

Intellectual Property Protection by Chinese Courts in 2013

Introduction

2013 is the initial year which the people's courts applied the principles of the 18th Party Congress. It is also a critical year to ensure continued efficient and effective implementation of the twelfth Five-Year Plan, and a year which intellectual property adjudication forges new frontiers.

The people's court have done well under the competent leadership of the Central Committee of the Chinese Communist Party (CPC) headed by General Secretary Xi Jinping, the keen supervision of people's congresses at all levels and their Standing Committees, and the valuable guidance of the Deng Xiaoping Theory, the "Three Represents" concepts and the scientific development approach.

The courts' foci were to carry out the essential messages of President Xi's series of important speeches and the responsibilities as required by the *Constitution* and the law; and to centre on the goal that "the people perceive equality and justice in every judicial case", and also on the macro perspective, justice for the people and judicial impartiality.

The people's courts endeavoured to strengthen comprehensively intellectual property adjudication, implement the national intellectual property strategy and enable intellectual property holders to benefit from the courts being the primary enforcer of intellectual property protection. The courts also deepened judicial reform of the intellectual property system, pressed ahead with greater transparency, better credibility and improved capabilities. All in all, the people's courts have contributed significantly to a safer China governed by the rule-of-law, enabled China to forge ahead in reinventing itself as an innovative country and a socialist cultural giant, and in advancing towards becoming a complete *xiaokang* society.

I. Emphasised the priorities of judicial protection and leveraged the role of the courts

The people's courts based their work on the party and the national priorities, and regarded intellectual property adjudication in earnest and its delivery with enthusiasm. There was profound observance of the basic judicial policy for intellectual property protection, which is "greater protection, classification of cases, appropriate stringency", and lawful, fair and effective adjudication of different types of intellectual property cases, so that the legitimate rights of intellectual property holders were protected, intellectual property infringements were stopped and sanctioned, and fair competition within the economic order of a socialist market economy preserved. The courts have thus furthered their dominant role as protectors of intellectual property. In 2013, the number of first and second instance intellectual property cases concluded by the local people's courts totalled 114,075 cases.

(i) Accomplished notable achievements in adjudication of civil cases relating to intellectual property, and enabled effective leveraging of the courts' role in intellectual property protection and in driving innovation

In 2013, the people's courts have accurately discerned the new goals and new demands on judicial protection of intellectual property under the comprehensive and deepened reform framework, and have seized opportunities, defined their work agenda and adhered to judicial activism. Civil litigation is increasingly important as a key means in protecting intellectual property and promoting indigenous innovation.

Compared to 2012, the number of first instance civil intellectual property cases accepted and disposed by local courts grew by 1.33% and 5.29% to 88,583 and 88,286 cases respectively. Within each intellectual property branch, the case numbers and percentage change compared to last year were as follows:

Newly accepted cases: 9,195 patent cases, 5.01% lower; 23,272 trademark cases, 17.45% higher; 51,351 copyright cases, 4.64% lower; 949 cases involving technology agreements, 27.21% higher; 1,302 cases involving unfair competition (of which, 72 were first instance civil cases involving monopoly disputes), 15.94% higher; 2,514 cases involved other intellectual property disputes, 13.91% higher.

Disposed cases: 1,697 first instance cases involving foreign parties, 18.75% higher; 483 first instance cases involving parties from Hong Kong, Taiwan or Macao, 21.21% lower; 69 first instance civil cases involving monopoly disputes, 40.82% higher.

For second instance cases involving civil intellectual property disputes, 11,957 cases were accepted and 11,553 cases disposed, respectively 24.80% and 24.33% higher than last year.

For reopened (*zaishen*) cases involving civil intellectual property disputes (including carried-over cases), 75 were newly accepted and 96 were concluded cases, which were 56.40% and 56.95% respectively lower than last year.

The Supreme People's Court (SPC)'s intellectual property division accepted 457 civil cases involving intellectual property disputes and concluded 417 cases, which were 92.82% and 69.51% higher than last year. Of the 365 newly accepted applications for retrial, 341 were disposed.

The people's courts of all levels have relied upon pre-trial preservation measures to promptly and effectively end infringements, and protect the lawful rights of the parties concerned.

The courts have accepted 11 cases involving application for preliminary injunction relating to intellectual property disputes; 77.78% were granted approvals. 173 applications for pre-trial preservation of evidence were accepted, and 97.63% were granted approval, which have reduced the burden of proof on the parties concerned. 47 applications for pre-trial preservation of property were accepted, and 96.97% approved.

For example, in the computer software copyright infringement case of Microsoft vs. e-Future Information Technology Inc., where e-Future was alleged to have infringed upon Microsoft's Microsoft Office series of software, Microsoft had applied for pre-trial preservation of evidence and its application approved. The case was handled by the Wuhan Intermediate People's Court at Hubei Province. The court approved preservation of the facts of infringement. Subsequently, the respondent accepted the court's decision and did not continue with the suit.

High profile cases include: *Hunan Keliyuan New Energy Co., Ltd vs. Ailantian High Technology Materials (Dalian) Co., Ltd*, involving infringement of invention patent; *Foshan Haitian Flavouring and Food Company Ltd vs. Foshan Gaoming Wei Pole Condiments Limited* involving trademark infringement and unfair competition; *Baidu Online Network Technology (Beijing) Co., Ltd etc. vs. Beijing Qihoo Technology Ltd*, involving unfair competition; *Tsuburaya Productions Co., Ltd etc. vs. Shanghai Audio & Video Publishing House*, involving copyright infringement; *SI Group Inc. etc. vs. Sino Legend (Zhangjiagang) Chemical Co., Ltd etc.*, involving trade secrets dispute; *Fujian Chaoda Modern Seed Industry Co.,Ltd vs. Rice Research Institute of the Anhui Academy of Agricultural Sciences*, involving determination of invalidity claims of a licensing agreement on plant breeders' rights etc.

(ii) Adjudicated intellectual property-related administrative actions, and fully exercised the courts' function in supervising enforcement of the law and ensuring lawful administration

The people's courts have carried out the important work arrangements as required by the 18th Party Congress to build a socialist rule-of-law country and to fully advance governance of the country based on law. The courts have also exercised fully their judicial review powers to supervise and support administrative authorities to administer according to law, therefore facilitated better administrative protection of intellectual property and protected the lawful rights of administrative counterparties.

