

W&B IP Newsletter

May. of 2021, Vol. 49

Contents

Patent

CNIPA publishes 2020 China Patents Survey Report.....	2
1.Industrialization rate of invention patents has steadily kept at over 30%	2
2.An ongoing decline is found in the proportion of patentees who have suffered infringement upon their patent rights	2
3.An increasing awareness of rights enforcement has grown among corporate patentees	2
4.The amount of damages granted in patent infringement cases has gradually increased	3
5.Nearly 80% of corporate patentees have carried out cooperative innovation	3
6.The enterprises' anticipated profits from their IP rights have further increased	3
7.Difficulties in evidence collection have been regarded as a major reason for difficult cross-region IP rights enforcement actions	4
8.Enhancing the efficiency of dispute resolution has been regarded as the primary legal role of the patent invalidation mechanism	4

Trademark

CNIPA: 20% of the Trademarks requesting Recognition as Well-known Trademarks approved from November 2019 to March 2021	5
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Intellectual Property

2020 Annual Report on IP Cases published by the Supreme People's Court: an Invention Patent Infringement Dispute represented by Watson & Band is selected	6
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Patent

CNIPA publishes 2020 China Patents Survey Report

On April 28, CNIPA published the *2020 China Patents Survey Report* (hereinafter the “*Report*” or the “*Survey*”). According to the Report, the industrialization rate of valid invention patents in China reached 34.7%. Commercialization of patents (including transfer and transformation) has been increasingly activated. Protection for patent rights has been obviously strengthened, which helps to continuously optimize the business environment. Investments in patent R&D process have been significantly increased and cooperative innovation has become an important means for enterprises. The *Report* mainly provides findings and conclusions in the following aspects:

1. Industrialization rate of invention patents has steadily kept at over 30%.

According to the Survey, the industrialization rate of valid patents in China was 41.6%. In terms of the types of patentees, enterprises reached a relatively high rate at 46%, while colleges and universities accomplished 3.0% only. In terms of the types of patents, the industrialization rate of valid design patents reached top 1 at 51.6%, while the industrialization rate of valid invention patents was at a relatively low figure – 34.7%.

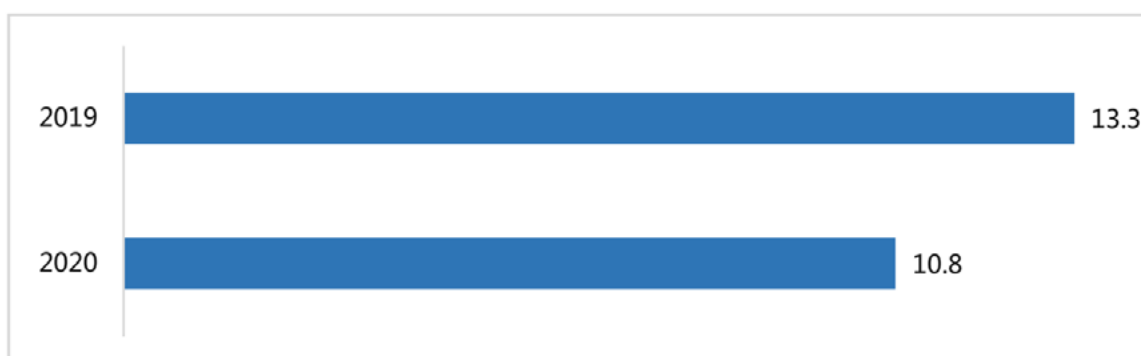
Table 55: Industrialization rates of valid patents owned by different types of patentees (unit: %)

	Enterprises	Colleges and Universities	R&D Institutions	Overall
Valid Inventions	44.9	3.8	11.3	34.7
Valid Utility Models	44.6	2.1	12.9	42.0
Valid Designs	53.1	1.9	39.0	51.6
Total	46.0	3.0	12.0	41.6

2. An ongoing decline is found in the proportion of patentees who have suffered infringement upon their patent rights.

According to the Survey, the proportion of patentees who suffered infringement upon their patent rights in 2020 was 10.8%, 3.7% lower than the percentage in 2015, showing an overall drop in that respect.

