

# The Latest Trends in Patent Protection in China

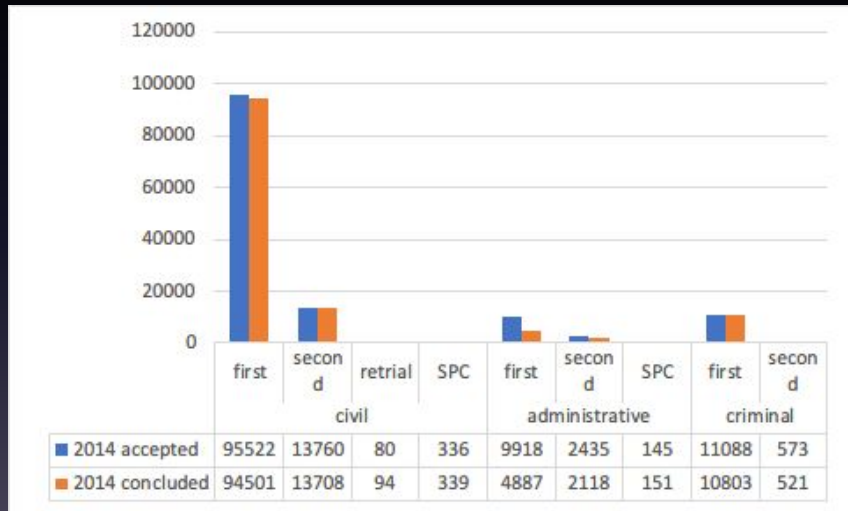
Zhong Ming

2017.9.28

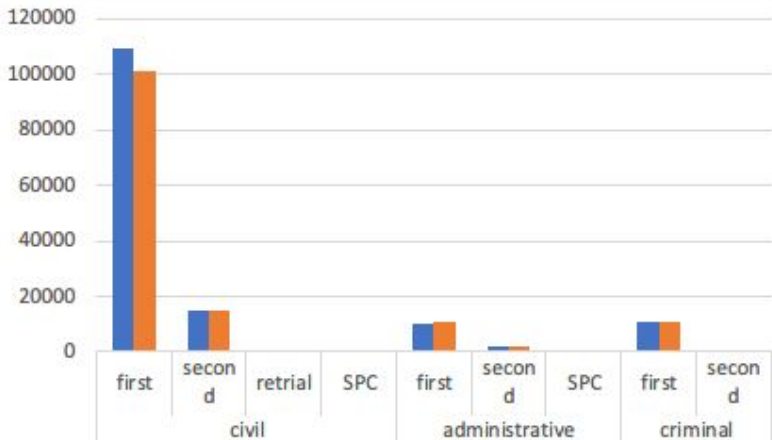
# Statistics on Judicial and Administrative Protection

Updating on Politics and Case-Law on Protection

# Statistics on IP litigation 2014



# Statistics on IP litigation 2015



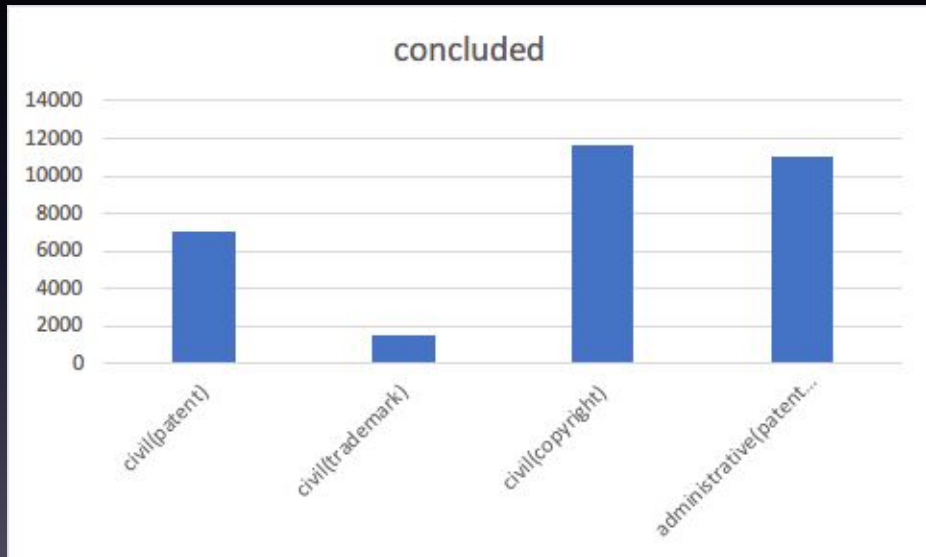
■ 2015 accepted	109386	15114	115	381	9839	2245	378	10975	790
■ 2015 concluded	101324	15025	114	377	10926	2329	377	10809	782

