



# NEWSLETTER

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美国ITC正式对移动电子设备启动337调查，联想、摩托罗拉成列名被告

USITC initiated 337 investigation into Certain Mobile Electronic Devices, Lenovo, Motorola were defendants

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

### 全国人大常委会2022年立法工作计划：6月进行《反垄断法》修正案二次审议

2022年5月6日，全国人民代表大会常务委员会（“全国人大常委会”）公布了2022年度立法工作计划。按照时间表，今年6月，《反垄断法》等五件法律案将提请全国人大常委会继续审议。

《反垄断法》自2008年8月1日生效实施。2021年10月19日，《反垄断法》修正草案提请第十三届全国人大常委会第三十一次会议初次审议。（[查看更多](#)）

### The Standing Committee of the National People's Congress Announces 2022 Legislative Working Plan: Further Review the Draft Amendment of Anti-Monopoly Law in June

On May 6, 2022, the Standing Committee of the National People's Congress of the People's Republic of China (“NPCSC”) announced its 2022 legislative working plan. According to the schedule, this June, NPCSC will further review 5 draft laws and revisions, including the *Anti-Monopoly Law*. The *Anti-Monopoly Law* came into effect on August 1, 2008. On October 19, 2021, the first draft amendment to the *Anti-Monopoly Law* was submitted to the thirty-first session of the Standing Committee of the thirteenth National People's Congress for preliminary review. ([More](#))

### 浙江省发布《互联网平台企业竞争合规管理规范（征求意见稿）》

近日，浙江省市场监督管理局组织起草了《互联网平台企业竞争合规管理规范（征求意见稿）》（“《规范》”），并向社会广泛征求意见。《规范》全面梳理了互联网平台企业竞争合规相关风险过程管理制度，着重强调互联网平台企业应注意识别垄断协议行为风险、滥用市场支配地位行为风险、经营者集中行为风险以及不正当竞争行为风险等竞争合规风险，并有效进行相关风险评估、提醒、控制及处置。（[查看更多](#)）

### Zhejiang Issues Specifications for Internet Platform Enterprises on Competition Compliance Management (Exposure Draft)

Recently, the Zhejiang Provincial Administration for Market Regulation organized the drafting of the *Specifications for Internet Platform Enterprises on Competition Compliance Management (exposure draft)* (“*Specifications*”), and widely solicited opinions from the public. The *Specifications* comprehensively sorts out the risk process management system related to competition compliance of Internet platform enterprises, and emphasizes that Internet platform enterprises should pay attention to identifying the risk of competition compliance, such as the risk of concluding monopoly agreement, abusing of the dominant market position, merger filing as well as conducting unfair competition behaviors, and effectively carry out relevant risk assessment, reminder, control and treatment activities. ([More](#))

### FTC对马斯克收购Twitter的交易进行反垄断审查

2022年5月6日，据报道，美国联邦贸易委员会（“FTC”）正在对特斯拉首席执行官马斯克以440亿美元收购Twitter的交易进行反垄断审查。FTC将在下月决定是否对该交易进行深入的反垄断审查。根据美国企业合并相关法律，马斯克须向FTC和美国司法部（“DOJ”）报告该项交易并在交割之前至少等待30天，以便各机构审查潜在的反垄断问题。此后FTC还可要求提供更多信息，这会进一步导致该交易的推迟。（[查看更多](#)）

## Musk's Twitter Buyout under Antitrust Review by Federal Trade Commission

On May 6, 2022, according to media reports, the U.S Federal Trade Commission (“FTC”) is reviewing Tesla chief executive Elon Musk’s USD 44 billion takeover of Twitter Inc. FTC is to decide by next month whether it will conduct an in-depth antitrust probe of the transaction. According to the U.S. merger law, Musk is required to notify the FTC and the United States Department of Justice (“DOJ”) of the transaction and wait at least 30 days before closing, which gives the agencies a timeframe to investigate potential antitrust concerns. After that, FTC can ask for additional information, resulting in more delay. ([More](#))

