

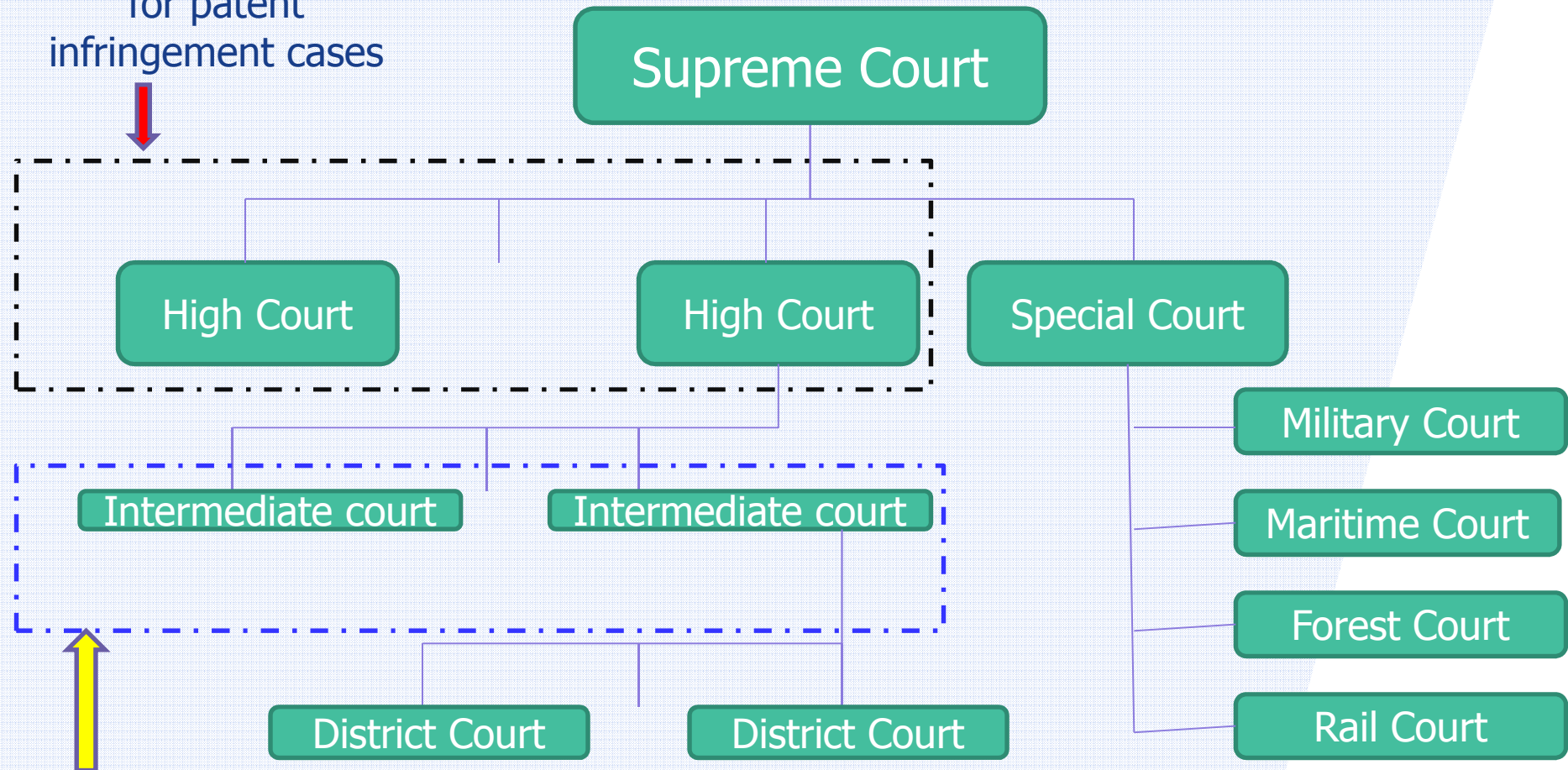


Patent Enforcement in China



Chinese Court System

Appellate & trial courts
for patent
infringement cases



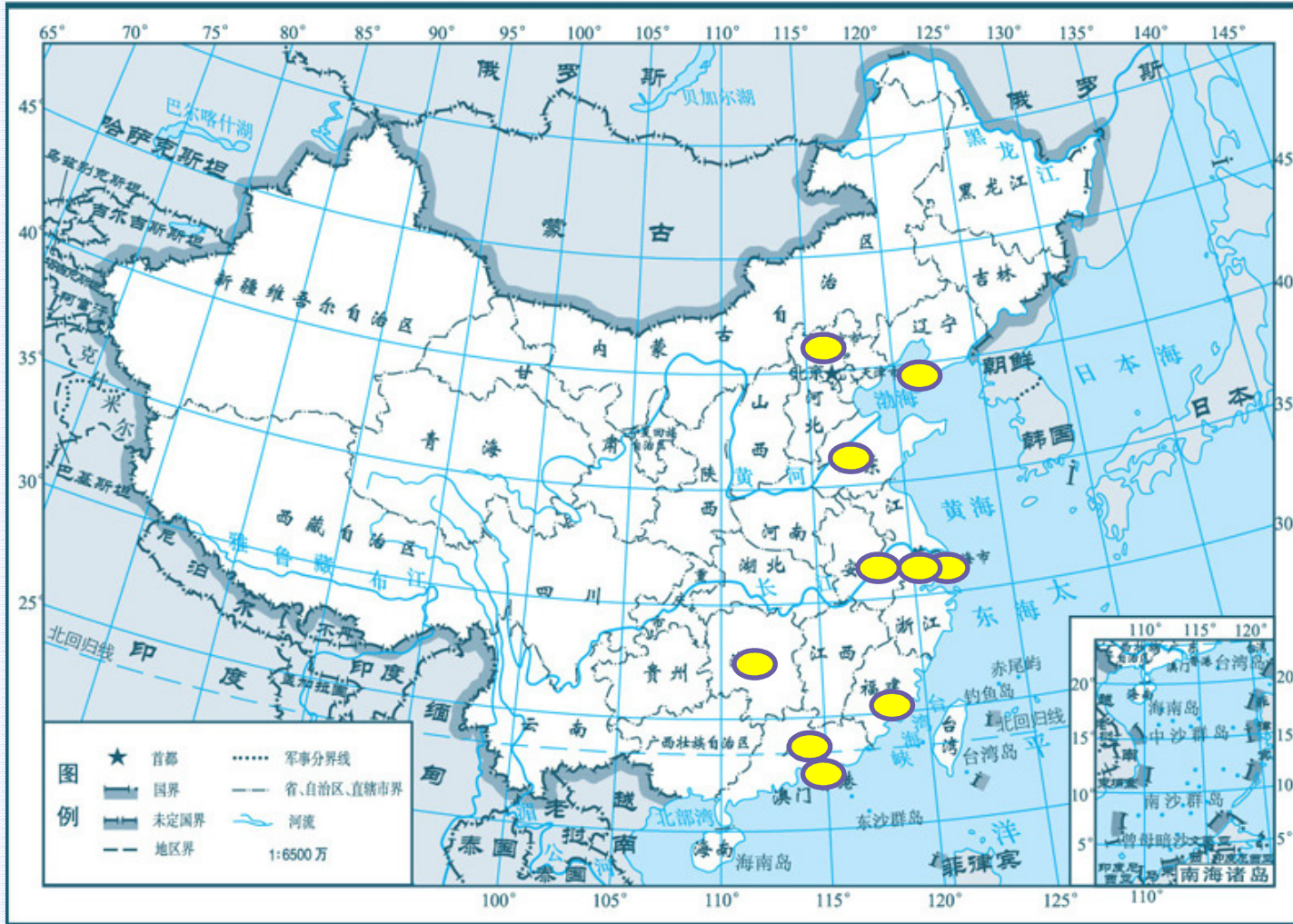
Trail courts for
Patent
infringement
cases



Intellectual Property Court System

中华人民共和国地图

政区版



- 127 Courts;
- 90 courts for patent infringement (2011)
- no special courts for IP
- no more than 20 experienced courts;
- over 7K patent infringement cases in 2011

