

Guangzhou Intellectual Property Court

Civil Judgment

(2017) Yue 73 Min Chu No. 3803

Plaintiff: Shenzhen Inmotion Technologies Co.,Ltd.Domicile: Floor 18, Building B1, Nanshan Zhiyuan Park, 1001 Xueyuan Avenue, Nanshan District, Shenzhen, Guangdong Province.Legal Representative: Zhou Wei, Chairman

Entrusted Agent Ad Litem: Zhang Chunyao, lawyer of Beijing Dacheng (Guangzhou) Law Firm.

Entrusted Agent Ad Litem: Li Guofei, lawyer of Beijing Dacheng (Guangzhou) Law Firm.

Defendant: Shenzhen GaokeTimes Co.,Ltd. Domicile: Floor 4, Factory Building 2, 8 Tangkeng Road, Tangkeng Residential Group, Guantian Community, Shiyao Subdistrict, Baoan District, Shenzhen, Guangdong Province.Legal Representative: Zhou Guanghui.

Entrusted Agent Ad Litem: Chen Huang, lawyer of Beijing Lantai (Qianhai) Law Firm.

Entrusted Agent Ad Litem: Deng Lixing, lawyer of Beijing Lantai (Qianhai) Law Firm.

Defendant: Zhongshan Yunjing Network Technology Co.,Ltd. Domicile: 1-923-7 Ziyiyuan, Phase 1 of Zicui Garden, 82 Zhongshanwu Road, East Area, Zhongshan, Guangdong Province. Legal Representative: Xiao Tianjian, Manager.

Defendant: Zhongshan Shiwang E-Commerce Co.,Ltd.Domicile: One Room on the First Floor, 27 Cuiyingxincun Street, Gangkou Town, Zhongshan, Guangdong Province.Legal Representative: Huang Rongrong.

For the case of dispute over infringement upon the patent right for appearance design between the Plaintiff Shenzhen Inmotion Technologies Co.,Ltd. (“INMOTION”) and the Defendants Shenzhen GaokeTimes Co.,Ltd. (“High-Tech Company”), Zhongshan Yunjing

Network Technology Co.,Ltd. (“Yunjing Company”) and Zhongshan Shiwang E-Commerce Co.,Ltd. (“Shiwang Company”), the Court put the case on record on Oct. 23, 2017, and then opened a court session publicly to try this case on Dec. 13, 2017. The agent ad litem Li Guofei entrusted by INMOTION, the agents ad litem Chen Huang and Deng Lixing entrusted by High-Tech Company, the legal representative Xiao Tianjian of Yunjing Company, and the legal representative Huang Rongrong of Shiwang Company appeared in the court for the litigation. Now, the trial of this case has come to an end.

INMOTION filed a claim to the Court for judging that: I. High-Tech Company stops manufacturing, promised sale, and sale of products infringing upon the ZL201630333346.3 patent right for appearance design of “electric vehicle”, and destroys all inventory products and their manufacturing moulds; Yunjing Company and Shiwang Company stop the promised sale and sale of the products infringing upon the ZL201630333346.3 patent right for appearance design of “electric vehicle” and destroy all inventory products; II. High-Tech Company, Yunjing Company and Shiwang Company jointly compensate INMOTION for the economic loss of RMB1 million, and compensate INMOTION for the reasonable expenditure of RMB50,000 for restricting infringing acts; III. High-Tech Company, Yunjing Company, Shiwang Company undertake the legal costs of this case.

Facts and Causes: INMOTION is the patent right holder of the ZL201630333346.3 patent of appearance design of “electric vehicle”, and the patent right is in effective state. The “Gaoke P1” electric vehicle manufactured, promised to sell, and sold by High-Tech Company is similar to the appearance of the above-mentioned patent owned by INMOTION, falls into the protection scope of the above-mentioned patent right, and infringes upon the patent right of INMOTION. Yunjing Company and Shiwang Company have promised to sell and sold the alleged infringing product at www.taobao.com, infringing upon the patent right of INMOTION.

