

13

Kunming Pharmaceuticals Group Co., Ltd. v. Kunmin Longjin Pharmaceuticals Co., Ltd.

Citation: The Supreme People's Court's Reply No. Minsantazi 10/2005

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Background

The Yunnan Province Higher People's Court requested the Supreme People's Court to give instruction on how to determine the extent of protection of independent claims in parallel in connection with the Kunming Pharmaceuticals Group Co., Ltd. (KPG) v. Kunmin Longjin Pharmaceuticals Co., Ltd. (Longjin). The Supreme People's Court gave its instruction as to the following.

Issue

How to determine the extent of protection of each independent claim in a patent comprising multiple independent claims in parallel?

Key points

According to the provisions concerning unity of invention or utility model as set forth in Article 31 paragraph one, of the Patent Law and Rule 35 of the Implementing Regulations of the Patent Law, where one application for a patent for two or more inventions or utility models belonging to one general inventive concept is filed, there may be two or more independent claims in the claims. The independent claim presented first in the claims is the first independent claim, and the other independent claims are the parallel independent claims. Section 2.2.1 (2) of Part II of the Guidelines for Examination provides for six ways to draft the claims of two or more inventions belonging to one single inventive concept, one of which is an "independent claim for "a product and for a process specifically for making the product".

Besides, under Rule 21, paragraphs two and three, of the Implementing Regulations of the Patent Law, the independent claim shall outline the technical solution of an invention or utility model as a whole and present the essential technical features necessary for the solution of its technical problem. A dependent claim shall contain additional technical feature to further define the claim which it refers to. Therefore, only a dependent claim defines the claim it refers to and one independent claim does not define another. The extent of protection for the patent should be determined by the terms of each independent claim. In the present case, the KPG's patent for the invention of "breviscapine powder injection and the method for preparing the same" comprised essentially two inventions: the "breviscapine powder injection" and the "method for preparing the same". The two belonged to one general inventive concept, and one application may be filed for a patent therefor. Claim 1 outlined the technical solution of "breviscapine powder injection" product, and claim 2 the technical solution of the method for making the same. Both were independent claims drafted in the way of "independent claim of a product in combination with a method for making the product" as provided for in the Guidelines for Examination. Since both claims 1 and 2 are independent claims, the extent of protection of each claim should be determined by the terms of the independent claims, and claim 2 did not define claim 1.