



### **What Effects Will the Intellectual Property Courts in China Bring About**

As you may have known, the first Intellectual Property Court in China - the Beijing Intellectual Property Court (BIPC) - was founded in November 2014. The first court hearing of the BIPC was conducted on November 16, presided by the Chief Judge Su Chi. On the same day, the Guangzhou Intellectual Property Court was established. Meanwhile, Shanghai Intellectual Property Court was also founded at the end of last year.

To keep you informed on these significant developments, the Beijing Sinda Law Offices have prepared the following analysis of the likely effects these Intellectual Property Courts will have in China, taking the innovative measures adopted by the BIPC as an example.

#### **Jurisdiction**

Before the founding of the BIPC, all civil and administrative Intellectual Property Rights (IPR) cases were adjudicated by Beijing's three Intermediate People's Courts as well as China's local courts. To address the issues in jurisdiction, allocation of judicial resources, judges' expertise as well as other related concerns, the Intellectual Property Courts have been set up in China, and have exclusive jurisdiction over all IPR cases.

The BIPC has jurisdiction over all administrative IP cases filed against administrative decisions, particularly those by the Patent Reexamination Board of the State Intellectual Property Office, and the Trademark Review and Adjudication Board. Further, the BIPC has jurisdiction over the most significant civil cases in relation to patents, new varieties of plants, layout designs of integrated circuit, know-how, computer software and well-known trademarks. Accordingly, Beijing's three intermediate courts no longer handle the above cases. Meanwhile, local courts still have jurisdiction over civil IPR cases of first instance.

#### **Technical Investigation Officers**

As IPR cases sometimes involve specialized technical issues, besides selecting veteran IPR judges, the BIPC has created a series of new positions previously unseen



in China, titled Technical Investigation Officers. These officers are responsible for researching specialized technical problems and assisting the judges in fact finding.

### **Strengthening judicial protection of IPR**

Procedurally speaking, the BIPC will more actively and legitimately utilize legal procedures such as preliminary injunctions, evidence preservation, and property preservation. Substantively, the BIPC will reasonably increase the claimable damages for intellectual property infringements, and will order the losing party to pay reasonable attorney's fees of the prevailing party.

### **Distinguishing written judgments**

For simple matters with clear facts, the BIPC will adopt a Form Verdict to improve the efficiency of adjudication. As for major and complex cases such as those involving “social influence”, the BIPC will bolster the legal analysis of its written judgments, which may have guiding and instructive effects in future cases.

### **Effects**

Although it is too early for any conclusive summary, we believe that these innovative measures adopted by the BIPC, including the establishment of the BIPC and two other IP courts, are a positive sign of China's determination to strengthen its IPR protection. Further, these measures will no doubt have the ancillary benefit of improving the public's awareness in respecting and protecting Intellectual Property Rights. Moreover, we believe that the establishment of these IPR courts will make the judicial protection of IPR in China more transparent, effective and predictable.

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