## 荷兰反垄断机构宣布对谷歌Google Play商店进行初步调查

2022年5月4日，荷兰消费者与市场管理局（Netherlands Authority for Consumers and Markets, “ACM”）宣布对谷歌应用商店是否涉及反竞争行为展开初步调查。此前，交友应用软件Tinder曾因无法使用谷歌支付系统以外的其他系统，要求ACM评估谷歌在交友应用软件市场中是否存在滥用市场支配地位行为。对此，谷歌回应称其仅通过谷歌应用商店收取15%的佣金，该比例在主流应用平台中是最低的，并且应用软件分发商也可通过在其他应用商店或网站分发应用程序的方式完全绕开谷歌应用商店。 ([查看更多](#))

## Dutch Watchdog to Preliminarily Investigate Google Play Store

On May 4, 2022, the Netherlands Authority for Consumers and Markets (“ACM”) announced a preliminary investigation into Google for possible anti-competitive practices in its Google Play store. Earlier, dating app Tinder had asked ACM to assess whether Google is abusing dominant position in the dating app market, for that Tinder was no longer able to use a payment system other than Google’s. In a response, Google said it charges customers 15% commissions for subscriptions via Google Play, which was the lowest rate among major app platforms. It said app distributors can also avoid Google Play entirely by distributing their apps via other stores or websites. ([More](#))

## 德国联邦卡特尔局认定Meta平台具有显著跨市场竞争影响

2022年5月4日，德国联邦卡特尔局发布公告，认定Meta平台公司具有显著跨市场竞争影响。根据《反限制竞争法（第十修正案）》（“GWB10”）第19a条的新规定，联邦卡特尔局能够更早、更有效地干预大型数字公司的反竞争行为。如果正式确定某个企业具有显著跨市场竞争影响，则可以禁止其实施反竞争行为。 ([查看更多](#))

## Germany Federal Cartel Bureau Determines Meta Platform’s Paramount Significance for Competition across Markets

On May 4, 2022, the Germany Federal Cartel Bureau has formally determined the paramount significance for competition across markets of Meta Platforms, Inc. The new provision, section 19a of the 10th amendment to the German Competition Act (“GWB10”), enables the Germany Federal Cartel Bureau to intervene earlier and more effectively against the anti-competitive practices of large digital companies. If it formally determines that an undertaking is of paramount significance for competition across markets, it can prohibit it from engaging in anti-competitive practices. ([More](#))

## 欧盟委员会正式就苹果支付发表异议声明

2022年5月2日，欧盟委员会发布公告，称其已正式向苹果公司对其滥用iOS设备移动支付市场上的支配地位发表异议声明。欧盟委员会认为，苹果公司通过限制应用软件商店中使用移动设备

进行无线支付的应用软件访问近场通信技术（“NFC”），限制了在iOS移动支付市场上的竞争，对其竞争对手产生了排他性影响，导致消费者无法享受iPhone移动支付市场的创新成果与多样化选择。（[查看更多](#)）

## European Commission Sends Statement of Objections to Apple over Practices Regarding Apple Pay

On May 2, 2022, the European Commission has announced that it has sent Apple its statement of objections over Apple's abuse of dominant position in markets for mobile wallets on iOS devices. By limiting access to the near-field communication technology (“NFC”) used for contactless payments with mobile devices in stores, Apple restricted competition in the mobile wallets market on iOS, which had an exclusionary effect on competitors and led to less innovation and less choice for consumers for mobile wallets on iPhones. ([More](#))

## 知识产权 Intellectual Property

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### 《海牙协定》在中国正式生效

5月5日，《工业品外观设计国际注册海牙协定》（以下简称《海牙协定》）在中国正式生效。生效当日，共有49家中国企业提交外观设计国际申请108件。

海牙体系为创新主体提供了一种简洁高效的外观设计国际注册程序，仅需使用一种语言、提交一份国际申请、使用一种货币、缴纳一组费用，即可在多个缔约方寻求外观设计保护。申请人在日后如有权利变更、续展等需求，也只需向WIPO国际局提交一份请求，即可在所有指定缔约国家/地区生效。

通过海牙体系提交外观设计国际申请有两种途径，申请人可以向WIPO国际局直接提交国际申请；如果缔约方局允许，申请人还可以通过缔约方局间接提交国际申请。在海牙体系下，外观设计国际注册在5年的首期内有效，可以5年为期进行两次续展。在每个受海牙协定1999年文本约束的被指定缔约方，国际注册获得保护的期限至少为15年。

来源：国家知识产权局

### The Hague Agreement entered into force in China on May 5, 2022

On May 5, 2022, the Hague Agreement concerning the International Deposit of Industrial Designs (“Hague Agreement”) entered into force in China. On the effective day, a total of 49 Chinese enterprises submitted 108 international applications for design patents.

