



NEWSLETTER

LIFANG & PARTNERS 立方观评



关注更多精彩内容

No.321

2022.11

立方要闻周报

Weekly News By Lifang & Partners

NO.61

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

工业互联网平台领域首批国家标准正式发布实施

Official Release and Implementation of the Initial National Standards in the Field of Industrial Internet Platforms

14项网络安全国家标准获批发布

14 National Standards for Network Security Have been Approved and Released

最高法：将推动健全大数据、基因技术等领域知识产权保护规则

SPC to Promote the Improvement of Intellectual Property Protection Rules in Big Data, Gene Technology and Other Fields

深圳市发改委就《深圳市关于促进智能网联汽车产业高质量发展的若干措施（征求意见稿）》公开征求意见

Shenzhen DRC Seeks Public Comments on *the Measures of Shenzhen for Promoting the High-quality Development of Intelligent & Connected Vehicle Industry (Draft for Comments)*

浙江省财政厅发布关于征求《数据资产确认工作指南（征求意见稿）》意见的通知

Zhejiang Provincial Department of Finance Seeks Public Comments on *the Guidelines for Data Asset Confirmation (Draft for Comment)*

上海市通信管理局召开车联网卡实名登记工作专题调度会议

SHCA Held a Dispatching Meeting on the Real Name Registration of Vehicle Online Cards

美国得州起诉谷歌非法收集生物识别数据

Texas Sues Google for Compiling Texans' Biometric Data

微软被曝泄露 2.4TB 客户敏感数据

Microsoft Data Breach Reportedly Exposed 2.4 TB Sensitive Information



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.321

2022.11

美国人脸识别公司Clearview AI因违反GDPR被罚2000万欧元

American Facial Recognition Company Clearview AI Was Fined 20 Million Euros for Breach of GDPR

经合组织发布跨境数据流动报告

OECD Published Cross-border Data Flows Report

知识产权 Intellectual Property

商标局开通商标信息泄露问题线索反映入口

Trademark Office Opens the Portal for Reporting Clues to the Leakage of Trademark Information

主播在直播中诋毁竞品被罚近百万

A Company Was Fined Nearly RMB 1 million for Slandering Competing Products in the Live Broadcast

山寨版“大话西游”网络游戏侵犯著作权案宣判

The Case of Copyright Infringement of Copycat Version of "Dahua Xiyou" Online Game Was Sentenced

“喜鹊巢”因与“雀巢”商标构成近似被认定无效

"Magpie Nest" trademark is invalid because it is similar to the "Nestle" trademark

中国药企东阳光在美国挑战原创药专利取得成功

Chinese pharmaceutical enterprise Sunshine Lake successfully challenged a drug patent in the U.S.

苹果请求联邦巡回法院推翻3亿美元的错误判决

Apple asks Federal Circuit to overturn USD 300 million judgment

美国最高法院审理安迪·沃尔霍与Prince肖像摄影师版权纠纷案

US Supreme Court Hears Andy Warhol vs. Prince Portrait Photographer's Copyright Dispute

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

工业互联网平台领域首批国家标准正式发布实施

2022年10月14日，国家市场监督管理总局（国家标准化管理委员会）发布2022年第13号中华人民共和国国家标准公告，批准GB/T 41870-2022《工业互联网平台 企业应用水平与绩效评价》和GB/T 23031.1-2022《工业互联网平台 应用实施指南 第1部分：总则》2项国家标准正式发布，这是我国工业互联网平台领域发布的首批国家标准，对我国工业互联网平台标准化建设具有重要意义。目前，2项标准已在全国31个省市、300余个城市与80余个细分行业的3万余家企业开展了应用验证。（[查看更多](#)）

Official Release and Implementation of the Initial National Standards in the Field of Industrial Internet Platforms

