

SPC Guiding Case No. 274: Qingdao Qing [X] Heavy Industry Co., Ltd. v. Qingdao Chen [X] Machinery Equipment Co., Ltd. (Utility Model Patent Infringement Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on February 28, 2026.

Keywords

Civil / infringement of utility model patent / offer to sell / civil liability / damages

Holding

An infringer who commits an act of offering to sell without the permission of the patentee shall not only bear the civil liability of ceasing the infringement and paying the reasonable expenses for protecting rights in accordance with the law, but shall also bear the civil liability of compensating for damages; such liability to compensate is not premised on an actual sale having occurred. As to the amount of compensation, where the loss caused to the patentee by the act of offering to sell, the benefit obtained by the infringer, and the patent licensing fee are all difficult to determine, the people's court may, based on the fault and circumstances of the infringement, reasonably determine the amount within the scope of statutory compensation.

Basic Facts

Qingdao Qing [X] Heavy Industry Co., Ltd. ("Qing [X] Heavy Industry") is the patentee of the utility model patent named "Vertical Secondary Construction Column Pump" (the "Patent in Issue"). On September 29, 2018, Qing [X] Heavy Industry notarized and preserved the webpage on which Qingdao Chen [X] Machinery Equipment Co., Ltd. ("Chen [X] Machinery") displayed the vertical secondary construction column pump in its store on an online platform; on October 20, 2019, it again notarized and preserved the webpage on which Chen [X] Machinery displayed the vertical secondary construction column pump on its website. Qing [X] Heavy Industry subsequently brought a lawsuit against Chen [X] Machinery on the ground that its manufacture, offering for sale, and sale of the accused infringing products infringed the Patent in Issue, requesting the court to order Chen [X] Machinery to cease the infringement and compensate for the losses. Chen [X] Machinery argued that it had only committed the act of offering for sale and had not manufactured or sold the products, that it had neither caused economic loss to Qing [X] Heavy Industry nor obtained any economic benefit from the act of offering for sale, and therefore Qing [X] Heavy Industry's claim for damages lacked a basis.

The court found upon trial: the accused infringing products contained all the technical features of the corresponding claims of the Patent in Issue, and Chen [X] Machinery's display of the accused infringing products on its website and in its store on the online platform constituted an act of offering for sale. Qing [X] Heavy Industry did not submit evidence that Chen [X] Machinery had manufactured or sold the products.

Judgment

The Qingdao Intermediate People's Court of Shandong Province rendered the civil judgment (2019) Lu 02 Zhi Min Chu No. 169 on August 19, 2020: (1) Chen [X] Machinery shall immediately cease, from the effective date of the judgment, the act of offering for sale of products infringing Qing [X] Heavy Industry's utility model patent "Vertical Secondary Construction Column Pump"; (2) Chen [X] Machinery shall compensate Qing [X] Heavy Industry for economic losses of RMB 30,000 (including reasonable expenses; same currency

hereinafter) within 10 days from the effective date of the judgment; (3) the remaining claims of Qing [X] Heavy Industry are dismissed. After the judgment was pronounced, Chen [X] Machinery appealed to the Supreme People's Court. The Supreme People's Court rendered the civil judgment (2020) Zui Gao Fa Zhi Min Zhong No. 1658 on March 22, 2021: the appeal is dismissed and the original judgment is affirmed.

Reasoning

The focus of dispute in this case was what infringement liability Chen [X] Machinery should bear for the act of offering for sale.

Chen [X] Machinery displayed the accused infringing products in its store on the online platform for the purpose of sale, which constituted an offering for sale. The act of offering for sale without permission is a type of infringement expressly prohibited by the Patent Law; it may occur either after the product is manufactured or before the product is manufactured, and either before the product is sold or during the process of sale. Although the act of offering for sale is directed toward the act of sale, it is in itself a statutory and independent type of infringement. The civil liability for this type of infringement is not premised on whether a sale has actually occurred. This is because, once an unauthorized act of offering for sale occurs, whether or not an actual sale occurs, it will generally cause the loss of the relevant patent licensing fee; moreover, the price at which the accused infringer offers for sale is usually lower than the price of the patented product, so the act of offering for sale will produce a psychological implication on potential consumers, affecting the reasonable pricing of the patented product, or cause consumers to give up purchasing the patented product and instead consider contacting the accused infringer to make a purchase, resulting in delay or even reduction of the normal sale of the patented product; the act of offering for sale may also adversely affect the advertising and publicity effect of the patented product. It can thus be seen that the act of offering for sale will not only cause the patentee to suffer loss of licensing fee, but may also cause price erosion of the patented product, delay or even reduction of commercial opportunities, and other damages. Such damages should also be remedied in accordance with the law. Therefore, while ordering the infringer to cease the infringement, the court should also order the infringer to bear the liability of compensating for the damages arising from the act of offering for sale. This is more conducive to protecting and encouraging innovation, and to realizing the legislative purpose of the Patent Law and creating a favorable business and innovation environment. If the infringer were to be exempted from liability for damages merely because the specific damage consequences caused by the act of offering for sale are difficult to prove accurately, and were only ordered to bear the civil liability of ceasing the act of offering for sale and paying the patentee's reasonable expenses for protecting rights, this would be detrimental to protecting the patent right and realizing the legislative purpose of the Patent Law.

Where the patentee has difficulty proving by evidence the specific loss suffered from the act of offering for sale, the amount of damages may be calculated through statutory compensation. It is precisely in consideration of the difficulty of proving patent infringement damage that the Patent Law provides for the statutory compensation system, under which, where the loss suffered by the patentee due to the infringement or the benefit obtained by the infringer cannot be determined, the amount of compensation may be determined based on the type of the patent right, the nature and circumstances of the infringement, and other factors. In this case, where Qing [X] Heavy Industry failed to prove by evidence its actual loss, Chen [X] Machinery's benefit from the infringement, and the licensing fee of the Patent in Issue, the people's court, comprehensively considering the type of the Patent in Issue, Chen [X] Machinery's subjective fault, the circumstances of Chen [X] Machinery's infringement, and Qing [X] Heavy Industry's reasonable expenses for protecting rights, determined at its discretion in accordance with the law that Chen [X] Machinery compensate Qing [X] Heavy Industry for economic losses of RMB 30,000.

Relevant Legal Provisions

Paragraph 1 of Article 11 and Article 71 of the Patent Law of the People's Republic of China (2020 Amendment) (this case applied Paragraph 1 of Article 11 and Article 65 of the Patent Law of the People's

Republic of China, 2008 Amendment).

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