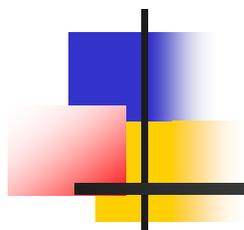


中美清洁能源联合研究中心知识产权研讨会

CERC Workshop on Intellectual Property

中国的知识产权纠纷解决机制

China's IP Dispute Resolution Mechanism



中华人民共和国

最高人民法院研究室副主任

中国应用法学研究所所长

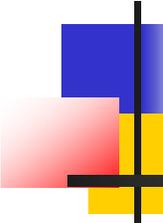
一级高级法官 罗东川博士

LUO Dongchuan

Deputy Director,

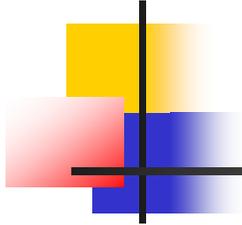
Research Office of People's Supreme Court of China

March 5, 2012 Haikou



摘要：罗东川法官主要介绍了中国的知识产权纠纷解决机制。他谈到了四个方面：一、中国司法体系的构成与职责。二、中国的审判制度包括二审终审制、陪审制度等。三、中国的知识产权纠纷解决方式主要有诉讼、调解和仲裁，并援引了《专利法》、《著作权法》和《商标法》的主要条款加以详细说明。四、中国2010年和2011年的知识产权审判情况，包括立案、结案，审判的程序及实体问题等。罗法官指出，在知识产权保护上，要加大司法救济力度，努力保护知识产权权利人的合法权益。

Abstract: Mr. LUO Dongchuan addressed China's IP dispute resolution mechanism from four aspects: 1) the structure and duties of Chinese judicial system; 2) Chinese trial system such as the two-tier trial system and the jury system; 3) IP dispute resolution in China, including litigation, mediation and arbitration. He also explained the major articles from Chinese Patent Law, Copyright Law and Trademark Law; 4) IP trials in China in 2010 and 2011. He discussed relevant statistics, procedures of IP trial and entity issue. He pointed out that it is necessary to enhance judicial remedy to fully protect the legal rights and interests of patentees.

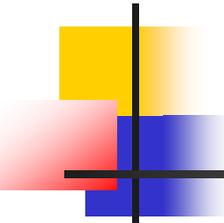


- 一、中国的司法体系
- Chinese judicial system

- 二、中国的审判制度
- Chinese trial system

- 三、中国的知识产权纠纷解决方式
- IP dispute resolution mechanism in China

- 四、中国的知识产权审判
- IP trial in China

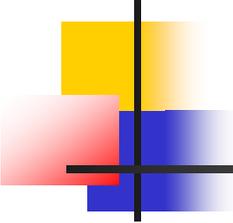


一、中国的司法体系 Chinese judicial system

- 广义包括人民法院、检察院、公安机关、司法行政机关。
- Including people's court, procuratorate, public security organs and judicial administrative organs in its broad sense.

- 狭义指人民法院。由最高人民法院、32个高级法院、400多个中级法院、3000多个基层法院组成。
- Consisting of Supreme People's Court, 32 high courts, over 400 intermediate courts and over 3,000 grass-roots courts in its narrow sense.

- 法院职责：审判刑事案件、行政案件、民事案件（民事、商事、知识产权、海事海商）
- Duties of courts: trial on criminal cases, administrative cases and civil cases (civil, commercial, IP, maritime affairs)



二、中国的审判制度 Chinese trial system

- 1、二审终审制
- **Two-tier trial system**

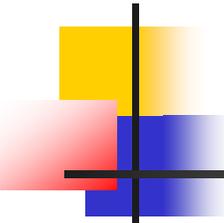
- 2、公开审判制度
- **Public trial system**

- 3、陪审制度
- **Jury system**

- 4、辩护和代理制度
- **System of surrogate and advocacy**

- 5、回避制度
- **Challenge system**

- 6、合议制度
- **System of collegial panel**



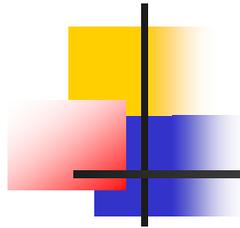
三、中国的知识产权纠纷解决方式

Ways of resolving IP disputes in China

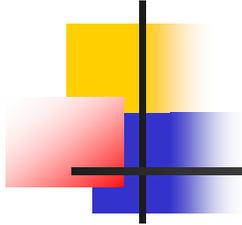
- 1、诉讼
- Litigation

- 2、调解（法院调解、行政调解、行业调解、当事人和解）
- Mediation (court mediation, administrative mediation, industry mediation, reconciliation between the parties)