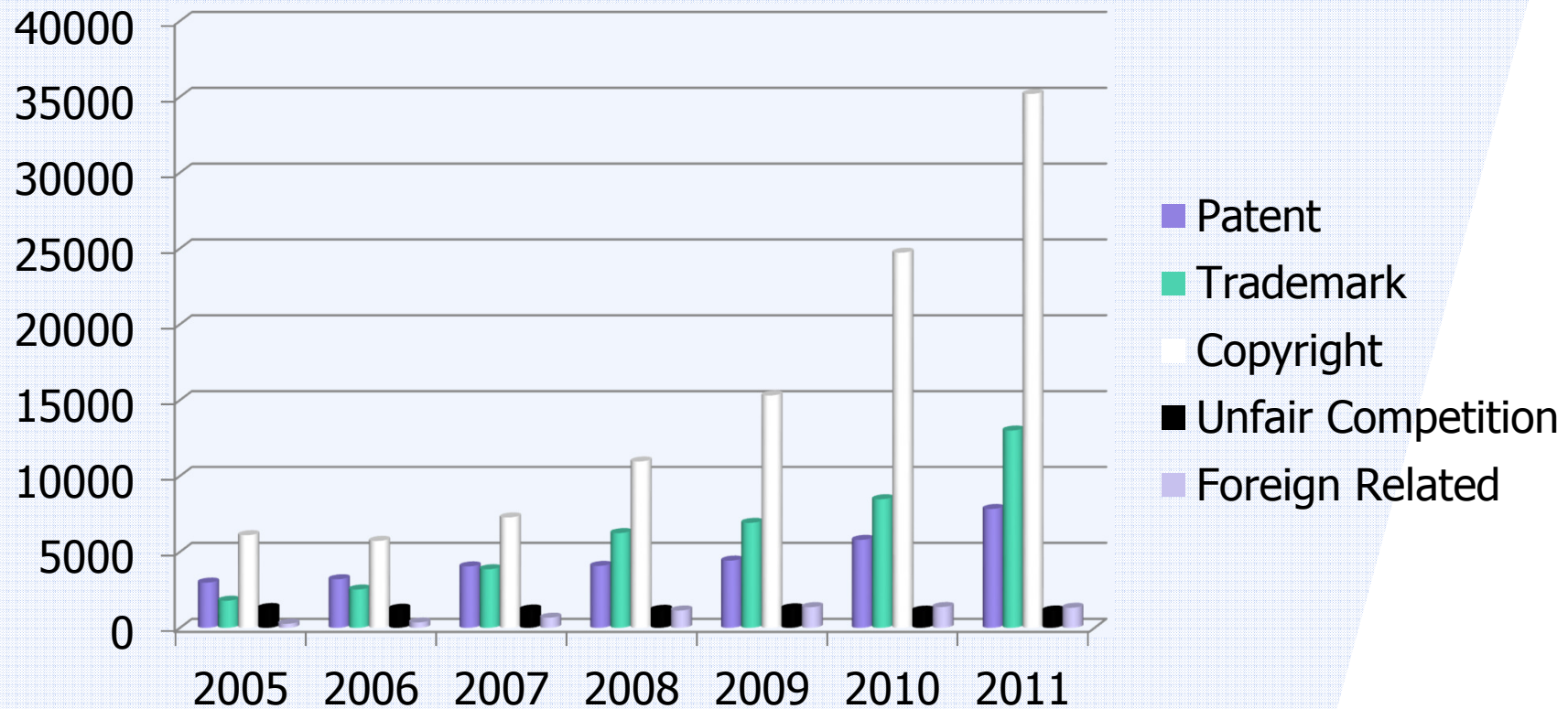
审图号: GS(2006) 2041号

2006年3月 国家测绘局制



Historical Data

Rapid increase of litigations



Source: Chinese Supreme Court



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Historical Data

Successful rate for plaintiff

2006	2007	2008	2009	2010
82%	83%	78%	80%	76%

Average damages for various cases

RMB

Trademark	Unfair Competition	Patent	Copyright
112,744	135,569	130,564	28,486

Average time for litigation

months

2006	2007	2008	2009	2010
5.8	5.5	4.6	4.6	3.7

Source: China IP Litigation Analysis



Historical Data

Statistics of Patent Infringement (from 2914 cases)

	Average Damages (RMB)	Duration (months)	Rate of Success by Patentee (%)
2011	170,933	8	79
2010	123,686	7	77
2009	63,884	6	75
2008	414,770	7	75
2007	64,964	7	80
2006	127,314	8	78

Historical Data

Top 10 Courts of Pro Patent (from 1553 cases)

	Successful Rate	Average Damages	Duration	Settled Cases	Number of Cases
Fu Zhou	94%	3,302,875	3m	17	55
Wu Xi	92%	14,750	5m	18	26
Zheng Zhou	92%	41,383	4m	11	73
Nan Tong	92%	79,870	6m	24	25
Ji Nan	88%	202,905	12m	10	66
Hang Zhou	86%	86,491	7m	58	211
Guang Zhou	86%	50,983	14m	33	639
Nan Jing	85%	78,189	5m	23	182
Chang Sha	84%	166,405	8m	8	62
Yi Wu	83%	40,600	4m	6	6

