



# NEWSLETTER

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

### 全国首个获批数据出境安全评估案例落地北京

2023年1月18日，北京市互联网信息办公室发布消息称，全国首个获批数据出境安全评估案例落地北京。据悉，自2022年9月1日《数据出境安全评估办法》实施以来，北京市已解答咨询电话700余通，服务数据出境需求主体270余家，组织指导北京市社交媒体、医疗、金融、汽车、民航等重点领域16家单位递交正式申报，10家单位申报材料通过完备性查验，2家单位通过数据出境安全评估。其中首都医科大学附属北京友谊医院与荷兰阿姆斯特丹大学医学中心合作研究项目成为全国首个数据合规出境案例，该项目的审批通过，标志着国家数据出境安全评估制度在北京市率先落地，为强化医疗健康数据出境安全管理，促进国际医疗研究合作提供了实践指引。近日，北京市申报的中国国际航空股份有限公司项目作为全国第二例也成功获批通过。

[\(查看更多\)](#)

### China's First Approved Security Assessment for Outbound Data Transfers Case Issued in Beijing

On 18 January 2023, according to the Beijing Cyberspace Administration (“BCA”), China's first approved security assessment for outbound data transfers case has been issued in Beijing. It is reported that since the implementation of the *Security Assessment Measures for Outbound Data Transfers* on 1 September 2022, BCA has answered more than 700 telephone inquiries, served more than 270 entities with outbound data transfers demand, organized and guided 16 entities in Beijing's key fields such as social media, medical care, finance, automobile, and civil aviation to submit official applications, of which 10 entities have passed the completeness inspection of their application materials, and 2 entities have passed the security assessment for outbound data transfers. Among them, the cooperative research project between Beijing Friendship Hospital, Capital Medical University and the University of Amsterdam Medical Center has become the first case of data compliance case for outbound data transfer in China. The approval of the project marks the first implementation of the national security assessment for outbound data transfers system in Beijing, providing practical guidance for strengthening the security management of outbound medical and health data and promoting international medical research cooperation. Recently, the Air China Limited project processed by BCA has also been successfully approved, which is the second successful application across China. [\(More\)](#)

### 国务院办公厅转发商务部科技部关于进一步鼓励外商投资设立研发中心若干措施

2023年1月11日，国务院办公厅转发商务部科技部《关于进一步鼓励外商投资设立研发中心若干措施》。其中规定，支持研发数据依法跨境流动，落实网络安全法、数据安全法、个人信息保护法等有关法律法规要求，加强数据跨境安全管理，保障国家安全和社会公众利益，保护个人信息权益。高效开展重要数据和个人信息出境安全评估，促进研发数据安全有序自由流动。

[\(查看更多\)](#)

## General Office of the State Council Forwarded *Several Measures on Further Encouraging Foreign Investment in the Establishment of Research and Development Centers* issued by the Ministry of Commerce and the Ministry of Science and Technology

On 11 January 2023, the General Office of the State Council forwarded *Several Measures to Further Encourage Foreign Investment in the Establishment of Research and Development Centers* issued by the Ministry of Commerce and the Ministry of Science and Technology. In particular, it is stipulated that efforts will be made to support the cross-border flow of research and development data in accordance with the law, implement the requirements of the *Cybersecurity Law*, the *Data Security Law*, the *Personal Information Protection Law* and other relevant laws and regulations, strengthen the cross-border data security management, safeguard national security and social public interests, and protect personal information rights and interests. security assessment of outbound transfer of important data and personal information shall be efficiently carried out, and the safe and orderly and free flow of research and development data shall be promoted. ([More](#))

## 西藏自治区网络信息安全管理条例发布

2023年1月20日，西藏网络安全和信息化领导小组办公室发布消息称，2022年12月9日西藏自治区第十一届人民代表大会常务委员会第四十三次会议通过了《西藏自治区网络信息安全管理条例》（下称《条例》）。《条例》适用范围包括自治区行政区域内利用计算机网络制作、复制、发布、传播信息等活动及其监督管理工作。《条例》规定，网络运营者依法保护用户个人信息，收集、使用个人信息，应当遵循合法、正当、必要的原则，公开收集、使用规则，明示收集、使用信息的目的、方式和范围，并经被收集者同意，以及其他网络运营者需要履行的义务。《条例》自2023年2月1日起施行。（[查看更多](#)）

