

Achievements of Beijing IP Court During First 12-month Operation

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I. Background and Missions of Beijing IP court

The Beijing Intellectual Property Court was officially unveiled on 6 November 2014. In light of the national strategy of innovation-driven development put forward at the 18th CPC National Congress, the requirement of deepening economic system reform and judicial reforms put forward at the third plenary session of the 18th Central Committee of the CPC and the general target of comprehensively implementing rule of law put forward at the fourth plenary session of the 18th Central Committee of the CPC, the Beijing IP Court undertakes two historical missions: one is to enhance the intellectual property protection level and implement the national strategy of innovation-driven development so as to provide powerful judicial safeguards for building an innovation-oriented country, and to try every effort to explore the Chinese experiences and mode regarding IPR judicial protection; the other is, serving as a court as a whole that implements judicial reform, to take a lead in exploring and implementing various reform measures by playing a role of pioneer, spearhead and explorer for the sake of providing reproducible and promotable experience and modes for the all-round judicial reform.

In view of the above missions, the Beijing IP court has, after conducting in-depth analysis on and tapping its own potential and attaining profound comprehension on the demands of international and domestic development environment for IP trials, pinpointed its own position with full reliance on the reform policies and support from the society and put forward the goal of achieving “four international-classes”, i.e. trying every effort to attaining an international-class trial level, building an international-class trial team, reaching an international-class research level and constructing an international-class image of impartiality and honesty, so as to provide top-quality judicial guarantee for the building of an inno-

vation-oriented country and meanwhile to establish a good international image of China in the fields of reform and opening-up and IPR protection.

To achieve the goal of achieving “four international-classes”, the Beijing IP Court has strictly followed the target, orientation, yardstick, criteria and keys of the judicial reform, and put forward the objective of trying every means to transform three notions based on the “overall reform situation” perspective. First is to take consolidation of the rule of law as the notion of the establishment of the Beijing IP court. Rule of law relies on judicial governance, and the judicial policies, criteria and level determine the level of development of the rule of law in the whole society to a larger extent. In the midst of comprehensive promotion of rule of law, the court’s position will be greatly changed, not only being engaged in making unremitting efforts to reconcile conflicts and resolve disputes, but also serving as basis and hub in rule of law in China, bringing the judiciary into playing a significant role in social governance. Second is to take output of high-quality convincing and guiding judgments as the notion of case adjudication. The court should, by no means, serve the overall interests of the country without performing its functions and fulfilling its responsibilities. It should, upon relying on high-level judgment, establish the authority of the rule of law, regulate social life, maintain social order and finally lead the development of the rule of law and morality. Third is to take respect for self-consciousness, self-discipline and self-autonomy of judges as notion of the team building. The realization of the establishment of dominant position and honour of judges are depending on activation of the thoughts and creativity of judges.

II. Measures taken and achievements obtained in IP trials

Over the past years, the Beijing IP court has faithfully

performed its judicial functions endowed by the Constitution by placing case adjudication as the top priority, effectively propelling the level of IPR judicial protection and promoting the judicial credibility, and has attained preliminary results.

1. Prominent improvement on efficiency and quality of adjudication. In the past years from its foundation to 6 November 2015, the Beijing IP Court has accepted 7918 cases, including 6699 first-instance cases, 1204 second-instance cases and 15 retrial cases, 2045 of which are civil cases while 5873 are administrative cases. The cases handled by the Beijing IP Court show a high proportion of first-instance case, administrative case and foreign-related case. Up to 6 November 2015, the Beijing IP Court has concluded 3250 cases, including 2275 first-instance cases and 975 second-instance cases, among which 1200 are civil while 2050 are administrative. The first batch of 18 selected judges has each, on average, accepted 400 cases and concluded 159. The significant increase in the average number of concluded cases better satisfies the urgent needs of right holders concerning IPR judicial protection. In an administrative dispute over a patent entitled “bock greenbrier rhizome micro pills and its preparation process”, the Beijing IP Court made detailed demonstration on issues including the definition of closed-ended and open-ended claims and the criteria on judgment of inventive step in the field of pharmaceutical industry, by taking the characteristics of the pharmaceutical industry into account, which has brought up significant guidance in the trial of cases of the same kind. In a copyright infringement and anti-unfair competition dispute concerning a mobile terminal game “Call Me MT”, the Beijing IP Court clarified explicitly the direction and train of thought with respect to IPR legal protection provided for mobile terminal games, which has had a demonstration effect on the promotion of healthy development of the industry of mobile terminal games.