Hague system provides a simple and efficient international registration procedure of design patents by filing one international application in one language, using one currency and paying one set of fees. If an applicant needs to change or renew rights, applicants only needs to submit one request to the International Bureau of WIPO, which can be effected in all designated contracting parties.

There are two ways to file an international application for a design patent through the Hague system: the applicant can file to the International Bureau of WIPO, or, if the contracting party permits, to the contracting party office. An international registration of a design is effective for an initial period of



five years and can be renewed twice in a five-year period. In each designated contracting party, the international registration is protected for at least 15 years.

Source: China National Intellectual Property Administration

### 最高法院：技术特征的划分及功能性特征保护范围的确定

最高人民法院对洛阳中冶建材设备有限公司与福建海源复合材料科技股份有限公司等侵害发明专利权纠纷案做出二审判决，认定被诉侵权技术方案未落入涉案专利权利要求的保护范围，撤销一审判决，驳回原告全部诉讼请求。

最高院认为，技术特征的划分应该结合发明的整体技术方案，考虑能够相对独立地实现一定技术功能并产生相对独立的技术效果的较小技术单元。本案中，关于涉案专利权利要求1关于1F的技术特征是否还应进一步拆分“腰形孔”“限位销钉”为最小技术单元，法院认为，二者虽然都是一个单独的部件或结构，但最终是通过二者相互配合的关系才在整体技术方案中发挥的上述作用。因此，“限位销钉”和“腰形孔”不属于独立的技术特征。

同时，对于权利要求中以功能或者效果表述的技术特征，应当结合说明书和附图描述的该功能或者效果的具体实施方式及其等同的实施方式，确定该技术特征的内容。由于1D技术特征仅记载了与机架的位置关系，并不能直接、明确地确定具体实施方式，故其是功能性特征，需结合说明书及附图描述的具体实施方式及其等同的实施方式，确定该技术特征的内容。

来源：最高人民法院

### The Supreme People's Court: Classification of technical features and determination of the scope of protection of functional features

The Supreme People's Court (SPC) made a judgment of second instance on a patent infringement dispute, revoking the original judgment and rejecting all of the plaintiff's claims.

SPC held that the division of technical features shall be combined with the overall technical scheme of the invention, considering the smaller technical units that can achieve certain technical functions relatively independently and produce relatively independent technical effects. In this case, regarding whether the technical features of claim 1 shall be divided into "waist-shaped hole" and "limit pin" as the smallest technical unit, the court held that although both are separate parts or structures, they are ultimately used through the relationship between them. Therefore, they are not independent technical features.

For the technical features expressed in terms of function or effect, the technical features shall be determined in combination with the specific implementation of the function or effect and its equivalent implementation described in the specification and accompanying drawings.

Source: The Supreme People's Court

### 最高法院：合理区分专利实施许可与配套交易的不同法律属性

近日，最高人民法院知识产权法庭对北京盛兴环保锅炉高科技股份有限公司与高现民发明专利实施许可合同纠纷一案做出终审判决，在补充查明涉案事实的基础上，依法改判被告支付专利实施许可费29万元及相应的违约金。

本案中，争议焦点主要为当事人后签订的《专利实施许可合同补充协议》（以下简称补充协议）是否是对《技术转让（专利实施许可）合同》（以下简称涉案合同）的变更。

最高法院认为，专利实施许可的本质在于利用专利技术方案来实施生产经营活动，专利权人（许可方）与使用者（被许可方）签订专利实施许可合同，其实质是围绕专利技术这一客体进行交易。而“实施专利技术”与“为了实施专利技术而另行完成必要物质条件准备工作”不应混为一谈。本案中，基于涉案合同和补充协议的签订主体、订立目的、权利义务内容等因素考量，应认定补充协议并非对涉案合同的变更，两份合同虽存在一定关联，但在法律关系上是彼此独立的两份合同。

来源：最高人民法院

### **The Supreme People's Court: Reasonable distinction between the different legal attributes of patent enforcement licensing and ancillary transactions**

Recently, the Intellectual Property Court of the Supreme People's Court made a final judgment on invention patent licensing contract disputes, ordered the defendant to pay the patent license fee of RMB 290,000.

