



现代知识产权法的演进

1760-1911 英国的历程

【澳】布拉德·谢尔曼

【英】莱昂内尔·本特利

金海军

著
译

The Making of Modern Intellectual Property



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缩 略 词 表

AC	<i>Law Reports: Appeal Cases</i>
All ER	<i>All England Law Reports</i>
Amb	<i>Ambler's Chancery Reports</i>
App Cas	<i>Law Reports: Appeal Cases</i>
Atk	<i>Atkyns' Chancery Reports</i>
Black W	<i>Sir William Blackstone's King's Bench Reports</i>
Bro PC	<i>Brown's Parliamentary Cases</i>
BT	<i>Board of Trade</i>
Bull NP	<i>Buller's Law of Nisi Prius</i>
Burr	<i>Burrow's King's Bench Reports</i>
CA	<i>Court of Appeal</i>
Carp Pat Cas	<i>Carpmael's Patent Cases</i>
CCD Mass	<i>Circuit Court, District of Massachusetts</i>
Ch	<i>Law Reports: Chancery</i>
Ch App	<i>Law Reports: Chancery Appeals</i>
Ch D	<i>Law Reports: Chancery Division</i>
Chit	<i>Chitty's King's Bench Reports</i>
CJ	<i>Commons Journal</i>
Co Rep	<i>Coke's King's Bench Reports</i>
Cowp	<i>Cowper's King's Bench Reports</i>
CPC	<i>Cooper's Chancery Patent Cases</i>
Dav Pat Cas	<i>Davies' Patent Cases</i>
De G J and S	<i>De Gex, Fones and Smith's Chancery Reports</i>
Eden	<i>Eden's Chancery Reports</i>
EIPR	<i>European Intellectual Property Review</i>
ER	<i>English Reports</i>
F	<i>Federal Reporter (US)</i>

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F Cas	<i>Federal Cases</i>
FO	Foreign Office
FSR	<i>Fleet Street Intellectual Property Reports</i>
GATT	General Agreement on Tariffs and Trade
Giff	<i>Giffard's Chancery Reports</i>
HBL	<i>H. Blackstone's Common Pleas Reports</i>
HL	House of Lords
HLC	<i>House of Lords Cases</i>
HLJ	<i>House of Lords Journal</i>
HMSO	Her Majesty's Stationery Office
Holt	<i>Holt's King Bench Reports</i>
HPC	<i>Hayward's Patent Cases</i>
IIC	<i>International Review of Industrial Property and Copyright Law</i>
IPJ	<i>Intellectual Property Journal</i>
JPTOS	<i>Journal of the Patent and Trademark Office Society</i>
Jur Ns	<i>Jurist Reports, New Series</i>
K & J	<i>Kay and Fohnson's Vice Chancellor's Reports</i>
LJ Ch	<i>Law Journal; Chancery</i>
LJCP	<i>Law Journal; Common Pleas</i>
LJJ	Lord Justices of Appeal
LQR	<i>Law Quarterly Review</i>
LR	<i>Law Reports</i>
LR Ch D	<i>Law Reports; Chancery Division</i>
LT	<i>Law Times</i>
LT NS	<i>Law Times (New Series)</i>
M & W	<i>Meeson and Welsby's Exchequer Reports</i>
Man & G	<i>Manning and Granger's Common Plea Reports</i>
Mer	<i>Merivale's Chancery Reports</i>
Mor Dict	<i>Morison's Dictionary of Decisions</i>
My & Cr	<i>Mylne and Craig's Chancery Reports</i>
New Rep	<i>New Reports</i>
Noy	<i>Noy's King Bench Reports</i>

