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Normal Consumer is Now the Standard for Determination of Infringement on Design Patents

The Beijing High People's Court lately made changes in the guidelines on judging whether an alleged infringing design be the same or similar to a patented design. Under the new law, the judgment depends on the knowledge and cognitive capability of a “normal consumer”. Further, qualifications of “design space” and “prior design condition” are introduced in defining a normal consumer.

In the past, the determination is based on the knowledge and cognitive capability of a “consumer of the patented design product”. In other words, the court relied on the knowledge of not an ordinary consumer but a specific consumer who bought the product with the patented design.

Under the new guideline for patent infringement of design patents, the court will now look at the knowledge of a normal consumer to decide whether an alleged design infringes or not. The new guidelines further define the normal consumer as a hypothetical person subject to qualifications of “design space” and “prior design”. A design space refers to a degree of freedom a designer enjoys in his creation of the product design, and is subject to conditions such as technical function of the product, degree of crowdedness of existing designs, etc. For example, the more crowded a design space is, the less freedom the designer can enjoy, and so the greater is the impact on subtle differences on the overall visual effect. In that case, a subtle difference on the alleged design may render the alleged design not infringing the patented design.

Further, knowledge and cognitive capability of a normal user depend on the prior design condition. A prior design condition refers to an overall condition of the design of same or similar products that were known to the public prior to the filing date of the design patent, and specific conditions of each design feature. If a design feature is proved to be the same or substantially the same as a prior design, such design feature has little effect on the overall visual effect of the product.

This change in law may initiate more patent owners to sue someone for infringing their design patents as the threshold of determining whether an alleged design infringes is now lower. How the court interprets the qualifications of design space and prior design remains uncertain; however, it

is most likely that the interpretation depends on specific details and circumstances on respective cases.

Stay tuned for more important updates on IP law in China.

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