Fig 36: Proportions of patentees who have suffered infringement of their patent rights (unit: %)



3. An increasing awareness of rights enforcement has grown among corporate patentees.

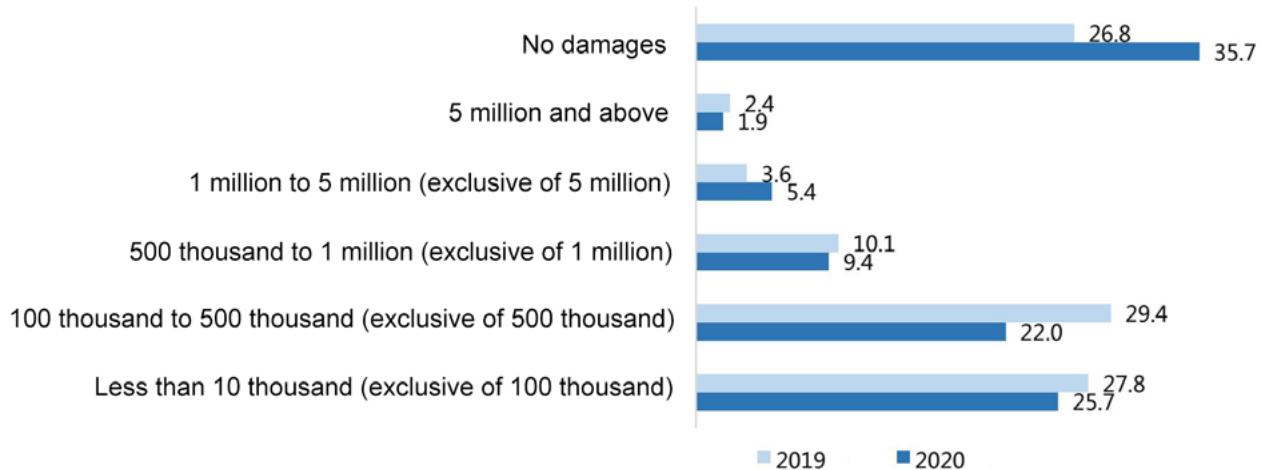
In 2020, 73.9% of the corporate patentees who suffered infringement upon their patent rights initiated enforcement actions against the infringers, reaching an increase rate of 12.1% with respect to the percentage in 2015. Said percentage has kept on rising in recent years.

Patent

4.The amount of damages granted in patent infringement cases has gradually increased.

According to the Survey, the proportion of cases, in which compensation was either granted by the court, or determined through mediation or settlement, in the amount of over 1,000,000 RMB, reached 7.3% in 2020, with an increase rate of 1.3% with respect to the percentage in 2019. Said percentage presented an overall rise in the past five years.

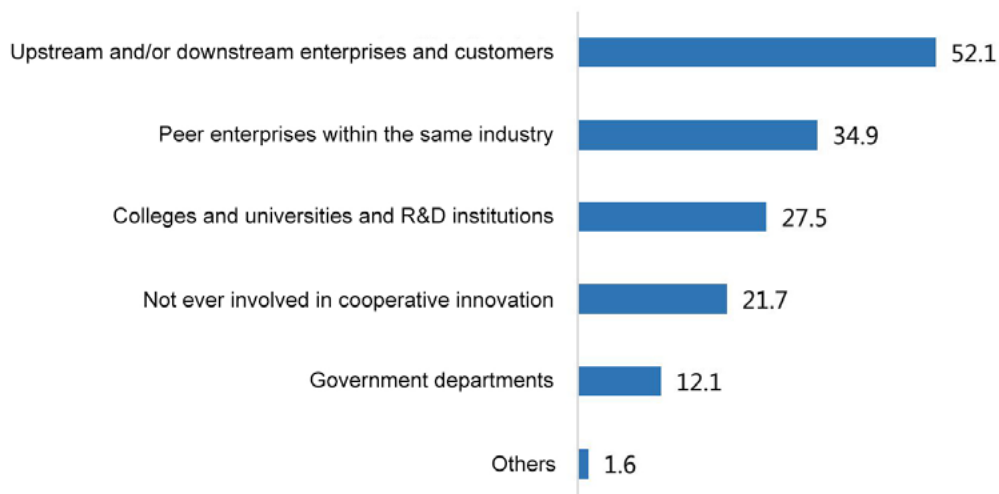
Fig 40: Amounts of damages granted by the court or determined through mediation or settlement in patent infringement cases (unit: %)



5.Nearly 80% of corporate patentees have carried out cooperative innovation.

