

China Courts Adopt Concurrent Partial Judgments and Preliminary Injunctions in New Model for Complex Copyright and Patent Civil Trials

High complexity, long trial periods from filing the case to receiving the judgment, and high costs have long been considered drawbacks of filing civil patent and copyright infringement cases in China. These concerns have been especially problematic for patent cases in fields such as telecommunications, mechanical engineering, and copyright cases involving software and online games. Parties in such cases often must conduct complex and time-consuming comparisons of accused products to the patented inventions or copyrighted works. IP owners often prevail in court proceedings yet still lose their competitive advantage.

Article 153 of the *PRC Civil Procedure Law* grants the courts the right to issue partial judgments with regard to undisputed facts and then examine other issues and facts in later stages. This provision was seldom employed in the trial of IP cases until the Beijing Intellectual Property Court successfully adopted the "partial judgment" method in 2018 in a series of patent civil disputes between Baidu, Inc. and Sogou, Inc. The court found infringement in three of six cases and rendered partial judgments before evaluating damages.

But a partial judgment on infringement is, by definition, not a final judgment, and the alleged infringer can still appeal the decision to a higher court. So although the partial judgment approach offers welcome relief for IP owners, the infringer can still appeal the partial judgment and liability until the appeal is resolved.

Recently, in cases where patentees or copyright owners applied for both partial judgment and a preliminary injunction, Chinese courts have started adopting a "partial judgment for infringement and preliminary injunction" (PJPI) model. To protect IP owners' legitimate rights and interests and more effectively resolve complex patent and copyright disputes, the courts will, in addition to issuing a partial judgment, issue a preliminary injunction against accused infringers. The preliminary injunction requires the party found to have infringed to stop its infringing acts even when it has appealed the partial judgment within the statutory time limit.

First Use in a Patent Case

The PJPI trial model was initially applied by the Intellectual Property Tribunal of the Supreme People's Court (SPC IP Tribunal) in its March 2019 decision in *Valeo Systemes D'essuyage v. Xiamen Lucas Car Accessories Co., Ltd. et al.*, which the SPC selected as one of the Top 10 IP Model Cases of 2019.

The patentee, Valeo, filed a civil lawsuit against Xiamen Lucas Car Accessories and requested a partial judgment and a preliminary injunction. The Shanghai Intellectual Property Court (SIPC) issued a partial judgment finding but did not rule on Valeo's application for an injunction. In an appeal from the partial judgment, the SPC IP Tribunal stressed the importance of preliminary injunctive relief:

Although the court of first instance made a partial judgment to stop the infringement of the relevant patent, the judgment did not take effect, and the patentee insisted that the court support its application for an injunctive order that was filed during the first instance. Although the injunctive order application and the partial judgment

to cease the infringement may have some overlapping content, and they may also share some functional similarities such as clarifying the status of the legal relationship between the parties and improving the efficiency of dispute resolution, they are nevertheless designed as two different dispute resolution channels. The application for an injunctive order still has its unique value under certain circumstances. For example, when, in the event of an emergency, the applicant's interests are infringed or other circumstances cause damage to the applicant, but the partial judgment on infringement has yet to take effect due to the status of appeal, the injunctive measures in litigation may stop the infringement in a timely manner, and the patent can therefore be protected in a more effective way. The value of the injunctive measures is particularly significant given that no Chinese laws or regulations provide for a provisional measure for enforcing a noneffective judgment.

On the facts, however, the SPC IP Tribunal rejected Valeo's application for an injunctive order because Valeo failed to prove irreparable harm and urgency. The SIPC subsequently awarded the patentee monetary damages of RMB 7 million (approximately \$1.1 million) in May 2020.

Model Use in a Copyright Case

In a case that the Zhejiang Higher People's Court selected as one of the 2020 Zhejiang Top 10 IP Model Cases, the Hangzhou Intermediate People's Court (HIPC) applied the PJPI model in a civil dispute concerning an online game copyright, *Shanghai Kaiying Network Technology Co., Ltd. and Zhejiang Shenghe Network Technology Co., Ltd. v. Suzhou Xianfeng Network Technology Co., Ltd.* This was the first application of the PJPI model in a copyright civil dispute.

Kaiying and Shenghe held the copyright for the online game *Blue Moon Legend* and sued Xianfeng for unauthorized use of their copyrighted work in the online game *Red Flame Heroes*. The HIPC decided to review infringement and damages separately due to the complexity and urgency of the case (online games have high development costs, high market risks, and short life spans, and they are easily reproduced). The court issued a partial judgment of infringement on April 26, 2019 (2019 World Intellectual Property Day), and concurrently issued a preliminary injunction requiring the defendant to halt its acts of infringement.

On appeal, the Zhejiang Higher People's Court upheld the partial judgment. The HIPC reviewed the damages claims, awarding Kaiying and Shenghe damages of RMB 10 million (approximately \$1.57 million) in August 2020. The HIPC also imposed a fine of RMB 1 million (approximately \$150,000) against Xianfeng for continuing to infringe after the injunction was issued.

Model Use in a Patent Case

In December 2020, the Shenzhen Intermediate People's Court issued both a partial judgment and preliminary injunction in a design patent dispute, *SZ DJI Technology Co., Ltd. v. Beijing Feimi Technology Co., Ltd. and Beyondsky Technology (Shenzhen) Co., Ltd.* This was the first patent case in which a PRC court applied the PJPI approach, and it was selected as one of the Top Five 2020 Shenzhen Innovative IP Cases by the Shenzhen Intermediate People's Court.

DJI sued Feimi and Beyondsky for infringement and claimed that Feimi and Beyondsky used its patented design in cloud platform cameras without authorization. Because of the complexity of the case and the relative frequency of updates to cloud platform cameras, the Shenzhen court issued a partial judgment of infringement and granted DJI's application for a preliminary injunction before reviewing DJI's damages claims. Feimi and Beyondsky did not appeal the partial judgment, and the damages claim is still pending before the Shenzhen court.

Takeaways

Compared to the traditional approach in which infringement and damages are decided together in a single final judgment at the end of the entire case, the PJPI trial model enables the courts to hear a complex copyright/patent civil dispute in a more efficient way. Under this new approach, the courts decide infringement early on and may grant a preliminary injunction in parallel. The practical effect is to add teeth to a partial judgment of infringement.

The PJPI approach is a practical option for effectively addressing complex copyright/patent infringements because it can result in quick cessation of infringement and deliver a strong message to the defendant and other would-be infringers in the market. Because the preliminary injunction is granted after a substantial trial, rather than a short hearing, courts save judicial resources and can base preliminary injunctions on stronger, more reliable evidence. The PJPI model also encourages settlements because once infringement has been found, the infringer will quickly lose business due to the preliminary injunction.

Requesting a partial judgment of infringement and a preliminary injunction simultaneously at the outset of complex copyright and patent cases will likely become more common in PRC litigation practice. It is important to keep in mind, however, that PRC courts still have limited experience in applying this new approach, and litigators seeking preliminary injunctive relief should be prepared with strong arguments and evidence to support claims of urgency and irreparable harm.

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