

中国法院知识产权司法保护状况 (2009 年)

**Intellectual Property Protection
by Chinese Courts in 2009**

**中华人民共和国最高人民法院
2010 年 4 月·北京**

**The Supreme People's Court,
the People's Republic of China
April 2010, Beijing**

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特别说明：

1、《中国法院知识产权司法保护状况（2009年）》以中英两种文本发布，以中文文本为准。

2、《中国法院知识产权司法保护状况（2009年）》系首次发布，故对过去30年中国法院知识产权司法保护概况亦予简要阐述。

Special Remarks:

1. This paper is published in both Chinese and English. The Chinese version shall be the authoritative version for the purpose of interpretation.
2. As a publication for the first time, this Paper includes a brief introduction of intellectual property protection in China in the last 30 years.

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中国法院知识产权司法保护状况 (2009 年)

前 言

人民法院是国家的审判机关，依照宪法和法律，独立行使审判权，履行对知识产权进行司法保护的神圣职责。

伴随着中国改革开放的步伐，自上世纪 70 年代末 80 年代初中国知识产权事业起步以来，在党和国家的高度重视下，在全社会的大力支持下，在人民法院广大法官的共同努力下，中国法院的知识产权司法保护事业从无到有，由弱到强，不断发展，逐渐建立起了能够基本适应国家发展需要、履行国际条约义务、体系比较完整的中国特色社会主义知识产权司法保护制度，成为中国司法事业的重要组成部分。

——30 年来，人民法院知识产权司法保护职能不断强化。人民法院通过行使民事、行政和刑事三种审判职能，对知识产权提供全方位司法保护。民事审判方面，自上世纪 70 年代末开始技术合同案件审判，80 年代中期陆续开始商标、专利、著作权民事案件审判，90 年代初期开始不正当竞争案件审判，人民法院依法受理和审结了大量知识产权民事案件。从 1985 年至 2009 年，人民法院共审结知识产权民事一审案件 166408 件。行政审判方面，自 1985 年专利法实施后人民法院开始受理以专利复审委员会为被告的专利行政案件以来，有关法院认真履行对涉及专利、商标等授权确权案件和知识产权行政执法案件的司法审查职责。从 1985 年至 2009 年，全国地方法院共审结知识产权行政一审案件 6387 件。刑事审判方面，1979 年刑法颁布施行后人民法院据此对注册商标予以刑事司法保护，1997 年刑法修订后对各类知识产权提供全面的刑事司法保护，不断加大知识产权的刑事司法保护力度，依法严惩假冒、盗版等严重侵犯知识产权犯罪。在 2004 年底最高人民法院和最高人民检察院联合发布关于办理侵犯知识产权刑事案件的司法解释以后，人

民法院受理和审结的涉及知识产权侵权的刑事案件明显增加。从 1997 年至 2009 年，共审结知识产权刑事一审案件 14509 件。

——30 年来，人民法院知识产权司法保护领域不断拓宽。人民法院受理的知识产权案件，90 年代中期以前以技术合同案件为主，90 年代中期以后至 2002 年期间专利案件最多，2002 年以来著作权案件上升到第一位。在传统的著作权、专利、商标、不正当竞争和技术合同案件总体上继续保持快速增长的同时，知识产权司法保护不断扩展到网络著作权、计算机软件著作权、植物新品种、集成电路布图设计、民间文学艺术、地理标志、特殊标志、企业名称、网络域名、驰名商标司法认定、非物质文化遗产、特许经营和申请诉前临时措施、确认不侵权以及反垄断等全新领域，尤其是涉及网络著作权的案件近年来迅猛增加。目前，人民法院受理的案件已经覆盖到所有类型的知识产权与各种方式的市场竞争行为，涉及到知识产权的创造、运用、保护和管理的全过程。司法日益成为当事人解决知识产权纠纷的主渠道，以专利保护为例，权利人多数选择直接向人民法院提起民事诉讼来解决纠纷。

——30 年来，人民法院知识产权司法保护水平不断提高。人民法院知识产权案件的审判质量和效率得到不断提高，知识产权民事案件一审结案率从 2003 年的 75.35% 上升到 2009 年的 85.35%，上诉率从 2003 年的 59.38% 下降到 2009 年的 48.82%，二审改判发回率从 2003 年的 15.19% 下降到 2009 年的 6.00%，再审率从 2003 年的 0.80% 下降到 2009 年的 0.33%。诉讼调解效果显著，近年来，全国法院知识产权民事一审案件平均调解撤诉率始终维持在 50% 之上。在涉外知识产权案件的审理中，人民法院坚持依法平等保护原则，依法平等保护中外当事人的合法权益，树立了良好的国际司法形象。司法保护的透明度不断增强，人民法院始终坚持审判公开原则，依法通过媒体、网络和出版物等形式及时向社会公开生效裁判和发布审判信息，最高人民法院于 2006 年 3 月 10 日正式开通“中国知识产权裁判文书

网”，统一上网公开各级人民法院的生效知识产权裁判文书。

——30 年来，人民法院知识产权司法保护力度不断加大。人民法院严格依法判令侵权人承担侵权责任，努力降低维权成本，加大侵权成本。在认定侵权成立的情况下，一般都会责令侵权人立即停止侵害，同时确保权利人获得足够的损害赔偿，依法适当减轻权利人的赔偿举证责任。例如，最高人民法院于 2009 年底终审的武汉晶源环境工程有限公司诉日本富士化水工业株式会社、华阳电业有限公司侵犯发明专利权纠纷案，判令二被告共同赔偿原告经济损失人民币 5061.24 万元（约合 742 万美元）。这是目前最高人民法院判决赔偿额最高的一起知识产权案件。人民法院积极慎重、合理有效地采取诉前临时措施，并注意依法运用民事制裁惩处侵权人。2002～2009 年，全国地方法院共受理与知识产权有关的诉前临时禁令申请案件 808 件，裁定支持率达到 84.18%；受理诉前证据保全申请案件 1312 件，裁定支持率达到 93.72%；受理诉前财产保全申请案件 527 件，裁定支持率达到 96.04%。人民法院特别注重刑事制裁在保护知识产权中的作用，在依法适用主刑、规范缓刑适用的同时，加大罚金刑的适用与执行力度，积极采取追缴违法所得、收缴犯罪工具、销毁侵权产品、责令赔偿损失等措施，从经济上剥夺侵权人的再犯罪能力和条件

——30 年来，人民法院知识产权司法保护制度不断完善。自 1985 年以来，最高人民法院共制定了 41 件知识产权司法解释，其中现行有效的 29 件；出台了 40 多份具有普遍指导意义的司法指导性文件。特别是自 2000 年以来，根据入世和建设创新型国家的需要，最高人民法院进一步加大司法解释力度，制定了 25 件知识产权司法解释。这些司法解释和指导性文件的颁布实施，使得人民法院在审理知识产权案件的程序和实体上有了更加具体明确的依据，知识产权审判制度更加健全。知识产权案件管辖制度不断完善，为确保知识产权案件的审判质量，在对专利、植物新品种和集成电路布图设计案件自始实行指定管辖制度的同时，从 1998

年起将其他知识产权民事一审案件的管辖权也基本集中至中级人民法院，近年来又根据涉及著作权和商标等一般知识产权案件大幅上升的态势，积极探索指定部分基层人民法院审理一般知识产权民事案件。知识产权案件案由更加科学和全面，2008年4月最高人民法院颁布施行新的《民事案件案由规定》，进一步将与知识产权和竞争法有关的民事案件案由集中统一予以规范。知识产权审判资源配置不断优化，上世纪80年代，著作权和工业产权民事案件分别由人民法院民事审判庭和经济审判庭负责，从90年代以来逐步统一由专门审判庭负责。近年来，一些地方法院还进行了由知识产权审判庭统一受理知识产权民事、行政和刑事案件试点工作，以及采用扩大合议庭组成或者民事法官参与知识产权刑事、行政案件审判的探索工作。

——30年来，人民法院知识产权司法保护能力不断增强。人民法院的知识产权审判组织不断健全，队伍建设不断加强，专业化水平不断提升。1993年8月，北京市高、中级人民法院在全国率先成立专门的知识产权审判庭，最高人民法院也于1996年10月成立知识产权审判庭。目前，各高级人民法院和多数中级人民法院以及所有具有知识产权民事案件管辖权的基层人民法院都设立了专门的知识产权审判庭，据截至2008年10月的统计，全国地方法院单设知识产权庭298个，专设知识产权合议庭84个，共有从事知识产权审判的法官2126人（截至目前全国地方普通法院共有31个高级人民法院、409个中级人民法院和3119个基层人民法院）。人民法院普遍选配素质较高、经验丰富的法官从事知识产权审判；重视对知识产权法官的培训以及专业知识和审判技能的强化训练，知识产权法官的司法能力和专业水平不断提高；注重调查研究和坚持理论创新，坚持学习和注重研究成为知识产权法官的普遍追求和职业特点。

2009年，伴随着人民共和国走过60年风雨历程，取得令世人瞩目成就的同时，人民法院的知识产权司法保护事业也取得了新进展。人民法院始终坚持以邓小平理论和“三个代表”重要思想为指导，深入贯彻落实科学发展观，紧紧围绕党和国

家工作大局，全面贯彻落实国家知识产权战略，重视研究知识产权审判工作面临的新情况、新问题，突出工作重点，创新工作方式，集中力量办案，坚持统筹兼顾，加强监督指导，实现了知识产权审判工作的新发展、新突破。

2009年，中国法官用智慧和汗水抒写了知识产权司法保护的又一新篇章。

一、依法公正高效审理知识产权案件， 充分发挥司法保护知识产权的主导作用

2009年，在知识产权案件数量增多、新类型案件增多、重大疑难案件增多、案件审理难度加大的情况下，人民法院始终坚持以执法办案为第一要务，充分发挥各项知识产权审判职能作用，依法保护知识产权，公正高效审理了各类知识产权案件。司法解决知识产权纠纷的主渠道作用更加凸显，知识产权司法保护越来越得到社会各界和国内外的高度信赖和充分肯定。

（一）依法妥善审理知识产权民事案件，充分发挥民事审判在保护知识产权和激励自主创新中的主导作用

知识产权民事案件数量继续保持多年来快速增长的势头，案件增幅明显，远超过其他类型民商事案件的增幅。2009年，全国地方法院共新收和审结知识产权民事一审案件30626件和30509件，分别比上年增长25.49%和29.73%，新收一审案件诉讼标的总金额达到308495万元（约合45225万美元）。其中，新收专利案件4422件，比上年增长8.54%；商标案件6906件，比上年增长10.80%；著作权案件15302件，比上年增长39.73%；技术合同案件747件，比上年增长19.9%；不正当竞争案件1282件，比上年增长8.19%；其他知识产权案件1967件，比上年增长46.79%。全年共审结涉外知识产权民事一审案件1361件，比上年增长19.49%；共审结涉港澳台知识产权民事一审案件353件，比上年增长56.89%。全年共新收和审结知识产权民事二审案件5340件和5492件，分别比上年增长12.21%和16.88%；共新收和审结再审案件100件和107件，分别比上年下降1.96%和增长