- 3、仲裁
- Arbitration

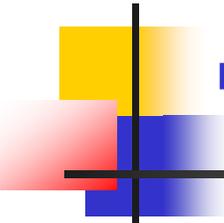


- 知识产权诉讼通常划分为
- **IP litigation is generally divided into:**
 - 知识产权合同纠纷、知识产权权属纠纷、知识产权侵权纠纷
 - IP contract dispute, IP ownership dispute, IP infringement dispute
 - 因竞争关系引发的知识产权纠纷通常与知识产权有关，所以竞争纠纷、垄断纠纷目前也归入知识产权纠纷。
 - IP disputes caused by competitive relationship are often related to IP rights. Therefore, competition disputes and monopoly disputes are also classified among IP disputes.

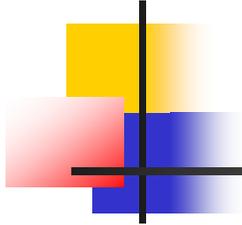


中国著作权法、专利法、商标法关于知识产权纠纷解决方式的规定

Provisions on IP dispute resolution as specified in Chinese *Copyright Law*, *Patent Law* and *Trademark Law*.

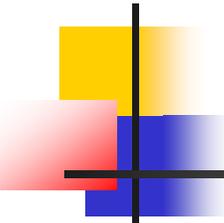
- 
- 著作权法第五十四条规定：
 - Article 54 of *Copyright Law*:
-

- 著作权纠纷可以调解，也可以根据当事人达成的书面仲裁协议或者著作权合同中的仲裁条款，向仲裁机构申请仲裁。
- A dispute over copyright may be settled by mediation or be submitted for arbitration to a copyright arbitration institution under a written arbitration agreement concluded between the parties concerned, or under the arbitration clause in the copyright contract.



当事人没有书面仲裁协议，也没有在著作权合同中订立仲裁条款的，可以直接向人民法院起诉。

Any party may bring a lawsuit directly to the people's court in the absence of a written arbitration agreement or an arbitration clause in the copyright contract.

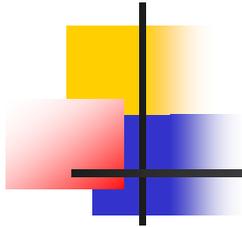


- 专利法第六十条规定：

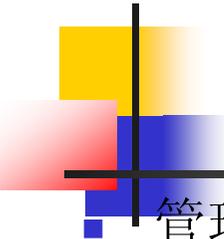
- **Article 60 of Patent Law:**

- 未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；

- Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties;

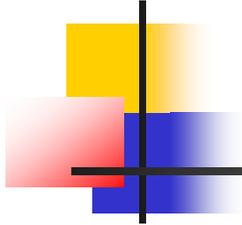


- 不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。
- Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the administrative authority for patent affairs to handle the matter.

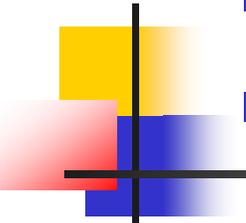


■ 管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。

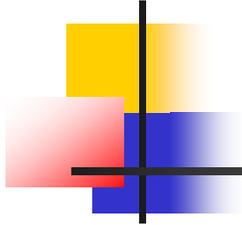
- When the administrative authority for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution.



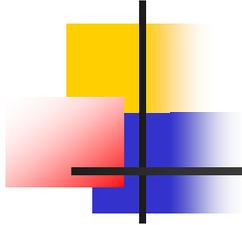
- 进行处理的管理专利工作的部门应当事人的请求，
可以就侵犯专利权的赔偿数额进行调解；调解不成的，
当事人可以依照《中华人民共和国民事诉讼法》
向人民法院起诉。
- The said authority handling the matter may, upon
the request of the parties, mediate in the amount
of compensation for the damage caused by the
infringement of the patent right. If the mediation
fails, the parties may institute legal proceedings in
the people's court in accordance with the Civil
Procedure Law of the People's Republic of China.

