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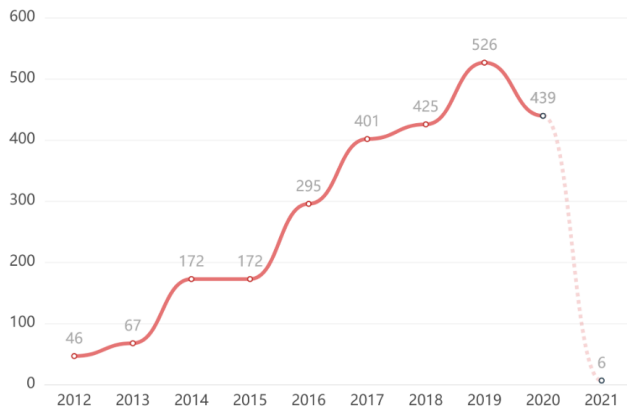
China Trade Secret Case Data Review (2012-2020)

Jerry XIA | 01/29/2021



Civil – 2,549 court decisions since 2012 in Alpha

No authoritative accurate data b/c many TS judgments not published for confidentiality/sensitivity:



- Very small portion among **1.4M+ IP case decisions** in total
- Actual case number even **lower** due to one case possibly having multiple court decisions
- General trend – **increasing annually**
- Among 1,737 first instance judgments, **infringement found only in 160 cases** (v. 322 rejected, 791 withdrawn, 451 settled, 13 others) – **winning rate 9.2%**
 - 116 winning out of 1,040 during 2012-2018 (11%)
 - 44 winning out of 697 during 2019-2020 (6%)
- Hot spots: Guangdong (457); Shanghai (383); Zhejiang (266); Jiangsu(249)

Foreign-related cases in 2020

- **15 cases** found to involve foreign parties (**8 US, 1 SE, 3 FR, 1 IT, 1JP, 1 NL**)
- 12 as plaintiff; 3 as defendant
- 2 won, 1 rejected, 5 withdrawn, 7 unknown yet
- Highlight: Dow Chemical winning \$100M against a local company in Jiangsu

Criminal – 300 court decisions with 100 convictions since 2012 in Alpha

2012-2018

- 203 court decisions, **60 convictions (30%)**
- Top 3 areas: Guangdong (16); Jiangsu (7); Zhejiang (10)

2019-2020

- 97 court decisions, **40 convictions (41%)**
- Top 3 areas: Guangdong (9); Beijing (8); Shanghai (6)

Shanghai People's Procuratorate's TS Report for 2010-2020 (released on Jan.14, 2021)

- **18 TS cases finally prosecuted and convicted (47%)** among a total of 38 received from the Police
 - **20 cases killed** – indeed most TS cases dead in the police or the prosecutor's phase
 - Technical secrets 75%; business secrets 34%; both 9%
 - Top 3 industries: (1) machinery manufacturing, (2) biotechnology, (3) software
 - An overall upward trend; significant growth in 2018 & 2019 but down a bit in 2020 (due to COVID)

Some observations

- **Revised TS laws and improved legal environment encouraging more international companies to enforce in China** (e.g. *Dow Chemical & Johnson Matthey winning \$100M against a local company in Jiangsu, July, 2020*)
- **Increasing patent-TS mingled cases** (e.g. *Skyroam v. Wang Bin, uCloudlink*)
- **Increasing cross-border cases** (e.g. *Motorola v. Hytera; Micron Technology, Inc.(US) v. UMC (Tai Wai), JHICC*)
- **More & easier criminal prosecutions with the lowered threshold?** – No clear sign. Yet to be seen
- **Shifting proof burden under new law** – yet to see more (*most recent cases still Meizhou Greenlight v. Former Employees – customer list; Beijing Hongwei v. Former Employees & Beijing Shicheng – customer list in 2019*)
- **No preliminary injunction (PI) seen in 2020** – hope to see more in the future (*last one still in 2019 for a US chemical company in Suzhou*)
- **More administrative enforcement seen** – especially after SAMR released *Protection Of Trade Secrets (Draft for comments)* on Sept. 4, 2020 (e.g. Shanghai Feifan Co. fined RMB525,000 & Shanghai Shisi Auto Co. fined 500,000 for TS infringement in 2020)

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THANKS

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