

中国法院知识产权 司法保护状况

(2018年)

Intellectual Property Protection by
Chinese Courts in 2018

人 民 法 院 出 版 社



图书在版编目 (CIP) 数据

中国法院知识产权司法保护状况. 2018年 / 最高人民法院
知识产权审判庭编. — 北京 : 人民法院出版社, 2019.4
ISBN 978-7-5109-2498-9

I . ①中… II . ①最… III . ①知识产权保护—研究—
中国—2018 IV . ①D923.404

中国版本图书馆CIP数据核字 (2019) 第066392号



中国法院知识产权司法保护状况 (2018年)

最高人民法院知识产权审判庭 编

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出版发行 人民法院出版社

地 址 北京市东城区东交民巷27号 (100745)

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65223677 (读者服务部)

客服 QQ 2092078039

网 址 <http://www.courtbook.com.cn>

E-mail courtpress@sohu.com

印 刷 北京瑞禾彩色印刷有限公司

经 销 新华书店

开 本 787×1092毫米 1/16

字 数 72千字

印 张 6

版 次 2019年4月第1版 2019年4月第1次印刷

书 号 ISBN 978-7-5109-2498-9

定 价 18.00元

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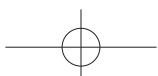
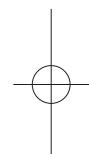
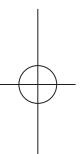
特别说明：

《中国法院知识产权司法保护状况（2018年）》以中英两种文本发布，以中文文本为准。

Special Remarks:

This paper is published in both Chinese and English.

The Chinese version shall be the authoritative version for interpretation purposes.





中国法院知识产权司法保护状况 (2018年)

前言

2018年，人民法院在以习近平同志为核心的党中央坚强领导下，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、三中全会及中央政法工作会议精神，深入学习贯彻习近平总书记系列重要讲话精神，牢固树立“四个意识”，坚定“四个自信”，坚决做到“两个维护”，坚持稳中求进工作总基调，不忘初心、牢记使命，忠实履行宪法和法律赋予的审判职责，勇于担当作为，紧紧围绕“努力让人民群众在每一个司法案件中感受到公平正义”的目标，深化知识产权审判领域改革，强化审判监督指导，积极发挥司法保护知识产权的主导作用，为实现“两个一百年”奋斗目标、实现中华民族伟大复兴的中国梦提供有效司法保障。



一、加强司法保护，发挥审判职能作用

习近平总书记在庆祝改革开放 40 周年大会上的讲话中强调，实施创新驱动发展战略，完善国家创新体系，加快关键核心技术自主创新，为经济社会发展打造新引擎。加强知识产权保护，是提升我国科技创新能力、加快推动经济高质量发展的必然选择。一年来，各类知识产权案件数量急剧增长，新类型、重大疑难案件大幅增加，案件审理难度增大。人民法院始终坚持以执法办案为第一要务，将案件审判工作作为各项工作的重中之重，坚持以民事审判为主导，行政审判和刑事审判并驾齐驱，严把事实认定关、法律适用关，明确司法政策导向，依法公正高效审理各类知识产权案件。2018 年，人民法院共新收一审、二审、申请再审等各类知识产权案件 334951 件，审结 319651 件（含旧存，下同），比 2017 年分别上升 41.19% 和 41.64%。

（一）加强民事审判工作，保障经济社会持续健康发展

一年来，人民法院准确把握全面深化改革对司法保护知识产权提出的新目标和新要求，坚持公正司法，加强知识产权民事审判工作，加大知识产权保护力度，保障知识产权权利人利益的充分实现。2018 年，地方各级人民法院共新收和审结知识产权民事一审案件 283414 件和 273945 件，分别比 2017 年上升 40.97% 和 41.99%。其中，新收专利案件 21699 件，同比上升 35.53%；商标案件 51998 件，同比上升 37.03%；著作权案件 195408 件，同比上升 42.36%；技术合同案件 2680 件，同比上升 27.74%；竞争类案件 4146 件（含垄断民



事案件 66 件), 同比上升 63.04%; 其他知识产权民事纠纷案件 7483 件, 同比上升 44.60%。地方各级人民法院共新收和审结知识产权民事二审案件 27621 件和 26288 件, 同比分别上升 26.60% 和 28.08%; 共新收和审结知识产权民事再审案件 223 件和 221 件, 同比分别上升 189.61% 和 301.82%。

2018 年, 最高人民法院新收知识产权民事案件 913 件, 审结 859 件, 比 2017 年分别上升 81.51% 和 74.24%。其中, 新收和审结二审案件 24 件和 21 件; 新收和审结申请再审案件 798 件和 759 件, 比 2017 年分别上升 76.55% 和 71.72%; 新收提审案件 77 件, 审结 65 件。

一年来, 人民法院审结的具有较大社会影响的知识产权民事案件有: 无锡国威陶瓷电器有限公司、蒋国屏与常熟市林芝电热器件有限公司、苏宁易购集团股份有限公司侵害实用新型专利权纠纷案; 优衣库商贸有限公司与广州市指南针会展服务有限公司等侵害商标权纠纷案; 北京百度网讯科技有限公司与北京搜狗科技发展有限公司等侵害发明专利权纠纷案; 北京微播视界科技有限公司与百度在线网络技术(北京)有限公司等侵害作品信息网络传播权纠纷案; 北京德农种业有限公司、河南省农业科学院与河南金博士种业股份有限公司侵害植物新品种权纠纷案; 佳能株式会社与上海慕名电子科技有限公司侵害发明专利权纠纷案; 3M 公司与上海源嘉塑胶有限公司等侵害发明专利权纠纷案; 动视出版公司、华夏电影发行有限责任公司侵害著作权、侵害商标权、擅自使用知名商品特有名称及虚假宣传案; 北京中融恒盛木业有限公司与左尚明舍家居用品(上海)



有限公司等侵害著作权纠纷案；等等。

（二）加强行政审判工作，监督促进知识产权行政执法

人民法院严格准确适用新修订的行政诉讼法及其司法解释，强化对知识产权授权确权案件的司法审查力度，加强对行政执法行为的司法监督，支持行政机关依法行政，进一步规范知识产权行政执法。2018年，地方各级人民法院共新收知识产权行政一审案件13545件，比2017年上升53.57%。其中，专利案件1536件，同比上升76.15%；商标案件11992件，同比上升51.20%；著作权案件17件，与2017年持平。审结一审案件9786件，同比上升53.15%。地方各级人民法院新收知识产权行政二审案件3565件，审结3217件，比2017年分别上升304.2%和180.72%。其中，维持原判2708件，改判446件，发回重审9件，撤诉45件，驳回起诉1件，其他方式结案8件。

2018年，最高人民法院新收和审结知识产权行政案件642件和581件，比2017年分别上升64.19%和41.02%。其中，新收申请再审案件537件，审结484件，比2017年分别上升55.20%和32.24%；新收提审案件99件，审结89件。

一年来，人民法院审结的具有较大社会影响的知识产权行政案件有：克里斯蒂昂迪奥尔香料公司与国家工商行政管理总局商标评审委员会商标申请驳回复审行政纠纷案；深圳市快播科技有限公司与深圳市市场监督管理局、深圳市腾讯计算机系统有限公司著作权行政处罚纠纷案；埃意（廊坊）电子工程有限公司与王贺、姚鹏、国家知识产权局专利复审委员会实用新型专利无效行政纠纷案；广

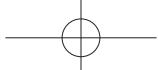


州市希力电子科技有限公司、济南千贝信息科技有限公司与上海波克城市网络科技股份有限公司、国家工商行政管理总局商标评审委员会商标异议复审行政纠纷案；安迪士公司与国家工商行政管理总局商标评审委员会及宁波市北仑博发美发用品用具有限公司商标异议复审行政纠纷案；国家工商行政管理总局商标局与安徽华源医药股份有限公司等商标行政纠纷案；国家工商行政管理总局商标局与腾讯科技（深圳）有限公司商标申请驳回复审行政纠纷案；等等。

（三）加强刑事审判工作，坚决制裁侵犯知识产权犯罪

人民法院充分发挥刑事审判职能，有力震慑侵犯知识产权犯罪行为，努力维护知识产权良好的法治环境。2018年，地方各级人民法院共新收侵犯知识产权罪一审案件4319件，同比上升19.28%。其中，侵犯注册商标犯罪案件4117件，同比上升20.20%；侵犯著作权罪案件156件，同比下降7.69%。

地方各级人民法院共审结侵犯知识产权罪一审案件4064件，同比上升11.59%；涉及侵犯知识产权的生产、销售伪劣商品罪案件1434件，同比上升30.36%。在审结的侵犯知识产权罪一审案件中，假冒注册商标罪案件1852件，同比上升9.78%；销售假冒注册商标的商品罪案件1724件，同比上升15.39%；非法制造、销售非法制造的注册商标标识罪案件305件，同比上升17.31%；假冒专利罪案件2件；侵犯著作权罪案件136件，同比下降20%；销售侵权复制品罪案件6件，同比上升50%；侵犯商业秘密罪案件39件，同比上



升 50%。^①

地方各级人民法院共新收涉知识产权的刑事二审案件 683 件，同比上升 28.14%；审结 668 件，同比上升 23.70%。

一年来，人民法院审结的具有较大社会影响的知识产权刑事案件有：李功志、巫琴犯非法制造注册商标标识罪案；巨石在线（北京）科技有限公司、黄明犯侵犯著作权罪案；等等。

2018 年的知识产权司法保护工作呈现出五个重要特点。

案件的数量增幅较大。2018 年，人民法院新收知识产权民事、行政和刑事案件数量达到 334951 件，比 2017 年增加 97709 件，同比上升 41.19%。其中，知识产权行政一审案件和民事一审案件呈大幅上升态势，增幅分别达到 53.57% 和 40.97%。广东新收知识产权行政一审案件，同比上升 77.78%；北京新收知识产权一审案件 52463 件，同比上升 47.40%。北京、上海、江苏、浙江、广东五省市法院收案数量仍然保持高位运行，新收知识产权民事一审案件 185337 件，占全国法院新收知识产权民事一审案件的 65.39%。其中，上海同比上升 49.77%；江苏同比上升 45.48%。浙江新收专利一审民事案件，比 2017 年上升 79.53%。其他一些省份新收各类知识产权案件同比也呈迅猛攀升态势，如甘肃上升 290%，贵州上升 157.22%，青海上升 155%，陕西上升 89.4%，天津上升 82.3%，四川上升 67.57%，广西上升 40.05%。河北新收知识产权一审案件，同比上升 156.44%。黑龙江新收知识产权民事一审案件，同比

^① 以上公开数据不含新收和审结涉知识产权刑事一审案件总数、涉及侵犯知识产权的生产、销售伪劣商品罪案件数、涉及侵犯知识产权的非法经营罪案件数以及其他侵犯知识产权案件数。



上升 130.71%。此外，海南法院受理各类知识产权案件数量同比上升 156.16%，青海上升 155%。山西受理知识产权一审案件同比上升 65.6%，其中著作权案件上升 199%，受理知识产权二审案件同比上升 155%。

案件的影响显著提升。通过各类案件的公正高效审理，形成了一批在国内外具有重大影响的判决，人民法院的知识产权审判越来越受到社会广泛关注。如最高人民法院公开开庭审理并当庭宣判克里斯蒂昂迪奥尔香料公司与国家工商行政管理总局商标评审委员会商标驳回复审行政纠纷案，充分彰显了平等保护中外权利人合法利益的原则，强调了履行国际公约、加强国际合作的价值追求，强化了对行政程序正当性的要求，也体现及时救济和全面保护的精神，对于宣传中国知识产权司法保护成果，努力将中国法院打造成为当事人信赖的国际争端解决“优选地”具有示范意义。公正审理一批诉讼标的额巨大、社会关注度高的涉及知名企业品牌利益保护和市场份额的商标纠纷案件、涉及著名影视文化作品互联网传播的著作权纠纷案件。如上海高院审理的浙江吉利控股集团有限公司等诉威马汽车科技集团有限公司等侵害商业秘密纠纷案，诉讼标的额达 21 亿元；广东高院审结涉及 2.6 亿元“天价罚单”的深圳市快播科技有限公司诉深圳市市场监督管理局行政纠纷二审案，均引起社会高度关注。上海浦东法院审理的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》，也具有较高的社会关注度。

审理的难度不断加大。随着我国市场经济的发展和创新驱动发展战略的实施，涉及复杂技术事实认定的技术类案件或者其他类型



新颖的案件越来越多，使知识产权审判不断面临新挑战。如北京法院审结了西安西电捷通无线网络通信股份有限公司与索尼移动通信产品（中国）有限公司标准必要专利侵权纠纷案、捷豹路虎有限公司与江铃控股有限公司汽车外观设计专利无效行政案以及首例声音商标“滴滴”商标申请驳回复审案等等。上海知识产权法院审结的武汉市汉阳光明贸易有限责任公司诉上海韩泰轮胎销售有限公司纵向垄断协议、滥用市场支配地位案，系纵向垄断协议纠纷案。该院还受理了多件涉及基因技术或基因数据案件，如DNA吉诺特克股份有限公司诉上海市人类基因组研究中心等侵害发明专利权纠纷案，涉及侵害人类基因测试技术专利；复旦大学附属华山医院诉弗林特侵犯人类遗传资源信息专属持有权案，涉及人类基因数据的归属问题；等等。此外还有上海浦东法院审结的优酷信息技术（北京）有限公司申请上海千杉网络技术发展有限公司诉前停止侵害知识产权案，系针对视频聚合平台不正当竞争的诉前禁令案等。

审判的质效稳步向好。一是结案数量显著提升。2018年，海南法院审结各类知识产权案件比2017年上升161.76%；河北法院审结知识产权一审案件2608件，同比上升156.44%；湖南法院审结各类知识产权案件9545件，同比上升69.08%；北京法院审结知识产权一审案件49596件，同比上升56%；天津法院审结各类知识产权案件4410件，同比上升68.3%；四川法院审结各类知识产权案件7331件，同比上升67.34%。二是服判息诉率持续向好。上海法院在案件收结总量大幅提升的情况下，一审案件服判息诉率达94.13%；新疆法院知识产权申诉信访率为零。三是案件调撤率大幅上升。宁夏



法院审结的各类知识产权案件，调撤率达 92%；辽宁法院审结知识产权一审案件调撤率达 74.87%；江西法院审结各类知识产权案件调撤率达 69.81%；山东法院审结知识产权民事一审案件调撤率达 68.7%；黑龙江法院审结的知识产权民事一审案件调撤率达 66.2%；安徽法院调撤率达 61.86%。大量案件调撤结案及服判息诉，社会效果良好。