High-Tech Company argued that: I. As retrieved, the appearance design of electric vehicles (patent number: 201630552808.0, 201630657543.0) did not have distinctive difference with the patent design at issue. In view of that INMOTION did not submit patent right evaluation report, the patent at issue possibly had some defects not meeting the conditions for granting of patent right; II. The appearance design of the alleged infringing product did not fall into the protection scope of the patent right at issue; III. High-Tech

Company's production and sale of the alleged infringing product did not constitute the infringement upon the patent right of INMOTION because High-Tech Company had obtained the authorization of the person other than involved in the case Shenzhen Shibadu Electronic Technology Co.,Ltd.; IV. Shenzhen Shibadu Electronic Technology Co.,Ltd. owned the patent right (patent number: 201730292293.X), and the appearance design of the cell and wheel nut, etc. of this patent was different from the patent at issue of INMOTION, and general consumers could distinguish the appearance design of the two patents completely.

Yunjing Company argued that: Yunjing Company did not infringe upon the patent right at issue, and did not have infringing behaviors and production behaviors. Between Yunjing Company and High-Tech Company, there was only cooperation for acting sales on the Internet, and Yunjing Company did not purchase goods. After customers placed orders with Yunjing Company, Yunjing Company would then place orders through the online store at www.alibaba.com, and High-Tech Company's factory would deliver goods directly. Yunjing Company learnt about the electric vehicle of High-Tech Company in 2017, and High-Tech Company made clear that it had the patent right for appearance design, so that Yunjing Company started acting sales. Yunjing Company had submitted evidence proving that, it sold the alleged infringing product in condition of not knowing the truth, so the court should please reject the claims of INMOTION.

Shiwang Company argued that: Shiwang Company did not actually participate in the manufacturing, purchasing and sale of the alleged infringing product. But instead, Shiwang Company only helped Yunjing Company draw an invoice, and the invoice amount was only RMB1589. Shiwang Company did not commit the behavior of production, promised sale and sale of the alleged infringing product, and INMOTION did not have legal evidence to require Shiwang Company to jointly undertake the tremendous compensation.

It was found out through trial that: INMOTION was the patent right holder of the ZL201630333346.3 patent of appearance design of "electric vehicle" ("Patent at Issue") (for the picture of the announcement on the authorization of the Patent at Issue, please refer to the figures attached to the Judgment). The date of application of the Patent at Issue was July 20, 2016, and the date of authorization announcement was Apr. 19, 2017. It's recorded in the brief description about the Patent at Issue that, the patent product was used for riding instead

of walking and for entertainment. The key point of the appearance design rests with the shape of the product, and the picture which could most show the key point of design is the stereogram. The patent right of the Patent at Issue was lawful and effective during the court trial.

The (2017) Shen Nan Zheng Zi No. 22385 Notary Deed of Shenzhen Nanshan Notarial Office shows that, INMOTION's entrusted agent ad litem YUE X, upon the demand of evidence preservation, logged on www.taobao.com and entered an online store "High-Tech Electric Vehicle Brand Store" under the witnessing of the notaries of the Notarial Office on the morning of Sept. 21, 2017. On the page of this online store, there were the appearance pictures and detailed introduction about the alleged infringing product "Gaoke P10" electric vehicle. YUE X bought one "High-Tech Foldable Electric Vehicle" at the unit price of RMB1499 from this online store. The printed webpage submitted by INMOTION shows that, the operator of this online store was Yunjing Company, which confirmed this point during the court trial.

