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### Introduction

In 2012, the people's courts have advanced judicial operations in the protection of intellectual property rights. Adjudication of intellectual property-related disputes has taken to new heights.

Several major events relating to the judicial protection of intellectual property have taken place as follows:

- Wang Shengjun, President of the Supreme People's Court, presented the *Report on Strengthening Intellectual Property Adjudication to Advance the Building of an Innovative Country* at the Thirtieth Session of the Standing Committee of the Eleventh National People's Congress, elaborating the people's courts activities relating to intellectual property adjudication since 2008;

- The Supreme People's Court (SPC) has issued judicial interpretations *Provisions on Issues Relating to the Application of the Law in Adjudicating Civil Disputes Arising from Monopolistic Behaviour*, the *Provisions on Issues Relating to the Application of the Law in Adjudicating Civil Disputes Involving the Infringement of the Right to Network Dissemination of Information* and the judicial policy document *Opinions on Leveraging the Adjudicatory Function to Provide Judicial Safeguards for Deepening the Reform of Scientific & Technological Institutions and for Accelerating the Establishment of a National System of Innovation*;
- The first national workshop for chief judges of intellectual property divisions was held in Guangzhou. This was the first time that Xi Xiaoming, Vice-president of the Supreme People's Court, provided a comprehensive narrative of the policy to “strengthen protection, classification, appropriate stringency” in the judicial protection of intellectual property;
- The China-United States Intellectual Property Adjudication Conference was held in Beijing.

## **I. Adjudicated according to Law, and Focused on Delivery of Justice**

In 2012, the people's courts discharged their official responsibility in adjudicating intellectual property matters. Delivery of justice was the top priority. Intellectual property-related cases were adjudicated fairly and efficiently. This has improved adjudication quality and efficiency, enhanced judicial credibility, and has enabled the judiciary to further its primary role in intellectual property protection.

In the past year, the people's courts have adjudicated cases involving all aspects of intellectual property law, encompassing civil, administrative and criminal matters. The number of intellectual property cases has increased substantially this year; the increase in the number of criminal cases most significant, more than double last year's figures. In terms of the number of first instance intellectual property cases accepted in 2012, there were 87,419 civil cases, 45.99% more than last year; 2,928 administrative cases, 20.35% more than last year; and 13,104 criminal cases, 129.61% more than last year.

**Civil Litigation has become an increasingly important means to protect intellectual property.**

Adjudicating intellectual property-related civil disputes is essential to the people's courts. Civil litigation is an important means to protecting intellectual property. In 2012, the people's court have strengthened protection of various intellectual property branches: patent, to encourage innovation and drive development; trademark, to enable brand-building; copyright, to enhance the overall capacity and competitiveness of the cultural sector; competition, to motivate market players and invigorate the market.

The number of first instance civil intellectual property cases accepted and disposed by local courts grew by 45.99% and 44.07% to 87,419 and 83,850 cases respectively. Within each intellectual property branch, the case numbers and percentage change compared to last year were as follows: 53,848 copyright cases, 53.04% higher; 19,815 trademark cases, 52.53% higher; 9,680 patent cases, 23.80% higher; 746 cases involving technology agreements, 33.93% higher; 1,123 cases involving unfair competition (of which, 55 were first instance civil cases involving monopoly disputes), 1.23% lower; 2,207 cases involved other intellectual property disputes, 0.64% higher. 1,429 first instance cases involving foreign parties were disposed, 8.18% higher; 613 first instance cases involving parties from either Hong Kong, Taiwan or Macao were disposed, 3.46% lower.

For second instance cases involving civil intellectual property disputes, 9,581 were accepted, and 9,929 disposed (including carried over cases), 25.37% and 21.32% higher than last year respectively. New cases and concluded and reopened (*zaishen*) cases fell by 41.5% and 0.45%, to 172 and 223.

SPC's intellectual property division accepted 237 cases, concluded 246 cases (including carried over cases); 181 were newly reopened cases, and 186 were disposed (including carried over cases).

Adjudication quality and efficiency has improved. Clearance rate of civil intellectual property cases of first instance at the local courts maintained at 2011's level of 87.61%; appeal rate fell from 47.02% in 2011 to 39.53% in 2012; reopen (*zaishen*) rate fell from

0.51% in 2011 to 0.20% in 2012; and overrule or remand for retrial (*chongshen*) rate increased from 3.66% in 2011 to 5.46% in 2012. The percentage of civil intellectual property cases of first instance concluded within time limit increased from 98.57% in 2011 to 99.24% in 2012.

27 cases preliminary injunction relating to intellectual property disputes were accepted by the various levels of people's courts; approvals were granted for 83.33% of the cases admitted. To reduce the burden of proof on the part of the applicant, the people's courts accepted 320 applications for pre-trial preservation of evidence, and 96.73% were granted approval. 74 applications for pre-trial preservation of property were accepted, and 94.67% approved.

High profile cases include *Apple Inc. and IP Application Development vs. Shenzhen Proview Technology*, involving the "IPAD" trademark dispute; *Sany Heavy Industry Co., Ltd vs. Ma'anshan City's Yonghe Heavy Industry Technology Co., Ltd*, involving an unfair competition dispute; *Beijing University's Founder Electronics Co. Ltd vs. Blizzard Entertainment etc.*, involving the copyright infringement of game fonts; *Hu Jinqing and Wu Yunchu vs. Shanghai Animation Film Studio*, involving attribution of copyright of the cartoon character "Huluwa" (*lit.* "Calabash Babies"); *Han Han vs. Beijing Netcom Science & Technology Co., Ltd*, involving copyright infringement; Zhejiang's Holley Communications infringement case vs. Shenzhen's Samsung Kejian Mobile Communication Technology Co., Ltd, involving a patent invention dispute; Zhang Chang, Zhang Hongyue, Nirenzhang Arts Development Co., Ltd vs. Zhang Tiecheng, Beijing Nirenzhang Bogu Clay Factory and Beijing Nirenzhang Arts & Craft Co., Ltd, involving unfair competition dispute; Yaoming vs. Wuhan Yunhedasha Sporting Goods Co., Ltd, involving infringement of moral rights and unfair competition.

