



# NEWSLETTER

LIFANG & PARTNERS 立方观评



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2022.04

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中央网信办开展“清朗·2022年算法综合治理”专项行动

CAC Launches the Special Action of Qinglang 2022 Algorithm Comprehensive Governance

五部门发布《关于进一步加强新能源汽车企业安全体系建设的指导意见》，强化网络安全、数据安全和个人信息安全保护

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欧盟拟收取大型在线平台年利润0.1%作为合规监管费

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Australia Develops *National Data Security Action Plan* to Build Data Security Framework

欧盟数据保护委员会宣布就新的跨大西洋数据隐私框架达成原则协议

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EDPB Adopts a Letter to BESA Expressing Concerns about the Recent Legislative Developments

日本经济部发布《中小企业治理守则》和《人工智能指南》

METI of Japan Publishes *Small and Medium Enterprise Governance Code* and *Artificial Intelligence Guidelines*

## 知识产权 Intellectual Property

商标局发布关于更新《类似商品和服务区分表》以外可接受商品和服务项目名称的通知

Notice of China National Intellectual Property Administration for Updating the Names of Acceptable Goods and Service Items Other than the Table for Differentiating Similar Goods and Services

世界知识产权组织发布《2022年世界知识产权报告》

World Intellectual Property Organization published World Intellectual Property Report 2022

广州知产法院：仿制药企业申请进入医保目录，不构成许诺销售行为

Guangzhou Intellectual Property Court: A generic drug company's application for entry into the medical insurance catalogue does not constitute offering for sale

最高法院就专利权无效行政纠纷中外观设计的比较判断作出认定

The Supreme People's Court made a decision on that CNIPA could affirm common knowledge ex officio when deciding on validity of design patent

“南粳9108”水稻种子遭恶意套牌，法院判决被告全额赔偿300万元



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A well-known rice variety was maliciously infringed, the court ordered the defendant to pay RMB 3 million for damages

北京知产法院：“湘西黄金茶”VS“保靖黄金茶”不构成近似地理标志证明商标

Beijing Intellectual Property Court: "Xiangxi Golden Tea" VS "Baojing Golden Tea" does not constitute similar geographical indication certification mark

沃尔玛在印度陷入商标纠纷

Walmart Involved in Indian trademark dispute

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

### 重庆市市场监督管理局纠正三例滥用行政权力排除、限制竞争行为

2022年3月30日，国家市场监督管理总局（“市场监管总局”）发布三例重庆市市场监督管理局（“重庆市市监局”）纠正滥用行政权力行为的通告，分别为“纠正合川区教育委员会滥用行政权力排除、限制竞争行为”、“纠正涪陵区农业农村委员会滥用行政权力排除、限制竞争行为”和“纠正两江新区国有资产监督管理局滥用行政权力排除、限制竞争行为”。经查，上述机构的行政文件内含排除、限制竞争内容，且未按要求进行公平竞争审查，违反《反垄断法》第三十二条禁止滥用行政权力的规定。（[查看更多](#)）

### Chongqing AMR Corrects Three Cases of Abuse of Administrative Power to Exclude and Restrict Competition

On March 30, 2022, the State Administration for Market Regulation (“SAMR”) issued three notices of the Chongqing Administration for Market Regulation (“Chongqing AMR”) correcting conducts of abusing administrative power. The three notices are *Correcting Hechuan District Education Committee’s Abuse of Administrative Power*, *Correcting Fuling District Agriculture and Rural Committee’s Abuse of Administrative Power* and *Correcting Liangjiang New Area State-owned Assets Supervision and Administration Bureau’s Abuse of Administrative Power*. After investigation, Chongqing AMR found that the administrative documents the aforementioned institutions issued respectively excluded and restricted competition and failed to conduct fair competition review as required, violating Article 32 of the *Anti-Monopoly Law* prohibiting abuse of administrative power. ([More](#))

### 市场监管总局发布三起未依法申报处罚决定，涉及房地产业及金融业

2022年3月29日，市场监管总局发布三起未依法申报违法实施经营者集中行政处罚决定书，分别为：阿波罗亚洲联合运营平台有限公司收购广日有限公司股权案、阿波罗亚洲房地产管理有限公司收购唯迅有限公司股权案，以及法国巴黎银行个人金融集团收购浙江智慧普华融资租赁有限公司股权案。市场监管总局对阿波罗亚洲联合运营平台有限公司、阿波罗亚洲房地产管理有限公司处以40万元的罚款，对法国巴黎银行个人金融集团处以30万元的罚款。（[查看更多](#)）

### SAMR Issues 3 Gun-Jumping Cases, Involving Real Estate and Financial Industries

On March 29, 2022, SAMR issued 3 administrative penalty decisions on 3 gun-jumping cases. The three decisions are *AGRE Asia Link Operating Platform Limited’s Acquisition of the Equity of Guangri Co., Ltd.*, *Apollo Asia Real Estate Management LLC’s Acquisition of the Equity of Weixun Co., Ltd.* and *BNP Paribas Personal Financial Group’s Acquisition of the Equity of Zhejiang Wisdom Puhua Leasing Co., Ltd.* SAMR imposed a fine of CNY 400,000 on AGRE Asia Link Operating Platform Limited and Apollo Asia Real Estate Management LLC respectively, as well as a fine of CNY 300,000 on BNP Paribas Personal Financial Group. ([More](#))



## 福建、河北等省份开展反垄断重点领域执法专项活动

近日，全国市场监管系统反垄断工作会议召开，部署2022年五大重点任务。其中一项任务要求，聚焦稳定宏观经济和保障民生福祉，着力加强重点领域反垄断监管执法，将公平竞争的“软实力”转化为推动发展的“硬动力”。据此湖北、福建、山西、河北、重庆、新疆、甘肃、陕西、天津等多地开展了制止行政性垄断专项行动。（[查看更多](#)）