The (2017) Shen Nan Zheng Zi No. 22388 Notary Deed of Shenzhen Nanshan Notarial Office shows that, INMOTION's entrusted agent ad litem YUE X, under the witnessing of the notaries of the Notarial Office on the afternoon of Sept. 21, 2017, received a parcel delivered by Fast Express and with waybill number 317060278693. The express list showed that the sender was "Liao X" from Baoan District, Shenzhen, Guangdong Province, and the sender's mobile phone number was 137****5365. After checking the sealing completeness of the parcel, the notaries brought the parcel to the Notarial Office, unpacked and took out the objects, and took photos of the objects. Inside the parcel, there were one electric vehicle, one name card of XIONG X of High-Tech Company, and one product specification of High-Tech Company. The notaries took photos of the above-mentioned objects and sealed them up once again. INMOTION alleged that, the electric vehicle received was the alleged infringing product "Gaoke P10" electric vehicle. Later, Shenzhen Nanshan Notarial Office received one invoice served by Shunfeng Express. The invoice showed that, the invoice drawing date was Oct. 9, 2017, and it was a national tax invoice numbered as 01969519. The payee was Shiwang Company, and the invoiced item was "electric vehicle", quantity 1, amount RMB1589. INMOTION alleged that this invoice was the invoice for the transaction at issue.

The printed webpage submitted by INMOTION showed that, High-Tech Company exhibited the appearance pictures and detailed introduction about the alleged infringing product “Gaoke P10” electric vehicle at its official website and in the webpage of the online store opened by it at the website of Alibaba. In addition, the (2017) Yue Guang Nan Fang No. 070648 Notarial Deed of Guangzhou Nanfang Notarial Office showed that, on Oct. 16, 2017, High-Tech Company opened a booth at the 122nd China Import and Export Fair, and the publicity material obtained on the spot exhibited the alleged infringing product “Gaoke P10” electric vehicle.

INMOTION showed in the court the parcel received through express delivery, as recorded in (2017) Shen Nan Zheng Zi No. Notarial Deed, including one electric vehicle, and INMOTION identified that, the motor was the motor of the alleged infringing product “Gaoke P10” (the appearance of the alleged infringing product is as shown in the attached figures of the judgment). High-Tech Company confirmed that, the alleged infringing product electric vehicle shown in the court was produced and sold by it. By comparing the appearance design of the alleged infringing product and the design of Patent at Issue, INMOTION alleged that the two products constituted similarity, and held that the common points in the design of the two products were that: Both products were two-wheeled electric vehicles and comprised of handlebar, frame, saddle, front wheel, rear wheel, fender, battery case, and foot plate, and their major structure was basically the same; as seen from the front view and stereogram that, the two products were basically the same, and the different point between the two products rested with that, the fender of the front and rear wheels was slightly different, and the wheelhubs of the front and rear wheels were different. High-Tech Company held after comparison that, the two products were not identical or similar, and their differences included: 1. The alleged infringing product had an electronic display screen between two handles, but the Patent at Issue did not; 2. The alleged infringing product had a LED lamp at the front, but the Patent at Issue did not; 3. The alleged infringing product had a built-in charger on the battery plate, and was different from the Patent at Issue in the shape; 4. The alleged infringing product had only one braking key, while the Patent at Issue had two; and 5. The seating washer of the two products was of different shapes; 6. The fender of the two products was of different shapes; and 7. The wheelhub of the two products was of different shapes. High-Tech Company submitted the ZL201630552808.0 patent of appearance of “electric vehicle” and ZL201630657543.0 patent of appearance of “micro

electric vehicle”, intending to prove that the patent of INMOTION was not novel. High-Tech Company submitted the Notification on Power of Attorney separately, intending to prove that the appearance design scheme implemented by it was the ZL201730292293.X patent of appearance design authorized by person other than involved in the case Shenzhen Shibadu Electronic Technology Co.,Ltd.. The date of application of ZL2 016305528 08. 0 patent was Nov. 14, 2016; the date of application of ZL201630657543.0 patent was Dec. 30, 2016, and the date of application of ZL201730292293.X patent was July 5, 2017. The date of application of the above-mentioned three patents was after the date of application of the Patent at Issue, namely July 20, 2016.

