

New Judicial Interpretation on IP Punitive Damages

On April 20, 2026, the Supreme People’s Court of China issued the *Interpretation on the Application of Punitive Damages in the Trial of Civil Disputes over Intellectual Property Infringement* (the “Judicial Interpretation”), which will take effect on May 1, 2026.

Punitive damages for IP infringement are separately provided for under the *Patent Law*, the *Trademark Law*, the *Anti-Unfair Competition Law*, and the *Copyright Law*. For example, Article 71(1) of the *Patent Law* states:

“The amount of compensation for patent right infringement shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement or the profits earned by the infringer as a result of the infringement. Where it is difficult to determine the losses suffered by the right holder or the profits earned by the infringer, the amount shall be reasonably determined by reference to the multiple of the amount of the royalties for the patent license. For intentional infringement of a patent right, if the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined in accordance with the above-mentioned method.”

The Supreme People’s Court previously issued a judicial interpretation on the application of punitive damages in 2021. The newly issued Judicial Interpretation revises and supplements the 2021 version. The principal revisions include: (i) clarifying that where a plaintiff fails to claim punitive damages in the original infringement lawsuit, a separate subsequent lawsuit seeking such damages after the conclusion of the infringement proceedings will not be accepted; (ii) expanding the circumstances that may constitute “willful infringement” and “serious circumstances” – the two prerequisites for applying punitive damages; and (iii) further clarifying the methods for determining both the calculation basis and the multiplier for punitive damages.

Below is an overview of the newly issued Judicial Interpretation compared with the 2021 interpretation. Please also refer to the attached English translation of the comparison table setting out the differences between the new and prior judicial interpretations on punitive damages.

(1) Requirements for Claiming Punitive Damages (Articles 1–5)

As under the previous framework, the application of punitive damages requires an express claim by the plaintiff. The plaintiff must specifically state the amount of punitive damages sought, the method of calculation, and the factual and legal grounds supporting the claim. A plaintiff may add a claim for punitive damages before the end of the debate in the court of first instance. However, where such a claim is added during the second-instance proceedings, the court may only conduct voluntary mediation; if mediation fails, the claim will not be upheld.

The Judicial Interpretation further clarifies that if a plaintiff in an infringement lawsuit claims ordinary damages but not punitive damages, and still fails to do so after the court has provided clarification, the court will not accept a subsequent

separate lawsuit seeking punitive damages based on the same infringement facts after the original proceedings have concluded.

In addition, the Judicial Interpretation provides that claims for punitive damages in unfair competition cases other than trade secret infringement will generally not be supported unless otherwise expressly provided by law.

(2) Criteria for Determining “Willful Infringement” (Article 6)

As noted, Article 71(1) of the Patent Law imposes two requirements for the application of punitive damages: “willful infringement” and “serious circumstances.”

With respect to determining “willful infringement,” the new Judicial Interpretation retains the requirement that courts comprehensively consider factors such as the type of intellectual property right at issue, the status and recognition of that right, and the relationship between the defendant and the plaintiff or interested parties.

The newly issued Judicial Interpretation revises and supplements certain circumstances that may constitute “willful infringement.” The following scenarios remain substantially unchanged from the 2021 interpretation:

- (i) the defendant continues the infringing conduct after receiving notice from the plaintiff or an interested party;
- (ii) the defendant or its legal representative or manager is also the legal representative, manager, or actual controller of the plaintiff or an interested party;
- (iii) an employment, labor service, cooperation, licensing, distribution, agency, or representative relationship exists with the plaintiff or an interested party, and the defendant had access to the intellectual property right at issue;
- (iv) the defendant has a business relationship or contract negotiations with the plaintiff or an interested party, and had access to the intellectual property right at issue; and
- (viii) other circumstances that may be considered willful.

Under the new Judicial Interpretation, item (ii) has been further clarified to expressly require that the defendant knew or should have known of the intellectual property right at issue. In addition, while the previous interpretation referred to “engaging in piracy or counterfeiting registered trademarks,” the new Judicial Interpretation newly adds “counterfeiting others’ patents” as a circumstance constituting willful infringement.

Furthermore, the following additional circumstances have been introduced:

- (vi) the defendant, after reaching a settlement with the plaintiff and agreeing to cease the infringing conduct, commits the same or similar infringing conduct again; and
- (vii) the defendant conceals the actual controlling relationship by establishing affiliated companies, changing the legal representative or controlling shareholder, operating through nominee companies, or other means, or signs liability waivers in order to evade legal liability for infringing the intellectual property rights at issue.