2. Gradual strengthening of infringement sanctions. To ameliorate the phenomenon of “low-cost and repeated IP infringement” that has been widely criticized over the years, the Beijing IP Court has, at its very beginning, clarified the measure of strengthening infringement sanctions through perfection of such procedural measures as property preservation, evidence preservation and conduct preservation, reasonable allocation of the burden of proof and increase of damages for infringement. In more than 10 cases such as the Adobe copyright case, the Beijing IP Court took active measures to preserve property and evidence so as to fix and

preserve key evidence and prevent the defendant from transferring property in a timely manner. In those infringement cases involving small commodity markets, the market lessors were found to be jointly and severally liable with commercial tenants for infringement due to the failure to fulfil the duty of care in commercial activities, which solved the difficulties in prosecution, document transference, enforcement as well as issue of market integrity from the very basis. In a copyright case filed by heirs of Zhou Zuoren against Xinhua Press, damages that were triple times of the author’s remuneration were awarded in comprehensive consideration of the factors such as the reputation of the works in dispute and the degree of faults of the infringers. In a trademark infringement case filed by Moncler Co. against Royalcat Co, the amount of RMB 3 million, the upper limit of the statutory damages, was awarded by taking comprehensive consideration of the factors such as the market value of the involved trademark.

3. Better performance of the function of judicial review. The Beijing IP Court has, in the past years from its foundation to 6 November 2015, accepted 5873 administrative cases involving granting and invalidation of patent and trademark rights, including 1085 patent-related cases and 4788 trademark-related cases. 2050 of them were concluded, including 179 patent-related cases and 1871 trademark-related cases. The Beijing IP Court fulfils its function of judicial review according to law. Among the 179 concluded patent-related administrative cases, 131 were concluded with court decision, with 11 of them concluded with a judgment of revoking the decision of PRB (Patent Reexamination Board), the revocation rate of which was about 8.4%. Among the 1871 concluded trademark-related administrative cases, 1670 cases were concluded with court decision, with 265 of them concluded with a judgment of revoking the decision of TRAB (Trademark Review and Adjudication Board), the revocation rate of which was about 16%. In view of such characteristics that the number of administrative cases involving granting and invalidation of patent and trademark rights is large, the facts of part of the cases are fairly simple, the legal relationship is clear, and the number of difficult and complicated new-type cases is increasing, the Beijing IP Court has taken its initiatives in probing into and carrying out a regime that sets the complex judgments apart from the simple ones and proposed a “dual-angled, multiple-styled” reform program on administrative judgment writing style, by creating a simplified judgment writing style such as by way of omission or reference, and innovating in judgment writing by presenting suf-

ficient reasoning around the key issues in dispute, for the purpose of realizing “efficient trial of simple cases and elaborate examination of complex cases”. In view of such characteristics of the administrative cases involving granting and invalidation of patent and trademark rights that the range of technical fields involved is large and the findings of technical fact are difficult, the Beijing IP Court has explored the technical investigator system and set up a technical investigation room so as to improve the fact-finding mechanism for case trials on the basis of the existing systems of expert consultation, expert jury and technical appraisal.

4. Optimization of the operational mechanism of judicial trial. The measures the Beijing IP Court has taken include: probing into a judge team of 1+1+2 mode (wherein one clerk is either a volunteer or an intern) and formulating relevant job responsibilities and descriptions, reforming the ways of court trial and the adjudication with the purpose of realizing the matching up between the litigation and adjudication centred on court trial, conducting court trials with focus on key issues by presenting the complaints and arguments and issues in dispute contained in the judgment document to the interested parties for confirmation and elaborating the judgement with a focus on the issues in dispute, as well as taking the following of precedents as a rigid restraint system for use in the reasoning in judicial documents. The Beijing IP Court has also taken other measures such as to reform the composition and operation of the collegial panel by abolishing the report system and realizing de-administration in adjudication, to establish mechanisms for guaranteeing the right of action of interested parties and for punishing conducts hindering actions, to formulate relevant job descriptions requesting judges to make timely response to various applications filed by the interested parties according to law, to open a window only for receiving materials for lawsuits so as to avoid improper contact outside of the court, to publicize the list of litigation rights enjoyed by the interested parties and channels of tip-off and supervision, during which, the court president and the chief justice are entitled to supervise the procedural issues in particular cases in real time, as well as to formulate implementing regulations for application of judicial detention procedures, so as to prevent and punish the conducts that severely disrupt the judicial order such as vexatious and frivolous entanglements and visits according to law.

