

# Patent Enforcement in China

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# China Becomes a Hot Place for Patent Dispute Resolution

QUALCOMM



HUAWEI

SAMSUNG

JHICC 晋华  
Integrated Circuit

Micron

GREE 格力

AUX 奥克斯

Midea

10,000 Patent Litigations  
Per Year

Multi-national Companies  
Litigate in China:

Chinese Companies Fight  
with Patents:

Qualcomm v Apple,  
smartphone

Huawei v Samsung,  
smartphone and SEP

JHICC v Micron,  
semiconductor

Δ litigation: GREE v Midea  
v AUX, top 3 domestic air-  
conditioner companies

# Content

Tribunals for patent litigation

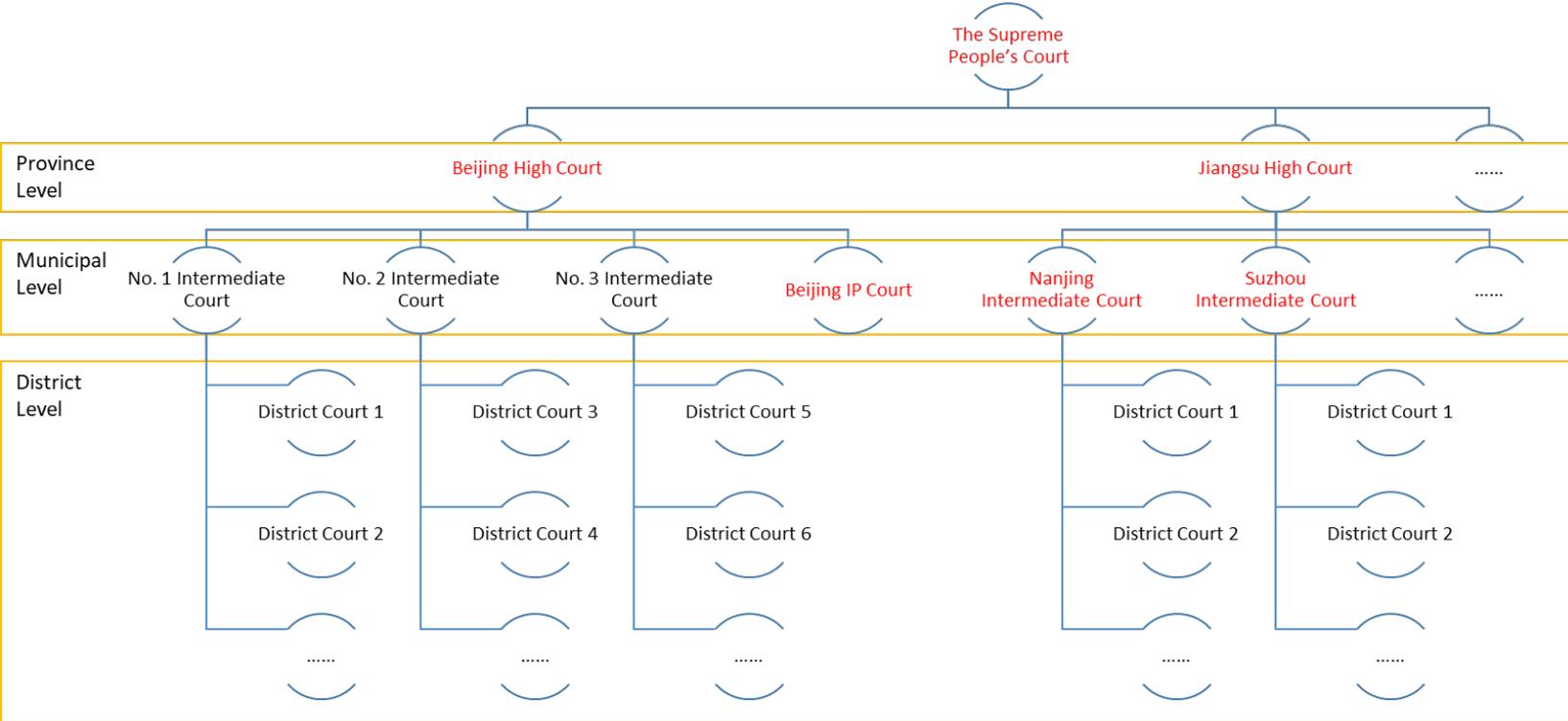
Time spans

Remedies

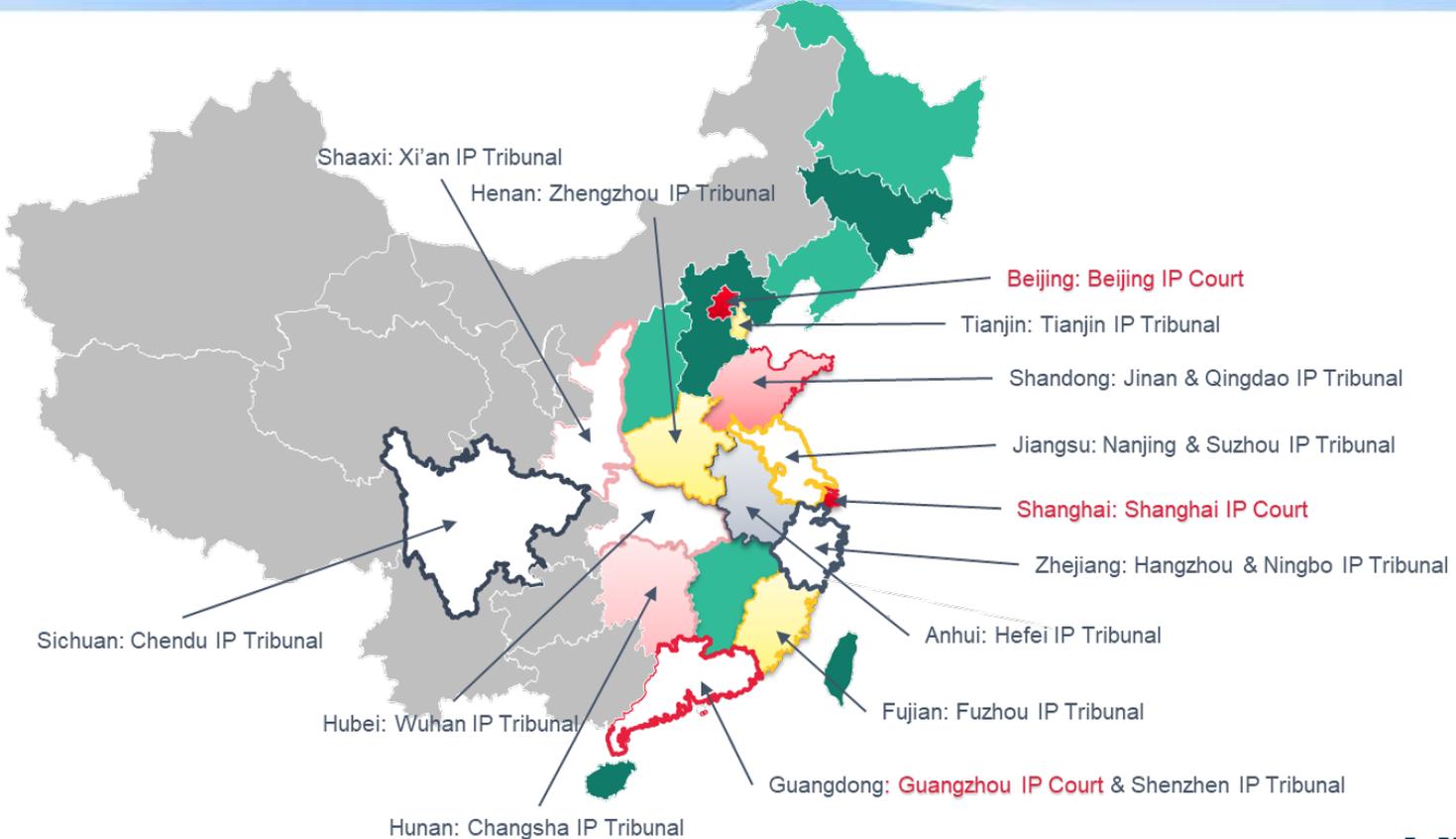
Determination of patent infringement

Sample case – how litigation proceeds

# China Court System



# China IP Courts & IP Tribunals Distribution



# Bifurcated System for Infringement and Validity

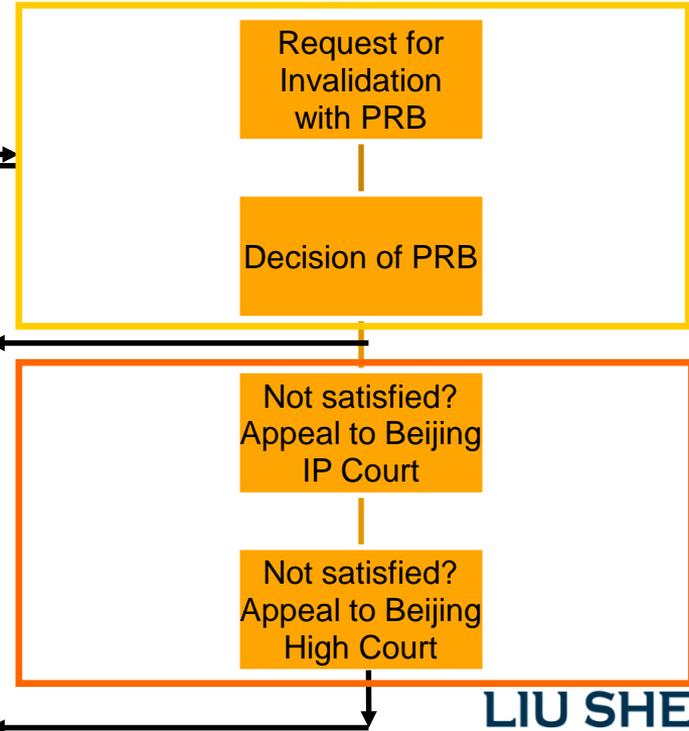
## Courts

### Patent Infringement Civil Action



## Patent Reexamination Board

### Invalidity Proceedings



Administrative Action

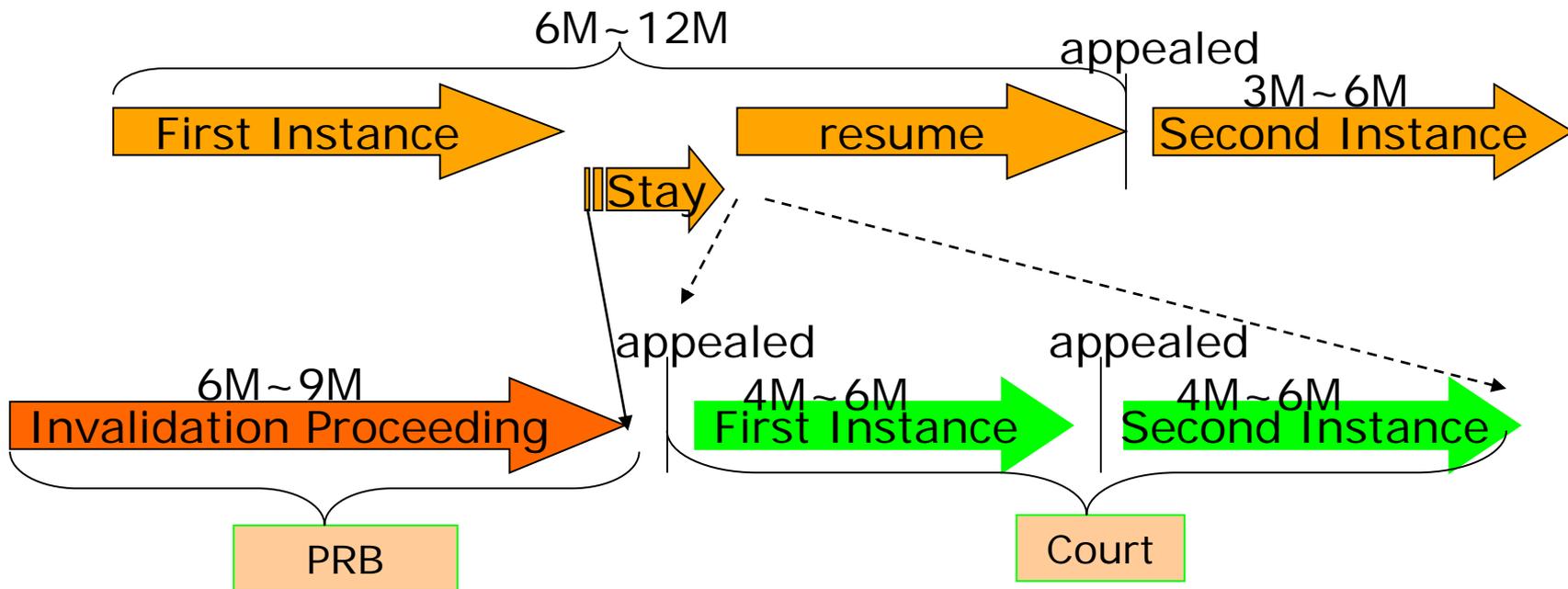
Request for Invalidation

