



# NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

## No.329

2022.12

### 立方要闻周报

## Weekly News By Lifang & Partners

### NO.68

#### 立方竞争法周报 **Weekly Competition Law News**

北京知识产权法院发文讨论行政垄断

Beijing IP Court Issues an Article on Administrative Monopoly

市场监管总局回复经营者集中申报咨询留言

SAMR Replies to the Public Consultation Message on Notification of Concentration of Operators

亚马逊与欧盟就滥用问题达成最终协议，欧盟将终止相关调查

Amazon Reaches Final Deal with EU on Abuse, EU to Close Relevant Investigations

欧盟委员会对两家银行参与欧元计价债券卡特尔发出异议声明

Antitrust: Commission Sends Statement of Objections to Deutsche Bank and Rabobank over Euro-denominated Bonds Trading Cartel Case

欧盟对因美纳违规收购Grail案宣布彻底剥离Grail等恢复性措施

Mergers: The Commission Adopts a Statement of Objections Outlining Measures to Unwind Illumina's Blocked Acquisition of GRAIL

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

《互联网信息服务深度合成管理规定》发布

Release of the Provisions on Administration of In-depth Synthesis Internet Information Services

财政部发布《企业数据资源相关会计处理暂行规定（征求意见稿）》

Ministry of Finance issues *Interim Provisions on Accounting Treatment for Enterprise Data Resources (Draft for Comments)*

六部门发布关于修改《网络预约出租汽车经营服务管理暂行办法》的决定



No.329

2022.12

Joint Decision of Six Departments on Revising the *Interim Administrative Measures for the Online Ride-Hailing Business Operations and Services*

最高检发布5件依法惩治侵犯公民个人信息犯罪典型案例

SPP Releases Five Typical Cases of Crimes of Infringing Citizens' Personal Information

江西省发布《江西省数据应用条例(草案)》

Jiangxi Province Releases *the Regulations of Jiangxi Province on Data Application (Draft)*

《四川省数据条例》获表决通过

*The Data Regulation of Sichuan Province is Adopted*

安徽省通管局通报29款侵害用户权益APP

Anhui Communication Administration Publicizes 29 APPs Infringing upon Users' Rights and Interests

湖北省及宁夏自治区开通数据出境安全评估申报通道

Hubei Province and Ningxia Hui Autonomous Region Have Opened the Application Channel for Security Assessment of Outbound Data Transfers

湖北、贵州、云南等地网信办发布开展2022年度汽车数据安全管理工作报送工作的通知

Hubei, Guizhou and Yunnan Organized to Carry out the Submission of 2022 Automobile Data Security Management Information

爱尔兰数据保护委员会宣布对Guerin Media的违规营销行为处以6,000欧元罚款

Ireland: DPC Announces € 6,000 Fine against Guerin Media for Marketing Violations

ICO对五家企业因拨打非法营销电话处以43.5万英镑罚款

ICO Fines Five Businesses £435,000 for Unlawful Marketing Calls

## 知识产权 Intellectual Property

《关于商标申请注册与使用如何避免与在先权利冲突的指引》发布

Release of *Guidelines on How to Avoid Conflict between Trademark Registration and Use and Prior Rights*



No.329

2022.12

国知局发布关于依法打击恶意抢注“世界杯”“拉伊卜”等商标注册的通告

Circular of the CNIPA on Legally Cracking Down on the Squatting of "World Cup", "LAEEB" and Other Trademarks

华为、OPPO签订全球专利交叉许可协议

Huawei and OPPO Sign the Global Patent Cross License Agreement

“SCIII”等商标侵权案：法院同时适用填平性赔偿和惩罚性赔偿

“SCIII” and Other Trademark Infringement Cases: the Court Applies Both Equitable and Punitive Damages

福州审判全国首例微信小程序侵犯著作权案

Fuzhou Court Issues First Copyright Criminal Judgment Involving WeChat Applet in China

法院认定以在后外观设计被授予专利权为由主张不侵权抗辩不能成立

The Court Ruled that the Defense of Non-infringement on the Ground that the Latter Design was Granted the Patent Right is not Tenable

欧盟公布《外观设计条例》与《关于外观设计法律保护的欧盟指令》修正案

EU Publication of the Amendments to the Designs Regulation and the EU Directive on the Legal Protection of Designs

苹果被指控：iPhone和Apple Watch侵犯6项定位专利

Apple Sued for Infringement on 6 of Geolocation Service Patents on iPhone and Apple Watch

## 立方竞争法周报 Weekly Competition Law News

### 北京知识产权法院发文讨论行政垄断

2022年12月5日，北京知识产权法院法官发文讨论了新反垄断法中关于反行政垄断的修订内容。新反垄断法明确了要建立公平竞争审查制度；扩大了行政垄断的主体范围，从行政机关扩大至所有法律法规授权的具有公共管理职能的组织；明确限制政府通过合作协议等方式排除、限制竞争；增加了对行政垄断的约谈调查程序；新法既要破除地方保护主义，又要防止过度优待外来企业，歧视本地企业；增加了改正报告的责任，违法的机关需要将改正情况书面报告上级机关和反垄断执法机构。（[查看更多](#)）

