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Partial Judgments in the Context of Intellectual Property Litigations

By Xun Yang | Nora Wu

Shanghai intellectual property court issued, on the 22nd of January 2019, a partial judgment in an invention patent infringement case between Valeo as the plaintiff and Lucas, FuKe and Chen as the joint defendants. In this case, the plaintiff Valeo is the patent owner of the invention patent concerning “the connector to screenwiper of vehicles and related interface units.” It claims that the three defendants committed the infringement of manufacturing, selling and offering to sell products which fall within the coverage of its invention patent, and that such manufacture, sales and offer to sell constitute an infringement of its patent. The Shanghai intellectual property court ruled for the establishment of infringement and ordered the defendants to cease infringement whilst the issues regarding the amount of damages are still pending. This is the first time a Shanghai court issued a partial judgment in an intellectual property case.

I. A Review of Partial Judgment

Partial judgment is not a brand new concept under the PRC law. As early as 1982, Article 121 of the PRC Civil Procedure Law stipulates that, during the trial of a case, if part of the case has become evident, the

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court can issue a partial judgment in respect of such part. Afterwards, during the amendments to the PRC Civil Procedure in 1991, 2007, 2012 and 2017, this article was retained intact. Different from judgments on whole cases, a partial judgment does not address all the claims between the parties, but only deal with those claims, in relation to which the factual bases are evident. A partial judgment has the following features:

(1) A partial judgment is a final judgment

Upon issuance of a partial judgment by a court, the trial in respect of such part of case is completed at this court. The party which does not agree with such partial judgment does not have the right to apply for a review of the claims covered in the partial judgment. Rather, it can appeal the partial judgment to a higher court. This is the fundamental difference of a partial judgment from a behavior preservation order issued in intellectual property cases, where, behavior preservation is a procedural measure which a court adopts in urgent situations to prevent irreparable damages incurred to IP right owners. According to article 2 of the *Several Interpretations on Behavioral Preservations in Intellectual Property Disputes* issued by the Supreme People's Court in 2008, a behavior preservation order can be issued anytime before a final judgment, decision or arbitration order is issued. Upon applications, a court has a right to revoke a behavior preservation order. However, a partial judgment, on the contrary, is a substantive judgment and it must not be cancelled by applications made by any party.

(2) A Partial judgment is an independent decision

A partial judgment is an independent decision, which means it is not a component of or an appendant to other decisions. As a result, if a party does not agree with a partial judgment, it has a right to appeal such partial judgment without waiting for the decision for rest part of the case. Moreover, after a partial judgment is issued, relevant parties have the right to apply for enforcement of the judgment. For example, in the Valeo case, when the partial judgment became effective, the defendants must cease the infringement of the plaintiff's patent concerning the connectors of screen wiper of vehicles and related to interface a judgment and must not continue their infringement activities in the ground that the rest part of the case is still in suspense.

(3) A partial judgment is a decision on part of a case

A partial judgment addresses part of the claims raised by the parties, which does not mean that all claims in the case has been resolved, and the rest part of the case will continue to be tried. For instance, in the Valeo case, although, the Shanghai Intellectual Property Court did not address the amount of damages in the partial judgment, the case regarding the award of damages was still under the court

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proceeding.

II. Application of Partial Judgment

The law fails to clarify the detail conditions for the application of partial judgments. According to juridical practice, the application of partial judgment must satisfy the following conditions:

(1) Part of the case has become evident

Since a partial judgment is a substantive decision, it must only be issued when part of the case has become evident. The insurance of a partial judgment does not require the completion of investigation into all facts of a case but requires that the ascertain of the facts supporting the claims in respect to which a partial judgment is issued. In the case concerning a dispute on a construction contract between Zhengzhou, Zhengyan and Beijing Baweizhongxin, the decision stated that it is up to the court decision as to whether part of a case has been ascertained and no party has the right to determine whether the facts has been ascertained.

In patent related cases, given the complexity and non-obviousness nature of patents, it is difficult to seek behavior preservations. As such, application for partial judgment during a trial when the infringement is established is an option worth being considered. In the above mentioned Valeo case, the Shanghai Intellectual Property Court issued the partial judgment on the cessation of infringing activities on the basis that the relevant part of the fact has become evident. In other words, the plaintiff raised sufficient evidence to convince the judge that the plaintiff is the patent owner of the invention patent, which patent is still valid during the period of protection and that the defendants were manufacturing, selling and offering to sell the products which meet all technical features of said patent.

