

# Effectiveness & Principles: Update on Judicial Protection of IPR in China

WANG Zhengzhi, Esq.

Globe-Law

Dec. 01, 2022

*The views presented here are those of the speaker and do not necessarily reflect those of the Globe-Law or its partners.*

Responsibility Enthusiasm Creativity

# What will be discussed?

**Strong Protection**  
**Effective Protection**  
**Equal Protection**

## Strong protection

( 1 ) “Vanillin” technology secret infringement case (2020) 1667)

Compensation of 3.5 million yuan

(It is calculated based on the statutory maximum compensation of \$3 million and reasonable expenses of \$500,000 at that time)

Both parties appealed.

The supreme People's Court held

**159 million yuan** in joint and several compensation

and the suspected criminal clues found during the trial of the case were transferred to the public security organs.

## Strong protection

### “Cabo” technology secret infringement case 【(2019) 562】

The Supreme People's Court's first case of applying punitive damages for intellectual property rights (Based calculation, fault, infringement, obstruction of evidence, duration, scale of infringement)

The court of first instance found that the defendant company and 4 individuals constituted infringement of the plaintiff's technical secrets, and judged to stop the infringement and determine punitive damages according to 2.5 times the profits from the infringement, and the 4 individuals bore part of the joint and several liability.

Both parties appealed.

The Supreme People's Court held

..... 5 times the infringement profit, and the defendant company compensated the plaintiff company for economic losses of 30 million yuan and reasonable expenses of 400,000 yuan.

Liu and the other 4 poison bear joint and several liability within the range of 30 million yuan, 5 million yuan, 1 million yuan, and 1 million yuan **r e s p e c t i v e l y**.

