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China's First Data Resources Tribunal Officially Set up

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The EDPB Adopts *Guidelines on the Calculation of Administrative Fines*

欧盟数据保护委员会通过《执法领域面部识别技术使用指南》



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The EDPB Adopts Guidelines on the Use of Facial Recognition Technology in the Area of Law Enforcement

荷兰消费者和竞争监管机构为在线平台制定新的指导方针

The Netherland's Authority for Consumers and Markets Sets New Guidelines for Online Platforms

美国法官启动首起刑事加密货币制裁案

US Judge Launches the First Criminal Cryptocurrency Sanctions Case

新加坡个人数据保护委员会发布《关于在安全应用中负责任地使用生物识别数据的指南》

The Personal Data Protection Commission Singapore Issues New Guide on the Responsible Use of Biometric Data in Security Applications

谷歌因患者数据交易面临集体诉讼

Google Faces Class Action Lawsuit Over Patient Data Deal

西班牙数据保护局因谷歌非法转移个人数据并阻碍行使删除权对其处以1000万欧元罚款

Spanish Data Protection Authority Fines Google EUR 10 Million for Unlawfully Transferring Personal Data and Hindering to Facilitate Right to Erasure

知识产权 Intellectual Property

法定最高额500万元，驰名商标“好太太”被侵权再获司法保护

The maximum judicial damages of RMB 5 million was awarded, the well-known trademark "HOTATA" got judicial protection again

最高人民法院发布了《最高人民法院关于涉及发明专利等知识产权合同纠纷案件上诉管辖问题的通知》

The Supreme People's Court (SPC) issued the Notice of the Supreme People's Court on the Jurisdiction of Appeals in Contract Disputes Involving Invention Patents and Other Intellectual Property Rights

知产侵权诉讼中首例认定股东违法减资并由股东承担补充连带责任案



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The first case in intellectual property infringement litigation that shareholders of defendant illegally reduced the registered capital, and shall bear supplementary liability

双务合同当事人互负给付义务，最高法知产法庭作出首例对待给付判决

The Intellectual Property Tribunal of the Supreme People's Court made the first judgement of reciprocal payment

全额判赔530万，生产商和销售商作为共同被告是否构成必要共同诉讼的裁判标准

RMB 5.3 million was awarded, the judgement criteria on whether the manufacturer and seller as co-defendants constitute necessary joint litigation

最高法1号案：将同业者的工程案例图片替换商标后作为自身案例宣传系不正当竞争

Case No. 1 of Supreme People's Court in 2022: Replacing the competitor's trademark on pictures of the construction projects and promoting them as its own projects constituted unfair competition

欧洲专利局：利用电解槽制氢的技术正在兴起

European Patent Office: Hydrogen production with electrolyzers is emerging

国际商标协会发布欧洲商标与补充权利课税报告

International Trademark Association Releases Report on the Taxation of Trademarks and Complementary Rights in Europe

苹果侵犯PanOptis 4G LTE专利被判赔偿3亿美元

Apple awarded USD 300 million for infringing PanOptis 4G LTE patent

立方竞争法周报 Weekly Competition Law News

国家市场监督管理总局部署开展公平竞争审查制度创新试点工作

2022年5月19日，国家市场监督管理总局（“市场监管总局”）发布公告，已组织部署在天津、吉林、上海等九个省（市）开展公平竞争审查制度创新试点工作，具体包括信息化建设、举报处理、重大政策措施会审、公平竞争指数四项试点，涵盖公平竞争审查实施的全链条、全环节，进一步创新公平竞争审查实施机制，促进全国统一大市场建设。（[查看更多](#)）

The State Administration for Market Regulation Launches an Innovative Pilot Program on Fair Competition Review System

On May 19, 2022, the State Administration for Market Regulation (“SAMR”) issued an announcement, stating that it has organized and launched an innovative pilot program on the fair competition review system in nine provinces (or province-level municipalities) including Tianjin, Jilin and Shanghai. The pilot program includes four pilot projects, namely information construction, reporting handling, joint review of major policies and measures as well as fair competition index, covering the entire chain of fair competition review implementation. This program will further innovate the fair competition review implementation mechanism, and promote the construction of a unified national market. ([More](#))

国家市场监督管理总局对知网涉嫌垄断行为立案调查

2022年5月13日，市场监管总局发布公告称，根据前期核查，依法对知网涉嫌实施垄断行为进行立案调查。随后，知网母公司同方股份有限公司发布公告，表示已收到市场监管总局的反垄断案件调查通知书，将坚决支持并全力配合上述调查工作，将全面自查，彻底整改，依法合规经营。此前，知网通过低价收录、高价出售、签订独家协议等方式获取高额利润的行为引起了广泛讨论。（[查看更多](#)）

SAMR Carries out Investigation into CNKI's Monopolistic Behavior

On May 13, 2022, SAMR issued a statement, stating that based on previous inspections, it had launched an investigation in accordance with law into CNKI's monopolistic behavior. Subsequently, Tongfang Co., Ltd., the parent company of CNKI, issued an announcement stating that it had received the notice of the anti-monopoly investigation from SAMR and would fully support and cooperate with SAMR's investigation. It would conduct a comprehensive self-examination and thorough rectification, and would operate in compliance with laws and regulation. Previously, it had aroused widespread discussion that CNKI obtained extremely high profits through “Buy Low, Sell High” strategy, exclusive agreements and other methods. ([More](#))

因“抢跑”被罚2800万欧元，欧盟普通法院驳回佳能上诉

2022年5月18日，欧盟普通法院驳回佳能公司（“佳能”）因在收购中未能遵守合并控制规则而被欧盟委员会罚款2800万欧元的上诉请求。2016年，佳能通过专门创建的证券化工具，分两步收购了东芝公司的全资子公司东芝医疗设备公司（“东芝医疗”）。2019年，欧盟委员会认定，佳能通过临时交易，部分实施了对于东芝医疗的单一集中收购，违反了停滞义务和通知义

务，因此对其处以两笔总额为2800万欧元的罚款。随后佳能提出上诉，要求撤销该决定，但被法院驳回。 ([查看更多](#))

The General Court of EU Dismisses the Action Brought by Canon, Which Was Fined EUR 28 Million over Gun-Jumping

