

Beijing Intellectual Property Court

Judicial Protection Data Analysis  
Report

(2015)

IPHOUSE Judicial Data Research Center



## **Brief Introduction to the Editorial Organization**

Beijing IPHOUSE Network Technology Co., Ltd. (hereinafter “IPHOUSE”) is jointly initiated and established by several experienced intellectual property professionals who have been in the field for more than a decade. IPHOUSE focuses on providing retrieving Chinese intellectual property judgment and analyzing the legal data thereof.

As of March 2016, the IPHOUSE China Intellectual Property Judgment Instrument Database has collected more than 200,000 judgments from the people’s courts at all levels for on intellectual property rights, and all the relevant laws and rules. This database becomes the most complete specialized intellectual property rights database in China.

The IPHOUSE Judicial Data Research Center is the first institution established by IPHOUSE and specializes in researching judicial intellectual property rights data in China. IPHOUSE consists of more than 30 domestic and overseas famous intellectual property professionals, scholars, data analysis experts, etc. whom have the goal to develop and promote the research on China intellectual property rights big data.

IPHOUSE endeavors at providing professional, authoritative and convenient judicial data services on China’s intellectual property rights for Chinese and foreign corporate users, governmental departments, judicial departments, and other professionals.

IPHOUSE utilizes innovation to create new values and serves the Chinese economy with data!

**Beijing IPHOUSE Network Technology Co., Ltd.**

Add.: 17 Madian East Road, Haidian District, Beijing (100088)

Tel.: +86 10 8200 4006

E-mail: [info@iphouse.cn](mailto:info@iphouse.cn)

Website: [www.iphouse.cn](http://www.iphouse.cn)

**IPHOUSE Judicial Data Research Center**

Add.: 17 Madian East Road, Haidian District, Beijing (100088)

Tel.: +86 10 8200 5878



English Translation presented by



[www.beijingeastip.com](http://www.beijingeastip.com)

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## Preface

Intellectual property right is the core of innovation-driven development. Encouraging and protecting innovation is a key issue in China's economic development, and also the foundation for accelerating the implementation of innovation driving strategy and constructing a society governed by law.

The Beijing Intellectual Property Court, founded on November 6, 2014, is the first specialized intellectual property court in China. Distinctively featured by overall types of intellectual property cases handled, national leading cases docketed and closed, the judge teams' abundant experiences in trial and judgment, etc., the Beijing Intellectual Property Court, as the analysis target, could well represent China's judicial protection level of intellectual property rights in recent years. Moreover, the Beijing Intellectual Property Court is the forerunner, vanguard and experimental field of judicial reform, and the significance of its reform and innovation is not only limited to intellectual property cases and trials. In this data analysis, IPHOUSE Judicial Data Research Center developed an analysis by taking the cases closed by the Beijing Intellectual Property Court in 2015 as samples, and provides a general overview of the current status of judicial intellectual property protection in China.

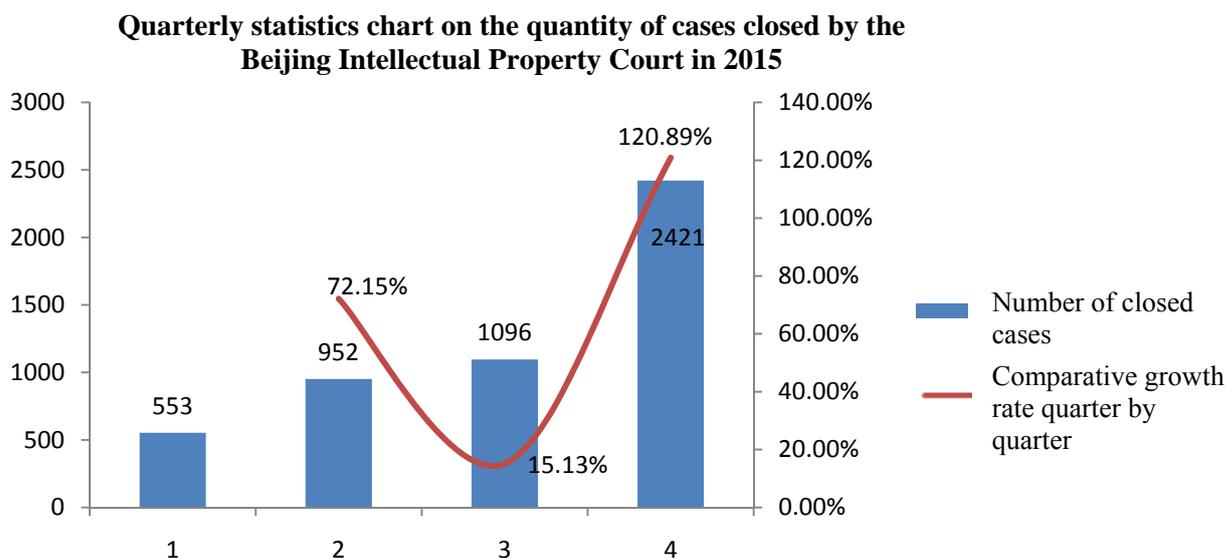
This report consists of four parts. Part One analyzes the overall operation status of the Beijing Intellectual Property Court in 2015; Part Two conducts a general analysis from two perspectives, administrative intellectual property cases and civil intellectual property cases; Part Three specially analyzes the factors that the public are most concerned about, including the trial of technical cases, the amount ordered to compensate, length of trial, the cases involving foreign affairs and involving Hong Kong, Macao and Taiwan, and the participation of juries, etc.; Part Four conducts an individualized analysis on the judges --- it conducts a multi-dimensional analysis on total 14 judge teams, including 3 presidents, 4 presiding judges, and 7 judges selected at random from the first 18 personnel-system judges who have worked for more than one year in the Beijing Intellectual Property Court.

## Part One Overall Analysis

### I. Analysis Sample Description

This data analysis uses total of 5,022 judgments of the closed cases by the Beijing Intellectual Property Court, from January 1 to December 31, 2015, collected in the China Intellectual Property Judgment Database ([www.iphouse.cn](http://www.iphouse.cn)) of IPHOUSE. According to the relevant statistics, the Beijing Intellectual Property Court closed 5,432 cases in 2015, and this data statistics samples accounted for 92.45% of the total data.

### II. Overall Data of Closed Cases



According to the sample data, the number of cases closed by the Beijing Intellectual Property Court in 2015 presents a quarterly growing trend, wherein, the growth rates in the second quarter and the fourth quarter were relatively high, while the third quarter is relatively low.

### III. Judgment Innovations

Through deep researches on all sample judgments, we have discovered that the following seven items are the innovations in the trials of the Beijing Intellectual Property Court in 2015:

**Innovation 1: All members of the Adjudication Committee of the Beijing Intellectual Property Court directly opened a court session to try the significant issues concerning the application of law involved in cases, a nationwide precedent.**

[Typical Case] (2015) Jing Zhi Xing Chu Zi No. 177

**Innovation 2: Precedents were quoted as reasoning for judgment.**

[Typical Cases] (2014) Jing Zhi Xing Chu Zi No. 1

(2014) Jing Zhi Xing Chu Zi No. 50

**Innovation 3: Technical investigation officers participated in trials.**

[Typical Cases] (2015) Jing Zhi Xing Chu Zi No. 2655

(2015) Jing Zhi Xing Chu Zi No. 5191

(2015) Jing Zhi Xing Chu Zi No. 5220

**Innovation 4: “Element-based” document drafting style adopted.**

[Typical Case] (2015) Jing Zhi Xing Chu Zi No. 903

**Innovation 5: Opinions were solicited publicly from academic institutions, and entirely incorporated into judgments.**

[Typical Cases] (2015) Jing Zhi Xing Chu Zi No. 91

(2015) Jing Zhi Xing Chu Zi No. 97

(2015) Jing Zhi Xing Chu Zi No. 98

**Innovation 6: Citations were added to judgments.**

[Typical Case] (2015) Jing Zhi Min Zhong Zi No. 1697

**Innovation 7: Dissenting opinions of the panel were incorporated into judgments.**

[Typical Case] (2015) Jing Zhi Min Zhong Zi No. 1750

## Part Two General Analysis

### I. Administrative Authorization and Determination Cases<sup>[1]</sup>

In accordance with the *Provisions of the Supreme People's Court on Case Governance of Intellectual Property Courts in Beijing, Shanghai and Guangzhou*, the Beijing Intellectual Property Court is the exclusive court of first instance administrative cases on authorization and determination of intellectual property rights. This is the typical characteristic distinguishing the Beijing Intellectual Property Court from other people's courts of different levels.

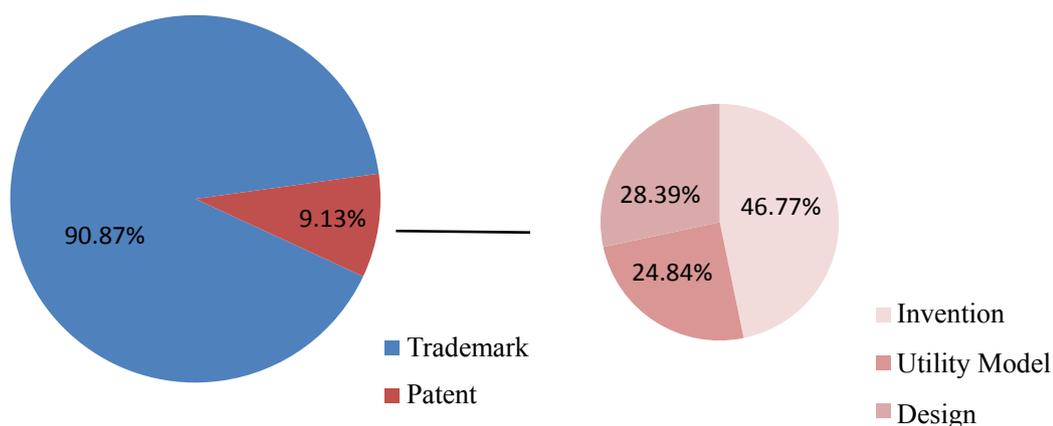
Among the sample data, there were 3,394 first instance administrative intellectual property authorization and determination cases, accounted for 67.58% of total samples, and 98.41% of total administrative cases.

#### 1. Types of Administrative Authorization and Determination Cases

Among the 3,394 administrative intellectual property authorization and determination cases, there were 3,084 trademark cases, accounted for 90.87% of total administrative authorization and determination cases; and there were 310 patent cases, accounted for 9.13% of total administrative authorization and determination cases. Among patent cases, there were 145 invention patent cases, accounted for 46.77% of total administrative patent authorization and determination cases; there were 77 utility model cases, accounted for 24.84% of total administrative patent authorization and determination cases; and there were 88 design patent cases, accounted for 28.39% of total administrative patent authorization and determination cases.

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[1] The scope of administrative authorization and determination cases adopted the definition in the *Opinions of Beijing High People's Court on Normalizing the Grounds for Administrative Litigation Cases of Trademarks* (Jing Gao Fa Fa [2014] No. 392) and the *Regulations of the Beijing High People's Court on Normalizing the Grounds for Administrative Litigation Cases of Patents and Trademarks* (Jing Gao Fa Fa [2012] No. 340); and the cases exceeding the scope of the definition and some cases without clearly stated grounds in the judgment instruments shall be counted as other types of administrative cases.



## 2. Distribution of Grounds for Administrative Authorization and Determination Cases

The distribution of grounds for administrative intellectual property authorization and determination cases of the Beijing Intellectual Property Court in 2015 is as shown below:

### Trademark

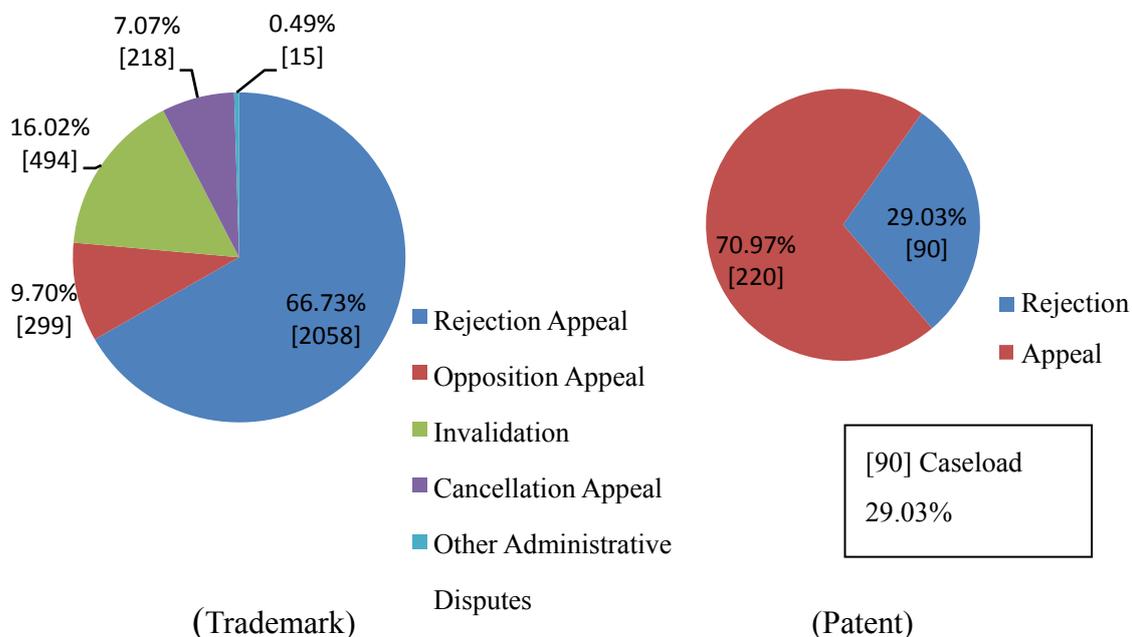
Grounds	Caseload	Percentage
Rejection Appeal	2058	66.73%
Opposition Appeal	299	9.70%
Invalidation (dispute)	494	16.02%
Cancellation Appeal	218	7.07%
Other Administrative Disputes	15	0.49%
<b>Total</b>	<b>3084</b>	<b>100%</b>

### Patent

Grounds	Caseload	Percentage	Patent Type	Caseload	Percentage <sup>[2]</sup>
Rejection Appeal	90	29.03%	Invention	86	95.56%
			Utility Model	3	3.33%
			Design	1	1.11%

[2] This indicates the percentage of various types of patents to the total patent cases of corresponding grounds, same below.

<b>Invalidation</b>	220	70.97%	Invention	59	26.82%
			Utility Model	74	33.64%
			Design	87	39.55%
<b>Total</b>	310	100%	--	310	100%



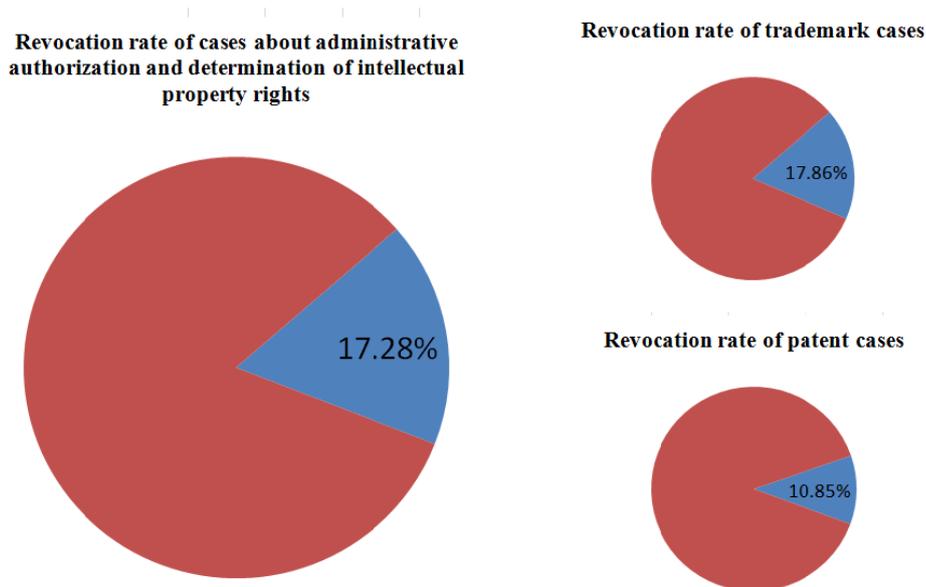
### 3. Withdrawal Rate of Administrative Authorization and Determination Cases

Among the sample data, there were 240 administrative authorization and determination cases withdrawn by the plaintiff, with a withdrawal rate of 7.07%. Wherein, there were 193 trademark cases withdrawn, accounted for 6.26% of total administrative trademark authorization and determination cases; and there were 47 patent cases withdrawn, accounted for 15.16% of total administrative patent authorization and determination cases.

### 4. Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were total 539 cases involving revocation of administrative actions of administrative departments, as judged by the court, with a

revocation rate of 17.28%<sup>[3]</sup>; wherein, there were 511 administrative trademark authorization and determination cases involving revocation of administrative actions of administrative departments, with a revocation rate of 17.86%; and there were 28 administrative patent authorization and determination cases involving revocation of administrative actions of administrative departments, with a revocation rate of 10.85%.



As analyzed from grounds, the data about revocation of administrative actions of administrative departments in various types of cases are as shown below:

### Trademark

Grounds	Caseload	Cancellation Rate
Rejection Appeal	322	16.59%
Opposition Appeal	28	10.57%
Invalidation (Dispute)	96	21.67%
Cancellation Appeal	65	32.66%
Other Administrative Disputes	0	0.00%
Total	511	--

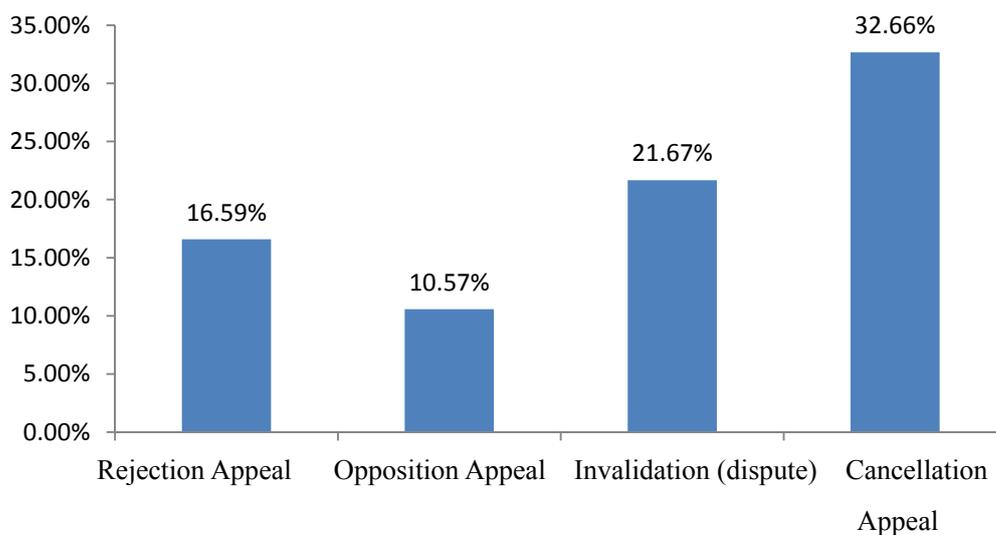
[3] Revocation rate = revocation of administrative actions of administrative departments caseload /total number of administrative authorization and determination cases closed by judgments; same below.