# Statistics on IP litigation 2016



	first	second	retrial	SPC	first	second	SPC	first	second
	civil				administrative			criminal	
2016 accepted	136534	20793	79	369	7186	3233	355	8352	787
2016 concluded	131813	20334	85	383	6250	3069	352	8601	812

# Statistics on litigation of 3 IP Courts



# Statistics on patent application, administrative enforcement, litigation and invalidation

year	2014	2015	2016
Patent applications for invention	928K	1102K	1339K
Granted patents of invention	233K	359K	404K
Administrative enforcement	24479	35844	48916
Patent infringements	7671	14202	20351
Invalidation	2742	3652	4100

# Statistics on Indemnities in Patent Litigation

Types of patent Damages(RMB)	Invention		Utility model		Design	
	Quantity	proportion	Quantity	proportion	Quantity	proportion
< 10k	3	0.6%	37	4.4%	223	8.1%
10k-100k	157	31.7%	564	67.2%	2,276	83.2%
100k-1000k	301	60.7%	232	27.6%	227	8.3%
1000k-5000k	33	6.6%	7	0.8%	11	0.4%
>=5000k	2	0.4%	0	0	0	0



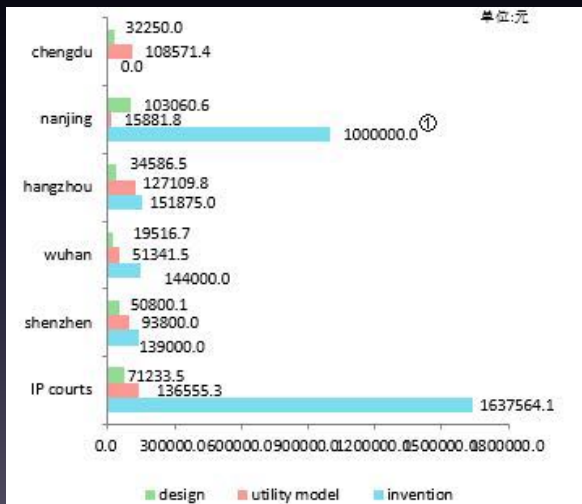
# Statistics on Indemnities to Foreign Patent Owners

Types	Nationwide			Foreign		
	Highest	Median	Minimum	Highest	Median	Minimum
invention	49,000,000	150,000	6,000	4,800,000	200,000	23,000
Utility model	3,588,000	50,000	2,085	300,000	180,000	25,000
Design	3,000,000	25,000	1,000	3,000,000	70,000	10,000

# Statistics on Ideminities in Patent Litigation of 3 IP Courts

Types \ Courts	Highest			Median			Minimum		
	Beijing	Shanghai	Guangzhou	Beijing	Shanghai	Guangzhou	Beijing	Shanghai	Guangzhou
Invention	49,000,000	200,000	260,000	827,630	11,000	100,000	52,478	25,000	30,000
Utility model	3,588,000	60,000	1,000,000	100,000	32,500	25,000	20,000	9,000	10,000
Design	3,000,000	150,000	600,000	110,000	13,000	25,000	5,000	6,000	5,000

# Comparison between 3 IP Courts and other Courts regarding Indemnities



Statistics on Judicial and Administrative Protection

Updating on Politics and Case-Law on Protection

# Outline of the Judicial Protection of Intellectual Property in China(2016-2020)

- ▶ Primacy of the judiciary;
- ▶ Strict enforcement of law;
- ▶ Differentiated measures;
- ▶ Proportionality.

