

# “Establishment of IP Tribunals in Pakistan”



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**11<sup>th</sup> ACE Session WIPO-HQs, Geneva**  
**5-7 September, 2016**

# Outlines

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- Establishment of IP Tribunal
- Powers of IP Tribunals
- Advantages of IP Tribunals

# Intellectual Property Tribunals

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- Independent IP Tribunals established for speedy adjudication in Islamabad, Karachi and Lahore
- Appointment of Presiding Officers of IP Tribunals accomplished
- Fully functional in Lahore
- Karachi and Islamabad start functioning in near future

# Powers of Intellectual Property Tribunals

## (Section 17 of IPO Act, 2016)

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- IP Tribunal will be a court for all purposes and intent and will have **all** the powers of District and Session Courts (in the light of Article 175 of the Constitution IP Tribunals could not be established in equivalence to a High Court);
- In exercise of its **civil jurisdiction**, the Tribunal shall have all powers vested in a civil court under the Code of Civil Procedure, 1908.
- In exercise of its **criminal jurisdiction**, the Tribunal shall have all powers vested in a Court of Sessions under the Code of Criminal Procedure, 1898.
- The Tribunal shall have jurisdiction to entertain all suits and other civil proceedings regarding infringement of intellectual Property rights under the respective laws.

# Advantages of Specialized IP Tribunals

- Creation of subject matter experts/expertise
- Effectiveness of decisions
- Ability to create special court procedures to enhance efficiency and accuracy
- Consistency and predictability of case outcomes
- Progressive or dynamism

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KIND ATTENTION**

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# INTELLECTUAL PROPERTY COURT



**WIPO – 06-09-2016**

# INTELLECTUAL PROPERTY COURT

## Agenda:

- 1) STAFF
- 2) COMPETENCE
- 3) VOLUME OF CASES
- 4) RESULTS



# INTELLECTUAL PROPERTY COURT

## GENERAL ASPECTS:

- 1- Established in 2011, located in Lisbon, started working in April 2012;
- 2- Started with just one judge;
- 3- By September 2014 IP Court received all pending cases.

# INTELLECTUAL PROPERTY COURT

## STAFF:

a) 4 + 1 Judges

b) 1 Public prosecutor

c) 11 Support staff

# INTELLECTUAL PROPERTY COURT

## COMPETENCE:

1) IPRs

2) Internet domain names or trade names

3) Copyrights

# INTELLECTUAL PROPERTY COURT

## VOLUME OF CASES:

**04/2012 to 08/2014**

**309 - Appeals from INPI**

**514 - Declaratory actions**

**325 - Provisional measures**

**09/2014 to 08/2015**

**1005 - Appeals from INPI**

**550 - Declaratory actions**

**253 - Provisional measures**

# INTELLECTUAL PROPERTY COURT

## VOLUME OF CASES:

### Decisions (appeals from INPI)

04/2012 to 08/2016

2013	-----	245
2014	-----	610
2015	-----	695
2016	-----	180

# INTELLECTUAL PROPERTY COURT

## RESULTS:

- a) **Judicial specialization of judges**
- b) **Consistency of judgements**
- c) **Faster resolution of disputes**

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MECHANISMS TO RESOLVE  
INTELLECTUAL PROPERTY DISPUTES  
IN A BALANCED, HOLISTIC AND EFFECTIVE MANNER

# The Experience of the Courts of the Russian Federation

Mr. Vyacheslav V. Gorshkov  
Judge of the Supreme Court of  
the Russian Federation,  
Head of a panel of judges for civil law disputes



# Introduction

- 2008: Part IV of the Civil Code of the Russian Federation is introduced, becoming the main source of codified regulation for the legal protection of IPR in Russia.
- Significant changes have taken place within the structure of the judicial system as well.

# The Supreme Court of the Russian Federation

## Moscow City Court

Adopts provisional measures to protect copyright and/or related rights in informational and telecommunications networks (e.g. the Internet). As a court of first instance, considers those cases in which it adopted provisional measures.

## Courts of constituent entities

As courts of appeal, check the legality of court decisions that have not yet entered into force. As courts of cassation, check the legality of effective court decisions.

## District courts

Courts of first instance: resolve disputes pertaining to the protection of IPR, arising between citizens, legal persons and the state.

## Court of Intellectual Property Rights

(specialized court)

Acts as a court of first instance and as a court of cassation.

## Arbitration courts of appeal

Check the legality of court decisions that have not yet entered into force.

## Arbitration courts of constituent entities

Courts of first instance: resolve economic disputes, including those pertaining to the protection of IPR.

# Court of Intellectual Property Rights

- Created by Federal Constitutional Law No. 4 of 6<sup>th</sup> December 2011.
- As a court of first instance, hears cases regarding the challenge of normative legal acts of federal executive bodies pertaining to the protection of intellectual property, cases regarding the granting or termination of legal protection of intellectual property.
- As a court of cassation, reviews cases considered by it in first instance; cases regarding the protection of IPR, considered by arbitration courts of constituent entities in first instance or considered by arbitration courts of appeal.
- The staff of the court includes specialists in natural and technical sciences, as well as in other spheres of knowledge.
- Can draw different specialists to participation in the proceedings and issue requests for expert assistance.
- In 2015: 703 cases considered in first instance, 1451 appeals considered in cassation.