## Release of Administrative Regulations of the Tibet Autonomous Region on Network Information Security

On 20 January 2023, the Office of the Tibet Leading Group for Cyberspace Security and Informatization announced that the 43rd session of the Standing Committee of the 11th People's Congress of the Tibet Autonomous Region has adopted the Administrative Regulations of the Tibet Autonomous Region on Network Information Security (the "Regulations") on 9 December 2022. The Regulations shall apply to such activities as producing, reproducing, promulgating and disseminating information by means of computer network and the supervision and related administration work within the administrative region of the Autonomous Region. The Regulations stipulate that network operators shall protect the personal information of users in accordance with the law, and collection and use of personal information shall follow the principle of lawfulness, rightfulness and necessity, publicize rules for information collection and use, explicitly express purposes, methods and scope of information collection and use, and obtain the consent of the persons whose personal information is collected. The Regulations have been effective implemented from 1 February 2023. ([More](#))

## 上海首批元宇宙场景需求发布

2023年1月17日，上海市政府发布消息称，上海正式公示第一批元宇宙重大应用场景需求榜单，涉及商业运营、课堂教育、文旅出游、品牌娱乐、智能制造、医疗健康、数字城市七大领域共20个场景需求。在数字城市领域，张江数字孪生未来城、“元”上苏州河、花木街道社区元宇宙等需求呼之欲出；在商业运营领域，世博源、南京路步行街等，推出了“零售元宇宙”“数字货币”“文创衍生”等场景。（[查看更多](#)）

## Release of Shanghai Metaverse Application Scene Requirements

On 17 January 2023, according to a news release by the Shanghai municipal government, Shanghai officially released the first list of demands for major metaverse application scenarios, which covers 20 scenarios in seven areas: business operation, classroom education, tourism and sightseeing, branded entertainment, intelligent manufacturing, healthcare and digital city. The digital city scenarios include, among others, Zhangjiang Digital Twin Future City, "Yuan" Upper Suzhou Creek, Huamu Street Community metaverse. In the field of business operation, the River Mall, Nanjing Road Pedestrian Street, etc., launched "retail metaverse", "digital currency", "cultural and creative derivatives" and other scenes. ([More](#))

## 海南省网信办通报17款侵犯用户个人隐私的网络游戏类App

2023年1月18日，海南省互联网信息办公室（下称“海南网信办”）发布消息称，对海南省内用户量大、与民众生活密切相关的各类应用程序收集使用个人信息情况进行了技术检测，检测结果显示“画线火柴人”“我切的贼溜”“机甲斗兽场”等17款App存在不同程度违法违规收集使用个人信息的行为。涉及问题包括，强制索取用户权限、未列明索权目的及超范围收集个人隐私信息等行为，涉嫌违反《移动互联网应用程序信息服务管理规定》。海南网信办集中向社会通报警示并责令相关运营单位限期整改。（[查看更多](#)）

## Hainan Cyberspace Administration Publicizes 17 Online Game Apps That Violate Users' Privacy

On 18 January 2023, the Hainan Cyberspace Administration announced that it had conducted a technical test on the collection and use of personal information by various applications with a large number of users and closely related to people's life in Hainan Province. The test results show that 17 apps, such as "matchmaker", "I cut very badly" and "robot arena", have been involved in different degrees of illegal collection and use of personal information. The problems involved include the compulsory request for user authorisations, failure to specify the purpose of request for authorisations and the collection of personal privacy information beyond the scope, which result in violation of the Administrative Provisions on Mobile Internet Applications Information Services. The Hainan Cyberspace Administration has publicly issued the warning and ordered the relevant operating units to rectify within a time limit. ([More](#))

## 涉及个人金融信息保护等23项违法行为，厦门银行被罚764万元

2023年1月30日，人民银行福州中心支行公布的行政处罚信息公示表显示，厦门银行因涉及违反个人金融信息保护规定、违反金融消费者保护内部控制及其他管理规定等23项违法行为，被人民银行福州中心支行予以警告，没收违法所得767.17元，并处罚款764.6万元。（[查看更多](#)）

## Xiamen Bank Was Fined RMB 7.64 Million for 23 Illegal Acts Including Violation of Personal Financial Information Protection

On 30 January 2023, according to the administrative penalty information publicity form published by the People's Bank of China Fuzhou Central Sub-branch, Xiamen Bank was warned by the People's Bank of China Fuzhou Central Sub-branch, confiscated the illegal income of RMB 767.17, and fined RMB 7.64 million for 23 illegal acts including violation of personal financial information protection regulations, violation of financial consumer protection internal control and other administrative regulations. ([More](#))