### Beijing IP Court Issues an Article on Administrative Monopoly

On December 5, 2022, judge of the Beijing Intellectual Property Court (“Beijing IP Court”) issued an article discussing the amendments to the new anti-monopoly law on anti-administrative monopoly. The new anti-monopoly law clarifies the need to establish a fair competition review system; expands the subject scope of administrative monopoly from administrative agencies to all organizations with public management functions authorized by laws and regulations; clearly restricts the government from excluding and restricting competition through cooperation agreements and other means ; increases interview and investigation procedures for administrative monopoly; not only breaks local protectionism, but also prevents excessive preferential treatment of foreign companies and discrimination against local companies; increases the responsibility for correction reports, and requires that the breaching agencies need to report corrections in writing to higher authorities and anti-monopoly enforcement agencies. ([More](#))

### 市场监管总局回复经营者集中申报咨询留言

2022年12月1日，国家市场监督管理总局（“市场监管总局”）在官网公众留言板块回复了一则关于经营者集中申报的咨询。在留言中，咨询者询问一笔增资控股交易是否需要经营者集中申报，如需申报，进行申报的主体和需要提供的相关材料为何。市场监管总局回复留言，是否进行经营者集中申报需兼而可考虑控制权变化和经营者营业额两个方面，进行申报的主体应为取得控制权或可以施加决定性影响的经营者。同时回复咨询者可以通过申报前商谈程序与市场监管总局进行沟通。（[查看更多](#)）

### SAMR Replies to the Public Consultation Message on Notification of Concentration of Operators

On December 1, 2022, the State Administration for Market Regulation (“SAMR”) replied to a consultation on the notification of concentration of operators on the public message section of its official website. In the message, the questioner asked whether a capital increase transaction needs to be notified as a concentration of business operators, and if it is necessary to notify, what is the subject of the notification and the relevant materials that need to be provided. SAMR replied to the message that whether to notify the transaction should take into account both the change of control and the turnover of the busi-

ness operators. The subject of the notification should be the business operator who has obtained control or can exert decisive influence. At the same time, the questioner can communicate with SAMR through the pre-notification consultation procedure. ([More](#))

## 亚马逊与欧盟就滥用问题达成最终协议，欧盟将终止相关调查

2022年12月6日，据媒体报道，亚马逊已与欧盟委员会就其利用数据损害竞争对手的行为达成最终协议。亚马逊承诺在网站的黄金购物车中给予竞争产品同等待遇，从而提升竞争产品知名度，该承诺为期五年。欧盟将终止两项引人注目的调查，亚马逊也可避免因违反数字市场法中禁止大型在线平台利用数据进行自我优待的规定而被处以可能高达其全球收入10%的巨额罚款。

([查看更多](#))

## Amazon Reaches Final Deal with EU on Abuse, EU to Close Relevant Investigations

On December 6, according to news report, Amazon has reached a final deal with EU antitrust regulators over concerns its use of data undermined rivals. Amazon has committed to increasing the visibility of rival products by giving them equal treatment on Amazon's "buy box", which generates the majority of purchases on the site. The commitments are set to remain in force for five years. The European Commission will close two of the most high-profile probes and Amazon will avoid a large fine of up to 10 percent of global revenues for breaching the Digital Markets Act by conducting self-preferencing as a large online platform. ([More](#))

## 欧盟委员会对两家银行参与欧元计价债券卡特尔发出异议声明

2022年12月6日，欧盟委员会针对德意志银行和荷兰合作银行实施欧元主导的债券交易卡特尔的行为，向二者发出异议声明。委员会担心两家银行在2005至2016年间，在欧洲经济区的二级市场上交易欧元主权债券、超主权债券、外国主权债券、次主权债券和政府担保的债券时，通过交易员交换了商业敏感信息并协调定价和交易策略。欧盟委员会此前曾同意与涉事公司共同探索和解可能性，后因进展停滞终止谈判，并迅速恢复正常反垄断程序。这是欧盟委员会第三次调查债券交易卡特尔行为。 ([查看更多](#))

## Antitrust: Commission Sends Statement of Objections to Deutsche Bank and Rabobank over Euro-denominated Bonds Trading Cartel Case

On December 6, 2022, the European Commission announced that it has sent Statement of Objections to Deutsche Bank and Rabobank over Euro-denominated bonds trading cartel. The Commission has concerns that between 2005 and 2016 the two banks, through some of their traders, exchanged commercially sensitive information and coordinated their pricing and trading strategies when trading Euro-denominated Sovereign, SSA (Supra-Sovereign, Foreign Sovereign, Sub-Sovereign/Agency), Covered and Government Guaranteed bonds in the secondary market in the European Economic Area. The Commission initially agreed to explore the possibility of a settlement with the companies involved but later discontinued the talks due to lack of progress and decided to quickly revert to the normal antitrust procedure. This is the third investigation conducted by the Commission involving cartels affecting the market for bonds trading. ([More](#))

## 欧盟对因美纳违规收购Grail案宣布彻底剥离Grail等恢复性措施

2022年12月5日，欧盟委员会发布公告，对其早前禁止的生命科学公司因美纳（Illumina）收购Grail案当事企业发出异议声明，并告知企业欧盟委员会拟采取的恢复性措施。欧盟委员会于2022年9月6日作出禁止因美纳收购Grail的决定，认为该交易会扼杀创新，并减少利用血液进行早期癌症筛查的新兴市场中的选择，在欧盟委员会进行审查前，因美纳已于2021年8月完成了对Grail的收购。为此欧盟委员会在异议声明中列出了拟采取的恢复性措施（restorative measures），要求：（1）因美纳必须实施彻底的剥离措施以解除与Grail的交易；（2）交易双方均需遵守过渡性措施直至完全解除交易。（[查看更多](#)）

