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外观设计专利审判与无效案例

Review of recent China Design Patent Infringement and Validity Cases

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3 外观设计判断 / Legal Tests

- 判断原则：整体观察，综合判断
- 判断主体：一般消费者
- 判断步骤：权利保护范围的确定

  区别设计特征的确定

  功能性设计的认定与排除

  产品近似性的认定与排除

  权利抗辩等

- Approach: Observation as whole, Judging based on all aspects
- Whose perspectives? Ordinary consumer
- Steps: Determine scope of protection

  Determine distinguishing design features

  Exclude functional design features

  Determine similarity of products

  Defense

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聚焦——“整体观察、综合判断”原则

Focus: The way determination is done

5 捷豹路虎起诉江铃抄袭侵权案 / Jaguar Land Rover sued Jiangling for infringement

基本案情

- 2014年07月，捷豹路虎有限公司向专利复审委请求无效江铃控股有限公司外观专利 ZL201330528226.5
- 2016年6月，复审委作出涉案外观设计无效的决定
- 2016年6月，捷豹路虎公司起诉江铃公司侵权
- 2018年3月，北京市知产法院作出（2016）京73行初4497号行政判决，撤销专利复审委无效决定
- 2018年11月，北京市高级人民法院做出（2018）京行终4169号行政判决书，撤销一审判决，驳回江铃控股有限公司的诉讼请求

Brief case

- 2014.07, Jaguar requested PRB to invalidate the design of Jiangling ZL201330528226.5
- 2016.06, PRB invalidated the design
- 2016.06, Jaguar sued Jiangling for infringement
- 2018.03, Beijing IP Court reversed PRB decision and maintained the validity
- 2018.11, Beijing Higher Court disagreed and invalidated the design

主视图对比 / Front view

江铃涉案外观专利
Jiangling design

对比设计
Contrast: Aurora Range Rover

整体视觉影响比重大：车身前面主要装饰件的相对位置关系相同

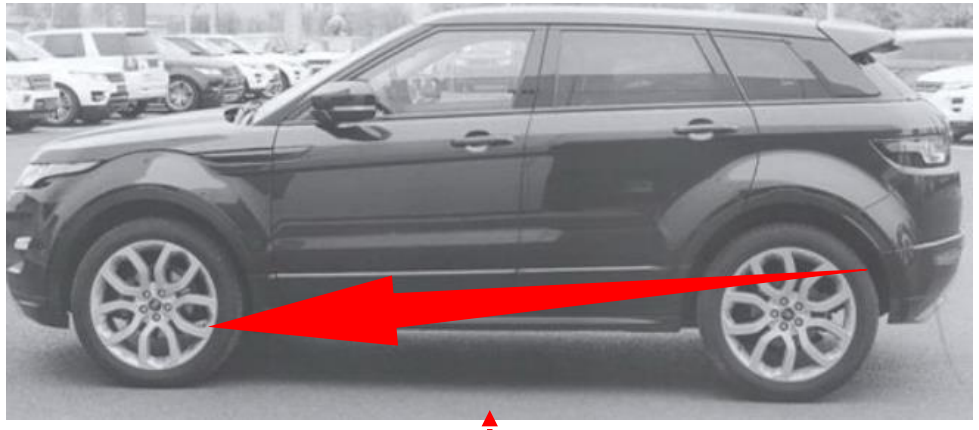
整体视觉影响比重小：装饰件具体的细节差异

Significant overall visual impact: the same relative positional relationship of the main decorative parts
Minor overall visual impact: different specific details of the main decorative parts for ordinary consumer

