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立方竞争法周报 Weekly Competition Law News

二十届三中全会：强化反垄断和反不正当竞争

2024年7月18日，党第二十届中央委员会审议通过《中共中央关于进一步全面深化改革、推进中国式现代化的决定》（“《决定》”）。《决定》一共提出了300多项重要改革举措，其中包括加强公平竞争审查约束，强化反垄断和反不正当竞争，清理和废除妨碍全国统一市场和公平竞争的各种规定和做法。（[查看更多](#)）

Resolution of 20th CPC Central Committee Session: Strengthening Anti-Monopoly and Anti-Unfair Competition

On July 18, 2024, the 20th CPC Central Committee deliberated and adopted the *Resolution of the CPC Central Committee on Further Comprehensively Deepening Reform and Advancing China's Modernization* (“Resolution”). The *Resolution* proposed more than 300 important reform initiatives in total, including strengthening the fair competition review constraints, reinforcing anti-monopoly and anti-unfair competition, and cleaning up and abolishing various regulations and practices that impede the national unified market and fair competition. ([More](#))

湖南省征集全省水电气行业垄断线索

2024年7月至10月，湖南省面向全省征集企业用水用电用气协议中凭借垄断地位直接、间接或者变相指定企业相关工程的设计、施工、设备材料供应单位等指定交易行为，强制搭售或附加不合理交易条件行为，没有正当理由，停止供水供电供气等拒绝交易行为，违反政府定价、政府指导价计费，重复收费，收取不合理费用等价格违法行为以及其他“霸王条款”行为的线索。（[查看更多](#)）

Hunan Province Solicits Clues on Monopoly in the Water, Electricity, and Gas Industries

From July to October 2024, Hunan Province will solicit clues from the province on restrictive trading in enterprises' water, electricity and gas supply agreements such as directly, indirectly or in disguise, designating the design, construction, or equipment material supply units of the enterprises' relevant project; tying or imposing unreasonable trading conditions; refusing to trade such as stopping water, electricity, or gas supply without justifiable reasons; illegal pricing behaviours such as charging against government pricing and government guidance price, double charging, charging unreasonable fees and other unfair terms and conditions. ([More](#))

江苏省市监局：2023年核查行政性垄断线索20件，对600余家企业开展反垄断合规辅导

近日，江苏省市场监督管理局（“江苏省市监局”）对江苏省政协一项提案作出答复，提到江苏省市监局开展行政性垄断专项执法，2023年核查行政性垄断举报线索20件，指导各地规范共

享单车运营，保障民营经济平等参与市场竞争；对医药、公用事业、行业协会等领域600余家企业开展合规辅导，引导企业健全合规管理体系。 ([查看更多](#))

Jiangsu AMR: Verifies 20 Administrative Monopoly Clues in 2023, Conducts Anti-Monopoly Compliance Instructions for More than 600 Enterprises

Recently, the Jiangsu Provincial Administration for Market Regulation (“Jiangsu AMR”) responded to a proposal made by the Jiangsu Provincial Committee of the Chinese People’s Political Consultative Conference, mentioning that the Jiangsu AMR carried out special law enforcement of administrative monopoly, verified 20 administrative monopoly reporting clues in 2023, guided local governments to regulate shared bicycle operations, guaranteed equal participation of the private economy in market competition; conducted compliance instructions for more than 600 enterprises in the sectors of pharmaceuticals, public utilities and industry associations, and guided enterprises to improve their compliance management systems. ([More](#))

欧盟普通法院判决字节跳动败诉，维持欧盟委员会“守门人”认定

2024年7月17日，欧盟普通法院（General Court）判决字节跳动在其对欧盟委员会提起的诉讼中败诉。欧盟普通法院判决维持了欧盟委员会对字节跳动属于《数字市场法》中“守门人（gatekeeper）”的认定，并基于字节跳动的欧盟用户数量巨大且近年呈现高速增长态势，认定字节跳动对欧盟内部市场有显著影响。欧盟普通法院认为欧盟委员会适用的证据标准正确，驳回字节跳动关于辩护权被侵犯及违反平等待遇的论点。 ([查看更多](#))

EU General Court Rules against Bytedance, Upholding European Commission’s “Gatekeeper” Finding

On July 17, 2024, the General Court of the European Union (“General Court”) ruled against Bytedance in its action against the European Commission. The General Court upheld the European Commission’s finding that Bytedance was a “gatekeeper” pursuant to the Digital Markets Act, and found that Bytedance had a significant impact on the EU internal market based on the large number of Bytedance’s EU users and its rapid growth in recent years. The General Court found that the European Commission had applied the correct legal standard of proof and rejected Bytedance’s arguments of infringement of rights of defence and breach of equal treatment. ([More](#))

