Newsletter

中国专利代理（香港）有限公司
China Patent Agent (H.K.) Ltd.

2009 Issue 5

WHAT'S NEW?

- "MONTAGUT" Trademark Dispute Case Earned CPA a Top 10 Award
- Theory and Practice Related to Patent Infringement Damages

Results Released for Top Performing Winning Counterplea Cases Handled by Chinese Trademark Agencies 2009

"MONTAGUT" Trademark Dispute Case Handled by CPA among the Top Ten List

The Award

The Certificate

On November 11, 2009, results were released in the Domestic and Foreign Trademark Agency Organization Development Forum 2009 held during the China International Trademark Festival for the *Top Performing Winning Counterplea Cases Handled by Chinese Trademark Agencies 2009*, a campaign hosted by the Trademark Branch under China Trademark Association. Ten trademark cases were granted the award, and **China Patent Agent (H.K.) Ltd. (CPA)** is pleased to share the honor with a trademark dispute case it handled among the top ten list, a case concerning the application for the cancellation of the improperly registered "夢達莉嬌 MONDALIJIO" trademark series entrusted by Bonneteric Cevenole S.A.R.L. of France, the "MONTAGUT" trademark owner.

Bonneteric Cevenole S.A.R.L. started registering the trademarks of "MONTAGUT", the flower figure and "夢特嬌" (Chinese transliteration and translation of MONTAGUT) etc. in China in the mid-eighties of the last century, i.e., shortly after China had implemented its Trademark Law, and introduced to the Chinese market merchandises including series of apparels carrying said trademarks in the early nineties of the last century. After continuous efforts over the years, the company has built a good reputation for its series of merchandises, which, however, also brought with it the trouble of passing-off and imitation for its trademarks and cloning of its brands. In handling said trademark dispute case, the attorneys from **CPA** had the trademarks of "MONTAGUT", the flower figure and "夢特嬌" recognized as **famous marks** by successfully initiating the famous marks recognition procedure, while at the same time overcoming the intricacies in collecting evidences offshore as well as undergoing the procedure for administrative cancellation of trademarks and the two trial judicial proceedings. These actions have contributed to the ultimate cancellation of over twenty improperly registered "夢達莉嬌 MONDALIJIO" series of trademarks, thereby not only safeguarding the legitimate rights of the owner, but also removing the obstacle to the protection of the trademark owner's rights in respect of subsequent related civil cases.

夢
特
嬌

MONTAGUT

Famous Marks

夢達莉嬌

MONDALIJIO

One of the Cancelled Marks

Theory and Practice Related to Patent Infringement Damages (Summary)

The issue of damages for patent infringement is always a focal point in patent infringement litigations. On 15 April 2009, the high-profile patent infringement lawsuit Chint v. Schneider was settled during the trial of second instance, with the accused infringer Schneider paying Chint, the patentee, the damages of RMB 157.5 million yuan, an amount about half of the damages of RMB 330 million yuan as decided in the first-instance judgment. The huge amount of damages involved has drawn wide attention in China and abroad, and many within the industry are keen to know how the Chinese courts look at the issue of patent infringement damages.

In light of this, China Patent Agent (H.K.) Ltd. has reviewed the fundamental theory and pertinent law provisions governing patent infringement damages, as well as probed into the patent infringement judgments made between 2007 and 2008, as recorded on the Fabao Legal Database of the Peking University, in the five regions of Beijing, Shanghai, Guangdong, Zhejiang and Jiangsu, where a relatively large volume of patent-related cases were received. Our studies aim to explore the determination of damages for patent infringement in China from both theoretical and practical perspectives.

Findings from the aforesaid studies include:

- Foreign rightholders won more or less the same percentage of cases as domestic rightholders did, both amounting to about 70%;
- Foreign rightholders showed a strong preference for instituting lawsuits in Beijing and Shanghai. Among the cases with foreign rightholders as the plaintiffs, 80% were sued in the courts of Beijing and Shanghai;
- In accordance with the Chinese laws and regulations, methods for working out patent infringement damages comprise: actual economic damage inflicted by the infringement, all the profits of an infringer attributable to the infringement, an appropriate multiple of the patent license royalties, and statutory damages (i.e. the amount of damages determined at the discretion of the judge according to the circumstances of the case, where no concrete evidence is available to support the amount of damages for the infringement). Despite the availability of said methods, statutory damages have become the dominant method for damages determination, representing 99% of all the cases under study;
- As a result of heavy reliance on the method of statutory damages and the prescription by the Supreme People's Court's Judicial Interpretation of the upper limit of statutory damages at RMB 500,000 yuan, a great majority of the cases (about 94%) were determined at damages of RMB 300,000 yuan or less;
- Imposition of high damages for patent infringement has been rare in China, with merely 0.5% of cases determined at damages exceeding RMB 1 million yuan;
- Relatively more cases in Beijing and Shanghai in aggregate involved a large amount of damages. Of the cases determined at damages exceeding RMB 500,000 yuan in the five regions under study, approximately 83% were concluded in Beijing and Shanghai.

By the time our studies ended, the Schneider case was not included in the Fabao Legal Database of the Peking University. The Schneider case that reaps damages amounting to hundreds of millions yuan is, however, an isolated incident, benefiting from the audits on the production and sales figures of the accused infringing product during the litigation proceeding, as well as the method of damages computation based on the total profits attributable to the infringing product. On the whole, damages for patent infringement in China remain at relatively low level.

In the latest amendment to the Patent Law, the upper limit of statutory damages is raised to RMB 1 million yuan, i.e. doubling of the original upper limit (see China Patent (H.K.) Newsletter, 2008 Issue No. 4). Meanwhile, the Supreme People's Court is considering the incorporation of the extent of contribution of the patented technology as a factor in determining damages where the method of total profits attributable to the infringing product is used, with a view to rectify the issue of computation that leads to unduly high damages (see China Patent (H.K.) Newsletter, 2009 Issue No. 3).

With the implementation of the new Patent Law and the increasing importance attached by the Supreme People's Court to the judgment of patent infringement, it is expected that more reasonable means of determining damages for patent infringement will be developed, and a rising trend in average value of damages is to be seen.

For details of our findings, please refer to the studies report in full text as attached hereinbelow.

Theory and Practice Related to Patent Infringement Damages

The Legal Affairs Department of China Patent Agent (H.K.) Ltd.