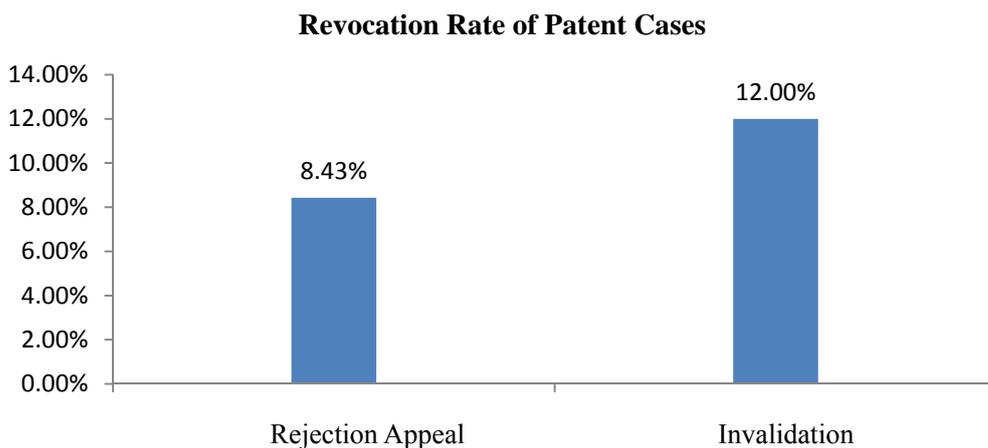
## Patent

Grounds	Caseload	Cancellation Rate	Patent Type	Caseload	Percentage
Rejection Appeal	7	8.43%	Invention	7	100%
Invalidation	21	12.00%	Invention	7	33.33%
			Utility Model	8	38.10%
			Design	6	28.57%
Total	28	--	--	28	--

The comparison of the percentage of administrative intellectual property authorization and determination cases involving revocation of administrative actions of administrative departments for differentis as shown below:

**Revocation Rate of Trademark Cases**

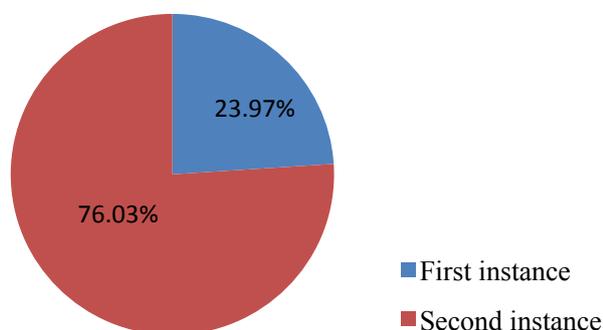




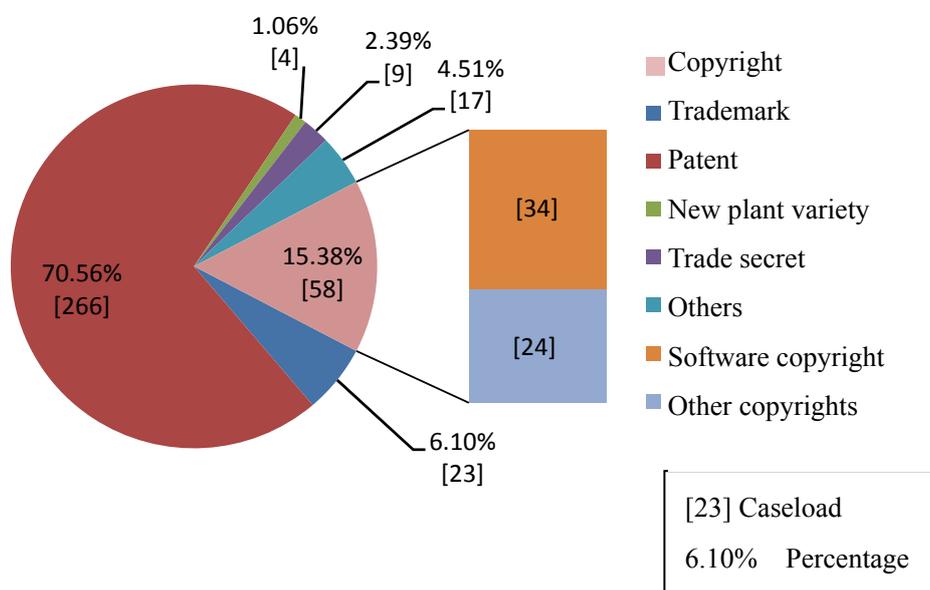
## II. Civil Cases

### 1. Analysis on Trial Level of Civil Cases

Among the sample data, there were 1,573 civil cases, including 377 first instance civil cases and 1,196 second instance civil cases, accounted for 23.97% and 76.03% of total civil cases respectively. Obviously, among the civil non-technical intellectual property cases, the Beijing Intellectual Property Court gave priority to the second instance cases, and this was consistent with the governance scope of the Beijing Intellectual Property Court as the second instance intellectual property people's court (non-technical type) in Beijing.



## 2. First Instance Civil Case Type Analysis



Among the first instance civil cases, there were 313 technical cases, accounting for 83.02% of the first instance civil cases closed by the Beijing Intellectual Property Court in 2015, including as patents (266), new plant variety (4), trade secrets (9), software copyright (34) <sup>[4]</sup>, etc. This is consistent with the governance scope of the Beijing Intellectual Property Court as the first instance court of technical cases in Beijing.

## 3. Analysis on the Winning Rate of Plaintiff in First Instance Civil Cases

Among the sample data, there were total 94 first instance civil cases closed by means of judgment by Beijing Intellectual Property Court in 2015, and wherein, there were 68 cases in which plaintiff’s claims were supported (including partially supported), and the winning rate of plaintiff in first instance civil cases was 72.34%.

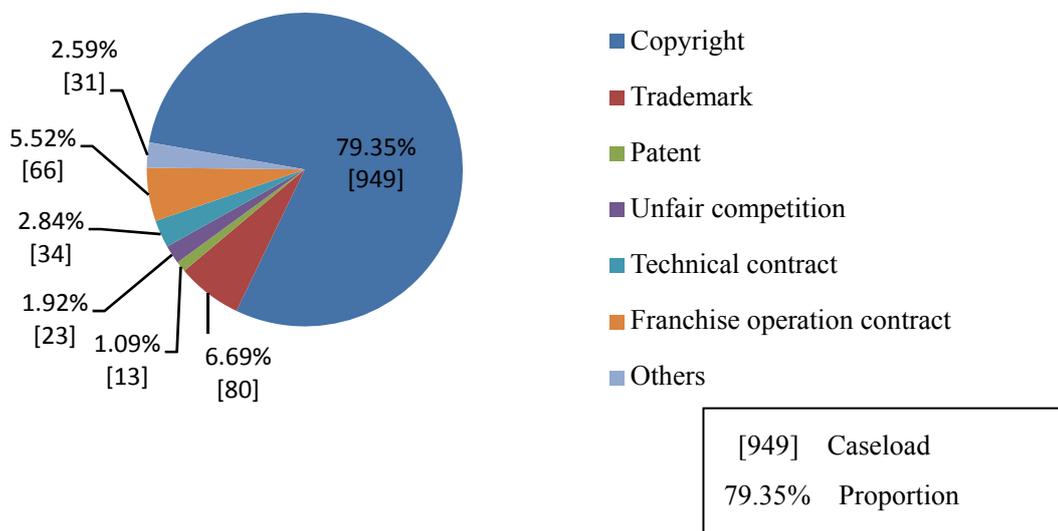
## 4. Analysis on Mediation and Cancellation Rate of First Instance Civil Cases

Among the sample data, there were 250 first instance civil cases closed by means of

[4] The types of copyright not made clear in the judgments were all counted as “other copyrights.”

mediation and cancellation, accounting for 66.31% of total first instance civil cases.

## 5. Second Instance Civil Case Type Distribution



In accordance with the *Provisions of the Supreme People’s Court on Case Governance of Intellectual Property Courts in Beijing, Shanghai and Guangzhou*, the cases on appeal against the first instance cases of intellectual property rights such as copyright, trademark, technical contract, unfair competition, etc. tried by local people’s courts in Beijing shall be tried by the Beijing Intellectual Property Court. Therefore, the degree of the civil judicial protection status of intellectual property rights in Beijing can be deducted from the cases closed by the Beijing Intellectual Property Court. <sup>[5]</sup>

## 6. Analysis on Cancellation of First Instance Judgment in Second Instance Civil Cases

Among the sample data, there were 53 first instance judgments cancelled (including partially cancelled) in the second instance trial of the Beijing Intellectual Property Court in 2015, and the cancellation rate of the first instance judgments was 4.43%. Where, there were 22 first instance judgment cases cancelled by means of judgment, and 31 cancelled by means of ruling, and the details are as shown below:

[5] Patent cases were cases pending before the establishment of the Beijing Intellectual Property Court, and do not represent second instance civil patents trials in Beijing.

Case Closed Types	Result	Caseload (case)
<b>Judgment</b>	Cancelled the first instance judgment	16
	Partially affirmed and partially cancelled the first instance judgment	6
<b>Ruling</b>	Cancelled the first instance ruling	27
	Cancelled the first instance judgment, and rejected the plaintiff's complaint	1
	Cancelled the first instance judgment, and remanded retrial at the first instance court	3
<b>Total</b>	--	53

Analysis on the reasons for the Beijing Intellectual Property Court to cancel the first instance judgment in second instance civil cases in 2015:

### Judgment

Reasons for re-judgment	Caseload (case)	Percentage
Errs in fact findings, and application of law	9	40.91%
Errs in fact findings	6	27.27%
Errs in application of law	6	27.27%
New evidence	1	4.55%
Total	22	100%

### Ruling

Reasons for re-judgment	Caseload (case)	Percentage
Improper expression in the first instance judgment results	18	58.06%
Withdrawal of the first instance complaints by the party concerned in the first instance	6	29.35%
Unclear fact finding and erred in application of law in the first instance	2	6.25%
Unclear fact finding in the first instance	1	3.23%
Erred application of law in the first instance	2	6.25%

Violation of statutory procedures in the first instance	1	3.23%
New evidence	1	3.23%
Total	31	100%

## 7. Analysis on the Mediation and Cancellation Rate of Second Instance Civil Cases

Among the sample data, there were 415 second instance civil cases closed by means of mediation and cancellation, accounted for 34.70% of total second instance civil cases.

## Part Three Specific Analysis

### I. Technical Cases

In accordance with the *Provisions of the Supreme People's Court on Case Governance of Intellectual Property Courts in Beijing, Shanghai and Guangzhou*, the Beijing Intellectual Property Court is the exclusive court of first instance civil technical cases, such as patent, new plant variety, integrated circuit layout design, trade secrets, computer software, etc. in Beijing, as well as the exclusive court of first instance administrative authorization and determination technical cases such as patent, new plant variety, integrated circuit layout design, etc. nationwide (excluding Hong Kong, Macao, and Taiwan areas).

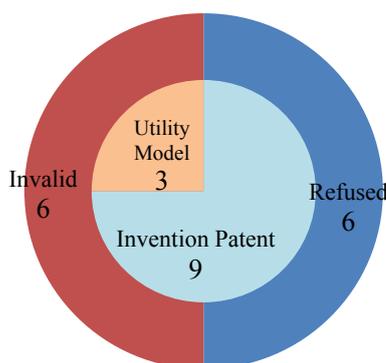
#### 1. Technical Case Types

Among the sample data, there were 634 first instance cases of technical type closed by the Beijing Intellectual Property Court in 2015, including 587 patent cases (including 266 civil patent cases and 321 administrative patent cases), 34 software copyright cases, 9 trade secret cases, and 4 new plant variety cases, accounted for 16.58% of total first instance cases closed.

## 2. Participation of Technical Investigation Officers in Trial

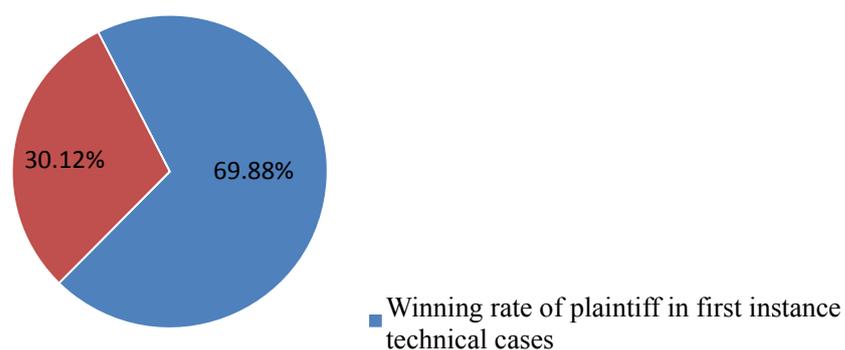
On October 22, 2015, the Technical Investigation Office of the Beijing Intellectual Property Court was established, and the first batch of technical investigation officers was formally appointed. Among the sample data, there were 12 cases in which technical investigation officers participated in judgment and litigation, and all of them were administrative cases on authorization and determination of patents. The cases in which technical investigation officers participated in litigation accounted for 6.45% of total technical cases (186) closed by the Beijing Intellectual Property Court by means of judgment after establishment of the Technical Investigation Office of the Beijing Intellectual Property Court. The details about the cases in which technical investigation officers participated in trial are as shown below:

**Cases tried with the participation of technical investigation officers  
of the Beijing Intellectual Property Court in 2015**



## 3. Analysis on Plaintiff's Winning Rate in Technical Cases

Among the sample data, there were total 83 first instance civil technical cases, including 58 cases where plaintiff's claims were supported (including partially supported). The winning rate of the first instance plaintiff in technical cases accepted by the Beijing Intellectual Property Court in 2015 was 69.88%, slightly lower than the average winning rate of the plaintiff in the first instance civil cases.



## II. Analysis on the Amount of Compensation Granted of First instance Civil Cases

Among the 68 first instance civil cases where the Beijing Intellectual Property Court judged to support or partially support plaintiff's claims in 2015, there were total 54 intellectual property right infringement cases in which right holders claimed for compensation for damages. In the following, the compensation amount of the 54 case samples would be analyzed.

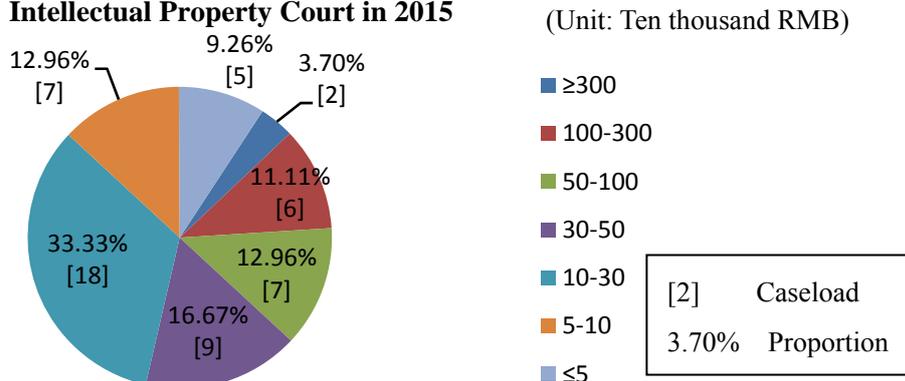
### 1. Overall Data

#### 1.1 Basic information

<b>Total amount claimed (RMB)</b>	51,352,993
<b>Average amount claimed per case (RMB)</b>	950,981
<b>Total amount of compensation granted (RMB)</b>	24,383,763
<b>Average amount of compensation granted per case (RMB)</b>	451,551
<b>Average appeal support rate</b>	47.48%

#### 1.2 Distribution of amount of compensation granted

**Distribution chart of the amount of compensation granted of the cases closed by the Beijing Intellectual Property Court in 2015**



According to the above data, in the first instance civil cases accepted by the Beijing Intellectual Property Court in 2015, the amount of compensation granted concentrated between RMB 100,000 – RMB 300,000, accounted for 33.33% of total compensation cases; the cases in which the amount of compensation granted was more than RMB 100,000 accounted for 77.78% of total compensation cases; the cases in which the amount of compensation granted was RMB 500,000 – RMB 1,000,000 and those in which the amount of compensation granted was RMB 500,000 – RMB 1,000,000 accounted for the same percentage, namely 12.96%.

## 2. Trademark Cases

### 2.1 Basic information

Caseload (case)	6
Total amount claimed (RMB)	4,740,000
Average amount claimed per case (RMB)	790,000
Total amount of compensation granted (RMB)	3,720,000
Average amount of compensation granted per case (RMB)	620,000
Average appeal support rate	78.48%

### 2.2 Distribution of amount of compensation granted

Amount of compensation granted (RMB 10,000)	Caseload (case)	Percentage
≥300	1	16.67%
10-30	4	66.67%
5-10	1	16.67%

According to the above data, the amount of compensation granted in the first instance trademark cases docketed by the Beijing Intellectual Property Court in 2015 was primarily RMB 100,000 – RMB 300,000, accounted for 66.67% of total trademark compensation cases.

### 3. Patent Cases

#### 3.1 Basic information

Caseload (case)	43
Total amount claimed (RMB)	41,652,608
Average amount claimed per case (RMB)	968,665
Total amount of compensation granted (RMB)	19,786,378
Average amount of compensation granted per case (RMB)	460,148
Average appeal support rate	47.50%

#### 3.2 Distribution of amount of compensation granted

Amount of compensation granted (RMB 10,000)	Caseload (case)	Percentage
≥300	1	2.33%
100-300	6	13.95%
50-100	6	13.95%
30-50	8	18.60%
10-30	13	30.23%
5-10	4	9.30%
≤5	5	11.63%

According to the above data, the amount of compensation granted in the first instance patent cases docketed by the Beijing Intellectual Property Court in 2015 was primarily RMB 100,000– RMB 500,000, accounted for 48.84% of total patent compensation cases; and the cases in which the amount of compensation granted was more than RMB 100, 000 accounted for 79.07% of total patent compensation cases.

Compared with trademark cases, the distribution of the compensation amount of patent cases was more scattered.

### 3.3 Patent Types

#### A. Invention patent

Caseload (case)	22
Total amount claimed (RMB)	26,353,067
Proportion to the total amount claimed of patent cases	63.27%
Average amount claimed per case (RMB)	1,197,866
Total amount of compensation granted (RMB)	13,965,497
Percentage to total amount of compensation granted in patent cases	70.58%
Average amount of compensation granted per case (RMB)	634,795
Average appeal support rate	52.99%

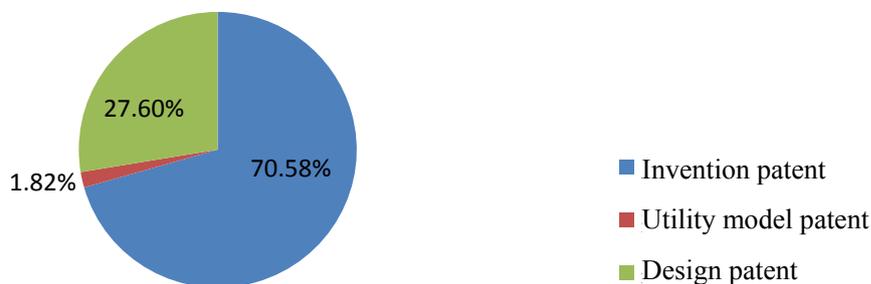
#### B. Utility Model

Caseload (case)	3
Total amount claimed (RMB)	762,701
Percentage to the total amount claimed of patent cases	0.18%
Average amount claimed per case (RMB)	254,234
Total amount of compensation granted (RMB)	360,000
Percentage to total amount of compensation granted in patent cases	1.82%
Average amount of compensation granted per case (RMB)	120,000
Average appeal support rate	47.20%

#### C. Design patent

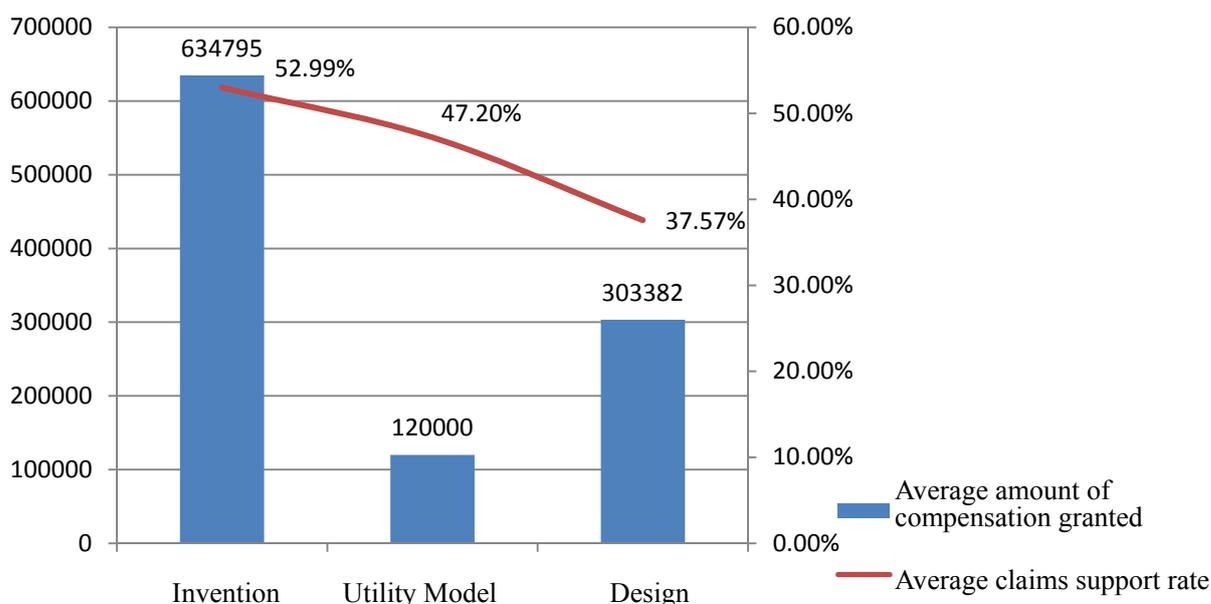
Caseload (case)	18
Total amount claimed (RMB)	14,536,841
Percentage to the total amount claimed of patent cases	34.90%
Average amount claimed per case (RMB)	807,602
Total amount of compensation granted (RMB)	5,460,881
Percentage to total amount of compensation granted in patent cases	27.60%
Average amount of compensation granted per case (RMB)	303,382
Average appeal support rate	37.57%

**Percentage of the amount of compensation granted in various patent cases in the total amount ordered to compensate in patent cases**



**Average amount of compensation granted & claim support rate in various patent cases**

(Unit: RMB)



According to data analysis, among the patent cases closed by the Beijing Intellectual Property Court in 2015, invention patent cases were by far higher than utility model and design cases in terms of the total amount of compensation granted, the average amount of compensation granted per case, and the average appeal support rate; the design patent cases were higher than utility model cases in terms of the total amount of compensation granted and the average amount of compensation granted per case, but were nearly 10% lower than utility model cases in terms of average appeal support rate. This shows that, the compensation claimed by the right holders for infringement of utility model close to that affirmed by the Court.

