

Intellectual Property Protection by Chinese Courts in 2011

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Introduction

As the national adjudication authorities, the people's courts are a cornerstone in protection system for China's intellectual property rights. They are irreplaceable in many aspects: regulating intellectual property relationships, safeguarding the lawful rights of intellectual property owners, punishing infringers, and maintaining the order of our socialist market economy. Last year was the first year of the 12th five-year plan period, during which accelerated progress was made in improving the socialist rule of law, and major strides taken in the judicial protection of intellectual property. Under the strong leadership of the Party Central Committee, headed by Secretary General Hu Jintao, and the effective supervision of the people's congresses and their standing committees of all levels, the people's courts adapted to emerging demands after the formation of a Chinese socialist legal system, discharged their constitutional and legal duties of intellectual property adjudication, and achieved the Three Key Tasks of social conflict resolution, development of innovative social

administration practices, and enforcement of law in a fair and honest manner. The people's courts have also improved their level of competence and quality of adjudication, increased public confidence in the judiciary, furthered judicial protection of intellectual property, and facilitated innovation and advancement in technology.

Wang Shengjun, President of the Supreme People's Court, has said that adjudication of intellectual property is increasingly important as the economy grows and the society modernizes. In recent years, intellectual property is a major priority for the people's courts of all levels. The courts have pursued judicial activism, focused on delivering key tasks as determined by the central government and have served the overall interests of the country. They have developed innovative approaches, improved judicial ethics and built professional capacity. In doing so, the people's courts have contributed significantly to China's economic and social development and to its innovative endeavours.

I. Adjudicated according to Law and Focused on Delivery of Justice

In 2011, the primary focus of the people's courts for intellectual property matters continued to be adjudication. Among the courts' many responsibilities, adjudication was the top priority. The people's courts adjudicated cases fairly and efficiently, ensured that facts are properly determined, laws correctly applied and decisions complied with judicial policies, tried to balance legal outcomes and social effect, improved the quality and efficiency of adjudication, and increased public confidence in intellectual property adjudication.

—Civil Trials as the dominant method for intellectual protection

In 2011, the people's courts had focused on using civil hearings for intellectual property matters. Civil hearing was a dominant method for intellectual property protection. Greater intellectual property protection on the part of the people's courts has helped curb infringing activities, safeguard the interests of owners of intellectual property, and create an environment conducive for innovation. By defining a reasonable scope and level of

protection, the people's courts aimed to prevent abuse of intellectual property, facilitate dissemination and application of knowledge and promote innovation. Additionally, this will level the playing field, realize the market value of intellectual property, and encourage use of intellectual property to increase productivity and competitiveness.

Strengthening of intellectual property protection took place in many forms to accomplish multiple goals: patent protection, to encourage indigenous innovation and improve state core competitiveness; trademark protection, to cultivate home-grown brands and jumpstart the brand-driven growth; copyright protection, to foster creation of new business models and development of creative industries; and competition protection, to improve market structure and ensure fair play.

In 2011, the number of first instance civil intellectual property cases accepted and disposed by local courts grew by 38.86% and 39.51% to 59,612 and 58,201 respectively. Among the cases accepted in 2011, 7,819 were patent cases, up 35.16% year-on-year; 12,991 were trademark cases, up 53.56% year-on-year; 35,185 were copyright cases, up 42.34% year-on-year; 557 were technology contract cases, down 16.87% year-on-year; 1137 were competition cases (18 were monopoly-related), up 0.53% year-on-year; and 2,193 were other intellectual property cases, up 11.55% year-on-year. Among the cases disposed in 2011, 1,321 involved foreign parties, down by 3.51% year-on-year; and 635 involved Hong Kong, Macau or Taiwan parties, up 128.42% year-on-year.

In 2011, civil intellectual property cases of second instance accepted and concluded rose 17.17% and 18.18% to 7,642 and 7,659 (including cases carried over from previous years); new and concluded reopened cases (*zaishen* cases) grew by 164.86% and 105.50% to 294 and 224; cases accepted and concluded by the Supreme People's Court (SPC) totalled 305 and 311 (including cases carried over from previous years), among which 255 were reopened cases and 262 were concluded (including cases carried over from previous years).

There was also improvement in adjudication quality and efficiency. The close rate of civil intellectual property cases of first instance at the local courts rose from 86.39% in 2010 to 87.61% in 2011; appeal rate fell from 49.65% in 2010 to 47.02% in 2011; reopen (*zaishen*) rate increased from 0.27% in 2010 to 0.51% in 2011; and remand for retrial (*chongshen*) rate decreased from 4.57% in 2010 to 3.66% in 2011. The percentage of civil intellectual property cases of first instance concluded within time limit increased from 97.93% in 2010 to 98.57% in 2011.

The people's courts were prudent in handling applications for preliminary injunction in intellectual property cases. In 2011, 130 applications for preliminary injunction were admitted, and 98.23% were approved; 186 applications for pre-trial preservation of evidence were admitted, and 93.42% were approved. To reduce the burden of proof on the part of the applicant, the people's courts were supportive in granting pre-trial preservation of evidence in accordance with law. In 2011, 20 applications for pre-trial preservation of property were admitted, and 100% were approved.

High-profile cases included *Gree Electric Appliances Inc. of Zhuhai v. Guangdong Midea Air-Conditioning Equipment Co., Ltd, and Zhuhai Taifeng Electric Appliances Co., Ltd*(patent infringement), *Guangzhou Hongtaiyang Auto Components Co., Ltd. v. Anhui Jianghuai Automobile Group Co., Ltd and Anhui Jianghuai Automobile Co., Ltd* (infringement of the exclusive right to use registered trademark), *E-Land International Fashion (Shanghai) Co. v. Zhejiang Taobao Network Co., Ltd. and Du Guofa*(trademark infringement), *Société Civile de Château Lafite Rothschild v. Shenzhen Jinhongde Trade Co., Ltd. and Health Industry Development Co., Ltd. under Hunan Biological & Pharmaceutical Group* (infringement of the exclusive right to use registered trademark and unfair competition), *Tencent Technology (Shenzhen) Co., Ltd. and Shenzhen Tencent Computer System Company Limited, v. Beijing Qihoo Technology Ltd., Beijing Sanji Wuxian Network Technology Co., Ltd., and Qizhi Software (Beijing) Co., Ltd.*(unfair competition), *Beijing Kaixinren Information Technology Co., Ltd v. Beijing Qianxiang Hulian Technology Development Co., Ltd. and Beijing Qianxiang Wangjing Technology Development Co., Ltd.*(unfair competition).