左视图对比 / Left view

江铃涉案外观专利
Jiangling design

对比设计
Contrast design

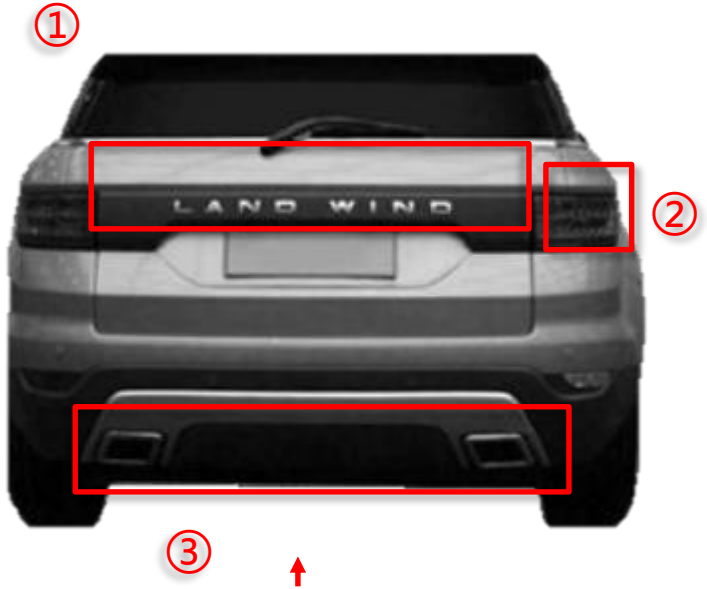


整体视觉影响比重大：侧面腰线等线条的设计、风格相同
整体视觉影响比重小：具体的细节差异一般消费者不易察觉

Significant overall visual impact:same design and style of the side waist lines
Minor overall visual impact: different specific details for ordinary consumer.

后视图对比 / Back view

江铃涉案外观专利
Jiangling design

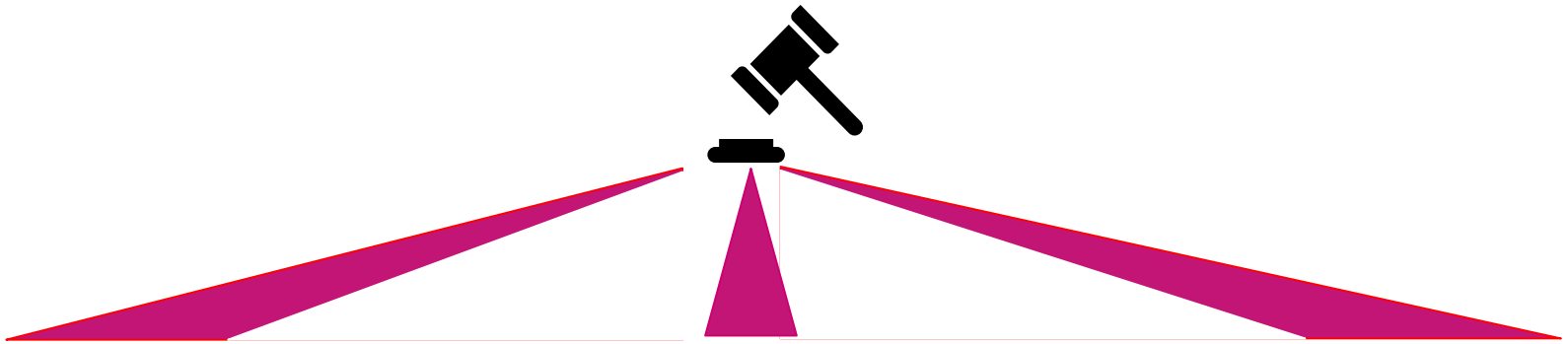


对比设计
Contrast design

整体视觉影响比重大：①后背门、 ②后车灯、③后保险杠的相对位置关系以及后面部件中的后车灯、后背门外形及与之相关的比例关系均相同
整体视觉影响比重小：装饰板等部件的具体差异

Significant overall visual impact:the same relative positional relationship between ①back door ②Rear light ③Rear bumper, and the same proportional relationship
Minor overall visual impact: specific differences in components

决定要点 / Summary of Judgment



1. 必须以一般消费者知识水平和认知能力为判断基础

1. Must be based on the knowledge level and cognitive ability of the ordinary consumer

2. 涉案专利所属领域产品的设计空间较大，微小变化对整体观感影响较小

2. The design space of the products in the field is larger, then small changes have less impact on the entire perception.

