IP CASE EXPRESS

NTD Intellectual Property Attorneys· CHINA IP CASE EXPRESS · 2016.06 Issue No.20

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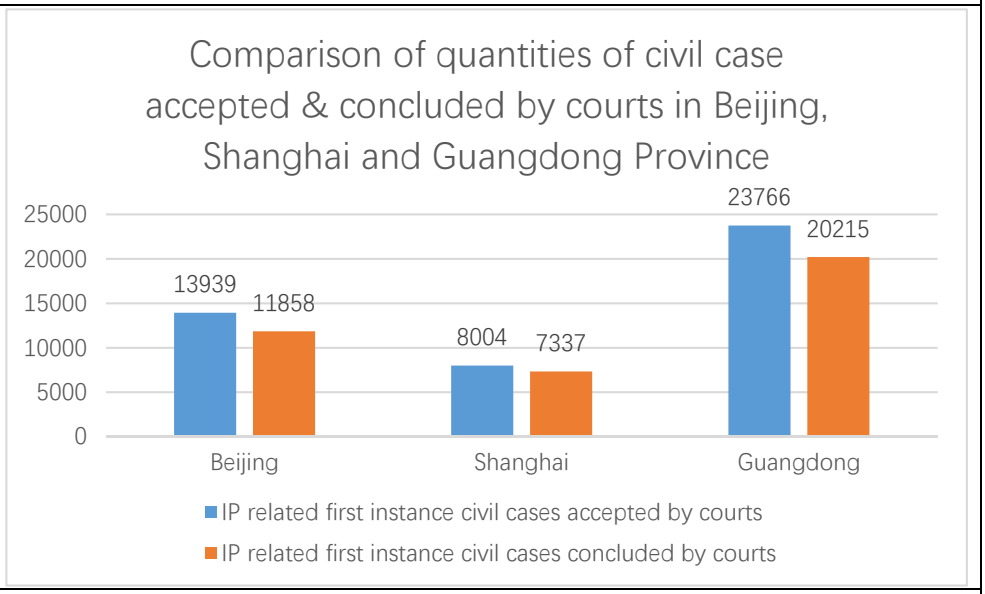
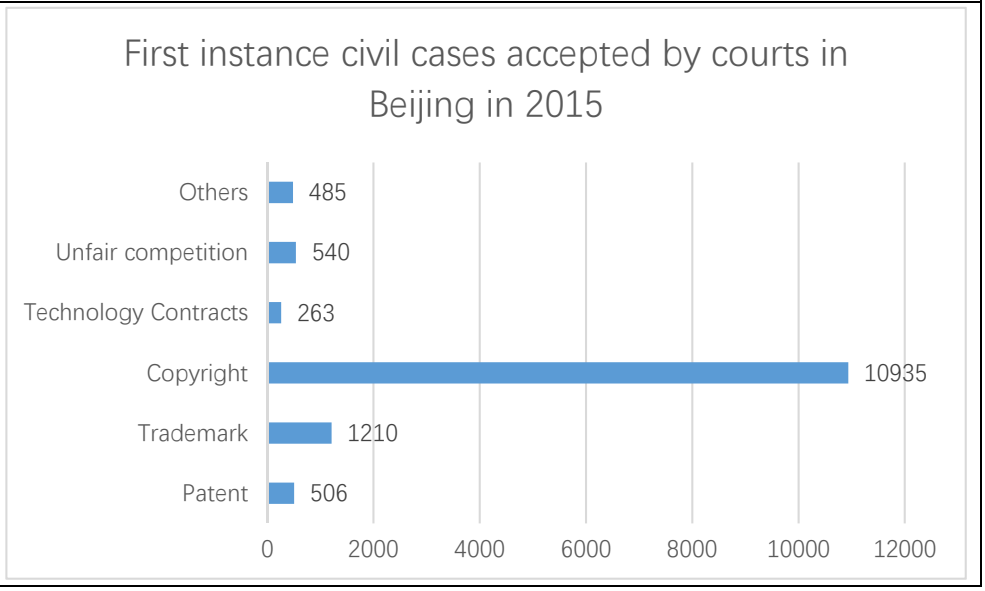
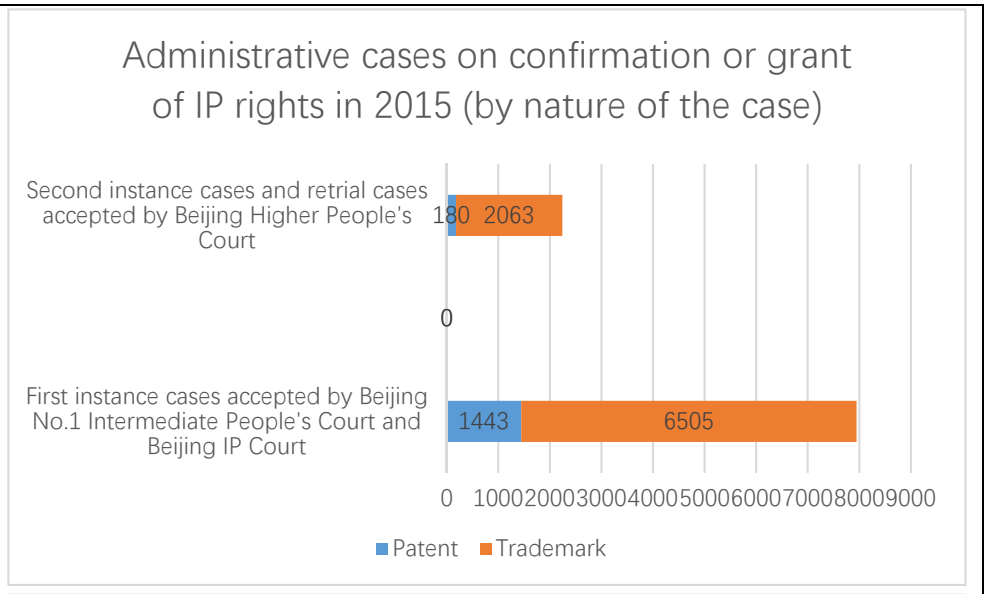
A. Comparison of quantities of civil cases

