**2019年上海法院知识产权审判白皮书**

**White Pater on Trial of Intellectual Property Cases by Shanghai Courts in 2019**

上海市高级人民法院

Shanghai High People’s Court

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**2019年上海法院知识产权司法保护状况**

2019年，上海法院充分发挥知识产权审判职能作用和司法保护主导作用，坚持贯彻“司法主导、严格保护、分类施策、比例协调”司法政策，公正高效审理各类知识产权案件，聚焦加大知识产权司法保护力度，继续深化对外交流合作，大力推进上海知识产权审判高地建设，着力优化创新创造营商环境，为进一步提升上海城市能级和核心竞争力、建成法治环境最好的全球城市积极提供优质高效的司法服务和保障。

一、知识产权审判总体情况

**（一）案件总量稳步攀升。**2019年，上海法院共受理各类知识产权案件23,580件、审结23,510件，同比分别增长3.97%和6.28%，收结案增长趋势有所放缓，但数量稳步提升，处于历史高位（图一）。

图一：2016-2019年上海法院各类知识产权案件  
收结情况对比图

受理一审知识产权案件22,996件，审结22,931件，同比分别增长7.64%和10.23%。其中，受理一审知识产权民事案件22,487件，审结22,496件，同比分别增长6.55%和9.53%（图二）；受2018年知识产权刑事案件管辖调整的影响（7类刑事案由被纳入知识产权刑事案件管辖范围），受理一审知识产权刑事案件507件，审结433件，同比分别大幅上升115.74%和103.29%；受理一审知识产权行政案件2件，审结2件，同比分别下降22件和48件。

图二：近五年一审知识产权民事案件收结趋势图

**（二）审判质效继续向好。**上海法院在案件总量持续增长态势下，审判质效保持良好。同期结案率99.70%，同比上升2.25%，其中一审知产民事案件同期结案率达100.04%；一审案件服判息诉率95.97%，同比上升1.44%；民商事案件调撤率75.83%，同比上升11.18%。

**（三）精品案件不断涌现。**2019年，上海法院精品案件数量再创历史新高。瓦莱奥清洗系统公司诉厦门卢卡斯汽车配件有限公司等侵害发明专利权纠纷案，入选最高人民法院指导性案例，并入选“2019年度人民法院十大民事行政及国家赔偿案件”。上海晨光文具股份有限公司诉得力集团有限公司等侵犯外观设计专利权纠纷案、开德阜国际贸易（上海）有限公司与阔盛管道系统（上海）有限公司等侵害商标权、虚假宣传纠纷案，以及宝马股份公司诉上海创佳服务有限公司、德马集团（国际）控股有限公司、周乐琴侵害商标权及不正当竞争纠纷案等3件案件入选《最高人民法院公报》案例。

平衡身体公司与永康一恋运动器材有限公司侵害商标权纠纷案入选“2019年中国法院知识产权司法保护十大案件”，许振纬等假冒注册商标罪、王彬销售假冒注册商标的商品罪案等4件案件入选“2019年中国法院知识产权司法保护50件典型案件”。

**（四）案件特点**

**1.著作权纠纷、商标权纠纷增速趋缓，特许经营合同纠纷、专利权纠纷案件数量大幅增长，不正当竞争纠纷同比明显下降。** 2019年，上海法院受理一审著作权纠纷案件17,717件，同比上升5%，增速同比下降88.64%；受理一审商标权纠纷案件2,375件，同比上升20.56%，增速同比下降65.9%，均呈现明显放缓趋势，也是全年上海法院各类知识产权案件受理总量增速下降的主要因素。在著作权纠纷中，受理侵害信息网络传播权纠纷案件15,066件，占一审著作权纠纷案件的85.04%，占比同比上升15.45%，反映出上海文化创意产业和网络信息产业繁荣发展的同时，涉信息网络的知识产权纠纷仍系当前侵害著作权案件的主要形式，且呈现出比重进一步放大的趋势。此外，受理一审专利权纠纷案件1,122件，同比上升91.14%，增幅明显，说明随着上海科创中心建设的不断推进，专利技术类案件继续呈现不断增长的趋势。受理一审特许经营合同纠纷案件891件，同比上升140.81%，连续两年呈现大幅攀升态势，表明特许经营商业模式仍存在相关问题亟待进一步规范。受理一审不正当竞争纠纷案件268件，同比下降67.04%，系此类案件在2018年出现井喷后的正常回落（图三）。

图三：2019年上海法院一审知识产权民事案件收案类型图

**2.大标的额案件持续涌现。**2019年，在上海法院受理的知识产权民事案件中，诉讼标的额在100万元至1,000万元的有610件，超过1,000万元的有57件。审结的盛绩信息技术（上海）有限公司与深圳市椰子互娱网络技术有限公司计算机软件开发合同纠纷案，诉请金额达2.08亿元。正在审理的重庆重橙网络科技有限公司诉上海二三四五网络科技有限公司侵害计算机软件著作权纠纷案，标的额近1.2亿元。受理的河北嘉福物业服务有限公司诉上海益中亘泰（集团）股份有限公司商标侵权及不正当竞争纠纷案，诉请标的额超过5,000万元。

