



知识产权案例精选

Selected Intellectual Property Cases
(2011—2012)

上海市高级人民法院知识产权审判庭 编
吴偕林 主编

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

Wu Xielin Chief Editor



知识产权出版社

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内容提要

本书从上海法院 2011 ~ 2012 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了归纳, 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、知识产权纠纷当事人及其代理人、高等院校研究人员 and 广大师生参考使用。



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序

党的十八届三中全会审议通过的《中共中央关于全面深化改革若干重大问题的决定》提出,要“加强知识产权运用和保护,健全技术创新激励机制,探索建立知识产权法院”。这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,同时对人民法院知识产权司法保护工作提出了新的更高要求。站在新的历史起点,以党的十八届三中全会精神为指引,紧紧围绕党和国家工作大局,自觉肩负“让人民群众在每一个司法案件中都感受到公平正义”的神圣职责,不断创新完善知识产权司法保护机制,全面加强知识产权司法保护,积极发挥司法保护知识产权的主导作用,为实施创新驱动发展战略提供强有力的知识产权司法保障,为推进法治中国建设作出应有的贡献,正成为上海法院知识产权审判的时代要求和历史使命。

人民法院要发挥司法在保护知识产权中的主导作用,最主要也最基本的领域在于知识产权案件的审判。通过对每一件知识产权个案的公正裁判,不仅可以有效地定纷止争,更能够营造良好的法治氛围,彰显司法裁判对于加强知识产权运用和保护、激励科技创新的规范、引导、教化功能与权威效应。编写知识产权典型案例,则是延伸个案功能与作用、发挥辐射示范效果的重要方式。上海法院历来十分重视知识产权案例编写工作,在审理好每一起知识产权案件的同时,力求将新类型案件、疑难复杂案件、社会影响大的案件办成认定事实清晰、审判程序规范、适用法律准确、法律效果和社会效果俱佳的“精品案”,并对这些案例及时进行总结、提炼,以汇编成册进行公开出版,从而充分发挥精品案例对司法实践的指导作用、对社会冲突的预决作用、对市场主体的引导作用、对竞争行为的规范作用、对公民的教育作用、对法学研究以及立法的促进作用。为满足业界不同人士的需要,进一步提升上海法院知识产权审判的国际影响,本书采用中英文对照体例。我们衷心期望中英文双语版《知识产权案例精选》一书能够成为展示上海法院依法、公正、高效、平等保护中外当事人知识产权的窗口,成为国际社会了解上海法院知识产权法官司法能力与水平的渠道,成为促进知识产权国际司法交流的载体。

本书汇编的38件案例是从2011年至2012年期间上海法院审结的近8000件知识产权案件中精选出来的,具有一定的代表性、典型性和指导性,

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,集中展示了上海法院知识产权法官的审判思路、审判能力和审判水平。例如,胡进庆等与上海美术电影制片厂著作权权属纠纷案涉及特定历史条件下单位职工创作的动画形象著作权归属的认定,该案被《最高人民法院公报》2013年第4期刊载,并入选“2012年中国法院知识产权司法保护十大案件”;上海玄霆娱乐信息科技有限公司与王钟等著作权合同纠纷案涉及对处分未来作品权利合同的效力判断,该案入选“2012年中国法院知识产权司法保护50件典型案例”和“2012年上海法院知识产权司法保护十大案件”;衣念(上海)时装贸易有限公司与浙江淘宝网络有限公司等侵害商标专用权纠纷案涉及网络交易平台经营者帮助侵权的司法认定,该案被《最高人民法院公报》2012年第1期刊载,并入选“2011年上海法院知识产权司法保护十大案件”;立邦涂料(中国)有限公司与上海展进贸易有限公司等侵害商标专用权纠纷案涉及商标指示性合理使用的司法认定,该案入选“2012年中国法院知识产权司法保护50件典型案例”;衢州万联网络技术有限公司与周慧民等侵犯商业秘密纠纷案涉及网站用户注册信息数据库的商业秘密性质认定,该案入选“2012年中国法院知识产权司法保护十大创新性案件”。

当前,上海正处于“创新驱动、转型发展”的关键时期,中国(上海)自由贸易试验区已正式运行,上海市委市政府提出了力争到2020年将上海建设成为亚太地区知识产权中心城市的战略目标,并提出将上海建设成为未来亚太地区知识产权纠纷诉讼与仲裁的首选地之一。面对新形势,上海法院将把握机遇,迎接挑战,大胆探索,勇于实践,不断提升知识产权司法保护水平,继续审理好、总结好、宣传好更多的知识产权精品案件,为进一步提升上海法院知识产权司法水平、不断增强上海法院知识产权审判的国际影响力和权威性作出新的更大的贡献。

编者

2014年1月

Preface

It is put forward in the “Decision on Major Issues Concerning Comprehensively Deepening Reforms” deliberated and approved by the Third Plenary Session of the 18th CPC Central Committee to enhance the application and protection of intellectual property, improve technological innovation incentive mechanism and explore setting up courts of intellectual property”. This fully indicates that work concerning intellectual property is of crucial importance in the course of comprehensively deepening reforms in China. Besides, it also brings forward new and higher requirements on judicial protection of intellectual property of the people’s courts. At the new historical starting point, it is the requirement of the time and historical mission for people’s courts in Shanghai in trials on intellectual property to take the spirit of the Third Plenary Session of the 18th CPC Central Committee, closely follow the overall plan for the work of the Party and the Central Government, spontaneously shoulder the sacred duty of “enabling the people to feel justice and fairness in every judicial case”, constantly innovate in and improve the judicial protection mechanism for intellectual property, enhance the judicial protection of intellectual property in an all-round way, actively play the leading role of judicial protection of intellectual property, provide strong and forceful judicial protection of intellectual property for the implementation of innovation-driven development strategy, and make due contribution to the establishment of China’s rule of law.