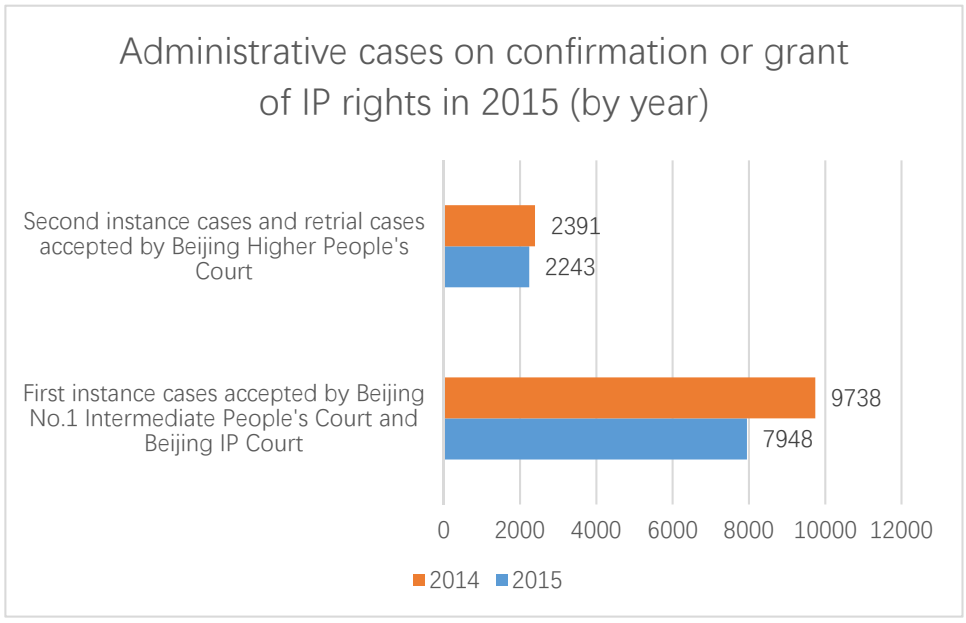


B. Courts in Beijing

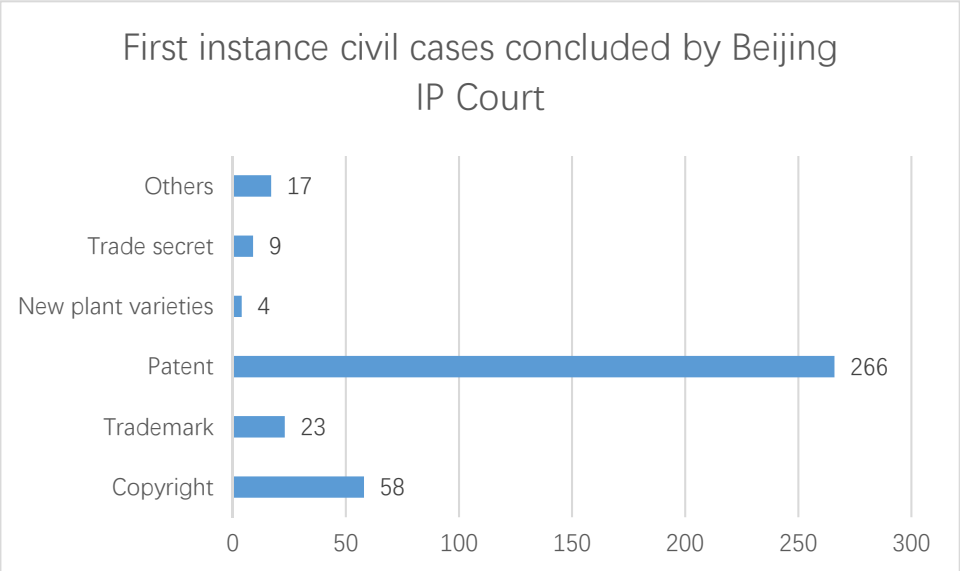
A total of13,939 IP related first instance civil cases has been accepted by courts at three levels in Beijing in 2015.



