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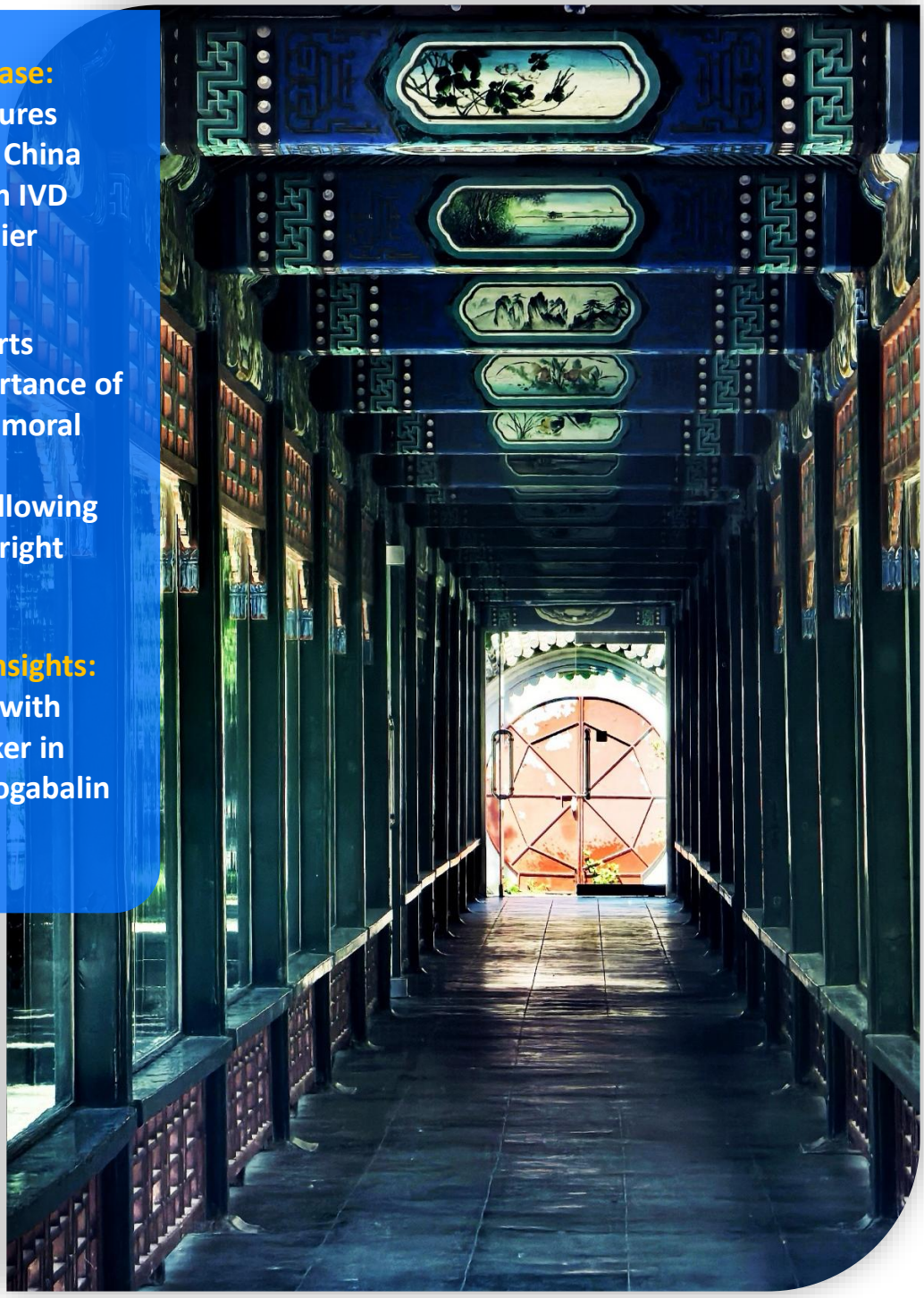

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n° 71 WHD Case:
TM | Werfen Secures Appellate Win in China Against Upstream IVD Equipment Supplier

Wei He, 22 April 2026, published by Lexology

Werfen, a spanish company active in the in vitro diagnostics (IVD) sector, produces and sells chemical or biochemical products (reagents) used for performing, outside the body, various types of medical analysis on samples (like blood, urine, or tissues), to guide diagnosis and clinical decisions. Since 2003, Werfen has built its presence in China through affiliated entities, distributor networks, professional promotion and participation in medical conferences and exhibitions.

The defendant, Haining Werfen / HAININGWERFEN AUTOMATION EQUIPMENT CO. LTD established in 2015, is a manufacturer of automation equipment - machines or robotic systems - using reagents to perform IVD tests. The defendant applies the mark WERFEN on its machinery, including blood glucose strips, pH strips, rapid test strips and urine test strips. Haining Werfen also appears at the same IVD-related trade fairs attended by Werfen.

