

# Probe into Requester's Eligibility in the Design Patent Disputes

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Article 45 of the Chinese Patent Law provides that where, starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid. Nor do the Implementing Regulations of the Patent Law set any limitations on an invalidation requester's eligibility. Under such circumstances, the provision<sup>1</sup> in the Guidelines for Patent Examination that the requester requesting for invalidating a design patent on the grounds of conflict of rights should be limited to the prior right holder or the interested party has aroused some disputes in judicial practice.

## I. Case in Dispute

On 7 February 2012, Jiangsu Tianyi Showa Ceramics Co., Ltd. (hereinafter referred to as "the requester") filed a request for invalidating a design patent No. 200630080704.0 on the grounds that the design in suit was in conflict with a legitimate prior right. The Patent Reexamination Board, after hearing, made an Invalidation Decision No. 19011 on 29 June 2012 (hereinafter referred to as Decision No. 19011 of the Patent Reexamination Board), ruling that the requester of the said case, Jiangsu Tianyi Zhaohe Ceramics Co., Ltd., asserted the prior right that was in conflict with the present design was jointly owned by Sango America Inc. and Japan's Showa Corporation. The requester of the said case was the subsidiary of Showa Corporation rather than the prior right holder. There was no evidence proving that the requester owned the said prior right or had been granted an exclusive license. Nor was there evidence proving that the requester had been authorized by the prior right holders to file a re-

quest for invalidation on the grounds of conflict of rights. For this reason, a requester is neither a prior right holder nor an interested party of the prior right. Therefore, in the light of the Guidelines for Patent Examination, the said requester was not eligible to file a request for invalidation because of conflict of rights. The collegial panel would not go through the specific rationales and evidence for invalidation submitted by the requester and thus sustained the said design valid.

The requester was not satisfied with the Decision No. 19011 of the Patent Reexamination Board and filed a case with the Beijing No. 1 Intermediate Court (hereinafter referred to as "the court of first instance"). The court of first instance accepted the case in December 2012 and issued the decision of first instance on 17 September 2013. It was held by the court of first instance that firstly, neither Article 23.3 of the Patent Law nor Rule 63.3 of the Implementing Regulations of the Patent Law sets limitations on the eligibility of an invalidation requester. In the light of Article 45 of the Patent Law, where, starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid. Such a provision does not place any restriction on the eligibility of an invalidation requester. Secondly, from the perspective of amendments to laws and regulations, the amendments that had been made to the Implementing Regulations of the Patent Law as of 2009 were related to the form and standards of evidence submitted, namely, the amended "evidence submitted to prove such conflict of rights" refers to all evidence that can prove the fact of conflict of rights, including but not limited to effective administrative and judicial decisions. The objective of such amendments was to reduce

the requester's difficulty in producing evidence, which released it from attaining administrative or judicial decisions by means of filing complaints or cases with the administrative authorities or courts before requesting for invalidation. There were no such provisions restricting the eligibility of an invalidation requester either in the old or amended Implementing Regulations. Lastly, viewing from the perspective of construction of the system, the request for invalidation on the grounds of conflict of rights not only involves the remedies of the prior right holder, but also has effect on the comprehension of the criteria for grant of patents as well as the public interest. Moreover, it may also affect the rights and interests of potential subjects influenced by the conflict of rights. It was based on the aforesaid grounds that the court of first instance revoked the Decision No. 19011 of the Patent Reexamination Board.<sup>2</sup>

The disputes arising from the said case include: (1) what is the original intention of introducing conflict of rights as the ground of invalidation; (2) whether there should be restriction on the eligibility of a requester for invalidation of design patent on the grounds of conflict of rights, and if the answer is yes, what kind of scope shall be deemed appropriate, and (3) whether there should be some amendments being made to the current laws and regulations and what kind of amendments should be made.

## II. Sources of Legislation of Provisions concerning Conflict of Rights

Before 2000 when the Patent Law was amended, there was no such provision as conflict of rights. Where there was a dispute involving conflict of rights, it can only be dealt with by the administrative or judicial authorities by making reference to infringement disputes. For instance, in case a design patent contains an earlier trademark, the trademark holder is not entitled to request the Patent Reexamination Board to declare the said design invalid on the grounds of conflict of rights; instead, he is simply entitled to request for invalidation due to lack of novelty, or in another way, when the design patent owner manufactures or markets the patented product, he may file a complaint with the Trademark Office or the people's court against the patent owner who infringes the trademark. However, if the design patent owner does not exploit his patent, the holder of the earlier legitimate trademark

should not file a complaint with the Trademark Office or the people's court alleging infringement. Meanwhile, if the prior right holder requests the Patent Reexamination Board to declare the design invalid on the grounds of prior disclosure, it is likely that the latter design will be sustained valid on the grounds that other part of the said design is novel or inventive. Obviously, since conflict of rights is not the legal ground for design invalidation, the aforesaid design that has illegitimately used the prior design of others may exist legitimately for a long time. The legitimate right of the prior right holder is infringed as lacking effective legal measures, which has thus aroused strong dissatisfaction among prior right holders.