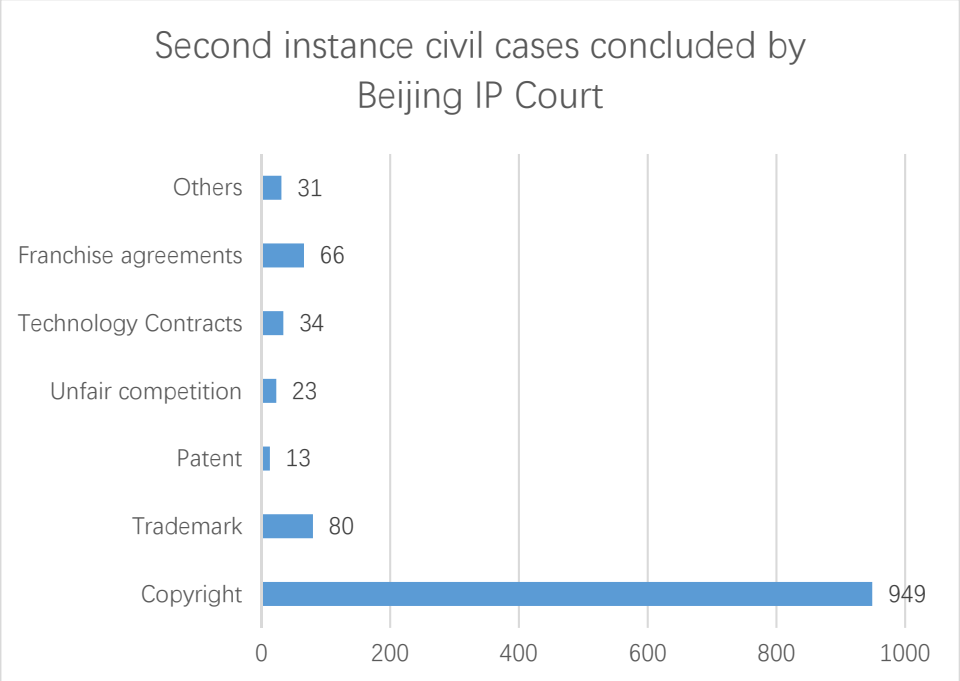

Administrative cases on confirmation or grant of IP rights in 2015 (by nature of the case)
Second instance cases and retrial cases accepted by Beijing Higher People's Court
180
2063
0
First instance cases accepted by Beijing No.1 Intermediate People's Court and Beijing IP Court
1443
6505
0
1000
2000
3000
4000
5000
6000
7000
8000
9000
Patent
Trademark


Administrative cases on confirmation or grant of IP rights in 2015 (by year)
Second instance cases and retrial cases accepted by Beijing Higher People's Court
2391
2243
First instance cases accepted by Beijing No.1 Intermediate People's Court and Beijing IP Court
9738
7948
0
2000
4000
6000
8000
10000
12000
2014
2015

A total of 377 IP related first instance civil cases has been adjudicated and concluded by Beijing IP Court in 2015.

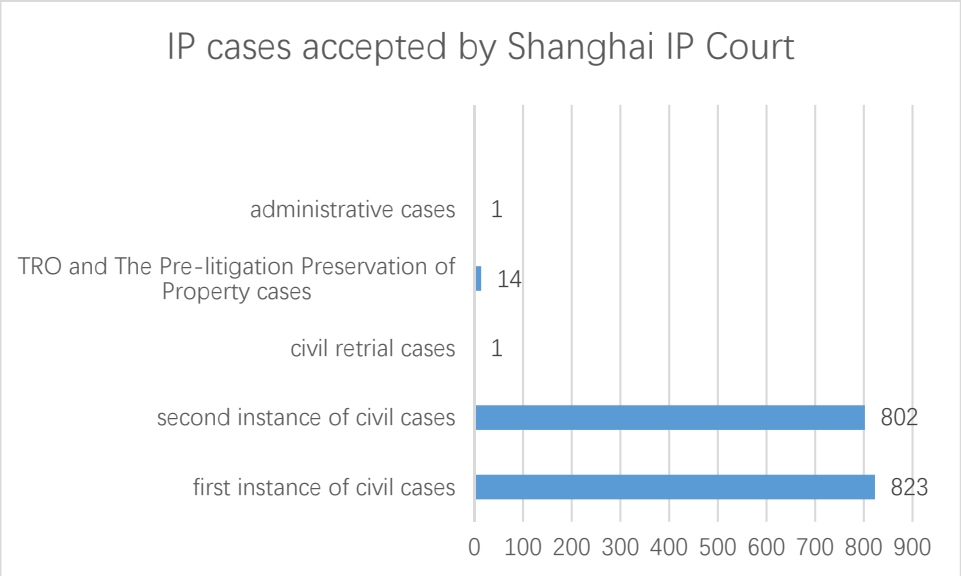


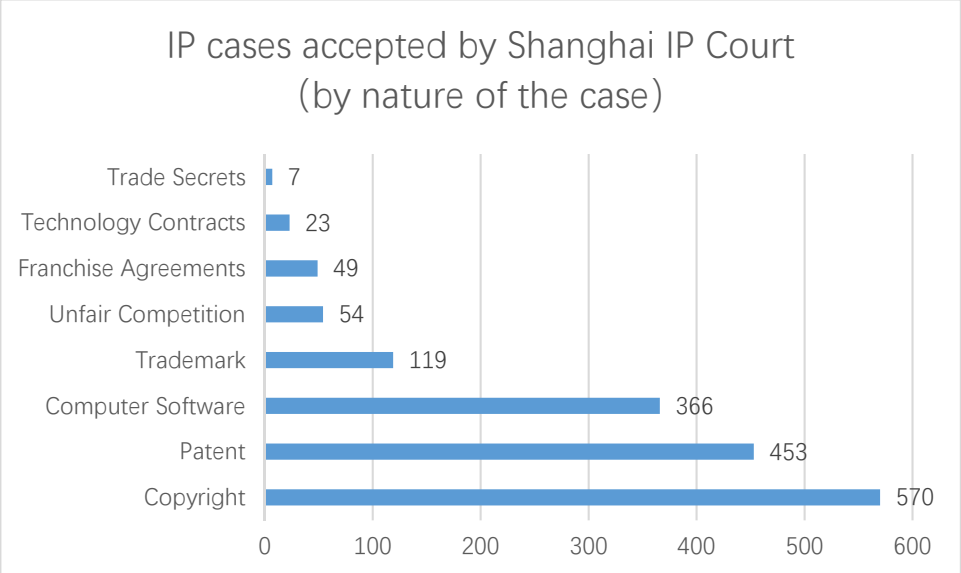
A total of 1,196 IP related second instance civil cases has been adjudicated and concluded by Beijing IP Court in 2015.