涉嫌违反垄断法，Visa日本分部遭JFTC现场检查

2024年7月17日，据媒体报道，日本公平交易委员会（Japan Fair Trade Commission, “JFTC”）对Visa日本分部（Visa Worldwide Japan Co.）开展现场检查。Visa涉嫌向不使用其信用授权系统的信用卡公司收取更高的费用，迫使这些公司停止使用其竞争对手的信用授权系统，上述行为可能构成附加不合理交易条件的滥用市场支配地位行为。除日本分部以外，JFTC还计划对Visa的新加坡分部与美国总部开展调查。 ([查看更多](#))

Visa Japan Unit Undergoes On-Site Inspection by JFTC for Alleged Antitrust Violations

On July 17, 2024, according to media reports, the Japan Fair Trade Commission (“JFTC”) conducted an on-site inspection of the Visa Japanese unit (Visa Worldwide Japan Co). Visa is suspected of charging higher fees to credit card companies that do not that use its credit authorisation system, forcing them to stop using its competitor’s credit authorisation system, which may constitute abuse of its dominant market position by imposing unreasonable trading conditions. In addition to its Japanese unit, the JFTC plans to investigate Visa’s Singaporean unit and U.S. headquarters. ([More](#))

法国竞争管理局对法国葡萄酒供应商处以50万欧元罚款

2024年7月17日，法国竞争管理局（Autorité de la concurrence）对葡萄酒供应商SAS Distribution du Domaine d’Uby（SDU）及其母公司共同参与卡特尔，向经销商限定“Uby”系列葡萄酒最低转售价格的行为处以50万欧元（396万人民币）的连带罚款。经调查，SDU向其经销商作出含有建议价格的定价指示，监控经销商对定价指示的遵守情况，并对无视定价指示的经销商采取延迟交货的惩罚措施。（[查看更多](#)）

French Competition Authority Fines French Wine Supplier EUR 500,000

On July 17, 2024, the French Competition Authority (Autorité de la concurrence) imposed a fine of EUR 500,000 (CNY 3.96 million) on the wine supplier SAS Distribution du Domaine d’Uby (SDU), jointly and severally with its parent company for engaging in cartel by imposing minimum resale prices on distributors of the “Uby” wines. The investigation revealed that SDU gave pricing instructions containing recommended prices to its distributors, monitored their compliance with the pricing instructions and sanctioned distributors ignoring the instructions by delaying deliveries. ([More](#))

美加州联邦法院驳回谷歌地图服务反垄断集体诉讼

2024年7月15日，据媒体报道，加州联邦法院驳回了一起指控谷歌利用垄断力量支配GPS导航市场的反垄断集体诉讼。Dream Big Media等公司于2022年起诉谷歌，称谷歌以搭售协议强迫用户使用捆绑式服务，并提高了数字地图产品的成本。原告声称谷歌的服务条款禁止购买其地图、路线或地点API的消费者使用任何其他供应商提供的API。法院认为，没有证据表明谷歌通过服务条款或其他手段禁止谷歌地图API的消费者基于使用路线和地点API的需要而转向谷歌的竞争对手，因此驳回原告起诉。（[查看更多](#)）

US California Federal Court Dismisses Antitrust Class Action Lawsuit over Google Maps Services

On July 15, 2024, according to media reports, a California federal court dismissed an antitrust class action alleging that Google used monopoly power to dominate the GPS navigation market. Dream Big Media and other companies sued Google in 2022, alleging that Google forced users into a bundle of services with a tying agreement and raised the costs of digital mapping products. The plaintiffs claimed that Google’s terms of service prohibited consumers who purchased its Maps, Routes, or Plac-

es APIs from using APIs offered by any other provider. The court held that there was no evidence that Google, through its terms of service or other means, prohibited consumers of Google Maps APIs from switching to Google's competitors for their routes and places API needs, and dismissed the plaintiffs' complaint. ([More](#))

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

《数据确权授权的流程与技术规范》团体标准暨首批试点发布

2024年7月15日，数据确权授权标准委员会于2024全球数字经济大会期间发布《数据确权授权的流程与技术规范》（“《规范》”）团体标准暨首批试点。《规范》界定国家秘密和军事数据以外数据的数据确权授权场景、流程、技术以及协议等内容，并在附件中提供数据授权协议的范本。《规范》明确数据确权授权流程中的主要节点，包括权益主体确认、数据来源合法性审核、实名认证、协议签署、数据确权授权存证等。（[查看更多](#)）