The issue of damages for patent infringement is always a focal point in patent infringement litigation. On 15 April 2009, the high-profile patent infringement lawsuit Chint Group Ltd. (Chint) v. Schneider Electric Low Voltage (Tianjin) Co., Ltd. (Schneider) was settled by the two parties during the trial of second instance, with the accused infringer Schneider paying Chint, the patentee, the damages of RMB 157.5 million yuan, an amount about half of the damages of RMB 335 million yuan as decided in the first-instance judgment[1]. The huge amount of damages involved has drawn so wide attention in China and abroad that damages for patent infringement have again become a hot topic in the community.

This article is trying to present an overview of the fundamental theory and the pertinent law provisions governing patent infringement damages, and probe into the patent infringement judgments, made in the five regions of Beijing, Shanghai, Guangdong, Zhejiang and Jiangsu between 2007 and 2008, which have been made accessible in the Fabao Legal Database of the Peking University, with a focus on the exploration of the amount of the decided damages for patent infringement in China now from the theoretical and practical perspectives.

I. Fundamental theory and pertinent law provisions governing patent infringement damages

In China, civil infringement damages are based upon the "equity (or fill-in) doctrine", i.e. injury or losses are recovered with damages at such an amount that an infringee would be brought back to the state before its or his right was infringed, without putting it or him at a position more advantageous than that before the infringement took place. Since patent infringement is a civil infringement, this doctrine is naturally followed in respect of damages for patent infringement. To date, provisions with regard to punitive damages[2] are not incorporated in the laws governing patent infringement in China.

In the Patent Law, as promulgated on 12 March 1984, the amount of damages for patent infringement was not

specified. In the court practice, the matter of damages is addressed under the general provisions concerning the damages for civil infringement.

In the Answers for Addressing Several Issues Concerning Trial of Cases of Patent-related Dispute as issued by the Supreme People's Court on 31 December 1992 ("the 1992 Judicial Interpretation"), it was specified, for the first time, the methods for the determination of the amount of damages for patent infringement, spelling out, in Part 4 thereof[3], three ways of damages computation or calculation:

(i) A patentee's actual economic damage inflicted because of an infringement ("infringement damage" for short) may be calculated by multiplying the reduced sales of the patented product because of the infringement with the profit of the unit piece of the patented product;

(ii) All the profits an infringer makes because of an infringement ("infringement profits" for short) may be calculated by multiplying the profit of each infringing product with the amount of their sales; and

(iii) The amount of damages is fixed at an amount no less than the reasonable amount of the royalties of the patent license.

Issuance of the Judicial Interpretation has played a positive role in guiding and regulating trial of patent infringement cases to an extent.

In Article 60[4] of the Patent Law as amended on 25 August 2000 ("the 2000 Patent Law") the following three methods of damages calculation are officially incorporated:

(i) based on the infringement damage;
(ii) based on the infringement profits; and
(iii) duly determined with reference to the multiple of royalties of the patent license (the appropriate multiple of royalties for short) [the wordings here somewhat different from that of the 1992 Judicial Interpretation].

This is the first time to have officially incorporated in the Patent Law the provision relating to the damages for patent infringement, which serves as an express law basis for the calculation of the amount of damages. However, the provision does not specify which of the two methods of calculation should apply first, nor address the issue of how to determine the amount of damages when none of the three methods is applicable[5].

On 22 June 2001, the Supreme People's Court issued the Several Provisions on Issues Relating to Application of Law to Adjudication of Cases of Patent Disputes ("the 2001 Judicial Interpretation"), in which a series of important and new provisions have been set forth on the determination of the amount of the damages for patent infringement.

Article 20[6] of the 2001 Judicial Interpretation worked out two flexible methods for calculating the amount of "infringement damage" and "infringement profits":
(1) Where it is difficult to determine the total reduction in the volume of sales of the rightholder because of the infringement, the total of the infringing products sold in the market times the reasonable profit of each patented product may be deemed to be the losses suffered by the rightholder due to the infringement.

(2) The benefits made by the infringer because of the infringement are generally calculated on the basis of the business profits made by of the infringer. As for the infringer who engages in infringement as its or his sole business, the benefits may be calculated on the basis of its or his sales profits.

The concept of "statutory damages" (or "fixed amount of damages") was used for the first time in Article 21 [7] of the 2001 Judicial Interpretation, whereby the people's courts are empowered to determine the amount of damages in the range of RMB 5,000 to 300, 000 yuan (not exceeding RMB 500,000 yuan) depending on the factors, such as class of the patent in suit and the nature and circumstance of the infringement by the infringer. The introduction of "statutory damages", which is a major change in the trial of patent infringement cases and of landmark significance, has made it possible for judges to determine the amount of damages depending on the circumstances of the case where the aforesaid methods of calculation are not applicable, and greatly improved their efficiency in handling cases of the kind. In recent years, imposition of the statutory damages has gradually become the dominant method used by the courts at all levels to determine the amount of damages in their trial of patent infringement cases. As shown by the corpus of cases under our scrutiny in the five regions mentioned above, approximate 99% of all the cases were treated with the amount of damages determined with the method of statutory damages, and in some regions, even 100%[8] of cases were treated this way. But with the cases where the statutory damages applied also rest such problems as passivity in adducing evidence on the part of interested parties, low amount of damages determined and too much discretion on the part of the judges.

Article 21 of the 2001 Judicial Interpretation also provides that where it is possible to refer to the patent license royalties, the people's court may determine the reasonable damages at an amount one to three times the patent license royalties. In other words, "one to three times" is determined as the "appropriate multiple" mentioned in Article 60 of the 2000 Patent Law in the judicial practice.

Besides, Article 22 [9] of the 2001 Judicial Interpretation also mentions that it is possible to include the reasonable costs or expenses paid for investigation or for ceasing the infringement in the amount of damages. This is a positive change, which would help rightholders recover their enforcement costs, and enhance, to an extent, the protection of the rightholders.

Article 65 [10] of the Patent Law as amended on 27 December 2008 ("the 2008 Patent Law", going into force on 1 October 2009) expressly provides that priority is given to the application of the "infringement damage" in determination of damages for patent infringement; "infringement profits" applies only when it is impossible to determine the "infringement damage". For the first time, it is made clear in the Patent Law that the amount of damages should include or cover the reasonable costs for ceasing infringement (reasonable costs for lawsuit). Also, in paragraph two of the Article it has been officially incorporated the "statutory damages", with both the upper and lower limits for the amount doubled. Judges are thus empowered to impose damages at the amount of RMB 10,000 to 1 million yuan depending on the specific circumstances of a case.

