

20

浦东法院知识产权 精品案例集

——纪念浦东法院知识产权“三合一”审判20周年

Selected Cases on Intellectual Property of
Pudong New Area People's Court

— Commemorating the 20th Anniversary of “Three-in-One” IP Trial of Pudong New Area People's Court

(中英对照本)



张 斌 主编



法律出版社

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序

当前,全球新一轮科技革命和产业变革蓬勃兴起,围绕知识产权的国际竞争日益加剧。我国经济发展进入新常态,经济增长动力正转向主要依靠创新驱动,加强知识产权的司法保护在推进我国创新驱动发展战略、知识产权强国战略实施中的地位和作用更加凸显。浦东新区地处改革开放的前沿,承载着中国(上海)自由贸易试验区、上海国际经济、金融、贸易、航运“四个中心”及“上海建设具有全球影响力的科技创新中心”核心功能区建设的重要使命,对知识产权保护有着更高的期待和要求。上海市浦东新区人民法院坚持服务大局、开拓创新,切实履行知识产权司法保护职责,积极为浦东新区经济社会发展提供有力的司法保障,并创立了诸多“第一”:第一个在基层法院设立知识产权审判庭(1994年)、第一个试点知识产权“三合一”审判机制(1996年)、第一个在基层法院建立知识产权司法保护网站(2009年)、第一批被评为“中国知识产权审判基层示范法院”(2011年)、第一个成立自贸区知识产权法庭(2015年)等。知识产权“三合一”审判机制是浦东法院知识产权司法保护创新发展中浓墨重彩的一笔。早在1996年浦东法院就开始探索,尝试由知识产权审判庭统一审理知识产权民事、行政和刑事案件,这一审判机制被已故著名知识产权法学家郑成思教授称为知识产权司法保护的“浦东模式”。

2016年是浦东法院开展知识产权“三合一”审判工作的20周年。20年来,浦东法院积极发挥知识产权“三合一”审判机制的作用,努力回应经济社会发展对知识产权司法保护提出的新需求、新期待,努力将各种疑难复杂、新类型案件办成审判程序规范、事实认定清晰、法律适用得当、法律效果和社会效果俱佳的“精品案件”。经过多年努力,浦东法院审结了一批在上海乃至全国有重大影响力的知识产权案件,其中3起案件入选《最高人民法院公报》,7起案件入选历年中国法院知识产权司法保护十大案件或50件典型案例,30多起案件入选历年上海法院知识产权司法保护十大案件或相关优秀案例。实践证明,知

识产权“三合一”审判机制符合知识产权审判规律的内在要求,有助于统一裁判标准、节约司法资源、提升司法水平、加大保护力度、培养专业法官、总结审判经验。

当前,知识产权司法保护正迎来新的重大发展机遇。党的十八大和十八届三中、四中、五中全会对全面深化改革、全面依法治国及“十三五”规划作出了重大战略部署。2015年3月,《中共中央 国务院关于深化体制机制改革加快实施创新驱动发展战略的若干意见》发布。2015年12月,《国务院关于新形势下加快知识产权强国建设的若干意见》发布。2015年9月,中共中央办公厅、国务院办公厅发布《深化科技体制改革实施方案》。上述中央文件要求强化知识产权司法保护,推进知识产权“三合一”审判机制改革。面对新形势和新挑战,浦东法院锐意改革、勇于创新。鉴于“生产、销售伪劣商品罪”和部分“扰乱市场秩序罪”与侵犯知识产权行为、不正当竞争行为密切相关,浦东法院经研究决定,自2015年9月起扩大知产庭审理涉知产刑事案件的范围,积极打造知识产权“三合一”审判机制的升级版,在知产庭审理“侵犯知识产权罪”的基础上,将“生产、销售伪劣商品罪”以及“扰乱市场秩序罪”中的“损害商业信誉、商品声誉罪;虚假广告罪;串通投标罪;非法经营罪;强迫交易罪”纳入知产庭的收案范围。浦东法院知识产权“三合一”审判工作由此步入了新的发展阶段。

值此浦东法院开展知识产权“三合一”审判工作20周年之际,我们特别撷取20年来浦东法院审理知识产权案件中的精品,汇编成册,作为展示知识产权司法保护“浦东模式”司法水平和司法智慧的载体。本书案件类型覆盖著作权、商标权、不正当竞争等民事案件以及知识产权刑事、行政案件,具有一定的代表性、典型性和指导性。筚路蓝缕开拓者,载歌载行二十年。浦东法院探索知识产权“三合一”审判的历程,展现了我院知产审判人员勇于创新的改革精神、公正司法的审判水平和为民司法的审判作风。在本书即将付梓之际,衷心希望我院知识产权审判人员继续开拓创新,更好地履行知识产权司法保护职责,努力为建设创新型国家,为上海建设具有全球影响力的科技创新中心提供强有力的司法保障。

