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北京市通信管理局通报2023年第三期存在问题App清单

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欧盟法院发布判决排除GDPR行政罚款的严格责任

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知识产权 Intellectual Property

2022年全国市场监管部门查处商标、专利违法案件4.4万件 涉案金额16.2亿元

State Administration of Market Regulation Solve More Than 44,000 Trademark and Patent Infringement Cases with Case Value More Than RMB 1.62 Billion in 2022

京东申请注册Chat相关商标 “ChatRhino”

Jingdong Applies for Registration of Trademark "ChatRhino"

杭州互联网法院判决首例涉“虚拟数字人”侵权案

Hangzhou Internet Court Tried First Case of Infringement on Virtual Digital Person

广东高院：关于商标权权利利用尽抗辩和合法来源抗辩的认定标准

Guangdong High Court Affirmed the Criteria on Exhaustion of Trademark Rights Defense and Legal Source Defense

WIPO发布法官专利案件管理国际指南

WIPO Release An International Guide to Patent Case Management for Judges

谷歌赢得数据检索技术的美国专利审判

Google Wins US Patent Trial over Data-Retrieval Technology

OPEX Corporation在专利纠纷中取得重大胜利

OPEX Corporation Achieves Important Win in Patent Dispute

立方竞争法周报 Weekly Competition Law News

海南发布2022年知产典型案例，含一起反垄断行政处罚案件

2023年5月5日，海南省高级人民法院（“海南高院”）发布2022年知识产权司法保护十大典型案例，其中包含海南南盾实业有限公司（“南盾公司”）与海南省市场监督管理局（“海南省市监局”）反垄断行政处罚案。南盾公司于2017年起在海南省消防协会消防维保检测行业分会组织下与其他会员单位达成所谓最低自律价决议，约定成员单位按照设定的收费项目及对应收费标准进行收费，并以各种办法等约束监督各成员单位按照最低价实施。海南省市监局于2020年11月对其处以2018年度销售额1%的罚款。南盾公司对此提起行政诉讼。法院认定其行为属于具有竞争关系的经营者达成固定商品价格的垄断协议情形，驳回其诉讼请求。（[查看更多](#)）

Hainan Issues 2022 Typical Intellectual Property Cases, Including an Administrative Monopoly Case

On May 5, 2023, the Higher People's Court of Hainan Province released its Top 10 typical cases of judicial protection of intellectual property rights in 2022, which included an administrative monopoly dispute between Hainan Nandun Industry Co., Ltd. (“Nandun Company”) and the Hainan Provincial Administration for Market Regulation (“Hainan AMR”). In 2017, Nandun Company reached a so-called “lowest self-discipline price resolution” with other member units under the Fire Protection Maintenance and Testing Industry Branch of the Hainan Provincial Association Of Fire Protection (“HPAFP”), agreeing that member units would charge according to the set charging items and corresponding charging standards, and using various methods to supervise and restrict all member units to implement the lowest price. In November 2020, the Hainan AMR imposed a fine of 1% of the company's sales revenue in 2018. Nandun Company filed an administrative lawsuit against this decision, but the court rejected its request, determining that its behavior constituted a situation where competing operators reached a monopoly agreement on fixed commodity prices. ([More](#))

市场监管总局公布三起反行政垄断案件

2023年5月4日，国家市场监督管理总局（“市场监管总局”）公布了来自重庆、湖北和甘肃的三起滥用行政权力排除、限制竞争行为案件。三起案件的当事人分别为重庆市花溪街道办事处、荆门市城市管理执法委员会和兰州市城市管理委员会。涉案行政垄断行为涉及滥用行政权力限定单位使用指定的经营者提供的商品，排除、限制了当地物业行业电子投票系统领域的竞争；要求户外广告公司使用特定经营者提供服务，指定某公司统一承接办理中心城区户外广告设置的申报手续；以与特定公司签订合同为由，印发文件要求下级相关单位对其他企业从事餐厨垃圾收运处理的申请不予行政许可，并要求下级相关单位督促餐饮企业与其指定的企业签订餐厨垃圾收运协议，相关行为均构成滥用行政权力排除、限制竞争行为，违反反垄断法。调查期间，当事人均积极整改，消除不良影响，废止、撤销有关文件，积极学习落实公平竞争审查制度。（[查看更多](#)）

SAMR Publishes Three Administrative Anti-monopoly Cases

On May 4, 2023, the State Administration for Market Regulation (SAMR) published three cases of abuse of administrative power to exclude or restrict competition in Chongqing, Hubei, and Gansu provinces. The parties involved in the three cases were the Huaxi Sub-district Office in Chongqing, the Urban Management and Law Enforcement Commission in Jingmen City, and the Urban Management Commission in Lanzhou City. The cases involved administrative monopoly behaviors that restricted government departments to use only the goods provided by certain designated operators, excluding and limiting competition in the field of electronic voting systems for local property industries; required outdoor advertising companies to use services provided by specific operators, and designated a certain company to handle the declaration procedures for outdoor advertising in the central urban area; issued documents requiring lower-level departments to refuse administrative licenses for other companies to engage in the collection and disposal of kitchen waste, and required lower-level departments to urge catering companies to sign agreements for kitchen waste collection and transportation with designated companies. These behaviors all constituted abuse of administrative power to exclude or restrict competition and violated anti-monopoly law. During the investigations, all parties proactively made corrections, eliminated negative impacts, revoked relevant documents, and actively learnt and implemented fair competition review systems. ([More](#))

