

中国法院知识产权

司法保护状况

 2020年

Intellectual Property Protection by Chinese Courts in 2020

最高人民法院知识产权审判庭 编

人民法院出版社

**CONTENT**

Introduction 24

1. PROPER ADJUDICATION TO ENHANCE THE ABILITY FOR BETTER SERVING THE OVERALL INTERESTS 25

1. INTENSIFIED REFORM AND INNOVATION TO IMPROVE SYSTEMS AND MECHANISMS 37
2. STRENGTHEN SUPERVISION AND GUIDANCE TO

PROMOTE THE UNIFIED APPLICATION OF THE LAW 46

1. EXTENSIVE INTERNATIONAL EXCHANGES AND COOPERATION TO PROMOTE THE LAW-BASE

GOVERNANCE IN CHINA AND ABROAD AS A WHOLE 55

1. CAPACITY BUILDING TO CREATE AN INTERNATIONAL

FIRST-CLASS TRIAL TEAM 58

Conclusion 61

**Special Remarks:**

This paper is published in both Chinese and English. The Chinese version shall be the authoritative version for interpretation purposes.


# Intellectual Property Protection by Chinese Courts in 2020

##### Introduction

The year of 2020 is the closing year of the 13th Five-Year Plan. The same year witnessed the decisive role in building a moderately prosperous society in all respects. Over the past year, the People’s Courts have adhered to Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era as its guide, and have implemented the guiding principles of the Party’s 19th National Congress and the second through fifth plenary sessions of the 19th Party Central Committee in full by conscientiously practiced Xi Jinping Thought on the Rule of Law. People’s Courts at all levels continued to foster the awareness of the staff members to maintain “Four Consciousnesses” (maintain political integrity, think in terms of big-picture, follow

- 24 -

the leadership core, and keep in alignment with the central Party leadership), “Four Self-confidence” (Be confident in the path, theory, system, and culture of socialism with Chinese characteristics) and “Two Upholds” (Upholding General Secretary Xi Jinping’s position as the core of the CPC Central Committee and the whole Party, as well as the authority of the CPC Central Committee and its centralized, unified leadership). The courts have consolidating the trial foundation, strengthening judicial functions, serving and guaranteeing the general interests, focusing on reform and innovation, carrying out international cooperation and strengthening capacity building for judges. Doing so projected the People’s Courts as the reliable provider of solid judicial services and guarantees for building an intellectual property power house and a high-tech global superpower, as well as a moderately prosperous society in all respects.


##### PROPER ADJUDICATION TO ENHANCE THE ABILITY FOR BETTER SERVING THE OVERALL INTERESTS

It is the important duty and mission of IP trials in the new era to actively perform adjudication duties, effectively improve trial quality and efficiency, effectively protect the lawful rights and interests of the parties, stimulate innovation and creativity, maintain fair

- 25 -

competition, promote cultural prosperity, and provide services for high-quality development.

As “striving to make people perceive fairness and justice in every judicial case”, the People’s Courts insisted on serving the overall interests, justice for the people and fair justice. In 2020, a total of 525,618 IP-related cases were accepted by the People’s Courts, including first and second instance cases and as well as apply-for- retrial cases, and 524,387 cases were concluded (including carried over cases, ditto hereinafter). Compared to 2019, representing a respective year-on-year increase of 9.1% and 10.2%.

1. Strengthened Judicial Protection of Civil IP Rights.

Given the essential role of protecting and stimulating innovation and creativity, the People’s Courts have strengthened their protection for IP rights in key core technologies, key areas and emerging industries in 2020. They have insisted on lightening the burden of proof on the right holder, shortening the trial period, increasing the amount of compensation for infringement, making efforts to reduce the cost of defending the rights of the parties, continuously improving the quality and efficiency of trials of civil IP cases, and enhancing the people’s sense of access, happiness and security.

In 2020, a total of 3,470 civil IP cases were accepted, and 3,260 cases were concluded, respectively 38.58% and 64.98% higher

- 26 -

than the previous year. In the same year, the local people’s courts accepted 443,326 civil IP cases of first instance, and concluded 442,722, where the respective year-on-year increases were 11.10% and 12.22%. Among the accepted cases, 28,528 were patent casesa,

an increase of 28.09% from last year; 78,157 trademark casesb, which increased by 19.86%; 313,497 copyright casesc, a 6.97%

increase; 3,277 technology contracts cases, a 4.53% increase; 4,723

competition-related casesd, and a 14.41% increase. Other civil IP disputes constituted 15,144 cases, a 34.96% increase. The local people’s courts accepted 42,975 civil IP cases of second instance, and concluded 43,511, translating to a year-on-year increase of 13.54% and decrease of 10.67% respectively.

High profile civil IP cases heard by the People’s Courts in 2020 include: a series of cases between Huawei Technology Co., Ltd., et al. and Conversant Wireless Licensing S.à.r.l, involving disputes over confirmation of non-infringement of patent right and standard-

* 1. Including: 384 disputes over patent contracts; 28,105 disputes over patent ownership or infringement; 37 disputes over confirmation of non-infringement of patent rights; and 2 disputes over responsibility for damage due to application to stop infringing patent right before litigation.
	2. Including: 464 disputes over trademark contract; 77,668 disputes over trademark ownership and infringement; 1 dispute over responsibility for damage due to application to stop infringing the exclusive right of a registered trademark before litigation; 24 disputes over confirmation of non- infringement of trademark rights.
	3. Including: 4,380 disputes over copyright contracts; 309,104 disputes over copyright ownership and infringement; 12 disputes over confirmation of non-infringement of copyright; and 1 dispute over confirmation of non-infringement of computer software copyright.
	4. Including: 4,662 unfair-competition disputes; and 61 monopoly disputes.

