Intellectual Property Protection by Guangzhou Intellectual Property Court (2022)

Preamble

The year of 2022 marked the successful organization of the 20th CPC National Congress, the advance of the "14th Five-Year Plan", and the beginning of the second centenary goal. The 20th CPC National Congress pointed out that we should adhere to the rule of law in all respects, accelerate the implementation of innovation-driven development strategy, speed up the construction of a new development pattern, and focus on promoting high-quality development. Over the past year, Guangzhou Intellectual Property Court adhered to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, profoundly implemented Xi Jinping Thought on the Rule of Law, and comprehensively implemented the spirit of the 19th and 20th CPC National Congress. We safeguarded the "Two Establishments", and continuously advanced the "Four Consciousnesses", "Four-Sphere Confidence", and "Two Upholds". We earnestly studied General Secretary Xi Jinping's key expositions on intellectual property protection, scientific and technological innovation, fair competition, rural revitalization, cultural prosperity promotion, and high-level opening-up. We fully utilized our judicial role and function in the trial of intellectual property rights, facilitated the construction of the "two areas" and "three platforms", and empowered high-quality development with high-quality judicial services.

In 2022, a total of 19,503 first-instance and second-instance cases were brought to the Court, a year-on-year increase of 2.89%, reaching a new high. This represents the strong demand for intellectual property protection and enthusiasm for innovation. There were 13,986 new cases that entered proceedings, a year-on-year decrease of 8.23%. 12,922 cases were closed, and the structure of cases changed greatly.

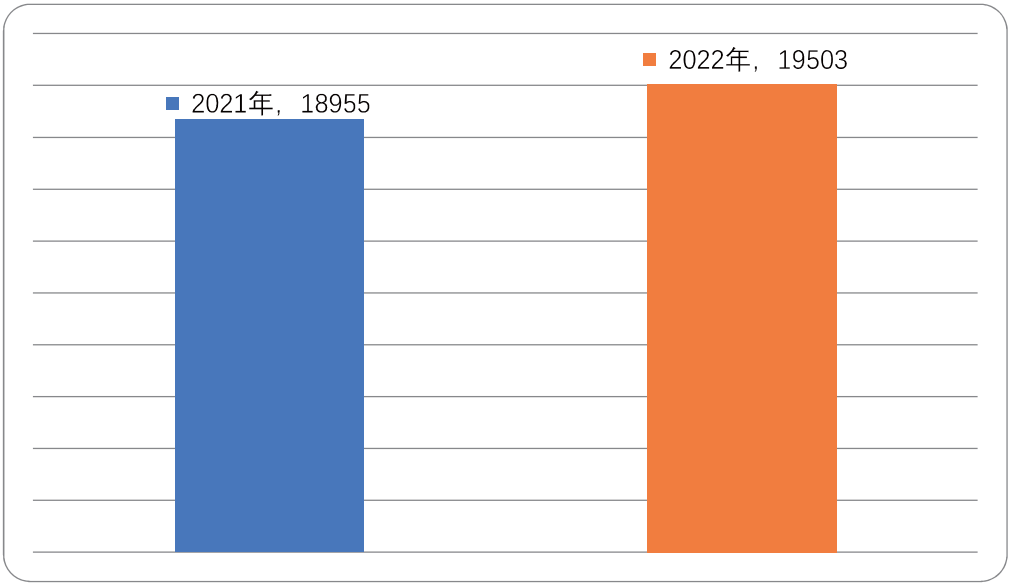

Fig. 1 Comparison of cases brought to the Court in the past two years

The number of first-instance cases increased obviously, and the proportions of first-instance and second-instance cases reversed. By case type, of the new cases, 13,887 cases were civil disputes, 23 were administrative disputes, and 76 were other disputes. By the level of trial, 9,357 were closed in the first instance, a year-on-year increase of 56.03%, and first-instance cases accounted for 66.90%; 4,553 were closed in the second instance, a year-on-year increase of 41.66%; 96 were other cases. Second-instance cases and other cases accounted for 33.10%. The ratio of first-instance to second-instance cases was 7:3 in 2022, compared with 4:6 in 2021.

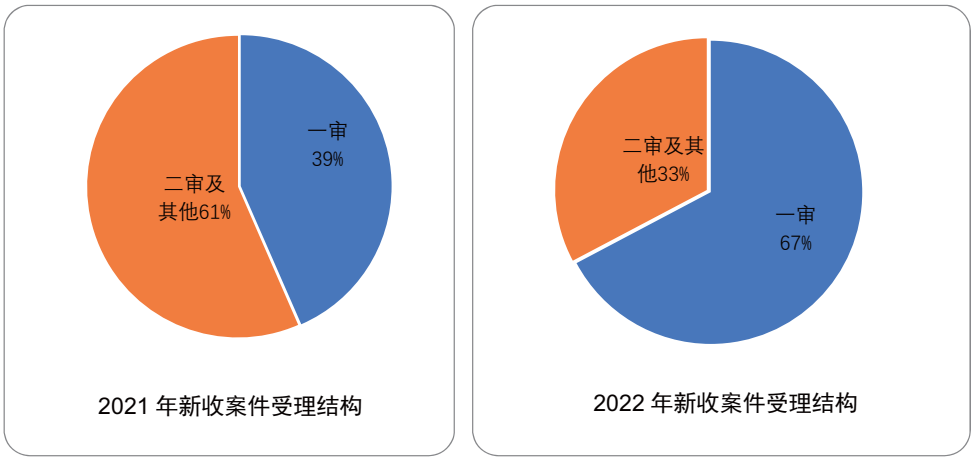

Fig. 2 Comparison of level of trial of cases accepted in the past two years

Technical cases have increased significantly. By the cause of action, of the new cases, 8,885 were patent disputes, a year-on-year increase of 63.99%, accounting for 63.53% of the total number of cases accepted by the Court; 3,980 were copyright disputes, 613 were trademark disputes, 167 were disputes over unfair competition, and 341 were other disputes, accounting for 28.46%, 4.38%, 1.19% and 2.44%, respectively. Among them, 2,678 were new technical cases, 2,299 were closed, a year-on-year increase of 35.66% and 14.21%, respectively. Technological innovation and creation will influence high-quality development more significantly.

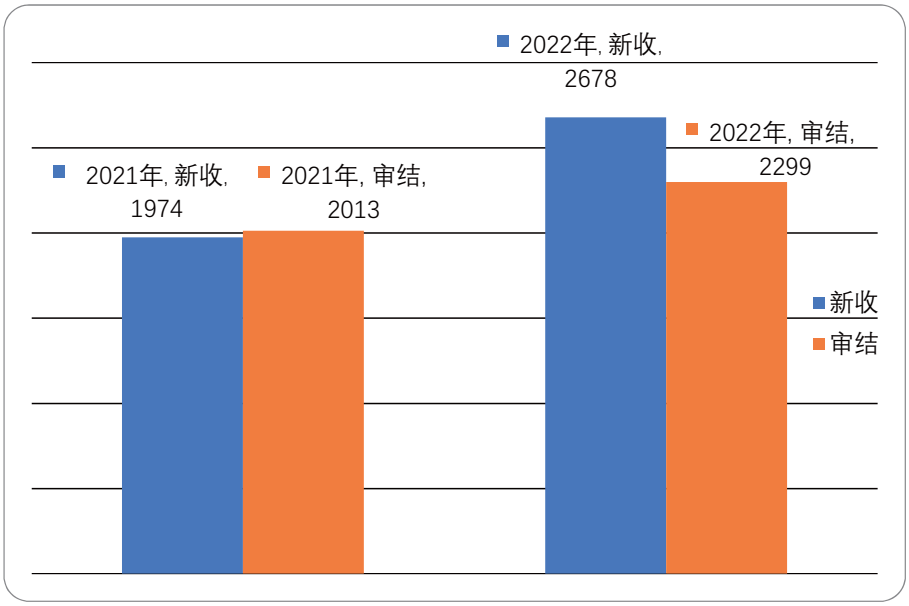

Fig. 3 Comparison of the number of technical cases in the past two years

I. Highlights in Judicial Work and High-quality Judicial Services for High-quality Development

Over the past year, the Court concentrated on facilitating the state's overall innovation performance. We fully utilized our special advantages as the only specialized intellectual property court in the Guangdong-Hong Kong-Macao Greater Bay Area, solidly implemented the new requirements for intellectual property protection, and actively served high-quality development.

(I) Legal guarantee was strengthened

1. Serving and safeguarding scientific and technological innovation

The 20th CPC National Congress pointed out that we should accelerate the implementation of innovation-driven development strategy, strengthen the legal guarantee of scientific and technological innovation, and strive to promote high-quality development. To this end, the Court gave full play to its function and role in technical intellectual property trial, and comprehensively enhanced institutional construction, reform and innovation, with a focus on the high proportion and great difficulty in the trial of technical cases. We have issued the ten typical cases serving and safeguarding scientific and technological innovation for the fifth consecutive year, and formulated the Several Measures on Strengthening the Legal Guarantee of Scientific and Technological Innovation and Serving High-quality Development with High-quality Judicial Services, so as to promote the innovation-driven development strategy and consolidate the country's self-reliance and strength in science and technology. Focusing on the demand of intellectual property protection of characteristic industries and emerging industries in the province, we have conducted in-depth industrial surveys for two consecutive years, and issued investigation reports on the pharmaceutical industry and lighting industry, facilitating sound and steady development of pillar industries in the Pearl River Delta region.

