

The logo for Rouse Lusheng Law Firm, featuring the word "ROUSE" in a bold, sans-serif font with a color gradient from purple to green.The logo for Lusheng Law Firm, featuring the word "LUSHENG" in a bold, sans-serif font with a color gradient from purple to green.

LAW FIRM

路盛律师事务所

Member of the Rouse Network

What is a typical PVP litigation look like in China?

Xu Yi

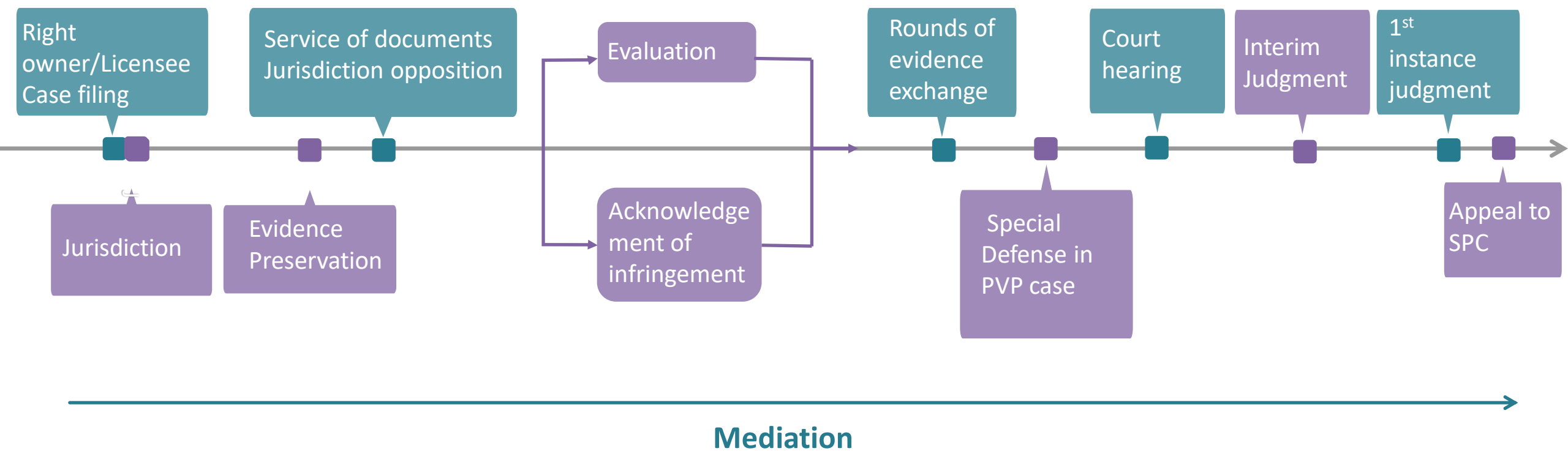
