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The Supreme People's Court Annual Report on Intellectual Property Cases (2017) (China)

Ida L. Knox

Ruixiang (Ray) Xu

Weichen Zhu

THE SUPREME PEOPLE'S COURT ANNUAL REPORT ON INTELLECTUAL PROPERTY CASES (2017) (China)

Translated by Ida L. Knox, Ruixiang (Ray) Xu, and Weichen Zhu[†]

Abstract: The Supreme People's Court of China began publishing its Annual Report on Intellectual Property Cases in 2008. The Annual Report summarizes intellectual property cases, such as patent, trademark, trade secrets, copyright, and unfair competition cases. This 2017 Annual Report examines 42 cases and includes general guidelines for legal application. This summary reflects the Supreme People's Court's thoughts and approaches for ruling on new and complex IP and competition cases.

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I. INTRODUCTION

In 2017, the Intellectual Property (IP) Division of the Supreme People's Court accepted a total of 897 new IP cases. Among the new cases, there were 15 second-trial cases, 56 review cases, 796 retrial cases, 29 appeal cases, and 1 reconsideration case.

When categorized by type of object involved in the cases, there were 336 patent cases, 9 new variety of plant cases, 395 trademark cases, 29 copyright cases, 1 integrated circuit layout design case, 4 monopoly cases, 11 trade secrets cases, 14 other unfair competition cases, 57 IP contract cases, and 41 other cases (mainly related to IP trial matters). When categorized by the nature of the cases, there were 390 administrative cases, of which 68 were administrative patent cases, 268 administrative trademark cases, 9 administrative guidance cases, and 5 other administrative cases. There were a total of 501 civil cases, 5 criminal cases, and 1 reconsideration case.

The IP Division tried and closed 910 IP cases in total, including 13 second trial cases, 58 review cases, 808 retrial cases, 30 instruction cases, and 1 reconsideration case. Among the 808 retrial cases, there were 366 administrative retrial cases, 442 civil retrial cases. The IP Division rejected

[†] Ida L. Knox, J.D. candidate 2020, University of Washington School of Law; Ruixiang (Ray) Xu, J.D. candidate 2020, University of Washington School of Law; Weichen Zhu, J.D. candidate 2020, University of Washington School of Law. Special thanks to Carl Peterson, J.D. candidate 2020, University of Washington School of Law, who provided reviews of the translations, and *Washington International Law Journal's* Chief Translation Editor, Samuel Kim, J.D. candidate 2019, for editing the piece for publication.

615 retrial cases, reviewed 98 cases, retried 66 cases, and withdrew 22 cases (including reconciliation). There were 7 cases that the IP Division decided to settle in alternative ways.

The characteristics and trends of the cases handled by the SPC in 2017 are as follows:

1. The proportion of IP cases related to patents and trademarks still has remained the highest. The number of patent civil cases and trademark administrative cases have increased;
2. Distinguishing of technical features and interpretation of claims are still the core controversy in most administrative civil cases. Moreover, related cases involving disputes over the inventor's reward of job-related invention or creation and compensation accounted for a large proportion of cases;
3. Evaluation of novelty and creativity is still the core controversy in most patent administrative cases;
4. Administration enforcement cases of patents primarily included illegal procedure issues, and the judicial supervision function of administration enforcement was constantly strengthened;
5. In trademark civil cases, legitimate use, legal source, and priority right became the prevailing reasons for defense;
6. Trademark similarity, similar commodities, and protection of prior rights were still the main focuses of administration cases for trademarks. The number of copyright cases has declined, and the originality judgment remains the main focus and difficulty in the cases;
7. In competition-related cases, disputes over infringement of commercial secrets, unauthorized use of special names of famous commodities, and packaging and upholstery accounted for a relatively large proportion. Trial of competition-related cases played a more prominent role in guiding the order of market competition order;
8. Antitrust cases accounted for a relatively small proportion. Identification of the relevant market and whether the operator had a dominant market position remain as the prime areas of debate for the courts;
9. Cases involving new varieties of plants have increased, mainly regarding the identification of infringement in transactions and the comparison of the types of infringement;

10. Breach of contracts and rescission of contracts are prominent in cases of technical contracts and disputes over franchise contracts.

The following are 33 legal issues significant to the field of IP in China. They were published in the 2017 Supreme People's Court Annual Report on Intellectual Property Cases.

I. PATENT CASES

A. Civil Patent Cases

1. The impact of statements in the confirmation process of other patents made by the parties who share the joint rights of the patent at issue

In *Dyson Technology Limited v. Suzhou Su-vac Electric Motor Co., Ltd.*,[1] the SPC held that the definition in the confirmation process of claims can be interpreted by using the statement in the confirmation process of other patents made by the parties who share the joint rights of the patent at issue.

2. Restrictions on applying estoppel in patent infringement cases

In *Cao Guilan v. Chongqing Lifan Automobile Sales Co., Ltd.*,[2] the SPC held that courts need to consider whether the statement made by the parties conforms to the "clear denial" provided in Article 13 of "the SPC's interpretation (II) on several issues concerning the application of law in the patent infringement case," when applied to estoppel in patent infringement cases. Courts shall make an objective and comprehensive judgment of the technical features in the authorization and confirmation process. Courts shall focus on whether the statements shall be confirmed and whether it will lead to the confirmation or support of the patent right at issue.

3. The standard of defining the technical features in patent infringement cases

In *Liu Zonggui v. Taizhou Fenglilai Plastic Co., Ltd.*,[3] the SPC held that the appropriate division of the technical characteristics of the patent rights was the basis for the comparison of the infringement. The division of technical characteristics should be combined with the overall technical scheme of the invention,

一、专利案件审判

（一）专利民事案件审判

1. 当事人在与涉案专利享有共同优先权的其他专利的授权确权程序中所作意见陈述的参考作用

在再审申请人戴森技术有限公司与被申请人苏州索发电机有限公司侵害发明专利权纠纷案【（2017）最高法民申 1461 号】中，最高人民法院指出，在确定权利要求用语含义时，同一专利申请人或专利权人在与涉案专利享有共同优先权的其他专利的授权确权程序中，对该相同用语已经作出了明确陈述的，可以参考上述陈述。

2. 专利侵权案件中适用禁止反悔原则的限制条件

在再审申请人曹桂兰、胡美玲、蒋莉、蒋浩天与被申请人重庆力帆汽车销售有限公司等侵害发明专利权纠纷案【（2017）最高法民申 1826 号】中，最高人民法院指出，人民法院在专利侵权案件中适用禁止反悔原则时，判断权利人作出的意见陈述是否符合《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释(二)》第十三条规定的"明确否定"，应当对专利授权和确权阶段技术特征的审查进行客观全面的判断，着重考察权利人对技术方案作出的限缩性陈述是否最终被裁判者认可，是否由此导致专利申请得以授权或者专利权得以维持。

3. 专利侵权判断中权利要求技术特征的划分标准

在再审申请人刘宗贵与被申请人台州市丰利莱塑胶有限公司侵害实用新型专利权纠纷案【（2017）最高法民申 3802 号】中，最高人民法院指出，恰当划分专利权利要求的技术特征是进行侵权比对的基础。技术特征的划分应该结合发明的整体技术方案，考虑能

taking into consideration the small technical units that could achieve technical functions and produce technical effects independently.