5. Further improvement on the layout style and reasoning of judicial documents. The Beijing IP Court has, based on the tentative practice where complex and simple judicial docu-

ments of administrative cases are bifurcated, tried to actively create new drafting layout style and reasoning of judicial documents, with the ultimate aim of enabling such judicial documents to manifest judicial adjudication and convey judicial credibility. In *Zhejiang Wecome Pharmaceutical Co., Ltd. v. PRB and a third party (Huaihua Zhenghao Pharmaceutical Co., Ltd.)*, an administrative dispute over invalidation of a patent entitled “bock greenbrier rhizome micro pills and its preparation process”, it was the first time that the Beijing IP Court has attempted to add “abstract of judgment” before the text of a judicial judgment, which condenses the basic information and essential points of the case, including the case number, the collegial panel and final results, so that the interested parties and the public may have quick access to key information of the judgment for better carrying out litigation for protection of rights, conduct guidance and case studies. In *Ernest Borel (far east) Co., Ltd. v. TRAB and a third party (Shenzhen Ernest Borel Health Care Technology Co., Ltd.)*, an administrative dispute over invalidation of a trademark right, the Beijing IP Court creatively included the minority opinion of the collegial panel into the judgment for the first time so as to improve the reasoning in the judicial judgment and more sufficiently disclose the trial process of the collegial panel. The record of the minority opinion will more authentically demonstrate the full picture of the academic divergences and judicial cognition with respect to the said legal issue and greatly improve the reasoning of the judicial documents.

6. Gradual unification of the judging criteria. Following the requirements of “reinforcing and standardizing judicial interpretation and case guidance, and unifying criteria for application of law” put forward at the fourth plenary session of the 18th Central Committee of the CPC, the Supreme Court set up its IP case guidance and research (Beijing) base (hereinafter referred to as ‘base’) at the Beijing IP court on 24 April 2015. Under the leadership of the Beijing Higher People’s Court, the Beijing IP Court and the IP tribunals of the courts within the jurisdiction of Beijing High People’s Court have piloted the research on issues concerning case guidance theories and practice and fostered the construction of the IP case guidance system with Chinese characteristics in the hope of solving various issues that have bothered the courts for a long time, such as unthorough reasoning, inconsistency in judiciary and insufficiency of prestige and failure to function as a dominant role. At present, the operational workflow system has undergone preliminary proof

at the base, and an expert advisory committee is on the way of building. A judge team organized by the Beijing IP Court has made efforts in groping for a case sampling and formation mechanism. As required by the vice president of the Supreme People's Court, Tao Kaiyuan, the base is expected to become a national centre for IP case theoretical research, a centre for discovery and identification of guiding cases, an intelligent centre for collection of information on guiding cases and a national comprehensive service centre.

III. Measures taken and achievements obtained in judicial reform and exploration

Being a court as a whole that implements judicial reform, the Beijing IP Court, by acting as a pioneer, spearhead and explorer, undertakes a historic mission of exploring various measures of reform for the sake of providing reproducible and promotable experience and modes for the all-round judicial reform. Looking back over the past years, the Beijing IP Court is committed as a pilot to judicial reform in order to explore new jurisdiction system conforming to the laws of IP adjudication, which has achieved preliminarily results.

1. Taking the lead in realizing a system called specified number of judges and teamwork mode. The Beijing IP Court has 45 judges (including a president, a vice president, a vice president and director in charge of political affairs, as well as five chief justices), among which two are judicial experts at a national level and five are judicial experts of Beijing. Among them, 86% hold a postgraduate degree. All of them work in the field of IP adjudication for seven years on average with an average age of 37.5, and deal with 310 IP cases per capita in the recent five years. The judges will be assisted by judge assistants, technical investigators, clerks and judicial police, wherein the former two types are newly emerged after the reform. On the basis of the specified number of judges, the Beijing IP Court decides to set up relatively fixed judge-centered trial teams consisting of "one judge + one assistant + one clerk", and manage and assess the team members based on various types of work so as to clearly identify rights and liabilities thereof.