Historical Data

❖ Top 5 Trademark Infringement Cases

- ❑ Beijing Jiayu Dongfang Wine Co., Ltd. vs. COFCO Ltd.
damages: RMB10,614,090 by Supreme Court
- ❑ Yamaha Corporation vs. Zhejiang Huatian Industrial Co., Ltd.
damages: RMB8,300,440 by Supreme Court
- ❑ Fujian Yipinde Tea Co., Ltd. vs. Pinpinde Tea Chain Co., Ltd.
damages: RMB8,000,000 by Beijing 1st Intermediate Court
- ❑ Qingdao Haichen Biotech Co., Ltd. vs. Qindao Jinguyuan Marine
damages: RMB4,752,000 by Qingdao Intermediate Court
- ❑ Inner Mongolia Mengniu Dairy Co., Ltd. vs. Huhhot Technical Economic
Development Area Mengniu Wine Industry Co., Ltd.
damages: RMB4,000,000 by Beijing 1st Intermediate Court

Historical Data

❖ Top 5 Patent Infringement Cases

- ❑ Wuhan Environment Project Tech Co., Ltd. vs. Fujikasui Engineering Co., Ltd.
damages: RMB50,612,400 by Fujian Higher Court
- ❑ Beijing Leader & Harvest Electric Technologies Co., Ltd. vs. Beijing Hiconics Technology Co., Ltd.
damages: RMB10,000,000 by Beijing 1st Intermediate Court
- ❑ Astellas Pharma Co., Ltd. vs. Chengdu List Pharma Co., Ltd.
damages: RMB5,585,000 by Beijing 1st Intermediate Court
- ❑ Xiangbei Welman Pharma Co., Ltd. vs. Suzhou Erye Pharma Co., Ltd.
damages: RMB5,000,000 by Changsha Intermediate Court
- ❑ Shandong Joyoung Electric Appliances Co., Ltd. vs. Ji Nan Zhengming Trading Co., Ltd.
damages: RMB3,000,000 by Ji Nan Intermediate Court

Legislation Developments

- The Third Amendment of the Chinese Patent Law
 - ❑ October 1, 2009
 - ❑ absolute novelty, secrecy examination, statutory damages, prior art defense
- The Implementing Regulations of the Patent Law
 - ❑ February 1, 2010
- Revised Patent Examination Guide
 - ❑ February 1, 2010

Legislation Developments

- Interpretation from the Supreme Court
 - January 1, 2010
 - Interpretation from intrinsic evidence & extrinsic evidence
 - Limitation of Means-Plus-Function claim
 - ◆ limited to embodiments
 - Design infringement
 - ◆ identical or similar products – the use of products
 - ◆ the overall view of the design
 - part easy to be seen
 - different from the prior design
 - Contributory infringement
 - Prior art defense

Choice of Forum

➤ IP infringement

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Evidence Collection

- No formal discovery procedure
 - ❑ dismissal for lack of evidence within 7 days of filing complaint
- Plaintiff normally bears burden to produce evidence and prove assertions
 - ❑ Infringement
 - ❑ Damages
 - ❑ burden reverses for infringement of process claims
- Court can but rarely take an inquisitorial approach in evidence collection
 - ❑ distance and time requirement, resistance from defendant, lack of power to enforce
- Affidavits or written testimonies
 - ❑ less weight
 - ❑ cross examination is given more weight but rarely done
 - ❑ live testimonies is recommended
- Audit book from the third party assigned by court
 - ❑ common way to discover damages
 - ❑ books cannot be compelled

Evidence Collection—how to?



Defense

- Exhaustion (domestic & international)
- Prior use
 - ❑ prior to the filing date, any person who has already made an identical product, used an identical process or made necessary preparation for its making or use can make or use it within the original scope
- Temporary entry of vehicles
- Legitimate source
 - ❑ not liable for damages
 - ❑ injunction still available
- Prior art defense
 - ❑ no infringement when accused product
 - ◆ is identical; or
 - ◆ has no substantive difference from corresponding technical features in a single technical solution of the prior art
 - ❑ assessment report necessary?

Necessary Consideration

- Carefully weigh cost and benefit of enforcing your IP rights in China
- Know Chinese substantive and procedure laws and regulations on IP enforcement
- Retain a competent counsel
- Be realistic about the remedies you may get
- Be prepared for counterattack from your opponent



Thank You !