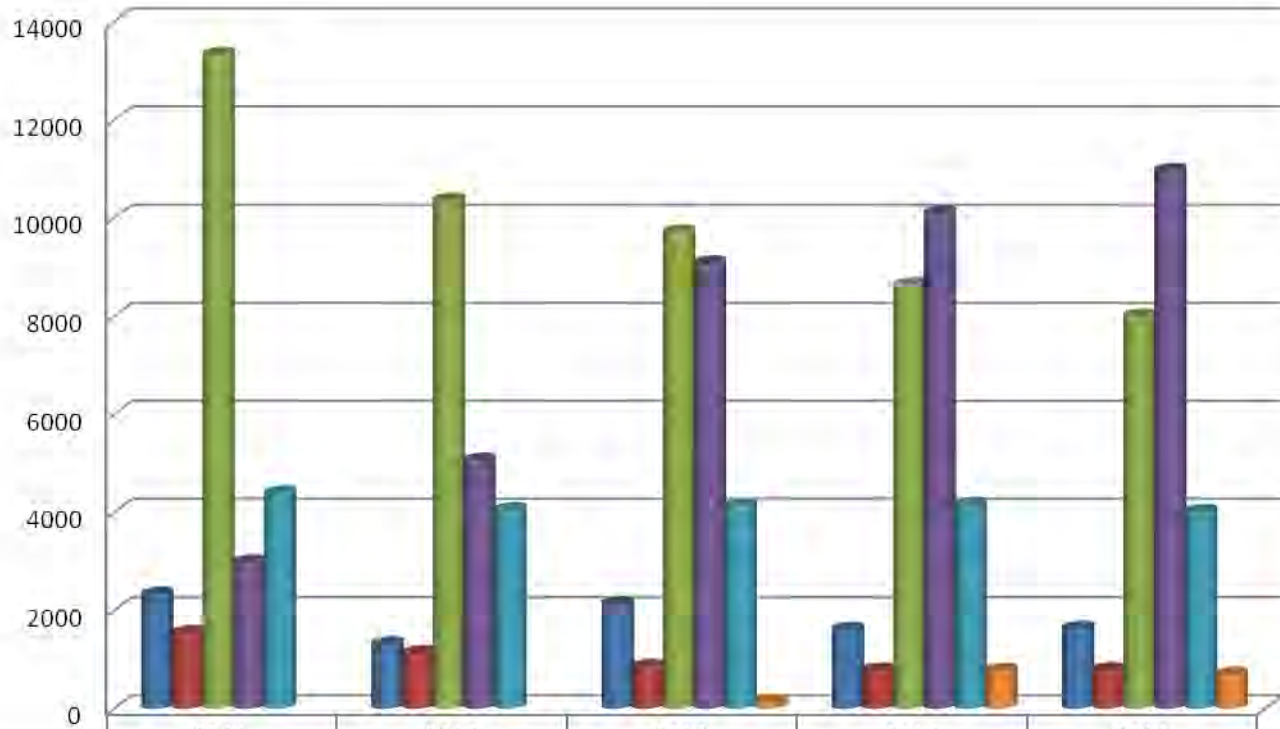
# Moscow City Court

- Starting 1<sup>st</sup> August 2013, considers cases regarding the protection of IPRs on films. In November 2014 the list of protected objects was significantly enlarged – it now comprises all objects of copyright and related rights, except for photography and analogous objects.
- Following applications of any persons, the court adopts rulings regarding provisional measures, published on its website on the following day. Within 15 days after the adoption of provisional measures, the claimant may file a corresponding lawsuit.
- As a result of swift removal of illegal content following the adoption of provisional measures, it may become unnecessary for the claimant to submit a statement of claim and go into full trial.
- From August 2013 to April 2016 the court has received over 1100 applications; provisional measures were adopted to satisfy 785 applications.

# The Supreme Court of the Russian Federation

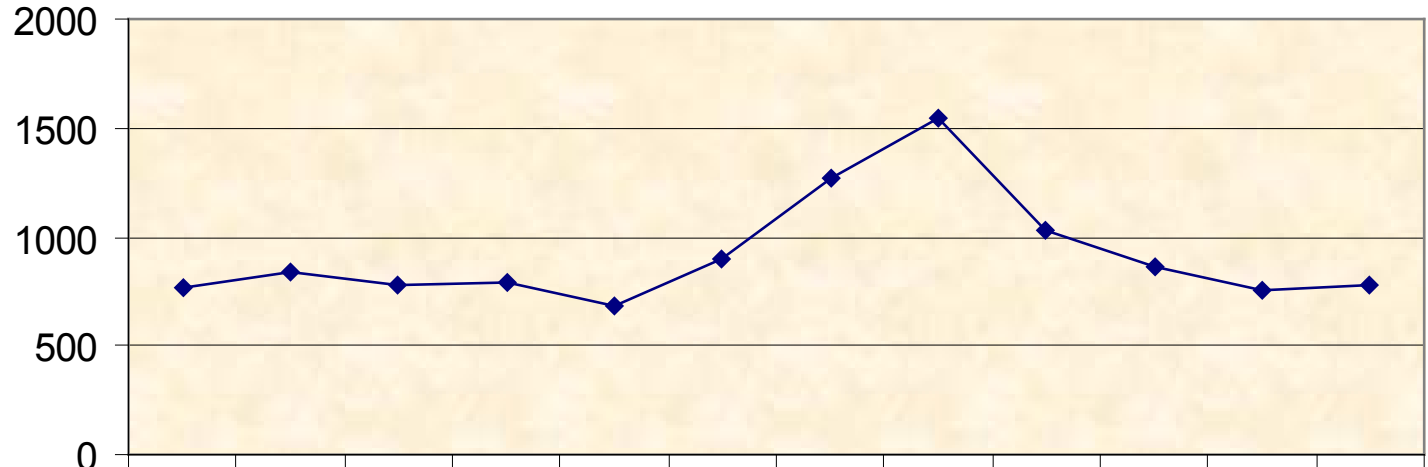
- In accordance with Federal Constitutional Law No. 2 of 5<sup>th</sup> February 2014, the Court is the highest judicial instance for both the courts of general jurisdiction and the arbitration courts.
- One of the Court's tasks is to safeguard the uniformity and stability of judicial practice in different types of disputes, including IPR disputes.
- The Court's clarifications on issues of judicial practice in civil cases, economic disputes, criminal, administrative and other disputes are obligatory for lower courts.
- The Court performs procedural review, in particular in IPR cases.

# Cases on IPR protection, considered by Russian Courts



	2011	2012	2013	2014	2015
■ People prosecuted for IP-related crimes	2336	1326	2141	1619	1642
■ Civil law cases considered by courts of general jurisdiction	1551	1141	863	794	798
■ Cases on administrative offences considered by courts of general jurisdiction	13338	10369	9721	8643	8007
■ Economic disputes considered by arbitration courts	2996	5069	9091	10109	10974
■ Cases on administrative offences considered by arbitration courts	4401	4059	4130	4169	4019
■ Cases considered by the Court of Intellectual Property Rights			146	783	703

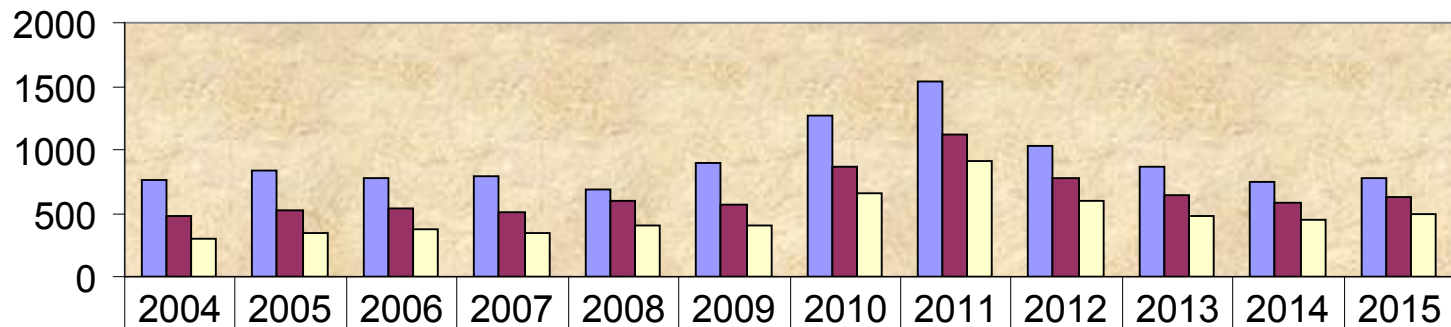
### Number of IPR protection cases received by courts of general jurisdiction



◆ Cases received within the period

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
761	843	774	787	683	902	1268	1543	1034	861	751	779

