

# China Legal Briefing\* 246

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## 1. Case Jurisdiction of Intellectual Property Courts is Confirmed by the Supreme Court

On 3 November 2014, the Supreme People's Court of the People's Republic of China released the *Provisions of Supreme People's Court on Case Jurisdiction of Intellectual Property Courts in Beijing, Shanghai, and Guangzhou* (Fa [2014] No. 267, "Provisions"). The Provisions are based on the Decision of the Standing Committee of the National People's Congress on Establishing Intellectual Property Courts in Beijing, Shanghai and Guangzhou, which was issued previously on 31 August 2014. They have the following main content:

### A. Case Jurisdiction

IP Courts have the same trial grade with the Local Intermediate Courts, focusing on technological IP cases. The trademark cases and copyright cases are still to be heard by the local courts. According to Article 1 of the Provisions, IP Courts should have jurisdiction over the following first-instance cases in their respective area:

- (1) Civil and administrative cases involving patent, new varieties of plants, layout designs of integrated circuit, technical know-how, and computer software;
- (2) Administrative cases filed against administrative acts committed by State Council departments and local people's governments at or above the county level that involve copyright, trademarks, or unfair competition; and
- (3) Civil cases involving recognition of well-known trademarks.

According to Articles 2 and 3, the Guangzhou IP Court exercises a trans-regional jurisdiction throughout Guangdong Province for cases of the categories (1) and (3). The Beijing and Shanghai IP Courts have jurisdiction over cases in all three categories within the city boundaries.

Furthermore, due to the fact that Beijing is the capital of China, pursuant to Article 5, the Beijing IP court will in addition have jurisdiction over the following first-instance administrative cases:

- (1) Dissatisfaction with the rulings or decisions made by State Council departments concerning patent, trademark, new varieties of plants, layout designs of integrated circuit and other intellectual property;
- (2) Dissatisfaction with the judgments made by State Council departments on compulsory licensing or royalties or remunerations for compulsory licensing made by the State Council departments concerning patent, new varieties of plants, or layout designs of integrated circuit;
- (3) Dissatisfaction with the other administrative acts of State Council departments concerning IPR licensing rights.

Finally, pursuant to Article 4, if a case involves a subject matter falling under category (1) or (3) of Article 1 plus an additional issue, e.g. a damages claim, the IP Courts have the jurisdiction over such a case.

## **B. Appeal Jurisdiction**

According to Article 6 cases related to copyright, trademark, technology-related contracts, unfair competition, and other IP matters that have been decided by regular basic level civil and administrative courts can be appealed at an IP Court.

According to Article 7, in the event that the parties appeal against first-instance decisions made by the IP Courts, or apply for reconsideration with superior courts, such appeal cases shall be heard by the IP Division of the high court where the IP Court is located.

## **C. Handling of Ongoing Cases**

Pursuant to Article 8, basic level courts and intermediate courts located in Guangdong Province, Beijing, Shanghai who have accepted IP cases prior to the establishment of the IP Court but have not yet issued a decision, should continue treating the case.

## **2. Decisions by the Fourth Plenary Session of the Communist Party of China on Reform of the Rule of Law**

The Communist Party of China (“CPC”) Central Committee Meeting was concluded on 23 October 2014 and the Decision Concerning Some Major Issues in Comprehensively Advancing Rule of Law (“Decision”) was issued on the same day. It was the first time a plenary session of the CPC Central Committee has taken the rule of law as its central theme. The Decision leads the way for China’s reform of its legal system, which demonstrates the CPC’s efforts to achieve a closer alignment of government action with the law. Many of the guidelines address issues that were long overdue and they are therefore certainly welcome, even if the reform measures are deliberately kept vague at this stage. However, due to the inherent constraints of a legal system that does not feature a strict separation of the legislative, executive and the judiciary powers, it is doubtful at best that this reform will lead to a deep and meaningful improvement of the rule of law. The highlights of the Decision are summarized as follows:

## **A. Legislature**

- (1) Constitutional supervision: The PRC leadership wants to elevate the role of the constitution. This shall be achieved by installing a more comprehensive constitutional supervision by the National People's Congress ("NPC") and its Standing Committee ("NPCSC") and by guaranteeing a more uniform interpretation of constitutional provisions. Specifically, new legislation such as notices, provisions, and local regulations shall henceforth be subject to a review by the NPC or the NPCSCS. To create more public awareness, a national constitution day is introduced on 4 December each year.
- (2) Compilation of a Civil Code: Since the first issue of the Civil General Law in 1986, the civil law system has become increasingly complicated with a wide range of specialized legal statutes legislation treating various aspects of civil law and often creating overlaps or conflicts among each other. Therefore, legislation shall be unified in the area of civil law by introducing a comprehensive Civil Code.
- (3) Exploration of a new mode for drafting laws and regulations: currently, the administrative legislation and management is controlled by different departments with duties that sometimes overlap. In order to simplify the procedure and to address the issue of protectionism, it shall be explored whether the legislation process could be outsourced to a specialized legislation body. Furthermore, new platforms shall be introduced to increase the participation of citizens and experts in the legislation process.

## **B. Judiciary**

- (1) Judicial transparency: The Decision provides that the transparency and clarity of interpretations of legal provisions by the Courts improved in order to facilitate a better understanding of the law by the public. Furthermore, courts shall be obliged to register and accept all cases submitted to them which have reasonable claims. Until now, it frequently occurred that courts would refuse to accept a case after a preliminary review based on intransparent reasoning.
- (2) Judicial independence: The Decision aims to give judges more independence and limit local officials' influence over courts and cases. It provides that officials shall be made responsible if they are found influencing judicial activities or intervening in a particular case, e.g. by being exposed in public announcements. Equally, judges and prosecutors have a lifelong

responsibility for fundamental breaches of their duty to remain impartial. Furthermore, the Supreme Court will establish Circuit Courts with trans-regional jurisdiction to hear major civil, commercial cases, and administrative cases. The government also wants to address a reform of the roles and responsibilities of the judiciary officers aiming in particular at a clearer separation between prosecution and judges in criminal cases. Also, the level of participation of the public in court proceedings shall be increased.

### **C. Administrative enforcement**

- (1) Strengthen law enforcement by administrative authorities: Law enforcement teams shall be reorganized to be made smaller more efficient, while measures are taken to avoid the shifting of responsibility between different authorities. The decision stresses that the comprehensive administrative enforcement of law shall be implemented in areas of food security, quality inspections, public health, culture and tourism, resources and environment, etc. A comprehensive case record system for enforcement procedures shall be installed.
  
- (2) Responsibility of public officials: In order to avoid administrative regulations guided by short term interests and to address impunity where damage is caused by actions of officials after they have left their posts, the Decision seeks to increase public and expert participation in the legislative process and to introduce a lifelong responsibility leading to punishments for public officials responsible in the event that administrative decisions or the delay of making decisions results in heavy losses.

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