## Mergers: The Commission Adopts a Statement of Objections Outlining Measures to Unwind Illumina's Blocked Acquisition of GRAIL

On December 5, 2022, the European Commission issued a statement, sent a Statement of Objections to Illumina and GRAIL informing them of the restorative measures the Commission intends to adopt. On 6 September 2022, the Commission prohibited the acquisition of GRAIL by Illumina over concerns that the merger would have stifled innovation and reduced choice in the emerging market for blood-based early cancer detection tests. Pending the Commission's review, in August 2021, Illumina had already completed its acquisition of GRAIL. Therefore, the Commission sets out the intended restorative measures in the Statement of Objections which include: (a) the divestment measures that the Commission considers Illumina must implement to unwind the transaction with GRAIL and (b) the transitional measures that Illumina and GRAIL need to comply with until Illumina has dissolved the transaction. ([More](#))

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

---

### 《互联网信息服务深度合成管理规定》发布

2022年11月25日，国家互联网信息办公室、工业和信息化部、公安部联合发布《互联网信息服务深度合成管理规定》（以下简称《规定》），自2023年1月10日起施行。《规定》适用于中华人民共和国境内应用深度合成技术提供互联网信息服务。《规定》明确了深度合成数据和技术管理规范，要求深度合成服务提供者和技术支持者加强训练数据管理和技术管理，保障数据安全，不得非法处理个人信息，定期审核、评估、验证算法机制机理等内容。（[查看更多](#)）

### Release of the Provisions on Administration of In-depth Synthesis Internet Information Services

On 25 November 2022, the Cyberspace Administration, the Ministry of Industry and Information Technology and the Ministry of Public Security jointly released the Provisions on Administration of In

-depth Synthesis Internet Information Services (the "Provisions"), effective from 10 January 2023. The Provisions apply to the application of deep synthesis technology to provide internet-based information services within the territory of the People's Republic of China. The Provisions specify the standards for the administration of deep synthesis data and technology. Moreover, the Provisions require deep synthesis service providers and technical supporters to enhance management of training data and technical administration to ensure the safety of data, prohibit such service providers and technical supporters from illegally processing personal information, and require them to review, evaluate and verify algorithms and mechanisms and other relevant contents on a regular basis. ([More](#))

## 财政部发布《企业数据资源相关会计处理暂行规定（征求意见稿）》

2022年12月1日，为加强企业数据资源管理，规范企业数据资源相关会计处理，强化相关会计信息披露，财政部发布了《企业数据资源相关会计处理暂行规定（征求意见稿）》（以下简称《意见稿》）。《意见稿》明确适用范围为符合准则规定、可确认为相关资产的数据资源，以及不满足资产确认条件而未予确认的数据资源的相关会计处理。此外，《意见稿》按照会计上经济利益实现方式，进一步细分为“企业内部使用的数据资源”和“企业对外交易的数据资源”两类，明确两类数据资源在确认、初始计量、后续计量、收入确认等环节应当遵循的具体准则。

([查看更多](#))

## Ministry of Finance issues *Interim Provisions on Accounting Treatment for Enterprise Data Resources (Draft for Comments)*

On 1 December 2022, in order to strengthen the management of enterprise data resources, standardize the accounting treatment relating to enterprise data resources, and enhance the disclosure of relevant accounting information, the Ministry of Finance issued *the Interim Provisions on the Accounting Treatment for Enterprise Data Resources (Draft for Comment) (the "Draft")*. The Draft applies to data resources that comply with the enterprise accounting standards and therefore can be recognized as relevant assets, as well as the accounting treatment of data resources that fail to be recognized as relevant assets under the enterprise accounting standards because they fail to meet the relevant recognition conditions for assets. In addition, according to the way in which economic interests are realized in accounting, the Draft further divides data resources into "data resources for enterprises' internal use" and "data resources for enterprises' external trading", and the detailed standards which shall be complied with in the recognition, initial measurement, subsequent measurement, revenue recognition and other processes for the two types of data resources are clarified. ([More](#))

## 六部门发布关于修改《网络预约出租汽车经营服务管理暂行办法》的决定

2022年11月30日，交通运输部、工信部、公安部、商务部、市场监管总局、国家网信办联合发布关于修改《网络预约出租汽车经营服务管理暂行办法》（以下简称《暂行办法》）的决定，修改后的《暂行办法》共四十条，其中规定了网约车平台公司不得向任何第三方提供驾驶员、约车人和乘客的姓名、联系方式、家庭住址、银行账户或者支付账户、地理位置、出行线路等个人信息，规定不得泄露地理坐标、地理标志物等涉及国家安全的敏感信息等内容。 ([查看更多](#))

## Joint Decision of Six Departments on Revising *the Interim Administrative Measures for the Online Ride-Hailing Business Operations and Services*