## 美国NIST发布人工智能风险管理新框架

2023年1月26日，美国商务部下属国家标准与技术研究院（NIST）发布了《人工智能风险管理框架1.0》（AI RMF1.0）。AI RMF1.0具有自愿性质，将有助于部署人工智能系统的组织增强其可信度、减少偏见，同时保护个人隐私。在人工智能技术即将给社会经济生活的各个方面带来革命性的变革的时候，AI RMF1.0代表了各国政府试图推广负责任且有用的AI系统，同时减轻机器学习算法的潜在负面影响的最新范例。（[查看更多](#)）

## U.S. NIST Publishes AI Risk Management Framework 1.0

On 26 January 2023, US NIST published AI Risk Management Framework 1.0. The framework is voluntary but will help organizations deploying AI systems to enhance their trustworthiness and reduce biases, while protecting individuals' privacy. This framework is the latest example of world governments attempting to promote responsible and useful AI systems, while mitigating the potential negative impacts of machine learning algorithms, as the technology is poised to revolutionize all aspects of socio-economic life. ([More](#))

## 美国和欧盟宣布达成首个“大规模”人工智能协议

2023年1月27日，美国与欧洲联盟委员会宣布达成协议，加速并强化人工智能(AI)在农业、卫生保健、应急响应、气候预测和电网等领域的应用合作。一名美国政府官员在美欧宣布达成协议前告诉路透社记者，这是美欧之间首个“大规模”AI协议，双方此前关于这一领域的协议仅限于特定领域，如强化个人隐私保护等。据报道，AI建模是运用多种机器学习算法，通过对数据的分析形成符合逻辑的决策，有助提高政府运转和服务效率。这位政府官员表示，未来几个月将邀请其他国家加入。（[查看更多](#)）

## U.S. and EU Announced First-of-its-kind AI Agreement

On 27 January 2023, The United States and European Union announced an agreement to speed up and enhance the use of artificial intelligence to improve agriculture, healthcare, emergency response, climate forecasting and the electric grid. A senior U.S. administration official, discussing the initiative shortly before the official announcement, called it the first sweeping AI agreement between the United States and Europe. Previously, agreements on the issue had been limited to specific areas such as enhancing privacy. AI modeling, which refers to machine-learning algorithms that use data to make logical decisions, could be used to improve the speed and efficiency of government operations and services. The senior administration official said other countries will be invited to join in the coming months. ([More](#))

## 俄罗斯科技巨头 Yandex 内部源代码泄漏

2023年1月28日，据 Bleeping Computer 报道，一名前雇员窃取的俄罗斯科技公司 Yandex 源代码库在一个黑客论坛上遭到泄露。泄密者贴出了一个磁性链接，指向他们声称的“Yandex git 源代码”，其中包括2022年7月从该公司窃取的44.7 GB文件。据称，该代码库包含该公司除反垃圾邮件规则外的所有源代码。据报道，该次泄露内容不包含任何Yandex客户数据，因此不会对Yandex用户的隐私或安全构成直接风险，也不会导致专有技术外流。 ([查看更多](#))

## Russian Tech Giant Yandex Leaked Source Code

On 28 January 2023, a Yandex source code base stolen by a former employee of a Russian technology company has been leaked as a torrent on a popular hacking forum, according to Bleeping Computer. Leakers posted a magnetic link to what they claim are “Yandex git sources”, including 44.7GB of files stolen from the company in July 2022. The code base allegedly contains all of the company's source code except for its anti-spam rules. It is reported that this leak does not contain any customer data, so it does not pose a direct risk to the privacy or security of Yandex users, nor does it directly threaten the leakage of patented technology. ([More](#))

## 知识产权 Intellectual Property

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### 国家知识产权局发布《关于禁止作为商标使用标志的指引》

近日，国家知识产权局为引导相关市场主体在商标申请注册与使用过程中遵循诚实信用原则，组织编写了《关于禁止作为商标使用标志的指引》（下称《指引》），供相关市场主体参考使用。《指引》旨在通过梳理禁止作为商标使用标志，分析注册申请或者使用相关标志需要承担的法律后果，引导市场主体树立正确的商标申请注册与使用意识。《指引》规定了适用范围，列举了“绝对禁止”标志的常见类型以及使用“绝对禁止”标志的法律后果等内容。

