Latest Developments in Application of Permanent Injunction as Remedy against Patent Infringement

Legal Affairs Department of China Patent Agent (H.K.) Ltd.

In the United States and other countries, "permanent injunction" is one of the commonest remedies adopted by the courts when a patent infringement is found. In 2006, the US Supreme Court reaffirmed, in eBay Inc., et al. v. Mercexchange, L.L.C. (eBay case),[1] the prerequisite for granting permanent injunctions, which aroused wide discussions around the world. In some later cases, the US courts came up with a more comprehensive interpretation of the prerequisites. On the other hand, in China, permanent injunction is granted in almost all the cases where patent infringements are found. This means that theoretical exploration and practice of denying "permanent injunction" are very limited and rarely seen in the judicial and academic communities. In December 2009, the Supreme People's Court made its final decision in Wuhan Jingyuan v. Japanese Fuji of the Water and Huayang Electric Industry (Jingyuan case), specifying that, in applying the permanent injunction remedy, account should be taken of its impact on the public interests or equity, namely, the remedy should not apply where it has a major impact on the public interests. The Wuhan Jingyuan case will have a great influence on the future judicial practice in China as the eBay case had in the U.S.. Following is a scrutiny and discussion of the issue of application of "permanent injunction" as a remedy against patent infringement and the limitation thereof with reference to the relevant US practice.

I. US practice of permanent injunction

1. Pre-eBay

The permanent injunction is a remedy at the law of equities, not specially applicable to patent infringement litigation. Through years of judicial practice, judges' view on explana-

tion of the prerequisites for granting permanent injunctions can be found in a variety of cases heard by the US courts, and a relative mature judgment standards have finally come into shape in the judicial community in the country, as is shown in the Weinberger v. Romero-Barcelo[2] and Amoco Production Co. v. Gambel[3], in which the courts took the view that whether to apply the permanent injunction should be determined under the principle of equity and according to the specific facts of a case, rather than applying it to a special category of infringements[4].

To be specific, in the patent community, under the US Patent Act, "the patent right is essentially private property"[5], and "a patentee is entitled to exclude others from making, using, offering for sale or selling his invention"[6]. Said right, however, cannot be construed as the cause of "natural" grant of an injunction in patent infringement litigation. The US Patent Act expressly says that the courts "may" decide whether to grant permanent injunctions "according to the principle of equity" in patent infringement litigations[7].

But, before eBay case, there were precedents where injunctions were not granted out of consideration of such factor as public interests[8], but when patent infringement was established, a court tended more to grant the permanent injunction. As in the Metabolite Labs., Inc. v. Competitive Techs., the district court decided to grant the injunction when it found no sound reason for denying it. The Court of Appeals for the Federal Circuit (CAFC) held that the decision was reasonable since "an injunction should be issued once infringement has been established unless there is a sufficient reason for denying it"[9].

2. eBay case: reaffirming the "four-factor test"

In hearing the eBay case, the CAFC held that "a permanent injunction will issue once infringement and validity have been adjudged", and indicated that injunctions should be denied only in the "unusual" case, under "exceptional circumstances" and "in rare instances . . . to protect the public interest." [10]

Directed to the practice, the Supreme Court believed that it was necessary to reiterate the fundamental principle of equities, so it granted certiorari, and stressed, in the judgment made after hearing the case, that a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.[11]

Ever since, the US courts judicial practice with regard to permanent injunction has begun to turn to a different direction. Directed by the eBay case, the US court at all levels, including the CAFC, now follow the four-factor test in handling patent infringement cases. Even so, permanent injunction remains to be the commonest outcome of these cases. Of the 75 decisions the US courts made by citing the eBay case decision from 15 May 2006 to 15 June 2009, about 70% of these cases were heard with injunction issued[12]. Besides, what mattered was not whether to issue an injunction, the court would also consider, in their decisions, such matters as the scope of application and effective time of injunction. Permanent injunction as a remedy against infringement has been under constant delineation, specification and amplification.

