

Impact of New Chinese Civil Procedure Law on Interim Measures in IP Civil Litigation

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On 31 August 2012, the Decision on Amendment to the Civil Procedure Law of the People's Republic of China was passed by the Standing Committee of the National People's Congress, and the amended Civil Procedure Law of the People's Republic of China will enter into force on 1 January 2013 (the new Civil Procedure Law). The provision of Article 6 on evidence preservation and that of Article 9 on preservation and prior enforcement of the new Civil Procedure Law will have great impact on the application of the interim measures in IP civil litigation. This article seeks to probe into the application of the interim measures provided for in the new Civil Procedure Law in IP civil litigation and its impact on the amendment to the Trademark Law, Copyright Law, and the Patent Law on the basis of a study of the present situation of the application of the interim measures in IP civil litigation and the interim measures provided for in the new Civil Procedure Law.

I. Present situation of the application of the interim measures in IP civil litigation in China

1. Law basis of interim measures in IP civil litigation in China

The interim measures in IP civil litigation, also known as the remedial measures in IP civil litigation, refer to the measures IP owners or interested parties petition the people's courts to take for evidence preservation, property preservation or action preservation before they bring civil litigation, during the civil proceedings, or before a court renders its final decision. The interim measures may be divided into pre-litigation and interlocutory measures, with the former including pre-litigation evidence preservation, pre-litigation prop-

erty preservation and pre-litigation action preservation; and the latter including interlocutory evidence preservation, interlocutory property preservation and interlocutory action preservation.

Before the new Civil Procedure Law goes into force, except the interlocutory evidence preservation, pre-litigation and interlocutory property preservation, all other interim measures in IP civil litigation are not provided for in the Civil Procedure Law, and the law bases for the interim measures are the special provisions set forth in the Patent Law, the Trademark Law, and the Copyright Law (referred to below as the conventional IP laws). For example, the pre-litigation evidence preservation measures are respectively provided for in Article 67 of the Patent Law, Article 58 of the Trademark Law, and Article 51 of the Copyright Law¹; pre-litigation action preservation measures are respectively provided for in Article 66 of the Patent Law, Article 57 of the Trademark Law, and Article 50 of the Copyright Law. The Supreme People's Court has made corresponding judicial interpretations relevant to the application of these interim measures.²

No provisions have been set forth in the former Chinese Civil Procedure Law³ and the conventional IP laws concerning interlocutory cessation of alleged infringements or interlocutory action preservation. In the judicial practice, some functions thereof are replaced, to an extent, by the prior enforcement system. The Supreme People's Court's judicial policy pertaining to adjudication of IP cases is very much related to the application of prior enforcement. For example, on 20 July 1998, the Supreme People's Court pointed out, in the Records of the Discussion by Some Courts across the Nation on Adjudication of IP Cases, that the people's courts should strictly abide by the relevant provisions of the Civil Procedure Law, be cautious in their application of the prior enforcement measures, and should stringently review, before taking the

prior enforcement measures, such matters as whether the interested parties have applied for enforcement of the prior enforcement and placed reliable, sufficient surety, whether the applicants' IP rights are of stably and legally valid, whether the facts of the respondents' infringement are obvious, and whether the enforcement is highly necessary. For another example, the Supreme People's Court pointed out, in its Opinions on Comprehensively Enhancing Adjudication of IP Cases to Provide Judicial Guarantee for Building Innovation Nation⁴, that the people's courts should duly apply the interim measures pursuant to law, and "should be active in receiving, quickly examining, prudently deciding in relation to applications interested parties filed for pre-litigation or interlocutory for provisional injunction or prior enforcement, property preservation and evidence preservation, and immediately take the measures. Besides, the responsible leading officials of the Supreme People's Court emphasised, on several occasions at forums or seminars on adjudication of IP cases, that the people's courts should attach importance to application of, and apply according to the law, measures, such as the pre-litigation interim measures and interlocutory property preservation measures and prior enforcement measures to cease infringement in a timely manner and effectively prevent damage or injure done to interested parties from expanding.⁵ All these show that, for the Supreme People's Court, interim injunctions requested in litigation are equal to prior enforcement.

