

中国知识产权司法保护纲要

(2016—2020)

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实现中华民族伟大复兴的中国梦，极大地激发了大众创业、万众创新。创业者创新者依法获得的产权，应当受到法律的保护。知识产权作为重要的产权类型，通过转化应用，可以形成先进的生产力，这是当前和今后一个时期推动我国供给侧结构性改革，淘汰落后产能，提升国际竞争力的必然选择。因此，必须加强知识产权司法保护，充分实现知识产权价值，促进创新性成果的创造和转化应用，为建设知识产权强国和世界科技强国提供有力的司法保障。

我国知识产权司法保护制度在改革开放的大潮中起步和发展，伴随着我国商标法、专利法、著作权法等法律的实施以及加入世界贸易组织而不断完善，逐步建立起了以司法保护为主导，民事审判为基础，行政审判和刑事审判并行发展的知识产权司法保护体制机制。这一模式，凝聚着知识产权保护的“中国智慧”和“中国经验”，反映了知识产权司法规律，是我国社会主义法律体系的重要组成部分，符合国际知识产权保护的通行规则和惯例。

一、发展状况

我国知识产权司法保护用了 30 余年的时间，不断追赶西方发达国家近 300 年走过的路，走出了一条融合与创新、自主发展与自我完善的“中国道路”。

历经 30 年，我国知识产权案件数量显著增长。1985 年 2 月，人民法院受理第一宗专利权纠纷案件。1985 年至 2016 年，人民法院

受理知识产权民事一审案件 792851 件，审结 766101 件。知识产权行政案件从 2002 年开始单列统计，至 2016 年，人民法院受理知识产权行政一审案件 44401 件，审结 39113 件。知识产权刑事案件从 1998 年开始单列统计，至 2016 年，人民法院受理知识产权刑事一审案件 77116 件，审结 76174 件。知识产权保护的范围涵盖了《与贸易有关的知识产权协议》所规定的各类知识产权以及不正当竞争行为。在中华老字号、中医药、中国民间文学艺术、中文字库等方面的知识产权司法保护，令古老的中华文明生机盎然。

历经 30 年，我国知识产权审判机制逐步健全。1995 年 10 月，最高人民法院成立知识产权审判庭。2014 年 11 月起，北京、广州、上海知识产权法院相继成立。2017 年初，南京、苏州、成都和武汉知识产权专门审判机构先后设立。2016 年 7 月，知识产权民事、行政和刑事案件审判“三合一”在全国法院推行。技术调查官以及司法鉴定、专家辅助人、专家咨询

等技术事实查明多元化机制初步形成。由北京知识产权法院依法管辖专利、商标授权确权行政案件，部分中级人民法院集中管辖专利等技术类民事案件，部分基层人民法院管辖一般知识产权案件的格局更趋合理。截至 2016 年年底，经最高人民法院指定或者依法享有专利、植物新品种、集成电路布图设计、垄断和涉及驰名商标认定民事纠纷案件专门管辖权的中级人民法院共有 224 个。此外，最高人民法院还批准了 167 个基层人民法院管辖一般知识产权民事案件。

历经 30 年，我国知识产权司法政策不断完善。最高人民法院通过制定司法政策指导审判实践，确保不同时期、不同地区、不同领域知识产权创造、运用和交易纠纷解决的法律适用标准统一透明，切实有效；确保在知识产权审判工作中坚持党的领导、人民当家作主与依法治国有机统一。1985 年至 2016 年，共制定涉知识产权司法解释 34 个，司法政策性文件 40 多件，有效发挥知识产权司法保护的主导作用。

特别是党的十八大以来，最高人民法院坚决贯彻习近平总书记系列重要讲话精神和治国理政新理念新思想新战略，加大司法改革力度，不断破解制约知识产权保护的体制机制性障碍，提出当前和今后一个时期坚持“司法主导、严格保护、分类施策、比例协调”知识产权司法保护基本政策。

过去 30 年的实践和经验证明，知识产权司法保护事关创新驱动发展战略实施，事关经济社会文化发展繁荣，事关国际国内两个大局，越来越受到社会各界和国际社会的广泛关注。为此，最高人民法院设立了“最高人民法院知识产权司法保护研究中心”“最高人民法院知识产权案例指导研究（北京）基地”“中国法院知识产权司法保护国际交流（上海）基地”“最高人民法院知识产权司法保护与市场价值研究（广东）基地”，定期发布《中国法院知识产权司法保护状况》《最高人民法院知识产权案件年度报告》《中国知识产权司法保护年鉴》，及时总结、权威展现中国知识产权司法保护的新成果、

新经验，努力让人民群众在每一个司法案件中感受到公平正义。

过去 30 年的实践和经验证明，知识产权司法保护必须立足我国仍处于社会主义发展初级阶段这一基本国情，紧紧围绕实现国家治理体系和治理能力现代化目标，坚持开放思维，坚持世界眼光，严格遵守国际公约，积极参与国际知识产权治理实践，及时发出中国声音，充分彰显中国知识产权司法保护的国际影响力。

过去 30 年的实践和经验证明，要充分发挥知识产权司法保护的主导作用，必须打造一支司法为民、公正司法的审判队伍，始终坚持做到信念坚定、业务精通、作风优良、清正廉洁、勇于创新、敢于担当。目前，全国法院共有知识产权法官及法官助理、技术调查官、书记员等 5000 余人。他们传承知识产权司法保护的先进理念，推动中国知识产权司法保护的发展进步，是一支让党和人民可以信赖的队伍。

党的十八大以来，“创新、协调、绿色、开

放、共享”的经济发展新理念对知识产权司法保护工作提出了更高的要求。同时，全球迎来了新一轮科技革命与产业变革，发达国家纷纷将知识产权作为抢占全球经济、科技制高点的有效武器，在国际贸易中实行高标准的知识产权保护规则，知识产权越来越成为国际竞争力的核心要素。面对新的国内和国际形势，按照《中华人民共和国国民经济和社会发展第十三个五年规划纲要》《中共中央、国务院关于完善产权保护制度依法保护产权的意见》《中共中央、国务院关于深化体制机制改革加快实施创新驱动发展战略的若干意见》《国家知识产权战略纲要》等决策部署，结合人民法院知识产权司法保护工作实际，特制定《中国知识产权司法保护纲要（2016—2020）》。力争通过五年的努力，知识产权司法保护体系更加完善，司法保护能力更大提升，司法保护的主导作用更加突出，同时为国际知识产权司法保护提供更多的“中国智慧”和“中国经验”。

