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立方竞争法周报 Weekly Competition Law News

市场监管总局召开2024年反垄断工作会议

2024年2月29日，国家市场监督管理总局（“市场监管总局”）在广东东莞召开全国反垄断工作会议。会议认真落实全国市场监管工作会议要求，总结2023年反垄断工作，部署2024年重点任务。会议指出，2023年全年共查处垄断协议、滥用市场支配地位案件27件，罚没金额21.63亿元；查处滥用行政权力排除、限制竞争案件39件；审结经营者集中797件。会议强调，在2024年要深入开展整治市场分割、地方保护突出问题，维护公平竞争市场秩序专项行动。纵深推进民生领域反垄断执法专项行动。切实做好互联网平台反垄断监管，促进平台经济有序竞争创新发展。持续提升经营者集中审查质效，增强经济活跃度，促进要素资源合理流动和高效配置。

[\(查看更多\)](#)

SAMR Holds 2024 Anti-Monopoly Work Conference

On February 29, 2024, the State Administration for Market Regulation (“SAMR”) held the National Anti-Monopoly Work Conference in Dongguan, Guangdong. The conference conscientiously implemented the requirements of the National Market Regulation Work Conference, summarized the anti-monopoly work in 2023 and deployed key tasks for 2024. The conference pointed out that in 2023, a total of 27 cases of monopoly agreements and abuses of market dominant positions were investigated and dealt with, with a fine of CNY 2.163 billion; 39 cases of abuse of administrative power to eliminate or restrict competition were investigated and dealt with; 797 cases of concentration of undertakings were concluded. The conference emphasized that in 2024, the SAMR will carry out special actions to rectify prominent problems of market segmentation and local protectionism, and maintain the order of a fair competition market; deeply promote the special anti-monopoly law enforcement actions in the field of people’s livelihood; effectively carry out anti-monopoly regulation of Internet platforms and promote orderly competition and innovative development of the platform economy; continue improving the quality and efficiency of review of concentration of undertakings to enhance economic mobility and promote the reasonable flow and efficient allocation of market factors and resources. [\(More\)](#)

最高法知识产权法庭在年度裁判要旨摘要中发布九起垄断案件

2024年2月23日，最高人民法院（“最高法”）发布《最高人民法院知识产权法庭裁判要旨摘要（2023）》，以集中展示最高法知识产权法庭在技术类知识产权和垄断案件中的司法理念、审理思路和裁判方法，涉及专利授权确权案件，专利权属、侵权案件，植物新品种案件，技术秘密案件，垄断案件，计算机软件案件，技术类知识产权合同案件，程序性案件。垄断案件涉及的问题包括垄断协议固定价格的认定，轴辐协议的认定，相关技术市场的界定以及市场力量的认定，下游市场间接竞争约束对中间投入品经营者市场支配地位认定的影响，不公平高价行为的认定和规制，知识产权行使与排除限制竞争效果认定，拒绝交易行为的停止侵害责任承担方式，拒绝交易行为的损害赔偿计算，仅诉请确认特定行为构成垄断时的处理。 [\(查看更多\)](#)

IP Court of SPC Releases Nine Monopoly Cases in Annual Summary of Judgments

On February 23, 2024, the Supreme People's Court (SPC) issued the *Summary of Judgments of the Intellectual Property Court (IP Court) of the SPC (2023)* to intensively demonstrate the judicial philosophy, trial ideas and adjudication methods of the IP Court of the SPC in technical intellectual property and monopoly cases, involving patent authorization and confirmation cases, patent ownership and infringement cases, new varieties of plants cases, technical secret cases, monopoly cases, computer software cases, technical intellectual property contract cases and procedural cases. Issues involved in the monopoly cases include the determination of price fixing in monopoly agreements, the determination of hub-and-spoke agreements, the definition of relevant technology markets and the determination of market power, the impact of indirect competition restraints in the downstream market on the determination of the market dominance of intermediate input undertakings, the identification and regulation of unfairly high prices, the identification of the effects of eliminating or restricting competition when exercising intellectual property rights, the specific liability for cessation of infringement of refusal to deal, the calculation of damages for refusal to deal, and handling of cases which only requested to confirm that a specific behaviour constitutes a monopoly. ([More](#))