—Supervised and Reviewed intellectual property-related administrative decisions and supported the intellectual property-related responsibilities of administrative authorities

The people's courts adjudicated administrative cases (disputes with administrative authorities) fairly and efficiently, and promoted substantive resolution of intellectual property-related administrative disputes. In 2011, the local courts accepted 2,433 intellectual property-related administrative cases of first instance, 6.06% less than previous year, and closed 2,470 such cases, 3.30% more than previous year. Of those accepted, 654 were patent cases, up 18.69% year-on-year; 1,767 were trademark cases, down 12.78% year-on-year; 2 were copyright cases, unchanged from the previous year; 10 were other intellectual property cases. In 2011, SPC accepted 102 intellectual property-related administrative cases and concluded 101. Of those concluded, 73 cases or 72.28% were dismissed; 20 cases or 19.80% were issued *tishen* orders (similar to certiorari), 3 cases or 2.97% were ordered to reopen (*zaishen*); 3 cases or 2.97% were withdrawn; 1 case or 0.99% involved issuance of written instructions to a lower court (*fahan*); 1 case or 0.99% through other methods. SPC reviewed 13 *tishen* cases and concluded 11. Of those concluded, 1 or 9.09% was affirmed; 10 or 90.91% were reversed.

The number of first instance cases involving foreign parties or Hong Kong, Macao or Taiwan parties increased substantially to 1,237, representing 50.08% of the concluded intellectual property-related administrative cases of first instance; 986 of the above cases involved foreign parties, 116 Hong Kong parties, 3 Macao parties and 132 Taiwan parties.

There was also a drastic increase in intellectual property-related administrative cases of second instance. The number of cases accepted and concluded by the local courts was 1,333 and 1,266 respectively. Of the concluded cases, 1,134 were affirmed, 67 reversed, 3 remanded for retrial (*chongshen*), 42 withdrawn, 14 dismissed; in 2 other cases, the original ruling was revoked and a new order issued to docket the case for hearing; 4 other cases were disposed of through other methods.

High profile cases included *Wei Tingjian and T.C. Pharmaceutical Industries Co., Ltd v. Trademark Review and Adjudication Board of the State Administration for Industry and Commerce* (administrative dispute over reconsideration decision on trademark cancellation), *Beijing Resources Double-crane Pharmaceutical Co., Ltd. and Xiangbei Welman Pharmaceutical Co., Ltd. v. Patent Re-examination Board of the State Intellectual Property Office* (administrative dispute over patent invalidation), *France Castel Frères SAS v. Trademark Review and Adjudication Board of the State Administration for Industry and Commerce* and *Li Daozhi* (administrative dispute relating to a review decision on trademark revocation).

—Punished and deterred infringement of intellectual property with criminal sanctions

To punish and deter infringement of intellectual property effectively, the people's courts stepped up criminal enforcement of intellectual property, and actively participated in the special action against intellectual property infringement and production and sale of counterfeit and sub-standard products.

In 2011, the number of intellectual property-related criminal cases of first instance increased considerably. New filings increased by 42.96% to 5,707. The new filings included 3,134 intellectual property infringement cases (2,417 involved registered trademarks, such as use of counterfeit marks), up 142.19% year-on-year; 774 were intellectual property infringement cases involving the crime of production and sale of sub-standard products, up 29.87% year-on-year; 1,747 were intellectual property infringement cases involving the crime of illegal business operations, down 15.93% year-on-year; 52 were cases of other nature.

Intellectual property-related criminal cases of first instance concluded by the local courts rose 39.62% to 5,504. Persons against whom judgments were effective totalled 10,055, including 7,892 who were given criminal sanctions: 2,967 were criminal cases involving infringement of intellectual property and 5,384 offenders were sentenced in effective judgments, up by 136.60% and 173.86% year-on-year; 750 were criminal cases of production and sale of

sub-standard products (involving intellectual property infringement) and 1,509 offenders were sentenced in effective judgments; 1,735 were criminal case of illegal business operation (involving intellectual property infringement) and 3,032 offenders were sentenced in effective judgments; 52 were criminal case of other nature but also involving intellectual property infringement and 130 offenders were sentenced in effective judgments.

For criminal cases involving intellectual property infringement, the defendants of 1,060 cases were found guilty of counterfeiting registered trademarks and 2,163 offenders were sentenced in effective judgments; the defendants of 863 cases were found guilty of selling products bearing counterfeit registered trademarks and 1,507 offenders were sentenced in effective judgments; the defendants of 370 cases were found guilty of illegally manufacturing or selling illegally manufactured counterfeit registered trademarks and 691 offenders were sentenced in effective judgments; the defendants of 1 case were found guilty of patent counterfeiting and 2 offenders were sentenced in effective judgments; the defendants of 594 cases were found guilty of infringing copyrights and 852 offenders were sentenced in effective judgments; the defendants of 30 cases were found guilty of selling infringing reproductions and 75 offenders were sentenced in effective judgments; the defendants of 49 cases were found guilty of infringing upon trade secrets and 94 offenders were sentenced in effective judgments. The case of Ju Wenming, Xu Lulu and Hua Yi, who were convicted of copyright infringement, was a high-profile case.

In 2011, the landscape for intellectual property cases exhibited the following characteristics:

First, new filings increased considerably. The local people's courts have accepted 59,612 new first instance intellectual property cases, 38.86% more than 2010; 2,433 first instance administrative intellectual property cases, 6.06% lower than 2010; and 5,707 intellectual property-related criminal case of first instance, 42.96% more than 2010.

