



# NEWSLETTER

LIFANG & PARTNERS 立方观评

No. 77

2019.1

## Content

### **Lifang & Partner's View**

What Says the Provisions of the Supreme People's Court on  
Several Issues Concerning Intellectual Property Tribunal?

## What Says the Provisions of the Supreme People's Court on Several Issues Concerning Intellectual Property Tribunal?

By Flora Li, Partner

On December 27, 2018, China's Supreme People's Court promulgated the *Provisions of the Supreme People's Court on Several Issues concerning Intellectual Property Tribunal* (Fa Shi [2018] No. 22) (the "*Provisions*"), effective as of January 1, 2019. Below is a brief of the drafting background, main content and potential impact of the *Provisions*.

### I. Background

In November 2017, the Central Leading Group for Comprehensively Continuing Reform of the 19th CPC Congress adopted the Opinions on Several Issues Concerning the Strengthening of the Reform and Innovation in IRP-Related Trials was adopted at its first session, requesting the "study and establishment of a national-level appeal mechanism for IPR cases." On 26 October 2018, the Decision on Several Issues concerning Procedures for Patent and Other Intellectual Property Cases (the "NPC Decision") was adopted at the 6th session of the Standing Committee of the National People's Congress, which gives the Supreme People's Court ("SPC") jurisdiction over patent and other complex technical IP cases. During the committee's session on 22 October 2018, Chief Justice of SPC, Hon. Zhou Qiang, made an explanatory speech on the establishment of a new Intellectual Property Tribunal ("SPC's IP Tribunal") within the SPC and stressed its significance in protecting innovation and unifying the adjudication criteria. Subsequently, the SPC promulgated these Provisions based on judicial practice to provide rules for implementing the NPC Decision and establishing the SPC's IP Tribunal as an appellate tribunal with nationwide jurisdiction.

### II. Major Points of the Provisions

The *Provisions* specify the power, jurisdiction, procedural rules, operation mechanism, transitional rules and other measures relating to the SPC's IP Tribunal. Specifically,

Firstly, it is specified that the judgments, rulings, mediation agreements and decisions made by the SPC's IP Tribunal are the judgments, rulings, mediation agreements and decisions of the SPC. This indicates that the SPC's IP Tribunal is a judicial organ of the Supreme People's Court. The SPC's IP Tribunal is based in Beijing.

Secondly, the SPC's IP Tribunal centralized some of the jurisdiction of provincial High People's Courts over appeal cases. The SPC's IP Tribunal mainly handles Appeal cases regarding patents and other technical civil cases, administrative cases (involving IPR granting and validation) and administrative penalty cases nationwide will be heard by the SPC's IP Tribunal instead of the provincial high courts. It should be noted that the existing judicial functions of SPC's Intellectual Property Division remain unchanged, regarding petitions for retrial and retrial of intellectual property related cases nationwide.

Thirdly, the SPC's IP Tribunal centralized some of the jurisdiction of provincial High People's Courts relating to judicial supervision. According to Article 3 of the NPC Decision, retrial of cases where the first-instance civil or administrative judgments or rulings made by intellectual property courts or local intermediate courts regarding patents and other technical disputes shall all be handled by the Supreme People's Court. After 1 January 2019, the high courts no longer undertake the supervision function relating to effective first-instance civil and administrative judgments or rulings made by intellectual prop-

-erty courts and the intermediate courts regarding patents and other technical cases. Where a high court finds that any effective first instance judgment or ruling regarding a technical case was wrongly made by an intermediate court or the intellectual property court in its jurisdiction, the high court shall report to the SPC's IP Tribunal. The SPC's IP Tribunal will decide whether to retry the case. In the event that a provincial People's Procuratorate files a protest to its corresponding high court, the high court shall inform it that the protest shall be filed by the Supreme Procuratorate to the SPC and the case shall be heard by the SPC's IP Tribunal.

Fourth, regarding transfer of case files by a first instance court, where a litigant to a technical case appeals or applies for reconsideration according to law against the judgment, ruling or decision made by the first instance court before 1 January 2019 (the date of the decision being the signing date of the adjudication instrument), the case shall be heard by the people's court at the next higher level. Otherwise, the appeal, application for reconsideration, application for retrial, protest, and retrial regarding court judgments or rulings made after 1 January 2019 in cases covered by Article 2 of the Provisions shall be handled by the SPC's IP Tribunal.

Moreover, the Provisions also include several measures for enhancing efficiency and convenience for the litigants. Upon consent from the parties, the SPC's IP Tribunal may serve litigation documents, evidentiary materials and adjudication documents by electronic means. Evidence exchange and pre-trial meetings may be conducted on the electronic litigation platform or by online video streaming. According to circumstances of a case, the SPC's IP Tribunal may hold hearings at the place of the disputes or the place of the original trial court. The case filing information, the members of the collegial panel, the trial process, and the adjudication documents of the cases heard by the IP Tribunal are required to be disclosed to the parties and the public according to law. Any party may search published information on the electronic litigation platform and the China Judicial Process Information Online website.

