

Intellectual Property Protection by Chinese Courts in 2010

Introduction

In 2010, the people's courts have, under strong party leadership and effective supervision of the people's congresses, upheld the great cause of socialism with Chinese characteristics, observed the tenets of the Deng Xiaoping Theory and the "Three Represents" and adhered to the scientific development approach, and have discharged their duty of intellectual property adjudication as mandated by the Constitution and the law to achieve the Three Key Tasks of social conflict resolution, development of innovative social administration practices, and fair and honest enforcement of law, so as to serve the greater needs of the country, carry through the National Intellectual Property Strategy and leverage the justice system as a leading force in creating a more effective intellectual property regime, and have, as a result, accomplished their intellectual property adjudication duties and effectively provided judicial protection for intellectual property to accelerate remodelling of economic development, reinvent our country and build a moderately prosperous society in an all-round way.

In 2010, intellectual property adjudication in China has reached another new ground.

I. The courts have executed constitutional and legal duties, and have taken intellectual property adjudication to new heights

In 2010, the people's courts have conducted intellectual property adjudication according to law, and have placed foremost priority on law enforcement and adjudication, and focused on studying new peculiarities in intellectual property cases. The courts have also concentrated on the key adjudication priorities,

employed innovative adjudication methods; strengthened supervision and guidance; and devoted more time and effort to adjudication. As a result, adjudication quality has improved, intellectual property cases were adjudicated fairly and efficiently, and the judicial protection was further established as a leading force in protecting intellectual property rights.

During the past year, the people's courts have handled cases spanning all aspects of intellectual property law, from civil, to administrative and criminal cases. Overall, there was increase in intellectual property disputes, variety of cases, level of difficulty, seriousness of impact, and the number of foreign-related cases. These have presented greater challenge for adjudication, and have elicited greater concern from the society at large.

Civil litigation continues to be the primary channel of resolution of intellectual property disputes.

In 2010, the people's courts have relied on the *Tort Liability Law*, the revised *Patent Law* and its judicial interpretation, the revised *Copyright Law* and *Anti-Monopoly Law* to strengthen patent protection for indigenous innovation and improvement of core competitiveness; strengthen trademark protection for native brand building and development of the brand economy; strengthen copyright protection for development of new business models and the cultural and creative industries; strengthen adjudication of competition cases for better market structure and fairer competition; and strengthen equal protection for a trade- and investment-conducive environment. The substantial increase in intellectual property caseload shows that the courts have increasingly become the primary channel for resolution of intellectual property disputes.

Total new IP-related first instance civil cases admitted and closed by local courts were 42,931 and 41,718 cases respectively, and the respective year on year increases were 40.18% and 36.74%. Total disputed value for new

first-instance cases was 7,948,013,300 yuan. Of these cases, 5,785 were patent-related, year-on-year increase was 30.82%; 8,460 were trademark-related, year-on-year increase was 22.50%; 24,719 were copyright-related, year-on-year increase was 61.54%; 670 were technology contract-related, year-on-year decrease was 10.31%; 1,131 was competition-related (33 were monopoly-related civil disputes), year-on-year decrease was 11.78%; 1,966 were other IP cases, year-on-year increase was 14.17%. For IP-related civil cases involving a foreign party, total number of closed cases was 1,369 in 2010, 0.59% more than last year; for those involving a Hong Kong, Macao or Taiwan party, the number was 278, 21.25% fewer than last year. Concluded monopoly-related first instance civil cases totalled 23 cases. Newly admitted and closed intellectual property cases of second instance for the year were 6,522 and 6,481 respectively, and the respective year-on-year increases were 22.13% and 18.01%. For closed but reopened (*zaishen*) cases, 111 were admitted and 109 were closed, higher than last year by 11% and 1.87% respectively. At the Supreme People's Court (SPC) level, 313 cases were newly admitted and 317 cases concluded, of which newly admitted cases of application for *zaishen* were 198, and 206 (including carried over cases) were concluded. The SPC have indeed ensured consistency in the judicial protection of intellectual property.

Adjudication quality and efficiency has continued to improve. Clearance rate of IP-related civil cases at first instance in all local courts rose from 85.04% in 2009 to 86.39% in 2010; appeals rose from 48.82% in 2009 to 49.65% in 2010; *zaishen* rate fell from 0.33% in 2009 to 0.27% in 2010; cases remanded for retrial (*chongshen*) and reversal of decisions at appeal also fell from 6% in 2009 to 4.57% in 2010. Clearance rate of IP-related civil cases in trial time limit by the local courts increased from 97.38% in 2009 to 97.93% in 2010.

The courts have actively relied on the special function of provisional measures to protect intellectual property rights. In 2010, the people's courts have appropriately ordered pre-trial preliminary injunction and pre-trial preservation of evidence according to law. A total of 55 applications for pre-trial preliminary injunction in IP-related cases were admitted by local courts, 89.74% were approved; 294 applications for pre-trial preservation of evidence were admitted, 97.46% were approved; 126 applications for pre-trial preservation of property were admitted, 97.41% were approved. For example, prudent use of pre-trial preliminary injunction by the Fujian Province Intermediate People's Court had enabled "soft-landing" of Taiwan enterprises, such that dispute resolution has little or no negative impact on production, or company image, or stability; instead, produced positive social impact.

