



# 重复专利侵权行为 Repeated Patent Infringement in China

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# What is Repeated Patent Infringement

- New activities
- Same party as the actor
- Same type:  
Manufacture/Sale/Use/Importation
- Upon same patent
- Timing: Previous activity was considered as infringement by an administrative or judicial Authority and stopped



# Judicial Practice in Handling Repeated Patent Infringement

- The Supreme Court Interpretation:
  - The patent right holder may request an authority to pursue the liability upon the infringer's refusal to execute the obligation to stop the infringement activities, or initiate a new procedure to pursue the infringer's further infringement liability.

Page 13 of Abstract Version of The Supreme Court Annual Report about Intellectual Property Cases (2009)

## Criteria for Establishment of Infringement

- The Supreme Court Interpretation in the case Longsheng Co. vs. Jieming Institute:
  - An activity conducting a modified technology is not covered by a previous effective injunction order if the actor substantially revises the contents of the technology falling in the scope of the patent on dispute
  - The Patent Holder shall initiate a new procedure to request the court to consider whether there is a new infringement.

Page 13 of Abstract Version of The Supreme Court Annual Report about Intellectual Property Cases (2009)

## Criminal Liability of Repeated Patent Infringement

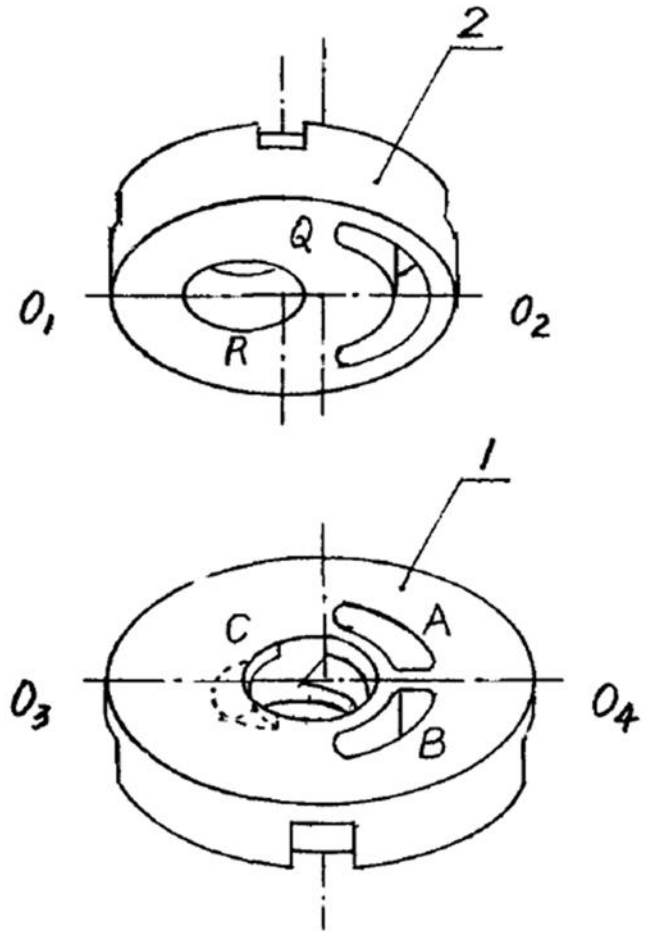
- Article 313 of Criminal Law, Whoever has the ability to execute the judgment or order made by a people's court but refuses to do so, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine if the circumstance is serious.
  - Having ability to execute
  - Refusal is explicitly expressed by means of a behavior
  - The circumstances must be so serious as to make impossible to execute a judgment order

## Repeated Patent Infringement Under Administrative Approach

- Article 60 of Patent Law, Patent authority has a power to order the infringer to stop the infringing act immediately upon a patent right holder's request when considering that the patent infringement is established.
- Article 18 of Patent Administrative Enforcement Rules, Patent authority may directly issue a decision to order the infringer to stop the infringement act if the infringer repeats the same type of infringement acts after a previous decision became effective against the infringement on the same patent by the same entity.

## Cui vs. Yongai Sanitary

- First Dispute
  - Settlement in November, 2003
  - Stopping Infringement + 4K US Dollars Damages
- Second Dispute
  - Judgment in October, 2006
  - Injunction+16K US Dollars Damages

