



# IP Litigation and Enforcement Guide: China



# IP Litigation & Enforcement in China

This is a brief guide addressing common questions and concerns of the IP litigation and enforcement landscape in China.

### Is your jurisdiction a common law or civil law jurisdiction?

China is a civil law jurisdiction. It has, however, been influenced by common law. Unlike many civil law countries, the court issues interpretations of the law and certain cases are designated as “guiding cases” which are expected to be followed by the courts in deciding cases.

### What methods are there for enforcing IP rights in your jurisdiction?

IP Right	Civil	Administrative	Criminal	Customs
Trademark	Yes	No	Yes	Yes
Unfair competition/ passing off	Yes	No	No	No
Copyright	Yes	No	Yes	Yes (for simple cases)
Registered designs/ design patents	Yes	No	No, but 3D designs are protected as copyright works	No
Patent	Yes	No	No	No

### What courts have jurisdiction to handle civil IP cases?

Please see the attached table setting out jurisdiction. A simple summary is set out below:

Geographic jurisdiction is determined by the domicile of the defendant, or the place occurred where the impact of the infringement was felt.

For trademark, unfair competition and copyright cases, the Basic People’s Courts, Intermediate People’s Courts and IP Courts have the jurisdiction to try first instance cases. The court to hear the case will depend on financial thresholds which vary for each court. Appeals are heard by the next higher court in the court hierarchy.

For patent and high-tech cases, the Intermediate People’s Courts and IP Courts have the jurisdiction to try first instance cases. Some Local People’s Court may try design patent cases. Appeals are heard by the Supreme People’s Court IP Tribunal (other than design patent cases).

In theory, the Higher People’s Courts have jurisdiction to try first instance cases, but the financial threshold is RMB 5 billion (US\$850 million) making them, effectively, appellate courts.

There are also 3 internet courts with the jurisdiction to try online trademark and copyright cases.

**Is there any bifurcation of proceedings? For example, for determining validity or damages?**

The validity of patents and trademarks are determined by the China National Intellectual Property Administration with appeals to the Beijing IP Court. For invention patents and trademarks, courts will generally not stay a case where validity is challenged.

In general, trials on liability and damages are not bifurcated, although there have been cases where some courts have been willing to determine liability first.

**What are procedures for civil enforcement?**

Civil judgment may be enforced by freezing bank accounts or other assets and sale. Applications are generally made to the enforcement chambers of courts where the assets are located.

**Is a power of attorney needed for civil action to be brought? If so what are the procedures and time lines?**

Yes. A power of attorney is needed. For foreign parties, the power of attorney needs to be localised, legalised and accompanied by proof of the signor's authority to sign. The documents required vary from country to country. For civil law countries the authority will often be clear from the company's register. For common law companies, board resolutions or a certificate of authority may be needed.

**What is the average time to trial in a civil case?**

A civil action will typically take around 6 to 12 months from the issue of proceedings to the first instance judgement. An appeal will take another 6 to 12 months.

**What is the language of the proceedings? Is there a choice of language?**

Mandarin Chinese is the official language of all proceedings. All evidence submitted in a foreign language must be translated into Chinese and certified by a translation agency. It is possible to translate extracts of relevant sections if the document is long.

**Is it possible to apply for summary judgment?**

No. There are no summary procedures in IP cases in China.

**On what basis are interim injunctions granted?**

In order to apply for an interim injunction the right-holder (or an exclusive licensee) must show that the other party is committing or about to commit an act of infringement. The application should also submit evidence to show the irreparable loss to the lawful rights and interests of the applicant and/or potential difficulties in enforcement of the any judgment. A bond may be required by the court in granting the injunction.

### **On what basis are permanent injunctions granted?**

As a general rule, permanent injunctions are granted if a rights holder requests for such. They may be refused on public policy grounds or if the patent is a standard essential patent.

### **What appeal procedures are available from a first instance judgment?**

Either party to a case may appeal to the next higher court within 15 days of receipt of the decision (30 days for foreign parties). The appellate will usually rehear the case in full. The filing of an appeal automatically states the judgement under appeal.

An appellate decision is final. However, it is possible to apply for a 'retrial' from a final judgement. Application for the retrial can be filed within six months from the second instance judgement to the Supreme People's Court (or the Higher People's Court if the second instance judgement was from an Intermediate People's Court). An application for a retrial does not stay the effect of the judgment.