Group Standard Process and Technical Specification for Data Rights Confirmation and Authorisation and Its First Batch of Pilot Units Released

On 15 July 2024, the Data Rights Confirmation and Authorisation Standards Committee released the group standard *Process and Technical Specification for Data Rights Confirmation and Authorisation* (“*Standard*”) and the first batch of pilot units during the 2024 Global Digital Economy Conference. The *Standard* defines the scenarios, process, technology and agreement of data rights confirmation and authorisation for data other than state secrets and military data, and provides a data confirmation and authorisation agreement template in the annex. The *Standard* specifies the main nodes in the data rights confirmation and authorisation process, including confirmation of the subject of interests, data source legality audit, real-name authentication, agreement signing, perseverance of data rights confirmation and authorisation evidence, and so on. ([More](#))

全国网安标委发布《数据安全技术 个人信息保护合规审计要求（征求意见稿）》

2024年7月12日，全国网络安全标准化技术委员（“全国网安标委”）会发布《数据安全技术 个人信息保护合规审计要求（征求意见稿）》，规定依据《个人信息保护法》开展个人信息保护合规审计的审计原则、审计总体要求，补充对收集个人信息最小必要要求和针对未成年人个人信息保护的审计内容，并在附件中提供个人信息保护合规审计流程、审计证据、审计内容和方法、审计底稿模板、审计报告模板以供参考。（[查看更多](#)）

TC260 Issues Data Security Technology Personal Information Protection Compliance Audit Requirements (Exposure Draft)

On 12 July 2024, the National Information Security Standardisation Technical Committee (“TC260”) issued the *Data Security Technology Personal Information Protection Compliance Audit Requirements*

(*Exposure Draft*), which stipulates the audit principles and general requirements for conducting personal information protection compliance audits in accordance with the *Personal Information Protection Law*, supplements the minimum necessary requirements for the collection of personal information and the audit contents for the protection of personal information of juveniles, and provides in the annex for reference the personal information protection compliance audit process, audit evidence, audit contents and methods, audit draft template, and audit report template. ([More](#))

山西发布《数据知识产权登记管理办法（试行）》

近日，山西省市场监督管理局等10部门联合印发《数据知识产权登记管理办法（试行）》（“《办法》”）。《办法》界定数据知识产权登记对象，明确数据集合在数据知识产权登记前应当进行公证存证或运用区块链等可信技术进行存证，列明数据知识产权登记的形式审查中不予登记的几种情况，并规定数据知识产权登记机构应建立数据知识产权登记档案，公开登记公告信息，提供登记公告信息检索等服务。（[查看更多](#)）

Shanxi Issues Measures for the Administration of Data Intellectual Property Rights Registration (for Trial Implementation)

Recently, the Shanxi Provincial Administration for Market Regulation and other 9 departments jointly issued the *Measures for the Administration of Data Intellectual Property Rights Registration (for Trial Implementation)* (“*Measures*”). The *Measures* defines the objects of data intellectual property rights registration, clarifies that data collections should be preserved for evidence by notarization or using trusted technologies such as blockchain before data intellectual property rights is registered, sets out several situations that are not registrable in the formal review of data intellectual property rights registration and instructs to set up data intellectual property rights registration archives, disclose the information of registration and provide services such as searching for information of registration. ([More](#))

财政部 税务总局发布关于节能节水、环境保护、安全生产专用设备数字化智能化改造企业所得税政策

2024年7月12日，财政部、税务总局发布关于节能节水、环境保护、安全生产专用设备数字化智能化改造企业所得税政策，规定企业在2024年1月1日至2027年12月31日期间发生的属于企业所得税优惠目录的专用设备的数字化、智能化改造投入，不超过该专用设备购置时原计税基础50%的部分，可按照10%比例抵免企业当年应纳税额。企业当年应纳税额不足抵免的，可以向以后年度结转，但结转年限最长不得超过五年。（[查看更多](#)）

MoF and SAT Issue Enterprise Income Tax Policy on Digital and Intelligent Transformation of Specialized Equipment for Energy and Water Conservation, Environmental Protection and Safety Production

On 12 July 2024, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) issued the Enterprise Income Tax Policy on the digital and intelligent transformation of specialized equipment for energy and water conservation, environmental protection and safe production, stipulating that the inputs for the digital and intelligent transformation of specialized equipment that fall into

the enterprise income tax preferential directory from 1 January 2024 to 31 December 2027, which does not exceed 50% of the original taxable base at the time of its acquisition can be credited against 10% of the enterprise's tax payable for the year. If the tax payable by the enterprise in the current year is not sufficient for the credit, it can be carried forward to the following years, but the maximum number of years to carry forward shall not exceed five years. ([More](#))