On 18 June 2009, the Supreme People's Court issued the draft of the Interpretation of Several Issues Concerning Application of Law to Trial of Cases of Dispute Arising from Patent Infringement (the Draft Interpretation) for comments, which reflects the Supreme People's Court's new practice along the line. While the terms of the Draft Interpretation are not final, they have drawn great attention from the community. Article 21, paragraph one[11] of the

Draft Interpretation provides that when determining the benefits an infringer has obtained because of an infringement, the court shall limit the amount of benefits to what the infringer has made because of the infringement of the involved patent *per se*; where its or his benefits are jointly generated due to other factors, the benefits obtained because of said other factors shall be excluded from the benefits obtained because of the infringement. In other words, in determining infringement profits, account must be taken of the "extent of contribution" of the patented technology to the gross profits made from the infringing products.

It is worth noting that the Draft Interpretation was issued just two months after Chint v. Schneider was settled. To the great surprise of the industry, the first-instance judgment in the case was made on 26 September 2007 with damages determined at such a high amount of RMB 330 million yuan (roughly $ 50 million). In the judgment, it was decided that the "infringement profits" were the entire profits made from the infringing product, without identifying the extent of contribution made by the patented technology, which caused wide debate in and outside China. It seems that, in some aspects, Article 21 of the Draft Interpretation may be understood as a rectification the Supreme People's Court made of the method of "infringement profits" taken as the whole profits made from infringing products.

Additionally, while the varied specific calculation methods are mentioned in the Patent Law and the Supreme People's Court's judicial interpretations, in practice, it is very difficult to determine the amount of damages with the methods of "infringement damage" and "infringement profits" for a variety of reasons. For example, the method of "infringement damage" requires the presence of direct causality between reduced sales of a patented product and an infringement. But in practice, sales of patented product may be reduced for many reasons. For instance, an economic crisis may result in an inadequate market demand, some new alternative product is made or the ways of consumption of the public have changed. It is impossible to attribute reduced sales of a patented product entirely to an infringement. Besides, it is rather difficult to find out exactly what role (or extent of contribution) an infringement has had in all these factors. For still another example, for the method of "infringement profits", it is difficult to ascertain the sales of, and profits from, an infringing product, especially when the infringer is a small business without standardised management; it is also an arduous task to obtain the data of the nature.

For that matter, the courts have come up with some flexible methods for damages calculation as follows[12]:

(i) To multiply the total of the infringer's sales by the profits of patentee's product in the case where it is impossible to find out the profits made from the infringing product;

(ii) To multiply the total of the sales of the infringing product by the profits of the relevant product in the industry in the case where it is impossible to find out the profits made from the infringing product or the patentee does not make the product;

(iii) To multiply the number (of multiplying the patentee's reduced sales by n%) by the profits made from the patentee's product in the case where the sales are reduced not solely because of an infringement;

(iv) To multiply the number (of multiplying the patentee's lowered sales by n%) by the profits made from the infringing product in the case where the profits of the infringing product is higher than that of the patentee's

product;

(v) To multiply the infringer's total sales by the number (of multiplying the profits made from the infringing product by n%) in the case where only some parts of the infringing product infringe the patent involved;

(vi) To multiply the patent license royalties by the number (derived from the time of the infringer's production divided by the time of the patent license) in the case of relatively short time of production of the infringing product; and

(vii) The number (from patent license royalties 1 plus patent license royalties 2 plus … plus patent license royalties n) divided by n in the case of multiple patent licenses.

While these flexible methods of damages calculation are not incorporated in the Supreme People's Court's judicial interpretations and cannot be directly used as legal basis in practice, use of the methods may be considered where it is indeed impossible to apply the standard methods as provided for in the Patent Law and the judicial interpretations. It is possible for the court to accept it in the presence of support with sufficient evidence[13].

II. Ways of statistics and data

In order to better understand the adjudication practice of the court, we have brought together the patent infringement cases decided between 2007 and 2008 as made accessible in the Fabao Legal Database[14] prepared by the Peking University. For our research the cases chosen are all heard by courts in the above mentioned five provinces and municipalities directly under the Central Government, where relatively more cases are heard. Besides, we have also classified the cases according to the years of the cases, regions, classes of the patent in suit, countries of the interested parties involved for the purpose of our study, with a detailed analysis made respectively of the rate of cases won by the rightholders, distribution of the amount of damages, methods of damage calculation, and "reasonable costs".

In order to more accurately show the practice of the courts in determination of the amount of damages and help interested parties better predict the judicial outcome of their pursuit of the entire lawsuits against or involving patent infringement, this article only focuses on a scrutiny of the judgments or rulings of the court there, excluding from the study the cases withdrawn or settled since the amount of damages in the mediation awards were generally results from the encountering and bargaining between plaintiffs and defendants, which are not true manifestation of the courts' view.

In some cases, the involved vendors' infringement was established, but they were not held liable for damages since they did not know what they marketed were infringing products and they were able to show the legitimate sources of their products in suit. Cases with zero damages involved are excluded from our statistics of the average and median value, which may result in the phenomenon where the total number of the cases with damages involved is smaller than that where the rightholders win in our statistics.

For simplicity in our method of our statistics, cases of first instance and second instance of trial involving the same infringement allegation are separately counted. If the trial of them is closed within the same year, they have

possibly been separately counted. Besides, in some associated cases, a rightholder institutes multiple suits against one defendant on the basis of multiple patents or sues multiple defendants on the basis of one patent right. The circumstances of the associated cases are often very similar, and the judicial outcome thereof is substantially the same. In our statistics, these associated cases are all separately counted, which may cause some statistical deviation. To evaluate the effect of these cases on the data of the present statistics, when computing the average or median value of the amount of damages, we first include the amount of damages of all the cases in our corpus of data for the computation of such values, then remove part of the identical data of the associated cases, keep one of the data for the computation, and calculate the average and median value after the adjustment is made. As the results show, these cases do not have substantial influence on the final statistic results.