二、指导思想

坚持以马克思列宁主义、毛泽东思想、邓小平理论、“三个代表”重要思想和科学发展观为指导，全面贯彻党的十八大和十八届三中、四中、五中、六中全会精神，深入贯彻习近平总书记系列重要讲话精神和治国理政新理念新思想新战略，牢固树立“四个意识”，按照“五位一体”总体布局和“四个全面”战略布局要求，紧紧围绕“努力让人民群众在每一个司法案件中感受到公平正义”的目标，坚持司法为民、公正司法，不断深化司法改革，充分发挥知识产权司法保护主导作用，树立保护知识产权就是保护创新的理念，为实施国家知识产权战略和创新驱动发展战略提供有效司法服务，为实现“两个一百年”奋斗目标和建设知识产权强国、世界科技强国提供有力司法保障。

三、基本原则

1. 坚持服务大局。服务大局是人民法院审判工作的根本使命，是知识产权审判的重要职责。必须切实增强大局意识，增强历史责任感和使命感，紧紧围绕党和国家发展大局，积极适应国际形势新变化，找准知识产权审判工作着力点。

2. 坚持改革创新。改革创新是知识产权审判持续健康发展的动力源泉，是实现审判体系和审判能力现代化的必由之路。对于影响和制约知识产权审判发展的关键领域和薄弱环节，必须以创新的理念和方法破解难题、补齐短板，不断完善审判体制机制，加快推进知识产权司法体系和司法能力向现代化迈进。

3. 坚持司法主导。发挥知识产权司法保护的主导作用是司法的本质属性和知识产权保护规律的内在要求，是全面推进依法治国的重要体现。必须强化司法主导理念，充分发挥司法保护的体制机制性优势，妥善处理司法保护和

行政保护之间的关系，强化对行政执法行为的程序审查和执法标准的实体审查，在依法支持行政执法行为的同时，加强监督，严格规范。

4. 坚持平等保护。要平等保护不同所有制经济主体和不同国别当事人之间知识产权的合法权益。必须坚持权利平等、机会平等和规则平等，无论是公有制经济，还是非公有制经济，无论是本国当事人，还是外国当事人，都要切实保障当事人在知识产权诉讼中享有平等的程序权利和实体权利。

5. 坚持严格保护。严格保护知识产权是实施创新驱动发展战略的必然要求，是我国当前和今后一个时期知识产权司法保护的基本方向。必须以充分实现知识产权价值为导向，以有利于激励创新为出发点，严格执行法律，切实提高知识产权司法保护的针对性和有效性。

6. 坚持分类施策。正确把握技术成果类、经营标记类等不同类型知识产权的保护需求和特点，妥善界定不正当竞争和垄断行为的判断标准，不断加强对关键环节、特殊领域以及特

定问题的研究和解决。根据知识产权的不同类型和领域分类施策,使保护方式、手段、标准与知识产权特质、需求相适应。

7. 坚持比例协调。统筹兼顾保护权利和激励创新,坚持知识产权保护范围和强度与其创新和贡献程度相协调,侵权人的侵权代价与其主观恶性和行为危害性相适应,知识产权保护与发展规律、国情实际和发展需求相匹配,依法合理平衡权利人利益、他人合法权益和社会公共利益、国家利益,实现保护知识产权与促进技术创新、推动产业发展和谐统一。

8. 坚持开放发展。提高我国知识产权司法保护的国际影响力是建成中国特色、世界水平的知识产权强国的必然要求。必须坚持国际视野和世界眼光,既立足现实和国情,又尊重国际规则和主流做法,大胆吸收和借鉴知识产权司法保护的国际经验,认真总结和积极宣传知识产权司法保护的中国经验,不断增强我国在知识产权国际治理规则中的引领力。

四、主要目标

1. 建立协调开放的知识产权司法保护政策体系。建立统领法律适用标准、裁判思路以及裁判价值导向,协调开放的司法政策体系。

2. 建立明确统一的知识产权裁判标准规则体系。建立在权利范围认定、侵权行为认定、损害赔偿认定、证据效力采信等方面明确统一的规则体系。

3. 建立均衡发展的知识产权法院体系。建立区域布局、横向关系、纵向关系、“三合一”机制均衡发展的知识产权法院体系。

4. 建立布局合理的知识产权案件管辖制度体系。建立地域管辖、级别管辖、专属管辖以及跨区域集中管辖的案件管辖制度体系。

5. 建立符合知识产权案件特点的证据规则体系。建立当事人提供证据与法院依职权调查取证及保全证据,证据披露与排除证据妨碍等统筹协调的证据规则体系。

6. 建立科学合理的知识产权损害赔偿制

度体系。建立权利人被侵权所遭受的损失、侵权人获得的利益、许可费用、法定赔偿以及维权成本与知识产权价值相适应的损害赔偿制度体系。

7. 建设高素质的知识产权法官队伍。建设公正司法、司法为民，能够优质高效审理知识产权民事、行政和刑事案件，具有国际视野的知识产权法官队伍。

8. 建立知识产权国际司法交流合作长效机制。积极推动我国“一带一路”和“走出去”战略、“中国制造 2025”战略的实施，创造公平公正、竞争有序的国际环境。

五、重点措施

（一）公正高效审理各类知识产权案件

积极改进民行交叉案件的审判机制，避免循环诉讼，加快纠纷的实质性解决。推进案件繁简分流，根据不同审级和案件类型性质，实现案件审理程序和裁判文书的繁简有度，做到

简案快审、繁案精审。适当扩大简易程序的适用范围,对于事实清楚、权利义务明确、争议不大的简单的知识产权案件,可以简化审理程序。充分发挥审判委员会总结审判经验和加强审判指导的职能作用,提高审判质量和效率。

