

PATENT LITIGATION IN CHINAⁱ

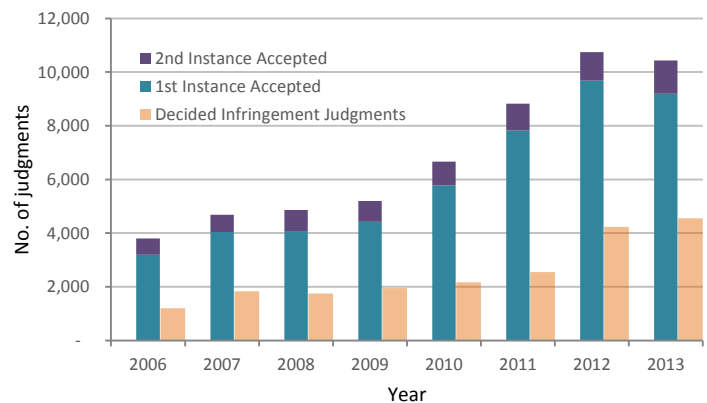
Patent right enforcement

ACCEPTED & DECIDED CIVIL PATENT INFRINGEMENT CASES BY THE COURTS

FIGURE 1

The last eight years have seen a significant growth in the volume of patent litigation in China. Numbers of cases filed almost tripled from 2006 to 2013. The slow growth before new patent law in 2009 and the acceleration after suggests that the changes have brought greater certainty for patent owners.

Similar growth rates are seen in decided cases, though lagging a few years behind filings.



The role of the courts in mediating settlements is significant. Almost two thirds of patent cases conclude in this way, without a reasoned decision. Appealed decisions count against judges in their performance metrics and this in itself functions as a driver of mediated settlement to end patent disputes.

Foreign party treatment

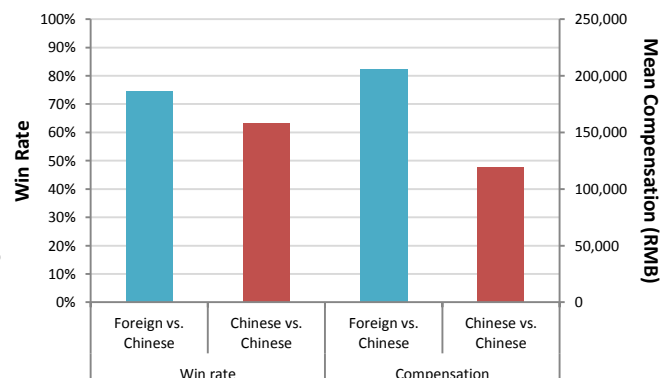
WIN RATE AND MEAN STATUTORY COMPENSATION COMPARISON FOREIGN AND DOMESTIC PLAINTIFFS

FIGURE 2

China is commonly perceived as an ‘unlevel playing field’ for foreign litigants. Analysis of patent cases decided on the merits would suggest otherwise.

Foreign plaintiffs in patent litigation win materially more often against domestic defendants than domestic plaintiffs do: a 75% win rate against a 63% win rate since 2006.

The average statutory compensation award for a foreign plaintiff also exceeds that for a domestic plaintiff by 72%.



While a conclusion that Chinese courts actually favour foreign plaintiffs should be cautiously avoided, the data consistently challenges common perceptions.

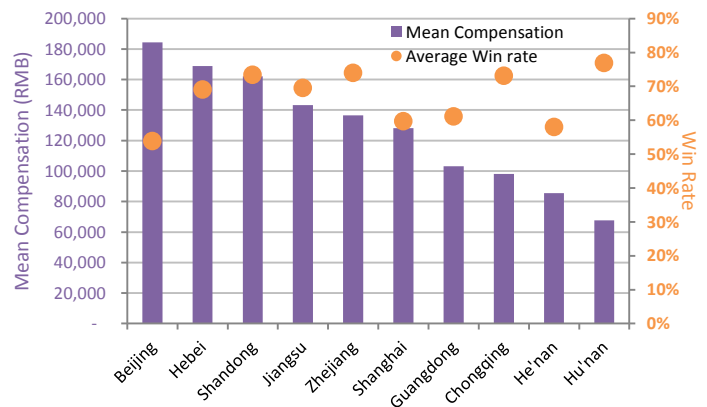
Geographical differences

MEAN COMPENSATION AND WIN RATES BY PROVINCE/MUNICIPALITY

FIGURE 3

Courts across China are becoming more and more experienced in handling patent litigation, with notable variations in outcomes.