2. Promoting the construction of "two areas" and "three platforms"

With an aim to build a hub for sci-tech and industrial innovation, we actively participated in the implementation of national and provincial intellectual property strategies, and studied policies and measures involving intellectual property protection. We actively facilitated the scientific and technological innovation in the Guangdong-Hong Kong-Macao Greater Bay Area, and promoted the construction of a hub for the settlement of intellectual property disputes involving foreign affairs, Hong Kong, Macao and Taiwan in the Greater Bay Area. In 2022, 10,949 cases involving the Greater Bay Area were closed, 7,227 of which were disputes involving Guangzhou enterprises. We improved the cross-border dispute resolution mechanism, gave play to mediators and

jurors from Hong Kong and Macao, and strengthened the protection of Hong Kong and Macao enterprises. The dispute over the unfair competition on King of Comedy was awarded as “Typical Case of Cross-Border Dispute in the Guangdong-Hong Kong-Macao Greater Bay Area”; the GBA Intellectual Property Alliance won the third prize at the first “Excellent Achievements of Judicial Cooperation Involving Hong Kong and Macao of the People’s Courts” award. We actively participated in the implementation of the Nansha Plan, and promoted the founding of Nansha Dispatch Court, in a bid to better facilitate Nansha’s development.

3. Building a collaborative protection pattern

We continued to improve the diversified dispute resolution mechanism. We jointly built Guangdong Intellectual Property Dispute Mediation Center with Guangdong Administration for Market Regulation and Guangdong Intellectual Property Protection Center, introduced 24 mediation organizations, and signed the agreement of cooperative framework on judicial confirmation of intellectual property administrative mediation with the market regulation administrations of 7 cities including Guangzhou. By doing so, we further formed joint mediation force and improved mediation efficiency. We established the priority review mechanism for invalid patents with China National Intellectual Property Administration, which shortened the trial period by more than 2 months on average, and we gave priority to the trial of 21 cases. We strengthened judicial review and promoted the unified standards for administrative law enforcement and judicial judgment. In the disputes over anti-monopoly administrative law enforcement of “horizontal monopoly agreement of concrete enterprises in Maoming” and “Huizhou Industry Association of Motor Vehicle Testing”, we supported the administrative punishment decision of Guangdong Administration for Market Regulation according to law. Both cases were listed in the 10 typical anti-monopoly cases of courts nationwide.

4. Building a hub for international intellectual property litigation

We kept coordinating rule of law in China and abroad, improved the mechanism for foreign law ascertainment, enhanced cross-border litigation services, equally protected the legitimate rights and interests of Chinese and foreign enterprises, and heard standard essential patents and other foreign-related cases fairly and efficiently. As a result, our

judicial credibility and influence rose continuously. In 2022, 251 foreign-related cases of intellectual property disputes were closed, which was 4.74 times that when the Court was established. Fruitful results were achieved in the construction of a hub for resolving international intellectual property disputes. For example, for the three cases on confirming non-infringement of patent rights claimed by Huawei against INVT, the Court took a broad view at the global disputes between the parties, required all the parallel agents ad litem of both parties to participate in negotiation, and helped to brought about a global package settlement between the parties. This won unanimous praise of the parties, and provided positive guidance for the increasingly fierce competition over standard essential patents at present. In the dispute over infringement on invention patent right claimed by P2I against Favored Tech, etc., based on the technical investigators' data interpretation and report analysis, the Court held that it did not fall within the scope of patent protection and therefore rejected the claim of P2I. This effectively protected independent innovation and equally protected the interests of domestic and foreign entities.

(II) The quality and efficiency of trial significantly improved

1. Excellent cases proliferated

We dealt with typical cases with full efforts and achieved brilliant results in the excellent case program. In 2022, a total of 22 cases won national and provincial awards, an increase of 7 cases over the previous year. One case was selected as the guiding case by the Supreme People's Court; 3 cases were selected into the "analysis of excellent cases of the national court system", an increase of one case over the previous year; 3 cases were selected into the Selected Cases of the People's Court; one case was selected into the annual cases of Chinese courts; 9 cases was selected in the typical cases of national courts; 6 cases were selected in the typical cases of courts in Guangdong Province. Among them, the dispute over the infringement of new plant varieties claimed by Cai against Runping Company was selected as the guiding case by the Supreme People's Court.

2. The trial quality continued to improve

We followed strict quality control procedures to make sure the quality of trial

improve continuously. In 2022, 87.87% of the civil cases of the Court were accepted without appeal in the first instance, which was basically the same as the previous year; 1.98% of the cases were changed and returned for retrial, a decrease of 0.56% over the previous year. We improved the list of trial power and responsibility, formulated the Measures for Leaders to Supervise Cases, and strengthened the trial supervision and management of the president and chief judges. 69 reviewed cases were submitted one by one to the trial for discussion. We improved working mechanisms such as exposure rating and classified disposal, and classified and disposed of 38 major sensitive cases, so as to prevent and resolve the risks of intellectual property trial throughout the chain.

3. Trial period was significantly shortened

We continuously deepened the reform of differentiating first- and second-instance cases by complexity to shorten the time required for case settlement. In 2022, 4,703 first-instance cases were closed quickly, accounting for 66.51% of the closed first-instance cases. Among them, 943 first-instance cases were closed within 100 days, accounting for 20.05%. In 2022, 4,168 second-instance cases were closed quickly, accounting for 72.19% of the closed second-instance cases. The closed cases accounted for 130.70% of the accepted second-instance cases for quick settlement. Remarkable results were made in settling longstanding lawsuits. A total of 422 unresolved lawsuits for over one year were settled, a decrease of 33.12% over the previous year. The experience of quick settlement reform in the second instance was written into the Report of Business Environment of Guangdong 2022, representing the “speed of Guangzhou Intellectual Property Court”.

4. Pre-litigation mediation cases soared

We actively promoted pre-litigation mediation. In 2022, a total of 12,600 pre-litigation mediation cases were introduced, of which 11,579 were closed, and 2,964 were successfully mediated, accounting for 25.6%, a record high. We gave high priority to the mediation of cases involving Hong Kong, Macao and foreign affairs, and appointed 4 Hong Kong and Macao mediators. A total of 64 cases were introduced, of which 63 were closed, and 3 were successfully mediated, accounting for 4.76%.

(III) Institutional innovation achieved remarkable results

1. Strengthening the innovation of technical fact ascertainment mechanism

China's first technical investigation laboratory was built and put into operation, providing hardware support for solving difficult technical cases and strengthening the neutrality, objectivity and scientificity of technical fact identification. A talent pool for technical investigation in the Greater Bay Area was built, providing technical support for intellectual property trial, administrative law enforcement, mediation and arbitration in the Greater Bay Area, and realizing the sharing of human resources of technical investigation. Technical investigators participated in nearly 1,000 cases. The technical fact ascertainment mechanism with the technical investigation laboratory and the expert talent pool were selected in the first typical cases of the State Council for building a strong country of intellectual property, and won the "Reform and Innovation Award of Guangdong Courts".

2. Promoting the construction of judicial public service mechanism

We provided one-stop litigation services integrating remote filing, entrusted mediation, case inquiry, remote instruction, remote interview, remote trial and circuit trial. We further deepened the practices on "actively promoting the construction of cross-regional remote litigation platform of intellectual property rights" proposed by the Outline of Building a Strong Country of Intellectual Property (2021-2035). Five reform and cultivation projects for "highlighting demonstration, promoting reform, and benefiting the people" were accepted, of which two projects were rated as excellent. We comprehensively strengthened the construction of remote litigation service platform, set up the Shunde Litigation Service Office, and founded the Jiangmen Circuit Trial Court. Five physical judges' studios were put into operation. We worked together with the People's Courts News and Communication Agency to carry out a series of live broadcasts on "widely used intellectual property rights", and organized a series of publicity activities such as the "April 26 World Intellectual Property Day", "live broadcasts of 100 court hearings on the Civil Code", and "International Day for Women Judges". These activities strengthened the effects of interpreting and popularizing the law with cases.

3. Deepening the reform of judicial trial mechanism

Through improving the trial committee system, we carried forward the mechanism

of readers for the professional judges' meeting, expanded the collegiate bench of professional trials, and uniformly standardized multiple prosecutions, batch processing of lawsuits and other specific measures. In this way, we solved the differences in the application of law and unified the standards for judicial trial. The Opinions of Guangzhou Intellectual Property Court on Implementing Punitive Compensation System was formulated to push forward the resolution of "low compensation". It was the first time for us to hear the case involving "administrative mediation + judicial confirmation", which promoted the establishment of working mechanism of judicial confirmation of patent administrative mediation agreement.

II. Full Exploitation of Judicial Function to Promote the Rule of Law in the New Era

We were rooted in intellectual property trial, performed our duties, and made our voices heard in encouraging innovation and creation, promoting cultural prosperity, and safeguarding fair competition.

