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2022.11

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立方竞争法周报 Weekly Competition Law News

最高院审理北京华远公司垄断协议案

2022年10月31日，根据中国庭审公开网信息，最高人民法院（“最高院”）于当日14:40开庭审理孙福武、王小英与北京华远农副产品综合批发市场有限公司（“北京华远公司”）垄断协议纠纷，审理法庭为最高院知识产权法庭第九法庭。本案原告为个体工商户，曾向北京知识产权法院起诉，要求认定被告北京华远公司构成垄断和强迫交易行为，并赔偿原告相应经济损失，一审法院驳回了原告全部诉讼请求。原告不服一审判决，后向最高院提起上诉。（[查看更多](#)）

SPC Hears the Beijing Huayuan Company Monopoly Agreement Case

On October 31, 2022, according to the information on the China Court Trial Open Network, the Supreme People's Court (“SPC”) held a trial at 14:40 on the same day to hear the monopoly agreement case between Sun Fuwu, Wang Xiaoying and Beijing Huayuan Agricultural and Sideline Products Wholesale Market Co., Ltd. (“Beijing Huayuan Company”). The trial court is the ninth court of the Intellectual Property Court of the SPC. The plaintiff in this case, an individual business, filed a lawsuit before the Beijing Intellectual Property Court, requesting that the court to determine that the defendant, Beijing Huayuan Company, had constituted a monopoly and forced trading behavior, and requested for compensation for the corresponding economic losses. The court of first instance rejected all the plaintiff's claims. The plaintiff refused to accept the first-instance judgment and later appealed to the SPC. ([More](#))

市场监管总局公布多地推广公平竞争审查实践活动

2022年10月27日，国家市场监督管理总局（“市场监管总局”）竞争政策协调司公布了多地推广公平竞争审查制度的实践活动。其中，四川省攀枝花市将公平竞争审查工作纳入法治政府考评，安徽省淮南市组织开展公平竞争审查第三方评估，江苏省丹阳市实现公平竞争审查乡镇全覆盖，江苏省无锡市召开公平竞争审查工作约谈会，辽宁省沈阳市开展公平竞争审查制度落实情况联合督查，四川省与重庆市推进川渝第三方交叉互评，重庆市多措并举确保妨碍统一市场和公平竞争政策措施清理到位，广西深化公平竞争审查和反垄断反不正当竞争协同机制建设。（[查看更多](#)）

SAMR Announces the Promotion Campaigns of Fair Competition Review in Provinces

On October 27, 2022, the Department of Competition Policy Coordination of the State Administration for Market Regulation (“SAMR”) announced the promotion campaigns of promoting the fair competition review system in multiple provinces. Among them, Panzhihua City, Sichuan Province included the fair competition review work in the evaluation of the rule-of-law government; Huainan City, Anhui Province organized a third-party assessment of fair competition review; Danyang City, Jiangsu Province achieved full coverage of fair competition review in all townships; Wuxi City, Jiangsu Province held a fair competition review work meeting; Shenyang City, Liaoning Province carried out a joint inspection of the implementation of the fair competition review system; Sichuan Province and Chongqing

City promoted third-party cross-evaluation of fair competition review work in Sichuan and Chongqing; Chongqing City took multiple measures to ensure that the policies and measures that hinder a unified market and fair competition are in cleared entirely; and Guangxi has deepened the construction of coordination mechanism of fair competition review and anti-monopoly and anti-unfair competition work. ([More](#))

未获反垄断审查批准，杜邦终止收购罗杰斯

2022年11月2日，杜邦公司（DuPont）与罗杰斯公司（Rogers）双双宣布终止两家公司之间的股权收购协议。根据协议，杜邦将向罗杰斯支付1.625亿美元的“分手费”。2021年11月2日，杜邦宣布其与罗杰斯达成股权收购协议，将以每股277美元现金的价格收购罗杰斯，协议约定若交易未在2022年11月1日或之前完成，双方均有权终止协议。截至2022年11月1日，双方仍未取得中国国家市场监督管理总局的经营者集中审查批准。 ([查看更多](#))

Fails to Receive Anti-Monopoly Approval, Rogers Announces Termination of Merger Agreement with DuPont

On November 2, 2022, DuPont and Rogers announced the termination of their definitive merger agreement. According to the agreement, Rogers has received a regulatory termination fee of \$162.5 million from DuPont. On November 2, 2021, DuPont announced that Rogers entered into a definitive merger agreement to be acquired by DuPont for \$277.00 per share in cash. The merger agreement provided both Rogers and DuPont with a right to terminate the merger agreement if the merger had not closed on or before November 1, 2022. As of November 1, 2022, the parties had not received regulatory approval from Chinese State Administration for Market Regulation. ([More](#))