## Fujian, Hebei and Other Provinces Launch Anti-Monopoly Law Enforcement Campaigns in Key Areas

Recently, the Anti-Monopoly Work Conference of national market regulation system was held to deploy five tasks for 2022. One of the tasks requires focusing on stabilizing the macro economy and ensuring people's well-being, strengthening anti-monopoly regulation and law enforcement in key areas, and transforming the "soft power" of fair competition into the "hard power" for development. Accordingly, Hubei, Fujian, Shanxi, Hebei, Chongqing, Xinjiang, Gansu, Shaanxi and Tianjin have recently launched special campaigns to regulate administrative monopoly behaviors. ([More](#))

## 最高院认定：垄断协议纠纷中的仲裁条款不能当然排除人民法院的管辖权

近日，最高人民法院（“最高院”）在白城市鑫牛乳业有限责任公司诉林甸伊利乳业有限责任公司、齐齐哈尔伊利乳业有限责任公司及内蒙古伊利实业集团股份有限公司滥用市场支配地位案中，明确表示合同中涉及垄断的部分才是侵权行为的本源和侵害发生的根源，对垄断行为的认定与处理超出了受害人与垄断行为人之间的权利义务关系。因合同的签订、履行引发的垄断纠纷所涉及的内容和审理对象，远超仲裁条款所涵盖的范围。当事人在合同中约定的仲裁条款不能成为排除人民法院管辖垄断纠纷的当然和绝对依据。（[查看更多](#)）

## SPC: Arbitration Clause in a Monopoly Agreement Dispute Cannot Exclude the Jurisdiction of the People's Court

Recently, in the case judgment of Baicheng Xinniu Dairy Co., Ltd. against Lindian Yili Dairy Co., Ltd., Qiqihar Yili Dairy Co., Ltd. and Inner Mongolia Yili Industrial Group Co., Ltd., the Supreme People's Court ("SPC") clearly stated that the part of the contract involving monopoly is the origin of tort and source of infringement, and that the identification and handling of monopoly conducts goes beyond the rights and obligations between the victim and the perpetrator. Considering that the content and objects of adjudication involved in monopoly disputes arising from the concluding and fulfillment of contracts are far beyond the scope covered by the arbitration clause, the arbitration clause agreed by the parties in the contract shall not be the consequent and absolute reasoning for excluding the jurisdiction of the People's Court over monopoly disputes. ([More](#))

## 法国一上诉法院维持针对谷歌的1.5亿欧元反垄断罚款

2022年4月7日，法国一上诉法院维持了针对谷歌的1.5亿欧元反垄断罚款。此前，法国竞争管理局（“FCA”）于2019年12月做出了这一罚款决定，认为谷歌滥用其在搜索广告市场的支配地位，

制定不透明的广告规则并随意更改。谷歌对广告商施加的运营规则是在非客观、非透明和歧视性条件下制定和适用的。这使得谷歌可以以歧视性或不一致的方式适用它们并给广告商和搜索引擎用户造成损害。 ([查看更多](#))

## A French Court of Appeals Upholds the 150 Million Fine against Google

On April 7, 2022, a French court of appeals upheld the fine of 150 million against Google. Previously, the France's Competition Authority ("FCA") levied the fine of EUR 150 million in 2019, said in its decision then that Google abused its dominance in the market of search engine advertising, applied opaque advertising rules and changed them at will. The Google Ads operating rules imposed by Google on advertisers are under non-objective, non-transparent and discriminatory conditions. This allows Google to apply them in a discriminatory or inconsistent way and cause damages to advertisers and search engine users. ([More](#))

## 加拿大竞争局发布2022-2023年度执法计划

2022年4月4日，加拿大竞争局（“CCB”）发布了《2022-2023年度计划：竞争、复苏与增长》。该年度计划列举了CCB接下来的执法工作重点，包括：（1）与新冠疫情相关的持续性问题，例如供应链领域内的反竞争行为；（2）关注对加拿大长期经济福利至关重要的经济部门，如数字服务、医疗健康、基础设施、电信和自然资源等；（3）支持加拿大政府审查和更新《竞争法案》，并持续支持各级政府出台促进竞争的法律法规和政策。 ([查看更多](#))

## CCB Published its 2022-2023 Annual Plan

On April 4, 2022, the Competition Bureau of Canada ("CCB") published its *2022-2023 Annual Plan: Competition, Recovery and Growth*. The Annual Plan outlines CCB's priorities for the coming year, which include: (1) targeting ongoing issues linked to the COVID-19 pandemic, such as anti-competitive conduct related to supply chain issues; (2) focusing enforcement on sectors of the economy that are vital to Canada's long-term economic well-being, such as digital services, health, infrastructure, telecommunications and natural resources; and (3) supporting the Government of Canada's review and update of the *Competition Act*, and continuing to encourage pro-competitive laws, regulations and policies at all levels of government in Canada. ([More](#))

## 美国司法部更新反垄断宽大政策

2022年4月4日，美国司法部反垄断局（“DOJ”）宣布更新其宽大政策，并发布了修订版的常见问题解答（FAQs）。DOJ推出新的专用邮箱，以便公司和个人申请宽大处理。根据其宽大政策，如果首个主动报告其参与了反垄断卡特尔行为的个人或公司能够配合反垄断局调查、起诉并满足其他条件，允许其被免于被起诉。更新后的政策还要求企业申请人在发现存在不当行为后及时报告，并采取补救措施以防止再次违法。 ([查看更多](#))