Second, the number of major complex and difficult cases, and new type cases has increased. Cases involved foreign parties and attracted

international attention were proportionally higher. There was also a growing percentage of cases where the legal provisions were too general and the courts had to define the boundaries of the law, or cases where the outcome of the judgement affected the parties' interests significantly.

Third, encouragement of innovation led to increasing demand to protect proprietary innovations; hence, rising number of patent cases. There was a notable increase in the number of cases involving high tech inventions or cases related to pharmaceutical, communications and environmental industries. The economic interests involved in the patent cases and the damages awarded have risen. There were also more disputes over patented items developed by local Chinese companies, and more Chinese companies are suing foreign companies or foreign-invested companies. As more foreign parties are involved in patent disputes, trials and court decisions attracted greater international attention.

Fourth, increasing awareness among enterprises in the building and protecting of their own brands, the number of trademark cases have increased. Cases involving the granting and validation of trademarks have increased significantly. There was also increase in the number of trademark infringement cases that either overlapped or are connected with the granting and validation of trademark rights, and cases that involved the major brands of well-known companies. Disputes involving commercial marks have also continued to rise.

Fifth, as the creative industry prospered, copyright protection must not only arise out of cultural considerations, but also for economic reasons. This has led to the continued increase in the number of copyright cases, which accounted for half of the total volume of intellectual property-related cases. Internet copyright issues were most prominent. The number of trials combining multiple cases involving common parties and the number of interrelated cases have risen. Copyright disputes over the development and application of internet technology were closely followed by the industry. The balance between copyright protection and development of new business models has become most imperative.

Sixth, fierce market competition and diverse commercial activities require that competitive activities be more regulated. Although unfair competition is prohibited by law and as such, incidents of unfair competitive behaviour have been declining, there were more cases that challenged the boundary of law. Therefore, application of the general principles of the *Anti-Unfair Competition Law* was increasing. In addition, behaviours previously accepted as legal were challenged since implementation of the *Anti-Monopoly Law*. The courts have since received “test cases”, where the action was initiated not for personal interests but to test or challenge the limits of the law. Such cases have received much public attention.

—Followed the principle of “Mediation as Priority and Combining Mediation and Adjudication” in dispute resolution

The people’s courts tried to balance mediation and adjudication, and attached importance to regulating mediation actions for better mediation results. The courts followed the principles of “resolving disputes, reconciling differences and dispelling problems” and considered the facts of the cases to determine their approach to a case.

The courts observed the lawful and voluntary use of mediation, avoided the impractical reliance of mediation rate as criteria for effectiveness, and respected the will of the parties; where mediation was inappropriate or unsuccessful, judgement was promptly delivered.

The courts were building a dispute resolution mechanism that combined judicial and non-judicial processes, and were promoting “Greater Mediation” (*da tiaojie*), which includes “people’s mediation”, administrative mediation and judicial mediation. The courts have also strengthened judicial confirmation for settlement agreements reached through people’s mediation, and have supported mediation agencies, arbitration bodies and the industrial organizations in their work of resolving social conflicts.

The high people’s courts of Tianjin, Shandong, Liaoning, Hubei, Anhui, Shannxi, Xinjiang, Guizhou, Hainan, Ningxia, Qinghai and Tibet and the

Court of Xiangjiang Production and Construction Corps were exploring a judicial mediation dispute resolution system tailored to their local conditions.

Beijing High People's Court deepened its partnership with Internet Society of China for Mediation and Chinese Writers' Association by developing a dispute resolution system. It has also signed a cooperation agreement with Beijing Intellectual Property Bureau to appoint the bureau as mediator for intellectual property disputes, and has formulated the *Guidelines in Coordinating Judicial Mediation with Administrative Mediation*.

Under the coordination of Hunan High People's Court, the Changsha County People's Court and Changsha City (at county level) Arbitration Commission established a mechanism to align their work with the alternative dispute resolution system of Changsha Economic and Technological Development Zone.

The courts of Fujian Province leveraged professional mediators, people's assessors (lay judges), industrial associations and agents ad litem to create the necessary structure for "Greater Mediation".

The courts of Sichuan Province established a "three-in-one" mediation scheme comprising of people's mediation, administrative mediation and judicial mediation.

The Shanghai Mediation Centre for Copyright Disputes and the Internet Society of China successfully mediated more than 120 intellectual property cases referred to them by Shanghai courts. The Shanghai Mediation Center for Copyright Disputes alone assisted the settlement of 68 intellectual property cases referred by the People's Court of Putuo District. In 2011, 72.72% of intellectual property-related first instance civil cases were withdrawn after mediation, 4.13% higher than 2010.

—Gained Public Confidence through Greater Judicial Openness

The people's courts adhered to the policy of judicial openness, improved fairness, openness and transparency in court proceedings, upheld the parties' and public's right to know, and practiced "sunshine justice" during adjudication.

To enhance transparency and public confidence, the courts relied on different means, such as press conferences, Court Open Day, and live webcast.

To promote judicial openness, SPC released the white paper entitled Intellectual Property Protection by Chinese Courts in 2010 (Chinese and English Editions), organized the National Seminar on Openness in Intellectual Property Cases, trained information officers in all the courts to build online databases of intellectual property judgements and decisions. The China Intellectual Property Rights Judgements and Decisions website was also upgraded to ensure that intellectual property judgements and decisions are promptly uploaded on the website and to improve the website's function. By the end of 2011, 40,175 judgements and decisions were published on the website. SPC also improved upon the content and upgraded the Intellectual Property Protection website, a sub-website under its official website.

The Shanghai High People's Court launched the Intellectual Property Protection by Shanghai Courts website. The courts of Jiangsu Province launched a province-wide initiative called "Real-time Court Reporting" (which includes real-time videotaping, real-time transcribing and real-time display of transcript). Under the initiative, all judgments and decisions were posted online, and court proceedings were shown on live webcast.

