

IP Practice in China

Time: Jan 18
2024

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2023 has seen the confirmation of changes to the Chinese strategy relating to the administration and protection of intellectual property rights, which have had a significant impact on the level of administrative litigation.

Changes of strategy

In 2008 China announced the National IP Strategy for the Protection of Intellectual Property Rights, encouraging through all sorts of subsidies, awards and tax advantages, the filing of IP rights for invention patents, utility models, trademarks. The result was spectacular growth in the number of filings, mainly of utility models and trademarks. However, the quality of many of the applications, in particular of utility models and trademarks, turned out to be more and more suspicious.

For utility models, which are in principle granted after a simple examination as a formality, the then State Intellectual Property Office in charge of the registration of the rights, has had to modify the examination rules and start refusing “abnormal patent filings. In November 2021, the China National Intellectual Property Administration (which now oversees both patents and trademarks) launched the “Blue Sky” campaign against abnormal patent application and in 2023 there was only a slight increase of new patent applications in China in comparison with the previous years. In the first nine months, the number of granted utility models decreased by 25.5% in comparison with the same period of 2022.

In the case of trademarks, which have frequently tended to be filed by applicants who had no intention of using them but were merely interested in the potential resale value of the marks, the CNIPA has started to take measures against such “bad faith trademark applications”. Subsidies have been cancelled, the work of patent and trademark agencies and agents have been scrutinised, and “trademark hoarding” have been targeted for sanctions. This new strategy has had an impact on the number of trademark filings. In 2022 the total number (7.51 million) was nearly two million lower than in 2021 (9.45 million), and in the first nine months of 2023, the total amount of trademark registrations granted decreased by 35.3% (1.71 million).

Such a decrease in the number of trademark applications resulted in a corresponding decrease in the number of opposition and invalidation cases, which was clearly felt by IP agencies.

Evolution of litigation practices, procedures and jurisdiction

As regards IP civil litigation, however, the situation remained stable. In 2022, People's courts rendered 457,805 judgements in domestic civil disputes, and 5,547 judgements in foreign related civil disputes (a percentage of 1.2%). However, with regard to foreigners, there is additional interesting data: in the past four years (2019-2022), 10% of the lawsuits submitted to the IP Tribunal of the Supreme Court (the court of appeal for technology related cases) were foreign related. One may safely conclude that foreign related IP lawsuits cover a large portion of China's "high value IP cases". In 2023, from January to September, People's courts accepted 0.37 million new IP lawsuits, a slight increase of 1.61%. It is worth noting that the number of patent contract disputes raised by 42%; patent infringement and ownership disputes raised by 27%; technology related civil lawsuits increased by 56.7%. In other words, the rate of "high value" IP lawsuits has increased significantly in 2023.

In the case of IP enforcement, over the past few years Chinese courts have been faced with a trend called "commercial IP enforcement": hundreds of thousands of civil IP lawsuits with very limited value. IP owners collected some evidence of IP infringement against small sellers and filed civil lawsuits to collect damages instead of investing in the search of the source, ie, the suppliers or the manufacturers. The courts, overwhelmed with such cases, awarded deliberately low damages to discourage this kind of business model. On the other hand, the courts published exemplary judgements with high damages rendered against the manufacturers.

User-friendly Procedures

China joined the "Convention Abolishing the Requirement of Legalization for Foreign Public Documents" ("Apostille Convention") on March 8th, 2023. The Convention will become effective in China on November 7, 2023. China's embassies in many countries have already announced that they will no longer provide any legalisation services. This means that foreigners will be exempted from the lengthy legalisation procedure for many documents/evidence to be used in China's courts like the power of attorney to the Chinese lawyer (a notarisation will be sufficient).

After the COVID pandemic ended in 2023, the courts at various levels had to wind up pending lawsuits, which were delayed by the COVID restrictive measures, and had to deal with newly filed lawsuits. This was a big challenge. The Supreme Court found a solution by selecting intermediate courts to hear technology related lawsuits, allowing them to hire "technology investigators" to help in the fact finding and understanding of the technology, while nearly 600 basic district courts were to try simple IP disputes (such as trademark infringement).

Besides jurisdiction adjustments, the "intelligent Court" practice also contributed to the speeding up of the procedures. Even before the COVID pandemic, some courts had begun to move some procedures, like filing a lawsuit, online. During the three years of the COVID pandemic, more and more courts joined this practice. This practice was not limited to filing a lawsuit with the court. Pre-litigation settlement negotiation, cross-evidence examination, lawyer's brief, argument presentation and oral hearing all moved online. The practice remained after the COVID pandemic ended. Courts of different instances also use the electronic file transfer system to speed up the appeal process. All of these practices make litigation work more convenient and efficient for IP practitioners.

Conclusion

All in all, the IP field in 2023, like the economic situation, has witnessed a slowdown after years of consecutive increase. Competition has become ever fiercer, but there always remain opportunities. Only the fittest can survive and prosper.