- 27 -

essential patent license; Red Bull Vitamin Beverage Co., Ltd. v. Tiansi Medical and Health Care Co., Ltd. , et al., an appellate case over trademark ownership dispute, and etc.

1. Effective Adjudication of Administrative IP Cases.

Over the past year, the People’s Courts have given full play to to the supervision role of the judiciary in the granting and reviewing of IP rights and administrative enforcement, strengthened coordination and cooperation, promoted the effective linking of administrative enforcement and judicial-led protection, and actively built a large pattern of IPR protection.

In 2020, the Supreme People’s Court accepted 1,909 and concluded 1,735 administrative IP cases, representing an year-on-year increase of 79.08% and 96.27% respectively. The local people’s courts accepted 18,464 administrative IP cases of first instance, 14.44% higher from 2019, and 17,942 cases of the first instance were concluded, 4 cases more than in 2019. Of all the cases newly accepted, there were 1,417 patent cases, down 14.69% year-on- year; 17,035 trademark cases, up 17.83% year-on-year; and 12 copyright cases, 4 cases less than in 2019. The local people’s courts accepted 6,092 administrative IP cases of second instance, and concluded 6,183, lower than last year by 16.59% and higher by 4.06% respectively. Among the concluded cases, the judgements

- 28 -

were affirmed in 4,828 cases and reversed in 1,214 cases, 2 cases were remanded for retrial, 114 withdrawn, 4 dismissed and 21 were concluded in other ways of closing.

High profile administrative IP cases heard by the People’s Courts in 2020 include: Apple Computer Trading (Shanghai) Co., Ltd., v. CNIPA and Shanghai Zhizhenzhineng Network Technology Co., Ltd., an administrative retrial case over invention patent invalidation dispute; Budweiser Harbin Beer Co., Ltd. v. CNIPA, an administrative case over the review of trademark application rejection dispute, and etc.

1. Stricter Sanctions against IP Crimes.

Over the past year, the People’s Courts have followed the principle of “Nulla poena sine lege”(No penalty without a law) and adhered to the criminal policy of tempering justice with mercy. They have implemented a trial-centered criminal procedure system, given full play to the deterrent, preventive and corrective functions of criminal penalties, and punished crimes against IP rights in accordance with the law.

In 2020, the local people’s courts accepted 5,544 IP-related criminal cases of first instance, representing a 5.76% year-on-year increase. Among them, there were 5,203 criminal cases of infringement

- 29 -

of registered trademarksa, up 4.44% year-on-year; 288 criminal cases of copyright infringement, up 37.14% year-on-year. Among the concluded criminal IP cases in the first instance, there were 2,260 criminal cases of counterfeiting registered trademarks, up 5.90% year-on-year; 2,528 criminal cases of selling product bearing counterfeit registered trademarks, up 10.93% year-on-year; 395 criminal cases of illegally manufacturing and selling illegally manufactured registered trademarks, down 6.62%; 2 criminal cases of patent counterfeiting; 273 more criminal cases of copyright infringement, up 42.93%; 17 criminal cases of selling infringing copies, 9 more cases from last year; 45 criminal cases of trade secret infringement, 6 more cases from 2019. For IP-related criminal cases of second instance, 869 were accepted by the local people’s courts, and 854 cases were concluded, up 7.55% and 5.82% respectively than the previous year.

The People’s Courts heard the following high-impact criminal IP cases in 2020 include: the criminal appellant case of Li Haipeng and other 9 people concerning copyright infringement; the criminal case of Zhenjiang Huaye Automobile Products Co., Ltd. and other 6 people over selling product bearing counterfeit registered mark; and the

a Including: 2,245 counterfeiting registered trademark crimes; 2,549 selling product bearing counterfeit registered trademark crimes; and 409 illegally manufacturing and selling illegally manufactured registered trademark crimes.

- 30 -

criminal case of Jiang Jianhui and other 6 people concerning trade secrets infringement, and etc.

In 2020, the adjudication of IP cases presented the following new features:

**The growth rate of caseload has slowed down.** Due to the continuous improvement of the diversified dispute resolution mechanism, more and more disputes were resolved before they entered the litigation process, and due to the impact of the COVID-19, the growth rate of the number of newly accepted and concluded IP cases in the People’s Courts slowed down in 2020, but still maintained high at around 10%. In terms of case types, copyright cases account for the largest proportion of all IP cases. In 2020, the proportion of new civil first-instance copyright cases accepted and concluded by the People’s Courts exceeded 70% of all civil first- instance IP cases.

