



Establishment of China's Intellectual Property Courts and Progress of Litigation

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重要通知：自2012年4月17日起，中伦律师事务所已依法改制为一家特殊的普通合伙。
Important Notice: Since April 17, 2012, Zhong Lun has reorganized into a LLP under the Implementation Rules for Law Firms of the Justice Ministry of China.

I. Background

- In 1993, the courts in Beijing set up the earliest intellectual property trial chambers in China, marking the specialization of intellectual property trials in China.
- By August 2014, the Supreme Court of China, 31 high courts, more than 400 intermediate courts, and over 100 designated grass-roots courts founded the intellectual property trial chamber, together with nearly 3,000 specialist judges of intellectual property.
- In 2014, China's courts accepted and heard 95,522 intellectual property civil cases of first instance and 9,918 intellectual property administrative cases of first instance.

I. Background

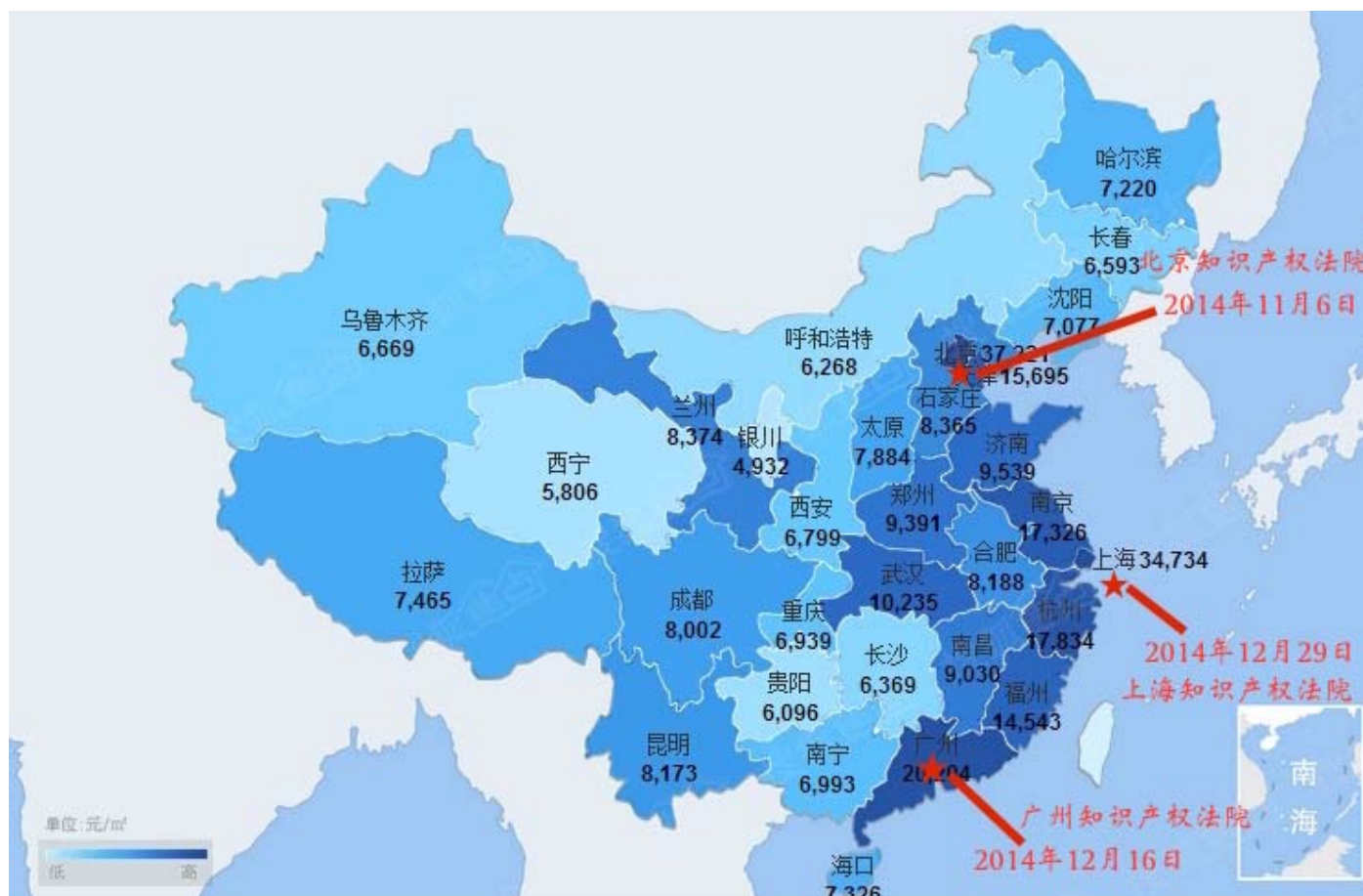
Typical problems in China's intellectual property trials are:

- Uneven capabilities in specialist trials of technology cases including patent and technology know-how;
- Discordance of judgment benchmarks in judging intellectual property cases;
- Doubts from obligees on IPR protection;
- Frequent interventions of local protectionism in trials.