In order to solve the aforesaid dilemma, the provision relating to conflict of rights was first introduced in Article 23 of the Patent Law in 2000, which provides that any design for which patent right may be granted must not be identical with and similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country, and shall not be in conflict with any prior right of any other person. However, there was a great dispute arising during the second amendment of the Implementing Regulations of the Patent Law concerning who would judge whether the design was in conflict with the legitimate prior right of others. Some thought the judgment on whether there was conflict of rights was the judgment on whether the design patent should be declared invalid, which should be conducted by the Patent Reexamination Board, while others thought the judgment on whether there was conflict of rights was the judgment on whether the legitimate prior right of others had been infringed, which, according to provisions as provided in the Trademark Law and Copyright Law, should be conducted by the administrations for industry and commerce, or copyright administrations, or the people's courts dealing with infringement disputes. The lawmakers concluded after discussion that the Patent Reexamination Board, when dealing with cases concerning conflict of rights, would encounter two difficulties including determination of the eligibility of the prior right holder as well as whether it was legally eligible to judge conflict of rights<sup>3</sup>. Therefore, the aforesaid latter opinion was adopted<sup>4</sup>.

Rule 65.3 of the Implementing Regulations of the Patent Law as of 2001 provides where a request for invalidation of a patent for design is based on the grounds that the patent for design is in conflict with a prior right of another person, but no effective ruling or judgment is submitted to prove such

conflict of rights, the Patent Reexamination Board shall not accept it. Based on such regulation, even though the Patent Reexamination Board is entitled to declare a design patent invalid on the grounds of conflict of rights, such decision shall only be made based on effective administrative or judicial decisions. In that case, in practice, even if a design contains a prior right, only when the design patent owner manufactures or markets the patented product can the prior right holder file a complaint with the administrative authority or file a case with the people's court against the said design patent owner for infringement. It is only after the aforesaid administrative authority or the people's court has made the related effective decisions can the prior right holder request the Patent Reexamination Board to declare the design patent invalid on the grounds of conflict of rights. However, in administrative enforcement and judicial practice, the administrative authority and people's court, rather than conduct a trial on whether the later-filed design patent is in conflict with the prior right directly, simply conduct a trial on whether the accused infringing product has infringed the legitimate prior right, even if the case filed by the prior right holder with the relevant administrative authority or people's court has been accepted. What is worse, when the prior right holder files an infringement action with the administrative authority or people's court, the accused infringer may use the design patent as a "defence", which will make it difficult for the administrative authority or people's court to determine infringement. It was due to the aforesaid rationales that the provision of conflict of rights falls through in examination practice in spite of its introduction into Article 23 of the Patent Law as of 2000, which resulted in the failure of realizing the legislative intent by eliminating conflict of rights in order to provide protection for the justified rights and interests of the prior right holder and prevent the filing of patent applications in bad faith.

The provision concerning conflict of rights has been reserved in the Patent Law as of 2008 as Article 23.3. It is pointed out in Introduction to the Third Amendment of the Patent Law that it often occurs in reality that the registered trademark or the image or model of the copyrighted works owned by other party is applied as a design patent and finally granted. It leads to the result that various parties are entitled to various kinds of intellectual property rights granted for the same subject matter and therefore causes conflict of rights upon exploitation of such different intellectual property rights.<sup>5</sup> Meanwhile, in order to effectively solve the issue of conflict of rights, the lawmakers have deleted Rule 65.3 of