**3.有社会影响力的案件持续增多。**上海法院审理的一批知识产权案件引发业界和社会关注。如上海三联（集团）有限公司吴良材眼镜公司等与南京吴良材眼镜有限公司等“吴良材”商标权侵权及不正当竞争纠纷申诉案，涉及新经济业态下由历史原因产生的“老字号”权利冲突及司法保护问题；深圳市朗科科技股份有限公司与创歆贸易（上海）有限公司等侵害发明专利权纠纷19案，涉案专利系移动存储领域的开创性技术；刘三田诉周梅森等著作权侵权纠纷案，涉及知名反腐文艺作品《人民的名义》；华其敏、陆爱珍与上海沈大成食品有限公司等著作权侵权纠纷案，两原告系知名画家华三川后人，被告“沈大成”系沪上知名餐饮企业；车王（中国）二手车经营有限公司与车好多旧机动车经纪(北京)有限公司不正当竞争纠纷一案，涉及“车王认证二手车超市”“瓜子二手车直卖网”两家国内知名二手车经营主体等。

**4.疑难、复杂、新类型案件持续增长。**深圳市乔安科技有限公司诉张志敏等因恶意提起知识产权诉讼损害责任纠纷、因申请诉中财产保全损害责任纠纷案，认定将已公开销售的产品申请专利并起诉同行构成恶意诉讼，并承担损害赔偿责任，该案也入选上海法院参考性案例。北京爱奇艺科技有限公司与杭州飞益信息科技有限公司等不正当竞争纠纷案，判定运用技术手段虚假刷高视频播放量行为构成不正当竞争。涉网络游戏《守望先锋》著作权侵权两案，首次将射击类游戏作为类电影作品保护，并对司法层面破解“换皮游戏”侵权困局进行了积极探索。金纽曼思（上海）食品有限公司与纽曼斯营养科技（北京）有限公司等侵害商标权纠纷案，涉及类似商品判断的新问题，法院最终认定类似商品判断主要根据相关公众对商品或者服务的一般认知，而非所属科学领域的学术观点。此外，创新制芯有限公司与思科（中国）有限公司等侵害发明专利权纠纷案、王彬与上海阅文信息技术有限公司滥用市场支配地位纠纷案、英翱（上海）商贸有限公司与石狮市物勒工名服饰有限公司等著作权侵权纠纷案以及上海宽娱数码科技有限公司与福州市嘀哩科技有限公司等侵害作品信息网络传播权纠纷案等，分别涉及芯片设计制造的相关前沿技术问题、网络公司垄断行为认定、抗战时期美国援华航空队“飞虎队”的相关标识著作权认定以及对日本法中有关著作权权属的外国法查明等新问题。

二、不断加大知识产权司法保护力度

**（一）足额支持赔偿诉请，充分体现权利价值。**在亨斯迈先进材料（瑞士）有限公司诉浙江龙盛集团股份有限公司等侵害发明专利权纠纷中，应权利人申请进行司法会计鉴定查明侵权产品销售额，并结合相关案件事实，酌情确定判赔金额1,400万元。美国平衡身体公司诉永康一恋运动器材有限公司侵犯商标权纠纷案，系上海首例适用知识产权侵权惩罚性赔偿案件，平等、严格保护中外市场主体的知识产权，全额支持原告300万诉请。在贝比赞公司与河北绿源童车有限公司侵害发明专利权纠纷案，以及斐珞尔（上海）贸易有限公司与珠海金稻电器有限公司等侵害外观设计专利权纠纷案中，均在查明侵权产品销售数量的基础上，依法支持原告选择的有利于权利保护的损害赔偿计算方式，全额支持了两案原告各300万元的诉请。在沈阳山泰矿山机械设备制造有限公司等与美卓矿机（天津）国际贸易有限公司等侵害商标权及不正当竞争纠纷等案件中，均做出法定最高赔偿300万的判决。

**（二）探索多种程序机制，有效维护合法权益。**在上海点点乐信息科技有限公司与上海犀牛互动网络科技有限公司等侵害商标权及不正当竞争纠纷案中，首次运用证据出示令制度，责令被告提交有关被控游戏营收的证据，并因两被告拒不提交证据，参考原告的主张和提供的证据将一审判赔金额从20万元改判至300万元。最高人民法院《关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》于2019年1月施行后，在上海鸿研物流技术有限公司与义乌市瑞来塑业有限公司侵害发明专利权纠纷案中，准确适用该司法解释对“情况紧急”的相关定义，基于当事人的申请首次作出行为保全裁定，并至展会现场送达，被申请人主动履行了裁定义务，及时保护了专利权人的合法权益。针对部分超长审理期限专利侵权案件，以国家知识产权局是否最终维持涉案专利效力作为调解协议附加条件，促进双方当事人在现有状况下达成和解，取得理想效果。

**（三）加大刑事打击力度，不断净化市场环境。**在被告人许振纬、鲁成学等9人犯假冒注册商标罪、王彬犯销售假冒注册商标的商品罪一案中，涉及多名被告人因假冒、销售假冒世界知名品牌“科颜氏”化妆品，准确认定共犯，严格适用刑罚，分别被判处有期徒刑四年六个月至一年四个月不等的实刑，并分别被判处高额罚金。二审当庭宣判后，法国大使馆通过外交照会上海高院对上海法院的司法保护工作表示感谢。此外，审结“法新面包案”“正大公司重大侵犯商业秘密案”“流浪地球案”“干细胞假药案”“假冒‘玉棠’牌白糖系列案”等一批社会关注度较高且复杂重大敏感案件，得到多方高度评价。畅通知识产权刑事联动机制，确立刑事案件跨区合作制度，形成打击知识产权犯罪的合力。

