

IPR Trial Work Summarization Five Years after PR China's Entry into WTO

1. It is already five years since PR China's entry into WTO and it is also a quite unusual period for PR China's trial work as this work has withstood various tests in the transition period after entering WTO and initially formed an IPR justice protection system basically adapting the needs of state development. Currently, it is a historically new point of beginning for PR China's IPR trial work and retrospect and summarization is quite necessary.

“It is a developing and unusual five-year for IPR trial work of Chinese courts.” Said vice president Chao Jianming from the Supreme People's Court of PR China on the Conference of IPR trial work of Chinese courts, hold in Wuxi, Jiangsu Province.

This conference is very special; though called a conference, nevertheless, its scale is second only to the President's Conference on the Chinese court system. President Cao's report, titled All-around Strengthening IPR Trial Work, so as to Provide Powerful Justice Safeguard for Building an Innovative Country and Constructing A Harmonious Society, summarized past IPR trial work of Chinese courts, analyzed situations ahead, clarified major tasks in 2007 and the near future, and proposed very profound and comprehensive requirements for correctly guiding IPR trial work. His report received coherent accolades from presidents,

presiding judges and judges from the Supreme People's Court, high courts and intermediate courts of regions, as well as IPR scholars. They all regarded this report as high-level and theoretically deep, deserving to be read carefully.

2. Increase in the number of cases of IPR trial “Over the past five years, courts at all levels have creatively developed IPR trial work, stepped to a higher level, initially formed a IPR justice protection system basically adapting the needs of state development, withstood various tests during the transition period after PR China's entering into WTO, and been sufficiently approved by the Standing Committee of the National People's Congress.” Indicated by President Cao, “Now it is a historically new point of beginning for IPR trial work of Chinese courts.”

According to the statistics of the Supreme People's Court, during the past five years 2002–2006, the number of first trial civil cases accepted and settled by municipal courts throughout PR China has greatly increased, respectively up to 54,321 and 52,437; and the number of second trial civil cases accepted and settled was 13,170 and 12,700, respectively. In 2006, there were 14,219 first trial civil cases accepted and 14,056 settled by municipal courts throughout PR China, and the growths this year are the increases of 5.92% and 4.95%, respectively over last year.

Among them, 2686 and 2652, respectively concern patent cases, 2521

and 2378 trademark cases, 5719 and 5751 copyright cases, 681 and 668 cases of technology contract, 1256 and 1188 cases of unfair competition, while 846 and 844 other IPR cases. 2686 and 2652 were second trial civil cases accepted and settled by municipal courts throughout PR China in 2006 and the decreases this year are 13.74% and 12.07%, respectively over last year. From 2002 to 2006, first trial foreign-related IPR civil cases were up to 931, with an average increase of 48.29% per year. Among them, 353 were accepted and settled in 2006 with an increase this year of 52.16% over last year. Moreover, according to a recent preliminary statistics, from January to October in 2006, Chinese courts accepted and settled, respectively 533 and 308 first trial IPR civil cases of various forms of enterprises.

The IPR trial field has been notably expanded. Cases concern temporary measures before litigation, network copyright, network domain name, renowned trademark identification, new plant species and so on.

Disputes concern integrated circuit layout design, folk literature, geographical indications, confirmation of no IPR violation, Special Permission contract, anti-monopolization and soon. “The sustainable great increase in the number of IPR cases and continuous expansion of trial field not only indicate the fast development of PR China’s IPR protection cause, but also reflect fierce demand and sufficient trust of the public to IPR justice protection.” said President Cao.

Courts at all levels also intensified relief in litigations as well as civil sanction, and strengthened IPR justice protection. From 2002 to October in 2006, Chinese courts has accepted 430 cases of pre-trial application for temporary injunction, and settled 425, with the actual rate of adjudication 83.17%; accepted 642 cases of pre-trial application for evidence preservation, and settled 607, with the actual rate of adjudication 92.67%; accepted 218 cases of pre-trial application for property conservation, and settled 208, with the actual rate of adjudication was 96.07%.

3. Promoting the quality of cases of IPR trial “Settlement rate of first trial IPR civil trial increased from 72.82% in 2002 to 78.36% in 2006. Rate of appeal decreased to 40.67% in 2006.” said President Cao, “This fully indicates that comparatively great improvement has taken place in PR China’s IPR trial quality and clear promotion has appeared in the level of IPR justice protection.”

The courts at all levels have properly operated procedural law and substantive law correctly and continuously promoted quality and efficiency of the trial of IPR cases. Besides data mentioned above, President Cao also showed that the rate of amendment and remand of second-trial IPR civil cases decreased from 23.90% in 2002 to 14.52% in 2006; and the rate of retrial decreased from 1% in 2002 to 0.27% in 2006. Courts at all levels emphasize mediation as well, from 2002 to

2006, there calling lawsuit rate of mediated in first trial IPR civil cases was relatively higher, up to 52.57%. The quality of Judge documents making was also ameliorated at large.

In order to meet the requirements of trial work and PR China's entry in WTO, since 2001, the Supreme People's Court totally constituted and amended 18 IPR-related justice interpretations concerning patent, trademark and copyright, etc., and clarified detailed principles and criteria concerning IPR protection in a series of guiding documents. Furthermore, the Supreme People's Court has expanded the scope of jurisdiction courts in a proper way. Now, there are 62, 38 and 43 intermediate courts that respectively have jurisdiction in patent, new plant species and integrated circuit layout design cases. 17 primary courts have been authorized to accept and settle part of IPR civil cases.(http://www.sipo.gov.cn/sipo/xwdt/mtjj/2007/200702/t20070215_135182.htm)