

USE OF IP PROTECTION GROWS



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On April 15, 2009, the Zhejiang Higher People's Court announced that Chint Group and Schneider Electric Group had reached a settlement in the Tianjin-based Schneider Electric Low Voltage (Tianjin Schneider) patent infringement lawsuit and that Tianjin Schneider will pay Chint Group Rmb157.5 million (\$23 million) in compensation. In addition, the two parties have also reached a series of global reconciliation agreements.

In November 1997, Chint Group filed a utility model patent application entitled 'High Breaking Miniature Circuit Breaker' to the State Intellectual Property Office (SIPO). On March 11, 1999, a patent right was granted (patent no. 97248479.5).

In July 2006, Chint Group launched a lawsuit against Tianjin Schneider at the Wenzhou Intermediate People's Court on the grounds that the circuit breakers produced by Tianjin Schneider violated Chint's patented utility model (patent no. 97248479.5).

Chint Group requested Tianjin Schneider to stop the infringing act immediately and pay Rmb500,000 in compensation. In February 2007, Chint Group changed its claim for compensation to Rmb335 million on the basis of the profits made by Tianjin Schneider, as calculated from the defendant's audited sales in previous years.

In September 2007, the Wenzhou Intermediate People's Court ruled that Tianjin Schneider pay Chint Group more than Rmb330 million for damages. Tianjin Schneider appealed this decision to the Zhejiang Higher People's Court, disputing issues including how the infringement had been determined and the amount of compensation claimed.

According to Chinese practice, patent infringement and patent validity are handled separately. After the Chint Group sued Tianjin Schneider in court, Tianjin Schneider immediately filed a request for invalidation of the utility model patent with the Patent Re-examination Board (PRB) of the SIPO.

In April 2007, the PRB upheld the utility model patent. Subsequently, as Tianjin Schneider was not satisfied with this decision, it filed an administrative action against the PRB and appealed to the Beijing No.1 Intermediate People's Court.

It also lost this case, but again appealed to the Beijing Higher People's Court. On March 26, 2009, the Beijing Higher People's Court ruled in favour of Chint Group, maintaining the ruling that Chint's utility model patent is valid.

On the infringement side, the Zhejiang Higher People's Court accepted Tianjin Schneider's appeal and set up its file on November 12, 2007. The court considered the arguments of both litigants and tried to assist the two sides to reach a compromise.

“CHINA'S CHINT GROUP DEMONSTRATED THAT CHINESE ENTERPRISES ARE PAYING GREATER ATTENTION TO INTELLECTUAL PROPERTY AND INCREASINGLY HAVE THE LEGAL MEANS TO PROTECT THEMSELVES.”

Since late March 2009, Zhejiang Higher People's Court has held three court sessions, carrying out a pretrial exchange of the evidence, a cross-examination of evidence, and trying to mediate between the two sides.

Its attempts appear to have been successful. Tianjin Schneider and its parent company, Schneider Electric Group, have now reached global reconciliation agreements with Chint Group, resulting in Tianjin Schneider and Chint Group also reaching an agreement.

Tianjin Schneider will pay Rmb157.5 million in compensation to Chint Group within 15 days of the date of the mediation decision. If Tianjin Schneider fails to pay on schedule and in full, Chint Group has the right to apply for the implementation of the first instance decision by the Wenzhou Intermediate People's Court of Zhejiang province.

It has been reported that negotiations before the court session on April 15, 2009 lasted more than 20 days. The involvement of the chief executives of the respective organisations meant that a global reconciliation agreement could be reached. The main point of the agreement is that the two sides will not sue each other for a certain period of time and within a certain scope for certain products and patents.

Foreign enterprises, especially multinational corporations, have traditionally been regarded by China's IP community as having greater expertise and skill when it comes to using legal weapons to protect intellectual property. But, in this case, China's Chint Group demonstrated that Chinese enterprises are paying greater attention to intellectual property and increasingly have the legal means to protect themselves. Settlement outside the court room was the best possible result in this case and represents the will of both litigants.

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