数字市场法案11月1日正式生效

2022年10月31日，欧盟委员会发布公告，宣布《数字市场法案》（Digital Markets Act, “DMA”）将于2022年11月1日正式生效。DMA由欧盟委员会于2020年12月提出，并以创纪录的速度在2022年3月获欧洲议会和理事会通过。DMA定义了大型在线平台在何种情况下可能构成守门人（gatekeeper）：凡是经营DMA中所罗列的一个或多个“核心平台服务”的企业，满足三项门槛标准后，就有可能构成守门人。DMA还规定了一系列守门人企业需要遵守的义务，包括禁止从事的部分行为。DMA生效后，将于2023年5月2日起开始实施，满足规定门槛的潜在守门人企业必须在两个月内（即在2023年7月3日前）向欧盟委员会通报其核心平台服务。 ([查看更多](#))

Digital Markets Act Enters into Force on November 1

On October 31, 2022, the European Commission published an announcement, stating that the Digital Markets Act (“DMA”) will enter into force on November 1, 2022. It was proposed by the Commission in December 2020 and agreed by the European Parliament and the Council in record-time, in March 2022. The DMA defines when a large online platform qualifies as a “gatekeeper”: companies operating one or more of the so-called “core platform services” listed in the DMA qualify as a gatekeeper if they meet the 3 requirements described in the DMA. The DMA also establishes a list of do’s and don’ts that gatekeepers will need to implement in their daily operations. With its entry into force, the DMA will

move into its crucial implementation phase and start to apply in six months, as of 2 May 2023. After that, within two months and at the latest by 3 July 2023, potential gatekeepers will have to notify their core platform services to the Commission if they meet the thresholds established by the DMA. ([More](#))

欧盟委员会附条件批准三文鱼生产商萨尔玛收购挪威海事集团

2022年10月31日，欧盟委员会附条件批准萨尔玛（SalMar）收购挪威海事集团（“NTS”）。萨尔玛是世界上最大的养殖三文鱼生产商之一，主要活动于挪威、冰岛和苏格兰。NTS是活跃于挪威和冰岛的三文鱼养殖商，拥有SalmoNor、Norway Royal Salmon和Frøy等子公司。欧盟委员会担心，该交易会削弱欧洲经济区内冰岛三文鱼（Icelandic salmon）商品市场中的竞争，并将冰岛三文鱼活跃养殖商的数量从三家削减至2家，合并后的实体将成为市场上最大的冰岛三文鱼供应商，可能导致欧洲经济区内冰岛三文鱼价格上涨、选择减少。为解决竞争担忧，萨尔玛承诺完全剥离NTS的子公司Arctic Fish，该公司构成NTS在冰岛的所有业务。（[查看更多](#)）

Mergers: Commission Approves SalMar’s Acquisition of NTS, Subject to Conditions

On October 31, 2022, the European Commission conditionally approved the proposed acquisition of NTS by SalMar. SalMar is one of the world's largest producers of farmed salmon, with operations in Norway, Iceland and Scotland. NTS, which owns SalmoNor, Norway Royal Salmon and Frøy, is also a leading salmon farmer active in Norway and Iceland. The Commission is concerned that the transaction could reduce competition for the supply of Icelandic salmon in the European Economic Area (“EEA”), and reduce the number of active farmers of Icelandic salmon from three to two. As a result, the merged entity would have become by far the largest supplier of Icelandic salmon. This could have led to higher prices and less choice for Icelandic salmon in the EEA. To address the Commission's competition concerns, SalMar offered to divest NTS’ Icelandic subsidiary Arctic Fish, which constitutes all of NTS’ operations in Iceland. ([More](#))

美国法院裁定禁止企鹅兰登书屋收购西蒙与舒斯特出版公司

2022年10月31日，美国哥伦比亚特区联邦地区法院作出裁定，支持美国司法部的主张，禁止出版商企鹅兰登书屋（Penguin Random House）以22亿美元收购西蒙与舒斯特（Simon & Schuster）出版公司。法院认定，拟议交易将极大减少美国预期畅销书出版市场中的竞争。司法部发言人表示，该交易“将减少竞争，降低作者的报酬，降低我们作品和思想的广度、深度和多样性，并最终损害我们的民主”。（[查看更多](#)）

U.S. District Court Blocks Penguin Random House’s Proposed Acquisition of Simon & Schuster

On October 31, 2022, the U.S. District Court for the District of Columbia ruled in favor of the Justice Department in its civil antitrust lawsuit to block book publisher Penguin Random House’s proposed \$2.2 billion acquisition of Simon & Schuster. The court found that the effect of the proposed merger would be to substantially lessen competition in the market for the U.S. publishing rights to anticipated top-selling books. “The proposed merger would have reduced competition, decreased author compensation, diminished the breadth, depth, and diversity of our stories and ideas, and ultimately impover-

ished our democracy,” said Assistant Attorney General Jonathan Kanter of the Justice Department’s Antitrust Division. ([More](#))

德国联邦卡特尔局认定亚马逊具有显著跨市场竞争影响

2022年10月26日，德国联邦卡特尔局发布公告，认定美国公司亚马逊（Amazon）为具有显著跨市场竞争影响的经营者，此次认定为期五年。根据德国《反竞争限制法（第十修正案）》（GWB10）第19a条规定，当大型数字平台经营者在多个市场上大范围开展业务时，即使在单个相关市场并未构成传统意义上的市场支配地位，联邦卡特尔局也可以认定其具有显著跨市场竞争影响，并对其所实施的反竞争行为进行提前干预。因此，根据第19a条，亚马逊及其子公司将受到扩展滥用控制的约束。（[查看更多](#)）

