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Kunming Pharmaceuticals Group Co., Ltd. v. Heilongjiang Province Zhenbaodao Pharmaceuticals Co., Ltd.

Citation: The Heilongjiang Higher People's Court's Judgment No. Heizhizhongzi 8/2004

Date of judgment: March 15, 2004

Procedural history

The Heilongjiang Province Zhenbaodao Pharmaceuticals Co., Ltd. (Zhenbaodao) filed an action for declaratory judgment in the Harbin Intermediate People's Court against Kunming Pharmaceuticals Group Co., Ltd. (KPC) on the ground that the patent infringement warning letter from KPC, the patentee, affected and harm its business operation and reputation. It was decided in the first-instance judgment that Zhenbaodao did not infringe the patent right in suit. The KPC appealed to the Heilongjiang Higher People's Court.

Issue

Whether acts of sending a warning letter and publishing a statement in the press could be the basis on which to bring a declaratory judgment action?

Facts

The KPC owned the patent (ZL96101652.3) for the invention of saponin of panax notoginseng powder injection solution and the patent (ZL96107464.7) for the invention of solvent for saponins powder injection solution.

The main ingredients and contents of "Xue Sai Tong" injection (lyophilized) product and its special solution made and marketed by Zhenbaodao were different from those disclosed in the patent

claims.

The KPC sent a letter of warning to Zhenbaodao, alleging that the “Xue Sai Tong” products made and marketed by Zhenbaodao fell within the extent of protection of said two patents, and it should immediately cease making and marketing them. The KPC also published a solemn statement in a professional periodical, stating that it was the proprietary owner of the two patents, and the “Xue Sai Tong” injection products made and marketed by it were protected by the two patents; it never authorized any other company or individual to exploit said patents; recently it found “Xue Sai Tong” injection products made by other companies which fell within the extent of protection of the patents, and the acts of making and marketing the infringing products should be ceased immediately; and the KPC reserved the right to sue the infringers.

Rule of law

Article 56 of the Patent Law *The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the claims.*

Reasoning

It was found upon comparison that the Zhenbaodao’s products did not fall within the extent of protection of the patents, nor infringe the KPC’s patent rights.

The KPC sent a letter of warning to Zhenbaodao, accusing the latter of infringing its patent rights, and published a solemn statement in a professional periodical with an intention to bar Zhenbaodao from making and marketing the “Xue Sai Tong” injection (lyophilized), and, in fact, had interfered in and damaged the latter’s production, sales and goodwill to an extent. For this Zhenbaodao instituted the judicial procedure to seek legal remedy and clarify the facts in the case. It petitioned to affirm that the evidence, showing that its acts of making and marketing the “Xue Sai Tong” injection (lyophilized) were legitimate and did not infringe the KPC’s patent right, were sufficient, and should be supported.

Holding

Sending a letter of warning against acts of patent infringement and publishing a statement in the press could be the basis on which the action was brought for declaratory judgment.