



## Intellectual Property Law

### China's New Supreme People's Court IP Tribunal Launched as of January 1, 2019

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On January 1, 2019, a new IP-focused tribunal within the Supreme People's Court (SPC) ("IP tribunal") was established in Beijing to hear second-instance cases involving patent and other complex technical IP matters. The IP tribunal will hear cases that are appealed from across China, from both the civil decisions of first-instance courts and administrative decisions of the Patent Re-examination Board (PRB) of the Chinese National IP Administration (CNIPA, patent office of China) and others. The IP tribunal is intended to unify IP judicial standards and improve the quality and efficiency of trials in IP cases. This development is regarded as a major step toward a national IP appellate court and is expected to greatly change China's IP protections in the coming years.

#### I. Background

In recent years, China has viewed centralizing its IP judicial system to be an essential component of its policy of strengthening and unifying IP protections. In November 2014, three specialized IP courts were established in Beijing, Shanghai and Guangzhou, and, from 2017, 18 new specialized IP tribunals have been established in the intermediate courts of major cities.

In early 2018, the central government issued the *Opinions on Several Issues Concerning Strengthening the Reform and Innovation in IPR Case Trials*, which identifies as an important reform task the establishment of a national level IP case appellate system. On October 26, 2018, the Standing Committee of the Thirteenth National People's Congress promulgated the *Decision on Several Issues Concerning Litigation Procedures of IPR Cases Including Patent Cases*, creating the IP tribunal to serve as a national IP appellate court and to hear civil and administrative appeals in patent and other technical IP cases, which were previously appealed to the respective provincial high courts.

The decision stipulates that the SPC will report to the Standing Committee three years after establishment of the IP tribunal. This indicates that the IP tribunal may be a transition towards a specialized IP appellate court.

## II. IP Tribunal Procedural Rules

In December 2018, SPC issued *Provisions on Several Issues Concerning the IP Tribunal* (“**Provisions**”), which came into force on January 1, 2019 and set forth some basic procedural rules for the IP tribunal.

### 1. Jurisdiction

Article 2 of the Provisions specifies that the IP tribunal has jurisdiction over:

- a. *Appeals of unsatisfactory first-instance decisions and rulings issued by High Courts, IP Courts, or Intermediate Courts in civil cases in relation to invention patents, utility models, new varieties of plant, layout designs of integrated circuits, technical secrets, computer software and monopoly;*
- b. *Appeals of unsatisfactory first-instance decisions and rulings issued by the Beijing IP Court in administrative cases in relation to the granting and validation of invention patents, utility models, design patents, new varieties of plant and layout designs of integrated circuits;*
- c. *Appeals of unsatisfactory first-instance decisions and rulings made by High Courts, IP Courts or Intermediate Courts in administrative cases in relation to invention patents, utility models, new varieties of plant, layout designs of integrated circuits, technical secrets, computer software and monopoly administrative penalties;*
- d. *Major and complex nationwide first-instance civil and administrative cases mentioned in items (1), (2) and (3) of this Article;*
- e. *Applications for retrial, protests, retrials and other cases suitable for judicial supervision where a legally effective decision, ruling, or mediation agreement has been issued in a first-instance case mentioned in items (1), (2) and (3) of this Article;*
- f. *Jurisdictional disputes in first-instance cases mentioned in items (1), (2) and (3) of this Article, applications for reconsideration of fines and detention decisions, applications for trial period extensions, etc.;*
- g. *Other cases that SPC considers should be tried by the IP tribunal.*

In addition to some special first-instance and retrial cases, the IP tribunal is generally designed to hear technology-related second-instance cases, including civil and administrative cases in relation to invention and utility model patents, plants, layouts, trade

secrets, antitrust, software copyrights, and administrative cases involving design patents. PRB design patent invalidation or re-examination decisions will now be appealed to the IP tribunal, while design patent infringement decisions issued by local courts will be appealed to the competent local high court.

Those IP cases not involving technology, such as trademark and non-software copyright cases, are not included in the jurisdiction at this stage but may be in the future. In addition, the IP tribunal will only hear cases appealed from first-instance decisions issued after January 1, 2019.

IP case retrials after the second instance will continue to be heard by the existing SPC IP Trial Tribunal, which is a separate tribunal under SPC.

## 2. Other procedural rules

The Provisions and SPC interpretations provide that the IP Tribunal will be flexible and transparent in how it handles cases. For example, if both parties agree, the IP tribunal can serve litigation documents, evidence and decisions by electronic means. The IP tribunal can also hold pre-trial meetings remotely through an online platform or hold hearings in cities other than Beijing in the form of a circuit court.

