



<中国>

## 体制を改善し、知財保護を 強化し続けよう

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特許、商標の各自管理と法執行の重複という問題を解決し、知財管理体制を改善するために、中国政府は2018年3月に、国家知識財産権局の職責、国家工商行政管理総局の商標管理の職責、国家品質監督検査検疫総局の原産地・地理的表示管理の職責を統合し、国家知識財産権局を組織改編し、国家市場監督管理総局の管理下に置くことを決定した。組織改編後の国家知識財産権局の主な職責は、知識財産権の保護に対して責任を持ち、知識財産権保護体系の建設を推進し、特許、商標、原産地・地理的表示の登録登記と行政裁決に対して責任を持ち、特許、商標の法執行などを指導する。特許、商標の法執行の職責を、市場監督管理の総合法執行チームが担当する。

国家革新駆動発展戦略を推進し、知財の司法保護を更に強化するよう、中国政府は既に2014年8月に、北京、上海、広州に知財裁判所を設立し、特許、植物新品種、集積回路配置設計等専門的な技術性が高い第1審の知財民事と行政事件を管轄させると決定した。最高裁は2017年1月に、近年来、革新の活躍度が高く、知財紛争が多い地域に地域を跨いで知財事件を集中的に管轄する専門法廷(4つ)の設立を許可した。そのうち、成都知的財産権法廷が2017年1月9日に一番早く設立された。南昌知的財産権法廷が2018年7月5日に設立され、現在の全国16個の知的財産権法廷の一つになった。よって、中国は16個の知的財産権法廷と3個の知財裁判所を設立し、「16+3」という新しい保護体制を構築した。

上記組織改革と改善に加え、中国は様々な措置を取って知財の司法保護を強化している。最高裁は「法[2018]1号」において知財市場価値によってガイドされ、補償に重点を置き、懲罰を補助とする権利侵害損害司法認定メカニズムを設立し、知財侵害賠償基準を高めると強調した。中国が近年来、知財違法事件への処罰が厳しくなり、企業の違法コストを高めようとすることは指摘に値する。四回目改

正中の中国「特許法」草案には、特許権侵害の法定賠償額を現在の「1 万元以上 100 万元以下」から「10 万元以上 500 元以下」まで引き上げる予定である。

知財保護体制を改善し続けることは、知財保護に対する国家の重視と強化の表れであり、革新創業環境の改善に対して必ずポジティブな積極作用を果たし、科技革新能力の向上にもつながる。

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## **Let's improve the organization and continue to strengthen intellectual property protection**

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In March 2018, the Chinese government decided the following matters to solve the problem of duplication of patent and trademark ownership management and law enforcement and to improve the intellectual property management system : Three responsibilities that of the State Intellectual Property Office, that of trademark management by the State Administration of Industry and Commerce, and that of the origin and geographical display management of the General Administration of Quality Supervision, Inspection and Quarantine are integrated. And the State Intellectual Property Office is organized and placed under the control of the State Market Supervision and Administration. Main responsibilities of the State Intellectual Property Office after reorganization are responsible for the protection of knowledge property rights, promoting construction of knowledge property rights protection system, registration of registration of patents, trademarks, origin / geographical indication It is responsible for the administrative rulings and to guide the patent, trademark law enforcement etc.

The comprehensive law enforcement team of market supervision and management is in charge of the duties of law and enforcement of patents and trademarks. Already, in August 2014, the Chinese government established the IP Court in Beijing, Shanghai and Guangzhou to promote national innovation drive development strategy and to further strengthen judicial protection of intellectual property. The Chinese government decided to intellectual property court to have intellectual property civil affairs and administrative affairs of the first instance, which has high technical expertise such as patents, new varieties of plants, integrated circuit layout design etc. In January 2017, the Supreme Court approved the establishment of four specialized courts that intensively have the jurisdiction of intellectual property cases across regions, in regions where intellectual property disputes are high, with a high degree of innovation activity. Among them, the Chengdu Intellectual Property Rights Court was established as early as January 9, 2017. The Nanchang Intellectual Property Rights Court was founded on July 5, 2018 and became one of

16 present intellectual property rights courts nationwide. Therefore, China established 16 intellectual property rights courts and three intellectual property courts and established a new protection system of "16 + 3".

In addition to the above organizational reform and improvement, China has taken various measures to strengthen the judicial protection of intellectual property. The Supreme Court is guided by the intellectual property market value in "Law [2018] 1", emphasizing compensation, establishing a mechanism for judging judicial judgment on infringement of right infringing on punishment, emphasizing that infringement compensation standards will be raised did. It is worth pointing out that China has recently come to strict punishment for intellectual property illegal incidents, and it is trying to raise the illegal cost of a company. In the fourth "Chinese Patent Law" amendment, the statutory damages for patent infringement will be raised from the current "10,000 yuan or more to 1 million yuan or less" to "100,000 yuan or more and 500 yuan or less".

Continuing to improve the intellectual property protection system is an indication of the emphasis and strengthening of the state on intellectual property protection, it always positively acts to improve the innovation founding environment and leads to the improvement of skills innovation capability.

(Translated by TIP)