## IPR protection cases considered by courts of general jurisdiction

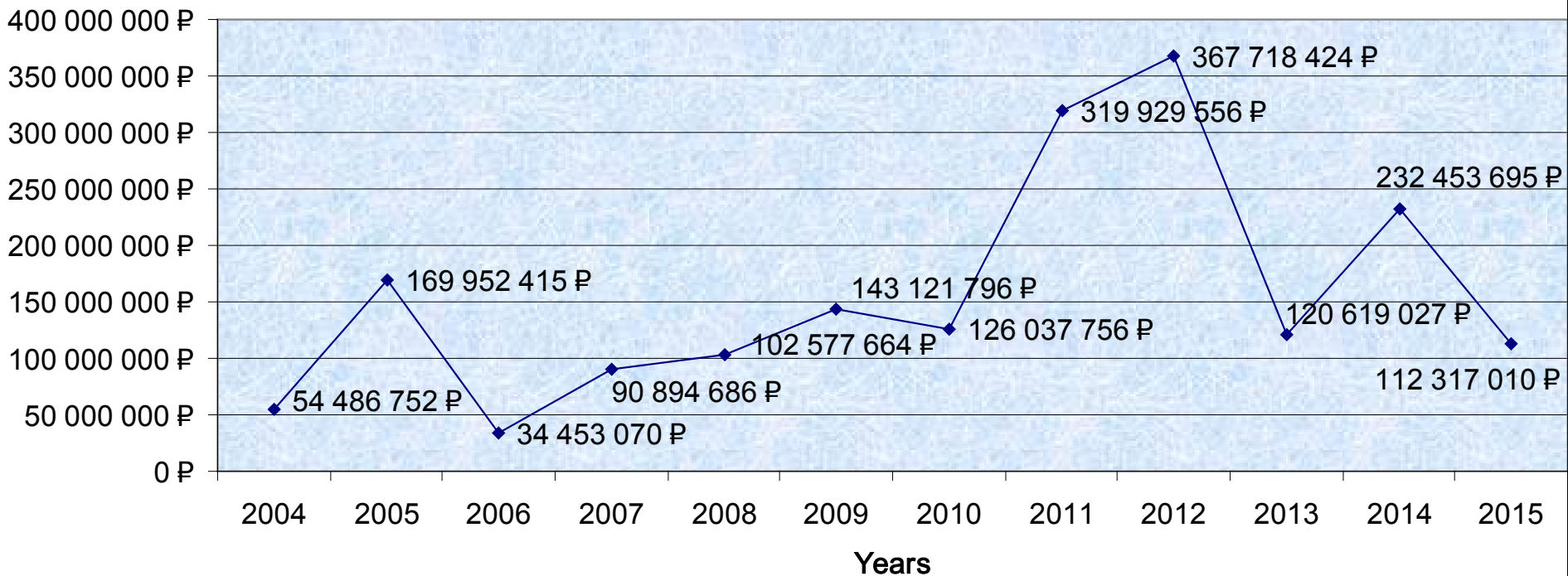


■ Cases received	761	843	774	787	683	902	1268	1543	1034	861	751	779
■ Cases finalised by decision	481	522	543	505	603	574	865	1112	770	636	579	627
■ Decision to satisfy claims	296	344	372	338	402	406	655	915	596	475	455	500

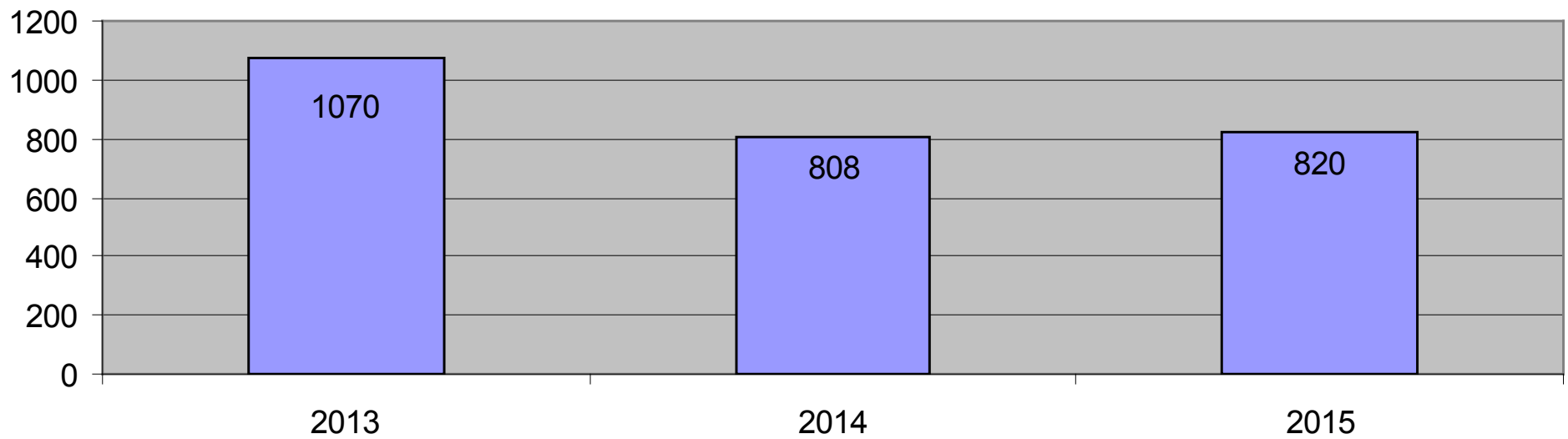
■ Cases received ■ Cases finalised by decision ■ Decision to satisfy claims



## Awards adjudicated by courts of general jurisdiction, where IPR protection were satisfied

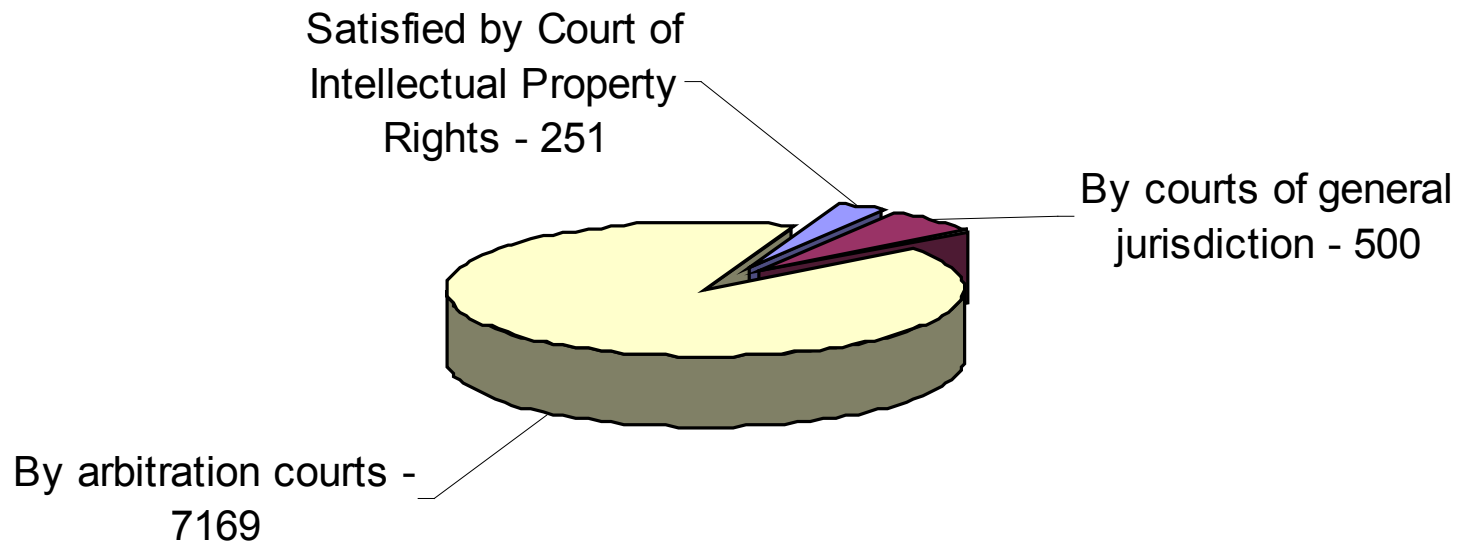


## People prosecuted in accordance with Art. 146 of the Criminal Code for breach of copyright and neighbouring rights

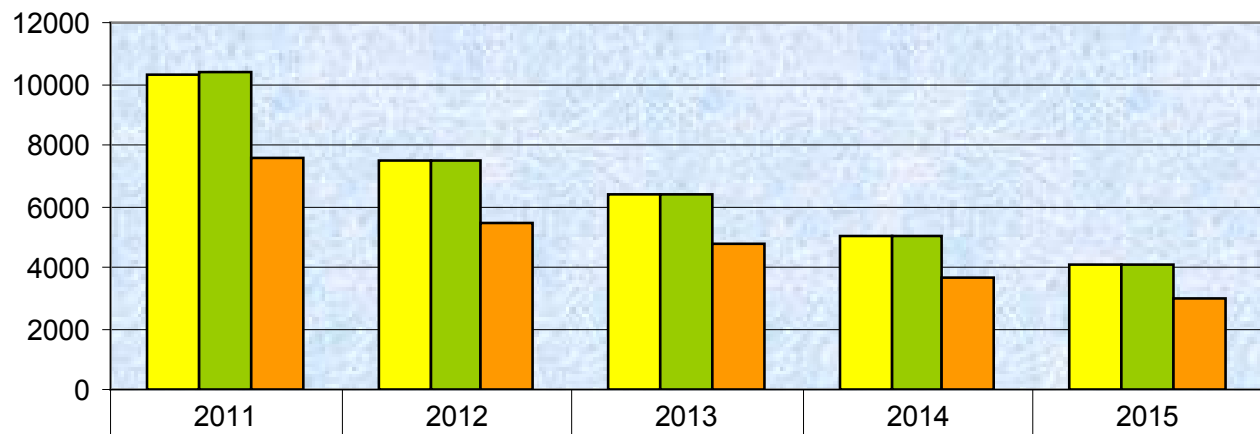


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**In 2015, courts satisfied claims in 7920 cases  
on protection of consumers' rights**