3. i4i Limited Partnership and Infrastructures for Information Inc. v. Microsoft Corporation: developments of four-factor test

We have to say that the four-factor test in the eBay case is a relatively generalised standard. In the judicial practice, with cases quite different from one another, the courts still need to decide which factors should be considered according to the four-factor test, in the i4i Limited Partnership and Infrastructures for Information Inc. (i4i) v. Microsoft Corporation[13] closed in December 2009, the CAFC came up with a more detailed, specific interpretation concerning the application of the four-factor test. Following is a brief of the case.

The plaintiff, (i4i), owner of a US patent for editing custom XML, a computer language, accused that Microsoft used its patented technology in its Microsoft Word application, and thus infringed its patent right before the U.S. District Court for the Eastern District of Texas in 2007. During the first-instance hearing, the District Court supported i4i's motion for issuance of a permanent injunction, and held the defendant liable for damages. It is worth noting that the District Court imposed restriction on the scope of the injunction by specifying that "it applies only to users who purchase Word or are licensed after the date the injunction takes effect. Users who purchase Word or are licensed before the injunction's effective date may continue using Word's custom XML editor, and receiving technical support".[14]

Dissatisfied, Microsoft appealed to the CAFC in 2009, and the court discussed whether the injunction should be is-

sued and, if so, to what extent it should be applied, according to the four-factor test. Finally, except the timing for the injunction to take effect, the CAFC upheld the District Court's decision.

As for the "irreparable injury", the CAFC concluded that past harm to a patentee's market share, revenues, and brand recognition was relevant for determining whether the patentee "has suffered an irreparable injury". In the case, i4i and Microsoft were direct competitors, and Microsoft's infringement rendered i4i's product obsolete for much of the custom XML market, causing i4i to lose its market share and change its business model. Evidence was sufficient to show that the plaintiff "had suffered an irreparable injury"[15].

As for the "inadequate remedies at law", the CAFC concluded that the difficulty in estimating monetary damages is to adducing evidence to prove that remedies at law are inadequate. In this case, i4i was practicing its patent exclusively, and did not show any intent to license it. Microsoft captured 80% of the custom XML market with its infringing Word products, forcing i4i to change its business strategy. I4i suffered a loss of market share, brand recognition, and customer goodwill, and particularly loss caused by the significantly change of the relevant market, such losses are hard to valuate. Thus, in this case, monetary damage would be inadequate to compensate i4i for its injury[16].

As for "balance of hardships", the CAFC believed that both parties' sizes, products, and revenue sources might be properly considered. In the case, i4i was a small business, the patent in suit was central to i4i's business and most of i4i's products were based on the patent in suit. Thus, i4i's market share, revenues, and business strategy were similarly tied to the patent in suit. In contrast, Microsoft's infringing custom XML editor was merely one of thousands of features within Word, used by only a small fraction of Microsoft's customers. The far greater importance of the patented method to i4i, combined with the demonstrated past effects of infringement on i4i, favoured issuance of a permanent injunction. The CAFC also indicated that the expenses Microsoft incurred in creating the infringing products, the consequences to Microsoft of its infringement, such as the cost of redesigning the infringing products are irrelevant, because neither commercial success, nor sunk development costs, shield an infringer from injunctive relief.[17]

As for "the public interests", the CAFC took the view that the touchstone of the public interest factor was whether an injunction, both in scope and effect, strikes a workable balance between protecting the patentee's rights and protecting the public from the injunction's adverse effects. The CAFC pointed out particularly that here the relevant "public" included not only individual consumers, but also companies that licensed infringing Word products and manufacturers that are part of Microsoft's distribution channels. It is proper in the case to have carved out users who purchased or licensed infringing Word products before the injunction's effective date, and the injunction's tailoring had minimized disruptions to the market and the public[18].

Finally, affirming the legality of the district court's grant of the injunction and the reasonability of the scope of the injunction, the CAFC gave its different view on the injunction effective date. Upon analysis of the record evidence, the CAFC held that the only evidence relevant to the injunction effective date was Microsoft's employees' testimony that it may take "at least" five months to comply with the injunction, while the plaintiff did not present any counter evidence. There is no evidence to support the district court's decision that the injunction's effective date is "60 days from the date of this order", and thus the CAFC modified the effective date to "5 months from the date of this order".[19]

II. "Permanent injunction" in China

The Chinese patent-related laws and regulations do not specifically provide for the application of permanent injunction in patent infringement litigation. It is generally believed that decision on ceasing an infringement in such litigation under the General Principles of the Civil Law as of 1986, Article 118 of which provides: "where the rights of authorship (copyrights), patent rights, trademark rights, right of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed by such means as plagiarism, alteration or imitation, they shall have the right to require the infringement to be ceased, its ill effects eliminated and the damages compensated for; and Article 134 specifies that permanent injunction is one of the main civil liabilities.[20] Article 15 of the Infringement Liability Law enacted in December 2009 and entering into force on 1 July 2010 also provides that permanent injunction is one of the main civil liabilities[21].