(二) 建立有效机制确保法律正确实施

认真总结专利、商标授权确权行政纠纷案件、商标民事纠纷案件和诉前行为保全中的法律适用问题,适时制定相关司法解释,统一裁判标准和尺度。推进植物新品种司法解释修订工作,加强植物新品种权的司法保护。积极开展对涉及标准必要专利、新商业模式、著作权集体管理、信息网络环境下的知识产权保护等前沿法律适用问题的调研。加强对中医药、民间文学艺术以及涉及非物质文化遗产的知识产权保护,及时制定司法政策,明确裁判原则和要求。加强对自由贸易区建设中涉平行进口、转运过境、定牌加工等知识产权纠纷问题的研究,妥善予以解决。积极参与专利法、著作权

法、反不正当竞争法等法律的修订工作，力争将司法解释、司法政策中的相关规则上升为法律，推动解决知识产权司法保护和行政保护“双轨制”实际运行中存在的问题。

（三）全面推进知识产权民事、行政和刑事审判“三合一”

遵循知识产权司法规律，构建符合实际情况的“三级联动、三审合一、三位一体”的集中型立体审判模式，重点解决知识产权刑事案件侦查、批捕、公诉、审判等各个环节的协调配合问题。高级人民法院要建立辖区内人民法院与检察机关、公安机关以及知识产权行政执法机关的沟通联络机制，协调公安、检察机关做好刑事案件的侦查和移送起诉工作。高、中级人民法院成立相应的协调组织，负责指导监督辖区内的“三合一”工作。根据工作需要适当调配审判力量，加大培训力度，努力造就一支能够驾驭三大诉讼的复合型法官队伍。知识产权法院要根据全国人民代表大会常务委员会作出

的相关决定适时开展“三合一”审判。

（四）不断完善知识产权案件管辖制度

按照知识产权案件适当集中、布局合理、审判模式“三合一”的原则，统筹确定知识产权案件的地域管辖、级别管辖和专门管辖。在中级人民法院辖区内的一般知识产权民事、行政和刑事案件原则上指定一个基层人民法院跨区划集中管辖，案件数量多的地区可以适当增加指定基层人民法院管辖，案件数量少的地区可以由中级人民法院提级管辖。级别管辖主要按照案件类型划分，逐步实现技术类案件集中管辖。要明确案件管辖权移转的条件、范围和程序，重大、疑难复杂、社会关注度高的案件可由上级人民法院提级管辖。知识产权法院及法庭实行跨行政区划专门管辖专利等技术类民事、行政和刑事案件。

（五）适时制定知识产权诉讼证据规则

根据知识产权自身的无形性、时间性和地

域性等特点，借鉴发达国家和地区经验，制定与之相适应的诉讼证据规则，引导当事人诚信诉讼。通过明确举证责任倒置等方式合理分配举证责任，完善诉前诉中证据保全制度，支持当事人积极寻找证据，主动提供证据。探索建立证据披露、证据妨碍排除等规则，明确不同诉讼程序中证据相互采信、司法鉴定效力和证明力等问题，发挥专家辅助人的作用，适当减轻当事人的举证负担，着力破解当事人举证难、司法认定难等问题。

（六）不断完善技术事实查明机制

明确技术调查官、技术咨询专家、技术鉴定人员等司法辅助人员参与技术事实调查的方式，充分运用技术调查的各种力量资源，构建有机协调的技术事实调查认定体系，提高技术事实查明的科学性、专业性和中立性，规范技术调查报告的撰写格式和采信机制。对于辅助法官形成心证并与裁判结果有重要关联性的技术调查意见，可以通过释明等方式向当事人适

度公开。强化法官在查明技术事实中的主导作用，规范技术调查主体提供的各种技术审查意见的法律定位。

（七）构建以充分实现知识产权价值为导向的侵权赔偿制度

大力弘扬尊重知识，尊重人才的理念。坚持知识产权创造价值，权利人理应享有利益回报，侵害知识产权就是侵害他人人身权和财产权的价值导向。建立公平合理、比例协调的知识产权损害赔偿制度，以补偿性为主，以惩罚性为辅，让权利人利益得到赔偿，侵权人无利可图，败诉方承担维权成本。推动在著作权法、专利法和反不正当竞争法等法律中规定惩罚性赔偿制度，提高知识产权侵权的法定赔偿额。按照《中共中央、国务院关于深化体制机制改革加快实施创新驱动发展战略的若干意见》《中共中央、国务院关于完善产权保护制度依法保护产权的意见》等的决策要求，实现对知识产权实行严格保护的历史性转变。

（八）开展知识产权诉讼特别程序法问题研究

为适应知识产权审判“三合一”需要，积极开展知识产权诉讼特别程序法专题调研，以适当方式适时推动制定符合知识产权审判特点的特别程序法。通过特别程序法确立知识产权民事、行政和刑事案件的地域管辖、级别管辖和专属管辖制度、知识产权诉讼证据规则和证据保全制度，进一步明确在专利和商标民事诉讼中人民法院对专利和注册商标效力进行审查的职能，明确技术调查官、专家辅助人、技术咨询专家等的诉讼权利义务与责任。

（九）推动健全知识产权审判专门机构

积极贯彻落实《京津冀协同发展纲要》精神，最高人民法院负责统筹协调京津冀技术类案件跨区域管辖工作。探索由北京知识产权法院在天津市和河北省设立派出法庭，集中管辖京津冀技术类案件，并以此为基础推动其他知识产权法院在更大范围内跨区划集中管辖技术

类案件。认真总结重庆、南京、苏州、武汉和成都知识产权专门审判机构设立以来的工作情况和经验，根据审判工作实际需要，依法适当增设知识产权法院，完善知识产权专门审判机构合理布局。

（十）研究构建知识产权案件上诉机制

按照 2008 年《国家知识产权战略纲要》提出的“探索建立知识产权上诉法院”的要求，从国家长远发展战略的高度以及适应国际发展趋势的宽广视野，深入研究建立国家层面知识产权案件上诉机制，努力从体制上解决全国技术类案件由于二审管辖分散导致终审判决法律适用标准不统一，从而影响司法公信力的问题。

（十一）积极推行知识产权案例指导制度

最高人民法院发布的知识产权指导性案例、公报案例、最高人民法院知识产权审判庭发布的典型案例、最高人民法院知识产权案例指导研究（北京）基地发布的案例以及最高人

民法院司法案例研究院发布的知识产权典型案例要形成科学合理的案例群，明确各自案例的遴选机制、效力层级、发布主体和发布方式。构建指导性案例和参考性案例并存的案例体系，实现各种案例严格规范生成和不断编纂更新替代的互动机制。建立覆盖全国的知识产权案例数据库，打造智能化案例信息管理和应用系统。