2. Limitation on application of interim measures in IP civil litigation in China

1) Some interim measures apply only to certain IP cases

Of the interim measures, the pre-litigation injunction and pre-litigation evidence preservation only apply to the conventional IP cases, such as those involving patent right, trademark right and copyright, but not to unfair competition cases, and those involving new varieties of plants for lack of provisions on interim measures, such as pre-litigation injunction and pre-litigation evidence preservation in the Unfair Competition Law and in the Regulation for the Protection of New Varieties of Plants. The remedial measures, such as evidence preservation, property preservation and prior enforcement are applicable to all IP cases, as they are provided for so in the former Chinese Civil Procedure Law.

2) Some interim measures in litigation apply only to IP cases of certain causes of action

Of the interim measures, the pre-litigation injunction and pre-litigation evidence preservation apply only to cases

of infringement of the patent right, trademark right and copyright, not to other civil cases involving the patent right, trademark right and copyright, such as cases of contractual dispute or dispute over ownership as they are specially provided for in the conventional IP laws as measures to cease alleged infringement and safeguard rightholders' interests.

II. Interim measures provided for in the new Chinese Civil Procedure Law

One of important parts of the new Chinese Civil Procedure Law is the established pre-litigation evidence preservation and action preservation system, which has improved the preservation system and interim measures in civil proceedings in China, and set forth provisions as the due basis for the interim measures provided for in the conventional Chinese IP laws.

1. Pre-litigation evidence preservation system established in the new Civil Procedure Law

The former Chinese Civil Procedure Law only provided for the interlocutory evidence preservation system.⁶ Now, the pre-litigation evidence preservation system has been added to the new Chinese Civil Procedure Law, and following matters are addressed in Article 81 thereof⁷ in relation to the application of the measure for pre-litigation evidence preservation:

i) Circumstances for application of pre-litigation evidence preservatory measures

The pre-litigation evidence preservation applies in some urgent circumstances, namely, where the evidence is likely to be lost or difficult to be obtained before action is brought.

ii) Persons applying for taking the measures of pre-litigation evidence preservation

Those who may apply for the pre-litigation evidence preservation under the law are interested parties, namely, besides the right owners, interested parties involved in a dispute, such as relevant IP right licensees, may file such applications.

iii) Courts having the jurisdiction over application for pre-litigation evidence preservatory measures

The people's courts having the jurisdiction over application for pre-litigation evidence preservatory measures include the people's courts of the places where the evidence exists, where the respondents are domiciled, or any people's courts that have the jurisdiction over the matter. The provisions relating to several people's courts having the jurisdic-

tion in the new Chinese Civil Procedure Law have made it convenient for interested parties to file applications.

iv) Time limit for applicants to bring action after pre-litigation preservatory measures are taken

Within 30 days after the people's court takes the measures of pre-litigation evidence preservation, an applicant should bring action under the law, otherwise, the people's court should lift or release the preservatory measures.⁸

2. Action preservation system established in the new Civil Procedure Law

By the action preservation is meant a decision the people's court makes to order one interested party to perform a certain act or to prohibit it or him from performing certain act to prevent any act said interested party is performing or will perform from inflicting irreparable injury to the applicant for the measures.⁹ Action preservations are divided into interlocutory and pre-litigation action preservations.

i) Interlocutory action preservation system established in the new Civil Procedure Law