Oct. 2021

A Typical IP Case Outline



Mediation

A Typical PVP Case Outline



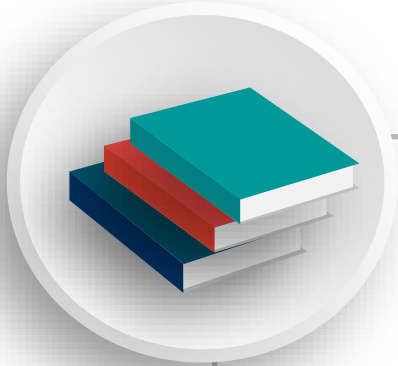
Jurisdiction

1st instance:
40 Selected Intermediate Courts

2nd instance:
Supreme Court



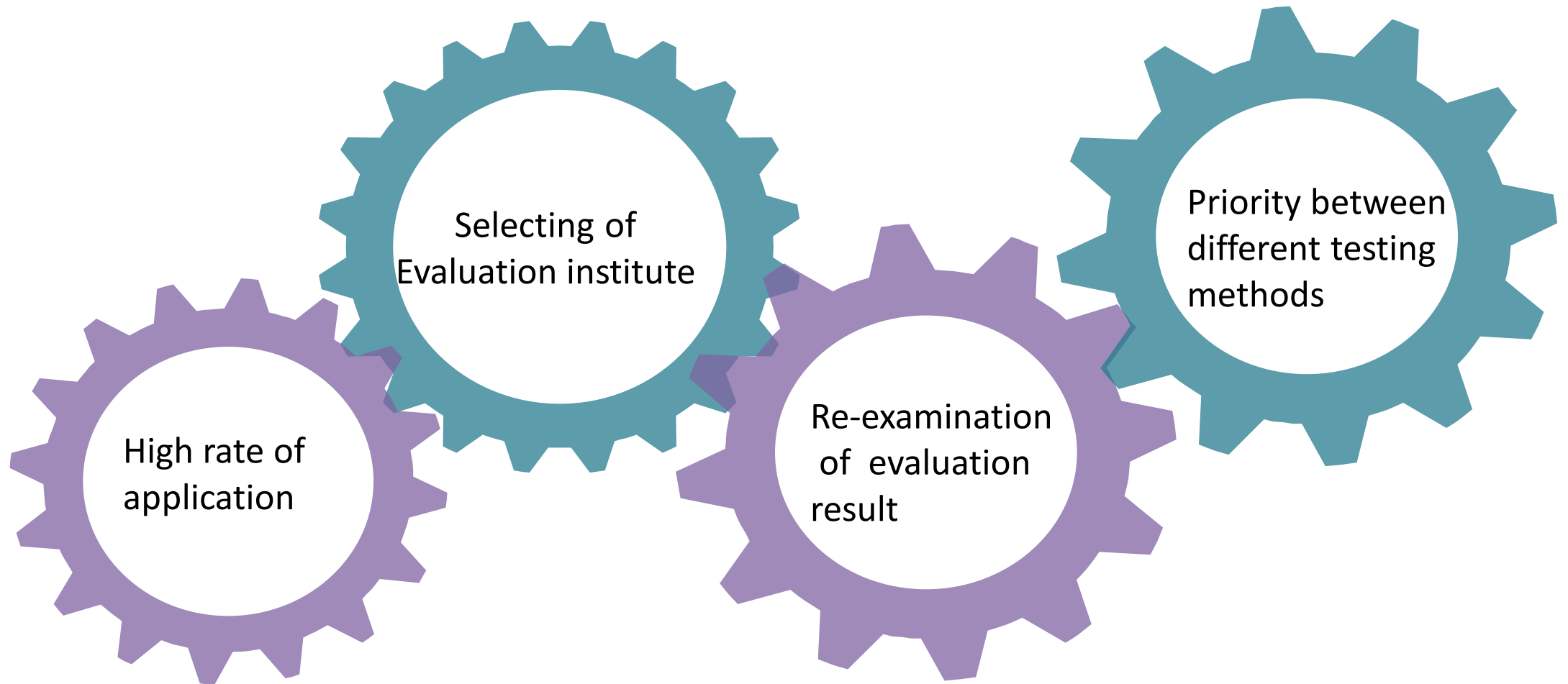
Evidence preservation



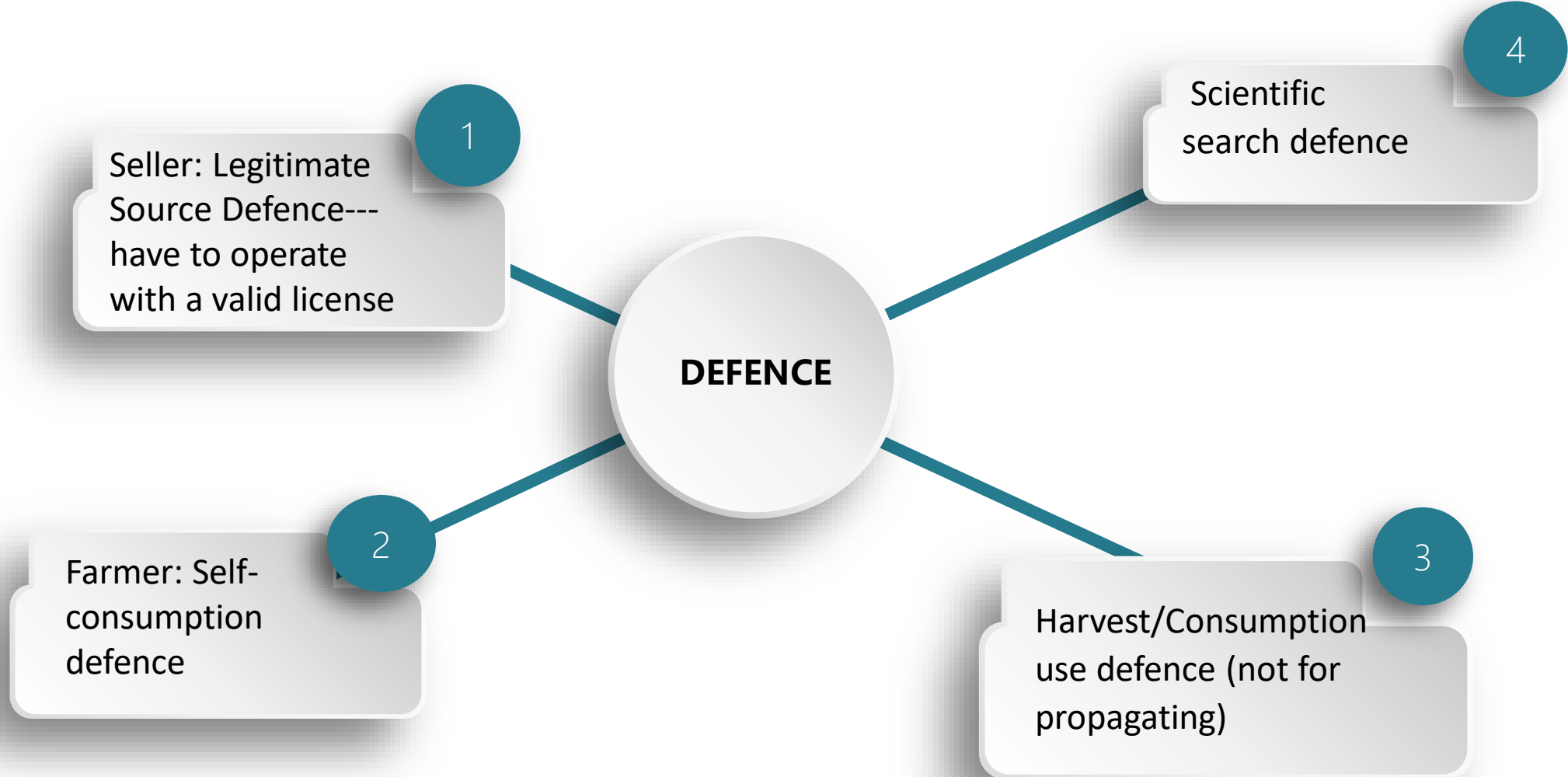
SPC: Several Provisions on the Specific Application of Law in the Trial of Dispute Cases of Infringement on the Right to New Plant Varieties” (“2nd JI”, July,2021)

If the alleged infringer tampers with the evidence, such as failure to preserve or destruction of the preserved plants, resulting in a situation where relevant facts of the case cannot be ascertained, then the court may presume the plaintiff’s claim in relation to the preservation of evidence is tenable.