# Strong protection

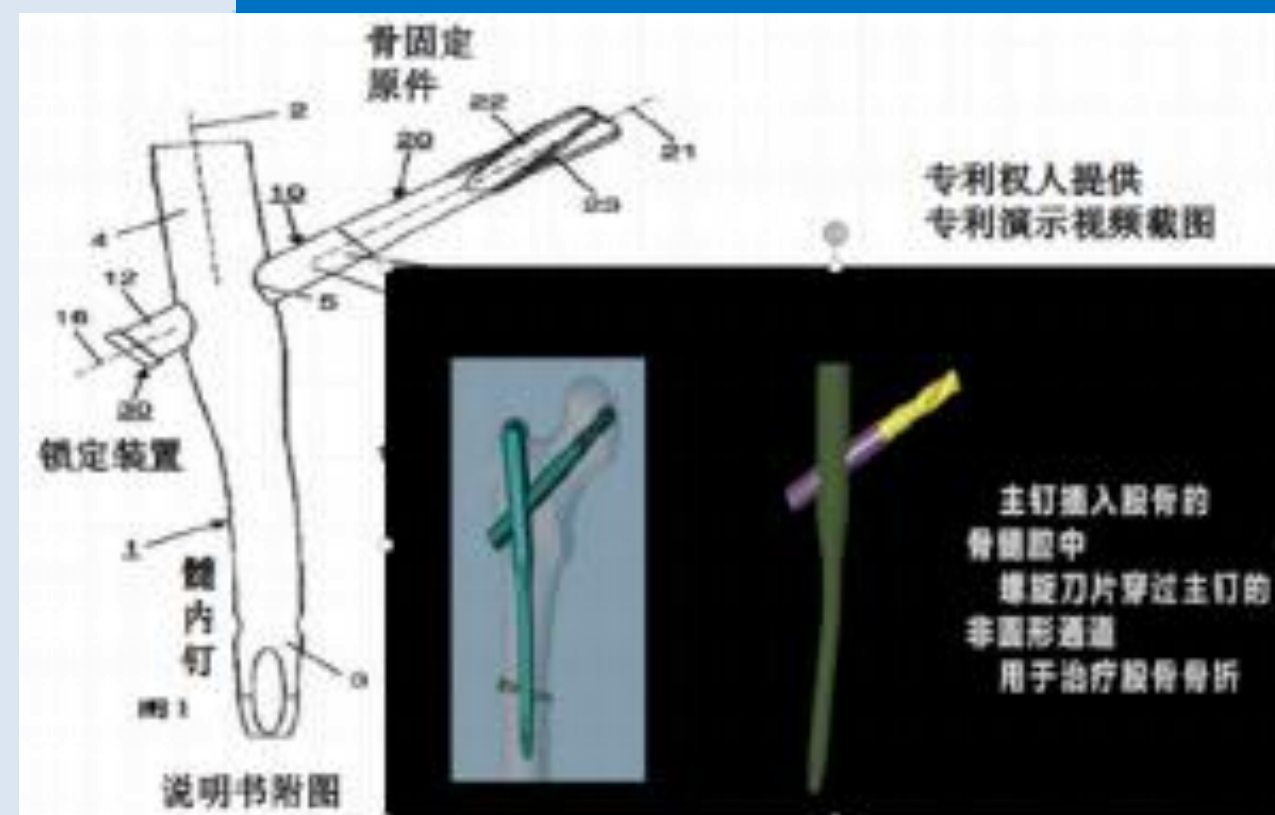
## 【(2021) 148】 Obstruction of Evidence

The first instance found infringement, and apply the legal compensation of 1 million yuan .Both parties appealed. The Supreme People's Court held that, The evidence in the case can prove that the defendant's actual infringement profit exceeds 20 million yuan, and its refusal to submit the books constitutes an obstacle to the presentation of evidence

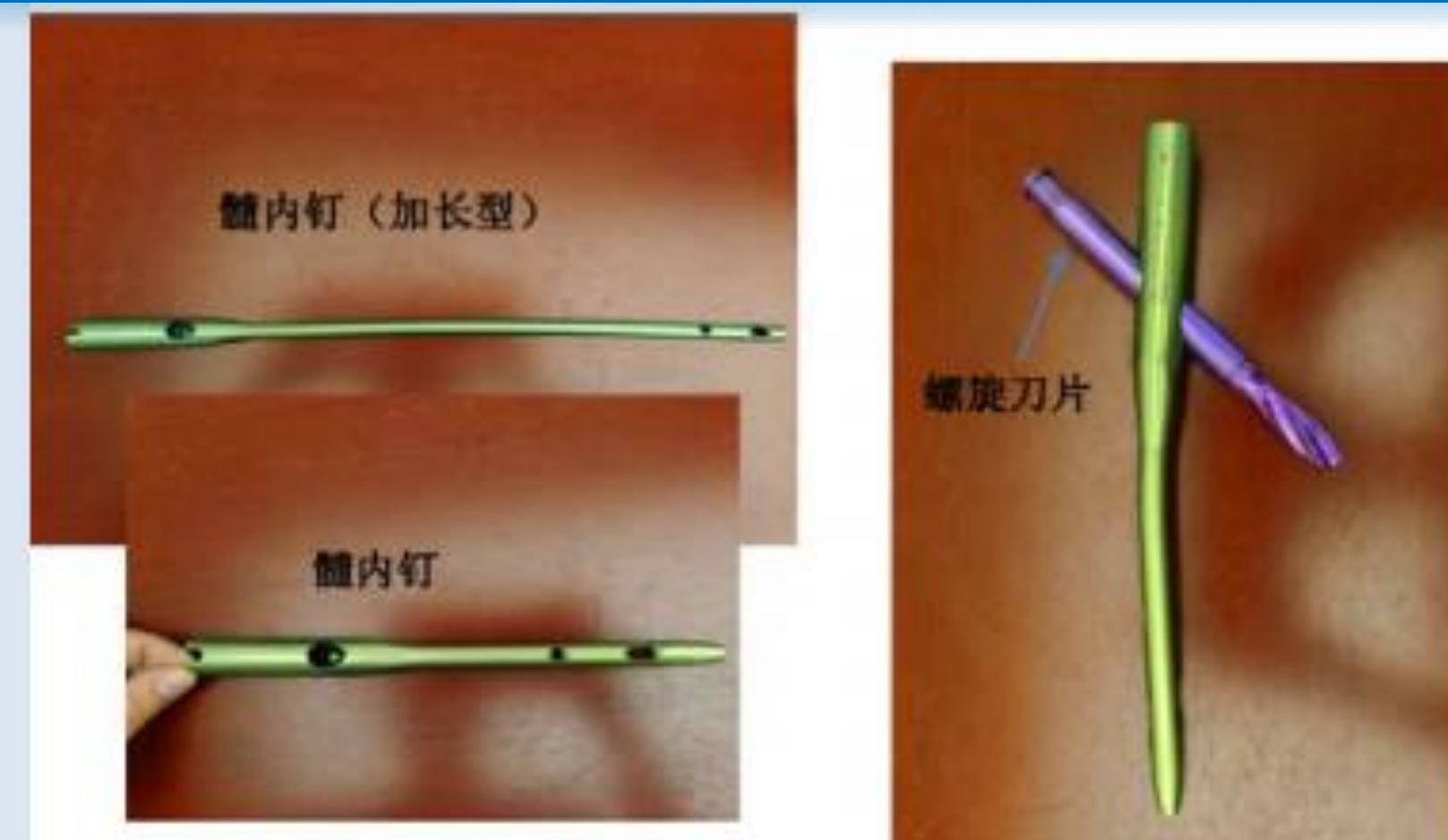
Therefore ,the judgment was changed to fully support the plaintiff's claim of more than 20 million yuan.