3. 必须遵循“整体观察、综合判断”原则，不宜割裂各单独的设计要素进行判断

3. Must follow the principles “整体观察，综合判断, and do not separate individual design elements for judgment.

高仪公司诉健龙卫浴侵害外观设计专利权纠纷案 / GROHE sued Gllon for infringement

基本案情

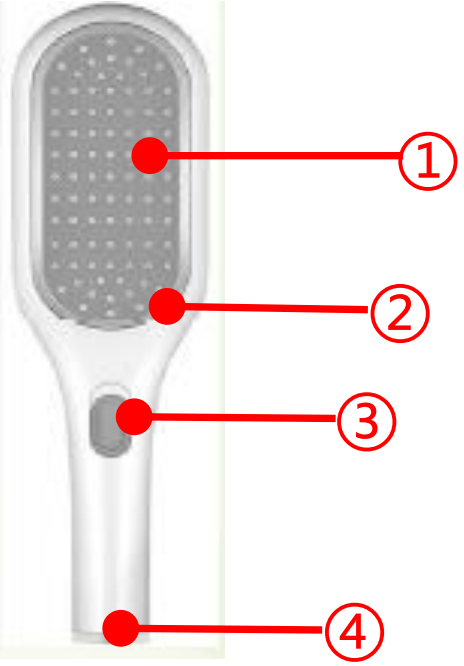
- 2012年11月，高仪股份有限公司向浙江省台州市中级人民法院起诉浙江健龙卫浴有限公司侵犯其外观专利 ZL 200930193487.X
- 2013年5月，台州市中级人民法院驳回高仪公司诉讼请求，高仪公司上诉
- 2013年9月，浙江省高级人民法院撤销原判，责令浙江健龙卫浴有限公司停止侵权，健龙卫浴有限公司提出再审
- 2015年8月，最高人民法院撤销二审判决，维持一审判决，侵权不成立

Brief case

- 2012.11, GROHE sued GLLON's products for infringement in Zhejiang Taizhou Intermediate People's Court
- 2013.05, Taizhou Intermediate People's Court rejected GROEI's claim. GROHE appealed
- 2013.09, Zhejiang Higher People's Court reversed the original judgment and ordered GLLON to stop the infringement, GLLON petitioned for retrial
- 2015.08, The Supreme People's Court vacated the second instance judgment and affirmed the first instance judgment – no-infringement

主视图对比 / Front View

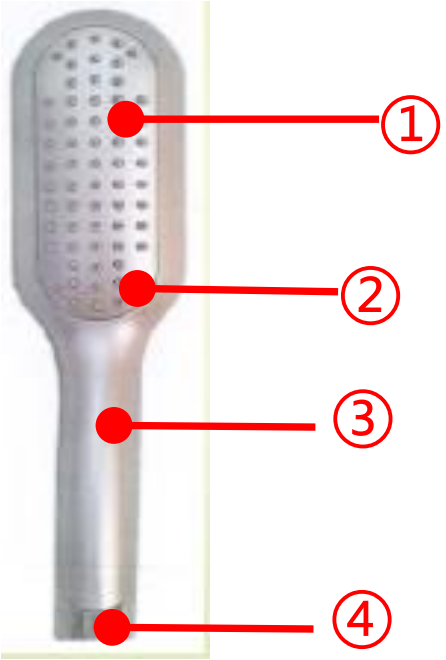
高仪公司外观设计
GROHE design



①圆孔的数量与排列
②跑道形边缘VS弧线型边缘
③有无按钮
④连接处有无装饰线

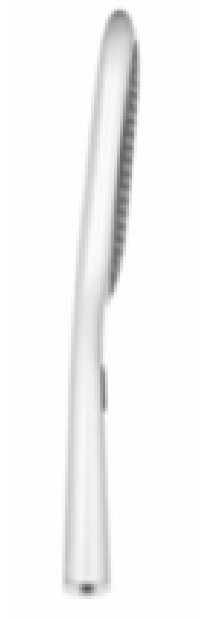
①Number and arrangement of holes
②Edge shape
③Button
④Connector

健龙卫浴被诉侵权产品
GLLON’s product



左视图对比 / Left view

高仪公司外观设计
GROHE design



倾斜角度不同

Different angles

健龙卫浴被诉侵权产品
GLLON’s product

一审判决要点 / Summary of First Instance Judgment

1

虽然出水面设计近似，但喷口的数量、排列、喷头正面边缘形状、按钮、喷头连接处形状以及喷头倾斜角度均存在差别

Differences: number of holes, the arrangement, the shape of the front edge, the shape of the button, the junction and the angle of the nozzle.