The high people's courts of Beijing, Tianjin, Chongqing, Shandong, Guangdong, Guangxi, Sichuan, Gansu, Hebei, Jiangsu, Hainan and Xinjiang issued white or blue papers on judicial protection of intellectual property for 2010. The high people's courts of Anhui, Jilin, Qinghai and Tibet and the court of Xinjiang Production and Construction Corps advanced the mechanism of judicial openness for intellectual property cases. The intellectual property divisions of Liaoning courts were generally equipped with IT systems and smart devices, and provided regular live webcasts of court proceedings. The Jiangsu High People's Court continued to improve on the professionalism of its people's assessors by selecting assessors from the intellectual property administrative agencies to hear intellectual property cases, and by issuing *Opinions on Managing Professional People's Assessors for Hearing Intellectual Property Cases*.

II. Served the Overall interests of the Party and the Country and Implemented the National Intellectual Property Strategy

In 2011, based on the actual work of intellectual property adjudication, the people's courts have followed out "judicial activism" in their work. They identified areas and issues consistent with the overall interests of the Party and the country, expanded the scope of services and further developed their judicial capacities, and implemented the National Intellectual Property Strategy. Enhanced judicial protection of intellectual property contributed to the steady and rapid economic growth during the 12th five-year plan period.

—Followed out judicial activism to serve the overall interests of the party and the country, and to promote balanced development of the economy and society

Intellectual property cases were handled by the people's courts with both the national as well as international considerations in mind. Adjudication was to serve the ultimate goal of accelerating change of China's growth pattern through strategic economic restructuring, technological advancement and indigenous innovation. The development of domestic and international situations was closely observed by the people's courts, as they leveraged the judicial protection function to balance economic and social development.

To facilitate the development of pillar industries and increase the core competitiveness, the people's courts have improved upon their adjudication of patent and other technology-related cases. To give impetus to the brand-driven economy, the courts have strengthened protection for well-known trademarks; at the same time, the courts protected well-known trademarks from abuse as well as infringement. To promote development of new industries, use of information technology and the rise of China's soft power, the courts have strengthened adjudication of software, database, internet and other copyright-related cases. To safeguard fair competition and maintain market order, the courts have also improved effectiveness in adjudication of competition cases.

Additionally, the people's courts have also imposed heavier sanctions for infringement, reduced the cost of litigation, and accelerated the building of a robust judicial protection system for intellectual property. They have stepped up protection for indigenous brands, essential and leading-edge researches, core and important technologies and the creative industry. They have also participated in operations to crack down on intellectual property infringement and production and sale of counterfeit and sub-standard products so as to build our national capacity for innovation and to nurture core competitiveness.

The “Stronger Judicial Protection of intellectual property for Change of Growth Pattern” project was launched to help reshape China's economy. SPC issued the *Opinions on the Role of Courts in the Development and Prosperity of Socialist Culture*, adopted thirty measures to protect authors of creative works and scientific and technological findings, and instructed local courts to step up protection for intellectual property.

The Shandong High People's Court released the *Guidelines on Strengthening the Adjudication of Intellectual Property Cases*, which provided direction for the courts.

The courts of Zhejiang Province expanded the role of adjudication of intellectual property cases based on the local economy and progress of industrial development, and implemented the “Local Context-Based Intellectual Property Case Adjudication” project.

The Tianjin High People's Court has issued the *Implementing Opinions on the Provision of Judicial Safeguards and Services for the Great Development and Great Prosperity of a Socialist Culture*. The Hubei High People's Court has also issued the *Implementing Opinions on Leveraging Initiatives on Judicial Protection for Intellectual Property to Strengthen the Province through Culture and Scientific Development*.

The Yunnan High People's Court issued the *Opinions on Improving Judicial Protection of the Intellectual Property of Special Industries and Industries with a Competitive Advantage*.

—Promoted the pilot project of centralised adjudication of civil, administrative and criminal cases on intellectual property by the intellectual property division.

The people's courts of all levels have pursued reform and developed innovative methods for intellectual property adjudication, and have also tried to establish a scientifically sound adjudication system and work mechanism.

Advancements of the National Intellectual Property Strategy have been made, in that there has been additional pilots launched in respect of centralised adjudication of civil, administrative and criminal cases involving intellectual property (“three-in-one adjudication”) by intellectual property divisions.

At the National Meeting of the Presidents of High Courts in December 2011, the SPC specified that the pilot project on centralised adjudication of intellectual property-related civil, administrative and criminal cases by intellectual property divisions. This will ensure comprehensive protection, resource optimisation and scientific operations. As a result, intellectual property adjudication will become an efficient and authoritative system.

The courts that are in the pilot project have reviewed their work under the pilot programme, operated with a more standardised approach, and promptly discovered new issues and resolved new problems. To further the pilot programme, the courts have established coordinating mechanisms for adjudicating civil, administrative and criminal cases involving intellectual property, and have stepped up collaborative efforts with the public security, prosecutorial and administrative authorities. This was to ensure greater judicial efficiency and consistency in judicial standards and to provide effective and comprehensive protection. The system also enables optimal use of resources, rational operations and the establishment of an efficient and authoritative adjudication system for intellectual property matters.

As at end 2011, the pilot programme has been launched in 5 high courts, 50 intermediate courts and 52 grassroots courts.

The high courts in Jiangsu, Zhejiang and Inner Mongolia have worked more closely with the local prosecutor's office and police, and have provided guiding opinions on criminal protection issues under the pilot project on "three-in-one adjudication".

The Jiangsu High People's Court and the provincial public security and prosecution departments have jointly issued the *Opinions on Procedural Issues Relating to Adjudicating Criminal Cases Involving Intellectual Property*. The *Opinions* included comprehensive provisions on review of rights, collection and perpetuation of evidence, and determination of technological secrets relating to the handling of criminal cases involving intellectual property matters. Also, the introduction of "publicly known technique" defence for criminal cases involving trade secrets was effective in unifying the standard of judgement for enforcing the law in criminal cases involving intellectual property, and was instrumental in increasing the level of criminal judicial protection.

—Focused on publicity for judicial protection of intellectual property, and continued to broaden the impact of judicial protection for intellectual property.