On 14 October 2022, the State Administration for Market Regulation (Standardization Administration) issued the Announcement on National Standards of the People's Republic of China(No.13 of 2020), approving the official promulgation of two national standards, namely, *Industrial Internet Platform - Assessment on Application Level and Performance of Enterprises (GB/T 41870 -2022)* and *Industrial Internet Platform - Application and Implementation Guide-Part 1: General Principles (GB/T 23031.1-2022)*. This represents the first batch of national standards released in the field of industrial Internet platforms in China, which is of great significance to the standardization construction of industrial Internet platforms in China. The two standards have been applied and verified in over 30,000 enterprises in over 80 subdivided industries in more than 300 cities in 31 provinces and municipalities.([More](#))

14项网络安全国家标准获批发布

2022年10月14日，国家市场监督管理总局、国家标准化管理委员会发布中华人民共和国国家标准公告（2022年第13号），全国信息安全标准化技术委员会归口的14项国家标准正式发布。前述标准均将于2023年5月1日起生效。本批发布的14项国家标准全部为信息安全技术标准，涵盖生物识别数据（步态、基因、声闻、人脸）、个人信息安全工程、汽车数据、即时通信、快递物流、网上购物、网络支付、网络音视频及预约汽车领域。（[查看更多](#)）

14 National Standards for Network Security Have been Approved and Released

On 14 October 2022, the State Administration for Market Regulation and the Standardization Administration of the People's Republic of China jointly issued the Announcement on the National Standards of the People's Republic of China(No.13 of 2022), and 14 national standards under the administration of the National Information Security Standardization Technical Committee were officially issued. The aforesaid standards will take effect on May 1, 2023. All 14 national standards released in this batch are technical standards for information security, covering fields such as biometric data (gait, gene, voice, and face), personal information security engineering, automobile data, instant messaging, express logistics, online shopping, online payment, online audio and video, and online ride-hailing services.([More](#))

最高法：将推动健全大数据、基因技术等领域知识产权保护规则

2022年10月19日，中国最高人民法院党组副书记、分管日常工作的副院长、一级大法官贺荣19

日在北京说，将推动健全大数据、人工智能、基因技术等领域知识产权的保护规则。她同时强调，要加强反垄断和反不正当竞争司法，加强行政执法和司法机制衔接，依法规范和引导资本健康发展。她提到，法院依法审理电商平台“大数据杀熟”等案件，不断加强对新就业形态劳动者和消费者合法权益的保护，促进数字经济、平台经济规范健康发展。（[查看更多](#)）

SPC to Promote the Improvement of Intellectual Property Protection Rules in Big Data, Gene Technology and Other Fields

The Supreme People's Court (the "SPC") will promote the improvement of the rules for the protection of intellectual property rights in big data, artificial intelligence, genetic technology and other fields, said He Rong, Deputy Secretary of the Party Leadership Group of SPC, Vice President in charge of daily work and Grand Justice of First Grade, said in Beijing on 19 October 2022. 19. At the same time, she stressed that it is necessary to strengthen administrative of justice in anti-monopoly and anti-unfair competition, strengthen the link between administrative law enforcement and judicial mechanisms, and regulate and guide the healthy development of capital according to law. She mentioned that the courts heard cases on e-commerce platforms' big data discriminatory pricing practices according to law, constantly strengthened the protection of the legitimate rights and interests of workers and consumers in new forms of employment, and promoted the standardized and healthy development of the digital economy and platform economy. ([More](#))

深圳市发改委就《深圳市关于促进智能网联汽车产业高质量发展的若干措施（征求意见稿）》公开征求意见

2022年10月11日，深圳市发展和改革委员会（以下简称深圳市发改委）研究起草了《深圳市关于促进智能网联汽车产业高质量发展的若干措施（征求意见稿）》（以下简称“征求意见稿”），意见征求截止于2022年11月10日前。意见稿拟从四个方面十六条措施来推动智能网联汽车产业发展，包括增强技术自主创新能力、促进产业协同集聚发展、扩大多元场景综合应用、优化产业发展配套环境等内容。（[查看更多](#)）

Shenzhen DRC Seeks Public Comments on the Measures of Shenzhen for Promoting the High-quality Development of Intelligent & Connected Vehicle Industry (Draft for Comments)

