



# NEWSLETTER

LIFANG & PARTNERS **立方观评**



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Guangzhou Haizhu Police Launched a Special Action to Combat Illegal Collection of Personal Information by Mobile APPs

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Equifax 因信用评分错误被提起集体诉讼

Equifax Filed Class Action Lawsuit for Credit Score Errors

Tim Hortons 因其APP追踪用户位置面临加拿大集体诉讼

Tim Hortons Facing Class Action Lawsuit in Canada for Tracking Mobile APP Users

亚马逊收购iRobot公司引发关于隐私问题的担忧

Amazon's Acquisition of Roomba\_Sparks Privacy Concerns

美国参议员敦促美国联邦最高法院重新审视隐私标准

US Senator Urges the Supreme Court to Re-examine Privacy Standards

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## 知识产权 Intellectual Property

首例全国重大专利侵权纠纷行政裁决落地，东阳光利格列汀首仿药被责令下架

The administrative ruling of the first major patent infringement dispute in China was , and the first Linagliptin generic drug was ordered to be removed from the shelves

典型“双轨制赔偿”案例——惩罚性赔偿+法定赔偿

Typical "Double-track Compensation" Case: Punitive Damages and Statutory Damages were both awarded to the plaintiff

擅用“巴洛克地板”近似标识及域名构成侵权，判赔200余万元

Unauthorized use of "Baroque Floor" similar logo and domain name constitutes infringement, and damages of more than RMB 2 million was awarded

全国首例“十万个为什么”商标维权案终审获胜

"100,000 Why" trademark obtained first favorable judgment

上海知产法院：被特许人未履行特许人新增促销政策是否构成违约的认定

Shanghai Intellectual Property Court: Whether the franchisee's failure to implement the franchisor's new promotion policy constitutes a breach of contract

377调查：8月5日新增动向

Section 377 Investigation Survey: New trends on August 5th

韩国：半导体专利审查时间将缩至2.5个月

South Korea: semiconductor patent examination period will be reduced to 2.5 months

英国知识产权局公布“标准必要专利与创新”意见征集答复报告

UKIPO published the report on the solicitation of opinions on "standard essential patents and innovations"

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

### 最高检印发关于反垄断领域公益诉讼检察工作的通知文件

2022年8月1日，最高人民检察院（“最高检”）发布了《关于贯彻执行〈中华人民共和国反垄断法〉积极稳妥开展反垄断领域公益诉讼检察工作的通知》，要求认真贯彻实施修订后的反垄断法，积极稳妥开展反垄断领域公益诉讼检察工作，重点关注互联网、公共事业、医药等民生保障领域，明确了反垄断领域公益诉讼的管辖规则。（[查看更多](#)）

### SPP Issues Notice Concerning the Procuratorial Work of Public Interest Litigation in Anti-Monopoly Field

On August 1, 2022, the Supreme People's Procuratorate (“SPP”) issued the *Notice on Implementing the Anti-Monopoly Law of the People's Republic of China and Actively and Properly Carrying out the Procuratorial Work of Public Interest Litigation in Anti-Monopoly Field*. The *Notice* requires to implement the revised Anti-Monopoly Law earnestly, carry out public interest litigation in the anti-monopoly field actively and steadily, focus on people's livelihood protection fields such as Internet, public utilities and health care, and clarify the jurisdictional rules of public interest litigation in the anti-monopoly field. ([More](#))

### 广东省市监局发布关于受委托开展经营者集中简易案件反垄断审查的公告

2022年8月1日，广东省市场监督管理局（“广东省市监局”）发布了《关于受委托开展经营者集中简易案件反垄断审查的公告》（“《公告》”）。《公告》明确，自2022年8月1日起，广东省市监局将主要负责广东、广西和海南的简易案件的反垄断审查。《公告》还明确了受委托审查案件的条件和审查程序，立案信息和无条件批准案件信息将在官网上进行公示。（[查看更多](#)）

### Guangdong AMR Issues the Announcement on Conducting Merger Review of Simple Cases

On August 1, 2022, the Guangdong Provincial Administration for Market Regulation (“Guangdong AMR”) issued the *Announcement on Conducting Merger Review of Simple Cases* (“*Announcement*”). The *Announcement* clarifies that Guangdong AMR will be mainly responsible for the merger review of simple cases in Guangdong, Guangxi and Hainan from August 1, 2022. The *Announcement* specifies the conditions and review procedures of entrusted cases, and the filing information and unconditionally approved cases will be publicized on the official website. ([More](#))

### 杭州中院裁定准许“中国知网反垄断第一案”撤诉

2022年7月31日，杭州市中级人民法院（“杭州中院”）裁定准许中国知网反垄断案原告提出的撤诉申请。2021年12月，原告郭兵向杭州中院起诉中国知网，指控其滥用市场支配地位，没有正当理由，拒绝向个人用户开放学术不端文献检测系统服务。7月20日，由于中国知网主动停止了滥用市场支配地位的行为，向个人开放相关服务，郭兵向杭州中院提出撤诉申请。7月27日，杭州中院裁定准许原告撤诉。（[查看更多](#)）

## Hangzhou Intermediate Court Rules to Approve the Withdrawal of the First Anti-Monopoly Case Against CNKI

On July 31, 2022, Hangzhou Intermediate People's Court (“**Hangzhou Intermediate Court**”) ruled to allow the plaintiff in the anti-monopoly case of Chinese National Knowledge Infrastructure (“**CNKI**”) to withdraw the complaint. In December 2021, the plaintiff Guo Bing sued CNKI before Hangzhou Intermediate Court, accusing CNKI of abusing its dominant position by refusing to open the academic misconduct literature detection system service to individual users without justifiable reasons. On July 20, Guo Bing applied to Hangzhou Intermediate Court to withdraw the complaint because CNKI had voluntarily stopped abusing its dominant market position and had opened related services to individuals. On July 27, Hangzhou Intermediate Court approved the plaintiff's withdrawal. ([More](#))

