

- **n° 96 WHD Insights:**
PT | Recent Trends in
China's Patent
Litigation: A Statistical
Overview
- **n° 97 WHD Insights:**
IP | Punitive damages in
China: penalty or
compensation?
- **n° 26 Case:**
TM | Clarity needed as
Puma dispute highlights
loophole in Chinese
trademark law



n° 96 WHD Insights: PT | Recent Trends in China's Patent Litigation: A Statistical Overview

Feng Zhen, Xiaoyang Yang, first published on Chambers

The landscape of patent litigation in the People's Republic of China has continued to evolve rapidly. The recent statistical data paints a picture of a robust and highly efficient patent protection regime in China – evidenced by the continued growth in patent applications, first-instance infringement cases and invalidation actions. Meanwhile, this surge in initial activity has been accompanied by the edging up of patent invalidation rates and sharply declining reversal and remand rates at the appellate level for patent invalidation cases.

In contrast, technical secrets litigation, which is an equally important route to protect technical innovation, has witnessed a clear trend in favour of right holders. The success rate for establishing infringement, as well as the amount of damages awarded to right holders at the appellate level, has markedly increased.

Legal framework of China's patent litigation

China's patent litigation is governed by a bifurcated system, with administrative proceedings over the validity of a patent and civil proceedings over patent infringement falling under the jurisdiction of different courts at the first instance.

A patent infringement action is initially filed with a specialised IP court or the IP division of an Intermediate People's Court, depending on where the case is filed. Appeals of patent infringement cases are centralised and solely handled by the Supreme People's Court IP Division Court ("SPC IP Division"). Under the Chinese practice, patent infringement actions are civil litigation cases and patent infringers cannot be held criminally liable in China.

A patent invalidation action is often a counteraction taken by the defendants in a patent infringement lawsuit, but courts cannot directly review the validity of a patent. The legal action against the validity of a patent has to be initially filed with the China National Intellectual Property Administration (CNIPA). The CNIPA's decision may then be appealed to the Beijing IP Court, with a further appeal to the SPC IP Division. Litigation against the CNIPA's decisions (invalidation and re-examination) is referred to as administrative litigation.

Key trends for patent litigation

Over the past decade, China has completed its transformation into a global intellectual property powerhouse. Fuelled by nationwide pro-IP policies and initiatives emphasising innovation-driven growth, the volume of IP activity in China has reached unprecedented levels. By 2024, the number of invention patents in force in China had reached 4 million, setting a new world record.

China has also launched a series of strategic directives aiming at fostering high-quality IP development. This includes the introduction of the “good faith” principle in the revised Implementing Regulations of the Patent Law effective from January 2024, providing a legal basis for rejecting or invalidating “abnormal” or “junk” patents. China has also eliminated government subsidies for patents, to ensure application of patents is driven by innovation rather than government incentives. Further, the CNIPA has included in the “Annual Work Guidelines (2024) for Promoting High Quality Development of IP” (Guo Zhi Fa Yun Zi [2024] No. 7) the quality of patents as one of the main objectives for the relevant administrative bodies.

For law practitioners and multinational corporations operating in this market, understanding the nuances of litigation trends is crucial for strategic planning. Data from 2019 to 2024 provides critical insights into the trajectory of China’s patent enforcement regime. The statistics reveal a complex dynamic: while the sheer volume of filings and initial disputes continues to climb, the appellate mechanisms are showing signs of increased deference to lower-level decisions. Moreover, an increasing success rate for invalidation actions has been observed.

1. Growing patent applications versus selective patent enforcement

The data indicates that the number of patent applications continued its upward trajectory in 2024, with more than 5.8 million applications (including invention, utility model and design patents) filed in a single year. However, this growth in the patent reservoir has not fuelled downstream enforcement activity. In 2024, 44,255 first-instance civil litigation cases (including invention, utility model and design patents) were filed, 456 fewer than in 2023. This decrease could suggest that low-stakes litigation may be waning and/or that patentees are more cautious in weighing their litigation options.

See [Fig 1](#) and [Fig 2](#). (Next page)