Article 100 of the new Civil Procedure Law has put in place the interlocutory action preservation system.¹⁰ As regards the interlocutory action preservation, the Article has spelt out the following matters: (i) the time for applying for action preservation is the time after the court puts a case on docket or before it makes a decision in the case; and either during the first-instance or during the second-instance proceedings;¹¹ ii) an application for action preservation is filed where it is imperative to stop the respondent's ongoing infringement or require it or him to perform certain act mainly to prevent an applicant from being inflicted irreparable injury;¹² (iii) the action preservation measures may be taken at the request of an interested party or by the people's court *ex officio*; (iv) the people's court may order the applicant to place surety; (v) as for the time limit for decision to take the measure, the people's court is required to make the decision within 48 hours in urgent situations, and if a decision is made to take the measures, it should be enforced immediately; and (vi) the people's court having the jurisdiction over the matter are those that have put the relevant case on docket, but yet to make its decision therein.

ii) Pre-litigation action preservation system established in the new Civil Procedure Law

Article 101 has put in place the pre-litigation action preservation system.¹³ As regards the pre-litigation action preservation, the Article has spelt out following matters: (i) the time for applying for pre-litigation action preservation is

the time before an interested party brings action in the court; ii) an application for the pre-litigation action preservation is filed mainly to protect the interested party against any irreparable injury; (iii) the pre-litigation action preservation measure may be taken only at the request of an interested party; (iv) the applicant should place surety; (v) as for the time to decide to take the measure, the people's court is required to make the decision within 48 hours, and if a decision is made to take the measure, the measures should be taken immediately; (vi) the people's courts having the jurisdiction over the matter are the people's courts of the places where the respondents are domiciled, or those having the jurisdiction over the matter; and (vii) the applicant for taking the measure is required to bring action within 30 days after the people's court takes the pre-litigation action preservation measure, otherwise the people's court should lift the preservatory measure.

iii) About the prior enforcement system

By the prior enforcement system is meant the system under which the people's court, when hearing a civil case, decides that one interested party is to pay the other interested party a given amount of money or specific things, or cease performing, or perform, a given action, and the measure is taken immediately as the latter's life or production so urgently requires.¹⁴ The prior enforcement system is original in the Chinese Civil Procedure Law, and has been working quite well in the judicial system in China, so the system has been kept in the new Civil Procedure Law while the action preservation system has been added to the new Civil Procedure Law.¹⁵

III. Application of interim measures under the new Civil Procedure Law in IP civil litigation

1. Application of interim measures under the new Civil Procedure Law in IP civil litigation

As mentioned above, since interim measures are not provided for in the laws and regulations, such as the Unfair Competition Law and the Regulations for the Protection of New Varieties of Plants, the people's court, after the New Civil Procedure Law goes into force, should directly apply the pre-litigation and interlocutory interim measures as provided for therein when hearing cases of the nature, including the interim measures added to the new Civil Procedure Law,

such as the pre-litigation evidence preservation, pre-litigation action preservation, and interlocutory action preservation. Likewise, as the interim measures provided for in the conventional IP laws apply only to infringement litigations, the interim measures provided for in the new Civil Procedure Law should apply to non-infringement litigation in the conventional IP field, such as those involving IP contracts and ownership, after the new Civil Procedure Law goes into force.

2. Application in conventional IP litigation

1) Difference between interim measures provided for in the new Civil Procedure Law and those in the conventional IP laws

While the interim measures provided for in the new Civil Procedure Law and the conventional IP laws are for the same legislative aim, analysis of them shows that they are different in the following aspects: (i) applicants for interim measures are expressed differently, for example, the expression of “interested party” is used in the new Civil Procedure Law in connection with the pre-litigation evidence preservation and pre-litigation action preservation¹⁶; while the expressions of “IP right owners” or “interested parties” are used in the conventional IP laws;¹⁷ and (ii) the time limit for the people’s court to lift interim measures where the applicant fails to bring action after the people’s court takes some pre-litigation interim measures, such as pre-litigation evidence preservation, or pre-litigation action preservation, is 30 days under the new Civil Procedure Law,¹⁸ while it is 15 days in the conventional IP laws.¹⁹

2) Matters of application of interim measures in the conventional IP litigation after the new Civil Procedure Law goes into force