PP	<i>Parliamentary Papers</i>
QB	<i>Law Reports: Queen's Bench Division</i>
RIDA	<i>Revue Internationale du Droit de l'Auteur</i>
RPC	<i>Report of Patent Cases</i>
Russ & M	<i>Russell and Mylne's Chancery Reports</i>
S Ct	<i>Supreme Court</i>
Salk	<i>Salkeld's King's Bench Reports</i>
Scott NR	<i>Scott's New Common Pleas Reports</i>
Sim	<i>Simons' Vice Chancellor's Reports</i>
Stark	<i>Starkie's Nisi Prius Reports</i>
Swans	<i>Swanston's Chancery Reports</i>
Taunt	<i>Taunton's Common Pleas</i>
TNAPSS	<i>Transactions of the National Association for the Promotion of Social Science</i>
TR	<i>Term Reports</i>
TRIPS	<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>
Web Pat Cas	<i>Webster's Patent Cases</i>
WLR	<i>Weekly Law Reports</i>
WR	<i>Weekly Reporter</i>
Y & CC	<i>Younge and Collyer's Chancery Cases</i>

制定法与法案表

按时间先后排序;在括号内给出的是其相应的简称和敕令号;每段最后一个(或一组)阿拉伯数字为本书边码。

- 1335 年《使外来商人在英国从事购销活动而不受干扰法》(An Act which Enabled Merchant Strangers to Buy and Sell without Disturbance) 9 Ed. III s. 1 c. 1 (1335) 209
- 1621 年《议会针对弗朗西斯·米切尔爵士、英格兰御前大臣弗朗西斯·怀康特·圣奥尔本和爱德华·弗勒德而通过之公开谴责法》(An Act Containing the Censure Given in Parliament against Sir Francis Mitchell, Francis Viscount Saint Albane Lord Chancellor of England and Edward Flood) 18 Jac. I c. 1 of Private Acts (1621) 208
- 1623 年《确认枢密院所作之关于废止授予亨利·赫伦在德文郡和康沃尔郡诸县从事鱼类腌制、晾晒和包装特权的特许证之判决法》(An Act to Confirm a Judgement Given in Chancery for Annulling Certain Letters Patent Granted to Henry Heron, for the Sole Privilege of Salting, Drying and Packing of Fish within the Counties of Devon and Cornwall) 21 Jac. I c. 11 (1623) 208
- 1624 年《关于垄断、刑法之特许以及由此产生之没收的法律》(An Act Concerning Monopolies and Dispensations with Penal Laws and Forfeitures Thereof) 21 Jac. I c. 3 (1624) (1624 年《垄断法》[Statute of Monopolies]) 49, 108, 206, 207, 208, 209, 210
- 1662 年《关于禁止频繁滥用印制煽动性叛乱性和非经许可之图书小册子并且管制印刷业印刷机法》An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Books and Pamphlets and for Regulating of Printing and Printing Presses 13 & 14 Car. II c. 33 (1662) 11

- 1690 年《鼓励从玉米中蒸馏白兰地和酒精法》(An Act for Encouraging the Distilling of Brandy and Spirits from Corn) 2 W. & M. c. 9 (1690) 209
- 1710 年《在所规定时间内将已印刷图书之复制件授予作者或者该复制件购买者以鼓励学术法》(An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies) 8 Anne c. 19 (1710) (1710 年《安妮女王法》[Statute of Anne]) 12, 13, 19, 32, 36, 40, 49, 74, 206, 207, 208, 209, 210, 214
- 1735 年《通过在规定时间内授予发明人和雕工以财产权而鼓励设计、雕刻、蚀刻历史性以及其他印版之技术法》(An Act for the Encouragement of the Arts of Designing, Engraving and Etching Historical and Other Prints, by Vesting the Properties thereof in Inventors and Engravers during the Time therein Mentioned) 8 Geo. II c. 13 (1735) (1735 年《雕工法》[Engravers' Act]) 16, 40, 74
- 1742 年《保护技术能手约翰·拜罗姆对由其发明之速记技术和方法在一定年限内享有独家出版权法》(An Act for Securing to John Byrom, Master of Arts, the Sole Right of Publishing for a Certain Term of Years the Art and Method of Shorthand, Invented by him) 15 & 16 Geo. II c. 23 (1742) 16
- 1787 年《通过在有限时间内授予设计人、印花工和所有权人以财产权而鼓励亚麻布、棉布、白棉布和平纹细布的设计、印花技术法》(An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicos and Muslins by Vesting the Properties thereof in the Designers, Printers and Proprietors for a Limited Time) 27 Geo. III c. 38 (1787) (1787 年《白棉布印花工法》[Calico Printers' Act]) 37, 41, 63, 64, 74, 75, 211
- 1789 年《关于将当朝陛下二十七年所制定法律——其名称为〈通过在有限时间内授予设计人、印花工和所有权人以财产权而鼓励亚麻布、棉布、白棉布和平纹细布的设计、印花技术法〉——延长至 1794 年 7 月 1 日法》(An Act for Continuing an Act Made in the Twenty Seventh Year of the Reign of His Present Majesty (c. 38) intituled An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicos and Muslins, by Vesting the Properties thereof in the Designers, Printers and Proprietors for a Limited Time-Till 1 July 1794) 29 Geo. III c. 19

