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Supreme People's Court Annual Report on Intellectual Property Cases (2015) (China)

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Abstract: The Supreme People's Court of China began publishing its Annual Report on Intellectual Property Cases in 2008. The annual reports, published in April each year, summarize and review new intellectual property cases. This translation includes all 32 cases and 38 legal issues of the 2015 Annual Report. It addresses various areas of law related to intellectual property, including patent law, trademark law, copyright law, unfair competition law, antitrust law, new plant product patent law, and laws related to procedural and evidentiary issues in intellectual property cases. While China is not a common law country, these cases serve as guidelines for lower courts in adjudicating intellectual property disputes.

I. INTRODUCTION

In 2015, the Supreme People's Court ("the SPC") served the overall situation, better adapted to and served the new economic normality. It actively implemented the national intellectual property ("IP") strategy and took leadership in protecting IP rights. It encouraged and supported mass entrepreneurship and innovation. It promoted honesty and faithfulness, and defended market economic order. It expanded international influence of judicial IP protection, served, and guaranteed economic and social development.

The SPC received various new IP cases in 2015, totaling 759. Among the newly received cases, 8 of them were taken from trials of second instances, 29 were retrial cases, 696 were applications for retrial, and 26 were cases referred by lower courts. Regarding subject matter, 257 of the cases were patent cases, 3 involved new plant product patents, 325 were trademark cases, 83 were copyright cases, 3 involved integrated circuits figure designs, 3 were antitrust cases, 9 were trade secret cases, 14 involved other unfair competition issues, 34 pertained to IP contracts, and 28 centered around issues related to the court's own internal rules. Regarding quality of the cases, 378 were administrative law cases, accounting for 49.80% of all cases received. Within these administrative law cases, 112 were patent administration law cases and 266 were trademark cases, which increased by 100% and 198.88% from 2014 respectively. 381 civil cases accounted for 50.20% of the total number heard by the SPC in 2015. By adding 77 of existing cases from 2014, there were 836

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of various appeal cases in 2015. This year there were 754 IP cases that were concluded: including 7 cases of second instances, 39 retrial cases, 682 applications for retrial, and 26 cases referred by lower courts. Of the 682 applications for retrial, 361 were for retrial of administrative cases and 321 were for retrial of civil cases. Ultimately, 514 of the 682 applications for retrial were denied, 81 are in the process of application, 38 were remanded, 16 were withdrawn (including resolution by settlement), and 33 were resolved extra-judicially.

General trends and case characteristics can be extrapolated from these numbers. Cases related to patents and trademarks accounted for the largest proportion amongst all cases, and the number of these cases has increased significantly. The controversies in patent administration cases that were most common include: the categorization and explanation of technical features; identification of public technology background; and the determination of the full disclosure of patent specifications. Among civil cases, equivalent infringement cases took a higher portion while the use of current technology and prior rights defenses were also common. New plant product cases have been developing on similarity contrast issues through DNA technologies, resulting in technology problems to be more complex and specialized. The number of trademark cases has increased. Among all trademark cases, the number of administrative actions has increased drastically. Discerning trademark similarity, commodity similarity, and protection of prior rights are still the main legal issues. The principle of good faith is taking a more influential role as value guidance. The number of copyright cases has remained basically stable. Internet infringement is still an outstanding problem in the new business model. Copyright disputes of films and television programs occurred frequently. Among unfair competition cases, trade secret cases constitute a relatively large portion. A patentee's ability to present evidence is weak, which makes it difficult to identify the scope of protection. The SPC also concluded an integrated circuit layout design case for the first time and explored the protection range of a layout design.

In an effort to serve the overall situation, the SPC has set forth the following objectives to consider when adjudicating IP disputes: to promote honesty and faithfulness of IP rights and ensure the reasonable scope of IP rights to maintain the fair competition and market order; ensure that the judiciary plays both a protecting and motivating role, and strengthens protections for innovation to be encouraged, and supports creativity and drive innovation; carry out the basic IP protection policy of "strengthen protection, differentiate categories, and temper justice with mercy" and protect the

legitimate interests of holders of IP rights; establish clear review standards in administrative cases, and resolve disputes in substantive ways; and promote judicial transparency to uphold justice and increase the impact of IP adjudication.

From SPC's retrial cases regarding IP and competition law in 2015, this annual report selected 32 model cases (one case of which essentially shares the same facts and the legal issue). The cases above cover all of ten major IP cases selected by people's court and 50 model IP cases. We hereby publish 38 selected issues from above cases that have legal normative values to present new, difficult, and complex cases in order to understand SPC's thought process and trial procedure on the field of IP and competition law.

I. PATENT LITIGATION	一、专利案件审判
A. Civil Patent Litigation	（一）专利民事案件审判
1. Patentee's burden of proof in claiming domestic priority In the retrial of *Cixi Bosheng Plastic Products Co., Ltd. v. Chen Jian* (hereinafter "Cleaning Supplies Case" concerning infringement of the patent for practical, new clean supplies),[1] the SPC held that patentee has the burden of proof when claiming domestic priority. The patentee may not claim domestic priority under the prior application rule when the patentee is not able to provide prior application documents related to domestic priority and is unable to prove that the patent in dispute is an invention sharing the same character as the one with the prior application.	1. 专利权人主张本国优先权时的举证责任和说明义务 在再审申请人慈溪市博生塑料制品有限公司与被申请人陈剑侵害实用新型专利权纠纷案【（2015）民申字第 188 号】（简称"清洁工具"实用新型专利侵权案）中，最高人民法院指出，专利权人主张本国优先权时，应当承担相应的举证责任和说明义务。未能提交与本国优先权主题相关的在先申请文件，亦未能证明本案专利与在先申请属于相同主题的发明创造，不能依据在先申请日享有本国优先权。
2. The proper understanding of the disclosed contents of patent specification citing background technology documents In the aforementioned Cleaning Supplies Case,[2] the SPC held that when available, background technology portion of patent specification should cite documents reflecting the background technology. The contents of the document are deemed disclosed if they reflect current technology and constitute part of the technical plan through the citation.	2. 在说明书引证背景技术文件的情况下，对说明书公开内容的正确理解 在前述"清洁工具"实用新型专利侵权案中，最高人民法院指出，在可能的情况下，说明书的背景技术部分应当引证反映背景技术的文件。在文件内容构成本案专利的现有技术，且通过引证的方式，上述内容已经成为说明书所涉技术方案的组成部分，则文件内容应视为已被说明书所公开。

3. The effect of industrial features in determining infringement of method patent In the retrial of *Huawei Technologies Co., Ltd. v. ZTE Corporation and Hangzhou Alibaba Advertising Co., Ltd.*, [3] the SPC held that technical features commonly used in patent implementation should be considered when determining infringement of method patent even if the claim does not mention it.	3. 应用环境特征在方法专利侵权判断过程中的作用 在再审申请人华为技术有限公司与被申请人中兴通讯股份有限公司、杭州阿里巴巴广告有限公司侵害发明专利权纠纷案【（2015）民申字第 2720 号】中，最高人民法院指出，对于虽然未作为技术特征写入权利要求，却是实施专利方法最为合理、常见和普遍的运行环境和操作模式，应当在涉及方法专利的侵权判断中予以考量。
4. The standard for identifying the meaning of "sales" under patent law In the retrial of *Liu Hongbin v. Beijing Jinglianfa Co., Ltd. and Tianwei Sichuan Silicon Co., Ltd.*,[4] the SPC held that in determining the meaning of sales, legislative purpose set force in Patent Law Section 11 should be considered to distinguish between sales and promises to sell in order to fully protect patentee's interest. Therefore, the deed of sales should be determined by the establishment of contracts (instead of execution of contract), contract payment, delivery of goods, or transfer of ownership.	4. 专利法意义上的销售行为的认定标准 在再审申请人刘鸿彬与被申请人北京京联发数控科技有限公司、天威四川硅业有限责任公司侵害实用新型专利权纠纷案【(2015)民申字第 1070 号】中，最高人民法院指出，专利法意义上销售行为的认定，需要考虑专利法第十一条的立法目的，正确厘定销售行为与许诺销售行为之间的关系，充分保护专利权人利益。为此，销售行为的认定应当以销售合同成立为标准，而不应以合同生效、合同价款支付完成、标的物交付或者所有权转移为标准。
5. Technical plan which is rejected during patent application cannot be taken under protection of patent for	5. 专利申请时已经明确排除的技术方案，不能以技术特征等同为由在侵权判断时重新纳入专利权的保护

reason of the equivalent technical feature In the retrial of *Sun Junyi v. Renqiu Bocheng Co., Ltd., Zhang Zehui, and Qiao Taida*,[5] the SPC held that application of the doctrine of equivalent must take into consideration of both the patentee's and the public's interests. It must also consider the difference in technology level at the time of patent application and patent infringement to define the scope of patent's proper protection.	范围 再审申请人孙俊义与被申请人任丘市博成水暖器材有限公司、张泽辉、乔泰达侵害实用新型专利权纠纷案【（2015）民申字第 740 号】中，最高人民法院指出，等同原则的适用需要兼顾专利权人和社会公众的利益，且须考虑专利申请与专利侵权时的技术发展水平，合理界定专利权的保护范围。
6. The object, comparing method and object compared in determining exterior design similarity In the retrial of *Honda Motor Co., Ltd. v. Shijiazhuang Shuanghuan Auto Co., Ltd., Shijiazhuang Shuanghuan Auto Ltd., and Shijiazhuang Xinnengyuan Ltd.*,[6] the SPC held that the exterior design similarity should be determined comprehensively, based on common consumer's knowledge level and cognitive ability as well as all design features. When the patent protects the overall exterior design, the product should not be compared by its dissembled parts or under an unusual condition. If pictures reflect the objective situation of the infringing product in dispute, the pictures can be used for comparison.	6. 外观设计近似性判断的判断主体、比对方法和比对对象 在上诉人本田技研工业株式会社与被上诉人石家庄双环汽车股份有限公司、石家庄双环汽车有限公司、石家庄双环新能源汽车有限公司侵害外观设计专利权纠纷案【（2014）民三终字第 8 号】中，最高人民法院指出，外观设计近似性的判断，应当基于一般消费者的知识水平和认知能力，根据外观设计的全部设计特征，以整体视觉效果进行综合判断。当专利保护的是产品整体外观设计时，不应当将产品整体予以拆分、改变原使用状态后进行比对。如果实物照片真实反映了被诉侵权产品的客观情况，可以使用照片中的被诉侵权产品与本案专利进行比对。

7. The determination of the design feature and its effect on determining the exterior design similarity In the retrial of *Zhejiang Gllon Sanitary Ware Co., Ltd. v. Grohe AG*,[7] the SPC held that the design features reflect creative content of the authorized exterior design, which differs from existing design, and the designer's creative contribution. If the product in question does not contain all design features of the authorized design, which are different from the design existed, it can be inferred that the designs are not similar. The burden to show the existence of the design features should fall on the patentee. Third parties may produce opposing evidence. With this evidence, the people's court will decide by law.	7. 设计特征的认定及对外观设计近似性判断的影响 在再审申请人浙江健龙卫浴有限公司与被申请人高仪股份公司侵害外观设计专利权纠纷案【（2015）民提字第 23 号】中，最高人民法院指出，设计特征体现了授权外观设计不同于现有设计的创新内容，也体现了设计人对现有设计的创造性贡献。如果被诉侵权产品未包含授权外观设计区别于现有设计的全部设计特征，一般可以推定二者不构成近似外观设计。设计特征的存在应由专利权人进行举证，允许第三人提供反证予以推翻，并由人民法院依法予以确定。
8. Conditions to establish conflicting application defense In the aforementioned Clean Supplies Case,[8] the SPC held that when the defendant raises a non-violation defense because their technical plan is in conflict with its application, the court should examine whether the technical plan in dispute is fully disclosed by the conflicting application. The defense can be established if the technical plan lacks novelty.	8. 抵触申请抗辩成立的条件 在前述“清洁工具”实用新型专利侵权案中，最高人民法院指出，被诉侵权人以其实施的技术方案属于抵触申请为由，主张不侵害专利权的，应当审查被诉侵权技术方案是否已被抵触申请完整公开。在该技术方案相对于抵触申请不具有新颖性时，抵触申请抗辩成立。
9. Examination and judgment of current design defense	9. 现有设计抗辩的审查与判断 在再审申请人丹阳市盛美照明器材