北京：提升反垄断执法效能，加强反垄断领域京津冀协同合作

近日，北京市市场监督管理局（“北京市市监局”）发布进一步优化营商环境降低市场主体制度性交易成本工作方案的通知，提出以下主要任务：（1）创新竞争监管方式，研究制定反垄断合规指引；（2）提升反垄断与反不正当竞争执法效能，组织开展民生领域反垄断执法专项行动，加强反垄断领域京津冀协同合作，开展反垄断领域专家库资源共享；（3）整治中介机构垄断行为，整治行政机关变相指定中介机构垄断服务、干预市场主体选取中介机构等行为。（[查看更多](#)）

Beijing: Improve the Effectiveness of Anti-monopoly Law Enforcement and Strengthen Cooperation in the Anti-monopoly Field between Beijing, Tianjin, and Hebei

Recently, the Beijing Municipal Administration for Market Regulation (“Beijing AMR”) issued a notice on further optimizing the business environment and reducing transaction costs for market entities. The notice proposes the following main tasks: (1) Innovate competition regulation methods and develop anti-monopoly compliance guidelines; (2) Improve the efficiency of anti-monopoly and anti-unfair competition law enforcement, organize special actions on anti-monopoly law enforcement in people's livelihood areas, strengthen cooperation in the field of anti-monopoly in the Beijing-Tianjin-Hebei region, and share resources of anti-monopoly expert database; (3) Crack down on monopolistic behaviors of intermediary agencies, rectify administrative agencies' disguised designation of intermediary agencies for monopolistic services, and intervene in the selection of intermediary agencies by market entities. ([More](#))

CMA启动对人工智能基础模型的初步审查

2023年5月4日，英国竞争与市场管理局（CMA）宣布开始初步审查人工智能基础模型的竞争和

消费者保护问题。该项审查旨在了解人工智能基础模型的发展情况，并对那些将最好地指导基础模型发展和未来使用的条件和原则进行评估。该项审查将审查基础模型及其应用的竞争市场可能如何发展，探索这些情境可能为竞争和消费者保护带来的机会和风险，并随着基础模型的发展制定指导原则以支持竞争和保护消费者。CMA欢迎各方于2023年6月2日前提交意见和证据，并将于2023年9月发布报告以阐明其调查结果。（[查看更多](#)）

CMA Launches Initial Review of Artificial Intelligence Models

On May 4, 2023, the Competition and Markets Authority (CMA) of the UK announced that it has initiated a preliminary review of competition and consumer protection issues related to artificial intelligence (AI) basic models. The review aims to understand the development of AI basic models and evaluate the conditions and principles that will best guide their development and future use. The review will examine how the competitive market for basic models and their applications might evolve, explore the opportunities and risks that these scenarios may pose for competition and consumer protection, and develop guidance principles to support competition and protect consumers as the basic models evolve. The CMA welcomes submissions of opinions and evidence from all parties before June 2, 2023, and will release a report in September 2023 to clarify its investigation results. ([More](#))

英国法院驳回CMA对禁止其调查苹果反竞争行为裁定的上诉

2023年5月3日，据媒体报道，英国竞争上诉法庭（Competition Appeal Tribunal）驳回了CMA对关于其无权调查苹果（Apple Inc.）移动浏览器和云游戏服务的裁决的上诉。此前，苹果成功对CMA对苹果和Alphabet（Alphabet Inc.）在移动浏览器市场占据支配地位进行深入调查的决定提起了上诉。CMA还可就此上诉至英国上诉法院（Court of Appeal）。（[查看更多](#)）

UK Court Rejects CMA's Appeal against the Ruling that Prohibits It from Investigating Apple's Anti-competitive Behavior

On May 3, 2023, according to media, the Competition Appeal Tribunal in the UK dismissed the appeal by the CMA regarding its decision to not have the authority to investigate Apple Inc. ("Apple")'s mobile browser and cloud gaming services for anti-competitive behavior. Previously, Apple had successfully appealed against the CMA's decision to conduct a thorough investigation into Apple and Alphabet Inc.'s dominant position in the mobile browser market. The CMA can still appeal this decision to the Court of Appeal in the UK. ([More](#))

欧盟委员会无条件同意挪威海德鲁收购Alumetal

2023年5月4日，欧盟委员会（European Commission）宣布无条件批准挪威海德鲁（Norsk Hydro ASA）收购Alumetal（Alumetal S.A.）。二者均是欧洲重要的铝铸造合金生产商。Alumetal使用回收材料制造铝铸造合金；而挪威海德鲁则使用非回收材料，并依赖可再生能源进行生产。委员会对拟议收购进行了深入调查，评估了该交易是否可能加强挪威海德鲁的领先地位，是否会消除新兴供应商的重要竞争优势，以及是否可能导致缺乏或无可靠的替代铝合金母材供

应商的局面。委员会发现，在欧洲经济区固态高级铝铸造合金市场中，双方的市场份额不高，且不是密切的竞争对手。由于市场上存在足够的替代供应商和客户，Alumetal作为铝合金母材生产商与挪威海德鲁作为潜在客户之间的纵向关系不会引发竞争担忧。该案件因此得无条件批准。（[查看更多](#)）