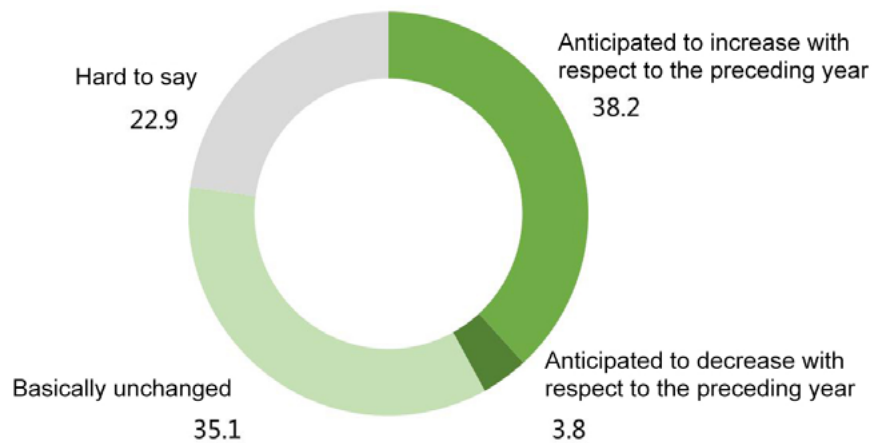
According to the Survey, 78.3% of the corporate patentees have carried out cooperative innovation, among which 52.1% of the corporate patentees cooperated with upstream and/or downstream enterprises or customers, 34.9% of them cooperated with peer enterprises and 27.5% of them cooperated with colleges and universities or R&D institutions.

Fig 24 Cooperators of the enterprises in innovation (unit: %)



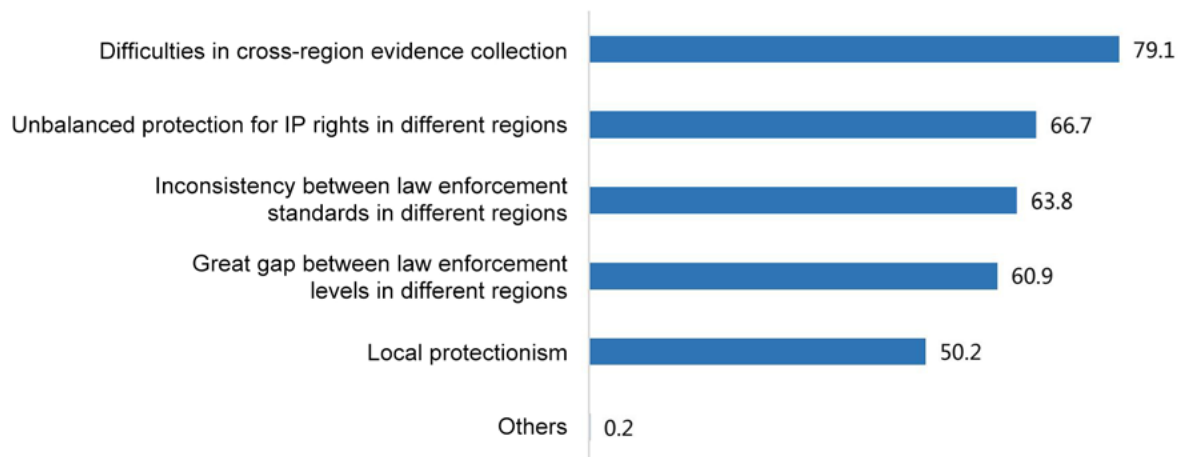
6.The enterprises' anticipated profits from their IP rights have further increased.

According to the Survey, 38.2% of the corporate patentees anticipated increases in their profits from exploitation of their patents in the coming year; 35.1% of them anticipated such profits to be basically unchanged; and only 3.8% of them anticipated decreases in such profits. Still, 22.9% of them selected "hard to say" as the answer. Said figures reflect an overall optimistic outlook into the future profits from exploitation of patents.

Fig 30: Anticipations in profits from exploitation of patents in the coming year (unit: %)

7. Difficulties in evidence collection have been regarded as a major reason for difficult cross-region IP rights enforcement actions.

According to the Survey, the major reason that patentees held for their difficulties in cross-region IP rights enforcement actions was “difficulties in cross-region evidence collection” – patentees that selected this reason accounted for 79.1%. It is found that the smaller the enterprises are, the higher percentage they account for in selecting this reason, as 82.1% micro enterprises in effect selected it.