## 4. Copyright Cases

### 4.1 Basic information

Caseload (case)	3
Total amount claimed (RMB)	4,510,385
Average amount claimed per case (RMB)	1,503,462
Total amount of compensation granted (RMB)	727,385
Average amount of compensation granted per case (RMB)	242,462
Average appeal support rate	16.13%

### 4.2 Distribution of amount of compensation granted

Amount of compensation granted (RMB)	Caseload (case)
72,385	1
120,000	1
535,000	1

## 5. Other Cases

### 5.1 New plant variety

Caseload (case)	1
Total amount claimed (RMB)	400,000
Average amount claimed per case (RMB)	400,000
Total amount of compensation granted (RMB)	100,000
Average amount of compensation granted per case (RMB)	100,000
Average appeal support rate	25.00%

### 5.2 Trade secret

Caseload (case)	1
Total amount claimed (RMB)	50,000
Average amount claimed per case (RMB)	50,000
Total amount of compensation granted (RMB)	50,000
Average amount of compensation granted per case (RMB)	50,000
Average appeal support rate	100.00%

## 6. Maximum Compensation Cases

Among the sample data, the case with the maximum amount of compensation granted was a civil dispute case involving “cosmetic device” design patent (Patent No.: ZL201130151611.3). The details are as shown below:

<b>Case No.</b>	(2015) Jing Zhi Min Chu Zi No. 266
Case Type	Design patent
Amount claimed (RMB 10,000)	320
Amount of compensation granted (RMB 10,000)	320
Support rate	100%

## 7. Cases with Full Support for Compensation Amount Claimed

Among the 54 cases involving the compensation of damages for intellectual property infringement handled by the Beijing Intellectual Property Court to support or partially support plaintiff’s claims in 2015, there were 10 cases where the court ordered to fully support the amount claimed by the right holders, accounted for 18.52% of total cases (54), indicating that the Beijing Intellectual Property Court provided high-degree protection for the right holders in civil infringement cases. The details of such cases are as shown below:

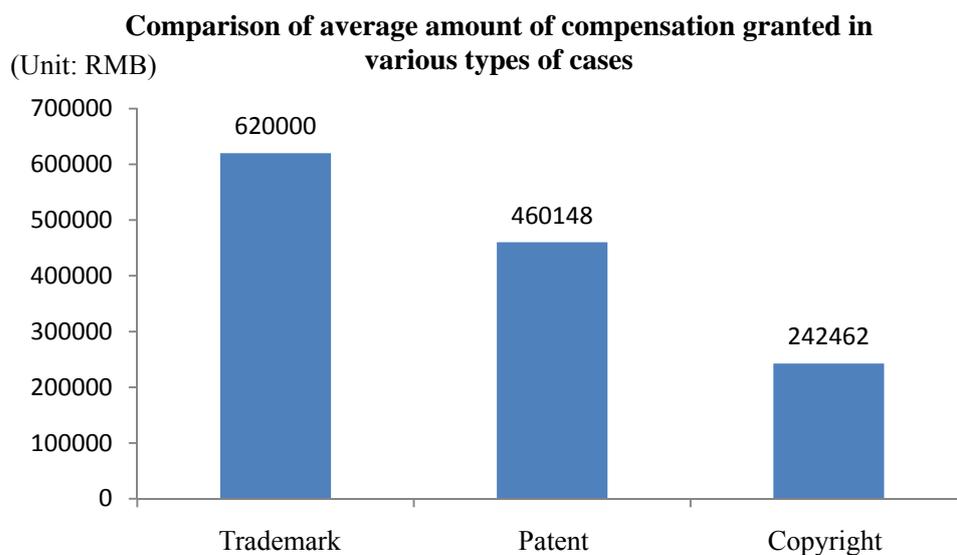
Cases No.	Case Type	Compensation amount (RMB 10,000)
(2015) Jing Zhi Min Chu Zi No. 266	Design	320
(2014) Jing Zhi Min Chu Zi No. 52	Trademark	300
(2015) Jing Zhi Min Chu Zi No. 204	Invention	102.801 <sup>[6]</sup>
(2015) Jing Zhi Min Chu Zi No. 186	Invention	102.815
(2015) Jing Zhi Min Chu Zi No. 187	Invention	102.811
(2015) Jing Zhi Min Chu Zi No. 188	Invention	102.7949
(2015) Jing Zhi Min Chu Zi No. 192	Invention	102.761
(2014)Jing Zhi Min Chu Zi No. 85	Trademark	30

[6] The right holder requested RMB 1,000,000 as compensation for damages and RMB 30,000 as reasonable expenditure. The Court fully supported the RMB 1,000,000 as compensation for infringement and RMB 28,010 reasonable expenditure.

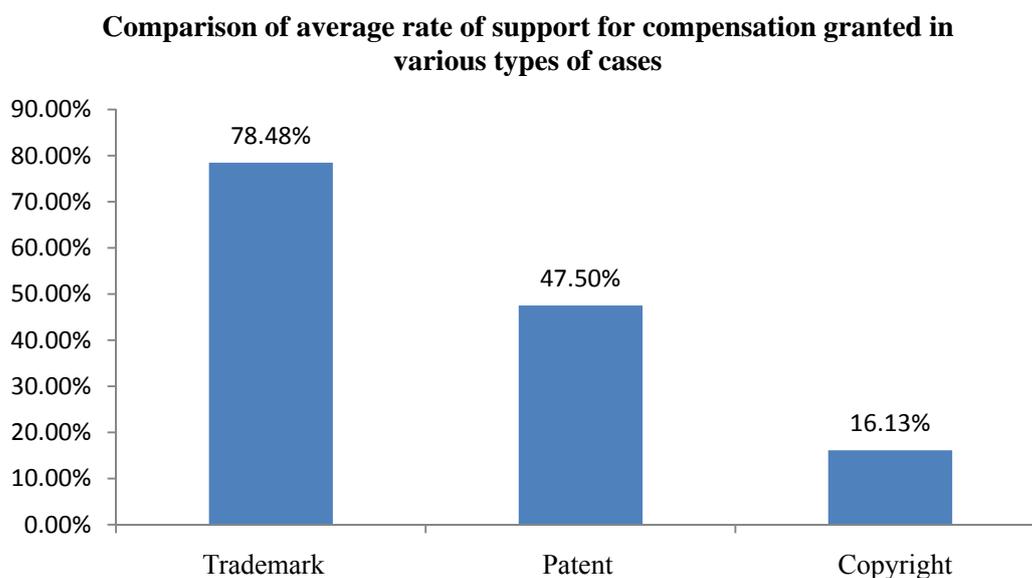
(2014) Jing Zhi Min Chu Zi No. 87	Trademark	10
(2014) Jing Zhi Min Chu Zi No. 64	Trade secret	5

## 8. Comparison of Compensation Granted in Various Types of Cases

### 8.1 Comparison of average amount of compensation granted in various types of cases



### 8.2 Comparison of average rate of support for compensation granted in various types of cases



According to the above data analysis, among the cases closed by the Beijing Intellectual Property Court in 2015, the order of cases from high to low on the amount of compensation granted and support rate was trademark cases, patent cases and copyright cases. It shall be noted that, among the sample data, there was a small number (6) of first instance civil trademark cases involving compensation judgment, and in 1 case therein, the total compensation amount claimed RMB3,000,000 was fully supported, so the average amount of compensation granted per case and the average support rate of compensation judgment of trademark cases were relatively high.

The average support rate of compensation judgment of copyright cases was greatly different from trademark and patent cases, indicating that the expectation on the compensation amount of right holders had a relatively great difference from that identified by the Court in copyright cases.

### **III. Length of Trial** <sup>[7]</sup>

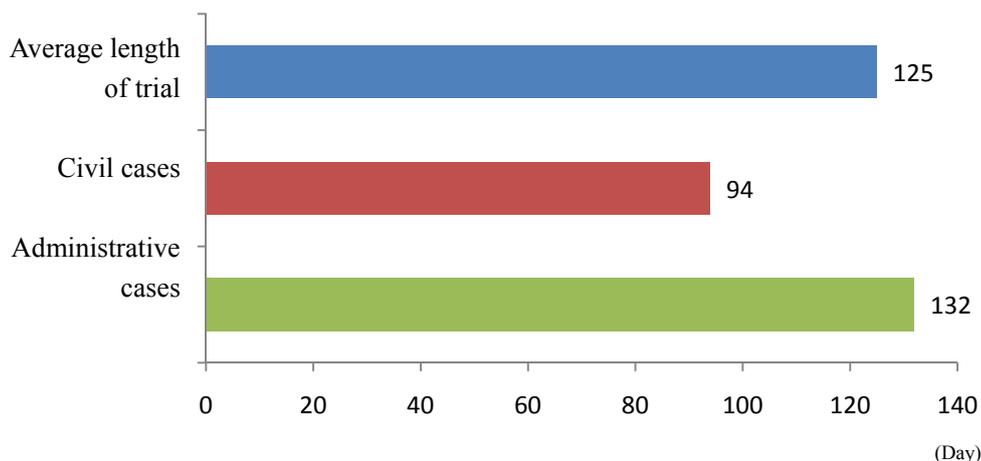
Among the sample data, there were 3,777 judgments according to which the length of trial and judgment date of cases could be confirmed, and the analysis on length of trial was just based on such sample judgments.

#### **1. Overall Analysis**

The average length of trial of the cases already judged and closed by the Beijing Intellectual Property Court was 125 days, where civil cases and administrative cases was 94 days and 132 days, respectively.

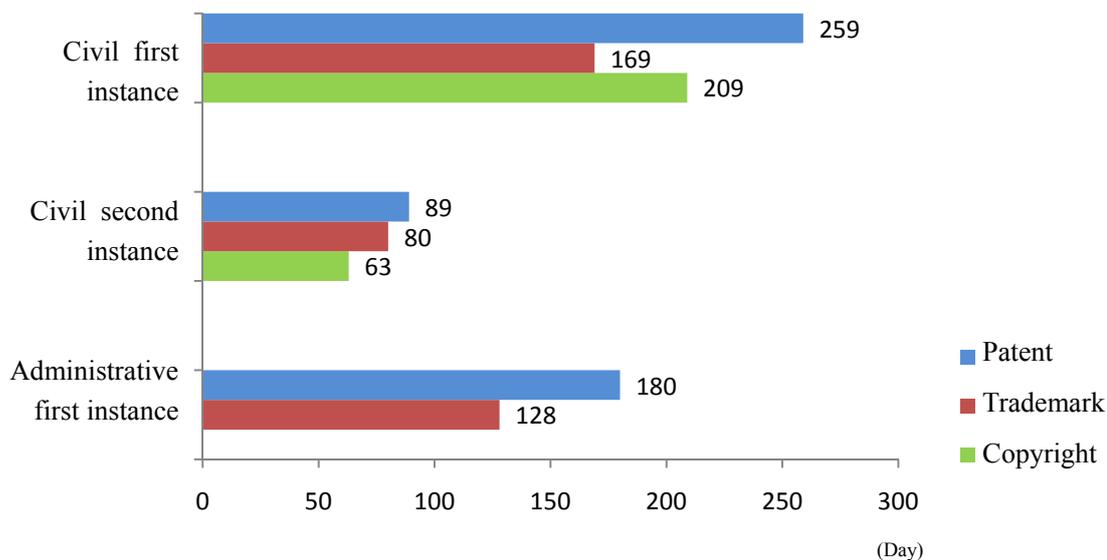
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[7] In the data report, length of trial is only counted by judgment, and does not consider those by ruling and mediation, etc.; length of trial is only calculated as per the difference between docketing time and judgment time, and does not consider other factors such as suspension of litigation, involving foreign affairs, and involving Hong Kong, Macao and Taiwan, etc.; the calculation result is rounded out. The “length of trial” of other parts herein is also applicable to this principle.



## 2. Analysis on Length of Trial of Various Types of Cases

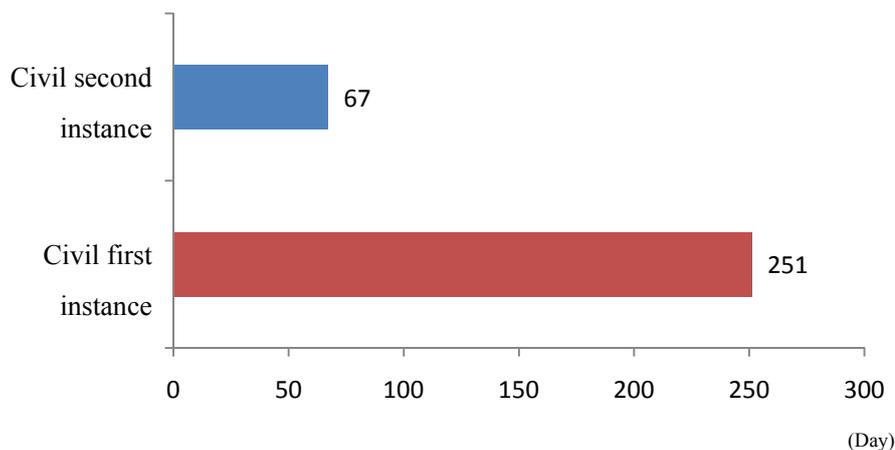
Among the civil first instance cases closed by the Beijing Intellectual Property Court in 2015, the ranking by length of trial from high to low was patent, copyright and trademark cases; among the civil second instance cases, the ranking by length of trial length from high to low was patent, trademark and copyright cases. The ranking of administrative first instance cases by length of trial length from high to low was patent and trademark.<sup>[8]</sup>



[8] Among the sample data, there was 1 second instance administrative case closed by the Beijing Court of Intellectual Property Right in 2015, so it is not considered here.

### 3. Analysis on Length of Trial of Civil Cases

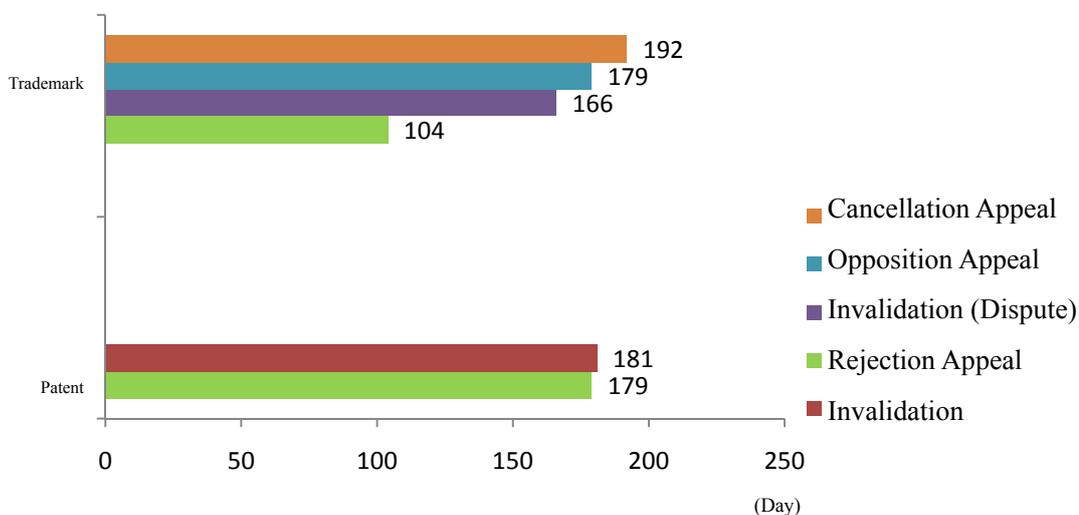
Among civil cases, the average length of trial of the first instance cases was 251 days, and the second instance cases were 67 days.



### 4. Analysis on Length of Trial of Administrative Authorization and Determination Cases

As seen from the grounds for administrative authorization and determination cases, among trademark cases, the ranking by length of trial length form high to low was cancellation appeal, opposition appeal, invalidation (dispute), rejection appeal; while the ranking of patent cases by length of trial length from high to low was invalidation and rejection appeal. The difference in the length of trial length of administrative cases of various patents was smaller than that in the length of trial length of administrative cases of trademarks.

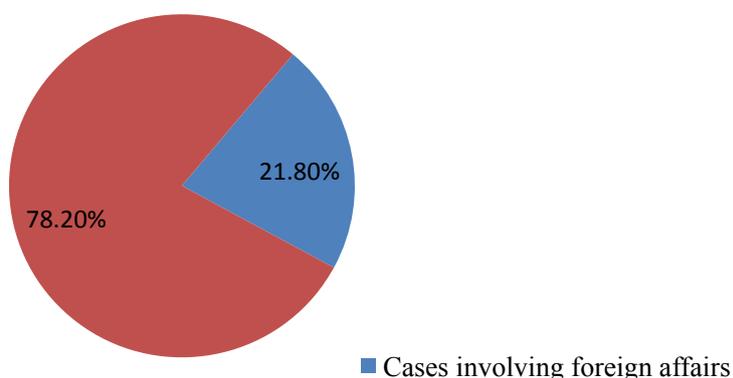
**Statistics about length of trial of administrative authorization and determination cases of the Beijing Intellectual Property Court in 2015**



**IV. Data of Cases Involving Foreign Affairs and Involving Hong Kong, Macao and Taiwan**

**1. Data of Cases Involving Foreign Affairs**

Among the sample data, there were total 1,095 cases involving foreign affairs, accounted for 21.80% of total samples, exceeding 1/5, indicating that among the cases closed by the Beijing Intellectual Property Court in 2015, the cases involving foreign affairs accounted for a big percentage.



Among the cases involving foreign affairs, the data of main countries involved are as shown below:

Country	Caseload	Percentage
USA	395	36.07%
Germany	145	13.24%
France	124	11.32%
Italy	121	11.05%
UK	100	9.13%
Japan	69	6.30%
Canada	46	4.20%
Korea	29	2.65%

According to the above data analysis, among the cases involving foreign affairs, there were 395 cases involving U.S. corporations, accounted for 36.07% of total cases involving foreign affairs, and around 2.7 times the cases involving Germany which ranked the second place, indicating that the economic and trading communication between China and the U.S. were constantly strengthened.

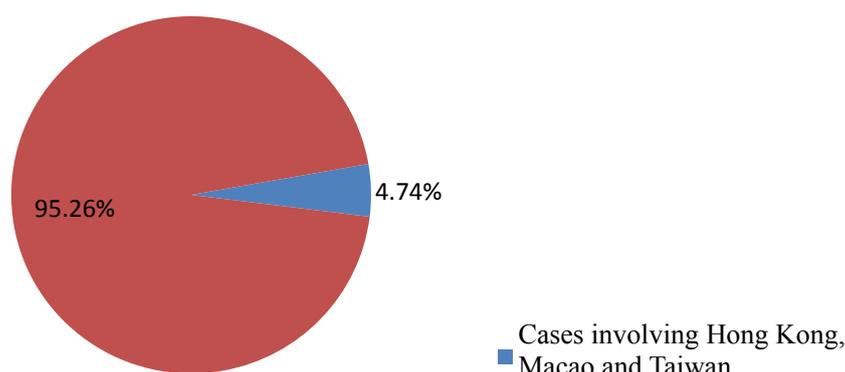
Among the cases involving U.S. corporations, there were 346 administrative cases and 49 civil cases, and the detailed data are as shown below:

Case Nature	Case Type	Caseload	Percentage <sup>[9]</sup>
Administrative	Trademark	331	95.66%
	Patent	15	4.34%
Civil	Trademark	19	38.78%
	Patent	6	12.24%
	Copyright	24	48.98%

## 2. Data of Cases Involving Hong Kong, Macao and Taiwan

Among the sample data, there were 238 cases involving Chinese Hong Kong, Macao and Taiwan, accounted for 4.74% of total samples.

[9] This indicates the proportion to the cases of the same nature, the same below.



The data of cases involving Chinese Hong Kong, Macao and Taiwan are as shown below:

Regions	Caseload	Percentage
Hong Kong	130	54.62%
Taiwan	105	44.12%
Macao	3	1.26%

Among the cases involving Chinese Hong Kong, Macao and Taiwan, there were 130 cases involving Hong Kong corporations, accounted for 54.62% of total cases involving Hong Kong, Macao and Taiwan.

Among the cases involving Chinese Hong Kong corporations, there were 126 administrative cases and 4 civil cases. The detailed data are as shown below:

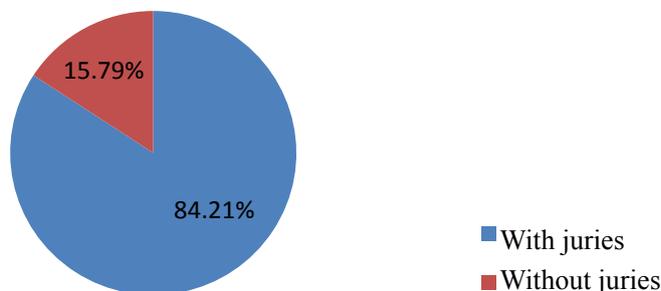
Case Nature	Case Type	Caseload	Percentage
Administrative	Trademark	122	96.83%
	Patent	4	3.17%
Civil	Patent	4	100%

## V. Participation of Juries in Trial

Among the sample data, there were 3,222 first instance cases which were tried with jury participation, and 604 first instance cases tried without jury participation, and the first instance cases tried with jury participation accounted for 84.21% of total first instance cases; the average rate of juries' participation in court per case was 1.44

person/times, indicating that democratic participation was relatively highlighted in the first instance cases accepted by the Beijing Intellectual Property Court in 2015.

**Participation of juries in the cases already closed by the Beijing Intellectual Property Court in 2015**



The statistics about the structure of collegiate bench for the cases tried with jury participation were as shown below:

Structure of Collegiate Bench	Caseload (case)
1 judge + 2 juries	2,276
2 judges + 1 jury	946

According to the above table, in the cases closed by the Beijing Intellectual Property Court in 2015, juries participated in court for 5,498 person/times, namely 1.44 person/times of juries participated in court session of every first instance case in average.