来源：国家知识产权局

## CNIPA Issues *the Guidelines for Marks Prohibited from Being Used as Trademarks*

Recently, the China National Intellectual Property Administration (CNIPA) organized and prepared *the Guidelines for Marks Prohibited from Being Used as Trademarks (the Guidelines)* to guide relevant market entities to follow the principle of good faith in the process of trademark registration and use. The Guidelines aim to guide market to establish the correct awareness in the application for registration, and use of trademarks by sorting out marks which are prohibited from being used as trademarks and analyzing the legal liability to be borne in the registration application or use of relevant marks. The Guidelines provide for the scope of application, enumerating the common types of marks of the "absolute prohibition", the legal consequences arising from the use of such marks and other contents.

Source: CNIPA

## 国家知识产权局发布关于全面推行专利证书电子化的公告

为贯彻落实党中央、国务院关于加强数字政府建设的决策部署，持续提高专利审查服务信息化和便利化水平，国家知识产权局自2023年2月7日（含当日）起，全面推行专利证书电子化。当事人以电子形式申请并获得专利授权的，通过专利业务办理系统下载电子专利证书；以纸质形式申请并获得专利授权的，按照《领取电子专利证书通知书》中告知的方式下载电子专利证书。

来源：国家知识产权局

## CNIPA Issues an Announcement on the Full Implementation of Electronic Patent Certificates

Recently, in order to continuously improve the informatization and facilitation level of patent examination services, CNIPA will fully implement the electronic patent certificates as of February 7, 2023 (inclusive). Where a party concerned applies for and obtains the authorization of a patent in electronic form, the party shall download the electronic patent certificate via the patent service handling system or download the electronic patent certificate in the way as stated in the Notice of Collecting the Electronic Patent Certificate.

Source: CNIPA

## 最高人民法院：如何判断两份专利技术方案是否构成同样的发明创造

最高人民法院就万杰智能科技股份有限公司（原审原告）与邢台德工重型设备制造厂、边振芳（原审被告）侵害发明专利权纠纷案作出二审判决，判决原审被告停止侵害原告的专利产品，并赔偿其经济损失12万元。

法院认为，判断两份专利技术方案是否涉及同样的发明创造，必须要明确比对的对象。针对同一日申请的发明专利和实用新型专利，将二者权利要求书进行比较，如果各权利要求的保护范



围均一一对应，则各权利要求所保护的技术方案均相同，则认定该同日申请的发明专利和实用新型专利属于同样的发明创造，也即判断二者是否构成“同样的发明创造”，应当采用权利要求保护的方案是否相同的判断方式。本案中，根据已查明的事实可知，同一申请人于同一日分别申请了涉案专利及实用新型专利，但涉案专利仅有1项权利要求，对应一个技术方案；同日实用新型专利共计14项权利要求，对应14个技术方案，二者不存在保护范围相同的技术方案。因此，涉案专利与同日实用新型专利不属于“同样的发明创造”。原审判决关于涉案专利与同日实用新型专利属于“同一发明”的认定错误。在此基础上，原审判决认定涉案专利效力应为待定状态，并据此判决驳回原告的诉讼请求确有错误，二审法院予以纠正。原审原告以涉案专利主张权利，具有事实与法律依据。

来源：最高人民法院

## SPC Clarifies How to Judge whether Two Patented Technical Solutions Constitute the Same Invention

Recently, the Supreme People's Court (SPC) made a second trial judgment on the case of infringement of the patent right of invention, ruling that the defendant shall stop infringing the plaintiff's patented products and pay the damages of RMB 120,000.

The court held that to determine whether the two patent solutions involve the same invention, the object of comparison must be specified. A comparison shall be made between the invention and the utility model filed on the same date. If the protection scopes of the claims are corresponding to each other and the technical solutions protected by the claims are the same, the invention and the utility model filed on the same date shall be the same invention. That is, to determine whether the two constitute the same patent, the method to determine whether the protection scope of the claims is the same shall be adopted. In this case, the same applicant applied for the patent involved and the utility model on the same day, but there was only one claim corresponding to one technical solution for the patent involved, while there were 14 claims corresponding to 14 technical solutions for the utility model on the same day, neither of the two patents had the same protection scope. Therefore, the patent concerned and the utility model of the same date are not "the same invention". The original judgment was wrong in determining that the patent and the utility patent of the same date are "the same invention".