(3) Criteria for Determining “Serious Circumstances” (Article 7)

The criteria for determining “serious circumstances” have also been revised.

Previously, to determine “serious circumstances,” courts were required to comprehensively consider factors such as the means of infringement, frequency of infringement, duration, geographic scope, scale, consequences of the infringing conduct, and the infringer’s conduct during the litigation process. Under the new Judicial Interpretation, the factor of “the infringer’s conduct during litigation” has been replaced with “the infringer’s awareness of and basic attitude towards the infringement.” This revision is intended to replace the previous abstract wording with a more concrete and understandable standard.

The circumstances that may constitute “serious circumstances” have also been adjusted. The following circumstances remain substantially unchanged from the 2021 interpretation:

- (i) the infringer commits the same or similar infringing act after having been administratively punished or held legally liable by a court judgment for the infringement;
- (ii) the infringer refuses to fulfill a preservation order without justifiable reason;
- (iii) the infringer forges, destroys, or conceals evidence relating to the infringement;
- and
- (vii) other circumstances that should be considered as serious.

The new Judicial Interpretation further refines the previously existing provision regarding “engaging in intellectual property infringement as a business” by clarifying that this includes situations “(iv) where the infringing conduct constitutes the infringer’s principal business activity, or profits derived from infringement constitute the principal source of income.”

Meanwhile, the former provision referring to “(v) where the infringer makes enormous profits from the infringement or causes substantial damage to the right holder” has been revised to “(v) where the infringer makes enormous profits from the infringement or causes serious damage to the right holder’s goodwill, market share, etc.”

In addition, the previous provision concerning “(vi) where the defendant endangers national security, public interests or personal health with the infringing conduct” has been revised to refer to situations “(vi) where the infringing conduct endangers or could endanger national interests or the social public interest.”

(4) Clarification of the Method for Calculating the Base Amount (Articles 8–10)

As provided in the latter part of Article 71(1) of the *Patent Law*, punitive damages are determined in an amount of one to five times the compensatory damages calculated under ordinary methods. In practice, the amount of damages calculated under ordinary methods is generally treated as the “base amount,” and punitive damages are then calculated according to the formula: base amount × multiplier.

In determining this base amount, the court may order the defendant to produce relevant documents, including account books and other materials relating to the infringing acts. Where the defendant refuses to do so without justifiable reason or submits false account books or materials, the People's Court may determine the base amount based on the plaintiff's claims and the evidence available in the case.

The new Judicial Interpretation further clarifies that statutory damages determined by the court based on the circumstances of the case — where neither the right holder's losses, the infringer's profits, nor a reasonable royalty amount can be determined — may not serve as the base amount for calculating punitive damages. Although this approach had already been adopted in judicial practice, it was not expressly provided for in the 2021 interpretation.

The new Judicial Interpretation also clarifies that:

- where the defendant's illegal income or profits from infringement are used as the base amount, the amount may be determined by reference to the defendant's operating profits;
- where the defendant engages in IP infringement as a business, the base amount may be determined by reference to the defendant's sales profits; and
- where the applicable profit margin cannot be determined, the court may refer to the average profit margin in the same industry during the same period published by statistical authorities or industry associations, or to the profit margin of the right holder.

(5) Clarification of the Method for Determining the Multiplier (Articles 11–13)

As before, the multiplier used to calculate punitive damages is determined by comprehensively considering factors such as the degree of the defendant's subjective fault and the seriousness of the infringing act. The new Judicial Interpretation expressly provides that the multiplier need not be an integer, so long as it falls within the statutory range of one to five times.

The Judicial Interpretation also clarifies that the total amount of damages determined through the application of punitive damages may not exceed five times the base amount, and that reasonable expenses paid by the right holder to stop the infringement are to be calculated separately in addition to the total amount. In this regard, some prior judicial decisions and local court guidelines had treated the total amount of punitive damages as the sum of: (i) compensatory damages constituting the base amount, and (ii) punitive damages calculated by multiplying the base amount by a specified multiplier (see, e.g., Judgment No. (2021) Zhe Min Zhong 294). Under that approach, total recovery could effectively amount to ordinary damages plus one to five times that amount, resulting in a maximum of up to six times the ordinary damages. The new Judicial Interpretation expressly clarifies that such an approach is incorrect, and that the maximum total recovery is capped at five times the ordinary damages.

Furthermore, the Judicial Interpretation provides that where a fine or a penalty has already been imposed and fully enforced for the same infringing act, the court shall take such circumstance into account when determining the multiplier for punitive damages, even if the defendant does not specifically request consideration of this factor.

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