SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA

Civil Judgment

[2020] Zui Gao Fa Zhi Min Zhong No. 661

Appellant (Plaintiff):	**VMI HOLLAND B.V.**
Domicile:	Epe, Netherlands
Representative:	Pieter Dirk Rademaker, Special Project Director
Authorized Attorney:	LIU Yongquan, Lawyer of Beijing Saelink Law Firm
Authorized Attorney:	CHEN Wenxuan, Lawyer of Beijing Saelink Law Firm
Respondent (Defendant):	**Safe-Run Intelligence Equipment Co., Ltd.**
Domicile:	Hengchangjing Road 111, Zhoushi Town, Kunshan City, Jiangsu Province, PRC
Legal Representative:	ZHANG Yingzi, Chairman
Authorized Attorney:	HE Fang, Lawyer of King & Wood Mallesons Shanghai Office
Authorized Attorney:	ZHANG Weiguo, Lawyer of King & Wood Mallesons Shanghai Office.

1 The appellant, VMI HOLLAND B.V. ("**VMI**"), was dissatisfied with the Civil Judgment (2018) Su 05 Min Chu No. 1297 made by the Suzhou Intermediate People's Court of Jiangsu Province, PRC, on December 26, 2019 in respect of the patent ownership dispute between VMI and the respondent, Safe-Run Intelligence Equipment Co., Ltd. ("**Safe-Run**"), and filed an appeal with this court. After docketing this case on May 20, 2020 and forming a judicial panel in accordance with the law, this court organized the pre-trial evidence exchange on October 30, 2020, held a public hearing on January 19, 2021, and presided evidence exchange and cross-examination between the parties on supplemental evidence on May 31, 2021. VMI's attorneys, LIU Yongquan and CHEN Wenxuan, and Safe-Run's attorneys, HE Fang and ZHANG Weiguo, appeared in court. Now the trial of this case ended.

2 VMI requested in its appeal that: **1.** The first instance judgment should be overruled, and the patent right of the invention patent no. 201410624213.1 (the "**Patent**"), titled "Tread assembly charging system", shall be awarded to VMI; **2.** Safe-Run shall bear all the litigation cost of this case. FACTS AND GROUNDS: The technical solution of the Patent applied-for by Safe-Run was the Prior Secret-related Technology (the "**Prior Secret-related Technology**"), titled "fitting material system with belt drum moving vertically and horizontally", which was independently developed by VMI and applied to the MAXX building machine and the EXXIUM building machine. VMI protected the Prior Secret-related Technology as technical

secret, but Safe-Run infringed upon VMI's technical secret by patenting the Prior Secret-related Technology. The patent owner of the Patent shall be VMI. **(I)** VMI shall be the prior owner of the Patent. The carriers of the Prior Secret-related Technology include VMI's MAXX and EXXIUM building machines as well as related technical manuals, operation drawings and other technical data. VMI has adopted strict confidential treatment to ensure that the Prior Secret-related Technology remains valuable and unknown to the public, and thus constitutes a technical secret. **1.** In 2008, VMI successfully developed the Prior Secret-related Technology and applied the same to MAXX, EXXIUM and other building machines, which has higher commercial value. **2.** VMI's strict confidential treatment fully demonstrates VMI's willingness to keep [the technology] confidential, it is in compliance with the industry practice and also sufficient to protect the Prior Secret-related Technology from being made known to the public, which constitutes the reasonable confidential treatment under the PRC Anti-unfair Competition Law amended in 2019 (the "**2019 AUCL**"). Specifically, **(1)** all the building machine purchase contracts between VMI and its customers, i.e., building machine buyers, included the confidentiality clause that prohibits disclosure or disposal of purchased building machines, expressly stipulating that: VMI's building machines carrying VMI's confidential information and data shall not be copied, reproduced or transferred to any third party in any form and/or method without permission; the area where VMI's building machines are placed shall be protected from unauthorized access by any persons other than employees of both parties, and shall be prohibited from photographing, drawing, video recording or measuring of building machines. **(2)** All the technical materials delivered by VMI recorded corresponding confidentiality requirements, expressly set out the IPR terms and conditions, and explicitly prohibited the building machine buyers from disclosing, disposing of, or transferring the building machines they purchased without the approval of VMI. **(3)** all the building machine purchase contracts between VMI and its customers, i.e., building machine buyers, included the pre-emptive right clause that VMI shall have the pre-emptive right, and the customers were prohibited from transferring or disposing of the purchased building machines without the approval of VMI, in particular the customers were prohibited from transferring the carriers containing the Prior Secret-related Technology to VMI's competitors. **3.** The carriers containing the Prior Secret-related Technology include large-size building machines and related relevant technical materials, which are available to specific tire manufacturers rather than ordinary consumers. Moreover, the technical solution of a building machine cannot be directly obtained through appearance observation, and thus is not made known to the public due to sales. **(II)** Safe-Run was likely to have access to the Prior Secret-related Technology and had actually possessed the Prior Secret-related Technology. **1.** Safe-Run had access to VMI's building machines and technical materials and acquired the Prior Secret-related Technology after hiring Zhang X, Piao X, Li X Han and other former employees of [###]. **2.** The evidence on file can also prove that Safe-Run had actually accessed and possessed the Prior Secret-related Technology before the application date of the Patent. On August 26, 2016, when working at Safe-Run, a former employee of Safe-Run received VMI's MAXX technical manual from another former employee of Safe-Run who sent to him and

other Safe-Run's employees via the working email address, which is sufficient to prove that Safe-Run had actually possessed the technical manual of VMI's building machine. **(III)** The technical solution of the Patent is identical to the Prior Secret-related Technology that was independently developed by VMI, and the claims, supporting drawings and technical details of the Patent are identical or substantially identical to the Prior Secret-related Technology. **(IV)** Safe-Run's argument that it had independently developed the technical solution of the Patent is unfounded. Since Safe-Run's evidence supporting its independent research and development ("**R&D**") cannot prove a complete process from project approval, R&D, completion to application and granting, Safe-Run shall bear the consequences of failure to prove. According to the evidence submitted by Safe-Run in the first instance, the R&D of its building machine implementing the technical solution of the Patent took only over four months from project approval to drawing production, which is clearly inconsistent with the industry practice and research difficulty. Moreover, QIN Yinfeng, one of the inventors of the Patent, had no previous R&D experience, technical achievement, professional title or other patent applications. **(V)** This court of first instance improperly allocated the burden of proof in this case. VMI had proven with evidence in the first instance that it was the prior right holder, identified the content and carrier of the Prior Secret-related Technology, and proven that Safe-Run had the likelihood of accessing, and had actually accessed, the Prior Secret-related Technology. VMI had also proven that the technical solution of the Patent was identical to the Prior Secret-related Technology. Even if the standards of proof set forth by the court of first instance are followed, VMI had fulfilled its burden of proof. **1.** Although VMI had proven with evidence that the technical solution of the Patent was identical to the Prior Secret-related Technology and that Safe-Run had ample channels and opportunities to access the Prior Secret-related Technology, the court of first instance still ordered VMI to prove that Safe-Run "had accessed and actually obtained" the Prior Secret-related Technology and "knew that VMI had adopted confidential treatment" when attempting to obtain the Prior Secret-related Technology, which improperly increased the burden of proof for VMI in a patent ownership lawsuit. In accordance with the provision of Article 32.2 of the 2019 AUCL, VMI was only required to prove that Safe-Run "had a channel or opportunity to access" the Prior Secret-related Technology, without being required to prove Safe-Run's subjective intent. **2.** This court of first instance mistakenly applied the law in holding that the specification of the Patent, including drawings, embodiments and other specific technical solutions should be compared with the Prior Secret-related Technology. The protection scope of a patent right shall be based on the claims, with drawings, embodiments and other specific technical solutions only being used to interpret the claims. Therefore, comparison should be made mainly between the technical solution defined by the claims of the Patent and the Prior Secret-related Technology, so as to determine whether the two are identical or not substantially different. **3.** This court of first instance mistakenly found that Safe-Run had preliminarily proven its independent R&D process and also mistakenly applied the principle of "first to file" under Article 9 of the PRC Patent Law (the "**Patent Law**"). **(VI)** Safe-Run first copied and patented the Prior Secret-related Technology, and

then sued VMI and its customers for infringement of the Patent, which is not in line with the policy of strengthening IRP protection. To sum up, Safe-Run had infringed upon VMI's right by patenting the Prior Secret-related Technology. The patent owner of the Patent shall be VMI. The first instance judgment was mistaken in the finding of facts and the application of law, and thus shall be overruled.

3 Safe-Run argued that: **(I)** The first instance judgment properly applied the principle of "first to file". The technical secret of the Patent was independently developed by Safe-Run. **(II)** The Prior Secret-related Technology asserted by VMI was not secret in nature, and thus did not constitute technical secret. **Firstly,** the Prior Secret-related Technology asserted by VMI had been made known to the public due to sale. In a separate case, VMI had acknowledged the publication due to sales and accordingly petitioned for invalidation of Safe-Run's relevant patents. **Secondly,** the tire manufacturers that according to VMI had signed non-disclosure agreements with VMI, including [###] and [###], had filmed promotional videos on VMI's building machines, and thus did not comply with the non-disclosure agreements. The technical features of a building machine can be directly obtained by observation. Filming videos on MAXX, EXXIUM and other building machines could cause a loss of confidentiality. **(III)** The alleged likelihood of having access to the Prior Secret-related Technology is unfounded. This case involves a patent ownership dispute that should be solved subject to actual access. **Firstly,** the alleged access to the Prior Secret-related Technology through [###]is unfounded. Zhang X and Piao X had worked for [###]from 1991 to January 2008 and from 1980 to 2008, respectively, [###]received VMI's MAXX building machine in July 2014, at the time the two employees already left the company for almost 6 years, thus they two were unlikely to have access to the technical solution of MAXX building machine at [###]. **Secondly,** VMI's allegation that Safe-Run had actually possessed the Prior Secret-related Technology is unfounded. The application date of the Patent was November, 2014, long before the alleged time when a former employee of Safe-Run received the relevant technical materials. Even if such materials exist indeed, they are irrelevant to the application of the Patent.

4 VMI brough a lawsuit before the court of first instance on September 20, 2018, and the court of first instance docketed the case on October 9, 2018. VMI requested: **1.** to declare that the patent owner of the Patent shall be VMI; **2.** to order Safe-Run to bear the litigation cost of the case. The FACTS AND GROUNDS are as follow: according to the Prior Secret-related Technology, the belt drum simultaneously moves in the vertical and horizontal directions to fit to the belt layer feeding module, the crown strip module and the tread feeding module, while in the prior art only oneset of vertical driving devices on the belt drum is needed for mounting one set of position adjusting devices on each charging template. Compared with the conventional building machine technologies, the Prior Secret-related Technology improved the accuracy, flexibility and speed of the belt drum fitting to materials, significantly shortened the single tire delivery time, and greatly reduced the cost of a building machine. VMI had supplied the Prior Secret-related Technology and MAXX

and other building machines to global tire manufacturers. Several Chinese tire manufacturers had also introduced the Prior Secret-related Technology developed by VMI and VMI's MAXX and other building machines carrying the Prior Secret-related Technology. VMI had adopted strict confidential treatment for the Prior Secret-related Technology, including agreeing on the confidentiality clause with tire manufacturers before supplying the Prior Secret-related Technology and relevant building machines, according to which tire manufacturers were obligated to keep the technology secret, and also expressly agreed that the ownership of the Prior Secret-related Technology was vested in VMI. The technical solution of the Patent applied-for by Safe-Run with the China National Intellectual Property Administration ("**CNIPA**") on November 6, 2014 and granted on January 25, 2017 possessed the same features of the Prior Secret-related Technology. Safe-Run improperly patented the Prior Secret-related Technology by means that are prohibited by law, and thus infringed upon the legitimate rights and interests of VMI.

5 Safe-Run argued in the first instance that: **(I)** The Prior Secret-related Technology documents, as the basis of VMI's claims, were formed at an uncertain time, and thus could not be regarded as the Prior Secret-related Technology asserted by VMI. The Prior Secret-related Technology documents asserted by VMI in this case are the MAXX mechanical drawings and operating manuals from [###] and [###], which were produced by VMI in the form of witness testimony. VMI failed to provide any historical R&D documents concerning the technical solution of the MAXX building machine. Therefore, VMI failed to prove that it had possessed the Prior Secret-related Technology documents before the application date of the Patent. **(II)** VMI mixed up the technical solutions of different building machines in the Prior Secret-related Technology documents it asserted, deliberately creating similarities between the Prior Secret-related Technology and the technical solution of the Patent. **(III)** VMI failed to prove that Safe-Run had access to the so-called Prior Secret-related Technology by illegal means. **(IV)** Even if the so-called Prior Secret-related Technology documents submitted by VMI is authentic, by comparison, the technical solution of the Patent is evidently different from the Prior Secret-related Technology asserted by VMI. **(V)** Safe-Run had independently completed the R&D of the Patent, and thus shall enjoy the patent right of the Patent. To sum up, Safe-Run requested to dismiss all claims of VMI.

6 This court of first instance made the finding of facts as follows:

(I) Regarding the Patent

7 On November 6, 2014, Safe-Run filed an application with CNIPA for an invention titled "Tread assembly charging system" and was granted with the patent no. 201410624213.1 on January 25, 2017. The inventor was QIN Yinfeng. The claims of the Patent as granted are:

"1. A tread assembly feeding system, comprising a base on which a belt drum structure capable of moving horizontally in a straight line is arranged, and one side of which is respectively provided with a belt layer feeding template, a crown strip template, and a tread feeding template, characterized in that: a horizontal moving slide plate of the belt drum structure is supported on a horizontal linear guide of the base, and a belt drum in the belt drum structure is externally connected with a vertical driving device, the vertical driving device being arranged on a vertical bracket of the belt drum structure, the bottom of the vertical bracket being fastened to the horizontal moving slide plate, and a belt drum rotary driving motor drives the belt drum to rotate, and the belt layer feeding template comprises a 1# belt layer feeding template and a 2# belt layer feeding template, the 1# belt layer feeding template, the tread feeding template and the 2# belt layer feeding template being sequentially arranged along the horizontal moving direction of the belt drum structure; the crown strip template is arranged above the 2# belt layer feeding template and adjacent to the tread feeding template, the 1# belt layer feeding template and the 2# belt layer feeding template being arranged obliquely downward to ensure that the lower position of the outer surface of the belt drum fits to the 1# belt layer feeding template and the 2# belt layer feeding template, and the upper position of the outer surface of the belt drum fits to the crown strip template and the tread feeding template.

2. A tread assembly feeding system according to claim 1, characterized in that: the belt drum structure comprises a vertical bracket, a belt drum, a slide plate, and a balance cylinder; standing poles on the vertical bracket are respectively provided with a vertical guide, a linear guide pair on the slide plate is correspondingly connected to the vertical guide; the slide plate is vertically arranged, with a drive motor arranged on an inner side of the upper end of the slide plate, an output shaft of the driving motor being externally connected to a ball screw, the ball screw being screwed and penetrates a connecting nut, the connecting nut being fastened to the rear side of the slide plate, and the front side of the slide plate is provided with a belt drum mounting shaft arranged horizontally in a straight line, one end of the belt drum mounting shaft being provided with the belt drum, and one end of the belt drum mounting shaft being provided with a driven pulley; the output shaft of the belt drum rotary driving motor is provided with a driving pulley, the belt is respectively connected to a driven pulley and the driving pulley; the balance cylinder is arranged between the horizontal moving slide plate and the lower end of the slide plate.

3. A tread assembly charging system according to claim 2, characterized in that: the output shaft of the driving motor is connected to the ball screw through a coupling.

4. A tread assembly charging system according to claim 3, characterized in that: a linear displacement sensor is arranged vertically between the horizontal moving slide plate and the slide plate.

5. A tread assembly charging system according to claim 1, characterized in that: a rack structure is arranged on the inner side of one of the horizontal linear guides of the base, and one end of the horizontal moving slide plate is provided with

a vertically arranged horizontal driving motor, the horizontal driving motor being fastened to the horizontal moving slide plate, and a portion of the horizontal driving motor that protrudes from a lower end surface of the horizontal moving slide plate is provided with a gear structure, the gear structure being in meshing engagement with the gear structure."

(II) Facts adduced by VMI to prove that the technical solution of the Patent is the Prior Secret-related Technology

8 1. "VMI Brings Forward the Launching of MAXX building machine due to Recession", Europe Rubber Weekly, March and April 2009; "VMI Launches MAXX building machine" dated November 4, 2008 and "VMI Launches a Double-drum Building Machine" dated March 3, 2009, both on European Rubber Journal's website; "VMI's building machine wins Innovation Medal", www.Typepree.com, March 3, 2009; "VMI Group Launches Highly Automatic Tire Building Technology", www.rubbernnews.com, March 9, 2009. All these showed that VMI had developed the Prior Secret-related Technology and applied the same to its MAXX building machine during 2008 and 2009.

9 "VMI Launches Full-automatic EXXIUM building machine", www.Typepree.com, January 25, 2012; "EXXIUM will be a new standard for building machines", European Rubber Journal's website, January 24, 2012; "VMI Releases a New Building Machine", reporting the launching of EXXIUM building machine by VMI Group, www.rubbernnews.com, February 20, 2012; "VMI's latest building machine", reporting that the EXXIUM building machine for motors and light trucks launched by VMI, the Dutch rubber and tire machinery supplier, could complete tire building in only 44 seconds, European Rubber Journal, February 26, 2012. All these showed that VMI had launched the EXXIUM building machine in 2012 before the application date of the Patent.

10 2. Excerpts from VMI's MAXX operating manuals and mechanical drawings that were produced as confidential evidence to the court of first instance.

11 3. In the invention patent infringement case (2018) Su 05 Min Chu No. 1458 brought before the court of first instance against VMI, Safe-Run adduced a notarial deed (2018) Hu Jing Zheng Jing Zi No. 1719 that recorded the process of downloading and printing VMI's technical manual titled "VMI MAXX 24" from the 360doc.com and also attached the relevant contents of the technical manual.

12 4. On July 3, 2018, [###], representative of VMI's authorized attorneys, took photos and videos of the VMI EXXIUM single-stage building machine at [###] under notarization by the Guangzhou Notary Public Office, Guangzhou City, Guangdong Province (the "**Guangzhou Notary**"), and also took photos of, copied, and attached as Appendixes 3 and 4 to the notarial deed the printout of, the excerpts from the operation manual materials (in both paper and CD format) related to the aforesaid

building machine, which were provided by [###]'s employees. The aforesaid photos, videos and CDs taken on the site were burned to CDs for recordal. On July 23, 2018, [###], representative of VMI's authorized attorneys, captured and printed out the screenshots of the aforesaid CDs under notarization by the Guangzhou Notary. The Guangzhou Notary issued a notarial deed (2018) Yue Guang Guangzhou No. 101546.

13 5. On November 13, 2018, [###], Project Manager of VMI, made an affidavit in the presence of a civil law notary in Epe, Netherlands as follows: On October 25, 2013, VMI and [###] entered into a contract ([###], title: [###], see Annex 1), according to which VMI supplied [###] [###]of VMI EXXIUM full-automatic single-stage building machines ([###]), each VMI EXXIUM building machine having a unique eight-digit production number starting with [###]. It was stipulated in Clause 21.1 and 21.2 of the contract that: all the information and data (designs, technical data, drawings, etc.) provided by the seller shall be solely owned by the seller, and the information and/or manufacturing methods related to the products shall be owned by the seller; the buyer may not copy, reproduce or transfer the aforesaid information or data to any third party in any form and/or manner without the written permission legally given by the seller, and the products may not be used for reproduction or copying without the written permission of the seller. On October 25, 2013, the two parties signed an appendix to the aforesaid contract (See Annex 2), which defined the scope of supply, technical specifications and technical documents. On October 16, 2014, VMI provided [###] with a hard copy of the VMI EXXIUM [###] manual (summarized in Annex 5.2) and an electronic version of the manual and mechanical drawings (summarized in Annex 5.3). On March 13, 2015, the two parties signed a final acceptance certificate. VMI submitted that the Annex 5.3 was a trade secret and thus produced Annex 5.3 to the court of first instance separately as confidential evidence, not together with the notarial deed.

14 6. On August 13, 2019, [###], Project Manager of VMI, made an affidavit in the presence of a civil law notary in Epe, Netherlands as follows: On December [###], 2013, VMI and [###] entered into a MAXX purchase contract ([###]). On the same day, VMI and [###] signed a MAXX purchase order ([###]Purchase [###], VMI Machine [###]). On July 25, 2014, VMI and [###] both signed an acceptance report recording VMI [###], confirming that the MAXX building machine had been installed at [###]'s factory and that all functional tests had been performed and successfully completed. In February 2014, VMI provided [###] with electronic copy and hardcopy of the technical documents, including the MAXX technical manual ([###]) (Annex 5.1) and the mechanical drawings ([###]) starting from drawing [###] (See Annex 5.2 for the mechanical drawings). On July 21-25, 2014, [###], Engineer of VMI, delivered an on-site [###] MAXX training at the [###]'s factory. At that time, the MAXX building machine was already in use and the technical data of the MAXX building machine were widely discussed among [###]'s employees during the training course. On August 4-8, 2014, [###], Engineer of VMI, delivered another [###] MAXX training for [###]'s equipment operators at the premises of [###]. At that time, the MAXX building machine was still in operation and the MAXX technical

data were widely discussed. On [###], 2013, following the MAXX building machine transaction, VMI and [###] entered into an IPR protection agreement (see Annex 4.1), in which [###] explicitly undertook to protect VMI's IPRs, trade secrets, know-how and proprietary technologies in VMI's building machines. In addition, [###] also undertook that it would not allow its employees or any third party to reverse engineer VMI's building machines. During the first instance, VMI submitted that the Annex 5.2 was a trade secret and thus produced Annex 5.2 to the court of first instance separately as confidential evidence, not together with the notarial deed.

15 7. On August 13, 2019, [###], Project Manager of VMI, made an affidavit in the presence of a civil law notary of Epe, Netherlands as follows: On October 15, 2010, VMI and [###] signed a purchase order for [###] of MAXX single-stage building machines ([###], see Annex 1.1). On October 25, 2010, VMI and [###]entered into a purchase contract ([###], VMI [###], see Annex 1.2), according to which VMI sold [###] of MAXX building machines to [###], each VMI MAXX building machine having a unique five-digit project number starting from [###]. On October 27, 2010, VMI offered a quote for the purchase order to [###] ([###] and [###], see Annex 1.3). It was stipulated in Section 4 of Annex 1.3 that: all the information and data (designs, technical data, drawings, etc.) provided by the seller shall be solely owned by the seller, and the information in the products and/or manufacturing methods shall be solely owned by the seller; the buyer may not reproduce, reverse engineer or disseminate, disclose or transfer to any third party in any form and/or manner, the information or data, or use the information or data for reverse engineering or reproduction of the products without the explicit permission given by the seller in writing. On October 30, 2010, VMI and [###]signed the Acceptance Certificate for [###] of building machines, each bearing [###], [###], VMI [###], and [###], confirming that all [###] of MAXX building machines had been satisfactorily installed at [###]and that all functional tests had been successfully completed, with a warranty period starting from the date of signing (see Annex 2.4). Since the first delivery in October 2011, VMI had provided [###]with the MAXX technical manual in both electronic and hardcopy format, including the technical manual ([###]) dated November 2011 for the MAXX building machines with project numbers of [###] (see Annex 3.1), and subsequent mechanical drawings ([###]) with a project number of [###] (see Annex 3.2). VMI submitted that the text of Annex3.2 was a trade secret and thus produced Annex 3.2 to the court of first instance separately as confidential evidence, not together with the notarial deed.

(III) Main facts presented by VMI to prove Safe-Run's channels and opportunities to access the Prior Secret-related Technology

16 1. On October 29, 2015, [###] Finance & Leasing Co., Ltd. purchased building machines from Safe-Run and then leased the building machines to [###] by means of finance leasing, including 2 sets of Safe-Run's SRS-H building machines, while VMI's building machines were placed in [###]'s tire building workshop at the same time.

17 2. On May 17, 2019, [###], Senior R&D Mechanical Engineer of VMI, made an affidavit in the presence of a civil law notary in Epe, Netherlands as follows: He had examined the VMI MAXX 24 technical manual downloaded from www.360doc.com/user/home/55608985 and produced as evidence by Safe-Run. The uploaded manual is a PDF file which was not searchable through search engines such as Baidu and Google. Therefore, anyone who can download the uploaded manual shall be the owner of the same rather than someone who found it through a search engine on the Internet. ... According to the VMI code recorded in the uploaded manual, we identified the uploaded manual relating to [###], a VMI MAXX building machine sold and delivered to [###]in March 2014.

18 According to the Announcements released by the Suzhou Municipal Talent Work Office and the Suzhou Human Resources and Social Security Bureau in Jiangsu Province on March 31, 2014 and February 2, 2015, respectively, two South Korean experts, Piao X and Zhang X, hired by Safe-Run, were named as candidates of the "Seagull Program" of Suzhou City in 2013 and 2014 respectively for the project of "Full-automatic Semi-Steel Radial Tire Single-stage Building Machine". In 2017, Zhang X of Safe-Run was again selected to the "Seagull Program" of Suzhou City for the project of "Technical Performance Verification of Intelligent Radial Tire Single-stage Building Machine".

19 Zhang X and Piao X used to work at [###] and had access to the relevant technical data of the VMI MAXX building machine sold to [###]. After leaving [###], they were both employed by Safe-Run.

20 3. VMI presented to the court of first instance an affidavit made on October 9, 2019 by [###], Field Service Engineer of VMI, summarized as follows: When the VMI MAXX Intelligent Single-stage Building Machines ([###]) were installed at [###]from May 10, 2014 to June 1, 2014, [###]'s employees took 100 close-up photos of the building machines every working day, made sketches, graphics and drawings of the machine parts and modules, and wrote down all the details in special notebooks. [###]'s employees usually closely observed the work of VMI's employees and followed VMI's employees throughout the process of installation, commissioning and calibration of the building machines. When VMI's employees adjusted or calibrated certain building machine modules and parts, [###]'s employees immediately approached and asked questions, including the details of adjustment or calibration, relevant reasons, technical background and details. Also, [###]'s employees often asked many details about the building machines. [###]kept the building machines in a locked room, by which it was impossible to use the building machines for production.

21 4. The Rubber/Plastic Technology and Equipment journal, 2013 Issue 1 (Vol. 39), published an article titled "Safe-Run – China's New-generation Tire Equipment R&D and Manufacturing Base", in which Safe-Run was introduced as "*a high-tech enterprise engaged in the R&D and production of tire equipment through technical*

collaboration with South Korea", "*the main products of building machine and hydraulic vulcanizer are based on South Korean high-end tire equipment technology with 30 years of experience and mature technology*", "*combined advanced technologies from many well-known manufacturers at home and abroad, including Germany, Japan, and South Korea*", and "*made a huge investment over the past three years, and combined advanced technologies from many well-known manufacturers in Germany, Japan, South Korea, etc.*". The Rubber/Plastic Technology and Equipment journal, 2014 Issue 21 (Vol. 40) published an article titled "Safe-Run, the mystery of disruptive high-speed development of an enterprise led by technology — Interview with Mr. Zhang Sailong, Founder of Safe-Run", in which Safe-Run was introduced as follows: "*At present, Safe-Run has attracted a group talents from international and domestic well-known tire manufacturers in the fields of machinery R&D and manufacturing technology and after-sale service …*", "*Intelligent single-stage building machine (aka unmanned building machine) … the main innovative concepts include: … (4) the cycle time reduced by ⅓ with a design of the belt drum moving up, down, left and right to achieve fitting, without requiring movement of belt ply, tread and crown strip template*", "*Safe-Run's main products, building machine and hydraulic vulcanizer, are based on South Korean high-end tire equipment technology with 30 years of experience and mature technology, relying on a team of professional talents from international famous companies and domestic industries in technology, manufacturing, quality and after-sale service*", "*We has invested heavily in the R&D of single-stage building machine since 2009, and has experienced several disruptive innovations and breakthroughs. The company made analysis and arrangement for the development trend of tire equipment industry with great foresight, and established a strong alliance with South Korean technology by weighing the situation …*".

(IV) The two parties' views on whether the technical solution of the Patent is identical or substantially identical to the Prior Secret-related Technology asserted by VMI

22 VMI submitted that: the claims of the Patent were highly consistent with the Prior Secret-related Technology in terms of claims, drawings and technical details. The technology used by VMI for comparison was the MAXX technical manual and drawings ([###]) delivered by VMI to [###] in 2014, which Safe-Run had actual access or had multiple channels and chances of access. The Patent and VMI's Prior Secret-related Technology solved the same technical problem, adopted the same technical solution, and achieved the same technical effect, which are highly consistent on the whole. The object of both is to overcome the problems of conventional building machines, that is, the charging system is slow in speed, long in cycle time, high in cost, and low in precision, etc., which are caused by the belt ply template, crown strip template and tread template moving to the belt drum in turn, centering, loading and repositioning. The technical concept of both is that the belt drum simultaneously moves in horizontal and vertical directions to fit to the belt ply template, crown strip

template and tread template. The technical solution of both is to achieve precise control of the belt drum moving in horizontal and vertical directions using two servo motors. The technical effect of both is to save the loading time and reduce the loading cycle time through the movement of the belt drum, with the belt ply template, crown strip template and tread template being in a stationary status, and at the same time reduce the cost of charging system with only one pair of centering structure. In addition, the drawings of the Patent were identical in detail with those of the Prior Secret-related Technology. This case is a dispute over patent ownership. In accordance with the relevant provisions of the General Principles of the PRC Civil Law on claim on property rights, the relevant provisions of the General Rules of the PRC Civil Law on unjust enrichment, and the relevant provisions of the 2019 AUCL on trade secret infringement, Safe-Run illegally patented VMI's Prior Secret-related Technology and thus shall return the patent right of the Patent to VMI.