审计署称利用政务数据牟利成为违反财经纪律的“新苗头”

近日，审计署发布《中央部门单位2023年预算执行等情况审计结果》，明确将利用政务数据牟利列为违反财经纪律的行为。一些部门存在监管不严的情况，所属的7家系统运维单位利用政务数据违规经营收费，未经审批自定数据内容、服务形式和收费标准，依托13个系统数据对外收费2.48亿元。 ([查看更多](#))

National Audit Office Says Use of Government Data for Profit Has Become “New Trend” in Violating Financial Discipline

Recently, the National Audit Office released the *Audit Results of the Budget Execution and Other Situations of Central Department Units in 2023*, which explicitly lists the use of government data for profit-making as a violation of financial discipline. There is lax supervision in some departments, and seven subordinate system operation and maintenance units used government data for operation and charged illegally, and set their own data content, service forms and charging standards without approval, relying on the data of 13 systems to charge the public CNY 248 million. ([More](#))

韩国发布《处理人工智能（AI）开发和服务中“公开数据”的指南》

2024年7月17日，韩国个人信息保护委员会（Personal Information Protection Commission, PIPC）发布《处理人工智能（AI）开发和服务中“公开数据”的指南》（“《指南》”），《指南》明确将公开数据用于AI训练和AI服务开发，个人数据处理者必须满足目的的合法性、数据处理的必要性以及个人数据处理者和数据主体之间相关利益的评估。此外，PIPC还提出保障相关数据主体权利的准则和途径以及人工智能企业和首席隐私官对于AI开发的重要作用。 ([查看更多](#))

Korea Issues Guidelines on Processing Publicly Available Data for AI Development and Services

On 17 July 2024, the Personal Information Protection Commission of Korea (PIPC) issued the *Guidelines on Processing Publicly Available Data for AI Development and Services* (“**Guidelines**”). The *Guidelines* clarifies that for the use of publicly available Data for AI training and AI service development, the personal data processor must satisfy the legitimacy of the purpose, the necessity of data processing, and the assessment of relevant interests among the personal data processors and data subjects. In addition, PIPC proposes guardrails and ways to safeguard the rights of relevant data subjects and the important role of AI companies and chief privacy officers for AI development. ([More](#))

法国CNIL发布欧盟《人工智能法案》适用问答

2024年7月12日，法国国家信息自由委员会（CNIL）发布关于《欧洲人工智能法》（“《人工智能法》”）适用的相关问答，介绍《人工智能法》的基本情况以及《人工智能法》和《通用数据保护条例》（GDPR）的共同适用问题。CNIL列明《人工智能法》和GDPR的适用场景、区别，明确《人工智能法》取代GDPR的某些规定，但并不取代GDPR的要求，而是在遵守GDPR的基础上提出更具体的要求，而且在透明度原则和文件要求等方面，《人工智能法》和GDPR具有互补性。（[查看更多](#)）

France's CNIL Publishes Q&A on Application of EU's AI Act

On 12 July 2024, the French National Commission on Freedom of Information (Commission nationale de l'informatique et des libertés, CNIL) published questions and answers related to the application of the European Artificial Intelligence Act (“AI Act”), introducing the basic information of the AI Act as well as the joint application of the AI Act and the General Data Protection Regulation (“GDPR”). The CNIL sets out the application scenarios and differences between the AI Act and the GDPR, and clarifies that the fact that AI Act replaces certain provisions of the GDPR, does not mean it replaces the requirements of the GDPR, but rather imposes more specific requirements based on compliance with the GDPR, and that the AI Act and the GDPR are complementary in terms of the principle of transparency and the documentation requirements. ([More](#))

知识产权 Intellectual Property

国家知识产权局关于《专利开放许可实施纠纷调解工作办法（试行）》的公告

2024年7月15日，国家知识产权局发布公告，为了深入贯彻《中华人民共和国专利法》第五十二条的规定，宣布与公告发布当日起施行《专利开放许可实施纠纷调解工作办法（试行）》。《办法》共有五章三十条，明确了专利开放许可实施纠纷调解的案件受理、案件调解、结案等方面的内容。第一章是总则，明确了专利开放许可实施纠纷调解的意义、法律依据和工作原则；第二章是案件受理，明确了专利开放许可实施纠纷调解申请的受理条件、应提交的文件材料等；第三章是案件调解，明确了调解程序的要求，当事人的权利与义务，以及惩戒措施等；第四章是结案，明确了签订调解协议书的情形，调解书生效条件等内容；第五章是附则。