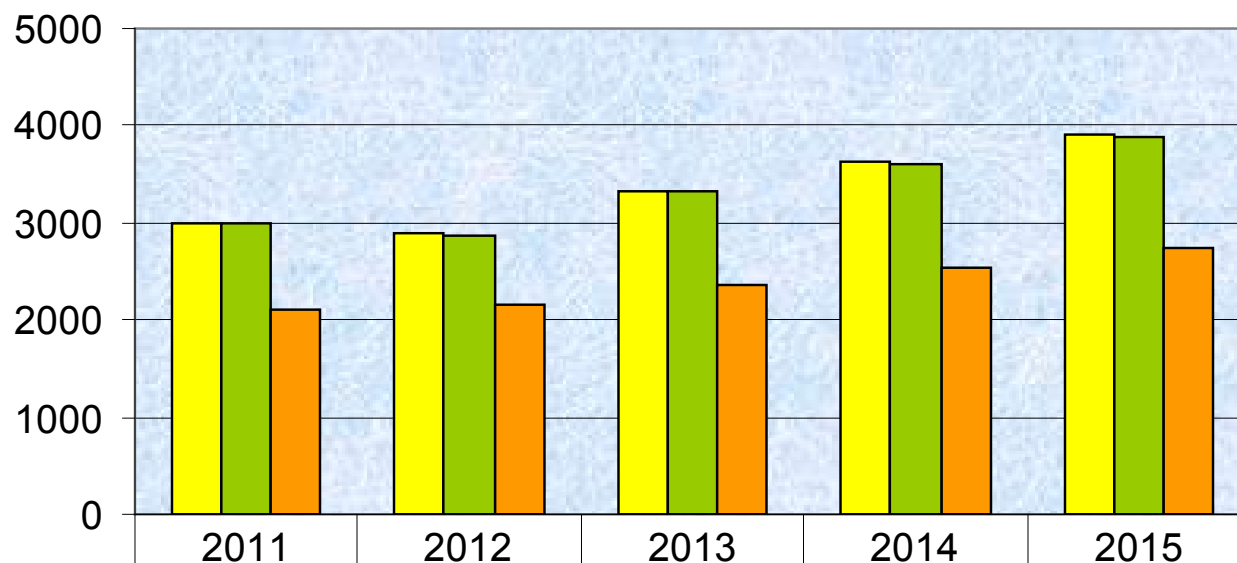


Cases on infringement of copyright and neighbouring rights, inventor's and patent rights, considered by courts  
of general jurisdiction  
(administrative offence, Art. 7.12 of Administrative Offences Code)



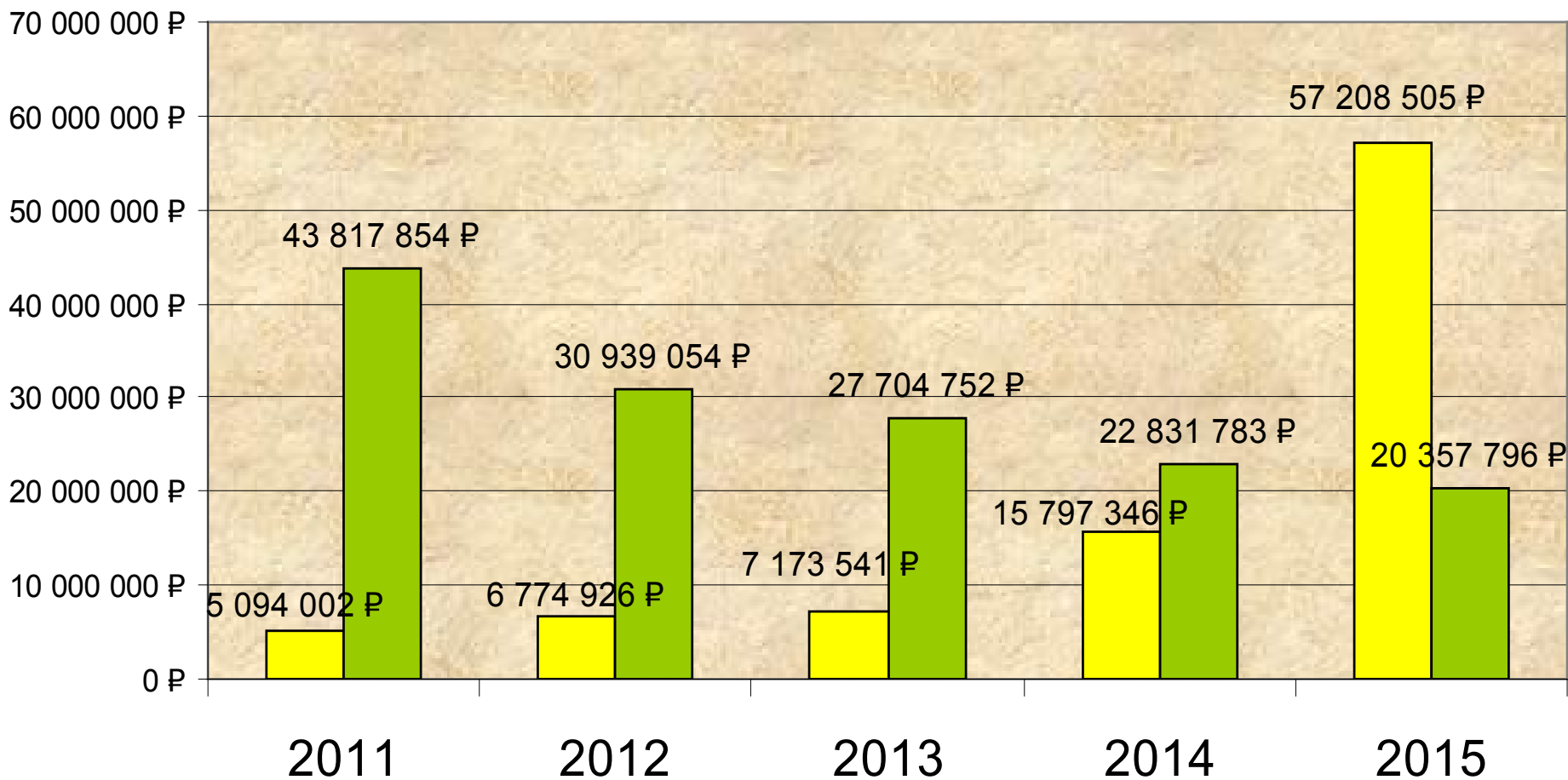
■ Cases received within the period	10313	7482	6393	4990	4077
■ Cases considered (regarding the number of persons)	10346	7502	6406	5040	4116
■ Persons punished	7614	5478	4731	3697	2960

Cases on illegal use of trade marks considered by courts of general jurisdiction  
(administrative offence, Art. 4.10 of Administrative Offences Code)



■ Cases received within the period	2983	2890	3324	3632	3919
■ Cases considered (regarding the number of persons)	2992	2867	3315	3603	3891
■ Persons punished	2117	2152	2367	2538	2740