Decision Published: Amazon’s Paramount Significance for Competition Across Markets

On October 26, 2022, Germany Cartel Office announced it has determined that Amazon.com, Inc. is an undertaking of paramount significance for competition across markets. This determination lasts for 5 years. According to Section 19a of the German Competition Act (GWB), when a large digital platform operator conducts business as a key player in multiple markets, even if it does not constitute a market dominance in the traditional sense in a single relevant market, the Federal Cartel Office can still determine that it has paramount significance for competition across market, and may intervene earlier against the practices of large digital corporations. Amazon and its subsidiaries are thereby subject to extended abuse control pursuant to Section 19a of the German Competition Act (GWB). ([More](#))

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

工信部就《道路机动车辆生产准入许可管理条例》公开征求意见

2022年10月28日，为全面落实车辆生产许可管理责任，工业和信息化部（以下简称“工信部”）会同有关部门起草了《道路机动车辆生产准入许可管理条例（征求意见稿）》（以下简称《条例》），向社会公开征求意见，意见反馈截止时间为2022年11月27日。《条例》规定，智能网联汽车生产企业应当建立车辆产品网络安全、数据安全、个人信息保护、车联网卡安全管理、软件升级管理制度；明确责任部门和负责人，落实安全保护责任；在产品销售、使用等过程中收集和产生的个人信息和重要数据应在境内存储，因业务需求确需向境外提供的，应通过安全评估并向相关部门报备。（[查看更多](#)）

MIIT Seeks Public Comments on Administrative Regulations on the Access Permit of Road Motor Vehicles Production

On 28 October 2022, in order to fully implement the responsibility of vehicle production permission management, the Ministry of Industry and Information Technology (the "MIIT"), jointly with relevant departments, drafted the *Administrative Regulations on the Access Permit of Road Motor Vehicles Production (Draft for Comments)* (the "Regulations"), seeking public comments by 27 November 2022.

The Regulations stipulate that intelligent connected vehicle manufacturers shall establish systems for the network security of vehicle products, data security, personal information protection, security management of vehicle online cards, and management of software upgrading; designate responsible departments and responsible persons to implement accountability for safety protection. Personal information and important data collected and generated in the process of product sales and use shall be stored in China. If it is necessary to provide overseas information due to business needs, the provision shall pass the security assessment and report to the relevant departments for filing. ([More](#))

工信部就《关于开展智能网联汽车准入和上路通行试点工作的通知》公开征求意见

2022年11月2日，工信部会同公安部组织起草了《关于开展智能网联汽车准入和上路通行试点工作的通知（征求意见稿）》（以下简称《通知》），公开征求社会意见，意见反馈截止日期为2022年12月1日。《通知》指出工信部、公安部决定开展智能网联汽车准入和上路通行试点工作。《通知》对试点城市、试点汽车生产企业、试点产品、试点使用主体等均提出了网络安全和数据安全等方面的要求。明确了企业在境内运营收集和产生的个人信息和重要数据应在境内存储，需要向境外提供的，应通过安全评估。试点车辆产生的网络安全和数据安全违法违规责任，由车内安全员、试点汽车生产企业、试点使用主体、自动驾驶系统开发单位等相关主体依法承担。（[查看更多](#)）

MIIT Seeks Public Comments on Circular on Carrying out the Market Access and the Pilot Program for Intelligent Connected Vehicles

On 2 November 2022, the MIIT in concert with the Ministry of Public Security (the "MPS"), drafted the *Circular on Carrying out the Market Access and the Pilot Program for Intelligent Connected Vehicles (Draft for Comment)* (the "Circular") for public comment by December 1, 2022. The Circular states that the MIIT and the MPS have decided to carry out the market access and the pilot program for intelligent connected vehicles. The Circular sets forth requirements in respect of the network security and data security for pilot cities, automobile manufacturers, products and users of the pilot products. It is clarified that the personal information and important data collected and generated during the operation of an enterprise in China shall be stored within the territory; where an enterprise needs to provide such information and important data to an overseas party, it shall pass the security assessment. The liabilities for illegalities and violations in respect of network security and data security arising from pilot vehicles shall be assumed by the safety personnel inside the vehicles, pilot vehicles manufacturers, pilot vehicle users, self-driving system developers and other relevant subjects in accordance with the law. ([More](#))

文旅部就《文化和旅游部关于推动在线旅游市场高质量发展的意见》公开征求意见

2022年11月3日，由文化和旅游部（以下简称“文旅部”）起草的《文化和旅游部关于推动在线旅游市场高质量发展的意见（征求意见稿）》（以下简称《意见》）公开征求意见，《意见》反馈截止日期为11月9日。《意见》拟规定，加强游客“行踪轨迹”等个人敏感信息保

护,防止超出合理经营需要收集游客个人信息,采取切实措施避免大数据“杀熟”、虚假宣传、虚假预订等侵害游客权益行为。(查看[更多](#))