Given the fact that the interim measures under the new Civil Procedure Law are different from those provided for in the conventional IP laws in the above aspects, the matter of how to apply the interim measures provided for in the conventional IP laws is worth probing into. For this writer, the provisions pertaining to the interim measures of the new Civil Procedure Law are general provisions and the regulations of the conventional IP authorities are specific ones. Therefore, after the new Civil Procedure Law goes into force, in the conventional IP civil litigation, the law bases of the interim measures should be the provisions of the conventional IP laws²⁰ and the Supreme People’s Court’s relevant judicial interpretations. For example, in an IP civil litigation involving infringement, an applicant should bring action within 15 days after the people’s court takes the pre-litigation preservation mea-

asures, otherwise, the preservation measures should be lifted.

IV. Matters worth probing into relating to application of interim measures to IP civil litigation provided for in the new Civil Procedure Law

1. Whether it is possible to lift action preservation measures due to counter-surety

Article 104 of the new Civil Procedure Law provides: “In cases of dispute over property where the respondent places surety, the people’s court should decide to release preservation.” According to the interpretation by the Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People’s Congress of the People’s Republic of China, by the “cases of dispute over property” are mainly meant cases in which a plaintiff brings action, claiming ownership of the property at issue and requesting a defendant to be obliged to pay in monetary form, or fulfill any other obligation that is monetarily computable, and property cases of IP infringement involving action preservation in property dispute are cases to which this Article applies.²¹

For this writer, this interpretation is open to question, and it is argued for a narrower interpretation of the “preservation” mentioned in Article 104 of the new Civil Procedure Law for the following reasons:

1) In property cases involving action preservation, it is difficult to monetarily repair injury to interested party

Under the new Civil Procedure Law, “preservations” are of evidence preservation, property preservation and action preservation. As the purpose of evidence preservation shows, even if the respondent places surety, unless the people’s court has taken measure to make copy of the evidence or otherwise fixate it, the people’s court should not return any evidence that is likely to be lost or is difficult to obtain in the future to the respondent. By contrast, action preservation is taken to protect the applicant against “other injury” or “injury difficult to repair” by way of ordering the respondent to perform, or not to perform, certain action. In the judicial practice, whether it is likely to inflict “injury difficult to repair” on the applicant should be determined mainly by taking account of whether the relevant injury can be monetarily compensated and whether there is reasonable expectation to enforce implementation.²² Injury is generally not considered difficult to repair if it is monetarily compensatable or it is of a reasonably

quantified, monetarily compensatable amount and there is reasonable expectation to enforce implementation.²³ Injury to business goodwill or moral rights and serious loss of the competitive edge in the market would possibly be “injury difficult to repair”.²⁴ Now that “injury difficult to repair” is hardly monetarily compensatable, the people’s court should not release preservatory measures. Suppose in a case where a defendant puts on a commercial and allegedly infringes a plaintiff’s business goodwill, and the people’s court has taken interlocutory preservatory measure at the request of the latter, namely ordering the former to cease and desist from the infringement immediately. The people’s court should, under this circumstance, not release the interim measure even if the defendant places large amount of surety, or the defendant will continue to do the advertising that is likely to infringe the plaintiff’s business goodwill, which would inflict irreparable injury on the plaintiff.

2)The Supreme People’s Court provides in the relevant judicial interpretation that pre-litigation action preservation should not be released or lifted as a respondent places surety

The conventional IP laws have already provided for the interim measures pre-litigation cessation of accused infringement of the IP right. To this end, the Supreme People’s Court has formulated the relevant judicial interpretation, setting forth provisions pertaining to the implementation of the pre-litigation action preservation measures against IP infringement. It is provided in the relevant judicial interpretation that a pre-litigation decision on cessation of infringement should, as a rule, remain effective until the final decision made in a case takes effective;²⁵ measures taken in the decision to cease an accused infringement should not be lifted as a result of the counter-surety placed by the respondent unless the applicant for the measures agrees to.²⁶