保护的力度持续加强。人民法院坚持以市场价值为导向解决赔偿低问题，加大对知识产权侵权行为的惩治力度，提升侵权人的违法成本，使赔偿数额与知识产权市场价值相适应，有效维护权利人的合法利益。如在涉及知名品牌“老板”电器的商标权及不正当竞争纠纷上诉案中，浙江高院根据侵权人在另案中提交的销售数量证据、侵权网站上的产品售价并参照权利人上市公司年报中的营业利润率，认定侵权获利已经超过权利人诉讼请求的赔偿数额，遂全额支持了权利人 1000 万元的诉讼请求，体现了加大知识产权保护力度的价值导向。在发挥民事审判主渠道作用的同时，人民法院始终注重发挥刑事打击的威慑作用。如湖北高院审理的何伟等六名被告人犯假冒注册商标罪、销售假冒注册商标的商品罪一案，涉案金额近 1600 万元，侦查阶段系公安部重点督办案件，社会关注度高、法律适用疑难，最终判决主犯何伟犯假冒注册商标罪判处有期徒刑七年，犯销售假冒注册商标的商品罪判处有期徒刑三年，合并执行有期徒刑十年，并处罚金 371 万元，充分彰显了知识产权刑事保护的能力及水平。



二、完善审判体系，创新司法改革模式

2018年是全面贯彻党的十九大精神的开局之年，是中国改革开放40周年。知识产权日益成为全球最重要的无形资产、国家利益的核心要素和大国博弈的重要工具。世界正处于大发展、大变革、大调整时期，国际知识产权治理体系面临发展和变革。人民法院锐意改革、勇于创新，积极推进知识产权司法体制机制改革，推动知识产权司法体系和能力向现代化迈进。

（一）设立最高人民法院知识产权法庭

推动成立最高人民法院知识产权法庭，健全中国特色知识产权司法保护体系。2018年2月，中央全面深化改革委员会将此确定为2018年改革重点工作。最高人民法院党组高度重视知识产权法庭组建工作，周强院长主持会议进行专题研究，提出“高起点、高标准、高水平、国际化”的知识产权法庭建设要求。10月26日，第十三届全国人大常委会第六次会议审议通过《关于专利等知识产权案件诉讼程序若干问题的决定》。12月3日，最高人民法院审判委员会第1756次会议讨论通过《最高人民法院关于知识产权法庭若干问题的规定》，进一步明确知识产权法庭案件审理范围、诉讼程序衔接等问题。知识产权法庭是最高人民法院派出的常设审判机构，行使专利、垄断等技术性上诉案件的审判职能。在较短时间内，知识产权法庭顺利完成办公场所选址装修、人员选调录用、办公办案系统升级、后勤保障措施到位等一系列组建工作，并于2019年1月1日起正式收案。知识产权法庭的成立，是以习近平同志为核心的党中央



从建设知识产权强国和世界科技强国的战略高度作出的重大决策部署，是全面深化司法改革、推进公正司法的重大改革举措，是新时代深化改革开放的重要标志，是我国 40 年持续改革开放的重大成果，是严格保护知识产权、服务创新驱动发展战略、营造国际一流营商环境的重大制度创新，在我国法治建设和人民司法事业发展史上具有非常重要的意义。

（二）深入稳步推进知识产权法院建设

贯彻落实全国人大常委会关于周强院长报告知识产权法院成立四年来工作情况的审议意见，继续加强对北京、上海、广州知识产权法院的指导，不断提高知识产权法院工作水平。三家知识产权法院各项工作扎实推进，进展顺利，取得显著成效。一方面，审理社会影响大、关注度高的重大案件，确立裁判规则，促进裁判标准统一，为行业发展提供重要指引；加大知识产权侵权赔偿力度，推进诉讼诚信建设，赢得社会各界高度评价。另一方面，作为司法改革的先行者和探索者，落实司法责任制，法官员额化、机构精简化、管理扁平化，形成法官主导、人员分类、权责明晰、协同合作的审判新模式，尝试审判委员会直接开庭审理案件，实现院、庭长办案常态化；探索案件繁简分流和裁判文书改革，建立技术调查官制度，努力创造可复制、可推广的改革经验。召开知识产权法院体系建设座谈会。总结知识产权法院、知识产权法庭设立以来的经验，研究完善知识产权法院体系。

（三）完善跨区域管辖知识产权专门审判机构建设

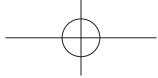
为贯彻落实国家知识产权战略，进一步优化知识产权案件管辖



格局，整合知识产权审判资源，最高人民法院2017年批复在南京、苏州等11个市设立跨区域管辖的知识产权专门机构，在此基础上，2018年批复在天津、郑州、长沙、西安、南昌、长春、兰州、乌鲁木齐8个市设立知识产权法庭。目前，除兰州、乌鲁木齐将于2019年揭牌以外，其他6家知识产权法庭已全部揭牌成立并开始正式运行。上述法庭的设立对进一步推进完善知识产权保护机制，统一知识产权司法裁判尺度，提升审判质量，维护市场秩序和市场主体合法权益，实施创新驱动发展战略，具有重要意义。最高人民法院将加强对跨区域管辖部分知识产权案件专门审判机构进行业务指导，继续探索优化知识产权审判资源配置，优化管辖布局。

（四）继续全面推进“三合一”改革工作

2018年，最高人民法院进一步巩固“三合一”改革工作成效，赴多个省市开展调研，并在郑州、重庆召开全国部分法院推进知识产权审判“三合一”工作及知识产权刑事审判工作调研座谈会，就知识产权刑事审判工作中存在的问题进行深入调研，根据调研情况撰写了《关于全国法院推进知识产权审判“三合一”工作情况的调研报告》《全国法院知识产权刑事审判工作调研报告》。报告强调各级法院知识产权庭要充分认识知识产权审判“三合一”机制的内在规律，知识产权司法保护围绕一项知识产权权利展开，知识产权民事审判构成了“三合一”的基本内核，是知识产权行政审判和刑事审判的基础。知识产权民事审判决定了知识产权审判“三合一”的管辖格局，必须以民事案件管辖为中心点，集聚起行政案件和刑事案件的管辖。要把“三合一”机制改革作为人民法院在新时代充分



发挥知识产权司法保护主导作用的瓶颈和突破口，按照中央的决策和最高人民法院的部署大力推进落实。全国目前已有 17 家高级法院、113 家中级法院和 129 家基层法院实行了“三合一”。同时，最高人民法院始终高度重视打击侵权假冒保护知识产权工作，认真履职，积极配合，全面贯彻落实党中央、国务院关于打击侵权假冒工作的决策部署。最高人民法院在全国打击侵权假冒工作领导小组办公室的组织领导下，参与各种文件草拟、材料汇总、会签文件、督办案件、现场考核等工作，圆满完成了各项工作任务，荣获“全国打击侵权假冒工作先进集体”荣誉称号。湖南法院构筑知识产权民事保护、行政执法监督、刑事打击三位一体的知识产权全方位保护格局，审结的株洲市天元区人民检察院提起抗诉的被告人项芳相、上官宗赏非法制造、销售非法制造的注册商标标识罪案，将被告人项芳相的刑罚主刑由缓刑改判为实刑，有力震慑了知识产权犯罪。在全国打击侵权假冒工作座谈会上，上海浦东法院介绍推进“三合一”审判机制建设工作经验，受到充分肯定，成为全国法院全面推进知识产权审判“三合一”改革工作可复制可推广的“浦东经验”。

三、统一裁判标准，强化审判监督指导

统一裁判尺度，保证知识产权法律适用的统一，增强法律适用的稳定性和可预见性，是知识产权法治建设的必然要求。2018 年，人民法院在统一司法裁判标准上做文章、下力气，严格履行审判监督职责，正确把握知识产权审判特点和规律，规范上下级人民法院



审判业务关系，努力提高知识产权审判质量和效率。

（一）召开全国审判工作会议，全面总结部署当前工作

2018年7月，最高人民法院在青岛召开第四次全国法院知识产权审判工作会。周强院长对此次会议作出重要批示。会议表彰了过去五年在知识产权审判工作中涌现出来的全国法院先进集体和先进个人。10个法院代表在会上做了经验交流。陶凯元副院长在会上深入总结了过去五年的工作，分析了当前面临的形势任务，部署了今后一个时期知识产权审判任务。会议确立了知识产权司法审判工作“三步走”的发展目标，明确了未来五年的工作思路，提出了“九个更加注重”的工作部署。会议要求，更加注重司法主导，全面提升知识产权司法权威；更加注重严格保护，切实增强知识产权权利人获得感；更加注重激励创新，大力营造创新法治环境；更加注重保护竞争，有效维护健康竞争机制；更加注重价值引领，积极弘扬社会主义核心价值观；更加注重国际视野，不断增强知识产权司法保护国际影响力；更加注重改革创新，持续推进知识产权审判体系和审判能力现代化；更加注重监督指导，着力提高知识产权审判质效；更加注重队伍建设，努力打造国际一流审判人才。会议精神对今后一个时期全国知识产权审判工作具有重要指导意义。

（二）加强司法解释的研究制定工作

发布《最高人民法院关于知识产权法庭若干问题的规定》，进一步明确了知识产权法庭的机构性质、受案范围、诉讼程序、审判权力运行机制、程序衔接等内容；发布《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》，对于保全案件的



申请主体、审查程序、保全必要性、申请有错误的认定及申请错误赔偿诉讼的管辖、保全措施的解除、申请费等问题作出了更为明确具体的规定；起草完成技术调查官参与诉讼活动司法解释，并提交审委会讨论通过；加快推进专利授权确权行政案件审理司法解释起草工作。通过上述措施，深入贯彻落实中央《关于加强知识产权审判领域改革创新若干问题的意见》，确保中央批准的《关于设立知识产权法庭的试点方案》和全国人大常委会《关于专利等知识产权案件诉讼程序若干问题的决定》落地见效，进一步丰富和发展了中国特色知识产权诉讼制度，对于健全知识产权专门化审判体系，提高知识产权审判质量和效率，统一司法裁判标准，服务创新驱动发展战略和知识产权战略具有重要意义。抓紧研究起草反不正当竞争法适用和商业秘密保护司法解释，回应国际关切。分别在南京和上海召开了两次“商业秘密司法保护法律研讨会”，研究完善商业秘密保护制度，厘清商业秘密保护的法律思路，为商业秘密司法解释出台奠定基础。

（三）完善司法政策，完成全国人大交办工作

制定下发《最高人民法院关于加强“红色经典”和英雄烈士合法权益司法保护弘扬社会主义核心价值观的通知》，起草《最高人民法院办公厅关于修订著作权法时纳入“加强红色经典司法保护弘扬社会主义核心价值观”相关内容的函》《关于加强红色经典知识产权司法保护有关情况的报告》，强调严格依法保护红色经典传承和英雄烈士合法权益，倡导讲品位、讲格调、讲责任，教育和引导社会公众尤其是广大青少年自觉抵制“低俗、庸俗、媚俗”，抵制历史虚无



主义，规范传播行为，维护社会公共利益。报送《最高人民法院关于研究落实全国人大常委会著作权法执法检查报告以及审议意见情况的报告》，认真完成全国人大执法检查交办的工作任务，围绕执法检查提出的问题，结合审判工作实际，在大力降低维权成本、缩短诉讼周期、提高侵权赔偿数额等方面提出了改进工作的切实措施和意见。

（四）积极参与法律的编纂修订和起草工作

积极参与民法典、专利法、著作权法、反不正当竞争法、商标法及商标法实施条例、植物新品种保护条例等法律法规的修订工作。结合审判实际，及时组织专项研究和论证，认真总结审判实践中形成的司法政策和经验，有针对性地提出修法建议。在北京召开全国部分法院著作权法修订座谈会，围绕著作权法修订草案送审稿修改稿中作品的分类、著作权的权利内容、权利的限制、著作权合同、集体管理、相关权的规定、法律责任以及与国际公约和其他法律的协调等问题进行了广泛和深入的讨论。在充分论证的基础上向司法部提交了《最高人民法院关于著作权法的修改意见》，受到高度评价。

（五）加强审判调研和案例指导工作

开展知识产权前沿热点问题专题调研。最高人民法院于2018年11月在杭州召开《关于知识产权民事诉讼证据的若干规定（稿）》征求意见座谈会，就知识产权民事诉讼证据司法解释进行调研，开展知识产权诉讼特别程序问题研究。开展商标恶意注册问题的调研。根据当前国际关注、社会反映强烈的商标恶意注册问题，会同国家市场监督管理总局商标局开展联合调研，提出法律规制恶意抢注商



标行为的措施建议。开展反垄断民事诉讼问题调研。为完善反垄断民事司法制度，加大反垄断法实施力度，及时制止垄断行为，召开纪念反垄断法实施 10 周年座谈会，总结反垄断民事审判经验，为反垄断法的修改以及相关司法解释的制定打好基础，为维护公平健康的市场竞争机制做出贡献。开展著作权与外观设计专利权权利冲突调研。在北京和昆明举办研讨会，起草外观设计和著作权冲突调研报告，就著作权与外观设计专利权之间的竞合与权利冲突问题，凝练出具有操作价值的审判指导意见。开展商业模式创新成果的司法保护调研。2018 年 4 月，最高人民法院知识产权司法保护研究中心召开了“商业模式创新成果的司法保护问题研究”成果论证评审会，邀请有关部门领导和专家教授担任论证评审专家，对课题成果进行论证评审，并对报告进行充实、调整和修改。全国各地法院也积极开展调研工作。北京高院于 2018 年 4 月 20 日发布《北京市高级人民法院侵害著作权案件审理指南》，明确提出著作权审判中应当坚持“加大保护、鼓励创作、促进传播、平衡利益”的基本审理原则，总结侵害著作权案件的审理思路，对北京互联网法院审理网络著作权案件以及北京法院著作权审判工作具有积极的指导意义，对首都文化产业的发展和创新发挥了积极的推动作用。北京高院于 2018 年 9 月 20 日向社会发布了《关于为北京加强全国科技创新中心建设提供司法保障的意见》，主要规定涉及创新发展技术及相关案件的审理规则和要求，提出破解制约知识产权审判发展的体制机制障碍的具体措施。广东高院于 2018 年 4 月制定出台的《关于审理标准必要专利纠纷案件的工作指引》研究探索标准必要专利领域案件的审判思路



和方法，受到广泛关注。《中国知识产权（英文版）》、全球知名知识产权专业媒体对该《指引》进行了专题报道和深入解读。美国高通公司、华为技术有限公司将广东作为标准必要专利纠纷案件管辖优选地。上海高院出台《关于加强知识产权司法保护的若干意见》，推行“便利当事人举证、提高赔偿数额、缩短审判周期”举措，得到社会各界充分肯定。四川高院出台《关于侵害信息网络传播权纠纷案件审理指南》《关于商标权侵权纠纷案件审理指南》等意见，统一全省法院裁判标准。浙江法院针对知识产权诉讼中电子证据审查认定标准不一的现状，研究知识产权诉讼中电子证据的审查与认定问题。山东高院完成最高人民法院重大调研课题“新形态创新成果的知识产权保护研究”，完成“关于加强知识产权司法保护的调研”，完成《关于〈中华人民共和国反垄断法〉的调研报告》和“商标侵权案件证明标准”课题的调研工作。天津高院完成最高人民法院司法研究重大课题“中国知识产权司法保护战略研究”和司法案例研究课题“互联网新型不正当竞争法律规制案例研究”。

