



Featured Article

Interpretation of New Regulations on Punitive Damages for Intellectual Property and Suggestions for Practical Strategy

The Supreme People's Court recently issued the Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Civil Cases Involving Disputes over Infringements upon Intellectual Property Rights (Interpretation No. 7 [2026], SPC) (hereinafter referred to as the "New Interpretation"), which officially came into effect on May 1, 2026. The New Interpretation systematically refines the rules governing the application of punitive damages in the field of intellectual property in response to the key and difficult issues revealed in judicial practice during the five years of implementation of Interpretation No. 4 [2021] of the Supreme People's Court¹ (hereinafter referred to as the "Original Interpretation"), thereby enhancing the operability of the judicial application of punitive damages.

In 2025, the courts nationwide applied punitive damages in 505 intellectual property cases, with total damages awarded amounting to RMB 1.8 billion. Among them, the Intellectual Property Tribunal of the Supreme People's Court applied punitive damages in 30 cases, with cumulative awards reaching

1. Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Intellectual Property Infringement Civil Cases (Interpretation No. 4 [2021], SPC), effective as of March 3, 2021, and repealed in full on May 1, 2026.

approximately RMB 1.13 billion². These figures indicate that punitive damages have gradually been frequently applied. In view of the above, it is crucial to thoroughly study the provisions of the New Interpretation in order to accurately apply them in practice.

Focusing on the core revisions introduced by the New Interpretation and supplemented by analysis of two representative cases recently released by the Supreme People's Court, this article examines the adjudicative approaches and reasoning adopted by the judiciary in such cases, with a view to achieving a deeper understanding of the key provisions of the New Interpretation and providing practical guidance for practitioners handling cases involving punitive damages.

I. Key Revision Points of the New Interpretation

With respect to punitive damages, prior judicial practice was primarily confronted with several issues, including inconsistent standards for determining "intentional infringement," excessive discretion in identifying "serious circumstances," the absence of refined standards for calculating the damages base, uncertainty regarding the legal consequences of a defendant's refusal to produce account books, and insufficient guidance for determining the applicable multiplier. The New Interpretation was promulgated precisely against this backdrop.

In response to the foregoing issues, the New Interpretation further refines the circumstances for determining "intentional infringement" and "serious circumstances," clarifies the methods for calculating the damages base, and improves the rules governing the determination of multipliers. While promoting consistency in adjudication, it also strengthens deterrence against malicious conduct such as repeated infringement, further infringement following settlement, and evasion through affiliated entities, thereby shifting punitive damages toward a system of "targeted punishment." The New Interpretation mainly introduces revisions in the following four respects³:

2. Intellectual Property Tribunal of the Supreme People's Court, "Special Type Cases of the Intellectual Property Tribunal of the Supreme People's Court", 2026-01-28, <https://ipc.court.gov.cn/zh-cn/news/view-5316.html>.

3. The Information Bureau of the Supreme People's Court, "The Supreme People's Court Releases 'Interpretation on the Application of Punitive Damages in the Trial of Civil Cases Involving Disputes over Infringements upon Intellectual Property Rights'", 2026-04-20, <https://www.court.gov.cn/fabu/xiangqing/497911.html>.

1. Two important circumstances have been newly added for determining "intentional infringement": first, where the defendant commits the same or similar infringing acts again after reaching a settlement with the plaintiff and agreeing to cease infringement; and second, where the defendant conceals the actual control relationship by establishing affiliated companies, changing the legal representative or controlling shareholder, establishing companies in another person's name, or entering into liability exemption agreements in order to evade legal liability for infringement of the intellectual property rights involved. These newly added circumstances directly address two of the most typical forms of bad-faith infringement encountered in litigation—repeated infringement following settlement and repeated infringement through corporate restructuring or shell replacement. In addition, the New Interpretation expressly includes "counterfeiting another person's patent" as a circumstance supporting a finding of intent, thereby further strengthening the basis for applying punitive damages in patent cases.