(I) Encouraging innovation and creation, and consolidating self-reliance and strength in science and technology

1. Strengthening the protection of innovation in frontier and core areas

We continued to protect innovation in an innovative manner and comprehensively strengthened the trial of cases involving information and communication, biomedicine, high-end equipment manufacturing, new materials and new energy. In the dispute over infringement of patent right between CJ Group and Star Lake, the characteristics of gene sequence and source were interpreted, and the burden of proof was rationally distributed. On this basis, we identified whether the gene sequence similar to the gene promoter involved in the case detected from the sued flavoring agent constituted infringement. This represented the judicial value orientation of prudently judging infringement of gene sequence patent, which was of great reference significance to the trial of gene cases. In the dispute over infringement of invention patent right between Techtotop and U-Blox,

etc., we rationally inferred that relevant types of products constituted infringement, according to the characteristics of satellite navigation, such as technology interconnection, information exchange, multi-equipment cooperation, and all relevant patents being method patents, combined with problems such as great difficulty in obtaining evidence by obligees in such cases, and utilizing the evidences and rules of evidence in the whole case. The technical protection in frontier areas was enhanced.

2. Giving play to judicial orientation to stimulate innovation vitality

We clarified the criteria for judging disputes over the ownership of on-duty inventions, summarized issues such as the ownership of on-duty inventions and funded technical re-innovation results, effectively balanced the distribution of innovation-related benefits, optimized the allocation of innovation resources, and accurately encouraged innovation. In the case of ownership of patent application rights between PATEO and Weitian, we pointed out that on-duty invention should be identified from the key aspects of the technical field of the resigned employee's duties or tasks, job content or responsibilities, technical topics, and technical ideas, so as to rationally balance the interests between protecting the physical technical investment of enterprises and encouraging proper talent flow. In the case of ownership of patent rights between Lidu Company and Ce Wenkui, Shenhong Company, identifying clinical trial data was critical to obtaining and maintaining the patent rights in the medicine field. The patent applied with the subsequent R&D results with the funded technology was on-duty invention. This case accurately stimulated the innovative development of China's clinical medicine.

3. Strengthening the protection of agricultural scientific and technological results

By setting up a professional collegiate bench for new plant varieties, we continuously strengthened the trial of cases on new plant varieties, actively protected the results of agricultural scientific and technological innovation, and enhanced the support and protection of agricultural protection, providing assistance for "rural revitalization". The case of Cai v. Guangzhou Runping Commercial on the infringement of new PVP clarified that non-fertile fruit seeds and their juice sacs were not protected by the new variety rights of plants. In the dispute of Quanwei v. Fertace over infringement

of invention patent rights, we fully studied and strictly examined the technical characteristics of the method and equipment of the patent involved in the case. On this basis, the preservation method with the least influence on agricultural production was selected, and people's livelihood security was taken into account, so as to strengthen the support and protection of judicial procedures to agriculture. In the series of cases between Zongke Company and Langsheng Planting Specialized Cooperative over the infringement of new plant varieties, modern plant genetic technologies were applied to improve the efficiency of protecting variety rights. This effectively promoted the development of gene fingerprint database of plant varieties, helped to encourage independent innovation in the seed industry, and facilitated the sound development of local pillar industries in Gaozhou.

(II) Promoting cultural prosperity and building cultural confidence and strength

1. Emphasizing intellectual property protection of traditional culture

We deeply implemented cultural construction to build a strong province, comprehensively enhanced the protection of copyrights in literature, art and other fields, and carried forward core socialist values. These measures promoted cultural and artistic innovation and the prosperity and development of cultural industries, and met diverse cultural demands of the people. In a series of cases on copyright disputes between 5184 Education Technology and Higher Education Press, it was found that 5184 Education Technology had made profits by selling pirated teaching materials. The claim was rejected and piracy was cracked down effectively. We strengthened the professional guidance for handling copyright disputes to primary courts in Guangzhou, and promoted the unification of judicial judgment standards.

2. Strengthening copyright protection in emerging fields

We explored the rules of intellectual property protection in emerging fields, properly handled disputes involving software development, video creation, animation and games, and ensured the sound development of characteristic industries such as video games and network broadcast. In the case of dispute over copyright infringement and unfair competition between Guangzhou Kaigu Internet Technology and Taotaoju, etc., the

"overall perception method" was applied based on the "abstraction-filtration-comparison method" which identifies the substantive similarity between literary works, and the merchant's behavior of plagiarizing business posts through WeChat and other platforms was identified. This provided trial ideas for judging the substantive similarity of business posts on emerging online platforms. In the case of dispute over infringement on computer software copyright between Guangzhou Soft Speed Information Technology and Minth Group, etc., the Court identified the "licenses" as "named user licenses", based on the parties' joint will, the law, regulations and industry practices, and factors such as technical development, software type and use. This promoted the standardized development of the application of computer software copyright licenses. In the dispute over copyright infringement and unfair competition between Tencent and AG Soft, Xie Rong, it was pointed out that data security is an important content of Internet products. The Court identified the defects in data security and the influence on WeChat software caused by the infringing software operated by group control of batch operations. A large amount of compensation was awarded. This effectively ensured and promoted the continuous upgrading of high-tech enterprises, so as to improve service ability and quality.

3. Defining the operator's responsibility to promote network development

Protecting copyright and promoting information network dissemination and operation service are two sides of the same coin in the Internet environment. All kinds of network operators are important participants in Internet development. Defining the operators' responsibilities and rationally balancing the interests of all parties can help promote sound Internet development. In the case of dispute over infringement on the right to disseminate the work's information on the Internet between Li Yingxin and Beijing Qihoo Technology Co., Ltd., the Court held that Qihoo, as an online search service provider, had used the thumbnails of photos involved in the case within the scope of fair use. This judgment rationally balanced the interests between the obligee, network service provider, and the public, and promoted information network technological innovation and business model development. In the dispute over infringement on the right to disseminate the work's information on the Internet between Byte Dance and Jiayan, the infringement rules of platform operators under the algorithm mode were explored, with a focus

on frequent infringement disputes caused by algorithm recommendation on network platforms. It was proposed that the "safe harbor" principle cannot become the referee rule to avoid responsibility. This standardized the rules of conduct and responsibility scope of platform operators in network dissemination.

(III) Safeguarding fair competition and optimizing the law-based business environment in all respects

1. Strengthening brand protection

We continuously enhanced the protection of well-known trademarks, famous brands, and time-honored brands, severely punished infringements such as trademark misappropriation and passing off, and firmly crack down on behaviors such as malicious registering and hording trademarks. In this way, we made full efforts to serve the construction of a strong province with well-known brands. In the case of dispute over infringement of trademark right and unfair competition claimed by Toutiao against Jinri Youtiao, it was clarified that in the special protection of well-known trademarks, protection boundaries should be rationally defined based on the principle of interest balance, so as to avoid arbitrary squeezing of free and fair competition space in the market. This had a positive influence on building a market environment with fair competition. In the case of dispute over infringement of trademark right between Mixue Bingcheng and Mixueyue, etc., Mixueyue was identified to have infringed the trademark of "Mixue Bingcheng", and ordered to stop the infringement in time.

2. Positively guiding the correct exercise of rights

We kept coordinating and protecting innovation, encouraged development, reviewed rights according to law, clarified different right boundaries, guided reasonable rights protection, and timely stopped abuse of rights in time. In the dispute between Xu Dingpeng and Yixin Company over infringement of trademark rights, it was pointed out that the priority right is a negative right, or defense right, against the accusation of trademark infringement. It is a kind of civil legal interest rather than a civil right. The case defined the right boundary between the trademark owner and the prior user, and standardized the prior user's behavior of using trademark. In the dispute between Biou

and Biou International, etc. over infringement of trademark right, it was pointed out that “negative evaluation of trademark squatting” and “priority right defense” should be distinguished. When the applicant who later registered the trademark was subjectively and obviously malicious, negative evaluation should be given to its behavior of preempting to register the trademark and abusing rights. The judgment effectively curbed the abuse of rights.

3. Effectively regulating competitive behaviors

We kept eliminating market blockade with judicial means, curbed infringements such as false advertising and slandering goodwill, and strictly punished various violations of trade secrets. We respected the independent management right of market players, and regulated the competitive behaviors on Internet platforms. We explored the rules of data rights protection to maintain the vitality of market competition and consumer rights and interests, serve the development of digital economy, and facilitate the country’s “dual circulation” development paradigm. In the dispute between Luzhou Laojiao and Zhenghe, etc., we strictly defined the auditing responsibility of e-commerce platforms and fully supported the obligee’s claim for compensation. The core competitiveness of enterprises was protected according to law. In the dispute over infringement of technical secrets claimed by Midea against Liu, it was found that Liu violated the confidentiality agreement by disclosing and using technical secrets in the patent application without authorization, which constituted the infringement of technical secrets. This case was rated as a typical case of protecting trade secrets of courts in Guangdong. In the case of unfair competition between Tencent and Qiaobushi, etc., we accurately understood and applied “other behaviors that hinder and destroy the normal operation of online products and services” in the special article of Internet in the Law of the People’s Republic of China Against Competition by Inappropriate Means. By this means, we handled the new unfair competition behavior of automatically controlling the marketing software on WeChat. This enhanced the judicial protection of intellectual property rights of technologies involving digital economy and platforms. The dispute between Huide Company and Jianyi Company over vertical monopoly agreement clarified the constitutive requirements and legal responsibilities of vertical monopoly agreement, effectively regulating

monopoly behaviors.

III. Experience Accumulation for Greater Contributions

With a focus on the central government's strategy and overall deployment of building a power of intellectual property, we firmly established the concept that protecting intellectual property rights is protecting innovation. With our key efforts on speed, accuracy, strength and humanity, we continuously explored new approaches and stimulated new kinetic energy while facing challenges and overcoming difficulties, and timely summarized practical, reproducible and transferable judicial work experience. With these measures, we contributed our efforts to creating a new paradigm for high-quality development.

