

# Overview of and Comments on Patent Administrative Lawsuits Heard at Supreme People's Court in 2016 and 2017 (I)

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This article systematically looks into patent administrative lawsuits concluded at the Supreme People's Court in 2016 and 2017, and reviews some typical cases regarding procedural issues, claim construction and assessment of inventive step. This article further analyses the judicial trend that is worthy of the attention of the IP industry and briefly comments on supplementing new grounds in patent administrative lawsuits.

## I. Brief introduction

From 2016 to 2017, we have collected 116 judgements and rulings on patent administrative lawsuits (those on suspension or withdrawal of cases are excluded) made by the Supreme People's Court<sup>1</sup>, wherein 78 of them were issued in 2016 and 38 in 2017. The specific distribution of these cases is shown in Table 1. Notwithstanding the small number of cases, there is an obvious change in comparison with the situations in previous years, i.e., there is a sharp increase in the proportion of applications for the retrial of cases in re-examination proceedings.

Table 2 shows the distribution of cases according to issues (See next page).

The overall distribution of issues is substantially the same as that in the re-examination and invalidation proceedings. Inventive step is still the key issue in a majority of the cases. The only thing we need to pay attention to is that, the prosecution and appeal rates in design patent invalidation cases always remain at a relatively low level, such that only a small number of design cases entered into the retrial

procedure.

Year	Re-examination	Invalidation			Total
2016	26 all involving inventions	52	invention	20	78
			utility model	13	
			design	19	
2017	19 all involving inventions	19	invention	10	38
			utility model	8	
			design	1	

Table 1 : Distribution of cases in the judgments and rulings in 2016 and 2017

Two series of cases may account for a large total number of patent cases in these two years. One series is related to 14 re-examination cases, the retrial of which was requested by Xu Baoan. The Supreme People's Court rejected all the retrial requests on clarity or inventive step reasons. The other series is related to 16 design patents. Shanghai Mingxuan Furniture Co., Ltd. filed invalidation requests against

16 design patents owned by Beijing Royal Modern Furniture Co., Ltd. The Patent Re-examination Board (PRB) held that all of them were valid. In the first-instance and second-instance, the PRB's decisions were upheld. Shanghai Mingxuan dissatisfied and requested for retrial, but all its retrial requests were rejected by the Supreme Court. This series of cases all related to evidence preservation issues involving webpages.

To get a full picture of those cases, we analyse all of the 116 cases. Here we would like to review and make comments on several important issues in these cases.

## II. Procedural issues

### (1) Abandoning reference documents in the re-examination proceedings does not violate the law

In the Case No. Zuigaofaxingshenzi 912/2017<sup>3</sup>, claim 1 was rejected for lacking inventive step over the combination of Reference 1 and Reference 2 in view of common knowledge. The PRB upheld the Rejection Decision on the grounds that claim 1 lacked inventive step over Reference 2 in view of customary technical means in the art. The patent applicant applied for retrial, claiming that the change of reference documents violated the proper procedure. The Supreme People's Court held that "generally speaking, the PRB shall examine on the basis of the facts and grounds used in the Rejection Decision. (In the present case) ... during the re-examination, the PRB did not add any new ground, but abandoned Reference 1, which means actually less reference documents were used. This is not a full examination of the patent application at issue. In addition, the PRB had pointed out in the Notification of Re-examination that the two parallel technical solutions of claim 1 were both non-inventive over Reference 2 in view of customary technical means in the art. The patent applicant (i.e., the retrial requestor) also have filed his observations accordingly. In this concern, the PRB did not impair the procedural rights

of the retrial requestor. The retrial requestor's argument that the PRB made a full examination of the patent application at issue and thus violated the law shall not be supported."

### (2) The scope of retrial may exceed what the retrial requestor claimed

In the Case No. Zuigaofaxingzai 19/2016<sup>4</sup>, the PRB held in its Invalidation Decision that claims 1 to 4, 6, 7, 9 to 12, 14 to 18, 20 to 26, 29, 30, 34, 35, 37 to 42, 44, 46 and 47 were not supported by the description, and the patent was maintained valid on the basis of the rest claims. Neither the invalidation requestor nor the patentee argued about the valid claims in the retrial. The Supreme People's Court, however, held that besides those invalidated claims, a part of the maintained claims was not supported by the description. Therefore, in addition to the retrial requestor's claims, the Supreme People's Court conducted an examination *ex officio* as to the support of the remaining claims, and upheld the Invalidation Decision in part. The Supreme People's Court emphasized that "if the erroneous part in the PRB's decision regarding the remaining claims is not corrected, those claims, the validity of which is wrongly maintained, will still provide the patentee with exclusive right, and unduly restrict others' legitimate rights and interests and the public's interests. Moreover, pursuant to the Principle of *Res Judicata* in the invalidation proceedings provided in Part IV, Chapter 3 of the Guidelines for Patent Examination, if any other party files a request for invalidating those 'valid' claims on the same grounds, i.e. on Article 26.4 of the China's Patent Law regarding the support, the PRB shall 'not accept or examine' the case", since these claims had been examined in the present case. "In order to supervise the PRB's administrative acts and to prevent those wrongfully maintained claims from impairing others' legitimate rights and interests and the public's interests, this Court, in full consideration of all parties' arguments, and according to Article 6 of the Administrative Procedure Law, also heard

Year	A2	A25	A26.3	A22.3	A22.4	A26.4 Clarity	A26.4 Support	A23.2	Evidence	Others	Total
2016	1	2	5	37	2	6	2	3	16	4	78
2017	1	1	2	23	3	1	3	1	0	3	38
Subtotal	2	3	7	60	5	7	5	4	16	7	116
Percentage (%)	1.72	2.59	6.03	51.72	4.31	6.03	4.31	3.45	13.80	6.03	100

Table 2: Issues argued in the judgments and rulings in 2016 and 2017<sup>2</sup>

and judged on whether the remaining claims comply with Article 26.4 of the China's Patent Law."