## DOJ Updates its Leniency Policy

On April 4, 2022, the Justice Department's Antitrust Division ("DOJ") announced updates to its Leniency Policy and issued a revised set of frequently asked questions (FAQs). The Antitrust Division also launched a new dedicated email address to make it easier for companies and individuals to apply for leniency. According to the Leniency Policy, the first individual or company, who self-reports its involvement in an antitrust cartel, can avoid prosecution if it cooperates with the Division's investigation and prosecutions, and meets other conditions. The updated policy announced today now also requires that a corporate applicant promptly self-report after discovering its wrongful conduct and undertake remedial measures to prevent reoffending. ([More](#))

## 苹果再遭反垄断指控：垄断美国App Watch心率监测APP市场

近日，据路透社报道，美国联邦法官表示苹果公司必须面对医疗设备公司AliveCor公司关于其非法垄断美国Apple Watch心率监测应用程序市场的指控。AliveCor诉称，苹果通过对Apple Watch的心率算法进行调整，使得第三方实际上无法通知用户何时进行心电图检查，从而获得不公平的竞争优势。美国地区法院法官Jeffrey White表示AliveCor公司可基于其诉称的苹果公司对这类应用市场的“完全控制”证明苹果违反美国反垄断法。（[查看更多](#)）

## Apple Faces another Claims it Monopolizes Heart-Rate Apps from Apple Watch

Recently, according to the Reuters, a federal judge said Apple Inc. must face AliveCor's claims it illegally monopolized the U.S. market for heart rate monitoring apps for its Apple Watch. AliveCor alleges that Apple made changes to the heart rate algorithm that made it effectively impossible for third parties to inform a user when to take an ECG, which gave Apple an anticompetitive advantage. U.S. District Judge Jeffrey White said AliveCor could try to prove that Apple violated federal antitrust law based on its alleged "complete control" over the market for such apps. ([More](#))

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

### 银保监会发布强化金融支持小微企业通知，关注数据源合规风险，加强数据安全和隐私保护

2022年4月6日，中国银行保险监督管理委员会（“银保监会”）发布《关于2022年进一步强化金融支持小微企业发展工作的通知》，强调加强信用信息安全和保密管理。通过各级融资信用服务平台获取的涉企信用信息不得用于为企业提供融资支持以外的活动；与第三方机构合作开展涉企信用信息应用的，应当建立安全评估的前置程序；交由第三方处理的涉企数据，应按照有关监管规定，依据“最小、必要”原则进行脱敏处理；通过第三方机构获取外部涉企数据的，要关注数据源合规风险，明确数据权属关系，加强数据安全技术保护。（[查看更多](#)）

### CBIRC Issues Notice to Strengthen Financial Support for Small and Micro Enterprises, Focusing on Data Source Compliance Risks, Data Security and Privacy Pro-



## tection

On April 6 2022, the China Banking and Insurance Regulatory Commission (“CBIRC”) issued the *Notice on Further Strengthening Financial Support for the Development of Small and Micro Enterprises in 2022*, emphasizing the security and confidentiality management of credit information. Enterprise-related credit information obtained through financing credit service platforms at all levels shall not be used for activities other than providing financing support for enterprises. Institutions cooperating with third-party institutions to develop Apps with enterprise-related credit information shall establish pre-procedures for security assessment. Enterprise-related data handed over to a third party shall be desensitized in accordance with the relevant regulatory regulations and the principle of minimum and necessary. Institutions obtaining external enterprise-related data through third-party institutions should pay attention to data source compliance risks, clarify data ownership relationships, and strengthen data security technical protection. ([More](#))

## 中央网信办开展“清朗·2022年算法综合治理”专项行动

2022年4月8日，中共中央网络安全和信息化委员会办公室（“网信办”）牵头开展“清朗·2022年算法综合治理”专项行动，深入排查整改互联网企业平台算法安全问题，评估算法安全能力，重点检查具有较强舆论属性或社会动员能力的大型网站、平台及产品，督促企业利用算法加大正能量传播、处置违法和不良信息、整治算法滥用乱象、积极开展算法备案，推动算法综合治理工作的常态化和规范化，营造风清气正的网络空间。（[查看更多](#)）

## CAC Launches the Special Action of Qinglang 2022 Algorithm Comprehensive Governance

On April 8 2022, the Office of the Central Cyberspace Affairs Commission (“CAC”) took the lead in carrying out the *special action of Qinglang 2022 Algorithm Comprehensive Governance*. In order to promote the normalization and standardization of the comprehensive governance of algorithms, and create a clean cyberspace, the special action requests authorities to deeply investigate and rectify security issues of algorithm on Internet platforms, evaluate the security ability of algorithm, check the algorithm of large-scale websites, platforms and products with strong public opinion attributes or social mobilization capabilities. The campaign also urge enterprises to increase the spread of positive energy, delete illegal information and develop algorithm filing. ([More](#))

## 五部门发布《关于进一步加强新能源汽车企业安全体系建设的指导意见》，强化网络安全、数据安全和个人信息安全保护

近日，为进一步压实新能源汽车企业安全主体责任，指导企业建立健全安全保障体系，工业和信息化部、公安部、交通运输部、应急管理部、国家市场监督管理总局等五部门联合印发《关于进一步加强新能源汽车企业安全体系建设的指导意见》（“《指导意见》”），提出企业要健全网络安全保障体系，加强网络安全防护，采取有效措施防范网络攻击、入侵等危害网络安全的行为；强化数据安全保护，按照法律、行政法规的有关规定进行数据收集、存储、使用、加工、传输、提供、公开等处理活动，以及数据出境安全管理；落实个人信息安全防护，对个