够相对独立地实现一定技术功能并产生相对独立的技术效果的较小技术单元。

4. Parts with only technical functions do not constitute infringement of appearance designs

4. 仅具有技术功能的零部件不构成外观设计侵权

In *Ou Jieren v. Taizhou Jinshen Household Articles Co., Ltd.*,[4] the SPC held that the production of, use as an infringing part in other products, and sale of an infringing part, does not constitute infringement, if such part only has technical functions in other products.

在再审申请人欧介仁与被申请人泰州市金申家居用品有限公司侵害外观设计专利权纠纷案【（2017）最高法民申 2649 号】中，最高人民法院指出，将侵犯外观设计专利权的产品作为零部件，制造另一产品并销售的，如零部件在另一产品中仅具有技术功能，该行为不构成侵权。

5. The manufacturing act in the patent infringement cases

5. 专利侵权案件中制造行为的认定

In *Shenyang China Railway Safety Device Co., Ltd. v. The Research Center of Speed Control System of Retarder of Harbin Railway Bureau and Ningbo China Railway Safety Device Manufacturing Co., Ltd.& Harbin Railway Bureau*,[5] the SPC held that, even though the accused had not directly participated in manufacturing the alleged infringed product, it could be presumed that the accused had committed the manufacturing act of infringement, if the accused controls of the manufacturing act of others or marks the name of the accused's enterprise and exclusive product model on the finished products.

在再审申请人沈阳中铁安全设备有限责任公司与被申请人哈尔滨铁路局减速顶调速系统研究中心、宁波中铁安全设备制造有限公司及一审被告哈尔滨铁路局侵害实用新型专利权纠纷案【（2017）最高法民再 122 号】中，最高人民法院指出，被诉侵权人虽未直接制造被诉侵权产品，但根据其对他人制造行为的控制、最终成品上标注的被诉侵权人企业名称和专属产品型号等因素，可以推定被诉侵权人实施了制造行为。

6. The non-shape or structure-type technical characteristics of utility models patents are not considered in principle when determining the plea of existing technology

6. 实用新型专利的非形状构造类技术特征在认定现有技术抗辩时原则上不予考虑

In *Tan Xining v. Zhenjiang New Area Hengda Silica Gel Co., Ltd.*,[6] the SPC held that the object of utility model patents is to protect the shape, structure, and the combination of both of an invention. Thus, in a claim, the non-shape or structure-type technical characteristics do not contribute to the novelty and creativity of the claim. Moreover, in a patent infringement case

在再审申请人谭熙宁与被申请人镇江新区恒达硅胶有限公司侵害实用新型专利权和外观设计专利权纠纷案【（2017）最高法民申 3712 号】中，最高人民法院指出，实用新型专利的保护对象是由形状、构造及其结合所构成的技术方案，故权利要求中非形状构造类技术特征对于该权利要求的新颖性和创造性不产生贡献。因此，在实用新型专利侵

of utility models, whether the existing technology discloses non-shape or structure-type technical characteristics recorded by the claim will not be considered in principle when determining the claimed infringement belongs to existing technology.

权案件中，现有技术抗辩的认定原则上不考虑现有技术是否公开了权利要求记载的非形状构造类技术特征。

B. Patent Administrative Cases

（二）专利行政案件审判

7. Identifying and handling procedural violation in patent administration enforcement

7. 专利行政执法中程序违法的认定和处理

In *Xixia Longcheng Special Type Material Co. v. Yulin Municipal Intellectual Property Office*,[7] the SPC held that the action of signing the administrative decision, regarding administrative panel members who have already been subject to adjustment, severely violated the legal procedure. The administrative decision panel, should constitute those who are certified in enforcing patent administrative law from the Patent Administrative Agency. The enforcement staffs enlisted from other places are required to complete a formal documentation process.

在再审申请人西峡龙成特种材料有限公司与被申请人榆林市知识产权局、陕西煤业化工集团神木天元化工有限公司专利侵权纠纷行政处理案【（2017）最高法行再 84 号】中，最高人民法院指出，已经被明确变更的合议组成员又在被诉行政决定书上署名，实质上等于“审理者未裁决、裁决者未审理”，构成对法定程序的严重违反。原则上，作出被诉行政决定的合议组应由该行政机关具有专利行政执法资格的工作人员组成。即使异地调配执法人员，也应当履行正式、完备的公文手续。

8. Determining the commencement point of the statute of limitations for an administrative appeal

8. 行政诉讼起诉期限起算点的确定

In *Beijing Tailong Automatic Equipment Co., Ltd., v. WANG Yu and Henan Provincial Intellectual Property Office*,[8] the SPC held that the statute of limitations should be calculated from the day when specific administrative acts are known, should have been known, or such acts are made, instead of the day when such acts are known or should have been known as illegal.

在再审申请人北京泰隆自动化设备有限公司、王宇与被申请人河南省知识产权局其他行政纠纷案【(2017)最高法行申 2778 号】中，最高人民法院指出，行政诉讼的起诉期限从知道或者应当知道具体行政行为内容之日、或者具体行政行为作出之日起计算，而非从知道或者应当知道具体行政行为违法之日起计算。

9. Determining whether a patent specification is complete

9. 说明书是否清楚完整的认定

In *Staubli Faverges Co. v. Changshu Textile Machinery Factory Co. and the Patent Review Board of State Intellectual Property Office*,[9] the SPC held that in order to determine if a patent

在再审申请人斯托布利—法韦日公司与被申请人常熟纺织机械厂有限公司,一审被告、二审被上诉人国家知识产权局专利复审委员会发明专利权无效行政纠纷案【（2016）最

specification is clear and complete, one should look to see if technicians in the field can understand and carry out technical solutions. If the technicians in the field can understand, discover, and rectify mistakes when reading the disclosed contents of the patent specification and the understanding and rectification will not lead to a change of technical solutions mentioned in the claim, then the mistakes are allowed to be corrected.

