



上海知识产权法院

Shanghai Intellectual Property Court's

知识产权司法保护状况

Judicial Protection Conditions for Intellectual Property

(2019)

2020.4

上海知识产权法院 知识产权司法保护状况 (2019 年)

2019 年，上海知识产权法院以习近平新时代中国特色社会主义思想为指导，在上海市委的领导下，在市人大及其常委会的监督下，在上级法院的指导下，忠实履行审判职能，持续深化改革创新，着力建设国际一流知识产权法院，充分发挥司法保护知识产权的主导作用，为上海落实“三项新的重大任务”、打造“四大品牌”、建设“五个中心”、奋力创造新时代上海发展新奇迹提供优质高效的司法服务和保障。

一、发挥司法职能，切实抓好执法办案第一要务

(一) 收案情况

2019 年，共受理各类知识产权案件 2496 件，同比增长 20.75%。其中，民事一审案件 1637 件，民事二审案件 776 件，行政二审案件 3 件，诉前保全案件 37 件，其他案件 43 件。（见图 1）

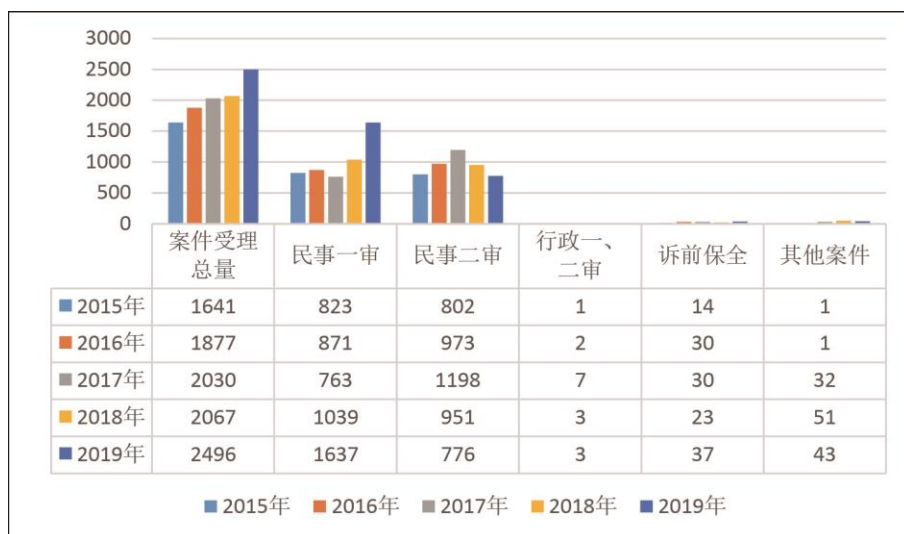


图 1 2015-2019 年案件受理数量对比图

在受理的案件中，收案数位居前五位的分别是：专利权纠纷案件 1123 件，占 44.99%，同比增长 91.31%；计算机软件纠纷案件 464 件，占 18.59%；著作权纠纷案件 433 件（不包括计算机软件著作权），占 17.35%；商标权纠纷案件 215 件，占 8.61%；特许经营合同纠纷案件 93 件，占 3.73%。还有不正当竞争纠纷案件 84 件，技术合同纠纷案件 13 件，垄断纠纷案件 2 件，其他案件 69 件。（见图 2）

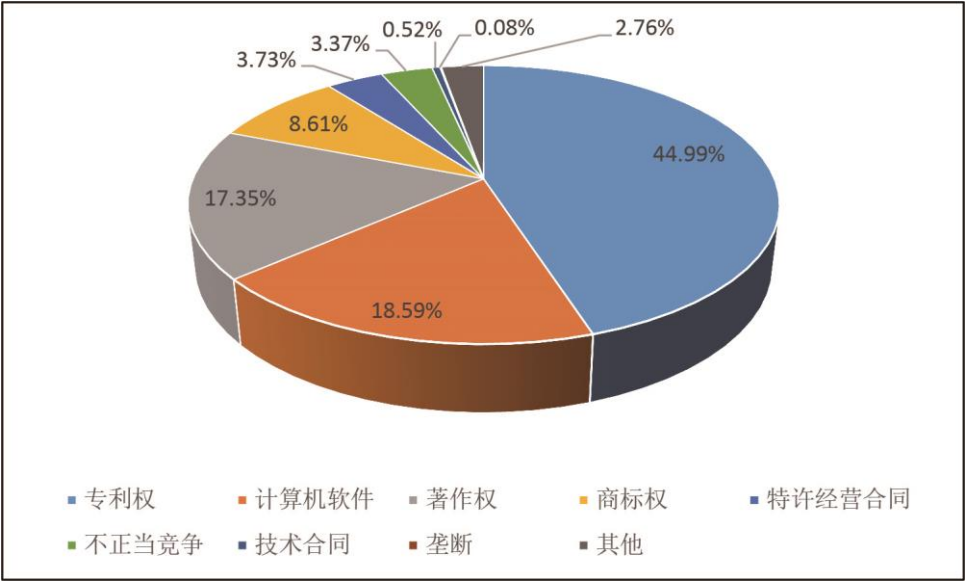


图 2 案由分布图

在受理的一审案件中，技术类案件共 1617 件，占 98.78%，同比增长 60.90%。其中，侵害专利权纠纷案件 1056 件，专利权权属纠纷案件 55 件，专利合同纠纷案件 12 件，计算机软件开发合同纠纷案件 379 件，计算机软件权属、侵权纠纷案件 85 件，技术秘密纠纷案件 15 件，其他技术类纠纷案件 15 件。（见图 3）