### **Adjudication of intellectual property-related administrative actions further the support and supervision of administrative authorities to ensure lawful operations**

In 2012, by granting and validating intellectual property rights and judicial review of administrative enforcements, the people's courts have streamlined and improved upon the review criteria for granting and validating intellectual property

rights, and in regulating administrative operations for matters relating to intellectual property.

The local courts accepted 2,928 intellectual property-related administrative cases of first instance, 20.35% more than last year, and closed 2,899 cases, 17.37% more than last year. Of those accepted, the breakdown by intellectual property branch and percentage change compared to last year is: 760 patent cases, 16.21% higher; 2150 trademark cases, 21.68% higher; 3 copyright cases, 50% higher; 15 cases of other categories, 50% higher.

The number of first instance cases involving foreign parties or Hong Kong, Macao or Taiwan parties continued to account for a large percentage of the cases. Total number of cases was 1,349, representing 46.53% of the concluded intellectual property-related administrative cases of first instance; 1,127 of the above cases involved foreign parties, 109 Hong Kong parties, 0 Macao parties and 113 Taiwan parties.

Total intellectual property-related administrative cases of second instance accepted and concluded by the local courts was 1,424 and 1,388 respectively. Of the concluded cases, 1,225 were affirmed, 118 reversed, 3 remanded for retrial (*chongshen*), 22 withdrawn, 15 dismissed; in 1 case, the original ruling was revoked and an order issued to docket the case for hearing; 4 other cases were disposed of through other methods.

SPC accepted 98 intellectual property-related administrative cases and concluded 98. Of the concluded cases, 70 cases or 72.16% were dismissed; *tishen* orders (similar to certiorari) were issued for 20 cases or 20.41%, 2 cases or 2.04% were ordered to reopen (*zaishen*); 5 cases or 5.10% were withdrawn; 1 case or 1.02% was disposed through other methods.

SPC reviewed 24 *tishen* cases and concluded 22. Of those concluded, SPC affirmed the original decision for 5 cases, or 22.73%; reversed the decision for 16 cases, or 72.73%. 1 case, or 4.55%, withdrew.

High profile administrative cases include: Wei Tingjian vs. Tiansi Pharmaceutical & Health Co., Ltd, Trademark Review and Adjudication Board of the State Administration of Industry & Commerce, involving an administrative dispute concerning

the cancellation of review; Suzhou Dingsheng Food Co., Ltd vs. Suzhou Administration Bureau of Industry & Commerce, Jiangsu Province, involving the administrative sanction of infringement of the “乐活 LOHAS” trademark.

### **Better leverage of criminal adjudication to sanction and prevent infringement of intellectual property**

In 2012, the people’s courts have stepped up the criminal enforcement of intellectual property to sanction and prevent infringement of intellectual property.

For intellectual property-related criminal cases of first instance handled by local courts, new filings increased by 129.61% to 13,104 cases, including 7,840 intellectual property infringement cases (4,664 involved infringement of registered trademarks, such as use of counterfeit marks), 150.16% higher than last year; 2,607 were intellectual property infringement cases involving the crime of production and sale of fake or inferior goods, 236.82% higher than last year; 2,587 were intellectual property infringement cases involving the crime of illegal business operations, 48.08% higher than last year; 70 were cases of other nature, 34.62% higher than last year.

The number of intellectual property-related criminal cases of first instance concluded by the local courts has increased by 132.45%, to 12,794 cases. The number of persons against whom judgments were effective totalled 15,518, 54.33% higher than last year, including 15,338 who were given criminal sanctions, year-on-year increase is 94.35%. Of the concluded cases, 7,684 involved infringement of intellectual property; 2,504 involved production and sale of fake and inferior goods (involving intellectual property infringement); 2,535 involved illegal business operations (involving intellectual property infringement); 71 were of other nature (involving intellectual property infringement).

In cases where the offender was found guilty of intellectual property infringement, 2012 cases were convicted of counterfeiting a registered trademark; 1,906 were convicted of selling goods bearing a counterfeit trademark; 615 were convicted of illegally manufacturing or selling illegally manufactured counterfeit marks; 63 were convicted of patent counterfeiting; 3,018 were convicted of copyright infringement; 27 were convicted of selling infringing reproductions; and 43 were convicted of infringing upon trade secrets.

A high profile case involved the copyright infringement of an online game through a private server.

### **Combined Mediation and Adjudication to resolve disputes in response to the need to build a harmonious society**

In 2012, the people's courts continued to broaden the use of mediation for intellectual property disputes, so as to manage conflicts and maintain social harmony and stability.

First, better aligned the adjudication-mediation processes, where improvement is made in the bridging and balance of adjudication with people's mediation, administrative mediation and judicial mediation in resolving intellectual property disputes.

The Inner Mongolia Autonomous Region's High People's Court worked with the region's various authorities, including the intellectual property bureau, industry and commerce bureau, press & publication bureau and cultural office, to clarify the bridging of the pre-trial mediation and litigation procedure, as well as systems as "mediation by invitation" (*yaoqing tiaojie*) and "mediation by appointment" (*weituotiaojie*) during the trial process.

The Hunan High People's Court had relied upon the results of its *Study on the Judicial Affirmation of Mediation Agreements for Administrative Actions* to initiate a pilot study on judicial affirmation of mediation agreements for administrative cases of patent disputes at Changsha Municipality's Yuelu District People's Court.

The Fuzhou Intermediate People's Court had entered into an *Agreement on Alignment of Adjudication and Mediation Processes for Intellectual Property Disputes* with the Fuzhou customs authority and industry & commerce bureau.