The people's courts have handled cases that are not only complex in application of law, but also involved value judgments and judicial philosophies relating to each economic, social or cultural sector.

These cases reflected the characteristics of intellectual property cases, i.e. large impact, difficult to adjudicate, controversial application of law and close public attention. Typical cases include the invention patent infringement case of *Eli Lilly and Company (U.S.) v. Jiangsu Haosen Pharmaceutical Company*, the invention patent dispute in *Wang Qun v. French Pavilion for the 2010 Expo*, the utility patent infringement case of *Cheng Runcang v. Gong Judong etc.*, the copyright dispute in *Chen Jian v. Wanpu (Fushun) Printing Co., Ltd*, the copyright infringement case of *Microsoft v. Dazhong Insurance Company Ltd*, the exclusive trademark right infringement case of *La Chemise Lacoste v. Crocodile International (Singapore) Pte Ltd*, technical trade secret infringement in the case of *Tianfu Cola Group Corp. v. Chongqing Pepsi-Tianfu Beverage Co., Ltd*, unfair competition dispute in the case of *Beijing Baidu Netcom Science and Technology*

Co., Ltd. v. Qingdao Branch of China United Network Communications etc, dispute on ownership of new plant variety in the case of *Lin Jinshan v. Fruit Tree Research Institute, Fujian Provincial Agricultural Science Academy*, and the case on infringement of exclusive right to layout-designs of integrated circuits in *Huarun Xiwei Science and Technology, Ltd v. Peaktek Technology Limited (Nanjing)*.

The courts have strengthened support and supervision of governance by law through adjudication of cases involving administrative authorities.

In 2010, the number of IP-related administrative cases concluded at first instance increased substantially. Most of such cases were trademark-related. Total IP-related first instance administrative cases newly admitted at the local courts were 2,590 in 2010, 25% more than last year; 2,391 cases were closed, 21.31% more than last year. Of these cases, 551 were newly admitted patent-related cases, where year-on-year decrease was 17.51%; 2,026 were trademark-related, year-on-year increase 47.23%; and 2 were copyright-related, year-on-year decrease 50%. At the SPC level, newly admitted IP-related administrative cases totalled 60, and concluded cases were 56. The reasons for such increase were more applications for review by the Trademark Review Board (TRAB), higher litigation rate among the reviewed cases, and high clearance rate of carried over cases by the TRAB. Of the disposed cases, review decisions were upheld in 1,776 or 74.28% of the cases; 330 cases or 13.80% revoked; 162 cases or 6.78% withdrawn; the claims of 87 cases or 3.64% were dismissed; judicial review application of 30 cases were dismissed; 4 cases were transferred; and 1 case was disposed of through other methods.

There was substantial increase in the number of first instance cases involving a foreign party or a Hong Kong, Macao or Taiwan party. The cases totalled at 1,004, representing 41.99% of first instance IP-related administrative cases

concluded; 815 of such cases involved foreign parties; 98 Hong Kong parties; 11 Macao parties; and 80 Taiwan parties.

The number of second instance IP-related administrative cases has also increased substantially. Newly admitted cases in all courts totalled 394; 294 were closed, of which, first instance decisions were upheld in 206 cases, decisions reversed in 20 cases, 1 was remanded, 9 were withdrawn, and 4 were dismissed. Cases that produced great social impact were *Honda Motor Co., Ltd v. Patent Re-examination Board (PRB) of the State Intellectual Property Office (SIPO) & Shijiazhuang Shuanghuan Automobile Co., Ltd etc's* administrative dispute on industrial design patent invalidation, *Shanxi Xinghuacun Fen Wine Factory Co., Ltd v. Trademark Review and Adjudication Board (TRAB) of the State Administration for Industry and Commerce (SAIC) & Anhui Xinghuacun Group Co., Ltd.'s* administrative dispute in a trademark opposition and review case concerning “*Xing Hua Cun*” trademark.

The courts further capitalised on criminal adjudication as punishment and deterrence of intellectual property criminal offences.

In 2010, IP-related first instance criminal cases experienced a rather significant increase. Total newly admitted first instance criminal cases was 3,992, 9.58% more than last year. IP criminal cases accounted for 1,294 (1,153 were cases involving infringement of registered trademark such as use of counterfeit marks), 26.99% more than last year; IP infringement cases involving production and sale of inferior or counterfeit goods totalled 596, 6.73% lower than last year; IP infringement cases involving illegal business operations totalled 2,078, 6.62% more than last year; cases of other nature totalled 24.

Total concluded IP-related first instance criminal cases was 3,942, 7.7% more than last year. The number of individuals on whom the courts' decisions became effective was 6,001, of which, 6,000 were found guilty.

Of the closed cases, 1,254 cases were found related to IP infringement crimes, and the decisions were effective on 1,966 persons, 24.53% and 22.49% higher than last year respectively; 609 cases were found related to the production and selling counterfeit and inferior goods (involving IP infringement), and the decisions were effective on 926 persons; 2,054 cases were found related to illegal business operations (involving IP infringement), and the decisions were effective on 3,068 persons; the remaining 25 were found guilty of other crimes relating to infringement of intellectual property, and decisions were effective on 41 persons.

