IP Courts in China, Jurisdiction and Prospect

By Xiaojun GUO

The policy makers have already realized that strong and efficient IPR protection is one of the most important ways to incent IP creations and further the economy and welfare of the country. With the explosive growth of IP registrations and creations in China and of IP disputes before courts, there is an anxious demand for the judicial system to improve the efficiency, quality and unity of IPR judicial protection. In this context, although the discussion of what kind of judicial system for IPR protection is the best for the country continues, the country has decided to establish specialized IP courts to adjudicate IP cases forgoing to a more centralized and stronger IPR protection.

Here we will have a review of the landmark events in 2014 regarding establishment of the initial three IP courts in China, inquiring into the jurisdiction of the IP courts and anticipate the next actions which might be taken by the IP courts in the near future. It is very clear from the voice of the policy makers that the establishment of the IP courts is only the first step in the reform of the IPR judicial protection system in China.

I. Landmark events in establishment of the IP courts in 2014

On July 9, 2014, the Supreme Court issued the Fourth Five-year Reform Outline of the Court (2014-2018), proposing to push forward establishment of specialized IP courts in the areas with concentrated IP cases.

On August 31, 2014, the Standing Committee of the National People's Congress ("NPC") passed the Decision of Establishing Intellectual Property Courts in Beijing, Shanghai and Guangzhou.

On November 3, 2014, the Supreme Court issued the Supreme Court's Regulations on Jurisdiction of Cases of the IP Courts in Beijing, Shanghai and Guangzhou.

As of November 6, 2014, the Beijing IP court began to perform its duties. Before this date, judges for the Beijing IP court had already been nominated, including the chief judge Chi SU from the Beijing Second Intermediate Court, deputy chief judge Jinchuan CHEN from the IP tribunal of the Beijing High Court and deputy chief judge Yushui SONG (Ms.) from Beijing Third Intermediate Court.

On December 16, 2014, the Guangzhou IP court opened up, and it began to receive cases as of December 21, 2014. This IP court is the only court that have cross-regional jurisdiction over certain IP cases. There are totally 13 judges including the chief judge in the court.

On December 28, 2014, the Shanghai IP court was formally founded. The court began to receive cases from Jan. 1, 2015. Currently 10 judges were nominated for the court.

II. Jurisdiction of the IP courts

The IP courts will be the core player of a three-year test in adjudicating especially technologically complex cases, according to the Decision of the Standing Committee of the NPC and the Supreme Court's Regulations, which stipulate the "first-instance jurisdiction", "cross-regional jurisdiction", "exclusive jurisdiction", "second-instance jurisdiction" and "appellate jurisdiction".

1. The IP courts will be established in Beijing, Shanghai and Guangzhou and will have exclusive jurisdiction on the cases as defined below.

2. The IP courts have jurisdiction for first instance on,

   a) Civil and administrative cases involving patents, new varieties of plants, layout designs of integrated circuit, technical secrets and computer software;

   b) Administrative cases regarding copyrights, trademarks, unfair competitions against decisions made by organs of the State Council or by county-level or over county-level local governments;

   c) Civil cases involving recognition of well-known trademarks. [First-instance jurisdiction]

3. The Guangzhou IP court shall have cross-regional jurisdiction on civil and administrative cases involving patents, new varieties of plants, layout designs of integrated circuit, technical secrets and computer software and on civil cases involving recognition of well-known trademarks, within the territory of Guangdong Province. [Cross-regional jurisdiction]

4. The Beijing IP court will have exclusive jurisdiction for the first instance on cases against,

   a) Decisions made by organs of the State Council regarding allowance or validity of IP rights including patents, trademarks, new varieties of plants and layout designs of integrated circuit;

   b) Decisions made by organs of the State Council regarding issuance of a compulsory license, compulsory license fees or rewards involving
The IP courts shall have the jurisdiction on review of judgments or decisions of first instance made by basic-level courts regarding copyrights, trademarks, technical contracts and unfair competitions in their territorial jurisdiction. [Second-instance jurisdiction]

6. The High Court shall have the jurisdiction on appeals against the IP courts’ first instance judgments or decisions in their territorial jurisdiction. [Appellate jurisdiction]

7. Where a case includes matters within the above item 2.a) or 2.b) and matters within the jurisdiction of other courts, the case shall be tried by the IP courts.

The Supreme Court shall report to the Standing Committee of the NPC the implementation situation of the decision after three years.

III. Parallel court systems for IP cases

In 2013, the Chinese courts heard more than 110,000 IP cases including first instance and second instance cases. The establishment of the IP courts will not influence the current IP legal proceedings apparently. Instead, it is an intrinsic power to propel the IPR protection to a higher level.

The Chinese court system consists of basic courts at the county level, intermediate courts, high courts and the Supreme Court. The IP Courts in Beijing, Shanghai and Guangzhou all sit at the same level as the intermediate courts in China and will hear both civil and administrative IP cases. However, criminal cases are still within the jurisdiction of the general courts.