来源：国家知识产权局

China National Intellectual Property Administration Issues Measures for Mediation of Disputes over the Implementation of Patent Open Licences (for Trial Implementation)

On 15 July, China National Intellectual Property Administration (CNIPA) issued a notice, announcing that the Measures for Mediation of Disputes over the Implementation of Open Licensing of Patents (for Trial Implementation) would come into force on the same day as the notice was issued, which is aimed to implement the provisions of Article 52 of the Patent Law of the People's Republic of China in an in-

depth manner. There are five chapters and thirty articles in the Measures, which clearly define the case acceptance, case mediation and case closure of the mediation of disputes over the implementation of patent open licences. Chapter I is the General Provisions, clearly defines the significance, legal basis and working principles of mediation of disputes over the implementation of patent open licences; Chapter II is the acceptance of cases, clearly defines the conditions for acceptance of applications for mediation of disputes over the implementation of patent open licences and the documents and materials that should be submitted, etc.; Chapter III is the mediation of cases, clearly defines the requirements of mediation procedures, the rights and obligations of the parties and the disciplinary measures, etc.; Chapter IV is the closure of cases, clearly defines the circumstances under which the agreement is signed and the effective date of the agreement. Chapter IV is the conclusion of the case, specifying the circumstances of the signing of the conciliation agreement, the conditions for the entry into force of the conciliation agreement, etc.; Chapter V is the bylaws.

Source: [China National Intellectual Property Administration](#)

最高法对拒不配合保全公司进行100万元罚款

近日，最高人民法院在审理一起侵害计算机软件著作权纠纷时，查明上诉人上海某某建筑设计咨询有限公司（以下简称某某公司）存在毁灭重要证据妨碍案件审理，以及拒不履行人民法院生效证据保全裁定等妨碍民事诉讼的行为。

一审程序中，某某公司拒不配合证据保全，一审法院两次发现某某公司员工在管理人员授意下持续删除涉案软件，最终一审法院采取直接清点计算机数量的措施实施了证据保全。某某公司的行为，严重妨碍正常的民事诉讼秩序，导致人民法院无法准确查明某某公司安装被诉侵权软件的具体数量等案件关键事实，根据《中华人民共和国民事诉讼法》对某某公司罚款100万元。

来源：最高人民法院

Supreme People's Court Imposes RMB 1 Million fine on Company for Refusing to Co-operate with Preservation Order

Recently, the Supreme People's Court (SPC), in a computer software copyright infringement case, found that the appellant, Shanghai XX Architectural Design & Consulting Co., Ltd (Defendant), had obstructed civil proceedings by destroying important evidence to impede the trial of the case, as well as by refusing to comply with the court's binding order on the preservation of evidence.

In the first instance, Defendant refused to cooperate with the evidence preservation order of the court, and the court of first instance found twice that employees of the Defendant, with authorisation from management of Defendant, have been deleting the alleged infringing software involved in the case, and the court of first instance decided to implement the evidence preservation according to the number of the computers at the site. The acts of Defendant seriously impeded the process of civil litigation, resulting in the court being unable to accurately ascertain the key facts of the case, such as the quantity of the infringing software installed by Defendant, and a fine of RMB 1,000,000 was imposed on Defendant according to the Civil Procedure Law of the People's Republic of China.

Source: [Supreme People's Court](#)

北京知产法院审结全国首例涉已获数据知识产权登记证书的数据竞争案件

近日，北京知识产权法院审结一起数据集不正当竞争纠纷案，驳回了上诉人的请求，维持一审原判。

2021年，数某某公司对隐某公司以侵害数据财产权、著作权和商业秘密以及构成不正当竞争行为提起诉讼。一审法院认为，数某某公司的数据集不具有独创性，不受著作权保护，但属于商业秘密，可适用商业秘密相关法律规定予以保护。

隐某公司上诉至北京知识产权法院，北京知产法院认为，第一，由于数据尚未被认定为绝对财产权的一种，数某某公司无权依据民法典之规定类推绝对财产权保护；其次，北京知产法院同样认为涉案数据集不构成著作权法保护的汇编作品；第三，涉案数据集由于已被数某某公司进行过主动公开而丧失秘密性，不构成商业秘密；第四，该数据集虽不构成商业秘密，但由于其附加的实质性投入为数据添附了商业价值，受到反不正当竞争法保护，同时隐某公司的被诉行为有违相关行业的诚信原则和商业道德，构成了2019年反不正当竞争法第2条规定的反不正当竞争行为。

来源：北京知识产权法院

Beijing Intellectual Property Court: Concluding Nation's First Data Competition Case Involving a Certificate of Registration of Obtained Data Intellectual Property Rights

Recently, the Beijing Intellectual Property Court concluded a data set unfair competition dispute case, rejected the appellant's request and upheld the judgement of the first instance.