**(3) An invalidation requestor may add new ground of common knowledge in the retrial proceedings**

In the Case No. Zuigaofaxingzai 69/2016<sup>5</sup>, the invalidation requestor argued in the retrial proceedings that a front steering driving axle of an automobile belongs to common knowledge. The patentee responded that this argument went beyond the scope of common knowledge discussed in the invalidation proceedings. The Supreme People's Court, however, held that "any invention-creation is a new technical solution made on the basis of common knowledge and prior arts. The common knowledge involved usually covers a broad scope. When filing a request for invalidation, the requestor, in most cases, only explains and provides evidence for common knowledge that may be disputable. Examiners of the PRB, as those skilled in the art, do not need and are unable to require the invalidation requestor to explain and provide evidence for all the common knowledge mentioned in the patent at issue. Especially for the basic knowledge in the art, an invalidation requestor usually believes that the patentee has already known it, and thus does not explain or provide relevant evidence." Meanwhile, the Supreme People's Court has stated in the Case No. Zhixingzi 6/2010<sup>6</sup> that "since the common knowledge is supposed to be known and understood by those skilled in the art, in the patent invalidation administrative lawsuit, based on the invalidation requestor's sole decision on how to use the prior art documents, the court may introduced *ex officio* common knowledge to evaluate the validity of a patent. This does not change the grounds for invalidation, is fair to both parties, and helps to avoid repetition of patent invalidation proceedings, and therefore does not violate legal procedures. Of course, when introducing common knowledge *ex officio*, the court shall provide each party procedural opportunities to make observations." In this case, although the patentee alleged the augment of the retrial requestor (i.e., the invalidation requestor) in the retrial proceedings, namely a front steering driving axle of an automobile belongs to common knowledge, extends beyond the scope of common knowledge claimed in the invalidation proceedings, "the court should not ignore the fact that a front steering driving axle of an automobile is common knowledge, and let it hinder the objective understanding of technical level". Considering it is common knowledge that a front axle of an automobile has both steering and driving

functions, although the patent in suit differs from Reference 1 in the distinguishing feature A, Reference 3 teaches to apply the distinguishing features A and C to Reference 1 to solve the technical problem of interference between the camshaft and the housing edge of the steering knuckle in the front steering driving axle. On this basis, the Supreme People's Court upheld the PRB's decision which declared the patent invalid.

Moreover, in the case, the patentee also argued that the retrial requestor failed to adduce evidence to prove its argument that the inclined angle of the camshaft mentioned in the distinguishing technical feature C belongs to common knowledge. The Supreme People's Court held that "during the hearing, the retrial requestor explained the common knowledge regarding the arrangement of the angle of the camshaft according to the variation of the contact line between the cam and the brake shoe platform when the camshaft is inclinedly arranged, that is, the larger the angle, the short the contact line between the cam and the brake shoe platform, and the smaller the contact force of the brake line. The retrial requestor clearly expounded the common knowledge regarding the angle setting." Based on the above-mentioned common knowledge, in the Invalidation Decision, it is held that those skilled in the art could make conventional choices on the range of inclined angle according to specific working conditions. Hence, such a decision was appropriate.

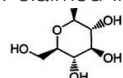
**(4) The PRB has no obligation to adduce evidence for common knowledge in litigation proceedings**

In the Case No. Zhixingzi 228/2015<sup>7</sup>, the PRB upheld the Decision on Rejection on the grounds that claim 1 did not possess inventive step over Reference 1 in view of common knowledge. The retrial requestor argued that the PRB did not submit evidence for common knowledge in the litigation proceedings. The Supreme People's Court held that "the PRB has already demonstrated a book titled Cathodic Protection of Oil and Gas Pipelines as evidence for common knowledge in the re-examination procedure, and the retrial requestor also quoted relevant parts of that book in his Bill of Compliant at the first instance. Thus, in this case, the PRB's failure to file the said book as evidence did not affect the finding of facts. As for the features 'collecting current signals by a current sensor', 'simultaneously monitoring a plurality of cathodic protection parameters' and 'simultaneously and synchronously monitoring and transmitting data on the premise of simultaneous monitoring of the

plurality of parameters', they are all basic knowledge and skills that those skilled in the art shall commonly have. Hence, the finding of the second instance court that the PRB had no obligation to adduce evidence on these features is proper."

**(5) Particularity of a specific case must be considered when taking a similar case as reference**

The issue involved in the Case No. Zhixingzi 352/2015<sup>8</sup> is whether the description complies with Article 26.3 of the Patent Law when it fails to disclose any data on the effect of the claimed chemical product. The retrial requestor argued that in regard to a divisional application for a compound of the formula IA or a salt thereof that is quite similar to the structure of the application at issue, the PRB determined in the Re-examination Decision No. 67557 that the description of the divisional application has sufficiently disclosed the compound of the formula IA or the salt thereof, so the same conclusion shall be drawn to the application at issue. The Supreme People's Court firstly studied the overall structure of the compound in the application at issue and that in the divisional application, and then analysed the difference between those compounds and the prior art compounds cited in the Re-examination Decision, as well as the predictability based on the difference. The Supreme People's Court concluded that at first, "although both the compound of the formula IA claimed in the divisional application, on which the Re-examination Decision No. 67557 was made, and the compound of the formula I claimed in the present application contain the structure



, their overall structure are different. In the divisional application, the compound of the formula IA has benzene rings in the positions corresponding to Ring A and Ring B of the compound of the formula I in the present application. The prior art compound disclosed in the patent No. WO01/68660 cited in the Re-examination Decision No. 67557 also has benzene rings in corresponding positions. The compound of the formula IA merely differs from the compound disclosed in the patent No. WO01/68660 in the linking group between the glucosyl and the A-ring phenyl. To be specific, the linking group in the former is nitrogen atoms while that in the latter is oxygen atoms. Nevertheless, the compound of the formula I in the present application, differs from the compound of the formula IA and the compound disclosed in the patent No. WO01/68660 not only in the linking group between the glucosyl and the A-ring phenyl, but also in that Ring B of the com-

pound of the formula I is a thiophene ring, rather than a benzene ring. A thiophene ring has different physical and chemical properties from a benzene ring. Thus, even if it was true according to Annex 8 of the Re-examination Decision No. 67557 that the activity of the entire compound does not alter when the linking group between the glucosyl and the A-ring phenyl is O, S, CH<sub>2</sub> or NH, it would be still hard to predict the activity of the compound formed by substituting a thienyl for a phenyl of Ring B. Those skilled in the art are unable to predict whether the compound of the formula I in the present application has Sodium-glucose co-transporter (SGLT) inhibition based on the prior art. For all these reasons, the Re-examination Decision No. 67557 cannot override the finding that the compound of the formula I and a salt thereof claimed in the present application are not sufficiently disclosed in the description."

