

SPC Guiding Case No. 278: Fujian Heng [X] Technology Co., Ltd. v. Quanzhou Ri [X] Flow Instruments Co., Ltd. (Liability for Damages from Malicious Initiation of Intellectual Property Litigation)

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

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Keywords

Civil / liability for damages caused by malicious initiation of intellectual property litigation / malicious litigation / basis of rights / knowledge / damages

Holding

Where a party, knowing that its claim is manifestly lacking in a basis of rights or a factual basis, nonetheless brings a patent infringement lawsuit against another person, thereby harming that person's rights and interests, this constitutes a malicious litigation act of abusing litigation rights; where the other person demands that the malicious litigant bear tort liability, the people's court shall support the demand in accordance with the law.

Basic Facts

Quanzhou Ri [X] Flow Instruments Co., Ltd. ("Ri [X] Instruments") was the patentee of a utility model patent (the "Patent in Issue") entitled "Built-in Digital-Display Target Flowmeter," granted on November 1, 2000. On March 1, 2006, the official website of the State Intellectual Property Office published an announcement that the Patent in Issue had been terminated for failure to pay the annual fee. On May 23, 2006, Ri [X] Instruments, on the ground that it had discovered in 2005 that Fujian Heng [X] Technology Co., Ltd. ("Heng [X] Technology") had produced and sold an "intelligent target flowmeter" infringing the Patent in Issue, brought a lawsuit in the Quanzhou Intermediate People's Court of Fujian Province (the "First Litigation"), requesting an order that Heng [X] Technology cease the infringement, make an apology, eliminate the effects, and compensate for economic losses of RMB 200,000 (same currency hereinafter) and reasonable rights-protection expenses of RMB 25,000. On November 7, 2006, the Quanzhou Intermediate People's Court rendered Civil Judgment (2006) Quan Min Chu Zi No. 230, finding that Heng [X] Technology's acts did not infringe the Patent in Issue and dismissing all of Ri [X] Instruments' claims. Ri [X] Instruments was dissatisfied and appealed. On March 20, 2008, the Fujian Higher People's Court rendered Civil Judgment (2007) Min Min Zhong Zi No. 23, dismissing the appeal and affirming the original judgment. Ri [X] Instruments was dissatisfied and applied to the Supreme People's Court for retrial. On November 14, 2008, the Supreme People's Court rendered Civil Ruling (2008) Min Shen Zi No. 504, directing the Fujian Higher People's Court to conduct a retrial. On December 20, 2014, the Fujian Higher People's Court rendered Civil Judgment (2009) Min Min Zai Zhong Zi No. 4, finding that Heng [X] Technology's acts constituted infringement of the Patent in Issue, and accordingly revoked the first-instance judgment and ordered Heng [X] Technology to cease the infringement and compensate Ri [X] Instruments RMB 125,000.

On December 25, 2015, Ri [X] Instruments, on the ground that Heng [X] Technology had continued to produce and sell a large quantity of products infringing the Patent in Issue during the period from May 2006 (when it was first sued) to 2010, again brought a lawsuit in the Quanzhou Intermediate People's Court of Fujian Province (the "Second Litigation"), requesting an order that Heng [X] Technology compensate it for economic losses of RMB 3.5 million. Heng [X] Technology submitted evidence that the Patent in Issue had

been announced terminated by the State Intellectual Property Office on March 1, 2006. On May 23, 2016, Ri [X] Instruments applied to withdraw the lawsuit. On May 25, 2016, the Quanzhou Intermediate People's Court rendered Civil Ruling (2016) Min 05 Min Chu No. 17-1, permitting Ri [X] Instruments to withdraw the lawsuit.

On January 4, 2017, Ri [X] Instruments, being dissatisfied with the State Intellectual Property Office's termination of the Patent in Issue, brought an administrative lawsuit in the Beijing Intellectual Property Court. On July 2, 2018, Ri [X] Instruments applied to withdraw the lawsuit. On July 6, 2018, the Beijing Intellectual Property Court rendered Administrative Ruling (2017) Jing 73 Xing Chu No. 31, permitting Ri [X] Instruments to withdraw the lawsuit.

On May 27, 2019, Ri [X] Instruments brought a lawsuit in the Fuzhou Intermediate People's Court of Fujian Province (the "Third Litigation") in respect of the alleged infringing acts in the Second Litigation, requesting an order that Heng [X] Technology compensate it for economic losses of RMB 4.5 million. The Fuzhou Intermediate People's Court ruled to transfer the case to the Xiamen Intermediate People's Court of Fujian Province for jurisdiction. On June 4, 2020, Ri [X] Instruments applied to withdraw the lawsuit. On June 10, 2020, the Xiamen Intermediate People's Court rendered Civil Ruling (2020) Min 02 Min Chu No. 346, permitting Ri [X] Instruments to withdraw the lawsuit.

