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SPC's Newly Released "Provisions of the Supreme People's Court on Several Issues Concerning the Intellectual Property Tribunal" and Its Interpretation

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The Supreme People's Court has just passed "The Decision on Amending the 'Provisions of the Supreme People's Court on Several Issues Concerning Intellectual Property Tribunal'" (Fa Shi [2023] No. 10) (hereinafter "the Judicial Interpretation") on October 16, 2023, and issued "The Notice of the Supreme People's Court on the Implementation of the Revised 'Provisions of the Supreme People's Court on Several Issues Concerning Intellectual Property Tribunal'" (Fa [2023] No. 183) (hereinafter "the Notice") on October 21, 2023.

According to the Judicial Interpretation and the Notice, several adjustments on the Intellectual Property Tribunal (hereinafter "the IP Tribunal") of the Supreme People's Court (hereinafter "the SPC"), which are specified by the Judicial Interpretation, shall take effect since November 1st, 2023. Based on a comprehensive reading of these adjustments, in combination with the Notice, Lifang & Partners holds such opinions that, the Judicial Interpretation not only adjusts the jurisdiction scope of the SPC's IP Tribunal, but might also signal some potential changes to occur with regard to its roles. How it will evolve in the future is worth of particular attention and further observation.

I. Adjustment of the scope of appeal cases and retrial cases accepted by the SPC's IP Tribunal

According to the Judicial Interpretation, the standard of acceptance by the SPC's IP Tribunal for the appeals concerning ownership/infringement civil cases and administrative cases of "utility model patents, technical secrets, and computer software" was adjusted to "**significant and complicated**". Compared with the previous practice, this adjustment clearly raises the standard of acceptance of such appeal cases by the SPC's IP Tribunal.

Before this Judicial Interpretation, all appeals concerning ownership/infringement civil cases and administrative cases of "utility model patents, technical secrets and computer software" were uniformly heard by the SPC's IP Tribunal. However, henceforward, only the appeals concerning those cases of "utility model patents, technical secrets and computer software" which are recognized as "**significant and complicated**" and heard by provincial High People's Courts in their first instances can be accepted by the SPC's IP Tribunal. "**Ordinary**" cases of this kind that are not heard by the provincial High People's Courts in the first instance will go to these local High People's Court for the second instance.

In addition, according to the second subparagraph of the second paragraph of Article 2 of the Judicial Interpretation, the SPC's IP Tribunal shall adjudicate "*cases eligible for trial-supervision procedures in which a motion for retrial, protest, retrial and the like are filed according to the law against already legally effective judgments, rulings and mediations of the first instance civil and administrative cases as provided for in the preceding paragraph*". Compared to the pre-amendment provisions, this provision only adjusts the expression with-

out touching the substantial content. However, according to the foregoing amendments, local provincial High People's Courts shall have the jurisdiction over the appeals of ordinary civil and administrative cases of utility model patents, technical secrets, and computer software. Now if such a second instance ruling or judgement issued by the High People's Court takes effect, whether or not a trial-supervision case instituted against such ruling or judgment should still be accepted by the SPC's IP Tribunal, express provision in this regard is absent from this Judicial Interpretation. How it will be interpretated and practiced in the future need to be further watched.

Noteworthily, the establishment of the SPC's IP Tribunal has long been regarded as an exploration and rehearsal of establishing a state-level patent appellate court. However, through this amendment, the appeals on ownership/infringement civil cases and administrative cases of ordinary utility model patents are readjusted back to the local provincial **High People's Courts**. It remains to be seen whether this change is only a provisional response to the status quo of "too few judges with too many cases" currently faced by the IP Tribunal, or an intended prolusion of restoring the previous regime that the local provincial High People's Courts have jurisdiction over the patent appeal cases, eventually leaving the SPC with the preservation of the mere jurisdiction over the patent related trial-supervision cases.

II. Adjustment of the scope of other cases accepted by the SPC's IP Tribunal

According to this newly passed Judicial Interpretation, the SPC's IP Tribunal has enlarged its jurisdiction scope to "**review of ruling on action preservation application**" involved in the first instance civil and administrative IP cases.

The addition of this provision is supposed to nationwide standardize the criteria for granting of "action preservation" involved in the first instance civil and administrative IP cases. Such action preservation applications, including applications of "preliminary injunction" and the like, especially the controversial "anti-suit injunction", are usually faced with varieties of complicated circumstances and have been attracting great concerns at home and abroad. Previously, the review request of the ruling on such action preservation application is directly handled by the first instance court who itself renders such ruling. Now the jurisdiction for reviewing such review applications is uniformly escalated to the SPC, indicating that the SPC intends to establish a unified standard for such cases, as a response to the great concerns from all quarters.

