

intellectual property right



▶ 高等院校知识产权专业英语示范教材

知识产权专业英语 (第2版)

厉宁 周笑足◎编著

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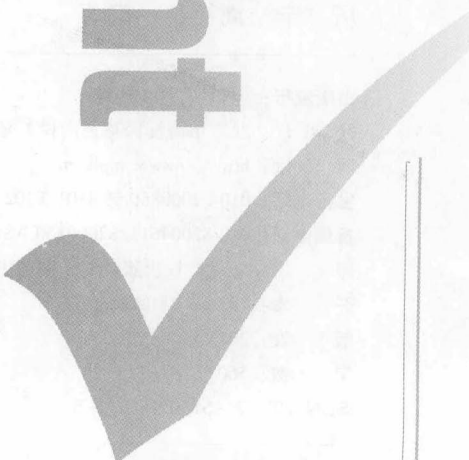
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内容提要

本书为高等院校知识产权专业教育的英语示范教材。全书分为32个单元，共收录涉及知识产权内容的英文文献56篇，以阅读理解为主，辅以专业词汇、文章注释，全面介绍了知识产权的基本理论、相关法律和组织、专利申请文件的撰写与阅读、知识产权学术交流英语和国家知识产权发展战略的研究等内容；每一单元介绍一个主题，课文后附有口头和笔头练习，便于读者加深对原文和专业问题的理解。

读者对象：高等院校知识产权专业及其他相关专业的在校师生，以及知识产权领域的从业人士。

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再版说明

《知识产权专业英语》2006年9月出版后，受到了广大知识产权从业人员和高等学校师生的普遍欢迎。2008年6月国务院发布《国家知识产权战略纲要》，并提出“加强知识产权人才队伍建设”、“在高等学校开设知识产权相关课程，将知识产权教育纳入高校学生素质教育体系”。《知识产权人才“十二五”规划》《知识产权高层次人才引领计划实施方案（2011～2015年）》等均对知识产权专门人才外语运用能力提出了要求。为此，应部分人才培养单位和广大读者的要求，对本书进行再版，以适应知识产权人才队伍扩大和素质提升的需求。

编者

2013年7月8日于广州

序 言

(第1版)

在已经不是闭关锁国的中国，学术研究要有深度和广度，不掌握一门以上外文是难以做到的，知识产权领域的学习与研究尤其如此。因为知识产权制度毕竟是舶来品。厉宁博士和周笑足女士所编著《知识产权专业英语》一书的出版，对知识产权法学科的学生，的确是件好事。我常对自己的学生说：“我没有天赋，也不是天才，我下的是死劲。”这不是自谦，而是实话。在我留学回国后，听到有同事抱怨没有机会上外语院校的“强化班”或“培训班”，因此出国考试总是通不过，我也常对他们说起自己从未上过一天外语“强化班”或“培训班”，完全是靠自学。这也不是自吹，而是实话。由于是非专门学习学出的，所以至今也没能算学好了英文。读者还能够从我写的英文书中挑出实实在在的毛病。这只能说明我还得继续学习，决不说明我认为知识产权领域的学习与研究外文特别重要的看法错了。当然，在知识产权领域还必须有法律常识。如果作为一个中国人，又是学法律的，不知由最高人民法院一审的案子就不再有二审了，不知广西高院叫省高院还是叫自治区高院，那么外文学得再好，也失去了意义。

在给何家弘教授主编的《法学家茶座》上，我曾讲到过自己学外文的几点体会，只是作为尚未学到家的老人的一点回顾，供年轻人参考。

我幼时没有用心学汉语，只是到了高中之后，在周围学习热情极高的优秀同学及严师的双重促压之下，有了危机感，方才开始努力。所以，我用心学汉语与用心学英语，以及对二者兴趣的不断增长，几乎是同步的。于是在学习中，我发觉这两种语言文字虽然看上去差异很大，却又存在着许多相同或相似之处，乃至共通之处。我在英译汉时，基本上是以古汉语语法去理解英语语法（尤其涉及动名词之处），而一般不会译错。我认为这两种语法有许多共性。但我毕竟不是语言学家，故从来未曾总结过，只是讲出这种感受，供已经比较了解汉语，又正在学习英语的学生参考。我想，你在学习中一旦品出其中味来，一定会感到无穷的乐趣。学习外语如同学习其他知识一样，如果始终感到是苦不是乐，那就离半途而废不远了。