On 30 November 2022, the Ministry of Transport, the Ministry of Industry and Information Technology, the Ministry of Public Security, the Ministry of Commerce, the State Administration for Market Regulation and the Cyberspace Administration jointly issued the Decision on Revising *the Interim Administrative Measures for the Online Ride-Hailing Business Operations and Services (the "Interim Measures")*. As revised, the Interim Measures consist of 40 articles, providing that online ride-hailing platform companies shall not provide any third party with the names, contact information, home addresses, bank or payment accounts, geographic locations, travel routes and other personal information of drivers, taxi bookers and passengers. The Interim Measures also provide that sensitive information relating to national security such as geographic coordinates, geographic markers, etc. shall not be disclosed. ([More](#))

### 最高检发布5件依法惩治侵犯公民个人信息犯罪典型案例

2022年12月7日，最高人民检察院发布5件依法惩治侵犯公民个人信息犯罪典型案例。该批典型案例涵盖了对公民征信信息、生物识别信息、行踪轨迹信息、健康生理信息等不同类型个人信息的全面保护，该批典型案例对司法办案中涉及个人信息的有关法律适用问题进行了重申或明确。比如，案例一明确，对客观上无法排重计算所涉个人信息数量的，可以通过确定违法所得数额作为定罪量刑的事实依据。案例二明确，对批量公民个人信息的条数，根据查获的数量直接认定，但是有证据证明信息不真实或者重复的除外等。 ([查看更多](#))

### SPP Releases Five Typical Cases of Crimes of Infringing Citizens' Personal Information

On 7 December 2022, the Supreme People's Procuratorate ("SPP") released five typical cases of crimes of infringing citizens' personal information. This group of typical cases covers the comprehensive protection of various types of personal information, including citizens' credit information, biometric information, whereabouts and track information and health care information, and restates and clarifies the issues concerning the application of laws with respect to personal information in judicial cases. For example, in Case I, where it is not possible to calculate objectively the quantity of personal information involved based on repetition exclusion, the amount of illegal gains can be used as the factual basis for conviction and sentencing. Case II clarifies that the quantity of a batch of personal information shall be directly calculated according to the quantity seized, unless there is evidence that the information is not true or is repeated. ([More](#))

### 江西省发布《江西省数据应用条例(草案)》

2022年11月28日，江西省第十三届人大常委会第四十二次会议对《江西省数据应用条例（草案）》（以下简称《草案》）进行了一审，公开征求意见，截止时间为2022年12月29日。《草案》共八章五十三条，包括：总则、数据资源、数据要素市场、发展应用、促进措施、安全保护、法律责任和附则。总则规定了适用范围，并且界定了公共数据、非公共数据、公共数据共



享和公共数据开放等内容。《草案》还规定了对公共数据收集、整合、共享、开放、治理的管理体系作进一步优化。 ([查看更多](#))

## **Jiangxi Province Releases *the Regulations of Jiangxi Province on Data Application (Draft)***

On 28 November 2022, the 42nd Session of the Standing Committee of the 13th People's Congress of Jiangxi Province has conducted the first review of *the Regulations of Jiangxi Province on Data Application (Draft)* to seek public opinions by 29 December 2022. The Draft consists of 53 articles in eight chapters, including General Provisions, Data Resources, Data Element Market, Development and Application, Promotion Measures, Security Protection, Legal Liability and Supplementary Provisions. The General Provisions provide for the scope of application, and define the contents of public data, non-public data, public data sharing, public data opening, etc. The Draft also stipulates that the management system for the collection, integration, sharing, opening and governance of public data shall be further optimized. ([More](#))

### **《四川省数据条例》获表决通过**

2022年12月2日,《四川省数据条例》(以下简称《条例》)已由四川省第十三届人民代表大会常务委员会第三十八次会议通过,予以公布,自2023年1月1日起实施。条例共有八章七十条,包括总则、数据资源、数据流通、数据应用、数据安全、区域合作、法律责任和附则,其中规定了:公共数据资源利用、数据分类分级、数据实行目录化管理;公共数据共享、开放机制,建立公共数据授权运营机制;加强数据安全管理和个人信息保护,建立数据安全责任制等内容。 ([查看更多](#))

## ***The Data Regulation of Sichuan Province is Adopted***

On 2 December 2022, *the Data Regulation of Sichuan Province* (the "Regulation"), adopted at the 38th Session of the Standing Committee of the 13th People's Congress of Sichuan Province, is hereby promulgated and shall come into force as of January 1, 2023. There are 70 Articles in eight Chapters in the Regulation, including General Provisions, Data Resources, Data Circulation, Data Application, Data Security, Regional Cooperation, Legal Liabilities and Miscellaneous. The Regulation stipulates the following: utilization of public data resources, classification and grading of data, and catalog management of data; public data sharing, open mechanism, and establishment of public data authorization operation mechanism; strengthening data security management and personal information protection, and establishing data security responsibility system, etc. ([More](#))

### **安徽省通管局通报29款侵害用户权益APP**

2022年12月7日,安徽省通信管理局近期对省内APP进行了检查,共检测到29款APP存在违法违规收集使用个人信息的问题,于2022年11月9日对上述违规APP企业下达了责令改正通知书,要求限期完成整改工作,所涉问题包括:违规收集个人信息;违规使用个人信息;APP强制、频