- 
- 商标法第五十三条规定：
 - Article 53 of *Trademark Law*:
-

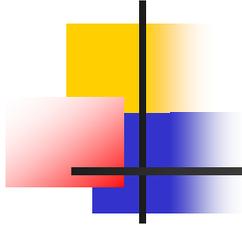
- 有本法第五十二条所列侵犯注册商标专用权行为之一，引起纠纷的，由当事人协商解决；
- Where any party has committed any of such acts to infringe the exclusive right to use a registered trademark as provided for in Article 52 of this Law and has caused a dispute, the interested parties shall resolve the dispute through consultation;



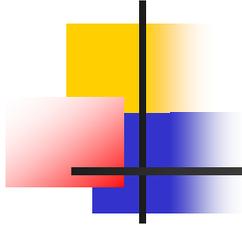
- 不愿协商或者协商不成的，商标注册人或者利害关系人可以向人民法院起诉，也可以请求工商行政管理部门处理。
- where they are reluctant to resolve the matter through consultation or the consultation fails, the trademark registrant or interested party may institute legal proceedings in the People's Court or request the administrative authority for industry and commerce for actions.



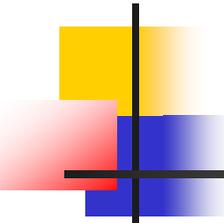
- 工商行政管理部门处理时，认定侵权行为成立的，责令立即停止侵权行为，没收、销毁侵权商品和专门用于制造侵权商品、伪造注册商标标识的工具，并可处以罚款。
- Where it is established that the infringing act is constituted in its handling the matter, the administrative authority for industry and commerce handling the matter shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringing goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine.



- 当事人对处理决定不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不履行的，工商行政管理部门可以申请人民法院强制执行。
- Where any interested party is dissatisfied with decision on handling the matter, it or he may, within fifteen days from the date of receipt of the notice, institute legal proceedings in the People's Court according to the Administrative Procedure Law of the People's Republic of China. If there have been instituted no legal proceedings or made on performance of the decision at the expiration of the said period, the administrative authority for industry and commerce shall request the People's Court for compulsory execution thereof.

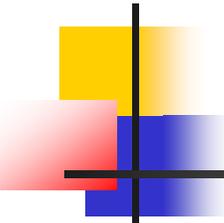


- 进行处理的工商行政管理部门根据当事人的请求，可以就侵犯商标专用权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。
- The administrative authority for industry and commerce handling the matter may, upon the request of the interested party, mediate on the amount of compensation for the infringement of the exclusive right to use the trademark; where the mediation fails, the interested party may institute legal proceedings in the People's Court according to the Civil Procedure Law of the People's Republic of China.



四、中国的知识产权审判 IP trial in China

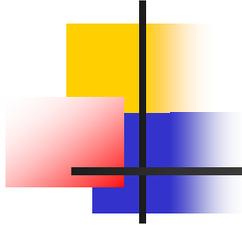
- （一）知识产权案件审理情况
- Statistics about IP trials in China
- （二）知识产权审判的程序问题
- Procedures of IP trial in China
- （三）知识产权审判的实体问题
- Entity issue of IP trial in China



2010年全国法院审理知识产权案件情况

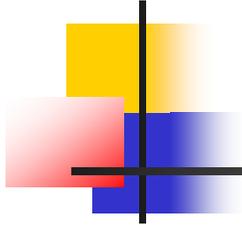
Trial of IP cases in China in 2010

- 知识产权民事一审案件:
- **IP civil trial of first instance:**
- 新收42931件, 审结41718件, 分别比上年增长40.18%、36.74%。
- 其中: 新收专利案件5785件, 增长30.82%;
- 新收商标案件8460件, 增长22.50%;
- 新收著作权案件24719件, 增长61.54%;
- 新收技术合同案件670件, 下降10.31%;
- 新收竞争案件1131件, 下降11.78%。
- 42,931 new cases, try and close 41,718 cases, increasing by 40.18% and 36.74% respectively compared with the previous year.
- Including: 5,785 new patent cases, increasing by 30.82%;
- 8,460 new trademark cases, increasing by 22.50%;
- 24,719 new copyright cases, increasing by 61.54%;
- 670 new technical contract cases, decreasing by 10.31%;
- 1,131 competition cases, decreasing by 11.78%.



