

周林 主编

知识产权案件的
审理与裁判
(中英对照)

中国人民公安大学出版社

Zhou Lin / Chief Editor

CHINA COURT CASES

ON INTELLECTUAL PROPERTY RIGHTS

(Chinese-English Edition)

周林 / 主编

知识产权案件的 审理与裁判 (中英对照)

中国人民
公安大学
出版社

图书在版编目(CIP)数据

知识产权案件的审理与裁判/周林主编.—北京:中国人民公安大学出版社,2002.1

ISBN 7-81059-804-X

I. 知... II. 周... III. 知识产权—民事诉讼—审判—中国
IV. D925.182

中国版本图书馆 CIP 数据核字(2001)第 068563 号

知识产权案件的审理与裁判

ZHISHI CHANQUAN ANJIAN DE SHENLI YU CAIPAN

周林 主编

出版发行:中国人民公安大学出版社

地 址:北京市西城区木樨地南里

邮政编码:100038

经 销:新华书店

印 刷:北京工大印刷厂

版 次:2002 年 1 月第 1 版

印 次:2002 年 1 月第 1 次

印 张:28.625

开 本:880×1230 A5

字 数:903 千字

印 数:0001~4000 册

ISBN 7-81059-804-X/D·670

定 价:82.00 元

本社图书出现印装质量问题,由发行部负责调换

联系电话:(010)83905728

版权所有 翻印必究

E-mail:cpep@public.bta.net.cn

撰稿人简介

周 林 中国社会科学院知识产权中心副研究员。1996 年曾担任日本东京大学法学部访问教授;2000 年曾担任德国明斯特大学信息、电子传播与媒体法律研究所访问教授。

1995 年至 1996 年曾担任北京市第二中级人民法院人民陪审员,曾参加于耀中与北京成像影视制作公司版权纠纷案、桑厦广告公司与微软(中国)有限公司版权纠纷案等案件的审理与裁判。1999 年起担任国际域名仲裁机构 ERESOLUTION 仲裁员,已仲裁过多起域名争议案件。

现任中国版权研究会理事,国际法学会文化遗产委员会委员。曾出版《艺术法实用手册》(主编)、《中国版权史研究文献》(主编之一)等专著多部及《中国版权法与互联网》、《商业外观的法律保护》等论文多篇。

罗东川 1996 年毕业于武汉大学法学院,获法学硕士学位。1991 年毕业于北京大学法律系,获法学学士学位。现为北京大学法学院在职博士研究生。2001 年 9 月曾率中国法官代表团参加欧盟在欧洲专利局举办的专利诉讼研讨会。

1993 年参加建立中国法院最早的知识产权审判庭——北京市中级人民法院知识产权审判庭;1995 年任北京市第一中级人民法院知

ii 知识产权案件的审理与裁判

知识产权审判庭副庭长,后任庭长;2000年任最高人民法院民事审判第三庭(知识产权庭)副庭长。曾主审和参与审理首批涉外知识产权案件,如美国迪斯尼公司与北京出版社版权纠纷案、美国20世纪福克斯电影公司等8大电影公司与北京先科激光商场版权纠纷案、美国微软公司与北京巨人电脑公司版权纠纷案等有重大影响的案件。

现任中国知识产权研究会理事、国家商标局商标评审委员会专家咨询委员、中国科技法学会理事。2000年荣获首届全国十大人民满意的好法官、北京十大杰出青年、全国先进工作者等称号。主编《人民法院知识产权审判案例精选》、《知识产权审判实务》、《知识产权名案评析》等著作,发表《知识产权损害赔偿》、《新技术对版权司法保护的影响》等数十篇知识产权方面的文章。

李顺德 中国社会科学院法学研究所研究员、教授、博士生导师、高级工程师。现任中国社会科学院知识产权中心副主任、中国社会科学院法学研究所知识产权法研究室主任、中国知识产权研究会理事、中国法学会知识产权法研究会副会长兼秘书长、中国法学会世界贸易组织法研究会常务理事、北京仲裁委员会和天津仲裁委员会仲裁员。曾在上海东方网股份有限公司与济南开发区梦幻多媒体网络技术开发中心不正当竞争纠纷案中担任人民陪审员。