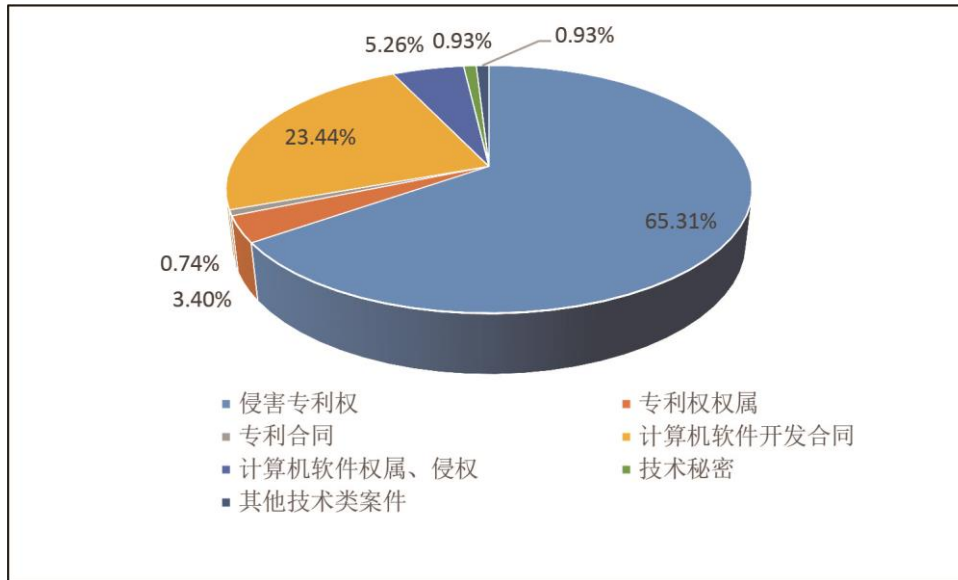


图3 技术类案件分布图

（二）结案情况

2019年，共审结各类案件2155件，同比增长4.26%。其中，民事一审案件1310件，同比增长26.2%，民事二审案件765件，行政案件1件，诉前保全案件37件，其他案件42件。

审结了一批新类型和有影响的案件。例如，北京爱奇艺公司与杭州飞益公司等不正当竞争纠纷案，系全国首例判定运用技术手段虚假刷高视频播放量行为构成不正当竞争的案件；衡标检测公司与和曦科技公司集成电路布图设计创作合同纠纷案，系我院判决的首起集成电路布图设计纠纷案；DNA吉诺特克公司与上海人类基因组研究中心等侵害发明专利权纠纷案，涉及人类基因测试技术；乔安科技公司与张某某等因恶意提起知识产权诉讼损害责任纠纷、因申请诉中财产保全损害责任纠纷案，涉及将已公开销售的产品申请专利并起诉同行的行为构成恶意诉讼的认定；费希尔技术公司与上海东方教具公司等侵害著作权及不正当竞争纠纷案，涉及搭建式玩具的模型作品构成及侵权认定；亚拓士公

司与娱美德公司等侵害计算机软件著作权、确认合同无效系列纠纷案，涉及知名游戏“传奇”权利主体授权行为的法律后果认定问题；陈某某与可口可乐公司职务发明创造发明人、设计人奖励、报酬纠纷案，涉及外商独资企业员工的职务发明奖励、报酬相关权利的保护问题。

2019 年，我院有 3 件案件入选《最高人民法院公报》，3 件案件入选中国法院知识产权十大案件和 50 件典型案例，1 篇案例分析被评为全国法院优秀案例分析，1 篇文书在全国法院首届“百篇优秀裁判文书”评选活动中获奖，还有十多件案件入选上海高院参考性案例、精品案例、优秀文书和示范庭审。

二、对标国际一流，积极作为促进优化营商环境

（一）明确发展目标，建设国际一流法院

2019 年 4 月，我院出台《关于建设国际一流知识产权法院的实施意见（2019-2021）》，明确专业化、智能化、国际化、权威性和影响力五个方面的建设目标和 30 项主要任务，着力打造知识产权公正专业审判高地、审判机制创新高地、司法智能运用高地、司法开放发展高地和审判人才建设高地，为上海知识产权法院的下一步发展制定了详细的路线图。

1. 努力打造专业审判队伍。2019 年，我院知识产权综合审判一庭荣立集体二等功，何渊法官被评为全国法院办案标兵和上海法院“邹碧华式的好法官”，吴盈喆法官被评为上海市三八红旗手并荣立个人一等功，12 名法官、法官助理荣立三等功、嘉奖等荣誉称号，3 名法官入选“上海青年法学法律人才库”和“上海涉外法律人才库”。

2. 积极推进智慧法院建设。全面推进电子卷宗随案同步生成和深度应用，探索诉讼材料全流程数字化采集。全面推进互联网审判，开展网上庭前会议、网上调解、网上庭审，审判智能化水平不断提升，实现“让数据多跑路，让当事人少跑腿”。建成知识产权审判大数据平台，为激励保护创新和审判管理决策提供数据支持。

3. 国外当事人赞誉公正审判。平等保护中外当事人，公正、高效审理涉外知识产权案件，以诉讼优选地助力打造投资优选地，得到当事人的高度认可，收到德国欧瑞康纺织有限及两合公司、德国慧鱼集团、日本株式会社普利司通、荷兰皇家飞利浦公司等当事人送来的感谢信和锦旗。

（二）发挥引领效应，促进市场健康发展

1. 营造公平竞争的市场环境。通过审判制止破坏公平竞争和市场秩序的垄断、不正当竞争、恶意抢注商标、恶意诉讼等行为，为维护良好市场秩序提供司法保障。例如，在芭黎贝甜公司提起上诉的侵害商标权纠纷案中，对恶意抢注“巴黎贝甜”商标行为的不正当性做出认定，维护市场公平诚信的竞争环境。

2. 发布专项白皮书促进产业发展。针对案件审理中发现的科技创新企业在计算机软件著作权和专利权保护方面存在的问题，发布计算机软件著作权案件审判情况白皮书和专利案件审判情况白皮书，提出对策建议，强化企业知识产权法律意识，激励、保护创新，从而促进产业发展。

3. 以司法建议促进规范管理。针对企事业单位及行业内知识产权创造、运用、管理、保护中出现的问题分别向有关企业、公

证机构、知识产权管理机构发出司法建议，获得了被建议单位的采纳和反馈。

（三）拓展职能空间，提升服务科创效果

1. 充分发挥专项审判团队作用。发挥涉自贸区知识产权案件集约化审理效应，推进自贸区案件专项审判，共受理涉自贸区知识产权案件 294 件，审结 264 件，确保自贸区知识产权案件专业高效审理，助推培育自贸区“法治化、国际化、便利化”的营商环境。

