

NEWSLETTER

知产快报

- From January 1, 2019, a national-level intellectual property (IP) appellate tribunal under the Supreme People's Court is set up to take on IP second instance cases. This set-up is for purpose of further unifying the judicial standards, equally protecting the legitimate rights and interests of various market entities, enhancing the judicial protection of IP rights, optimizing the legal environment for scientific and technological innovation, and accelerating the implementation of innovation-driven development strategies.



China's Supreme Court to Take on Intellectual Property Appeal Cases

In October 2018, the Supreme People's Court issued the "the Provisions of the Supreme People's Court on Several Issues concerning Intellectual Property Tribunal" ("Provisions" hereinafter). According to the Provisions, an IP Tribunal which is aimed at intensively trying second-instance IP cases will be established by the Supreme People's Court. The Provisions shall come into force on January 1, 2019. This is another major judicial reform following the establishment of specialized IP Courts in 2014.

I. A brief review of China's litigation system

China has a four-level court system: the Supreme People's Court, High People's Courts, Intermediate People's Courts, and Basic People's Courts. China also adopts a system of two instances of trials whereby at the second instance a case shall be finally decided. In a scenario where a final judgement takes effect and a party believes the judgment obviously wrong or unfair, the case may have a chance to be retried by a retrial procedure (in most cases, the jurisdiction for the retrial is the upper court of the court that has made the final judgment). However, only a small percentage of cases can initiate the retrial procedure. That is to say, the party's appeal will probably not be accepted.

Currently, in most cases, the first instance of an IP case is under the jurisdiction of an Intermediate People's Court or an IP Court (Beijing, Shanghai, and Guangzhou). The first instance of a small number of cases is under the jurisdiction of the Basic People's Courts designated by the Supreme People's Court. Also, there are a small number of cases in which the first instance is under the jurisdiction of the High People's Courts because of high damage demands or other special circumstances. Prior to the establishment of the Intellectual Property Tribunal, the second instance of an IP case was commonly under the jurisdiction of the higher court of the first instance court (an IP Court is equivalent to the level of an Intermediate People's Court).

II. The new changes brought about by the Provisions

1. Changes in the jurisdiction of the second instance

Article 2 of the Provisions stipulates the jurisdiction of the IP Tribunal as follows:

The IP Tribunal accepts the following cases:

(1) Where a party is not satisfied with and appeals a first-instance judgment or ruling made by a High People's Court, an IP Court, or an Intermediate People's Court for civil cases concerning invention patents, utility models, new variety of plants, layout design of integrated circuits, technical secrets, computer software and monopoly;

(2) Where a party is not satisfied with and appeals a first-instance judgment or ruling made by Beijing IP Court for administrative cases concerning grant and confirmation of invention patents, utility models, design patents, new variety of plants and layout design of integrated circuits;

(3) Where a party is not satisfied with and appeals a first-instance judgment or ruling made by a High People's Courts, an IP Court, or an Intermediate People's Court for administrative cases concerning invention patents, utility models, new variety of plants, layout design of integrated circuits, technical secrets, computer software and monopoly administrative penalties;

(4) First-instance civil and administrative cases with nationwide significance and complicated nature mentioned in items 1, 2 and 3 of this Article;

(5) Cases in which an effective judgment, ruling, and mediation agreement of a first-instance case mentioned in items 1, 2, and 3 of this Article have been legally applied for retrial, protest, retrial, etc. and follow procedure for trial supervision;

(6) Disputes concerning jurisdiction in first-instance cases mentioned in items 1, 2, and 3 of this Article, application for reconsideration of fine and detention decision, application to extend the trial limit; and

(7) Other cases that the Supreme People's Court considers should be tried by the IP Tribunal.

That is to say, after the establishment of the IP Tribunal under the Supreme People's Court, the second instance of IP litigation will be mainly heard by the IP Tribunal.

Note that, for design patents, the second instance of civil cases (such as design infringement cases) are still under the jurisdiction of the higher court of the first instance court, while the second instance of the administrative litigation cases (such as design invalidation cases) are under the jurisdiction of the IP Tribunal. For the above Article, officials of the Supreme People's Court pointed out that this is because the technicality of design patents are not as high as invention patents and utility model patents, and the amount of cases, the trial team, the work continuity and other factors are also taken into account by the Supreme People's Court.