2. With respect to the determination of "serious circumstances," the New Interpretation clarifies the meaning of "engaging in infringement as a business" by specifying that it includes situations where infringement constitutes the defendant's principal business activity or where profits from infringement represent the defendant's primary source of revenue. It

also specifies that serious consequences include substantial profits obtained through infringement or serious damage to the right holder's goodwill, market share, or other commercial interests, thereby rendering the applicable standards more practical and operable.

3. The New Interpretation further clarifies the methods for calculating the damages base. Determining the damages base has long constituted one of the principal technical difficulties in the application of punitive damages. The New Interpretation provides that where the defendant's illegal proceeds or profits from infringement are used as the calculation base, operating profits may serve as a reference; where the defendant engages in intellectual property infringement as a business, sales profits may be used as a reference instead; and where the applicable profit margin cannot be determined, reference may be made to the average profit margin for the same industry and period as published by statistical authorities or industry associations, or to the right holder's profit margin. The New Interpretation further clarifies that statutory damages may not serve as the calculation base for punitive damages. Through this multi-tiered framework, the New Interpretation helps address the longstanding difficulties encountered in practice in calculating punitive damages.

4. The New Interpretation also improves the method for determining the multiplier. In accordance with the principle of

proportionality between punishment and misconduct, it expressly provides that where administrative fines or criminal fines have already been imposed and fully executed for the same infringing conduct, the people's court shall take such circumstances into consideration when determining the multiplier for punitive damages, regardless of whether the parties have raised such arguments. In addition, the multiplier applied to punitive damages is not required to be an integer.

II. Analysis of Representative Cases

Several representative cases heard by the Intellectual Property Tribunal of the Supreme People's Court prior to the issuance of the New Interpretation have already demonstrated a judgment logic that is basically consistent with the rules of the New Interpretation. Two representative patent infringement cases are discussed below, which were decided before the implementation of the New Interpretation and were ruled in accordance with the Original Interpretation and relevant provisions of the Patent Law. As can be seen from the cases, the written rules established by the New Interpretation have been fully explored in past judicial practice, and the judicial experience in the cases provides significant reference value for accurately understanding the connotation of the relevant provisions under the New Interpretation.

Case 1: Application of Punitive Damages for Repeated Infringement

In the judgments (2024) SPC IP Civil Final Nos. 1075 and 1076, the Supreme People's Court made important rulings on the application of punitive damages in cases of repeated infringement. If the alleged infringer who has been concluded in an effective judgment to have infringed a patent right continues to commit infringement act by merely making non-substantive modifications to the alleged infringing technical solution, it may be deemed as intentionally committing the same or similar infringement again, and punitive damages may be applied.

The patent involved is an invention patent No. 201310093010. X entitled "Removable locking mechanism for a drawer slide rail and a side plate". The alleged infringing product is a drawer hardware specifically used for installing drawers.

Guangdong Dongtai Hardware Precision Co., Ltd. (hereinafter referred to as "Dongtai Company"), the exclusive licensee of the patent involved, first filed an infringement lawsuit against the first-generation product of the alleged infringer (Tai X company) in 2020. The Supreme People's Court issued a judgment (2021) SPC IP Civil Final No. 1727, ruling that the first-generation product of the Tai X company constituted infringement,

upholding the original judgment⁴, and ordering damages compensation of RMB 200,000.

In June 2023, Dongtai Company filed infringement lawsuits against the second-generation and third-generation products of Tai X company respectively. The court of first instance found that the second-generation product of Tai X Company constituted infringement and awarded damages compensation of RMB 200,000, but did not support the punitive damages claimed by Dongtai Company⁵. As for the third-generation product of Tai X Company, the court of first instance concluded that it did not constitute infringement and dismissed all claims of Dongtai Company⁶. On December 31, 2025, the Supreme People's Court issued final judgments (2024) SPC IP Civil Final Nos. 1076 and No. 1075, respectively, both revoking the judgments of first instance and making new damages compensation awards. The reasoning behind these two judgments is quite consistent with the rules of the New Interpretation, and can be regarded as practical sources for the relevant clauses of the New Interpretation.