## Amounts of fines appointed by courts of general jurisdiction for administrative offences



■ Infringement of copyright, etc. ■ Illegal use of trade marks



# **Advisory Committee on Enforcement Eleventh Session**

RESOLVING INTELLECTUAL PROPERTY  
DISPUTES IN A BALANCED, HOLISTIC AND  
EFFECTIVE MANNER – A SOUTH AFRICAN  
EXPERIENCE





# **INTRODUCTION**



# TRIPS ART 41.4

No obligation on member states

- o for a special judicial system for enforcement of IPRs or
- o for special allocation of resources for IPR enforcement

# We think in generalities but we live in detail and the devil is in the detail

- o Enforcement tribunals are judicial
- o Not concerned with administrative tribunals, such as
  - o patent or
  - o trademark registration offices
- o which deal with the grant of IPRs



# South Africa is . . .

RSA is a

- developing country
- with certain unique African cultural values
- Anglophone
- Procedural law based on English common law principles
- draws a clear distinction between civil and criminal enforcement

# South Africa is not . . .

What follows does not deal with what is perceived to be good or best practices for

- o developed countries
- o countries with different circumstances, or
- o countries with a civil-law tradition



# South Africa: Policy

- o No formal policy on enforcement structures
- o Policy deduced from existing structures
- o IPRs are not superior to other legal rights
- o No constitutional right to an IPR
- o IPRs enforcement is dealt with accordingly

# CRIMINAL ENFORCEMENT

- o Limited to counterfeiting and copyright piracy
- o Lower courts
  - o commercial divisions of those courts
- o High court: theoretically possible
- o Ordinary appeal structures



# CIVIL ENFORCEMENT

- o Trademark: High Court
- o Copyright: invariably High Court
- o Patent: Commissioner of Patents
- o Designs: Commissioner of Patents
- o Appeals: ordinary structures
  - o Supreme Court of Appeal
  - o Constitutional Court

# COMMISSIONER OF PATENTS

- o Not a permanent court
- o Cases allocated to a high court judge who sits *pro tem* as Commissioner of Patents
- o Intention is that judges with IP experience or some technical background should be nominated for these cases
- o Jurisdiction covers the country as a whole
- o Sits in Pretoria



# GENERALIST JUDICIARY

- Limited IPR training at university level
- Seldom previous practical experience of IPR litigation
- No technical background

**DOES IP ENFORCEMENT  
REQUIRE A SINGLE  
DEDICATED COURT  
STRUCTURE?**



# BUILDING RESPECT

- o Specialized courts have no therapeutic value without more
- o Effective IP enforcement requires:
  - o building respect for IPRs
  - o recognizing the rights of the public
  - o Sustainable structures
  - o proper law enforcement at all levels

# IPL is not a unified discipline

- o Cf Traffic Law
- o No commonality between
  - o Patents
  - o Trademarks
  - o Copyright.
- o Some commonality between
  - o Patents and
  - o Designs



# COMPLEXITY

- o Supposed justification
- o Hoexter Commission
  - o IP law can be mastered by ordinary mortals
  - o Copyright and trademarks not complex
  - o Patent law not complex
  - o Specialization may lead to tunnel vision

# PATENT LAW: THE FACTS

- o Facts may be complex/technical
- o But covers whole spectrum of applied science and technology:
  - o Micro-biology
  - o Nanotechnology
  - o Mechanical engineering
- o No court that can be qualified a priori to deal with all fields of science and technology





**PRACTICAL ASPECTS  
FROM A LOCAL  
PERSPECTIVE**

# Factors

- o Not affordable or feasible
- o General lack of resources (human, financial and structural)
- o Low IP case load
- o Centralized IP court makes access to justice illusory
- o IPR not a special priority
- o Criminal: general level of criminality



# POSITIVES

- o A generalist judiciary has to deal with many technical matters
- o Diversion to “expert” judges
- o Specialist IP practitioners
- o Judicial training
  - o Companies and Intellectual Property Commission (in conjunction with WIPO)
  - o Office of the Chief Justice

# CONCLUSION

- o The present South African structure has served us well
- o No real justification to move to specialist enforcement structures
- o BUT as circumstances change a rethink may be required



# *Justice Louis Harms*

- o Former Deputy President of the Supreme Court of Appeal of South Africa;*
- o Extraordinary Professor at the University of Pretoria, South Africa;*
- o Honorary Bencher of the Middle Temple, London, United Kingdom of Great Britain and Northern Ireland*
- o The views expressed are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.*

**The Experience  
of  
the Thai Central Intellectual Property  
and International Trade Court (CIPITC)**

**Thammanoon Phitayaporn  
Deputy Chief Justice  
The Central Intellectual Property  
and International Trade Court**



# ABOUT THE CIPITC

- **Opened on Dec 1, 1997**
- **A specialized court to consider  
Intellectual Property and International Trade  
disputes**

- **A trial court that considers both civil and criminal cases.**
- **The CIPITC is located in Bangkok and has jurisdiction throughout Thailand.**

- **A panel consists of 2 judges and 1 associate judge.**
- **The CIPITC's judgement can be appealed to the Supreme Court.**



- **5,105 IP cases**  
**(309 civil cases, 4,796 criminal cases) (In 2015)**
- **19 Judges 157 associate judges**  
**(As of June 22, 2016)**

# **SPECIALIZATION OF THE CIPITC**

- **The establishment of the CIPITC as a specialized court for IP cases provides for more uniformity than when decisions were made by general courts in various jurisdictions.**

# **SPECIALIZATION OF JUDGES**

- **The appointment of a judge to the CIPITC is based on expertise in IP law. Judges with primary responsibility to the CIPITC, not having other trial work, such as in general courts, are able to develop expertise.**

- **This contributes to the quality and timeliness of the court's decisions in a way not possible prior to the establishment of the CIPITC, when judges were required to serve in a diverse range of court assignments.**

# **SPECIALIZATION OF ASSOCIATE JUDGES**

- **The legislation allows for the selection of a qualified expert member, with IP expertise, to serve as associate judge working together with assigned judges to decide cases for the court.**

# **SPECIALIZATION OF ASSOCIATE JUDGES**

## **Examples:**

- 1. Engineers to decide matters related to invention patent claims.**
- 2. Pharmacists or others knowledgeable about drugs to decide matters relating to medicinal patents.**
- 3. Those with expertise in computer programming to decide matters relating to copyright in computer software.**

# EXPERT WITNESSES

- **The CIPITC may wish to call in an expert witness to provide comments for the court's consideration. The court's actions in this regard will not prevent the parties from asking permission to the court to bring in witnesses to offer expert testimony for the parties. The use of expert witness offers another type of mitigation in the event of a case that requires specialized expertise.**

# PROCEDURAL LAW AND COURT RULE

- **The law gives authority to the CIPITC Chief Justice to institute a Court Rule relating to proceedings and hearings, instituting standard measures for deliberation of IP cases.**



**Some measures prescribed by the legislature include:**

- **Interim Orders prior to Lawsuits : The CIPITC is authorized to issue injunctive relief before filing a lawsuit, in cases where the defendant may not be in a position to provide restitution or where it may be difficult to enforce the rights at a later stage.(The party petitioning for injunctive relief must initiate legal proceedings within 15 days of the court order, or within a period specified by the court. )**

- **Orders to Internet Service Providers (ISPs) for Blocking Access to Materials Protected by the Copyright Law:**

**Under the copyright legislation, the CIPITC can issue injunctive orders for ISP action to block user access to internet content.**

- **Orders for Taking Evidence prior to Lawsuits:**  
The CIPITC can issue orders to take in and log evidence prior to litigation in circumstances where the evidence is at risk of being lost or may be difficult to obtain at a later point in time. This authority includes the power to order the seizure or to impound documents and objects to be used as evidence.

