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中华人民共和国
人民法院种业知识产权司法保护典型案例（第一批）
Cases of Judicial Protection for Intellectual Property Rights in Seed Industry by the People's Courts of the People's Republic of China
(First Batch)

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9. Criminal Case of Producing and Marketing Fake or Substandard Commodities by A Agricultural Company and Wang

案例 1：“郑 58”玉米植物新品种侵权纠纷案

Case 1: “Zheng 58” Maize Variety Infringement Case

Case 1:

https://ipc.court.gov.cn/zh-cn/news/view-1508.html

关键词：杂交种，亲本，相互授权模式

Key words: hybrid, parents, mutual authorization model

【案号(Case Number)】

申请再审：最高人民法院（2018）最高法民申 4587 号

Petition for retrial: (2018) SPC IP Civil Retrial 4587

二审：河南省高级人民法院（2015）豫法知民终字第 00356 号

Second instance: (2015) Yu IP Civil Final 00356

一审：河南省郑州市中级人民法院（2014）郑知民初字第 720 号

First instance: (2014) Zheng IP Civil 720

【基本案情】母本“郑 58”与已属于公有领域的父本“昌 7-2”杂交而成“郑单 958”玉米品种。“郑 58”和“郑单 958”的植物新品种权人分别为 A 种业公司和 C 农学院。C 农学院与 B 种业公司签订《玉米杂交种“郑单 958”许可合同》及补充协议，许可 B 种业公司在一定期限内销售“郑单 958”玉米杂交种，B 种业公司为履行合同而进行制种生产过程中涉及第三方权益的由 B 种业公司负责。B 种业公司依据授权，在取得《农作物种子经营许可证》后，在甘肃省开始大量生产、销售“郑单 958”玉米杂交种。A 种业公司认为 B 种业公司在授权期限截止后，未经许可使用“郑 58”

生产、繁育“郑单 958”玉米杂交种的行为，构成侵权，故诉请 B种业公司停止侵权、赔偿 A 种业公司经济损失及合理开支 4952 万元，并要求 C 农学院承担连带责任。

[Case Brief] The “Zhengdan 958” maize variety was bred by crossing the female parent “Zheng 58” with the male parent “Chang 7-2” which was already in the public domain. The right holders of new plant varieties “Zheng 58” and “Zhengdan 958” were respectively A Seed Company and C Agricultural Academy. C Agricultural Academy and B Seed Company entered into the *License Contract for “Zhengdan 958” Hybrid Maize* and the supplementary agreement, which permitted B Seed Company to sell the “Zhengdan 958” hybrid maize within a certain period of time and stipulated that B Seed Company shall be responsible that any third-party rights involved in seed production of “Zhengdan 958” is respected. In accordance with the authorization, B Seed Company started mass production and sales of the “Zhengdan 958” hybrid maize in Gansu Province after obtaining the Crop Seed Business License. A Seed Company held that B Seed Company’s unauthorized use “Zheng 58” to produce and breed the “Zhengdan 958” hybrid maize after the authorization period expired constituted infringement. Therefore, A Seed Company filed a lawsuit against B Seed Company requesting that B Seed Company cease the infringement and pay damages of RMB 49.52 million for A Seed Company's economic losses and reasonable expenses and

that C Agricultural Academy bear joint and several liability.

【裁判结果】河南省郑州市中级人民法院一审认为，B种业公司在合同终止后继续使用“郑58”必须重新取得品种权人许可。B种业公司未取得A种业公司授权，在A种业公司发函后仍继续使用“郑58”生产“郑单958”，构成侵权。考虑到加强植物新品种权保护有助于推动国家三农政策，B种业公司已经取得“郑单958”品种权人的授权许可，并已支付相应的使用费，为生产“郑单958”杂交种花费了大量的人力物力，若禁止B种业公司使用母本“郑58”自交种生产“郑单958”玉米杂交种，将造成巨大的经济损失，可采取支付一定的赔偿费的方式弥补A种业公司的损失，故判决B种业公司赔偿损失及合理开支4952万元，C农学院在300万元内承担责任，驳回A种业公司的其他诉讼请求。B种业公司和C农学院均提起上诉。河南省高级人民法院二审认为，C农学院和A种业公司实行相互授权模式，B种业公司生产过程中涉及第三方权益时应由B种业公司负责，与C农学院无关，故判决维持一审法院关于赔偿损失和合理支出的判项，撤销一审法院关于C农学院承担连带责任的判项。B种业公司不服二审判决，向最高人民法院申请再审，最高人民法院驳回了B种业公司的再审申请。

[Judgment] In the first instance, Zhengzhou Intermediate People's Court held that B Seed Company must obtain permission from the plant variety rights holder to use “Zheng 58” again after the termination of the contract. Without obtaining authorization, B Seed Company continued to use

“Zheng 58” to produce “Zhengdan 958” after receiving a written notice from A Seed Company, which constituted infringement. Considering that B Seed Company had obtained authorization from the plant variety rights holder of “Zhengdan 958”, paid the corresponding fees, and invested a lot of manpower and material resources in the production of the “Zhengdan 958”, if B Seed Company was prohibited from using the female parent “Zheng 58” to produce the “Zhengdan 958”, it would suffer huge economic losses, and the loss suffered by A Seed Company may be remedied by means of payment of a certain amount of compensation. On these grounds, the court ruled that B Seed Company should pay damages of RMB 49.52 million for economic losses and reasonable expenses and that C Agricultural Academy should bear liability within the range of RMB 3 million. The court rejected A Seed Company's other claims. B Seed Company and C Agricultural Academy both appealed. Henan High People's Court held in the second instance that, with mutual authorization model followed by C Agricultural Academy and A Seed Company, B Seed Company should be responsible for any third-party rights involved in the production process of “Zhengdan 958” is respected, which was unrelated to C Agricultural Academy. Therefore, the court upheld the first-instance court's judgment on B Seed Company's compensation for losses and reasonable expenses, and revoked its judgment on C Agricultural Academy’s joint liability.

Dissatisfied with the second-instance judgment, B Seed Company apply for retrial to the Supreme People's Court. The Supreme People's Court rejected B Seed Company's application for retrial.

【典型意义】本案对杂交种生产中涉及杂交种及其亲本关系的植物新品种侵权纠纷具有指导意义。法律并不禁止利用授权品种进行育种及其他科研活动，但在新品种获得授权及通过品种审定后，该新品种的权利人及其被许可人面向市场推广该新品种，将他人已授权品种的繁殖材料重复用于生产该新品种的繁殖材料时，仍需经过作为父母本的已授权品种的权利人同意或许可。本案中，考虑到被许可人已经为杂交种繁育推广花费了大量的人力、物力，可以通过支付赔偿费用对亲本权利人的损失予以补偿。因此，在侵权损害赔偿确定时，综合侵权人的主观过错、获利情况、不停止使用亲本生产直至保护期满可以继续获利等因素，对权利人请求的4952万元的赔偿数额和合理支出予以了全额支持。本案判决在依法维护品种权人合法权益的同时，对鼓励培育及推广良种亦起到了积极的促进作用。

[Comments] This case is of guiding significance for resolving disputes over the infringement of new plant variety rights related to hybrid production and the relationship between hybrids and their parents. The use of granted varieties for breeding and other research activities is not prohibited by law. However, after a new variety is authorized and approved, if the rights holder or licensee wants to promote the new variety to the

market and use the same authorized varieties in the production process, they still need the consent or permission of the rights holder of the authorized varieties used as parents. In this case, considering that the licensee had already invested a lot of manpower and material resources in the breeding and promotion of the hybrid, it is reasonable to order the licensee to compensate the losses of the parental variety rights holder. On these grounds, when determining the compensation for infringement damages, the court considered factors such as the subjective fault of the infringer, the profits obtained, and the continuous use of the parental variety for profits until the protection period expires, and fully supported the rights holder's claim for compensation of RMB 49.52 million and reasonable expenses. The judgment in this case not only legally protects the legitimate rights and interests of the variety rights holder, but also encourages the cultivation and promotion of superior varieties.

