



NEWSLETTER

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Intellectual Property

China (Shanghai) Intellectual Property Protection Center was established

Recently, China National Intellectual Property Administration(CNIPA) agreed to build the China (Shanghai) Intellectual Property Protection Center (Shanghai Protection Center), bringing the number of intellectual property protection centers to 53 nationwide.

The Shanghai Protection Center will further enhance the level of IPR protection and services in Shanghai, together with the Pudong Protection Center, which has been completed in advance, to continuously optimize the business and innovation environment, accelerate the adjustment of Shanghai's advantageous industrial layout, enhance the ability of convergence of IPR innovation achievements, stimulate IPR innovation vitality, and accelerate innovation-driven development; and help Shanghai build an international IPR protection highland by constructing a fast and coordinated IPR protection system and opening up the whole chain of IPR creation, application, protection, management and service.

Source: CNIPA

Zhejiang takes the lead in the country to pilot free open licensing of patents

On October 18, Zhejiang officially announced 379 free open license patents, and enterprises can use these patents for free by applying. This is the first batch of free open license patents in China, and at present, they have been precisely matched with 6365 enterprises in Zhejiang Province through big data.

At present, domestic enterprises pay patent licensing fees ranging from a few thousand to hundreds of thousands of yuan per year, the highest up to tens of millions of yuan. The patent is free to use, and the biggest beneficiary is the large number of small and medium-sized enterprises.

Source: Zhejiang Daily

Changsha court issued a ban on the "Honor of Kings" game rental platform

Recently, Kaifu Primary People's Court, Changsha, Hunan issued a pre-action preservation injunction, ordering two network technology companies in Hubei to immediately stop its development of the rental APP to provide the "Honor of Kings" game account rental platform services, and a network technology company in Changsha to immediately stop the two companies in Hubei's rental APP for publicity, promotion and account distribution behavior.

This is the first case of injunction issued by the national court system to the "Honor of Kings" game rental platform.

Source: Kaifu Primary People's Court, Changsha, Hunan

BMW's dispute over the trademark of Mini car model was rejected

On October 20, the first instance administrative judgment between BMW AG and CNIPA was issued. According to the judgment, BMW AG filed a lawsuit against CNIPA for revocation of the decision to revoke the trademark "MINI and figure", requesting the revocation of the decision. The trademark at issue was approved in April 2011, and the approved goods for use were miniature car models. The decision found that the evidence on file was not sufficient to prove that the trademark in dispute had been used for real, legal and effective commercial purposes on the approved goods from August 14, 2014 to August 13, 2017, and therefore the trademark in dispute was revoked.

Beijing Intellectual Property Court found that the evidence on file did not form a complete chain of evidence and could not prove that the trademark in dispute had been used in real, legal and effective commercial use on the approved goods within the designated period, and the trademark in dispute should be

cancelled. The final decision of the court was to reject the plaintiff BMW AG's claim.

Source: JIEMIAN.COM

Nikola is allowed to continue to file a \$2 billion patent lawsuit against Tesla

Hydrogen truck startup Nikola has reportedly been allowed to continue its three-year-old \$2 billion patent lawsuit against Tesla.

Earlier this month, a federal judge put the lawsuit on hold after the companies stopped responding to a court order.

Nikola first filed the lawsuit in 2018, claiming the Tesla Semi infringed on several of Nikola's design patents. Tesla, for its part, said the claim was without merit. However, it lost a bid to invalidate some of the patents in question with the U.S. Patent and Trademark Office in April 2020.

On Tuesday, Judge James Donato stated in a new order that the case against Tesla will remain "administratively closed" but will not be dismissed. He assigned Nikola two new January deadlines: one to present the technology to the court, and one to hold a hearing on the scope of the patents Nikola claims were infringed. For now, the judge said, the case will not be dismissed for failure to prosecute, but that could change if Nikola does not move forward with resolution of this case in an effective and timely manner.

Source: FROMGEEK.COM

OPPO counter-claims Nokia 5G patent infringement before the German court

Recently, four 5G patent infringement cases of OPPO against Nokia have been filed by the courts in Mannheim, Munich and Hamburg, Germany. Among the above places of litigation, Mannheim and Munich are also the courts previously chosen by Nokia to sue OPPO, while Hamburg is another front opened by OPPO.

The Nokia v. OPPO case is the largest 5G-centric patent dispute to date. Nokia has launched dozens of lawsuits against OPPO in nine countries at the same time. With such a big move, Nokia values not only the huge shipments represented by OPPO itself, but also in paving the way for a 5G licensing model. In fact, in addition to the license agreement has expired OPPO, Nokia is about to usher in a massive renewal with Apple and other manufacturers, forcing OPPO to accept the license terms in its favor is Nokia's way to clear the subsequent negotiation obstacles and even avoid potential disputes.