发挥研究基地作用，加强案例指导和研究。人民法院经过多年的探索和积累，建立了独具特色的“典型案例、指导性案例、案件年度报告、案例指导研究基地”四位一体的知识产权案例指导制度体系。最高人民法院陶凯元副院长于2018年4月主持召开最高人民法院知识产权司法保护研究中心工作座谈会暨知识产权司法保护理论研讨会，并发表讲话，强调要进一步统一思想，凝聚合力，推动知识产权理论研究方法、研究视角和研究成果的不断创新和转化运用。各个理论研究基地和调研基地代表纷纷发言，为新时期进一



步发挥该中心在知识产权司法保护理论研究方面的作用，加强该中心理论研究工作献言献策。最高人民法院对近年来中国知识产权司法保护经典案例进行总结，以中英文双语出版《中国知识产权司法保护经典案例集》，积极宣传知识产权司法保护成就，受到广泛关注。《最高人民法院知识产权审判案例指导》（第十辑）将于近期出版。编辑出版《知识产权司法实务新型疑难问题解析：专利、商标与著作权热点问题》《知识产权司法实务新型疑难问题解析：知识产权司法保护与产业发展》《知识产权司法解释理解与适用（最新增订版）》，并通过每月编辑并发送《知识产权审判动态》及业务汇报等形式，畅通对下级法院知识产权审判的业务指导与交流机制。重庆高院于2018年12月编辑出版了第七辑《中国知识产权审判研究》，发表各类文章52篇，共计65万余字，该书为审判理论专业委员会的连续出版物，作为中国审判理论研究丛书的重要系列，具有重要影响。2018年重庆高院与西南政法大学共联合举办四场“中国知识产权法官讲坛”。广西高院于2018年3月印发《2011—2016年广西高院知识产权典型案件裁判文书集》，供知识产权审判人员学习参考；制定形成《外观设计专利侵权纠纷裁判指引》，统一全省法院外观设计专利侵权纠纷案件的裁判尺度。

四、深化司法公开，促进司法公正高效

2018年，人民法院知识产权审判工作坚决贯彻落实党中央全面深化改革和全面依法治国重要决策部署，积极推进司法公开，构建



开放、动态、透明、便民的阳光司法机制，取得显著成效。

（一）加大宣传力度，提升司法影响力

结合 2018 年世界知识产权日“变革的动力：女性参与创新创造”的主题，充分展现新时代知识产权女法官的风采，最高人民法院于 2018 年 4 月 27 日组织召开“知识产权女性座谈会”，思考新时代知识产权女性如何将智慧与担当化作创新的动力。会议以习近平新时代中国特色社会主义思想和党的十九大精神为指导，邀请了全国人大代表、全国妇联、女法官协会及知识产权保护领域的女科技创新工作者、女学者、女记者及各地法院的知识产权女法官，共同畅谈心得，交流新时代知识产权事业的使命与担当。会议代表畅谈交流心得，发言热烈。陶凯元副院长作了题为《内外兼修，以温柔的正义和司法的智慧为改革创新巨轮的扬帆起航倾注一往情深》的主旨发言，座谈会上播放了由陶凯元副院长作词的《知识产权之歌》音乐短片，描绘的知识产权人的心声、使命和情怀，令人动容。江苏法院继续维护并运营好官方微博账号“江苏知产视野”，增强知识产权审判业内外影响力，并在江苏高院新浪微博、微信公众号等知产领域专业媒体同步开设专栏，定期公布全省法院审结的疑难复杂案件，及时传递知识产权司法保护的最新资讯，提升全省法院知识产权审判在业内外的影响力。“江苏知产视野”设立以来，共刊登 182 期 170 余个典型案例，近 10 篇文章资讯，取得良好成效。

（二）解读“两会”报告，全媒体直播访谈

在全国“两会”期间，为了积极回应人民群众对知识产权审判工作的关切，2018 年 3 月 16 日，围绕《最高人民法院工作报告》



中的知识产权内容，最高人民法院知识产权庭宋晓明庭长及王闯、林广海副庭长受邀就“充分发挥知识产权司法保护主导作用”相关问题参与全媒体访谈直播活动，同时邀请北京知识产权法院副院长宋鱼水通过视频连线参与访谈直播。在访谈中，结合周强院长的工作报告，从人民法院积极发挥知识产权审判职能、服务保障创新发展国家战略，加大监督指导力度、确保法律适用标准统一，深化知识产权领域司法改革、完善审判体制机制，推进司法公开和交流、提高中国司法国际影响力，加强知识产权队伍建设、提升审判能力和水平五个主题，结合详实的数据与场外嘉宾的精彩点评，全面介绍过去五年来知识产权审判工作的进展情况，对《最高人民法院工作报告》中关于“充分发挥知识产权司法保护主导作用”的内容进行了全方位、立体化、深层次的解读。30余家媒体并机直播，社会反响热烈，取得了良好的社会效果。

（三）开展“4·26”主题活动，掀起宣传高潮

自2009年起，最高人民法院以“4·26”世界知识产权日为契机，紧紧围绕知识产权司法公正公开的主题，突出知识产权司法保护的热点和亮点，不断总结和完善知识产权司法保护宣传的方式方法。九年来，全国法院的知识产权宣传活动逐步体系化、规模化，形成品牌效应。陶凯元副院长在2018年知识产权宣传周活动新闻发布会上介绍了2017年人民法院知识产权司法保护的总体情况，以及2018年的工作设想，通报创新亮点；发布《中国法院知识产权司法保护状况（2017年）》（中英文版）、2017年中国法院十大知识产权案件和50件知识产权典型案例、发布《最高人民法院知识产权案件



年度报告（2017）》。来自中央和地方的20余家媒体对新闻发布会进行了报道，舆论反响热烈。各地法院结合本地实际开展形式多样的“4·26”宣传活动。

（四）加强司法公开，有力保障司法公正

积极推进裁判文书公开。探索移动互联环境下司法公开的新途径，强化知识产权审判对中国裁判文书网、中国审判流程信息网、中国庭审公开网等平台的广泛应用，推进知识产权司法公开的信息化、数据化、精细化，提升审判工作透明度，对于适宜公开的裁判文书及时、全面上网，定期通报文书上网情况，并逐渐提高裁判文书的公布范围和公布效率。最高人民法院知识产权审判庭裁判文书上网率达100%。推行审判流程公开和网上办案。强化案件审判流程管理，加强科技法庭建设，大力推进庭审同步录音录像和庭审网络直播，创新庭审公开形式，拓展庭审公开范围，保障当事人的知情权、监督权，提高司法公开的智能化水平，提升审判质量和效率。安徽法院依托司法公开三大平台，做到裁判文书“应上尽上”，庭审直播“应播尽播”。亳州中院开展万名公民旁听庭审活动，广泛邀请社会各界人士旁听知识产权案件庭审；铜陵中院对适宜采用巡回法庭形式开庭的案件，直接到被告住所地、商场等场所开庭审理，面对面开展普法宣传。

五、开展交流合作，服务国际国内大局

知识产权法律制度具有很强的国际共通性和交互影响性，人民



法院要积极参与国际和区域知识产权交流与合作，建立和完善知识产权司法保护对外信息沟通交流机制，加深世界各国对中国知识产权司法保护制度及保护状况的全面、客观了解，提升中国在国际知识产权舞台上的参与权、话语权、主动权，注重营造良好贸易投资环境和树立负责任大国形象。根据中国国情和发展需求开展知识产权司法保护，坚持知识产权的地域性和独立性原则，借鉴国外有益司法经验和制度规则。

（一）加强国际区际协作交流

加强国际司法交流。人民法院重视加强与国际组织及世界各国的交流，展示我国知识产权司法保护的成果以及知识产权法官的风貌。2018年11月，陶凯元副院长应世界知识产权组织总干事高锐先生邀请，率团赴瑞士日内瓦参加世界知识产权组织举办的首届知识产权法官论坛和法官顾问委员会首次会议。会上，陶凯元副院长以“坚定不移加强知识产权司法保护，携手共创知识产权美好未来”为题，发表了本次法官论坛唯一的一场主旨演讲，反响积极热烈。世界知识产权组织在其官方网站上大幅引用了此次演讲的重点语段。世界知识产权组织及其总干事高锐先生表达对中国知识产权事业的大力支持与高度认可。此次出访，积极宣传了中国知识产权司法保护取得的历史性成就，正面回应了各方关切，最大限度地争取了国际社会对于中国知识产权保护情况的理解和认同，同时，也发出中国声音，贡献中国智慧和中国方案。在京召开与欧盟反垄断执法机构联合举办的中欧反垄断司法研讨会。欧盟普通法院院长积家、法官萨瓦斯、欧盟反垄断执法机构及欧盟委员会驻华机构代表出席了



本次研讨会。研讨会举办期间，陶凯元副院长、宋晓明庭长先后会见了欧盟普通法院院长积家一行。欧盟商会发布《欧盟企业在中国建议书》高度评价中国专设知识产权法院这一举措。此外，最高人民法院还派员参加中美首届数字经济论坛、国际商标协会第 140 届商标年会法官会议、2018 年中日韩及东盟国家知识产权司法保护高级论坛、第八届 OECD/KPC 亚太法官竞争法研讨会、国际商会知识产权委员会 2018 年秋季会议；继续参与海牙承认与执行外国民商事判决公约的谈判工作，参加于海牙召开的第四次特委会会议；派员参加商务部中欧知识产权工作组第 21 次会议。中欧双方承诺加强知识产权对话，深化知识产权保护合作。11 月，中欧知识产权合作项目中国知识产权法官代表团访问德国、比利时、卢森堡。加强与欧盟机构所在地的知识产权政策制定者和司法机构的交流，有助于欧盟成员国了解中国知识产权司法保护的力度及平等保护境内外权利人的态度，提高我国知识产权司法保护的国际影响力；有助于学习、借鉴域外知识产权立法与司法先进经验，进一步加强我国知识产权审判体系建设，完善知识产权司法保护体制机制，提升知识产权审判专业水平。

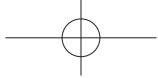
加强区际司法交流。一是港澳互访交流。2018 年 10 月，应香港特别行政区终审法院和澳门特别行政区终审法院邀请，陶凯元副院长率 8 人代表团赴港澳特区访问交流。首次在香港举办两地法官审判专题研讨会。通过研讨，两地法官产生诸多法律人的共鸣。代表团还参访港澳特区司法机构，落实内地与港澳特区法官互访机制，参加内地与香港、澳门知识产权审判专题研讨会。与香港律政司签



订《关于内地与香港特别行政区法院相互认可和执行民商事案件判决的安排》，就知识产权民事判决的认可和执行问题作出规定，积极服务粤港澳大湾区建设。二是海峡两岸互访交流。应台湾中华法学邀请，2018年5月15日至21日，宋晓明庭长以中国法官协会常务理事名义率中国法官协会知识产权代表团一行12人，赴台考察知识产权专门法院的设立与运行情况，以及知识产权审判“三合一”、技术调查官等知识产权司法保护相关制度。在考察团全体成员的共同努力下，考察交流取得积极成效，达到预期目的。12月13日，宋晓明庭长会见了应中国法官协会邀请来访的台湾智慧财产法院法官熊诵梅一行，双方就知识产权领域的惩罚性赔偿制度、专利诉讼代理、技术调查官的来源及构成等问题进行了深入交流。

（二）通过举办知识产权司法审判高级研究班，加强与世界知识产权组织合作

2018年8月21日至24日，最高人民法院与世界知识产权组织共同在国家法官学院举办了首届知识产权司法审判高级研究班。此次高级研究班是世界知识产权组织近年来组织的最为重要、规格最高、研讨内容最为深入的一次司法培训活动。首席大法官、最高人民法院周强院长高度重视，专门会见了世界知识产权组织副总干事王彬颖、总法律顾问弗里茨·庞德科和研究班学员和讲师代表。此次研究班成员包括7名讲师，24名正式学员，15名观察员，由来自中国、美国、德国、澳大利亚、比利时、韩国、新加坡、菲律宾、越南、泰国、摩尔多瓦、巴西、拉脱维亚、马来西亚、南非等15个国家的40余名高级法官共同组成，全程使用英语授课、交流。周强院长指出，



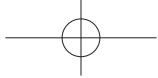
中国法院与世界知识产权组织交流密切，合作富有成效，此次研究班的成功举办是双方合作的重要成果，对于加强各国法官交流、促进各国知识产权司法保护将产生积极推动作用。此次培训活动的成功举办标志着最高人民法院与世界知识产权组织的合作迈上新台阶，拓展了对外宣传中国知识产权司法保护成就的渠道，切实推动中国知识产权审判队伍国际化进程。

六、提升司法能力，推进审判队伍建设

过硬队伍建设始终是人民法院知识产权审判工作的根本所在。各级法院知识产权司法审判队伍自觉提高政治站位，提升职业能力素养，着力锻造一支政治坚定、顾全大局、精通法律、熟悉技术并具有国际视野的知识产权司法审判队伍，为新时代知识产权司法审判工作提供坚强有力的组织保障。

（一）加强思想政治建设，提高思想政治水平

党的政治建设是党的根本性建设，知识产权审判队伍必须深刻领会党的政治建设对人民法院党的建设的重要意义，坚持党对政法工作的绝对领导，不断坚定政治信仰、提高政治觉悟、提升政治素养和政治能力，增强政治定力，严守政治纪律和政治规矩。最高人民法院于2018年初，在北京知识产权法院召开了以“光荣与梦想·使命与担当”为主题的恳谈会，陶凯元副院长与大家分享对知识产权司法保护事业的情怀、理想与追求，引发干警的强烈共鸣。2018年6月，赴革命老区延安开展了“以追求延安足迹，弘扬延安精神”



为主题的党日活动，使党员们深受教育。10月至12月，举办“庆祝改革开放40周年摄影展”，以精彩的影像生动展现知识产权司法保护工作及知识产权审判队伍良好的精神风貌。

（二）加强审判业务建设，提高审判工作司法能力

《关于加强知识产权审判领域改革创新若干问题的意见》明确提出要“大力推进知识产权审判队伍正规化、专业化、职业化、国际化建设”。建立一支高素质的知识产权法官队伍，是知识产权司法保护事业持续发展的根本保障。2018年，最高人民法院知识产权审判庭在国家法官学院以及地方法院共组织知识产权培训班30余场。举办最高人民法院“知识产权审判庭党支部大讲堂”活动3次，就专利审查若干法律适用问题、知识产权刑事审判、数据环境下的商标权保护、网络服务运营商的法律责任等专题举办讲座，收到了良好效果。同时，地方法院积极开展培训工作，如福建高院于2018年8月14至23日在华东政法大学举办60人参加的审判能力提升班，着力提升知识产权法官的专业水平。