2. 开展针对性专题调研。围绕“完善知识产权司法保护机制，服务保障自贸试验区扩区发展”主题，深入园区调研，了解自贸区企业对知识产权保护现实需求和对法院工作的意见建议，形成问题清单和相应的处理方案。加强新类型知识产权司法保护的研究，形成《大数据产业发展背景下数据信息的知识产权司法保护》等课题调研成果。

3. 提升法官工作室服务效能。成立“凌崧法官工作室”，与“全国审判业务专家陈惠珍法官工作室”一起，拓宽服务科创中心建设和自贸区建设的覆盖面，把服务的触角深入到创新的第一线，提升创新创业者对知识产权司法保护的感受度。两个工作室全年开展巡回庭审、专题讲座和法律咨询等活动 15 次，普及知识产权法律知识，倡导知识产权保护的文化和氛围。

三、强化严格保护，着力提升权利主体维权获得感

（一）有效破解权利人维权举证难题

1. 及时实施证据保全。知识产权案件具有取证困难、证据容易灭失的特性，通过诉前、诉中证据保全，及时固定证据，助力

查明事实，维护当事人合法权益。在技术性较强的证据保全案件中，以“法官+执行人员+技术专家”团队提升证据保全的效率效果。全年依当事人的申请作出诉前、诉中证据保全裁定共计 53 份。例如，在塞拉尼斯公司起诉的侵害发明专利权纠纷案中，由华东理工大学药学院教授协助法官依法对被告的操作记录本、实验记录本、图纸、技术文件等予以保全，为侵权事实的认定打下基础。

2. 合理运用调查令。对于第三方掌握的原告因客观原因无法取得的证据，依法准许当事人的申请签发调查令，并将调查获取的证据作为确定判赔数额的基础证据。全年共发出调查令 38 份。例如，在鱼跃医疗公司起诉的侵害外观设计专利权纠纷案中，基于原告申请出具调查令，根据从天猫公司调取的被诉侵权产品的销售额并结合其他证据综合考虑，一审判决被告赔偿原告经济损失及合理费用共计 65 万元。

3. 依当事人申请开展调查。对于掌握侵权人销售侵权产品的数量、金额等证据又不接受调查令的第三方，法院依当事人的申请以出具协助调查函及实地调查的方式进行取证。例如，在三菱电机株式会社起诉的侵害发明专利权和外观设计专利权纠纷两案中，法院依当事人的申请以上述方式从宁波海关和上海海关取得被告出口侵权产品的相关数据。

4. 强化证据规则运用。首次运用证据出示令，对控制证据且无正当理由拒不提交的当事人，适用证明妨害规则作出不利于控制人的认定。例如，在点点乐公司提起上诉的侵害商标权及不正当竞争纠纷案中，责令侵权人提交有关被控游戏营收的证据，因

侵权人拒不配合提交证据，故参考权利人的主张和提供的证据，将判赔金额从原审的 20 万元改判至 300 万元。

（二）依法适用有利于权利保护的赔偿计算方式

1. 优先考虑当事人的选择。根据有效证据依法支持权利人选择的损失赔偿计算方式。例如，在斐珞尔公司起诉的侵害外观设计专利权纠纷案中，依法采纳原告主张的以侵权产品在市场上销售的总数乘以每件专利产品的合理利润，再乘以涉案专利设计对专利产品利润的贡献度，作为确定其因被告侵权行为所受到的实际损失的计算方式，一审全额支持原告要求被告赔偿 300 万元的诉请。

2. 灵活运用赔偿计算方式。在同一案件中，针对多个侵权事实，如果既存在可以较为精确计算权利人损失或侵权人获益的部分，又存在难以计算权利人损失或者侵权人获益的部分，可以对前者适用以权利人损失或者侵权人获益计算赔偿，对后者适用法定赔偿，以两者之和确定损害赔偿数额。例如，在西门子公司起诉的侵害外观设计专利权纠纷案中，结合在案证据，根据上述计算方式，一审全额支持原告要求被告赔偿 600 万元的诉请。

3. 依法在法定赔偿额以上确定赔偿数额。对于难以确定权利人损失或者侵权人获益的具体数额，但有证据证明前述数额确已超过法定赔偿最高限额的，可以综合全案证据情况，酌定赔偿数额，而不受法定赔偿最高限额的限制。例如，在贝比赞公司起诉的侵害发明专利权纠纷案中，在查明侵权产品销售数量的基础上，综合考虑同类产品的合理利润率和专利贡献度等因素，一审全额支持原告要求被告赔偿 300 万元的诉请。

（三）从重惩治恶意、重复侵权

1. 充分考虑惩罚性因素。在侵权人实施重复侵权、恶意侵权等情况下，从重确定赔偿额。例如，在霍夫曼-拉罗奇公司起诉的侵害发明专利权纠纷案中，考虑到已有生效判决认定被告生产的涉案试剂盒系侵权产品，被告系重复侵权，主观恶意明显，故在法定赔偿的范围内从重判赔。

2. 准确认定侵权主观故意。对合法来源抗辩“实际不知道且不应知道”的认知，根据主客观表现作出严格认定，以实现权利人的充分保护。例如，在前述斐珞尔公司起诉的侵害外观设计专利权纠纷案中，对在涉诉后未停售被控侵权产品仍主张合法来源抗辩的销售商，认定其具有知道被控侵权产品涉嫌侵权仍继续实施侵权的故意，一审判决该销售商提出的合法来源抗辩不成立并对原告起诉后产生的损失与生产商承担连带赔偿责任。

（四）运用行为保全及时制止侵权

《最高人民法院关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》于2019年1月1日施行后，根据个案实际情况依法支持当事人的行为保全申请，及时制止侵权行为。例如，在鸿研公司起诉的侵害发明专利权纠纷案中，鉴于申请人的知识产权在展销会时效性较强的场合正在受到侵害，我院依法作出行为保全裁定，并由承办法官至展会现场送达，被申请人当场下架两款被控侵权产品，及时保护了专利权人的合法权益。

四、创新工作方法，不断完善高效审判机制

（一）繁简分流提升审判质效。制定《关于推进案件繁简分流工作的实施方案（试行）》，对简化审理的案件范围，以及相应

的发现、审理和配套机制等作出规定，实现立案登记要素化、审判流程集约化，简化审理的案件可以适用要素式、令状式、表格式等简式文书，并简化说理。自 2019 年 9 月实施以来，审结分流的简单案件 82 件，平均审理天数 51 天，全面缩短了审理期限，有效提高了审判效率，促进简案快审、繁案精审。

