



立方观察

Lifang & Partners ' View

- ◆ 最高人民法院被指定为技术类知识产权案件的专属二审法院
- ◆ Supreme People' s Court Designated as the Sole Appellate Court for All Technology Related Intellectual Property Lawsuits in China

最高人民法院被指定为技术类知识产权案件的专属二审法院

文/立方律师事务所知识产权团队

全国人大常委会2018年10月26日发布一项关于专利等知识产权案件诉讼程序若干问题的决定(“决定”)，该决定对知识产权案件的级别管辖产生重大影响。

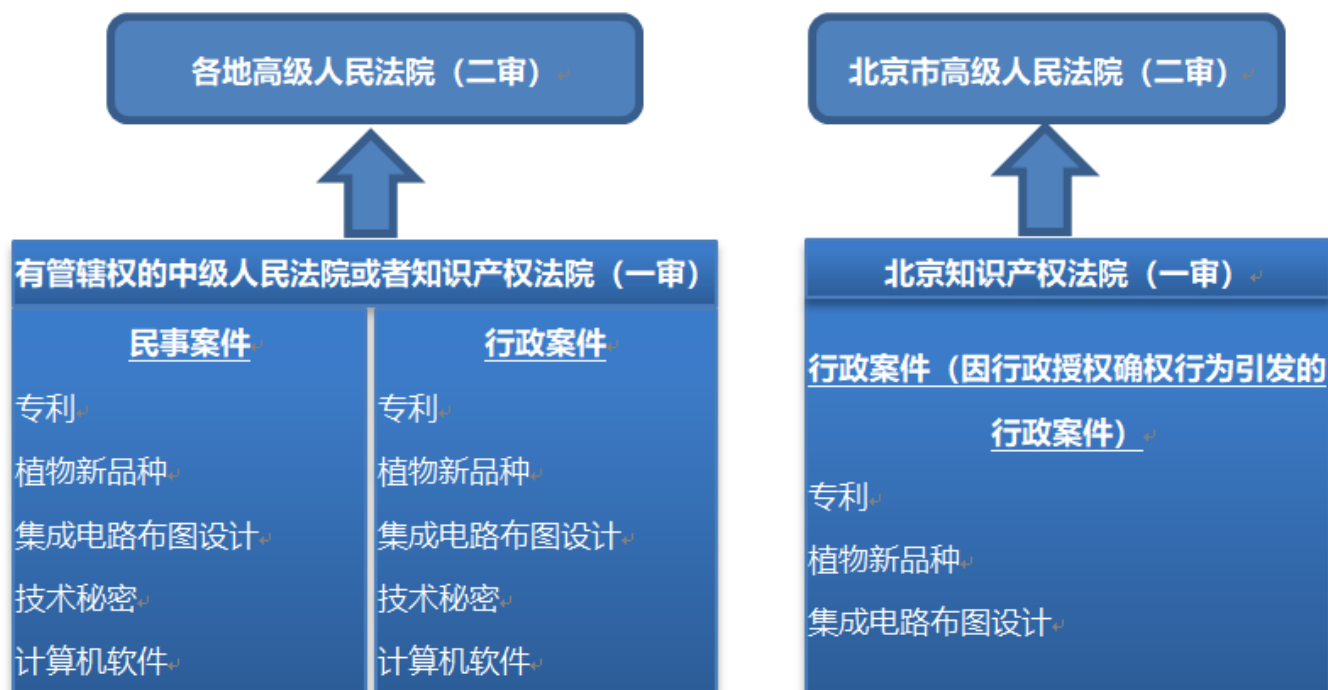
据此决定，最高人民法院将成为全国范围内技术类知识产权案件的专属上诉法院。即当事人对于专利、植物新品种、集成电路布图设计、技术秘密、计算机软件、垄断等专业技术性较强的知识产权民事或者行政第一审判决、裁定提起上诉的，都将由最高人民法院审理。其中，知识产权民事案件中的专利案件仅包括涉案专利类型为发明专利和实用新型专利的案件，不包括外观设计专利案件；而知识产权行政案件中的专利案件则包括三种涉案专利类型的案件。最高人民法院还享有对已经生效的上述一审案件的再审管辖权，并且可以指令下级人民法院再审。该决定所涉知识产权案件以外的其他知识产权案件的管辖权暂不改变。

目前，所述案件的初审一般是由中级人民法院或者是位于北京、上海、广州的三个知识产权法院管辖，二审一般由高级人民法院管辖。随着该决定的出台，所涉案件的二审管辖权将统一归属最高人民法院。该决定被认为有助于解决当前各地在知识产权案件审理标准方面的不一致以及知识产权民事案件与行政案件审理标准方面的不一致，有利于提高知识产权案件的审判质量与效率，强化知识产权保护，激励科技创新。