2

根据一般消费者的认知水平，喷头头部特征以及喷头连接的方式更容易被观察到，两者在整体视觉效果上存在明显差异

According to **the ordinary consumer**, the characteristics of the head of the nozzle and the way the nozzle connected are more easily observed, and there is a significant difference in the overall visual effect between the two.

二审判决要点 / Summary of Second Instance Judgment

1. 一项设计区别于现有外观设计的具有一定识别度的设计要素，应当重点考量

   A design element with a certain recognition that distinguishes itself from the prior art should be considered

2. 高仪产品中的跑道状喷头的出水面即为重点考量要素，而被诉侵权产品即具备该设计要素，且两者整体轮廓、比例近似

   The surface of the nozzle in GROHE’s design is the key factor, and the GLLON’s product has the design element. The whole outline and proportion of the two are similar.

3. 涉案外观设计专利手柄上的按钮为功能性设计特征

   The button on the handle of the GROHE’s design is a functional design feature

最高院判决要点 / Summary of Supreme Court Retrial Judgment

1 健龙公司提交了跑道状出水面为现有技术的证据

GLLON submitted evidences of runway-like surface as prior art

2 喷头头部特征、手柄以及喷头连接方式是容易被一般消费者直接观察到的部位

The head, the handle and nozzle connection are easy to be observed by the ordinary consumer

最高院判决要点 / Summary of Supreme Court Retrial Judgment

3

涉案外观设计专利手柄上的按钮并非仅是功能性设计特征，还兼为装饰性设计特征

The button of the design involved is not just a functional design feature, but also a decorative design feature

4

除了喷头出水面，喷头及其各面过渡的形状，喷头的宽度和手柄直径的比例等设计特征使得两者在整体上存在明显差异

The shape, the width of the nozzle and its various transitions, the ratio of the handle make the difference between the two

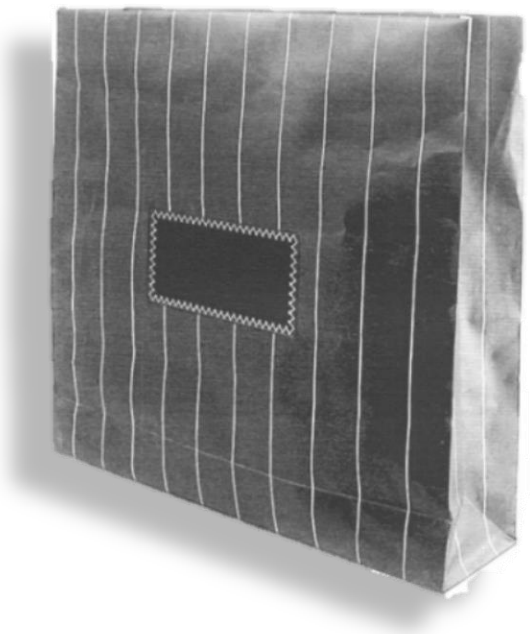
富银与康恩泰的包装袋外观纠纷案 / Zsoni and CONSITEX

基本案情

- 2013年03月，富银公司向专利复审委就康恩泰公司（杰尼亚知识产权持有人）的外观设计专ZL 200430005351.9提出无效请求
- 2013年09月，康恩泰公司起诉富银公司侵权
- 2013年10月，复审委作出该涉案外观设计无效的决定
- 2014年09月，北京市第一中级人民法院作出判决，撤销专利复审委无效决定
- 2015年02月，北京市高级人民法院作出判决，维持原判，确认该专利有效。

