

# Institutional Innovation, Responsibilities and Goals of SPC's IP Court

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On 1 January, 2019, the IP Court of the Supreme People's Court (SPC) was officially unveiled in Beijing. The establishment of SPC's IP Court is an important national policy deployment for building a powerful country in terms of IP and scientific technologies, a vital reform measure for comprehensively deepening judicial reform and promoting judicial fairness, and a major institutional innovation that strictly protects IP rights, facilitates innovation-driven development strategies and creates a world-class business environment, which is of extreme significance in the history of the rule of law and judicial development.

## I. Institutional innovation: Protecting and stimulating innovation by innovative means

The establishment of SPC's IP Court is a major breakthrough and innovation in China's IP litigation system, which is primarily manifested in the following three aspects.

### 1. Innovation in institutional hierarchy

The SPC's IP Court in China is the first specialized IP judicial organ established at the top level of courts. Globally speaking, a specialized IP judicial organ responsible for unifying the judging standards is usually at the high court level. For example, the United States Court of Appeals for the Federal Circuit, the German Patent Court, the IP Division of the Tokyo High Court, and the Korean Patent Court are all at the high court level and responsible for hearing patent and other IP cases at the second instance and unifying judging standards within their respective jurisdictions. The establishment of the SPC's IP Court is aimed to give prominence to the finality and authoritativeness of judgment and exert a broader influence. This institutional innovation is not only in

line with the international trend of establishing IP courts, but also a showing of China's innovations and wisdom. Apart from meeting the judicial requirements for scientific and technological innovations, it has also evolved and enriched an IP litigation system with Chinese characteristics.

### 2. Innovation in jurisdiction

In the light of the Decision of the Standing Committee of the National People's Congress (NPCSC) on Several Issues Concerning Litigation Procedure for Patent and Other IP Cases and the Provisions of the SPC on Several Issues Concerning the IP Court, SPC's IP Court has centralized jurisdiction over appeals against decisions in first-instance technology-related civil and administrative cases all over the country. The types of cases nearly cover all IP types except trademark, including patents, new plant varieties, integrated circuit layout designs, technical secrets in anti-unfair competition cases, computer software in copyright cases and monopoly cases. It is noteworthy that monopoly cases and technology-related IP cases are put under the jurisdiction of a unified specialized trial organ according to the special legislation of the NPCSC. This mode enables the court to attend to and be alert to destruction of competition by abuse of IP rights while strengthening the protection of IP rights, thereby better achieving the coordination and balance between innovation and competition. In terms of the nature of cases, second-instance technology-related administrative and civil IP cases are under the unified jurisdiction of the court. This "2-in-1" mode has laid a solid foundation for the coordination and unification of judgments in technology-related administrative and civil IP cases.

### 3. Innovation in trial mechanism

The first is the innovation in appeal mechanism. The SPC's IP Court has centralized jurisdiction over technology-related IP appeals all over the country, while local high

courts are skipped over in the litigation procedure, thereby forming a “leap appellate system”, which is conducive to shortening a dispute resolution period and unifying judicial standards.

The second is the innovation in the manner of service. Pursuant to judicial interpretations, the IP Court may, with the consent of the party concerned, serve litigation documents, evidential materials and judgements by electronic means, such as an electronic litigation platform. Apart from the Internet Court, this is the first court that serves judgements by electronic means.

The third is the innovation in trial manner. According to judicial interpretations, SPC’s IP Court may conduct a portion of litigation procedures online, such as exchanging evidence or convening pre-trial meetings through an electronic litigation platform or online video. Meanwhile, in view of its jurisdiction over cases nationwide and for the purpose of facilitating litigation by parties concerned, SPC’s IP Court has established a specialized circuit trial system, so as to conduct trial on site or at the location of the court of original jurisdiction based on the actual details of a case. On 23 July, 2019, the IP Court conducted its first circuit trial in Nanjing, Jiangsu Province, which facilitated factual findings and the participation of the parties in legal proceedings, and meanwhile won high praises from all sectors of society.

## **II. Responsibilities and tasks: Judicial orientation, strict protection, innovation stimulation, protection of competition, and global vision**

### **1. To strengthen judicial orientation**

Judicial protection is the most effective, fundamental and authoritative means to protect IP rights. For the first time, the IP Court realized the centralized and unified trial of administrative appeals relating to technology - related IP right grant and invalidation, appeals related to administrative investigation and punishment and appeals related to civil infringement. Meanwhile, with the technical investigator system becoming increasingly mature and the judicial trials becoming specialized and professional day by day, and with the aid of information and intelligence based trials, a better platform and a more solid foundation are provided for judicial protection to play its leading role.