高法行再 95 号】中，最高人民法院指出，判断专利说明书是否清楚、完整，应当以本领域技术人员是否理解技术方案并能够实现作为判断标准。如果本领域技术人员在阅读说明书公开的内容时，即能理解、发现并更正其错误，且该理解和更正并不会导致权利要求的技术方案发生变化，则应当允许对专利说明书中存在的错误予以更正理解。

10. Determining whether a claim of right is based on the patent specification

10. 权利要求是否以说明书为依据的认定

In *Sensing Electronics Co. v. Patent Review Board of State Intellectual Property Office, and Ningbo Xunqiang Signatronic Technology Co.*,[10] the third party in the first trial (referred to as an administrative dispute over invalid invention patent on Electronics Monitoring Indicator), the SPC held that the owner of the patent is entitled to draft the claim in a reasonably summarized manner in order to obtain reasonable protection of the patent. The protection scope requested by the claim should be consistent with the technical contribution of the patent involved as well as the scope of the fully disclosed part of the specification.

在再审申请人传感电子有限责任公司与被申请人国家知识产权局专利复审委员会、一审第三人宁波讯强电子科技有限公司发明专利权无效行政纠纷案（简称“电子货品监视用标识器”发明专利权无效行政纠纷案）【（2016）最高法行再 19 号】中，最高人民法院指出，权利人有权在说明书充分公开的具体实施方式等内容的基础上，通过合理概括的方式撰写权利要求，以获得适度的保护范围。权利要求限定的保护范围应当与涉案专利的技术贡献和说明书充分公开的范围相适应。

11. Determining whether the claim is based on the patent specification

11. 在认定权利要求是否以说明书为依据时涉案专利所要解决的技术问题的确定

In the preceding “*Sensing*” case,[11] the SPC held that, in patent specification claims, several factors will be considered when ascertaining the type of technical problems the patent intends to solve and the technical effects the patent intends to achieve. These factors are: (1) the background techniques described and its shortcomings in the specification, (2) “invention purposes,” (3) “technical problems to be solved” and “beneficial effects” in Contents of the Invention, (4) the relevant contents related to the “technical problems,” and (5) “beneficial effects” in the specific implementation methods. However, the technical problems redefined by

在前述“电子货品监视用标识器”发明专利权无效行政纠纷案中，最高人民法院指出，在认定权利要求是否以说明书为依据时，可以结合说明书中记载的背景技术及其存在的缺陷，发明内容中记载的“发明目的”“所要解决的技术问题”“有益效果”，以及具体实施方式中与“技术问题”“有益效果”相关的内容等，对涉案专利所要解决的技术问题和实现的技术效果进行认定。
根据权利要求与“最接近的现有技术”的区别技术特征所重新确定的“实际解决的技术问题”可能不同于涉案专利所要解决的技术问题，不能直接作为认定权利要求是否以说明书为依据的基础。

the distinguishing technical characteristics of the technology "actually to be solved" cannot be directly used as a factor.

12. Determining whether the claim is based on the patent specification and whether the claim is original

In the preceding "*Sensing*" case,[12] the SPC held that even if the claims are original, for each technology, including the distinguishing technical characteristics recorded therein, the court has discretion in deciding whether the characteristics are correctly summarized and whether the technical solutions defined in the claims are generally summarized as appropriate, in accordance with the Patent Law, Article 26, Paragraph 4.

12. 权利要求是否以说明书为依据与该权利要求是否具有创造性的关系

在前述“电子货品监视用标识器”发明专利权无效行政纠纷案中，最高人民法院指出，即使权利要求具备创造性，对于其中记载的包括区别技术特征在内的各项技术特征是否概括适当，以及权利要求限定的技术方案整体上是否概括适当，仍然需要根据专利法第二十六条第四款的规定进行认定。

13. The nature of Markush Claims

In *Patent Reexamination Board of the State Intellectual Property Office v. Beijing Wansheng Pharmaceutical Co., Ltd.* (referred to as "Markush Claims" case),[13] the SPC held that the compound claims written in the form of Markush should be understood as a general technical plan, instead of a numerous collection of compounds.

13. 马库什权利要求的性质

在再审申请人国家知识产权局专利复审委员会与被申请人北京万生药业有限责任公司、一审第三人第一三共株式会社发明专利权无效行政纠纷案（简称“马库什权利要求”专利无效行政纠纷案）【(2016)最高法行再41号】中，最高人民法院指出，以马库什方式撰写的化合物权利要求应当被理解为一种概括性的技术方案，而不是众多化合物的集合。

14. The modifying principles of Markush Claims in invalid procedures

In the preceding "*Markush Claims*" case,[14] the SPC held that the modification of compounds based on Markush claims are not allowed if the modification creates one type of or one single compound with new properties and effects. Moreover, courts should make the decision on a case by case basis.

14. 马库什权利要求在无效程序中的修改原则

在前述“马库什权利要求”专利无效行政纠纷案中，最高人民法院指出，允许对马库什权利要求进行修改的原则应当是不能因为修改而产生具有新性能和作用的一类或单个化合物，但是同时也要充分考量个案因素。

15. The determination on creativity of Markush Claims

15. 马库什权利要求的创造性判断方法

In the preceding "*Markush Claims*" case,[15] the SPC held that when judging the creativity of compound claims written in Markush representation, the "three-step method," specified in the patent examination guidelines, should be followed. The unexpected technical effect is an auxiliary factor for judging creativity. Moreover, it is usually not appropriate to directly apply the "three-step method" in order to determine whether a patent is original.

在前述"马库什权利要求"专利无效行政纠纷案中，最高人民法院指出，以马库什方式撰写的化合物权利要求的创造性判断应当遵循创造性判断的基本方法，即专利审查指南所规定的"三步法"。意料不到的技术效果是创造性判断的辅助因素，通常不宜跨过"三步法"直接适用具有意料不到的技术效果来判断专利申请是否具有创造性。

16. Distinguishing technical features in invalidity of design patent cases

16. 外观设计专利权无效案件中区别技术特征的认定

In *YKK Co., Ltd. v. Patent Reexamination Board of the State Intellectual Property Office*,[16] the SPC held that if the main view of the exterior design patent does not have any clearly displayed feature in the 3D format, the feature cannot be considered as a distinctive technical feature of the design patent at issue when compared to a similar design.

在再审申请人 YKK 株式会社与被申请人国家知识产权局专利复审委员会、一审第三人理想（广东）拉链实业有限公司、开易（广东）服装配件有限公司外观设计专利权无效行政纠纷案【（2016）最高法行申 3687 号】中，最高人民法院指出，对于在外观设计专利主视图中没有任何体现，且立体图无清晰显示的特征，不构成外观设计专利与对比设计的区别技术特征。

II. TRADEMARK CASES

二、商标案件审判

A. Civil Trademark Cases

（一）商标民事案件审判

17. The relationship between the protection of trademark and the popularity of the infringing trademark

17. 注册商标的保护与被诉侵权商品商标知名度的关系

In *Cao Xiaodong v. Yunnan Xiaguan Tea (Group) Co., Ltd*., [17] the SPC held that a trademark is a symbolic civil right. The trademark right holder not only has the right to prohibit others from using the registered trademark logo on a similar product, but also has the right to use its registered trademark logo and establishes a link between the trademark logo and its source of goods to the relevant public. The confusion between the infringing trademark and the registered trademark includes that the public will confuse the infringing trademark with the registered trademark, and the public

在再审申请人曹晓冬与被申请人云南下关沱茶（集团）股份有限公司侵害商标权纠纷案【（2017）最高法民再 273 号】中，最高人民法院指出，注册商标作为一项标识性民事权利，商标权人不仅有权禁止他人在相同类似商品上使用该注册商标标识，更有权使用其注册商标标识，在相关公众中建立该商标标识与其商品来源的联系。相关公众是否会混淆误认，既包括将使用被诉侵权标识的商品误认为商标权人的商品或者与商标权人有某种联系，也包括将商标权人的商品误认为被诉侵权人的商品或者误认商标权人与被诉侵权人有某种联系。

will confuse the registered trademark with the infringing trademark.