Therefore, the writer believes that the “preservation” mentioned in Article 104 of the new Civil Procedure Law should be confined to the circumstances of property preservation. Property is preserved mainly for the sake of enforcing a court decision in the future. If a respondent places surety, the court should lift the preservation. In this regard, clear provision was set forth in Article 95 of the former Chinese Civil Procedure Law. It seems that Civil Procedure Law Amendment and Research Group of the Supreme People’s Court holds a different view on Article 104 of the new Civil Procedure Law, and points out, in particular type of cases of property dispute, after a respondent places surety, “it

seems necessary to conduct further research” as to whether all action preservation measures should be invariably lifted.²⁷

a) Conditions for application of interlocutory action preservation and its relations with prior enforcement

Since no provisions have been set forth in the conventional IP laws regarding interlocutory action preservation, in the judicial practice, the people’s courts basically follows the former Chinese Civil Procedure Law and the provisions of the Supreme People’s Court’s judicial interpretation on prior enforcement. For them, if failure to order, in litigation, to cease an accused infringement would affect the applicant’s production or business, a decision is to be enforced in advance.²⁸ For the purposes of ceasing infringement and eliminating interference, the prior enforcement, a cessation of some action is generally viewed as an action preservation measure;²⁹ hence, after the new Civil Procedure Law enters into force, the people’s court should directly cite the provision on interlocutory action preservation, not that on prior enforcement of the Law, and decide on a defendant ceasing some action in the proceedings.

V. Mutual impact of new Civil Procedure Law and conventional IP laws on interim measures provisions

1. Impact of the interim measures provided for in the new Civil Procedure Law on amendment to conventional IP laws

Amendment to the Trademark Law, Copyright Law and Patent Law is now underway, and one of the goals of the ongoing amendment is to enhance the protection of owners or holders of the IP rights. Without any doubt, taking interim measures in IP litigation is vital to them. For this writer, with systematic provisions on the interim measures set forth in the new Civil Procedure Law, it is no longer necessary to keep provisions on the interim measures in these laws; hence, all such provisions can be deleted when they are being amended.

2.Experience to be gained from practice and provisions on interim measures of the conventional IP laws for the sake of implementation of the new Civil Procedure Law

It is no denying that there is much to be learned from the interim measure provisions of the conventional IP laws for the sake of implementation of the new Civil Procedure Law. The interim measure system of the latter has drawn on the relevant provisions of the former laws. Even if the provisions of

the conventional IP laws relating to interim measures are to be deleted in the course of amendment thereof, much can be learned from these provisions, the relevant judicial interpretations and the people's court's judicial practice for the sake of application of the interim measures in the new Civil Procedure Law, and for the reference of the Supreme People's Court's formulation of the judicial interpretation of the new Civil Procedure Law. For example, the main purpose of the interlocutory action preservation provided for in the new Civil Procedure Law is to protect interested parties against "other injury". But the IP judicial practice and theory show that interlocutory and pre-litigation action preservation should be for the same purpose, namely, to protect applicants against "injury difficult to repair". For this reason, the writer believes that in IP cases, one of the conditions for application of interlocutory action preservation should be that not taking a preservatory measure will inflict injury difficult to repair on an applicant, namely interpreting the "other injury" provided for in the new Civil Procedure Law as meaning "injury difficult to repair". For another example, as for the issue of whether the action preservation can be lifted because a respondent has placed surety, the writer takes the view that at least in IP litigation, according to the Supreme People's Court's relevant judicial interpretation pertaining to pre-litigation cessation of accused infringement of the IP right, action preservation taken by the people's court should not be lifted unless the applicant therefor agrees to.

