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Weekly Competition Law News

The Standing Committee of the National People's Congress Announces 2022 Legislative Working Plan: Further Review the Draft Amendment of Anti-Monopoly Law in June

On May 6, 2022, the Standing Committee of the National People's Congress of the People's Republic of China ("NPCSC") announced its 2022 legislative working plan. According to the schedule, this June, NPCSC will further review 5 draft laws and revisions, including the *Anti-Monopoly Law*. The *Anti-Monopoly Law* came into effect on August 1, 2008. On October 19, 2021, the first draft amendment to the *Anti-Monopoly Law* was submitted to the thirty-first session of the Standing Committee of the thirteenth National People's Congress for preliminary review. ([More](#))

Zhejiang Issues Specifications for Internet Platform Enterprises on Competition Compliance Management (Exposure Draft)

Recently, the Zhejiang Provincial Administration for Market Regulation organized the drafting of the *Specifications for Internet Platform Enterprises on Competition Compliance Management (exposure draft)* ("*Specifications*"), and widely solicited opinions from the public. The *Specifications* comprehensively sorts out the risk process management system related to competition compliance of Internet platform enterprises, and emphasizes that Internet platform enterprises should pay attention to identifying the risk of competition compliance, such as the risk of concluding monopoly agreement, abusing of the dominant market position, merger filing as well as conducting unfair competition behaviors, and effectively carry out relevant risk assessment, reminder, control and treatment activities. ([More](#))

Musk's Twitter Buyout under Antitrust Review by Federal Trade Commission

On May 6, 2022, according to media reports, the U.S Federal Trade Commission ("FTC") is reviewing Tesla chief executive Elon Musk's USD 44 billion takeover of Twitter Inc. FTC is to decide by next month whether it will conduct an in-depth antitrust probe of the transaction. According to the U.S. merger law, Musk is required to notify the FTC and the United States Department of Justice ("DOJ") of the transaction and wait at least 30 days before closing, which gives the agencies a timeframe to investigate potential antitrust concerns. After that, FTC can ask for additional information, resulting in more delay. ([More](#))

Dutch Watchdog to Preliminarily Investigate Google Play Store

On May 4, 2022, the Netherlands Authority for Consumers and Markets ("ACM") announced a preliminary investigation into Google for possible anti-competitive practices in its Google Play store. Earlier, dating App Tinder had asked ACM to assess whether Google is abusing dominant position in the dating app market, for that Tinder was no longer able to use a payment system other than Google's. In a response, Google said it charges customers 15% commissions for subscriptions via Google Play, which was the lowest rate among major app platforms. It said app distributors can also avoid Google Play entirely by distributing their apps via other stores or websites. ([More](#))

Germany Federal Cartel Bureau Determines Meta Platform's Paramount Significance for Competition across Markets

On May 4, 2022, the Germany Federal Cartel Bureau has formally determined the paramount significance for competition across markets of Meta Platforms, Inc. The new provision, section 19a of the 10th amendment to the German Competition Act ("*GWB10*"), enables the Germany Federal Cartel Bureau to intervene earlier and more effectively against the anti-competitive practices of large digital companies. If it formally determines that an undertaking is of paramount significance for competition across markets, it can prohibit it from engaging in anti-competitive practices. ([More](#))

European Commission Sends Statement of Objections to Apple over Practices Regarding Apple Pay

On May 2, 2022, the European Commission has announced that it has sent Apple its statement of objections over Apple's abuse of dominant position in markets for mobile wallets on iOS devices. By limiting access to the near-field communication technology ("NFC") used for contactless payments with mobile devices in stores, Apple restricted competition in the mobile wallets market on iOS, which had an exclusionary effect on competitors and led to less innovation and less choice for consumers for mobile wallets on iPhones. ([More](#))

Intellectual Property

The Hague Agreement entered into force in China on May 5, 2022

On May 5, 2022, the Hague Agreement concerning the International Deposit of Industrial Designs ("Hague Agreement") entered into force in China. On the effective day, a total of 49 Chinese enterprises submitted 108 international applications for design patents.

Hague system provides a simple and efficient international registration procedure of design patents by filing one international application in one language, using one currency and paying one set of fees. If an applicant needs to change or renew rights, applicants only needs to submit one request to the International Bureau of WIPO, which can be effected in all designated contracting parties.

There are two ways to file an international application for a design patent through the Hague system: the applicant can file to the International Bureau of WIPO, or, if the contracting party permits, to the contracting party office. An international registration of a design is effective for an initial period of five years and can be renewed twice in a five-year period. In each designated contracting party, the international registration is protected for at least 15 years.

Source: [China National Intellectual Property Administration](#)

The Supreme People's Court: Classification of technical features and determination of the scope of protection of functional features

The Supreme People's Court (SPC) made a judgment of second instance on a patent infringement dispute, revoking the original judgment and rejecting all of the plaintiff's claims.