23 Safe-Run submitted a "Statement on the R&D of the Technical Solution for Tread Assembly Charging System", stating that: the demand in the tire market had changed around 2013, specifically an increase in the demand for tires, more accidents caused by tire quality problems every year, and manual intervention in PA joint treatment and steel rim mounting during the equipment production, which directly affected the production efficiency and quality control. At the beginning of 2014, Safe-Run launched the R&D of a new project. The R&D of the new project had gone through two stages, i.e., the research and validation of the R&D program, and the design and implementation, which took nearly two years. In fact, Safe-Run had gained extensive experience in building machine design before the technical solution of the Patent involving tread assembly charging system. The tread assembly charging system solution of the Patent was an improved design based on the prior art. The tread assembly charging system solution of the Patent was one of the important parts at the research and validation stage of the R&D program. It took about four months to build, discuss and comprehensively validate the program. To this end, Safe-Run formed a high-level R&D team led by LI Zhijun, Chief Engineer, and the key technical personnel had more than ten years of experience in the relevant fields. After research and discussion, the R&D team came up with four technical solutions, from which the solution requiring the fewest moving parts was selected for further R&D. Safe-Run invested a lot of manpower and resources, and independently completed the R&D of the technical solution of the Patent.

(V) The facts presented by Safe-Run to support its defense

24 On January 10, 2014, Safe-Run's R&D Department made the Project Proposal for the project of "Intelligent Single-stage Building Machine", in which the basic requirements were set out as follows: automatic fitting to tread assembly and carcass assembly, automatic rolling, formed tire carcass, and automatic tire removal. The machine was designed for semi-steel tires from 14 inch to 20 inch. On February 5, 2014, Safe-Run launched the R&D program titled "Intelligent Single-stage Building Machine (SRS-H 14-20)" and formed a team for relevant design and R&D. On

February 10, 2014, Safe-Run finalized the Design Task Sheet. On August 14, 2014, Safe-Run confirmed in the Design Audit Record that the design requirements of the project had been satisfied. On August 20, 2014, Safe-Run made the Design Output Record including the accessory equipment drawings, in which QIN Yinfeng was recorded as the designer.

25 On May 5, 2016, Safe-Run and Beijing Keyi Intellectual Property Agency (General Partnership) Suzhou Branch ("**Keyi Suzhou**") entered into the Contract for Entrustment of Intellectual Property Application, according to which Safe-Run entrusted Keyi Suzhou to file invention and utility model patent applications for the technical solution of "Auxiliary orientation device for conveying a belt ply (interim)". The contract price was RMB 6,220. During the first instance, Suzhou Guocheng Intellectual Property Agency Co., Ltd. provided a Written Explanation to the court of first instance, stating that: at the time when the aforesaid applications were filed, Suzhou Guocheng Intellectual Property Agency Co., Ltd. was known as Keyi Suzhou, but it did not keep the emails with Safe-Run at that time as a long time had passed. The documents attached to the Written Explanation were the photocopies of the technology disclosure documents provided by Safe-Run at the time of patent application, affixed with the official seal of Safe-Run. The attachments to the Written Explanation were accompanied with the Technology Disclosure Report for Invention or Utility Model Patent titled "Tread Assembly Charging System", affixed with the official seal of Safe-Run.

26 QIN Yinfeng, the inventor of the Patent, signed an employment contract with Safe-Run, with a term from August 19, 2013 to August 8, 2018. His position was a mechanical designer.

27 As can be seen from Zhang X's Application Form for Work Permit for Foreigners in China, Zhang X used to work as the director of equipment management at [###] from December 1991 to December 2007. From October 2010 to August 2017, Zhang X served as the deputy general manager of Safe-Run's International Marketing Center.

28 As can be seen from the resume of Piao X provided by Safe-Run, Piao X used to work as the vice chairman and general manager of PCR Factory in Jiaxing City, China since June 2004. Since January 2009, Piao X had served as the assistant director of Daewha Machinery Factory/Research Institute and concurrently the assistant director and vice chairman of China Daewha Machinery. On August 4, 2010, Piao X signed the full-time employment contract with Safe-Run, working as the managing director, and the contract was valid until August 3, 2015.

29 It was also found in the first instance that: on July 10, 2019, [###]provided the court of first instance with a Written Explanation as to the notarial deed (2018) Yue Guang Guangzhou No. 101546, stating that: [###] had never received any notice or application from the Guangzhou Notary or its notary for on-site notarization, nor had it permitted the Guangzhou Notary or its notary public to collect any evidence under

notarization at [###]; [###] had adopted strict confidentiality rules and regulations, according to which the company's employees were prohibited from disclosing any technical secrets relating to various machinery and equipment of the company or allowing others to take photos within the factory, without the company's authorization; [###] attached great importance to the protection of partners' technical secrets and had established a strict visitor registration system. According to the visitor registration record of that day, [###] had not found any visit record of the investigator and notary mentioned in the notarial deed. The information obtained through [###]'s internal investigation showed that on the date recorded in the notarial deed, no employee of [###] participated in the aforesaid notarization or provided the notary with the building machine operating manual, nor did [###] authorize others to take photos or copy the building machine operating manual. The identity of the person who provided the technical data of building machine as stated in the notarial deed was unknown. As for the technical data provided by such unidentified person, [###] did not admit that the technical data were sourced from [###] and that the technical data were nor from the operating manual of the building machine in [###]'s possession.

30 The court of first instance held that: this case is a dispute over the ownership of patent right. Generally speaking, ownership disputes are all caused by contract or infringement. In this case, VMI alleged that Safe-Run illegally patented VMI's technology of fitting material system with belt drum moving vertically and horizontally. Since VMI claimed that the patent ownership should belong to VMI, VMI was required to at least prove its claim from the following three indispensable aspects: **Firstly,** VMI shall prove that it has the prior right over the Prior Secret-related Technology as well as the specific details and carrier thereof. **Secondly,** Safe-Run illegitimately obtain the Prior Secret-related Technology by improper means or in lack of legal basis. This is because that the principle of "first to file" is adopted for patent granting in China. in this case, Safe-Run has preliminarily proven with evidence the process from project approval, R&D, design completion to the entrusted application for and granting of the patent right of the technical solution of the Patent; thus, even if the Prior Secret-related Technology was developed and implemented by VMI first, it cannot claim it is the proprietor of the patent right, but shall further prove that Safe-Run obtained the technical data of the Prior Secret-related Technology by improper means and then patented the Prior Secret-related Technology. In particular, VMI shall not only prove that Safe-Run had access to and actually obtained the data of the Prior Secret-related Technology, but also prove that Safe-Run did so after knowing the confidential treatment adopted by VMI for the Prior Secret-related Technology. **Thirdly,** the technical solution of the Patent, especially the specification of the Patent including drawings, embodiments and other specific technical solutions shall be compared with the Prior Secret-related Technology asserted by VMI to comprehensively determine whether the two are identical or substantially identical in terms of the specific technical solution for achieving the inventive object. In this case, the evidence provided by VMI cannot prove that Safe-Run had illegally possessed the

Prior Secret-related Technology it asserted, and thus VMI's request for declaring that the patent owner of the Patent shall be VMI lacks factual basis and is unfounded.

31 In accordance with the provision of Article 64.1 of the PRC Civil Procedure Law (amended in 2017), the court of first instance decided to dismiss the claims of VMI and that the case acceptance fee of RMB 800 shall be borne by VMI.

32 During the second instance, both VMI and Safe-Run produced the relevance evidence to this court to support their own opinions. The evidence and related cross-examination briefs submitted by both parties and this court's opinions are as follows:

(I) Evidence presented by VMI in the second instance proceedings

33 To prove its claims, VMI provided this court with 27 pieces of evidence as follows:

34 The first group includes evidence 1-6 proving that VMI had invested heavily in the R&D of the Prior Secret-related Technology and accordingly shall enjoy the right of the Prior Secret-related Technology. Evidence 1 is a certificate issued by the Ministry of Economic Affairs of Netherlands to support the R&D fund for VMI MAXX project, the attachment to which was submitted as confidential evidence; Evidence 2 is an affidavit made by [###], Chief Engineer of MAXX building machine R&D project about the R&D process of the Prior Secret-related Technology; Evidence 3 (confidential evidence) includes the R&D proposal for MAXX building machine, flow chart, personnel work plan, budget application, simulation videos, mechanical drawings, procurement emails, commissioning report and analysis, which are the attachments to Evidence 2. The above Evidence 1-3 are to prove that: VMI had made a huge time and financial investment in the R&D of the Prior Secret-related Technology; VMI has enjoyed the prior right of the technical secret in the Prior Secret-related Technology, which had been acknowledged and verified by various parties. Evidence 4 is an acceptance certificate issued by [###] for the MAXX prototype; Evidence 5 is an affidavit made by [###], about the video filming of the MAXX prototype. The above Evidence 4-5 are to prove that: the MAXX prototype carrying the Prior Secret-related Technology was tested at [###] between 2008 and 2010, the process of which was recorded as video, i.e., 2010 prototype video. Evidence 6 is a claim chart produced by Safe-Run in a separate case where Safe-Run accused VMI of infringing upon the Patent, to prove that: Safe-Run misused the first-to-file system to improperly patent the Prior Secret-related Technology and in turn started a patent infringement lawsuit against the VM MAXX building machine asserting that the technology carried in the VM MAXX building machine was identical with the technical solution of the Patent; the legal actions and representations brought by Safe-Run before the Suzhou Municipal Intellectual Property Office, the Jiangsu Provincial Intellectual Property Office and the Suzhou Intermediate People's Court of Jiangsu Province can prove that the technical solution of the Patent was developed by VMI first.

35 The second group includes Evidence 7-12, proving that VMI had adopted reasonable confidential treatment for the Prior Secret-related Technology in line with the industry practice. Evidence 7 is supply contracts and confidentiality clauses between VMI and Chinese tire manufacturers, to prove that VMI had adopted reasonable confidential treatment for the Prior Secret-related Technology and carriers thereof. Evidence 8 is a public report on the Internet to prove that VMI filmed the promotional videos for its building machines, but its technical secret was not disclosed and thus no loss of confidentiality was caused. Evidence 9 is a public report on the Internet to prove that building machine manufacturers usually protect the intellectual property rights of building machines in the form of technical secrets. Evidence 10 (confidential evidence) is a statement made by a well-known machinery equipment manufacturer in Beijing about the building machine manufacturing industry. Evidence 11 (confidential evidence) records a statement made by a well-known machinery equipment manufacturer in Shandong Province about the building machine manufacturing industry. Evidence 12 is a press interview about the building machine manufacturing industry. The above Evidence 10-12 are to prove that VMI had adopted reasonable confidential treatment for the Prior Secret-related Technology in line with the industry practice, including non-disclosure agreements and prohibition against photo-taking in building machine workshops.

36 The third group includes Evidence 13-16 proving that Safe-Run did not conduct the so-called independent R&D. Evidence 13 is the distinguishing feature (2) claimed by Safe-Run in the first instance and the utility model patent no. 201820629764.0 applied-for by Safe-Run. Evidence 14 is the distinguishing feature (4) claimed by Safe-Run in the first instance and the utility model patent no. 201921224354.9 applied-for by Safe-Run. The above Evidence 13-14 are to prove that: the distinguishing features between the Patent and the Prior Secret-related Technology as asserted by Safe-Run have no impact on determining whether the technical solution of the Patent and the Prior Secret-related Technology are identical ; Safe-Run's conduct of patenting the so-called distinguishing features with unspecified function can in turn prove that Safe-Run acknowledged such features were sourced from VMI; Safe-Run misused the first-to-file system by successively patenting the technical features of the Prior Secret-related Technology; Safe-Run appropriated other's technology by patenting the Prior Secret-related Technology on the whole. Thus, the technical solution of the Patent was not independently developed by Safe-Run. Evidence 15 (confidential evidence) is the description of the R&D process of building machines. Evidence 16 is the expert opinion on the abnormality in building machine development by Safe-Run. The above Evidence 15-16 are to prove that: Safe-Run did not carry out the so-called independent R&D at all, and the evidence and grounds it submitted are against the common practice of building machine R&D; Safe-Run submitted the materials that plagiarized and copied from the Prior Secret-related Technology and building machines of VMI as evidence to support the so-called independent R&D.

37 The fourth group includes Evidence 17, which is court transcripts for case (2017) Su 05 Min Chu Zi No.120 and the building machine workshop layout provided by

Safe-Run, to prove that: Safe-Run placed the two SRS-H prototypes adjacent to the VMI building machines, so as to create channels and opportunities to access to the VMI building machines and related technical secrets.

38 The fifth group includes Evidence 18, which is an explanation of the Dutch notary system and the penalty of perjury. This is to prove the affidavits presented by VMI is authentic and that such affidavits can be the basis for finding the facts of this case.

39 VMI further provided this court with the following supplemental Evidence 19 - 27 on January 14, 2021:

40 Evidence 19 (confidential evidence) is the simulation videos of the MAXX building machine developed by VMI, to prove that VMI's feasibility analysis of the Prior Secret-related Technology at the early R&D stage of the MAXX project contained a complete and detailed R&D process.

41 Evidence 20 is about the patent applications made by members of Safe-Run's R&D team, to prove that the inventor recorded in the Patent and all members of the technology R&D team as claimed by Safe-Run did not have the knowledge, competence and experience required for the independent R&D of building machine technology.

42 Evidence 21 is the civil judgment (2019) Su 05 Zhi Chu No. 251, to prove that Safe-Run and its technical director, LI Zhijun, did not carry out the independent R&D of the technical solution of the Patent, but only maliciously patented the prior art, national standard and others' products, which showed their conducts of consistently plagiarizing others' technologies. Moreover, the VMI MAXX building machine had been successfully developed as early as 2008, which was supported with numerous news reports, and thus VMI owned the Prior Secret-related Technology.

43 Evidence 22 is an analysis table comparing other patents applied-for by QIN Yinfeng, inventor of the Patent, with the Prior Secret-related Technology, to prove that many patents applied-for by QIN Yinfeng during his employment with Safe-Run was copied from VMI's MAXX and EXXIUM building machines and thus he had no technical R&D capability.

44 Evidence 23 is the relevant public reports as to Safe-Run's background, company registration information, and excerpt from Safe-Run's IPO prospectus, to prove that Safe-Run, a family-owned business, did not have the capability or experience required for the independent R&D of semi-steel radial tire single-stage building machine which is a technology with a high barrier of entry.

45 Evidence 24 is an excerpt from Safe-Run's IPO prospectus, to prove that Safe-Run's investment in the R&D of SRS-H building machine was extremely low, in an amount of RMB 5.3 million that was less than the gross profit for selling two prototype

machines in light of the average gross profit margin of SRS-H building machine, which indicates that the authenticity of the R&D process is in doubt.

46 Evidence 25 compares the similarities between Safe-Run's contracts and VMI's contracts, to prove that: Safe-Run not only plagiarized VMI's machines and technology, but also plagiarized VMI's contract for selling the 245-SL building machine to [###]; Safe-Run was likely to have access to the relevant materials of VMI's building machines through [###] or [###].

47 Evidence 26 records the part numbers in the mechanical drawings of VMI's building machines that were also shown in the drawings of Safe-Run's other patents, to prove that Safe-Run plagiarized VMI's 2009 building machine model and directly used VMI's technical drawings for patent application; the part numbers marked in the drawings were identical to the specific building machine models sold by VMI to [###] in 2009, which shows the likelihood that Safe-Run had access to VMI's building machine data through [###] or [###].

48 Evidence 27 is the notarial deed [###] and the identity information of former employees of Safe-Run, to prove that Safe-Run had actually possessed the confidential technical manual provided by VMI to [###], which together with the MAXX technical manual uploaded by Safe-Run corroborates the likelihood that Safe-Run had access to VMI's building machine data through [###].

49 VMI submitted that the appendices to Evidence 1, Evidence 3, Evidence 10, Evidence 11, Evidence 15, and Evidence 19 were confidential evidence, and requested for the same confidential treatment and scope as those in the first instance. VMI consented that, under the direction of this court, only the two authorized attorneys and the expert assistant named LI Zhijun of Safe-Run who have signed the Letter of Confidentiality Undertaking may access the aforesaid confidential evidence at court. Without permission, the confidential information contained in the aforesaid evidence shall not be copied, read, excerpted, tape-recorded or photographed. With regard to Evidence 27 which in VMI's opinion relates to key witnesses, i.e., former employees of Safe-Run, VMI requested for the following treatment when submitting such evidence to this court: **1.** to request this court to issue an injunction against Safe-Run and its attorneys, or to expressly order, that they are prohibited from making any threat, harassment, intimidation, bribery or retaliation against any witnesses mentioned in the Evidence or other relevant person, and that they are prohibited from instigating, ordering, entrusting or hinting any third party to make any threat, harassment, intimidation, bribery or retaliation against such witnesses or other relevant person, and they are prohibited from disclosing to any third party the identity of such witnesses or their connection to this case; **2.** to request this court to adopt confidential treatment for the Evidence, including private cross-examination, and that only the persons who have signed the Letter of Confidentiality Undertaking may access such information, such information shall not be copied, excerpted or photographed, and such persons shall bear corresponding confidentiality obligations.

50 On October 20, 2020, this court organized a pre-trial exchange and cross-examination of Evidence 1-18 adduced by VMI other than the aforesaid confidential evidence. At the public hearing on January 19, 2021, both parties adduced evidence and cross-examined VNI's Supplementary Evidence 19-27. At the hearing, VMI expressly stated that Evidence 25 was not new evidence for the second instance, so this court no longer organized any evidence exchange and cross-examination as to Evidence 25. During the evidence exchange and cross-examination on May 31, 2021, this court organized both parties to cross-examine the appendices to Evidence 1, Evidence 3, Evidence 10, Evidence 11, Evidence 15 and Evidence 19 submitted by VMI as confidential evidence. VMI's authorized attorneys, LIU Yongquan and CHEN Wenxuan, attended this court hearing in person; VMI's expert, WANG Zheng, attended the hearing via the internet; and Safe-Run's authorized attorneys, HE Fang and ZHANG Weiguo, attended the hearing in person and, after signing the Letter of Confidentiality Undertaking, accessed VMI's aforesaid confidential evidence and gave its cross-examination opinions. During the evidence exchange and cross-examination on May 31, 2021, VMI consented to completely disclose the content of Evidence 27. This court informed Safe-Run in the hearing that according to the provisions of Articles 111.1(i) and 111.1(ii) of the PRC Civil Procedure Law (amended in 2017) which was in force at that time, where violence, threat or bribery is applied to prevent a witness from testifying, or where instigation, bribery or threatening of others to commit perjury, or where insult, slander, frame-up, beat or retaliation is taken against any judicial officer, litigant, witness, interpreter, expert witness, inspector or personnel assisting in enforcement, the people's court may impose a fine or detention depending on the seriousness of the circumstances; if a crime is constituted, criminal liabilities shall be investigated in accordance with the law; if an entity commits any of the above conducts, the person-in-charge or the person directly liable may be fined or detained; if a crime is constituted, criminal liabilities shall be investigated in accordance with the law. Following the explanations given by this court, Safe-Run undertook in the hearing that it would not commit any act that would interfere the civil proceedings and would submit its post-trial cross-examination opinion after reading the complete content of Evidence 27.

51 With regard to the Evidence adduced by VMI in the second instance, Safe-Run made its cross-examination opinion as follows:

52 Evidence 1: its authenticity, legality, relevance and purpose of proof are not accepted. The Evidence is originated outside China, it had not been notarized and legalized and was not issued by the Government of the Netherlands. VMI failed to provide the information of "[###]" which provided the Evidence and the identity of its person-in-charge. Therefore, the authenticity of the Evidence is not accepted. Safe-Run had proven that the technical solution of the Patent was independently developed and the related patent application was filed first. Even if VMI could prove that it had completed the R&D of the same technology earlier, the ownership of the Patent is not affected. Therefore, the Evidence is irrelevant to this case. Evidence 2:

its authenticity, legality, relevance and purpose of proof are not accepted. The Evidence is originated outside China to show the identity relationships. It had not been legalized by the Chinese Consulate or Embassy, so its authenticity and legality should not be accepted; the Evidence is written testimony made by the witness, [###], serving as the vice president of global product management of VMI, who had an interest in VMI, so the authenticity of the aforesaid testimony is not accepted. The reasons for not acknowledging the relevance and purpose of proof are the same as those for Evidence 1. Evidence 3 (confidential evidence): its authenticity, legality, relevance and purpose of proof are not accepted. Evidence 4: its authenticity, legality and relevance are not accepted. The Evidence is originated outside China, it had not been notarized and legalized, and the identity of both sender and recipient recorded in the email correspondence were unclear, so its authenticity and legality are not accepted. The reasons for not acknowledging the relevance and purpose of proof are the same as those for Evidence 1. Evidence 5: its legality is recognized, but its authenticity, relevance and purpose of proof are not accepted. Pages 59-62 of the Evidence is not an original copy, so the authenticity of the photocopy is not accepted; the evidence is testimony issued by a witness who did not testify in court, and the witness was employed by a business partner that had close business relationship with VMI and also had an interest in VMI, so the Evidence should not be admitted in lack of other supporting evidence. The reasons for not acknowledging the relevance and purpose of proof are the same as those for Evidence 1. Even if the authenticity of the Evidence is accepted, the Evidence can just prove that VMI's downstream customers generally did not adopt confidential treatment for the MAXX building machine and permitted "continuous shooting" by "film crew". VMI's MAXX building machine technology shall not be deemed as unknown to the public. Evidence 6: its authenticity and legality are accepted, but its relevance and purpose of proof are not accepted. The Evidence cannot prove that Safe-Run improperly obtained the technical solution of the Patent, and cannot prove that the Prior Secret-related Technology asserted by VMI is identical to the technical solution of the Patent, or that the Prior Secret-related Technology was developed by VMI first. Evidence 7: its legality is accepted, but not its authenticity, relevance and purpose of proof. The Evidence is a contract provided by VMI, which had not been notarized and largely redacted, making it impossible to verify its authenticity; moreover, there are contradictions in the content there, for example, the party to the contract was named "VMI Holland BV" and the signatory was "VMI Yantai", not the VMI in concerned (page 121 of the Evidence). The supply contract between VMI and a third party is irrelevant to the finding of facts in this case. Even if the contract between VMI and a third party provided a confidentiality clause, it cannot prove that VMI had actually adopted reasonable confidential treatment for the Prior Secret-related Technology, not to mention proving that Safe-Run was aware of the confidentiality obligation between VMI and relevant companies. Evidence 8: its legality and authenticity are accepted, but not its relevance and purpose of proof. The videos filmed by other building machine manufacturers to promote their products are irrelevant to this case. Evidence 9: its legality is accepted, but not its authenticity, relevance and purpose of proof. The Evidence is a third-party online report that had not be notarized, the source of which cannot be verified as VMI did

not provide the webpage link; the online reports did not mention any confidential treatment or technical secret, they cannot prove that the building machine manufacturers had taken protective measures, and thus are irrelevant to the facts to be proven; even if protection in the form of technical secret is recognized in the industry, it cannot prove that the Prior Secret-related Technology asserted by VMI was a technical secret. Evidence 10 and 11 (confidential evidence): its legality, authenticity, relevance and purpose of proof are not accepted. These two pieces of evidence did not involve any confidential business and technical data, so they could not be deemed as confidential evidence. There is no legal basis for VMI submitted this evidence as confidential evidence just because they did not want to disclose the name of the relevant entities, and thus these two pieces of Evidence shall not be admitted; these two pieces of evidence are not objective as they were the unilateral opinions made by the entities upon entrustment by VMI. Meanwhile, other manufacturers' practices in the industry cannot prove that VMI had protected the relevant intellectual property rights as technical secret. Evidence 12: its legality is accepted, but not its authenticity, relevance and purpose of proof. Relevant news report only reflected the subjective opinion of the individual being interviewed; even if what was said in the interview is true, it cannot prove that the technical solution of VMI's building machines were unknown to the public. Evidence 13 and 14: its legality and authenticity are accepted, but not its relevance and purpose of proof. The patent mentioned was not the Patent in this case, and thus is irrelevant to this case; the application date of the said patent was later than that of the Patent in this case, so it cannot prove that Safe-Run had committed any illegal access activity and it cannot be used to determine the ownership of the Patent. Evidence 15 (confidential evidence): the cross-examination opinion is the same as that for confidential Evidence 10 and 11. Evidence 16: its legality is accepted, but not its authenticity, relevance and purpose of proof. The Evidence was not an original copy, was originated from abroad, and had not been notarized and legalized; the identity of the so-called expert was unknown, and the expert opinion was largely based on estimated data so it is not objective and has technical bias, and is lack of objective analysis and assessment. Evidence 17: its legality and authenticity are accepted, but not its relevance and purpose of proof. It is unjustifiable to deem that Safe-Run had actual access to the technology carried in VMI's EXXIUM building machine solely based on the fact that Safe-Run's SRS-H building machine was placed adjacent to VMI's EXXIUM building machines. The Evidence cannot prove that Safe-Run had the channels or opportunities for access. Evidence 18: its legality, authenticity, relevance and purpose of proof are not accepted. The Evidence was originated outside China that had not been legalized, so the source thereof was unknown. Given that this case shall be governed by the laws of China, the validity of the so-called affidavit made abroad shall be determined in accordance with the laws of China. Evidence 19 (confidential evidence): its authenticity, legality, relevance and purpose of proof are not accepted. The time when the Evidence was formed cannot be determined pursuant to the properties of the video, so it cannot prove that the video was filmed on June 27, 2006; moreover, the video was filmed for the purpose of explaining the technical principles to layman, it was not developed during the R&D process. Evidence 20: the authenticity of the form of the Evidence is

not accepted. The Evidence is a written statement of VMI, and the webpage could not be visited via the link shown in the attached printout; its relevance and purpose of proof are not accepted. The applications for other patents made by members of Safe-Run's R&D team as the inventor are irrelevant to this case. VMI only described the patent applications made by some inventors during a specific time period or made in the name of a specific company, which cannot give a comprehensive view on the R&D capability of the inventors. Evidence 21: its authenticity and legality are accepted, but not its relevance and purpose of proof. The patent mentioned in the judgement is irrelevant to this case and the judgement has not come into force. Since the judgment is erred in finding of facts and application of law, Safe-Run had filed an appeal. Evidence 22: its authenticity, relevance and purpose of proof are not accepted. The Evidence was a unilateral statement of VMI, which is not objective or authentic; this piece of evidence only listed the drawings of the relevant patents, without any evidence that can prove the technical solution of the Patent and the Prior Secret-related Technology are identical, it claimed that QIN Yinfeng as the inventor "plagiarized" VMI's technology, such accusation is untrue; the patent in the Evidence was not the Patent in this case, so the Evidence is irrelevant to this case. Evidence 23: its authenticity and legality are accepted, but not its relevance and purpose of proof. Whether Safe-Run is a family-owned business is irrelevant to this case, not to mention to use this piece of evidence for proving that Safe-Run did not have the R&D capability; on the contrary, the report indicated that the founding team of Safe-Run had successful experience of running overseas businesses. Evidence 24: its authenticity and legality are accepted, but not its relevance and purpose of proof. Safe-Run's investment in the R&D of single-stage building machine was far more than RMB 5.3 million. The amount of RMB 5.3 million recorded in Safe-Run's IPO prospectus only referred to the R&D cost under the administrative expenditure in 2014. It was an accounting result to show a portion of the R&D investment, not including all R&D investment in capitalization. For example, the R&D investment recorded as intangible assets was not included. Evidence 26: its authenticity is not accepted. In terms of form, appendices 2, 5, 6, 7, 9 and 10 of the Evidence are the internal system documents, email correspondence, or the statement drafted by VMI based on its subjective views, and thus were not objective. They had not been notarized, and is not consistent with contents other evidence; in terms of content, there were a lot of subjective views. Therefore, its relevance is not accepted. The patent in the Evidence was not the Patent in this case, and thus is irrelevant to this case. Its purpose of proof is not accepted as the image information in the drawings of Safe-Run's other patents did not necessarily refer to the so-called part number. Evidence 27: the authenticity, legality, relevance and purpose of proof of its content are not recognized. **Firstly**, the sender recorded in the evidence was a former employee having left Safe-Run and had seriously damaged the interests of Safe-Run by engaging in competitive business in the name of Safe-Run. Safe-Run had sent a warning letter against the former employee's behaviour to defraud others by pretending to be Safe-Run's employee. The email presented by the former employee of Safe-Run was formed by forwarding an email from the company email address to the personal email address. Given the conflicts between the witness and Safe-Run, the authenticity of the relevant statements and

alleged email from the witness is in doubt. **Secondly**, the sender, "* *", did not edit the body of the email and signature, nor did the email was extracted from a complete email chain. Instead, the sender emailed a copy of technical material to the personal email address of the witness as a salesperson who in common sense has no need to use such technical material. Therefore, it is very unusual that this employee can provide such an email. Given that the witness did not appear in court for questioning, it is doubtful whether the email sent by "* *" was an act committed by Safe-Run. Even if all the contents of the attachment to such email are true, it was the act of the individual "* *". **Thirdly**, the document titled "14.01.01 VMI MAXX MANUAL [###].pdf" stored in the flash drive was created on August 26, 2016, which was alleged to be sent from"* * @safe-run.cn", but the information in such document was contradictory to the email content. The file name was different from that of the email attachment, i.e., "MANUAL. pdf", and the file size was also different (the email attachment was 38 MB, while the document was 40.2 MB); if the document was not sent from the email address shown in the notarial deed, VMI did not and could not identify the source of the document in their email system, so the information of the document is inconsistent with the email content. Furthermore, the Evidence cannot prove that Safe-Run had access to the Prior Secret-related Technology asserted by VMI. The creation time shown in the file information of the email attachment, i.e., August 26, 2016, was later than the application date of the Patent and even later than the time when Safe-Run completed the independent R&D and delivered the technology disclosure.

