

Judicial Protection of Intellectual Property in China

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CEO IPHOUSE
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I . IP Litigation in China

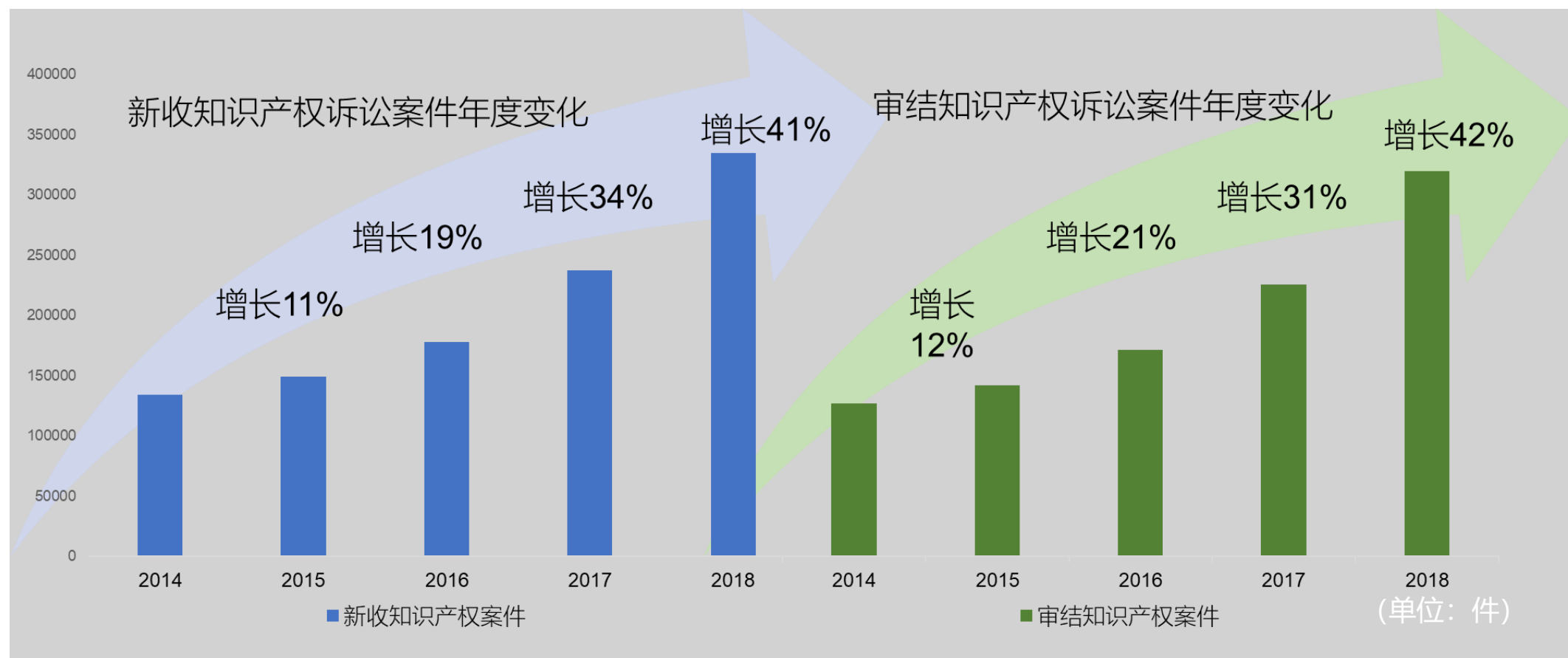
II . Establishment of IP Courts & Tribunals