The people’s courts shall bring the leading role of justice in protecting intellectual property into full play, which primarily lies in trial for cases on intellectual property. Just judgment of each case on intellectual property will not only effectively determine and resolve disputes, but also create a sound environment of rule by law, showcasing the functions of standardization, guidance and education and the authoritative effect of the judicial judgment in enhancing the application and protection of intellectual property and encouraging technological innovation. Compiling typical cases on intellectual property is an important means of extending the functions and influence of individual cases, bringing their radiating demonstration effects into play. The people’s courts in Shanghai always attach great importance to

the compilation of cases on intellectual property. In addition to judging every case on intellectual property, they strive to turn new cases, difficult cases and those with great social influence into “excellent cases” where facts are clearly found, trial procedures are standard, correct laws are applied and both legal and social effects are good. Besides, they make summation and conclusion from these cases in a timely manner for compilation and open publishing so that “excellent cases” can play its guiding role to judicial practice, pre-resolving role to social conflicts, leading role to market players, standardizing role to market competition, educating role to citizens, and promoting role to legal researches and legislation. To meet the demands of people from different circles and further improve the international influence of people’s courts in Shanghai in trials for intellectual property, this book will be published in Chinese-English edition. We sincerely hope that this *Selected Judgments of Intellectual Property Case* (Chinese-English Edition) will become a window displaying the legal, just, efficient and equal protection of intellectual property for both Chinese and foreigners by the people’s courts in Shanghai, a channel for the international community to learn the judicial capabilities and level of intellectual property judges of the people’s courts in Shanghai, and a carrier promoting international judicial exchange about intellectual property.

The 38 cases compiled in this book are selected from nearly 8, 000 cases on intellectual property heard and closed by the people’s courts in Shanghai during 2011 and 2012, which are of representative, typical and guiding importance. The cases cover civil cases involving copyright, trademark, patent and anti-unfair competition, as well as criminal and administrative cases on intellectual property, particularly displayed the judging mentality, capability and level of intellectual property judges of the people’s courts in Shanghai.

For example, the dispute over copyright ownership between Hu Jinqing, *et al.* and Shanghai Animation Film Studio involves the determination of copyright ownership of the cartoon images created by the employees of the Studio under particular historical conditions. The case was published on Issue 4 of the *Gazette of the Supreme People’s Court* in 2013 and has been selected into the “2012 China’s 10 Cases on Judicial Protection of Intellectual Property”. The dispute over copyright contract between Shanghai Xuanting Entertainment Information Technology Co., Ltd. and Wang Zhong, *et al.* involves the determination of the effect of copyright contract on future works. The case has been selected into the “2012 China’s 50

Typical Cases on Judicial Protection of Intellectual Property” and the “2012 Shanghai’s Ten Cases on Judicial Protection of Intellectual Property”. The dispute over infringement of exclusive right to use a trademark between E land Fashion (Shanghai) Co., Ltd. and Zhejiang Taobao Network Co., Ltd. involves the judicial determination of assistant infringement of a network trading platform operator. The case was published on Issue 1 of the *Gazette of the Supreme People’s Court* in 2012 and has been selected into the “2011 Shanghai’s Ten Cases on Judicial Protection of Intellectual Property”. The dispute over infringement of exclusive right to use a trademark between Nippon Paint (China) Co., Ltd. and Shanghai Zhanjin Trade Co., Ltd. involves the judicial determination of normative fair use of trademark. The case has been selected into the “2012 China’s 50 Typical Cases on Judicial Protection of Intellectual Property”. The dispute over infringement of business secrets between Quzhou Wanlian Network Technology Co., Ltd. and Zhou Huimin, *et al.* involves the determination of the database of registration information of network users as business secret. The case has been selected into the “2012 China’s 10 Innovative Cases on Judicial Protection of Intellectual Property”.

At present, Shanghai is at the critical period of the “innovation-driven transformation for development”. The China (Shanghai) Pilot Free Trade Zone has been put into official operation. Shanghai CPC Committee and Shanghai Municipal Government proposed to strive for the strategic goal of building the city into the intellectual property center in Asia-Pacific Region by 2020, and to develop the city into one of the first choices for litigation and arbitration of disputes over intellectual property in the region. Facing the new situations, the people’s courts in Shanghai will seize opportunities, rise to challenges, and take courage to carry out exploration and practice so as to constantly improve the level of judicial protection of intellectual property. They will continue hearing, summing up and publicizing more excellent cases on intellectual property, making more contribution to further improve their judicial level in judging intellectual property cases, and constantly enhancing their international influence and authority in judging intellectual property cases.

The editor
January 2014

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