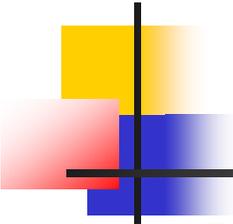
- 另外：涉外知识产权民事案件审结1369件；
- 涉港澳台知识产权民事案件审结278件。

- In addition: conclude 1,369 foreign-related IP civil cases; 278 IP civil cases related to Hong Kong, Macao and Taiwan.



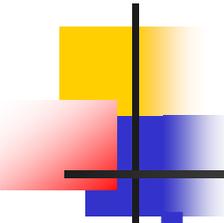
- 知识产权行政一审案件:
- **IP administrative trial of first instance:**

- 新收2590件，增长25%。
- 其中：专利551件；
- 商标2026件；
- 著作权2件。
- 2,590 new cases, increasing by 25%.
- Including: 551 patent cases;
- 2,026 trademark cases;
- 2 copyright cases.



知识产权刑事案件： IP criminal cases:

- 审结知识产权一审刑事案件3942件，增长7.7%。
- 其中：知识产权罪1254件；
 - 生产、销售伪劣商品罪涉及知识产权的609件；
 - 非法经营罪涉及知识产权的2054件。
- 判决发生法律效力涉及6001人，判决有罪的6000人。
- Try and close 3,942 IP criminal cases of first instance, increasing by 7.7%.
- Including: 1,254 IP criminal cases;
 - 609 IP-related crimes of producing and selling fake or poor quality products;
 - 2,054 IP-related crimes of illegal business operations.
- Legally effective judgments involve 6,001 people and 6,000 are convicted.
-



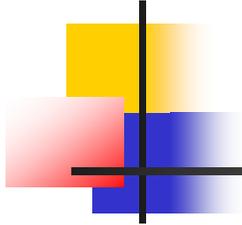
2011年全国法院审理知识产权案件情况

Trial of IP cases in China in 2011

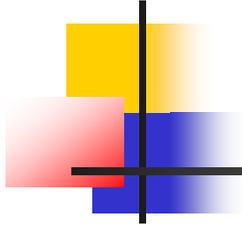
■ 知识产权民事一审案件：

■ **IP civil trial of first instance:**

- 新收和审结近6万件，分别比上年增长39%。
- 其中：新收专利案件7800多件，增长35%；
- 新收商标案件近1.3万件，增长53%；
- 新收著作权案件3.5万件，增长42%；
- 新收竞争案件1137件，与上年持平；
- 新收技术合同案件557件，下降16%。
- Around 60,000 new cases, try and close around 6,000 cases, increasing by 39% respectively compared with the previous year.
- Including: 7,800 new patent cases, increasing by 35%;
- 13,000 new trademark cases, increasing by 53%;
- 35,000 new copyright cases, increasing by 42%;
- 1,137 new competition cases, equal to the previous year;
- 557 new technical contract cases, decreasing by 16%.
-

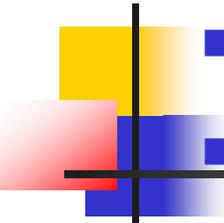


- 审结涉外知识产权民事案件1296件；
- 审结涉港澳台知识产权民事案件619件。
- In addition: conclude 1,296 foreign-related IP civil cases;619 IP civil cases related to Hong Kong, Macao and Taiwan.



- 知识产权行政一审案件:
- **IP administrative trial of first instance:**

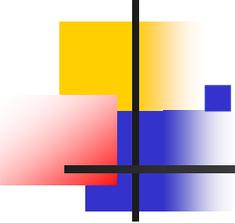
- 新收2433件，下降6%。
- 其中：专利654件；
- 商标1767件；
- 著作权2件。
- 2,433 new cases, decreasing by 6%.
- Including: 654 patent cases;
- 1,767 trademark cases;
- 2 copyright cases.