In the retrial of *Danyang Shengmei Lighting Co., Ltd. v. Tong Xianping*,[9] the SPC held that when the product in dispute presents similarity to the patented product, the current design defense is not available if the product adopted design features that differ from current design of the patent.	有限公司与被申请人童先平侵害外观设计专利权纠纷案【（2015）民申字第 633 号】中，最高人民法院指出，在被诉侵权产品与本案专利相近似的情况下，如果被诉侵权产品采用了本案专利与现有设计相区别的设计特征，现有设计抗辩不能成立。
10. The review and determination of the First Use Defense In the retrial of *Beijing Yingtelai Technology Co., Ltd. v. Shenzhen Bluedon Co., Ltd. (Beijing Branch) & Beijing Bluedon Chuangzhan Mengye Co., Ltd.*,[10] the SPC held that if existing evidence shows that the manufacturer has applied the patent or has made necessary preparation of technology or material for applying the patent before the application date, and that further manufacturing is confined to the previous scope, the manufacturer can raise the First Use Defense. If the manufacturer is not a defendant of the case, the wholesaler can raise the First Use Defense by proving the legal source of the allegedly infringing product and that the manufacturer has the First Use Rights.	10. 先用权抗辩的审查与认定 在再审申请人北京英特莱技术公司与被申请人深圳蓝盾公司北京分公司、北京蓝盾创展门业有限公司侵害发明专利权纠纷案【（2015）民申字第 1255 号】中，最高人民法院指出，现有证据能够证明，制造商在申请日前已经实施或已经为实施本案专利做好了技术或物质上的必要准备，且仅在原有范围内继续制造的，先用权抗辩成立。在制造商并非本案被告，但销售商能够证明被诉侵权产品的合法来源以及制造商享有先用权的情况下，销售商可以提出先用权抗辩。
B. Patent Administrative Litigation	（二）专利行政案件审判
11. The general principle for interpreting claims of right In the retrial of *Li Xiaole v. Patent Re-examination Board of the State*	11. 权利要求的解释所需遵循的一般原则 在再审申请人李晓乐与被申请人国家知识产权局专利复审委员会、一

Intellectual Property Office of the P.R.C. ("SIPO"), Guo Wei, and Shenyang Tianzheng Electrical Equipment Manufacturing Co., Ltd.,[11] the SPC held that to interpret languages of claims of right in the confirmation process of patent authorization, the interpretation is the broadest interpretation that is most reasonable. It will be based on the language of the claims of right combined with the understanding of the patent specification. The interpretation will further take into consideration the legal requirements under the patent law; for example, the patent specification shall sufficiently disclose the technological proposal of the invention, and the claims of right shall be supported by the patent specification. The amendments to the patent application documents shall not exceed the scope of the original patent specification and claims of right.	审第三人、二审上诉人郭伟、沈阳天正输变电设备制造有限责任公司发明专利权无效行政纠纷案【（2014）行提字第 17 号】中，最高人民法院指出，在专利授权确权程序中解释权利要求用语的含义时，必须顾及专利法关于说明书应该充分公开发明的技术方案、权利要求书应当得到说明书支持、专利申请文件的修改不得超出原说明书和权利要求书记载的范围等法定要求，基于权利要求的文字记载，结合对说明书的理解，对权利要求作出最广义的合理解释。
12. Rules for interpreting technical characters of products which contain ambiguous language In the retrial of *Liaoning Prajna Network Technology Co., Ltd. v. Patent Re-examination Board of SIPO, China Hewlett-Packard Co., Ltd.*,[12] the SPC held that the interpretation of technical characters in claims of right with ambiguous language shall take into consideration the contents disclosed in the patent specification and pictures attached, shall conform to the purposes of the inventory patent, and shall not	12. 字面含义存在歧义的技术特征的解释规则 在申诉人辽宁般若网络科技有限公司与被申诉人国家知识产权局专利复审委员会、一审第三人中国惠普有限公司发明专利权无效行政纠纷案【（2013）行提字第 17 号】中，最高人民法院指出，对于权利要求中字面含义存在歧义的技术特征的解释，应当结合说明书及附图中已经公开的内容，并符合本案专利的发明目的，且不得与本领域的公知常识相矛盾。

conflict with common knowledge of the field.	
13. Determining whether the patent specification is fully disclosed within the field of chemical products invention In the retrial of *Patent Re-examination Board of SIPO and Beijing Jialin Pharmaceutical Co., Ltd. v. Warner-Lambert Company LLC and Zhang Chu* (hereinafter "*Atorvastatin* Case" concerning the invalidity of patent rights),[13] the SPC held that the patent specification of an invention in chemical products invention field shall take a record of the confirmation, manufacturing process, and use of the chemical product.	13. 化学领域产品发明说明书充分公开的判断 在再审申请人国家知识产权局专利复审委员会、北京嘉林药业股份有限公司与被申请人沃尼尔·朗伯有限责任公司、一审第三人张楚发明专利权无效行政纠纷案【（2014）行提字第 8 号】（简称"阿托伐他汀"发明专利权无效案）中，最高人民法院指出，化学领域产品发明的专利说明书中应当记载化学产品的确认、制备和用途。
14. The relationship between the determination of technical issues to be resolved and the determination whether the patent specification is fully disclosed In the aforementioned *Atorvastatin* Case,[14] the SPC further ruled that there is a sequential, logical relationship between three issues to be determined. First, consider whether technical staff in this area may carry out the technological proposal following the disclosed patent specification. Second, determine whether the technical issues are resolved. Third, confirm whether technical effects are generated.	14. 确定发明所要解决的技术问题与判断说明书是否充分公开之间的关系 在前述"阿托伐他汀"发明专利权无效案中，最高人民法院还认为，技术方案的再现与是否解决了技术问题、产生了技术效果的评价之间，存在着先后顺序上的逻辑关系，应首先确认本领域技术人员根据说明书公开的内容是否能够实现该技术方案，然后再确认是否解决了技术问题、产生了技术效果。

15. Whether experimental evidence submitted after the application day could be used to prove the full disclosure of patent specification In the aforementioned *Atorvastatin* Case, [15] the SPC ruled that the experimental evidence submitted after the application day is permissible if with the knowledge and recognition ability patentee had before the day of the application, technical staff in this field can carry out the invention with the disclosed contents of the patent specification. The evidence shall not be excluded solely because it was submitted after the application day.	15. 申请日后补交的实验性证据是否可以用于证明说明书充分公开 在前述“阿托伐他汀”发明专利权无效案中，最高人民法院还认为，在申请日后提交的用于证明说明书充分公开的实验性证据，如果可以证明以本领域技术人员在申请日前的知识水平和认知能力，通过说明书公开的内容可以实现该发明，那么该实验性证据应当予以考虑，不能仅仅因为该证据在申请日后提交而不予接受。
16. Determining whether the patent specification supports the subordinate claims of right In the retrial of *Zhu Funai, Zhai Yohua, and Ma Guonai v. Patent Re-examination Board of SIPO and Henan Quanxin Yetai Qidong Shebei Co., Ltd.*,[16] the SPC held that if a claim of right subordinates another claim in form, but in substance substitutes a certain technical character of that independent claim, its scope shall be determined by the substance of its limiting technological proposal. Whether that claim of right is supported by the patent specification shall be determined on such a basis.	16. 从属权利要求是否得到说明书支持的判断 在再审申请人朱福奶、翟佑华、马国奶与被申请人国家知识产权局专利复审委员会及一审第三人、二审上诉人河南全新液态起动设备有限公司发明专利权无效行政纠纷案【（2014）行提字第 32 号】中，最高人民法院指出，对于形式上具有从属关系，实质上替换了独立权利要求中特定技术特征的从属权利要求，应当按照其限定的技术方案的实质内容来确定其保护范围，并在此基础上判断是否得到说明书的支持。

17. The relationship between evaluating the creativity of claims of right to products and that of the method in the same technological proposal In the retrial of *Guangdong Techpool Bio-Pharma Co., Ltd. v. Patent Re-examination Board of SIPO and Zhang Liang*, [17] the SPC held that for an invention patent which includes both claims of right to products and claims of right to methods, if the claims of right to products are not solely limited by the claims of right to the method, then there is a possibility of obtaining the products by other means. In situations where claims of right to methods meet creativity requirements, it does not necessary mean that the claims of right to products meet creativity requirements.	17. 同一技术方案中产品权利要求与方法权利要求创造性评判之间的关系 在再审申请人广东天普生化医药股份有限公司与被申请人国家知识产权局专利复审委员会、第三人张亮发明专利权无效行政纠纷案【（2015）知行字第 261 号】中，最高人民法院指出，对于同时包含产品权利要求与方法权利要求的发明专利而言，如果产品权利要求并非由方法权利要求所唯一限定，即存在通过其他方法获得该产品的可能性。在方法权利要求具备创造性的情况下，并不能必然得出产品权利要求也具备创造性的结论。
II. TRADEMARK LITIGATION	二、商标案件审判
A. Trademark Civil Litigation	（一）商标民事案件审判
18. The exclusive right to use a trademark which lacks legal basis cannot be used as defense against fair use by a third party In the retrial of *Ningbo Guangtian Saikesi Hydraulic Co., Ltd. v. Shao Wenjun*, [18] the SPC held that the exclusive right to use a trademark, if obtained in bad faith in violation of the principle of honesty, does not warrant the protection under the trademark law in cases against others' fair use.	18. 缺乏合法性基础的注册商标专用权不能对抗他人的正当使用行为 在再审申请人宁波广天赛克思液压有限公司与被申请人邵文军侵害商标权纠纷案【（2014）民提字第 168 号】中，最高人民法院指出，以违反诚实信用原则恶意取得的注册商标专用权，对他人的正当使用行为提起的侵害商标权之诉，不应得到法律的支持和保护。