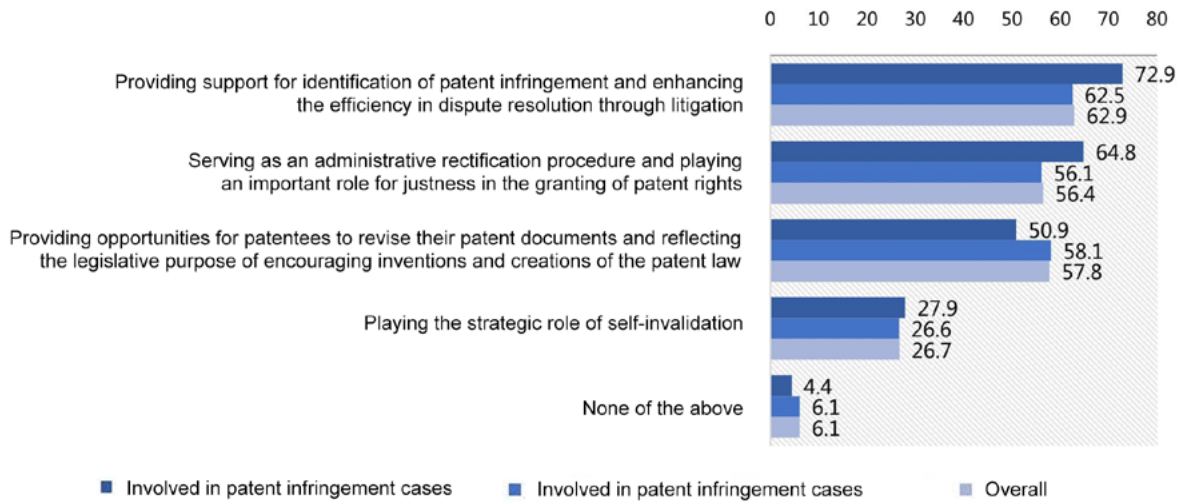
Fig 45: Major reasons patentees held for their difficulties in IP rights enforcement actions (unit: %)

8. Enhancing the efficiency of dispute resolution has been regarded as the primary legal role of the patent invalidation mechanism.

In terms of the roles played by the patent invalidation mechanism, 63.1% of the patentees agreed that this mechanism “provides support for identification of patent infringement and enhances the efficiency in dispute resolution through litigation”, rendering said role as the top 1 in the survey results. Among the patentees selecting this role, enterprises who had suffered infringement upon their patents were 10% more than those who had not suffered any infringement in the past five years, which actually shows that the patent invalidation mechanism has played an active role in patent infringement cases based on its strong expertise and high accuracy.

Patent

Fig.78: enterprises’ understandings of the roles of the patent invalidation mechanism (whether or not they have been involved in patent infringement cases in the past five years)



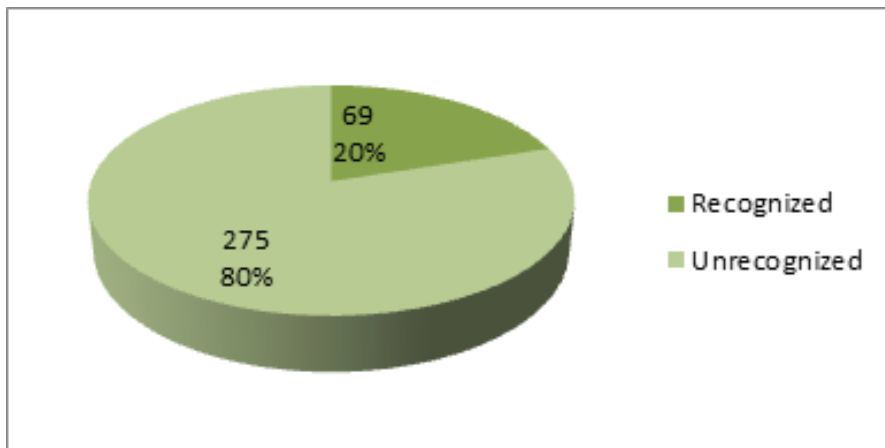
(Source: China National Intellectual Property Administration)

Trademark

CNIPA: 20% of the Trademarks requesting Recognition as Well-known Trademarks approved from November 2019 to March 2021

On May 11, CNIPA published the understanding and application of the *Notice on Strengthening Protection for Well-known Trademarks in Cases Involving Illegal Conducts over Trademarks*. According to the said document, as of March 2021, CNIPA has received an accumulative total of 344 requests for recognition of the relevant trademarks as well-known trademarks, of which 69 trademarks were recognized as well-known, reaching a percentage of approximately 20%.