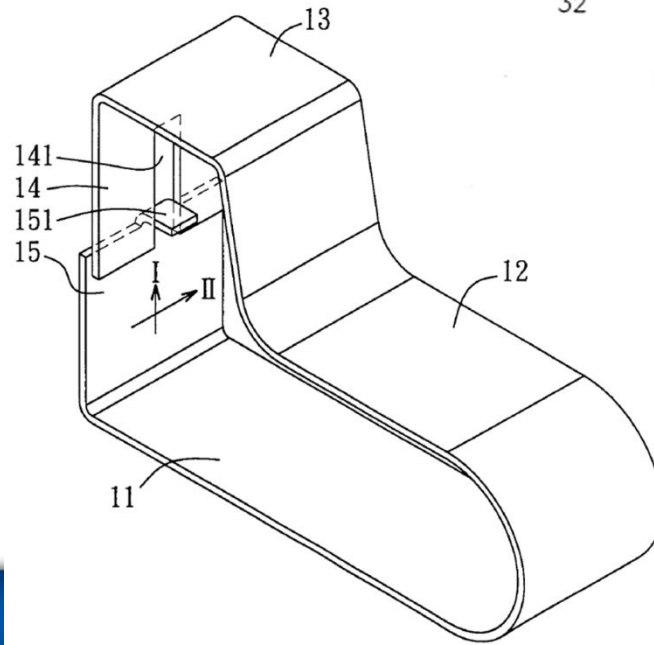
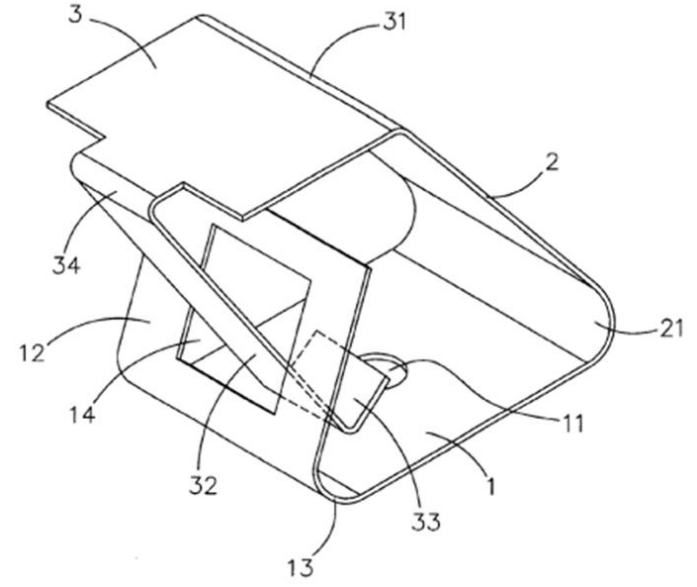
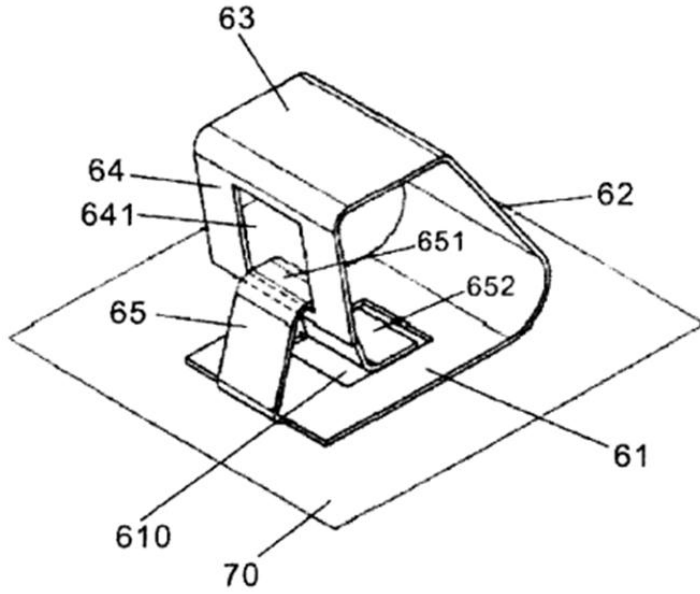


## Chen vs. Ruihong Electronics

- First Final Judgment:
  - Injunction + RMB500K Damages
- Second Final Judgment
  - Injunction + RMB 550K Damages
  - “Non-substantial” allegation by the plaintiff was not accepted
  - Repetition Infringement is one of elements to be considered when the damages are calculated

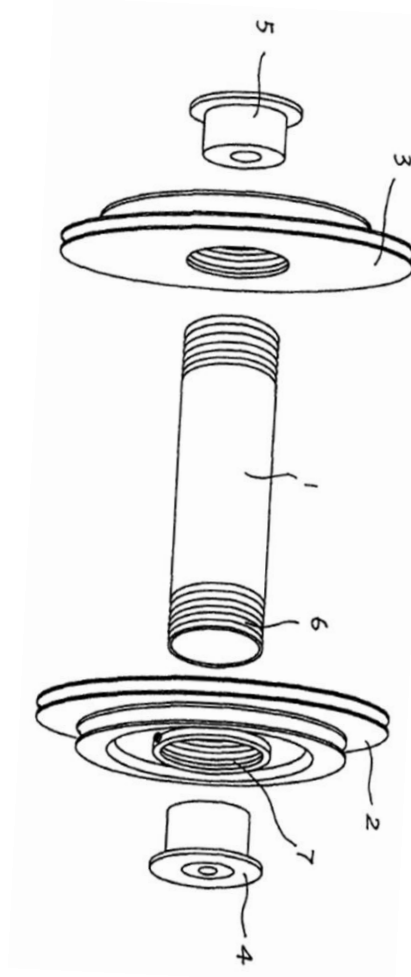


# Brief of the Case



## Guo vs. Guo

- First Decision:
  - Injunction by Administrative Authorities
- Second Decision
  - Same Structure
  - Injunction
  - Confiscating all illegal gains and Imposing a fine of double of the amount of illegal gains





# Thanks !

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