(I) Properly handling disputes at a high speed

First, we supported "quick" trial with technology. We adopted high-tech measures to improve our services, exploring the model of "science and technology + rule of law". We independently developed a intelligent supporting system for total-factor trial of appearance design cases. As a result, more than 80% of the contents of judgment documents could be automatically generated, which greatly increased the efficiency of handling cases. With information technology, we comprehensively improved our Internet justicial services including online filing, online hearing, electronic delivery, and intensive delivery. 14,950 cases were filed online, and 14,708 electronic deliveries were made. The 24/7 case filling and online trial services further drove the optimization of business environment. Second, we supported "quick" trial with institution and ensured efficiency with innovation. With regard to the reality of "heavy caseload and understaffing", we deepened the reform of "separating complex cases from simple ones". We "tailored" personalized resolutions to disputes, and timely responded to people's ardent expectations. We strengthened the convergence of judicial administration, and made full use of innovative mechanisms such as priority review of invalid cases, judicial and administrative joint trial, etc., which greatly shortened the process.

(II) Handling trials accurately according to law

First, we accurately ascertained technical facts to support refined trial. We effectively responded to the demand of handling technical cases, established a diverse technical fact ascertainment mechanism featuring "technical investigators + technical advisers + technical consulting experts", and further improved the work procedures for technical investigators to participate in trials. With combined measures, we ensured the trial quality and efficiency of technical cases. Second, we accurately grasped the key points of protection to facilitate high-quality development. In view of strategic emerging industries and key areas involving the new generation of information technology, high-end equipment manufacturing, new energy, new materials, biomedicine, integrated circuit layout, and new plant varieties, we set up a special trial team to deepen research, strengthened the judicial orientation for encouraging innovation, and promoted the breakthrough of key core technologies, helping the development of strategic emerging industries. Third, we accurately supervised major cases to help standardize the exercise of judicial power. We gave full play to the working mechanism of professional judges' meeting, and promoted the "refinement", "specialization" and "standardization" of professional judges' meetings. Among the typical cases, nearly 70% were discussed by the judges' meeting. This gave play to the professional judges' meeting system in assisting case-handling decision-making, pre-filtration and unifying the judgment standard, effectively improved the speciality and authority of decision-making of the trial committee, and solved the prominent problem of "different judgments for the same case" after judicial reform.

(III) Serving innovation with powerful measures

First, we raised the compensation standards to deter infringement. To solve the problem of "high cost and low compensation", the market value of intellectual property rights must be fully reflected. We firmly grasped the critical point of standard for infringement compensation, which enhanced intellectual property protection. According to General Secretary Xi Jinping's requirement of "letting infringers to pay high costs",

we raised the standard for infringement compensation greatly. Thus, obligees will choose justice as a weapon to safeguard their rights, and the spread of infringement will be effectively curbed. In 2022, the average amount of compensation for infringement of the Court increased to RMB 57,401, a year-on-year increase of 38.40%. Second, we upheld a stringent preservation system to effectively help solve problems. We strictly implemented the norms of preservation system, enhanced the preservation of core technology cases and malicious, repeated infringement cases, and highlighted the guarantee of both preservation and production. We established the preservation supervision mechanism and further promoted our characteristic of properly using preservation measures. In 2022, the Court produced 116 pieces of property preservation, which practically improved the timeliness, convenience and effectiveness of judicial relief of intellectual property rights. Third, we emphasized integrity and standardized litigation with multiple measures. We continuously promoted the strictest judicial protection of intellectual property rights, and gave equal emphasis to protection and punishment. In judgments, we were guided by integrity and severely cracked down on behaviors violating the principle of integrity and recognized business ethnics. By these measures, we strove to create a fair, orderly and honest judicial environment, and provided powerful judicial services and guarantee for promoting the construction of intellectual property integrity system and a strong country of intellectual property. Fourth, we enhanced governance by guiding rights protection through source tracing. There were increasing cases of rights protection in batches, which tended to squeeze the judicial resources of intellectual property. In view of this, we made efforts to strengthen the guidance of rights protection and the governance of litigation sources. With mechanisms such as direct interview, explanation and guidance, and case-based coordination, we prevented commercial litigation of rights protection from deviating from the purpose of litigation and compensation stack, reduced the extra profits of obligees, and guided obligees to trace the source of infringement. Positive results were achieved in reducing the number of disputes, easing the burden of terminal sellers and other aspects.

(IV) Ensuring development with caring services

First, we set up a service system to provide convenient litigation services for the people. Based on the positioning of cross-area jurisdiction functions, we established a nationwide service system of "litigation service office + circuit trial court". This improved the level and quality of litigation services in an all-round way, extended judicial services for the people, and effectively improved the people's judicial experience and satisfaction. Second, we settled and stopped disputes to promote harmony with diverse solutions. We regarded strengthening pre-litigation mediation and expanding new channels of diverse solutions to disputes as the key methods of promoting the governance of litigation sources, striving to settle intellectual property disputes before litigation. We actively absorbed mediation forces from all sides. Lawyer mediation rooms were set up to explore mediation by resident and non-resident lawyers, and invite representatives of mediation organizations, industry associations, Hong Kong and Macao mediators to participate in mediation. This timely settled disputes and enhanced the publicity of the rule of law, cultivated a social atmosphere that respects intellectual property rights, and played an effective role in improving the intellectual property protection system. Third, we built a powerful team to strengthen our competence. We implemented the targeted requirements of achieving results in learning theory, updating mind by ideological and political education, shouldering responsibilities in starting a business, solving problems for people, and setting a good example of being honest and upright. Thus, the cohesion and capability of the team was continuously strengthened. Since the Court was established, a total of 8 police officers and 4 teams were successively awarded honors by the Supreme Court, the provincial court, and the Political and Legal Committee of Guangzhou Municipal Committee.

IV. New Situations and New Challenges

Hope and challenge coexist in 2023. The problem of "heavy caseload and understaffing" has become increasingly prominent, and new problems encountered in trial work have been increasing. First, judicial protection faces new demands and new challenges. With the rapid update and development of science and technology, a new

generation of strategic emerging industries, such as information technology, high-end equipment manufacturing, new energy, new materials, biomedicine, integrated circuit layout, and new plant varieties, involve new fields, new formats, new technologies and new legal issues, which have posed new challenges to the application of laws. As a professional court, we should not only strictly protect intellectual property rights, but also resolutely prevent abuse of rights, ensuring both public interests and incentives for innovation. The judicial wisdom and judicial ability of our judges are facing a more severe test. Second, working mechanism faces new demands and new challenges. The number of cases accepted by the Court is increasing rapidly, and the problem of heavy caseload and understaffing continues to intensify. It is urgent to innovate the working mechanism through judicial reform and resolve disputes through social resources, so as to handle intellectual property cases with high quality and efficiency. At the same time, the number of foreign-related cases has increased significantly, involving more and deeper conflicts of interests. Equal protection of the legitimate rights of domestic and foreign subjects, in-depth participation in international intellectual property governance, and mastery of intellectual property judicial discourse have also put forward higher requirements to our work. In addition, with the in-depth development of the “two areas” and “three platforms”, the demand for rules convergence is becoming more and more urgent. As the only specialized intellectual property court in the region, we have great responsibility and arduous task to explore the convergence of legal rules in the Greater Bay Area and promote the deep integration of judicial assistance between Guangdong, Hong Kong and Macao. Third, team building faces new demands and new challenges. There is still a gap between the lack of intellectual property trial talents, especially compound talents, and the new requirements for judicial protection of intellectual property rights in the new era. The talent reserve and echelon construction urgently need to be strengthened. The professional training and selecting mechanism of intellectual property judges has not been fully established. The selection and training mechanism of intellectual property judges still needs to be improved. Only by accurately grasping the current situation and actively responding to the challenges posed by new technologies and new economy can we give full play to our due role and assume the major responsibility

as the main force in intellectual property protection.

V. Prospects for Work in 2023

In 2023, we will continue to firmly adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for the New Era, closely focus on the construction of “two areas” and “three platforms”, constantly improve the ability and level of judicial protection of intellectual property rights in accordance with world-class standards, and strive to create a law-based environment that protects and encourages innovation. We will focus on the following tasks: First, enhancing the ability to serve the overall situation. We will keep coordinating the rule of law at home and related to foreign countries, prevent and resolve major risks and challenges in the trial field, and better safeguard national sovereignty, security and development interests. We will further enhance intellectual property protection, plan and promote the judicial protection of intellectual property rights at a higher level, based on the requirements of building the “two areas” and “three platforms” and the deployment of the 13th Party Congress of Guangdong Province. Second, continuously improving the quality and efficiency of judicial trial. According to the policy orientation of prioritizing the real economy and developing the manufacturing industry, we will serve high-quality development with high-quality judicial protection of intellectual property rights. We will strengthen the protection of key core technologies, key areas and emerging industries, properly handle new high-tech cases, and serve the construction of an innovative country and a world-class science and technology power. We will strengthen the trial of trademark disputes, enhance the protection of well-known trademarks and trade secrets, curb monopoly and unfair competition, and maintain the order of market competition. We will strengthen copyright trial and promote the development of digital economy and the prosperity of cultural industry. Third, constantly improving judicial reform and innovation. Based on the characteristics of a specialized court, we will explore more experience and make our brand widely known. We will focus on the weak links that affect fair justice, firmly undertake judicial responsibility, and promote the systematic integration of comprehensive reform results. We will continue to

improve the efficiency of level of trail functional orientation reform, deepen the reform of separating complex cases from simple ones, improve the construction of smart courts, and raise the quality and efficiency of trial work.