## 市场监管总局发布2022年第二批行政垄断案件

2022年7月29日，国家市场监督管理总局（“**市场监管总局**”）发布了2022年制止滥用行政权力排除、限制竞争执法专项行动案件（第二批），公布了11个行政垄断案件。这批案件涉及湖北省、福建省等多地的行政机关，违法行为主要包括：制定含有排除、限制竞争内容的规定；妨碍商品在地区之间的自由流通；限定或者变相限定单位或者个人经营、购买、使用指定的经营者提供的商品。（[查看更多](#)）

## SAMR Issues the Second Batch of Administrative Monopoly Cases in 2022

On July 29, 2022, the State Administration for Market Regulation (“**SAMR**”) issued the 2022 special law enforcement campaign cases (the second batch) of stopping abusing administrative power to exclude and restrict competition, and published 11 administrative monopoly cases. The cases involve administrative authorities in Hubei, Fujian and other regions. The violations mainly include: formulating regulations containing contents of eliminating or restricting competition; impeding the free flow of goods between regions; directly restricting or restricting in disguise units or individuals to operate, purchase and use the goods provided by designated undertakings. ([More](#))

## 湖南、新疆市监局分别公布本地区行政垄断案件

2022年7月29日，湖南省市场监督管理局和新疆维吾尔自治区市场监督管理局分别发布了本地区依法调查处理的行政机关滥用行政权力排除、限制竞争行为案件。公布的案件涉及“限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品”和“制定含有排除、限制竞争内容的规定”两种行政滥用行为。当事机构在调查期间或收到行政建议书后积极整改，主动纠正违法行为，消除了不良社会影响，恢复了市场公平竞争。（[查看更多](#)）

## Hunan and Xinjiang AMR Publish Regional Administrative Monopoly Cases

On July 29, 2022, Hunan Provincial Administration for Market Regulation and Xinjiang Uygur Autonomous Regional Administration for Market Regulation (“**Hunan and Xinjiang AMR**”) respectively published cases of administrative authorities abusing administrative power to exclude and restrict competition, which were investigated and dealt with according to law. The published cases involve two kinds of administrative monopolies: “directly restricting or restricting in disguise units or individuals to operate, purchase and use the goods provided by designated undertakings” and “formulating regulations containing the contents of excluding and restricting competition”. During the investigation period or

after receiving the administrative proposal, the authorities concerned rectified and corrected their illegal acts actively, eliminated the adverse social impact and restored fair competition in the market. ([More](#))

## 谷歌应用商店面临欧盟反垄断调查

2022年8月4日，据两位知情人士透露，欧盟委员会反垄断机构正在调查谷歌应用商店。据悉，谷歌的竞争对手已收到来自欧盟委员会的保密调查问卷，调查谷歌应用零售商店的计费条款和开发者收费问题。此外，英国反垄断机构也对谷歌应用商店进行了公开调查。谷歌应用商店涉嫌向开发者抽成高达30%，并且开发者事前不得使用其他各种计费方式向客户收费。欧盟委员会拒绝对此发表评论。 ([查看更多](#))

## Google Play Store Faces Antitrust Investigation in EU

On August 4, 2022, in accordance with two individuals near the matter, the European Commission is investigating Google Play Store. It was said that Google's rivals had acquired confidential questionnaires from European Commission, probing billing phrases and developer charges for Google Play Store. In addition, the UK antitrust agency also conducted a public investigation on Google App Store. It was suspected of charging developers as much as 30%, and developers were not allowed to make use of various billing methods to gather cost from customers beforehand. The European Commission declined to remark. ([More](#))

## 苹果因 App Store 收费过高被法国APP开发商起诉

2022年8月1日，苹果公司因 App Store 收费过高被法国APP开发商起诉。原告向加利福尼亚州奥克兰联邦法院提起诉讼，指控苹果公司滥用其在 iOS 移动设备上的应用程序分发市场上的垄断地位，要求这些设备只有一个应用程序商店。原告表示，这使得苹果公司能够在 14 年内收取“超竞争水平”的 30% 佣金，并向应用程序开发人员收取 99 美元的年费，同时扼杀创新和消费者选择。 ([查看更多](#))

## Apple Sued by French APP Developers for Supposedly Overcharging for APP Store Access

On August 1, 2022, Apple was sued by French APP developers that accused the iPhone maker of violating US antitrust law by overcharging them to use its app store. According to the complaint filed in the federal court in Oakland, California, Apple has abused its monopoly power over APP distribution on iOS-based mobile devices by mandating only one APP store for those devices. The plaintiffs said this has enabled the Cupertino, California-based company to charge “supra competitive” 30% commissions for 14 years, as well as USD 99 annual fees to APP developers, while stifling innovation and consumer choice. ([More](#))

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

### 工信部网安中心发布《数据传输安全白皮书》

2022年7月29日，在第四届全球工业互联网大会——网络和数据安全论坛期间，《数据传输安全白皮书》（“《白皮书》”）正式发布。《白皮书》由工业和信息化部网络安全产业发展中心（“工信部网安中心”）牵头组织编制，旨在为各界数据安全管理工作提供参考。《白皮书》全文共八个章节，包括基于当前形势研判，梳理相关政策与合规要点；聚焦数字政府建设、数字金融、互联网等领域中数据传输安全典型应用场景，探讨主要风险点与解决方案；展望数据传输安全发展趋势。（[查看更多](#)）