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- 1794 年《关于修订和使当朝陛下二十七年所制定法律——其名称为〈通过在有限时间内授予设计人、印花工和所有权人以财产权而鼓励亚麻布、棉布、白棉布和平纹细布的设计、印花技术法〉——永久化法》(An Act for Amending and Making Perpetual an Act Made in the Twenty Seventh Year of His Present Majesty intituled An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicos and Muslins by Vesting the Properties thereof in the Designers, Printers and Proprietors for a Limited Time) 34 Geo. III c. 23 (1794) 37, 63
- 1798 年《鼓励制作新模型和胸像以及其他物品法》(An Act for Encouraging the Art of Making New Models and Casts of Busts, and Other Things Therein Mentioned) 38 Geo. III c. 71 (1798) (1798 年《雕塑著作权法》[Sculpture Copyright Act]) 17
- 1831 年《强制亚麻布印花工在其印制亚麻布上标示其名字法案》(A Bill to Oblige Printers of Linen to Mark their Names on Linens Printed by them) (1831) 2 PP (281) 166
- 1833 年《修订有关戏剧文学财产法律法》(An Act to Amend the Laws Relating to Dramatic Literary Property) 3 & 4 Wm. IV c. 15 (1833) (1833 年《戏剧财产法》[Dramatic Property Act]) 117
- 1835 年《修订与发明专利相关法律法》(An Act to Amend the Law Touching Letters Patent for Inventions) 5 & 6 Wm. IV c. 83 (1835) (1835 年《布鲁厄姆勋爵法》[Lord Brougham's Act]) 103, 104, 105, 177
- 1837 年《修订与发明专利相关之惯例,以改善鼓励技术与制造品法案》(A Bill to Amend the Practice Relating to Letters Patent for Inventions, and for the Better Encouragement of the Arts and Manufactures) (1837) 3 PP (315) 104
- 1837—1838 年《为改善鼓励技术和制造品,保障个人在有限时间内对其发明享受利益法案》(A Bill for the Better Encouragement of the Arts and Manufactures, and Securing to Individuals the Benefit of their Inventions for a Limited Time) (1837—1838) 1 PP (71) 104, 105
- 1838 年《在某些案件中保护作者之国际著作权利益法》(An Act for Securing to Authors in Certain Cases the Benefit of International Copyright) 1 & 2

