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## China Litigation Series:

Which Court Should You  
Choose to File an IP Case  
in China?

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In a previous article in this series [[Which Court Should You Choose to File a Lawsuit in China?](#)], we addressed and explained a number of important general jurisdiction issues that are particular to China's judicial system. In this article, we look at civil jurisdiction in intellectual property (IP)-related cases: which courts hear which types of IP-related disputes? This is critical for any business that has a dispute involving its IP in China.

There are several factors to consider when determining which is the proper court to file an IP case in China, such as: the amount in dispute, the type of IP involved (e.g. patent, trademark, copyright, trade secret), and the suitable venue. These factors are often intertwined, making it difficult to choose the right court to file an IP case, at least without the right guidance. Here, we offer a summary of the key points of information and process to serve as a good starting point for any business needing to pursue an IP-related case in China. Fangda has the expertise and experience to assist with the nuts and bolts of any claim.

## *- IP Courts in China*

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China has courts set up specifically for handling IP cases. The layout of these IP Courts can be described as "1+4+N": "1" stands for one IP Court within the Supreme Court ("SPC IP Court"); "4" stands for four IP Courts in Beijing, Shanghai, Guangzhou, and the Hainan Free Trade Port; and "N" stands for a number of Intellectual Property Tribunals within the intermediate level of courts in different prefectures and municipalities.

The SPC IP Court is a tribunal of the Supreme Court, and is located in Beijing. It handles complex appeals such as patent cases and other IP cases that require more technical expertise.

The four IP Courts in Beijing, Shanghai, Guangzhou, and the Hainan Free Trade Port exercise first-instance jurisdiction over patent cases, other IP-related cases involving highly technical subject matter, and civil cases involving well-known trademarks. The four IP Courts also hear civil and administrative appeals related to IP rights within the municipality in which each of the four courts is domiciled. Since the four IP Courts act at the level of intermediate courts, it used to be the case that the appeals of the first-instance cases handled by the four IP Courts would be heard by the IP Tribunal attached to the applicable High Court. However, following the establishment of the SPC IP Court, some of those appeals (e.g. patent cases and other cases that require more technical expertise) are now being heard by the SPC IP Court itself.

The *N* IP Tribunals were set up within the Intermediate Courts of each municipality and province to specifically handle IP cases. In addition to handling first-instance trials of IP cases of the municipality in which they are domiciled, some IP Tribunals will conduct first-instance trials of IP cases of nearby municipalities that do not have a local IP Tribunal. That is because many IP cases are complex—especially patent cases—and so it is felt to be better to allow these IP Tribunals to hear cases even though the cases themselves may be outside their municipality. For example, the Hangzhou IP Tribunal is empowered to hear first-instance IP civil cases related to patents, technical know-how, computer software, new plant varieties, layout designs of integrated circuits, recognition of well-known trademarks and antitrust disputes within not only Hangzhou, but also Jiaying, Huzhou, Jinhua, Quzhou and Lishui, all of which are municipalities in Zhejiang province. Such cross-regional jurisdiction integrates the handling of IP cases into one specialized system, as well as ensuring that cases are always heard by judges with IP expertise.

In our view, such a structure makes good sense and can offer businesses with IP disputes the reassurance that their cases will be expertly handled.

## - *Jurisdiction determined by the amount in dispute and the IP type*

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As we explained in our previous article, there are four levels of courts in China: the Basic Court; the Intermediate Court; the High Court; and the Supreme Court. The first-instance trials of IP cases may be handled by either the Basic Court, or the Intermediate Court, or the High Court.

Generally, the amount in dispute of a particular IP case will determine which level of court will hear the first-instance trial of a case. As a rule of thumb, the greater the amount in dispute, the higher the level of court designated to hear the first-instance trial. In most IP cases, the first-instance trial will be heard by the Intermediate Court. However, readers should note a particular exception in trademark cases if the amount in dispute is relatively small, which will be heard in the Basic Court.

In cases where the Intermediate Court has jurisdiction, if there is an IP Court or IP Tribunal that has jurisdiction over a particular IP case, the first-instance trial of the case will be handled by that IP Court or IP Tribunal. Otherwise, in theory, a regular Intermediate Court will conduct the first-instance trial. However, to complicate things further, this rarely happens because the four IP Courts and the *N* IP Tribunals have the jurisdiction to cover the vast majority of regions in China.

## - *Venue for IP cases*

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Where to file the IP case is the next question for a potential litigant to ponder.

In general, the proper venue for an infringement case is the place where the defendant is domiciled or the place where the acts of infringement occur. There are specific rules in terms of venue for different types of IP cases.

Some type-specific venue rules for IP cases are as follows:

- **Patent cases.** The place where the acts of infringement occur include: the place where the accused infringing products are manufactured, used, offered for sale, sold and imported; the place where the acts of using patented methods occur, and the place where the products obtained directly according to the patented method are used, offered for sale, sold and imported; the place where the acts of counterfeiting the patent of others are committed; and the place where the consequences of the foregoing infringing acts occur.
- **Trademark cases.** The place where the infringement is committed, the place where the infringing goods are stored, seized or detained, or the place where the infringer is domiciled has jurisdiction.
- **Copyright cases.** The place where the infringement is committed, the place where the infringing copies are stored, seized or detained, or the place where the infringer is domiciled has jurisdiction. For acts of infringement committed through the Internet, the place where the computer and other devices used to commit infringement are located or the place where the rights holder is domiciled has jurisdiction.

For example, if you wished to file a patent infringement suit in China where the infringer sells infringing products in Shanghai and the amount in dispute is less than RMB5 billion, either the Shanghai IP Court or the IP Court/Tribunal in the location where the infringer is domiciled may have jurisdiction.

## - *“Leapfrog Appeal”*

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The SPC IP Court, which, as we indicated above, is part of the Supreme Court, was set up to central-ize the handling of appeals of patent cases and other highly technical IP cases. As such, this system marks an exception to the two-instance trial process discussed in our previous article. This ability to “leapfrog appeal” demonstrates the special status of IP cases in China’s judicial system and the im-portance the country attaches to achieving technological advancement.

Such a centralized approach is similar to the United States Court of Appeals for the Federal Circuit, which is the only appellate-level court with the jurisdiction to hear patent case appeals in the U.S.

## - *Summary*

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There are special rules for determining the jurisdiction of courts hearing IP cases. Because IP cases are often complex and the stakes involved are almost always high, the Intermediate Courts usually have first-instance jurisdiction over IP cases. To this end, China has established several dedicated IP Courts and IP Tribunals at the intermediate court level, which makes it easier for those who believe their IP has been infringed to pursue claims.

Even though the jurisdiction that applies to IP matters in China is significantly more complicated than that which applies in general civil disputes, it is possible to steer a course through the complexities and to successfully pursue claims through the courts. As specialists in the IP field, we have advised extensively on IP issues, both for Chinese and international clients, and can be a first port of call for any business with an IP-related legal issue.

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