MCT Seeks Public Comments on the Opinions of the Ministry of Culture and Tourism on Promoting the High-quality Development of the Online Tourism Market (Draft for Comment)

On 3 November 2022, the Opinions of the Ministry of Culture and Tourism on Promoting the High-quality Development of the Online Tourism Market (Draft for Comment) (the "Opinions") drafted by the Ministry of Culture and Tourism (the "MCT") are seeking public comments by 9 November. The Opinions propose to provide for better protection of tourists' sensitive personal information, including their "records of whereabouts", to prevent the collection of tourists' personal information beyond the reasonable business needs, and take effective measures to avoid any behavior infringing upon tourists' rights and interests, such as using the big data to enforce price discrimination, false publicity and false reservations. ([More](#))

网信办依法集中查处一批侵犯个人信息合法权益的违法违规APP

2022年11月3日,据报道,国家互联网信息办公室(以下简称“网信办”)依法查处135款违法违规APP。经查,相关APP涉及强制索要非必要权限、未经单独同意向第三方共享精确位置信息、无隐私政策、超范围收集上传通讯录、频繁索要非必要权限、首次启动未提示隐私政策、未告知相关个人信息处理规则、默认勾选隐私政策、无法或难以注销账号等问题。对于前述部分违法性质恶劣的APP直接予以下架处置,对其他APP给予1个月的整改期,如逾期未完成整改的,也将予以下架。(查看[更多](#))

CAC Investigates and Punishes a Number of Illegal APPs that Infringed on the Legitimate Rights and Interests of Personal Information

On 3 November 2022, according to reports, the Cyberspace Administration of China (the "CAC") has investigated and punished 135 illegal APPs. Upon investigation, the main violations of the Apps included forced requests for unnecessary permissions, the sharing of precise location information with third parties without separate consent, no privacy policy, collecting and uploading address books beyond the scope, frequent requests for unnecessary permissions, no reminder of the privacy policy at the first launch, no notification of the relevant personal information processing rules, checking the privacy policy by default, and inability or difficulty to deregister accounts. Some of the aforesaid APPs with serious violations shall be removed directly from the shelves, and other APPs are given a period of one month for rectification. If the rectification is not completed within the time limit, they shall also be removed from the APP store. ([More](#))

北京市通信管理局关于20款问题APP的通报

2022年10月29日,北京市通信管理局组织开展北京地区APP技术检测工作。经查,有20款APP存在侵害用户权益和安全隐患等问题,发现相关APP未经用户同意收集个人信息、Janus签名机制漏洞、违规向他人提供个人信息、账号注销难等问题。北京通管局要求有关APP运营企业立即

整改，并于11月15日前提交整改报告，逾期不整改或整改不到位的，北京通管局将依法依规予以处置。（[查看更多](#)）

BCA Informs 20 Problematic APPs

On 29 October 2022, the Beijing Communications Administration (the "BCA") organized and carried out technical testing of APPs in Beijing. After testing, a total of 20 APPs were found to have problems such as infringement of users' rights and security risks. The relevant APPs were found to have problems such as the collection and use of personal information without users' consent, the vulnerability of the Janus signature mechanism, providing personal information to others in violation of regulations, and difficulties to cancel the account. The BCA requested the relevant APP operators to immediately rectify and submit rectification reports before 15 November. If the rectification is still not in place after the deadline, BCA will deal with these Apps in accordance with the law. ([More](#))

广东高院发布个人信息保护典型案例

2022年10月31日，《个人信息保护法》施行一周年之际，广东省高级人民法院发布一批个人信息保护典型案例，其中包括2个刑事、4个民事案件，涉及打击侵犯公民个人信息犯罪、防止个人信息“过度收集”、保障行使个人信息查阅复制权、规范网络平台依法使用个人信息等内容。（[查看更多](#)）

The High People's Court of Guangdong Province Releases a Number of Typical Cases on Personal Information Protection

On 31 October 2022, on the first anniversary of *the Personal Information Protection Law*, the High People's Court of Guangdong Province released a number of typical cases on personal information protection, including two criminal cases and four civil cases. The cases involve cracking down on the crime of infringing citizens' personal information, preventing "excessive collection" of personal information, safeguarding the exercise of the right to review and copy personal information and regulating network platforms' lawful use of personal information. ([More](#))

广东省网信办开通数据出境安全评估申报通道

2022年11月1日，根据《数据出境安全评估办法》和网信办发布的《数据出境安全评估申报指南（第一版）》，广东省互联网信息办公室正式开通数据出境安全评估申报通道，接收该省数据处理者提交的申报材料。广东网信办同时发布了数据出境安全评估申报的适用范围、申报方式及流程、申报材料清单以及咨询电话020-87197742。（[查看更多](#)）

Cyberspace Administration of Guangdong Province Has Opened the Application Channel for Security Assessment of Outbound Data Transfers

On 1 November 2022, according to *the Security Assessment Measures for Outbound Data Transfers and the Guide to Applications for Security Assessment of Outbound Data Transfers (First Edition)* issued by the Cyberspace Administration of China, the Cyberspace Administration of Guangdong Province has opened the application channel for security assessment of outbound data transfers, receiving the application materials from the data processors in the province. The Cyberspace Administration of Guangdong Province also issued the specific requirements on the application scope, application method, application process, application materials and consultation Tel: 020-87197742. ([More](#))