Brief case

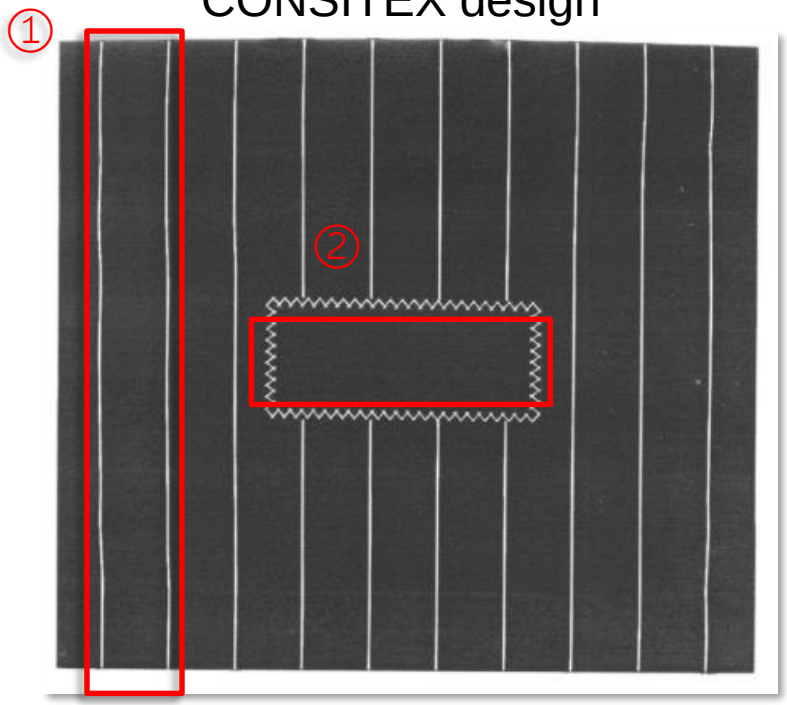
- 2013.04, Zsoni requested PRB to invalidate the design ZL200430005351.9 of CONSITEX
- 2013.09, CONSITEX sued Zsoni for infringement
- 2013.10, PRB invalidated the design
- 2014.09, Beijing First Intermediate People‘s Court overturned the PRB decision, maintaining the validity
- 2015.02, Beijing Higher Court agreed and validated the design



主视图对比 / Front view

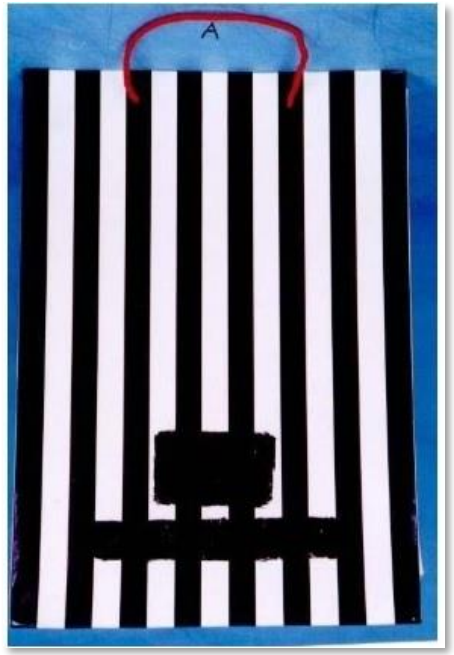
康恩泰涉案外观专利

CONSITEX design



对比设计

Reference Design



整体视觉效果影响比重大：①条纹宽度、宽窄比例和②矩形框的数量、位置及其装饰方式

Significant overall visual impact:Stripe width①, width to width ratio and position of rectangular frames②, and how they are decorated

判决要点 / Summary of Judgment

1

如果两者设计要素差异致产生了明显不同的整体视觉效果，不应当认为本专利和对比设计为近似设计

If design elements result in significantly different overall visual effects, the patent and the prior art design should not be considered as similar designs.

2

即使在简要说明中未要求保护色彩，但这并不必然导致图片、照片中黑白色不影响整体视觉效果

Even if the color is not required to be protected in the brief description, it does not necessarily mean that the black and white coloring in the picture does not affect the overall visual effects.

