

Monthly Newsletter

April 2022



Numbers you need to know about the IPC's report

The IP Court of The Supreme People's Court of China recently released its report on the cases it tried and settled in 2021. Purplevine is here to share the relevant data with you to understand the trend of the IP cases in China.

541,000

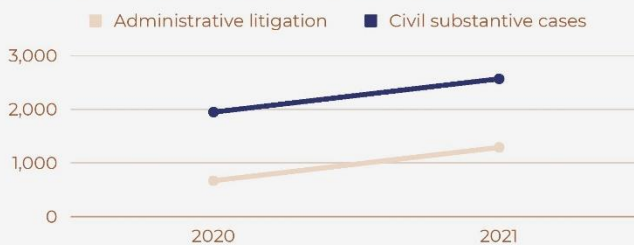
IP Cases settled in the court of first instance in 2021

INCREASING NUMBER OF IP CASES SETTLED

Comparing to 2020, a 16% increase in number of IP cases settled in the court of the first instance, demonstrating an increasing demand in IP litigations.

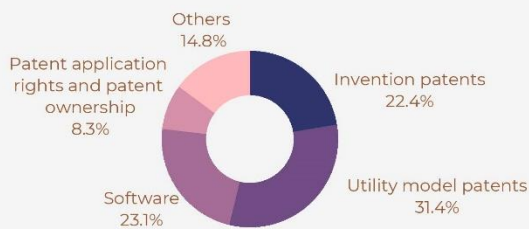
RAPID GROWTH IN IP APPEALING CASES

An increase of 31.8% of appeal civil substantive cases and 92.5% of appeal administrative cases reflects a strong demand for judicial protection of IP rights.



INCREASE IN CROSS-BORDER IP CASES

10.1% cross-border cases (437 cases) were tried at the IPC in 2021, an increase of 16.2% YoY. The number of cross-border cases has continued to grow rapidly which reinforced China's IP policy in improving IP competitiveness in the world.

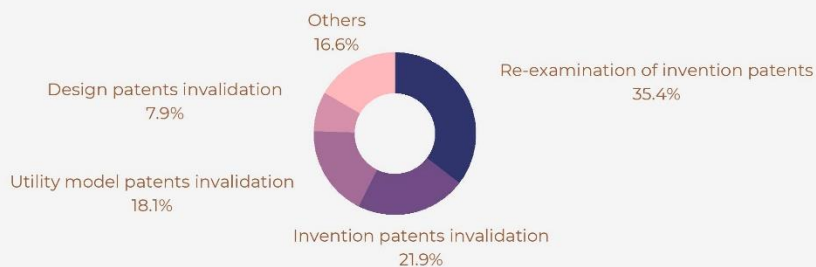


CIVIL SUBSTANTIVE CASES (2,569 CASES) - A FOCUS OF CLAIM INTERPRETATION

Most of the disputes tried at the IPC court related to invention patents and utility model patents. High proportion of the cases had disputes around patent ownerships.

ADMINISTRATIVE LITIGATIONS (1,290 CASES) - ISSUES AROUND NOVELTY AND INVENTIVENESS

Communication, internet, big data, e-commerce, AI and blockchain are the main area of litigation. Definition of novelty and inventiveness has been a controversial topic in litigations.



A BROAD RANGE OF TECHNICAL AREAS INVOLVED

More than a quarter of the cases involved emerging technologies including new generation of information technology, biomedicine, high-end equipment manufacturer, renewal energy and materials.



CNIPA Issued the Second Batch of Guiding Cases for Administrative Enforcement of Intellectual Property Rights

On March 29, 2022, the China National Intellectual Property Administration (CNIPA) issued the Second Batch of Guiding Cases for Administrative Enforcement of Intellectual Property Rights, covering topics including repeated infringement, trademark infringement and administrative mediation. We summarized the Guiding Cases and highlighted the key points below.

