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Shanghai Sidi Enterprise Management Consultation Co., Ltd. v. Shanghai Intellectual Property Office

Citation: The Shanghai No. 2 Intermediate People's Court's Administrative Judgment

No. Huerzhongxingzhongzi 192/2006

Date of judgment: July 18, 2006

Procedural history

The Shanghai Sidi Enterprise Management Consultation Co., Ltd. (Sidi) sued the Shanghai Intellectual Property Office (the IP Office) in the Jingan District People's Court, Shanghai, requesting the IP Office to perform its statutory function and duty. Its litigant request was rejected in the first-instance judgment. Sidi then appealed to the Shanghai No. 2 Intermediate People's Court.

Issue

Whether a non-self developed design was eligible to the special patent-related financial aid?

Facts

According to the relevant provisions of the IP Office, where a patent fostering pilot enterprise files application for a patent for a design, it is entitled to the financial aid amounting to RMB 500 yuan for each application. Sidi, a qualified patent fostering pilot enterprise, concluded an agreement with the Shanghai Shimaier Fine Porcelain Co., Ltd. (Shimaier), a third party in the case, in which Shimaier entrusted Sidi with filing applications for patent, Shimaier would be the patentee, and Sidi be the patent applicant, with the application fees to be paid by Sidi. Under the agreement, Sidi filed more than 1,000 design patents for Shimaier's products of yarn guide devices. For these patent applications, Sidi applied to the IP Office for the patent-related special financial aid.

The IP Office believed that Sidi's applying for the patent-related special financial aid was fraudulent, so disqualified it as a patent fostering pilot enterprise, and refused its applications for the aid.

The first-instance court held that the assignment of the right to apply for patent between Sidi and Shimaier did not go through the statutory procedure prescribed in Article 10 of the Patent Law. It was not true to the fact, nor in satisfaction with the requirements concerning the application for the patent-related special financial aid, and ran counter to the purpose of the established aid program as Sidi had made itself a patent applicant eligible to obtain the patent-related special financial aid by taking advantage of its qualification as a patent fostering pilot enterprise by virtue of the concluded agreement.

Rule of law

Article 1 of the Shanghai Municipal's Patent-related Financial Aid Measures *These Measures are formulated to encourage entities and individuals to file applications for patent for their invention-creations to secure IP protection, to improve their market competitiveness, and to promote the progress of science and technology, and boost the economy in Shanghai, ...*

Article 13, paragraph one *The entity and individual applying for the financial aid shall submit authentic material and proof. If one is found to practice fraud, the aid granted shall be returned in full, he or it be disqualified for the aid, and imposed the legal liability.*

Reasoning

The patent-related special financial aid is an additional financial aid for the special types of enterprises, such as patent fostering pilot enterprises. A patent fostering pilot enterprise shall "invest certain amount of funds for scientific research annually to develop new products and technologies, and establish a technical center or scientific research division". Under Article 1 of the Shanghai Municipal's Patent-related Financial Aid Measures, granting the special financial aid for patent fostering pilot enterprises is to encourage enterprises to independently make invention-creations with their own advantageous position. For this reason, that the patent which a patent fostering pilot enterprise applied for related to a technology independently developed by itself is one of the necessary conditions for grant of the patent-related special financial aid.

Holding

Sidi's act to apply in its own name for the patents for the designs which it had not independently developed itself was an act of practicing fraud against the aim of the patent-related special financial aid program, and the application did not meet the conditions for the grant of the patent-related special financial aid.