In the past judicial practice in China, once a patent infringement is established, the court, under most circumstances, would order the infringer to cease the infringement. In the very few pre-Jingyuan cases, the courts did not sup-

port the patentees' claims for permanent injunction when patent infringement was established.

1. Cases not supporting permanent injunction claims pre-Jingyuan

Zhuhai Jingyi v. North International and Shenzhen Airport

In January 2005, the Guangdong Province Shenzhen City Intermediate People's Court closed a utility model patent infringement case (case No.587)[22]. In the case, the plaintiff, Zhuhai Jingyi Glass Engineering Co., Ltd. (Zhuhai Jingyi) owned a patent for a utility model of a screen wall connecting device (ZL97240594.1) for supporting and fixing screen walls, especially a screen wall connecting device for the upper end of such a wall. The defendant, North International Cooperation Co., Ltd. (North International) undertook the screen wall project of reconstruction and expansion of airport terminal for the defendant Shenzhen Airport Co., Ltd. (Shenzhen Airport), made the infringing screen wall connecting device, and used it in the said project. Zhuhai Jingyi claimed for permanent injunction, compensating of damages, paying for patent royalties.

The court concluded that North International's unauthorised manufacture and use of the patented products constituted patent infringement, and held North International liable for permanent injunction and compensation of the damages. The court also held that the Shenzhen Airport was a profit-making company, and the terminal is its commercial site; hence its use of the patented product was business use thereof; and its use of said product for business purpose also constituted an infringement, and it should immediately cease the infringement under law. Considering that it was practically impossible for the Shenzhen Airport to cease using the patented product, the court held it liable for paying for the reasonable royalties for using the patented product.

Fischerwerke Arthur Fischer GmbH & Co. KG v. Shanghai Luming, Shenyang Kaixing and Shanxi Museum

In September 2006, the Shanghai No.2 Intermediate People's Court closed Fischerwerke Arthur GmbH & Co. KG (Fischerwerke Arthur) v. Shanghai Luming, Shenyang Kaixing and Shanxi Museum, an invention patent infringement litigation (case No.186)[23]. The plaintiff Fischerwerke Arthur owned a patent (ZL91100552.8) for a fastener which related to a metal fastener specially suitable for fixing roof boards. The defendant, Shanghai Luming Building Material Co., Ltd. (Shanghai Luming) sold the plaintiff's products to Shenyang Kaixing Decoration Engineering Co., Ltd. (Shenyang Kaixing), with the documents, such as Quality Guarantee and Certificate of Origin presented. Shenyang Kaixing made the same products and forged the relevant certificates, and used both the authentic and infringing products in the project of installing stone screen walls for the defendant Shanxi Museum. Therefore, the plaintiff sued them all, claiming permanent injunction and compensation of damages.

The court found defendant Shanghai Luming's sale of the legitimate products neither infringed the patent right, nor facilitated the infringement. Shenyang Kaixing's acts of making and using, in the project, infringing products without authorization, and finally delivering, for use, the screen wall work containing said infringing products were acts of selling and using the infringing products for business purposes, and infringed the plaintiff's patent right. Given that Shenyang Kaixing admitted before court it still had some infringing products in stock, the court ordered it to cease infringement, and not to sell and use them any more, and granted damages. The court also found that Shanxi Museum used the building containing the infringing products, but the use was not for business purpose, so its act did not constitute an infringement.