案例 2：“金粳 818”水稻植物新品种侵权纠纷案

Case 2: “Jinjing 818” Rice Variety Infringement Case

Case2:

https://ipc.court.gov.cn/zh-cn/news/view-1510.html

关键词：销售行为，销售侵权，惩罚性赔偿

Key words: sales activity, infringement by sale, punitive damages

【案号(Case Number)】

二审：最高人民法院（2021）最高法知民终816号

Second instance: (2021) SPC IP Civil Final 816

一审：江苏省南京市中级人民法院（2020）苏01 民初773号

First instance: (2020) Su01 Civil 773

【基本案情】A种业公司为水稻新品种“金粳818”的独占实施被许可人，B农业公司未经许可，以线下门店推广以及在微信群内发布“农业产业链信息匹配”线上宣传等方式，寻找潜在的交易者，并对成为B农业公司会员的主体提供具体的侵权种子交易信息，在与买家商定交易价格、数量、交货时间后安排送货收款，对外销售白皮袋包装的“金粳818”稻种。A种业公司认为B农业公司的行为构成侵权，故诉请判令B农业公司停止侵权并赔偿经济损失300万元。B农业公司辩称其仅是向作为农民的种子供需双方提供自留种子信息，由供需双方自行交易，并未销售被诉侵权“金粳818”稻种。

[Case Brief] A Seed Company is the exclusive licensee of the new rice variety “Jinjing 818”. However, without permission, B Agricultural Company promoted the infringing seed through offline store and online publicity such as posting “agricultural supply chain information matching” in WeChat groups, looked for potential buyers, and provided specific information on the accused infringing seed transactions for those who became members of B Agricultural Company. Furthermore, after

negotiating the transaction price, quantity, and delivery time with buyers, B Agricultural Company arranged for delivery and collection of payment, and sold to the public the “Jinjing 818” rice packaged in white packages (packages without marks or labels). A Seed Company held that the acts of B Agricultural Company constituted infringement, and therefore filed a lawsuit against B Agricultural Company, requesting that B Agricultural Company cease the infringement and pay damages of RMB 3 million. B Agricultural Company argued that it only provided information on the reserved seed for suppliers and buyers who were farmers and that the suppliers and buyers traded on their own, so it did not sell the accused infringing seed “Jinjing 818”.

【裁判结果】江苏省南京市中级人民法院一审认为，B农业公司为涉案种子交易的达成提供了积极有效的帮助。B农业公司帮助销售种子的过程中，在销售主体、销售地域及销售数量上均不符合农民在当地集贸市场上合法交易个人自繁自用剩余常规种子的情形，构成侵权。综合考虑B农业公司侵权行为的情节，适用惩罚性赔偿确定损害赔偿数额，判决B农业公司停止侵权并赔偿经济损失及合理开支300万元。B农业公司不服，提起上诉。最高人民法院二审认为，B农业公司发布侵权种子销售具体信息，与购买者协商确定种子买卖的包装方式、价款和数量、履行期限等交易要素，销售合同已经依法成立，销售行为已经实施，应认定B农业公司构成销售侵权，对一审法院认定的帮助侵权予以纠正。B农业公司没有获得种子生产经营许可证，违法销售“白皮

袋”种子的行为，侵权行为严重，一审法院按照赔偿基数的二倍适用惩罚性赔偿正确，故判令驳回上诉，维持原判。

[Judgment] In the first instance, Nanjing Intermediate People's Court held that B Agricultural Company had provided active and effective assistance in securing the transaction of the accused infringing seed. When it comes to assisting in the sale of seed, B Agricultural Company could not be taken as farmers who legally trade surplus seed for self-propagation and self-use in the local market considering the sales subject, sales region, and sales quantity. Therefore, B Agricultural Company’s acts constituted infringement. Taking into account the circumstances of B Agricultural Company’s infringement, punitive damages shall be applied to determine the amount of compensation for damages. It is ruled that B Agricultural Company shall cease the infringement and pay damages of RMB 3 million for economic losses and reasonable expenses. Dissatisfied with the judgment, B Agricultural Company appealed. The Supreme People's Court held in the second instance that since B Agricultural Company had released specific information on the sale of the accused infringing seed and negotiated with buyers to determine the packaging, price, quantity, and contract performance period concerning the seed, with the sales contract lawfully established and the sales act implemented, B Agricultural Company shall be considered as the sellers of the accused infringing seed, and the first-instance court's finding that B Agricultural Company had

assisted in the infringement should be corrected. B Agricultural Company did not obtain a seed production and operation license and its illegal sale of white packages seed was a serious infringement. The court of First Instance correctly applied punitive damages and set the compensation amount to be twice the compensation base. Therefore, the appeal was dismissed and the original judgment was upheld.

【典型意义】本案对于被诉侵权人以通过信息网络途径组织买卖各方，以“农民”“种粮大户”等经营主体名义为掩护实施的侵权行为进行了准确定性。B 农业公司发布侵权种子销售具体信息，与购买方协商确定种子买卖的包装方式、价款和数量、履行期限等交易要素，销售合同已经依法成立，B 农业公司系被诉侵权种子的交易组织者、决策者，实施了销售行为，构成侵权。B 农业公司并非农民，其发布和组织交易的种子销售信息所涉种子数量达数万斤，远远超出了农民个人自繁自用的数量和规模。在赔偿数额上，B 农业公司表示自己不留存有关交易记录，无法提供相关账簿，故人民法院参考 B 农业公司宣传交易额过亿的资料，综合考虑侵权情节，推定其侵权获利超出 100 万元，并以 100 万元作为计算本案赔偿的基数。B 农业公司组织销售不标注任何产品信息的白皮袋侵权种子、未取得种子生产经营许可证但生产经营种子，违反《中华人民共和国种子法》相关规定，属于侵权行为情节严重，依法适用惩罚性赔偿制度，在计算基数的二倍以上从高确定惩罚性赔偿数额，实际赔偿总额为补偿性赔偿数额的三倍，最终全额支持权利人的诉讼请求，

判令B农业公司停止侵权并赔偿经济损失及合理开支300万元。

[Comments] This case accurately determines that the accused infringer's act of organizing buyers and sellers through information network in the name of "farmers""large-scale grain growers" and other business subjects was an infringing act. In this case, B Agricultural Company released the specific information on the sale of infringing seed, and negotiated with the buyers to determine the transaction details including the packaging, price, quantity and contract performance period concerning the sale of seed, and the sales contract had been lawfully established. B Agricultural Company was the organizer and decision-maker of the transaction involving the accused infringing seed and carried out the sale, which constituted infringement. B Agricultural Company was not a farmer and the quantity of the accused infringing seed sold through its release of information and transactions it had organized amounted to tens of thousands of kilograms, far exceeding the quantity and scale of the seed that farmers could personally reserve for self-propagation and self-use. In terms of the amount of compensation, B Agricultural Company stated that it did not keep any transaction records and could not provide relevant account books. Therefore, the court referred to the transaction amount of over RMB 100 million as publicized by B Agricultural Company. Considering the circumstances of the

infringement, it was presumed that the profits from the infringement exceeded RMB 1 million, which was taken as the compensation base for the determination of the compensation in this case. B Agricultural Company organized the sale of the accused infringing seed in white packages, produced and operated the accused infringing seed without obtaining a seed production and operation license, and violated relevant provisions of the Seed Law of the People's Republic of China, which constituted a serious infringement. Punitive damages were applied in accordance with the law, and the amount of punitive damages was determined at a higher level based on more than twice the compensation base. The actual compensation amount was three times the compensatory damages. Finally, the court fully supported the rights holder's claims, ruling that B Agricultural Company should cease the infringement and compensate RMB 3 million for economic losses and reasonable expenses.