The patent in question

### "Device for the treatment of femoral fractures" Invention patents



### Infringing product

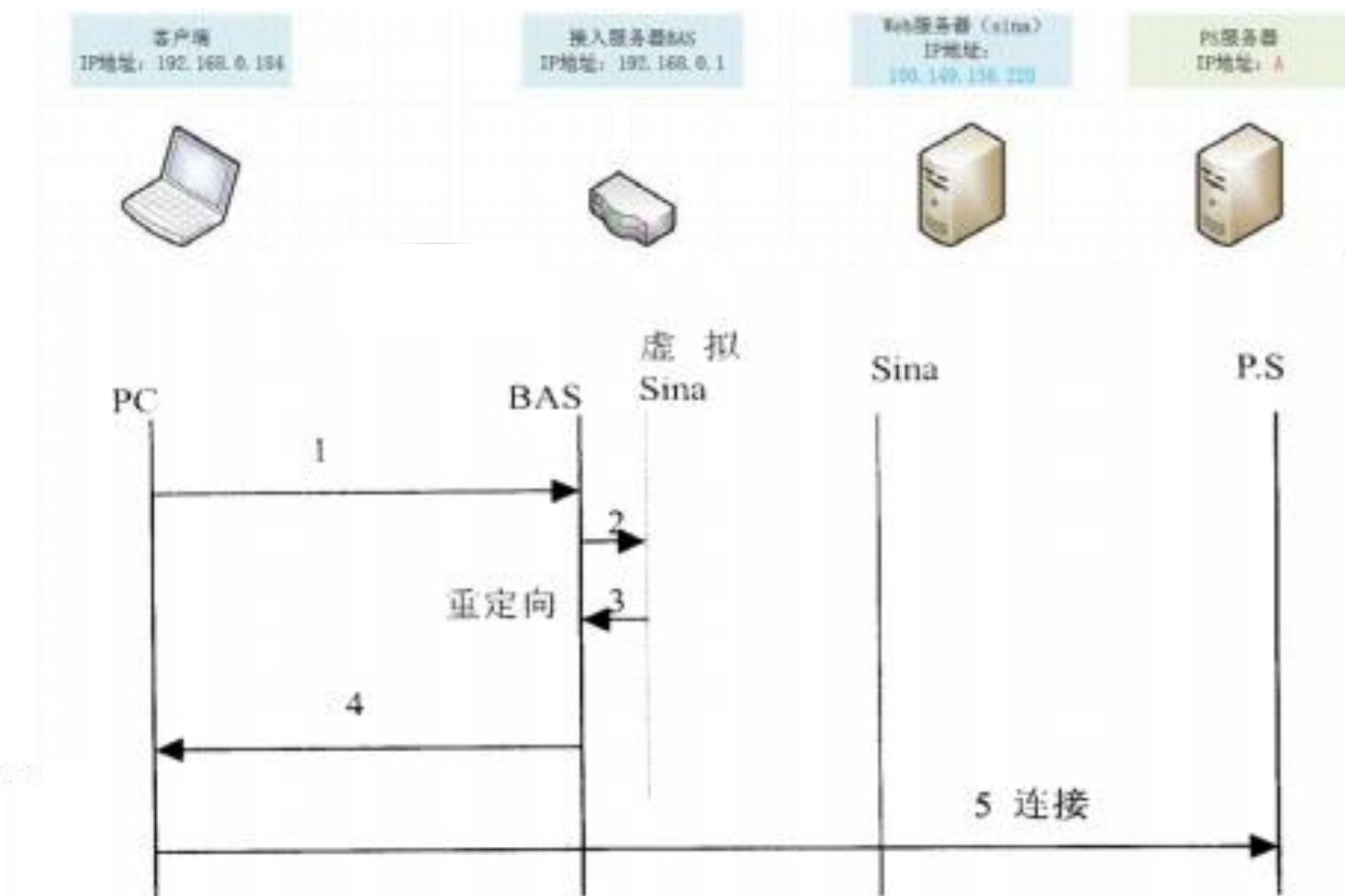


