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Patents

Lower Courts May Now Hear Patent Disputes, Chinese Supreme Court Says

BEIJING — China's local level courts will begin to hear civil patent cases under a recent interpretation from the Supreme People's Court, a change that could lead to local protectionism and uncertainty for multinational companies in the short term, practitioners told BNA.

Court Interpretation [2013] No. 9, dated April 1 and published on April 15 on the court's website, amends a line in an existing law to allow the Supreme People's Court, "according to the actual situation", to permit lower courts to hear patent disputes.

The interpretation moves China's patent process in a direction "away from what practitioners had been expecting," according to Yan Zhao, a patent attorney and partner in DLA Piper's Intellectual Property and Technology practice in Shanghai.

"Previously we have been talking about a sort of centralized IP court that would take on all the appeal cases for patents," Zhao told BNA in a phone interview on April 24. Instead, with this interpretation, the Supreme People's Court has signaled that it will push more cases to the lower courts.

Inconsistent Decisions, Local Protectionism

China's court system has four levels: local or "grass-roots" courts, intermediate courts, the high court, and the Supreme People's Court, Zhao said. Patent cases in China are currently handled at the intermediate court level, although only about 70 of the country's roughly 400 intermediate courts currently hear patent cases, Zhao said.

With an increasing number of patent disputes coming to court, there is a shortage of judges with patent expertise and experience, according an explanation of the new rule posted on the Supreme Court's website. China's courts nationwide received 87,419 first instance civil cases concerning intellectual property rights, a year-on-year increase of 45.99%, according to figures the government released on April 25.

While pushing patent cases to the lower courts will relieve some of the workload at the intermediate level, it could be more difficult to maintain consistent decisions, Zhao said. Local protectionism may also become challenge, Zhao said.

Zhao added that it is unclear from the court's interpretation whether China will also expand the number of intermediate courts that hear patent cases.

Easier for Patent Trolls

Hans Lee, a chartered patent attorney and partner at CWL Partners in Hong Kong, told BNA in an email on

April 25 that the new rule could create challenges for multinational companies in the lower courts.

Having a greater number of courts hearing patent disputes could make it “easier for patent owners or trolls” to drag MNCs into patent infringement cases at the local level, Lee said. “As judges at lower courts are rarely patent or patent law savvy, MNCs that are dragged into patent litigation will face many unknowns and uncertainties.”

On the bright side, if domestic litigants prefer the local courts, multinational companies may find that the intermediate courts become more available, Lee said.

Training of Judges an Issue

Training of local judges may also be an issue, according to Jie Zhou, a patent attorney and partner at law firm Morrison & Foerster’s San Francisco office, who spoke with BNA by phone on April 24 whilst in Beijing.

“My concern is that [local level judges] are not well trained,” she said. “Patents are very different from trademarks and copyrights, and part of the process is understanding the technology.”

A number of lower courts already hear trademark and copyright disputes, Zhou said. Under a pilot program, three local courts in China have begun to hear patent disputes. However, the courts in the pilot program have only reviewed design patents and utility model patents, which are relatively simple, Zhou said. Invention patents covering technology are much more complex.

A Long-Term Positive Step

Longer term, the court’s decision is a positive development, because it is another step “towards a more comprehensive system,” Zhou said. One of the biggest problems in China’s court system is that cases are decided too quickly because the case load is so high, Zhao said. “They’re just trying to get through them as fast as they can.”

Allowing the lower courts to start hearing patent disputes shows that China is “really trying to develop an effective court system,” Zhou said. Multinational companies may also appreciate having another layer in which to litigate, she said.

By Leslie A Pappas