Judgments Nos. 1076 and 1075 help clarify the definition of "committing the same or similar infringement again" as stipulated in Articles 6 and 7 of the New Interpretation. Compared to the first-generation product identified as infringing in Judgment No. 1727, the second-generation product did

not have any substantial modifications to the already infringing drawer hardware. It merely replaced the unlocking structure of the first-generation product with a finger-operated toggle block unlocking mechanism, which still falls within the protection scope of Claim 2 of the patent involved. Therefore, the alleged infringer essentially committed substantially the same infringement as in the prior judgment, constituting repeated infringement. The guiding ramp of the third-generation product is located on the mating part where the moving slide rail connects with the mounting slot, while the guiding ramps of both the patent involved and the first-generation product are positioned in the mounting slot. Although the two guiding ramps are positioned in different positions, they have the same function. Accordingly, the third-generation product constitutes infringement under the doctrine of equivalence, but the alleged infringer does not constitute repeated infringement (see Judgment No. 1075), and punitive damages should not be applied.

Intentional infringement and serious circumstances are the two core prerequisites for the application of punitive damages, which are required to coexist under both the New Interpretation and the Original Interpretation. Referring to Judgment No. 1076, the court examined the applicability of punitive damages from the perspectives of subjective intent and

4. See (2020) Yue 73 IP Civil First Civil Judgment No. 697.

5. See (2023) Yue 73 IP Civil First Civil Judgment No. 1430.

6. See (2023) Yue 73 IP Civil First Civil Judgment No. 1429.

severity of circumstances. The alleged infringer was clearly aware of the patent involved and was capable of determining that its products fell within the patent's scope of protection, and thus it can be determined that the alleged infringer had the subjective intention to infringe the patent involved. Having been held liable for infringement by the effective Judgment No. 1727, the alleged infringer once again committed essentially the same infringement as stated in the effective judgment, constituting repeated infringement, so that the circumstance of infringement should be deemed as serious. Ultimately, the court determined that punitive damages should be applied. This also aligns with a circumstance that should be deemed as serious under Paragraph 1, Article 7 of the New Interpretation of, which states "the defendant commits the same or similar infringement again after having assumed legal liability based on a court judgment due to infringement." Repeated infringement serves as proof of both intentional infringement and serious circumstances, which in combination lay a solid factual foundation for the application of punitive damages.

In terms of damage calculation, the New Interpretation follows a two-step approach: first determining the calculation base, and then setting the multiplier of punitive damages. The amount of the actual loss suffered by the plaintiff, the amount of illegal proceeds obtained by the defendant, or the benefits obtained from the infringement shall still be taken as the

calculation base according to the New Interpretation, while the calculation criteria are further clarified therein. Notably, the amount of statutory damages shall not be taken as the calculation base for punitive damages and the plaintiff's reasonable expenses incurred to stop the infringement shall not be included in the calculation base. When determining the multiplier of the punitive damages, the court shall still fully consider the degree of the defendant's subjective fault, the seriousness of the infringement, and other factors. The determined multiplier is more precise and can be non-integer, taking into account the cumulative effect of administrative penalties.

As can be seen in Judgment No. 1076, Dongtai Company proposed adopting either the defendant's profits from infringement or the RMB 200,000 damage awarded in Judgment No. 1727 as the calculation base, with a punitive compensation of five times. The court pointed out that the sales list of the alleged infringing product ordered to be submitted by the alleged infringer in the second instance is not consistent with the purchase order, and the total tax-inclusive amount of the sales list was only RMB 237,643.61. After comprehensive consideration, the court determined that the amount stated in the evidence related to the sales of the alleged infringing product could not objectively and comprehensively reflect the specific circumstances of the alleged infringement, and thus could not serve as the calculation

base. Therefore, reference can be made to the claim of Dongtai Company, and the damage amount of RMB 200,000 determined in Judgment No. 1727 can be used as the calculation base for the punitive damages.

Regarding the multiplier of punitive damages, the court comprehensively considered that the alleged infringer had not made any substantial modifications to the alleged infringing product, constituted repeated infringement with obvious subjective fault, and had dishonest behaviors such as submitting false sales data. Therefore, the court determined that the alleged infringer should bear a punitive damages liability of four times, which means a total damage compensation of RMB 1 million to Dongtai Company.