1985年成为我国首批专利代理人,开始从事专利代理和知识产权研究。曾承担《世界专利制度发展趋势的研究》、《中国知识产权保护制度发展与完善》、《我国社会主义市场经济下反垄断对策研究》、《WTO与我国知识产权法律制度研究》等重点课题任务。主要著作有《计算机软件和集成电路的知识产权保护》、《知识产权价值评估中的法律问题》(合著)等。参加了《专利法》、《商标法》、《版权法》、《计算机软件保护条例》、《集成电路布图设计保护条例》等法律、法规的

制订和修改工作。

陈锦川 1989年毕业于中国政法大学研究生院,获法学硕士学位。1986年毕业于西南政法学院,获法学学士学位。1993年起开始从事知识产权审判工作,1996年起任北京市高级人民法院知识产权审判庭副庭长。1998年至1999年前往法国巴黎商业法院进修。

主要负责北京市法院知识产权审判的监督指导工作,主持起草了市高级法院《关于审理版权纠纷案件若干问题的解答》、《关于审理计算机软件版权纠纷案件几个问题的意见》、《关于审理因域名注册、使用而引起的知识产权民事纠纷案件的若干指导意见》等指导性文件,提出了定额赔偿及国家规定有付酬标准的按付酬标准的2倍~5倍计算赔偿数额的损害赔偿计算方法。曾审理《我的前半生》版权纠纷案、中国社会科学院语言研究所、商务印书馆与王同亿、海南出版社侵犯版权纠纷案等有影响的案件。

曾发表《TRIPS的执法要求与我国知识产权司法审判》、《计算机软件版权的侵权损害赔偿》、《软件版权侵权诉讼的举证》等多篇论文,主编或者参与编写了《北京知识产权审判案例研究》、《版权审判实务与案例》等书,翻译《法国竞争法的实践》等文章。

吴登楼 1996年毕业于华东政法学院,获法学硕士学位。1996年起在上海市第二中级人民法院从事知识产权审判工作。现为上海市第二中级人民法院助理审判员。

曾主审美国宝洁公司与上海晨铨公司“SAFEGUARD”域名与注册商标冲突案件,徐企平与上海淮剧团、胡嘉禄版权纠纷案,王锡麟与知识产权出版社等版权纠纷案等有影响的案件。

曾发表《域名与注册商标冲突之解决》、《域名纠纷若干问题分析》、《论虚构人物形象的知识产权保护》、《知识产权诉讼中的禁止令

制度》、《专利、商标等知识产权案件损害赔偿探析》等多篇论文,参与编写了《知识产权案例与优秀裁判文书精析》一书,曾参加《知识产权诉讼中的专家证人制度》等多个课题的研究。

马秀荣 1996年毕业于中国社会科学院研究生院,获法学硕士学位。1993年毕业于黑龙江大学法律系,获法学学士学位。1996年起在北京市海淀区人民法院知识产权庭工作,任助理审判员。

曾参与审理涉及口述作品、录像表演、互联网作品、未注册商标、商号等领域的新类型案件;审理叶青与孙天卫首例舞美设计版权纠纷案,刘展、人民音乐出版社与湖南文艺出版社爵士鼓鼓谱版权纠纷案,电脑爱好者杂志社与网之易信息技术北京有限公司网站间接侵权责任版权纠纷案,吴小富与胡顺来蜜蜂养殖业不正当竞争纠纷案等案件。

曾在《知识产权研究》、《法律适用》、《新华文摘》、《经济参考》等刊物上发表学术文章十余篇;参与过《反不正当竞争法的问题》、《刑法重点解析》等书的写作。

卫德雅 1997年毕业于英国牛津大学,获文学士学位。在德国慕尼黑高中毕业后,曾在牛津大学萨莫维尔学院攻读学士学位。于2000年从牛津大学毕业并获得法理学荣誉学位,然后到中华人民共和国,在北京大学学习一年中文和法律。2001年夏,被美国纽约州哥伦比亚大学法学院录取为硕士研究生,专攻知识产权和公司法。

