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Intellectual Property Protection by Chinese Courts in 2021

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### 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 2021**

# Introduction

General Secretary Xi Jinping emphasized that innovation is the primary force propelling development, protecting intellectual property rights (IPRs) protects innovation, and the rule of law for intellectual property (IP) protection should be strengthened. In September 2021, the Central Committee of the Communist Party of China (CPC) and the State Council released *The Outline for Building an Intellectual Property Powerhouse (2021-2035)* for the purposes of advancing the building of an IP powerhouse in an overall manner, comprehensively improving IP creation, use, protection, management and services, and maximizing the critical role of the IP system in the socialist modernization.

In 2021, people’s courts adhered to the guidance of Xi Jinping

Thought on Socialism with Chinese Characteristics for a New Era and thoroughly implemented Xi Jinping Thought on the Rule of Law. The courts earnestly implemented General secretary Xi

Jinping’s important elaboration of enhancing the IPRs protection；

acquired a deep understanding of the decisive significance of the two establishments of both Comrade Xi Jinping’s core position on the Party Central Committee and in the Party as a whole and the guiding role of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era; boosted four consciousnesses of the need to maintain political integrity, think in big-picture terms, follow the leadership core, and keep in alignment with the central Party leadership; stayed four self-confidence in the path, the theory, the system, and the culture of socialism with Chinese characteristics; upheld 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. People’s courts were relentlessly in their pursuit of “Striving to Make People Perceive Fairness and Justice in Every Judicial Case”, and accurately grasped the overall requirements for strengthening the IP adjudication in the new era. The professional adjudication system was largely established, the capacity for professional adjudication was significantly increased, and the level of judicial IP protection was substantially enhanced. People’s courts have provided strong judicial

service in coordinating pandemic prevention and economic society development. Satisfaction with IP trials has increased in recent years, and the entire society gradually strengthened an awareness of the importance of respecting and protecting IPRs. The global reach of China’s IP adjudication has continued to expand.

# Significant Increase of Cases and Continuous Improvement in Trial Quality and Efficiency

In 2021, people’s courts adjudicated all types of IP cases in an impartial and efficient way in accordance with the law. A total of 642,968 IP-related cases were accepted by people’s courts, including first and second instance cases and apply-for-retrial cases, and 601,544 cases were concluded (including carried over cases, ditto hereinafter), representing a respective year-on-year increase of 22.33% and 14.7%.

### Quantity of Each Type of Cases

The Supreme People’s Court of China (SPC) accepted 4,243 IP cases and concluded 3,557, up by 22.28% and 9.11% respectively on a year-on-year basis. Local people’s courts at all levels accepted 550,263 cases in the first instance and concluded 515,861, up by 24.12% and 16.52% respectively from 2020. Among them, 31,618

patent cases were accepted, with a year-on-year increase of 10.98%, 124,716 trademark cases, up by 59.62%, 360,489 copyright cases, up by 14.99%, 4,015 technology contract cases, up by 22.52%, 8,419 competition-related cases, up by 78.26%, and 21,006 other civil disputes over IPRs with a year-on-year increase of 38.01%. Local people’s courts at all levels accepted 49,084 cases of the second instance and concluded 45,468, up by 14.22% and 4.5% respectively on a year-on-year basis.

The SPC accepted 2,852 administrative cases on IPRs and concluded 2,487, up by 49.4% and 43.34% compared with those of 2020. Local people’s courts at all levels accepted 20,563 administrative cases of first instance on IPRs, and concluded 19,342, up by 11.37%

and 7.8% compared with 2020 respectively. Among them, 1,810 cases on patent were accepted, with a year-on-year increase of 27.73%; 18,734 cases on trademark, up by 9.97%; and 19 cases on copyright, with an increase of 7 cases. Local people’s courts at all levels accepted 8,215 administrative IP cases of second instance and concluded 7,418, up by 34.85% and 19.97% respectively from 2020. Among them, 5,636 cases were sustained, judgments of 1,597 cases were reversed, 1 case was remanded for retrial, 145 cases were withdrawn, 11 cases were dismissed, and 28 cases were resolved in other means.

Local people’s courts at all levels accepted 6,276 first-instance criminal cases of IPRs infringement and concluded 6,046, up by 13.2% and 9.53% respectively on a year-on-year basis. Among them, 5,869 trademark infringement and 333 copyright infringement cases were accepted, an increase of 12.8% and 9.54% respectively. Among the concluded first-instance criminal cases, there were 2,558 cases of counterfeiting registered trademarks, up by 13.19%, 2,623 cases of selling goods with counterfeited registered trademarks (up by 3.76%), 476 illegally manufacturing or selling illegally manufactured logos of registered trademarks (up by 20.51%), 313 criminal cases of copyright infringement (up by 14.65%), 15 criminal cases of selling infringing copies (down by 2), and 61 criminal cases of trade secret infringement (increase by 16). Local people’s courts at all levels accepted 1,050 second-instance criminal cases of IP infringement and concluded 997, up by 20.83% and 16.74% respectively.

### Features of Cases

The following are the primary characteristics of IP cases received by people’s courts.