Source: IPR daily

J.P. Morgan Chase & Co joins a patent sharing organization created by HP, Microsoft and Facebook

Recently, J.P. Morgan Chase & Co announced that it has joined the Low Carbon Patent Pledge to combat climate change by providing free patents to anyone who uses low-carbon technologies. J.P. Morgan Chase & Co is the sixth company to join. The pledge was established by Hewlett-Packard(HP), Microsoft and Facebook, along with two other companies, on World Earth Day, April 22, 2021, to promote low-carbon technologies and foster collaborative innovation.

The bank is said to be developing several key patents on how to efficiently cool and ventilate its massive data centers. The large data centers used by J.P. Morgan Chase & Co and other large companies consume large amounts of energy for cooling and ventilation to prevent systems from overheating. The official website of the Low Carbon Patent Pledge shows a current total of 435 patents in nine countries, with the current patent pledge organizations coming mainly from HP, Microsoft and Facebook.

Source: Reuters

Disney sues to retain copyright of Avengers characters

The Walt Disney Company (TWDC) filed a series of lawsuits in federal courts in New York and California on Sept. 24 to retain full control over its Marvel franchise characters, including Iron Man, Spider-Man, Black Widow, Thor and others. The lawsuit was filed against the Marvel franchise, which includes Stan Lee, Steve B. Lee, and Steve D. Lee, Lee, Steve Ditko, and Gene Baker. The lawsuit was filed against five famous comic book artists, including Stan Lee, Steve Ditko and Gene Colan. The lawsuit was filed against the heirs of five prominent comic book writers and producers, including Stan Lee, Steve Ditko and Gene Colan, and their estates, in an effort to invalidate the notice of copyright termination served on TWDC.

The dispute began earlier this year when the administrators of the writers' estates served Marvel with copyright termination notices, seeking to recover rights related to the Marvel characters they helped create. TWDC countered those notices with a flurry of lawsuits seeking declaratory relief, arguing that the rights to the characters could not be terminated because the works were made during the employment period.

Source : Intellectual Property Protection in China

Entertainment Software Association reports piracy issues to the U.S. government

At the request of the Office of the United States Trade Representative (USTR), the Entertainment Software Association (ESA) has submitted a list of so-called "notorious markets" to the U.S. government. The ESA represents and speaks for some of the biggest names in the video game industry, from Activision, Ecolab, Nintendo and Ubisoft to Capcom, Microsoft, Konami and Scooby Doo. The ESA says all members face the threat of specialized piracy platforms or piracy-assisted platforms.

In its comment release, ESA said, "ESA represents companies that publish interactive games for video game consoles, handheld devices, personal computers, and the Internet. ESA sees the Notorious Markets Review as an important opportunity to dissect markets where problematic markets expose industry products and services to mass infringement or counterfeiting, and where these markets can either evade enforcement action or are not subject to enforcement action deterrence."

Source : Intellectual Property Protection in China

Cybersecurity and Data Protection

Anti-Telecommunication Network Fraud Law (Draft for Comment) Deliberated by the NPC Standing Committee

On October 23, 2021, *Anti-Telecommunication Network Fraud Law (Amendment)* was deliberated at the 31th Session of the Standing Committee of the Thirteenth National People's Congress and openly solicited opinions from the public. *The Amendment* highlights the "implementation" of the real-name system for telephone cards, financial accounts and Internet accounts, stipulates a special article for the governance of "Internet of Things cards", requires that enterprises shall be governed by law, rectifies fraud-related illegal services, equipment and industries, supports the research and development of telecommunication network fraud. It also supports the development of technical countermeasures against fraud, and promotes big data anti-fraud. Based on the experience of the previous anti-telecom network fraud work, targeted provisions have been made and multiple measures have been taken. ([More](#))

MIIT: Enterprises shall Establish the System of "Double Lists" for Personal Information Protection

On October 19, 2021, at the conference on the industry and information technology development for the first three quarters, Ministry of Industry and Information Technology (MIIT) responded to questions concerning App rectification. In the first three quarters, 10 batches of centralized inspections have been carried out, a total of 1,494 illegal APPs were circulated and 408 APPs that refused to rectify have been removed; the technical inspection of 1.76 million APPs has been completed, covering more than 60% of the total APPs nationwide. The problem that open screen pop-up information cannot be closed has been basically solved. The rate of disordered jump which misleading user also dropped to 1%. MIIT will launch a six-month special campaign as the next step to enhance the perception of information and communication service users, and urge enterprises to establish a "double list" system for personal information protection (i.e., a list of collected personal information and a list of personal information shared with third parties). ([More](#))