What made the dispute complex was that the defendant is an upstream supplier, rather than a direct competitor selling the same finished medical products. Besides, it also owned its own Class 7 registered marks, such as " WRF 威尔芬 WERFEN EQUIPMENT " and " 威尔芬 Werfen Equipment "for the relevant machinery, which gave it a potentially strong defense.

Furthermore, Werfen did not obtain the trademark registration in Class 5 until 2022, which is later than the above infringing activities. So, Werfen had to rely on its trade name right. However, unlike consumer-facing brands, medical companies do not usually build market recognition through mass advertising campaigns, making it difficult for Werfen to justify the required reputation for the trade name protection.

First-instance judgment and appellate reversal

The Jiaxing Intermediate People's Court dismissed all of Werfen's claims in December 2024. It held that Werfen's Class 5 diagnostic reagents and the defendant's Class 7 machines were not similar goods, and also found that the accused signs were not

sufficiently similar to Werfen's rights. It further rejected the unfair competition claims relating to the English trade name and the domain name, largely because it considered the evidence on influence in China insufficient.

On appeal, the Zhejiang High People's Court took a much more practical view.

First, it looked beyond the formal class difference and focused on market reality. Although the defendant's products were machines, they were specifically promoted for use in the IVD field and could be used in the production and processing of Werfen's diagnostic reagent products. That was enough for the court to find sufficient overlap in function, purpose, sales channels and customer groups.

Second, the High Court rejected the defendant's reliance on its own registered mark. It held that the defendant had not used that mark in the approved form, but had instead split and altered its elements in actual commercial use. As a result, the registration did not shield it from infringement liability.

Third, the appellate court accepted a broader and more industry-specific body of evidence to establish Werfen's influence in China. Rather than relying only on traditional advertising materials, Werfen supported its case with evidence such as distributor arrangements, sales records, professional journal advertising, hospital use, and participation in conferences and exhibitions. On that basis, the court found that "WERFEN" had acquired substantial recognition in China's medical, and especially IVD, field.

The court therefore recognized protection for Werfen's English trade name in China and held that the defendant's use of such name in its business identifiers constituted unfair competition. It reached the same conclusion for the domain name chinawerfen.com.

The significance of the case

This case shows that a brand owners can rely on trade name right against an upstream supplier where the products are closely connected within the same industry chain.

Second, the case is particularly useful for medical and life sciences companies. It shows that reputation and influence in China can be proved through a broader mix of industry-facing evidence, such as hospital procurement, distributor networks, trade journals, conference participation and sustained sales, rather than only through mass-market advertising. A more tailored evidentiary showing of market recognition would be key for the enforcement of such kind.

Finally, the judgment confirms that a defendant's own registration is not necessarily a safe harbor. If the actual use falls outside the approved registered form, that registration may offer little defense.

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n° 27 Case:
CP | Chinese courts underscore importance of compliance with moral rights in brand collaborations following high-profile copyright dispute

Xiaoquan (Claus) Zhang, 29 April 2026, first published by IAM

Precis: *A high-profile copyright dispute involving popular beverage brand LELECHA has shed light on how modifications that simply diverge from the author's intended expression, even without negative connotations, may be held liable. It also highlights how the Chinese judiciary addresses compliance of moral rights in commercial settings.*

On 24 February 2026, a high-profile copyright dispute involving popular Chinese beverage brand LELECHA ended as the Shanghai IP Court approved its withdrawal of an appeal, rendering the first-instance judgment final. On 13 March 2026, LELECHA issued a public apology to the two plaintiffs to mitigate the adverse effects of its infringing actions.

At its core, the case follows a familiar commercial formula, brand collaborations built around historical or cultural elements, but delivers a less familiar message: while often overlooked in practice, moral rights – the personal rights that belong to the creator of an original artistic, literary or intellectual work, over and above any economic rights they may have as a result of copyright – can carry decisive weight in compliance.

Case background

In the 1970s, the late Chinese painter Yang Zhiguang and his spouse and collaborator Ou Yang jointly created two portraits of Lu Xun, prominent Chinese writer and critic in 20th century Chinese literature. These artworks are the copyrighted works cited by the plaintiffs, Ou Yang and Yang Hong (Yang Zhiguang's daughter).

Yilin Press had published collections related to Lu Xun, and LELECHA, operated by Shanghai Chatian Catering Management, launched a brand collaboration campaign in partnership with Yilin Press on 23 April 2024 (World Book and Copyright Day). The campaign paid tribute to Lu Xun, a towering figure in modern Chinese literature and a cultural icon whose visual image – featuring short hair, a thick moustache, a long white gown and often depicted holding a cigarette – has long circulated in artistic works derived from historical photographs.