53 VMI's response to Safe-Run's cross-examination opinion on Evidence 27 was as follows: **1.** Safe-Run had acknowledged that the email recipient was a former employee of Safe-Run, and Safe-Run failed to prove the former employee committing perjury, so the opinion was only the subjective speculation of Safe-Run. **2.** Safe-Run had acknowledged that the email to which the VMI confidential technical manual recorded in the Evidence was from a Safe-Run work email account, so drafting, editing and sending work-related email is an act of Safe-Run's employees performing their duty, which can be deemed as that the VMI confidential technical manual was in Safe-Run's possession and was disseminated within Safe-Run. **3.** The work email account of Safe-Run was a corporate email account which is capable of running email searching. If Safe-Run believes that the email or the statement was false, it should be in a position to adduce rebuttal evidence. **4**. Since Safe-Run had acknowledged that the sender, recipient and copied persons in the email were all former employees, Safe-Run should be in a position to check with the relevant persons and prove their arguments. **5.** Safe-Run's challenge to file size is unfounded as various operating systems are different in calculating and displaying the file size. The attachment in the online Aliyun email box was 38.38 MB (40246969 bytes) in size, while the attachment downloaded under notarization was "40246969 bytes (40.3 MB on local drive)" as shown in the properties dialog box, which is exactly the same size as the technical manual delivered by VMI to [###]. **6.** Although the email was sent on August 26, 2016, it can be seen from the properties dialog box that the document had been create as early as February 13, 2014, earlier than the application date of the Patent. In view

of the resume and period of employment of [###]'s former employees, Zhang X, Li X Han, Piao X et al., as well as the timeline of VMI selling the building machine and delivering the technical manual to [###], it can be determined that Safe-Run had obtained the technical manual before the application date of the Patent. The testimony of the former employee of Safe-Run also recorded that Safe-Run had obtained the technical manual in 2015 before he joined Safe-Run. Therefore, the Evidence can prove that Safe-Run actually possessed VMI's technical manual, which not only shows the likelihood of access but also Safe-Run's actual access to VMI's technical manual. If Safe-Run asserts that it obtained the technical manual after the application date of the Patent, the burden of proof shall rest on Safe-Run.

54 After this court hearing, VMI submitted the original Capital Contribution Certificate in Evidence 1 in the second instance, the original copy of the notarized affidavit of [###] in Evidence 2, the original copy of the contract in Evidence 7, and the original CD of the video document in Evidence 19. Upon examination and verification by this court, the photocopies of the aforesaid evidence presented by VMI were consistent with the contents of the originals.

55 This court held that: Article 16.1 of the Several Provisions of the Supreme People's Court on Evidence in Civil Procedures ("**SPC Evidence Provisions**") provides that: "Where the documentary evidence provided by a party is formed outside the People's Republic of China, the evidence shall be notarized by a notary office within the country where the evidence is formed, or legalized according to the relevant treaties between the People's Republic of China and the country". The notarized documentary evidence formed abroad stipulated in the above provision includes judgments and rulings rendered by foreign courts, documents issued by foreign administrative authorities, certificates of commercial registration, birth and death, marital status and otherwise issued by foreign public institutions, but excluding the documents issued by foreign appraisal institutes and other private institutions. Article 92(2) of the SPC Evidence Provisions provides that: "Private documentary evidence that is signed, sealed or stamped by the producer or the agent thereof shall be presumed to be authentic." Evidence 1 is the Capital Contribution Certificate issued by [###], and thus is from abroad, but it is not a documentary evidence as provided under Article 16(1) of the SPC Evidence Provisions. Therefore, it is not required to be notarized by a notary offer within the country where the producer is located. Since the Capital Contribution Certificate had been signed and sealed by the producer, in the absence of other counter-evidence to rebut its authenticity, this court admitted the authenticity and legality of the Evidence; the company stated that it was "*authorized to collect information from VMI, assess the correctness of the information, and file an application for government funds with the Ministry of Economic Affairs, Government of the Netherlands*". to the contents of this piece of evidence is relevant to the Prior Secret-related Technology asserted by VMI and thus is relevant to this case. Therefore, the Evidence is admitted. The Evidence submitted by VMI is to prove the R&D process of the Prior Secret-related Technology, and thus has certain probative value. However, the entity issuing the certificate collected and assessed the

relevant information provided by VMI, not directly participating in the R&D process. Therefore, the facts to be proven could be admitted if corroborated by other evidence. Evidence 2: the Evidence includes the notarial deed no. "50909 FW/MvH" issued by the Royal Netherlands Notarial Association, and the affidavit made by [###] under notarization by a notary public under the Dutch civil law. The notarized deed shows: VMI acknowledges that [###] is the Vice President of Global Product Management of VMI and that his affidavit in relation to VMI can be used in the intellectual property litigation involving VMI or other intellectual property enforcement in China [###] worked as the person-in-charge during the R&D of VMI's MAXX and EXXIUM automatic building machines. This court admits the authenticity and legality of the Evidence. Since the content of the Evidence is related to the Prior Secret-related Technology asserted by VMI, the Evidence is relevant to this case and is admitted. The Evidence can prove the R&D process of VMI's Prior Secret-related Technology. However, the affidavit made by [###] as recorded in the Evidence is a "testimony made by a witness having an interest in one party or its agent" as provided under Article 90.3 of the SPC Evidence Provisions, and thus cannot serve alone as the basis for finding the facts of this case. The facts to be proven could be admitted if corroborated by other evidence. Evidence 3 (confidential evidence): the Evidence is one of the ten appendices mentioned in the affidavit recorded in Evidence 2, therefor is admitted for the same reasons as Evidence 2. However, the Evidence cannot serve alone as the basis for finding the facts of this case. The facts to be proven could be admitted if corroborated by other evidence. Evidence 4: the Evidence is a printout of an email with an uncertain source. Its authenticity cannot be confirmed, so it is not admitted. Evidence 5: the Evidence is an affidavit made on October 30, 2018 by [###], which had been legalized by the Embassy of the People's Republic of China in the Netherlands. Its authenticity and legality are accepted. The affidavit records that: "*On May 26, 2010, when I wore my uniform jacket and performed my usual duties at my workstation, the team shooting the following video came to my workstation next to the MAXX building machine ... During the video filming, I was sitting on a chair in front of the MAXX building machine to observe from time to time a colour monitor mounted in the upper corner of the MAXX building machine. The monitor displayed in real time the tire production status. On the bottom of the monitor displayed '[###]', which means 'May 26, 11: 07 am' ... All copies attached to this affidavit are true and correct copies of the original.*" The affidavit was accompanied with a link to the video on Youku.com and two screenshots of the video, but the monitor mentioned in the affidavit could not be seen on the screenshots. The MAXX building machine in the Evidence is related to the carrier of the Prior Secret-related Technology asserted by VMI, so it is certainly relevant to this case and thus is admitted. However, the Evidence is in nature a witness testimony to prove the time when the video uploaded to the video website was filmed. It can prove that VMI had completed the R&D of MAXX building machine at that time if corroborated by other evidence. Evidence 6: since Safe-Run acknowledged the authenticity and legality of the Evidence, this court admits it. The Evidence records the Administrative Complaint filed by Safe-Run with the administrative authorities, a list of evidence submitted in the infringement litigation, a notarial deed, and an infringement analysis table. The rights asserted by

Safe-Run in the aforesaid administrative enforcement and litigation proceedings are based on the Patent, and the alleged infringing products are also the carrier of the Prior Secret-related Technology asserted by VMI in this case, i.e., the MAXX building machine, so it is relevant to this case. Evidence 7: its authenticity and legality are accepted. The Evidence includes the purchase and sale contracts signed by VMI, as the seller, with [###], [###], and [###] respectively, as well as the Bilateral Intellectual Property Protection Agreement between VMI and [###]. The subject matter of the aforesaid purchase and sale contracts included the EXXIUM building machine that carries the Prior Secret-related Technology asserted by VMI in this case. The aforesaid contracts also contained the provisions regarding intellectual property rights. Therefore, the contracts are to prove the confidential treatment adopted for the Prior Secret-related Technology asserted by VMI, and thus are relevant to this case and are admitted. With regard to one of the aforesaid contracts that was signed by "VMI Yantai", rather than VMI, as pointed out by Safe-Run, VMI answered that the signatory shown in the contract was fully authorized to execute the contract on behalf of VMI. This court deems that since VMI was expressly recorded as the seller in the contract, VMI's statement is admitted on the condition that VMI acknowledged that the signatory was authorized to execute the contract. Evidence 8: the Evidence records the relevant online media reports involving the official promotional videos of TST Tianjin Saixiang Technology Co., Ltd. and MESNAC Co., Ltd. Since Safe-Run has acknowledged the legality and authenticity of the Evidence, this court admits the same. However, it is unknown whether the videos filmed by a third party contains any technical secret of the third party, so the Evidence cannot used to show whether VMI had adopted reasonable confidential treatment. Therefore, this court does not admit the relevance of the Evidence. Evidence 9: the Evidence is a webpage printout. Since Safe-Run did not acknowledge the authenticity of the Evidence, this court is unable to verify the authenticity and thus does not admit the Evidence. Evidence 10 (confidential evidence): the Evidence is a written statement issued by the legal representative of a third-party tire manufacturer. The authenticity and legality of the Evidence are accepted. The statement is a witness testimony that has certain probative value, and the content of such statement can be used to show the protection by the tire manufacturer of the intellectual property rights in tire building machines, and thus is relevant to this case to a certain extent and is admitted. Evidence 11 (confidential evidence): the Evidence is a written statement issued by a third-party tire manufacturer, but only affixed with the company seal of the third-party manufacturer, there is no signing date and the identity of the third-party manufacturer is unclear. Since the authenticity of the Evidence in form is hard to be verified, the Evidence is not admitted. Evidence 12: the Evidence includes an interview with XU Wenying, Vice Director and Secretary-general of the China Rubber Industry Association, which was published on the North China Legal News and the North China Legal Online. Upon examination, this court admits the authenticity and legality of the Evidence. During the interview, XU Wenying introduced the intellectual property protection in the tire building machine industry, which to a certain extent reflects the intellectual property protection in the industry, and thus is relevant to this case to a certain extent. Therefore, this court admits the Evidence.

Evidence 13 and 14: since Safe-Run accepted the authenticity and legality of the Evidence, this court admits the Evidence. However, these evidence are not related to the Patent, and thus are not relevant to this case and are not admitted. Evidence 15 (confidential evidence): the Evidence records the Explanation for the R&D Process of Building Machines issued by the general manager of a third-party tire manufacturer. Its authenticity and legality are accepted. Based on its content, the Evidence is to explain the relevant practices of the industry, and thus relevant to the technology R&D process in this case to a certain extent and is admitted. The Evidence can prove the relevant situation of the industry if corroborated by other evidence. Evidence 16: the Evidence records the "Expert Opinions" made by [###]. Its authenticity and legality are accepted for the same reasons as Evidence 1. The Evidence included an assessment of the growth mode of Safe-Run, information on the R&D of full-automatic single-stage semi-steel building machine technology in the industry, and the confidentiality obligation of the building machine buyers to the building machine suppliers. [###]. The opinion given by [###] is a witness testimony in nature. The Evidence can prove the relevant situations in the building machine industry if corroborated by other evidence. Evidence 17: since Safe-Run accepted the authenticity and legality of the Evidence, this court admits the Evidence. The photos in the Evidence were provided by Safe-Run in a separate lawsuit, including the photo of Safe-Run's SRS-H building machine. VMI claimed that Safe-Run's SRS-H building machine and VMI's EXXIUM building machine were placed in the same workshop of [###], and thus the Evidence is relevant to this case and is admitted. Evidence 18: the examination and verification of the evidence including witness testimony in this case shall be governed by the laws and judicial interpretations of China. Therefore, the Evidence is irrelevant to this case and is not admitted. Evidence 19 (confidential evidence): its authenticity and legality are accepted. The Evidence is a 50-second simulation video of building machine, and the statement in the end showed that the video was produced on June 27, 2006 and contained VMI's confidential information, for internal use only. Upon examination of the properties of such video saved in the original CD from VMI, the video file is 10.4MB in size and was modified at the time of "2006/06/27 20: 58: 40". The video content recorded in the Evidence is relevant to the Prior Secret-related Technology asserted by VMI, and thus is admitted. Evidence 20: the authenticity of the webpage printout attached to the Evidence cannot be verified, and thus is not admitted. Evidence 21: its authenticity and legality are accepted. The Evidence is relevant to the facts of this case to a certain extent, and thus is admitted. However, the judgment has not yet come into force, so the relevant finding of facts in the judgment is still required to be proved in this case. Evidence 22: the Evidence records an analysis table prepared by the VMI, comparing the drawings of the two patents in which QIN Yinfeng was recorded as one of the inventors with the drawings of the carrier of the Prior Secret-related Technology asserted by the VMI. Given that the two patents are irrelevant to this case, whether the Patent in this case is identical or substantially identical to the Prior Secret-related Technology asserted by the VMI shall be based on the comparison result, this piece of evidence also failed to reflect the R&D capability of QIN Yinfeng and thus is not admitted. Evidence 23 and 24: since Safe-Run accepted the authenticity and legality of the evidence, this

court admits the same. The Evidence records the relevant public reports, company registration information and IPO prospectus of Safe-Run, and thus are relevant to this case and are admitted. Evidence 26: the patent of Safe-Run recorded in the Evidence was not the Patent in this case, and the building machine of VMI recorded therein was not the carrier of the Prior Secret-related Technology in this case. Therefore, the Evidence is irrelevant to this case and is not admitted. Evidence 27: the Evidence includes notarial deeds recording the enquiry by LIU Yongquan, authorized attorney of VMI, of a former employee of Safe-Run who was not a party in this case, the relevant transcript, the process of searching and downloading of relevant emails, and the identity information of the former employee and two other former employees. This court admits the authenticity and legality of the three notarial deeds. Since Safe-Run acknowledged that the person involved was their former employee, this court admits the authenticity and legality of another statement regarding the identity information of this former employee. The Evidence involves whether Safe-Run had access to the Prior Secret-related Technology asserted by VMI, and thus is relevant to this case and is admitted. As for the authenticity of the testimony and emails in the notarial deeds, this court will make further comments below.

(II) Relevant evidence adduced by Safe-Run

56 To support its opinion, Safe-Run adduced 38 pieces of evidence to this court as follows:

57 The first group includes evidence 1-4: Evidence 1 is the oral hearing record of a patent invalidation procedure with a case number of 5W111596. Evidence 2 is the prior art documents provided by VMI for patent invalidation during the patent invalidation procedure with a case number of 5W111596. Evidence 3 is the administrative complaint filed by VMI following the patent invalidation procedure. Evidence 4 is the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7395. This group of evidence are to prove that VMI's EXXIUM and MAXX building machines carrying technical secrets were the building machine models widely available in the market .h The machines and corresponding technical materials constitute prior use and could not be the carriers of technical secret. The Prior Secret-related Technology asserted by VMI is not secretive. During the invalidation procedure and administrative litigation initiated by VMI against Safe-Run in respect of other patents, VMI had acknowledged that sale of VMI's building machines constitute prior public use, and used the technical solution of the building machine sold by VMI as prior art to prove that Safe-Run's patent lacks novelty; VMI's 248-SL building machine was shown in the photo published in the relevant report dated October 20, 2016.

58 The second group includes Evidence 5-7: Evidence 5 is the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7392. Evidence 6 is the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7393. Evidence 7 is the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7394. This group of evidence are to prove that: no confidential treatment had been adopted for the EXXIUM and MAXX building machines sold by VMI in China;

tire manufacturers had taken and disseminated a large number of videos and photos of VMI's building machines, so VMI's assertions that strict confidential treatment had been adopted for its building machines and that the relevant technical solution constitutes prior technical secret are unfounded. For example, a third party, [###] filmed the video of VMI's EXXIUM building machine for publicity purpose and uploaded such video to Youku in 2014; the running process of VMI's MAXX building machine had been filmed and uploaded to Youku in 2015; the EXXIUM building machine had been filmed and uploaded to Tencent Video in 2016.

59 On October 30, 2020, Safe-Run submitted Supplemental Evidence 8: the administrative judgment (2018) Jing 73 Xing Chu No. 161 to prove that the Prior Secret-related Technology asserted by VMI is not secretive and thus does not constitute a technical secret.

60 On December 29, 2020, Safe-Run submitted Supplemental Evidence 9-10: the sales contracts of single-stage building machines signed by Safe-Run in 2012 and 2013, to prove that Safe-Run at least had started the R&D of the technology relating to semi-steel single-stage building machine in 2012 and had gained extensive experience in the field of semi-steel single-stage building machine before the project approval of the technology involved, so Safe-Run was capable of independently completing the R&D of the technical solution of the Patent in a short period of time.

61 On May 14, 2021, Safe-Run submitted the List of Supplemental Evidence (III) and Evidence 11-16 to this court. Safe-Run acknowledged that only Evidence 14 was supplemental evidence whereas all other evidence had been submitted before. Evidence 14 is the presentation provided by VMI in case (2018) Jing 73 Xing Chu No. 161, to prove that the relevant building machines of VMI once sold had been made public, and thus the Prior Secret-related Technology asserted by VMI in this case did not constitute a technical secret.

62 On May 31, 2021, Safe-Run submitted the List of Supplemental Evidence (IV) and Evidence 17-38, and also submitted the corresponding certificate of trusted timestamping authentication. Evidence 17 records a paper titled "Factors of VMI Four-drum Building Machine Affecting the Accuracy of Fixed Length of 0° Belt Ply and Solutions", published by employees of Guizhou Tire Co., Ltd. on February 20, 2020; Evidence 18 records a paper titled "Modification of the Carcass Opening and Closing Structure in VMI's Building Machines", published by employees of Guizhou Tire Co., Ltd. on August 10, 2015; Evidence 19 records a paper titled "Modification of the Guiding Device of the Wire Clamping Arm on the Transfer Ring in VMI Radial Truck Tire Single-stage Building Machine", published by employees of Guizhou Tire Co., Ltd. on May 10, 2013; Evidence 20 records a paper titled "Debugging and Application of VMI VAST4 Building Machine", published by employees of Guizhou Tire Co., Ltd. on March 10, 2005; Evidence 21 is a utility model patent CN203901749U as granted, with an applicant of Guizhou Tire Co., Ltd., an application date of June 10, 2014, and a patent title of "Optimized Structure of the

Belt Ply Fitting to the Drum in VMI Building Machines"; Evidence 22 is a utility model patent CN203557725U as granted, with an applicant of Guizhou Tire Co., Ltd., an application date of April 23, 2014, and a patent title of "Improved Carcass Opening and Closing Structure in VMI Building Machines"; Evidence 23 records a paper titled "Feasibility Analysis of Replacing the Mechanical Drum with the Bladder Drum in VMI Four-Drum Building Machines", published by employees of Hangzhou Chaoyang Rubber Co., Ltd. on August 1, 2014; Evidence 24 is a paper titled "The Feasibility Analysis of Changing the Drum of VMI Series Four Drum Forming Machine to Bladder Drum", published by employees of Hangzhou Chaoyang Rubber Co., Ltd. on December 15, 2013; Evidence 25 is a paper titled "Improvement of Tire Performance with VMI Radial Tire Single-stage Building Machines", published by employees of [###]. on March 10, 2014; Evidence 26 records a paper titled "Management and Maintenance of Tire Building Machines", published by employees of Prinx Chengshan (Shandong) Tire Co., Ltd. on February 1, 2017; Evidence 27 is a document titled "Modification of Rear Pressure Rollers in VMI Building Machines"; Evidence 28 is a news report titled "Kenda Rubber Invests RMB 35 Million in Building Machine Automatization", published on CNRC's website on April 25, 2008. The above Evidence 17-28 are to prove that the so-called confidential treatment of VMI could not prevent general tyre manufacturers from obtaining the relevant technology through reverse engineering and making such technology public. It was a common, long-lasted and well-known practice in the industry that VMI's building machines were dismantled, analysed and reassembled by tire manufacturers. Therefore, VMI did not adopt reasonable confidential treatment to protect the technical solution of the building machines it sold. Conclusion of non-disclosure agreements did not constitute the confidential treatment, nor did it reflect the willingness to keep the technology confidential. It is a common, long-lasted and well known practice that the tire manufacturers has studied and modified VMI's building machine for many years, but VMI has never asserted against these tire manufacturers for misappropriation of its trade secret or breached the obligation of confidentiality. VMI failed to adopt confidential treatment to protect its building machine technology. Evidence 29 records the bidding information of the "Bidding for the Upgrading and Modification of VMI's All-steel Three-drum Building Machine" issued by Prinx Chengshan (Shandong) Tire Co., Ltd. on April 17, 2019; Evidence 30 records the bidding information of the "Bidding for the Modification of Weighing Device in Building Machines" issued by Prinx Chengshan (Shandong) Tire Co., Ltd. on October 13, 2020; Evidence 31 records the "Bidding Announcement (Thailand, Rongcheng VMI Basic Tooling)" issued by Prinx Chengshan (Shandong) Tire Co., Ltd. on February 26, 2021, published on the "Tianyancha" website; Evidence 32 records the bidding announcement about the "Vietnam Project of Advance Tire (Vietnam) Co., Ltd. - 3D Winding Device for Heavy Truck Radial Tire Building Machine" issued by Guizhou Tire Co., Ltd. on May 27, 2021; Evidence 33 records the bidding announcement about the "Procurement Project for the Upgrading and Modification of BT Automation of Single-stage Building Machine" issued by Zaozhuang Mining (Group) Co., Ltd. on March 15, 2021; Evidence 34 records the project announcement about the "Modification of Electrical Control System for VMI Four-drum Building Machines";

Evidence 35 records the sales webpages of Wuxi Tianmao Rubber Roll Co., Ltd. on the Alibaba website (1688.com). The above Evidence 29-35 are to prove that users of VMI building machines invited the public to access and modify VMI building machines by means of public tendering and procurement, and thus VMI did not adopt reasonable confidential treatment. Evidence 36 records the announcement about "Transfer of two semi-steel radial tire building machines" published on the equipment trading platform "Second-hand Exchanges" on November 28, 2019; Evidence 37 records the "Announcement of Huanan Tire Company about Transfer of 327 sets of Production Equipment" published on www.cria.org.cn on April 14, 2021; Evidence 38 records a paper titled "Big News! [###]Group was acquired at a price of RMB 1.1 billion! A New Tire Giants in China!", published on NetEase. The above Evidence 36-38 are to prove that there is a second-hand transaction market where tire building machines are traded for asset replacement and second-hand transfer, and thus VMI's statement that there is no second-hand market for its building machines is inconsistent with the facts.

63 VMI submitted cross-examination opinions as follows:

64 Evidence 1-3: VMI agreed the authenticity and legitimacy of the evidence, but disagreed the relevance and the purpose of proof. **Firstly**, the evidence in the invalidation case No. 5W111596 and the subsequent administrative litigation relates to VMI's 248-SL tire building machine, which is different from the carriers of the technical secret in this case, that is, the MAXX and EXXIUM building machines. Moreover, the 248-SL machines were sold in about 2005, far earlier than the R&D time of the Prior Secret-related Technology asserted by VMI, therefore, this early model tire building machine is irrelevant to this case. **Secondly**, the technology in the invalidation case is "composite laminate device", which is different from the technical solution of the Patent. Moreover, the disclosure by utilization asserted by VMI in such invalidation case is that the photograph of the device has been shown in the brochure of 248-SL tire building machine in detail. VMI did not assert or acknowledge that the technical solution of the building machine constitutes prior art. **Thirdly**, public sale of the machine does not contradict to adopt confidential measures, and VMI adopted confidential measures when selling the machine, which was consistent with industry practice. Evidence 4: VMI agreed the authenticity and legitimacy of the evidence in form, but disagreed the authenticity and relevance of its content, and the purpose of proof. Based on the same cross-examination opinions as provided against Evidence 1-3, the 248-SL tire building machine in this evidence is not the same model as the carriers of the Prior Secret-related Technology, and the technical solutions and sales models are also different and are not comparable. Moreover, VMI has taken reasonable confidentiality measures. In addition, the photograph in the news report was only a static blurry photograph from the front side of the building machine, and failed to disclose any technical detail. The content of the news report was also only a brief description of the manufacturing process, without disclosing any specific structure or construction of the machine and failed to reflect

the specific technical solution. Evidence 5-7: VMI agreed the authenticity of the evidence in form, but disagreed the authenticity, legitimacy, and relevance of its content, and the purpose of proof. The identity of the video uploader is unclear, the source is unknown, the authenticity of the content is therefore in doubt. Moreover, the promotional video that featuring machines manufactured by tire factories is only available to specific users and will not be disclosed on the internet without the permission of the machine supplier, so its legitimacy is in doubt. In particular, only the title of the video recorded in the notarial certificate (2020) Hu Dong Zheng Jing Zi No. 7393 mentioned "MAXX", while the model was not shown in the video, it is impossible to identify whether it is the building machine manufactured by VMI, and therefore, it is irrelevant to this case. Furthermore, there is no conflict between the sale behaviour and the adoption of confidentiality measures, so this evidence cannot be used to prove that VMI did not take confidentiality measures. Evidence 8: VIM agreed the authenticity and legitimacy of the evidence, but disagreed the relevance. **Firstly**, the judgment relates to VMI's 248 building machine, which is different from the carriers of the Prior Technical Secret in this case, therefore, the judgment is irrelevant to this case. **Secondly**, the judgment has not yet come into force, and the judgment recognized that the extraterritorial evidence had been notarised and legalised, the content thereof corroborated with each other. Its authenticity, legitimacy and relevance should not be negated just because formality defects. The judgment further found that CNIPA had erred in not admitting such evidence in the invalidation proceeding. The judgment did not determine that the sale would lead to disclose. Therefore, the evidence cannot fulfil the purpose of proof asserted by Safe-Run. Evidence 9 and 10: VMI disagreed the authenticity, relevance and the purpose of proof. **(1)** Regarding authenticity: The subject matters of these two contracts are respectively the "1420 Semi-Steel Single-Stage Tire Building Machine" and the "Single-Stage Tire Building Machines" with three sizes, signed on April 5, 2012, and December 21, 2013. However, the listing prospectus of Safe-Run Group Holdings Limited records that the semi-steel radial tire single-stage tire building machine first launched by Safe-Run in April 2012 was the model "SRS-M" only, without any other models, so the authenticity of the evidence is challenged. **(2)** Regarding relevance and the purpose of proof: First, Safe-Run provided only a few pages of contract but did not provide the machine agreement or technology agreement which are clearly indicated in the contract, it is impossible to determine the technical contents of the subject matter of the contract, therefore, it is impossible to prove Safe-Run's R&D capability; the subject matter of the contract is ambiguous, it is impossible to determine whether the contract is effective or not, nor can it determine whether the subject matter of the contract has been delivered. Furthermore, the listing prospectus of Safe-Run Group Holdings Limited never mentioned "Shandong Hengyu" or "Shandong Haohua" as its customers, so there is reason to suspect that the contract is forged, and the product has never been actually delivered. Even if Safe-Run manufactured and sold the product, it cannot prove its R&D capability. Second, the Patent was first used on Safe-Run's SRS-H tire building machine, and not on the so-called old-model PCR. Therefore, the contract signed by Safe-Run and its customer cannot prove the specific technical contents of the tire building machine. Moreover,

the technology of semi-steel single-stage tire building machine in the said contract is not equivalent to the one of fully automatic semi-steel single-stage building machine, so it is irrelevant to this case. Third, according to Safe-Run's assertion on the R&D process, the project was initiated in January 2014, the technical R&D was completed in May of the same year, and the Patent was filed in November. However, the signing date of the two contracts and the delivery date of the products are from October 2012 to June 2014, long before the date on which the R&D of the Patent was completed and its possible application to the product, therefore, it is obvious that neither of the two contracts relate to the technology of the Patent and are irrelevant to this case. In addition, the contract in Evidence 9 is highly similar to the contract VMI signed with [###] in 2009 on the 245-SL tire building machine, the overall structure and the order of clauses of which are identical, the technical details such as "five tons (inclusive) or more than nine meters in length" are also the same, which proves that Safe-Run had access to and obtained the complete technical documents and transaction documents on VMI's 245-SL tire building machine before April 2012 via [###]. Evidence 14: This evidence is irrelevant to this case. The technology and the model of the tire building machine asserted by VMI in the case (2021) Jing 73 Xing Chu No. 161 are completely different from those asserted in this case, and the prior art asserted in that case is the brochure of the tire building machine. The cross-examination opinions are the same as the ones against Evidence 1-4 and Evidence 8. Evidence 17 - 28: VMI agreed the authenticity and legitimacy in form, but disagreed the relevance and purpose of proof. The evidence does not relate to the alleged semi-steel single-stage tire building machine or the concerned technology, which is irrelevant to this case, nor is it relevant to whether VMI adopted confidentiality measures for the Prior Secret-related Technology. Evidence 17, 20, 25, 26, and 28 are general descriptions of the function, maintenance, daily management, and operation steps of the relevant machines, which do not involve any specific technical content or involve or disclose any technical solution relating to this case; Evidence 19 and 27 concern only alteration of basic components, which relate to simple technical problems or defects, but no technical secret of VMI is involved. Specifically, there is only one record in relation to VMI's machine, i.e., "VMI tire building machine with 0° belt ply adopts automatic length fixing and cutting", which relates to the basic functions of the cutting machine, the specific structure of the machine has not been disclosed, nor has any technical information of VMI been disclosed; Evidence 18 only includes the schematic diagram and contour photo of the structure of the expanding and shrinking device before the reformation, and does not disclose any confidential technical information or the specific structure of the machine; the "Tire body drum expanding and shrinking device of the tire building machine" is a commonly-used device, which has been protected through fling the patent application, and it only relates to the improvement of the commonly-used technology rather than the improvement of the technical functions of the tire building machine; Evidence 19 relates to the "transfer ring steel-wire-ring gripper guide device of VMI's radial tire single-stage building machine". The truck tire building machine and the semi-steel tire building machine in this case are different products, and the steel-wire-ring gripper guide device is also irrelevant to the technology in this case; VMI has

