

Summary of the amendment to the new Civil Procedure Law of PRC from an IP Perspective

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The Standing Committee of the National People's Congress (NPC) adopted on August 31st, 2012, the Decision on Amending the Civil Procedure Law ("CPL") of the P.R.C. The new CPL entered into effect as of January 1st, 2013.

Herein a few amendments to highlight especially for the consequences in the intellectual property practice:

Jurisdiction

The current CPL held zero tolerance against violation of jurisdiction. Consequently, wrong forum is one of the circumstances because of which the people's court shall conduct a retrial. According to Article 127(2) of the new CPL, where a party raises no objection to jurisdiction and responds to the action, the court accepting the action shall have jurisdiction. Accordingly, wrong choice of forum is no longer the reason to petition retrial. This new approach respects the will of parties and promotes efficiency as well. IP lawyers might have more chances for "forum shopping".

According to new Article 34, not only parties to contract dispute do have a right to choose the forum by a written agreement, but also parties to *other rights or interest in property*. Additionally, it provides that parties, at their discretion, may choose any court with actual connection with the dispute.

Methods of service and service abroad

After the amendment, the CPL additionally provides new means of service. A court may serve process by fax, email and other means capable of confirming receipt by the person to be served. However, a judgment, ruling and mediation statements shall be served by traditional means.

According to new CPL legal process shall be deemed served on a party having no Chinese residence by post on the expiration of 3 months after the postmark date (Item 6 of Article 267). And according to Item 8 of the same article, legal process shall be deemed served, by public announcement, 3 months after the date of public announcement. Both periods are sharply shortened from 6 to 3 months so as to increase efficiency.

Interim measures (evidence and assets preservation, injunction)

The amendment transplants provisions already existing in Copyright, Patent and Trademark Law, into the Civil Procedure Law. Article 81 CPL now explicitly provides that "*where any evidence may be extinguished or may be hard to obtain at a later time, if the circumstances are urgent, an interested party may, before instituting an action or applying for arbitration, apply for evidence preservation...*" which means evidence preservation before trial may be applied to unfair competition and anti-trust as well.

Article 100 explicitly introduces injunction: "*a people's court may... order certain conduct of the party or prohibit the party from certain conduct upon application of a party...*" and article 101 CPL introduces the asset preservation.

However, according to new CPL provisions, the applicant shall provide guarantee deposit for taking any of these measures while according to the mentioned IP laws the deposit is only an option for the judge.

Expert Witness

The amendment first adopts the term “*a person with expertise*” in Article 79 which allows parties invite experts to court to comment or other professional inquiries. Article 78 urges any expert to appear and testify in the court upon a party raises any objection against his opinions. The implication thereof is that any expert is likely subject to cross examination not only by parties but also by other experts.

Evidence (electronic form and deadlines)

According to Article 63, electronic data has been officially admitted as one form of evidence. Although electronic data is generally admissible, the amendment and its future judicial interpretation may unify the standard of admissibility of the electronic evidence.

The new CPL stresses the necessity to file evidence in a timely way. The parties are allowed to provide (new) evidence in the first instance, second instance or retrial judgment within the time limit scheduled by the Court. The evidence filed after the deadline could be regarded as inadmissible. Moreover, a fine can be imposed if evidence is filed after the time limit without explanation or when the explanation is not acceptable. The court is required to issue receipts corresponding to each piece of evidence received.

If a party cannot submit evidence with the time limit, he may apply for an extension. Moreover, even though the evidence is submitted beyond the time limit, the court may adopt it if the party provides a convincing or reasonable explanation. The Court moreover can impose a fine on the party that delay the filing of evidence without reasons.

Heavier fines for obstructions

Artt.114-115 CPL provided that entities and individuals who refuse to assist in investigation or enforcement may be imposed a fine which is much heavier than it used to be. For individuals, the amount is up to CNY 100,000 comparing CNY 10,000 before the amendment; for entities it is up to CNY 1 million comparing to CNY 300,000 before the amendment.

Summary procedure for small claims

According to new CPL Article 162, the first instance adjudication shall be final when the amount of subject matter is no higher than 30% of the previous year’s annual average wages of workers in a summary procedure. Moreover, parties to the dispute may voluntarily agree to choose the summary procedure according Article 157(2), while previously was available only to cases meeting statutory requirements, such as relative minor disputes, unambiguous rights and obligations, etc.

Public access to case law (art. 156 CPL)

Before the amendment, a great portion of legally effective judgments or ruling are unavailable to the public, however according to Article 156, the public may access to effective written judgments and rulings except content involving any national secret, trade secret or individual privacy. In light of all docketed judgments and rulings will be accessible after Jan 1 of 2013, IP practitioners are about to predict their cases with reference to all judicial precedents.

Litigation representative

Article 58 CPL exclude ordinary citizen to serve as representative in litigation. However, the 3rd paragraph of the Article 58 leaves the door open to citizen “recommended by the community” or by “the entity employing a party” or by a “relevant social group”. China Trademark Association (CTA) or the All-China Patent Agent Association (ACPAA) might be required to issue statements to entrust trademark attorney and patent to serve as litigation representatives.

Public interest litigation (class action)

The amended Article 55 CPL includes a right for "institutions and relevant organizations" to file litigations where rights and interests of the public are harmed.

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