# Insisting strict protection of intellectual property

- ▶ Creating an infringement damages system that reflects the full value of intellectual property;
- ▶ Clarifying the function of the courts to examine the legal force of patents and registered marks during a patent or trademark civil litigation;
- ▶ Formulating intellectual property evidentiary rules when appropriate.

# SPC(2012) Min Shen Zi No. 1544 BAI Wanqing vs. Chengdu Hard-To-Find Items Center

## Guiding Case No. 55

If there is an obvious flaw in the statements of a utility model patent claim and the specific meaning of the technical terms in the claim still cannot be determined by combining the specification of the patent involved in a case, attached figures, common knowledge in the art, relevant existing technology, etc., resulting in the scope of protection of the patent being obviously unclear, then a people's court cannot determine that the allegedly infringing technical solution constitutes an infringement of rights because there is no way to conduct a substantively meaningful infringement comparison of the claim with the allegedly infringing technical solution.

# Interpretation (II) of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Patent Infringement Dispute Cases<sup>1</sup>

- ▶ Effects of patent invalidation on infringement litigation;
- ▶ Calculation of damages;
- ▶ Cessation of infringement acts;
- ▶ Issues of standard essential patent;
- ▶ Indirect infringement.

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<sup>1</sup>Effective date: 04-01-2016.



## Article 2 of Interpretation (II)

- ▶ Where the claims of a patentee in a patent infringement action is declared invalid by the Patent Reexamination Board, the people's court that tries the patent infringement dispute case may rule to dismiss the action which is initiated based on such invalid claims.
- ▶ Where there is evidence proving that the decision of declaring the invalidation of the aforesaid claims is set aside by an effective administrative judgment, the patentee may initiate a separate action.

## Article 27 of Interpretation (II)

1. Where it is difficult to determine the actual losses suffered by the patentee due to the infringement, the people's court shall, in accordance with the provisions of paragraph 1 of Article 65 of the Patent Law, request the patentee to produce evidence to prove the interests acquired by the infringer due to the infringement.
2. Under the circumstance that the patentee has provided the preliminary evidence on the interests acquired by the infringer, and the account books or materials related to the patent infringing act are primarily controlled by the infringer, the people's court may order the infringer to provide such account books or materials.

# Article 27 of Interpretation (II)

3. Where the infringer refuses to provide or provides any false account books or materials without any justifiable reason, the people's court may determine the interests acquired by the infringer due to the infringement according to the patentee's claims and the evidence they provided.

# Watchdata vs. Hengbao<sup>2</sup>

- ▶ Both Watchdata and Hengbao produce USB keys used for bank transactions,
- ▶ Watchdata filed a suit, alleging Hengbao of infringing its patent,
- ▶ Evidence produced by Bank of China showed that Hengbao in totality sold about 4.8 million USB keys to twelve different banks.
- ▶ Notarized web pages belonging to Hengbao showed that the company also sold infringing products to several other banks.
- ▶ Hengbao refused to submit its account books or any other evidence, the Court presumed that Watchdata's claim was valid and supported its claim.

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<sup>2</sup>Beijing IP Court (2015) Jing Zhi Min Chu No. 441.

# Panasonic vs. Jindao<sup>3</sup>

- ▶ Panasonic stated that the product “Kingdom Ion Cosmetic Steamer KD-2331” that was produced, sold and offered for sale by Jindao infringed the design patent of Panasonic;
- ▶ The patentee provided that the amount of 18,411,347 infringement products was retrieved and fixed on a part of e-commerce platforms via notarization and the average unit price RMB 260 of the product.
- ▶ Courts determined that the compensation amount of RMB 3 million claimed by Panasonic according to the sale and the average unit price of the infringement product shown on the Internet was reasonable.

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<sup>3</sup>Beijing Higher People’s Court (2016) Jing Min Zhong No. 245.

THANKS!