苹果无效品胜公司“充电器”外观设计专利 / Apple and Pisen

基本案情

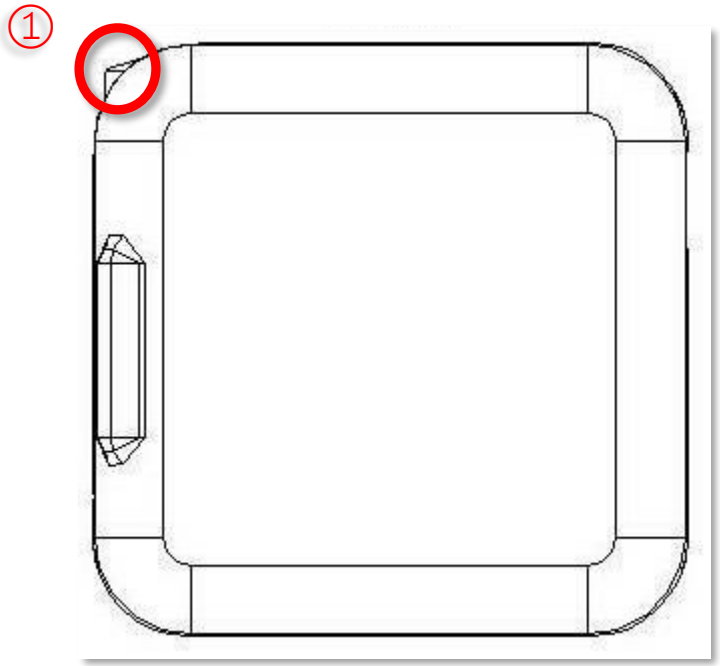
- 2017年4月，苹果公司于向专利复审委员会请求无效品胜公司的广东品胜电子股份有限公司的外观专利ZL 201530456920.X，并提交了来自于天猫商城的用户图片晒单评论作为现有设计证据
- 2017年9月，专利复审委作出涉案外观专利全部无效的无效决定

Brief case

- 2017.04, Apple requested PRB to invalidate the design ZL201530456920.X of Pisen, Apple submitted online evidences as a prior art design, which came from the posting comments of a buyer of his/her actual purchase with pictures at Tmall.com
- 2017.09, PRB invalidated the design

主视图对比 / Front view

品胜公司涉案外观专利
Pisen design



对比设计（来自于天猫晒单）
Prior art design (Tmall.com)

整体视觉效果影响比重小：凸出部分①虽不能完全收纳入主体，但占整体比例很小

Minor overall visual impact:the pin① cannot be completely received into the main body, but the pin is a small proportion of the whole

决定要点 / Summary of Decision

1

涉案专利与对比设计整体造型基本相同，对插头部分可收折的形式、侧面凹处形状和各部分具体造型均基本相同，整体呈现出基本相同的视觉效果

The folding form, the shape of the side recess and the shape of each part are basically the same, and the overall visual effects are substantially the same.

2

虽然涉案专利的该凸出部分为产品插针不能完全收纳入主体部分所露出的部分结构，但该部分占整体比例很小，对整体视觉效果不具有显著影响

The pin is a small proportion of the whole, so it does not have a significant influence on the overall visual effect.

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GUI类外观设计保护标准逐渐确立

GUI Design

猎豹公司无效动景公司GUI外观设计专利 / Cheetah Mobile and UC

基本案情

- 2016年6月，北京猎豹移动科技有限公司于向专利复审委员会请求无效品胜公司的广州市动景计算机科技有限公司的外观专利ZL201530383753.0
- 2017年4月，专利复审委作出涉案外观专利全部无效的无效决定

Brief case

- 2016.06, Cheetah Mobile Inc. requested PRB to invalidate the design ZL201530383753.0 of UC Inc.
- 2017.04, PRB invalidated the design, which is the first GUI design patent invalidation decision made by PRB

主视图对比 / Front view

动景公司涉案外观专利设计2

UC: 2nd design

对比设计

Prior art design

主界面布局的不同点属于细微差异，二者主界面内容上没有明显区别

The differences in the layout of the main interface are subtle differences, and there is no significant difference between the two main interfaces.