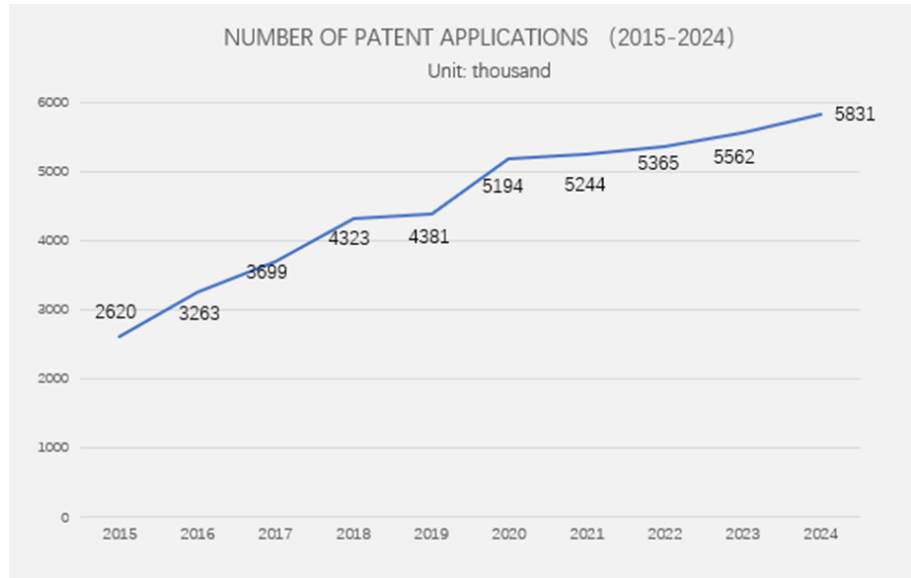


Fig 1

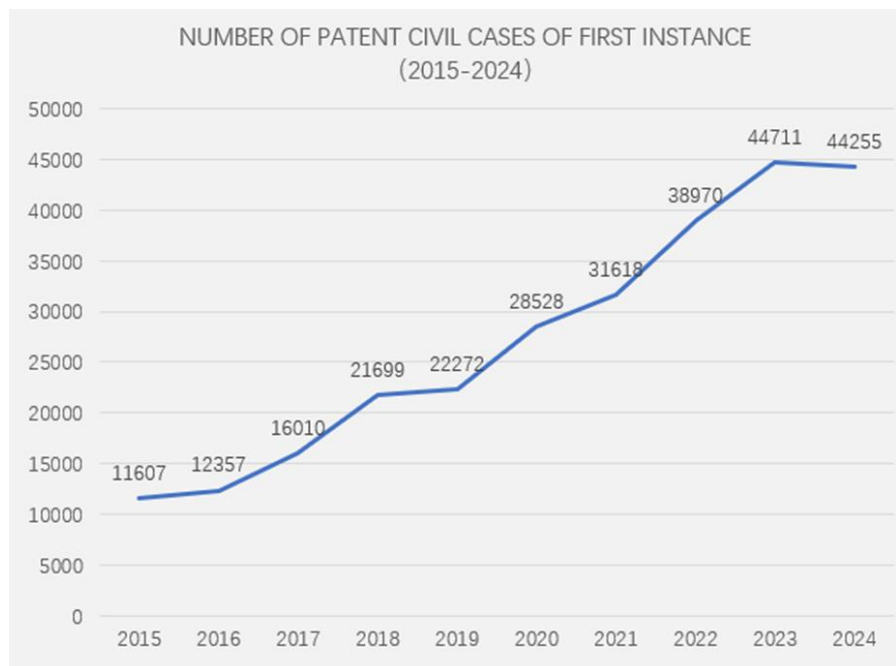


Fig 2

However, the decrease in patent civil litigation cases is not necessarily bad news for patentees. While the number of patent civil litigation cases has tripled over the last decade, the cohort of the judges hearing these patent disputes has not seen a commensurate increase. In courts of major IP hubs, a judge can be assigned an annual caseload of over 200 patent cases and thus struggle to manage the huge docket while meeting various internal deadlines. A lighter caseload means that judges can spend more time on each case to improve the quality of court decisions. This is especially important for patent cases, where the understanding of intricate technical details requires both time and resources allocated by judges.

2. Rising invalidation actions and success rates

As a usual countermeasure in high-stakes cases, the defendants in patent infringement cases will file patent invalidation actions. As such, patent invalidation cases can serve as a reliable barometer of commercially significant patent civil litigation.

Compared with the huge number of patent infringement cases, the number of patent invalidation cases has been much more reasonable. In the last five years, patent invalidation cases (including invention, utility model and design patents) have increased from 6,000 to 9,000, with 2022 an outlier as the number dipped around 7% year on year. In 2024, 9,091 invalidation actions were filed with the CNIPA. Utility model and design patents were the major targets of invalidation actions, respectively accounting for 43% and 37% of all the cases filed. Approximately 20% of invalidation actions (1,837 cases) targeted invention patents, the invalidation of which presumably requires a more significant investment of resources.

See [Fig 3](#).