**Internet-related cases on a continuous rise.** China’s Internet industry has developed rapidly. Internet has become one of the most predominant areas that IP infringement occurs, and therefore IP infringement violations on the Internet has become the focal point

of the IP judiciary gradually. In 2021, the three Internet courts in Hangzhou, Beijing and Guangzhou accepted a total of 66,148 new cases involving various types of Internet IPRs, an increase of 6.64% over the previous year. The number of Internet cases has been steadily increasing year by year, and more legal issues involved are novel, complex, and perplexing. In the Internet environment, infringements are easier to commit, which are more concealed and complicated. While the impact is greater, gathering and fixing evidence is harder. Consequently, the difficulty of defending rights for right holders is also rising. Strengthening the rule of law in cyberspace and ensuring the protection of innovation and creativity on the Internet is critical for the judicial protection of IPRs for people’s courts.

**New types of disputes in proliferation.** Innovation is critical to China’s overall modernization development. In recent years, the booming new technologies, new business forms and models have injected new momentum into the economic and social development, which brought new legal issues as well. The number of new-type cases involving core Internet technologies, gene technologies, communications, integrated circuits, artificial intelligence, Internet platform economy, etc., continues to grow, complicating the determination of complex technical facts and the application of laws, and poses new challenges to judicial decisions on the boundary of

rights and the determination of liability for the IPRs infringement in these new business fields and forms. However, people’s courts have actively responded to judicial demand for IPR protection in new technologies, new industries, new business forms and models, and proactively explored ways to strengthen the judicial IPR protection rules in relevant fields. In 2021, people’s courts have adjudicated a batch of new-type IP cases involving biomedicine, online gaming, live webcast, “Big data-enabled price discrimination against existing customers”, sharing economy, artificial intelligence, etc., and all of which sparked widespread public concern.

**Cases involving public interests increased.** The interests involved in IPRs are complicated and often closely related to the social and public interests. The trial of IPR cases needs to balance the protection of individual rights and public interests, accurately grasp differentiated value orientation and properly handle the relationship between development and security even better. In 2021, in the areas such as administrative granting and reviewing, civil infringement and competition order maintenance, people’s courts heard a number of cases involving malicious trademark registration, the application of “Notice-and-Delete” Rule, fan works, etc. in order to keep the balance between private and public interests.

**Expanding protection in criminal cases.** In recent years, interlocked

civil and criminal IPR cases have brought up many problems in application of law. For example, IP infringement crimes using technologies such as deep linking and game plug-ins are constantly emerging. The *Criminal La*w’s *Amendment (XI)*, effective as of March 1, 2021, has made major revisions for the crime of IP infringement and strongly supported further judicial IP protection improvement. By following the requirement of “improving criminal laws and judicial interpretations, intensifying criminal crackdown” put forward by General Secretary Xi Jinping, people’s courts adhered to the Principle of “Legality” and “Strict Protection”, and punished crimes such as counterfeiting registered trademarks, copyright infringement, trade secrets infringement, as well as producing and selling fake seeds in accordance with the law. By strongly protecting the legitimate rights and interests of right holders and consumers, a sound market order is effectively maintained. In 2021, the number of criminal cases of IP infringement accepted and concluded by local people’s courts at all levels rose rapidly, and the deterrent and preventive functions of criminal penalties in punishing IP infringement and counterfeiting became increasingly prominent.

# Enhancing the Protection of Science and

**Technology Innovation to Serve the Innovation-driven Development**

Innovation is the primary driving force for development and the essential condition for implementing new development concepts, establishing new development patterns and promoting high-quality growth. People’s courts have emphasized the role of IP adjudication in stimulating scientific and technological innovation, and strove to ensure that the protection of IPRs is proportional to the extent of its technological contribution. People’s courts are constantly synthesizing and refining rules governing the judicial protection of scientific and technological innovation in order to foster continuous innovation of technology and industrial upgrading.

### Improving Quality and Efficiency of Adjudication

People’s courts heared numerous IP cases in accordance with the law. By formulating judicial interpretations and judicial policies, and issuing guiding cases, cases on the *Gazette of the SPC* and annual cases, the courts effectively strengthened trial guidance, standardized the criteria for adjudication, facilitated the unification of administrative law enforcement

and adjudication standards, and maintained a consistently high level of trial competence. The SPC promulgated the *Provisions on Several Issues concerning the Application of Law in Civil Cases of Patent Rights Relating to Pharmaceutical Products Applied for Registration*, focusing on the procedural issues that must be resolved following the implementation of the patent linkage system for pharmaceutical products, particularly the interaction and cooperation between litigation procedures and administrative procedures of pharmaceutical products evaluation or approval, as well as the procedure of administrative decision. It established clear guidelines for the timely and impartial trial of relevant cases, as well as institutional incentives and judicial guarantees for the pharmaceutical industry’s independent innovation and high- quality development. The SPC also issued the *Several Provisions on the Specific Application of Law in the Trial of Cases Involving Disputes over Infringement upon Rights of New Plant Varieties (II)*, and released the first series of typical cases of judicial IP protection in the seed industry tried by people’ s courts. The SPC summarized judicial practices in recent years, effectively implemented the *Seed Law*, strengthened the protection of plant variety rights, stimulated innovation in breeding and safeguarded the scientific and technological self-reliance of the seed industry. These initiatives have enhanced the judicial protection of IPRs in China’s seed industry, and

created a sound legal environment for the revitalization of the seed

industry.