(1) The function of the IP Court for judicial review of IP right grant and invalidation cases shall be brought into full play. More efforts shall be made to strengthen the comprehensive and in-depth review of the legality of substantive standards for patent grant such as novelty, inventive step and practical applicability, promptly clarify and unify the standards, and promote the standardization and scientificization of patent grant and invalidation, thereby continuously improving the quality of granted patents.

(2) The function of the IP Court for judicial supervision of IP administrative investigation and punishment acts shall be brought into full play. More efforts shall be made to strengthen the examination on the legitimacy of the IP administrative law enforcement entities and procedures, and actively guide the standards of administrative law enforcement authorities on, for example, investigation and evidence collection, evidence review, infringement determination and assumption of responsibility, to be consistent with judicial standards, thereby enhancing the quality and level of administrative law enforcement.

(3) The cross-procedural problems related to administrative patent invalidation and civil infringement proceedings shall be dealt with properly. It is a vital responsibility of the IP Court to smoothly connect the trials of patent invalidation cases and civil infringement cases and coordinate the results thereof. Effective measures must be taken to enhance the trial efficiency of administrative patent invalidation cases, and stabilize the validity of patent rights as soon as possible, so as to provide a better right status basis for the trials of civil infringement cases. Claim construction rules shall be clarified and further defined in an effort to cohere and coordinate the rules for construing claims in administrative patent invalidation and civil infringement proceedings and ensure the scope of protection of a patent to be in line with the technical contributions it makes. Reasonable emphasis shall be placed on the prior and decisive position of civil procedures under particular circumstances so as to facilitate the resolution of IP related civil disputes interweaving civil and administrative procedures, lead the subsequent administrative disputes to an appropriate resolution, and effectively shorten the period for case trials. In the cases where patentees accuse others of infringement on the obvious grounds for invalidation, such as the scope of protection of claims being apparently unclear, fabricated information that is essential for patent grant like experimental data in the specification, and the technical solution of the

patent being disclosed prior to the filing date and non-satisfaction of the requirement for the so-called novelty grace period, a decision may be directly issued to reject a patent according to the specific situation of the case with no need of awaiting the results of administrative procedures. Where clear interpretation was provided for a specific claim in a previous civil patent infringement case, reference shall be made thereto in the subsequent administrative patent invalidation proceedings for interpreting the same claim.

## **2. To strengthen strict protection**

President Xi Jinping profoundly stated that strengthening the protection of intellectual property rights is the most significant part for improving the property right protection system and meanwhile the utmost incentive to enhance China's economic competitiveness. The IP Court shall focus on strict protection, strengthen judicial protection, raise the cost of law breaking and give full play to the legal deterrence.

(1) Damages awarded for technology-related IP infringement shall be enhanced. Damages awarded for IP infringement are supposed to be in proportion to the market value of the IP right. For an accused product that involves multiple components and multiple patents, in the determination of the damages for infringement, account shall be taken of how much contribution the patent in suit has made to the market value of the particular components or the entire product, and the incremental value of the infringing product brought by the patent shall be used as the basis for awarding damages. The systems, such as the orders for the production of documents and spoliation of evidence, stipulated by the existing laws and judicial interpretations thereof shall be put to active application. Where, without justifiable reasons, the infringer refuses to obey the orders for the production of documents or spoliates evidence willfully on the premise that infringement is established, reference can be made to the patentee's claims and evidence for determining a higher damage amount. The methods for calculating damage amount under relevant intellectual property laws may be applied in a reasonable order so as to alleviate the burden of proof on right holders. If a right holder selects a particular method for calculating damages in a specific case, it may be presumed that the amount of damages calculated according to the previous method is difficult to determine, unless there exists counterevidence. Issues concerning punitive damages for technology-related IP infringement shall be studied and explored in depth. Where require-

ments are met, the right holder's claim for punitive damages shall be supported according to law so as to increase the cost of infringement and give full play to the legal deterrence of punitive damages to infringement. For instance, punitive damages shall be applied in the light of the provisions of the Seed Law in cases of serious infringement on the rights of new plant varieties like willful infringement, repeated infringements and multiple infringements.

(2) The behaviour preservation system shall be actively used to ensure the timeliness and soundness of judicial relief. The behaviour preservation system plays a vital role in improving the timeliness and effectiveness of judicial relief and reducing the cost of safeguarding rights for right holders. Efforts shall be made to grasp the spirit of "timely protection and sound protection" conveyed in the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Cases Involving the Review of Behaviour Preservation in IP Disputes, properly examine a party's application for behaviour preservation, correctly understand the requirements for behaviour preservation like "emergency" and "irreparable damages", fully consider such factors as uncontrollable suspected infringing acts and irreparable damages, and reasonably balance the interests between the applicant and the party against whom an application is filed, so as to realize "timely protection and sound protection".

## **3. To strengthen and stimulate innovation**

The ultimate goal of conferring intellectual property protection to scientific and technological innovations is to stimulate innovations. The judicial protection of technology-related intellectual property rights shall be innovation-oriented, aiming to provide protection and incentives for innovations, and to create a "rule of law" environment that is conducive to innovations.