IP cases generally involve civil and administrative proceedings but may also involve criminal proceedings when the infringing act is severe.

1. IP enforcement cases

With the establishment of the IP courts, an IP enforcement case may be tried by a general basic court, a general intermediate court or by an IP court, whichever has the jurisdiction over the case.

In China, an owner of an IP right may enforce his right through legal proceedings or through administrative proceedings. For example, when a patent owner finds an infringing act, he may institute a legal action before an intermediate-level court or request a local Patent Office to stop the infringing act. In the case of taking the administrative proceedings, the decision made by the local Patent Office may be appealed to the intermediate-level court so as to be examined through administrative litigation proceedings.

For a trademark right, besides relying on a court to enforce the right, the right owner may request a local Industrial and Commercial Bureau to stop an infringing act, and the decision of the local Industrial and Commercial Bureau is also appealable to the court to be examined through administrative litigation proceedings.

For copyright, the patent owner may similarly rely on the court or relay on a local Copyright Office for copyright disputes.

The established IP courts don’t exclude the competent administrative organs from executing their IP protection duties.

Regardless of the three specialized IP courts, before the general courts with jurisdiction on IP cases, an IP related civil case is tried only by a specialized IP tribunal. It is highly possible that an IP related administrative case, such as that against a decision of a local Patent Office, is tried by an administrative tribunal, instead of by an IP tribunal, of the court.

2. IP allowance or validity cases

A significant number of administrative litigation cases are the cases instituted against decisions of the Patent Reexamination Board or the Trademark Review and Adjudication Board, regarding allowance of patent or trademark applications or validity of patents or registered trademarks. These cases were previously heard by the Beijing First Intermediate Court and the newly established Beijing IP court will have the unique jurisdiction over these kinds of cases in the future.

IV. Future Prospect

In China, it has been a common view to promote innovation and development of the country through strong IPR protection. The establishment of the IP courts, which is one of the approaches to strengthen the IPR judicial protection, is also for realizing the national innovation-driven development strategy and economic development of the country.

We can predict that the establishment of the IP courts will improve the quality and efficiency of IP litigation, and enhance the IPR protection in China. “Civil and administrative cases tried by the same IP courts, this is one significant feature of China’s IP courts”, said Chuang WANG, deputy chief judge of the IP tribunal of the Supreme Court. The specialized IP courts hear both civil and administrative IP cases, which conforms to the current practice and is advantageous to a unified civil and administrative protection for IPRs.

The IP courts are not only a test of the court system but also a launch of a series of reforms for IPR protection in China. We can foresee that a series of actions will be taken through the IP Courts. As said by Chuang WANG, “the IP courts not only indicate a significant reform to China’s IPR judicial protection system, but also are explorers and pioneers of the China’s judicial reform”, the IP courts will take the trial judge responsibility system, explore the judicial system for specified number of judges, and improve the tribunal responsibility system. Further, within the IP courts, a procedural system concentrating on trial of an IP case will be pursued so as to establish specialized procedures and regulations conforming to IP trial rules.

Further, as revealed by Chuang WANG, the IP courts will explore the technical investigator system so as to improve the scientificity, professionalism, and neutrality of fact-findings.
The establishment of the specialized IP courts is a milestone of IPR protection in China. It lays the bedrock for the development of the IPR judicial protection system in China. With commencement of operations of the IP Courts, the reform of the IPR protection system formally kicks off.

On December 26, 2014, it was revealed that the Supreme Court, in a report, suggested setting up a high court for intellectual property disputes at national level in China and deliberating on the issue of hearing both infringement litigation and validity dispute of a patent simultaneously by the same court, for the purpose of shortening pending of an IP case, unifying the adjudication etc. This signals that further actions re reform of the IPR protection system will not be long. It is no doubt that a strong, efficient and unified IPR protection system will be launched in China.

1. 《人民法院第四个五年改革纲要（2014－2018）》in Chinese. For editor's reference only.
2. 《关于在北京、上海、广州设立知识产权法院的决定》in Chinese. For editor's reference only.
3. 《最高人民法院关于北京、上海、广州知识产权法院案件管辖的规定》in Chinese. For editor's reference only.
4. 宿迟 in Chinese. For editor's reference only.
5. 陈锦川 in Chinese. For editor's reference only.
6. 宋鱼水 in Chinese. For editor's reference only.
7. A system enhancing the responsibility and right of the presiding judges, i.e.”主审法官制度” in Chinese. For editor's reference only.
8. Under this system the number of judges will be specified so that the ability of the judges can be maintained, i.e.”法官员额制度” in Chinese. For editor's reference only.
9. ”合议庭办案责任制” in Chinese. For editor's reference only.
10. ”技术调查官制度” in Chinese. For editor's reference only.