2. Insisting on specifying the number of judges while establishing the dominant and central role of judges. The Beijing IP Court has clarified that the work of the Court is cored on case adjudication, in which, the administrators and com-

prehensive service departments shall serve for the judges. The judicial responsibility system shall be designed to make the judges feel at ease, rather than worry about being punished, so as not to deviate from the ultimate goal of the reform. The trial research and administration office (hereinafter referred to as 'R&M office') is presided over by judges under the supervision of the heads of the court, and while undertaking tasks of case trial, is responsible for a large amount of trial-related research, administration and services, based on the principle of "from the trials and for the trials". Four research groups specialized in patents, trademarks and competition, copyright and comprehensive procedures respectively, consisting of judges and judge assistants of each section, have been set up, which are responsible for long-term investigation and research and academic follow-ups of various kinds of cases, periodical compilation of judicial newspaper, information research and investigation, provision of advices to the collegial panel and courts of lower level concerning IP case adjudication on a case-by-case basis, as well as timely summarization of trial experience for the purpose of training expert judges. Conference system among the judges both on the court and tribunal level has been established, via which, all the judges can sit together periodically to discuss the issues encountered during their trials. Such a communication platform assists in solving such issues as information asymmetry and non-unification of judicial criteria, which is beneficial for realizing judges' autonomy. The Beijing IP Court assesses trial management and job performance according to the achievements made, rather than make reference to indicators, clarifies two basic tasks of the judges, namely, resolving specific disputes and maintaining the development of the rule of law and unification in law enforcement in China through dispute resolution. Judges are encouraged to innovate in legal theories and judging methods, and make judgments that have a guiding role. The criterion for assessing judges' performance is quality of judgments, which will be evaluated at three levels, namely, fair and impartial, convincing, and of guiding significance.

3. Full implementation of de-administration in judiciary. In the light of the principle of judicial reform put forward by CPC, the Beijing IP Court takes initiatives in exploring and improving system of case handling by the presiding judge and the collegial panel. A relatively fixed collegial panel is formed without nomination of the presiding judge. Whoever is in charge of the case will hold the position of the presiding judge. Cases are allotted at random to judges under the prin-

ciple of having access to various types of cases with professional orientation and expert guidance. The case reporting system is eliminated for the sake of de-administration in judiciary. Unless in those cases that may have severe influences on the public interests of the state and society, the president and the chief justice will no longer listen to the report for a particular case whose trial they do not participate in. The trial results rely on the majority opinion of the collegial panel. Where the collegial panel cannot form the majority opinion or the presiding judge holds the minority opinion, the presiding judge can seek advice from the president, the chief justice, the specialized judge meeting, as well as the investigation and research team at his own choice, and provide the relevant results to the collegial panel as a reference.

4. Preliminary transformation of powers and duties of the president and the chief justice. In spite of de-administration in judiciary, the president and the chief justice are still responsible for trial administration and supervision compatible with their positions. The lists of power thereof have been formulated. In addition to the right to make a final decision for a particular case, the president and the chief justice are also entitled to supervise the procedure of a specific case so as to ensure that improper exercise of the right to judge can be corrected timely and that the right to judge is subject to restrictions established by the right of action of the interested parties. The president and the chief justice are responsible for trial administration and supervision of significant cases that may affect China's diplomatic security and social stability, so as to provide safeguarding supervision measures despite of de-administration in judiciary. All the written documents rendered by the president and the chief justice during the supervision activities shall be recorded in dossiers for reference, so as to prevent the president and the chief justice from conducting supervision beyond their authority. Liability will arise from dereliction of any of those duties.

5. Normalization and systemization of trials by the presidents and chief justices. Among all of the presidents and chief justices, two are judicial experts at the national level and five are judicial experts of Beijing. They all have solid theoretical knowledge and rich practical experiences due to years of accumulation in the field of IP trial. However, miscellaneous administrative matters and frequent attendance at meetings and conferences make them impossible to devote themselves in adjudicating cases. In spirit of the judicial reform that the specified number of judges should deal with cases, as well as guarantee the sufficient time that the presi-

dents and the chief justices have on trials, the Beijing IP Court has, ever since its foundation, established the mechanism called "president trial week", requiring the president and vice presidents to spare at least one week per month for collectively hearing and trying his cases. The scope of cases that should be handled by the presidents and chief justices are defined as those significant, difficult, complicated, landmark and new-type cases or those cases having universal significance or guidance in terms of applicability of law. The president or the chief justice presides as a presiding judge over the hearings, collegial decision-making processes and document issuance, and the like. From the very first day (16 December 2014) that the writer banged a gavel on the bench to 6 November 2015, three presidents of the Beijing IP Court have accepted 201 cases with 98 concluded, and four chief justices have accepted 505 cases with 286 concluded. The cases concluded by the presidents and chief justices accounted for 11.8% of the total number in the Beijing IP Court, thereby achieving normalization and systemization of trials by the presidents and chief justices.

