



## IP Cases



### Guidance Case in IP Administration and Law Enforcement Released by the CNIPA

—Design patent infringement dispute ends with mediation agreement by Shanghai IP Office and judicial confirmation

#### Gist of the Case

In the process of dealing with patent infringement disputes, the department of patent administration presides over the mediation and assists the parties concerned in reaching a mediation agreement that would then be enforced after judicial confirmation, which highlights the combination of administrative protection and judicial protection.

#### Brief of the Case

A Shanghai-based company was found by Markor International Home Furnishings Co., Ltd. (hereinafter referred to as “Markor”) being suspicious of offering for sale of products infringing several design patents of Markor. Markor then filed a request for adjudicatory action with Shanghai Intellectual Property Office on May 25, 2020. On June 1, 2020, Shanghai Intellectual Property Office accepted a series of cases in relation to the patent infringement and presided over mediation according to the willingness of the parties concerned. On September 29, 2020, the two parties signed an agreement on the administrative mediation of the patent infringement dispute.

On October 20, 2020, the two parties applied for judicial confirmation of the agreement with Shanghai Intellectual Property Court. The Shanghai Intellectual Property Court then conducted an examination of the application materials and the form and content of the mediation agreement filed by the parties concerned according to law and issued a civil ruling paper on the day of completing the examination. According to the paper, the mediation agreement reached between the two parties is valid. Where one party refuses to perform or fails to fully perform the agreement, the other party may directly apply to the people's court for compulsory execution.

## Guidance Meaning

Since the department of patent administration has public credibility and high professional level, it can stand as a third party to preside over administrative mediation, which **is helpful in negotiating the parties concerned to reach a settlement and sign a mediation agreement.** However, a mediation agreement is in nature a civil contract that is not enforceable. In case one party reneges and refuses to perform the agreement at a later time, a great administrative resource would be wasted and the credibility of the administrative organ would be damaged while the cost of protecting the patent right of the patentee would be increased. **After going through a judicial confirmation procedure, the mediation agreement is endowed with enforcement force, which solves the problem of difficult implementation of mediation agreements.** In addition, the judicial confirmation of a mediation agreement has to go through but only one instance, which improves the protection efficiency and highlights the combination of administrative protection and judicial protection.

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