（二）科技示证打破空间阻隔。积极运用现代科技赋能审判工作。为解决在线审理知识产权侵权案件证据原件核对、实物证据勘验比对难题，积极探索运用网络技术手段搭建高清全景远程示证平台，增设 360° 高清远程示证平台和书证展示台，保障在线庭审高效开展。当事人还可以通过在线审判系统上传证据材料，实现无纸化庭审示证，方便对方当事人和法院即时查阅，确保庭审顺利进行。

（三）创新方法升级多元解纷机制。一是尝试运用附条件调解。在一起专利侵权纠纷案中，在法院主持下，双方当事人协商达成一致。若国家知识产权局就被告提出的无效宣告请求作出维持专利权有效的决定，则被告停止侵权并向原告支付款项；反之，则原告不再向被告主张权利。上述调解方案既有效维护了当事人的合法权益，亦解决了专利确权程序时间长导致的案件审理周期长的问题。二是探索在技术类案件中邀请技术调查官参与调解。例如，在金鑫公司起诉的计算机软件开发合同纠纷案中，原被告双方未能就调解达成一致方案，后通过技术调查官现场演示软件功能，原被告双方确认了涉案软件存在的问题，在法官主持下成功达成调解协议。技术调查官参与调解，有利于在固定技术事实的基础上缩小双方争议，为调解工作的开展创造空间。

五、打造透明法院，提升公信力和影响力

（一）健全公开机制。制定《技术审查意见适度公开规则（试行）》，明确公开的适度原则、适用条件、程序要求以及公开后的权利保障，规范技术审查意见的采信机制，增强了技术事实认定的透明度和科学性。案件立案信息、缴费信息、审判组织、开庭信息、结案信息、生效时间等信息，重要节点主动推送，案件信息全面可查，生效裁判文书 100%上网，保障当事人和人民群众的知情权、监督权，以公开促公正。

（二）强化全媒体宣传。加强与公共媒体的全面合作，强化网站、微博、微信等自媒体平台建设，形成新媒体矩阵宣传合力，打通媒体信息“最后一公里”，及时宣传知识产权司法保护成效。媒体围绕建设国际一流法院、跨国企业知识产权保护、科创企业和科技工作者权利保护、法官工作室活动以及典型案例等进行集中宣传报道，全年中央和本地媒体共刊发（播）300 余篇次。

（三）深化国际交流。先后有 10 批 188 人次的国际组织、外国和港澳台地区的知识产权专业人士来院交流访问。创新方式，与欧盟知识产权局上诉委员会采取网络视频方式进行交流，取得良好效果，双方建立了常态化的沟通交流机制。选派法官和法官助理为上海国际知识产权学院 WIPO 学员培训项目授课，组织编写出版中英文版《上海知识产权法院裁判文书精选（2017-2018）》，分享知识产权司法保护成果。依托中国法院知识产权司法保护国际交流（上海）基地和最高人民法院知识产权司法保障科技创新研究（上海）基地，召开“新时代知识产权司法保护研讨会”，中外专家、法官共同围绕知识产权司法保护的现代化和国际化、

加大知识产权惩罚性赔偿力度等交流经验。

2020 年是全面建成小康社会和“十三五”规划收官之年，上海知识产权法院将始终以习近平新时代中国特色社会主义思想为指导，全面贯彻落实中央《关于强化知识产权保护的意见》，坚持公正司法、司法为民，持续深化司法改革，不断加大知识产权司法保护力度，深入推进国际一流知识产权法院建设，为上海建设亚太地区知识产权中心城市、建设知识产权强国和世界科技强国作出更大贡献。

Shanghai Intellectual Property Court's Judicial Protection Conditions for Intellectual Property (2019)

In 2019, guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, under the leadership of the Shanghai Committee of the Communist Party of China and the supervision of the Shanghai Municipal People's Congress and its Standing Committee, Shanghai Intellectual Property Court faithfully performed the trial function and continued to deepen reform and innovation under the guidance of superior court. Focusing on building a world-class intellectual property court, Shanghai Intellectual Property Court gave full play to the leading role of judicial protection of intellectual property rights, and provided high-quality and efficient judicial services and guarantees for Shanghai for purposes of “Three New Major Tasks” (opening of a new section of the Shanghai Pilot Free Trade Zone, launching of a science and technology innovation board at the Shanghai Stock Exchange with a registration system being piloted for listed companies, and implementation of national strategy of integrated development of the Yangtze River Delta region), “Four Major Brands” (Shanghai Service, Made in Shanghai, Shanghai Shopping and Shanghai Culture), “Five Centers” (International Economics, Finance, Trade, Shipping, and Technology Innovation Centers), and new Shanghai development wonder in the new era.

I. Gave Full Play to Judicial Functions and Earnestly Carried out Law Enforcement and Case Handling as the First Priority

(I) Case accepted

In 2019, a total of 2,496 various intellectual property cases were accepted, with a year-on-year increase of 20.75%. The Court totally accepted 1637 civil cases of first instance, 776 civil cases of second instance, 3 administrative cases of first instance and second instance, 37 cases of pretrial preservation and 43 other cases. (See Fig. 1)

