# On Infringement Liability of Lessers of Patented Products

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## I. Introduction

Article 11 of the China's Patent Law sets forth the exclusive rights enjoyed by patentees, stating that "after the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the permission of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product, or use the patented process, and use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes". This provision was formed in the second revision to the China's Patent Law in August 2000 prior to China's entry into the World Trade Organization (WTO). According to the interpretation of the Legislative Affairs Commission of the National People's Congress, through this revision to the China's Patent Law, "the provision of 'offering for sale' was added to the acts of exploiting invention and utility model patents in the light of Article 28 of the WTO's Agreement on Trade - Related Aspects of Intellectual Property Rights (TRIPS), in such a way to make the patent system of China compliant with the international intellectual property system…… The concept that is identical or similar to offering for sale has been adopted in the patent laws of many countries so that the patentees can timely stop infringement before business transactions, prevent the dissemination of infringing products, protect themselves from suffering losses due to infringement and avoid further losses." [1] Therefore, the scope of the exclusive rights enjoyed by the patentees under Article 11 of the China's Patent Law is consistent with that under Article 28 of TRIPS.

However, it may trigger a question, namely, whether the exclusive rights to "make, use, offer to sell, sell or import" the patented products granted by the China's Patent Law to the invention and utility model patentees can be used to regulate the lessors' act of "leasing" the patented products? From the literal meanings of the above - mentioned exclusive rights, it is difficult to draw a firm conclusion.

Even if the leasing of patented products does not belong to a narrow - sense business "transaction" which has the nature of "sale", it can be obviously considered as a kind of "transaction" in a broad sense, which commercially exploits the patented products. Since the selling acts of sellers should be under the patentees' control, we should not turn a blind eye to the leasing acts of lessors, because even the leasing of legally manufactured patented products without permission may lead to a decrease in the overall sales volume and may impair the normal sale of legitimate sellers. If the lessors rent out the "patented products made and sold without the authorization of the patentee" as stipulated in Article 77 of the China's Patent Law and provide such "illegally manufactured patented products" to end users in the leasing market, it is more like an encouragement to the infringers, which would be an obvious loophole in the patent protection system. Furthermore, since the China's Patent Law has expanded the patentees' exclusive rights to the act of "offering for sale" "before business transactions" through the revision in 2000 so as to "prevent the dissemination of infringing products", if the lessors are allowed to lease the infringing products at will, it is obviously detrimental to the prevention of patent infringement or the circulation and dissemination of the infringing products. The act of leasing the patented products can cause more direct damage to the patentees than the act of offering for sale. In short, no matter from the perspective of the jurisprudential logic of protecting patent rights or from the actual needs for stopping patent infringement, the lessors who lease infringing products should be held liable.

The question is how to investigate and pursue the infringement liability of lessors under the current framework of the exclusive rights granted to the patentees by Article 11

of the China's Patent Law? In other words, which exclusive right of the patentee is infringed by a lessor when he leases a patented product without authorization? This has not been clearly answered either in theory or in judicial and law enforcement practice. This article will analyze and discuss this question from the aspect of legal interpretation.

## II. Lessors cannot be held liable by extensively interpreting the right to sell

Some courts in China have tried to solve the issues related to the infringement liabilities of lessors through extensive interpretation of the right to sell. Article 108 of the Guidelines for Patent Infringement Determination of the Beijing High People's Court revised in 2017 reads that the leasing of the product that infringes other's patent right shall be deemed as the sale of the patented product. Some scholars agree with such an interpretation, mainly because both the leasing and the sale are acts of transferring the ownership of a product or the right to use for considerations, and thus, there is no clear-cut demarcation between them. If a product with many customized features is leased for a long period of time and generates a considerable number of returns, the leasing can be considered as a special form of sale. [2]

However, different voices are also heard. In *Zheng, Deng and others v. Foshan Lanke Intelligent Engineering Co., Ltd. and others*, a dispute over infringement of a utility model patent, the Guangzhou Intellectual Property Court held that "the sale of patented products means a paid transfer of ownership of the infringing product falling within the scope of a patent, or the product directly obtained by a patented process, or the product containing a design patent from the seller to the buyer. The act of leasing an infringing product does not constitute the act of sale in the sense of the patent law." [3] This article also agrees that it should be cautious towards the extensive interpretation of the right to sell.