英语单词的相当一部分，我是按汉语的象形、形声、会意、指事、假借、转让

等方法去记的。例如，“苦力”这个英文单词，显然百分之百是从汉语借过去的。随着中国越来越受国际社会重视，中文在世界上地位越来越高，这类负面含义的“假借”出去的词会渐少，而正面的肯定会更多。有朝一日，英语国家的人们说“Ni-Hao!”可能会像我们这里的年轻人今天说“白白”一样普遍了。

当你把手往桌子上一拍，会听见“啪”的一声响。这正是英文中“手”的发音，它难道不是个典型的象声词吗？而当你又开五指把手举起来时，你分明看到了一张棕榈叶子。英文中“棕榈”正是与“手”为同一单词。这里既有会意，又有象形。好好想一想，英语与汉语就开始走近了。

在读马克·吐温的书时，有一则吐温（克莱明斯）先生开出的英文“字谜”，使我至今难忘。这个谜语是吐温提出来要他的女儿去猜的。有一日，吐温的姐姐穿了一身灰衣服在吃东西，于是他指着姐姐对女儿说：“这副样子就是一个英文单词的谜面，请你说出谜底。”他的女儿也很聪明，想了想，喃喃自语道：“In Grey She Eat (s)...”（身着灰装的她在吃东西）——“Ingratiate!”谜底出来了。当然，前面这句话与谜底之间并无任何相通的含义，仅仅是与谜底的发音完全相同。不过这就够了。中国类似的谜语很多。“寄回家书半字空”的谜底为“白芷”，而不是“白纸”，即是一例。

将近四分之一世纪之前，伦敦的一位英国教授与我聊天时，也曾给我出了一道题（也可以算是一个谜语吧），使我感到中、英文之间，不仅有字、词、语法相似之处，就连句读（音“逗”，即断句）也有相似之处。记得国内山海关前一庙宇中有一对联，其上联是：“海水朝朝朝朝朝朝朝落”（注意，共计7个“朝”字，其中“潮”与“朝”相通），把它读通，即是“海水潮，朝朝潮，朝潮，朝落”。那位英国教授要我读通的难题是：“When Tom had had Smith had had had had had had made Smith rank first.”（注意：在Smith与made之间，有6个had）。在这句话中，如果加几个引号及逗号加对了，意思就明白了，难题也即获得了答案。我当年可是费了半天劲才答对的，所以也不想让读者不费脑筋就得到答案。故就此住笔，留给读者一点遗憾和更多兴趣。

在这点体会发表后一个月，我的一位过去的同事、后来的领导的孩子，一个大学生，就把它断开了。可见年轻人只要努力，肯定会超过老人的。

总之，学习是苦的，想要毫不费力地每一锄头都锄出金娃娃，最终只能是自欺欺人；但同时学习中又是充满乐趣的。愿我们大家都能在苦中寻乐，以求不断进步。

2005年6月手术后

前 言

(第 1 版)

随着我国实施人才强国战略和制定国家知识产权战略进程的加快,知识产权人才培养问题日益突出。我国知识产权事业的快速发展,需要加快知识产权高级专门人才的培养步伐,建设一支不仅能熟练掌握国内相关法律和相关业务,而且能精通外语、熟悉和掌握 WTO 有关规则以及主要贸易伙伴国知识产权法律和实务技能的高级人才队伍。为此,教育部和国家知识产权局非常重视知识产权高级专门人才的培养工作,积极支持高等院校建立知识产权学院(系)和相关专业,大力推动在大学本科设立知识产权必修课和增加知识产权双学士、硕士、博士学位授予点的工作。由于是一门新兴的专业,知识产权培养和教材体系十分薄弱,其专业外语教育及教材在国内一些重点培养单位目前还少有问津。鉴于此,《知识产权专业英语》应运而生。

《知识产权专业英语》是一本配合知识产权专业教育的英语教材,供知识产权专业和其他相关专业大学生、研究生以及知识产权工作者学习专业知识使用。本教材的基本素材全部取之于国外知识产权专业书籍、期刊和政府及国际组织的公开文献,力求使读者在学习过程中直接领略世界知识产权最新理论和发展动态,同时促进专业英语的思维和运用能力得到提高。

本书编写注重培养读者掌握基本理论和实际运用能力。全书共设 32 个单元,分别介绍了知识产权的基本理论、知识产权的相关法律和组织、知识产权学术交流英语和国家知识产权发展战略的研究。前 22 个单元侧重于知识产权的基本理论、相关法律及国际组织介绍,从知识产权发展的共性基础出发,不但从法学理论的立法和执法角度,而且从行政管理、知识产权代理、知识产权转让和许可等方面,全面论述了专利、商标和版权的发展动态。第 23 单元介绍了知识产权学术交流英语,其目的在于使学习者提高以英语为工具,熟练地