Source: SPC

## “凯莱”等4枚商标遭故意攀附，获一二审法院保护

北京知识产权法院就凯莱国际酒店管理（北京）有限公司（下称“凯莱公司”）与遂川县恺蒂大酒店（下称“恺蒂酒店”）、北京艺龙信息技术有限公司侵害商标权纠纷案作出二审判决，维持原判。一审法院认定，恺蒂酒店的涉案行为侵害了凯莱公司的注册商标专用权，依法应当承担停止侵权、赔偿损失的民事责任。

法院认为，商标法所称商标的使用，是指将商标用于商品、商品包装或者容器以及商品交易文书上，或者将商标用于广告宣传、展览以及其他商业活动中，用于识别商品来源的行为。未经

商标注册人许可，在同一种商品上使用与其注册商标相同的商标的、在同一种商品上使用与其注册商标近似的商标或者在类似商品上使用与其注册商标相同或者近似的商标容易导致混淆的行为属于侵犯商标权的行为。本案中，恺蒂酒店提供的服务与凯莱公司的4枚涉案商标核定使用的住所、饭店、旅馆预订等服务构成类似服务。恺蒂酒店在经营过程中，于酒店楼顶显著位置、雨棚棚顶、大堂总台背景墙、宣传页、标识牌、所提供的日用品、酒店预定网页，突出使用“凯莱”字样以及图形，能够起到指示服务来源的作用，构成商标性使用。经比对，恺蒂酒店在经营过程中突出使用“凯莱”字样以及图形，与凯莱公司的4枚涉案商标已构成近似标识，容易导致相关公众对服务来源产生混淆或误认，故恺蒂酒店的涉案行为侵害了凯莱公司的注册商标专用权。

来源：北京知识产权法院

### **"Kailai" and other Three Trademarks were Hitchhiked and Protected by Courts**

Beijing Intellectual Property Court (Beijing IP Court) made the second-instance judgment in the trademark right infringement case between the Management (Beijing) Co., Ltd., Kailai International Restaurant (Kailai Company) and Kaidi Hotel (Kaidi Hotel) and Beijing ELong Information Technology Co., Ltd., which upheld the original judgment. The court of first instance held that Kaidi Hotel's acts infringed the exclusive right to use the registered trademark of Kailai Company, and shall stop the infringement and pay the damages for Kailai Company.

The court ruled that the use of a trademark as referred to in the Trademark Law shall mean the use of a trademark on products, packages or containers of products and products transaction documents, or the use of a trademark in advertisements, exhibitions and other business activities for the purpose of identifying the source of the products. The service provided by Kaidi Hotel was similar to the service of residence, restaurant and hotel reservation as approved for use of the four trademarks involved by Kailai Company. During the operation of the Kaidi hotel, the prominent use of the words and logo of "Gloria" on the roof of the hotel, on the roof of the canopy, on the background wall of the reception desk in the lobby, on the brochure, on the signboard, on the hotel's daily necessities, and on the hotel's reserved webpage, which indicates the source of service and constitutes trademark use. Upon comparison, the prominent use of the characters and logo of "Gloria" by Kaidi Hotel during its operation by the said characters and logo were similar to the four trademarks of Kailai Company, which would easily cause confusion or misidentification of the relevant public with respect to the service source. Therefore, the act involved by Kaidi Hotel infringed upon Kailai Company's exclusive right to use the registered trademarks.

Source: Beijing IP Court

### **擅将“黑马”与“程序员”的组合词汇设为搜索关键词构成侵权**

北京知识产权法院就江苏传智播客教育科技股份有限公司（下称“传智播客公司”）与北京千锋互联科技有限公司（下称“千锋公司”）侵害商标权及不正当竞争纠纷案作出二审判决，认定千锋公司的被诉行为已经构成商标侵权。

法院认为，传智播客公司作为涉案商标一的被许可使用人和涉案商标二的商标权人，其注册商标权应当依法予以保护。千锋公司在百度搜索、360搜索中设置搜索关键词“黑马程序员”，并在涉案网站搜索链接的标题和描述中使用“程序黑马员”“黑马培训”字样，可以起到识别服务来源的作用，属于商标性使用。千锋公司使用的“黑马程序员”“程序黑马员”“黑马培训”字样与传智播客公司涉案商标一的“黑马程序员”文字，在文字构成、呼叫、含义等方面相同或相近，已构成相同或近似商标。千锋公司搜索链接的网站内容均为教育培训类内容，其网站所宣传的服务与传智播客公司涉案商标一核定使用的“培训”服务，在服务的内容、目的、对象、方式等方面基本相同，属于同一种服务。千锋公司的行为易使相关公众在搜索“黑马程序员”时，因浏览了搜索链接标题和描述内容而访问千锋公司的网站，从而造成相关公众误认为其访问了与“黑马程序员”相关的网站，进而导致相关公众的混淆误认。