Conclusion

In 2023, we usher in the first year of fully implementing the spirit of the 20th CPC National Congress. In this new era and on this new journey, guided by Xi Jinping Thought on Socialism with Chinese Characteristics for the New Era, we will continue to boost high-quality development, and provide more powerful judicial services and guarantee for building a socialist modern country in all respects. Thereby, we will strive for the judicial protection of intellectual property rights in southern Guangdong, which will comprehensively promote the great rejuvenation of the Chinese nation with Chinese modernization!

Guangzhou Intellectual Property Court

Top 10 Exemplary Cases of 2022

1	Regulating the Abuse of Trademark Rights to Maintain Fair Market Order **Biou v. Biou International, etc. Dispute over Infringement on Trademark Rights**
2	Delineating the Boundaries of Rights Reasonably to Safeguard Legitimate Rights and Interests of the Public **Toutiao v. Jinri Youtiao Dispute over Infringement of Trademark Rights and Unfair Competition**
3	Supporting the Innovation of Plant Varieties with Gene Technology and Facilitating the Development of Green Industry with Judicial Trial **Zongke Company v. Langsheng Planting Cooperative Dispute over Infringement of New Plant Variety Rights**
4	Actively Resolving Disputes on Standard Essential Patents to Promote Win-win Benefit of All Parties **Huawei v. INVT Dispute over Confirming Non-infringement of Patent Rights**
5	Defining the Subject of Priority Right Defense to Safeguard the Legitimate Rights of Trademark Owners **Xu Dingpeng v. Yixin Company Dispute over Infringement of Trademark Rights**
6	Clarifying the Boundaries of Fair Use of Works to Promote Innovation in Information Network Technology **Li Yingxin v. Beijing Qihoo Technology Co., Ltd. Dispute over Infringement of the Right of Communication Through Information Network**
7	Regulating the Use of Software Licenses to Build an Integrity-based Business Environment **Guangzhou Soft Speed Information Technology v. Minth Group, etc. Dispute over Infringement of Computer Software Copyrights**
8	Facilitating High-quality IPR Trials with High-level Technical Investigation Techniques **P2I v. Favored Tech, etc. Dispute over Infringement of Invention Patent Rights**
9	Regulating the Authorization for Software Development to Strengthen Data Security Tencent v. AG Soft and Xie Rong **Dispute over Infringement of Copyrights and Illicit Competition**
10	Cracking Down on IPR Crimes to Help Protect the Rights and Interests of Consumers **Defendant Zhou Fei's Criminal Incidental Civil Public Interest Litigation Case of Counterfeiting Registered Trademarks**

Case 1

Regulating the Abuse of Trademark Rights to Maintain Fair Market Order

Biou v. Biou International, etc. Dispute over Infringement on Trademark Rights

[(2020) YUE 73 MZ No.5237]

[Parties]

Appellant (plaintiff in the first instance): Guangzhou Biou Cosmetics Co., Ltd. (hereinafter referred to as Biou)

Appellee (defendant in the first instance): Guangdong Biou International Cosmetics Co., Ltd.(hereinafter referred to as Biou International), Guangzhou Runing Muying Trading Co., Ltd.(hereinafter referred to as Runing), Guangzhou Runing Muying Trading Co., Ltd. Shaoguan Branch (hereinafter referred to as Runing Shaoguan Branch), and Opal Cosmetics (Huizhou) Co., Ltd.(hereinafter referred to as Opal)

[Facts and Judgment]

Biou, the obligee of the No.12113899 registered trademark “ ”, claimed that Biou International, Opal, and Runing Shaoguan Branch infringed the registered trademark involved in the case, and demanded that the defendants jointly compensate RMB 200,000 for its economic losses and rights protection expenses and make an apology in the newspapers. The court of first instance held that the use of the logo “ ” by Zhong Limin as an outsider met the constitutive requirements of priority right defense. Thus, he has the right to continue to use the trademark within the original range of use, and Biou has no right to prohibit it. However, Zhong Limin should attach a distinctive mark in the subsequent use of the logo, so as to distinguish his products from those of Biou. All the

claims of Biou were rejected.

After hearing the case, Guangzhou Intellectual Property Court held that before Biou applied for the trademark involved in the case on January 28, 2013, it was a fact that Zhong Limin and his related enterprises had used commercial logos containing the figure "  " on the cosmetics, cleaning products and other products approved for use in the trademark involved in the case, which met the constitutive requirement of "having certain influence" in Article 32 of the Trademark Law. Because Zhong Limin was the prior user of the commercial logos containing the figure "  " and had achieved popularity "having certain influence", Zhong Limin and his licensed Biou International should be allowed to continue to use the logos "  " and "  ". Before applying for the trademark involved in the case, Biou should have known that Zhong Limin was the prior user of the commercial logos containing the figure "  " on cosmetics, cleaning products and other products. Therefore, its application for registration of the trademark involved in the case constituted the behavior of preempting the registration of a trademark used by others and having certain influence by unfair means stipulated in Article 32 of the Trademark Law. In this case, Biou claimed infringement on this basis, which violates the principle of good faith and cannot be justified, and thus constitutes an abuse of rights. Thus, the claim was rejected and the original judgment was upheld.

[Significance]

This case is of certain guidance in refining the provisions of the Trademark Law, filling the gaps of law, and unifying the judgment scale. Before this case, the Trademark Law did not distinguish the applicable conditions between the "negative evaluation of trademark squatting" in Article 32 and the "priority right defense" in Clause 3, Article 59. The "priority right defense" is only a passive, limited defense reason of the prior user, while the "negative evaluation of trademark squatting" system is a powerful weapon to completely deny rights abusers. The judgment of second instance innovatively pointed out that "negative evaluation of trademark squatting" and "priority right defense" should be distinguished. Whether the later applicant for trademark registration is in good faith or malicious when applying for the trademark is the key to distinguishing the two legal

systems of “negative evaluation of trademark squatting” and “priority right defense”. Given that evidently the later applicant for trademark registration was subjectively malicious, it was sensible to give a negative evaluation to such trademark squatting and rights abusing behaviors, instead of applying the “priority right defense” system to impose restrictions such as “subjecting to the original range of use” and “attaching appropriate distinguishing marks” on the prior user, and then affirming the behaviors of the two parties, which avoided indulging the malicious trademark applicant. In this case, the applicable scenes and constitutive requirements of the two situations were distinguished and clarified for the first time, thus curbing the abuse of rights more effectively. The judgment was reported in China Intellectual Property News, achieving good legal and social effects.

Case 2

Delineating the Boundaries of Rights Reasonably to Safeguard Legitimate Rights and Interests of the Public

Toutiao v. Jinri Youtiao Dispute over Infringement of Trademark Rights and Unfair Competition

[(2020) YUE 73 MC No.2332]

[Parties]

Plaintiff: Beijing Douyin Information Service Co., Ltd.(hereinafter referred to as Douyin)

Defendant: Henan Jinri Youtiao Catering Management Co., Ltd.(hereinafter referred to as Jinri Youtiao), Zhao Yadong, Henan Shaokaozhe Food Co., Ltd.(hereinafter referred to as Shaokaozhe)

[Facts and Judgment]

Douyin is the owner of the four registered trademarks 今日头条 , 头条 , 头条 , and 今日头条 . Douyin claimed that before the infringement occurred, the above four registered trademarks had been widely known by the relevant public, and it had requested the Court to identify them as well-known trademarks. Jinri Youtiao, etc. set up breakfast stores selling deep-fried dough sticks, soybean milk and other food. Logos such as 今日油条 and 油条 were widely used on its signboards, menus, food packages, store decoration, staff uniforms, WeChat official account, websites, investment promotion advertisements and exhibitions. These infringed their trademark rights and constituted unfair competition. Thus, the Court was requested to order Jinri Youtiao to stop the infringement and compensate a total of RMB 2 million for economic losses and reasonable litigation expenses.

After hearing the case, Guangzhou Intellectual Property Court held that the logos of the defendant and registered trademarks involved in the case were not the same or similar in wording, meaning, colors and other elements. It was easy for the public to distinguish them with general attention. The existing evidence could not prove that Jinri Youtiao, etc. had the intention of confusion or had caused actual confusion to the public. Therefore, Jinri Youtiao, etc. did not constitute an infringement on ordinary trademarks. The words "Toutiao" and "Jinri Toutiao" in the trademark involved in the case are commonly used, and show weak inherent distinctiveness in news. The logos of the defendant and registered trademarks involved in the case are separately used in completely different markets. Douyin does not have real interests in the catering field. The two parties have no direct or indirect competition in the market. Jinri Youtiao, etc. did not weaken, derogate or vilify the well-known trademarks, nor did they improperly use the market reputation of the well-known trademarks. Therefore, though some of the trademarks involved in the case can be recognized as well-known trademarks, Jinri Youtiao, etc. did not constitute an infringement on these well-known trademarks. The brand name "Jinri Youtiao" used by Jinri Youtiao is greatly different from "Toutiao". The logos used in the defendant's WeChat official account and websites are not the same as or similar to the interface of "Toutiao" mobile App. There are differences between the slogans and posters of the two. Therefore, the behaviors of Jinri Youtiao had not constituted unfair competition. Guangzhou Intellectual Property Court rejected all the claims of Douyin in the first-instance judgment.