the Implementing Regulations of the Patent Law as of 2001 and revised it as Rule 66.3 of the Implementing Regulations as of 2009. It provides that where a request for invalidation of a patent for design is filed on the grounds that the patent for design does not comply with the provision of Article 23.3 of the Patent Law, but no evidence is submitted to prove such conflict of rights, the Patent Reexamination Board shall not accept it. The said amendment entitles the Patent Reexamination Board to directly examine the conflict of rights. Once the requester has submitted evidence to prove the conflict of rights, such request for invalidation shall be accepted. The said evidence includes relevant decisions or judgments concerning infringement as well as evidence demonstrating that the prior right owned by the requester exists legitimately and that the patent owner of the design in dispute has used all or part of the elements of the prior right in its design without the requester's consent.<sup>6</sup> In the examination practice of the Patent Reexamination Board thereafter, there has been a significant increase in the number of cases concerning conflict of rights, in which, most evidence is submitted to prove the legitimate existence of the prior rights and that the later-filed design patents contain the prior rights. What is more, most of the requesters for invalidation are prior right holders or licensees authorized thereby to use their legitimate prior rights.

It can be seen that viewing from the source of legislation of the provision of the conflict of rights among design patents, the legislative intent to introduce the provision of conflict of rights as the ground for invalidation is as follows: the intellectual property right is an intangible property right and the same content may be used by different right holders intentionally or unintentionally. Thus, when exercising intellectual property rights, it may cause conflict among various right holders. The conflict of intellectual property rights of the same kind owned by different right holders can be solved in the light of provisions concerning lacking of inventive step or double patenting, while the conflict of intellectual property rights of different kinds can only be solved by means of provisions of conflict of rights in invalidation procedure so as to protect the justified rights and interests of the prior right holder. In other words, the legislative intent of the provision of conflict of rights does not lie in guaranteeing the degree of the inventive step of a design, or in preventing the design in public domain from being applied as a design patent and therefore damaging the public interests; rather it lies in eliminating the conflict of rights and protecting the legitimate

rights and interests of the prior right holders.

### III. Reasons for Restrictions on the Eligibility of Requesters for Invalidation of Design Patent Based on Conflict of Rights

#### 1. Conflict of rights is a relative ground for invalidating a design patent

For this writer, Article 23.1&2 of the Patent Law, which are dealing with the degree of inventive step of design are absolute ground for invalidation, namely, any request for invalidation based on such ground shall be judged by the Patent Reexamination Board based on the evidence provided, with the same ground and evidence resulting in the same conclusion. Even if the parties come to a settlement and the requester withdraws his request for invalidation, the third party is still entitled to request for invalidation based on the same ground and evidence. Or even, in the light of Rule 72.2 of the Implementing Regulations of the Patent Law as of 2009, where the person requesting invalidation withdraws his request, the Patent Reexamination Board finds that it is able to make a decision to wholly or partly invalidate the patent right based on the current examination, the examination procedure shall be continued until the decision is made. Any party is entitled to file a request for invalidation based on the grounds provided in Article 23.1&2 of the Patent Law concerning the degree of inventive step, and the results are always the same. If a design patent does not comply with the provision of Article 23.1&2 of the Patent Law, namely, it does not possess the inventive step as is provided in the law, it, in its essence, constitutes an invasion of the prior design in the public domain, which directly damages the public interest of the social public including everyone. For this reason, any person is entitled to file a request for invalidation of such a design patent. Even if the requester withdraws his request, the Patent Reexamination Board is still entitled to continue the examination *ex officio* for the protection of the public interest.

However, unlike the aforesaid absolute ground for invalidation, the direct victim of the conflict of rights is the prior right holder, who may eliminate the conflict of rights by granting license or permission to the latter right holder and thus benefits both parties. So the provision of conflict of rights is a relative ground for invalidation. The two parties may solve the

aforesaid conflict via settlement and by means of the license granted by the prior right holder to the patent owner of the design patent in dispute, which will come to a win-win result, and sustains the patent in suit valid. After the elimination of the conflict of rights, although the said latter right contains the content of the prior right, it can exist both legitimately and justifiably, which is similar to the circumstance of a dependent patent. Since the said conflict has been eliminated, it is certainly impossible for a third party to file a request for invalidation based on the same ground and evidence. In that case, it is also impossible for the Patent Reexamination Board to refuse the withdrawal and continue the examination to wholly or partly invalidate the design patent. If another person who is irrelevant to the prior right is allowed to file a request for invalidation on the grounds of conflict of rights, then the relative ground is regarded as an equivalent to the absolute ground, which will probably result in the loss of opportunity of eliminating conflict of rights to reach the win-win situation. That will do no good to the protection of intellectual property rights as well as the maintenance of social harmony.