**Part Four Analysis on Judge Teams** <sup>[10]</sup>

Through a deep analysis on the data of cases closed by the typical judge teams collected in the sample data, the cases closed by the Beijing Intellectual Property Court in 2015 can be deeply understand from points to areas, and in comprehensive details. Therefore, we deeply analyzed the data of the cases closed by a total of 14 teams, namely 3 presidents, 4 presiding judges and 7 judges selected at random from the first 18 personnel-system judges having worked for more than one full year in the Beijing Intellectual Property Court, in order to analyze the judicial work of the

[10] The Beijing Intellectual Property Court executes the case handling mode of “1judge + 1 assistant to judge + 1 clerk.” In this report, the name of each judge is used to represent his/her team.

Beijing Intellectual Property Court in 2015 from a microscopic perspective.

## I. Data of Presidents

Among the sample data, the three presidents of the Beijing Intellectual Property Court closed total 162 cases in 2015, namely per capita 54 cases closed accounted for 3.23% of total samples; the total word account of the cases closed by the presidents was 812,400 words, per capita 270,800 words.

Items		Presidents		
		SU Chi	CHEN Jinchuan	SONG Yushui
<b>Total number of cases</b>		40	72	50
<b>Case Type</b>	Trademark	23	61	42
	Patent	3	7	1
	Copyright	14	3	7
	Others	0	1	0
<b>Case Nature</b>	Administrative	25	65	41
	Civil	15	7	9
<b>Trial Level</b>	First Instance	25	67	41
	Second Instance	15	5	9
<b>Case Close Method</b>	Judgment	38	67	42
	Ruling	2	5	1
	Mediation	0	0	7

### 1. Team of Judge SU Chi

#### Judge SU Chi

#### President, Member of the Judgment Committee, and Judge of the Beijing Intellectual Property Court

SU Chi, male, Han Nationality, born in January 1957, graduated as an on-job undergraduate, Doctor of Law, began to work in March 1976. After graduation, he worked at the Beijing High People's Court, successively acted as clerk, assistant judge, judge, and Deputy Division Head. In June 1993, he was transferred to the Beijing

Intermediate People’s Court, successively acted as judge, Head of Intellectual Property Division, member of the Judgment Committee, and Vice President. In January 2010, he acted as Vice President of the Beijing College of Politics and Law. In July 2013, he was transferred to the Beijing Second Intermediate People’s Court, acted as Vice President, member of Judgment Committee, and judge. He has held the present position since November 2014.

## 1.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
31-90	6
91-180	18
181-365	14

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	169
		Opposition Appeal	245
		Invalidation (dispute)	127
		Other Administrative Disputes	60
	Patent	Invalidation	173
Civil	Copyright	Dispute over the ownership and infringement of copyright	143

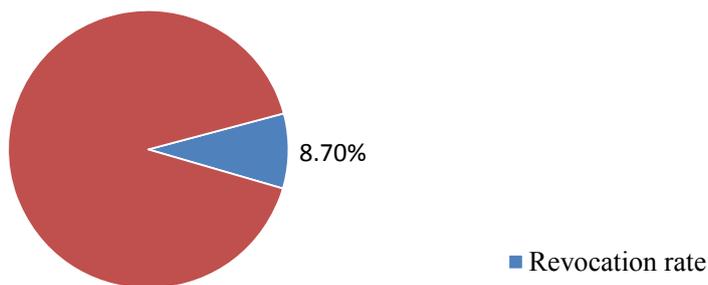
## 1.2 Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were 23 administrative intellectual property authorization and determination cases closed by means of judgment by Judge SU Chi’s team, including total 2 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 8.70%.

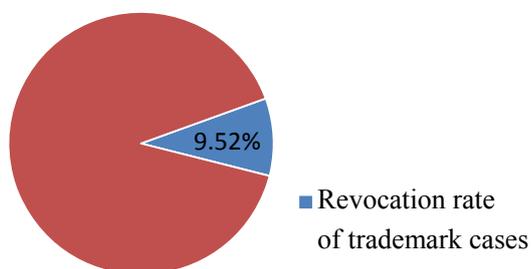
Wherein, there were 21 administrative cases of trademarks closed, including 2 cases involving revocation of administrative actions of administrative departments, with a

revocation rate of 9.52%; there were 2 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge SU Chi's team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge SU Chi's team in 2015**



### 1.3 Word Count of the Judgment

Contents	Word Count
Total word count	244,787
Average word count	6,442
Average word count of theoretical part	3,319

### 1.4 Typical Cases

## (1) Cited Cases

### A. (2014) Jing Zhi Xing Chu Zi No.1

**Key Points of the Judgment:** Under Article 26(4) of the *Patent Law*, patent claims should be supported by the specifications. Where the court is construing whether the disputed patent claims are supported by the specifications, a clear line is drawn between closed and open claims, namely, literal interpretation, overall interpretation, purpose of co-invention interpretation, and interpretation of the person having ordinary skill of art. This case actively explored the written judgment format and the reasoning, which gave it a very representative significance.

**Cited Cases:** a. (2009) Min Ti Zi No. 20  
b. (2011) Gao Xing Zhong Zi No. 607

### B. (2015) Jing Zhi Min Zhong Zi No. 559-563

**Key Points of the Judgment:** This case further clarified the judgment principle that “active target link service provider shall carry a relatively high burden for the contents of the video, and shall be obligated to review whether contents in the linked website are copyrighted. Where the service provider has fulfilled its duty, even if the link ultimately linked to a video with illegal contents, it shall not be deemed to be objectively at fault.” This ruling was cited later in the judgment of (2015) Jing Zhi Min Zhong Zi No. 1172.

**Cited Cases:** a. (2009) Min Ti Zi No. 17  
b. (2009) Min San Zhong Zi No. 2  
c. (2011) Min Shen Zi No. 686  
d. (2004) Gao Min Zhong Zi No. 1303  
e. (2007) Gao Min Chu Zi No. 1201

**Note:** This case was selected as the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

### C. (2015) Jing Zhi Xing Chu Zi No. 2474

**Key Points in the Judgment:** Citing cases of reference proposed by the Beijing High Court, Article 44(1) of the *Trademark Law* is applied in a case of

administrative dispute regarding trademark opposition review against the action of an applicant for trademark, who has applied in many Classes for a large number of registrations of trademarks which are identical or similar to well-known trademarks of others with an intention of copying and imitating well-known trademarks of others, thus ensuring in an effective way the consistency in juridical criteria. Based on this, the case has, through juridical reasoning in full, provided a clear guide whereby market entities are encouraged to actively draw a line defining business marks and the acts of unfair registration of trademarks by “taking advantage of others”, and “free-riding” are deterred.

**Cited Cases:** a. (2014) Gao Xing Zhong Zi No. 389  
b. (2015) Gao Xing (Zhi) Zhong Zi No. 659

#### **D. (2015) Jing Zhi Min Zhong Zi No. 478**

**Key Points of the Judgment:** Search link service provider shall carry a high burden regarding the specific redirections it specially set up. Where it is obvious that this unique and specifically linked website has engaged in information service without consent, and provided complete and lengthy video works, the service provider shall reasonably notify the specific right holder’s rights regarding the disputed video.

This judgment provided comments on the precedents submitted by the interested parties.

#### **(2) Other Typical Case: (2015) Jing Zhi Xing Zhong Zi No. 1518**

**Key Points of the Judgment:** This was the first second instance intellectual property administrative case accepted by the Beijing Intellectual Property Court. With respect to the legality of penalty decision made by the Administration of Industry and Commerce, this case pointed out that the administrative enforcement based on authority or interested party’s request was different from civil disputes among equal interested civil parties. The exercise of public authority may involve safeguarding of public order and interests, which is an important element in market order maintenance, which the public may rely upon each specific administrative action. Accordingly, the people’s court shall also review the legality of each specific administrative action. Upon commission of a specific administrative action, the specific interested parties’ private rights disposition or settlements shall not be deemed as a justified reason to revoke the specific

administrative action. This is to ensure the stability of specific administrative act and the reliance interests thereupon.

## 2. Team of Judge CHEN Jinchuan

### CHEN Jinchuan

#### Vice President, Member of the Judgment Committee, and Judge of the Beijing Intellectual Property Court

CHEN Jinchuan, male, Han Nationality, born in January 1964, graduated as postgraduate, Master of Law, began to work in August 1989. After graduation, he worked at the Beijing High People's Court, and successively acted as a clerk, assistant judge, judge, Deputy Division Head, division heads, member of the Judgment Committee, full-time member of the Judgment Committee. He has held the present position since November 2014.

### 2.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	1
31-90	36
91-180	20
181-365	10

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	83
		Opposition Appeal	113
		Invalidation (dispute)	94
		Cancellation Appeal	119
	Patent	Rejection Appeal	88
		Invalidation	147

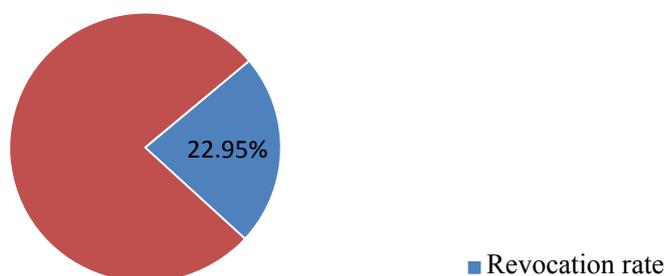
Civil	Trademark	Dispute over ownership and infringement of trademark right	177
	Copyright	Dispute over the ownership and infringement of copyright	130
	Unfair competition	Unfair competition	89

## 2.2 Revocation of Administrative Actions of Administrative Departments

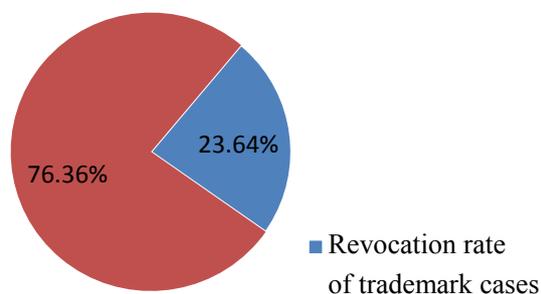
Among the sample data, there were 61 administrative intellectual property authorization and determination cases closed by means of judgment by Judge CHEN Jinchuan's team, including total 14 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 22.95%.

Wherein, there were 55 administrative cases of trademarks closed, including 13 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 23.64%; there were 6 administrative cases of patents closed, including 1 case involving revocation of administrative actions of administrative departments, with a revocation rate of 16.67%.

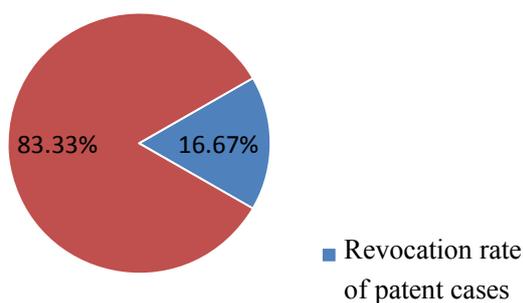
**Revocation rate of the cases about administration and determination of intellectual property rights of Judge CHEN Jinchuan's team in 2015**



**Revocation rate of the cases about administration and determination of trademarks of Judge CHEN Jinchuan's team in 2015**



**Revocation rate of the cases about administration and determination of patents of Judge CHEN Jinchuan's team in 2015**



### 2.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support Percentage
Dispute over the copyright ownership and infringement	1	535,000	12.71%

### 2.4 Word Count of the Judgment

Contents	Word Count
Total word count	326,632

Average word count	5,104
Average word count of theoretical part	1,735

## 2.5 Typical Cases

### (1) Cases tried with participation of technical investigation officers:

(2015) Jing Zhi Xing Chu Zi No. 5220

### (2) Other typical cases:

#### A. (2014) Jing Zhi Min Chu Zi No. 1

**Key Points of the Judgment:** Originality is the necessary prerequisite for the works to be protected by the *Copyright Law*, also is the essential attribute of the works, namely, the works should be created independently and reflects creativity, the plaintiff's claims that the names of anime and characters don't have originality, cannot enjoy copyright. Adapted works can be regarded as new works by the original work. The plaintiff claimed the five images of its games in the adaptation works basis on animation works, the court found that there was no essential difference between the game *Call Me MT* and the original anime in facial image and clothing, but the two works had significant differences in terms of weapons and clothing, and the difference has reached a basic level of highly creative works as required by art works. In addition, the court made a detailed and careful analysis on finding the defect in the no trial deed, and whether the name of mobile terminal game would constitute specific name of well-known goods, the determination of false promotion act, etc. In terms of the civil liability, market share of the game upon which the infringement has been made, and the attitude of the asserted infringing party and others have been fully considered to protect the interests of the right holder of the game to the maximum extent, and combat the unjustified actions to obtain other's interests.

**Typical meaning:** This case clarified that the ideas and directions of the intellectual property protection of the mobile terminal game industry. This case is influential to the developments of judicial examination the mobile terminal game industry. The game *Call Me MT* has very high reputation, and the infringing game *Super MT* is similar to *Call Me MT* in many aspects, makes this case a typical one.

**Note:** This case has been selected as one of the Top 14 Typical Cases closed by the intellectual property rights courts of Beijing, Shanghai and Guangzhou as released

by the Supreme People's Court, the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary, and the 2015 Top Ten Typical Cases of Judicial Protection by the Beijing Intellectual Property Court.

**B. (2015) Jing Zhi Xing Chu Zi No. 1720**

**Key Points of the Judgment:** The intent of creating the conflicting application clause is for avoiding double patenting. A design patent shall not constitute a conflicting application of invention or utility model, but may constitute as the prior art of invention or utility model. As a result, the decision reversed the Patent Reexamination Board's decision. Neither parties appeal to this decision.

**C. (2015) Jing Zhi Xing Chu Zi No. 3735**

**Key Points of the Judgment:** This case has defined the requirements for application of certification mark, which include requirements concerning the technicians and professional testing equipment, and the conditions for foreigners to apply for certification mark, etc. It has also made it clear that distinctiveness required for a trademark to achieve the function of a common trademark is not applicable to a certification mark.

**D. (2015) Jing Zhi Xing Chu Zi No.3737**

**Key Points of the Judgment:** This case has discussed whether a trademark or service mark can be a cited mark of certification mark. It concludes that in principle a trademark or service mark and a certification mark should not serve as a cited mark for each other, unless the relevant public would not recognize the application mark as certification mark.

**E. (2015) Jing Zhi Min Zhong Zi No. 122**

**Key Points of the Judgment:** Statutory license for broadcasting institution constitutes limitation on the right of broadcasting of the copyright holder, which shall be under the premises that the use of other's works by broadcasting station or TV station will not impair the substantial interests of the copyright holder. This is to require that broadcasting station or TV station using other's works shall respect the original works as much as possible, and may make proper changes in light of the broadcasting characteristics and requirements, provided that such changes shall not form any new works. Meanwhile, statutory license for broadcasting institute shall imply the affixing of author's name in other's works.

**Note:** This case has been selected as one of the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary and the 2015 Top Ten Innovative Cases of Judicial Protection by the Beijing Intellectual Property Court.

#### **F. (2015) Jing Zhi Min Zhong Zi No. 588**

**Key Points of the Judgment:** The Article 59(3) of the *Trademark Law* is a newly added provision aiming at balancing the interests between the prior use of trademark and the owner of registered trademark. The main purpose is to protect the interests of the owners of trademarks that have obtained certain influence in the market but have not been registered. This case clarifies four conditions for prior use defense in Article 59 (3) of the *Trademark Law*: (1) the existence of a prior use before the application date of trademark by others; (2) the prior use shall happen before use of the trademark by the registrant; (3) the prior used trademark shall bear certain influence; (4) the accused infringing use by others should be within the original scope.

In applying condition (1), good faith of the prior user should be taken as an important factor for consideration. If the prior user is not aware of the previous use by the trademark registrant, and there is no other evidence to prove bad faith on the part of the prior user, the prior use defense cannot be rejected on ground of the prior use by the trademark registrant.

If the trademark is used with true intention and has the identifying function through use in the use region, it would meet the requirement of “certain influence” in condition (3).

As to the understanding of “original scope” in condition (4), the factors of “trademark”, “goods or services”, “use” and “entity to use”, etc., should be taken into consideration. The later used trademark and its goods or services should be “identical” or “basically identical” with the previous used trademark and its goods or services. The entity to use is confined to “prior user” itself and the prior authorized “licensed user”, but the scope of use of the later used trademark is not confined to the scope of prior use.

**Note:** This case has been selected as the 2015 Top Ten Innovative Cases of Judicial Protection by the Beijing Intellectual Property Court.

### 3. Team of Judge SONG Yushui

#### Judge SONG Yushui

#### Vice President, Member of Judgment Committee, and Judge of the Beijing Intellectual Property Court

Judge SONG Yushui, female, Han Nationality, born in February 1966, graduated as an on-job undergraduate, holding doctor's degree of law, started to work in August 1989. After graduation, she worked at the Beijing Haidian District People's Court, and successively acted as a clerk, assistant judge, judge, Deputy Division Head, division head, member of Judgment Committee, and Vice President. In May 2014, she was transferred to the Beijing Third Intermediate People's Court, and successively acted as Vice President, member of Judgment Committee, and judge. She has held the present position since November 2014.

#### 3.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	2
31-90	14
91-180	24
181-365	2

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	124
		Opposition Appeal	79
		Invalidation (dispute)	120
	Patent	Invalidation	97
Civil	Trademark	Dispute over ownership and infringement of trademark right	11

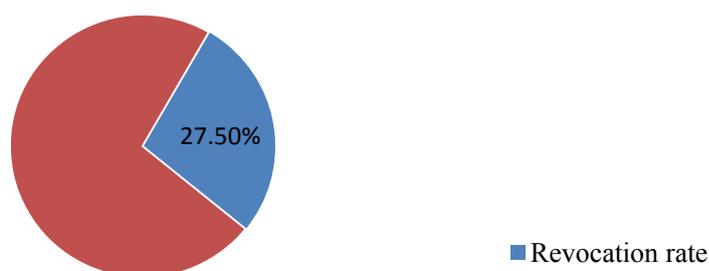
	Copyright	Dispute over the ownership and infringement of copyright	23
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### 3.2 Revocation of Administrative Actions of Administrative Departments

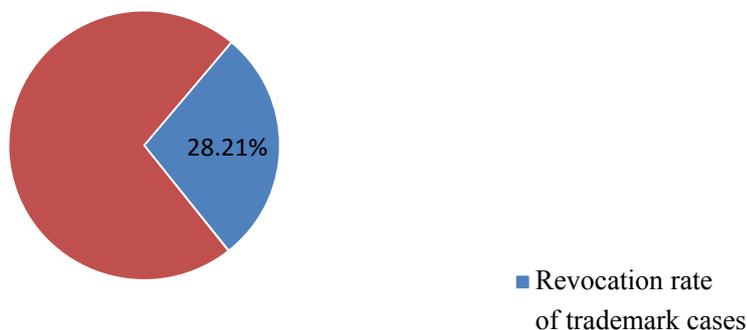
Among the sample data, there were 40 administrative intellectual property authorization and determination cases closed by means of judgment by Judge SONG Yushui's team, including total 11 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 27.50%.

Wherein, there were 39 administrative cases of trademark closed, including 11 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 28.21%; and there were 1 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge SONG Yushui's team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge SONG Yushui's team in 2015**



### 3.3 Word Count of the Judgment

Contents	Word Count
Total word count	233,084
Average word count	5,550
Average word count of theoretical part	2,208

### 3.4 Typical Cases

**(1) Cited Cases: (2015) Jing Zhi Min Zhong Zi No. 1619**

**Key Points of the Judgment:** The Statutory compensation set out in the *Copyright Law* refers to where neither party to the action can prove by evidence the amount of actual loss or illegal gains, the judge may determine a compensation amount less than RMB 500,000. Though illegal gains of the infringing party and the actual loss of the right holder cannot be ascertained based on the available evidence, but it is certain that the loss would exceed the statutory compensation amount based on the current evidence, the compensation amount shall be determined, in light of the actual circumstances, beyond the statutory compensation. The gaming industry has the characteristics of various operation and promotional platforms and higher profits, thus an infringement on an original game, particularly a well-known original game, will impose a substantial impact on the developments of the game. For the purpose of protecting cultural and innovative gaming industry, it's necessary to increase the penalty against infringement and the degree of infringement liability, raise the cost of infringement, and provide sound judicial intellectual property environment for the developments of the gaming industry.

**Cited Case:** (2015) Jing Zhi Min Zhong Zi No. 925

**(2) Cases Participated in by Technical Investigator:**

(2015) Jing Zhi Xing Chu Zi No. 5191

**(3) Other Typical Case:**

**A. (2015) Jing Zhi Xing Chu Zi No. 951**

**Key Points of the Judgment:** In treating cases of “cancellation for non-use in three years”, principles for review should be established and an overall consideration should be made on the situation of use before and after the three-year period, so as to avoid making a mechanical review only on the three years as specified. Even in the case of defects found in a certain piece of evidence, an effective use of trademark may be established if all the evidence can form a complete chain.

**B. (2015) Jing Zhi Xing Chu Zi No. 1279**

**Key Points of the Judgment:** Agreement of Coexistence is a statement made by the owner of the Cited Mark agreeing to apply for registration of a trademark, which, as such, does serve to judge if the goods and marks are similar. Trademark right authorization and confirmation is an administrative action, yet autonomy of will is also one of the factors that should be considered, as the right granted is a civil one and civil relationship between the parties will be involved. The owner of the Cited Mark has the closest interest in that Mark, whose agreement to apply for registration and use of the trademark would mean that the act of applying for registration of trademark will not harm the interests of the owner of the Mark, which, however, may not necessarily prevent damage to the consumer and other operators in the market.