III. Curbing the abuse of litigation rights

The Judicial Interpretation adds a new Article 4: "*The IP Tribunal may require the parties to disclose the circumstances of the associated cases concerning the ownership, infringement, right granting and verification related to the disputed IP rights. Refusal of a truthful disclosure by a party may be deemed as a consideration factor for determining whether such party follows the principle of good faith and constitutes an abuse of rights, etc.*"

This provision would be conducive to a certain extent to curbing the inequitable conducts conducted by right holders in IP litigations. Whether this provision will only be limited to the IP Tribunal of the SPC, or it can be extended to all levels of courts in the future, is also worthy of further attentions .

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最高人民法院就《最高人民法院关于知识产权法庭若干问题的规定》的最新修改及其解读

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最高人民法院于2023年10月16日通过了《关于修改〈最高人民法院关于知识产权法庭若干问题的规定〉的决定》（法释〔2023〕10号）（下称“司法解释”），并于2023年10月21日下发了《最高人民法院关于贯彻执行修改后的<最高人民法院关于知识产权法庭若干问题的规定>的通知》（法〔2023〕183号）（下称“通知”）。

根据该司法解释和通知，这些涉及最高人民法院知识产权法庭的相关调整，将于2023年11月1日生效。结合该通知进行全面解读，我们认为，该司法解释不单调整了最高人民法院知识产权法庭的管辖范围，还预示着最高人民法院知识产权法庭的定位未来有可能进一步发生变化。后续将如何发展，值得特别关注和进一步观察。

一、关于最高院知识产权法庭受理的上诉案件和再审案件范围的调整

根据该司法解释，最高人民法院知识产权法庭对涉及“实用新型专利、技术秘密、计算机软件”的权属、侵权民事和行政上诉案件的受理标准调整为“**重大、复杂**”。相较于此前的实践，此次调整因此明确提高了最高人民法院知识产权法庭对此类上诉案件的受理标准。

此前，此类涉及“实用新型专利、技术秘密、计算机软件”的权属、侵权民事和行政上诉案件，均统一由最高人民法院知识产权法院受理。但本司法解释实施后，此类案件中，只有经由**高级人民法院一审**且被认定属于“**重大、复杂**”的案件，其上诉才能由最高人民法院知识产权法庭受理。而非由高级人民法院一审的“**普通**”的涉及“实用新型专利、技术秘密、计算机软件”的权属、侵权民事和行政上诉案件，将重新回到**高级人民法院管辖**。

另外，按该司法解释第二条第二款第二项的规定，最高人民法院知识产权法庭将审理“对前款规定的第一审民事和行政案件已经发生法律效力的判决、裁定、调解书依法申请再审、抗诉、再审等适用审判监督程序的案件”。相比于修改前的规定，该条款仅是调整了表述，主体内容并没有变化。但是，由于根据前述修改，“普通”的实用新型专利、技术秘密、计算机软件的民事和行

政上诉案件，现在将由地方高级人民法院进行管辖。那么这些由地方高级人民法院所作出的二审裁判如果生效，就其提起的再审、抗诉等审判监督程序案件，是否仍应由最高人民法院知识产权法庭受理，还是另有安排？该司法解释似无明文规定。后续对此如何解读及实践，尚需要进一步观察。

值得重点关注的是，此前设立最高人民法院知识产权法庭一直被认为是设立国家级专利上诉法庭的探索和预演。但是此次修改中，对于“普通”的涉及实用新型专利的权属、侵权民事和行政上诉案件的管辖又重新调整回地方高级人民法院。这一举措，究竟是对最高人民法院知识产权法庭“案多人少”现状的临时应对之策，还是在进行了充分探索之后有意恢复之前由地方高级人民法院管辖专利上诉案件的前序，最后仅由最高人民法院保留对专利案件生效裁判的审判监督程序的管辖，尚有待后续进一步观察。

二、关于最高院知识产权法庭受理的其他案件范围的调整

根据该司法解释，最高人民法院知识产权法庭增加受理第一审民事和行政知识产权案中涉及的**“行为保全裁定申请复议”**案件。

该条款的增加应该是为了统一全国范围内的第一审民事和行政知识产权案中涉及的“行为保全裁定申请复议”的案件的批复尺度。此类案件包括诸如“诉前禁令”等，尤其是争议颇多的“禁诉令”，通常面临的情况比较复杂，牵涉面也很广，一直受到国内外高度关注。此前，针对此类保全裁定的复议申请由作出裁定的一审法院直接处理。经过此次修改，这类案件的复议审查权限统一提至最高人民法院，标志着最高人民法院有意对此类案件设立统一标准，以应对各方面的高度关注。

三、关于滥用诉讼权利行为的遏制

本司法解释增加了一个新的“第四条”：“知识产权法庭可以要求当事人披露涉案知识产权相关权属、侵权、授权确权等关联案件情况。当事人拒不如实披露的，可以作为认定其是否遵循诚实信用原则和构成滥用权利等的考量因素。”

该规定一定程度上有利于遏制权利人在知识产权诉讼中不诚信的行为。该规定是否仅限于最高人民法院知识产权法庭，还是将来能推广到各级法院，同样值得进一步的关注。

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