[Significance]

This case involves the well-known trademark "Toutiao", and Douyin is a famous We-Media company in China. Since the case was filed, it has aroused widespread discussions and great concern in society. It is necessary and justified to give special protection to well-known trademarks, whether for protecting diligence, encouraging innovation, and maintaining fairness, or for safeguarding the legitimate rights of consumers. However, in the special protection of well-known trademarks, the boundaries of protection should be defined reasonably with the principle of balance of interests, avoiding arbitrary squeezing

of liberal and fair competition space in the market. In the trial of this case, the balance of interests between enhancing intellectual property right (IPR) protection and preventing IPR holders from abusing their rights to restrict competition was kept well. This has a positive influence on creating a market environment with fair competition.

Case 3

Supporting the Innovation of Plant Varieties with Gene Technology and Facilitating the Development of Green Industry with Judicial Trial

Zongke Company v. Langsheng Planting Cooperative Dispute over Infringement of New Plant Variety Rights

[(2020) YUE 73 ZMC No.326-329]

[Parties]

Plaintiff: Guangzhou Zongke Yuanyi Development Co., Ltd.(hereinafter referred to as Zongke)

Defendant: Gaozhou Langsheng Planting Specialized Cooperative (hereinafter referred to as Langsheng Planting Cooperative)

[Facts and Judgment]

Zongke claimed that the plant propagation materials grown, cut and grafted by Langsheng Planting Cooperative had infringed its new variety rights of plants such as “Xiameng Yanping”, “Xiameng Xiaoxuan”, “Xiari Qixin” and “Xiayong Guose”. Zongke filed a multi-case lawsuit, demanding that Langsheng Planting Cooperative should stop infringement and compensate a total of RMB 5.457 million for economic losses. Both parties had disputes on whether the properties and characteristics of the plant propagation materials of the defendant were the same as those of the authorized new plant varieties and the source of the plants of the defendant.

After hearing the case, Guangzhou Intellectual Property Court held that whether the properties and characteristics of the plant propagation materials of the defendant were the same as those of the authorized varieties should be measured by professional testing

technology. After learning about the principle of gene fingerprinting detection from forestry technical experts, the Court explained the law to the parties and urged them to select through negotiation the gene fingerprinting detection method to determine whether the properties and characteristics of the plant propagation materials of the defendant were the same as those of the authorized new plant varieties.Then, the Court organized the parties to take samples at court, so that the process from testing plant leaves and buds to issuing the survey report would be completed in a short time. The Molecular Testing Laboratory of New Plant Varieties, National Forestry and Grassland Administration tested the samples with SSR molecular markers, and concluded that the DNA fingerprints of the propagation materials of the defendant were identical to those of the authorized varieties at selected points. On this basis, the Court held that the characteristics and properties of the camellia plants of the defendant were the same as those of the new plant varieties of "Xiameng Yanping", "Xiameng Xiaoxuan", "Xiameng Qixin" and "Xiayong Guose", and that the behaviors of Langsheng Planting Cooperative constituted an infringement on the new variety rights of the plants involved in the case. Given that Langsheng Planting Cooperative performed torts intentionally, infringing the new variety rights of many plants at the same time; the propagation materials involved were planted in a large area, and the infringement lasted for a long time, and in view of the type of new plant varieties involved in the case, the high authorization cost of new variety rights of plants involved in the case, and the high market price of the authorized varieties, the Court determined a high liability for compensation within the statutory scope, and ordered Langsheng Planting Cooperative to compensate a total of RMB 1.35 million. After the series of cases were pronounced, Langsheng Planting Cooperative refused to accept the verdict and filed an appeal. The Supreme Court judged in the second instance that the appeal was rejected and the original judgment was upheld.

[Significance]

This is a typical case of applying gene technology to protect new plant variety rights. Strengthening the judicial protection of IPRs in the seed industry is related to the self-reliance and self-improvement of agricultural technology, and is the judicial

guarantee of the “agriculture, farmers and rural areas” economy. In this case, modern plant gene technical means were used to improve the judicial efficiency of protecting new plant variety rights, which purified the seed market and achieved good legal and social effects. This has been China’s first case in which the gene fingerprinting detection method was used to determine whether the characteristics and properties of camellia propagation materials were the same as those of the authorized varieties in an infringement act. Based on the test results of the Molecular Testing Laboratory of New Plant Varieties, National Forestry and Grassland Administration, the claim for a total of RMB 1.35 million by the new plant variety rights holder was upheld. In this case, a new solution was adopted for the detection problem and the detection period was shortened in the dispute over infringement on new plant varieties, which effectively improved the judicial protection efficiency for new plant variety rights. This not only highlights the judicial protection of IPRs and helps form a powerful deterrent to infringement acts in the seed industry, but also encourages self-innovation in the seed industry, improves seed industry participants’ awareness of new plant variety rights, and promotes rural revitalization.

Case 4

Actively Resolving Disputes on Standard Essential Patents to Promote Win-win Benefit of All Parties

Huawei v. INVT Dispute over Confirming Non-infringement of Patent Rights

[(2021) YUE 73 ZMC No.386-388]

[Parties]

Plaintiff: Huawei Technologies Co., Ltd. and Huawei Terminal Co., Ltd. (hereinafter referred to as Huawei)

Defendant: INVT SPE LLC (hereinafter referred to as INVT)

[Facts and Judgment]

The patents of invention involved in the three cases are: Patent No.ZL02142556.6 “sending and receiving methods and devices for automatic request of retransmission”; Patent No.ZL200910008458.0 “communication terminal device and wireless communication method”; Patent No.ZL01803504.3 “orthogonal frequency division multiplexing (OFDM) communication device”. From January to October 2015, the original patentee of patents involved in the case sent a letter to Huawei for licensing negotiation on the standard essential patents involving 3G and 4G communication standards. The two parties had great disputes and failed to reach a licensing agreement. In 2017, INVT obtained the patent rights involved in the case by transfer. In February 2020, it filed an infringement lawsuit against Huawei on the patents in the same family as the patents involved in the case in Germany. Huawei argued that the patents involved in the case were not standard essential patents, so the terminal products it manufactured, sold and promised to sell in China did not infringe the patent rights of INVT. After being

urged by Huawei, INVT did not file a lawsuit in China. Thus, Huawei filed a lawsuit for confirming non-infringement on the three cases. After the cases were heard and the collegiate bench presided over the mediation, both parties reached a global settlement agreement. On August 9, 2022, Huawei applied to our court to withdraw the lawsuit.

After hearing the cases, Guangzhou Intellectual Property Court held that it is the best approach to solve disputes over standard essential patents by reaching a license agreement through negotiation between the patentee and the standard implementer.The result reached by negotiation can fully reflect the value of standard essential patents recognized by the market. Under the guidance of the people's court, both parties returned to rationality in time, conducted sincere and active negotiation, and reached a global license, which set a good example for proper settlement of such disputes, and should be praised.

[Significance]

The three cases are lawsuits for confirming non-infringement on standard essential patents, with great difficulty in identifying technical facts and parallel lawsuits in other countries. During the negotiation, there were also difficulties such as the change of global market layout of Huawei, INVT as a non-patent implementer, a quotation gap of nearly 100 times between the two parties, and parallel lawsuits around the world. Considering the special nature of disputes over standard essential patents, negotiation and cooperation between the two parties are beneficial to technical application and transformation, and fully reflect the market value of patents, which are in the fundamental interests of both parties. In the mediation process, the Court was not limited to the cases, but aimed at solving the global disputes between the parties. The attorneys of global parallel lawsuits of the parties were all required to participate in the settlement and negotiation process and fully state their standings and solutions. Then, the Court made a comprehensive appraisal and communicated with all parties. In the end, both parties reached a global package settlement. Both the plaintiff and the defendant sent thank-you letters and pennants in succession. The successful settlement of disputes in the three cases pushed the parties back to the rational track of negotiation, promoted the parties to establish a solid

foundation for cooperation, and provided positive guidance for the increasingly fierce competition for standard essential patents. Thus, it is a good example of the people's court playing an active judicial role in promoting the proper settlement of major foreign-related cases.

Case 5

Defining the Subject of Priority Right Defense to Safeguard the Legitimate Rights of Trademark Owners

Guangzhou Soft Speed Information Technology v. Minth Group, etc. Dispute over Infringement of Computer Software Copyrights

[(2019) YUE 73 ZMC No.1519]

[Parties]

Plaintiff: Guangzhou Soft Speed Information Technology Limited (hereinafter referred to as Soft Speed)

Defendant: Minth Group Ltd.(hereinafter referred to as Minth Group), Ningbo Shintai Machines Co., Ltd.(hereinafter referred to as Ningbo Shintai), and 22 other companies.