（十二）推动建立知识产权多元化纠纷解决机制

有效发挥仲裁和其他纠纷解决方式在知识产权纠纷解决中的积极作用，鼓励当事人通过非诉讼方式化解纠纷。加强与仲裁机构、行业协会、调解组织的沟通，推动知识产权民事纠纷解决第三方平台建设，畅通诉讼与仲裁、调解的对接机制，统一相关流程和法律文书。支持仲裁机构、调解组织在证据保全、财产保全、强制执行等方面依法履职，形成知识产权纠纷非诉讼解决便捷机制。

（十三）全面推进知识产权司法公开

积极探索移动互联环境下司法公开的新途径，强化知识产权审判对中国裁判文书网、中国审判流程信息网、中国庭审公开网等平台的广泛应用，推进知识产权司法公开的信息化、数据化、精细化。加强科技法庭建设，运用视频、音频等技术公开庭审过程，大力推进庭审同步录音录像和庭审网络直播，创新庭审公开形式，拓展庭审公开的范围。引入数据分析机构、互联网新媒体等第三方专业机构分析研发司法数据，加强司法公开的成果应用，提升司法公开的智能化。做好《中国法院知识产权司法保护状况》《最高人民法院知识产权案件年度报告》以及“十大案件和五十个典型案例”等撰写发布工作。

（十四）继续加强国际交流与合作

依托中国法院知识产权司法保护国际交流（上海）基地，建设具有国际水平的知识产权智库，积极开展具有国际影响力的知识产权研讨

交流活动,宣传中国知识产权司法保护成就。进一步拓展国际交流合作空间,通过派员参加国际会议、出国培训、举办国际论坛、邀请外国法官和学者来华交流等方式,及时了解掌握国际知识产权保护动态,促进相互沟通与合作。通过各种对话平台,积极参与和引导国际知识产权治理规则创设和修订,推动构建更加公平公正开放透明的国际规则。

(十五)建设高素质知识产权审判队伍

加强思想政治建设,改进司法作风,确保司法廉洁。通过挂职、任职等多种方式,建立知识产权法院之间、知识产权专门审判机构之间、上下级法院之间形式多样的人员交流制度,逐步实现全国法院知识产权法官队伍建设一体化。着力培养一批顾全大局、精通法律、了解技术并具有国际视野的知识产权法官。推进人员分类管理,明确法官、法官助理、技术调查官、书记员的职责及管理要求。规范技术调查官的选任条件、任职类型、回避制度和培养机制。

最高人民法院负责本纲要的具体组织实施工作，根据工作需要成立相应的协调指导机构，确定本纲要各项重点措施实施的时间表和路线图。建立情况通报制度，及时总结经验，加强监督指导，推动地方各级人民法院按期完成各项工作任务。各级人民法院要积极做好舆论宣传工作，为知识产权司法保护营造良好的外部环境。

最高人民法院

2017年4月20日

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

The endeavour to realise the Chinese Dream of national rejuvenation has animated waves of mass entrepreneurship and crowd innovation. For entrepreneurs and innovators to flourish, their legally obtained property rights must be protected according to law. As an important type of property rights, intellectual property rights can be translated into advanced productive forces. To succeed in its supply side structural reform, phase out backward capacity and shore up its international competitiveness, China

must harness the power of intellectual property. In this context, judicial protection of intellectual property must be strengthened to maximise the value of intellectual property, and facilitate the creation and commercialisation of innovative outcomes. This will provide a powerful judicial safeguard for shaping China as a global power-house of intellectual property and technology.

China's judicial protection system for intellectual property germinated and grew amidst the great transformations of the reform and opening-up period, and continued to improve following the enactment of the Trademark Law, Patent Law and Copyright Law, and China's accession into the World Trade Organisation. Today, a judiciary-led protection system comprising civil, administrative and criminal adjudications has taken shape. It embodies the "Chinese wisdom" and "Chinese experience" in intellectual property protection, and respects the

fundamental judicial principles in the intellectual property domain. It is also an important part of our socialist legal system, and is well aligned with the general rules and norms globally in intellectual property protection.

I. Development Overview

Over the past three decades, China has been catching up with the West on judicial protection of intellectual property that has taken developed countries nearly three centuries to foster. In this process, it has carved out for itself a “China path”, a path of convergence and innovation, and of self-directed development and improvement.

Substantial increase in case numbers

In February 1985, the people’s courts accepted China’s first patent dispute case. Between 1985 and 2016, the people’s courts accepted 792,851 and concluded 766,101 civil intellectual property cases of first

instance. From 2002 when statistics for administrative intellectual property cases were collected separately to 2016, the people's courts accepted 44,401 and concluded 39,113 administrative intellectual property cases of first instance. For criminal intellectual property cases, statistics were collected separately since 1998. As at 2016, the people's courts accepted 77,116 and concluded 76,174 criminal intellectual property cases of first instance.

The protection covers all intellectual property rights and unfair competition acts specified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Judicial protection of intellectual property relating to China's time-honoured brands, traditional Chinese medicine, folk cultures and arts, and the Chinese characters and fonts repository has breathed new life into the ancient Chinese civilisation.

Gradual improvement in intellectual property adjudication mechanisms

In October 1995, the Supreme People's Court established its Intellectual Property Division. In November and December 2014, Beijing, Guangzhou and Shanghai set up their own intellectual property courts. In early 2017, specialised intellectual property adjudication organs were launched in Nanjing, Suzhou, Chengdu and Wuhan. In July 2016, the “three-in-one” model for adjudicating civil, administrative and criminal intellectual property cases was adopted at the national level.

A diversified technical fact-finding system comprising technical investigation officers (*jishu diaochaguan*), judicial authentication (*sifa jianding*), expert assessor (*zhuanjia fuzhuren*) and expert advice (*zhuanjia zixun*) was initiated. Jurisdiction is better structured in that Beijing Intellectual Property Court exercises

jurisdiction over cases relating to administrative granting and validation of patent and trademark rights, certain intermediate people's courts are given concentrated jurisdiction over patent and other technology-related civil cases, and some basic-level people's courts exercise jurisdiction over intellectual property cases of a general nature.

