As patent filing and grant numbers have skyrocketed in China, so has the attractiveness to settle patent infringement suits there. The opening of a series of specialized intellectual property courts, especially the courthouse located in Beijing, has changed the view of many that the country is lax in protecting IP rights. This view has changed so much that China is now seen as a jurisdiction of choice in many patent infringement cases – including cases where both litigants are foreign companies. The two main patent enforcement mechanisms in China remain administrative actions and civil litigation.

**Administrative actions**

The State Intellectual Property Office of China's ("SIPO's") Patent Review and Adjudication Board (PRAB) is responsible for handling validity challenges through administrative procedures. The SIPO also offers a relatively fast and low-cost way to gather evidence for patent infringement actions. Following entry of a petition by the patent holder, the SIPO determines whether a patent is infringed and whether it will issue an injunction when it finds infringement. Where infringement is found, injunctive relief is immediately enforced by the SIPO. Interestingly, the SIPO only has the authority to order injunctive relief, while the courts can order compensatory relief as well. According to SIPO statistics, the number of administrative patent infringement cases has increased from 4,684 in 2013 to 14,202 in 2015.

**Civil litigation**

Since China is a civil law country, Chinese judges make ruling based directly on statutes without deference to other court decisions. This is in stark contrast to the United States which has a common law legal system that is based on judicial interpretations of legislation. As in the US and Europe, infringing acts under Chinese patent law include the sale, offer for sale, use, manufacture and export of a patented product. Typically bookending an infringement trial are settlement negotiations that are mediated by the trial judge. Only if these settlement negotiations fail, will the trial judge hand down a judgment.

Another major difference in Chinese civil litigation compared to the US and Europe is the speed at which verdicts are returned by the courts. The average time from filing suit to verdict in Beijing's IP court was 125 days. Compare that with an average time of 18 months in Europe and a whopping 2.4 years in the United States! What makes this speed even more impressive is that in 2015, there were more than 13,000 patent infringement cases pending and this number represented a 22 percent increase over the prior year.

The analysis of whether to file an administrative or civil action should be undertaken with care to examine the circumstances of each case and choose the best avenue for enforcement.

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