In 2013, the local courts accepted 2,886 intellectual property-related administrative cases of first instance, 1.43% lower than last year, and disposed 2,901 cases (including carried forward cases), basically no change from last year. Of those accepted, the breakdown by intellectual property branch and percentage change compared to last year is as follows: 697 patent cases, 8.29% lower; 2161 trademark cases, 0.51% higher; 3 copyright cases, no change from last year; 25 cases of other categories, 66.67% higher.

Among the disposed first instance cases, those involving foreign parties or Hong Kong, Macao or Taiwan parties continued to represent a substantial percentage. Total number of cases was 1,312, representing 45.23% of the

concluded intellectual property-related first instance administrative cases, of which, 1,143 cases involved foreign parties, 84 Hong Kong parties, 0 Macao parties and 85 Taiwan parties. All disposed cases were either patent or trademark related disputes, of which the latter account for a substantial percentage of 80.10%.

Total intellectual property-related administrative cases of second instance accepted and concluded by the local courts was 1,490 and 1,496 respectively, 4.64% and 7.78% more than last year. Of the concluded cases, 1,268 were affirmed, 146 reversed, 59 withdrawn, 18 dismissed; 5 other cases were disposed of through other methods.

SPC's intellectual property division accepted 117 applications for retrial of administrative cases and concluded 104, 19.38% and 6.12% respectively more than last year. Of the concluded cases, 80 cases or 76.92% were dismissed; *tishen* orders (similar to certiorari) were issued for 23 cases or 22.12%, 1 case or 0.96% were withdrawn. 19 new *tishen* cases were accepted, and 19 cases were disposed. Of those disposed, SPC affirmed the original decision for 3 cases, or 15.79%, and reversed the decision for 14 cases, or 73.69%; 1 case, or 5.26%, withdrew; in 1 case, or 5.26%, the original ruling was revoked and an order issued to docket the case for hearing.

High profile administrative cases include: *Power Dekor Group Co., Ltd vs. Trademark Review and Adjudication Board of the State Administration of Industry & Commerce (SAIC) etc.*, involving a trademark administrative dispute; *Cubist Pharmaceuticals, Inc. vs. Patent Review Board, State Intellectual Property Office (SIPO)*, involving an administrative dispute on the invalidation of a patent invention; *Wuyishan City's Tongmu Tea Leaves Co., Ltd vs. Trademark Review and Adjudication Board of the State Administration of Industry & Commerce (SAIC) etc.*, involving an administrative dispute on the review of a trademark opposition; *Beijing Yawang Roasted Duck Shop Co., Ltd vs. Trademark Review and Adjudication Board of the State Administration of Industry & Commerce etc.*, involving an administrative dispute on the review of a trademark opposition; *Li Longfeng vs. Trademark Review and Adjudication Board of the State Administration of Industry & Commerce etc.*, involving a trademark administrative dispute etc.

(iii) Improved and strong criminal adjudication of intellectual property disputes to effectively sanction crimes and deter infringement

The people's courts have exercised fully their adjudication powers for intellectual property crimes, and have cooperated with the relevant authorities in special actions to fight intellectual property crimes and crimes involving the manufacturing and sale of counterfeit or inferior goods. Through their relentless efforts, the courts' have succeeded in punishing and deterring criminal behaviour relating to intellectual property infringement. For the first time in five years, the number of intellectual property crimes adjudicated by the people's courts has reduced.

In 2013, for intellectual property-related criminal cases of first instance handled by local courts, new filings reduced by 28.79% to 9,331 cases, including 5,021 infringement cases (3,473 involved infringement of registered trademarks, such as use of counterfeit marks, and 1,484 cases involved copyright infringement), 35.96% lower than last year; 2,455 were infringement cases involving the production and sale of counterfeit or inferior goods, 5.83% lower than last year; 1,686 were infringement cases involving illegal business operations, 34.83% lower than last year; 169 were cases of other nature, 141.43% higher than last year.

The number of intellectual property-related criminal cases of first instance concluded by the local courts has decreased by 28%, to 9,212 cases. The number of persons against whom judgments were effective totalled 13,424, 13.49% lower than last year, including 13,265 who were given criminal sanctions, 13.52% lower than last year. Of the concluded cases, 4,957 involved intellectual property infringement, and the number of persons against whom judgments were effective totalled 6,866; 2,390 cases involved production and sale of counterfeit and inferior goods (involving intellectual property infringement), and the number of persons against whom judgments were effective totalled 3,430; 1,712 cases involved illegal business operations (involving intellectual property infringement), and the number of persons against whom judgments were effective totalled 2,882; 153 cases were of other nature (involving intellectual property infringement), and the number of persons against whom judgments were effective totalled 246.

For concluded and disposed intellectual property-related criminal cases, 1546 cases involved counterfeiting trademarks, and the number of persons against whom judgments were effective totalled 2462; 1,496 cases involved the production and sale of counterfeit and inferior goods, and the number of persons against whom judgments were effective totalled 2,221; 350 cases involved illegal manufacturing and sale of illegally manufactured marks of registered trademarks, and the number of persons against whom judgments were effective totalled 589; 1 case involved counterfeiting patent, and the number of persons against whom judgments were effective was 0; 1,499 cases involved copyright infringement, and the number of persons against whom judgments were effective was 1,490; 15 cases involved the sale of infringing reproductions, and the number of persons against whom judgments were effective was 33; 50 cases involved infringement of trade secrets, and the number of persons against whom judgments were effective was 71.

Newly accepted second instance criminal cases involving intellectual property infringement totalled 662, and the number of disposed cases was 627.

High profile intellectual property-related criminal cases were: *Zong Liangui* case involving 28 people in trademark counterfeit; *Jiangxi Yibo E-Tech Co., Ltd etc.* case involving infringement of trade secret; *Chen Bangqu etc.* case involving 3 people in the sale of counterfeit and inferior goods; *You Yan etc.* case involving 3 people in copyright infringement.