进行本专业的研究并能与国外同行进行学术交流的能力，例如，获得学术论文写作和学术通讯等方面的能力。最后9个单元着重介绍了日、美两个发达国家知识产权发展战略研究的最新动态，以期能对我国的知识产权发展战略的制定和实施有所启迪和帮助。

本教材的课文篇幅长短不一，主要原因在于编者想就某一主题给读一个完整概念和体系。这样有利于读者对国外知识产权有一个全面的、系统的、清晰的了解。课文文字由浅入深，词汇重复率高，符合外语学习循序渐进的要求。每课配有口头与笔头练习，旨在帮助读者理解课文，操练知识产权基本词汇和用语。每课后附有答案，对配合教师教学和自学者自学都十分方便。

中国社会科学院知识产权研究中心郑成思教授在百忙中和病愈后欣然为本书作序，在此表示衷心的感谢。知识产权出版社对该书出版给予大力支持，在此一并表示感谢。

本书在编写过程中，参阅了国内外一些同行的学术成果，有的在书中列明，有的受条件所限没作说明，在此，特向相关作者一并表示感谢。

本书编写历经一年有余，虽几易其稿力求完美，但由于我们的水平、经验和时间所限，难免存在诸多不足之处，诚请各位同行和读者提出批评和建议，以便在本书修订时再作改进。

编者

2005年3月20日于广州

Table of Contents

Unit One Intellectual Property	(1)
New Words and Phrases	(2)
Notes	(6)
Word Study	(6)
Exercises	(7)
Reading Material World Intellectual Property Organization	(8)
Keys to Exercises	(12)
Unit Two Paris Convention for the Protection of Industrial Property: Provision of Right of Priority	(13)
New Words and Phrases	(15)
Notes	(19)
Word Study	(19)
Exercises	(20)
Reading Material Paris Convention for the Protection of Industrial Property: Provision of National Treatment	(21)
Keys to Exercises	(25)
Unit Three Patents	(26)
New Words and Phrases	(27)
Notes	(29)
Word Study	(30)
Exercises	(31)
Reading Material The Prohibited Act of Patent Infringement	(32)
Keys to Exercises	(35)
Unit Four Conditions of Patentability	(36)
New Words and Phrases	(37)
Notes	(39)
Word Study	(40)
Exercises	(41)
Reading Material Practical Aspects of Drafting Patent Applications	(41)
Keys to Exercises	(46)

Unit Five Patent Cooperation Treaty (PCT)	(47)
New Words and Phrases	(49)
Notes	(51)
Word Study	(52)
Exercises	(53)
Reading Material Filing an International Application under the PCT System	(54)
Keys to Exercises	(58)
Unit Six USPTO Patent Full-Text and Image Database (1)	(59)
New Words and Phrases	(63)
Notes	(67)
Word Study	(68)
Exercises	(69)
Reading Material USPTO Patent Full-Text and Image Database (2)	(69)
Keys to Exercises	(80)
Unit Seven International Patent Classification (IPC)	(81)
New Words and Phrases	(84)
Notes	(86)
Word Study	(86)
Exercises	(87)
Reading Material Use of the IPC for Search Purposes	(88)
Keys to Exercises	(92)
Unit Eight Trademark	(94)
New Words and Phrases	(95)
Notes	(96)
Word Study	(97)
Exercises	(97)
Reading Material Trademark Registration: Application and Examination	(98)
Keys to Exercises	(102)
Unit Nine Rights Arising from Trademark Registration	(103)
New Words and Phrases	(105)
Notes	(106)
Word Study	(107)
Exercises	(107)
Reading Material Trademark Piracy, Counterfeiting and Imitation of Labels and Packaging	(109)
Keys to Exercises	(112)
Unit Ten Trademark Licensing	(114)
New Words and Phrases	(116)

Notes	(117)
Word Study	(118)
Exercises	(118)
Reading Material Franchising and Franchise Types	(119)
Keys to Exercises	(122)
Unit Eleven Industrial Design	(123)
New Words and Phrases	(124)
Notes	(125)
Word Study	(125)
Exercises	(126)
Reading Material Rights in Industrial Designs	(127)
Keys to Exercises	(130)
Unit Twelve Geographical Indications	(131)
New Words and Phrases	(133)
Notes	(133)
Word Study	(134)
Exercises	(135)
Reading Material Integrated Circuits	(136)
Keys to Exercises	(139)
Unit Thirteen Protection against Unfair Competition	(140)
New Words and Phrases	(142)
Notes	(143)
Word Study	(144)
Exercises	(145)
Reading Material National Protection: Three Main Approaches to Unfair Competition Law	(146)
Keys to Exercises	(149)
Unit Fourteen Copyright and Related Rights	(151)
New Words and Phrases	(153)
Notes	(154)
Word Study	(154)
Exercises	(155)
Reading Material Rights Comprised in Copyright	(156)
Keys to Exercises	(160)
Unit Fifteen Copyright Protection	(161)
New Words and Phrases	(162)
Notes	(163)
Word Study	(164)