该决定将于2019年1月1日起生效。施行满三年，最高人民法院应当向全国人大常委会汇报其实施情况。

为方便理解所述决定带来的管辖方面的变化，现附上该决定实施前后技术类知识产权案件的诉讼程序示意图如下：

决定实施前:



决定实施后:



Supreme People's Court Designated as the Sole Appellate Court for All Technology Related Intellectual Property Lawsuits in China

— By Lifang Intellectual Property Team

The standing committee of the highest legislature in China (namely, National People's Congress of PRC) has just issued a decision on 26 October 2018 on patent and other intellectual property litigation procedures in China ("**Decision**"), which makes huge change to the subject matter jurisdiction of intellectual property matters in China.

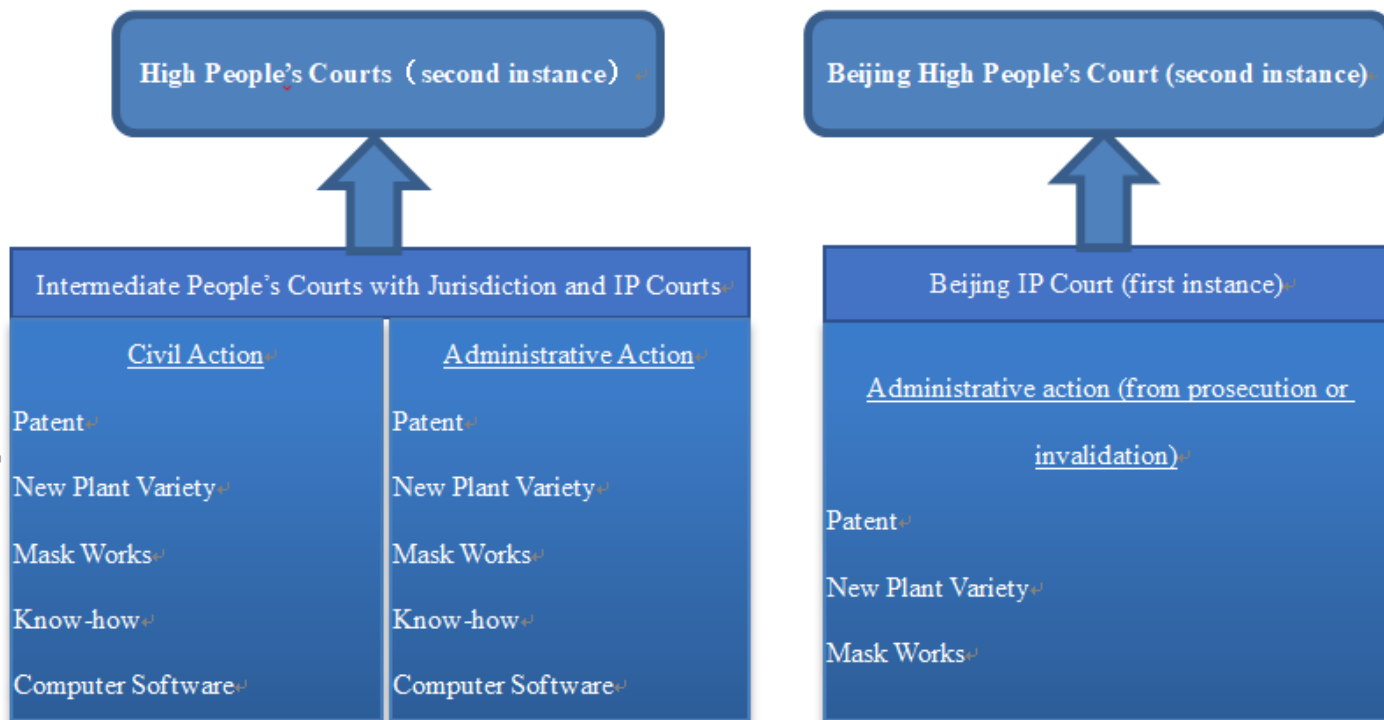
According to the Decision, the Supreme People's Court ("**SPC**") will become the exclusive appellate court for all technology related intellectual property lawsuits nationwide, civil or administrative, regardless where the case is originated and which the court of first instance is. Said technology related intellectual property lawsuits refer to lawsuits over patents, new plant variety, mask works, know-how, computer software, and antitrust and so on, which are considered as highly technical and complex. Please note that in a civil action, the Decision only applies to invention patent or utility model patent involved patent cases, as compared to in an administrative action where the Decision also applies to design patent involved patent cases in addition to invention patent and utility model patent cases. Retrial jurisdiction for aforesaid cases that have become enforceable based on the Decision of the court of first instance remains with the SPC, and the SPC can delegate such retrial jurisdiction to lower courts.