（三）加强党风廉政建设，确保队伍清正廉洁

2018年，全国法院知识产权审判部门严格落实从严治党、从严治院、从严治庭、从严管理，大力加强知识产权审判队伍纪律作风建设，聚焦“四风”问题新动向，聚焦人民群众反映最强烈的突出问题，立查立改，常抓常严、久久为功。各级审判部门积极教育引导干警恪守司法良知，严格规范司法行为，不断改进司法作风，同时加大司法廉洁风险防控力度，抓紧构建和完善与新型审判权力运行机制相适应、与司法责任制相配套的管理监督机制。严肃查处以



案谋私和充当司法掮客的行为，以最坚决的态度、最有力的举措，坚决清除队伍中的害群之马，做到真管真严、敢管敢严、长管长严。

结束语

2019年是中华人民共和国成立70周年，是决胜全面建成小康社会、实现第一个百年奋斗目标的关键之年，也是实施人民法院第五个五年改革纲要的开局之年，新的历史起点对人民法院知识产权审判工作提出了更高要求，人民群众对公平正义的期待更高，人民法院服务大局、司法为民、公正司法的任务更加艰巨繁重。新时代是奋斗者的时代，新的答卷正等待我们去书写。人民法院知识产权司法保护将坚持以习近平新时代中国特色社会主义思想为指导，深刻把握新时代社会主要矛盾变化，着力提高新时代知识产权司法能力和水平，切实增强忧患意识、责任意识，有效防范风险，积极应对挑战，锐意改革创新、狠抓工作落实，努力推进更高水平的法治中国建设，不断增加知识产权权利人的获得感、幸福感、安全感，为建设知识产权强国和世界科技强国，为经济持续健康发展提供更加有力的司法保障，以优异成绩庆祝中华人民共和国成立70周年！



附件：

2018 年全国法院新收 知识产权案件类型与数量图

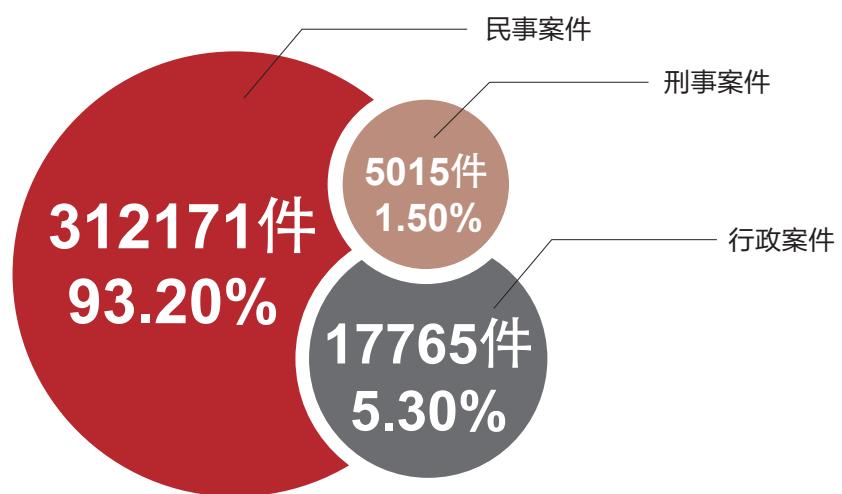
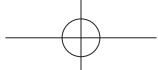


图1 2018 年全国法院新收知识产权案件类型与数量图



(单位: 件)

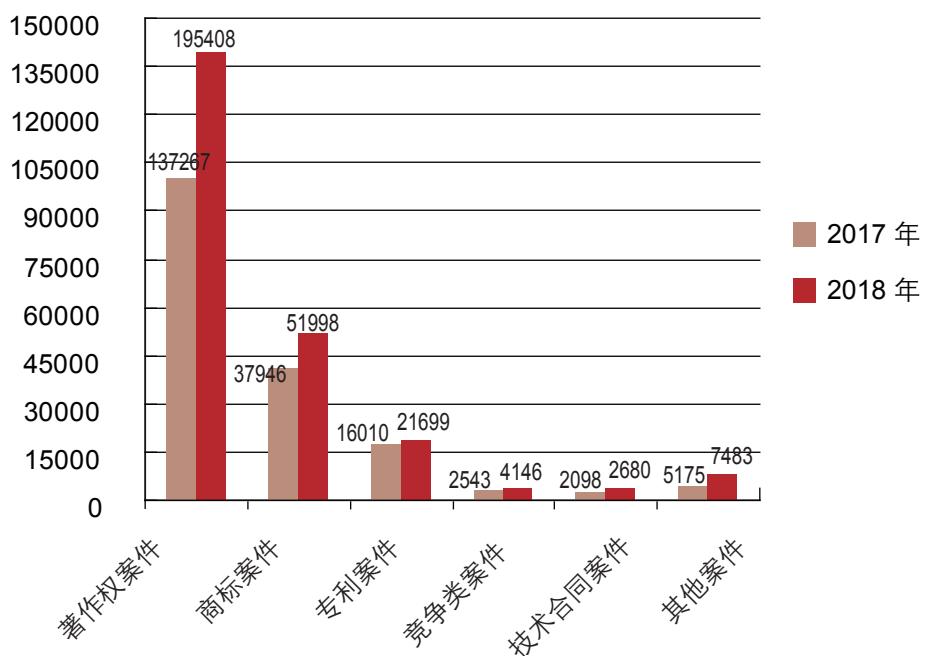


图2 2018年全国地方各级人民法院新收知识产权民事一审案件同比增幅图

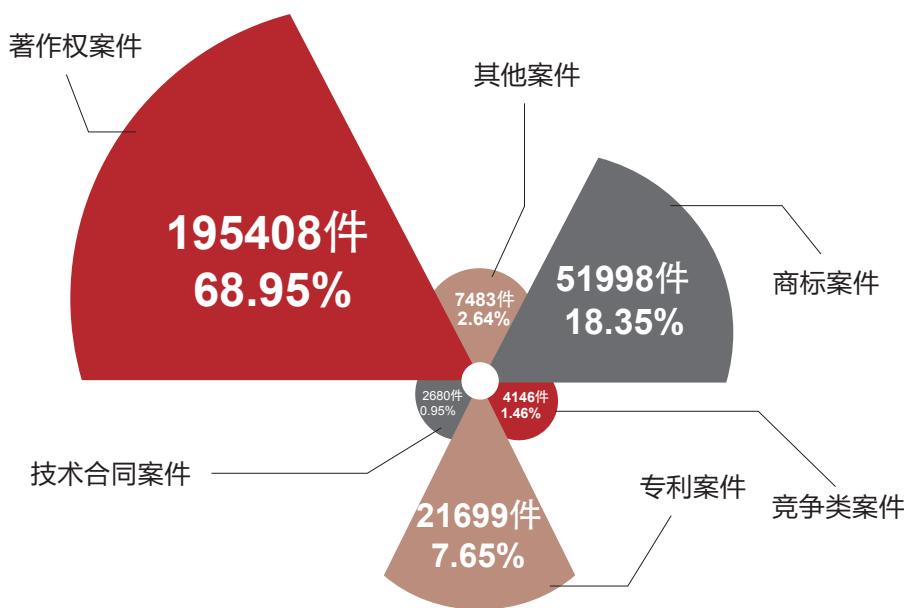


图3 2018年全国地方各级人民法院新收知识产权民事一审案件类型与数量图

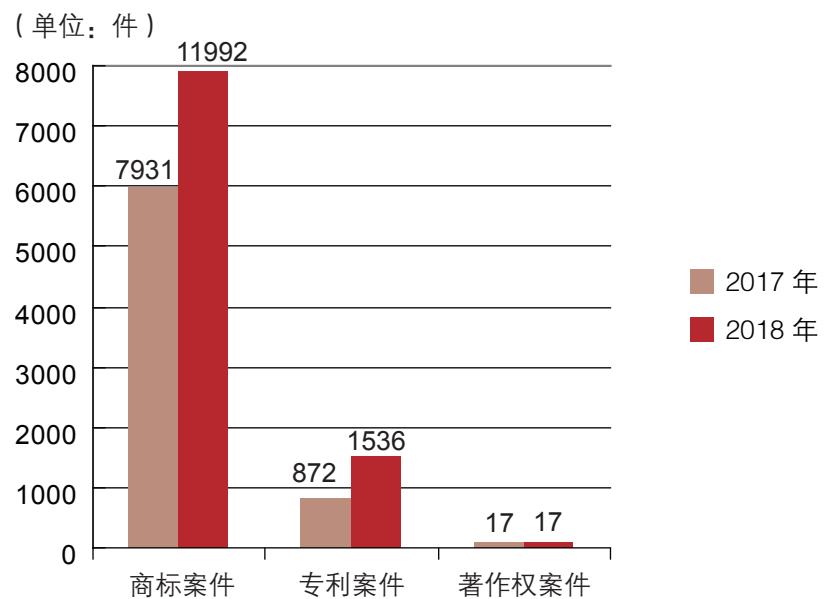
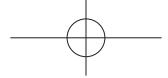


图4 2018年全国地方各级人民法院新收知识产权行政一审案件同比增幅图

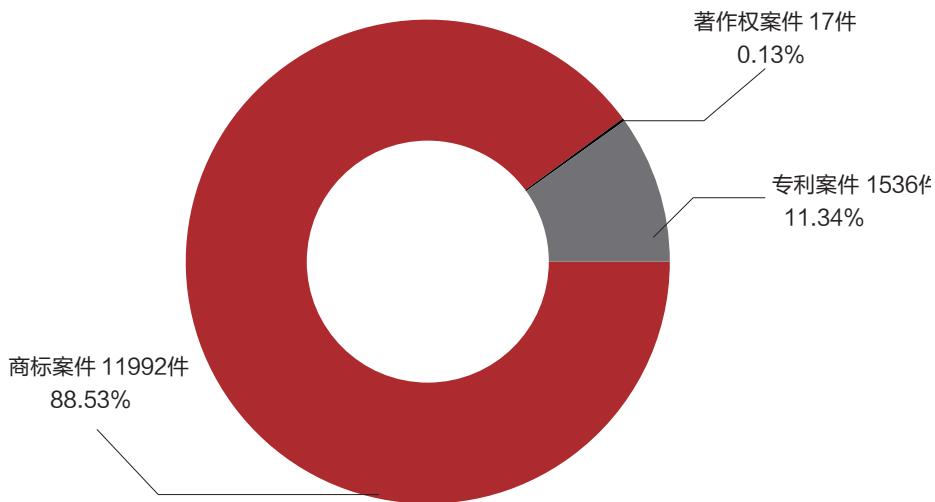
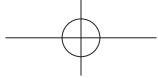


图5 2018年全国地方各级人民法院新收知识产权行政一审案件类型与数量图



(单位: 件)

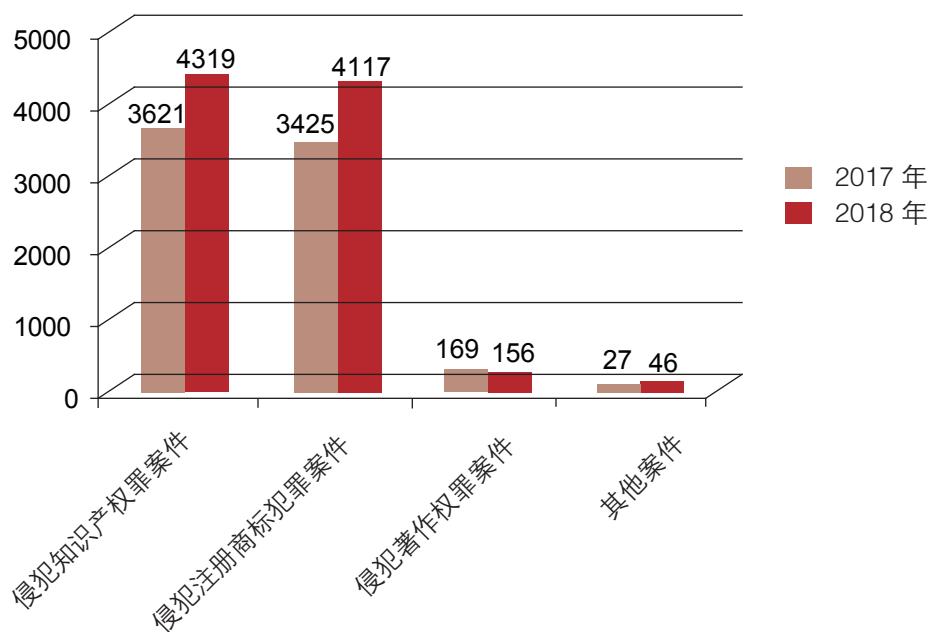


图6 2018年全国地方各级人民法院新收知识产权刑事一审案件同比增幅图

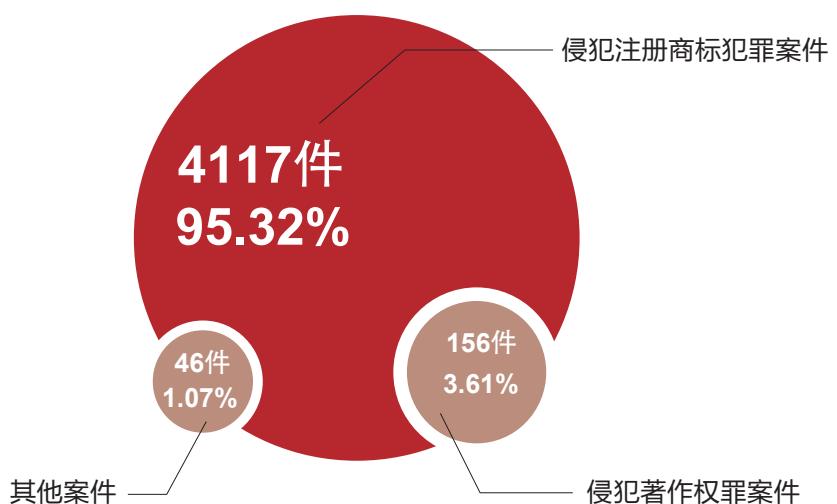


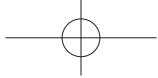
图7 2018年全国地方各级人民法院新收知识产权刑事一审案件类型与数量图



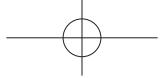
Intellectual Property Protection by Chinese Courts (2018)

Introduction

In 2018, under the strong leadership of the Central Committee of the Communist Party of China (CCP) with Xi Jinping as the leadership's core and guided by the underlying precepts of Chinese socialism for the new era, the People's Courts have applied the principles and implemented instructions decided at the 19th National Congress of the Communist Party of China ("Party Congress"), the second and third plena of the 19th CCP Central Committee and the Central Political and Legal Work Conference. They studied and applied the ideals of General-Secretary Xi Jinping's key addresses, and fostered



the “four aspects of consciousness”—consciousness in political correctness, in serving the broader interests, in following the core leadership, and in staying aligned with the central party leadership; the “four matters of confidence”—confidence in the path of Chinese socialism, in the theoretical foundation of the path, in the system of Chinese socialism and in the Chinese culture; and the “two pillars to safeguard”—safeguarding the core status of General Secretary Xi Jinping, and the central and unified leadership of the CCP Central Committee. The People’s Courts adopted a steady and progressive approach to work, keeping in mind their earliest aspirations and the current mission, and discharging adjudicatory responsibilities as conferred by the Constitution and the law. Our judges have been our trusted achievers, as they endeavoured to deliver for the people a sense of equality and justice in every case handled by the judiciary. Reforms in intellectual property adjudication have deepened, and supervision and guidance for adjudicatory operations have increased. And as the courts strive to make the courtroom the principal forum for intellectual property protection, they are also providing effective judicial safeguards, in the process of working tenaciously toward the “two centennial goals”, and toward achieving the China dream of the great rejuvenation of the Chinese nation.