三、扎实推进服务保障大局各项工作

**（一）认真服务区域经济社会创新发展。**上海三级法院赴上海商标审查协作中心、知识产权浦东保护中心以及上海寻梦信息技术有限公司、紫光展锐科技有限公司等相关企业对商标行政案件管辖、专利受理和初审以及电商平台、5G芯片等知识产权保护需求等进行调研。上海知产法院依托“陈惠珍法官工作室”“凌崧法官工作室”平台，积极走访一线科创企业，并举办职务发明讲座、巡回庭审等多次活动。浦东法院集中调研临港新片区、张江高科技园区等，听取民营企业意见。徐汇法院调研电商平台运营企业，杨浦法院设立全市首个双创审判巡回点，普陀法院在第二届进博会期间开展咨询等，以提供优质高效的司法服务。

**（二）推进长三角地区知识产权司法保护协作机制构建。**上海高院会同浙江、江苏、安徽三省高院，就长三角地区知识产权司法保护协作开展研究会商，联合会签《长江三角洲地区人民法院知识产权司法保护交流合作协议》，建立四地法院知识产权司法保护协作机制。这是继长三角四地高院签约开展司法协作后，在审判条线层面第一个签约的合作协议。

**（三）优化自贸区新片区法治营商环境。**积极回应上海自贸区临港新片区司法保障需求，浦东法院成立自贸区知识产权法庭临港新片区审判站；对接中国（浦东）知识产权保护中心并成立倪红霞法官工作室，定期派驻知识产权法官，及时了解企业对知识产权保护新需求，为解决知识产权纠纷提供便捷渠道，服务产业和经济社会发展。召开第四届自贸区知识产权司法保护研讨会，深入开展理论和实务探讨，着力破解新类型自贸区知识产权保护难题。

四、积极深化知产司法对外交流模式

**（一）有序深化院校合作交流机制。**市高院与华东政法大学建立常态化交流合作机制，签署《关于加强知识产权教育和司法实践的专项合作纪要》，在人才培养、书籍出版、国际交流等方面进行深入合作。定期遴选同济大学和华东政法大学研究生担任上海高院和上海知产法院法律助理实习生，参与审判辅助和调研工作。组织同济大学“世界知识产权组织（WIPO）”和“一带一路”硕士项目班学生等赴三级法院知产审判部门学习交流。整合全市法院知产审判力量，深度参与同济大学和华东政法大学研究生项目，为WIPO和“一带一路”硕士项目班学生以及WIPO暑期学校学生授课、开展中、英文的模拟法庭活动；同济大学开展的课程活动报世界知识产权组织备案。

**（二）有效发挥国际交流基地作用。**2019年11月，市高院召开“新时代知识产权司法保护国际研讨会”，来自欧盟的专家、国内知名学者以及最高法院、其他省市高院的法官围绕知识产权司法保护的现代化与国际化、惩罚性赔偿制度研究等专题进行研讨，取得共识与成效。上海法院知识产权对外交流小组翻译、校对、跟踪并报送了一批英文文献资料，与华东政法大学合作启动了WIPO知识产权国际政策法律文本库建设项目，对知识产权相关国际条约订立目的、背景以及过程进行梳理和编译，取得初步成果。

**（三）有力展示上海知产审判形象。**高院先后接待芬兰驻上海总领事馆副总领事、美国国家专利商标局中国知识产权政策高级法律顾问等外方人士。知产法院与欧盟知识产权局上诉委员会通过视频连线方式开展知识产权司法保护国际交流。高院发布《2018年上海法院知识产权审判白皮书》和“2018年上海法院知识产权司法保护十大案件”“2018年上海法院加强知识产权保护力度典型案件”。知产法院还就专利、计算机软件著作权案件审判情况和典型案例召开通报会，浦东法院发布了白皮书和典型案例。在4.26期间，全市法院通过新媒体手段共直播庭审案件23件、集中宣判32件。

五、稳妥开展知识产权审判调研指导

**（一）制定审判规则指引。**高院会同市检察院、市公安局以及高校专家学者，召开“知识产权犯罪量刑”研讨会，发布《关于常见知识产权犯罪的量刑指引》，供全市法院知识产权刑事审判参考。知识产权法院和徐汇法院分别撰写《外观设计专利侵权办案要件指南》《商标侵权办案要件指南》，将在2020年研讨审核后参考适用。

**（二）召开专题研讨会。**高院会同交通大学和华东政法大学，分别召开 “《电子商务法》与知识产权保护”“知识产权纠纷行为保全司法适用”研讨会，对电商平台的责任边界、错误投诉的法律责任、知识产权纠纷行为保全程序、行为保全的申请与审查程序等问题进行深入探讨，厘清审理思路，在相关问题解决上达成共识。

**（三）完善案件审理机制。**知产法院充分发挥法官助理初步审理作用，探索适用令状式及表格式文书样式，出台国内首例《技术审查意见适度公开规则》，推进繁简分流办案机制。浦东法院发布《知识产权民事案件新型庭审流程指引（试行）》，徐汇法院通过庭前沟通庭审释明，引导当事人庭审中确认无争议的事实和诉请。杨浦法院开展“书状先行，争点整理，公开心证”等内容的新型庭审改革，普陀法院组建专业审判团队，切实提高审判效率。