protected the steel-wire-ring gripper technology by means of filing for patent. The article only includes blurry photos of the base of the transfer ring before the reconstruction, and the text only relates to that "the guidance and positioning are realized by the cooperation of four outer ring guide bearings with V-grooves and V-shaped guide rails", without disclosing any confidential technical information and the specific structure of the machine; Evidence 20 also relates to a "VMI four-drum tire building machine", only relates to the commissioning and application of the machine, does not relate to the product structure, and no technical information has been disclosed; Evidence 21 and 22 are utility model patents on the belt drum and the carcass drum respectively, and the belt drum and the carcass drum are replaceable workpieces. For the commonly used belt drum and carcass drum technology, VMI has applied for patent protection, and the relevant patents have been granted or expired, therefore, the information of the commonly used belt drum and carcass drum of VMI disclosed in Evidence 21 and 22 is not technical secret, and it is irrelevant to whether VMI has taken confidentiality measures; the opinions against Evidence 23 and 24 are the same as above; Evidence 25 is an overview of the process flow and performance of the tire building machine, the so-called "process parameters" disclosed include tire dimensions, air pressure, machine voltage, process accuracy, and et al, all of which are standard parameters of the tire building machine, and do not involve the technical information or secrets of VMI, do not involve the specific structure of the machine, and no confidential technical information has been disclosed; Evidence 26 is the management and maintenance of the 242 tire building machine, and does not involve the specific structure of the machine, and two drawings in the "Technical Manual of the 242 Tire Building Machine" are cited, in which Fig. 1 was blurred out, and no technical details are disclosed, and Fig. 2 is a top view of the layout, and no technical information has been disclosed; Evidence 27 is the distance change of the rear pressure roll of the peripheral components of the building machine, which is not technical secret and it is irrelevant to whether VMI has taken confidentiality measures on the Prior Secret-related Technology asserted by VMI; Evidence 28 is the news of reconstruction investment, and no technical information has been disclosed. Evidence 29-35: **(1)** Regarding the authenticity and legitimacy. Evidence 29 and 30: because the timestamp certificate only involves the webpage evidence preservation, the authenticity and legitimacy of the webpage is agreed in form; however, Safe-Run did not provide the timestamp certificate for the attachments "Bidding Documents" and "Technical Requirements" of the webpage, the authenticity and legitimacy of which are not agreed. The authenticity and legitimacy of Evidence 31, 32, 34, and 35 in the form are agreed. Safe-Run did not provide a timestamp certificate of Evidence 33 and thus its authenticity and legitimacy are not agreed. Further, Evidence 31 mechanical drawing attached to the alleged bidding project (tooling) is marked with VMI's trademark and trade name, and that "the drawing is the exclusive property of VMI and shall not be reconstructed, reproduced, or disposed without written approval", Safe-Run's duplication of drawings and submission of them as evidence constituted a violation of VMI's confidentiality requirements, and therefore lack of legitimacy; Evidence 35 is the website of Alibaba.com, which provides "Manufacturers custom-made sponge rolls for VMI building machines", with buttons

for prices, specifications and "order immediately", which not only used VMI's trademark and trade name without authorization, but also constituted customizing and selling of counterfeit products. It is illegal. **(2)** The relevance of Evidence 29-35 is not agreed. **Firstly**, the publication date of Evidence 29-33 is later than the filing date of the Patent, while Evidence 34 and 35 do not show any date. **Secondly**, Evidence 29-35 do not involve the MAXX and EXXIUM models in this case, and Evidence 29-33 do not even relate to the higher-level semi-steel single-stage tire building machine or the Prior Secret-related Technology, let alone that the reasonable confidentiality measures taken by VMI to the Prior Secret-related Technology cannot be negated. Specifically, Evidence 29 relates to the all-steel three-drum tire building machine, which has nothing to do with the semi-steel two-drum tire building machine in the case, the bidding project only involves the electrical control system, which has nothing to do with the concerned technology in this case; Evidence 30 relates to the tire weighing device, which is used to weigh the tires produced by the tire building machine at the output port, wherein the "technical requirements" only relate to the tire transfer device at the output port of the tire building machine, and do not relate to the technology of the tire building machine itself, and do not relate to the mechanical structure of the tire building machine; Evidence 31 relates to the "foundation tooling" processing, which is specified on the drawings as "foundation frame", which is the bottom frame that the tire manufacturer needs to lay on the ground in advance for the assembly of the tire building machine, and does not relate to the technical solution of the tire building machine itself; Evidence 32 relates to the 3D winding machine, "VMI" is not mentioned throughout the description of the bidding project, therefore it has nothing to do with VMI. The 3D winding machine is used for material unwinding and winding, and it belongs to a different production stage machine from the building machine. It does not involve the technology of the tire building machine itself and does not relate to the mechanical structure of the tire building machine; Evidence 33 relates to the tire building machine, but there is no attachment to the bidding documents, and no technical information has been provided; in Evidence 34, the identity of the alleged third-party service provider is unknown. No team name or contact information has been provided, and the service description does not relate to any technical information; and Evidence 35 relates to the illegal sale of counterfeit sponge rollers, which is irrelevant to the concerned technology. **(3)** The purpose of proof of Evidence 29-35 is not agreed. It is a normal business arrangement for the right holder to take different confidentiality measures and confidentiality degree for different technologies. There is no evidence in Evidence 29-35 pointing to the model of tire building machine in this case, and the purpose of proof asserted by Safe-Run is unfounded. Evidence 29-33 are all bidding projects, and the bidder is also required to comply with the confidentiality requirements of the bidding party and shall comply with the obligation to keep confidential the technical secret of the bidding party accessed during the service period, for example, the bidding document on page 662 of Evidence 29 specifies that "The bidder must unconditionally sign and agree to the attached Letter of Confidentiality Undertaking, see annex", and the bidding document on page 675 of Evidence 30 specifies that "Any technical information and drawings provided to the requesting party shall not be

disseminated to any third party; the supplying party's construction personnel shall abide by the rules and regulations of the requesting party and the factory rules during the period of commissioning", so it is not an invitation of the general public to provide VMI tire building machine reconstruction and upgrading services on site as asserted by Safe-Run. Since the bidder (especially the bid winner) has the confidentiality obligation, the access under the confidentiality obligation will not lead to the disclosure of technical secrets, nor could it prove that VMI failed to take reasonable confidentiality measures. The evidence provided by Safe-Run could not prove that "there were third-party enterprises specialized in providing VMI tire building machine upgrading service", as VMI did not authorize such services, any technical secret disclosure under this premise will also constitute infringement. The provider of such services shall also be obligated to sign a confidentiality undertaking with the tire manufacturer (the requesting party) and assume the confidentiality obligation. Evidence 36-38: **(1)** VMI disagreed the authenticity and legitimacy of the evidence. The authenticity and legitimacy of Evidence 36 and 37 are agreed in form, but the relevance and purpose of proof are not agreed. The screenshot attachment in timestamp certificate in Evidence 38 could not be opened, and its authenticity and legitimacy could not be verified. **(2)** The relevance is not agreed. The publication dates of Evidence 36-38 are all later than the filing date of the Patent. The subject matter of the transfer in Evidence 36 is the tire building machine manufactured by "Qingdao MESNAC", which is irrelevant to whether VMI took reasonable confidentiality measures. This single transfer advertisement from an unknown source cannot prove the existence of a large number of free circulations of second-hand tire building machines as asserted by Safe-Run; the list of objects to be transferred in Evidence 37 does not include VMI's tire building machine, it has nothing to do with whether VMI has taken reasonable confidentiality measures. The machinery listed are not tire building machines, and it cannot prove the existence of a transfer market for tire building machines; Evidence 38 is the news published on May 15, 2021, which records that Wuchan Zhongda Group Co plans to invest in and acquire the bankrupted and restructured [###] Group and [###]. At that time, the acquisition project had not commenced, the ownership of the machines had not been transferred, and the right of first refusal clause between VMI and [###] had not been triggered. Therefore, it failed to prove that VMI had not exercised the right of first refusal. Moreover, the acquisition project is to 13 companies under the "[###] Group's affiliates", only the ownership of shareholdings changes, not involving the changes of the ownership of assets. After restructuring, only the control right of the company changes, and the ownership of the machine will not be affected. After the acquisition is completed, the rights and obligations of [###] Group will be directly succeeded by the new company. The acquisition shall not involve the sale and market circulation of the tire building machine, and therefore the right of first refusal is also irrelevant. The confidentiality obligations and the right of first refusal originally binding the tire manufacturers shall remain in force and shall not be deprived with the transfer of the control right of the company. Certain affiliate under Wuchan Zhongda Group Co is also VMI's customer. Even after the completion of the acquisition, the tire building machine will be owned by certain entity under the Wuchan Zhongda Group Co, in fact,

it does not involve the disclosure of technology, nor it will lead to the circulation of tire building machines in the market. **(3)** The purpose of proof is not agreed. Evidence 36-38 are only sporadic, occasional, unidentified and blurred internet posts or reports, which cannot prove that a large number of second-hand tire building machines are in free circulation.

65 This court found that: Evidence 1-4: the authenticity and legitimacy are agreed but the relevance and purpose of proof are disagreed. **Firstly**, the tire building machines in these four pieces of evidence are not the carriers of the Prior Secret-related Technology asserted by VMI in this case, and are irrelevant to this case. **Secondly**, there is no evidence proving that the 248-SL tire building machine bears the same technical information as the Prior Secret-related Technology asserted by VMI in this case, so whether the technical information borne on the 248-SL model was disclosed is irrelevant to this case. **Finally**, the reference document that destroyed the novelty as asserted by VMI in the invalidation proceeding is the relevant manual of VMI's 248-SL machine, which is a different carrier compared with the one of the technical secret asserted in this case, the technical solutions involved are also different. Therefore, whether the 248-SL machine manual constitutes the prior art of the Patent in above invalidation proceeding and whether it has disclosed the relevant technical solution is irrelevant to whether the Prior Secret-related Technology asserted by VMI is known to the public. Therefore, Evidence 1-4 is not accepted. Evidence 5-7: these three pieces of evidence are the notarization made for relevant videos on websites. The authenticity and legitimacy of such videos are accepted. In particular, in Evidence 5, the words "VMI EXXIUM" could be clearly seen on the machine shown in the video screenshots in the notarial certificate (2020) Hu Dong Zheng Jing Zi No. 7392, which was the same as the carrier of the Prior Secret-related Technology asserted by VMI in this case. It was related to this case and should be admitted. In Evidence 6, the notarial certificate (2020) Hu Dong Zheng Jing Zi No. 7393, only the title of the website video shows "VMI MAXX tire building", it is unable to confirm whether the machine shown in the video is the carrier of the Prior Secret-related Technology of VMI in this case. Under the objection of VMI, this court will refrain from confirming this. The evidence is insufficient to reflect its relevance to this case and is therefore not admitted. Evidence 7, the notarial certificate (2020) Hu Dong Zheng Jing Zi No. 7394, is accepted based on the same reasons as Evidence 5. Evidence 8: the court agreed its authenticity and legitimacy, but disagreed its relevance and purpose of proof. The reference documents that used to destroy novelty involved in the judgment are VMI's 248-SL per se and its manual copy, which are different from the carriers of the Prior Secret-related Technology asserted by VMI in this case. Therefore, Evidence 8 is dismissed on the basis of the same opinions as Evidence 1-4. Evidence 9 and 10: The two contracts are photocopies, dated April 25, 2012, and December 21, 2013, respectively. The subject matters of the contracts are "1420 Semi-Steel Single-Stage Tire Building Machine" and the "Single-Stage Tire Building Machines" with three sizes, respectively. In the absence of other evidence on delivery or other technical materials to corroborate, only two photocopies of the contracts are insufficient to form a complete chain of evidence to prove that Safe-Run

has mastered the technology of the semi-steel single-stage tire building machine at this time. And Safe-Run did not submit evidence to prove the technical solutions of the tire building machine involved in the two contracts. This court has no way to determine the specific technical solutions of the tire building machines involved in the two contracts, nor can this court determine whether the technical solutions borne on them are substantially related to the technical solutions of the Patent. Therefore, it is difficult to prove the R&D capacity of Safe-Run on the concerned patented technology only by these two contracts. The two pieces of evidence are not accepted. Evidence 14: based on the same opinions as Evidence 1-4 and Evidence 8, the evidence is not accepted. Evidence 29-35: (1) the authenticity and legitimacy of Evidence 29-32, 34 and 35 are accepted. Safe-Run did not submit the timestamp certificate of Evidence 33 and therefore its authenticity is not accepted. (2) Evidence 29-35 do not relate to the concerned technology in this case, or the carriers of the Prior Secret-related Technology asserted by VMI in this case, that is, MAXX or EXXIUM tire building machine. Therefore, the relevance of the evidence is not accepted. Specifically, the tire building machine model involved in Evidence 29 is "VMI VAST3", and only relates to the electrical control system; the tire building model involved in Evidence 30 is "VMI242/245", and the reconstruction relates to the addition of a weighing device and the reading of the weight of tire rough; Evidence 31 relates only to the foundation tooling, not the technical solution of the tire building machine; Evidence 32 does not appear to be related to VMI; the tire building machine model involved in Evidence 33 is "VMI245 Single-Stage Tire Building Machine", with no other technical information provided; Evidence 34 failed to disclose any technical information, so it is unable to see whether it is related to the concerned technology; Evidence 35 is the "Custom-made Sponge Aaron Sanding Machine Sponge Wheel for VMI Tire Building Machine" released by Wuxi Tianmao Rubber Roller Co., Ltd. on Alibaba.com. No specific technical information has been disclosed, and it is unable to see whether it is related to the concerned technology. **(3)** The purpose of proof of Evidence 29-35 asserted by Safe-Run is not agreed. **Firstly**, none of the above evidence relates to the technical solution of the Patent, or the Prior Secret-related Technology asserted by VMI, so the above evidence cannot prove whether VMI had taken confidentiality measures for the Prior Secret-related Technology. **Secondly**, the above evidence is only the bidding information released by the tire manufacturer or the user of the tire building machine for proposal to carry out partial reconstruction of relevant machine or infrastructure construction, which cannot prove the factum probandum that person in relevant fields can obtain VMI's relevant technical materials only by purchasing the bidding documents or contacting the bidding company as asserted by Safe-Run. In addition, Evidence 29 and 30 have explicitly stipulated the confidentiality obligations that bidders should have in the specific bidding content involved. To sum up, Evidence 29-35 are not accepted. Evidence 36-38: the authenticity and legitimacy of the evidence are accepted. Evidence 36 is the transfer information of semi-steel radial tire two-stage tire building machine released on November 18, 2019. The brand model is Qingdao MESNAC. The evidence can be used to prove the circulation of tire building machines, and thus is accepted. Evidence 37 is the "Announcement on the Transfer of 327 Sets of Manufacturing Machines of

South China Tire Company" posted on the China Rubber Web. It can be seen from the Announcement that it does not relate to the tire building machines, and is irrelevant to this case, and thus the evidence is not admitted. Evidence 38 is the news report regarding the external investment announcement released by Wuchan Zhongda Group Co, in which the target companies to be acquired include [###]Group and [###]. However, the news report did not reflect VMI's excise of its right of first refusal to the tire building machines of relevant companies, and therefore the evidence is not accepted.

66 During the trial of second instance, VMI asserted that the process of notarizing the technical manual of VMI from the "360 Personal Library" website in another infringement lawsuit filed by Safe-Run against VMI based on the Patent could prove that Safe-Run possesses and is familiar with the technical manual of VMI's building machine. VMI further asserted that the said technical manual was actually uploaded by Safe-Run for the purpose of filing an infringement lawsuit with the following main reasons: **1.** It can be seen from the process of notarization that Safe-Run possessed and was familiar with the technical manual. The screenshots of the notarization by Safe-Run involved three documents on the website, which were named "VMI MAXX 1 (3)", "VMI MAXX 2 (3)", and "VMI MAXX 3 (3)" respectively. The screenshots of the notarial certificate showed that the three documents were viewed 13 times, 6 times and 1 time, and downloaded 1 time, 0 time and 1 time, respectively, at the time of notarization. The three documents had a total of more than 1,000 pages, which were not read and downloaded much. The second document was downloaded 0 time. However, the relevant personnel of Safe-Run could locate the relevant technical solutions to be preserved by searching the page numbers of the documents during the notarization, which is sufficient to prove that Safe-Run actually held the said technical manual and was familiar with its content before the notarization. **2.** From the timeline of Safe-Run's assertion of rights relied on the Patent and the timeline of uploading of the above documents by the users of the 360 Personal Library website, it is highly likely that Safe-Run uploaded the technical manual by itself. On May 15, 2018, Safe-Run signed on the Administrative Complaint regarding the handling of the infringement of the Patent, and on the same day, the uploader signed up on the 360 Personal Library website; on May 20, Safe-Run submitted the Administrative Complaint to the administrative authority; the next day, the user of the 360 Personal Library website uploaded the above three technical manual documents; on July 5, the Intellectual Property Office of Jiangsu Province accepted the application of Safe-Run for administrative complaint, and on the same day, Safe-Run notarized the technical manual; later, Safe-Run submitted the notarial certificate in the infringement lawsuit filed at the court of first instance relied on the Patent. **3.** The identity of the uploader is suspicious according to its IP address. By inquiring the IP address "211.80. [###]. [###]" of the user who uploaded the above technical manual disclosed by Beijing Liuzhi Information Technology Co., Ltd., the IP address falls within the Xuhui Campus of [###]University (including the Law School), and the law firm Safe-Run entrusted in this case have students from the Shanghai Jiao Tong University, who have also participated in the administrative matters. In this regard, Safe-Run deems

that the above allegations of VMI are all its subjective imagination which are inconsistent with the facts and are not supported by evidence and therefore will not be accepted.

67 This court found that: the facts found in the trial of first instance were basically true, and this court affirms this.

68 During the trial of second instance by this court, VMI further submitted the originals of the relevant evidence that it had submitted in the first instance, including: First Instance Evidence 11 (Evidence 2-7 in the first instance): the original of the Contract ([###]) signed between VMI and [###], First Instance Evidence 12 (Evidence 2-8 in the first instance): the original of the notarial certiticate (2018) Yue Guang Guangzhou No. 101546, First Instance Evidence 15 (Evidence 2-14 in the first instance): the original of the Mutual Intellectual Property Protection Agreement signed between VMI and [###]. After examination and verification, this court confirms that the photocopies of the above-mentioned evidentiary materials on file were consistent with the original documents submitted by VMI.

69 VMI's expert, WANG Zheng, participated in the open hearing on January 19, 2021, and the evidence exchange and inquiry hearing on May 31, 2021. Safe-Run's expert, LI Zhijun, participated in the open hearing on January 19, 2021. The parties' expert witnesses introduced the technical proposals asserted by the parties respectively and provided their opinions on the technical facts.

70 With respect to the facts of this case, in combination with the relevant evidence submitted by the parties in the first instance as well as evidence submitted during the second instance before this court, this court additionally ascertained as follows:

(I) The Prior Secret-related Technology asserted by VMI

1. The Prior Secret-related Technology and its carriers as asserted by VMI

71 The Prior Secret-related Technology asserted by VMI in this case is "fitting material system with belt drum moving vertically and horizontally", which is applied to its MAXX and EXXIUM tire building machines after R&D. VMI used the technical manual and technical drawings of the MAXX building machine with [###] submitted by it as the carriers of the secreted-related technology.

2. R&D process

72 [###], Vice President of Global Product Management of VMI, made a written "Affidavit" (the "**R&D Affidavit**") on October 5, 2020, under the notarization of a practicing civil law notary public in Zwolle, the Netherlands. [###] stated that he was responsible for and involved in the R&D of VMI's MAXX and EXXIUM automatic tire

building machines. [###] stated in the section of R&D Objectives and Initial Process that: "[###]"

73 [###]

74 [###]

75 [###]

76 [###]

77 Capital Contribution Certificate issued by [###] on October 8, 2020, with five appendices attached thereto. In this certificate, [###] states: "*1. We, on behalf of the undersigned, are authorized to collect information from VMI, evaluate the correctness of information and make application for government funding to the Ministry of Economic Affairs, Government of the Netherlands. ... the government funding application related to VMI's MAXX project includes the labour costs for the development of the MAXX building machine by VMI. 2. We hereby confirm that VMI is a recipient of Dutch government funding issued by the Ministry of Economic Affairs and managed by the auditing firm [###] commissioned by the Ministry of Economic Affairs. The government funding has been used for [###]* (Contents of the annexes refer to confidential evidence and have been omitted)

3. Relevant reports on the MAXX building machine

78 Europe Rubber Weekly's March-April 2009 issue published an article entitled "VMI Releases MAXX building machine Ahead of Schedule Due to Recession", stating: "*Another innovation is that the belt and tread (B&T) drum is movable laterally on the track, whereas previous machines have the B&T drum fixed in one position. VMI Indicates that it has managed to ensure the normal operation of the machine without loss of accuracy. The building drum can be moved up and down, and the diameter can be changed by servo control, the first buffer is lifted and moved down, then the next is operated, the second buffer is lifted and returned to the original position, the band is removed and the whole is returned to the moved position. ... [###] is operating on a two-machine rotation basis, and preliminary results show an improvement of at least 20% in radial force compared to VMI's previous machine 248.*"

79 Article published on Europe Rubber Magazine Website on November 4, 2008, entitled "VMI launched MAXX building machine" said: "*the Netherlands, VMI has designed and manufactured a new MAXX building machine, which is a double drum machine for radial tires based on a one-pass building process. ... According to VMI, the two building drums on the transfer track are movable, while the transfer ring is mounted in a fixed position. The MAXX tire-building process is fully automatic, and the tires can be removed from the machine by a robot.*"

80 On March 3, 2009, the website of the European Rubber Magazine published an article entitled "VMI Releases Double Drum building machine", stating: "*VMI has been awarded the Tire Industry 'Innovation and Excellence Award' for its new MAXX building machine, which was shown at the Tires Technologie Hamburg, Germany. ... VMI reports that production of the first VMI MAXX has taken place in Finland.*"

81 On March 3, 2009, www.Typepree.com published an article entitled "VMI Tires Machine Wins Innovation Medal", stating: "*VMI, the Dutch tires building machine manufacturer, has been awarded the Tire Industry 'Innovation and Excellence Award' for its new MAXX building machine, which was shown at the Tires Technologie Hamburg, Germany. ... The design includes a movable drum and a fixed moving position, which allows for improved accuracy, flexibility and speed of operation. ... VMI reports that production of the first VMI MAXX has taken place in Finland.*"

4. Relevant Transaction between VMI Company and Tire Manufacturers

(1) Business transaction with [###]

82 According to the Minutes of Meeting attached as Exhibit 1.1 of Evidence 8 submitted by VMI in the first instance trial, [###]

83 According to the Minutes of Meeting attached as Exhibit 1.2 of Evidence 8 submitted by VMI in the first instance trial, [###]

84 In 2013, VMI and [###] entered into a Mutual Intellectual Property Protection Agreement.

85 On [###], 2013, Team Manager of [###], [###] sent a "Letter of Intent" to VMI, which read as: "*This Letter of Intent undertakes that* [###] *will place a purchase order to VMI Netherlands for the supply of MAXX tire building machine.* [###] *will negotiate the terms of the purchase order in good faith after signing of this Letter of Intent. Payment and contractual conditions will be discussed in the near future.* [###]"

86 On December [###], 2013, VMI, as the Seller, and [###], as the Buyer, entered into the Procurement Agreement with Order No. [###], purchasing [###] set of VMI MAXX building machine. The port of shipment refers to [###], and the port of destination refers to [###]. It is stipulated in Article 4 Delivery Clause in the Agreement that "[###]" Article 7 the confidentiality clause stipulates that "*The Buyer and the Seller agree to maintain confidentiality of information and shall not disclose ,produce or copy any software, material, specification or document marked as confidential or proprietary and provided to the Buyer under this agreement,*

unless otherwise provided in this agreement." On the same day, the two parties signed a Purchase Order No. [###], the product is "(KP) VMI MAXX building machine", the quantity of product is [###] set, the international delivery term is "[###]", the delivery date was [###], 2014, the shipment date was no later than [###], 2014

87 On [###], 2013, VMI issued to [###] an invoice with number ESL/-[###] which states: "Your order No. [###]", "Our order No. [###]", terms of delivery was Incoterms 2010 [###], and the Quantity and Description Section states: "*In accordance with the above Purchase Order, we hereby credit to your account an amount equivalent to* [###] *of contract value with respect to the following supply: VMI MAXX building machine*"

88 On [###], 2014, VMI sent to [###], the following fax (regarding shipping documents) stating: "[###]"

89 On [###], 2014, VMI issued a commercial bill (No. [###]) to [###], which stated: "[###]".

90 According to the combined transport bill of lading with number [###], Shipper is VMI, consignee to be instructed by [###] Bank, notifying party: [###] of [###], vessel name: [###], voyage number [###], gross weight [###] Kg.

91 According to the Packing List attached as Exhibit 2.2 of Evidence 8 submitted by VMI in the first instance trial, the applicant is [###], and the Purchase Order No.: [###] Purchase Order No.: [###], to the beneficiary of VMI, and the Purchase Order No.: VMI Reference No. [###], documentary credit No. [###] issued by [###] Bank, on [###], 2014, and the description of the goods and/or services states that: "Customs Code: [###],1 (one) VMI MAXX Fully Automatic tire building machine .....This document relates to 1 (one) VMI MAXX Fully Automatic tire building machine with VMI Reference No. [###]". The cargo form shows the total net weight as [###]Kg and the total gross weight as [###]Kg.

92 On July 25, 2014, Semgll Min, the applicant of [###], signed the "Certificate of Acceptance", L/C No. [###] issued by [###] Bank on [###], 2014, and the VMI reference number is [###], under Purchase Order No.: [###], for One (1) VMI MAXX Fully Automatic building machine. The main content of the certificate is: "*We hereby state that the above-mentioned machines have been successfully installed at the customer's site. All functional testing has been completed. We declare that the above-mentioned machine performs in accordance with the specifications attached to the contract/order.*"

93 On [###], 2014, VMI issued to [###] a commercial invoice (No. [###]), which states: "Your order for [###] Purchase Order No.: [###] dated December [###], 2013, shipment date [###], 2014, our order: No. [###], shipment by [###]", in which

the terms of payment is "***EUR payable directly by telegraphic transfer (in addition to LC) this document is payable for***EUR under irrevocable letter of credit no. [###] issued by [###] Bank on [###], 2013, of which***EUR payable after shipment, ***EUR upon acceptance", the quantity and description section states: "*We hereby confirm the deposit of ……EUR to your account under the above mentioned purchase order and letter of credit*", and the goods and/or services section stated as " Customs Code [###], 1 (one) set of VMI MAXX Fully Automatic tire building machine."

94 VMI submitted three copies of the Training Sign-In Forms in the first instance, relating to the training items as "MAXX Electrical/Software Maintenance Training Part 1/2 and Part 2/2 starting from Thursday 32nd week", "MAXX Mechanical Maintenance Training", and "MAXX Operator Training" respectively, all of which were using the project No. [###], and the training days were from July 21st to 25th, July 21st to 25th and August 4th to August 8th respectively. VMI alleged that the above sign-in forms were the sign-in of [###]'s employees during the training for the [###] MAXX building machine conducted by VMI at [###]'s plant in 2014.

95 VMI separately submitted in the first instance the VMI MAXX24 Technical Manual (VMI Technical Manual No. [###], Manual No. [###]and dated [###]). VMI alleged that this manual was the technical manual it delivered to [###] in February 2014.

(2) Transaction Process with [###]

96 On October 25, 2013, VMI, as the Seller, and [###], the Buyer, entered into a Contract (No. [###]). The product name and model number of the product to be purchased and sold under the Contract was "[###] sets of VMI EXXIUM Fully Automatic tire building machine", the port of shipment was [###], the packing method as agreed in the Packing Clauses of Article 8 was "[###]", the method of transaction as agreed in the Shipment Clauses of Article 10.3 was [###].

97 On [###], 2013, VMI issued a commercial invoice (No. [###]) to [###]. The invoice showed Contract No. VMI-[###], with Order No. [###].

98 On [###], 2013, VMI, [###]. and [###] entered into the VMI-[###]Agreement on Modification of Contract ("**Agreement on Modification of Contract**"), providing that the parties to the modified Contract shall be VMI as the Seller, [###] as the Buyer and [###], the Buyer's import agent. Article 4 stipulates that "Ex-work Readiness Notification" in Article 10.10 of the original Contract that "After the shipment of the goods, the Seller shall mail by post to the Buyer one set of copy documents immediately: a) Ex-work Readiness Notification" shall be amended to "a) evidence of receipt".

99 According to the Packing List of VMI dated [###], 2014, the customer is Sumida, the end-user is [###].\, with Order No. [###], Reference No. [###], Contract No. VMI-[###], and L/C No. [###]. The commodity is "[###] sets of VMI EXXIUM Fully

Automatic Uni-Stage tire building machine, and the trade term is "[###]". The packing is "[###]", and it is also stated that "The shipment involves 1 (one) set of VMI EXXIUM Fully Automatic Uni-Stage tire building machine, VMI Reference No. [###], which is the first set of the [###] sets of VMI EXXIUM Fully Automatic Uni-Stage tire building machine." Total Items [###] Bale, net weight is [###]Kg, gross weight is [###]Kg

100 On [###], 2014, [###] issued a Certificate of Receipt, stating that the place of shipment was [###], and the shipment time was [###], 2014, the consignee was [###], and the name of the goods was VMI EXXIUM Fully Automatic Uni-Stage tire building machine, the applicant was [###], and the end-user was [###]., the beneficiary was VMI. The quantity of goods was [###] pieces, weight of [###] kilograms, and the notes of the shipment stated that "Transportation No. VMI-[###]. This transport involves one (1) set of VMI EXXIUM Fully Automatic tire building machine, VMI reference No. [###], which is the first set of the [###] sets of VMI EXXIUM Fully Automatic tire building machine."

