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Provisions of the Supreme People's Court on Certain Issues of the Intellectual Property Tribunal

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The Provisions of the Supreme People's Court on Certain Issues of the Intellectual Property Court was adopted by the Supreme People's Court Judicial Committee at its 1756th meeting on December 3, 2018. It is hereby promulgated and will come into force on January 1, 2019.

Supreme people's court

December 27, 2018

Law Interpretation [2018] No. 22

Provisions of the Supreme People's Court on Certain Issues of the Intellectual Property Court

(

adopted at the 1756th meeting of the Judicial Committee of the Supreme People's Court on December 3, 2018 , effective as of January 1, 2019)

In order to further standardize the standards of intellectual property cases, equal protection of the legitimate rights and interests of various market entities, increase the judicial protection of intellectual property rights, optimize the environment for scientific and technological innovation, and accelerate the implementation of innovation-driven development strategies, in accordance with the "Organization Law of the People's Court of the People's Republic of China" "The Civil Procedure Law of the People's Republic of China", "Administrative Procedure Law of the People's Republic of China", "Decision of the Standing Committee of the National People's Congress on Several Issues Concerning the Proceedings of Intellectual Property Cases Such as Patents" and other legal provisions, combined with the actual work of the trial, The relevant issues of the property court are as follows.

Article 1 The Supreme People's Court shall establish an intellectual property court to mainly examine patents and other intellectual property appeal cases with strong technical expertise.

The Intellectual Property Tribunal is a permanent judicial institution sent by the Supreme People's Court and is based in Beijing.

The judgments, rulings, mediations and decisions made by the Intellectual Property Tribunal are the judgments, rulings, mediations and decisions of the Supreme People's Court.

Article 2 The Intellectual Property Tribunal hears the following cases:

(1) Dissatisfied with the invention patents, utility model patents, new plant varieties, integrated circuit layout designs, technical secrets, computer software, monopoly first-instance civil judgments and rulings made by the higher people's courts, intellectual property courts, and intermediate people's courts. The case in which the appeal was filed;

(2) Dissatisfied with the case in which the Beijing Intellectual Property Court appealed the first-instance administrative case judgment or ruling made by the invention patent, utility model patent, design patent, new plant variety, and integrated circuit layout design authorization;

(3) dissatisfied with the provisions of the Higher People's Court, the Intellectual Property Court, and the Intermediate People's Court on invention patents, utility model patents, design patents, new plant varieties, integrated circuit layout designs, technical secrets, computer software, and monopoly administrative penalties. a case in which an appeal is filed in the first instance of an administrative case;

(4) Major and complicated first-instance civil and administrative cases referred to in Items 1, 2 and 3 of this Article;

(5) Cases in which the judgment, ruling or mediation of the first-instance case referred to in Items 1, 2 and 3 of this Article has been legally applied for retrial, protest, retrial, etc., applying the trial supervision procedure;

(6) The disputes over the jurisdiction of the first-instance case referred to in Items 1, 2 and 3 of this Article, the fines, the decision to apply for remand in the detention decision, and the application for extension of the trial limit;

(7) Other cases that the Supreme People's Court considers should be tried by the Intellectual Property Court.

Article 3 The trial court of the first instance referred to in Items 1, 2 and 3 of Article 2 of these Provisions shall promptly transfer paper and electronic files to the Intellectual Property Court in accordance with the provisions.

Article 4 With the consent of the parties, the intellectual property court may serve litigation documents, evidential materials and referee documents through electronic litigation platform, China trial process information disclosure network, and fax, e-mail and other electronic means.

Article 5 Intellectual property courts may organize evidence exchanges, convene pre-trial meetings, etc. through electronic litigation platforms or online video.

第六条 知识产权法庭可以根据案件情况到实地或者原审人民法院所在地巡回审理案件。

第七条 知识产权法庭采取保全等措施，依照执行程序相关规定办理。

第八条 知识产权法庭审理的案件的立案信息、合议庭组成人员、审判流程、裁判文书等向当事人和社会依法公开，同时可以通过电子诉讼平台、中国审判流程信息公开网查询。

第九条 知识产权法庭法官会议由庭长、副庭长和若干资深法官组成，讨论重大、疑难、复杂案件等。

第十条 知识产权法庭应当加强对有关案件审判工作的调研，及时总结裁判标准和审理规则，指导下级人民法院审判工作。

第十一条 对知识产权法院、中级人民法院已经发生法律效力和本规定第二条第一、二、三项所称第一审案件判决、裁定、调解书，省级人民检察院向高级人民法院提出抗诉的，高级人民法院应当告知其由最高人民检察院依法向最高人民法院提出，并由知识产权法庭审理。

第十二条 本规定第二条第一、二、三项所称第一审案件的判决、裁定或者决定，于2019年1月1日前作出，当事人依法提起上诉或者申请复议的，由原审人民法院的上一级人民法院审理。

第十三条 本规定第二条第一、二、三项所称第一审案件已经发生法律效力的判决、裁定、调解书，于2019年1月1日前作出，对其依法申请再审、抗诉、再审的，适用《中华人民共和国民事诉讼法》《中华人民共和国行政诉讼法》有关规定。

第十四条 本规定施行前经批准可以受理专利、技术秘密、计算机软件、垄断第一审民事和行政案件的基层人民法院，不再受理上述案件。

对于基层人民法院2019年1月1日尚未审结的前款规定的案件，当事人不服其判决、裁定依法提起上诉的，由其上一级人民法院审理。

第十五条 本规定自2019年1月1日起施行。最高人民法院此前发布的司法解释与本规定不一致的，以本规定为准。

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