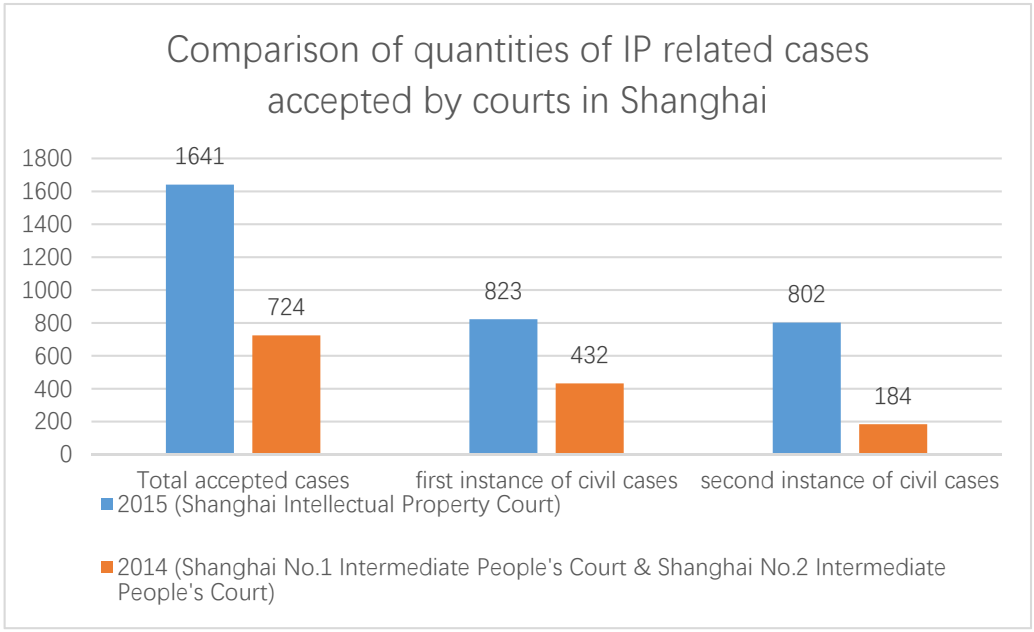


C. Courts in Shanghai

A total of1,641 IP related cases has been accepted by Shanghai IP Court in 2015



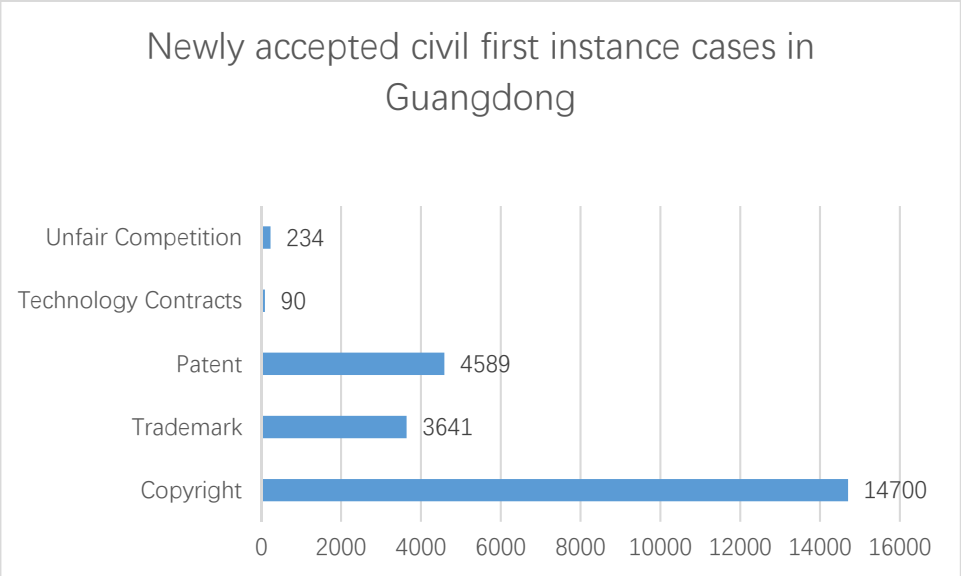




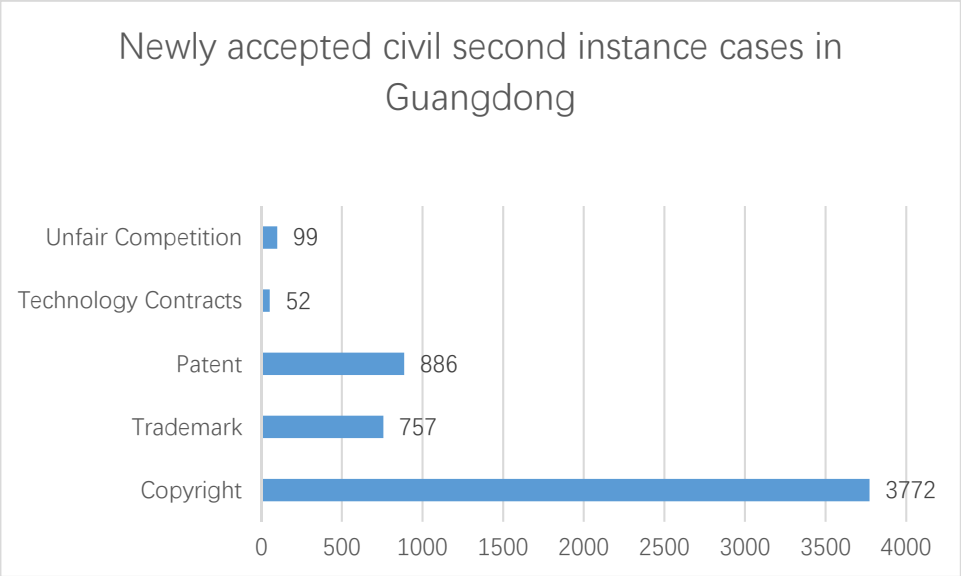
Compared to the total number of IP related cases accepted by Shanghai No.1 Intermediate People's Court and Shanghai No.2 Intermediate People's Court in 2014, the total number of cases accepted by Shanghai IP Court in 2015 has increased by 126.66%, among which first instance civil cases increased by 90.51% and second instance civil cases increased by 335.87%.