III. Rate of cases won by rightholders

For rightholders (including patentees and exclusive licensees), whether it or he can win an infringement lawsuit is a matter of vital importance. If it is impossible to win the lawsuit, the market value of their patent rights will be decreased dramatically. For that reason, the rate of cases in which the rightholders are the winners in patent infringement litigation is a matter of general concern. For the statistics in this regard see Table 1.

Table 1: Rate of Cases Won by Rightholders[i] in Patent Infringement Litigation[ii] (2007-2008)

Region/Class of Patents	Beijing				Shanghai				Guangdong				Jiangsu				Zhejiang				Total
	P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	
Total Judgments	53	48	79	180	17	20	28	65	5	23	59	87	14	21	102	137	14	43	68	125	594
Cases involving foreign rightholders[iii]	31	0	20	51	12	2	12	26	3	1	4	8	1	0	2	3	2	0	6	8	96
Cases won by foreign rightholders	22	0	16	38	9	0	8	17	3	0	1	4	1	0	0	1	2	0	6	8	68
Winning rate %	71	--	80	75	75	0	67	65	100	0	25	50	100	--	0	33	100	--	100	100	71
Cases involving domestic rightholders	22	48	59	129	5	18	16	39	2	22	55	79	13	21	100	134	12	43	62	117	498
Cases won by domestic rightholders	11	23	43	77	4	6	10	20	0	16	43	59	7	17	94	118	6	32	50	88	362
Winning rate %	50	48	73	60	80	33	63	51	0	73	78	75	54	81	94	88	50	74	81	75	73
Cases won by rightholders	33	23	59	115	13	6	18	37	3	16	44	63	8	17	94	119	8	32	56	96	430
Total winning rate %	62	48	75	64	76	30	64	57	60	70	75	72	57	81	92	87	57	74	82	77	72

P1: Invention Patent P2: Utility Model Patent P3: Design Patent Σ: Subtotal

[i] "Cases won by rightholders" means that infringement was found. The "rightholders" here include plaintiffs in the patent infringement litigation and defendants in the litigation for declaratory judgment.

[ii] "Patent infringement litigation" here also includes litigation for declaratory judgment, apart from patent infringement litigation in general sense.

[iii] "Foreign rightholdes" here means that at least one of the rightholders who claim their rights in a case has a foreign background, such as pure foreign business or businesses of sole foreign investment or joint ventures.

As a whole, rightholders won about 70% of the cases (in which infringement was found) in these regions. As for the nationality of the rightholders, foreign rightholders (or rightholders involving foreign elements) won more or less the same percentage of cases as domestic rightholders, both amounting to about 70%. There was a slight

regional variation in this aspect. In some regions, the percentage was extraordinarily high or low due to the small number of cases of a specific type in our corpus of data.

It is worth noting that the total number of judgments made in lawsuit involving dispute arising from infringement instituted by foreign rightholders in Beijing and Shanghai was obviously larger than that in other regions (with a total of 77 cases involving foreign rightholders in Beijing and Shanghai, taking up 80% of the total)[15], which showed that foreign rightholders strongly prefer to sue in the courts in the two cities. This might have something to do with the relatively rich experience and high level of proficiency of the judges in the courts in Beijing and Shanghai. In patent infringement litigation, rightholders were often reluctant to sue in the courts of place where infringing products are made or where the defendants are domiciled for fear of local protectionism[16]. Many rightholders got the chance to sue in a specific region by accusing an unimportant vendor based in that region as a co-defendant. As the statistics show, interested parties prefer to sue in the courts in Beijing and Shanghai. In many cases, the plaintiffs and main defendants were both based outside the region of Beijing and Shanghai, but the plaintiffs chose, by way of suing "strawman" vendors, to bring action in the court there even if this might mean that they would have to suffer from the long journey. The court system recognises the practice, believing that this shows the interested parties' own choice of place to sue, and it is good for handling patent infringement cases in a just and timely manner, which is also in line with the demand for enhancing intellectual property protection[17].

We also noted that the total number of judgments made in cases of dispute arising from infringement of invention patent in Beijing was obviously more than those in other regions (with 53 cases involving invention patent infringement in Beijing, taking up 51% of the 103 cases in total)[18] in the past two years. The cases of dispute arising from infringement of invention patent with foreign rightholders are concentrated in Beijing and Shanghai (43 cases in Beijing and Shanghai, taking up 88% of the 49 cases in total). These cases usually involve considerable financial interests at stake and are often difficult to deal with. Concentration of cases of the nature in these courts showed, to an extent, the rightholders' recognition of the courts there.

IV. Distribution of damages and methods of determination of amount of damages

Table 2: Amount of Damages in Patent Infringement Litigation (2007-2008)

Region/Class of Patents		Beijing				Shanghai				Guangdong				Jiangsu				Zhejiang				Total
		P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	P1	P2	P3	Σ	
Damage per case (Unit: RMB 10,000 yuan)	Average	16.9	14	12.6	14.2	17.8	22.5	7.5	13.7	10.3	12.6	5.7	7.7	20.6	16.9	8.2	10.3	13.7	7.9	6.6	7.6	10.6
	Median	15	8.1	6	8.1	15	20	8	8	6	10	4.8	6	17.5	15	3.5	5	15	5	4	5	7
	Largest	50	103	105	105	61.3	50	15.8	61.3	20	52.6	20	52.6	50	50	50	50	30	50	30	50	105
	Smallest	0.9	2.0	0.3	0.3	4.1	5.0	2.0	2.0	5.0	1.2	0.5	0.5	3.5	2.0	0.3	0.3	3.0	1.0	0.5	0.5	0.3
Cases by amount of damages	≤100,000	8	12	37	57	5	1	14	20	2	9	42	53	3	8	75	86	2	27	47	76	293
	100,001~300,000	19	7	13	39	7	4	3	14	1	6	2	9	3	7	9	19	5	4	8	17	97
	300,001~500,000	6	0	1	7	0	1	0	1	0	0	0	0	2	2	7	11	0	1	0	1	10
	>500,000	0	1	3	4	1	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	6

P1: Invention Patent P2: Utility Model Patent P3: Design Patent Σ: Subtotal

As was shown in Table 2, the average and median value of damages in the five regions in the recent two years were

approximately RMB 100,000 yuan (about $15,000) and RMB 70,000 yuan (about $10,000) respectively. Damages of RMB 300,000 yuan or less are imposed in most cases (about 94%). The total number of cases involving high damages are rare, for example, only six cases (about 1.4%) involving damages exceed RMB 500,000 yuan (about $70,000), and two cases (about 0.5%) thereof involve damages of RMB one million yuan (about $150,000) or more. In the five regions in recent two years, the largest amount of damages ever imposed was RMB 1.05 million yuan (about $ 150,000)[19], and the smallest RMB 3,000 yuan (about $400).