III . Key Points for 4th Amendment of Patent Law

I . IP Litigation in China

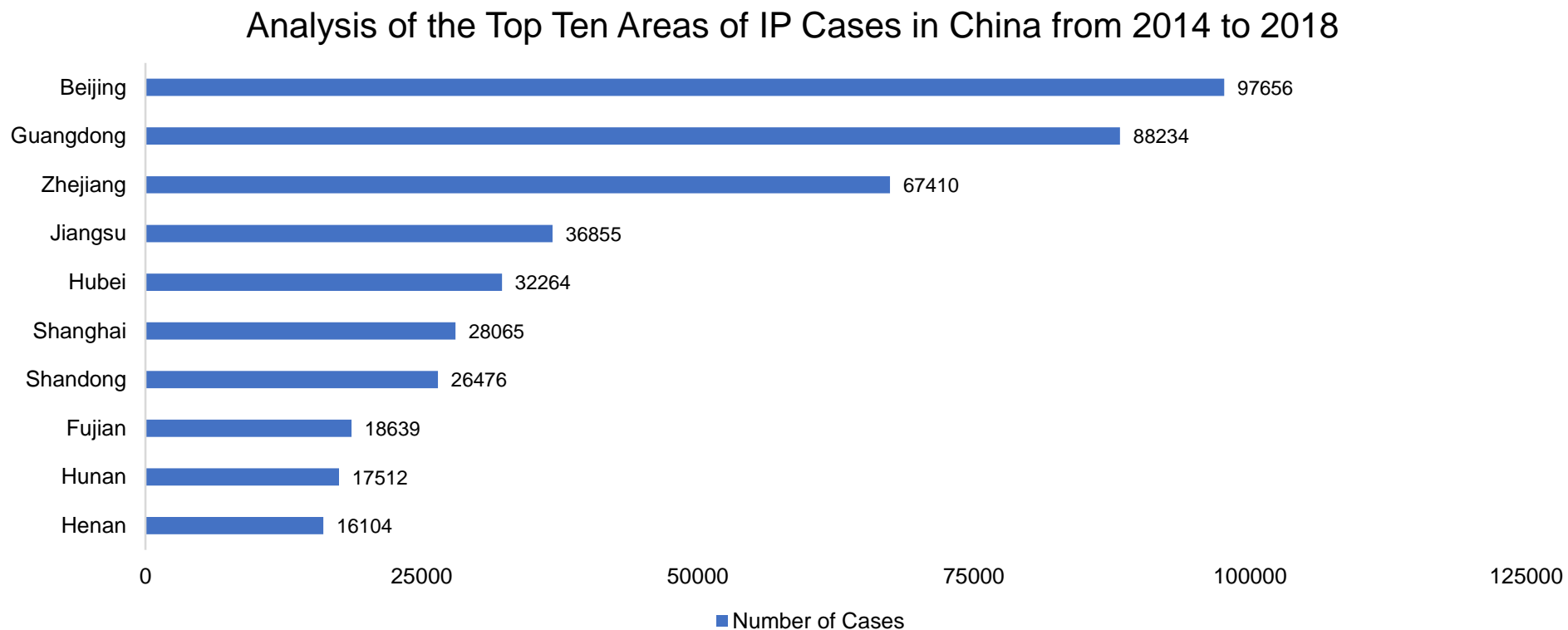
Blue: IP cases received by courts

Green: IP cases decided by courts



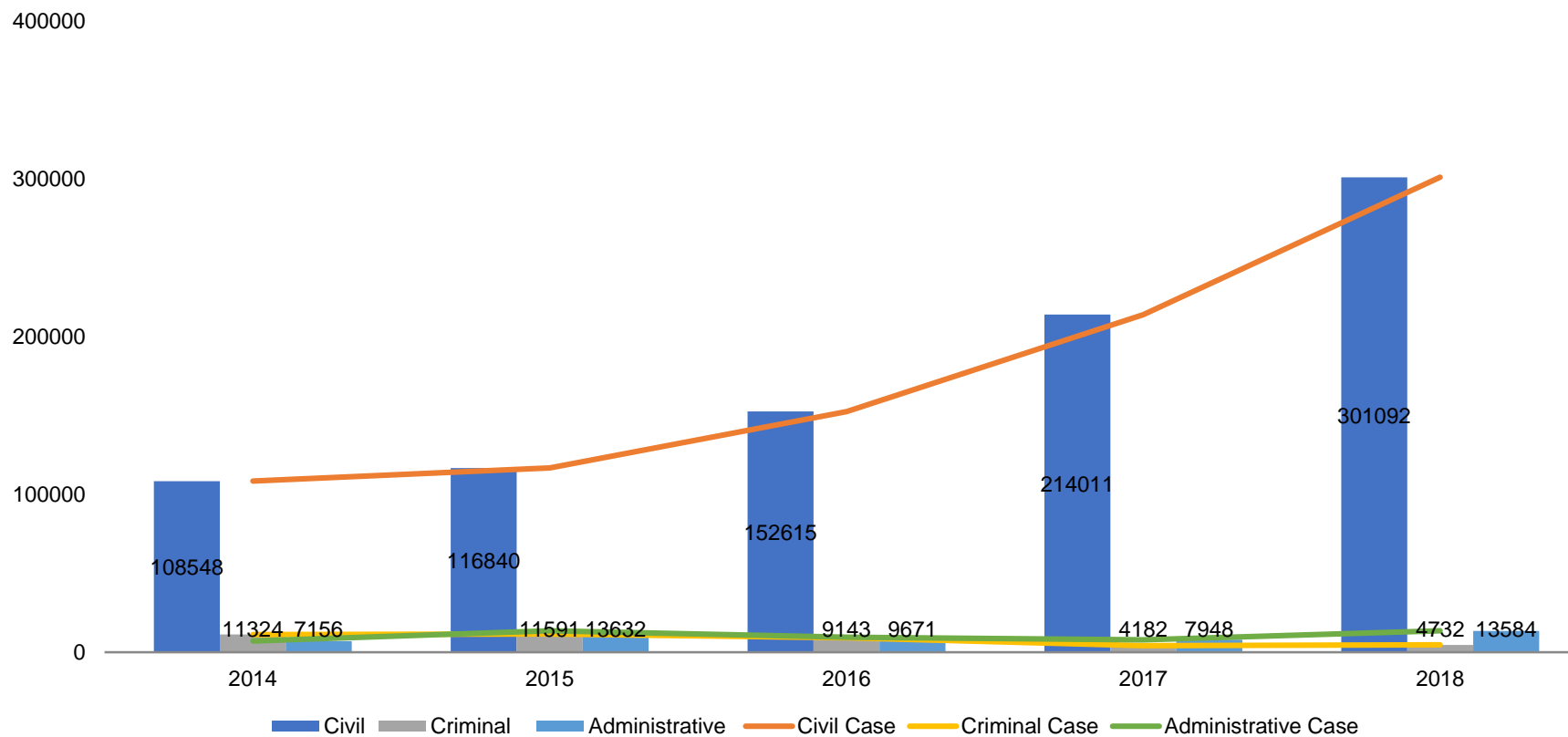
数据来源: 中华人民共和国最高人民法院 整理: 知产宝