In terms of geographical distribution, the number of cases accepted and concluded by the courts in the eastern developed regions grew steadily. For example, courts in Shanghai accepted a total of 40,214 cases of various types of IP rights and concluded 37,514 cases, an increase year-on-year of 70.54% and 59.57% respectively. Courts in Guangdong Province newly accepted 196,070 IP cases and concluded 193,019 cases, up 24.60% and 26.07% respectively. The increase rate of cases accepted and concluded by courts in part of central and western regions increased significantly. For example, courts

- 31 -

in Sichuan Province accepted 16,867 cases and concluded 16,007 cases, representing a year-on-year increase of 44.96% and 61.36% respectively. Courts in Yunnan Province accepted 6,262 IP cases and concluded 5,540 cases, and the respective increases were 125.46% and 125.45%. Courts in Guizhou accepted 2,681 IP cases and concluded 2,118 cases, up 59.58% and 28.44% respectively.

**The efforts of protection has increased.** The People’s Courts have earnestly implemented the “Opinions on Several Issues of Strengthening Reform and Innovation in IP trials” and “Opinions on Strengthening IP Protection” issued by the General Office of the CPC Central Committee and the General Office of the State Council of the People’s Republic of China, and explored the establishment of an infringement damage compensation system that reflects the value of IP rights, so that the right holder can be fully compensated and the infringer would pay the maximum price. With the orientation of respecting IP rights and encouraging the use of innovation, the courts have made great efforts to coordinate the compensation for infringement with the market value of IP. They have actively applied punitive damages to intentional infringement of IP rights. For those who intentionally infringed upon IP rights and the circumstances were serious, the courts supported the right holder’s request for punitive damages in accordance with the law to curb and deter serious infringement of IP rights. Jiangsu High People’s Court heard a dispute between Xiaomi Technology Company, et al. and Zhongshan Pentium Company, et al. over infringement of trademark rights and unfair competition, upheld the full amount of 50 million yuan

- 32 -

in damages claimed by the right holder, illustrating the purpose of severe punishing in serious infringement of IP rights. The courts have reasonably allocated the burden of proof, applied systems such as the “Exclusion of Obstruction of Evidence” in accordance with the law, and supported parties to preserve, fix and submit evidence through block-chain and other means. Courts in Beijing heard a dispute between Beijing Guoruisheng Technology Co., Ltd. and Jin Lifang, et al. over infringement of business secrets, through the reasonable allocation of the burden of proof, it reduced the difficulty of proof, timely and effective protected the legitimate rights and interests of trade secret rights holders.

**Effective results were achieved in serving the overall interests.** The People’s Courts have effectively played the important role of IP trials in stimulating innovation and creativity, maintaining fair competition and promoting cultural prosperity, fully implementing the new development philosophy, fostering a new development pattern, and actively providing effective judicial services and protection to promote high-quality development. They have strengthened the equal protection of IP rights for all types of market entities in accordance with the law, and continued to create a market-oriented, law-based and internationalized business environment. The Supreme People’s Court concluded the second- instance trial of the dispute over trademark ownership between Hongniu Vitamin Beverage Co., Ltd. and Thailand Tiansi Medical and Health care Co., Ltd.. By clarifying the law application of trademark right acquisition and licensing, it conveyed the signal to the whole society of equal protection of the lawful rights and interests of both

- 33 -

Chinese and foreign parties. Hangzhou IP Court applied punitive damages to infringer who maliciously infringed the trademark of the internationally renowned brand “Wyeth”, and the amount of damages awarded at first instance was as high as 30.55 million yuan, attracting widespread attention in society. After the outbreak of COVID-19 pandemic, courts at all levels have strengthened online litigation services to deliver the maximum convenience of remote participation in litigation, balancing the epidemic prevention and control with case trial. They have established a fast track for drug- related patents and the resumption of work and production cases to ensure the scientific and technological research and technological innovation for the epidemic prevention and control. Trademark squatting, trademark counterfeiting, commercial defamation, false publicity and other behaviors that disturbed the market order related with epidemic prevention and control were also strictly punished on the basis of law to guarantee the epidemic prevention and control. Over a trade secret infringement dispute, Hubei High People’s Court timely changed the subject matter of preservation in a trade secret litigation to maintain the daily operation of enterprises during the epidemic which achieved a good social effect. Courts in Jiangsu Province concluded 11 criminal cases involving IP rights related to the epidemic, cracking down crimes such as production and sale of counterfeit “3M” brand masks. The court service guaranteed the overall work of promoting epidemic prevention and control as well as economic and social development as a whole.

**Incentive innovation gained remarkable effect.** The courts have actively guided enterprises to focus on core technology research and

- 34 -

development by adjudicating fairly, so as to encourage enterprises to carry out technological innovation and strive to solve the problems of “being hit in the throat”. The People’s Courts have properly heard disputes involving patents, integrated circuit layout designs, computer software and other related disputes to guide enterprises to break through the core technology, leading to continuous upgrading of technology and industry. They have attached importance to the emerging needs from the development of Internet, artificial intelligence, big data and other technologies, and properly handled new types of cases related with sports events, online games, online live broadcasting and data infringement in accordance with the law, so as to promote the regulated development of the emerging industry. The Supreme People’s Court concluded the case of Shenzhen Yusheng Technology Co., Ltd. v. Suzhou Saixin Electronic Technology Co., Ltd. over the infringement of the exclusive right of integrated circuit layout design, clarifying the protection scope and infringement comparison method of integrated circuit layout design, and strengthening the judicial protection of IP rights of integrated circuit industry. In a series of ownership disputes involving foreign patents, Tianjin Courts facilitated long-term technical cooperation between the two parties by licensing through settlement, which greatly promoted the technological progress of the relevant industry in China.