界面变化状态图对比——动景公司涉案外观设计2 / UC-Interface transitional images

界面变化状态图3

Interface transitional image 3

界面变化状态图4

Interface transitional image 4

界面变化状态图5

Interface transitional image 5

界面变化状态图对比——对比设计 / Contrast design-Interface transitional images

界面变化状态图3

Interface transitional image 3

界面变化状态图4

Interface transitional image 4

界面变化状态图5

Interface transitional image 5

决定要点 / Summary of Decision

GUI类外观专利设计的动态界面的动态变化过程相对于主界面的设计而言对于消费者的体验能产生更重要的影响，在整体视觉效果上属于应当考虑的重要内容

The dynamic change process of the interface of the GUI design has a more important impact on the consumer experience, and is an important aspect that should be considered in the overall visual effect.

江民公司无效奇虎科技公司GUI外观设计专利 / Jiangmin and 360

基本案情

- 2016年8月，江民新科技术有限公司向复审委请求无
- 效奇虎科技有限公司的GUI外观专利ZL201430324283.6
- 2017年4月，复审委作出涉案外观专利无效的决定

Brief case

- 2016.08, Jiangmin requested PRB to invalidate the design ZL201430324283.6 of 360
- 2017.04, PRB invalidated the design

江民公司无效奇虎科技公司GUI外观设计专利 / Jiangmin and 360

江民公司

- 江民新科技术有限公司向复审委提交了在国内知名软件论坛——卡饭论坛上的网络证据，源自论坛用户提供给部分网络用户的“360安全卫士10.0”内测版，其界面与涉案外观专利的内容基本相同，且发布日期比涉案专利申请日早1个月

奇虎公司

- 奇虎公司主张论坛上的下载软件是内测的保密软件、下载使用所述软件的体验用户需要高级别并承担保密义务，并且设置了体验码，同时，在360网站上记载有内测保密条款，因而不构成向公众公开，因此要求涉案专利享有新颖性宽限期

Jiangmin

- Jiangmin submitted online evidence on the popular domestic software forum Kanfan.com to the PRB, which was derived from the ‘360 Security Guard 10.0’ internal test version provided by the forum users to other users. The interface is basically the same as the patent, and the release date is one month earlier than the patent application date.

360

- 360 claimed that the internal test version on the Kanfan forum is an internal beta version. Users who downloaded and used the software needed to have a high level of confidentiality and assumed the confidentiality obligation, meanwhile 360 had set an experience code. At the same time, 360 official website contains the internal test confidentiality clauses. So it is not prior art, and 360 required the patent to enjoy the grace period of novelty.

决定要点 / Summary of Decision

- 如果涉案外观设计在申请日之前存在提供给网络用户试用导致于申请日前已经公开的情况，专利权人应当提交证明所述试用软件在提供试用时，具有明示或默示要求试用用户进行保密的条款要求，以此来请求新颖性宽限期；
- 虽然专利权人设置有体验码，但具备涉案专利GUI设计的软件在申请日之前已经处于任何人可下载安装使用而为公众所知的事实状态，即使该软件为内测版本，其内测的保密义务是否成立均不影响是否构成现有设计的认定；
- 对于专利权人自身官网的内测保密条款，其网页内容是否修改过完全受控于专利权人，鉴于与本案的直接利害关系，不足以证明本案中涉及的在涉案专利申请日之前对体验试用软件的用户有相关保密约定

- If the design exists before the application date, and a beta version provided to the network user results in the disclosure before the application date, the patentee shall submit evidences that the beta version has expressed or implied requirement to users for confidentiality obligation, if patentee requests a grace period of novelty;
- Even the patentee has set an trial code, it is a state of fact that anyone can download the beta version with the patented GUI design and install it before the application date. Thus it constitutes the prior art whether the obligation of confidentiality is established or not.
- For the patented confidentiality clauses of the patentee owner's official website, the content of the webpage is completely controlled by the patentee. It is not sufficient to prove the confidentiality agreements.