On July 8, 2020, Ri [X] Instruments brought a lawsuit in the Xiamen Intermediate People's Court of Fujian Province with the same claims and grounds as in the Third Litigation (the "Fourth Litigation"). On February 8, 2021, the Xiamen Intermediate People's Court rendered Civil Judgment (2020) Min 02 Min Chu No. 963, dismissing all of Ri [X] Instruments' claims. Ri [X] Instruments was dissatisfied and appealed to the Supreme People's Court, but failed to pay the case acceptance fee in accordance with the law and applied to withdraw the appeal. On June 9, 2021, the Supreme People's Court rendered Civil Ruling (2021) Zui Gao Fa Zhi Min Zhong No. 921, finding that the case was to be treated as an automatic withdrawal of the appeal.

In January 2022, Heng [X] Technology brought the present lawsuit in the Xiamen Intermediate People's Court of Fujian Province, asserting that Ri [X] Instruments, knowing that the Patent in Issue had been terminated, maliciously brought the Third and Fourth Litigations, harming Heng [X] Technology's lawful rights and interests, and requesting an order that Ri [X] Instruments make an apology to Heng [X] Technology and compensate for economic losses and reasonable rights-protection expenses totaling RMB 500,000.

Judgment

On July 8, 2022, the Xiamen Intermediate People's Court of Fujian Province rendered Civil Judgment (2022) Min 02 Min Chu No. 151, ordering Ri [X] Instruments to compensate Heng [X] Technology for economic losses and reasonable rights-protection expenses of RMB 60,000 and dismissing Heng [X] Technology's remaining claims. After the judgment was pronounced, Ri [X] Instruments was dissatisfied and appealed to the Supreme People's Court. On October 30, 2023, the Supreme People's Court rendered Civil Judgment (2022) Zui Gao Fa Zhi Min Zhong No. 1861: the appeal was dismissed and the original judgment affirmed.

Reasoning

The focal point of dispute in this case was whether Heng [X] Technology's assertion that Ri [X] Instruments' initiation of the Third and Fourth intellectual property litigations constituted malicious litigation was established, and, if so, how liability should be borne.

In this case, in examining whether the Third and Fourth Litigations initiated by Ri [X] Instruments constituted malicious litigation, the key was to determine whether it brought the patent infringement lawsuits knowing that the lawsuits lacked a basis of rights and a factual basis, and whether it was malicious as to the resulting harm.

First, the Patent in Issue had been announced terminated on March 1, 2006, and that termination had become final, so the Third and Fourth Litigations manifestly lacked a basis of rights. Ri [X] Instruments failed

to pay the patent annual fee as required, and the Patent in Issue was announced terminated by the State Intellectual Property Office on March 1, 2006. Although Ri [X] Instruments was dissatisfied with the State Intellectual Property Office's decision to terminate the Patent in Issue and brought an administrative lawsuit on January 4, 2017, it again withdrew the lawsuit in July 2018, and the state in which the Patent in Issue was no longer protected by law had become final.

Second, Ri [X] Instruments knew that the Third and Fourth Litigations it initiated lacked a basis of rights. Ri [X] Instruments admitted that it had already known in May 2016 (during the Second Litigation) that the Patent in Issue had been terminated and had therefore withdrawn the lawsuit, and that its Third and Fourth Litigations both targeted acts committed by Heng [X] Technology after the termination of the Patent in Issue, so that its lawsuits manifestly lacked a basis of rights. At the same time, Ri [X] Instruments was represented by attorneys in both the Third and Fourth Litigations. Ri [X] Instruments should have had a clear awareness that its lawsuits had no basis of rights, yet nonetheless brought patent infringement lawsuits, and it could be found that it pursued or was reckless as to whether Heng [X] Technology would suffer harm from the litigation.

Third, the acts in Ri [X] Instruments' Third and Fourth Litigations had caused losses to others. As a result of the Third and Fourth Litigations initiated by Ri [X] Instruments, Heng [X] Technology had to incur expenses such as attorney fees in responding to the litigation; in the Fourth Litigation, property preservation measures were taken against Heng [X] Technology upon Ri [X] Instruments' application, which also caused losses to Heng [X] Technology; in addition, Heng [X] Technology adduced evidence that, in a number of bidding activities in which it planned to participate, the tendering parties required the absence of intellectual property disputes, and Heng [X] Technology lost bidding opportunities because of Ri [X] Instruments' lawsuits. All of the above losses arose from Ri [X] Instruments' initiation of the Third and Fourth Litigations and constituted tortious damage.

In sum, Ri [X] Instruments brought the Third and Fourth Litigations knowing that its lawsuits manifestly lacked a basis of rights, which was an act of abusing litigation rights to harm the lawful rights and interests of others, and should be found to constitute malicious litigation. Heng [X] Technology thereby suffered losses including the loss of business opportunities, payment of litigation expenses, and the inability to make normal use of the property under preservation, and Ri [X] Instruments should bear the corresponding tort liability for compensation in accordance with the law. Because Heng [X] Technology did not appeal, that is, it did not dispute the amount of damages in the first-instance judgment, the second-instance court did not adjust the amount.

Relevant Legal Provisions

Articles 120, 1165, and 1184 of the Civil Code of the People's Republic of China.

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