Exercises	(165)
Reading Material Piracy and Infringement of Copyright	(166)
Keys to Exercises	(169)
Unit Sixteen Basic Operation of Collective Management of Copyright and	
Related Rights (1)	
New Words and Phrases	(172)
Notes	(172)
Word Study	(173)
Exercises	(174)
Reading Material Basic Operation of Collective Management of Copyright and	
Related Rights (2)	(175)
Keys to Exercises	(178)
Unit Seventeen Commercial Transfer and Acquisition of Technology (1)	
New Words and Phrases	(182)
Notes	(183)
Word Study	(184)
Exercises	(185)
Reading Material Commercial Transfer and Acquisition of Technology (2)	(186)
Keys to Exercises	(191)
Unit Eighteen Agreement on Trade-Related Aspects of Intellectual Property	
Rights(“TRIPS Agreement”)	
New Words and Phrases	(194)
Notes	(195)
Word Study	(196)
Exercises	(197)
Reading Material Enforcement of Intellectual Property Rights under TRIPS	
(Part III)	(198)
Keys to Exercises	(200)
Unit Nineteen Function of a Patent Agent in the Pre-application Phase of	
Patents	
New Words and Phrases	(203)
Notes	(204)
Word Study	(206)
Exercises	(207)
Reading Material Functions of Trademark Agent	(208)
Keys to Exercises	(211)

Unit Twenty Enforcement of Industrial Property Rights in General (1)	(212)
New Words and Phrases	(214)
Notes	(214)
Word Study	(215)
Exercises	(216)
Reading Material Enforcement of Industrial Property Rights in General (2)	(217)
Keys to Exercises	(220)
Unit Twenty-One Intellectual Property Litigation (1)	(221)
New Words and Phrases	(224)
Notes	(225)
Word Study	(226)
Exercises	(227)
Reading Material Intellectual Property Litigation (2)	(228)
Keys to Exercises	(231)
Unit Twenty-Two Modern IP Management and the New Economy	(232)
New Words and Phrases	(234)
Notes	(235)
Word Study	(236)
Exercises	(237)
Reading Material Electronic Commerce and the Impact on IP	(238)
Keys to Exercises	(240)
Unit Twenty-Three English for Academic Communication of Intellectual	
Property (1)	(241)
New Words and Phrases	(244)
Notes	(245)
Word Study	(245)
Exercises	(246)
Reading Material English for Academic Communication of Intellectual	
Property (2)	(247)
Keys to Exercises	(249)
Unit Twenty-Four Developing Human Resources and Improving Public	
Awareness	(250)
New Words and Phrases	(252)
Notes	(254)
Word Study	(255)
Exercises	(255)
Reading Material Increasing Public Awareness of Intellectual Property	(256)
Keys to Exercises	(258)

Unit Twenty-Five Creation	(259)
New Words and Phrases	(262)
Notes	(263)
Word Study	(265)
Exercises	(265)
Reading Material Promoting the Creation of High-Quality Intellectual Property	(266)
Keys to Exercises	(269)
Unit Twenty-Six Exploitation: Support for International Standardization	
Activities	(270)
New Words and Phrases	(274)
Notes	(275)
Word Study	(277)
Exercises	(277)
Reading Material Developing Environments for Intellectual Property Exploitation	(278)
Keys to Exercises	(281)
Unit Twenty-Seven The Dramatic Expansion of Content Business (1)	(283)
New Words and Phrases	(287)
Notes	(288)
Word Study	(289)
Exercises	(290)
Reading Material The Dramatic Expansion of Content Business (2)	(291)
Keys to Exercises	(293)
Unit Twenty-Eight Trademark E-Government	(294)
New Words and Phrases	(297)
Notes	(299)
Word Study	(301)
Exercises	(302)
Reading Material Trademark Work-at-Home	(302)
Keys to Exercises	(306)
Unit Twenty-Nine Support for Patent Cooperation Treaty (PCT) Search	
Activity	(307)
New Words and Phrases	(310)
Notes	(311)
Word Study	(313)
Exercises	(314)
Reading Material Proposed Procedures to Implement Exploitation of Search	

