



*Selected Judgments of Intellectual Property  
Cases of Shanghai Court (Chinese-English Edition)  
(2009-2013)*

*Compiled by the Intellectual Property Division of Shanghai High People's Court  
Chief Editor: WuXielin*

# 上海法院知识产权 裁判文书精选

◎ ( 2009-2013 ) ◎

上海市高级人民法院知识产权审判庭 编  
吴偕林 主编



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## 内容提要

本书从上海法院 2009 ~ 2013 年审理的逾万件知识产权案件的裁判文书中精选出 42 件优秀裁判文书集成册，其目的，一是为了展示上海市法院这 5 年知识产权审判的成果，二是为了让其他法官制作裁判文书时可以借鉴，三是为其他学习者提供参考资料。

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——谨以此书纪念上海市高、中级人民法院知识产权审判庭成立 20 周年！

——This collection of judgments is in commemoration of the 20<sup>th</sup> anniversary of the founding of intellectual property tribunals in Shanghai High People's Court and Shanghai Intermediate People's Courts!

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## 序

1994年2月15日，经上海市人大常委会批准，上海市高、中级人民法院同时成立知识产权审判庭，标志着上海法院知识产权审判工作从此走上了专业化的发展道路。20年来，上海法院始终围绕上海经济社会发展大局，认真履行知识产权司法保护职责，依法平等保护中外当事人合法权益，为上海经济社会文化发展营造了良好的知识产权司法保护环境。

20年来，上海法院不断探索创新知识产权审判机制和审判方法。继上海高、中级人民法院成立知识产权审判庭后，1994年6月，浦东新区人民法院在全国基层法院中率先成立知识产权审判庭，并于1996年在全国率先实行由知识产权审判庭统一审理知识产权民事、行政、刑事案件的“三合一”审判模式。为探索司法公开的有效途径，1999年1月，首次通过上海电视台、上海人民广播电台现场直播上海市第一中级人民法院开庭审理的一起不正当竞争纠纷案件。2003年起，上海法院开始在互联网上公布知识产权案件的裁判文书。2008年，上海法院在全国率先开展知识产权案件网络庭审直播。2009年，上海法院在全国率先探索建立“知识产权审判技术咨询专家库”。2011年4月，上海市高级人民法院在全国高级人民法院中率先开通知识产权司法保护网互联网站，向社会公开审判动态、裁判文书、典型案例、法律法规等审判信息。基于在知识产权司法保护方面所做的努力和所取得的成效，2012年6月，上海市高级人民法院知识产权审判庭被世界知识产权组织授予“2012年世界知识产权组织版权金奖（中国）保护奖”。2011年、2012年浦东新区人民法院、黄浦区人民法院先后被最高人民法院确定为“中国知识产权审判基层示范法院”。

20年来，上海法院公正及时地审理了2.2万多件知识产权案件，很多案件入选年度“中国法院知识产权司法保护十大案件”、“中国法院知识产权司法保护五十件典型案例”和《最高人民法院公报》。如近年来审结的王群诉上海世博会法国馆等侵犯发明专利权纠纷案，衣念（上海）时装贸易有限公司诉浙江淘宝网络有限公司等侵害商标权纠纷案，胡进庆、吴云初诉上海美术电影制片厂著作权权属纠纷案，北京锐邦涌和科贸公司诉强生公司垄断纠纷案等案件。迄今为止，上海法院审结的知识产权案件中，已有24件被《最高人民法院公报》作为指导性案例予以刊载，约占《最高人民法院公报》刊登的知识产权案例总数的五分之一。

裁判文书是对审判经验和审判规则的真实记录，集中体现了法官的司法水平和司法智慧，是指导审判实践、引导社会行为、促进法学研究、推进法治建设的重要载体。同时，向社会公开裁判文书也是推进阳光司法、公开司法的有效途径，对树立司法权威、提升司法公信具有重要作用。为此，2010年1月，上海市高级人民法院以出版《上海法院知识产权裁判文书精选（1994—2008）》一书的形式，纪念上海市高、中级人民法院知识产权审判庭成立15周年。今天，我们以精选汇编2009年至2013年期间优秀裁判文书的形式，纪念上海市高、中级人民法院知识产权审判庭成立20周年。本书汇集了著作权纠纷、商



标纠纷、专利纠纷、不正当竞争纠纷、知识产权刑事案件和知识产权行政案件等各类知识产权典型案件的 48 篇裁判文书。本书仍然采用中英文对照的体例，便于中外各界了解上海法院知识产权司法保护的发展历程和主要成效，促进知识产权司法保护国际交流。

随着党的十八届三中全会精神的全面贯彻落实，以及上海市委市政府提出的 2020 年将上海建成亚太地区知识产权中心城市战略目标的不断推进，上海法院知识产权审判工作迎来了新的发展机遇。今年，最高人民法院将在上海建立全国唯一的“知识产权司法保护国际交流基地”，以发挥上海辐射全国、面向世界的区位优势。上海市高级人民法院知识产权审判庭也将于今年实施知识产权民事、行政、刑事案件“三合一”审判机制，实现全市三级法院知识产权“三合一”审判机制的全覆盖。面对新形势、新挑战，上海法院将以服务科技创新和文化繁荣为导向，进一步探索创新、奋发有为，积极发挥司法保护知识产权的主导作用，努力让人民群众在每一个司法案件中都感受到公平正义，为将上海建设成为亚太地区知识产权中心城市、为法治中国建设作出新的更大的贡献！

吴偕林

2014 年 1 月 10 日



## Preface

With the approval of the Standing Committee of Shanghai Municipal People's Congress, both Shanghai High People's Court and Shanghai Intermediate People's Courts established their intellectual property (IP) tribunals at the same time on February 15, 1994, signifying that judgment of intellectual property cases by Shanghai courts took a first step toward the specialized development. Over two decades, focusing on the big picture of the social and economic development in Shanghai, Shanghai courts have earnestly fulfilled the duty of judicial protection of IP rights and safeguarded the legitimate rights and interests of both Chinese and overseas parties on an equal basis, creating a favorable condition of IP judicial protection for economic, social and cultural development of the city.