**Outstanding results were witnessed in the development of smart courts.** In 2020 , the People’s Courts at all levels comprehensively deepened the development of smart court, highlighted the role of judicial data platform and smart court

- 35 -

brain as the smart engine to explore the data sharing and deep application of IP judicial big data. They actively updated the cross- regional IP remote litigation platform, and vigorously promoted the popularization and application of information technology to improve the convenience, efficiency and transparency of judicial resolution of IP disputes. Courts in Beijing heard nearly 40,000 IP cases online in 2020, and made every effort to promote “cloud justice”. They created a full-process online litigation model and launched an online litigation service platform to provide one-stop online litigation services for litigation parties. During the epidemic, Zhejiang High People’s Court issued the “Online Trial Procedures for Civil IP Cases (for Trial Implementation)”, and the utilization rate of “mobile micro-courts” and the electronic service rate of litigation documents exceeded 85%. The court actively researched and developed an electronic evidence preservation application management system based on 3D scanning technology, and built a “cloud evidence room” to solve the serious backlog of evidence. Guangzhou IP Court has realized the “online-offline office” for the whole process of litigation service, filed and reviewed 8,651 cases online, electronically served 6,153 times, served 44,407 copies of litigation documents, provided an electronic version of case validity certificate, and added online witness authorization and entrustment for litigation services, allowing information to automatically run more and parties to run less physically.

- 36 -

##### INTENSIFIED REFORM AND INNOVATION TO IMPROVE SYSTEMS AND MECHANISMS

In 2020, the People’s Courts continuously deepened reform and innovation in the IP trials, improved the IP litigation system, perfected the mechanism of technical IP trials, and made significant progress in the organization of IP trials, trial mechanisms, and judicial capacity building.

1. The Achievement for Construction of Professional Adjudication System has been Significant.

On December 26, 2020, the 24th meeting of the Standing Committee of the 13th National People’s Congress adopted the “Decision of the Standing Committee of the National People’s Congress on the Establishment of the IP Court of Hainan Free Trade Port”, which decided to establish the IP Court of Hainan Free Trade Port. At present, the specialized IPR trial pattern has been formed, with the Supreme People’s Court as the leader, the IP courts in Beijing, Shanghai, Guangzhou and Hainan Free Trade Port as the focus, and 22 IP divisions in provincial capitals and central cities as the support, and the specialized IPR trial pattern with Chinese characteristics has been formed. The road to specialized IP trials with Chinese characteristics is getting broader. In 2020, a total of 3,176 new

- 37 -

technical IP cases were accepted by the IP Court of the Supreme People’s Court and 2,787 were concluded, an increase of 63% and 95% respectively compared with 2019. The number of cases was growing rapidly, most of which were related to new industries and new forms of business, and enjoyed high social attention. The IP Court of the Supreme People’s Court has continued to promote the unification of adjudication standards for technical IPR cases and strove to foster the synergy between administrative enforcement and judicial protection, which continued to rise the international influence of China’s IPR judiciary. The IP courts have been deepening the comprehensive reform of the judicial system, promoting the specialization of trial institutions, full-time trial personnel and professionalism of trial, and giving full play to their leading and exemplary role. The IP divisions of the local courts have centralized jurisdiction over technical IP cases of first instance across regions, playing an important role in assisting regional development.

1. The Pattern of Extensive Protection of IPRs was Taking Shape.

The Supreme People’s Court actively promoted the establishment of a special network line for data exchange with the National IP Administration and advanced the exchange and cooperation with the National IP Administration for patent talents, and improves the linking mechanism. Shaanxi High People’s Court,

- 38 -

together with Shaanxi Provincial IP Administration and other departments, jointly issued the “Guidance on Interdepartmental IP Enforcement Collaboration in China (Shaanxi) Pilot Free Trade Zone”, and formulated the “Regulations on the Connection of Shaanxi Provincial Administration for Market Regulation and Administration Comprehensive Administrative Enforcement and Criminal Justice” with the Provincial People’s Procuratorate, Public Security Department and the Administration for Market Regulation to strengthen the sound interaction between administrative enforcement and judicial protection. Jilin High People’s Court established a joint meeting system for IPRs with the People’s Procuratorate, the Public Security Department and the Administration for Market Regulation of the province to improve the system of trace notification, case coordination, joint law enforcement and case transfer. Kunming Intermediate People’s Court and the Municipal IP Administration signed the “Framework Agreement on Strengthening Cooperation in IP Protection with Municipal IP Administration to promote the link of administrative enforcement and judicial protection. Dandong Intermediate People’s Court signed the “Memorandum of Cooperation on Strengthening the Protection of IP Rights in Import and Export” with the Municipal IP Administration, the Administration for Market Regulation and etc., and actively built an overall protection pattern for IP rights. Fuzhou

- 39 -

Intermediate People’s Court formed a linkage mechanism with the city’s Taiwan Compatriot Investment Enterprise Association, Folk Arts Association and other institutions to promote the development of a collaborative protection pattern for Taiwan-related IP rights and folk literature and art copyrights. Ruian People’s Court in Wenzhou City, in cooperation with relevant functional departments, established a “blacklist” for enterprises with serious IP rights infringement, and made joint efforts to punish IP rights infringement.