### **III. The potential impact of the Provisions on technical cases**

The Provisions aim to provide detailed rules for implementing the NPC Decision, and building up the institutional guarantee for the appeal mechanism for intellectual property cases at the national level. Considering the specialized and complex technology involved in technical cases such as patent cases, centralizing the jurisdiction of the second instance for civil and administrative technical cases in the SPC's IP tribunal will positively influence the trial of such cases at least in the following three aspects:

#### **Firstly, unifying adjudication standards and enhancing trial quality.**

By centralizing the jurisdiction over complex civil technical cases, such as patent cases, and administrative cases involving IPR granting and validation, the SPC's IP Tribunal is expected to connect the two major procedures of validity determination and infringement determination regarding intellectual property and unify the adjudication standards for technical cases. Moreover, the SPC's IP Tribunal is made up of senior judges with extensive experience and expertise in intellectual property trials, ensuring that future technical cases will be in more capable hands. There is high hope that the trial quality and efficiency will be enhanced.

#### **Secondly, strengthening judicial protection and improving business environment.**

Strengthening the judicial protection of intellectual property has always been the direction of China's judicial policy. The SPC issues the Provisions with a view to strengthening the equal protection of intellectual property of Chinese and foreign businesses and promoting a business environment that is under

the rule of law, complies with international practice and facilitate business activities. Litigants can expect fairer trial and results. With intellectual property under stronger judicial protection, China's business environment will be further optimized.

**Thirdly, bringing convenience to the parties, and shortening the trial period.**

The second instance of technical cases is centralized in the SPC's IP tribunal. According to the Provisions, all intellectual property courts and intermediate people's courts shall timely transfer paper and electronic files to the SPC's IP tribunal. With unified procedure and time of case transfer and the trial period, technical cases will be heard with enhanced efficiency. Furthermore, serving litigation documents by electric means, organizing evidence exchanges and convening pre-trial meetings, etc. through the electronic litigation platform or online video streaming will greatly facilitate the parties' participation in litigation, shorten the trial period, and reducing litigation costs for the parties.

**Appendix:**

**Provisions of the Supreme People's Court on Several Issues concerning the Intellectual Property Tribunal**

*(Adopted at the 1756th meeting of the judicial committee of the Supreme People's Court on December 3, 2018, promulgated by the Supreme People's Court on 27 December 2018, and effective as of January 1, 2019. Fa Shi [2018] No. 22.)*

For the purpose of further unifying the judicial standards of intellectual property cases, equally protecting the legitimate rights and interests of various market entities, strengthening judicial protection of intellectual property, improving the legal environment for scientific and technological innovations, and accelerating the implementation of the innovation-driven development strategy, in accordance with the Organic Law of People's Courts of the People's Republic of China, the Civil Procedures Law of the People's Republic of China, the Administrative Procedure Law of the People's Republic of China, and the Decision of the Standing Committee of the National People's Congress on Several Issues concerning Judicial Procedures for Patent and Other Intellectual Property Cases, and in accordance with judicial practices, the following provisions ("these Provisions") on relevant issues concerning the Intellectual Property Tribunal of the Supreme People's Court are made.

*Article 1* The Supreme People's Court establishes an Intellectual Property Tribunal (the "IP Tribunal") which will mainly hear cases appeal cases relating to patents and other complex technical intellectual property.

The IP Tribunal is a permanent adjudication outlet of the Supreme People's Court and is based in Beijing.

The judgments, rulings, mediation agreements and decisions made by the IP Tribunal are judgments, rulings, mediation agreements and decisions of the Supreme People's Court.



*Article 2* The IP Tribunal accepts the following cases:

- A. Where a party is not satisfied with and appeals a first-instance judgment or ruling made by a High People's Court, an Intellectual Property Court, or an Intermediate People's Court for civil cases concerning invention patents, utility models, new variety of plants, layout design of integrated circuits, technical secrets, computer software and monopoly;
- B. Where a party is not satisfied with and appeals a first-instance judgment or ruling made by Beijing Intellectual Property Court for administrative cases concerning grant and validation of invention patents, utility models, design patents, new variety of plants and layout design of integrated circuits;
- C. Where a party is not satisfied with and appeals a first-instance judgment or ruling made by a High People's Courts, an Intellectual Property Court, or an Intermediate People's Court for administrative cases concerning invention patents, utility models, design patents, new variety of plants, layout design of integrated circuits, technical secrets, computer software and monopoly administrative penalties;
- D. First-instance civil and administrative cases mentioned in items 1, 2 and 3 of this Article that have nationwide significance or of complicated nature;
- E. Cases in which an effective judgment, ruling, and mediation agreement of a first-instance case mentioned in items 1, 2, and 3 of this Article is petitioned for retrial, protested, or re-tried that follow the procedure of trial supervision.
- F. Cases relating to jurisdiction disputes, applications for reconsideration of fine and detention decisions, and applications to extend the trial limit, in first-instance cases mentioned in items 1, 2, and 3 of this Article;
- G. Other cases that the Supreme People's Court considers should be tried by the IP Tribunal

*Article 3* The trial court of the first instance cases mentioned in items 1, 2 and 3 of Article 2 of these Provisions shall promptly transfer paper and electronic files to the IP Tribunal in accordance with regulations.