### Cybersecurity Center of MIIT Issues the *White Paper on Data Transmission Security*

On 29 July 2022, during the 4th Global Industrial Internet Conference - Network and Data Security Forum, the *White Paper on Data Transmission Security* (the “*White Paper*”) was officially issued. The *White Paper* was organized and compiled by the Cybersecurity Center of the Ministry of Industry and Information Technology (“Cybersecurity Center of MIIT”), with the aim of providing a reference for data security management in all sectors. The *White Paper* consists of eight chapters, including sorting out the key points of relevant policies and compliance based on the current situation; focusing on typical application scenarios of data transmission security in digital government construction, digital finance, Internet and other fields, and discussing the main risk points and solutions; and prospecting the development trend of data transmission security. ([More](#))

### 自然资源部开展智能网联汽车高精度地图应用试点

2022年8月2日，据自然资源部新闻，近日，自然资源部办公厅印发《关于做好智能网联汽车高精度地图应用试点有关工作的通知》（“《通知》”），在北京、上海、广州、深圳、杭州、重庆六个城市开展智能网联汽车高精度地图应用试点。《通知》要求，强化自动驾驶活动中地理信息采集、汇聚、处理、使用全流程的安全保密管理，制定并严格执行安全事件应急处置预案，确保所有试点行为不得危及国家地理信息安全。（[查看更多](#)）

### MNR Launches Pilot Application of High-Precision Maps for ICVs

On 2 August 2022, according to the news of the Ministry of Natural Resources (“MNR”), the General Office of the MNR recently issued the *Notice on the Work Related to the Pilot Application of High-Precision Maps for Intelligent Connected Vehicles (“ICVs”)* (“*Notice*”), launching the pilot application of high-precision maps for ICVs in six cities, namely Beijing, Shanghai, Guangzhou, Shenzhen, Hangzhou and Chongqing. The *Notice* requires strengthening the security and confidentiality management of the whole process of geographic information collection, aggregation, processing and use in autonomous driving activities, and formulating and strictly implementing emergency response plans for security incidents to ensure that all pilot behaviors should not endanger the national geographic information security. ([More](#))

### 国家级数字资源综合平台建设在京启动

据新华社2022年8月1日报道，在2022年7月30日举办的全球数字经济大会数据要素峰会平行论坛

上，由新华社媒体融合生产技术与系统国家重点实验室、北京国际大数据交易所与国家物联网标识管理公共服务平台共同打造的国家级数字资源综合平台正式发布。该平台集数据资产注册登记、实名备案、信息存证、跟踪追溯、灾备恢复等数字资源综合管理能力于一体，有助于全面实现“技术安全、交易安全、文化安全、数据安全”。([查看更多](#))

### **Establishment of National Digital Resources Integrated Platform Starts in Beijing**

According to news reporting by Xinhua News Agency on 1 August 2022,, at the parallel forum of the Data Elements Summit of the Global Digital Economy Conference held on 30 July 2022, the national digital resources comprehensive platform jointly created by State Key Laboratory of Media Convergence Production Technology and Systems, Beijing International Big Data Exchange and China Internet of Things Names Service Platform was officially launched. The platform integrates the comprehensive management capabilities of digital resources, such as data asset registration, real-name filing, information storage, tracking, disaster recovery, etc., and helps to fully realize “technical security, transaction security, cultural security and data security”. ([More](#))

### **广东省信管局对小鹏汽车、广汽丰田开展车联网网络安全检查**

2022年8月2日，广东省通信管理局（“广东省信管局”）组织中国电子信息产业发展研究院、中国信息通信研究院两家单位的专家成立专项检查工作组，对广州小鹏汽车科技有限公司（“小鹏汽车”）、广汽丰田汽车有限公司（“广汽丰田”）开展为期一周的“双随机、一公开”网络安全检查，重点检查车联网服务平台安全和车联网数据安全。广东省信管局将加强车联网安全监管，督促企业落实网络安全、数据安全保护义务，加强网络安全防护和监督检查；强化手段建设开展车联网安全监测和漏洞管理；完善车联网安全威胁和漏洞通报处置机制，加强对智能网联汽车、车载联网关键设备等安全漏洞进行监测和通报处置。([查看更多](#))

### **Guangdong CA Carries Out Cybersecurity Inspection of Internet of Vehicles on XPENG and GAC Toyota**

On 2 August 2022, Guangdong Communication Administration (“Guangdong CA”) organized experts from China Electronics and Information Industry Development Research Institute and China Information and Communication Research Institute to set up a special inspection working group to carry out a one-week “double random and one open” cybersecurity inspection, inspection of randomly selected objects by randomly selected law enforcement inspectors and the results released to the public, on Guangzhou Xpeng Motors Technology Co., Ltd. (“XPENG”) and Guangzhou Automobile Toyota Motor Co., Ltd. (“GAC Toyota”). The inspection focuses on checking the security of Internet of vehicles service platform and data security of Internet of vehicles. Guangdong CA will strengthen the safety supervision of Internet of vehicles, urge enterprises to implement their obligations of cybersecurity and data security protection, and strengthen cybersecurity protection, supervision and inspection; strengthen the construction of means to carry out safety monitoring and vulnerability management of Internet of vehicles; improve the notification and disposal mechanism of Internet of vehicles security threats and vulnerabilities, and strengthen the monitoring, notification and disposal of security vulnerabilities such as intelligent networked vehicles and key equipment of vehicle networking. ([More](#))

### **浙江省信管局通报2022年第四、五批侵害用户权益行为APP**

2022年8月3日，浙江省通信管理局（“浙江省信管局”）发布了关于侵害用户权益行为的APP



通报（2022年第四、五批）。通报表明，浙江省信管局于近期组织第三方检测机构对50款手机APP开展检测工作，其中42款存在“违规收集个人信息”、“超范围收集个人信息”、“违规使用个人信息”、“强制用户使用定向推送功能”等问题。浙江省信管局已书面要求问题APP相关企业限期整改。截至通报发布日，尚有27款APP未完成整改，浙江省信管局在附件中予以列明，并要求其在8月9日前完成整改落实工作。逾期不整改的，将被依法依规处理。（[查看更多](#)）

