

## Three-Year Review and Reform Prospect of SPC Intellectual Property Court

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"If unsatisfied with this decision, the party may file an appeal brief with this Court, appealing to the Supreme People's Court" – In the past three years, appearances of the parties concerned and legal practitioners of patent cases in China before the bench of the Supreme People's Court ("the SPC") have been far more frequent than before. Yet, a fact often overlooked is, judges adjudicating these cases all come from a pilot establishment that has still been serving its "overdue" and overwhelmingly taxing duties – the Intellectual Property Court of the SPC ("the IP Court").



In October 2018, the Chinese legislators decided to set up a tribunal within the SPC to specially handle patent and monopoly cases, thereby initiating the three-year piloting of the IP Court from 2019 to 2021. Prior to the introduction of centralised jurisdiction at the SPC, patent appeals were heard independently by the high courts across the thirty-odd provinces in the country, which had given rise to a range of issues such as divergence in judges' experience and professional standards, inconsistent outcomes for cases concerning the same legal question, and differential levels of damages awards.

During the said three-year pilot period, the SPC kept seconding professional judges from across the country to assume duties at the IP Court; at the same time, some judges, after serving some time with the IP Court, returned to the local courts. This has contributed to a talent circulation of professional IP judges on a national scope. Between 2019 and 2021, the IP Court has accepted 9,458 second-instance cases and concluded 7,680 cases. For the 42 current judges, they have to hear 126 cases individually on average, more than double of the 60 cases per capita according to the original plan.

From the information disclosed by the IP Court, we notice the following: (1) more than half of the appeal cases accepted by the IP Court came from the three specialised intellectual property courts located respectively in Beijing, Shanghai and Guangzhou, showing that regardless of first-instance or second-instance cases, considerable concentration of patent cases in terms of territorial jurisdiction has been achieved; (2) 18% of the civil cases handled by the IP Court have been remanded or reversed, which, by empirical estimates, is a figure higher than the statistical average of the number at the courts nationwide as well as the corresponding ratio prior to the inception of the IP Court; and (3) although technically, certiorari by the SPC can still be petitioned on the decisions of the IP Court (petition cases will be heard by No.3 civil division of the SPC), the filings for petitions were found to be reducing significantly, and cases that have been successfully granted certiorari were even rarer.

During the pilot period, the IP Court put forward some innovative measures, including the precedent database and reference cases mechanism, the influence of which has extended beyond the scope of IP cases with the measures being incorporated by the SPC into general civil proceedings. As regards problems reflected in the piloting, the president of the SPC remarked in his summary report on the piloting that the provincial high courts become less experienced and insufficiently manned with professionals in dealing with patent cases as a result of the cases skipping these courts; additionally, allocation of judicial resources

unavoidably tends to lose its balance, with many cases not embodying controversial legal questions getting direct access to the SPC. After the three-year piloting, consensus has now been reached within the legislative and judicial organs that there is a need for China to establish an IP appeal court on a national level earlier. Such a new court is expected to take the form of a specialised court in Beijing or in multiple centres across the country, although the specific form of which remains to be seen.

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