案例 3：“淮麦 33”小麦植物新品种侵权纠纷案

Case 3: “Huaimai 33” Wheat Variety Infringement Case

Case 3:

https://ipc.court.gov.cn/zh-cn/news/view-1511.html

关键词：繁殖材料，收获材料

Key words: propagating materials, harvested materials

【案号(Case Number)】

二审：江苏省高级人民法院（2018）苏民终1492号

Second instance: (2018) Su Civil Final 1492

一审：江苏省南京市中级人民法院（2018）苏01 民初293号

First instance: (2018) Su01 Civil 293

【基本案情】A种业公司为小麦品种“淮麦33”的被许可人，其代理人与公证人员两次购买B种业公司销售的“淮麦33”。A种业公司认为B种业公司的行为构成侵权，故诉请判令B种业公司停止侵权并赔偿损失。B种业公司辩称，其销售的是小麦商品粮，并未销售小麦种子。

[Case Brief] A Seed Company is the licensee of the wheat variety “Huaimai 33”. Its agent and notary officers twice purchased “Huaimai 33” sold by B Seed Company. A Seed Company held that B Seed Company's acts constituted infringement, and filed a lawsuit requesting that B Seed Company cease the infringement and compensate for losses. B Seed Company argued that it sold wheat as a commercial grain and did not sell wheat seed.

【裁判结果】江苏省南京市中级人民法院一审认为，依据A种业公司提供的证据材料，B种业公司销售了被诉侵权产品，且被诉侵权产品的价格明显高于当年小麦商品粮价格，应当认定其销售的是“淮麦33”小麦种子，故判决B种业公司立即停止销售侵权种子，赔偿A种业公司经济损失100万元。B种业公司不服，提起上诉。江苏省高级人民法院二审认为，B种业公司在公安机关的询问笔录亦承认销

售了被诉侵权种子，销售的品种、单价、数量与两份公证书记载的一致，B 种业公司销售的被诉侵权种子价格明显高于当年小麦商品粮的价格，一审法院认定其销售的是“淮麦 33”小麦种子并无不当，故判决驳回上诉，维持原判。

[Judgment] In the first instance, Nanjing Intermediate People's Court held that according to the evidence provided by A Seed Company, B Seed Company sold the accused infringing seed, and the price of the accused infringing seed was greatly higher than the price of wheat as a commercial grain that year. Therefore, it should be determined that B Seed Company sold “Huaimai 33” wheat seed. The court ruled that B Seed Company should immediately cease selling the accused infringing seed and compensate RMB 1 million for A Seed Company’s economic losses. Dissatisfied with the judgment, B Seed Company appealed. In the second instance, Jiangsu High People's Court held that B Seed Company had admitted in the inquiry record of the public security agency that it had sold the accused infringing seed, and the variety, unit price, and quantity of the sales were consistent with those recorded in the two notarized certificates. The price of the accused infringing seed sold by B Seed Company was greatly higher than the price of wheat as a commercial grain that year. The first-instance court's determination that B Seed Company sold “Huaimai 33” wheat seed was correct. Therefore, the appeal was dismissed, and the original judgment was upheld.

【典型意义】侵害植物新品种权的生产、销售行为极为隐蔽，加之侵权行为发生时适用的《中华人民共和国种子法》对于植物新品种的保护范围仅包括繁殖材料而不包括收获材料，对于既是品种权的繁殖材料也是收获材料的被诉侵权植物体，被诉侵权方往往抗辩所涉植物体是收获材料用作商品粮等消费品，试图逃避侵权指控。本案即属此类典型，人民法院在此类案件中作出侵权判定时必须加大事实查明力度，充分利用经验法则和专业常识，适时转移证明责任。小麦作物具有双重属性，既是收获材料又是繁殖材料。作为繁殖材料，小麦种子的纯度、发芽率、含水量等方面的要求均高于普通的商品粮，种子的生产成本和销售价格会明显高于商品粮。本案被诉侵权人否认销售的是种子，主张销售的是商品粮，但两次购买价格明显高于当年小麦商品粮的价格。在公证购买过程中，被诉侵权人的现场销售人员将进入购买现场人员的手机全部收走，具有违反交易惯例的反常行为。综合在案的相关证据和查明的事实，人民法院最终认定被诉侵权人销售的是侵权种子，不是商品粮，属于侵害品种权的侵权行为。

[Comments] The production and sales involving the infringement on new plant variety rights are extremely covert. In addition, the Seed Law of the People’s Republic of China applied in this case only protects the propagating materials of new plant varieties, not the harvested materials. As a result, the accused infringer often defends itself by claiming that the infringing plant material is harvested for use as a commercial

grain or other consumer goods, in an attempt to evade the infringement charges. This case is a typical example of this type of situation. When making infringement determinations in such cases, the courts must intensify efforts to ascertain the facts, make full use of experience and professional knowledge, and timely shift the burden of proof. Wheat could serve as both harvested and propagating materials. As propagating materials, wheat has more demanding requirements for seed in terms of the purity, germination rate, moisture content, etc., compared with other ordinary commercial grains. The production cost and sale price of seed are greatly higher than those of commercial grains. The accused infringer in this case claimed that it sold commodity grains, not seed, but the sales prices in the two transactions were significantly higher than the price of wheat as a commodity grain in that year. During the notarized purchase process, the salesperson of the accused infringer prohibited the use of mobile phones in the purchasing site, which was an abnormal behavior that doesn't conform with the trading custom. Based on the relevant evidence in the case and the ascertained facts, the court ultimately found that the accused infringer sold the accused infringing seed, not as commercial grain, which constituted an infringement on rights to plant varieties.

案例 4：“宜香优 2115”水稻植物新品种侵权纠纷案

Case 4: “Yixiang You 2115” Rice Variety Infringement

Case

Case 4:

https://ipc.court.gov.cn/zh-cn/news/view-1512.html

关键词：套牌侵权，执法检查，鉴定结论

Key words: infringement by mislabeling the granted variety, administrative inspection, expert conclusion

【案号(Case Number)】

二审：最高人民法院（2020）最高法知民终 793 号

Second instance: (2020) SPC IP Civil Final 793

一审：四川省成都市中级人民法院（2018）川 01 民初 1217 号

First instance: (2018) Chuan01 Civil 1217

【基本案情】A 种业公司、四川农业大学农学院、宜宾市农业科学院联合选育的“宜香优 2115”水稻于 2012 年 12 月 24 日通过农业部国家农作物品种审定委员会审定，并于 2016 年 3 月 1 日获得了植物新品种权。A 种业公司获得“宜香优 2115”独占生产、经营权以及市场维护、维权打假的权利。2018 年，A 种业公司发现B 种业公司未经许可套牌销售“宜香优 2115”稻种，构成侵权，故诉请判令 B 种业公司停止侵权，销毁库存侵权稻种，赔偿损失 300 万元并刊登声明消除影响。

[Case Brief] The “Yixiang You 2115” rice, jointly bred by A Seed Company, the College of Agronomy of Sichuan Agricultural University, and the Yibin Academy of Agricultural Sciences, was approved by the National Crop Variety Approval

Committee of the Ministry of Agriculture on December 24, 2012, and obtained new plant variety rights on March 1, 2016. A Seed Company has obtained the exclusive production and operation rights of “Yixiangyou 2115”, as well as the right to safeguard the market and combat counterfeiting. In 2018, having found that B Seed Company sold “Yixiangyou 2115” rice seed that were mislabeled without a license, which constituted infringement, A Seed Company filed a lawsuit against B Seed Company, requesting B Seed Company cease the infringement, destroy the stock of infringing rice seed, pay damages of RMB 3 million for losses and apologize on public platform.