18. Considerations on the coexistence of trademarks and font sizes in special historical background

18. 特殊历史背景下商标与字号共存的考量因素

In *Taiyuan Daningtang Pharmaceutical Co., Ltd. v. Shanxi Pharmaceutical Company*,[18] the SPC held that, when considering the unique historical background, market status, and choice of law, it would be fair to allow both parties to use the trademark and trade name in the market.

在申诉人太原大宁堂药业有限公司与被申诉人山西省药材公司商标侵权、不正当竞争纠纷案【(2015)民提字第 46 号】中，最高人民法院指出，在特殊历史背景下，对于使用与他人商标相同的字号是否构成商标侵权和不正当竞争，应当从历史传承、现实情况、法律适用和社会效果等方面综合考量。

19. Determining the legal generic name

19. 法定通用名称的认定

In *Fuzhou Rice Factory v. Wuchang Jinfutai Agricultural Co., Ltd., Fujian Xinhuadu General Department Store Co., Ltd. Fuzhou Jinshan Dajingcheng Branch* case and other cases of trademark infringement disputes (referred to as "*Taohuaxiang*" infringement of trademark rights dispute cases),[19] the SPC held that the name of a species (i.e., a variety denomination adopted by an administrative organization as pursuant to the administrative regulation) should not necessarily be regarded as the generic name from the perspective of trademark law. It cannot be based solely on the name of the variety that is approved for publication, and the name is deemed to be the generic legal name in the sense of trademark law.

在再审申请人福州米厂与被申请人五常市金福泰农业股份有限公司、福建新华都综合百货有限公司福州金山大景城分店等侵害商标权纠纷案（简称"稻花香"侵害商标权纠纷案）【（2016）最高法民再 374 号】中，最高人民法院指出，农作物品种审定办法规定的通用名称与商标法意义上的通用名称含义并不完全相同，不能仅以审定公告的品种名称为依据，认定该名称属于商标法意义上的法定通用名称。

20. Determining the conventional generic name

20. 约定俗成通用名称的认定

In the preceding "*Taohuaxiang*" cases,[20] the SPC held that the relevant market for products is not limited to a specific region. The relevant market shall be determined on a nationwide basis. The standard in determining whether or not a mark is a generic is to look at common usage in the general public, nationwide.

在前述"稻花香"侵害商标权纠纷案中，最高人民法院指出，产品的相关市场并不限于特定区域而是涉及全国范围的，应以全国范围内相关公众的通常认识为标准判断是否属于约定俗成的通用名称。

21. Proper use of crop generic name

21. 农作物品种名称的正当使用

In the preceding "*Taohuaxiang*" cases,[21] the SPC held that if a person has previously registered the trademark, then the name of the crop can be used as the processed products of the crop. The name should be approved for publication. However, the use is limited to indicating the source of the crop variety and shall not be used deceivingly.

在前述“稻花香”侵害商标权纠纷案中，最高人民法院指出，在存在他人在先注册商标权的情况下，经审定公告的农作物品种名称可以规范使用于该品种的种植收获物加工出来的商品上，但该种使用方式仅限于表明农作物品种来源且不得突出使用。

22. Determination of proper use in trademark infringement cases

22. 商标侵权案件中正当使用的认定

In *Feng Yin v. Xi'an Qujiang Yuejianglou Catering and Entertainment Culture Co., Ltd.*,[22] the SPC held that there is no infringement (1) if the main purpose of using part of the protected trademark in the infringer's company's name and other business activities is to describe the provided service, (2) if the infringer does not use the protected trademark completely, and (3) if there is no evidence that shows the infringer used the protected trademark to gain its reputation unfairly. The Court concluded that the alleged infringement does not have the possibility of confusion in the general public; thus, does not constitute as trademark infringement.

在再审申请人冯印与被申请人西安曲江阅江楼餐饮娱乐文化有限公司侵害商标权纠纷案【（2017）最高法民申 4920 号】中，最高人民法院指出，被诉侵权人在其企业名称中及其他商业活动中使用相关符号的主要目的在于客观描述并指示其服务的特点，并且在其实际使用过程中，从未完整使用与涉案商标相同的图文组合形式，亦无证据显示被诉侵权人对相关符号文字的使用旨在攀附涉案商标的商业信誉，可以认定被诉侵权行为并不具有使相关公众混淆误认的可能性，进而不构成侵害涉案商标权。

B. Administrative Trademark Cases

（二）商标行政案件审判

23. Factors for the approximation of trademarks

23. 商标近似性判断的考量因素

In *Sichuan Yibin Wuliangye Group Co., Ltd. v. State Administration for Industry and Commerce Trademark Review Committee, Gansu Binhe Food Industry (Group) Co., Ltd.*,[23] the SPC held that when determining the factors for the Approximation of Trademark used on the same or similar goods, the courts should consider the components, the prior use status, and the popularity of the objected trademark. If the public does not confuse the objected trademark with the cited trademarks, there is no approximation of the two trademarks.

在再审申请人四川省宜宾五粮液集团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、甘肃滨河食品工业（集团）有限责任公司商标异议复审行政纠纷案【（2014）知行字第 37 号】中，最高人民法院指出，判断被异议商标与引证商标是否构成使用在相同或类似商品上的近似商标，应当综合考虑被异议商标和引证商标的构成要素、被异议商标的在先使用状况及知名度等因素，若不会导致相关公众的混淆误认，则应认定被异议商标与引证商标不构成近似。

24. Proof of the subject of prior copyright

24. 主张在先著作权适格主体的证明

In *Wenzhou Yijiuliang Optical Co., Ltd. v. Dama Co., Ltd. and the State Administration for Industry and Commerce, the Trademark Review and Adjudication Board,*[24] the SPC held that the copyright owner and the stakeholder of the copyright may claim the prior copyright under the provisions of Article 31 of the Trademark Law. The copyright registration certificate filed after the trademark application cannot be used as evidence of ownership of the prior copyright. The trademark registration certificate filed before the trademark application date cannot also be used as evidence of copyright ownership, and it can be used as prima facie evidence to determine the trademark owner as a stakeholder who has the right to claim the trademark logo.