SPC held that the division of technical features shall be combined with the overall technical scheme of the invention, considering the smaller technical units that can achieve certain technical functions relatively independently and produce relatively independent technical effects. In this case, regarding whether the technical features of claim 1 shall be divided into "waist-shaped hole" and "limit pin" as the smallest technical unit, the court held that although both are separate parts or structures, they are ultimately used through the relationship between them. Therefore, they are not independent technical features.

For the technical features expressed in terms of function or effect, the technical features shall be determined in combination with the specific implementation of the function or effect and its equivalent implementation described in the specification and accompanying drawings.

Source: [The Supreme People's Court](#)

The Supreme People's Court: Reasonable distinction between the different legal attributes of patent enforcement licensing and ancillary transactions

Recently, the Intellectual Property Court of the Supreme People's Court made a final judgment on invention patent licensing contract disputes, ordered the defendant to pay the patent license fee of RMB 290,000.

The court held that the essence of patent implementation license lies in the use of patented technology solutions to implement production and business activities, the patentee (licensor) and the user (licensee) signed a patent implementation license contract to trade around the patented technology. The "implementation of the patented technology" shall not be confused with the "completion of the necessary material preparation work for the implementation of the patented technology".

In this case, regarding the subject matter, the purpose, the content of the contract and the supplementary contract, the two contracts are independent of each other.

Source: [Intellectual Property Court of the Supreme People's Court](#)

Hangzhou “Wang Xingji” VS Shaoxing “Wang Xingji”: The time-honored brand logo shall not infringe on the registered trademark rights

Hangzhou Intermediate People's Court made a second judgment on the trademark infringement between “Wang Xingji” and “Wang Xingji”, upholding the original judgment, which ordered the defendant to pay damages of RMB 300,000.

In this case, the "Wang Xing Ji Fan" is the name of the intangible cultural heritage of the defendant, and the defendant's enterprise name was obtained before the approval date of the trademark, the defendant can use "Wang Xing Ji" within a reasonable and necessary scope. However, the defendant actually used "Wang Xing Ji" and other marks, which are not the standard identification of enterprise name, nor the introduction of the intangible cultural heritage, but the use of trademarks indicating the source of goods. "Wang Xing Ji" is the plaintiff's well-known trademark, time-honored brand name and enterprise brand name. The relevant public with general attention can not distinguish whether the defendant's use refers to the enterprise name or to the source of the goods, the defendant's action is easy to cause confusion among the relevant public, which was the prominent use of the name and constitutes trademark infringement.

Source: [Hangzhou Intermediate People's Court](#)

BGI Genomics wins \$333.8 million patent lawsuit in the U.S.

On May 6, a federal jury in Delaware ruled that Illumin's two-channel DNA-sequencing systems infringed two DNA-Sequencer Patents, which were held by BGI Genomics subsidiary Complete Genomics Inc.(CGI) Complete Genomics. Illumin was ordered to pay damages of USD 333,801,990 for intentional infringement. The jury also rejected Illumina's claim that CGI's patents were invalid. This amount of award is the largest patent award ever awarded to a Chinese company overseas.

Source: [nasdaq.com](#)

Japan Patent Office issued Research Report on International Intellectual Property System in 2021

Japan Patent Office issued Research Report on International Intellectual Property System in 2021, which investigates the status of IP under international framework, analyzes the status of IP under bilateral and regional economic partnership agreements, and the trend of IP system in various countries.

In terms of COVID-19-related IPR trends, the international proposals and discussions on restricting IPR can be divided into three categories:

- (1) India and South Africa submitted a proposal to the TRIPS Council in October 2020 to exempt from TRIPS obligations on IP rights such as patents, designs and trade secrets for a certain period of time.
- (2) Enforcement of COVID-19-related patents, such as limiting IP rights by compensating patentees.

(3) Declaration of voluntary patent collaboration and licensing by private companies in response to COVID-19 related research and development.

Source: [Japan Patent Office](#)

USITC initiated 337 investigation into Certain Mobile Electronic Devices, Lenovo, Motorola were defendants.

Recently, the U.S. International Trade Commission (USITC) voted to initiate a 337 investigation (Code: 337-TA-1312) into Certain Mobile Electronic Devices (CMED).

On March 30, 2022, Maxell, Ltd. of Japan filed a petition for a 337 investigation to the ITC, claiming that the products exported to, imported into, and sold in the U.S. infringed its patent rights, requesting ITC to issue a limited exclusion order and injunction. Lenovo Group Ltd. of Beijing, China, Lenovo (United States) Inc. of Morrisville, NC, Motorola Mobility LLC of Libertyville, IL were defendants.

ITC will determine the termination period within 45 days of filing the case. Except in cases where the U.S. Trade Representative overrule for policy reasons, an order for relief will become effective as of the date of issuance and have final effect from the 60th day.

Source: [USITC](#)

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