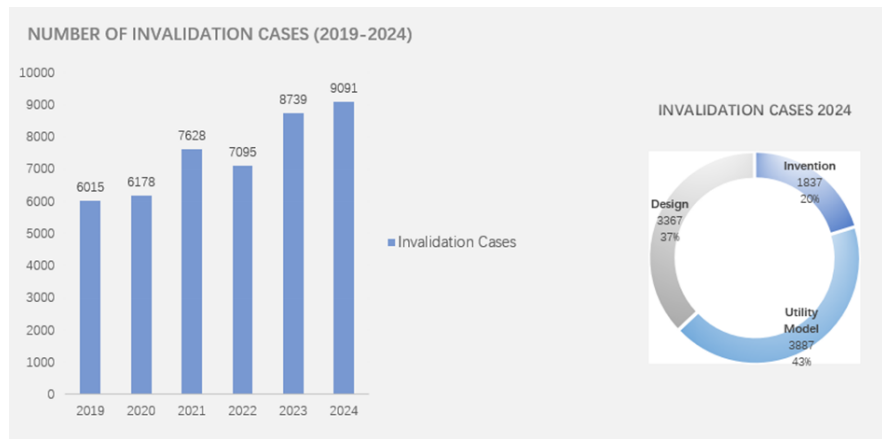


Fig 3

Patentees have observed a disturbing trend, namely, a sustained increase in the success rate of patent invalidation actions from 2022 to 2024 for both invention patents and utility model patents. In 2021, 60.4% of invention patents survived invalidation actions in their entirety. In 2023 and 2024, the figures were 47.79% and 43.27% respectively. Meanwhile, in 2021, only 24.7% invention patents were found invalid in their entirety, but the figures climbed steeply in 2023 and 2024, reaching 39.43% and 42.13% respectively. The same trend was observed for utility models. From 2022 to 2024, the percentage of utility models maintained in their entirety was 39.90%, 32.95% and 28.91% respectively. In contrast, the percentage of utility models invalidated in their entirety was 41.40%, 49.26% and 54.72% respectively. The statistical data suggests that patentees should prioritise quality over quantity, as advocated by China’s various policy directives.

See [Fig 4](#) and [Fig 5](#). (Next page)

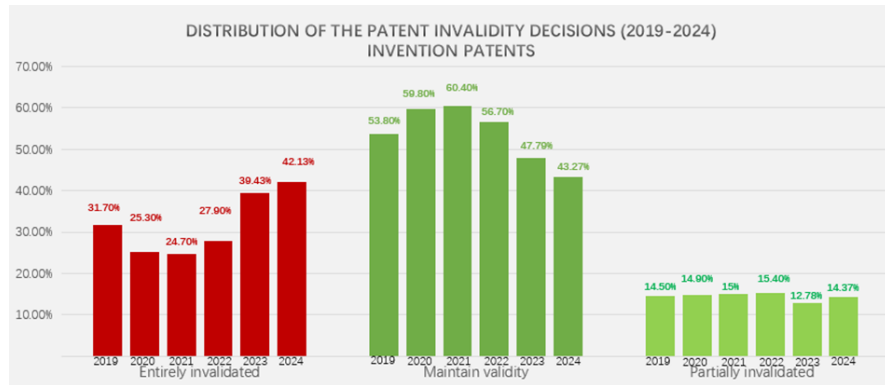


Fig 4

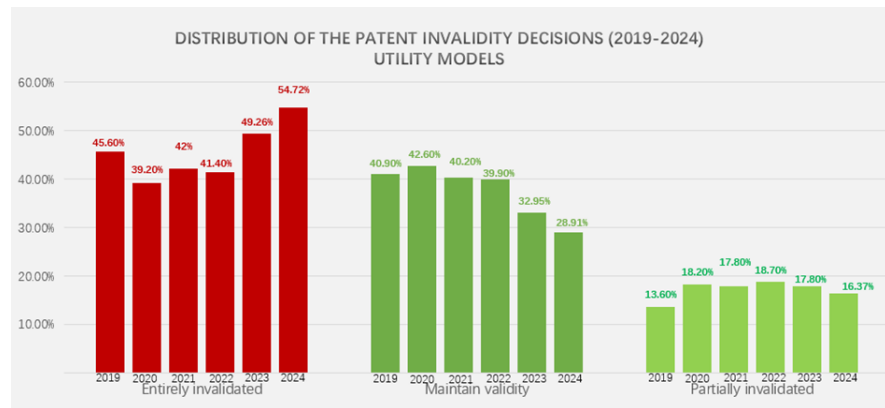


Fig 5

(Data above from 2019 to 2022 comes from official statistics. Data from 2023 to 2024 comes from statistics summarised by commercial databases, as no official statistics were released in those two years.)

3. Lower rate of reversals and remands in 2024

Statistics show that the number of second-instance infringement actions before the SPC IP Division based on invention and utility model patents consistently increased from 2019 to 2023. In 2024, the SPC IP Division designated lower courts to handle the appeals of civil litigation concerning utility models. As such, there are no publicly available statistics on the number of utility model cases that year. However, statistics show that the number of second-instance infringement cases over invention patents grew steadily in 2024. Meanwhile, the number of second-instance administrative cases for invention and utility model patents has been largely growing since 2019, except for a slight dip (14.7%) in 2022.

See [Fig 6](#) (Next page, data from the SPC’s annual reports).

