

# **A Jurisdictional View of Chinese IP Litigation**

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#### Same As In The U.S., Cases Can Be Filed In Many Courts Across China



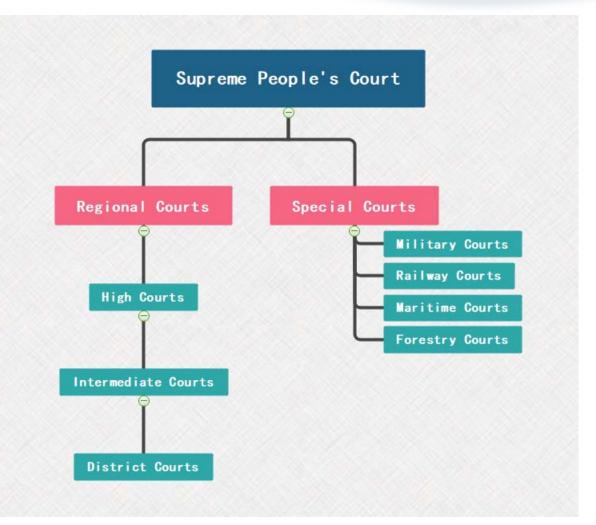


#### **Chinese Court System At A Glance**



- Mainland China has 31

   administrative regions, including
   22 provinces, 5 autonomous
   regions, and 4 municipalities, all
   under one unified legal system.
- Court System:
  - One Supreme People's Court
  - <u>Each province</u>: One High Court
     Several Intermediate Courts
     Several District Courts





- In 2018, courts in China accepted a total of 334,951 intellectual property cases, including first instance and second instance cases and applications for extraordinary legal remedy to reopen cases, and concluded 319,651 cases, representing a year-to-year increase of 41.19% and 41.64% respectively.
- In 2018, the Supreme People's Court accepted 913 new civil intellectual property dispute cases (81.51% year-to-year increase) and concluded 859 (74.24% year-on-year increase).
- In 2018, the local people's courts accepted 283,414 and concluded 273,945 civil intellectual property cases of first instance, and the year-to-year increases were 40.97% and 41.99% respectively. Among the newly accepted cases, there were 21,699 patent cases, representing a 35.53% increase from last year; 51,998 trademark cases, representing a 37.03% increase; and 195,408 copyright cases, representing a 42,36% increase.



- Popular Courts For Filing IP Litigation In China
  - Beijing, Shanghai, Jiangsu, Zhejiang and Guangdong continue to operate under a heavy caseload, having accepted 185,337 civil IP cases of first instance and accounting for 65.39% of the total nationwide number.
- Establishing Jurisdiction Connections for Specific IP Disputes:

Locations where the infringing products are

Manufactured Promoted Sold Stored Seized

> Plaintiff's residence is usually not deemed as a location with jurisdiction



- Courts that handled more similar disputes with results that are more favorable, and have judges with more experience with like disputes.
- Courts in more developed locations, which have tendency to grant higher damages when statutory damages are applied.
- Courts with shorter average trial periods, which have more stringent time limitations and faster trial speed.
- Usually avoid choosing the location of the defendant's business residence to avoid potentially negative effect on the outcome (i.e., reduce risk of local protectionism)



# **General Principles**

## The principle of "two facilitations":

- To facilitate litigation by parties concerned.
   To facilitate courts to exercise judicial power independently, impartially and efficiently
   The Principle of "Plaintiff Accommodated to Defendant":
- The place where the defendant has his domicile (or the place of his habitual residence) is deemed as a location with jurisdiction, while that of the plaintiff's is usually not.

#### **Jurisdictions Of Infringement Cases**



# Jurisdictions of Infringement Cases

Civil Procedure Law Article 28: A lawsuit brought on a tort action shall be under the jurisdiction of the people's court of the place where the tort is committed or where the defendant has his domicile. > Interpretations of the Supreme People's **Court on the Application of the Civil Procedure Law Article 28**: For the purpose of Article 28 of the Civil Procedure Law, the place of infringement shall include <u>the</u> place where infringement is committed and the place where the consequences of infringement take place.