After three years of pilot operation, the SPC’s IP Court accepted 9,368 technical cases and concluded 7,625, which involved patent, new plant variety and layout design of integrated circuit. 4,335 were accepted and 3,460 were concluded in 2021. Among them, over a quarter of cases involved strategic emerging industries such as new generation information technology, biomedicine, high-end equipment manufacturing, and energy conservation and environmental protection. In January 2022, the China Association for Science and Technology, the China Society of Law, respectively completed the third-party assessments of the SPC’s IP Court pilot program. Each assessment concluded that the pilot program was properly focused and effective in achieving the CPC’s stated objectives of its establishment, further improving the appellate trial mechanism for IP cases at the national level, and vigorously promoting unification of adjudication standards and improvement of trial quality and efficiency of technology-related cases. On 27 February, 2022, Justice Zhou Qiang, President of the SPC, briefed the Standing Committee of the 13th National People’s Congress on the implementation of the *Decision on Several Issues concerning Judicial Procedures for Patent and Other Intellectual Property Cases*, which got the full affirmation by the Standing Committee after deliberation.

### Reinforcing the Protection of Original Innovation

People’s courts strengthened the review of legality of administrative acts over patent grant and confirmation in order to improve the quality. People’s courts correctly adjudicated IP cases of high-tech fields such as 5G technology, biomedicine, high-end equipment manufacturing, new materials and new energy, and thereby sparked scientific and technological innovation. Additionally, the courts strengthened IP protection in emerging fields and fairly adjudicated cases involving the sharing economy, artificial intelligence, big data, cloud computing and other new-type IP cases, clarifying protection rules and rights boundaries and guiding the healthy and orderly development of new technologies, new forms and models of business along the rule of law’s path. The SPC, in the invalidity cases of invention patent involving “magnetic resonance imaging” and “traditional Chinese medicine (TCM) sorting machine”, interpreted the claims in a scientific and reasonable manner, upheld the validity of the patent, serving and safeguarding the fight against COVID-19 according to the law; in patent ownership cases involving “high-temperature microwave expanding furnace”, “fingerprint identification”, the criteria for determining disputes over the ownership of on-duty inventions were clarified to stimulate innovation and creativity among scientific researchers and protected the legitimate rights and interests of scientific and

technological innovation subjects in accordance with the law; in the variety rights cases involving rice “Jinjing 818” and corn “Longping 206”, the SPC strengthened the IPR protection and promoted self- reliance and self-improvement of the seed industry; the SPC also studied and formulated the guiding opinions on strengthening the criminal trial involving seeds, punishing seed-related crimes in conformity with the law, and accelerating the revitalization of the seed industry. Furthermore, the SPC hosted a symposium on the judicial protection of IPRs in TCM in terms of preserving rightfulness, innovation and inheritance. Jiangsu High People’s Court and five provincial authorities jointly selected top 34 enterprises from key development industry chains, and provided help to them in the technology research. Henan High People’s Court issued 20 measures aimed at comprehensive strengthening the judicial protection of IPRs, particularly in emerging fields such as artificial intelligence and biomedicine. Fuzhou Intermediate People’s Court, Fujian issued the *Implementing Opinions on Strengthening the Judicial Protection of Intellectual Property Rights of Key Enterprises in Technology-Intensive Industries (for Trial Implementation)*, responding actively to the judicial demand for IPRs of high-tech enterprises.

# Strengthening Registered Trademark Protection to

# Assist the Construction of Brand Power

People’s courts have striven to improve the quality of the administrative cases of trademark granting which is and reviewing, resolutely crack down on malicious trademark registration not for the purpose of trademark use, and promote a normal and regulated trademark application and registration order. People’s courts also have strengthened the protection of well-known trademarks, and severely punished trademark attachment, counterfeiting and other “free-riding” activities. The courts scientifically and reasonably defined the boundary of trademark rights and the scope of protection, enhanced the role of trademark usage in determining the protective scope of trademark rights, and actively guided the right holder to consistently and practically use the trademark to bring into play the identification function of the trademark and protect the legitimate rights and interests of consumers.

### Safeguarding the Trademark Registration Order

The SPC and several local people’s courts collaborated with the National Intellectual Property Administration to hold seminars on trademark registration and reviewing cases to exchange views

with the goal of quality improvement. The SPC resolved a number of administrative trademark cases according to the law, and further consummated the recognition standards for “distinctiveness” in trademark registration applications. Based on the actual circumstances, Beijing IP Court formulated the *Implementing Plan for Promoting the Reform of Split-flowing Simple and Complex Administrative Proceedings (for Trial Implementation)*, which made an attempt to improve the rules on the application of simplified procedures for trademark administrative proceedings and the application of electronic litigation to split-flow the trademark administration cases in respect of the complexity, significance and duration of trial. Suzhou Intermediate People’s Court, Jiangsu advocated for the establishment of a whole-process mechanism to combat malicious trademark registration in trademark infringement cases.

