

# Practical Dilemmas and Improvement of China's Administrative Ruling System for New Plant Varieties

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**Abstract:** With the implementation of the strategy of strong intellectual property rights, the implementation and development of the protection system of new plant variety rights, as a kind of intellectual property rights, has an important impact on the breeding innovation as well as the development of seed industry in China. Effective settlement of disputes over new plant varieties is not only an important embodiment of the implementation of the national strategy of strengthening intellectual property rights, but also a key initiative to promote the seed industry revitalisation action plan and establish a good seed industry market order. How to resolve all kinds of disputes over new plant varieties at the stage of minimum damage to the right holder, so that the right holder to defend their rights more convenient is the problem that remains to be solved. According to the current framework for the protection of new varieties of plants in China, the right to judicial, administrative, arbitration and other means of relief, but subject to a variety of practical constraints, the development of administrative and judicial protection of new varieties of plants and the development of two kinds of protection is not balanced. One of the more prominent problems is that, compared with judicial protection, the role of administrative protection has not been well played for a long time, which is far from the goal of comprehensively constructing the protection system of agricultural intellectual property rights, and is worthy of in-depth study. This paper mainly focuses on the new varieties of plants for the application of administrative adjudication of the practical dilemma to analyse, to build a more perfect administrative adjudication procedures in the field of new varieties.

**Keywords:** Administrative Adjudication;

**Plant Variety Rights;  
Institution-Building;  
Matters; Technical Surveyor  
Adjudication**

## 1. Introduction

The intellectual property rights system of China's seed industry is centred on the protection system of new plant varieties, which has significantly accelerated the transformation of scientific and technological achievements of the seed industry into practical applications since its establishment. It not only continues to stimulate the vitality of breeding innovation, but also greatly promotes the rapid development of the modern seed industry. In the process, the system provides a solid support for the creation of a healthy and orderly business environment for the seed industry, ensuring fair competition and sustainable development of the industry. It is based on this institutional framework that China's seed industry has successfully explored a unique development path that meets international trends.

## 2. Evolutionary features of Administrative Rulings on Plant Variety Rights

### 2.1 Legislative Evolution

Administrative adjudication is the act of the administrative organ to adjudicate civil disputes closely related to administrative activities according to the application of the parties and the authorisation of laws and regulations in an intermediary manner. The original intention of the system designer is to position the administrative adjudication as a specific mechanism to serve the society, aiming at solving specific civil disputes. Compared with civil litigation, which is also dedicated to resolving civil disputes, administrative adjudication shows its unique advantages: it combines professionalism and

flexibility, providing professional and efficient solutions to specific cases; at the same time, administrative adjudication is relatively inexpensive, alleviating the economic burden of the parties; in addition, its operational efficiency is higher than that of civil litigation, and it can deal with disputes more quickly. If administrative adjudication can give full play to its effectiveness, it can also prevent disputes at source and play a positive role in litigation governance. At present, administrative adjudication is mainly applied to disputes of tenure adjudication, disputes of infringement compensation adjudication, and disputes of compensation administrative adjudication. New plant varieties belong to the field of intellectual property rights, so the administrative adjudication system can be applied in infringement compensation disputes. [1] In view of the growing importance of agricultural trade in international trade, the need to strengthen the protection of new varieties of plants has become more urgent, in this context, the promulgation of the Regulations for the Protection of New Varieties of Plants and the establishment of the Office for the Protection of New Varieties of Plants is in line with the trend, and play a positive role in promoting the development of China's agricultural economy. [2]

The administrative adjudication system of intellectual property rights in China began with the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law) in 1985, and has been amended twice since then to establish the current administrative adjudication system for patent infringement disputes. Since then, the administrative adjudication system has been continuously improved in the field of patent infringement disputes. The State Intellectual Property Office (SIPO) issued the Measures for Administrative Adjudication of Early Settlement Mechanism of Pharmaceutical Patent Disputes on 5 July 2021, which mainly focuses on how to solve the problem of the boundaries of the rights of the relevant right holders at the early stage of infringement. However, with the rapid development of science and technology and its wide application, intellectual property rights have become increasingly diverse. Accordingly, the scope of application of administrative adjudication of intellectual property rights has gradually expanded from traditional patent and trademark disputes to emerging fields such as

Chinese medicine variety rights, plant variety rights, exclusive rights to integrated circuit layout designs, new patents and copyrights. At the same time, the types of disputes involved are no longer limited to general infringement disputes, but further cover disputes over licensing fees.