(1) With an aim of stimulating innovation, the reasonableness of patent grant and invalidation standards shall be enhanced. We shall strengthen the judicial review of the legality and legitimacy of formal standards for patent grant, and try our utmost to make the formal standards more flexible and reasonable. Formal standards for patent grant shall be accurately grasped by giving reasonable considerations to the objective limitations of patent drafting, and based on the knowledge level and cognitive capability of a person skilled in the art, in such a way to guarantee patent protection of invention-creations having explicit inventive step so as to inspire the passion for innovation.

(2) Efforts shall be made to create an innovation-friendly legal environment to stimulate and protect innovations and entrepreneurship. Technology-related intellectual property rights such as patents are in close association with research and development, production and investment. Fuzzy scope of rights and unclear protection will do harm to technological innovations and business operations. Attention shall be paid to clearly deciding legal liabilities, clarifying the scope of protection of technology-related intellectual property rights, definitely defining the scope within which intellectual property rights can be utilized by the public freely and legally, providing explicit legal expectations for various innovative and commercial entities, protecting enthusiasm for commercial production and investment, and enhancing innovation and entrepreneurial confidence.

(3) Protection restrictions and exceptions in the IP legal system shall be utilized as appropriate to ensure the market transaction security of *bona fide* users according to law, reduce the legal risks that innovators face, and encourage more social entities to devote themselves to innovations and startups. New technologies, new products and new business models shall be treated prudently, laws and regulations shall be applied in a way that is conducive to innovations, fair competition and consumers' long-term interests, and the legality of new technologies, new products and new business models should not be denied recklessly.

#### 4. To strengthen the protection of competition

A fair, orderly and dynamic competition mechanism is an important guarantee for stimulating innovative vitality of various entities. The IP Court has the vital responsibility of protecting competition and maintaining a fair, orderly, unified and open market competition order. We must attach great importance to and strengthen anti-monopoly trials, inhibit monopolistic behaviours timely and enhance the market transparency and competitiveness.

(1) Civil monopoly disputes shall be tried to such an extent that the civil anti-monopoly justice can coordinate with the administrative enforcement, guarantee an award of damages for victims, and deter and prohibit monopolistic behaviours. Independent and impartial trials of civil monopoly disputes shall be maintained correctly, and monopoly disputes shall be accepted and heard actively. The relationship between administrative law enforcement conducted by administrative anti-monopoly law-enforcing authorities and civil litigation shall be handled properly. Fact-findings ascertained in administrative decisions made by the law-enforc-

ing authorities are only one line of evidence for the court's decision and may be overruled if sufficient counterevidence exists, under the circumstances of which the court may re-conduct fact-findings. As for facts that have not been ascertained by administrative authorities, the court may make an independent determination based on the specific evidence and facts in a case. The factual presumption rule shall be applied correctly and the burden of proof shall be transferred properly so as to effectively alleviate the burden of proof on plaintiffs in civil monopoly disputes.

(2) Administrative monopoly disputes shall be tried to such an extent that administrative law enforcement is subject to regulation and rights and interests of entities in market competition are protected. Administrative cases resulting from administrative anti-monopolistic investigation and punishment acts shall be accepted according to law, and judicial review shall be strengthened with the focus on the law enforcement standards and procedural legitimacy for the sake of providing clear legal guidance and promoting the standardization and rule of law in administrative law enforcement.

(3) IP-related monopoly disputes shall be handled properly. The purpose of preventing monopoly is to promote competition, and the aim of IP protection is to stimulate innovations that can create new demands and markets to boost a higher level of competition. In the trial of IP-related monopoly disputes, it is required to follow the general applicable principles and analytical methods of the Anti-Monopoly Law, and more importantly, to comprehensively consider the characteristics of IP, take innovations as a key factor and focus on the impact of the operators' exercise of IP rights on competition, innovation and productivity.

#### 5. To have a global vision

President Xi Jinping delivered a speech at the first meeting of the Central Committee for the Comprehensive Rule of Law, highlighting that "China must be good at the rule of law if it goes global and play its part as a major and responsible country". As a major innovation of the IP judicial protection system in China, SPC's IP Court is a crucial platform for establishing the image of China as a major and responsible country in terms of IP protection, creating a world-class business environment and actively participating in and leading the international IP management process.

(1) Developing a strategic plan. It is imperative to deeply understand the changes in the international situation and domestic demands on reform and development. Unremit-

ting efforts shall be made to build the IP Court into a globally influential IP judicial institution by trying major cases in a fair and efficient manner, determining judging rules and innovating litigation systems, actively participating in and promoting the formation of international IP rules and reform on management systems, and constantly enhancing China's balance force and leadership in international management rules.

