

ZHOU LIN

# China Court Cases on Intellectual Property Rights

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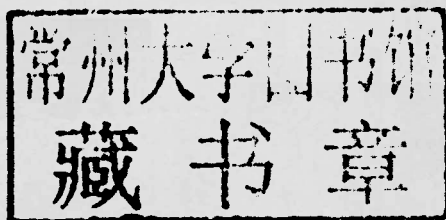
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# **China Court Cases on Intellectual Property Rights**

Update and Commentary Version

Edited by

**Zhou Lin**



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**China Court Cases on Intellectual  
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## Introduction to the New Version

In the history of the campaign to protect intellectual property rights in China, there were two memorable events. One occurred in July 1993 when the 'Intellectual Property Tribunal' established in the Beijing's Courts. The other was in March 1996 when two Intermediate People's Courts in Beijing appointed six young scholars as judicial assessors among professionals engaged in teaching and research institutes and universities. While the former marked that the trial and adjudication of intellectual property cases had drawn the attention of and was strengthened by Chinese judicial organs, the latter, for the first time, let scholars have the opportunity to confront judicial practice and participate in the trial of specific cases. Differing from previous appointments, the judicial assessors in this case have been given power by the court to handle cases and enjoy and bear the same rights and obligations as those of the judicial personnel of the court.

It was my honor to be appointed as one of the six judicial assessors and, in my capacity as a 'judge', handled around thirty case of trademark, patent, copyright and trade secret disputes. These were valuable experiences for me and allowed me to acquire intimate knowledge of the adjudication process. For each case, before writing the final judgment the judge shall read the case, make analysis and preliminary judgment, sum up the main points and then, after the parties have presented their evidence, cross-examination, corroboration and debate during the court session, conduct further analysis, judgment, collegiate discussion, prepare a final report and, when necessary, make a report about the case to the president or the judicial committee, of the court. While it is the judgment that is most important to the parties, people who study law should pay particular attention to the adjudication process. Under the present judicial system, however, most people can only learn the judicial results or, at most, the 'arraigned' on-the-spot of the court hearing'.



For judges who control the outcome of a case, it is more important to summarize the adjudication process than to sum up the result. As we can see, the courts often conduct examination and appraisal on adjudication documents, which is helpful for summing up judicial experience and enhancing the quality of adjudication. A judgment written by a judge would not likely be found with many errors in grammar or logic. However, should the adjudication process be distorted or improperly affected and thus the truth and falsehood are confused, with the failure to collaborate and apply the law that should be applied, then what is the use of a judgment even if it has been well written.

I have been seeking the opportunity to share such experiences of mine and what I have learnt from those experiences. What I have in my mind is to compile a collection of case reports, with some details of cases to be judged respectively by three real judges in the form of collegial panel, which is actually imitating the 'collegial discussion' in the trial of specific cases. The collegiate discussion is the most important link in the hearing and adjudication of a case. I hope my effort will be helpful for people who study law in their understanding of the adjudication process and serve as reference for judicial personnel engaged in the judicial work concerning intellectual property rights.

For better understanding the IPR cases trials in China, a project was included in EU-China IPR Cooperation Programme of 2001. It gave me an opportunity to put my idea into the result of this project—the book: *China Court Cases On Intellectual Property Rights* which was published by the Publishing House of the Chinese People's Public Security University in 2002. The original book was published in bilingual: Chinese and English. Soon after that a Japanese version issued in 2004. This new version is based on the above expressions and achievements.

This is a textbook on case analysis. It contains explanations and comments on the entire process of sixteen real cases in China, including trial and judgment. This book provides the readers with a full explanation of how a judge analyses cases, applies the law, reasons and reaches a judgment. This book is very different from several published case books which limit themselves to commentary on the decisions only. In fact the decisions did not always truly and accurately reflect the whole process and the reasons resulting in the judgment, due to the limited ability and unique personality of each of the judges in charge of the specific case as well as the influence of 'interfering elements' both inside and outside the court. Commentary on such decisions is not beneficial to readers, and can even serve to mislead. In the opinion of the authors of this book, it is far from sufficient to only comment on the decisions, i.e. the result of the judgment. For law students, lawyers and other legal practitioners, it is far more important to understand the whole process that results in a judgment. An increase in the transparency of the process of judgments will prove a major breakthrough in China's legal reform.

There is an introduction at the beginning of this book provides some basic information in regards to the trials and judgments of intellectual property cases in China. The main part of this book contains sixteen cases involving copyrights, trademarks, patents and trade secrets. All of them are real cases originating from

real courts in China. Three authors, or quasi-judges, involved in the judicial and legal research field, were invited to give independent opinions on each of the cases, similar to a collegiate panel where judges should be free to give independent opinions. General commentary by the authors and the real decision of the court follows.

Hopefully, this book will allow the readers closely follow the authors' process of judgments in the trial of the cases. As there are three quasi-judges making independent opinions in each case, the readers will be able to understand how a specific judge functions as a member of the collegiate panel. The readers are able to experience the roles and perceptions of any party, including the plaintiff, the defendant or even a third person, arguing with a specific judge. This book is a valuable resource for those practitioners who have been dealing with increased intellectual property cases in China and very useful for teachers and students in teaching and learning intellectual property law of China.

As a contributor and the chief editor of this book, I owe a lot for the people who shared their ideas and valuable efforts in this book. Here I could only mention some of them, the late professor Mr. Zheng Chengsi, who wrote a preface for the first Chinese version of this book, my friend Prof. Dr. Thomas Hoeren who took the part as the advisor of this project of EU-China IPR Cooperation Programme of 2001, Dr. Hao Xiaofeng, my colleague in Beijing Second Intermediate People's Court in 1995–1996, Dr. Andrea Wechsler who helped me to prepare the first English version of this book. I should give my sincere thanks for all the contributors in achieving this book. It is hard to imagine that this project could be accomplished without their great works.

Zhou Lin  
June 20, 2011



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