As part of the campaign, LELECHA used a portrait highly similar to the plaintiffs' works

on product packaging and promotional materials, with the notable change of reversing the figure's orientation and replacing the cigarette in Lu Xun's hand with a cup of milk tea.

Figure 1. Artworks cited by the plaintiffs

Figure 2. Accused images

On 19 February 2025, the two plaintiffs filed a copyright suit against LELECHA and its affiliates, seeking cessation, 1 million yuan in damages and reasonable expenses, and a public apology.

Court decision

The first-instance court, the Shanghai Putuo District People's Court, found that the accused images were substantially similar to the protected artworks. Aside from minor adjustments, such as reversing the figure's orientation and substituting the cigarette with a beverage, the overall composition and expression constitute a slavish copy of the original.

Beyond confirming the infringement of reproduction, distribution and communication to the public, the court underscored the ramifications of the alteration, finding that replacing the cigarette with a cup of milk tea, while seemingly minor, departed from the authors' creative intent and therefore infringed the right of modification. More importantly, the modification was found to have distorted the original work's expression. The court noted that the altered image reshaped Lu Xun's established persona – from a solemn and resolute intellectual figure into something more casual and commercial. This shift was held to be far from aesthetic as it disrupted the underlying emotional and ideological connotation of the original artwork, thereby impairing its integrity.

On this basis, the court concluded that LELECHA had infringed both the moral and economic rights of the copyright owners. It ordered damages of 200,000 yuan and granted the plaintiffs' request for a public apology.

A lesson learnt for brand collaborations

This case reflects how the Chinese judiciary addresses compliance of moral rights in commercial settings.

Under China's Copyright Law, moral rights include the rights of authorship, publication, modification and integrity. The prevailing perspective assumes that only distortions of the copyrighted works to the point of ridicule or defamation would be problematic. This case suggests otherwise. A modification that simply diverges from the author's intended expression, even without negative connotations, may be held liable. This is particularly relevant in today's branding landscape, where cultural symbols are frequently repackaged in playful or commercial contexts, sometimes in the name of 'paying tribute'. This case suggests that this practice could be at fault if the underlying expression has been materially altered.

Another point worth noting is that, under Articles 10(2) and 10(3) of the Chinese Copyright Law, moral rights are neither transferable nor licensable. This means that the creators will remain be vested with such rights. As a result, it would be advisable for parties seeking to engage in adaptations or secondary creations of a copyrighted work to secure, where possible, separate written consent from the original creators, on top of obtaining authorisation from the owner that holds the economic rights over said work.

n° 98 WHD Insights:
PT | CNIPA sides with generic drug maker in dispute over mirogabalin besylate tablets

Yue Guan, 29 January 2026, first published by MIP

On December 3 2025, the CNIPA published three administrative rulings: (2025) Guo Zhi Yao Cai No. 10, 11, and 12. The decisions confirmed that the three dosage forms of the generic mirogabalin besylate tablets, for which Chengdu Easton Biopharmaceuticals Co., Ltd. (Chengdu Easton) applied for regulatory approval, do not infringe upon the formulation patent (Chinese patent ZL201480001374.3, titled 'solid composition of amino carboxylate salt') owned by the innovator drug maker, Daiichi Sankyo Co., Ltd.

The rulings will be appealable until the expiry of the six-month statutory window, counting from the date of receipt of the decisions.

Mirogabalin besylate tablet is a third-generation calcium channel modulator drug developed by Daiichi Sankyo and marketed under the trade name Tarlige. The drug

was approved in China in June 2024 for the treatment of diabetic peripheral neuropathic pain in adults, making it the country's first imported innovator drug approved for this indication.

The Phase III clinical study of Tarlige demonstrated that pain scores improved significantly within just two days of administration, with sustained efficacy lasting over 52 weeks. Through price negotiations, it was later included in China's National Reimbursement Drug List, the catalogue of medications covered under the country's public health insurance system, and has been recommended in authoritative diagnosis and treatment guidelines. The global cumulative sales of the drug were approximately $1 billion from 2019 to 2023.

Under China's drug patent linkage regime, an innovator drug maker needs to register with China's Marketed Drug Patent Information Registration Platform the patent information on active ingredients, pharmaceutical composition, and pharmaceutical uses, and a chemical generic drug applicant is obligated to make a statement based on the status of the patent.