### Regulating the Use of Registered Trademarks

People’s courts continued to intensify the punishment on trademark infringement and strengthen the judicial protection for well-known trademarks, traditional brands and time-honored brands. Zhejiang High People’s Court organized special campaigns and released typical cases on brand protection. Tacheng Intermediate People’s Court, Xinjiang coordinated the Municipal Administration for Market

Regulation to strengthen inspection and regulation to fundamentally curb the highly frequent trademark counterfeiting crimes from the source. Chengdu Intermediate People’s Court, Sichuan transferred relevant trademark infringement clues to administrative authorities, and promoted the practice of determining the administrative penalties in trademark infringement cases by referring to the trial standards to reduce the quantity of similar IP disputes. Local people’s courts of different jurisdictions also emphasized the deterrent effect of punitive damages and criminal sanctions on trademark infringement. Courts in Guangdong Province awarded treble punitive damages in 2 trademark infringement cases, with damages of RMB 10 million and RMB 30 million respectively; and a court in Guizhou Province and a court in Heilongjiang Province imposed a fine of RMB 21 million and RMB 21.25 million respectively in two trademark counterfeiting cases.

### Actively Responding to Social Concerns

With the increasing judicial protection of registered trademarks, in particular the increasing amount of damages awarded, the abuse of trademark rights, in a malicious or fraudulent manner, often occurred. These incidents have caused serious disturbances to the normal production and operation of micro, small and medium enterprises (MSMEs) and self-employed individuals, which have

aroused great social concern. The SPC timely held a question-and- answer session on the judicial protection of geographical indications of Tongguan Roujiamo (the brand of the steamed meat roll named after Tongguan) and Xiaoyao Town Hulatang (the brand of the spicy soup originally made in Xiaoyao Town), and resolved ambiguities to guide judicial practice, protected geographical indications, and severely punished malicious litigation, thereby achieved positive social effects. The Sichuan courts handled the “Green Pepper” trademark disputes expeditiously and in accordance with the law, preserving the order of trademark usage, clarifying the boundary of trademark rights, and ensuring legitimate use and honest operation.

# Improving Copyright Protection to Accelerate the Construction of Strong Cultural Power

Based on judicial function, people’s courts have vigorously promoted core socialist values while fully executing the leading and guiding function of copyright adjudication for outstanding culture. The courts have strengthened the protection for culture creators’ rights and interests, safeguarded the legitimate rights and interests of those who distribute their works legally, and continuously improved the copyright protection in respect of traditional culture and traditional knowledge to boost the healthy development of cultural industry.

### Carrying Forward Socialist Core Values

People’s courts at all levels protected the inheritance of red classics and the legitimate rights and interests of heroes and martyrs, regulating the order of cultural dissemination, guiding the public to consciously resist historical nihilism, incivilization, vulgarity and kitsch, strengthening IPRs protection such as genetic resources, traditional culture, traditional knowledge and folk literature, and promoting the collation and utilization of intangible cultural heritage and the creative transformation and innovative development of Chinese excellent traditional culture. Beijing IP Court concluded the copyright infringement dispute over acrobatic works to strengthen the protection of traditional acrobatic works. Shijingshan Primary People’s Court, Beijing conducted a special research on 4 types of disputes over IPRs which involved the infringement of the Winter Olympic Games logos to contribute to the success of Winter Olympic Games and the Winter Paralympic Games in Beijing. A court of Quanzhou in Fujian Province promulgated the *Implementing Opinions on Strengthening the Judicial Protection of World Heritage Properties*, which established a circuit court for the protection of Maritime Silk Road Historical Sites to strengthen the protection of intangible cultural heritage and promote the protection and utilization of historical relics as well as the protection and inheritance of cultural heritage Jingdezhen Intermediate People’s Court, Jiangxi established

an IP division to provide judicial service and guarantee for the construction of the National Ceramic Culture Inheritance and Innovation Pilot Zone.

### Improving the Regulated and Healthy Development of Emerging Business Forms

In recent years, copyright infringement cases have increased in the domains of online games, sports events and live webcasts, and relevant judicial decisions have continued to improve the rules for the practical recognition and protection of works. In 2021, the amended *Copyright Law of the People*’*s Republic of China* came into force. In consideration of the work practice, people’s courts at all levels conducted researches on the amendment to ensure that copyright cases were heard in accordance with the law and to promote the healthy and sustainable development of the cultural industry. The SPC held a series of symposiums to conduct in- depth discussions on legal issues about the copyright protection of game live-streaming footage and the audio-visual works clips, and concluded a series of cases on the latter one. Courts in Tianjin convened deliberate discussion on issues such as ICP filing, application market, short videos, IPTV infringement and the amount of compensation involved in the Internet copyright cases, and formulated the *Answers to Issues concerning the Trial of Internet*

*Copyright Cases* to guide the resolution of complicated issues in

judicial practice.

