146?

?Judgement Summary?

The fact that a mark enjoys the right to exclusive use of a trademark does not mean that the mark is of course entitled to use it as the name of an enterprise. Even if the alleged infringer is subsequently licensed to use or obtains a trademark that is identical with or similar to the trade name of the right holder, the right to register the trade name of the right holder as an enterprise name cannot be obtained based on the subsequent trademark provided that the trade name of the right holder has a relatively high level of popularity.

30. Determination of the standing of plaintiff industry associations

?Case No.?

?2022??????76?

?Judgement Summary?

Whether an industry association is qualified as a plaintiff in unfair competition disputes can be comprehensively judged based on the nature and business scope of the industry association. If an industry association has a competitive relationship with operators and has a direct interest in the case, it can be determined to having standing

31. Whether using the word “new” in front of a specific product name as the name of the product being promoted constitutes false advertising

?Case No.?

?2022??????76?

?Judgement Summary?

Where the name of a specific commodity that has a national or industrial standard, without relevant evidence to prove the existence of succession relationship, and the word “new” is prefixed to the name of a specific commodity as the name of the commodity being publicized, which is likely to cause consumers to misunderstand the said commodity and is likely to deceive or mislead consumers, it may be determined that the act has constituted false advertising.

32. There is evidence to prove that the profits from infringement are higher than

the statutory maximum compensation amount and the factors to be considered in the decision-making

?Case No.?

?2022??????312?

?Judgement Summary?

When the evidence in the case is sufficient to determine that the benefits obtained by the infringer due to infringement clearly exceed the statutory maximum limit of compensation stipulated in the Anti-Unfair Competition Law, the people's court shall comprehensively consider the popularity of the company name, the degree of subjective malice of the infringer, whether there is obstruction of evidence, and whether there is any infringement. The amount of compensation shall be determined above the statutory compensation amount based on factors such as the specific circumstances of the behavior and the reasonable expenses incurred by the infringed person in defending their rights.

33. Review of agreements related to trade secrets and the constituent elements of trade secrets

?Case No.?

(2021) Supreme People's Court No. 1530

?Judgement Summary?

Even if the parties have reached an agreement on the formation, ownership, infringement, and liability of technical trade secrets by concluding a settlement agreement or any other means, in a subsequent dispute, the people's court shall examine and determine whether the technical information claimed by the parties constitutes technical trade secrets in the meaning of the Anti-Unfair Competition Law.

34. Liability determination of the legal representative as a channel for enterprises to obtain technical secrets

?Case No.?

?2021??????1629?

?Judgement Summary?

If the accused infringing enterprise directly commits the infringement of using technical secrets, and the legal representative of the enterprise is the channel through which the enterprise obtains the technical secrets involved, in principle, it can be determined that the legal representative and the enterprise constitute joint infringement, and it cannot simply be held that if there is no direct evidence that proves that the legal representative committed the infringement he/she shall be exempted from liability for infringement.

35. Compensation for the costs of repairing, rebuilding, and strengthening

confidentiality measures

?Case No.?

?2022???????945?

?Judgement Summary?

In a dispute over infringement of technical know-how, the amount of damages may be calculated out of the expenses incurred by the right holder for repairing or rebuilding the original confidentiality measures damaged due to the infringement, and the expenses incurred for reasonably strengthening the confidentiality measures to mitigate the losses and prevent the expansion of losses.

36. Novelty judgment of new plant variety rights

?Case No.?

?2022???????809?

?Judgement Summary?

The act of handing over the propagation materials of a variety to others for the purpose of trading and giving up the right to dispose of the propagation materials constitutes a sale that results in the loss of novelty of the variety applied for protection of new plant variety rights. If the breeder delivers the propagation materials of the applied variety in order to entrust others to produce seeds, and at the same time agrees that the produced propagation materials of the variety will be returned to the breeder, since the breeder essentially retains the right to dispose of the propagation materials of the variety, this generally does not result in the loss of novelty of the applied variety.

37. Review scope and specificity identification criteria for new plant variety registration procedures

?Case No.?

?2023???????132?

?Judgement Summary?

1. In the invalidation procedure of new plant variety rights initiated upon request, the new plant variety review committee only needs to review whether the authorized variety meets the authorization conditions based on the evidence and reasons submitted by the invalidation requester in principle, and is not obligated to undertake a comprehensive review on whether it meets all authorization conditions for new plant variety rights.

2. In the procedures for the confirmation and examination of rights in new plant varieties, the criteria for the determination of distinctness shall be consistent with the procedures for the authorization and examination of new plant varieties, that is, a final determination of whether a protected variety has distinctness shall, in principle, be based on the trait features determined in field planting tests. Where there is no obvious difference between a protected variety and a known variety in identification by

gene fingerprint, such identification may serve as an important reference for determining that the protected variety does not have distinctness.

38. Infringement comparison of new plant varieties for which there are no molecular marker detection standards

?Case No.?

?2022???????568?

?Judgement Summary?

To determine whether a new plant variety is identical with the alleged infringing variety in characteristics, and to examine the probative power of the inspection report using the molecular marker test such as gene fingerprint test, etc. for some varieties for which there is no national standard or industrial standard for such molecular marker test as gene fingerprint test, the people's court shall comprehensively analyze all the relevant evidences, and emphatically examine whether the sample range of primer sources and the representativeness thereof are consistent with the scientific law and whether the establishment of gene fingerprint test is sufficient to scientifically and accurately distinguish different varieties.

39. Determination of fixed price in monopoly agreement

?Case No.?

?2023???????29?

?Judgement Summary?

The price-fixing method involved in a monopoly agreement to fix commodity prices includes not only fixing the minimum price or directly determining the specific price, but also includes fixing the price range or fixing calculation methods and standards that can be used to indirectly control prices.

40. What to do if you only request confirmation that a specific behavior constitutes a monopoly

?Case No.?

?2021???????2131?

?Judgement Summary?

If the plaintiff sues only to request the people's court to confirm that the defendant's specific behavior constitutes a monopoly, but does not request the defendant to bear civil liability, this type of lawsuit does not have the benefit of litigation, that is, it does not have the necessity and effectiveness of litigation, and the people's court may rule not to accept or reject the lawsuit.

41. "Place of origin" is the condition for determining the jurisdiction of the case where the manufacturing act is carried out.

?Case No.?

?2023??????143?

?Judgement Summary?

If “Place of origin” is not identified in Article 2 of the “Several Provisions of the Supreme People’s Court on Legal Issues Applicable in the Trial of Patent Dispute Cases” then if “place of origin” is deemed as the place where the alleged infringing act is committed, this place shall be a specific place convenient for ascertaining the alleged infringing manufacturer or act of manufacturing, and shall be sufficient to provide the court with jurisdiction over the case regarding the alleged infringing act on this basis.

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