Daiichi Sankyo has registered four patents, including one compound patent expiring in September 2028 and three formulation patents expiring successively in April 2034, March 2036, and December 2040. Chengdu Easton filed a Category 3 declaration regarding the compound patent, avowing not to market its generic version before the patent expires. For the three formulation patents, it filed Category 4.2 declarations, asserting that the generics do not fall within the protection scopes of these patents. The patent involved in the aforesaid ruling is one of the three formulation patents.

CNIPA reasoning

The CNIPA's ruling does not divulge many details, except a synopsis of its reasoning.

Claim construction

The CNIPA cautions that where it is impossible to clearly construe the terminology or technical features based solely on the description of patent claims, it is necessary to refer to internal evidence such as the patent specifications, as well as external evidence such as textbooks and technical manuals. In principle, the interpretation of the aforesaid terms shall not deviate from the purpose of the invention as perceived by a person skilled in the art based on the context and content of the specifications.

Doctrine of equivalents and burden of proof

The CNIPA concludes that it would be untenable to argue patent infringement under the doctrine of equivalents if the technical solution of the generic drug differs from the patent claims in at least one technical feature, provided that the patentee fails to provide sufficient evidence to demonstrate that this differing feature, which would have been obvious to a person skilled in the art, constitutes an 'equivalent' of performing substantially the same function, in substantially the same manner, to achieve substantially the same result.

Estoppel

'Estoppel' is a legal term meaning that a second argument is barred if it is inconsistent with a first argument. In a patent prosecution process, it is not unusual that the patentee amends the claims in response to the office actions issued by the examiner, to facilitate the grant of the patent.

The CNIPA underscores that where a disputed technical feature was incorporated into the granted claims through an amendment made by the patentee during prosecution, yet the patentee contends that a specific technical solution falling between the scope of the original claims and the amended claims had not been disclaimed, the patentee shall bear the burden of proof or make a reasonable explanation to support this contention. In other words, the estoppel principle bars the patentee from admitting the removal of a technical solution from the patent claims in the patent prosecution process and later contradicting that admission in the patent dispute administrative adjudication proceeding.

Comments

The case is very intriguing. Although the formulation details of the generic drug filed by Chengdu Easton are not publicly available, a search of the CNIPA's database revealed the claim amendment to the patent at issue (as shown below), with the newly added features in bold.

Original claim 1	Published claim 1 (granted after amendment)
A pharmaceutical composition comprising: [(1R,5S,6S)-6-(aminomethyl)-3-ethylbicyclo[3.2.0]hept-3-en-6-yl]acetic acid monobenzenesulfonate of formula (I),	A pharmaceutical composition comprising: [(1R,5S,6S)-6-(aminomethyl)-3-ethylbicyclo[3.2.0]hept-3-en-6-yl]acetic acid monobenzenesulfonate of formula (I),
(i) one or two or more components selected from the group consisting of D-mannitol, lactose, corn starch, and crystalline cellulose; and	and (i) D-mannitol **having an average particle size of 100μm or less**,
(ii) any one or both of carmellose calcium and sodium carboxymethyl starch.	and (ii) calcium carboxymethylcellulose,
	and further comprising **magnesium stearate or sodium stearyl fumarate, wherein the pharmaceutical composition is a tablet prepared by a direct extrusion process**.

The granted claim 1 defines the excipients and particle sizes and incorporates the preparation method, thus markedly narrowing the scope of protection of the patent at issue.

Based on the amendment and the CNIPA's reasoning, the following deduction could be made:

- The technical solution of Chengdu Easton's generic drug is not identical to that protected by the patent claims;
- The claim of Daiichi Sankyo's patent at issue was amended during the prosecution process to incorporate new technical features; and
- The technical solution of the generic drug does not contain the said incorporated technical features, but the chances are high that such solution could have fallen within the original, yet much broader, scope of the patent claims.

A focal point of the case is whether the protection scope excluded in a claim amendment can be reclaimed in a patent infringement case. The CNIPA does not rule out the possibility, but the burden of proof lies with the patentee to justify why the excluded technical solutions should not be deemed to have been disclaimed. In exchange for the quick grant of the patent at issue, the narrow protection scope proposed by the patentee during amendment could be self-defeating in hindsight.

This case underscores the pivotal role that the drafting strategy of formulation patents plays in withstanding a patentability challenge brought by invalidity petitioners and in maximising its enforceability in future assertion actions. The baseline is to ensure the granted patents could effectively hedge against potential generic competitors and extend the drug's market exclusivity.

It is worth noting that, in view of the often high threshold for the patentability of formulation inventions, it would be more advisable for patentees to proactively build claims around core technical features by including a range of potentially equivalent variations and providing comprehensive experimental data demonstrating the effects of these variations. This approach helps to lay a solid foundation to support arguments for a broader scope of protection during prosecution and future enforcement proceedings.