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An Update on China's Specialized IP Courts

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by Dylan Ding and Benjamin Bai

Since we last visited this subject in December 2014, the specialized IP courts in China have moved with a speed that is more often observed in some areas of Chinese development but is perhaps unfamiliar to others. The progress so far has been so significant that it warrants an update.

Beijing: Old IP tribunals will soon be history

Among the three IP courts, the Beijing IP Court is the oldest, which opened its doors to litigants on November 6, 2014. There are now more than 25 IP judges on the bench and more than 220 cases before them.

Because the Supreme People's Court ("SPC") rules do not allow the transfer of old IP cases from the intermediate courts to the new IP courts, the old IP tribunals within the intermediate courts are supposed to persist. But as new IP cases in Beijing are being filed with, or appealed to, the Beijing IP Court after November 6, the IP caseload on some intermediate courts in Beijing is diminishing. Many IP judges have also been transferred to the new IP court. Therefore, the dissolution of the old IP tribunals within the intermediate courts in Beijing is now inevitable and foreseeable.

With about 20 IP cases still pending before it, the IP tribunal with the Beijing 2nd Intermediate Court will likely be the first to go among its peers. The remaining IP judges in the Beijing 2nd Intermediate Court has recently set a target to resolve all pending IP cases and close shop by the Chinese New Year on February 19, just a month away.

However, not all IP tribunals in Beijing are in a position to administer justice so swiftly. There are still some 6000 IP cases pending before the Beijing 1st Intermediate Court, for example, which certainly cannot all be adjudicated or settled by February 19. But, as they get through these last cases, the IP tribunals with the Beijing 1st Intermediate Court, as well as the IP tribunals with all other intermediate courts in Beijing, will eventually disband in the foreseeable future.

Guangzhou: IP court's jurisdiction evaded by Shenzhen, seat of a new SPC circuit court

The Guangzhou IP Court was established on December 16, 2014 and started taking cases on December 21. At least ten judges have been appointed to the court. The court has jurisdiction in the Guangdong province with the notable exception of the municipality of Shenzhen, the fourth largest city of China (behind Shanghai, Beijing, and Guangzhou, all seats of the new IP courts). No

official explanation has been given for this carve-out.

Although Shenzhen will not be affected by the introduction of the IP courts, it has been selected as the site of the First SPC Circuit Court, another new species of the Chinese court. Unlike the circuit courts of appeals in the current U.S. federal court system, the SPC circuit courts in China are “branch offices” of the SPC, not another level of courts below the SPC, and their judgments are final and as if made by the SPC in Beijing. Unlike their counterparts in the U.S., SPC justices from Beijing will actually ride circuits and sit on the benches of these circuit courts for a term of one or two years.

The First SPC Circuit Court is being organized in Shenzhen, and the Second SPC Circuit Court in Shenyang, a major city in northeastern China. Although the SPC circuit courts do not specialize in IP and are two levels above the new IP courts (with the provincial high courts in between the two), the two new types of Chinese court have one thing in common: They are both intended to combat the long-standing problem of provincialism. The IP courts are breaking down the municipal borders that have separated the conventional intermediate court, whereas the SPC circuit courts will break down provincial borders. For example, the First SPC Circuit Court in Shenzhen will have jurisdiction in the provinces of Guangdong, Guangxi, and Hainan. Both the IP courts and the SPC circuit courts are milestones in China’s on-going endeavor to alleviate the influence of local interest groups and provide uniform and consistent rule of law.

Shanghai: IP court is up and running, together with a twin

The Shanghai IP Court took its first 18 IP cases on January 4, 2015, the first business day of the new calendar year. About fourteen IP judges have been appointed to the bench and they have an average age of over 41.

Unlike its sisters in Beijing and Guangzhou, the Shanghai IP Court is joined at the hip with a new intermediate court. The Shanghai 3rd Intermediate Court shares the same court house with the Shanghai IP Court, is headed by the same chief judge, and was established at the same time as the Shanghai IP Court. But this new intermediate court will specialize only in administrative cases against the municipal government of Shanghai and subdivisions thereof. It is not clear at present whether these two conjoined courts will eventually separate, or whether it will prove be a permanent birth defect on the IP court’s judicial independence.

Concluding thoughts

The evolution of China’s specialized IP courts has some surprising wrinkles: who would have thought that Shenzhen would not be subject to the jurisdiction of the Guangzhou IP Court? The dissolution of the IP tribunals in the Beijing 2nd Intermediate Court was not part of the initial plan. The Shanghai IP Court was initially to be co-located with the Shanghai 1st Intermediate Court. The timing of the SPC circuit courts, although not IP focused, coincided with the rollout of the specialized IP courts. All these are characteristic of Chinese reform: crossing the river by feeling the stones. In other words, reform is a matter of experiment. Such experiments have caused short-term confusion and even chaos. But the new specialized IP courts may set the stage for the eventual rollout of nationwide IP courts, with one unified IP appellate court.

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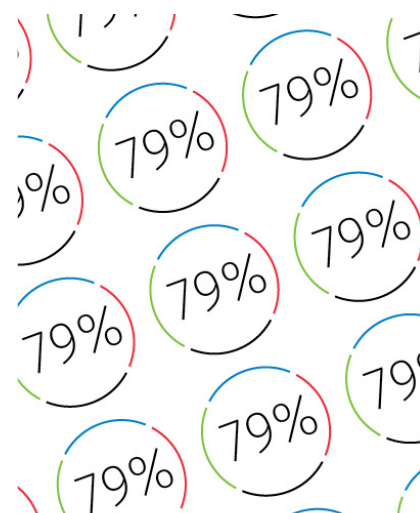
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