

Newsletter



# Beijing RisingMark

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### ➤ **China Leads Global IP Applications Filing**

According to the 2016 World Intellectual Property Index reported by WIPO on November 23 in Geneva, there had been around 2.9 million patent applications received from all over the world in 2015, up 7.8% from 2014; China was the biggest contributor with over 1 million patent applications in a span of one year for the first time. (Source: CRI.cn)

### ➤ **The 2nd ID5 Forum held in Beijing**

On November 1, 2016, EU Intellectual Property Office (EUIPO), Japan Patent Office (JPO), Korea Intellectual Property Office (KIPO), the State Intellectual Property Office of P.R.China (SIPO), and US Patent & Trademark Office (USPTO) met in Beijing for 2016 ID5 Forum (the industrial design framework comprised of the 5 IP offices mentioned above). Observer from the World Intellectual Property Office (WIPO) also attended the event at invitation. The forum reiterated the goals set forth in the first forum, which took place in 2015, and continued to push the establishment of an efficient industrial design protection system that can be adopted among all member states.

The 5 offices decided to cooperate in various aspects of industrial design, such as examination practice study, automated supporting system, industrial design classification, quality improvement, statistics and etc., and to work together to explore the possible solutions in response to emerging technologies and new issues related to industrial designs. To provide openness and transparency, the 5 offices decided to launch an ID5 cooperation website ([www.id-five.org](http://www.id-five.org)) as a platform to share the information and projects' progress with the public.

## Cases in Spotlight

### ➤ **Design Patent Infringement concerning a Handheld Shower Head**

#### **Case Summary:**

In November 2012, Friedrich Grohe AG & Co. KG (Grohe) started a lawsuit against Zhejiang Gllon Sanitary Ware Ltd. (Gllon) for its manufactory, sales and offer to sale of sanitary products which have infringed upon Grohe's "Handheld Shower Head" design patent. Zhengjiang Taizhou Municipal

Intermediate People's Court of first instance found that 1) although Grohe claimed the shower head's outlet surface design as a major feature of the design patent involved, such claim could not be found in the abstract of the granted patent and 2) although the two parties' designs are similar in the shower head's outlet surface, there are differences in the design of shower head surrounding and handle. Accordingly, the court determined that the two designs do not constitute similar and rejected the request of Grohe.

Grohe filed an appeal with Zhejiang Provincial Higher People's Court, who held that special consideration shall be given to the design feature of the runway-shaped shower head's outlet surface as being distinctive from existing designs. The alleged infringing design adopted a highly similar design of the outlet surface; meanwhile the two designs are also very close in overall shape and the length proportion between the shower head and handle. The court determined that the two designs are similar, and ordered Gllon stop infringement, destroy the remaining infringing products in stock, and pay an indemnity of 100,000 yuan RMB to Grohe for its economic loss.

Gllon refused to accept the judgement and requested retrial by the Supreme Court. The Supreme Court accepted the case and made a ruling on August 11, 2015. According to the Supreme Court, based on the invalidation decision made by the Patent Reexamination Board, the design patent at issue has three design features, the shower head and transitional shapes thereof, the shape of the water outlet surface, and the length proportion between the shower head and handle. Although the alleged infringing design has the highly similar runway shape feature, there is obvious difference between the two parties' design features concerning the shower head and transitional shapes thereof. Besides, the shower head, the handle and their connection are the primary parts that can be directly observed, which shall be given special consideration when judging overall visual effects. The alleged infringing design does not contain all the design features of the design patent at issue, and has not fallen into the protection scope of the plaintiff's design patent. The Supreme Court revokes the second instance judgement and maintains that of the first instance.

According to the Supreme Court, the design features of a granted design patent represent the innovative content that differs from the existing design and the designer's creative contribution to the existing design. If the alleged infringement design does not contain all the design features that distinguish the authorized design patent from the existing design, it can be presumed that the alleged infringement

design is not similar to the authorized design patent. The determination of design features shall be demonstrated by the patentee in respect of the design features claimed by him and shall be allowed to be rebutted by a third party. The determination of a functional design feature is not a matter of whether the design is not selective due to functional or technical constraints but rather whether the general consumer of the design patent product agree that the design is determined solely by the particular function, and it is not necessary to consider whether the design is aesthetically pleasing. The retrial judgment has expounded the significance, the proof, the determination and consideration of the design features of design patents for infringement determination in a systematic manner, also has discussed the meanings, classification and identification of functional features, then clarify the standard of judging the infringement on design patent on this basis, which provides great significance.

**Highlights :**

This case concerns a controversial topic in judicial practice concerning the design feature and functional feature of a design patent. According to the Supreme Court, the determination of design features shall be demonstrated by the patentee and shall be allowed to be rebutted by the other party. In determining a functional design feature, however, the key is whether the design is merely decided by the specific function with no need of aesthetic consideration as far as ordinary consumers are concerned. The retrial judgment has expounded the significance, the test, the determination and infringement consideration of the design features of a design patent in a systematic manner, also has discussed the definition, classification and identification of functional features, hence clarify the standard of judging design patent infringement, which provides great significance.

## **RSMK news**

### **➤ The third National Forum on animal nutrition safety**

From May 15 to 17, 2013, in order to effectively improve the professional level of our company personnel and the ability to serve the feed industry, the company's patent engineers Guo Xiaodi and Li Ruilin went to Wuhan to participate in the third National High-level Forum on animal nutrition safety, to learn about the feed industry expertise.