

Specialized IP Courts in Beijing, Shanghai and Guangzhou

Paving the way to more efficient IP litigation?

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Summary

On 31 August 2014, the Standing Committee of the National People's Congress ("NPC") passed a decision concerning the establishment of specialized intellectual property ("IP") courts in three main hubs: Beijing, Shanghai and Guangzhou. This newsflash aims at summarizing some of the key changes proposed in the decision. The courts are expected to be set up by end of this year.

We will send updates as they become available.

INTRODUCTION

It is hoped that the recent establishment of specialized IP courts will improve the quality and speed of court procedures involving IP rights. This should in turn increase the efficiency of IP enforcement in China. The establishment of specialized IP courts is considered an important stepping stone aimed at paving the way towards an innovation-driven economy for China.

DETAILED PROVISIONS OF THE DECISION:

1. The internal structure and organization of the IP courts will be determined by the Supreme People's Court in Implementing Regulations, according to the types and amounts of IP cases.
2. The IP courts will have jurisdiction over:
 - ✓ *In first instance:* cases involving complex technology (e.g. patents, technical trade secrets, semiconductor designs, etc.). Within three years from their establishment, the IP courts will have a cross-territorial jurisdiction throughout their province or municipality over such first instance cases. This will be the most anticipated advantage to the current system.
 - ✓ *On appeal:* review of judgments issued by local courts in trademark and copyright disputes. The territorial jurisdiction of the respective IP courts will be determined on the basis of the location of the relevant local court.
3. The Beijing IP court will have exclusive jurisdiction over first instance review actions brought against

decisions issued by the IP Administrative Authorities (the Trademark Review and Adjudication Board, the Patent Review Board, etc.).

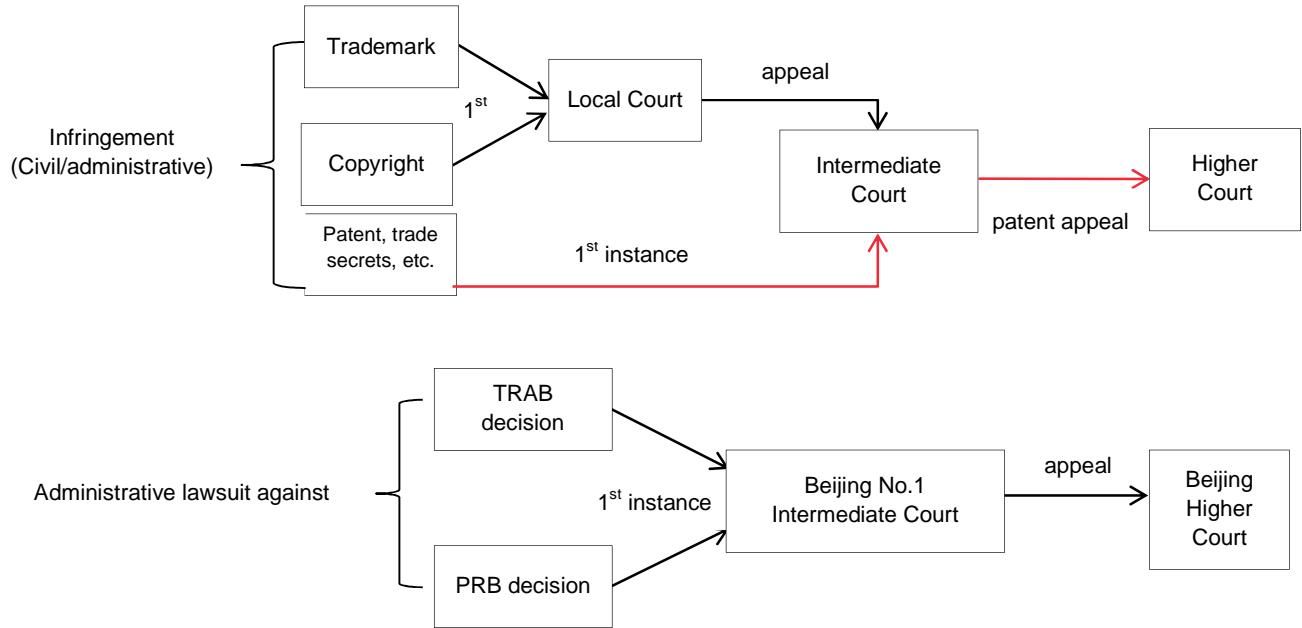
4. The Higher People's Court with jurisdiction over the province in which the IP court is located has the jurisdiction over appeals against the IP courts' first instance decisions.
5. The Decision came into effect on 31 August 2014 and details are being worked out currently.

