

## CHIEF EDITOR'S NOTE ON INTELLECTUAL PROPERTY COURTS IN BRICS COUNTRIES

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DOI:10.21684/2412-2343-2016-3-1-4-6

**Recommended citation:** Dmitry Maleshin, *Chief Editor's Note on Intellectual Property Courts in BRICS Countries*, 3(1) BRICS Law Journal 4–6 (2016).

Patent or Intellectual Property Courts (IP Courts) are considered specialized courts. They are specialize in intellectual property law and have exclusive jurisdiction over patent law disputes.

**Brazil** has not yet introduced specialised IP Courts separated from the courts of general jurisdiction. The 1996 Industrial Property Law did refer to the creation of specialized intellectual property courts but this has not yet happened. Intellectual property cases are currently considered in the courts of general jurisdiction by a specialized intellectual property division. There are also appellate courts that have exclusive jurisdiction over intellectual property cases.

In **Russia**, the IP Court acts as a specialised court and is part of the commercial courts system. The scope of its competence covers disputes connected to intellectual rights.

This category of disputes is notable not only for the complexity of the legal analysis but also for the complexity of technical issues connected with the specifics of intellectual rights. Handling a case not only requires serious experience of legal practice but also skills in the technical and spheres. The judge considering such a case usually needs to understand some technical issues connected with intellectual property rights. The specialized IP Court provides efficiency of judicial proceedings by means of specialization of judicial practice in this area. Narrow specialization of judges increases the quality of judicial work, and reduces consideration time of a case.

The Russian IP Court was founded in 2011. However, the idea of a specialized court was announced for the first time in the late 80s. There were some drafts on

this topic and even some laws supported this idea and contained the provisions concerning the necessity to establish a specialized IP Court. The creation of the Patent Court of the USSR was stipulated in the 1988 Law 'On Inventive Activity in the USSR' (Art. 55, 56), in the 1991 USSR Law 'On Inventions in the USSR' (Art. 14, 15, 25, 42, 43), in the 1991 USSR Law 'On Industrial Models' (Art. 26), in the 1991 USSR Law 'On Trademarks and Service Marks' (Art. 32). The USSR Law 'On the Patent Court of the USSR' did not come into force. The Concept of judicial reform in the Russian Federation (1991) designated a need for court specialization and judicial specialization. The 1992 Law 'On Trademarks' provided for the creation of the Patent Court of the Russian Federation. However, the legislator refused this idea in favor of an administrative order on dispute settlement in this area. In 2010, the project of the Federal Constitutional Law 'On Patent Courts of the Russian Federation' providing for the formation of an independent patent courts system was brought to the State Duma (the Russian parliament) but was not accepted. The initiative for creating today's Intellectual Property Court was that of the Supreme Commercial Court of the Russian Federation which even adopted a special Plenum Resolution in 2013 on this court functioning.

The IP Court is situated in Moscow. The structure of the court consists of the presiding judge, two deputies, a presidium and two judicial panels. There is also an Academic and Advisory Council. It uses the *Arbitrazh* (Commercial) Procedural Code as the procedural rules for considering cases.

The IP Court acts as both a court of the first instance and as a court of cassation. Despite the IP Court being part of the commercial courts system, the criteria of jurisdiction of commercial courts do not apply to it: its competence does not depend on the nature of the dispute (economic or personal dispute) or on the status of the subject to a dispute (citizen, legal entity or sole trader).

As a court of the first instance, the IP Court considers: cases of contest of legislative acts of the federal government in the sphere of intellectual property; and cases of disputes on intellectual property activity. As a court of cassation, it considers: cases previously considered in the IP Court as in a court of the first instance; and cases in the sphere of intellectual property decided by *Arbitrazh* (Commercial) Courts.

**India** has a specialized administrative tribunal that exclusively considers intellectual property cases.

In **China**, there are specialised IP Courts. Intellectual property cases are considered by courts of general jurisdiction with specialized divisions as well as in three specialized IP Courts. There are specialized intellectual property divisions in the Supreme People's Court of China. Specialized IP Courts were established in Beijing, Shanghai and Guangzhou in November 2014. These courts have special jurisdiction over intellectual property cases.

As courts of the first instance, the IP Courts consider cases concerning patents, computer software, trade secrets of a technical nature, etc. They also hear appeals

on first-instance decisions in intellectual property cases decided by basic courts located in these three regions.

Hong Kong has no specialized IP Courts. All intellectual property claims are filed in the court of first instance. There are specialized intellectual judges in the courts of Hong Kong.

In **South Africa**, there are two IP Courts, one for patents and one for trademarks. The 1952 Patents Act created a specialized patent court of the first instance – the Court of the Commissioner of Patents. It has a single patent judge. There is also a Copyright Tribunal to decide licensing disputes.

Therefore, all BRICS countries have special legal regulations on intellectual property litigation. Some countries, such as Russia, China and South Africa, have created specialised IP Courts. In other countries, intellectual property cases are considered in the courts of general jurisdiction.