繁、过度索取权限；APP频繁自启动和关联启动；强制用户使用定向推送功能等。（[查看更多](#)）

## Anhui Communication Administration Publicizes 29 APPs Infringing upon Users' Rights and Interests

On 7 December 2022, the Anhui Communications Administration recently conducted an inspection on the Apps in the province and detected 29 APPs that have illegally collected or used personal information. On November 9, 2022, it issued a notice to order the above-mentioned APP enterprises to complete rectification within a time limit. The problems involved include illegal collection of personal information; illegal use of personal information; forced, frequent and excessive claims for authority by APPs; frequent self-start and associated start of APPs; and forced use of the directed push function. ([More](#))

## 湖北省及宁夏自治区开通数据出境安全评估申报通道

2022年12月2日与7日，根据《数据出境安全评估办法》，湖北省互联网信息办公室以及宁夏自治区互联网信息办公室相继开通数据出境安全评估申报通道，接收该省数据处理者提交的申报材料。同时发布了数据出境安全评估申报的适用范围、申报方式及流程、申报材料清单以及咨询电话027—87796799、027—87231397（湖北省）、0951-6668922（宁夏自治区）。（[查看更多](#)）

## Hubei Province and Ningxia Hui Autonomous Region Have Opened the Application Channel for Security Assessment of Outbound Data Transfers

On 2 December 2022 and 7 December 2022, respectively, according to the *Security Assessment Measures for Outbound Data Transfers*, the Cyber Administration offices in Hubei Province and Ningxia Hui Autonomous Region opened the application channel for security assessment of outbound data transfers for receiving the application materials from the data processors in the respective province or region. The two Cyberspace Administration offices have also issued the specific requirements on the application scope, application method, application process, application materials and advice Tel: 027—87796799, 027—87231397 ( Hubei Province), 0951-6668922 (Ningxia Hui Autonomous Region). ([More](#))

## 湖北、贵州、云南等地网信办发布开展2022年度汽车数据安全管理工作报送工作的通知

近日，为规范汽车数据处理活动，保护个人、组织的合法权益，维护国家安全和社会公共利益，促进汽车数据合理开发利用，湖北、贵州、云南等地先后发布开展2022年度汽车数据安全管理工作报送工作的通知，报送内容可参考各地发布的汽车数据安全管理工作报告，报送截止时间均为2022年12月15日。（[查看更多](#)）

## Hubei, Guizhou and Yunnan Organized to Carry out the Submission of 2022 Automobile Data Security Management Information

Recently, in order to regulate the automobile data processing, protect the legitimate rights and interests of individuals and organizations, safeguard the national security and social public interests, and promote the rational development and utilization of vehicle data, several regions including Hubei, Guizhou and Yunnan have successively issued a notice on the submission of 2022 Automobile Data Security Management Information. The submission contents may be made with reference to the automobile data security management reports released by the respective region. The deadline for the submission is 15 December 2022. ([More](#))

## 爱尔兰数据保护委员会宣布对Guerin Media的违规营销行为处以6,000欧元罚款

2022年12月5日，爱尔兰数据保护委员会（下称“DPC”）宣布，Naas地区法院根据2011年第336号法定文书第13条的规定，对Guerin Media所实施的未经同意的营销通信行为罚款6,000欧元。DPC指出，Guerin Media是一家出版公司，其在未经个人同意的情况下向两个用户发送了营销电子邮件。DPC指出，该判决结果应警示以任何形式从事电子营销活动（如通过电子邮件、短信或冷电话进行电子营销等方式）的组织不遵守规定时可能面临DPC的刑事诉讼。

([查看更多](#))

## Ireland: DPC Announces €6,000 Fine against Guerin Media for Marketing Violations

On 5 December 2022, the Data Protection Commission (“DPC”) announced, on 5 December 2022, the decision of Naas District Court to fine Guerin Media €6,000 for sending unsolicited marketing communications, pursuant to Regulation 13 of Statutory Instrument 336 of 2011. The DPC noted that Guerin Media, a publishing company, sent unsolicited marketing emails to two individuals without their consent. the DPC noted the outcome of the decision should serve as a reminder to all organizations that are engaged in any form of electronic marketing, such as by email, text message or cold calling, that non-compliance with the regulations may result in a criminal prosecution by the DPC. ([More](#))

## ICO对五家企业因拨打非法营销电话处以43.5万英镑罚款

2022年12月7日，英国信息专员办公室（下称“ICO”）公布了五份罚款通知，对Applianceservices UK Ltd（下称“AUKL”）、Boiler Cover Breakdown Limited（下称“BCBL”）、Boiler Breakdown Limited（下称“BBL”）、Repair Plans UK Limited（下称“RPUK”）和Utility Guard Limited（“UGL”）等五家公司共罚款43.5万英镑，原因是在ICO在收到个人投诉后展开的调查中发现，上述五家公司分别违反了《2003年隐私和电子通信（欧盟指令）条例》（下称“PECR”）的第21和24条。经过调查，ICO发现，这些公司总共拨打了50万个非法营销电话，其中一些电话看来是针对那些已经在电话偏好服务中登记阻止此类非法营销电话的老年弱势人群。这些公司在通话过程中使用压力策略，以获取个人的付