The Chief Justice of the IP tribunal, Mr. Dongchuan Luo, has promised to take advantage of artificial intelligence and big data technologies to alleviate pressure from administrative work, and take some new measures in trials such as employing different procedures in complex and simple cases, intelligent assigning processes, assigning similar patent cases to the same panels, etc. More provisions and interpretations on procedural and substantive issues will be formulated soon.

### III. Structure and Personnel

The IP tribunal now has six trial groups, a technical investigation department for investigating technical matters, a litigation service center for procedural management, and an administrative office.

The IP tribunal includes a total of 27 experienced judges from SPC, lower courts, and PRB. Specifically, (a) ten judges are from SPC, including the head and three deputies; (b) three judges are from the Beijing High Court, one judge is from each of the Shanghai, Jiangsu, Zhejiang, Shandong, Hubei, Hunan and Fujian High Courts; (c) two judges are from the Beijing IP Court, one judge is from each of the Shanghai IP Court and the Guangdong IP Court; and (d) three judges are from PRB. Half of the judges have a doctoral degree and one-third have a technical background. The judges average over twelve years of IP trial experience and 42 years of age.

Mr. Luo has estimated that the IP tribunal may hear about 2,000 cases per year and will recruit

more judges. In addition to recruiting judges with trial experience, SPC has issued recruiting advertisements to the public welcoming scholars and lawyers who are experienced in IP law to join the IP tribunal.

#### **IV. Outlook**

SPC has repeatedly stated that the IP Tribunal has been established to ensure uniformity of legal decisions in the area of intellectual property, to protect IP rights and encourage innovation, and to create a sound business environment.

##### **1. Unify judicial standards**

A common appellate tribunal across China will greatly reduce conflicting decisions, whether between courts from different provinces or between courts handling infringement and validity cases of the same IP rights. Previously, over 30 local high courts could hear civil appeal cases and did sometimes issue conflicting decisions. For example, courts have disagreed whether jurisdiction can be established based on online purchases, and discrepancies have arisen under parallel validity and infringement proceedings. Though estoppel of prosecution history was a principle widely accepted, its successful application in practice remained an issue for a long time. The IP tribunal may resolve these issues, since the IP tribunal will presumably hear related appeal cases from the same panels or even the same judges.

The IP tribunal is also expected to take particular measures to unify judicial standards. For example, the IP tribunal will establish professional judge meetings to discuss difficult cases or essential legal issues, select typical cases to provide guidance for lower courts and PRB, rely on IT technology to help judges easily search for similar case precedents, and rely on the trial committee of SPC for important cases.

An additional advantage of a centralized appellate tribunal is that choice of forum issues will generally be less important, since differences at the lower court level may no longer weigh heavily on case outcomes.

##### **2. Provide better protections for IP rights**

A common IP tribunal at the appellate level is expected to provide greater protections for both domestic and foreign IP owners.

IP owners can expect the IP tribunal to issue larger damage awards. A draft amendment to the Patent Law, issued on January 4, 2019, proposes to quintuple damages in the case of willful infringement and raise the upper limit of statutory damages by five times to RMB 5 million. The amendment is expected to be passed soon. At the opening ceremony of the IP Tribunal, the Chief Justice of SPC, Mr. Qiang Zhou, emphasized that it is an important

task for the IP tribunal to “explore and improve the compensation system for IP infringement damages, correctly apply punitive damages, and to increase punishment for violations of IP rights.”

Moreover, under unified judicial standards, the outcomes of infringement cases may be more reliable and predictable for IP owners, which will act to improve IP owners’ confidence in IP protections in China.

### 3. Simplify procedures and shorten trial periods

Directly appealing to the IP tribunal removes a layer of appeals, which will reduce the cost and duration of litigation for IP owners. Efficiency, together with an increase in damage awards, will help attract more IP owners to initiate litigation in China.

## V. Summary

The establishment of the IP tribunal within SPC is the most significant change in the China’s IP judicial system since the establishment of specialized IP courts in 2014. This is good news for IP owners who wish to enforce their rights in China since the IP tribunal is expected to adjudicate complex civil and administrative patent cases under unified validity and infringement standards, more efficient procedures and improved IP rights protections. We look forward to seeing a more reliable, efficient, and unified IP system with the establishment of the IP Tribunal.

### References:

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