Clearly, the court's approach to determining the calculation base is highly consistent with the provisions of Article 10 of the New Interpretation, which states that "if the defendant refuses to provide without any justifiable reason or provides false account books or materials, among others, the people's court may determine, in accordance with the law, the calculation base for punitive damages based on the plaintiff's claims and the evidence on file."

Case 2: Application of Punitive Damages to Continued Infringement by Changing of Implementing Entities

7. See Case No. 60 in "Summary of Judgment Digests of the Intellectual Property Court of the Supreme People's Court

The "infringement by changing of implementing entities" mentioned in the judgment (2025) SPC IP Civil Final No. 598 is a typical intentional infringement form highlighted in the New Interpretation, which falls into the typical circumstances as prescribed in Article 6, Item (7) of the New Interpretation, namely "by concealing the actual control relationship by means of such as establishing an affiliated company, changing the legal representative or controlling shareholder, or establishing a company in another person's name".

The main point of the judgment No. 598 is as follows: after an effective judgment has determined that a natural person or a company in which the natural person is the actual controller constitutes patent infringement, if the natural person organizes and implements the same or similar patent infringement act in the name of another entity, and the patentee requests punitive damages and advocates for determining the calculation base for punitive damages with reference to the damages calculating method used in the prior effective judgment, the people's court may support it as appropriate⁷. The court's ruling logic regarding infringement by changing of implementing entities will be focused on in the following with reference to Judgment No. 598.

The patent involved is an invention patent No. 200880118796.3 entitled "Intermediate Plate". The patentee (Rimowa GmbH) filed

of China (2025)".

a lawsuit against Ai X Factory (a sole proprietorship of Li X) and Li X in 2016 for infringing the patent involved. The court of first instance issued a judgment (2016) Yue 73 Civil First Civil No. 288, ordering Ai X Factory to stop manufacturing, selling, and offering for sale products infringing the patent involved and to pay damage compensation of RMB 300,000 and ordering Li X to pay the part of the compensation that Ai X Factory's assets are insufficient to cover. The judgment was upheld in the second instance⁸ and took effect in 2017.

In 2023, the patentee filed another lawsuit, claiming that Li X had repeatedly infringed the patent by changing the infringing entity and requesting punitive damages being calculated with reference to the RMB 300,000 damage base established in the prior judgment, seeking damages compensation of RMB 1,500,000. Although the court of first instance found that Li X and Liao X were not the first time to infringe the patent involved by hiding behind a sole proprietorship or a company invested and established by the couple, it did not apply punitive damages and only awarded economic losses of RMB 750,000 (plus reasonable expenses of RMB 50,000). On appeal, the Supreme People's Court reversed this aspect of the judgment and applied punitive damages, with the following main viewpoints:

Based on the relevant facts ascertained in the first instance, the court clarified the

associative relationship among the five alleged infringers: Li X, Liao X, Zhongshan Jun X Company, Wei X Company, and Cai X, wherein Li X and Liao X were spouses who jointly established Wei X Company in 2013, with Li X serving as the legal representative, specializing in the "DXX" brand products; Zhongshan Jun X Company was established in June 2016, with Cai X being the sole registered shareholder and the legal representative, while Li X used a personal bank account to receive payments for the alleged infringing product from Zhongshan Jun X Company; Liao X established Ai X Hong Kong Company, whose business name was the same as that of the infringing entity in the previous case, Ai X Factory, and in June 2017, it was renamed Jun X Hong Kong Company, which had the same business name as Zhongshan Jun X Company; moreover, the alleged infringing product, the online store operated by Wei X Company, and the online store operated by Zhongshan Jun X Company all used the "TXXX" trademark registered by Jun X Hong Kong Company and the "DXX" trademark personally registered by Liao X. Accordingly, the court, after comprehensively considering the facts such as the identity relationship, the trademark usage, and the collection of sales proceeds, determined that after being found infringing in an effective judgment, Li X organized Liao X, Zhongshan Jun X Company, and Wei X Company to jointly

8. See (2017) Yue Civil Final Judgment No. 89.

commit the act of alleged infringement of the patent involved once again.