As of end 2016, 224 intermediate people's courts were designated by the Supreme People's Court or mandated by law to have special jurisdiction over civil cases concerning new plant varieties, integrated circuit design, monopoly and determination of well-known trademarks. 167 basic people's courts were approved by the Supreme People's Court to exercise jurisdiction over civil intellectual property cases of a general nature.

Better judicial policies for protecting intellectual property

By formulating judicial policies to guide adjudication practice, the Supreme People's Court has ensured that laws are applied consistently, transparently and effectively to settle disputes over intellectual property creation, utilisation and transactions across different times, regions and disciplines. By adjudicating intellectual property cases, the Supreme People's Court has also upheld the unification of the Party's leadership, the people as the master of the country and the rule according to law.

Between 1985 and 2016, the Supreme People's Court has issued a total of 34 intellectual property-related judicial interpretations and over 40 judicial policy documents, making the judiciary an effective and leading force in protecting intellectual property. Following the 18th CPC National Congress in

particular, the Court observed the spirit of CPC General Secretary Xi Jinping's important addresses and his new theories, thoughts and strategies on governance, advanced the judicial reform agenda, and revamped the institutions and mechanism that hindered intellectual property protection. It has laid down, for now and for years to come, China's fundamental policy in intellectual property protection: primacy of the judiciary, strict enforcement of law, differentiated measures, and proportionality

The past 30 years' practice and experience demonstrates the following:

First, judicial protection of intellectual property is essential for implementing the innovation-driven development strategy and achieving socio-economic development and cultural prosperity. It affects development both at home and abroad, and is increasingly scrutinised by various society at large and

the international community.

For the above reasons, the Supreme People's Court has set up the Intellectual Property Judicial Protection Research Centre, Case Guidance and Research Base(Beijing) , China International Exchanges Base (Shanghai) for Judicial Protection of Intellectual Property Rights and Intellectual Property Judicial Protection and Market Value Research Base (Guangdong). It also publishes regularly the “Protection of Intellectual Property by Chinese Courts”, “Supreme People's Court Annual Report on Intellectual Property Cases” and “Yearbook of Judicial Protection of Intellectual Property in China”. These publications are the authoritative outcomes of China's efforts at reviewing promptly the country's latest progress and experience in judicial protection of intellectual property, and at allowing the people to perceive fairness and justice in every judicial case.

Second, judicial protection of intellectual property must be grounded in China's national circumstances at the primary stage of socialist development, and must serve the goal of modernising China's national governance system and capabilities. We must have an open mind and a global vision, observe international conventions, and actively engage in the international governance of intellectual property. We must also express China's position and demonstrate China's global influence in the judicial protection of intellectual property.

Third, to fully leverage the leading role of the judiciary in protecting intellectual property, we must develop an adjudication team that bear in mind the people's interests and that administers justice fairly. Judges must be firm in their convictions, excel in their professional capabilities, and must be upright, incorruptible, innovative, and responsible. Today, over 5,000 judges, assistant judges, technical investigation

officers and clerks are working in courts across China. Armed with the best ideas and concepts, they have advanced the judicial protection of intellectual property in China and have won the trust of the Party and the people.

From the 18th CPC National Congress onward, the new notion of “innovation, coordination, greenness, openness and sharing” development has raised the bar even higher for the judicial protection of intellectual property in China. In the meantime, the world is embracing a new round of technological revolution and industrial transformation. Using intellectual property as a powerful tool to improve their competitiveness in the global economic and technologic landscape, developed countries are enforcing more rigorous intellectual property protection rules in international trade. Intellectual property is increasingly becoming the decisive advantage in global competition.

In light of the new domestic and international realities, in accordance with the “13th Five-Year Plan for Economic and Social Development of the People’s Republic of China”, “CPC Central Committee and the State Council’s Opinions on Improving the Intellectual Property Protection System for the Protection of Property Rights According to Law”, the “CPC Central Committee and the State Council’s Several Opinions on Deepening Reform of Institutions and Mechanisms and Accelerating the Implementation of the Innovation-Driven Development Strategy”, and the “Outline of the National Intellectual Property Strategy”, and based on the judicial practice of the people’s courts in protecting intellectual property, this “Outline of the Judicial Protection of Intellectual Property in China (2016-2020)” is formulated. The five-year Outline aims to further improve China’s intellectual property judicial protection system, strengthen the judicial protection capacity, and better accentuate the judiciary’s leading

role in protecting intellectual property. The Outline also aims to introduce more “Chinese wisdom” and “Chinese experience” in the area of judicial protection of intellectual property.

II. Guiding tenets

This Outline is based on the following tenets: Marxism-Leninism, Mao Zedong Thoughts, Deng Xiaoping Theory, the “Three Represents” (*sange daibiao*), the Scientific Concept of Development, the key tenets set forth at the 18th CPC National Congress, the Third, Fourth, Fifth and Sixth Plenums of the 18th CPC Central Committee, and the spirit of CPC General Secretary Xi Jinping’s important addresses and his new theories, thoughts and strategies on governance.

The Outline requires the people's courts to strengthen their political awareness, serve the larger good, uphold the centrality of the CPC and maintain consistency and unity (*sige yishi*). It observes the overarching concept of “five areas in one (*wuwei yiti*)”, i.e. balancing economy, politics, culture, society and environment in pursuing development, and serves the strategic vision of the “four comprehensives (*sige quanmian*)”, i.e. building a comprehensive *xiaokang* society, comprehensively advancing reforms, comprehensively governing according to law, and comprehensively enforcing strict governance of the Party.

The Outline focuses on “ensuring that the people perceive fairness and justice in every judicial case”, and embodies China's commitment to fair administration of justice for the people. As per the Outline, judicial reforms will be advanced, and the leading role of the judiciary in protecting intellectual property fully unleashed. Protecting intellectual

property is protecting innovation. In this connection, the Outline will help deliver effective judicial services for implementing China's intellectual property strategy and innovation-driven development strategy, and will provide a strong judicial safeguard in making China a global power-house of intellectual property and science and technology.

III. Fundamental principles

1. Serving the overall interests.

This is the fundamental mission of adjudication by the people's courts', and an important responsibility of intellectual property adjudication. We must improve our awareness of the big picture and enhance our sense of responsibility and of purpose, and serve the overall interests of the Party and of national development.