曾经在牛津大学担任欧盟法领域的研究助理,并曾在下述单位实习:联邦德国外交部驻南非办事处,位于布鲁塞尔的德国驻欧盟永久代表处,以及伦敦、上海和北京的律师事务所和法院。

Introduction of the Contributors

Zhou Lin Associate Professor of the Intellectual Property Center of China Academy of Social Sciences; Visiting Professor of Tokyo University of Japan in 1996; Visiting Professor of the Institute of Information, Telecommunication and Media Law of Muenster University in 2000. Zhou Lin has also held courses on Intellectual Property Law and Art Law at Peking University and Central Academy of Fine Arts of China.

Associate Professor Zhou Lin was invited by Beijing Second Intermediate People's Court as a judicial assessor (1995 – 1996), and presided and participated in the investigation of nearly thirty IPR cases. From 1999 he was invited by eResolution – an international domain name dispute resolution organization, as an arbitrator. Several cases were presided by Zhou Lin.

At present, Associate Professor Zhou Lin is a member of the Council of China Copyright Society, a member of the Cultural Heritage Law Committee of International Law Association. He has published several articles on copyright law, trademark law, art law in Britain, Germany, Japan and China. He has also published several books: *An Introduction of China's Copyright Law* (chief editor), *Art Law Handbook* (chief editor), *The Documents of the History of China's Copyright Law* (chief editor).

Luo Dongchuan LL.M., Wuhan University School of Law, 1991; LL.B., Peking University Law Department, 1986; at present, admitted to the doctorate programme of the Law Faculty of Peking University. From 1993 to 2000, he went to America, Japan, Indonesia, Thailand and Taiwan to enroll in the IPRs seminars held by the related countries, regions and WIPO; in September, 2001, he led a delegation of Chinese judges to take part in the patent litigation seminar held by EU at the European Patent Office.

In 1993, Luo Dongchuan was one of the founders of the first IPRs division of a court in China – the IPRs division in Beijing Intermediate People's Court; in 1995,

II China Court Cases On Intellectual Property Rights

he severed as the Deputy Director-General of the IPRs division at Beijing First Intermediate People's Court and later became the Director-General; in 2000, he acted as the Deputy Director-General of the Third Civil Division (the IPRs division) of the Supreme People's Court. Luo Dongchuan was the presiding judge in the first IPRs cases concerning foreign interests, such as *America Disney Company v. Beijing Press* for infringing copyrights, eight movie companies including *America 20th Century Fox Movie Company v. Xian Ke Laser Market* for infringing movie-works' copyrights, *America Microsoft Company v. Beijing Giant Computer Company* for infringing software's copyrights, etc. These cases have had a great influence in China and abroad.

At present Luo Dongchuan is a member of the China IPRs Research Society; the consultant expert of the Trademark Review Board of the National Trademark Bureau; a member of the Council of China Law and Science and Technology Society. In 2000, he achieved the title of one of the first ten national good judges who satisfy the people, one of the ten outstanding youths in the Beijing area and the national advanced worker. Luo Dongchuan is the chief editor in *The Select IPRs Cases of the People's Court*, *IPRs Trial Practice* and *The Review on the Famous IPRs Cases*. He published dozens of articles in the IPRs field, such as *Damages in IPR Cases*, *The Influences of New Technology on the Protection of Copyrights*, etc.

Li Shunde Professor, Doctor tutor and Senior Engineer in the Law Institute of the China Academy of Social Sciences (CASS). He is now the deputy director of the Intellectual Property Center of CASS, director of the Intellectual Property Division of the Law Institute of CASS, a member of the Expert Examination Group of the National Natural Science Fund, a member of the Council of China Intellectual Property Research Society, Vice Chairman of the Intellectual Property Law Research Society of China Law Association, an arbitrator of the Beijing Arbitration Committee (BAC) and the Tianjin Arbitration Committee (TAC). Li Shunde was a judicial assessor in *Shanghai Eastday Ltd. v. Dream Multimedia Net Technology Development Center in Jinan Developing Area*.