On 11 October 2022, the Development and Reform Commission of Shenzhen Municipality ("Shenzhen DRC") has drafted *the Measures of Shenzhen for Promoting the High-quality Development of Intelligent & Connected Vehicle Industry (Draft for Comments)* (the "Draft"), seeking public comments by 10 November, 2022. The Draft proposes to introduce 16 measures in 4 aspects to promote the development of intelligent & connected vehicle industry, including enhancing independent technological innovation capacity, promoting industrial collaborative and agglomeration development, expanding the comprehensive application of diverse scenarios, and optimizing the supporting environment for industrial development. ([More](#))

浙江省财政厅发布关于征求《数据资产确认工作指南(征求意见稿)》意见的通知

2022年10月25日，浙江省财政厅组织发布了《数据资产确认工作指南（征求意见稿）》，意见

征求截止于2022年11月10日前。据悉，这是全国首个针对数据资产确认制定的推荐性地方标准。该稿给出了数据资产确认的术语和定义，数据资产初始确认、后续确认和终止确认，适用于指引数据资产确认工作。此外，该稿通过附录明确“访问控制技术方法”和“数据资产价值评估方法”，为实现数据资源的有效控制和可靠计量提供指引。（[查看更多](#)）

Zhejiang Provincial Department of Finance Seeks Public Comments on *the Guidelines for Data Asset Confirmation (Draft for Comment)*

On 25 October 2022, the Zhejiang Provincial Department of Finance released *the Guidelines for Data Asset Confirmation (Draft for Comment)* (the “Draft”), and is seeking public comments by 10 November, 2022. It is reportedly the first recommended local standard for the confirmation of data assets in China. The Draft sets out the terminology and definitions of the data asset confirmation, and the guidelines apply to the initial recognition, subsequent recognition and de-recognition of data assets. In addition, the Draft clarifies the "access control technical methods" and the "data asset valuation methods" in the appendices, so as to provide guidelines for effectively controlling and reliably measuring data resources. ([More](#))

上海市通信管理局召开车联网卡实名登记工作专题调度会议

2022年10月21日，据报道，上海市通信管理局（以下简称“市通管局”）联合上海市经济和信息化委员会（以下简称“市经信委”）召集上汽通用、上汽大通、上汽乘用车、沃尔沃汽车、吉利汽车、捷豹路虎（含奇瑞捷豹路虎）6家重点车企相关负责人召开了车联网卡实名登记工作专题调度会。会上，市通管局通报了当前车联网卡实名工作推进整体进度情况，重点介绍了当前已售载有车联网卡车辆实名登记率已达90%以上的8家车企实名工作成果。下一步，市通管局将在工业和信息化部领导下，联合市经信委，进一步推进车联网卡实名登记管理工作，以实际行动切实保障用户权益、维护网络安全。（[查看更多](#)）

SHCA Held a Dispatching Meeting on the Real Name Registration of Vehicle Online Cards

On 21 October 2022, it is reported that the Shanghai Communications Administration (the "SHCA"), in conjunction with the Shanghai Municipal Commission of Economy and Informatization, (the "SHEITC"), called up the relevant officials of 6 major vehicle companies, including SAIC GM, SAIC Datong, SAIC Passenger Vehicles, Volvo, Geely and Jaguar Land Rover (including Chery Jaguar Land Rover) to attend a special scheduling meeting on the real name registration of vehicle online cards. At the meeting, the SHCA briefed on the overall progress of the promotion of the real name registration work for vehicle online cards, with focus on the results of the real name work of 8 vehicle companies whose real name registration rate for the sold vehicles carrying online cards has reached 90% or more. As the next step, under the leadership of the Ministry of Industry and Information Technology, the SHCAB will jointly with the SHEITC, further promote the administration work of real name registration of vehicle online cards, so as to effectively protect the rights and interests of users and maintain cyber security with practical actions. ([More](#))