For cases where the court's decision was IP crime, 585 cases involved the accused being found guilty of use of counterfeit registered mark, and the decisions were effective on 1,028 persons; 345 cases involved the accused being found guilty of sale of products with a counterfeit mark, and the decisions were effective on 459 persons; 182 cases involved the accused being found guilty of illegal production and sale of illegally produced registered marks, and the decisions were effective on 253 persons; 2 cases involved the accused being found guilty of counterfeiting patent, and the decisions were effective on 3 persons; 85 cases involved the accused being found guilty of copyright infringement, and the decisions were effective on 142 persons; 5 cases involved the accused being found guilty of sale of IP-infringing reproductions, and the decisions were effective on 10 persons; 50 cases involved the accused being found guilty of infringing trade secrets, and the decisions were effective on 71 persons. The most prominent case was the Liu Zhaolong case involving counterfeit registered trademarks.

The courts have increased use of mediation and have focused on conflict resolution.

The people's courts have observed the *Several Opinions on Furthering the Principle of "Mediation as Priority and Combining Use of Mediation & Adjudication"*

(“*tiaojie youxian, tiaopan jiehe*”) issued by the SPC, setting forth that use of mediation should be legally based and voluntary; and mediation is priority if permissible by law, possible by case merits, and better in outcome. The courts focused on regulating the mediation process and ensuring appropriate balance of adjudication and mediation. Where mediation was unsuitable or unsuccessful, a decision was issued according to law. The courts continued to put efforts into exploring greater possibilities for mediation, regulating the judicial mediation procedures, and improving mediation quality and efficiency.

In 2010, court mediation of intellectual property disputes were conducted under better institutional framework, more comprehensive rules and regulations, and greater rationality. Litigation and mediation have attained a new dimension. 66.76% of all IP-related first instance civil cases were successfully mediated and case eventually withdrawn, 5.68 percent higher than 2009. The SPC had also successfully mediated and facilitated withdrawal of 24 difficult intellectual property cases. Examples of such cases were the trademark infringement cases of *France Bayer AG, Bayer Crop Science v. Anhui Huaxing Chemical Co., Ltd* and *Shanghai Johnson & Johnson Pharmaceuticals, Ltd v. Xi'an Qiangsheng Pharmaceutical Co., Ltd*, where the parties were satisfied with the outcome, and response from the general public was positive. As part of a continued effort to improve, the high people's courts of Shanghai and Tianjin have issued guidelines to strengthen mediation of intellectual property-related civil disputes. Also, the prefecture and provincial level high people's courts of Guangdong, Hebei, Sichuan, Henan, Guangxi and Guizhou, and the Beijing Municipality Second Intermediate People's Court and the Fuzhou Intermediate People's Court of Fujian Province have studied and developed a set of systematic mediation methods.

The courts have espoused openness to ensure fairness, and have delivered equity to gain credibility.

The people's courts believe in "sunshine justice"; that is, ensure fairness through openness. Openness is assured by specifying the content, procedures and methods for accepting cases, trial, execution, hearing, documentation, and court administration, and by using various means, such as press conferences, Court Open Day, web livecast etc, to improve transparency in intellectual property adjudication. In doing so, IP courts have delivered fairness and regulated use of judicial discretion, won public confidence and achieved "sunshine justice". On Public Open Day on 12 April, SPC chose, for the first time, to allow observation of court proceedings of an IP case by the general public. The Hunan provincial courts have also developed a permanent system for deputies of people's congresses to observe court proceedings and for live telecast of court proceedings via the internet, where deputies of people's congresses are regularly invited to observe IP trials. The Liaoning provincial IP courts are equipped with information and technology facilities, where livecast of court proceedings are a regular feature. The high people's courts of Fujian and Yunnan provinces and the intermediate people's courts of Fuzhou and Kunming have also relied on web livecast to deliver the latest information on intellectual property trials to the masses..

Greater transparency is further exemplified by the introduction of the white paper on intellectual property protection to update on the people's courts' progress in IP adjudication. In April 2010, the SPC published the bilingual white paper entitled *Intellectual Property Protection by Chinese Courts in 2009*, providing an overview of intellectual property adjudication during the thirty years since China's reform and opening-up and reviewed the achievements of the people's courts in 2009. The paper documents the results and successes of judicial protection of intellectual property in China, and reflects China's determination and confidence in intellectual property protection. This was the first

time that the SPC had published the work of the people's courts in respect of IP protection, and an important step taken by the people's court to deliver the National Intellectual Property Strategy and to strengthen judicial protection for intellectual property. Similarly, the high people's courts of Tianjin, Chongqing, Shandong, Guangxi, Sichuan, Gansu and Hebei have also published white papers on intellectual property adjudication, and the High People's Court of Jiangsu Province published a blue paper entitled *Judicial Protection of Intellectual Property 2009*. The white and blue papers provided a complete overview of the intellectual property judicial regime at the respective localities, to enable the public to understand IP adjudication and to check and monitor the court's work; and finally, achieve equality and justice in the IP judicial regime.

Besides maintaining the high quality of the China IPR Judgments & Decisions website, SPC has officially opened a "Judicial Protection of Intellectual Property" sub-website under the SPC's official website. Both websites will be platforms from which the people's courts will issue authoritative information on judicial protection of intellectual property. The public will be promptly informed of the latest developments and information of IP protection by the people's courts. As at end 2010, 41,696 judgements were published on the China IPR Judgments & Decisions website. Local courts have also promptly published information about IP judicial protection on their own websites IP cases that were adjudicated and decided.