The new Civil Procedure Law, representing a comprehensive amendment to the former Chinese Civil Procedure Law, will have great impact on the civil proceedings in China after it goes into force. IP litigation is an important part of civil litigation. The relevant provisions of the conventional IP laws have been drawn on in legislating the provisions on interim measures in the new Civil Procedure Law, and the latter, when implemented, will have far-reaching impact on the application of the interim measures in IP cases, and even on the amendment to be made to the conventional IP laws. ■

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court may also take, on its own, the measure of evidence preservation. But the Civil Procedure Law does not provide for the pre-litigation evidence preservation.

² See the Supreme People's Court's Several Provisions on Issues Relating to the Application of Law to Pre-Litigation Cessation of Patent Infringement (No. Fashi 20/2001); the Supreme People's Court's Interpretation on Issues Relating to the Application of Law to Pre-Litigation Cessation of Infringement of the Exclusive Right to Use Registered Trademarks and Evidence Preservation (No. Fashi 2/2002); and the Supreme People's Court's Interpretation on Issues Relating to the Application of Law to Adjudication of Cases of Civil Dispute over Copyright (No. Fashi 31/2002).

³ The former Chinese Civil Procedure Law mentioned in this article refers to the Civil Procedure Law as amended in 2007.

⁴ The Supreme People's Court's Document No.Fafa 1/2007.

⁵ See the following speeches by Cao Jianming, Vice-President of the Supreme People's Court: 1) Strengthen Judicial Protection of IP Rights and Regulate the Market Competition Order: speech at the Forum of All-China Courts on Adjudication of IP Cases held on 11 November 2004; 2) Strengthen Judicial Protection of IP Rights, Improve the Innovation Environment and Build up a Harmonised Society: speech at the Forum of All-China Courts on Adjudication of IP Cases held on 21 November 2005; and 3) In-depth Study and Implementation of the Spirit of 17th National Conference of the Chinese Communist Party to Strengthen Theoretic Study in and System Innovation of Adjudication of IP Cases: Speech at the Ninth Symposium on Adjudication of IP Cases Attended by Judges from People's Courts of Some Provinces and Municipalities held on 16 November 2007.

⁶ For the evidence preservation system, see Article 74 of the former Civil Procedure Law.

⁷ Paragraph two of Article 81 provides: "In urgent situations, an interested part may apply for the preservatory measure to the people's court of the place where the evidence is put or the respondent is domiciled, or to the people's court having the jurisdiction over the matter before bringing action or resorting to arbitration if the evidence is likely to be lost or difficult to obtain again in the future". Paragraph three further provides: "For the other procedures of evidence preservation, refer to the relevant provisions in Chapter 9 on preservation of this Law.

⁸ Article 101, paragraph three, of the Civil Procedure Law of the People's Republic of China as of 2012.

⁹ The Civil Law Office of the Legislative Affair Commission of the Standing Committee of National People's Congress of the People's Republic of China (ed.), Interpretation of the Civil Procedure Law of the People's Republic of China, the China Legal System Publishing House, 2012, P.255.

¹⁰ The Article goes like this: In cases where any action by one interested

¹ Article 74 of the Civil Procedure Law of the People's Republic of China as amended in 2007 provides for evidence preservation system, namely, under the circumstances where evidence is likely to be lost or difficult to obtain again in the future, a party involved in a litigation may apply to the people's court for evidence preservation, and the people's

party or any other reason has rendered it difficult to implement a decision or inflict other injury on an interested party, the people's court may, at the request of the other interested party, decide to preserve the former's property, order him or it to perform, or prohibit him or it from performing, a given action; where the interested party does not file the request, the people's court may also decide to take the preservatory measures if necessary.

When taking the preservatory measure, the people's court may order the applicant therefor to place surety; where the applicant fails to do so, the application will be rejected.

After accepting an application, the people's court, in urgent situations, must make its decision within 48 hours; decision made on taking the preservatory measure should be enforced immediately.

¹¹ Supra Note 9, P259.