美国得州起诉谷歌非法收集生物识别数据

2022年10月20日，据Texas Tribune报道，美国得克萨斯州总检察长已经起诉科技巨头谷歌，指称该公司在未经知情或同意的情况下收集得州人的面部、声音识别数据的行为违反了该州法律。得州在诉状中表示，谷歌的应用程序和设备在未明确告知或征得同意的情况下，无限期地储存其收集的面部、声音识别数据，违反了得州生物特征信息收集与使用法。诉状并声称谷歌利用其收集的上述生物特征数据以实现商业目的。（[查看更多](#)）

Texas Sues Google for Compiling Texans' Biometric Data

On 20 October 2022, according to Texas Tribune, Texas Attorney General has filed a lawsuit against Google, claiming the internet giant is violating state law by amassing facial and voice recognition data on Texans without their knowledge or consent. The lawsuit claims Google apps and devices indefinitely store data on facial geometry and voiceprints from anyone they capture, whether they are Google users or not. The company does not expressly inform people or receive their consent, violating the Texas Capture or Use of Biometric Information Act, the lawsuit claims. The lawsuit claims that Google is using Texans' stored biometric data to further its commercial goals.([More](#))

微软被曝泄露 2.4TB 客户敏感数据

2022年10月20日，据Digital Trends报道，根据一家安全研究公司透露的信息，微软部分客户达2.4TB的敏感信息可能因微软服务器配置错误而导致泄露，涉及111个国家的6.5万多个实体。泄露的客户信息包括姓名、电话号码、电子邮件地址、公司名称、电子邮件内容和包含公司专有信息的文件（如概念验证文件、销售信息、产品订单）。微软称该端点已得到保护，现仅通过必要的认证才能访问，没有任何迹象表明客户帐户或系统已经被入侵，并已将情况通知给受影响的客户。（[查看更多](#)）

Microsoft Data Breach Reportedly Exposed 2.4 TB Sensitive Information

On 20 October 2022, according to Digital Trends, according to the information disclosed by a security research company, approximately 2.4TB sensitive information of some Microsoft customers may be exposed due to misconfiguration of Microsoft servers, involving more than 65,000 entities from 111 countries. According to Microsoft, the exposed information includes names, phone numbers, email addresses, company names, and attached files containing proprietary company information, such as proof of concept documents, sales data, product orders, among other information. Microsoft released a statement saying it had secured the comprised endpoint, which is “now only accessible with required authentication,” and that an investigation “found no indication customer accounts or systems were compromised.” The company also stated that it has directly contacted customers that were affected by the breach.([More](#))

美国人脸识别公司Clearview AI因违反GDPR被罚200万欧元

2022年10月17日，法国的数据保护机构——国家信息与自由委员会（CNIL）向美国Clearview AI开出了200万欧元的罚单，指控其违法收集和生物识别信息。Clearview AI在未经个人同意的情况下从公开网络和社交媒体平台上收集了超过200亿张人脸图像，基于这一数据库，

Clearview AI用户得以通过搜索引擎利用照片进行搜索。Clearview AI向执法部门提供这一搜索服务以确认犯罪人或受害者身份。CNIL官网显示，2020年5月，CNIL收到了针对Clearview AI面部识别数据库的投诉，并就此展开调查。2021年5月，国际隐私组织（Privacy International）也对CNIL作出提示。经过调查，CNIL揭示了Clearview AI违反GDPR的具体行为，例如非法处理生物识别信息数据，且在收集和使用这些数据时缺乏合法性基础等。2021年11月26日，CNIL向Clearview AI发出正式通知，要求其停止违规收集和使用时法国境内人员的数据；保护个人的数据权利，并遵守其删除请求。（[查看更多](#)）

American Facial Recognition Company Clearview AI Was Fined 20 Million Euros for Breach of GDPR

