

# 知识产权民事案件的审判程序

## The Trial of IP Civil Cases

中华人民共和国最高人民法院民事审判第三庭  
晏景

No. 3 Civil Division, SPC (Supreme People's Court)  
Judge Jing YAN

2022年5月 北京  
May 2022, Beijing



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01

庭前准备

Pretrial Preparations

# ◆ 庭前准备 Pretrial Preparations

开庭审理前  
必经阶段  
Must-dos

当事人  
Parties

获取案件信息  
Access case details

法官  
Judges

了解案件情况 Know the case  
掌握案件焦点 Understand the focus  
查阅法律法规 Reference the law

# ◆ 庭前准备的主要内容 Pretrial Preparations

## 诉讼材料的送达

### Service of documents

1. 案件受理后，由书记员向当事人送达。

Documents are served by the court clerk upon case acceptance.

2. 被告有权在15日内提交书面答辩状，不答辩的，不影响审理。

The defendant is entitled to, within 15 days from the date of receipt, submit a statement of defense. Failure to submit a statement of defense shall not affect the trial of the case.

3. 开庭三日前书记员通知当事人并发布开庭公告。

The court clerk shall notify the parties three days prior to the hearing

## 阅卷

### Examination of case file

法官助理在承办法官的指导下进行阅卷：

The judge's assistant reads the case file under direction of the judge.

1. 查阅案卷材料，梳理诉辩主张及证据，制作阅卷笔录；

Access the the case file materials. Comb through the claims, arguments and evidence. Prepare notes.

2. 查阅法律法规及司法解释

Reference the law and its judicial interpretation.

3. 与当事人或其他诉讼参与人沟通。

Communicate with parties to the case and other participants in the action

## 庭前会议

### Pretrial meeting

案情复杂、证据较多的案件可召集当事人进行庭前会议

Pretrial meeting with the parties may be held for cases with complex details and evidence.

1. 明确诉讼请求及诉辩意见 Identify claims and arguments

2. 证据的收集、鉴定、勘验与保全等 Collection, examination, investigation and preservation of evidence

3. 证据交换 Evidence exchange

4. 进行调解 Mediation

02

开庭审理

Trial in Court

# ◆ 开庭审理的环节 Trial in Court: Procedures



## 庭审笔录 Trial Transcript

时间 Time:  
地点 Location:  
案号 Case number:  
案由 Cause of action:  
合议庭成员 collegiate bench:  
法官助理 Judge's assistant:  
书记员 Court clerk:  
庭审记录 Court records:

# ◆ 庭审准备和开始 Trial in Court: Preparations and Opening

## 书记员 Court clerk



## 审判长 Presiding judge

1. 核实当事人及其他诉讼参与人到庭情况;  
The court clerk shall ascertain the presence in court of the parties to the case and other participants in the action;
2. 宣布法庭纪律;  
announce the discipline of the court;
3. 宣布全体到庭人员起立后, 请合议庭成员入庭;  
all persons shall rise while members of the collegiate bench enter the court;
4. 向审判长报告开庭准备的情况。  
report to the presiding judge on the preparations before the trial.

1. 敲击法槌, 宣布开庭;  
The presiding judge shall pound the gavel and take the bench;
2. 核对当事人身份;  
check the parties present;
3. 向出庭人员告知相关诉讼权利义务, 包括询问当事人是否申请审判人员及司法辅助人员回避。  
advise the parties of their procedural rights and obligations and inquire whether the parties wish to challenge any judicial officers

## ◆ 法庭调查 Investigation in Court

### 法庭调查的顺序 Order of investigation in court

当事人陈述  
Statements by the  
parties

归纳争议焦点  
Summarizing the  
focus of dispute

举证、质证  
Presentation and  
cross-examination  
of evidence



**遵循平等原则 Principle of equality**

在审判人员的主持下，围绕争议焦点依次发言。

Under the direction of the judicial officers, the parties take turn in arguing the case.

## ◆ 最后陈述 Final Statements

庭审结束前，当事人都有陈述最后意见的权利。

The parties shall have the right to present a final statement before the trial in court concludes.

最后陈述是对己方诉讼请求、诉讼观点的最终确认和总结。

The final statement is the final confirmation and summary of a party's claims and arguments.