On May 18, 2022, the General Court of the European Union dismissed the action brought by Canon Inc. (“Canon”), which was fined EUR 28 million by the European Commission for failure to comply with merger control rules in its acquisition. In 2016, Canon took over Toshiba Medical Systems Corporation (“TMSC”), a wholly-owned subsidiary of Toshiba Corporation, and that acquisition was carried out in two steps, through a securitization vehicle created specifically for that purpose. In 2019, the European Commission found that by proceeding with the interim transaction, Canon had partially implemented the single concentration consisting of the acquisition of TMSC and had thereby infringed the standstill obligation and the obligation to notify. For that reason, the European Commission imposed two fines totaling EUR 28 million. Then Canon brought an action for annulment of that decision, which was dismissed by the court. ([More](#))

英国竞争上诉法庭批准对高通滥用市场支配地位行为的集体诉讼

2022年5月17日，英国竞争上诉法庭 (“CAT”) 批准英国消费者协会的申请，合并对高通公司 (Qualcomm Incorporated, “高通”) 的独立索赔，进行集体诉讼。这些独立索赔指控高通违反《1999年竞争法》第18条第2章和《欧盟运作条约》第102条规定，滥用市场支配地位向智能手机制造商收取过高的芯片专利许可使用费。这些专利许可使用费由智能手机制造商转嫁给消费者，致使消费者因更高昂的产品价格和/或更低的产品质量遭受损失。 ([查看更多](#))

The UK Competition Appeal Tribunal Approves Class Action against Qualcomm for Abuse of Dominant Market Position

On May 17, 2022, the Competition Appeal Tribunal (“CAT”) approved the application by Consumers’ Association for a collective proceedings order to combine standalone claims alleging that the Qualcomm Incorporated (“Qualcomm”) has abused its dominant position in breach of the Chapter II prohibition in s.18 of the *Competition Act 1999* and Article 102 of the *Treaty on the Functioning of the European Union* in relation to the royalties charged by Qualcomm to smartphone manufacturers for the licensing of its patents for chipsets. The standalone claims are for loss suffered by consumers in the form of more expensive and/or lower quality products, alleged to have been passed on to them by smartphone manufacturers who paid inflated royalties for the use of Qualcomm’s patents. ([More](#))

六家大型银行将支付6450万美元和解金以解决反垄断指控

2022年5月16日，据媒体报道，瑞士瑞信银行、德意志银行、香港上海汇丰银行、荷兰国际银行、花旗银行和摩根大通银行六家银行同意签署和解文件，支付6450万美元（约合人民币4.4亿元）的和解金，以解决针对他们的反垄断指控。这些指控涉及银行合谋垄断操纵新加坡广泛用于抵押贷款和其他银行产品的基准利率。 ([查看更多](#))

Six Major Banks to Pay USD 64.5 Million to Settle Antitrust Allegation

On May 16, 2022, according to media report, six major banks, including Credit Suisse, Deutsche Bank, The Hongkong and Shanghai Banking Corporation Limited, ING Bank Citibank and JPMorgan Chase

& Co. have agreed to sign the settlement filing and pay USD 64.5 million (approximately CNY 440 million) to resolve the antitrust allegations that they conspired to rig benchmark Singapore interest rates, which is widely used for pricing mortgages and other banking products. ([More](#))

欧洲法院就认定意大利电力相关市场支配地位提出裁判标准

近日，欧洲法院针对意大利电力市场自由化过程中出现的限制竞争的排他性行为，对经营者市场支配地位认定标准作出判决。法院认为：（1）消费者福利是限制经营者滥用市场支配地位的最终目标；（2）竞争执法机构无需证明经营者存在排除限制竞争的主观意图，但证明存在该意图的证据可纳入认定滥用市场支配地位的考虑因素；（3）经营者应避免使用其依赖此前垄断地位而获得的关键竞争资源；（4）母公司应对子公司的滥用行为负责，除非母公司可提供证据证明子公司独立经营。（[查看更多](#)）

The Court of Justice of EU Sets out Criteria for Defining a Dominant Position of Italian Electricity Market

Recently, the Court of Justice of European Union (“ECJ”) made judgement on the criteria for defining the dominant position of undertaking in view of the exclusionary behaviors restricting competition in the process of liberalization of the Italian electricity market. The court has observed that: (1) The well-being of consumers must be regarded as the ultimate objective to penalize abuse of a dominant position; (2) The competition authority is not required to demonstrate that the undertaking has the intention of excluding or restricting competition, but the evidence of such intention is a factor that may be taken into account for abuse of a dominant position; (3) The undertaking must refrain from using key competition resources available to it on account of its former monopoly; (4) When a dominant position is abused by subsidiaries belonging to one unit, that unit, as the parent company, is also liable for that abuse, unless the parent company shows that its subsidiaries were acting independently. ([More](#))

英国零售商针对沃尔沃、梅赛德斯-奔驰等卡车制造商固定价格提起诉讼

近日，据媒体报道，英国的几家主要零售商在伦敦对沃尔沃、梅赛德斯-奔驰等卡车制造商提起反垄断诉讼。该诉讼与2016年和2017年欧盟委员会的两项罚款决定有关。由于这些卡车制造商在长达14年的时间内串通实施固定价格行为，欧盟委员会对这些公司处以巨额罚款。提起诉讼的英国零售商在公告中称，在欧盟委员会决定所涵盖的期间中，卡车价格被固定在缺乏竞争的水平，他们的卡车业务因此而受到损害。（[查看更多](#)）

UK Retailers Sue Truck Makers Including Volvo and Mercedes-Benz over Alleged Price Fixing

Recently, according to media report, several major UK retailers filed an antitrust in London against Volvo and Mercedes-Benz Group AG, among other truck makers. The suit is connected with two 2016 and 2017 European Commission decisions that issued the truck makers with hefty fines for colluding to fix prices over 14 years across. In a statement issued by the British retailers who filed the lawsuit, they claimed that during the period covered by the European Commission decisions, their truck business suffered harm as a result of the prices of those trucks being set at uncompetitive levels. ([More](#))