## **Zhejiang CA Notifies the Fourth and Fifth Batches of Apps Infringing Users' Rights and Interests in 2022**

On 3 August 2022, Zhejiang Communication Administration (“Zhejiang CA”) issued the *Notice on APPs Infringing on Users' Rights and Interests* (the fourth and fifth batches in 2022) (the “Notice”). The Notice indicates that recently, Zhejiang CA organized third-party testing organizations to inspect 50 mobile phone APPs. The inspection found that 42 APPs have problems such as collecting personal information illegally, collecting personal information excessively, using personal information illegally and forcing users to use the directed push function. Zhejiang CA has informed relevant operating enterprises and urged them to make rectification within a time limit. As of the publication date of the notice, there are still 27 APPs that have not completed the rectification as required, which are listed in the annex by Zhejiang CA. These APPs are required to implement the rectification work before 9 August; or they will be punished in accordance with the law. ([More](#))

## **广州海珠警方开展移动APP违法违规采集个人信息专项整治活动**

2022年8月3日，根据广州市公安局发布消息，2022年以来，广州海珠警方集中开展了移动APP违法违规采集个人信息专项整治活动，对辖区内提供移动互联网服务的单位和企业开展全面执法检查，依法处罚违规企业21家。涉及的行为主要包括：在未经用户阅读隐私政策同意下，就违法违规收集个人信息；在用户关闭APP进程后，仍不间断收集个人信息；未向用户明示全部收集个人信息的目的、方式和范围；明文传输用户敏感信息；存在数据安全风险等。接下来，海珠警方将加大对超范围收集个人信息违法行为的打击力度，强化互联网安全监管，净化移动互联网整体环境，保护公民个人信息安全。（[查看更多](#)）

## **Guangzhou Haizhu Police Launched a Special Action to Combat Illegal Collection of Personal Information by Mobile APPs**

On 3 August 2022, according to a news released by Guangzhou Public Security Bureau, Guangzhou Haizhu Police has since 2022 launched a special action to combat illegal collection of personal information by mobile APPs, carried out comprehensive law enforcement inspections on the units and enterprises providing mobile Internet services under their jurisdiction, and punished 21 illegal enterprises according to law. The illegal acts involved mainly include collecting personal information illegally without the consent of users by reading privacy policy; collecting personal information continuously after the users close the APP process; failing to clearly and fully express the purpose, method and scope of the collection to users; transmitting users' sensitive information in plain text; having risks on data security, etc. Next, Guangzhou Haizhu Police will intensify the crackdown on illegal acts of collecting personal information beyond the scope, strengthen Internet security supervision, purify the overall environment of mobile Internet, and protect citizens' personal information security. ([More](#))

## 农行、建行因客户信息安全管理问题被处罚

2022年7月28日、29日，银保监会发布了上海银保监局对中国建设银行股份有限公司上海市分行及责任人王某、以及三明银保监分局对中国农业银行股份有限公司宁化县支行及责任人夏某作出的行政处罚法决定书。两银行的违法行为均涉及对客户信息安全管理不到位，违反了《中华人民共和国银行业监督管理法》等相关规定。两银行分别被处以罚款50万元和30万元，两责任人员分别被处以禁止从事银行工作10年和3年的处罚。（[查看更多](#)）

## ABC and CCB Are Punished for Customer Information Security Management Issues

On 28 and 29 July, 2022, China Bank and Insurance Regulatory Commission (“CBIRC”) issued the administrative punishment decisions made by Shanghai Bank and Insurance Regulatory Bureau against China Construction Bank (“CCB”) Shanghai Branch and its responsible person Wang, and by Sanming Bank and Insurance Regulatory Bureau against Agricultural Bank of China (“ABC”) Ninghua County Branch and its responsible person Xia, respectively. The illegal acts of both banks involved inadequate management of customer information security, which violated the *Banking Supervision Law of the People’s Republic of China* and other relevant regulations. The two banks were fined CNY 500,000 and 300,000 respectively, and the two responsible persons were banned from banking for 10 years and 3 years respectively. ([More](#))

## 法国CNIL 发布应用于体育部门的数据保护自我评估工具

2022年8月4日，法国国家信息自由委员会（“CNIL”）发布了应用于体育部门的数据保护自我评估工具，用于帮助运动组织遵守数据保护法规。该自我评估工具主要包括三部分：第一，明确数据领域的主要概念，包括个人数据、数据处理、目标或目的等，并以体育行业的具体实践为例加以说明；第二，提示常见问题，例如从事体育活动的机构能否在运动员注册时收集他们的社会保险号码、能否在网上公布有执照的非职业运动员的成绩等；第三，提供自我评估指南，介绍了开展体育活动时从数据收集到销毁的各主要阶段。该自我评估工具主要面向业余体育行业的机构。CNIL将随后发布专门针对体育联合会和职业联盟的内容。（[查看更多](#)）

## The CNIL Publishes Data Protection Self-Assessment Tools for the Sports Sector

On 4 August 2022, the CNIL published data protection self-assessment tools for the sports sector to help sports teams comply with data protection regulations. The self-assessment tools consist of three parts: (1) Define the main concepts in the data field, including personal data, data processing, goals or objectives, etc., and illustrates them by concrete examples from practices in the sports sector; (2) Point out the frequently asked questions, containing the questions most frequently asked by professionals in the sector, such as whether a structure in which sports activities are practiced can collect the social security number of sportspeople when they register, and whether it can publish the results of licensed non-professional athletes online, etc.; (3) Provide a self-assessment guide, illustrating the main stages of the data journey when practicing a sporting activity, from the collection of data to their destruction. These tools are mainly intended for structures involved in the amateur sports sector. The CNIL will soon publish content dedicated to federations and professional leagues. ([More](#))