- Vict. c. 59 (1838) (1838 年《国际著作权法》[International Copyright Act]) 114, 115, 116, 117
- 1839 年《关于白棉布印花工之外观设计著作权扩展至一般性外观设计法》(An Act for Extending the Copyright of Designs for Calico Printers to Designs) 2 Vict. c. 13 (1839) (1839 年《外观设计著作权法》Copyright of Designs Act) 64, 65, 70
- 1839 年《关于在限定时间内确保制造品外观设计所有人对该外观设计享有著作权法》(An Act to Secure to Proprietors of Designs for Articles of Manufacture the Copyright of Such Designs for a Limited Time) 2 Vict. c. 17 (1839) (1839 年《外观设计登记法》[Designs Registration Act]) 64, 65, 67, 70, 71, 72, 74, 75, 80, 81, 82, 83, 84, 85, 87, 89, 170
- 1839 年《为改善鼓励技术和制造品,保障个人在有限时间内对其发明享受利益之法案》(A Bill for the Better Encouragement of the Arts and Manufactures, and Securing to Individuals the Benefit of their Inventions for a Limited Time) (《式样和发明法案》[Patterns and Inventions Bill]) (1839) 4 PP (31) 104, 105
- 1841 年《对于在机器织物和糊墙纸上之印花设计扩大其著作权期限法案》(A Bill for Extending the Term of Copyright in Designs for Printing on Woven Fabrics and Paper Hangings) (1841) 2 PP (13 and 23) 74, 79
- 1842 年《著作权法修订法》(An Act to Amend the Law of Copyright) 5 & 6 Vict. c. 45 (1842) (1842 年《著作权法》[Copyright Act]) 116, 117
- 1842 年《合并与修订有关装饰性制造品外观设计著作权法律法》(An Act to Consolidate and Amend the Laws Relating to the Copyright of Designs for Ornamenting Articles of Manufacture) 5 & 6 Vict. c. 100 (1842) (1842 年《装饰性外观设计法》[Ornamental Designs Act]) 65, 77, 79, 80, 81, 87, 88, 89, 90, 110, 163, 218
- 1843 年《修订有关外观设计著作权法律法》(An Act to Amend the Laws Relating to the Copyright of Designs) 6 & 7 Vict. c. 65 (1843) (1843 年《实用性外观设计法》[Utility Designs Act]) 65, 77, 79, 88, 89, 90, 91, 92, 93, 110, 170, 188
- 1844 年《修订与国际著作权相关法律法》(An Act to Amend the Law Relating to International Copyright) 7 & 8 Vict. c. 12 (1844) (1844 年《国际著作

- 权法》[International Copyright Act]) 114, 115, 116, 117
- 1850年《扩大和修改与外观设计著作权相关法律法》(An Act to Extend and Amend the Acts Relating to the Copyright of Designs) 13 & 14 Vict. c. 104 (1850) (1850年《外观设计法》[Designs Act]) 183
- 1851年《扩大1850年〈外观设计法〉之规定,对于在1851年万国工业成果展览会上展出新发明者给予保护法》(An Act to Extend the Provisions of the Designs Act, 1850, and to Give Protection from Piracy to Persons Exhibiting New Inventions in the Exhibition of the Works of Industry of all Nations in One Thousand, Eight hundred and Fifty One) 14 & 15 Vict. c. 8 (1851) (1851年《发明保护法》[Protection of Inventions Act]) 134
- 1851年《进一步修订与发明专利相关法律之法案》(A Bill for the Further Amendment of the Law Touching Letters Patent for Inventions 5 PP 63 (502); 5 PP 91 (612), (1851) (1851年《专利法案》[Patents Bill]) 134
- 1851年《扩大1850年〈外观设计法〉之规定,对于在1851年万国工业成果展览会上展出新发明者给予保护之法予以命名的法案》(A Bill Intituled An Act to Extend the Provisions of the Designs Act, 1850, and to give Protection from Piracy to Persons Exhibiting New Inventions in the Exhibition of the Works of Industry of all Nations in 1851) 2 PP (443) (1851年《发明保护法》[Protection of Inventions Act]) 134
- 1852年《修订授予发明专利之法律法》(An Act for Amending the Law for Granting Patents for Inventions) 15 & 16 Vict. c. 83 (1852) (1852年《专利法修订法》[Patent Law Amendment Act]) 107, 130, 134, 187, 188, 208
- 1852年《修改在威斯敏斯特普通法高级法院和在兰开斯特、达勒姆伯爵领地高级法院之程序、惯例和诉讼模式法》(An Act to Amend the Process, Practice and Mode of Pleading in the Superior Courts of Common Law at Westminster and in the Superior Courts of the Counties Palatine of Lancaster and Durham) 15 & 16 Vict. c. 76 (1852) (1852年《普通法程序法》[Common Law Procedure Act]) 191
- 1852年《使女王陛下得以实行与法国缔结之著作权公约,扩张和解释国际著作权法,以及解释有关版画著作权法律法》(An Act to Enable Her