I. Buttressing judicial protection and leveraging the judicial process

In a speech delivered at the conference celebrating the 40th anniversary of China's reform and opening-up, General-Secretary Xi Jinping emphasised the importance of following through the innovation-driven development strategy by creating a more enabling eco-system for innovation and accelerating proprietary innovation of key technologies to forge new socio-economic growth engines,. Given China's strategic thrust of elevating technological innovation capabilities and promoting high-quality economic development, strengthening protection of intellectual property is a natural and necessary option. Last year was marked by soaring case-load, with massive increase in new types of cases and cases of gravity and complexity. Adjudication was thus more challenging. Law enforcement and adjudication is and will always be the people's courts' top priority, where civil adjudication is the primary focus of the courts' adjudication practice, followed by administrative and criminal adjudication, both of which being equally important. The fact-finding process is rigorous, law-application prudent and judicial policies elucidated to ensure lawful and efficient adjudication of intellectual property disputes.



Last year, the People's Courts accepted a total of 334,951 intellectual property cases, including first instance and second instance cases and applications for extraordinary legal remedy to reopen cases, and concluded 319,651 cases (including carried forward cases), representing a respective year-on-year increase of 41.19% and 41.64%.

(1) More effective adjudication of civil disputes to ensure sustained and sound socio-economic development

Throughout the past year, the People's Courts have directed efforts to meeting the new goals and new demands on the intellectual property judicial protection under the comprehensive deepening of reform agenda, delivered fair justice, and strengthened civil adjudication to better protect intellectual property rights and the full interests of the rights holders.

In 2018, the local people's courts accepted 283,414 and concluded 273,945 civil intellectual property cases of first instance, and the respective year-on-year increases were 40.97% and 41.99%. Among the newly accepted cases, 21,699 were patent cases, an increase of 35.53% from last year; 51,998 trademark cases, a 37.03% increase; 195,408 copyright cases, a 42.36% increase; 2,680 technology contract-related cases, a 27.74% increase; 4,146 unfair competition cases (including 66 monopoly cases), a 63.04% increase. Other



intellectual property disputes constitute 7,483 cases, 44.60% increase from last year.

The local people's courts accepted 27,621 (26.60% year-on-year increase) and concluded 26,288 (28.08% year-on-year increase) civil intellectual property cases of second instance. For extraordinary legal remedies to reopen cases terminated by a final judgement (*zaishen*), the local people's courts accepted 223 cases and concluded 221 cases, representing a increase of 189.61% and 301.82% respectively.

In the same year, the Supreme People's Court accepted 913 new civil intellectual property dispute cases (81.51% year-on-year increase) and concluded 859 (74.24% year-on-year increase). The number of newly accepted and concluded second instance cases were 24 and 21, and the number of newly accepted and concluded reopened cases were 798 and 759, representing year-on-year increases of 76.55% and 71.72% respectively; among the certiorari (*tishen*) cases, 77 were newly accepted cases and 65 concluded cases.

High profile civil disputes involving intellectual property heard and concluded by the people's courts during the year include:

Wuxi Guowei Ceramic Electrical Appliances Co., Ltd (plaintiff/appellant/petitioner), *Jiang Guoping* (plaintiff/appellant/petitioner) vs. *Changshu Linzhi Electrothermal Devices Co., Ltd* (defendant/appellant/petitionee), *Suning.com Co., Ltd* (defendant/appellee/



petitionee) involving a dispute on utility patent infringement; *Guangzhou Compass Conference and Exhibition Service Co., Ltd* (plaintiff/appellant,) vs. *Fast Retailing Trading Co., Ltd. (UNIQLO)* (defendant/ appellant) involving trademark infringement dispute; *Beijing Baidu Network Technology Co., Ltd* (defendant, appellant) vs. *Beijing Sogou Technology Development Co., Ltd* (plaintiff, appellee) involving an invention patent dispute; *Beijing Microvision Horizon Technology Co., Ltd* (plaintiff) vs. *Baidu Online Network Technology (Beijing) Co., Ltd* (defendant) et al. involving infringement of the right of dissemination via the information network; *Beijing Dehong Seed Industry Co., Ltd* (defendant/appellant/petitioner) and *Henan Academy of Agricultural Sciences* (defendant/appellant/petitioner) vs. *Henan Goldoctor Seed Co.,Ltd* (plaintiff/appellee/petitionee) involving infringement in new plant variety; *Canon Inc.* (plaintiff) vs. *Shanghai MUMING Electronic Technology Co., Ltd* (defendant) involving an invention patent dispute; *3M Company* (plaintiff/appellee) vs. *Shanghai Yuanjia Plastic Co., Ltd* (defendant/appellee) and *Shanghai Yushuaiwei Industrial Co., Ltd* (defendant/appellee) et al. involving invention patent infringement; *Activision Publishing, Inc.* (plaintiff/appellant) vs. *Huaxia Film Distribution Co., Ltd* (defendant/appellant) involving infringements of copyright and trademark, unauthorised use of the unique names of well-known goods, and false advertising; and *Crosplus Home Furnishings (Shanghai) Co., Ltd*

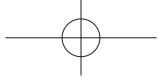


(plaintiff/appellant) vs. *Beijing Zhongrong Hengsheng Wood Co., Ltd et al.* (defendant/appellee) involving copyright infringement.

(2) More effective adjudication of administrative disputes to promote and supervise law enforcement by administrative agencies with regard to intellectual property

The newly amended Administrative Litigation Law and its judicial interpretations were rigorously applied during the past year. By stepping-up judicial review for cases involving the granting and validation of intellectual property rights, and exercising stronger oversight to support the administrative authorities to administer according to law, administrative law enforcement is further regulated.

In 2018, the local people's courts accepted 13,545 administrative intellectual property cases of first instance, 53.57% more than last year. Specifically, 1,536 were patent cases (76.15% year-on-year increase), 11,992 were trademark cases (51.20% year-on-year increase) and 17 were copyright cases (no change from last year). 9,786 first instance cases were concluded, 53.15% more than last year. 3,565 administrative intellectual property cases of second instance were accepted by the local people's courts (304.20% year-on-year increase), and the number of concluded cases totalled 3,217 (180.72% year-on-year increase), of which, the courts upheld the decisions of 2,708 cases, amended the first instance judgement



for 446 cases, remanded 9 cases for retrial, dismissed 45 cases, overruled the decision in 1 case, and disposed of 8 cases through other methods.

The Supreme People's Court accepted 642 and concluded 581 administrative intellectual property cases, representing an increase of 64.19% and 41.02% respectively. Specifically, 537 cases were reopened (55.20% year-on-year increase) and 484 concluded (32.24% year-on-year increase); 99 certiorari cases were newly accepted during the year and 89 concluded.

High profile administrative disputes involving intellectual property heard and concluded by the people's courts during the year include:

Christian Dior Perfumes LLC (plaintiff/ appellant/ petitioner) vs. *Trademark Review and Adjudication Board (TRAB) of the State Administration for Industry and Commerce (SAIC)* (defendant/ appellee/ petitionee) involving the rejection of a trademark application; *Shenzhen QVOD Technology Co., Ltd* (plaintiff/ appellant) vs. *Shenzhen Market Supervision Administration* (defendant/ appellee) and *Shenzhen Tencent Computer System Co., Ltd* (third party in original instance) involving a dispute on copyright administration penalty; *E Italian (Langfang) Electronic Engineering Co., Ltd* (petitioner/ third party in original instance) vs. *Wang He* (plaintiff/appellant/ petitionee), *Yao Peng* (plaintiff/ appellant/ petitionee) and *Patent Re-*



examination Board (PRB) of the State Intellectual Property Office of the PRC (defendant/ appellee/ petitionee) involving an administrative dispute over the invalidation of an invention patent; *Guangzhou Sealy Electronic Technology Co., Ltd* (petitioner/ third party in original instance), *Jinan Qianbei Information Technology Co, Ltd* (petitioner/ third party in original instance) vs. *Poker City Network Technology* (Shanghai) Co., Ltd (plaintiff/ appellant/ petitionee) and *Trademark Appeals Board of the State Administration of Industry and Commerce* (defendant/appellee) involving an administrative dispute on trademark opposition review; *Andis Company* (plaintiff/ appellant/ petitioner) vs. *Trademark Review and Adjudication Board (TRAB) of the State Administration for Industry and Commerce* (defendant/ appellee/ petitionee) and *Ningbo Brofa Hairdressing Appliance Co.,Ltd* (defendant/appellee/petitionee) involving an administrative dispute on trademark opposition review; *Trademark Office of the State Administration for Industry and Commerce* (defendant/ appellant) vs. *Anhui Huayuan Pharmaceutical Co., Ltd* (plaintiff/ appellee) involving a trademark administrative dispute; *Trademark Office of the State Administration for Industry and Commerce* (defendant/ appellant) vs. *Shenzhen Tencent Computer System Co., Ltd* (plaintiff/ appellee) involving an administrative dispute over the review of a rejected trademark application.

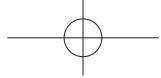


(3) More effective adjudication of criminal offences to sanction intellectual property infringement

The People's Courts exercised their official powers of criminal adjudication as a powerful lever to deter criminal infringement of intellectual property rights and to maintain a positive legal environment that protects intellectual property.

In 2018, the local people's courts accepted 4,319 intellectual property-related criminal cases of first instance, 19.28% higher than last year. Among the accepted cases, 4,117 were related to criminal infringement of registered trademarks (20.20% year-on-year increase), and 156 were criminal copyright infringement (7.69% year-on-year decrease).

The local peoples' courts concluded 4,064 intellectual property-related criminal cases of first instance in total, 11.59% higher than last year. 1,434 cases involved manufacturing and selling counterfeit or substandard goods, 30.36% higher than last year. Of the concluded first instance cases, 1,852 cases were related to the counterfeiting of registered trademarks, 9.78% higher than last year; 1,724 cases involved selling goods bearing counterfeit registered trademarks, 15.39% higher than last year; 305 were cases of illegal manufacturing or sale of goods bearing illegally produced registered trademarks, 17.31% higher than last year; 2 cases involved counterfeiting patents;



136 cases were related to the criminal infringement of copyright, 20% lower than last year; 6 cases involved selling infringing reproductions, 50% higher than last year; and 39 cases involved crimes of trade secret infringement, 50% higher than last year.^①

For intellectual property-related criminal cases of second instance, the local people's courts accepted 683 cases, 28.17% higher than last year; 668 cases were concluded, representing an increase of 23.70%.

High profile criminal cases involving intellectual property heard and concluded by the people's courts during the year include:

Li Gongzhi and Wu Qin's illegal production of registered marks; Jushi Online (Beijing) Technology Co., Ltd and Huang Ming, who were involved in a copyright infringement crime.

In 2018, intellectual property protection by the judiciary exhibits **five key features**.

Considerable increase in case numbers: In 2018, the number of civil, administrative and criminal intellectual property cases newly accepted by the People's Courts was 334,951, 97,709 cases and 41.19% more than last year. First instance administrative and civil

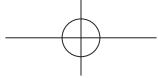
^① The above publicised figures exclude the total number of first-instance intellectual property-related criminal cases, the number of cases involving the manufacturing and sale of counterfeit and substandard goods, the number of cases relating to illegal business operations involving infringement of intellectual property rights, and the number of other intellectual property infringement cases.



disputes increased substantially, by 53.57% and 40.97% respectively.

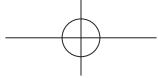
Most notably, Guangdong Province's first instance administrative cases went up by 77.78% year-on-year, and Beijing accepted 52,463 new cases, 47.40% more than last year. Beijing, Shanghai, Jiangsu, Zhejiang and Guangdong continued to operate under a heavy case-load, having accepted 185,337 civil cases of first instance and accounting for 65.39% of the national total for the same category, with Shanghai increasing by 49.77% and Jiangsu Province by 45.48% year-on-year. Zhejiang Province's new first instance patent cases grew by 79.53%.

Many other provinces also witnessed an explosive year-on-year increase. For example, the case-load for Gansu Province grew by 290%, Guizhou Province by 157.22%, Qinghai Province by 155%, Shaanxi Province by 89.4%, Tianjin Municipality by 82.3%, Sichuan by 67.57%, Guangxi autonomous region by 40.05%, and Hainan Province by 156.16%. Also, Hebei Province's newly accepted first instance cases grew by 156.44% and Heilongjiang Province's newly accepted first instance civil cases increased by 130.71%. Shanxi Province's newly accepted first instance cases grew by 65.6%, of which cases involving copyright disputes increased by 199%, and second instance cases increased by 155%



Significantly greater case impact: By hearing different types of cases fairly and efficiently, a digest of cases with significant impact has been created, and intellectual property adjudication by the People's Courts have received increasing attention from home and abroad. For example, for *Christian Dior Perfumes LLC vs. Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC)*, an administrative dispute concerning the refusal of TRAB to accept a trademark application by the plaintiff, the Supreme People's Court conducted open hearing and pronounced the verdict immediately after submissions. The outcome of the case reflects the principle of equal protection for local and foreign rightsholders, and features prominently the value orientation of complying with international conventions and strengthening international cooperation. Through the case, the court also reinforces the demand for due administrative processes and embodies the values of prompt relief and comprehensive protection. This is of exemplary significance in terms of making known China's accomplishments in intellectual property protection, and for making Chinese courts a "preferred forum" for resolving international disputes.

The courts have also adjudicated disputes involving trademark disputes, where famous companies sought to protect their brand interests and market share, and copyright disputes involving the



transmission of cinematograph films and television works through the Internet. These cases involved large claims and attracted wide social attention. For example, in *Zhejiang Geely Holding Group Co Ltd vs. WM Motor* heard by the Shanghai High People's Court, the claim was CNY 2.1 billion; in *Shenzhen QVOD Technology Co., Ltd vs. Shenzhen Market Supervision Administration*, the Guangdong High People's Court ordered an “astronomical fine” of CNY 260 million, which received much public attention. Shanghai Pudong Court heard the *Liu Santian v. Zhou Meisen* copyright infringement case, which was also a highly publicised case involving *In the Name of the People* (*Renmin de Mingyi*) a renowned anti-corruption TV drama.