款细节。因此，ICO认为，BCBL和BBL违反了PECR的第21和24条规定，其余公司也违反了PECR第21条的规定。（[查看更多](#)）

## ICO Fines Five Businesses £435,000 for Unlawful Marketing Calls

On 7 December 2022, The Information Commissioner's Office ("ICO") published, on 7 December 2022, five monetary penalty notices, in which it imposed fines totalling £435,000 on Applianceservices UK Ltd ("AUKL"), Boiler Cover Breakdown Limited ("BCBL"), Boiler Breakdown Limited ("BBL"), Repair Plans UK Limited ("RPUK"), and Utility Guard Limited ("UGL"), for violations of Regulation 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") respectively, following investigations by the ICO and the receipt of complaints by individuals. Following its investigation, the ICO highlighted that the companies collectively made half a million unlawful marketing calls, some of which appeared directed at elderly vulnerable people who had taken action to block the calls registered with the Telephone Preference Service. The ICO detailed that the companies, during calls, used pressure tactics to obtain payment details from individuals. Accordingly, the ICO determined that BCBL and BBL had violated Regulations 21 and 24 of the PECR, and the remaining companies have violated Regulation 21 of the PECR. ([More](#))

## 知识产权 Intellectual Property

---

### 《关于商标申请注册与使用如何避免与在先权利冲突的指引》发布

近日，为引导市场主体在申请注册与使用商标时遵循诚实信用原则，避免损害他人在先权利，国家知识产权局组织编写了《关于商标申请注册与使用如何避免与在先权利冲突的指引》（下称《指引》）。《指引》规定了适用范围、关注重点、商标与在先权利冲突的常见情形以及商标与在先权利冲突的法律后果。其中《指引》规定了八类商标与在先权利冲突的常见情形。《指引》为市场主体避免“囤商标”“傍名牌”“搭便车”“蹭热点”等不当注册及使用行为提供了范本。

来源：国知局

### Release of Guidelines on How to Avoid Conflict between Trademark Applications for Registration and Use and Prior Rights

Recently, the CNIPA has organized the compilation of *the Guidelines on How to Avoid Conflict between Trademark Registration and Use and Prior Rights (the "Guidelines")*, in order to guide market entities to follow the principle of good faith in applying for and using trademarks and avoid harming others' prior rights. The Guidelines provide for the applicable scope, focus, common situations of conflicts between trademarks and prior rights, and legal consequences of conflicts between trademarks and prior rights. In particular, the Guidelines provide for eight types of common situations in which trademarks are in conflict with prior rights. The Guidelines provide models for market entities to avoid such improper registration and use of trademarks as "hoarding trademarks", "attaching to the goodwill of well-known trademarks", and "clout-chasing".

Source: CNIPA

## 国知局发布关于依法打击恶意抢注“世界杯”“拉伊卜”等商标注册的通告

第二十二届国际足联世界杯足球赛正在卡塔尔举行，但少数企业、自然人以谋取不当利益为目的，对“世界杯”、著名球星姓名、世界杯吉祥物“LAEEB”“拉伊卜”等热词、标志进行商标恶意抢注，侵害了社会公共利益。国家知识产权局高度重视卡塔尔世界杯知识产权保护工作，对“世界杯”，“LAEEB”等26件商标注册申请予以驳回，对已注册的“LAEEBS”商标依职权宣告无效。国知局将继续加强对包括世界杯、世界杯吉祥物、著名球星姓名在内的世界杯热词、标志的保护。

来源：国知局

## Circular of the CNIPA on Legally Cracking Down on the Squatting of "World Cup", "LAEEB" and Other Trademarks

The 22nd FIFA World Cup is being held in Qatar, but some of enterprises and individuals, for the purpose of seeking improper benefits, squatting trademarks of such words and logos as "World Cup", names of famous football players and World Cup mascots "LAEEB" and "拉伊卜", which infringe upon the social and public interests. The CNIPA attaching great importance to the protection of intellectual property rights for the Qatar World Cup, has rejected the applications for registration of 26 trademarks including "World Cup" and "LAEEB", and declared the registered trademark "LAEEBS" invalid ex officio. The CNIPA shall continue to strengthen the protection of the World Cup words and logos including the World Cup, World Cup mascots, names of famous football players.

Source: CNIPA

## 华为、OPPO签订全球专利交叉许可协议

12月9日，华为技术有限公司与OPPO广东移动通信有限公司宣布签订全球专利交叉许可协议，该协议覆盖了包括5G标准在内的蜂窝通信标准基本专利。华为知识产权部部长樊志勇表示：“经过20多年的持续创新，华为已经在全球范围内形成了包括5G、Wi-Fi、音视频等多个高价值专利包。企业间相互认可知识产权价值，可以促进高价值标准技术研究“投入——回报——再投入”的创新正循环，提升产业的可持续创新能力，为消费者提供更多有竞争力的产品和服务。”

来源：华为

## Huawei and OPPO Sign the Global Patent Cross License Agreement

On 9 December, Huawei Technologies Co., Ltd. ("Huawei") and OPPO Guangdong Mobile announced the signing of a global patent cross-licensing agreement, which covers basic patents of cellular communication standards including 5G standards. Fan Zhiyong, Minister of Intellectual Property Department

of Huawei, commented that, "Huawei has formed many high-value patent packages in the world via continuous innovations over the past 20 years, including 5G, Wi-Fi, audio and video patents, etc. Mutual recognition of the value of intellectual property between enterprises can promote the positive innovation cycle of 'input – return – reinvestment' in the research and development of standard technologies with high value, and enhance the sustainable innovation ability of the industry, and provide consumers with more competitive products and services. "

