

# Overview of Intellectual Property Courts in China

Song Xiaoming

On 31 August 2014, the Standing Committee of the National People's Congress (NPC) of China adopted the Decision on Establishment of Intellectual Property (IP) Courts in Beijing, Shanghai and Guangzhou. IP courts located in Beijing, Guangzhou and Shanghai were officially unveiled in succession in November and December. In a background of the all-round reform and innovation-driven development, the IP courts were founded to undertake an important mission of reinforcing the application and protection of IP rights, improving mechanisms for rewarding technological innovations, and optimizing the legal environment with scientific and technological innovations. In other words, the establishment of IP courts is a key milestone marking a new era for IP protection in China and exerting a profound and far-reaching influence on its future IP protection.

## I. Background for establishment of Chinese IP courts

Specialized IP courts are established to adapt to current social and economic development and further optimize our judicial system, and more importantly, serve as a vital measure to deepen the judicial reform.

Internationally, IP rights are key elements of national strategic resources and international competitiveness, and various countries of the world are speeding up an international IP layout. Meanwhile, IP trials tend to be more specialized due to professional and technological characteristics of the IP justice. Courts specialized in trying IP cases have been set up in many countries and regions, like U.S., Britain, Germany, Russia, Finland, Japan, Korea, Singapore, Thailand and India. Establishment of IP courts has become an internationally conventional practice.

Domestically, on the one hand, establishment of IP courts is of great significance in promoting innovation-driven development strategies, improving mechanisms for reward-

ing scientific and technological innovations, optimizing scientific and technological innovations and nomocracy. On the other hand, IP courts are established for strengthening judicial protection of IP rights by request. With the flourishing and prosperity of scientific and technological innovations in China, IP cases tend to increase at a fast pace. Establishment of IP courts facilitates centralized governance of patent cases with more technicality and specialty, solves the issue of dissimilar judging criteria in a more effective manner; conduces to improvement on capability and level of judicial protection of IP rights, safeguards the legitimate rights of the IP owners, interdicts or punishes all kinds of IP infringement acts, maintains a fair-competitive socialist market economic order; and promotes enrichment and perfection of IP judicial trial system and policies, and sets up a more professional, unified and effective IP judicial protection system.

## II. Characteristics of Chinese IP courts

Chinese IP courts are established with reference to ripe experiences in IP courts from other countries and regions and aimed to adapt to practical requirements for China's IP protection with their unique characteristics.

Firstly, Chinese IP courts with their respective characteristics are set up in three particular areas. According to the decision of the Standing Committee of the NPC, the three IP courts were established in Beijing, Shanghai and Guangzhou. These three cities are chosen as the locations for IP courts mainly on the grounds that 1) they are at a higher level of science, technology and economic development, play an active role in technological innovations, and hunger and thirst for protection of scientific and technological innovations; and 2) IP cases, especially patent cases, prevail quantitatively in these three cities, so that it is urgent to prepare more professional judges and specialized courts for trial of cases. Take Guangdong province for example, the local

courts have annually accepted, on average, more than 3,400 first instance patent-related civil cases in recent years, the number of which exceeds the total annual amount of patent-related cases in many countries. An IP court located in Guangzhou can better satisfy requirements for trial of patent-related cases. Meanwhile, these three IP courts have different jurisdictions, wherein the Beijing IP court is mainly responsible for trial of administrative granting and validation cases related to patents, trademarks and the like, concurrently for trial of civil cases, and the Guangzhou and Shanghai IP courts are mainly responsible for trial of civil infringement cases related to patents and the like, excluding administrative granting and validation cases related to patents and trademarks. With the co-existence of the three IP courts, there is certainly competition among them in trial of technology-related civil cases, such as patent cases. Such competition helps to encourage them to keep improving their judging capabilities and win the trust from the parties concerned.

Secondly, the Chinese IP courts play roles as first-instance courts and courts of appeal. These three IP courts are intermediate courts capable of trying cases of first instance and appeal. The IP Courts have first instance jurisdiction over the technological cases involving patent, new plant varieties, layout designs for integrated circuits, technological secrets, etc.; and function as the courts of appeal to try the cases involving copyright, trademarks and unfair competition. As for the technological cases, these three IP courts are mainly responsible for ascertaining the facts and resolving disputes; and as for the non-technological cases such as cases involving copyright and trademarks, they are responsible for unifying the criteria of grassroots courts within their jurisdiction.

Thirdly, the Chinese IP courts try not only civil cases (involving patent, trademark, technological contracts and unfair competition) but also administrative cases (including lawsuits filed by an interested party who is unsatisfied with the decision on IP infringement made by an administrative authority). The Beijing IP court has an exclusive jurisdiction over grant and validation cases relating to IP rights such as patent rights and trademark rights. Such a mechanism is made for better adaptation to the “dual-track system” to provide both judicial and administrative IP protection in China, thereby facilitating consistent application of the civil and administrative protection standards.