(2) Cultivating a global vision. Equal protection shall be strengthened to adhere to the lawful and equal protection of the legitimate rights and interests of Chinese and foreign parties, strictly examine foreign-related cases according to statutory procedures, and adequately protect the litigation rights of Chinese and foreign parties and participants on equal terms. Issues concerning the construction of "One Belt, One Road", free trade pilot zones and free trade ports shall be studied and explored in depth, so as to facilitate high-level free trade and investment according to law and meanwhile strive to achieve the high-level IP protection.

(3) Strengthening international communication and cooperation in IP. China shall strengthen its judicial exchange and cooperation with international organizations such as the World Intellectual Property Organization, partner countries in the "Belt and Road" Initiative, developed countries such as the European Union, the United States and Japan, as well as major developing countries, to fully demonstrate the achievements China has made in the rule of law in the IP field, share "Chinese stories about the rule of law" in a way easily understood by the world, actively boost the exchange and learning in terms of judicial civilization, and contribute China's wisdom to the world IP management and reform.

### III. Development goal: Building a world-class adjudicatory organ

#### 1. Improving the intellectual property court (tribunal) system and promoting the reform of the litigation system

The intellectual property court (tribunal) system shall be improved. Attention shall be paid to the synergetic and integral construction of SPC's IP Court, IP tribunals, and specialized courts having cross-regional jurisdiction over technology-related IP cases, with an aim of building and improving an institutionalized, standardized and informationized working connection mechanism. The IP litigation system shall be further improved. The system concerning uni-

fied evidence in IP litigation shall be improved to effectively ease the difficulty in adducing evidence and proving infringement. Efforts shall be made to investigate, study and further promulgate the guidelines for IP evidence rules in litigation in order to establish a litigation mechanism under the principle of good faith that can actively encourage the parties to adduce evidence, effectively ease the burden of right safeguarding and evidence collection on right holders and effectively eliminate the difficulty in proof in IP cases. The rules of trial procedures shall be reformed and improved to elevate the openness and convenience of trial work. The justice is by the people and for the people, and all the effective measures shall be taken to facilitate the trial of IP lawsuits. Cases shall be divided according to the complexity, importance and urgency so that cases of different natures and levels of complexity can be handled as appropriate. The circuit trial system shall be improved to rationally arrange the circuit courts and actively conduct circuit trials to facilitate litigation.

#### 2. Strengthening the construction of smart courts vigorously

In the era of the Internet, we should vigorously strengthen the construction of smart courts and make good use of modern technology so as to enable the courts to distribute justice more efficiently and facilitate the route to justice. We should comprehensively strengthen informationization and greatly boost the in-depth utilization of big data and artificial intelligence. We should strive to promote technologies concerning speech recognition and intelligent textual information extraction, work harder on the construction of software (e.g., remote video) and infrastructure, as well as intelligent case allocation and auxiliary intelligent case-handling systems, improve the functions of similar case retrieval, data analysis, risk warning and the like, promote simultaneous generation and in-depth use of electronic files, and manage to realize paperless office and case handling, intensified process in dealing with litigation affairs, and intelligent analysis of dynamic work. In particular, more efforts shall be made on the construction of intelligent case allocation and auxiliary intelligent case-handling systems and on the improvement of similar case retrieval, such that cases involving the same patent can be intelligently allocated to the same responsible judge or collegial panel, and information on similar cases can be automatically pushed to responsible judges with an aim of making judgements consistent by taking advantage of information technology.

### 3. Striving for IP trial team building

Team building is the cornerstone and guarantee of a steady and far-reaching development of IP trial cause. Talents are the key to building the IP Court into a world-class intellectual property trial institution. The team building of IP judges shall be specialized, professional and international. Both objective laws and domestic and international experiences demonstrate that the cultivation of IP trial talents must follow a specialized, professional and international path for the sake of professionalism. The enthusiasm, initiative and creativity of IP judges shall be further motivated so that they would be happy to devote themselves to the IP industry and keep up with the international first-class level. IP judges shall improve their capabilities to adapt themselves to the development requirements of the new era, and to the characteristics of the IP industry such as active thinking, fast knowledge update and high degree of internationalization. We shall provide more opportunities for IP judges to ac-

cept IP professional training and foreign language training to improve their capabilities and provide them with global vision and skills. The idea of treating the whole country as a chessboard shall be established to promote communication between personnel in the IP Court and local courts, i.e., courts with strong capabilities in trying technology-related cases may continue sending judges to the IP Court to deal with cases under specific circumstances, and the IP Court may select qualified judges to go to lower courts with heavier workload to assist in case handling. Such interaction and two-way communication may improve trial capabilities and jointly provide judicial protection for intellectual property rights. The IP Court shall function as a role model to cultivate trial experts and become a cradle for IP trial talents. ■

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