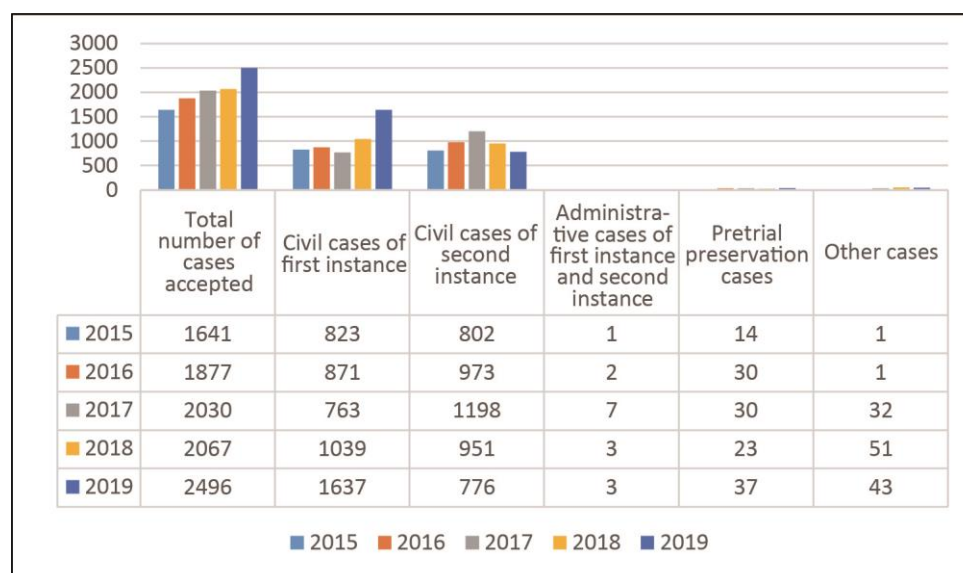


Fig. 1: Comparisons of cases accepted during 2015-2019

Among the accepted cases, the top five in terms of case quantity were: 1,123 cases of patent right disputes, accounting for 44.99% with a year-on-year increase of 91.31%; 464 cases of computer software disputes, accounting for 18.59%; 433 cases of copyright disputes (excluding cases of computer software copyright), accounting for 17.35%; 215 cases of trademark rights disputes, accounting for 8.61%; and 93 cases of franchise contract disputes,

accounting for 3.73%. In addition, there were 84 cases of unfair competition disputes, 13 cases of technical contract disputes, 2 cases of monopoly disputes, and 69 other cases. (See Fig. 2)

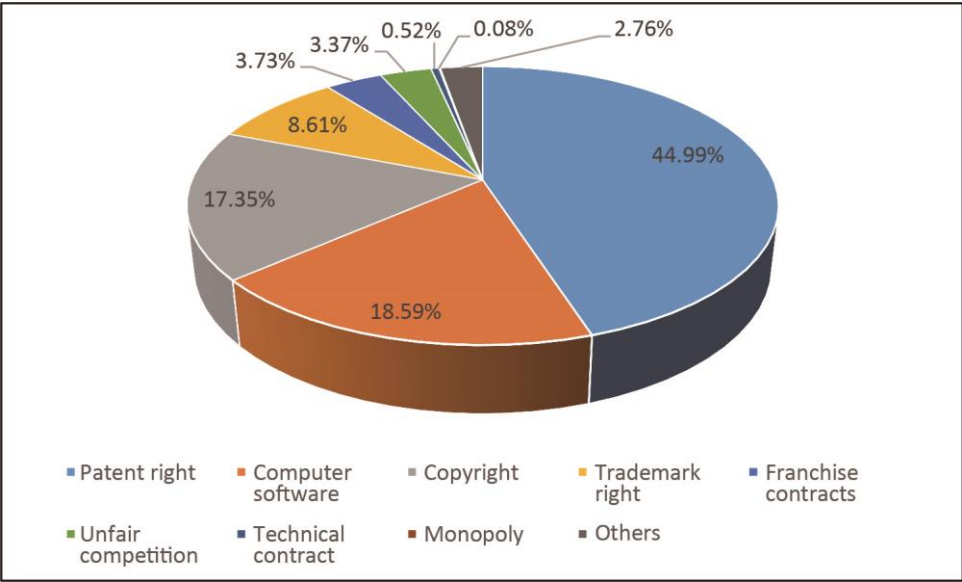


Fig. 2 Distribution of case causes

Among cases of first instance accepted, 1617 were technical cases, accounting for 98.78% with a year-on-year increase of 60.90%. There were 1056 cases of patent right infringement disputes, 55 cases of patent right ownership disputes, 12 cases of patent contract disputes, 379 cases of contract disputes of computer software development, 85 cases of computer software ownership and infringement disputes, 15 cases of technical secret disputes and 15 cases of other technical disputes. (See Fig. 3)

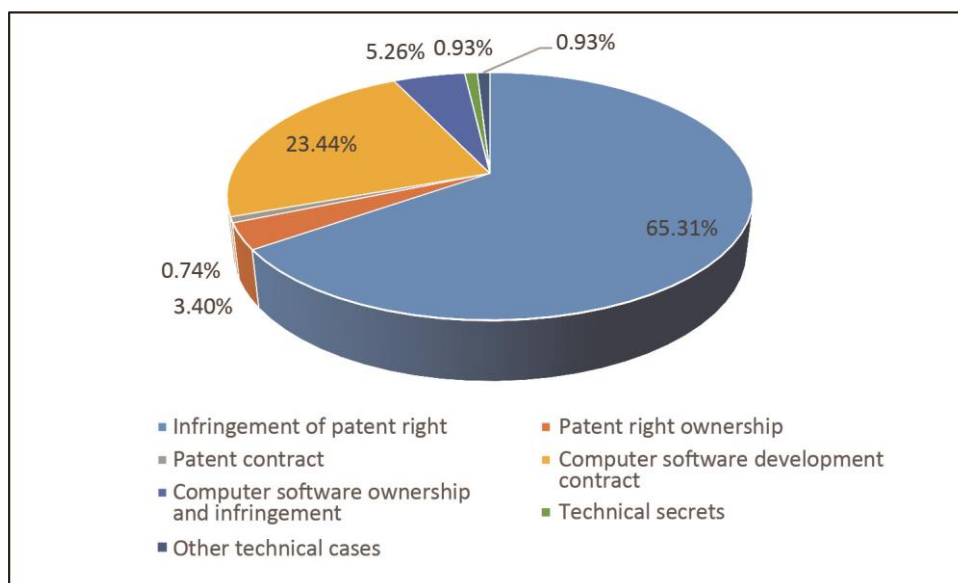


Fig. 2 Distribution of technical cases

(II) Cases concluded

In 2019, a total of 2,155 various cases were concluded, with a year-on-year increase of 4.26%. The Court totally concluded 1,310 civil cases of first instance (a year-on-year increase of 26.2%), 765 civil cases of second instance, 1 administrative case of second instance, 37 cases of pretrial preservation and 42 other cases.