In 2013, the people's courts have comprehensively strengthened their adjudication of intellectual property cases, and new traits have emerged:

First, slower increase in the number of cases, and greater adjudication difficulty. The increase in the number of first instance civil cases received by all the local people's courts have fell from the previous year's 45.99% to 1.33%. Newly received first instance administrative and criminal cases have also seen a changed trend, from the respective increases of 20.35% and 129.61%, to a decrease of 1.43% and 28%. From 2009 to 2012, the increases in newly accepted first instance civil cases, administrative cases and criminal cases were 37.63%, 33.05% and 48.05% respectively.

Based on the distribution of newly accepted cases, local people's courts that have a larger case base are seen to experience a slower increase in the number of new cases, whereas those with a smaller case base, such as courts located in the central and western regions, experience a faster increase. Although the courts at large experienced a slower increase in the number of new cases, the number of first instance civil cases of intellectual property disputes involving foreign parties has grown considerably, with year-on-year increase of 18.75%.

The following types of cases have increased in numbers, therefore continued increase in the level of adjudication difficulty: new types of cases or complicated and problematic cases involving cutting-edge technology; brand protection cases involving the major interests of famous companies; technological contract cases involving the commercial use of technological outcomes; and unfair competition cases involving maintaining the market's competition order. Some of these are: *Beijing Ruibang Yonghe Technology and Trade Co., Ltd vs. Johnson & Johnson Medical (Shanghai) Ltd etc.*, involving a first vertical monopoly agreement dispute in China; *Eli Lilly & Co. of U.S.A. etc. vs. Huang Mengwei*, involving a dispute on infringement of technical secret; *Huawei Technologies Co., Ltd vs. IDC Co.*, involving a royalty dispute over the licensing of standard-essential patents; *Google Inc. vs. Wang Shen*, involving a copyright infringement dispute; *Zhongshan Longcheng Daily Product Co., Ltd. vs. Hubei Tongba Children's Appliances Co., Ltd*, involving a dispute on utility patent infringement; *Tianjin Tianlong Science & Technology of Agriculture Co.,Ltd vs. Jiangsu Xu Agricultural Seed Technology Co., Ltd*, involving a dispute on infringement of new plant variety etc.

Second, substantial improvement in adjudication quality and efficiency.

Clearance rate of civil intellectual property case of first instance at the local courts was stable, at 87.95%; reopen (*zaishen*) rate fell from 2012's 0.20% to 0.09%; appeal cases reversed or remanded for retrial (*chongshen*) was at 5.84%. Clearance rate of administrative intellectual property cases of first instance at local courts was 87.04%, increased by 0.5% from last year; appeal cases reversed and remanded for retrial was at 9.8%, reopen rate fell from 2012's 0.21% to 0.069%. The percentage of criminal intellectual property cases of first instance concluded within time limit was 91.66%, a rather high figure.

Third, effectiveness of judicial mediation evident. The people's courts have observed the adjudication tenets of lawful, voluntary and regulated mediation to beef up mediation for intellectual property disputes, and have continued to seek creative ways in mediation for dispute resolution. The coordinated "three-in-one" mediation mechanism, which aligns judicial mediation with people's mediation and administrative mediation, was streamlined and improved, so that many conflicts and disputes were settled at the grass-root level and at pre-litigation. The courts also continued to explore other mediation methods "mediation by appointment" (*weituó tiaojie*), "mediation by industry associations" (*hangye tiaojie*) and "mediation by experts" (*zhuanjia tiaojie*), to create a multi-channel coordinated mediation mechanism and find the correct breakthrough point to resolve problems encountered during mediation. There was also focus on mediating related cases to facilitate cooperation to the advantage of multiple parties and for greater social harmony.

For example, for complex cases involving serious disputes, the Shanxi High People's Court did not simply sit within the courtroom and hear a case; instead, in its many attempts to find ways to resolve disputes, judges would perform fieldwork to better understand a case's context, which enabled them to resolve cases involving important livelihoods at the grass-root level.

Cooperation between the people's courts and the relevant authorities had enabled the withdrawal rate of first instance civil cases involving intellectual property disputes to reach 68.45%. High profile cases that were successfully mediated by the courts were: *Beijing Changdi Mapping Technologies Co., Ltd vs. Careland Technology (Shenzhen) Co.,Ltd etc.*, involving a copyright dispute on alleged plagiarism of the "Dao Dao Tong" GPS Electronic Map; *BMW vs. Shenzhen Century Baoma Apparel Co. Ltd*, involving trademark infringement and unfair competition practices; *Hong Kong Hung Wo Tong Medicament Ltd vs. Guilin Yibai Lijiang Pharmaceutical Co.,Ltd*, involving a dispute on technical cooperation agreement; *Microsoft Inc. vs. Anhui Wanyi Science & Technology Co., Ltd*, involving copyright infringement of computer software; *Gao Xiaosong vs. Beijing Youshi Meters Network Technology Co., Ltd*, involving copyright infringement etc.. The courts' work has resulted in encouraging social and legal outcomes.

Fourth, greater judicial transparency. The people's courts have worked towards "sunshine justice" by improving judicial openness to ensure the people's right to know, right to participate and right to supervise judicial endeavours are ensured.

- **Improved and regulated publication system for written judgements involving intellectual property cases.** SPC's intellectual property division has issued the *Supreme People's Court's Provisional Guidelines for Online Publication of Written Judgements for Intellectual Property Cases*, and has set up a staff system for online publication and implemented a regular reporting system for online publication, so as to ensure judgements are duly published online. As at end 2013, 61,368 legally effective written judgements for intellectual property disputes issued by the people's courts of all levels have been published.
- **Stepped up disclosure of details for major cases.** For cases of major social concern, adjudication should be shown using all possible and appropriate media formats to improve the depth and extensiveness of disclosure. In major cases such as the unfair competition case of Tencent Inc. vs. Qihoo 360, and the Johnson & Johnson monopoly case, the courts employed open trials and the society has responded positively.
- **Continued to widen channels of judicial openness.** Live telecast, inviting deputies to people's congresses to observe court proceedings, organise open days for the public, publishing white paper on judicial protection and collections of typical cases etc. are means which the courts disclose information on intellectual property adjudication to respond to social concerns. SPC has published the *Intellectual Property Protection by Chinese Courts in 2012*, and compiled and published the *Yearbook on Intellectual Property Protection in China (2012)*. The high people's courts of Beijing Municipality, Hebei Province, Shanghai Municipality, Jiangsu Province, Anhui Province, Shandong Province, Guangdong Province, Hainan Province, Gansu Province and Xinjiang Autonomous Region etc. have also released publications on intellectual property protection in their respective jurisdictions.