In 1985, he was qualified to be one of the first Patent agents in China and since then started to conduct research on patents and intellectual property. He was involved in the *Study on the Trend of International Patent System Development, Development and Perfection of the Intellectual Property Protection System in Chi-*

na, *Study on Countermeasures against Monopolization under the Socialist Economy Environment in China*, *Deng Xiaoping's Thoughts on Legal System and Social Economic Law Issues*, *Study on the WTO and the Intellectual Property Protection System in China*, etc. He has also joined the edition of several large monographs such as *Intellectual Property Practice Pandect*. His main works include *Intellectual Property Protection for Computer Software and Integrated Circuits*, *Legal Problems in the Evaluation of Intellectual Property*, etc.

Chen Jinchuan LLM, Graduate School of China Political Sciences and Law University, 1989; LLB, Southwest Political Sciences and Law Institute, 1986. Since 1993, Chen Jinchuan has taken part in IPRs trials; since 1996 he has been acting as the Deputy Director-General of the IPRs Court of the Beijing Higher People's Court; from 1998 to 1999 he went to the Paris Commerce Court of France to engage in advanced study.

At present Chen Jinchuan is mainly responsible for supervising and directing the IPRs trials at all Beijing courts; is in charge of drafting a series of guiding papers, such as *The Resolutions to Some Problems about Trying the Cases of Copyright Dispute*, *The Suggestions to Several Problems about Trying the Cases of Computer Software Copyright Dispute*, *Several Guiding Suggestions about Trying the Cases of IPRs Civil Disputes Rising from the Registration and Use of Domain Names*, etc. Chen Jinchuan has tried several influential cases, such as the case of *The First Half of My Life* copyright dispute, *Languages Research Institute of China Academy of Social Sciences and The Commercial Press v. Wang Tongyi and The Hainan Press* for infringing of copyright.

Chen Jinchuan is the author of many papers including *The Law Enforcement Requirement of TRIPS and IPRs Judicial Trial System of China*, *The Contribution of Our Country's Courts to the Copyright Law in the Digital Times*, *Finding Back the Spiritual Family - We Should Insist on Applying the Principles of the Civil Law to the IPRs Trial*, *The Damages of Infringement of Computer Software Copyrights*, *Inducing Evidence in the Infringement Litigation of the Software Copyrights*, etc. He also acts as the chief editor or one of the editors in many books, including *The Research on Beijing IPRs Cases*, *Copyright Trial Practice and Cases*, etc. He is also the translator of the article *The Practices of the Competition Law of France* and other articles.

IV China Court Cases On Intellectual Property Rights

Wu Denglou LLM, Political Sciences and Law Institute of East China, 1996. Since 1996, he has taken part in IPRs trials at Shanghai Second Intermediate People's Court. At present he is an assistant judge at Shanghai Second Intermediate People's Court.

Wu Denglou acted as a presiding judge in several influential cases, such as *America Safeguard Company v. Shanghai Cheng Xuan Company* relating to the domain name and registered mark "SAFEGUARD", *Xu Qiping v. Shanghai Huai Theatrical Company and Hu Jialu* copyright dispute, *Wang Xilin v. IPRs Press* for infringement of copyrights, etc. In these cases he has done some exploration and trial in the aspects of domain names and registered marks, the determination of well-known trademark, the scope, method and punishment of the compensation of copyright infringement.

In recent years Wu Denglou has published several papers including *The Resolution to the Conflict between Domain Names and Registered Marks*, *The Analysis to Some Problems in Domain Name Disputes*, *On the IPRs Protection of the Fictitious Character*, *The Injunction System in the Litigation IPRs*, *The Trial Analysis on the Damages to the IPRs Cases Such as Patent Cases, Copyright Case, etc.* He is one of the authors and editors of the *Detailed Analysis on the IPRs Cases & the Excellent Judicatory Documents*. He took part in the research of several research projects including *The Expert Witness System in the IPRs Litigation*.