A number of cases of new types and influence were concluded. For example, the dispute over unfair competition of Beijing Iqiyi Technology Co., Ltd. v. Hangzhou Feiyi Information Technology Co., Ltd. et. al., the first case judged to be the unfair competition caused by falsely increasing video view counts with the use of technical means in the country; the contract dispute over integrated circuit layout, design and creation of Guangdong Standard Test Technology Co., Ltd. v. Guangzhou Seafarer Information Technology Co., Ltd., the first case of dispute over the layout design of integrated circuits

judged by our Court; the dispute over infringement of patent right of invention DNA Genotek Inc. v. Chinese National Human Genome Center at Shanghai et. al., which was related to human genetic testing technology; disputes over damage liabilities arising from malicious IPR action and property preservation application filed during the action of Shenzhen Jooan Technology Co., Ltd. v. Zhang et. al., which were related to the determination of malicious action constituted by the patent application of product publicly sold and behavior of bringing an action against the peer; the dispute over copyright infringement and unfair competition of Fischertechnik GmbH v. Shanghai Dongfang Teaching-aids Co., Ltd. et. al., which was related to the composition of model works of construction sets and the determination of infringement; the series of disputes over infringement of computer software copyright and invalidation of contract of Actoz Soft v. Wemade Co., Ltd. et. al., which were related to the determination of legal consequences of the authorization of the subject of right, the well-known game "Legend"; and the dispute over reward and remuneration for inventor and designer of service invention-creation of Chen and Coca Cola, which was related to the protection of rights with connection to reward and remuneration of service invention-creation of employees in wholly foreign-owned enterprises.

In 2019, 3 cases accepted by the Court were selected in the Gazette of the Supreme People's Court of the People's Republic of China, 3 cases selected as the Ten Cases and Fifty Model Cases of Intellectual Property Rights of Chinese Courts, one case analysis rated as the National Court Excellent Case Analysis, one instrument awarded in the campaign of first 100 Excellent

Judgment Documents within national courts, and more than ten cases selected as reference cases, classic cases, excellent documents and model court trials of the Shanghai High People's Court.

II. Directed to World-class and Took the Initiative to Promote the Optimization of the Business Environment

(I) Clarified development goals and built a world-class court

In April 2019, the Shanghai Intellectual Property Court promulgated the Implementation Opinions on Building World-class Intellectual Property Court (2019-2021), which specified the construction objectives and 30 major tasks in five aspects of professionalization, intelligence, internationalization, authority and influence, strove to build highlands for impartial and professional trials of intellectual property, trial mechanism innovation, intelligent judicial application, open judicial development and training of trial talents, formulating the detailed roadmap for the next development of the Shanghai Intellectual Property Court.

1. Strove to build a professional trial team. In 2019, the No.1 Comprehensive Adjudication Division of Shanghai Intellectual Property Court was honored with the second-class group merit citation. Judge He Yuan was appraised as the national court case handling pacemaker and the "Good Judge of Zou Bihua-Style" in Shanghai courts. Judge Wu Yingzhe was appraised as Shanghai "March 8th Red Banner" outstanding woman pacemaker and honored with first-class merit citation. Twelve judges and assistant judges were honored with third-class merit citations. Three judges were selected into

the "Shanghai Youth Law and Legal Talent Pool" and "Shanghai Foreign Legal Talent Pool".

2. Actively promoted the construction of smart court. The Court promoted the simultaneous generation and in-depth application of electronic files with cases in all respects, and explored the digital collection of litigation materials throughout the process. The Court comprehensively promoted Internet trials, conducted online pre-trial meetings, online mediation and online trials. The level of trial intelligence was continuously improved to achieve the goal of "more data sharing and less visits of party concerned". The Court has established the big data platform of intellectual property trials, to provide data support for motivating innovative protection and for trial management and decision-making.

3. Praised by foreign parties concerned for the fair trials. The court equally protected both Chinese and foreign parties concerned, heard foreign intellectual property cases fairly and efficiently, and used the preferred action venue to help create the preferred investment venue, which was highly recognized by parties concerned. The court has received letters of thanks and silk banners from parties concerned such as Oerlikon Textile GmbH & Co.KG, Fischer Group of Companies, Bridgestone Group, and Royal Dutch Philips Electronics Ltd.

(II) Gave play to the leading effect to promote the healthy development of the market

1. Created a fair competition market environment. Through trials to stop

behaviors that disrupt fair competition and market order such as monopolies, unfair competition, malicious squatting of trademarks, and malicious litigation, the court provided judicial protection for maintaining good market order. For example, in the case of a trademark right infringement dispute filed by Beijing Balibeitian Enterprise Management Co., Ltd., the Court determined the unfairness of malicious squatting of the trademark “Paris Baguette” and maintained the fair and honest competitive environment in the market.

2. Published the special white paper to promote industrial development.

In response to the problems in the protection of computer software copyrights and patent rights of scientific and technological innovation-oriented enterprises discovered during the trial, the Court issued the white paper on the trial of computer software copyright cases and the white paper on the trial of patent cases, proposing countermeasures and suggestions to strengthen corporate intellectual property legal awareness, encourage and protect innovation, and thereby promote industrial development.

3. Promoted standardized management with judicial suggestions. The Court provided judicial suggestions to the relevant enterprises, notaries, and intellectual property management agencies for the problems arising in the creation, usage, management, and protection of intellectual property rights in enterprises and institutions and the industry. Such suggestions were adopted by units advised with feedback.

(III) Expanded functions and enhanced the effect of serving the science and innovation

1. Gave full play to the role of the special trial team. The Court took full advantage of the intensive trial effect of intellectual property cases related to China (Shanghai) Pilot Free Trade Zone and promoted special trials of cases occurred in the Pilot Free Trade Zone. The Court accepted a total of 294 intellectual property cases related to Pilot Free Trade Zone and concluded 264 cases. In this way, professional and efficient hearing of intellectual property cases in the Pilot Free Trade Zone was ensured, and the business environment of "rule of law, internationalization and facilitation" in the Pilot Free Trade Zone was fostered.

2. Carried out targeted special research. Focusing on “Improving the judicial protection mechanism for intellectual property rights and providing services for the expansion of the Pilot Free Trade Zone”, the Court conducted in-depth researches in the Zone to understand the real needs of intellectual property protection by companies in the Pilot Free Trade Zone and opinions and suggestions on the work of the Court. Accordingly, a list of problems and corresponding solutions were proposed. The Court strengthened the research on judicial protection of intellectual property rights of new types, and obtained research results such as Judicial Protection of Intellectual Property Rights of Data Information in the Context of Big Data Industry Development.