European Commission Unconditionally Approves the Acquisition of Alumetal by Norsk Hydro

On May 4, 2023, the European Commission announced that it unconditionally approved the acquisition of Alumetal S.A. (“Alumetal”) by Norsk Hydro ASA (“Norsk Hydro”). Both companies are important aluminum casting alloy producers in Europe. Alumetal manufactures aluminum casting alloys using recycled materials, while Norsk Hydro relies on non-recycled materials and renewable energy for production. The commission conducted an in-depth investigation into the proposed acquisition, assessing whether the transaction could strengthen Norsk Hydro’s leading position, eliminate important competitive advantages of emerging suppliers, and lead to a situation of lack of or unreliable alternative aluminum alloy suppliers. The commission found that the market shares of both parties in the solid-state advanced aluminum casting alloy market in the European Economic Area are not high and they are not close competitors. As there are enough alternative suppliers and customers in the market, the vertical relationship between Alumetal as an aluminum alloy substrate producer and Norsk Hydro as a potential customer would not raise competition concerns. The case was therefore unconditionally approved. ([More](#))

默克支付5.73亿美元达成降胆固醇药物反垄断案和解

2023年4月30日，据媒体报道，被告默克制药公司（Merck & Co.）及印度格伦马克制药公司（Glenmark Pharmaceuticals Limited）与原告健康保险公司及药店就关于默克和格伦马克协商延迟降胆固醇药物Zetia仿制药上市的指控以5.73亿美元达成和解。2009年，默克曾向美国食品药品监督管理局（FDA）指控格伦马克侵犯其药品专利。2010年，默克和格伦马克签署了一份书面协议，规定格伦马克将于2016年开始销售Zetia的仿制药。此次和解将影响默克第一季度的收益。（[查看更多](#)）

Merck Pays USD 573 Million to Reach an Antitrust Settlement over Cholesterol-lowering Drugs

On April 30, 2023, according to media, Merck & Co. (“Merck”) and Glenmark Pharmaceuticals Limited of India (“Glenmark”) reached a settlement of \$573 million with a health insurance company and pharmacy over allegations that Merck and Glenmark negotiated a delay in the launch of a generic version of the cholesterol-lowering drug Zetia. In 2009, Merck accused Glenmark of infringing on its drug patent with the U.S. Food and Drug Administration (FDA). In 2010, Merck and Glenmark signed a written agreement that Glenmark would begin selling a generic version of Zetia in 2016. This settlement will impact Merck’s first-quarter earnings. ([More](#))

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

工信部公开征求《汽车整车信息安全技术要求》等四项强制性国家标准意见

2023年5月5日，根据工业和信息化部消息，按照《中华人民共和国标准化法》和《强制性国家标准管理办法》，工业和信息化部装备工业一司组织全国汽车标准化技术委员会开展了《汽车整车信息安全技术要求》《智能网联汽车 自动驾驶数据记录系统》《乘用车外部凸出物》《商用车驾驶室外部凸出物》四项强制性国家标准的制修订，已形成征求意见稿，公开征求社会各界意见，征求意见截止日期为2023年7月5日。其中，《汽车整车信息安全技术要求》规定了汽车信息安全管理要求、车辆信息安全一般要求、车辆信息安全技术要求、审核评估及测试验证方法等内容，《智能网联汽车 自动驾驶数据记录系统》规定了智能网联汽车自动驾驶数据记录系统的技术要求和试验方法。（[查看更多](#)）

MIIT Publicly Solicit Opinions on Four Mandatory National Standards, Including Technical requirements for vehicle cybersecurity

On 5 May 2023, according to the Ministry of Industry and Information Technology (the “MIIT”), in accordance with the *Standardization Law of the People's Republic of China* and *Mandatory National Standards Management Measures*, the MIIT Equipment Industry Department I guided the National Automotive Standardization Technical Committee to carry out the formulation and revision of the four mandatory national standards including Technical requirements for vehicle cybersecurity, Intelligent and connected vehicle - Data storage system for automated driving, External projections for passenger car, External projections for passenger car. Drafts for public comment have been publicized, with the deadline for comments to be 5 July 2023. Among them, the *Technical requirements for vehicle cybersecurity* specifies the automotive information security management system requirements, vehicle information security general requirements, vehicle information security technical requirements, audit assessment and test verification methods, etc., and *Intelligent and connected vehicle - Data storage system for automated driving* specifies the technical requirements and test methods for data storage systems for automated driving with respect to intelligent and connected vehicles. ([More](#))

上海网信办公布首批通过数据出境安全评估的两家企业

2023年5月5日，据上海网信办消息，马自达（中国）企业管理有限公司、丝芙兰（上海）化妆品销售有限公司通过数据出境安全评估。截至4月28日，上海市网信办累计解答咨询电话3300余通，接收涉及金融、零售、商务服务、汽车、医疗等重点领域的申报材料超400件，通过完备性查验并报送国家网信办申报材料近60件。此外，还通过开通咨询电话、发布实务指南、组织系列宣讲、广泛开展调研等多种形式指导上海企业有序申报数据出境安全评估，合法依规开展数据出境活动。（[查看更多](#)）

Shanghai CAC Announces the First Two Enterprises to Pass Cross-border Data Transfer Security Assessment