**(6) Web pages preserved by a judicial expertise institution do not have the presupposed probative power.**

The series of Cases No. Zuigaofaxingshenzi 2806-2810/2016, 2812-2814/2016 and 2816-2823/2016<sup>9</sup> all relate to the authenticity of web page evidence, wherein the evidence submitted by the invalidation requestor was promotion materials on a furniture company's website. Fujian Zhongzheng Judicial Identification Centre provided an expert report on the evidence. During the oral hearing of an associated case, the invalidation requestor searched those webpages with "Sogou" search engine on a computer provided by the PRB. However, all pages had been deleted by its publisher. For this reason, the PRB ruled in the Invalidation Decision that such evidence was not admissible due to lack of authenticity. In regard to this issue, the Supreme People's Court firstly investigated the process of evidence preservation and found that "Mingxuan Co. (i.e., the invalidation requestor) used its own computer to log on a third party web platform named 'electronic data evidence preservation cloud' and saved the web pages. Although Fujian Zhongzheng Judicial Identification Centre is a judicial expertise institution, it only, at the request of Mingxuan Co., verified the preserved web pages with certain technical means and provided an inspection report." Later, the Supreme People's Court commented on this method of evidence preservation that: first of all, "the above-mentioned evidence preservation method still lacks authoritative and effective verification in terms of technical credibility, so that the possibility of data tampering in the entire process cannot be completely excluded". Second, "in comparison with

the notarization made by a notary public, the preservation and witness of a judicial expertise institution do not have presupposed probative value. At the oral hearing, the PRB found that the web pages had been deleted or were lost. Considering that Fujian Zhongzheng Judicial Identification Centre made its report without actually logging on the website to verify the web pages, the report alone was insufficient to prove the authenticity of the web pages saved by Xuanming Co. Only when it is used in combination with other evidence, this report can prove the objective existence of the web pages at the time of preservation.” Third, “even if the web pages existed when Xuanming Co. saved them, it is still needed to prove that the pictures shown on the web pages have already existed prior to the application date of the patents and have been known to the public. Since those web pages had been lost, it was insufficient to determine whether the time indicated on the web pages is actually earlier than the filing date of the patent at issue merely according to the hard copy of the web pages attached to the judicial expertise report.” Last but not the least, “Xuanming Co. only provided the web address of web pages, but not showed whether the web pages can be accessed by general public through a search engine or a web portal. In other words, it has not been proved that the web pages were available and accessible on Internet at the time of evidence preservation, let alone that the contents thereon were known to the public prior to the filing date of the patent.”

### III. Claim construction

#### (1) “Pharmaceutically acceptable salts” are not “salts having pharmaceutical use”

In the Case No. Zhixingzi 352/2015<sup>10</sup>, claim 1 of the patent at issue covers a new compound and pharmaceutically acceptable salts thereof. The PRB held in the Re-examination Decision that the description fails to disclose experimental data capable of proving their pharmaceutical use, which does not meet the requirement on sufficiency of disclosure. The second-instance court upheld the Decision on Rejection, and found that the new compound had been disclosed sufficiently since it can be manufactured and its structure can be verified. But the pharmaceutically acceptable salts thereof do not meet the requirement on sufficiency of disclosure due to the uncertainty of its pharmaceutical use. As for the meaning of the term “pharmaceutically acceptable salts” in claim 1, the Supreme People’s Court

held that “the ‘pharmaceutically acceptable salts’ is a conventional term used in pharmaceutical patents. It does not mean that the salts have certain pharmaceutical use, or that a compound which is not defined by any pharmaceutical use has no pharmaceutical use. Instead, it means that on the basis of a compound with pharmaceutical use, the salts formed therefrom have the same pharmaceutical use as the compound and are suitable for pharmaceutical applications.” For those reasons, if a compound has been sufficiently disclosed in the description, the common salts thereof are, generally speaking, also sufficiently disclosed. In the case, the second-instance judgment wrongfully constructed the “pharmaceutically acceptable salts” as “salts having pharmaceutical use” and the compound of the formula I as a compound having no pharmaceutical use, thereby wrongfully applying different criteria on the sufficiency of disclosure of the compound of the formula I and the pharmaceutically acceptable salts thereof.

#### (2) Features on administration cannot define a Swiss-type claim.

The Case No. Zhixingzi 355/2015<sup>11</sup> relates to the use of the anti-ErbB2 antibody in the preparation of a medicament for the treatment of a human patient susceptible to or diagnosed with a disorder characterized by overexpression of ErbB2 receptor, including an initial dose and a subsequent dose of a combination of drugs. Claim 1 defines that “the initial dose comprising an anti-ErbB2 antibody administered at 6mg/kg, 8mg/kg or 12mg/kg, and the subsequent dose comprising an anti-ErbB2 antibody administered at 2mg/kg once a week.” Evidence 1 discloses a method for the treatment of a metastatic breast cancer patient susceptible to or diagnosed with overexpression of ErbB2 receptor by a humanized version of the murine 4D5 antibody and a chemotherapeutic agent, as well as corresponding administration solutions. Claim 1 of the patent in suit differs from Evidence 1 in dosage and administration solution. In regard to whether the features concerning dosage and administration solution in claim 1 shall be considered in the evaluation of novelty and inventive step, the Supreme People’s Court reviewed the history of pharmaceutical use patent and clarified why this type of claim is patentable: “according to Article 25.1(3) of the China’s Patent Law amended in 2000, no patent right shall be granted for methods for the diagnosis or for the treatment of diseases. However, since a medicament and a method for the manufacture thereof are patentable according to the Patent Law, a patent can be granted

if an application for the medical use of a substance adopts pharmaceutical claim or use claim in the form of a method for preparing a medicament, such as ‘use of substance X for the manufacturing of a medicament’, ‘use of substance X for the manufacturing of a medicament for the treatment of a disease’ and so on.” Where an invention relating to the medical use of a chemical medicament differs from the prior art in features relating to use, such as the object, mode, route, dosage, interval of administration, the Supreme People’s Court clarified that “if these distinguishing features cannot define the procedure of the manufacture of a pharmaceutical, but only merely present in the course of administration, said distinguishing features could not bring novelty to a medical use claim.” In this case, the difference in dosage and administration solution is “doctor’s choice of treatment plan. In other words, they only define the administration of a medicament but not the preparation thereof. These features cannot differ the use claimed in claim 1 from that disclosed in Evidence 1. Hence, claim 1 possesses no novelty.”

### **(3) Process features having no effect on the structure or performance of a product cannot define a product claim**

In the Case No. Zhixingzi 170/2015<sup>12</sup>, the patent at issue claims a laminated heat-preserving plastic composite pipe. The distinguishing features of Claim 1 over Reference 1 are: (1) the laminated heat-preserving plastic composite pipe in claim 1 is synchronously extruded and formed of plastic, and (2) the walls of the inner and outer tubes or the laminated layer of the composite pipe can be combined with other thermal insulating material or other thermally insulating material. The Supreme People’s Court held that claim 1 was directed to a product, but the distinguishing feature (1) was a process feature defining the manufacturing of said composite pipe, which had effects on neither the structure nor the performance of the claimed product. Hence, the distinguishing feature (1) cannot impose limitations on the scope of claim 1 and shall not be taken into account in assessment of inventive step.

