

The Establishment of Specialized Intellectual Property Court in China

On August 31 2014, China took a solid step further on its way to enforce its legislations and international duties concerning intellectual property protection. The Standing Committee of the National People's Congress approved a resolution that the Specialized Intellectual Property Courts (SIPC) will be established in Beijing, Shanghai and Guangzhou, respectively.

This resolution is highly appreciated by the judiciary system, the law-enforcement organs, the academic circles and IPR-sensitive industries. Without any exaggeration, the establishment of an IP Court has been longed and advocated long before. With more and more disputes and criticism emerging, Chinese government can no longer turn a blind eye to the prevalent piracy and IPR infringement within its manufacturing industry, creative industry and retailing. The drastic IPR infringement, which was deliberately neglected, used to be one pillar of the dynamic economic development of China. However, after paying so much heavy price such as polluted air, contaminated water, rough operating conditions and severely undervalued labor, China is now quitting the extensive growth, which costs the most but obtains the least on the profit-sharing chain. In order to maintain its attraction to the foreign investors and successfully introduce its own hi-tech companies to the international market, China is forced to rectify its attitude against the IPR enforcement. A non-official survey among the courts and judges revealed that the number of lawsuits concerning IPR in the past ten years draws a curve of exponential growth. The current arrangement and division of the jurisdiction over IPR disputes is far away from satisfying the justice needs. Thus the specialized IP court is always in the spotlight of public attention.

It is not surprise that the Specialized Intellectual Property Courts are going to be established in Beijing, Shanghai and Guangzhou, the most developed three cities in China. With the most intensive hi-tech companies headquarters, the proportion of IP-related lawsuits is highest in these three cities. According to the resolution, the Supreme People's Court shall decide the specific number of judicial tribunal within each SIPC later.

The resolution also made it clear that the SIPC enjoy the specialized jurisdiction over the first trial of civil and administrative disputes concerning patent, new species of vegetation, layout design of integrated circuit and know-how. The administrative lawsuits brought against the administration under the governance of State Council will be heard by the SIPC in Beijing. As to the geographical division of the jurisdiction, it adopts a mode that is similar to the circuit court. Within the first three years since the establishment, each SIPC shall be the competent judicial organ to hear all the first trial of IP lawsuits mentioned above brought about within its administrative division. Speaking of the vertical coordinate of the SIPCs, they are designed to be the equivalent to the Intermediate People's Court. The SIPCs shall review the judgments of those civil and administrative lawsuits concerning copyright and trademark. And the Higher People's Court within the same administrative region shall hear the appeal of the judgment of the first trial made by the SIPCs.

According to the resolution, the SIPCs are under the supervision of (i) the Higher People's Court within the same administrative region, (ii) the Supreme People's Court and (iii) the People's Procuratorate.

The Standing Committee of the local-level People's Congress shall have the final say on the appointment and dismissal of the chief judge of the SIPCs. The SIPCs shall report to the Standing Committee.

Obviously, the resolution is just a framework arrangement. A lot of details need to be filled during the pilot term, which is decided to be three years. After the pilot term, the Supreme People's Court shall report the enforcement of this resolution to the NPC. By observing the experience generated by these three SIPCs, the NPC shall further consider to apply the new policy nationwide.

The old saying goes that Rome was not built in one day. The resolution might have been a big step, but some scholars express their concerns at the same time. Mr. Sihan ZHANG, a professor of National Judges College, former researcher of the Supreme People's Court told the journalist of Caijing that it is a regret that temporarily there will not be a specialized appeal court for the SIPCs. The appealing

of the first trial by SIPC returns to the Higher People's Court. The reason behind the establishment of the SIPC is that the IP lawsuits especially those patent related cases require the expertise possessed by judges to a very high extent. Going back to the Higher People's Court would conceal the specialty conveyed by the SIPC. The human resource is another big issue concerning the public. The SIPC might be the new organs, but a court consists of judges. It is the judges who interpret the law, make the judgments. So if the judges are not specialized, then the SIPC will be no different from assigning a new office to the judges. They will do the same thing in the same way only in a different place. By saying that is not about taking all the credit away from the judges for what they have done. After all, they have done their best to carry out their duties, and the result is quite impressive. However, we are aiming high. To enhance the standard of the IP judicial acts, we need to recruit more talent with versatile background into our team, and push the judges who hold a current position to improve his or her ability.

Thought the SIPC are still in the blueprint stage, we have some many expectations from them. We have faith in them that they will become the flagship of the enforcement of IPR in China.