## Equifax 因信用评级错误被提起集体诉讼

2022年8月4日，据报道，Equifax 公司因提供错误的信用评级被提起了集体诉讼。该诉讼由佛罗里达州一名妇女于2022年8月3日向在亚特兰大联邦法院提起，指控该公司提供不准确的信用评级，违反了《公平信用报告法》。原告声称，由于 Equifax 的错误，她在申请汽车贷款时的信用评级下降了130分，导致她在不得不每月多承担 150 美元的贷款费用。（[查看更多](#)）

### Equifax Filed Class Action Lawsuit for Credit Score Errors

On 4 August 2022, it was reported that Equifax had been filed a class action lawsuit for providing inaccurate credit score. The lawsuit was filed by a Florida woman in the federal court in Atlanta On 4 August 2022, accusing the company of providing inaccurate credit scores, which violated the *Fair Credit Reporting Act*. The plaintiff claims that because of Equifax's error, her credit score was off by 130 points when she applied for a car loan, resulting in her getting denied before having to take a different loan that is costing her USD 150 more per month. ([More](#))

## Tim Hortons 因其APP追踪用户位置面临加拿大集体诉讼

2022年8月3日，据报道，Tim Hortons 因其APP追踪用户位置在加拿大面临集体诉讼。Tim Hortons 在其网站上自称是“加拿大最大的连锁餐厅”，它提供了一款APP，可以通知用户正在进行的促销活动，并能够提供订购和付款服务。约有数百万加拿大公民在使用这款APP。然而，该APP的用户据称并不知道，这款APP即使在关闭的情况下也会追踪和监控他们的位置。一位下载了 Tim Hortons APP的魁北克居民针对此情况发起了集体诉讼，指控 Tim Hortons 侵犯了集体成员的隐私权，违反了加拿大联邦个人信息保护和电子文件法，并指出Tim Hortons 还违反了其隐私协议，该协议规定APP仅在运行时才使用客户位置数据。（[查看更多](#)）

### Tim Hortons Facing Class Action Lawsuit in Canada for Tracking Mobile APP Users

On 3 August 2022, it is reported that Tim Hortons is facing a class action lawsuit in Canada. Tim Hortons says it is “Canada's largest restaurant chain” on its website. It offers its customers a mobile APP, which notifies users about ongoing promotions and provides an easy way to order and pay. Millions of Canadians may have installed the Tim Hortons APP on their smartphones. However, Tim Hortons mobile APP users were reportedly unaware that the mobile APP tracked and monitored their locations even when it was turned off. A Quebec resident who downloaded the Tim Hortons mobile APP filed a class action lawsuit based on the situation, asserting that Tim Hortons violated Class Members' privacy rights, violating the *Federal Personal Information Protection and Electronic Documents Act* and breached its own contract which stated that the mobile APP would only use customer location data when it was open. ([More](#))

## 亚马逊收购iRobot公司引发关于隐私问题的担忧

2022年8月7日，据报道，亚马逊与iRobot公司于前一天发布联合声明称，iRobot同意以17亿美元的价格被亚马逊收购。Roomba 是iRobot 公司的智能扫地机器人产品，它在工作时会使用传感器来绘制其所在房屋的地图。如果交易成功，亚马逊将获得新的个人数据——Roomba业主

家的内部地图。结合最近的其他收购目标，这家电子商务巨头于2018年收购了可视门铃公司Ring，一年后收购Wi-Fi路由器制造商Eero，亚马逊可通过多渠道获取个人信息的情况引发了公众关于个人隐私问题的担忧。（[查看更多](#)）

## Amazon's Acquisition of Roomba Sparks Privacy Concerns

On 7 August 2022, it was reported that Amazon and iRobot had issued a joint statement the day before, saying that iRobot had agreed to be acquired by Amazon for USD 1.7 billion. Roomba is an intelligent sweeping robot product of iRobot Company, which uses sensors to map the homes they operate in. If the deal goes through, it would give Amazon access to yet another wellspring of personal data: interior maps of Roomba owner's homes. Combined with other recent acquisition targets, the ecommerce giant acquired video doorbell company Ring in 2018 and Wi-Fi router-maker Eero a year later. Amazon could wind up with a comprehensive look at what's happening inside people's homes, which will cause privacy concerns. ([More](#))

## 美国参议员敦促美国联邦最高法院重新审视隐私标准

2022年8月4日，据报道，俄勒冈州民主党参议员罗恩·怀登（Ron Wyden）致函美国联邦最高法院首席大法官约翰·罗伯茨（John Roberts），敦促其解决联邦法院系统数十年来未能在法庭文件中保护美国人敏感的个人信息的问题。怀登在信中表示，联邦法院规则要求在法庭文件公开之前清除个人信息，但前述规则实际没有得到遵守，每年有成千上万的美国人面临不必要的隐私侵犯。并且，怀登还建议法院更新这些规则，并增加额外的个人信息保护措施，以减少人们在利用法律体系时面临的隐私风险。（[查看更多](#)）

## US Senator Urges the Supreme Court to Re-examine Privacy Standards

On 4 August 2022, it was reported that Senator Ron Wyden, a Democrat from Oregon, wrote a letter to the US Supreme Court Chief Justice John Roberts, urging him to address the federal court system's decades-long failure to secure Americans' most sensitive personal information in court filings. Wyden said in the letter that the Federal court rules mandate that court filings be scrubbed of personal information before they are publicly available. These rules are not being followed, the courts are not enforcing them, and as a result, each year tens of thousands of Americans are exposed to needless privacy violations. Moreover, Wyden also suggested that the courts should also update those rules and add additional protections so that people don't risk their privacy when they access the legal system. ([More](#))