NISSTC Issued the Information Security Technology - Security Requirements of Vehicle Collected Data (Draft for Comment)

On October 19, 2021, The National Information Security Standardization Technical Committee (NISST) Promulgates *the Information Security Technology - Security Requirements on Data Collected by Automobiles (Draft for Comment) (the Standard)*. The Standard, which consists of 15 articles in eight sections, set out the security requirements for the transmission, storage and export of the data collected from automobiles and other processing activities. It not only provides guidance for automakers to ensure the safety of automobile data processing activities, but also provides reference for competent regulators and third-party assessment agencies to supervise, administer and assess the processing of collected data of locomotives. The period for comment will end on December 18, 2021. ([More](#))

The First Criminal Case of Illegally Obtaining Geographic Information Data Sentenced in Huzhou

The Intermediate People's Court of Huzhou City, Zhejiang Province, recently has sentenced the first criminal case of illegal access to geographic information data. The second instance upholds the first instance in which three defendants were sentenced for imprisonment ranging from three years and six months to one year and four months and a fine ranging from 100,000 yuan to 20,000 yuan. Appellant Zhang used to be a distributor of Company Q. Where Zhang was aware that Company Q refused him from obtaining the data and forwarding it, he continued to obtain and forward the data of Company Q by concealed means after the termination of the distribution and cooperation agreement. Zhang had the intention to illegally obtain the data of Company Q with bad faith. Meanwhile, Zhang's behavior of obtaining data that only is accessible to legal users of Company Q can be regard as the acquisition of data stored, processed and transmitted in the computer information system by "other technical means". In summary, the appellant Zhang, the defendants Chen and Li of the original trial used other technical means to obtain the data stored, processed or transmitted in the victim's computer information system, the circumstances are particularly serious, their behavior has constituted the crime of illegal access to computer information system data. ([More](#))

14 APPs Reported for Suspected Collection of Personal Privacy Information beyond the Scope

On October 20, 2021, the National Computer Virus Emergency Response Center (CVERC) found through internet monitoring that 14 APPs are non-compliant about privacy and violated the Cybersecurity Law, and are suspected of collecting personal privacy information beyond the scope. Specific rea-

sons for reporting include: the App fails to expressly indicate to users all privacy rights it applied for; the App provides personal information to third parties without anonymizing it; the App collect personal information before obtaining the consent of users; Failing to provide functions to effectively correct or delete personal information or deregister users' accounts, or setting up unreasonable conditions for de-registering users' accounts; failing to establish and publicize channels for complaints and reports about personal information security, or failing to handle and respond to such complaints and reports within the promised time limit. ([More](#))

France: CNIL Addresses Alternatives to Third-party Cookies

On 13 October 2021, The French data protection authority (CNIL) published a blog post on alternatives to third-party cookies and the consequences of such technologies in terms of consent. In particular, CNIL emphasized that alternative technologies developed for targeted advertising must always respect the rules relating to data protection and, above all, the consent and rights of individuals. Specifically, CNIL highlighted the following four main categories of third-party-cookie alternatives: First-party cookies and browser fingerprinting; Single sign-on; Unique identifiers; and Cohort-based targeting advertising. ([More](#))

EDPB launches first coordinated action on cloud-based services

On 18 October 2021, the European Data Protection Board launched its first action under the Coordinated Enforcement Framework on the use of cloud-based services by the public sector. Created in October 2020, the framework aims to coordinate joint actions for supervisory authorities. In a coordinated action, the EDPB prioritizes a certain topic for supervisory authorities to work on at the national level. "The results of these national actions are then bundled and analyzed, generating deeper insight into the topic and allowing for targeted follow-up on both the national and the EU level," the EDPB said. ([More](#))

OAIC Determined 7-Eleven Breached Privacy Laws by Gathering Data Without Consent

On 12 October 2021, Office of Australian Information Commissioner (OAIC) determined that 7-Eleven breached customer privacy by collecting facial imagery without consent. From June 2020 to August 2021, 7-Eleven conducted surveys that required customers to fill out information on tablets with built-in cameras. These tablets, which were installed in 700 stores, captured customers' facial images at two points during the survey-taking process -- when the individual first engaged with the tablet, and after they completed the survey. OAIC determined that the company collected up to 3.2 million facial images over a 10 month period. 7-Eleven complied with an order to cease the data collection and has been further ordered to destroy all collected "faceprint" data. ([More](#))

Ukraine Submits Draft Law to Create Data Protection Commission

The Ukrainian Parliament proposed a draft law on the creation of a National Commission for Personal Data Protection and Access to Public Information, with the intent of creating a commission to monitor compliance with the country's data protection law. The draft law outlines the commission's duties, organization and goals, saying the body will "promote the restoration of the right to protection of personal data and the right to access public information." ([More](#))

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