

China's New Intellectual Property Courts

By Ziv Rotenberg, Reinhold Cohn Group, Israel

First published on www.rcip.co.il

The Chinese government recently established three new intellectual property courts – in Beijing, Shanghai and Guangzhou. These courts, which will have special jurisdiction and expertise, will further strengthen China's intellectual property regime and are another step in China's path towards having an advanced intellectual property legal system.

Intellectual property (“IP”) is a unique branch of the law. IP cases tend to be among the most complicated legal cases, requiring both specific legal background as well as (in patent cases) relevant technical background. Specialized IP courts were established in many countries. These special courts have the expertise to handle IP cases that may be lacking in general courts. Specialized IP courts exist, among others, in Japan, Portugal, Switzerland and the UK while other countries, such as the US, have judges that gained expertise in this area of law and are thus selected to hear such cases¹.

In China, IP cases were hitherto handled in the general civil court system, but were heard by judges with specific IP background who formed a specialized IP tribunal within the court (including the IP tribunal of the Supreme People's Court).

In a bid to further enhance China's IP protection regime, the Chinese government decided, in August 2014, to set up three new specialized IP courts. The need for these specialized IP cases arose out of the large number and the rapid growth in the number of IP cases heard by Chinese courts – more than 100,000 in 2013. Three IP courts were established – in Beijing, Shanghai and Guangzhou, with the Beijing IP court being the first and starting operation in November 2014.

The new IP courts will sit as first-instance in civil and administrative cases involving patents, computer software, trade secrets of technical nature, new plant varieties and integrated circuit design², civil cases for the recognition of well-known trademarks and administrative cases against decisions of provincial and municipal governments with respect to IP rights. They will also hear appeals on first-instance decisions in IP cases from decided by basic courts located in their jurisdiction. The Beijing IP Court will also have exclusive jurisdiction with respect to administrative cases against decisions of the state administrative authorities involving the determination of IP rights³.

Appeals on the decisions of these new IP courts will be to the High Court located in the province

where the relevant IP court is located. Thus, it seems that the IP Courts' position in the hierarchy of the Chinese judicial system is similar to that of an intermediate court⁴.

It should be noted that the new IP courts will affect the IP regime only in Beijing, Shanghai and Guangzhou⁵ but there will be no change to the current practice in other territories in China.

Nevertheless, as a substantial share of China's IP litigation takes place in these three cities, the effect may be profound on the entire IP regime in China. This may also, ultimately, pave the way to a more complete and harmonized IP judicial system in the whole of China.

The new IP courts are therefore good news for owners of IP rights and another testimony of the ever-improving level of IP protection in China.

For more information, please contact:



Ziv Rotenberg
Adv. – Director of Operations & Business Development China
Reinhold Cohn Group, Israel
zirotenberg@rcip.co.il
www.rcip.co.il

¹ As Israel is not among these countries (IP cases are heard before the general civil courts), the need for a separate IP court had been a hotly debated subject among legal scholars and professionals in Israel in recent years.

² The jurisdiction provisions issued by the Supreme People's Court are unclear with respect to first-instance civil cases involving copyright and trademarks - although there are provisions dealing with computer software and the determination of well-known trademarks. It is therefore assumed that the IP courts will not have jurisdiction over general first-instance civil cases involving copyright and trademarks (e.g. trademark infringement cases).

³ These authorities include the Chinese State Intellectual Office (SIPO) and its Patent Review Board (PRB), as well as the Chinese Trademark Office (CTMO) and its Trademark Review and Adjudication Board (TRAB).

⁴ The Chinese judicial system has a four-tier hierarchy, which includes – in ascending order: basic courts (sometimes also referred to as “grassroots courts”), intermediate courts, high courts and the People's Supreme Court.

⁵ While the Beijing and Shanghai will have jurisdiction in appeals from lower courts' decision in these cities, the Guangzhou court will have a broader regional jurisdiction encompassing the entire Guangzhou province (including Shenzhen).

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