Ma Xiurong LLM, Graduate School of China Academy of Social Sciences, 1996; LLB., Law Faculty of Heilongjiang University, 1993. Since 1996, she has been acting as an assistant judge at the People's Court in Haidian District of Beijing.

Ma Xiurong took part in several trials of new type cases concerning the fields of oral works, videography performances, internet works, unregistered trademarks and business names. She tried several cases including the first choreography and artistic designing copyright dispute – *Ye Qiu v. Zhang Tianwei*, the copyright dispute of the stereoscopic reappearance of the design drawing – *Beijing FanYang Exhibition Design Center v. Bai Yuan Automobile Train Service Ltd.*, the publishing contract dispute of the line between the publishing rights and the freedom of expression – *Li Wenli v. the Weapon Industry Press*, the copyright dispute of the Jazz drum score – *Liu Zhang and People's Music Press v. Hunan Literature Art Press*, the copyright dispute of the indirect website infringement – *Computer Lover Maga-*

zine Office v. Neteasy Information and Technology (Beijing) Ltd., the unfair competition dispute of bee aquaculture – *Wu Xiaofu v. Hu Shunlai*, etc.

Ma Xiurong has published dozens of academic papers in many publications, such as *Intellectual Property Studies*, *The Application of Law*, *Xinhua Digest*, *Economic Reference*, etc. She is one of the authors of *The Problems of the Unfair Competition Law*, *The Analysis to the Important Points in the Criminal Law*, etc.

Andrea Wechsler B.A. (Oxon) studied her undergraduate degree in law at the University of Oxford, Somerville College, after graduation from High School in Munich, Germany, in 1997. She graduated with an Honours Degree of Jurisprudence from the University of Oxford in 2000 and went to the People's Republic of China for one year where she studied Chinese and Chinese law at Peking University. Since the summer of 2001 she is enrolled in the Master of Law (LL.M.) programme at Columbia University Law School, New York U.S.A., where she is specializing in intellectual property rights and corporate law. Andrea Wechsler has worked as research assistant at the University of Oxford in the field of European Union law and held internships with the Foreign Office of the Federal Republic of Germany in South Africa, with the German Permanent Representation to the European Union in Brussels and with international law firms and chambers in London, Shanghai and Beijing.

前言

郑成思*

改革开放以来，中国的知识产权法律制度从无到有，并不断完善；中国的知识产权执法状况也在不断改善。1993年北京法院设立“知识产权审判庭”之后，这种发展的进程加快了。本书收入的10多个此类案件的处理过程及处理结果，正是中国司法界这种发展的一个清晰反映。

中国的知识产权庭（在今后一段时间里，可能要称为“民三庭”）的法官们，诚然有过不少发达国家知识产权法官一二百年前，或至少是几十年前的经历，更有发达国家知识产权法官在近年乃至在今天的经历。本书中的几个有关网络的版权纠纷案例，正是后一种经历的纪实。

在中国走进WTO的进程中，在中国走向“知识经济”的进程中，在中国“以信息化促

* 中华人民共和国全国人民代表大会法律委员会委员，中国社会科学院知识产权中心主任，中国社会科学院法学研究所研究员。

2 知识产权案件的审理与裁判

工业化”的进程中，应当说知识产权案件的处理（尤其是司法处理），是举国乃至举世瞩目的。事实正是如此。知识产权案件的数量，在中国整个法院系统案件受理数量中占的比例是微乎其微的，但绝大部分产生在中国的知识产权司法裁判（如果不说是一切这类裁判），都会引起人们的关注、人们的议论或人们的研究、探讨或争论。可见，国人及世人，均知道知识产权保护在中国改革开放，在中国市场经济发展中的地位及分量。