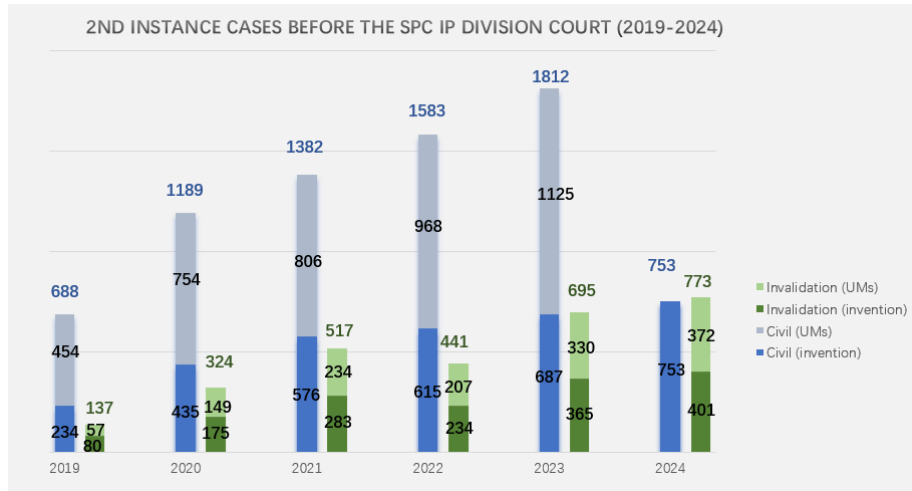


Fig 6

The statistics show that the percentages of second-instance decisions overturned or remanded for retrial for civil and administrative cases had significant differences. For civil cases, the percentage grew up to over 20% in 2023 and 2024. For administrative cases, the percentage was much lower. The percentage was 9.3% in 2023 and 6.8% in 2024. Together with the rising patent invalidation rates in 2023 and 2024, the drop in reversal and remand rates by the SPC IP Division rings alarm bells for patentees. In terms of administrative litigation, such a significant drop signifies a higher degree of judicial deference to the specialised first-instance court (the Beijing IP Court) and, by extension, to the technical expertise of the CNIPA.

See [Fig 7](#) (data from the SPC’s annual reports).

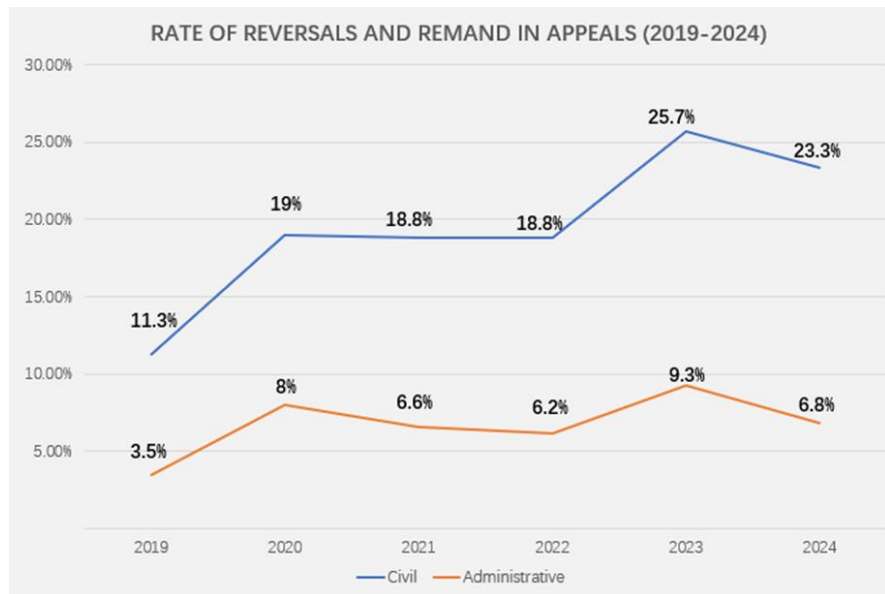


Fig 7

For practitioners, this sends a clear message: the window for correcting errors on

appeal regarding patent validity is narrowing. The appellate courts appear increasingly reluctant to challenge the technical findings and legal conclusions of the CNIPA, unless clear, egregious errors are present. This trend raises the stakes significantly for the initial invalidation proceedings and the subsequent first-instance administrative litigation.

Recent judicial trend for technical secret cases

While patent litigation remains a primary focus of China’s IP landscape, the 2024 data for technical secrets infringement cases reveals a startling trend. At the appellate level, the volume of second-instance cases plummeted, while the success rate for those few cases that reached the SPC climbed significantly.

Statistics indicate that the number of second-instance proceedings involving technical secrets saw a 70% decrease from 2023 to 2024. In 2023, the SPC received 113 such cases; by 2024, that number had taken a dive to a mere 34 cases.

See [Fig 8](#) (data from the SPC’s annual reports).

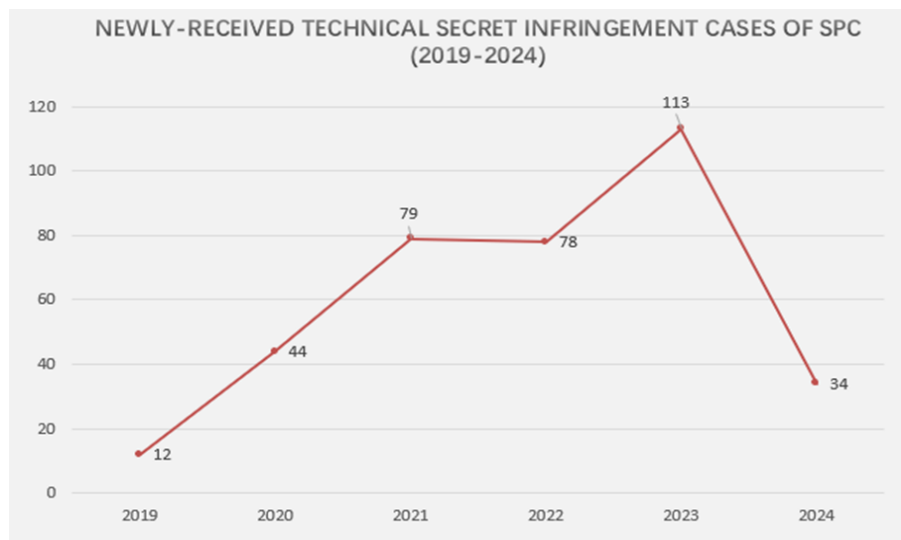


Fig 8

As the volume decreased, the success rate for technical secrets infringement cases surged. Although there are no official statistics, case research based on publicly available official database shows that the percentage of second-instance technical secrets cases finding infringement increased to around 70% over the last couple of years. Given the higher likelihood for the SPC IP Division to find trade secret infringement, the drop in the number of technical secrets cases sends a positive signal to right holders: the court decisions might have been well received by the market and deterred potential infringers.