## **IV. Inventive step**

### **(1) Determination of the closest prior art**

1. The closest prior art refers to a technical solution that is the most closely related to the claimed invention

In the Case No. Zuigaofaxingshenzi 2678/2016<sup>13</sup>, the Supreme People’s Court clarified that “the closest prior art

refers to a technical solution in the prior art that is the most closely related to the claimed invention. The closest prior art may, for example, be an existing technology in the same technical field as the claimed invention, and its technical problem to be solved, technical effects, or intended use are the closest to the claimed invention, and/or has disclosed the greatest number of technical features of the claimed invention.” In the case, the preparation method disclosed in Evidence 1 is to mix reclaimed rubber, fillers, curing agents, active agents and accelerators in proportion before curing the mixture into a vulcanizing machine. Judging from its definition, reclaimed rubber is rubber that can be reused after devulcanization of old rubber product and still is a kind of rubber. Considering the components and steps of the preparing method disclosed therein, Evidence 1 should be determined as the closest prior art as it is the closest to the claimed invention, belongs to the same technical field, and has disclosed the greatest number of technical features of the claimed invention.

2. A patentee shall adduce evidence to prove its observations on the closest prior art in the invalidation proceedings

In the Case No. Zhixingzi 186/2015<sup>14</sup>, the Supreme People’s Court held that “the closest prior art may be an existing technology in the same technical field as the claimed invention, and its technical problem to be solved, technical effects, or intended use are the closest to the claimed invention, and/or has disclosed the greatest number of technical features of the claimed invention; or be an existing technology which, despite being in a different technical field from the claimed invention, is capable of performing the function of the invention and has disclosed the greatest number of technical features of the invention. In the patent invalidation proceedings, whether a technical solution is the closest prior art shall be examined and determined based on the evidence adduced by the party concerned. If the patentee disagrees with the invalidation requestor on the closest prior art, he shall adduce evidence to prove that another prior art is closer to the claimed invention.” In the case, Evidence 1 is identical with or similar to the patent at issue in terms of the technical field, the technical problem to be solved and technical effects. In the event that the retrial requestor failed to prove by evidence that another prior art is closer to the claimed invention, the PRB and the lower level courts can use Evidence 1 as the closest prior art for assessing the inventive step of the patent at issue.



## (2) Comparison of technical features

1. Technical features defined in a claim are the basis for comparison in inventive step assessment

The technical features defined in a claim are not only the basis for finding distinguishing features but also a factual basis for assessing inventive step. Features that are not defined in a claim shall not be considered in inventive step assessment.

The Case No. Zhixingzi 154/2015<sup>15</sup> relates to a communication translation method. Reference 1 discloses a multi-lingual automatic audio simultaneous interpretation system for GSM and a method thereof. The Supreme People's Court held that "the distinguishing technical features of a claim over the closest prior art shall be recited in the claim, and technical features that are not recited in the claim cannot serve as the basis for comparison, let alone becoming distinguishing technical features." In the case, claim 1 only differs from Reference 1 in that translators can be at the service desk and send texts to a user.

The Case No. Zuigaofaxingshenzi 3091/2016<sup>16</sup> relates to an anti-dripping agent for a thermoplastic resin. The patentee filed a retrial request, arguing that "a method for preparing a chemical product is the main basis for judging whether the chemical product can be carried out. A specific preparing method can be used to obtain a corresponding product. The present patent adopts an improved suspension polymerization method, which can manufacture a product that has better properties than the product obtained by emulsion polymerization in Evidence 1 and Evidence 2." The Supreme People's Court held that "whether an invention is inventive is assessed based on the claimed invention, and therefore the evaluation of inventive step shall focus on the technical solutions as defined in the claims. The technical features that the invention contributes to the prior art shall be included in the claims; otherwise, they shall not be considered in inventive step assessment." In the case, since the features of a preparing method emphasized by the retrial requestor are not defined in claim 1, it shall not be considered in the assessment of inventive step of claim 1.

Generally speaking, the technical features which are not recited in the claim but only in the description or drawings can neither be interpreted into a claim nor become a part of the claimed technical solution. This was the main point of the Supreme People's Court in the Case No. Zuigaofaxingzaizi 70/2016<sup>17</sup>. This case relates to a frequen-

cy-conversion speed-regulation type hydraulic coupler electrically-driven feed pump. The PRB held in the Invalidation Decision that claim 1 has three distinguishing technical features over Evidence 4, wherein the distinguishing feature 3 is that "the oil pump in the present patent provides pressure oil to a pump impeller and a turbine through a pipeline, whereas Evidence 4 does not mention an oil pump at all." However, said distinguishing feature is a conventional design choice made by those skilled in the art through logical analysis and reasoning according to design demands or actual working conditions. The second-instance court did not agree with the PRB and held that "as for an invention or utility model, it is usually hard to understand the connection between components and the structures and shapes of the components only by reading the claims, and one must read the description and drawings in order to accurately comprehend the claimed technical solutions." Only from the distinguishing feature 3, it is difficult to tell the positional relationship between the oil pump and the hydraulic coupler, i.e., whether the oil pump is located inside or outside the hydraulic coupler. But it can be clearly seen that the oil pump is located outside the hydraulic coupler from the only structural schematic drawing in the description. Meanwhile, the description also recites "a tailor-made main oil pump which matches with the hydraulic coupler and is directly driven by an independent motor is arranged outside the hydraulic coupler." As a result, those skilled in the art can unambiguously determine after reading the description and drawing that the oil pump defined in claim 1 is an externally arranged oil pump. Evidence 4, however, does not disclose or teach an externally arranged oil pump. Since the above feature is closely related to inventive step, the second-instance court revoked the Invalidation Decision. In the retrial, the Supreme People's Court noted that one of the key issues is "whether a technical feature can be interpreted into claims and become a part of the claimed technical solution, when it is recited in the description and drawings only, but not in the claims". The Supreme People's Court held that "regarding the technical features recited in the description or drawings, interpreting such kind of features as if it were included in the claimed technical solution is actually amending the claims." Pursuant to the provisions regarding amendments to granted claims under the Implementing Regulations of the Patent Law and the Guidelines for Patent Examination, "generally speaking, a specific technical feature in the description or drawings is neither allowed nor

can be added into the claims through claim construction. From another perspective, for an invention patent, allowing such amendment is no different from restarting the substantive examination. For a utility model patent, a patentee may intentionally leave some specific features in the description or drawings when filing an application, such that the patentee may benefit from a broader protection scope in an infringement litigation because of the claims the less technical features; or, in invalidation proceedings, may interpret the features in the description or drawings into the claims so as to narrow down the protection scope to avoid being invalidated. For those reasons, it shall not be allowed to interpret specific technical features recited in the description or drawings into the claims, otherwise the boundaries of a patent right may be inconsistent and the protection scope will be instable, which will improperly affect the public's interests." In the case, claim 1 covers at least two possibilities, that is, the oil pump is arranged inside or outside of the coupler. According to the description and drawings, the second-instance court interpreted the outside arrangement as a technical feature of the claimed technical solution. Such an interpretation is actually an amendment to the claim and does not comply with relevant laws and regulations.