· **Elaborated legal reasoning in written judgements.** The courts have disclosed comprehensively and objectively the case facts, evidence relied upon for decision and arguments by each party, and decision rationale, so as to improve the public's comprehension of the court's ruling. This would also enable the written judgement to demonstrate the entire judicial process, present a positive judiciary's image, regulated judicial behaviour. Other objectives include disseminating legal knowledge and taking the lead in the society to establish the correct social behaviour and transmit the positive rule-of-law ethos.

· **Accepted supervision on own initiative.** The courts have solicited widely from different social sectors opinions and recommendations on judicial protection, and have taken the initiative to accept supervision by the general public, the prosecutorial and supervisory authorities and the media for their work on judicial protection. SPC attaches great importance to the opinions and recommendations on the Report on Intellectual Property Adjudication by the Supreme People's Court presented at the 13th meeting of the Standing Committee of 11th National People's Congress, and has studied and developed implementation plans and completed a special report to ensure that the standing committee's review recommendations are implemented. Local people's courts of all levels have also communicated frequently with people's congresses' deputies and members of the local people's political consultative conferences to update them on the progress of judicial protection and improve their work. The High People's Court of Jiangxi Province has made a special presentation on the progress of its work on judicial protection of intellectual property, and was commended by the deputies for their good work.

Fifth, continued increase in adjudication impact. The people's courts attach high priority to adjudication of major cases, and have heard a series of cases of great social concern, extensive impact and significant disputed interest, and involve the direction of industry development. In doing so, the courts have ensured equal protection of the lawful rights of different categories of rights- holders and of local and foreign parties. The courts' work is recognised and commended by the society at large and at home and abroad, and the impact of judicial protection of intellectual property has been significantly increased.

For example, in the case of *Tencent Inc. vs. Qihoo 360* involving unfair competition, and which requires determination of competition rules in the internet domain, SPC put together a five-judge panel, whereby Xi Xiaoming, vice-president of the SPC, was the presiding judge. The entire hearing was telecast live, and more than forty domestic and foreign media companies gave extensive coverage. The strong adjudication team and open hearing, as well as the sustained and wide attention drawn, indicates the confidence and determination on the part of the people's courts to step up judicial protection of intellectual property. The public's response also demonstrates considerable popular resonance, whether on the part of the social public or holders of intellectual property rights.

II. Grounded in the goal of innovation-driven development, and focused on implementing the intellectual property strategy

The 18th Party Congress has laid out a major strategy at the critical juncture of China's plan to build a complete *xiaokang* society, which encompasses accelerating the building of a more robust socialist market economy, remodelling the growth strategy, implementing an innovation-driven development strategy, and strengthening intellectual property protection. The people's courts are fully aware of the unprecedented circumstances and new tasks they face in protecting intellectual property, and took full advantage of the opportunities presented before them, met the challenges, and leveraged their official roles to serve the larger interests. They have implemented the national intellectual property strategy, and have relentlessly contributed to ensuring and facilitating economic and social development. The High People's Court of Guangdong Province has been awarded the honour of "Progressive Team in Implementation of the National Intellectual Property Strategy".

(i) Persisted in serving the larger interests, and continued to improve upon the policies pertaining to judicial protection of intellectual property

A correct mind-set and appropriate policies are important guideposts for strengthening judicial protection of intellectual property, and for ensuring fair and efficient adjudication of different types of intellectual property cases.

In 2013, the people's courts have redoubled efforts in implementing the basic policy of "greater protection, classification of cases, appropriate stringency" in

judicial protection, and have promptly adjusted and improved upon judicial policies and systems based on changes in the national policies relating to science & technology, economics, industry, culture and trade etc. Based on the nature, function, characteristics and practical needs of the various intellectual property branches, specific judicial policies were enhanced and improved.

The courts have:

Focused on building up the momentum on innovation-driven development and improving the capacity for indigenous innovation by strengthening patent protection, and by concentrating on strengthening protection of the technological outcomes of essential and cutting-edge research, emerging strategic industries and modern information technology industries, so as to drive technological breakthroughs and innovation.

Focused on nurturing new competitive brand advantages to promote brand innovation by strengthening protection of trademarks and famous marks, and made determined efforts to check infringing behaviours as use of counterfeit marks and malicious trademark squatting.

Focused on promoting cultural prosperity and industrial development by strengthening copyright protection, and targeted at protecting splendid cultural resources, cultural innovation outcomes and new cultural forms to encourage indigenous innovation.

Focused on creating a fair and credible market environment to induce market dynamism by stepping up competition protection, cracking down on unfair competitive behaviour as counterfeit activities, false publicity, infringement of trade secrets, therefore, facilitated development of a robust and modern market regime.

Focused on defending the full rights of rights-holders by increasing the amount of damages awarded, strengthening application of evidence spoliation system and appropriately managing the relationship between statutory damages and discretionary damages for to improve reasonableness in calculation of damages. For criminal cases, focus especially on property sanctions to impose more severe punishment for

intellectual property crimes, so as to deprive criminals of the ability and the capacity to recidivate. For example, in the Zong Liangui etc. case involving 28 persons in the use of counterfeit marks for Arawana (“Jin Long Yu”) and Luhua cooking oil brands, the High People’s Court of Henan Province fined the defendants for 27.04 million yuan. This was an effective deterrent and has improved the market environment.

(ii) Persisted in reform and innovation, and continued to improve upon the intellectual property-related adjudication system and work mechanisms

To inject dynamism in the people’s courts intellectual property adjudication operations and ensure that effective institutional safeguards are in place, deepened judicial reform and reform and innovation are necessary. In 2013, the people’s courts have vigorously implemented reform and driven innovation in the intellectual property regime, and have made continued improvements in the adjudication system and work mechanisms.