**（四）加强课题调研和指导载体建设。**高院开展《知识产权惩罚性赔偿的司法适用》课题研究，知产法院完成《证据出示令制度在知识产权诉讼中的适用问题研究》等报批课题，浦东法院参与市级课题《完善上海自由贸易试验区知识产权营商环境对策研究》。此外，高院知产庭定期编发《上海知识产权审判》刊物，并完成“WIPO—中国（上海）知识产权司法保护系列丛书”《上海法院知识产权案例精选》（2015-2016）、（2017-2018）版本的编辑出版工作。

**（五）创新业务培训形式。**探索与同济大学合作举办知识产权保护发展形势培训班新模式，邀请WIPO中国区高级顾问、最高法院民三庭和知识产权法庭的资深法官、国家市场监管总局上海商标审查协作中心的专家、本市交大、同济、上大、华政四所高校的知识产权学院院长，来自中德经济法研究所的德国教授以及区块链等技术领域专家教授担任授课老师，向全市法院知产法官及其他条线的干警介绍知识产权保护的最新发展情况，取得良好反响。

2020年是全面建成小康社会的决胜之年和十三五规划的收官之年，上海要在更高水平上全面建成小康社会，形成具有全球影响力的科技创新中心基本框架。上海法院将始终坚持以习近平新时代中国特色社会主义思想为指导，全面贯彻落实党的十九大和十九届二中、三中、四中全会精神，以知识产权司法现代化、国际化、专业化、精细化发展为工作目标，充分发挥司法保护知识产权的职能作用，持续加大知识产权司法保护力度，着力打造符合上海知识产权审判事业发展需要的专业队伍，不断提升司法保护促进法治化营商环境建设的能力，为上海提升城市能级和核心竞争力、建设具有全球影响力的科创中心提供更为优质高效的知识产权司法服务和保障。

**An Overview on Juridical Protection of Intellectual Property by Shanghai Courts**

**in 2019**

In 2019, Shanghai courts gave full play to their functions and rolesin connection with trial of IP cases and the leading role of the judiciary in IP protection, insisting on implementationof the judicial policy on IP protection, i.e.,“leading role of the judiciary, strict protection, tailored policy implementation for different IPRs, and proportionality”, heard various types of IP cases in a fair and efficient manner, focused on strengthening of judicial protection of IPR, further deepened international exchanges and cooperation, made vigorous efforts inbuilding Shanghai into a highland for IP casetrial and improvingthe environmentfor innovation, and hencebusiness and investment, and provided high-quality and efficient judicial services and guaranteesto further improve Shanghai's urban function level and core competitiveness and makeShanghai a global city with top-notch legal environment.

**I. General Situation onIPCase Trial**

**(1) The total number of cases increased steadily.** In 2019, Shanghai courts accepted a total of 23,580 IP cases and concluded 23,510 IP cases, up 3.97% and 6.28% respectively from the previous year. With a slower but steady increase, the numbers of accepted and concluded reached a historical high (Figure 1).

Cases accepted Cases concluded

Figure 1: Comparisons of IP Cases Accepted and Concluded by Shanghai Courts in 2016-2019

A total of 22,996 cases accepted and 22,931 cases concluded were cases of first instance, representing a year-on-year increase of 7.64% and 10.23% respectively. Among them, 22,487 cases accepted and 22,496 cases concluded were civil IP cases, up 6.55% and 9.53% respectively from the previous year (Figure 2); due to the adjustment of jurisdiction over criminal IP cases in 2018 (to cover 7 more types of causes of criminal actions), 507 cases accepted and 433 cased concluded were criminal IP cases, skyrocketing 115.74% and 103.29% respectively from the previous year; and 2 cases accepted and 2 cases concluded were administrative IP cases, respectively 22 and 48 cases less than that of the previous year.

Figure 2: Trend Chart of Accepted and Concluded Civil IP Cases of First Instance in Past Five Years

**(2) The quality and efficiency of trials kept improving.** Though the number of total cases kept growing, courts across the city have maintained the good quality and efficiency of trials. The ratio of cases concluded to cases accepted in the same periodreached 99.70%, up 2.25% YoY. In particular, the ratio of civil IP cases of first instance concluded to those accepted in the same period hit 100.04%; in 95.97% of the cases of first instance, litigants were willing to accept the judgments rendered, up 1.44% YoY; and civil and commercial IP cases that were withdrawn after mediation amounted to 75.83% of the total, up 11.18% YoY.

**(3) Model cases kept emerging.** In 2019, the number of model cases tried by Shanghai courts hit another record high. *Valeo Systemes d'Essuyage SAS v. Xiamen Carall Auto Parts Co., Ltd. et al.* over dispute in invention patent right infringement was selected into Guiding Cases of the Supreme People’s Court and into the Ten Major Civil, Administrative and State Compensation Cases of People’s Courts in 2019. Another 3 cases were selected into the Gazettes of the Supreme People’s Court. They are: *M&G Chenguang Stationery Co., Ltd. v. Deli Group Co., Ltd. et al.*over dispute in design patent rightinfringement; *K. D. Feddersen Distribution (Shanghai) Co., Ltd. v. Aquatherm Pipeline System (Shanghai) Co., Ltd. et al.* over disputes in trademark infringement and false publicity; and *Bayerische Motoren Werke AG v. Shanghai Chuangjia Services Co., Ltd., Dema Group (INT’L) Holding Limited and Zhou Leqin*over disputes in trademark infringement and unfair competition. *Balanced Body Incorporation v. Yongkang Gymnastics Equipment Co., Ltd.*, a case of trademark infringement dispute, was selected into the *2019 Top Ten IP Cases of Chinese Courts*. Four cases including the criminal case of Xu Zhenwei et al. committing the crime of counterfeiting registered trademark, and the criminal case of Wang Bin committing the crime of selling commodities bearing counterfeit registered trademarks were selected into the *2019 Top 50 Typical IP Cases of Chinese Courts*.