See [Fig 9](#) (Next page, data from <https://wenshu.court.gov.cn/>).

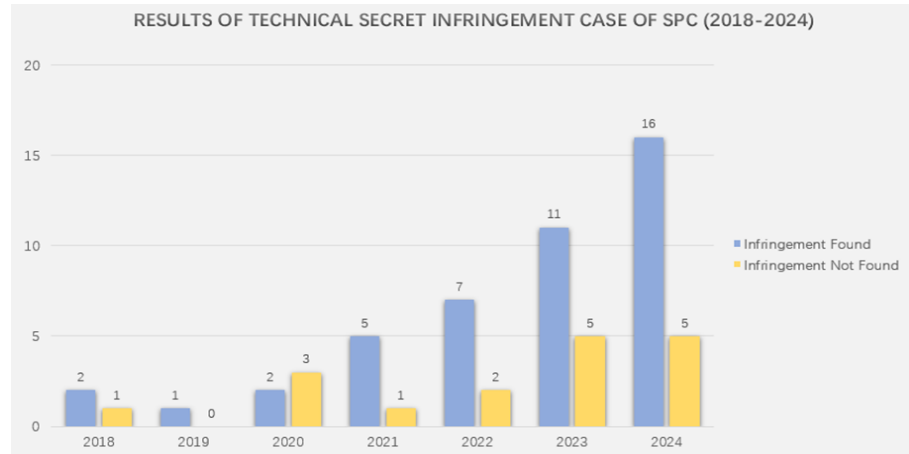


Fig 9

For the past few years, the SPC has consistently issued landmark decisions on technical secrets infringement cases, either making ground-breaking findings or awarding high damages. For instance, in a case relating to patent and technical secrets infringement on the production of melamine, the SPC awarded in its decisions (2020) Zui Gao Fa Zhi Min Zhong No. 1559 and (2020) Zui Gao Fa Zhi Min Zhong No. 541, damages of CNY218 million for the Phase I infringing project. The parties to this case eventually settled for a total of CNY658 million, with the compensation relating to the Phase II infringing project included, setting a new record for damages in an IP infringement case.

In another case involving technical secrets infringement and a dispute over the proprietorship in a patent, the technical secret at issue was formed in a foreign jurisdiction but the infringement took place in China. The former employee of the foreign right holder applied for a patent based on the technical secret at issue. In its decision (2023) Zui Gao Fa Zhi Min Zhong No. 2913, the SPC ruled in favour of the foreign right holder and ordered the proprietorship in the patent relating to the technical secret at issue belonged to the foreign right holder.

Conclusion

The Chinese government has been taking multidimensional measures to reshape its IP ecosystem. With the CNIPA increasingly prioritising the quality of new patent applications and scrutinising the validity assessment of the granted patents in invalidation proceedings, the battlefield of patent litigation has quietly shifted.

For multinational corporations, the takeaways are twofold. First, the “mortality rate” of patents – particularly utility models – underlines the necessity of rigorous and tactical drafting. A utility model patent that cannot survive the 54% invalidation threshold is a liability rather than an asset. Second, the 6.8% reversal rate in administrative litigation necessitates a “front-loaded” legal strategy. In the environment of low reversal rate by the SPC, the first-instance trial and the initial CNIPA invalidation proceeding have become the decisive battlegrounds. In this landscape, the likelihood of success is promoted by technical robustness and strategic precision from the outset of a dispute, rather than by the size of a portfolio.

n° 97 WHD Insights: IP | Punitive damages in China: penalty or compensation?

Paul Ranjard, Huang Hui & Zhu Zhigang, published by [Lexology](#)

China started introducing the concept of punitive damages into its IP legal framework in 2013 with the revision of the Trademark Law. Punitive damages were, then, added to the Seed Law (2015), the Anti-Unfair Competition Law (2019), the Patent Law (2020), the Copyright Law (2020), the Civil Code (2020) and the SPC's Several Provisions on the Concrete Law Application Matters Concerning the Trial of Disputes over Infringement of New Plant Varieties Right II (2021).

In all these laws and judicial interpretation, the principle is basically the same: in "serious" cases and when the acts of infringement are intentional, "*...the amount of damages may be determined as no less than one time but no more than five times*" the amount that is determined according to the calculation methods provided by the law (losses, illegal gains or reference to a royalty rate).

On March 3, 2021, the Supreme Court released a "*Judicial Interpretation on the Application of Punitive Damages in the Trial of Civil Cases Involving Infringement of Intellectual Property Rights*" (the 2021 Interpretation) to coordinate and unify the criteria and language used in these different laws. Consequently, it has been observed that punitive damages have been increasingly awarded by People's Courts.