In terms of classes of the patents, the aggregate damages decided in cases involving invention patent (average amount at RMB 169,000 yuan) are higher than those involving utility model (average amount at RMB 127,000 yuan) and design patents (average amount at RMB 83,000 yuan).

There is no obvious difference in the amount of damages imposed in these regions. Generally, the amount of damages imposed in Beijing and Shanghai were slightly higher than in the other regions (the average amount of damages were RMB 142,000 and RMB 137,000 respectively). There were also relatively more cases involving large amount of damages imposed in the two cities (five out of six cases involving damages in these two cities exceed RMB 1 million yuan).

On the whole, patent infringement cases are imposed relatively small amount of damages in China, which seems rather insignificant compared with the damages amounting to several hundred million US dollars imposed frequently in the U.S. and European countries. In some cases, the amount of the imposed damages is so small that they could not cover the litigation costs[20]. For that reason, there stood little chance for seeking large amount of damages in lawsuit in the absence of especially sufficient evidence to support one's claim. In this case, the significance in winning a patent infringement lawsuit mainly lies in cessation of the infringement. To obtain damages, settlement of a dispute is desirable since one probably could only get over RMB 100,000 yuan (about $15,000) for the damages after making great efforts, fighting the lawsuit to the very end. It was not worthwhile at all.

The other reason for the small amount of damages imposed in patent infringement cases in China probably has something to do with the frequent application of the statutory damages. Many cases ended up in recent two years with the imposition of statutory damages (including pure statutory damages, statutory damages plus reasonable litigation costs, statutory damages including reasonable costs incurred in litigation and pure reasonable litigation costs), which has become the dominant way for damages determination. Among all the 416 judgments imposing damages, only one[21] was adopted the method of "infringement profits", four were adopted the method of "appropriate multiple of license loyalties", and the remaining 411 were adopted the method of statutory damages. Under the current 2001 Judicial Interpretation, the statutory damages were generally RMB 300,000 yuan or less, and not more than RMB 500,000 yuan at the most. Given the circumstance that statutory damages were applied close to 100% to the cases, it is no surprising that the average amount of damages is somewhere at over RMB 100,000 yuan. In the newly amended 2008 Patent Law effective 1 October 2009, the uppermost and lowermost amounts of damages have been doubled, ranging from RMB 10,000 to one million yuan. It is predicted that in the years to come, the amount of statutory damages to be imposed by the courts will be increased on the whole.

Under the doctrine of the burden of proof on the one who claims, the plaintiff is obliged to adduce evidence to support his or its request to calculate the amount of damages. To date, there does not exist in China a procedure

similar to the US "discovery" procedure, in which the defendant is obliged to make his or its account books or statements of loss, profits and debts accessible for the purpose of determining the amount of damages. Consequently, it is of great importance for the plaintiff to adduce evidence with regard to the specific ways to determine the amount of damages, otherwise he or it could do nothing but request the court for imposing the statutory damages. As a result, the damages of over RMB 100,000 yuan (roughly $15,000) he or it is paid is not worth the efforts he has put into the litigation at all.

But, even if an interested party finds it impossible to calculate the amount of damages in any other ways, and has to petition the court to impose the statutory damages, he or it should not remain passive in adducing evidence and do nothing but wait for the court to make its decision. We have noted a higher amount of statutory damages the court decided on was often supported by considerable evidence[22]. For that reason, even if claiming for the statutory damages, the plaintiff should make available as much useful information as possible to help the judge determine the amount of damages in a more reasonable manner.

When determining the amount of damages, a judge may consider these factors, such as class of the patent involved, sales price of the infringing product, circumstances and nature of the infringement[23], type, price, scale of production and the normal market profit of the allegedly infringing products[24]; wholesales price and gross profits, mode of sales, price of products sold by vendors, number of and fees paid by dealers[25]; patent license royalties[26] (it is worth noting that where damages are claimed on the basis of patent royalties, evidence, such as proof of payment or invoices, is required to show the execution of a patent license); the subjective fault of the defendant and the facts of continued infringement after the patent administration made a Patent Infringement Dispute Treatment Decision[27]; facts of exporting to a plurality of nations and regions the infringing products advertised on the defendant's website[28]; and the defendant's statement of loss, profits, debts, and performance, and fees paid for patent license[29]. Statements of the nature will greatly help a judge get to know about the facts of a case and duly determine the amount of damages, and as well make larger amount of damages more likely.

V. Reasonable costs

The "reasonable" costs a rightholder pays in a case often include investigation and evidence collection expenses, translation fees, notary fees, payment for buying infringing products, travel expenses, documents reproduction fees, fees for communications, appraisal fees, and lawyer's fees, patent attorneys' fee, consultants' fees, warehouse fees, rents, and security expenses.

The costs may roughly be divided into two categories: investigation and evidence collection expenses, and service fees.

The investigation and evidence collection expenses, such as notary fees, translation fees, fees paid for converting DV to DVD, documents reproduction fees, travel expenses and payment for buying infringing products, are an interested party's necessary actual costs or expenses, and usually of a relatively small amount, and the reasonability of these expenses is often a matter of little controversy. Hence, in the presence of sufficient evidence, the court often supports recovery of these costs.

The courts often treat the service fees, such as lawyers fees, attorney's fees and warehouse fees, in a more careful

manner. Rates of fees charged in different regions or in the same region vary considerably for lawyers of varied level of professional proficiency, patent attorneys and other professionals. There is much disagreement on the reasonability of fees for a level of service[30]. As the specific cases show, the determined lawyer's fees or attorney's fees under the item of "reasonable costs" often amount to several thousands RMB yuan (about hundreds of US dollars), mostly not exceeding RMB 20,000 yuan (about $ 3,000). Cases of more than RMB 50,000 yuan (about $70,000) are quite few. In cases involving foreign interested parties, the determined amount of damages is trivial compared with the thousands of US dollars paid for the lawyers fee. As the warehouse fees, while they should be taken as the necessary expenses, much disagreements exist as to how large a rented warehouse is "reasonable". Cases of full supports from the court are quite few.

