



Update China Desk China Law Brief

07/2012
English Version

Three interim injunctions against design patent infringement in China successfully enforced

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Interim Injunction against Design Patent Infringement at an International Fair

During the ITMA Asia + CITMA 2012 in Shanghai (12th - 16th June 2012), an exhibition of worldwide fame for textile machinery manufacturers, **the Belgian company Picanol NV has at a Shanghai court successfully applied for and enforced interim injunctions to stop design patent infringements against three Chinese manufacturers, Guangdong Fengkai Machinery Co., Ltd., Shandong Liaocheng Youjia Textile Machinery Co., Ltd. and Zhejiang Wanli Textile and Machinery Co., Ltd.**

On the first day of the fair, the 12th June 2012, Picanol NV found that the machines of these three companies showed significant similarities in design with the machines of Picanol VN. Picanol NV at once applied to the Shanghai 1st Intermediate People's Court for interim injunctions against these companies, to prohibit the exhibition of the machines in questions, as, Picanol claimed, these three Chinese companies had used a nearly identical design as used by Picanol, without Picanol's permission. The Shanghai court assessed the applications, issued corresponding cease-and-desist orders already on 13th June 2012 and enforced them at once. The machines concerned were sealed by the bailiff, covered with a blanket, and were not to be exhibited until the end of the fair.

Under Chinese patent law, patent holders may apply to the court for a cease-and-desist order prior to a legal action, if their patent rights are or are to be infringed and they might suffer irremediable damage without an immediate action. When applying for such an order, the patent holder or the applicant must provide a security to the court - a cash deposit or a warranty. The court must within 48 hours from the receipt of the application either reject it or issue a cease-and-desist order, immediately enforceable. In this way, the patent holders

Application Decision Enforcement

Interim Injunction in Chinese patent law: Cease-and-Desist Order

are granted interim protection before bringing action. Therefore, the cease-and-desist order will be revoked if the applicant has not filed an action within 15 days after the execution of the order. Nevertheless, such an order is an effective weapon against patent infringement, in particular at fairs.

Another form of interim injunction in the Chinese Patent Law is the preservation of evidence. The conditions for the application, for the enforcement and for the repeal of an order for the preservation of evidence are similar to those for a cease-and-desist order. Both these injunctions apply solely to the protection of patent and trademark rights. For other disputes, e.g. about failure to perform or about debts, the preservation of assets prior to action, regulated in the Chinese Civil Procedure Law as a form of interim injunction, can be used.

In the above case, Guangdong Fengkai Machinery Co., Ltd. later removed the court seals, continued the exhibition of the machines and tried to sell them. Piucanol notified the Court, and court personnel returned to the fair on 16 June 2012 to reenforce the order. Company staff tried to prevent that, so a leading manager was arrested and sentenced to 10 days imprisonment; another leading manager of the company was fined RMB 10,000.00. The company itself had to pay a fine of RMB 100,000.00.

Preservation of Evidence

Preservation of Assets

Prosecution for Disturbing the Court Enforcement

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