The court held that the first-instance judgment was improper for not applying punitive damages. Li X continued to commit the act of alleged infringement of the patent involved in this case after being found infringing in the previous case, which constitutes intentional infringement and has serious circumstances. Punitive damages can be applied according to the law.

Regarding the amount of damages compensation, the court held that, in light of the specific factors of intentional infringement and the specific circumstances of the alleged infringement, the amount of RMB 300,000 determined in Judgement No. 288 could be directly used as the base for calculating punitive damages, without further deducting reasonable expenses for litigation. At the same time, although punitive damages of five times the amount could have been applied, due to the limitation of the amount requested by the patentee, the court ordered the application of punitive damages of four times the amount. Ultimately, the court awarded damages of RMB 1,500,000 and reasonable expenses of RMB 50,000.

III. Suggestions for Practical Strategies

On the basis of the Original Interpretation, which achieved formal unification of the

applicable rules for punitive damages in the field of intellectual property, the New Interpretation further focuses on enhancing the practical operability of the relevant standards. For example, the New Interpretation has included more explicit and detailed enumerations of circumstances for determining intention and serious circumstances, a clear definition of engagement in IPR infringement as a business, specific methods for calculating the damages base, and the time limit for litigation by IP right holders.

After the implementation of the New Interpretation, the amount of punitive damages that the right holder can ultimately obtain will primarily depend on the right holder's ability to provide persuasive evidence and present a well-supported damages model. Practitioners can no longer rely on the relatively broad-brush litigation strategies commonly adopted under the Original Interpretation. Instead, they should conduct a comprehensive assessment of the case at the outset, carefully evaluate whether and when to seek punitive damages, and, if possible, formulate an integrated litigation strategy that incorporates a claim of punitive damages as early as possible. They should develop a refined evidentiary strategy and present an accurate damages calculation model supported by reliable evidences. On the basis of the rules established by the New Interpretation and with reference to the aforementioned judgments, the following general

suggestions are provided regarding the approach to handling cases involving punitive damages.

1. Intentional infringement and serious circumstances are the two statutory prerequisites for punitive damages, and the facts supporting them often overlap in practice. It is necessary to refer to the specific situations listed in Articles 6 and 7 of the New Interpretation to focus on whether the alleged infringer constitutes repeated infringement, further infringement after settlement, or shell-changing operation, whether the alleged infringer organizes multiple entities to jointly infringe, whether the alleged infringer has been subject to criminal or administrative penalties, whether the alleged infringer is engaged in intellectual property infringement as a business, whether the alleged infringer refuses to fulfill preservation orders without legitimate reasons, and whether the alleged infringer has engaged in obstruction of proof, etc. Establishing these circumstances may provide a strong basis for the court to apply a higher amount of damages. The rights holders should also be aware that for ongoing infringements (such as continuous sale, production, and dissemination of infringing products, and continuous disclosure of trade secrets), if the statutory requirements for preservation are satisfied, they should apply for behavioral preservation,

evidence preservation, and property preservation as early as possible⁹. Evidence secured during the preservation stage often strengthens subsequent claims for high punitive damages.

2. When investigating potential infringers, practitioners should carefully examine the relationships among relevant entities and seek to include actual controllers, ultimate beneficiaries, and parties that materially assisted the infringing conduct in the scope of joint liability whenever the facts support such claims. Based on the points mentioned in item 1, the following information should be carefully examined: whether the defendant has established multiple affiliated companies to operate the same infringing business, whether the legal representative or controlling shareholder of the defendant company frequently changes in various forms, whether the defendant has signed exemption agreements to avoid legal liability for infringement, whether the defendant has been subject to administrative penalties by market supervision and management authorities or judgments by people's courts for similar infringements, whether the defendant's business activities are primarily conducted through infringing products, and whether the majority of the defendant's business profits come from infringing income.

9. Yu Guodong, "Answers to Controversies Regarding Punitive Damages in the Intellectual Property Field", Rule of Law Weekly, 2026-04-30,

http://www.legalweekly.cn/lldy/2026-04/30/content_9382866.html.

