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SUPREME PEOPLE'S COURT ISSUES IPR PROTECTION NEW OUTLINE

China's Supreme People's Court has recently released new guidelines regarding the judicial protection of intellectual property rights (IPR) which will be implemented during the China's 13th Five-years Plan taking place between 2016 and 2020. This happens just in parallel with the launch of China National Intellectual Property Campaign Week.

Though the similar IPR guidelines had never been released by some China authorities, this is the first time that China's Supreme Court released such IPR guidelines since the China people's court accepted and heard the first legal case concerning patent dispute in 1985. During 1985~2016, there were more than 792,000 civil cases involving IPR, which have been disposed in China People's Court.

The Supreme People's Court has considered the increasing number of cases involving IP and the high complexity and different implications of them, and has consequently defined the eight main goals of the guidelines 1) to establish a coordinated and open policy system of IPR protection; 2) to establish a clear and unified system of judgement standards and rules for IPR trials 3) to establish a balanced and developed system of IPR courts; 4) to establish a reasonable system of jurisdiction regulations on IPR cases; 5) to establish a specific system of rules on evidence, set out according to the features of IPR cases; 6) to establish a reasonable system of compensation policies for IP damages; 7) to build a well-professional team of judges specialized in IPR cases; 8) to establish a long-term valid mechanism for IPR international juridical communications. The Supreme Court stressed the importance of "hearing IP cases of various types in a fair and efficient way" and "establishing an effective mechanism to ensure the correct implementation of laws."

Most importantly, the Supreme Court urged the introduction of the punitive compensation regulations into the Copyright Law, Patent Law, Anti-unfair Competition Law, the relevant laws and to increase the amount of statutory compensation for the infringements of IPRs. However, during the IPR protection the principles shall be to take the remedial compensation as the prior purpose and the punitive compensation as the complementary measure, recover the losses of the victims, prevent the infringer to benefit anything, and cause the litigation loser to bear all remedies cost.

This is, without doubt, an innovative measure giving the PRC Courts the possibility to condemn not only to the "actual damages", that are always difficult to prove during an IP trial, but also to punish

the infringers throughout punitive damages based on their illegal behavior. Punitive damages are, in fact, awarded in addition to actual damages (so far the only ones recognized on such matters by Chinese judges) under the condition that the infringer acted with recklessness, malice or deceit. This measure could represent a possible turning point and a huge chance for all the foreign companies struggling with IP issues in China. The total number of IPR closed case in China consisted of 171,708 cases in 2016, said Tao Kaiyuan, vice president of the Supreme People's Court, up 20.86 percent from 2015, while the Court itself dealt with a total of 177,705 IPR cases in 2016, an increase of 19.07 percent from the previous year, according to a statement released on the website of the supreme court.

And the significant number of cases not only includes the trademark protection, but involved also the copyright, patent protection, the technical contract dispute, unfair competition and other civil cases of IPR. To give an idea of the phenomenon, in the first quarter of this year, more than 2 million pirated publications were seized, said a joint statement issued Thursday by China's National Office Against Pornographic and Illegal Publications and the National Copyright Administration.

China understands the value of IP and is determined to become a "powerful IP nation". Its 5 years plan recognizes that a strong intellectual property protection and enforcement will be the key to achieve its objective of innovation-driven economic growth, clearly noticeable by the number of IP developments in China taking place in the last several months.

At the recent 'Two Sessions' of the Chinese legislatures in March, Premier Li Keqiang called for greater punishment for counterfeiting and copyright violations. Other provisions from the Supreme People's Court and revised trademark examination guidelines from the Chinese Trade Mark Office clarify the grounds on which to fight bad faith trademark filings, and we can also expect to see substantial amendments to China's patent law in the next year. Moreover, recently the Chinese government launched a national copyright monitoring website, which would provide 24/7 monitoring of the Internet and identify suspected right infringements.

China is definitely making stronger efforts to better recognize and protect IPR as part of its larger effort to create and protect investment in innovation, research and development.



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