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Disputed Issues in Deciding the Validity of Intellectual Property Right — A Focus on Issue Preclusion

Kuo-Cheng Chen

Abstract

The new Intellectual Property Case Adjudication Act consists of civil, criminal or administrative actions (three in one). While a party claims or defends that an intellectual property right shall be cancelled or revoked in civil or criminal actions, there are possibilities of contradictions and differences among decisions on the validity of intellectual property right where the court decides on the merit of the case.

Broadening effect of court holding on different litigation may offer solutions to eliminate conflicts on court determinations of validity. Issue preclusion doctrine in case law in America provides relative references to deal conflict of decisions on the validity of intellectual property right.

According to the Article 33 of Intellectual Property Case Adjudication Act, there are no limitations for a case to introduce the evidences those could be presented in a prior action on the same grounds for the cancellation or revocation of a registered trademark or patent. It takes time to observe whether the goal could be reached to prevent procedural delay by submitting repeatedly cancellation or revocation action with the same evidences. However, claim preclusion doctrine in America also shows some references for dealing that problem.

This note tries to provide preliminary suggestions on disputing issue arose on jurisdiction, conflicts of decisions on the validity of intellectual property right and relative disputed issues of civil, criminal or administrative action for further study and reference to IP practitioners.

Keywords: Intellectual Property Case Adjudication Act, Validity of Intellectual Property Right, Issue Preclusion, Claim Preclusion