On 17 October 2022, France's data protection authority ("CNIL") has fined Clearview AI with 20 million Euros for illegal collection and processing of biometric data. Clearview AI has collected over 20 billion images from websites and social media platforms without consent, which images are being used to feed a biometric database. Customers of the company may use a search engine to search a person using a photograph. The company offers this service to law enforcement authorities in order to identify perpetrators or victims of crime. According to CNIL, as of May 2020, the CNIL received complaints from individuals about Clearview AI's facial recognition software and opened an investigation. In May 2021, the association Privacy International also warned the CNIL about this practice. The investigations carried out by the CNIL revealed several breaches of the GDPR, such as unlawful processing of personal data and the collection and use of biometric data are carried out without a legal basis. On 26 November 2021, the CNIL decided to give Clearview AI formal notice to: cease the collection and use of data of persons on French territory in the absence of a legal basis; facilitate the exercise of individuals' rights and to comply with requests for erasure.([More](#))

经合组织发布跨境数据流动报告

2022年10月12日，经济合作与发展组织（“OECD”，以下简称经合组织）发布了关于七国集团数字和技术轨迹的背景报告《跨境数据流动——盘点关键政策和举措》（Cross-border Data Flows——Taking Stock of Key Policies and Initiatives）。数据及其跨境流动对于实现数字技术在数字经济和社会方面的潜力、促进商业模式的创新至关重要。在这种情况下，保持对跨境数据流动的高度信任是在保持数据保护高标准的同时实现数字化转型的关键。为此，OECD发布该报告，总结七国集团促进可信跨境数据流动的协议和举措，具体内容包括单边政策和法规、政府间进程以及技术和组织层面的关键努力。（[查看更多](#)）

OECD Published Cross-border Data Flows Report

On 12 October 2022, Organization for Economic Co-operation and Development (the "OECD") has published *Cross-border Data Flows - Taking Stock of Key Policies and Initiatives*, a background report on the digital and technology trajectories of the G7. Data and its cross-border flows are critical in fulfilling the potential of digital technologies for the digital economy and society, and in promoting innovation in business models. In this context, maintaining a high level of confidence in cross-border data flows is key to achieving digital transformation while maintaining high standards of data protection. In this regard, the OECD has published this report summarizing G7 agreements and initiatives to promote trusted cross-border data flows, including unilateral policies and regulations, intergovernmental processes and key efforts at technical and organizational levels.([More](#))

知识产权 Intellectual Property

商标局开通商标信息泄露问题线索反映入口

近日，国家知识产权局商标局不断加强对“商标信息泄露”的监管，首先召开商标业务工作调研座谈会，听取企业、代理机构及行业协会代表对商标工作的意见建议。与会代表就加强商标领域“审代勾连”和信息泄露问题治理等内容提出了意见建议。随后，商标局开通了商标信息泄露问题线索反映入口。广大社会公众可在问题线索反映页面（网址：<http://sbj.cnipa.gov.cn/sbj/xsfy/>）提交有关线索或宝贵意见，如有图片、录音等其它形式线索，也可另行发送至商标局商标信息泄露问题线索收集邮箱（sbxxwt@cnipa.gov.cn）。此举切实防范了商标信息泄露风险，推动商标信息泄露问题得到有效解决。

来源：商标局

Trademark Office Opens the Portal for Reporting Clues to the Leakage of Trademark Information

Recently, the Trademark Office of CNIPA continued to strengthen the supervision of the leakage of trademark information. First of all, it held a research symposium on trademark business to listen to the opinions and suggestions of enterprises, agencies and industry associations on trademark work. The representative put forward suggestions on strengthening the governance of the collusion between the trial and agency in the trademark field and the information leakage. After that, the Trademark Office Opened the Portal for Reporting Clues to the Leakage of Trademark Information. This measure has effectively prevented the risk of trademark information leakage and promoted the effective settlement of trademark information leakage issues. The public may submit relevant clues or opinions on the feedback page (<http://sbj.cnipa.gov.cn/sbj/xsfy/>), and if there are clues in other forms, such as pictures and audio recordings, they may also send the same to the E-mail of the Trademark Office for collection of clues to trademark information leakage issues.