【裁判结果】四川省成都市中级人民法院一审认为，（2018）农种检报字第69号、（2018）农种检报字第70号鉴定报告中送检的“宜香5979”来源于B种业公司库存或销售网点，非来源于公证购买的销售网点，无法确定其送检的种子和被诉侵权的种子以及“宜香优2115”具有一一对应的关系，对上述鉴定报告未予采信。根据法院委托作出的（2019）农种检报字第0066号检验报告，B种业公司生产、销售的“宜香优5979”号水稻和案涉品种权相同，故对A种业公司关于B种业公司生产、销售侵害其植物新品种繁殖材料的主张予以支持，判令B种业公司停止侵权、赔偿经济损失70万元和合理开支8万余元。B种业公司不服，提起上诉。最高人民法院二审认为，泸州市农业局行政执法过程中的检验报告与法院委托鉴定意见，并非针对同一种子批的检验，二者得出不同结论，相互之间并不冲突，泸州市农业

局行政执法中检验报告不能排斥法院委托鉴定意见，B种业公司关于“宜香优5979”未套牌“宜香优2115”，没有侵权行为的上诉主张不成立，故判决驳回上诉，维持原判。

[Judgment] In the first instance, Chengdu Intermediate People's Court held that the “Yixiang 5979” submitted for inspection in the identification reports (2018) N.Z.J.B. No. 69 and (2018) N.Z.J.B. No. 70 were from the inventory or sales outlets of B Seed Company, but not from the sales outlets where the notary public purchased. Unable to determine the correspondence among the seed submitted for inspection, the accused infringing seed and “Yixiangyou 2115”, the court did not accept the above identification reports. According to the Inspection Report (2019) N.Z.J.B. No. 0066 commissioned by the court, “Yixiangyou 5979” rice produced and sold by B Seed Company is the same as “Yixiangyou 2115”. Therefore, the court supported A Seed Company's claim that B Seed Company’s acts of producing and selling the propagating materials infringed on A Seed Company's new plant variety rights, and ruled that B Seed Company should cease the infringement and pay damages of RMB 700,000 for economic losses as well as over RMB 80,000 for reasonable expenses. Dissatisfied with the judgment, B Seed Company appealed. The Supreme People's Court held in the second instance that the inspection report in the administrative law-enforcement of the Agricultural Bureau of Luzhou City and the court-appointed

expert opinion were not inspections of the same batch of seed of the variety “Yixiangyou 5979”. For this reason, the inspection report in the administrative law enforcement of the Agricultural Bureau of Luzhou City could not exclude the court-appointed expert opinion as expressed in Inspection Report (2019) N.Z.J.B. No. 0066. B Seed Company's appeals that “Yixiangyou 5979” was not mislabeled as “Yixiangyou 2115” and that no infringement was established. The appeal was rejected and the original judgment was upheld.

【典型意义】在种子行政主管机关送检形成的检验报告与人民法院委托的检测机关作出的检测报告得出不同结论的情况下，采纳人民法院委托检测机关作出的检测结论，认定套牌侵权成立。权利人针对侵害其植物新品种权的行为可以采取行政举报和提起侵权诉讼等不同的维权手段，本案对不同程序中的鉴定报告间的关系进行了明确。行政主管部门根据举报，对被诉侵权人进行执法检查，抽检被诉侵权人的库存种子送检形成的检验报告，本身具有合法性。针对同一侵权行为在行政查处程序中形成的检验报告与民事侵权纠纷案件具有关联性，相关检验报告可以在民事侵权纠纷案件中作为证据使用。针对不同批种子的检验，不同检测机构得出不同的结论，不能认为检验结论之间存在冲突。在没有证据证明多份检测报告系针对同一种子批，且相关证据显示送检样本来源不同、生产日期不同时，应认定多份检测报告并非针对同一种子批的检测，其得出的不同结论相互之间并不冲突。法院委托检测机构作出的检测报告程序规范合法，应

予采纳。

[Comments] Under the circumstance where the seed inspection report provided by the administrative authority and the inspection report provided by the testing agency commissioned by the court reached different conclusions, the latter was adopted, and the infringement through mislabeling was established. The rights holder can take measures to safeguard his/her rights, such as administrative reporting and filing an infringement lawsuit, against acts that infringe on his/her rights. This case clarified the connections between identification reports in different procedures. The administrative authority, based on the report, conducted inspections of law enforcement against the accused infringer, and the inspection report formed by sampling the accused infringer's inventory seed has legitimacy. The inspection report formed during the administrative investigation and enforcement procedure for the infringing act is related with the case of civil disputes over infringement, and the relevant inspection report can be used as evidence in the case of civil disputes over infringement. Inspection reports on several batches of seed from various testing agencies may reach different conclusions, but it cannot be assumed that there is a conflict between the inspection conclusions. When there is no evidence to prove that multiple inspection reports are for the same batch of seed and relevant evidence shows that the samples submitted for inspection have

different sources and were produced on different dates, it should be determined that the multiple inspection reports were not for the same batch of seed and that the conclusions reached therein do not conflict with each other. On these grounds, the legality of testing procedure of the inspection report made by the testing agency commissioned by the court should be recognized, and the inspection report should be adopted.

案例 5：“SBS902”玉米植物新品种侵权纠纷案

Case 5: “SBS902” Maize Variety Infringement Case

Case 5:

https://ipc.court.gov.cn/zh-cn/news/view-1513.html

关键词：委托制种，代繁，举证责任转移

Key words: commissioned seed production, produce propagating materials on behalf of others, shifting the burden of proof

【案号(Case Number)】

二审：最高人民法院（2020）最高法知民终 428 号

Second instance: (2020) SPC IP Civil Final 428

一审：甘肃省兰州市中级人民法院（2019）甘 01 知民初168 号

First instance: (2019) Gan01 IP Civil 168

【基本案情】A 种业公司为玉米新品种“SBS902”的品种权人。C 村委会在该村六社、七社组织生产“SBS902”玉米杂交种 400 余亩，该生产行为由 B 种业公司委托，亲本

由B种业公司提供。A种业公司认为B种业公司为商业目的生产授权品种的行为侵害了其植物新品种权，C村委会明知B种业公司实施侵权行为而为其掩护，应承担连带责任，故诉请判令B种业公司停止侵权、赔偿损失，C村委会对损失承担连带赔偿责任。

[Case Brief] A Seed Company is the variety rights holder of the new maize variety “SBS902”. C Village Committee organized the production of “SBS902” maize hybrids on more than 400 mu (1 mu = 666.7 square meters) of land in the sixth and seventh groups of the village. The production was commissioned by B Seed Company who provided the parent seed. A Seed Company held that B Seed Company's production of granted varieties for commercial purposes constituted an infringement of its new plant variety rights, and C Village Committee should bear joint liability for assisting B Seed Company's infringing act. Therefore, A Seed Company filed a lawsuit, pleading the court to order B Seed Company to cease the infringement and compensate for the losses, and C Village Committee to bear joint liability for compensation for the losses.