The courts in Tibet, and Hebei, Henan, Jiangsu, Jiangxi, Sichuan, Guangdong and Hainan provinces also prioritised the development and improvement of a multifarious dispute resolution mechanism, and in the creation and positive development of a "three-in-one" mediation structure that integrates judicial mediation, people's mediation and administrative mediation.

Second, formulate more innovative mediation methods. To benefit from the professional expertise of industry associations and technical experts, the courts have explored a multi-prong mediation strategy, comprising “mediation by invitation”, “industry mediation” and “expert mediation”. The Beijing courts have established a dispute resolution mechanism comprising mediation strategies “mediation by invitation” and “cooperative practice” by working with entities such as the mediation centre of the Internet Society of China, China Writers’ Association and the Beijing Intellectual Property Bureau. The Zhejiang High People’s Court has also explored the possibility of establishing a mechanism for mediation by appointment, targeting at civil patent disputes. The Xinjiang Autonomous Region High People’s Court has invited technical experts to assist in the mediation for intellectual property cases.

Third, focused on mediation of related cases, and guided the parties to re-channel their resentment from infringement into energy for business cooperation. The Jiangsu Province High People’s Court has assessed the circumstances of related cases in the Karaoke industry and have organised several seminars for copyright owners, copyright collective management organisations, representatives of Karaoke bar owners and the relevant authorities to address at source the many issues in copyright disputes in the Karaoke industry. For high profile intellectual property disputes with related cases, the Guangxi Province High People’s Court organised discussions at the local level with the parties, lawyers and the industry’s regulatory authority.

The people’s courts have made remarkable progress in mediating intellectual property disputes. 70.26% of first instance intellectual property-related civil cases withdrew after mediation. The success in mediating the highly publicised dispute between Apple Inc. and Proview Technology (Shenzhen) Co., Ltd involving the “IPAD” mark was highly commended at home and abroad.

### **Greater judicial openness for improved credibility to address public concerns**

In 2012, the people’s courts have employed various methods and approaches when adjudicating intellectual property disputes, and have increased openness and implemented open hearing.



First, the open intellectual property court includes circuit trials, live online telecast of court hearings, invitation of deputies of people's congresses, members of people's political consultative conferences and members of the public to observe hearings. In the anti-monopoly case of *Qihoo 360 Technology Co., Ltd vs. Tencent Inc.*, the Guangdong Province High People's Court invited the media and the general public to observe the case proceedings, and allowed live telecast over the micro-blog. The courts of Inner Mongolia, Henan, Jiangsu, Anhui, Hunan, Sichuan, Fujian, Jiangxi, Ningxia provinces and Xinjiang region have established a permanent system of observation of court hearings by deputies of people's congresses and members of people's political consultative conferences, as well as online live telecast.

Second, published written judgements of intellectual property cases to publicise the outcome of the courts' decisions. The SPC continued to maintain the quality of the Intellectual Property Judgements in China website and the Judicial Protection of Intellectual Property sub-website under the SPC website. The high people's courts have designated information officer responsible for uploading judgements and decisions on the websites and for maintaining the websites. Information officers must also implement web analytics, and must report and improve the web traffic. As at end 2012, 47,422 intellectual property judgements and decisions have been published on the Intellectual Property Judgements in China website.

Third, published white papers on intellectual property protection and yearbook to present and publicise the people's court's adjudication operations for intellectual property cases. In April 2012, SPC released the *Intellectual Property Protection by Chinese Courts in 2011* (Chinese & English Editions). In November 2012, Supreme People's Court, Supreme People's Procuratorate (SPP) and Ministry of Public Security (MPS) jointly published the first *Yearbook on Intellectual Property Protection in China (2011)*, which compiles important normative documents, work summaries, statistics, research outcomes and typical cases relating to the judicial protection of intellectual property rights. The high people's courts of Beijing, Chongqing, Shandong, Hebei, Henan, Gansu, Xinjiang, Jiangsu, Hunan, Sichuan, Guangdong, Guangxi and Hainan have each issued a white paper or blue paper outlining the judicial protection of intellectual property at the local level.

## **II. Served the Needs of Socioeconomic Development, and Implemented the National Intellectual Property Strategy**

Based on adjudication practice, the people's courts found the appropriate points of breakthrough to serve the broader goals of socioeconomic development, and have implemented the national intellectual property strategy to ensure and enable speed and excellence in development. The courts have endeavoured as follows: first, continued extending the boundaries of the intellectual property-related adjudication function to answer the demands of economic and social development; second, persisted in reform and innovation by improving upon the intellectual property-related adjudication system and work mechanisms to address the demands of the national intellectual property strategy; third, further publicised the judicial protection of intellectual property to broaden public impact; fourth, strengthened cooperation with the administrative and law enforcement authorities to broadened the social impact of judicial protection of intellectual property; fifth, buttressed international and inter-regional cooperation to increase global impact.

### **Continued extending the boundaries of the intellectual property-related adjudication function to answer the demands of economic and social development**

In July, to leverage the adjudicatory function as a means to intensify reform of the of scientific & technological institutions and for accelerating the establishment of a national system of innovation, SPC publish the *Opinions on Leveraging the Adjudicatory Function to Provide Judicial Safeguards for Deepening the Reform of Scientific & Technological Institutions and for Accelerating the Establishment of a National System of Innovation*. The *Opinions* noted that the people's courts should improve upon their understanding and their sense of responsibility and of mission in providing judicial protection to serve the said objectives. The *Opinions* also pointed out that outcomes of intellectual endeavours should be given better protection to spur indigenous innovation and technological transcendence, that new factors should receive allocated rationally and according to law to align science and technology with social and economic development, and that centralised coordination should be strengthened to improve operations and measures, and ultimately augment judicial capacity in rendering protection.