First, neither the drafting and negotiating history of TRIPS nor any authoritative interpretation supports the view that the right to sell covers the act of leasing. Article 28 of TRIPS is on "Patents: Rights Conferred". According to the process of negotiations on "exclusive right", the early "Anell Draft reflected considerable differences between parties with regard to the enumeration of exclusive rights". In terms of product patents, the Approach B of the Draft only confers on the patentee the right to "manufacture, use or sell the patented product", whereas the Approach A confers on the patentee the following rights: making, using, [putting on the market, offering] [or selling] [or importing] [or importing or stocking for these purposes] the patented product. The compromise finally reached is that only the rights of "offering for sale" and "importing for these purposes" the patented product were added on the basis of the Approach B, and the rights of "putting on the market" and "stocking" of the Approach A, which are mostly likely to cover the act of leasing, were rejected. [4] As viewed from the process and results of the negotiations, Article 28 of TRIPS inclines to not incorporating the act of leasing into the scope of exclusive rights, and "selling" therein should not be interpreted to cover leasing. This is confirmed by other documents. In *WTO: Trade-Related Aspects of Intellectual Property Rights*, regarding Article 28 of TRIPS, the book stated that, according to Carlos Maria Correa, "the enumeration in Art. 28, which refers to the activities that the patent owner can prevent, is exhaustive. Therefore it should be interpreted narrowly." Furthermore, "[t]he exclusive right to sell has to be understood in a narrower way than a right to commercialize. This right can be exercised to hinder the sale or resale of infringing products". [5] As regards the interpretation of Article 26 of TRIPS, which provide the rights of the owner of a design, it is noted that the meaning of the terms in Article 28 "may be useful for purposes of interpreting" Article 26, while the selling in Article 26 "is used to cover sale transactions. Accordingly, this does not encompass renting." [6]

Second, the right to sell in the China's patent law is analyzed in detail in *Introduction to the Patent Law of China*, an authoritative book on the interpretations of the China's patent law, written by Yin Xintian (the former director of the Department of Treaty and Law of the CNIPA). He stated that the patent laws of most European countries do not adopt the expression "selling patented products". A representative example is the expression "putting on the market" used in the patent laws of Germany, Swiss and France, which is also adopted in the European Patent Convention in an attempt to generalize the practice of European countries (for example, "transferring or borrowing" in the Danish patent law, and "hire out or deliver the patented product, or otherwise deal in it" in the Dutch patent law). Therefore, "putting on the market" encompasses a broader scope than "selling", as it includes not only selling, but also other acts such

as leasing. Article 2 of the Japanese Patent Act also directly uses the expression of "transferring" or "lending out" a product. Accordingly, when discussing the meaning and scope of "selling the patented products" in the China's patent law, Yin Xintian called attention to the differences between the provisions of the China's patent law and the patent laws of European countries and Japan, demanding not to simply copy the practice of those countries. The act of "selling" is a transaction between the buyer and the seller, i.e., the seller transfers the ownership of an object to the buyer, which means an agreement on sale is reached in the sense of the Contract Law. [7] The author deems that the conclusion drawn by Yin Xintian through comparative law research is convincing. According to his studies, the "right to sell" in the China's patent law obviously cannot prohibit the act of leasing.

Thus, from the abandonment of the expression "putting on the market" by Approach A of TRIPS and the interpretation of the "right to sell", as well as from the differences in relevant expressions between the China's patent law and the patent laws of some European countries and Japan, it can hardly be concluded that the right to sell in Article 11 of the China's patent law encompasses the act of leasing.

## III. Legislation and practice concerning the lessor's infringement liability based on the right to use

### 1. No definite conclusion has been reached by China's judicial and administrative authorities

In addition to the extensive interpretation of the right to sell, is it possible to hold the lessor liable for infringement by extensively interpretating other exclusive rights enjoyed by the patentee? Both the judicial and administrative authorities came up with the idea of incorporating the act of leasing patented products for a fee or free of charge into the scope of the right to "use patented products".

