

Probing into Practice Relevant to Implied Patent License in China

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Article 11 of the Chinese Patent Law provides for the scope of the right to forbid others from exploiting a patent, namely, the patent should not be exploited without authorization of the patentee. In addition to the specific exploitation acts, presence of a license from the patentee is an important prerequisite to denial of patent infringement; hence, patent license is one of the grounds for making a defense against patent infringement. The most common way to obtain a license is to conclude a patent license in writing with the patentee, in which are specified the content of the patent license in the express terms of the contract. In light of the relevant law provisions in China, however, the patent license can be made in, but not limited to, a written form or an express manner. There have occurred cases involving implied patent license in the Chinese patent practice. Since the regulatory documents, such as the existing laws, regulations and judicial interpretations, do not set forth specific provisions regarding implied patent license, and reasons for and factors of application of implied license are varied, the practical situation is worthy of exploration made on the basis of laws applicable to and practice relevant to implied patent license in China.

I. Varied reasons for implied patent license

The main circumstances for implied patent licenses to arise include, among other things, (1) implied patent licenses resulting from exploitation of a patent included in technology standards or in a technology promotion project; (2) those resulting from sales of special parts of a patented product or special apparatus/raw materials/semi-finished products for implementing a patented method; (3) those resulting from parallel imports; and (4) those resulting from previous agreements. Implied patent license, different from an express license in writing, is a kind of patent license arising from implied actions by the patentee which lead one exploiting the patent to believe that it has the necessary permission.¹

II. Legal basis of implied patent license

Firstly, an implied patent license is an implied expression of will and often establishes an implied contractual relationship between the patentee and licensee, so it is regulat-

ed by the General Principles of the Civil Law and the Contract Law. An implied contract, a form of constituted contract, refers to a contract concluded in a non-verbal form, neither written nor oral. Implied form, also known as a presumed form or a form of expressed will, means that the actor does not express his will directly, which is however implied from acts (action or inaction) by means of logical reasoning or according to habits and customs.² This contract form is affirmed in both the General Principles of the Civil Law and the Contract Law in China, as is shown in Article 56 of the General Principles of the Civil Law and Article 10.1 of the Contract Law³. In addition, Article 2 of the Supreme People's Court's Interpretation (II) of Several Issues Concerning the Application of the Contract Law stipulates that "where the parties did not conclude a contract in a written or verbal form, but it may be inferred from the civil conduct of both parties that both parties intended to conclude the contract, the people's court may determine that the contract was concluded in 'any other form' as mentioned in Article 10.1 of the Contract Law, unless it is otherwise provided for in the law."

Most implied patent licenses are found from implied terms in prior contracts. For instance, a prior contract for purchase of special parts or components may contain terms of an implied license based on the acts or trading customs of the parties concerned. The concept and system of implied terms originated from dispute over sales of goods in common law countries⁴. Compared with express terms, implied terms refer to those that should exist in a non-verbal manner in the contract and are inferred from express terms, law provisions, trading customs or acts of the parties concerned.⁵ The concept of "implied terms" is absent in the General Principles of the Civil Law and the Contract Law in China. However, the substantive contents in relation to implied terms can be found in the pertinent provisions, such as Article 61 of the Contract Law and Article 7 of the Supreme People's Court's Interpretation (II) of Several Issues Concerning the Application of the Contract Law⁶.

Secondly, an implied patent license is also a patent license subject to the Patent Law. Article 12 of the Patent Law stipulates "any entity or individual exploiting the patent of another party must conclude with the patentee a written license contract for exploitation and pay the patentee a fee for the exploitation of the patent..." Pursuant to this provision, the Patent Law as a special law does not limit the form in which patent licenses are to be concluded. That is to say, the Patent Law within the patent system does not exclude the