Yunjing Company alleged in the court trial that, the alleged infringing product sold by it in the form of “acting sale”, that’s to say, Yunjing Company accepted customers’ orders first at www.taobao.com, then placed orders to the online store off High-Tech Company at Alibaba, and High-Tech Company delivered goods to customers directly. Similar trading method was adopted for the alleged infringing product shown in the court trial, only because that High-Tech Company owed money to Yunjing Company, so it did not place orders to the online store at Alibaba. High-Tech Company confirmed the trading mode alleged by Yunjing Company in the court, but High-Tech Company did not confirm that, the physical object of the alleged infringing product obtained for the notarization at issue was directly posted by High-Tech Company.

Yunjing Company claimed that, the alleged infringing product had lawful source, and submitted the screenshot of the online trading at Alibaba to prove that, Yunjing Company purchased in August 2017 many Gaoke P10 electric vehicles from the online store opened by Shenzhen Shibadu Electronic Technology Co.,Ltd. at Alibaba. The snapshots of the webpage transaction showed multiple photos of the electric vehicle, the company’s content introduction and pictures of honor certificates. At the bottom of the webpage, there were the contents like “We sincerely recruit national agents ... Mobile phone: 137****5365 Liao ... Address: Shibadu Electronic Technology, High-Tech Industry Park, 8 Tangkeng Road, Baoan District, Shenzhen, Guangdong Province. Customers are welcome to the factory for visiting and negotiation ...”, etc.

Shiwang Company submitted a copy of WeChat chatting record, intending to prove that, Shiwang Company only drew an invoice of the alleged infringing product for Yunjing

Company, and Shiwang Company did not actually participate in the sale of the alleged infringing product. The chatting record showed the time of chatting, the pictures of the invoice at issue, the handling charge for acting drawing of invoice, the receiving address for posting the invoice, etc. Yunjing Company confirmed in the court that the contents stated by Shiwang Company on acting drawing of the invoice were authentic.

In addition, it was found out that, High-Tech Company was a limited liability company established with registered capital of RMB10 million on June 25, 2009, and its business scope covered the sale and production of the products like intelligent electric balancing vehicle, navigator, etc. Yunjing Company was a limited liability company established with registered capital of RMB1 million on Mar. 26, 2015, and its business scope covered the technical development of network technology, computer technology, information technology, electronic digital products, etc. Shiwang Company was a natural person solely-funded limited liability company established with registered capital of RMB1 million on June 17, 2014, and its business scope covered the sale and online operation of toys, electronic products, instruments and meters, and hardware, etc.

The Court held that, INMOTION is the patent right holder of the 21201630333346.3 patent of appearance design of “electric vehicle”, and the patent is in effective period and protected by law. According to the facts found out, the following problems are mainly examined in this case: I. Whether the alleged infringing design falls into the protection scope of the Patent at Issue; II. Whether the alleged infringing behaviors of High-Tech Company, Yunjing Company, Shiwang Company are tenable; III. Whether the defense causes of High-Tech Company and Yunjing Company are tenable; and 4. How to determine the civil liabilities to be undertaken by High-Tech Company, Yunjing Company, Shiwang Company where the infringing behaviors are tenable.

I. Whether the alleged fringing design falls into the protection scope of the Patent at Issue

It is regulated in Clause 2, Article 59 of the Patent Law of the People’s Republic of China that, the protection scope of patent right for appearance design gives priority to the appearance design of the product as shown in drawings or photographs, and brief description may be used to explain the appearance design of the product as shown in the drawings or photographs. It is regulated in Article 8 and Article 9 of the Interpretation of the Supreme