If the trademark applied for is highly similar to the Cited Mark, which enables the public concerned to directly decide if the mark is an identical or similar marks used on identical or similar goods, registration of the trademark will lead to market confusion and loss of trademark function of identifying and distinguishing, thus violating the fundamental function of a trademark and breach the purpose of the *Trademark Law*. In such case, a clear judgment may be made without relying on the trademark coexistence agreement.

If, however, the trademark bears certain difference from the Cited Mark and the

public concerned could not directly decide whether the mark is identical/similar marks on identical/similar goods, where the owner of the Cited Mark who has the closest interest in the Cited Mark agrees to the coexistence of the mark, the coexistence agreement may be taken as a preliminary evidence to prove that the trademark will not cause confusion in the market. From the perspective of cognitive ability, as the owner of Cited Mark who is of higher cognitive ability would not think that confusion will not be caused, there will be no confusion and misunderstanding on the part of other market operators as to the source of goods concerned.

#### **C. (2015) Jing Zhi Xing Chu Zi No.1673**

**Key Points of the Judgment:** In this case, basic requirements for renewal of trademark registration are defined, that is the trademark primarily registered has acquired through use certain reputation, leading the relevant public to associate a later application by the trademark owner for identical or similar trademark for use on identical or similar goods with the original trademark, to believe that the goods on which the mark is used all come from the registrant or have a specific connection to the registrant, and that the commercial reputation of the original trademark can be carried on by the later trademark.

Renewal of trademark registration should be based upon no confusion among relevant public. In this case, the judicial decision has clearly defined the basic conditions for renewal of trademark registration, that is, the original trademark should be similar to the later trademark, should be used on similar goods and services, and the original trademark should obtain certain reputation through actual use.

#### **D. (2014) Jing Zhi Min Zhong Zi No. 79**

**Key Points of the Judgment:** This case clarified that under network environment, though website operators and hardware producers may fall into different industries, they may still be competing with each other since the core interests of success lie in the number of network users.

**Note:** This case was selected as one of the “Top 14 Typical Cases Closed by the Beijing, Shanghai, and Guangzhou Intellectual Property Court” released by the Supreme People’s Court, and the 2015 Top Ten Innovative Cases of Judicial Protection by the Beijing Intellectual Property Court.

### E. (2014) Jing Zhi Min Zhong Zi No. 134

**Key Points of the Judgment:** This case dealt with legal issues on the application of the defense of unregistered trademarks prior use, presented a detailed reasoning on the application factors of prior use defense under Article 59(3) of the *Trademark Law*, and provided deep analysis on prior mark use, marks reputation, subjective attitude of users and other issues, which certainly has a strong reasoning.

**Note:** This case was selected as one of the “Top 14 Typical Cases Closed by the Beijing, Shanghai, and Guangzhou Intellectual Property Court” released by the Supreme People’s Court, and the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

## II. Data of Presiding Judge Teams

Among the sample data, the four presiding judges of the Beijing Intellectual Property Court closed total 427 cases in 2015, per capita 107 cases closed, accounted for 8.50% of total samples; the total word count of the judgment instructions about the cases closed by the presiding judges was 1,452,200 words, per capita 363,000 words.

Items		Division heads			
		DU Changhui	JIANG Ying	ZHANG Xiaojin	ZHANG Xiaoxia
<b>Total number of cases</b>		136	104	108	79
<b>Case Type</b>	Trademark	24	73	72	44
	Patent	6	10	23	14
	Copyright	88	20	11	14
	Others	18	1	2	7
<b>Case Nature</b>	Administrative	23	81	78	54
	Civil	113	23	30	25
<b>Trial Level</b>	First Instance	25	86	90	58
	Second Instance	111	18	18	21
<b>Case Conclusion</b>	Judgment	6	66	78	60
	Ruling	129	32	19	9
<b>Method</b>	Mediation	1	6	11	10

## 1. Team of Judge DU Changhui

### Judge DU Changhui

#### Member of Judgment Committee, Head of the Third Adjudication Division, and Judge of the Beijing Intellectual Property Court

Judge DU Changhui, male, Han Nationality, born in September 1968, graduated as an on-job undergraduate, Master of Law, started to work in July 1991. After graduation, he worked at the Beijing Shijingshan District People’s Court, successively acted as a clerk, assistant judge, judge, Deputy Division Head, office director, member of Judgment Committee, and Vice President. In July 2013, he was transferred to the Beijing Third Intermediate People’s Court, and acted as member of Judgment Committee, division head, and judge. He has held the present position since November 2014.

### 1.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
31-90	1
91-180	3
181-365	2

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	171
		Opposition Appeal	127
		Invalidation (Dispute)	99
Civil	Trademark	Dispute over ownership and infringement of trademark right	82
		Unfair competition	213

### 1.2 Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were 4 administrative intellectual property authorization and determination cases closed by means of judgment by Judge DU Changhui's team, all were authorization and determinant of trademarks cases, including 0 case involving revocations of administrative actions of administrative departments.

### 1.3 Word Count of the Judgment

Contents	Word Count
Total word count	46,108
Average word count	7,685
Average word count of theoretical part	1,915

### 1.4 Typical Cases

#### A. (2015) Jing Zhi Min Zhong Zi No. 654

**Key Points of the Judgment:** The case involved the unfair competition disputes between Beijing Sougou Information Service Company and Beijing Qihoo Technology Company. Operators shall comply with the relevant rules when rendering services to network users, and shall not acquire benefits at the cost of influencing the fair and lawful operation of other operators. Any operation which may bring good services to extensive network users without impairing other's fair rights shall be supported by the laws; however, any operations provides network user services by forcibly alter other's operation style, obtaining own benefits by damaging other's interests. Such competition based on damaging other operator's justified interests shall not be recognized by the unfair competition laws.

**Note:** This case was selected as the 2015 Top Ten Innovative Cases of Judicial Protection by the Beijing Intellectual Property Court.

#### B. (2015) Jing Zhi Min Zhong Zi No. 1046

**Key Points of the Judgment:** The principle of claim preclusion is the basic principle in civil lawsuits, which basically requires that upon the judgment come into force, the interested parties shall not initiate another lawsuit based on the prior disputed facts. The principle of claim preclusion not only requires that parties involved to be identical, but that the subject of trial (subject of lawsuit)

shall be identical as well. A lawsuit's subject is also called a lawsuit's target, which means the target to be tried and judged in a civil lawsuit reflects the legal relationships claimed by the interested parties. In this case, the works claimed and the interested parties and the contents of the complaint were basically identical. The new lawsuit's claims for requests also carried the characteristics of substantially denying the prior judgment. However, the lawsuit targets of the two cases were different; in other words, the claim by Zhixian Wei of the relevant rights to the Teaching Material in the form of inseparable works was inconsistent with the rights claimed in the previous in the Teaching Material. Therefore, the lawsuit initiated by Zhixian Wei did not constitute a double lawsuit.

### C. (2015) Jing Zhi Min Chu Zi No. 1446

**Key Points of the Judgment:** This case involved a bad faith intellectual property damage liability dispute. Generally, the interested party in a lawsuit shall be clearly of its grounds of rights. Where the interested party initiated a lawsuit without any grounds of right, that party shall be deemed to initiate it with bad faith. To determine whether a patent infringement lawsuit is initiated with bad faith, the complexity of the patent right shall be considered combining with the patentee's actual behaviors in the invalidation procedure, and any special actions in the subsequent patent infringement lawsuit. This case's judgment clarified the patentee's boundary for enforcing its rights, especially under a background of the docketing system, which helped to regulate the rights holder's litigation actions, and guide the rights holder to enforce under the laws. This case has a certain degree of referential guidance to adjudicating a bad faith intellectual property damage liability dispute.

## 2. Team of Judge JIANG Ying

### JIANG Ying

#### Member of Judgment Committee, Head of First Adjudication Division, and Judge of the Beijing Intellectual Property Court

Judge JIANG Ying, female, born in October 1968, Han Nationality, graduated from university, Master of Law, started to work in July 1994. After graduation, she worked

at the former Beijing Intermediate People’s Court as a clerk. In July 1995, she was transferred to the Beijing First Intermediate People’s Court, successively acted as a clerk, assistant judge, judge, deputy division head, division heads. She has held the present position since November 2014.

## 2.1 Length of Trial

**Table 1**

Length of Trial(day)	Caseload (case)
≤30	1
31-90	37
91-180	21
181-365	5
More than 1 year	2

**Table 2**

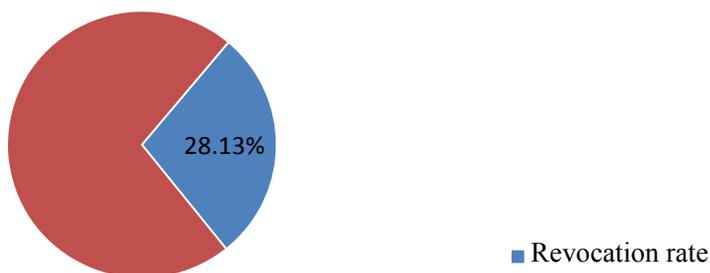
Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	71
		Opposition Appeal	104
		Invalidation (dispute)	155
		Cancellation Appeal	95
	Patent	Rejection Appeal	249
		Invalidation	285
Civil	Copyright	Dispute over the ownership and infringement of copyright	69

## 2.2 Revocation of Administrative Actions of Administrative Departments

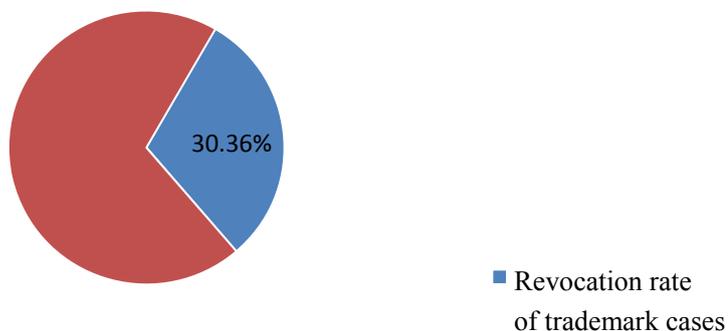
Among the sample data, there were 64 administrative intellectual property authorization and determination cases closed by means of judgment by Judge JIANG Ying’s team, including total 18 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 28.13%.

Wherein, there were 56 administrative cases of trademarks closed, including 17 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 30.36%; and there were 8 administrative cases of patents closed, including 1 case involving revocation of administrative actions of administrative departments, with a revocation rate of 12.50%.

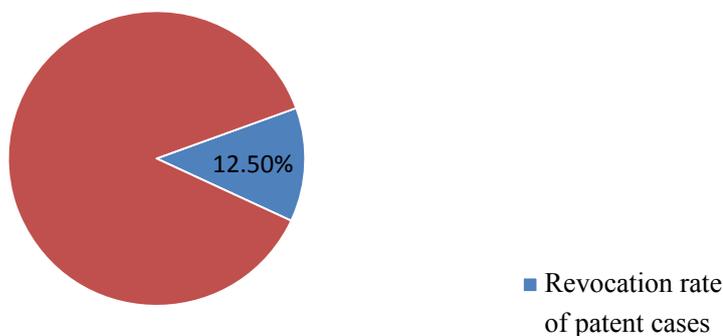
**Cancellation rate of the cases about authorization and determination of intellectual property rights of Judge JIANG Ying's team in 2015**



**Revocation rate of cases about authorization and determination of trademarks of Judge JIANG Ying's team in 2015**



**Revocation rate of cases about authorization and determination of patents of Judge JIANG Ying's team in 2015**



## 2.3 Word Count of the Judgment

Contents	Word Count
Total word count	324,007
Average word count	4,909
Average word count of theoretical part	2,012

## 2.4 Typical cases

### (1) Cited Cases:

#### A. (2015) Jing Zhi Xing Chu Zi No. 33

##### **Key Points of the Judgment:**

Regarding a product's claims, where the literal description on tags and packing slips could imply the characteristics of the product in terms of structure and composition, it shall be deemed that the character description substantially limited the product's claims, which shall be taken into consideration; where the character description will not bring any changes to the structure and composition of the product sought for protection in the claims, it shall not be considered. For a claim of drug production, only raw material, preparation steps and process conditions, form or composition of the drug product, and equipment will impose direct limiting function, and the characteristics in the drug using behavior shall not impose any limitation.

**Cited Case:** (2012) Zhi Xing Zi No. 75

#### B. (2015) Jing Zhi Xing Chu Zi No. 4851

**Key Points of the Judgment:** On whether a sign similar to an advertising slogan cannot be registered as trademarks due to a lack of distinctiveness, the Beijing First Intermediate Court has made a decision in a previous effective judgment. The court holds in that judgment that if use of cannot make consumers to believe that it is a trademark in use; such a sign does not possess inherent distinctiveness. As the relevant public has a general acknowledge as to the form of a trademark, that is, the trademark should be composed of simple word, design or combination thereof. If a sign does not have the normal form of a trademark, such sign will not be deemed to have inherent distinctiveness. If the trademark "Leading the Way in Steering Solutions" is used on goods or services, the relevant public will believe

that it represents an advertising phrase or a slogan, not a trademark, it therefore does not possess inherent distinctiveness. Compared with the precedent, the disputed trademark in this case “THE REAL YOU IS SEXY” is not simple words, design or combination thereof, the trademark used on skin care cosmetics, hair conditioner and other goods does not conform to the common recognition of relevant public toward normal form of a trademark. Using the disputed trademark on such goods will make the relevant public to believe that it serves to be an advertising phrase or a slogan, not a trademark, and thus it cannot identify sources of goods and have the inherent distinctiveness. In judging the distinctiveness of the disputed trademark, the judge of this case should therefore, keep consistency with prior effective judgment of holding that the disputed trademark does not have the function of identifying sources of goods, and hence does not have the distinctive feature.

**Cases Cited:** (2010) Yi Zhong Zhi Xing Chu Zi No. 1503

## **(2) Other Typical Case:**

### **A. (2015) Jing Zhi Xing Chu Zi No. 4330**

**Key Points of the Judgment:** Openness is a basic principle for administration bylaw, and is a basic requirement of rule of law. According to the requirements of administrative openness, during the process of examining on trademark registration, the trademark registration examination authority should notify the applicant of the Rules on Administration of Use of Certification Mark submitted by the applicant being not in compliance with the specific circumstance as stipulated by Measures for the Registration and Administration of Collective Marks and Certification Marks, and give the applicant the opportunity to modify and correct, so as to ensure the interests of the applicant. The review decision only states that: “... the Rules on Administration of Use of Certification Mark provided does not conform to Measures for the Registration and Administration of Collective Marks and Certification Marks,” but remains unclear as to which clauses of the administration rules are referred to and why the administration rules do not conform to the measures for administration of certification marks, causing the applicant to bear loss as to how to modify and complete the relevant trademark administration rules in the subsequent process, which is in violation of the basic requirements of administrative openness.

**B. (2015) Jing Zhi Xing Chu Zi No. 3204**

**Key Points of the Judgment:** Whatever the specific form, the essence of a sign that “lacks distinctive features” is that it cannot function to identify the source of goods or services. If the specific mark can identify the sources of goods or services, it shall be deemed as a mark possessing distinctive feature for trademark registration. As to whether a sign conveying operator information can be registered as a trademark, the key issue is still that the sign itself should be able to identify the sources of goods or services. The sign cannot be deemed to have lacked distinctiveness directly and be disapproved for registration just because it can only convey operator information.

**C. (2015) Jing Zhi Xing Chu Zi No. 2188**

**Key Points of the Judgment:** Generally, the Trademark Review and Adjudication Board should mainly review the applicant’s requests, facts and reasons, and the response of the respondent, the part of the response beyond the applicant’s request should not be included in the scope of review. Article 53 of the *Implementing Regulations of the Trademark Law* in 2014 provides that if the opinions of the original opponent have substantial effects on the hearing result of the case, they can be taken as evidence for review and adjudication. In general, “the opinions of the original opponent” shall not go beyond the scope of the opposition decision made by the Trademark Office, unless relevant opinions relate to provisions of Article 10, Article 11 and Article 12 of the *Trademark Law*.

**D. (2015) Jing Zhi Xing Chu Zi No. 6012**

**Key Points of the Judgment:** Signs prescribed in Article 1(1)(ii) of the *Trademark Law* are descriptive signs, the use of which is restricted by the factors of distinctiveness and horizontal competition. The signs may be registered as trademarks if they have acquired the distinctive features through use and become readily identifiable. Whether the signs have acquired the distinctive features through use shall be decided based on the judgment standard that a sole and stable relationship has been created between such signs and the plaintiff after actual use, which is sufficient to enable the relevant public to identify the source of service. In this case, “Shanghai-Shenzhen 300 Index” has already established a sole and stable relationship with the plaintiff through its use, which enables the relevant public to distinguish the sources of service. The sign has acquired the required distinctive

features and become readily identifiable, thus may be registered as a trademark. The application for the trademark at issue is not in violation of Article 11 of the *Trademark Law*.

### 3. Team of Judge ZHANG Xiaojin

#### Judge ZHANG Xiaojin

#### Member of Judgment Committee, Head of Second Adjudication Division, and Judge of the Beijing Intellectual Property Court

Judge ZHANG Xiaojin, female, Han Nationality, born in March 1970, graduated as an on-job undergraduate, Doctor of Law, began to work in July 1992. After graduation, she worked at the former Beijing Intermediate People’s Court as clerk. In May 1995, she was transferred to Beijing Second Intermediate People’s Court, successively acted as a clerk, assistant judge, judge, deputy division head, division heads. She has held the present position since November 2014.

#### 3.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	1
31-90	18
91-180	45
181-365	13

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	92
		Opposition Appeal	83
		Invalidation (dispute)	118
		Cancellation Appeal	225
	Patent	Rejection Appeal	224

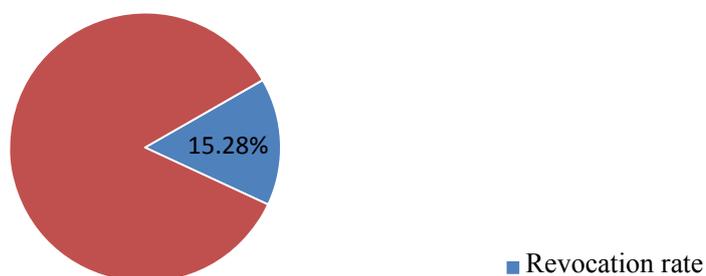
		Invalidation	161
Civil	Trademark	Dispute over ownership and infringement of trademark right	197
	Patent	Dispute over the ownership and infringement of patent right	338
	Copyright	Dispute over the ownership and infringement of copyright	43

### 3.2 Revocation of Administrative Actions of Administrative Departments

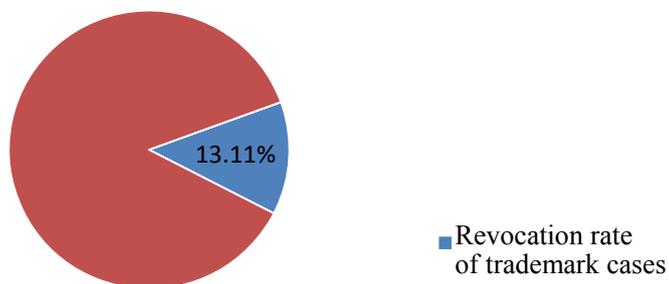
Among the sample data, there were 72 administrative intellectual property authorization and determination cases closed by means of judgment by Judge ZHANG Xiaojin's team, including total 11 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 15.28%.

Wherein, there were 61 administrative cases of trademarks closed, including 8 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 13.11%; there were 11 administrative cases of patents closed, including 3 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 27.27%.

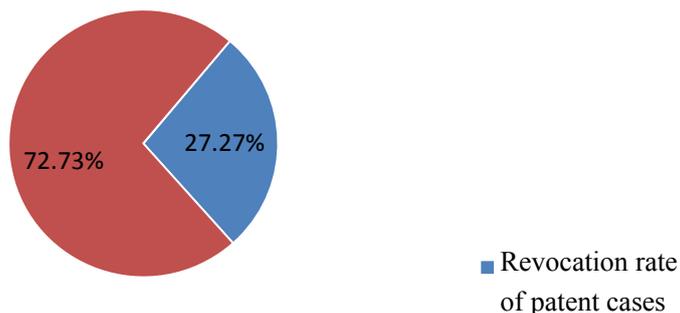
**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge ZHANG Xiaojin's Team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge ZHANG Xiaojin's team in 2015**



**Revocation rate of the cases about authorization and determination of patents of Judge ZHANG Xiaojin's team in 2015**



### 3.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Invention patent infringement dispute	1	1,562,000	21.88%

### 3.4 Word Count of the Judgment

Contents	Word Count
Total word count	472,572
Average word count	6,059
Average word count of theoretical part	1,754

### 3.5 Typical Cases

#### (1) Previous cases quoted:

- I. 2015 Jing Zhi Xing Chu Zi No. 2600  
[Case Quoted] (2012) Gao Xing Zhong Zi No. 1043
- II. 2015 Jing Zhi Xing Chu Zi No. 3097  
[Case Quoted] (2014) Zhi Xing Zi No. 125

#### (2) Cases tried with participation of technical investigation officers:

- I. (2015) Jing Zhi Xing Chu Zi No. 2655
- II. (2015) Jing Zhi Xing Chu Zi No. 2227
- III. (2015) Jing Zhi Xing Chu Zi No. 2656

#### (3) Cases with compensation higher than maximum of statutory compensation:

##### (2014) Jing Zhi Min Chu Zi No. 5

**Key Points of the Judgment:** When determining the manufacturing seller of an involved infringing product, the decision made a determination of the existing evidence based on the customary industrial practice of selling set of drive head, wire, and valve body, which ascertained the disputed infringing product, was manufactured and sold by the defendant Hen Seng Company. Upon comparison, the defendant's action constituted infringement when the involved infringement product fell into the scope of protection of the plaintiff's involved patent. As a result, the decision awarded a damage of RMB 1.5 million that was higher than the statutory damage, based on the two defendant's infringement's nature, length of the infringement, the scope of its influence and other factors.

