

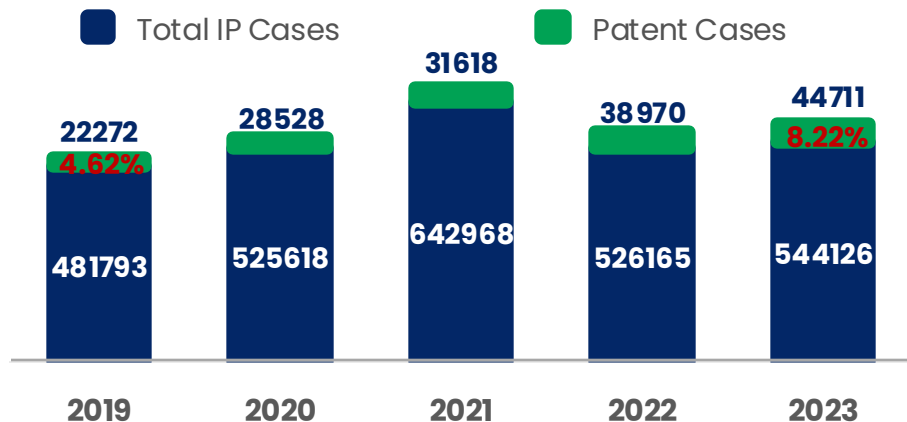
China

Patent Litigation & Patent Linkage

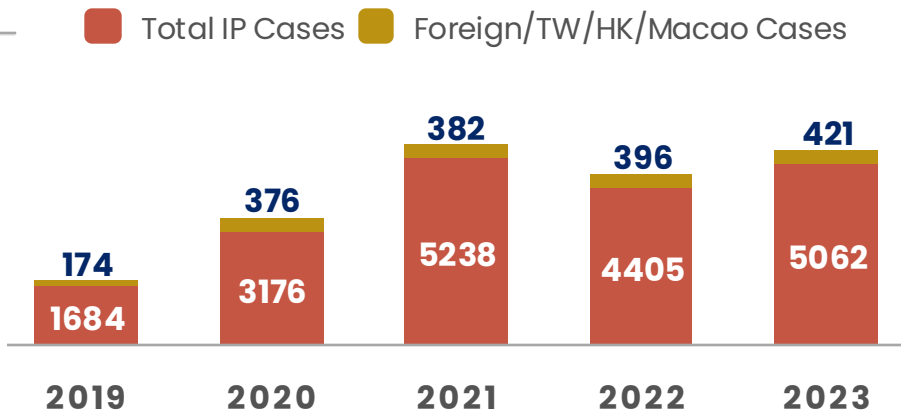
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Patent Litigation – Statistics

VOLUME OF ACCEPTED IP CIVIL CASES (NATIONAL)



VOLUME OF ACCEPTED IP CIVIL CASES (SPC)

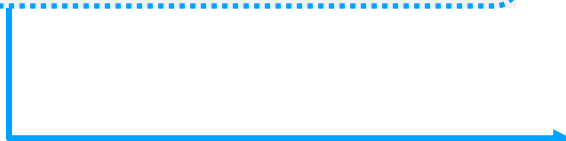


*Source: Annual White Papers of the China's Courts

Patent Litigation – Statistics

DAMAGES IN PATENT INFRINGEMENT CASES

Damage (RMB)	2019	2020	2021	2022	2023
0	29.80%	35.70%	36.80%	33.70%	37.80%
<100,000	24.80%	25.70%	17.70%	21.80%	16.30%
100,000 – 500,000	28.40%	22%	19.90%	21.80%	16.60%
500,000 – 1,000,000	9.80%	9.40%	9.00%	8.60%	9.90%
1,000,000 – 5,000,000	4.10%	5.40%	9.00%	7.00%	11.00%
> 5,000,000	3.10%	1.90%	7.60%	7.00%	8.40%



Damages > 1 million

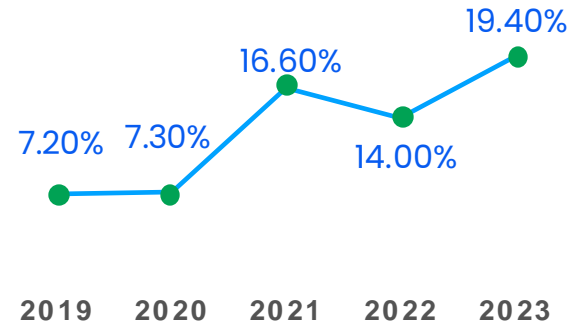
TRADE SECRET MISAPPROPRIATION CASES

5X punitive damages

Tinci v. Newman (2019) SPC Civil Final No. 562

Highest damages: ~90 million USD

Geely v. Weltmeister (2023) SPC Civil Final No. 1590



*Source: CNIPA: China Patent Survey Report 2023.

Patent Litigation – Features & Concerns

Features

- **“Case Law”**
- **Complex issues are addressed**
e.g. SEP, Indirect Infringement, Damages
- **Strong IP protection**
e.g. Damages, Burden of proof
- **National Court of Appeals***

Concerns

- **Significant delay**
- **Quality Concerns**
Average 3 days/case
- **Transparency**
- **Utilization of interim remedies**
- **Invalidation**
- **Talent recruitment**
- **Number Pursue**

Patent Litigation – Cases

Offer for sale

Volume-based Purchase (VBP): a major drug distribution network in China.

- In ***Eisai v. Qilun*** (2021 Lu 01 Civil No. 1026), Jinan IP Tribunal ruled that the application to participate VBP with infringing drug does not constitute offer for sale under the Patent Law.
- In ***Sandoz v. Hansoh*** (2021 SPC Civil Final No. 1158), the SPC held that filing an application for VBP constituted infringement of offering for sale, thereby overturned the above effective judgement.

National Drug Reimbursement List (NDRL): listed drug will be reimbursed by China medical insurance fund.

- In ***MSD v. Hec*** (2022 SPC Civil Final No. 1062 and 1194), the SPC held that listing in the NDRL did NOT constitute infringement of offering for sale.

Patent Litigation – Cases

Against invalidation

Alfa Laval v. 711/Qiyao (2020 SPC Retrial No. 969)

An infringement court overruled CNIPA's claim construction in its invalidation decision.

- During two instances of an infringement lawsuit, the courts overruled CNIPA's claim construction, and found infringement.

Chugai v. Haihe (2020 SPC Final No. 905)

The SPC ruled that the patent linkage case may not be dismissed due to an unfavorable invalidation decision, upon both parties' agreement.

Team up for clients

Thanks !