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Civil Enforcement of IP in China

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Civil Litigation – Court Structure

One Legal System

- Supreme People's Court (national level)
- High People's Court (provincial level)
- Intermediate People's Court (city level)
 - court of first instance in patent matters
 - 376 as of now
 - 3 IP Courts (intermediate level)
- Primary People's Court (district level)

Civil Litigation – Court Structure

Notes:

- All trials are bench trials (no jury)
- Two instances of trial whereby the case decision is final upon second trial
- Courts are not bound by the decision of another court, although
 - certain decisions will be “examined”
 - “Judicial Interpretations” issued by the Supreme People’s Court

Effective Patent Enforcement

- Civil courts can assess damages and can get to the heart of the problem
- Can be undertaken after administrative action, but not concurrently
 - But often only choice if matter is complex or if administrative agency is unable to resolve problem
- Relatively inexpensive approach that can take up to two years
- Extremely limited discovery – seek preservation of evidence

Effective Patent Enforcement

- Invention patents are presumed valid although the proceedings can be halted in the case of an invalidation request
- If the action involves a UMP or a design patent, litigation will be stayed pending issuance of an affirming evaluation report
- Patentee must prove infringement
 - Evidence from outside of China must be translated, notarized and legalized before being introduced (time consuming; plan ahead)

Effective Patent Enforcement

- Infringing samples must be notarized
 - Early planning critical because of multiple layers
 - Location of purchase will likely determine location of civil action
- Experts must be sanctioned by the court
 - Sometimes “experts” don’t know the technology

Effective Patent Enforcement

- Ex Parte communications – normal and accepted
- Proceedings at first instance usually last between 6 and 12 months
 - Common for defendant to argue against jurisdiction (waste of plaintiff's time and resources)

Effective Patent Enforcement

- Damages
 - Relatively low as a rule despite the outlying Chint v. Schneider Electric case (\$45 million damages verdict; UMP)
 - Typically statutory damages are all that is available to the patentee
 - Expectations: Be realistic; unlikely to make self whole; more likely to send stop wrongful act and to send message of intolerance

Effective Patent Enforcement

- Forum shopping
 - Jurisdiction held by court where:
 - Defendant resides
 - Infringing activity occurs (manufacturing, distribution, sales, etc.)
 - If possible, IP courts in Beijing, Guangzhou and Shanghai are preferred based on experience and reduced likelihood of bias
 - Local influence possible at all levels

Patent Enforcement – Civil - Statistics

Civil litigation in China by the numbers:

- Total Number of Civil IP cases filed in 2017: **237,242** (an increase of 33.5% over 2016)
- Total Number of Civil IP cases concluded in 2017: **225,678** (an increase of 31.4% over 2016)

Patent Enforcement – Civil - Statistics

By type:

- Patent cases filed in 2017: 16,010 (increase of 29.6% over 2016)
- Trademark cases filed in 2017: 37,946 (an increase of 39.6% over 2016)
- Copyright cases filed in 2017: 137,267 (an increase of 57.8% over 2016)

Patent Enforcement – Civil - Statistics

No longer the home of IP litigation:

Compared with the US:

- Patent cases heard in 2017: 4,057
- Trademark cases heard in 2017: 3,781
- Copyright cases heard in 2017: 1,019

CONCLUSION

Hesitating to litigate in China? Come on in! The water is ... well, much better.

- In 2014, three specialized IP courts were created in Beijing, Shanghai, and Guangzhou
- Since then, 15 IP Tribunals have been set up in 10 provinces and two cities/municipalities
- Judges and practitioners much more experienced, much more sophisticated



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Thank you.

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