网络安全与数据合规 Cybersecurity and Data Protection

工信部2022年规章制定工作计划：《电信和互联网用户个人信息保护规定（修订）》列入年内起草项目

2022年5月17日，工业和信息化部向社会公布2022年规章制定工作计划。其中《电信和互联网用户个人信息保护规定（修订）》（“《规定》”）被列入十项年内完成研究起草任务的项目之一。《规定》于2013年9月开始施行，是国内首个聚焦个人信息保护的部门规章。随着民法典、个人信息保护法的出台，《规定》中的一些条款已不再符合当下电信和互联网行业的个人信息保护需求。比如，《规定》仅对个人信息的收集、使用、储存做出规定，《个人信息保护法》则对个人信息的收集、存储、使用、加工、传输、提供、公开、删除等处理活动均作出详细规定。（[查看更多](#)）

The Ministry of Industry and Information Technology's 2022 Working Plan for the Formulation of Regulations: Regulation on the Protection of Personal Information of Telecommunication and Internet Users (Revision) Included

On 17 May 2022, the Ministry of Industry and Information Technology announced its working plan for the formulation of regulations, in which the *Regulation on the Protection of Personal Information of Telecommunication and Internet Users (Revision)* (“Regulation”) was listed as one of the ten research and drafting projects to be completed within this year. The Regulation came into force in September 2013 and was the first domestic departmental regulation focusing on personal information protection. With the promulgation of the *Civil Code* and the *Personal Information Protection Law*, some articles in the Provision no longer meet the needs of current personal information protection in the telecommunications and Internet industries. For example, the Regulation only stipulate the collection, use and storage of personal information, while the *Personal Information Protection Law* covers all the detailed stipulations on the collection, storage, use, processing, transmission, provision, disclosure, deletion and other processing activities of personal information. ([More](#))

全国政协召开“推动数字经济持续健康发展”专题协商会

2022年5月17日，中国人民政治协商会议全国委员会在京召开专题协商会，围绕“推动数字经济持续健康发展”进行协商议政。中共中央政治局常委、全国政协主席汪洋在会上强调，要认真学习领会习近平总书记关于发展数字经济的重要论述，科学研判形势，增强发展信心，辩证看待和统筹把握发展和安全的关系，不断做强做优做大数字经济，推动高质量发展。（[查看更多](#)）

The National Committee of the Chinese People's Political Consultative Conference Holds Consultation Meeting on Promoting the Sustainable and Healthy Development of Digital Economy

On 17 May 2022, the National Committee of the Chinese People's Political Consultative Conference held a special consultation meeting in Beijing to conduct consultations and discussions on “promoting the sustainable and healthy development of the digital economy”. Wang Yang, Member of the Standing Committee of the Political Bureau of the CPC Central Committee and Chairman of the National Committee of the Chinese People's Political Consultative Conference, emphasized at the meeting that it is

necessary to earnestly understand General Secretary Xi Jinping's important comments on the development of the digital economy, scientifically study the situation, enhance confidence of development, as well as dialectically view and coordinate the relationship between development and security, to strengthen, optimize and expand the digital economy, and to promote high-quality development. ([More](#))

银保监会：建立消费者个人信息保护机制，保护消费者信息安全权

2022年5月19日，中国银行保险监督管理委员会（“银保监会”）发布《银行保险机构消费者权益保护管理办法（征求意见稿）》（“《管理办法》”），向社会公开征求意见。《管理办法》要求，银行保险机构应当建立消费者个人信息保护机制，完善内部管理制度、分级授权审批和内部控制措施，对消费者个人信息实施全流程分级分类管控。 ([查看更多](#))

The CBIRC: Establish a Consumers' Personal Information Protection Mechanism to Protect Consumers' right of Information Security

On 19 May 2022, the China Banking and Insurance Regulatory Commission (“CBIRC”) issued the *Administrative Measures for the Protection of Consumers' Rights and Interests of Banking and Insurance Institutions (Draft)* (“Administrative Measures”) to solicit public opinions. The Administrative Measures require that banking and insurance institutions shall establish consumers' personal information protection mechanisms, improve systems of internal management, hierarchical authorization approval and internal control measures, to implement full-process, hierarchical and classified management and control of consumers' personal information. ([More](#))

中共中央办公厅、国务院办公厅发布《关于推进实施国家文化数字化战略的意见》

2022年5月22日，中共中央办公厅、国务院办公厅印发了《关于推进实施国家文化数字化战略的意见》（“《意见》”）。《意见》明确，到“十四五”时期末，基本建成文化数字化基础设施和服务平台，形成线上线下融合互动、立体覆盖的文化服务供给体系。到2035年，建成物理分布、逻辑关联、快速链接、高效搜索、全面共享、重点集成的国家文化大数据体系，中华文化全景呈现，中华文化数字化成果全民共享。 ([查看更多](#))

The General Office of the Central Committee of CPC and the General Office of the State Council Issue the Opinions on Promoting the Implementation of the National Cultural Digitalization Strategy

On 22 May 2022, the General Office of the Central Committee of the CPC and the General Office of the State Council issued the *Opinions on Promoting the Implementation of the National Cultural Digitalization Strategy* (“Opinions”). The Opinions stated that by the end of the “Fourteenth Five -Year Plan” period, the cultural digital infrastructure and service platform would be basically built to form an online and offline interaction and multidimensional cultural service supply system. By 2035, a national cultural big data system with physical distribution, logical association, rapid linking, efficient search, comprehensive sharing and focused integrating would be built, to present a panoramic view of Chinese culture and the achievements of a digital Chinese culture would be shared by people in the whole nation. ([More](#))

国内首家数据资源法庭正式成立

2022年5月18日，温州市瓯海区人民法院数据资源法庭正式揭牌设立，这是国内设立的首个以受理数据资源案件为核心业务的专业法庭。该数据资源法庭的成立，旨在推动数据要素、优质企业、创新力量集聚，为打造数据产业集群新优势提供司法保障，以及为全省、全国司法审判提供基层探索经验。 ([查看更多](#))

China's First Data Resources Tribunal Officially Set up

On 18 May 2022, the Data Resources Tribunal of the People's Court in Ouhai District Wenzhou City was officially set up, which is the first professional court in China to accept data resource cases as its core business. The establishment of the Data Resources Tribunal aimed to promote the gathering of data elements, high-quality enterprises, and innovation forces, to provide judicial guarantees for creating new advantages of data industry clusters, and to provide grassroots exploration experience for the province and national judicial trials. ([More](#))