Fischerwerke Arthur GmbH & Co. KG v. Shanghai Qifeng, Sun Chenglai, Shanghai Hongli, and Hongqiao Development Zone

In December 2006, the Shanghai No.2 Intermediate People's Court closed an invention patent litigation instituted by Fischerwerke Arthur also involving patent (ZL91100552.8) for fastener (case No.12724).[24] In the case, the defendants Shanghai Qifeng Stainless Steel Standard Parts Co., Ltd. (Shanghai Qifeng) and Sun Chenglai, an individual, made the infringing fasteners and sold the infringing products to the defendant Shanghai Hongli Decoration and Design Engineering Co., Ltd. (Shanghai Hongli) without license from the plaintiff. Shanghai Hongli used the infringing products in the wall slabstones in the construction of the Xinhongqiao Building it undertook for the Shanghai Hongqiao Economic Technical Development Zone Integrated Development Co., Ltd. (Hongqiao Development Zone), and the defendant Hongqiao Development Zone used the Hongqiao Building constructed with the infringing products. The patentee sued them, claiming for permanent injunction, and compensation of damages.

The court found that Shanghai Qifeng and Sun Chenglai made and sold the infringing products, and thus granted permanent injunction and compensation of damages.

Shanghai Hongli's acts of using the infringing products in its construction and delivering the building constructed with the infringing product were act of selling and using the infringing product for business purposes, and constituted an infringement of the patent right. But since all the infringing products were used in the walls of said building, it was impossible to require Shanghai Hongli to cease the infringement. Hongqiao Development Zone's use of the building constructed with the infringing products was not for business purposes, so it did not infringe the patent right.

Brief analysis

The three cases heard respectively in Shenzhen and Shanghai were somewhat similar in that they all involved building elements installed in buildings and difficult to detached therefrom, and all involved defendants, such as contractors using the infringing products and owners/users of buildings containing said infringing products. While the plaintiffs requested the courts to order the defendants to cease making, selling and using the infringing products, the latter did not support all their claims.

As for the contractor, in case No.587, the Shenzhen Intermediate People's Court decided that the contractor making and using said infringing products should cease infringement. In case No.186, the Shanghai No. 2 Intermediate People's Court's decision on permanent injunction was limited to the infringing products in stock. In case No.12, the same Intermediate People's Court's decision against the contractor was directed to the defendant's act of using the photographs of the infringing products to offer for sale on its corporate website. As for the infringing products installed in the buildings, the Shanghai No. 2 Intermediate People's Court's position was very clear: since it was impossible to cease the infringement with respect to the infringing products, permanent injunction did not apply.

On the other hand, as for the owners/users of buildings, while the courts did not order them to cease infringement, the courts in Shenzhen and Shanghai made diametrically different determination in respect of the acts in suit. For the Shenzhen court, since the user of the building is a profit-making company, and the terminal is its commercial site;, it used the building containing the infringing products for business purposes, and should be liable for infringement. In way of imposition of the liabilities, the Shenzhen court concluded that it was practically impossible to cease the infringement; hence payment of royalties be imposed instead. By contrast, the Shanghai court decided that the act of the building owner's use of the building containing the infringing products was not for business purposes; hence under Article 11 of the Patent Law, it did not constitute patent infringement, and the user was not imposed any liabilities, including permanent injunction.

While these identical cases were adjudged differently, the courts took substantially the same attitude toward the infringing products installed in and difficult to be detached from the buildings involved, that is, it was undue to decide on permanent injunction in respect of this part of the infringing products. While the courts did not fully explain why they made their decisions this way, as the cases clearly show, it was not difficult to see that the courts took some in-depth consideration when making their decisions. For the Shenzhen court, Shenzhen Airport's use of the building containing the infringing products constituted an infringement, and it should be held liable therefor, but the court found permanent injunction "practically impossible". Here the court was obviously aware of the adverse impact of permanent injunction on the pubic interests, though it did make any explanation in its decision.

