



知识产权案例精选

Selected Intellectual Property Cases
(2009—2010)

上海市高级人民法院知识产权审判庭 编
郑肇芳 主编

Compiled by Intellectual Property Division
of Shanghai High People's Court

Zheng Zhaofang Chief Editor



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内容提要

本书从上海法院 2009—2010 年受理及审结的数千件知识产权案件中精选出具有一定代表性与指导性的案例。每个案例均设提要、案情、审判、评析四大部分。每个案例在提要部分对案例涉及的主要问题进行归纳,在案情部分介绍基本案情,在审判部分详细介绍审判理由和判决结果。评析部分是在概述案件事实的基础上,详细阐述判决的法理和法律依据。

本书可供知识产权审判工作者、权利人、知识产权纠纷当事人及其代理人、高等院校研究人员和广大师生参考使用。

责任编辑:彭小华

责任校对:韩秀天

执行编辑:甘军萍

责任出版:卢运霞

特约编辑:肖树乔

图书在版编目(CIP)数据

知识产权案例精选. 2009—2010 / 郑肇芳主编; 上海市高级人民法院
知识产权审判庭编. —北京: 知识产权出版社, 2012. 3

ISBN 978 - 7 - 5130 - 1117 - 4

I. ①知… II. ①郑…②上… III. ①知识产权法 - 案例 - 分析 - 中国
IV. ①D923. 405

中国版本图书馆 CIP 数据核字 (2012) 第 029162 号

知识产权案例精选 (2009—2010)

ZHISHICHANQUAN ANLI JINGXUAN (2009—2010)

上海市高级人民法院知识产权审判庭 编

郑肇芳 主编

出版发行: 知识产权出版社

社 址: 北京市海淀区马甸南村 1 号

邮 编: 100088

网 址: <http://www.ipph.cn>

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责编邮箱: pengxiaohua@cnipr.com

印 刷: 北京富生印刷厂

经 销: 新华书店及相关销售网点

开 本: 880mm × 1230mm 1/32

印 张: 19.125

版 次: 2012 年 3 月第 1 版

印 次: 2012 年 3 月第 1 次印刷

字 数: 531 千字

定 价: 60.00 元

ISBN 978 - 7 - 5130 - 1117 - 4/D · 1414 (3998)

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序

中国特色社会主义法律体系形成后，确保法律适用统一，促进法律有效实施，成为贯彻落实依法治国基本方略极为重要和紧迫的任务之一。在知识产权司法领域加强法律适用统一，提高审判质量，不仅是知识产权审判工作全面落实依法治国方略的基本要求，而且对于加强知识产权司法保护，促进创新型城市与创新型国家建设具有重要的现实意义。典型案例具有明晰法律规则、统一裁判标准、推进法律适用统一、提高司法水平的作用。为充分发挥典型案例的这一功能，我们多年来坚持编写知识产权审判案例集。本书是我们精心编写的最新案例集，谨此奉献给广大关心和支持上海法院知识产权审判工作的朋友们。

上海处于中国经济发展的前沿，经济活跃，新类型案件、疑难案件比较多。近年来，上海法院各知识产权审判庭积极实施“精品战略”，不断建立、健全精品案件的发现、审理、调研、发布机制，努力将各种疑难复杂、新类型案件办成审判程序规范严谨、举证认证充分细致、事实认定清晰扎实、法律适用准确得当的“精品案”。经过多年努力，上海法院已有不少知识产权案件作为指导性案例登载于《最高人民法院公报》，有些案件入选最高人民法院评选的年度“中国法院知识产权司法保护十大案件”和“中国法院知识产权司法保护 50 件典型案例”。自 2011 年起，上海市高级人民法院首次评选和发布年度“上海法院知识产权司法保护十大案件”，积极扩大精品案件的社会影响，充分发挥司法审判对社会的引导、规范作用。

本书汇编的案例是从近两年上海法院审结的数千件知识产权案件中精选出来的，案件类型覆盖著作权、商标、专利、反不正当竞

争等民事案件以及知识产权行政、刑事案件。在入选的案例中，有的因涉及国内外知名企业、知名商标、知名作品以及上海世博会等重大活动而广受社会关注；有的涉及网络服务提供者的注意义务与侵权认定标准、商标合理使用的认定、外国企业名称中文译名的保护、功能性技术特征权利要求的解释、外观设计专利侵权判定标准等当前知识产权审判中的疑难问题。每个案例围绕事实认定与法律适用中的关键问题，剖析事理、探讨法理，力求以简洁清晰的文风，严谨求实的精神，反映上海法院近两年知识产权案件审判的最新动态，反映上海法院知识产权法官对知识产权审判前沿问题的最新思考与探索。本案例集采用中英文对照体例，以满足业界不同人士的需要。