Flexible jurisdiction rules offer alternatives as to venue for plaintiffs in many cases. Beijing remains the most experienced jurisdiction (probably the most sophisticated, as well) and has the highest average award of statutory compensation in China. But win rates for patentees there are amongst the lowest in China.

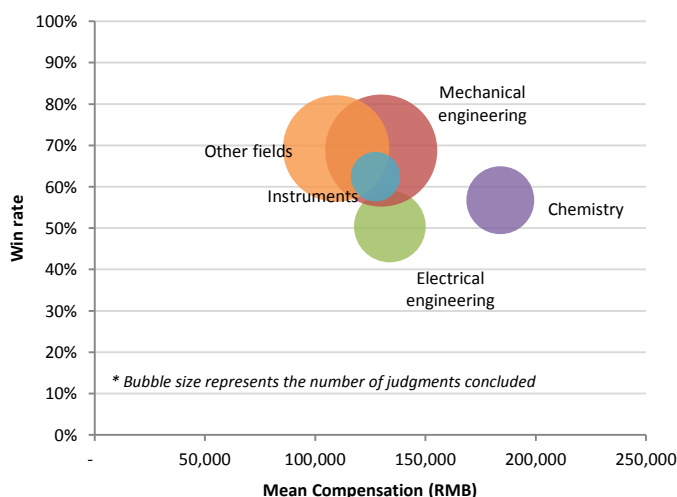


Today, therefore, patent owners should give real consideration to enforcing their rights outside of the 'traditional' venues of Beijing, Shanghai and Guangzhou. The courts in Shandong, for instance, have comparable averages awards of statutory compensation, but find for the patentee almost 20% more often than the Beijing courts.

Comparison of technical Sectors

MEAN COMPENSATION AND WIN RATE BY TECHNICAL SECTOR

FIGURE 4¹



'Lower-tech' patent infringement cases still dominate the landscape, with mechanical engineering and other fields (including civil engineering) representing almost two thirds of all decided patent cases since 2006. This is to be expected in a developing economy.

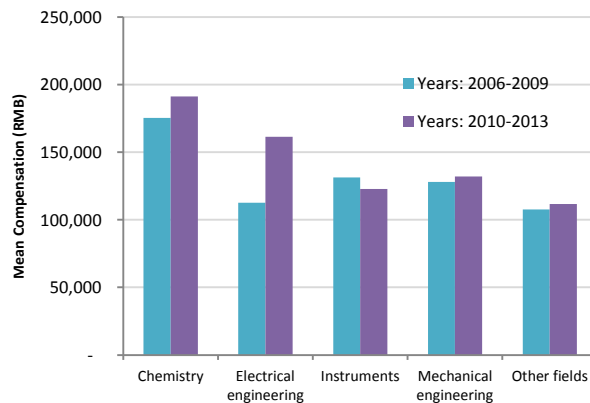
But notable in that period are both the growth in litigation in more complex technical fields of chemistry and electrical engineering, and the increase in statutory compensation awards in the same fields, outstripping the same in other

¹ * Bubble size represents the number of judgments concluded

fields. Indeed average court awards of statutory compensation in chemistry cases exceed all other fields by more than 37%. Absolute value of the awards remain low (RMB183,975, roughly USD30,000), but the trend is clearly upwards and punitive levels of statutory compensation – as now present in the Trade Mark Law – should be expected to be introduced in the next round of amendments to the Patent Law.

MEAN COMPENSATION TRENDS BY TECHNICAL SECTOR

FIGURE 5



ⁱ This analysis is an overview of the Invention and Utility model patent civil infringement landscape.

Trend information for acceptance rates for civil patent infringement is sourced from Supreme People’s Court (SPC) and the State Intellectual Property Office (SIPO) data and white papers. Decided cases are estimated based on the total number of concluded IP cases multiplied by the weightings of accepted patent cases for that same year.

Foreign party treatment, geographical differences, and comparison of technical sector information has been sourced from CIELA. Launched in 2009, CIELA is an innovative IP litigation analysis service developed by Rouse based on a deep statistical analysis of over 28,000 IP judgments including patent, trade mark, copyright, and unfair competition cases since 2006. CIELA data covers infringement and administrative appeal decisions from 128 IP courts in 48 cities.

Out of all cases where compensation was awarded, approximately 95% of the awards were statutory compensation awards, i.e. awards in the judicial discretion up to a given maximum, now RMB1,000,000. The analysis in this report excludes compensation awards based on other types such as: loss of profit, illegal income, and royalty income, in order to provide the truest comparison between variables.