【裁判结果】甘肃省兰州市中级人民法院一审认为，公证处在保全证据过程中对附近耕作及路上遇到的农户进行询问时，农户均陈述所在地属于观山口六组、七组，委托制种公司为B种业公司。该陈述与A种业公司委托代理人后期询问的其他农户，六组、七组组长及村委会主任的陈述相互吻合。B种业公司亦认可其在观山口村六组、七组制种的事

实，仅辩称在公证保全的地块并未委托制种，但并未提交证据证明在观山口村实际委托制种情况，故判令B种业公司停止侵权并赔偿经济损失50万元，C 村委会对经济损失承担连带赔偿责任。B种业公司不服，提出上诉。最高人民法院二审认为，B种业公司在一审中并未提交相应的证据证明其答辩所主张的事实，其二审提交的玉米种子生产合同等证据，并未明确种植的具体地块，无法证明B种业公司实际生产品种及其所主张的实际生产面积，且缺乏付款和结算证据以及亲本发放、种子收购花名册等附件佐证，同时作为一审共同被告的C村委会对于一审判决并未上诉，二审又不出庭应诉，B种业公司在二审提交的证据，不足以推翻一审法院认定的本案基本事实。故判决驳回上诉，维持原判。

[Judgment] Lanzhou Intermediate People's Court, held in the first instance that during the evidence preservation process, when the notary office asked nearby farmers encountered on the way about their farming, all farmers stated that the site of production belonged to the sixth and seventh groups of Guanshankou Village, and the seed production was commissioned by B Seed Company. This statement was consistent with the statements of other farmers, the leaders of the sixth and seventh groups, and the director of the village committee who were later interviewed by A Seed Company's authorized agent. B Seed Company also recognized the fact that it produced seed in the sixth and seventh groups of Guanshankou Village, but argued that it did not commission

seed production on the land where the notary office preserved evidence. However, B Seed Company did not submit evidence to prove the place of commissioned seed production in Guanshankou Village. Therefore, the court ordered B Seed Company to cease the infringement and pay damages of RMB 500,000 for economic losses and C Village Committee to bear joint liability for compensation for the economic losses. Dissatisfied with the judgment, B Seed Company appealed. The Supreme People's Court held in the second instance that B Seed Company did not submit corresponding evidence to prove the fact it claimed in the first instance. The evidence, such as the maize seed production contract, submitted in the second instance did not specifically identify the specific plots of land for planting, and could not prove the variety actually produced by B Seed Company and the actual production area claimed by B Seed Company. Moreover, there was no payment and settlement evidence, or supporting evidence such as the distribution of parent seed and the seed purchase roster. At the same time, as a co-defendant in the first instance, C Village Committee did not appeal against the first-instance judgment and did not appear to respond in the second instance. The evidence submitted by B Seed Company in the second instance was not sufficient to overturn the basic facts established by the court of first instance. Therefore, the appeal was rejected, and the original judgment was upheld.

【典型意义】本案对于植物新品种侵权纠纷中委托制种行为的侵权判定具有指导意义。不签订制种合同、选定代理人发放繁殖材料、通过间接方式给付制种费用等方式，是实践中非法代繁行为所采取的普遍手段。这类侵权行为隐蔽，品种权人往往难以收集有效的直接证据，也难以追究真正侵权人的法律责任。根据案件相关事实和证据，适时转移举证责任，对于一味否定侵权事实但不提供相关证据的当事人，推定侵权事实成立，是降低品种权人维权难度的关键。本案中，品种权人提交种子生产合同、公证书等初步证据以证明制种公司委托制种行为构成侵权，制种公司虽然否认但无法对涉嫌侵权品种种植地块的制种情况进行说明，且未提供上述地块的亲本发放凭证及种子收购花名册等予以佐证，应当认定其行为构成侵害品种权的行为，依法承担侵权责任。

[Comments] This case involved the commissioned seed production acts in disputes over infringement on new plant variety rights. Not signing a seed production contract, selecting an agent to distribute propagating materials, and indirectly paying seed production fees are common methods used in illegal commissioned seed production. These types of infringements are covert, and it is often difficult for the variety rights holder to collect direct and effective evidence and hold the true infringer legally responsible. Based on the relevant facts and evidence of the case, timely shifting the burden of proof and presuming the existence of infringement facts for parties who deny infringement but do not provide relevant evidence is key to

reducing the difficulty in the right protection by the variety rights holder. In this case, the variety rights holder submitted preliminary evidence such as seed production contracts and notarized documents to prove that the commissioned seed production acts of the seed production company constituted infringement. Although the seed production company denied the claim, it failed to account for the seed production in the plots where the disputed infringing varieties were produced or provide supporting evidence such as distribution certificates of parent seed and seed purchase rosters concerning the above plots. Therefore, its act should be deemed as infringement on the plant variety rights and the accused infringer should bear tort liability according to law.

案例 6：“南粳 9108”水稻植物新品种侵权纠纷案

Case 6: “Nanjing 9108"Rice Variety Infringement Case

Case 6:

https://ipc.court.gov.cn/zh-cn/news/view-1514.html

关键词：自繁自用，种植规模

Key words： self-propagation and self-use by farmers, the scale of planting

【案号(Case Number)】

二审：最高人民法院（2019）最高法知民终 407 号

Second instance: (2019) SPC IP Civil Final 407

一审：江苏省南京市中级人民法院（2018）苏 01 民初

1453 号

First instance: (2018) Su01 Civil 1453

【基本案情】A 种业公司为水稻新品种“南粳 9108”的独占实施许可人，有权以自己名义对侵害水稻“南粳 9108”植物新品种权的单位和个人追究法律责任。A 种业公司认为秦某未经许可擅自生产、销售“南粳 9108”水稻种子的行为侵害了其独占实施的被许可权，诉请判令秦某停止侵权并赔偿经济损失 50 万元。秦某辩称，其利用自留种子生产商品粮的行为属于法律规定的“农民自繁自用”情形，不构成对“南粳9108”水稻新品种权的侵害。

[Case Brief] A Seed Company is the exclusive licensee of the new rice variety “Nanjing 9108” and has the right to hold accountable the units and individuals who infringe on the rights to the new plant variety “Nanjing 9108” in its own name. Holding that Qin's unauthorized production and sale of “Nanjing 9108” rice seed constituted an infringement of its exclusive license rights, A Seed Company filed a lawsuit, pleading the court to order Qin to cease the infringement and pay damages of RMB 500,000 for economic losses. Qin argued that his use of the reserved seed to produce commercial grains fell within the scope of “self-propagation and self-use by farmers” as stipulated by law and thus did not constitute an infringement on the rights to the new rice variety “Nanjing 9108”.

【裁判结果】江苏省南京市中级人民法院一审认为，秦某通过土地流转，获得经转包的土地经营权达 973.2 亩，已

不是以家庭联产承包责任制的形式签订农村土地承包合同的农民，而是一种新型的农业生产经营主体。该类经营主体将他人享有品种权的授权品种用于生产经营活动的，应当取得品种权人的许可，否则构成侵权。故判令秦某停止侵权并赔偿经济损失。最高人民法院二审认为，秦某经营的土地面积高达900余亩，其在该面积土地上进行耕种、收获粮食后售出以赚取收益的行为，不再仅仅是为了满足其个人和家庭生活的需要，而是具有商业目的。从秦某享有经营权的土地面积、种植规模、产量以及用途来看，其已远远超出普通农民个人以家庭为单位、依照家庭联产承包责任制承包土地来进行种植的范畴，原审法院将其认定为一种新型农业生产经营主体，具有事实依据和法律依据。若允许秦某播种上述面积土地所使用的繁殖材料均系由自己生产、自己留种而无需向品种权人支付任何费用，无疑会给包括A种业公司在内的涉案品种权利人造成重大经济损失，损害其合法权益。由于秦某在其通过转包获得经营权的973.2亩土地上进行耕种，未经许可生产“南粳9108”水稻种子并留作第二年播种使用的行为，不属于法律规定的“农民自繁自用”情形，应当取得涉案品种权利人的同意，并向品种权人或经授权的企业或个人支付费用。因现有证据仅能证明秦某存在生产行为，不能证明其实施了销售侵权种子的行为，故对原审判决赔偿数额予以酌情调整。