6. Historic breakthrough in the reform of the Judicial Committee. The functions and decision-making manners of the Judicial Committee have been reformed so as to exert its judicial power. The range of the judicial power of the Judicial Committee has been confined to the way that the decisions of the Judicial Committee shall be made in a written form and attempt has been taken to disclose the contents and rationale thereof in the judicial documents. Under the governance of the Committee, there are four specialized judge meetings serving as pre-consulting and filtering mechanisms for the purpose of making the decisions more scientific and professional. In each particular case, the Committee will study the case under the principle of openness and transparency. In September 2015, in an administrative case concerning the review on the legitimacy of a regulatory document issued by the Trademark Office of the Administration for Industry & Commerce of the PRC, the Beijing IP Court took the lead throughout the nation in exploring a direct open court session for the trial of the said case by all the members of the Judicial Committee. Such exploration has provided a vivid case for academic discussion and system practice related to judicial reform, which was widely reported by the press and highly thought of by the community. The Judicial Committee of the Beijing IP Court was nominated as the sole entity candidate of "figure of rule of law of the year" by the TV show "Society and Law" of CCTV (China Central Television).

7. Establishment of technical investigator system to solve the difficulties in fact-finding. In view of the characteristics of the cases tried at the Beijing IP Court such as the large number of technical cases, the wide range of technical fields and difficulty in adjudication, the Beijing IP Court has explored and implemented the technical investigator system on the basis of the existing systems of expert consultation, expert jury and technical assessment. Measures for Administration of Technical Investigators (for Trial) and Work Rules of Technical Investigators (for Trial) have been formulated to clarify and regulate the technical investigators' role in assisting the judges in fact-finding. Technical investigators are divided into four types, namely, employed as civil servants, employed not as civil servants, exchanged and part-time, for the sake of improving the fact-finding mechanism during trials. On 22 October 2015, the Beijing IP Court established a technical investigation room with 37 exchange and part-time technical investigators nominated as the first batch, and the technical investigator system has become an important part of the technical fact-finding mechanism of the Beijing IP Court ever since. In an administrative dispute over a patent entitled "pharmaceutical preparations for clinical treatment of diseases like metastatic breast cancer (MBC)" heard on the same day, the Beijing IP Court invited technical investigators to participate in the court trial for the first time. With the help of technical investigators, the parties concerned were managed to put more energy on arguments over technical opinions, rather than spend lots of time in explaining technical terms, which saved a large amount of time and increased the efficiency of the court trial.

8. Delaying of administrative management. The Beijing IP Court has 12 judicial administrative staffs responsible for more than 70 primary functions, which should have been borne by nearly 20 sectors in other courts, such as General Management Office, Political Affairs Sector, Supervision Room, Information Technology Sector, News Centre and Logistics Service Centre. The workload of each judicial administrative staff is about 8 to 10 times of the average workload of those unreformed comprehensive functional sectors. The General Management Office of the court has, as a functional department concentrated on undertaking administrative management and services of the court after the judicial reform, after carding, dividing and integrating various responsibilities, ultimately sorted out three management cardinal lines (namely, team management, case management and administrative management) and six functional models and

relevant job functions thereof (namely, political & discipline inspection, human resources, adjudication management, investigation, research & propaganda, capital construction, and logistics & finance). All the staffs exerting their own strengths with clear responsibilities are arranged for the sake of easy cooperation, in such a way that one person is allocated to take charge of several posts according to their capabilities.

9. Internalization of external resources. The Beijing IP Court took the lead in setting up the first volunteer service team of IP Court, which will recruit college students, the majority of which are young students, as volunteers to provide litigation and trial services, and recruit experts and scholars as volunteers to provide support to trial research and guidance, thereby forming a long-term mechanism of professional volunteer service so as to provide feasible samples for the reform. The Beijing IP Court has been working collaboratively with the law schools of universities and colleges such as Peking University, Renmin University, Tsinghua University, China University of Political Science and Law, to bring in excellent postgraduates as intern judge assistants and invite outstanding scholars to participate in research projects, which not only provide a practical platform and case resources for legal education, but also enhance the quality of judicial services provided by the court. The construction of Legal Community of IP has been greatly promoted. In view of the characteristics that the IP adjudication is significantly professional, the upgrade of knowledge is rather fast, and communication is quite frequent and the IP professional circle is rather small, the Beijing IP Court has, by making efficient use of the advantages of the Legal Community, has successively cooperated with a number of units, such as the Beijing Lawyers Association, to organize an expert committee so as to jointly solve various problems affecting the quality and efficiency of trials as well as carry out researches on relevant topics such as case guidance. Meanwhile, in view of the large number of administrative cases involving granting and invalidation of patent and trademark rights, the Beijing IP Court has set up a fast-track "green channel" with the TRAB and PRB for court trials and mass transfer of documents. ■

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