On 5 May 2023, according to the Shanghai CAC, Mazda (China) Limited and Sephora (Shanghai) Limited passed the cross-border data transfer security assessment. As of April 28, the Shanghai CAC has answered a total of more than 3,300 advisory calls, received more than 400 applications involving key areas such as finance, retail, business services, automotive, and medical, nearly 60 of which passed the completeness check and have been submitted to the CAC. In addition, the Shanghai CAC also guided Shanghai enterprises to submit applications in an orderly manner and carry out cross-border data transfer activities legally and in accordance with applicable laws and regulations by providing consultations by telephone, issuing practical guidelines, organizing a series of lectures and conducting extensive research. ([More](#))

“新闻资讯类”App个人信息收集情况测试报告发布

2023年4月28日，据国家互联网应急中心消息，中国网络空间安全协会、国家计算机网络应急技术处理协调中心对“新闻资讯类”公众大量使用的部分App收集个人信息情况进行了测试。测试选取了19家应用商店累计下载量达到1亿次的8款“新闻资讯类”App。测试环境为安卓操作系统；测试场景涵盖启动App、刷新首页新闻、查看新闻内容、分享新闻链接4种用户使用场景，以及后台静默应用场景；测试内容包括系统权限调用、个人信息上传、网络上传流量3项内容。

([查看更多](#))

Test Report on the Collection of Personal Information by "News and Information" Apps Released

On 28 April 2023, according to the National Internet Emergency Response Center, the China Cyberspace Security Association and the National Computer Network Emergency Response Technical Processing Coordination Center conducted a test on the collection of personal information by certain apps heavily used by the public for "news and information". The test selected 8 "news and information" apps with a cumulative download of 100 million times from 19 application stores; the test environment is Android operating system; the test covers 4 user scenarios, namely those of launching the app, refreshing the home page news, viewing news content, and sharing news links, as well as the background silent application scenario. The test includes system permission call, personal information upload and network upload traffic. ([More](#))

北京市通信管理局通报2023年第三期存在问题App清单

根据北京市通信管理局（以下简称“北京通管局”）2023年4月26日消息，北京通管局持续开展APP隐私合规和网络数据安全专项整治，通过抽测发现北京市部分APP存在“违反必要原则收集个人信息”“未明示收集使用个人信息的目的、方式和范围”等侵害用户权益问题。截至目前，尚有7款APP未整改或整改不到位，现予以公开通报。此外，2023年4月3日，北京通管局通报北京市部分存在侵害用户权益行为的APP并要求整改。截至目前，仍有3款APP未整改或整改不到位，现予以下架处置。 ([查看更多](#))

Beijing Communications Administration Publicly Notifies the Third Batch of problemic App List in 2023 P

According to announcement from Beijing Communications Administration (the “BCA”) on 26 April 2023, the BCA has continued to carry out special rectifications with respect to APP privacy compliance and network data security. Through random testing, the BCA found that some APPs in Beijing engaged in activities infringing upon user rights, such as "violating the principle of necessity in collection of personal information " and "failure to expressly notify the purpose, manner and scope of collection and use of personal information". The BCA noted that up to now, there are still 7 APPs that have not been rectified or whose rectifications are not complete, which are now publicly notified. In addition, on 3 April 2023, the BCA notified some APPs in Beijing that have infringed on users' rights and required rectification accordingly. Up to now, there are still 3 APPs that have not been rectified or whose rectifications are not complete, and are now taken down from the app store. ([More](#))

《健康医疗数据合规流通标准》团体标准发布

2023年4月19日，由广东省计算机信息网络安全协会发起、广东省计算机信息网络安全协会、中国广电广州网络股份有限公司、广东省人民医院、南方医科大学南方医院等多家单位共同起草编写的《健康医疗数据合规流通标准》（以下简称“《流通标准》”）正式发布。《流通标准》共分为范围、规范性引用文件、术语和定义、数据流通框架、合规流通原则、数据分类体系、数据流通指南、合规监管要求八部分。《流通标准》适用于指导健康医疗数据流通参与者对健康医疗数据进行合规流通共享活动的实施，也可供健康医疗、数据安全相关管理部门开展健康医疗数据的合规流通监管时作参考。（[查看更多](#)）

The Group Standard of Health Care Data Compliance Circulation Standard Released

On 19 April 2023, the "Health Care Data Compliance Circulation Standard" (the “Circulation Standard”), initiated by Guangdong Computer Information Network Security Association, and jointly drafted and prepared by Guangdong Computer Information Network Security Association, China Broadnet Guangzhou Network Company Limited, People’s Hospital of Guangdong Province, Nanfang Hospital and many other units, was officially released. The Circulation Standard is divided into eight parts: scope, normative references, terms and definitions, data circulation framework, compliance circulation principles, data classification system, data circulation guidelines, and compliance regulation requirements. The Circulation Standard is applicable to guide the implementation of compliance circulation and sharing activities of healthcare data by healthcare data circulation participants, and can also be used as a reference for healthcare and data security related management departments to carry out compliance circulation supervision of healthcare data. ([More](#))

工信部通报56款存在侵害用户权益行为的App（SDK）（2023年第3批，总第29批）

2023年5月6日，工业和信息化部（以下简称“工信部”）发布关于侵害用户权益行为的APP（SDK）通报（2023年第3批，总第29批）。工信部组织第三方检测机构对群众关注的实用工