19. Determining the use of trademark in foreign commissioned processing contracts In the retrial of *Pujiang Yahuan Locks Co., Ltd. v. Focker Security Products International Limited*,[19] the SPC held that the basic function of trademark law is to protect the identifiability of trademarks. To determine whether there is a confusion between identical or similar commodities that use identical or similar trademarks, the court shall decide whether the trademarks are distinguishable. If a commissioned processing product is solely for exportation, to attach a label to the product, regardless of its originality, functions, or features, does not constitute "use" in trademark law.	19. 涉外委托加工中商标使用行为的判断 在再审申请人浦江亚环锁业有限公司与被申请人莱斯防盗产品国际有限公司侵害商标权纠纷案【(2014)民提字第 38 号】中，最高人民法院指出，商标法保护商标的基本功能，是保护其识别性。判断在相同或类似商品上使用相同或近似商标的行为是否容易导致混淆，要以商标发挥或者可能发挥识别功能为前提。在全部用于出口的委托加工产品上贴附的标志，既不具有区分所加工商品来源的意义，也不能实现识别该商品来源的功能，该标志不具有商标的属性，该贴附行为不构成商标意义上的使用行为。
B. Trademark Administrative Litigation	（二）商标行政案件审判
20. Knowledge and recognition of the relevant public is used to determine whether the trademark at issue, which contains foreign words, encompasses a name of a foreign country and is therefore not registrable In the retrial of *Nike International Ltd. v. Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce*,[20] the SPC held that as long as the relevant public, based on their knowledge and recognition, would not consider whether the trademark at issue contains words identical or similar to of a name of a foreign country, the trademark at	20. 对包含外文文字的申请商标是否构成禁止注册的外国国家名称，应基于相关公众的知识水平和认知能力作出判断 在再审申请人耐克国际有限公司与被申请人国家工商行政管理总局商标评审委员会商标驳回复审行政纠纷案【(2015)知行字第 80 号】中，最高人民法院指出，相关公众基于知识水平和认知能力，不会认为申请商标整体上与外国国家名称相同或近似的，应认定申请商标未违反商标法第十条第一款第（二）项的规定。

issue does not violate Article 10 Section 1 Clause 2 of the Trademark Law of the PRC.	
21. Application of the principle of recognizing well-known trademarks by necessity in administrative confirmation of trademark authorization In the retrial of *Juhua Group Corp. v. Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce and Hu Jinyun*,[21] the SPC held that the people's court shall follow the principle that recognizes well-known trademarks by necessity in the trial of administrative cases regarding the confirmation of trademark authorization for cases that involve protection of well-known trademarks. If the trademark in dispute does not constitute duplication, imitation, or translation of the trademark cited, or if the registration of the challenged trademark does not mislead the public or lead to potential harm to the right holder of the trademark cited, it is not necessary to examine or recognize the well-known trademark.	21. 驰名商标按需认定原则在商标授权确权行政案件中的适用 在再审申请人巨化集团公司与被申请人国家工商行政管理总局商标评审委员会、第三人胡金云商标异议复审行政纠纷案【（2014）知行字第 112 号】中，最高人民法院指出，人民法院审理涉及驰名商标保护的商标授权确权行政案件，亦应遵循驰名商标的按需认定原则。如果被异议商标并未构成对引证商标的复制、摹仿或者翻译，或者被异议商标获准注册并不会导致误导公众并可能损害引证商标权利人利益的结果，即无需对引证商标是否构成驰名的问题作出审查和认定。
22. When an existing trademark has relatively high distinctiveness and brand awareness, following applicants bear a higher duty of care and duty to avoid for trademark application In the retrial of *Beijing Fuliansheng Shoes Co., Ltd. v. Trademark Review and Adjudication Board of State*	22. 在先商标具有较高显著性和知名度的情况下，在后申请人应负有更高的注意和避让义务 在再审申请人北京福联升鞋业有限公司与被申请人国家工商行政管理总局商标评审委员会、北京内联升鞋业有限公司商标异议复审行政纠

Administration Bureau for Industry & Commerce and Beijing Neiliansheng Shoes Co., Ltd.,[22] the SPC held that when the trademark compared has relatively high distinctiveness and brand awareness, its trademark scope is broader than that of ordinary trademarks. Thus, business competitors bear a higher duty of care and duty to avoid the trademark use.	纷案【(2015)知行字第 116 号】中，最高人民法院认为，在引证商标具有较高的显著性和知名度的情况下，与其构成近似商标的范围较普通商标也应更宽，同业竞争者亦应具有更高的注意和避让义务。
23. Factors to consider for proper co-existence of trademarks In the retrial of *Turtlewax Inc. v. Beijing Turtle Doctor Carwash Chain Co., Ltd., Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce and Beijing Banlong Trade Center*,[23] the SPC held that the co-existence of trademarks usually appears from special historical background. The subjective intent of the right holder of the existing trademark and the objective facts are both considered to determine whether market separation has been formed.	23. 商标之间适当共存的考量因素 在再审申请人特多瓦公司与被申请人北京龟博士汽车清洗连锁有限公司及一审被告、二审被上诉人国家工商行政管理总局商标评审委员会，一审第三人、二审被上诉人北京半隆贸易中心商标异议复审行政纠纷案【（2015）行提字第 3 号】中，最高人民法院指出，商标之间的适当共存，一般具有特殊的历史背景，且需考虑在先权利人的意愿和客观上是否已经形成了市场区分的事实。
24. Identifying the trademark that possesses existing use in special historical background that has an influential existing use In the retrial of *Guizhou Laishi Alcohol Co., Ltd. v. Trademark Review and Adjudication Board of State of Administration for Industry & Commerce and China Guizhou Maotai Distillery (Group) Co., Ltd.*,[24] the SPC held that in order to determine whether	24. 特殊历史背景下在先使用并有一定影响商标的认定 在再审申请人贵州赖世家酒业有限责任公司与被申请人国家工商行政管理总局商标评审委员会、一审第三人中国贵州茅台酒厂（集团）有限责任公司商标异议复审行政纠纷案【（2015）知行字第 115 号】中，最高人民法院指出，判断被异

the trademark in dispute was unfairly registered because it contains influential existing use by others, the court shall consider the following factors: the history of the existing trademark, the registration status of the existing trademark, and whether the existing trademark has been legally used before the application day of the trademark in dispute.	议商标是否属于以不正当手段抢先注册他人在先使用并有一定影响的商标时，需考查在先商标的历史、申请注册情况，并结合在先商标在被异议商标申请日前是否为合法使用等因素综合判断。
25. The term "use" shall be limited to the products within registered scope under the principle of registered trademarks which has not been used for three years In the retrial of *Ningbo Qinghua Paint Co., Ltd. v. the Trademark Review and Adjudication Board of State of Administration for Industry & Commerce and Shanghai Fangda (Beijing) Law Firm*,[25] the SPC held that under the principle that a registered trademark be repealed if such trademark has not been used for three years, the "use" of such trademark shall be limited to the products within registered scope.	25. 注册商标连续三年停止使用制度中的"使用"行为，应以核定使用的商品为限 在再审申请人宁波市青华漆业有限公司与被申请人国家工商行政管理总局商标评审委员会、一审第三人上海市方达（北京）律师事务所商标撤销复审行政纠纷案【（2015）知行字第 255 号】中，最高人民法院认为，在注册商标连续三年停止使用予以撤销制度中，复审商标的使用行为应以核定使用的商品为限。
26. Symbolical use of a trademark does not constitute an actual use In the retrial of *Cheng Chao v. Tongyong Mill Food Asia Co., Ltd. and Trademark Review and Adjudication Board of State of Administration for Industry & Commerce*,[26] the SPC held that, in the case with respect to the principle that a registered trademark be repealed if such trademark has not been used for three	26. 象征性使用不构成商标的实际使用行为 在再审申请人成超与被申请人通用磨坊食品亚洲有限公司、一审被告国家工商行政管理总局商标评审委员会商标撤销复审行政纠纷案【（2015）知行字第 181 号】中，最高人民法院指出，在注册商标连

years, to determine whether the trademark in dispute constitutes an actual use, the court shall consider the actual intention and the behavior of the trademark registrant. If there is only symbolical use of the trademark in dispute to sustain its presence, an actual use of a trademark is deemed to be not established.	续三年停止使用的复审案件中，判断复审商标是否进行了实际使用，需要考察商标注册人是否具有真实的使用意图和使用行为。仅为维持复审商标存在而进行的象征性使用，不构成商标的实际使用行为。
III. COPYRIGHT CASES	三、著作权案件审判
27. Determining whether the expression in tabular form has originality In the retrial of *Ma Qi v. The Radio and Television Press and Publication Bureau of Leshan City and Tang Changshou,*[27] the SPC held that the originality is reflected in the expression, rather than in ideas or opinions. The original expression shall be completed independently by author and be different from the expression that already exists. The tabular form still belongs to the general classification of form; its contents are expressed in a relatively fixed way; no originality is contained; and tabular form would not be protected by the copyright law.	27. 表格类表达方式是否具备独创性的判断 在再审申请人马琦与被申请人乐山市文化广播影视新闻出版局、唐长寿著作权权属、侵害著作权纠纷案【（2015）民申字第 1665 号】中，最高人民法院指出，作品的独创性应体现在作品的表达方式而非思想或观点之中，具有独创性的表达方式应由作者独立完成且不同以往。表格形式仍属于一般性的表格分类方式，表格内容的表达方式相对固定，不具备作品所应具有的独创性，不能受到著作权法的保护。
28. Recognizing copyright infringement among co-owners In the retrial of *Beijing Jinse Licheng Culture Art Co., Ltd. v. Shanghai Jinxin Film Development Co., Ltd, Li Xiaojun, and Li Wenxiu,*[28] the SPC held that a co-owner could exercise the copyright	28. 共有权利人之间相互侵害著作权行为的认定 在再审申请人北京金色里程文化艺术有限公司与被申请人上海晋鑫影视发展有限公司、原审被告李晓军、李文秀侵害著作权纠纷案

solely by himself if other co-owners reject a negotiation without reasonable cause. Such action does not constitute a transfer and the co-owner will share the profit with other co-owners. However, transfer and pledge are material actions to the copyright. Thus, any transfer of the copyright without consent of other co-owners constitutes infringement to other co-owners.	【（2015）民申字第 131 号】中，最高人民法院认为，著作权的共有权利人可以在与对方协商不成、对方无正当理由、行使的权利不含转让、与对方分享收益等情况下，有条件地单独行使权利。但著作权的质押和转让，是对权利的重大处分。未与共有权人协商而对著作权进行转让，构成未经许可侵害共有权人著作权的行为。
IV. UNFAIR COMPETITION LITIGATION	四、不正当竞争案件审判
29. Clarifying the contents and scopes of trade secrets owned by a patentee In the retrial of *Xinfa Pharmaceutical Co., Ltd. v. Yifan Xinfu Pharmaceutical Co., Ltd*.,[29] the SPC held that in the trial of a trade secret case, the trade secret holder shall be allowed to clarify the contents and scopes of its trade secrets, and the court shall consider the case based on such clarified contents and scopes. As long as the procedural rights of parties are not infringed, the judgment shall be deemed to be not exceeding the claim.	29. 权利人对商业秘密内容和范围的明确与固定 在再审申请人新发药业有限公司与被申请人亿帆鑫富药业股份有限公司、一审被告姜红海、马吉锋侵害商业秘密纠纷案【（2015）民申字第 2035 号】中，最高人民法院指出，在商业秘密案件审理过程中，应当允许权利人对其商业秘密的内容和范围进行明确和固定，人民法院在此基础上进行的审理和裁判，只要不影响当事人的程序性权利，即不构成超出诉讼请求的裁判。
30. Issuing infringement warning prior to the judgment for patent infringement does not constitute unfair competition In the retrial of *Shijiazhuang Shuanghuan Automobile Co., Ltd. v. Honda Motors Co., Ltd.* (hereinafter "Train Case" concerning infringement of the exterior design of a train),[30] the	30. 专利权人于侵权认定作出前发送侵权警告维护自身权益的行为，不构成不正当竞争 在石家庄双环汽车股份有限公司与本田技研工业株式会社确认不侵害专利权、损害赔偿纠纷案【（2014）民三终字第 7 号】（简