Further optimised jurisdiction for intellectual property cases. Due to continued increase in the number of patent disputes, SPC issued the *Decision on Amending the “Several Rules Regarding the Application of Law When Adjudicating Patent Disputes”*, which provides for appropriate decentralising of jurisdictional powers for patent cases, and for designating basic people’s courts that meet specific criteria as the first instance court for patent disputes. Also, to streamline jurisdiction for a more tenable structure, certain courts were selected as the court of competence for civil cases relating to patent and technology disputes, and special cases such as those involving well-known marks are flexibility assigned to certain courts based on need.

As at end 2013, 87 intermediate people’s courts have jurisdiction for patent cases, 45 for new plant varieties, 46 for topographies for integrated circuits, and 45 for well-known marks; 160 basic courts are given jurisdiction for general intellectual property cases, and 7 basic courts for adjudicating utility and design patent disputes.

Steadily advanced pilot projects for “three-in-one” adjudication of intellectual property disputes. The courts have worked to improve the “three-in-one” pilot project to establish a more systematic, wholesome and synergistic regime, and have guided the local people’s courts to proceed steadily with the pilot project. As at end 2013, the number of participating courts includes 7 high people’s courts, 79 intermediate people’s courts and 71 basic people’s courts.

Further improved the technical fact-finding mechanism. The courts have refined the operation procedures for the technical fact-finding mechanisms for forensic examination, expert assistant (*zhuanjia fuzhuren*) and expert advice, established and improved the work mechanisms for participation in court hearings for expert witnesses and technical experts, and strengthened the procedural and substantive review of forensic opinion and expert opinion. As such, technical fact-finding is increasingly scientific in terms of approach.

The High People’s Court of Zhejiang Province has developed working guidelines for technical experts, and employed 20 technical experts to help resolve the problems relating to technical fact-finding. The High People’s Court of Hubei Province has set up three expert databanks to provide intellectual support for adjudication-related professional issues.

Optimised the work of people’s assessors. The participation methods and processes of people’s assessors in hearing cases were standardised, their participation mechanism improved, and additional expert assessors as needed for adjudication of intellectual property cases selected. Thus, the courts have ensured that the people’s assessors exercise their official powers according to law, and effectiveness of their participation improved. The Nanning Intermediate People’s Court in Guangxi Zhuang Autonomous Region has increased its use of expert assessors. Participation of expert assessors in hearing 58 cases involving complex technical issues has improved adjudication quality.

(iii) Persisted in pursuing justice for the people, and continued to expand the scope of judicial services for intellectual property

The people's courts have conscientiously observed the party's mass line in intellectual property adjudication, and have taken the initiative to practise justice for the people as a work objective by going into the grass-root level, getting to know the masses, listening to the voices of the people and understanding them, and have continued to improve judicial measures to provide convenience and benefits for the people.

Greater guidance on defending rights and litigation procedures.

The courts have provided more information on matters such as rights and duties, burden of proof and litigation risks, and have helped rights-holders manage infringement problems and defend their rights rationally.

For example, the Huangshi Intermediate People's Court of Hubei Province regularly distributes the "Legal Risks Warning Card", "Handbook on the Risks in Intellectual Property Protection" etc. to local businesses, and has helped companies set up their "rights-protection response mechanism" and "litigation guidance mechanism". The courts have also stepped up efforts in preserving evidence and in collecting evidence ex-officio. Whenever the circumstances satisfy the conditions for evidence preservation or investigation and collection of evidence, the courts would promptly take the appropriate measures to reduce the burden of proof on the part of the rights-holders.

Organised circuit tribunals as needed. The High People's Court of Henan Province has progressively organised circuit adjudication for intellectual property cases. More than 400 cases were heard by the circuit tribunal, thus have successfully dealt with many intellectual property cases of immense complexity, or that the parties were highly antagonistic. More than 20,000 persons from all walks of life, including deputies to people's congresses, members of political consultative conferences, teachers and students of tertiary institutions have observed the circuit tribunal. The impact was encouraging.

The Chuzhou Intermediate People's Court of Anhui Province actively explored the possibility of setting up a circuit tribunal in cities and counties

with higher intellectual property cases, and has given full play to its guiding role of the justice system.

The Yili Prefecture branch court of the High People's Court of the Xinjiang Uygur Autonomous Region has set up a circuit work station for judges at the Korgos Economic and Technological Development Zone, where judges are sent to the work station monthly to adjudicate on-site.

Launched legal advisory services. The people's courts of Jinlin , Fujin, Anhui and Guizhou extended their adjudication responsibilities by moving the gantry of intellectual property protection forward, thus providing "home delivery of legal services" for key enterprises, science & technology parks. The courts reached out to businesses to understand their needs for intellectual property protection, and helped them solve legal issues relating to the creation, administration, operation and protection of intellectual property. Additionally, they also helped businesses raise their awareness to be innovation-driven and in risk-prevention, so as to strengthen their ability to prevent and defuse operational risks and develop their capabilities in innovation and development. The courts' efforts were well-received by the businesses.

More active in providing judicial recommendations. The courts have provided guidance and direction in the form of judicial recommendations for striking, common and recurrent problems. The recommendations were given to the relevant departments to enable substantive resolution of the problems.

For example, the Hubei High People's Court has provided judicial recommendations to the local government on copyright infringement of internet cafés, so as to guide intellectual property users to operate lawfully and facilitate the industry's healthy development. The Guizhou High People's Court addressed the problem of notarised documents being inadmissible as a result of procedural flaws by giving its judicial recommendations to the provincial judicial office, bring to the office's attention the need for regulated notarisation. The Hainan High People's Court submitted to the provincial government judicial recommendations on

protection of special trademark resources to help improve their protection. The high people's courts of Shanxi and Shanghai have also progressively become more active in providing judicial recommendations. In doing so, the courts have effectively served the relevant authorities and have helped them improve the use, administration and protection of intellectual property rights.

(iv) Persisted in strengthening protection, and continued to step up judicial publicity on intellectual property rights

Judicial publicity is an important channel through which the people's courts enable the society at large to understand how judicial protection of intellectual property works. It is also an important vehicle to promote the rule-of-law spirit in judicial protection, as well as a key avenue to elevate the society's respect for knowledge and increase awareness of the concept of intellectual property protection.