The aforesaid 2021 Interpretation is about to be superseded, as of May 1st, by a New Interpretation of the SPC, which introduces a few additional clarifications or modifications.

1. The need to adjudicate punitive damages claims is clarified.

Article 1 of the New Interpretation eliminates the ambiguity of the 2021 Interpretation which provided that, when a claim of punitive damages is submitted by the plaintiff, the court shall *examine and handle* the matter in accordance with law. Now, it is clear that the court shall *adjudicate* the matter.

2. Submission deadline of punitive damages claims is clarified.

The New Interpretation confirms the rule established in 2021: (1) the plaintiff must submit a specific claim, because the court may not – unlike what is done in Common Law countries – award punitive damages out of its own initiative, (2) the amount of the claim must be clear and supported by a method of calculation (it is not enough to ask for an additional amount of damages), and (3) the claim

must be submitted before the conclusion of the first instance debate (i.e., before the end of the hearing).

What the New Interpretation adds, however, is a clear and final rejection of any punitive damages claim that might be submitted after the above deadline (first instance debate). In the 2021 Interpretation, the door was not entirely closed: it was still possible, for the plaintiff, to file a punitive damages claim during the second instance, but the court could only mediate "on the basis of the parties' voluntary consent", and in case the mediation fails, the plaintiff will need to file a separate action. In the New Interpretation, the mediation remains, but in case of failure, the possibility to file a claim for punitive damages is definitively closed (Articles 3 & 4).

3. In cases related to the Anti-Unfair Competition Law, punitive damages are restricted to the misappropriation of trade secrets.

Punitive damages were introduced in the Anti-Unfair Competition Law by the 2019 amendment, but only for trade secrets cases. Yet, the 2021 Interpretation did not provide any restriction in this regard. Article 5 of the New Interpretation clarifies that only cases involving the misappropriation of trade secrets are eligible. It is regrettably confirmed that all the other intentional and serious cases where a competitor commits one of the "confusing acts" enumerated in Article 7 of the Anti-Unfair Competition Law, or behaves in an unethical manner, in violation of the general principle established in Article 2 of the said law, are excluded from the punitive damages regime.

4. Determination of the *intention to infringe*

The 2021 Interpretation listed six circumstances where the court may make a preliminary finding that the infringing act is intentional. Article 6 of the New Interpretation deletes the word "preliminary" and clarifies that the defendant may adduce contrary evidence to escape the liability for punitive damages. Furthermore, Article 6 specifies that the court may rely on *any* of such circumstances and adds two more.

The first five circumstances that reveal the intention of the infringer are basically the same as in the 2021 Interpretation:

- (1) The infringer continues infringement despite having been notified by the plaintiff. Here, the New Interpretation adds a precision: the notice must be *effective*. The exact meaning of this word is not clear. Does a cease-and-desist letter qualify as effective? Additional guidance would be welcome.
- (2) The legal representative or manager of the infringer occupies, at the same time, or in the past, a managerial position of the plaintiff. The New Interpretation adds that the infringer *should know or should have known* about the infringed IP right.

- (3) There is some sort of a relationship (employment, cooperation, licensing, agency, representation) between the infringer and the plaintiff. The New Interpretation adds that *based on such relationship*, the infringer had access to the infringed IP right.
- (4) There is some sort of business relationship between the infringer and the plaintiff; and like in the preceding circumstance, the New Interpretation adds that *based on such relationship*, the infringer had access to the infringed IP right.
- (5) The infringer is engaged in piracy, counterfeiting of a registered trademark, and the act of *counterfeiting a patent*, which is added by the New Interpretation.

The New Interpretation adds two more circumstances:

- (6) After reaching a settlement with the plaintiff, the infringer engages in the same or similar infringing acts.
- (7) The defendant conceals his activities by using various methods, like creating affiliated companies, changing legal representatives or controlling shareholders, or setting up companies under concealed ownership, or signing disclaimer agreements to evade legal liability for infringement of the IP rights in question.

5. Definition of the word *serious*

Compared to article 4 of the 2021 Interpretation, Article 7 provides a wider definition of the term "*serious*". Besides the general circumstances regarding the means, frequency, duration, geographical scope, scale and consequences of the acts of infringement, the New Interpretation underlines more generally the *infringer's awareness and general attitude*.

The New Interpretation reiterates the examples of serious circumstances listed in the 2021 Interpretation, specifying that, in any of these circumstances, the court *shall* (instead of "*may*") determine that the infringement is serious. Furthermore, the New Interpretation adds some precisions to the scenarios: (1) Refusing to comply with a preservation order, with the added precision that such refusal must be *without justifiable reasons*; (2) "Being an infringer by trade" is described as "*deriving primary profits from infringing gains*"; (3) enormous illegal gains or losses to the right holder is emphasized with a more precise wording: "*serious damage to the right holder's business reputation, market share, or other interests*".

6. Basis of calculation of the punitive damages

The New Interpretation does not change the basis of calculation set up in the IP laws and in the 2021 Interpretation: the multiplication (up to five times) only applies to the damages as calculated according to one of the three calculation methods provided by the laws (losses, gain or reference to a royalty rate).

