



I. Legal News

Mainland and Hong Kong Courts Cooperate on Interim Measures in Arbitral Proceedings

On April 2, 2019, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceeding by the Courts of the Mainland and the Hong Kong Special Administrative Region ("Arrangement") was signed in Hong Kong by the Supreme People's Court of the PRC ("SPC") and the Department of Justice of the Government of Hong Kong. The Arrangement will come into effect after the promulgation of a judicial interpretation by the SPC and the completion the relevant procedures in Hong Kong.

Prior to the Arrangement, parties to Mainland arbitral proceedings may already apply for interim measures to Hong Kong courts while parties to Hong Kong arbitral proceedings couldn't make such applications to Mainland courts for lacking legal basis. The reciprocal Arrangement is thought to equate the circumstance by enabling parties to Hong Kong-seated arbitrations to apply for such aids to a Mainland court. Matters in the Arrangement include the scope of interim measures, the definition of arbitral proceedings in Hong Kong, the procedures and the processing of applications, etc. Once the Arrangement is enforced, courts of both sides could obtain interim measures protection to better protect the parties' legitimate rights.

For the interim measures that can be applied for to Mainland courts, the Arrangement clarifies that the arbitration proceedings must be seated in Hong Kong, and the arbitral institution shall be on the list jointly confirmed by both SPC and Hong Kong Government (Ad hoc arbitration is not accepted). Such interim measures include the preservation of property, evidence and conduct. As to the timing, parties may apply for such actions before the arbitral award is made, no matter whether the proceedings have been initiated or not. An application has to be made to PRC Intermediate People's Court of the respondent's place of residence or the place where the property or evidence is situated.

In view of the Arrangement, parties should pay attention while designing overseas arbitration clauses to better protect their interests by expressly stipulating that the place of arbitration is Hong Kong, that the arbitral proceedings should be administered by an arbitral institution rather than an ad hoc one, and that the selected arbitral institution is on the list jointly confirmed by the SPC and the Hong Kong Government.

Serving as the seventh mutual legal assistance arrangement between both sides since the return of Hong Kong to China, the Arrangement indicates the realization of their closer judicial assistance. The Arrangement is said to be important to the implementation of key policies such as the Greater Bay Area Initiative and the Belt and Road Initiative, and is also expected to enhance Hong Kong's role as a key legal and dispute resolution hub in the Asia-Pacific region.

(<http://www.court.gov.cn/zixun-xiangqing-149552.html>)

II. Case

First Case by the SPC's IP Court to Uphold Valeo's Patent Rights

In our previous article "SPC Clarifies the Establishment of SPC's IP Court", we have informed you that SPC's IP Court officially started the performance of its statutory duties as of January 1, 2019. On March 27, 2019, the first judgment was issued by this newly established IP Court.

A French automotive supplier, Valeo Systemes D'essuyage ("Valeo"), sued two Chinese companies and a Chinese individual for (1) infringement of its patent (windscreen wiper IP design) as well as (2) claimed for compensation for its economic loss and relevant expenses amounting to RMB 6 million at Shanghai IP court. On January 22, 2019, Shanghai IP court ruled partially on the first request which is in favor of Valeo; however, with respect to the economic compensation, it is still ongoing. In February 2019, this case went to SPC's IP Court as the Chinese companies filed an appeal at SPC's IP Court directly for such partial judgment.

The SPC's IP Court compared the technical features of the patent and the products involved and ruled that the acts of the appellants constitute infringement of Valeo's patent and ordered the appellants to cease their manufacturing immediately. In addition, Shanghai IP Court shall continue to hear the remaining part on compensation request.

It is an innovative breakthrough in China's IP litigation system that a partial judgement issued at the court of first instance can be directly appealed to SPC's IP Court, said by the experts attending the trial. It only took the SPC's IP Court 50 days to try this case which sets a good example to enhance the judicial credibility for IP cases as this innovation can ensure the unity of judgement standards and streamline the legal procedures. Since there were around 148,000 patent applications from foreign entities in 2018, this first case is interpreted as a sign that China is on its way to achieve innovation-driven development by protecting IP rights with greater efforts and the first judgment adjudicated by SPC's IP Court may strengthen the confidence of foreign entities to conduct business in China.

(http://english.scio.gov.cn/chinavoices/2019-03/28/content_74620750.htm)

(<https://www.chinacourt.org/article/subjectdetail/id/MzAwNMgqMoABAA%3D%3D.shtml>)

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