



中国农业植物新品种维权策略

The Strategies of Safeguard PVRs of Agricultural Plants in China

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Content (主要内容)

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农业植物新品种维权现状

- **Problems in Protecting the Rights of New Varieties of Agricultural Plants**

农业植物新品种维权面临的问题

- **Countermeasures for Protecting the Rights of New Varieties of Agricultural Plants**

农业植物新品种维权对策建议



■ Current Status



Current Status

- 1.The total number of lawsuits is small
- 诉讼案件少
- The number of lawsuits involving infringement of variety rights increases every year, but the total number is small。
- 品种权侵权诉讼案件数量每年增加，但总体数量偏少

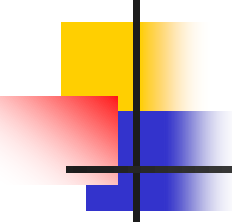


Judgements

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	total
6	6	9	79	61	51	150	176	184	151	873

Basic courts	intermediate court	higher court	Supreme Court	cases
20	677	119	57	<677

- Incomplete statistics based on the number of judgements published China Judgement Online (2011-2020.11.13)

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- (1) A sharp contrast to number of intellectual property cases(与知识产权案件数量鲜明对比)
 - In 2019, the National Court received 481793 new intellectual property cases and concluded 475853 cases nationwide (Supreme People's Court) .
 - 2019年全国法院新收各类知识产权案件481793件，全国审结475853件。（最高人民法院公布）

(2) A sharp contrast to number of applications and acquisitions of plant varieties (与品种权申请与授权数量鲜明对比)

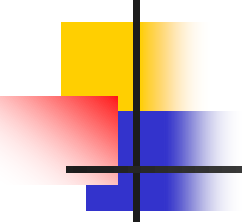
	Applications 申请量	Acquisitions 授权量	Invalidation 无效品种权	Validation 有效品种权
2015	2342	1589	793	4816
2016	2923	2132	1123	6781
2017	4465	1646	704	7723
2018	5760	2395	129	9989
2019	7834	2727	23	12917

2. Centralized jurisdiction in lawsuit 诉讼案件

管辖集中

- (1) Intermediate People's Court of the seat of the government of a province, autonomous region or municipality directly under the Central Government and designated by supreme people's court shall act as courts of first instance;
- 省、自治区、直辖市人民政府所在地和最高人民法院指定的中级人民法院，以及各省自治区直辖市的高级法院作为一审法院；

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- (2) Since 2015, intellectual property courts in Beijing, Guangzhou and Shanghai, as the first instance courts in Beijing, Guangzhou and Shanghai, have tried cases of infringement of new plant varieties;
 - 自2015年开始，北京、广州、上海知识产权法院作为各自区域内一审法院，审理植物新品种侵权案件；

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- (3) On January 1, 2019, the intellectual property Court of Supreme people's Court was established to focus on the case of infringement of new plant varieties.
 - 2019年1月1日，最高人民法院知识产权法庭成立，集中审理植物新品种侵权上诉案件。

3. Concentration of crop categories involving lawsuit : field crops 涉案作物类别集中：大田作物

- Maize, Wheat, Rice, Soybean, 玉米、小麦、水稻、大豆
- Cabbage 大白菜 (2017) Elm 美人榆 (2017)
- Locust tree 双季米槐 (2017) Orange 柑橘 (2017)
- Pomelos 三红蜜柚 (2019) Potentilla 青海蕨麻1号 (2019) Potato 土豆 (2019)
- Pear 梨 (2020)



■ Problems



1. Low compensation for damage to variety rights 赔偿低

- (1) Not many cases with over 1 million compensation 超过100万元判赔额的案件不多
- (2) The compensation for most cases is less than 500000 yuan, or even less than 100,000 yuan. 大部分侵权案件的赔偿额在50万元以下，甚至不足十万。



Typical Cases 高判赔额典型案例

- 1. Maize “**郑58**” (2015) 4950万元+2万元
(合理支出)
- 2. Maize “**先玉355**” (2013) 500万元
- 3. Maize “**利合228**” (2018) 363.75万

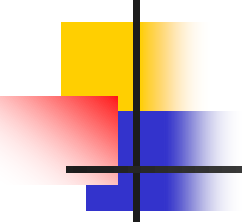


2. Collecting evidence is difficult

取证难

- (1) Procedural complexity 程序繁琐
- Evidences in most successful cases must be secured by notarization or administrative organization or the People' s Court
- 大部分胜诉案必须通过公证取证或行政执法或法院证据保全；

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- (2) High technicality 技术性强
 - Variety identification is required in most successful cases
 - 大部分胜诉案件需要进行品种鉴定；

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- (3) Less opportunity of gathering evidence
取证环节少
 - Only evidence of unauthorized **production** and **sale** of **propagating materials** of authorized varieties has legal effect.
 - 只有证明未经许可生产销售授权品种繁殖材料的证据才有具有法律效力。

3、 taking a long time of successful relief 维权周期长

Cases	Proportion	Trial time(Year)
Cases concluded at first instance	70—80%	1-2
Cases concluded at second instance	20-30%	2-3
retrial cases(the supreme court)	5%	5-7

- Incomplete statistics based on the number of judgements published China Judgement Online (2011-2020.11.13)