#### Jurisdiction of Foreign-Related Litigation

Legal Jurisdiction:

Civil Procedure Law Article 265: In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People's Republic of China, if the contract is signed or performed within the territory of the People's Republic of China, or if the subject matter of the action is located within the territory of the People's Republic of China, or if the defendant has distrainable property within the territory of the People's Republic of China, or if the defendant has its representative office within the territory of the People's Republic of China, the people's court of the place where the contract is signed or performed, or where the subject matter of the action is, or where the defendant's distrainable property is located, or where the torts are done, or where the shall have defendant's office is located, jurisdiction. representative **Jurisdiction as Agreed:** 

Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law Article 531:The parties to disputes over a foreign-related contract or other foreign-related property rights and interests may reach <u>written agreements</u> to select any of the following foreign courts as the competent court: <u>the foreign court at the domicile of the defendant</u>, <u>the foreign court in the place where the contract in dispute is performed or signed</u>, <u>the foreign court at the domicile of the plaintiff</u>, <u>the foreign court at the locus of the subject matter</u>, <u>the foreign court at the place of infringement</u>, or <u>any other foreign court in a place that has actual connection to the disputes in question</u>.

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# • Supreme People's Court (SPC) established a specialized IP Tribunal on January 1, 2019

The IP Tribunal shall conduct trial of the following cases:



(1) Appeals from the first-instance judgments and verdicts of civil cases involving invention patents, utility model patents, new plant varieties, layout designs of integrated circuit, know-how, computer software and monopoly as rendered by high people's courts, intellectual property courts and intermediate people's courts;

(2) Appeals from the first-instance judgments and verdicts of the administrative cases involving affirmation or grant of intellectual property rights to invention patents, utility model patents, new plant varieties, layout designs of integrated circuit, know-how and computer software as rendered by the Beijing Intellectual Property Court;

(3) Appeals from the first-instance judgments and verdicts of the administrative cases involving invention patents, utility model patents, new plant varieties, layout designs of integrated circuit, know-how, computer software and monopoly-related administrative punishments, etc. as rendered by high people's courts, intellectual property courts and intermediate people's courts;

(4) Nationwide major and complicated civil and administrative cases in the first instance as stated in Items (1), (2) and (3) of this Article;

(5) Cases to which the trial supervision procedure shall be applicable, such as request for retrial, protest and retrial, etc., legally initiated against the legally effective judgments, verdicts and mediation agreement of the first-instance cases as stated in Items (1), (2) and (3) of this Article;

(6) Cases involving the disputes over jurisdiction, application for review of the decisions on fines or detention, and application for extending the time limit for trial, etc. in the first-instance cases as stated in Items (1), (2) and (3) of this Article; and(7) Other cases to be heard by IP Tribunal as deemed necessary by the Supreme People's Court.

Source: Provisions of the Supreme People's Court on Several Issues concerning the IP Tribunal Article 2



# ✓ Beijing IP Court (2014-11-06)

## ✓ Guangzhou IP Court (2014-12-16)

 ✓ Shanghai IP Court (2014-12-28)







#### **Jurisdiction Of The Three Specialized IP Courts**



- An intellectual property court shall govern the following cases of first instance within the jurisdiction of the municipality of its domicile:
  - (1) Civil and administrative cases of patents, new plant varieties, layout designs of integrated circuit, know-how and computer software;
  - (2) Administrative cases brought against the administrative acts involving copyrights, trademarks, unfair competition, etc. that are committed by the departments of the State Council or local people's governments at and above the county level; and
  - (3) Civil cases involving the recognition of well-known trademarks.

Source: Provisions of the Supreme People's Court on the Jurisdictions over Cases by Intellectual Property Courts in Beijing, Shanghai and Guangzhou Fa Shi [2014] No.12 Article 1

- An intellectual property court shall govern the following cases of second instance within the jurisdiction of the municipality of its domicile:
  - Cases of appeal lodged by the parties concerned against the first-instance civil and administrative judgments and verdicts on copyrights, trademarks, technology contracts, unfair competition and other IPRs as rendered by the district-level people's courts in the city of domicile of an intellectual property court shall be heard by the intellectual property court.
  - ✓ A case of appeal lodged by a party concerned against the first-instance judgments and verdicts rendered by an intellectual property court, or a case for which reconsideration by the court at the next higher level is requested pursuant to the law, shall be heard by the intellectual property tribunal of the high people's court at the domicile of the intellectual property court.