Furthermore, in reality, owing to intangibility of intellectual property rights, it is quite common that the prior right is licensed to others, so that multiple subjects are entitled to exercise the same intellectual property right simultaneously. If a design patent is in conflict with some other prior right, it will hinder the prior right holder from exercising his own legitimate rights, as well as those who are entitled to exercise the prior right or have other interests in the prior right from exercising their own corresponding legitimate interests. Therefore, in addition to the prior right holder allowed to file a request for invalidation on the grounds of conflict of rights, those who are entitled to the relevant rights and interests of the prior right shall also be allowed to do so.

#### 2. Standards for judgment on prior right infringement is taken as a reference for examining conflict of rights

What is conflict of rights? There are no further specific provisions in this regard in the Patent Law or the Implementing Regulations of the Patent Law. The Guidelines for Patent Examination as of 2010 provide that “to be in conflict” means that the design patent constitutes an unauthorized use of the subject matter of a legitimate prior right, therefore the exploitation of the patent would infringe the relevant legitimate rights and interests of the prior right holder. After studying relevant provisions concerning conflicts between a design patent and a trademark right or copyright<sup>7</sup>, criteria for deter-

mining trademark or copyright infringement can be used as a reference for examination of conflict between a design patent and a trademark right or copyright.

In the intellectual property infringement action, there are restrictions on the eligibility of the plaintiff, which means, only the right holder or the interested party is entitled to accuse others of infringing his intellectual property. With reference to the aforesaid provision, it is provided in the Guidelines for Patent Examination as of 2010 that where a request for invalidating a design patent is submitted on the grounds that the design patent is in conflict with a legitimate right of another individual which has been acquired prior to the filing date of the patent, the requester is limited to the prior right holder or interested party. Wherein, the interested party refers to the person who is entitled to bring a lawsuit to the people's court or request the competent administrative authority to handle the matter regarding the dispute over infringement of the prior right in accordance with the relevant legal provisions.<sup>8</sup> Otherwise, the Patent Reexamination Board shall not accept the request. During the patent validation process, the requester shall bear the burden of producing evidence for his allegation, including proving himself the right holder or interested party of the prior right and the validity of the prior right.<sup>9</sup>

For this writer, conflict of rights is proposed based on the theory of imminent infringement, so it is proper to make reference to the standard of infringement during trial of conflict of rights. Based on that, it is within its original meaning that the eligibility of an invalidation requester based on conflict of rights should be restricted. It is inappropriate to interpret it in a broad sense, since it may irrationally increase the number of disputes involving conflict of rights, waste administrative resources and increase the burden on right holders.

### **3. The rules of evidence and the requirement on administrative efficiency lead to the restriction on the eligibility of invalidation requestor on the grounds of conflict of rights**

During the settlement of a civil dispute, the principle of "the burden of proof is borne by the claimant" should be complied with, and the person who fails to produce evidence shall undertake the liability that his claim cannot be supported. The prior right holder has the most knowledge of the existence, exploitation and features of the said prior right, so that the evidence provided by it will be more complete and accurate. When filing a request with the Patent Reexamination Board, the prior right holder is more capable of proving

the current situation of the existence and exploitation of the prior right explicitly, and clarifying the specific rationales for the conflict of rights, which will make the Patent Reexamination Board easier to determine whether there exists conflict of rights or not. Meanwhile, viewing from the efficiency of patent validation examination, it is usually hard for others to comprehend the situation of the prior right completely and accurately, which results in the lack of rationales and evidence. It will then expand the scope of and increase the burden of *ex officio* investigation made by the Patent Reexamination Board, and do harm to their effective and orderly administrative validation examination.

### **4. System to settle down the conflict of rights under the Trademark Law can be taken as reference**

It is noteworthy that Articles 44 and 45 of the Trademark Law provide different definitions for the eligibility of subjects requesting invalidation based on different grounds. Article 44 provides that where a registered trademark stands in violation of the provisions of Article 10, 11 or 12 of this Law, or the registration of a trademark has been acquired by fraud or any other unfair means, the Trademark Office shall declare the registered trademark invalid; any other organization or individual may request the Trademark Review and Adjudication Board to declare such a registered trademark invalid. Article 10 of the Trademark Law provides that such signs as the state name or international intergovernmental organization shall not be used as trademarks, while Articles 11 and 12 provide that signs which are devoid of any distinctive character shall not be used as trademarks. All of the aforesaid grounds are absolute grounds for invalidating the said trademark. It will certainly lead to the invalidation of the said trademark once such provisions are violated. The absolute ground for invalidation is directly related to the public interest. The violation of such provisions constitutes infringement of the public interest, so any person may request invalidation on that ground. Unlike the aforesaid situation, Article 45 of the Trademark Law provides that where a registered trademark stands in violation of the provisions of Article 13.2&3, Article 15, Article 16.1, Article 30, Article 31, or Article 32 of this Law, the earlier right owners or any interested party may, within five years from the date of registration, request the Trademark Review and Adjudication Board to declare the registered trademark invalid. Article 13.2&3 of the Trademark Law are dealing with prohibition of reproduction, imitation, or translation of a well-known trademark of another person registered in China. Article 15 provides prohibition of the unau-