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证据的采信

Admission of evidence

网络证据 / Network evidences

知名度高、信誉好、管理规范的网络平台证据，若无反证，通常予以采信

Usually accepted: evidences come from reputational and well-managed online platforms, unless otherwise rebutted

江民与奇虎360GUI无效案
Jiangmin and 360

苹果与品胜充电器无效案
Apple and Pisen

先用权证据 / Prior Right Evidences

基本案情

- 2014年10月，盛纪公司获得涉案“饮水杯（0506 - 2）”外观专利设计授权
- 2015年7月，盛纪公司起诉经销商为星巴克公司，制造商为增豪公司
- 被告增豪公司提交了主要证据为：被告增豪公司出具的售货确认书、装箱明细、发票、海关出口货物报关单，福联贸易有限公司(以下简称福联公司)出具的装箱明细、发票；WOODMAX公司出具的发票、装箱单，证明已于专利权人申请专利之前完成实际发货
- 被告星巴克公司提供证据证明其销售的产品来源于增豪公司，亦可主张增豪公司享有先用权

Brief

- 2014.10, the design patent ZL201430149475.8 of Shengji Company was granted.
- 2015.07, Shengji Company sued Starbucks and New Tech S.S. Company for infringement.
- The main evidences submitted by the defendant New Tech S.S. Company were: the sales confirmation letter, the packing details, the invoice, the customs export goods declaration, and the packing details issued by Fulian Trading Co., Ltd., invoices and packing lists issued by WOODMAX, which proved that the actual delivery has been completed before the patentee applied for the patent.
- Starbucks provided evidences that the products they sold were from New Tech S.S. Company, and that New Tech S.S. Company had the right to use it first.

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侵权赔偿

Damages

侵权赔偿数额计算 / Compensation Calculation

- 《专利法》第65条
- 《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》(2015年修订，法释[2015]4号)第20条、第21条、第22条
- 《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释》(法释[2009]21号)第16条
- 《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释(二)》(法释[2016]1号)第27、28条

- Article 65 of Chinese Patent Law
- Articles 20, 21 and 22 of Interpretation(2015) No.4
- Article 16 of Interpretation(2009) No.21
- Articles 27 and 28 of Interpretation(2016) No.1

松下与珠海金稻、北京丽康富雅公司外观设计纠纷案 / Panasonic and K-SKIN, Likang Company

基本案情

- 2015年3月，松下电器产业株式会社（简称松下电器公司）诉被告珠海金稻电器有限公司(简称金稻公司）、北京丽康富雅商贸有限公司（简称丽康公司）侵害外观设计专利权纠纷一案，一审法院北京知识产权法院判定被告侵权
- 2016年12月，北京高级人民法院二审判决维持原判，驳回上诉

Brief case

- 2015.03, Panasonic sued K-SKIN Company and Beijing Likang Company for infringement, Beijing I.P. Court found the defendant’s infringement
- 2016.12, Beijing Higher People's Court affirmed the original judgement and rejected the appeal

侵权赔偿计算 / Compensation Calculation

1. 原告松下株式会社诉讼请求：赔偿经济损失人民币300万元
Panasonic filed a compensation claim for economic losses 3 million RMB

2. 松下株式会社通过公证取证方式在部分电商平台上检索得到侵权产品同型号产品销售数量之和为18411347台，平均价格为260元
Panasonic researched sales amount of infringing products on some online platforms, and the sales number was 18,411,347 units, the average price was 260 RMB

3. 即便从低考虑每件侵权产品的合理利润，得出的计算结果仍远远高于300万元，因此，松下株式会社主张300万元的赔偿数额具有较高的合理性
The calculation result (about 4.7 billion) was still far higher than 3 million RMB, the court supported Panasonic’s claim

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思 考 / Discussion

思考 / Discussion

1. 整体观察，综合判断原则与一般消费者认知水平的适用

2. 网络时代，互联网传播速度与GUI外观设计保护之间的矛盾

3. 网络证据的采信范围

1. Whose perspectives? Ordinary consumers or ordinary designers

2. GUI designs in the Internet era

3. Admission of online evidence.

THANKS

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