Thus, based on the local cultural characteristics and development of the local cultural industry, the high people's courts of Tianjin, Inner Mongolia, Hubei, Guangdong, Guangxi and Sichuan have issued specific rules of implementation for providing judicial protection of intellectual property to facilitate development and prosperity of our socialist culture. The rules were formulated to strengthen intellectual property protection in the cultural sector, enable development of the traditional cultural sector, and provide impetus for growth of emerging creative industries. The high people's courts of Hunan and Shanxi have developed rules of implementation for judicial protection and service for building an innovative economy, which tailored to the local state of socioeconomic development. This would drive innovation and development of science and technology, as well as strategic restructuring of the economy.

The Jiangsu Province High People's Court surveyed various segments of the cultural industry, such as film production, publication and distribution, Karaoke, games and animation, and intangible cultural heritage, to find out the demands for intellectual property-related judicial protection within the cultural industry. The study culminated in the *Report on the Situation Analysis of Intellectual Property Protection of the Cultural Industry in Jiangsu Province*, within which included 14 judicial recommendations. The Hunan Province High People's Court reviewed the irregularities in notarial evidence in intellectual property litigation, and submitted to the local department of justice the *Judicial Recommendations for Regulating the Notarisation and Preservation of Electronic Information & Evidence*. The Hubei provincial courts have focused on cases involving copyright infringement of KTVs and internet cafes in the course of business operation, and submitted judicial recommendations to the local bureau of industry & commerce, copyright bureau and cultural bureau. The Huangpu District Court in Shanghai also reviewed the irregularities in authorship of movie and television productions and submitted judicial recommendations to the then-State Administration of Radio, Film & Television.

The courts of Beijing, Shanghai, Heilongjiang, Inner Mongolia, Shandong, Henan, Jiangsu, Zhejiang, Sichuan and Guizhou visited business enterprises and organised intellectual property workshops to establish a long-term contact mechanism with innovators to find out the difficulties and demands of innovators encounter in respect of intellectual property protection. This was as way to provide judicial protection and

service that serve the local needs in developing innovative economies. The specific activities were:

- Beijing Xicheng District People’s Court visited companies with old trade names, and to protect old trade names and intangible cultural heritage, cooperated with the relevant authorities to initiate the “Intellectual Property Protection Campaign for Old Trade Names”;
- Shijingshan District People’s Court proposed the idea of “intelligent protection for CRD (*zhi hu CRD*) and to build a “Shijingshan Service” brand, so as to provide judicial protection and service for the distribution of goods and the cultural and creative industries under its jurisdiction;
- Changzhou Intermediate People’s Court in Jiangsu Province has established a judicial protection contact point for intellectual property matters for key creative industries;
- Xuzhou Intermediate People’s Court has set up an intellectual property protection base at the “Creative 68 (*Chuang Yi 68*)” Cultural Industrial Park;
- Shaoxing Intermediate People’s Court in Zhejiang Province has organised a special study on the intellectual property protection of Shaoxing yellow wine;
- Hefei Hi-Tech District People’s Court in Anhui Province has completed the Analysis of the Pattern of Typical Cases Involving Copyright Disputes and Study of the Development Strategies of Cultural Industries;
- Jingdezhen Intermediate People’s Court in Jiangxi Province initiated a survey of intellectual property protection of porcelain arts and crafts, and provided recommendations for the drafting of the *Jingdezhen Porcelain Arts & Crafts Standard*;
- Hainan High People’s Court commenced studies on the adjudication of intellectual property disputes in the context of Hainan Island being a destination for international tourism;
- During the Second China-EuroAsia Exposition and the Eighth China-Kashgar Commodities Trade Fair, the Urumqi Intermediate People’s Court, Shuimogou District People’s Court, Kashgar Region Intermediate

People's Court and the Kashgar City People's Court deployed intellectual property judges to provide advisory services on intellectual property protection at exhibitions for exhibitors;

- Jilin High People's Court was invited to provide services at the "Intellectual Property Complaint Centre" of the Eighth North-east Asia Investment & Trade Exposition.

**Persisted in reform and innovation by improving upon the intellectual property-related adjudication system and work mechanisms to address the demands of the national intellectual property strategy**

In 2012, the people's courts have continued to improve upon intellectual property-related adjudication system and work mechanisms based on the *Outline of the National Intellectual Property Strategy*, to advance the National Intellectual Property Strategy.

First, promoted the pilot project of centralised adjudication of civil, administrative and criminal cases on intellectual property by the intellectual property division ("three-in-one" adjudication of intellectual property disputes), and improved upon the coordinated adjudication mechanism of civil, administrative and criminal matters relating to intellectual property, such that the overall effectiveness of judicial protection of intellectual property is given play preliminarily. As at end 2012, there were 5 high people's courts, 59 intermediate people's courts and 69 basic-level courts that have initiated the pilot project. There are several interesting developments:

In 2012, the Guangdong courts have gone full steam ahead in implementing the reform pilot programme of "three-in-one" adjudication of intellectual property disputes. The provincial court, 19 intermediate courts and 30 basic-level courts have begun implementing the system, where 90% of criminal intellectual property cases were included in the pilot. The Shenzhen Intermediate People's Court has done so well in the "three-in-one" reform, and the social media has referred to its distinctive model as the "Shenzhen Model".

The Jiangsu High People's Court has stepped up its study of the application of the law for criminal intellectual property matters in the "three-in-one adjudication" reform

pilot programme, and has led the completion of the *Summary of Issues in the Application of law in Intellectual Property Disputes (Draft for Public Opinion)*.

The courts in Inner Mongolia, Shandong, Hunan, Sichuan, Fujian and Guizhou have also relied on various methods to strengthen cooperation with the administrative and law enforcement authorities to drive the “three-in-one” pilot programme for adjudication of intellectual property disputes.

Second, continued to fine-tune the jurisdiction structure of intellectual property cases. While concentrating the adjudication of cases involving patent, well-known mark and anti-monopoly dispute in certain courts as appropriate, certain basic-level courts are given an appropriate level of authority to accept intellectual property cases. Basic-level courts are encouraged to exercise extra-regional jurisdiction, in order to create a more logical jurisdiction structure. As at end 2012, SPC has appointed 83 intermediate people’s courts to adjudicate cases involving patent disputes, 45 for new plant varieties, 46 for topographies of integrated circuits, and 44 for determination of well-known marks; 141 basic courts are given jurisdiction for general intellectual property cases.