50.7%。此外，自 2008 年 8 月 1 日反垄断法实施以来至 2009 年底，全国地方法院共受理和审结垄断民事一审案件 10 件和 6 件。

2009 年，最高人民法院共新收和审结知识产权民事案件 297 件和 390 件（含旧存）。其中，新收申请再审案件 230 件，审结 319 件（含旧存），切实履行了对全国法院知识产权审判的监督和指导职责。

在 2009 年人民法院审理的案件中，有一批社会关注度高、影响面广乃至在国际上都有重大影响的案件。如正泰诉施耐德“小型断路器”实用新型专利案、江汉石油“牙轮钻头”商业秘密案、武汉晶源“烟气脱硫”方法专利案、宝马诉世纪宝马驰名商标案、“吴良材”商标及不正当竞争案、“鲁锦”商标与通用名称之争案、“道道通”导航电子地图著作权案、黄金假日诉携程机票预订不正当竞争案、“采乐”商标撤销行政诉讼案、“番茄花园”软件网络盗版案等。

案件的审判质量和效率不断提高。全国地方法院知识产权民事案件一审结案率从 2008 年的 81.73% 上升到 2009 年的 85.04%，上诉率从 2008 年的 49.32% 下降到 2009 年的 48.82%，再审率从 2008 年的 0.44% 下降到 2009 年的 0.33%，上诉案件改判率从 2008 年的 6.20% 下降到 2009 年的 6.00%。最高人民法院知识产权民事案件的结案率从 2008 年的 55.93% 上升到 2009 年的 88.64%，提高了 32.71 个百分点。

充分发挥临时措施在保护知识产权中的特殊作用。2009 年，全国地方法院共受理与知识产权有关的诉前临时禁令申请案件 59 件，裁定支持率达到 85.42%；受理诉前证据保全申请案件 237 件，裁定支持率达到 98.72%；受理诉前财产保全申请案件 56 件，裁定支持率达到 100%。总体而言，人民法院对于适用临时措施保护知识产权的态度比较积极，裁定支持的比例较高。

（二）依法严惩侵犯知识产权犯罪，充分发挥刑事审判惩治和震慑侵犯知识产权犯罪的功能

人民法院充分发挥知识产权刑事司法保护的职能作用，依法运用各种刑事制裁

措施，加大对涉及知识产权侵权犯罪行为的打击力度，严厉打击各类知识产权犯罪行为。2009年，全国地方法院共审结涉及知识产权侵权的刑事案件3660件，比上年上升10.04%；判决发生法律效力5836人，比上年上升8.31%，其中有罪判决5832人，比上年上升8.28%。在审结案件中，以侵犯知识产权犯罪判决的案件1007件，生效判决人数1605人，同比分别上升1.1%和下降3.14%；以生产、销售伪劣商品犯罪（涉及侵犯知识产权）判处案件646件，生效判决人数1114人；以非法经营罪（涉及侵犯知识产权）判处的案件1973件，生效判决人数3076人；以其他犯罪判处的涉及侵犯知识产权的案件34件，生效判决人数41人。一些案件的裁判在国内外产生了重大影响。如由江苏省苏州市虎丘区人民法院判决的成都共软网络科技有限公司与孙显忠、洪磊等犯侵犯著作权犯罪案（即“番茄花园”软件盗版案），是我国通过刑事司法途径打击大规模软件网络盗版行为的一起成功案例，该案给那些寄希望于通过盗版获取非法利益的网站和其他侵权者给予了沉重打击，展示了我国严格履行国际公约，对国内外著作权人给予平等保护的良好形象。

（三）依法履行对知识产权行政行为的司法审查职责，充分发挥监督和支持知识产权行政执法保护的职能

人民法院切实发挥行政审判对知识产权行政行为的司法审查职能，监督和支持行政机关依法行政，保护知识产权行政相对人的合法权益，维护知识产权行政管理秩序，促进知识产权行政保护。2009年全国地方法院共新收和审结一审知识产权行政案件2072件和1971件，分别比上年增长92.92%和90.99%。其中，新收专利案件688件，比上年上升19.03%；商标案件1376件，同比上升184.3%；著作权案件4件，同比下降42.86%；其他案件4件。最高人民法院共新收和审结知识产权行政案件54件和56件（含旧存）。

知识产权行政案件主要是以国家知识产权局专利复审委员会和国家工商行政管理总局商标评审委员会为被告的授权确权类行政案件。2009年，这类行政案件的增幅创历史新高，办案压力明显增大。据统计，北京市第一中级人民法院共新收和

审结一审专利行政案件 626 件和 594 件，分别比上年增长 20.38%和 34.69%；北京市高级人民法院共新收和审结专利行政二审案件 361 件和 337 件，分别比上年增长 11.42%和 17.01%。北京市第一中级人民法院共新收和审结一审商标行政案件 1346 件和 1222 件，分别比上年增长 209.42%和 333.33%；北京市高级人民法院共新收和审结商标行政二审案件 465 件和 416 件，分别比上年增长 144.73%和 195.03%。

（四）加大知识产权案件调解力度，努力构建知识产权审判“大调解”格局

人民法院在运用裁判方式审判案件的同时，依法发挥调解这一“东方经验”的功能作用，将“调解优先、调判结合”工作原则贯穿于知识产权审判的全过程，在案结案事了上下功夫。2009 年，人民法院调解水平不断提高，调解率不断上升，知识产权诉讼调解效果显著，全国地方法院知识产权民事一审案件平均调解撤诉率达到 61.08%，同比上升 5.22 个百分点。如，浙江省高级人民法院在审理正泰集团诉施耐德公司“小型断路器”实用新型专利侵权上诉案时，促使法国施耐德电气公司与正泰集团基于本案达成全球和解协议，不仅解决了双方长期在多国存在的多起知识产权争议，为双方创造了良性竞争的市场环境，也为双边关系的改善起到了积极作用。湖北省高级人民法院在审理江汉石油“牙轮钻头”商业秘密侵权案中，经过近五十次的耐心调解，双方终于就与本案以及相关的所有纠纷达成一揽子调解协议，当事人双方对此均十分满意，取得了良好的社会效果。最高人民法院在审理“好想你”商标行政纠纷案过程中，在河南省高级人民法院协助下，会同当地政府有关部门做耐心细致的调解工作，当事人最终达成和解并撤回了 4 个案件的再审申请，同时促成当事人之间 105 件商标争议和侵权案件的一并了结。人民法院积极创新调解方式，主动加强与有关部门的协作，不断完善诉讼与非诉相衔接的纠纷解决机制，从根本上化解矛盾纠纷。如，北京市高级人民法院于 11 月 3 日代表北京法院系统与中国互联网协会网络调解中心正式建立网络纠纷案件委托调解机制，社会反响积极。浙江、四川、广西等地高级人民法院分别出台了关于加强知识产权民事诉讼调解工作的指导意见，取得了较好效果。最高人民法院注重申请再审案件中的和解工

作，对于当事人达成和解的，依当事人的请求，尝试在准予撤回再审申请的裁定中对和解协议的有关内容予以表述，并对原判的明显错误予以纠正。

（五）进一步落实公开审判制度，不断提高知识产权司法透明度

2009年，人民法院在知识产权审判工作中，进一步落实公开审判的宪法原则，严格执行三大诉讼法有关程序公开的规定，积极按照最高人民法院《关于司法公开的六项规定》、《关于人民法院接受新闻媒体舆论监督的若干规定》和《关于加强人民法院审判公开工作的若干意见》的要求，扩大司法公开的范围，拓宽司法公开的渠道。在审判工作全过程落实公开审判，强化和规范对当事人依法告知的义务，切实保障当事人在知识产权案件立案、审判、执行、审判监督等各个环节的知情权、参与权、表达权和监督权，自觉接受社会监督，维护了当事人的合法权益，促进了司法公正。充分发挥“中国知识产权裁判文书网”和地方法院网公开知识产权裁判文书的平台作用，完善文书上网的管理机制，及时更新信息，加大知识产权裁判文书上网的公开力度，截至2009年底，已经有34263份生效知识产权裁判文书通过“中国知识产权裁判文书网”公开。浙江省高级人民法院邀请外国政府和国际组织驻华机构代表和境内外媒体参加全省法院知识产权审判工作会议，进一步体现了知识产权审判的开放与透明。

二、积极服务经济社会发展大局， 深入贯彻实施国家知识产权战略

人民法院知识产权审判工作与党和国家大局密切相关。2009年，人民法院紧紧围绕国家关于“保增长、保民生、保稳定”的战略决策，深入贯彻实施国家知识产权战略，全面加强知识产权司法保护体系建设，为建设创新型国家和全面建设小康社会提供了强有力的司法保障。

（一）采取有效措施，切实保障国家知识产权战略的贯彻实施

自党的十七大明确提出“实施知识产权战略”要求，国务院于2008年6月5日

发布《国家知识产权战略纲要》，决定实施国家知识产权战略以来，人民法院高度重视国家知识产权战略的贯彻实施。最高人民法院为此专门成立了贯彻实施国家知识产权战略工作领导小组，并于2009年2月25日印发了《关于实施国家知识产权战略纲要任务分工》，分解落实了涉及人民法院工作的20项具体任务。2009年3月23日，最高人民法院发布《关于贯彻实施国家知识产权战略若干问题的意见》，该《意见》从充分认识实施国家知识产权战略的重大意义、充分发挥司法保护知识产权的主导作用、切实加大知识产权司法保护力度、完善知识产权审判体制和工作机制、优化审判资源配置、加强知识产权司法解释工作和加强知识产权审判队伍建设等方面，对人民法院贯彻落实《国家知识产权战略纲要》提出具体的工作要求，成为指导今后一个时期知识产权审判工作的纲领性文件，为人民法院贯彻落实国家知识产权战略奠定了基础。全国地方法院按照最高人民法院的部署和要求，结合本地的实际情况，积极采取切实可行的措施，国家知识产权战略在人民法院知识产权审判工作中切实得到了贯彻落实。天津、河北、上海、江苏、浙江、安徽、湖南、四川、甘肃、青海等地高级人民法院均出台了贯彻实施国家知识产权战略的指导性文件。

（二）积极应对国际金融危机，发挥知识产权司法保护的独特作用

为应对国际金融危机对我国实体经济造成的冲击，2009年1月，最高人民法院召开知识产权审判应对金融危机对实体经济的冲击暨服务外包法律论坛，研讨知识产权审判工作促进经济平稳较快发展的具体措施。4月，最高人民法院发布《关于当前经济形势下知识产权审判服务大局若干问题的意见》。该《意见》根据严峻复杂的国际国内经济形势对于知识产权审判提出的新要求新期待，从努力增强知识产权审判服务大局的针对性和有效性、加大专利权保护力度、加强商业标识保护、完善知识产权诉讼制度四个方面，明确和完善了当前经济形势下的一系列知识产权司法政策。特别是，该《意见》旗帜鲜明地指出，“在当前经济形势下，知识产权司法保护只能加强和提升，不能削弱和放松”，及时回应和澄清了当时社会上对于