Request for stay

Restore

# Timelines

For Foreigner-involved Cases (based on experiences):



# Interim Remedies

## I Preliminary Injunctions

- available but very difficult to obtain
- factors to be considered by Courts
  - ✓ whether likely there is an infringement
  - ✓ where irreparable harm is going to be caused
  - ✓ whether a bond is secured
  - ✓ whether there is any harm to public interest

## II Preservation of Evidence or Preservation of Property

- available upon request
- Little chance, but possible



# Remedies

- Permanent Injunction
- Damages awards – the part regarding to damages calculation basis
  - ✓ Patentee's actual loss
  - ✓ Infringer's profit from the infringement
  - ✓ 1-3 times of reasonable patent license royalty
- Statutory damages between RMB10,000-1,000,000
- Reasonable cost – cost for purchasing infringement goods as evidence and reasonable portion of attorney fees

# Determination of patent infringement

- Element by element comparison
- Literal infringement
  - All the elements in the claims could be found from the accused product or process
- Doctrine of equivalence
  - **Substantially** the same **means**, for substantially the same **purpose**, to achieve substantially the same technical **effect**, and one skilled in the art does **not** need **inventive labor**.

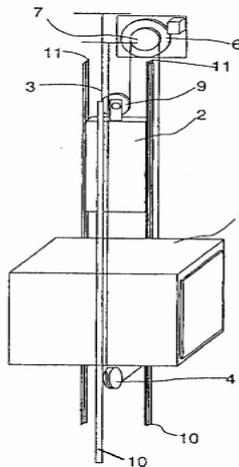
# Claim construction

- Article 59 of Patent Law
  - Claim;
  - Description **can** interpret claim.
- Functional features – SIPO & Courts
  - Examination Guideline: Functional features in claims shall be construed as covering **all the means that could realize the function**. Causing strict novelty and non-obviousness.
  - Supreme Court Judicial Provision: For technical features in the language of function or effect, the court should determine the content of the technical features in combination of **embodiments and their equivalences**.

# Sample case

- Introduction: European Company P has patent. China Company D manufactures accused elevator

// v. 5°  
Evidence



# Issue of Evidence

- Plaintiffs are heavily burdened to provide evidence, either for proof of patent infringement or damages.
  - No US-style discovery procedures;
  - Evidence obtained outside China needs to be notarized and legalized;
  - Evidence illegally obtained would be blocked;
  - Court order for preserving evidence is possible especially evidence for calculating evidence, if plaintiff has preliminary evidence and it is obvious that the defendant holds the evidence.

# Issue of Evidence

## **Evidence – Plaintiff's side**

- ✓ Evidence for proving the patent right
- ✓ Evidence for proving the infringement
- ✓ Evidence for calculating damages

# Issue of Evidence

## **Evidence – Defendant's side**

- ✓ Evidence for proving the invalidity of the patent right
- ✓ Evidence about the invalidation request (if initiated)
- ✓ Evidence establishing the prior art which would support prior art defenses
- ✓ Evidence supporting non-infringement defenses
- ✓ If the defendant is a seller, evidence for proving the legitimate source of the alleged-infringing product

# Investigation

- Website information
  - Helpful to make plans
- Work with investigation firms
  - Necessary information
  - Collection of evidence

# Summary

I do not want, but I litigate in China.

Well prepared before initiating a lawsuit.

Damages can be high!

# Thanks!

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