

# 中国法院技术事实查明 机制简介

## Ascertaining Technical Facts at Chinese Courts

中华人民共和国最高人民法院知识产权审判庭  
IP Tribunal, SPC (Supreme People's Court)  
吴蓉法官 Judge Rong WU

2022年5月23日 北京  
May 23, 2022 Beijing



# 目录 Contents

## 一、技术调查官和技术咨询专家

I. Technical investigator and technical expert

## 二、专家陪审员

II. Expert juror

## 三、司法鉴定

III. Judicial appraisal

## 四、专家辅助人

IV. Expert assistant

# 一、技术调查官和技术咨询专家

## I. Technical investigator and technical expert

### 1. 技术调查官

#### 1. Technical investigator

司法解释：《最高人民法院关于技术调查官参与知识产权案件诉讼活动的若干规定》

Judicial interpretation: *Several Provisions of the SPC on the Participation of Technical Investigators in Litigation Activities Related to IP Cases*

身份定位：审判辅助人员

Technical investigators are trial assistants.

具体职责：庭前准备、调查取证、勘验保全、庭审、案件评议等

They participate in pre-trial preparations, investigation, evidence collection, inspections & preservation, and case deliberation.

技术调查意见的性质：为法官认定技术事实提供参考

Technical investigation opinions are used by the judge for reference to ascertain technical facts.

# 一、技术调查官和技术咨询专家

## I. Technical investigator and technical expert

### 2. 技术咨询专家

#### 2. Technical expert

#### 身份定位：外部专家

Technical experts are external experts.

#### 具体职责：一事一聘，临时性的接受法院的委托提供咨询意见

They are engaged provisionally on a case-by-case basis to provide consultation at the request of the court.

#### 技术咨询意见的性质：为法官认定技术事实提供参考

Technical consultation opinions are used by the judge for reference to ascertain technical facts.

## 二、专家陪审员

### II. Expert juror

**法律规定：民事诉讼法第四十条**

Legislation: Article 40, Civil Procedure Law

**身份定位：审判人员**

Expert jurors are judicial officers.

**具体职责：与法官相同**

The juror shares the same responsibilities as the judge.

**评议意见的性质：直接影响案件裁判结果**

Juror deliberation opinions have a direct bearing on the case decision.

# 三、司法鉴定

## III. Judicial examination

**法律规定：民事诉讼法第七十九条**

Legislation: Article 79, Civil Procedure Law

**鉴定制度的功能：在事实发现过程中辅助事实审理者对专业问题作出决定**

The appraisal system supports the trier of fact in making the decision on specialized issues during fact finding.

**鉴定的启动：双方当事人申请、单方当事人申请、法院依职权**

Appraisal may be initiated upon application of both parties or one party to the case, or by the court ex-officio.

**鉴定人的确定：双方当事人协商、法院指定**

The appraiser is determined by both parties through negotiation or appointed by the court.

**鉴定意见的性质：证据**

The appraisal opinions are used as case evidence.

## 四、专家辅助人

### IV. Expert assistant

**法律规定：民事诉讼法第八十二条**

Legislation: Article 82, Civil Procedure Law

**专家辅助人的身份定位：诉讼辅助人，辅助当事人充分有效地完成诉讼活动，不承担法官“专业助手”的职责**

The expert assistant assists the parties during the legal proceedings. They are not mandated to be the judge's assistant.

**专家辅助人出庭：当事人申请，只能就鉴定意见或者专门性问题提出意见**

The expert assistant may, upon application of a party to the case, appear before the court and weigh in on appraisal opinions or specialized issues.

**专家辅助人意见的性质：视为当事人陈述**

The expert assistant's opinions are regarded as representation of a party to the case.

谢 谢 大 家

Thank you!

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