The recent Apple v. Baili case has generated wide interest in design patents. This article discusses developments in Chinese standards for determining design patent infringement. Apple filed a suit against iPhone 6 and iPhone 6 Plus for design patent infringement. The Court, thus, applied the "ordinary observer test" and compared the various features of the accused products to the design patent to determine infringement. The Court also took into consideration the degree of freedom in design, the designer's functional choices, and the similarities between the accused products and the prior art. Apple argued that the scope of the patented design is restricted to a very limited range by the decision of the Beijing Intellectual Property Court ("BIPO decision") in March 2015. The court concluded that iPhone 6 and 6 Plus do not infringe on Baili's'113 patent because they do not meet the "ordinary observer test."
For a long time, the test for design patent infringement in China involved a high degree of subjectivity and the outcome was especially uncertain in determining whether the accused design is the same as or similar to the patented design. The Apple v. Baili case provides a clear and comprehensive framework for analyzing whether one design infringes another.

Many commentators describe it as a landmark case that brought more certainty to the test of design patent infringement.

The key strategy an accused party could learn from Apple is trying his best to collect prior art references and file an invalidity action against the asserted design patent. The validity challenge can bring possibility of staying the infringement case pending the invalidity decision.

More importantly, strong prior art would significantly limit the expansive scope of the claimed design to increase the likelihood of non-infringement finding. Further, such prior art references can also help narrow the scope of design so that dissimilarities in details may be accepted as grounds for non-infringement, and support non-functional arguments.