上海市浦东新区人民法院院长

張斌

2016年4月

PREFACE

At present, a new round of technological revolution and industrial reform around the globe has gained momentum. Under the background of accelerating transformation of economic development mode and the evident trend of development driven by innovation in our country, it has been essential to stimulate innovation and promote development by conscientiously strengthening the protection of intellectual property. Pudong New Area, at the forefront of reform and opening up, undertakes the important mission of building China (Shanghai) Pilot Free Trade Zone, Shanghai International Economic Center, Shanghai International Financial Center, Shanghai International Trade Center, Shanghai International Shipping Center, and other key functional areas of “constructing the scientific and technological innovation center with global influence”, which raises high expectations and requirements on the protection of intellectual property rights. Shanghai Pudong New Area People’s Court (“PNAPC”) has always adhered to serving the overall interests, making innovation and exploration and tangibly performing its duties of IP judicial protection, thus providing strong judicial guarantee for economic and social development of Pudong New Area and creating many “firsts”: the first court setting up the IP Tribunal in the grassroots court(1994), the first court piloting the trial mechanism of IP “Three in One”(1996), the first court creating the IP judicial protection website in the grassroots court(2009), the first court being honored as “Grassroots Demonstrative Court for Chinese IP Trial”(2011) and the first court establishing the IP Tribunal in China (Shanghai) Pilot Free Trade Zone(2015). The trial mechanism of IP “Three in One” has made PNAPC stand out in the innovative development of IP judicial protection. As early as in 1996, PNAPC has started exploring the mechanism under which the IP Tribunal heard the civil, administrative and criminal IP cases in a

unified manner. Furthermore, the mechanism has been named “Pudong Mode” by the late famous Professor Zheng Chengsi, an IP law scholar.

It coincides with the 20th anniversary for PNAPC’s implementation of the trial mechanism of IP “Three in One”. Over the past 20 years, PNAPC has actively exerted the active role of the trial mechanism of IP “Three in One”, spared no effort to respond to new demands and new expectations for IP judicial protection due to social and economic development, strived to make various new-type complex and difficult cases become “premium cases” featured by standard trial procedure, clear identification of facts and proper application of law. With years of efforts, PNAPC has tried and concluded a collection of IP cases with important influence in Shanghai and even across China, three of which were selected and included into the *Gazette of the Supreme People’s Court*, seven were incorporated in Chinese top ten cases or 50 model cases of IP judicial protection, and more than 30 were included in the top ten case or excellent cases of courts in Shanghai on IP judicial protection each year. The practice proves that the trial mechanism of IP “Three in One” conforms to internal requirements of IP trial rules and plays an important role in standardizing the judgment standards, saving judicial resources, lifting judicial level, stepping up the protection, fostering professional judges and summing up trial experience.

The IP judicial protection is now embracing new major development opportunities. The 18th CPC National Congress, the third, fourth and fifth plenary sessions of the 18th CPC Central Committee all made important strategic deployments for deepening the reform comprehensively and governing the country by the law, as well as the “13th Five-year Planning”. In March 2015, *Several Opinions of the CPC Central Committee and the State Council on Deepening the Reform of Systems and Mechanisms to Accelerate the Implementation of Innovation-driven Development Strategies* were published. In December 2015, *Several Opinions of the State Council on Accelerating the Construction of Great Power in Intellectual Property Rights under the New Situation* were released. In September 2015, the General Office of the CPC Central Committee and the General Office of the State Council jointly published the *Plan for the Implementation of Deepening the Science and Technology System Reform*. These documents issued by the CPC Central Committee policies required reinforcing the IP judicial protection and promoting the reform in trial mechanism of IP “Three in One”. In face of new situation and challenges, PNAPC

reforms with keen determination and innovates bravely. Since “the crime of production and sales of fake products” and “the crime of disrupting the market order” are closely associated with infringement on IP and unfair competition acts, PNAPC has expanded the scope of the IP Tribunal to try IP-related criminal cases since September 2015 to implement the upgraded version of the trial mechanism of IP “Three in One”, and on the basis of the IP Tribunal hearing the cases of “IP infringement crime”, included “the crime of production and sales of fake products” and “the crime of damaging commercial reputation and commodity reputation, the crime of false advertising, crime of collusion in entering bids, the crime of illegal business operation and the crime of forced transaction” falling within “the crime of disrupting market order” in the scope of acceptance. The trial mechanism of IP “Three in One” accordingly embraces a new period of more profound and comprehensive development.

On the eve of the 20th anniversary for PNAPC’s implementation of the trial mechanism of IP “Three in One”, PNAPC hereby particularly selects premium IP cases being heard over the past 20 years and compiles this Book to display the judicial level and wisdom of “Pudong Mode”. This Book covers copyright, trademark right, unfair competition and other civil cases, as well as IP criminal cases and administrative cases, thus being representative, typical and instructive. Over the past 20 years, PNAPC has endured great hardships in pioneer work and made painstaking to explore the trial mechanism of IP “Three in One”, which embodies the IP judges’ spirit of brave innovation and reform, trial level of fair justice, and trial style for the people. At the moment when this Book is to be delivered for printing, we sincerely hope the Court can keep exploring and innovating in IP trial, and better perform the judicial duty of IP protection, so as to provide better judicial guarantee and safeguard for Shanghai as a science and technology innovation center with global influence.

Zhang Bin

President of Shanghai Pudong New Area People’s Court

April, 2016

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