- **Delivery of Copy of Complaint and Summons by International Express Mail: Where the defendant is abroad and there is no international agreement between Thailand and the country where the defendant is domiciled, courts in general, including the CIPITC, are authorized to order that copies of the complaints and summons be delivered via international express mail**

# TECHNOLOGY

- **Video Conferencing: The court may hear witness testimony by means of video conferencing, for witnesses located in another province or country**

- **Digital Testimony Recording System: Thai courts generally use a system of recording where witness testimony given under direction of a judge is captured by written documentation, read back to the witness and litigant parties to affirm validity.**

- **The CIPITC is one of a number of pilot courts that are testing a system for the digital recording of oral testimony. The digital testimony recording system records an audio file of the original testimony. Judges using the system may elect to print some or all parts of the testimony and use this as written record.**

- **E-filing : The CIPITC has an e-filing system for use by litigants intending to file pleadings and other documents to the court. The parties can register with the CIPITC to deliver litigant pleadings and various other documents to by e-mail. This system is currently used by litigant parties on a voluntary basis only.**



# ADJUDICATING INTELLECTUAL PROPERTY DISPUTES

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**ICC report on specialised IP jurisdictions (SIPJs) worldwide**

6 September 2016 | Advisory Committee on Enforcement: Eleventh Session  
WIPO, Geneva  
Eugene Arievidh, Principal, Baker & McKenzie CIS Limited, Moscow  
A lead drafter of the ICC report

# INTRODUCTION

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## Background

- Growth in IPR grants and registrations year by year, resulting in more IP disputes
- Increased discussion on efficiency, impartiality and predictability of court trials for IP disputes
- Some countries have established specialised IP jurisdictions (SIPJs) for resolving IP-related disputes, others are considering doing this

# INTRODUCTION

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## The ICC report

- Study to assist countries on whether and how to establish or improve SIPJs and enhance efficiency and expertise in IP-related trials
- Report based on survey of ICC members - information from parties and practitioners on litigation mechanisms in their countries
- Information obtained from 24 countries (Asia, Europe and North, Central and South America)

## Aspects addressed:

- rationale for setting up SIPJs
  - structure and competence of SIPJs
  - composition of tribunals in SIPJs
  - doctrines and rules of evidence of SIPJs
  - rules for representation of parties and the execution of judgements in SIPJs
- ❖ Information summarised in tables with overview of situation in different countries.

## EXISTENCE AND RATIONALE FOR SIPJS

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### **19 out of the 24 countries surveyed have SIPJs:**

Belgium, Brazil, Chile, China, France, Germany, India, Japan, Republic of Korea, Mexico, Peru, Portugal, Russia, Spain, Sweden, Switzerland, Thailand, United Kingdom and the United States

**Albania, Costa Rica, Guatemala, Honduras and Ireland do not have SIPJs** – with the exception of Ireland, respondents said there is need for and interest in establishing SIPJs

### **Main motivations for establishing SIPJs:**

- developing IP expertise in specialized judges
- unifying court practice with respect to IP cases
- improving consistency of court judgments and predictability of litigation outcomes
- enhancing effectiveness of IP rights enforcement
- improving overall climate of respect, protection and enforcement of IP rights.

## STRUCTURE AND COMPETENCE OF SIPJS

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### Forms of structural organization of SIPJs in countries studied (can coexist):

- Specialised chambers/divisions within existing civil or commercial courts, that hear IP cases exclusively or in addition to other disputes (majority of surveyed countries)
- Separate stand-alone courts specialised in IP cases (some countries)
- Administrative agencies dealing with IP cases through administrative procedures, and appellate boards reviewing invalidation actions (some countries)

## STRUCTURE AND COMPETENCE OF SIPJS (2)

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**Competence of SIPJs** varies with regard to:

- kinds of IP rights (some jurisdictions only hear patent or other cases)
- types of cases falling within jurisdictions' exclusive competence (some courts can hear only invalidation, or infringement, actions)
- In some jurisdictions there is monetary value threshold for certain courts to be competent

**Appellate structure:**

- SIPJs hear cases as either courts of first instance, appeal or last resort; ultimate authority often vested in higher court or even Supreme Court (non-specialised)
- In some countries decisions of national patent and trademark office on applications can be directly challenged before court of appeal

# JUDGES, JURIES AND TECHNICAL EXPERTS

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## Types of judges in SIPJs:

- legally qualified judges - with appropriate legal qualification;
  - technically qualified judges - appropriate legal + technical qualification;
  - lay judges – don't necessarily have legal qualification, citizens appointed to the tribunal through a specific process.
- 
- Composition of boards of SIPJs regarding type of judges varies among the surveyed countries and among different instances within a country.
  - Countries with SIPJs rely on legally qualified judges as at least part of the members of the competent tribunal.
  - Few countries rely on technically qualified judges, and even fewer on lay judges.
  - Apart from the US, none of surveyed countries with SIPJs rely on juries.

## JUDGES, JURIES AND TECHNICAL EXPERTS (2)

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### Technical experts:

- Used in most surveyed countries
- Not members of the decision-making panel;
- Appointed by the tribunal or parties to support the tribunal;
- Like technically qualified judges, especially relevant when technical aspects play important role (e.g. most patent disputes) and in instances dealing with facts (i.e. usually first instance).



## PROCEDURES IN SIPJS

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- ❑ **Types of procedures:**
  - General civil or commercial courts – general court procedure + specifics codified in relevant procedural and/or IP law
  - Stand-alone IP courts – similar to the above
  - Administrative bodies – specific administrative rules codified in relevant administrative and IP laws
- ❑ Wide consensus on **basic principles and doctrines** applied in IP-related procedures, including for provision of evidence.
- ❑ All surveyed countries with SIPJs allow **preliminary injunctions** in IP-related cases:
  - Ex-parte preliminary injunctions (vast majority);
  - Inter-partes preliminary injunctions (Japan and Republic of Korea).
- ❑ No special mechanisms for the **execution of judgements** - SIPJs subject to normal routes of execution.

## REPRESENTATION IN SIPJS

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### Individuals/entities authorised to represent parties before SIPJs:

- Attorneys-at-law
- Qualified IP practitioners who are not qualified attorneys (e.g. patent and trademark attorneys/agents)
- Individuals/entities neither attorneys-at-law nor IP practitioners (e.g. corporate in-house counsel or staff members, social organizations and individual citizens)

Some countries allow only one category of representatives (usually attorneys-at-law) to represent parties, others allow simultaneous representation

Increasing technical complexity of many IP cases: vital to ensure courts and representatives can attain necessary technical knowledge

- Achieved in different ways: technical experts, IP practitioners and/or technically qualified judges.

## CONCLUSIONS

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Many countries around the world have established SIPJs:

- Different structures and mechanisms
- Similar or identical basic principles.

**General conclusions** from the study:

- SIPJs can improve efficiency and quality of IP-related litigation processes and outcomes
- Need for and most appropriate form of SIPJs depend on country needs and circumstances
- Proper trial mechanisms and judicial expertise are essential.

## THANK YOU

### ADJUDICATING INTELLECTUAL PROPERTY DISPUTES



*Adjudicating intellectual property disputes: an ICC  
report on specialised IP jurisdictions worldwide*

Available for download on the [ICC website](https://www.iccwbo.org)

For more information on the ICC Commission on Intellectual Property,  
contact Daphne Yong-d'Hervé, Chief Intellectual Property Officer, at  
[dye@iccwbo.org](mailto:dye@iccwbo.org) or go to the [ICC website](https://www.iccwbo.org).