Source: Trademark Office

主播在直播中诋毁竞品被罚近百万

近日，上海清争落网鱼文化传媒有限公司（以下简称清争公司）在某平台直播时，因推销产品时贬损竞争对手同类型产品等行为被处罚98万元。

据上海市市场监督管理局公示的处罚决定书显示，清争公司主播曾在直播间销售“珀莱雅羽感防晒”“理肤泉眼部卸妆水”等美妆产品时，使用了伊菲丹上千元的防晒依旧会泛油光、比美宝莲好用等贬低同类竞品的话语，严重损害了竞争对手的商业信誉和商品声誉。随后，该公司主播推销“兰蔻小白管轻透水漾防晒乳”产品时，又使用了“兰蔻在欧莱雅下面，欧莱雅做防晒……欧莱雅可以做地表，就是防晒没有人做得可以比它更强”等具有强烈误导性的内容进行虚假宣传。市监局针对上述行为，认定清争公司编造、传播误导性信息，对商品功能进行虚假宣传，严重损害了竞争对手的权益，处以罚款98万元，并责令其停止违法行为。

来源：上海市徐汇区市场监督管理局

A Company Was Fined Nearly RMB 1 million for Slandering Competing Products in the Live Broadcast

Recently, a company was fined RMB980,000 because its live streaming host slandered similar products offered by competitors during live broadcasts. According to the punishment decision published by the Shanghai Municipal Market Supervision Administration, the live streaming host of the company once slandered similar competing cosmetic products in the live studio, which seriously damaged its competitors' business reputation and commodity reputation. Subsequently, the live streaming host promoted other products with highly misleading content and false advertising. In response to the above acts, the Administration determined that the company fabricated and disseminated misleading information, and made false publicity about the functions of the products, which seriously damaged the rights and interests of competitors, imposed a fine of RMB 980,000 and ordered the company to stop the illegal acts.

Source: [Shanghai Municipal Market Supervision Administration](#)

山寨版“大话西游”网络游戏侵犯著作权案宣判

近日，江苏省宿迁市宿城区人民法院公开宣判山寨版“大话西游”侵犯著作权案。2015年，网易（杭州）网络有限公司取得《大话西游》计算机软件著作权，并在国家版权局进行了登记。2018年年底，被告人段某等6人以盈利为目的，商量合作开发《大话西游》网络游戏“私服”，后被告人段某等6人共同出资从网上购买《大话西游》的人物、地图、宠物等素材资源，进行开发维护升级，并命名为《遮天西游》。2019年，上述被告人在未取得网易公司授权的情况下，开始运营《遮天西游》。各被告人分工合作，获利巨大，经鉴定，自2019年2月至2020年6月间，该游戏累计非法经营数额为1574.9万余元。法院认为，被告人陈某等人以营利为目的，未经著作权人许可，复制发行他人作品，通过信息网络向社会公众传播并运营“私服”游戏，其行为均已构成侵犯著作权罪，判处有期徒刑并处罚金。

来源：中国法院报

The Case of Copyright Infringement of Copycat Version of "Dahua Xiyou" Online Game Was Sentenced

Recently, The People's Court of Suqian City, Sucheng District, Jiangsu Province publicly sentenced the copycat version of "Dahua Xiyou" copyright infringement case. In 2015, NetEase (Hangzhou) Network Co., Ltd. obtained the copyright of the "Dahua Xiyou" computer software and registered it with the National Copyright Administration. In 2018, for the purpose of making profits, the defendants jointly funded the material resources of Dahua Xiyou from the Internet, developed it and named it as "Zhetian Xiyou". In 2019, the defendant started to operate the game without the authorization of NetEase. From February 2019 to June 2020, the accumulative illegal business turnover of this game amounted to over RMB15.749 million. The court held that the defendants, for the purpose of making profits, reproduced and distributed the works of others, disseminated and operated the copycat game to the public through the information network. All the acts constituted a crime of copyright infringement, and the defendants were sentenced to fixed-term imprisonment and a fine.