Source: Huawei

## “SCII”等商标侵权案：法院同时适用填平性赔偿和惩罚性赔偿

上海知识产权法院就上海赛一环保设备有限公司（下称原告）与常州溢水环境工程有限公司（下称溢水公司）、上海皖能环境技术有限公司（下称皖能公司）侵害商标权及不正当竞争纠纷案作出二审判决，驳回上诉，维持原判。一审法院认定溢水公司未经许可与他人签订协议，生产、销售涉案侵权产品的行为构成商标侵权；皖能公司作为上证所基地项目的供货方，将涉案侵权产品销售予XX局，构成商标侵权。

法院认为，关于溢水公司是否应适用惩罚性赔偿应考量其是否具有侵权故意及侵权情节是否严重两个要素。首先，对于侵权故意的认定，应当综合考虑被侵权客体类型、权利状态和相关产品知名度、被告与原告或者利害关系人之间的关系等因素。本案中，原告公司成立时间早，其水处理产品在相关领域知名度较高，作为同业竞争者应当清楚原告商标的基本情况，但被告仍与案外人签订协议，生产、销售侵犯涉案注册商标专用权的产品。因此，可以认定溢水公司具有侵害涉案注册商标专用权的故意。其次，溢水公司曾向原告出具承诺函，并称不会再出现侵犯原告注册商标专用权的行为，但在本案中，溢水公司背弃承诺，仍提供载有涉案注册商标标识的侵权产品，故溢水公司的行为可以被认定为情节严重。综上，原告主张按照溢水公司侵权获利的4倍适用惩罚性赔偿，法院予以支持，并确定其应承担的赔偿总额应当为填平性赔偿数额与惩罚性赔偿数额之和，即为基数的5倍，共638,200元。

来源：上海知识产权法院

## "SCII" and Other Trademark Infringement Cases: the Court Applies Both Equitable and Punitive Damages

The Shanghai Intellectual Property Court made a second instance judgment on the case of trademark infringement and unfair competition disputes, and rejected the appeal. The court of first instance held that the defendant's act of producing and selling the infringing products and signing sales agreements regarding infringing products with others constituted trademark infringement. The sale of infringing products by the other defendant constituted trademark infringement.

The court held that whether the defendant shall be entitled to punitive damages shall take into account two factors, i.e. whether the defendant has intent for infringement and whether the infringement is serious. First, in determining the intent of infringement, a court shall comprehensively consider such fac-

tors as the type and right status of the infringed IPR, the popularity of the relevant product, and the relationship between the defendant and the plaintiff or the interested party. The plaintiff's company was established earlier, and its water treatment products are well known in relevant fields. As a competitor, defendant should be aware of the trademark of the plaintiff. However, the defendant still signed agreements with other parties to produce and sell products infringing on plaintiff's trademark. Therefore, it can be determined that the defendant has the malicious intent to infringe the alleged trademark. Secondly, the defendant once issued a letter of commitment to the plaintiff, saying that there would be no further infringement of the plaintiff's trademark. However, the defendant still provided infringing products containing the trademark logo involved in the case, so the defendant's acts can be considered as serious. To sum up, the plaintiff claimed that punitive damages shall be applied according to 4 times of the defendant's profits from infringement, which was supported by the court. The court determined that the total amount of damages shall be the sum of the equitable damages and the punitive damages, which is 5 times of the base number, totaling RMB 638,200.

### 福州审判全国首例微信小程序侵犯著作权案

近日，福州鼓楼法院审结一起侵犯宝宝巴士公司计算机软件著作权的刑事案件。该案系全国首例微信小程序的侵犯著作权案。法院认定被告单位昆山某信息科技有限公司未经著作权人许可，复制发行其计算机软件，非法经营获利，该公司总经理作为直接负责的主管人员，其行为均构成了侵犯著作权罪。

承办法官表示，《中华人民共和国刑法》第二百一十七条中侵犯著作权罪的“复制发行”与著作权法中的“复制”和“发行”，包括了复制作品、发行作品、既复制又发行作品，也包括了信息网络传播作品的行为，还包括了破坏计算机软件技术措施的行为，涵盖的范围广。而本案被告人以盈利为目的，擅自“复制”他人微信小程序的源代码并植入广告后，上架到微信平台公开信息网络传播，系属未经著作权人许可，通过信息网络公众传播他人计算机软件的行为，符合本罪的构成要件，应承担相应的刑事责任。

来源：福建日报

### Fuzhou Court Issues First Copyright Criminal Judgment Involving WeChat Applet in China

Recently, the Gulou District Court in Fuzhou concluded a criminal case of computer software copyright infringement. This case is the first case of copyright criminal case regarding WeChat applet in China. The court held that the defendant copied and distributed the plaintiff's computer software, making illegal profits. As the directly responsible person in charge, the general manager of the company committed acts that constituted a crime of copyright infringement.

According to the judge in charge, the term "reproduction and distribution" in Article 217 of the Criminal Law of the People's Republic of China, and the terms "reproduction" and "distribution" in the Copyright Law include the reproduction and distribution of works, as well as the activities of communication of works through information network, and destruction of works. The infringement and distribution of works are also included. However, the defendant "copied" the source code of others' WeChat applets for the purpose of making profits, and implanted the advertisements, and then put them on the WeChat

platform for public information network dissemination. This is an act of public dissemination of others' computer software through the information network without the permission of the copyright owner, which meets the constitutive requirements of this crime and shall bear the corresponding criminal responsibility.