德国联邦卡特尔局主办第22届国际竞争会议

2024年2月29日，德国联邦卡特尔局（Bundeskartellamt）发布公报，宣布于2024年2月29日至3月1日在柏林主办国际竞争会议（International Conference on Competition）。该会议是竞争政策和竞争法执行方面最著名的国际活动之一，今年预计有来自60多个国家的350多名参与者出席。本次会议共分为六场讨论会，分别讨论了竞争法和竞争政策对更广泛的政治局势带来的挑战的应对措施，如何应对与人工智能模型和应用相关的反竞争动态以及政府干预所涉及的风险，美国反垄断法律适用的动态以及以往立法得失，与竞争（尤其是数字经济领域的竞争）相关的挑战以及对滥用行为的规制目标，合并监管的当前趋势以及如何解决当前监管方式尚未充分应对的案件的审查问题，人工智能和相关技术可在多大程度上用于支持竞争法执法。（[查看更多](#)）

German Federal Cartel Office Hosts 22nd International Competition Conference

On February 29, 2024, the German Federal Cartel Office (Bundeskartellamt) issued a notice, announcing that it would host the International Competition Conference in Berlin from February 29 to March 1, 2024. The conference is one of the most prestigious international events in competition policy and competition law enforcement, with more than 350 participants expected to attend this year from more than 60 countries. The conference was divided into six panels, which separately examined the responses of competition law and competition policy to the challenges of the wider political situation; how to counter anti-competitive developments related to AI models and applications and the risks involved in government intervention; the developments in applying the law in the United States and the successes and setbacks of previous legislative initiatives; both the challenges related to competition, particularly in the digital economy, and the objectives of abuse control; the current trends in merger control to address the examination of cases that were not yet adequately covered by the current options available; the extent to which artificial intelligence and related technologies can be used to support competition law enforcement. ([More](#))

欧盟对国际航空以4亿欧元收购欧洲航空发出反垄断警告

2024年2月29日，据媒体报道，国际航空集团（IAG）可能面临欧盟对其4亿欧元（31亿人民币）收购欧洲航空公司（Air Europa）的反垄断警告。国际航空集团拥有西班牙伊比利亚航空公司（Spanish carrier Iberia）的所有权，该公司于2月23日提交了让步方案，试图解决竞争问题。然而，这些让步的具体内容并未披露。欧盟委员会此前曾在1月表示竞争担忧，认为此次收购可能会减少各条航线上的竞争，包括西班牙国内飞往巴利阿里群岛和加那利群岛等热门旅游目的地的航班，以及连接马德里与欧洲主要城市、以色列、摩洛哥、英国和瑞士的短途航线。此外，马德里与北美和南美目的地之间的长途航线也引起了关注。（[查看更多](#)）

EU Issues Antitrust Warning against International Airlines' EUR 400 Million Acquisition of European Airlines

On February 29, 2024, according to media reports, International Airlines Group (IAG) is likely to face an antitrust warning from the European Union regarding its EUR 400 million (CNY 3.1 billion) acquisition of Air Europa. IAG, which owns Spanish carrier Iberia, submitted concessions on February 23 in an attempt to address competition issues. However, the specifics of these concessions were not disclosed. The European Commission previously expressed competition concerns in January that the acquisition could reduce competition on various routes, including domestic Spanish flights to popular tourist destinations such as the Balearic Islands and Canary Islands, and connections to Madrid. Short-haul routes to major European cities, Israel, Morocco, the UK and Switzerland. In addition, long-distance routes between Madrid and destinations in North and South America were also attracting attention. ([More](#))

谷歌因数字广告行为被32家媒体集团起诉赔偿21亿欧元

2024年2月28日，据媒体报道，谷歌卷入了32家媒体集团提起的21亿欧元（164亿人民币）的诉讼，其中原告包括施普林格（Springer）和Schibsted等知名公司。媒体集团认为谷歌被指控的不当行为剥夺了媒体公司从广告中获得更高收入的机会，并使其不得不为广告服务支付更高的费用。他们引用了法国竞争管理机构2021年对谷歌开出的2.2亿欧元（7.86亿人民币）罚款和欧盟委员会正在进行的反垄断指控作为支持其主张的证据。选择向荷兰法院提起诉讼反映了媒体集团的战略决策。媒体集团的目的在于利用荷兰作为欧洲反垄断损害赔偿索赔关键司法管辖区的声誉，同时整合他们的诉讼力量避免在欧洲不同国家进行分散的诉讼。（[查看更多](#)）

Google Sued by 32 Media Groups for EUR 2.1 Billion over Digital Advertising Practices

On February 28, 2024, according to media reports, Google was involved in a EUR 2.1 billion (CNY 16.4 billion) lawsuit filed by 32 media groups. The plaintiffs included well-known companies such as Springer and Schibsted. Media groups argued that Google's alleged misconduct deprived media companies of the opportunity to earn higher revenue from advertising and forced them to pay more for advertising technology services. They cited the French competition authority's EUR 220 million (CNY