101 On March 13, 2015, VMI and [###] entered into the Final Acceptance Certificate, which involves VMI and Order No. [###], Contract No. VMI-[###] and VMI Reference No. [###]. Such certificate states: "*This document contains: one (1) set of VMI EXXIUM Fully Automatic tire building machine, VMI reference No.* [###]. *This is the first set of the* [###] *sets of VMI EXXIUM Fully Automatic tire building machine. Issued by* [###]*, under documentary credit number* [###]. *We hereby declare that the above-mentioned building machine has been properly installed in the customer's plant. All functions testing department has been completed. We hereby declare that the performance of the above-mentioned machine conforms to the specifications described in the Contract.*"

102 The name of the fixed asset indicated on the management card of fixed asset in a photo in the notarial deed (2018) Yue Guang Guangzhou No. 101546 is "Fully Automatic Uni-Stage Tire Building Machine", its model number is "VMI EXXIUM", and its construction year is "January 31, 2015"; the nameplate of the building machine in the above photo records "VMI HOLLAND BV", the machine model number is "VMI EXXIUM", the year in which both of them are made was 2014, and the module involved includes [###]. Product numbers include [###]. The notary also notarized and preserved in [###] the "Tire Building machine EXXIUM Technical Manual" (hereinafter referred to as the "EXXIUM Technical Manual"), with VMI item number [###], manual number [###], revision number [###], released on August 8, 2014, and mechanical drawings with item number [###], manual number [###]. The contents of the physical copy of the technical manual photographed during the notarization include: "4.2.4 [###]", "4.2.4.1 [###]", "4.2.4.2 [###]", "4.2.4.3 [###]", "4.2.4.4 [###]", "4.2.5 [###]", "4.2.5.1 [###]", "4.2.5.2 [###]", "4.2.5.3 [###]", "4.2.6 [###]", "4.2.7 [###]" in Chapter 4 "Function Description", "10.2.1.1 [###]", "10.2.1.2 [###]", "10.2.1.4 [###]", "10.2.1.3 [###]", "10.2.2.2 [###]", "10.2.2.3

[###]",“10.2.2.4 [###]"; The notarization also included the electronic version of the EXXIUM Technical Manual.

103 Evidence 11 submitted by VMI in the first instance trial contains part of the contents of Exhibit 5.2 “Tire Building Machine EXXIUM Technical Manual”. VMI claimed that the technical manual was the EXXIUM Technical Manual delivered to [###]. The VMI project number, manual number, revision number and issuance date recorded in the technical manual are consistent with the information recorded in the EXXIUM Technical Manual notarized and preserved by [###]. The contents involving “4.2.4 [###]”, “4.2.4.1 [###]”, “4.2.4.2 [###]” and “10.2.2.2 [###]” are also consistent with the information recorded in the EXXIUM Technical Manual notarized and preserved by [###].

(3) Related Transactions with [###]

104 On October 15, 2010, [###] entered into a Purchase Order No. [###] with VMI for [###] sets of Uni-Stage tire building machines (model MAXX), [###], the price terms are: “(1) … of Contract Price shall be paid by T/T on [###], 2010; (2) Contract Price. … of … shall be issued to the Seller an 360-day irrevocable letter of credit on [###], 2010, the shipment time of the [###] set (leaving Europe port) is [###], 2011, and the shipment time of the sets [###].

105 October 25, 2010, VMI as the Seller and [###] as the Buyer entered into a contract with reference number [###] VMI [###] for [###] sets of the Uni-Stage tire building machine (Model MAXX): Product name and model of MAXX Uni-Stage tire building machine, quantity of [###] sets of Uni-Stage tire building machine, the price and model thereof be the total contract price [###], the place of shipment is [###] and the destination is [###].

106 VMI submitted in the first instance trial Evidence 9 Exhibit 2.1, which was a letter sent by VMI to [###], the contents of which read: “In accordance with your purchase order [###], please check the enclosed original invoice of the prepaid invoice for [###] sets of VMI Uni-Stage Tire Building Machine # MAXX … Annex: Invoice [###].” VMI submitted separately a pro forma invoice No. [###] dated [###], 2010 that was issued to [###]. The pro forma invoice was dated [###]2010, it stated that: “Your reference no. is [###], our reference n. is [###], terms of delivery [###]” and terms of payment: “(1) … of the order to be paid by T/T on [###], 2010; (2) … of the order to be paid for … To be issued by Company to Seller on [###], 2010. The aforesaid [###] invoices relate to [###] VMI MAXX20 Fully Automatic Uni-Stage tire building machine with the following VMI reference codes respectively: [###]. Among others, the shipping time recorded in the invoices involving the VMI reference code of [###] was October 5, 2011, the shipping method was [###], and the shipping weight was [###]kg gross weight.

107 VMI submitted in the first instance trial Evidence 9 Exhibit 2.3, which included the letter sent by VMI to [###] with the subject “L/C No[###] Bank, [###]” together

with two bills of exchange, one bill of lading, one packing list, one insurance policy, and one certificate of origin. The contents of the letter sent to [###] included: "[###]." The bills of exchange submitted by VMI were dated [###], 2012 with documentary letter of credit No. [###] issued on [###], 2010 and all recipients was VMI. The bill of lading submitted by VMI showed that the vessel is [###], gross weight of the goods is [###]kg, total number of containers is [###], and the date of signature is of [###], 2011. The packing list showed that the customer was [###], the beneficiary was VMI, the delivery address was [###]'s place of business, and the letter of credit No. [###] was issued on [###], 2010. The part of goods and/or services stated that: "This document relates to 1 (1) set of the [###] sets of VMI MAXX20 Fully Automatic tire building machine, VMI Uni-Stage tire building machine MAXX20 VMI ref [###]; The total gross weight recorded in the Goods Schedule is [###]kg, the total net weight is [###]." The Certificate of Origin was issued by VMI on December 22, 2011, the contents of which are: "We, the signatory and manufacturer of the undermentioned machine, hereby certify that the said goods conform to the specifications of the contract No. [###] dated 25th October 2010 between [###] and VMI Netherlands. The country of origin of these goods is the Netherlands. … This document is with respect to 1 (1) set of the [###] sets of VMI MAXX20 Fully Automatic tire building machine, with VMI reference No. [###].

108 VMI submitted Evidence 9, Exhibit 2.4 in the first instance trial, including 12 machine acceptance certificates dated October 30, 2012, showing that the applicant was [###] and the beneficiary was VMI, and that the order number were all showed as [###]. The contract number is [###] dated October 25, 2010, which stated that "We hereby declare that the above mentioned building machine has been successfully installed at the address of the applicant and that all functional testing has been completed. We hereby declare that the performance of the above-mentioned machine complies with the specifications given in the contract/order. Therefore, the machine is released for production. The warranty period starts from the date on which this certificate is signed by the authorized site representatives of both parties. "The VMI MAXX20 Uni-Stage tire building machine reference code mentioned in the description of the goods in the [###] Machine Acceptance Certificates included [###] as mentioned in the aforesaid [###] invoices.

(II) Information relating to the confidentiality measures taken by VMI for the asserted Prior Secret-related Technology

1. Relevant Agreements entered into by VMI and the relevant tire manufacturers

109 The Mutual Intellectual Property Protection Agreement signed by and between VMI and [###] in 2013 stipulates that "*this Agreement shall constitute the basis for the delivery of VMI machine to* [###]*and shall establish a relationship between the two companies that is greater than that of a traditional buyer–seller relationship*". Article 2 stipulates that "*the Parties acknowledge that, the machine purchased by* [###] *from VMI, and the information and data provided by VMI to* [###] *includes*

valuable intellectual property rights of VMI (including VMI patents and VMI technical secrets)". Article 3 stipulates that "[###] *shall respect the intellectual property rights of VMI and keep its business information, know-how and specific technologies confidential. Based on the conditions set forth in the VMI Machine Supply and Sale Contract,* [###]*agrees to make every effort to prevent other machinery manufacturers from benefiting from VMI's IP rights embodied in VMI machine, and to refuse third parties' access to VMI machine in its facilities.* [###] *shall not permit its own employees or any third party to reverse engineer VMI machine (or its parts and components).* [###] *will inform VMI immediately should any product be encountered in the market which may be regarded as an imitation of VMI machine or its parts and components.* [###] *will support VMI in protecting VMI's IP rights.*" Article 5 stipulated that "*as a result of this Agreement, VMI will provide* [###] *machine embodying the latest technical secrets and proprietary technologies of* [###] *and VMI. It is in the best interest of the Parties that the area in which VMI machine is located within* [###] *Plant is recognized as a "protected zone". Within this protected zone,* [###] *and VMI will: a. Only allow* [###] *and VMI employees to access the area. b. Access to the protected zone by other persons not mentioned in a. above is prohibited unless in the presence of a VMI representative and/or with the prior written consent of VMI. c. Taking Photos, drawing, videotaping and measuring are prohibited unless in the presence of a VMI representative and with the prior written approval of VMI. In addition,* [###]*'s confirmation is required.*" Article 6 stipulated that "*Article 3 of this Agreement shall continue to be valid and effective for 10 years after the termination of this Agreement.*"

110 Art 21 Intellectual Property Provision of the VMI Agreement [###] entered into between VMI and [###] provided that "*21.1 All the information and data (design, technical information, drawing etc.) provided by the Seller shall remain the sole property of the Seller. The information and/or the manufacturing methods in relation to the products shall remain the property of the Seller. 21.2 The information and data cannot be copied, reproduced or transferred to any third party in any form and/or any way without seller's legitimate written permission. The products cannot be copied or reproduced without Seller's written permission. 21.3 After Delivery, Buyer shall have the non-exclusive right to use the software. The intellectual property rights owned by Seller ("Seller's Software") shall be used only for the Products. Without prior written consent from Seller, buyer shall not make any copies of the software, except as a backup for its own use., and cannot transfer the use of Seller's Software to other related owner or tenant. The Seller retains the intellectual property rights in the Seller's software, even if the software has been specifically made for the Buyer. Seller is not obligated to provide the source code for such software. Seller has no obligation to provide any upgraded version of the Seller's software unless otherwise agreed in writing. 21.4 If Buyer decides to sell or transfer ownership of the products, Seller shall have the right of first refusal.*"

111 The [###] was executed on June 1, 2013 between VMI, as the Seller, and the Buyer, [###], in which the Product Name and Model is VMI EXXIUM tire building machine. The Intellectual Property Rights provision of Article 21 of the said Contract stipulate that "*21.1 All the information and data (design, technical information, drawing etc.) provided by Seller shall remain the sole property of the Seller. The information and/or manufacturing methods in relation to the products shall remain the property of the Seller. 21.2 Such information and data shall not be copied, reproduced or transferred to a third party in any form and/or any method without Seller's written permission. Such products shall not be copied or reproduced without the Seller's written permission. 21.3 After delivery, Buyer shall have the non-exclusive right to use the software. The intellectual property rights owned by the Seller (Seller's Software) shall be used only for the Products. Without prior written consent from Seller, buyer shall not make any copies of the software, except as a backup for Buyer's own use, and cannot transfer the use rights for Seller's Software to other related owner or tenant. The Seller retains the intellectual property rights in the Seller's Software, even if the software has been specifically made for Buyer. Seller is not obligated to provide the source code for such software. Seller has no obligation to provide upgraded version of the Seller's Software unless otherwise agreed in writing. 21.4 Any violation of provisions 21.1, 2 and 3 with proof provided by the seller, including taking photos and videos without written consent of the Seller will result in paying a penalty of one million euro to the Seller*."

112 Article 20 "the right of first refusal" under the "General Terms and Conditions of Sale" signed between VMI and [###] with respect to the MAXX tire building machine provides that "*20.1 In the event that the Buyer decides to sell or transfer the ownership of the subject goods, the Seller shall enjoy the right of first refusal*".

113 On [###], VMI, as the Seller, and [###], the Buyer, signed the Contract ([###]), specifying the type and name of goods to be supplied, including Uni-Stage Tire Building Machine of half-steel radial tire. It is stipulated in Article 21 "Trade Secrets and Intellectual Property Rights" that "*21.2 Trade Secrets and intellectual property rights shall be in accordance with the Bilateral Intellectual Property Protection Agreement entered into by and between the parties in July 2013.*"

114 The Bilateral Intellectual Property Protection Agreement entered into between VMI and [###] stipulating that "*this agreement shall be the basis on which VMI machine will be delivered to [###] and shall establish a buyer/seller relationship between the two companies that goes beyond the traditional buyer/seller relationship. Such a relationship goes beyond the scope of the Purchase Contract and the General Terms of Sales signed in the actual machine purchase agreement between the two parties and requires mutual trust and respect between the parties.*" It is stipulated in Article 2 that "*All machine (and components) supplied (or to be supplied) to [###] by VMI, or its intellectual property rights or know-how that are or will be supplied in its design, belongs to VMI. The know-how contained in all machines (including components) belong to VMI.*" Article 3 stipulated that "*the*

parties recognize that the machine purchased by [###] from VMI, and the information and data provided by VMI to [###] contain valuable intellectual property rights of VMI, including VMI's patents and know-how." Article 4 stipulated that "*[###] will respect the confidentiality of the intellectual property rights, business information, know-how of VMI. In addition to the conditions provided in VMI's Machine Procurement and Supply Contract, [###] agrees to do everything reasonably possible to prevent other machinery manufacturers from benefiting from the Intellectual Property Rights of VMI contained in the VMI machine, and to deny third parties's access to VMI machine in its plant. [###] will not permit its employees or any third party to mearue VMI machine (or components).*" Article 8 stipulated that "*machine embodying the latest know-how and technical secret of [###] and VMI will be provided to [###] as a result of this Agreement. It is in the common interest of both Parties that the area where [###] Plant is located be designated as a 'protected zone'. In this protected zone, [###] and VMI shall ensure that: a. Only employees of [###] and VMI can enter this area. b. Persons not referred to in Article a are prohibited from entering this area unless accompanied by a representative of VMI, and/or with the written consent of VMI and further confirmed by [###]. c. No photo-taking, mapping, videotaping, measuring or surveying may take place unless in the presence of a representative of VMI and with the written consent of [###].*" Article 7 stipulated that "*After the termination, this Article 4 of this Agreement shall still be valid for five years*."

115 On [###], VMI as the Seller and [###], as the buyer, signed the [###] with the name of the commodity being "VMI EXXIUM Uni-Stage Tire Building Machine". It is stipulated in Article 22 of the Intellectual Property Rights of the Contract that "*22.1 All information and data (designs, technical information, drawings etc.) provided by the Seller shall remain the sole property of the Seller. The information and/or the manufacturing methods in relation to the products shall remain the property rights of the Seller. 22.2 Such information and data shall not be copied, reproduced or transferred to a third party in any form and/or any method without Seller's written permission. Such products shall not be copied or reproduced without the Seller's written permission. 22.3. After Delivery, the Buyer shall have the non-exclusive right to use the software. The intellectual property rights owned by the Seller ("Seller's Software") shall be used only for the Products. Without the written consent of the Seller, the Buyer shall not make any copies of the Seller's Software, except as a back-up for Buyer's own use, and cannot transfer the use rights for Seller's Software to other related owner or tenant The Seller retains the intellectual property rights in the Seller's Software, even if the software has been specifically made for the Buyer. The Seller is not obligated to provide the source code for such software. Seller has no obligation to provide any upgraded Seller's Software unless otherwise agreed in writing*."

2. VMI's Intellectual Property Rights Statement in Relevant Technical Materials

116 VMI's VMI MAXX 24 technical manual states that "*Products of VMI shall not be copied, reproduced or disseminated by the Buyer and/or the (End) User; They shall not be disclosed or conveyed to third parties in any form and/or any means; nor can they be used for the reproduction or copying of similar products without the express written permission of VMI.*" "*All information and data (designs, technical documents, drawings etc.) provided by VMI are protected by copyright laws and remain the sole property of VMI. The information contained in the Products and/or manufacturing methods is and shall remain the property of VMI. The information and data referred to above shall not be copied, reproduced or disseminated by the Buyer and/or the (End) User; shall not be disclosed or conveyed to third parties in any form and/or by any means and shall not be used for copying or reproduction of similar products without the express written permission of VMI.*"

117 The preamble of the EXXIUM technical manual notarized and obtained by [###]states that "*Without the express written permission of VMI, the Products shall not be reproduced, copied or transmitted to the Buyer and/or the (End) User, nor can they be disclosed or transferred to third parties in any form and/or any means or used for the copying or reproduction of such Products.*" "1.1 General Summary" states that "*The copyright in this manual and any other information provided herein shall at all times remain the property of VMI Holland BV. … Without the prior written permission of VMI, reuse, reverse engineering, reproduction, dissemination or any other way not mentioned herein to process the information in whole or in part electronically or mechanically, is strictly prohibited.*" The content recorded in "1.1 Overview" in the EXXIUM technical manual submitted by VMI in the first instance proceedings is consistent with the corresponding part of the notarized EXXIUM technical manual.

3. Information relating to the tire building machine industry

118 SUN XX, the legal representative of Company A, issued a written explanation on July 24, 2020, which mainly stated that: "*Company A was established in 1996 and has been involved in the tire machinery manufacturing industry for twenty-four years, and has ranked in the top 30 global rubber machinery for many times. … In the early development stage, Company A took several years to research and develop the car radial tire building machine. … Each type of tire building machine product took the Company three to five years to develop. … The tire building machine has complex structure and diverse functions, and it is difficult to apply for patents for all kinds of technologies. Trade secrets are a more effective means to protect its intellectual property rights. Trade secrets protection is a well-known protection measure commonly adopted by domestic and foreign industry players. … Company A has taken a series of common and effective confidentiality measures commonly used in the industry. For example, Company A will sign confidentiality agreements with their customers, requiring the customers to take reasonable confidentiality measures and not to disclose the technical secrets of Company A to any third party; Company A will conduct technical training for the customers under the*

confidentiality condition. Because a tire manufacturing factory normally has the tire building machine technology that the tire building machine supplier requires the customer to keep confidential, both domestic and foreign tire factories will take strict confidentiality measures at the factory premises. Generally speaking, the factory will prohibit outsiders from visiting. Visitors need to register and even be accompanied by the factory staff. The factory premises will have access control, prohibiting visitors from taking photos. These measures are common confidentiality measures taken by all types of enterprises in the industry. The highly confidential environment of the plant can ensure that all kinds of technical secrets provided by the tire building machine supplier will not be illegally disclosed."

119 On August 14, 2020, the Northern Legal Daily published an interview report entitled "Xu Wenying, vice president and secretary-general of the China Rubber Industry Association: The Association will attach great importance to the rubber industry's intellectual property". According to the records of the said article, in response to the reporter's questions about how the enterprises in the industry protect the intellectual property and what problems existed, XU Wenying's answer was: "The tire building machine manufacturing enterprises attach great importance to the intellectual property protection of R&D results, and they not only apply for patents, but also use the technical secrets to protect their intellectual property. For example, signing confidentiality agreements stipulating confidentiality obligations when selling tire building machine products and providing technical information. Tire building machine is a large industrial facility. It is impossible to cover the whole tire building machine for reasons such as safety, operation, repair, maintenance, etc.. Therefore, enterprises usually take confidentiality measures to protect the workshop where the tire building machine is located and unauthorized personnel are prohibited from entering. Normally a visitor hierarchy system is adopted, visitors and reporters are prohibited from taking photos. Access control and monitoring machine are set up, and the tire building machine is partially covered. This is the usual practice in the industry. Therefore, the tire building machine workshop has a special environment. On one hand, the unauthorized personnel are prevented from accessing the confidential machine, and on the other hand, the personnel entering the building workshop do have access to the confidential machine. Therefore, in addition to the confidentiality measures within the plant, an enterprise will also set restrictions to its employees and other suppliers entering and leaving the building workshop, and tire building machine manufacturers will sign confidentiality agreements with their customers. These confidentiality measures are mutually coordinated to achieve the effect of confidentiality."

4. The relevant facts used by Safe-Run to rebut VMI's claim of secrecy regarding the concerned technology

120 On June 10, 2020, King & Wood Mallesons, Shanghai Branch (as the applicant) made an application to Shanghai Dongfang Notary Office for evidence preservation notarization. The applicant entrusted its ZHOU Feifei, to visit Shanghai Dongfang

Notary Office. The staff of the notary office conducted the relevant operations on the computer of the notary office under the instructions of ZHOU Feifei: entered the website “www.youku.com”, entered the keyword “[###]” in the search bar and clicked “search the internet”, clicked the search result entitled “[###]” and played the webpage video. “During the above operation, the staff working in the notary office, Wang Ding saved and printed out the relevant screen shots based on the instructions of the applicant's entrusted agent. Meanwhile, screen recorder software was used to record the real-time operation on the computer and a video was created. On June 11, 2020, Shanghai Dongfang Notary Office produced the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7392 based on the above preserved evidence. This court reviewed the webpage video saved by the notary office, under which the video displayed the video user was “zhangzongcai17” and the time was “six years ago”. The video was 7 minutes and 35 seconds long, and a tire building machine with the marking “VMI EXXIUM” was showed at about 4 minutes and 32 seconds to 4 minutes and 33 seconds of the video. It shows the overall appearance of the building machine, and cannot be seen from it the structure of the specific components; the remaining part of the video showed some parts of a tire building machine arein the process of making a tire, but cannot clearly reflect that the above components are part of the tire building machine marking with “VMI EXXIUM” as mentioned previously, and the structure of these specific components cannot be seen.

121 On the same day, the Shanghai Branch of King & Wood Mallesons, as the applicant, applied for evidence preservation notarization to Shanghai Dongfang Notary Public Office. Attorney Zhou Feifei came to Shanghai Dongfang Notary Public Office. The staff of Shanghai Dongfang Notary Public Office conducted relevant operations on the computer of Shanghai Dongfang Notary Public Office under the instruction of Zhou Feifei, namely, entering into the website address“v.qq.com”, and typing in “Uni-Stage Tire Building Machine of [###] Factory”, and clicking “search the internet” and then clicking the search result “Uni-Stage Tire Building Machine of [###] Factory” and playing the video on the webpage. In the process of the above operation, the notary office staff member Wang Ding saved and printed out the relevant screen shots according to the instructions of the applicant's entrusted agent and used screen recorder software to record the real-time computer operation and a video was created. On June 11, 2020, Shanghai Dongfang Notary Office produced the notarial deed (2020) Hu Dong Zheng Jing Zi No. 7394 based on the above notarization for evidence preservation. After review by this court. The webpage video recorded by the notary office, with a duration of 1 minute and 35 seconds, shows that the video was released by a video user on August 23, 2016, and shows part of the process of an EXXIUM tire building machine making a tire. However, the video material could not clearly identify the specific technical features of the Prior Secret-related Technology asserted by VMI in this case.

(III) Facts relating to the possibility of Safe-Run having access to VMI’s technical secret as claimed by VMI

1. The VMI MAXX 24 technical manual obtained by Safe-Run through notarization and evidence collection in another infringement litigation asserting the Patent

122 This court found that the customer information, VMI project number, date and other information in the VMI MAXX 24 technical manual notarized and obtained by Safe-Run were redacted. The VMI code set forth in Section 11 “Parts, Drawings and List” of the technical manual was “[###]”, which was identical to the code recorded in the corresponding section of the MAXX building machine Technical Manual delivered by VMI to [###]submitted by VMI in this case.

123 VMI claimed that the aforesaid code was unique to each tire building machine of VIM, and the code could be used to trace the corresponding tire building machine-where the manual was belong to. VMI searched for the code in its internal system and determined that the manual belonged to MAXX building machine ([###]) and the corresponding customer was [###]. With respect to this searching process, in the first instance trial, VMI submitted a statement made by [###], Senior R&D Mechanical Engineer ,under notarization by a civil law notary in Epe, the Netherlands. The statement specifically set forth the steps and screen captures of searching the code within VMI’s internal system.

124 The VMI MAXX 24 technical manual notarized and obtained by Safe-Run relates to 3 documents on the “360 Personal Library “website, with the names of “VMI MAXX 1 (3)”, “VMI MAXX 2 (3)” and “VMI MAXX 3 (3)”, and their page numbers are 400, 400, and 411 respectively, with a total of 1,211 pages. At the time of the notarization and evidence collection, the aforesaid three documents have 13 views, 6 views and 1 view respectively, and was downloaded 1 time, 0 times and 1 time respectively. After viewing the screen recording material of the notarization and evidence collection process of Safe-Run, this court ascertained the general situation of the notarization and evidence collection process of Safe-Run as follows: opening the document “VMI MAXX 1 (3)” (showing that it has 13 views, being downloaded for 1 time, and the number of pages is 400), directly inputting page numbers 70 and 73 and saving the screen capture, and then browsing to page 77 and 78 for saving the screen capture, inputting page number 124 and saving the screen capture, and then browsing to page 125, 129, 133, 134 and 136 for saving the screen capture, and then downloading the document; opening the document “VMI MAXX 2 (3)” (showing that it has 6 views, no download, and the number of pages is 400), scrolling down to page 11 and then downloading the whole document, after downloading the document, opening the document s saved in the local drive of the computer and quickly browsing the whole document; opening the document “VMI MAXX 3 (3)” (showing that it has 7 views, being downloaded for 1 time, and the number of pages is 411), inputting page number 114 and saving the screen capture, and quickly browsing from page 1 to page 120 and then downloading the document.

125 In the first instance, upon application by VMI, the court of first instance issued an Investigation Order. By presenting the investigation order to Beijing Liuzhi Information Technology Co., Ltd. who is operating the "360 personal library" website, VMI's attorney manage to collect the real-name authentication information of the user "xxqwedcxza" of the said website. On July 11, 2019, Beijing Liuzhi Information Technology Co., Ltd. replied to the court of first instance as follows: "Regarding the identity information of the username 'xxqwedcxza' on the website of 360 personal library, details are as follows: User ID: 55608985, current nickname: xxqwedcxza, Registration Email: [###]@163.com, Registration Verification Phone No.: 1999318[###], Registration Time: 2018/5/15 9: 40: 55, Gender: unknown, Region: unknown, Registered IP: 202.120. 14. [###]. Article published by the user: Article Title: VMI MAXX3 (3), Upload Time: 2018/5/21 8: 53: 32, Upload IP: 211.80.40. [###]; Article Title: VMI MAXX2 (3), Upload Time: 2018/5/21 8: 52: 50, Upload IP: 211.80.40. [###]; Article Title: VMI MAXX1 (3), Upload Time: 2018/5/21 8: 52: 08, Article Title: General Introduction of Machine Series – Chinese, Upload Time: 2018/5/15 9: 50: 01, Upload IP: 202.120. 14. [###]; Article Title: MAXX System of Half-Steel Tire Building Machine, Upload Time: 2018/5/15 9: 49: 19, Upload IP: 202.120. 14. [###].

2. Evidence Notarization Relating to Former Employees of Safe-Run

126 On November 27, 2020, a notary and a staff of the Guangzhou Notary accompanied by the attorney of VMI paid a visit to the address at [###], Qingdao City, Shandong Province. VMI's attorneys, LIU Yongquan and WU Donglin, and relevant witnesses, a former employee of Safe-Run were present at the scene. Under the witness of the notary, LIU Yongquan verified the ID card of the former employee of Safe-Run and the employment contract signed with Safe-Run, inquired the former employee some issues and made a Written Record of Investigation. The former employee of Safe-Run signed and pressed his fingerprint on the Written Record of Investigation. The notary took a video of the inquiry process.

127 According to the Written Record of Investigation, LIU Yongquan and WU Donglin, VMI's attorney, asked the former employee of Safe-Run some questions. LIU Yongquan and WU Donglin informed the former employee of Safe-Run about their identities as well as showed him their ID documentations. The former employee was also told that he should bear legal liability in case of any intentional false statement. The former employee of Safe-Run represented that he was employed by Safe-Run as a ** from [###]. When asked whether Safe-Run had the technical manual of VMI Company's MAXX tire building machine and how he learned about it, the former Safe-Run employee replied: "*Yes. In August 2016, when I worked at Safe-Run, another employee**sent through his work email account the manual to work email accounts of many Safe-Run employees including mine . This email together with the manual was also automatically forwarded to my private email account at the same time*." When asked whether others within Safe-Run had the manual, the former Safe-Run employee replied: "*Yes. Many personnel have the manual.*" When asked when

Safe-Run had obtained the manual, the former Safe-Run employee replied: "*It should have been before I joined.*" When asked whether Safe-Run knew internally that the manual was confidential technical material of VMI, the former Safe-Run employee replied: "*Yes.*" When asked whether Safe-Run had other technical documents of VMI, the former Safe-Run employee replied: "I once saw the mechanical drawings VMI245 and MAXX."

128 Then, the notary turned on his own laptop. Under the witness of the notary, the former Safe-Run employee logged in "Ali Mailbox Personal Edition", searched for "**", found and opened an email with the keywork "MANUAL", which showed that the sender was "**<**@ safe-run.cn>", and the date of sending was 2016-08-26, with an attachment "MANUAL. pdf" (the size of the attachment was 38 MB as shown in the e-mail), and the recipients were this former employee and other employees of Safe-Run. The attachment was opened and then downloaded and saved on the computer desktop. The attachment entitled "MANUAL" is "VMI MAXX24 Technical Manual", the customer was "[###] South Korea", i.e., [###]. VMI project number was "[###]", and the date was "[###]".

129 Then, the former Safe-Run employee opened his own MacBook Pro computer and found a document named "14.01.01 VMI MAXX MANUAL [###]TIRE. pdf". The document showed that the document was created on August 26, 2016. It was from "<**@safe-run.cn>". Then, he saved a copy of this document into the usb flash drive provided by the notary public. Then, VMI's attorney opened his MacBook Air computer under the witness of the notary public, plugged in the above usb flash drive and opened the above document "14.01.01 VMI MAXX MANUAL [###] TIRE. pdf", which showed that the document was created on August 26, 2016, with a size of "40,246,969 bytes (40.3 MB on the disk)", the source is "<**@safe-run.cn> and other relevant information.