The people's courts have used various forms of publicity to promote the judicial achievements in intellectual property protection. Publicity was comprehensive and multi-dimensional. As an important aspect of the court's responsibility, publicity was used to broaden the impact of judicial protection for intellectual property, and to establish a positive image of the judiciary in intellectual property protection.

The World Intellectual Property Day was observed as usual on 26 April. Different activities were organised during the publicity week, and the organisers continued to improve upon the publicity content. The courts of all levels organised publicity activities based on the *Circular on the Activities for the 2011 National Intellectual Property Publicity Week* issued by the Organizing Committee of the National Intellectual Property Publicity Week consisting of 25 authorities, including the CPC Central Committee Publicity Department and SPC. The achievements of all courts in protection of

intellectual property were widely publicised. Publicity activities were varied and innovative, and have created extensive and positive social impact.

During the publicity period, the SPC conducted the following activities:

- Convened a Symposium for National Courts on Judicial Openness;
- Signed *Memorandum on Mediation Mechanism for Internet Intellectual Property Disputes*;
- Published white paper *Intellectual Property Protection by Chinese Courts in 2009* in Chinese and English;
- Published the *Annual Report on Intellectual Property Cases*;
- Open the upgraded and revised China Intellectual Property Rights Judgements and Decisions website;
- Established theoretical research bases, field research bases and demonstration models of local courts in respect of intellectual property protection;
- Published the Ten Major Cases and Fifty Typical Cases on Judicial Protection of Intellectual Property for 2010;
- Published the draft judicial interpretation on adjudication of civil disputes involving monopoly to solicit public opinion; and
- Organised the “Judicial Protection of Intellectual Property in Jiangsu” activity for the central media agencies.

The publicity activities were extensively reported by dozens of local media agencies. The Associated Press and other foreign media have also highly commended our efforts in strengthening intellectual property justice and improving judicial transparency for intellectual property matters. The achievements of our courts in judicial protection of intellectual property have been well-praised at home and abroad. Judicial protection of intellectual property has won greater confidence in China's intellectual property protection and achieved greater international impact.

The “Judicial Protection of Intellectual Property in Jiangsu” activity was also extensively reported by central media agencies, including the *People's*

Daily, www.people.com.cn, *Xinhua News*, *Guangming Daily*, *China Central Television*, *China Intellectual Property News*, *Legal Daily* and *People's Court Daily*. Journalists visited Nanjing in Jiangsu Province, Suzhou, Changzhou, and Wuxi and reported the activities, and were able to obtain first-hand information on the judicial system and operational reforms of the Jiangsu courts and their open judiciary for intellectual property matters. Reporters also provided in-depth reports on the local dispute resolution mechanism for intellectual property disputes, and institutional-building and workforce-building for intellectual property judicial protection.

—Improved upon the jurisdiction structure for intellectual property cases, and promoted the concept of justice for the people and accessible by the people.

Embarking from the angle of providing convenience for intellectual property right holders to ensure that the rights holders better exercise their lawful rights, and economising litigation costs, the people's courts complied with the SPC's *Circular on Adjusting the Criteria for Jurisdiction over First Instance Civil Cases Involving Intellectual Property by Different Levels of Local People's Courts* and *Circular on Publication of Criteria for Jurisdiction over First Instance Civil Cases Involving Intellectual Property by Different Levels of Local People's Courts*, and improved upon the jurisdiction structure for intellectual property cases such that it was now more reasonable and logical. It also optimised allocation of judicial resources.

In areas that were economically, culturally and technically more developed, more basic-level courts were given, as appropriate, jurisdiction over general intellectual property cases. Intermediate courts and grassroots courts were encouraged to exercise trans-regional, centralised jurisdiction covering designated administrative regions in light of their work needs.

As at end 2011, there were 82 intermediate people's courts with jurisdiction over patent cases, 45 over plant breeders' rights, 46 over integrated circuit topography and 43 over determination of well-known marks. 119 basic-level courts had jurisdiction over general intellectual property cases,

and 3 basic-level courts were designated as pilot sites for adjudicating disputes relating to utility models and industrial design patents.

The Jiangsu High People's Court had been actively working on trans-regional jurisdiction over intellectual property cases at basic-level courts, such as Suzhou, Wuxi and Nanjing. The court also issued a *Circular on Further Clarifying the Criteria for Grade Jurisdiction over Intellectual Property Cases in the Province* to unify criteria of jurisdiction over intellectual property cases across different levels of courts.

—Focused on developing an innovative adjudication system for intellectual property matters, and continued to improve upon its fairness, efficiency, and authority

The people's courts have always focused on developing an innovative adjudication system for intellectual property matters:

The Intellectual Property Division of SPC has signed a *Memorandum on Mediation Mechanism for Internet Intellectual Property Disputes* with the Internet Society of China. The memorandum represents a development in judicial and non-judicial approaches (ADR) to dispute resolution. The high people's courts of Heilongjiang, Shanghai, Tianjin, Qinghai, Hebei, Zhejiang, Fujian, Guangxi, Shanxi, Jiangxi, Xinjiang and Inner Mongolia explored ways to establish and improve upon the mechanism for finding technical facts. The courts also capitalised on the role of experts by launching pilots in expert assessor and expert witness systems to ensure better adjudication quality.

The high people's courts of Shandong and Hunan provinces signed with their respective provincial associations for science and technology a memorandum of understanding on cooperation in judicial protection of intellectual property. The two sides have employed special advisors and experts in science and technology, developed operation guidelines for them, and have explored new avenues that technical experts may participate in adjudication of intellectual property matters.

The Jiangsu High People's Court assisted the intermediate people's courts within its jurisdiction to establish an expert databank and has issued

provisional guidelines for the management of databank on technical experts in intellectual property.

The Guangdong High People's Court has established an legal expert advisory system, whereby ten experts who have extensive experience in theoretical research in science and technology and intellectual property and in administrative and law enforcement were appointed as consultants for intellectual property law for the entire provincial court system.

—Reinforced horizontal relationships and built a comprehensive institution for protection of intellectual property.