收入本书的案件的审理与裁判全程的介绍，可以作为中国知识产权执法不断进步的一个证明。当然，这并不是说凡收入的这些案件的裁判都是无可争议的，无可改进的。但不论怎么说，在这些相关裁判中，决不会出现从根本上否认知识产权是一种“专有权”的错误，也不易找出否认知识产权具有特殊性、否认精神权利的保护也受到限制等理论界经常出现的“硬伤”。中国的知识产权裁判文书，正越来越向理论型转化。这标志着知识产权领域的中国法官，总体水平在提高。

作为历史，作为事实的记录，作为研究者的参考材料，作为裁判者的参照或借鉴的典型，这部书的出版是很有必要的。

2001年8月17日

Preface

Zheng Chengsi *

Since the reform and opening up of the People's Republic of China to the outside world, the Chinese system of intellectual property law has evolved from non-existence to establishment and gradual perfection. There is also huge progress in relation to intellectual property law enforcement in China. A major factor in the promotion of this development has been the "Intellectual Property Tribunal" established in the Beijing Court in 1993. The way that more than ten cases, which are included in this book, were handled as well as the outcome of those cases clearly reflect these developments of Chinese law.

The judges of the Intellectual Property Tribunal of China (which might soon be renamed "The Third Civil Court") have a lot of experience which judges in developed countries might have had centuries or at least decades before. In addition, they have exactly the experience and expertise which judges in the field of intellectual property in developed countries have today and have developed over recent years. Several cases in this book about online copyright disputes are evidence of this experience.

In the course of negotiations leading to the accession of the People's Republic of China to the WTO, (*i.e.*, the negotiations in which China aims at the establishment of a "Knowledge Economy" and stresses the "Acceleration of the Process of Industrialization") China should point out that the judgments in the national field of intellectual property law are well-known throughout the country and the world. It is a fact that the number of intellectual property cases is only a very small proportion of the total number of cases accepted by the courts, but most of them have attracted a lot of attention, triggered discussions, investigations and arguments. It is obvious

* Professor of the Law Institute of China Academy of Social Sciences, Director of the Intellectual Property Center of CASS, Member of the Law Committee of the People's Congress of the PRC.

2 *China Court Cases On Intellectual Property Rights*

that the general public is very well aware of the role and importance of intellectual property protection in the development of the Chinese market economy.

The investigations of the cases and the respective judgments included in this book may provide evidence of the continuous progress made in relation to the enforcement of Chinese intellectual property law. This is certainly not to say that the decisions in those cases are immune to criticism or cannot be improved. However, there is no evidence of a denial of intellectual property rights as a kind of “exclusive right” based on a misconception of the nature of intellectual property. Nor are there any technical matters such as the denial of sufficient particularity to intellectual property or the denial of moral rights protection in the judgments. The outcome of intellectual property cases are well in line with the theoretical idea and notion of intellectual property and thus reflect the increasing competence and improvement of Chinese judges in the field of intellectual property.

As an account of the history of the included cases, their facts and the legal experts involved, but also as a casebook and valuable resource – this publication is undoubtedly an important necessity.

August 17, 2001

目 录

前 言	郑成思(1)
概 论	(1)
中国知识产权案件的审理与裁判	周 林(3)
外国知识产权案件的审理与裁判	
——普通法和大陆法的经验	卫德雅(13)
案例评判	(19)
王蒙与世纪互联通讯技术有限公司版权纠纷案	(21)
刘京胜与搜狐爱特信信息技术(北京)有限公司版权	
纠纷案	(39)
华声月报社与农民日报社版权纠纷案	(55)
胡三三与裘海索、中国美术馆版权纠纷案	(71)
黄鸣与中国美术家协会版权纠纷案	(89)
英特莱格公司、乐高海外公司与东莞市乐趣玩具实	
业公司专利权、版权、不正当竞争纠纷案	(104)
北京创联通信网络有限公司与北京汇盟国际商务咨	
询有限公司不正当竞争与版权纠纷案及汇盟公司	
反诉创联公司不正当竞争纠纷案	(125)
北京金融城网络有限公司与成都财智软件有限公司	
不正当竞争纠纷案	(148)