**(4) Features of Cases**

**1. The number of copyright and trademark cases saw****a slower increase, the number of franchise and patent cases increased significantly, while the number of unfair competition cases decreased remarkablycompared with the previous year.** In 2019, Shanghai courts accepted altogether 17,717 cases of first instance over copyright disputes, up 5% YoY with the increase rate down 88.64%, and accepted 2,375 first instance trademark cases, up 20.56% YoY with the increase rate down 65.9%. The significant slowing trend of both indexes was also the main contributor to the decline in the increase rate of the total number of IP cases accepted by Shanghai courts throughout the year. Among cases of copyright disputes, 15,066 cases, or 85.04% of the total, involved disputes over infringement of the information network transmission right of works, up 15.45% from the previous year. This reflects that with the prosperity of Shanghai’s cultural and creative industry and network information industry, IP disputes involving information network are still the main form of copyright infringement cases at present and show a further increasing trend in terms of the proportion. In addition, there were1,122 cases of first instance accepted over patent right disputes, a surge of 91.14% YoY, indicating that cases involving patented technologies have kept increasing as the construction of Shanghai Science and Technology Innovation Center proceeds. And there were 891 cases of first instance accepted over franchise contract disputes, up 140.81% YoY. The surge in two consecutive years indicates that there are still issues in the franchise model that need to bestandardized. Shanghai courts also accepted 268 cases of first instance over unfair competition disputes, down 67.04% from the previous year, showing a normal decline after a blowout in 2018. (Figure 3)

Figure 3: Types of First Instance Civil IP Cases Accepted by Shanghai Courts in 2019

**2. Cases involving large-amount claims continued to emerge.** In 2019, courts across the city accepted 610 civil IP cases involving an amount of over RMB 1 million yet no more than RMB 10 million and 57 cases involving an amount of over RMB 10 million. The case that has been concluded between Shengji Information Technology (Shanghai) Co., Ltd. and Shenzhen Coconut Mutual Entertainment Network Technology Co., Ltd. over computer software development contract dispute involved an amount of RMB 208 million.*Chongqing Chongcheng Network Technology Co., Ltd. v. Shanghai 2345 Network Technology Co., Ltd.* over computer software copyright infringement dispute that is being tried involved an amount of nearly RMB 120 million. In *Hebei Jiafu Property Service Co., Ltd. v. Shanghai ServeChina Logistics Group Co., Ltd.* over trademark infringement dispute and unfair competition dispute that has been filed with the court, the claimed amountexceeds RMB 50 million.

**3. Cases with social influence kept increasing.** A number of IP cases tried by Shanghai courts have attracted the attention from the relevant sectors and the society. For example, the case of application for retrial, i.e.,*Wuliangcai Glasses Co., Ltd. of Shanghai Sanlian (Group) Co., Ltd. et al. v. Nanjing Wuliangcai Glasses Co., Ltd. et al.* over dispute ininfringement of the “Wuliangcai” trademark and unfair competition concernsconflictof right and judicial protectionin terms ofthe time-honored brand with historical factors under new economic forms. In the 19 cases filed byShenzhen Netac Technology Co., Ltd. against ChuangXin Trading (Shanghai) Co., Ltd. and others over dispute in invention patent rightinfringement,the patent involvedwas a pioneering technology in the field of mobile storage. *Liu Santian v. Zhou Meisen et al.* over copyright infringement dispute involvedthe well-known anti-corruption literary work *In the Name of the People*. In *Hua Qimin and Lu Aizhen v. Shanghai Shendacheng Food Co., Ltd.* over copyright infringement dispute, the two plaintiffs are descendants of well-known painter Hua Sanchuan while the defendant Shendacheng is a well-known catering enterprise in Shanghai. *Car King (China) Used Car Operation Co., Ltd. v. Chehaoduo Used Automobile Agency (Beijing) Co., Ltd.*over unfair competition dispute involved two well-known domestic used car operation entities, namely Car King (China) Used CarSupermall and GuaziUsed AutomobileDirect Selling Website.