# Effective protection

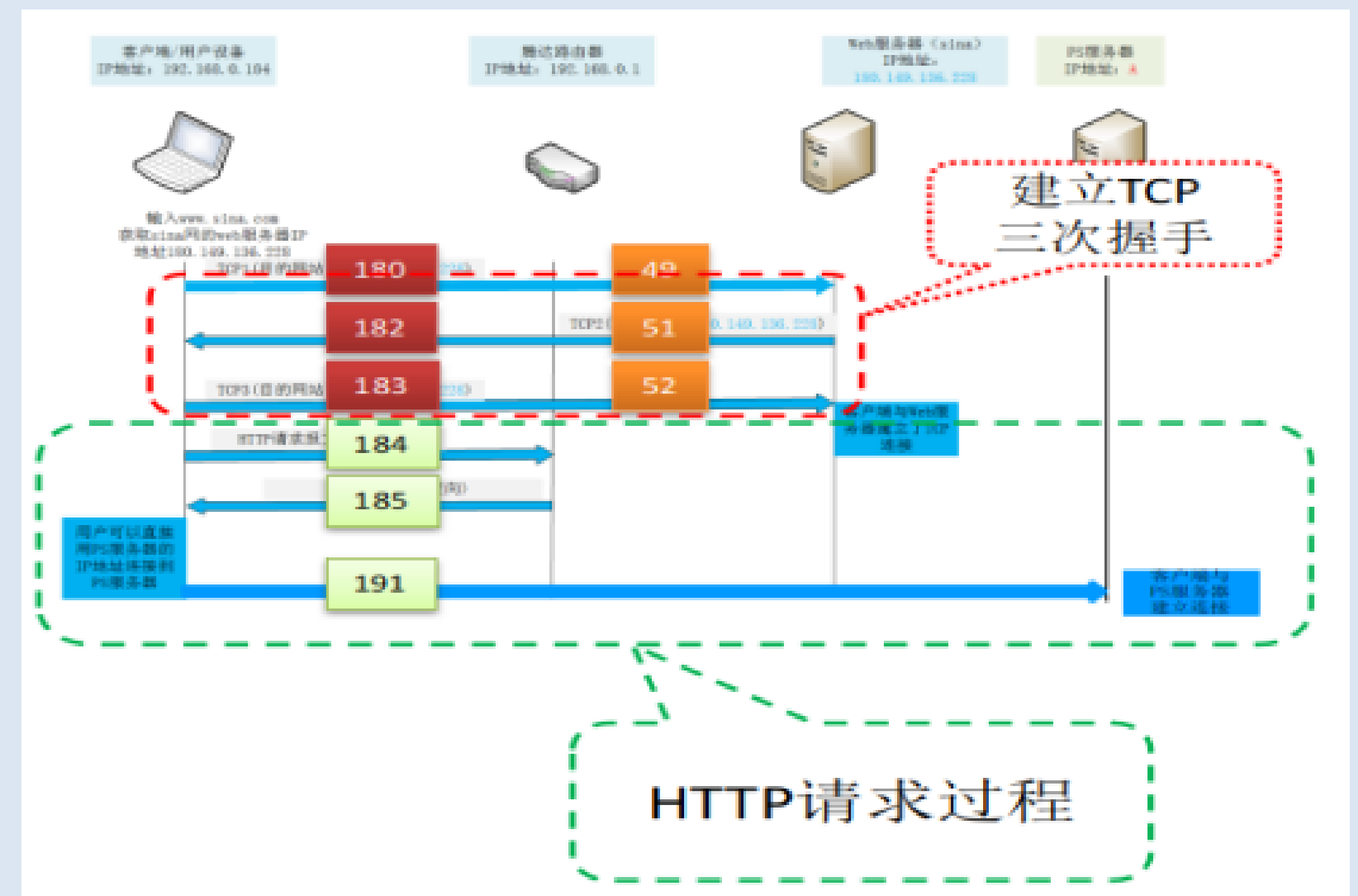
## (1) "Router" Method invention patent infringement case

