



Multinationals Need to Watch Patent Litigation in China Courts

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Ruixue Ran, Justin Wang, and Xiaoliang Chen from Covington & Burling spotlight evolving patent infringement litigation in Chinese courts, and considerations for global companies with Chinese interests.

China's market remains formidable for global business, offering substantial opportunities for foreign enterprises, especially those from the US. However, companies entering this marketplace must stay attuned to the evolving landscape of patent infringement litigation in Chinese courts.

Foreign Patent Lawsuits

The vibrancy of the Chinese market extends beyond trade to legal activity. Chinese courts have witnessed a significant increase in patent cases in recent years, with foreign entities consistently making their presence felt.

For instance, China's Intellectual Property Tribunal of the Supreme People's Court has highlighted that in [2020](#), [2021](#), and [2022](#), foreign-related cases made up over 10% of its total caseload, experiencing an impressive annual growth rate of 45.6%.

Of these, a substantial 57.4% pertained to patent infringement disputes, including patent infringement cases concerning the patent for invention and utility model. This underscores the importance for foreign businesses to familiarize themselves with the realm of patent litigation when entering the Chinese market.

Although challenges and uncertainties may exist in China in its rapidly evolving patent litigation landscape, we have observed the following reasons to use Chinese proceedings to resolve their global patent disputes.

Injunctive Reliefs

In China, cessation of infringement is considered a cornerstone of patent rights, leading to a tendency for courts to readily grant injunctions upon a right holder's request in cases of proven infringement.

The comparative ease in obtaining an injunction in China provides a compelling reason for right holders to consider litigation within the country.

Although Chinese courts' willingness to grant injunctions has sparked discussions about the balance between patent holders and potential infringers, the SPC has clarified that only "national interests and public interests" can justify denying an injunction. This clarity in approach heightens the appeal of Chinese courts for global businesses.

In *Sichuan Golden-Elephant Sincerity Chemical Co. v. Shandong Hualu-Hengsheng Chemical Co.*, also known as the Golden Elephant case, the plaintiffs requested dismantling of infringing production equipment and destruction of related technical assets.

Initially, the lower court sided with the defendants, citing a potential "waste of social resources." The SPC overturned this decision on appeal, highlighting the significance of intellectual property rights, and asserting that the lower court's decision unduly limited the rights of patent holders. The SPC ruled in favor of the plaintiffs' original requests.

Enhanced Damages

China's patent infringement damages have been criticized for being **modest**, but recent legislative changes signal a shift toward bolstering intellectual property rights.

Compared with the **2008 amendment**, the **2020 amendment** to Chinese patent law increased statutory damages' minimum from 10,000 yuan (\$1,369) to 30,000 yuan and the maximum from 1 million yuan to 5 million yuan. The 2020 amendment also introduced "punitive damages," reaching up to five times the calculated damages.

This proactive stance is evident in court outcomes. In **2022**, Beijing courts averaged damage awards of 2.86 million yuan in technical-related cases—including cases of disputes over infringement of invention patents and utility model patents, disputes over misappropriation of technical secrets, and disputes over infringement of exclusive rights of integrated circuit layout designs.

In Golden Elephant, the SPC set a new precedent with damages worth 120 million yuan.

China's National Intellectual Property Administration annual survey indicates foreign entities often secure higher damages awards than domestic enterprises.

In **2019**, 28.2% of foreign-invested enterprises filing patent infringement lawsuits received damages (including damages from court judgments and settlement money in court mediation or self-conciliation) of at least 1 million yuan, compared to 6.9% of domestically-funded enterprises. The same trend was also observed in **2020** and **2021**.

Strategic Lever

Chinese courts hold strategic importance for multinational corporations for two key reasons. First, Chinese market's size makes it indispensable for most industries, requiring effective use of China's judicial resources to protect commercial interests.

Second, engaging in litigation in Chinese courts can align well with litigation in other major jurisdictions, globally facilitating the resolution of disputes. Many multinational companies have successfully employed this litigation strategy to gain an advantage in global competition.

Through coordinated management with procedures in other major jurisdictions such as the US and Europe, Chinese proceedings may offer distinct and unique advantages and benefits.

These include to the extent allowed by Chinese laws, obtaining valuable information through court litigation proceeding and invalidity proceedings before CNIPA to bolster parallel patent litigations in other jurisdictions and build synergy in strategic planning.

They also capitalize on the generally expeditious nature of parallel Chinese proceedings to secure swift favorable outcomes, which may serve as negotiation leverage for global dispute resolution. For global businesses, adapting to and engaging with China's patent litigation system is no longer optional—it's a vital component of sustainable success in the region.

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Author Information

[Ruixue Ran](#) is managing partner of Covington's Beijing office and a member of the firm's patent litigation practice.

Justin Wang and Xiaoliang Chen are advisers at Covington & Burling and admitted to the Chinese bar.

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