具、休闲娱乐及短视频等移动互联网应用程序（APP）及第三方软件开发工具包（SDK）进行检查，发现56款APP（SDK）存在侵害用户权益行为，问题包括：APP强制、频繁、过度索取权限、违规收集个人信息、欺骗误导强迫用户等。工信部要求涉及APP及SDK应按有关规定进行整改，整改落实不到位的，工信部将依法依规组织开展相关处置工作。（[查看更多](#)）

MIIT Publicly Notifies 56 Apps (SDK) with Infringement of Users' Rights and Interests (3rd Batch in 2023, 29th Batch in Total)

On 6 May 2023, the MIIT issued a notification on APPs (SDKs) infringement of users' rights and interests (the 3rd batch of 2023, the 29th batch in total). The MIIT organized a third-side testing agency to inspect mobile Internet applications (APPs) and third-party software development kits (SDKs) for practical tools, leisure and entertainment, and short videos, which are of public concern, and found that 56 APPs (SDKs) had infringed on users' rights and interests. The uncovered problems include: forced, frequent, and excessive requests for permission, illegal collection of personal information, and deceiving and misleading users in a forced manner, etc. The MIIT requires that the APPs and SDKs should be rectified in accordance with the relevant provisions, and if the rectification and implementation is not in place, the MIIT will deal with such APPs and SKDs in accordance with applicable laws and regulations. ([More](#))

宁夏回族自治区通信管理局等通报未按要求整改问题APP（2023年第二批）

据宁夏回族自治区通信管理局2023年5月4日消息，宁夏回族自治区通信管理局联合自治区互联网信息办公室持续开展APP个人信息保护和网络数据安全专项整治，并于4月12日向近期抽测发现的“违规收集和使用个人信息”“APP强制、频繁、过度索取权限”等侵害用户权益问题的6款属地APP运营单位下发整改函，要求限期整改。截至目前，尚有2款APP未按要求完成整改。宁夏回族自治区通信管理局要求涉及APP运营单位于2023年5月15日前完成问题APP整改，逾期不整改或整改不到位的，将依法依规严肃处置。（[查看更多](#)）

Ningxia Communications Administration Publicly Notified APPs That Failed to Rectify as Required (2nd batch of 2023)

According to announcement by the Ningxia Communications Administration (the “NCA”) on 4 May 2023, the NCA, together with the Ningxia CAC, continued to carry out special rectification work on APP personal information protection and network data security, and issued a rectification letter on 12 April to the six local APP operators found to have engaged in “illegal collection and use of personal information” and “forced, frequent, and excessive requests for permission”. Up to now, 2 APPs have not completed the rectification as required. The NCA requires the APP operators to complete the rectification of the problematic APPs by 15 May 2023, and if such APPs are not rectified in a timely manner or not completely rectified, the NCA will deal with such operators in accordance with applicable laws and regulations. ([More](#))

北京互联网法院判决：近亲属无权直接登录死者账号查阅复制个人信息

近期，北京互联网法院审结了郭某等四原告与上海某科技公司等四被告个人信息保护纠纷一案。

案，该案系《个人信息保护法》颁布后该院审理的首例近亲属对死者个人信息行使权利的案件。法院认为，四原告作为死者李某的近亲属，虽然有权对死者李某的相关个人信息行使查阅、复制等权利，但是手段应当必要、正当，无权采取直接登录死者生前个人账号的方式行使。网络服务提供者虽然停用李某账号，但是未排除四原告通过其他合理途径行使权利，同时四被告也并未控制四原告主张的个人信息，不构成侵权。最终，法院判决驳回四原告的全部诉讼请求，双方均未提起上诉，目前该案判决已生效。（[查看更多](#)）

Beijing Internet Court: Close Relatives Do Not Have the Right to Directly Log in to the Deceased's Account to Access and Copy Personal Information

Recently, the Beijing Internet Court concluded a case of personal information protection dispute between four plaintiffs, including Guo, versus four defendants, including a Shanghai technology company, which was the first case deciding on the rights of close relatives to the personal information of the deceased after the promulgation of the PRC Personal Information Protection Law. The court held that the four plaintiffs, as the deceased Li's close relatives, have the right to access, copy and other rights to the deceased Li's personal information, but the means to exercise such rights should be necessary and legitimate. The plaintiffs do not have the right to take direct access to the deceased's personal account. Although the network service provider deactivated the account of Li, it did not exclude the four plaintiffs from exercising their rights through other reasonable means, while the four defendants also did not control the personal information claimed by the four plaintiffs and the defendants' action does not constitute infringement. Finally, the court rejected all the claims of the four plaintiffs. Both sides did not appeal, and the judgment has now come into effect. ([More](#))

丹麦数据保护机构要求医疗机构遵守信息提供义务

丹麦数据保护机构Datatilsynet于2023年5月3日宣布其决定，认定医疗机构Statens Serum Institut违反了《通用数据保护条例》（下称“GDPR”）第14(1)至14(4)条的规定，并命令该医疗机构遵守这些条款的要求。丹麦数据保护机构指出，在接到投诉后，即开始调查以确定该医疗机构在以下情况是否履行了GDPR第14条规定的信息提供义务：当它接收血液样本等进行分析时；以及当它决定在丹麦的国家生物库中储存剩余材料时。丹麦数据保护机构注意到，该医疗机构没有根据GDPR第14(1)至14(4)条向数据主体提供信息，而是声称根据GDPR第14(5)(b)条，提供信息需要付出不成比例的努力，即大量的行政和财务成本。此外，丹麦数据保护机构指出，该医疗机构进一步表示其未能遵守GDPR第14条规定的义务是因为其缺乏一个可以自动通知注册用户所需信息的既定系统。丹麦数据保护机构认为该医疗机构违反了GDPR第14(1)至14(4)条，并且错误地依赖第14(5)(b)条来避免履行其信息提供义务。因此，丹麦数据保护机构要求该医疗机构发表声明，明确其将在裁决之日起三个月内采取何种行动来履行其信息提供义务。（[查看更多](#)）