2. Wuhan Jingyuan Case

Brief of the case

The plaintiff, Wuhan Jingyuan Envirnmental Engineering Co., Ltd. (Wuhan Jinyuan) owned a patent for the invention with the title "a method of using sea water for desulfurization of flue-gas and aeration device". The defendant, Huayang Electric Industry Co., Ltd. (Huayang Electric) bought a sea water type flue-gas desulfurization system from the defendant, the Japanese Fuji Water Co., Ltd. (Fuji Water), and used the same in the flue-gas desulfurization project in the Houshi Thermal Plant in Fujian Province. Wuhan Jinyuan claimed that said system infringed its patent right, and requested Huayang Electric, on several occasions, to cease the infringement of said patent, and to negotiate on patent license. Later, Wuhan Jinyuan sued in the Fujian Higher People's Court, requesting the court to hold the two defendants liable for permanent injunction and compensation of damages. The plaintiff also claimed that, for easy enforcement, the plaintiff would like to accept payment of royalties from the defendants, instead of their permanent injunction.

The court concluded in its decision made in May 2008 that the two defendants infringed the plaintiff's patent right. "But, installation of flue-gas desulfurization devices in a thermal plant conformed to the essential national environment protection policy and the industrial policy, was conducive to

building up an environmentally friendly society and produce good social benefits, and power supply had direct impact on the local economy and life of the local people; ceasing use of the devices would have adverse effect on the local economy and life of the local people. "To strike a balance between the interests of the patentee and those of the general public", the Fujian Higher People' s Court did not support Wuhan Jingyuan's request that Huayang Electric cease the infringement, and meanwhile ordered Huayang Electric to pay royalties to Wuhan Jingyuan from the date on which the power generator sets using the infringing method and devices were put to business operation to the expiry of the patent in suit.[25] Dissatisfied with the decision, both parties appealed to the Supreme People's Court.

In December 2009, the Supreme People's Court made the final judgment, affirming the first-instance court conclusion. The Supreme People's Court took the view that "given that the flue-gas desulfurization system has been installed in the power plant of Huayang Electric and put into operation, and ordering it to cease the infringement would have major impact on the local public interests, with full consideration of the interests of the patentee and those of the general public," it is not undue for the first-instance judgment to support paying the royalties, and not to issue permanent injunction.[26]

Brief analysis

In Wuhan Jingyuan case, it is the first time for the courts in China to have specified that public interest is a consideration for the application of permanent injunction in patent infringement litigation. Before the case arose, while there was a case where accused infringers made public-interests defence, the trial court did not rule on liability because the allegedly infringing technical solution did not fall within the extent of protection for the patent in suit, and thus the alleged infringement was not found.[27]

Cases similar to the Wuhan Jingyuan case also arose in the judicial history in the U.S., such as City of Milwaukee v. Activated Sludge, Inc. closed by the Seventh Circuit Court of Appeals in 1934. In the case, the plaintiff had several patents for processes and apparatus for sewerage processing, and the defendant's sewage plant infringed the plaintiff's patent rights. In its decision, the court pointed out that if the injunction ordered by the trial court is made permanent in this case, it would close the sewage plant, leaving the entire community without any means for the disposal of raw sewage other than running it into Lake Michigan, thereby polluting its waters and endangering the health and lives of more than half a million people in the adjoining communities. Given that the plaintiff's damage could be monetarily compensated, the court did not support the plaintiff's motion for injunction [28].

Of course, the aforsaid precedent on whether to grant an injunction has been overridden by eBay case and cases following eBay. As mentioned above, the "public interest" is only one factor of the four-factor test. Even with reference made to the four-factor test, the decisions made in the Wuhan Jingyuan case are due. As for the "irreparable injury", the plaintiff did not submit any evidence to prove it. After the case was closed, the plaintiff claimed that the infringement had changed the market structure, and made it difficult to enter the relevant market. If this could be proved, it would be favourable for issuing an injunction[29]. As for the "inadequate remedies", since China is not a common law country, the issue of whether to apply the law of equity does not exist there, so this issue can be simplified to whether damages is sufficient to compensate for the losses of the plaintiff. Wuhan Jingyuan is an environmental engineering company devoted to R&D, manufacture and construction of desulfurization and denitrification technology and equipments for thermal power generation. It does not use the patent in suit, but just license its patents to others[30]. In the litigation, the Wuhan Jingyuan requested, on several occasions, to negotiate with the defendant on patent license, and expressed its willingness to accept royalties instead of permanent injunction in its claims during the litigation. Under this circumstance, it would be hard for the court to find that monetary damages were inadequate to compensate for the plaintiff's injury. As for "the balance of hardships", there lacked relevant evidence in the case. But considering that on the date of the second-instance judgment, the patent in suit was the only patent Wuhan Jingyuan owned,[31] which was central to its business[32], and on which its production and business were based. This factor seemed to be conducive to issuance of an injunction. Finally, as for the "public interests", both courts concluded that permanent injunction would do serious harm to the public. It was exactly out of this consideration that the two courts did not support the plaintiff's claim for permanent injunction claim. Possibly since application of permanent injunction is rarely discussed in the judicial practice in China, the interested parties did not argue on, nor adduce evidence about, this issue in the case. Even if considering evidence likely to be supplemented, the plaintiff Wuhan Jingyuan would probably find it difficult to satisfy the require-