来源：北京知识产权法院

## Setting the Combination of "Dark Horse" and "Programmer" as Search Keyword Constitutes Infringement

Recently, Beijing Intellectual Property Court (Beijing IP Court) made the second-instance judgment in the trademark infringement and unfair competition dispute case, affirming that the alleged acts of defendant constituted trademark infringement.

The court held that the defendant set the search keyword "Dark Horse Programmer" in Baidu Search and 360 search, and used the words "Dark Horse Program Member" and "Dark Horse Training" in the titles and descriptions of the search links of the websites involved, which could serve the purpose of identifying the source of services, and shall be deemed as trademark use. The words "Dark Horse Programmer", "Dark Horse Program Member" and "Dark Horse Training" used by the defendant are identical or similar to the words "Dark Horse Programmer" in the plaintiff's trademark involved in this case in terms of word composition, pronunciation, meaning and other aspects and have constituted identical or similar trademarks. The search links provided by the defendant were all education and training contents, and the service promoted by the defendant's websites was basically the same as the "training" service used by the plaintiff upon verification of the trademark involved I in terms of service content, purpose, subject, method and other aspects; therefore, they belonged to the same service. The defendant's acts made it easy for the relevant public to visit the defendant's website by browsing the title and description of the search link when searching for "Dark Horse Programmer", thus causing the relevant public to misunderstand that they had visited a website related to "Dark Horse Programmer".

Source: Beijing IP Court

## 河南高院：关于著作权法所保护的美术作品认定

河南省高级人民法院就葛赞与开封市金维康野生植物开发有限公司、开封市金包府酒业有限公司（原审被告）等著作权权属、侵权纠纷案作出二审判决，维持原判。原审法院判决责令

被告立即停止生产、销售、许诺销售侵犯原告葛赞“云雾冰菊酒瓶”著作权的行为并赔偿经济损失30万元。

法院认为，关于著作权法所保护的美术作品认定，需要考量其是否具备作为美术作品的独创性和审美意义。实用艺术作品作为美术作品，本身既具有实用性，又具有艺术性，但实用功能不受著作权法保护，作为实用艺术作品受到保护的仅仅在于其艺术性，即保护实用艺术作品上具有独创性的艺术造型或艺术图案。作为受著作权法保护的实用艺术作品，应满足其实用性与艺术性可以相互分离。如果不能分离，则不能成为受著作权法保护的美术作品。

本案中，就涉案酒瓶和包装箱整体而言，虽然在构图、文字、色彩等方面体现了一定的个人设计，但其整体的艺术性尚未达到美术作品所要求的独创性和审美意义。酒瓶和包装箱整体更突出其实用性，且与体现艺术性的山水画图案、文字等无法分离，故酒瓶整体和包装箱均不属于受著作权法保护的美术作品。但是，“云雾冰菊”酒瓶和包装箱的外观结合了绘画和文字特征，根据在案证据证明，酒瓶瓶身和包装箱上印制的山水画图案系葛赞创作，具有一定的独创性和审美意义，葛赞对该山水画美术作品享有著作权，依法应当受到保护。经比对，被诉侵权酒瓶与葛赞“云雾冰菊”酒瓶瓶身形状、颜色、构图相似，且被诉侵权酒瓶上印制的蓝白黑相间山水画与葛赞所绘并印制在“云雾冰菊”酒瓶上的山水画的构图、颜色都构成近似，侵犯了葛赞对于其山水画美术作品的著作权。

来源：河南高院

## **Judgment of the Henan High People's Court on Works of Fine Art under the Copyright Law**

The Henan High People's Court has made the judgment of second instance and upheld the original judgment on a copyright ownership and infringement dispute. The court of original instance ordered the defendant to stop manufacturing, sale and offering to sell the copyright of the plaintiff and pay the damages of RMB300,000.