2. Ranking in terms of quantity of IP cases.



Data Source: Data Base of IPHOUSE

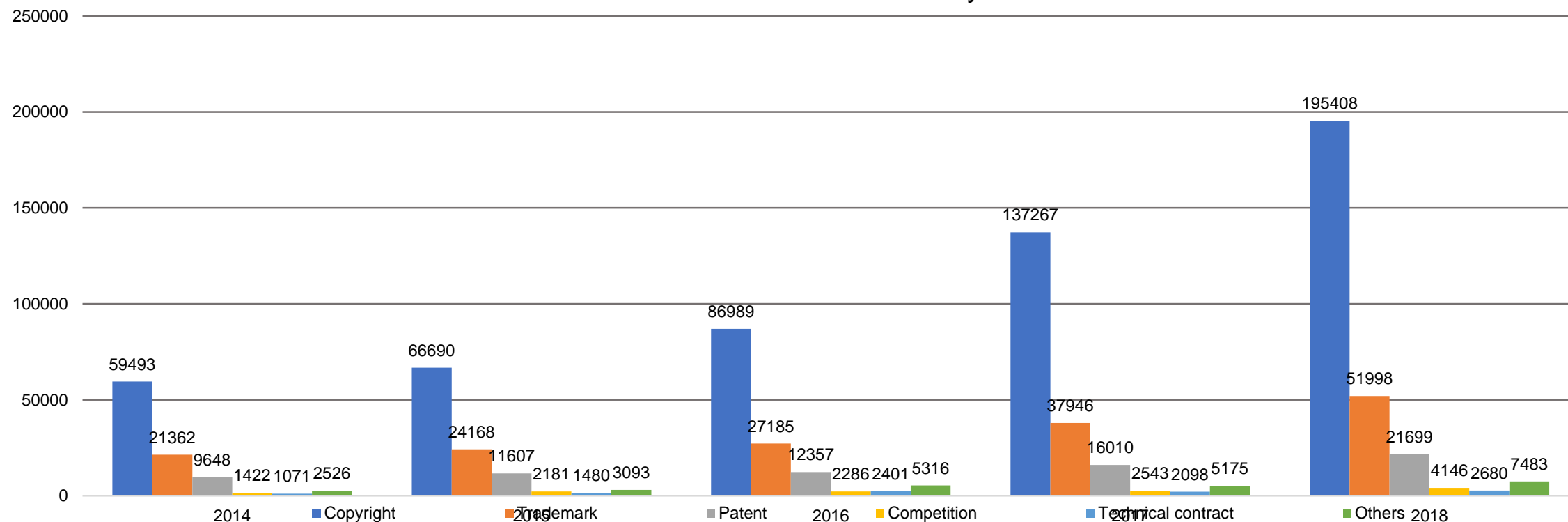
3. Growth rate of civil, administrative and criminal cases



2. Civil cases

An explosive growth of copyright cases.

