SPC Guiding Case No. 55: Bai Wanqing v. Chengdu Nanxun Product Marketing Service Center et al. (Utility Model Patent Infringement Dispute)

Dan Young Business Consultancy — www.danyoungcpa.com

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 November 19, 2015.

Keywords

Civil / infringement of utility model patent / scope of protection / technical term / infringement comparison

Holding

The scope of protection of a patent right shall be clear. Where the claims of a utility model patent contain obvious defects in drafting, and the specific meaning of a technical term in the claims cannot be determined even when considered in conjunction with the patent specification, drawings, common general knowledge in the field, and relevant prior art, so that the scope of protection of the patent right is clearly unclear, then no meaningful infringement comparison can be made between it and the alleged infringing technical solution, and accordingly the alleged infringing technical solution cannot be found to constitute infringement.

Basic Facts

The plaintiff, Bai Wanqing, was the patentee of the utility model patent No. 200420091540.7, named "Anti-Electromagnetic-Pollution Garment" (the "Patent in Issue"). The technical features of claim 1 of the Patent in Issue were: A. an anti-electromagnetic-pollution garment, comprising an upper garment and a lower garment; B. a metal mesh or film with a shielding function is provided in the fabric of the garment; C. the shielding metal mesh or film is composed of metal filaments or metal powder with high magnetic permeability and no residual magnetism. The patent specification stated that the purpose of the patent was to provide an anti-electromagnetic-pollution garment with low cost, a broad scope of protection and good effect. It was characterized in that the garment was provided in its fabric with a shielding metal mesh or film composed of metal filaments or metal powder with high magnetic permeability and no residual magnetism. The metal filaments could be commercially available copper wire of 5 to 8 strands, and the metal powder could be soft iron powder. Figures 1 and 2 indicated that the protective garment, without changing the existing garment style and fabric function, was formed by weaving conductive metal filaments into the fabric, or by compounding conductive metal powder with the fabric through any one of the processing methods of spraying, coating, diffusion, soaking and printing, to form a mesh structure with openings.

On May 28, 2010, Chengdu Nanxun Product Marketing Service Center sold an anti-radiation garment upper garment of the Tianxiang brand produced by Shanghai Tianxiang Industrial Co., Ltd. The product was priced at RMB 490, and its technical features were: a. an anti-electromagnetic-pollution garment upper garment; b. a shielding metal protective mesh is provided in the fabric of the garment; c. the shielding metal protective mesh is composed of stainless steel metal fiber. On July 19, Bai Wanqing brought a civil lawsuit in the Intermediate People's Court of Chengdu City, Sichuan Province, alleging that the Tianxiang-brand anti-radiation garment upper garment sold by Chengdu Nanxun Product Marketing Service Center and produced by Shanghai Tianxiang Industrial Co., Ltd. (the "Alleged Infringing Product") infringed the Patent in Issue, requesting the court to order Chengdu Nanxun Product Marketing Service Center to immediately cease selling the alleged infringing product, and Shanghai Tianxiang Industrial Co., Ltd. to cease producing and selling the alleged infringing product and to compensate for economic losses of RMB 1 million.

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Judgment

On February 18, 2011, the Intermediate People's Court of Chengdu City, Sichuan Province rendered Civil Judgment (2010) Cheng Min Chu Zi No. 597, dismissing Bai Wanqing's claims. After the judgment was pronounced, Bai Wanqing appealed. On October 24, 2011, the Higher People's Court of Sichuan Province rendered Civil Judgment (2011) Chuan Min Zhong Zi No. 391, dismissing Bai Wanqing's appeal and affirming the original judgment. Bai Wanqing was dissatisfied and applied to the Supreme People's Court for retrial. On December 28, 2012, the Supreme People's Court ruled to dismiss the retrial application.

Reasoning

The effective judgment held as follows. The focal point of dispute in this case was whether the alleged infringing product produced by Shanghai Tianxiang Industrial Co., Ltd. and sold by Chengdu Nanxun Product Marketing Service Center infringed Bai Wanqing's "Anti-Electromagnetic-Pollution Garment" utility model patent. Article 26(4) of the Patent Law of the People's Republic of China provides: "The claims shall be supported by the specification and shall clearly and concisely define the scope of protection sought for the patent." Article 59(1) provides: "The scope of protection of the patent right for an invention or utility model shall be determined by the terms of the claims, and the specification and the drawings may be used to interpret the claims." It is thus evident that accurately defining the scope of protection of a patent right is the precondition for determining whether the alleged infringing technical solution constitutes infringement. Where the drafting of the claims contains obvious defects, and the specific meaning of a technical term in the claims still cannot be determined when considered in conjunction with the patent specification, the drawings, common general knowledge in the field, and relevant prior art, so that the scope of protection of the patent right cannot be accurately determined, then no meaningful infringement comparison can be made between the alleged infringing technical solution and it. Therefore, for a patent right whose scope of protection is clearly unclear, the alleged infringing technical solution cannot be found to constitute infringement.

In this case, the specific range of "high magnetic permeability" in technical feature C of claim 1 of the Patent in Issue was difficult to determine. First, according to the evidence provided by Bai Wanqing, although magnetic permeability is sometimes also called magnetic conductivity, magnetic permeability is divided into absolute magnetic permeability and relative magnetic permeability, and depending on the specific conditions it further involves concepts such as initial permeability μi and maximum permeability μm. Different concepts have different meanings, and the calculation methods are also not entirely the same. Magnetic permeability is not a constant; when the magnetic field intensity H changes, changes in magnetic permeability can be observed. However, in the specification of the Patent in Issue, it was recorded neither whether the magnetic permeability referred to relative magnetic permeability or absolute magnetic permeability or some other concept in the technical solution of the Patent in Issue, nor the specific range of high magnetic permeability, nor the objective conditions, including the magnetic field intensity H, for calculating magnetic permeability. A person skilled in the art would, based on the specification of the Patent in Issue, find it difficult to determine the specific meaning of "high magnetic permeability" as used in the Patent in Issue. Second, from the relevant evidence submitted by Bai Wanqing, although it could prove that some prior art indeed used expressions such as high magnetic permeability and high magnetic conductivity, the meaning of so-called high magnetic permeability was very broad depending on the technical field and the magnetic field intensity, ranging from 80 Gs/Oe to 83.5×10^4 Gs/Oe, all of which Bai Wanqing called high magnetic permeability. The evidence provided by Bai Wanqing could not prove that, in the technical field to which the Patent in Issue belonged, persons skilled in the art had a relatively unified understanding of the meaning or range of high magnetic permeability. Finally, Bai Wanqing argued that, depending on the specific use environment, a person skilled in the art could determine a specific lower safety limit and thereby determine the required magnetic permeability. This argument was in effect to bring all situations capable of achieving the anti-radiation purpose within the scope of protection of the Patent in Issue, and the scope of protection was overly broad and also lacked factual and legal basis.

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In summary, based on the specification of the Patent in Issue and the relevant evidence provided by Bai Wanqing, a person skilled in the art would find it difficult to determine the specific range or specific meaning of “high magnetic permeability” in technical feature C of claim 1, and could not accurately determine the scope of protection of claim 1, and no meaningful infringement comparison could be made between the alleged infringing product and it. Therefore, the second-instance judgment’s finding that Bai Wanqing failed to prove that the alleged infringing product fell within the scope of protection of the Patent in Issue was not improper.

(Judges of the effective judgment: Zhou Xiang, Luo Xia, Du Weike)

Relevant Legal Provisions

Article 26(4) and Article 59(1) of the Patent Law of the People’s Republic of China.

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