ments of the four-factor test. Under the four-factor test, the courts would be more unlikely to issue a permanent injunction.

3. Guidance of the Supreme People's Court's trial

It is worth noting that before the first-instance ruling was made in the Wuhan Jingyuan case, Cao Jianming, Vice-President of the Supreme People's Court mentioned the issue of correct application of the civil liabilities in the speech he made at the second meeting on the work of trial of IP cases attended by the courts in China in February 2008, pointing out that "permanent injunction and compensation of damages are the basic civil liabilities for IP infringement, but civil liability could be flexibly imposed. In practice, it is possible to determine the specific civil liabilities and ways to bear the liabilities according to the specific circumstances and practical needs of a case under the law, so that the liability imposed would correspond to the infringement, and fully protect rightholders' legitimate rights and interests". As for the application of permanent injunction, he noted that "where an infringement goes on when a first-instance decision is made, the court should generally order the infringement to be ceased"; "a reasonable balance should be kept between the interests of the interested parties and those of the general public according to the specific circumstances of a case. If permanent injunction is likely to knock the parties' interests greatly out of balance or goes against the public interests, or it is practically impossible to cease infringement, the court could weigh upon the interests according to the specific circumstances of a case, and may not give an order to cease the infringement where it is possible to take the substitutive measures, such as full and practical damages or monetary compensation."[33]

In addition, the Supreme People's Court's spelt out a principle in Article 8 of the Opinion on Several Issues Relating to Implementation of the National IP Strategy issued on 30 March 2009, providing that the relations between protection of private rights and safeguarding the public interests should be treated with care. Work should be done to enhance the awareness of private rights protection and respect for the rules for the protection of the private rights, so as to protect interested parties' legitimate rights and interests under the law and realise the goal of the IP regime for encouraging innovation; while works should also be done to duly define the limit of the IP rights, abide by the mandatory regulations set under the law to protect the public interests, to ensure a balance between the private rights and the public interests and to keep the public order[34]. In this regard, what the Supreme People's Court pointed out should not be limited only to the matter of application of permanent injunction; it also related to issues and systems, such as the compulsory patent license system, of keeping a balance between the protection of private rights and the public interests as a whole. The decisions made in the Wuhan Jingyuan case have evidently embodied the spirit of the speech and conformed to the principle for due treatment of protection of private rights and the public interests.

III. Conclusion

In the Wuhan Jingyuan case, the court has decided, for the first time, not to apply permanent injunction out of consideration of the factor of public interests, which is of landmark significance. While China is not a case law country, the second-instance decision, as made by the Supreme People's Court, could serve as a frame of reference for the judicial practice of all the courts in China in the future. Considering the speech and the opinion, it can be expected that there might be more cases involving permanent injunction in the future, and the situation that permanent injunction is naturally applicable in case of established infringement is likely be changed. ■

The authors: Meng Pu, Wu Yuhe, Xiong Yanfeng, Johnson Li, Daniel Cheng Miao, Li Rongxin, and Liu Feifei

---

[1] 547 U.S. 388, (2006)

[2] 456 U.S. 305, (1982)

[3] 480 U.S. 531, (1987)

[4] In Weinberger v. Romero-Barcelo, the US Supreme Court concluded that an injunction is an equitable remedy. It was not a remedy which issues as "of course". The basis for injunctive relief has been irreparable injury and the inadequacy of legal remedies. The court should balance the conveniences of the parties and possible injuries to them cuased by the granting or withholding of the injunction, and pay particular regard for the public consequences in applying the injunctive remedy. 456 U.S. 305, 311-313, (1982).

