



China's Challenges Overseas 中国在国外面临的挑战

Quantum Leap: Developments in China IP in 2020 飞跃：2020年中国知识产权的发展

Timothy C. Bickham
贝恬慕

6 May 2021
2021年5月6日

Step toe & Johnson LLP
美国世强律师事务所

Beyond the bright lights of anti-suit injunctions and SEP litigation.... 除了反诉禁令和标准必要专利(SEP) 诉讼之外.....

- Global strategies: global supply chains require businesses to prepare for threats/opportunities for counter litigation.
- 全球战略: 全球供应链要求企业为反击诉讼的威胁/机会做好准备
- Validity challenges: SIPO and USPTO
- 专利有效性的挑战: 中国国家知识产权局和美国专利商标局
- Infringement challenges: attacking supply chains and manufacturing centers
- 侵权性的挑战: 攻击供应链和制造中心

Issue to Watch:
需要特别注意的问题:

ITC's Extraterritorial Authority over Trade Secret Misappropriation
国际贸易委员会对商业秘密侵权案件的域外管辖

“某些肉毒杆菌毒素产品”案/Certain Botulinum Toxin Products, Inv. No. 337-TA-1145

- The Complainants allege that Daewoong misappropriated trade secrets related to (i) Medytox's bacterial strain used to manufacture its BTX products, and (ii) Medytox's manufacturing process for Meditoxin.

原告称大熊制药公司侵犯了与以下内容相关的商业秘密：（1）美得妥公司用于生产BTX产品的肉毒毒素菌株，及（2）美得妥公司生产Meditoxin的制造工艺。

- The issue of first impression in this investigation is that the asserted trade secrets at issue here are purely Korean trade secrets — there are no U.S. trade secret rights at issue in this case.

此次调查涉及无先例可循的问题，即涉诉的商业秘密为纯韩国的商业秘密，本案中并没有涉及美国商业秘密权利。

- The Commission affirmed that the ITC has broad subject matter jurisdiction over trade secrets both developed and misappropriated abroad; jurisdiction based on importation of a product made through unfair business conduct (i.e. misappropriation).

委员会确认ITC对在国外开发和侵权的商业秘密拥有广泛的管辖权；管辖权是基于对通过不公平商业行为（例如侵权行为）所生产的产品进口。

Issue to Watch:
需要特别注意的问题:

**Process Patent Infringement (35 USC § 271(g)) and Statutory
Burden Shifting (35 USC § 295)**
工艺流程专利侵权(美国法典第35章第 271(g)条)和法定举证责任的转移(美国法典第35章第 295条)

Burden Shifting for Process Patent Infringement

对于工艺专利侵权的举证责任的转移

In actions alleging infringement of a process patent based on the importation, sale, offer for sale, or use of a product which is made from a process patented in the United States, if the court finds:

在指控基于进口、销售、发出销售要约或使用由美国专利工艺制成的产品而侵犯某项工艺专利的诉讼中，如果法院认定：

(1) that a substantial likelihood exists that the product was made by the patented process, and

（1）该产品非常有可能是利用该专利工艺制造的，且

(2) that the plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable to so determine,

（2）原告已尽合理努力但仍无法确定该产品生产中实际使用的工艺，

the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.

则应推定该等产品是使用该专利工艺制造的，由主张该产品并非用该等工艺制造的一方当事人负责提出证据加以证明。

35 USC § 295

美国法典第35章第 295条

Thank You!
谢谢！

Timothy C. Bickham

贝恬慕

合伙人

美国世强律师事务所

北京办公室

北京朝阳区建国路79号

华贸写字楼2座2901

电话: +86 10 5834 1000

Washington, DC

1330 Connecticut Avenue, NW

Washington, DC 20036

电话: +1 202 429 5517