II. The courts have attended to demands for intellectual property-related judicial services in economic and social development, and have achieved new breakthroughs in implementing the National Intellectual Property Strategy

In 2010, the people's courts continued to embrace dynamic justice by finding a point of entry where intellectual property adjudication could support

socioeconomic development, and by focusing on the national strategy of accelerating transformation of development models and maintaining a steady and relatively fast economic growth. The purpose of doing so is to deliver the National Intellectual Property Strategy, and to eventually provide effective judicial protection for intellectual property for fast and healthy social and economic development.

The courts have adhered to dynamic justice to serve greater international and domestic interests.

After the essential undertaking to remodel growth was raised at the 17th National Congress of the Communist Party of China, the SPC issued the *Several Opinions on the Provision of Judicial Protection and Service to Support Accelerated Remodelling of Economic Growth* in July 2010. The *Opinions* specified that adjudication of the various types of intellectual property cases must be appropriately conducted to ensure and serve indigenous innovation, strengthen judicial protection for intellectual property of key sectors, facilitate development of strategic sectors, enable development of native brands and brand economy, protect the core competitive strengths of companies, maintain fair competition and market order, encourage cultural innovation, and promote growth of the cultural sector.

In February 2010, in response to the post-financial crisis situations and challenges in respect of intellectual property adjudication, SPC organised a Seminar on Intellectual Property Protection in a Post-Financial Crisis Era to explore how intellectual property adjudication may be leveraged to reduce or mitigate the adverse effects on our economy and society in a post-crisis era. In April, to advance the three key tasks of social conflict resolution, development of innovative social administration practices, and fair and honest enforcement of law as proposed by the Party Central Committee and to realise the spirit of the

meeting of presidents of national high courts, SPC convened a national symposium on intellectual property adjudication in Luoyang, Henan Province. At the workshop, participants discussed and planned the direction of IP adjudication under new circumstances, and clearly set forth the related key responsibilities and work measures. After the workshop, the high people's courts swiftly convened meetings to ensure implementation of the spirit of the national meeting, based on local circumstances.

To guarantee smooth organisation of major events as the Shanghai World Expo and the Guangzhou Asian Games and Asian Para Games, the people's courts provided full support for intellectual property protection and judicial services. SPC formed a special investigation team to study World Expo-related IP judicial protection with the Shanghai High People's Court and the Coordination Bureau of Shanghai World Expo, and to instruct the local courts on appropriate adjudication of relevant IP cases. The Shanghai High People's Court issued special guidelines on application of law when adjudicating World Expo-related IP cases, defining the standards based on which laws should be applied when adjudicating disputes relating to World Expo intellectual property issues, and setting forth the World Expo work plan for ensuring availability of service for intellectual property protection. The Guangzhou Intermediate People's Court and the Guangzhou Asian Games Organizing Committee and its legal advisor held the Seminar on Strengthening Intellectual Property Protection for the Asian Games for a comprehensive understanding of the judicial needs for intellectual property protection at the Asian Games, and have submitted judicial recommendations on strengthening IP protection at the games.

The people's courts have responded readily to the State Council's special operation to "Crack Down on Intellectual Property Infringement and Manufacturing and Sale of Counterfeit and Inferior Products", to further control IP criminal

infringement. The courts have also cooperated with the procuratorates, and the public security, industry and commerce, copyright and customs departments to develop synergy, so as to enable fast and healthy development of intellectual property in China. Many courts have also provided recommendations for other departments to advance the National Intellectual Property Strategy. For example, the high people's courts of Shandong and Hunan provided judicial recommendations on preservation and notarisation of evidence in the internet environment. When the Guangdong Province High People's Court discovered the use of intellectual property by some foreign enterprises as a commercial means to prevent competition, and to suppress and disable their Chinese competitors, it provided judicial recommendations to the relevant authorities, suggesting that they should establish a pre-warning mechanism and a mechanism of response to foreign-related parties and aid for overseas IP right protection. The Shandong Province High People's Court proposed specific recommendations of how IP adjudication could protect and serve the transformation of economic development models, and defined the part which IP judicial protection plays and the core sectors of protection. The Sichuan Province High People's Court issued special opinions to guide IP adjudication to focusing on supporting the remodelling of economic development.

The people's courts have persisted with judicial reform in the intellectual property regime, and have advanced institutional fundamentals for intellectual property adjudication and improved work mechanisms.

The people's courts were increasingly aware of the need for judicial reform, and have implemented the National Intellectual Property Strategy by driving restructuring and improvement of the IP adjudication and work regime.

Part of the judicial reform is a pilot study of "Three-in-One" adjudication, i.e. intellectual property divisions of the people's courts will administer all IP-related

civil, administrative and criminal cases. In July 2010, the SPC convened the “Symposium on Pilot Study of Centralising Adjudication of Intellectual Property Civil, Administrative and Criminal Cases by Intellectual Property Divisions” in Kunshan, Jiangsu Province. Participants included representatives from the relevant central authorities and courts involved in the “Three-in-One” pilot project. New pilot entities later approved by the SPC included the Fuzhou Intermediate People’s Court, Xiamen Intermediate People’s Court, the basic and intermediate people’s courts of Shenzhen, Foshan and Zhongshan municipalities, and the basic courts of Gulou District of Fuzhou municipality and Siming District of Xiamen municipality. As at end December 2010, total pilot entities included 5 high courts, 49 intermediate courts and 42 basic courts.