thorized registration of a trademark by an agent or representative. Article 16.1 is related to geographical indication. Article 30 provides prohibition of registration of a trademark that is identical or similar to a trademark of another person. Article 32 prohibits the squatting of a trademark of another person on the grounds of conflict of rights or by unjustified means. All the aforesaid grounds, as is provided in Article 45 of the Trademark Law, are relative grounds for invalidating a trademark. What is directly infringed is the interests of a specific person, so that such a request for invalidation can only be brought up by the prior right holder or interested party.

It is noteworthy that Article 4 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Adjudication of Trademark Civil Cases provides that the interested parties shall include the licensee of a registered trademark licensing contract, and the legal heir to the property right of the registered trademark. Article 3 of the Interpretation of the Supreme People's Court on Issues Concerning Jurisdiction and the Application of Laws in the Adjudication of Trademark Cases provides that where a trademark registrant or an interested party files a request with the administration for industry and commerce for handling trademark infringement and files a case with the people's court for compensation for damages resulting from trademark infringement, the people's court shall accept the case. Viewing from the aforesaid provisions comprehensively, the interested party, as is provided in the Trademark Law, is limited in judicial practice to those who are entitled to bring an action to the people's courts or the administration for industry and commerce due to trademark infringement, which includes the licensee of a registered trademark licensing contract and the legal heir to the property right of the registered trademark. Such interpretation has been put into implementation all the time in trademark infringement practice. For this writer, the meaning of a legal term in one set of laws should remain consistent, so the scope of "interested party", who is entitled to request invalidation based on relative grounds such as conflict of rights, as is provided in Article 45 of the Trademark Law, should be consistent with that as is provided in the two Judicial Interpretations mentioned above. In view that the dispute settlement system concerning conflict of rights is based on the theory of imminent infringement, standards of infringement examination are used as reference when making standards for examination of conflict of rights. The writer thinks this approach is both legal and

rational.

#### IV. Conducting analysis on dispute, improving the legislation and unifying the enforcement

For this writer, the cause of the divergence in the aforementioned case in dispute lies in the fact that the relevant provisions of neither the Patent Law nor the Implementing Regulations of the Patent Law have sufficiently demonstrated the legislative intent of the introduction of conflict of rights. Moreover, there has been no corresponding judicial interpretation issued by the Supreme People's Court. The legal hierarchy of the Guidelines for Patent Examination is rather low and what is worse, some points of the said provision are not so easy to understand or comprehend, including:

Firstly, Article 45 of the Patent Law provides that where, starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid. It can be seen that there are no restrictions on the eligibility of a requester for invalidation of design patent on the grounds of conflict of rights.

Secondly, Rule 66.3 of the Implementing Regulations of the Patent Law provides that where a request for invalidation of a patent for design is filed on the grounds that the patent for design does not comply with the provision of Article 23.3 of the Patent Law, but no evidence is submitted to prove such conflict of rights, the Patent Reexamination Board shall not accept it. The restriction on the acceptance of the request as is provided in the provision mentioned above can be interpreted in at least twofold ways: broadly, the requester is required to submit evidence in relation to the conflict of rights, or otherwise, the request for invalidation shall not be accepted; and narrowly, the requester is required to submit evidence to prove the conflict of rights, which, viewing from aspects of the legislative intent as well as the construction components, shall include the evidence to prove the existence of the prior right and to prove the requester is the prior right holder or is entitled to certain rights or interests with respect to the said prior right, as well as evidence to prove the design patent in dispute is in conflict with the

aforesaid prior right. Seen from the provisions in Section 7, Chapter 5 of Part IV of the Guidelines for Patent Examination, they are closer to the latter narrow interpretation,<sup>10</sup> which provides restrictions on the eligibility of the requesters for invalidation of a design patent. Yet, since the legal hierarchy of the Guidelines for Patent Examination, as department rules, is rather low, and may simply be used as reference by the people's courts during the trial of cases, under the circumstance that the Supreme People's Court has not issued any relevant judicial interpretation, there may be some different understandings among the local people's courts on the legislative intent of the specific provisions in the Patent Law and the Implementing Regulations of the Patent Law in judicial practice. Therefore, the provisions in the Guidelines for Patent Examination may or may not be used as reference when concluding a judgment during the trial of specific cases, which results in inconsistent enforcement of legislation.