In 2021, Plaintiff filed a lawsuit against Defendant for infringement on data property rights, copyrights and trade secrets, as well as constituting unfair competition. The court of first instance held that the dataset of Plaintiff was not original, and shall not be protected as copyright, but it could be protected as trade secret.

The Beijing Intellectual Property Court held that, firstly, as the data had not yet been recognised as a kind of absolute property right, Plaintiff shall not be entitled to analogous protection of absolute property right in pursuant to the provisions of the Civil Code; secondly, the Beijing Intellectual Property Court likewise held that the dataset in question shall not constitute a compilation work protected under the Copyright Law; thirdly, the dataset in question had lost its secrecy, and shall not constitute a trade secret, as it had already been voluntarily disclosed by the Plaintiff; ; fourth, although the dataset did not constitute a trade secret, it can be protected under the Anti-Unfair Competition Law, because its additional substantive inputs added commercial value to the data, and the alleged acts of Defendant violated the principle of good faith and business ethics of the relevant industry, and constituted an act of unfair competition as stipulated in Article 2 of the Anti-Unfair Competition Law of 2019.

Source: Beijing Intellectual Property Court

最高法知产法庭审结行为保全复议上提首案

近日，最高法知产法庭审结行为保全复议上提制度实施以来的首起申请复议案件，厘清了专利侵权案件中诉前行为保全申请的审查判断标准。

2024年6月，苏州某公司向某地中级法院申请诉前行为保全，请求北京某公司立即停止制造、销售、许诺销售侵害其公司涉案发明专利的产品。中级法院认为，北京某公司构成专利侵权的可能性较高，且在618大促期间不及时采取措施会给苏州某公司造成难以弥补的损害，具有紧迫性，裁定北京某公司应立即停止制造、销售、许诺销售被控产品。北京某公司向最高法院申请复议。最高法院审查后认为，本案的诉前行为保全不符合情况紧急的前提，苏州某公司的申请基于侵害发明专利权纠纷引发，一般并不会导致涉案专利权本身灭失或对权利价值造成不可挽回的损害；且侵权行为首次实施与该公司申请保全期间，期间也存在大促，当时并未及时提出保全申请，证明本案并不存在较强的时效性，也意味着不具有紧迫性。其次，本案的诉前行为保全也不符合一些法定要件，第一，现阶段认定侵权可能性较高的事实基础尚不清晰；第二，没有证据足以证明被控公司将显著增加苏州某公司的损害，反而可能对被控公司造成损害。

来源：最高人民法院

Supreme People's Court: Concluding the First Application for Review of Preservation of Act in a Patent Infringement Case

Recently, SPC concluded the first application for review since the implementation of the system of review of preservation of act, clarifying the standards for reviewing and judging pre-litigation applications for preservation of act in patent infringement cases.

In June 2024, a Suzhou company filed an application for pre-litigation preservation of act, requesting a Beijing company to immediately stop manufacturing, selling or promising to sell products infringing its invention patent. The court held that the likelihood of patent infringement by the Beijing company was high, and that failure to take timely measures during the 618 promotion would cause irreparable damage to the Suzhou company, and due to the urgency of the situation, the court issued order of preservation of act, ordering that the Beijing company shall immediately stop manufacturing, selling, and promising to sell the alleged infringing products.

The Beijing company applied to SPC for review of the order of Preservation of Act. After review, SPC held that the pre-litigation preservation of act in this case did not meet the condition of urgency, and that the application of the Suzhou company was based on the infringement of invention patent disputes, and generally will not lead to the loss of the patent right per se, or irreparable damage to the value of the right; and during the period of the first implementation of the alleged infringing acts, and the Suzhou company's application for preservation, there was also other big promotion incident, and Suzhou company, at that time, did not make a timely preservation application, which proves that there is no urgency in this case. Secondly, the pre-litigation preservation of act in this case also did not meet other statutory elements, such as, the factual basis for the finding of a higher likelihood of infringement at this stage was not yet clear; and, there was no sufficient evidence to prove that the Beijing company would significantly increase the damages of the Suzhou company, but instead, it might cause damages to the Beijing company.