2010 saw continued efforts to realign jurisdiction for intellectual property disputes and improve further judicial resources. In January 2010, SPC issued the *Notice on Adjustment of Jurisdiction Criteria of the Various Levels of People’s Courts for First Instance Intellectual Property Civil Cases* and the *Notice on Printing and Distribution of Jurisdiction Criteria of the Various Levels of People’s Courts for First Instance Intellectual Property Civil Cases* to revise and clarify jurisdiction for different classes of IP civil cases by the various levels of courts. Although jurisdiction for cases relating to technology and well-known marks are strictly restricted, more basic courts are allowed to hear general IP cases, as appropriate. Intermediate and basic courts are encouraged to form jurisdiction blocks crossing jurisdiction boundaries, and to explore the possibility of assigning jurisdiction of certain patent cases to certain basic courts. In its reply (*pifu*) to the Kunshan People’s Court of Jiangsu Province, SPC agreed to the court’s request to commence a pilot programme on adjudicating patent disputes relating to utility models and designs. As of today, two basic courts have joined the pilot study. As at end December 2010, the number of intermediate people’s courts having

jurisdiction for patent disputes stood at 76, 44 for new plant variety, 46 for layout-designs of integrated circuits and 41 for determination of well-known marks; 101 basic courts have jurisdiction for general intellectual property disputes.

In keeping with the spirit of judicial reform, the relevant local courts have also developed detailed programmes based on local circumstances, to ensure success of the “Three-in-One” pilot project and unobstructed delivery of justice. In Zhejiang and Inner Mongolia, for example, the high people’s courts have stepped up cooperation and coordination with local procuratorates and police to develop guidelines on judicial protection for criminal cases pursuant to the pilot.

The courts have strengthened innovation in the adjudication regime for intellectual property cases to improve the quality of IP-related judicial services.

As intellectual property cases require technical expertise, SPC continued to establish and improve judicial systems in respect of forensic evaluation, expert witness and technical investigation etc. At the same time, it also encouraged and guided the appropriate courts in exploring effective approaches and specific methods for conducting technical investigation.

In April 2010, SPC signed a memorandum of cooperation in judicial protection of intellectual property with the China Association for Science & Technology to strengthen cooperation between the parties, based on which, SPC has established a science & technology special advisory expert body comprising eleven academic fellows of the Chinese Academy of Science and Chinese Academy of Engineering, including Yuan Longping and Zhong Nanshan, all of whom will serve as expert advisors in science & technology for SPC. SPC hopes to leverage their expertise to advise on macro policy issues relating to IP judicial protection, answer technical questions relating to the cases in question, and assist in resolving IP disputes. This was an important step toward judicial reform

of the IP regime. The high people's courts in Shanghai, Jiangsu, Qinghai, Hebei, Zhejiang, Guangxi and Shanxi were also exploring the establishment of a technical investigation system for fact-finding in IP cases, and have created technical experts advisory bodies and piloted the expert jury systems and expert witness systems. These systems and mechanisms are important for resolving difficulties involving technical expertise, and have helped improve the quality of adjudication of IP cases. The Xiamen Intermediate People's Court has also attempted establish a protective order system with respect to IP adjudication to prevent risking loss of confidentiality through disclosure of trade secret by the parties asserting their rights.

The courts have increased publicity on judicial protection of intellectual property by organising Intellectual Property Publicity Week based on the April 26 World Intellectual Property Day.

To maximise the impact of the World Intellectual Property Day on 26 April, the people's courts have organised the "World Intellectual Property Publicity Week", during which a series of varied and multidimensional activities were put together to showcase our achievements in IP judicial protection and our IP judges, and create a positive image for judicial protection of intellectual property in China. During the week, SPC organised a press conference and released important judicial documents, such as the bilingual white paper entitled *Intellectual Property Protection by Chinese Courts in 2009*, the *Ten Major Cases in Judicial Protection of Intellectual Property in China in 2009* and *Fifty Classical Cases*, the *Supreme People's Court Annual Report of Intellectual Property Cases (2009)* and the *Supreme People's Court's Opinions on Several Issues Regarding the Adjudication of Administrative Cases Relating to Granting or Validation of Trademarks* and the memorandum of cooperation in judicial protection of intellectual property signed with the China Association for Science & Technology.

The local people's courts have also complied with SPC's requirements for more intensive and extensive publicity, giving special attention to the content and form of publicity. The publicity vehicles used include traditional and contemporary media at the local and central levels; even foreign media. Newspapers, television, radio, broadcast stations, internet, magazines and posters & banners were fully utilised. Judges were organized to taking part in promoting the importance of judicial protection for intellectual properties and in presenting the courts' latest achievement justice and policies. The above activities had played a positive role in elevating the general IP awareness among the public.