**4. Difficult and complicated cases and new types of cases continued to increase.**In *Shenzhen Jooan Technology Co., Ltd. v. Zhang Zhimin et al.*over disputes in liability for damages arising respectively frommalicious IP lawsuit and application for property preservation during lawsuit, it was determined that applying for patents for products that have been publicly sold and suing competitors constitute malicious litigation, for which the party concerned shall be liable for damages. This case was also selected as a reference case for Shanghai courts. In*Beijing IQIYI Science & Technology Co., Ltd. v. Hangzhou Feiyi* *Information Technology Co., Ltd. et al.*over unfair competition dispute,it was determined that the fraudulent use of technical means to increase video views constitutes unfair competition. In the two cases that involved copyright infringement of the online game Overwatch, shooting games were protected for the first time asassimilated works expressed by a process analogous to cinematography, and active exploration was made to solve the infringement dilemma of “skin-changing games” (copying gameplay etc.) at the judicial level.*Numans (Shanghai) Food Co., Ltd. v. Neuromins Nutrition Technologies (Beijing) Co., Ltd. et al.* over trademark infringement dispute involved new problems in identifying similar products. In this case, the court ultimately held that identification of similar products shall be based on general conception of the relevant public on products or services, rather than on academic views in the field in which the products belong to.

**In addition,***Innovative Foundry Technologies LLC v.* *Cisco (China) Co., Ltd. et al.* over dispute in invention patent right infringement,*Wang Bin v. Shanghai Yuewen Information Technology Co., Ltd.* over dispute in abuse of dominant market position, *Avirex (Shanghai) Trading Co., Ltd.v.Shishi Wule Gongming Clothing Co., Ltd. et al.* over copyright infringement dispute, and *Shanghai Kuanyu Digital Technology Co., Ltd. v. Fuzhou Dilidili Technology Co., Ltd.*over dispute in infringement of information network transmission rights of works respectively involved cutting-edge technological issues related to chip design and manufacturing, the identification of monopolistic behaviors of Internet companies, the identification of copyright of the “Flying Tigers” logo of the US Air Force during the Anti-Japanese War, and the identification of Japanese laws on copyright ownership.

**II. Constantly Strengthening Judicial Protection of IPR**

**(1) Claims for compensation were supported in full amount to fully reflect value of the intellectual property.** In *Huntsman Advanced Materials (Switzerland) GmbH v.* *Zhejiang Longsheng Group Co., Ltd. et al.*overdispute in invention patent rightinfringement, judicial accounting appraisal was conducted upon the application of the right owner to find out the sales amount of infringing products, and the defendants were ruled to compensateRMB 14 million based on relevant facts of the case. *Balanced Body Inc. v. Yongkang Elina Sports Co., Ltd.*over trademark infringement dispute is the first case in Shanghai to apply punitive damages for infringement of IPR. In this case, the claim of the plaintiff for a compensation of RMB 3 million was supported in full amount in the principle of protecting theIP rights of both Chinese and foreign market players in an equal and strict manner. In both*BABYZEN v. Hebei Lvyuan Baby Strollers Co., Ltd.* over dispute in invention patent right infringement and*FOREO (Shanghai) Trading Ltd. v.* *Zhuhai K·SKIN Electric Appliance Co., Ltd. et al.* over the dispute in design patent rightinfringement, the methods of calculating damages chosen by the plaintiffs that were conducive to right protection were supported in accordance with the law on the basis of finding out the sales volume of infringing products, and the claim of each plaintiff for a compensation of RMB 3 million was supported in full amount. In cases like*Metso Minerals (Tianjin) International Trade Co., Ltd. et al. v. Shenyang Shanland Mining Machinery & Equipment Manufacturing Co., Ltd. et al.* over trademark infringement dispute and unfair competition dispute, the court concerned also rendered the ruling of a compensation of RMB 3 million, the statutory maximum amount of compensation.

**(2) Various procedural mechanisms were explored to effectively safeguard legitimate rights and interests.** In the caseof*Shanghai Diandianle Information Technology Co., Ltd. v. Shanghai XNHD Network Technology Co., Ltd. et al.* over trademark infringement dispute and unfair competition dispute, the evidenceproduction subpoena was applied for the first time to order the defendants to submit evidence on the alleged game revenue, and the amount of compensation was revised from RMB 200,000 ruled in the case of first instance to RMB 3 million after referring to the plaintiff’s claims and submitted evidencesas the two defendants refused to submit evidence. After the *Provisions on Several Issues concerning the Application of Law in Examining Cases Involving Act Preservation in Intellectual Property Disputes*of the Supreme People’s Court came into effect in January 2019, the definition of “urgent circumstances” therein was correctly applied in the case of*Shanghai HongYan Returnable Transit Packaging Co., Ltd v. Yiwu Ruilai Plastics Co., Ltd.* over dispute in invention patentinfringement. An injunction ruling was rendered for the first time based on the application of the applicant and served to the exhibition site. The respondent voluntarily fulfilled the obligation stated in the ruling, enabling timely protection of the legitimate rights and interests of the patentee. For some patent infringement cases with long trial terms, whether the State Intellectual Property Office will ultimately maintain the validity of the patents involved was included in the mediation agreementas an additional condition to promote both parties tosettlethe case under the existing conditions, which have achieved ideal results.

**(3) Crackdown on crimeswas intensified to continuously improve the market environment.** In the case in whichthe 9 defendants including Xu Zhenwei and Lu Chengxue committed the crime of counterfeiting the registered trademark ofthe world renowned brandKiehl’s and the defendant Wang Bin committed the crime of selling cosmetics with the counterfeited registered trademark, the accomplice was correctly ascertained and the criminal punishment was strictly imposed.The defendants were sentenced to fixed-term imprisonment of different periods ranging from four years and six months to one year and four months and were respectively ruled to paya large amount of fine. After the judgment was handed down inthe court of second instance, the French embassy extended its gratitude to Shanghai courts for the judicial protection workinitsdiplomatic note to Shanghai High People’s Court. In addition, a number of highly sensitive and complex cases with a lot of social concern, such as the Faxin Bread case, the case involving Zhengda Company’s severemisappropriation of trade secrets, the Wandering Earth case, the counterfeit stem-cell drug case, and the serial cases involving the counterfeit of “Yutang”white sugar were concluded,which were highly appraisedby many of those who are concerned. The linkage mechanism for criminal IP cases was unblocked, and a system of cross-regional cooperation in criminal cases was established to form a synergy to crack down on IP crimes.