WIPO ACE 11/7 – Geneva, Sept. 6, 2016

# Specialized IP Courts

## Issues and Challenges

Prof. Jacques de Werra  
*Vice-Rector and Professor of Intellectual Property  
and Contract Law*



**UNIVERSITÉ  
DE GENÈVE**

**FACULTÉ DE DROIT**

# Specialised Intellectual Property Courts– Issues and Challenges

Jacques de Werra

With contributions by

Denis Borges Barbosa and Pedro Marcos Nunes Barbosa, Hong Xue, Shamnad Basheer and Susan Isiko Štrba



International Centre for Trade  
and Sustainable Development



[www.ictsd.org/themes/innovation-and-ip/](http://www.ictsd.org/themes/innovation-and-ip/)

# Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner

- **(1) Balance**
- (2) Holistic approach
- (3) Effectiveness



# (1) Balance

- **Balance is at the core of the IP system**

« *Recognizing* the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention, [...] »  
(Preamble, WIPO Copyright Treaty)

# Balance

- **Balance should also be at the core of the IP judicial system**
- « [...] enforcement procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse » (art. 41 para. 1 TRIPS)

# Balance

- **IP litigation beyond IP counterfeiting/piracy cases**
- Diversity of IP disputes
- Complexity / transversality of IP disputes

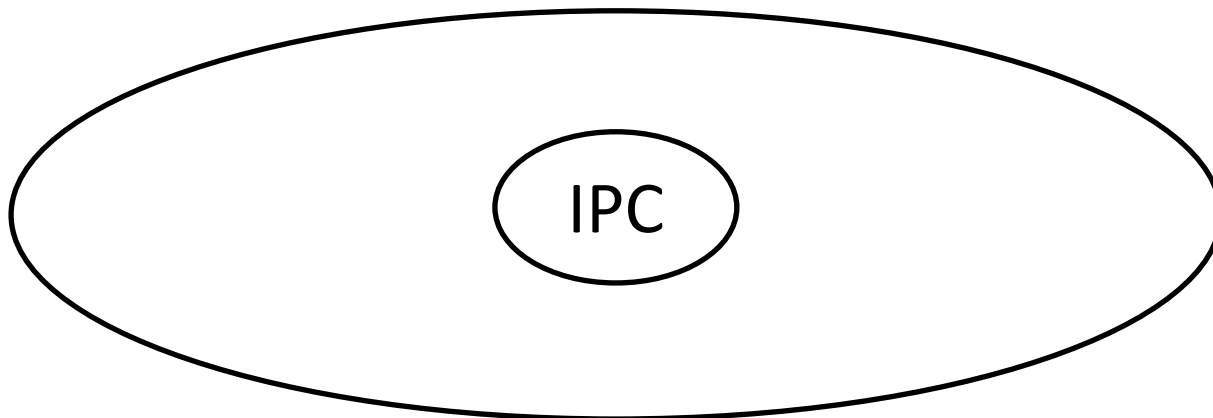
“There is a trend away from one off licensing of A to B, and towards multi-party know-how and IP arrangements in the context of bigger projects.” (IP lawyer, France, in: Results of the WIPO Arbitration and Mediation Center International Survey on Dispute Resolution in Technology Transactions, 2013)

# Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner

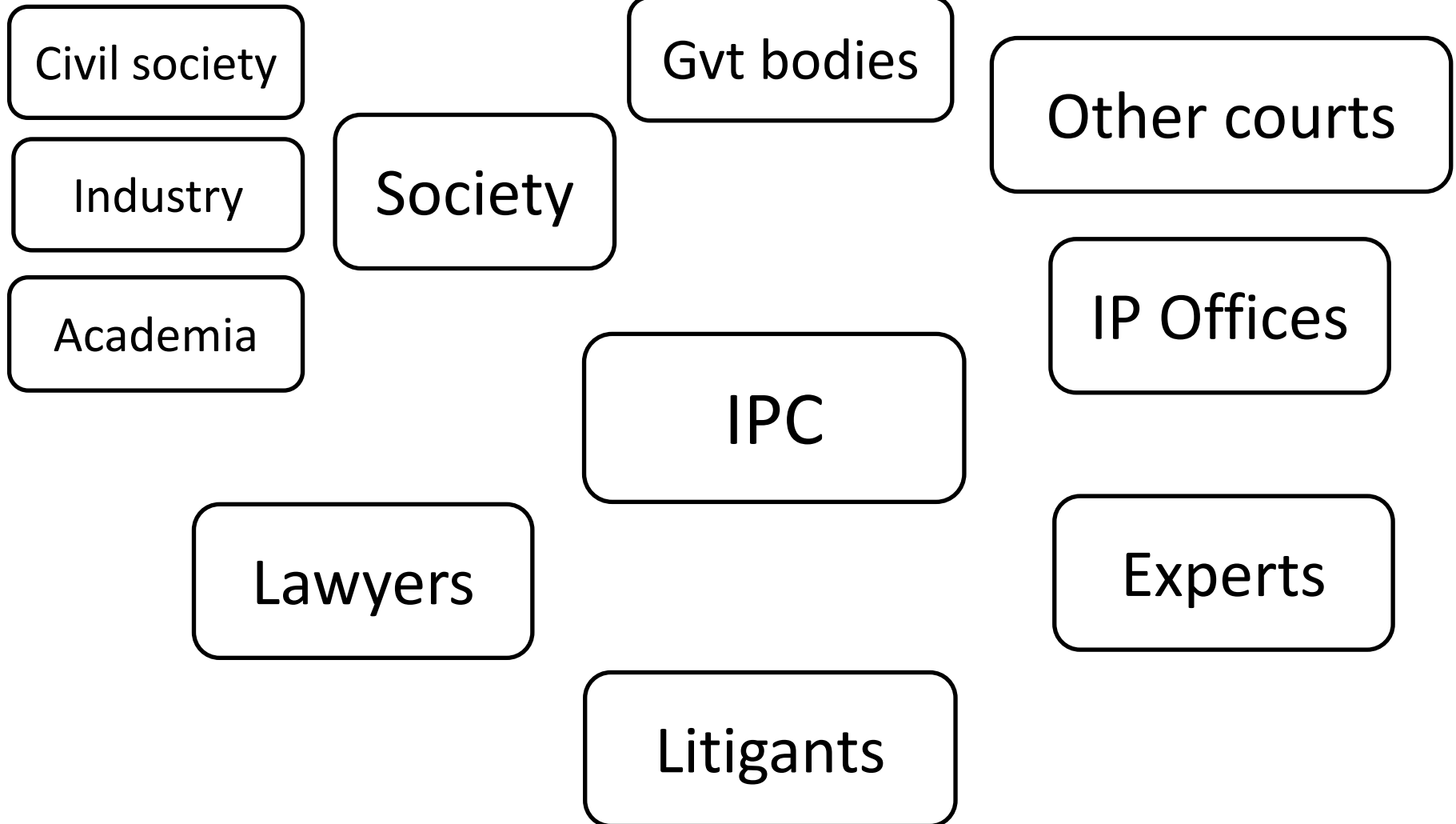
- (1) Balance
- **(2) Holistic approach**
- (3) Effectiveness

## (2) Holistic approach

- « dealing with or treating the whole of something or someone and not just a part » (Cambridge)
- IP courts (IPC) as a *part* of an ecosystem