北京市通信管理局开展电信和互联网行业网络与数据安全检查工作

2022年5月18日，北京市通信管理局发布《关于开展2022年电信和互联网行业网络与数据安全工作的通知》（“《通知》”），将组织专业技术机构通过访谈、资料查阅、现场技术抽测等方式对北京地区电信和互联网行业开展网络与数据安全检查工作，重点聚焦关键信息基础设施和重要信息系统的网络安全、数据安全与个人信息保护工作落实情况。 ([查看更多](#))

The Beijing Municipal Communications Administration Carries out the Telecom and Internet Industry Network and Data Security Inspection

On 18 May 2022, the Beijing Municipal Communications Administration issued the *Notice on Carrying out the Telecom and Internet Industry Network and Data Security Inspection 2022* (“Notice”), stating it will organize professional technical institutions to conduct network and data security inspection on Beijing's telecommunications and Internet industries through interviews, data inspection, and on-site technology drawing, focusing on the network security, data security and personal information protection of key information infrastructures and important information systems. ([More](#))

欧盟理事会批准通过《数据治理法案》

2022年5月16日，继欧洲议会之后，欧洲理事会批准通过《数据治理法》（“DGA”），以促进数据的可用性，建立使用数据创造和研究创新性服务产品的可信赖环境。DGA将建立强大的机制以推动特定领域受保护公共部门数据的再利用，增加对数据中介服务的信任，并在整个欧盟范围提倡数据利他主义。新规则将在法案生效后15个月后正式适用。 ([查看更多](#))

The European Council Approves Data Governance Act

On 16 May 2022, after the European Parliament, the European Council approved the *Data Governance Act* (“DGA”) to promote the availability of data and build a trustworthy environment to facilitate their use for research and the creation of innovative new services and products. The DGA will set up robust mechanisms to facilitate the reuse of certain categories of protected public-sector data, increase trust in data intermediation services and foster data altruism across the EU. The new rules will apply 15 months after the entry into force of the regulation. ([More](#))

欧盟数据保护委员会通过新的《罚款计算指南》

2022年5月16日，欧洲数据保护委员会（“EDPB”）通过新的《关于行政罚款的计算指南》（“《指南》”），以统一各国数据保护机构（“DPA”）的计算方法。《指南》包括计算罚款的统一“起算点”，在此考虑三个要素：侵权行为的性质分类、侵权的严重性和企业的营业额。欧洲经济区（“EEA”）内的各国DPA将遵循相同的方法来计算罚款，这将进一步提高各国DPA罚款实践的协调度和透明度。各国DPA仍在确保每笔罚款有效、相称且具有预防作用方面发挥重要作用，个案的特殊情况始终应作为案件的决定性考虑因素。（[查看更多](#)）

The EDPB Adopts Guidelines on the Calculation of Administrative Fines

On 16 May 2022, the European Data Protection Board (“EDPB”) adopted new *Guidelines on the Calculation of Administrative Fines* (“Calculation Guidelines”), harmonizing the methodology data protection authorities (“DPA”) use. The Calculation Guidelines include harmonized “starting points” for the calculation of a fine. Hereby, three elements are considered: the categorization of infringements by nature, the seriousness of the infringement and the turnover of a business. DPAs across the European Economic Area (“EEA”) will follow the same methodology to calculate fines. This will boost further harmonization and transparency of the fining practice of DPAs. The individual circumstances of a case must always be a determining factor and DPAs have an important role in ensuring that each fine is effective, proportionate and dissuasive. ([More](#))

欧盟数据保护委员会通过《执法领域面部识别技术使用指南》

2022年5月16日，EDPB通过《关于在执法领域使用面部识别技术的指南》。《指南》为欧盟和成员国立法者以及执法机构提供指导，以实施和使用面部识别技术系统。EDPB强调，面部识别工具只能在严格遵守《执法指令》的情况下使用。此外，只有在必要和适当的情况下，才能按照《基本权利宪章》的规定使用此类工具。（[查看更多](#)）

The EDPB Adopts Guidelines on the Use of Facial Recognition Technology in the Area of Law Enforcement

On 16 May 2022, the EDPB adopted *Guidelines on the use of facial recognition technology in the area of law enforcement* (“Guidelines”). The Guidelines provide guidance to EU and national law makers, as well as to law enforcement authorities, on implementing and using facial recognition technology systems. The EDPB stresses that facial recognition tools should only be used in strict compliance with the *Law Enforcement Directive*. Moreover, such tools should only be used if necessary and proportionate, as laid down in the *Charter of Fundamental Rights*. ([More](#))

荷兰消费者和竞争监管机构为在线平台制定新的指导方针

2022年5月16日，荷兰消费者和市场管理局（“ACM”）开始着手制定指导方针，以对平台和搜索引擎必须遵守的规则进行阐明。ACM预计将在今年秋季发布指南以供公众咨询。ACM董事会成员Manon Leijten解释说：“通过进行市场研究，我们发现在实践中以不同的方式对P2B法规中的开放标准进行解释。通过发布该指导方针，我们能够明确，ACM作为执行这些规则的监管机构将如何解释这些标准，从而能够向平台阐明他们需要做什么，并确保他们的商业客户知晓自己的权利。”（[查看更多](#)）

The Netherland’s Authority for Consumers and Markets Sets New Guidelines for

Online Platforms

On 16 May 2022, the Netherland's Authority for Consumers and Markets ("ACM") has started drawing up guidelines in which it will clarify the rules that platforms and search engines must meet. The ACM aims to publish the guidelines this fall for public consultation. "In our market study, we have found that, in practice, the open standards in the P2B Regulation are interpreted in different ways. By issuing guidelines, we are able to provide clarity about how ACM, as the regulator enforcing these rules, will interpret these standards, thereby clarifying to platforms what they need to do, and ensuring that their business customers know what their rights are", explains Manon Leijten, Member of the Board of ACM. ([More](#))

美国法官启动首起刑事加密货币制裁案

2022年5月16日，美国第一起刑事加密货币制裁案件启动。在裁决中，美国地方法官Zia Faruqui披露了关于数字货币的各种担忧，对数字货币使用匿名性的流行理论以及数字货币在法律诉讼方面的最终地位等概念进行了权衡。Faruqui法官引用财政部外国资产控制办公室提起的一项新诉讼，允许法官就虚拟货币和国家制裁提出自己的观点和意见。Faruqui法官表示，司法部可以并且将会对不遵守OFAC规定（包括关于虚拟货币的规定）的个人和实体进行刑事起诉。 ([查看更多](#))