130 On December 14, 2020, the Guangzhou Notary issued the notarial deed [###] with respect to the above process.

131 During the court hearing of the second instance, Safe-Run confirmed that the former employee and the sender of the email were its employees.

(IV) The R&D of the Patent as claimed by Safe-Run

132 According to the Project Proposal No. SC-RDP16-A submitted by Safe-Run in the first instance, the proposal was made by QIN Yinfeng, the date of the proposal was January 10, 2014, the model number was "SRS-H 14-20", the basic requirements were "automatic tread fitting component, tire body part, automatic rolling, tire embryo building and automatic tire unloading", and "the machine is suitable for semi-steel tires 14 "-20"", the market forecast analysis was "the expected first batch sales volume is [###] units, according to the investigation of the market situation, it is suggested that the price is RMB***, the delivery period is [###] months", the cost and team

members were “the cost per unit is RMB***, the departments of R&D, procurement, technology, production management, production and other departments shall assign special personnel to take charge of the project”.

133 According to the R&D Plan No. SC-RDP16-B submitted by Safe-Run in the first instance, the name of the project was “Intelligent Uni-Stage Tire Building Machine”, the model number was “SRS-H 14-20”, the commencement and termination date was “from February 10, 2014, to July 10, 2014”, and the budget cost was**. The design and development personnel included Li Zhijun, head of the design department, and design engineers Qin Yinfeng, He XX, Li XX, Qiu XX, and Dong XX, as well as Ma XX, Head of electrical design department, and Yang XX, electrical design engineer. According to different development phases as provided in the plan, Li Zhijun and Qin Yinfeng were the persons in charge of the base, steel ring preset, JLB wrapping, automatic ring grab and light assembly and will be completed on June 3, 2014; HE XX and QIN Yinfeng will be the persons in charge of the rolling station, tire unloading and steel ring transfer, and will be completed on 28 May 2014; QIN Yinfeng will be the person in charge of the headstock, bell drum drive and steel ring gripping, and will be completed on June 5, 2014; LI XX and QIN Yinfeng will be the persons in charge of the headstock servicer and will be completed on July 10, 2014; QIU XX and QIN Yinfeng will be the persons in charge of the tread servicer, and will be completed on July 10, 2014; DONG XX and QIN Yinfeng will be the persons in charge of the B&T servicer, and will be completed on June 6, 2014; and MA XX and YANG XX will be the persons in charge of the electrical programming, and will be completed on July 10, 2014. The resource allocation requirements in the plan specifies: “The Production Department needs [###] personnel for assembly → the Production Department would coordinate and assign→ the assembly tools and testing machine → the R&D personnel will confirm at the scene→ all the basic machine required has been prepared and the internal contact sheet shall be used for the communication between each department”.

134 According to the Design Output Document Record (SC-RDP16-E) submitted by Safe-Run in first instance, the said document was prepared by QIN Yinfeng on August 15, 2018, reviewed by MA XX on August 15, 2014, and approved by LI Zhijun on August 20, 2014. The “List of Output of Design & Development” indicates as follows: “(copies of relevant information attached; if the information is ready, please mark in ☐ a “√ “) Electrical: Electrical Drawing ☑ List of Electrical Components ☑ Position Number Table ☐ Wiring Diagram ☑ Wiring Production Diagram ☐ Commissioning Instruction Manual ☐ Source Code and Object Program ☑ Software Specifications ☑. Structure: Final Assembly Diagram ☑, Component Diagram ☑, Part Diagram ☑, Packing Box Diagram☐, Structure Schedule ☑, Essential Techniques Documentation ☑. Others: Bill of materials ☑ . Operation manuals ☑. Criteria for non-standard components production and verification rules ☑ Drawings and regulations of special

components ☑ QC Technical Indicators of the Product☐ Requirements that specify the safety and normal use characteristics of a product☑. Whether the specifications for acceptance of a product meet the design requirements of the product☑". Safe-Run did not submit the materials that have been ticked as ready in the Design Output Document Record.

(V) Information of the Patent

135 The Background Technology in paragraph **[0002]** of the Specification of the Patent provides that "in the manufacture of the existing radial tire, after the belt drum is respectively run to the belt layer feeding template, crown strip template and tread feeding template, the corresponding belt layer feeding template, crown strip template and tread feeding template are adjusted through position adjustment structure, so that the corresponding belt layer feeding template, crown strip template and tread feeding template are respectively attached to the outer surface of the belt drum for feeding. As it takes long time for the belt layer feeding template, crown strip template and tread feeding template to be adjusted through the adjustment structure, the whole feeding cycle is long. In addition, the belt layer feeding template, crown strip template and tread feeding template require adjustment structures respectively, the cost of the whole feeding system is high."

136 Paragraph **[0004]** of the Specification provides that "the horizontal moving sliding plate of the belt drum structure is supported by a horizontal linear guide rail of the base, the belt drum in the belt drum structure is externally connected with a vertical driving device, the vertical driving device is disposed on a vertical support of the belt drum structure, and the bottom of the vertical support is fastened to horizontal moving slide plate." Paragraph **[0008]** provides that "a rack structure is arranged on the inner side of one of the horizontal linear guide rails of the base, and one end of the horizontal moving slide plate is disposed with a vertically arranged horizontal driving motor, the horizontal driving motor is fastened to the horizontal moving slide plate, a portion of the horizontal driving motor that protrudes from a lower end surface of the horizontal moving slide plate is provided with a gear structure, and the gear structure is in meshing engagement with the rack structure." Paragraph **[0010]** provides that "after adopting the structure of the present invention, the tread assembly feeding system relates to feeding stations of the belt layer the crown strip and the tread, the positions changes of the respective stations through the horizontal movement of the belt drum, and when feeding at different stations, the belt drum fits to the belt layer feeding template, the crown strip template and the tread feeding template through simultaneous vertical and horizontal movements, so as to save the feeding time and make the feeding cycle short, in addition, comparing to the original arrangement that each station needs one group of position adjusting structures respectively, the existing system only needs to arrange one group of vertical driving devices of the belt drum, which saves the machine cost and keep the whole feeding system in low cost."

137 Paragraph **[0019]** of the Specification provides that "the horizontal moving slide plate 7 of the belt drum structure 2 is supported by the horizontally linear guide rails 8 of the base 1, the belt drum 9 in the belt drum structure 2 is externally connected with the vertically driving device, the vertically driving device is disposed on the vertical support 10 of the belt drum structure 3, the bottom of the vertical support 10 is fastened to the horizontal moving slide plate 7." Paragraph **[0020]** provides that "the output shaft of the driving motor 15 is connected to the ball screw 17 through the coupling 16, and the coupling 16 ensures a stable connection between them." Paragraph **[0021]** provides that "a linear displacement sensor 22 arranged vertically is disposed between the horizontal moving slide plate 7 and the slide plate 12 to accurately obtain the displacement value in the vertical direction, so that when the specifications are replaced, the upper and lower values of the belt drum of different specifications are electrically set, and the specification replacement of the tread assembly feeding position is completed only by directly invoking the parameters of the corresponding specifications, which greatly saves the time and labor intensity of the replacement of the specifications." Paragraph **[0022]** provides that "a rack structure (not shown in the figure, which belongs to the existing mature structure) is arranged on the inner side of one of the horizontal linear guide rails 8 of the base 1 is disposed with ... the portion of the horizontal driving motor 23 that protrudes from a lower end surface of the horizontal moving slide plate is provided with a gear structure (not shown in the figure, which belongs to the existing mature structure), and the gear structure is in meshing engagement with the rack structure; the rotation of the horizontal driving motor 23 drives the gear structure to rotate, which in turn makes the horizontal moving slide plate 7 move horizontally and linearly along the horizontal linear guide rails 8."

(VI) Information about the Parties Concerned in this case

138 On January 29, 2021, upon the approval of the Suzhou Municipal Administrative Examination and Approval Bureau, Safe-Run Huachen Machinery (Suzhou) Co., Ltd. changed its name to Safe-Run Intelligence Machine Co., Ltd. and its enterprise type changed from a limited liability company to a (non-listed) share-holding company.

(VII) Other disputes involving VMI and Safe-Run

1. The Administrative enforcement action Safe-Run initiated based on the Patent

139 Safe-Run as the petitioner, had submitted an Administrative Complaint to Suzhou Intellectual Property Office of Jiangsu Province asserting the Patent, requesting to order Cooper (Kunshan) Tire Co., Ltd. to stop the infringement of the Patent (including but not limited to stop using the single-stage tire building machine MAXX). The Administrative Complaint was signed on May 15, 2018.

2. Disputes between the two parties over the liability for damages caused by the abuse of intellectual property rights.

140 On April 22, 2019, the Suzhou Intermediate People's Court of Jiangsu Province (the court of first instance trial of this case) accepted the abuse of intellectual property rights action brought by VMI against Safe-Run. VMI claimed: 1. To rule that Safe-Run to compensate VMI for its economic losses of RMB1,000,000 caused by the malicious litigation; 2. To rule that Safe-Run to publish a statement on the industrial media to eliminate the adverse impact on VMI and restore the goodwill of VMI; 3. To rule that Safe-Run to bear the litigation costs. The facts and grounds claimed by VMI were that: Safe-Run was fully aware the utility model patent ZL201220227958.0 did not meet the conditions for granting a patent, Safe-Run nevertheless filed administrative enforcement actions and patent infringement action with the Suzhou Intellectual Property Office of Jiangsu Province, the Intellectual Property Office of Jiangsu Province and the Suzhou Intermediate People's Court of Jiangsu Province against VMI and its customer, Cooper (Kunshan) Tire Co., Ltd. four times within three months. After Safe-Run severely damaged the goodwill and normal production and operation of VMI, Safe-Run withdrew all the aforesaid actions for the reason that the China National Intellectual Property Administration declared the patent invalid in its entirety. The court of first instance rendered down the Civil Judgment [2019] Su 05 Zhi Chu No.251 on December 14, 2020, finding that: Safe-Run knew that the technical solution of its utility model patent had been disclosed by prior art, but still applied for and obtained the patent right. In addition, VMI's MAXX building machine was launched in the market earlier than the application date of the Patent. Safe-Run, as a company specializing in the manufacturing of tire building machine, can be regarded as that it was fully aware of the above fact but still deliberately filed a lawsuit. Safe-Run and VMI were competitors in the same industry, and Safe-Run based on the prior art to apply for a utility model and asserted such patent against VMI for patent infringement. This was an act of excluding competition for improper purposes. Safe-Run was at fault, so the litigation it brought against VMI should be determined as a malicious litigation. On this basis, the court of first instance ruled that: (1) Safe-Run shall compensate VMI's economic losses of RMB 1 million within ten days as of the date of effectiveness of the judgment; (2) other claims of VMI shall be dismissed. Safe-Run was not satisfied with the judgment and appealed to the Higher People's Court of Jiangsu Province. The case is still being heard by the Higher People's Court of Jiangsu Province at the second instance.

141 The aforesaid findings of facts were supported by the specification of the Patent submitted by VMI during the litigation of this case, as well as evidence materials for proving the R&D processes of the Prior Secret-related Technology, the reasonable confidentiality measures adopted, the transaction process of the tire building machine, the possibility of Safe-Run to gain access to the Prior Secret-related Technology, evidentiary materials on the relevant lawsuits between Safe-Run and VMI, evidentiary materials submitted by Safe-Run during the litigation to prove that the technical solution of the Patent is independently researched and developed by Safe-Run, and statements of the parties concerned.

142 This court considers that: according to both parties' arguments, the focuses of the dispute during the second instance of this case are: (1) whether the technical secret asserted by VMI qualifies as technical secret; (2) whether the technical solution of the Patent applied and disclosed the technical secret of VMI; (3) whether Safe-Run is likely to have access to VMI technical secret; and (4) whether Safe-Run has made inventive contributions to the substantive features of the Patent.

(I) Whether the technical secret asserted by VMI qualifies as technical secret

143 Article 9 (4) of the 2019 AUCL provides that "for the purpose of this Law, a trade secret shall refer to any commercial information such as technical and business information which is unknown to the public, has commercial value, and for which corresponding confidentiality measures have been adopted by the right holder." In this case, the technical secret asserted by VMI is the "fitting material system for vertical and horizontal moving with belt drum" successfully developed and applied by VMI to its MAXX tire building machine and EXXIUM tire building machine prior to the filing date of the Patent. The carriers of technical secret asserted by VMI are the technical manual and drawings of MAXX tire building machine (No. E1GG0404). There is no dispute between the parties that the technology asserted by VMI is technical information and has commercial value. This court confirms this and would not make further comment. Regarding this issue, the main dispute between the parties lies in whether the Prior Secret-related Technology asserted by VMI is known to the public and whether VMI has taken corresponding confidentiality measures. This court set out the analysis as follows:

1. When the Prior Secret-related Technology asserted by VMI was created

144 To prove that the Prior Secret-related Technology asserted by VMI has been created before the filing date of the Patent, VMI provided the contracts, invoices, packing lists, acceptance certificates, email correspondences and other evidence proving the transaction between VMI and [###], VMI and [###] for the supply of MAXX tire building machines and the transaction between VMI and [###]for the supply of EXXIUM tire building machines which bear the technical secret concerned, as well as the relevant news reports. This court considers that the evidence submitted by VMI during the first instance and the second instance is sufficient to conclude that the Prior Secret-related Technology asserted by VMI in this case was created before the filing date of the Patent, that is, before November 6, 2014, the reasons are as follows:

145 Firstly, the above transaction-related evidence submitted by VMI can internally corroborate with each other and constitute a complete evidence chain which is sufficient to prove that the transactions with respect to the MAXX and EXXIUM building machines between VMI and [###], VMI and [###] and VMI and [###] had actually taken place and the building machines had been delivered and put into use. The main information relating to the purchase and sale of products, such as the TBM model number, contract number, VMI internal number, letter of credit number,

international trade term, date of delivery, weight of products loaded, acceptance conditions, are recorded in various evidential materials ascertained by the court during the second instance, is consistent with each other. In particular: [###].

146 Secondly, the above transaction evidence can be corroborated with other external evidence. **(1)** The date of execution of the contract for sale or purchase of the building machine and the date of delivery of the building machine reflected by the above transaction evidence can be corroborated with news reports regarding the launch of MAXX and EXXIUM tire building machines by VMI. VMI submitted evidence in the first instance to prove that relevant magazines and websites from 2008 to 2009 reported that VMI launched MAXX tire building machine and in January 2012, VMI launched EXXIUM tire building machine was reported. However, the time reflected in the evidence regarding the MAXX tire building machine transaction made by VMI with [###] and [###], and the time reflected in the evidence regarding the EXXIUM tire building machine transaction made by VMI with [###] were later than the aforesaid reporting time, therefore, the authenticity of the MAXX and EXXIUM building machines transaction could be affirmed. **(2)** The evidence of the transaction between VMI and [###] regarding the EXXIUM tire building machine submitted by VMI corroborates with the evidence collected by notarization at [###]factory. [###].

147 Finally, the technical manual for the MAXX tire building machine (that is VMI MAXX 24) that VMI delivered to [###], the technical manual for the EXXIUM building machine (that is EXXIUM Technical Manual) that VMI delivered to [###] and identified under the notarization at [###] factory, and the EXXIUM tire building machine notarized all contain the corresponding technical information "fitting material system with belt drum moving vertically and horizontally" alleged by VMI in this case, which are sufficient to prove that such technical information had been created at the time of the transaction between VMI and the above companies.

148 In conclusion, the evidence on file is sufficient to recognize that the relevant technical information of VMI's "fitting material system with belt drum moving vertically and horizontally" borne on VMI's MAXX and EXXIUM tire building machines, their corresponding technical manuals and mechanical drawings, were created before November 6, 2014, that is, the filing date of the Patent.

2. Whether VMI adopted confidentiality measures for its Prior Secret-related Technology

149 Article 5 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases involving Infringement on Trade Secrets provides that "if a right holder has taken reasonable confidentiality measures to prevent the disclosure of a trade secret prior to the occurrence of the alleged infringing act, the people's court shall recognize them as the confidentiality measures as stipulated by Article 9 (4) of the 2019 AUCL. The people's court shall determine whether the right holder has taken corresponding confidentiality measures

based on factors such as the nature of the trade secret and its carrier, the commercial value of the trade secret, identification degree of confidentiality measures, degree of correspondence between the confidentiality measures and the trade secret, and the right holder's willingness to keep the trade secret confidential.. ” Article 6 of the aforesaid Provisions provides that “Under any of the following circumstances, if it is sufficient to prevent the leakage of a trade secret under normal circumstances, a people's court shall determine that the right holder has taken corresponding confidentiality measures:**1.** entering into a non-disclosure agreement or stipulating confidentiality obligations in a contract; **2.** making confidentiality requirements to employees, ex-employees, suppliers, customers and visitors who may have access to or obtain the trade secret by means of articles of association, training, rules and systems, written notification, and et al; **3.** Visitors' access to factory premises, workshops and other production or distribution premises involving the trade secret is restricted or such premises are differentiated for separate management.; **4.** differentiating and managing the trade secret and its carriers by means of marking, classification, isolation, encryption, sealing up for safekeeping, and limiting the scope of personnel who may have access to or obtain the trade secret; **5.** taking measures such as prohibiting or restricting the use of, visiting, storing and reproducing on computer equipment, electronic equipment, network equipment, storage equipment and software, and et al that could access, obtain the trade secret; **6.** requiring resigned employees to register, return, delete or destroy the trade secrets they have accessed to or acquired as well as the carriers thereof, and to continue to assume the obligation of confidentiality; and **7.** taking other reasonable confidentiality measures. ”

150 In this case, the carriers of the technical secrets asserted by VMI are the MAXX tire building machine and corresponding technical manual and mechanical drawings. Based on VMI’s assertion on the confidentiality measures taken and the evidence on file, this court considers that the measures taken by VMI comply with the requirements of taking corresponding confidentiality measures as provided under the 2019 AUCL for the following reasons:

151 Firstly, VMI has made specific confidentiality requirements to the parties who purchase the carriers of the technical secret, that is, the customers who have access to and have obtained the technical secret, which shows VMI’s willingness to keep the technology confidential, and the confidentiality measures can be effectively identified. VMI has stipulated corresponding confidentiality clauses in the non-disclosure agreements or separate bilateral agreements on intellectual property rights with the parties (that is, [###], [###]etc.) which obtain the carriers of the technical information. In addition, the technical manuals for the MAXX and EXXIUM tire building machines delivered by VMI to the above parties contain statements such as “shall not be reproduced or disclosed to any third party”. It is explicitly provided in the Mutual Intellectual Property Protection Agreement between VMI and [###]that [###]shall refuses the access by any third party to VMI’s equipment in its factory; [###] shall not allow its employees or any third party to reverse engineer VMI’s equipment (or parts and components); and [###]will inform VMI immediately if it comes across any

product which may be deemed as an imitation of VMI's equipment or parts and components in the market. It is also explicitly stated in the technical manual for the MAXX tire building machines delivered by VMI to [###] that the products of VMI shall not be copied, reproduced or disseminated by the Buyer and/or users; they shall not in any way be disclosed or transferred to any third party; and cannot be used for copying or reproduction of similar products without VMI's explicit written permission. The contract regarding the sale and purchase of EXXIUM building machines between VMI and [###] also explicitly provides that [###]is not allowed to reproduce, copy or transfer the products to any third party in any form and/or by any means without the legitimate written permission of VMI; the products are not allowed to be reproduced or copied without the written permission of VMI. It is also explicitly stated in the EXXIUM technical manual delivered by VMI to [###]that without prior written permission of VMI, all or part of such information is strictly prohibited to be re-used, reverse engineered, reproduced, disseminated or otherwise disposed of, in any manner, in whole or in part, through electronic or mechanical means. In addition, similar confidentiality agreements have been concluded between VMI and [###]. The above confidentiality agreements and Intellectual Property Rights Statement are sufficient to reflect VMI's willingness to keep its technical information confidential. Meanwhile, the counterparty is able to clearly understand its confidentiality obligation through the above agreements and statements, and is able to clearly and definitely identify the contents that VMI required to keep confidential.

152 Secondly, VMI explicitly required that the entity who purchases the carrier of the asserted technical secret (the customers who may access or obtain the technical secret) shall adopt protective measures to restrict the access of the building machine. For instance, the place where the building machine is located shall be differentiated and visitor restrictions shall be imposed, which indicates VMI's intent to prohibit unauthorized persons from accessing the carrier of its technical secret. Such confidential measures can be fully identified. In the Mutual Intellectual Property Rights Protection Agreement signed by and between VMI and [###], it is expressly provided that the area where VMI's equipment is located shall be recognized as the "protected area", and no entry to the protected area without permission and prohibition of photo-taking, drawing, videotaping and measuring etc, shall be clearly agreed. The above agreement is sufficient for the counterparty, that is, [###], to identify the confidentiality measures taken by VMI with respect to its equipment. Furthermore, the photos taken by VMI at the time of evidence preservation at [###]factory show that an iron wire fence was set up around the EXXIUM building machine in the factory of [###], which shows the agreements made by and between VMI and its customers who may have access to VMI's building machines on access restrictions of building machines.

153 Thirdly, by agreeing on "right of first refusal" terms with its customers who purchase its tire building machine equipment, VMI ensures that the tire building machines containing VMI's technical information shall only be delivered to the recipient who signed a non-disclosure agreement with VMI, so as to prevent its tire

building machines from entering into the second-hand market, or being obtained by an unspecific third party from through the market, that is, to prevent an unspecific third party without authorization from obtaining the carrier of the asserted technical secret without signing a non-disclosure agreement. On one hand, the nature of the tire building machine determines the its market and recipients. Transactions in respect of tire building machines are generally conducted between enterprises. It is difficult for the public to obtain tire building equipment in the common market. On the other hand, the sales contracts or general terms and conditions entered into by and between VMI and its customers who may have access to and obtain the technical secret asserted by VMI all provide that VMI shall have the "right of first refusal", which further restricts the market circulation of VMI building machines. For instance, Article 21.4 of the Purchase Contract between VMI and [###]for the EXXIUM tire building machine stipulates that "if the Buyer decides to sell or transfer the ownership of the products, the Seller shall have the right of first refusal." Article 20 (the right of first refusal) of the General Terms and Conditions of Sale signed between VMI and [###]for the MAXX building machine stipulates that "20.1 If the Buyer decides to sell or transfer the ownership of the subject products, the Seller shall have the right of first refusal."

154 Finally, the above confidentiality measures taken by VMI and the value of the concerned technical information are basically matched and in accordance with the confidentiality measures generally taken in the industry. **(1)** According to the evidence on file, since the unique nature of the tire building machine industry leads to that the building machine equipment would not be circulated freely in the market, Tire Building Machine manufacturers can, to a certain extent, control who may have access to and obtain the building machine products. Therefore, VMI adopted the measures of entering into confidentiality agreements or provisions with the purchasers of its tire building machines to comply with the common practice of circulation in the tire building machine industry. **(2)** The evidence on file shows that the major confidentiality measures taken by the tire building machine industry include entering into confidentiality agreements with the tire manufacturers who are the customers of tire building machines, physical protective measures such as isolation nets and fences surrounding the tire building machines, and restricting visitors to the factory buildings, workshops and other places where the tire building machines are placed. **(3)** Taken the evidence on file submitted by VMI into consideration, including the public documents of Safe-Run, it can be seen that the tire building machines are generally tailored-made for the tire building machine manufacturers in accordance with the requirements of tire manufacturers. Therefore, the tire building machines not only carry the trade secrets of the tire building machine manufacturers, but also may carry the corresponding trade secrets or other intellectual property of the tire manufacturers. This is reflected in the Bilateral Intellectual Property Protection Agreement entered into by and among VMI, [###]and [###]. Therefore, the tire manufacturers have no motivation to resell or transfer the tire building machines containing their own trade secrets, which also reduces the possibility of the tire building machines to enter the second-hand market for circulation. Therefore, the above confidentiality measures taken by VMI conform to the confidentiality measures generally taken in the industry

and the above confidentiality measures taken by VMI is sufficient to prevent the disclosure of its technical secrets under normal circumstances.

155 Moreover, Safe-Run argued that the confidentiality measures of VMI were not complied with by the relevant tire manufacturers and therefore the confidentiality measures of VMI are not appropriate. In this regard, this court deems that the nature of the technical secrets and their carrier, as well as the commercial value of the technical secrets, the identification degree of the confidentiality measures, the degree of correspondence between the confidentiality measures and the technical secrets, and the willingness of the right holder to keep the trade secret confidential shall be combined in determining whether the right holder has taken the confidentiality measures stipulated in the 2019 AUCL, and should not disregard the confidentiality measures taken by the right holder on the ground that others violate the confidentiality agreement signed with the right holder. Such argument raised by Safe-Run lacked legal basis and was not supported by the court.

3. Whether the Prior Secret-related Technology of VMI has been known to the public

156 Article 3 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secret Infringement stipulates: "*in case the information which a right holder requests for protection is not generally known by and easily available to the relevant personnel in the field at the time of the occurrence of the alleged infringement, the people's court shall recognize it as unknown to the public as stipulated in Article 9 (4) of the 2019 AUCL." Article 4 of the same Provisions stipulates: "the people's court may deem the relevant information as known to the public under any of the following circumstances: (1) the information belongs to common knowledge or industrial practice in the field; (2) the information only relates to the dimensions, structures, materials and the simple assembly of components of the product, and can be directly obtained by the relevant personnel in the field by observing such product on the market; (3) the information has already been publicly disclosed in any publication or any other media; (4) the information has already been publicized in any public presentation or exhibition, and et al; (5) the information can be obtained by the relevant personnel in the field through other public channels. Any new information generated from sorting, improvement and processing of the known information of the public shall be deemed as unknown to the public in compliance with the provision of Article 3 of these Provisions.*"

157 **Firstly**, as described above, the recipient of the carrier of the technical secret asserted by VMI, that is, the tire building machine, technical manual and mechanical drawings, is specific, and the recipient is mainly from the tire manufacturers that have signed a non-disclosure agreement with VMI and VMI has taken relevant confidentiality measures to restrict the access and acquisition by any person not authorized by VMI. Therefore, the carrier of the technical secret itself cannot easily be

obtained by public and the personnel in the field through public channels, and the technical information borne on such carries is also not obtainable through public channels.

158 **Secondly**, the technical information asserted by VMI does not only relates to the simple combination of dimensions, structures, materials and components of the product, nor is it directly obtainable by the personnel in the field through observing a product in the market (tire building machine). The concerned technology asserted by the VMI, that is, the "fitting material system for vertical and horizontal moving with belt drum", has a complicated structure and contains many parts and components, and mainly involves the movement of the belt drum in the vertical and horizontal directions and then laminating to the corresponding loading modules, in which the rotary drive motor for the belt drum, the vertical moving motor and the horizontal moving motor correspond to different transmission mechanisms, that is, rotary timing belt, vertical ball screw, and horizontal rack rails, respectively. Most of the relevant major components and the matching relationship between components are provided at the inner side of the belt drum base, the rear side of large metal plates and the inside of the horizontal rails, and are hidden in the building machine. Therefore, the specific technical solution of the concerned technology cannot be directly obtained from observing the appearance of the building machine, and the technical solution borne on the machine is not directly obtainable by the personnel in the field through observation.

159 **Thirdly**, there is no evidence proving that the technical information asserted by VMI has been made public by other means. Safe-Run argued in the second instance that the concerned technology asserted by VMI has already been made public, and the corresponding video of the building machine has been made public on the internet. In this regard, this court considers that: **(1)** judging from the time of publication of the video evidence submitted by Safe-Run, the time of publication of the video referred to in the two notarial certificates cannot be clearly determined as before the filing date of the Patent or is obviously after the filing date of the Patent, so it cannot be proved that the concerned technology asserted by VMI has been disclosed before the filing date of the Patent. Wherein, in (2020) Notarial Certificate Hu Dong Zheng Jing Zi No. 7392, the time of publication of the video which is collected as evidence on June 10, 2020 was published six years ago, which cannot accurately indicate whether this video was released or disclosed before the filing date of the Patent; in Notarial Certificate (2020) Hu Dong Zheng Jing Zi No. 7394, the time of publication of the video which is collected as evidence (August 23, 2016) is obviously later than the filing date of the Patent. **(2)** From the content of these two videos, even if the publication time is earlier than the filing date of the Patent, the content captured in the video only provides a general overview of the appearance of a tire building machine, the duration of which is very short, from which a clear and complete technical solution of the Prior Secret-related Technology asserted by VMI cannot be observed. Therefore, such defense argument raised by Safe-Run is not tenable, and shall not be supported by this court.

160 In addition, Safe-Run also argued that after the sale of the tire building machine, which is the carrier of the technical secret of VMI, the technical information borne on the tire building machine has become available to the public. In this regard, this court considers that the right holder's sale of the carriers of technical secret does not inevitably lead to that the technical information borne on such carriers becomes known by the public, and the standard for determining whether the related information that the right holder requests for protection is known by the public shall still be subject to whether such information is generally known by or easily available to the relevant personnel in the field. In this case, as mentioned above, the confidentiality measures taken by VMI conform to those stipulated in the 2019 AUCL. The evidence submitted by Safe-Run in this case was insufficient to prove that VMI's sale of the tire building machine made relevant technical information borne on the building machine generally available to or readily available to relevant personnel in the field, so such defense argument is not tenable and shall not be supported by this court.

161 In conclusion, the "fitting material system for vertical and horizontal moving with belt drum" researched and developed by VMI before the filing date of the Patent is unknown to the public and has commercial value for which VMI has taken corresponding confidentiality measures. Such information is in compliance with the statutory elements of technical secret and shall be protected by laws.