# Holistic approach: who ?



# Holistic approach: what ?

Antitrust /  
competition law

Constitutional law

Civil and  
commercial law

IP law

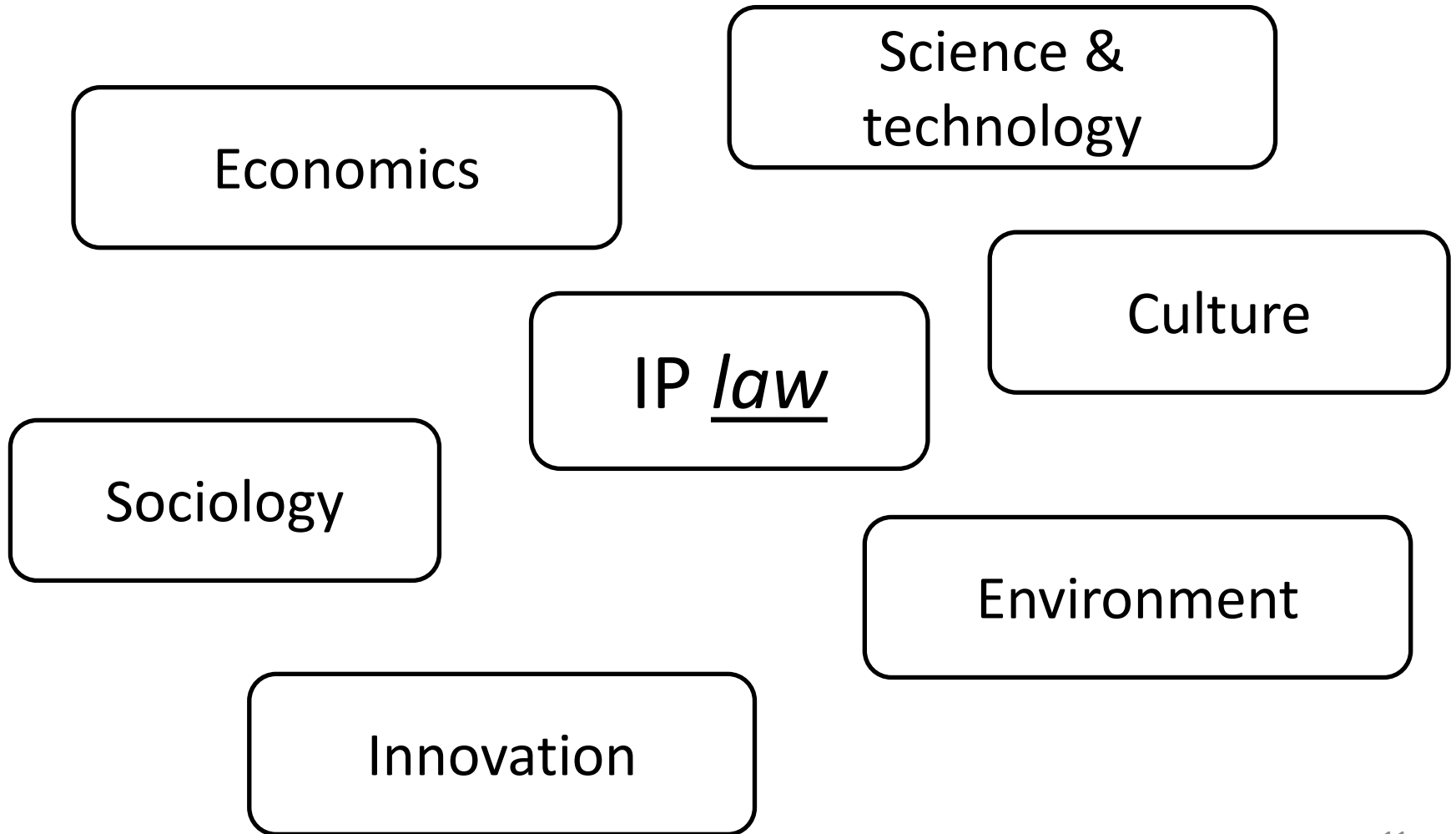
Contract law

Administrative &  
criminal laws

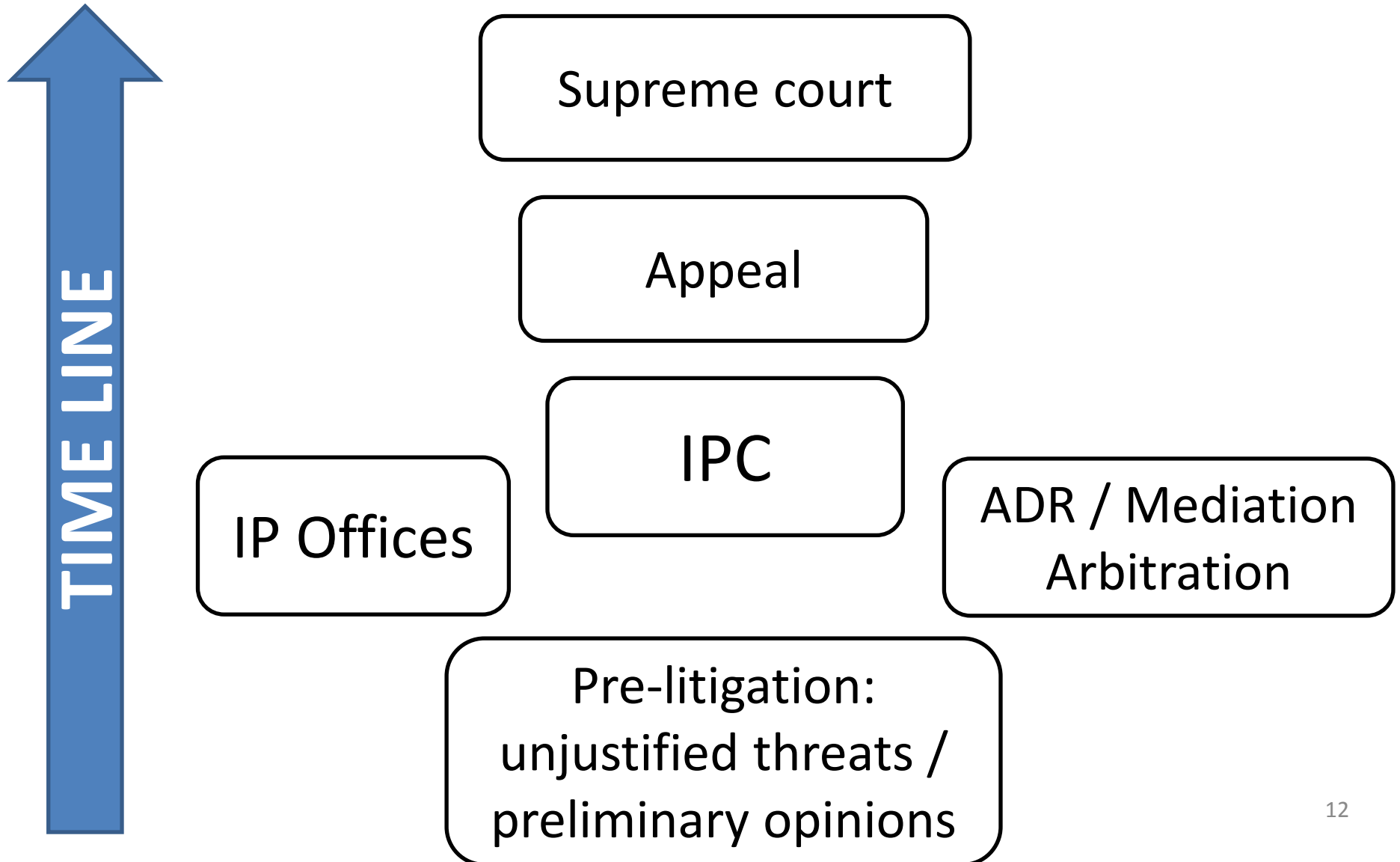
Unfair competition law  
and consumer law



# Holistic approach: what (2) ?



# Holistic approach: when ?



# Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner

- (1) Balance
- (2) Holistic approach
- (3) Effectiveness

## (3) Effectiveness

- Quality                   => expertise
- Consistency           => transparency (e.g. databases)
- Speed
- Cost                      => for litigants & for countries
- Accessibility

- **IPC : one tool in the innovation policy toolbox**



One size  
does **NOT**  
fit all.



- **Importance of exchanges of information, best practices and education**

**Thank you for your attention**

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