2. Technical features shall be compared in consideration of their functions, working principles and effects in respective technical solutions

In the Case No. Zhixingzi 195/2015<sup>18</sup>, the Supreme People's Court held that "technical features defined in the claim shall be compared with the prior art from the perspectives of their functions, working principles and effects in the technical solutions. The technical features shall not be rigidly, isolated compared, but we shall bear in mind the inherent relationship therebetween." The case relates to a steering operation device of an agricultural harvester, wherein claim 1 defines that the steering operation device comprises a first operation rod and a second operation rod, which swings left and right or back and forth so as to steer or elevate the device. Reference 2 discloses a steering mechanism of a working machine. Claim 1 of the patent at issue differs from Reference 2 in the control mechanism for achieving a bi-directional control. Specifically, in claim 1, at the first connection point on the longitudinal (Y) axis there is a fulcrum support (34), which allows the base end of a steering rod (32) to swing integrally around the Y axis, and meanwhile on the fulcrum support (34) there is a fixed spindle (33) which is rotatable integrally with the fulcrum support

(34) around the horizontal (X) axis. The Supreme People's Court held that "dividing technical features according to the function of the operation rod, which swings left and right or back and forth in order to steer or elevate the operation device, would be much closer to the inventor's concept." Reference 2 also discloses a corresponding component that controls the elevation and left-right steering. By analysing the relevant components and the working principles thereof, it can be seen that Reference 2 teaches the integral fixation of fulcrum support and spindle, and the transmission of forces in different directions through the axis, such that the left-right turning would not be interfered by the back-forth turning. In practice, in order to prevent the back-forth turning from being interfered by the left-right turning, to set a fulcrum support rotatable around the Y axis in place of the X axis (disclosed in Reference 2) does not involve any inventive work.

### **(3) The technical problem to be solved does not have to be explicitly indicated in words**

Determining the technical problem to be solved is a crucial step in the "problem-and-resolution" approach. In the Case No. Zuigaofazai 69/2016<sup>19</sup>, the Supreme People's Court held that it is not necessary to identify the technical problem explicitly. In said case, the second-instance court revoked the Invalidation Decision, holding that "according to the Guidelines for Patent Examination, the key step in the "problem-and-resolution" approach for assessing inventive step is to figure out the distinguishing features of the claimed technical solution over the closest prior art, identify the technical problem to be solved by the claimed technical solution over the closest prior art, and then judge whether the prior art as a whole provides a teaching or not. Without determining the technical problem, it is unlikely to judge whether a technical teaching exists. Although the PRB tried to follow the "problem-and-resolution" approach, in this case, the PRB did not follow it strictly. The PRB skipped the technical problem step to directly analyse the functions of the distinguishing features, and concluded that Evidence 3 gave a teaching. It is obvious that the PRB did not assess the inventive step properly."

Regarding this issue, the Supreme People's Court first agreed with the Guidelines for Patent Examination that the "problem-and-resolution" approach is an approach for assessing inventive step. In the case at hand, claim 1 had three distinguishing features over Evidence 1. Regarding the distinguishing feature C, the Supreme People's Court



further found that “the technical problem to be solved by distinguishing feature C is to avoid interference between the camshaft sleeve and the housing edge of the steering knuckle, which is consistent with the technical problem to be solved stated in the present patent...The PRB’s determination and analysis of the distinguishing technical features and comments on the teaching provided by Evidence 3 all have implied the technical problem to be solved...The PRB’s decision is correct.”

#### (4) Technical teachings

##### 1. Invention by changing elements

In the Case No. Zhixingzi 219/2015<sup>20</sup>, claim 1 covers an equi-gap packed-bed electrodialyzer. Claim 1 differs from Reference 1 in that uniform particle size (ball) or a single particle size range of anion and cation exchange resin mixture filled in a freshwater chamber is very narrow, with a uniformity coefficient of  $S < 1.3$ . The retrial requestor claimed that said distinguishing feature has been disclosed in Reference 2, which was, however, not supported by the court. The retrial requestor also argued that said distinguishing feature belongs to an invention by changing elements. The Supreme People’s Court held that “the provisions on changing relations between elements in the Guidelines for Patent Examination can only be applied to invention patents, but not utility models.” The retrial requestor’s argument is untenable.

##### 2. Invention by omitting elements

In the Case No. Zhixingzi 122/2015<sup>21</sup>, the patent at issue claims an inflow rod stabilizer, which mainly comprises an upper joint, a lower joint and a stabilizer body. The patent at issue was held as obvious over the combination of Reference 1 and Reference 2 in the Invalidation Decision and the first-instance and second-instance judgments. In the second-instance judgment, it was found that after removing the wear-resistant layer, the anti-partial abrasion function disappeared accordingly. Therefore, the patent was not an invention by omitting elements. The patentee, as the retrial requestor, disagreed and argued that without an alloy powder layer and a sprayed layer in Reference 1, the working cylinder directly rubs against another cylinder, thereby functioning with partial abrasion. The Supreme People’s Court held that “an invention by omitting elements refers to an invention in which one or more elements of a known product or process are omitted. If, after the omission of one or more elements, the corresponding function disappears accordingly, the invention does not involve an inven-

tive step.” In the case, as disclosed in the description of Reference 1, “the anti-partial abrasion multiplier cylinder is provided with the alloy powder layer and the sprayed layer so as to strengthen the anti-wear and anti-corrosion of the anti-partial abrasion device and the oil pipe. The present patent omits the alloy powder layer and the sprayed layer such that the stabilizer body is in direct contact with the oil pipe, thereby rendering the corresponding anti-wear and anti-corrosion properties disappeared. Nevertheless, the patent at issue did not describe whether equal or better technical effect can be achieved without the alloy powder layer and sprayed layer.” As a result, the retrial requestor’s claim on invention by omitting elements was untenable.