在国际金融危机形势下是否还要加强知识产权保护的争论。该《意见》不仅对人民法院的知识产权司法保护工作具有重要指导意义，也对企业 and 市场产生了积极的引导和规范作用，在国内外产生了重大影响，受到了国内学界业界和国际社会的普遍好评。全国地方法院纷纷采取相应措施，积极应对国际金融危机。如，江苏、安徽、广西等地高级人民法院出台专门指导意见，对进一步做好知识产权审判工作促进本地自主创新提出具体要求。浙江省高级人民法院联合工商、海关等部门专题研讨涉外定牌加工中的商标法律问题，推动企业从贴牌加工转向自主创新。福建省法院系统加强与公安、检察、工商、版权等知识产权保护职能部门间的沟通协调，促进形成司法与行政执法的良性互动和保护合力。广东省高级人民法院通过多种渠道开展座谈，深入行业了解情况，积极研讨司法对策。

（三）完善知识产权审判体制和工作机制，大力加强知识产权审判体系建设

——**明确专利、商标等授权确权类知识产权行政案件审理分工。**2009年6月22日，最高人民法院发布《关于专利、商标等授权确权类知识产权行政案件审理分工的规定》，要求自2009年7月1日起，将涉及专利、商标、集成电路布图设计和植物新品种等授权确权类知识产权一、二审和再审案件统一交由北京市有关中级人民法院、北京市高级人民法院和最高人民法院知识产权审判庭审理，结束了自2002年以来该类案件由有关法院知识产权审判庭和行政审判庭分别受理的历史。这是人民法院在贯彻实施国家知识产权战略背景下优化审判资源配置、及时有效地解决纠纷、确保统一裁判标准、发挥司法保护知识产权主导作用的一项重要举措。北京市有关法院切实落实《规定》的有关要求，及时调整审判力量，使此类案件的统一审理有了良好开端。

——**推动由知识产权审判庭统一受理知识产权民事、行政和刑事案件的试点。**按照《国家知识产权战略纲要》的有关要求，2009年，最高人民法院对地方人民法院开展的知识产权审判庭统一受理知识产权民事、行政和刑事案件试点（简称“三审合一”试点）进行专题调研，批复同意江苏省高级人民法院、内蒙古自治区法

院系统、河南省高级人民法院与所辖郑州、洛阳两个中级人民法院及天津市和平区人民法院开展“三审合一”试点。截至 2009 年底，全国已有 5 个高级人民法院、44 个中级人民法院和 29 个基层人民法院开展了相关试点。开展试点工作地区的高级人民法院纷纷出台规范性文件，规范和协调整试点相关工作。

——**调整和完善知识产权案件管辖布局。**2009 年 5 月，最高人民法院发出《关于做好调整和完善知识产权案件管辖制度相关工作的通知》，要求地方法院在继续坚持技术类案件指定管辖制度，严格控制新增专利案件管辖权中级人民法院数量的同时，按照既方便当事人诉讼又方便法院审理原则，积极开展中、基层法院跨区管辖工作。最高人民法院指定浙江省义乌市人民法院试点管辖第一审实用新型和外观设计专利纠纷案件，指定哈尔滨市、齐齐哈尔市、宜昌市、襄樊市、厦门市、泉州市、包头市中级人民法院和新疆生产建设兵团农十二师、农八师中级人民法院跨地区受理专利纠纷案件。最高人民法院高度重视知识产权案件管辖布局的科学化、合理化和全国法院知识产权审判工作的均衡发展，注重充分发挥中、基层法院离当事人最近、便于诉讼的优势，大力加强中、基层法院知识产权司法保护能力建设。截至 2009 年底，经最高人民法院指定，具有专利、植物新品种、集成电路布图设计案件和涉及驰名商标认定案件管辖权的中级人民法院分别为 75 个、41 个、46 个和 41 个，可以审理一般知识产权民事案件的基层人民法院达到 92 个。

(四) 开展知识产权审判“优化自主创新司法环境”年度主题活动，努力营造激励自主创新的司法环境

为解决当前知识产权司法保护工作中影响和制约自主创新的突出问题，加大知识产权司法保护力度，进一步打造有利于激励自主创新的司法环境，激发科技创新和自主品牌对催生新兴产业、创造社会需求、培养新的经济增长点的引领和推动作用，2009 年 4 月 9 日，最高人民法院发出《关于在全国法院开展知识产权审判“优化自主创新司法环境”年度主题活动的通知》，要求全国法院做好专利案件审理工作，促进科技创新；审理好垄断案件和不正当竞争案件，营造有利于公平竞争的市

市场秩序；做好商标案件的审理工作，促进品牌经济发展；加强审判监督和工作指导，切实统一法律适用标准。全国地方法院也积极制定活动实施方案，突出本地知识产权审判工作特色，分阶段加以贯彻落实。该项主题活动成为 2009 年人民法院的工作亮点和重点之一，在深入贯彻国家知识产权战略，充分发挥知识产权司法保护主导作用方面，均取得了重要进展。

(五) 加强对上海世博会的知识产权司法应对，自觉履行知识产权司法保护职责

2010 年上海世博会是继 2008 年北京奥运会之后，我国举办的又一次世界性盛会。人民法院充分认识上海世博会举办的重要意义，坚持能动司法，提高司法水平，为办成一届“成功、精彩、难忘”的世博会提供公正高效权威的知识产权司法保障。2009 年，最高人民法院高度重视世博会的知识产权司法保护问题，采取积极措施，对世博会可能涉及的各类知识产权法律适用难题开展了前瞻性研究。作为世博会举办地的上海市三级法院，主动应对世博会对知识产权司法保护的需求，在依法妥善快速地解决一些涉世博知识产权纠纷的同时，注重延伸司法职能，全面服务和保障世博会。上海市浦东新区人民法院对首例涉世博知识产权刑事案件进行了网络庭审直播，依法认定被告人构成销售假冒注册商标的商品罪，判处被告单位上海长正物资有限公司罚金人民币 18 万元(约合 2.64 万美元)，判处被告人谭天有期徒刑 2 年，罚金人民币 10 万元(约合 1.47 万美元)，该案的裁判切实体现了人民法院对涉世博知识产权的司法保护力度。

(六) 组织开展“知识产权宣传周”活动，提高社会公众的知识产权保护意识

最高人民法院积极开展“全国知识产权宣传周”活动，以“4.26”世界知识产权日前后为重点，组织全国法院开展了形式多样、内容丰富、范围广泛的宣传活动，通过召开新闻发布会、制定指导性文件、发布案件年度报告、公布典型案例、组织公开开庭、开展座谈研讨等多种方式，全方位、多角度展示中国法院知识产权司法保护的成就、状况和未来举措，注重以司法案例这一生动的“活法”引导社会公众提高

知识产权保护意识，推动树立尊重知识、崇尚创新、诚信守法的知识产权文化。各地法院的活动各具特色。如，天津市高级人民法院召开法官与作家座谈会，山东省和湖北省高级人民法院召开由社会各界参加的知识产权司法保护座谈会，贵州省、甘肃省和青海省高级人民法院及西宁市中级人民法院的知识产权法官走上街头开展知识产权咨询公益活动，辽宁省高级人民法院和湖南省长沙市中级人民法院对知识产权案件庭审进行网络直播。中央主要新闻媒体、主要门户网站以及地方主要新闻媒体对人民法院在“知识产权宣传周”期间的活动进行了广泛深入持续的报道。

三、不断强化审判监督和业务指导， 努力统一知识产权司法尺度

统一知识产权司法尺度，确保裁判标准的统一性，是建立公正高效权威知识产权司法保护制度的基本要求。2009年，人民法院通过加强审判监督和业务指导，努力维护知识产权司法统一。

（一）加强知识产权司法解释工作，统一裁判规则

最高人民法院一贯注意发挥司法解释在统一法律适用中的重要作用。2009年，在全国地方法院的积极配合和参与下，就专利侵权判定、驰名商标司法保护、反垄断民事诉讼、专利商标授权确权案件和网络著作权案件审判等问题开展司法解释和规范性文件的起草工作。4月22日，公布了《最高人民法院关于审理涉及驰名商标保护的民事纠纷案件应用法律若干问题的解释》，进一步明确了驰名商标的保护条件、标准和证据要求等，回应了社会较为关注的驰名商标保护问题，有力地促进了品牌经济的健康发展。12月28日，公布了《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释》，规范了专利权利要求的解释规则，进一步完善了专利侵权判定标准，对于保障修改后的专利法的正确贯彻实施，做好专利侵权案件审理工作，积极推进自主创新，具有重要指导意义。在广泛调研的基础上，最高人民法院起草了《关于审理垄断民事纠纷案件适用法律若干问题的规定（初稿）》和《关于审理商标授权确权行政案件若干问题的意见（初稿）》，广泛、

公开征求了各方面的意见，为下一步修改完善和公布实施奠定了基础。

（二）强化知识产权审判业务指导，确保法律正确实施

上级人民法院高度重视对下级人民法院的审判业务指导。2009年，最高人民法院和各高级人民法院注意通过司法文件、会议纪要和典型案例的裁判批复等形式，明确知识产权保护的具体司法原则和标准，及时解决了一些较为突出的审判实践问题，特别注重出台具有普遍指导意义的司法文件。为确保驰名商标司法保护制度正确实施，解决在驰名商标司法认定过程中出现的问题，1月5日，最高人民法院下发了《关于涉及驰名商标认定民事纠纷案件管辖问题的通知》，将有关案件管辖权集中至省会市和计划单列市中级人民法院，有效地规范了驰名商标的司法认定工作，维护了知识产权司法保护的良好形象。为保障修改后的专利法正确贯彻实施，最高人民法院还发布了《关于学习贯彻修改后的专利法的通知》，明确了新旧专利法适用的衔接问题。为解决本地审判实践中遇到的问题，地方法院也普遍注重及时总结审判经验。如，北京市高级人民法院针对外观设计专利案件审理，浙江省、湖北省和云南省高级人民法院针对网络著作权侵权案件审理，广东省高级人民法院针对侵犯音像著作权案件审理，山西省和青海省高级人民法院针对涉及驰名商标认定案件审理，总结和提出了一些比较系统的指导性意见。各地法院还对有较大社会影响的关联和类似案件，注意及时沟通协调，统一案件审判标准，保证裁判结果的一致性，维护司法的权威性。

（三）积极发挥知识产权典型案例的示范效应，创新审判指导方式

最高人民法院在“4.26”世界知识产权日期间，发布了2008年中国知识产权司法保护10大案件，同时公布了50件典型案例，进一步宣传和弘扬了典型案例的示范效应和指导作用；首度发布《最高人民法院知识产权案件年度报告（2008）》，该年度报告汇集了从2008年度最高人民法院审结的184件案件中精选出来的23件典型案例的判理摘要，是最高人民法院历史上第一次对自身审理的典型案例的集中

展示，是创新审判指导制度的一次全新尝试，对于及时总结审判经验，加强审判指导工作，促进知识产权法律适用标准的统一和完善起到了积极作用。地方法院也普遍注重对典型司法案例的收集整理、理论分析和编辑出版，指导审判实务。上海市高级人民法院编辑出版的《1994 - 2008 上海知识产权裁判文书精选》(中英文对照本)，受到国内外的的好评。