In 2013, the people's courts managed to gain insight into the work involving judicial protection of intellectual property and focused on the key aspects of the work. For publicity, they have developed innovative publicity formats, focused on key publicity efforts, and have leveraged the role of publicity media such as media owned by the people's courts, the news media, micro-message (*Weixin*) and microblog (*Weibo*). The courts have mobilised the strengths of different parties to create publicity synergies, thereby augmenting the effectiveness of the publicity. A publicity week was carefully planned around 4.26 World Intellectual Property Day.

SPC published the *Ten Major Cases, Ten Major Innovative Cases and Fifty Typical Cases on Judicial Protection of Intellectual Property for 2012*, and the Supreme People's Court's *Annual Report on Intellectual Property Cases (2012)* to present to the general society a lively and vivid picture of the results of increased judicial protection of intellectual property. Local courts have also taken an active stance in generating publicity and in response to the public's interest in judicial protection of intellectual property by publishing updates on judicial protection of intellectual property and cases adjudicated, organised press conferences, and by going on the streets and distributing publicity pamphlets.

For example, the High People's Court of Inner Mongolia Autonomous Region organised a publicity week under the theme "Implement the Intellectual Property Strategy, Support Innovation-Driven Development". Legal awareness publicity activities extended to company offices and school grounds;

During the publicity week, the courts in Jiangsu Province organised 9 press conferences, set aside more than 1,800 places for observation of court hearing, and visited more than 100 companies, during which more than 5,000 publicity pamphlets were given out.

The Xinjiang Production and Construction Corps Branch Court of the High People's Court of the Xinjiang Uygur Autonomous Region organised a series of rich, interesting and people-friendly publicity activities based on the theme "Intellectual Property Helps Remodel Economic Growth".

The Hefei Intermediate People's Court of Anhui Province visited the "Seed Street" ("*Zhongzi Yitiaojie*") to hear a case on new plant varieties. It invited management staff of the seed management station and seed sellers to observe the hearing. By using cases to teach the law, judicial publicity was more effective in communicating messages and influencing mind-sets.

(v) Persisted in synergistic development, and continued to vitalise intellectual property cooperation and exchanges

With deepening economic globalisation, greater cultural diversity and increasing information accessibility, increased intellectual property protection must stay on the path of cooperation for mutual benefits and joint development.

Strengthened inter-departmental coordination and cooperation to form combined protection forces. In 2013, the people's courts have continued to coordinate the relationship between judicial protection and administrative protection of intellectual property by escalating cooperation with the administrative and law enforcement departments to establish a multi-dimensional protection regime.

The high people's courts of Anhui, Jiangxi and Guangxi provinces have worked rigorously to establish a joint mechanism in intellectual property

protection and an information-sharing platform. The High People's Court of Henan Province have stepped up coordination and cooperation with the intellectual property administrative authorities to expand avenues for resolution of intellectual property disputes.

Strengthened international exchanges to raise our international profile.

SPC has sent representatives to participate in intellectual property work groups meetings between China and the United States, Europe, Russia and Switzerland, as well as in international meetings on negotiations of China-Switzerland and China-Korea free trade zones. In doing so, we have shown our intellectual property achievements, and demonstrated China's position and determination to continue strengthening intellectual property protection. The courts have received nearly 100 high level delegates from the United States, Japan and European Union, and have responded positively to the concerns of the foreign visitors, clarified misunderstandings and showcased on achievements in judicial protection of intellectual property; therefore, established a positive international profile.

To widen exchange channels and amplify the exchange outcomes, SPC has established an International Exchange (Shanghai) Base for Judicial Protection of Intellectual Property, and have relied upon the support of the Shanghai High People's Court to receive delegations from the United States, Japan, Korea, Canada and Switzerland, and have received high commendations from the guests.

III. Focused on achieving greater judicial impartiality and credibility, and buttressed adjudication supervision and administration

Judicial impartiality is an important aspect in establishing the rule of law in China. It is the lifeline of the people's courts and the fundament for establishing judicial credibility. In 2013, the people's courts have focused hard on judicial impartiality and judicial credibility as the main guideposts to improve the norms for judicial protection, strengthen adjudication administration and supervision mechanism, and intensify guidance for adjudication and research. These undertakings would improve the quality and efficiency of intellectual property adjudication, and ensure that every case heard, could stand up to the test of the law, of history and of the people.

(i) Established robust judicial protection regulations, and facilitated uniformity in the standards employed in judicial protection

Further strengthened judicial guidance. To ensure that the amended Civil Procedural Law is correctly applied and that patent cases are adjudicated smoothly, SPC issued on January 2013, the *Supreme People's Court Notice Regarding Printing the List of Patent Agents Recommended by the All-China Patent Agents Association* to regulate participation of patent agents participating in civil procedures involving patent dispute.

To ensure that the newly amended Trademark Law is correctly implemented, SPC has promptly drafted and published the Supreme People's Court's Interpretations of Issues Regarding Jurisdiction and Scope of Application of Law during Adjudication of Trademark Disputes after the Implementation of the Decision on the Amendment of the Trademark Law.

Further strengthened adjudication guidance. In March 2013, SPC convened the 3rd National Work Conference on Intellectual Property Adjudication in Xi'an of Shanxi Province. The conference adopted the principles and spirit of the 18th Party Congress and the 1st session of the 12th National People's Congress. Participants reviewed the results and experiences of the people's courts in adjudication of intellectual property during past five years, analysed the current situation, and identified the guiding principles and tasks pertaining to intellectual property adjudication now and during the subsequent period. Issues that require particular attention when applying the law during intellectual property adjudication were also studied. The conference was extremely meaningful, as it has provided a clear direction for intellectual property adjudication for 2013 and for a short period of time in the future.

In April 2013, SPC held a national workshop for chief judges of intellectual property tribunals of all courts. The workshop centred on the practicalities of intellectual property adjudication and focused on the themes of judicial impartiality, improving judicial credibility and advancing governance of the country based on law. The workshop also discussed the current situations facing intellectual property adjudication and the need to grasp accurately judicial policy, and was able to unify minds and drive progress.

To ensure implementation of the spirit of the 3rd National Work Conference on Intellectual Property Adjudication, the high people's courts of Zhejiang, Fujian, Shandong and Guangdong etc. also convened intellectual property work meetings for all the courts within the province to plan and delegate work pertaining to intellectual property adjudication in 2013, so as to ensure that adjudication is carried in a regulated and orderly manner.