Fourthly, the Chinese IP courts are those having cross-regional jurisdiction. In contrast to common courts, the IP

courts' judicial jurisdiction is not bound by administrative borders. Take the Guangzhou IP court for example, it has cross-regional jurisdiction over the entire Guangdong province. Such an arrangement not only solidifies the transcendent position of the IP courts, but also helps guarantee consistent application of legal provisions.

### III. System design of Chinese IP courts

A well-established system design is a key to IP courts' effective operation and attainment of expected effects. For this reason, IP courts need to keep setting up and perfecting various systems, especially a case jurisdiction system, technical investigator system and judicial power operating system.

First, a case jurisdiction system of IP courts. The Provisions on the Jurisdiction of the Beijing, Shanghai and Guangzhou IP Courts as a Judicial Interpretation came into force as of 3 November 2014. IP courts' jurisdiction and their relation with upper and lower courts are explicitly defined in this Judicial Interpretation. Attention shall be attracted to the following points. One is that the Judicial Interpretation broadens the scope of IP courts' cross-regional jurisdiction over first instance technological cases. In accordance with the Judicial Interpretation, the IP courts have cross-regional jurisdiction over civil and administrative cases involving patents, new plant varieties, layout design of integrated circuit, technological secrets and computer software, wherein cases in relation to computer software are mostly related to proprietorship and infringement disputes, and involve relatively specialized technological facts at the time of infringement adjudication. These cases are in close association with development of newly emerging industries. Trial of these cases at the IP courts is conducive to improvement on case trial quality. The other is to unify jurisdiction over IP civil and administrative cases. According to the legislative provisions of the Standing Committee of the NPC, cases appealed against first instance IP civil and administrative judgments made by the grassroots people's courts are tried at the IP courts. For this reason, first instance IP administrative cases that should have been handled by the intermediate people's courts are all under the jurisdiction of the IP courts according to the Judicial Interpretation. Meanwhile, the cases appealed due to unsatisfaction with the decision made by the IP courts are under the jurisdiction of the IP tribunal of the local Higher People's Court, by which way the IP courts realize unified ju-

jurisdiction over IP civil and administrative cases.

Second, a technical investigator system. In January 2015, the Supreme People's Court promulgated Interim Provisions of Participation in Litigation by Technical Investigators. According to the Provisions, technical investigators, like judge assistants, are support staff during the trial. They have no jurisdiction, but are assigned by a judge to be responsible for making explanation or suggestion to the judge about technical problems involved in the trial, in order to make up for judge's lack of technological knowledge, thereby greatly decreasing a judge's overdependence on judicial evaluation and enhancing his or its capability in judging technical issues. The Supreme People's Court is now working on studying how to select and manage technical investigators, and clarifying issues concerning the technical investigators' job function, number, requirement, management and the like. The technical investigators, as technical consultants of judges, assist judges in understanding and clarifying specialized technical problems involved in the cases, further ascertaining the facts in a more scientific, professional and neutral way, so as to guarantee fairness and effectiveness of trial of technological cases.

Third, a judicial power operating system. Strictly control the internal institutions pursuant to the principle of simplification, manage judges, judicial support staff and judicial administrators separately, and follow the judge quota system and the responsibility system of handling cases by the presiding judge and collegial panel. Judges are selected by a Judge Selection Commission, and associate judges are no longer in existence, but judge assistants take the responsibility of supporting the judges' work and the technical investigators assist the judges in figuring out technical problems. The number of judges in the IP courts is obviously less than that in the common courts. A chief judge alone leads the business of and presides over the IP tribunal, and there is no deputy chief judge for the IP tribunal. Less management levels and simplified internal management procedures provide judges with prominent status and responsibility, in order to ensure the principle that "the judges hand down verdicts and the collegial panel is responsible for carrying them out". Take the Beijing IP court for example, it has a total number of 107 staff, including 25 presiding judges (1 president and two vice presidents inclusive), 38 judge assistants, 11 judicial administrative personnel, 4 bailiffs and 29 appointed clerks. The case filing chamber is responsible for registration of various cases handled at the Beijing IP court; the No. 1 and No.

2 tribunals for trial of various IP-related civil and administrative cases; the trial supervision tribunal for handling IP-related retrial cases; the technical investigators' office for assisting in investigation, inquiry and analysis of technical problems involved in case trial and providing technical opinions for case adjudication; the judicial police corps for all aspects of the judicial constabulary's work; the general affairs office for trial management, information inquiry, personnel and party affairs, disciplinary supervision, administrative management and logistics service.