(四) 加强知识产权审判调查研究，提供理论基础支撑

人民法院始终坚持理论创新，不断丰富知识产权审判理论，重视知识产权司法保护工作的国际交流和学习，提升中国法院知识产权司法保护的国际影响力。2009年，人民法院富有成效地开展了一系列调研，取得了较为丰富的审判理论成果，形成了许多颇有价值的调研成果，并通过指导性文件和工作措施等形式实现成果转化。在地方法院的大力配合下，最高人民法院开展了网络著作权、音像制品侵权损害赔偿、反垄断民事诉讼等专题调研，组织召开了互联网著作权司法保护国际研讨会、反垄断民事诉讼课题研讨会、知识产权司法保护国际研讨会等会议，组织“欧盟竞争法考察团”出访了英、比、德、卢四国，与美国司法部和联邦贸易委员会合作举办了“中美反垄断民事诉讼问题研讨班”，创办了《知识产权审判动态》，这些调研活动进一步深化了知识产权审判理论研究，有效促进了裁判标准的细化和统一。1月8日，经最高人民法院批准，中国知识产权司法保护(苏州)调研基地在江苏省苏州市中级人民法院成立，为全国法院的知识产权司法保护研究提供基础支持。最高人民法院积极发挥中国法学会审判理论研究会知识产权审判理论专业委员会的理论平台作用，组织开展了各项研讨活动，并于4月19日在重庆市沙坪坝区人民法院成立了该委员会的知识产权审判研究基地。地方法院不断深化对审判规律的认识，根据当地实际和审判工作需要，积极主动地开展了许多重要课题的调研，取得了可喜的成果，为审判工作提供了重要的理论支持。人民法院还积极参与知识产权立法修法活动，组织专门力量参与商标法、反不正当竞争法、专利法实施细则、知识产权海关保护条例、民间文学艺术保护条例等法律法规的起草修订工作，

努力提供建设性的意见和建议。鉴于中国法院和法官在知识产权司法保护方面做出的突出贡献，两名中国知识产权法官入选英国《知识产权管理》杂志评选的“2009年度全球最具影响力的50位知识产权人物”。

四、全面加强知识产权法官队伍建设， 不断提高知识产权司法能力和水平

严格、公正、文明的知识产权司法需要一支高素质的法官队伍。2009年，人民法院以开展“人民法官为人民”主题实践活动为载体，大力加强知识产权审判组织建设、业务能力建设和廉政建设，努力提高知识产权法官队伍整体素质，不断强化知识产权审判的组织保障和人才基础。

（一）着力夯实知识产权审判组织体系建设

2009年，中国法院知识产权审判组织体系更加健全，中级以上法院普遍建立了知识产权审判专门机构，并注意从精通法律、外语基础较好、具有理工专业背景和一定审判经验的人员中选拔、培养知识产权专业法官，进一步完善知识产权审判队伍的专业结构。各级法院的立案、刑事审判、行政审判和执行等职能部门一般都指定了专门的合议庭或者法官负责知识产权案件的审查、审判、执行。2009年，人民法院着力加强基层基础建设，进一步配齐配强审判力量，切实解决一些地方知识产权审判庭案多人少的问题。各地法院针对知识产权案件特点，精心选择、积极推荐相关领域专家担任人民陪审员，发挥他们在一些专业性较强案件审判中的专业优势和独特作用，天津市高级人民法院专门出台了《关于推进人民陪审员参加知识产权案件审判的意见》。最高人民法院和上海、江苏、浙江、广东、四川等地高级人民法院以及北京市第一、二中级人民法院继续开展与专利复审委员会等知识产权专门机构的人员交流。各地法院注意发挥技术专家在解决知识产权纠纷中的作用，上海市高级人民法院建立了知识产权审判技术专家库。

（二）大力加强知识产权审判业务能力建设

人民法院高度重视对知识产权法官的专业知识和审判技能的强化培训，有针对

性地加强知识产权审判专门人才培养，重点针对当前知识产权审判热点、难点问题举办业务培训，加大对中西部法院和基层法院知识产权审判的支持力度，推动全国法院知识产权审判水平的整体提高。2009年8月，最高人民法院在国家法官学院举办了全国法院知识产权审判新问题研修班，对来自中、基层法院的240余名知识产权审判人员进行了集中培训。北京、黑龙江、浙江、山东、湖北、湖南、广西、重庆等地高级人民法院也举办了类似培训班。

（三）高度重视知识产权法官队伍思想政治建设

2009年，人民法院继续深化社会主义法治理念教育，教育广大知识产权法官牢固树立公正、廉洁、为民的司法核心价值观，自觉抵制各种腐朽思想和不良风气的侵蚀，不断提高知识产权法官的政治素质、业务素质和职业道德素质，确保公正廉洁司法。各级法院注意树立和宣传司法公正、司法为民的先进典型，发挥先进典型的激励、示范作用，努力培养知识产权法官亲民爱民为民的良好作风。11月17日，最高人民法院作出《关于授予孔祥俊等45名同志“全国审判业务专家”称号的决定》，6名知识产权法官被授予“全国审判业务专家”称号，充分展示了中国知识产权法官的良好职业素养。

结束语

成绩属于过去，过去30年以及2009年的荣誉已经载入史册。

2010年，国家知识产权战略实施将进入更为关键的时期。面对新形势、新任务、新挑战，人民法院将紧紧围绕党和国家工作大局，确保国家关于加快经济发展方式转变和保持经济平稳较快发展战略部署的贯彻落实，始终坚持以执法办案为第一要务，进一步加大知识产权司法保护力度；继续深入贯彻实施国家知识产权战略，充分发挥司法保护知识产权的主导作用；积极推动知识产权领域司法改革，进一步完善知识产权审判体制和工作机制，不断提高知识产权司法保护能力和水平；进一步强化知识产权审判监督指导，大力加强知识产权法官队伍建设，为建设创新

型国家和全面建设小康社会提供更加有力的知识产权司法保障！

Intellectual Property Protection

by Chinese Courts in 2009

Introduction

The People's Courts are the State judicial authority for intellectual property (IP) protection, which independently exercise adjudicative powers according to the *Constitution* and the law.

China's reform and opening-up (*gaige kaifang*) has spurred the development of intellectual property since the late 1970s and early 1980s. Being a national and Party priority, and buttressed by strong social support and diligent judges, judicial protection of intellectual property in Chinese courts has germinated and grown. The current comprehensive judicial intellectual property protection regime embodies the ideals of socialism with Chinese characteristics, embraces the country's development needs, observes China's duties under international conventions. It is an essential part of China's judicial architecture.

In the last 30 years, the People's Courts have:

—— **Expanded their functions and powers in intellectual property protection**

The People's Courts provided judicial protection for intellectual property through civil, administrative and criminal procedures.

Civil adjudication had begun including cases relating to technology contracts toward the end of the 1970s. Trademark, patent and copyright cases were added during the mid 1980s, and unfair competition disputes in the early 1990s. The People's Courts had received many filings, and had rendered decisions for as many as 166,408 IP-related cases between 1985 and 2009.

In terms of administrative adjudicative duties, the People's Courts have been given the mandate to handle patent suits against the Patent Re-examination Board since 1985. Hence, Chinese courts are responsible for conducting judicial reviews for intellectual property administrative enforcement disputes and cases relating to granting or validation of patent or trademark. Between 1985 and 2009, the local People's Courts have altogether concluded 6387 IP-related administrative cases of first instance.

Since the implementation of the 1979 *Criminal Law*, the People's Courts were able to offer protection against criminal violations of registered trademark rights under the *Law*. The 1997 *Amendment* of the *Criminal Law* further enhances judicial powers in criminal protection against violation of the various intellectual property rights, including the imposition of severe punishment against serious violations of intellectual property rights, such as counterfeit and piracy. Following the *Judicial Interpretation Concerning the Adjudication of Cases Involving Infringement of Intellectual Property Rights* jointly issued by the Supreme People's Court and the Supreme People's Procuratorate at the end of 2004, the number of IP-related criminal cases admitted and decided by the courts increased substantially; between 1997 and 2009, 14,509 IP-related criminal cases of first instance were decided by the courts.

— **Enlarged the scope of judicial protection for intellectual property**

The mid-1990s was a turning point in terms of the general nature of intellectual property cases received by the courts. Before the mid-1990s, the cases related mainly to technology contracts. From that period onwards and until 2002, patent cases were predominant. And since 2002, copyright cases represent the largest caseload.

Besides catering to the general speedy rise in traditional IP caseload involving copyright, patents, trademarks, unfair competition & technology contracts, judicial protection expanded to address emerging issues such as copyright on the internet, computer software, new plant varieties, layout-designs (topographies) of integrated circuits, folk literature & art, geographical indications, special signs, corporate names, domain names, judicial recognition of well-known marks, non-material cultural heritage, franchise, application for pre-trial provisional measures, declaration of non-infringement, and anti-monopoly. Among those, cases relating to copyright infringements on the internet have been swiftly on the rise. The People's Courts have handled cases involving all categories of intellectual property and many different types of competitive behavior, ranging from the creation, use, protection, to the management of intellectual property.

The judicial channel is becoming the primary means of intellectual property dispute resolution. For example, to settle patent disputes, most patent owners would choose to file a civil suit with the People's Courts directly, instead of using administrative means.

— **Increased the level of judicial protection for intellectual property**

The quality and efficiency of judicial decisions on cases relating to intellectual property

have improved over the years. The clearance rate of first instance civil intellectual property cases increased from 75.35% in 2003 to 85.35% in 2009. Appeals fell from 59.38% in 2003 to 48.82% in 2009. Likewise, cases remanded or decisions reversed at the second instance reduced from 15.19% in 2003 to 6.00% in 2009, and retrials fell from 0.80% in 2003 to 0.33% in 2009.

Court mediation has also proven to be an effective means of dispute settlement. In recent years, more than 50%, on the average, of intellectual property civil cases were settled through court mediation at first instance.

At the same time, the People's Courts have built a respected international reputation for their fair and equitable treatment of all parties in cases involving foreign litigants.

Judicial transparency is progressively improving. The People's Courts adopt the principle of judicial openness, and effective court judgments and decisions as well as judicial information are disseminated via the media, internet, publications and other vehicles according to law. On 10 March 2006, the Supreme People's Court formally launched a website on "China IPR Judgments & Decisions", a centralized open library of judgments and decisions rendered by the People's Courts of different levels.

—— **Enhanced the effectiveness of judicial protection for intellectual property**

The People's Courts have imposed severe penalties for infringements as provided by law, so as to lower the cost of protection, and increase the cost of infringement.

For valid infringement claims, infringers would be ordered to cease and desist, and would be exposed to damages awarded against them that sufficiently compensate the aggrieved party's losses. Also, the burden of proof for a right holder is reduced as appropriate,

according to law. Recently, during the last instance of the patent infringement case of Wuhan Jingyuan Environmental Engineering Co., Ltd. (“WJC”) v. Fujikasui Engineering Co., Ltd and Huayang Electric Co., Ltd, the Supreme People’s Court found in favour of the plaintiff, and ordered the two defendants to pay WJC RMB 50.6124 million yuan (USD 7.42 million) in damages. This was the highest damages award ever made by the Supreme People’s Court for infringement of intellectual property right.

