

Intellectual Property Courts in China

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1. Introduction

- A new trend in the world to establish special IP Courts, or Tribunals to adjudicate the IP cases, especially the cases concerning technology
 - U.S. Federal Circuit in 1982, patent appeal court
 - London County Patent Court in 1991
 - Japan IP High Court in 2004, Tokyo district court and Osaka district court in 1997
 - Exploration of EU Patent Court system now
- The cases are concerned with technology, competition power of enterprises and a country

2. Intellectual Property Tribunals

- China enacted its Trademark Law in 1982, Patent Law in 1984, Copyright Law in 1990, and Unfair Competition Law in 1993
 - At the beginning, the cases were in economic tribunals in some basic and intermediate courts
- To establish its special IP tribunals since 1993
 - Beijing intermediate court and high court
 - Shanghai Intermediate court and High court
 - Supreme Court of China
 - And in the courts in different level
 - About 410 IP tribunals now
- Some special tribunals for patents, plant varieties, and layout designs of integrated Circuits, appointed by Supreme Court

2. Intellectual Property Tribunals

- At the end of 2013
- 87 intermediate courts (IP tribunals) to adjudicate first instance patent cases
- 45 intermediate courts for plant variety cases
- 46 intermediate courts for layout-design cases
- And 7 basic courts for utility model patent and design patent cases (3 patents in China)
- To appeal to the related high courts, maybe 32
- So the scattered jurisdictions for first instance cases, and for appeal cases
 - The standard for the infringement and validity of rights was different sometimes
- How to go further in this line

2. Intellectual Property Tribunals

- The outline of national IPR Strategy in 2008
 - Suggestion for the establish a single national appeal court for the cases of patent, plant variety, layout design of integrated circuits, trade secret, and computer program
 - Suggestion for three-in-one in an IP tribunal or panel: civil, administrative, and criminal cases
 - Suggestion for the quasi-judicial status of patent review board and trademark review board
 - Suggestion for the three-in-one or two-in-one of the administrative agencies: patent, trademark, copyright
 - Suggestion for the separate of administration management and administration enforcement

3. Intellectual Property Courts

- On August 31, 2014, the Standing Committee of NPC passed a Decision on the Establishment of Intellectual Property Courts in Beijing, Shanghai, and Guangzhou
 - On Oct 31, 2014, Supreme Court of China: Rules for the Jurisdiction of the Intellectual Property Courts in Beijing, Shanghai, Guangzhou
- Three Key Points
- To adjudicate the first instance civil and administrative (no criminal) cases concerning

3. Intellectual Property Courts

- Patent, plant variety, layout design of integrated circuits, technical secret, computer program
- Beijing IP court also adjudicate the cases resulted from the decisions by the administrative agencies in Central Government, such as Patent Review Board, Trademark Review Board, and Agriculture and Forest Department
- Trans-area jurisdiction
 - 3 IP Court, in first 3 years within the municipality area and the province
 - Guangzhou IP Court: cases from Guangdong Province
 - A broken through of the judicial system in China

3. Intellectual Property Courts

- how about 3 years later?
- Intermediate courts
 - The decisions may be appealed to the related high courts, accept appeal cases from the basic courts in the jurisdiction area
 - For example, Beijing IP Court
- Beijing Intellectual Property Court on Nov. 6, 2014
 - Most of the Judges are from three former IP tribunals
- Guangzhou IP Court on December 16
 - Except for Shenzhen, a lot of high tech enterprises there
- Shanghai IP Court on December 28
 - From two former tribunals

3. Intellectual Property Courts

- The Decision is significant, to establish a new judicial system concerning technological IP cases
 - A new starting point
- The Decision: three years later, the Supreme Court shall report to the Standing Committee of NPC
 - Chief Justice reported to the Standing Committee of NPC in Aug. 2017
- And from Jan. 2017 to July 2019
 - After the approval by the Supreme Court, 21 Intellectual Property Tribunals in the Intermediate Courts have been established
 - Including Tianjin, Qingdao, Nanjing, Suzhou, Hangzhou, Ningbo, Fuzhou, Xiamen, Shenzhen, in east coastline