1. The “Three-in-one” Adjudication was Reformed in An Orderly Manner.

The Supreme People’s Court has strengthened its guidance on the “three-in-one” reform of civil, administrative and criminal IP adjudication. It approved the “three-in-one” implementation plans in High People’s Courts of Anhui, Henan provinces and Xinjiang Uygur Autonomous Region, and guided Jiangxi High People’s Court to improve such trial mode. Anhui High People’s Court developed the “Opinions on Certain Procedural Issues in Handling Criminal IP Cases” with the Provincial People’s Procuratorate and the Department of Public Security, establishing a unified jurisdictional pattern for civil, administrative and criminal IP cases. High People’s Court of Xinjiang Uygur Autonomous Region, together with the People’s Procuratorate as well as the Public Security Department

- 40 -

of the Autonomous Region, formulated the “Joint Meeting System for Criminal Judicial Protection of IP Rights in the Xinjiang Uygur Autonomous Region” and jointly signed the “Opinions on Certain Issues of Criminal Judicial Protection in the ‘Three-in-One’ Reform of IP Rights Trials (for Trial Implementation)” to further strengthen the coordination of the public security, procuratorate and courts in combating IP infringement. Henan High People’s Court increased coordination with the Provincial People’s Procuratorate and the Provincial Public Security Department to further clarify the principles of jurisdiction over criminal IP cases. Shenyang Intermediate People’s Court, together with the Municipal People’s Procuratorate and the Municipal Public Security Department, jointly issued the “Notice on Centralized Jurisdiction of IP Criminal Cases”, which centralized jurisdiction over IP criminal cases within Shenyang’s municipal jurisdiction which played a positive role in unifying the adjudication and improving the quality of trials. Haikou Intermediate People’s Court, the Municipal People’s Procuratorate and the Municipal Public Security Bureau jointly signed the “Opinions on Several Issues Concerning the ‘Three-in- One’ Hearing of Criminal, Civil and Administrative IP Cases (for Trial Implementation)” to promote the overall synergy and effectiveness of civil rights protection, crackdown against crimes and administrative review.

- 41 -

1. IP Litigation Mechanism Continued to Improve.

In order to improve the quality and efficiency of judicial protection of IP rights, the Supreme People’s Court has actively explored litigation regulations that conform to the laws of IP cases, and accelerated the drafting of the legislative proposal for the special procedure law of IP litigation. The Supreme People’s Court has continued to improve the diversified technical fact-finding mechanism based on the technical investigator system, with technical consultation, expert assessor, expert assistance and technical appraisal as important components, and has established a “national court technical investigation talent pool” and a “national sharing mechanism”. More than 450 technical investigators have been enrolled in above-mentioned pools, covering more than 30 technical fields, initially realizing the nationwide “on-demand deployment” and “talent sharing” of technical investigation talents, effectively alleviating the difficulty of technical fact ascertainment. This has improved the objectivity, impartiality and provided science-based support to technical fact finding; promoted the division of complicated and simple IP cases and resolved the conflict between caseload and number of judges. Qinghai High People’s Court developed the “Provisions on Some Issues Concerning the Participation of Technical Investigators in Litigation (for Trial Implementation)”,“Duties, Tasks and Related Requirements of Technical Investigators”, “Implementation Rules on

- 42 -

the Participation of People with Specialized Knowledge in Judicial Technical Activities (for Trial Implementation)”, “Working Rules on the Collection of Judicial Technical Evidence Materials” and “Rules on the Confirmation of Technical Evidence Materials”, to promote the establishment of a diversified technical fact-finding mechanism.

1. Diversified Settlement system of IP Disputes has been

**Implemented Effectively.**

The Supreme People’s Court and the National IP Administration jointly issued the “Notice of Establishing an Online Litigation and Mediation Linking Mechanism for IP Disputes”, established an online litigation and mediation linking mechanism for IP disputes by applying the mediation platform of people’s courts and carry out online linking for IP disputes to provide one-stop services for the parties. Hebei High People’s Court formulated the “Implementation Opinions on the Promotion of ‘Fast Trial Mechanism for IP Type Cases’ in Courts in the Province (for Trial Implementation)” to further promote the separation between complicated IP cases and simple ones and optimize the allocation of judicial resources. Shanxi High People’s Court, together with the Department of Justice, the Administration for Market Regulation and the Copyright Bureau of Shanxi province, jointly formulated the “Opinions on the Establishment of a Mechanism for Coordination and Diversified

- 43 -

Dispute Resolution between Judicial Trials and Administrative Law Enforcement of IP Rights”, giving full play to the role of the administrative in preventing and resolving IP disputes. Jiangsu High People’s Court and the Copyright Management Department of the Publicity Department Of Jiangshu Provincial Party Committees jointly held a forum on linking litigation and mediation, and promoted to transfer the mediation of copyright disputes over music video works to the Jiangsu Copyright Mediation Center, the Entertainment Industry Association and other organizations, successfully resolving 2,701 IP disputes. The Production and Construction Corps Branch of the High People’s Court of Xinjiang Uygur Autonomous strengthened coordination and cooperation with administrative departments of IP rights and people’s mediation organizations, and invited representatives of the People’s Congress and members of the People’s Political Consultative Conference to assist in mediation, with a 35.14% mediation rate in 2020. Hangzhou Intermediate People’s Court launched the “China (Hangzhou) IP Rights - International Commercial Mediation Cloud Platform”, integrating the mediation capacity of the China Council for the Promotion of International Trade, Hangzhou Small and Medium Enterprises Association and other organizations, and has now successfully mediated 1,395 IP disputes. The Primary People’s Court of Shanghai Pudong New Area, cooperated with WIPO Arbitration and Mediation Shanghai Center,

- 44 -

successfully mediated the first foreign IP dispute in China with the participation of an overseas dispute resolution institution. Baotou Intermediate People’s Court formulated the “Specifications for the Evidence Preservation and Management in IP Cases” to improve the working mechanism for evidence in IP cases.