Adjudication becoming increasingly challenging: As China presses ahead with the development of a market economy and the implementation of the innovation-driven development strategy, technology-based disputes involving finding of complex technology facts or other new types of disputes are increasingly emerging, and new adjudication challenges for intellectual property disputes confront the courts. For example, the Beijing courts heard and concluded the case of *Xi'an Xidian Jietong Wireless Network Communication Co., Ltd vs. Sony Mobile Communications (China)* involving standard essential patents, *Jaguar Land Rover Automotive PLC vs. Jiangling Motors Group Co., Ltd*, an administrative case involving the invalidation of a design patent, and the first



administrative lawsuit involving the rejected application of “DiDiDiDiDiDi” sound trademark.

The Shanghai Intellectual Property Court concluded the case of *Wuhan Han yang Guangming vs. Shanghai Hankook Tire Sales*, where the defendant is accused of entering into vertical monopoly agreements and of abusing its market dominance. This was the first vertical monopoly dispute that the court has heard. The same court also adjudicated several cases involving genetic technology or genetic data, such as the *DNA Genotek Inc. vs. Chinese National Human Genome Center (Shanghai)*, an invention patent dispute involving the infringement of a patented genetic testing technology for human genes; *Huashan Hospital* (a teaching hospital affiliated to Fudan University) *vs. Jonathan Flint*, a case of infringement of the exclusive ownership of information of human genetic resources, which involves the attribution of ownership of human genetic data. The Shanghai Pudong Court also concluded *Youku Information Technology (Beijing) Co., Ltd vs. Shanghai Qianshan Network Technology Development Co., Ltd*, which involved the issuance of a cease and desist order before an unfair competition trial, targeting at the defendant's video aggregation platform.

Adjudication quality progressively improved: First, significant increase in the number of concluded cases. On a year-on-year basis,



the percentage of cases concluded by the Hainan courts in 2018 grew by 161.76%; first instance cases concluded by the Hebei courts was 2,608, representing a 156.44% increase; in Hunan, 9,545 cases were concluded, 69.08% more than last year. In Beijing, 49,596 first instance cases were concluded, 56% more than last year; for Tianjin, the figure was 4,410, with a year-on-year increase of 68.3%; for Sichuan Province, 7,331 cases were concluded, representing an increase of 67.34%.

Second, the percentage of cases accepting the courts' decision as final continued to be encouraging. In Shanghai, with significant increase in new acceptances and disposals, 94.13% of the cases accepted the first instance decision. In Xinjiang with zero petition and complaints through the *Xinfang* ("Letters and Visits") channel.

Third, significant increase in rate of post-mediation discontinuance. Ningxia courts achieved a post-mediation discontinuance rate of 92%. In Liaoning, 74.87% of the cases were discontinued after mediation; the figure for Jiangxi was 69.81%. In Shandong, 68.7% of first instance intellectual property cases were discontinued after mediation; Heilongjiang's figure was 66.2%. In Anhui Province, post-mediation discontinuance rate was 61.86%. The high post-mediation discontinuance rate and high rate of acceptance of the courts' decision have generated good social outcomes.



Protection continued to strengthen: The People's Courts have continued to award damages based on market value to increase the severity of punishment for intellectual property infringement. This will also raise the cost of breaching the law and keep the damages quantum on par with the market value of intellectual property to effectively protect the interests of rightsholders. In an unfair competition case involving the "Laoban '老板'" brand of electrical appliances, the Zhejiang High People's Court which heard the appeal referred to the sales figures submitted as evidence in another case, the selling prices showed in the infringing website and the operating profits indicated in the annual financial statements of the rightholder's listed company. The court determined that the gains from infringement had exceeded the rightholder's claim of damages, and went on to award the entire claim of CNY 10 million, which demonstrated the value orientation of stepping up intellectual property protection. While civil adjudication is the predominant means of resolving intellectual property disputes, the People's courts have continued to focus on using criminal sanctions as deterrence. In the case of He Wei et al. heard by the Hubei High People's Court, where six people were involved in counterfeiting registered trademarks and selling goods with counterfeit marks and where the criminal proceeds was almost CNY 16 million, the Ministry of Public Security gave the case priority focus to supervising the



investigation phase. The case, which attracted much public attention, was difficult in the application of law. The court eventually sentenced He Wei, the principal offender, to seven years in prison on the charge of counterfeiting registered trademarks and three years in prison on the charge of selling goods with a counterfeit mark, thus, totalling 10 years, and a fine of CNY 3.71 million. The punishment meted out to the offender clearly demonstrates the capabilities and level of criminal protection for intellectual property.

II. Enhancing the robustness of the adjudication system and pursuing innovative approaches to judicial reform

2018 marks the first year when we put into action the values and precepts of the 19th Party Congress and the 40th year of China's reform and opening-up. Increasingly, intellectual property is becoming the most important intangible asset in the world, a critical component of national interests, and an essential tool when great powers collide. The world is undergoing a period of change, with major development, major transformation and major adjustments, and the international regime governing intellectual property rights is also progressing and evolving. Determined to change and innovate, the People's Courts are pushing ahead with reforms of the intellectual property judicial regime to recalibrate systems and mechanisms and



rebuild capacities for the modern age.

(1) Establishing an Intellectual Property Tribunal under the Supreme People's Court

Creating an intellectual property tribunal within the Supreme People's Court is part of the efforts to developing a sound and China-specific judicial protection regime for intellectual property. In February 2018, the Central Commission for Deepening Overall Reform decided that the setting up of an intellectual property tribunal would a key reform focus for 2018. The Supreme People's Court's Party organisation regarded the development of the intellectual property tribunal as a key priority, and Chief Justice Zhou Qing chaired a special meeting to study the feasibility of the project, demanding that the intellectual property tribunal meet the criteria being of "high starting point, high standard, high level and international in nature". On 26 October, the Sixth Meeting of the Standing Committee of the 13th National People's Congress approved the "Decision of the National People's Congress Standing Committee on Several Issues Concerning Litigation Procedures for Patent and Other Intellectual Property Cases". On 3 December 2018, at the 1756th meeting of the Supreme People's Court Judicial Committee, the "Supreme People's Court's Provisions on Several Issues Concerning the Intellectual Property Tribunal" was adopted. The provisions clarified issues such



as the scope of cases to be heard by the tribunal and the alignment of procedures. Being a permanent adjudication entity that is part of the Supreme People's Court, the intellectual property tribunal is an appellate-level tribunal having centralise jurisdiction over appeals of patent infringement and antitrust or other technology-related intellectual property disputes. Within a short time, the tribunal has accomplished a suite of tasks, including site selection, recruitment, upgrading of case-operations system and back-end support, and officially began accepting cases on 1 January 2019.

Establishing the intellectual property tribunal is an important decision and resource deployment that stems from the strategic thinking of the CCP Central Committee with Xi Jinping as the core leader, which is to develop China into a global powerhouse in intellectual property and in science and technology. It is also an important reform measure for our comprehensive deepening of judicial reform and promoting fair justice, an important symbol of the intensification of reform and opening-up in the new era, an important outcome of 40 years of continued reform and opening-up, and an important institutional innovation that provides rigorous protection for intellectual property, that serves the innovation-driven development strategy, and that helps cultivate a world-class business environment. Thus, the intellectual property tribunal is of enormous significance to China's rule-of-law development and its history of



advancing the cause of people's justice.

(2) Progressive deepening of the structural and operational development of intellectual property courts

The intellectual property courts have followed through the National People's Congress Standing Committee's deliberations and opinions on Chief Justice Zhou Qiang's report on the work of the intellectual property courts. Increased guidance was provided for the Beijing, Shanghai and Guangzhou intellectual property courts to elevate the standard of their operations. The three courts have made solid and smooth progress, and have achieved significant outcomes. By hearing high profile cases that draw considerable public attention, the courts establish the rules for deciding cases and promote unification of adjudication criteria, providing essential guidance for development of the adjudication sector. The courts' efforts at significantly increasing compensation awards and encouraging litigation integrity have won them worthy praises from the society at large.

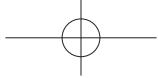
Having implemented a host of measures, the intellectual property courts are also the ground-breakers and trail-blazers of judicial reform: in terms of human resource management, they put in place the judicial accountability system, the professional judges headcount system, and a flat management structure; in terms of mode of adjudication, they developed a collaborative judge-led model with



categorised personnel, and clear accountability and responsibilities; in terms of de-bureaucratisation, they attempted hearing conducted directly by the adjudication committee, and having presidents and chief judges hear cases on a regular basis; in terms of case operations, they explored the case diversion system to separate simple cases from complex ones, and reform of written judgements, and established the technical investigation system to accumulate replicable and scalable experiences. The intellectual property courts also organised symposiums focusing on the development of a system for intellectual property courts, reviewed the lessons and experiences of the intellectual property courts and tribunals, and studied the ways to improve on the system.

(3) Improving the organisational development of specialised intellectual property adjudication institutions with cross-regional jurisdiction

To carry out the national intellectual property strategy, optimise intellectual property case management, and integrate intellectual property adjudication resources, the Supreme People's Court approved in 2017 the setting up specialised intellectual property adjudication institutions with cross-regional jurisdiction in 11 cities, including Nanjing and Suzhou. In 2018, it approved the establishment of intellectual property tribunals in another 8 cities, namely Tianjin,



Zhengzhou, Changsha, Xi'an, Nanchang, Changchun, Lanzhou and Urumqi. Except for Lanzhou and Urumqi, which will commence operations in 2019, the other 6 intellectual property tribunals have commenced operations. Establishing these tribunals are important for unifying the yardsticks for decision-making, improve adjudication quality, and maintaining market order. They are also instrumental in terms of protecting the lawful interests of market players and in implementing China's innovation-driven development strategy. More effort will be committed to provide professional guidance for cases handled by the specialised intellectual property adjudication entities with cross-regional jurisdiction, and the resource allocation for intellectual property adjudication will be continually optimised to improve on the overall jurisdiction structure.

(4) Continuing with “three-in-one” reform

In 2018, the Supreme People's Court buttressed the results of the “three-in-one” reform by performing field studies in multiple provinces and cities. It also convened in Zhengzhou and Chongqing national symposiums for selected courts on topics relating to advancing the “three-in-one” initiative and investigative studies of intellectual property criminal adjudication. Participants at the symposiums carried out in-depth study of the problems in intellectual property criminal adjudication, and completed the “Research Report



on Promoting Nation-wide ‘Three-in-One’ Adjudication of Intellectual Property Cases” and “Nation-wide Research Report on Criminal Adjudication in Chinese Courts”.

The above reports emphasised the need for the intellectual property tribunals of the different levels of courts to fully comprehend the inherent nature of the “three-in-one” mechanism for intellectual property adjudication, that the scope of intellectual property protection stems from a single intellectual property right, and that civil adjudication constitutes the core of the “three-in-one” model and the basis of administrative and criminal adjudication. In intellectual property disputes, civil adjudication determines the jurisdiction structure of “three-in-one” adjudication, in that the jurisdiction of civil cases must be the focal point, around which jurisdiction for administrative and criminal disputes aggregate. The reform of the “three-in-one” mechanism is the chokepoint but also the opening for the People’s Courts to become the main channel for protecting intellectual property in the new era. Therefore, full effort should be devoted to the implementing the “three-in-one” model, as decided by the Central Committee and as arranged by the Supreme People’s Court.

Currently, 17 high courts, 113 intermediate courts and 129 basic-level courts have implemented the “three-in-one” model. At the same



time, the Supreme People's Court continues to give important priority to fighting infringement and counterfeiting to protect intellectual properties, and has been diligent and committed to this priority, having collaborated with the various authorities to follow through the decisions and arrangement of the CCP Central Committee and the State Council. Led by the office of the National Leading Group on the Fight against IPR Infringement and Counterfeiting, the Supreme People's Court has participated in the drafting of various documents, compiling materials, jointly endorsing documents, supervising case operations and on-site appraisal. Its excellent performance of the various tasks has won it the accolade of "Outstanding Group Award for Combating Infringement and Counterfeiting".

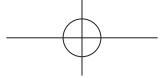
The Hunan courts developed comprehensive intellectual property protection regime comprising civil protection, administrative oversight on law enforcement and criminal sanctions. In the appeal by the Tianyuan People's Procuratorate of Zhuzhou City, where defendants Xiang Fangxiang and Shangguan Zongshang were accused of illegally manufacturing and selling illegally produced registered trademarks and marks, the Hunan Zhuzhou Intermediate People's Court amended the principal penalty from suspended prison sentence to prison sentence to effectively deter intellectual property crimes.



At the national symposium on fighting infringement and counterfeiting, the Shanghai Pudong Court shared its progress in driving the “three-in-one” adjudication model and was duly recognised. In the “three-in-one” reform initiative for intellectual property adjudication which all Chinese courts are pushing ahead, it is the “replicable and scalable” “Pudong experience” for general emulation.

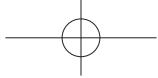
III. Unifying adjudication criteria and strengthening judicial supervision and guidance

Having unified adjudication criteria and ensuring a uniform approach to law-application for consistency and predictability is necessary for developing the intellectual property legal regime. In 2018, the People’s Courts have devoted much effort to unifying adjudication criteria and supervision of adjudicatory operations, and were able to correctly discern and manage the peculiarities and nature of intellectual property adjudication and align adjudication operations between the different levels of courts to improve adjudication quality and efficiency.



(1) Convening national adjudication work meetings to review and organise all aspects of the current operations

In July 2018, the Supreme People's Court convened in Qingdao its 4th National Work Meeting on Intellectual Property Adjudication, for which Chief Justice Zhou Qiang gave important instructions. At the meeting, groups and individuals with outstanding performance were recognised and commended. Ten representatives from different courts shared their experiences. Vice President Tao Kaiyuan reviewed in depth the courts' work for the past five years and the current situation and tasks, and organised intellectual property adjudication work for the near future. The meeting established the "three-step" development goal for intellectual property adjudication and specified the direction for the next five years. It also set forth nine major areas of increased emphasis, which are: establishing the courts as the key dispute resolution channel for intellectual property disputes to elevate the courts' authority in the intellectual property legal regime; strict protection to increase the intellectual property rightsholders' sense of gain; encouraging innovation to cultivate an innovative legal environment; maintaining competition to preserve an effective and healthy competition mechanism; values-driven to promote the core values of socialism; international perspective to continue elevating the international impact of judicial protection of intellectual property; reform and innovation to continue to modernise the intellectual



property adjudication system and adjudication capabilities; supervision and guidance to improve the quality and efficiency of intellectual property adjudication; capacity-building to develop a team of world-class judges. The principles established at the meeting were pertinently instructive for intellectual property adjudication in China for the near future.