Repeated infringement

The current "Patent Law" and "Regulations for the Implementation of the Patent Law" of the People's Republic of China do not provide clear guidance on repeated patent infringement. The essence of this case indicates that if the perpetrator infringes the patent rights of others and fails to stop the infringement after the administrative ruling or judicial ruling takes effect, and continues or repeats the infringement on the same patent right, it may be identified as repeated infringement according to local regulations, and administrative penalties will be imposed. At present, Beijing, Tianjin, Hebei, Zhejiang, Fujian, Henan, Hubei, Guangdong, Chongqing, Sichuan, Guizhou, Xinjiang and other provinces (autonomous regions and municipalities) clearly stipulate in their local regulations that administrative penalties can be imposed for repeated patent infringement.

Case Summary

In 2018, the Wenzhou Intellectual Property Office issued an administrative ruling, ordering the infringer to stop the production and sale of infringing products, and the infringer did not file an administrative lawsuit. In 2019, the patent owner once again complained to Wenzhou Intellectual Property Office, that similar products produced and sold by the infringer infringed the same patent right. Wenzhou Intellectual Property Office made an administrative ruling, ordering the infringer to immediately stop the infringement and destroy the infringing products. The infringer refused to accept and filed an administrative lawsuit. In 2020, the Intermediate People's Court of Ningbo City, Zhejiang Province rejected the infringer's claim, and the infringer withdrew his appeal to the Supreme People's Court. In 2021, the Wenzhou Intellectual Property Office initiated an investigation into the infringer's alleged repeated infringement of the same patent right, and determined that the infringement committed by the infringer constitutes repeated infringement.

Trademark infringement

According to the national resource recycling policy and industry practice, glass containers are allowed to be recycled and reused, but they should also be used in accordance with the law. In this case, the infringer recycled the beer bottles for reuse, filled the bottles with same or similar goods sold by the trademark owner, and putting them back on sale without effectively blocking the embossed characters of other people's registered trademarks on the beer bottles. This is easily causing the relevant public to misunderstand the source of the product and whether there is a specific connection between the infringer and the trademark owner, thereby causing damage to trademark owner's exclusive right to use the registered trademark. It constituted an infringement of the exclusive right to the registered trademark stipulated in Article 57(7) of the Trademark Law. The authority ordered the parties involved to immediately stop the infringement and imposed administrative penalties.

Case Summary

The infringer used the recycled beer bottles as his own beer containers for a long time in accordance with industry practice. Among them, the 600ml beer bottles included the Tsingtao beer bottles with the embossed characters "青岛啤酒TSINGTAO" on the neck of the bottle, but they affixed their own trademarks and packages for sale, and failed to effectively block the embossed text of "青岛啤酒TSINGTAO" on the bottle neck.

Administrative mediation

In this case, the patent owner and the infringer reached a consensus through administrative mediation. The patent management department has credibility and a high level of professionalism as a government institution. It presides over the administrative mediation work as a third party, which is conducive to facilitating both parties to reach a settlement and sign a mediation agreement. However, the mediation agreement is a civil contract in nature and has no enforceability. Therefore, through the judicial confirmation procedure, the mediation agreement is given enforceability, which solves the issue of difficulty in the implementation of the mediation agreement. In addition, the judicial confirmation of the mediation agreement is the conclusion of a first instance trial, which improves the protection efficiency and strengthens the organic connection between administrative protection and judicial protection.

At present, Beijing, Shanghai, Fujian, Hunan, Sichuan, Shaanxi and other places have clearly established a judicial confirmation system for tort dispute mediation agreements through local regulations.

Case Summary

The patent owner found several products that the infringer promised to sell were suspected of infringing on multiple design patents it owned. In 2020, the patent owner filed an administrative adjudication request on patent infringement with Shanghai Intellectual Property Office. The Shanghai Intellectual Property Office accepted the above-mentioned series of cases and presided over the mediation according to the mediation wills of both parties. Both parties signed an administrative mediation agreement for patent infringement disputes. Subsequently, both parties applied to Shanghai Intellectual Property Court for judicial confirmation of the agreement, and the Court reviewed the submitted application materials, the form and content of the mediation agreement in accordance with the law. On the same day after the review, the court issued a civil ruling confirming that the mediation agreement reached by both parties is valid. Since the mediation agreement is valid, if one party refuses to perform or fails to perform in full, the other party may directly apply to the people's court for compulsory execution.