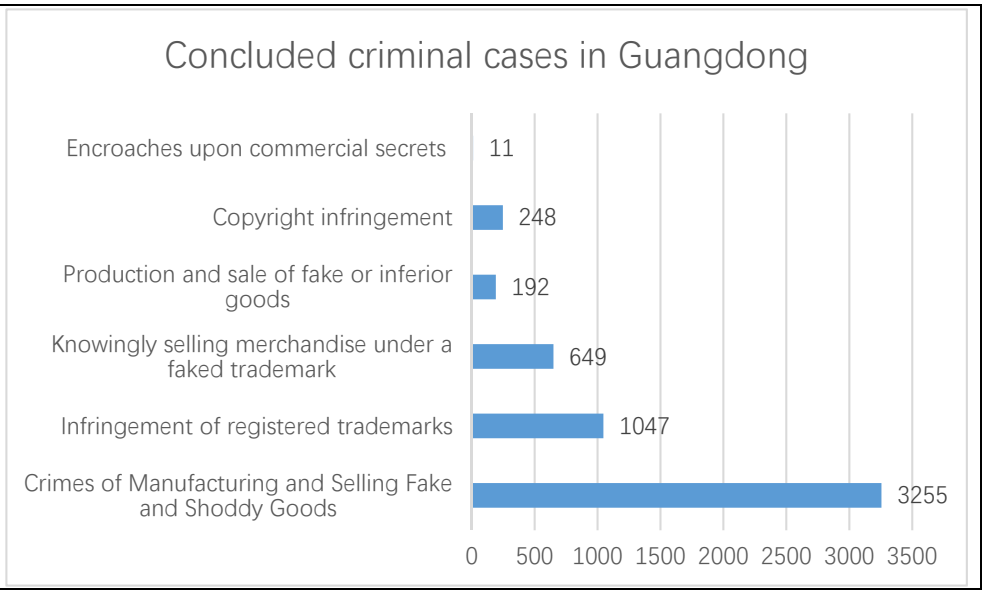
D. Courts in Guangdong

23,766 newly accepted civil intellectual property cases of first instance by courts in Guangdong



6,132 newly accepted civil intellectual property cases of second instance by courts in Guangdong



6,621 concluded criminal intellectual property cases of first instance by courts in Guangdong	

II. Ten Major IP Cases and Ten Major Innovative Cases in Beijing Courts in 2015

I. Ten Major IP Cases in Beijing Courts in 2015	
01	Case of dispute over copyright infringement lodged by Qiong Yao against Yu Zheng
	Comments: First, it clarified the distinguishing standards of thoughts and expression in literary works. Only when the plots and story in a literary work are specific enough to the level of reflecting the writer's unique selections, judgment and choices, can it become an expression protected by the copyright law. Second, it clarified the standard for judging substantive similarity. Copyright infringement needs to meet two essentials, i.e. "contact" and "substantive similarity." "Substantive similarity" between literary works can be judged according to their selection of plots, structuring and design of plot development. Third, it introduced expert aider. This case was the first of copyright infringement cases to introduce expert aider, making the trial and judgment of the case agreeing with industry characteristics and the rules of writing.
02	Case of dispute over false promotion of "First Can of Drinks in China"
	Comments: Being misleading is the essence of false propaganda. As long as competitors' propaganda is enough to cause misunderstanding, it generally constitutes false propaganda under the Anti-Unfair Competition Law.

	It is particularly noticeable that the Supreme People's Court has pointed out, in a number of cases of false propaganda brought specifically against the party concerned in this case, in its decisions on retrial of rejected requests that the parties concerned in a case shall show due respect for history, correctly understand and respect related rules on trademark licensing, respect the trademark right while taking into full consideration the licensees' great contribution to the well-knownness of the trademarks; and not seek improper interests through improper means or ways of competition, or misuse litigation means and waste judicial resources. Such statement provides a basic rule for correctly handling disputes of such kind in the future.
03	Administrative case of invalidation of the patent for invention of "A Robot System for Chatting"
	Comments: When it comes to patent protection and identification of patent validity in the field of computer software, whether such patent description has fully disclosed specific ways of realizing the software's certain function shall be taken into consideration. Patent description shall not only record the technical feature of realizing the above functions in form, but also further explain the components and working principle of such technical feature. All in all, patent description shall contain a clear and complete explanation of the invention, to the level of enabling the technicians in the technical field to realize such invention.
04	Trademark infringement case for "滴滴打车" (Di Di Taxi)
	Comments: To judge whether two trademarks constitute similar trademarks in the trademark law sense, besides comparing the similarity between the signs

	of both trademarks, many other factors including the trademarks' distinctiveness, classes and nature of the trademarks' designated goods or services, actual use of the trademarks shall be also taken into full consideration.
05	Administrative litigation over the review of opposition against trademark "清样" (Qing Yang) Comments: This case sets that, in trademark opposition proceedings, the provision of Article 41.1 of the 2001 Trademark Law can be taken as a reference. That's to say, a pending trademark can also be refused if it was applied through deceitful means or other improper means of competition.