In Amoco Production Co. v. Gambell, the US Supreme Court also pointed out that the fundamental principle was that an injunction is an equitable remedy that does not issue as of course. The court held that the bases for injunctive relief were irreparable injury and inadequacy of legal remedies. In each case, a court must consider the effect on each party of the granting or withholding of the injunction and particular regard

should be given to the public interest. 456 U.S. 305, 311-313, (1982).

[5] "Subject to the provisions of this title, patents shall have the attributes of personal property." 35 U.S.C. §261.

[6] "Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof." 35 U.S.C. 154 (a) (1).

[7] "The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable." 35 U.S.C. §283.

[8] See：City of Milwaukee v. Activated Sludge, Inc., 69 F.2d 577, (7th Cir. 1934).

[9] Metabolite Labs., Inc. v. Competitive Techs, 370 F.3d 1354, 1372 (Fed. Cir. 2004).

[10] MercExchange, LLC v. eBay, Inc., 401 F. 3d 1323, 1339 (Fed. Cir. 2005).

[11] eBay Inc., et al. v. Mercexchange, L.L.C., 547 U.S. 388, 391.

[12] Mark J. Feldstein, Permanent Injunctions and Running Royalties in a Post eBay World, at http://www.finnegan.com/resources/articles/articlesdetail.aspx?news =9ab31765 –b1b2-43ac-b4fe-01a5477485a6 as visited on 28 February 2010.

[13] 589 F.3d 1246,(Fed. Cir. 2009)

[14] i4i Limited Partnership and Infrastructures for Information Inc. v. Microsoft Corporation, 589 F.3d 1246, 1275 (Fed. Cir. 2009).

[15]Id. at 1276.

[16]Id. at 1276.

[17]Id. at 1277.

[18] Id. at 1277.

[19]Id. at 1277, 1278.

[20] Article 134 of the General Principles of the Civil Law of the People's Republic of China: The main methods of bearing civil liability shall be (1) permanent injunction; ….

[21] Article 15 of the Infringement Liability Law of the People's Republic of China: "The main methods of bearing civil liability shall be (1) permanent injunction; …."

[22] The Shenzhen Intermediate People's Court's Civil Judgment No. Shenzhongfaminsanchuzi 587/2004.

[23] The Shanghai No.2 Intermediate People's Court's Civil Judgment No. Huerzhongminwu(zhi)chuzi 186/2006.

[24] The Shanghai No. 2 Intermediate People's Court's Civil Judgment No. Huerzhongminwu(zhi)chuzi 12/2006.

[25] The Fujian Intermediate People's Court's Civil Judgment No. Minzhichuzi 4/2001.

[26] The Supreme People's Court's Civil Judgment No. Minsanzhongzi 8/2008.

[27] See Min Xueshu v. Kunmin City Dianchi Administration, in which the Yunnan Province Kunming City Intermediate People's Court made the Civil Judgment No. Kunminliuchuzi 25/2005.

[28] City of Milwaukee v. Activated Sludge, Inc., 69 F.2d 577, 593 (7th Cir. 1934).

[29] Li Li, Win a Major Foreign-Related Patent Case in the Field of Environmental Protection, at http://www.legaldaily.com.cn/bm/content/2010-01/14/content_ 2025313.htm, as visited on 28 February 2010.

[30] See Wuhan Jingyuan website http://www.cept.com.cn, as visited on 28 February 2010.

[31] Source of data from http://www.sipo.gov.cn/sipo2008/, as visited on 28 February 2010.

[32] See Wuhan Jingyuan website http://www.cept.com.cn/Article/ShowClass.asp?ClassID=6 as visited on 28 February 2010.

[33] Cao Jianming, Speech made by Cao jinming, Vice-President of the Supreme People's Court in February 2008 at meeting on the work of trial of IP cases attended by the courts in China in February 2008 at http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=110312, as visited on 28 February 2010.

[34] The Supreme People's Court's Opinion on Several Issues Relating to Implementing the National IP Strategy (No. Fafa 16/2009) at http://www.chinacourt.org/flwk/show.php?file_id=134543, as visited on 28 February 2010.