We must also adapt to evolving international circumstances and identify the right priorities for intellectual property adjudication.

2. Pursuing reform and innovation.

Reform and innovation is the fountainhead of driving forces for achieving sustained and sound development of intellectual property adjudication. They are also the only way to modernise our adjudication system and capabilities. The major hindrances and weaknesses constraining intellectual property adjudication must be overcome through innovative ideas and methods, and the adjudication systems and mechanisms must be progressively improved to modernise the intellectual property-related judicial system and judicial capacity.

3. Adopting a judiciary-led approach.

Leveraging the leading role of the judiciary in protecting intellectual property is the intrinsic in the delivery of justice and is consistent with the general

practice in intellectual property protection. It also represents an important outcome of comprehensively promoting governance according to law. We must strengthen the judiciary-led protection concept and capitalise on the advantages of the judiciary's system and mechanisms in intellectual property protection. We must manage the relationship between judicial protection and administrative protection, step up the procedural and substantive review of administrative enforcement, and while supporting lawful administrative enforcement, strengthen supervision and regulation,.

4. Providing equal protection

We must provide equal protection of the lawful rights for all economic entities of all ownership types and parties of all nationalities, and observe equality of rights, opportunities and rules. All entities and parties, whether publicly or privately owned, and whether

Chinese or foreign, are entitled to equal procedural and substantive rights in an intellectual property action.

5. Insisting strict protection

Intellectual property must be protected to implement the innovation-driven development strategy, and the basic direction of judicial protection of intellectual property in China, for now and for the coming years. To maximise the value of intellectual property and to drive innovation, we require strict enforcement of laws and be more targeted and effective in providing judicial protection.

6. Adopting differentiated measures

We must better understand the protection needs and features of different types of intellectual property such as technological outcomes and trademarks, and properly define the criteria for determining unfair competition and monopoly. We must step up research in key areas and special domains and better resolve

specific issues. Protection approaches, measures and standards must be differentiated to correspond to the nature and needs of different types and areas of intellectual property.

7. Maintaining proportionality

We must balance protecting rights and promoting innovation. The scope and intensity of protection must be proportionate to the level of innovation and the intellectual property's contribution; the cost of infringement must be proportionate to the infringer's subjective malice and harmful act; and protection of intellectual property must be balanced with the underlying laws of development, the national circumstances and development needs. We must manage according to law the relationship between the interests of intellectual property owners, the lawful interests of others, and public and national interests to balance intellectual property protection and

technological innovation and industrial development.

8. Seeking open development

Increasing the global influence of China's judicial protection of intellectual property is essential for building a world-class power-house of intellectual property with Chinese characteristics. A global vision is critical. We must be grounded in our practical circumstances and national conditions as we respect international rules and general norms, draw upon international experience in the judicial protection of intellectual property, and distil and share our experiences, so as to strengthen China's principle role in the international governance of intellectual property.

IV. Major objectives

1. Establishing a coordinated and open judicial policy system to guide and regulate the application of law, and the rationale and value orientation of decision making for the judicial protection of intellectual property.
2. Formulating clear and consistent decision criteria and rules for determining the scope of rights, infringing acts, damages, and the probative value and admissibility of evidence.
3. Establishing an intellectual property court system that is designed with a regional perspective, that addresses the vertical and horizontal relationships of adjudicating organs, that adopts the “three-in-one” adjudication model, and that achieves a balanced

development of the above elements.

4. Setting up a well-structured intellectual property jurisdiction system comprising territorial jurisdiction, original jurisdiction, exclusive jurisdiction, and concentrated cross-regional jurisdiction.

5. Formulating intellectual property-specific evidentiary rules which include the burden of proof by the parties, *ex officio* investigation and evidence collection and preservation by the courts, and discovery and exclusion of evidence.

6. Evolving an intellectual property damages system underpinned by scientific rigour and rationality, such that the infringement-related losses, infringing gains, royalties, statutory damages and litigation costs correspond to the value of the intellectual property.

7. Developing a team of intellectual property judges who are of high-calibre, who are committed to fair justice for the people, who can adjudicate civil,

administrative and criminal intellectual property cases effectively and efficiently, and who has a global vision.

8. Establishing a long-term mechanism for judicial exchanges and cooperation on intellectual property to facilitate implementation of the “Belt and Road” Initiative, the “Go Global” strategy, and the “China Manufacturing 2025” strategy, and to help create an equal, fair and orderly global competitive landscape.

V. Key Measures

(1) Fair and effective adjudication

A key measure is the improvement of the adjudication mechanism for cases involving both civil and administrative disputes. This is one way to avoid repeated litigation and to expedite effectual resolution. Classifying cases by their complexity is one way of

saving time. By separating cases based on the level of original jurisdiction, and the type and nature of the case, hearing procedures and written judgements could be adapted according to the degree of complexity. Speedy hearing could be used for simple cases, and elaborate hearing for complex ones. Where appropriate, the applicable scope of the simplified procedure could be expanded for straightforward cases when the facts, and the rights and obligations are clear, and when the disputed matter is minor. The courts should try to profit fully from the adjudication committee's role in reviewing the adjudication practice and in providing better guidance to elevate adjudication quality and efficiency.

(2) Creating effective mechanisms to ensure proper application of law

Effective application of the law requires diligent review of the application of law relating to

administrative disputes involving the granting and validation of patent and trademarks, trademark civil disputes and pre-trial injunctive relief, and the drafting of judicial interpretations where appropriate to unify adjudication criteria and standards. Other action to be taken include revising the judicial interpretation for new plant varieties for better judicial protection; initiating study researches on the latest issues on application of law such as those on standard-essential patents, new business models, collective management of copyright, and intellectual property protection in a digital environment; strengthening intellectual property protection of TCM, folk literature and culture, and intangible cultural heritage by developing judicial interpretation promptly to clarify the adjudication principles and requirements; and intensifying study on FTA-related intellectual property disputes involving parallel imports, trans-shipment and transit, and OEM, and seek appropriate resolution. Further to

the above, the courts will actively participate in the amendment of the Patent Law, Copyright Law, and Unfair Competition Law, and work towards elevating the provisions in the judicial interpretations and judicial policies into law, and resolving the current practical problems of the “two-track” judicial-cum-administrative protection of intellectual property.

