China's Specialized IP Courts

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Please refer to this post at: Strategic 
Cross-Over, As 

1. Background

In late 2004, China announced the Outline of National Strategy (“P5 Strategy”), which set out a roadmap for Chinese innovation, specifically high-level IP creation, citation and protection by 2020. As a key part of the P5 Strategy, China committed to a number of policy reforms to strengthen the protection of IP rights. One of the most promising efforts to date is China’s effort to establish specialized tribunals to deal with patent cases with growing volumes. In this regard, China has been following the experience of the United States, which has quite a few of the specialized IP courts.

2. Overview of the Three IP Court Performance

Since the first IP Court in Beijing, Shanghai and Guangzhou officially opened in late 2013, there has been significant progress in the IP arena. These IP Courts are designed to be by cases involving patents, technical secrets, computer software, new plant varieties, integrated circuit layout designs, and cases regarding recognition of unfair competition and antitrust issues.

3.1. Achievements of the Specialized IP Courts

Damages awarded by the specialized IP Courts have grown significantly in the past few years. Statistically, the average amount of damages granted by the Beijing IP Court in 2015 was around ¥1.23 million, compared to ¥1.53 million in 2014. Meanwhile, the Beijing IP Court issued an improved damages award, ¥9 million, approximately U.S. $1.4 million in a patent case. These decisions are important in the context of the Beijing IP Court’s decision on damages.

3.2. Shortcomings of the specialized IP Courts

Patent validity review is a complex process and requires the involvement of experts. The specialized IP Courts have limited jurisdiction over patent-related cases and are not well-equipped to handle complex cases. It is important that these courts are not burdened with such cases.

4. The New Specialized IP Tribunals

In January and February 2015, four new specialized IP Tribunals were established in four cities, namely, Beijing, Shandong, Jiangsu Province, and Hebei. These new specialized IP Tribunals are located in the four most important provinces in eastern, northern and western parts of China. These provinces are seen as having the largest number of enterprises and most innovative parts of China.

5. The Potential of IP Appellate Courts

The Beijing High Court is the best candidate for the unified IP appellate court, as it has already been handling appeals involving a variety of patents and trademarks. The Beijing High Court is a central court, located in Beijing, and has jurisdiction over patent cases not appealed to the Beijing IP Court. It is also located in the central region of China, which is the heart of China’s IP litigation. The Beijing High Court is a suitable appellate court for the unified IP appellate court.

6. Conclusion

This article will make a brief overview of the performance of the IP Courts since their establishment, provide an evaluation of the new specialized IP Tribunals, and take a look at the prospect of a unified IP appellate court.
for trial, to the Beijing High People’s Court for appeal, and to the Supreme People’s Court for a further discretionary appeal (as called “retrial”). Such lengthy procedure may be eased 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 judicial 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 protection landscape. These progresses 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 its goals laid out in its IP strategy.