3. Improved service performances of the judge's studio. With the establishment of "Ling Song Judge's Studio" and with the "National adjudication expert Chen Huizhen Judge's Studio", the Court broadened the coverage of serving constructions of science and technology innovation center

and Pilot Free Trade Zone, deepened the reach of the service to the front line of innovation, and enhanced the entrepreneurs' perception of judicial protection of intellectual property rights. The two studios carried out 15 activities such as tour of court hearings, special lectures and legal consultations throughout the year to popularize intellectual property legal knowledge and promote the culture and atmosphere of intellectual property protection.

III. Strengthened strict protections and focused on improving the sense of fulfillment of rights protection of rights subject

(I) Effectively overcame difficulties in rights protection and production of evidence right-holders had

1. Implemented evidence preservation in a timely manner. Intellectual property cases have the characteristics of difficulty in obtaining evidence and the easy loss of evidence. The preservation of evidence before and during the action fixed the evidence in time to help ascertain the facts and protect the legitimate rights and interests of the parties concerned. In the case of highly technical evidence preservation, the team of "judge + executive staff + technical expert" was used to improve the efficiency of evidence preservation. A total of 53 rulings on preserving and pre-litigation evidence were made in accordance with the parties' applications throughout the year. For example, in the dispute over infringement of patent for invention filed by Celanese Corporation, a professor from the School of Pharmacy, East China University of Science and Technology assisted the judge to legally preserve the

Defendant's operation logbook, experiment logbook, drawings, technical documents, etc. to lay the foundation for the determination of infringement facts.

2. Reasonable use of investigation orders. For the evidence held by the third party that the Plaintiff cannot obtain due to objective reasons, the Court approved the application of the party concerned to issue the investigation order according to law, and used the evidence obtained through the investigation as the basic evidence for determining the amount of compensation. The Court issued a total of 38 investigation orders throughout the year. For example, in the dispute over the infringement of design patent right filed by Yuyue Medical Equipment & Supply Co., Ltd., based on the Plaintiff's application to issue the investigation order, the Court made the decision that the Defendant should compensate for the Plaintiff's economic losses and reasonable costs of RMB 650,000 in the first instance according to the retrieved sales of infringing products sued from Tmall, and other evidences.

3. Carried out the investigation according to the application of the parties concerned. For the third party who has obtained the evidence about the quantity and amount of the infringing products sold by the infringer but refuses to accept the investigation order, the Court issued a letter of assistance and conducted field investigation to collect evidence upon the application of the parties concerned. For example, in the two cases of dispute over infringement of invention patents and appearance design patents filed by

Mitsubishi Electric, upon the application of the parties concerned, the Court obtained the relevant data from Ningbo Customs and Shanghai Customs in the manner described above to prove that the defendant's has exported infringing products.

4. Strengthened the application of evidence rules. The evidence presentation order was used for the first time. For the party concerned who has control over the evidence but refuses submission without justifiable reasons, the rule of spoliation of evidence shall be used to make a decision to the disadvantage of such party. For example, in the dispute case filed by DDLE against infringement of trademark right and unfair competition, the Court ordered the infringer to submit evidence about the revenue of the alleged game, but the defendant refused to cooperate in submission of such evidence, so the court examined the right holder's claim and evidence and changed the compensation amount from RMB 200,000 in the first instance to RMB 3 million.

(II) Adopted the Compensation Calculation Methods Conducive to the Protection of Rights in Accordance with the Law

1. The choice of the parties concerned should be prioritized. According to valid evidence, the method for calculating loss compensation chosen by the right holder shall be supported in accordance with the law. For example, in the dispute case filed by FOREO against infringement of appearance design patents, the calculation method advocated by the Plaintiff to determine its actual losses caused by the infringement of the defendant shall be supported in

accordance with the law, namely, the loss shall be the total number of infringing products sold on the market multiplied by reasonable profit of each patented product multiplied by contribution of patent design involved in the case to the profits of patent products. The Court fully supported the Plaintiff's claim for compensation of RMB 3 million in the first instance.

2. Flexibly used the compensation calculation method. For multiple infringement facts in the same case, if certain losses of the right holder or certain profits of the infringer can be accurately calculated while it is difficult to calculate some losses of the right holder or profits of the infringer, it shall use the losses of the right holder or the profits of the infringer to calculate the compensation for the former and legal compensation shall be used for the latter. The amount of the compensation shall be the sum of the two. For example, in the dispute case filed by Siemens against infringement of appearance design patents, the Court fully supported the Plaintiff's claim for compensation of RMB 6 million from the defendant in the first instance based on the documented evidence and using the above-mentioned calculation method.

3. Determined the amount of compensation in addition to the statutory limit of compensation. If it is impossible to determine the exact amount of the losses of the right holder or the profits of the infringer but it is confirmed that such amount exceeds the statutory limit of compensation, the Court may decide the amount of compensation after consideration of all evidence of the case and may not be limited by the statutory limit of compensation. For

example, in the dispute case filed by BABYZEN against infringement of invention patents, the Court fully supported the Plaintiff's claim for compensation of RMB 3 million from the defendant in the first instance on the basis of identified quantity of infringing products sold and comprehensive consideration of reasonable profit rate and contribution to patent of similar products.

(III) Given a Heavier Punishment on Malicious and Repeated Infringement

1. Fully considered punitive factors. In the case of repeated and malicious infringement by the infringer, an increased compensation amount shall be determined. For example, in the dispute case filed by F. Hoffmann-LaRoche AG against infringement of invention patents, the Court determined a heavier punishment on the defendant within the scope of legal compensation as the existing effective judgment has ascertained that the test kit involved in the case produced by the defendant is infringing and that the defendant is performing repeated infringement with obvious subjective malice.

2. Accurately identified the subjective intent of infringement. For legitimate source defense with the recognition of "have no actual knowledge and ought not to have knowledge", strict identification shall be made based on subjective and objective performance for full protection of the right holder. For example, in the dispute case filed by FOREO against infringement of appearance design patents mentioned above, for the vendor who has not stopped the sales of the alleged infringing products involved in lawsuit and are

still claiming legal source defense, the Court decided that such vendors had the intention of continued infringement with the awareness that the alleged infringing products were suspected of infringement. The Court judged in the first instance that the vendor's legitimate source defense could not stand up and that the vendor should be jointly and severally liable with the manufacturer for the losses incurred by the Plaintiff for the lawsuit.

