

Beijing IP Court docket statistics and new guidelines vital for foreign litigants

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On 19 December 2023 the Beijing IP Court released statistics on its docketed cases from the first 11 months of 2023 and introduced the Guidelines for Handling Supporting Documents Certifying the Subject Qualification in Foreign-Related Cases at a press conference.

Statistics from 2023

From January to November, 24,324 IP cases were docketed in total by the Beijing IP Court, showing a decrease of 7% – in contrast to the average annual growth rate of around 20% – over the past seven years. This marks the first fall since the court's inauguration in 2014.

Given that the Beijing IP Court has exclusive jurisdiction over all China National IP Administration decisions concerning trademarks and patents, it is unsurprising that most of the cases handled by the court are administrative. Of the 24,324 cases docketed from January to November, 5,449 were civil and 18,875 were administrative.

With regard to civil cases, 1,369 were filed directly with the Beijing IP Court at first instance, while the remaining 4,080 were appeals against lower-court decisions and cases concerning other procedural matters. As for administrative cases, 18,867 were submitted at first instance.

Of the total caseload docketed at the first instance, 21.2% were foreign-related (including Hong Kong, Macao and Taiwan). Cases involving France, Germany, Japan, South Korea and the United States made up over 50% of all foreign-related cases.

The court's new guidelines

In addition to these statistics, the Beijing IP Court also released its Guidelines for Handling Supporting Documents Certifying the Subject Qualification in Foreign-Related Cases, in which it provides detailed instructions to help foreign litigants establish and submit the set of documents that officially certify their identity and capacity. This clarification effort is a welcome development, especially after China's formal accession to the Apostille Convention in 2023.

The documentation that is required to certify litigants' identity and eligibility varies in different jurisdictions. Since it is impossible to address all of the existing legislation concerning legal forms and corporations' operational rules, the guidelines focus on six countries only: Belgium, France, Germany, Japan, South Korea and the United States (California and Delaware). For each of these jurisdictions, the guidelines cite the relevant laws and describe, with examples, the content of each certification document that is required.

In addition to proving their identities, foreign litigants must submit a power of attorney in favour of the Chinese attorney who will act in court on their behalf. Since the undersigned of the power of attorney is rarely the litigant's legal representative (it is often a member of staff – authorised by a kind of internal power of attorney), it is necessary to satisfy the court that the undersigned is, indeed, duly authorised. In its guidelines, the Beijing IP Court explains who has the authority to sign a power of attorney on behalf of a company according to local laws and provides templates that litigants can easily follow.

Since 7 November 2023, litigants from contracting states of the Apostille Convention can skip the legalisation procedure – which previously involved the issuing country's authorities and the Chinese Consulate in the litigant's country. Now, litigants may submit the documents with the Apostille, provided by the relevant authority in the country concerned, together with an official translation (see "Apostille Convention marks transformative step forward for foreign IP litigants in China").