**III. Steadily Advancing Work to Serve and Guarantee the Greater Good**

**(1) Earnest services were provided to promote regional economic and social developmentdriven by innovation.**Shanghai courts of three levels went to Shanghai Trademark Examination and Cooperation Center, Pudong Intellectual Property Protection Center, Shanghai Xunmeng Information Technology Co., Ltd., UNISOCTechnologiesCo., Ltd. and other related enterprises to conduct survey on the jurisdiction of administrative trademark cases, theacceptance and preliminary examinationof patent applications, and the demand for IP protection in fieldslike e-commerce platforms and 5G chips. Relying on platforms like Judge Chen Huizhen’sStudio and Judge Ling Song’s Studio, Shanghai IP Court actively visited frontline scientific and technological innovation enterprises and held multiple activities, including lectures on service inventions andcircuit court trials. Pudong District Court focused on the survey of Lingang New Area and Zhangjiang High-tech Park to listen to the opinions of private enterprises. Xuhui District Court conducted surveyon e-commerce platform operators, Yangpu District Court set up the city’s first circuit trial station for innovation and entrepreneurship, while Putuo District Court provided consultingduring the second CIIE to provide quality and efficient judicial services.

**(2) A cooperation mechanism was established for judicial protection of IPR in the Yangtze River Delta region.** Shanghai High People’s Court, in conjunction with the high courts in Zhejiang, Jiangsu and Anhui, has conducted research and consultation on the judicial protection of IPR in the Yangtze River Delta region. The four high courts have countersigned the *Exchange and Cooperation Agreement on Judicial Protection of Intellectual Property Rights Among People’s Courts in Yangtze River Delta Region*to establish a cooperation mechanism among the courts of the four regions for judicial protection ofIPR. This is the first cooperation agreement signed at the trial line level after the high courts in the four regions signed an agreement to carry out judicial cooperation.

**(3) The legal and business environment in the new area ofShanghai Pilot FTZ was improved.** In response to the need for judicial guarantee in Linggang New Area in Shanghai Pilot FTZ, Pudong District Court established the Linggang New AreaTrial Station under theFTZ IPTribunal, set up Judge Ni Hongxia’s Studioin cooperation with China (Pudong) Intellectual Property Protection Center, and dispatchIP judges regularly to keep abreast of the new demands of enterprises for IP protection, so as to provide convenient channels for settling IP disputes and serve the industrial, economical and social development. The fourth seminar on the judicial protection of FTZ-related IPRwas held to carry out in-depth theoretical and practical discussions, with focus on solving the new types of difficult problems in protection of FTZ-relatedIPR.

**IV.Actively deepening the mode of exchanges with external parties in judicial protectionof intellectual property**

**(1) Mechanism for cooperation and exchange with colleges and universitiesbecame more sophisticated.**Shanghai High People’s Court and East China University of Political Science and Law have established a regular exchange and cooperation mechanism and signed the *Memorandum for Special Cooperation on Strengthening Intellectual Property Education and Judicial Practice*to extend cooperation in talent training, book publishing and international exchanges. Graduate students from Tongji University and East China University of Political Science and Law were regularly selected to serve as legal assistant interns atShanghai High People’s Court and Shanghai IP Court to participate in trial assistance and survey work. Students of the master program of Tongji University, i.e., World Intellectual Property Organization (WIPO) and Belt &Road Initiativewere organized to study and exchange in the IP divisionsat the courts of three levels. Experts in IP case trial across all the courtsin Shanghai were integrated for in-depth participationin the postgraduate programs of Tongji University and East China University of Political Science and Law. They gave lectures to WIPO -BRI class and WIPO summer school, and conducted moot court activities in both Chinese and English.The curriculum activities carried out by Tongji University werefiled withthe World Intellectual Property Organization.

**(2) The role of International Exchanges Base (Shanghai) for Judicial Protection of Intellectual Property Rights was brought into effective play.** The International Symposium on Judicial Protection of IPR in the New Erawas held by Shanghai High People’s Court in November 2019, and experts from the EU, well-known domestic scholars, and judges from the Supreme Court and high courts of other provinces and municipalitiesdiscussedtopics focusing onmodernization and internationalization of the judicial protection of IPRand the system of punitive damages, with consensus and fruitful resultsachieved. The Foreign Exchange Team of Shanghai Courts on Intellectual Property has translated, proofread, tracked and submitted quite a number of English documents and materials. It has also launched a project to build a database oftexts of WIPO international policies and laws on intellectual property in cooperation with East China University of Political Science and Law to comb and compile the purpose, background and process of concluding international treaties related to intellectual property, which has achieved initial results.