Denmark: Datatilsynet Requires Medical Institution To Comply with Information Provision Obligations

The Danish data protection authority (the “Datatilsynet”) announced, on 3 May 2023, its decision in

which it found that Statens Serum Institut, a medical institution, violated Articles 14(1), 14(2), 14(3), and 14(4) of the General Data Protection Regulation (the “GDPR”), and ordered the institution to comply with the requirements of the same articles.

The Datatilsynet stated that following a complaint, it had initiated an investigation to ascertain whether the institution had fulfilled its obligation to provide information under Article 14 of the GDPR in the following cases: when it receives blood samples, etc. for analysis; and when it decides to store residual material in Denmark's National Biobank. In this regard, the Datatilsynet noted that the institute had refrained from providing information to data subjects pursuant to Articles 14(1) to 14(4) of the GDPR, alleging that it would require a disproportionately large effort, in the form of large administrative and financial costs, relying on Article 14(5)(b) of the GDPR. Additionally, the Datatilsynet stated that the institution further justified its failure to adhere to the obligations under Article 14 of the GDPR, noting its lack of an established system that can automatically notify registered users with the information required. Ultimately, the Datatilsynet found that the institution was in violation of Articles 14(1), 14(2), 14(3), and 14(4) of the GDPR and had incorrectly relied on Article 14(5)(b) to refrain from complying with its information provision obligations. As such, the Datatilsynet requested a statement from the institution to explain what actions it will take to fulfill its information provision obligations within three months from the date of the decision. ([More](#))

欧盟法院发布判决排除GDPR行政罚款的严格责任

2023年5月4日，欧盟法院（下称“CJEU”）发布了卫生部下属的国家公共卫生中心诉国家数据保护监察局（下称“VDAI”）（第C-683/21号）一案的判决，作为对立陶宛维尔纽斯地区行政法院的初步裁决请求的进一步回应。CJEU审议了在适用《通用数据保护条例》（下称“GDPR”）第83条时，是否有可能在没有故意或过失，即在没有任何过错的情况下，对违反GDPR的控制者处以行政罚款。CJEU认为，GDPR第83条必须被解释为只有在裁决故意或过失的侵权行为时才可以处以罚款，因此拒绝对GDPR行政罚款条款适用严格责任。另外，CJEU进一步审查了“控制者”、“联合控制者”和“处理”的概念。值得注意的是，CJEU推断，“处理”的概念包括在移动应用程序的测试阶段使用个人数据的情况，除非这些数据已经被匿名化，使数据主体无法或不再能够被识别。（[查看更多](#)）

EU: CJEU Issues Judgement Excluding Strict Liability for GDPR Fines

The Court of Justice of the European Union (the “CJEU”) issued, on 4 May 2023, its judgment in National Public Health Centre under the Ministry of Health v State Data Protection Inspectorate (“VDAI”) (C-683/21), further to a request for a preliminary ruling from the Regional Administrative Court of Vilnius.

The CJEU considered whether it is possible, in application of Article 83 of GDPR, to impose an administrative fine on a controller that has not intentionally or negligently, i.e. in the absence of any fault, committed any breach of the GDPR. Further to this, the CJEU took the view that Article 83 of the GDPR must be interpreted as meaning that a fine can only be imposed in order to sanction an infringement which has been committed intentionally or negligently, thus rejecting strict liability for fines under the GDPR. The CJEU further examined the concepts of “controller”, “joint controllers”, and “processing”. Notably, the CJEU reasoned that the concept of “processing” encompasses a situation in

which personal data is used during the testing phase of a mobile application, unless such data has been anonymised in such a way that the data subject is not, or no longer, identifiable. ([More](#))

知识产权 Intellectual Property

2022年全国市场监管部门查处商标、专利违法案件4.4万件 涉案金额16.2亿元

据新华社消息，2022年，全国市场监管部门共查处商标、专利违法案件4.4万件，涉案金额16.2亿元。公安机关破获侵犯知识产权和制售伪劣商品犯罪案件2.7万起，检察机关起诉侵犯知识产权和制售伪劣商品犯罪嫌疑人2.7万人，审判机关审结各类一审知识产权案件219.4万件；全国海关共查扣进出口侵权嫌疑货物6万多批、7700多万件。2022年，人民法院审结第一审知识产权刑事案件5000多件，依法惩处涉及侵犯中外权利人商标权、著作权、商业秘密等知识产权犯罪，有力维护了社会公共利益，依法保护了中外权利人合法权益。

来源：新华社

State Administration of Market Regulation Solve More Than 44,000 Trademark and Patent Infringement Cases with Case Value More Than RMB 1.62 Billion in 2022

In 2022, Administration of Market Regulation (AMR) nationwide investigated and handled 44,000 cases of trademark and patent infringement, involving a total of RMB 1.62 billion. Public Security Bureaus cracked 27,000 cases for counterfeiting criminal cases; and Public Procuratorial prosecuted more than 27,000 suspects. Courts concluded 2,194,000 cases of various types of IP in the first instance. The national customs authorities seized more than 60,000 batches and 77 million pieces of suspected infringing goods for import and export. The courts concluded more than 5,000 criminal cases on IP, and punished crimes involving infringement of trademark rights, copyrights and trade secrets of Chinese and foreign right holders in accordance with the law.