#### (4) Other Typical Case:

##### A. (2015) Jing Zhi Min Zhong Zi No. 153

**Key Points of the Judgment:** According to the provisions of the *Trademark Law*, during the hearing of disputes over conflicts between trademark and enterprise name, legal rights and interests of the owner of enterprise name that has been registered legally and used previously shall be protected, that is, if the trade name of the enterprise name registered legally and used before the application date of the registered trademark is identical or similar to others' trademark, the user of the enterprise name is entitled to continue using the name, but it shall use the

enterprise name fairly and reasonably. This case makes an in-depth analysis on Beijing Deheng Law Office's use of wording similar to the registered trademark "DeHeng," and holds that the use of the enterprise name is a fair use and no infringement is established.

#### **B. (2015) Jing Zhi Xing Chu Zi No. 410**

**Key Points of the Judgment:** The significance of this case lies in its determination of trademark co-existence agreements. In this case, disputed trademark and cited trademark are slightly different. In general, if disputed trademark and cited trademark belong to different market entities, using them at the same time may cause confusion and misleading relevant public as to the sources of goods. However, based on existing evidence, it can be identified that the owner of cited trademark and the plaintiff are the entities of same interests. Furthermore, if the owner of cited trademark provides a Declaration of Co-existence Agreement agreeing to the registration of disputed trademark, the Declaration of Co-existence Agreement may be considered in judging whether the disputed trademark should be registered. Therefore, the decision made by the Trademark Review and Adjudication Board should be cancelled.

### **4. Team of Judge ZHANG Xiaoxia**

#### **Judge ZHANG Xiaoxia**

#### **Member of Judgment Committee, Head of Trial Supervision Tribunal, and Judge of the Beijing Intellectual Property Court**

Judge ZHANG Xiaoxia, female, Han Nationality, born in August 1967, graduated as a postgraduate, Doctor of Law, began to work in September 1991. After graduation, she worked at the former Beijing Intermediate People's Court as a clerk. In May 1995, she was transferred to the Beijing First Intermediate People's Court, successively acted as a clerk, assistant judge, and assistant to division head, deputy division head, and judge. She has held the present position since November 2014.

#### **4.1 Length of Trial**

**Table 1**

<b>Length of Trial (day)</b>	<b>Caseload (case)</b>
------------------------------	------------------------

31-90	18
91-180	28
181-365	10
More than 1 year	1

**Table 2**

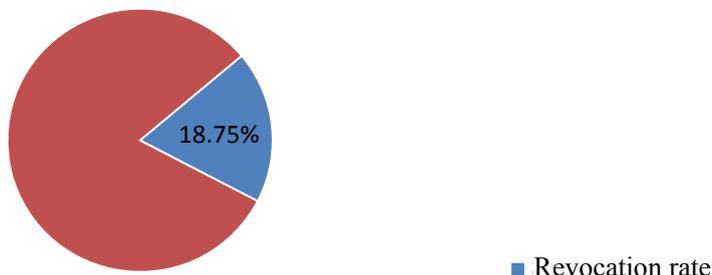
Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	82
		Opposition Appeal	172
		Invalidation (dispute)	147
		Cancellation Appeal	119
	Patent	Rejection Appeal	161
		Invalidation	170
Civil	Copyright	Dispute over the ownership and infringement of copyright	84
	Patent	Dispute over the ownership and infringement of patent right	155

## 4.2 Revocation of Administrative Actions of Administrative Departments

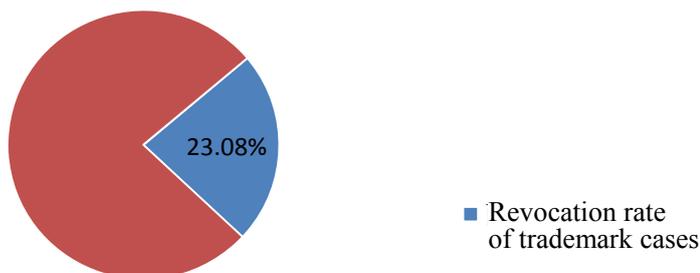
Among the sample data, there were 48 administrative intellectual property authorization and determination cases closed by means of judgment by Judge ZHANG Xiaoxia's team, including total 9 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 18.75%.

Wherein, there were 39 administrative cases of trademarks closed, including 9 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 23.08%; there were 9 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge ZHANG Xiaoxia's team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge ZHANG Xiaoxia's team in 2015**



### 4.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Appearance design patent infringement dispute	1	3,200,000	100.00%

### 4.4 Word Count of the Judgment

Contents	Word Count
Total word count	411,477
Average word count	6,858
Average word count of theoretical part	2,306

### 4.5 Typical Cases

## (1) Cited Cases

### A. (2015) Jing Zhi Xing Chu Zi No.4672

**Key Points of the Judgment:** In this administrative case of trademark non-use cancellation for three years, the disputed trademark designated on the goods identical or similar to the goods in actual use has been maintained, while the trademark on the goods not identical or similar to the goods in actual use will be cancelled.

**Cases Cited:** (2014) GAO Xing (Zhi) Zhong Zi No.3737

### B. (2015) Jing Zhi Xing Chu Zi No.5136-5137

**Key Points of the Judgment:** Citing a precedent to support the judgment can enhance the reasoning of the legal argument. If the view not adopted in the judgment is supported by the precedent, pointing out the difference between the precedents and the subject case for illustrating it can also enhance the reasoning. In the administrative judgment on opposition review against “design mark (No. 3461360)” ((2013) Gao Xing Zhong Zi No. 840, the Beijing High Court holds that, in judging the distinctive part of a combination trademark, which is composed of foreign words and design, the low degree of recognition of foreign language and high degree of recognition of the design by Chinese public concerned shall be considered. Meanwhile, the fundamental principle for judging the similarity between trademarks is to look at and compare their overall appearance. The fact that the Chinese relevant publics have a low degree of recognition toward foreign language and high degree of recognition toward design should be considered as one of the factors. Although both this case and the precedent involve trademarks consisting of foreign words and design, the trademarks are different in the proportion of words and design, font, particular meanings of the words, etc., the judgment in this case is therefore different from that in the precedent.

### C. (2015) Jing Zhi Xing Chu Zi No. 5150

**Key Points of the Judgment:** The interested party claimed that the adjudication shall follow the precedents and submitted it to the court. The court should take this claim into consideration and respond, using the relationship between the submitted precedents and this case as a question presented and adjudicate. In this case, the

collegiate panel ascertained through case identification skill to determine that the rules in the precedents were not identical with the claim of the party in the current case, and that the applicable circumstances of the precedent's rules were not identical with circumstances of the current case. For this purpose, the party's claim to follow precedents in this case was not accepted.

The judgment commented on the precedents submitted by interested parties.

## (2) Other Typical Cases

### A. (2014) Jing Zhi Min Chu Zi No. 146

**Key Points of the Judgment:** The case involved a monopoly dispute. Consumers instituted the anti-monopoly civil compensation lawsuit based on the notice of a penalty decision issued by the anti-monopoly law enforcement authority regarding the monopoly agreement involving fixing the price of resale commodity, in which the focus was the association of facts involved in the notice of penalty decision with the loss claimed by the party involved. Rules applied in the case were that, without contrary evidence, it shall be ascertained that issues contained in the notice of penalty notice constituted facts. Since the notice of penalty decision has identified that Abbott Company has reached monopoly agreement with the counterparty to fix the price of commodity resale to third parties; though the notice of penalty decision has not indicated the counterparty, Abbott Company and Carrefour Shuangjing Store shall be obligated to deliver their agreement to prove that the Goods Contract between them were beyond the scope of the notice of penalty decision. Another focus in the case was that whether indirect purchaser was allowed to institute the anti-monopoly civil compensation lawsuit. Rules applied in the case were that consumers indirectly purchased goods may initiate a civil lawsuit on the monopoly behavior. As the notice of penalty decision has ascertained that Abbott was involved in monopoly, which may remove and limit competitions, and consumers indirectly purchased goods shall have the burden of proof for the causal relationship between the loss claimed and the monopoly actions.

### B. (2015) Jing Zhi Xing Chu Zi No. 977

**Key Points of the Judgment:** Whether prejudice to the right of prior personal name has been caused or not shall be explained within the *Trademark Law* and the infringement by interference, usurpation and false representation prescribed in

Article 99 of *General Civil Law* shall apply. Due to close tie between recognition function of personal name of certain fame and a particular person, the relevant publics are likely to believe that specific goods or services are sourced from a specific person or have some relations with that person. Registering a personal name as a trademark is therefore an act of false representation, which does not only cause confusion among the relevant public and also cause prejudice to commercial interests of the owner of name right.

**C. (2015) Jing Zhi Xing Chu Zi No. 4721**

**Key Points of the Judgment:** The Trademark Review and Adjudication Board has changed a decision by Trademark Office from applying the provisions of Article 10(1)(viii) of the *Trademark Law* to applying the provisions of Article 10(1)(vii) of the *Trademark Law* without giving the applicant an opportunity to be heard, which should not be deemed a violation of legal procedure due to the following two reasons: 1. The applicant has in fact made a statement where defense is provided against the grounds that the term ZHENPINGOU in Chinese as a trademark can easily mislead consumers; 2. As change from applying the provisions of Article 10(1)(viii) of the *Trademark Law* to applying the provisions of Article 10(1)(vii) of the *Trademark Law* does not involve proof of facts, the party's not being given an opportunity to be heard will not cause loss of his substantial rights resulted from missing provision of evidence.

**D. (2015) Jing Zhi Xing Chu Zi No. 5154**

**Key Points of the Judgment:** Scope of administrative case review is limited to the facts based on which the administrative authority conducts a specific administrative action. However, trademark administrative cases are special and the purpose of trademark administrative proceedings is not only to review a specific administrative act made by the Trademark Review and Adjudication Board, but also to judge on the qualification of the applicant to register and hold trademarks. The result of trademark administrative proceedings will directly affect civil rights of the parties. Therefore, the objective fact that has already changed cannot be ignored. In this case, since the approved goods of the cited trademark have changed during the court hearing, the facts based on which the Trademark Review and Adjudication Board makes a judgment has also changed. The court has therefore made a judgment on whether the cited trademark constitutes after the change a prior right obstacle based on the approved goods of the cited trademark.

**E. (2015) Jing Zhi Min Zhong Zi No. 1986**

**Key Points of the Judgment:** In copyright infringement lawsuits, where the source of right of a right holder originated from an authorization of a foreign company, the premises of the authorization come into force shall be that the work's copyright involved in the case shall be legal and valid. In this case, though both parties were Chinese companies and no international treaty has been involved, but in deciding whether the copyright of the works involved are legal and valid, the court shall still first determine whether relevant international treaties shall be applicable to copyright of foreign companies, and cannot avoid this determination.

**F. (2015) Jing Zhi Xing Min Chu Zi No. 4679**

**Key Points of the Judgment:** This case presented a difficult issue of whether Mobicool International Led's effective opposition decision of the trademark dispute held by the Chinese Trademark Office (CTMO), during the implementation of the *Trademark Law (2001)*, can used as an argument to preclude the invalidation proceeding. The rules clarified in this case were: during the transition period between the old and new *Trademark Law*, the interested party shall not lose its relief because of the amendments, neither shall the interested party gain additional relief because the new amendments changed the dispute proceeding in the 2001 law into the new invalidation proceeding. Mobicool's raised a defense that the disputed trademark went through opposition proceeding, where the CTMO allowed the registration and the party did not move the case forward to the opposition appeal proceeding, thus the invalidation proceeding shall be precluded. However, Mobicool's facts and claims for the invalidation were different than those raised during the opposition; therefore it would not be precluded.

**G. (2015) Jing Zhi Min Zhong Zi No. 925**

**Key Points of the Judgment:** Article 49 of the *Copyright Law* states detailed and clear provisions on the rules of determination of the amount damages. Loss arise from infringement upon copyright is loss of ascertained future interests, which is difficult to prove. Therefore, the law granted judges the right to determine the amount within the statutory limit according to specific circumstances, which the determined amount cannot be brake through. However, the court of the first instance decided the amount of damages beyond the ceiling of the statutory compensation amount of RMB 500,000, considered the

inventiveness and reputation of the subject matter involved, the application manner of the subject matter by Aimeide Company, the continuous use period, and aesthetic appearance of the subject matter involved, etc. which may contribute to the illegal gains acquired by Aimeide Company from the infringement, the illegal gains of the infringing party can be considered in light of the specific circumstances. Accordingly, the second instance judgment sustained the first instance court's judgment.

**Note:** This case has been selected as one of the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary and the 2015 Top Ten Typical Cases of Judicial Protection by the Beijing Intellectual Property Court.

### III. Data of Other Judge Teams

The 7 judge teams selected at random from the first 18 personnel-system judges having worked for more than one full year in the Beijing Intellectual Property Court, according to the sample data, closed 1,758 cases in total, per capita 251 cases closed, accounted for 35.01% of total samples; the total word count of the judgment on the cases closed was 6,611,200 words, per capita 944,500 words. The above-mentioned data are enough to prove the heavy trial workload of the judges at the Beijing Intellectual Property Court in 2015.

Items		Judge						
		RUI Songyan	JIANG Shuwei	ZHOU Liting	LI Yanrong	ZHANG Jian	ZHAO Ming	FENG Gang
<b>Total number of cases</b>		257	224	276	244	265	251	241
<b>Case Type</b>	Trademark	169	148	175	161	161	184	148
	Patent	34	32	45	39	31	20	25
	Copyright	42	41	52	35	53	45	56
	Others	12	3	4	9	20	2	12
<b>Case Nature</b>	Administrative	183	157	197	181	162	200	157
	Civil	74	67	79	63	103	51	84
<b>Trial Level</b>	First Instance	208	181	225	200	204	206	179
	Second Instance	49	43	51	44	61	45	62

<b>Case</b>	Judgment	209	162	195	186	183	223	198
<b>Close</b>	Ruling	39	59	77	47	71	12	24
<b>Method</b>	Mediation	9	3	4	11	11	16	19

## 1. Team of Judge RUI Songyan

### Judge RUI Songyan

#### Judge of the Beijing Intellectual Property Court

Judge RUI Songyan, female, born in April 1975, Han Nationality, graduated as postgraduate, Doctor of Law, began to work in July 1994. After graduation, she worked at the Beijing First Intermediate People’s Court, successively acted as a clerk, assistant judge, deputy division head, and judge. She has held the present position since November 2014.

### 1.1 Trial Time

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	3
31-90	79
91-180	50
181-365	69

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	98
		Opposition Appeal	185
		Invalidation (dispute)	201
		Cancellation Appeal	232
	Patent	Rejection Appeal	172

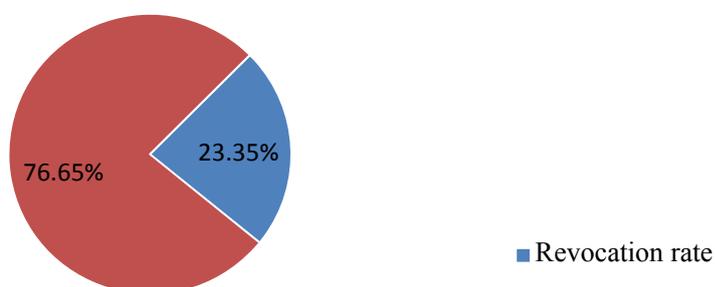
		Invalidation	215
Civil	Patent	Dispute over the ownership and infringement of patent right	246
	Copyright	Dispute over the ownership and infringement of copyright	65
	Unfair competition	Dispute over unfair competition	52

## 1.2 Revocation of Administrative Actions of Administrative Departments

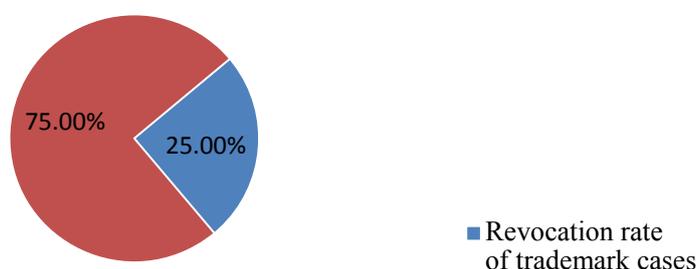
Among the sample data, there were 167 administrative intellectual property authorization and determination cases closed by means of judgment by Judge RUI Songyan's team, including total 39 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 23.35%.

Wherein, there were 156 administrative cases of trademarks closed, including 39 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 25.00%; there were 11 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge RUI Songyan's team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge RUI Songyan's team in 2015**



### 1.3 Word Count of the Judgment

Contents	Word Count
Total word count	954,631
Average word count	4,568
Average word count of theoretical part	1,727

### 1.4 Typical Cases

#### (1) Previous cases quoted:

- A. (2015) Jing Zhi Min Zhong Zi No. 1172  
[Case Cited] (2015) Jing Zhi Min Zhong Zi No. 559
- B. (2015) Jing Zhi Xing Chu Zi No. 3787  
[Case Cited] a. (2011) Gao Xing Zhong Zi No. 1479  
b. (2011) Gao Xing Zhong Zi No. 115

#### (2) Opinions were solicited publicly from academic institutions, and incorporated into judgments completely:

- A. (2015) Jing Zhi Xing Chu Zi No. 91
- B. (2015) Jing Zhi Xing Chu Zi No. 97
- C. (2015) Jing Zhi Xing Chu Zi No. 98

#### (3) Quotes were added to judgments (quoting the interpretation about *Copyright Law of the Standing Committee of the National People's Congress*, and related provisions in *Berne Convention*): (2015) Jing Zhi Min Zhong Zi No. 1697

#### (4) Other typical cases:

##### A. (2015) Jing Zhi Xing Chu Zi No. 408

**Key Points of the Judgment:** In three years non-use cancellation cases, Item 4 of Article 44 of the *Trademark Law (2001)* “requires” evidence of existing use of the disputed trademark, formally requires the authenticity of evidence, and requires evidence to show use of the trademarks, signs, and the categories corresponding to the present case, substantially requires the trademark use to be within the territory of China with true and bona fide trademark use actions. In this case, the owner of the disputed trademark was a Chinese export corporation. The issue of this case was whether export constitutes as use of a trademark. The court reasoned in detail from the nature of trademark, the legislative intent of Article 44(4) of the *Trademark Law*, provisions of international convention, and protection on domestic corporations. The court held that export constitutes as use of a trademark. Moreover, the court reasoned on the registration issue of whether use on partial goods was sufficient to constitute use on other approved goods. The court determined whether the disputed trademark should only remain valid when its actual use was on the “identical” category of goods, or on the “similar goods.” The determination required a comprehensive consideration of a combination of the legal consequences of the two practices and the legislative intent of Article 44(4) of the *Trademark Law* and other factors.

##### B. (2015) Jing Zhi Xing Chu Zi No. 4299

**Key Points of the Judgment:** The significance of this typical case was that it has confirmed the determining factors of three-dimensional trademarks acquiring distinctiveness. This is the only case that involves recognition of a three-dimensional trademark that has distinctive characteristics, and gives preliminary approval for publication. In existing cases, though there are some cases refer to determination of three-dimensional trademarks distinctiveness, few of them have obtained registration. The current practice is basically determining three-dimensional trademarks lack distinctive and rejects the registration applications. In this case, however, the court held that where a mark lacked distinctiveness, but that mark has obtained a degree of well-known status through use on specific goods and services, such well-known status was sufficient to allow the relevant public to create a unique association between this mark and the users. This mark can then be recognized to have obtained distinctiveness on this

particular goods or services. The key to obtain a distinctiveness judgment is the recognition of the well-known degree, which is identical to the degree of well-known of a well-known mark. A trademark application, who has submitted a substantial amount of evidence, the court, upon sufficient analysis on the factors for a trademark obtaining distinctiveness, verified the above evidence, can recognize it has met the requirements of acquiring distinctiveness.

**C. (2015) Jing Zhi Min Zhong Zi No. 1147**

**Key Points of the Judgment:** The significance of this typical case is to clarify the rules for the continuous use of the Red classics. This case held that the licensing from the writer Xin Liang of the 1964 movie was valid and without expiration. The Chinese National Ballet has the right to continue its performance, but must compensate relevant royalties.

**Note:** This case has been selected as the 2015 Top Ten Typical Cases of Judicial Protection by the Beijing Intellectual Property Court.

**D. (2015) Jing Zhi Xing Chu Zi No. 3517**

**Key Points of the Judgment:** The significance of this typical case is to clearly point out that, in a trademark rejection case, a mark's degree of well-known status does not need to be taken into as a consideration. This condition is obviously different from trademarks opposition, appeal, and invalidation cases.

The main reason of this holding is that the degree of well-known status of a cited mark cannot be ascertained in a rejection appeal cases. However, when not considering the degree of well-known status of the cited mark, it is difficult to make reasonable decisions on whether the mark is confusing. Thus consideration of the subject mark's degree of well-know status in a trademark rejection appeal case is not required. This holding signals that there is no requirement to provide evidence regarding the degree of well-known status in similar cases.