- 45 -

##### STRENGTHEN SUPERVISION AND GUIDANCE TO PROMOTE THE UNIFIED APPLICATION OF THE LAW

The People’s Courts, on the basis of the trial practice, strengthened the consciousness of question, addressed the rules and characteristics of IP cases as well as the situation and tasks of IP protection in China. They summarized the trial experience, showcased Chinese characteristics, and continuously advanced the systemic, forward-looking and openness of the concept of judicial protection of IPRs.

1. The Overall Requirements of Future Work was Further

**Clarified.**

Since the 18th Party Congress, courts at all levels have actively played their role, and judicial protection of IP rights with Chinese characteristics has made remarkable achievements. On November 12, 2020, the Supreme People’s Court held the “National Symposium on IP Trials in Courts in China” in Guangzhou .In this era , the People’s Court should ground the efforts in the new development stage, apply the new development philosophy, create a new pattern of development and pursue high-quality development as the general

- 46 -

aim. Based on these characteristics, the conference focused on the economic and social development goals for the 14th Five-Year Plan period and the visionary goals for 2035. Having focused on the major strategic plans proposed by the Fifth Plenary Session of the 19th Central Committee of the Party, such like adhering to innovation-driven development and comprehensively shape new advantages of development, the courts comprehensively summarized the achievements and experiences, deeply analyzed the situation and tasks, and clarified the general requirements for IP trials now and in the coming period, taking into account the status quo of IP trials. In the face of new tasks and challenges, the People’s Courts must do the following: uphold the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, strengthen “Four Consciousnesses”, “Four Self-confidence” and “Two Upholds”, implement the guiding principles of the Party’s 19th National Congress and the second through fifth plenary sessions of the 19th Party Central Committee in full. In the face of the new situation and new requirements, the people’s courts would uphold to the absolute leadership of the Party over judicial work, maintain the progress in a stable manner, and adhere to the new development philosophy and the people-centered approach. Focusing on the requirements of “promoting high-quality development and fostering a new development pattern”, the courts would continue to uphold

- 47 -

the absolute leadership of the Party to the judiciary, act on the general principle of pursuing progress while ensuring stability, apply the new development philosophy and people-centred approach, strengthen the judicial protection of IP rights to pursue high-quality development as the general aim and create a new pattern of development, conscientiously serve the general interests, strengthen the protection, take progressive reform and innovation, and continuously optimize the law-based environment for IP rights to promote innovation. By taking these efforts, the courts would be capable of providing solid law-based guarantee for the realization of scientific and technological self-reliance and self-improvement, and providing solid judicial services and guarantee for the construction of an intellectual property power and a world-class scientific and technological power, as well as for the comprehensive construction of a modern socialist country.

1. The Annulment of Judicial Interpretation was Completed with High Quality.

In 2020, the Supreme People’s Court adhered to the people- centered approach, actively responded to the concerns of the public, intensively formulated and promulgated 10 judicial interpretations and normative documents in response to the new issues and requirements encountered in IP trials, involving protection of trade

- 48 -

secrets, patent granting and reviewing, network IP infringement, criminal protection of IPRs, evidence in civil IP litigation, protection of IPRs on e-commerce platforms, increasing punishment for IP infringement and strengthening protection of copyright and related rights.

In order to ensure the uniform and correct application of the Civil Code, implement the legislative spirit and basic principles of the Civil Code into IP trials, and give full play to the systematic effect of the Civil Code, the Supreme People’s Court issued “Decision to Amend Eighteen IP Judicial Interpretations including ‘the Interpretation

(II) of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Cases involving Patent Right Infringement Disputes’”, and repealing and amending the judicial interpretations of IP rights to be implemented simultaneously with the Civil Code. Four judicial interpretations of IP rights were abolished in accordance with the development and changes in trial practice to ensure the accurate application of the Civil Code and IP laws in trial practice.

1. Case Guidance, Judicial Research and Other Work were Carried out Effectively.

The People’s Courts have actively constructed a guidance system for IP cases with Chinese characteristics consisting of guiding cases,

- 49 -

gazetted cases and typical cases to regulate discretion and improve the quality of trials. In 2020, the Supreme People’s Court released the “Top Ten IP Cases and Fifty Typical IP Cases of Chinese Courts for 2019”, “Annual Report on IP Cases (2019)”and other documents. summarized the cases in 2019 with significant impact as well as the cases with general guidance for judicial decisions, and refined and clarified the the standards of judicial decisions therefore. Local courts made full use of the “4·26” IP Publicity Week to publicize typical cases, taking into account the characteristics of the cases under their jurisdiction, and achieved sound social results.