### Regulating Adjudication of Rights Protection Cases

With the rapid development of cultural industry and the increased awareness of copyright holders, the copyright protection litigation has continued to grow. Protecting creators’ rights and interests in conformity with legal provisions, taking into account the interests of the disseminators and the public, keeping a balance between encouraging creativity and safeguarding people’s cultural rights and interests, and promoting the creation and dissemination of intellectual works are all critical issues that must be addressed in the trial of copyright protection cases. In a series of cases involving copyright infringement by KTV operators, the SPC clarified the issues of electronic evidence determination, lowering the burden of proof for the parties, and effectively protected the legitimate rights of right holders. Chongqing High People’s Court and Sichuan High People’s Court researched and drafted the *Minutes of the Judges*’ *Meeting on Determining the Compensation Amount for Cases Involving Copyright Infringement of Audio-visual Works by KTV Operators* in response to the issues including heavy caseload of copyright infringement in audio-visual works and the ambiguous standards for determining the amount of compensation awarded in their jurisdictions, which

guided the healthy development of relevant industries according to the law.

# Strengthening the Protection of Fair Competition

**and Protecting a Law-based Market**

The IPR protection and the promotion of fair competition are the necessary preconditions for establishing a market-oriented and law- based international business environment, as well as for constructing a modern economic system and improving the socialist market economic system. In 2021, people’s courts intensified the crackdown on unfair competition activities such as infringement of trade secrets and strengthened judicial regulation for monopolies by Internet platform enterprises. Acts that disrupted fair competition or market order such as “Either-Or Choice” of the Internet platform or “Big data-enabled price discrimination against existing customers” have been severely punished, so as to effectively protect the lawful rights of consumers and the interests of public. By maintaining and promoting fair market competition, the disorderly capital expansion was prevented.

### Strengthening Anti-monopoly and Anti-unfair Competition Adjudication

People’s courts have properly adjudicated anti-monopoly and unfair

competition cases. Judicial decisions fulfilled the functions of rule guidance and value orientation in maintaining fair competition in the market, increasing enterprise awareness of fair competition, and guiding the creation of a market environment that respects, protects and promotes fair competition. In the horizontal monopoly agreement case of “joint operation of driving schools”, the joint venture agreement and self-discipline convention were declared null and void, putting an end to monopolistic practices at their sources. People’s courts also actively explored and improved the standards for defining the monopolistic acts of Internet platforms. The practices of excessively collecting and using personal information, the use of algorithms to commit price discrimination and fraud were also severely punished, which regulated the market competition order. The courts heard cases including data rights, transactions, services and privacy protection, explored and improved the rules for data right protection, and promoted the development of an open, healthy and safe digital environment. The unfair competition practices such as imitating, confusion, false publicity, and commercial defamation were forbidden through the judiciary’s efforts to purify the market environment, and guide business operators to join in positive competitions through technological innovation. The protection of trade secrets was further tightened. Efforts have also been made to deal with the relationship between the protection of trade secrets

and freedom of employment, as well as the relationship between the non-compete restraints and the flow of talents to promote the reasonable mobility of talented personnel. The specific measures for protecting trade secrets in litigation were clarified, assuaging right holders’ misgivings about “secondary disclosure” and encouraging them to defend their rights in accordance with the law. To address the issues including inadequate compensation and high costs, the court effectively increased the support for damages and reasonable expenses for rights maintenance, awarding RMB 159 million in the “Shannon” technical secrets infringement case.

### Promoting the Unification of Adjudication Criteria

The SPC reported to the NPC Standing Committee on the study and implementation of the *Report on the Law Enforcement Inspection of the Anti-unfair Competition Law and Its Deliberations*. The SPC issued the *Interpretations on Several Issues concerning the Application of the Anti-unfair Competition Law of the People*’*s Republic of China* after research, which, in accordance with the newly amended *Anti-unfair Competition Law*, focused on refining the provisions of Article 2 of the *Anti-unfair Competition Law,* as well as counterfeiting and confusion, false publicity and unfair competition on the Internet, etc.. The Interpretation is a timely response to the judicial needs of emerging fields and new business forms, which is critical in strengthening

the adjudication of anti-unfair competition cases, consolidating the fundamental position of competition policy, and promoting the formation of a domestic unified market that is efficient, well- regulated and fully open. The SPC published 20 model cases on Internet IPRs protection, anti-monopoly and anti-unfair competition, indicating the judiciary’s unwavering commitment to foster a fair and competitive law-based environment.

# Deepening the Adjudication Reform and

**Promoting Comprehensive Protection**

In 2021, people’s courts emphasized the importance of resolving difficult problems through reform thinking and protecting innovation in novel ways. The *Plan for Judicial Protection of Intellectual Property by People*’*s Courts (2021-2025)* and the *Opinions on Strengthening the Trial of Cases Involving Intellectual Property Rights in the New Era to Provide Effective Judicial Services and Support for Building China into an Intellectual Property Rights Power* were issued, which promoted the judicial protection capability and standard in IPR protection steadily. It has made significant strides towards improving the professional trial system and promoting litigation standards. Simultaneously, people’s courts have actively strengthened the mechanism for judicial adjudication and administrative enforcement,

improved coordination and cooperation with IPRs administrative departments, promoted the unification of administrative enforcement and judicial adjudication standards, and made efforts to promote a sound pattern of IPRs protection.