CNIPA Released “Annual Work Guidelines for Promoting the High-quality Development of Intellectual Property (2022)”

On March 16, 2022, China National Intellectual Property Administration (CNIPA) issued "Annual Work Guidelines for Promoting the High-quality Development of Intellectual Property (2022)", aiming to implement the “15-year Plan of Building a Powerful Intellectual Property Nation (2021-2035)” and the “14th Five-Year Plan of National Intellectual Property Protection and Utilization Plan”. We have highlighted some key points for you to better understand the policy trends.

- The examination cycles of invention patents, high-value invention patents and trademark registration reduced to 18.5 months, 14 months, and 4 months, respectively.
- Speeding up the construction of intellectual property protection information platforms and enhancing the functions of the Technology and Innovation Support Center, the National IP Information Service Center of Universities and the National IP Information Public Service Network. Promoting the application of electronic certificates for patents and trademarks.
- Continuing the negotiation for the inclusion of Chinese language in the Madrid System and the Hague System.
- Continuing to participate in the negotiation on the exemption of IPR related to COVID-19 vaccines and therapeutic drugs.
- Actively engaging in the discussion of formulation of international rules and standards in new fields and new business forms under the framework of WIPO.
- Continuing to conduct in-depth research on intellectual property provisions in economic and trade agreements and orderly implementing these provisions domestically. These include the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreements for Trans-Pacific Partnership (CPTPP).
- Strengthening the IP cooperation with the "Belt and Road" countries and consolidating multilateral and bilateral relations. Successfully organizing the meeting of BRICS intellectual property office directors, and closely collaborating with the US, Europe, Japan and South Korea on IP issues.
- Efficiently responding to the demand on IP development from both domestic and foreign enterprises and conducting extensive research to understand the needs of the enterprises in order to promote balanced protection at home and abroad.
- Continuing to consolidate and expand the Patent Prosecution Highway (PPH) cooperation network.
- Improving the review system for IPR foreign transfers. Strengthening the construction of overseas IP risk prevention and control system and improving the network of dispute response guidance centers .

China issues Guidelines on “National Unified Market” - Why does it matter

The Communist Party of China Central Committee and the State Council jointly released a guidelines on accelerating the establishment of a unified domestic market on April 10. The ultimate goal of the Guidelines is to break local protection and push for a market which is effectively regulated, fairly competitive and fully open. The Guidelines describe how China will build a “national unified market” across a wide range of sectors and fields.

Conventionally, provincial governments set up barriers to protect their local companies against companies from other regions / provinces in order to ensure growth within their own jurisdictions. As a result, it caused variations of regulations and standards significantly from region to region. Foreign companies may also face challenges when they try to enter into businesses in some provinces.

To overcome the current situations, the Guidelines proposed widespread standardization of a range of industries and regulations, such as intellectual property rights (IPR) protection, market access, anti-monopoly regulations, and various industry-specific standards. In summary, the Guidelines encourages:

- Innovating the intellectual property litigation system
- Ensuring the consistencies of regulations across the country
- Standardizing the patent prosecution procedure to align with global standard and actively engage in the discussion and formation of IP rules.
- Standardizing law enforcement and judicial system in order to reduce discretion
- Strengthening the coordination of law enforcement and judicial departments
- Improving the cross-regional jurisdiction system of intellectual property courts
- Establishing the working mechanism of the integrated supervision department and industry regulatory authorities

To conclude, the Central Government is determined to create a better business environments for both Chinese and foreign companies, and protect IP rights in order to encourage technological innovations.

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