SPC held that the patent owner could issue infringement warnings prior to filing a lawsuit or during the lawsuit. Issuing an infringement warning is not only a key step to protect the patent owner's own right, but also a key step to resolve the dispute through negotiation, and law shall not prohibit it. In addition, the law allows issuing such warning because it could reduce costs, enhance efficiency, and save judicial resources.	称“汽车”外观设计专利确认不侵权案）中，最高人民法院指出，专利权人可以在提起侵权诉讼之前或者起诉期间发送侵权警告，发送侵权警告是其自行维护权益的途径和协商解决纠纷的环节，法律对此并无禁止性规定，且允许以此种方式解决争议有利于降低维权成本、提高纠纷解决效率、节约司法资源，符合经济效益。
31. Issuing infringement warning shall be limited to a reasonable extent and shall be exercised with duty of care In the aforementioned Train Case,[31] the SPC further held that issuing an infringement warning reflects that the patent owner exercises her basic civil rights. However, such civil rights shall be exercised within reasonable limitation, and the patent holders shall exercise duty of care.	31. 侵权警告的发送应限于合理范围，并善尽注意义务 在前述“汽车”外观设计专利确认不侵权案中，最高人民法院还指出，权利人发送侵权警告维护自身合法权益是其行使民事权利的应有之义，但行使权利应当在合理的范围内，并善尽注意义务。
32. An existing use of trademark in good faith does not constitute unauthorized use of the trademark of another entity In the retrial of *Guangzhou Xinghewan Development Co., Ltd, Guangzhou Hongfu Real Estate Co., Ltd. v. Su Weibing Group Construction Development Co., Ltd.* (hereinafter “*Xinghewan* Case” concerning trademark infringement and unfair competition),[32] the SPC held that if an entity has used the name in dispute under good faith prior to the right holder	32. 善意的在先使用行为不构成擅自使用他人企业名称 在再审申请人广州星河湾实业发展有限公司、广州宏富房地产有限公司与被申请人江苏炜赋集团建设开发有限公司侵害商标权及不正当竞争纠纷案【（2013）民提字第 102 号】（简称“星河湾”商标侵权及不正当竞争案）中，最高人民法院指出，他人善意使用诉争名称的时间早于权利人对其企业名称的使

obtaining the trademark, such prior use does not constitute unauthorized use of the trademark of another entity.	用，该使用行为不构成擅自使用他人企业名称的行为。
V. LITIGATION ON NEW PLANT SPECIES	五、植物新品种案件审判
33. Admission of the test report with different conclusion under new plant infringing patent In the retrial of *Shandong Denghai Xianfeng Seed Industry Co., Ltd. v. Shanxi Nongfeng Seed Industry Co. Ltd. and Shanxi Dafeng Seed Industry Co., Ltd.*, [33] the SPC held that it is a precondition to present the same characteristics to bring a claim on patent infringement of new plan species. The recognition of new plant species is based on the field planting DUS test. When the conclusion of the field planting DUS test is different from the one from DNA fingerprint test, the conclusion of DUS test prevails.	33. 侵害植物新品种权案件中，对结论不同的测试报告的采信与认定 在再审申请人山东登海先锋种业有限公司与被申请人陕西农丰种业有限责任公司、山西大丰种业有限公司侵害植物新品种权纠纷案【（2015）民申字第 2633 号】中，最高人民法院指出，特征特性相同为认定侵害植物新品种权行为的前提条件。植物新品种的授权依据为田间种植的 DUS 测试，当田间种植的 DUS 测试确定的特异性结论与 DNA 指纹检测结论不同时，应以田间种植的 DUS 测试结论为准。
VI. LITIGATION ON LAYOUT DESIGN OF INTEGRATED CIRCUIT	六、集成电路布图设计案件审判
34. Protection scope of the layout design of integrated circuits could be determined by registered samples In the retrial of *Angbao Electronics (Shanghai) Co., Ltd. v. Nanjing Zhipu Xinlian Electronic Technology Co., Ltd., Shenzhen Sailing Trading Co., Ltd. and Shenzhen Zikunjia Technology Co., Ltd.*, [34] the SPC held that if a layout design of integrated circuit is commercially used before registration, the protection scope of the proprietary	34. 登记图样和样品对集成电路布图设计保护范围确定的作用 在再审申请人昂宝电子（上海）有限公司与被申请人南京智浦芯联电子科技有限公司、深圳赛灵贸易有限公司、深圳市梓坤嘉科技有限公司侵害集成电路布图设计专有权纠纷案【（2015）民申字第 785 号】中，最高人民法院指出，登记时已投入商业利用的集成电路布图设计，其专有权的保护内容应当以

rights shall be based on the duplication or drawing submitted through registration. If necessary, samples could be considered as auxiliary reference.	申请登记时提交的复制件或图样为准，必要时样品可以作为辅助参考。
VII. PROCEDURE AND EVIDENCE OF INTELLECTUAL PROPERTY LITIGATION	七、关于知识产权诉讼程序与证据
35. When requesting the people's court a declaration of non-infringement of trade secret, the fact that a party with capability to adduce evidence clearly refusing to specify the content of trade secret does not influence the ruling of people's court In the retrial of *Dandong Colossus Group Co., Ltd. v. Jiangxi Huadian Electronic Co., Ltd.*,[35] the SPC held that for determining non-infringement of trade secret, the court shall identify the content of trade secret and responsibility of each party for the litigation based on the capability and difficulty to adduce evidence. If the party with capability to adduce evidence clearly refuses to specify the content of trade secret, such party shall bear the risk of disadvantageous judgment. However, it will not be a presumption for the people's court to rule such case requesting the court's declaration of non-infringement of trade secret.	35. 具有举证能力的一方当事人拒绝明确商业秘密的具体内容，不影响人民法院对确认不侵害商业秘密案件的受理 在再审申请人丹东克隆集团有限责任公司与被申请人江西华电电力有限责任公司确认不侵害商业秘密纠纷案【（2015）民申字第 628 号】中，最高人民法院指出，在确认不侵害商业秘密纠纷案中，应当根据当事人的举证能力和取证难度，确定商业秘密的具体内容和诉讼权利义务的指向对象。具有举证能力的一方当事人拒绝明确商业秘密的具体内容，应就此承担不利的法律后果，但不影响人民法院对确认不侵害商业秘密案件的受理。
36. Authenticity and probative value of electronic evidence In the retrial of *Dong Jianfei v. Wu Shuxiang and Patent Re-examination Board of SIPO*,[36] the SPC held that	36. 电子证据真实性和证明力的审查判断 在再审申请人董健飞与被申请人吴树祥、一审被告、二审上诉人国家知识产权局专利复审委员会外观设

upon determining the authenticity and probative value of the publish date of a notarized internet website, the court shall make decision by considering the case itself and relevant factors, including but not limited to the production process of notarization report, production process of the website, the timing of releasing the website, qualification and credit status of the website, business management status, and technical methods.	计专利权无效行政纠纷案【（2015）知行字第 61 号】中，最高人民法院指出，在审查判断以公证书形式固定的互联网站网页发布时间的真实性与证明力时，应考虑公证书的制作过程、网页及其发布时间的形成过程、管理该网页的网站资质和信用状况、经营管理状况、所采用的技术手段等相关因素，结合案件其他证据进行综合判断。
37. Determining the effectiveness of evidence and the punishment for perjury In the retrial of *Guangdong Huarun Paint Co., Ltd. v. East Asia Elephants Paint Co., Ltd. and Wu Xuechun*,[37] the SPC held that people's court shall fully and objectively review the evidence on the basis of legal procedures; shall apply logical reasoning and routine experience to determine the existence of a probative value and its influence on the basis of legal provisions; and shall disclose the reasoning and result of the judgment. Criminal liability shall be posed based on law against the party violating the principle of honesty, by committing perjury, by providing false statement, or by engaging in acts that interfere with the judicial authority for litigation activities.	37. 对证据证明效力的审核认定及对提供伪证行为的处罚 在再审申请人广东华润涂料有限公司与被申请人江苏大象东亚制漆有限公司、一审被告吴雪春不正当竞争纠纷案【（2014）民提字第 196 号】中，最高人民法院指出，人民法院应当按照法定程序，全面、客观地审核证据，依照法律规定，运用逻辑推理和日常生活经验法则，对证据有无证明力和证明力大小进行判断，并公开判断的理由和结果。对于严重违反诚信原则，提交伪证、进行虚假陈述、扰乱司法秩序的行为，应当按照法定程序予以处罚。
38. Imposing the responsibility to cease the acts of infringement shall follow both the principle of supporting good faith and protecting public interest	38. 停止侵权责任的承担，应当遵循善意保护原则并兼顾公共利益 在前述“星河湾”商标侵权及不正

In the aforementioned *Xinghewan* Case,[38] the SPC further held that if the trademark right and other intellectual property rights conflict with other property rights, the court shall determine whether to hold a party responsible for a legal liability under the principle of protecting bona fide party and the principle of balancing public interests.	当竞争案中，最高人民法院还认为，在商标权等知识产权与物权等财产权发生冲突时，是否判令当事人承担停止使用的法律责任，应当遵循善意保护原则并兼顾公共利益。

[1] Cixi Shi Bosheng Tuliaon Zhipin Youxiangongsi Yu Chen Jiang, Qinhai Shiyong Xinxing Zhuanli Jiufen An（慈溪市博生塑料制品有限公司与陈剑侵害实用新型专利权纠纷案）［*Cixi Bosheng Plastic Products Co., Ltd. v. Chen Jian*］, CIVIL RETRIAL. NO. 188 (Sup. People's Ct. 2015). Chen Jian is the owner of the cleaning appliance patent. The patent's application date is June 24th, 2011. On June 20th, 2013, Chen Jian sued Bosheng for patent infringement on Bosheng's unauthorized manufacturing, selling, and offering to sell the infringing products. Hangzhou Intermediate People's Court in Zhejiang Province held that the products at issue were not within the protection range of the patent, and overruled Chen Jian's claim. Chen appealed. In response, Bosheng claimed that their utility model patent under application number 201120157568.6 was applied prior to the patent at issue, and the products produced by this patent do not infringe the patent at issue. The Intermediate People's Court held that the products were within the protection range of the patent at issue, and issued injunction and 100,000RMB damages against Bosheng. Bosheng appealed to the SPC. On December 2, 2015, the SPC denied Bosheng's application for retrial.

[2] *Id.*

[3] Huawei Jishu Youxiangongsi Yu Bei Zhongxing Tongxun Gufen Yongxiangongsi, Hangzhou Alibaba Guanggao Youxiangongsi Qinhai Faming Zhuanli Quan Jinfen An（华为技术有限公司与被中兴通讯股份有限公司、杭州阿里巴巴广告有限公司侵害发明专利权纠纷案）［*Huawei Technologies Co., Ltd. v. ZTE Corporation and Hangzhou Alibaba Advertising Co., Ltd.*], CIVIL RETRIAL. NO. 2720 (Sup People's Ct. 2015). Huawei is the owner of a patent for preventing fabricated IP addresses. The claim described a method that prevents fabricated IP addresses during dynamic IP address allocation. Huawei claimed that the infringing products produced by ZTE and sold by Alibaba used the technical plan within the protection range of the patent. Hangzhou Intermediate People's Court held that the manifestation of method patent infringement is using the technical plan. Huawei did not adequately prove that ZTE used Huawei's networking mode when producing the claimed infringing products, and the technical plan used by ZTE was different from the plan of the patent. The evidence was insufficient to prove ZTE infringed the patent, and Huawei's claim was denied. Huawei appealed. Huawei argued that the lower court narrowed the protection range by including the networking method not mentioned in the claim as a suggested technical feature. Zhejiang Higher People's Court maintained the ruling. Huawei appealed to the SPC, and the SPC overruled.

[4] Liu Hongbin Yu Beijing Jinglianfa Shukong Keji Youxinagongsi, Tianwei Sichuan Guiye Youxianzerengongsi Qinhai Shiyong Xinxing Zhuanli Quan Jinfen An (刘鸿彬与北京京联发数控科技有限公司、天威四川硅业有限责任公司侵害实用新型专利权纠纷案) [*Liu Hongbin v. Beijing Jinglianfa Co., Ltd. and Tianwei Sichuan Silicon Co., Ltd.*], CIVIL RETRIAL. NO. 1070 (Sup. People's Court Ct. 2015). Hongbin is the owner of the patent of a new type of grilling machine. The date of the patent application was December 31st, 2008. The date of authorization was October 21st, 2009. On April 10th, 2009, Tianwei (buyer) made a sales contract with Jinglianfa

(seller) through bidding. The sale involved selling the claimed infringing products to Tianwei. Liu Hongbin sued for patent infringement because the allegedly infringing products' technical feature is entirely the same as the patent. Chengdu Intermediate People's Court held that the allegedly infringing products fall within the protection range of the patent's claim and ruled against Jinglianfa. Tianwei's bidding process was conducted earlier than the patent's authorization date. Therefore, Tianwei should not be liable for monetary damages. The Court issued injunctions against Tianwei and Jinglianfa, and 100,000RMB monetary damages against Jinglianfa, and Jinglianfa appealed. Sichuan Higher People's Court held that using the same technical plan as the patent before the authorization day does not constitute patent infringement. The lower court's decision was repealed. Liu Hongbin appealed to the SPC. The SPC denied.