Activities at the local level are manifold. The courts in Jiangsu Province have successfully organised the 15th Year Commemorative Seminar of Professional Intellectual Property Adjudication in Jiangsu Province cum Seminar on Intellectual Property Protection and Balance of Interests, and published the *Innovation and Development—A Compendium of Fifteen Years of Intellectual Property Adjudication by Jiangsu Courts* and the *Commemorative Catalogue of Glories Journeys and a Brighter Tomorrow*. The Zhejiang High People's Court organised an intellectual property press conference and answered questions of journalists from more than 40 local and foreign media. The Hubei High People's Court collaborated with the *Science Technology and Law* magazine to start a special column that promotes awareness of IP judicial protection. During the activity period, the Production & Construction Corps Branch of the Higher People's Court of Xinjiang Uigur Autonomous Region issued 6,000 questionnaires on intellectual property knowledge and put up more than 60 display boards. Courts in Hainan and Tibet also relied on different ways to promote the achievements of the courts in IP protection.

The courts have intensified international exchanges and cooperation to enhance China's international influence on judicial protection of intellectual property.

In 2010, with increasing integration of the global economy and speeding internationalization of intellectual property systems, the people's courts have strengthened international exchanges and collaboration, improved on the quality of IP adjudication, and focused on establishing positive international profile on IP judicial protection. Diplomatic activities were good platforms on which the courts could respond to issues of concern to the foreign parties, clarify misunderstandings, publicise our achievements in IP protection, and defend our international image. SPC has sent representatives to participate in the Sino-Europe Intellectual Property Workgroup Conference, the Sino-American Joint Commission on Commerce and Trade (JCCT) IPR Working Group Conference, and the meeting of the Chinese-Swiss Working Group on Intellectual Property. Our courts have actively participated in the EU-China IPR2 Project activities, and have communicated our position and determination to protect intellectual property. The people's courts continued to intensify intellectual property exchanges and cooperation relating to the economy and trade through dialogues with the US, Europe, Switzerland, Russia, Japan and Brazil, and through special intellectual property working groups, including visits by Japanese intellectual property officials. SPC has received delegations of nearly one hundred senior officials from Japan, US and other countries, and has based on internal needs, arranged outstanding judges to visit countries as the US, Japan and Europe for training and exchanges. The Zhejiang High People's Court has also received a delegation from the American Intellectual Property Law Association and judges from the U.S. Court of Appeals for the Federal Circuit, and judges had in-depth discussions with the visitors on IP topics of interest.

III. The courts have established rules for application of intellectual property laws to ensure consistency, and have improved judicial supervision and guidance

Consistency in application of law is embodied in the tenet of all being equal before the law. It is a manifestation of fairness and authority of the justice system, and the fundamental features of a country with rule of law. In 2010, consistent application of intellectual property laws continued to be the people's courts' priority. To ensure fairness and consistency in the intellectual property judicial system, the courts have identified problems that affected fairness of decisions and consistency in application of law, persisted at developing innovative methods and strengthening adjudication management to improve institutions and mechanisms for supervision and guidance.

The Courts have intensified implementation of judicial policies to regulate use of discretion during adjudication of intellectual property cases.

Based on the characteristics and needs of different intellectual property cases, SPC has developed a judicial policy that allows differentiated treatment and appropriate protection of intellectual property based on their category. SPC has also relied on various means to ensure observance of IP-related judicial policies, and has effectively leveraged judicial policies as macro regulatory measures for consistency in adjudication.

In April 2010, SPC issued the *Opinions on Several Issues Regarding the Adjudication of Administrative Cases Relating to Granting or Validation of Trademarks*. This was the first time that SPC issued guidelines on judicial review standards for the granting and validation of trademarks in the form of normative documents. The *Opinions* define the boundaries of the relevant laws and set uniform judicial standards, and is of significant importance for ensuring proper delivery of judicial reviews and consistency in trademark determination

and validation. In November, SPC issued the *Notice on Adjudication of Copyright Disputes Relating to Internet Cafés*. By identifying the key issues in internet café-related copyright disputes and promptly clarifying the adjudication principles and specific standards for similar cases, the *Notice* has ensured protection of the parties according to law and effectively prevented infringement of copyrights. It has also enabled dissemination of information and regulated such dissemination, and has facilitated healthy development of the cultural industry on internet.

The courts have explored the case guidance system for the intellectual property legal regime, and have promptly published typical intellectual property cases for reference purposes.

The people's courts place great importance in the demonstrative value of typical cases in intellectual property adjudication. One of the key tasks of the courts is to select and publish typical cases so that the case referencing could be developed into a standardised and permanent system. In April 2010, SPC released the *Supreme People's Court Annual Report of Intellectual Property Cases (2009)*. The *Annual Report* is a compendium of 37 typical intellectual property cases closed and on which final conclusive opinions have been given. Based on the written judgements and decisions of these 37 cases, 44 typical problems on application of law are identified and are publicised in the form of an annual report. The annual report, which condenses the SPC's experience in adjudicating typical cases, is an attempt at a more innovative method of adjudication guidance, and an importance step toward transparency and acceptance of public supervision. The *Ten Major Cases in Judicial Protection of Intellectual Property in China in 2009 and Fifty Classical Cases* is a good example of leveraging the demonstrative effect of cases, as it encompasses IP-related civil, administrative and criminal cases, and nearly all IP-related categories as patent,

new plant variety, copyright, trademark and unfair competition. These cases, which are vivid examples of how the people's courts have stepped up protection of intellectual property and the legal rights of IP holders, and how the courts exercise their powers to determine the boundaries of rights, help instil an intellectual property rule of law awareness and create an honest and lawful competition culture. Local courts have also selected and published typical and outstanding cases; the high people's courts of Tianjin, Chongqing, Shandong, Anhui, Fujian, Hunan, Sichuan and Heilongjiang have also released the ten typical local cases. The High People's Court of Guangxi Zhuang Autonomous Region has established a case reference system based on typical cases, and the Intermediate People's Court of Shaanxi Province has also published classic cases on judicial protection of intellectual property.