Three, continued improving the fact-finding mechanism for specialised technologies. The courts of all levels have explored effective fact-finding methods for specialised technology in intellectual property adjudication, which encompass forensic examination, expert assistant (*zhuanjia fuzhuren*) and expert assessor (*zhuanjia peishenyuan*) as part of the technical fact-finding system. Much effort has been taken by the courts in different regions:

The Heilongjiang Province High People’s Court has developed the *Heilongjiang Province Rules of Implementation for Consultation in Scientific & Technological Matters in Intellectual Property Adjudication*; Inner Mongolia Autonomous Region High People’s Court has signed a memorandum of cooperation on judicial protection of intellectual property with the region’s science and technology association, and have appointed 25 technical experts as litigation assistants; Jiangsu Province High People’s Court has outlined the method of use of expert witnesses during intellectual property litigation in the *Practical Uses of Expert Witnesses in Adjudication of Intellectual Property Cases*; the Urumqi Intermediate People’s Court uses expert assessors for all intellectual

property cases; Beijing 2<sup>nd</sup> Intermediate People's Court has employed the "three-member technical team, and five-member adjudication panel" to try patent cases involving complex technical fact-finding. The courts of Tianjin, Xinjiang, Hubei, Hunan and Sichuan have been actively exploring the expert technical assessor system, and have appointed experts to be lay judges to plug the specialised technical knowledge gaps of intellectual property judges.

### **Further publicised the judicial protection of intellectual property to broaden public impact**

In 2012, the people's courts have used the World Intellectual Property Day on 26 April as opportunity to organise a Publicity Week for the April 26 World Intellectual Property Day. Wide-ranging, comprehensive and multi-perspective publicity activities on the judicial protection of intellectual property were organised, so as to accelerate the formation of a rule of law culture for intellectual property and to widen the public impact of intellectual property judicial protection.

On 26 April World Intellectual Property Day, SPC organised a press conference and released the *Intellectual Property Protection by Chinese Courts in 2011* (Chinese & English Editions), and published the *Ten Major Cases and Fifty Typical Cases on Judicial Protection of Intellectual Property for 2011*, and the Supreme People's Court's *Annual Report on Intellectual Property Cases*. In November 2012, SPC, SPP and MPS jointly published the first *Yearbook on Intellectual Property Protection in China (2011)*. The local courts have captured fully the benefits of newspapers, books and magazines, publicity brochures, radio stations, television stations, broadcast networks and the internet and other media to promote the significance, judicial policies and achievements of the judiciary in protecting intellectual property, so as to nurture the awareness of intellectual property right and rule of law concept among the public.

The high people's courts in Beijing, Chongqing, Gansu, Xinjiang, Shandong, Hebei, Henan, Jiangsu, Hunan, Guangdong, Guangxi, Sichuan and Hainan have published their own white paper or blue paper on the judicial protection of intellectual property for 2011. During the publicity week, the Liaoning Province High People's Court had organised a public incineration of pirated publications, and the

Liaoning Television Station broadcasted a special documentary film called the *Glorious Path in Intellectual Property Adjudication*; the Xining Intermediate People's Court of Qinghai Province has forged a long-term collaborative relationship with the Qinghai Television Station, which through the economic segment's "Life and Law (*shenghuo yu fa*)" programme, reported and publicised the court's work in protecting intellectual property; many media, such as the *Legal Daily*, *Dazhong Daily*, Shangdong Satellite Television and *Shandong Legal News* have reported the intellectual property adjudication work of the courts in Shandong Province, and the *People's Court Daily* has also published an article entitled "Clearing the Skies for Rule of Law in Intellectual Property Rights" relating the work of the Shandong courts; the branch courts of the Xinjiang Production and Construction Corps have also publicised its efforts in protecting intellectual property by giving out questionnaires on intellectual property knowledge and books of the law, and by providing legal advice.

**Strengthened cooperation with the administrative and law enforcement authorities to broadened the social impact of judicial protection of intellectual property**

In 2012, the people's courts have aligned as appropriately the relationship between the judicial protection and administrative protection of intellectual property, and furthered their cooperation with the administrative authorities, and have optimised the intellectual property protection regime; in doing so, they have established a synergistic force, and have continued to expand the social impact of the judiciary in intellectual property protection.

The SPC has convened many inter-departmental meetings with the Ministry of Public Security (MPS), SPP, and SAIC to discuss draft legislative proposals for the criminal enforcement of intellectual property, study the standard of proof for criminal cases involving counterfeit and fake or inferior goods, and promoted the establishment of a case guidance mechanism for criminal adjudication intellectual property cases, so as to improve the consistency in judicial enforcement of intellectual property rights.

The people's courts have assisted the MPS in combating the crime of infringement of rights and counterfeiting, and have since solved 43,000 cases involving the crimes of



infringement of intellectual property and of manufacturing and sale of fake and inferior goods. More than 60,000 criminal suspects were arrested, and the amount involved was 11.3 billion yuan.

The high people's courts of Heilongjiang, Shaanxi etc. have signed a *Memorandum of Cooperation on Strengthening Intellectual Property Protection* with the administrative and law enforcement agencies, such as the provincial intellectual property bureau, the copyright bureau, industry & commerce bureau, to work together in protecting and managing intellectual property. The Guizhou High People's Court has stepped up its cooperation and coordination with the relevant authorities, such as the provincial intellectual property bureau, industry & commerce bureau, food and drug administration, the cultural regulatory authorities and the public security department, to find ways to establish a long-term mechanism jointly enforced by the judiciary and the administrative authorities, to protect intellectual property rights involving the cultural heritage of Guizhou's ethnic minorities, geographical indications, and traditional Chinese medicine. The high people's courts of Ningxia, Anhui, Hebei, Henan and Guangxi have also taken an active role in adopting various ways to strengthen communication, coordination and cooperation with administrative authorities as the intellectual property bureau, copyright bureau, and industry & commerce bureau, to facilitate positive interaction between the judiciary and administrative law enforcement authorities for a powerful and synergistic force in intellectual property protection.