US Judge Launches the First Criminal Cryptocurrency Sanctions Case

On 16 May 2022, the first criminal cryptocurrency sanctions case in the USA was launched. In the ruling, US Magistrate Judge Zia Faruqui disclosed various concerns surrounding digital currencies, weighing in on concepts like the prevailing theory surrounding its anonymity in use, as well as their ultimate standing in regards to legal action. He cites a newly-inducted action filed under the Treasury Department's Office of Foreign Assets Control, allowing judges to make their own observations and complaints regarding virtual currencies and US sanctions. Faruqui said that the Department of Justice can and will criminally prosecute individuals and entities for failure to comply with OFAC's regulations, including as to virtual currency. ([More](#))

新加坡个人数据保护委员会发布《关于在安全应用中负责任地使用生物识别数据的指南》

2022年5月17日，新加坡个人数据保护委员会（“PDPC”）发布了新的《关于在安全应用程序中负责任地使用生物识别数据的指南》，以协助公司、建筑物/场所业主和安全服务公司等组织管理其数据，确保其负责任地使用安全摄像头和生物识别系统，以保护收集、使用或披露的个人生物识别数据。 ([查看更多](#))

The Personal Data Protection Commission Singapore Issues New Guide on the Responsible Use of Biometric Data in Security Applications

On 17 May 2022, the Personal Data Protection Commission Singapore ("PDPC") has published a new Guide on the Responsible Use of Biometric Data in Security Applications to help organizations such as management companies, building/premise owners and security services companies, to ensure responsible use of security cameras and biometric recognition systems to safeguard individuals' biometric data where it is collected, used or disclosed. ([More](#))

谷歌因患者数据交易面临集体诉讼

2022年5月17日，谷歌及其人工智能子公司DeepMind Technologies（“DeepMind”）在英国面临集体诉讼，涉嫌未经用户同意或在其不知情的情况下使用160万余人的机密医疗记录。2015年，DeepMind和NHS宣布合作开发了一款应用程序，该应用程序将简化对患者数据的访问，以实现更快、更准确的医疗诊断。然而，数据共享协议显示，未经患者知情且同意，DeepMind可以访问NHS所覆盖的五年内超过160万患者的保密数据，这些数据包括入院、出院、转院、事故、紧急情况、重症监护、病理学和放射学等数据。2017年，英国数据保护监管机构信息专员办公室（“ICO”）发现该数据共享协议违反《数据保护法》并对NHS作出处罚。（[查看更多](#)）

Google Faces Class Action Lawsuit Over Patient Data Deal

On 17 May 2022, Google and its artificial intelligence subsidiary DeepMind Technologies (“DeepMind”) are faced with the class-action lawsuit in the UK for allegedly using confidential medical records belonging to 1.6 million individuals “without their consent or knowledge”. In 2015 DeepMind and the NHS announced a collaboration for developing an app, which would streamline access to patient data for a faster and more accurate prognosis. However, the data-sharing agreement revealed DeepMind was gaining access to five years’ worth of confidential data on admissions, discharge and transfer, accidents, emergencies, critical care, pathology, and radiology data on over 1.6 million patients covered by the NHS without their knowledge or informed consent. In 2017 the UK’s data protection watchdog, the Information Commissioner’s Office (“ICO”), found the data-sharing agreement breached the *Data Protection Act* and sanctioned the NHS. ([More](#))

西班牙数据保护局因谷歌非法转移个人数据并阻碍行使删除权对其处以1000万欧元罚款

2022年5月18日，西班牙数据保护局（“AEPD”）发布针对谷歌公司（“谷歌”）的行政决定，宣布因谷歌严重违反数据保护相关规则（《通用数据保护条例》第6条和第17条），非法将数据转移到第三方，并阻碍公民行使数据删除权，对该公司判处1000万欧元罚款。除了施加经济罚款以外，AEPD命令谷歌将数据提交给Lumen项目，以行使从其产品和服务中删除内容的请求相关的删除权，还要求谷歌向用户提供的信息应符合数据保护规则。（[查看更多](#)）


Spanish Data Protection Authority Fines Google EUR 10 Million for Unlawfully Transferring Personal Data and Hindering to Facilitate Right to Erasure

On 18 May 2022, the Spanish Data Protection Agency (“AEPD”) has issued a decision on the administrative procedure initiated against Google LLC (“Google”) declaring the existence of two very serious infringements of data protection rules (Articles 6 and 17 of the General Data Protection Regulation) and has imposed a penalty of EUR 10 million on the firm for transferring data to third parties without legal base to do so and for hindering citizens’ right to erasure. In addition to the financial penalty imposed in its decision, the Agency has also required Google to put the communication of data to the Lumen Project, the procedures for the exercise of the right of erasure in relation to requests for the removal of content from its products and services, and the information it offers to its users, in line with data protection rules. ([More](#))

知识产权 Intellectual Property

法定最高额500万元，驰名商标“好太太”被侵权再获司法保护

近日，浙江省高级人民法院对原告广东好太太科技集团股份有限公司（下称好太太科技公司）与被告好太太电器（中国）有限公司（下称好太太电器公司）、佛山凯达能企业管理咨询有限公司（下称凯达能公司）侵害商标权及不正当竞争纠纷一案做出二审判决，判决维持原判，此前一审判决二被告停止侵权、刊登声明消除影响并赔偿经济损失和合理开支共计517万元，好太太电器公司变更企业名称，且变更后的企业名称不得含有“好太太”文字。


本案涉及注册商标专用权跨类保护问题，法院在认定涉案第1407896号“”商标构成在第21类晾衣架商品上的驰名商标的基础上，综合考量了涉案权利商标与被诉侵权标识的显著识别部分及呼叫的差异性、消费群体的重叠度、产生实际混淆误认的可能性等。法院认为虽然被诉侵权标识使用在燃气灶、吸油烟机等商品及服务上，与涉案商标核定使用的晾衣架虽然不属于同类群组，但二者均为常见的家居用品，销售渠道、使用场所、消费群体存在一定重叠，两者具有关联性。而好太太电器公司的使用方式起到识别商品来源的作用，属于商标法意义上的商标使用行为，构成商标侵权。