【(2019) 147】 The first Patent Infringement Case of Multi-agent Implementation Method in Network Communication Field in China .Selected as a guiding case of the Supreme People's Court.

"An easy way to access the network operator portal" Invention patents



Infringing product





# Effective protection

## "Router " Method invention patent infringement case

### Focus of the dispute——

#### Determination of infringement:

If the defendant has consolidated the substance of the patent method into the product accused of infringing for the purpose of production and operation, and the end user can naturally reproduce the process of the patent method when normally using the product accused of infringing, it shall be deemed that the person accused of infringing has implemented the patent method and constitutes infringement.

### Focus of the dispute——

#### Compensation calculation:

Where the patentee claims to calculate the amount of damages based on the profit from infringement and has completed the preliminary proof of the scale of the infringement, and the infringer sued refuses to provide relevant evidence materials about the scale of the infringement without justifiable reasons, so that the basic facts used to calculate the profit from infringement cannot be determined, the defense of the infringer sued that the contribution of the patent involved to its profit from infringement should be considered, It can be unsupported.

## Effective protection

“Vertical secondary structure column pump” Utility model patent  
promise sales infringement case  
【(2020) 1658号】

The court of first instance found that , The defendant constituted **a promise of sale** infringement.

Reducing or delaying the commercial opportunities of the patented product, and there will be remedies for the damage to the right, unless otherwise specified by law.