form of implied patent license, leaving room for the application of the general laws, such as the General Principles of the Civil Law and the Contract Law. Although implied patent license *per se* has much in common with other general implied civil permissions, implied patent license often applies where disputes arise between the patentee and exploiters over presence of a license or constitution of infringement, and it then becomes an important defense against patent infringement accusation. In *De Forest Radio Telephone Co. v. United States*, the U.S. Supreme Court interprets the basic principles of implied patent license: no formal granting of a license is necessary in order to give it effect. Any language used by the owner of the patent or any conduct on his part exhibited to another, from which that other may properly infer that the owner consents to his use of the patent in making or using it, or selling it, upon which the other acts, constitutes a license, and a defense to an action for a tort. Whether this constitutes a gratuitous license or one for a reasonable compensation must, of course, depend upon the circumstances; but the relation between the parties thereafter in respect of any suit brought must be held to be contractual, and not an unlawful invasion of the rights of the owner.⁷ It can thus be seen that an implied patent license is essentially a limitation on the rights of the patentee, in particular a limitation on right abuse by the patentee. Moreover, the provisions relating to "exhaustion of right" and "parallel imports" under Article 69.1(1)⁸ stipulating "the circumstances that are not deemed to be infringement of a patent right" of the Patent Law may, in theory, involve the issue of patent license. For instance, free use or sale of a patented product after its first sales is also a kind of implied consent from a certain perspective. For another example, a licensee is licensed to sell a patented product abroad, but he or it imports the patented product into China (the patented product is also protected under the Chinese Patent Law). While Article 69(1) of the Patent Law does not specify whether the scope of "sales" is "at home" or "abroad", it relates to an implied consent to patent exploitation in China or the doctrine of international exhaustion of rights if "parallel import" is allowed.

To conclude, application of the implied patent license focuses on determination of contract formation and contract interpretation within the framework of the contract law theory, and focuses on limitation on the patentee's rights and balance between the interests of patentees and the public interests within the framework of the patent law theory. No matter under the Contract Law or the Patent Law, the appli-

cation of the implied patent license is based on the basic requirement of the good faith doctrine of the civil law. Article 4 of the General Principles of the Civil Law and Articles 6 and 60 of the Contract Law⁹ have all established the good faith doctrine, based on which others can determine that the patentee expressed his will of implied patent license from his implied act or according to the nature of a prior contract, trading customs and other foreseeable results. It is based on the other parties' trust that the law forbids the patentee acting against estoppel in violation of the good faith doctrine; otherwise, other parties' reasonable expectations and normal market order would be damaged. Application of the implied patent license is not excluded in China though no specific provisions relating to implied patent license are set forth in the existing patent laws, regulations and policies in China. Meanwhile, guided by the good faith doctrine of the civil law, the pertinent provisions of the General Principles of the Civil Law, the Contract Law and the Patent Law in China also provide sufficient theoretical bases and guarantees for application of implied patent license.

III. Practical situation of implied patent license in China

In the judicial practice, implied patent license is usually raised by the accused infringer as a defense against patent infringement accusation in patent infringement dispute, and the accused infringer is under the burden to prove the existence of implied license and the contents thereof. There are cases in the judicial practice in China under the above-mentioned circumstances where implied patent license would occur. Following is an overview of these cases involving implied patent license in the judicial practice:

1. A case involving implied patent license due to exploitation of patents included in technology standards or technology promotion projects

Case 1: *Henan Tiangong Pharmaceutical Industry Co., Ltd. (Tiangong) v. Guangxi Nanning Yongjiang Pharmaceutical Industry Co., Ltd. (Yongjiang)*, an appellate case of dispute over invention patent infringement¹⁰

In the case, the appellant, Tiangong, contended that Yongjiang voluntarily gave its patent to the Chinese Government and the patented formula was published as a national standard to the public, which was deemed to authorize others to use its patent. Use of the Yongjiang's patent by Tiangong was a legitimate act to implement these national stan-

dards. The second-instance court made a decision on 22 May 2007 that making pharmaceutical products according to national pharmaceutical standards and whether a patent right was infringed involved two different legal characters, i.e., one was the pharmaceutical production under the administrative supervision and management, and the other was civil. Making pharmaceutical products according to national pharmaceutical standards did not conflict with possible constitution of infringement on the other party's civil rights. Moreover, in the civil legal acts, implied expression of will must be determined under explicit law provisions, but not presumed arbitrarily. Yongjiang's act was not an implied license under the law, nor was there an agreement reached between the two parties. Thus, it was impossible to consider that Yongjiang had implicitly allowed Tiangong to use its patent, and Tiangong was finally found infringing the patent.

As the reasoning of the above judgment shows, the second-instance court did not accept the theory of implied patent license, and opined that implied expression of will can only be determined under explicit law provisions. This opinion is open to question because implied expression of will can be both identified according to law provisions and presumed according to agreements, trading customs and common sense, etc.. As for the reason for not applying the implied license, the second-instance court additionally pointed out that upon grant of a patent for a pharmaceutical product, the patentee was required to obtain the right to produce after converting the pharmaceutical patented technology into a national pharmaceutical standard through the prescribed procedures. That is, the patentee must convert the patented technology into a pharmaceutical standard, and had no right to choose whether or not to include it into the pharmaceutical standard. To exploit its own patent to make the product, Yongjiang entrusted the Guangxi Autonomous Region Drug Testing Institute to draft a pharmaceutical standard of compound lysine particles according to the patented technology, and the standard was published as a national pharmaceutical standard upon approval. Any other party's making of the pharmaceutical products according to the national pharmaceutical standard was an act of exploiting the patented technology and should be licensed by the patentee to do so.