[Facts and Judgment]

Between 2013 and 2018, Minth Group purchased 478 licenses of ERP system software from Soft Speed with the agreement that if there were unlicensed plants or the number of users was more than agreed, Minth Group would need to purchase licenses based on actual usage. The "Judicial Appraisal Opinions" submitted by Soft Speed recorded that the appraisal institution counted the log-in and log-out records generated by Minth Group when using the software involved in the case and concluded that the total number of user names was 1,380 in 2017 and 927 in 2018. Soft Speed argued that the number of actual software users of Minth Group was 1,380, which exceeded the authorized number of 478 and infringed Soft Speed's reproduction right of the software. Thus Soft Speed filed a lawsuit to the Court.

After hearing the case, Guangzhou Intellectual Property Court held that the contract involved in the case specified that the unit for the number of software purchased by Minth Group was "Named User", and it could be confirmed that the means of authorization agreed by both parties was named user licenses considering the contents of the contract and the settings of "User ID" and "Password" on the software log-in page. The contract did not specify whether "licenses" therein referred to single/named users or concurrent licenses. Under such circumstances, from the perspective of protecting the rights and interests of the software copyright owner, the "license" mentioned in the contract should be subject to restrictive interpretation. Given the technological development status, the type and use of the software, and other factors at the time of contract signing, the "licenses" should mean named user licenses, also known as single licenses, i.e., one license could be used by only one named user. The "number of users" and "number of named user licenses" should also match each other and be used in the same way, i.e., one license for one user.

Minth Group argued that after it purchased the software involved in the case, it copied and installed the software on the server, provided the purchased license accounts and passwords to its affiliated companies, and that each company logged on to the server to use the software by logging into a virtual machine remotely. The contract involved clearly stipulated that "the Buyer agrees to and abides by the rules for standard license authorization and use". Although Minth Group purchased multiple licenses for the software involved, it should abide by the license requirements of the copyright owner of the software and use the software involved in the case in accordance with the scope of authorization. Minth Group's number of actual users of the software in question was 1,380, which exceeded the legitimately authorized number of 478. Therefore, Minth Group's use of the involved software exceeded the authorized scope agreed in the contract, which infringed Soft Speed's reproduction right of the software involved. The act of copying was carried out by Minth Group and the existing evidence was not sufficient to prove that the other twenty-three defendants were part of a joint infringement with Minth Group. In conclusion, Guangzhou Intellectual Property Court ruled that Minth Group immediately stopped the infringement of Soft Speed's reproduction right of the software involved in

the case and compensated Soft Speed for its economic losses and reasonable expenses at a total of RMB 4 million. After the judgment was made, none of the parties appealed, and the first-instance judgment has taken legal effect.

[Significance]

In the era where computer software and Internet technology are developing rapidly, how to accurately, appropriately, and reasonably interpret the content of contracts is the key to dealing with such cases.The handling of this case can provide a useful reference for similar cases. Meanwhile, a correct message has been conveyed to the public via the trial of the case, guiding the standardization of the use of computer software copyright licenses. While making use of new technologies, the agreements of the parties involved should be followed, laws and regulations and industry practices should be observed, and the technical means should not be used to utilize loopholes and circumvent the contractual agreements or the laws and regulations and industry practices in order to satisfy one’s interests.

Case 6

Clarifying the Boundaries of Fair Use of Works to Promote Innovation in Information Network Technology

Li Yingxin v. Beijing Qihoo Technology Co., Ltd. Dispute over Infringement of the Right of Communication Through Information Network

[(2021) YUE 73 MZ No.7310 and 7311]

[Parties]

Appellant (defendant in the first instance): Beijing Qihoo Technology Co., Ltd. (hereinafter referred to as Qihoo)

Appellee (plaintiff in the first instance): Li Yingxin

[Facts and Judgment]

Li Yingxin published two articles, One of the Nine Cultural Cities in Europe with the Scandinavian Elegance and Characteristic Buildings Everywhere and The Most Interesting Beach on Saipan with Star-like Sand that Tourists Are Forbidden to Take Away but Can Buy, and claimed that the two illustrations in the articles were photographic works of which she was the author and copyright owner. After entering "One of the Nine Cultural Cities in Europe with the Scandinavian Elegance and Characteristic Buildings Everywhere" in the search box of the 360 search engine operated by Qihoo, the webpage of search results contained a number of pictures, including the picture of the alleged infringement; there was an advertisement text under the picture; by clicking on the picture, the page would be redirected to a website with the words and logo of "Silk Road Education". After entering "The Most Interesting Beach on Saipan with Star-like Sand" in the search box, the webpage of search results contained a number of pictures, including

the picture of the alleged infringement; there was an advertisement text under the picture; by clicking on the picture, the page would be redirected to a website of Lijiang travel guide with the best-recommended routes. Li Yingxin claimed that Qihoo had violated her right of attribution and right of communication through the information network by making the above photographic works available to the public on its 360 search engine (so.com) without permission or attribution, and thus filed a lawsuit with the Guangzhou Court of the Internet, demanding that Qihoo be ordered to compensate RMB 3,000 for her economic losses and reasonable rights protection expenses for each case. After hearing the cases, the Court of first instance held that the actions of Qihoo infringed Li Yingxin's right of communication through the information network of the photographic works involved and ordered Qihoo to compensate Li Yingxin for her economic losses and reasonable expenses for rights protection at RMB 600 per case. Qihoo appealed to the Guangzhou Intellectual Property Court against the judgment of the first instance.

After the hearing, the Guangzhou Intellectual Property Court held that the mentioned advertising actions of Qihoo, a provider of web search services, did not change the results of the search, nor would it prevent Internet users from finding the original web page through the search results. The actions did not in fact affect the normal use of Li Yingxin's photographic works involved in the case or unreasonably compromise Li Yingxin's legitimate rights to the works, but objectively increased the exposure of the works. From the perspective of safeguarding the interests of the public, it could be concluded that Qihoo's use of the thumbnail images of the photographic works of the alleged infringement did not exceed the scope of fair use without breaking the balance of interests between the right holder, the network service provider, and the public. In the event of disagreement toward the presentation of thumbnail images in Qihoo's 360 image search service, as the copyright owner of the involved photographic works, Li Yingxin could apply the "notice - deletion" rule and request Qihoo not to attach advertisements to the search results of the photographic works in question through the complaint channel and method announced on its website to protect her legitimate rights and interests. Therefore, the second-instance judgment was amended to reject all of Li Yingxin's claims.

[Significance]

The judgment of this case accurately grasps the spirit and essence of laws, administrative regulations, judicial interpretations, and judicial policies regarding copyright protection in the network environment, especially the balance of interests among right holders, network service providers, and the public. It is necessary to strengthen copyright protection in the network environment while paying attention to the promotion of innovation and business model development of information network technology and ensuring the interests of the public. The judgment of this case has made a beneficial exploration and attempt to further clarify the criteria for determining whether the actions of network service providers constitute copyright infringement and the boundaries of the actions.

Case 7

Regulating the Use of Software Licenses to Build an Integrity-based Business Environment

Li Yingxin v. Beijing Qihoo Technology Co., Ltd. Dispute over Infringement of the Right of Communication Through Information Network

[(2021) YUE 73 MZ No.7310 and 7311]

[Parties]

Plaintiff: Guangzhou Soft Speed Information Technology Limited (hereinafter referred to as Soft Speed)

Defendant: Minth Group Ltd.(hereinafter referred to as Minth Group), Ningbo Shintai Machines Co., Ltd.(hereinafter referred to as Ningbo Shintai), and 22 other companies.

[Facts and Judgment]

Between 2013 and 2018, Minth Group purchased 478 licenses of ERP system software from Soft Speed with the agreement that if there were unlicensed plants or the number of users was more than agreed, Minth Group would need to purchase licenses based on actual usage. The "Judicial Appraisal Opinions" submitted by Soft Speed recorded that the appraisal institution counted the log-in and log-out records generated by Minth Group when using the software involved in the case and concluded that the total number of user names was 1,380 in 2017 and 927 in 2018. Soft Speed argued that the number of actual software users of Minth Group was 1,380, which exceeded the authorized number of 478 and infringed Soft Speed's reproduction right of the software. Thus Soft Speed filed a lawsuit to the Court.

After hearing the case, Guangzhou Intellectual Property Court held that the contract involved in the case specified that the unit for the number of software purchased by Minth Group was "Named User", and it could be confirmed that the means of authorization agreed by both parties was named user licenses considering the contents of the contract and the settings of "User ID" and "Password" on the software log-in page. The contract did not specify whether "licenses" therein referred to single/named users or concurrent licenses. Under such circumstances, from the perspective of protecting the rights and interests of the software copyright owner, the "license" mentioned in the contract should be subject to restrictive interpretation. Given the technological development status, the type and use of the software, and other factors at the time of contract signing, the "licenses" should mean named user licenses, also known as single licenses, i.e., one license could be used by only one named user. The "number of users" and "number of named user licenses" should also match each other and be used in the same way, i.e., one license for one user.

Minth Group argued that after it purchased the software involved in the case, it copied and installed the software on the server, provided the purchased license accounts and passwords to its affiliated companies, and that each company logged on to the server to use the software by logging into a virtual machine remotely. The contract involved clearly stipulated that "the Buyer agrees to and abides by the rules for standard license authorization and use". Although Minth Group purchased multiple licenses for the software involved, it should abide by the license requirements of the copyright owner of the software and use the software involved in the case in accordance with the scope of authorization. Minth Group's number of actual users of the software in question was 1,380, which exceeded the legitimately authorized number of 478. Therefore, Minth Group's use of the involved software exceeded the authorized scope agreed in the contract, which infringed Soft Speed's reproduction right of the software involved. The act of copying was carried out by Minth Group and the existing evidence was not sufficient to prove that the other twenty-three defendants were part of a joint infringement with Minth Group. In conclusion, Guangzhou Intellectual Property Court ruled that Minth Group immediately stopped the infringement of Soft Speed's reproduction right of the software involved in

the case and compensated Soft Speed for its economic losses and reasonable expenses at a total of RMB 4 million. After the judgment was made, none of the parties appealed, and the first-instance judgment has taken legal effect.

