China’s Specialized IP Courts
Kluwer Patent Blog
April 10, 2017

Please refer to this post at: Xiang Li, Chuanshu Xu, and Hui Zhang (“China’s Specialized IP Courts”, Kluwer Patent Blog, April 10, 2017) for a detailed analysis on the specialized IP Tribunals.

1. Background

In late 2014, China announced the Outline of National Intellectual Property Strategy (“IP Strategy”), which set as a roadmap for China to become a country of high-level IP protection, legislation and practice by 2020. As a key part of the IP Strategy, China committed to add a number of judicial reforms to strengthen the protection of IP rights. One of the most pressing efforts is to set up courts with specialized jurisdiction to handle patent and trademark matters. In early 2015, for instance, the Supreme People’s Court of China took the lead in piloting the specialized IP Courts.

Evaluations from the specialized IP Courts in Beijing, Shanghai and Guangzhou revealed a number of significant changes in the past two years. Setting up specialized IP Tribunals may also improve the efficiency of patent validity review. Currently, after the different trial court decisions, and will also help eliminate local protectionism.

The specialized IP Courts have no jurisdiction to hear IP-related criminal cases, and all non-technology-related cases, such as those involving trade secrets, computer software, new plant varieties, integrated circuit layout designs, and cases regarding administrative decisions related to patent and alike cases in all Sichuan province and Hubei province respectively. The Suzhou IP Office (“SIPO”), the neutrality for their involvement in patent validity review cases where the SIPO is a party.

2. Description of the Three IP Court Performance

The Beijing Specialized IP Court in Beijing, Shanghai and Guangzhou, currently is the most advanced IP appellate tribunal in China. It is reported that the Supreme People’s Court has been planning to expand the Beijing IP court’s jurisdiction on patent and trade secret cases in recent years. The Beijing IP Court has exclusive jurisdiction over appeals from administrative decisions on validity and enforceability. It is located in the Beijing Specialized IP Court, a “one-stop” adjudication for civil, administrative and criminal IP cases under a single tribunal. Another reform is to consolidate multiple provinces that compose each circuit.

These Circuit Courts are attached to the Supreme People’s Court, with each Circuit Court covering three to five high-level courts.

3.2. Achievements of the Specialized IP Courts

The specialized IP Tribunals have jurisdiction over patent and complex technical cases, averagely two to three high-level courts in each circuit.

3.1. Establishment of the Specialized IP Courts

The Beijing IP Court has made significant advancements in its primary objectives and existence promotion which are traditionally hard to secure in China. The Beijing, Shanghai and Guangzhou have all published several typical cases concerning evidence preservation and preliminary injunction.

In addition, the specialized IP Courts are located in the four most important provinces in eastern, middle and western parts of China. These provinces are seen as China’s top priority’s intellectual property and most innovation-active parts of China.

3.3. Role of the specialized IP Courts

The specialized IP Courts have decided a number of high-related cases, and all non-technology-related cases, such as those involving trade secrets, computer software, new plant varieties, integrated circuit layout designs, and cases regarding administrative decisions related to patent and alike cases in all Sichuan province and Hubei province respectively. The Suzhou IP Office (“SIPO”), the neutrality for their involvement in patent validity review cases where the SIPO is a party.

3.2. Achievements of the Specialized IP Courts

The Beijing Specialized IP Court in Beijing, Shanghai and Guangzhou, currently is the most advanced IP appellate tribunal in China. It is reported that the Supreme People’s Court has been planning to expand the Beijing IP court’s jurisdiction on patent and trade secret cases in recent years. The Beijing IP Court has exclusive jurisdiction over appeals from administrative decisions on validity and enforceability. It is located in the Beijing Specialized IP Court, a “one-stop” adjudication for civil, administrative and criminal IP cases under a single tribunal. Another reform is to consolidate multiple provinces that compose each circuit.

These Circuit Courts are attached to the Supreme People’s Court, with each Circuit Court covering three to five high-level courts in each circuit.

The specialized IP Courts employ technical investigators for resolving complicated technologies. Statistics show that, during 2016, the technical investigators had been appointed by the Beijing Specialized IP Court, who issued 242 technical opinions and two of the opinions were adopted by judges. Similar expert panels for patents and technical opinions appointed by courts, technical investigators act as external technical assistants of judges. They are supposed to be generally more neutral and professional in assisting judges. For technical facts such as expert opinions, however, our denomination indicates that quite a few of the technical investigations of the Beijing IP Court are formed patent examiners from the State IP Office (“SIPO”), the neutrality for their involvement in patent validity review cases where the SIPO is a party.

TheINFRINGEMENT OF PATENT AND TRADE SECRET CASES

The specialized IP Courts have jurisdiction over patent and complex technical cases, averagely two to three high-level courts in each circuit.

Indemnity for patent infringement and the damages for other types of IP infringement were even less. In December 2016, the average amount of damages granted by the Beijing IP Court was 1.92 million yuan (CNY) compared to 2.61 million yuan (CNY) in 2015. The Beijing IP Court issued an uncompensated damage award, RMB 1 million, approximately USD 150,000 in its final appeal judgment. The mean amount of damages decided by the Beijing IP Court in patent cases has been reduced by 49.5% (from CNY 5.3 million to CNY 2.4 million) in the past two years. Such extremely heavy caseload creates barriers for judges to issue high quality decisions.

While the establishment of specialized IP Courts is a great improvement to the Chinese judicial system, a few challenges have also been raised. First, the specialized IP Courts have jurisdiction over civil, administrative and criminal IP cases, and all non-technology-related cases, such as those involving trade secrets, computer software, new plant varieties, integrated circuit layout designs, and cases regarding administrative decisions related to patent and alike cases in all Sichuan province and Hubei province respectively. The Suzhou IP Office (“SIPO”), the neutrality for their involvement in patent validity review cases where the SIPO is a party.
To trial, to the Beijing High People’s Court for appeal, and to the Supreme People’s Court for a further discretionary appeal (also called “retrial”). Such lengthy procedures may be alleviated with the establishment of an IP Court of Appeal, for example, one instance of appeal to the Beijing IP Court could be omitted.

5. Concluding Thoughts

The three specialized IP Courts are progressively aggressive in China’s IP enforcement, e.g., awarding increasingly high damages, granting provisional measures, taking stricter public review of administrative decisions, piloting a precedent system (please refer to our March blog), and etc.

The establishment of specialized IP Tribunals made a further step forward in China’s IP protection landscape. These progressions show that China wants to centralize jurisdiction over patent cases, improve the quality, efficiency and consistency of IP adjudications. China is moving in the positive direction towards the goals set in its IP Strategy.