The Supreme People’s Court held the Forth National IP Outstanding Judgment Document and the Second National IP Outstanding Research Results Competition, and commended 146 leading IP judgment documents and 64 excellent research results of the courts nationwide. The People’s Courts conducted in-depth research on punitive damages, anti-monopoly, national defense patents, data property rights protection, Chinese medicine, new plant varieties, integrated circuits and other topics, resulting in a number of excellent research results. Guangdong High People’s Court held a research seminar on “Legal Risks of IP Rights in the Introduction of High-level Foreign-related Professionals”, carried out in-depth communication with high-tech enterprises in the province and served their needs in rights protection overseas. In response to

- 50 -

the increasingly diversified and complicated new types of unfair competition on the Internet, Zhejiang High People’s Court led the key topic of “Research on New Types of Unfair Competition on the Internet and Its Legal Regulation”; and Chongqing High People’s Court held the “Seminar on Judicial Protection of Online Game IP Rights” to discuss in depth the judicial protection of IPRs for online games. On the occasion of the signing of the “China- EU Geographical Indications Agreement”, Sichuan High People’s Court jointly organized a seminar with the related departments on “Difficulties in the Trial of Geographical Indications and Non- Foreign Heritage Cases” to discuss in depth the problems involving the application and promotion of geographical indications and intangible cultural heritage resource products along with poverty alleviation and dispute resolution , strengthened the protection of geographical indications and intangible cultural heritage resource products in Sichuan Province and promoted the development of trade in geographical indication products between China and Europe. For the ninth consecutive year, Heilongjiang High People’s Court and the IP Law Research Association of the Provincial Law Society jointly held the “Heilongjiang IP Judicial Protection Forum”, focusing on topics such as “Civil Code and the Change of IP System” and “Judicial Protection of Geographical Indications” to jointly enhance the effectiveness of IP protection.

- 51 -

The Supreme People’s Court actively participated in the codification of the Civil Code, as well as the revision and formulation of the Patent Law, Copyright Law, Anti-monopoly Law and Criminal Law Amendment (XI), and sent members to participate in the seminars held by the legislature on several occasions to propose amendments. The courts have actively cooperated with the relevant administrative organs in the development of implementation methods of drug patent linkage.

1. Judicial Transparency was Intensified.

The People’s Courts have conscientiously implemented the requirements of the reform of judicial accountability system, vigorously promoted the disclosure of information on IP trials, court hearings and adjudication documents, to realize the people’s right to know and the right to participate to the maximum extent. When the Judicial Committee of the Supreme People’s Court discussed the “Opinions on Strengthening the Protection of Copyright and Copyright-related Rights”, representatives of the National People’s Congress and members of the National Committee of the Chinese People’s Political Consultative Conference were invited to attend the meeting and express their opinions, which were highly evaluated by the deputies and members. The IP Court of the Supreme People’s Court launched a thematic release campaign for

- 52 -

the first anniversary of its establishment, and the public opinion was enthusiastic. Xinjiang High People’s Court organized People’s Congress representatives, members of the Committee of the People’s Political Consultative Conference and special supervisors, media reporters and student representatives to observe hearings during the “4·26” IPR Publicity Week, and incorporated the IPR Publicity Week Court Hearings into the online courses of universities, achieving good legal and social results. The courts in Shandong gave full play to the advantages of Internet trials and organized more than 30 chief judges of IP divisions to bang the gavel at the same time to start online “cloud hearings”, and for some cases, judgements were pronounced in court. Gansu High People’s Court organized courts across the province to hold hearings and deliver judgments in more than 30 cases of IPRs infringement, with good publicity. Hubei High People’s Court organized the “Centralized Destruction Activity of Infringing and Counterfeiting Goods on World IP Day” to convey to the whole society the determination to protect IP rights and crack down on infringement and counterfeiting. The High People’s Court of Tibet Autonomous Region and Lhasa Intermediate People’s Court organized staff and judicial police officers to distribute more than 5,000 brochures on trademark law and copyright law on World IP Day, and answered more than 100 questions from the public related to the public to promote the protection of IP. CCTV “Rule of Law

- 53 -

Online” program made a special report on an infringement dispute over utility model patent heard by Yinchuan Intermediate Court.

- 54 -

##### EXTENSIVE INTERNATIONAL EXCHANGES AND COOPERATION TO PROMOTE THE LAW-BASE

**GOVERNANCE IN CHINA AND ABROAD AS A WHOLE**

The People’s Court actively carries out pragmatic and efficient international exchanges and cooperation by adhered to the concept of a Community of Shared Future for Mankind, the principle of openness, inclusiveness, balanced and universal benefit. They deeply participated in the global IP governance under the framework of the World Intellectual Property Organization, actively improved international rules and standards on IP and related international trade and investment, and promoted the development of the global IP governance system towards a more just and reasonable direction.

1. Exchanges and Cooperation with International Organizations were Strengthened.

In 2020, 30 Chinese and English judgements was entered into the WIPO Law and Treaty Database. The Supreme People’s Court sent members to participate in the preparation of the “WIPO Global Judicial Guide to Patent Case Management” and in several webinars. In addition, staff members were sent to the international

- 55 -

conferences, including the AIPPI Global Members Online Conference, the 2020 Annual Meeting of the International Trademark Association, International Seminar on Variety Implementation and Rights Maintenance and the Third International Cooperation Forum on Combating Infringement and Counterfeiting. By taking these efforts, China’s judicial protection of IP rights was widely received by the world.