(2) Greater focus on studying and publishing judicial interpretations

The Supreme People's Court issued the "Provisions on Several Issues Concerning the Intellectual Property Tribunal" to expound details such as the nature of the organisation, scope of case acceptance, litigation procedures, working mechanism of adjudicatory powers and linking of procedures. Another judicial interpretation issued was the "Provisions on Several Issues Concerning the Application of Law in Examining Cases Involving Taking Preservation Measures against Infringing Acts in Intellectual Property Disputes", which provided clarity on matters such as the applicants of preservation cases, review procedure, necessity of preservation, jurisdiction relating to the determination of erroneous applications and initiation of compensation action to redress an erroneous application, removal of preservation measures, application charges. It also drafted a judicial interpretation concerning the participation of technical investigators



in litigation, which was submitted to the adjudication committee for deliberation. Judicial interpretations concerning adjudication of administrative cases relating to the granting and validation of patent rights are continuously studied, and new problems that emerged are widely discussed.

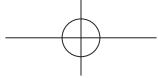
By working on and publishing the above judicial interpretations, the Supreme People's Court has put into effect the "Opinions on Several Issues concerning Strengthening Reform and Innovation in Intellectual Property Adjudication" issued by the CPC Central Committee, to ensure that the "Pilot Programme on Establishing Intellectual Property Tribunal" approved by the Central Committee and the National People's Congress Standing Committee's "Decision on Several Issues Concerning the Litigation Procedures in Patent and Other Intellectual Property Cases" are implemented and the desired results achieved, thereby helping to enrich and further develop the China-specific intellectual property litigation system. These efforts are critical for increasing the robustness of a specialised intellectual property adjudication system, elevating the quality and efficiency of adjudication, unifying adjudication criteria, and serving China's innovation-driven development strategy and intellectual property strategy. The Supreme Court has also worked on the drafting of judicial interpretations concerning the application of the unfair competition law and protection of trade secrets to address



international concerns. Two legal seminars on the judicial protection of trade secrets were convened separately in Nanjing and Shanghai to clarify the legal thinking with regard to adjudicating trade secrets disputes, so as to prepare for the eventual promulgation of the judicial interpretation on trade secrets.

(3) Enhancing judicial policies to accomplish tasks assigned by the National People's Congress

The Supreme People's Court issued the "Notice on Strengthening Judicial Protection of 'Red Classics' and the Lawful Rights of Heroes and Martyrs to Promote the Core Values of Socialism", drafted the "Letter from the Supreme Court's General Office on Incorporating Content Relating to 'Strengthening Judicial Protection of Red Classics and the Lawful Rights of Heroes and Martyrs to Promote the Core Values of Socialism' upon the Amendment of the Copyright Law" and the "Report on Matters Relating to the Strengthening Judicial Protection of Red Classics" to underline the importance of protecting the legacy of red classics and the lawful rights of heroes and martyrs according to law. The above documents also advocate the importance of paying attention to taste, style and responsibility, with the aim of educating and guiding the general public, especially the youth, to consciously resist being "lowly, crude and tawdry", warn against historical nihilism, and regulate broadcasting activities to protect



social and public interests.

The Supreme People's Court also submitted the "Report on the Study and Implementation of the National People's Congress Standing Committee's Report on the Audit of Copyright Law Enforcement and its Deliberations and Opinions" as assigned by the National People's Congress' law enforcement audit. Based on the problems as identified from the law enforcement audit and the judicial practice, the report proposed practical corrective measures and opinions pertaining to matters such as substantive reduction of the cost of defending rights, reducing the long litigation period, increasing the amount of infringement damages.

(4) Actively participating in the revision, compilation research and drafting of laws

The courts have been active participants of in revision of laws and regulations, such as the Civil Code, Patent Law, Copyright Law, Law Against Unfair Competition, Trademark Law, and the Regulations for the Implementation of the Trademark Law and Regulations on the Protection of New Plants Varieties. Judicial policies developed and experiences accumulated from adjudication practice were promptly and specifically studied and assessed, and recommendations for amendments proposed.

A national symposium for selected courts was convened in Beijing



to discuss the amendment of the Copyright Law. Extensive and in-depth discussion were carried out, focusing on the classification of works, the rights included in copyright, copyright agreements, collective management, provisions on related rights, legal liability and coordination and alignment with international treaties and other laws. After thorough discussion, the “Supreme People’s Court’s Opinions on the Amendments to the Copyright Law” was submitted to the Ministry of Justice, and the document was highly commended, and the opinions contained within were well-received.

(5) Strengthening adjudication research and case guidance

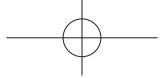
Thematic forums on current and hot intellectual property issues. In November 2018, the Supreme People’s Court convened in Hangzhou, a symposium to solicit opinions and recommendations for the “Several Provisions on Evidence for Civil Procedure for Intellectual Property Disputes (Draft)”. The meeting participants conducted an investigative study on judicial interpretation of evidence in intellectual property civil litigation and studied the use of special procedure in intellectual property litigation.

Several other research studies were also initiated. The research study on malicious trademark registration was a response to the problem that has attracted international attention and serious social displeasure. Another research was conducted jointly with the State



Administration for Market Regulation (SAMR) Trademark Office to provide recommendations on the possible measures to deal with trademark squatting. To develop a better civil justice system to deal with monopoly matters, a research study on civil procedural issues relating to anti-monopoly disputes was initiated, so that the Anti-Monopoly Law could be better leveraged to curb monopolistic behaviour expeditiously. To commemorate the 10th year of promulgation of the Anti-Monopoly Law, the Supreme People's Court organised a symposium to review the experiences relating to the adjudication of civil cases involving monopoly disputes, so as to pave the way for the revision of the Anti-Monopoly Law and the drafting of judicial interpretations, and that a fair and effective mechanism that conduces to market competition can be maintained.

Other areas of research include the study of the conflicts between industrial design and copyright, for which seminars were held in Beijing and Kunming, and the "Study Report on the Conflicts between Industrial Design and Copyright" was drafted to elucidate the similarities and differences and the conflict of rights, and from which practical adjudication guiding opinions could be generated. The study on the judicial protection of outcomes from innovative business models was another interesting attempt. On April 2018, the Supreme People's Court's Intellectual Property Judicial Protection Research Centre convened an assessment conference to deliberate and evaluate



the outcomes of the “Study on the Judicial Protection of the Outcomes of Innovative Business Models”. Leaders from the relevant agencies and experts and academics attended the conference to deliberate and assess the research project’s outcomes, and provided feedback, adjustments and revisions for the report.

The local courts also actively carried out research studies in different areas. On 20 April 2018, the Beijing High People’s Court issued the “Beijing High People’s Court Bench Book on Adjudicating Copyright Infringement Cases”, which specifically sets forth that when adjudicating copyright cases, judges should adhere to the basic adjudication principles of providing greater protection, of encouraging creation, of promoting dissemination and of balancing interests. By summing up the thinking behind the hearing of cases involving copyright infringement, the bench book provides useful guidance for the hearing of internet-related copyright disputes by the Beijing Internet Court and the adjudication of copyright disputes by other Beijing courts. The bench book is a valuable contribution to advancing development and innovation in Beijing’s cultural sector. Again, on 20 September 2018, the court published the “Opinions on Providing Judicial Protection for Strengthening the Development of a National Technological Innovation Centre in Beijing”, which sets forth adjudication rules and requirements for disputes involving innovation-based technologies and relevant cases, and lays out



specific measures for overcoming obstacles stemming from institutions and mechanisms that hamper development of intellectual property adjudication.

In April 2018, the Guangdong High People's Court published the “Operational Guidelines on Adjudicating Standard Essential Patent Disputes”, which looked in to the adjudication thinking and methodology behind disputes involving standard essential patents. “China Intellectual Property (English Edition)” and world-renowned specialised intellectual property media reported on the publication in great detail, providing penetrating interpretations of the Guidelines. It was encouraging to see Qualcomm Technologies and Huawei Technologies Co. Ltd selecting Guangdong Province as the choice jurisdiction for standard essential patent disputes.

The Shanghai High People's Court issued the “Several Opinions on Strengthening Judicial Protection of Intellectual Property” to implement measures that make production of evidence convenient for the parties, that increase the amount of compensation, and that shorten the adjudication cycle, which was highly regarded by the society at large.

The Sichuan High People's Court published the “Guidelines on Adjudicating Disputes Relating to the Infringement of the Right of Information Transmission in Networks” and the “Bench Book



on Adjudicating Trademark Infringement Disputes” unify the adjudication criteria for all courts in the province.

To address the inconsistent standards used in determining electronic evidence submitted during intellectual property litigation, the Zhejiang courts developed a manual entitled “Examination and Determination of Electronic Evidence Relating to Intellectual Property Rights”.

The Shandong High People’s Court was highly productive, having completed the Supreme People’s Court’s major research project entitled “Research on the Intellectual Property Protection of New Forms of Innovation”, the “Research on Strengthening Judicial Protection of Intellectual Property”, the “Research Report on the ‘Anti-Monopoly Law of the People’s Republic of China’” and the research study on “Standard of Proof for Trademark Infringement Cases”

The Tianjin High People’s Court completed the Supreme People’s Court’s major research project entitled “Research on the Judicial Protection Strategy of Intellectual Property in China” and the judicial practice-based thematic research project entitled “Case Study on the Legal Regulation of New Types of Unfair Competition on the Internet”.

Leveraging the role of research bases and bolstering case guidance and case studies: After years of searching and learning, the People’s Courts have developed a unique “four-in-one” intellectual



property case guidance system underpinned by typical cases, guiding cases, annual case reports and case-guidance research bases.

In April 2018, Tao Kaiyuan, Vice President of the Supreme People's Court convened and chaired the Work Symposium of the Supreme People's Court's Intellectual Property Judicial Protection Research Centre cum Seminar on Theories of Intellectual Property Judicial Protection. In his speech, Justice Tao stressed the need to unify thinking and forge synergies in promoting the continued innovation and practical application of intellectual property theories and research methods, research perspectives and outcomes. Representatives from different theoretical study bases and research bases spoke at the symposium. This enabled the research centre to contribute to theoretical research in the judicial protection of intellectual property in the new era, and to leverage its theoretical research capabilities to contribute advice and suggestions.

The Supreme People's Court reviewed the classic cases relating to the judicial protection of intellectual property, and compiled and published the Chinese and English versions of the "Collection of Classic Cases on the Judicial Protection of Intellectual Property in China" to make known the court's achievements. The work has attracted broad interest. Also publishing soon is the "Supreme People's Court Guiding Cases for Intellectual Property Adjudication



(Volume 10)". Other publications include the "Analysis of New Challenges in Intellectual Property Judicial Practice: Hot Issues on Patents, Trademarks and Copyright", "Analysis of New Challenges in Intellectual Property Judicial Practice: Intellectual Property Judicial Protection and Industrial Development", "Interpretations and Applications of Intellectual Property Judicial Interpretations (Updated Edition)". Through its monthly publication "Trends in Intellectual Property Adjudication" and work reporting, the Supreme People's Court has developed a regular guidance and communication mechanism with lower level courts.

In December 2018, the Chongqing High People's Court edited and published the 7th edition of its "Research on Intellectual Property Adjudication in China", comprising 52 articles and totalling 650,000 words. As a continuous publication by the Judicial Theory Committee and an important series under the Chinese Judicial Theory series, this is a highly influential publication. The Chongqing High People's Court also jointly organised with the Southwest University of Political Science & Law the "China Intellectual Property Judges' Forum". Four forums were held in 2018.

In March 2018, the Guangxi High People's Court published the "Collection of Written Judgments on Typical Intellectual Property Cases by Guangxi High Court (2011 to 2016)" targeting at intellectual



property judges, and developed the “Guidelines on Adjudicating Design Patent Infringement Disputes” to provide standard yardsticks for deciding disputes involving the infringement of design patents.

IV. Increasing judicial transparency and promoting fair and efficient justice

In 2018, intellectual property adjudication for the People’s Courts implemented the CCP Central Committee’s decisions and plans to deepen reforms comprehensively and to govern according to law comprehensively, and to fulfil the important tasks of promoting open justice and developing an open, dynamic, transparent and convenient sunshine justice mechanism. The courts’ efforts produced positive results.

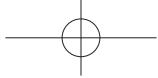
(1) Intensifying publicity for greater judicial impact

In conjunction with the World Intellectual Property Day’s theme of “Powering Change: Women in Innovation and Creativity” to celebrate the brilliance of the women who are shaping the world’s intellectual property landscape, the Supreme People’s Court organised the “Symposium on Intellectual Property for Women” on 27 April, which aimed to reflect on how women in the intellectual property sector of the new era could transform their intelligence and



sense of responsibility into the power of innovation. Discussions at the symposium revolved around Xi Jinping's thoughts on Chinese socialism for the new era and the tenets of the Party's 19th Congress, where NPC deputies, representatives from the All China's Women's Federation and Women's Judges Association, women in technological innovation within intellectual property sector, women academics, female journalists and women judges from different courts gathered at the symposium to share insights and their aspirations and missions for their intellectual property careers of the new era. Vice President Tao Kaiyuan gave a key note speech entitled "Inner and Outer Cultivation, with gentle justice and judicial wisdom, give every passion and affection to the great journey of reform and innovation". An MV of the "Intellectual Property Song" was played at the symposium. Written by Vice President Tao, the lyrics express the voice, mission and noble sentiments of the intellectual property fraternity and are deeply moving.

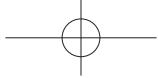
The Jiangsu courts continued to maintain and operate their WeChat official account, the "Jiangsu Intellectual Property Perspective ('Jiangsu Zhichan Shiye')" to increase their influence within and outside the intellectual property adjudication sector. Special columns in professional intellectual property media, such as the Jiangsu High People's Court's Sina Weibo and WeChat official accounts were run, publishing regularly information on complex and difficult cases



heard and concluded by the different courts within the province for prompt dissemination of the latest news on intellectual property judicial protection and increase the courts' impact in intellectual property adjudication within and outside the Jiangsu Province. Since establishing the "Jiangsu IP Vision (Jiangsu Zhichan Shiye)" on WeChat, more than 170 typical cases and nearly 10 articles were published in 182 editions, and the results were encouraging.

(2) Elaborating reports presented at the National People's Congress (NPC) and Chinese People's Political Consultative Conference (CPPCC) ("two conferences") and live telecast of interviews by all media

During the period of the "two conferences", to respond to the people's interest and concern in intellectual property adjudication, the Supreme People's Court participated in an interview which were telecasted live on all media on 16 March 2018, focusing on the key points noted in the "Supreme People's Court Work Report". The invited guests were chief judge Song Xiaoming and deputy chief judges Wang Chuang and Lin Guanghai, who spoke about issues relating to "leveraging the courts as the main channel for protecting intellectual property". Another invited guest was Justice Song Yushui, Vice President of the Beijing Intellectual Property Court, who was interviewed via online video-conferencing.



