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Weekly Competition Law News

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

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

SAMR Carries out Investigation into CNKI’s Monopolistic Behavior

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

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

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

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

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

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

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

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

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

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

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

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

Cybersecurity and Data Protection

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

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

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

On 17 May 2022, the National Committee of the Chinese People's Political Consultative Conference held a special consultation meeting in Beijing to conduct consultations and discussions on "promoting the sustainable and healthy development of the digital economy". Wang Yang, Member of the Standing Committee of the Political Bureau of the CPC Central Committee and Chairman of the National Committee of the Chinese People's Political Consultative Conference, emphasized at the meeting that it is necessary to earnestly understand General Secretary Xi Jinping's important comments on the development of the digital economy, scientifically study the situation, enhance confidence of development, as well as dialectically view and coordinate the relationship between development and security, to strengthen, optimize and expand the digital economy, and to promote high-quality development. ([More](#))

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

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

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

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

China's First Data Resources Tribunal Officially Set up

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

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

On 18 May 2022, the Beijing Municipal Communications Administration issued the *Notice on Carrying out the Telecom and Internet Industry Network and Data Security Inspection 2022* ("Notice"), stating it will organize professional technical institutions to conduct network and data security inspection on Beijing's telecommunications and Internet industries through interviews, data inspection, and on-

site technology drawing, focusing on the network security, data security and personal information protection of key information infrastructures and important information systems. ([More](#))

The European Council Approves *Data Governance Act*

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

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

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

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

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

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

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

US Judge Launches the First Criminal Cryptocurrency Sanctions Case

On 16 May 2022, the first criminal cryptocurrency sanctions case in the USA was launched. In the ruling, US Magistrate Judge Zia Faruqi disclosed various concerns surrounding digital currencies, weighing in on concepts like the prevailing theory surrounding its anonymity in use, as well as their ultimate standing in regards to legal action. He cites a newly-inducted action filed under the Treasury Department’s Office of Foreign Assets Control, allowing judges to make their own observations and complaints regarding virtual currencies and US sanctions. Faruqi said that the Department of Justice can

and will criminally prosecute individuals and entities for failure to comply with OFAC's regulations, including as to virtual currency. ([More](#))

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

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

Google Faces Class Action Lawsuit Over Patient Data Deal

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


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

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

Intellectual Property

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

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

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

The court held that although the infringing mark was used on gas stoves and other goods and services, which are not the same class as that of clothes hangers, they were common household goods, and overlapped in sales channels, places of use and consumer groups. And the infringing trademark was used to identify the source of goods, which constituted trademark infringement.

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

Source: Zhejiang High People's Court

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

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

Source: The Supreme People's Court

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

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

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

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

Source: Chongqing High People's Court

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

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

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

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

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

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

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

In this case, the court discussed the standard whether the manufacturer and the seller constitute necessary joint action, and held that although the types and sales range of the products involved in the infringing acts committed by the manufacturer alone, were wider than that jointly committed by the manufacturer and the seller, the two were closely related, and shall be identified as the same object, so the lawsuit in which the manufacturer and seller as co-defendants constitute necessary joint action.

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

Source: [Beijing Intellectual Property Court](#)

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

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

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

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

European Patent Office: Hydrogen production with electrolysers is emerging

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

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

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

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

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

Source: [European Patent Office](#)

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

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

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

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

Source: [INTA](#)

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

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

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

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

Source: [Apple Insider](#)

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