[5] Sun Junyi Yu Renqiu Shi Bochengshuinuanqicai Youxianggongsi, Zhang Zehui, Qiao Taida, Qinhai Shiyong Xinxing Zhuanli Quan Jinfen An（孙俊义与任丘市博成水暖器材有限公司、张泽辉、乔泰达侵害实用新型专利权纠纷案）[*Sun Junyi v. Renqiu Bocheng Co., Ltd., Zhang Zehui, and Qiao Taida*], CIVIL RETRIAL. NO. 740 (Sup People's Court Ct. 2015). Sun Junyi was the owner of the patent of automatic exhaust system at issue. One of the technical features is the cone surface which prevents erosion. Sun Junyi sued Bocheng, Zhang Zehui, and Qiao Taida for producing and selling the claimed infringing products. By comparison, the claimed infringing products had flat surface different from the patented feature. Harbin Intermediate People's Court held that the claimed infringing products had similar technical features and infringed the patent. Bocheng appealed. Heilongjiang Higher People's Court held that the patent limited the surface as conical because a flat surface was not able to achieve the patent's technical purpose. Therefore, the flat surface is out of the protection range of the patent. The lower court's decision was repealed. Sun Junyi appealed. The SPC denied the appeal.

[6] Bentiangiyangongye Zhushihuishe Yu Shijiazhuang Shuanghuan Qiche Gufenyouxianggongsi, Shijiazhuang Shuanghuan Qiche Youxianggongsi, Shijiazhuang Xinnengyuan Qiche Youngxianggongsi.Qinhai Waiguan Sheji Zhuanliquan Jiufen An (本田技研工业株式会社与石家庄双环汽车股份有限公司、石家庄双环汽车有限公司、石家庄双环新能源汽车有限公司侵害外观设计专利权纠纷案）[*Honda Motor Co., Ltd. v. Shijiazhuang Shuanghuan Auto Co., Ltd., Shijiazhuang Shuanghuan Auto Ltd., and Shijiazhuang Xinnengyuan Ltd.*], CIVIL RETRIAL. NO. 8 (Sup. People's Court Ct. 2014). Honda was the patentee of the design patent. Hebei Higher People's Court held that the claimed infringing product was not within the protection range. Honda appealed. The SPC upheld the Higher People's Court's decision.

[7] Zhejiang Jianlong Weiyu Youxianggongsi Yu Gaoyi Gufengongsi Qinhai Waiguan Sheji Zhuanliquan Jiufen An（浙江健龙卫浴有限公司与高仪股份公司侵害外观设计专利权纠纷案）[*Zhejiang Gllon Sanitary Ware Co., Ltd. v. Grohe AG*], CIVIL RETRIAL. NO. 23 (Sup. People's Court Ct. 2015). Grohe was the patentee of the design patent at issue. Grohe argued that the nozzle design was the key feature of the patent. However, it was not manifested by the patent authorization announcement. There were differences between the designs on nozzle head and handle, resulting in the two designs to not be similar. Grohe appealed. Zhejiang Higher People's Court ruled for Grohe. Gllon appealed to the SPC. The SPC repealed the Higher People's Court's decision and upheld the initial decision for Gllon.

[8] *See* supra note 1.

[9] Danyang Shi Shengmei Zhaoming Qicai Yongxianggongsi Yu Tong Xianping, Qinhai Waiguan Sheji Zhuanliquan Jiufen An （丹阳市盛美照明器材有限公司与童先平侵害外观设计专利权纠纷案）[*Danyang Shengmei Lighting Co., Ltd. v. Tong Xianping*], CIVIL RETRIAL. NO. 633 (Sup. People's Court Ct. 2015). Tong Xianping was the patentee of the exterior design patent at issue. Tong sued Shengmei for selling and offering to sell the claimed infringing products. Zhenjiang Intermediate People's Court held that the claimed infringing products and the patent has no substantive difference in their overall visual effects, and that they are similar. The court issued an injunction and 58,950RMB damages against Shengmei. Shengmei appealed. Jiangsu Province Higher People's Court and the SPC both denied.

[10] Beijing Yingtelai Jishu Gongsi Yu Shenzhen Landun Gongsi Beijing Fen Gongsi, Beijing Landun Chuangzhan Menye Youxian Gongsi Qinhai Faming Zhanli Quan Jiufen An (北京英特莱技术公司与深圳蓝盾公司北京分公司、北京蓝盾创展门业有限公司侵害发明专利权纠纷案) [*Beijing Yingtelai Technology Co., Ltd. v. Shenzhen Bluedon Co., Ltd. (Beijing Branch) & Beijing Bluedon Chuangzhan Mengye Co., Ltd.*], CIVIL APPLICATION FOR RETRIAL NO. 1255 (Sup. People's Ct. 2015). The applicant Beijing Yingtelai Technology Co., Ltd. (hereinafter "Yingtelai") is the right holder of the patent regarding a fire-resistant roller shutter. It brought a lawsuit against

Shenzhen Bluedon Co., Ltd. (Beijing Branch) (hereinafter "Bluedon Beijing") and Beijing Bluedon Chuangzhan Door Industry Co., Ltd. (hereinafter "Bluedon Chuangzhan"), alleging that the fire-resistant roller shutter products manufactured by the two fall within the scope of its patent, and that they infringed on Yingtelai's patent rights. The trial court, Beijing No. 2 Intermediate People's Court, found that the allegedly infringing products fell within the scope of the patent; however, the products came from Shenzhen Bluedon Industrial Co., Ltd. (hereinafter "Shenzhen Bluedon"). Shenzhen Bluedon has been manufacturing the same products before the patent application day, and its manufacturing is confined to the previous scope, therefore it has First Use Rights. The court held that Bluedon Beijing and Bluedon Chuangzhan may raise First Use Defense. Yingtelai appealed. Beijing High People's Court affirmed. Yingtelai petitioned for a retrial in the SPC but was rejected by the SPC.

[11] Li Xiaole Yu Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuan Hui, Guo Wei, Shenyang Tianzheng Shubiandian Shebei Zhizao Youxian Zeren Gongsi Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (李晓乐与国家知识产权局专利复审委员会、郭伟、沈阳天正输变电设备制造有限责任公司发明专利权无效行政纠纷案) [*Li Xiaole v. Patent Re-examination Board of the State Intellectual Property Office of the P.R.C. ("SIPO"), Guo Wei, and Shenyang Tianzheng Electrical Equipment Manufacturing Co., Ltd.*], IP ADMINISTRATIVE RETRIAL NO. 17 (Sup. People's Ct. 2014). Guo Wei and Shenyang Tianzheng Electrical Equipment Manufacturing Co., Ltd. (hereinafter "Shenyang Tianzheng") are the right holders of the patent at issue, Invention Patent No. 03123304.X. Among the 12 claims of right, Claim 1 disclosed a Reflective Sagnac Interferometer All-fiber Current Transformer. One of its characteristics is that it consists of at least a photoelectric unit and a fiber optic current sensor unit, but it did not mention reflective coatings; while Claim 10, which is the subordinate claim of right of Claim 1, further limited that the fiber optic current sensor unit consist of at least a waveplate, an induction fiber coil, and the reflective coating plated on the end surface of the induction fiber coil. Li Xiaole brought a petition to the Patent Re-examination Board of SIPO (hereinafter "the Board"), claiming that the patent should be invalidated for lack of originality and creativity. The Board rejected the application and affirmed the validity of the patent, finding that the all-fiber is a structure in the fiber optic current sensor unit that uses the reflective coating plated on the end surface of the induction fiber coil as a reflector. Thus, Li brought an administrative litigation challenging the Board decision. Beijing No. 1 Intermediate People's Court affirmed. On appeal, Beijing High People's Court found that Claim 1 does not mention using the reflective coating plated on the end surface of the induction fiber coil as a reflector, concluding that Claim 1 does not include this character, and the structure at issue uses a reflector other than a mirror. The court affirmed the lower court's decision. On petition, the SPC decided to review this case, vacated the prior judgments and the Board decision, and remanded the case to the Board.

[12] Liaoning Bore Wangluo Keji Youxian Gongsi Yu Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuan Hui, Zhongguo Huipu Youxian Gongsi Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (辽宁般若网络科技有限公司与国家知识产权局专利复审委员会、中国惠普有限公司发明专利权无效行政纠纷案) [*Liaoning Prajna Network Technology Co., Ltd. v. Patent Re-examination Board of SIPO, China Hewlett-Packard Co., Ltd.*], IP ADMINISTRATIVE RETRIAL NO. 17 (Sup. People's Ct. 2013). Liaoning Prajna Network Technology Co., Ltd. (hereinafter "Prajna") is the owner of the patent at issue, "Fault-Tolerant Array Server." Claim 1, feature b of the patent reads, "keyboard, mouse, monitor, NIC and power supply connect through integrated plug and integrated outlet." The patent specification includes the following: the purpose of the invention is to provide an array server, which can complete the connection of keyboard, mouse, monitor, NIC and power supply at a single plug or unplug, whose motherboard can be plugged or unplugged with power on, and whose backboard can accommodate multiple servers. China Hewlett-Packard Co., Ltd. filed a petition in the Patent Re-examination Board of SIPO (hereinafter "the Board") to invalidate the patent for lack of creativity. The Board invalidated the patent. Prajna therefore filed an administrative lawsuit in Beijing No. 1 Intermediate People's Court, which affirmed the Board's decision. On appeal, Beijing High People's Court affirmed the lower court's decisions again. Prajna petitioned for a retrial at the SPC, claiming that Claim 1, feature b limited the method and contents of the connection between server and the case. The Board decision was incorrect to interpret Claim 1, feature b as "keyboard, mouse, monitor … connect to the power supply," which was inconsistent with the language. The SPC granted a retrial, vacated prior board decision and lower courts' judgments, and remanded to the board.

[13] Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuan Hui, Beijing Jialin Yaoye Gufen Youxian Gongsi Yu Woni'er Langbo Youxian Zeren Gongsi, Zhang Chu Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (国家知识产权局专利复审委员会、北京嘉林药业股份有限公司与沃尼尔·朗伯有限责任公司、张楚发明专利权无效行政纠纷案) [*Patent Re-examination Board of SIPO and Beijing Jialin Pharmaceutical Co., Ltd. v. Warner-Lambert Company LLC and Zhang Chu*], IP ADMINISTRATIVE RETRIAL NO. 8 (Sup. People's Ct. 2014). Warner-Lambert

Company LLC (hereinafter "Warner-Lambert") is the owner of the patent at issue. Claim 1 of the patent defines the subject as Type I Crystalline Atorvastatin Hydrate with 1-8 moles of water. Beijing Jialin Pharmaceutical Co., Ltd. (hereinafter "Jialin") and Zhang Chu filed a petition, respectively, in the Patent Re-examination Board of SIPO (hereinafter "the Board") to invalidate the patent. The Board invalidated the patent for violation of Article 26, Clause 3 of the Patent Law of the PRC. The Board found that (1) the Patent specification failed to provide anything to prove that the Type I Crystalline Atorvastatin Hydrate contains 1-8 moles of water; therefore, people skilled in this field cannot identify the protected product based on the contents disclosed in the Patent specification; (2) people skilled in this field cannot know from the Patent specification of how to manufacture Type I Crystalline Atorvastatin Hydrate with 1-8 moles of water. Warner-Lambert brought an administrative lawsuit. Beijing No. 1 Intermediate People's Court affirmed the Board's decision. Warner-Lambert appealed. Beijing High People's Court reversed, finding that the focus of the patent is to obtain Type I Crystalline Atorvastatin Hydrate and to overcome the difficulty of filtration and drying amorphous atorvastatin in mass production, therefore the Board failed to evaluate the patent as a whole. The Board and Jialin petitioned the SPC for a retrial. The SPC granted the petition, vacated the appellate decision, and restored the judgment of the court in the first instance.