Case 2: *Ji Qiang, Liu Hui v. Chaoyang Xingnuo Construction Engineering Co., Ltd. (Xingnuo)*, a case of dispute over patent infringement¹¹

In the case, the patent in suit was included, with consent of the patentee, in the standard of ram-compaction piles with

composite bearing base issued by the Ministry of Construction and popularized in the construction industry in China. The plaintiffs, Ji Qiang and Liu Hui, licensees of the exclusive license of the patent in suit, found that the construction methods used by the defendant, Xingnuo, in a construction project fell within the protection scope of the claims of the patent in suit, and then filed a complaint before the court. Xingnuo argued that it was not undue for it to conduct design and construction according to the industry standard issued by the Ministry of Construction and appealed the case to the Liaoning Province Higher People's Court. The Liaoning Province Higher People's Court then asked the Supreme Court for instruction as to whether the act of the defendant, Xingnuo, constituted patent infringement, and the Supreme Court replied¹² on 21 December 2009, stating that given the practical situation that the standard-setting authorities in China had not established the relevant rules on the disclosure and use of patent information in a relevant standard, if a patentee participated in setting a standard or agreed to incorporate his patent into a national, industry or local standard, the patentee is deemed to have licensed others to exploit the patent while exploiting the standard, and therefore others' relevant exploitation is not an act of patent infringement as mentioned in Article 11 of the Patent Law. The patentee may require the person exploiting the patent to pay certain royalties, which, however, should be obviously less than the normal royalties; and if a patentee promises to give up royalties, his promise would be followed. Accordingly, the Liaoning Province Higher People's Court found that the act of Xingnuo did not constitute an infringement, but the latter should pay the plaintiffs, Ji Qiang and Liu Hui, royalties of RMB 40,000 yuan.

This is the first case that confirms the existence and legitimacy of implied patent license in judicial practices. As the Supreme Court's Letter of Reply shows, the Chinese courts are positive in application of implied license of patents incorporated in technological standards. From another point of view, incorporation of patented technologies in technological standards is now a trend with development of science, technology and economic activities, and it is unavoidable for standard implementers to exploit others' patents. Therefore, the introduction of implied patent license must be considered under the circumstance where patented technologies are incorporated in the technological standards.

Case 3: *Hengshui Ziyahe Construction Engineering Co., Ltd. (Ziyahe) v. Zhang Jingting et al.*, an appellate case

of dispute over invention patent infringement¹³

In the case, the plaintiff in the first instance, Zhang Jingting, owned an invention patent entitled "method for building node structures of prefabricated composite load-bearing wall construction". The drawing collection of CL Structure Construction issued as local standards by the Construction Bureau of Hebei Province included Zhang Jingting's patented technology. The first-instance court concluded that the technologies in the local standards issued by the Construction Bureau of Hebei Province were for public use and reimbursable, and no entity or individual could exploit the technology, without authorization of the patentee, and Ziyahe was found infringing Zhang Jingting's patent right. The appellant, Ziyahe, argued that the mechanical construction technology it used was legally assigned, and it had no idea that the technology was patented. Besides, according to the Construction Law, the appellant was required to carry on construction according to project design drawings. The appellant's use of the technology in suit was fair use whether in light of the statutory obligations or according to the construction industry standards. On 21 March 2011, the second-instance court cited the Supreme Court's Letter of Reply (No. Minsantazi 4/2008) in *Ji Qiang, Liu Hui v. Chaoyang Xingnuo Construction Engineering Co., Ltd.*, a case of dispute over patent infringement, and determined that the patent in suit was incorporated in the local standards of Hebei Province, and the patentee, Zhang Jingting, participated in making the standards, so it should be deemed that the patentee, Zhang Jingting, licensed others to exploit this patent when implementing the standards, and Ziyahe was not found infringing.