同时，“好太太”经过原告的长期使用和宣传作为企业名称，已具有较高的显著性和知名度。好太太电器公司与原告公司同为广东省的家居类商品的经营者，理应知晓“好太太”企业名称的知名度并作合理避让，但却在经营活动中持续使用“好太太”等文字，主观攀附故意明显，构成不正当竞争行为。凯达能公司明知司法判决和行政决定责令其停止使用“好太太”商标和字号，却仍通过控股好太太电器公司变相继续实施侵权行为，综上，二被告构成恶意侵权和重复侵权，法院按照法定赔偿额上限确定被告损害赔偿数额。

来源：浙江省高级人民法院

The maximum judicial damages of RMB 5 million was awarded, the well-known trademark "HOTATA" got judicial protection again

Recently, the Zhejiang High People's Court made a judgment of second instance on the dispute over trademark infringement and unfair competition for "HOTATA", upholding the first instance judgment, which ordered the two defendants to stop infringement, publish a statement to eliminate the impact and pay damages of RMB 5.17 million, change the enterprise name which shall not contain "HOTATA" words.

This case involves cross-class protection of registered trademarks. On the basis of determining that the trademark No. 1407896 "" is a well-known trademark on the clothes hanger of Class 21, the court evaluated difference in the distinctive part and the pronunciation of the trademark, the overlapping of consumers, and the likelihood of confusion of the trademark and the infringing mark.

The court held that although the infringing mark was used on gas stoves and other goods and services, which are not the same class as that of clothes hangers, they were common household goods, and over-

lapped in sales channels, places of use and consumer groups. And the infringing trademark was used to identify the source of goods, which constituted trademark infringement.

Also, after the plaintiff's long-term use and publicity, "HOTATA" has a higher significance and visibility as the enterprise name. The first defendant and the plaintiff are household goods enterprises in Guangdong Province, the first defendant should be aware of the visibility of "HOTATA", and make reasonable avoidance, but it used "HOTATA" and other words in business activities, which constituted unfair competition. The second defendant knew that the judicial and administrative penalty decision ordered it to stop using the "HOTATA" trademark and enterprise name, but still operated business through the holding company to implement infringement. The two defendants constituted malicious infringement and repeated infringement, therefore the court decided to award the maximum judicial damages of RMB 5 million.

Source: Zhejiang High People's Court

最高人民法院发布了《最高人民法院关于涉及发明专利等知识产权合同纠纷案件上诉管辖问题的通知》

5月20日，最高人民法院公布了《最高人民法院关于涉及发明专利等知识产权合同纠纷案件上诉管辖问题的通知》，通知中明确：地方各级人民法院（含各知识产权法院）自2022年5月1日起作出的涉及发明专利、实用新型专利、植物新品种、集成电路布图设计、技术秘密、计算机软件的知识产权合同纠纷第一审裁判，应当在裁判文书中告知当事人，如不服裁判，上诉于上一级人民法院。

来源：最高人民法院

The Supreme People's Court (SPC) issued the Notice of SPC on the Jurisdiction of Appeals in Contract Disputes Involving Invention Patents and Other Intellectual Property Rights

On May 20, the SPC issued the Notice of the SPC on the Jurisdiction of Appeals in Contract Disputes Involving Invention Patents and Other Intellectual Property Rights, which specifies that: In the judgment of first instance involving invention patents, utility model patents, new varieties of plants, layout designs of integrated circuits, technology secrets, computer software intellectual property contract disputes, made by courts at all levels (including the Intellectual Property courts) from May 1, 2022, the court shall inform the parties that if they disagree with the judgment, they can appeal to the court at the next higher level.

Source: The Supreme People's Court

知识产权诉讼中首例认定股东违法减资并由股东承担补充连带责任案

重庆市高级人民法院对纳恩博（北京）科技有限公司与重庆小猴科技有限公司、李相龙、李桦等侵害外观设计专利权纠纷案做出二审判决，判决维持原判，此前一审判决被告公司停止侵权并赔偿经济损失及合理开支共计10万元，被告公司两名股东在其减资范围内对公司债务不能清偿的部分承担补充赔偿责任。

关于法律责任承担，二审法院认为，一审法院于2020年5月12日向被告公司刊登公告送达了诉讼材料，自公告之日起经过60日即为送达。被告公司于5月13日刊登减资公告，于7月2日将注

册资本从100万元变更为3万元，虽然未满六十日，但被告公司于2020年4月14日向公证处申请办理用于本案诉讼的保全证据公证以及2020年6月24日委托律师作为本案一审诉讼代理人的行为均表明其于7月2日办理减资登记前已经知晓了本案诉讼情况，应当预见到其可能承担一定赔偿责任的后果，公司及两名股东仍继续减资程序。而原告作为被告公司减资前的合法债权人，被告未及时将减资情况通知原告，既损害了公司的清偿能力，又致使原告的利益受损。因此，被告公司两名股东的减资行为存在瑕疵，应在其减资数额范围内对被告公司的债务清偿不能的部分承担补充赔偿责任。

来源：重庆市高级人民法院

The first case in intellectual property infringement litigation that shareholders of defendant illegally reduced the registered capital, and shall bear secondary liability

Chongqing High People's Court made a judgment of the second instance on the dispute over design patent infringement, upholding the first instance judgment, which ordered the defendant to stop the infringement, and pay damages of RMB 100,000. The two shareholders of the defendant shall bear secondary liability within the scope of their capital reduction.

The court of second instance held that, the court of first instance issued a notice to serve the defendant with the litigation materials on May 12, 2020. The defendant changed its registered capital from RMB 1 million to RMB 30,000 on July 2, 2020. Although the service notice period was not expired, the defendant applied to a notary public on April 14, 2020 for the notarization of preservation evidence, and appointed a lawyer on June 24, 2020, which showed it had known the lawsuit before capital reduction, and foreseen the consequences.

As the plaintiff is the legal creditor of the defendant company before the capital reduction, the defendant did not inform the plaintiff of the capital reduction, therefore the two shareholders are fault in their capital reduction, and shall bear secondary liability for the debt that cannot be paid off by the company within the scope of their capital reduction amount.