The court held that the essence of patent implementation license lies in the use of patented technology solutions to implement production and business activities, the patentee (licensor) and the user (licensee) signed a patent implementation license contract to trade around the patented technology. The "implementation of the patented technology" shall not be confused with the "completion of the necessary material preparation work for the implementation of the patented technology".

In this case, regarding the subject matter, the purpose, the content of the contract and the supplementary contract, the two contracts are independent of each other.

Source: Intellectual Property Court of the Supreme People's Court

### **杭州王星记 VS 绍兴王星记：老字号企业标识不得侵犯他人注册商标权**

杭州中级人民法院对杭州王星记扇业有限公司与绍兴王星记扇厂等侵害商标权纠纷一案做出二审判决，判决维持原判，此前一审判决被告立即停止侵权行为，赔偿经济损失及合理费用30万元。

法院认为，非遗项目传承人有权在经营活动中标注其商品系采用相关传统技艺制作，但标注的内容应规范完整，抽象化概括性地加以标示、易导致市场混淆的，构成商标侵权。同样，企业名称的登记先于涉案注册商标核准日的，该企业享有合法使用字号的在先权利，但应规范使用自己的企业名称，突出使用企业字号易导致市场混淆的，构成商标侵权。本案中，鉴于“王星记扇”系被告绍兴王星记扇厂非物质文化遗产的项目名称，且被告绍兴王星记扇厂企业名称的取得先于涉案商标的核准日，故其有权正当使用“王星记”指称其字号或非物质文化遗产项目，但不得超出必要、合理的限度。而被告实际使用了“王星记”“王星记扇”“绍兴王星记”等标识，并不是企业名称规范的标识方式，也非产品作为非物质文化遗产载体的内容介绍，而系具有指示商品来源的商标性使用。而“王星记”既是原告的驰名商标和中华老字号，又是其企业字号，相关公众施以一般注意力无法区分被告该种使用方式是指代企业名称还是指

代相关扇子商品的来源，被告的涉诉行为易使相关公众产生混淆误认，属于字号突出使用，构成侵犯注册商标专用权行为。

来源：[杭州中级人民法院](#)

## Hangzhou “Wang Xingji” VS Shaoxing “Wang Xingji”: The time-honored brand logo shall not infringe on the registered trademark rights

Hangzhou Intermediate People's Court made a second judgment on the trademark infringement between “Wang Xingji” and “Wang Xingji”, upholding the original judgment, which ordered the defendant to pay damages of RMB 300,000.

In this case, the "Wang Xing Ji Fan" is the name of the intangible cultural heritage of the defendant, and the defendant's enterprise name was obtained before the approval date of the trademark, the defendant can use "Wang Xing Ji" within a reasonable and necessary scope. However, the defendant actually used "Wang Xing Ji" and other marks, which are not the standard identification of enterprise name, nor the introduction of the intangible cultural heritage, but the use of trademarks indicating the source of goods. "Wang Xing Ji" is the plaintiff's well-known trademark, time-honored brand name and enterprise brand name. The relevant public with general attention can not distinguish whether the defendant's use refers to the enterprise name or to the source of the goods, the defendant's action is easy to cause confusion among the relevant public, which was the prominent use of the name and constitutes trademark infringement.

Source: [Hangzhou Intermediate People's Court](#)

## 华大智造在美赢得专利诉讼，获赔3.338亿美元

5月6日，美国特拉华州联邦陪审团认定Illumin公司的双通道测序化学完全侵犯了华大子公司 Complete Genomics Inc. (CGI) Complete Genomics 持有的两项DNA测序专利，系故意侵权，应该赔偿333,801,990美元。陪审团同时驳回了Illumina 关于CGI专利无效的主张，这是中国公司有史以来在海外获得的最大数额专利赔偿。

来源：[nasdaq.com](#)

## BGI Genomics wins \$333.8 million patent lawsuit in the U.S.

On May 6, a federal jury in Delaware ruled that Illumin's two-channel DNA-sequencing systems infringed two DNA-Sequencer Patents, which were held by BGI Genomics subsidiary Complete Genomics Inc.(CGI) Complete Genomics. Illumin was ordered to pay damages of USD 333,801,990 for intentional infringement. The jury also rejected Illumina's claim that CGI's patents were invalid. This amount of award is the largest patent award ever awarded to a Chinese company overseas.