### Optimizing the Specialized IP Trial System with Chinese Characteristics

China has established a specialized IP adjudication system, with the SPC’s IP judicial departments serving as the anchor, 4 IP courts serving as the model, 27 IP divisions in local intermediate people’s courts serving as the focal points, and IP divisions of the local courts at all levels serving as the support. The appellate trial mechanism for IP cases at the national level was advanced, the building of specialized IP organs was reinforced, and the function of the Internet courts and IP divisions in local courts at various levels were under improvement. The SPC formulated the *Several Provisions on Jurisdiction over Intellectual Property Civil and Administrative Cases of First Instance*, which strengthened the judicial protection system through scientific jurisdiction, rationally positioned the trial functions of courts at all four levels, further optimized trial resource allocation, facilitated parties in litigations, effectively resolved disputes, and resolved current inconsistency problems in the standards, systems and inconvenience of IP cases jurisdiction

of first instance. The SPC has continued to improve mechanism for the “3-in-1” integrated trial of civil, criminal and administrative IP cases, and effectively guide the promotion of reform. Tibet High People’s Court issued the *Implementing Plan for Integrated* 3-in-1 *Trial of Intellectual Property Cases* to ensure consistent and unified adjudication. Hainan High People’s Court’s *Opinions on Several Issues of Designated Jurisdiction over Criminal Cases Involving Intellectual Property Rights* clarified the scope of IP-related criminal cases.

Diversified technical facts investigation mechanism has been improved. “The National Court Technical Investigator Talent Database” included a list of over 450 technology experts covering more than 30 technology fields, effectively alleviating the difficulties of fact-finding in technical cases by dispatching experts on demand nationwide. Shanghai IP Court initiated a mechanism of entrusting technical fact investigation to other professional agencies, which could meet the technical investigation demands on IP adjudication for courts at various levels in Shanghai. Shenyang Intermediate People’s Court, Liaoning explored the establishment of a full-time technical investigators system on the basis of the improvement in the selection of part-time technical investigators.

### Improving the Litigation System Compatible with IP

**Adjudication**

The SPC actively conducted researches and studies on litigation rules consistent with IP practice, and promoted the improvement of the IP litigation system. The SPC issued the *Interpretation on the Application of Punitive Damages in the Trial of Intellectual Property Infringement Civil Cases*, which improved the regulations on punitive damages that were compatible with the provisions of the *Civil Code*. Guided by the principle of Comprehensive and Equal Protection, the interpretation clarified the applicable conditions, improved the operability of the judicial application of punitive damages, ensured unified criteria for punitive damages application, punished serious infringement upon IPRs, and endeavored to resolve the difficult problem of “low compensation and high costs”. The SPC issued 6 model cases on punitive damages for infringements of IPRs. 895 cases in 2021 resulted in punitive damages being awarded to infringers. The SPC issued the *Official Reply on Issues concerning the Defendants*’ *Request for Reasonable Expenses in Intellectual Property Infringement Litigation on the Ground of Plaintiff’s Abuses of Rights* to uphold the bona fide doctrine, fully exploit the role of reasonable expenses such as attorneys’ fees in regulating parties’ litigation behaviour, support claims for reasonable expenses from abusive litigants, guide parties in exercising their rights in good faith, and prevent right abusement

in the meantime. The SPC also summarized the judicial practices, and in collaboration with the Supreme People’s Procuratorate, examined the formulation of supporting judicial interpretations to ensure the effective implementation of the *Criminal Law’s Amendment (XI)*. The amended eighteen judicial interpretations on IPRs entered into force on January 1, 2021, concurrently with the *Civil Code*, promoting greater uniformity in the scale of adjudication of IP cases.

Local people’s courts at all levels also carried out pilot programs in small claims IP litigation and single-judge trials, classifying cases based on their complexity, significance, and duration of trial. They actively used modern technologies such as 5G, Augmented Reality, and Artificial Intelligence to conduct online litigation, consolidate and enhance smart court construction achievements to overcome the impact of COVID-19 pandemic, and comprehensively promote the modernization of the adjudication system and expertise. Beijing High People’s Court formulated the *Guidelines on the Evidence Rules for Intellectual Property Civil Litigation* in an attempt to address the issue of difficulty in adducing evidence. Zhejiang High People’s Court promoted the application of copyright examination by AI to check image duplicate, identify the innovative points and evaluate similarities. The AI assistant has been put into practice in 173 cases, with an effective duplicate check rate of 43%. Hulunbuir Intermediate People’s Court, Inner Mongolia piloted the use of the

judicial block-chain platform to provide efficient and convenient technical support for IP protection before and during the trial. Yinchuan Intermediate People’s Court, Ningxia formulated the *Guidelines for the Fast Trial Mechanism for Typed Intellectual Property Cases*, which effectively reduced the average duration of IP case trial.