## 知识产权 Intellectual Property

### 首例全国重大专利侵权纠纷行政裁决落地，东阳光利格列汀首仿药被责令下架

7月27日，国家知识产权局做出了《重大专利侵权纠纷行政裁决办法》施行以来的首例全国重大专利侵权纠纷行政裁决：

责令被请求人广东东阳光药业有限公司立即从已挂网的药品采购平台撤回被控侵权制剂利格列汀片的挂网；同时责令被请求人广东东阳光药业有限公司和宜昌东阳光长江药业股份有限

公司立即停止制造、销售、许诺销售侵犯请求人勃林格殷格翰制药两合公司发明专利权（专利权：ZL201510299950.3）的产品。

来源：国家知识产权局

## **The administrative ruling of the first major patent infringement dispute in China was settled, and the first Linagliptin generic drug was ordered to be removed from the shelves**

On July 27th, China National Intellectual Property Administration (CNIPA) made the first national administrative ruling on major patent infringement disputes since the implementation of the Measures for Administrative Ruling on Major Patent Infringement Disputes:

Ordering the respondents to immediately withdraw the linked-up of the accused infringing Linagliptin tablets from the linked-up drug procurement platform. At the same time, the respondents are ordered to immediately stop manufacturing, selling and offering to sell the products that infringe the invention patent of the applicant Boehringer Ingelheim (patent No.: ZL201510299950.3).

Source: CNIPA

## **典型“双轨制赔偿”案例——惩罚性赔偿+法定赔偿**

日前，上海市知识产权法院对JUKI株式会社与浙江巨凯缝纫科技有限公司侵害商标权纠纷议案作出二审判决，维持原判。一审判决责令被告停止侵权、赔偿损失。

本案是一起典型的同时适用惩罚性赔偿和法定赔偿的“双轨制赔偿”案件。一审法院认为如果机械地认为只要基数的全部数额不能查明就不能适用惩罚性赔偿，将严重影响惩罚性赔偿制度功能的发挥，因而在赔偿金额的认定部分采用了同时适用“惩罚性赔偿”和“法定赔偿”的方式，基于被告的侵权主观故意和侵权情节，对境外出口的可查明部分3倍适用了惩罚性赔偿，对无法查明的部分则适用了法定赔偿；二审法院对此亦予以认同。

来源：上海市知识产权法院

## **Typical "Double-track Compensation" Case: Punitive Damages and Statutory Damages were both awarded to the plaintiff**

Recently, the Shanghai Intellectual Property Court made a second-instance judgment on the motion of trademark infringement dispute between JUKI and ZHEJIANG JUKAI SEWING SI-TCH CO LTD, and upheld the original judgment. The first-instance judgment ordered the defendant to stop the infringement and compensate for the losses. This case is a typical "double-track compensation" case that applies both punitive damages and statutory damages at the same time. The court of first instance held that the notion that punitive damages could not be applied as long as the total amount of the base could not be ascertained is not correct, which would seriously affect the function of punitive damages system. Therefore, punitive damages and statutory damages can be simultaneously applied. Based on the defendant's intent and infringement circumstances, punitive damages were applied to the affirmative part of overseas exports for three times, and statutory damages were applied to the indeterminable part of the compensation. The court of second instance also affirm this.

Source: Shanghai Intellectual Property Court

## 擅用“巴洛克地板”近似标识及域名构成侵权，判赔200余万元

近日，江苏省高级人民法院对巴洛克木业（中山）有限公司与湖州南浔幸福魔方家居有限公司、万玉凯、如皋市罗店建材商行侵害商标权及不正当竞争纠纷一案作出二审判决，判决维持原判，责令被告停止侵权、恢复原状、赔偿损失。

法院认定，被告幸福魔方公司在涉案侵权木地板产品外包装，产品价签，宣传海报、官方网站、微信公众号等多处大量使用多个侵权标识，与巴洛克公司主张保护的涉案多个商标构成近似，致使被诉侵权标识容易使相关公众对商品的来源产生误认或者认为其与注册商标的商品有特性联系，构成对巴洛克公司涉案商标的侵害；被告作为同业竞争者，与涉案商标权利人之间有过多次商标行政处理争议，其理应知晓原告巴洛克木业公司网站域名及商标情况，不仅不履行避让义务，反而刻意注册与巴洛克公司近似的域名，利用该网站大量宣传、推广与巴洛克公司经营的相同产品，足以导致相关公众对网站主体的误认或者认为其与巴洛克公司之间存在授权等特殊关联关系，构成使用近似域名不正当竞争行为。

来源：江苏省高级人民法院

## Unauthorized use of "Baroque Floor" similar logo and domain name constitutes infringement, and damages of more than RMB 2 million was awarded

Recently, Jiangsu High People's Court made a second-instance judgment, which upheld the original judgment by ordering the defendant to stop the infringement, restoring the original state and compensate the losses.

The court held that the defendant used a large number of infringing marks in the outer packaging of the infringing wooden floor products, the price tag of the products, posters, official websites, WeChat official account and other places, which were similar to the trademarks in the case. As a result, the alleged infringing marks easily led the relevant public to confuse the source of the goods or think that they had certain connection with the plaintiff, which constituted trademark infringement. As a competitor in the same industry, having many administrative disputes over trademarks with the plaintiff, the defendant should have known the domain name and trademark of the plaintiff. Instead of fulfilling the avoidance obligation, the defendant deliberately registered the domain name similar to that of plaintiff, and used the website to publicize and promote the same products, which constituted unfair competition in using similar domain names.