Lastly, it is provided in Section 3.2, Chapter 3 of Part IV of the Guidelines for Patent Examination that where a request for invalidating a design patent is submitted on the grounds that the design patent is in conflict with a legitimate right of another person acquired prior to the filing date of the patent, and the requester fails to prove himself the prior right holder or interested party, his request for invalidation shall not be accepted. Wherein, the interested party refers to the person who is entitled to file a lawsuit before the people's court or request the competent administrative authority to handle the matter regarding the dispute over infringement of the prior right in accordance with the relevant legal provisions. For this writer, after analyzing the legislative intent of the provision concerning design patents involving in conflict of rights, it can be concluded that the eligible requester should be limited to another individual who is entitled to the relevant rights and interests of the prior right, as mentioned above. The aforesaid person, who is entitled to bring an action to the people's court or request the competent administrative authority to handle the dispute over infringement of the prior right in accordance with the relevant legal provisions under the Guidelines for Patent Examination, has an "interest" or "stake" in the prior art. "An interested party" as such defined is a narrow interpretation of such a legal concept, which is far from the meaning of an interested party as is provided in the Civil Procedure Law concerning the subject of civil action. And therefore, it is easy to arouse misunderstandings among the public and lead to different applications of relevant provisions. In addition, "the prior right hold-

er" and "the interested party" in the provision mentioned above are engaged in a parallel relationship, which, when reading through the whole context, may lead to the fact that the "interested party" is understood as a person that has an "interest" or "stake" in the patent right in suit or in the prior right. It is quite difficult to make people all understand based on the legislative intent that the interested party refers to another person, except the prior right holder, who is entitled to the interests of the prior right.

For the above reasons, the writer would like to propose the following suggestions:

(1) It is suggested that a new paragraph should be added to Article 45 of the Patent Law, providing that where the grant of the said patent right does not comply with the provision of Article 23.3 of the Patent Law, such request with the Patent Reexamination Board to declare the said patent invalid shall be filed by the holder or interested party of the prior right.

(2) It is suggested that the Supreme People's Court should release judicial interpretation concerning the adjudication of cases involving conflict of intellectual property rights, in which the scope of interested party should be clarified.

The writer hopes that the regime of design patents in China can be improved by means of amending legislation and unifying the standards for enforcement based on the analysis of the divergent opinions in the case in dispute and bearing in mind the legislative intent of the provision of conflict of rights. ■

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<sup>1</sup> Section 3.2, Chapter 3 of Part IV of the Guidelines for Patent Examination (Edition 2010), published by Intellectual Property Publishing House in January 2010, p.376.

<sup>2</sup> After the trial, the Patent Reexamination Board was not satisfied with the trial decision and filed an appeal with Beijing High People's Court. And the appeal is still pending.

<sup>3</sup> Guide to the Newly Amended Patent Law, Department of Treaty and Law of the State Intellectual Property Office, published by Intellectual Property Publishing House in August 2001, p.163.

<sup>4</sup> Introduction to the Second Amendment of the Implementing Regulations of the Patent Law, edited by Department of Treaty and Law of the State Intellectual Property Office, published by Intellectual Property

Publishing House in 2001, p. 46.

<sup>5</sup> Introduction to the Third Amendment of the Patent Law, edited by Department of Treaty and Law of the State Intellectual Property Office, published by Intellectual Property Publishing House in March 2009, p. 55.

<sup>6</sup> Introduction to the Third Amendment of the Implementing Regulations of the Patent Law, edited by Department of Treaty and Law of the State Intellectual Property Office, published by Intellectual Property Publishing House in August 2010, p. 82

<sup>7</sup> Section 7, Chapter 5 of Part IV of the Guidelines for Patent Examination as of 2010, published by Intellectual Property Publishing House in January 2010, p. 407

<sup>8</sup> Ibid. , Section 3.2, p 376.

<sup>9</sup> Ibid. , Section 7, p 408.

<sup>10</sup> It is provided in this section that in the invalidation proceeding, the requester shall bear the burden of producing evidence for his allegation, including proving himself the right holder or interested party of the prior right and the validity of the prior right.