## 2.2 Relevant Provisions

Currently, the provisions on administrative adjudication of new plant varieties are concentrated in Article 11(2) of the Regulations for the Protection of New Varieties of Plants (2014) on compulsory royalty disputes and Article 39(1) on infringement disputes, which belong to the system of administrative regulations.

Meanwhile, Article 72 of the Seed Law of the People's Republic of China provides that 'Where there is infringement of the right to new plant varieties in violation of the provisions of Article 28 of this Law, the parties concerned shall negotiate and settle the matter; if they are unwilling to negotiate or if the negotiation fails, the owner of the right to new plant varieties or the interested party may request the competent departments of agriculture and forestry of the people's governments at or above the county level to handle the matter, or they may directly bring a lawsuit to the People's Court. The competent departments of agriculture and forestry of the people's governments at or above the county level may, on the basis of the principle of voluntariness of the parties concerned, conciliate the damages caused by the infringement of the rights to new varieties of plants. If an agreement is reached through conciliation, the parties concerned shall fulfil the agreement; if the parties concerned do not fulfil the agreement or the conciliation fails to reach an agreement, the owner of the right to new varieties of plants or the interested party may, in accordance with the law, file a lawsuit with the People's Court. .... When the competent departments of agriculture and forestry of the people's governments at or above the county level deal with cases of infringement of the rights to new varieties of plants, in order to safeguard the public interest of the society, the infringer shall be ordered to stop the infringing acts and confiscate the illegal

income and seeds; if the value of the goods is less than 50,000 yuan, a fine of not less than 10,000 yuan and not more than 250,000 yuan shall also be imposed; if the value of the goods is more than 50,000 yuan and impose a fine of not less than five times but not more than ten times the amount of the value of the goods.'

According to the above provisions, for the infringement of new plant varieties, which is similar to patent infringement, the parties concerned may apply for administrative adjudication to the departments of agriculture and forestry at or above the county level if the negotiation fails. If the administrative judgement of the agriculture or forestry department at or above the county level finds that the infringement of the right to new varieties of plants has been established, it will order the cessation of the infringing behaviour.

### **3. Dilemma of Administrative Adjudication System in the Field of New Plant Varieties**

#### **3.1 Low Application Rate**

China's intellectual property protection system adopts the dual mechanism of administrative protection and judicial protection in parallel. Among them, judicial protection has the advantage of being the preferred choice in resolving intellectual property disputes due to its final nature. In the field of new varieties of plants, because of the need to identify infringement of *dus* field test, so the evidence collection cycle is longer, the awareness of varieties of varieties of rights varies, to determine whether the infringement of varieties of rights constitutes an infringement of varieties of rights is a complex and onerous task, and often need to invest a lot of human resources and material resources. Large enterprises are usually more aware of their rights, and will actively collect evidence and defend their rights through legal channels. In contrast, SMEs are less active in defending their rights and often choose to give up defending their rights due to the difficulty in bearing the time, energy and economic costs required to combat counterfeiting in the long run. Fourthly, the cyclical, regional and seasonal nature of plant seed production is very strong, which brings a lot of inconvenience to the agricultural administrative and law enforcement departments and variety right holders to defend their rights. At the same time, the rights of litigation

procedures are complex, costly, and variety infringement cases to have a designated provincial courts, breeding experts do not have the time and energy to defend the enthusiasm is not high. If the choice of judicial path to resolve, it will extend the rights cycle, reduce the willingness of the parties. [3]