[14] *Id.*

[15] *Id.*

[16] Zhu Funai, Zhai Youhua, Ma Guonai Yu Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuan Hui ji Henan Quanxin Yetai Qidong Shebei Youxian Gongsi Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (朱福奶、翟佑华、马国奶与国家知识产权局专利复审委员会及河南全新液态起动设备有限公司发明专利权无效行政纠纷案) [*Zhu Funai, Zhai Yohua, and Ma Guonai v. Patent Re-examination Board of SIPO and Henan Quanxin Yetai Qidong Shebei Co., Ltd.*], IP ADMINISTRATIVE RETRIAL NO. 32 (Sup. People's Ct. 2014). Zhu Funai, Zhai Youhua and Ma Guonai are the right holders of the patent at issue. Claim 1 of the patent seeks to protect a brushless self-controlled motor soft starter, which features an elastic resistance device set between the movable electrode and the static electrode to prevent the movable electrode from moving to the static electrode, and an exhaust valve and a safety valve are set on the electrolyte storage vessel. Claim 3 further limited Claim 1 or 2 by specifying that the elastic resistance device is a spring attached to the movable electrode and the inner annular wall of an annular cavity. Claim 5 further limited Claim 3 by specifying that the exhaust valve is a centrifugal exhaust valve, set on the end surface close to the axis. Henan Quanxin Liquid Starting Equipment Co., Ltd. (hereinafter "Henan Quanxin") filed a petition in the Patent Re-examination Board of SIPO (hereinafter "the Board") to invalidate the patent, alleging that the claims of right were not supported by the patent specification. The Board found that the patent specification did not provide that there was anything between the movable and static electrolytes, therefore, Claim 1 was not supported by the patent specification. Furthermore, Claim 2-5 directly or indirectly subordinates Claim 1; their contents would not overcome the flaw of Claim 1. The Board invalidated that patent in its whole. The right holders filed an administrative lawsuit in Beijing No. 1 Intermediate People's Court. The court found that the patent specification provided that "there is an elastic resistance device between the movable and static electrolytes, which prevents the movable electrolyte from moving to the static electrode" and elaborated on the purpose of the elastic resistance device; the images in the patent specification also showed the existence of the elastic resistance device. The court vacated the Board's decision and remanded it to the Board. Both the Board and Henan Quanxin appealed. Beijing High People's Court ruled that technical staff skilled in this field cannot come to the technological proposal in the claims of right by reading the patent specification, therefore vacated the lower court's judgment and restored the Board's decision. The SPC granted the right holders' petition for a retrial, vacated both judgments and remanded to the Board.

[17] Guangdong Tianpu Shenghua Yiyao Gufen Youxian Gongsi Yu Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuan Hui, Zhang Liang Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (广东天普生化医药股份有限公司与国家知识产权局专利复审委员会、张亮发明专利权无效行政纠纷案) [*Guangdong Techpool Bio-Pharma Co., Ltd. v. Patent Re-examination Board of SIPO and Zhang Liang*], IP ADMINISTRATIVE RETRIAL NO. 261 (Sup. People's Ct. 2015). Techpool Bio-pharma Co., Ltd. (hereinafter "Techpool") is the right holder of the patent at issue. Among the 8 claims of right, Claim 1 and Claim 8 are claims of right to products, while Claim 2-7 are claims of right to the method of manufacturing the product in Claim 1. Zhang Liang brought a petition to the Patent Re-examination Board of SIPO (hereinafter "the Board") to invalidate the patent for lack of originality and creativity. The Board announced Claim 1 and Claim 8 invalid; Claim 2-7 remain valid. Techpool brought an administrative lawsuit to challenge the Board's decision but lost on both the first trial and on appeal. Techpool petitioned for a retrial, alleging that one skilled in this field needs creative efforts to obtain the product in Claim 1. The SPC denied its petition.

[18] Ningbo Guangtian Saikesi Yeya Youxian Gongsi Yu Shao Wenjun Qinhai Shangbiao Quan Jiufen An (宁波广天赛克思液压有限公司与邵文军侵害商标权纠纷案) [*Ningbo Guangtian Saikesi Hydraulic Co., Ltd. v. Shao Wenjun*], CIVIL RETRIAL NO. 168 (Sup. People's Ct. 2014). Shao Wenjun was a governmental official in Ningbo Administration Bureau for Industry & Commerce, Jiangbei Branch. Three years after his resignation from the Bureau, Shao Wenjun successfully registered the trademark "赛克思 SAIKESI." He then brought a lawsuit against Guangtian Saikesi Hydraulic Co., Ltd. (hereinafter Guangtian Saikesi) for using the same words in their products. Ningbo Intermediate People's Court ruled that Guangtian Saikesi has prior right to use, that Guangtian Saikesi does not have the bad faith to take advantage of the reputation of the trademark, and that it would not cause confusion to the public about the source of the products; therefore, there is no infringement on the trademark. Shao Wenjun appealed. Zhejiang High People's Court held that registered trademarks are protected by law; Guangtian Saikesi used a similar symbol as a trademark and would cause confusion. The court also held that since the trademark at issue was not in use, Guangtian Saikesi did not have bad faith in using the symbol; therefore, the damages are limited to reasonable costs. Guangtian Saikesi petitioned for a retrial. The SPC granted the petition, vacated the judgment on appeal, and restored the decision of Ningbo Intermediate People's Court.

[19] Pujiang Yahuan Suoye Youxian Gongsi Yu Laisi Fangdao Chanpin Guoji Youxian Gongsi Qinhai Shangbiao Quan Jiufen An (浦江亚环锁业有限公司与莱斯防盗产品国际有限公司侵害商标权纠纷案) [*Pujiang Yahuan Locks Co., Ltd. v. Focker Security Products International Limited*], CIVIL RETRIAL NO. 38 (Sup. People's Ct. 2014). Xu Ronghao registered the trademark "PRETUL and elliptical graphics" and transferred it to Focker Security Products International Limited (hereinafter "Focker"). Zhejiang Pujiang Yahuan Locks Co., Ltd. (hereinafter "Yahuan") contracted with a Mexico company Truper Herramientas S. A. De C. V. (hereinafter "Truper") to supply padlocks. Ningbo Customs twice seized the allegedly infringing padlocks with the trademark "PRETUL" on the lock body, keys, and patent specifications, which were to be exported to Mexico. On the boxes, words "Importer: Truper Ltd." and "Made in China" are written in Spanish, but there is no mention of Yahuan. Truper owns the trademark "PRETUL" or "PRETUL and elliptical graphics" in Mexico and multiple other countries and regions. Truper issued a statement alleging that all the padlocks with "PRETUL" trademark manufactured by Yahuan were authorized by Truper and were to be exported to Mexico. Focker filed a lawsuit for infringement on its trademark. Ningbo Intermediate People's Court ruled that the law of PRC does not protect trademarks registered in Mexico, and found that the symbol "PRETUL" was different from the trademark at issue and there was no infringement; however, "PRETUL and elliptical graphics" infringed upon Focker's rights. Both Focker and Yahuan appealed. Zhejiang High People's Court found that the use of "PRETUL" also infringed on Focker's rights. Yahuan petitioned for a retrial. The SPC granted the petition, vacated lower courts' judgments, and denied Focker's claims.

[20] Naike Guoji Youxian Gongsi Yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuan Hui Shangbiao Bohui Fushen Xingzheng Jiufen An (耐克国际有限公司与国家工商行政管理总局商标评审委员会商标驳回复审行政纠纷案) [*Nike International Ltd. v. Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce*], IP ADMINISTRATIVE RETRIAL NO. 80 (Sup. People's Ct. 2015). Nike International Ltd. (hereinafter "Nike") applied to register a trademark with the word "JORDAN." The Trademark Office of the State Administration Bureau for Industry & Commerce of the People's Republic of China (the "Trademark Office"), Trademark Review and Adjudication Board (the "Trademark Review Board") denied the application, finding that Jordan can be interpreted as the name of a country and that it violated Article 28 of the Trademark Law of the PRC. Nike brought an administrative litigation, but lost on both the first instance and on appeal. Its petition for a retrial was also denied by the SPC.

[21] Juhua Jituan Gongsi Yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuan Hui, Hu Jinyun Shangbiao Yiyi Fushen Xingzheng Jiufen An (巨化集体公司与国家工商行政管理总局商标评审委员会、胡金云商标异议复审行政纠纷案) [*Juhua Group Corp. v. Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce and Hu Jinyun*], IP ADMINISTRATIVE RETRIAL NO. 112 (Sup. People's Ct. 2014). Juhua Group Corp. (hereinafter "Juhua") registered the trademark "巨化牌 JH" (the cited trademark) on Type 1 commodities, which includes liquid chlorine, calcium carbide, methanol, caustic soda etc. Hu Yunjin applied to register the trademark "巨化" (the disputed trademark) on Type 11 commodities, which include lamps, lampshades, lights for cars, gas water heater etc. Juhua disputed the registration in the statutory period for objection, but the Trademark Office approved the registration of the disputed trademark. Juhua applied for a re-examination by the Trademark Review Board. The Trademark Review Board found that there was not sufficient evidence qualifying the cited trademark as a well-known trademark; furthermore, even if it was, the difference between Type 1 and Type 11

commodities was so obvious that it would not cause confusion among the consumers. The Trademark Review Board affirmed its prior decision. Juhua brought an administrative litigation, but lost on both the first instance and on appeal. Juhua petitioned for a retrial, alleging that both the lower courts and the Trademark Board failed to examine whether the cited trademark qualified as a well-known trademark. The SPC denied its petition.

[22] Beijing Fuliansheng Xieye Youxian Gongsi Yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuan Hui, Beijing Neiliansheng Xieye Youxian Gongsi Shangbiao Yiyi Fushen Xingzheng Jiufen An (北京福联升鞋业有限公司与国家工商行政管理总局商标评审委员会、北京内联升鞋业有限公司商标异议复审行政纠纷案) [*Beijing Fuliansheng Shoes Co., Ltd. v. Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce and Beijing Neiliansheng Shoes Co., Ltd.*], IP ADMINISTRATIVE RETRIAL NO. 116 (Sup. People's Ct. 2015). Beijing Neiliansheng Shoes Co. Ltd. (hereinafter "Neiliansheng") is the right holder of the trademark "内联升" (the cited trademark), registered in "shoes" among Type 25 commodities. Beijing Fuliansheng Shoes Co., Ltd. (hereinafter "Fuliansheng") applied to register the trademark "福联升 FULIANSHENG and image" (the disputed trademark) on "clothes, underwear, shoes" among Type 25 commodities. Despite the objection from Neiliansheng within the statutory period, the Trademark Office approved its registration. Neiliansheng applied for the Trademark Review Board review. The Trademark Review Board denied the registration of the disputed trademark on review. Fuliansheng brought an administrative litigation. Beijing No. 1 Intermediate People's Court found that the co-existence of the cited and disputed trademark would not cause confusion to the public, therefore vacated the Trademark Review Board decision and remanded to the Trademark Review Board. Both the Trademark Review Board and Neiliansheng appealed. Beijing High People's Court found that the existing reputation of the cited trademark would make the co-existence of the two trademarks on similar commodities confusing. The public might think that the commodities came from the same provider, or that their providers were connected. The court vacated the lower court's judgment and affirmed the Trademark Review Board decision on review. The SPC denied Fuliansheng's petition for a retrial.