The interview focused on Chief Justice Zhou Qiang's work report, revolving around five main points: the People's Courts leveraging their intellectual property adjudicatory functions to serve and secure the national strategy of innovation-driven development; increasing oversight and guidance and ensuring consistency in law-application; deepening judicial reform of the intellectual property regime to build a more robust system of adjudication; increase judicial transparency and exchange to elevate China's international influence in the judicial arena; strengthening development of the intellectual property adjudication team to raise their adjudication capabilities and standard. Detailed figures were quoted, and the observations of the guest commenters were enlightening. The comprehensive sharing of the progress of intellectual adjudication during the past five years and the extensive, multi-dimensional and thorough elaboration of what "leveraging the courts as the main channel for protecting intellectual property" indicated in the "Supreme People's Court Work Report" means was telecasted live by more than 30 media, and generated positive and enthusiastic public response and social effect.

(3) Organising thematic activities for "26 April" World Intellectual Property Day and bringing the publicity campaign to a climax

The Supreme People's Court has celebrated the "26 April" World



Intellectual Property Day since 2009. Its focus has always been on the theme of open justice, as it continues to draw attention to the latest topics and highlights of judicial protection of intellectual property. This is also an excellent opportunity to review and improve on the means and methods of doing publicity on the judicial protection of intellectual property. During the past nine years, our courts have learned and evolved in the way they organise intellectual property outreach programmes, which are now increasingly systematic and up-scaled, creating an excellent brand effect.

Vice President Tao Kaiyuan shared at the press conference of the 2018 Intellectual Property Outreach Week, the overall results achieved by the People's Courts in 2017 in terms of intellectual property protection and the highlights of their innovative outcomes. Several publications were also released during this time, including the "Intellectual Property Protection by Chinese Courts in 2016" (Chinese and English versions), "Ten Major Intellectual Property Cases and Fifty Typical Cases Adjudicated by China's Courts in 2016", and the "Supreme People's Court Annual Report of Intellectual Property Cases (2017)". More than 20 media attended and reported the press conference, and enthusiastic responses and comments generated. The local courts also organised various "26 April" outreach activities based on local circumstances and needs.



(4) Enhancing open justice to ensure impartial justice

The courts have made significant efforts to publish written judgements, where they actively explored new avenues on the mobile internet environment to promote open justice, and have used extensively platforms such as China Judgements Online (wenshu.court.gov.cn), China Judicial Process Information Online (<https://splcgk.court.gov.cn/gzfwww/>) and China Court Hearing Online (tingshen.court.gov.cn/) to build an information-based, data-driven and detail-oriented intellectual property open justice system and to increase the transparency of adjudication. Written judgements appropriate for public access are uploaded on the websites promptly and fully, and updates on their online availability announced regularly. Over time, the scope of such public access will increase and the efficiency of providing accessibility will improve. The written judgements of the Supreme People's Court Intellectual Property Division are 100% available online.

Advancing public access of the hearing process and online case operations is another area of focus. The courts have improved their management of the adjudication process for intellectual property cases and furthered the development of technology courts to promote adoption of contemporaneous audio- and video-recording and live streaming of the hearing process. New and innovative ways



of open hearing are created, and the scope of open hearing expanded to ensure that the parties can exercise their right to know and right to supervise. Promoting greater use of smart technology has empowered open justice and improved adjudication and efficiency.

The Anhui courts have leveraged the three major open justice platforms to enable online access of written judgements and live streaming of court hearings as much as possible, where appropriate. The Haozhou Intermediate People's Court have organised open hearings for ten thousand citizens, where people from different sectors were invited to observe the court proceedings when intellectual property cases were heard. For cases suitable for circuit court hearing, the Tongling Intermediate People's Court would deploy judges to the location of the defendant's principal establishment, shopping mall or places as such to conduct hearings and face-to-face legal outreach and education.

V. Organising exchanges and cooperation and serving broader national and international interests

The intellectual property legal regime draws strength from international commonalities and responses to interactive effects from different regimes. The People's Courts must actively engage in



international and regional intellectual exchanges and cooperation, and must establish and improve its communication and exchange mechanisms for sharing information on judicial protection of intellectual property to facilitate deeper and objective understanding of the complete set-up of China's intellectual property judicial protection regime by the different countries. China works to elevate its participation, discourse power and the flexibility to respond to its advantage to changes and challenges, and gives priority to building an environment conducive to trade and investment and creating the image of a responsible power.

(1) Strengthening international and regional collaboration and exchange

Strengthening international judicial cooperation and exchange:

The People's Courts attaches great importance to strengthening exchanges with international organisations and countries around the world, and to showcasing the results of judicial protection of intellectual property in China and the abilities and accomplishments of Chinese intellectual property judges.

In November 2018, at the invitation of WIPO Director-General Francis Gurry, Vice President Tao Kaiyuan led a delegation for WIPO's inaugural Intellectual Property Judges Forum in Geneva and her first meeting of with the WIPO Advisory Board of Judges. Delivering the



only key note address at the forum, Justice Tao spoke on the topic “Steadfast in providing judicial protection of intellectual property; working together to create a great future for intellectual property”. Her inspiring address received a positive and enthusiastic response from the audience, and key excerpts of her speech is quoted on WIPO’s website. WIPO and Director-General Gurry expressed their strong support and great recognition for China’s work on intellectual property. The visit provided opportunity for China to share its historical achievements in the judicial protection of intellectual property and to respond to issues of concern, and in doing so, garner maximum understanding and receptiveness of China’s specificities in intellectual property protection from the international community. It was also an excellent platform which China used to make itself heard, contribute the Chinese wisdom and Chinese formula.

The EU-China Anti-Monopoly Judicial Seminar convened in Beijing. Co-organised by the Supreme People’s Court and European anti-monopoly agencies, the seminar was attended by President of the General Court (EGC) of the Court of Justice of the European Union Marc Jaeger, Judge Schwarcz, European anti-monopoly agencies, and China representatives from the EU Commission. During this period, Vice President Tao Kaiyuan and Chief Judge Song Xiaoming met with EGC President Jaeger and his delegation. In addition, the European



Union Chamber of Commerce in China today released its “European Business in China–Position Paper”, which highly commended China for establishing intellectual property courts.

The Supreme People’s Court also sent representatives to participate in the Inaugural U.S.-China Digital Economy Forum, 140th Annual Meeting of the International Trademark Association, Symposium on Intellectual Property Advanced Seminar for ASEAN+3 2018, the 8th OECD/KPC Competition Workshop for Asia-Pacific Judges, 8th OECD/KPC Competition Workshop for Asia-Pacific Judges and the ICC Commission on Intellectual Property (Fall Conference). It also continued to participate in the negotiations of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, and was involved in the 4th Special Commission meeting.

Cooperation with Europe continued to be very close, as the court also sent representatives to participate in the 21th meeting of the EU-China IP Working Group. Both China and Europe agreed to strengthen their intellectual property dialogue and to deepen cooperation in intellectual property protection. In November, under the China-EU IP Cooperation Project “IP Key China”, a delegation of intellectual property judges from China went on study visits to Germany, Belgium and Luxembourg. This was a programme aimed at fostering



exchanges with the intellectual property-related policy-makers and judiciaries of European authorities to help them understand the level of judicial protection given to intellectual property in China and China's position of giving equal protection to local and foreign rightholders, which will give China greater international influence. It will also help us learn and adapt advanced legislative and judicial experiences to further strengthen our intellectual property adjudication system and develop more robust intellectual property protection systems and mechanisms, which will elevate our professional competence in intellectual property adjudication.

Strengthening inter-judicial cooperation and exchange: First, mutual visits and exchange with Hong Kong and Macao. In October 2018, Vice President Tao Kaiyuan led a delegation of eight to visit the Hong Kong Court of Final Appeal and the Court of Final Appeal of Macau at their invitation. This was the first time that mainland and Hong Kong judges held a seminar on the topic of adjudication in Hong Kong. The discussions have enabled the judges from both sides to resonate in many areas as men of the law. The delegation also visited judiciaries in Hong Kong SAR and Macao SAR to confirm the mutual visit mechanism for their judges, as well as participated in intellectual property adjudication seminars in Hong Kong and Macao. The "Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the



Mainland and of the Hong Kong Special Administrative Region" signed with Hong Kong's Legislative Council provides for the recognition and enforcement of intellectual property-related civil judgements and serves the development of the Guangdong-Hong Kong-Macau Greater Bay Area.

Second, mutual visits and exchange with Taiwan. Between 15 and 21 May, Chief Judge Song Xiaoming visited Taiwan in the capacity of executive director of the China Association of Judges under the invitation of the Taiwan Law Society. The 12-person delegation visited the Taiwan Intellectual Property Court to study the set-up and operations of the specialised court, and other systems relating to the judicial protection of intellectual property, such as "three-in-one" adjudication and technology investigators. With the joint efforts of all members of the delegation, the study visits and exchanges yielded positive results and met the objectives of the trip. On 13 December, Justice Song met with Justice Sung-Mei Hsiung from the Taiwan Intellectual Property Court, who was invited to visit by the China Association of Judges. Both sides discussed intensively on issues such as punitive damages, patent litigation agent, and the source and makeup of technology investigators.



(2) Organised master class on intellectual property adjudication to strengthen cooperation with WIPO

Organised as a collaborative effort between the Supreme People's Court and WIPO, the inaugural "Master Class on IP Adjudication" was held on 21-23 August 2018 at the National Judges College in Beijing. This judicial training was the most important and the highest level, and where the discussion topics of which were the most in-depth. Chief Justice and President of the Supreme People's Court Zhou Qiang specially met with Deputy Director-General of WIPO Wang Binying, Legal Counsel and head of the WIPO legal team Frits Bontekoe, and representative of the students and instructors of the master class. The class consisted of 7 lectures, 24 formal students and 15 observers from China, the United States, Germany, Australia, Belgium, Korea, Singapore, the Philippines, Vietnam, Thailand, Moldova, Brazil, Latvia, Malaysia and South Africa. More than 40 judges from 15 countries gathered here to learn and share, using English as the only language of communication.

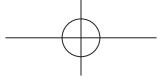
Chief Justice Zhou noted that China's courts engage closely with WIPO and collaboration between them has been fruitful. The success of this master class is a major outcome of this collaboration, and is instrumental in encouraging the judges from different countries to engage with each other more, and in facilitating judicial protection



of intellectual property in different countries. This success also marks the advancement of the cooperation between the Supreme People's Court and WIPO to new heights, and opens up avenues for making known to the world China's achievements in the judicial protection of intellectual property, and with widened international exposure, China's intellectual property judges will truly become more international in their legal knowledge and perspectives.

VI. Enhancing judicial capabilities and strengthening character-building for judges

Solid and sound training has always been the cornerstone of intellectual property adjudication for the People's Court. The intellectual adjudication team of the courts of every level must have the initiative to adopt a higher political stance and to elevate their professional qualities and competence. The courts must also apply themselves to building an intellectual property adjudication team that is steadfast in political belief, that has the sense of totality, that is well-versed with the law and technically-skilled, and that possess an international perspective, so as to provide strong organisational underpinnings for the adjudication of intellectual property in the new era.



(1) Intensifying development of ideological and political thoughts to elevate the level of thinking and political calibre

The Party's political development is a fundamental development. Intellectual property judges must appreciate the full importance of the Party's political development to the People's Courts' development, uphold the absolute leadership of the party, and stay determined and unwavering in their political belief. They must develop greater political awareness, improve on their political qualities and capabilities, and strengthen their political conviction, and they must adhere strictly to political discipline and political rules.

In early 2018, a talkfest whose theme was "Glory and Dream, Mission and Responsibility" was held at the Beijing Intellectual Property Court. Vice President Tao Kaiyuan shared her emotion affinity, ideal and pursuit with regard to intellectual property rights, and elicited strong resonance among the cadre police officers.

In June 2018, a Party Day activity under the theme "In pursuit of Yan'an's footprint, uphold the Yan'an Spirit" was held in the old revolutionary base of Yan'an. The party members felt deeply enlightened. Between October and December, the "Photography Exhibition Celebrating the 40th Anniversary of Reform and Opening-up" was held, where brilliant photo images gave vivid expression to



the work of intellectual property judicial protection, the devotion of the adjudication team, and the inspiring ethos and energy.

(2) Strengthening training on adjudication operations to improve on the judicial capabilities of in adjudication

The “Opinions on Several Issues concerning Strengthening Reform and Innovation in Intellectual Property Adjudication” specifies the need to devote great effort to develop the intellectual property adjudication team into a “formalised, specialised, professionalised and internationally savvy” team. A high-calibre team of judges is essential for sustaining the development of intellectual property judicial operations. In 2018, the Supreme People’s Court organised more than thirty sessions of intellectual property training at the National Judges’ College and the local courts. The court also organised three sessions of the “Expert Lecture Series for the Party Branch of the Intellectual Property Divisions”, focusing on topics such as the application of law in patent examination, criminal adjudication of intellectual property infringement, trademark protection in a digital environment, legal liability of network service operators, which was very well-received by the participants.

The local courts also conducted training. To improve the professional capabilities of intellectual property judges, for example, the Fujian High People’s Court, organised a training on adjudication skills



for sixty trainees between 14 to 23 August 2018 at the East China University of Political Science and Law.

(3) Strengthening party ethics and government integrity to ensure that the team is clean and honest

In 2018, the intellectual property divisions of all the courts have followed through with the requirement to enforce strict governance on the party, the court, the division and in management, and has dedicated much effort to developing good conduct and discipline within the intellectual property adjudication teams, focusing on correcting the “four problematic habits (*sifeng*)”: formalism, bureaucratism, hedonism and extravagance, and on striking problems that elicit strong public reaction. Checks and corrective actions are taken promptly, regularly and persistently.

The different levels of adjudication divisions are also committed to educating and guiding cadre police officers on judicial conscience and to enforcing rigorous discipline on judicial behaviour as part of a continuous process to improve judicial conduct. Greater prevention and control measures have also been instituted to guard against the risks of judicial dishonesty. Another area that has been given urgent attention is the development and improvement of management and supervision mechanisms that accommodate the new mechanism for exercising adjudication powers, and that support the judicial



accountability system. Finally, the courts also take rigorous action in investigating and punishing fraudulent and adjudication-for-gain behaviour. Strict and determined measures are imposed to eradicate rotten apples to ensure that the action and stringency are indeed genuine, undeterred and sustained.

Conclusion

In 2019, we celebrate the 70th year of the founding of the People's Republic of China. But 2019 is also the critical year for achieving the building of a "complete xiaokang" society and the first Centenary Goal, and the first year of the People's courts' fifth Five-Year Reform Programme. As we usher in a new chapter in history, the People's Courts face an exciting future with higher demands and a people with higher expectations. Enabling the courts to serve the larger good, and enabling justice to be done for the people and done impartially are tasks that are increasingly laborious and onerous.

The new era is for go-getters. And the answers are for us to give. Judicial protection of intellectual property by the People's Courts will adhere to the path of Chinese socialism for the new era as propounded by President Xi Jinping. The courts will discern and manage the key social contradictions and changes in the new era,