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PRESS RELEASE

INTELLECTUAL PROPERTY PROTECTION BY CHINESE COURTS IN 2009

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The People's Courts are the State judicial authority for intellectual property (IP) protection, which independently exercise adjudicative powers according to the Constitution and the law.

China's reform and opening-up (gaige kaifang) has spurred the development of intellectual property since the late 1970s and early 1980s. Being a national and Party priority, and buttressed by strong social support and diligent judges, judicial protection of intellectual property in Chinese courts has germinated and grown. The current comprehensive judicial intellectual property protection regime embodies the ideals of socialism with Chinese characteristics, embraces the country's development needs, observes China's duties under international conventions. It is an essential part of China's judicial architecture.

In the last 30 years, the People's Courts have:

- - - - Expanded their functions and powers in intellectual property protection

The People's Courts provided judicial protection for intellectual property through civil, administrative and criminal procedures.

Civil adjudication had begun including cases relating to technology contracts toward the end of the 1970s. Trademark, patent and copyright cases were added during the mid 1980s, and unfair competition disputes in the early 1990s. The People's Courts had received many filings, and had rendered decisions for as many as 166,408 IP-related cases between 1985 and 2009.

In terms of administrative adjudicative duties, the People's Courts have been given the mandate to handle patent suits against the Patent Re-examination Board since 1985. Hence, Chinese courts are responsible for conducting judicial reviews for intellectual property administrative enforcement disputes and cases relating to granting or validation of patent or trademark. Between 1985 and 2009, the local People's Courts have altogether concluded 6387 IP-related administrative cases of first instance.

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Since the implementation of the 1979 Criminal Law, the People's Courts were able to offer protection against criminal violations of registered trademark rights under the Law. The 1997 Amendment of the Criminal Law further enhances judicial powers in criminal protection against violation of the various intellectual property rights, including the imposition of severe punishment against serious violations of intellectual property rights, such as counterfeit and piracy. Following the Judicial Interpretation Concerning the Adjudication of Cases Involving Infringement of Intellectual Property Rights jointly issued by the Supreme People's Court and the Supreme People's Procuratorate at the end of 2004, the number of IP-related criminal cases admitted and decided by the courts increased substantially; between 1997 and 2009, 14,509 IP-related criminal cases of first instance were decided by the courts.

- - - - Enlarged the scope of judicial protection for intellectual property

The mid-1990s was a turning point in terms of the general nature of intellectual property cases received by the courts. Before the mid-1990s, the cases related mainly to technology contracts. From that period onwards and until 2002, patent cases were predominant. And since 2002, copyright cases represent the largest caseload.

Besides catering to the general speedy rise in traditional IP caseload involving copyright, patents, trademarks, unfair competition & technology contracts, judicial protection expanded to address emerging issues such as copyright on the internet, computer software, new plant varieties, layout-designs (topographies) of integrated circuits, folk literature & art, geographical indications, special signs, corporate names, domain names, judicial recognition of well-known marks, non-material cultural heritage, franchise, application for pre-trial provisional measures, declaration of non-infringement, and anti-monopoly. Among those, cases relating to copyright infringements on the internet have been swiftly on the rise. The People's Courts have handled cases involving all categories of intellectual property and many different types of competitive behaviour, ranging from the creation, use, protection, to the management of intellectual property.

The judicial channel is becoming the primary means of intellectual property dispute resolution. For example, to settle patent disputes, most patent owners would choose to file a civil suit with the People's Courts directly, instead of using administrative means.

- - - - Increased the level of judicial protection for intellectual property

The quality and efficiency of judicial decisions on cases relating to intellectual property have improved over the years. The clearance rate of first instance civil intellectual property cases increased from

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75.35% in 2003 to 85.35% in 2009. Appeals fell from 59.38% in 2003 to 48.82% in 2009. Likewise, cases remanded or decisions reversed at the second instance reduced from 15.19% in 2003 to 6.00% in 2009, and retrials fell from 0.80% in 2003 to 0.33% in 2009.

Court mediation has also proven to be an effective means of dispute settlement. In recent years, more than 50%, on the average, of intellectual property civil cases were settled through court mediation at first instance.

At the same time, the People's Courts have built a respected international reputation for their fair and equitable treatment of all parties in cases involving foreign litigants.

Judicial transparency is progressively improving. The People's Courts adopt the principle of judicial openness, and effective court judgements and decisions as well as judicial information are disseminated via the media, internet, publications and other vehicles according to law. On 10 March 2006, the Supreme People's Court formally launched a website on "China IPR Judgments & Decisions", a centralised open library of judgements and decisions rendered by the People's Courts of different levels.

- - - - Enhanced the effectiveness of judicial protection for intellectual property

The People's Courts have imposed severe penalties for infringements as provided by law, so as to lower the cost of protection, and increase the cost of infringement.

For valid infringement claims, infringers would be ordered to cease and desist, and would be exposed to damages awarded against them that sufficiently compensate the aggrieved party's losses. Also, the burden of proof for a right holder is reduced as appropriate, according to law. Recently, during the last instance of the patent infringement case of Wuhan Jingyuan Environmental Engineering Co., Ltd. ("WJC") v. Fujikasui Engineering Co., Ltd and Huayang Electric Co., Ltd, the Supreme People's Court found in favour of the plaintiff, and ordered the two defendants to pay WJC RMB 50.6124 million yuan (USD 7.42 million) in damages. This was the highest damages award ever made by the Supreme People's Court for infringement of intellectual property right.