Article 2.3 of the Guidelines for Determination of Patent Infringing Acts (Draft for Comments) released by the State Intellectual Property Office (now renamed as the CNIPA) in April 2016 also mentioned that the use of an infringing products for leasing, lending out, mortgaging or pledging for profits shall be determined as the use of the patented products. [8] The Beijing High People's Court formulated and released in 2013 the Guidelines for Patent Infringement Determination, wherein Article 95 stipulates that "the use of a product that infringes the patent right of others for leasing should be determined as the use of the patented product". However, this provision has been revised [9] in 2017 and the above-mentioned provision in CNIPA's draft was deleted from the final Guidelines for Determination of Patent Infringing Acts (Trial). It can be seen that the notion that leasing and lending out of infringing products constitutes an infringement of the right to use is undoubtedly met with some resistance.

However, the Beijing High People's Court still follows this rationale to make analysis and judgment in some cases. For instance, in *Shenzhen Jiedian Technology Co., Ltd. and other v. Anker Innovations Technology Co., Ltd.*, a dispute over infringement of a utility model patent, regarding the issue whether the defendant, Jiedian, infringed by placing the allegedly infringing products in shopping malls for public use, the Beijing High People's Court found from the proved facts of the case that the ownership of the allegedly infringing products placed in business locations belonged to Jiedian, who provided them for the shopping malls for free. Thus, Jiedian and the proprietors of the business locations were not in a selling or renting relationship …… Jiedian also admitted that the allegedly infringing products were placed in the business locations to provide the public with mobile charging service for profits. Hence, the court of first instance properly determined that Jiedian used the infringing products. [10] In this case, although the defendant did not rent the infringing products for a fee but provided them to the shopping malls for free, the logic underlying the judgment follows the view that renting is a type of use, i.e., the act of providing an infringing product for others to use, no matter it is paid or free of charge, is covered by the right to use. In view that the paid leasing and the free lending out make no difference in terms of the use of the product, the rationale underlying the judgment made by the Beijing High People's Court in 2018 is more closer to its view (leasing constitutes use) in the Guidelines for Patent Infringement Determination of 2013, but deviates from the provision (leasing constitutes selling) in the revised Guidelines of 2017.

### 2. The term "using" in Article 28.1 of TRIPS may include "leasing"

According to the book entitled *Resource Book on TRIPS and Development* (Chinese version), "using" controllable by the patentee in Article 28.1 of TRIPS refers to the utilization of the product by a third party, but "this concept

may include a sales demonstration; but not include merely possession or display, acts of commercialization such as renting or leasing which do not entail a sale; as well as the utilization of a product as part of a land vehicle, aircraft or vessel" [11] (back translated from the Chinese ). The ambiguity is whether the acts not included encompass "acts of commercialization such as renting or leasing which do not entail a sale"? The context of the above expression is confusing. It is reasonable that using does not include merely possession or display. But it is illogical that using does not include the utilization of a product as part of means of transportation - because such an act obviously exploits the patent by "using a patented product". To be specific, both Article 5 of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the Paris Convention) and Article 75 of the China's Patent Law provide "foreign means of transportation that temporarily passed through the territory" as an exception to infringement. Therefore, it is quite puzzling whether "renting or leasing" appearing between "merely possession or display" and "the utilization of a product as part of a land vehicle, aircraft or vessel" should be excluded from the act of "using".

Having read the original English text [12] of the book, it is found that the Chinese translation is misleading or contains some errors. The original English text actually intends to indicate that "using" may include an act of sales demonstration, which is however not merely possession or display, and also include acts of commercialization which do not entail a sale, such as renting or leasing, and further include the utilization of a product as part of a land vehicle, aircraft or vessel, [13] except those satisfy the temporary presence exception provided in both Article 5 of the Paris Convention and Article 75 of the China's Patent Law. Such translation and understanding are consistent and coherent in the context. Therefore, from the above analysis, the act of "using" mentioned in *Resource Book on TRIPS and Development* surely includes renting and leasing. This understanding is also corroborated in another book. [14] Professor Correa of Argentina, a renowned scholar on TRIPS also deems that "uses that the patent owner may prevent include for example activities of commercialization but not entailing sale, like renting, leasing or sales demonstrations". [15]

3. Controlling the act of leasing by the right to use still requires extensive interpretation

Although interpreting the leasing of patented products as the act of using is endorsed by the above-mentioned foreign articles and the international convention, it still lacks solid theoretical basis. Moreover, judging from the basic rules of various China's intellectual property laws on granting exclusive rights to right holders, neither the trademark law nor the copyright law contains the provisions on the control of leasing by the right to use a work or the right to use trademarked goods. For instance, except computer software, the China's copyright law does not confer on a right holder the exclusive right to use the carrier of the work, and the act of leasing the carrier of the work is directly controlled under the right to lease for certain types of works. In trademark law, a right holder does not have an exclusive right to use the goods labelled with the registered trademark, and the leasing of such goods is interpreted as one of the "other business activities" in Article 48 of the China's Trademark Law on the grounds that leasing is surely a business activity, and the leasing of goods labelled with a registered trademark should be considered as "the use of the trademark for business activities". For this reason, intellectual property professionals in China rarely confuse the leasing of products with the use of products.