Besides, it is worth noting that the "official fees" paid to the court for case acceptance and expert appraisal sometimes may be as much as over RMB 100,000 or even several hundred thousands yuan, or even in excess of the total amount of damages decided in some cases. And these official fees are not to be covered by the damages due from the other party as part of the "reasonable costs".

VI. An overview of typical cases

Now, let's look at some typical cases selected from those closed in the recent two years, commenting on them from a practical perspective to help our readers better understand the courts' specific practice in hearing patent infringement lawsuits and realise the importance of adduction of sufficient evidence for the sake of claiming larger amount of damages.

1. Beijing Duolaiming Medical Treatment Science and Technology Co., Ltd. v. Jiang Quantao, a case of appeal involving patent infringement dispute, in which the Beijing Higher People's Court made the Civil Judgment No. Gaominzhongzi 971/2008

Jiang Quantao, the patentee, sued the Beijing Duolaiming Medical Treatment Science and Technology Co., Ltd. (Duolaiming) for infringing his invention patent (200410036125.6)

In the procedure, Jiang Quantao furnished the Goldrash Manual accepted by Duolaiming, in which it was stated that the fees charged for joining the business chain by a self-managed chain store was RMB 28,000 yuan. Jiang Quantao also presented the Contract No. JM-106 A (57001) for Joining the Business Chain as sealed by Duolaiming. Under the contract the fee charged for joining the business chain was RMB 28,000 yuan. During the court session before the first-instance court, Duolaiming stated that it began to make the three models of the thermal eye-sight therapeutic instruments, which were identical in structure, from July 2007, and had made altogether 2,500 sets of the instruments by the time of first-instance procedure. There were 13 member stores in the business chain. An instrument was sold to the chain dealer at the price of RMB 315 yuan a set. Calculated on the basis of this unit price, the gross profit was roughly 35% when the dealer sold it at the retail price of RMB 915 yuan a set.

The court determined the amount of profits made by Duolaiming because of its infringement, on the basis of the factors, such as volume of production, price of the products sold to its chain retailers and the gross profits as it stated before court, taking into account of the mode of sales by Duolaiming of the products in suit, the price at

which the retailer sold the products, the number of such chain retailers and fees for joining the business chain. Together with the notary fees of RMB 4,655 yuan, the lawyers fee of RMB 6,000 yuan, and the surety fee of RMB 5,000 yuan Jiang Quantao had paid, the amount of damages totaled more than RMB 300,000 yuan.

In the case, the plaintiff provided relatively sufficient evidence, and the court had decided on a relatively large amount of damages in the case.

2. Beijing Tianweiheng Electric Co., Ltd. v. Beijing Dianke Siwei Electric Power Technology Co., Ltd., a case involving patent infringement dispute, in which the Beijing No. 2 Intermediate People's Court made the Civil Judgment No. Erzhongminchuzi 15968/2006

The Beijing Tianweiheng Electric Co., Ltd. (Tianweiheng) sued the Beijing Dianke Siwei Electric Power Technology Co., Ltd. (Siwei) for infringement of its utility model patent (99201400.X).

The plaintiff Tianweiheng provided the proofs as to the defendant Siwei's statements of assets, debts and performance in 2004 and 2005 to show the benefits the defendant had obtained because of its infringement. The plaintiff also furnished proofs of the agreement it concluded with the Jiangsu Jinke Mutual Inductor Co., Ltd. and the Dalian Mutual Inductor Co., Ltd. on assignment of the patented technology to prove the amount of fees due to it for assigning the patented technology at the amount of RMB 1.5 million yuan and 600,000 yuan respectively.

On account of the nature and scale of the defendant's infringement, price of the products in suit, the normal market profits and the plaintiff's license royalties, it was decided on RMB 1 million yuan as the damages due to the plaintiff and on RMB 27,000 yuan as the reasonable costs the plaintiff paid for the lawsuit.

In the case, the defendant's statements of loss, profits and debts, and statement of performance provided by the plaintiff were all relatively solid evidence, from which a lot of specific data were directly gathered for evaluating the benefits obtained because of the infringement. With such relatively sufficient evidence adduced, the court decided on the damages at the amount of RMB 1 million yuan, in excess of the upper limit of the statutory damages at RMB 500,000 yuan provided for in the 2001 Judicial Interpretation. It was a rather large amount of damages decided in recent two years.

3. Honda v. Lifang Industrial Group Co., Ltd., a case involving patent infringement dispute, in which the Shanghai No. 2 Intermediate People's Court made the Civil Judgment No. Huerzhongminwu (zhi) chuzi 89/2004.

The plaintiffs, Honda and Wuyang-Honda Motorcycle (Guangzhou) Co., Ltd. sued Lifang Industrial Group Co., Ltd. (Lifang) and Shanghai Wenan Motorcycle Co., Ltd. for infringement of their invention patent (95104356.0).

According to the facts that the State Machinery Bureau publicised Lifang's LF125T-2D motorcycle in May 2000, and that Lifang stopped its production of the motorcycle in 2004 owing to the lawsuit and resumed its production after the PRB held the plaintiff's patent right invalidatable, the court decided that the periods of infringement were between May 2000 and December 2003, and between January 2005 and November 2007.

According to the information of the volume of production of the motorcycles recorded with the Quality

Certification Information Administration as designated by the State Development and Reform Commission, the court decided that Lifang made 17,617 LF 125T-2D-model motorcycles in the periods of infringement.

As for the profits made from the infringing products, Lifang insisted that it made a very small amount of profits and even lost money from its production of the motorcycles in suit, without presenting any financial evidence to prove it. The plaintiff Honda furnished the proof showing the rate of profits from Lifang's motorcycles business in the market in Japan and the rate of profits made by Lifang over the years as calculated from the information taken from the Composite Information of China's Automobile Industry (Mmotorcycles Part). The court held that the damages of the infringement lawsuit should be calculated on the basis of the relevant information of the market in China, and did not accept the Honda's evidence of the rate of profits Lifang made from its relevant products in Japan. Reference might be made to the relevant data from the Composite Information of China's Automobile Industry (Mmotorcycles Part) though they did not show the profits of a particular model of motorcycle made. The court determined that the average rate of profits of motorcycles was at 3% after taking into account of factors such as the scale of production, main business, and the characteristics of the motorcycles in suit.