##### 3. Invention by combination

In the Case No. Zuigaofaxingshenzi 457/2016<sup>22</sup>, the Supreme People’s Court clarified the term “invention by combination” and how to assess its inventive step. “An invention by combination refers to a new technical solution made by combining certain known technical solutions to solve a technical problem objectively existing in the prior art. In assessing the inventive step of an invention by combination, the following factors need to be taken into account: whether those combined technical features functionally support each other, the difficulty or ease of combination, any technical motivation to make the combination in the prior art, and the technical effect of the combination, etc. If the combined technical effects which is supposed to be technical features functionally support each other and produce a new technical effect, or in other words, if the combined technical effects are greater than the sum of the technical effects of the individual features, then such combination has prominent substantive features and represents notable progress, and thus the invention involves an inventive step.”

In the Case No. Zhixingzi 186/2015<sup>23</sup>, in addition to emphasizing the above-mentioned factors for assessing inventive step of an invention by combination, the Supreme People’s Court held that “any party, who claims that the patent at issue as an invention by combination is inventive, shall prove that the patented technical solution produces new technical effect due to the combination of prior art processes, or achieves greater technical effect than the sum of the technical effects of the individual processes.” Since the patent at issue did not show any technical effects with notable progress brought by the combination of prior arts, and no evidence proved such kind of technical effects, the patent at issue as an invention by combination possessed no in-

ventive step.

4. Inventive step of an invention concerning chemical process

In the Case No. Zuigaofaxingzaizi 18/2016<sup>24</sup>, the Supreme People's Court expressed its opinion on the inventive step of a process for preparing a chemical product. "In chemical field, if a process for preparing a chemical product differs from the closest prior art merely in the selection of raw materials, and the prior art as a whole has provided available raw materials and taught to improve the closest prior art to arrive at the claimed process, then the preparing process lacks inventive step over the prior art." In the case, claim 1 claims the application of a glycerol-based product in the manufacturing of dichloropropanol, wherein the glycerol-based product comprises at least 500g of glycerol per kg of product and glycerol alkyl ethers in an amount of 0.001 to 5g/kg of product. Evidence 1 teaches that crude glycerol product, or preferably purified glycerol product, can be used in the manufacturing of dichloropropanol. The patent at issue differs from Evidence 1 in that the raw material "glycerol-based product" comprises a specific impurity (glycerol alkyl ethers) and the content thereof (an amount of 0.001 to 5g/kg of product). Evidence 2 discloses a process for preparing purified glycerol, specifically, a process for purifying glycerol from aqueous crude glycerol solution with glycerol alkyl ethers, which is a kind of impurity hard to remove. The Supreme People's Court held that since Evidence 1 has clearly taught that high purity glycerol is preferably used for the manufacturing of dichloropropanol, those skilled in the art can easily think of using the purified glycerol product in Evidence 2 as the raw material in Evidence 1. "Even though Evidence 1 and Evidence 2 fail to explicitly disclose whether and how the impurity contained in the raw material, i.e. glycerol alkyl ethers, will bring any side-effect and what the side-effect would be, it would not obstruct those ordinarily skilled in the art from selecting the purified glycerol in Evidence 2 to manufacture dichloropropanol under the explicit teaching of E1. Moreover, in chemical production, it is usually desired to make a product as pure as possible. Even when the impurity contained does not affect the use of a product, the product may not be further purified only on account of costs. Thus, irrespective of whether those ordinarily skilled in the art know the reaction principle that glycerol alkyl ethers contaminate dichloropropanol or even epichlorohydrin, they would still combine Evidence 1 with Evidence 2."

In addition, whether the motive for combining Evidence 1 with Evidence 2 is consistent with the object of the invention or the technical problem to be solved recited in the description of the patent at issue is not a key factor in the assessment of inventive step. As long as those skilled in the art have motive to combine Evidence 1 with Evidence 2, judging from the result, the claim is not inventive even if the reason for combination is different from the one recited in the description of the patent at issue.

## V. Brief comments

### (1) Noteworthy judicial trends

Through the analysis of all the 116 cases one by one, it is found that in patent administrative lawsuits, the Supreme People's Court's understanding on the law and regulations is in line with the Guidelines for Patent Examination. The Supreme People's Court also shows full respect to the examining rules in administrative procedures. For instance, regarding the procedural issues in invalidation and re-examination cases, the Supreme People's Court holds that using less reference documents in the re-examination proceedings does not violate the law<sup>25</sup>; and the combined examination of cases in the invalidation proceedings is also legal<sup>26</sup>. Regarding substantive issues, the Supreme People's Court confirms the "problem-and-resolution" approach in assessment of inventive step<sup>27</sup>, and holds that the sufficient disclosure of a chemical product needs to meet all the requirements on product confirmation, preparation and usage<sup>28</sup>.

Nevertheless, the Supreme People's Court has its particular views on some detailed issues, which are mainly in the following aspects:

1. Different from previous judgments in patent administrative lawsuits, which revoke or uphold an administrative decision as a whole, according to the newly amended Administrative Procedure Law, the Supreme People's Court now may revoke or uphold an administrative decision in part.

2. The scope of retrial hearing has changed. First of all, besides what the retrial requestor claimed, those which are not argued, such as those grounds and evidence that are not mentioned in the retrial request, can also be heard. Secondly, beside the original grounds in the invalidation proceeding, a retrial requestor is allowed to supplement new common knowledge arguments. Thirdly, a retrial requestor or respondent is not required to file evidence on common

knowledge. Furthermore, with the progress of the case guiding system, more precedents are likely to be cited in the judgments.

3. Regarding whether an amendment goes beyond the original scope of disclosure, the view that “those can be obviously and directly derived from the claims, description and drawings shall be considered as within the original scope of disclosure” gradually gains its advantage in trial<sup>27</sup>.

In face of the above new judicial trends, we should: on the one hand, study the cases, in particular those selected into the Gazette of the Supreme People’s Court, Top Ten Cases and Guiding Cases, try our best to follow the rationale therein and prepare to cite these cases in litigation; on the other hand, to predict the impacts these new trends may have on the administrative proceedings, and get prepared in procedural matters and for potential amendment of regulations.