Source: Xinhua.com

京东申请注册Chat相关商标“ChatRhino”

天眼查App显示，北京京东叁佰陆拾度电子商务有限公司申请注册“ChatRhino”商标，国际分类为网站服务，当前商标进度为申请中。今年2月，京东宣布推出ChatJD，旨在打造优势、高频、刚需的产业版通用ChatGPT。ChatJD将通过在垂直产业的深耕，快速达成落地应用的标准，并不断推动不同产业之间的泛化，形成更多通用产业版ChatGPT。

来源：福布斯中国

Jingdong Applies for Registration of Trademark "ChatRhino"

Beijing Jingdong applied for the registration of "ChatRhino" trademark, international classification for website services, the current trademark progress is in the application.

In February this year, Jingdong announced the launch of ChatJD, which aims to create an advantageous, high-frequency, and just-in-demand industrial version of the universal ChatGPT. ChatJD hopes to quickly reach application standards in order to form a universal industrial version of ChatGPT.

Source: Forbes China

杭州互联网法院判决首例涉“虚拟数字人”侵权案

近日，杭州互联网法院就首例涉“虚拟数字人”侵权案作出一审判决，认定被告构成著作权侵权及不正当竞争，判决其承担消除影响并赔偿损失（含维权费用）12万元的法律责任。

法院认为，真人驱动型虚拟数字人背后的中之人是必不可少的参与主体，虚拟数字人所作的“表演”实际上是对真人表演的数字投射、数字技术再现，其并非《著作权法》意义上的表演者，不享有表演者权。结合作品独创性的要求，虚拟数字人Ada的表现形式借鉴了真人的体格形态，同时又通过虚拟美化的手法表达了作者对线条、色彩和具体形象设计的独特的美学选择和判断，构成美术作品。使用Ada形象的相关视频分别构成视听作品和录像制品。原告享有上述作品的财产性权利及录像制作者权。被告发布两段被诉侵权视频的行为符合信息网络传播行为的构成要件，其中一段视频构成对视听作品信息网络传播权的侵害，另一段视频构成对美术作品、录像制作者及表演者的信息网络传播权的侵害。被告存在利用抖音视频、虚拟数字人Ada进行引流营销的目的，其在视频中对涉及原告有关标识的信息内容进行删减并替换为课程营销信息或自身商标，可能影响消费者理性决策，从而得以获得更多商业机会，扰乱市场竞争秩序，直接损害原告的商业利益，构成虚假宣传的不正当竞争行为。

来源：杭州互联网法院

Hangzhou Internet Court Tried First Case of Infringement on Virtual Digital Person

Recently, Hangzhou Internet Court issued the first instance judgement on the case of copyright and unfair competition. The defendant was found to constitute copyright infringement and unfair competition, and ordered to eliminate the impact, and compensating damages of RMB 120,000.

The court held that the "performance" made by the virtual digital person was actually a digital reproduction of a real person's performance. It was not a "performer" within the meaning of the Copyright Law, and did not have performer's rights. The expression of the virtual digital person Ada draws on the physical form of a real person, and at the same time, modified the appearance of real person, which constituting an work of art. The relevant videos using Ada's image constitute audio-visual works, and video products respectively. The plaintiff enjoys the property rights of the above works. The defendant's act of releasing two infringing videos constitutes infringement on the right of information network dissemination.

The defendant used the Internet platform and the virtual digital person Ada for attracting and marketing, influencing consumers' rational decision-making, disrupting the order of market competition, and constituting the unfair competition of false advertising.

Source: Hangzhou Internet Court

广东高院：关于商标权权利用尽抗辩和合法来源抗辩的认定标准

广东省高级人民法院就费加罗传感科技（上海）有限公司（原审原告）与深圳市源建传感科技有限公司、深圳市铭森恒达电子有限公司（原审被告）侵害商标权及不正当竞争纠纷案作出二审判决，法院结合涉案商标的知名度、被告的主观恶意、侵权范围和合理维权开支等综合评判，酌定原审被告赔偿经济损失及合理费用100万元。

法院认为，合法来源抗辩成立需要满足两个条件：一是销售者能够证明被诉侵权商品是其合法取得并说明提供者，二是销售者主观上不知道其销售的商品侵犯了他人注册商标专用权。本案中，气体传感器属精密电子元器件，品质要求高，费加罗气体传感器是根据具体客户需求定制并定量交付。从源建公司官网宣传资料及在多个电子产品交易网站、主要电商平台销售传感器产品情况看，其为集设计、生产、销售环境相关类传感器的高科技公司，理应对传感器行业及费加罗传感器产品在该行业内的市场声誉和地位、乃至销售渠道有明确的认知，也具备判断商品是否来源于费加罗公司的知识和能力，但其仍然在未经充分核实授权情况下销售侵害涉案商标权的商品，且在未经授权的情况下，在其官方网站及多个交易平台多处、反复使用侵权标识，通过商品链接名称、商品介绍多处宣传其销售的是来自商标权利人的正品。故源建公司具有明显的主观恶意，其关于合法来源抗辩的意见不能成立。

