



知识产权案例精选

Selected Intellectual Property Cases
(2013—2014)

上海市高级人民法院知识产权审判庭 编
茆荣华 主编

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

Mao Ronghua Chief Editor



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序

经过半年多的编撰工作,《知识产权案例精选(2013-2014)》一书终于正式出版了。

在知识经济全球化的今天,知识产权已经成为提升国家核心竞争力、促进经济社会发展的重要力量和战略资源。2015年12月,国务院发布了《关于新形势下加快知识产权强国建设的若干意见》,要求“深化知识产权领域改革,加快知识产权强国建设”。中共中央和国务院2016年5月发布的《国家创新驱动发展战略纲要》明确要求,“充分发挥知识产权司法保护的主导作用,增强全民知识产权保护意识,强化知识产权制度对创新的基本保障作用”。2016年5月召开的全国科技大会也明确提出到新中国成立100年时要使我国成为世界科技强国。这些都充分说明了国家从战略高度对知识产权工作进行了更高的定位,充分体现了知识产权工作在我国全面深化改革进程中的极端重要性,也对知识产权司法保护工作提出了新的更高要求。面对新变化、新特征、新态势,人民法院作为知识产权保护的核心环节,必须责无旁贷地肩负起司法保护知识产权的重大责任和光荣使命,充分发挥司法保护创新和维护公平竞争的主导作用,不断完善知识产权司法保护体制机制,全面加强知识产权司法保护,确保知识产权法律制度全面有效实施,为知识产权强国和世界科技强国建设提供有力的司法保障。

司法保护知识产权主导作用的充分发挥,关键要通过案件审判来实现。多年来,上海法院的知识产权审判工作一直走在全国法院前列,通过对每一起案件的公正裁判,平等保护中外当事人的合法权益,树立了公正、高效、权威的良好形象。同时,借助上海创新驱动发展的环境优势,以及上海独特的地域优势,我们也精心审理了一批在全国乃至国际上有影响力的新类型、疑难复杂知识产权案件,抽象出一些具有权威性、影响力的裁判规则。将这

些具有代表性、指导性和典型性的精品案件编写成典型案例，将案例中蕴含的法律精神、法律规则传播给社会，对于加强知识产权保护和运用，激励科技创新的规范、引导、教化功能具有十分重要的意义。上海法院历来十分重视知识产权案例编写工作，建立了案例编选和发布制度，加强对案例的多视角研究，深度开发案例的应用价值，不断提升案例的权威性和指导性。自1997年以来，一共编辑出版了10本案例集，充分发挥了对司法实践的指导作用、对法学理论创新的启发作用、对宣传法制的教育作用以及对化解纠纷的示范作用。这些案例集是二十多年来上海法院知识产权审判工作的缩影和结晶，为构建中国特色社会主义案例指导制度发挥了积极作用，值得研究、记取和珍惜。

本书正是对上海法院历年来知识产权审判精品案例工作的传承和延续。其中汇编的37件案例是2013-2014年上海法院审理的在国内外具有一定影响的案件，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刑事、行政案件，集中展现了上海法院知识产权法官的专业化审判能力和水平。例如，圣莱科特国际集团等诉华奇（张家港）化工有限公司等侵害商业秘密纠纷案涉及涉外商业秘密平行诉讼案件的审理原则，该案入选“2013年中国法院知识产权司法保护十大案件”；维多利亚的秘密商店品牌管理有限公司诉上海锦天服饰有限公司侵害商标权及不正当竞争纠纷案涉及正规渠道进口正牌商品并转售是否构成商标侵权，该案入选2013年《最高人民法院公报》案例；北京锐邦涌和科贸有限公司诉强生（上海）医疗器材有限公司等纵向垄断协议纠纷案系国内首例纵向垄断协议纠纷案，涉及限制最低转售价格行为反垄断分析与认定中的一系列法律未规定而需要明确的基本问题，该案入选“2013年中国法院知识产权司法保护十大创新性案件”和2014年《最高人民法院公报》案例；钜泉光电科技（上海）股份有限公司诉深圳市锐能微科技有限公司等侵害集成电路布图设计专有权纠纷案涉及集成电路布图设计的侵权认定，该案入选“2014年中国法院知识产权司法保护十大案件”，同时入选“2014年度人民法院十大民事案件”；张俊雄侵犯著作权罪案涉及网络服务提供行为构成侵犯著作权罪的司法认定，该案入选“2014年中国法院知识产权司法保护十大创新性案件”及“《人民法院案例选》2014年度优秀案例”；白先勇诉上海艺响文化传播有限公司等侵犯改编权纠纷案以及派诺特贸易（深圳）有限公司诉上海派若特国际贸易有限公司、仇