### Actively Participating in Establishing an Overall Protection Framework for IPRs

Protecting IP rights is a systematic endeavour. People’s courts have always laid stress on coordination and cooperation, actively participating in the development of a comprehensive protection system and bolstering systematic protection capacity. The SPC was a positive participant in the work to crack down IP infringement and counterfeiting, as well as the formulation of significant IP protection documents. It established communication and liaison mechanisms with the National Intellectual Property Administration and the State Anti-Monopoly Bureau to facilitate an effective interface between administrative enforcement and the judiciary. It signed a memorandum of cooperation with the Ministry of Agriculture and Rural Affairs and jointly hosted a symposium on IPRs protection in the seed industry, established an expert consultation mechanism for judicial protection of IPRs in seed industry, and actively promoted the revitalization of the seed industry. Additionally, the

SPC bolstered coordination with the National Administration of Traditional Chinese Medicine and the National Intellectual Property Administration in order to promote the establishment of special rules and protection mechanisms in patent granting for TCM. The SPC continued to advise courts in the Yangtze River Delta and other regions to establish cross-regional and inter-departmental collaboration mechanisms with administrative authorities in order to foster regional collaborative innovation. As a furtherance to the *Notice of Establishing an Online Litigation and Mediation Connecting Mechanism for Intellectual Property Disputes* jointly issued by the SPC and the National Intellectual Property Administration, an online platform that connects litigation and mediation by incorporating mediators and mediating organizations at all levels was established to enable the whole-process online IP dispute mediation. There were 289 mediation organizations and 1,635 mediators in the platform, and over 20,000 IP cases were assigned to this platform by local courts for pre-litigation mediation. Qinghai High People’s Court and the Qinghai Administration for Market Regulation signed the *Memorandum of Cooperation on Joint Punishment of Seriously Dishonest Entities in Intellectual Property (Patents) Domain* which was intended to jointly punish the dishonest entities in respect of IP infringement. Xinjiang High People’s Court and the Xinjiang Administration for Market Regulation signed the *Framework*

*Agreement on Intellectual Property Protection Cooperation* to promote cross-departmental coordination. Courts in Hebei Province have actively participated in special actions such as the campaign against counterfeiting agricultural materials and the joint action of IP protection in e-commerce by providing legal services and judicial support. Huaibei Intermediate People’s Court,Anhui on the basis of the *Framework Agreement for Coordinated Judicial Protection of Intellectual Property in Huaihai Economic Zone*, built itself into a model for inter-provincial coordinated IP protection. Liaoning High People’s Court, Liaoning Provincial People’s Procuratorate and Liaoning Provincial Public Security Department jointly issued the *Minutes of the Conference on Several Issues concerning the Handling of Criminal Cases of Intellectual Property Infringement Cases*, which standardized law enforcement and adjudication, comprehensively enhanced the crackdown of IP crimes. Qingdao Intermediate People’s Court, Shandong and Qingdao Municipal People’s Procuratorate signed the *Framework Agreement on the Connection and Cooperation between the Court and Procuratorate on Intellectual Property Protection* to resolve jurisdiction issues and advance coordination. Courts in Shanxi, Jilin, Hunan, Guangxi, Yunnan and other regions and provinces actively organized the delivery of laws to enterprises and communities, conducted public court hearings and law enforcement activities, implemented “whoever enforces the law is responsible

for promoting the law”, enhanced judicial disclosure, and raised the general public’s awareness of the importance of respecting and protecting IP rights.

# Impartial Trial of Foreign-related Cases and Actively Engaged in International Cooperation

People’s courts have adhered to coordinate efforts to advance domestic and international rule of law, equally safeguarded the legitimate rights and interests of Chinese and foreign parties and all types of market entities in accordance with the law, maintained the market order of fair competition, and served the new development paradigm featuring dual circulation, in which domestic and overseas markets reinforced each other with the domestic market as the mainstay. The courts actively engaged in international cooperation in IPRs protection, and contributed China’s judicial wisdom to global IP governance.

### Equally Protecting the Legitimate Rights and Interests of

**Chinese and Foreign Litigants**

By fairly adjudicating foreign-related IP cases and properly resolving major IP disputes relating to international trade, people’s courts implemented the TRIPs Agreement, the Madrid Agreement, the

Berne Convention and other international treaties ratified and acceded to by China. The courts actively promoted an open, fair, just and non-discriminatory environment for science and technology development, as well as a market-oriented, law-based and international business environment, which demonstrated China’s confidence and determination of protection innovation, openness and inclusiveness. The SPC ruled in favour of the full amount of RMB 20 million in damages claimed by the foreign right holder in the case of patent infringement for the “locking intramedullary nail” invention based on the refusal of submitting account books from the infringer. Therefore, the legitimate rights and interests of the foreign litigants were fully protected. China has increasingly become a reliable and trustworthy choice for international IP litigation.

### Participating in International Cooperation in IPRs Protection

People’s courts maintained a high level of international judicial exchanges and cooperation, actively participated in global IP governance through the World Intellectual Property Organization (WIPO), and promoted the development of a more just and rational global IP governance system. The SPC hosted the Sino-European Forum on the Comparison of Intellectual Property Litigation Systems, participated in international conferences such as the 7th

BRICS International Competition Conference, the 18th Shanghai International Intellectual Property Forum, the 2nd International Symposium on Judicial Protection of Intellectual Property Rights, the 2021 WIPO Intellectual Property Judges Forum, the China-EU Judicial Forum Seminar on Standard Essential Patents and the International Association for the Protection of Intellectual Property (AIPPI) China Youth IP Seminar. The SPC also held an online exchange with the UK IPR Enterprise Court and co-wrote the *WIPO Global Judicial Guide to Patent Case Management*. Chinese courts have actively promoted China’s voice, told the story of China’s legal protection of IPRs, and contributed Chinese wisdom to the global IP governance system. Shanghai High People’s Court established the IP Innovation Award after signing a Memorandum of Understanding with the WIPO Arbitration and Mediation Centre.