人信息实行分类管理，并采取相应的加密、去标识化等安全技术措施，防止未经授权的访问以及个人信息泄露、篡改、丢失。（[查看更多](#)）

### **Five Ministries Issue the *Guidance Opinions on Further Strengthening the Construction of New Energy Vehicle Enterprises' Security System* to strengthen the security of network, data and personal information**

Recently, in order to further consolidate the main responsibility for the safety of new energy vehicle enterprises and guide enterprises to establish and improve the safety guarantee system, the Ministry of Industry and Information Technology, the Ministry of Public Security, the Ministry of Transportation, the Ministry of Emergency Management, and the State Administration for Market Regulation jointly issued the *Guidance Opinions on Further Strengthening the Construction of New Energy Vehicle Enterprises' Security System* (“the Guidance Opinions”). The Guidance Opinions proposed that enterprises should improve the network security guarantee system, strengthen network security protection, and take effective measures to prevent network attacks, intrusions and other behaviors that endanger network security. The Guidance Opinions also request enterprises to strengthen data security protection, collect, storage, use, process, transmit, provide and disclose data as well as manage data export security according to laws and regulations. In addition, enterprises should fulfill personal information security protection, implement classified management of personal information and take corresponding security technical measures such as encryption and de-identification to prevent unauthorized access and personal information leakage, tampering, and loss. ([More](#))

### **最高院：爬虫技术被用于违法活动，但该技术仍受反不正当竞争法保护**

2022年4月6日，最高人民法院知识产权法庭（“最高院知产庭”）发布精品案例，最高院知产庭在该判决书中指出，爬虫技术曾被用于违法活动的事实不能证明涉案技术信息不受法律保护，即使爬虫技术曾被用于违法活动，但并不等于该项技术本身具有违法性，且该技术仍应受反不正当竞争法保护。（[查看更多](#)）

### **SPC: Crawler Technology Used in Illegal Activities Still Protected by the *Anti-Unfair Competition Law***

On April 6 2022, the Intellectual Property Court of the Supreme People's Court of China (“SPC”) issued a case pointing out in the judgment that the fact crawler technology has been used in illegal activities shall not prove the conclusion that relevant technology is not under the protection of law. The crawler technology itself is not illegal, and shall still be protected by the *Law of the People's Republic of China Against Unfair Competition*, even if it had been used in illegal activities. ([More](#))

### **江苏出台《省政府关于加快统筹推进数字政府高质量建设的实施意见》，加快建设现代数字政府**

2022年4月4日，江苏省人民政府出台《省政府关于加快统筹推进数字政府高质量建设的实施意见》（“《实施意见》”），加快建设现代数字政府。《实施意见》要求，准确把握数字政府建设总要求，系统搭建数字政府主架构，坚决打通数据共享开放大动脉，切实提升数字化治理效能驱动力，建立健全统筹协调规范管理新体制等六大方面。特别是就数据共享方面，《实施

意见》提出，要大力消除信息孤岛数据壁垒，大力开展数据汇聚治理攻坚行动，大力推进公共数据开发利用。（[查看更多](#)）

## **Jiangsu Province Issues the Provincial Government's Implementation Opinions on Accelerating the Coordination and Promotion of High-quality Construction of Digital Government to accelerate the construction of a modern digital government**

On April 4 2022, the Jiangsu Provincial Government issued the *Provincial Government's Implementation Opinions on Accelerating the Coordination and Promotion of High-quality Construction of Digital Government* (“the Implementation Opinions”) to accelerate the construction of a modern digital government. The Implementation Opinions promoted to accurately grasp the general requirements of digital government construction systematically build the main structure of digital government, resolutely open up the main artery of data sharing and openness, effectively improve the driving force of digital governance efficiency, and establish and improve a new system for overall coordination and standardized management. Especially in terms of data sharing, the Implementation Opinions urged to eliminate the data barriers, promote the aggregation and regulation of data, as well as the utilization of public data. ([More](#))

## **《广州市数字经济促进条例》发布，为全国首部城市数字经济地方性法规**

近日，《广州市数字经济促进条例》（“《条例》”）经广东省十三届人大常委会第四十一次会议批准，将于2022年6月1日实施。《条例》作为国内首部城市数字经济地方性法规，将为广州数字经济发展提供重要法治保障。《条例》共设十一章，分为总则、数字产业化、工业数字化、建筑业数字化、服务业数字化、农业数字化、数字基础设施、数据资源、城市治理数字化、发展环境、附则，共八十九条。值得关注的是，《条例》设置“数据资源”专章，重点探索首席数据官、数据交易及数据经纪人等创新制度。（[查看更多](#)）

## **Guangzhou Digital Economy Promotion Regulation Released As the First Local Regulation of the City's Digital Economy in China**

Recently, the 41st Meeting of the Standing Committee of the 13th Guangdong Provincial People's Congress approved *Guangzhou Digital Economy Promotion Regulation* (“the Regulation”). The Regulation will come into effect on June 1, 2022. As the first local regulation of the city's digital economy in China, providing an important legal guarantee for the development of Guangzhou's digital economy, the Regulation consists of 11 chapters, 89 articles, which are divided into general provisions, digital industrialization, industrial digitalization, construction industry digitalization, service industry digitalization, agricultural digitalization, digital infrastructure, data resources, digitalization of urban governance, development environment, and supplementary provisions. It is worth noting that the Regulation set up a special chapter on data resources, focusing on exploring innovative systems such as chief data officers, data transactions and data brokers. ([More](#))