- Majesty to Carry into Effect a Convention with France on the Subject of Copyright, to Extend and Explain the International Copyright Acts, and to Explain the Acts Relating to Copyright in Engravings) 15 & 16 Vict. c. 12 (1852) 118
- 1858 年《修订当朝女王陛下五年和六年法律,以合并和修改与装饰性制造品之外观设计相关法律法》(An Act to Amend the Act of the Fifth and Sixth Years of her Present Majesty, to Consolidate and Amend the Laws Relating to Designs for Ornamenting Articles of Manufacture) 21 & 22 Vict. c. 70 (1858) (1858 年《外观设计著作权修订法》[Copyright of Designs Amendment Act]) 183
- 1860 年《标题为合并、修改英格兰和爱尔兰可指控仿冒罪制定法之法律的法案》(A Bill Intituled An Act to Consolidate and Amend the Statute Law of England and Ireland Relating to Indictable Offences by Forgery) (No. 152) 3 PP (383) 171
- 1861 年《修改与美术作品著作权相关法律法案》(A Bill for Amending the Law Relating to Copyright in Works of Fine Art) 1 PP (519) 184
- 1862 年《修订与美术作品著作权相关法律并遏制该作品之欺诈性生产销售法》(An Act for Amending the Law Relating to Copyright in Works of the Fine Arts, and for Repressing the Commission of Fraud in Production and Sale of Such Works) 25 & 26 Vict. c. 68 (1862) (1862《美术作品著作权法》[Fine Art Copyright Act]) 127, 163, 184
- 1862 年《修改与欺诈性商品标记相关法律法》(An Act to Amend the Law Relating to the Fraudulent Marking of Merchandise) 25 & 26 Vict. c. 88 (1862) (1862 年《商品标记法》[Merchandise Marks Act]) 168, 170
- 1862 年《修改与美术作品著作权相关法律法案》(A Bill for Amending the Law Relating to Copyright in Works of Fine Art) 1 PP 485 184
- 1862 年《修改与美术作品著作权相关法律法案》(A Bill for Amending the Law Relating to Copyright in Works of Fine Art) (业经特别委员会修改) 1 PP 493 184.
- 1862 年《修改与假冒、欺诈性使用或者盗用商标相关之法律,以在某些案件中保护商标所有人之国际保护利益的法案》(A Bill to Amend the Law Relating to the Counterfeiting or Fraudulent Use or Appropriation of Trade

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- Marks, and to Secure to Proprietors of Trade Marks in Certain Cases the Benefit of International Protection) (1862) 5 PP (267) 166
- 1863 年《授予由 1851 年和 1862 年展览局长所制之证明奖章以防止虚假陈述法》(An Act to Prevent False Representations as to Grants of Medals of Certificates Made by the Commissioners for the Exhibitions of 1851 and 1862) 26 & 27 Vict. c. 119 (1863) 166
- 1873 年《为设立最高法院以及与改善英格兰法官之管理、授权将女王司法委员管辖权移转该最高法院之上诉庭相关之其他目的而制定法》(An Act for the Constitution of a Supreme Court and for Other Purposes Relating to the Better Administration of Justice in England and to Authorise the Transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's) PC 36 & 37 Vict. c. 66 (1873) (1873 年《司法法》[Judicature Act]) 191
- 1875 年《设立商标登记簿法》(An Act to Establish a Register of Trade Marks) 38 & 39 Vict. c. 91 (1875) (1875 年《商标法》[Trade Marks Act]) 190
- 1881 年《合并修改与著作权相关法律法案》(A Bill to Consolidate and Amend the Law Relating to Copyright) 1 PP 639 (121) (1881) (1881 年《著作权法案》[Copyright Bill]) 192
- 1883 年《修改、合并有关发明专利以及外观设计和商标登记之法律法》(An Act to Amend and Consolidate the Law Relating to Patents for Invention, Registration of Designs and of Trade Marks) 46 & 47 Vict. c. 57 (1883) (1883 年《专利、外观设计和商标法》[Patents, Designs and Trade Marks Act]) 162, 183, 188, 189
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案 例 表

注:在正文脚注中,所引案例若属《英国判例汇编》(English Reports),则仅以其 ER 引见方式表示,其他判例报告的详细出处附后。

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