In addition, the People’s Courts have taken a prudent yet effective approach to using pre-trial provisional measures, and have imposed civil sanctions on infringement according to law. Between 2002 and 2009, a total of 808 applications for pre-trial preliminary injunction in IP-related cases were admitted by local courts, 84.18% were granted approval; 1312 applications for pre-trial preservation of evidence were admitted, 93.72% were granted approval, 527 applications for pre-trial preservation of property were admitted, 96.04% were granted approval.

Criminal sanctions are an important means of protecting intellectual property by the People’s Courts. Besides imposing principal punishments and regulating the use of probation, other punitive measures that include the imposition and enforcement of heavier criminal fines, recovery of criminal proceeds, seizure of criminal tools, destruction of infringing goods, ordering payment of damages, are also means to deprive perpetrators of the financial capacity to repeat the offence.

—— **Improved the judicial system in intellectual property protection**

Since 1985, the Supreme People’s Court has published 41 judicial interpretations relating intellectual property rights, 29 of which are currently in force. More than 40 judicial guidance documents (*zhidaoxing wenjian*) that helped instruct the lower courts were also

issued. Especially since 2000, in line with China's accession to the World Trade Organization and to serve the country's need to build an "innovation-based nation", the Supreme People's Court has issued 25 IP-related judicial interpretations. Issuance and implementation of judicial interpretations and guidance documents have provided the People's Courts with more concrete substantive and procedural bases on which they rely for adjudication of intellectual property cases. As a result, the judicial system has continued to see progress.

The jurisdiction regime for intellectual property has improved. To ensure quality adjudication of intellectual property cases, judicial interpretations provide for "designated jurisdiction" for cases involving patent, new plant varieties and layout designs of integrated circuits. In 1998, jurisdiction for other first instance civil cases relating to intellectual property was also largely transferred to the Intermediate People's Courts. In recent years, due to significant increase in the number of general intellectual property cases relating to copyrights and trademarks, designated Primary People's Courts are given jurisdiction to handle such cases.

The grounds of action in intellectual property cases have also become more rational and more comprehensive. In April 2008, the Supreme People's Court issued and implemented the *Regulations on Grounds of Action for Civil Cases*¹ which consolidated the grounds of action relating to intellectual property right and the competition law.

Optimized allocation of judicial resource for intellectual property has seen results. During the 1980s, civil cases involving copyrights and industrial property rights were each handled by the civil division and economic division in the People's Courts. The 1990s saw the creation of special intellectual property divisions to hear such cases. In recent years, some local courts have even conducted pilot programmes where the intellectual

¹ "Min-shi an-jian an-you gui-ding".

property division takes overall responsibility for IP-related civil, administrative and criminal cases. Also explored are the expansion of the judges' panel (*heyi ting*) and participation of civil judges in the adjudication of criminal and administrative cases relating intellectual property rights.

—— **Bettered the capacity in providing judicial protection for intellectual property**

The People's Courts have endeavored to build a robust adjudication organization, a stronger team of judges, and high level of professionalism for intellectual property protection. In August 1993, the Beijing Intermediate and High People's Courts became the first courts in the country to introduce dedicated Intellectual Property Divisions. In October 1996, the Supreme People's Court set up its Intellectual Property Division. At present, all High People's Courts, almost all Intermediate People's Courts and all Primary People's Courts with civil jurisdiction for intellectual property cases have created dedicated intellectual property divisions. According to statistics dated October 2008, local courts had established a total of 298 separate intellectual property divisions and 84 intellectual property panels in civil divisions, and staffed 2,126 specialised intellectual property judges (currently, among the general courts, there are 31 High People's Courts, 409 Intermediate People's Courts, and 3119 Primary People's Courts).

As a general practice, the better and more experienced judges are selected to adjudicate intellectual property cases. Providing guidance for intellectual property judges and intensive training for their professional knowledge and adjudication skills is a priority, and has continuously strengthened the adjudication capacity and professional level of intellectual property judges. Thus, the combination of research, theoretical innovation and

learning is a professional philosophy adopted and pursued by all intellectual property judges.

In 2009, when China celebrated its 60 anniversary and its impressive achievements that astounded the world, the People's Courts have also made new progress in intellectual property protection. Guided by the tenets of Deng Xiaoping and the "Three Represents", the courts have ensured actualization of the "Scientific Development Concept" and adherence to the Party and national plans. Besides the delivery of the national intellectual property strategy, there was heavy emphasis on new issues or problems encountered during adjudication of intellectual property cases. The advances made in intellectual property adjudication are also attributed to the courts' focus on priorities, innovative methods, concentration of resources, comprehensive planning, as well as strengthened supervision and guidance.

In 2009, with their wisdom and dedication, Chinese judges wrote yet another new chapter on the judicial protection of intellectual property.

I. Fair and Efficient Adjudication of Intellectual Property Cases According to Law has Made the Judicial System a Leading Force in Intellectual Property Protection

In 2009, despite adjudication being made difficult by rapid increase in caseload, new types of disputes, and the more high-impact and controversial cases, the People's Courts remained committed to fair and efficient disposition of cases by tapping their potential in the protection of intellectual property rights. As a result, judicial adjudication has become

an even more important channel of intellectual property dispute resolution, and judicial protection of intellectual property is increasingly trusted and recognized by the various social sectors both in China and abroad.

The People's Courts have:

(1) Adjudicated IP-related civil cases according to law, and used civil procedures to protect intellectual property and encourage proprietary innovation

The number of civil cases relating to intellectual property has increased rapidly over the years, much faster than the other categories of civil and commercial cases.

In 2009, first instance IP civil cases admitted and closed by all local courts were 30,626 and 30,509 respectively, a year-on-year increase of 25.49% and 29.73% respectively. Total disputed value of newly admitted cases of first instance was 3,084,950,000 yuan (USD 452.25 million). Of the newly admitted cases, there were 4,422 on patent, 8.54% increase from 2008; 6,906 on trademark, 10.80% increase from 2008; 15,302 on copyright, 39.73% increase from 2008; 747 on technology contracts, 19.9% increase from 2008; 1,282 on unfair competition, 8.19% increase from 2008; and 1,967 on other intellectual property, 46.79% increase from 2008. For IP-related civil cases where foreign parties are involved, the total number of closed cases was 1,361 in 2009, 19.49% more than last year; for cases involving Hong Kong, Macao or Taiwan, the number was 353, 56.89% more than last year. Newly admitted and closed intellectual property cases of second instance for the year were 5,340 and 5,492 respectively, and the respective year-on-year increases were 12.21% and 16.88%. Newly admitted and closed retrial cases were

100 and 107 respectively, declining by 1.96% and 50.7% respectively from last year. In addition, since the implementation of the *Anti-Monopoly Law* on 1 August 2008 and until the end of 2009, total admitted and closed monopoly-related civil cases of first instance were 10 and 6 respectively.

In 2009, the Supreme People's Court admitted 297 IP-related civil cases, and closed 390 cases (including carried over cases). Of these, the newly admitted cases for retrial application totaled 230, and a total of 319 (including carried over cases) retrial application cases were closed. Hence, the Supreme People's Court has fulfilled its duty of supervision and guidance in intellectual property adjudication for all local courts.

There were several cases in 2009 that had elicited the attention of the society at-large, and had produced substantial domestic and international impact. These include Chint v. Schneider utility model patent cases; Jiang Han Petro's "rotary drilling bit" trade secret case; the Wuhan Jingyuan Environmental Engineering Co., Ltd case involving a patented process of "flue gas desulphurisation (FGD)"; the BMW (Baoma) v. Shenzhen Century Baoma Apparel Co., Ltd case of well-known mark dispute; the "Wu Liangcai" case of trademark dispute and unfair competition; the "Lu Jin" case on trademark/generic name dispute; the Cn-map ("*Daodao Tong*") navigation digital map copyright case; the Golden Holiday v. CTRIP unfair competition in flight tickets reservation case; the judicial review case of St-Flora v. Trademark Review and Adjudication Board (TRAB) on the cancellation of the "*Cai-le*" trademark; and the "Tomato Garden" software internet piracy case in Suzhou.

Quality and efficiency of adjudication has continued to improve. Clearance rate of IP-related civil cases at first instance in all local courts rose from 2008's 81.73% to 2009's 85.04%; appeals fell from 2008's 49.32% to 2009's 48.82%. Retrials fell from 0.44% in 2008 to 0.33% in 2009, while reversal of decisions at appeal also fell from 6.20% in 2008

to 6.00% in 2009. Clearance rate of civil cases relating to intellectual property at the Supreme People's Court increased from 55.93% in 2008 to 88.64% in 2009, an improvement of 32.71%.

The courts have also leveraged the special role of provisional measures. In 2009, a total of 59 applications for pre-trial preliminary injunction in IP-related cases were admitted by local courts, 85.42% were granted approval; 237 applications for pre-trial preservation of evidence were admitted, 98.72% were granted approval; 56 applications for pre-trial preservation of property were admitted, 100% were granted approval. In general, the courts have been supportive of the use of provisional measures to protect intellectual property, as reflected in the percentage of approvals granted.

(2) Punished perpetrators of intellectual property crimes according to law, and used criminal sanctions to deter intellectual property crimes

The People's Courts have exercised their criminal judicial powers by using different criminal sanctions against intellectual property crimes as provided by law, to crack down heavily on any criminal infringement of intellectual property rights.

In 2009, 3,660 criminal cases relating to intellectual property infringement were closed, 10.04% more than last year. The number of individuals on whom the courts' decisions became effective was 5,836, 8.31% higher than last year; of which, 5,832 persons were found guilty, 8.28% higher than the previous year. Among the closed cases, 1,007 were convicted for crimes of intellectual property infringement, 1.1% higher than last year, and decisions were effective on 1,605 persons, 3.14% lower than last year; 646 were found guilty of producing and selling counterfeit and inferior goods (involving infringement of intellectual property right), and the decisions were effective on 1,114 persons; 1,973 were

found guilty of illegal business operations (involving infringement of intellectual property right), and the decisions were effective on 3,076 persons; the remaining 34 were found guilty of other crimes relating to infringement of intellectual property, and decisions were effective on 41 persons.

The decisions of some cases have created a significant impact within and outside the country. For example, the Huqiu District People's Court of Suzhou City in Jiangsu Province had found Chengdu Gongruan Networking Technology Co., Ltd and its founders Sun Xianzhong and Hong Lei guilty of copyright infringement ("Tomato Garden" software internet piracy case). As the biggest crackdown on large-scale software piracy, the case has hit hard on those who had hoped to illegitimately gain from piracy as well as other infringers, and was evidence of the government's strict observance of international conventions and China's equal protection of all copyright holders.

(3) Conducted judicial review of intellectual property administrative actions according to law, and used supervision of and support for administrative law enforcement to protect intellectual property

Through adjudicating administrative cases, the People's Courts have conducted judicial reviews of the government's conduct relating to intellectual property matters, thus supervising and supporting administrative authorities in carrying out lawful administrative processes, and in protecting the legitimate rights of the authorities' administrative counterparts. Furthermore, they have also maintained administrative order and facilitated administrative protection of intellectual property.