Case 4: *Jiangsu Youningshu Bullock Construction Materials Co., Ltd. (Youningshu Bullock) v. Jiangsu Hehai Technology & Engineering Co., Ltd. (Hehai), Jiangsu Shenyu Construction Co., Ltd. (Shenyu), Yangzhou City Survey, Design & Research Institute Co., Ltd. (Yangzhou)*, a case of dispute over patent infringement¹⁴

In the case, the court found that the patentee, Youningshu Bullock, included its patent in the national science and technology promotion project and then authorized Yangzhou to use its patented design, which would unavoidably lead to subsequent construction and manufacture by the defendants, Hehai and Shenyu, according to the drawings. The patentee's act gave the defendants, Hehai and Shenyu, good reasons to believe that the patentee had the will to license others to exploit its patent. In this case, the act of the defendants, Hehai and Shenyu, did not constitute patent in-

fringement¹⁵.

As the above judicial cases show, the accused infringers mostly raise a plea of implied patent license in patent infringement cases involving certain standards. Generally speaking, the Chinese courts do not reject application of the implied patent license; however, lack of specific provisions resulted in discrepancy in this regard in different regions or at different time. While the Letter of Reply of the Supreme Court in 2008 clearly provides for the application of the implied patent license in the cases involving dispute over infringement of patents as standards, but as the former Chief Judge, Kong Xiangjun, in the Intellectual Property Tribunal of the Supreme Court remarked in response to the questions on the Supreme Court's Letter of Reply from some enterprises and individuals, the Supreme Court's Letter of Reply was made under the circumstances where some standard-setting authorities in China had not established a system concerning patent-related information disclosure and use, it was only a reply in a particular case relevant to the construction industry, and its applicability depends on the details of a case. More efforts should be made to study and probe into similar issues in other industries, such as communication industry, with consideration taken of the characteristics of each industry, and indiscriminate application is forbidden.¹⁶ Some scholars believe that "implied license" of a patentee shall be based on the fact that the rightholder is "free to choose whether to include the patent in the standard or not". In other words, if the inclusion is compulsory under the law and the patentee has no other choice, the application of implied license can be excluded. According to this opinion, Yongjian as mentioned in case 1 must convert the pharmaceutical patent into a national standard in an effort to obtain the right to lawfully make it in consideration of the particularity of the drug and according to the Drug Administration Law. Though Yongjiang participated in making the pharmaceutical standard, it had no right to choose whether to incorporate the patent in the standard or not, and therefore it did not need to make a statement as to whether to license the patent.¹⁷ The judge of the Guangxi Autonomous Region Higher People's Court opined that if Yongjiang did not state that the prescription adopted in the standard fell within the protection scope of the valid patent when making the quality standard, it should be deemed to be an implied license to allow free exploitation of the patented technology.¹⁸

Further, late 2013, the National Communication for Standardisation Administration and the State Intellectual

Property Office of China issued the Provisional Rules on Patent Related National Standards, which entered into force as of 1 January 2014. Article 5 of the Provisional Rules stipulates that any organization or person participating in making a standard shall bear relevant legal liabilities for failure to disclose the patent owned thereby as required and violation of the good faith doctrine. If a patentee fails to disclose his or its patented technology when a standard is being made, he or it shall bear corresponding legal liabilities for violating the good faith doctrine. Nevertheless, the Provisional Rules neither specify the legal liabilities in detail, nor invoke any provisions of other specific laws and regulations. In fact, as is shown from the above-mentioned legal basis and judicial practice in relation to implied patent license, implied license is applicable under this circumstance. The basic good faith doctrine is invoked for lack of any specific provisions about implied license in the Chinese laws and regulations.

2. Cases involving implied patent license due to sales of special parts for making patented products or special device/raw materials/semi-finished products for exploiting patented methods

In the following latest case, the Supreme Court commented on the issue of implied patent license involved in the dispute over patent infringement resulting from sales of raw materials of the patented product.

Case 5: *Jiangsu Microorganism Institute Co., Ltd. v. Fuzhou Haiwang Fuyao Pharmaceutical Co., Ltd. (Fuyao)*, a retrial case of dispute over patent infringement¹⁹