- 知识产权刑事案件:

- **IP criminal cases:**

- 审结知识产权一审刑事案件5504件，增长近40%。
- 判处罪犯7892人。
- Conclude 5,504 IP criminal cases of first instance, increasing by about 40%.
- Sentence 7,892 criminals.

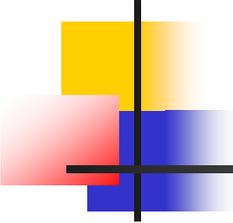


结论 Conclusion

- 1、知识产权民事救济是知识产权司法保护的主渠道。
- IP civil remedy is the major way of judicial protection of IP .

- 2、知识产权行政审判主要是涉及授权、无效和撤销程序的案件，是知识产权保护的基础工作。
- Administrative trial on IP cases is in general related to the procedures of authorization, invalidation and revocation of IP, which is the basic work of IP protection.

- 3、知识产权刑事审判主要体现惩治和震慑犯罪的功能。
- The major functions of trial on IP criminal cases are to punish and deter crimes.



知识产权审判涉及的程序问题

Procedures involved in IP trial

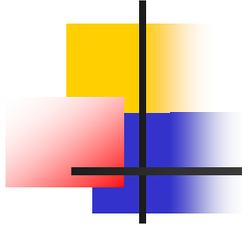
- 管辖问题：如何选择管辖
- Jurisdiction issue: how to select the jurisdiction

- 证据问题：证据保全；调查取证；鉴定；专家证人。
- Evidence: Perpetuation of evidence; obtain evidence through investigation; verification; expert witness

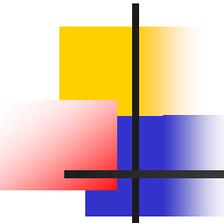
- 证据交换制度
- Evidence exchange system

- 临时禁令
- Temporary injunction

- 聘请专业律师
- Engage professional lawyer



- 临时禁令的适用 Applicability of temporary injunction:
- 依法积极慎重适用诉前临时措施，增强司法救济的有效性。
- Adopt provisional measures before action in a legal, active and prudent way and enhance the effectiveness of judicial remedy.
- 准确把握诉前停止侵权的适用条件，既要积极又要慎重，既要合理又要有效，关键是要依法进行，同时要防止当事人滥用诉前临时措施制度。
- Grasp the conditions for the application of measures to stop infringement before action to ensure that provisional measures before action are adopted in an active yet prudent, proper, effective and legal way and to prevent any abuse of such measures on the part of interested parties.

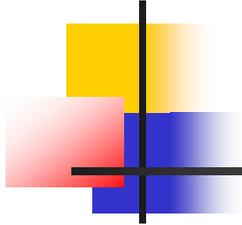


- 知识产权审判涉及的实体问题
- **Entity issue in IP trial**

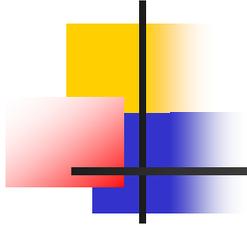
- 定性认定：事实依据、法律依据；
- Determine the nature: fact, law;

- 法律责任：诉讼请求与裁决依据。
- 财产责任和非财产责任
- 调查取证费用和律师费
- 诉讼费

- Legal liability: basis for litigation and arbitration
- property liability and non-property liability
- fees for investigation and evidence collection, counsel fee
- legal costs



- 正确适用民事责任制度，加大知识产权司法救济力度。
- Apply properly the system of civil liability and enhance judicial remedy of IP right.
- 坚持全面赔偿原则，依法确定侵权人的侵权损害和因制止侵权行为等引起的损害的赔偿责任，降低维权成本，加大侵权成本，努力确保权利人获得足够的损害赔偿。
- Adhere to the principle of full compensation, identify the damage caused by infringement and the compensation liability, reduce cost on IP right protection, increase infringement cost and make sure obligees get enough amount of compensation.



- Thank you!
- luodch@sina.com
- 010-67557203