Source: Jiangsu High People's Court

## 全国首例“十万个为什么”商标维权案终审获胜

上海知识产权法院就上海少年儿童出版社有限公司与四川天地出版社有限公司商标侵权及不正当竞争纠纷一案作出二审判决，判决维持原判，责令被告停止侵害、赔礼道歉、赔偿损失。

法院认为，“十万个为什么”不属于问答式科普图书的通用名称，天地出版社在相关图书封面突出使用“十万个为什么”，并不属于为了说明图书内容而进行的正当使用，而是构成识别图书来源的商标性使用，且容易导致购买者对于图书的来源或者天地出版社与少年儿童出版社公司之间的关系发生混淆误认。因此，天地出版社上述行为构成商标侵权。“十万个为什么”系

列图书经过长期的使用宣传，在少儿科普图书领域享有很高的知名度和美誉度，被相关公众广为知悉，具备了识别系列图书来源的属性特征，在“十万个为什么”商标获准注册之前，受到反不正当竞争法关于知名商品的特有名称权保护，在商标获准注册之后，受到商标法的保护。

来源：[上海知识产权法院](#)

### **"100,000 Why" trademark obtained first favorable judgment**

The Shanghai Intellectual Property Court made a second-instance judgment on the trademark infringement and unfair competition dispute, which upheld the original judgment and ordered the defendant to stop the infringement, apologize and compensate for the losses.

The court held that "100,000 whys" are not the general name of question-and-answer popular science books, and the defendant highlighted the use of "100,000 whys" on the covers of infringing books, which are not the proper use for revealing the contents of books, but constituted the trademark use for identifying the source of books. Therefore, the above acts of defendant constitutes trademark infringement. After long-term use and publicity, the series of "100,000 Why" books enjoy high popularity and reputation in the field of popular science books for children, and are widely known by the relevant public. They have the attribute characteristics of identifying the source of series books. Before the trademark of "100,000 Why" is approved to be registered, it is protected by the unique name of well-known commodities in the anti-unfair competition law, and after the trademark is approved to be registered, it can be protected by the trademark law.

Source: [Shanghai Intellectual Property Court](#)

### **上海知产法院：被特许人未履行特许人新增促销政策是否构成违约的认定**

上海知识产权法院对施恺（本案原告）与上海网鱼信息科技有限公司（本案被告）特许经营合同纠纷一案作出二审判决，维持原判，驳回原告诉讼请求。

在特许经营合同履行中，特许人要求被特许人执行统一新增的优惠政策，被特许人对此拒绝执行的行为是否构成违约，应当以该政策是否实质性损害被特许人利益作为判断标准。根据认定事实，原告明知“鱼乐卡”的销售及结算情况，但从未向被告提出过异议，而是以实际履行行为认可了“鱼乐卡”的销售模式及分成比例，故一审法院认定双方当事人系争合同履行过程中明确了“鱼乐卡”销售的相关权利义务事项，原告就此主张被告违约及相关诉讼请求，法院不予支持。原告出现不执行会员制度的违约事由，被告有权暂停对原告的服务直至施恺纠正该违约行为。因此，被告停止涉案加盟店的网咖管理系统，符合系争合同约定，原告主张被告该行为构成违约进而主张损害赔偿，法院亦不予支持。

来源：[上海知识产权法院](#)

### **Shanghai Intellectual Property Court: Whether the franchisee's failure to implement the franchisor's new promotion policy constitutes a breach of contract**

The Shanghai Intellectual Property Court made a second-instance judgment on the dispute over the franchise contract, upholding the original judgment and rejected the plaintiff's claim.

During the performance of the franchise contract, the franchisor requires the franchisee to implement a unified and newly added preferential policy. Whether the franchisee's refusal to implement this policy

constitutes a breach of contract should be judged by whether the policy substantially damages the franchisee's interests. The court of first instance found that both parties made clear the relevant rights and obligations during the performance of the disputed contract, and the plaintiff claimed that the defendant had breached the contract and related claims, but the court did not support it. If the plaintiff fails to implement the membership system, the defendant has the right to suspend the service to the plaintiff until it corrects the breach. Therefore, the defendant stopped the Internet cafe management system of the franchise store involved in the case, which was in line with the contract agreement. The plaintiff claimed that the defendant's behavior constituted a breach of contract and claimed damages, and the court did not support it.

Source: Shanghai Intellectual Property Court

### 377调查：8月5日新增动向

2022年8月4日，美国国际贸易委员会（ITC）发布公告称：

- 1.对特定图形系统及其组件和包含该系统的数字电视（调查编码：337-TA-1318）作出部分终裁：对初裁（No.10）不予复审，即基于申请方撤回，终止对美国注册专利号8,760,454的调查。
- 2.对特定离心机实用平台和降膜蒸发器系统及其组件（调查编码：337-TA-1311）作出部分终裁：对初裁（No.15）不予复审，列名被告为缺席被告；对初裁（No.18、No.20）不予复审，终止对列名被告的调查。
- 3.对特定复合棒球垒球球棒及其组件（调查编码：337-TA-1283）作出部分终裁：对本案行政法官于2022年7月11日作出的初裁（No.23）不予复审，终止调查，并就本案的公众利益和救济措施征求意见。
- 4.对特定集成电路及其下游产品（调查编码：337-TA-1272）作出部分终裁：对本案行政法官于2022年7月25日作出的初裁（No.24）不予复审，终止调查。

来源：USITC

### Section 337 Investigation Survey: New trends on August 5th

On August 4, 2022, the United States International Trade Commission (ITC) issued a notice saying:

1. The graphics system and its components and the digital TV (investigation code: 337-TA-1318) containing the system: the preliminary ruling (No.10) will not be reviewed, that is, the investigation of the registered patent No.8,760,454 of the United States will be terminated based on the withdrawal of the applicant.
2. The centrifuge practical platform and falling film evaporator system and its components (investigation code: 337-TA-1311): the preliminary ruling (No.15) will not be reviewed, and the named defendant is the defendant in absentia; The preliminary rulings (No.18 and No.20) will not be reviewed, and the investigation of listed defendants will be terminated.
3. Compound baseball softball bat and its components (investigation code: 337-TA-1283): do not review the preliminary ruling (No.23) on July 11th, 2022, terminate the investigation, and solicit opinions on the public interest and relief measures of this case.