More precisions are provided with references to the *operating profit* or the *sales profits* of the defendant (*in case the defendant is an infringer by trade*), or to the *average profit margin in the same industry during the same period as published by statistical authorities or industry associations*, or even *the right holder's profit margin, if profit margin is difficult to ascertain*.

Article 10 of the New Interpretation considers the situation where the defendant refuses to comply with the court order over the disclosure of the defendant's books. Then the court may calculate the punitive damages on the basis of the claim submitted by the plaintiff and the evidence of the case.

7. Coefficient of 1 time to 5 times

Finally, the New Interpretation (Article 11) reiterates the general principle governing the choice of the multiplying coefficient (degree of the defendant's subjective fault and seriousness of the infringing acts). The New Interpretation adds a precision: *the multiplier for punitive damages shall be determined within the statutory range and need not be a whole number*, which, basically, allows the court to decide on a number employing a multidimensional and more nuanced approach.

Article 12 of the New Interpretation stipulates that "*the total amount of damages awarded by people's courts shall not exceed five times the calculation base*". The SPC intends to explicitly dictate how the wording of the law should be implemented, insisting on the maximum total amount of the damages, which includes the compensatory part (calculated according to the law) and the punitive part (added by the court). This seems in contradiction with the practice of many courts who, first, calculate the punitive multiplication, and then add the result to the compensatory damages. This practice has some logic and intends to avoid the situation where the punitive damages would be a multiplication by a coefficient of one: if the result is not added to the compensatory amount, the total amount would be exactly the same as the compensatory amount, losing therefore any punitive effect.

Comment

Following the previous 2021 Interpretation, this New Interpretation ushers in some welcome precisions rather than major changes.

In all IP laws, the regime of calculation of compensatory damages is restrained in the same boundaries: the plaintiff must prove his losses, or the gains of the infringer, or make a calculation by reference to an adequate rate of royalty, and only if this calculation is impossible, may the court decide *ex officio*, within the statutory limit of 5 million CNY.

The practice has revealed that, due the difficulty to justify a claim for damages according to the three legal methods stipulated in the law, most of the cases end up being adjudicated on the statutory basis.

On April 21, 2009, the SPC granted some leeway to the courts by issuing an *“Opinion on Several Issues Concerning the Use of Intellectual Property Trial to Serve the Overall Interests in the Context of the Current Economic Situation”*, in which it stipulated that *“Where it is difficult to prove the exact prejudice suffered from or profits yielded from the infringement, yet there is evidence proving that the aforesaid amount obviously exceeds the limit of statutory damages, the compensation should be ascertained and set above the limit of statutory damages by taking into account all the evidence....”*.


The punitive damages regime seems to correspond to that trend allowing the courts to free themselves from the double boundaries resulting from the strict calculation method and the statutory limit.

It was even noted that in an Opinion dated 24 December 2024, the SPC intended to allow the courts to award punitive damages calculated on the basis of the "discretionary" estimation: Art.16 of such Opinion stipulated that *“where actual losses or infringer’s profits are difficult to calculate, and no comparable license fees are available, the court may rely on existing evidence to reasonably estimate a base for punitive damages, comprehensively considering the infringer’s intent, means, scale, and impact of infringement.”*

However, this possibility is not mentioned in the New Interpretation, and furthermore the regime is bound by its own structural limits.

Literally speaking, the term "punitive" affixed to the word "damages" is an oxymoron. Punitive relates to a sanction justified by an illegal behavior, whereas damages correspond to the compensation of a prejudice. In Common Law countries, the system allows the court to decide, after the compensatory damages claimed by the plaintiff have been awarded, to punish the infringer with an additional amount. Such an additional amount is unrelated to the claim but decided in consideration of the infringer's behavior.

With China being a civil law country, the civil procedure law mandates that the full amount of damages – compensatory and punitive - cannot exceed the amount claimed by the plaintiff. If the plaintiff claims too little, the court cannot award more, even if, based on the evidence of the case, it wishes to do so. Furthermore, there is just no way for the plaintiff to foresee what the judge might consider to be an appropriate level of punitive damages.

The logical approach to punitive damages in China would be to treat the plaintiff's claimed base amount as a floor, and then, allow the plaintiff to request the application of punitive damages without having to submit a specific amount, but only the evidence that such punishment is justified. Then the court could be free to apply the multiplier on top of whatever base is ultimately determined. 

n° 26 Case: TM | Clarity needed as Puma dispute highlights loophole in Chinese trademark law

18 March 2026, Zhigang Zhu, Paul Ranjard, first published by [IAM](#)

On 26 December 2025, the Supreme People's Court revoked an unfavourable decision made by the Beijing High Court against Puma and ordered the CNIPA to reconsider the invalidation request that it rejected.

Case background

Puma owns several well-known trademarks consisting of curved stripe designs placed on the side of athletic shoes. The mark first appeared in 1958 and has since been used and promoted worldwide, including in China. Puma obtained multiple trademark registrations in China for the stripe design on footwear, including registrations dating back to 1976, 1991 and 2007 (see Figures 1, 2 and 3).