The "right to use" granted to the patentee of an invention or utility model under Article 11.1 of the China's Patent Law means the right to "use the patented product, or the product directly obtained by the patented process, for production or business purposes". Therefore, the word "use" herein obviously refers to the user's utilization of the functionality of the patented product (or the product directly obtained by the patented process) itself to realize the use value of the patented product (or the product directly obtained by the patented process), rather than "using the technical solution under patent protection" (the act of manufacturing the patented product or using the patented process), or even "using a patent" or "exploiting a patent" in a general sense. The lessor only provides the lessee with the patented product for use, and does not actually use the patented product by himself. It is the lessee who actually uses the patented product. Unlike the China's copyright law which explicitly confers on the copyright owner the right to lease, or the China's trademark law which stipulates a miscellaneous provision on "the use in other business activities", the China's patent law provides no legal basis for the control of the leasing of the patented product. Even if the leasing of the patented product can be interpreted as the use of the patented product, it is still an extensive interpretation broadening the scope of the "right to use". This is also the

main reason why China's patent administrative and judicial authorities either change their mind or eventually give up incorporating the leasing of the patented product into the "right to use".

## IV. The advantages of controlling the leasing by the right to use from the perspective of the exhaustion doctrine

To prevent the leasing of the patented product, either the right to sell or the right to use can be interpreted in a broad sense. However, when interpreting the provisions of TRIPS, why do foreign scholars prefer interpreting the leasing as an act controlled by the right to use rather than the right to sell? In addition, no matter under the right to sell or under the right to use, the legal effects seem to be the same: on the one hand, the leasing of the infringing products by others can be prohibited; and on the other hand, according to Article 75 of the China's Patent Law, the use or sale of the patented product which was already sold by the patentee or any authorized entity or individual shall not be deemed as infringement. It seems that controlling the leasing by the right to use or by the right to sell make no difference. Is this really the case? In our opinion, the approach of foreign scholars in interpreting TRIPS is more conducive to the application of the exhaustion doctrine or the first sale doctrine to the act of leasing, and is less likely to conflict with normal commercial practices or custom. In this regard, the following provides a detailed explanation.

**1. Permitting the leasing of the patented products which are legally manufactured and sold is in line with commercial practices**

Judging from the scope of rights conferred on the right holders in international conventions on intellectual property rights, the right to lease had not been clearly recited as one of the exclusive rights enjoyed by the right holders in the long run. Regarding patent rights and trademark rights, neither the Paris Convention nor TRIPS explicitly grants the exclusive right to lease to the right holders; and regarding copyright, it was not until the 1996 WIPO Copyright Treaty (WCT) that the "right of rental" was explicitly introduced for the first time, though merely for specific types of works. If the intellectual property laws explicitly grant the exclusive right of rental, it means that the leasing of the legally sold copies of work, trademarked goods or patented products is still under the control of the right holders. In a commercial society, however, it is quite normal for businessmen to purchase legally sold products and lease them to third parties, which is also in line with the general business logic. If intellectual property rights holders have the right to exclude others from leasing legally acquired goods, it is apparently in conflict with customary business practices.

Thus, in the intellectual property system, the right of rental is an exception. Even though in some countries the right holders have been granted with the right of rental by law, such a right is confined to exclude the rental of pirated or infringing products, and cannot restrict the rental of legally manufactured and sold goods. A typical example is in the U.S. Copyright Law. Section 106 thereof stipulates that the owner of copyright has the exclusive rights to "distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending", i.e., rental is one way of distribution. Furthermore, the first sale doctrine, according to the U.S. Copyright Law, applies not only to sale, but also to rental, which means that the copies of the works (exclusive of musical works and computer software), once legally sold, are no longer restricted by the right of distribution, and the right owner cannot stop others from renting the legally sold copies of the works. It is obvious that the U.S. is reluctant to generally grant the right of rental to the right holders of all types of works. So far, even the rental of films in the U.S. is subjected to the first sale doctrine and thus not controlled by the copyright owners. The main function of the right of rental in the U.S. Copyright Law is to prohibit the rental of pirated products.