Recognition of Well-known Trademarks (November 2019 to March 2021)



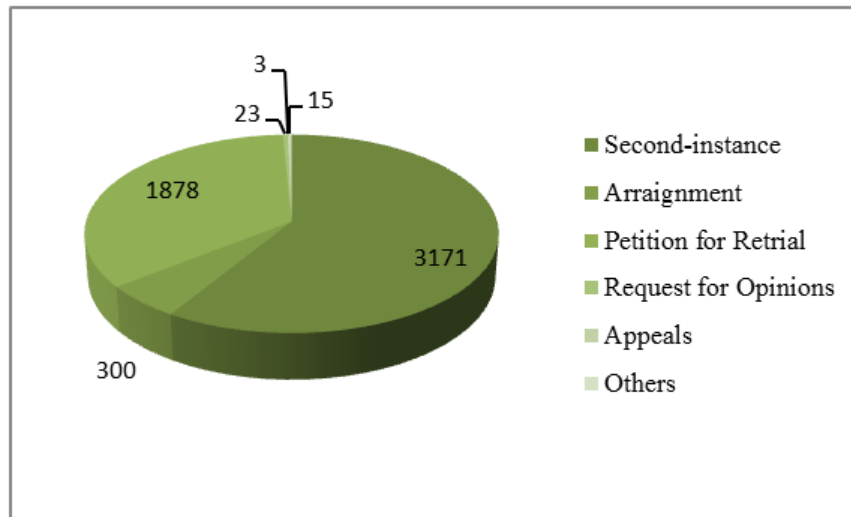
(Source: China National Intellectual Property Administration)

Intellectual Property

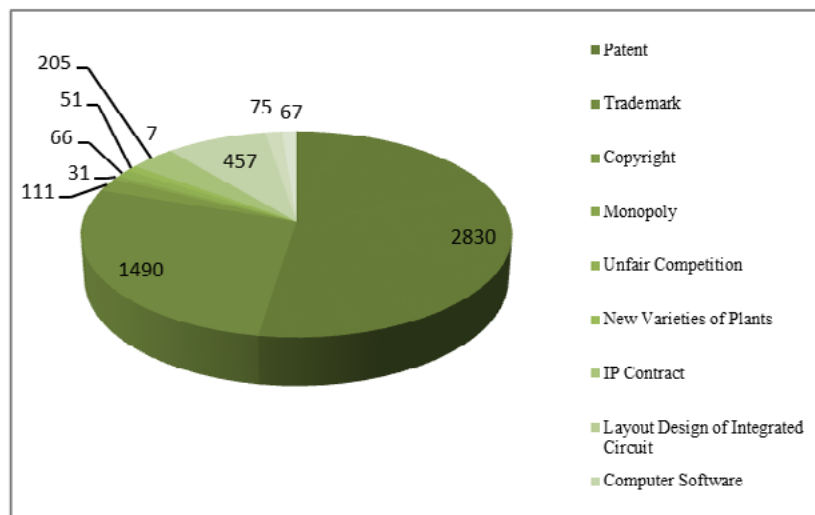
2020 Annual Report on IP Cases published by the Supreme People's Court: an Invention Patent Infringement Dispute represented by Watson & Band is selected

On April 25, the Supreme People's Court published the *2020 Annual Report on IP Cases (Abstracts)*. According to the *Annual Report*, the Supreme People's Court accepted a total of 5390 IP cases in 2020.

Classified per the procedure applied in the cases (unit: cases)



Classified per the types of the objects involved (unit: cases)



Classified per the nature of the cases (unit: cases)

Administrative Cases	Patent-related	742
	Trademark-related	1119
	Others	43
	Subtotal	1904
Civil Cases		3470
Criminal Cases requesting SPC's Opinions		16

Intellectual Property

In addition, in this *Annual Report*, the Supreme People's Court selected 55 typical cases out of the IP-related cases concluded throughout the year 2020, and summarized 63 issues on the application of law that incorporate guidance values to some extent. Such cases reflect the thinking and adjudication methods of the Supreme People's Court in the trial of IP cases involving new types of rights, difficulties and complexities.

The "Patent-related Civil Cases" section of the *Annual Report* includes an invention patent infringement dispute that Watson & Band's partner, Mr. Jianguo Huang, along with his team, represented for the patentee. The Supreme People's Court commented on the guidance value of this case as follows:

How to identify the exceptions to functions features

In the invention patent infringement dispute between the retrial petitioner – a Japanese company, and the retrial respondents – a pneumatic equipment company in Yueqing and a hardware tooling company in Shanghai (File No.: (2019) SPC Civil Retrial No.5477), the Supreme People's Court points out that based on the knowledge level and cognitive competence of an ordinary person skilled in the art prior to the filing date of the patent, if the specific embodiment that may realize the function or effect disclosed in the disputed technical feature belongs to common knowledge of an ordinary person skilled in the art, then said disputed technical feature should be identified as feature for which an ordinary person skilled in the art can directly and definitely determine the specific embodiment that may realize the function or effect disclosed therein, and therefore should not be identified as a functional feature.

(Source: Supreme People's Court)