在再审申请人温州市伊久亮光学有限公司与被申请人达马股份有限公司及二审被上诉人国家工商行政管理总局商标评审委员会商标权无效宣告请求行政纠纷案【（2017）最高法行申 7174 号】中，最高人民法院指出，著作权人、著作权的利害关系人均可依据商标法第三十一条的规定主张在先著作权。诉争商标申请日之后的著作权登记证书不能单独作为在先著作权的权属证据。诉争商标申请日之前的商标注册证虽不能作为著作权权属证据，但可以作为确定商标权人为有权主张商标标志著作权的利害关系人的初步证据。

25. The review and determination of which party has prior copyright rights

25. 对他人是否享有在先著作权的审查认定

In *Jiejie Co., Ltd. v. State Administration for Industry and Commerce, the Trademark Review and Adjudication Board and Jinhua Baizi Cosmetics Co., Ltd,*[25] the SPC held that it is necessary to comprehensively consider relevant evidence to determine whether the parties enjoy the prior copyright. When the date on copyright registration certificate is later than the filing date of the trademark, the company may confirm the relevant evidence by combining the trademark registration certificate, the webpage containing the trademark mark, the contents of the newspapers recording the creative process of the work, the physical objects, and the proof of the transfer of the copyright. When a complete evidence chain has been formed, it can be assumed that the parties have prior copyright in the trademark mark.

在再审申请人杰杰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、一审第三人金华市百姿化妆品有限公司商标异议复审行政纠纷案【（2017）最高法行再 35 号】中，最高人民法院指出，对于当事人是否享有在先著作权，需要综合考量相关证据予以认定。在著作权登记证明晚于诉争商标申请日时，可以结合商标注册证、包含商标标志的网站页面、记载作品创作过程的报刊内容、产品实物、著作权转让证明等证据，在确认相关证据相互印证、已形成完整的证据链时，可以认定当事人对该商标标志享有在先著作权。

26. For the prior protection of a portrait there must be a distinguishing feature

26. 作为在先权利保护的“肖像”应当具有可识别性

In *Michael Jeffrey v. State Administration for Industry and Commerce, Trademark Review Board, and Jordan Sports Co., Ltd.*,[26] the SPC

在再审申请人迈克尔•杰弗里•乔丹与被申请人国家工商行政管理总局商标评审委员会、一审第三人乔丹体育股份有限公司商标争议

set out the criteria for the protection of rights of a portrait. That is, the rights of the portrait of an individual protectable by the law must be identifiable. Among other identifiable figures, the facial figures frequently used to identify a person from others and shall be the most important factor. It should contain personal characteristics sufficient enough to enable the public to identify the corresponding rights subject.

行政纠纷案【（2015）知行字第 332 号】中，最高人民法院指出，肖像权所保护的“肖像”应当具有可识别性，其中应当包含足以使社会公众识别其所对应的权利主体即特定自然人的个人特征，从而能够明确指代该特定的权利主体。

III. COPYRIGHT CASES

三、著作权案件审判

27. Criteria for the identification of model works:

27. 模型作品的认定标准

In *Shenzhen Feipengda Boutique Manufacturing Co., Ltd. v. Beijing Zhonghang Zhicheng Technology Co., Ltd.*,[27] the SPC held that when determining whether a model work is protected by the copyright law, the provisions of the model work of Article 4(13) of the Implementing Regulations of the Copyright Law cannot be separated from Article 2. If the case only satisfies the provisions of Article 4(13), it is not yet seen as model works under the protection of by the Copyright Law.

在再审申请人深圳市飞鹏达精品制造有限公司与被申请人北京中航智成科技有限公司侵害著作权纠纷案【（2017）最高法民再 353 号】中，最高人民法院指出，在判断是否构成受著作权法保护的模型作品时，不能将著作权法实施条例第四条第（十三）项模型作品的规定与第二条作品的规定割裂开来适用。在仅仅满足著作权法实施条例第四条第（十三）项规定的情况下，尚不能认定构成受著作权法保护的模型作品。

28. Calculating the damages and compensation of infringement when using other’s works as trademarks

28. 将他人作品作为商标使用时侵权损害赔偿的计算

In *Li Yanxia v. Jilin City Yongpeng Agricultural Product Development Co., Ltd*.,[28] the SPC held that the unlicensed use of another person’s work as a trademark constitutes copyright infringement. Compensation and damages for infringement should not be calculated on the basis of the copyright holder or the benefit gained by the copyright infringer; rather, it should be an issue of copyright royalties. The fee for the trademark design of the accused infringer can be used as a reference for determining the copyright license fee.

在再审申请人李艳霞与被申请人吉林市永鹏农副产品开发有限公司及一审第三人南关区本源设计工作室侵害著作权纠纷案【（2017）最高法民申 2348 号】中，最高人民法院指出，未经许可将他人作品作为商标使用，构成侵害他人著作权的，不应依据权利人损失或侵权人获益计算损害赔偿，而应主要考虑著作权许可使用费。被诉侵权人商标设计费用可以作为确定著作权许可使用费的参考。

IV. UNFAIR COMPETITION CASES

29. There should be a correlation between the package and the product for uniquely packaged, well-known goods

In *Guangdong Jiaduobao Beverage & Food Co., Ltd. v. Guangzhou Pharmaceutical Group Co., Ltd.*,[29] the SPC held that Article 5, Paragraph 2 of the Anti-Unfair Competition Law states that there is an inseparable relationship between "well-known goods" and "unique packaging and labels." The law can only target products that use unique packaging and labels. Abstract product names or products without clear and meaningful concepts are separate from packaging attached to specific goods to which the law applies. The lack of availability of evaluations on the practical use is not in accordance with the language in Article 5, Paragraph 2 of the Anti-Unfair Competition Law.

30. Factors used to determine packaging rights of ownership for well-known goods

In the preceding "*Jiaduobao*" case,[30] the SPC held that when determining who owns the rights to unique packaging, follow the principle of good faith and honest work. Additionally, the court held that consumers make perceptions about the source of the product based on the obvious traits of the packaging.