Besides, according to the factory price of the motorcycles as provided by Lifang in the years from 2005 to 2007 and on account of the market factors, the court decided that the average price of the motorcycles in suit sold by Lifang was at RMB 4,000 yuan.

It was possible to calculate on the basis of the ascertained facts that Lifang made a profit of RMB 2.114 million yuan from the motorcycles in suit it had made and sold.

Consideration was given to the fact that Honda made its claim for damages on the basis of its design and invention patents in the present case and in another case (see Shanghai No.2 Intermediate People's Court Judgment No. Huerzhongminwu(zhi)chuzi 225/2003). In the latter case, the court, when determining the amount of damages, considered the value that the patent took up in the products. For that reason, the court, when deciding the amount of damages in the present case, also determined Lifang's profit made because of the infringement on the basis of the value of the patent. The court decided that the rate of value that the patent took up in the products of the motorcycles in suit was at 1:5 or 20% on the basis of the factors, such as the class of the patent, content of technology, market value and contribution to the production of a motorcycle as a whole. Accordingly, it was calculated that Lifang made a profit of RMB 422,800 yuan from its infringement of the patent in suit.

Regarding the reasonable costs in the lawsuit, the court supported the claim for full recovery of RMB 19,800 yuan as part of the reasonable costs the plaintiff had paid for buying the infringing product and for notarisation for the purpose of ceasing the defendants' infringement. While the rent was part of the reasonable costs, according to the site inspection, the presumed 360m^2 of the warehouse for the motorcycle in suit was obviously too large, so the court supported the claim for recovery of the relevant fees of RMB 20,000 yuan. Besides, the court decided on the recovery of RMB 150,000 yuan on account of the factors, such as the circumstances of the case, the schedule of the relevant fees charged, and the actual work the lawyer had done. To sum up, Lifang should pay the two plaintiffs RMB 612,600 yuan in compensation of their financial damage, their reasonable costs included.

This case is one of the rare cases where the amount of damages was determined on the basis of the "profits made because of the infringement". The case will thus serve as a very valuable frame of reference. To prove the profits

made because of the infringement, the plaintiff provided a lot of evidence. Interested parties should refer to the practice and do a better job in adducing evidence. The final amount of damages of RMB 1.035 million yuan was a relative large amount determined in the cases closed in the recent two years. But it seemed that the amount of damages was still not enough to cover the lawyers fee of RMB 956,000 yuan, rent of RMB 70,000 yuan and the security fee of RMB 81,000 yuan as claimed for by the plaintiffs.

4. Chint Group Ltd. v. Schneider Low-Voltage (Tianjin) Co., Ltd., a case involving patent infringement dispute[31], in which the Zhejiang Wenzhou City Intermediate People Court made the Civil Judgment No. Wenminsanchuzi 135/2006

The plaintiff Chint Group Ltd. (Chint) sued the Ningbo Tariff Protection Zone Sida Electric Equipment Co., Ltd. (Sida), its Yueqing Branch (Sida Branch) and Schneider Low-Voltage (Tianjin) Co., Ltd. (Schneider) for infringement of its utility model patent (ZL 97248479.5).

The court invited an account public to audit the Schneider at the request of Chint. Since Schneider did not make its account books accessible, it was impossible to directly determine the business profits made from selling the infringing products. For this reason, the court decided that the average business profits as the audit revealed of the products sold by Schneider was the business profits made from selling the infringing products, and then multiplied it by the amount of the sales of the products. It was decided that the business profits of the infringing products was RMB 356 million yuan, even more than the amount of damages of RMB 335 million yuan claimed by Chint. The first-instance court supported the full amount of damages claimed, and decided that Schneider was to pay RMB 335 million yuan (about $50 million).

VII. Conclusion

As the statistics showed, Chint v. Schneider is a very special case in which several hundred million RMB yuan was imposed as the determined damages. It did not change the scenario of the small amount of damages awarded in patent infringement cases. Except the case, of all the sample cases closed in the five regions under our study, the largest amount of damages decided by the court was RMB 1.05 million yuan. In most cases, the amount of damages was pretty small .

Debates are still going on in the community as to whether the three methods (infringement damage, infringement profits and appropriate multiple of royalties) for calculating infringement damages have followed the “fill-in” doctrine. For some scholars, only the “infringement damage” has[32] while it is possible for the amount of damages as calculated with the latter two methods to exceed a rightholder’s actual injury or damage. After the ruling was rendered in the Chint case, the debate became hottest. Some scholars argue that the infringing product involves a plurality of technologies, and contribution made by the involved patented technology to the total profits made should be identified, it is thus an over-evaluation and contrary to the “fill-in” doctrine to attribute the total profits from selling the infringing products to the patented technology alone. It seems that Article 21 of the Draft Judicial Interpretation recently issued for comments has been formulated in direction to the case, and brought the debate back on the track of the “fill-in” doctrine again. It is predicted that determination of the amount of damages on the basis of total profits from sales of an infringing product is unlikely to be the mainstream practice in the future.

[1] See Zhejiang Province Wenzhou City Intermediate People's Court Civil Judgment No.Wenminsanchuzi 135/2006 in Chint v. Schneider.

[2] For example, in the U.S., triple damages would be impossible for willful infringement.

[3] Part 4 of the 1992 Judicial Interpretation: Imposition of the damages caused because of patent infringement should follow the principle of fairness, so that the injury actually sustained by the patentee because of the infringement may be duly compensated.

The amount of damages to cover the losses caused because of an infringement of a patent may be calculated with methods as follows:

(1) The actual economic injury done to the patentee because of the infringement is deemed to be the amount of damages. The method of calculation is: where the sales of the patented product of the patentee is decreased by the sale of the infringing product of the infringer (including the products made with a patented process of another person) in the market, multiply the product of the total of the decreased sales by the profit made from each patented product to get the actual economic injury of the patentee;

(2) The total profits made by the infringer because of the infringement is deemed to be the amount of damages. The method of calculation is: the profits made by the infringer from each infringing product (including the product made with a patented process of another person) multiplied by the total sales in the market to get the total profits made by the infringer; or

(3) A reasonable amount not less than the patent license royalties is deemed to be the amount of damages.

The people's court may choose one of the three methods of calculation depending on the different circumstances of a case.