II. Basics

- In August 31st, 2014, the Standing Committee of the National People's Congress discussed and passed the *Resolution on Establishing Intellectual Property Courts in Beijing, Shanghai, and Guangzhou*, enabling the formal launch of China's setting-up procedure for intellectual property courts.

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The reasons for choosing the three cities above as below:

- **Beijing** is China's capital and the political and cultural center. There are large numbers of cases, especially administrative cases related to the granting and confirmation of patent and trademark within the exclusive jurisdiction in Beijing;
- **Shanghai** is the economic and financial center as well as the city with the largest population in China. Foreign companies congregate in Shanghai;
- **Guangzhou** has a large number of intellectual property cases and rich experience in handling patent cases.
- Meanwhile, the three cities are among the earliest to conduct intellectual property trials in China, which has laid a sound foundation for adjudication.

II. Basics

Characteristics of China's intellectual property court and the doubts encountered

- The administrative level of an intellectual property court is equivalent to that of an intermediate court, making the intellectual property court both a court of first instance and of appeal. Specifically, the intellectual property court stands as the court of first instance for technology cases such as patent disputes and the court of appeal for non-technology cases such as copyright, trademark, and unfair competition disputes.

III. Scope of Jurisdiction

- 1. Civil and administrative cases of first instance related to technological expertise such as patent, new plant variety, integrated circuit layout-design, and technology know-how;
- 2. Administrative cases of first instance related to the granting and confirmation of intellectual property rights filed due to refusal to the decisions or resolutions made by the State Council's administrative departments shall fall within the exclusive jurisdiction of the Beijing Intellectual Property Court;
- 3. Cases of appeal related to intellectual property rights such as copyright and trademark that have been first tried by the grass-roots court in the same city and have been brought to civil and administrative decrees or decisions.

III. Scope of Jurisdiction

- The Supreme Court also includes three types of cases within the jurisdiction of intellectual property courts as cases of first instance:

- 1. Civil and administrative cases related to computer software;
- 2. Administrative cases filed against the administrative acts of intellectual property rights conducted by the State Council's departments or local governments at and above the county level;
- 3. Civil cases related to the determination of well-known trademarks.

IV. Organization

- Beijing Intellectual Property Court
- Four chambers, including: Case-filing Chamber, Trial Chamber I, Trial Chamber II, and Trial Supervision Chamber.
- In addition, there are also Office of Technology Investigation, Office of Research and Management, General Office, and the Judicial Police Detachment.
- Members of the Court include 1 president, 2 vice-presidents, 42 judges (selected and employed in two batches), and judicial assisting members like judge assistants, technology investigators, and clerks.

V. Progress in the Past Year

- By Nov. 6th this year, the Beijing Intellectual Property Court have accepted and heard 7,918 cases, including: 6,699 cases of first instance, 1,204 cases of second instance, and 15 cases of appeal. Among all these cases, 3,250 cases have been concluded, including 1,200 civil cases and 2,050 administrative cases.
- The number of cases accepted and cases concluded on average of the 18 presiding judges selected and employed in the first batch stood at 400 and 159 respectively.

V. Progress in the Past Year

Characteristics of the Cases:

- 1. Cases of first instance accounted for the majority of the cases accepted, and the proportion stood at 86%;
- 2. Patent and trademark administrative cases occupied a large proportion of all the cases accepted, which stood at 75.3%;
- 3. Cases involving Hong Kong, Macao, Taiwan, and foreign countries accounted for 39.4% of the cases of first instance, a relatively large ratio;
- 4. The proportion of technology cases related to complicated issues like patent and new plant variety in the cases of first instance was maintained at about 25%;
- 5. Complicated cases and new-type cases were also in large number.

V. Progress in the Past Year

- While handling civil cases, the Beijing Intellectual Property Court attaches importance to implementing the guiding thought of strengthening the judicial protection on intellectual property rights, particularly in terms of effectiveness, deterrence, and influence.
- 1. Increased compensation for infringement;
- 2. Reasonable distribution of the burden of proof;
- 3. Full performance of the preservation system;
- 4. Improvement to the application of tort liability.

V. Progress in the Past Year

- While handling administrative cases on the granting and confirmation of rights, the Beijing Intellectual Property Court fully performs the judicial review and unifies the relevant judicial review criteria, leading the judicial protection to strictly grant rights, restrain pseudo-innovations, and protect authentic innovations.
- Among the 179 patent and 1,871 trademark administrative cases that have been concluded, the Beijing Intellectual Property Court decreed to revoke 11 cases that had been decided by the Patent Re-examination Board and to revoke 269 cases that had been decided by the Trademark Appraisal Committee, with a revocation rate of 8.4% and 16% respectively.

Thank you.

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