[23] Teduowa Gongsi Yu Beijing Gui Boshi Qiche Qingxi Liansuo Youxian Gongsi ji Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuan Hui, Beijing Banlong Maoyi Zhongxin Shangbiao Yiyi Fushen Xingzheng Jiufen An (特多瓦公司与北京龟博士汽车清洗连锁有限公司及国家工商行政管理总局商标评审委员会、北京半隆贸易中心商标异议复审行政纠纷案) [*Turtlewax Inc. v. Beijing Turtle Doctor Carwash Chain Co., Ltd., Trademark Review and Adjudication Board of State Administration Bureau for Industry & Commerce and Beijing Banlong Trade Center*], IP ADMINISTRATIVE RETRIAL NO. 3 (Sup. People's Ct. 2015). Turtlewax Inc. (hereinafter "Turtlewax") registered the trademark "龟博士" in Type 3 commodities "car polishing wax, cleaning liquid" (the cited trademark). Changsha Earth Company applied to register the trademark "龟博士" on "vehicle lubricants, vehicle maintenance" (the disputed trademark) and later transferred to Beijing Turtle Doctor Carwash Chain Co., Ltd. (hereinafter "Turtle Doctor"). Despite objections from Turtlewax and Beijing Banlong Trade Center (hereinafter "Banlong") within the statutory period, the Trademark Office approved the registration. Turtlewax and Banlong applied for a check by the Trademark Review Board. The Trademark Review Board invalidated the disputed trademark on review. Turtle Doctor filed an administrative lawsuit. Beijing No. 1 Intermediate People's Court found that the disputed trademark violated Article 28 of the Trademark Law of the PRC, but did not violate Article 15. Both Turtle Doctor and Turtlewax appealed. Beijing High People's Court found that Article 15 was not applicable in this case; considering the reputation that the disputed trademark has, and that the cited trademark and the disputed trademark have established their respective market, they are not similar trademarks. The court vacated the decision in the first instance and remanded to the Trademark Review Board. Turtlewax petitioned for a retrial. The SPC granted the petition, vacated the judgment on appeal, and affirmed the decision in the first instance with clarification on matters of law.

[24] Guizhou Laishijia Jiuye Youxian Zeren Gongsi Yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui, Zhongguo Guizhou Maotai Jiuchang (Jituan) Youxian Zeren Gongsi Shangbiao Yiyi Pingshen Xingzheng Jiufen An (贵州赖世家酒业有限责任公司与国家工商行政管理总局商标评审委员会、中国贵州茅台酒厂(集团)有限责任公司) [*Guizhou Laishi Alcohol Co., Ltd. v. Trademark Review and Adjudication Board of State of Administration for Industry & Commerce and China Guizhou Maotai Distillery (Group) Co., Ltd.*], IP ADMINISTRATIVE RETRIAL NO. 115 (Sup. People's Ct. 2015). Defendant Guizhou Maotai obtained the registered trademark "赖茅" in 1996. However, in 2005, the trademark "赖茅" was repealed because it had not been used for three years. Thereafter, Guizhou Laishijia started using the trademark "赖茅". In 2006, Guizhou Maotai filed to register the label "赖茅" again, but Guizhou Laishijia initiated a trademark invalidation proceeding against Guiboshi

in the Trademark Review Board, which was denied. Guizhou Laishijia then appealed this decision to Beijing First Intermediate People's Court, in which the trial court upheld the Trademark Review Board's decision. Guizhou Laishijia then appealed to the Beijing High People's Court. Denied review at the appeal court, Guizhou Laishijia moved for re-trial by the SPC. The SPC denied the motion and further held that due to this special historical background, Guizhou Maotai still has exclusive right to use the label "赖茅" even if the registration of such trademark was repealed. The use of Guizhou Laishijia before Guizhou Maotai filed the registration in 2006 actually infringed the exclusive rights of Guizhou Maotai on the label "赖茅".

[25] Ningbo Shi Qinghua Qiye Youxian Gongsi Yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui, Shanghai Shi Fangda (Beijing) Lvshi Shiwusuo Shangbiao Chexiao Fushen Xingzheng Jiufen An (宁波市青华漆业有限公司与国家工商行政管理总局商标评审委员会、上海市方达(北京)律师事务所商标撤销复审行政纠纷案) [*Ningbo Qinghua Paint Co., Ltd. v. the Trademark Review and Adjudication Board of State of Administration for Industry & Commerce and Shanghai Fangda (Beijing) Law Firm*], IP ADMINISTRATIVE RETRIAL NO. 255 (Sup. People's Ct. 2015). Qinghua owns the trademark "B 及图". In 2010, Fangda Law Firm initiated a trademark repeal proceeding in the Trademark Office on the ground that Qinghua has not used the trademark continuously for three years, but it was denied. Fangda Law Firm appealed to the Trademark Board, and the Trademark Board found for Fangda Law Firm. Qinghua then filed a lawsuit against the TRBA's decision to Beijing Intellectual Property Court. The trial court found for Qinghua. The Trademark Board then appealed to Beijing High People's Court, and the decision of the trial court was reversed. Qinghua then moved for retrial by the SPC, which was denied. The SPC held that the term "use," under the principle of registered trademark that has not been used for three years, should be limited to the products under its registered scope. The SPC further noted that even though Qinghua provided enough evidence to prove that the reviewing trademark was in use, such use was not for the products within the Second Category, the scope that the trademark was registered for, and therefore, the reviewing trademark should be repealed.

[26] Cheng Chao Yu Tongyong Mofang Shiping Yazhou Youxian Gongsi, Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui Shangbiao Chexiao Xingzheng Jiufen An (成超与磨坊食品亚洲有限公司、国家工商行政管理总局商标评审委员会商标撤销行政纠纷案) [*Cheng Chao v. Tongyong Mill Food Asia Co., Ltd. and Trademark Review and Adjudication Board of State of Administration for Industry & Commerce*], IP ADMINISTRATIVE RETRIAL NO. 181 (Sup. People's Ct. 2015). Third party Zhongshan Shi Bainiao Guichao Hotpot Restaurant registered the trademark "湾仔码头" in 2000. Then the trademark "湾仔码头" was transferred to the plaintiff Chen Chao on August 13, 2009. On August 21, 2009, the defendant Tongyong Mofang initiated a trademark repeal proceeding in the Trademark Office on the ground of the trademark had not been used continuously for three years, and it was granted. Cheng Chao appealed this decision to the Trademark Review Board, and it affirmed the Trademark Office's decision. Cheng Chao then filed a lawsuit against Tongyong Mofang and the Trademark Review Board ng Mofang then appealed to Beijing High People's Court, and the appeal court reversed the trial court's decision. Cheng Chao then moved retrial by the SPC, which the SPC denied. The SPC held that it is not the "use of a trademark" under the trademark law if there is no actual use, such as merely executing a trademark transfer, permitting to use the trademark, publishing trademark information, or making statement regarding the exclusive right to the trademark. If there is only symbolical use of the disputed trademark for sustaining purpose, it does not constitute the actual "use of a trademark." The SPC further noted that the evidence provided by Cheng Chao showed that only symbolical use existed and Cheng Chao did not have intention of actual use.

[27] Ma Qi Yu Leshan Shi Wenhua Guangbo Yingshi Xinwen Chubanju, Tang Changshou Zhuzuoquan Quanshu, Qinhai Zhuzuoquan Jiufen An (马琦与乐山市文化广播影视新闻出版局、唐长寿著作权权属、侵害著作权纠纷案) [*Ma Qi v. The Radio and Television Press and Publication Bureau of Leshan City and Tang Changshou*], CIVIL RETRIAL NO. 1665 (Sup. People's Ct. 2015). Ma Qi engaged into an archaeological relic census in Leshan City, and Ma Qi prepared various tabular forms regarding the archaeological relic census in Leshan City (Tabular Forms). Then Ma Qi submitted the Tabular Forms to the Culture Bureau of Leshan City, and then the Tabular Forms were submitted to the Archaeological Relic Census Office of Sichuan Province. In 2008, in order to organize and summarize the results of the archaeological relic census, the State Archaeological Relic Bureau edited and the Archaeological Relic Press Bureau published <Atlas of Chinese Archaeological Relic>. The <Atlas of Chinese Archaeological Relic: Sichuan Fascicule> includes the Tabular Forms. Thus, Ma Qi brought a copyright infringement lawsuit to Sichuan Leshan City Intermediate People's Court, but it was denied. Ma Qi then appealed to the Sichuan High People's Court, and the appeals court affirmed the trial court's decision. Ma Qi then moved for retrial by the SPC, and the SPC

affirmed the appeals court's decision. The SPC held that the originality shall be reflected in the expression rather in ideas or opinions, and the originality of expression shall be completed by author independently and be different from the previous expression. The SPC further noted that even though the Tabular Forms was a creative work by Ma Qi, the contents of Tabular Forms are expressed in a relatively fixed way, and therefore, there is no originality contained.

[28] Beijing Jinse Licheng Wenhua Yisu Youxian Gongsi Yu Shanghai Jinxin Yingshi Fazhan Youxian Gongsi, Li Xiaojun, Li Xiuwen Qinhai Zhuzuoquan Jiufen An (北京金色里程文化艺术有限公司与上海晋鑫影视发展有限公司、李晓军、李文秀侵害著作权纠纷案) [*Beijing Jinse Licheng Culture Art Co., Ltd. v. Shanghai Jinxin Film Development Co., Ltd, Li Xiaojun, and Li Wenxiu*], CIVIL RETRIAL NO. 131 (Sup. People's Ct. 2015). In 2006, Jinse Licheng and Jinxi entered a Joint Production Agreement. The agreement states that parties shall produce a TV drama named "天情" jointly, the parties are the co-owners of such TV drama, and without the consent of the other party, any party shall not transfer or pledge any property, asset, and intellectual property on such TV drama. In 2007, Jinse Licheng pledged the right to use the TV drama "天情" to a third party Zhongtian Co., Ltd. Later, Jinse Licheng transferred Zhongtian Co., Ltd. the copyright, the right to use, publication of the TV drama "天情" and the original digital tape (including production license and publication license). Jinxin then brought a copyright infringement suit against Jinse Licheng to Jiangsu Wuxi Intermediate People's Court, and the trial court found for Jinxin. Jinse Licheng appealed to Jiangsu High People's Court, which affirmed the trial court's decision. Jinse Licheng then moved for retrial by the SPC, which was denied. The SPC held that transfer and pledge are material actions to a copyright, and Jinse Licheng conducted above actions without Jinxin's consent, which has violated the copyright law and the Joint Production Agreement between the parties. In addition, Jinse Licheng's actions caused Jinxin to lose its rights on the TV drama "天情", constituting a copyright infringement to Jinxin.

[29] Xinfa Yaoye Youxian Gongsi Yu Yifan Xinfu Yaoye Gufen Youxian Gongsi, Jiang Hongmei, Ma Jifeng Qinhai Shangye Mimi Jiufen An (新发药业有限公司与亿帆鑫富药业股份有限公司、姜红梅、马吉锋侵害商业秘密纠纷案) [*Xinfa Pharmaceutical Co., Ltd. v. Yifan Xinfu Pharmaceutical Co., Ltd*.], CIVIL RETRIAL NO. 2035 (Sup. People's Ct. 2015). Xinfu is a corporation whose principle business is producing D-Pantothenic Acid and claimed the ownership of a trade secret with respect to the production method of D-Pantothenic Acid (Xinfu Trade Secret). In the first trial and the appeal trial, the courts made decisions based on the scope of Xinfu Trade Secret provided by Xinfu itself. Both trial court and appellate court found for Xinfu. Xinfa, the defendant, then moved for retrial by the SPC, but it was denied. The SPC held that in a trade secret disputing case, the plaintiff must identify scope of the disputing trade secret first, which is different from any other intellectual property cases. In addition, the court shall make decision based on the scope identified by the plaintiff.