#### **3.2 Insufficient Legitimacy of Protection**

For the administrative protection of variety rights, at present only includes the people's government at or above the provincial level of agriculture, forestry administrative departments according to the request of the variety right holder or interested parties, according to their respective powers and functions of the variety rights infringement cases. In the field of administrative adjudication, local governments are more concerned with compensation for land expropriation, compensation for demolition and relocation, confirmation of ownership and the environment, while the central government is more concerned with intellectual property rights. [4]

Based on the above provisions, several obvious features of the administrative protection of variety rights in China can be found. (1) for variety right infringement cases, the corresponding administrative department can only be requested by the right holder, that is to say, the administrative protection of variety right infringement is also a kind of passive protection, which follows the principle of no-action-no-compensation; (2) the corresponding competent department only has the right to mediate the damages of infringement, but not the right to adjudicate; (3) the relevant variety right infringement, once it jeopardises the public interest, the corresponding administrative department can not only order to stop the infringement, but also order to stop the infringement, but also order to stop the infringement. In addition to ordering the cessation of infringement, the administrative department may also impose administrative penalties, confiscate the illegal income, and may impose a fine of up to five times the illegal income.

### **4. Analysis of the Causes of the Dilemma of Administrative Decision on New Plant**

## Varieties

### 4.1 High Ambiguity of Existing Legal Provisions

As a large number of administrative adjudication legislation in China was enacted in the 1980s, the Administrative Litigation Law of the People's Republic of China (hereinafter referred to as the Administrative Litigation Law) has not yet been promulgated, so most of the laws at that time only stipulated that the parties to the administrative adjudication of the people's court can be filed a lawsuit, but what kind of lawsuit should be filed, whether it is a civil lawsuit, or an administrative lawsuit, the laws have not been clarified. [5] By analysing the 'provincial administrative adjudication table', 55 matters are included in the scope of application of administrative adjudication in China's practice. The types of scope include not only disputes of ownership, infringement disputes, compensation and indemnity disputes, but also disputes of procurement, bidding, price and quality, and complaints of teachers and students. However, there are differences in the matters subject to administrative adjudication in each province, including disputes over the name of enterprises in 27 provinces, disputes over land ownership in 23 provinces, complaints handling in government procurement in 23 provinces, mediation and arbitration in disputes over metrology in 20 provinces, disputes over infringement of patents in 20 provinces, disputes over the names of healthcare institutions in 17 provinces, and disputes over the scope of the area of exploration operations and the scope of the mine area between the owner of a prospecting right and the owner of a mining right. These seven areas of adjudication involved the largest number of provinces, more than 50 per cent of the provinces counted. In addition to the wording of the legislation, it is also important to ensure the reasonableness of the enforcement of the law. An important aspect of the reasonableness of administrative enforcement is the reasonable determination of the strength of administrative penalties. Intellectual property protection in China has long suffered from insufficient compensation, and in response, the Civil Code introduces a system of punitive damages. Administrative penalties are less popular than civil damages because they only involve punishment of the offender and do not involve direct compensation

to the right holder. However, in principle, administrative penalties, like civil damages, also constitute the cost of the offence to the offender. [6]

### 4.2 Specific Procedures for Adjudication have not yet been Constructed

Throughout China's laws and regulations on administrative adjudication, mainly entity-based authorisation, procedural rules are less, which makes China's administrative adjudication system does not have a certain procedure as a support, the adjudication process is not standardised, it is difficult to get uniform application in practice, the procedure of the administrative adjudication system of civil disputes should at least contain the application, acceptance, hearing and adjudication of these four basic procedures, the current laws and regulations For the way of administrative adjudication hearing, written hearing or hearing are not made clear provisions. The evidence system of administrative adjudication and whether the mediation did not make clear instructions, how to debate in the hearing process did not make the procedural requirements, at the same time, due to the establishment of standard procedures, so that the administrative organs responsible for administrative adjudication of the power of the administrative organ without procedural limitations, will be prone to abuse of power, which will lead to unfair adjudication. [7] At the same time, under the current management system, the main problems that exist between the agricultural and forestry sectors are the fragmentation, intersection and overlapping of administrative functions. In addition to the fact that these problems have led to the agricultural and forestry departments competing for the management of matters in their own favour and pulling each other's strings on matters that are not in their own favour, more importantly, as mentioned earlier, they have also led to a situation where there are regulations in one department and gaps in the other, in terms of review boards and administrative enforcement procedures. [8] The current management system has also led to a situation where there are regulations in one department and gaps in the other. [8]