[Judgment] Nanjing Intermediate People's Court, held in the first instance that Qin obtained the right to operate 973.2 mu (1 mu = 666.7 square meters) of land through land transfer and

sublease, and was no longer a farmer who signed a rural land contract under the household contract responsibility system. Instead, he was a new type of agricultural production and operation entity. If such entities use granted varieties of others, they should obtain the permission of the variety rights holder; otherwise, such unauthorized use constitutes an infringement. Therefore, the court ordered Qin to cease the infringement and compensate for economic losses. The Supreme People's Court held in the second instance that the area of the land Qin operated was over 900 mu, and his act of cultivating, harvesting and selling grain on the land for profits was no longer just to meet his personal and household needs, but for a commercial purpose. The land area that Qin has the right to operate, the scale of planting, the grain yield, and the purpose of producing grain have far exceeded the scope of farmers' planting under the household contract responsibility system. The court of first instance identified Qin as a new type of agricultural production and operation entity, which has a factual and legal basis. If Qin were allowed to use the propagating materials that are all produced and retained by himself on the above-mentioned land without paying any fees to the variety rights holder, rights holders of the involved variety including A Seed Company would definitely suffer significant economic losses and have their legitimate rights and interests damaged. As Qin engaged in cultivation on the 973.2 mu of land, to which he obtained the

operation right through a sublease, the act of producing “Nanjing 9108” rice seed without permission and retaining them for sowing in the second year does not fall within the scope of “farmers' self-propagation and self-use” stipulated by law. Therefore, Qin should obtain the permission of the variety rights holder and pay fees to the variety rights holder or authorized enterprises or individuals. As the existing evidence can only prove Qin's production act, but not that he has engaged in the sale of infringing seed, the amount of compensation in the original judgment should be adjusted accordingly.

【典型意义】本案进一步细化了“农民自繁自用”的适用条件，有助于解决司法实践中“农民”身份界定难、“自繁自用”行为界定难的问题，对准确适用“农民自繁自用授权品种的繁殖材料”具有指导意义。本案明确了“农民自繁自用”适用的主体应是以家庭联产承包责任制的形式签订农村土地承包合同的农民个人，不包括合作社、种粮大户、家庭农场等新型农业经营主体；适用的土地范围应当是通过家庭联产承包责任制承包的土地，不应包括通过各种流转方式获得经营权的土地；种子用途应以自用为限，除法律规定的可以在当地集贸市场上出售、串换剩余常规种子外，不能通过各种交易形式将生产、留用的种子提供给他人使用。本案中，被诉侵权人享有经营权的土地面积、种植规模、粮食产量以及收获粮食的用途足以表明其远远超出了农民个人以家庭为单位、依照家庭联产承包责任制承包土地来进行种植的范畴，不属于“农民自繁自用”的情形。

[Comments] This case further clarifies the application of “farmers”, “self-propagation and self-use”. This case ascertains that the subject applicable to “farmers' self-propagation and self-use” should be farmers who sign rural land contracts under the household contract responsibility system, and does not include new agricultural operation entities such as cooperatives, large-scale grain growers, and family farms. The scope of land applicable should be land contracted through the household contract responsibility system, and should not include land obtained through various transfer methods. The use of seed should be limited to self-use. Except for the legally stipulated sale or exchange of surplus seed on local markets, the produced and reserved seed cannot be provided for others through whatever forms of transactions. In this case, the area of land operated by the disputed infringer, the scale of planting, the grain yield, and the use of harvested grain were sufficient to show that the act went far beyond the scope of planting by farmers under the household contract responsibility system, and did not fall under the category of “farmers' self-propagation and self-use”.

案例 7：“丹霞红”梨植物新品种侵权纠纷案

Case 7: “Danxia Red”Pear Variety Infringement

Case 7:

https://ipc.court.gov.cn/zh-cn/news/view-1515.html

关键词：合法来源抗辩，权利用尽抗辩，种子数量

Key words: the legitimate source defense, exhaustion-of-rights defense, quantity of propagating materials

【案号(Case Number)】

二审：最高人民法院（2021）最高法知民终592号

Second instance: (2021) SPC IP Civil Final 592

一审：河南省郑州市中级人民法院（2020）豫01 知民初605号

First instance: (2020) Yu01 IP Civil 605

【基本案情】A研究所为梨树新品种“丹霞红”的品种权人，B种植园未经许可将其购买的梨树苗进行栽苗、出售，且经品种鉴定报告显示编号为2-7的梨树样品与“丹霞红”对照差异位点数为0。A研究所认为B种植园构成侵权，故诉请判令B种植园停止侵权并赔偿经济损失50万元。

[Case Brief] A Research Institute is the variety rights holder of the new pear variety “Danxia Red”. B Fruit Plantation plantedand sold the pear seedlings it had purchased without permission, and the variety identification report showed that the difference loci of comparison between the pear samples numbered 2-7 and “Danxia Red” was 0. Holding that B Fruit Plantation constituted an infringement of its rights to plant varieties, A Research Institute filed a lawsuit, pleading the court to order B Fruit Plantation to cease the infringement and pay damages of RMB 500,000 for economic losses.

【裁判结果】河南省郑州市中级人民法院一审认为，B

种植园在未经得 A 研究所许可的情况下，将其购买的梨树苗进行栽苗并出售，且经品种鉴定报告显示编号为 2-7 的梨样品与“丹霞红”对照差异位点数为 0，其行为侵害了 A 研究所享有的涉案品种权，构成侵权，应当承担相应的民事责任。据此判令 B 种植园停止侵权并赔偿 A 研究所经济损失 4 万元。最高人民法院二审认为，涉案梨树中部分是 B 种植园购买“丹霞红”品种苗木后，利用 5 年的梨树作砧木嫁接而来，结合B 种植园多次销售“丹霞红”品种苗木的行为及其销售数量，可以证明 B 种植园存在繁殖“丹霞红”品种的事实。 B 种植园未证明所购入的“丹霞红”苗木是经品种权人许可售出的，且其在本案中实施的不仅是销售行为，还存在对购入的“丹霞红”苗木进行进一步繁殖，并向他人销售从而获利的行为，显然侵害了品种权人的利益，应当认定属于侵权行为。故判决驳回上诉，维持原判。

[Judgment] Zhengzhou Intermediate People's Court, held in the first instance that B Fruit Plantation planted and sold pear seedlings it purchased without permission from A Research Institute, and the variety identification report showed that the number of differing loci between the pear samples numbered 2-7 and the control variety “Danxia Red” was zero, B Fruit Plantation’s acts constituted an infringement of the variety rights held by A Research Institute and it should bear corresponding civil liability. On these grounds, the court ordered B Fruit Plantation to cease the infringement and compensate A Research Institute for economic losses of RMB 40,000. The Supreme

People's Court held in the second instance that some of the pear trees involved in the case were obtained by B Fruit Plantation with the “Danxia Red” variety seedlings purchased and grafted onto 5-year-old pear trees as rootstocks. Combined with B Fruit Plantation's repeated sale of “Danxia Red” variety seedlings and the quantity of sales, it can be proven that B Fruit Plantation constituted the act of breeding the “Danxia Red” variety. B Fruit Plantation failed to prove that the purchased “Danxia Red” seedlings were sold with the permission of the variety rights holder. Moreover, in this case, B Fruit Plantation not only engaged in sales activity but also further bred the purchased “Danxia Red” seedlings and sold them to others for profit, which obviously infringed on the interests of the variety rights holder and should be deemed as infringement. Therefore, the appeal was rejected, and the original judgment was upheld.