Source: Supreme People's Court

上海法院案例：单一潜在客户的采购意向作为商业秘密获得保护，赔偿300万元

近日，上海知识产权法院审结一起侵害经营秘密、不正当竞争纠纷案。本案中，被告为原告公司员工，劳动合同中约定了保密义务。

一审法院认为，原告实际掌握的经营信息即案外人Z公司在某市地铁项目中向原告采购其产品的意向，属于原告的商业秘密。被告在原告公司工作期间掌握了涉案商业秘密，被告A公司提供的产品与原告公司涉案商业秘密内容实质相同且无合法来源，被告T公司明知所获知的涉案商业秘密归原告公司所有却使用上述信息协助履行合同，几被告共同侵害了原告公司的商业秘密。

双方不服，提起上诉。上海知识产权法院经审理认为，原告公司所主张的经营信息具有秘密性、价值性和保密性的特点，构成商业秘密。本案各被告未能提供充分证据证明其通过合法方式取得涉案商业秘密，且各被告共同侵害了原告公司的涉案商业秘密，应当向原告公司承担赔偿责任，遂判决驳回上诉，维持原判。

来源：[上海知识产权法院](#)

Shanghai Court Case: Purchase Intentions of a Single Potential Customer Can be Protected as a Trade Secret, with Damages of RMB 3 Million

Recently, the Shanghai Intellectual Property Court concluded a case of infringement of business secrets and unfair competition dispute. In this case, the Defendant 1 was an employee of the Plaintiff, and the obligation of confidentiality was agreed in the employment contract.

The court of first instance held that the business information actually held by the Plaintiff, i.e. the intention of the outsider, Company Z, to purchase its products from the Plaintiff in the metro project in a certain city, belonged to the Plaintiff's business secrets. Defendant 1, when working in the Plaintiff, obtained the trade secrets. Defendant A company, provide products which are substantially identical to that of the contents of the trade secrets involved in the case, but without legitimate source; Defendant T company, knowing that the trade secrets involved in the case belong to Plaintiff, and still use the information in the trade secret to assist in performing the contract. The court of first instance ruled that these Defendants jointly infringed on the Plaintiff's trade secrets.

Both parties appealed. Shanghai Intellectual Property Court held that the business information claimed by Plaintiff can constitute trade secrets. The Defendants failed to provide sufficient evidence to prove that they obtained the trade secrets through legitimate means, and the Defendants jointly infringed on the Plaintiff's trade secrets, the appeal court dismissed the appeal, and affirmed the original judgment.

Source: [Shanghai Intellectual Property Court](#)

厦门法院案例：出借身份帮开网店构成共同侵权

近日，厦门中院审结一起侵害商标纠纷案。涉案商标为“BOSS”商标，原告指控被告未经授权在网络店铺使用此具有极高知名度的商标。法院认为，被诉侵权商品与涉案商标核定使用商品相同，且在店铺商品信息、被诉侵权实物吊牌等位置使用的标识与“BOSS”商标构成相同。“BOSS”商标具有较高知名度，被告使用相同商标进行销售，系假冒涉案商标。被告店铺实际经营者为伍某某，开设身份信息为艾某，艾某虽并未参与实际经营，但出借身份信息开店的行为是为伍某某的侵权行为提供便利和帮助，构成共同侵权。

来源：厦门市中级人民法院

Xiamen Court Case: Lending Personal Identity to Assist Opening Online Shop Constitutes Joint Infringement

Recently, the Xiamen Intermediate Court concluded a trademark infringement case. The plaintiff accused the defendant of unauthorised use of the trademark ‘BOSS’ in its online shop, which is a highly recognised trademark. The court held that the infringing goods were the same as the goods for which the trademark was designated, and that the logos used in the shop's product information and the infringing goods' hangtags were identical to the “BOSS” trademark. The trademark ‘BOSS’ has a high reputation, and the Defendant's use of the same trademark for sales is a counterfeiting of the trademark in question. The actual operator of the Defendant's shop was Wu Moumou, and the identity information was Ai Mou. Although Ai Mou did not participate in the actual operation of the shop, the acts of lending of the personal identity information to open the shop was facilitating and assisting Wu Moumou's infringing acts, which constituted a joint infringement.

Source: Xiamen Intermediate People's Court

英格兰及威尔士上诉法院二审认为Lidl无字版商标属于恶意注册

2024年3月19日，英格兰及威尔士上诉法院对Lidl案作出二审判决，基本维持了一审的认定。

本案中，德国折扣零售商Lidl拥有使用在相关商品和服务的篮框红边黄圆商标（包含有字版与无字版），英国Tesco超市宣传和促销时使用了蓝框黄圈并附有文字的标志，Lidl以商标侵权等为由将Tesco诉至法院，Tesco反诉要求无效Lidl无字版的引证商标。