786 million) fine against Google in 2021 and the European Commission's ongoing antitrust charges as evidence to support their claims. The choice to bring proceedings before the Dutch courts reflected a strategic decision by the media group. The media groups aimed to leverage the Netherlands' reputation as a pivotal European jurisdiction for antitrust damages claims, while consolidating their legal efforts to avoid fragmented proceedings in different European countries. ([More](#))

DOJ对联合健康在医疗保健市场的支配地位展开反垄断调查

2024年2月27日，据媒体报道，美国司法部（DOJ）已对联合健康（UnitedHealth Group）展开反垄断调查。反垄断调查源于对该公司收购行为的担忧，旨在评估联合健康的市场支配地位是否造成了不公平的竞争格局。联合健康此前于2023年10月收到通知，称DOJ开始对其进行“非公开反垄断调查”。调查人员已经与包括医生团体在内的医疗保健行业各利益相关方进行了面谈。面谈的重点在于探讨联合健康集团的保险部门UnitedHealthcare与其运营医生团体和其他资产的医疗服务部门Optum之间的关系。（[查看更多](#)）

DOJ Launches Antitrust Investigation into UnitedHealth's Dominance of Health Care Market

On February 27, 2024, according to media reports, the U.S. Department of Justice (DOJ) launched an antitrust investigation into UnitedHealth Group. The antitrust investigation stemmed from concerns about the company's acquisition practices and sought to assess whether UnitedHealth's market dominance created an unfair competitive landscape. UnitedHealth previously received notice in October 2023 that the DOJ had begun a "non-public antitrust investigation" against it. Investigators interviewed various stakeholders in the healthcare industry, including physician groups. The interviews focused on the relationship between UnitedHealth's insurance unit, UnitedHealthcare, and its health services arm, Optum, which owns physician groups and other assets. ([More](#))

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

信安标委发布《生成式人工智能服务安全基本要求》

2024年3月1日，全国网络安全标准化技术委员会（“信安标委”）公开发布了《生成式人工智能服务安全基本要求》（“《AI服务安全标准》”）。《AI服务安全标准》文件共有9条，规定了生成式人工智能服务在语料安全、模型安全、安全措施方面的要求，对生成式人工智能服务的词库、题库和分类模型提出安全要求，并列出安全评估方法以供服务提供者和主管部门在进行安全评估时作为参考。（[查看更多](#)）

TC260 Releases the *Basic Security Requirements for Generative Artificial Intelligence Service*

On March 1, 2024, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China (“TC260”) publicly released the *Basic Security Requirements for Generative Artificial Intelligence Service*.

cial Intelligence Service (the “*AI Service Security Standard*”). The *AI Service Security Standard* contains nine articles, in which it sets out the requirements for generative AI services in terms of corpus security, model security and security measures, imposes security requirements for the thesaurus, question bank and classification model of generative AI services, and lists the security assessment methodology for service providers and competent authorities to use as a reference when carrying out security assessment. ([More](#))

江苏无锡发布《无锡市公共数据授权运营管理办法（试行）》

2024年2月29日，江苏省无锡市印发了《无锡市公共数据授权运营管理办法（试行）》（“《办法》”），由无锡市大数据管理局和财政局共同制定，是江苏省首个公共数据授权运营规范性文件。《办法》共有七大章节，共三十三条内容，提出了授权运营分类分级方式，明确授权运营可以采取综合、领域、场景等授权运营方式进行；鼓励多方合作开展公共数据产品市场化运营，探索多元化利益分配机制；对加强数据全生命周期安全也提出了相关规定。此前，无锡已成立了大数据交易有限公司，2023年相关业务交易规模达2262万元。（[查看更多](#)）

Wuxi, Jiangsu Issues the *Management Measures for Authorized Operation of Public Data in Wuxi City (Pilot)*

On February 29, 2024, Wuxi City, Jiangsu Province issued the *Management Measures for Authorized Operation of Public Data in Wuxi City (Pilot)* (the “*Measures*”), which is jointly formulated by the Wuxi City Big Data Management Bureau and the Finance Bureau and is the first normative document for authorized operation of public data in Jiangsu Province. The *Measures* have seven chapters with a total of thirty-three articles, which put forward the categorization and classification method of authorized operation and clarify that the authorized operation can be implemented in multiple manners such as comprehensive authorization, domain authorization and scenario authorization. The *Measures* encourages multi-party cooperation to carry out the market-oriented operation of public data products and explores the diversified revenue distribution mechanism; it also puts forward the relevant provisions for strengthening the security of data lifecycle. Previously, Wuxi has set up a big data transaction company, and the scale of related business transactions in 2023 amounted to CNY22.62 million. ([More](#))