### **What are the procedures for criminal enforcement?**

Criminal enforcement can be taken against trade mark and copyright infringement in China. The Public Security Bureau (PSB) is responsible for the investigation, arrest and preliminary examination of IP criminal cases. They generally only take on serious cases. The PSB may become involved in criminal cases through transfer of cases from administrative authorities, direct filing of a complaint, or through its own investigations. Following investigation of the case, the PSB will either decide to terminate or prosecute. If the case is prosecuted, the case will then be transferred to the People's Procuratorate for prosecution in court, who will decide whether to accept the case or not. If the People's Procuratorate decides to prosecute, an indictment will be filed in court and a public hearing will be held.

Private prosecutions can also be brought but they are rare.

### **What are the procedures for criminal appeals?**

Criminal appeals can be brought to the next highest court in the court hierarchy.

## What are the procedures for administrative enforcement?

The State Administration of Market Regulations (SAMR) through its Economic Inspection Bureau handles the administrative enforcement of patents and trademarks. The administrative enforcement of copyright is carried out by Cultural Enforcement Departments.

A party wishing to file an administrative action must file evidence proving the existence and ownership of its right, along with evidence of the infringement. If the administrative body deems that infringement has occurred, they can take actions against the infringer, such as raiding premises, ordering cessation of infringement and imposing fines. Damages cannot be awarded.

Administrative actions are more common in clear-cut trade mark and unfair competition cases. They are sometimes used for simple mechanical patent cases.

## What are the measures for Customs border protection?

The General Administration of Customs of China (GACC) has implemented a recordal system to detain imported or exported goods suspected of infringing IP rights. Patents (including design patents), trademarks and copyright may be recorded.

The GACC has a computerised network connected to all local customs offices of Mainland China so they may access the database. Either upon registration of the IP right, or *ex officio*, Customs may intercept infringing products being imported into or exported from China. If goods are seized, the right-holder must put up a bond based on the declared value of the goods to cover any damages to the consignor or consignee and customs expenses. The bond will be returned after the subtraction of fees for dealings of the detained goods (e.g. warehousing, storage) once a decision is made by the customs or judicial authorities. If the right-holder fails to put a bond, pay customs expenses or fails to file a notice to the court for further detainment of the goods, Customs must release the goods.

If the goods are found to be infringing, they will be confiscated and can be donated or sold to the brand owner. If this is not amendable, the goods will be auctioned off after removal of the infringing features. If the infringing features cannot be removed, then the goods will be destroyed.

## Court Jurisdiction for Hearing IP Cases in China

Court	Subject Matter	Territorial	Financial thresholds
<b>Supreme People's Court</b>	<ol style="list-style-type: none"> <li>All IP matters on re-trial from SPC IP Tribunal</li> <li>First instance in very important cases (which will be very rare with establishment of SPC IP Tribunal)</li> </ol>	All of China	None
<b>SPC IP Tribunal</b>	<ol style="list-style-type: none"> <li>First instance in very important cases</li> <li>Second Instance appeal court for civil and administrative cases relating to patent infringement and validity cases, high technology cases (not including design patents) and anti-monopoly cases from higher people's courts or intermediate people's courts</li> <li>Second Instance appeal on all other IP matters from higher people's courts</li> <li>"Re-trial court" for final IP decisions</li> </ol>	All of China	None
<b>Higher People's Courts</b>	<ol style="list-style-type: none"> <li>First instance in high value cases</li> <li>Appeals from Intermediate people's courts in TM, copyright, unfair competition cases and design cases</li> <li>NOT appeals in high technology cases and anti-monopoly cases which go to SPC IPC Tribunal</li> </ol>	Whole province D in province Infringing act in province On appeal: from a court in province	<ol style="list-style-type: none"> <li>Over RMB 5 billion (US\$850 million)</li> <li>Important cases not subject to this limit if higher people's court accepts case</li> </ol>
<b>Beijing IP Court</b>	<ol style="list-style-type: none"> <li>First instance patent and high technology cases</li> <li>Anti-monopoly cases</li> <li>Appeals in IP cases from Basic People's Courts in Beijing</li> <li>Appeals from Trademark Review and Adjudication Department and Re-examination and Invalidation Department</li> </ol>	Beijing D in Beijing Infringing act in Beijing On appeal: Basic People's court in Beijing	Up to RMB 5 billion in TM, copyright, unfair competition cases and design patent infringement cases.  No limit in patent (not including design patent) infringement cases, high technology matters and anti-monopoly cases
<b>Shanghai IP Court</b>	<ol style="list-style-type: none"> <li>First instance patent and high-technology cases</li> <li>Anti-Monopoly cases</li> <li>Appeals in IP cases from Basic People's Courts in Shanghai</li> <li>Review of city level administrative decision relating to IP</li> </ol>	Shanghai D in Shanghai Infringing act in Shanghai On appeal: Basic people's court in Shanghai	As for Beijing IP Court