This is the case for the rental of publications in the cultural field, and even more true for the rental of the patented products or trademarked goods in the industrial field. In common business practices, the buyer of a patented product should be allowed to lease the product. If the lessor who rents out a legally manufactured patented product may be at a risk of infringement, it is in conflict with the business practices and also common sense. After the sale of a legally manufactured patented product, the lessor, even without the permission from the patentee, should be exempted from infringement liability. So far no patent or trademark law has ever prohibited the rental of a legally sold patented product or trademarked goods. The above understanding will facilitate the discussion as to whether the rental or leasing should be prohibited under the patent law on the basis

of the right to sell or the right to use.

2. The exhaustion of the right to sell may affect the rental of legally sold patented products

In the patent law, if the rental of patented products is prohibited by broadly interpreting the right to sell, it means that renting is deemed as a type of selling. Such rules or way of interpretation can be found in copyright laws of various countries, in some of which the act of renting is covered by the right of distribution. In addition to the U.S. Copyright Law as mentioned above, the Act on Copyright and Related Rights of German stipulates that the right of distribution enjoyed by the copyright owner broadly means the right to offer or transfer (including rent) the original or copies of the work to the public. Therefore, even temporarily offering the original or copies of a work to the public for use without transferring the ownership of the work also constitutes distribution. [16]

However, contrary to the approach of the U.S. Copyright Law, it is clearly stipulated in the Act on Copyright and Related Rights of German that the exhaustion doctrine does not apply to rental [17]. The purpose of granting the exclusive right of rental to the right holder is not simply to prohibit the rental of pirated works, but to require that permission should be obtained from the copyright holder for the rental of a legitimate copy of a work, even the copied has been legally sold. On the one hand, the right of rental mainly aims to allow the copyright owners to further share commercial profits gained from the rental of legally published works, and on the other hand, if authorized copies of the work, after their first sale, can be rented without permission, it will certainly decrease the sale of other legal copies on the market and obviously be detrimental to the economic interests of the copyright owner. Therefore, in countries such as China, where the right of rental is conferred by copyright law, the exhaustion doctrine does not apply to rental. Even in countries (e.g. Germany) where rental is controlled by the right of distribution, it is clearly emphasized that rental is an exception to the exhaustion of the right of distribution. Although according to the U.S. Copyright Law, the first sale doctrine applies to rental, in such a way that the right of rental is exhausted by the first sale, such legislation is not typical, as it is almost tantamount to the denial of the right of rental.

Given that the legislation or interpretation in Germany and China that the exhaustion doctrine does not apply to the right of rental is more compliant with the normal meaning of granting the right of rental to the copyright holders, if the right to sell enjoyed by the patentee is extensively interpreted to cover rental, the interpretation of the exhaustion doctrine in the patent law should be consistent with that in the copyright law. That is to say, after the first sale with permission, although the subsequent sale of the patented product is no longer under the control of the patent owner due to the exhaustion doctrine, its rental can still be controlled by the patent owner. From the fact that the rental of the patented product will inevitably affect the sale thereof, it can be naturally inferred that the exhaustion doctrine should not be applied to the rental of the legally sold patent product, and the rental should require the permission of the patentee. However, such an inference obviously goes against the business practices.

Although it is unclear whether such a legal inference is the reason that foreign scholars in TRIPS did not discuss the act of leasing under the right of sale, the above analysis shows that in the case of prohibiting rental by the right of sale, if the law is not clear as to whether the exhaustion doctrine applies to the rental of the legally sold patented product, its interpretation is bound to be divided. Therefore, this should not be a preferred approach of interpretation.

3. The exhaustion of the right of use better addresses the rental of the legally sold patented product

To the contrary, if the rental of the patented product is prohibited by extensively interpreting the right to use, such a dilemma will not happen.