**(3) The good image of Shanghai courts in terms of IP case trial was well demonstrated.** Shanghai High People’s Courthas successively received foreign guests such as the Deputy Consul General of the Consulate General of Finland in Shanghai and the Senior Legal Adviser of the United States Patent and Trademark Office on China’s IP Policies. Shanghai IP Court had a video conference with the Appeal Committee of the European Union Intellectual Property Office for international exchange on judicial protection of IPR. Shanghai High People’s Court issued the *White Paper on Trial of IP Cases by Shanghai Courts in 2018*, Top Ten Cases onJudicial Protection of IPRby Shanghai Courts in 2018 and Typical Cases with Strengthened Protection ofIPRby Shanghai Courts in 2018. Shanghai IPCourt held news briefing on trial of patent and computer software copyright cases and typical cases. Pudong District Court issued its white paper and typical cases. Before andafterApril 26, the courtsin Shanghai broadcasted live trial of 23 cases and handed down judgments of 32 cases through new media.

**V. Steadily Carrying outResearch and Guidance onIPCase Trial**

**(1) Guidelines for trial rules were established.**Shanghai High People’s Court, together with Shanghai Procuratorate, Shanghai Public Security Bureau, and experts and scholars from universities, co-organized a seminar on sentencing inIPcrimes and issued the *Guidelines for Sentencing in Common IP Crimes* for reference by courts across Shanghaion trial of criminal IP cases. Shanghai IP Court and Xuhui District Court respectively compiled the*Guidelines on Key Points in Handling Cases of Design Patent Infringements* and the *Guidelines on Key Points in Handling Cases of Trademark Infringements*, which will be applied after deliberation and review in 2020.

**(2) Special seminars were held.** Shanghai High People’s Court, together with Shanghai Jiao Tong University and East China University of Political Science and Law, held seminars on “E-Commerce Law and IP Protection” and “Judicial Application of Injunctions inIP Disputes” respectively, at which the boundary of e-commerce platforms’ responsibilities, the legal liability for erroneous complaints, the procedure for injunctions in IP disputes, the application and review procedure for injunctions etc. were discussed in depth to clarify thoughts about trials and reach consensus on resolution of relevant issues.

**(3) Case trial mechanism was improved.** Shanghai IP Court gave full play to the role of judge assistants in preliminary trial, explored the application of legal documents in the form of writs and sheets, issued the first *Rules for Appropriate Disclosure of Technical Examination Opinions* in China, and promoted the mechanism of diverging complicated cases and simplified ones. Pudong District Court Released the*Guidelines on New Trial Procedures for Civil IP Cases (Trial)*.Through pre-trial communication and interpretation during the trial, Xuhui District Courtguidedthe parties to affirm uncontested facts and claims in the trial. Yangpu District Court launched its reform in court trial, including“submittingwritten documents and exchanging evidences before trial, sorting out points in dispute, and disclosing judges’ conviction”. Putuo District Court set up a professional trial team to effectively improve the trial efficiency.

**(4)Judicial research and guiding platforms were strengthened.** Shanghai High People’s Court carried out theresearch on *Judicial Application of Punitive Damages in IP Cases*. Shanghai IP Court completed the *Research on Application of Evidence Production Subpoena System in IP Lawsuits*. Pudong District Court participated in the *Research on Countermeasures to Improve the IP-related Business Environment in Shanghai Pilot Free Trade Zone,* which is a research project sponsored by Shanghai Municipality. In addition, the IP Division of Shanghai High People’s Court compiled and issuedon a regular basis*Shanghai IP Case Trial* and has completed the editing and publishing of *Selected IP Cases of Shanghai Courts (2015-2016) and (2017-2018)* under the WIPO-China (Shanghai) Book Series on Judicial Protection of IPR.

**(5) New ways were explored for professional trainings.**A new mode was explored for organizing a training course on the development of IP protection in cooperation with Tongji University. WIPO’s senior advisors in China, senior judges atIP Division and IP Court of the Supreme Court, experts from the Shanghai Trademark Examination and Cooperation Center of the State Administration for Market Regulation, deans of the IPDepartments of the four universities in Shanghai, i.e. Jiao Tong University, Tongji University, Shanghai University, East China University of Political Science and Law, German professors from the Sino-German International Economic Law Institute, and experts and professors in technical fields such as block chain were invitedas lecturers to introduce the latest developments of IP protectionto theIPjudges in Shanghai and other working staffin Shanghai courts, whichwere echoed with positive feedback.

Year 2020 is the determinative year for building a moderately prosperous society in an all-round way and the closing year of the 13th Five-Year Plan. This year, Shanghai needs to build a moderately prosperous society in an all-round way at a higher level and establish the basic framework for the science& technology innovation center with global influence.Always following*President Xi Jinping’s Thoughts on Socialism with Chinese Characteristics for a New Era* and the spirits of 19th National Congress of the CPC and the second, third and fourth plenary sessions of the 19th CPC Central Committee, Shanghai courts willwork on modernizing, internationalizing, specializing and refiningthe judicial protection of IPR,give full play to their judicialfunctions and rolesin IPR protection, and constantly strengthen the judicial protection of IPR. Shanghai courtswill strive to build a professional team that meets the needs of IP trialdevelopment in Shanghai, continue to improve the ability injudicial protectionof IPR and hence in promoting the rule-of-law business environment, and provide more high-quality and efficient IP-related judicial services and guarantees for Shanghai to enhance its urban function level and core competitiveness and to build a science& technology innovation center with global influence.