2.A Fair International Competitive Order was Maintained.

At present, international competition in the field of IP rights has become more and more intense, and IP rights have become the core element of international competitiveness. The People’s Courts have tried a large number of important cases in a fair and coefficient manner, attracting domestic and international attention, achieving sound legal and social effects. In the series of disputes between Huawei and Convince, the Supreme People’s Court made a ruling on behavior preservation with the nature of injunction, and the parties finally reached a global settlement which accumulated useful experiences of the anti-suit injunction system in China. In the case of OPPO Co. v. Sharp Co., Ltd., et al. over standard-essential patent licensing disputes, Shenzhen Intermediate People’s Court successfully resolved the problem in the international parallel proceedings by released an anti-suit injunction,

- 56 -

safeguarding China’s judicial sovereignty and protected the legitimate interests of the parties.

- 57 -

##### CAPACITY BUILDING TO CREATE AN INTERNATIONAL FIRST-CLASS TRIAL TEAM

A high-quality trial team is the bedrock of improved judicial protection of IPRs. In the face of the new situation and new tasks, the People’s Courts have vigorously innovated the training mode and mechanism, adhered to the deep integration of party building and trial capacity, continuously improved the ideological and political awareness, professional ethics and professional capacity of IP judges, and strove to cultivate a group of IP judges who are politically firm, mindful of the overall situation, proficient in law, familiar with technology and have international vision.

1. The Ideological and Political Education was Strengthened.

The People’s Courts have always put the political construction in the first place, and beard in mind that they are the political organs firstly. They have adhered to Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era to guide the practice and promote work by thoroughly implementing Xi Jinping Thought on the Rule of Law and bringing the “Four Consciousnesses”, “Four Self-confidence” and “Two upholds”in the practice of IP trials. They have adhered to

- 58 -

the absolute leadership of the Party in judicial work, unswervingly followed the road of socialist rule of law with Chinese characteristics, established the correct judicial concept in the new era, and ensured that IP trials always proceed in the right direction.

1. The Ability to Resist Corruption and Prevent Degeneration was Enhanced.

The courts have deeply promoted the building of good conduct and political integrity, and fighting corruption, and adhered to “full coverage and zero tolerance” in the anti-corruption campaign. They have solidly carried out the special rectification activities of the “three provisions”, effectively prevented and timely handled situations where the leaders of the court intervened in judicial activities and participated in specific cases, and internal personnel interfered and intervened in cases in violation of regulations, and regulated contact between judicial officers and litigants, lawyers, special related persons, and intermediary agencies. They strengthened the warning education, so that the personnel could strengthen their faith, know revere laws and disciplines, and behave within limits. They continuously reminded the Party members and officials stay true to the Party’s original aspiration and founding mission, and constantly raised their political, ideological and moral awareness. The requirements of the reform of the judicial responsibility system was seen in full. And the courts has

- 59 -

improved the mechanism of judicial power operation, supervision and restriction in the field of intellectual property, and ensure the fairness and integrity in justice.

1. The Professional Training Model was Innovated.

The courts have taken the cultivating of “seven abilities” in political awareness, investigation and research, scientific decision-making, reform, emergency response ability, mass work and implementation as a guide, examined the existing deficiencies and gaps Based on the trial practice of IP rights and judges’ responsibilities, the courts improved the ability of judges to deal with the current complex situation, complete difficult tasks and solve practical problems. Combining the characteristics of active thinking, rapid knowledge updating and high level of internationalization in the field of IP, the courts have been constantly innovating training approaches, strengthening cooperation with relevant international organizations, research institutes and high- tech enterprises, and carrying out education and training in innovative forms and lively contents. Through staff secondment, posting and selection, they actively carried out the exchange and sharing of people between courts at different levels and in different regions to achieve complementary advantages, provided more opportunities for staff members to practice and learn from each other, and provided human resource for the long-term development of IP trials.

- 60 -

##### Conclusion

The year 2020 was an extremely extraordinary year. In the face of the outbreak of the COVID-19 epidemic and profound changes in the international situation, , the challenges brought by the normalization of epidemic prevention and control to IP trials become more critical, and the international competition in the field of IP has become more intense. The demand for strengthening judicial protection of IPRs for high-quality development also becomes more urgent. The People’s Courts have always uphold the leadership of the Party and the people-centered approach, apply system thinking, continue the reform and innovation, and insist on team building. They have achieved fresh progresses in the cause of judicial protection of IPRs with a high sense of responsibility and mission. The year 2021 is the first year of implementing the 14th Five-Year Plan and starting a new journey of building a comprehensive socialist modern country, as well as the 100th anniversary of the founding of the Communist Party of China. The People’s Courts will firmly focus on the theme of promoting high-quality development, accurately understand and hold to the new development stage, thoroughly implement

- 61 -

the new development philosophy and requirements for fostering a new development pattern, give full play to the role of trial, plan and promote the judicial protection of IP rights in China carefully, and provide powerful judicial services for the comprehensive construction of a modern socialist country to start well and take a good step forward.

- 62 -