# ◆ 调解 Mediation

能调则调  
Mediation  
where possible

当判则判  
Judgment  
where should

调判结合  
Mediation  
+ judgment

案结事了  
Case closed  
= case settled

1360

余万件

2017年至2018年，全国法院共审结  
民事一审案件数量

Between 2017 and  
2018, 13.6m+ first-  
instance civil cases  
were tried and  
closed in China.

44.25%

调解结案数占比

601

余万件

2017年至2018年，全国法院  
审结的民事一审案件中以调解  
方式结案的数量

Of which, 6.01m+,  
or 44.25% of the  
cases, were closed  
by mediation.

## ◆ 宣布闭庭 Court Closed

最后陈述并征求调解意见之后，  
审判长宣布闭庭，敲击法槌。  
庭审活动全部结束。

The presiding judge announces  
the court closed by pounding  
the gavel after hearing the final  
statements and soliciting the  
parties' opinions on mediation.  
All trial activities are hereby  
concluded.

书记员宣布全体起立，请审判人员  
先退庭，其余人员再依次退庭。

On announcement of the clerk, all  
persons shall rise. The judicial officers  
are invited to withdraw from the court,  
followed by other persons.

## ◆ 庭审笔录 Trial Transcripts

在开庭审理中，书记员对开庭审理的全过程进行书面记录，庭审结束后，形成庭审笔录。

**During the trial in court, the clerk keeps a written record of the whole process and produces the transcript after the trial.**

真实  
Authentic

全面  
Comprehensive

客观  
Objective

### 庭审笔录 Trial Transcript

时间 Time:  
地点 Location:  
案号 Case number:  
案由 Cause of action:  
合议庭成员 collegiate bench:  
法官助理 Judge's assistant:  
书记员 Court clerk:  
庭审记录 Court records:

03

案件评议

Deliberation

# 合议庭评议

## Deliberation of the collegiate bench

1.承办法官起草审理报告，提出案件的拟处理意见，并将审理报告提交合议庭评议。

The judge drafts the case trial report and proposed case opinions for deliberation of the collegiate bench.

2.合议庭由单数法官组成，不能形成一致意见时，少数服从多数，并以多数意见作为合议庭的决议意见。

A collegiate bench must have an odd number of members. The rule of majority shall apply in the absence of a consensus, and the majority opinions serve as the resolution of the collegiate bench.

3.评议过程由书记员如实制作笔录，合议庭成员签名确认。

The deliberation shall be recorded in writing by the clerk, and the transcript signed by the members of the collegiate bench.

04

判決

Judgment

## ◆ 判决的格式 The Format of Judgment



# ◆ 判决的核心内容 The Core Content of Judgment

## 事实认定

The facts as found in the judgment

- 法院对案件事实的查明及认定过程  
The process with which the court ascertains the facts.
- 认定事实所依据的证据要有理有据  
The well-grounded evidence for the ascertained facts.

## 裁判理由

The grounds of the judgment

- 法院对当事人诉讼请求、抗辩理由的分析与评判  
The court's analysis and verdict of the parties' claims and arguments.

## 裁判主文

The main body of judgment

- 对案件的最终裁判结果  
The final results of the ruling.

## ◆ 判决的签署 The Signing of Judgment



# ◆ 判决的宣告 The Pronouncement of Judgment

## 当庭宣判 Extempore judgment

- 1.事实清楚、法律适用无争议的案件；  
Cases with clear facts and uncontested applicability.
- 2.庭审后合议庭直接评议并拟写简要判词，审判长当庭宣读判词。  
The collegiate bench enters deliberation and drafts a short verdict directly after the court hearing. The presiding judge reads out the verdict in court.
- 3.当庭宣判10日内向当事人送达判决书。  
In case of an extempore judgment, the judgment shall be serviced to the parties within ten days.

## 定期宣判 Reserved judgment

- 1.不能当庭宣判的，审判长宣布另定日期宣判。  
The presiding judge states that the judgment is to be reserved for a later date.
- 2.定期宣判的，宣判后立即向当事人送达判决书。  
The written judgment shall be issued immediately after the pronouncement.
- 3.一般来说，案件多采用定期宣判的方式。  
Most cases receive reserved judgement.

# ◆ 判决的生效 The Legal Effect of Judgment

## 一审裁判 First instance

- 一审终审的案件直接生效  
Effective immediately upon final adjudication
- 上诉期内（15天）不上诉的，  
上诉期满后生效
- Effective upon expiry of the period of appeal (15 days)

## 二审裁判 Second instance

- 向当事人送达后生效  
Effective upon service to the parties

生效的裁判就是  
发生法律效力的裁判  
“Effective” means the  
judgment is valid and  
of legal effect.