# Effective protection

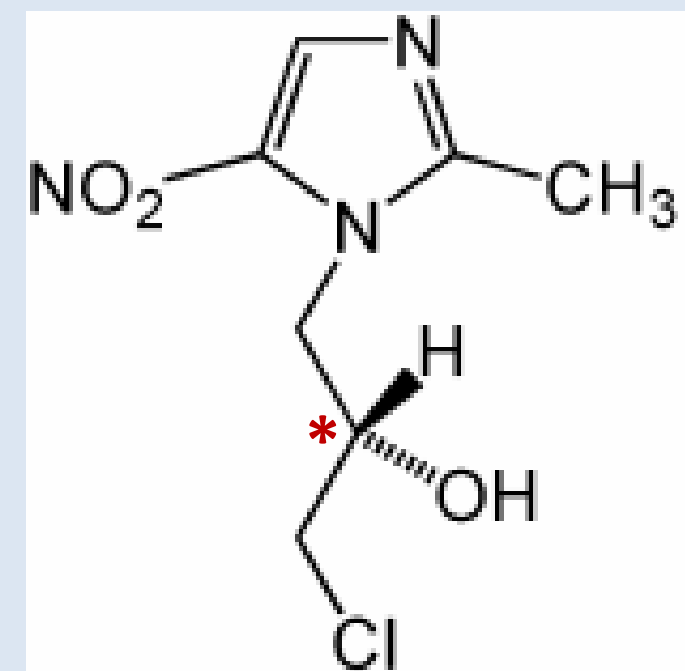
"L-ornidazole" Four cases of patent infringement for pharmaceutical use invention and patent invalidation intersected by the civil bank

【(2020) 1156、 1158, (2020) 475、 476】 Although the parties in the civil and administrative procedures of these four cases did not correspond one-to-one, they involved the interpretation and protection of the same patents, and the SPC Intellectual Property Court still adopted the practice of coordinated trial and actively explored ways to solve the problem of "long period" in resolving such disputes.



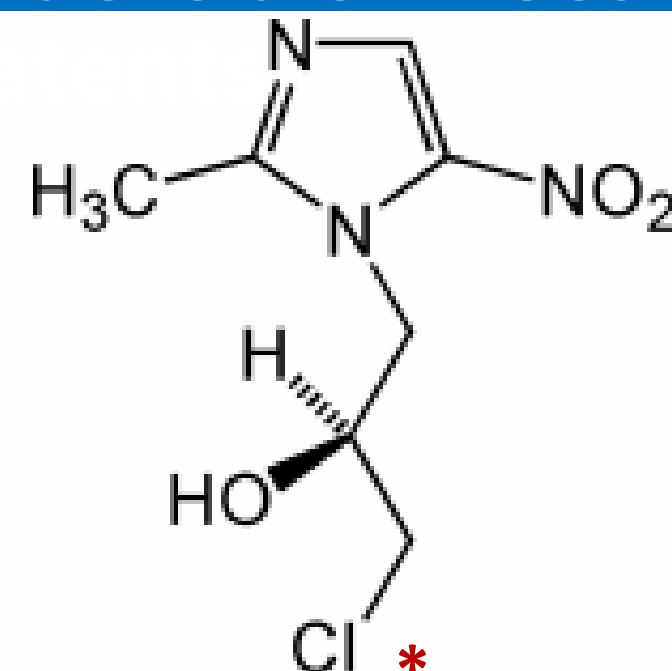
The patent in question

## "Application of levonedazole in the preparation of drugs against anaerobic infections" Invention



L-O  
Nitdazole

Ornidazole



D-O

Nitdazole



Patented  
products

The Intellectual Property Tribunal of the Supreme People's Court coordinated the trial of cross-border cases involving the same civil bank, found the patent rights of Shenghe Company valid in the two patent invalidation administrative cases, revoked the first-instance judgment, and upheld the decision being sued; At the same time, in two patent infringement cases, Warner Company and CITIC Company were found to have committed infringement, and the first-instance judgment was upheld.

# Equal protection

(1) "Car wipers" Invention patent infringement case  
【 (2019) 2 】

(2) "With intramedullary nail" Invention patent infringement case  
【 (2021) 148 】

(3) "NX" Computer software copyright infringement case  
【 (2020) 155 】

## Equal protection

(4) "Magnetic resonance imaging "Method invention patent invalidation case  
【 (2019) 61 】

(5) "Rivaroxaban "Administrative ruling on invention patent infringement  
【 (2021) 451 】

It is determined that the promised sale does not fall under the exceptions to the approval of drugs and medical devices stipulated in the Patent Law, and intellectual property rights are strictly protected in accordance with law.

*Any Questions?*

# THANK YOU!

wangzhengzhi@globe-law.com

www.globe-law.com