<b>Guangzhou IP Court</b>	<ol style="list-style-type: none"> <li>1. First instance patent and high technology cases</li> <li>2. Anti-Monopoly cases</li> <li>3. Appeals in IP cases from Basic People's Courts within its territorial jurisdiction</li> </ol>	<p>Guangdong Province except Shenzhen</p> <p>D in Guangdong (except Shenzhen)</p> <p>Infringing act in Guangdong (except Shenzhen)</p> <p>On Appeal: basic people' court in Guangzhou City.</p>	As for Beijing IP Court
<b>Intermediate People's Courts (except where IP courts have been established)</b>	<ol style="list-style-type: none"> <li>1. Patent cases (not all IPCs have jurisdiction)</li> <li>2. Major cases involving foreigners</li> <li>3. Appeals from decisions of Customs</li> <li>4. Cases above financial threshold for Basic People's Court</li> </ol>	<p>Area/Region/City in which they are based</p> <p>Cross region jurisdiction for patent cases</p>	<p>Up to RMB 5 billion</p> <p>Minimum where one party not from same province</p> <p>Jiangsu Zhejiang, Shenzhen: Over RMB 50 Million</p> <p>Tianjin etc: Over RMB 20 million</p> <p>Jilin etc: Over RMB 10 million</p> <p>Tibet etc: Over RMB 5 million</p>
<b>Basic People's Courts where IP courts established</b>	IP Cases not in jurisdiction of IP courts	<p>Guangzhou: within own area</p> <p>In Beijing 6 of 16 and in Shanghai, 4 of 16 basic people's courts have been given cross district jurisdiction to hear IP cases</p>	Less than RMB 5 billion
<b>Basic People's Courts (Except where IP Courts established)</b>	<p>IP Cases not otherwise reserved to intermediate courts</p> <p>Some basic people's courts have jurisdiction to hear design patent cases</p>	Within own area	Below minimum threshold for intermediate people's court
<b>Beijing, Hangzhou, and Guangzhou Internet Courts</b>	Online copyright cases	Within jurisdiction of basic people's courts within their cities	Within the jurisdiction of basic people's court for that city



## What IP treaties is your jurisdiction a member of?

- Madrid Agreement
- WTO – TRIPS Agreement
- WIPO – Performances and Phonograms Treaty
- WIPO – Copyright Treaty
- WIPO – Trademark Law Treaty
- Nice Agreement
- Strasbourg Agreement
- Locarno Agreement
- Berne Convention
- Paris Convention
- Patent Cooperation Treaty
- Beijing Treaty
- Singapore Treaty
- Washington Treaty
- Phonograms Convention
- Universal Copyright Convention
- UPOV Convention

## Further Reading

### Guides:

- [IP Snacks: Recent amendments to the Chinese Patent Law](#)
- [Patent and design patent administrative enforcement in China](#)
- [Overview of Administrative Copyright Enforcement in China](#)
- [BCCC China Market Entry Guide 2021](#)
- [IP | IQ: Bad Faith Filings in China and the Impacts of the New Amendments](#)
- [Guide to China Tax Treaties](#)
- [Webinar: How to manage and defend your IP assets in China](#)
- [CIELA Insights: Software Copyright Litigation in China](#)
- [Managing Personal Data in China](#)
- [Rouse launches China Software Litigation Report](#)

### Articles:

- [Fourth Amendment of China's Patent Law - Impact on Design Patents](#)
- [Where are you from: The EU-China Agreement on Geographical Indications](#)
- [New Balance wins major unfair competition lawsuit in China](#)
- [Tips for suing online sellers in China Mind the Gap - The IP Protection law vs. reality in China](#)
- [BIPC releases report on damages in patent infringement cases](#)
- [In brands, we trust](#)
- [When 1+1 is more than 2: IP Issues in Co-Branding in China](#)
- [New Amendments to the Chinese Patent Law Revealed](#)
- [The lay of the land: Patent law and AI inventors](#)
- [The Trump-Biden transition's impact on China IP enforcement policy](#)
- [Enforcement data reveals destination shift for counterfeits originating in China](#)
- [China proposes changes to strengthen the criminal judicial protection of IPR](#)
- [Battling against infringement in cross border e-commerce](#)
- [How is COVID-19 driving change on China's e-commerce platforms?](#)
- [How to win the fight against "legitimate" infringers in China?](#)

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