## ◆ 申请再审 Application for Retrial

生效的裁判  
Effective  
judgment

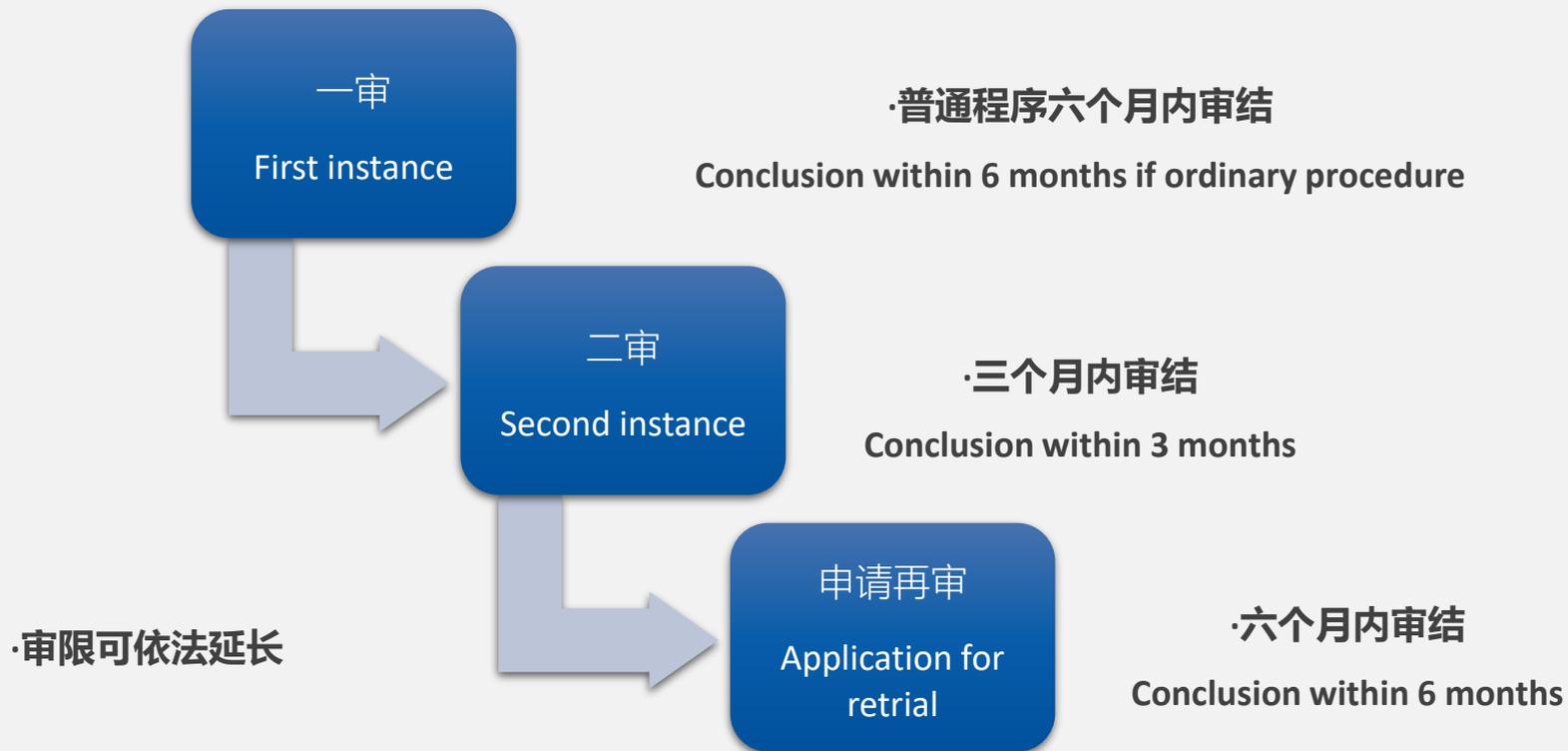


·发生法律效力后六个月内提出

Within six months after the date on  
which the judgment takes effect

申请再审  
Application  
for retrial

## ◆ 审理期限 Time Period for Trials



谢 谢 大 家

Thank you for your attention

2022年5月23日  
May 23, 2022