## 5 Improvement of the Administrative Adjudication System for New Plant Varieties

### 5.1 Unify the Expression Norms and Clarify the Term 'Adjudication'.

With the above legislative evolution, combined with the current time cases in the field of patents, most of the provisions of 'processing' imply the use of administrative means of adjudication combined with penalties to resolve disputes, rather than the internal decisions of government departments. Therefore, standardising the language of the provisions is the first step in using the adjudication system, for example: after having the basis of the provisions, it should be clear that the steps for the application of administrative adjudication. Clearly prioritise administrative adjudication, improve the administrative adjudication of simple procedures, administrative adjudication procedures generally include: application, acceptance, evasion, evidence, mediation, trial, execution, period, delivery, etc., administrative organs follow the principle of equality, standardisation, simplicity and efficiency, to facilitate the parties to file an application for administrative adjudication in accordance with the law, and to safeguard the legitimate rights and interests of the parties. Improvement of administrative adjudication notification system. Jiangsu took the lead in opening the administrative adjudication system to improve the procedures of the judicial administrative department is responsible for the administrative region of the administrative adjudication of the work of comprehensive coordination. Qualified cases of new varieties of plants are adjudicated first to achieve the complexity and simplicity of new varieties of plants cases.

### 5.2 Construct Specific Adjudication Procedures

(1) Determine the adjudication processing agency to resolve conflicts at the grassroots level. However, many new plant variety right cases occur without the knowledge of the right holders, and the right holders are unable to sue the judicial organ because they are unable to collect evidence. Instead, administrative organs can take the initiative to protect the rights holders according to their applications or on their own authority. Compared with the passive nature of the judiciary, administrative adjudication, as a kind of administrative act, can

achieve ex ante protection for the right holders. Actively carry out cross-regional investigation, cross-departmental collaboration, the implementation of adjudication and docking. The main body of the ruling is the administrative organ authorised by laws and regulations, unlike the civil arbitration institution that makes civil arbitration and the court that accepts civil litigation cases. For example, the administrative ruling on land ownership disputes is made by the people's government of the district (county) or town, and the administrative ruling on patent infringement disputes is made by the municipal market supervision department. Based on the principle of system construction and reference, linking to Article 72 of the Seed Law, which states that 'If there is infringement of the right to new varieties of plants in contravention of the provisions of Article 28 of this Law, the parties concerned shall negotiate to resolve the matter, and if they are unwilling to negotiate, or the negotiation fails If it is unwilling to negotiate or the negotiation fails, the owner of the right to new plant varieties or the interested party may request the competent department of agriculture and rural areas, forestry and grassland of the people's government at or above the county level to deal with the matter, or may directly file a lawsuit with the people's court.' The adjudication of infringement of new plant variety rights may be carried out by the competent departments of agriculture, rural areas and forestry and grassland of the people's governments at or above the county level for acceptance and preliminary case examination.

(2) Preparing a list of administrative adjudication matters. Various regions combined with the actual situation in the region to form a list of administrative adjudication matters. For example, zhejiang province based on laws, regulations, rules, combined with the actual situation in the province, the preparation of the first administrative adjudication matters list and announced to the public, involving land ownership disputes, infringement of plant variety rights, patent infringement disputes, enterprise name dispute adjudication, government procurement complaints, electric power interconnection disputes, such

as 15 adjudications. [9] By means of the administrative adjudication, the government of the county and above people's agricultural, rural, forestry and grassland departments receive and review the preliminary cases. [9] Through the list management of adjudication matters, clarify the adjudication responsibilities and authorities of each department, promote the correct performance of duties and responsibilities of functional departments in accordance with the law, and ensure the consistency of rights and responsibilities of administrative adjudication, and operate on the track of the rule of law.