06	Case of dispute over infringement of the copyright of The Red Detachment of Women
	Comments: As regards licensed use of a work, if related facts and evidence can prove the existence of the licensing despite the absence of a written licensing contract, using another party's work will not constitute infringement of such party's copyright during the period of licensing, but due remuneration shall be paid to the copyright owner.
07	Case of infringement of the copyright of "Super MT" and unfair competition
	Comments: If the name of a game can play the role of distinguishing the sources of goods or services after continuous propaganda and use, it can be identified as a specific name of well-known service in mobile phone games. Where the doer knowingly uses a name that is similar to the specific name of well-known service without authorization, which easily causes confusion and misunderstanding among the relevant public, it shall be identified as constituting unfair competition. In this case, the name of the figure in the game is also identified as a specific name of well-known service. The case serves as a reference for similar cases of games on mobile terminals in the future.
08	Case of dispute over infringement of the copyright of the logo of Travel Channel
	Comments: Dishonest litigant acts in IP actions such as forging evidence or giving false testimony—since they will disturb the litigation order, waste judicial resources, and damage the rights and interests of the counterparty—will

	be faced with fines of large amounts from the people's court.
09	Case of dispute over infringement of design patent of "Abbott Rice Flour Can"
	Comments: When determining the amounts of compensation for patent infringement, the following factors shall be taken into consideration: 1. type of patent involved in the case; 2. contribution of the patent involved in the case to the sales of the sued infringing products; 3. scope of sales of the infringing products; 4. amount and duration of sales; 5. the defendant's subjective faults.
10	Case of copyright infringement by selling computer software encryption locks
	Comments: When judging whether the acts involved in cases of crimes of computer software infringements are copyright infringements, the pattern of computer software infringements shall be taken into consideration to identify such acts in nature.

II. Ten Major Innovative IP Cases in Beijing Courts in 2015

01	Case of dispute over unfair competition of hindering the installation setting of browser brought by Sougou against Qihu
	Comments: When playing its reasonable functions like giving risk hint and necessary intervention, a security software product shall follow the principle of good faith and meet the basic requirements of business ethics and, under the premise of "doing what is necessary for realizing its functions," try to be

	objective, neutral and within a reasonable limit when intervening in other software products. Intervention in other software products' normal operation and installation beyond the reasonable limited, which damages the interest of other software product operators shall be identified as unfair competition.
02	Case of dispute over unfair competition of "HiWiFi" by shielding video advertisements
	Comments: 1. The judgment of the existence of "competitive relationship" among operators shall not be based on the operators' identities, main businesses or industries they are in, but on their specific behavior, whether their acts are for business purpose and competitive, which should be consistent with the ruling principle of this guiding case. 2. To judge whether competitive behavior is fair and proper, the principle that operators normally can't directly intervene in others' legal operational behavior unless for public welfare shall be followed.
03	Case of design infringement dispute for building blocks
	Comments: For a design relating to a combination product without the need to assemble its components or an assembled product with more than one option of assembly, where the design of each individual component composing the accused infringing product is identical with or similar to that of corresponding component of the patented design, the product shall be determined to fall into the protection scope of the patented design; where the accused infringing product does not have a component, or the design of one component of the accused infringing

	product is neither identical with nor similar to that of corresponding component of the patented design, the accused infringing product does not fall into the protection scope of the patented design.
04	Administrative case of review of refusal to trademark "莫言" (Mo Yan)
	Comments: The behavior of squatting trademarks for the name, pen name or stage name of a well-known figure in the hope of benefiting from the reputation of such well-known figure not only violates the principle of good faith and damages specific interests of such well-known figure, but also damages the public order and good customs in the society to a certain extent. Such applications for trademark registration don't conform to the provision of Article 10.1.8 of the Trademark Law.
05	Trademark infringement case for "UNIQUE"
	Comments: When identifying if the sued infringing mark constitutes a similar mark to the trademark involved in the case under the Trademark Law, such factors as the design of the mark itself, the actual use of the trademark involved in the case, whether the defendant has the intention to cling to such a trademark, and the cognition of the public concerned shall be taken into full consideration.
06	Case of dispute over the right to prior use of trademark "启航"
	Comments: The prior use defense provided in Article 59.3 of the Trademark Law shall be applied under the following conditions: (1) the defendant's use was prior to the date of application of the plaintiff's registered trademark; (2) the defendant's use shall be prior to the plaintiff's use in principle; (3) the defendant's prior use of its trademark had earned a certain

	degree of influence; and (4) the sued infringement behavior shall be within the original scope of the prior use.

07	Case for damages caused by filing IP actions in bad faith
	Comments: Where one party sues others for infringing its patent right which it has waived voluntarily, the party, under the circumstance of clearly knowing that it is not legally grounded, shall be deemed as filing the patent infringement action against the latter in bad faith. The economic loss, including the counsel fee thus caused to the others in the action, shall be compensated by the party bringing the action to the court.
08	Case of jurisdiction objection brought by Xiaomi against Qihu
	Comments: 1. If the controversy in a case is—whether a computer software product or website, which issued to be conducting unfair competition, sets functions that hinder others' fair competitions, it doesn't involve the problem that the information online constitutes an infringement, nor fall into the category of regulation on places of information network infringements as provided in Article 25 of the Interpretation of Civil Procedure Law. 2. To identify that the people's court in the place where the plaintiff resides has jurisdiction only because related computer software can be downloaded from the Internet and operated does not conform to the basic principle of determining jurisdiction, and may bring to nowhere the system design of determining jurisdiction by "the defendant's domicile." Therefore, it is improper to give an extensive interpretation of information network infringements.
09	Case of dispute over the copyright of the model of fighter "Jet-10"
	Comments:

	Model works are magnified or minified objects at certain scales. The more similar the models are to the originals or the more the models meet actual needs, the more original they are. The model in this case is original, and constitutes a model work, thus it shall be protected by the Copyright *Law*. Other parties' producing and selling the sued infringing models without permission damages the obligee's right to reproduce and issue such model work.
10	**Case of dispute over copyright ownership and infringement of Jia Zhigang's Story about the Spring and Autumn and Warring States Period**
	Comments: That broadcasting stations broadcast others' published works is within the scope of consent by the copyright law. Legal consent allows revisions of the original works, but such revisions shall be made for the purpose of meeting the broadcasting requirements and characteristics. However, such revisions shall not contain addition of new contents to the original works, thus producing new works, or they will infringe upon the writers' right to adaptation.