Source: [nasdaq.com](#)

## 日本专利局发布2021年国际知识产权制度研究报告

日本专利局（JPO）发布2021年国际知识产权制度研究报告，主要调查了国际框架下的知识产权状况，分析了双边和区域性经济伙伴关系协定下的知识产权状况，以及各国知识产权制度的动向。



关于COVID-19相关的知识产权动向，报告中提到国际关于限制知识产权的提案和讨论大致可分为3类：

(1) 世界贸易组织（WTO）中的印度和南非于2020年10月向“与贸易有关的知识产权协定（TRIPS）理事会”提交一项提案，建议在一定期限内免除TRIPS协定中涉及专利、外观设计和商业秘密等知识产权方面的义务。

各国都在讨论的COVID-19相关专利强制实施的问题，例如可以通过补偿专利权人限制知识产权。

为了应对COVID-19疫情相关的研发，民间企业自愿进行专利合作、许可等声明。

来源：[Japan Patent Office](#)

### **Japan Patent Office issued Research Report on International Intellectual Property System in 2021**

Japan Patent Office issued Research Report on International Intellectual Property System in 2021, which investigates the status of IP under international framework, analyzes the status of IP under bilateral and regional economic partnership agreements, and the trend of IP system in various countries.

In terms of COVID-19-related IPR trends, the international proposals and discussions on restricting IPR can be divided into three categories:

- (1) India and South Africa submitted a proposal to the TRIPS Council in October 2020 to exempt from TRIPS obligations on IP rights such as patents, designs and trade secrets for a certain period of time.
- (2) Enforcement of COVID-19-related patents, such as limiting IP rights by compensating patentees.
- (3) Declaration of voluntary patent collaboration and licensing by private companies in response to COVID-19 related research and development.

Source: [Japan Patent Office](#)

### **美国ITC正式对移动电子设备启动337调查，联想、摩托罗拉成列名被告**

近日，美国国际贸易委员会（ITC）投票决定对特定移动电子设备（Certain Mobile Electronic Devices）启动337调查（调查编码：337-TA-1312）。

2022年3月30日，日本Maxell, Ltd. of Japan向美国ITC提出337立案调查申请，主张对美出口、在美进口和在美销售的该产品侵犯了其专利权（美国注册专利号7,199,821、7,324,487、8,170,394、8,982,086、10,129,590、10,244,284），请求美国ITC发布有限排除令、禁止令。中国北京Lenovo Group Ltd. of Beijing, China联想集团、美国Lenovo (United States) Inc. of Morrisville, NC、美国Motorola Mobility LLC of Libertyville, IL为列名被告。

美国国际贸易委员会将于立案后45天内确定调查结束期。除美国贸易代表基于政策原因否决的情况外，美国国际贸易委员会在337案件中发布的救济令自发布之日生效并于发布之日后的第60日起具有终局效力。

来源：美国国际贸易委员会

**USITC initiated 337 investigation into Certain Mobile Electronic Devices, Lenovo, Motorola were defendants.**

Recently, the U.S. International Trade Commission (USITC) voted to initiate a 337 investigation (Code: 337-TA-1312) into Certain Mobile Electronic Devices (CMED).

On March 30, 2022, Maxell, Ltd. of Japan filed a petition for a 337 investigation to the ITC, claiming that the products exported to, imported into, and sold in the U.S. infringed its patent rights, requesting ITC to issue a limited exclusion order and injunction. Lenovo Group Ltd. of Beijing, China, Lenovo (United States) Inc. of Morrisville, NC, Motorola Mobility LLC of Libertyville, IL were defendants.

ITC will determine the termination period within 45 days of filing the case. Except in cases where the U.S. Trade Representative overrule for policy reasons, an order for relief will become effective as of the date of issuance and have final effect from the 60th day.

Source: [USITC](#)

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