(3) Strengthening team building and synchronising specialisation and institutionalisation. Enhance the professionalism of adjudicators, establish a system of technical investigators, and allow more researchers of new plant varieties to enter the administrative adjudication system, e.g., research and development institutes of new plant varieties, seed companies, and other institutions related to food security as well as agricultural development in that locality. Increase in local revenues by the government to increase willingness to adjudicate administratively. Interest shaping identity, such as administrative adjudication, the parties are not convinced of the results of the adjudication, should be as a third party in the subsequent civil litigation to make a statement. [10] At the same time, improve the technical investigation officer system, play the role of the technical investigation officer in the ruling of the evidence, should be submitted to the technical investigation officer of the technical investigation of the opinion of the technical investigation of the regular evaluation and statistics, combined with the judges team on its evaluation, and the court hearing the appeal case on its judgement, regularly give the corresponding evaluation, every year based on the evaluation results of the technical investigation officer of the posting of the adjustment. [11]

(4) Improving the adjudication and mediation mechanism, building a mediation platform for administrative adjudication, mobilising social forces such as trade associations, lawyers and other professional lawyers, and actively organising mediation between the parties concerned, so as to give full play to the advantage of the convenience of administrative adjudication in 'combining adjudication and mediation'. Innovating the mechanism of

simplified and complicated streaming, promoting the diversion of administrative adjudication cases into simplified and complicated streams, and the separation of fast and slow streams, and applying simplified procedures to administrative adjudication cases of intellectual property rights where the basic facts are clear, the evidence is conclusive, and the relationship of rights and obligations is clear, so as to provide maximum convenience for enterprises and the public. Establishing a mechanism for deciding on major rulings, strictly enforcing the requirements of hearing, legality review and collective discussion and decision-making for major administrative rulings involving public interests and people's immediate interests, comprehensively promoting the standardisation of administrative rulings, and further enhancing the quality and effectiveness of administrative rulings.

(5) follow the situation of judicial finality. Administrative adjudication belongs to alternative dispute resolution, not all civil disputes accepted by the court into the administrative adjudication matters. Administrative adjudication scope of the boundary in its definition has been clear, namely, must belong to the 'civil dispute' and 'administrative activities' related to administrative adjudication, administrative adjudication scope of the application of the expansion of the scope of the boundary can not go beyond, beyond the scope of the administrative adjudication of the extension. In the new situation, to further realise the convergence of administration and justice, and to explore the establishment of a judicial confirmation system for administrative mediation agreements is a necessary initiative.[6] Any disputes arising under the constitution and legal norms should be made by the judiciary to make the final decision, the court for the dispute enjoys the right of final settlement, here the right of final settlement of the judiciary, means that no other organs, enterprises, individuals can not revoke, denying the court's judgement on it. This right of final settlement is exclusive. In the administrative adjudication system, the principle of judicial finality refers to the civil disputes between the parties, upon application by the parties, the administrative

adjudication organ to make the corresponding decision, the parties to express their dissatisfaction with it, can directly resort to the court, the use of judicial intervention to solve the disputes. [7]

## 6. Conclusion

the current pressure of judicial trial in our country makes us have to pay attention to the construction of diversified dispute resolution mechanism, have to re-exert the important role of administrative adjudication in dispute resolution, which can be more flexible and efficient to deal with some economic and very specialised civil disputes, and give play to its due value. In practice, the number of disputes over new plant varieties is increasing, and the legal issues involved are becoming more and more complicated. The effective settlement of disputes over new plant varieties is not only a manifestation of the implementation of the national strategy of strengthening intellectual property rights, but also a manifestation of the implementation of the action programme for the revitalization of the seed industry and the establishment of a good market order for the seed industry. According to China's current legal framework, the settlement of disputes over new plant varieties can be remedied through judicial, administrative and arbitration channels, and the construction of administrative adjudication on new plant varieties is particularly necessary for the settlement of infringement disputes.

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