刚侵害商标权及不正当竞争纠纷案，分别涉及将电影作品改编为话剧进行演出是否需要同时取得制片者和原作品作者的授权许可以及以仿冒注册商标、企业字号为手段，损害权利人的经营秘密是否应当分别规制手段行为和结果行为，这两起案件均入选最高人民法院“2014年中国法院知识产权司法保护50件典型案例”。此外，为满足中外人士的需求，本书采用中英文对照体例，以期成为向国际社会展示上海法院司法保护成果的重要窗口，成为推进上海法院开展知识产权国际交流的重要载体，成为参与、推动甚至引领国际知识产权保护 and 规则制定的重要平台。

案例是法律理念和法律条文的具体化，每一个案例都是燃起法治之火的火种。本书收录的案例不仅展现了上海法院知识产权法官在知识产权审判工作中的孜孜不倦和辛勤付出，也折射出法官们在每一起案件中运用法律思维、追求公平正义的拳拳之心和智慧才情。在本书付梓之际，我衷心希望多年来关注知识产权审判的各界有识之士，给予上海法院更多的关心与支持！也希望上海各级法院知识产权审判庭和知识产权法官，继续审理好、总结好、宣传好知识产权精品案件，不断增强上海法院知识产权审判的权威性和影响力，努力把上海法院建设成为当事人信赖的国内乃至国际知识产权司法保护的“优选地”，为世界知识产权强国和科技强国建设，为上海加快具有全球影响力的科技创新中心和亚太知识产权中心城市建设作出新的更大的贡献！

是为序！

茆荣华

2016年9月10日

Preface

Upon the compilation work of more than half a year, this *Selected Intellectual Property Cases (2013 – 2014)* is officially published now.

In the globalized knowledge economy, intellectual property right has become a vital force and strategic resource in improving national core competitiveness and promoting economic and social development. In December 2015, the State Council issued the Opinions on Speeding up the Construction of a Powerful Country in Intellectual Property under New Situation, requiring to “deepen the reform in the field of intellectual property, and speed up the construction of a powerful country in intellectual property”. In May this year, the Central Committee of the Communist Party of China and the State Council issued the Outlines of National Innovation-Driven Development Strategy, clearly requiring to “give full play to the leading role of IP judicial protection, enhance the national IP protection awareness, and intensify the basic role of IP system in protection innovation”. The National Conference on Science and Technology held in May this year also put forward clearly that we should make China a world technology superpower by the 100th anniversary of the People’s Republic of China. All of these have fully indicated that China has highly positioned the work concerning intellectual property from a strategic height and that the work concerning intellectual property is of crucial importance in the course of comprehensively deepening reforms in China. Besides, they have also brought forward new and higher requirements on judicial protection of intellectual property. Facing the new changes, new characteristics and new conditions, the people’s court as the core link of intellectual property protection must assume the great responsibility and glorious mission of IP judicial protection,

give full play to its leading role in protecting innovation and maintaining fair competition, continuously improve the IP judicial protection system and mechanism, comprehensively enhance the IP judicial protection and ensure the full and effective implementation of IP laws and regulations, so as to provide forceful judicial guarantee for the construction of a powerful country in intellectual property and technology.

Trial of IP cases is crucial to giving full play to the leading role of IP judicial protection. The IP trial work of courts in Shanghai has always been among the best in the whole country for years. Through just judgment of each case and safeguard of the legitimate rights and interests of both Chinese and overseas parties on an equal basis, courts in Shanghai have built a fair, efficient and authoritative good image both at home and abroad. Meanwhile, with the environmental advantage of Shanghai in innovation-driven development and its unique geographical advantage, we have also tried a batch of complicated IP cases of new types with influence in China and even in the world, and summarized some judgment rules with authority and influence. Compiling these excellent representational cases of guiding and typical importance into typical cases and spreading the legal spirits and rules embodied by these cases to the public are of great importance for strengthening the protection and application of intellectual property and intensifying the function of technology innovation in respect of standardization, guidance and education. Courts in Shanghai have always been attaching great importance to the compilation of IP cases and have established a system of case selection, compilation and publication, so as to enhance the multi-perspective case research, develop in depth the application value of cases and improve continuously the authority and guidance of cases. Since 1997, totally 10 case collections have been compiled and published, giving full play to their guiding role to judicial practice, inspiring role to innovation of law theory, educating role to legal publicity and the demonstration effect on dispute resolution. These case collections are the microcosm and achievements of IP trial work of the courts in Shanghai, and play a positive role in the construction of the socialism case guidance system with Chinese characteristics, which deserve to be studied, remembered and treasured.