In these two decades, Shanghai courts have made unremitting efforts to explore and innovate in the mechanism and methodology for the trial of IP cases. Following the establishment of IP tribunals in Shanghai High People's Courts and Shanghai Intermediate People's Courts, Pudong New Area People's Court of Shanghai took the lead to found its own IP Tribunal among the courts at the grass-roots level across China in June 1994 and started the model of unification of jurisdiction over IPR-related civil, criminal and administrative cases in the IP Tribunal in 1996. For the purpose of exploring effective approach of judicial transparency, Shanghai No. 1 Intermediate People's Court broadcast a live trial of a case over the dispute of unfair competition on Shanghai TV Station and Shanghai People's Broadcasting Station in January 1999. The year 2003 marked a milestone that courts in Shanghai began to publish the judgment of IP cases on the Internet. In 2008, the courts in Shanghai were the first to launch live webcasts of IP case trials across China. In 2009, courts in Shanghai were among the first to explore the building of an Expert Database for Technical Consulting of the Trial of IP Cases. In April 2011, Shanghai High People's Court became the first among all nation-wide high people's courts to launch an IP judicial protection website to publish trial information, judgments, typical cases, laws and regulations, to name just a few. Thanks to the efforts and effects in the IP judicial protection, the IP Tribunal of Shanghai High People's Court was honored 2012 World Intellectual Property Organization Golden Award for Copyright Protection (China) in June 2012. In 2011 and 2012, Pudong New Area People's Court of Shanghai and Huangpu District People's Court of Shanghai were named Model Courts at Grass-roots Level of IP Trials in China in succession.

For these two decades, the courts in Shanghai have tried over 22,000 cases in respect of IP in a fair and timely manner, many of which have been selected into the annual China's 10 Cases on Judicial Protection of Intellectual Property, China's 50 Typical Cases on Judicial Protection of Intellectual Property and the *Gazette of the Supreme People's Court of China*. The cases tried and closed in recent years include Wang Qun v. French Pavilion of Shanghai World Expo Invention Patent Infringement, E. Land International Fashion (Shanghai) Co. Ltd v. Zhejiang Taobao Net-

work Co. Ltd. , et al. Dispute over Trademark Right Infringement, Hu Jinqing and Wu Yunchu v. Shanghai Animation Film Studio Dispute over Copyright Ownership, and Beijing Ruibang Yonghe Technology and Trade Co. , Ltd. v. Johnson & Johnson Dispute over Monopoly. Among all IP cases tried and closed by the courts in Shanghai, there have been 24 cases published in the *Gazette of the Supreme People's Court of China* as the guiding cases, accounting for approximately one fifth of the IP cases published by the Gazette.

Judgments are the real records of both experience and rules of trials, representing the competence and wisdom of judges in the judicial field. Judgments also constitute an important vehicle to guide the trial practice, the public behavior and promote the study of law as well as propel the legal system building. Moreover, making the judgments open to public is an effective way to advance the justice in sunshine and justice transparency and plays a key role in upholding the power of law and uplifting the judicial credibility. In consideration of all the above purposes, Shanghai High People's Court published the Selected Judgments of Intellectual Property Cases of Shanghai Court 1994-2008 in January of 2010 in commemoration of the 15<sup>th</sup> anniversary of the foundation of IP tribunals in Shanghai High People's Court and Shanghai Intermediate People's Courts. Today in commemoration of the 20<sup>th</sup> anniversary of the foundation of IP Tribunals, we present the Selected Judgments of Intellectual Property Cases of Shanghai Court 2009—2013. The book is a collection of 48 judgments covering the typical cases of disputes over copyright, trademark, patent, unfair competition as well as IP-related criminal cases and administrative cases. The book, as before, is written in Chinese-English so as to facilitate the understanding of readers both home and abroad on development and major achievements of judicial protection of IPR by the courts in Shanghai and further enhance the exchange of judicial protection of IPR on a global scale.

Now the trial of IP cases by the courts in Shanghai embraces a brand new opportunity of development with the full implementation of the spirit of the third Plenary Session of the 18<sup>th</sup> Central Committee of the CPC and the on-going promotion of the strategic goal proposed by Shanghai CPC Committee and Shanghai Municipal Government to build Shanghai into an intellectual property center in the Asia-Pacific Region by 2020. Shanghai High People's Court will build China's one and sole International Exchange Base of IP Judicial Protection in Shanghai this year to give full play the city's regional advantage of radiating its influence to the whole country and the globe. The IP Tribunal of Shanghai High People's Court will also start the model of unification of jurisdiction over IPR-related civil, criminal and administrative cases in this year with a view to realizing the full coverage of trial of IPR-related cases by the courts at the third level across the city. In the face of new circumstance and new challenge, the courts in Shanghai will, in the direction of serving technological innovation and cultural prosperity, deepen the exploration and innovation and make all-out efforts to actively play the leading role of IP judicial protection so that the public will sense the fairness and justice in our trial of each case while we can contribute more to the building of the city into the intellectual property center in the Asia-Pacific Region and China into a country ruled by law.

Wu Wielin

January 10 2014

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