### **Buttressed international and inter-regional cooperation to increase global impact**

In 2012, the people's courts have continued to adopt an international perspective, and have broadened the avenues and format to strengthen international and regional exchanges. These are ways to dispel misunderstandings, build trust, and facilitate cooperation, to continue expanding the international impact of China in respect of judicial protection of intellectual property.

In May, the China-United States Intellectual Property Adjudication Conference was held in Beijing. More than 1,200 participants, including representatives of intellectual property judges from China and the United States, government officials, academics,

lawyers, representatives of intellectual property owners, attended the seminar. More than 240 intellectual property judges from China were at the conference; the United States sent a delegation of more than 200 people, including seven judges from United States Court of Appeals for the Federal Circuit, director of the United States Patent and Trademark Office, and president of the Federal Circuit Bar Association. Twenty-six topics, including “Macro Issues concerning Intellectual Property Adjudication” and “Contribution of Court to the IP System”, were discussed in depth and extensively, with 143 speaking at the conference. The conference reflected the sincerity and goodwill on the part of the Chinese and the Americans to share and cooperate for the future in the increasingly globalised world, and was indeed a milestone in intellectual property relations between the two countries.

SPC has responded positively by sending representatives to participate in activities as the China-US Intellectual Property Work Group Meeting, the China-Europe Intellectual Property Work Group Meeting, the Cross-Straits Intellectual Property Agreement Work Group Meeting, and the intellectual property public relations team that visited the United States etc, and have prepared more than thirty sets of work plans and recommendations that showcased our achievements in intellectual property protection. SPC judges have also received nearly one hundred high level delegates from the United States, the European Union, Japan and Korea, and have responded to the concerns for their foreign visitors, clarified misunderstandings, and shared our practices and achievements in intellectual property protection. They have also corrected misconceptions of a handful of countries in our intellectual property protection regime. SPC has also sent some of its intellectual property judges as participants in international intellectual property meetings in countries as the United States, Ireland and Korea.

### **III. Increased adjudication supervision and guidance, and ensured consistency in application of law**

The people’s courts have stepped up adjudication supervision and operational guidance for intellectual property cases, unified the judicial standards and improved the quality of adjudication. First, judicial interpretations were strengthened, judicial policies improved, and exercise of discretion during adjudication unified; second, the ways of providing supervision and guidance were broadened to improve the quality of

adjudication; third, research and analysis was stepped up to resolve promptly any emerging or difficult problems in application of law.

### **Strengthened judicial interpretation, improved judicial policies and unified exercise of discretion during adjudication**

In May, SPC released the *Provisions on Issues Relating to the Application of the Law in Adjudicating Civil Disputes Arising from Monopolistic Behaviour*. This was the first judicial interpretation pertaining to anti-monopoly that SPC has issued, providing for initiation of action, accepting a case, jurisdiction, distribution of burden of proof, evidence in litigation, civil liabilities, statutory limitation etc. It was essential for guiding the courts in applying the Anti-Monopoly Law correctly to stop monopolistic behaviour according to law and to ensure fair competition.

In December, SPC issued the *Provisions on Issues Relating to the Application of the Law in Adjudicating Civil Disputes Involving the Infringement of the Right to Network Dissemination of Information*. This was a judicial interpretation that provided for the principles on which discretion is exercised in cases involving infringement of the right to network dissemination of information, determination of infringement behaviour, determination of joint-direct infringement, induced infringement and contributory infringement, and determination of objective fault on the part of the network service providers. It is an effective tool for dealing with the impact and challenges that the internet presents for the traditional protection of copyright and for ensuring the correct application of the *Copyright Law*.

In February, Xi Xiaoming, Vice-president of SPC gave a keynote speech at the first workshop for presiding judges of intellectual property divisions on the topic “Grasping Precisely the Current Policies on Judicial Protection of Intellectual Property to Further Strengthen Judicial Protection for Intellectual Property”. For the first time, he gave a comprehensive explanation of how the SPC’s intellectual property tribunal has actively explored the judicial policy of “strengthen protection, classification, appropriate stringency”. These are the basic tenets on which our judicial protection of intellectual property is based. To “strengthen protection” is the necessary path, given our socioeconomic situation as well as the domestic and international environment; “classification” is the necessary requirement, given the nature and characteristics of

intellectual property; “appropriate stringency” is the demand, given the implicit connection between protection of intellectual property and economic development.

### **Broadened ways of providing supervision and guidance to improve quality of adjudication**

In 2012, the people’s courts have relied on a variety of methods, such as published guiding opinions and guiding cases, organised meetings on adjudication operations, and announcing information on major and related intellectual property cases to broaden the means of supervision and guidance to improve the quality of adjudication.

In December, SPC has issued a notice on “Issues Regarding the Implementation of the ‘*Decision of the Standing Committee of the National People’s Congress on Amendment of the Civil Procedural Law of the People’s Republic of China*’ in Intellectual Property Adjudication”. The notice highlighted the importance of implementing the *Decision on Amendment of the Civil Procedural Law* (“*Decisions*”) for intellectual property adjudication, and set forth matters as a patent agent becoming an *agent ad litem* in the capacity of a citizen, and correct application of the pre-trial preservation of evidence, to guide the courts in applying the *Decisions* correctly in the course of their intellectual property adjudication.