This case collection has inherited and continued the work of the courts in Shanghai in collecting excellent cases on intellectual property. 37 cases contained herein were tried during 2013 – 2014 with certain influence both at home and abroad, including civil cases involving copyright, trademark, patent, anti-unfair competition, etc. as well as criminal and administrative cases on intellectual property, showing the professional capability and level of IP judges of the courts in Shanghai in hearing cases. For example, the case on the dispute over infringement upon trade secrets between SI Group et al. and Sino Legend (China) Chemical Co. Ltd. et al. involved the trial principle of parallel litigation concerning foreign trade secrets and was selected into the “2013 China’s 10 Cases on Judicial Protection of Intellectual Property”; the case on the dispute over trademark right infringement and unfair competition between Victoria’s Secret Store Brand Management Co., Ltd. and Shanghai Jintian Clothing Co., Ltd. involved the issue of whether the import and resale of genuine goods from formal channel should constitute trademark infringement, and was selected into the Cases Selected by the *Gazette of the Supreme People’s Court* in 2013; the case on the dispute over vertical monopoly agreement between Beijing Ruibang Yonghe Technology and Trade Co., Ltd. and Johnson & Johnson (Shanghai) Medical Company et al. was the first case on dispute over vertical monopoly agreement in China involving a series of basic issues not specified in the laws but required to be clarified during the anti-monopoly analysis and determination of the act of restricting the minimum resale price, and was selected into the “2013 China’s 10 Innovative Cases on Judicial Protection of Intellectual Property” and the Cases Selected by the *Gazette of the Supreme People’s Court* in 2014; the case on the dispute over infringement upon the layout design of integrated circuit between HiTrend Technology (Shanghai) Co., Ltd. and Shenzhen Renenergy Technology Co., Ltd. et al. involved the identification of infringement upon the integrated circuit layout design, and was selected into the “2014 China’s 10 Cases on Judicial Protection of Intellectual Property” and the “Top Ten Civil Cases of the People’s Court in 2014”; the case on the crime of copyright infringement committed by Zhang Junxiong involved the judicial determination of whether the act of providing

network service shall constitute crime of copyright infringement, and was selected into the “2014 China’s 10 Innovative Cases on Judicial Protection of Intellectual Property” and the “2014 Excellent Cases in the *Case Collection of People’s Court*”; the case on the dispute over infringement upon adaptation right between Bai Xianyong and Shanghai Yixiang Culture Communication Co., Ltd. et al. and the case on the dispute over infringement upon trademark right and unfair competition between Parrot Trade (Shenzhen) Co., Ltd. and Shanghai Parrot International Trade Co., Ltd., Qiu Gang respectively involved the issue of whether the adaptation of a film work for drama performance should obtain the authorization of both the producer and the original work author and the issue of whether the act of impairing the right owner’s trade secrets by means of counterfeiting the registered trademark, trade name should be regulated in terms of means behavior and purpose behavior respectively, both of which were selected into the “2014 China’s 50 Typical Cases on Judicial Protection of Intellectual Property” of the Supreme People’s Court. Furthermore, to meet the demands of readers both at home and abroad, this book will be published in Chinese and English, hoping to become an important window showing the judicial protection achievements of the courts in Shanghai to the world, an important carrier advancing the international IP exchange carried out by the courts in Shanghai, and an important platform to participate, promote and even lead the international intellectual property protection and intellectual property rule making.

Cases embody legal concepts and provisions of laws, and each case is like a spark shining the light of the rule of law. The cases contained herein not only embody the diligence and hard work of intellectual property judges of the courts in Shanghai in their trial work concerning intellectual property, but also reflect the judges’ sincerity and wisdom of applying legal thinking and pursuing fairness and justice in each case. On this occasion, we sincerely hope that all people paying close attention to the trial work concerning intellectual property for years would give more care and support to the courts in Shanghai! I also hope that the IP tribunals and IP judges of all courts in Shanghai would continuously try, conclude and propagandize the excellent cases on intellectual property, constantly enhance

the authority and influence of the courts in Shanghai in the trial concerning intellectual property, strive to construct the courts in Shanghai into the “first choice” of intellectual property court in the country and even in the world that gains the trust of parties concerned, so as to make new and greater contributions to the construction of a powerful country in intellectual property and technology, and accelerating the construction of Shanghai into a technology innovation center with global influence and into the intellectual property center city in Asian-Pacific region!

This serves as a preface!

Mao Ronghua

September 10, 2016

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