(2) The claims which a partial judgment concern have independency

Insurance of a partial judgment is conditioned on the independence of the claims with respect to which a partial judgment is issued. This includes two scenarios: (i) the part of the claims concern an independent object, and (ii) although the part of the claims do not concern an independent object, the decision of the claims is not conditioned on the trial of rest part of the claims. On this regard, a partial judgment differs from “Enforcement in Advance,” which is designed to enforce a claim to satisfy a party’s livelihood, which claim is not independent from the legal relationship the parties dispute on.

For example, in the case concerning the disputes on the equity in Jingang company between Minshi

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Xie and Ruichang Zhang, the action to transfer equity and the payment of equity price are considered two independent claims. The decision on the former claim is not conditioned on the trial of the later. On the contrary, the payment of equity transfer price is conditioned on the approval of equity transfer. Therefore, the court is able to issue partial judgment on the former claim.

For the same reason, in the intellectual property cases, the decision of cessation of infringement is conditioned on the establishment of the infringement and on the existence of ongoing infringing activities, but is not conditioned on the award of damages. Therefore, the establishment of an infringement is a condition to award damages, but not the other way. Consequently, the establishment of infringing activity is considered an independent claim but the award of damages is not. As indicated in the Valeo case, the claims between the parties are about cessation of infringement and award of damages. The Shanghai Intellectual Property court issued a partial judgment in relation to the cessation of infringement whilst the claim about damages was still pending trials.

(3) There is a necessity to issue partial judgment on the relevant part of case

Insurance of partial judgment is an exception for court which usually issue judgments on case in its entirety. Generally speaking, a partial judgment is issued where there is a necessity. Such necessity is usually demonstrated by the facts that there are many parts of the case are difficult to be ascertained during a short period of time whilst the time is essential for a decision on part of the claims, without which irreparable damages maybe incurred to the relevant party. For example, in the contract dispute case between Nanjing Guhai construction materials and Jiangsu Anju high school, the Jiangsu high court clearly pointed out that the time is not essential for the claims for investment incomes from the jointly developed real properties and, therefore, a partial judgment is not required.

In intellectual property cases, it is usually difficult to collect evidence about the amount of damages resulting from the infringement. If the whole infringement case is pending decision for a long period time, the intellectual property owner may suffer huge and irreparable ongoing damages. This gives rights to necessity to apply for partial judgment. However, this does not mean that partial judgment is applicable to all intellectual property cases. Rather courts will examine all related facts and make a comprehensive balance. In any event, preservation orders are available in intellectual property cases which functions to stop infringement in urgent cases.

III. The Benefits Partial Judgment Brought to Intellectual Property Owners

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In intellectual property infringement cases, an application of partial judgment may bring to intellectual property owners the following benefits and is an option to be considered:

(1) Cessation of further infringement

Applications for partial judgments are usually made to cease further infringement and to prevent infringing activities from being spread so as to protect IP owners' rights. This is in particular important in patent cases where behavior preservation orders are seldom issued. As discussed above, it usually takes quite some time to complete the trial of an intellectual property case and IP owners may suffer increasing damages during that period of time. For example, with a deployment of business and enlargement of infringement scale by the party against which an intellectual property claim is initiated, the IP owner's market position will be likely to be gradually compromised during the period of litigation. Therefore, IP owners may be in a dilemma to choose to seek full compensation or to sacrifice the claim for damages in order to receive an earlier judgment to stop infringement. A partial judgment will benefit IP owners so that they can stop infringing activities at an earlier stage so as to protect its IP rights and at the same time to leave the claims for damages which is more complicated to be proved to be tried at a later stage.

(2) The declaratory effect

A partial judgment in respect of cessation of infringement functions critically to establish that certain activities is considered infringing so as to warn other infringers or potential infringers to stop or to withdraw from carrying out infringing activities. Since intellectual properties have the potential to be duplicated for an unlimited times, activities which infringe intellectual property rights as a behavioral pattern can also be duplicated. This gives rise to repeated infringement and massive infringement, incurring difficulties to protect intellectual property rights. A partial judgment which orders cessation of infringement may function as follows: on one hand, realizing the infringing nature of certain activities, some competitors may adjust their behaviors or adjust their business models to avoid infringement, and, on the other hand, when intellectual property rights owners send letters to stop infringement to infringers, a partial judgment can clearly demonstrate the infringing nature and help the IP rights owners to secure a better position in negotiating with actual or potential infringers.

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