## **丹麦数据监管机构拟因数据问题对丹斯克银行处以罚款**

2022年4月4日，丹麦数据监管局（“SA”）已向丹麦警方报告了 Danske 银行违反《通用数据保护条例》中第5条第2款的行为，并拟对其处以 1000万丹麦克朗（约130万欧元）的罚款。Danske银行作出“关于发现个人数据遭到删除的声明”后，不存在继续审查的正当理由，SA在2020年11月启动的案件到此结束。经查，Danske银行存在超过400个（银行处理）系统无法根据已经制定的规则删除和存储个人数据，也无法记录是否曾手动删除个人数据，这些系统共计处理数百万人的个人数据。（[查看更多](#)）

### **Danish Data SA Proposes to Fine Danske Bank over Data Issues**

On April 4 2022, the Danish Data Supervisory Authority (“SA”) has reported Danske Bank to the Danish police and proposed a fine of DKK 10 million (app. EUR 1.3 million) for the infringement of Article 5 (2) of the GDPR. This concludes a case that the SA opened in November 2020 after the bank itself had stated that they had identified a problem with the deletion of personal data in which there was not necessarily a commercial justification for continuing to process. During the Danish SA’s investigation, it has become clear that the bank in more than 400 systems has not been able to document whether rules have been laid down for deletion and storage of personal data, or whether manual deletion of personal data has been carried out. These systems process personal data of millions of people. ([More](#))

### **欧盟拟收取大型在线平台年利润0.1%作为合规监管费**

2022年4月6日，据报道，欧盟拟向大型互联网平台每年收取其全球年利润的0.1%作为合规监管费用，因为新规则要求欧盟做更多的工作来监督这些互联网平台。年度合规监管费用的总金额应基于欧盟委员会根据数字服务法承担监管任务所预计的成本。该费用不得超过大型互联网平台或大型搜索引擎平台上一财政年度全球总利润的0.1%。（[查看更多](#)）

### **Big Online Firms Face 0.1% Supervisory Fee Under New EU Rules**

On April 6 2022, Major online platforms face a yearly fee up to 0.1% of annual net income to cover the costs of monitoring compliance with new European Union rules requiring them to do more to police their content. The overall amount of the annual supervisory fees shall be based on the estimated costs the Commission incurs in relation to its supervisory tasks under the Digital Services Act. The fee shall not exceed 0.1% of the global annual net income of the provider of very large online platforms or very large search engine in the preceding financial year. ([More](#))

### **欧洲议会通过《数据治理法》议案，促进欧盟内部数据共享**

2022年4月6日，欧洲议会通过新法案以增加初创公司和企业的數據可用性，刺激创新。《数据治理法案》（“DGA”）于2021年11月由欧洲理事会达成一致，旨在增加对数据共享的信任，建立关于数据市场中立性的欧盟新规则，并促进公共部门持有数据的再利用。DGA将在健



康、环境、能源、农业、流动性、金融、制造业、公共管理和技能等战略领域建立共同的欧洲数据空间。（[查看更多](#)）

### **EU Parliament Passes New Legislation to Increase the Availability of Data**

On April 6 2022, the European Parliament backed new legislation to increase the availability of data for start-ups and businesses to stimulate innovation. The Data Governance Act (“DGA”), agreed with European Council in November 2021, aims to increase trust in data sharing, create new EU rules on the neutrality of data marketplaces, and facilitate the reuse of certain data held by the public sector. It will set up common European data spaces in strategic domains such as health, the environment, energy, agriculture, mobility, finance, manufacturing, public administration, and skills. ([More](#))

### **澳大利亚制定《国家数据安全行动计划》，以建立数据安全框架**

2022 年 4 月 6 日，澳大利亚内政部着手制定新的国家数据安全行动计划，以组成联邦政府更广泛的数字经济战略。该行动计划将着眼于保护公民的数据（在数字系统和网络上收集、处理和存储的信息）免受安全侵袭。作为行动计划的一部分，内政部就政府如何提高国家数据安全性，征求州政府、企业和公众的意见。在一份新发布的讨论文件中，内政部阐述了该计划的愿景，其中包括为政府、企业和个人建立数据安全设置和要求，这些设置和要求将在以安全、责任和控制为重点的框架下运作。（[查看更多](#)）

### **Australia Develops *National Data Security Action Plan* to Build Data Security Framework**

On April 6 2022, the Australian Department of Home Affairs (“Home Affairs”) has commenced work on a new *National Data Security Action Plan* as part of the federal government’s wider digital economy strategy. The action plan will look to protect citizens’ data (information collected, processed, and stored on digital systems and networks) from those who would undermine security. As part of the action plan's development, Home Affairs is also seeking the views of state and territory governments, businesses, and the Australian public on how federal government can improve the nation's data security. In a newly released discussion paper, Home Affairs laid out its vision for the plan, which includes establishing data security settings and requirements for governments, businesses, and individuals that will operate under a framework focusing on security, accountability, and control. ([More](#))

### **欧盟数据保护委员会宣布就新的跨大西洋数据隐私框架达成原则协议**

2022年4月7日，欧盟数据保护委员会（“EDPB”）通过一项关于宣布新的跨大西洋数据隐私框架的声明。EDPB欢迎美国作出承诺，在欧洲经济区的个人数据被转移到美国时采取前所未有的措施保护其隐私和个人数据，EDPB认为这是朝着正确方向迈出积极的第一步。（[查看更多](#)）

### **EDPB Adopts Statement on the Announcement of a New *Trans-Atlantic Data Privacy Framework***



On April 7 2022, EDPB adopted a statement on the announcement of a new Trans-Atlantic Data Privacy Framework. The EDPB welcomes the commitments made by the U.S. to take unprecedented measures to protect the privacy and personal data of individuals in the European Economic Area when their data are transferred to the U.S. as a positive first step in the right direction. ([More](#))