Building a strong relationship with the administrative authorities for intellectual property, science and technology, industry associations and tertiary institutes has always been priority for the people's courts. This is a way to achieve substantial results in protecting intellectual property and to achieve synergy between judicial and administrative protection, to elevate the level of protection in China. The people's courts of all levels have worked with the Patent Re-examination Board of the State Intellectual Property Organisation in organising meetings and exchanges between their personnel, and have been an active and effective force in providing legislative and administrative and policy recommendations.

The Beijing court system has been a driver in strengthening horizontal relationships, building exchange platforms and forging cooperation. It has also explored the possibilities of establishing district-level intellectual protection regimes: together with the district's intellectual property bureau and judicial bureau, the Shijingshan District Court has established the "Zhongguancun Tech Park Shijingshan Park Legal Service Platform"; the Chaoyang District Court and the relevant authorities in the district have jointly organised a theme activity called "Protect Your Intellectual Property, Usher in Innovation and Development"; the Dongcheng District Court, the district's intellectual property bureau, Yongheyuan Management Committee jointly organised the Third "IP-Yonghe Campaign"; the Huairou District Court worked with seven industry associations, including the Beijing Electronic Chamber of Commerce to establish a focal point.

The Henan courts have also forged communication and coordination mechanisms with the relevant intellectual property authorities to create synergy for intellectual property protection.

—Increased international and inter-regional exchanges, and elevated the image of China as a responsible country in judicial protection of intellectual property.

The people's courts have always looked upon international and inter-regional exchanges as important avenues in the judicial protection of intellectual property. As such, the courts have continued to develop different channels of exchange and enriched the forms of cooperation, and have increased communication and cooperation with the United States and Europe.

Selected intellectual property judges have gone on study visits to the United States, and judges have participated in China-Europe Intellectual Property Working Group Meeting, China-US Joint Commission on Commerce and Trade Intellectual Property Work Group Meeting, and the Meeting of the Chinese-Swiss Working Group on Intellectual Property. By participating in activities involving foreign counterparts, the courts were able to respond to areas of concern of foreign parties, clarify misunderstandings, as well as made known our achievements in intellectual protection to elevate our international image.

Last year, the SPC received nearly two hundred high-level visitors from countries as Japan and the United States, and provided for the visitors a comprehensive overview of the situation and achievements in China in respect of judicial protection of intellectual property, thereby increasing China's international impact in judicial protection of intellectual property.

To step up exchanges between the intellectual property legal fraternity and judiciary between the mainland of China and Taiwan, the SPC organised a visit to Taiwan by a delegation from the China Judges Association. The members of the delegation were mainly intellectual property judges. The delegation met with members of the judiciary in Taiwan, and conducted extensive discussions about judicial systems, judicial protection of intellectual

property and other issues relating to the adjudication systems. The visit had helped improved understanding between the two jurisdictions, developed friendship, and facilitated consensus in many issues. It was significant in building trust and cooperation between the mainland and Taiwan, and in improving communication and exchange.

III. Strengthened the foundation of basic-level courts, unified application of law, and focused on adjudication supervision and operational guidance

Fundamentals and local capacity affect the overall operations of the people's courts, and unifying judicial standards is necessary for rule of law in the country and for public confidence in the people's courts. In 2011, strengthening the fundamentals and local capacity was the focus of all the people's courts, including unification of judicial standards, supervision of adjudication activities and provision of operational guidance. The courts have streamlined the line relationship between superior and inferior courts and have clarified the scope and procedures of supervision by superior courts, so as to raise the intellectual property-related judicial standard at the basic-level courts.

—Strengthened the fundamentals and local capacity for intellectual property adjudication and consolidated the operational foundation of intellectual property adjudication.

Based on characteristics and general practice of intellectual property trials, the people's courts of all levels have implemented the SPC's opinions on strengthening the fundamentals and capacity of the basic-level people's courts. The efforts taken were manifold: further improved the institutional set-up for intellectual property adjudication at basic-level courts and increased the workforce; focussed on specific issues when organising training for the basic-level courts; enabled greater exchange-postings, such that intellectual property judges from basic-level courts may do postings at a superior court or at courts of the same level to sharpen the skills and abilities of intellectual property judges at basic-level courts.

The basic-level courts also received support in reforming and reviewing of institutions and operational mechanisms relating to intellectual property adjudication, to enable them to promptly reflect upon and share their experience. Demonstrative courts were established at the basic level as models and to lead the other courts in improving the quality and efficiency of intellectual property adjudication, in developing innovative systems of adjudication and operation, and in unifying adjudication approaches and standards and strengthening of the adjudication team.

The SPC implemented the “Three-Five’s Project” to strengthen the fundamentals and the basic courts capacity. The project involves the following three dimensions: Established theoretical research bases at the Peking University, Renmin University of China, East China University of Political Science and Law, Southwest University of Political Science and Law and Shenzhen University; on top of the current China field research base for intellectual property judicial protection (in Suzhou), established four more field research bases in Qingdao, Shenzhen, Changsha and Chengdu; established demonstrative courts for intellectual property adjudication at the basic-level courts in Chaoyang District in Beijing, Pudong New Area in Shanghai, Huqiu District in Suzhou of Jiangsu Province, Yiwu City of Zhejiang Province and Jiang’an District of Wuhan City of Hubei Province.

SPC’s Intellectual Property Division signed a memorandum of understanding of cooperation with the Gaoxin District Management Committee of Suzhou to establish Suzhou’s Gaoxin District as a base for the selection and distribution of typical cases on the judicial protection of intellectual property in China. The Liaoning High People’s Court has also cooperated with Dalian Maritime University to jointly establish a “Liaoning Research Base for the Judicial Protection of Intellectual Property”.

—Strengthened thematic research relating to intellectual property adjudication.

The people’s courts of all levels have recognised the importance of “research-based adjudication”. The courts have continued to improve their research abilities and to use their research outcomes to serve their

adjudication needs. Research topics include: imposition of heavier sanctions, reducing the cost of rights protection, setting down the principles and standards for calculation of damages for intellectual property cases, and improving the rationale and reasonableness of damages calculation.