People's Court on the Application of Law in the Trial of Disputes over the Infringement Upon Patent Rights that, where appearance design identical or similar to the authorized appearance design is adopted on the products of the category identical or similar to the appearance design patent product, the People's Court shall affirm that the alleged infringing design falls into the protection scope of the patent right for appearance design. The People's Court shall affirm whether product varieties are identical or similar according to the use of appearance design products. It is regulated in Article 10 and Article 11 of the Interpretation that, the People's Court shall judge whether appearance design of appearance design patent products is identical or similar based on the common consumers' knowledge level and recognition ability. When affirming whether appearance design is identical or similar, the People's Court shall make comprehensive judgment according to the characteristics of authorized appearance design and alleged infringing design, and the overall visual effects of appearance design, and shall not consider the design characteristics mainly determined by technical functions, and the characteristics of the materials and internal structure, etc. of the products not affecting the overall visual effects. The following circumstances generally have greater influences on the overall visual effects of appearance design: (1) the parts which are easy to be observed directly during the normal use of products, in comparison with the other parts; (2) the design characteristics distinguishing the authorized appearance design from the existing design, in comparison with the other design characteristics of the authorized appearance design. Where the alleged infringing design and the authorized appearance design do not have differences in overall visual effects, the People's Court shall affirm that the two designs are identical; whether there is no substantial difference in overall visual effects, the two shall be affirmed to be similar.

In this case, the alleged infringing product and the Patent at Issue are both electric vehicles, belonging to products of the same category, so they could be subject to identical or similar appearance design comparison. The comparison of the appearance design of the Patent at Issue and the alleged infringing product shows that, both products are comprised of the parts such as handlebar, frame, saddle, front and rear wheels, fender, battery case, foot plate, etc., and their main structure, shape, and proportion of each parts are basically the same, and especially, the U-shaped frame is the same; the different points between them mainly rest with that: The shape of the battery case is different; the shape of the fender of the front and rear wheels is different; the shape of wheelhub of the front and rear wheels is

different. Through overall observation and comprehensive judgment, it is available to confirm that, the above-mentioned different points only belong to local slight differences, and will not produce remarkable influences on the overall visual effects, and the alleged infringing design and the Patent at Issue constitute similarity in terms of overall visual effect. The Court hereby affirms that, the alleged infringing design falls into the protection scope of the Patent at Issue.

II. Whether the alleged infringing behaviors of High-Tech Company, Yunjing Company, Shiwang Company are tenable

In accordance with the provisions of Clause 1, Article 90 of the Interpretation of the Supreme People's Court on the Civil Procedure Law of the People's Republic of China, the party concerned shall provide evidence to certify the facts based on which it lodges its claims or the facts based on which it opposes the other party's claims. INMOTION claimed that the Defendant High-Tech Company manufactured, sold and promised to sell the alleged infringing product, and claimed that Yunjing Company and Shiwang Company manufactured, sold and promised to sell the alleged infringing product. In accordance with the abovementioned legal regulations, INMOTION should assume the responsibility to provide evidence for this.

As concerning the issue that High-Tech Company manufactured, sold and promised to sell the alleged infringing product, High-Tech Company confirmed that it had the behavior of manufacturing and selling the alleged infringing product. In combination with the facts like that, the Notarial Deed showed that the specifications of the alleged infringing product showed High-Tech Company as the manufacturer, the name card showed that the seller was High-Tech Company, and the alleged infringing product was produced and sold by High-Tech Company to Yunjing Company, etc., the Court hereby affirms that, High-Tech Company manufactured and sold the alleged infringing product. According to the evidence submitted, High-Tech Company exhibited the alleged infringing product and marked corresponding sales price on the webpage of the store opened at the website of Alibaba, opened a booth at the 122nd China Import and Export Fair, and exhibited the alleged infringing product "Gaoke P10" electric vehicle in the publicity materials during the Fair, and High-Tech Company also had the behavior of promising the sale. To sum up, the Court hereby affirms that, High-Tech Company implemented the behavior of manufacturing,

selling and promising to sell the alleged infringing product.