2. Changes in the mode of trials

Article 1 of the Provisions indicates that the IP Tribunal of the Supreme People's Court is located in Beijing. In recent years, about two thousand patent appeal cases are accepted annually. It can be predicted that the IP Tribunal will face a lot of work pressure in the future. At the same time, if all the proceedings are required to be carried out at the location of the IP Tribunal, it will increase the transportation costs and time costs of the parties.

In this regard, the Provisions also proposed a series of measures to make the proceedings more convenient. For example, Article 4 of the Provisions reads "upon consent from the parties, the IP Tribunal may serve litigation documents, evidence and judgement documents through electronic litigation platform, China Judicial Process Information Online website, fax, e-mail and other electronic means"; Article 5 of the Provisions reads "the Intellectual Property Tribunal may organize evidence exchanges, convene pre-trial meetings, etc. through electronic litigation platforms or online video streaming"; and Article 6 of the Provisions reads "the Intellectual Property Tribunal may, on the basis of the case, go to the place of case or the people's court of the original trial to hear the case".

At present, China has established Internet Courts in Beijing, Guangzhou and Hangzhou to manage cases such as financial loan contract disputes and small loan contract disputes that are executed and performed over the Internet. In the future, the Internet will likely be used more

during the trials of IP cases to facilitate a rapid resolution of disputes.

III. Some information about the IP Tribunal

The former Vice President of the Supreme People's Court, Mr. Luo Dongchuan, was appointed as the Chief Judge of the IP Tribunal. Among the first batch of judges recruited by the IP Tribunal, all judges have a master's degree or above, and about half of the judges have doctorate degrees; about one-third of judges have a background in science and engineering; about one-third of judges have experience in studying abroad; and the average age of all judges is 42.

IV. Summary

The establishment of the IP Tribunal under the Supreme People's Court is a decision made in the background of increased trade friction between China and the United States, which may have the following significances:

(1) Further strengthen the protection of intellectual property rights. In the background of increased trade friction between China and the United States, the Chinese government needs to release positive signals and give foreign investors more confidence, thus reducing the adverse impact of trade friction on the Chinese economy. In response to a reporter's question, Mr. Luo Dongchuan, the Chief Judge of the IP Tribunal, said that setting up a special intellectual property court to hear patent-type appeals at this time can directly implement the Supreme Court's intention and requirements, as well as China's determination to strengthen intellectual property protection.

(2) Uniform trial standards for intellectual property cases. In recent years, the amount of patent infringement compensation has been increasing. Taking the Beijing IP Court as an example, the average patent infringement compensation was CNY 350,000 in 2015, CNY 760,000 in 2016, and CNY 1,350,000 in 2017. However, the courts in different regions have different standards in judging the amount of compensation. Among the more developed regions and the courts with more trial experience, the compensation is higher as compared to undeveloped regions. After the establishment of the IP Tribunal, the standard of compensation is expected to be unified and damage awards will probably be further increased.

(3) Avoid local protectionism. In previous IP litigation, courts in some areas may favor local businesses in the refereeing. Since the first instance of most cases is before an Intermediate People's Court and the second instance is in a High People's Court (located in the administrative capital of a province or a municipality directly under the central government), if the above-mentioned local protection occurs, the unfair judgment may be difficult to be corrected, since the second instance is also under the jurisdiction of a local court. After the establishment of the Intellectual Property Tribunal, local protectionism will be contained to the fullest extent.

(4) Speed up the trial of intellectual property cases. According to preliminary data, the average trial period of IP cases in the Beijing IP Court is four months. In contrast, the average trial period for patent cases in Europe is 18

months, while the average trial period for patent cases in the US is 29 months. From this point of view, China's current litigation efficiency is already very high. However, the protection of intellectual property rights in China is still in a stage of rapid development, and the number of cases has increased year by year. The parties still hope that intellectual property rights can be quickly protected. Through the establishment of specialized IP courts to hear cases of appeal can focus on the promotion of in-depth study of the trial mechanism, and to maintain the current speed of trial by reforming the trial mechanism, and even further expedite the speed of trial.

In short, the establishment of the IP Tribunal under the Supreme People's Court is a further strengthening of the Chinese government's protection of intellectual property rights. We will look forward to the effect of this!

The newsletter is not intended to constitute legal advice. Special legal advice should be taken before acting on any of the topics addressed here.

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