first instance IP cases received by courts

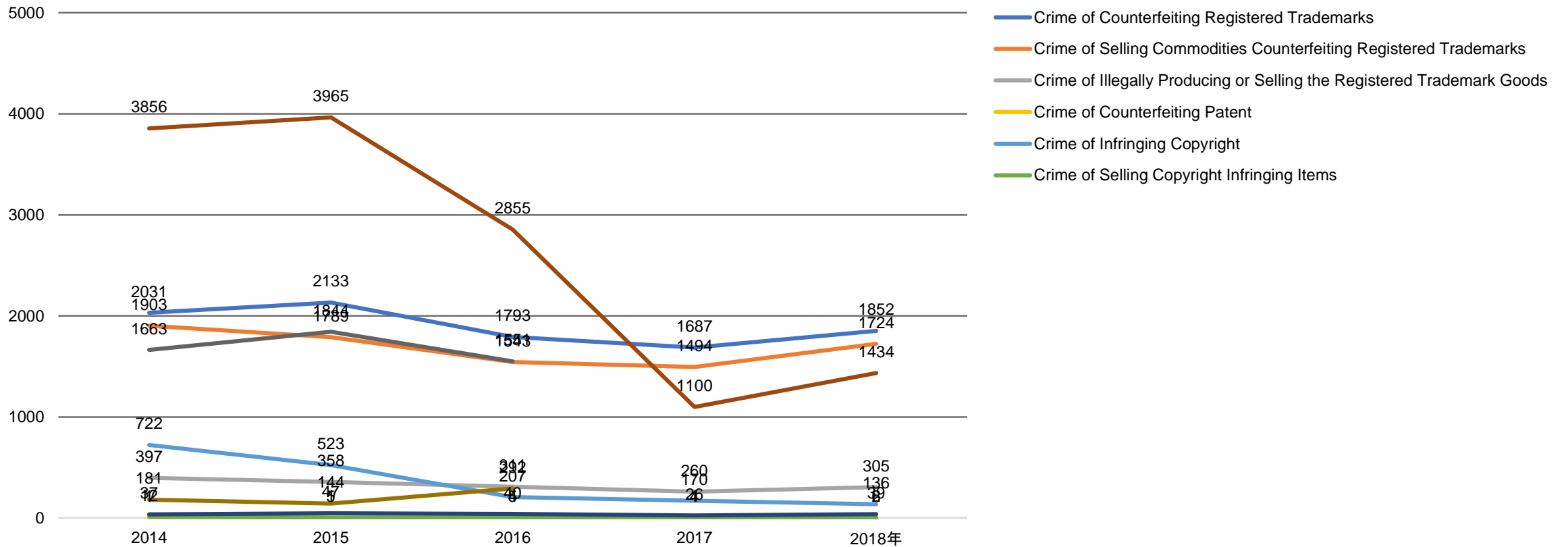


3. Criminal Cases

- A decrease of number.
- Most are trademark infringement cases.



Analysis of Charges of Criminal Cases Involving Intellectual Property in Courts



II . Establishment of IP Courts & Tribunals

1. Background of establishing IP Courts & Tribunals

(1) IP Tribunal of the Supreme Court

Permanent tribunal of the Supreme People's Court established in Beijing and in charge of trial of patent and other technology related IP appeal cases nationwide, aiming to unify the criteria for IP cases judgement.

(2) IP Courts

Beijing, Shanghai, Guangzhou

Jurisdiction: all categories of IP rights, only civil and administrative cases, no criminal case.