III. Ten Major Cases of Judicial Protection of IP in Shanghai Courts in 2015

01	Case of dispute over trademark licensing contracts about repeated authorization of exclusive use of trademark "毕加索"
	Comments: Where a trademark owner signs two trademark licensing contracts on the exclusive use of the same trademark, the trademark licensing contract signed later is not naturally invalid due to the existence of the prior trademark licensing contract. However, if the licensee of the trademark licensing contract signed later is not a third party in good faith, the licensee can't act against the prior trademark licensing contract or obtain the right to use such trademark.
02	Case of dispute over infringement of and unfair competition against trademark "Victoria's Secret"
	Comments: The doer's buying the obligee's authentic commodities without authorization, but through regular channels, and then selling them does not constitute an infringement upon the exclusive right to use the trademark of the commodities. But if the use of the trademark is in ways not simply for indicating the commodities sold, and is enough to produce the effect of signifying service source, it constitutes service trademark

	infringement.
03	Case of pre-litigation acts preservation in the action brought by Taobao.com against the unfair competition of "B5M.com"
	Comments: Pre-litigation acts preservation shall meet the following conditions: (1) it is possible that the applicant will win the case; (2) it will cause irremediable harms to the applicant if not taking the preservation measure; (3) the preservation measure does not damage public interests in the society. As regards irremediable harms, thes court held that the applicant had a huge trading volume at Taobao.com, and the "11•11" festival, reputed as the shopping carnival, was approaching. If the sued infringing behavior was not stopped timely, it might cause irremediable damages to the applicant's competitive edge and market shares.
04	Case of disputes over unauthorized use of specific name, package and decorations of well-known commodities of "CROCS shoes"
	Comments: Decorations of business sites mainly in white and green and the ways of hanging footwear products are not distinctive in themselves, nor originally created by the plaintiff. The business signs, marks, illustrations, material analysis words, styles of website design, layout of product manual, contents of ads, cartoon images that are adopted in operation are irrelevant to the elements of business decoration, and do not meet the components of business decoration. Contents of works or with patent right for a design therein may be protected through the Copyright Law and the Patent Law.
05	Case of dispute over infringement and false propaganda of trademark "洁水"

	Comments: 1. If a party uses other parties' trademarks in business activities only for describing or clarifying some objective situation, and such use will not cause relevant public to confuse the sources of the commodities or services, it will not constitute trademark infringement. Before or after the amendment of the Trademark Law, the standard to judge trademark infringement has always been causing or possibly causing confusion. In this case, the judge obviously took into consideration the objective fact that trademark "洁水" had always been associated with the defendant and its products. Although the court couldn't directly judge that the trademark "洁水" belonged to the defendant, it did not support the plaintiff to seek improper benefits from a trademark that it rushed to register improperly. 2. False propaganda is identified by taking into full consideration the overall interpretation of the advertisement words, the general attention of the relevant public, and established cognitive experience.
06	**Case of dispute over infringement of trademark of geographical indication "西湖龙井"**
	Comments: Relative to the general registered trademarks, trademarks of geographical indications are given greater protection. Not only are trademark users licensed by trademark registrants, but commodities carrying such trademarks of geographical indications shall come from specific places of production and have special quality which is determined by the natural or human factors of the region, otherwise it shall be deemed as trademark infringement.

07	Case of utility model infringement dispute for a "pre-filter"
	Comments: In determining the amount of compensation for the damage at the court's discretion, the sales channels of the accused infringing product, the sales amount alleged on internet, the number of people giving comments online, the exterior package of the accused infringing products, advertising and promotion on online sales platforms, market prices of products of the same kind are all factors that can be taken into consideration.
08	Case of dispute over online games' infringement upon the copyright of Louis Cha's works and unfair competitions
	Comments: To judge whether a game work infringes upon a literary work's right to adaptation, the game and the literary work may be compared in terms of figures, relations among different figures, story plots, martial arts, etc. so as to judge if they are substantively similar.
09	Case of crime of copyright infringement by "oolong" learning software
	Comments: The substantive similarity of computer software products shall be judged comprehensively according to industry practices and software characteristics, based on the exclusion of public files and documents of third parties, and in light of the similarity scale of the core parts of the software products and other specific situations.
10	Case of administrative penalty to trademark "美固"
	Comments: 1. After receiving a complaint, the administration for industry and

	commerce may examine, investigate and collect evidence before registering the case and, in emergencies, take administrative coercive measures first before going through the approval formalities. 2. The expert conclusion made by the right owner at the request of the administration for industry and commerce can be used as a base to judge authentic or fake products in the absence of contrary evidence. 3. Sale of commodities infringing upon others' trademark right including completed selling and abortive selling. Whether the commodities are actually sold does not affect the identification of the nature of such behavior.

