

First-in-history Partial Judgment Issued by Shanghai IP Court

Jerry Xia Wen Zou Anbi Xu

Recently, the Shanghai Intellectual Property Court (SIPC) rendered a so-called partial or interlocutory judgment during a patent infringement lawsuit filed by the French automotive parts manufacturer Valeo against three Chinese defendants including Xiamen Lucas Automotive Parts Co., Ltd., Xiamen Fuke Automotive Parts Co., Ltd. and an individual Mr. Chen (hereinafter collectively referred to as “the defendants”). In this case, Valeo alleged that the wipers for cars being manufactured and sold by the defendants have infringed its Chinese invention patent named "Connectors for wiper of motor vehicles and corresponding connecting devices" and on that basis, they requested RMB 6M for damages. After careful investigation with support of technical experts, the SIPC found that the defendants’ products have indeed fallen into the scope of Claims 1-3 and 6-10 of Valeo’s patent in question and hence should immediately stop the infringement first while the damages can be determined later.

It’s said that this is the first time the SIPC has made such a partial judgment for an IP case. The legal basis is Article 153 of the Civil Procedure Law of PRC: “If some of the facts in a case being tried by the people's court are already evident, the court may pass judgment on that part of the case first.”

Usually patent lawsuits can take long given their technical complexity including the difficulty to calculate the damages. In a case like this one where the SIPC believed the infringement can adequately be established based on all the ascertained facts, they considered it an innovative and efficient way to apply Article 153 to issue a partial judgment first so as to cease the infringement in a timely manner. Then if the parties would quickly settle on the damages or enter into a licensing arrangement, further judicial proceedings will be saved with effective deterrents already served.

Partial judgments are still not commonly seen probably mainly because the underlying facts of most cases can hardly be ascertained until a full judgment is made. Our research revealed another patent case Sougou v. Baidu in 2018 where the Beijing IP Court issued a similar partial judgment. In addition, there was a copyright dispute case before the Jiangsu High People’s Court where determining the ownership of the software copyright was a pre-condition for infringement conclusion. In light of the huge burden to do infringement analysis for over 30 software programs, the court took its discretion to render an interlocutory judgment on the software copyright ownership first in order to give the parties an opportunity to negotiate a settlement.

Some people might find a partial judgment somewhat similar to a preliminary injunction in terms of stopping the infringement before a final full judgment is made. However, what is different is that a partial judgment issued by the first instance court can still be appealed and hence is not immediately effective. In comparison, a

preliminary injunction once granted cannot be appealed and must be executed right away even though the final judgment has not been made.

For the above Valeo case, it's said that the defendants have filed an appeal which is currently being handled by the newly established IP Tribunal of the Supreme People's Court of PRC. The result remains to be seen. If the first instance judgement regarding infringement is maintained, that part becomes final and then the SIPC can continue to issue a damages award, unless the parties will settle in advance. If the infringement conclusion is revoked, the case is dismissed and since apparently there is no need to determine the damages at all so the judicial resources can be saved in a way as well.

Overall, a partial judgment can be a good thing to try for applicable cases where IP ownership or infringement may be easily concluded based on the available facts and evidence, particularly if the plaintiff seeks quick deterrents as well as the leverage to negotiate a satisfactory settlement. It can be a viable approach to save time, efforts and costs for both the parties and the courts. The SIPC has set a good example for similar cases in the future.