【典型意义】本案对于植物新品种侵权纠纷中合法来源抗辩和权利用尽抗辩的审查认定具有指导意义。被诉侵权人应对其主张的合法来源、权利用尽等不侵权抗辩承担举证责任。对于此类抗辩应作严格审查。被诉侵权人销售“丹霞红”苗木的数量超出其购买数量，足以认定其存在繁殖行为，不能适用合法来源及权利用尽抗辩。品种权通过保护繁殖材料来保护品种权人利益，而品种权的繁殖材料具有繁殖子代的特性。因此，与其他知识产权领域相比，植物新品种领域的权利用尽原则要受到更多限制，对于存在进一步繁殖后销售的行为，不适用权利用尽抗辩，避免出现以权利用尽为名严重

影响品种权人利益的后果。

[Comments] This case involved legitimate source defense and exhaustion-of-rights defense in disputes over infringement on new plant variety rights. The accused infringer should bear the burden of proof for its defense of claims of no infringement including the legitimate source and exhaustion of rights. Such defenses should be strictly examined. The quantity of "Danxia Red" seedlings sold by the accused infringer exceeded the quantity purchased, which is sufficient to prove that it engaged in breeding activities. Therefore, the defense of the legitimate source and exhaustion of rights cannot be applied. Plant variety rights protect the interests of the variety rights holder by protecting the propagating materials, which are characterized in propagating offspring. Compared with other intellectual property fields, the exhaustion of rights doctrine in the field of new plant varieties is subject to more limitations. In the situation where the quantity of seedlings sold by the accused infringer exceeded the quantity of seedlings purchased, without evidence to show that the surplus seedlings are from others, the exhaustion-of-rights defense should not be applied, in order to avoid consequences that would seriously jeopardize the interests of the variety rights holder under the pretext of the exhaustion of rights.

案例 8："哈育 189"玉米植物新品种申请驳回复审行

政纠纷案

Case 8: “Hayu 189”Maize Variety Administrative Rejection Case

Case8:

https://ipc.court.gov.cn/zh-cn/news/view-1516.html

关键词：已知品种，品种审定，申请日

Key words: a known plant variety, variety approval, date of application

【案号(Case Number)】

二审：最高人民法院（2021）最高法知行终453号

Second instance: (2021) SPC IP Admin. Final 453

一审：北京知识产权法院（2019）京73行初1401号

First instance: (2019) Jing73 Admin. 1401

【基本案情】植物新品种复审委员会2019年1月17日作出《关于维持<哈育189品种实质审查驳回决定>的决定》，认定A种业公司于2015年6月29日提交“哈育189”玉米品种权申请时，“利合228”品种已于2015年4月14日公告初步审查合格，选择“利合228”品种作为本申请的近似品种符合《中华人民共和国植物新品种保护条例》规定。经原农业部植物新品种保护办公室前置审查，“哈育189”品种不符合《中华人民共和国植物新品种保护条例》关于授权的有关规定，A种业公司的复审理由不能成立，决定维持品种保护办公室作出的《哈育189品种实质审查驳回决定》，驳回A种业公司的复审请求。A种业公司不服，认为“利合228”在国内首次申请品种审定或品种权保护的时间均晚

于“哈育 189”，不能作为评价“哈育 189”特异性的近似品种，诉请判决撤销被诉决定，并判令植物新品种复审委员会重新作出决定。

[Case Brief] On January 17, 2019, the Re-examination Committee of New Plant Varieties issued The Decision to Uphold the Rejection of the Substantive Examination of the “Hayu 189” Variety, determining that when A Seed Company submitted the application for rights to the “Hayu 189” maize variety on June 29, 2015, the “Lihe 228” variety had already been preliminarily examined and approved on April 14, 2015, and that selecting the “Lihe 228” variety as a similar variety for this application met the requirements of the *Regulations on the Protection of New Plant Varieties of the People's Republic of China*. According to the prerequisite examination by the New Plant Varieties Protection Office of the Ministry of Agriculture, it was determined that the “Hayu 189” variety did not meet the relevant regulations for authorization under the Regulations on the Protection of New Plant Varieties, and A Seed Company's grounds for a re-examination were not valid. Re-examination Committee of New Plant Varieties decided to uphold *The Decision to Reject the Substantive Examination of the “Hayu 189” Variety* made by the New Plant Varieties Protection Office and dismiss A Seed Company's application for re-examination. Dissatisfied with the decision. A Seed Company held that “Lihe 228” was not a suitable variety to evaluate the distinctness of

“Hayu189”, because the date of on which “Lihe 228” was first applied for variety approval or variety rights protection in China was later than that of “Hayu 189”. A Seed Company filed a lawsuit pleading the revocation of the disputed decision and an order for the Re-examination Committee of New Plant Varieties to make a new decision.

【裁判结果】北京知识产权法院一审认为，申请品种权的植物新品种是否具备特异性，其比较对象是递交申请以前的已知植物品种。“利合 228”品种权初审合格公告时间在“哈育 189”递交品种权申请之前，构成“哈育 189”品种权申请递交前已知的植物品种，可以作为判断“哈育 189”品种是否具有特异性的比较对象。本案品种权申请针对的是“哈育 189”，其何时申请品种审定对本案已知植物品种的判断不产生影响。综上，被诉决定选择“利合 228”作为“哈育 189”品种权申请的近似品种，符合法律规定。在此基础上，“哈育 189”品种并未明显区别于其递交申请以前已知的植物品种“利合 228”，被诉决定关于“哈育 189”品种不具备特异性的认定结论正确，故判决驳回 A 种业公司的诉讼请求。最高人民法院二审认为，“哈育 189”品种在 2015年 6 月 29 日申请植物新品种权时，“利合 228”品种已经完成了品种权申请初审，被诉决定将“利合 228”玉米品种作为“哈育 189”品种权申请日之前的已知品种，就其相关特征、特性进行测试，与申请品种进行性状对比，于法有据。根据鉴定，“哈育 189”“利合 228”有差异性状，但差异不显著，且（2018）甘民终 695 号民事判决已认定，“利合 228”

与“哈育 189”属于同一玉米品种，因此申请品种权的“哈育 189”不具有明显区别于已知品种“利合 228”的性状，不具备特异性，被诉决定和原审判决认定并无不当。故判决驳回上诉，维持原判。

[Judgment] Beijing Intellectual Property Court held in the first instance that the comparison object for determining the distinctness of the new plant variety seeking plant variety rights protection should be the known plant varieties before the plant variety rights application was submitted. As the the notification of passing priliminary examination for the “Lihe 228” variety rights was issued before the submission of the application for rights to the “Hayu 189” variety, which made the “Lihe 228” variety a known plant variety to the “Hayu 189” variety, “Lihe 228” could be used as a comparison object to determine whether the “Hayu 189” variety has distinctness. The subject of the application for plant variety rights in this case is the “Hayu 189” variety, and the date of its application for variety approval did not affect the determination of the known plant varieties herein. In conclusion, the decision to select “Lihe 228” as the known variety for the application for plant variety rights to the “Hayu 189” variety was in accordance with the law. On this basis, it was determined that the “Hayu 189” variety was not significantly distinctive from the known plant variety “Lihe 228”, and the disputed decision that the “Hayu 189” variety did not have distinctness was correct. Therefore, the Beijing

Intellectual Property Court rejected A Seed Company's claim. The Supreme People's Court held in the second instance that when the “Hayu 189” variety applied for plant variety rights on June 29, 2015, the “Lihe 228” variety had already completed the preliminary examination of application for plant variety rights. The disputed decision is justified in law to regard the “Lihe 228” variety as a known variety to “Hayu 189” variety for comparison testing of relevant characteristics and features. According to the identification, the differences in traits between “Hayu 189” and “Lihe 228” are not significant. Moreover, it was already determined in the the No. 695[2018] final civil judgment of High People’s Court of Gansu Province that “Lihe 228” and “Hayu 189” are the same variety. Therefore, “Hayu 189” does not have significant differences in traits from the known variety “Lihe 228” and thus does not have distinctness. The disputed decision and the original judgment are deemed appropriate. Therefore, the appeal was rejected, and the original judgment was upheld.