In 2009, local courts nationwide admitted 2,072 and closed 1,971 IP administrative cases of first instance, an increase of 92.92% and 90.99% respectively over the previous year.

Of these, 688 new patent cases were admitted, 19.03% more than last year; 1,376 trademark cases, 184.3% more than last year; 4 copyright cases, a drop of 42.86% from 2008; and 4 cases on other subjects. The Supreme People's Court admitted 54 such new cases and closed 56 (including carried over cases).

Administrative litigation cases relating intellectual property are basically cases concerning the grant or validation of patent or trademark, where the defendants are principally two entities: the Patent Re-examination Board under the State Intellectual Property Office, and the Trademark Review and Adjudication Board under the State Administration for Industry and Commerce.

The number of IP-related administrative cases was a record high, and caseload for the courts was significantly heavier in 2009. Based on statistics, there were 626 new patent-related administrative cases of first instance admitted by the Beijing First Intermediate People's Court, and 594 such cases closed by the same, an increase of 20.38% and 34.69% respectively from the previous year. For the Beijing High People's Court, 361 new patent-related administrative cases of second instance were admitted, and 337 closed, an increase of 11.42% and 17.01% from last year. For trademark-related administrative cases, the Beijing First Intermediate People's Court admitted 1,346 new first instance cases and closed 1,222, 209.42% and 333.33% respectively higher than last year. As for the Beijing High People's Court, 465 such new second instance cases were admitted, and 416 cases were closed, an increase of 144.73% and 195.03% respectively over the previous year.

- (4) Increased the use of mediation to settle intellectual property disputes, and established a comprehensive mediation system for intellectual property cases**

Besides adjudication, the People's Courts used mediation— a traditional “oriental experience” —as an alternative dispute resolution option. For cases relating to intellectual property, the courts operate according to the principle of “give priority to mediation; combine mediation and adjudication” (*tiaojie youxian, tiaopan jiehe*) to ensure full and final resolution.

In 2009, the People's Courts continued to improve their mediation capabilities, and this is seen in the rising proportion of mediated settlements. 61.08% of IP-related civil cases at local courts were resolved through mediation or withdrawal of claims after mediation, 5.22% more than the previous year.

In a utility patent dispute on the Schneider miniature circuit breaker, the High People's Court of Zhejiang Province mediated for Schneider Electric and Chint Group Corp at appeal. This had led to a global settlement for the parties. Settlement had not only put to rest the various intellectual property disputes between the parties in many countries, but created a healthy competitive environment for the parties and improved their relationship. Another case involved the misappropriation of Jiang Han Petro Drill Corp's “rotary drilling bit” trade secret. After nearly 50 rounds of mediation, the parties arrived at a blanket mediation agreement for the case, and succeeded in resolving all disputes between them. The parties were satisfied with the “win-win” situation which mediation had brought about.

A third case was an administrative suit involving a dispute over the trademark “*Hao Xiang Ni*” (“Missing You”), the case was mediated by the Supreme People's Court, with the assistance of the High People's Court of Henan Province, together with the local government authorities. The parties finally settled, and the petitioner also withdrew its retrial application for 4 cases. In addition, the parties settled another 105 cases of

trademark dispute and infringement.

The People's Courts are always seeking innovative mediation methods. By collaborating with the relevant authorities, the courts have improved our system of dispute resolution that links multiple forms of ADR with litigation to ensure complete resolution of problems.

On 3 November, on behalf of all Beijing courts, the Beijing High People's Court formally launched the Authorized Mediation Mechanism for Internet Disputes with the Internet Mediation Centre of the Internet Society of China. The initiative was welcomed by society in general. The guidelines on mediation in civil intellectual property cases issued by the High People's Courts of Zhejiang, Sichuan and Guangxi have also proven effective. For retrial applications, the Supreme People's Court's focus is on facilitating conciliation between the parties. If parties agree to settle, the court may incorporate, upon parties' request, the relevant stipulations in the settlement agreement in its written ruling approving withdrawal of retrial application, as well as correct any error in the original judgment.

(5) Advanced the open adjudication initiative to improve judicial transparency in intellectual property protection

In 2009, the People's Courts furthered the open adjudication initiative in IP-related cases according to the *Constitution*, and observed procedural openness as set forth under the three procedural laws (Civil, Administrative & Criminal). Based on the *Six Provisions on Judicial Openness*², the *Several Provisions on the People's Courts Accepting Supervision by the News Media and by Public Opinion*³, and the *Several Opinions on Enhancing*

² "Guan-yu si-fa gong-kai de liu-xiang gui-ding".

³ "Guan-yu ren-min fa-yuan jie-shou xin-wen mei-ti yu-lun jian-du de ruo-gan gui-ding".

*Adjudication Openness in the People's Courts*⁴ issued by the Supreme People's Court, local courts have become increasingly transparent and have sought additional avenues to disseminate judicial information.

To ensure transparency, the entire adjudication process is open. Courts are required to notify parties according to law, so that all parties are guaranteed of their right of information, of participation, of expression and of supervision at every stage of a procedure relating to an intellectual property matter, from case admission, to hearing, enforcement, and supervision. The courts voluntarily accept social supervision to ensure protection of the parties' interests and dispensation of justice.

The China IPR Judgments & Decisions website and websites of local courts that publish written judgments and decisions of intellectual property cases are platforms built to enable public access to judicial information through the internet. These platforms are continually improved, and information constantly updated to provide prompt and open information access. By the end of 2009, 34,263 IP-related written judgments and decisions in force were published on the China IPR Judgments & Decisions website.

In its Conference on Intellectual Property Adjudication for Zhejiang People's Courts, the High People's Court of Zhejiang Province's invitation of foreign government officials, representatives of international organizations, and local and foreign media demonstrates the transparency and openness in its intellectual property adjudication system.

II. Judicial Protection for Intellectual Property has Served the Needs of Socioeconomic Development and has Observed and Delivered the National

⁴ "Guan-yu jia-qiang ren-min fa-yuan shen-pan gong-kai gong-zuo de ruo-gan yi-jian".

Intellectual Property Strategy

Adjudication of IP-related cases is closely related to the Party priorities and national plans. In 2009, with the national strategy to “safeguard growth, livelihoods, and stability” in mind, the People’s Courts have helped enforce the national intellectual property strategy through elaboration of the judicial system to protect intellectual property. By providing judicial safeguards, the People’s Courts have indeed contributed to the building of an “innovation-based nation” and a *xiaokang* society.

The People’s Courts have:

(1) Adopted effective measures to ensure the observation and delivery of the national intellectual property strategy

On 5 June 2008, the State Council issued the *Outline of the National Intellectual Property Strategy*⁵, based on the need to “implement an intellectual property strategy” as indicated at the 17th Party Congress. Delivery of the national intellectual property strategy since its implementation has been the People’s Courts’ top priority. The Supreme People’s Court has formed a steering group for implementing the national intellectual property strategy, and explicated more than 20 specific duties for the People’s Courts according to *the Outline*.

On 23 March 2009, the Supreme People’s Court published the *Opinions on Several Issues Concerning the Implementation of the Outline of the National Intellectual Property*

⁵ “*Guo-jia zhi-shi chan-quan gang-yao*”.

*Strategy*⁶ (“*Opinions*”). The *Opinions* specified the following aspects: the importance of understanding the need to implement the national intellectual property strategy; necessity for the judicial system to be the primary means of intellectual property protection; more effective judicial protection of intellectual property; elaboration of the adjudication system and work mechanism; optimization of judicial resource allocation; improvement in the provision of judicial interpretations; strengthening of capacity building. These will be the guiding principles in the People’s Courts’ adjudication of intellectual property cases in the near future, and the foundation on which the People’s Courts would deliver the national intellectual property strategy.

By complying with the Supreme People’s Court’s plans and requirements, and taking into consideration their local circumstances, the People’s Courts nationwide have taken practical steps to ensure achievement of the national intellectual property strategy. The High People’s Courts of Tianjin, Hebei, Shanghai, Jiangsu, Zhejiang, Anhui, Hunan, Sichuan, Gansu and Qinghai have issued guidance documents pursuant to the implementation of the national intellectual property strategy.

(2) Addressed the international financial crisis by leveraging the unique facility of judicial protection for intellectual property

To address the adverse impacts of the international financial crisis on our real economy, the Supreme People’s Court organized the “Legal Forum on Using Intellectual Property Adjudication as a Means to Cope with the Adverse Impact of the Financial Crisis on the Real Economy and Service Outsourcing” in January, to discuss specific measures in intellectual property adjudication that could facilitate steady growth of the economy.

In April, the Supreme People’s Court issued the *Opinions on Several Issues Concerning*

⁶ “*Guan-yu guan-che shi-shi guo-jia zhi-shi chan-quan zhan-lue ruo-gan wen-ti de yi-jian*”.

*the Use of Intellectual Property Adjudication to Serve Overall Interests under the Current Economic Situation*⁷. The *Opinions* contain renewed expectations and demands on intellectual property adjudication, based on the austere and complex domestic and international economic landscape, and have defined and elaborated judicial policies for intellectual property protection under the current economic climate in four aspects: intellectual property adjudication must be more specific and effective in serving bigger interests; effectiveness of patent protection must be enhanced; protection of commercial marks must be strengthened; the intellectual property adjudication system must be improved. In particular, the *Opinions* clearly pointed out that “under the current economic climate, judicial protection of intellectual property must only be strengthened and enhanced, and cannot be weakened or relaxed.” The statement was a prompt response and needful clarification to the prevailing social debate on whether stronger intellectual property protection was required in view of the crisis. Not only were the *Opinions* necessarily instructive to the People’s Courts when adjudicating intellectual property cases, they helped guide and regulate business and market behavior. The *Opinions* created major impact at the domestic and international level, and were applauded by the local and international academia and society at-large.

At the local level, the courts also took steps to overcome repercussions brought on by the financial crisis. For example, the High People’s Courts of Jiangsu Province, Anhui Province and Guangxi Autonomous Region issued special guidance opinions, setting forth the specifics in intellectual property adjudication, so as to promote proprietary innovation at the local level. In conjunction with the local Administration for Industry and Commerce and the Customs, the High People’s Court of Zhejiang Province convened a seminar to discuss the trademark legal issues in OEM branding for foreign parties to

⁷ “*Guan-yu dang-qian jing-ji xing-shi xia zhi-shi chan-quan shen-pan fu-wu da-ju ruo-gan wen-ti de yi-jian*”.

encourage shifting from OEM manufacturing and processing to proprietary innovation. In Fujian Province, the courts have strengthened communication and linkage with the various authorities involved in intellectual property protection, such as the police, prosecutor's office, industry & commerce administration and copyright bureau. In doing so, it created positive dynamics and synergistic relationships between the judicial protection and administrative law enforcement. The High People's Court of Guangdong Province has also organized seminars through various channels and obtained in-depth industry knowledge to explore solutions on the part of the judiciary.