As concerning whether Yunjing Company implemented the behavior of selling and promising to sell the alleged infringing product, according to the evidence submitted by High-Tech Company and Yunjing Company respectively, and the statement during the court trial of Yunjing Company, it could be affirmed that, Yunjing Company opened a store at www.taobao.com, introduced the alleged infringing product and marked the sales price on the webpage, and sold the alleged infringing product after accepting customers' orders, so the Court hereby affirms that, Yunjing Company implemented the behavior of selling and promising to sell the alleged infringing product. Yunjing Company argued that, it only took charge of acting sales or distribution, but its so-called acting sales and distribution behaviors still constitute the behavior of selling and promising to sell, and the Court will not adopt the argumentation opinions.

As concerning whether Shiwang Company implemented the behavior of selling and promising to sell the alleged infringing product, it may be known from the evidence submitted by INMOTION, the statements of Yunjing Company and Shiwang Company, and the contents of WeChat chatting record submitted by Shiwang Company, in the transaction at issue, Shiwang Company only drew a sales invoice on behalf of Yunjing Company. The Court holds that, it cannot be pushed out only from the acting drawing of invoice that, Shiwang Company participated in the sale and promised sale of the alleged infringing product, and whether the behavior of acting drawing of invoice violates relevant administrative rules is not within the treatment scope of this case, so the Court will not support this claim of INMOTION.

III. Whether the defense causes of High-Tech Company and Yunjing Company are tenable.

High-Tech Company submitted two copies of others' patent documents, and meanwhile, submitted one copy of the Notification on Power of Attorney about the 21201730292293.X appearance design patent that the person other than involved in the case Shenzhen Shibadu Electronic Technology Co.,Ltd. authorized High-Tech Company to implement, intending to prove that the Patent at Issue was not novel, and the design scheme implemented by High-Tech Company also had patent. In accordance with the provisions of Article 23 of the Patent Law of the People's Republic of China, existing design refers to the

design known to the public at home and abroad before the date of application. As examined, the date of application of all the above-mentioned three appearance design patents was after the date of application of the Patent at Issue, the said three appearance design patents did not constitute design defense, and so it's unnecessary to compare the alleged infringing product and the design scheme submitted by High-Tech Company. So, the defense causes of High-Tech Company are not tenable, and will not be supported by the Court.

Yunjing Company argued that, the alleged infringing product sold by it was purchased from High-Tech Company, which delivered goods to customers directly. High-Tech Company affirmed this point in the court trial. Yunjing Company hereby argued that, the alleged infringing product sold and promised to sell by it had legal source, and it submitted the online transaction record about that it purchased the "Gaoke P10" electric vehicle from Shenzhen Shibadu Electronic Technology Co.,Ltd. at the website of Alibaba, as well as the online honor certificate, etc. The Court holds that, in accordance with the provisions of Article 70 of the Patent Law of the People's Republic of China, whoever uses or sells a patented product without knowing that the product was produced and sold without permission of the patentee or a product directly obtained from a patented process for the purpose of production and business operation is not required to bear the liabilities for compensation provided that it or he can prove that the product is obtained from a legal source.

In accordance with the provisions of Clause 3, Article 25 of the Interpretation of the Supreme People's Court on the Application of Law in the Trial of Disputes over the Infringement Upon Patent Rights (II) that, legal source refers to that "products are acquired by normal commercial means, such as through lawful sales channels, and general purchasing and sales contract, etc. For legal source, the users, the sales promisers, or the sellers shall provide relevant evidence proving the compliance with transaction habits". In this case, Yunjing Company submitted the historical transaction record about that it purchased "Gaoke P10" electric vehicle from Shenzhen Shibadu Electronic Technology Co.,Ltd., but such historical transaction record excludes the transaction record of the electric vehicle involved in this case. As seen from the existing evidence, the express list of the alleged infringing product "Gaoke P10" electric vehicle obtained for goods notarization in this case showed that the sender was "Liao X", and the sender's mobile phone number was 137****5365, which was consistent with the mobile phone number of the salesperson Liao X of the online

store opened by Shenzhen Shibadu Electronic Technology Co.,Ltd. at Alibaba. Only this evidence is not enough to prove the legal source of the alleged infringing product. Therefore, under the circumstances that, Yunjing Company did not submit the evidence such as purchasing and sales contract, payment voucher, etc. to prove the definite source of the alleged infringing product, and did not submit evidence to prove its reasonable and necessary review on whether the alleged infringing product was involved in infringement, the Court will not adopt Yunjing Company's defense opinion that the alleged infringing product promised to sell and sold by it has legal source.