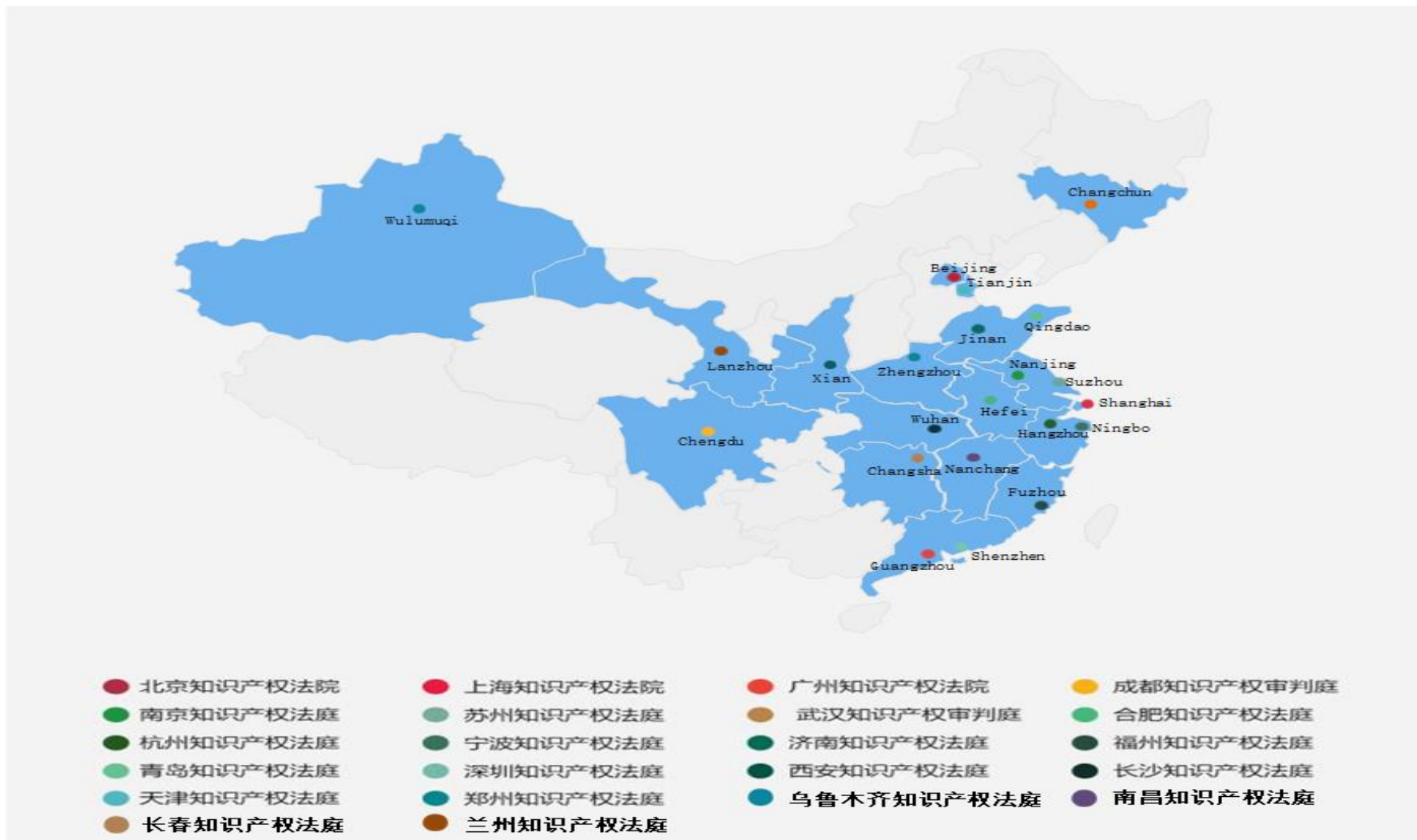
(3) IP Tribunals

Permanent tribunals dealing with IP cases established by people's courts.

2. 1+3+19 IP courts & tribunals

IP Tribunal of the Supreme Court	Established on 2019.1.1
3 IP courts	Beijing IP Court Guangzhou IP Court Shanghai IP Court
19 IP Tribunals	Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xi'an, Nanchang, Lanzhou, Changchun, Wulumuqi (Haikou's approved in April)