3. In terms of evidence organization, it is necessary to focus on the burden of proof related to intentional infringement and serious circumstances while also consolidating the evidence chain for the calculation base. Especially in the collection of evidence related to repeated infringement and infringement by changing entities, the following aspects can be considered as demonstrated in Judgment No. 1076 and Judgment No. 598:

- 1) Collecting prior judgments, administrative penalty decisions, settlement agreements, cease-and-desist letters, proof of service, as well as physical evidence of repeated infringement and sales evidence, to prove that the defendant continued to commit infringement despite knowing it was infringing;
- 2) Particularly fixing evidence regarding the defendant's intentional circumvention, for example, by obtaining the business registration details of affiliated companies, shareholding information, records of changes in legal representatives, proof of kinship, channels of fund transfer, information on receiving accounts, and transaction documents, in order to identify the actual controller, thereby proving the defendant's acts of shell trading, concealed control, or affiliated-entity evasion;
- 3) Fixing the technical solution of the infringing product, sales channels, and the business model through notarized evidence collection in terms of behavioral identity, to prove the continuity of the infringement. Judgments No. 1075 and No. 1076 provide a good practical reference regarding whether there are substantial

modifications to the technical solution; and

- 4) Paying attention to whether the defendant has engaged in any obstruction of proof, and promptly apply for evidence preservation to secure core evidence such as the defendant's financial books and bank statements, in order to prevent the defendant from transferring property or destroying account books.

Furthermore, Judgment No. 598 provides a particularly useful example of an effective investigative strategy for the IP right holders. Rather than focusing solely on the entities identified in corporate registration records, the right holder assembled evidence relating to identity connections, corporate succession, operational control, commingling of funds and accounts, trademark licensing arrangements, trade-name history, continuity of conduct, and intent to evade liability. Taken together, those evidences enabled the court to conclude that Li X had conducted repeated infringement through newly established affiliated entities to change the subject. Moreover, when the defendant obstructs evidence collection by changing the subject, and the previous case and the subsequent case involve the same patent right and the same actual controller, the court may use the damages awarded in the previous case as the calculation base for punitive damages in the subsequent case.

4. When calculating the damages base, economic losses and reasonable expenses

(such as attorney fees, notary fees, investigation fees, purchase fees, translation fees, etc.) should be listed separately to avoid errors in the calculation base due to mixed calculation.

Further, the calculation of the damages base should strictly adhere to the guidelines of the New Interpretation. In practice, it is more feasible to use infringement profits and the multiple of licensing fees. When calculating the calculation base on the basis of the infringement profits, two distinct points should be emphasized. Firstly, it is important to distinguish between operating profit and sales profit. For entities engaged in intellectual property infringement as their business, the right holder should advocate the use of sales profit for calculation. Secondly, since the New Interpretation allows the quotation of the average profit rate of the same industry and period, as published by industry associations or statistical departments, or the profit rate of the right holder, when the profit rate cannot be determined, the right holder can cross-verify the calculation of profit rate through multiple aspects, such as the industry average profit rate, the profit rate of similar products of the right holder, and the profit rate of the defendant's self-operated products, in order to improve the objectivity and admissibility of the calculation base.

Finally, the right holder can actively utilize the rule of obstruction of proof to request the court to directly adopt the calculation base advocated by the right holder when the infringer refuses to provide financial accounting documents.

5. When initiating a lawsuit, the right holder should fully assess the degree of infringement malice and the severity of the circumstances, and propose a higher damage claim within a reasonable range where the total amount does not exceed five times the calculation base. Non-integer multipliers should be flexibly applied to avoid "self-limiting" the scope of punitive damages due to excessively low claims. For example, in judgement No. 598, the court considered the upper limit of the plaintiff's claim when determining the multiplier and ultimately applied a four-times multiplier rather than the five-times multiplier that might otherwise have been justified.

In summary, under the framework of the New Interpretation, the opportunity for claiming punitive damages is essentially a "one-time opportunity". Practitioners should carefully analyze and devise litigation strategies to secure a reasonable amount of punitive damages for the right holders.

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