大数据服务安全能力要求国家标准正式实施

2024年3月1日，根据国家标准化管理委员会（“国家标准委”）公开平台披露，推荐性国家标准《信息安全技术 大数据服务安全能力要求》（“《大数据标准》”）于2024年3月1日起正式实施。《大数据标准》共分7节，详细规定了大数据服务提供者应具备的大数据组织管理安全能力要求、大数据处理安全能力要求和大数据服务安全风险管理能力要求，可用于指导相关服务提供者的大数据服务安全能力建设，也可作为进行大数据服务安全能力评估的参考。（[查看更多](#)）

National Standard for Security Capability Requirements for Big Data Services Officially Implemented

On March 1, 2024, according to the disclosure of the public platform of the National Standardization Administration, the voluntary national standard *Information Security Technology — Security Capability Requirements for Big Data Services* (the “**Big Data Standard**”) is officially implemented from March 1, 2024, onwards. The *Big Data Standard* contains seven sections, specifying in detail the requirements for big data organization and management security capability, big data processing security capability and big data service security risk management capability that big data service providers should have, which can be used to guide the construction of big data service security capability of relevant service providers, and also serve as a reference for the assessment of big data service security capability. ([More](#))

上海市检察院督促治理App侵害个人信息权益行政公益诉讼案

2024年2月28日，上海市检察院（“上海市院”）官方宣布其督办的一件App侵害个人信息权益行政公益诉讼案入选最高人民检察院公益诉讼典型案例。2022年10月，上海市院发现多款App和小程序存在侵犯个人信息权益的情况，主动委托司法鉴定机构对相关问题进行鉴定检测确认存在违规收集用户个人信息情况，且该等情况持续存在，致使社会公共利益受到严重侵害，于2023年2月9日对该问题进行立案。因涉及多个监管部门，在厘清职责后，确定由网信部门统筹协调个人信息保护、网络数据安全和监管工作；电信管理机构、公安、市场监督管理机构各自加强个人信息保护监管工作，上海市院采取多种措施敦促行政机关加强监管，并最终邀请测评认证机构复核确认问题整改到位。（[查看更多](#)）

Administrative Public Interest Litigation Case of Shanghai Procuratorate Supervising Administration of App Infringement on Personal Information Rights and Interests

On February 28, 2024, the Shanghai Procuratorate officially announced that an administrative public interest litigation case it supervised on apps’ infringement of personal information rights and interests was selected as a typical case of public interest litigation by the Supreme People’s Procuratorate. In October 2022, the Shanghai Procuratorate found that several apps and mini programs violated the rights and interests of personal information and took the initiative to commission the institute of forensic science to conduct forensic examination on relevant issues to confirm the persisting violations of the collection of users’ personal information. Such violations resulted in serious harm to the public interests of the society. The Shanghai Procuratorate officially filed the case on February 9, 2023. Considering that the case involves a number of regulatory authorities, after clarifying the responsibilities, it is determined that the cyberspace affairs department will coordinate the protection of personal information, network data security and regulatory work; telecommunication regulatory agencies, public security department and market regulation authority will respectively strengthen their personal information protection and regulatory work. The Shanghai Procuratorate will take multiple measures to urge the administrative authorities to strengthen regulation and finally invited the evaluation organization to review and confirm that the problems are rectified. ([More](#))

重庆通报侵害用户权益App名单

2024年2月26日至29日，重庆市通信管理局（“重庆市通管局”）先后通报了两批侵害用户权益的App名单，对于未按要求完成整改的5款违规收集个人信息和未明示个人信息处理规则的App，重庆市通管局通报将对这些App下架处理。另外，在和四川省通管局联合对川渝主流应用商店中的App进行检查后，重庆市通管局又通报了6款存在侵害用户权益问题的App名单，要求这些App在3月8日前完成整改。（[查看更多](#)）

Chongqing Releases List of Apps Infringing on Users' Rights and Interests

From February 26 to 29, 2024, the Chongqing Communications Administration (“CCA”) has released two batches of App lists infringing on the rights and interests of users. For the five violating Apps that have not completed the rectification as required for the collection of personal information and have not notified the rules for the processing of personal information, CCA announced that it will remove these Apps from app stores. In addition, after the joint inspection of apps in mainstream app stores in Sichuan and Chongqing with the Sichuan Communications Administration, CCA released another list of six apps that infringe on the rights and interests of users and required these apps to complete the rectification before March 8. ([More](#))