Source: Fujian Daily

## 法院认定以在后外观设计被授予专利权为由主张不侵权抗辩不能成立

近日，广东省高级人民法院就中山尚洋科技股份有限公司（原审原告）与嘉利玛（北京）商贸有限公司（原审被告）侵害外观设计专利权纠纷案作出二审判决，责令原审被告停止制造、销售、许诺销售原告享有专利权的产品。

法院认为，获得专利权的在后外观设计，即使提供了与涉案专利设计有区别的专利评价报告，亦不能以此为由抗辩不侵权。专利评价报告侧重于找出专利与对比设计之间的差异从而考虑专利是否具有创造性，而侵权比对是对被诉侵权设计与授权专利设计之间的近似性进行判断。专利评价报告可以作为法院审理专利侵权案件的参考，而不必然作为认定被诉侵权产品与涉案专利是否构成近似的依据。《最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释（二）》第二十三条规定：“被诉侵权技术方案或者外观设计落入在先的涉案专利权的保护范围，被诉侵权人以其技术方案或者外观设计被授予专利权为由抗辩不侵犯涉案专利权的，人民法院不予支持。”本案中，在后外观设计专利申请日晚于涉案专利公告日，以此主张不侵权抗辩不能成立。

来源：广东高院

## The Court Ruled that the Defense of Non-infringement on the Ground that the Latter Design was Granted the Patent Right is not Tenable

Recently, the Guangdong High People's Court has made the second-instance judgment in a design patent infringement dispute, ordering the defendant to stop producing, selling, and offering to sell the plaintiff's patented products.

The court held that for the latter design granted the patent right, even if a patent evaluation report different from the design of the patent concerned is provided, it cannot be used as a defense to non-infringement. The patent evaluation report focuses on finding out the difference between the patent and the comparative design, so as to consider whether the patent is creative, while the comparison of patent infringement is a judgment on the similarity between the design sued for patent infringement and the design of the patent as authorized. The patent evaluation report can be used as a reference for the court to hear patent infringement cases, but not necessarily as a basis for determining whether the sued infringing products are similar to the patents involved. Article 23 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (II) stipulates: “In the case that the alleged infringing technical scheme or external design falls under the scope of protection of the prior patent in the case, if the respondent infringer



asserts no infringement of the patent in the case on the basis that his technical scheme or design is patented, the People's Court shall not support.” In this case, the application date of the latter design patent is later than the announcement date of the patent concerned, so the defense based on which the latter design patent is claimed as non-infringement is untenable.

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

## 欧盟公布《外观设计条例》与《关于外观设计法律保护的欧盟指令》修正案

近日，欧盟委员会公布了《欧盟外观设计条例》与《关于外观设计法律保护的欧盟指令》的修正案。两项修正案目前正待欧盟议会和欧盟理事会表决。本次修订旨在使欧盟外观设计保护与数字化时代相适应，并且为了与欧盟商标制度的相关实践保持一致做出了适应性修改。本次修订将降低官方费用，简化程序，加快处理速度，提升可预见性和法律上的确定性，从而降低获得外观设计法律保护门槛。

来源: [欧盟知识产权局](#)

## EU Publication of the Amendments to the Designs Regulation and the EU Directive on the Legal Protection of Designs

Recently, the European Commission has published the amendments to the EU Industrial Designs Regulation and the EU Directive on the Legal Protection of Industrial Designs. The amendments are currently before the EU Parliament and the EU Council to vote. The amendments aim at adapting EU protection of industrial designs to the digital age and have made some adaptable changes to keep in line with the practices relating to EU trade mark system. The Amendment will reduce official costs, simplify procedures, speed up processing, and improve predictability and legal certainty, thereby lowering the threshold for obtaining legal protection for industrial designs.

Source: [EUIPO](#)

## 苹果被指控: iPhone和Apple Watch侵犯6项定位专利

苹果公司近日被 Geoscope Technologies Pte. Ltd指控，认为苹果公司侵犯了其 6 项和移动设备地理定位服务领域有关的专利。Geoscope 是一家新加坡公司，在美国弗吉尼亚州联邦注册经营，该公司声称苹果的iPhone和Apple Watch是使用基于位置的服务的两台设备，侵犯了Geoscope Technologies的专利。该公司还称这六项专利的最初发明人将在庭审中作证。

来源: [patentlyapple](#)

## Apple Sued for Infringement on 6 of Geolocation Service Patents on iPhone and Apple Watch

Recently, Apple has been sued by Geoscope Technologies Pte. Ltd, a company organized under the

laws of Singapore and registered to do business in the Commonwealth of Virginia. The company owns six patents relating to the field of geolocation services for mobile devices. The company claims that Apple's mobile devices, especially the iPhone and Apple Watch infringe on their acquired intellectual property. The lawsuit mentions that the original inventors of the six patents will testify at trial.

Source: [patentlyapple](https://patentlyapple.com)

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](http://www.lifanglaw.com)

 Email: [info@lifanglaw.com](mailto:info@lifanglaw.com)

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261