Source: Provisions of the Supreme People's Court on the Jurisdictions over Cases by Intellectual Property Courts in Beijing, Shanghai and Guangzhou Fa Shi [2014] No.12 Article 6, Article 7



- The Guangzhou Intellectual Property Court shall exercise cross-regional jurisdiction within Guangdong Province over:
  - the Civil and administrative cases of patents, new plant varieties, layout designs of integrated circuits, know-how and computer software;
  - (2) the Civil cases involving the recognition of well-known trademarks.
- Shenzhen, another major city in Guangdong Province, is an exception to this interpretation, and still has jurisdiction over IP cases in Shenzhen.

*Source: Provisions of the Supreme People's Court on the Jurisdictions over Cases by Intellectual Property Courts in Beijing, Shanghai and Guangzhou* Fa Shi [2014] No.12 **Article 2** 



## Specialized IP Tribunals in 21 major cities of 18 provinces

Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xi' an, Nanchang, Lanzhou, Changchun, Urumqi, Haikou, Xiamen

#### Examples of Cross-regional Jurisdiction of Intellectual Property Tribunals:

Hefei IP Tribunal's Cross-regional Jurisdiction: The first-instance civil and administrative cases of intellectual property in the jurisdiction of Anhui province involving Patents, Know-How, Computer Software, New Plant Varieties, Layout Design of Integrated Circuits, Identification of Well-known Trademarks and Monopoly Disputes.

Source: Reply of the Supreme People's Court on Approving the Intermediate People's Courts of Hangzhou, Ningbo, Hefei, Fuzhou, Jinan and Qingdao to Set up Specialized Judicial Bodies and Cross-regional Jurisdiction over Some Intellectual Property Cases (Fa [2017] No.236 Article 4)



Because so many products are made in China, an injunction from an IP infringement case in China affects not only their sales in China, but also their exports from China, and thus has *de facto* extraterritorial effects that can be felt throughout the world, including the U.S.





An injunction issued in China, but felt in the world, can be one example of the extraterritorial reach of Chinese laws.

#### Long-Arm Jurisdiction, Or Extraterritorial Reach Of US Laws?



In the U.S., "Long-Arm Jurisdiction" is a form of personal jurisdiction based on some minimum contact. The corresponding Chinese translation, "长臂管辖", has been used in China and elsewhere to mean, generally, the extraterritorial reach of U.S. laws.





First ZTE, then Huawei. The Top 2 Chinese Telecom companies have been prosecuted for allegedly violating the U.S. economic sanctions against Iran. Telecom companies from other countries may have the same violations but have not been prosecuted by the U.S.

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- The EU Blocking Statute was initially introduced in 1996 in response to the U.S. extraterritorial sanctions legislation concerning Cuba, Iran and Libya. The EU Blocking Statute prohibits EU companies from complying with the extraterritorial sanctions that exceed those of the EU, allows companies to recover damages arising from sanctions imposed on them, and nullifies the effects of such decisions in the EU.
- In response to President Trump's decision to unilaterally withdraw the United States from the Iran sanctions relief program, the EU Commission updated the EU Blocking Statute on August 7, 2018. The Blocking Statute (a) prohibits persons operating within the EU (so-called "EU operators") from complying with certain extra-territorial US sanctions listed in the Annex to the Blocking Statute (US sanctions), (b) allows such persons to recover damages arising from the effects of the US sanctions, and (c) renders foreign court rulings based on the US sanctions invalid within the EU.



- Chinese Government: Follow EU to implement a similar blocking statute, or other countermeasures based on the principles of international law?
- Chinese Government: Implement other Chinese-style countermeasures?
- Chinese Government: Advise certain citizens not to travel to the U.S. or a country with extradition treaty with the U.S. in light of what happened to Ms. Meng?
- Chinese Government: Challenge those U.S. actions at WTO/UN?
- Chinese Companies: Ensure compliance with those U.S. laws?
- Chinese Companies: Give up the U.S. market?

# THANK YOU!

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