



## Analysis of the Supreme People's Court's 115th Guiding Case



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In 2008, Mr. Feng joined Tee & Howe and engaged in patent prosecutions including drafting, patent reexamination and patent search work.

In 2012, he joined Beijing Jiayue Tongleji Electronics Technology Co., Ltd. as an IP manager, mainly focusing on patent warning, mining and layout, distributing a number of patents in US, Japan, Korea, Canada, etc, and provided a comprehensive support for technological R&D and product protection.

In 2017, Mr. Feng joined a Beijing IP firm, engaging in patent prosecutions including drafting, patent reexamination and invalidation work. He also provided services such as patent search, mining, layout and warning. He has held nearly 100 lectures for hundreds of enterprises and won the title of 2017 to 2018 Excellent Beijing Attorneys.

In 2019, Mr. Feng joined back to Tee & Howe.

On April 27<sup>th</sup>, 2020, in order to focus on the achievements of the judicial protection of intellectual property rights (IPR) of the People's Court, and give full play to the exemplary role of typical cases, the General Office of the Supreme People's Court has released Chinese courts' Top 10 IPR cases in 2019, for reference by people's courts at all levels in the future trial of IPR. This article will focus on one of the Top 10 IPR cases—Infringement Dispute of the Invention Patent Right between Valeo Systemes d'Essuyage and Xiamen Lucas Auto parts co. LTD, etc.

The details of the infringement dispute of the invention patent right between Valeo Systemes d'Essuyage (hereinafter referred to as Valeo Company) and Xiamen Lucas Auto parts co. LTD, Xiamen Fuke Auto parts co. LTD and Shaoqiang CHEN (hereinafter referred to as Lucas Company, etc) are as follows,

The plaintiff Valeo Company filed a lawsuit with the Shanghai Intellectual Property Court in 2016, claiming that the windscreen wiper products manufactured and sold by the defendants Lucas Company, etc fall within the scope of protection of its patent (PatentNo.:ZL200610160549.2, Patent Title: Motor vehicle windscreen wiper comprising a safety clasp; hereinafter referred to as the subject

patent). The plaintiff sought an order directing the defendants to **stop the infringement, and claimed compensation for the losses and reasonable expenses thereof**. The Shanghai Intellectual Property Court upheld the plaintiff's claim in 2019, and the defendants appealed to the Supreme People's Court. After the trial, the Supreme People's Court rejected the appeal and upheld the judgment of the First Instance. In addition, the Supreme People's Court rejected the request for preliminary injunction claimed by the Valeo Company.

This article would analyze the subject case from two aspects of technology and preliminary injunction respectively.

1. The judgment of this case elaborates the identification standard of functional features.

Functional features means the technical features which, instead of directly defining the structures, components, procedures, conditions or the mutual relationship thereof of the invention technical solution, define the structures, components, procedures, conditions or the mutual relationship thereof through their functions or effects in invention and creation. If a technical feature has defined or implied the specific structure, components, procedures, conditions or the mutual relationship thereof of the invention technical solution, even if the subject technical feature also defines the functions or effects it achieved, it is not in principle the functional feature as mentioned in the above judicial interpretation, and shall not be regarded as a functional feature so as to make infringement analysis.

In the Claim 1 of the subject patent, the technical feature “a safety fastener mounted so as to be able to move between a closed position in which it extends with regards to the securing element in order to prevent its elastic deformation and lock the connector” belongs to Means-Plus-Function. The above mentioned technical feature actually defined the position relationship between the safety fastener and the securing element and implied a specific

structure, “safety fastener extends with regards to the securing element”, which plays a role of “preventing the elastic deformation of the securing element and locking the connector”. According to this position and structure relationship, combined with the specification and drawings of the subject patent, especially the description in paragraph [0056] as “the locking of the connector is provided by the internal faces of the vertical lateral walls of the fastener which extends along the external lateral faces of the lugs. Thus the fastener prevents the lugs from being deformed transversely towards the outside of the connector and therefore the connector cannot be disengaged from the hook”, those skilled in the art could understand that when “safety fastener extends with regards to the securing element”, and under the circumstance that the distance between the extended part and the external faces of the securing element is small enough, it could play a role of preventing the elastic deformation of the securing element and locking the connector. It is thus clear that the subject technical feature “a safety fastener mounted so as to be able to move between a closed position in which it extends with regards to the securing element in order to prevent its elastic deformation and lock the connector” defined not only the specific position and structure, but also the function of the subject position and structure. Besides, only by combining the position and structure and the functions they have achieved, can the specific content of the position and structure be clearly determined. Although these “position/structure + functional description” technical features have functional description, they are essentially positional or structural features, instead of the functional features as mentioned in the above judicial interpretation.

2. With regard to the preliminary injunction, Valeo Company has insisted the Supreme People's Court in support of its request for preliminary injunction; however, the evidence submitted by Valeo Company is not sufficient to prove that an urgent circumstance causing damage to him has occurred, additionally, the Supreme People's Court has made the judgment in court. It is no longer meaningful to

make a separate preliminary injunction.

The author herewith would like to cite Article 66 of the Patent Law to introduce the preliminary injunction applicable to intellectual property disputes,

*Article 66. Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, petition the people's court to adopt measures to stop the relevant acts.*

*When a petition is filed, the petitioner shall provide a security; if it or he fails to do so, the application shall be rejected.*

The **urgent circumstances** referred in the judgment of the Supreme People's Court, is defined in the *Provisions of the Supreme People's Court on*

*Several Issues Concerning the Application of Law in Cases Involving the Review of Act Preservation in Intellectual Property Disputes* as follows: (1) The petitioner's business secret is about to be illegally disclosed; (2) Petitioner's personal rights such as rights of publication, privacy, etc. will be infringed; (3) The intellectual property involved in the dispute will be illegally disposed; (4) The intellectual property of the petitioner is being or will be infringed at a time-sensitive occasion such as a trade fair; (5) The time-sensitive popular TV shows are being or will be infringed; (6) Other circumstances requiring immediate act preservation measures. **The amount of security** provided by the petitioner shall be equivalent to the loss that the respondent may suffer as a result of the act preservation, including the reasonable loss of the sales revenue and storage costs involved in the order for stopping the infringement.

The infringement act by Lucas Company, etc. does not fall under the above-mentioned urgent circumstances.

#### Editor's note

- Jurisdiction over invention patent infringement litigation

First Instance: It shall be under the jurisdiction of either of the courts as follows,

- a. Intermediate People's Court of the place where the infringement was committed;
- b. where the defendant has his domicile;
- c. Intermediate People's Court designated by the Supreme people's court.

Currently, there are 3 IP courts across the country (Beijing, Shanghai and Guangzhou), and 20 IP tribunals (Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xian, Nanchang, Lanzhou, Changchun, Urumqi and Haikou).

Second Instance: the Supreme People's Court

- While judging similar cases, People's Courts at various levels **shall refer to** the guiding cases selected and uniformly issued by the Supreme People's Court.

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