#### IV. Prospect of Chinese IP Courts

Since establishment of the IP courts, presidents and the chief judges, acting as the presiding judges in person, have held public hearings for cases that arouse wide concern in society, which were fully broadcasted by relevant media and won positive evaluation. In general, all works are going on smoothly and step-by-step with a very good start. Meanwhile, the IP courts are newly emerged and in face of series of challenges resulting from Chinese economy, science and technology development, from on-going judicial reform of the China's courts, as well as from the IP courts and their trial systems *per se*. The IP courts will make more exploration and attempts in these aspects, for promoting and guiding the development and improvement of the Chinese IP judicial protection system.

Firstly, the Chinese IP courts will become one of the courts that accept and try most IP-related cases in the world. With further development of China's reform and opening up and reconstruction of domestic economic infrastructure, the public is increasingly conscious of respecting and protecting IP rights, and demands of judicial protection of IP rights are increasingly strong. The number of IP-related cases accepted and heard at the Chinese courts tends to grow fast. In 2013, the Chinese courts accepted and heard more than 110,000 IP-related cases of first and second instance, rendering China to be a country that accepts and hears the greatest number of IP-related cases in the world. It is estimated that this number will be further increased after the establishment of IP courts in Beijing, Shanghai and Guangzhou. Take the Beijing IP court for example, the number of first- and second-instance cases accepted and heard therein is expected to exceed 10,000 in 2015. The tough issues facing the IP courts are how to handle these cases properly, resolve disputes timely, and balance the benefits

and interests of IP owners and the public rationally.

Secondly, Chinese IP courts undertake an important mission as pioneers of China's judicial reform. The IP courts have been promoting judicial reform by taking measures ranging from simplification of internal institutions, classified staff management to the judge quota system, which constitute a vital part of a new round of judicial reform. Judicial openness will be enhanced in order to comprehensively implement the responsibility system of handling cases by a presiding judge and guarantee the job security. Thus, the IP courts are not only a reform to Chinese IP judicial protection system but also act as explorers and pioneers of Chinese judicial reform that bear responsibilities for piloting various reform measures. In some sense, the scope of the IP courts goes beyond the protection of IP rights, and its operating effectiveness will directly affect the future trend of the IP judicial reform in China.

Thirdly, the IP courts and adjudication system in China are still in a groping phase. According to the legislation, the Supreme People's Court will report the operation of the IP courts to the Standing Committee of the NPC for assessment after three years of their establishment. Then the various systems of the IP courts will be adjusted and modified according to the assessment result. Such tentative development leaves much room for making the systems better in future. Currently, at least two points are noteworthy so far. One is to unify the judging criteria for first-instance technological cases used by the IP courts. At present, cases of appeal filed due to unsatisfaction with the judgements and decisions for first-instance technological cases are under jurisdiction of the Higher People's Courts in the locations where the IP courts are also situated, i.e., the Higher People's Courts at Beijing, Shanghai and Guangzhou. In this system, the Higher Courts in the above three locations may adopt inconsistent judging criteria. It is worth further observation and discussion on how to prevent such inconsistency and whether to set up an IP court at a higher level to uniformly accept and hear technological cases of appeal. The other is related to specialized trial proceedings and rules of IP cases. Compared with other cases, IP cases need specialized trial proceedings and rules because of their speciality in these regards, for instance, overlapping procedures of IP civil and administrative litigation cases. During trial of IP civil infringement cases, the party concerned often challenges validity of a particular IP right and then requests invalidation thereof in an administrative invalidation proceeding, thereby rendering the civil

infringement procedure and administrative invalidation proceeding overlapped. The current Chinese IP law adopts a binary system that separates civil infringement apart from administrative invalidation. The courts for civil IP cases usually have no direct jurisdiction over validity of IP rights. To ensure fairness, the courts where civil infringement cases are tried often have no way but suspend the trial and await the results of administrative invalidation proceeding, which severely reduces the efficiency in trying civil infringement cases. After establishment of the IP courts, and as the judges get improved in trial experience and proficiency, the IP courts may, in the civil proceeding, conditionally attempt to examine invalidation argumentation against IP rights filed by the party concerned, and as for IP infringement cases where IP rights are obviously invalid, the litigation claims of the right owner can be directly dismissed without awaiting the results of administrative invalidation proceeding. The IP courts may make an exploration in this aspect to provide empirical supports to future system design.

Establishment of IP courts is a milestone marking a new era for IP protection in China, and a basic and institutional measure for promoting Chinese judicial reform, thus bearing a responsibility of building an innovation-type country. It is firmly believed that Chinese IP courts surely can make a special contribution to setting up of a better IP trial system and improvement of quality of IP judicial protection. ■

The author: Commissioner of the Trial Board of the Supreme People's Court and the chief judge of the IP Tribunal