In addition, the People's Courts have taken a prudent yet effective approach to using pre-trial provisional measures, and have imposed civil sanctions on infringement according to law. Between 2002 and 2009, a total of 808 applications for pre-trial preliminary injunction in IP-related cases were admitted by local courts, 84.18% were granted approval; 1312 applications for pre-trial preservation of evidence were admitted, 93.72% were granted approval, 527 applications for pre-trial preservation of

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property were admitted, 96.04% were granted approval.

Criminal sanctions are an important means of protecting intellectual property by the People's Courts. Besides imposing principal punishments and regulating the use of probation, other punitive measures that include the imposition and enforcement of heavier criminal fines, recovery of criminal proceeds, seizure of criminal tools, destruction of infringing goods, ordering payment of damages, are also means to deprive perpetrators of the financial capacity to repeat the offence.

- - - - Improved the judicial system in intellectual property protection

Since 1985, the Supreme People's Court has published 41 judicial interpretations relating intellectual property rights, 29 of which are currently in force. More than 40 judicial guidance documents (zhidaoxing wenjian) that helped instruct the lower courts were also issued. Especially since 2000, in line with China's accession to the World Trade Organisation and to serve the country's need to build an "innovation-based nation", the Supreme People's Court has issued 25 IP-related judicial interpretations. Issuance and implementation of judicial interpretations and guidance documents have provided the People's Courts with more concrete substantive and procedural bases on which they rely for adjudication of intellectual property cases. As a result, the judicial system has continued to see progress.

The jurisdiction regime for intellectual property has improved. To ensure quality adjudication of intellectual property cases, judicial interpretations provide for "designated jurisdiction" for cases involving patent, new plant varieties and layout designs of integrated circuits. In 1998, jurisdiction for other first instance civil cases relating to intellectual property was also largely transferred to the Intermediate People's Courts. In recent years, due to significant increase in the number of general intellectual property cases relating to copyrights and trademarks, designated Primary People's Courts are given jurisdiction to handle such cases.

The grounds of action in intellectual property cases have also become more rational and more comprehensive. In April 2008, the Supreme People's Court issued and implemented the Regulations on Grounds of Action for Civil Cases[1] which consolidated the grounds of action relating to intellectual property right and the competition law.

Optimised allocation of judicial resource for intellectual property has seen results. During the 1980s, civil cases involving copyrights and industrial property rights were each handled by the civil division and economic division in the People's Courts. The 1990s saw the creation of special intellectual property divisions to hear such cases. In recent years, some local courts have even conducted pilot programmes

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where the intellectual property division takes overall responsibility for IP-related civil, administrative and criminal cases. Also explored are the expansion of the judges panel (heyi ting) and participation of civil judges in the adjudication of criminal and administrative cases relating intellectual property rights.

- - - - Bettered the capacity in providing judicial protection for intellectual property

The People's Courts have endeavoured to build a robust adjudication organisation, a stronger team of judges, and high level of professionalism for intellectual property protection. In August 1993, the Beijing Intermediate and High People's Courts became the first courts in the country to introduce dedicated Intellectual Property Divisions. In October 1996, the Supreme People's Court set up its Intellectual Property Division. At present, all High People's Courts, almost all Intermediate People's Courts and all Primary People's Courts with civil jurisdiction for intellectual property cases have created dedicated intellectual property divisions. According to statistics dated October 2008, local courts had established a total of 298 separate intellectual property divisions and 84 intellectual property panels in civil divisions, and staffed 2,126 specialised intellectual property judges (currently, among the general courts, there are 31 High People's Courts, 409 Intermediate People's Courts, and 3119 Primary People's Courts).

As a general practice, the better and more experienced judges are selected to adjudicate intellectual property cases. Providing guidance for intellectual property judges and intensive training for their professional knowledge and adjudication skills is a priority, and has continuously strengthened the adjudication capacity and professional level of intellectual property judges. Thus, the combination of research, theoretical innovation and learning is a professional philosophy adopted and pursued by all intellectual property judges.

In 2009, when China celebrated its 60 anniversary and its impressive achievements that astounded the world, the People's Courts have also made new progress in intellectual property protection. Guided by the tenets of Deng Xiaoping and the "Three Represents", the courts have ensured actualisation of the "Scientific Development Concept" and adherence to the Party and national plans. Besides the delivery of the national intellectual property strategy, there was heavy emphasis on new issues or problems encountered during adjudication of intellectual property cases. The advances made in intellectual property adjudication are also attributed to the courts' focus on priorities, innovative methods, concentration of resources, comprehensive planning, as well as strengthened supervision and guidance.

Lehman, Lee & Xu is a prominent Chinese corporate law firm and trademark and patent agency with offices in Beijing, Shanghai, Shenzhen, Hong Kong, Macau, and Mongolia. The firm is managed by Mr.

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Edward Lehman who is a long-time China resident, and is recognized as one of the top full service as well as intellectual property firms with almost 20 years of practice experience in Mainland China.

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