IV. The civil liabilities to be undertaken by High-Tech Company, Yunjing Company, Shiwang Company

In accordance with the provisions of Items (1) and (6), Clause 1, Article 15 of the Law on Tort Liability of the People's Republic of China, patent right holder shall have the right to require the infringing party to stop infringement and compensate losses. High-Tech Company implemented the infringing behaviors of manufacturing, sale and promising to sell, and Yunjing Company implemented the infringing behaviors of manufacturing, sale and promising to sell, INMOTION's appealing for judging that High-Tech Company and Yunjing Company stop corresponding infringing behaviors will be supported by the Court. The existing evidence cannot show that High-Tech Company and Yunjing Company have common infringing behaviors, so High-Tech Company and Yunjing Company shall respectively undertake the civil responsibility of stopping infringement and compensating losses. According to the aforesaid contents, Shiwang Company only had the behavior of drawing invoice and did not actually doing the behavior of selling and promising to sell, so Shiwang Company does not need to undertake civil responsibilities in this case. In accordance with the provisions of Article 65 of the Patent Law of the People's Republic of China, the amount of compensation for a patent infringement shall be determined on the basis of the actual losses incurred to the patentee as a result of the infringement. Where it is difficult to determine the actual losses, the actual losses may be determined on the basis of the gains which the infringer has obtained from the infringement. Where it is difficult to determine the losses incurred to the patentee, the gains obtained by the infringer as well as the royalty obtained for the patent, the People's Court may, by taking into account such factors as the type of patent, nature and particulars of the infringement, etc., decide a compensation in the sum of not less than RMB10,000 but not more than RMB1 million.

INMOTION claimed that High-Tech Company and Yunjing Company shall compensate its economic losses and reasonable expenses and expenditure of total RMB1 million, but INMOTION did not submit sufficient evidence to prove its actual losses incurred by the infringement and the concrete amount of gains obtained by High-Tech Company and Yunjing Company from the infringement. So, according to the concrete situation of this case, and by comprehensively considering the factors such as that the Patent at Issue is an appearance design patent, High-Tech Company implemented the infringing behaviors of manufacturing, selling and promising to sell, Yunjing Company implemented the infringing behaviors of manufacturing, selling and promising to sell, High-Tech Company had a relatively large enterprise scale, the alleged infringing product was sold at a relatively high price and within relatively broad scope, as well as the contribution rate of the appearance design at issue in the product value, as well as the reasonable right maintenance fee incurred by INMOTION for notarization, evidence producing, entrusting lawyers for lawsuit, etc., the Court hereby comprehensively judges that, High-Tech Company shall pay total RMB150,000 as compensation to INMOTION for its economic losses and reasonable right maintenance fee; and Yunjing Company shall pay total RMB50,000 as compensation to INMOTION for its economic losses and reasonable right maintenance fee. The amount claimed in excess of the above-mentioned part will not be supported by the Court. In addition, INMOTION appeals for “destroying all inventory products and their manufacturing moulds”. INMOTION did not prove the concrete situation of “inventory products and their manufacturing moulds”, so this claim will be rejected by the Court.