[Significance]

In the era where computer software and Internet technology are developing rapidly, how to accurately, appropriately, and reasonably interpret the content of contracts is the key to dealing with such cases.The handling of this case can provide a useful reference for similar cases. Meanwhile, a correct message has been conveyed to the public via the trial of the case, guiding the standardization of the use of computer software copyright licenses. While making use of new technologies, the agreements of the parties involved should be followed, laws and regulations and industry practices should be observed, and the technical means should not be used to utilize loopholes and circumvent the contractual agreements or the laws and regulations and industry practices in order to satisfy one’s interests.

Case 8

Facilitating High-quality IPR Trials with High-level Technical Investigation Techniques

P2I v. Favored Tech, etc. Dispute over Infringement of Invention Patent Rights

[(2018) YUE 73 MC No.2555]

[Parties]

Plaintiff: P2I Ltd.(hereinafter referred to as P2I)

Defendant: Jiangsu Favored Nanotechnology Co., Ltd. Shenzhen Branch (hereinafter referred to as Favored Tech) and Huizhou Kaifa Technology Co., Ltd.(hereinafter referred to as Kaifa)

[Facts and Judgment]

P2I's "surface coating" of patent number ZL98807945.3, a defense project funded by the UK Ministry of Defence, was granted a Chinese patent in 2005. Favored Tech, a private company in China that focuses on functional modification of nano-coating, was founded in 2016. P2I argued that the cell phones that were manufactured and sold by Favored Tech and Kaifa had been processed by coating equipment using the mentioned patent of the P2I. P2I entrusted an appraisal institution to conduct testing and issue an appraisal report and obtained an official test report through a state administrative investigation. Whether the technical solution that was accused of infringement of the patent involved fell into the scope of protection of the patent involved and whether the two product manufacturing processes were in fact the same were the focus of dispute in this case.

After hearing the case, Guangzhou Intellectual Property Court held that the

admissible test report was not sufficient to support the technical comparison at the level of the molecular structure before and after the reaction, it could not reflect the molecular structure change of each monomer in the allegedly infringing coating solution, and that judgment of whether the allegedly infringing product had the technical features of the patent could not be formed. On the contrary, as the allegedly infringing technical solution had other active substances added, it was theoretically bound to copolymerize and cross-link to form reticulated polymers, which would be significantly different from the straight-chain polymers produced based on the patent. Therefore, the two were not in fact the same. The collegial panel adopted the opinions of the technical investigation, found that Favored Tech and Kaifa did not constitute infringement, and rejected the plaintiff's claim. After the first-instance trial, the plaintiff accepted the judgment and rested the case.

[Significance]

This case is a dispute between Chinese and foreign enterprises over infringement on an invention patent involving foreign matters and new material, which is technically difficult and has a wide social impact. It is related to the balance of interests between independent innovation protection and equal protection. The ascertainment of technical facts in such technical cases is the key to resolving disputes in IPR litigation. In this case, by interpreting data, analyzing reports, and combining professional knowledge, the technical investigator established the principle for determining whether the technical solutions of some chemical products were in fact identical, which offers an important guideline for the application of literal infringement involving polymer patent and a good example for chemical patent infringement cases not to apply literal infringement obtrusively.

Case 9

Regulating the Authorization for Software Development to Strengthen Data Security

Tencent v. AG Soft and Xie Rong Dispute over Infringement of Copyright and Illicit Competition

[(2020) YUE 0106 MC No.36378]

[Parties]

Plaintiff: Tencent Technology Shenzhen Co., Ltd., Shenzhen Tencent Computer System Co., Ltd., and Guangzhou Tencent Technology Co., Ltd.(hereinafter referred to as the three Tencent companies)

Defendant: Guangzhou AG Soft Technology Co., Ltd. (hereinafter referred to as AG Soft) and Xie Rong

[Facts and Judgment]

The three Tencent companies developed and launched the WeChat software in 2011. They enjoy the copyright of the WeChat software, WeChat Red Packet, and WeChat Yellow Face emojis as well as the exclusive right of the WeChat trademark, and jointly operate the WeChat software and provide security protection, privacy protection, and operation and maintenance services for the WeChat platform. The Y3 Weiliao chat management system software launched by AG Soft launched malicious functions including group control of WeChat software accounts, monitoring statistical data, and group control of batch operations. The same contents as WeChat Red Packet and emojis were used on the Weiliao chat management platform. The three Tencent companies argued that AG Soft constituted illicit competition and infringement of copyright. Xie Rong, the legal representative of AG Soft, received payments and jointly committed

the infringement with AG Soft. Therefore, the three Tencent companies filed a lawsuit and requested that AG Soft and Xie Rong be ordered to stop the infringement, publish a statement to eliminate the impact and compensate for their economic losses and reasonable expenses at RMB 17.3 million. After the hearing of the case, the Court of first instance held that the software developed and operated by AG Soft cracked the keys for data packages cached on WeChat users' cell phones through technical means, disrupting the normal operation of the WeChat platform and constituting illicit competition to the three Tencent companies. Therefore, the Court ruled that AG Soft should stop the infringement, publish a statement to eliminate the impact, and compensate the three Tencent companies for their economic losses and reasonable expenses totaling more than RMB 17.19 million. AG Soft appealed the first-instance judgment and later withdrew the appeal. The judgment of the case has taken legal effect.

[Significance]

The reality is that data has had a huge impact on the development of society and user behaviors. Against this backdrop, data security is an important part of Internet products. The Wechat software has multiple functions satisfying personal social needs and business communications. The importance of smooth operation and security of the software is becoming increasingly prominent. Various kinds of infringements on the WeChat software have emerged, imposing hidden risks for WeChat's operation and data security. The judgment of this case identified the deficiencies of the software involved in terms of data security and the impact they had on the three Tencent companies. The court ordered high compensation accordingly to clearly stop and warn against infringements and fully protect the IPRs of software developers and operators, strongly protecting and promoting science and technology enterprises to continuously improve their service capabilities and quality at the same time. It is also a beneficial exploration of the identification and protection of data and information rights in Internet operations.

Case 10

Cracking Down on IPR Crimes to Help Protect the Rights and Interests of Consumers

Defendant Zhou Fei's Criminal Incidental Civil Public Interest Litigation Case of Counterfeiting Registered Trademarks

[(2021) YUE 0112 XC No.80 I]

[Parties]

Plaintiff: The People's Procuratorate of Huangpu District, Guangzhou.

Defendant: Zhou Fei

[Facts and Judgment]

From March and April 2018 to January 13, 2019, Zhou and co-defendant Zeng collaborated and successively hired co-defendants Ni and Wu. During that period, they made use of the venue and raw materials such as trademark labels, liquor bottles, and raw liquor provided by co-defendant Zhou. They filled imported liquor bottles with registered trademarks such as "Hennessy" and "Martell" with raw liquor from Jiefang and Boldlyhorse at No. X, X Lane, Jiannan Hengxiang Street, Renhe Town, Baiyun District, Guangzhou, and other locations and sold them without obtaining permission from the holders of the registered trademarks, reaching a total sales amount of more than RMB 4.61 million. On January 13, 2019, the public security authority arrested the defendant Zhou, the co-defendant Zeng and others at the mentioned address, and seized the tools and a batch of counterfeit imported liquors. The public prosecution authority pressed charges against defendant Zhou and others for counterfeiting registered trademarks and also filed a criminal incidental civil public interest litigation.

After hearing the case, Guangzhou Huangpu District People's Court held that Zhou

and others made counterfeit high-end imported liquors and fraudulently sold them to consumers without obtaining food production and hygiene licenses, causing potential safety hazards to the health of consumers who bought the mentioned counterfeit liquor, which infringed on the legitimate rights and interests of unspecified consumers and compromised public interests. Therefore, the defendant Zhou was ordered to pay punitive damages of over RMB 13.83 million for the public interest litigation and make a public apology on a provincial-level or above television station or a newspaper distributed nationwide.

[Significance]

In this case, the Court legally held that the defendant Zhou and others hand-filled low-end imported liquor into recycled empty bottles that did not meet hygiene standards, sealed the bottles, and made them into counterfeit high-end imported liquor without obtaining a food production license and a food hygiene license, which constituted fraud on consumers and caused potential safety hazards to the health of unspecified consumers and compromised social public interests. Such cases of criminal incidental civil public interest litigation against counterfeit imported liquor are rare nationwide. Moreover, the case upheld triple punitive damages and the compensation amount awarded exceeded RMB 10 million, making it one of the cases with the highest compensation in the country so far, which showcased the judicial authority's efforts in cracking down on IPR violations and reflected its determination to protect consumers' legitimate rights and interests, maintain the order of trademark management, and purify the market environment. At the same time, this case has punished the infringement of the legitimate rights and interests of trademark owners and consumers through criminal and civil judicial procedures, which has given strong judicial guidance and educational significance in deterring and preventing IPR infringements.