司法案例是司法智慧的集中体现，蕴含了丰富的法治人文信息。期以本书推进上海法院知识产权法官与学术界、业界的沟通交流，诚挚地欢迎社会各界人士一如既往地关心、支持上海法院的知识产权审判工作！

编 者

2011 年 11 月

Preface

After the socialist legal system with Chinese characteristics has been established, ensuring the unified application of laws and promoting effective enforcement of laws have become one of the most important and imperative tasks in carrying out the basic strategy of ruling of law. In the judicial area concerning Intellectual Property, better unification in application of law and improving trial quality is not only the basic requirement in fully carrying out the basic strategy of ruling of law in the trial work concerning Intellectual Property, but also of important realistic significance to strengthening the judicial protection of Intellectual Property and promoting the construction of innovation-oriented country and cities. Typical cases have the role of demonstrating rules of law, unifying ruling criteria, advancing unified application of law and upgrading judicial level. To bring this function of typical cases into full play, for years, we have kept on compiling collections on trial of cases concerning Intellectual Property. This book is a collection of latest cases we elaborately compiled, and now we present it to our friends concerning and supporting the trial work related to Intellectual Property in courts of Shanghai.

Shanghai is at the front of economic development in China, playing an active role in business and economic activities, and there are also many challenging cases with new features. In recent years, the Intellectual Property tribunals in various courts of Shanghai have actively implemented the “exquisite strategy”, keeping on establishing and completing the mechanism to discover, handle, investigate and make known exquisite cases, and endeavoring to conclude various complicated challenging

cases of new features as “exquisite case” handled by following formalized and stringent procedures, with sufficient and careful proof of evidences, clear and steadfast affirmation of facts and accurate and proper application of law. After years of efforts, many cases concerning Intellectual Property trial by courts of Shanghai have been published on the “Bulletin of Supreme People’s Court” as guiding cases, and some cases were selected among “ten major cases handled by courts of China concerning judicial protection of Intellectual Property” of the year and “50 typical cases handled by courts of China concerning judicial protection of Intellectual Property” after appraisal by the Supreme People’s Court. In 2011, Shanghai High People’s Court for the first time selected and published “ten major cases handled by courts of Shanghai concerning judicial protection of Intellectual Property”, in order to actively expand the social influence of exquisite cases, and bring into full play the guiding and formalizing role of judicial trial in the society.

The cases compiled in this book were carefully selected from several thousand cases concerning Intellectual Property concluded by courts in Shanghai in recent two years, including civil cases concerning copyright, trademark, patent and anti-unfair competition and administrative and criminal cases concerning Intellectual Property. Among the selected cases, some have attracted wide attention in society as they are related to well-known domestic or overseas enterprises, trademarks, works and major events such as Shanghai World Expo; and some are related to difficult issues in current trials of Intellectual Property cases such as obligation of care by network service providers and infringement affirmation criteria, determination of rational use of trademarks, protection of Chinese translation in names of foreign enterprises, interpretation of claims concerning functional technical features, and infringement determination criteria in design patent. In each case, we made analysis of the matter and

explored the theory of law on key issues in affirming facts and application of law, with the efforts to reflect in simple and clear writing and a stringent and pragmatic manner the latest movement in trial of cases on Intellectual Property in courts of Shanghai in recent two years and the latest thinking and exploration by Intellectual Property judges in courts of Shanghai on the leading edge issues in their judgment concerning Intellectual Property. This collection is arranged bilingually in Chinese and English, to meet the different needs of different people in the judicial circle.

Judicial cases reflect judicial wisdom. They contain rich information on rule of law and humanities. We hope that this book can help promote communications and exchange of ideas between Intellectual Property judges in courts of Shanghai and the academic and industrial circles. We also highly appreciate people from all walks of life for their persistent concern and support for the Intellectual Property trial work in courts of Shanghai.

The editor

November, 2011

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