*Article 4* Upon consent from the parties, the IP Tribunal may serve litigation documents, evidentiary materials and adjudication documents through the electronic litigation platform, the China Judicial Process Information Online website, fax, e-mail and other electronic means.

*Article 5* The IP Tribunal may organize evidence exchanges, convene pre-trial meetings, etc. through the electronic litigation platform or online video streaming.

*Article 6* The IP Tribunal may, according to circumstances of a case, go to the place of case or the place of the original trial court to hear the case.

*Article 7* The IP Tribunal shall take preservation measures in accordance with the relevant provisions of the court enforcement procedures.

*Article 8* The case filing information, the members of the collegial panel, the trial process, and the adjudication documents of the cases heard by the IP Tribunal shall be disclosed to the parties and the public according to law and accessible by search on the electronic litigation platform and the China Judicial Process Information Online website.

*Article 9* The IP Tribunal Judge Meeting, composed of the Director, the Vice Director and several senior judges of the Tribunal, is for discussion of important, difficult or complicated cases.

*Article 10* The IP Tribunal shall strengthen investigation and study of the trial work, and timely summarize the judicial standards and the rules of trial, to guide the trial work of subordinate courts.

*Article 11* Where the provincial People's Procuratorate files protest to the High People's Court against effective first instance judgments, rulings, and mediation agreements made by Intellectual Property Courts and Intermediate People's Courts mentioned in items 1, 2 and 3 of Article 2 of these Provisions, the High People's Court shall inform the provincial People's Procuratorate that the protest shall be submitted by the Supreme People's Procuratorate to the Supreme People's Court in accordance with the law and the protest shall be heard by the IP Tribunal.

*Article 12* For judgments, rulings or decisions of the first-instance cases mentioned in items 1, 2 and 3 of Article 2 of these Provisions made before January 1, 2019, any party's appeal or application for reconsideration shall be heard by the people's court at the higher level next to the original trial court.

*Article 13* For effective judgments, rulings or mediation agreements of first-instance cases mentioned in items 1, 2 and 3 of Article 2 of these Provisions made before 1 January 2019, where they are petitioned for retrial, protested, or re-tried according to law, the relevant provisions of the Civil Procedures Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China shall apply.

*Article 14* The local people's courts that have been approved to accept first-instance civil and administrative cases relating to patents, technical secrets, computer software and monopoly before the implementation of these Provisions shall no longer accept the above-mentioned cases.

For cases stipulated in the preceding paragraph and not concluded by the local people's court prior to January 1, 2019, if a party refuses to accept the court judgment or ruling and appeals according to law, the appeal shall be heard by the people's court at the higher level next to the original trial court.

*Article 15* These Provisions shall come into force on January 1, 2019. In case of any discrepancy between the judicial interpretations issued previously by the Supreme People's Court and these Provisions, these Provisions shall prevail.



**Flora LI**

**Senior Counsel**

From 2009 to 2014, as a judge at Beijing No. 2 Intermediate People's Court, During this period, she mainly focused on tort, contract and labor disputes. Immediately before joining Lifang & Partners, Ms. Li served as a judge at the Beijing IP Court since its establishment in November 2014. During her service as a judge, Ms. Li heard over 300 civil and administrative cases relating to trademarks, copyright and patents. Handling IP disputes from a judicial perspective has given Ms. Li the ability and experience to understand the critical factors that affect the outcome of dispute involving infringement, licensing issues and rights confirmation across the whole IP spectrum.



## IMPORTANT INFORMATION

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### Beijing Office

Address: 11th Floor, Tower A, Nanxincang Business BuildingA22, Dongsishitiao Street, Dongcheng District, Beijing P.R.China 100007

Telephone: (8610) 64096099

Fax: (8610) 64096260,64096261

### Shanghai Office

Address: 2805, China Insurance Building No.166 Lujiazui East Road, Pudong New Area, Shanghai P.R.China

Telephone: (8621) 58501696

Fax: (8621) 68380006

### Guangzhou Office

Address: Room 3806, Building G, G.T.Land Plaza, No. 16, Zhujiang East Road, Zhujiang New Town, Tianhe District, Guangzhou P. R. China

Telephone: (8620) 85561566, 85561660, 38898535

Fax: (86-0) 38690070

### Shenzhen Office

Address: 22B03, Anlian Building No.4018, Jintian Road, Futian District, Shenzhen Guang Dong P. R. China 518067

Telephone: (86755) 86568007, 86568070

Fax: (86755) 86568072

### Wuhan Office

Address: 2505, Building A, Tanhualin Fanyue Certer, No.202 Tanhualin Road, Wuchang District, Wuhan, Hubei P. R. China 430060

Telephone: (8627) 87301677

Fax: (8627) 86652877

### Seoul Office

Address: 5F, ILJIN Building, 45, Mapo-daero, Mapo-gu, Seoul, South Korea

Telephone: (0082) 02 69590780

Fax: (0082) 02 21799332