(3) Advancing “three-in-one” adjudication of civil, administrative, criminal intellectual property disputes

Based on the principles underlying intellectual property and the practicalities, a centralised adjudication model for intellectual property disputes will be established. The streamlined model puts civil, criminal and administrative disputes under one umbrella, coordinates the three adjudication levels, and unifies innovative endeavours pertaining to the adjudication mechanism, adjudication organisation,

and adjudication management (*sanji liandong, sanshen heyi, sanwei yiti*). The new model also helps focus efforts on resolving problems of coordination between the investigation, approval for arrest (*pibu*), public prosecution, and adjudication.

The High People's Courts plan to establish within their jurisdictions a communication and liaison mechanism that links the local courts, prosecution, police, and intellectual property administrative enforcement agencies. The liaison mechanism will help coordinate the police and prosecution in the investigation of criminal cases and the transfer of cases for prosecution.

The High People's Courts and Intermediate People's Courts will set up coordinating organisations responsible for supervising the “three-in-one” operations within their jurisdictions. Deployment of adjudication manpower will be based on need, and training will be strengthened to form a corps of

competent multi-skilled judges capable of handling the three categories of litigation.

Based on the decision of the Standing Committee of the National People's Congress, the intellectual property courts will launch the “three-in-one” adjudication model as appropriate.

(4) Improving the jurisdiction system for intellectual property cases

Intellectual property cases should be appropriately concentrated in certain courts, with a rational distribution of jurisdiction and apply the “three-in-one” adjudication model. These are the principles based on which the territorial jurisdiction, original jurisdiction, and exclusive jurisdiction of intellectual property cases are defined.

In principle, for general civil, administrative and criminal intellectual property cases that fall within the Intermediate People's Courts' jurisdiction, a basic-

level court is designated to hear cases for several zones; where appropriate, areas with a heavier caseload may designate more basic-level courts. For areas with a lighter caseload, disputes may be escalated and be heard by the intermediate courts.

Original jurisdiction based on the hierarchical level of the court basically classifies by the type of cases, so that jurisdiction for technology-based cases will be progressively concentrated. The conditions, scope and procedure for transfer of jurisdiction must be specified, and jurisdiction for cases which are important, difficult and complex, and which attract major public concern may be escalated to the higher level court. Intellectual property courts have specific cross-administrative regional jurisdiction for technological-based civil, administrative and criminal cases, such as patent disputes.

(5) Formulating intellectual property evidentiary rules when appropriate

Evidentiary rules will be developed based on the peculiarities of intellectual property, including its intangible, time-based and regional features, and by drawing on the experience of developed countries and regions, so as to guide the parties toward pursuing litigation in good faith.

Improvement of the evidentiary regime includes reasonable allocation of the burden of proof, such as shifting the burden of proof to the defendant, improvement of the evidence preservation system before and during trial, and supporting the parties in actively gathering and producing evidence.

Also under consideration are the establishment of rules for disclosure of evidence and spoliation of evidence, clarification of issues pertaining to mutual admissibility of evidence in different procedures, the

force and effect of forensic examination, and probative value, allowing expert assessors (*zhuanjia fuzhuren*) to play their role, appropriately reducing the burden of proof of the parties. Hopefully, these measures will reduce the burden of proof on the part of the parties, and therefore help address the challenges of producing evidence and judicial determination.

(6) Improving the technical fact-finding mechanism

To create a more robust technical fact-finding mechanism, the method which ancillary judicial personnel (*sifa fuzhu ren yuan*) such as technical investigation officers (*jishu diaochaguan*), technical advisory experts (*jishu zixun zhuanjia*), and technical expert witness (*jishu jianding ren yuan*) participate in technical fact-finding should be defined, the capacities and resources of technical investigation fully exploited, and a coordinated system for finding

and determining technical facts created. Further efforts include improving the scientific rigour, professional quality and neutrality of technical fact-finding, and standardising the format and admission mechanism of technical investigation reports. Technical investigation opinions which assist the judge in forming an inner conviction and which are closely connected with the decision may be appropriately disclosed and explained to the parties (*Aufklaerung*). Other related measures include strengthening the judge's role as the principal technical fact-finder, and regulating the legal status of the technical review opinions provided by technical investigators.

(7) Creating an infringement damages system that reflects the full value of intellectual property

Having a strong respect for knowledge and talent, China's courts believe that because intellectual

property creates value, intellectual property owners should enjoy returns in benefits, and that infringing on intellectual property rights is infringing on the moral right and property right of other persons. As such, an IP infringement damages system that is fair and reasonable, that observes proportionality and coordination, and which has a compensatory primary role and a punitive secondary role should be created. This will be a system that allows compensation of the right-holder's lost benefits, deprive the infringer of any profit, and make the losing party pay for costs. Efforts will be made to push for the inclusion of punitive damages in the Copyright Law, Patent Law and Unfair Competition Law to increase the amount of statutory damages for infringement of intellectual property rights.

Based on the requirements under the “CPC Central Committee and the State Council’s Several Opinions on Deepening Reform of Institutions and Mechanisms

and Accelerating the Implementation of the Innovation-Driven Development Strategy” and “CPC Central Committee and the State Council’s Opinions on Improving the Intellectual Property Protection System for the Protection of Property Rights According to Law”, the intellectual property regime will be reformed. This will mean that a historical change will take place, in that intellectual property will be effectively protected.

(8) Launching studies on a special procedural law for intellectual property litigation

To meet the needs of the “three-in-one” adjudication model, thematic studies pertaining to the formulation of a special procedural law for intellectual property litigation will be launched. At the right time, and with the right method, a special procedural law that befits the specificities of intellectual property adjudication will be formulated. The special procedural law

will provide for the territorial jurisdiction, original jurisdiction, and exclusive jurisdiction of civil, administrative and criminal cases relating to intellectual property disputes, intellectual property-related evidentiary rules, and the evidence preservation system. It will also further clarify the function of the courts to examine the legal force of patents and registered marks during a patent or trademark civil litigation, and specify the duties and responsibilities of technical investigation officers, expert assessors (*zhuanjia fuzhuren*), technical advisory experts (*jishu zixun zhuanjia*).