In most countries including China, neither the copyright law nor the trademark law grants to right holders an exclusive right to use the carrier of a work (such as publications) or a trademark(such as goods). Only the patent law explicitly confers on the patentee the exclusive right to use a product covered by an invention or utility model patent as a sign of "strong protection" provided to the patentees. This exclusive right is also restricted by the exhaustion doctrine, in such a way that the patentee has no right to control the use of the patented product after its first sale, so as to avoid unnecessary interference with an end user's normal use of a legally purchased patented product. Since the "right to use the patented product" is exhausted after the sale, if the rental of the patented product is regarded as the use thereof, just like the use of a legally sold patented product, its rental will not result in patent infringement. Such a conclusion accords with the normal business practices.

In summary, if rental is controlled by the right to sell,

the contradiction is that when the right to sell is exhausted, the right to rent may not. If rental is deemed as a part of the right to use, both the right to rent and the right to use will be exhausted at the time of the first sale. Thus, in the patent law, the control of rental by the right to use can, on the one hand, achieve the legal effect of prohibiting others from renting an infringing product, and on the other hand, legalize the rental of the legally sold patented product under the doctrine of the exhaustion of the right to use, such that normal business transactions will not be affected or interfered. In this sense, where the China's patent law neither explicitly grants the right to rent to the patentee nor confers on the patentee the right of "putting on the market" as other countries do, controlling the leasing by the right to use the patented product is a more feasible interpretation of the law.

## V. Infringement liability regarding the rental of a patented design

Suppose the lessor of a product containing a patented design should be liable for the infringement of the right to use the patented product, a further issue is, since Article 11.2 of the China's Patent Law does not grant the "right to use" to the patentee of a design, the right holder cannot exclude others from using a product bearing a patented design, let alone prohibiting the leasing of such a product by the "right to use".

Even though Chinese courts or law enforcement authorities can prohibit the rental of illegally manufactured products that infringe an invention or utility model patent by extensively interpreting the right to use, they can do nothing to stop the leasing of illegally manufactured products containing a patented design with the right to use, but have to resort to other legal basis and grounds. Does the lessor, who rents infringing products to others for their use, violate the provision of Article 1169 of the Civil Code and shall be liable for "abetting" or "aiding" infringement? The question can be analyzed from two aspects.

First, from the aspect that the lessor provides an infringing product to the lessee for use, where an invention or utility model patent is infringed, since the patentee has the exclusive right to use the patented product, the lessee who uses the patented product without permission may infringe the patent. In such a case, the lessor is likely to be held liable for abetting infringement. However, the patentee of a design does not have the exclusive right to use the product bearing the design under the China's patent law, so the user who uses the product without permission will not infringe the patent. If the product provided by the lessor infringes a design patent, the abetting infringement by the lessor cannot be established because the user (lessee) does not infringe the patent.

Second, from the aspect that the lessor assists the supplier (manufacturer or seller) of the infringing product in realizing the final use value of the infringing product, although it is hard to hold the lessor liable for joint infringement as the lessor does not participate in the manufacture or sale of the infringing product, the lessor's act assists the manufacturer and seller in accomplishing the transactions of the infringing product. In the entire business chain, the lessor actually plays the role of assisting the infringement. In the case that the leasing has took place, the lessee, as a user, is not liable for infringement, and the courts or law enforcement authorities cannot directly require the lessee to stop using the infringing product until the lease expires, but can order the lessor to destroy the infringing product or seize and confiscate the infringing product upon expiry of the lease. In addition, if the lessor and the upstream manufacturer or supplier of the infringing product have common liaison and know that the product they provided infringes a design patent, the lessor shall be jointly and severally liable for damages due to its fault.

In short, where the China's patent law does not grant to the patentees the exclusive right to use the articles bearing the patented design, although the lessor cannot be held liable for direct infringement based on the "right to use", it may be liable for contributory infringement. Regarding the infringing products to be rented, as analyzed in *Nature of Providing Pirated Scripts to Players by "Murder Mystery Game" Operators* [18], where the lessor has proved the legitimate source of the infringing products, the courts or law enforcement authorities may find the products to be rented as the infringing products illegally manufactured and sold by others, or grant direct remedies such as confiscating or destroying the infringing products; or otherwise, where the lessor cannot or fails to prove the legitimate source, the lessor should be deemed as the manufacturer of the infringing products and be held liable for the infringement due to illegal manufacture of the patented products. ■

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[1] The Interpretation of the China's Patent Law (1 August 2001). Retrieved from http://www.npc.gov.cn/npc/c2199/200108/57a15800fe1e4f6c81b94d15aadd0ad4.shtml.