Map of IP Courts & Tribunals

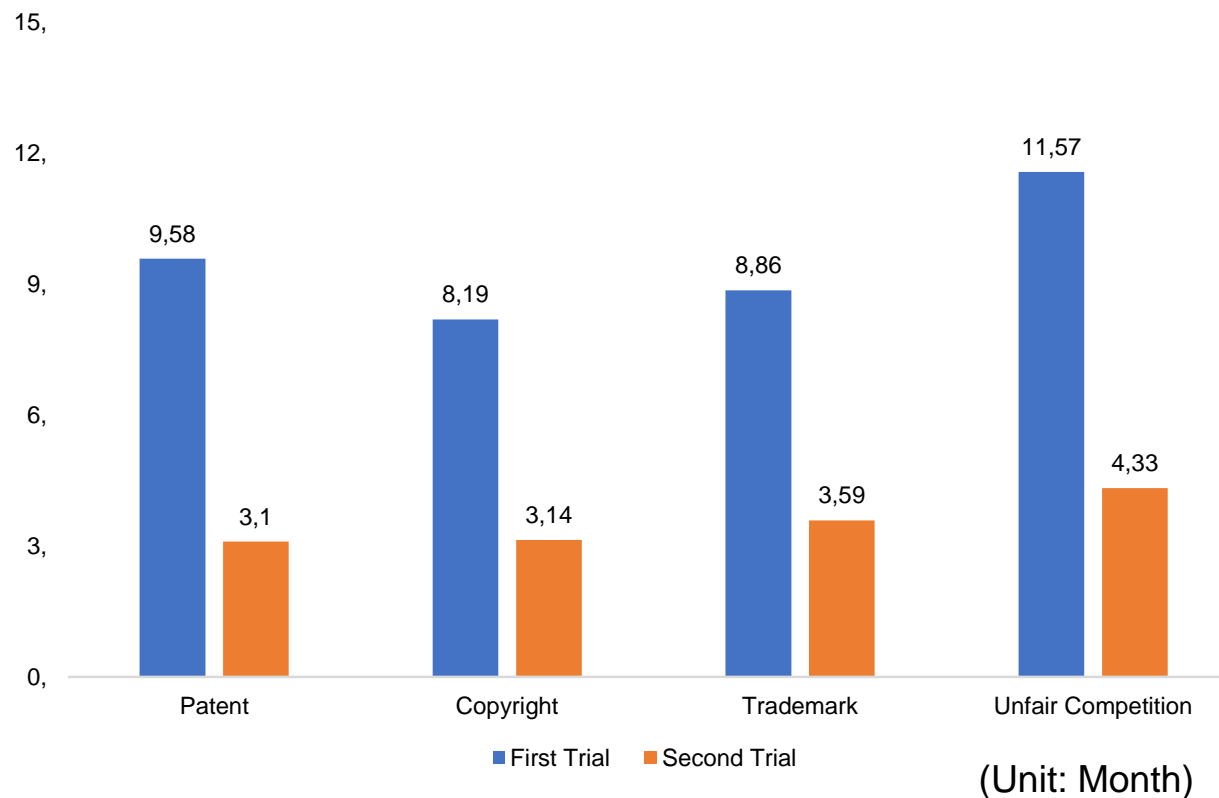


So far, the setting up of the IP courts & tribunals have:

1. covered all first-tier cities.
2. achieved a coverage rate of 90% among the top 10 cities in GDP. (except Chongqing)
3. achieved a coverage rate of 75% among the top 20 cities in GDP. (except Chongqing, Wuxi, Foshan, Quanzhou and Nantong)

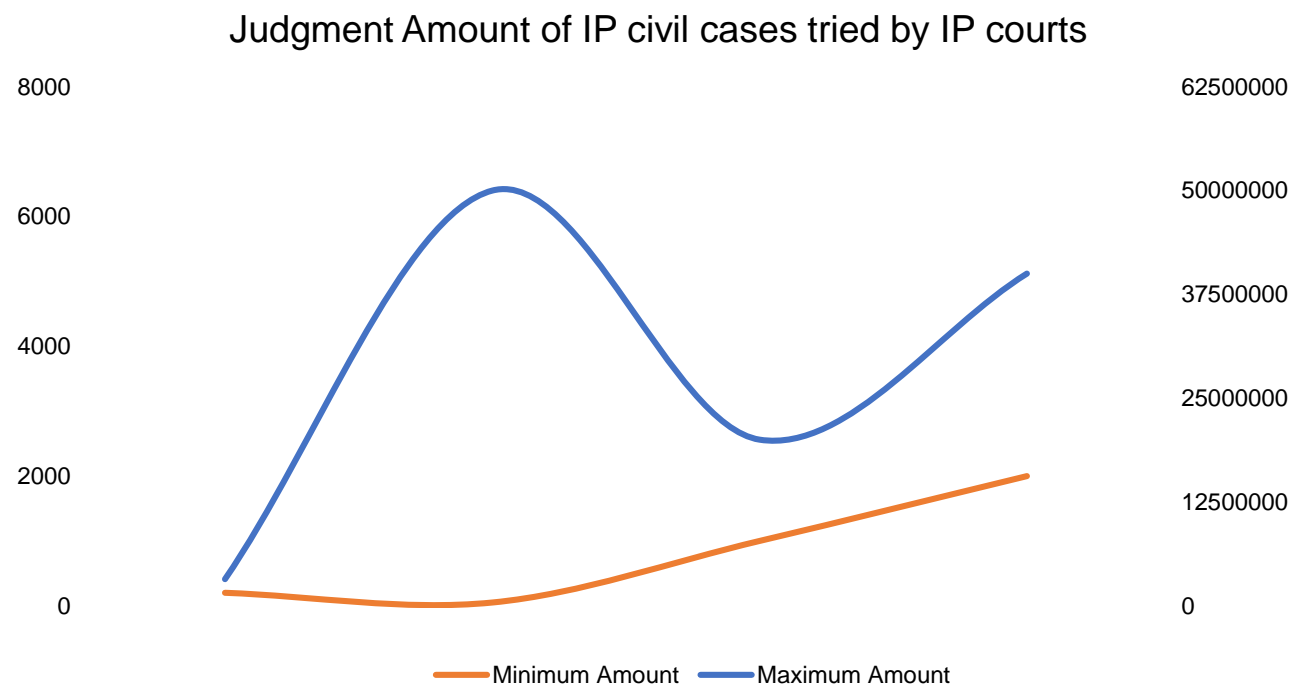
3. Characteristic of trial of civil cases by IP courts