上海网信办发布数据出境安全评估申报工作实务问答

2022年11月3日，根据《数据出境安全评估办法》和《数据出境安全评估申报指南（第一版）》，上海市互联网信息办公室（以下简称“上海市网信办”）就近期咨询受理中的常见问题发布了数据出境安全评估申报工作实务问答。问答就数据处理者如何申报数据出境安全评估、申报材料、咨询方式、查验期间等相关工作作出了详细的回答。（[查看更多](#)）

Cyberspace Administration of Shanghai Has Issued a Q&A on Practices of Application for Security Assessment of Outbound Data Transfers

On 3 November 2022, according to the *Security Assessment Measures for Outbound Data Transfers and the Guide to Applications for Security Assessment of Outbound Data Transfers (First Edition)*, the Cyberspace Administration of Shanghai has issued a Q&A, in response to common questions arising from its handling of inquiries, on practices of application for security assessment of outbound data transfers. The Q&A provides detailed answers on how to apply for security assessment of outbound data transfers, application materials, methods of inquiry, inspection period, etc. ([More](#))

英国拟议就数据立法启动新的磋商

据Tech Monitor2022年11月1日报道，英国可能进一步推迟在脱欧后推出新数据立法。英国文化、媒体和体育部（DCMS）官员确认，将就《数据保护和数字信息法案》（Data Protection and Digital Information Bill）启动新一轮磋商，该法案将在英国取代欧盟的《通用数据保护条例》（GDPR）。DCMS国内数据保护政策副主任欧文·罗兰表示，最终法案的“核心”是允许数据根据英国与欧盟的充分性协议在英国和欧洲之间流动。（[查看更多](#)）

New Public Consultation Launches into UK's Proposed Data Legislation

According to reporting by Tech Monitor on 1 November 2022, the UK's new post-Brexit data legislation could face further delays after a Department for Culture, Media and Sport (DCMS) official confirmed further consultation into the Data Protection and Digital Information Bill, which is set to replace the EU's GDPR. The adequacy agreement with the EU, which allows data to flow between Britain and Europe, will be “at the heart” of the finalized bill, Owen Rowland, deputy director for domestic data protection policy at the DCMS, said. ([More](#))

ICO大幅削减内阁办公室的数据泄露罚款

2022年11月4日，英国数据保护机构（ICO）将对内阁办公室重大数据安全事件的罚款从500,000英镑减少到50,000英镑。据悉，2019年，内阁办公室意外披露了新年荣誉名单中的1,000多人的姓名和未经保密处理的地址。ICO表示，在这些信息在线的两个小时内被访问了数千次。信息专员约翰·爱德华兹说，尽管最初的罚款金额与受害者人数相称，但也需要考虑到公共机构目前面临的经济压力，而且在某些情况下，罚款在实现威慑效应方面可能不那么重要。（[查看更多](#)）

ICO Slashes Government Data Breach Fine

On 4 November 2022, the ICO, the UK's data protection regulator, has reduced a fine imposed on the Cabinet Office after a major breach, from £500,000 to just £50,000. The Cabinet Office accidentally published the names and unredacted addresses of more than 1000 people announced in the New Year Honours list in 2019. The information was accessed thousands of times during the two hours it was left online, the ICO said. Information commissioner John Edwards said that although he believes the original fine was proportionate to the number of victims, "I recognize the current economic pressures public bodies are facing, and the fact that in certain cases fines may be less critical in achieving deterrence."[\(More\)](#)

第44届全球隐私大会通过了关于面部识别技术和网络安全监管的决议

2022年10月28日，在土耳其伊斯坦布尔举行的第44届全球隐私大会（GPA）上，加拿大隐私专员办公室（OPC）以及来自加拿大、欧洲和其他地区的120多个数据保护机构通过了一项关于在面部识别技术中合理使用个人信息的决议。在该决议中，提出了六项原则和期望，包括：1.合法依据：使用面部识别技术的组织应基于明确的合法依据来收集和使用生物识别技术；2.合理性、必要性和相称性：组织应建立并能够证明其使用面部识别技术的合理性、必要性和相称性；3.保护人权：组织尤其应评估和防止对隐私和其他人权的非法或任意干涉；4.透明度：面部识别技术的使用应该对受影响的个人和团体透明；5.问责制：面部识别技术的使用应包括明确有效的问责机制；6.数据保护原则：面部识别技术的使用应尊重所有数据保护原则。有关当局承诺共同努力，向外部利益攸关方团体宣传这些原则，评估开发人员和用户实际应用这些原则的情况，并报告其进展情况。第44届全球隐私大会还通过了一项承诺加强网络安全监管能力的决议。[\(查看更多\)](#)

The 44th GPA Adopted Resolutions on Facial Recognition Technology and Cybersecurity Regulation