Source: Chongqing High People's Court

双务合同当事人互负给付义务，最高法知产法庭作出首例对待给付判决

近日，最高人民法院知识产权法庭在一起技术开发合同纠纷上诉案中作出法庭成立以来首例对待给付判决，判令双方相互履行对待给付义务，实现了纠纷一次性解决。

本案中，原告北京派尔特医疗科技股份有限公司与被告深圳市科焘芯科技有限公司签订签订了技术开发合同，合同履行过程中原告认为被告交付的设计资料不符合合同要求，因此未支付开发费尾款，而后发现被告申请了一项与开发合同有关的一件涉案专利，故将其诉至法院请求判令被告继续履行开发合同并确认涉案专利申请权属。

最高院经审理认为，被告不当交付在先，原告可据此行使抗辩权而不履行在后的支付义务，而且原告在二审中表示同意支付尾款，请求被告继续履行开发合同，因被告拒绝受领而支付未果，属于不当阻止合同条件成就，故应视为原告请求取得涉案专利申请权的条件已成就。为促进双方全面履行合同、一次性解决纠纷，法院确认涉案专利归原告所有，并判令双方对待给付，即被告办理涉案专利申请权变更登记，原告支付开发费尾款。

来源：最高人民法院知识产权法庭

The Intellectual Property Tribunal of the Supreme People's Court made the first judgement of reciprocal payment

Recently, the Intellectual property Tribunal of SPC made the first judgement of reciprocal payment in a technology development contract dispute appeal case, ordering both parties to perform the obligations.

In this case, the plaintiff signed a technology development contract with the defendant. The plaintiff held that the design materials did not meet the requirements of the contract, and refused to pay the balance of development fee. Later, the plaintiff found that the defendant applied for a patent involved in the contract, so it sued defendant to confirm the ownership of the patent, and requested the defendant to continue to perform the contract .

The court held that, the defendant improperly performed obligations of the contract first, so the plaintiff had the right of defense for not performing the subsequent payment obligation. And the plaintiff agreed to pay the fee, but the defendant refused to accept, which was improper to prevent the achievement of contract conditions. In order to urge parties to fully perform the contract and settle the dispute once, the court confirmed that the patent belonged to the plaintiff, and ordered that the defendant shall conduct the change registration of patent application right, and the plaintiff shall pay the balance of development fee.

Source: Intellectual Property Tribunal of the Supreme People's Court

全额判赔530万，生产商和销售商作为共同被告是否构成必要共同诉讼的裁判标准

近日，北京知识产权法院对威乐（中国）水泵系统有限公司与威乐泵业（江苏）有限公司（下称江苏威乐公司）、北京阳光科宇新能源科技有限公司侵害商标权及不正当竞争纠纷一案做出二审判决，二审法院在全面查明本案事实基础上，依法纠正了一审法院错误界定的本案审理范围，并将赔偿数额由60万改判为530万。

本案中，二审法院探讨了被诉侵权产品生产商和销售商作为共同被告是否构成必要共同诉讼的裁判标准问题，认为虽然生产商单独实施被诉侵权行为所涉产品的型号种类和销售范围大于生产商和销售商共同实施被诉侵权行为所涉产品的型号种类和销售范围，但两者之间具有密切关联，应认定属于同一诉讼标的，故以该生产商和销售商为共同被告的诉讼构成必要共同诉讼。此前一审法院未将生产商江苏威乐公司独立实施生产、销售被诉侵权产品的行为纳入审理范围属于法律适用错误。

同时，二审法院还在本案中还对销售商合法来源抗辩的构成要件进行深入探讨，在销售者已举证证明其合法取得被诉侵权产品的事实时，法院还应审查其是否具有主观善意，是否尽到合理注意义务，尽到合理的注意义务可以从其经营规模、专业程度、市场交易习惯等进行判定。

来源：北京知识产权法院

RMB 5.3 million was awarded, the judgement criteria on whether the manufacturer and seller as co-defendants constitute necessary joint litigation

Recently, the Beijing Intellectual Property Court made a second instance judgment on the dispute over trademark infringement and unfair competition of the trademark of "Wei Le", correcting the scope of the trial, and increased the amount of damages from RMB 600,000 to RMB 5.3 million.

In this case, the court discussed the standard whether the manufacturer and the seller constitute necessary joint action, and held that although the types and sales range of the products involved in the in-

fringing acts committed by the manufacturer alone, were wider than that jointly committed by the manufacturer and the seller, the two were closely related, and shall be identified as the same object, so the lawsuit in which the manufacturer and seller as co-defendants constitute necessary joint action.

At the same time, the court of second instance also discussed elements of the seller's legal source defense. When the seller proved that it legally obtained the product, the court shall also examine whether it had good faith and fulfilled the duty of due diligence, which can be judged from its business scale, professional level, market trading habits, etc.

Source: Beijing Intellectual Property Court

最高法1号案：将同业者的工程案例图片替换商标后作为自身案例宣传系不正当竞争

近日，最高人民法院对南京德尔森电气有限公司与美弗勒智能设备有限公司侵害商标权及不正当竞争纠纷一案做出再审裁判，判决撤销一审、二审判决，认定被告构成不正当竞争行为，责令被告停止侵权并赔偿经济损失及合理开支共计52万余元。

最高院认为，被告制作的产品宣传册中的工程案例图片虽未载明具体的工程名称和位置，但根据查明的事实，这8张成功案例图片系原告公司施工项目中的产品图片。被告公司将这8个工程图片中的原告公司商标换成自己的商标，将工程图片当作自己的工程成功案例印制在产品宣传册上进行宣传，此行为足以使消费者误认为此8个工程案例系由其所承建，由此易使其获取市场竞争优势和市场交易机会，损害与其作为同业竞争关系的原告的利益，被告的行为构成反不正当竞争法第八条第一款规定的虚假宣传的不正当竞争。

来源：最高人民法院

Case No. 1 of SPC in 2022: Replacing the competitor's trademark on pictures of the construction projects and promoting them as its own projects constituted unfair competition

Recently, SPC made a retrial judgment on the dispute over trademark infringement and unfair competition, revoking the first and second instance judgments, ordering the defendant to stop infringement and pay damages of more than RMB 520,000.

The court held that although the pictures in the product brochures of the defendant did not contain specific project names and locations, these eight pictures of successful project were the plaintiff's pictures of construction projects. The defendant replaced the plaintiff's trademark with its own trademark, and printed the pictures as its own success projects for promotion, which is enough to make the consumers believe that the eight projects are constructed by it, and thus easily made it obtain the competitive advantage and market trading opportunity, and harmed the interests of the plaintiff, the defendant's act constituted unfair competition of false propaganda as stipulated in Article 8(1) of the Anti Unfair Competition Law.