Developed adjudication instruction materials. SPC has published books and materials as Instruction Manual on Intellectual Property Adjudication, Trends in Intellectual Property Adjudication, and Reflections and Prospects in Trademark Adjudication, which have reviewed operational materials as important normative documents and instructional opinions, work overview, statistics, research outcomes, typical cases, which have provided the quickest route to providing instructions of adjudication operations. The Beijing High People's Court has developed and released a Manual on Determination of Patent Infringement, which has standardised and coordinated the law enforcement standard for patent cases in Beijing.

(ii) Intensified adjudication research, and expanded avenues to standardise application of the law

Judicial protection of intellectual property must face the most vibrant sectors of all creative activities: economic, scientific, culture and arts; hence, new issues continue to emerge, and judicial protection perpetually faces new demands and challenges. The important means with which adjudication of intellectual property employs a scientific approach is to strengthen research guidance for intellectual property cases and their adjudication, and to promptly standardise adjudication criteria and respond to the new needs in judicial protection of intellectual property.

In 2013, the people's courts directed their attention to key and difficult aspects in intellectual property adjudication to find creative ways and research anchor points, organise adjudication research, review experiences and resolve new issues. The efforts were fruitful. SPC centred on establishing the criteria for determining patent infringement, adjudication standards in granting and validating patents rights for administrative cases, application of the Trademark Law, standards in granting

and validating trademark rights for administrative cases, protection of well-known marks and service marks, protection of trade secrets, and application of the law for copyright disputes involving Karaoke operators etc., and conducted thematic researches in preparation for drafting the corresponding judicial interpretations.

In January 2013, SPC organised in Xiamen, Fujian Province, a national seminar on internet new technology and new business models and competition.

In July 2013, SPC established in Zunyi City Intermediate People's Court in Guizhou, a "Supreme People's Court Intellectual Property Judicial Protection Research Base for the Spirits Industry". The research base will better enable discovery of issues relating to judicial protection of intellectual property, hence healthy development for the industry. To further facilitate research, SPC organised the first national award for excellence in intellectual property research outcome, and has completed the preliminary selection from 193 research reports.

Based on the practical realities, local people's courts also organised different research activities. For example, the Chongqing High People's Court collaborated with the relevant authorities to jointly organise the "International Conference on Trademark Infringement and Monopoly in the Internet Environment", and the "High-Level Forum on Judicial Protection for Computer Software Copyright in the Cloud Computing Environment". Tianjin High People's Court organised the research activity on "Intellectual Property Judicial Protection of Cultural and Creative Businesses in Tianjin". The Guangdong High People's Court conducted research based on the theme of "Exploring and Improving the Judicial Evidentially System to Resolve the Difficulty in Determining Damages for Intellectual Property Infringement", and carried out pilot studies in 14 basic and intermediate people's courts.

The high people's courts of Beijing, Hebei, Liaoning, Shanghai, Jiangsu, Guangxi, Yunnan, Shanxi, Qinghai and Ningxia also conducted research on specific themes based on key and difficult issues at the local level. This had be useful in providing guidance for adjudication operations.

(iii) Strengthened adjudication management, and improved upon the supervision and evaluation system to establish a scientific and effective system

An important institutional safeguard for judicial impartiality is the establishing of a management system that aligns accountability with powers, that supervises the use of powers, that misconduct is held accountable, and that violation of the law will be punished, which operates under a strict adjudication management and supervision powers, and which regulates the exercise of discretionary rights to prevent losing the control of powers and deviation from behavioural norms.

In 2013, the people's courts of all levels have established, improved and implemented systems and mechanisms to ensure adjudication quality and efficiency, and have continued to review and promptly promoted experiences and practices that could help improve adjudication quality and efficiency. Indeed, the quality and efficiency of intellectual property adjudication have evidently improved.

The courts have also tightened management of the adjudication process, tracked and monitor the major processes and major areas in adjudication, and implemented regular reporting of case disposal. They have also improved on the timing of case disposal to ensure that conclusion of cases is evenly distributed throughout the year. These measures have improved the quality of adjudication.

The Shanxi High People's Courts have implemented online case-handling, such that the entire process of receiving and hearing a case, panel deliberation and announce of decision is regulated, such that every phase in the adjudication process is traceable and evidence-based.

The courts have also:

Improved upon the quality of adjudication by organising joint meetings of presiding judges, full bench meetings and expert assessment meetings for difficult and complex cases, so as to ensure quality of adjudication. Quality reviews for are conducted to instil in judges the mindfulness of exquisiteness in quality.

Improved the review and evaluation mechanism for case quality, refined the evaluation standards, specified the criteria for determining miscarriage of

justice and for accountability and recourse, so as to discover problems in time, correct errors, and prevent any miscarriage of justice.

Assessed, reviewed and compared written judgements to improve their quality, and have effectively prevented clerical errors etc., such that written judgements become the vehicle that embody the entire adjudication process, the grounds of judgement, and enablers of social supervision. To encourage better quality writing, SPC has initiated selection activities for 3rd National Excellence in Written Judgements for Intellectual Property Case, and have completed the preliminary selection from 483 written judgements.

IV. Focused on strengthening the basics at the grass-root level, and continued to improve upon the quality of the judicial team

Justice for the people, judicial impartiality and improving judicial credibility, are goals that hinge upon the team of people and whose key lie within the grass-roots. The people's courts have always attached a high priority to strengthening the intellectual property adjudication team, so that the people would experience equity and justice for every case handled by the judiciary. The team of adjudicators would be proper and professional and armed with the required expertise. Hence, the courts have focused on building the team by adopting a scientific approach, so that the intellectual property adjudication team would be politically firm, professionally sound, with a good attitude and of high integrity.

(i) Strengthened institutional-building

A robust institution is the prerequisite for good intellectual property adjudication. In 2013, the people's courts have conscientiously carried out the *Opinions on Several Issues Concerning Implementation of the National Intellectual Property Strategy*, and have continued to step up efforts in establishing specialised adjudication authorities for intellectual property cases, so as to lay a firm foundation for adjudicating intellectual property cases at the basic level.