(1) The average trial time of the three IP courts is generally lower than that of the United States, major EU countries, Japan and other countries



Date Source: IP House database

(2) 2015-2018, maximum & minimum amount of damages by the three IP courts



(Unit: Month)

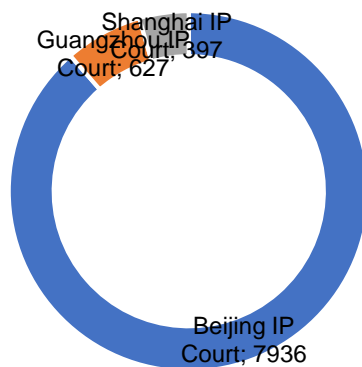
Date Source: IP House database

4. Foreign company-related and HK, MO and TW related cases before IP courts

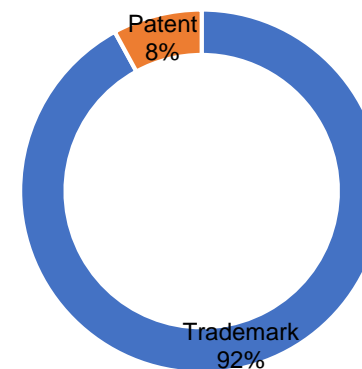
(1) parties from 86 countries and regions

(2) Beijing IP Court treated most of the cases: nearly 8000 foreigner -related IP cases in 4 years, among which 95% were trademark cases and 92% were trademark related cases.