The courts have strengthened study of IP-related topics to improve the quality of IP-related judicial interpretations and interpretive documents.

The people's courts firmly believe in "research-based adjudication" and regards research as integral to adjudication of intellectual property cases, and instrumental to producing high quality judicial interpretations and interpretive documents. To this end, the courts have organised seminars, invited experts to speak, held judges' forum, conducted field studies, written survey reports and published books. In 2010, SPC convened topic-specific seminars for the relevant courts across the country. The seminars provide a platform for prompt resolution of key issues in judicial practice and for strengthening research and study in the application of law for new genres of cases. The courts have also embarked on a series of researches and studies, including judicial protection of copyright in the internet environment; adjudication standards for granting and validation of patents; research and study of granting and validation of trademarks; copyright protection for foreign works without an administrative

licence; copyright infringement of internet cafés; judicial protection of trade secrets; study of the judicial protection system for intellectual property during the Twelfth Five-Year Plan period; application of law during adjudication of civil disputes involving monopoly; application of law during adjudication of IP-related administrative cases; and study of the relevant issues relating to the establishment of an intellectual property appeals court, etc. Researches and studies provided the courts insights on the situations and dynamics of the current intellectual property judicial system and fruitful research outcomes. Judicial interpretation and interpretive documents will be issued based on full and thorough researches and studies. After much research and study, special adjudication guidelines were issued to address issues in copyright protection for foreign works without an administrative licence, copyright infringement of internet cafés, adjudication standards for granting and validation of trademarks. The local courts have also amassed research outcomes valuable for guiding adjudication. Over the years, intellectual property judges have developed a professional attitude towards research and learning. The Specialised Committee on Intellectual Property Adjudication Theory have co-organised with other departments the “Seminar on the Commemoration of the 20th Anniversary of the Copyright Law and Fundamental Theory on Copyright Protection”, and published the *Study of China Intellectual Property Adjudication Theory (Volume 2)*. The Beijing High People’s Court also published the *Classic Intellectual Property Cases (Volume 5 & 6)* and the *Classic Cases on Internet Copyright*.

The courts have diversified the channels of guidance for intellectual property adjudication to fully discharge their duty of guidance

In 2010, the superior courts have continued to diversify their tools of guidance, which include judicial interpretation, judicial papers, guidelines,

topic-specific research studies, professional meetings, training on special topics, magazines for internal circulation, guiding cases, etc. In doing so, they have undertaken the duties of guidance for intellectual property adjudication, standardised adjudication criteria for intellectual property cases, regulated the exercise of discretion for intellectual property cases, and ensured justice in the intellectual property cases. Additionally, SPC has summarised its experience in adjudicating cases involving application for *zaishen* and collated the problems encountered by the courts during adjudication, and based on which, increased its guidance for key issues. Similar cases are studied, so as to guide the relevant courts in correct application of law; standard criteria are established for judicial determination of well-known marks and in-depth evaluation of cases involving well-known marks is conducted, to increasingly regulate judicial protection of well-known marks. Also, the Shanghai Municipality High People's Court has developed a judicial guidance paper on methods to determine the amount of statutory indemnification for disputes involving intellectual property infringement, clarifying methods of application of statutory indemnification under several basic principles; the High People's Court of Jilin Province has put together a team of high-performing IP judges to lecture at the intermediate people's courts within the province; the high people's courts of Hunan and Ningxia provinces have established coordinate mechanisms for kindred cases; the High People's Court of Shanxi Province has established and improved on the contact-reporting system (*lianxi baogao zhidu*) between the superior and inferior courts; the Tianjin High People's Court has authored and published the *2005—2009 Major Events in Tianjin Intellectual Property Adjudication* and the *Intellectual Property Adjudication by Tianjin Courts*; the high people's courts of Heilongjiang, Shanxi and Gansu have also authored publications on intellectual property adjudication guidance.

IV. The courts have strengthened capacity building for intellectual property judges, and have enhanced judicial competence and quality

Capacity building is fundamental to the people's courts. In 2010, the people's courts have, based on practical needs, strengthened adjudication management and introduced innovative methods, strengthened capacity-building among intellectual property judges, intensified activities based on the theme of "People's Judges for the People" ("*Renmin Faguan Wei Renmin*"), and nurtured the core judicial values of "To Justice, In Honesty, For the People", so as to build a team of intellectual property judges who are firm in political beliefs, professionally sound, people-oriented, and who are fair, honest and superior.

The people's courts have worked hard at improving the professional skills of judges.