FURTHER REMARKS:

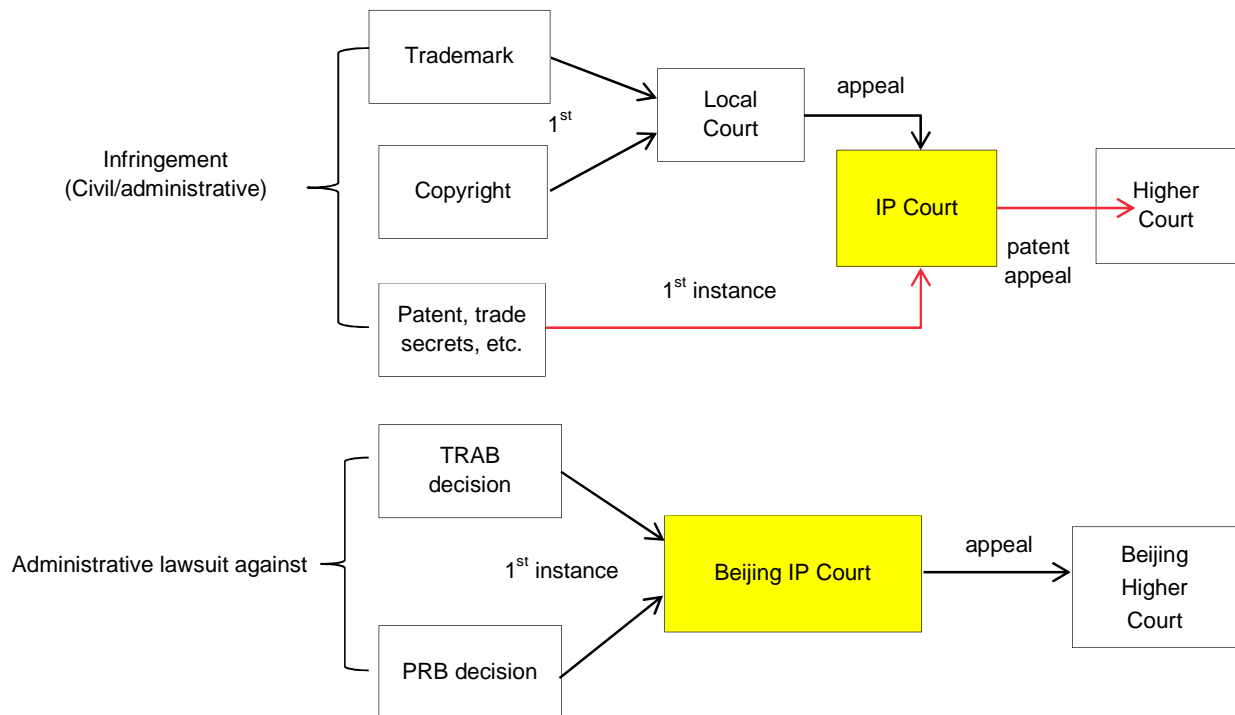
- Before the publication of the Decision, the local Intermediate courts had first instance jurisdiction over disputes involving foreign parties, or over claims that passed a certain monetary threshold. The Decision did not cover this aspect. Pending the publication of Implementing Regulations, it is our view that this approach will continue to be followed, and we hope eventually such cases will be handled by the new IP Courts.
- As to antitrust or abuse of IP cases, these used to be handled by the IP sections of the People's Courts. The Decision also remains silent on this subject. It is as of yet unclear whether the jurisdiction of these cases will be transferred to the IP courts, or whether they will go to a new section of the Intermediate Courts.

FLOWCHART

Situation before the establishment of IP courts



Situation after the establishment of IP courts



Further information

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