Evaluation



Defence



Interim Judgment

Judgment on partial issues (e.g. establishment of infringement)

Appealable

Provide efficient relief in complicated cases



2nd JI Article 14 Where the people's court holds that the infringement act is established based on the fact of infringement upon the PVR ascertained, it may rule to cease the infringement in advance, and may, upon the request of the party concerned and in light of the actual situation of the case, order to take such measures as inactivating and preventing the proliferation and reproduction of the accused infringing product.

Compensation

Draft of 4th amendment of Seed Law: statutory compensation raised from CNY 3,000,000 to CNY 5,000,000

Shift of Burden of proof on compensation issue

Encourage plaintiff to submit evidence of damage

Punitive damage (Civil code Article 1185, Draft of 4th amendment of Seed Law: 1-3 times to 1-5 times)

Compensation

Identify “serious infringement” of punitive damage in PVP cases

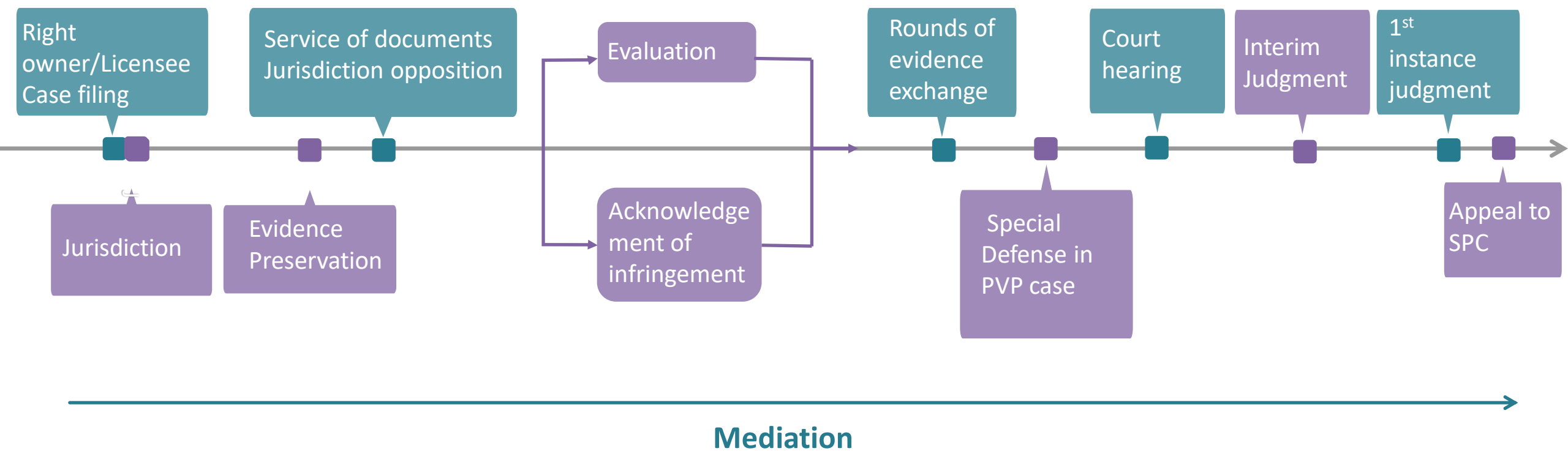
Forging PVP certificates

Selling granted varieties in packages without marks or labels

Violations of the Seed Law such as producing or selling seeds without an operating license

Refusing to advise the places of production, reproduction, sale and storage of the alleged infringing products

A Typical PVP Case Outline





Increasing number of PVP cases

- 2016-2020 China courts handled 781 civil cases relating to PVP
- 85% about corn, wheat, rice varieties
- Concluded case/per year increased from 66 to 252
- 70% cases ended with the victory of PVR righter holder, with a highest compensation of CNY 49,520,000 for a case relating to corn variety



Detailed data of publicized cases/court hearing videos

- SPC and Jiangsu Court has issued Top 10 PVP cases respectively in 2021
- 400+ judgments of PVR infringement case and 100+ judgments of PVR contract cases available on court's database open to public



Thank You!

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