The people’s courts have always attached great importance to the demonstrative and guidance function of typical cases in intellectual property adjudication. The selection and publication of typical cases are subject to a unified standard and has become part of the institutional practice over the long term. In April, SPC has selected 34 typical cases from the concluded cases in 2011, and has extracted and summarised 44 problems of application of law which are universally applicable. The problems are compiled in the Supreme People’s Court’s *Annual Report on Intellectual Property Cases (2011)* and published. SPC has also published the *Ten Major Cases and Fifty Typical Cases on Judicial Protection of Intellectual Property for 2011*. Those that have also published their local versions of typical intellectual property cases or annual report were the high people’s courts of Beijing, Tianjin, Chongqing, Heilongjiang, Liaoning, Inner Mongolia, Gansu, Henan, Hubei, Hunan, Sichuan, Jiangsu, Anhui, Fujian, Guangxi, Yunnan and Xinjiang.

The Zhejiang High People's Court has organised a province-wide work meeting on intellectual property adjudication and a seminar for presiding judges of intellectual property division for all the intermediate people's courts within the province. These were aimed at sorting thoughts for adjudicating emerging and difficult cases, to unify the adjudication standards. The courts of Jiangsu Province have created a new approach to adjudicating related cases, and have selected related cases that are either typical or demonstrative, and have taken the initiative to organise circuit tribunals. The Shanghai High People's Court has developed the *Guidebook on Adjudicating Copyright Cases* and the *Several Issues in Intellectual Property Adjudication during the First Half of 2012*. The Hunan High People's Court has observed and improved upon the reporting system on case trends and information, analysis system of the quality and effectiveness of cases remanded for retrial or cases with amended judgements, and the communication system for cases remanded for retrial or cases with amended judgements, and have promptly studied and notified the courts within the province salient problems in intellectual property cases. The Heilongjiang High People's Court has leveraged the Heilongjiang adjudication network and relied on the internet for instantaneous communication and the email to set up a guidance network for comprehensive intellectual property research to which all the courts within the province have access. The high people's courts of Henan, Shanxi and Jiangxi have established a reporting system for related intellectual property cases to ensure consistency of judgement for the same case.

### **Stepped up research and analysis to promptly resolve any emerging or difficult problems in application of law**

In 2012, the people's courts have focused on intellectual property adjudication, and have continued to strengthen research and analysis to cope with new situations and problems, so as to resolve promptly emerging and difficult problems with application of law.

2012 saw the amendment of six major laws, being the *Patent Law*, *Trademark Law*, *Copyright Law*, *Civil Procedural Law*, *Regulations on Patent Commissioning*, and *Measures on Service Invention*, and SPC has participated in the relevant meetings and discussions, and has closely followed the development of the law, taken note of new situation and emerging issues. It has also reviewed the judicial principles and

experiences generated from its adjudicatory practice in recent years, and conducted extensive studies and analysis to propose recommendations for legislative amendments. The intellectual property division SPC has also organised special discussions on particularly salient and difficult issues, including directions for use of drugs, copyright in karaoke, copyright for drama works, and non-squatting trademark issues.

Beijing High People's Court have completed research outcomes as *Answers to Several Issues on Adjudicating Disputes Involving the Infringement of Intellectual Property in E-Commerce*, and *Bench Book on Adjudicating Copyright Disputes Involving the Sharing of Video Clips* etc; Tianjin High People's Court has published the *Study on Intellectual Property Protection for Technology-Based Small & Medium-Sized Enterprises*; Shanghai High People's Court has published the *Study on Judicial Protection of Intellectual Property to Facilitate Development of the Cultural and Creative Industries*; Hunan Province People's Court has completed the *Research Report Copyright Cases on Karaoke Operators for all Courts within the Province*; Jiangsu High People's Court have commence studies as *A Study on Problems Relating to Evidentiary Rules during Adjudication of Intellectual Property Cases* and the *Study on the Judicial Protection of Intellectual Property for the Cultural Industry*; and the Hebei High People's Court has commenced the *Study on Intellectual Property Protection of Fine Ethnic Cultures*.

#### **IV. Bolstered the Foundation of Basic-Level Courts, and Strengthened the Adjudication Team**

In 2012, the people's courts have further consolidated the fundamental capacities of intellectual property adjudication and the basic-level courts, strengthened the capacity of the team of intellectual property judges, and drove the scientific development of intellectual property adjudication, so as to respond to the people's concerns and expectations in intellectual property adjudication. First, the courts have strengthened the adjudication team to improve upon the adjudication regime; second, they have improved political and judicial attitudes and ways, and have strengthened the building of an incorrupt practice to advance judicial impartiality; third, enhanced capacity building of intellectual property judges to elevate judicial credibility.

## **Strengthened the adjudication team to improve upon the adjudication regime**

The people's courts have always given priority to establishing an intellectual property division within the courts and to building a strong team. Courts that are of intermediate-level and above have intellectual property divisions, and the 141 basic-level courts with civil jurisdiction for general intellectual property matters have also established intellectual property divisions. Intellectual property judges for all levels of courts are selected from candidates who are well-versed in the law, highly-educated, with extensive adjudication experience. This was the way to strengthen the adjudication team and to optimise the adjudication structure. As at end 2012, there were 420 intellectual property divisions across the country, 2,759 intellectual property judges, and of whom, 97.5% with at least a bachelor degree and 41.1% with at least a master degree.

Also important is the leveraging of the fundamental roles of the basic-level and intermediate courts in intellectual property adjudication. In April, SPC issued the *Decision on Establishing a Research Base for the Judicial Protection of the Intellectual Property of Pharmaceutical Industry and on Increasing the Number of Demonstration Courts for Intellectual Property Adjudication and Field Study Bases and Theoretical Research Bases for the Judicial Protection of Intellectual Property*. Newly added basic-level demonstration courts for intellectual property adjudication were the Beijing Haidian District People's Court, Shanghai Huangpu District People's Court, Guangdong Province's Guangzhou Tianhe District People's Court, Jiangsu Province's Nanjing Gulou District People's Court, and Zhejiang Province's Hangzhou Xihu District People's Court, bring the total number to ten. Jiangsu Province's Nanjing Intermediate People's Court and Hubei Province's Wuhan Intermediate People's Court were the new research bases for intellectual property judicial protection; also, special research bases for intellectual property judicial protection for pharmaceutical industry were established at Jiangsu Province's Taizhou Intermediate People's Court and Lianyungang Intermediate People's Court, bringing the total number of research bases to nine.