In the case, the parties concerned had no different opinion as to the exploitation of the patent by the petitioner Fuyao, but to the issue of whether there was a license for the exploitation of the patent by Fuyao and whether Fuyao could make a legitimate defense. The primary defense made by Fuyao was that the patentee exclusively licensed Shanhe Corporation the right for making sulfate etimicin API and water injection; Fuyao's manufacture was under the right from the patent licensee, Shanhe Corporation, and therefore did not constitute an infringement; the patentee violated the patent exhaustion doctrine for not allowing Fuyao to make injection out of API legally purchased from the licensee. The Supreme Court held in the decision made on 5 December 2012 that the provision of Article 12 of the Patent Law as of 2000 was not a mandatory provision, and absence of a license in writing did not necessarily mean that there was no patent license relationship. In this sense, patent license was not limited to the written form, and implied license was also

one of the forms of patent license. For instance, if the sole reasonable commercial use of a product is for use in exploiting a patent, selling it to others by the patentee or a third party licensed by the patentee means the patentee's implied license for exploitation of the patent by the buyer thereof. According to the ascertained facts, the raw material for making API of sulfate etimicin chloride injection by Fuyao was bought from the joint venture of the patentee and the others or from the third party licensed by the patentee, Shanhe Corporation. Though the sulfate etimicin API *per se* did not fall within the protection scope of the subject patent, the sales of API by the business set up by the patentee or the third party licensed by the patentee implied a license which allowed others to exploit the patent if the sole commercial use of the sulfate etimicin API was for use in manufacturing the patented product involved in this case.

The comments made by the Supreme Court provided a positive reply to the application of implied patent license in sales of raw materials of the patented product, which is of great significance. In addition, Article 119 (3) and (4) of Guidelines for Patent Infringement Adjudication promulgated by the Beijing Higher People's Court in 2013 provides for the circumstances of implied patent licenses resulting from sales of special parts of patented products or special devices for implementing patented methods. Exploitation of patented products or implementation of methods is not deemed to be an infringement of the patent rights under these circumstances²⁰.

3. Cases involving implied patent license due to other contractual relationships

Case 6: *Wuhan Jingyuan Environmental Engineering Co., Ltd. (Jingyuan) v. Japan Fujikasui Engineering Co., Ltd. (Fujikasui) and Huayang Electric Power Co., Ltd. (Huayang)*, a case of dispute over invention patent infringement

Huayang argued that according to the Commission Contract of Feasibility Research Report on Zhangzhou Houshi Power Plant Smog Desulfurization Project concluded with Jingyuan, it could use the pure seawater smog desulfurisation technology recommended in the Feasibility Research Report by Jingyuan. Jingyuan accused Huayang of patent infringement and violation of the good faith doctrine in spite of the fact that Jingyuan clearly knew about Huayang's use of the disputed technologies and devices beforehand. The first-instance court held that in the Feasibility Research Report, Jingyuan only mentioned the use of pure seawater in Zhangzhou Houshi power plant smog desulfurization process, feasibility of the project solution and the environments

and social benefits of the method, without mentioning the complete technical solution of the subject patent and without licensing Huayang to use the subject patent free. The accusation of Huayang was not supported by facts and law. The second-instance court made no comments on the appellant's grounds.

Implied patent license defense made by Huayang was related to the application of implied license on the basis of other contractual relationship, such as technical consultation. In the present case, it was worth exploring on whether the provision of the Feasibility Research Report by Huayang in light of the good faith doctrine and for the sake of the protection of trust interest can be considered as an implied license on the assumption that the Feasibility Research Report provided by Jingyuan to Huayang indeed involved the patented technologies and devices and Jingyuan knew that it enjoyed the patent right for the technologies and devices.

The former five cases demonstrated that there is room for application of patent implied license in the judicial practice in China. As mentioned in Part II herein, the existing laws and regulations in China provide theoretical bases for application of implied patent license. However, on the other hand, implied patent license is not directly provided for in the law, and there are many varied causes of implied patent license, for example, the case 6 involves other contractual relationship. Implied patent license still needs to be further improved legislatively and judicially. In particular, judicial interpretation and the preceeding guiding cases offered by the Supreme Court can provide teachings for adjudication of different cases.

IV. Conclusion

In conclusion, there is no clear provision concerning implied patent license in the Chinese Patent Law. However, the civil law theories, the provisions of the existing civil laws and regulations, and the current patent systems all provide theoretical basis and room for application of implied patent license. Besides, in the current judicial practice in China, implied patent license is used as a defense in more and more patent infringement cases, and both patent infringement dispute cases involving standards and patent infringement dispute cases resulting from product sales are likely to involve it. It becomes more and more important and urgent to establish a system of rules relating to implied patent license with the development of science, technology and economic activities, and the improvement of the patent judicial system in

China. Meanwhile, the existing patent systems, such as the patent exhaustion doctrine, parallel imports and co-infringement of patent, need theoretical basis and coordination provided by the implied patent license theories, and better and more rational patent systems to better balance the interests of the patentees and those of the public, so as to promote commodity circulation and spur economic development. ■

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¹ Yuan Zhengfu, Research on Implied Patent License System (A), in the Patent Law Research, 2010, and (C) in the Patent Law Research 2011.