Currently, the appellate jurisdiction for aforesaid cases is generally with the high people's court at the provincial level in China since these cases are originally heard by intermediate people's courts of sizable cities or three intellectual property courts in Beijing, Shanghai and Guangzhou in normal circumstances. With the issue of the Decision, the appellate jurisdiction will be vested exclusively with the SPC, which is considered to help harmonize the difference of standards in adjudicating intellectual property cases by different venues and between civil and administrative actions, and help improve both the quality and efficiency of the courts in hearing intellectual property disputes, strengthen intellectual property protection in China as well as further incentive technology innovation.

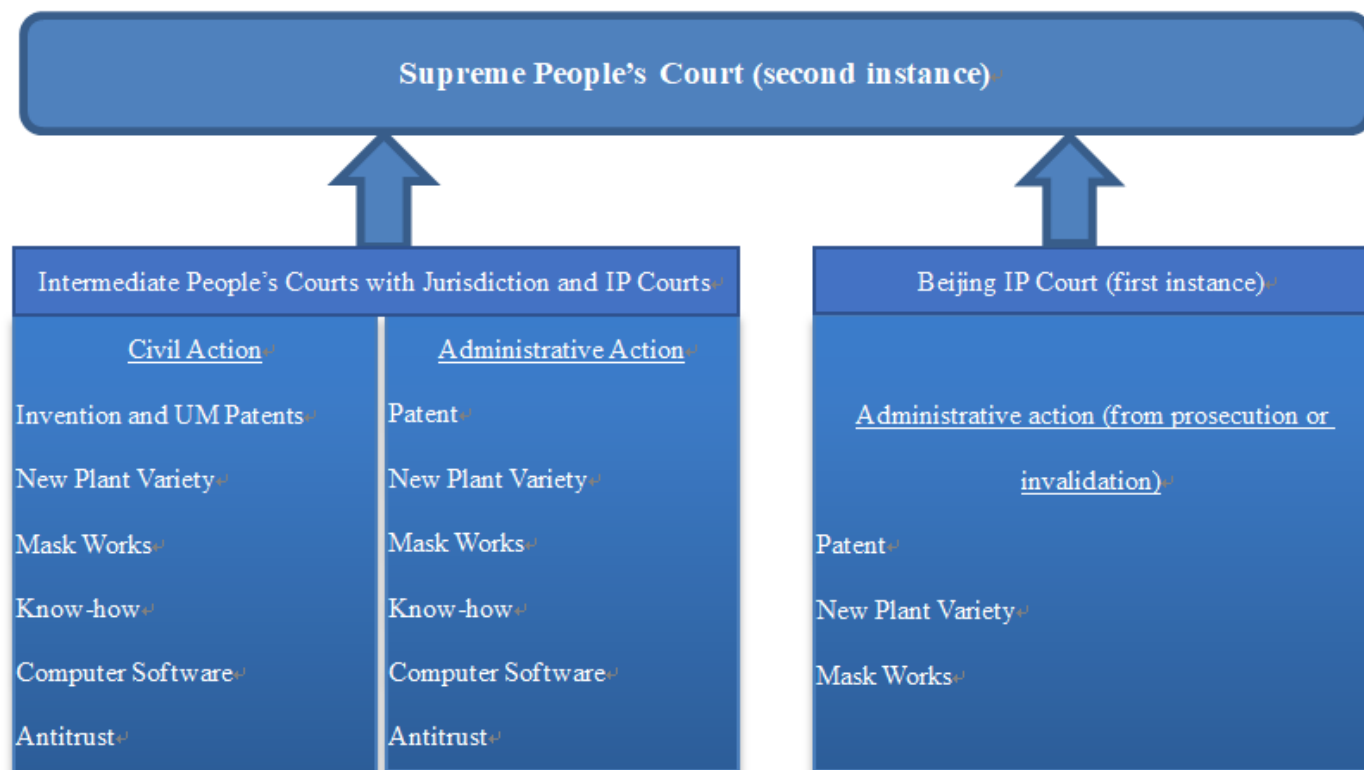
The Decision will enter into effect as of 1 January 2019 and the SPC will report to the standing committee of NPC its implementation of the Decision after 3 years since the date of entry into effect.

To help understand the Decision, jurisdictional changes brought about by the Decision are illustrated as below:

Before the Decision:



After the Decision:



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