#### **(2) New grounds supplemented in patent administrative lawsuits**

In the Case No. Zuigaofaxingzai 69/2016, the invalidation requestor argued in the invalidation proceedings that technical feature A in claim 1 was disclosed by Evidence 1. This argument was supported in the Invalidation Decision. However, the first-instance and second-instance courts later revoked the Invalidation Decision. In the retrial, the invalidation requestor argued that feature A belongs to common knowledge in the art. The Supreme People’s Court supported this common knowledge argument, holding that claim 1 possesses no inventive step, and upheld the Invalidation Decision.

As to substantive issues in the above case, we totally agree with the retrial judgment. However, what worth discussing is whether it is proper to examine the legality of an invalidation decision in the administrative litigation based on grounds that the invalidation requestor did not argue in the previous invalidation proceedings. We suggest to be cautious in this issue.

Pursuant to Article 6 of the Administrative Procedure Law amended in November, 2014, the courts shall, in hearing administrative cases, examine the legality of administrative acts. Although there are different understandings on this provision, from the fundamental legislative purpose of the Administrative Procedure Law, “judicial supervision” really makes sense only when the legality of administrative acts is examined in view of the evidence and facts, based on which the administrative acts were undertaken.

Specifically in an administrative patent lawsuit, the court shall, in principle, examine the legality of an Invalidation Decision based on the facts, grounds and evidence presented by the invalidation requestor and the patentee in invalidation proceedings. Surely, if an Invalidation Decision declares a patent invalid, in consideration that a patent right can never be restored once mistakenly invalidated, in an administrative lawsuit, it is legally and reasonably proper to slightly relax the requirements for a patentee on supplementing grounds and evidence for, e.g., commercial success, and examine the legality of the Invalidation Decision while taking into account these new evidence and new grounds.

Nevertheless, if the requirements are relaxed to the extent that the invalidation requestor are allowed to add new grounds and evidence, and then the court examines the legality of the Invalidation Decision based on those new grounds and evidence, it seems that the court is hearing a new invalidation request rather than examining the legality of the Invalidation Decision at issue. This may improperly lead the parties to hide important grounds and evidence in administrative proceedings and hold them for the administrative litigation. Little by little, it may increase the courts’ workload, waste the administrative proceedings, and lower the overall efficiency due to the ambiguous boundary between administrative and judicial power.

In this case, the invalidation requestor actually only amended his argument rather than added a brand new ground. However, that a feature is disclosed by a reference document and that the feature belongs to common knowledge are two completely different arguments. The former focuses on whether the feature is explicitly or implicitly disclosed by a reference document; while the latter focuses on the characteristics of the feature *per se*, namely whether the feature is generally known to a person skilled in the art. In practice, only when a feature is not disclosed in a reference document will an invalidation requestor select to allege a feature as common knowledge. In this concern, amending the allegation that “a feature is disclosed in a reference” to “a feature belongs to common knowledge” is more like a negation to the former. Even though the same provision is cited, this change is sufficient to alter the original ground into a totally different new ground. If this is acceptable, then the question is whether other similar amendment should be accepted. For instance, is it acceptable to change Example 1 of a reference document to Example 2 in the assessment

of inventive step?

Preventing recurrent litigation is one of the goals we are pursuing nowadays. However, the premise thereof should be non-violation of the fundamental legal procedures. We should be conscious of accepting changed invalidation grounds or new grounds or new evidence in the administrative proceedings. ■

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<sup>1</sup> The data are analysed on the basis of the judgments and rulings we collected, and there may still be missing ones. Therefore, there is discrepancy between the data in this article and those disclosed in the annual report of the Supreme People's Court. The specific data analysis is provided for readers' reference only.

<sup>2</sup> A2 refers to Article 2 of the China's Patent Law, A26.3 refers to Article 26.3 of the China's Patent Law, and so on.

<sup>3</sup> A patent application for invention (No. 200810301821.3). The Re-examination Decision No. FS74233. The First-instance Judgment No. Jingzhixingchuzi 286/2015 and the Second-instance Judgment No. Gaoxingzhongzi 1899/2016 both upheld the Invalidation Decision. The patent applicant filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>4</sup> An invention patent (No.97197519.1). The Invalidation Decision No. WX18161 declared the patent partially invalid. The First-instance Judgment No. Yizhongzhixingchuzi 2111/2012 and the Second-instance Judgment No. Gaoxingzhongzi 961/2013 both upheld the Invalidation Decision. The patentee filed a request for retrial. The Supreme People's Court accepted the case and ruled to partially uphold the Invalidation Decision.

<sup>5</sup> A utility model patent (No. 200720006218.3). The Invalidation Decision No. WX19621 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1273/2013 and the Second-instance Judgment No. Gaoxingzhizhongzi 884/2014 both revoked the Invalidation Decision. The invalidation requestor filed a request for retrial. The Supreme People's Court accepted the case and ruled to revoke the first-instance and second-instance judgments and uphold the Invalidation Decision.

<sup>6</sup> *Fujian Prismatic Steel Co., Ltd. (retrial requestor) v. Xiamen Jimen Lianjie Steel Casting Factory (respondent), PRB (appellant in the sec-*

*ond instance trial) and Fujian Quanzhou Venus Steel Shot Co., Ltd. (third party in previous proceedings).*

<sup>7</sup> An invention patent (No.201110266751.4). The Re-examination Decision No. FS75954. The First-instance Judgment No. Jingzhixingchuzi 120/2015 and the Second-instance Judgment No. Gaoxingzhizhongzi 2046/2015 both upheld the Re-examination Decision. The re-examination requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>8</sup> An invention patent (No.200480022007.8). The Re-examination Decision No. FS47530. The First-instance Judgment No. Yizhongzhixingchuzi 1356/2013 and the Second-instance Judgment No. Gaoxingzhongzi 2364/2013 both upheld the Re-examination Decision. The re-examination requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>9</sup> The series of cases is related to disputes over design patents, and involves the authenticity of web page evidence. For example, the Judgment No. Zuigaofaxingshenzi 2806/2016 is directed to the design patent No. 201430427963.0. The Invalidation Decision No. WX26904 maintained the patent valid. The First-instance Judgment No. Jingzhixingchuzi 5454/2015 and the Second-instance Judgment No. Jingxingzhong 1771/2016 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>10</sup> A patent application for invention (No. 200480022007.8). The Re-examination Decision No. FS47530. The First-instance Judgment No. Yizhongzhixingchuzi 1356/2013 upheld the Invalidation Decision, and the Second-instance Judgment No. Gaoxingzhongzi 2364/2013 upheld the first-instance judgment and the Invalidation Decision but corrected some parts therein. The patent applicant filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>11</sup> An invention patent (No. 00814590.3). The Invalidation Decision No. WX 19128 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1819/2013 and the Second-instance Judgment No. Gaoxingzhongzi 1435/2014 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>12</sup> A patent application for invention (No. 200510200161.6). The Re-examination Decision No. FS38155. The First-instance Judgment No. Yizhongzhixingchuzi 1626/2012 and the Second-instance Judgment No. Gaoxingzhongzi 501/2013 both upheld the Re-examination Decision. The re-examination requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>13</sup> An invention patent (No. 201110236849.5). The Invalidation Decision No. WX22559 declared the patent wholly invalid. The First-instance Judgment No. Yizhongxing(zhi)chuzi 9601/2014 and the Second

