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Establishing 15 IP Tribunals Nationwide, Chinese Courts Further Concentrate Jurisdiction Over IP Matters

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Patent and ITC Litigation

China has continued to develop its adjudicatory framework for intellectual property disputes with the establishment of three Intellectual Property Tribunals ("IP Tribunals") this month. This reform began with the establishment of three specialized IP Courts in Beijing, Shanghai, and Guangzhou at the end of 2014, and has been furthered with the establishment of IP Tribunals in 10 provinces and two cities/municipalities around the country. For companies facing an IP dispute in China, understanding this framework in order to select the appropriate jurisdiction for a case can have a significant impact on the time to resolution, as well as the ultimate merits of the case.

Most significantly, through the establishment of these IP Tribunals many Chinese courts have been stripped of their jurisdiction over IP matters in favor of the IP Tribunals. This has led to a fundamental change to the forum selection strategies of both multinational and Chinese companies.

The three IP Tribunals established on the first two days of March 2018 are located in Tianjin Municipality, and cities of Changsha and Zhengzhou respectively. This brings the number of IP Tribunals that have been set up across 10 provinces and two cities/municipalities in China since January 2017 to a total of 15.

The most unique aspect of the specialized IP Tribunals is that they have cross-regional[1] and exclusive jurisdiction over IP matters in significant first-instance[2] cases (i.e., those generally including disputes involving patents, new varieties of plants, integrated circuit layout and design, technical-related trade secrets, software, the recognition of well-known trademarks, and other IP cases in which the damages sought exceed a certain amount)[3]. The

[1] In China, courts are usually set up at three levels within a provincial region: Grassroots/local People's Courts at the county or district level; Intermediate People's Courts at the city level; and Higher People's Courts at the provincial level. Above that, China's Supreme People's Court may hear appeals or petitions against decisions by the lower courts.

[2] Usually the Chinese courts follow the system whereby the court of second instance is the court of last instance.

[3] The subject-matter jurisdiction of the different IP Tribunals varies slightly. Generally speaking, jurisdiction over copyright cases not involving software, trademark cases not involving the recognition of well-known trademarks, trade secret cases not involving technical disputes, and cases in which the damages sought fall below a certain amount (which amount varies from one region to another) remains unchanged. Such cases are not discussed in this article.

specialized IP Tribunals are established as an integral part of the respective Intermediate People's Court in the relevant cities, but they have first-instance jurisdiction over significant IP matters whose territorial scope goes beyond the city concerned, reaching either an entire province, or several cities. For example, Zhengzhou is the capital city of Henan Province, and one of 18 cities in the province—although the Zhengzhou IP Tribunal is a part of the Zhengzhou City Intermediate People's Court, its jurisdiction over significant IP matters covers all of Henan Province.

As a result of the establishment of these IP Tribunals, the number of courts having jurisdiction over patent cases as well as other significant IP cases have been largely reduced. Taking Jiangsu Province as an example, prior to the establishment of Nanjing and Suzhou's IP Tribunals, 11 Intermediate People's Courts and four Grassroots/local People's Courts had jurisdictions over patent cases. That jurisdiction has now been entirely vested in these two IP Tribunals. The previous numbers of competent courts for Zhejiang and Shandong provinces were 11 and six (respectively), and now both have been reduced to two IP Tribunals.

This is not the first time that jurisdiction over IP cases has been centralized in China. By the end of 2014, per the establishment of specialized IP courts in Beijing, Shanghai and Guangzhou—three major commercial centers in China—the number of courts having jurisdiction over patent cases in Beijing, Shanghai and Guangdong Province was reduced from 16 to four in the three IP courts and the Shenzhen People's Intermediate Court.

The three specialized IP courts and 15 specialized IP Tribunals can be generally classified into the categories as follows:

Category	IP Courts/Tribunals	Scope of Territorial Jurisdiction
Specialized IP Court with jurisdiction over the entire province	Beijing	Beijing Municipality[4]
	Shanghai	Shanghai Municipality
	Guangzhou	Guangdong Province (except Shenzhen City, see below)
One IP Tribunal in a province with cross-regional jurisdiction over the entire province	Chengdu	Sichuan Province
	Wuhan	Hubei Province
	Hefei	Anhui Province
	Fuzhou	Fujian Province
	Xi'an	Shaanxi Province
	Changsha	Hunan Province
	Zhengzhou	Henan Province
	Tianjin	Tianjin Municipality
Two IP Tribunals in a province with	Nanjing	Nine cities of Jiangsu Province, including Nanjing, Zhenjiang, Yangzhou, Taizhou,

[4] Beijing, Shanghai, and Tianjin are China's three province-level municipalities directly under China's central government.

cross-regional jurisdiction over a part of the province		Yancheng, Huai'an, Suqian, Xuzhou, and Lianyungang
	Suzhou	Four cities of Jiangsu Province, including Suzhou, Wuxi, Changzhou and Nantong
	Hangzhou	Six cities of Zhejiang Province, including Hangzhou, Jiaxing, Huzhou, Jinhua, Quzhou, and Lishui
	Ningbo	Five cities of Zhejiang Province, including Ningbo, Wenzhou, Shaoxing, Taizhou, and Zhoushan
	Jinan	Eleven cities of Shandong Province, including Jinan, Zibo, Zaozhuang, Jining, Tai'an, Laiwu, Binzhou, Dezhou, Liaocheng, Liyi, and Heze
	Qiangdao	Six cities of Shandong Province, including Qingdao, Dongying, Yantai, Weifang, Weihai, and Rizhao
IP Tribunal without cross-regional jurisdiction	Shenzhen	Shenzhen City

The creation of these specialized IP courts and Tribunals shows China's determination to establish a judiciary system separated from the boundaries set by administrative divisions (provinces, province-level municipalities and cities within a province). It may alleviate some concerns parties may have about regional protectionism because many defendants will not be accused in their own cities, and thus change foreign companies' forum-selection strategies in China. More importantly, it is expected to help improve the expertise of judges adjudicating IP cases and unify and harmonize practices on IP cases throughout China. Time will tell what the practical impact of the IP courts and Tribunals will be on patent litigation.

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