国内首个个人信息保护AI大模型“智御”已发布

近日，工业和信息化部（“工信部”）发布了关于2023年第四季度电信服务质量的通告，回顾了2023年第四季度的电信服务重点工作情况，其中包括制定了《小程序个人信息保护规范》等标准，并发布了国内首个个人信息保护AI大模型“智御”助手，为APP开发运营、检测防护、政策解读等提供智能化服务。（[查看更多](#)）

China's First AI Model for Personal Information Protection “ZhiYu” has been Released

Recently, the Ministry of Industry and Information Technology (“MIIT”) issued a circular on the quality of telecom services in the fourth quarter of 2023, reviewing the key work of telecom services in the fourth quarter of 2023, including the formulation of standards such as *Specification of Personal Information Protection for Mini Program* and the release of the first domestic personal information protection AI model “ZhiYu” assistant, which provides intelligent services for App development and operation, detection and protection, and policy interpretation. ([More](#))

新加坡发布《关于在AI推荐和决策系统中使用个人数据的咨询指南》

2024年3月1日，新加坡个人数据保护委员会（Personal Data Protection Commission, “PDPC”）正式发布《关于在AI推荐和决策系统中使用个人数据的咨询指南》（“《AI指南》”），《AI指南》致力于在向消费者提供AI系统使用个人数据的保障的同时，为机构提供何时可使用个人数据发展AI系统的确定性。《AI指南》明确了机构可以依据指南获得消费者同意、使用消费者数

据的例外情况，规定了定制化AI系统的第三方开发者的合规义务，并鼓励机构透明化以保障消费者个人信息被合理使用。（[查看更多](#)）

Singapore PDPC Releases *Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems*

On March 1, 2024, the Singapore Personal Data Protection Commission (“PDPC”) officially releases the *Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems* (the “*AI Advisory Guidelines*”). The purpose of the *AI Advisory Guidelines* is to provide organizations with certainty on when they can use personal data to develop and deploy AI Systems and give consumers assurance on the use of their personal data in AI Systems. The *AI Advisory Guidelines* clarifies the exceptions under which the organizations may obtain consumer consent and use consumer data, imposes compliance obligations on third-party developers of bespoke AI Systems, and encourages the organizations to be more transparent to ensure the appropriate use of consumer personal information. ([More](#))

美国发布行政令防止“受关注国家”获取大量敏感个人数据和政府相关数据

2024年2月28日，美国白宫发布一项总统行政令，授权美国司法部发布法规保护美国人的敏感个人数据和美国政府数据不被“受关注国家”获取和利用。这些敏感个人数据包括基因数据、生物数据、个人健康数据、地理位置数据、金融数据和特定的个人身份信息。美国司法部于同日发布声明，明确将由下属国家安全司制定《拟议制定规则的预先通知》（ANPRM）细化将被禁止的数据和交易类型。“受关注国家”中包括中国大陆（含香港和澳门地区）。（[查看更多](#)）

U.S. Government Issues Executive Order on Preventing Access to American’s Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern

On February 28, 2024, the White House issued a presidential Executive Order authorizing the U.S. Department of Justice (“DOJ”) to prevent access to and use of Americans’ sensitive personal data and U.S. government-related data by “Countries of Concern”. The sensitive personal data includes genomic data, biometric data, personal health data, geolocation data, financial data and certain kinds of personal identifiers. The DOJ issued an announcement on the same day, specifying that the Department’s National Security Division will issue an *Advance Notice of Proposed Rulemaking* (ANPRM) describing the initial categories of prohibited data and transactions. The “Countries of Concern” include Mainland China (including Hong Kong and Macau). ([More](#))

EDPB启动2024年数据保护机构对数据访问权的协调执法行动

2024年2月28日，欧洲数据保护委员会（European Data Protection Board, “EDPB”）宣布启动2024年协调执法框架（CEF）行动，此次行动将由欧洲经济区（EEA）31个数据保护机构参与，主要针对实施访问权问题。数据访问权是数据保护的核心，个人主体能以此检查组织是否合规处理了其个人数据，该权利还涉及其他数据保护权（如更正和删除权）的行使。EDPB