**E. (2015) Jing Zhi Xing Chu Zi No. 3243**

**Key Points of the Judgment:** The significance of this typical case was to clarify the rules for determining the similarity between Chinese and English trademarks. The Trademark Review and Adjudication Board (TRAB) unanimously held that as long as the meaning between the Chinese and English was close, the trademarks can be deemed similar. In this case, however, the judge held an opposite view, and provided an in-depth analysis on the mistake of the above practice from the

angles of confusing subjects and creation of the confusion. The judge held that the TRAB's view was against customer's general perceptions.

The judgment states that among two dimensional trademark's three factors of pronunciation, design, and meaning, the pronunciation and design factors are closely associated with audio and visual effects, which has substantial influence when recognizing confusion possibility. The meaning factor, however, has a supplementary role, which is difficult to have its own influence without pronunciation and design. If a Chinese and an English trademark only has identical meaning, but its pronunciation and design is significantly different, the relevant public will not likely to be confused only because of the identical meaning.

## 2. Team of Judge JIANG Shuwei

### Judge JIANG Shuwei

#### Judge of the Beijing Intellectual Property Court

Judge JIANG Shuwei, male, Han Nationality, born in February 1977, graduated as an on-job undergraduate, Master of Law, began to work in July 1999. After graduation, he worked at the Beijing First Intermediate People's Court, and successively acted as clerk and assistant judge. In February 2012, he was transferred to the Beijing Shijingshan District People's Court, and successively acted as assistant judge, judge, and Director of Research Office. He has held the present position since November 2014.

### 2.1 Length of Trial

**Table 1**

<b>Length of Trial (day)</b>	<b>Caseload (case)</b>
≤30	9
31-90	63
91-180	58
181-365	31

**Table 2**

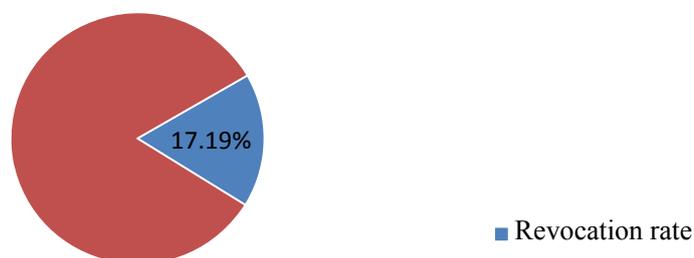
Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	115
		Opposition Appeal	166
		Invalidation (dispute)	221
		Cancellation Appeal	202
	Patent	Rejection Appeal	83
		Invalidation	93
Civil	Trademark	Dispute over ownership and infringement of trademark right	64
	Patent	Dispute over the ownership and infringement of patent right	235
	Copyright	Dispute over the ownership and infringement of copyright	41

## 2.2 Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were 128 cases about administrative intellectual property authorization and determination and closed by means of judgment by Judge JIANG Shuwei's team, including total 22 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 17.19%.

Wherein, there were 123 administrative cases of trademarks closed, including 22 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 17.89%; there were 5 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge JIANG Shuwei's team in 2015**



**Revocation rate of the cases about administration and determination of trademarks of Judge JIANG Shuwei's team in 2015**



### 2.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Copyright infringement dispute	1	72,385.17	72.11%
Dispute over infringement of invention patent right	3	694,823.3	67.46%

### 2.4 Word Count of the Judgment

Contents	Word Count
Total word count	722,839
Average word count	4,462

Average word count of theoretical part	1,495
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## 2.5 Typical Cases

### (1) Previous cases quoted:

- A. (2014) Jing Zhi Xing Chu Zi No. 50  
[Case Cited] (2014) Gao Xing (Zhi) Zhong Zi No. 2491
- B. (2015) Jing Zhi Xing Chu Zi No. 342  
[Case Cited] (2010) Gao Xing Zhong Zi No. 265

### (2) First Element-based document:

- (2015) Jing Zhi Xing Chu Zi No. 903

### (3) Other typical cases:

#### A. (2015) Jing Zhi Min Chu Zi No. 204

**Key Points of the Judgment:** The right holder's claim for economic loss of 1 million RMB was fully supported. Through comparison, the disputed products included the entire features described in claim 1 of the disputed patent, which fell into its scope of protection and constitutes as an infringement. When ascertaining the amount of infringement damages, the court compared the significant advantage of the disputed patent with the prior art, the influence of the disputed patent product's release to the generational change of the current product on the market, the scale and degree of infringement, and other factors comprehensively to uphold the plaintiff's claims for damages in full.

#### B. (2014) Jing Zhi Min Chu Zi No. 2

**Key Points of Judgment:** This case clarified that the amount of compensation for the infringement should be tripled the highest standard rate. In the copyright infringement dispute imitated by heirs of Zuoren Zhou against the Xinhua Publishing House, the Xinhua Publishing House violated the plaintiff's right of reproduction, publishing rights and the right of remuneration of the book "Fly" and other thirty-one works. The Xinhua Publishing House have a civil liability to stop the infringement and compensate for the plaintiff's losses. The collegiate panel considered the notable achievements and reputation of Zuoren Zhou in Chinese contemporary literature field, the degree of fault of Xinhua Publishing House of

using Zhou's works without a license, determined that the remuneration of the works involved shall be RMB 300 per Chinese characters according to the circumstances. In this event, the collegiate panel tripled the amount of compensation and held that the defendant shall compensate the plaintiff RMB 72,000.

### **C. (2015) Jing Zhi Min Chu Zi No. 442**

**Key Points of the Judgment:** It was ruled that the defendant should fully compensate the plaintiff for the agreed technical transfer fee of RMB 40 million. Upon the execution of the Technical Transfer Agreement on Total Flavonoids Extract of Epimedium and Capsule by the plaintiff and the defendant, the plaintiff shall transfer the patented pharmacy manufacturing technology at issue and various approved formalities to the defendant as agreed on the contract, but the defendant failed to pay the balance of the technical transfer fee of RMB 40 million to the plaintiff as agreed. As the plaintiff was unwilling to settle with the defendant, the collegiate panel adjudicated the case within the statutory time limit of trial and fully upheld the plaintiff's claim of technical transfer fee of RMB 40 million. Upon the announcement of the first instance holdings, both the plaintiff and the defendant did not appeal.

## **3. Team of Judge ZHOU Liting**

### **Judge ZHOU Liting**

#### **Judge of the Beijing Intellectual Property Court**

Judge ZHOU Liting, female, Han Nationality, born in September 1981, graduated as a postgraduate, Master of Law, began to work in July 2005. After graduation, she worked at the Beijing First Intermediate People's Court, and successively acted as a clerk and assistant judge. She has held the present position since November 2014.

### **3.1 Length of Trial**

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	8
31-90	72
91-180	85
181-365	29

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	95
		Opposition Appeal	169
		Invalidation (dispute)	209
		Cancellation Appeal	208
	Patent	Rejection Appeal	143
		Invalidation	166
Civil	Trademark	Dispute over ownership and infringement of trademark right	54
	Patent	Dispute over the ownership and infringement of patent right	309
	Copyright	Dispute over the ownership and infringement of copyright	48
	Unfair competition	Dispute over unfair competition	99

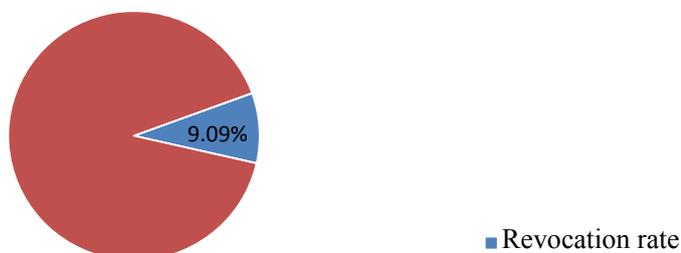
### 3.2 Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were 165 administrative intellectual property authorization and determination cases closed by means of judgment by Judge ZHOU Liting's team, including total 15 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 9.09%.

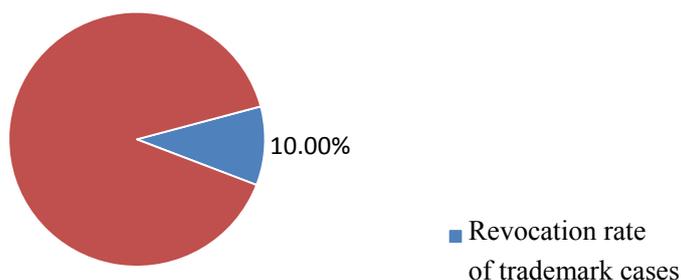
Wherein, there were 150 administrative cases of trademarks closed, including 15 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 10.00%; there were 15 administrative cases of patents closed,

including 0 case involving revocation of administrative actions of administrative departments.

**Cancellation rate of the cases about authorization and determination of intellectual property rights of Judge ZHOU Liting's team**



**Cancellation rate of the cases about authorization and determination of trademarks of Judge ZHOU Liting's team**



### 3.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Dispute over infringement of new plant variety	1	100,000	25.00%
Appearance design patent infringement dispute	1	52,881	51.40%
Invention patent infringement dispute	6	861,256.5	83.79%

### 3.4 Word Count of the Judgment

Contents	Word Count
Total word count	877,166
Average word count	4,498
Average word count of theoretical part	1,421

### 3.5 Typical Cases

#### (1) Cases with full support for compensation amount claimed:

- A. (2015) Jing Zhi Min Chu Zi No. 186
- B. (2015) Jing Zhi Min Chu Zi No. 187
- C. (2015) Jing Zhi Min Chu Zi No. 188
- D. (2015) Jing Zhi Min Chu Zi No. 192

#### (2) Other typical cases:

##### A. (2015) Jing Zhi Xing Chu Zi No.2515

**Key Points of the Judgment:** This case clarified the factors of the “except for geographical names that have other meaning,” and “registered trademarks that use geographical names shall continue to be valid” as stated in Article 10(2) of the *Trademark Law (2001)*. For the understanding of “except for geographical names that have other meaning” in Article 10(2) of the *Trademark Law*, it shall be understood as that marks using geographical names which have other meaning, except for the geographical names of administrative divisions at or above the county level. If other meaning of the marks is related to geographical positions, relevant public may consider the marks as the characteristics of the designated source of goods, therefore the marks may not be identified as trademarks, and shall be determined combining the use of the goods. The understanding of “registered trademarks that use geographical names shall continue to be valid” shall apply to those registered trademark that use geographical names to continue be valid if registered before the *Trademark Law (1993)*. Besides, in principle, the latter shall not be extend to the identical or similar trademark of the later application on identical or similar goods of the same entity. Such trademarks can only be identified if the prior registered geographical trademark obtained a higher reputation after use, became well-known to the relevant public, and was sufficient

to eliminate the relevant public's recognition of that trademark only as a geographical name.

**Typical meaning:** In this case, the judgment used the theses writing style for reference, and for the first time, added footnotes with additional supplementary reasoning. This simplified the judgment body with a suitable level of details.

**Note:** This case has been selected as one of the typical cases in the "Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary."

#### **B. (2014) Jing Zhi Xing Chu Zi No.67 (the "Wechat" Trademark Case)**

**Key Points of the Judgment:** This case presented an issue of balancing the interests between the good faith prior registered mark, and the use of the good faith later registered mark that created a significant market reputation. This issue was a gray area under the trademark registration system, which has a lot of space for argument and has its representativeness. The judgment began with the possible societal consequences by the registration of the disputed trademark and its use, with respect to the administrative lawsuit's judgment, and the actual circumstances when the judgment was made, as well as swung towards balancing the interests, and the actual interests preferred by a large, non-specific public. The court finally held that the trademark filed by the Trunk bow International Holdings could not be approved for registration. After the decision was handed down, it caused widespread concerns and discussions amount the public.

#### **C. (2015) Jing Zhi Xing Chu Zi No.269**

**Key Points of the Judgment:** This case involved the judgment of the novelty and inventiveness of invention patent application entitled "Separation and Purification Method of Long Chain Diprotic Acid." The judge's reasoning began from the distinction between the basic concept of "chromatographic separation" and "adsorption separation." According to the substantial analysis on the separation process of Reference 1, it was regarded that Reference 1 involved an adsorption chromatographic separation process. In this event, in light of the scope of limitation by Claim 1 and disclosure of the Description, the scope of protection of Claim 1 cannot be interpreted as being limited to the separation of different long chain dipodic acids and the separation of long chain dipodic acid from foreign substance like pigment. The court found that Reference 1 has disclosed the technical solution identical with Claim 1, so Claim 1 was not novel and Claim 11 was not inventive.

#### **D. (2015) Jing Zhi Min Zhong Zi No. 796**

**Key points of Judgment:** The judgment clarified the rules for where violation of an agreement between the information network transmission right holder and licensee on prohibiting link does not create a legal consequence of information network dissemination infringement. The right to network dissemination of information has its specific scope and border, providing link does not belong to the actions controlled by the information network transmission right. Providing link is a secondary action in the network communication process, the primary action is the network service provider providing network services or matching linked interface. In this case, iQIYI has been licensed for broadcasting the film, which did not constitute an infringement of the right to network dissemination of information. In addition, for the legislative intent of the *Copyright Law* and the spirit of the Internet, the court affirmed that the appellant establish directional link to iQIYI websites did not constitute infringement.

## **4. Team of Judge LI Yanrong**

### **Judge LI Yanrong**

#### **Judge of the Beijing Intellectual Property Court**

Judge LI Yanrong, female, born in September 1969, Han Nationality, graduated from university, Master of Law, began to work in July 1992. After graduation, she worked at the former Beijing Intermediate People's Court as clerk. In May 1995, she was transferred to Beijing First Intermediate People's Court, and acted as a clerk and assistant judge. In October 2005, she was transferred to the Beijing High People's Court, and successively acted as assistant judge and judge. She has held the present position since November 2014.

### **4.1 Length of Trial**

#### **Table 1**

Length of Trial (day)	Caseload (case)
31-90	41
91-180	89
181-365	51

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	119
		Opposition Appeal	164
		Invalidation (dispute)	203
		Cancellation Appeal	204
	Patent	Rejection Appeal	126
		Invalidation	180
Civil	Trademark	Dispute over ownership and infringement of trademark right	177
	Patent	Dispute over the ownership and infringement of patent right	150
	Copyright	Dispute over the ownership and infringement of copyright	107
	Unfair competition	Dispute over unfair competition	116

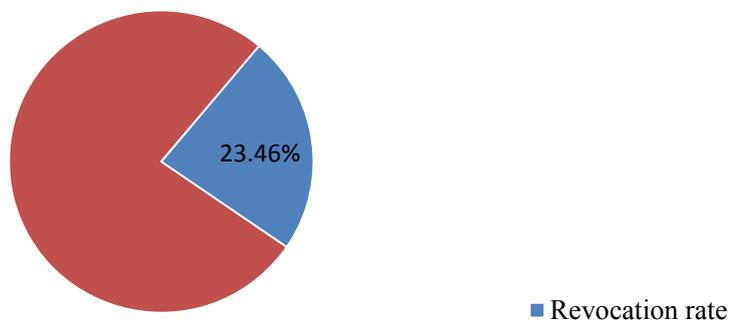
## 4.2 Revocation of Administrative Actions of Administrative Departments

Among the sample data, there were 162 administrative intellectual property authorization and determination cases closed by means of judgment by Judge LI Yanrong's team, including total 38 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 23.46%.

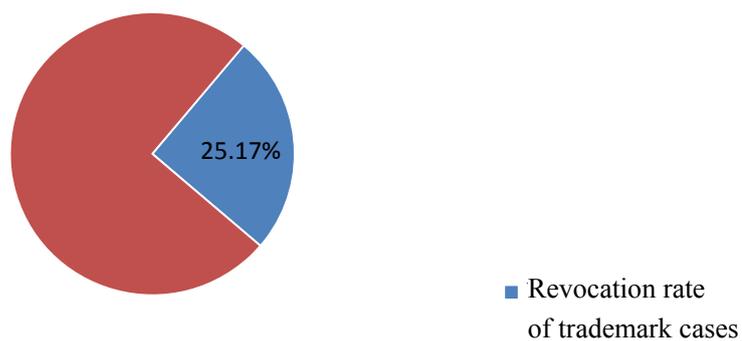
Wherein, there were 143 administrative cases of trademarks closed, including 36 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 25.17%; there were 19 administrative cases of patents closed, including 2 cases involving revocation of administrative actions of administrative

departments, with a revocation rate of 10.53%.

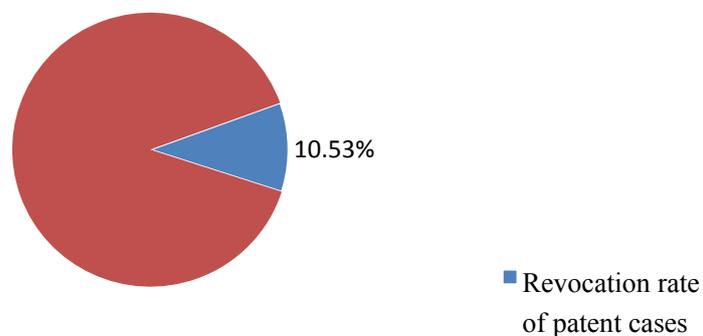
**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge LI Yanrong's team in 2015**



**Revocation rate of the cases about authorization and determination of trademarks of Judge LI Yanrong's team in 2015**



**Revocation rate of the cases about authorization and determination of patents of Judge LI Yanrong's team in 2015**



### 4.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Dispute over infringement of utility model	1	160,000	50.00%

#### 4.4 Word Count of the Judgment

Contents	Word Count
Total word count	1,024,971
Average word count	5,481
Average word count of theoretical part	2,231

#### 4.5 Typical Cases

##### (1) Cases tried with participation of technical investigation officers:

- A. (2015) Jing Zhi Xing Chu Zi No. 3075
- B. (2015) Jing Zhi Xing Chu Zi No. 3076
- C. (2015) Jing Zhi Xing Chu Zi No. 2229
- D. (2015) Jing Zhi Xing Chu Zi No. 2230
- E. (2015) Jing Zhi Xing Chu Zi No. 4453

##### (2) Other typical cases:

###### A. (2015) Jing Zhi Xing Chu Zi No. 1456

**Key Points of the Judgment:** In this case, after confirming the most relevant existing technology, for those, the judge can't confirm the difference between the patent and the above existing technology and the technical problems which the invention resolves, the decision will strictly abide by the three steps mentioned above to execute and then have a decision whether the patent has inventiveness or not.

**Note:** This case has been incorporated into Top 14 Typical Cases Closed by the Beijing, Shanghai, and Guangzhou Intellectual Property Court" released by the Supreme People's Court, and the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

## **B. (2015) Jing Zhi Min Zhong Zi No. 673-675**

**Key Points of the Judgment:** In the case of infringement upon the right to Network Dissemination of Information, the network service provider who provides the work in the network without permission constitutes an infringement, unless the provider can prove that they only provide the searching or linking and other network services as well as no fault. Thus, it should confirm that the nature of the behavior for propagating the works by the defendant in the Internet and then determine the legal liability in terms of different nature of deed. In this case, according to the identified evidence, the film wasn't played in the "youdao".com. Besides, there was no evidence indicates that the films involved in this case were stored on the server of "youdao" website. Although the Union Voole Technology Co., Ltd (Union Voole) claimed that the "youdao" company provided the online watching service regarding the film involved in the case together with the third-part video websites, but they did not submit any evidence. The evidence the Union Voole provided could not support the claim. According to the related content of the notarial certificate, the court has affirmed the searching or linking services that Youdao provides regarding the films involved in this case. When determining the amount of compensation, the time of completion, content, value, the subjective fault of the defendant and the mode of infringement of the films in question shall be comprehensively taken into consideration. Meanwhile, the circumstances whether the films involved in this case have obtained the license of permit release of film is also an important fact to be considered. The final number of compensation shall be determined in a low level in the light of those works which has been published legitimately or passed the administrative examination and approval.

## **5. Team of Judge ZHANG Jian**

### **Judge ZHANG Jian**

#### **Judge of the Beijing Intellectual Property Court**

Judge ZHANG Jian, male, Han Nationality, born in January 1979, graduated from university, Master of Law, began to work in July 2001. After graduation, he worked at Beijing Second Intermediate People's Court and successively acted as a clerk,

assistant judge, deputy division head and judge. He has held the present position since November 2014.

## 5.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	11
31-90	78
91-180	49
181-365	35

**Table 2**

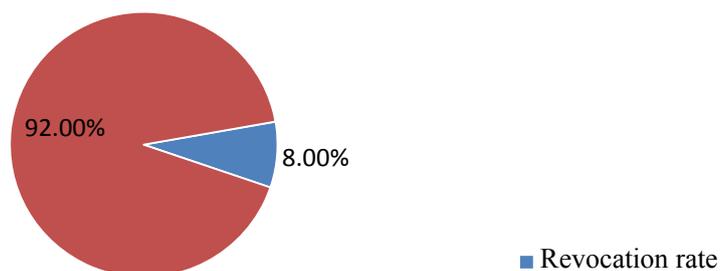
Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	85
		Opposition Appeal	204
		Invalidation (Dispute)	227
		Cancellation Appeal	284
	Patent	Rejection Appeal	185
		Invalidation	209
Civil	Trademark	Dispute over ownership and infringement of trademark right	188
	Patent	Dispute over the ownership and infringement of patent right	209
	Copyright	Dispute over the ownership and infringement of copyright	48

## 5.2 Revocation of Administrative Actions of Administrative Departments

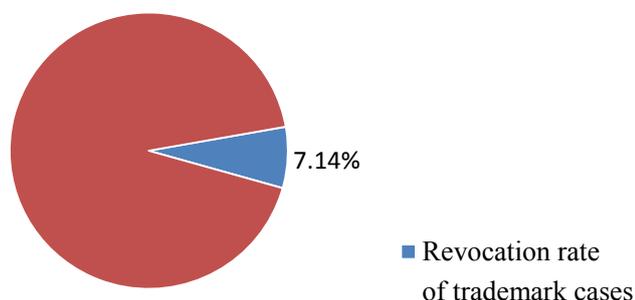
Among the sample data, there were 150 administrative intellectual property authorization and determination cases closed by means of judgment by Judge ZHANG Jian's team, including total 12 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 8%.