On 28 October 2022, during the 44th Global Privacy Assembly (GPA) in Istanbul, Türkiye, the Office of the Privacy Commissioner of Canada and more than 120 data protection authorities from across Canada, Europe and beyond adopted a resolution on the appropriate use of personal information in facial recognition technology. In it, authorities outlined six principles and expectations for organizations seeking to use the technology. They include: 1. Lawful basis: Organizations using facial recognition should have a clear lawful basis for the collection and use of biometrics; 2. Reasonableness, necessity and proportionality: Organizations should establish, and be able to demonstrate, the reasonableness, necessity, and proportionality of their use of facial recognition technology; 3. Protection of human rights: Organizations should in particular assess and protect against unlawful or arbitrary interference with privacy and other human rights; 4. Transparency: The use of facial recognition should be transparent to affected individuals and groups; 5. Accountability: The use of facial recognition should include clear and effective accountability mechanisms; 6. Data protection principles: The use of facial recognition should respect all data protection principles. Authorities committed to working together to promote the principles to external stakeholder groups, to assess the real-world application of the principles by developers and users and to report back on their progress. The 44th GPA also adopted a resolution, by which a commitment was made to build capacity to improve cybersecurity regulation. [\(More\)](#)

知识产权 Intellectual Property

《专利审查指南修改草案（再次征求意见稿）》公开征求意见

为配合专利法及其实施细则修改，国家知识产权局持续开展《专利审查指南》修改工作，现将《专利审查指南修改草案（再次征求意见稿）》及其说明予以公布，征求社会各界意见。意见反馈截止至2022年12月15日前。为在审查实践层面保障对专利法及其实施细则的贯彻落实，国家知识产权局在认真研究和论证的基础上，综合前两次的征求意见稿，进一步对专利法及其实施细则相关规定进行的配套修改。

来源：国知局

CNIPA Seeks Public Comments on *the Guidelines for Patent Examination (Draft for Comments)*

In order to cooperate with the revision of *the Patent Law* and *the Implementation Regulations for the Patent Law*, the CNIPA has continued to revise *the Guidelines for Patent Examination*. Now, the revised draft of *the Guidelines for Patent Examination (Draft for Comments)* and its explanation are published for comments, seeking public comments by 15 December, 2022. On the basis of research and demonstration, the CNIPA further revised *the Patent Law* and its Implementation Rules by the first two drafts for comments.

Source: CNIPA

《商标代理监督管理规定》发布

10月27日，市场监管总局发布《商标代理监督管理规定》（以下简称《规定》），《规定》自2022年12月1日起施行。《规定》进一步规范了商标代理行为，规定从事商标代理业务的基本原则、应当履行的义务和代理机构基本事项的公示，要求商标代理机构建立健全业务管理制度和业务档案制度，加强从业人员职业道德和职业纪律教育等。《规定》的出台，为规范商标代理行为，提升商标代理服务质量，促进商标代理行业健康发展，营造规范有序、公平竞争、充满活力的商标代理市场环境提供了有力法治支撑。

来源：市场监管总局

Regulations on the Supervision and Administration of Trademark Agency has been Released

On October 27, the State Administration for Market Regulation released *the Regulations on the Supervision and Administration of Trademark Agency (the Regulations)*, to be effective from December 1, 2022. The Regulations further regulate the activities of trademark agencies, stipulating the basic principles for engaging in trademark agency business, the obligations that shall be performed and the publicity of basic information of the agencies, requiring trademark agencies to establish and improve the business management system and business archive system, and enhancing the education on the professional ethics and professional disciplines of practitioners. The promulgation of the Regulations provides a strong legal support for standardizing the activities of trademark agency, improving the quality of trade-

mark agency services, promoting the healthy development of the trademark agency industry, and creating a standardized, orderly, fair and dynamic trademark agency market environment.

Source: State Administration for Market Regulation

中国代表当选国际植物新品种保护联盟理事会主席

10月28日，国际植物新品种保护联盟（UPOV）理事会第56次例会于瑞士日内瓦世界知识产权组织总部召开，UPOV相关成员国一致同意任命农业农村部科技发展中心总农艺师崔野韩为UPOV理事会主席，任期三年。这是我国代表首次担任该组织这一重要职务。自1999年加入UPOV以来，我国积极履行UPOV成员国义务，不断提升植物新品种保护水平，植物新品种申请量已连续多年位居世界首位。我国代表成功当选UPOV理事会主席，标志着我国在国际植物新品种保护体系中的地位与影响力得到进一步提升。

来源：国知局

The representative of China was Elected as the President of the Council of UPOV

On October 28, at the 56th regular meeting of the Council of the International Union for the Protection of New Varieties of Plants (UPOV), held at the headquarters of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland, relevant member states of UPOV unanimously agreed to appoint Cui Yehan, chief agronomist of the Science and Technology Development Center of the Ministry of Agriculture and Rural Affairs, as chairman of the UPOV Council with a term of three years. This is the first time that our representative has occupied this important post in the Organization. Since its accession to the UPOV in 1999, it has actively performed its obligations as a UPOV member state and constantly enhanced the level of protection of new plant varieties, and the number of applications for new plant varieties has ranked first in the world for many consecutive years. The successful election of the representative of China as chairman of the UPOV Council marked the further promotion of China's status and influence in the international system of the protection of new plant varieties.