- instance Judgment No. Gaoxingzhizhongzi 1566/2015 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>14</sup> An invention patent (No. 02139085.1). The Invalidation Decision No. WX20572 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 2428/2013 and the Second-instance Judgment No. Gaoxingzhizhongzi 2070/2014 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>15</sup> A patent application for invention (No. 200410008343.9). The Re-examination Decision No. FS67073. The First-instance Judgment No. Yizhongxing(zhi)chuzi 8657/2014 and the Second-instance Judgment No. Gaoxingzhizhongzi 810/2015 both upheld the Re-examination Decision. The re-examination requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>16</sup> An invention patent (No. 200510036563.7). The Invalidation Decision No. WX24144 declared the patent wholly invalid. The First-instance Judgment No. Jingzhixingchuzi 742/2015 and the Second-instance Judgment No. Gaoxing(zhi)zhongzi 2260/2015 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>17</sup> A utility model patent (No. 201020640252.8). The Invalidation Decision No. WX22786 declared the patent wholly invalid. The First-instance Judgment No. Yizhongxing(zhi)chuzi 8844/2014 upheld the Invalidation Decision and the Second-instance Judgment No. Gaoxingzhizhongzi 958/2015 revoked the First-instance Judgment and the Invalidation Decision. The patentee filed a request for retrial. The Supreme People's Court accepted the case and ruled to revoke the Second-instance Judgment and uphold the First-instance Judgment and the Invalidation Decision.

<sup>18</sup> An invention patent (No. 99120352.6). The Invalidation Decision No. WX15288 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1301/2012 and the Second-instance Judgment No. Gaoxingzhongzi 1224/2013 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>19</sup> A utility model patent (No. 200720006218.3). The Invalidation Decision No. WX19621 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1273/2013 and the Second-instance Judgment No. Gaoxingzhizhongzi 884/2014 both revoked the Invalidation Decision. The invalidation requestor filed a request for retrial. The Supreme People's Court accepted the case and ruled to revoke the first-instance and second-instance judgments and uphold the Invalidation Decision.

<sup>20</sup> A utility model patent (No. 97221361.9). The Invalidation Decision

No. WX19093 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 3657/2012 and the Second-instance Judgment No. Gaoxingzhongzi 1196/2013 both revoked the Invalidation Decision. The invalidation requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>21</sup> A utility model patent (No. 200820188166.0). The Invalidation Decision No. WX19642 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1492/2013 and the Second-instance Judgment No. Gaoxingzhongzi 806/2014 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>22</sup> A patent application for invention (No. 200610111765.8). The Re-examination Decision No. FS72742. The First-instance Judgment No. Jingzhixingchuzi 61/2015 and the Second-instance Judgment No. Gaoxingzhizhongzi 2725/2015 both upheld the Re-examination Decision. The re-examination requestor filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>23</sup> An invention patent (No. 02139085.1). The Invalidation Decision No. WX20572 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 2428/2013 and the Second-instance Judgment No. Gaoxingzhizhongzi 2070/2014 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request.

<sup>24</sup> An invention patent (No. 200710111065.3). The Invalidation Decision No. WX21044 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 3865/2013 upheld the Invalidation Decision, but the Second-instance Judgment No. Gaoxingzhongzi 1711/2014 revoked the First-instance Judgment and the Invalidation Decision. The invalidation requestor filed a request for retrial. The Supreme People's Court accepted the case and ruled to revoke the Second-instance Judgment and uphold the Invalidation Decision.

<sup>25</sup> A patent application for invention (No. 200810301821.3). The Re-examination Decision No. FS74233. The First-instance Judgment No. Jingzhixingchuzi 286/2015 and the Second-instance Judgment No. Gaoxingzhongzi 1899/2016 both upheld the Re-examination Decision. The patent applicant filed a request for retrial and the Supreme People's Court ruled to reject the request. The Supreme People's Court Ruling is No. Zuigaofaxingshenzi 912/2017.

<sup>26</sup> An invention patent (No. 200610063434.1). The Invalidation Decision No. WX23705 declared the patent wholly invalid. The First-instance Judgment No. Yizhongxing(zhi)chuzi 10149/2014 and the Second-instance Judgment No. Gaoxing(zhi)zhongzi 4214/2016 both upheld the Invalidation Decision. The patentee filed a request for retrial and the Supreme People's Court ruled to reject the request. The Supreme People's Court Ruling is No. Zuigaoxingshenzi 1879/2016.

<sup>27</sup> A utility model patent (No. 200720006218.3). The Invalidation Decision No. WX19621 declared the patent wholly invalid. The First-instance Judgment No. Yizhongzhixingchuzi 1273/2013 and the Second-instance Judgment No. Gaoxingzhizhongzi 884/2014 both revoked the Invalidation Decision. The invalidation requestor filed a request for retrial. The Supreme People's Court accepted the case and ruled to revoke the First-instance and Second-instance Judgements and upheld the Invalidation Decision. The Supreme People's Court Ruling is No. Zuigaofaxingzai 69/2016.

<sup>28</sup> A patent application for invention (No. 200480022007.8). The Re-examination Decision No. FS47530. The First-instance Judgment No. Yizhongzhixingchuzi 1356/2013 upheld the Invalidation Decision. The

Second-instance Judgment No. Gaoxingzhongzi 2364/2013 upheld the First-instance Judgment and the Invalidation Decision, but also corrected some parts therein. The patent applicant filed a request for retrial and the Supreme People's Court ruled to reject the request. The Supreme People's Court Ruling is No. Zhixingzi 352/2015.

<sup>29</sup> A patent application for invention (No. 201110319747.X). The Re-examination Decision No. FS87365. The First-instance Judgment No. Jingzhixingchuzi 4457/2015 and the Second-instance Judgment No. Gaoxingzhongzi 5355/2016 both upheld the Re-examination Decision. The patent applicant filed a request for retrial and the Supreme People's Court ruled to reject the request. The Supreme People's Court Ruling is No. Zuigaofaxingshenzi 5586/2017.