【典型意义】本案是植物新品种授权行政纠纷，判决阐明了植物新品种特异性判定中的已知品种的认定问题。品种特异性要求申请品种权的植物新品种应当明显区别于在递交申请以前已知的植物品种。因此，判断的基准时间是申请品种权的申请日，而非申请品种审定的时间。在特异性的判定中，确定在先的已知品种的目的是为了固定比对对象，即比较该申请品种与递交申请日以前的已知品种是否存在明

显的性状区别。申请植物新品种权保护的品种在申请日之前进行品种审定、品种推广的时间，对判断其是否具备新颖性具有意义，但与选择确定作为特异性比较对象的已知品种并无关联，对特异性判断不产生影响。

[Comments] This case is an administrative dispute over the granting of new plant variety rights. The judgment clarifies the issue of identifying known varieties in the determination of the distinctness of new plant varieties. In terms of variety distinctness, it is stipulated that the plant variety applying for plant variety rights should be significantly distinctive from known plant varieties before the application is submitted. The base date for determination is the application date for plant variety rights, rather than the application date for approval of the variety. In the distinctness review, the determination of known varieties is to determine the comparison object, so as to compare whether the variety applying for plant variety rights is significantly different from the known varieties in terms of traits. The application date for approval of the variety and the date when the variety is promoted has significance in determining whether this variety has novelty, but it has no affect in determination whether another variety could be used as a known variety.

案例 9：A 农业公司、王某某生产、销售伪劣产品案

Case 9: Criminal Case of Producing and Marketing Fake or

Substandard Commodities by A Agricultural Company and Wang

Case 9:

https://ipc.court.gov.cn/zh-cn/news/view-1518.html

关键词：生产、销售伪劣产品罪，种子质量，损失情况

Key words： the crime of producing and selling shoddy products, seed quality, economic loss

【案号(Case Number)】

一审：甘肃省酒泉市肃州区人民法院（2020）甘 0902 刑初160 号

First instance: (2020) Gan0902 Criminal 160

【基本案情】被告人王某某系 A 农业公司的法定代表人。2017 年，该公司将自己繁育的种子及从他人处收购的辣椒籽进行加工、包装后，以“豫椒王”品种向甘肃省酒泉市肃州区种子管理站申请生产经营备案，后因质量问题未能申请成功。2018 年 12 月，该公司将“豫椒王”辣椒种子销售给 B 农业公司 3500 罐，销售金额共计 245 万元。B 农业公司将其中 1626 罐“豫椒王”辣椒种子委托酒泉市肃州区农户种植。2019 年7 月，农户种植该辣椒种子后出现大量杂株，辣椒产量和质量均受到严重影响。经鉴定，该辣椒种子的纯度为 63.4%，纯度远低于国家标准 95%和罐体标识 96%，认定为劣种子。经测产，该辣椒平均亩产 1783.2 公斤，其中形成商品价值的辣椒 1382.2 公斤，远低于罐体标识的亩产 3000公斤至4000 公斤。案发后，王某某主动向公安机关投案。

[Case Brief] The defendant Wang is the legal

representative of A Agricultural Company . In 2017, A Agricultural Company processed and packaged chili seed bred by itself and chili seed purchased from others, and applied for production and operation registration with the “Yu Pepper King” variety with the Seed Management Station of Suzhou District of Jiuquan City of Gansu Province. Due to quality issues, the application was rejected. In December 2018, A Agricultural Company sold 3,500 cans of “Yu Pepper King” chili seed to B Agricultural Company, with a total sales amount of RMB 2.45 million. B Agricultural Company entrusted 1,626 cans of “Yu Pepper King” chili seed to farmers in Suzhou District, Jiuquan City, Gansu Province for planting. In July 2019, after planting the chili seed, the farmers found a large number of weed, which severely affected the yield and quality of the chili. According to the identification, the purity of the chili seed was 63.4%, far lower than the national standard of 95% and the figure of 96% as labeled on the can. The chili seed were identified as inferior seed. According to yield measurement, the average yield of the chili was 1,783.2 kilograms per mu (1 mu = 666.7 square meters), of which 1,382.2 kilograms were of commercial value, far lower than the yield of 3,000 to 4,000 kilograms per mu as indicated in the can label. After the incident, Wang voluntarily surrendered to the public security authority.

【裁判结果】甘肃省酒泉市肃州区人民法院经审理认为，被告单位A农业公司、被告人王某某以不合格产品冒充

合格产品，销售金额245万元，其行为已构成生产、销售伪劣产品罪。王某某具有自首情节，依法可减轻处罚。王某某归案后认罪态度好，有悔罪表现，依法可酌情从轻处罚。据此，以生产、销售伪劣产品罪判处被告单位A农业公司罚金二百四十五万元；判处被告人王某某有期徒刑十一年，并处罚金一百二十三万元。

[Judgment] After hearing the case, Suzhou Primary People's Court, Jiuquan City, Gansu Province held that the defendant A Agricultural Company and the defendant Wang had marketed substandard products as up-to-standard ones, with a total sales amount of RMB 2.45 million. Such acts constituted the crime of producing and selling shoddy products. Wang had the circumstances of voluntarily surrendering to the authorities, which, according to law, could lead to a lenient punishment. After surrendering to the authorities, Wang had a good attitude toward admission of guilt, showed remorse, and therefore, could be punished leniently according to law. Based on this, the defendant A Agricultural Company was convicted of the crime of producing and selling shoddy products and was fined RMB 2.45 million. The defendant Wang was sentenced to fixed-term imprisonment of 11 years and fined RMB 1.23 million.

【典型意义】近年来，涉及经济作物种子的犯罪案件日益增加，不仅关系到农民增收的“钱袋子”，也关系到人民群众的“菜篮子”。被告单位和被告人明知涉案辣椒种子质量不合格，在辣椒种子包装上虚假标注亩产、纯度等重要指标，

以不合格种子冒充合格种子销售，并给相关企业和农户造成经济损失，对此类犯罪应依法从严惩处。实践中，生产、销售伪劣种子案件往往因受制于生产农时、土壤能力、种植水平、天气状况等复杂因素，很多案件难以对生产遭受的损失情况作出准确认定，也就难以以生产、销售伪劣种子罪追究被告人的刑事责任。本案中，经相关农业部门测产，造成辣椒减产除了涉案种子原因外，还存在农户移栽时间晚、种植密度大，以及天气影响等因素，因此办案机关未能对农户生产遭受损失情况作出认定。在此情况下，本案依法适用生产、销售伪劣产品罪定罪处罚。

[Comments] In recent years, criminal cases involving economic crop seed have grown in number, which affects not only farmers' incomes but also public food safety. Aware that the chili seed involved in the case were substandard, the defendants falsely labeled the package of chili seed with important indicators such as yield and purity, marketed substandard seed as up-to-standard ones, and caused economic losses to related enterprises and farmers. Such crimes should be punished severely in accordance with the law. Influenced by complex factors such as the agricultural season, soil capacity, planting capacity, and weather conditions, losses to production in such cases are difficult to accurately determine, making it hard to hold the defendant criminally liable for the crime of producing and marketing substandard seed. In this case, according to the yield measurement conducted by the relevant

agricultural departments, in addition to seed quality, there were also factors such as late transplanting by farmers, high planting density, and weather impact that caused a reduction in chili yield. The investigating authorities were unable to determine the losses suffered by farmers in production. In this situation, the crime of producing and selling shoddy products should be applied for conviction and punishment in accordance with the law.