(9) Establishing and improving specialised intellectual property adjudication organ

To implement the requirements in the “Outline of the Coordinated Development Plan for the Beijing-Tianjin-Hebei (*Jing-Jin-Ji*) Region”, the Supreme People’s Court is responsible for coordinating the cross-

regional jurisdiction of technology-related cases for the Beijing-Tianjin-Hebei region. Under consideration is the establishment of branch courts by the Beijing Intellectual Property Court in Tianjin Municipality and Hebei Province to concentrate jurisdiction of technology-related cases in the region. A further move would be to do the same for other intellectual property courts to expand their area of jurisdiction and exercise cross-jurisdiction for technology-related cases.

The Supreme People's Court will be reviewing the operations of the specialised intellectual property adjudication organs in Chongqing, Nanjing, Suzhou and Chengdu, and depending on need, establish new intellectual property courts according to law, so as to rationalise the distribution of specialised intellectual property adjudication organs.

(10) Studying the establishment of an appeal mechanism for intellectual property disputes

As required under the 2008 “Outline of the National Intellectual Property Strategy” to “explore the establishment of an intellectual property appellate court”, an appeal mechanism for intellectual property disputes will be explored and studied. This study stems from a long-term national perspective and the broader view to adapt to the global development trend. Plugging institutional gaps is one way to resolve the inconsistencies in the application of law due to dispersed jurisdiction for the two instances, as the inconsistencies in turn undermine the judiciary’s credibility.

(11) Promoting use of the case guidance system for intellectual property adjudication

The intellectual property guiding cases published by the Supreme People’s Court and the cases in the

“Supreme People’s Court Gazette”, representative cases published by the Supreme People’s Court’s Intellectual Property Division, cases published by the Supreme People’s Court’s Case Guidance and Research Base(Beijing), and the representative intellectual property cases published by the Supreme People’s Court’s Judicial Cases Research Centre will form a case pool that can stand up to the rigours of science and rationality. Also defined will be the rules and mechanisms for case selection, and the level of legal force, the publishing institution and publication method.

A case system that includes guiding cases and reference cases will be established. This is a dynamic and interactive system, under which different cases are selected, based on a rigorous standard, and which are perpetually rewritten and replaced.

Eventually, a national-level intellectual property case

archive will be created, together with a smart case information management and application system.

(12) Advancing the establishment of an alternative dispute resolution mechanism for intellectual property disputes

Arbitration and other dispute resolution methods will be given full play to effectively resolve intellectual property disputes, and the disputing parties encouraged to settle their disputes through non-litigious methods. Other endeavours include strengthening communication with arbitration organisations, industry associations and mediation organisations, creating a third-party platform for resolution of intellectual property-related civil disputes, aligning litigation with arbitration and mediation, and standardising the relevant processes and legal documents. Arbitration and mediation organisations will receive support in the performance of their lawful duties in terms of evidence

and property preservation and enforcement action, so as to create an expedient mechanism for non-litigious dispute resolution methods for intellectual property disputes.

(13) Driving comprehensive judicial transparency for intellectual property matters

Improving judicial transparency involves exploring new channels in the mobile internet environment, expanding the use of platforms such as China Judgements Online (<http://wenshu.court.gov.cn/>), China Judicial Process Information Online (<http://splcgk.court.gov.cn/zgsplcxxgkw/>), and the China open-court website (<http://tingshen.court.gov.cn/>) for use in intellectual property adjudication, and driving informatization, digitisation and attention to details in the intellectual property judicial transparency.

Technology is an effective means for advancing judicial transparency. Use of the technology includes

building technologically equipped courtrooms, using video and audio technologies to broadcast court proceedings, and simultaneous audio- and video-recording and live broadcast of court hearings. More forms of open-court will be explored, and the scope of the open-court system will be expanded.

Professional third-party organisations such as those in data analytics, internet and new media will be brought in to analyse judicial data, strengthen application of the outcomes of judicial transparency, and elevate the use of smart technology to support judicial transparency.

As part of the process of improving transparency, emphasis will be given to the writing and publishing of publications such as the “Intellectual Property Protection by Chinese Courts”, the “Supreme People’s Court’s Annual Report on Intellectual Property Cases” and the “Ten Major Cases and Fifty Representative Cases”.

(14) Continued strengthening of international exchanges and cooperation

The China International Exchanges Base (Shanghai) for Judicial Protection of Intellectual Property Rights will be leveraged to create an intellectual property think-tank of international stature. Further efforts include organising intellectual property seminars and exchange activities with international impact, and communicating China's achievements in judicial protection of intellectual property.

Further international exchanges and cooperation includes sending representatives to participate in international conferences, participating in overseas study trips, organising international forums, and inviting foreign judges and academics to China for exchanges, so as to stay up to date with the latest developments in intellectual property protection globally, and promote communication and cooperation.

By leveraging the various dialogue platforms, China's courts can actively participate in and shape the creation and revision of international rules of intellectual property governance, and drive the development of international rules that are more equal, fairer, and that are more open and transparent.

(15) Building a high quality intellectual property adjudication team

Developing a high quality adjudication team includes strengthening development of the ideological and political mind-set, improving the judicial behaviour, and ensuring a clean judiciary.

Through secondment and employment, among others, a multifarious people-exchange system will be established to allow exchange of personnel between intellectual property courts, between specialised intellectual property adjudication organs, and between the superior and inferior courts. Over time, an

integrated intellectual property adjudication team will be established in the country.

Other focuses include developing a body of intellectual property judges with a macro perspective and an international outlook, who has a good knowledge of the law, and who understand technology; classification of personnel into different categories and managing them separately; specifying the official responsibilities and management requirements of judges, assistant judges, technical investigation officers, and clerks; and regulating the terms and conditions for appointing technical investigation officers, their job nature, recusal system, and development mechanism.

The Supreme People's Court is responsible for organising and implementation of this Outline, and has, depending on necessity, formed the respective coordinating and steering organisations to determine

the time table and roadmap for implementing the various key measures. A reporting system has also been established, so as to review the lessons learnt, strengthen supervision and guidance, and ensure that the different levels of local People's Courts complete their work and fulfil their responsibilities promptly. The various levels of People's Courts must work hard at promoting publicity and shaping public opinion, so as to create an external environment that conduces to the judicial protection of intellectual property.

The Supreme People's Court

20 April, 2017