Where interested parties agree to calculate the amount of damages with another method, the people's court may allow it provided that it is fair and reasonable.

[4] Article 60 of the 2000 Patent Law: The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the losses suffered by the patentee or the profits made by the infringer because of the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has made, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license.

[5] The logic system of calculation of damages for patent infringement, http://www.gmfalv.cn/Html/?1354_1.html visited on 15 August 2009.

[6] Article 20 of the 2005 Judicial Interpretation: Where the people's court imposes liability for damages on the infringer under the provision of Article 57, paragraph one, of the Patent Law, it may, at the request of the

rightholder, determine the amount of damages according to the injury done to the rightholder because of an infringement or the benefits obtained by the infringer
because of the infringement.

The injury done to a rightholder because of an infringement may be calculated by multiplying the total sales of the infringing products with the reasonable profits made from each infringing product. Where it is difficult to determine the total of the reduced sales by the rightholder, the total sales of the infringing products multiplied by the reasonable profit made from each infringing product may be deemed to be the injury done to the rightholder because of the infringement.

The benefits obtained by the infringer because of the infringement may be calculated by multiplying the sales of the infringing products with the reasonable profits of each infringing product. The profits made by the infringer because of the infringement are generally calculated according to the business profits made by the infringer. As for the infringer who solely engages in infringement as its or his entire business, the profits may be calculated on the basis of its or his sales profit.

[7] Article 21: Where it is difficult to determine the injury done to the infringee or the benefit obtained by the infringer, the people's court may, where reference may be made to the patent license royalties, determine the reasonable amount of damages according to the class of the patent right involved, the nature and facts of the infringement by the infringer, the amount of the patent license royalties, the nature, extent and time of the patent license with reference to one to three times the patent license royalties; in the absence of the patent license royalties to be referred to or in the case of obviously unreasonable license royalties, the people's court may, according to the factors, such as class of the patent right, the nature and facts of the infringement, determine the amount of damages of more than RMB 5,000 yuan and less than RMB 300,000 yuan, but not in excess of RMB 500,000 yuan at the most.

[8] In Beijing and Zhejiang, the method of statutory damages was applied in all the patent infringement judgments.

[9] Article 22: The people's court may, at the request of the rightholder or depending on the specific circumstances of a case, include the reasonable costs paid for investigation or for ceasing the infringement in the amount of damages.

[10] Article 65 of the 2008 Patent Law: The amount of damages for the infringement of the patent right shall be determined on the basis of the losses actually suffered by the patentee, or the profits which the infringer has earned through the infringement if it is difficult to determine the above losses. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed with reference to the appropriate multiple of the amount of the royalties of that patent under contractual license. The monetary damages shall include the reasonable costs incurred for ceasing the infringement.

If it is difficult to determine the losses which the patentee has suffered and the benefits which the infringer has earned, or the patent license loyalties, the people's court may award damages no less than RMB 10,000 yuan and no more than RMB 1,000,000 yuan depending on the factors, such as the type of patent right, the nature and gravity of the infringing act.

[11] Article 21: When determining the benefits an infringer has obtained because of an infringement under Article 65, paragraph one, the people's court shall limit the amount to the benefits the infringer has made because of infringement of the involved patent per se; where its or his benefits are generated also owing to other factors, the benefits obtained because of said other factors shall be excluded from the benefits obtained because of the infringement.

[12] Supra Note 5.

[13] See Shanghai No. 2 Intermediate People's Court's Civil Judgment No. Herzhongminwu(zhi)chuzi 89/2004 made in Honda v. Lifang.

[14] See http://vip.chinalawinfo.com/ visited on 15 August 2009.

[15] The cases withdrawn or settled were not included. Their inclusion would change the percentage.

[16] See the Supreme People's Court's Reply (dated 8 March 1994) to the Reports for Directions on How to Determine the Regional Jurisdiction in Patent Infringement Lawsuit.

[17] Supra Note 16.

[18] Supra Note 15.

[19] As the case, Chint v. Schneider, was not included in the Fabao Legal Database, it was not calculated in our statistics.

[20] Supra Note 13.

[21] Supra Note 13.

[22] See Beijing Tianwei Ruiheng Electric Co., Ltd. v. Beijing Dianke Siwei Electric Co., Ltd. The court decided on the statutory damages at the amount of RMB one million yuan plus reasonable litigation costs amounting to RMB 27,000 yuan (see Beijing No.2 Intermediate People's Court's Civil Judgment No. Erzhongminchuzi15968/2006; in Honda v. Hebei Xinkai Automobile Manufacturing Co., Ltd., the court decided on an amount of RMB 1.05 million yuan for the statutory damages plus the reasonable litigation costs (see Beijing Higher People's Court's Civil Judgment No. Gaominchuzi 1472/2004).

[23] See Shuangxiang Weiye Mining Equipment (Beijing) Co., Ltd. v. Li Xingbing (see Beijing Higher People's Court's Civil Judgment No. Gaominchuzi1379/2008).

[24] See Guangzhou Maipu Science and Technology Co., Ltd. v. Epson (Beijing Higher People's Court's Civil Judgment No. Gaominchuzi1004/2008).

[25] See Beijing Duolaimi Medical Technology Co., Ltd. v. Jiang Quantao (see Beijing Higher People's Court's Civil Judgment No. Gaominchuzi 971/2008).

[26] See Shanghai Henghao Glass Technology Co., Ltd. v. Beijing Meitong Shijia Building Materials Co., Ltd. (see Beijing No.2 Intermediate People's Court's Civil Judgment No. Erzhongminchuzi 9615/2007).

[27] Shanghai Fupei Trading Co., Ltd. v. Ningbo Fuda Electric Appliance Co., ltd. (see Shanghai Higher People's Court's Civil Judgment No. Hugaominsan (zhi)zhongzi 47/2008).

[28] Wenzhou Ridian Electric Appliance Co., Ltd. v. Philips (see Shanghai Higher People's Court's Civil Judgment No.Hugaominsan (zhi)zhongzi 80/2008).

[29] Beijing Tianwei Ruiheng Electric Co., Ltd. v. Beijing Dianke Siwei (see Beijing No.2 Intermediate People's Court's Civil Judgment No. Erzhongminchuzi15968/2006).

[30] Supra Note 13.

[31] The case is not included in the Fabao Legal Database, what has been stated here is based on the relevant reports.

[32] Supra Note 5.