(IV) Used Act Preservation to Stop Infringement in Time

After Provisions on Several Issues Concerning Applicable Laws in Reviewing Preservation Cases in Intellectual Property Disputes Launched by the Supreme People's Court came into effect on January 1, 2019, application for act preservation of the party concerned shall be supported based on the actual situation of the cases to stop infringement in time. For example, in the dispute case filed by HOYAN against infringement of invention patents, as the applicant's intellectual property rights were being infringed at a trade show, which was a time-sensitive occasion, the Court made a ruling on behavior preservation in accordance with the law and had the ruling delivered to the site of the trade show by the judge in charge. The respondent removed the two products accused of infringement from the shelf on the spot, timely protecting the lawful rights and interests of the patentee.

IV. Innovated Working Methods and Constantly Improved the Efficient Trial Mechanism

(I) Adopted Distribution of Complex and Simple Cases to Improve the Efficiency and Quality of Trials. Implementation Plan on Promoting

Distribution of Complex and Simple Cases (Trial) has been formulated and has provided provisions on the scope of the simplified cases heard and the corresponding discovery, trial and supporting mechanisms, realizing element-style case registration and centralized trial procedures. Simplified cases can be simple documents in applicable element-style form, writ form and tabular form with simplified reasoning. Since its implementation in September 2019, 82 distributed simplified cases were concluded, with an average trial day of 51 days, greatly shortening the trial period comprehensively, effectively improving the trial efficiency and promoting speedy trial of simple cases and refined trial of complex cases.

(II) Removed Space Barriers through Science and Technology Demonstration. Modern science and technology shall be actively used to power judicial work. To solve the problems of verification of original evidence and inspection and comparison of physical evidence during online hearing of intellectual property infringement cases, a high-definition panoramic remote demonstration platform was established using network technologies, and a 360-degree high-definition remote demonstration platform and documentary evidence display platform were set up to ensure efficient online court hearings. The party concerned can upload evidence materials through the online trial system for paperless court testimony, supporting immediate consultation of the other party and the court and ensuring smooth trial.

(III) Innovated Methods to Upgrade Multi-element Dispute Resolution Mechanism. First, conditional mediation is used. In a case of dispute over

patent infringement, both parties concerned reached an agreement through consultation under the jurisdiction of the Court. If National Intellectual Property Administration decides to maintain the validity of the patent right for the announcement of invalidation made by the defendant, the defendant shall cease the infringement and make related payment to the Plaintiff and the Plaintiff shall not re-claim its rights against the defendant vice versa. The above-mentioned mediation scheme protects the lawful rights and interests of the party concerned and provides a solution to the long case trial cycle caused by the long patent confirmation procedure. Second, technical investigators are invited to participate in mediation of technical cases. For example, the plaintiff and the defendant could not reach an agreement on mediation of the case of dispute over the computer software development contract prosecuted by Jinxin Company. After the technical investigators demonstrated the software functions on site, the plaintiff and the defendant confirmed the problems about the software involved in the case and successfully reached a mediation agreement under the jurisdiction of the judge. The participation of technical investigators in mediation helps to reduce the disputes between the two parties based on fixed technical facts and creates space for mediation.

V. Built a Transparent Court and Enhanced Credibility and Influence

(I) Improved the Disclosure Mechanism. Rules on Moderate Disclosure of Technical Review Opinions (Trial) are formulated to specify the principle of moderation for disclosure, applicable conditions, procedural requirements and protection of rights after disclosure and the deposition mechanism of technical

review opinions is standardized, enhancing the transparency and scientificity of technical fact determination. For information such as case filing, payment, trial organization, hearing, case conclusion, and entry-into-force time, information about important nodes is actively pushed, the information about cases is fully available, and all the effective judgment documents can be accessed online, protecting the rights of the parties concerned and the general public to be informed and to oversee and promoting justice through publicity.

(II) Strengthened All-media Publicity. Comprehensive cooperation with public media is strengthened with more input on the construction of self-media platforms such as Websites, Microblog and WeChat to form a new media matrix for joint publicity, get through the "last mile" in media information and timely publicize the achievement of judicial protection on intellectual property rights. The media has carried out intensive publicity and reporting on the construction of first-class international courts, intellectual property rights protection of transnational enterprises, protection of the rights of scientific and technological enterprises and workers, activities in judges' studios as well as typical cases. The central and local media has published/broadcasted more than 300 articles during the year.

(III) Deepened International Exchanges. 188 visits in 10 batches by intellectual property professionals from international organizations, foreign countries and Hong Kong, Macao and Taiwan regions of China were made to the Court. The way of communication is innovated. Communication through online video was carried out with Appeal Committee of EU Intellectual

Property Office. The communication was smooth and the two sides have established a regular communication mechanism. Judges and judge assistants were selected to give lessons in the training program of WIPO trainees of Shanghai International Intellectual Property School, and related personnel was organized for the preparation and publication of Shanghai Intellectual Property Court Judgments Selection (2017-2018) (Chinese – English version) to share the achievements of judicial protection on intellectual property. Relying on the International Exchange (Shanghai) Base for IPR Judicial Protection of Chinese Courts and Scientific and Technological Innovation Research (Shanghai) Base for IPR Judicial Protection of the Supreme People's Court, the Seminar on IPR Judicial Protection in the New Era was held, during which Chinese and foreign experts and judges exchanged experience on the modern and international development of IPR judicial protection and imposing heavier punitive damages for IPR.

In 2020, the "Thirteenth Five-Year" ending battle, the Court will fully implement the Opinions on Intensified Protection of Intellectual Property Rights of the Central Committee of the Communist Party of China and adhere to people-oriented judicial justice under the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era. And also, the Court will continue to deepen the reform of the judicial system, intensify IPR protection, and further promote the construction of an international first-class IPR court, making greater contributions to building Shanghai into an IPR center city in the Asia-Pacific region and forging China into an IPR powerhouse and a world power in science and technology.

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