将通过问卷、正式调查和后续行动方式评估机构在实践中的数据访问权合规问题，并将在行动结束后发布一份结果分析报告。（[查看更多](#)）

EDPB Launches 2024 Coordinated Enforcement of DPAs on the Rights of Access

On February 28, 2024, the European Data Protection Board (“EDPB”) announced the launch of its Coordinated Enforcement Framework (CEF) action for 2024. Throughout the year, 31 Data Protection Authorities (“DPAs”) across the European Economic Area (EEA) will take part in this initiative on the implementation of the right of access. The right of access is at the heart of data protection which enables individuals to check whether their personal data is processed in a compliant manner by organizations, and it often enables the exercise of the other data protection rights (e.g. the right to rectification and erasure). The EDPB will gauge how organizations are complying with the right of access in practice by implementing the CEF in a number of ways like questionnaires, formal investigation and follow-up of ongoing formal investigations, and publish a report on the outcome of the analysis once the actions are concluded. ([More](#))

知识产权 Intellectual Property

最高人民法院：去年前11个月，检察机关共受理审查起诉侵犯知识产权犯罪2.8万人

2024年2月28日，最高人民法院知识产权检察办公室主任刘太宗做客“全面贯彻习近平法治思想 高质效办好每一个案件”最高检厅长网络访谈，针对相关工作情况进行了介绍。访谈中提到，办案数据显示，知识产权检察工作在2023年呈现出“刑事惩治力度不断加大、民事行政监督成效显著提升、公益诉讼积极稳妥探索”三个方面的显著变化。

据了解，2023年前11个月，全国检察机关共受理审查起诉侵犯知识产权犯罪2.8万人，同比上升53.3%；受理知识产权民事行政公益诉讼监督案件2240件，同比增加1.7倍，提出抗诉和再审检察建议600余件，同比增加7.7倍；立案办理知识产权公益诉讼案件570余件。2023年，知识产权检察工作落实最高检党组的有关要求，注重在人员专业化、职能综合化、办案多元化、机制系统化等方面下功夫，综合履职进入新阶段。

来源：最高人民法院

SPP: In the first 11 months of 2023, procuratorate offices prosecuted 28,000 people for intellectual property crimes

On February 28, 2024, Liu Taizong, the director of the Intellectual Property Prosecution Office of Supreme People's Procuratorate (SPP), introduced the procuratorate work. According to the data from case handling, the intellectual property prosecution work in 2023 showed three significant

changes: "continuous increase in criminal punishment, significant improvement in the effectiveness of civil and administrative supervision, and active and prudent exploration in public interest litigation."

It is understood that in the first 11 months of 2023, procuratorate offices received and reviewed 28,000 cases of intellectual property crimes, an increase of 53.3% year-on-year; they received 2,240 cases of intellectual property civil and administrative litigation supervision, an increase of 1.7 times compared to the previous year, and proposed more than 600 procuratorate protests, and rehearing procuratorial suggestions, an increase of 7.7 times compared to the previous year; they also filed over 570 intellectual property public interest litigation cases. In 2023, the intellectual property prosecution work implemented the relevant requirements of the Party Leadership Group of the Supreme People's Procuratorate, focusing on making efforts in personnel specialization, functional integration, diversified case handling, and systematic mechanisms, ushering in a new stage of comprehensive performance of duties.

Source: SPP

最高院案例：我国首例非标准必要专利拒绝许可垄断案判决

近日，最高人民法院就宁波华某磁业有限公司（原审原告，下称原告）与日某株式会社（原审被告，下称被告）滥用市场支配地位纠纷一案作出二审判决。判决撤销原判，改判驳回原告全部诉讼请求，被告不构成滥用市场支配地位。

最高院认为，首先，被告及获其专利实施许可的企业的市场份额不高，其难以控制相关市场的交易条件；其次，在案证据不足以证明被告的专利在技术上不可替代，相反表明被告的专利在技术上可替代，由此说明被告在技术上难以影响其他研发同类技术或者生产同类商品的经营者进入相关市场；最后，原告关于被告的专利在商业上不可替代的主张并不能成立。综上，原告不能证明被告具有市场支配地位，其应承担举证不能的不利后果，最终判决驳回原告全部诉讼请求。

来源：最高人民法院

SPC Case: First Case of Refusal to License Non-Standard Essential Patents Constituting Monopoly

Recently, Supreme People's Court (SPC) issued a second instance judgment in the case of abuse of market dominance between Ningbo Magnetics Co., Ltd. (the plaintiff) and a Japanese company (the defendant). The judgment reversed the original decision and dismissed all claims of the plaintiff, holding that the defendant did not constitute abuse of market dominance.