Administrative cases tried by Beijing IP Court

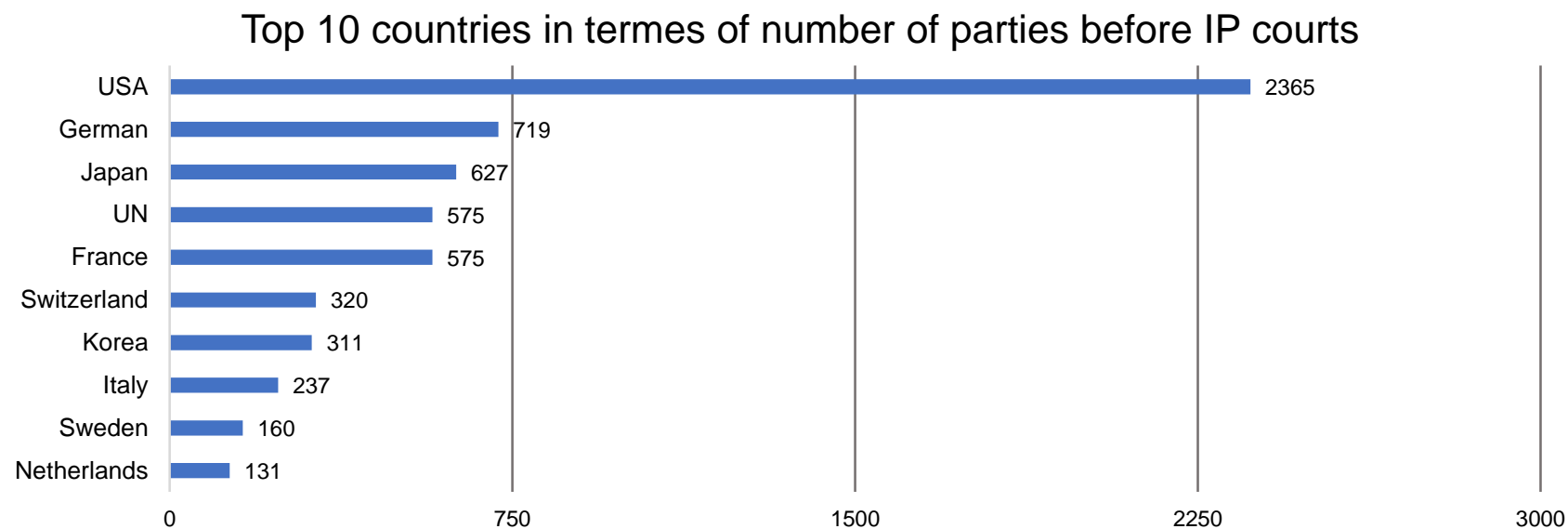


■ Beijing IP Court ■ Guangzhou IP Court ■ Shanghai IP Court



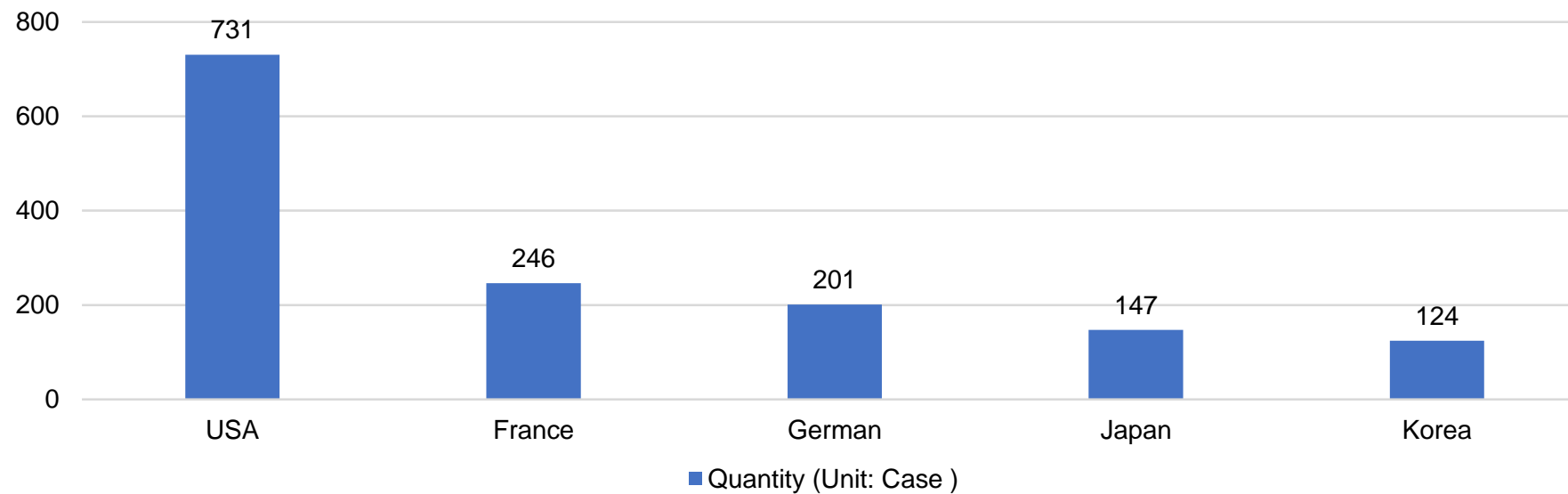
■ Trademark ■ Patent

(3) USA entities: as plaintiff in 1835 cases, as defendant in 50 cases, as third party in 418 cases.



Date Source: IP House database

(4) Cases with foreigners as plaintiffs in first instance cases nationwide 2014 to 2018. 1931 cases in total.



III. Key Points for 4th Amendment of Patent Law



In December 2015, Legal Affairs Office of the State Council issued *Draft of Patent Law Amendment (For Review)* to solicit opinions from the public.

Overall: A comprehensive amendment, 18 revised articles+ 11 new articles + 1 deleted article

(1) Design refers to the shape and pattern of **the whole or part (newly added)** of a product

(2) Add “**Patent Evaluation Report**”

(3) Term of protection for design patent: **10 years (original) – 15 years**

(4) Increase amount of damages:

- punitive damages to bad faith infringers

- rang of statutory damages increased from 10,000 to 1,000,000 RMB as stipulated in the current Patent Law to **100,000 to 5,000,000 RMB**

Key Points of Amendment

(5) Facilitate the proof of infringement damage and add a new article:

“In order to determine the amount of damages, on the premise that the patentee has tried its best to provide evidence and the accounting and materials related to infringement are mainly possessed by the infringer...the court may request the infringer to provide them. If the infringer refuses to provide them or provides false evidence, the court may **determine the amount of damages by referring to the claim and evidence provided by the patentee**”.

(6) Improve administrative enforcement of patent law and add a new article:

“**The patent office** may, at the request of the patentee or interested party, handle patent infringement disputes that have a significant impact on the whole country”

(7) Add **joint liability** on **internet service providers for internet user's patent infringement**

(8) Provide “**Unit's disposal right to service invention-creation**”

Thank you!

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<http://en.iphouse.cn>