Typical Cases 典型案例

- Case of infringement and license contract of rice “Bo III you 273” and “boIII A”(Retrial cases) (2012-2017) 水稻“博III优273”、“博III A”品种权侵权与许可合同纠纷案（再审）
- Case of infringement of Rice “BeiDao 4”“(Retrial cases) (2012-2019) 水稻“北稻4号”品种权侵权纠纷案（再审）
- Case of infringement of Maize “Zheng 58”(case of trial of second instance) (2014-2018) 玉米“郑58”品种权侵权纠纷案（二审）



In most cases proceedings in most cases is not long. **大部分案件诉讼时间不算长。**

- In some cases, the proceedings have been extensive and lengthy. **某些案件经历的诉讼程序多，审理时间较长。**
- The Supreme people's Court has set up an intellectual property court to focus on the appeal of infringement of new plant varieties, which helps to shorten the trial time. **最高人民法院设立知识产权法庭，集中审理植物新品种侵权上诉案件，有助于缩短审理时间。**


4、 Relationship between DUS testing and molecular identification DUS测试与分子鉴定的关系

- Legal effects of methods for identifying plant varieties 植物品种鉴定方法的法律效力问题
- Infringer DUS High accuracy 准确
- Breeder DNA High efficiency, high speed, low cost 效率高 速度快 成本低



DNA detection is more and more widely used in various infringement cases 。DNA检测越来越广泛应用于各类侵权纠纷案件。

- As long as the evidence collection procedure is legal and the evidence chain is complete, the dna test conclusion has legal effect.只要取证程序合法，证据链完整，DNA检测结论就具有法律效力。
- Only when there is evidence that is different from the conclusion of DNA detection, the court may take DUS tests for variety identification. 只有存在与DNA分子鉴定结论不同的证据时，法院可能会采取DUS测试进行品种鉴定。



If the name of the variety produced and sold by the alleged infringer is the same as the authorized variety, in the course of the lawsuit, the defendant course of the lawsuit, or if, after inquiry by the court, it is clear that the identification does not apply for appraisal, the court may determine the infringement to be established according to the same name of the variety.

- 如果被控侵权人生产、销售的品种名称与授权品种相同，在诉讼过程中，被告没有提出鉴定申请，或者经法院询问，明确标识不申请鉴定的，法院可以根据品种名称相同，认定侵权成立。

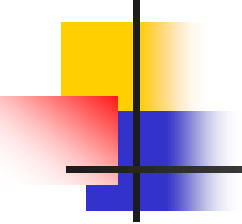



■ Suggestions

1. Practica operation

实际操作层面

- (1) Set up a professional team to protect the rights of new plant varieties and implement the process operation: proof of infringement, variety identification, litigation documents preparation, damage compensation certificate and so on.
- 建立植物新品种维权专业团队，实行流程化作业：侵权取证、品种鉴定、诉讼文书准备、损害赔偿赔偿证明等。

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- (2) Case is the best teaching material, learning efficient approaches and recognized by the court, and the failure of protecting breeders' rights.
 - 案例是最高的教材，学习有效率维权并为法院认可的做法，借鉴维权失败的教训。



- (3) Attach importance to the legality of the procedure, properly use all kinds of legal procedures, especially notarization, administrative enforcement and court evidence preservation procedures, to form a complete chain of evidence.

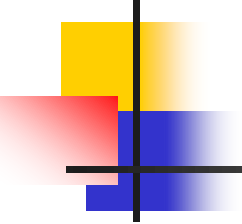
- 重视程序的合法，妥善运用各种合法程序，尤其是公证、行政执法和法院证据保全程序，形成完整的证据链条。



2. Institutional improvement

制度建设层面


- (1) Introduction of the Cascading Principle of UPOV1991 , to extend Breeder' s rights scope to new plant varieties. **引进UPOV1991人工瀑布保护规则，延长植物新品种权的权利行使链条。**


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- From the propagating material of the protected variety to the harvested material, and products made directly from harvested material of the protected variety (alternative)
 - 从受保护品种的繁殖材料扩展到收获材料由收获材料直接制成的产品（可以选择）



Incorporate the following actions into the control of Breeders' Rights 将下列行为 纳入品种权控制范围

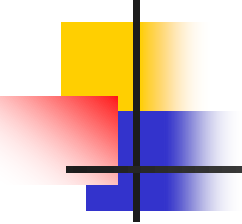
- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

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- Prolong the process of breeder's claim infringement, to reduce the difficulty of gathering evidences **延长育种者侵权举证的环节, 减少举证困难**
 - Strengthen the public's awareness of the protection of variety rights **强化社会公众的品种权保护意识**



■ (2) Introduce the system of Essential Derived Varieties, strengthen the protection of original breeding innovation, and establish a reasonable benefit-sharing mechanism between original breeders and breeders of Essential Derived Varieties.

■ **规定实质性派生品种制度，强化对原始育种创新的保护，在原始品种育种者和实质性派生品种育种者之间，建立合理的惠益分享机制。**

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- (3) Re-understand the value of breeding innovation results and evaluate the standard of compensation for infringement damage of variety rights.
 - 应重新认识育种创新成果的价值，评估品种权侵权损害赔偿标准。

THANKS