SPC held that, first, the defendant and the enterprises licensed to implement its patents did not have a high market share, and it was difficult for them to control the trading conditions in the relevant market. Secondly, the evidence on record was insufficient to prove that the defendant's patent was technically irreplaceable. On the contrary, it showed that the defendant's patent was technically replaceable, indicating that the defendant was technically unable to affect other operators developing similar technologies or producing similar products from entering the relevant market. Finally, the plaintiff's claim that the defendant's patent was commercially irreplaceable could not be established. In summary, the plaintiff could not prove that the defendant had a dominant market position, and shall bear the unfavorable

consequences of failing to provide evidence. Therefore, the court ultimately dismissed all claims of the plaintiff.

Source: SPC

最高法院案例：日本制铁赢得对宝山钢铁专利行政上诉案

近日，最高人民法院就日本某株式会社（原审第三人、专利权人，下称专利权人）与某钢铁股份有限公司（原审原告、无效宣告请求人，下称原告）、中华人民共和国国家知识产权局（原审被告，下称被告）发明专利权无效行政纠纷一案作出判决。判决支持专利权人的上诉请求，撤销原审判决，驳回原告诉讼请求。

最高院认为，本案争议焦点是：本专利权利要求1-4未限定“间隙特征”，是否导致本专利权利要求1-4不能得到说明书的支持和缺少必要技术特征。对此，最高院结合“发明目的”、“技术改进路径”、“间隙数值是否为公知常识”等多个维度进行深入分析，最终认定一审法院认定本专利权利要求1-4不符合2000年专利法第二十六条第四款及2002年专利法实施细则第二十一条第二款规定依据不足，最高院依法予以纠正。

来源：最高人民法院

SPC Case: Nippon Steel Wins Administrative Suit Against Baoshan Iron and Steel Over Patent Invalidation

Recently, Supreme People's Court (SPC) issued a judgment in an administrative dispute case regarding the invalidation of an invention patent between a Japanese company (the patent owner), a steel company limited the plaintiff), and CNIPA (the defendant). SPC upheld the patent holder's appeal and reversed the original judgment, dismissing the plaintiff's claims.

SPC held that the key of this case was whether the failure to specify the "clearance characteristics" in claims 1-4 of the patent led to the inability of these claims to be supported by the specification and the lack of essential technical features. In this regard, SPC conducted a thorough analysis by considering multiple dimensions such as the "purpose of the invention," "path of technological improvement," and "whether the clearance value is common knowledge." Ultimately, SPC determined that the first instance court's holding that claims 1-4 of the patent did not comply with Article 26(4) of the Patent Law of 2000 and Article 21(2) of the Implementing Regulations of the Patent Law of 2002 was insufficiently supported. Therefore, SPC corrected the judgment accordingly.

Source: SPC

最高法院案例：西电捷通诉苹果判赔1.4亿

近日，最高院公开西安西电捷通无线网络通信股份有限公司（原审原告，下称原告）与苹果电脑贸易（上海）有限公司（原审被告，下称被告）侵害发明专利权纠纷一案的二审判决书。判

决被告苹果公司无需停止销售涉案型号的手机、电脑，但应当赔偿原告经济损失14284余万元及合理开支50余万元。

2021年12月30日，陕西高院对该案作出判决，判决被告停止销售相应型号的手机电脑、赔偿原告14284.0608万元，合理开支人民币50.9958万元等。最高法院认为，被告与其实际控制方美国某甲公司共同进行被诉侵权产品的研发、测试、生产制造、检测等行为，直接实施了原告涉案专利，构成对原告专利权的侵害。针对被告是否应当承担停止侵害的责任，法院认为，在本案被告主张权利的期间之后，特别是原审判决作出后，涉及专利许可合同履行问题的基本事实、专利实施者的主观状态及涉案专利的权利状态发生了重大变化，同时可以认定涉案专利为实施强制性标准的必要专利，基于对本案事实和法律问题的综合评判，二审中继续维持原审判决判令被告承担停止侵害的民事责任既无必要、亦无可能，因此，对于原审判决关于停止侵害的判项，最高法院予以调整。

来源：最高人民法院

SPC Case: Xidian Jietong Wins Against Apple in Patent Infringement Lawsuit With the Damages of RMB 140 Million

Recently, Supreme People's Court(SPC) issued a second instance judgment in the case of patent infringement dispute between Xi'an Xidian Jietong Wireless Network Communications Co., Ltd. (the plaintiff) and Apple Computer Trading (Shanghai) Co., Ltd. (the defendant). The judgment held that while the defendant did not need to stop selling the mobile phones and computers of the involved models, but it shall compensate the plaintiff for damages of over RMB 142.84 million and reasonable expenses of over RMB 500,000.