(II) Whether the technical solution of the Patent utilizes the technical secret of VMI

162 1. Regarding the comparison object of the relevant technical solution

163 In this case, VMI asserted that the technical manual and mechanical drawings of the MAXX model tire building machine delivered to [###] before the filing date of the Patent shall be used as the carriers for technical comparison. Safe-Run argued that patent claims are usually superordinate concepts summarized by abstracting specific technical solutions and technical features, and usually cover a scope broader than that of a specific technical solutions of an invention. Therefore, the patent claims shall not be used as the actual technical solutions researched and developed by inventors and patentees to compare with the so-called Prior Secret-related Technology, but the technical disclosure submission, drawings and the embodiments of the specification shall be used as the basis for comparison with the allegedly infringed technical secret. It also shall not combine the technical data from any models of VMI's tire building machine and then compare them with the Patent. However, VMI argued that the source of the technical disclosure submission presented by Safe-Run was unknown and there was no other evidence to affirm its authenticity, legality and relevance. Therefore, such submission should not be used as the basis for technical comparison, and the contents recorded in the claims, specification and drawings of the Patent should be used as the basis for technical comparison.

164 In this regard, this court consider that, where the owner of the technical secret asserts ownership of relevant patent right on the basis of infringement of the technical secret, the people's court during the trial shall examine whether the patent documents disclose the technical secret asserted by the owner, or whether the technical secret is used in the patented technology, and whether the technical secret constitutes the substantial contents of the patented technical solution. In this case, the basis for VMI to assert ownership of the Patent is that Safe-Run misappropriated the technical secret of VMI and applied for the Patent accordingly. Therefore, the trial of this case should focus on whether the Patent which Safe-Run applied for and has been granted disclosed the technical secret asserted by VMI, or whether the patented technology utilized the technical secret. In this court's assessement, the technical secret asserted by VMI should be compared with the documents of the Patent, that is, the claims, specification and drawings of the Patent. The technical disclosure submission asserted by Safe-Run is not the published contents of the Patent, that is, it is not the technical contents disclosed by the Patent, and the scope of protection of the Patent cannot be determined therefrom. Therefore, the technical disclosure submission asserted by Safe-Run cannot be used as the basis for comparison. Safe-Run's such defense argument was untenable, and was not supported by the court.

2. Whether the two solutions are substantially the same

165 VMI asserted that: the Prior Secret-related Technology lies in actively approaching and aligning each server through the vertical movement and axial horizontal movement of the belt drum, so as to complete the charging process of relevant materials. Each server can be set in a static state, and no movement mechanism and position adjustment mechanism are required to be set at the front end of each server, such that the overall manufacturing cost is reduced. In the meantime, since the belt drum actively moves vertically and horizontally, the path is shortened and a circular path is formed, almost continuous production without interruption can be realized, and the overall production efficiency is improved greatly. The production time of a tire is shortened from 50-60 seconds to 38 seconds. All the above invention points were disclosed by the Patent.

166 Safe-Run argued that: the Patent is different from the Prior Secret-related Technology asserted by VMI from various aspects.

167 With respect to the comparison on whether the technical solution of the Patent and the Prior Secret-related Technology of VMI are substantially identical, the court comments in details as follows:

(1) Regarding claim 1

168 During the second instance, both parties confirmed that Claim 1 of the Patent could be decomposed into the specific technical features 1A to 1H for comparison, the court comments in details as follows:

169 ① Technical feature 1A: "A tread assembly charging system, which includes a base, a belt drum structure that can move horizontally in a straight line is disposed on the base, and one side of the base is respectively provided with a belt layer feeding template, a crown strip template, and a tread feeding template"

170 Safe-Run argued that: it is a customary design for a tread assembly charging system to have the belt drum structure and the base. Both parties' technical solutions containing the belt drum structure and the base cannot prove the similarity of both parties' technology. VMI's technical data does not explicitly indicate the location of the belt layer feeding template, the crown strip template and the tread feeding template; in combination with paragraphs [0008] and [0022] of the specification of the Patent, the technical solution of the Patent uses a servo motor to drive a rack and gear structure to realize horizontal movement of the belt drum structure above the base, while in VMI's technology, the horizontal movement of the belt drum structure is realized by driving a synchronous belt structure by a linear motor.

171 VMI argued that: its Prior Secret-related Technology has a base and a belt drum structure that can move horizontally in a straight line, and the belt drum structure has a device that can drive the belt drum to move vertically up and down, and such design is not a customary design. MAXX technical manual shows that parallel linear guide rails are set above the base, matching with the linear guide rail pair below the reciprocating seat of the belt drum, to realize the horizontal in a straight line movement of the belt drum structure, and a belt layer feeding template, a crown strip template and a tread feeding template are arranged at one side of the base. The linear motor in the Prior Secret-related Technology of VMI corresponds to the horizontal drive motor of the Patent, the synchronous belt structure corresponds to the rack of the Patent, both of which drive gears through motors, and the gears mesh with the rack or the synchronous belt to realize the horizontal movement of the belt drum structure, therefore they are the same. Thus, the technical feature 1A is identical to the Prior Secret-related Technology of VMI.

172 In this regard, this court considers that the VMI MAXX technical manual "4.2.3 Belt Drum Drive and Reciprocating Seat" clearly shows that there is a horizontal linear base, and a belt drum is arranged above the base, and it can be known from the transfer track set on the base and the "reciprocating seat of the belt drum is used to move the belt drum transversely and up and down" recorded in "4.2.3.1 Belt Drum Reciprocating Seat" that the belt drum can move horizontally in a straight line. The manual "4.1.1 Machine Overview: MAXX Tire Assembling Machine" clearly shows that a belt ply server (belt layer feeding template), a crown belt server (crown strip template) and a tread server (tread feeding template) are set on one side of the base. Therefore, the technical feature 1A of the Patent is identical to the above-mentioned technical feature of VMI.

173 ② Technical feature 1B: "the horizontal moving slide plate of the belt drum structure is supported by the horizontal linear guide of the base"

174 Safe-Run argued that: the horizontal moving slide plate of the Patent is an independent component fastened with the bottom of the vertical support, while the part labelled "horizontal moving slide plate" in the technical data of VMI is the bottom of the vertical support body, not an independent part; the Patent adopts a structure in which the horizontal moving guide rail pair and the horizontal linear guide rail cooperate, the horizontal moving guide rail pair is assembled on the horizontal moving slide plate, and the mutual positions of the bottom of the vertical support and the horizontal linear guide rail pair can be adjusted according to the actual situation to eliminate the error, while the vertical support in VMI's technology is placed directly on the horizontal linear guide rail, and does not have a horizontal moving slide plate that can be used to adjust the position of error.

175 VMI argued that: first of all, Safe-Run's explanation on the "horizontal moving slide plate" is inconsistent with the text of the Patent. The reference number 7 in the drawing of the Patent is "horizontal moving slide plate", pointing to the bottom horizontal part directly connected to the vertical support 10, and Safe-Run explained that the patent agency changed the position of the arrow in the technical disclosure submission when applying for the patent. VMI did not agree with this argument. The subject matter of the dispute in this case is the Patent, and the contents of comparison shall be based on the text stated in the Patent. The source of the so-called technical disclosure submission from Safe-Run was unknown, there was no other evidence to affirm, and its authenticity, legitimacy and relevance are challenged. Therefore, it should not be used as the basis for technical comparison. Second, even according to Safe-Run's above explanation, VMI's Prior Secret-related Technology has the same structure of the "horizontal moving slide plate." MAXX technical manual reveals that the bottom of the belt drum support consists of two layers of plate-like parts, and the horizontal axial moving linear guide rail pair is directly connected to the lower slide plate, on which is the horizontal part of the support of the belt drum structure. MAXX mechanical drawings also reveal, in the perspective view of the front side, the same two-layer plate structure. Therefore, no matter the "horizontal moving slide plate" is construed as an integral part according to the text of the Patent, or the "horizontal moving slide plate" is construed as the lower layer of the two-layer plate-like structure as asserted by Safe-Run, the said technical feature is identical with VMI's Prior Secret-related Technology. Thirdly, Safe-Run has not adduced evidence to prove that the two-layer structure of the bottom of the vertical support and the horizontal moving slide plate can achieve the effect of adjusting the horizontal error. Even if there are the above effects, with the same structure, VMI's Prior Secret-related Technology has the same technical effects asserted by Safe-Run.

176 In this regard, this court considers that: first of all, the belt drum structure in VMI's Prior Secret-related Technology has a horizontal moving slide plate, and the horizontal

linear guide rail pair below the horizontal moving slide plate is supported on the horizontal linear guide rail of the base. Second, regarding whether the horizontal moving slide plate is a separate part. As mentioned above, the basis of comparison in this case should be the claims, the specification and the drawings of the Patent, and the construction of the claims should also be based on the specification and the drawings, rather than the so-called technical disclosure submitted by Safe-Run. According to the definition of Claim 1 on "the bottom of the vertical support is fastened with the horizontal moving slide plate", in combination with the records of paragraph [0004] and Fig. 1 of the specification, the defined horizontal moving slide plate and the vertical support are connected between two parts by way of fastening connections. VMI MAXX technical manual and mechanical drawings reveal that a horizontal moving slide plate and a vertical support are provided, there is connection relationship between the horizontal moving slide plate and the vertical support, and the horizontal moving slide plate and the vertical support assume an L-shaped structure. The technical feature 1B of the Patent is identical with VMI's Prior Secret-related Technology. The corresponding embodiment of the technical feature shown in the specification of the Patent is also that the horizontal moving slide plate and the vertical support assume an L-shaped structure. It should be emphasized that the parts of the horizontal moving slide plate corresponding to VMI's Prior Secret-related Technology and the Patent are both connected to the bottom of the vertical support. Regardless of whether these two parts are designed integrally or separately by means of fastening connection, there is no substantial difference between the two parts in terms of structure, function and effect. However, at the time of assembly, if there are two separable parts, the two parts should be assembled at the time of assembly. Safe-Run deems that "the horizontal moving guide rail pair is assembled on the horizontal moving slide plate, and during assembly, the position between the bottom of the vertical support and the horizontal moving linear guide rail pair can be adjusted to eliminate the error according to the actual conditions". However, the claims of the Patent did not define the horizontal moving guide rail pair, and the relevant technical effect asserted by Safe-Run was not clearly stated in the specification. Therefore, the differences asserted by Safe-Run could not be supported. Therefore, the technical feature 1B is identical with VMI's Prior Secret-related Technology.

177 ③ Technical feature 1C: "the belt drum in the belt drum structure is externally connected with a vertical driving device, and the vertical driving device is disposed on the vertical support of the belt drum structure"

178 It is recorded in VMI's MAXX technical manual "4.2.3.1 Reciprocating Seat of Belt Drum" that the belt drum comprises a servo motor and a ball screw disposed on the vertical support, and it is clearly recorded that "the reciprocating seat of the belt drum is used to move the belt drum horizontally and up and down so as to move the belt drum relative to the following devices to properly position the drum: belt ply 1 server; belt ply 2 server; crown strip server; tread server; transfer ring", and "the drum

drive head moves up and down (through a ball screw driven by a servo motor)." The technical feature 1C of the Patent is identical to VMI's Prior Secret-related Technology.

179 ④ Technical feature 1D: "the bottom of the vertical support is fastening connected with the horizontal moving slide plate"

180 Based on the court's comment on technical feature 1B, the technical feature 1D is identical with VMI's Prior Secret-related Technology.

181 ⑤ Technical feature 1E: "the belt drum rotary drive motor drives the belt drum to rotate"

182 VMI's MAXX technical manual "4.2.3.2 Drum Drive Head" explicitly states that "the drive head is used to drive rotation and diameter changes of the belt drum. For rotary motion, the (servo) motor/gearbox [6] drives the drum via a synchronous belt [3] and pulleys." The (servo) motor/gearbox referenced 6 (rotary motion) is clearly shown in its illustration. The technical feature 1E of the Patent defines that the belt drum is driven by a rotary driving motor that drives the belt drum to rotate, and the rotary driving motor corresponds to the (servo) motor/gearbox in the Prior Secret-related Technology of VMI, therefor this feature is the identical with the Prior Secret-related Technology of VMI.

183 ⑥ Technical feature 1F: "the belt layer feeding template comprises a 1# belt layer feeding template and a 2# belt layer feeding template, the 1# belt layer feeding template, the tread material template, and the 2# belt layer feeding template are sequentially arranged along the horizontal moving direction of the belt drum structure, the crown strip template is disposed above the 2# belt layer feeding template and adjacent to the tread feeding template."

184 Safe-Run argued that: first, it is not certain that VMI's mechanical drawings can be used as the basis for comparison. Second, whether the actual location of the crown strip template is above the 2 # belt loading template and adjacent to the tread feeding template cannot be identified according to VMI's mechanical drawings.

185 In this regard, this court considers that the MAXX technical manual of VMI clearly records that the reciprocating seat of the belt drum is used to move the belt drum horizontally, up and down so as to correctly position the drum with respect to the following devices: belt ply 1 server; belt ply 2 server; crown strip server; tread server; transfer ring. From the overall technical concept, the belt drum moves horizontally and vertically through the reciprocating seat of the belt drum to be close to other modules to complete the charging process. With respect to the specific arrangement positions of the four modules, combined with the illustrations of "8.1.13 crown strip server" and "8.1.14 tread server" in VMI's MAXX technical manual and the overall top view of the building machine in its mechanical drawings, it can be determined that the 1# belt layer

feeding template, the tread material template, and the 2# belt layer feeding template are sequentially arranged along the horizontal moving direction of the belt drum structure, the crown strip template is adjacent to the tread feeding template, and the top view has clearly shown that the crown strip server is disposed above the 2 # belt layer feeding template. Technical feature 1F of the Patent is identical to the Prior Secret-related Technology of VMI.

186 ⑦ Technical feature 1G: "the 1# belt layer feeding template and the 2# belt layer feeding template are arranged obliquely downward to ensure that the lower position of the outer surface of the belt drum fits to the 1# belt layer feeding template, and the 2# belt layer feeding template"

187 Safe-Run argued that: in the Prior Secret-related Technology asserted by VMI, it cannot be determined whether the belt drum moves to fit the belt loading template or the belt loading template moves to fit the belt drum.

188 VMI argued that: it has been specified in the MAXX technical manual that the belt drum moves vertically, up and down to the height of the four servers, charging position, and in the corresponding mechanical drawings, it only indicates that the belt drum has a vertical moving device, while the belt ply server, the crown strip server and the tread server are in fixed positions, without moving mechanism. Therefore, according to the literal description and the drawing information, it can be determined that the belt drum moves to fit the crown strip and tread in the upper position and the belt in the lower position.

189 In this regard, this court considers that, first of all, according to the illustration of "8.1.12 Belt ply server" in the MAXX technical manual and the mechanical drawings thereof, it can be seen that in the Prior Secret-related Technology of VMI, both ends of the two belt ply servers have an obvious height difference, and the whole is arranged in an inclined plane and the end close to the belt drum is inclined downward. Second, it is clearly recorded in the MAXX technical manual that the reciprocating seat of the belt drum is used to move the belt drum horizontally and up and down so as to correctly position the drum with respect to the following devices: the belt ply 1 server, the belt ply 2 server, the crown strip server, the tread server, and the transfer ring. From the overall technical solution, it can be determined that the belt drum is moved to fit the materials on other modules by moving the belt drum in the horizontal direction and the vertical direction to complete the charging process. It is indicated in the MAXX technical manual and the mechanical drawings that the belt drum is equipped with the corresponding moving device and driving device to realize its horizontal and vertical movement, while the two belt servers, the crown strip server and the tread server are all in relatively fixed positions, and there is no moving device or driving device for moving them. In addition, "8.4.2.6 Drum Height Adjustment above the Feeding Plate" in the MAXX technical manual records: "height of the loading template applicable to the belt drum: if the distance between the loading template and the belt drum needs to be increased, a positive value is input during the fitting process;

if the distance between the loading template and the belt drum needs to be decreased, a negative value is input during the fitting process." The arrow in the figure clearly indicates that the distance between the belt drum and the loading template is adjusted by moving the belt drum up and down in the vertical direction, which also confirms that the overall technical solution is implemented by moving the belt drum, rather than moving other servers. Finally, combined with the MAXX technical manual and the mechanical drawings, both have shown that two belt servers disposed obliquely downward at one end near the belt drum, and the overall technical concept of moving the belt drum to fit the servers to complete the charging process. It can be determined that VMI completes the charging process by making the lower position of the outer surface of the belt drum fit the belt servers. It is also clearly shown in the drawing of "8.4.2.6 Drum Height Adjustment above the Feeding Template" in the MAXX technical manual, that is, the lower position of the outer surface of the belt drum is close to the belt ply servers for fitting and charging, and the relative position of the belt servers and the belt drum is also clearly shown in the MAXX technical manual, that is, the belt drum is located above the belt drum servers, and the lower position of the outer surface of the belt drum is close to the servers. Therefore, the technical feature 1G of the Patent is exactly the same as the Prior Secret-related Technology of VMI.

190 ⑨ Technical Feature 1H: "the upper position of the outer surface of the belt drum is attached to the crown strip template and the tread feeding template"

191 Safe-Run argued that it is impossible to determine whether the belt drum moves up and down to fit to the crown strip template, the tread feeding template, or the crown strip template, the tread feeding template moves up and down to fit to the belt drum in VMI's technology.

192 In this regard, this court considers that, first of all, for the same reasons as commented on technical feature 1G, it can be determined that VMI's Prior Secret-related Technology is to move the belt drum to fit to the material on other modules to complete the charging process. Secondly, the crown strip server of VMI is disposed above the belt ply 2 server, and the head of the crown strip server is disposed obliquely downward, so to move the belt drum to fit to the crown strip server must be that the upper position of the outer surface of the belt drum fits to the crown strip server. Finally, the illustration, especially the front view, in the MAXX technical manual "1.2 Positioning Rollers/Fitting Rollers" have clearly shown that during the tread feeding process, the tread server is located above the belt drum, and the upper position of the outer surface of the belt drum is close to the tread server, so to move the belt drum to fit to the tread server must be the appearance of the belt drum. The upper position of the tread is fitted to the tread server. Therefore, the technical feature 1H of the Patent is identical with the Prior Secret-related Technology of VMI.

(2) Regarding Claim 2

193 Claim 2 of the Patent cites Claim 1. During the trial of second instance, both parties confirmed that the additional technical features of Claim 2 were decomposed into technical features 2A to 2E for comparison. The court comments in details as follows:

194 ① Technical feature 2A: "the belt drum structure comprises a vertical support, a belt drum, a slide plate and a balance cylinder"

195 Safe-Run argued that the "slide plate" in the technology asserted by VMI is only a plate, which cannot be realized by cooperating with the vertical linear guide rails to realize vertical movement of the belt drum. Therefore, the structure of the slide plate in the Patent is different from the prior technology of VMI.

196 VMI argued that its MAXX technical manual and mechanical drawings show the features of the slide plate and the linear guide rail pair from various aspects, so that the above allegations of Safe-Run are not supported by facts.

197 In this regard, this court considers that the structure of the belt drum in the Prior Secret-related Technology of VMI includes a vertical support, a belt drum, a slide plate and a pneumatic cylinder. In the Prior Secret-related Technology of VMI, the horizontal moving slide plate is provided with a pneumatic cylinder, the piston column of which is connected to the slide plate of the belt drum mounting base to assist the vertical driving device to drive the belt drum to move up and down. The function of the pneumatic cylinder is to offset the weight of the belt drum, assist the vertical driving device to control the belt drum to move up and down, and also balance the center of gravity of the belt drum mounting base. The balance cylinder defined in the Patent is of the type that describes the cylinder equipment by the effect to be achieved, that is, "balancing". Paragraph [0020] of the specification of the Patent states that: "a balance cylinder 21 is disposed between the lower end portions of the horizontal moving slide plate 7 and the slide plate 12, and the balance cylinder 21. The driving motor 15 is the power source of the vertical driving device". As can be seen from the arrangement position of the balance cylinder in combination of the embodiment, the balancing function of the balance cylinder is mainly embodied in balancing the center of gravity of the belt drum, so as to assist the driving motor 15 to drive the belt drum vertically, and the balancing function is mainly brought by its arrangement position. Therefore, there is no substantial difference between the balance cylinder of the Patent and the pneumatic cylinder in the Prior Secret-related Technology of VMI. The technical features also include a vertical support, a belt drum and a slide plate, so it is completely the same as the Prior Secret-related Technology of VMI. As for the matching relationship between the slide plate and the linear guide rail asserted by Safe-Run, this court will comment on it in technical feature 2B.

198 ② Technical feature 2B: "A vertical guide rail is arranged on the vertical pole on the vertical support respectively, and the linear guide rail pair of the slide plate is correspondingly connected to the vertical guide rail"

199 The drawing of the reciprocating seat of the belt drum in the MAXX technical manual of VMI clearly shows that the vertical support has a vertical pole, the vertical pole is provided with two parallel vertical guide rails. The drawing in the MAXX technical manual "2 belt drum frame" clearly shows that the rear side of the slide plate of the belt drum mounting base is provided with a linear guide rail pair, which is correspondingly connected to the two vertical guide rails. The technical feature 2B of the Patent is completely the same as the above-mentioned feature of the Prior Secret-related Technology of VMI.

200 ③ Technical feature 2C: "the slide plate is vertical in arrangement, a driving motor is arranged at an inner side of an upper end of the slide plate, an output shaft of the driving motor is externally connected with a ball screw pole, the ball screw pole is threaded into and penetrates through a connecting nut, and the connecting nut is fastened at a rear side of the slide plate"

201 According to the illustration of "2 belt drum frame" in the MAXX technical manual of VMI, the slide plate is vertical in arrangement, according to the diagrams of "reciprocating seat of the belt drum" and "synchronous belt adjustment", the inner side of the upper end of the vertical support is provided with a servo motor, the output shaft of the servo motor is connected with the ball screw pole through a synchronous belt, the ball screw pole is threaded into and connected through a connecting nut, the connecting nut is fastened at a rear side of the slide plate, and the structure drives the belt drum to move vertically under the drive of the servo motor.

202 Safe-Run argued that: the driving motor of the Patent is placed horizontally, and its output shaft is fixedly connected with the ball screw pole through a reducer; in the Prior Secret-related Technology asserted by VMI, the driving motor is placed vertically, its output shaft is connected with the synchronous belt, and the synchronous belt is detachably connected with the ball screw pole. In the Prior Secret-related Technology asserted by VMI, when the belt drum moves to a higher position, the driving motor will no longer be located at the upper end of the slide plate, which is different from the Patent.

203 VMI argued that: the linear position of its belt drum moving up and down in the Prior Secret-related Technology is sensed through a proximity switch and a sensor, the positions of the proximity switch and the sensor define the maximum height that can be reached by moving the slide plate vertically, at this limit height, the upper edge of the slide plate is lower than the driving motor, so its vertical driving motor is located at the inner side of the upper end of the slide plate, and the Patent does not define whether the driving motor is placed horizontally or vertically.

204 In this regard, this court considers that, first of all, Claim 2 and other claims of the Patent do not define the placement direction of the driving motor, only the drawing given in the specification are shown to be placed horizontally, therefore the scope of protection of the claims cannot be confined by the contents of the specification of the Patent, Safe-Run's assertion that the driving motor in the Patent should be placed horizontally lacks grounds, and the placement direction asserted does not constitute a difference between the two solutions. Whether the driving motor is placed horizontally or vertically as asserted by Safe-Run is mainly related to the connection manner of the driving motor and the ball screw pole and the arrangement of the relevant parts. Secondly, the Patent filed by Safe-Run clearly defines that the driving motor is located on the inner side of the upper end of the slide plate, while in VMI's Prior Secret-related Technology, the motor is no longer located on the inner side of the upper end of the slide plate after the slide plate is moved. It is evident in VMI's MAXX Technical Manual that there is a protruding cylindrical part under the driving motor. Combined with the MAXX mechanical drawings, it can be seen that the structure is a proximity switch, therefor a part to limit the movement of the slide plate has been set under the driving motor, so that the slide plate can always be controlled to be located under the driving motor during the process of up and down sliding. Therefore, the feature of the Patent "a driving motor is arranged at the inner side of the upper end of the slide plate" is identical with VMI's Prior Secret-related Technology. In conclusion, technical feature 2C of the Patent is exactly the same as VMI's Prior Secret-related Technology.

205 ④ Technical feature 2D: "the front side of the slide plate is provided with a belt drum mounting shaft arranged in a horizontal straight line, one end of the belt drum mounting shaft is provided with the belt drum, one end of the belt drum mounting shaft is provided with a driven pulley, the output shaft of the belt drum rotation driving motor is provided with a driving pulley, and the belt is connected to the driven pulley and the driving pulley respectively"

206 Safe-Run argued that the "belt drum mounting shaft" asserted by VMI is actually the transmission shaft of the driving motor 7 for the expansion and contraction of belt drum, rather than the belt drum mounting shaft in the claims of the Patent, and in the VMI technical solution, the belt drum is mounted on a horizontal vertical support, rather than mounted through a horizontal mounting shaft arranged in a straight line.

207 In this regard, this court considers that it is clearly recorded in "4.2.3.3 Belt Drum" section of the MAXX technical manual that: "the belt drum (1) is mounted on the shaft of the belt drum drive head (2)." As can be seen from the illustration and texts of the "4.2.3.2 Drum Drive Head" and "4.2.3.3 Belt Drum" in the MAXX technical manual, a belt drum mounting shaft is provided on the front side of the slide plate and is arranged in a horizontal line and concentric with the rotation shaft of the forming drum, the belt drum is mounted on the shaft of the belt drum drive head, the shaft is further provided with a driven pulley, the output shaft of the (servo) motor/gearbox

(rotation) is provided with a driving pulley, and a synchronous belt is connected to the driven pulley and the driving pulley respectively. Regarding the issue of the belt drum mounting shaft raised by Safe-Run, VMI's MAXX technical manual "4.2.3.2 Drum Drive Head" has clearly stated: "for diameter changes, the (servo) motor/gearbox [7] drives a shaft [1] within the main shaft of the belt drum. The shaft drives the mechanism [4] in the drum. This causes expansion and contraction of the drum. "As can be seen from the drawings, there is another shaft within the main shaft, and its (servo) motor/gearbox (contraction/expansion) drives another shaft within the main shaft, which makes the drum expand and contract. The argument that the VMI's so-called "mounting shaft for the belt drum" asserted by Safe-Run is the drive shaft for the expansion and contraction of the belt drum cannot be founded. Therefore, technical feature 2D of the Patent is identical to the Prior Secret-related Technology of VMI.

208 ⑤ Technical feature 2E: "the balance cylinder is disposed between the said horizontal moving slide plate and the lower end of the slide plate."

209 Safe-Run argued that: the horizontal moving slide plate is not included in VMI's technology, therefor technical feature 2E of the Patent is different from VMI's technology.

210 In this regard, this court considers that, in the Prior Secret-related Technology of VMI, a balance cylinder is disposed on the horizontal moving slide plate, the piston of which is connected to the slide plate of the belt drum mounting base, and the belt drum is driven up and down by an auxiliary vertical drive device. As the court has commented on the technical feature of the horizontal moving slide plate in technical feature 1B, the description thereof will not be repeated here. Therefore, technical feature 2E of the Patent is identical to the Prior Secret-related Technology of VMI.

(3) Regarding Claim 3

211 Claim 3 of the Patent cites Claim 2, further defining that the output shaft of the drive motor is connected to the ball screw through a coupling.

212 Safe-Run argued that: a coupling refers to a mechanical component that is used to fixedly connect the drive shaft and driven shaft in different mechanisms to rotate together and transmit motion and torque, often composed of two and a half components, respectively, connected with a key or a tight fit, fastened at two shaft ends. In VMI's technology, the output shaft of the drive motor is connected to the ball screw through a synchronous belt pulley structure, the part labelled "coupling" is actually a synchronous belt, which is not a fastening connection for the connection between the drive shaft and the driven shaft; the drive motor, the coupling and the ball screw of the Patent are directly connected and cannot be disassembled, while the drive motor in

the VMI technology is connected to the ball screw through a synchronous belt and can be disassembled.

213 VMI argued that: in the Prior Secret-related Technology of VMI, the output shaft of the belt drum vertical motion servo motor is connected to the ball screw through a synchronous belt (a specific form of coupling). The specification of the Patent only records the coupling in paragraph [0020]: "the output shaft of the drive motor 15 is connected to the ball screw 17 through the coupling 16, and the coupling 16 ensures a fastening connection between the two." The claims and the specification of the Patent do not involve whether the coupling can be disassembled or its specific structure. A coupling refers to a device that connects two shafts to make them rotate together in the process of transmitting motion and power, which can also be disassembled. Therefore, the Safe-Run's claim that the difference between the two is that the coupling is not removable, but the synchronous belt can be removable lacks grouds. The belt drive can change the transmission speed by changing the size of the gears, and the transmission ratio is not quite accurate. The coupling itself also has a safety protection effect, impact effect.

214 In this regard, this court considers that in the Prior Secret-related Technology of VMI, as described above, the output shaft of the servo motor is connected to the ball screw through a synchronous belt. The technical feature of the Patent defines a specific connection manner between the drive motor and the ball screw, that is, the output shaft of the drive motor is connected to the ball screw through a coupling. According to the common knowledge in the art, a coupling is mainly a device for connecting two shafts and making them rotate together in the process of transmitting motion and power. The coupling itself is a connecting component, and the Safe-Run also agreed this, so its assertion of non-disassembly is obviously unfounded. There are some technical differences between the coupling connection of the Patent with the synchronous belt connection in the Prior Secret-related Technology of VMI, but both of them finally realize the connection between the motor and the ball screw and carry out transmission. According to paragraph [0020] of the specification of the Patent, the coupling ensures a fastening connection between the drive motor and the ball screw, and a person having ordinary skill in the art, after reading the claims and the specification, cannot conclude that the coupling has other functions or achieves other technical effects in addition to the functions of connection and transmission in the technical solution of the Patent. For a person having ordinary skill in the art, both the coupling connection and the synchronous belt connection are more conventional technical means, and there is no substantial difference between the two connection methods in the case of realizing the connection between the motor and the ball screw and carrying out transmission.

(4) Regarding Claim 4

215 Claim 4 of the Patent cites Claim 3, further defining that a vertically arranged linear displacement sensor is disposed between the horizontal moving slide plate and the slide plate.