IV. Ten Major Cases of Judicial Protection of IP in Guangdong Courts in 2015

01	Case of dispute over infringement of trademark right brought by Gree Electric Appliances Inc. of Zhuhai against Guangdong Midea Air-Conditioning Equipment Co., Ltd. and Zhuhai Taifeng Electric Industry Co., Ltd.
	Comments: 1. Commodity names can be general names or specific names. Specific commodity names refer to appellations of specific commodities, so they can serve to distinguish sources of commodities or services. 2. Whether a trademark name is significant enough to distinguish the source of commodities does not depend on people's subjective understanding or differences in appellations, but on whether such trademark name has objectively had the significance of distinguishing the source of commodities. 3. While applying the 2001 Trademark Law, the following provision of the newly amended 2013 Trademark Law shall still apply: "Where the rights owner can neither prove use of the trademarks in recent three years nor their losses due to the infringement, the accused infringer shall bear no liability for compensation".

02	Case of dispute over infringement of patent for invention brought by Royal Dutch Philips Electronics Ltd. against Superman Group Co., Ltd. and Liu Jianping
	Comments: 1. Accidental states that are irregular and appear randomly shall not be included in the scope of patent right protection; 2. Even if a patent is to solve a technical problem in a certain and accident state, its technical solution shall be based on certain laws, can be mastered and implemented, and be described clearly when drafting the claims.
03	Case of dispute over infringement of the right to exclusive use of a registered trademark brought by Guangdong Monalisa New Construction Material Group Co., Ltd. against Guangzhou Monalisa Building Materials Co., Ltd. and Foshan Bonnet Bathroom Fittings Co., Ltd.
	Comments: Trans-class protection of well-known trademarks is protection in correspondence to the well-knownness and distinctiveness of such trademarks, where others' legitimate and reasonable use of such trademarks can't be absolutely and exclusively prevented. While handling the relationship between prior registered trademarks and well-known trademarks, the basic principle of fairness and honesty, and balance of interests shall be followed; the margins of rights of registered trademarks and well-known trademarks shall be taken into full consideration; and the established order of law and market pattern shall be respected.

04	Case of dispute over infringement of right of layout-design of integrated circuits brought by Nanjing Micro One Electronics Inc. against QX Micro Devices Co., Ltd.
	Comments: 1. Layout-designs of integrated circuits and corresponding chip manufacturing industry have specific industry rules and development background, so the identification of relevant evidence shall conform to daily life experience and industial experience. 2. When the similarity error is within a reasonable scope, the products can be identified as the same products of layout-designs of integrated circuits. 3. The behavior of relabeling and then selling products of layout-designs of integrated circuits that are bought is an act of commercial use, which does not constitute reproduction of layout-designs.
05	Case of dispute over infringement of trademark right brought by Hangzhou Xihu Longjing Tea Industry Association against Guangzhou Tea Growers Trade Co., Ltd.
	Comments: For trademarks of geographical indications, even if the sued infringing products does be from the area of the geographical indication, the party, without the licensing of the trademark owner, doesn't have the right to use such trademarks of geographical indications or similar trademarks, otherwise it will constitute infringement of the right to the exclusive use of a registered trademark.

06	Case of dispute over false propaganda brought by Guangzhou Pharmaceuticals Corporation against Guangdong Jiaduobao Drink & Food Co., Ltd. and Peng Bijuan
	Comments: That there are market competitions between the parties concerned, propaganda causes some kind of misunderstanding among the public concerned, and actual damages are done to the competitors are the three factors to be taken into consideration to judge if it is unfair competition through false propaganda.
07	Case of dispute over copyright infringement brought by Zhongshan Shangfang Network Technology Co., Ltd. against Zhongshan Baofeng Technology Co., Ltd.
	Comments: This case was the first case of dispute over WeChat infringement in Guangdong. The judgment of this case plays an active guiding and demonstrative role in leading the public concerned to respect and protect intellectual properties and legally use public platforms like WeChat.
08	Case of injunction in action over copyright infringement and unfair competition brought by Blizzard Entertainment Co., Ltd. and Shanghai EaseNet Network Technology Limited against Chengdu Qiyou Limited ("Seven Games"), Beijing Fenbo Shidai Network Technology Co., Ltd. and Guangzhou UCWEB Computer Technology Co., Ltd.
	Comments: How people' s courts judge the possibility of the plaintiff winning the lawsuit, and whether there may be irremediable harms when issuing injunction.

09	Case of dispute over unauthorized use of specific package decorations of well-known commodities brought by Guangzhou Tiger Head Battery Group Co., Ltd. and Guangzhou Light Industry & Trade Group Co., Ltd. against LinyiHuatai Battery Co., Ltd.
	Comments: 1. The area standard for judging well-known commodities shall be within the territory of China. To identify the area, such factors as the sites of sales, the scope of propaganda and the scope of honors won shall be taken into full consideration. Sites of sales not only include the locations of the sales targets, but also the places where the behavior of sales occurs. 2. Where an enterprise produces and sells commodities of different styles with different package decorations using the same registered trademark, the distinctiveness of one commodity is not naturally diluted by the other styles of commodities, which leads to the loss of specialness of package decorations. To judge specific package decorations, it is crucial to see if such package decorations have had the distinctiveness of distinguishing sources of goods in themselves or after being used for a long term.
10	Case brought by plaintiff Zhang Zhongyi against the administrative penalty decision made by Shenzhen Market Supervision and Management Bureau
	Comments: The accused infringing technical solution relates to a method that takes the time sensed by a ground inductor as the basis of stopping timing. This method is fundamentally different from the patent involved in this case where a car owner manually sends a request to stop timing.Therefore, the

	two technical solutions have differences in sequence and method of timing. The timing method of the accused infringing technical solution depends on accurate ground induction and does not need manual instruction, while the patent involved in this case emphasizes the role of men. The accused infringing technical solution can get rid of manual control and ensure objective and accurate timing of parking.Therefore, the two technical features are not equivalent since they use different technical measures to achieve different technical effects and functions, and since the differences between them can not be associated for an ordinary person skilled in the art without doing any creative work.

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