Figure 1. G426712 (1976)



Figure 2. G581191 (1991)



Figure 3. G925647 (2007)

At the beginning of 2010, a company called Do-win in the province of Jiangsu filed a design patent application for athletic shoes. The patented designs featured stripe-like graphics placed on the side of the shoe (see Figure 4).



Figure 4. Do-win's design

Puma opined that these stripe designs were visually similar to its well-known trademarks and filed invalidation requests at the CNIPA, arguing that the design patent violated Article 23(3) of the Chinese Patent Law, which prohibits the granting of design patents that conflict with prior rights of others.

The defendant argued that the disputed design patent constituted the legitimate use of a trademark (3016612) registered in 2004, which the defendant was authorised to use pursuant to a licence agreement (see Figure 5).



Figure 5. Trademark registered in 2004

The CNIPA found that the disputed design patent was more similar to the licensed trademark than to Puma's trademarks and therefore rejected the invalidation request. Puma then brought an administrative lawsuit before the Beijing Intellectual Property Court. On 29 October 2024, the court dismissed Puma's claims for the same reasons as the CNIPA – so Puma filed an appeal with the Supreme People's Court.

Supreme People's Court decision

On 26 December 2025, the Supreme People's Court revoked the Beijing IP Court's decision and ordered the CNIPA to reconsider the invalidation request. In its decision, the court clarified how conflicts between prior trademarks and subsequent design patents should be assessed.

The court explained that in essence, it is necessary to assess whether the disputed design has been exploited in a manner that indicates the source of the products and therefore functions as a trademark.

The court noted that in the footwear industry, particularly for athletic shoes, it is common practice to place a graphic mark on the side of the shoe to indicate the product's origin. The court found that the stripe design in the disputed patent was placed precisely in this position and occupied a prominent area of the shoe. It concluded that the design would likely be perceived by consumers as identifying the source of the goods and thus constituted trademark use.

The court then considered the similarity between the disputed design and Puma's earlier trademarks. Both consisted of curved stripe patterns extending diagonally across the shoe and formed by multiple parallel lines. While certain details were

different, such as line width and spacing, the overall visual impression remained highly similar. Given that the goods involved were identical – sports shoes – and that Puma’s mark had acquired strong distinctiveness and market recognition through long-term use and promotion, the court held that the disputed design was likely to cause consumers to misconstrue that the products originated from or were associated with Puma.

Finally, the court rejected the defendant’s argument based on its use under licence of the trademark registered in 2004.

It first examined whether the design implemented the registered trademark as is, or whether features of the said trademark had been substantively altered. In the process, the court found and analysed differences between the two (see Figure 6).



Figure 6. The licensed trademark versus the disputed design

One of these differences is that, in the trademark, the three lines merge in the middle to form one thick line – whereas in the design, the lines remain distinct and parallel, which, as the court noted, is a distinctive feature of Puma's trademarks.

The court thus found that the defence argument could not be supported because, in the process, the trademark’s distinctive features had been substantially altered.

Further, the court found that the design incorporated some distinctive features of Puma’s mark while deviating from that of the licensed mark. In addition, the design was used in essentially the same position and manner as that of Puma on athletic shoes. It concluded that the legitimate use defence could not be sustained.

Key takeaways

This case illustrates two situations, which are frequent and sometimes combined:

- a trademark owner discovers a later-registered similar trademark, which has remained unnoticed for more than five years; and
- a trademark owner discovers a registered trademark in the market that has become infringing due to some transformation of its appearance.

The transformed trademark is sometimes an older registered trademark that had never been used, has recently been purchased or taken under licence and is being exploited under its infringing new look, or, as in the present case, a subsequent trademark that has been registered for more than five years.

These situations can be extremely difficult to resolve as the holder of the contested trademark is in a very strong position.

First, pursuant to a 2008 Interpretation of the Supreme People's Court on the conflicts between registered trademarks and prior rights, it is not possible for a trademark holder to sue the holder of another registered trademark in court. The defending trademark must first be invalidated by the administrative authority.

Second, according to Article 45 of the Trademark Law, if a trademark has been registered for more than five years, it is impossible to request its invalidity unless the challenger can prove that its own trademark was well known when the contested mark was filed and that it was filed in bad faith.

However, when infringement could be attributed to a transformation of the trademark, a certain possibility of action is available.

According to Article 1 of the Interpretation, a civil action is possible if the contested trademark is being used in a way that substantially alters its distinctive features. Such an action may put an end to the infringing activities but cannot solve the problem posed by the mark's existence.

The Supreme People's Court provides an exception for cases involving the transformation of a registered trademark, but this does not exist in the Trademark Law.

Article 49 of the current law provides that where a trademark is unilaterally altered, the trademark office shall issue an order to rectify, possibly a fine and eventually a decision to revoke it. However, when a trademark infringes upon another party's rights as a result of alteration, this party has no right to request the mark's revocation. This constitutes a shortcoming in the law.

Finding a trademark that is free from invalidation and sufficiently close to a target mark so that a simple transformation makes it quite similar is the ultimate demonstration of malice and bad faith. And yet, no action is available.

This loophole has been flagged on various occasions in comments made to revision drafts of the law. The latest draft, issued in December 2025 (Article 56), does not seem to consider the possibility of revocation upon request when a registered trademark is transformed and becomes infringing as a result. 