## 欧盟数据保护委员会关于国家立法草案向比利时监督机构致信

2022年4月7日，欧盟数据保护委员会（“EDPB”）致信比利时监督机构，表达对比比利时最近旨在改革建立比利时监管机构（“SA”）的立法发展的担忧，因为这可能会对比比利时监督机构的稳定性和独立性产生负面影响。EDPB 强调，独立监督对于保护数据的基本权利至关重要，受到欧盟宪章和欧盟条约的保护，也是EDPB和SA在GDPR框架下有效合作的基石，而它担心独立监督会受到此次拟议改革的影响。同时，EDPB对加强议会监督的提案与GDPR第52条第2款中不受外部影响的规定之间的联系提出质疑。（[查看更多](#)）

## EDPB Adopts a Letter to BESA Expressing Concerns about the Recent Legislative Developments

On April 7 2022, the EDPB adopted a letter expressing concerns about the recent legislative developments in Belgium aimed at reforming the law establishing the Belgian Supervisory Authority (“SA”), as it may negatively affect the stability and the independent functioning of the Belgian authority. The EDPB stresses that independent supervision, which it fears is impacted by the proposed reforms, is essential to the fundamental right to data protection and for this reason is protected by the Charter and the EU Treaty. It is also the cornerstone of effective enforcement under the GDPR and effective cooperation among SAs. The EDPB also questions how the various proposals leading to increased parliamentary oversight may relate to the requirement for SAs to “remain free from external influence” in accordance with Art. 52(2) GDPR. ([More](#))

## 日本经济部发布《中小企业治理守则》和《人工智能指南》

2022年4月8日，为促进中小企业数字化转型，迎接人工智能挑战，日本经济产业省发布《中小企业治理守则》（“《守则》”）和《人工智能指南》（“《指南》”），旨在使中小企业根据自己的实际情况确定适当的数字化转型和人工智能实施方法。《守则》介绍了中小企业在进行数字化转型时需要采取的措施及优秀参考案例，《指南》分为人工智能构想阶段和人工智能导入阶段，以便中小企业负责人了解具体的实施程序。（[查看更多](#)）

## METI of Japan Publishes Small and Medium Enterprise Governance Code and Artificial Intelligence Guidelines

On April 8 2022, in order to promote the digital transformation of small and medium-sized enterprises (“SMEs”) and meet the challenges of artificial intelligence, the Ministry of Economy, Trade and Industry of Japan (“METI”) issued *Small and Medium Enterprises Governance Code* (“the Code”) and *Artificial Intelligence Guidelines* (“the Guidelines”), which aim to allow SMEs to determine the appropriate digital transformation and artificial intelligence implementation methods according to their actual situation. The Code introduces the measures and excellent reference cases that SMEs need to know when

carrying out digital transformation. The Guide contains the conception stage and implementation stage of artificial intelligence so that SMEs can understand the specific implementation procedures. ([More](#))

## 知识产权 Intellectual Property

### 商标局发布关于更新《类似商品和服务区分表》以外可接受商品和服务项目名称的通知

4月7日，商标局发布通知称：为贯彻落实商标注册便利化改革要求，进一步方便申请人，商标局定期更新《类似商品和服务区分表》以外可接受商品和服务项目名称并对外公布。2022年第二季度可接受商品和服务项目名称已在中国商标网商标查询栏目和商标网上服务系统公布，申请人可在线查询和填报。

来源：中国商标网

### Notice of China National Intellectual Property Administration for Updating the Names of Acceptable Goods and Service Items Other than the Table for Differentiating Similar Goods and Service

On April 7, CNIPA issued an announcement stating: In order to implement the reform requirements for the facilitation of trademark registration and further facilitate applicants, CNIPA regularly updates the names of acceptable goods and services other than the " the Table for Differentiating Similar Goods and Services " and announces it to the public.

The names of acceptable goods and services in the second quarter of 2022 have been announced in the trademark inquiry column of China Trademark Network and the trademark online service system, and applicants can inquire and fill in the application online.

Source: China National Intellectual Property Administration

### 世界知识产权组织发布《2022年世界知识产权报告》

4月7日，世界知识产权组织发布《2022年世界知识产权报告》，报告的主要结论包括：1. 报告研究了上世纪的专利申请率，这一时期的特点是：创新活动每隔一定年限就出现一次重大推进，总体增长25 倍，相当于每年约3%；2. 数字化是新的重大创新变革。它正在通过改变创新的对象、类型和过程，改变着当今的各个产业。数字化创新在截止2020 年的20 年内翻了两番，年增长率为13%，2020 年占有所有专利申请的12%；3. 新技术得到大规模利用，以实现经济发展。在东亚，日本、大韩民国和中国各自利用其科学能力、技术资本和熟练劳动力，全面融入全球经济，成为信息技术全球价值链的核心和积极参与者。4. 自1973 年石油价格冲击以来，全球低碳排放技术的创新每年增长6%，持续到2012 年，但此后绿色创新停滞不前等。

来源：世界知识产权组织

### World Intellectual Property Organization published World Intellectual Property

## Report 2022

On April 7, the World Intellectual Property Organization released the "2022 World Intellectual Property Report". Among the report's key findings: (1) The report looked at patenting rates over the past century – a period marked by a number of major pulses in innovative activity – and found a 25-fold increase in overall growth, or about 3% each year. (2) Digitalization is the new big innovation revolution: It is now transforming industries, by changing who innovates, the types and process of innovation. (3) New technologies can be leveraged to achieve economic development at a large scale. In East Asia, Japan, Republic of Korea and China have each leveraged their scientific capacity, technological capital and skilled labor to fully integrate into the global economy as core and active participants in IT global value chains. (4) Since the oil price shock in 1973, global innovation in low-carbon emission technologies has growing by 6% annually until 2012, but green innovation has stagnated since then.