In Tibet Autonomous Region, the intermediate people's courts in Linzhi, Shannan, Naqu and Ali have established specialised intellectual property adjudicatory organs. In Fujian Province, the basic courts in Gulou, Siming and Jinjiang have established intellectual property tribunals. In Hubei Province the intermediate people's courts of Xiangyang, Yichang, Huangshi, Huanggang and

Jingmen have established intellectual property tribunals, such that specialised adjudicatory organs would facilitate the professional development of intellectual property adjudication. In Beijing's Haidian District, the people's court has set up the first basic court dispatch tribunal focusing mainly on hearing intellectual property cases. This was to lend strength for the establishment of a National Indigenous Innovation Demonstration Zone within Zhongguancun.

At the same time, the people's courts of all levels have continued to build up their manpower for the adjudication team, as judges who are well-rounded in capabilities were selected to strengthen the intellectual property adjudication team and to ensure that intellectual property adjudication is supported by a strong talent pool.

(ii) Strengthened capacity-building

Under the new circumstances, where intellectual property adjudication has developed rapidly, there is urgent demand for intellectual property judges to improve their judicial skills and standard to serve the people well, ensure equity and justice, as well as to resolve conflicts and disputes and shape public opinion. The people's courts have always focused their efforts on improving the capabilities of intellectual property judges as an important means to improve judicial protection of intellectual property. The means replied upon include organising training and seminars on specific themes, on-the-job training, exchanges and temporary job postings, observation of hearings, and setting up practice bases for intellectual property protection, so as to continue to step up the intensity and extensiveness of education and training.

Strengthened learning of political theory. The people's courts of different levels have captured the essence of the spirit of the 18th Party Congress and of President Xi Jinping's series of important discourse to guide intellectual property judges to be steadfast in their beliefs, develop a socialist rule-of-law concept, and nurture and practise the core values of socialism. This would strengthen their self-confidence in their pursuit of socialism, in their theoretical belief and in the system, and would lay a firm foundation for concept of judicial impartiality.

Strengthened training of professional skills. SPC continued to use the intellectual property training course provided by the National Judges College as vehicle to organise training for intellectual property judges. It has increased training for judges located in the central and western regions, and have deployed intellectual property judges to conduct touring lectures in the western region.

The Heilongjiang High People's Court has introduced specialised intellectual property training, and has organised judges' forum to train expert judges in the field of intellectual property; the Hubei High People's Court has organised the "Five Ones" capacity-building activity, so as to build a team of intellectually-inclined judges; the Yunnan High People's Court has held judges' salons, and has specially organised reviewers from the Patent Review Board of SIPO to conduct touring lectures in intermediate people's courts that have jurisdiction for adjudicating patent cases; the Zhejiang High People's Court and the provincial judges' college have jointly organised training courses on intellectual property adjudication and training courses for key personnel, so as to increase the level of training for adjudicators.

Also, the Chongqing High People's Court has actively organised exchange activities with tertiary institutions as a way to align resources and fill each other's needs and lacks and to raise the level of professionalism in adjudication; the Inner Mongolia Autonomous Region's High People's Court has organised trainings to hone professional skills in intellectual property adjudication, so as to train judges on the most current issues in intellectual property; the Beijing High People's Court has explored the "practical training system" (*shi xun zhi*) as a training model to improve training for younger judges and has laid a solid foundation for the sustainable development of intellectual property adjudication. Judge Chen Jinchuan, member of the court's judicial committee and Chief Judge of the Intellectual Property Tribunal, has been received the "Award of Excellence in Copyright Achievement"

(iii) Strengthened nurturing of judicial attitude

Judicial attitude is the external embodiment of judicial impartiality, which directly concerns the feeling and evaluation of the people toward judicial impartiality.

In 2013, the people's courts took the opportunity presented in the activity on educating judges on the party's mass line to incorporate education on nurturing of judicial attitude. Every adjudicator must have the courage to face problems, and to look at themselves critically to discover their flaws and inadequacies. Based on the

overall requirement to “look at yourself, tidy yourself, clean yourself and cure yourself”, criticisms and self-criticisms were carried out, such that the most striking problems as reflected by the general public were addressed. Judges have strictly observed the eight-point regulations concerning improving working attitudes and close contact with the masses, as well as the six measures as required by the SPC, so that justice for the people is truly implemented. The courts were stringent in enforcing the proper judicial attitudes and imposed strict disciplines, which have translated into improved awareness of the sense of purpose and sense of responsibility as public servants on the part of the intellectual property adjudicators. This has ensured the adjudication team for intellectual property are advanced in mind-sets and pure in spirit.

(iv) Strengthened judicial integrity

Integrity has always been a key task as part of capacity-building for judges in the people’s courts. In 2013, every level of the people’s courts were working vigorously to fight corruption, and to build a more robust system of integrity risk prevent system by strengthening responsibility in management supervision and stepping up accountability and recourse. By organising centralised education, educating about consequence, and conferences on special themes as democratic living and heart-to-heart discussions, the courts were able to teach and guide intellectual property adjudicators that they should uphold the requirement to be “practical and upright for the people; that they should treasure power, be careful when using power, using their powers well; that they should not be moved by temptations or enticed by distractions; that they should be diligent in initiating judicial inspection and supervision of adjudication operations to tighten administration and plug administration gaps. In doing so, power abuse would be locked away, and the judges would be upright, the courts would be clean, and justice would be fair.

Conclusion

2014 is the critical year to carry out the principles and spirit of the 3rd Plenary Session of 18th CPC Central Committee and to see to fruition the 12th Five-year plan. This is also the critical year to stabilise growth, restructure the economy and drive reform. Under the strong leadership of party central committee led by General

Secretary Xi Jinping, the people's courts must persist in the path of socialism with Chinese characteristics, and be guided by the Deng Xiaoping Theory, the "Three Represents" and the scientific approach to development. They must adhere to discharging their responsibilities lawfully, to delivering justice for the people, to achieving judicial impartiality, and must perform intellectual property adjudication based on the spirit of reform and innovation. They must also continue to expand the mainstream role of judicial protection for intellectual property rights and level of protection for intellectual property. They must stay determined and enterprising, resolute and unrelenting. And they must contribute even more to opening new pages in intellectual property adjudication, to forging ahead with the innovation-driven development strategy, and to realising the China dream in the pursuit of renaissance of the Chinese nation.