Source: CNIPA

世界贸易组织：关于诊断与治疗的TRIPS决定陷入僵局

世界贸易组织（WTO）由于主要的发达国家自2020年以来一直在实施阻碍议程的策略，因此不太可能在2022年12月17日之前扩展“WTO第12届部长级会议（MC12）关于《与贸易有关的知识产权协定（TRIPS）》的决定”（以下称为TRIPS决定）以涵盖新冠肺炎诊断工具与治疗方法的生产和供应。在2022年10月12日举办的WTO TRIPS理事会常规会议上，主要工业化国家/地区（一方）与绝大多数发展中国家和最不发达国家（另一方）对于TRIPS决定以涵盖新冠肺炎诊断工具和治疗方法的生产和供应再次出现分歧。根据2022年6月17日WTO第12届部长级会议通过的TRIPS决定第8段，WTO有权在该决定发布之日起6个月内扩展该决定的适用范围，以涵盖新冠肺炎诊断工具和治疗方法的生产和供应。该最后期限将于12月17日届满。

来源：中国保护知识产权网

WTO: TRIPS Decision on Diagnosis and Treatment is Deadlocked

As the major developed countries have been implementing strategies to block the Agenda since 2020, it is unlikely that the WTO will extend the Decision of the 12th WTO Ministerial Conference (MC12) on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (the TRIPS Decision) to cover manufacture and supply of diagnostic tools and treatments for COVID-19 by December 17, 2022. At the regular meeting of the WTO TRIPS Council held on October 12, 2022, major industrialized countries/regions and the majority of developing countries and least developed countries once again diverged on the TRIPS decision. Under paragraph 8 of the TRIPS Decision, adopted at the 12th Ministerial Conference of the WTO on 17 June 2022, the WTO has the authority within six months from the date of issuance of the Decision to extend the application of the Decision to cover manufacture and supply of diagnostic tools and treatments for COVID-19. This deadline expires on 17 December 2020.

Source: IPR in China

判赔3200万，腾讯抖音长短视频之战一审判决

近日，西安市中级人民法院就腾讯诉抖音《云南虫谷》侵害著作权及不正当竞争案作出一审判决，抖音应立即采取有效措施删除、过滤、拦截相关视频，并赔偿腾讯经济损失及合理费用3240余万元。本案中3240余万元的赔偿金额打破了全国同类案件的判赔纪录。

腾讯认为，《云南虫谷》在腾讯视频独播之后，抖音上存在大量用户上传的该剧剪辑片段。据此向西安市中级人民法院起诉，要求抖音立即采取有效措施删除、过滤、拦截相关视频，并赔偿经济损失及合理费用1000万元。案件开庭前，腾讯公司变更诉讼请求，将索赔金额上升至9000万元。

法院认为，抖音应对平台内侵权内容承担相应的管理义务，虽然其采取措施减少了侵权作品的数量，但侵权行为仍未得到有效遏制。故法院认定抖音构成帮助侵权。法院综合考虑涉案作品类型、制作成本、知名程度、被告侵权行为性质、可能获益等因素，法院酌定腾讯因侵权行为遭受的经济利益损失为平均每集200万元、总计3200万元，并要求抖音支付腾讯42万余元的合理维权费用。本案判赔金额并不适用惩罚性赔偿。

来源：西安中院

Damages of RMB 32.4 million was awarded in Tencent v. Tiktok for Copyright Infringement

Recently, the Xi'an Intermediate People's Court has rendered its first-instance judgment in the copyright infringement and unfair competition case filed by Tencent against Tiktok, ordering Tiktok to take effective measures to delete, filter, and intercept relevant videos, and pay the damages of more than RMB 32.4 million. The damages of over RMB32.4 million broke the adjudication record of a similar case in China.

After the exclusive broadcast of "The Worm Valley" on Tencent Video, there were a large number of clips of the play uploaded by users on Tiktok. The court held that Tiktok shall bear corresponding management obligations for infringing content on the platform. Although it took measures to reduce the number of infringing works, the infringement has not been effectively curbed. Therefore, the court de-

terminated that Tiktok constituted contributory infringement. The court considered the type of work, production cost, the popularity of the work, the nature of infringement of the defendant, potential benefits and other factors, and ordered TikTok to pay the damages of more than RMB 32.4 million. Punitive damages are not applicable to this case.