V. CASES OF NEW VARIETIES OF PLANTS

31. New plant variety protection regulations and Article 6 "sales" implications

In *Laizhou City Institute of Eternal State v. Ge Yanjun*,[31] the SPC held that the meaning of the term "sales," in Article 6 of the Regulations on the Protection of New Varieties of Plants, should be understood in conjunction with the provisions in Article 5, Paragraph 1 of the International Convention for the Protection of

四、不正当竞争案件审判

29. 知名商品特有包装装潢中的"商品"与"包装装潢"应当具有特定指向关系

在上诉人广东加多宝饮料食品有限公司与被上诉人广州医药集团有限公司、广州王老吉大健康产业有限公司擅自使用知名商品特有包装装潢纠纷两案（简称"红罐"特有包装装潢纠纷案）【（2015）民三终字第 2 号、第 3 号】中，最高人民法院指出，反不正当竞争法第五条第二项规定的"知名商品"和"特有包装装潢"之间具有互为表里、不可割裂的关系，只有使用了特有包装装潢的商品，才能够成为反不正当竞争法调整的对象。抽象的商品名称或无确定内涵的商品概念，脱离于包装装潢所依附的具体商品，缺乏可供评价的实际使用行为，不具有依据反不正当竞争法第五条第二项规定进行评价的意义。

30. 确定知名商品特有包装装潢权益归属的考量因素

在前述"红罐"特有包装装潢纠纷案中，最高人民法院指出，在确定特有包装装潢的权益归属时，既要在遵循诚实信用原则的前提下鼓励诚实劳动，也应当尊重消费者基于包装装潢本身具有的显著特征而客观形成的对商品来源指向关系的认知。

五、植物新品种案件审判

31. 植物新品种保护条例第六条规定中"销售"的含义

在再审申请人莱州市永恒国槐研究所与被申请人葛燕军侵害植物新品种权纠纷案【（2017）最高法民申 4999 号】中，最高人民法院指出，对于植物新品种保护条例第六条规定中"销售"一词的含义，应该结合我国已经加入的《国际植物新品种保护公约》(1978 年文本)第五条第一款的规定予

New Varieties of Plants (1978). According to the principle of consistency between international law and domestic law, "sales" as referred to in Article 6 should include committed sales behavior.

以理解。根据国际法与国内法解释一致性原则，植物新品种保护条例第六条所称的“销售”应该包括许诺销售行为。

VI. Trials of Cases of Technical Contracts

六、技术合同案件审判

32. Determining the purpose of technical industrial contracts

32. 技术工业化合同中合同目的的认定

In *Shaanxi Tianbao Soybean Food Technology Research Institute v. Zhangzhou Yuyuan Native Products Co., Ltd.*, [32] the SPC held that considerations of (1) whether a product can be produced which meets the expectation of the contract and can be sold on the market, (2) whether a product is marketable, and (3) whether or not that product will make a profit all carry different level of problems. In contracts involving technological industrialization, if there is no explicit agreement, commercialization of the product should not be considered as a contractual purpose.

在再审申请人陕西天宝大豆食品技术研究所与被申请人汾州裕源土特产品有限公司技术合同纠纷案【(2016)最高法民再 251 号】中，最高人民法院指出，能否产出符合合同约定的产品与该产品能否上市销售、是否适销对路、有否利润空间等并非同一层面的问题。在涉及技术工业化的合同中，如无明确约定，不应将产品商业化认定为合同目的。

VII. Intellectual Property Litigation Procedures and Evidence

七、关于知识产权诉讼程序与证据

A. Intellectual Property Civil Litigation Procedures and Evidence

（一）知识产权民事诉讼程序与证据

33. Online shopping receipts should not be used for infringement of intellectual property and unfair competition cases

33. 网络购物收货地不宜作为知识产权和不正当竞争案件的侵权行为地

In *Guangdong Manner Garments Co., Ltd. v. New Balance Trade (China) Co., Ltd.*, [33] the SPC held that in violations of intellectual property and unfair competition (when a plaintiff purchased the product that allegedly infringed online), it is not appropriate to apply the provisions of Article 20 of the Judicial Interpretation of Civil Procedure Law. The geographical jurisdiction of the case is determined by the online shopping receipt.

在上诉人广东马内尔服饰有限公司、周乐伦与被上诉人新百伦贸易（中国）有限公司、一审被告南京东方商城有限责任公司不正当竞争纠纷管辖异议案【（2016）最高法民辖终 107 号】中，最高人民法院指出，侵犯知识产权和不正当竞争案件中，原告通过网络购物方式购买被诉侵权产品，不宜适用民事诉讼法司法解释第二十条的规定，以网络购物收货地作为侵权行为地确定案件的地域管辖。

34. Examination and approval of notarized evidence for surveys of market statistics

In *Hebei Liuren Baked Beverage Co., Ltd. v. Hebei Yangyuan Zhihui Beverage Co., Ltd.*,[34] the SPC held that a review of notarized evidence of market statistic surveys should specifically examine the objectivity, technicality, and legality of the surveys. Surveys should not be accepted into evidence simply because they have been notarized.

34. 对涉及市场统计调查的公证书证据的审查认定

在再审申请人河北六仁烤饮品有限公司与被申请人河北养元智汇饮品股份有限公司及一审被告金华市金东区叶保森副食店擅自使用知名商品特有包装、装潢纠纷案【（2017）最高法民申 3918 号】中，最高人民法院指出，对涉及市场统计调查的公证书证据的审查认定，应当具体审查该市场统计调查的客观性、科学性、适法性等有关情况，不能仅因该调查经过公证就当然采信。

35. In retrial applications, new evidence for existing technical defenses should not be supported

In *Tangshan Pioneer Printing Machinery Co., Ltd. v. Tianjin Changrong Printing Equipment Co., Ltd.*, [35] the SPC held that in patent infringement cases, when an accused infringer claims an existing technical defense with new evidence in their application for a retrial, the court will essentially see this as equivalent to a new prior defense because the infringer applied for retrial on the grounds of new evidence. If the accused infringer is allowed to propose a new defense without restrictions at the retrial stage, it is unfair to the patentee because the patentee must fix his or her claim before the end of arguments in the original trial. For the patentee's lawsuit, it constitutes the first and second proceedings being vacated.

35. 在申请再审程序中以新的证据主张现有技术抗辩不应予以支持

在再审申请人唐山先锋印刷机械有限公司与被申请人天津长荣印刷设备股份有限公司、一审被告常州市恒鑫包装彩印有限公司侵害发明专利权纠纷案【（2017）最高法民申 768 号】中，最高人民法院指出，专利侵权案件中，被诉侵权人在申请再审程序中以新的证据主张现有技术抗辩，表面上系以新证据为由申请再审，但实质上相当于另行提出新的现有技术抗辩。如允许被诉侵权人在申请再审程序中无限制地提出新的现有技术抗辩，与专利权人应当在一审法庭庭审辩论终结前固定其主张的权利要求相比，对专利权人显失公平，且构成对专利权人的诉讼突袭，亦将架空一、二审诉讼程序。

36. The source of legal defenses should be relevant evidence

In *Ningbo Ou Lin Industrial Co., Ltd. v. Ningbo Bosheng Valve Fittings Co., Ltd.*,[36] the SPC held that a "declaration" should be issued by one party to the other providing information about the production of the alleged infringing product. In the case that the patent owner does not endorse the declaration and in the absence of other proof of objective evidence, it should be

36. 合法来源抗辩应当提供符合交易习惯的相关证据

在再审申请人宁波欧琳实业有限公司与被申请人宁波搏盛阀门管件有限公司，二审上诉人宁波欧琳厨具有限公司等侵害外观设计专利权纠纷案【(2017)最高法民申 1671 号】中，最高人民法院指出，一方当事人出具的有关其生产并提供被诉侵权产品给其他当事人的"声明"属于当事人陈述，在专利权人对该声明不予认可，且缺乏其他客观证据证

determined that a legal defense cannot be established.