Judges' skills must be upgraded consistently to guarantee delivery of social justice and quality. In 2010, the people's courts have continued to focus on the important tasks of professional skills improvement and training of intellectual property judges, including professional knowledge and adjudication skills. The courts have also developed learning-based court sessions, strengthened adjudication management and improve on the learning and training regime, so as to groom a team of professional adjudication experts in our judges. Getting the essential aspects at the basic level, especially establishing IP adjudication infrastructure at the basic courts, was a pressing task. Professional training includes seminars and trainings organised by SPC, as well as trainings conducted by the high people's courts and the intermediate people's courts. Strengthening of adjudication guidance includes training that employs innovative methods, that are problem-based and results-driven, that are centralised, that encourage vertical communication between specialised divisions, that include observation of court sessions, and that involves case evaluation and review. Intellectual property

judges are active self-learners who are not only constantly acquiring new knowledge in intellectual property law, from judicial papers issued by superior courts and from typical cases and decisions, but also basic knowledge in science and technology. Many courts, especially those with heavy caseloads, are keen to recruiting persons with science and technical expertise into their team of judges. Recently, SPC has organised two training sessions on intellectual property adjudication for all courts at the National Judges' College. Nearly 200 judges attended the training sessions. Many courts have also organised activities of various forms to nominate star performers and adjudication experts. The courts in the central and western regions, such as those from Jiangxi and Qinghai, have organised study tours for judges to visit the eastern developed regions for observation and mentor-learning. The high people's courts of Shanghai, Hunan and Guangdong have collaborated with PRB of SIPO and other intellectual property authorities to establish long-term exchange mechanisms. The provincial high people's courts of Chongqing, Shandong, Guangdong, Hebei, Xinjiang, Inner Mongolia, Guangxi and Liaoning have increased training for judges through various methods.

The courts have worked hard at improving the working style of the intellectual property judges.

Style is image, and style is credibility. In 2010, the people's courts continued to improve their styles by organising public perspectives education, establishing "justice for the people" as a purpose, cultivating the sense and awareness for the public among intellectual property judges, and by maintaining a positive culture. They have also organised activities for judges to meet the community, enterprises, schools and public groups to hear from the academic community, emerging industries, the corporate world, social groups and the masses opinions and recommendations on judicial protection of intellectual property, and to establish

close ties with the general public. The high people's courts of Shandong, Jiangsu, Liaoning, Sichuan, Inner Mongolia, Guizhou and Heilongjiang have forged closer ties with companies to better understand the development of the various sectors and to increase the awareness among companies to protect their intellectual property rights. In Jiangxi Province, the Pingxiang Municipality Intermediate People's Court has established an intellectual property legal aid centre that provides free advice and recommendations to companies, public service entities and individuals. The Heping District People's Court in Tianjin has established a circuit court in the Culture and Creative Industrial Park in Park No. 6 of Heping District. The large pool of intellectual property judges are working hard to cultivate the core values of justice, honesty and service for the people, to improve their professional ethics, and to live the tenets as set forth under the *Basic Professional Ethics for Judges*, *Judges' Code of Conduct*, and *Basic Rules on the Civilised Use of Language by the People's Court*. The courts also encourage emulation of Model of Progressiveness ("*Xianjin Dianxing*") by learning from Judge Chen Yanping, known for being a "good judge who has won confidence and trust from the people", and from Judge Long Jinpin, a national outstanding judge who was voted "Pioneer of the Era" ("*Shidai Xianfeng*"). The Intellectual Property Division of the Beijing Municipality High People's Court was awarded the "WIPO Copyright Gold Award" by the World Intellectual Property Organisation; and the Intellectual Property Division of the Shanghai Municipality High People's Court was conferred the title of "Progressive Group by the Special Task on Protection of Intellectual Property at the World Expo".

The people's courts have persisted at building a clean and honest team of IP judges.

An honest judicial team ensures observation of professional ethics, which guarantees judicial justice. In 2010, the people's courts have continued to build an

honest team of judges by imposing institutional monitoring and ethical restraints. They have intensified education on judicial honesty, and have relied on more effective methods, avoiding mechanical indoctrination, organised pre-warning education (“*Jingshi Jiaoyu*”), and enhanced awareness on preventing corruption and degradation. The courts have complied strictly with the “Five Strictly Prohibited Behaviours” and the various anti-corruption regimes. SPC has also instructed people’s courts of various levels to accept supervision, to strengthen supervision mechanisms, and to impose restraints for the building of a fair and honest justice system for improving the credibility of the judicial system.

Conclusion

2011 is the first year of implementation of the Twelfth Five-Year Plan period. The people’s court will confront the challenges and seize strategic opportunities for strengthening judicial protection of IP. They will adhere to the Deng Xiaoping Theory, the “Three Represents”, and the “scientific development approach” to help remodel economic growth. The people’s courts will work to accomplish their core tasks of enforcement of law and disposition of cases, and will strengthen capacity-building, and continue to deliver the Three Key Tasks. They will exercise their powers of intellectual property adjudication independently and fairly, and intensify practical thematic activities based on the tenets of “uphold our tradition, adhere to beliefs, and enforce law for the people”. The people’s courts will bring intellectual adjudication to new heights, and will provide judicial guarantee to support indigenous innovation and the country’s core competitiveness.