216 Combined with the illustration in the MAXX technical manual and the parts indicated in the mechanical drawings, it can be seen that a sensor and a proximity switch assembly are disposed vertically on the belt drum frame in the Prior Secret-related Technology of VMI, the proximity switch is disposed above the horizontal moving slide plate and below the servo motor, and the proximity switch and the sensor are used to detect the position of the slide plate when it moves in the vertical direction, so as to accurately position the displacement position of the belt drum. The additional feature of Claim 4 of the Patent defines that a vertically arranged linear displacement sensor is disposed between the horizontal moving slide plate and the slide plate. It can be seen from paragraph [0021] of the specification that the linear displacement sensor functions to accurately obtain accurate displacement values of the slide plate in the vertical direction, which is not substantially different from the sensor and the proximity switch set in the vertical direction of the vertical support of VMI.

(5) Regarding Claim 5

217 Claim 5 of the Patent cites Claim 4, further defining that a rack structure is disposed at the inner side of one of the horizontal linear guide rails of the base, a vertically arranged horizontal driving motor is disposed at one end of the horizontal moving slide plate, the horizontal driving motor is fastened to the horizontal moving slide plate, and the part of the horizontal driving motor protruding downward from the lower end surface of the horizontal moving slide plate is provided with a gear structure, and the gear structure connects and meshes with the rack structure.

218 Safe-Run argued that the Patent refers to the rack and gear structure while the technology of VMI refers to the synchronous belt structure, the two are obviously different from each other. In the technical solution of the Patent, a gear structure is disposed at the inner side of one of the horizontal linear guide rails of the base, and the horizontal driving motor protrudes downward from the lower end surface of the horizontal moving slide plate is provided with a gear structure, and the gear structure connects and meshes with the rack structure; the horizontal driving motor rotates, the gear structure is driven to rotate, so that the horizontal moving slide plate moves horizontally and linearly along the horizontal linear guide rail. The rack and gear structure, their relative positions with the base and the linear guide rail, and their working principle are not disclosed in the drawings of VMI.

219 In this regard, this court considers that, as can be seen from the illustration in the MAXX technical manual, a gear structure is disposed at the inner side of the horizontal linear guide rail of the Prior Secret-related Technology; a linear servo motor is disposed under the horizontal moving slide plate of the belt drum frame and is vertical to the horizontal moving slide plate; a lower protrusion of the linear servo motor engages

with the guide rail; and the linear servo motor controls the lateral movement of the belt drum frame on the horizontal guide rail.

220 In addition to the above comparison opinions, Safe-Run asserted that the relevant components in the technical features after decomposition of the Patent are common knowledge in the art, so even if the relevant technical features after decomposition are the same as the Prior Secret-related Technology asserted by VMI, it cannot be recognized that the two technical solutions are substantially the same. In this regard, this court deems that, even if the belt drum, tread feeding module, crown strip module and belt loading module are provided in the Patent over the prior art or the belt drum is driven by a rotary drive motor and et al, which are customary designs in the art, the Patent itself is an invention of improvement over the prior art, in which the simultaneous horizontal and vertical movement of the belt drum is realized by adjusting the positions of relevant modules and the connection relationship between such components. Therefore, even if the relevant components asserted by Safe-Run are of customary design, if the positional relationship and connection relationship of the relevant components are the same as the corresponding features in VMI's Prior Secret-related Technology, the determination that the technical solutions of the two are substantially the same shall not be affected.

221 In conclusion, the overall technical concept of the Patent which Safe-Run applied for and has been granted is the same as that of VMI's Prior Secret-related Technology, in which simultaneous movement of a belt drum in the horizontal and vertical directions is realized so that the belt drum can actively fit to the belt ply template, crown strip template and tread template. The technical means of both are the same, in that two servo motors are used to control the movements of a belt drum in the horizontal and vertical directions, respectively. The technical effect achieved by the two is the same, that is, the belt ply template, crown strip template and tread template are fastened, and the charging is carried out only by controlling the movement of the belt drum, so as to save the charging time, shorten the charging cycle and reduce the cost of the charging system. The technical solutions of the Patent are not substantially different from VMI's Prior Secret-related Technology, and the main inventive point of the Patent is also the realization that the belt drum is simultaneously moved in the horizontal and vertical directions to fit other templates. VMI's Prior Secret-related Technology has constituted the substantial contents of the technical solutions of the Patent.

(III) Whether the Safe-Run is likely to have access to VMI technical secret

222 With respect to this issue of the dispute, Safe-Run argued that as this case is a patent ownership dispute, the determination standard shall be whether there is an actual access, rather than the likelihood of such access. In this regard, based on VMI's right basis to claim ownership, the adjudication of this case not only included to decide whether the technical secret alleged by VMI was misappropriated and disclosed by the Safe-Run, but also included to decide whether Safe-Run's defense argument that it

independently researched and developed the Patent was tenable. In the adjudication of whether the Patent disclosed the technical secret, when the right holder of the technical secret adduces evidence to prove that the technical solution disclosed in the Patent is the same as or substantially the same as the asserted technical secret, and the accused patentee has the channel or opportunity to obtain the technical secret of the right holder, it shall be presumed that the accused patentee misappropriated and disclosed the technical secret. If the accused patentee defended that it has independently researched and developed the accused technical solution or it has legitimate source of the accused technical solution, the accused patentee shall bear the burden of proof; if the evidence submitted by the accused patentee is sufficient to prove its defence, the above presumption of misappropriation and disclosure can be negated, and it could also prove that the patentee enjoys the legitimate right in terms of the Patent. On the contrary, if the accused patentee is unable to prove its defence, and the technical secret asserted by the right holder constitutes the substantial contents of the Patent, it shall be determined that the right holder of the technical secret enjoys the patent right in accordance with laws. Therefore, the Safe-Run's defence that the judgment should be relied on the actual access is unfounded in this case and is not acceptable by the court.

223 In this case, VMI asserted that Safe-Run had the opportunity and channel to access the disputed technical secret prior to the filing date of the Patent mainly from [###]. That is, many ex-employees of [###] had job positions in Safe-Run or its affiliates after leaving [###]and were still keeping close connection with relevant technical personnel of [###] after working for Safe-Run. During the trial of this case, VMI, after submitting additional evidence, asserted that Safe-Run had actually obtained the technical manual of MAXX tire building machine delivered by VMI to [###]. This court considers that the evidence submitted by VMI is sufficient to prove that Safe-Run had the opportunity or channel to access to the technical secret asserted by VMI, with the reasons as follows:

224 **Firstly**, the two employees hired by the Safe-Run within one year after the establishment of the Safe-Run both have more than ten years or about twenty years of work experience at [###]respectively, and both of their work duties are related to building machine equipment and production. After joining Safe-Run, the two employees also participated in the project research relating to the technical solutions of the Patent. According to the facts ascertained by the court of first instance, Safe-Run was established on December 21, 2009; Zhang XX was responsible for equipment management at [###]from December 1991 to December 2007 and served as the director of the [###]; from October 2010 to August 2017, Zhang XX was responsible for international marketing management at Safe-Run Suzhou and served as the deputy general manager of the International Marketing Center. According to the curriculum vitae of Piao XX submitted by Safe-Run in the first instance, Piao XX worked for [###]Company since November 1980, and Safe-Run asserted that Piao XX was no longer the general manager of [###]Company since December 1, 2008. Meanwhile, the Employment Contract between Piao XX and Safe-Run submitted by

Safe-Run in the first instance indicates that Piao XX served as the executive general manager of the Safe-Run from August 4, 2010, and the term of the employment contract expired on August 3, 2015. VMI had no objection to the foregoing work experience of Zhang XX and Piao XX. In addition, according to the Announcement on the List of Persons Who Have Passed the Evaluation of the "Seagull Program" in 2013 issued by the Suzhou Human Resources and Social Security Bureau, the Safe-Run's project in which Zhang XX and Piao XX participated in was the "Automatic Semi-Steel Radial Tire Single Stage Building Machine."

225 **Secondly**, after Zhang XX and Piao XX left [###], and during the period that they worked for the Safe-Run, Safe-Run filed the application for the Patent. Safe-Run was established on December 21, 2009, both Zhang XX and Piao XX joined the Safe-Run in 2010 and participated in the R&D projects related to the Patent. Safe-Run filed the application for the Patent on November 6, 2014.

226 **Thirdly**, although the date on which VMI and [###]formally concluded the agreement for the sale and purchase of the MAXX tire building machine in 2013 was long after the date on which Zhang XX and Piao XX left [###] (respectively after December 2007 and December 2008), [###]had attended the meeting where VMI introduced the MAXX tire building machine before the formal conclusion of the agreement with VMI (November 2009), and had learnt about the MAXX tire building machine newly launched by VMI. VMI and [###]jointly held a technical specification meeting in November 2009, during which VMI gave a demonstration of the MAXX system and introduced the advantages of the MAXX tire building machine compared with the 248 machine.

227 **Fourthly**, although when the two employees hired by the Safe-Run left [###], the MAXX tire building machine transaction had not concluded between VMI and [###], since the two employees had long working experience in [###]in relation to equipment and production and had held certain senior positions in [###]before their resignation, Safe-Run could still establish the technical communication channel with [###]through these two employees.

228 **Finally**, VMI proved that Safe-Run actually possessed the MAXX technical manual which was delivered by it to [###]on August 26, 2016, that is, one of the carriers of the prior technical secret as asserted by VMI. This could prove that Safe-Run was able to establish a certain "connection" with [###]and obtain the technical data of VMI which is lawfully possessed by [###]. During the trial of second instance, in accordance with the VMI evidence, on August 26, 2016, an ex-employee of Safe-Run received, via his work email address, the VMI MAXX 24 Technical Manual ([###]) dated [###]which was sent by another ex-employee of Safe-Run via his work email address. Safe-Run challenged that: there were conflicts and contradictions between the ex-employee and Safe-Run after his resignation, the authenticity of the employee's relevant statements and the email was challenged; the act of sending the email was a personal act of that employee; the file size of the technical manual stored in the U drive

is different from that shown as attachment by the email. In this regard, this court considers that the above objection raised by the Safe-Run cannot refute the fact that the ex-employee had sent the VMI MAXX technical manual to other employees via his work email account. Firstly, both the sender and the recipient of such email were the employees of Safe-Run at the time of sending the email and the email was also sent via the work email account of Safe-Run, therefore, Safe-Run fully had the capability to search and verify the content of such email. In the event that VMI has proved that an employee of Safe-Run had sent the email via his work email account, if Safe-Run challenges the authenticity of the email, it should adduce strong evidence to the contrary to rebut. Allegation of the Safe-Run that the recipient of such email has conflicts with Safe-Run after his resignation from Safe-Run is not sufficient to negate the authenticity of the email. Secondly, the process of downloading the email attachment and saving it to C-disk was all conducted under the witness of a notary public. In the event that Safe-Run did not submit any evidence to the contrary, the court affirmed the authenticity of the process of downloading and saving onto the C-disk. The documents saved on the C-disk were sent by an ex-employee of Safe-Run via his work email account. Thirdly, the ex-employee of Safe-Run opened and checked the properties of the "14.01.01 VMI MAXX MANUAL [###]" file stored in his computer under the witness of the notary public, which proved that he had received and downloaded the attachment of the said email on August 26, 2016. The documents saved in the computer by Safe-Run's ex-employee shows that it was from the work email account of another Safe-Run's ex-employee, both created and modified on August 26, 2016. As to the issue on the file size raised by Safe-Run, there may be certain variance as the file size is calculated and displayed differently in different operating systems. Even if the objection raised by Safe-Run on the file size is tenable, it does not change the fact that its employee had sent VMI technical manual to other employees via his work email account as affirmed above. Therefore, the evidence on file is sufficient to determine that on August 26, 2016, Safe-Run's employee sent to other employees via his work email account a copy of MAXX technical manual delivered by VMI to [###]. Safe-Run has not provided a reasonable explanation which is in line with common sense and business practice as to why its employees would possess the technical data protected as technical secret by its competitor VMI. Moreover, Safe-Run failed to adduce evidence to prove that above conduct is irrelevant to Safe-Run. Therefore, the evidence on file is sufficient to determine that Safe-Run possessed the MAXX technical manual delivered by VMI to [###]as of August 26, 2016. Although the evidence on file can only prove that the Safe-Run actually possessed the technical data containing the technical secret of VMI after the filing date of the Patent, this fact corroborates that Safe-Run and [###]could establish certain "connection" and Safe-Run had the opportunity and channel to obtain the technical data of VMI which is lawfully possessed by [###]on the other side.

229 In conclusion, the evidence on file can prove that Safe-Run had the opportunity or channel to access the carrier of the prior technical secret asserted by VMI in this case.

(IV) Whether Safe-Run has made inventive contributions to the substantive features of the Patent

230 Article 6 of the Patent Law (mended in 2008) stipulates that: "in performance of duties of the entity to which one belongs, or an invention made by a person primarily by using the material or technical means of the entity to which he belongs is a service invention. For a service invention, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee. For a non-service invention-creation, the right to apply for a patent belongs to the inventor or designer. After the application is approved, the inventor or designer shall be the patentee. For an invention made by a person using the material and technical means of an entity to which he belongs, where the entity and the inventor or designer have entered into a contract which stipulates who has the right to apply for a patent and who has the patent right, such provision shall apply." According to Article 13 of the Implementation Rules of the Patent Law of the People's Republic of China, "inventor or designer" as prescribed in the Patent Law refers to any person who has made inventive contributions to the substantive features of the invention. As mentioned above, where the right holder of the technical secret claims its ownership of relevant patent right relied on the infringement of the technical secret, and the right holder has proved the technical solution of the patent is the same or substantially the same as its technical secret, and the patentee has the channel or opportunity to obtain the technical secret, if the patentee asserts that it has made inventive contribution to the substantive features of the patent or has other legitimate sources to obtain the technical solution of the Patent, the patentee shall prove this assertion.

231 In this case, VMI has proved that it has completed the R&D of the confidential technology first, and Safe-Run had opportunity and channel to access to VMI's Prior Secret-related Technology prior to the filing date of the Patent. Moreover, the technical solution of the Patent which Safe-Run applied for and has been granted is substantially the same as that of VMI's Prior Secret-related Technology. In this case, Safe-Run shall bear the burden of proof when it asserted that the Patent is invented through its independent R&D. After examining the relevant evidence submitted by Safe-Run to prove that the Patent is independently researched and developed by Safe-Run, the court considers that the evidence submitted by the Safe-Run is insufficient to prove that the technical solution of the Patent is invented through its independent research and development, let alone prove its inventive contributions to the substantive features, which are analyzed in details as follows:

232 1. The R&D evidence submitted by Safe-Run lacks the process materials to reflect the substantive contents of R&D and is unable to demonstrate the complete R&D process of a technical solution. Firstly, Safe-Run lacks relevant technical materials or R&D materials to reflect the changing process of technology conception and technology roadmap from the prior art to the technical solution of the Patent. According to the records regarding the background technology of the Patent, in the prior art, after the belt layer feeding templates, crown strip template and tread feeding template are

respectively run through the belt drum, the corresponding belt layer feeding templates, crown strip template and tread feeding template are respectively fitted to the external surfaces of the belt drum for charging. In addition, it takes a long time for the belt layer feeding template, crown strip template and tread feeding template to be adjusted by the adjustment mechanism and the adjustment mechanisms need to be set up respectively, which leads to long charging cycle and high cost of the charging system. The technical solution proposed in the Patent improves the charging method of the tire building machine, which is also the main inventive point of the Patent, that is, the belt layer feeding template, the crown strip template and the tread feeding template are fitted through the belt drum's simultaneous vertical and horizontal movements, and only one set of vertical drive motors of the belt drum needs to be set up, and the other loading template does not need to be set up with adjustment mechanism, thereby shortening the charging cycle and reducing the cost of the charging system. However, in the evidence submitted by Safe-Run, only the "Project Proposal" states "automatic fitting of tread set components and carcass components", and the "Design Task Statement" states that the design contents include "automatic fitting of tread components, automatic inspection of the interface state of the belt connector" and "automatic fitting of carcass components, automatic pressing of all connectors". There is no stepwise research or technical material to support why the R&D personnel of Safe-Run proposed the technical solution and how the technical idea was proposed. Judging from the Safe-Run's application for patent protection on the technical solution of the Patent, Safe-Run obviously agrees that the technical solution of the Patent has outstanding substantive feature and remarkable progress over the prior art, then the proposal of the technical idea and the change in the technical route are naturally not easy to think of by the person having ordinary skill in the art, but the so-called R&D evidence submitted by Safe-Run does not reflect how its R&D personnel came up with the technical solution. In short, the so-called R&D evidence submitted by the Safe-Run only has a conclusion, which cannot reflect the specific change process of its technical idea and technical route from the prior art to the technical solution of the Patent. Second, there is a lack of stepwise technical materials that contain specific technical content and can reflect specific technical solutions. Throughout the six pieces of evidence submitted by Safe-Run, five of them are proposals, tasks, and review records filled out by the relevant R&D personnel of the Safe-Run, which in fact do not contain technical information or reflect specific technical content but are only written records of a certain stage of the development, and the remaining one is the mechanical drawing of the final developed building machine. The above-mentioned R&D evidence submitted by the Safe-Run does not contain the specific technical content of the relevant technical solution proposed in the process of R&D. Third, there is a lack of phased test materials which can reflect the application of the technical solution in the building machine and relevant materials which prove the equipment of R&D completed passed the final test. Based on the R&D evidence submitted by Safe-Run, the technical solution of the Patent was based on the R&D of its intelligent single stage building machine, and according to the record in its Project Proposal, it was expected that two tire building machines would be sold in the first batch. Therefore, the process of the Safe-Run's R&D of the technical solution of the Patent inevitably involved the practical

application of the technical solution on its tire building machine. It is known from the common sense of product R&D, or even common sense in daily life, that a new technical solution must be tested correspondingly if it is to be applied on production equipment and ultimately sold to the customers. In particular, the technical solution involved in this case made a major adjustment to the displacement relationship of the main working positions of the tire building machine. The proposal and implementation of the technical solution to the production of qualified building machine must go through a series of steps, including performance and safety, and et al in order to achieve the standards for sale or the relevant industry standards that such product must satisfy. Per the Design Output Record provided by Safe-Run, it can be seen that the output list includes "acceptance criteria for the formulation or application of non-standard components", "prescribed features of the product in terms of safety and normal use", and "whether the specifications for product acceptance can meet the requirements of product design", and et al. However, the R&D evidence submitted by Safe-Run does not include any stepwise testing materials or materials on the final passing the test relating to the application of the technical solution of the Patent in the building machine. Fourth, there is a lack of technical materials which can reflect the "trial and error" process of the technical solution. As mentioned above, the technical solution of the Patent can ultimately be applied on the building machine of Safe-Run only if it has passed a series of process tests and the final passing test. According to the common understanding of persons in the field with regard to the research and development process of products, in R&D testing, cases that fail to fulfill the expected function or performance are usually encountered, and the existing technical problems are found out, and the technical bottleneck encountered during the testing may be solved by studying and improving relevant technical details. However, the evidence submitted by Safe-Run does not show that the relevant technical solution proposed by Safe-Run in the course of its research and development failed to realize the objective of automatic fitting technology, nor does it include the technical solution with defects proposed by Safe-Run in the course of its research and development which failed to pass the relevant tests. According to the R&D evidence submitted by Safe-Run, we can only learn that the research and development of the technical solution of the Patent by Safe-Run was very smooth, but this does not conform to common sense. To sum up the above analysis, the so-called R&D evidence submitted by Safe-Run is only a research conclusion, which does not reflect the substantive process of R&D including specific technical contents and technical details.

233 2. In the absence of other legitimate technical sources or research and development basis, the process and time of R&D in the evidence submitted by Safe-Run are not in line with common practice and are not in line with the difficulty of industry practice and research in the field of building machines. First, the Safe-Run's R&D time is relatively short. Safe-Run's "Project Proposal" was raised on January 10, 2014. It took only more than seven months to approve the "Design Output File Record" on August 20, 2014, and the planned beginning and ending date of R&D recorded in its "R&D Plan" was only five months, that is, February 10, 2014 to July 10, 2014. Safe-Run completed the R&D of the "main chassis, belt drum drive, steel ring clamping" on

June 5, 2014, which took about four months. Second, the R&D process asserted by the Safe-Run does not reflect the customization and procurement process of the specific components needed by the new building machine, nor does it reflect the impact of the customization and procurement process on the overall R&D process. The change of the charging mode in the technical solution proposed by the Patent involves the adjustment of the azimuth of the four modules, namely, the belt drum, the belt layer feeding template, the crown strip template and the tread feeding template, and the specific structure of the belt drum needs to be adjusted to realize the movement of the belt drum, which will inevitably involve relevant non-standard components. According to the "Design Output File Record" submitted by Safe-Run, the output file also includes the development or application of acceptance criteria for non-standard components, and drawings of special components, and et al. Moreover, according to the common practice of the research and development process of equipment in the art, the customization of non-standard components is generally determined step by step in the research and development process, and the relevant dimension parameters of the components also need to be adjusted adaptively according to the specific scheme of the research and development. However, Safe-Run's R&D evidence does not reflect such process. Finally, judging from Safe-Run's documented R&D process, its R&D process is not only too simple, but also too short of research and development time. In the absence of other evidence, it is not convincing that Safe-Run completed the development of the Patent and successfully applied it to the tire building machine it sold. According to the statement of Safe-Run's expert assistant Li Zhijun (who is also one of the designers and developers recorded in the R&D evidence submitted by the Safe-Run) presented in the hearing, it was asserted that the change in building machines is rapid. Domestic R&D generally does not go through the process of formulating a plan, testing to a plan, because such process is too long. Therefore, the R&D cycle of domestic building machines basically is a year, and it is asserted that one year of R&D is a normal R&D cycle in domestic industry. Even if Safe-Run asserted that it had relatively strong R&D capability and had a certain R&D foundation in the early stage, and therefore it could develop and complete the technical solution of the Patent within a short period of time, Safe-Run should adduce the evidence to prove its alleged strong R&D capability and R&D foundation, but Safe-Run did not provide sufficient information to support its assertion. Therefore, Safe-Run's assertion of strong R&D capability and prophase R&D foundation are not accepted by the court. Under the circumstance that Safe-Run failed to prove that it has strong R&D capability, strength and relatively solid and mature research and development foundation, the written records of the R&D process are not sufficient to prove that Safe-Run has independently researched and developed the technical solution of the Patent.

234 3. The research and development process presented in the research and development evidence submitted by Safe-Run fails to reflect the inventive efforts made by Safe-Run to research and develop the technical scheme of the Patent. As mentioned above, Safe-Run's research and development evidence only reflects the results of research and development but does not involve the substantive contents of the research and development process of a specific technology. The record of the

research and development process in the above evidence cannot show that Safe-Run completed specific work and workload directly related to the technology at a certain stage or a certain time period, and cannot reflect the inventive efforts made by Safe-Run in the process of changes in technical solution. Even if Safe-Run asserts that the development of the technical solution of the Patent is a "small project in its SRS-H intelligent single stage building machine R&D project", the completion and the application of the technical solution in its SRS-H building machine should still comply with a series of processes, such as scheme design, scheme debugging, scheme optimization and adjustment, prototype assembly, and prototype test, which are usually needed in the design and manufacture of building machines.

235 4. Compared with the relevant R&D evidence submitted by VMI to prove its Prior Secret-related Technology, the evidence is sufficient to reflect the R&D process of a technical solution in a relatively complete manner. The evidence submitted by VMI reflects the corresponding stages of R&D, including finding and positioning of technical problems, project establishment demonstration and project team establishment, formulation of R&D plan, design of specific technology path, determination of the best technical solution, design and selection of parts and components, prototype assembly, naming of new machine, prototype testing and optimization, completion of prototype testing, and commercial production of new machine. The evidence submitted by VMI can also reflect the specific R&D work directly related to technology completed by VMI during a certain period of time.

236 In conclusion, the evidence submitted by Safe-Run is insufficient to prove that the technical solution of the Patent asserted by Safe-Run is independently researched and developed by Safe-Run, let alone prove that Safe-Run has made inventive contributions to the substantive features of the Patent.

237 In this case, VMI has proved its possession of the Prior Secret-related Technology, and Safe-Run has opportunity and channel to access to its Prior Secret-related Technology prior to the filing date of the Patent, and the technical solution of the Patent which Safe-Run applied for and has been granted is substantially the same as the Prior Secret-related Technology of VMI, which had constituted the substantial contents of the technical solution of the Patent. In this case, although Safe-Run asserted that it independently developed the technical solution of the Patent, the so-called R&D evidence submitted by Safe-Run in the trial of first instance is not sufficient to prove such assertion. Therefore, such assertion of Safe-Run is not acceptable by this court. Moreover, during the trial of second instance, when VMI provided further evidence to prove that Safe-Run had the likelihood and had actually had such access, Safe-Run did not provide further evidence in respect of its assertion of independent research and development. Therefore, Safe-Run's defense argument that it enjoys the right to the Patent lacked factual and legal grounds. Accordingly, based on the evidence provided by both parties and the investigation of the facts by the court, the court could recognize that Safe-Run has misappropriated the Prior Secret-related Technology of VMI and then filed the Patent and obtained the patent

right relied on VMI prior technical secret. Therefore, the Patent shall be owned by VMI.

238 The court of first instance neglected to consider that the right basis for VMI to claim patent right was infringement of its technical secret, and thus failed to examine the technical secret part. Under the circumstances that whether or not the Prior Secret-related Technology asserted by VMI constituted technical secret, whether the Safe-Run had the likelihood to have such access and the technical solution of the Patent is substantially the same as the Prior Secret-related Technology asserted by VMI, the court of first instance held that the Safe-Run had preliminarily proved that the technical solution of the Patent was independently developed, based on such evidence submitted by Safe-Run, which did not fully reflect the research and development process, and therefore required VMI to bear the burden of proof that the Safe-Run had accessed to and actually obtained the prior confidential technical information of VMI, and that the Safe-Run's acquisition thereof was under the circumstance that the Safe-Run has been aware that VMI had taken confidential measures for the prior confidential technical information. Such allocation of burden of proof is inappropriate. The court hereby corrects.

239 In conclusion, VMI's request for appeal is founded and supported by this court. In accordance with Article 9 (4) of the 2019 AUCL of the People's Republic of China, Article 3, 4, 5 and 6 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Civil Cases Involving Trade Secret Infringement, Article 6 of the Patent Law of the People's Republic of China (Amended in 2008), Article 13 of the Implementing Rules of the Patent Law of the People's Republic of China, and Item 2, Paragraph 1, Article 177 of the Civil Procedure Law of the People's Republic of China, the court hereby makes the verdict as follows:

I. To revoke the Civil Judgment (2018) Su 05 Min Chu No. 1297 handed down by the Suzhou Intermediate People's Court;

II. The right of invention patent No. 201410624213.1, titled "A Tread Assembly Feeding System" is owned by VMI.

240 The court fees in the first and second instances of RMB 800 shall all be borne by Safe-Run.

241 This judgment is final.

Chief judge: CEN Hongyu
Judge: SHE Chaoyang
Judge: CHEN Ruizi

[Seal of Supreme People's Court of People's Republic of China]

December 13, 2022

Judge assistant: ZHU Fanghui
Clerk: LI Menglin

Takeaway of the Judgement

Case No.	(2020) Zui Gao Fa Zhi Min Zhong No. 661	
Cause of action	Dispute over ownership of patent rights	
Collegial panel	Chief judge: CEN Hongyu Judge: SHE Chaoyang & CHEN Ruizi	
	Judge assistant: ZHU Fanghui	Clerk: LI Menglin
Date of Judgment	December 13, 2022	
Patent	Invention patent titled "Tread Assembly Charging System" (No. 201410624213.1)	
Keywords	Patent Right, Ownership, Technical Secret, Inventive Contribution, Burden of Proof	
Parties	Appellant (Plaintiff): VMI; Respondent (Defendant): Safe-Run.	
Judgement	I. To revoke the Civil Judgment (2018) Su 05 Min Chu No. 1297 handed down by the Suzhou Intermediate People's Court; II. The right of invention patent No. 201410624213.1, titled "Tread Assembly Charging System" is owned by VMI. Main body of first instance judgement: Dismiss all claims requested by VMI.	
Related Laws and Regulations	Article 9 (4) of the Anti-unfair Competition Law of the People's Republic of China; Article 3, 4, 5 and 6 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Civil Cases Involving Trade Secret Infringement; Article 6 of the Patent Law of the People's Republic of China (Amended in 2008); Article 13 of the Implementing Rules of the Patent Law of the People's Republic of China;	
Legal Issues	Methodology of trial on cases that the right holder of the technical secret claims ownership of patent right relied on trade secret infringement	
Opinion of Judgement	In the event that the right holder of the technical secret claims ownership of patent rights relied on trade secret infringement, the people's court shall examine whether the patent documents have disclosed the technical secret asserted by the right holder or whether the patented technology has utilized such technical secret, and whether the technical secret has constituted the substantive contents of the technical solution of the patent in the process of trial. In the trial of whether the concerned patent documents have disclosed the technical secret, if the right holder	

	of the technical secret adduces evidence to prove that the technical solution disclosed by the patent documents are identical or substantially identical with the technical secret it asserted, and the accused patentee has channel or opportunity to access the technical secret of the right holder, it could be presumed that the accused patentee misappropriated the technical secret and disclosed the same. If the accused patentee asserts that it independently researched and developed the accused technical solution or it obtain the accused technical solution from the legitimate source, it should bear the burden of proof; if the accused party adduces the sufficient evidence to prove its assertion, it could negate the presumption that its above acts of misappropriation and disclosure, it could also prove that the patentee enjoys the legitimate rights in terms of the concerned patent rights meanwhile. Otherwise, if the accused patentee is not able to prove its assertion, meanwhile, the technical secret asserted by the right holder constitutes the substantive content of the concerned patent, it could be recognized that the right holder of the technical secret enjoys the rights of the concerned patent.
Notes: This excerpt is not part of the judgment and has not legal effect.	