# Strengthening Capacity Building for Judges to

**Serve and Guarantee Fairness**

In 2021, people’s courts concentrated their efforts on developing an IP trial team capable of meeting the demands of a new era. The courts conducted an in-depth research and education on the Party’s history, as well as team education and rectification, adhered to Party Building in order to promote team building and trials, strengthened

political construction, developed political loyalty, and increased the IP trial team’s awareness and ability to serve the overall situation. Professional training and judge selection were strengthened, and the mechanism for IP judge reservation and selection was also improved. The courts sought to develop an IP trial team that was politically committed, cognizant of the broader context, well-versed in the law, knowledgeable about technology, and with an international perspective.

### Carrying out the In-depth Education of CPC’s History

The year 2021 marks the 100th anniversary of the founding of the CPC. People’s courts diligently implemented the Party Central Committee’s major decisions, conducted an in-depth research and implementation of the spirits of General Secretary Xi Jinping’s important speeche on the mobilization meeting of the study and education of the Party’s history and important speech delivered on July 1, 2021, and continuously strengthened their understanding of the spirit of the 19th CPC Central Committee’s Sixth Plenary Session, focusing on promoting Party history learning through the education with high standards and high quality, with the core of learning history to understand the reasoning, boost self-confidence, respect morality, and promote practice. At all levels, people’s courts used the “I do practical work for the public” campaign as a powerful tool to

exercise their judicial functions fully and to meet the public’s judicial needs for IP protection. The SPC organized seminars on issues concerning the copyright infringement in the use of other people’s works on university campus networks, with the goal of establishing a communication channel and promoting consensus among education authorities, video companies, and research universities to resolve disputes.

### Carrying out Education and Rectification

By resolutely implementing the spirits of important instructions on the education and rectification of political and legal team elaborated by General Secretary Xi Jinping as well as the decision-making and deployment of the Party Central Committee, people’s courts have educated and corrected their teams, resolutely completing the “four tasks” of building political loyalty, eliminating vicious members, resolving persistent and chronic problems, and promoting the spirit of heroism, in order to develop a reliable team with firm belief, responsibility, incorruptibility and people-centered awareness. People’s courts at all levels have worked to achieve the unification of delivering one-time judgment and ensuring long-lasting peace, and in consideration of practice of IP trials, improved the mechanism for the exercise and supervision of judicial power, and taken the achievements of rectification education to push forward high-quality

development of IP trial in the new era.

### Improving Talent Training Model

People’s courts at all levels endeavored to enhance the professionalism of IP talents in handling new, complex and highly technical cases by cultivating their comprehensive trial abilities. The SPC actively coordinated the training of specialized IP talents nationwide by convening professional meetings and seminars, organizing professional training, improving judicial databases, publishing trial guidelines, carrying out human resource exchanges and other methods; therefore, the capability and quality of IP trial team were well promoted. Meantime, the court continued to increase support for the construction of court talent teams to the primary courts as well as the courts in the western region. Shaanxi High People’s Court, taking advantage of the abundant resources in scientific and technology education, signed a comprehensive strategic cooperation agreement with Northwest University and Xi’an Jiaotong University, and built court-university cooperation platforms such as the Intellectual Property Case Study Center. High People’s Courts in Jiangxi, Hubei, Gansu and other regions and provinces gave professional training courses on IP trial for the judges, judge assistants and clerks specialized in IP adjudication.

# Closing Remarks

The year of 2022 is of great significance for starting the new journey to build China into a modern socialist country in all respects and achieve the Second Centenary Goal. People’s courts at all levels must follow the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and implement Xi Jinping Thought on the Rule of Law. The courts should fully act on the guiding principles from the Party’s 19th National Congress and the plenary sessions of the 19th Party Central Committee. The courts should acquire a deep understanding of the decisive significance of the establishment of both Comrade Xi Jinping’s core position on the Party Central Committee and in the Party as a whole and the guiding role of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, and boost our consciousness of the need to maintain political integrity, think in big-picture terms, follow the leadership core, and keep in alignment with the central Party leadership. The courts should stay confident in the path, the theory, the system, and the culture of socialism with Chinese characteristics. The courts should firmly uphold Comrade Xi Jinping’s core position on the Party Central Committee and in the Party as a whole and uphold the Central Committee’s authority and its centralized, unified

leadership. The courts should carry forward the great founding spirit of the Party, remaining true to our original aspiration and keeping our mission firmly in mind. The courts will closely follow the requirements of “standing firmly in the new development stage, applying the new development philosophy in full, creating a new pattern of development, and promoting high-quality development”. The courts should firmly establish the concept of IP protection as a means of protecting innovation, and comprehensively deepen the reform and innovation in the field of IP adjudication. What the courts have gained from the initiatives to study the history of the CPC and the team education and rectification will be consolidated. All of us in the Courts will strengthen our role in IP trials, enhancing their quality, efficiency, and judicial credibility, and optimizing the rule of law environment conducive to innovation, creativity, and entrepreneurship. Efforts will be taken to increase the international influence of China’s IPR judiciary, as well as provide judicial services and a guarantee for China to become a major player in IPRs. These efforts will enable the courts to pave the way for a successful 20th National Party Congress.