² Ma Yuan, Chinese Civil Law Textbook, Chinese University of Political Sciences and Law Press, 1996, P.105.

³ Article 56 of the General Principles of the Civil Law: a civil juristic act may be in written, oral or any other form. If the law stipulated that a particular form be adopted, the stipulation shall be observed; and Article 10.1 of the Contract Law: the parties may, when concluding a contract, use written, verbal or any other form.

⁴ This can be traced back to 1815, and *Cardiner v. Grew* is the earliest case in which the implied terms were established.

⁵ Zhai Yunling and Wang Yang, Probing into Legal Issues of Implied Terms, the Jurisprudential Forum, 2004, issue 1.

⁶ Article 61 of the Contract Law: for a contract that has become valid, where the parties have not stipulated the contents regarding quality, price or remuneration or place of performance, or have stipulated them unclearly, the parties may supplement them by agreement; if they are unable to reach a supplementary agreement, the problem shall be determined under the relevant clauses of the contract or according to trade practices. Article 7 of the Supreme People's Court's Interpretation (II) of Several Issues Relating to Application of the Contract Law: the People's Court may determine, as the trade practices, the following circumstances if they are not contrary to the mandatory provisions of the law and administrative regulations: (1) practices that are generally adopted in the place of trade, or in a region or industry or which the other party of the trade knows has reason to know during the conclusion of the contract; and (2) customary practice both parties often adopt. Regarding a trade practice, the party making the claim shall be under the burden of proof. For another example, Articles 62, 133, 139, 141, 142, 144, 145, 150, 153, 154, 168, 169 and 371 all contain substantial contents of implied terms.

⁷ *De Forest Radio Telephone co. v. United States*, 273 U.S.236 (1927).

⁸ Article 69.1 of the Patent Law provides: none of the following shall be deemed an infringement of the patent right:

(1) Where, after the sale by the patentee, or an entity or individual authorized by the patentee of a patented product or a product directly obtained with the patented process, the product is used, offered for sale, marketed or imported;

⁹ Article 4 of the General Principles of the Civil Law: in civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed; and Article 6 of the Contract Law: the parties shall abide by the principle of good faith in exercising their rights and fulfilling their obligations; and Article 60: the parties shall fully fulfill their respective obligations in accordance with the contract. The parties shall abide by the principle of good faith, and fulfill the obligations of notification, assistance, and confidentiality, etc. in light of the nature and aims of the contract and trade practices.

¹⁰ The Guangxi Zhuang Nationality Autonomous Region's Higher People's Court's Civil Judgment No. Guiminsanzhongzi 46/2007.

¹¹ The Liaoning Province Higher People's Court's Civil Judgment No. Minliaoosizhizi 126/2007.

¹² The Supreme People's Court's Letter of Reply No. Minsantaizi 4/2008.

¹³ The Hebei Province Higher People's Court's Civil Judgment No. Jiminsanzhongzi 15/2011.

¹⁴ The Classical Cases on IP Protection heard by the Courts in Jiangsu Province in 2009.

¹⁵ Ibid.

¹⁶ Kong Xiangjun's Speech at the Meeting of All-China Courts on IP Adjudication and for Rewarding Excellent Groups and Individual Persons in IP Adjudication on 29 November 2008.

¹⁷ Huang Shu, Is Silence "Gold": on Implied Patent License in Standards, carried in the Collected Prize-winning Papers of the 23rd All-China Courts Symposium on Exploration of Socialist Judicial Common Practice and Improvement of Civil and Commercial Legal System, 2011, P.1157.

¹⁸ The Guangxi Zhuang Nationality Autonomous Region's Higher People's Court's Special Report on Implied Patent License Issues, 2008.

¹⁹ The Supreme People's Court's Administrative Judgment No. Zhixingzi 99/2011.

²⁰ Article 119 of the Beijing Higher People's Court's Guidelines for Patent Infringement Adjudication: use, offer for sale, sale or import of a patented product or any product directly obtained by a patented process after being sold by the patentee or any entity or an individual person authorized thereby shall not be deemed to be an infringement of the patent, including ... (3) ... of parts or components or assemble them to make patented product after ... sold the special parts or components of the patented product; (4) use of special devices for exploiting a patented process after the patentee of the patented process or any licensee sold the device.