¹² Ibid., P.261

¹³ The Article provides: "In urgent situations, if an interested party's not filing an application immediately would inflict injury difficult to repair on his or its legitimate rights and interests, the interested party may apply, for taking the preservatory measure, to the people's court of the place where the property to be preserved is placed, where the respondent is domiciled, or to the people's court having the jurisdiction before bringing action or resorting to arbitration. The applicant shall place surety. If he or it fails to do so, the people's court may decide to reject his or its application.

After accepting an application, the people's court must make its decision within 48 hours; decision made on taking the preservatory measure should be enforced immediately.

Where the applicant fails to bring action or to resort to arbitration according to law within 30 days from the date when the people's court takes the preservatory measures, the people's court shall lift the preservation."

¹⁴ Supra Note 9, Pp.277-278.

¹⁵ Article 106 of the Civil Procedure Law of the People's Republic of China as of 2012.

¹⁶ Paragraph two, Article 81 of the Civil Procedure Law of the People's Republic of China as of 2012.

¹⁷ Articles 66 and 67 of the Patent Law of the People's Republic of China and Articles 57 and 58 of the Trademark Law of the People's Republic of China. In the two Laws have been respectively used the expression of "patentee or interested party" and "trademark registrants or interested parties". In Articles 50 and 51 of the Copyright Law of the People's Republic of China are used the expressions of "copyright owners or holder of right related to the copyright".

¹⁸ Article 81, paragraph three, and Article 101, paragraph three, of the Civil Procedure Law of the People's Republic of China as of 2012.

¹⁹ Article 66, paragraph four, and Article 67, paragraph four, of the

Patent Law of the People's Republic of China; Article 57, paragraph two, and Article 58, paragraph four, of the Trademark Law of the People's Republic of China; and Article 50, paragraph two, and Article 51, paragraph four, of the Copyright Law of the People's Republic of China.

²⁰ See Xi Xiaoming (ed.), Construction and Application of the Amended Articles of the Civil Procedure Law of the People's Republic of China, the People's Court Publishing House, 2012, Pp. 205-206.

²¹ Supra Note 9, P.276.

²² The Supreme People's Court's Opinions on Several Issues Relating to Adjudication of IP Cases for the Overall Public Interest in the Current Economic Situation (No. Fafa 23/2009).

²³ Cao Jianming, Vice-President of the Supreme People's Court, Seeking Truth, Doing Practical Work, and Being Determined to Forge Ahead and Taking Pains to Build a Just, Highly Efficient, and Authoritative IP Adjudication System: speech at the Forum of All-China Courts on Adjudication of IP Cases held on 19 February 2008.

²⁴ Cao Jianming, Vice-President of the Supreme People's Court, Strengthen Judicial Protection of IP Rights Improve the Innovation Environment and Build up a Harmonised Society: speech at the Forum of All-China Courts on Adjudication of IP Cases held on 21 November 2005.

²⁵ Article 14 of the Supreme People's Court's Several Provisions on Issues Relating to the Application of Law to Pre-litigation Cessation of Patent Infringement (No. Fashi 20/2001); and Article 14 of the Supreme People's Court's Provisions on Issues Relating to the Application of Law to Pre-litigation Cessation of Trademark Infringement and Evidence Preservation (No. Fashi 2/2002).

²⁶ Article 8 of the Supreme People's Court's Several Provisions on Issues Relating to the Application of Law to Pre-litigation Cessation of Patent Infringement (No. Fashi 20/2001); Article 8 of the Supreme People's Court's Provisions on Issues Relating to the Application of Law to Pre-litigation Cessation of Trademark Infringement and Evidence Preservation (No. Fashi 2/2002).

²⁷ Supra Note 20, P.234.

²⁸ Articles 97 and 98 of the Civil Procedure Law of the People's Republic of China, Articles 106 and 107 of the Supreme People's Court's Opinions on Several Issues Relating to Application of the Civil Procedure Law of the People's Republic of China.

²⁹ Supra Note 20, P.228.