明的情况下，应认定合法来源抗辩不能成立。

B. Intellectual Property Administrative Hearings and Evidence

（二）知识产权行政诉讼程序与证据

37. The qualification of invalid claims due to the conflict between the design patent right and prior legal rights of others

37. 以外观设计专利权与他人在先取得的合法权利相冲突为由提起无效宣告请求的请求人资格

In *Stippers v. Patent Reexamination Board of SIPO*,[37] the SPC held that there are two types of reasons to invalidate a patent: (1) absolutely invalid and (2) relatively invalid. There are significant differences between the two in terms of their objective nature and legislative purpose. The conflict between the design patent right and prior legal rights of others is a relatively invalid reason. The provisions of Article 45 of the Patent Law apply to the invalid reasons based on the essential attributes of relative invalid grounds, legislative objectives, and the effects of the legal order. The subject matter of the invalid claim is limited. In principle, only the rights holders and their interested parties can make claims.

在再审申请人斯特普尔斯公司与被申请人罗世凯、一审被告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(简称“碎纸机”外观设计专利权无效行政纠纷案)【（2017）最高法行申 8622 号】中，最高人民法院指出，专利无效理由可以区分为绝对无效理由和相对无效理由两种类型，两者在被规范的客体本质、立法目的等方面存在重大区别。有关外观设计专利权与他人在先合法权利冲突的无效理由属于相对无效理由。当专利法第四十五条关于请求人主体范围的规定适用于权利冲突的无效理由时，基于相对无效理由的本质属性、立法目的以及法律秩序效果等因素，无效宣告请求人的主体资格应受到限制，原则上只有在先合法权利的权利人及其利害关系人才能主张。

38. Litigants’ constant principle can be applied to the patent invalidation administrative procedures

38. 当事人恒定原则可以适用于专利无效宣告行政程序

In the preceding “*Shredder*” case,[38] the SPC held that in administrative proceedings after the Court hears relevant arguments, in order to ensure the stability of the proceedings and avoid uncertainty of litigation, the parties qualifications will not be lost due to subsequent changes in the legal relationship of the subject matter of the litigation. The patent invalidation procedure is a quasi-judicial procedure, and the Constant Principle acts as a reference in this procedure. If a claimant meets the eligibility criteria at the beginning of the administrative procedures for invalidation, he will still be qualified after his subsequent legal relationship has changed.

在前述“碎纸机”外观设计专利权无效行政纠纷案中，最高人民法院指出，在行政诉讼程序中，人民法院受理相关诉讼后，为保证诉讼程序的稳定和避免诉讼不确定状态的发生，当事人的主体资格不因有关诉讼标的的法律关系随后发生变化而丧失。专利无效宣告行政程序属于准司法程序，当事人恒定原则对于该程序亦有参照借鉴意义。对于无效宣告行政程序启动时符合资格条件的请求人，即便随后有关诉讼标的的法律关系发生变化，其亦不因此当然丧失主体资格。

39. Conditions of admissibility for retrial of judgements arising from administrative proceedings rulings

In *Suntory Holdings Co., Ltd. v. Trademark Review and Adjudication Bd. of State Admin. for Indus. & Commerce*,[39] the SPC held that when the applicant filed another administrative lawsuit against the ruling of the Trademark Review and Adjudication Board based on the judgement of the court, and when the SPC ruled to uphold the administrative ruling based on the original judgement, courts need to consider whether parties can apply for retrial and whether there will be a new retrial based on both the legal nature of the administrative ruling and the content of the new ruling. Courts also need to consider that circular litigation should be prevented whenever possible. If the respondent administrative ruling is completely based on the first judgment, the new judgment is made according to facts and reasons determined in the judgment, not based on a substantive hearing of the administrative ruling. In order to avoid circular proceedings, the new judgment should not be allowed a retrial.

39. 对于已为在先生效判决所羁束的行政裁决提起行政诉讼所引致的新判决申请再审的受理条件

在再审申请人三得利控股株式会社与被申请人国家工商行政管理总局商标评审委员会、原审第三人杭州保罗酒店管理集团股份有限公司之商标权承继人浙江向网科技有限公司商标撤销复审行政纠纷案【（2017）最高法行申 5093 号】中，最高人民法院指出，当事人对于商标评审委员会依据法院生效判决作出的行政裁决再次提起行政诉讼，人民法院依据原生效判决的认定作出维持该行政裁决的判决，当事人可否针对该新判决申请再审，应结合被诉行政裁决的法律性质、新判决的内容及尽可能防止循环诉讼等因素予以考虑。如果被诉行政裁决完全被在先生效判决所羁束，新判决系根据在先生效判决确定的事实和理由作出，未对被诉行政裁决进行实体审理，为避免循环诉讼，对于该新判决不应允许申请再审。

40. The Supreme People's Court can identify important facts missed by the administrative department

In *Plana Life Art Co., Ltd. v. Trademark Review and Adjudication Bd. of State Admin. for Indus. & Commerce*,[40] the SPC held that applicants claim priority when applying for trademark registration. If the administrative department has misunderstood whether an application for a trademark has priority and the appellant decision is wrong, the SPC shall make a judgement on the law and basis of relevant facts.

40. 人民法院可以对行政部门漏审的重要事实依职权作出认定

在再审申请人普兰娜生活艺术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申请驳回复审行政纠纷案【（2017）最高法行再 10 号】中，最高人民法院指出，申请人在申请商标注册时主张有优先权，行政部门对申请商标是否享有优先权存在漏审，导致被诉决定错误的，人民法院应当在查清相关事实的基础上依法作出裁判。

41. The Supreme People's Court may partially revoke a patent invalidation decision

In the preceding "*Electronic Surveillance Marker*" case,[41] the SPC held that if it can be

41. 人民法院可部分撤销专利无效决定

在前述"电子货品监视用标识器"发明专利权无效行政纠纷案中，最高人民法院指出，

separately determined whether or not the patent is invalid, the SPC may partially revoke a part of an invalidation decision if it was determined incorrectly.