4. The integrated circuit and its downstream products (investigation code: 337-TA-1272): the preliminary ruling (No.24) on July 25th, 2022 will not be reviewed, and the investigation will be terminated.

Source: USITC

### 韩国：半导体专利审查时间将缩至2.5个月

7月24日，韩国特许厅（KIPO）宣布，为配合韩国对半导体产业的扶持政策、确保对半导体行业核心专利提供全方位支持，KIPO将对半导体相关专利实施优先审查。KIPO将把半导体关键专利优先审查期从12.7个月大大缩短至2.5个月左右，相关法规预计将于今年10月颁布实施。

此外，还提到基于GAA（Gate AllAroundT）技术的3纳米工艺半导体产品投入量产的竞争现状，三星于今年6月底开始批量生产上述半导体产品，TSMC则预计将于2023年开始量产。KIPO还将通过半导体专利申请中的发明人信息分析各领域的关键人才，通过分析发明人平均年龄的变化提出未来人才培养的方向。同时，KIPO还将加强对企业、高校和公共机构的研发技术保护力度，聘用半导体等核心技术领域的退休人员进行专利审查，严防半导体核心技术流向海外。

来源：KIPO

### South Korea: semiconductor patent examination time will be shortened to 2.5 months

On July 24th, the Korea International Patent Office (KIPO) announced that KIPO would give priority to semiconductor-related patents. KIPO will greatly reduce the priority examination period of key semiconductor patents from 12.7 months to about 2.5 months, and relevant regulations are expected to be promulgated and implemented in October this year.

In addition, it also mentions the competition of 3 nm process semiconductor products based on GAA (Gate AllAroundT) technology in mass production. Samsung started mass production of the above semiconductor products at the end of June this year, while TSMC is expected to start mass production in 2023. KIPO will also analyze key talents in various fields through the information of inventors in semiconductor patent applications, and propose the future direction of talent training by analyzing the changes of average age of inventors. At the same time, KIPO will also strengthen the protection of R&D technologies of enterprises, universities and public institutions, hire retirees in core technologies such as semiconductors to conduct patent examination, and prevent semiconductor core technologies from flowing overseas.

Source: KIPO

### 英国知识产权局公布“标准必要专利与创新”意见征集答复报告

8月5日，英国知识产权局UKIPO在其官方网站公布了去年12月7日征集的有关“标准必要专利与创新：征求意见”的答复《标准必要专利和创新：对征求意见的答复摘要》。从摘要披露的意见征集情况来看，共收到57份答复，数量少于欧盟的回复（157份），多于日本（20份）的回复。主要涉及如下六大方面：

第一，标准必要专利、创新与竞争之间的关系。包含：FRAND许可，监管调查，标准制定组

织在标准必要专利许可中的作用等。

第二，竞争与市场运作。包含：标准必要专利的全球许可，竞争法框架等。

第三，标准必要专利系统透明度。包含：标准必要专利声明过程本身是否有足够的透明度，是否有必要引入独立第三方进行必要性检查，定价透明度等。

第四，专利侵权和补救措施。包含：标准必要专利许可成本的地区差异，全球许可和区域许可费率，全球市场的公平性、禁诉令的适当性等。

第五，标准必要专利许可。包含：标准制定组织的角色，监管和政府干预，引入标准必要专利许可“原则”的建议，使用和访问专利池以提高标准必要专利许可的效率，提高定价和条款的透明度，标准必要专利许可效率的善意谈判等。

第六，标准必要专利诉讼。包含：法院在标准必要专利纠纷中的作用，国家法院确定全球FRAND许可条款的好处与缺陷，替代性争议解决方案等。

来源：UKIPO

## **UKIPO published the reply report on the solicitation of opinions on “standard essential patents and innovations”**

On August 5th, UKIPO, the UK Intellectual Property Office, published on its official website the reply "Standard Essential Patents and Innovations: A Summary of Responses to Soliciting Opinions" collected on December 7th last year.

It mainly involves the following six aspects:

1. The relationship between standard essential patent, innovation and competition. Including: FRAND licensing, regulatory investigation, the role of standard-setting organizations in the licensing of essential patents, etc.
2. Competition and market operation. Including: global licensing of standard essential patents, framework of competition law, etc.
3. The transparency of the standard essential patent system. Including: whether the standard necessary patent declaration process itself is transparent enough, whether it is necessary to introduce an independent third party for necessity inspection, pricing transparency, etc.
4. Patent infringement and remedial measures. Including: regional differences in licensing costs of standard essential patents, global and regional licensing rates, fairness in the global market, appropriateness of injunction, etc.
5. The standard necessary patent license. Including: the role of standard-setting organizations, supervision and government intervention, suggestions on introducing the "principles" of standard essential patent licensing, using and visiting patent pools to improve the efficiency of standard essential patent licensing, improving the transparency of pricing and terms, and good faith negotiations on the efficiency of standard essential patent licensing, etc.
6. Standard essential patent litigation. Including: the role of courts in standard essential patent disputes, the advantages and disadvantages of global FRAND licensing terms determined by national courts, alternative dispute resolution, etc.

Source: UKIPO

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