商标权权利用尽，是指附着有注册商标的商品通过正常合法的商业渠道售出后再行转售的，通常不构成商标侵权。费加罗公司的官网上虽宣称仅授权三家企业作为中国市场的特约经销商，但官网宣传中所指的三家特约经销商并没有证据显示包括菱商公司。综上，现有证据不能证明源建公司向菱商公司采购的传感器为正品，源建公司的该项上诉抗辩意见缺乏事实依据，故法院不予支持。

来源：广东省高级人民法院

Guangdong High Court Affirmed the Criteria on Exhaustion of Trademark Rights Defense and Legal Source Defense

Guangdong High Court made the second instance judgement on the case of trademark and unfair competition between Figaro limited (shanghai), versus Shenzhen Yuanjian Limited and others. The plaintiff was awarded damages of RMB 1 million.

The court held that the legal source defense consists of two elements. Firstly, the seller shall prove that it acquired the infringing products legally, and disclose the provider. Secondly, the seller does not

know the products are infringing. In this case, the alleged products were custom-made according to the customer's requirements. The defendant has the knowledge and ability to know that the products are from the plaintiff. The defendant's repeated use of the plaintiff's trademark has obvious malice, and its defense of legal source cannot be established.

Exhaustion of trademark rights, which is referred to the resale of goods with registered trademarks after they have been sold through normal and legal commercial channels. It usually does not constitute trademark infringement. The available evidence does not prove that the goods purchased by defendant from other company are genuine, and the court does not support it.

Source: Guangdong High Court

WIPO发布法官专利案件管理国际指南

2023年4月21日，世界知识产权组织发布了名为《法官专利案件管理国际指南》（An International Guide to Patent Case Management for Judges，下文简称《指南》）的新文件。《指南》概述了每个司法管辖区的专利制度，包括专利局在评估和决定专利有效性方面的作用，以及负责解决专利纠纷的司法结构。

来源：WIPO

WIPO Release An International Guide to Patent Case Management for Judges

Produced with the support of the University of California at Berkeley School of Law and the Berkeley Judicial Institute, this Guide highlights the progress achieved in patent case management in ten patent-heavy jurisdictions. The Guide offers an overview of the patent system in each jurisdiction, including the role of patent offices in evaluating and deciding on patent validity, and the judicial structures responsible for resolving patent disputes. Thereafter chapters are structured on the different stages of patent litigation in civil infringement cases. Readers can create their own custom guide by selecting any combination of jurisdictions and topics covered in the Guide.

Source: WIPO

谷歌赢得数据检索技术的美国专利审判

近日，Alphabet的谷歌有限责任公司在特拉华州联邦法院就谷歌智能手机和应用程序的功能提起的长期专利诉讼中赢得了陪审团审判。陪审团裁定卢森堡专利所有人Arendi SARL 的专利无效，谷歌并未侵犯该专利。Arendi 还就相关专利起诉了其他科技公司，包括苹果公司、微软公司和三星电子公司。这些案件都已被驳回或解决。

来源：路透社

Google Wins US Patent Trial over Data-Retrieval Technology

Recently, Alphabet's Google LLC won a jury trial in a long-running patent lawsuit in Delaware federal court over features in Google's smartphones and apps.

The jury decided that Luxembourg-based patent owner Arendi SARL's patent was invalid and that Google did not infringe it, according to the verdict made public on Wednesday.

Arendi has also sued other tech companies including Apple Inc, Microsoft Corp and Samsung Electronics Co over related patents. Those cases have all been dismissed or resolved.

Source: Reuters

OPEX Corporation在专利纠纷中取得重大胜利

OPEX Corporation最近在一项专利纠纷案件中赢得了有利的初步裁决。该裁决称，宾夕法尼亚州康舍霍肯的Invata, LLC（以下简称“Invata”）和中国杭州市的HC Robotics（以下简称“HC Robotics”）侵犯了OPEX的两项专利，这两项专利与OPEX屡获殊荣的Sure Sort和Perfect Pick系统以及与之相关的iBOT车辆有关。经过全面审理，国际贸易委员会的首席行政法官判决称，Invata和HC Robotics的第二代Omnisort系统侵犯了OPEX的美国8,622,194号专利和10,576,505号专利。该裁决还确认了OPEX专利的有效性。

来源: businesswire

OPEX Corporation Achieves Important Win in Patent Dispute

OPEX Corporation recently won a favorable initial determination that Invata, LLC of Conshohocken, Pennsylvania (“Invata”) and HC Robotics of Hangzhou City, China (“HC Robotics”) infringed two of OPEX’s patents related to OPEX’s award-winning Sure Sort and Perfect Pick systems and their associated iBOT vehicles.

After a full trial, the Chief Administrative Law Judge of the International Trade Commission concluded that Invata and HC Robotics’ second generation Omnisort system infringes OPEX’s U.S. Patent Nos. 8,622,194 and 10,576,505. The ruling also upheld the validity of OPEX’s patents.

Source: businesswire

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