Source: [World Intellectual Property Organization](#)

## 广州知产法院：仿制药企业申请进入医保目录，不构成许诺销售行为

广州知识产权法院对默沙东公司诉东阳光公司侵害发明专利权案作出一审判决，该案中，原告默沙东公司是涉案“二肽基肽酶-IV抑制剂的磷酸盐”专利的专利权人，主张被告东阳光公司通过行政审批程序获得本案仿制药的生产上市许可证，并申请涉案侵权药品进入国家医保目录的行为构成许诺销售，侵害了原告的专利权。法院经审理认为，根据我国专利法相关规定，行政审批所实施专利行为不视为侵害专利权行为；东阳光公司向国家医疗保障局申报被诉侵权药品名单进入医保目录，虽然是为获得审查批准后将该药品纳入到国家医保目录进行销售，属于“以生产经营为目的”，但仿制药品许可持有人向国家医疗保障局申请将该仿制药纳入到国家医保目录的申报行为本身，不属于实施本案专利的行为。被诉侵权行为是向特定的行政机关申报行为，这一行为并非为商品销售而进行的展销行为或者陈列行为。虽然医药企业向行政机关申请将仿制药品进入医保药品目录具有为生产经营目的，但申报对象是履行国家医保职责的行政机关，不能据此认定为许诺销售。

来源：广州知识产权法院

## Guangzhou Intellectual Property Court: A generic drug company's application for entry into the medical insurance catalogue does not constitute offering for sale

In this recent dispute over infringement of the patent right of invention, the plaintiff is the patentee of the patent in question, who claims that the defendant obtained the production and marketing license of the generic drug in this case through the administrative examination and approval process, and applied for the infringing drug to be included in the National Medical Insurance Catalogue, which constitutes offering for sale, thereby infringing the plaintiff's patent rights.

The Guangzhou Intellectual Property Court held that, according to the Patent Law, the implementation of patent acts by administrative examination and approval is not regarded as infringement of patent. However, the application is aiming for an administrative agency, that performs the duties of national medical insurance, and this cannot be identified as offering for sale.

Source: [Guangzhou Intellectual Property Court](#)

## 最高法院就专利权无效行政纠纷中外观设计的比较判断作出认定

杨某典与国家知识产权局外观设计专利权无效行政纠纷一案，北京知识产权法院一审认定，《专利法》及其相关法规并不强制要求被告必须对于常见设计手法给予举证证明，特别对于普通公众仅凭一般社会生活常识即可很容易想到的设计手法，当然被告对于常见设计手法的认定应当保持必要的谨慎。最高人民法院二审认定，专利无效行政案件中知识产权局可依职权认定公知常识。本案中杨某典主张的涉案外观设计对一般消费者而言，所谓的区别设计特征在外观设计对比的整体观察中并不重要，且设计上与现有设计存在的区别并不足以对整体视觉效果产生显著影响，故涉案外观设计专利应予无效。本案法院认定国家知识产权局可以依职权对于公知常识进行认定，在一定程度上减轻了专利无效案件中请求人对公知常识的举证责任。

来源：最高人民法院

## The Supreme People's Court made a decision on that CNIPA could affirm common knowledge ex officio when deciding on validity of design patent

In an administrative dispute over the invalidation of a design patent right, the Supreme People's Court found in the second instance that CNIPA could identify and interpret common knowledge in an administrative patent invalidation case. For the ordinary consumers of the design involved, the distinctive design features claimed by the plaintiff are not important in the overall observation of the design comparison, and the difference between the design and the existing design is not enough to have a significant impact on the overall visual effect. Thereby the design patent involved shall be invalid.

In this case, the court held that CNIPA could identify common knowledge ex officio, which could reduce the burden of proof of the petitioner on common knowledge in patent invalidation cases..

Source: The Supreme People's Court

## “南粳9108”水稻种子遭恶意套牌，法院判决被告全额赔偿300万元

高科公司享有涉案“南粳9108”水稻品种的独占实施权利，被告金大丰公司、董某某、曹某某、杨某某等四被告生产、销售假冒涉案水稻种子，侵害了原告的合法权益，法院综合考量：涉案水稻品种具有较高的知名度和美誉度；被告的侵权行为给原告造成了巨大经济损失；被告销售量和销售金额特别巨大，经营规模庞大，系多次侵权，主观恶意和侵权情节均较为严重；侵权种子种植后出现杂稻，造成购买假种子种植户的减产，给农业生产、粮食安全带来重大危害，必须严厉予以制止。故法院最终判决全额支持了原告的300万元诉讼请求。

来源：江苏省南京市中级人民法院

## A well-known rice variety was maliciously infringed, the court ordered the defendant to pay RMB 3 million for damages

The plaintiff enjoys the exclusive right to implement the "Nanjing 9108" rice variety involved in the case. The four defendants produced and sold counterfeit rice seeds involved in the case, infringing upon



the plaintiff's legitimate rights and interests. The court considered the following: the rice varieties have high popularity and reputation; the defendant caused huge economic losses to the plaintiff; the defendant's sales volume and sales amount were particularly huge, the scale of operation was huge, the defendant had repeatedly infringed, and the subjective maliciousness and infringement were serious. In addition, Infringing seeds have brought serious harm to agricultural production and food security, which shall be strictly stopped. Therefore, the court judgement is in full support of the plaintiff's claim of RMB 3 million.