3. Intellectual Property Courts

- Wuhan, Changsha, Chengdu, Xi'an, Lanzhou, Urumqi, Changchun, in middle and west hinterland
- The 21 IP Tribunals are in the level of Intermediate Court, as Beijing, Shanghai, Guangzhou IP Courts
- So there are 3 IP courts and 21 Tribunals
 - Adjudicate the first instance cases concerning Patent, Plant Variety, Layout Design of integrated circuits, technical secret, and computer software
 - And to appeal to the High Courts where it is located
 - So the first instance cases are concentrated to the 3 IP courts and 21 Tribunals, but appeal courts are not concentrated
- To advocate a single national appeal court

3. Intellectual Property Courts

- On Oct. 28, 2018, A Decision on the Litigation Procedures concerning Patent and other Intellectual Property Cases by the Standing Committee of NPC
 - To establish an Intellectual Property Court in the Supreme Court
 - To adjudicate the appeal civil cases concerning invention patent, utility model patent, (no design patent) plant variety, layout design of integrated circuits, technical secret, computer program, and monopoly
 - To adjudicate the appeal administrative cases concerning patent, plant variety, layout design of integrated circuits, technical secret, computer program, and monopoly

3. Intellectual Property Courts

- Jan. 2019, Intellectual Property Court in the Supreme Court inaugurated
 - Judges are from different IP Tribunals, and IP Courts
 - To accept appeal civil cases from 3 IP courts and 21 Tribunals, may harmonize or unify the standard for the infringement of invention patent, utility model patent, plant variety, layout design of integrated circuits, technical secret, computer program, and monopoly
 - To accept appeal administrative cases from 3 IP courts and 21 Tribunals, especially from Beijing IP Court, may harmonize or unify the standard for the grant of patent, plant variety
 - Again another broken through of judicial system in China

4. Future Tasks

- From Aug. 2014, there is a new effort
 - to establish a judicial system for the cases concerning technology, such as patent, plant variety, technical secret, and computer program
 - On the to get rid off the old judicial system for the technological cases
- The establishment of the new judicial system has almost been finished
 - 3 Courts and 21 Tribunals for the first instances cases
 - IP Court in the Supreme Court for the appeal cases
- Some issues yet to be resolved

4. Future Tasks

- For re-appeal cases
 - According to the civil procedure law, first instance, appeal, and sometimes re-appeal
 - By IP Tribunal, or Supervisory Tribunal in Supreme Court?
 - Wait and see
- To locate the intellectual property courts in a reasonable numbers
 - Now 3 IP Courts, Beijing, Shanghai, Guangzhou
 - And 21 Tribunals, shall be some new IP Courts?
 - Trans-regional jurisdiction
 - No more than ten, otherwise it is a failure again

4. Future Tasks

- To be “three-in-one” or “two-in-one”
 - Civil, administrative, and criminal cases concerning IP by one tribunal or a panel
 - In the original draft, patent, plant variety, layout design of integrated circuits, no criminal liability, so two-in-one
 - Added the cases concerning technical secret, and computer program, maybe criminal liability
- Layout design of integrated circuits case: is it necessary?
 - US Semi-Conductor Chip Act in 1985
 - Washington Treaty in 1989
 - TRIPS Agreement in 1994
 - China in 2000
 - However, almost no case

4. Future Tasks

- How to invalidate a patent
 - Current practice: Patent Review Board, Beijing IP Court, and Beijing High Court, even the Supreme Court
 - How about to invalidate a patent in a civil case?
 - Before new judicial system, jurisdictions for the first instance cases and appeal cases were scattered
 - Now the new system has been established, jurisdictions for the first instance cases are concentrated, and a single national appeal IP Court has been established
 - The decision for invalidate or maintain a patent involved only concerns the parties in the case, not for the world
 - To resolve the disputes quickly and effectively
 - And the patent review board's decision is for the world

5. Concluding Remarks

- There is a new trend in the world to establish special IP tribunals or courts to adjudicate the IP cases concerning technology
- China has established special IP tribunals since 1993, and coincidentally followed this new trend
- Since 2014, China has established three IP courts and 21 IP Tribunals in the level of intermediate court to adjudicate the first instance cases concerning technology
- And again in Jan. 2019 China established the IP Court in the Supreme court, a single national appeal court for the technological cases

5. Concluding Remarks

- So the new judicial system to adjudicate the technological cases has been established well
- However, there are some other task to be finished
- Such as to reasonably locate the IP courts, adopt the solution of three-in-one, and in a specific case to invalidate or maintain the patent involved
- And for all of the efforts, it is to harmonize or unify the standard of infringement and for grant of rights
- The purpose is to protect innovation results effectively, and to promote innovation and social and economic development

Thank for your attention!

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