The court held that the determination of works of art protected by the copyright law needs to consider whether they have the originality and aesthetic significance as works of art. As a work of art, a work of applied art has both practicality and artistry, but its practical function is not protected by the copyright law. As a work of applied art, it is only protected by its artistry, that is, to protect the original artistic forms or patterns on the work of applied art. As a work of applied art protected by the copyright law, its practicality and artistry can be separated from each other. If it cannot be separated, it cannot become a work of art protected by copyright law.

In this case, in terms of the wine bottles and packaging cases involved, although they embody certain design in terms of composition, text, color, etc., their overall artistry has not yet reached the originality and aesthetic significance required by the art works. The wine bottle and the packaging box are more practical as a whole, and cannot be separated from the landscape painting patterns and characters that embody the artistry. Therefore, the wine bottle and the packaging box are not art works protected by copyright law. However, the appearance of the "cloud and ice chrysanthemum" wine bottle and the

packaging box combined the characteristics of painting and writing. According to the evidence in the case, the landscape painting patterns printed on the wine bottle body and the packaging box were created by the plaintiff, with certain originality and aesthetic significance. The plaintiff has the copyright of the landscape painting art works, which shall be protected according to law.

Source: [Henan High People's Court](#)

## 中国厂商以专利侵权为由起诉国际液晶显示巨头，索赔6000万元

近日，液晶显示领域又发生了一起高额专利诉讼。江苏和成显示科技有限公司（下称“和成显示”）以专利侵权为由起诉日本DIC株式会社在中国的两个子公司，索赔金额高达6000万元。据悉，和成显示成立于2002年，是一家专注于显示相关材料的研发和产业化的中国高新技术企业。DIC株式会社是一家以印刷油墨、颜料、合成树脂等精细化学品为主的综合性化学品企业，其涉诉的两家子公司的事业内容涉及液晶材料的研发、生产和销售。此前，和成显示曾就DIC株式会社所持有的“液晶显示元件”专利提出无效宣告请求，国家知识产权局认为，该发明专利的权利要求1-7不具有创造性，宣告全部无效。和成显示近日表示，该案已经在南京市中级人民法院立案。

来源: [iprdaily.cn](#)

## Chinese Manufacturers Sues International LCD Giants for Patent Infringement, Claiming Damages of RMB 60 Million

Recently, a high-value patent lawsuit occurred in the field of LCD. Jiangsu Hecheng Display Technology Co., Ltd. (Hecheng Display) sued two subsidiaries of Japan DIC Co., Ltd. in China for patent infringement, with a claim amount of up to RMB 60 million. It is reported that Hecheng Display, founded in 2002, is a Chinese high-tech enterprise focusing on the research and development and industrialization of display-related materials. DIC Co., Ltd. is a comprehensive chemical enterprise focusing on printing ink, pigment, synthetic resin and other fine chemicals. Its two subsidiaries involved in the lawsuit are engaged in the research, development, production and sales of liquid crystal materials. Previously, Hecheng Display filed a request for invalidation of the patent for "liquid crystal display element" held by DIC Co., Ltd. The China National Intellectual Property Administration considered that claims 1-7 of the invention patent were not creative and declared all invalid. Hecheng Display said recently that the case had been filed in the Nanjing Intermediate People's Court.

Source: [Jiwei](#)

## 美国专利商标局宣布启动新的知识产权标识符工具

近日，美国专利商标局（USPTO）宣布启动新的知识产权（IP）标识符工具。这种用户友好的虚拟资源专为不太熟悉知识产权的人群设计，使用户能够了解拥有的知识产权以及支持和推进

其业务、发明或品牌所需的知识产权保护。USPTO鼓励正在考虑创业或试图发展企业的个人利用这个工具。当前，IP标识符由两个模块组成：基本IP标识符、高级IP标识符；第三个模块“管理IP资产”目前正在开发中。

来源：中科院知识产权信息

## **USPTO Announced the Launch of a New Intellectual Property Identifier Tool**

Recently, the United States Patent and Trademark Office (USPTO) announced the launch of a new intellectual property (IP) identifier tool. This user-friendly virtual resource is designed for people who are not familiar with intellectual property, so that users can understand the intellectual property they own and the intellectual property protection required to support and promote their business, invention or brand. USPTO encourages individuals who are considering starting a business or trying to develop a business to use this tool. Currently, IP identifier consists of two modules: basic IP identifier and advanced IP identifier; The third module "Managing IP assets" is currently under development.

Source: CASIP

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