Source: Nanjing Intermediate People's Court of Jiangsu Province

## 北京知产法院：“湘西黄金茶”VS“保靖黄金茶”不构成近似地理标志证明商标

近日，北京知产法院就第15887938号“湘西黄金茶”商标无效宣告行政诉讼纠纷案作出一审判决，驳回了原告保靖县茶叶产业开发办公室的诉讼请求。

保靖县茶叶产业开发办公室就吉首市经果技术推广站注册的诉争商标“湘西黄金茶”提起无效宣告请求，国家知识产权局裁定维持诉争商标注册，保靖县茶叶产业开发办公室不服该裁定，向北京知产法院提起行政诉讼。法院审理认为，地理标志商标可以进行商标近似性的比对，但因地理标志证明商标在商标标志构成及商标的功能作用等方面与普通商标存在差异，在判断商标近似与否时，除商标的外观、呼叫等因素之外，是否导致消费者混应当为最终判断标准，且应当建立在不能识别商标中的地名进而不能识别产地的前提之下。

本案中，在保靖黄金茶1号、黄金茶2号等品种已成为湘西州当地普遍种植的茶树品种。在诉争商标与引证商标同为地理标志证明商标的情况下，二者共同包含的“黄金茶”部分显著性已经逐步减弱，诉争商标中的“湘西”与引证商标中的“保靖”起到了地理标志证明商标中标识商品产地的作用。且引证商标“保靖黄金茶”注册时间较早，已经拥有一定的市场和消费群体定位，因此，保靖县茶叶办公室提交的证据不足以证明诉争商标和印证商标在消费者中已产生混淆误认。最终，法院判决维持被诉裁定，诉争商标得以维持注册。

来源：北京知识产权法院

## Beijing Intellectual Property Court: "Xiangxi Golden Tea" VS "Baojing Golden Tea" does not constitute similar geographical indication certification mark

Recently, the Beijing Intellectual Property Court made a first-instance judgment on the administrative litigation dispute over the invalidation of the trademark "Xiangxi Golden Tea" No. 15887938, rejecting the claim of the plaintiff Baojing County Tea Industry Development Office.

Previously, the plaintiff filed a request for invalidation of the trademark "Xiangxi Golden Tea". CNIPA ruled to maintain the registration of the disputed trademark. The plaintiff refused to accept the ruling, and brought an administrative lawsuit to the court.



The court held that geographical indication trademarks can be compared for similarity of trademarks, but because geographical indication certification marks are different from ordinary trademarks in terms of the composition of trademark and functions. Likelihood of confusion of the consumers shall be decisive criteria for affirming similarity of the trademarks, and it shall be based on whether the geographical name in the trademark can be identified, and the place of origin cannot be identified thereof.

In this case, Baojing Golden Tea No. 1, Golden Tea No. 2 and other varieties have become commonly grown tea varieties in Xiangxi Prefecture. Moreover, when the disputed trademark and the cited trademark are both geographical indication certification marks, the distinctiveness of the "golden tea" part jointly contained by the two has been weakened, and the "Xiangxi" in the disputed trademark and the "Baojing" in the cited trademark can be used to identify the origin of the product. Therefore, the evidence submitted by the plaintiff is insufficient to prove that the disputed trademark and the certified trademark have been confused and misidentified among consumers. In summary, the court decided to uphold CNIPA ruling, and the registration of the disputed trademark was upheld.

Source: [Beijing Intellectual Property Court](#)

## 沃尔玛在印度陷入商标纠纷

近日，沃尔玛在印度陷入商标纠纷，原告是沃尔玛的全资子公司，在美国特拉华州注册成立，也是Walmart和Wal-mart商标在印度的所有人。原告的Walmart商标于2006年获得，2008年在市场上启用，原告发现，被告于2020年1月申请在第25类和第35类注册Wmart商标，并声称它自2019年以来一直在使用该标志。同时被告使用网址www.wmartretail.com在线零售衣服和家居饰品。原告向法院申请永久禁令，指控被告侵犯商标和版权，法院比较多组商标后初步认定，如果不授予禁令，原告将遭受无法弥补的损失和伤害。因此，法院下达禁令，禁止被告使用WMart标志或与原告的Walmart和Wal-Mart商标具有欺骗性相似或相同的任何其他标志。

来源: [lexorbis.com](http://lexorbis.com)

## Walmart Involved in Indian trademark dispute

The plaintiff, incorporated in the State of Delaware, USA, is a wholly-owned subsidiary of Walmart Inc. and the subsequent proprietor of the trademarks Walmart and Wal-mart in India. The plaintiff's mark, Walmart, is prominently displayed in several stores, was adopted in 2006 and was launched in the market in 2008. The plaintiff discovered that the defendants had applied in January 2020 to register the mark Wmart in classes 25 and 35, claiming that it had been in use since 2019. The application for class 25 related to such items as hosiery, ready-made garments and undergarments. The defendants were selling in brick-and-mortar stores. They also sold clothes and home accessories by online retail using the address www.wmartretail.com.

The plaintiff applied for permanent injunctions, alleging infringement of trademarks and copyright. The court held that the comparison of the sets of marks showed that the plaintiff had a prima facie case and that without the grant of injunctions the plaintiff would suffer irreparable loss and injury. The court therefore granted injunctions to restrain the defendants from using the mark WMart or any other mark deceptively similar or identical to the plaintiff's trademarks Walmart and Wal-Mart.

Source: [lexorbis.com](http://lexorbis.com)

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