Wherein, there were 140 administrative cases of trademarks closed, including 10 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 7.14%; there were 10 administrative cases of patents closed, including 2 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 20%.

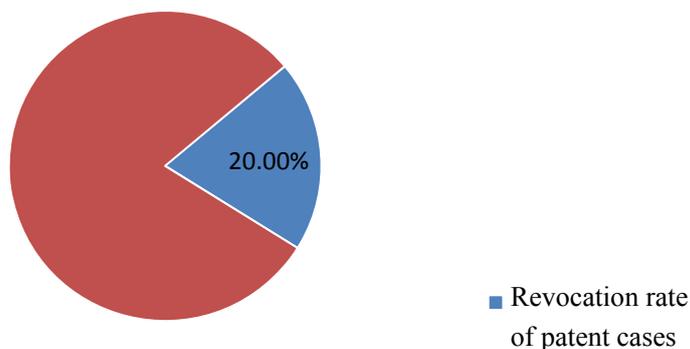
**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge ZHANG Jian's team**



**Revocation rate of the cases about authorization and determination of trademarks of Judge ZHANG Jian's team**



**Revocation rate of the cases about authorization and determination of patents of Judge ZHANG Jian's team**



### 5.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Trademark right infringement dispute	2	75,000	75.00%
Appearance design patent infringement dispute	1	13,000	43.33%

### 5.4 Word Count of the Judgment

Contents	Word Count
Total word count	797,833
Average word count	4,360
Average word count of theoretical part	1,490

### 5.5 Typical Cases

#### (1) Previous cases quoted:

**(2015) Jing Zhi Xing Chu Zi No. 1361**

[Case Quoted] (2013) Gao Xing ZhongZi No. 902

#### (2) Other typical cases:

##### A. (2014) Jing Zhi Xing Chu Zi No. 34

**Key Points of the Judgment:** In this case, the knowledge level, recognition level, reasoning, analysis, and creativity capacity of those of ordinary skill in the art has been applied to decide the judgment, and to determine whether the scope of protection of the claims of the patent was clear, whether the claims can be supported by the Description, and whether the amendment of the patent application document has exceeded the scope of the original Description and Claims. Accordingly, it shall be determined as to whether the patent contained any prominent substantive features and notable progress compared with the reference document and the common knowledge, and to determine the inventiveness of the patent.

**Note:** This case has been incorporated into Top 14 Typical Cases Closed by the

Beijing, Shanghai, and Guangzhou Intellectual Property Court” released by the Supreme People’s Court, and the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

#### **B. (2015) Jing Zhi Min Chu Zi No. 615**

**Key Points of the Judgment:** The case involves the series of evidence preservation cases in the dispute of computer software copyright infringement initiated by Adobe and Autodesk against Fleet Entertainment (Beijing) Media Culture Company and Fleet Entertainment (Beijing) Trading Company. To increase the judicial protection level of intellectual property rights, it is necessary to set up liquidated damages calculation system meeting market rules, and substantially satisfy the right protection requirement to increase the amount of liquidated damages, and to apply evidence preservation measures and other measures actively to enhance the timeliness and effectiveness of judicial remedy. Since, in this case, it was difficult for the right holder to collect evidence from the end user of the computer software infringement, the evidence preservation was actively taken when the interested party satisfied the necessary requirements, and safeguarded the lawful rights and interests of the right holder, fully demonstrate the increase of judicial protection on intellectual property right, and acquired solid achievements.

**Note:** This case has been incorporated into the Top 14 Typical Cases closed by the intellectual property rights courts of Beijing, Shanghai and Guangzhou as released by the Supreme People’s Court and the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

#### **C. The series of cases on unfair competition dispute between Beijing Baidu Network Technology Company and Qihoo Technology Company, Qihoo 360 Software (Beijing) Company**

**Key Points of the Judgment:** At the beginning of 2015, the Beijing Intellectual Property Court accepted six cases from Beijing Baidu Network Technology Company (“Baidu”), Qihoo Technology Company (“Qihoo”), and Qihoo 360 Software (Beijing) Company (“360”) regarding unfair competition disputes, including two cases initiated by Qihoo and four cases initiated by Baidu. The unfair competition actions that the lawsuits brought against included the pop-up window and interception mounted in the anti-virus software, key words setup in browser, and the commercial defamation against other party in their self-operated website, etc. In addition, Baidu, Qihoo and, 360 were involved in several cases of

unfair competition disputes in other courts in Beijing.

The collegiate panel has communicated with both parties regarding the cases, and led both parties to reach a settlement of the six cases. Finally both parties reached a general settlement agreement on the fourteen cases initiated in Beijing, and basically resolved the dispute between both parties. To avoid subsequent disputes after the settlement between both parties and in light of the mutual ideas of both parties, the Beijing Intellectual Property Court prepared detailed descriptions in the civil mediation of one of the core cases between both parties on the potential future disputes, which primarily set up the fast dispute settlement system and avoid possible disputes to the highest extent. The communications system and the fast dispute settlement system created during the mediation has prevented the competitions between both parties, prevented subsequent disputes and cases, reached a demonstration function to a certain extent for the standardized and orderly developments of the Internet industry, and created good social effects.

**Note:** This case has been incorporated into the Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary.

#### **D. (2015) Jing Zhi Min Zhong Zi No.1259**

**Key Points of the Judgment:** This case was related to two registered trademarks “JOY CITY in Chinese” and “JOY CITY” by COFCO. The two trademarks had nationwide high reputation after many years of promotions. Over the years, with the brand awareness of ascension of “JOY CITY in Chinese,” there were several infringements where “JOY CITY in Chinese” was used in the real estate developers’ projects, one after another, to raise attentions to its real estates by diluting brand names and free-riding. This case was one of the typical cases that the real estate developer, Huarui Corporation used lots of the words of “Jiamei Square JOY CITY in Chinese,” “JOY CITY in Chinese,” and “JOY CITY,” without authorization in their “Jiamei Square” project when selling and advertising their properties, which led the public to mistake the project was related to COFCO, and infringed the COFCO’s registered trademark right. Sina Corporation was the proprietor of the Lok Ku web, which profited from the advertisements and sales intermediary housekeeping services for the “Jiamei Square.” Sina also infringed upon COFCO’s registered trademark right. Based on these facts, the court held that Huarui Corporation and Sina Corporation infringed, and ordered them to make public announcements, remove negative influence, and compensated a high damage.

## 6. Team of Judge ZHAO Ming

### Judge ZHAO Ming

#### Judge of the Beijing Intellectual Property Court

Judge ZHAO Ming, female, Man Nationality, born in August 1974, graduated from university, Master of Law, began to work in July 1997. After graduation, she worked at Beijing First Intermediate People's Court and successively acted as a clerk and assistant judge. She has held the present position since November 2014.

### 6.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	19
31-90	69
91-180	85
181-365	45
More than 1 year	2

**Table 2**

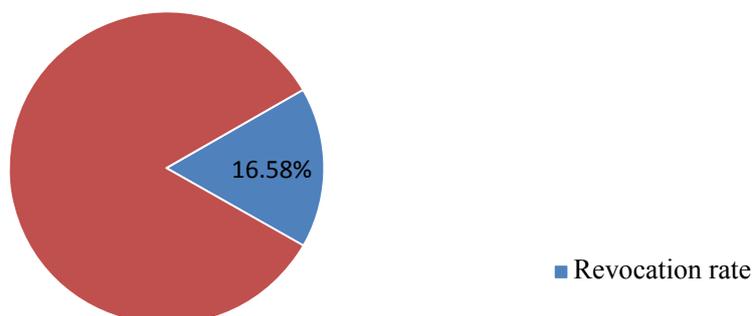
Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	108
		Opposition Appeal	193
		Invalidation (dispute)	150
		Cancellation Appeal	143
	Patent	Rejection Appeal	213
		Invalidation	197
Civil	Patent	Dispute over the ownership and infringement of patent right	60
	Copyright	Dispute over the ownership and infringement of copyright	37

## 6.2 Revocation of Administrative Actions of Administrative Departments

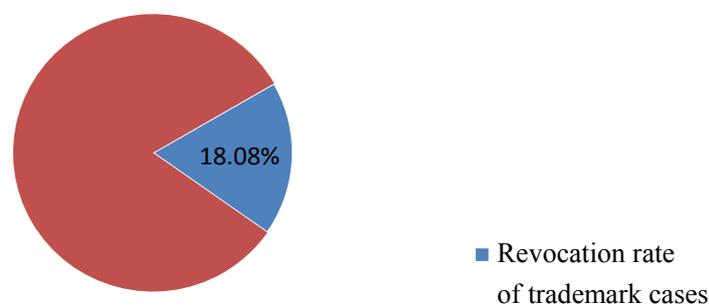
Among the sample data, there were 193 cases about administrative intellectual property authorization and determination and closed by means of judgment by Judge ZHAO Ming's team, including total 32 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 16.58%.

Wherein, there were 177 administrative cases of trademarks closed, including 32 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 18.08%; there were 16 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Revocation rate of the cases about authorization and determination of intellectual property rights of Judge ZHAO Ming's team**



**Revocation rate of the cases about authorization and determination of trademarks of Judge ZHAO Ming's team**



### 6.3 Judgment Amount

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Invention patent infringement dispute	1	105,000	21.00%

### 6.4 Word Count of the Judgment

Contents	Word Count
Total word count	971,528
Average word count	4,357
Average word count of theoretical part	1,373

### 6.5 Typical Cases

#### (1) Cases tried with participation of technical investigation officers:

- A. (2015) Jing Zhi Xing Chu Zi No. 4596
- B. (2015) Jing Zhi Xing Chu Zi No. 4598

#### (2) Other typical cases:

##### A. (2015) Jing Zhi Min Zhong Zi No. 1444

**Key Points of the Judgment:** According to the *Copyright Law*, without the permission of the copyright owner, dissemination of their works to the public through information networks shall have the corresponding tort liability; the key to hearing of the case is to determine the service that the network providers provide is to search for link service or content service. During the proceedings, the court applied the preponderance of the evidence rule, and ruled out the opposed evidence. Considered the process involved in the program broadcast, the playback screen, and other factors, the court found that the defendant infringed the copyrighted Season 2 of *A Bite of China*. When determining the damages, the court considered the remarkable social influence of the program, and the immediate infringement of the program after it was first broadcasted to calculate the amount of compensation as RMB 273,000.

**Note:** This case has been incorporated into the Twelve Typical Cases of the

Beijing Intellectual Property Court for the First Anniversary.

**B. (2015) Jing Zhi Min Chu Zi No. 68**

**Key Points of the Judgment:** This case was one of the series of patent ownership administrative disputes between ZTE and Huawei. This series of cases involved multiple emerging and difficult issues in the telecommunications field. The focus of the case was whether the subject name of Claim 1 can be regarded as technical features, and will be deemed as distinguishing technical features in the inventiveness assessment. Regarding whether the subject name is a technical feature, no express provisions have been found in the *Patent Law*, the *Rules for the Implementation of the Patent Law* or the *Guidelines for Patent Examination*. Though in civil cases, subject name has been regarded as limiting the scope of patent protection, it has not been expressly determined the technical features of the subject name. In this case, the court has comprehensively considered Article 22 of the *Rules for the Implementation of the Patent Law*, provisions on the writing mode of claim, the "technological" characteristics of technical solution and technical features, and the limiting function of the subject name in this case upon other technical features in the claim, and finally found that the subject name in patent constituted a technical feature.

**C. (2015) Jing Zhi Xing Chu Zi No.643**

**Key Points of the Judgment:** In this case, the TRAB held that none of the arguments presented on the appeal were supported, and actively applied the first part of the Article 30 of the *Trademark Law (2013)*, which indicates that “where a trademark application does not comply with the relevant provisions in this Law ... its registration shall be refused by the Trademark Office after examination and the mark shall not be published.” In practice, this application is rare. The court made it clear that from the view of the legislative intent, the “relevant provisions” under Article 30 has a defined general scope, which is directed at Article 10, 11, 12, and other provisions of the *Trademark Law (2013)* that are related to the regulation on the situation on total refusal of a registration. It should not be seen as a catchall provision that lacked foundation in the *Trademark Law*, and supplemented when there were no actual provisions on point. This would, otherwise, break legal norms and predictability of the judgment by the relevant public. This would also lead to infinite extension of the discretion of law enforcement. Therefore, the collegial panel vacated the decision based on errs in the application of the laws.

#### **D. (2015) Jing Zhi Xing Chu Zi No. 3022**

**Key Points of the Judgment:** This case involved a disputed trademark that contained a “tai,” which presented a question on whether this trademark fell into as “those identical with or similar to the symbols or names of the Red Cross or the Red Crescent shall not be used as trademarks” under Article 10 of the *Trademark Law*. In this case, the court held that in order to avoid the Red Cross signs appeared in non-Red Cross related activities, strict examination standards should be applied during the administrative trademark examinations. The disputed mark consisted of the letters “BATTERY” and design, while the design cannot be differentiated from the Red Cross in plain view. Since the disputed mark did not designate any specific color, it may use any color in actual use, which leads to a possibility that it will use white background with red-colored cross. Moreover, though the trademark also consists of letters, but the word part and the graphic part can be distinguished independently. Therefore, despite the letters, the graphic part itself in the trademark was sufficient to confuse the relevant public with the Red Cross. Thus, the application for the protection of its territorial extension is not approved.

#### **E. (2015) Jing Zhi Xing Chu Zi No. 1159**

**Key Points of the Judgment:** This case involves the identification and protection of well-known trademark. Where a disputed trademark is sufficient to make relevant public associate it with the well-known trademark, and decreases the distinctiveness of a well-known trademark, dilute the reputation of a well-known trademark, or improperly uses the reputation of a well-known trademark are under the circumstances stipulated in Article 13 of the *Trademark Law* (2001). The court held that the disputed trademark decreased and diluted the reputation of the well-known trademarks based on the comprehensive evidence recognizing the “Jing Tian” and “Bai Sui Shan” mark as well-know trademarks. The decision states that the use of the disputed trademark in medical nutrition beverage has a considerable degree of association with the goods of mineral water, water (beverage) and other goods of the well-known trademarks, which is likely to cause confusion and misidentification by the relevant public on the source of the goods. Besides, the disputed trademarks’ approved goods in disinfectant cleaner, veterinary medicine, sanitary napkins and other goods, which can easily cause negative associations with cleaning and unclean, improperly use the reputation of the well-known trademarks, break the inherent association from the relevant public

as to the two cited trademarks and the plaintiff's mineral water related goods, and damaged the plaintiff's interests as the well-known trademarks holder.

## 7. Team of Judge FENG Gang

### Judge FENG Gang

#### Judge of the Beijing Intellectual Property Court

Judge FENG Gang, male, Han Nationality, born in July 1971, graduated as postgraduate, Master of Law, began to work in July 1994. After graduation, he worked at the Beijing Second Intermediate People's Court and successively acted as clerk, assistant judge, deputy division head, and judge. In July 2013, he was transferred to the Beijing Third Intermediate People's Court, and acted as deputy division head and judge. He has held the present position since November 2014.

### 7.1 Length of Trial

**Table 1**

Length of Trial (day)	Caseload (case)
≤30	2
31-90	58
91-180	55
181-365	73

**Table 2**

Case Nature	Case Type	Grounds	Average Length of Trial (day)
Administrative	Trademark	Rejection Appeal	135
		Opposition Appeal	246
		Invalidation (dispute)	233
		Cancellation Appeal	233
	Patent	Rejection Appeal	250
		Invalidation	270
Civil	Trademark	Dispute over ownership and infringement of trademark right	78

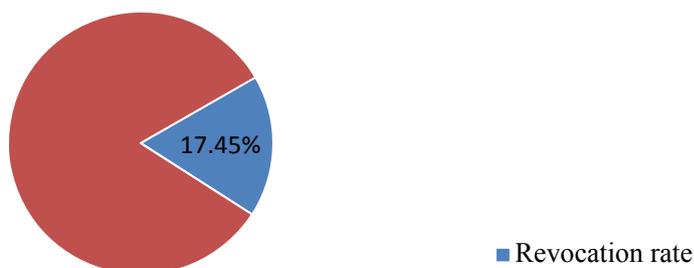
	Patent	Dispute over the ownership and infringement of patent right	281
	Copyright	Dispute over the ownership and infringement of copyright	72

## 7.2 Revocation of Administrative Actions of Administrative Departments

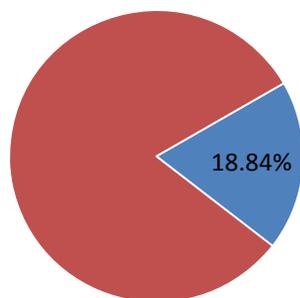
Among the sample data, there were 149 administrative intellectual property authorization and determination cases closed by means of judgment by Judge FENG Gang's team, including total 26 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 17.45%.

Wherein, there were 138 administrative cases of trademarks closed, including 26 cases involving revocation of administrative actions of administrative departments, with a revocation rate of 18.84%; there were 11 administrative cases of patents closed, including 0 case involving revocation of administrative actions of administrative departments.

**Cancellation rate of the cases about authorization and determination of intellectual property rights of Judge FENG Gang's team**



**Cancellation rate of the cases about authorization and determination of trademarks of Judge FENG Gang's team**



■ Revocation rate of trademark cases

**7.3 Judgment Amount**

Grounds	Caseload	Average amount of compensation granted (RMB)	Support proportion
Trademark right infringement dispute	2	135,000	21.77%
Copyright infringement dispute	1	120,000	60.00%
Appearance design patent infringement dispute	6	90,833.33	25.96%

**7.4 Word Count of the Judgment**

Contents	Word Count
Total word count	934,898
Average word count	4,722
Average word count of theoretical part	1,390

**7.5 Typical Cases**

**(1) Previous cases quoted:**

- A. (2015) Jing Zhi Xing Chu Zi No. 2910  
[Case Cited] (2013) Gao Xing Zhong Zi No. 448
- B. (2015) Jing Zhi Xing Chu Zi No. 2405  
[Case Cited] (2012) Gao Xing Zhong Zi No. 1779
- C. (2015) Jing Zhi Xing Chu Zi No. 834  
[Case Cited] a. (2014) Gao Xing Zhong Zi No. 1117  
b. (2012) Gao Xing Zhong Zi No. 1931

## **(2) Minor opinions of collegiate bench were incorporated into judgments:**

- (2015) Jing Zhi Min Zhong Zi No. 1750

## **(3) Other typical cases:**

### **A. (2014) Jing Zhi Xing Chu Zi No.182**

**Key Points of the Judgment:** This case made clear that when the judge determines similarity of a trademark, the extended association between the basic trademark and the later trademarks from one entity should be considered, and analyzes the factors of the extended association. In this case, the court comprehensively considered the degree of well-known status of the Tongjitang Corporation's prior basic trademark, the situation where the disputed trademark and the basic trademark are similar and designated to similar goods, the situation of the disputed trademark's actual usage as well as the difference between the disputed trademark and the two cited trademarks and so on. The court finally recognized that the goodwill of the basic trademark can be extended to the disputed trademark. The relevant public would associate the applicant of the disputed trademark and the basic trademark as the same entity, or there existed some particular relationships between them, which will distinguish the disputed trademark from the basic trademark to avoid confusion.

**Note:** This case has been selected as one of the typical cases in the "Fourteen Typical Cases Closed by the Beijing, Shanghai, and Guangzhou Intellectual Property Court" and the "Twelve Typical Cases of the Beijing Intellectual Property Court for the First Anniversary" issued by the Supreme People's Court.

### **B. (2015) Jing Zhi Min Chu Zi No.811**

**Key Points of the Judgment:** The court defined the action of the right of integrity of copyrighted works in this case. For the protection of the right of integrity, there

has always been a dispute between the subjective and the objective standard. The court held that to maintain the right of integrity is to maintain the work content, views, forms without distortion, mutilation, which is based on the respect for the personality of the author and the work itself, the significance of the right lies in protecting the author's reputation, prestige, and the purity of works. The right of integrity does not include "undermine the author's reputation" in the current *Copyright Law*, the subjective standard is helpful to increase the protection of copyright, and can increase public respect for the rights of others, raise the consciousness to maintain the unity of the work. Therefore, in published works, the subjective criteria can be used in principle.

### C. (2015) Jing Zhi Min Chu Zi No. 264-265

**Key Points of the Judgment:** This case took the loss of trademark's business reputation into the consideration of the scope of the statutory monetary damages. In judicial practice, the widely used method of applying the statutory damages to ascertain the amount of infringement damages often has the problems related to insufficient reasoning, non-unified standard, and lack of degree of protection. In this case, when determining the amount of damages, the court considered the loss of the plaintiff's well-known trademark "LV" suffered, which embodied the factor of statutory damages, and increase the degree of protection for the right-holder at the same time.

## **Statement**

This data analysis report only takes the data incorporated into the China Intellectual Property Judgment Instrument Database of Beijing IPHOUSE Network Technology Co., Ltd. ([www.iphouse.cn](http://www.iphouse.cn)) as analysis samples, and takes IPHOUSE Judicial Data Research Center as an independent third party editorial organization. Its use in judicial procedures shall give priority to the data investigated, and IPHOUSE hereby disclaims any corresponding legal liability arising from quoting the data in this report.