Source: [China Court Journal](#)

“喜鹊巢”因与“雀巢”商标构成近似被认定无效

近日，北京市高级人民法院就中华人民共和国国家知识产权局、雀巢产品有限公司商标权无效宣告请求行政纠纷案作出判决，认定诉争商标“喜鹊巢”在核定使用的全部服务上与引证商标“雀巢”构成使用在同一种或类似服务上的近似商标，诉争商标“喜鹊巢”的注册违反了2019年商标法第三十条的规定，应予以宣告无效。

法院认为，诉争商标是由汉字“喜鹊巢”构成的文字商标；引证商标是由“雀巢”构成的文字商标。诉争商标“喜鹊巢”与“雀巢”均含有“巢”，“鹊”与“雀”呼叫相同，诉争商标与引证商标在文字构成、呼叫、含义、整体外观等方面相近，若共同使用在同一种或类似服务上，相关公众在施以一般注意力隔离观察时，容易认为使用上述商标的服务系来源于同一主体或者两者之间有特定联系，从而产生混淆误认。

来源：[北京市高级人民法院](#)

"Magpie Nest" trademark is invalid because it is similar to the "Nestle" trademark

Beijing High People's Court made a judgment on the administrative dispute case concerning the request for invalidation of trademark rights, and held that the trademark in dispute "Magpie Nest" constituted a similar trademark in the same or similar services with the cited trademark "Nestle" in all services approved for use. The registration of the trademark in dispute "Magpie Nest" violated the provisions of Article 30 of the Trademark Law and should be declared invalid.

The court held that the disputed trademark and the cited trademark are similar in terms of text composition, call, meaning, overall appearance, etc. If they are used together on the same or similar services, the relevant public, when observing with general attention isolation, is likely to believe that the services using the above trademarks come from the same subject or there is a specific connection between them, thus causing confusion.

Source: [Beijing High People's Court](#)

中国药企东阳光在美挑战原创药专利取得成功

2022年10月18日美国法院正式宣判’405专利无效，芬戈莫德胶囊开始上市销售。至此，广东东阳光药业有限公司（以下简称“东阳光”）是第一家在美国挑战原创药专利并取得成功的中国本土企业。芬戈莫德作为全球首个治疗成人多发性硬化症的口服药物，具有广阔的市场前景，多发性硬化的全球药物市场规模约230亿美元。东阳光于2014年9月附带PIV专利声明向美国FDA提交ANDA首仿申请，随后向原研诺华发出挑战书，挑战其中两篇OB专利（US5604229专利和US8324283专利）的有效性。2018年7月，多方结果维持了专利的有效性，其他公司均和解并退出诉讼，仅东阳光一家坚持庭审，最终成为挑战芬戈莫德专利且坚持到最后胜诉的唯一厂家。

来源：[东阳光官网](#)

Chinese pharmaceutical enterprise Sunshine Lake successfully challenged a drug patent in the U.S.

On October 18, 2022, the U.S. court ruled that the '405 patent was invalid, and Fingolimod Capsules has been available in the market. So far, Sunshine Lake Pharma Co., Ltd. (Sunshine Lake) is the first Chinese local company that successfully challenged an innovator drug patent in the United States. Fingolimod is the world's first drug for the treatment of adult multiple sclerosis. The global market for multiple sclerosis drugs is about USD23 billion. Sunshine Lake filed the ANDA first imitation application with US FDA in September 2014 with the PIV Patent Claims. Sunshine Lake subsequently issued a letter of challenge to Novartis, challenging the validity of two of the OB Patents (US 5604229 Patent and US 8324283 Patent). In July 2018, the multilateral result upheld the validity of the patent, the other companies settled and exited from the litigation but Sunshine Lake persisted in the litigation and eventually became the sole manufacturer to challenge the patent of Fingolimod and prevail.