一审法院判定Tesco侵犯了Lidl的商标及著作权，并同时构成仿冒；但Lidl公司的无字版图形商标属于恶意注册，应予无效。一审法院认为，Lidl多次申请涉案无字商标，用于重合度很高的商品/服务，Lidl又没有足够证据证明善意，因此应认定为恶意注册。上诉法院在这一点上持同样意见，Lidl没有单独使用过无字版的标记，没有任何相反证据的情况下，就已经成立了“恶意”的初步证据。根据在案证据，上诉法院认为Lidl公司没有充足的证据证明自己是善意申请。

此外，上诉法院纠正了高等法院有关Tesco侵犯著作权的认定，认为Tesco并没有抄袭Lidl享有著作权的作品的“主要部分”，因此没有侵犯原告的著作权。

来源：《中华商标》

Court of Appeal of England and Wales Holding that Lidl's Wordless Version of the Trademark is Bad Faith Filing

On 19 March 2024, the Court of Appeal of England and Wales handed down its second-instance judgment in the Lidl case, largely upholding the first-instance finding.

In this case, Lidl, a German discount retailer, owned the basket-framed, red-bordered, yellow-circle trade mark (comprising a worded version and a wordless version) used in relation to the relevant goods and services, and the blue-framed, yellow-circle mark with words was used by Tesco supermarkets in the UK for publicity and promotional purposes; Lidl brought an action against Tesco on the basis of trade mark infringement, amongst other things, and Tesco counter-claimed for invalidation of the wordless version of the cited trade mark of Lidl.

The Court of First Instance ruled that Tesco had infringed Lidl's trade mark and copyright and also constituted counterfeiting; however, Lidl's wordless version of the pictorial trade mark was registered in bad faith and should be invalidated. The Court of First Instance held that Lidl's repeated applications for the wordless trade mark in question for goods/services with a high degree of overlap, and Lidl's lack of sufficient evidence of bona fide intent, warranted a finding of bad faith registration. The Court of Appeal was of the same view on this point, that Lidl had established a prima facie case of 'bad faith' in the absence of any evidence to the contrary, as Lidl had not used the wordless version of the mark on its own. On the basis of the evidence in the case, the Court of Appeal held that Lidl did not have sufficient evidence of a bona fide application.

In addition, the Court of Appeal corrected the High Court's finding of copyright infringement by Tesco, holding that Tesco had not infringed the plaintiff's copyright as it had not copied a 'substantial part' of Lidl's copyrighted work.

Source: [China Trademarks](#)

Hoccer与Match Group长达五年的专利纠纷告一段落

被告之一Match Group公司（Tinder母公司）运营的Tinder与Hoccer功能相似，是一个基于位置、由应用程序驱动的约会网站。2019年，Hoccer就其EP 2454894专利的德国部分提起侵权诉讼，被告包括美国Match Group公司和三家欧洲公司。

慕尼黑地方法院以被告之一MTCH未出席侵权听证会为由作出“缺席判决”，并颁布禁令，禁止Tinder在德国运营，MTCH提供650000欧元保证金，请求暂停禁令，慕尼黑法院批准。同时MTCH对专利提起了无效诉讼，慕尼黑地方法院驳回Hoccer的两起诉讼，认定Tinder未侵犯Hoccer专利。Hoccer向慕尼黑高级法院提出上诉，至今搁置，后因MTCH在联邦专利法院的无效诉讼胜诉，法院裁决Hoccer必须撤回其就高级法院的上诉。这预示着Hoccer与Match Group长达五年的专利纠纷告一段落。

来源: [JUVE Patent](#)

Patent Dispute between Hoccer and Match Group of Five Years is Coming to an End

One of the defendants, Match Group, Inc. (Tinder's parent company), operates Tinder, a location-based, app-driven dating site with similar functionality to Hoccer. In 2019, Hoccer filed an infringement lawsuit over the German portion of its EP 2454894 patent against Match Group, Inc. in the U.S. and three European companies.

The Munich District Court issued a 'default judgment' against one of the defendants, MTCH, for failing to appear at an infringement hearing, and issued an injunction prohibiting Tinder from operating in Germany, with MTCH providing a bond of €650,000 and requesting a stay of the injunction, which was granted by the Munich court. At the same time, MTCH filed an invalidation lawsuit against the patent, and the Munich District Court dismissed both of Hoccer's lawsuits, finding that Tinder did not infringe Hoccer's patent. Hoccer filed an appeal with the Munich Higher Court of Justice, which has so far been held in abeyance, and then ruled that Hoccer had to withdraw its Higher Court of Justice appeal because MTCH won the invalidation lawsuit in the Federal Patent Court. This signals the end of a five-year patent dispute between Hoccer and Match Group.

Source: [JUVE Patent](#)

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