To sum up, in accordance with the provisions of Items (1) and (6), Clause 1, Article 15 of the Law on Tort Liability of the People’s Republic of China, Clause 2 of Article 11 and Article 65 of the Patent Law of the People’s Republic of China, Article 152 of the Civil Procedure Law of the People’s Republic of China, and Article 8, Article 9, Article 10 and Article 11 of the Interpretation of the Supreme People's Court on the Application of Law in the Trial of Disputes over the Infringement Upon Patent Rights, the Court hereby makes the following judgment:

I. Shenzhen GaokeTimes Co.,Ltd. shall stop the manufacturing, promised sale and sale of the product infringing upon the ZL2 0163033346.3 patent right for appearance design of “electric vehicle” of Shenzhen Inmotion Technologies Co.,Ltd. within ten (10) days since the date when the judging takes effect;

II. Zhongshan Yunjing Network Technology Co.,Ltd. shall stop the promised sale and sale of the product infringing upon the 21201630333346.3 patent right for appearance design of “electric vehicle” of Shenzhen Inmotion Technologies Co.,Ltd. within ten (10) days since the date when the judging takes effect;

III. Shenzhen GaokeTimes Co.,Ltd. shall compensate the economic loss and reasonable right maintenance fee of total RMB150,000 to Shenzhen Inmotion Technologies Co.,Ltd. within ten (10) days after the judgment takes effect.

IV. Zhongshan Yunjing Network Technology Co.,Ltd. shall compensate the economic loss and reasonable right maintenance fee of total RMB50,000 to Shenzhen Inmotion Technologies Co.,Ltd. within ten (10) days after the judgment takes effect.

V. Reject the other claims of Shenzhen Inmotion Technologies Co.,Ltd.. Where the infringing parties do not implement the obligation of making payment within the period specified in the Judgment, they shall pay double of the interests on the debts during the extended implementation period in accordance with the provisions of Article 253 of the Civil Procedure Law of the People’s Republic of China.

The fee for accepting this case is RMB14250, wherein, RMB6250 shall be undertaken by Shenzhen Inmotion Technologies Co.,Ltd., RMB6000 shall be undertaken by Shenzhen GaokeTimes Co.,Ltd., and RMB2000 shall be undertaken by Zhongshan Yunjing Network Technology Co.,Ltd.

Where compulsory execution is needed for this case in accordance with the provisions of Article 224 of the Civil Procedure Law of the People’s Republic of China and Article 6 of the Notification of the Supreme People’s Court on the Governance of Intellectual Property Cases, the case shall be executed by Guangzhou Intermediate People’s Court or the Intermediate People’s Court at the place where the properties executed are located.

Either party not obeying this judgment may submit a petition for appeal to the Court within fifteen (15) days after the service of the judgment, and shall provide duplicates according to the number of the other party’s persons, and appeal to Guangdong Higher People’s Court.

Chief judge: Yao Yonggang

People's jury: Hou Wenqing



This document is proved to be a true copy of the original.

Guangzhou Intellectual Property

Court

Mar. 7, 2018

Assistant to the judge: Han Yazhe

Clerk: Ye Yanping

Attached Figures of (2017) Yue 73 Min Chu No. 3803 Civil Judgment:

Design of the Patent at Issue

Alleged Infringing Design



Front view



Rear view



Front view

Rear view



Left view



Left view



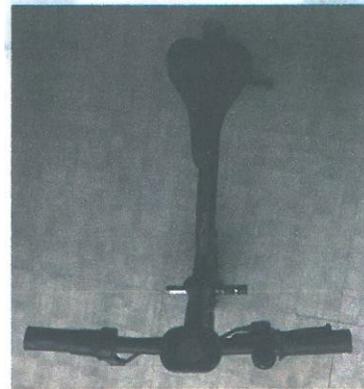
Right view



Right view



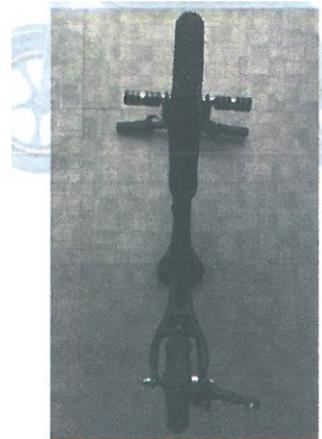
Vertical view



Vertical view



Upward view



Upward view



Stereogram



Stereogram