Source: [Sunshine Lake](#)

苹果请求联邦巡回法院推翻3亿美元的错误判决

苹果公司要求美国联邦巡回上诉法院推翻一起涉及4G无线技术标准必要专利的侵权判决，称法官错误地处理了这起诉讼，苹果要求对该案进行重新审理。此前，美国德克萨斯州东区地方法院裁定苹果因侵犯涉案专利需向Optis赔偿3亿美元。2019年，Optis向苹果发起诉讼，称苹果公司的智能手机、智能手表和基于LTE蜂窝标准的平板电脑侵犯了其七项涉及LTE蜂窝技术的相关标准必要专利。2020年8月，美国德克萨斯州陪审团裁定苹果故意侵犯了7项专利中的5项，要求苹果公司向Optis支付5.06亿美元，作为此前苹果侵权设备销售的许可费。2021年8月，德克萨斯州陪审团二审维持侵权判决不变，但将5.06亿美元的赔偿金额改判为3亿美元，原因是双方未曾就FRAND许可费率达成一致。苹果对此判决结果提出了上诉，要求进行第三次重审，但其请求在今年5月被驳回。

来源: [LAW360](#)

Apple asks Federal Circuit to overturn USD 300 million judgment

Apple asked the U.S. Court of Appeals for the Federal Circuit to reverse a judgment involving SEPs infringement in 4G wireless technology, claiming the judge mishandled the lawsuit and Apple has requested a rehearing. Previously, the U.S. District Court for the Eastern District of Texas ruled that Apple was required to pay Optis USD300 million in damages for infringement of the plaintiff's patents. In 2019, Optis initiated a lawsuit against Apple, claiming that Apple's smartphones, smartwatches and tablets based on LTE cellular standards infringe seven of its relevant SEPs relating to LTE cellular technology. In August 2020, a Texas jury found that Apple had willfully infringed five of the seven patents, and ordered Apple to pay Optis USD506 million in licensing fees for sales of Apple's infringing devices. In August 2021, a Texas jury upheld the infringement verdict in a second trial, but commuted the USD506 million award to USD300 million because the parties had not agreed on a FRAND royalty rate. Apple appealed the verdict for a third retrial, but its request was denied in May of this year. On October 14, Apple appealed again in the Federal Circuit Court of Appeals, arguing that the USD300 million in damages should be set aside.

Source: [LAW360](#)

美国最高法院审理安迪·沃霍尔与Prince肖像摄影师版权纠纷案

美国最高法院于10月12日就安迪·沃霍尔（Andy Warhol）在自己的作品中使用林恩·戈德史密斯（Lynn Goldsmith）拍摄的Prince的照片是否构成合理使用的问题听取了近两个小时的陈述。戈德史密斯五年前在纽约州对安迪·沃霍尔视觉艺术基金会提起诉讼，声称沃霍尔曾为《名利场》杂志供稿时，未经许可使用了戈德史密斯1981年拍摄的Prince的照片来创作他1984年的“Prince系列”中共16幅丝网印刷作品。戈德史密斯表示，沃霍尔从未征求过她的同意，也没有署名或提供报酬。法庭就沃霍尔的作品是否构成合理使用展开了激烈讨论。该案正受到密切关注，预计将在几个月内作出裁决。

来源：[ARTFORUM](#)

US Supreme Court Hears Andy Warhol vs. Prince Portrait Photographer's Copyright Dispute

The U.S. Supreme Court heard arguments for nearly two hours on October 12 on whether Andy Warhol's use of Lynn Goldsmith's photograph of Prince in his own work constituted fair use. Goldsmith filed a lawsuit against the Andy Warhol Foundation for the Visual Arts in New York state five years ago, claiming that Warhol, a former contributor to Vanity Fair magazine, used Goldsmith's 1981 photograph of Prince without permission for his 1984 "Prince series," a series of 16 silkscreens. Goldsmith says Warhol never asked her permission, signed her name or offered to pay her for the work. The court debated whether Warhol's work constituted fair use. A decision in the case, which is being closely watched, is expected within months.

Source: [ARTFORUM](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.





Subscribe to our WeChat community


扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 韩国

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Korea

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261