(3) Elaborated the intellectual property adjudication system and work mechanism, and strengthened the intellectual property adjudication institution

The People's Courts have:

—— **Centralized adjudication of IP-related administrative cases involving the granting and validation of patent or trademark**

On 22 June 2009, the Supreme People's Court issued the *Provisions on the Division of Labor in the Adjudication of Intellectual Property Administrative Cases Pertaining to the Granting or Validation of Patents and Trademarks*⁸, setting forth that as of 1 July 2009, cases of first & second instances and retrial cases relating to the granting and validation of trademarks, patents, layout designs of integrate circuits and new plant varieties, to be

⁸ "Zui-gao ren-min fa-yuan guan-yu zhuan-li, shang-biao deng shou-quan que-quan lei zhi-shi chan-quan xing-zheng an-jian shen-li fen-gong de gui-ding".

adjudicated by the intellectual property divisions of the relevant Beijing Intermediate People's Courts, Beijing High People's Court and the Supreme People's Court. By issuing the *Provisions*, the Supreme People's Court had effectively ended the tradition of "separate adjudication" of such cases by either the intellectual property divisions or the administrative divisions of the relevant courts.

This was an important step where the People's Courts observed and delivered the national intellectual property strategy through optimization of judicial resources, prompt and effective resolution of disputes, unified adjudication criteria, and the dominant role of the judiciary in intellectual property protection. By complying with the *Provisions* and promptly reconfiguring their judicial resources, the relevant courts in Beijing have got off to a good start in centralized adjudication of such cases.

— **Promoted implementation of pilot programmes for centralised adjudication of civil, administrative and criminal cases relating to intellectual property by the intellectual property divisions**

Based on the *Outline of the National Intellectual Property Strategy*, the Supreme People's Court studied the pilot projects initiated by the local People's Courts on the centralised adjudication of IP-related civil, administrative and criminal cases ("Three-in-One Pilot"). In 2009, approval for the 'Three-in-One' Pilot was given by the Supreme People's Court to the High People's Court of Jiangsu Province, the courts of Inner Mongolia Autonomous Region, the High People's Court of Henan Province and two Intermediate People's Courts under its jurisdiction (in Zhengzhou and Luoyang), and the People's Court of Heping District, Tianjin Municipality. By the end of 2009, there were 5 High People's Courts, 44 Intermediate People's Courts and 29 Primary People's Courts in

the country that had launched the pilot. The High People's Courts of the pilot regions have issued normative documents to regulate and coordinate pilot-related matters.

— **Adapted and improved jurisdiction arrangement for intellectual property cases**

In May 2009, the Supreme People's Court issued the *Notice on the Adjustment and Improvement of the Jurisdiction Arrangement Concerning Intellectual Property Cases*⁹, providing that local courts should continue to adhere to the “designated jurisdiction” principle for technology-related cases and strictly limit the increase of Intermediate People's Courts with designated jurisdiction for patent cases. Meanwhile, the *Notice* also requires intermediate and primary courts to accept cases from neighbouring jurisdictions, provided that it is convenient for both the litigants and the court.

The Supreme People's Court has designated the People's Court of Yiwu City in Zhejiang Province as the pilot court to deal with first instance patent disputes in utility models and industrial designs, and the Intermediate People's Courts of Harbin, Qiqihar, Yichang, Xiangfan, Xiamen, Quanzhou and Baotou, and the No.12 and No. 8 Agricultural Intermediate People's Courts of the Production and Construction Corps of Xinjiang to accept cases from neighbouring jurisdictions.

The Supreme People's Court places high priority in having a rational intellectual property jurisdiction arrangement as well as balanced-development of all courts in intellectual property adjudication. As primary and intermediate courts are more accessible to the disputing parties, the Supreme People's Court has strengthened capacity of these courts in intellectual property protection.

⁹ “*Guan-yu zuo-hao tiao-zheng he wan-shan zhi-shi chan-quan an-jian guan-xia zhi-du xiang-guan gong-zuo de tong-zhi*”.

As at end 2009, the number of Intermediate People's Courts designated by the Supreme People's Court to handle specific categories of intellectual property cases was as follows: 75 for patent, 41 for new plant variety, 46 for layout design of integrated circuit, and 41 for recognition of well-known marks. 92 primary courts are designated to adjudicate general IP-related civil cases.

(4) Organised the “Optimisation of Judicial Environment for Proprietary Innovation” annual thematic event pertaining to intellectual property adjudication, to nurture a judicial climate that encourages proprietary innovation

To address the problems in the judicial protection of Intellectual property that affect and limit proprietary innovation, increase the level of judicial protection and create a judicial climate conducive for proprietary innovation, the Supreme People's Court issued the *Notice on the Organising of the “Optimisation of Judicial Environment for Proprietary Innovations” Annual Thematic Activity in All Courts Across the Country*¹⁰ on 9 April 2009. In doing so, the Supreme People's Court hopes to encourage innovation and birth of proprietary brands, which would create new industries, generate demand, and nurture new areas of economic growth. As such, the *Notice* requires the courts to do better adjudication work in patent cases to facilitate technological innovation, in monopoly and unfair competition cases to create a level-playing field in the market and in trademark cases to promote brand economy. In addition, the *Notice* also requires the strengthening of adjudication supervision and work guidance and the unification of criteria in application of law.

¹⁰ (“*Guan-yu zai quan-guo fa-yuan kai-zhan zhi-shi chan-quan shen-pan ‘you-hua zi-zhu chuang-xin si-fa huan-jing’ nian-du zhu-ti huo-dong de tong-zhi*”)

All courts have formulated implementation plans for this event based on their local circumstances. The plans have been carried out in phases. The thematic activity was one of the highlights and priorities of the People's Courts in 2009. It has enabled the courts to achieve significant progress in their delivery of the national intellectual property strategy and in enabling the judicial system to play a leading role in intellectual property protection.

(5) Strengthened judicial responses to intellectual property matters for the Shanghai World Expo, and proactively provided judicial protection

2010 is another important year for China after the 2008 Beijing Olympics. It is the year of the Expo 2010, Shanghai. The People's Courts recognised the important significance of the Expo, and have worked towards offering dynamic and quality judicial services. The courts have provided fair, efficient and authoritative judicial protection of intellectual property to ensure a "successful, splendid and unforgettable exposition".

As intellectual property protection is priority at the Shanghai Expo, in 2009, the Supreme People's Court took important steps to study the legal issues that might arise when addressing intellectual property disputes relating to the Expo.

The three levels of courts in Shanghai, the Expo city, have been active in meeting the Expo's need for intellectual property protection. Besides providing swift and appropriate resolution of Expo-related intellectual property disputes, the courts have also tried to expand their judicial functions to render comprehensive services and safeguards for the Expo.

The Peoples' Court of Pudong New District, Shanghai, conducted a live webcast of hearing the first Expo-related intellectual property criminal case. Finally, the court found

the defendant, Shanghai Changzheng Material Co., Ltd guilty of selling counterfeit trademark goods, and imposed a criminal fine of 180,000 yuan (USD 26400), and sentenced its principal Tan Tian to 2 years' imprisonment and a criminal fine of 100,000 yuan (USD 14670). The case was a good example of the effectiveness of judicial protection of Expo intellectual property

(6) Organised the “Intellectual Property Publicity Week” to enhance the general public’s awareness of intellectual property

In line with the events in the “Intellectual Property Publicity Week” organised by the relevant national authorities, the Supreme People’s Court put together a series of varied and interesting publicity activities around the World Intellectual Property Day on 26 April. By organising press conferences, formulating guidance documents, publishing annual case reports, announcing typical cases, arranging open court hearings and convening seminars, the Supreme People’s Court has presented a comprehensive and multi-dimensional showcase of the Chinese courts’ achievements, their current situation and future plans in intellectual property judicial protection. Also, by using judicial case studies, the public was given a vivid demonstration how the law works, from which, awareness of intellectual property protection was elevated, respect for knowledge established, innovative spirit cultivated, and an honest and law-abiding culture fostered.

Different regional courts have planned activities distinctive to their locality. For example, the Tianjin High People’s Court organised a seminar for judges and writers; the High People’s Courts of Shandong Province and Hubei Province convened public seminars on judicial protection of intellectual property; intellectual property judges of the High People’s Courts of Guizhou Province, Gansu Province and Qinghai Province, and the

Intermediate People's Court of Xining City went on the streets to provide community intellectual property advisory services; the High People's Court of Liaoning Province and Intermediate People's Court of Changsha City, Hunan Province, provided live webcast of hearings of intellectual property cases. The major media and key websites at the Central level, as well as key local media, have reported extensively on the "Intellectual Property Publicity Week" organised by courts.

III. Enhanced Judicial Supervision and Guidance has Created Greater Consistency in Adjudication Practices and Decision-Making

The uniform application of law is the basic requisite of a fair, efficient and authoritative judicial system for intellectual property protection. In 2009, the People's Courts have stepped up supervision of adjudication and professional guidance to maintain uniformity in intellectual property adjudication.

The People Courts have:

- (1) Drafted and issued judicial interpretations of intellectual property law to standardise adjudication criteria**

The Supreme People's Court has always given priority to use judicial interpretations to standardise the application of laws. In 2009, with the cooperation and participation of local courts across the country, it organised special studies on the issues of determination

of patent infringement, judicial protection of well-known marks, anti-monopoly civil actions, adjudication of cases relating to patent & trademark granting & validation, and internet copyright protection. Judicial interpretations and issue-specific documents pertaining to the subjects of the studies were also drafted.

The *Supreme People's Court's Interpretation Concerning Several Issues in the Application of Law During Adjudication of Civil Cases Involving the Protection of Well-Known Marks*¹¹ issued on 22 April further defines the conditions for rendering protection for well-known marks, as well as the criteria and evidence requirements. It also answers many social concerns on the protection of well-known marks, and catalyses the healthy development of brand economy.

In addition, the *Supreme People's Court's Interpretation concerning Several Issues in the Application of Law in Patent Infringement Disputes*¹² issued on 28 December provided for the rules of patent claim construction and the criteria for determining patent infringement. The *Interpretation* is instrumental in providing guidance to ensure correct implementation of the amended *Patent Law* and proper adjudication of patent cases, and to incentivise proprietary innovation.

Supported by extensive research, the Supreme People's Court drafted the *Provisions on the Application of Law concerning Several Issues in the Trial of Monopoly Civil Cases (Preliminary Draft)*¹³ and the *Opinions concerning Several Issues in the Trial of Trademark Granting and Validation Administrative Cases (Preliminary Draft)*¹⁴. Based on the drafts, the Supreme People's Court solicited suggestions openly and extensively to prepare for further improvements and amendments, as well as their eventual

¹¹ “Zui-gao ren-min fa-yuan guan-yu shen-li she-ji chi-ming shang-biao bao-hu de min-shi jiu-fn an-jian ying-yong fa-lü ruo-gan wen-ti de jie-shi”.

¹² “Zui-gao ren-min fa-yuan guan-yu shen-li qin-fan zhuan-li jiu-fen an-jian ying-yong fa-lü ruo-gan wen-ti de jie-shi”.

¹³ “Guan-yu shen-li long-duan min-shi jiu-fen an-jian shi-yong fa-lü ruo-gan wen-ti de gui-ding”.

¹⁴ “Guan-yu Shen-li shang-biao shou-quan que-quan Xing-zheng an-jian ruo-gan wen-ti de yi-jian”.

announcement and implementation.