**Improved political and judicial attitudes and ways, and strengthened the building of an incorrupt practice to advance judicial impartiality**

The people's courts have always focused on developing the political attitudes and ways of intellectual property judges. In 2012, the people's courts have pursued party-building to lead team-building and finally to achieve adjudication quality. To do that, many thematic activities were organised, such as learning and practising the scientific development concept, education sessions on the socialist rule of law concept, and entitled "People's Judge for the People" nurture and consolidate the socialist rule of law concept in intellectual property judges, and help the judges reinforce their ideals and beliefs.

The people's courts have always given priority to strengthening the judicial attitudes and ways of intellectual property judges. The value pursuit is "justice for the people". To achieve that, the courts have organised major discussions with the public and major checks on judicial attitudes and ways, so as to regulate judicial behaviour and improve on the judicial practice. In December, to implement the eight required qualities to improve the work practice and to regulate judicial actions as set forth by the Central Committee of the Communist Party of China, SPC published a notice pertaining to the *Six Measures to Improve the Judicial Practice* to guide the courts to observe the following, based on their practical realities: pursue justice for the people, and maintain close contact with the public; advance judicial openness, and accept the public's supervision; strengthen communication of the people's opinions, and expand judicial democracy; streamline meetings and activities, and really improve upon the ways that meetings are conducted; simplify documented reports, and really improve upon the ways that documents are prepared; improve research studies, and improve the effectiveness of research studies. These were the six areas that were worked on to achieve better attitudes and ways on the part of the judiciary.

The people's courts have always given priority to building a clean and uncorrupted judicial practice among intellectual property judges. In 2012, the people's courts have launched moral education programmes promoting incorrupt judicial practice, addressing problems with temporary and permanent solutions, but focusing on the root of problems. Moral education aims to help elevate the moral integrity of intellectual property judges and be conscious of resisting moral depravity. The courts of various levels have stepped up the creation of a corruption risk prevention and control mechanism to realise the "five strict prohibitions and the various anti-graft systems. Anti-corruption ombudsman, recusal of judges, anti-interference of case operations by



internal officers, anti-conflict of interest etc. are anti-graft measures, which are internal supervisory efforts aimed at improving judicial powers at work.

### **Enhanced capacity building of intellectual property judges to elevate judicial credibility**

The people's courts have always place great emphasis on strengthening capacity-building among intellectual property judges. In 2012, the people's courts have adopted a multi-prong approach, and have developed learning-based adjudication divisions, held trainings, organised seminars, initiated the hearing-cum-written judgement "double evaluation system", to put together a team of high quality and professional intellectual property judges. This was a practical way to improve ability and quality of intellectual property judges in applying the law and in resolving practical problems.

In February, SPC held the first National Workshop for Presiding Judges of Intellectual Property Divisions. All presiding judges from the high people's courts, intermediate people's courts and basic-level courts having jurisdiction for intellectual property cases were at the workshop. More than 230 participants were at the meeting. Local experts from the State Council Legislative Affairs Office, the State Intellectual Property Office, and Renmin University of China, and foreign experts from the United States Federal Circuit were invited to give keynote addresses, during which the basic intellectual property regime as well as the most discussed and difficult issues were discussed extensively. In September, SPC held a training course on intellectual property adjudication practice at the National Judges College, where more than 200 intellectual property judges from across the country were trained. Famous academics and experience SPC judges were invited to impart knowledge on the adjudication practice of patent, trademark, copyright and unfair competition disputes.

SPC has organised more than ten seminars, including "Seminar on the Foremost Intellectual Problems", "Seminar on the Protection of Copyright on the Internet and Well-Known Marks", "Forum on Intellectual Property Right of Pharmaceuticals", "Seminar on the Protection of Intellectual Property Right in the Information Era" and "Seminar on Strengthening Protection of Well-Known Marks and

Contain Illegal Trademark Squatting”. Other courts in different regions have also organised similar activities:

The Beijing High People’s Court held the “Fourth Seminar on Prime Intellectual Property Cases for Beijing Courts”; the Inner Mongolia Autonomous Region High People’s Court enrolled all the region’s judges in the distant learning programme organised by the China Intellectual Property Training Centre; the Shandong courts were gearing towards the building of a learning-based party branch, where weekly discussions on hot and difficult issues encountered during adjudication of intellectual property cases were held; the Zhejiang High People’s Court has developed a training system for key adjudication personnel of intellectual property-related civil cases; the Sichuan Province courts have stepped up their training of new intellectual property judges by adopting a “one-to-one” mentoring system; the Hunan Province High People’s Court has held trainings on intellectual property adjudication, and have since trained more than 160 key adjudicators of intellectual property cases.

## **Conclusion**

2012 was a gainful year for the judiciary in terms of intellectual property adjudication. For 2013, the people’s courts will assess any changing circumstances and determine the new tasks ahead, and will work towards advancing their cause.

2013 is the first year to implementing the principles as set forth at the National Congress of the Communist Party. It is also a critical year to build on the previous year’s achievements and to continue the good work in the year ahead. It is a year which offers unprecedented opportunities. The people’s courts will practise the principles of the 18<sup>th</sup> party congress and adhere to the key notions underlying the Deng Xiaoping Theory, the “Three Represents” and the Scientific Development Concept. Their goals are to build a safe country governed by the rule of law, and to “work towards ensuring that the people will experience equity and justice in every judicial case”. They work to enforce the law and adjudicate intellectual property-related disputes, initiate judicial reforms, supervise and guide, build capacity, and strengthen the fundamentals at the basic-level courts. Their ultimate aim is to serve the people, deliver justice, improve judicial credibility, and to power the building of a complete *xiaokang* society by providing the most effective judicial service.