[2] Zhu Junyue. Does rental belong to patent infringement? WeChat Account: Lung Tin IP, posted on 6 September 2019.

[3] The Civil Judgment No. Yue73minchu 2784/2017 issued on 16 November 2018.

[4] TRIPS Article 28 Rights Conferred 1. A patent shall confer on its owner the following exclusive rights: (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;

The Anell Draft "2. Rights Conferred 2.1A A patent shall confer on its owner at least the following exclusive rights: (a) to prevent third parties not having his consent from the acts of: making, using, [putting on the market, offering] [or selling] [or importing] [or importing or stocking for these purposes] the product which is the subject matter of the patent. (b) ……2.1B Once a patent has been granted, the owner of the patent shall have the following rights: (a) The right to prevent others from making, using or selling the patented product or using the patented process for commercial or industrial purposes. UNCTAD-ICTSD. Resource Book on TRIPS and Development. Retrieved from https://digitallibrary.un.org/record/556860. Chinese version:《TRIPS 協定與發展:資料讀本》(2013, p. 484). China Commerce and Trade Press.

[5] Peter-Tobias Stoll, Jan Busche and Katrin Arend (2009). *WTO: Trade-Related Aspects of Intellectual Property Rights* (pp.515-516). Martinus Nijhoff Publishers.

[6] *Ibid*, p. 460.

[7] Yin Xintian (2011). *Introduction to the Patent Law of China* (pp. 146-147). Intellectual Property Publishing House.

[8] See supra note 2.

[9] In the Guidelines released by the Beijing High People's Court in 2017, it has been revised that the act of leasing belongs to the "sale" of the patented product.

[10] The Civil Judgment No. Jingminzhong 470/2018 issued on 22 November 2018.

[11] UNCTAD-ICTSD. *Resource Book on TRIPS and Development*. Retrieved from https://digitallibrary.un.org/record/556860. Chinese version:《TRIPS 協定與發展:資料讀本》(2013, p. 484). China Commerce and Trade Press. There may be translation errors after checking the original English text of the book.

[12] The original text reads: (b) "Using", meaning utilization of the product by a third party. This concept may include a sales demonstration, but not merely possession or display, acts of commercialization which do not entail a sale, such as renting or leasing, as well as the utilization of a product as part of a land vehicle, aircraft or vessel. UNCTAD-ICTSD (2005). *Resource Book on TRIPS and Development* (p. 419). New York: Cambridge University Press. Retrieved from https://digitallibrary.un.org/record/556860.

[13] See supra note 11.

[14] See supra note 6, p. 515.

[15] Carlos Maria Correa (2007). *Trade Related Aspects of Intellectual Property Rights, A Commentary on the TRIPS Agreement* (p. 257). Cited from Peter-Tobias Stoll, Jan Busche and Katrin Arend (2009). *WTO: Trade-Related Aspects of Intellectual Property Rights* (pp. 515-516). Martinus Nijhoff Publishers. The original text goes like this: Uses that the patent owner may prevent include for example activities of commercialization but not entailing sale, like renting, leasing or sales demonstrations.

[16] Fan Changjun (translator) (2013). *Act on Copyright and Related Rights of German* (pp. 17-18). Intellectual Property Publishing House.

[17] *Ibid*, p. 18.

[18] Zhang Weijun and Zhang Lin. Nature of providing pirated scripts to players by "Murder Mystery Game" Operators. *China Press Publication Radio Film and Television Journal*, posted on 2 December 2021.

## SAIP Designates CNIPA as PCT ISA/IPEA

Under a letter of intent on Patent Cooperation Treaty (PCT) cooperation between the China National Intellectual Property Administration (CNIPA) and the Saudi Authority for Intellectual Property (SAIP), since 1 May 2023, the CNIPA has become the PCT International Searching Authority (ISA)/ International Preliminary Examining Authority (IPEA) for international patent applications in English or Arabic (attached with English translation) issued by nationals or residents in the Kingdom of Saudi Arabia, which has been officially affirmed by the World Intellectual Property Organization.

Relevant details will be published on the PCT Gazette and relevant PCT legal documents.

Source: CNIPA