被诉专利无效决定的相关认定可以区分处理的，人民法院可部分撤销无效决定中认定错误的部分。

42. In patent invalidation procedures evidence in a foreign language does not always require a separate Chinese translation

42. 无效宣告程序中外文证据并非一律需要单独提供中文译文

In *ZTE Corporation v. Patent Reexamination Board of SIPO*,[42] the SPC held that in patent invalidation procedures, it is not always necessary to provide separate Chinese translations of documents originally in foreign languages. The State Council's Patent Administration Department may decide when circumstances require parties to submit a Chinese translation.

在再审申请人中兴通讯股份有限公司因与被申请人国家知识产权局专利复审委员会、美商内数位科技公司发明专利权无效行政纠纷案【（2017）最高法行申 4798 号】中，最高人民法院指出，在专利无效宣告程序中，对于外文证明文件并非一律需要单独提供中文译文，国务院专利行政部门可以根据具体情况决定是否有必要要求当事人提交中文译文。提交中文译文的必要性通常需要考量方便专利复审委员会和对方当事人理解证据内容、保证行政效率、保障和便利当事人行使发表意见的权利等因素，在特殊情况下无需单独提供中文译文。

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[33] Guangdong Maneier Fushi Youxian Gongsi, Zhoulelun yu Xinbailun Moayi (Zhongguo) Youxian Gongsi, Nanjing Dongfang Shangcheng Youxian Gongsi Buzhengdang Jingzheng Jiufen Guanxia Yiyian (广东马内尔服饰有限公司、周乐伦与被上诉人新百伦贸易（中国）有限公司、一审被告南京东方商城有限责任公司不正当竞争纠纷管辖异议案) [Guangdong Manner Garments Co., Ltd. v. New Balance Trade (China) Co., Ltd.] CIVIL FINAL NO. 107 (Sup. People's Ct. 2016).

[34] Heibei Liurenkao Yinpin Youxian Gongsi yu Hebei Yangyuan Zhihui Yinpin Gufen Youxian Gongsi, Jinhuashi Jindongqu Yebaosen Fushidian Shanzi Shiyong Zhiming Chanpin Boazhuang Jiufenan (河北六仁烤饮品有限公司与被申请人河北养元智汇饮品股份有限公司及一审被告金华市金东区叶保森副食店擅自使用知名商品特有包装、装潢纠纷案) [Hebei Liuren Baked Beverage Co., Ltd. v. Hebei Yangyuan Zhihui Beverage Co., Ltd.] CIVIL RETRIAL NO. 3918 (Sup. People's Ct. 2017).

[35] Tangshan Xianfeng Yinshua JIxie Youxian Gongsi yu Tianjing Changrong Yinshua Shebei Gufen Youxian Gongsi, Changzhoushi Hengxin Baozhuang Caiyin Youxian Gongsi Qinhai Faming Zhuanliquan Jiufenan(唐山先锋印刷机械有限公司与天津长荣印刷设备股份有限公司、常州市恒鑫包装彩印有限公司侵害发明专利权纠纷案) [Tangshan Pioneer Printing Machinery Co., Ltd. v. Tianjin Changrong Printing Equipment Co., Ltd.], CIVIL RETRIAL NO. 768 (Sup. People's Ct. 2017).

[36] Ningbo Oulin Shiye Youxian Gongsi yu Ningbo Bosheng Famen Guanjian Youxian Gongsi, Ningbo Oulin Chuju Youxian Gongsi Deng Qinhai Waiguan Sheji Zhuanliquan Jiufenan (宁波欧琳实业有限公司与宁波搏盛阀门管件有限公司，宁波欧琳厨具有限公司等侵害外观设计专利权纠纷案) [Ningbo Ou Lin Industrial Co., Ltd. v. Ningbo Bosheng Valve Fittings Co., Ltd.], CIVIL RETRIAL NO. 1671 (Sup. People's Ct. 2017)

[37] Siteepuersi Gongsi yu Luoshikai, Guojia Zhishi Chanquanju Zhuanli Fushen Weiyuanhui Waiguan Sheji Zhuanliquan Wuxiao Xingzheng Jiufenan (申请人斯特普尔斯公司与罗世凯、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) [Stippers v. Patent Reexamination Board of SIPO], ADMINISTRATIVE RETRIAL NO. 8622 (Sup. People's Ct. 2017).

[38] Siteepuersi Gongsi yu Luoshikai, Guojia Zhishi Chanquanju Zhuanli Fushen Weiyuanhui Waiguan Sheji Zhuanliquan Wuxiao Xingzheng Jiufenan (申请人斯特普尔斯公司与罗世凯、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) [Stippers v. Patent Reexamination Board of SIPO], ADMINISTRATIVE RETRIAL NO. 8622 (Sup. People's Ct. 2017).

[39] Sandeli Konggu Zhushi Huishe yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui, Hangzhou Baoluo Jiudian Guanli Jituan Gufen Youxian Gongsi Zhi Shangbiaoquan Chengjiren Zhejiang Xiangwang Keji Youxian Gongsi Shangbiao Chexiao Fushen Xingzheng Jiufenan (三得利控股株式会社与被申请人国家工商行政管理总局商标评审委员会、杭州保罗酒店管理集团股份有限公司之商标权承继人浙江向网科技有限公司商标撤销复审行政纠纷案) [Suntory Holdings Co., Ltd. v. Trademark Review and Adjudication Bd. of State Admin. for Indus. & Commerce], ADMINISTRATIVE RETRIAL NO. 5093 (Sup. People's Ct. 2017).

[40] Pulanna Shenghuo Yishu Youxian Gongsi yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui Shangbiao Shenqing Bohui Fushen Xingzhen Jiufenan (普兰娜生活艺术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申请驳回复审行政纠纷案) [Plana Life Art Co., Ltd. v. Trademark Review and Adjudication Bd. of State Admin. for Indus. & Commerce], ADMINISTRATIVE RETRIAL NO. 10 (Sup. People's Ct. 2017).

[41] Pulanna Shenghuo Yishu Youxian Gongsi yu Guojia Gongshang Xingzheng Guanli Zongju Shangbiao Pingshen Weiyuanhui Shangbiao Shenqing Bohui Fushen Xingzhen Jiufenan (普兰娜生活艺术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申请驳回复审行政纠纷案) [Plana Life Art Co., Ltd. v. Trademark Review and Adjudication Bd. of State Admin. for Indus. & Commerce], ADMINISTRATIVE RETRIAL NO. 10 (Sup. People's Ct. 2017).

[42] Zhongxin Tongxun Gufen Youxian Gongsi yu Guojia Zhishi Chanquanju Zhuanli Fushen Weiyuanhui, Meishangnei Shuwei Keji Gongsi Faming Zhuanliquan Wuxiao Xingzheng Jiufenan (中兴通讯股份有限公司因与被申请人国家知识产权局专利复审委员会、美商内数位科技公司发明专利权无效行政纠纷案) [ZTE Corporation v. Patent Reexamination Board of SIPO], ADMINISTRATIVE RETRIAL NO. 4798 (Sup. People's Ct. 2017).