Research on the judicial protection of copyright on the internet continued, and key topics on the judicial protection of internet copyright have been completed. For patents, research included adjudication of administrative cases involving granting and validation of patents, judicial protection of trade secrets and pre-trial provisional measures for intellectual property cases. Research for trademarks was also carried out in aspects relating to improving the quality and efficiency of adjudication of administrative cases and in the reform of the bounds of jurisdiction over administrative cases involving trademark disputes. Other thematic researches involved copyright protection involving foreign works, copyright disputes involving internet cafés, and protection of traditional opera works.

The resources of the Specialised Committee on Intellectual Property of the China Adjudication Theory Research Association were also fully exploited, in that the committee serves as a specialised academic body in intellectual property adjudication and platform for academic exchange. To lay theoretical foundation for advancing adjudication of intellectual property issues in the country, the Specialised Committee on Intellectual Property of the China Adjudication Theory Research Association held the Annual Conference 2011 cum Seminar on “Increasing the Level of Protection for Intellectual Property and Reducing the Cost of Rights Protection” in Chongqing. The meeting adopted a Decision to Adjust Major Membership of the Specialised Committee on Intellectual Property of the China Adjudication Theory Research Association. The courts also worked closely with the relevant authorities to amend laws and regulations, such as the *Civil Procedure Law* and the *Anti-Monopoly Law*. Experienced and theoretically-sound judges were selected from different parts of the country and were divided into a copyright law research team and trademark law research team. The teams conducted researches and provided high quality legislation recommendations.

There were also specific researches targeting at difficult and hot topics, and at new situations and emerging issues. The people's courts at all levels continued to improve on their methods of research using innovative ways, and based on their research, prepared research reports, summarised their adjudication experience and published research papers. They also documented their adjudication experience for exchanges, and organised forums and lectures. The courts and judges dedicated themselves to improving their research ability and the quality of their research, so as to serve the needs of adjudication practice.

—Continued to develop channels that help guide adjudication of intellectual property matters.

The people's courts of all levels provided work guidance for inferior courts in many forms, including issuing judicial interpretations, judicial documents, guiding cases, guiding opinions, and through special researches.

The SPC took on the important responsibility of providing judicial interpretation or normative documents of a judicial interpretation nature for laws relating to intellectual property rights. Also, SPC completed the drafting of the judicial interpretation for adjudicating *anti-monopoly civil cases*, and sought public feedback on its judicial interpretations. Other drafting responsibilities of SPC include judicial interpretation for adjudicating internet copyright infringement cases, guiding opinions on the adjudication criteria relating to adjudicating administrative cases for the granting and validation of patents, and guiding opinions on procedural issues relating to adjudicating administrative cases for the granting and validation of trademarks.

The Supreme People's Court, Supreme People's Procuratorate and Ministry of Public Security jointly issued the *Opinions on Issues Relating to the Application of Law for Criminal Cases of Intellectual Property Infringement* to clarify the conviction and sentencing criteria for intellectual property crimes, in doing so, improved upon the normative regime of judicial protection for intellectual property crimes. The *Opinions* was necessary for providing the public security organs, the procuratorates and the courts with regulatory support, for dispelling doubts in the application of law, and for

issuing lawful sanctions. The *Opinions* are instrumental in enabling capitalization of judicial initiatives to protect intellectual property, and maintain a fair and orderly market environment.

A Work Conference for Intellectual Property Adjudication for National Courts was convened in Hangzhou of Zhejiang Province, during which the requirements set forth by the 17th National People's Congress of the CPC and the 6th Plenary Session of the 17th CPC Central Committee were thoroughly learned and implemented. The conference captured the opportunities and addressed the challenges in intellectual property adjudication guided by the concept of socialist rule of law; highlighted the importance of intellectual property adjudication; reflected upon adjudication work in 2011 for intellectual property cases; analysed the current situation and tasks; and planned and designated work relating to adjudication of intellectual property for the near term. It was a significant event that helped improve the work of the judges in 2012 and in the period after.

In addition, the expertise of intellectual property experts and academics and of outstanding intellectual property judges was relied upon to write up a book on intellectual property case studies for all the courts, so that intellectual property judges were equipped with high quality educational materials. The Guangdong High People's Court also assisted the Zhongshan City Intermediate People's Court in establishing a Zhongshan Decorative Lighting Intellectual Property Express Rights Protection Mechanism and an Intellectual Property Circuit Court, and the Shenzhen Longgang District Court in establishing a system for perpetuating electronic evidence.

—Leveraged judicial policies in unifying judicial application of intellectual property laws.

Based on the judicial policy of “classification, differentiated treatment and appropriate stringency”, the people's courts adjusted and formulated specific policy guidelines for adjudication of intellectual property cases, and in doing so, enabled the judiciary to play an important role in protecting intellectual property. During adjudication, the courts were able to rely accurately on judicial policies

to guide them in the correct application of laws and regulations. The courts also reviewed and elaborated intellectual property judicial policies and used every means to ensure that these judicial policies are observed and implemented, so that the administration of intellectual property justice will eventually be uniform, standardised and open.

—Innovated and strengthened adjudication management.

The people's courts of all levels were working towards establishing a management system for intellectual property adjudication which was logical, complete and effective. This enabled management to be systematic; and management ensured quality and efficiency. The emphasis on adjudication management was based on rules and standards, and to be scientifically sound. The management system included every adjudicator and every process in the adjudication, so that quality and efficiency and the adjudication management process were improved continually. The management system also included a regular reporting mechanism for disposed cases. This was implemented to improve adjudication efficiency, and to ensure that disposition of cases was evenly spread out throughout the year.

Another area of focus was the quality of written judgements. Judges were urged to prepare judgements that were detailed in reasoning and that might be used as models or quality references. Well-written judgements were frequently selected and awards issued to encourage greater focus on the quality of written judgements. To improve on the adjudication of difficult cases, the courts relied on different approaches such as joint-meetings of presiding judges, conferences of relevant judges and expert panel discussions to ensure fair administration of justice.