Source: Xi 'an Intermediate People's Court

外资企业在华最高赔偿额商标案：获赔5000万

近日，江苏省高级人民法院就德禄产业与发展有限责任两合公司、德禄国际有限公司、德禄（太仓）家具科技有限公司（原审原告）与德禄家具（上海）有限公司、德禄家具（南通）有限公司、朱培军（原审被告）侵害商标权及不正当竞争纠纷案作出判决，驳回上诉，维持原判。

本案发生于中外合资关系结束后，合资方继续使用另一方商标和企业字号所引发的知识产权侵权纠纷，是迄今为止外资企业在中国获得判赔金额相对较高的商标侵权类案件。原告5000万元赔偿请求获全额支持。

法院认为：两被告公司系中德合资设立，其“德禄”字号和“德禄”“raumplus”商标的使用权利系基于合资关系的存续并经德禄两合公司专门授权所取得。在合资关系结束后，德禄上海公司、德禄南通公司理应停止使用德国公司的相应知识产权，但两公司未经德国公司许可，大量使用“德禄”“raumplus”等商标，生产、销售与涉案注册商标核定使用商品相同的定制家具，侵犯了德禄两合公司的商标专用权；继续使用“德禄”企业字号，造成市场混淆与误认，严重损害了德禄品牌正常的市场竞争利益，并将自有品牌宣传为德禄旗下高端定制品牌，大规模开设经销门店，大批量承接工程项目，构成不正当竞争行为，应予禁止。

来源：江苏高院

Damages of RMB 50 Million was awarded, the highest ever for foreign plaintiff in Chinese trademark infringement cases

Recently, the High People's Court of Jiangsu Province made a judgment in a trademark infringement and unfair competition dispute case, rejecting the appeal, upholding the original judgment and ordering the defendant to pay damages of RMB50 million.

The case occurred in an intellectual property infringement dispute arising from the defendant continuous use of the trademark and enterprise name of the foreign plaintiff after the termination of the Sino-foreign joint venture relations. It is a trademark infringement case in which a foreign-invested enterprise has obtained high amount of damage as adjudicated so far.

The court held that the two defendant companies were established based on the Sino-foreign joint venture relationship, and the use right of the trademark involved was obtained based on the existence of the joint venture relationship and the special authorization of the foreign plaintiff. After the end of the joint venture relationship, the defendant shall have stopped using the foreign plaintiff's intellectual property rights, but the defendant still used the trademark involved in the case, produced and sold customized furniture with the same products as the foreign plaintiff's registered trademark, which infringed the foreign plaintiff's exclusive right to use the trademark, and the defendant continued to use

the trademark as the enterprise name, causing the confusion of the relevant public, seriously damaging the foreign plaintiff's normal market competition interests. It also publicized its own brand as a high-end customized brand under the foreign plaintiff, opened large-scale distribution stores, and undertook engineering projects in large quantities, which constituted unfair competition and shall be prohibited.

Source: [High People's Court of Jiangsu Province](#)

欧洲专利局裁定撤销两项无线星球专利

近日，处于多起国际诉讼中心的Unwired Planet（无线星球）公司，被欧洲专利局撤销了两项专利，包括一项母公司专利。谷歌(Google)、华为、三星(Samsung)和 LG在内的6家反对者提出了反对意见。此前，这两项专利是FRAND全球争论的核心。针对Unwired Planet两项专利的最新裁决，是NPE与众多实施者之间长期争议的一部分。在过去几年中，德国和英国的法院也审理过相关侵权和无效诉讼。欧洲专利局在谷歌、华为、三星、LG等6家反对公司提出反对意见后，宣布Unwired Planet专利EP 24 85 514无效。除了HTC，所有各方最终都撤回了他们的反对意见，现在HTC成功看到了该专利与其母公司专利被宣告无效。

来源: [juve-patent](#)

EPO Ruling Revokes Two Unwired Planet Patents

Recently, Unwired Planet, a company at the centre of multiple instances of international litigation, has had two patents including one parent patent revoked at the European Patent Office. Six opponents, including Google, Huawei, Samsung and LG, had filed oppositions. The two patents were central to previous global FRAND debates. The latest ruling against two Unwired Planet patents is part of a long-running dispute between the NPE and numerous implementers. In the past few years, courts in Germany and UK have also presided over ongoing infringement and nullity proceedings. The EPO has invalidated Unwired Planet's patent after six opponents including Google, Huawei, Samsung and LG, filed oppositions. However, all parties eventually withdrew their oppositions except for HTC which has now successfully seen the patent, and its parent patent invalidated.

Source: [juve-patent](#)

苹果在与Optis的标准必要专利纠纷中败诉

10月27日，苹果在英国与Optis的专利纠纷败诉，这是苹果设备（包括iPhone和iPad）中使用的关键电信专利的长期争议的最新进展。英国上诉法院判决，在法院就公平使用条款做出裁决之前，总部位于美国德克萨斯州的Optis蜂窝技术有限责任公司可以阻止苹果实施侵犯其某些重要专利（如4G）的行为。英国上诉法院判决驳回苹果对Optis提出的上诉，维持下级法院的判决，这一判决也意味着苹果与Optis从2019年开始的标准必要专利纠纷将落下帷幕。

来源: [路透社](#)

Apple Loses Appeal in London Court in Optis Patent Dispute

On October 28, Apple Inc lost an appeal in a London court in the latest stage of a long-running dispute

over key telecommunications patents used in Apple devices including iPhones and iPads. The Court of Appeal ruled Texas-based Optis Cellular Technology LLC can stop Apple infringing its patents which are essential to certain technological standards, such as 4G, before a court has ruled on fair terms of use. The decision by the Court of Appeal, which upholds the lower court's ruling, marks the latest chapter in litigation initially brought by Optis in 2019.

Source: Reuters

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