[30] Shijiazhuang Shuanghuan Qiche Gufen Youxian Gongsi Yu Bentian Jiyan Gongye Zhushihuishe Queren Bu Qinhai Zhuanliquan, Sunhai Peichang Jiufen An (石家庄双环汽车股份有限公司与本田技研工业株式会社确认不侵害专利权、损害赔偿纠纷案) [*Shijiazhuang Shuanghuan Automobile Co., Ltd. v. Honda Motors Co., Ltd.*], THIRD CIVIL COURT FINAL NO. 7 (Sup. People's Ct. 2014). Honda owns the design "汽车" (Honda Design). Since 2003, Honda sent warnings to Shuanghuan repeatedly on the ground of Shuanghuan manufacture and sell the automobile "LAIBAO S- RV" which infringed upon Honda Design. Further, in November 2003, Honda brought a lawsuit against Shuanghuan to Beijing High People's Court. On October 16, 2003, Shuanghuan brought a lawsuit against Honda to Hebei Shijiazhuang Intermediate People's Court, seeking a declaration by the court that the manufacture and sale of "LAIBAO S-RV" does not infringe Honda Design (Declaration Suit). In the meantime, Shuanghuan initiated a design patent invalid proceeding to the Patent Re-examination Board of SIPO (hereinafter "the Board"), which was granted. Honda then appealed this decision to Beijing First Intermediate People's Court and Beijing High People's Court. Both courts affirmed the decision of the Board. Honda then moved for retrial by the SPC, and SPC remanded the decision with respect to the invalid of Honda Design. In addition, the SPC indicated that the Declaration Suit shall be moved to Hebei High People's Court. During the trial, Shuanghuan argued that due to various warnings provided by Honda, Shuanghuan ceased manufacturing, postponed marketing, and improved designs of "LAIBAO S-RV," which cost the losses on the amount of RMB365,740,000. However, on February 19, 2014, Hebei High People's Court found that Shuanghuan does not infringe Honda Design and Honda shall compensate Shuanghuan RMB50,000,000. Both parties appealed the decision to the SPC. The SPC affirmed that Shuanghuan does not infringe Honda Design, and further reversed the compensation amount to RMB160,000,000. The SPC held that issuing infringement warnings is a basic right of a patent holder, and the laws do not prohibit issuing such warnings because it could reduce costs, enhance efficiency, and save judicial resources. Ceasing manufacturing, postponing marketing, and improving designs after

receiving infringement warnings are those decisions made under ordinary business risk, and Shuanghuan shall bear such risks by themselves.

[31] *Id.*

[32] Guangzhou Xinghewan Shiye Fazhan Youxian Gongsi, Guangzhou Hongfu Fangdichan Youxian Gongsi Yu Jiangsu Weifu Jituan Jianshe Kaifa Youxian Gongsi Qinhai Shangbiaoquan ji Buzhengdang Jingzhen Jiufen An (广州星河湾实业发展有限公司、广州宏富房地产有限公司与江苏炜赋集团建设开发有限公司侵害商标权及不正当竞争纠纷案) [*Guangzhou Xinghewan Development Co., Ltd, Guangzhou Hongfu Real Estate Co., Ltd. v. Su Weibing Group Construction Development Co., Ltd.*], CIVIL RETRIAL NO. 102 (Sup. People's Ct. 2013). Hongfu registered an image trademark "星河湾", and later such trademark was transferred to Xinghewan. Hongfu retained the right to use the trademark and was entitled to bring trademark infringement lawsuit. Hongfu and its affiliated companies invested various estate programs under the name of "星河湾" in Guangzhou, Beijing, and Shanghai. Since 2000, Jiangsu Weifu invested various estate program in Nantong City named "星河湾花园". Xinghewan and Hongfu then brought a lawsuit against Jiangsu Weifu claiming trademark infringement and unfair competition because the name of its estate program contained the term "星河湾". The trial court, Jiangsu Nantong Intermediate People's Court, found for Jiangsu Weifu and denied both claims. On the appeal, the appeal court, Jiangsu High People's Court, affirmed the trial court's decision. The plaintiffs, Xinghewan and Hongfu, then moved for retrial by the SPC. The SPC reversed decisions of the trial court and the appeal court, and further granted claim of trademark infringement, but it denied the claim of unfair competition. The SPC held that Suzhou Weifu started using the name "星河湾" since 2000, which was prior to the use by the plaintiffs, the prior use did not constitute unauthorized "use" of the name of other's entity as long as it was in good faith, and therefore, the claim of unfair competition is not supported.

[33] Shandong Denghai Xianfeng Zhongye Youxian Gongsi Yu Shanxi Nongfeng Zhongye Youxian Zeren Gongsi, Shanxi Dafeng Zhongye Youxian Gongsi Qinhai Zhiwu Xinpingzhong Jiufen An (山东登海先锋种业有限公司与陕西农丰种业有限责任公司、山西大丰种业有限公司侵害植物新品种权纠纷案) [*Shandong Denghai Xianfeng Seed Industry Co., Ltd. v. Shanxi Nongfeng Seed Industry Co. Ltd. and Shanxi Dafeng Seed Industry Co., Ltd.*], CIVIL RETRIAL NO. 2633 (Sup. People's Ct. 2015). Xianfeng International Seed Co., Ltd. ("Xianfeng") is the right holder of a corn seed "先玉 335" ("Xianyu 335"), and Denghai was granted the right to bring new varieties of plant infringement lawsuit. The disputing product was another corn seed "大丰 30" ("Dafeng 30"), which was produced and marketed by the defendants, Nongfeng and Dafeng. Plaintiff, Xianfeng, argued that according to a DNA test, two types of corn seeds, "Xianyu 335" and "Dafeng 30," are similar. However, the defendants submitted the DUS Report issued by Ministry of Agriculture, pursuant to which the corn seed "Dafeng 30" obtains particularity, conformity and stability, and therefore, those two types are not similar. The trial court, Shanxi Xi'an Intermediate People's Court, found for the defendant. The plaintiff, Xianfeng, then appealed to Shanxi High People's Court, which affirmed the trial court's decision. The plaintiff then moved for retrial by the SPC, which was later denied.

[34] Angbao Dianzi (Shanghai) Youxian Gongsi Yu Nanjing Zhipu Xinlian Dianzi Keji Youxian Gongsi, Shenzhen Sailing Maoyi Youxian Gongsi, Shenzhenshi Xinkunjia Keji Youxian Gongsi Qinhai Jicheng Dianlu Butu Sheji Zhuanyouquan Jiufen An (昂宝（上海）有限公司与南京智浦芯联科技有限公司、深圳赛灵贸易有限公司、深圳市梓坤嘉科技有限公司侵害集成电路布图设计专有权纠纷案) [*Angbao Electronics (Shanghai) Co., Ltd. v. Nanjing Zhipu Xinlian Electronic Technology Co., Ltd., Shenzhen Sailing Trading Co., Ltd. and Shenzhen Zikunjia Technology Co., Ltd.*], CIVIL RETRIAL NO. 785 (Sup. People's Ct. 2015). The plaintiff, Angbao, owns a registered layout design of integrated circuits named "OB2535/6/8," which had been used for commercial purpose before the registration. For the registration, Angbao submitted and disclosed the sample and drawings of the integrated circuits. The submitted drawings consist only two portions, "Metal-1" and "Metal-2." Angbao brought a lawsuit against Nanjing Xinlian and Shenzhen Sailing on the grounds of unauthorized copy and commercial use of the integrated circuits, and against Shenzhen Zikunjia on the grounds of unauthorized commercial use of the integrated circuits. The trial court, Nanjing Intermediate People's Court, and the appellate court, Jiangsu High People's Court, both rejected the claims. Angbao then moved for retrial by the SPC, which was later denied. The SPC held that the right holder should submit the duplicated copy and drawings of the integrated circuits for registration purposes, whether or not such integrated circuits were commercially used prior to the registration. In addition, after the integrated circuits were registered, the public shall be entitled to access the submitted duplicated copy and the drawings, and therefore, the court may not deny the essentiality of the duplicated copy and the drawings. It is unfair if the court determines the protection scope of the registered integrated circuits on the basis of samples. The SPC

further pointed out that the sample and drawings disclosed by Angbao may not identify its integrate circuit precisely, and therefore, the protection scope shall be limited to what Angbao submitted at the registration.

[35] Dandong Kelong Jituan Youxian Zeren Gongsi Y u Jiangxi Huadian Dianli Youxian Zeren Gongsi Queren Buqinhai Shangye Mimi Jiufen An (丹东克隆集团有限责任公司与江西华电电力有限责任公司确认不侵害商业秘密纠纷案) [*Dandong Colossus Group Co., Ltd. v. Jiangxi Huadian Electronic Co., Ltd.*], CIVIL RETRIAL NO. 628 (Sup. People's Ct. 2015). Jiangxi Huadian issued infringement warnings to Dandong Clone and its clients claiming the business activities of Dandong Clone has infringed its trade secret. Dandong Clone then brought a lawsuit against Jiangxi Huadian, requesting the court to declare there was no trade secret infringement exists. The trial court, Liaoning Dandong Intermediate People's Court, found for the plaintiff. However, the appellate court, Liaoning High People's Court, reversed the decision and held that since the plaintiff may not specify the disputing trade secret, the court lacks subject matter jurisdiction for declaring non-infringement. Dandong Clone then moved for retrial by the SPC, and the SPC remanded the appellate court's decision and ordered retrial by Liaoning High People's Court. The SPC held that even if the plaintiff, Dandong Clone, initially raised the lawsuit, the defendant, Jiangxi Huadian, shall bear the burden of proof that the plaintiff infringed its trade secret. If Jiangxi Huadian refuses to specify the content of trade secret, it will not affect the acceptance of the court to hear the case.

[36] Dong Jianfei Yu Wu Shuxiang, Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuanhui Waiguan Sheji Zhuanliquan Wuxiao Xingzheng Jiufen An (董健飞与吴树祥、国家知识产权局专利复审委员会外观设计专利权无效行政纠纷案) [*Dong Jianfei v. Wu Shuxiang and Patent Re-examination Board of SIPO*], IP ADMINISTRATIVE RETRIAL NO. 61 (Sup. People's Ct. 2015). Dong Jianfei is the right holder of a design patent named "水晶烫钻模具(5)." Wu Shuxiang initiated a design patent invalid process to the Patent Re-examination Board of SIPO (hereinafter "the Board"), claiming that the disputing design patent has been published on the internet before its registration, and provided a notarized website page as evidence, however, the Board rejected this motion and affirmed the validity of the disputing design patent. Wu Shuxiang then appealed this decision to Beijing First Intermediate People's Court. The trial court found for Wu Shuxiang because the website date was created by computer automatically and the website holder shall not be able to change such date, and therefore, the evidence would be enough to prove that the patent design was published before registration. The Board and Dong Jianfei then appealed the trial court's decision to Beijing High People's Court, and the appellate court affirmed the trial court's decision. Dong Jianfei then moved for retrial by the SPC. The SPC denied the motion and held that the judgment of the trial court stands.

[37] Guangdong Huaren Tuliao Youxian Gongsi Yu Jiangsu Daxiang Dongya Zhiqi Youxian Gongsi, Wu Xuechun Buzhengdang Jingzheng Jiufen An (广东华润涂料有限公司与江苏大象东亚制漆有限公司、吴雪春不正当竞争纠纷案) [*Guangdong Huarun Paint Co., Ltd. v. East Asia Elephants Paint Co., Ltd. and Wu Xuechun*], CIVIL RETRIAL NO. 196 (Sup. People's Ct. 2014). The plaintiff, East Asia Elephants Paint, uses a specified packaging decoration on its products. East Asia Elephants Paint brought a lawsuit against Guangdong Huaren on the ground of unauthorized use of similar packaging decoration. The trial court, Jiangsu Suzhou Intermediate People's Court, found for the plaintiff. Guangdong Huarun and Wu Xuechun then appealed the decision to Jiangsu High People's Court, and the trial court's decision was affirmed. Guangdong Huarun then moved for retrial by the SPC. During the retrial, the SPC found that East Asia Elephants Paint forged certain evidences. As a result, the SPC repealed the decisions by both trial court and appellate court, and denied all of East Asia Elephants Paint's complaints.

[38] *See* supra note 32.