

From Tribunal to Court: Latest Development of Judicial Protection for Intellectual Property in China*

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The judicial protection of IP is the most important and fundamental guarantee for the protection of IP in China. The judicial protection system of IP in China has experienced the development procedure of setting up a special pilot tribunal, "three-hearing-in-one" and a special court. The establishment and operation of IP courts in Beijing, Shanghai, and Guangzhou marks the establishment of the new hearing system for IP dispute in China. The founding and operation of IP courts have an in-depth background. With the rapid development of the economy in China, especially since the entrance of the WTO, there have been more IP cases and they constitute huge challenges for adjudication of IP disputes in China. In this regard, the IP courts is a good way to cope with. The establishment of IP courts will undoubtedly has deeper influence and significance in the judicial protection of IP in China, yet there are also many problems and difficulties to tackle with it.

Keywords: Special Courts, IP Court, Judicial Protection, Three-Hearing-in-One, China

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I. INTRODUCTION

Judicial protection is the most important form to defend Intellectual Property (“IP”) in China. It aims to ensure effective implementation and enforcement of IP through the People’s Courts at all levels timely and correctly.¹ The basic form of judicial protection of IP in China has developed from special tribunal, the pilot of “three-hearing-in-one”² to the special court. The first group of IP courts in China was initiated in 2014. Today, the IP courts have received widespread attention at home and abroad.

This research will explore the theory and practice of China’s judicial protection of IP with special references to the IP court. This paper is composed of seven parts including a short Introduction and Conclusion. Part two will analyze the evolution of China’s judicial protection system of IP. Part three will examine the background for founding the IP courts in China. Part four will discuss China’s court system of IP. Part five will probe into the function and significance of the special courts of IP in China. Part six will focus on the problems for improving the operation of IP courts in China.

II. THE EVOLUTION OF CHINA’S JUDICIAL PROTECTION OF IP

A. Background

China has strengthened the judicial protection of IP following the changing international and domestic situation. First, judicial protection of IP in China complies with the international trend. Today’s scientific and technological progress is largely integrated with the economic and social development, as well as every aspect of human life. In this context, the core strategic position of IP in national economic development is displayed.³ The protection of IP has come to a post-TRIPs Agreement era, featured by improving the protection level and strengthening the legal measures of enforcement. The Trans-Pacific Partnership Agreement (“TPP”) and the Transatlantic Trade and Investment Partnership Agreement (“TTIP”) are building higher protection level for IP. In 2011, the Anti-Counterfeiting Trade Agreement (“ACTA”) was signed, which enhanced and