Program	(315)
Keys to Exercises	(319)
Unit Thirty Certification of Knowledge, Skills and Ability in Patent Process to Ensure Proper Hiring, Retention, and Promotion of Patent Examiners	(321)
New Words and Phrases	(324)
Notes	(326)
Word Study	(327)
Exercises	(328)
Reading Material Implementation of Pre-employment Testing for Patent Examiners	(329)
Keys to Exercises	(335)
Unit Thirty-One Enhance Current Quality Assurance Program by Integrating Reviews to Cover all Stages of Examination	(337)
New Words and Phrases	(342)
Notes	(343)
Word Study	(344)
Exercises	(345)
Reading Material Certification of Searching Authorities	(346)
Keys to Exercises	(349)
Unit Thirty-Two Transforming Work: The E-Government Work Place (1)	(350)
New Words and Phrases	(354)
Notes	(355)
Word Study	(357)
Exercises	(357)
Reading Material Transforming Work: The E-Government Work Place (2)	(358)
Keys to Exercises	(361)
Reference	(362)

Unit One Intellectual Property

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

Generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. Intellectual property is traditionally divided into two branches, “industrial property” and “copyright”.

The Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2(viii)) provides that “intellectual property shall include rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

The areas mentioned as literary, artistic and scientific works belong to the copyright branch of intellectual property. The areas mentioned as performances of performing artists, phonograms, and broadcasts are usually called “related rights”, that is, rights related to copyright. The areas mentioned as inventions, industrial designs, trademarks, service marks, and commercial names and designations constitute the industrial property branch of intellectual property. The area mentioned as protection against unfair competition may also be considered as belonging to that branch, the more so as Article 1(2) of the Paris Convention for the Protection of Industrial Property

(Stockholm Act of 1967) (the “Paris Convention”) includes “the repression of unfair competition” among the areas of “the protection of industrial property”; the said Convention states that “any act of competition contrary to honest practices in industrial and commercial matters constitutes an act of unfair competition” (Article 10bis(2)).

The expression “industrial property” covers inventions and industrial designs. Simply stated, inventions are new solutions to technical problems, and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and protection against unfair competition. Here, the aspect of intellectual creations—although existent—is less prominent, but what counts here is that the object of industrial property typically consists of signs transmitting information to consumers, in particular, as regards products and services offered on the market, and that the protection is directed against unauthorized use of such signs which is likely to mislead consumers, and misleading practices in general.

Scientific discoveries, the remaining area mentioned in the WIPO Convention, are not the same as inventions. The Geneva Treaty on the International Recording of Scientific Discoveries (1978) defines a scientific discovery as “the recognition of phenomena, properties or laws of the material universe not hitherto recognized and capable of verification” (Article 1(1)(i)). Inventions are new solutions to specific technical problems. Such solutions must, naturally, rely on the properties or laws of the material universe (otherwise they could not be materially or “technically” applied), but those properties or laws need not be properties or laws “not hitherto recognized”. An invention puts to new use, to new technical use, the said properties or laws, whether they are recognized (“discovered”) simultaneously with making the invention or whether they were already recognized (“discovered”) before, and independently from, the invention.

(Source: excerpt from “WIPO Intellectual Property Handbook: Policy, Law and Use” from <http://www.wipo.int>)

New Words and Phrases

- act** [ækt] vi. 行动, 产生…的效果, 担当, 表演, 假装, 表现, 见效 n. 幕, 法案, 法令, 动作, 举动, 节目, (戏剧的) 幕
- activity** [æk'tiviti] n. 活跃, 活动性, 行动, 行为
- access** ['ækses] n. 通路, 访问, 入门 vt. 存取, 接近
- addition** [ə'diʃən] n. 加, 加起来, 增加物, 增加, 加法
- aesthetic** [i:s'thetik] adj. 美学的, 审美的, 有审美感的
- among** [ə'mʌŋ] prep. 在…之中, …之一
- appearance** [ə'piərəns] n. 出现, 露面, 外貌, 外观
- appellation** [ˌæpe'leiʃən] n. 名称, 称呼
- application** [ˌæpli'keiʃən] n. 请求, 申请, 申请表, 应用, 运用, 施用, 敷用; 应用, 应用程序, 应用软件
- apply** [ə'plai] vt. 申请, 应用 vi. 申请, 适用
- area** ['eəriə] n. 范围, 区域, 面积, 地区, 空地
- article** ['ɑ:tɪkl] n. 文章, 论文, 物品, 商品, 项目, 条款 v. 清楚说出 adj. 表达清晰的 n. 条, 条款