Source: The Supreme People's Court

欧洲专利局：利用电解槽制氢的技术正在兴起

近日，欧洲专利局（EPO）与国际可再生能源局（IRENA）联合发布的一项研究通过专利统计数据揭示了电解制氢领域令人兴奋的发展趋势和活力。该报告的主要发现之一是，自2005年以来，制氢技术的专利申请量平均每年增长18%。

该报告跟踪了过去15年专利申请的演变情况，并强调了几个趋势，包括：

1) 2016年，水电解技术的同族专利数量超过了利用化石能源（例如基于固体或液体煤和油的氢源）制氢技术的专利数量；

2) 2018年，基于较便宜矿物的电催化剂发明超过了基于更传统但更昂贵的电催化剂（例如使用金、银、铂或其他贵金属）的发明数量。这一趋势非常明显，中国国家专利申请量激增就证明了这一点。

尽管专利申请量急剧增加，但报告强调，仍然需要对电解槽技术进行重大创新，以进一步降低成本，满足市场需求。随着全世界都在推行重大方案，例如欧盟委员制定了专门的“氢战略”，现有情况今后可能会发生改变。

来源：[中国保护知识产权网](#)

European Patent Office: Hydrogen production with electrolyzers is emerging

A joint study published today by the European Patent Office (EPO) and the International Renewable Energy Agency (IRENA) uses patent statistics to reveal the trends and dynamism in the exciting field of hydrogen that can be produced using renewable electricity via electrolysis. Among the report's key findings was that patent filings for hydrogen production technologies have grown on average by 18% each year since 2005.

The report tracks the evolution of patent filings over the last 15 years and highlights several trends, including:

In 2016, the number of patent families for water electrolysis technologies surpassed the number of patents related to producing hydrogen from fossil sources (e.g. solid or liquid coal and oil-based hydrogen sources).

In 2018, inventions for electrocatalysts based on cheaper minerals surpassed the number of inventions based on more traditional but expensive electrocatalysts (which use e.g. gold, silver, platinum or other noble metals), confirming the drive for cheaper alternatives. This trend is pronounced and demonstrated by a surge in Chinese national patent filings.

The demands for cleaner energy have never been greater. Although patent filings show a steep increase, the report underlines that major innovations in electrolyser technology are still needed to further reduce its costs and make it market-ready at industrial levels. This situation could change in the future with the recent introduction of major programmes worldwide such as the European Commission's dedicated "Strategy on hydrogen".

Source: [European Patent Office](#)

国际商标协会发布欧洲商标与补充权利课税报告

近日，国际商标协会（INTA）发布《欧洲商标和补充权利税收报告》，重点分析了欧盟、英国和瑞士商标生命周期内的税收影响。

主要内容包括：

(1) 商标从业人员和税务人员合作的成效与作用。

(2) 法定企业所得税率、特殊税收制度和预先税收裁决的作用，并比较了欧洲不同的司法管辖区。在商标许可过程中，商标从业人员必须考虑税率如何影响商标许可结构。

(3) 需要调和商标从业人员和税务人员对商标相关问题的不同看法，阐明了在确定商标税时应考虑的各种细微差别。

(4) 比较了许可和商标转让的税收影响。

(5) 讨论了许可使用费的征税方式，概述了独立交易原则并描述了如何确定许可的受益所有人。

(6) 概述欧盟的前景和趋势。新规则影响全球最低税收的适用范围，特别是在税基计算以及税收和程序规则等方面。

来源：中科院IP信息

International Trademark Association Releases Report on the Taxation of Trademarks and Complementary Rights in Europe

Recently, the International Trademark Association (INTA) released its Report on the Taxation of Trademarks and Complementary Rights in Europe. Focused on the tax implications within the trademark lifecycle in the EU, UK, and Switzerland, the report serves to provide brand legal practitioners with a clear understanding of tax policy as it relates to trademark and complementary rights issues, and a framework to strengthen their collaboration with tax professionals.

Recognizing the need to reconcile the different views of trademark and tax practitioners on trademark-related issues, the report sheds light on the various nuances that should be considered when determining the taxation of trademarks. For example, even if trademarks are defined as assets, they will not be recognized as assets on the tax or accounting balance sheets unless acquired or transferred.

The report also compares the tax implications of licensing and trademark transfer, discusses how royalty payments are taxed, and provides an overview of projected trends in the EU.

Source: INTA

苹果侵犯PanOptis 4G LTE专利被判赔偿3亿美元

据 Apple Insider 报道，苹果试图对无线专利持有公司 PanOptis 进行新的审判已被驳回，这意味着该公司将不得不支付 3 亿美元的赔偿金。

2020年8月，PanOptis 及其母公司 Opti指控苹果侵犯了其 4G LTE 专利，涉案产品包括 iPhone、iPad 和 Apple Watch，并赢得了标的额为 5.062 亿美元的诉讼。2021 年 4 月，一名联邦法官因对判决“严重怀疑”而允许重审，重审后赔偿数额被削减至 3 亿美元。但苹果随后抗议称在证据、证词、陪审团指示和 Optis 判给的金额方面存在多个问题。因此，苹果公司辩称其有权进行第三次审判。

据报道，苹果的案件现已被驳回。它本可以将损害赔偿降至零，但美国东德克萨斯地区法官 Rodney Gilstrap 拒绝了苹果公司提出的重新审判或裁决的请求。

来源：Apple Insider

Apple awarded USD 300 million for infringing PanOptis 4G LTE patent

Apple's attempt to get a new trial against wireless patent holding firm PanOptis has been rejected, meaning the firm will have to pay out \$300 million in damages.

PanOptis, and its parent company Optis, originally won a \$506.2 million case against Apple for infringing on a series of 4G LTE patents. That was filed in August 2020, but in April 2021, a federal judge allowed a retrial because of "serious doubt" concerning the verdict.

The sum was consequently cut down to \$300 million, but Apple then protested that there had been multiple issues with evidence, testimony, jury instructions, and the amount of money Optis was awarded. Apple therefore argued that it was entitled to a third trial.

[Source: Apple Insider](#)

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