Further enforced were elevated jurisdiction (*tiji guanxia*: a higher court exercises jurisdiction where necessary) and trans-regional jurisdiction (*yidi guanxia*), so as to prevent local protectionism and to ensure fair adjudication. The courts also attached importance to coordinating adjudication of related cases, so that related cases were handled consistently. The Guangdong High People's Court established three work mechanisms as an on-going effort to improve the quality of adjudication work. These were intellectual property

adjudication work analysis and sharing, guidance by category, and communication and coordination. The courts of Chongqing Municipality have also developed a reporting system for major cases.

—Leveraged the demonstrative role of typical cases in adjudication of intellectual property cases.

The people's courts attached great importance to the demonstrative role of typical cases in intellectual property adjudication; selection and publication of typical cases was considered an important long-term task. Case guidance in intellectual property adjudication was increasingly standardised, institutionalized and perpetuated. The Supreme people's Court's 2010 Annual Report on Intellectual Property Cases incorporated the ten major cases and fifty typical cases relating to the judicial protection of intellectual property by Chinese courts in 2010. Other high people's courts such as those of Beijing, Tianjin, Chongqing, Shandong, Anhui, Fujian, Jiangxi, Hunan, Sichuan, Shanxi, Heilongjiang, Guangdong, Guangxi, Gansu and Guizhou, that published their local typical cases made an on-going effort to improve on the typical case guidance system.

IV. Strengthened the adjudication team and focused on quality

A strong team of adjudicators is critical for adjudication quality. In 2011, capacity-building at the people's courts of all levels was carried out under the initiative of "Party-building in service of capacity building for quality judgement". The aim was to improve the overall quality of our team of judges. Our intellectual property judges were fully committed to cultivating a robust court culture and to improving their personal legal culture capacity, so as to develop a sound culture in the administration of intellectual property justice.

—Strengthened development of a court culture, and established a positive professional image of intellectual property judges.

A judicial culture was being fostered to stimulate the mind and broaden the vision of intellectual property judges, and to enhance their professional conduct and humanistic qualities. An atmosphere of learning and

advancement was created to cultivate a professional image of fairness, honesty and care for the people for intellectual property judges.

—Developed learning-based trial courts and improved the political and professional qualities of intellectual property judges.

The people's courts of all levels applied themselves to building learning-based intellectual property courts that have both political awareness and professional knowledge. The educational emphasis was on strengthening the core values of "loyalty, care for the people, justice and honesty" set for all officers of justice. The judges broadened their learning in the areas of applied jurisprudence and sought innovative learning methods. The courts organised regular courses on the latest developments in applied jurisprudence, so as to adapt to the impact of the declared formation of the Chinese socialistic legal system on how the people's courts protect intellectual property.

—Organised two thematic activities to consolidate the concept of socialist rule of law.

The people's courts organised a thematic activity entitled "People's Judge for the People" under a thematic educational activity organised by the CPC Central Political and Legal Committee, called "Advance Our Tradition, Strengthen Our Belief, Enforce for Our People". As required by the CPC Central Political and Legal Committee and the SPC, the activities focused on Party-building and judicial conduct. The activities were based on the practice of intellectual property adjudication and revolved around organisational leadership and delivery of work results, so as to ensure that both activities achieved the desired outcomes.

Part of the activity curriculum was to improve on the judicial conduct of intellectual property judges, such that judges would adhere to the Party's mass line, and broaden their people-perspective. Debates on people's demands were organized to ingrain the people-perspective in judges' minds. The activities tried to develop a spirit of honesty in the intellectual property justice system and implement the central concept of "people being the basis and

governing for the people”. Intellectual property judges were urged to observe honesty, integrity and self-discipline.

—Organised professional training and education for intellectual property judges and improved the overall quality of the intellectual property team.

SPC and the high people’s courts have organised various forms of training to improve the judicial abilities of intellectual property judges. The people’s courts of all levels have implemented the education and guiding principles of “one goal (‘rule of law’), two shifts (‘from theory to practice, from knowledge to ability’) and three approaches (‘judges being trainers’, ‘case-based education’, and ‘field education’)” in training intellectual property judges, and have adhered to the SPC’s 2011-2015 Education and Training Plan for National Courts to continue to improve the content of intellectual property training, develop innovative methods for training intellectual property adjudication skills, and better the quality of training in intellectual property adjudication.

SPC has organised national training in intellectual property adjudication to strengthen understanding of judicial policies and the socialist rule of law concept, and to facilitate discussions on important concepts of intellectual property justice. This will hone the judicial skills of intellectual property judges, and as a result, elevate the level of judicial protection for intellectual property.

Together with the United States Agency for International Development and the Asia Foundation, SPC also organised the first National Workshop for Chief Judges of Intellectual Property Divisions. More than 230 chief judges of intellectual property divisions from all levels of the people’s courts participated. The one-week workshop covered macro and meso topics as judicial concepts of intellectual property, judicial policies and basic legal system.

Conclusion

In 2011, our judges for intellectual property cases adopted an open and innovative approach, and worked tirelessly to achieve impressive results. 2012

will be a year when they will strive with greater confidence and will accomplish greater success.

2012 is a year of special significance for China, as this is the year of the 18th National Congress of the Communist Party. For intellectual property-related judicial matters, the people's courts will continue to focus on adjudication, so as to fulfil its objective to "serve the overall interests; deliver justice for the people". The courts will seek depth, results and improvement in their work to address emerging situations and new challenges and to fulfil the heavy task of judicial intellectual property protection. The courts will tighten research and pursue judicial activism to facilitate creation of an innovative intellectual property adjudication system, and to achieve better legal and social outcomes. The courts will promote cooperation with enforcement authorities for more effective action against intellectual property crimes, to ensure fair competition necessary for a good market-based economic order. The courts will improve capacity-building by developing educational activities that focus on the core values of "loyalty, care for the people, justice, honesty" set for all officers of justice to guide professional conduct. The courts will strive for progress and a greater contribution to the development of intellectual property adjudication.