(2) Enhanced professional guidance in intellectual property adjudication to ensure correct application of law

Superior courts place important emphasis on providing adjudicative guidance for inferior courts. In 2009, by providing judicial documents (*sifa wenjian*), minutes of meetings, and replies (*pifu*) concerning adjudication of typical cases, the Supreme People's Court and the provincial High People's Court had set forth clear judicial principles and criteria on intellectual property protection, and by doing so, they had promptly resolved certain notable issues in judicial practice. In particular, the superior courts have tried to issue judicial documents that serve as general guidance for all cases.

To improve the regime of judicial protection for well-known marks and resolve problems in the determination of well-known marks, the Supreme People's Court issued the *Notice on the Jurisdiction over Civil Disputes concerning the Determination of Well-known Marks*¹⁵ on 5 January 2009. The *Notice* assigns jurisdiction over cases relating to well-known marks to the Intermediate People's Courts of provincial capitals and cities with provincial-level status in economic management (*jihua danlie shi*); thus, maintained people's trust in the judicial protection of intellectual property.

For proper implementation of the revised *Patent Law*, the Supreme People's Court has also issued the *Notice on the Study and Enforcement of the Revised Patent Law*¹⁶, explaining application issues in relation to the transition (*i.e.* old law vs. new law). Local courts have also generally been diligent in summarising and reviewing their adjudication experiences. For instance, systematic guidelines have been developed for patent cases

¹⁵ “*Guan-yu she-ji chi-ming shang-biao ren-ding min-shi jiu-fen an-jian guan-xia wen-ti de tong-zhi*”.

¹⁶ “*Guan-yu xue-xi guan-che xiu-gai hou de zhuan-li-fa de tong-zhi*”.

relating to industrial design by the High People's Court of Beijing Municipality, for internet copyright infringement cases by the High People's Courts of Zhejiang, Hubei and Yunnan provinces, for audiovisual copyright infringement cases by the High People's Courts of Guangdong Province, and for cases relating to the determination of well-known marks by the High People's Courts of Shanxi and Qinghai provinces. Furthermore, for relevant and similar cases of certain social impact, local courts have also promptly communicated and coordinated with other courts to ensure the same adjudication standards are applied and consistent adjudication outcomes obtained; hence, maintained judicial authority.

(3) Adopted innovative instructional methods by using typical intellectual property cases

On 26 April, the World Intellectual Property Day, the Supreme People's Court published the 10 major cases relating to national judicial protection of intellectual property for 2008, and 50 typical cases for the same year. Such publication has helped reinforce the demonstrative and instructive effect of typical cases.

The *Supreme People's Court Annual Report (2008) on Intellectual Property Cases*¹⁷ was the first publication of its kind. The *Report* is a compilation of abstracts of the grounds of judgement of 23 typical cases, specially selected from 184 cases decided and disposed in 2008 by the Supreme People's Court. As the first compendium of typical cases adjudicated by the Supreme People's Court, it was an innovative approach to the adjudication guidance system. This has contributed to the prompt summarisation of adjudication experience, improvement of adjudication guidance and uniformity in

¹⁷ "Zui-gao ren-min fa-yuan zhi-shi chan-quan an-jian nian-du bao-gao (2008)".

application of law.

Local courts, too, have collated and published typical cases and theoretical analyses to provide instructive guidance for local judicial practice. The *Selected Judgments of Intellectual Property Cases of Shanghai Court 1984-2008 (Chinese-English Edition)*¹⁸ published by the High People's Court of Shanghai Municipality was well-received by local and foreign readers.

(4) Increased research & study to provide theoretical support in intellectual property adjudication

Theoretical innovation as a means to inform intellectual property adjudication has always been a priority to the People's Courts. Participation in international exchanges and knowledge sharing in relation to judicial protection of intellectual property is regarded as an important means of elevating the international influence of Chinese courts in intellectual property judicial protection.

In 2009, the People's Courts successfully organised a series of studies, from which valuable study outcomes were generated, and fecund adjudication theories derived. The outcomes were translated into operable formats by way of guiding documents and work measures.

With the support of local courts, the Supreme People's Court organised special studies on internet copyright infringement, damages for copyright infringement of audiovisual works, and anti-monopoly civil litigation. The Supreme People's Court hosted the International Conference on Judicial Protection of Internet Copyright, Seminar on Anti-Monopoly Civil Litigation, and International Conference on Judicial Protection of

¹⁸ "1994-2008 Shanghai zhi-shi chan-quan cai-pan wen-shu jing-xuan"

Intellectual Property. Other activities include the European competition law study tour, which took the study group to the United Kingdom, Belgium, Germany and Luxemburg, the “China-U.S. Seminar on Private Enforcement of Anti-Monopoly Law” jointed organised with the United States Department of Justice and Federal Trade Commission, and the dissemination of *Intellectual Property Adjudication Newsletter*. These are activities that offered more tools to the study of intellectual property theory, and facilitated the refinement and unification of adjudication standards.

On 8 January, the Supreme People’s Court approved the setting up of the China Intellectual Property Judicial Protection Research Base (Suzhou) at the Intermediate People’s Court of Suzhou City, Jiangsu Province, to provide basic research support in the study of judicial protection relating to intellectual property for all courts across the country.

By leveraging the research platform provided by the Specialised Committee on Intellectual Property Adjudication Theory under the Adjudication Theory Studies Institution of the China Law Society, the Intellectual Property Division of the Supreme People’s Court and the Committee has jointly convened a series of seminars and meetings. On 19 April, the Committee also established an intellectual property adjudication research base in the People’s Court of Shapingba District in Chongqing Municipality.

Local courts have continued to gain insight to adjudication principles. Many have taken the initiative to organise conferences on important topics, based on local circumstances and adjudication needs. The positive results culminating from these meetings provide valuable theoretical support for their adjudication practice.

At the same time, the People’s Courts have been active participants in legislative and law revision activities relating to intellectual property. Through task forces that take part in the drafting and revision of the *Trademark Law*, *Law against Unfair Competition*,

Implementing Regulations of the Patent Law, Regulations on the Customs Protection of Intellectual Property Rights, and draft of *Regulations for the Protection of Folk Literature and Arts*, the People's Courts have provided constructive opinions and recommendations.

In view of the outstanding contributions of the Chinese courts and judges in intellectual property judicial protection, two intellectual property judges from China made it to the *Managing Intellectual Property* list of the "50 most influential people in intellectual property in 2009".

IV. Capacity Building for Intellectual Property Judges has Improved Judicial Competence and Quality

A team of high calibre judges is a prerequisite for strict, impartial and reasonable judicial practice.

In 2009, the People's Courts launched the "People's Judge for the People" ("*renmin faguan wei renmin*") thematic event. Through the activity, the People's Courts strengthened the intellectual property adjudication organisation, professional capacities, and integrity-building. The courts are perpetually working to elevate the overall calibre of intellectual property judges, and to buttress the organisational framework and talent base for intellectual property adjudication.

The People's Courts have:

(1) Strengthened the organisational structure for intellectual property adjudication

2009 saw a stronger and better intellectual property adjudication organisation within Chinese courts.

Besides establishing dedicated intellectual property divisions in most Intermediate People's Courts, intellectual property judges are selected from a pool of persons well-versed in law and foreign language, and who possess specialised technical knowledge and good adjudication experience. The courts emphasises in preparing specialised intellectual property judges, and improving the professional make-up of the intellectual property adjudication team.

Normally, the case admission, criminal adjudication, administrative adjudication and enforcement divisions of the courts of various levels would designate specific panels or judges to admit, adjudicate and execute intellectual property cases. In 2009, the People's Courts had stepped up its personnel infrastructural-building by allocating additional and better human resources, to solve the problem of insufficient manpower for intellectual property adjudication in certain localities.

To draw on the specialised knowledge and unique role of professionals, the local courts would select and recommend experts from the relevant fields to be people's assessors (lay judges), based on circumstances of the intellectual property cases. For example, the High People's Court of Tianjin Municipality has specially issued the *Opinions on Enhancing the Participation of People's Assessors in the Adjudication of Intellectual Property Cases*¹⁹; the Supreme People's Court, High People's Courts of Shanghai, Jiangsu, Zhejiang, Guangdong and Sichuan, and the First and Second Intermediate People's

¹⁹ "Guan-yu tui-jin ren-min pei-shen-yuan can-jia zhi-shi chan-quan an-jian shen-pan de yi-jian".

Courts of Beijing Municipality have also continued personnel exchanges with intellectual property authorities such as the Patent Re-examination Board. Local courts also try to benefit from technical experts' role in helping resolve intellectual property disputes. For example, the High People's Court of Shanghai Municipality has established a technical expert pool for intellectual property adjudication.

(2) Strengthened professional capacity in the adjudication of intellectual property cases

The People's Courts place great importance in providing professional knowledge and adjudication skills training for intellectual property judges. To develop a stronger team of specialised intellectual property judges, training is problem-specific and targeted at the latest issues. In particular, to elevate the overall standard of intellectual property adjudication, primary courts as well as courts located in the central and western regions of China are provided with training support.

On August 2009, the Supreme People's Court organised a "Workshop for National Courts on New Issues in Intellectual Property Adjudication" at the National Judges College. Training was provided for more than 240 intellectual property judges from intermediate and primary courts. Similar workshops have also been organised by the High People's Court in Beijing, Heilongjiang, Zhejiang, Shandong, Hubei, Hunan, Guangxi and Chongqing.

(3) Focused on improving the integrity of judges

In 2009, the People's Courts continued to advance judges' education in the socialist rule

of law concept. Intellectual property judges were nurtured to observe the core judicial values of fairness, honesty and service for the people, and to resist any corruptive idea or impropriety. Efforts were made to elevate the political awareness, professional capability, and work ethics of intellectual property judges. Fair and people-oriented personalities were used as role models to encourage and develop intellectual property judges into persons who listen to, care for, and work for the people.

On 17 November, the Supreme People's Court announced the *Decision to Award the Title of "National Adjudication Expert" to 45 Judges, Such As Kong Xiangjun, And Others*.²⁰

The list included 6 intellectual property judges, which reflects the excellent professional abilities of intellectual property judges in China.

Conclusion

Results are from the past. All the achievements of the last 30 years and of 2009 will be part of history.

In 2010, our national intellectual property strategy will enter a critical phase, where new circumstances, new tasks and new challenges await. The People's Courts' primary duty is to deliver the national strategy to accelerate the remodelling of economic growth, while maintaining a stable but relatively fast growth. As such, the People's Courts will enhance effectiveness of judicial protection for intellectual property through adjudication of cases, implement the national intellectual property strategy, and enable the judicial system to be the primary means of intellectual property protection. They will also power judicial

²⁰ "Guan-yu shou-yu kong xiangjun deng 45 ming tong-zhi 'quan-guo shen-pan ye-wu zhuan-jia' cheng-hao de jue-ding".

reforms in the intellectual property domain, refine the intellectual property adjudication system and work mechanism, and improve the capacity and level of judicial protection for intellectual property. Finally, they will step up supervision and guidance for intellectual property adjudication, and strengthen capacity building for its team of intellectual property judges.

By providing powerful judicial protection for intellectual property, the People's Courts hope to contribute effectively to the building of an "innovation-based nation" and a *xiaokang* society.