On December 30, 2021, the Shaanxi High Court issued a judgment in the case, holding the defendant to stop selling the mobile phones and computers of the corresponding models and to pay the damages of RMB 142,840,608 and reasonable expenses of RMB 509,958. SPC held that the defendant, together with its actual controllers, jointly engaged in the research and development, testing, manufacturing, and inspection of the alleged infringing products, directly implementing the plaintiff's patent and infringing on the plaintiff's patent rights. Regarding whether the defendant shall bear the responsibility of stopping the infringement, the court held that significant changes had occurred in the basic facts related to the performance of the patent license contract, the state of the patent implementer, and the status of the patent rights involved after the period during which the defendant claimed its rights, especially after the original judgment was issued. It could also be determined that the patent involved was an essential patent for implementing mandatory standards. Therefore, it was neither necessary nor possible to maintain the original judgment ordering the defendant to bear the liability for stopping the infringement in the second instance. Therefore, SPC adjusted the judgment on stopping the infringement in the original judgment.

Source: SPC

最高院案例：涉案近2800万专利诉讼落下帷幕

2024年3月1日，江苏博迁新材料股份有限公司（以下简称“博迁新材”）发布涉及诉讼结果公告。公告显示，博迁新材在一起涉案2800万元的发明专利诉讼的终审判决中获胜，为双方这起三年多的诉讼画下了句号。该案始末如下：

2020年12月23日，博迁新材发布公告称，台州市金博新材料有限公司（以下称原告）在宁波市中级人民法院向博迁新材全资子公司宁波广新纳米材料有限公司（以下称被告）发起两起专利侵权诉讼。在诉讼中，原告请求法院判令被告立即停止生产、使用侵害两项涉案专利的涉诉产品、销毁全部库存的涉诉产品，并赔偿原告经济损失及制止侵权所支付的合理费用100万元，两个案件索赔合计200万元。2021年11月，博迁新材发布的公告显示，在案件审理过程中，原告向宁波中院递交变更诉讼请求，将两起诉讼的赔偿金额各由100万元变更为2800万，即两起诉讼合计索赔5600万元；2022年1月4日，宁波中院判决驳回了原告两案中的诉讼请求，两案合计363600元的案件受理费由原告承担，后原告向最高院提起上诉。2024年2月29日，最高院对ZL201611085580.4号发明专利的诉讼案件做出二审终审判决：驳回上诉，维持原判，二审案件受理费181800元由台州市金博新材料有限公司负担。该专利纠纷案件终落下帷幕。

来源：江苏博迁新材料股份有限公司

SPC Case: Patent Litigation with Claim of Damages of nearly RMB 28 Million Comes to an End

On March 1, 2024, Jiangsu Boqian New Materials Co., Ltd. (hereinafter referred to as "Boqian Materials") announced the results of a patent infringement litigation involving claimed damages of nearly RMB 28 million. The announcement indicated that Boqian Materials had prevailed in the final judgment of the patent infringement lawsuit, bringing an end to the more than three-year dispute between the two parties. Here is a summary of the case:

On December 23, 2020, Boqian Materials issued an announcement stating that Taizhou Jinbo New Materials Co., Ltd. (the plaintiff) had initiated two patent infringement lawsuits against Ningbo Guangxin Nanomaterials Co., Ltd. (the defendant), a wholly-owned subsidiary of Boqian Materials, in the Ningbo Intermediate People's Court. In the lawsuit, the plaintiff requested the defendant to immediately stop producing and using the products infringing on the two patents involved, destroy all inventories of the infringing products, and compensate the plaintiff for damages and reasonable expenses incurred in stopping the infringement, totaling RMB 1 million for each case, with a combined claim of RMB 2 million for both cases. In November 2021, Boqian Materials issued an announcement stating that during the trial of the case, the plaintiff submitted a change to the court, increasing the claimed compensation amount for each of the two lawsuits from RMB 1 million to RMB 8 million, resulting in a combined claim of RMB 56 million for both lawsuits. On January 4, 2022, the Ningbo Intermediate People's Court rejected the plaintiff's claims in both cases, ordering the plaintiff to bear the total court fees of RMB 363,600 for both cases. Subsequently, the plaintiff appealed to Supreme People's Court (SPC). On February 29, 2024, SPC issued the second instance judgment of the patent infringement lawsuit involving patent ZL201611085580.4, upholding the original judgment and dismissing the ap-

peal. The court fees of RMB 181,800 for the second instance were borne by the plaintiff. This patent dispute case has finally come to an end.

Source: Jiangsu Boqian New Materials Co., Ltd.

广东法院案例：全球AIGC平台侵权首案判决

近日，广州互联网法院就上海新创华文化发展有限公司（原告）与某AI公司（被告）网络侵权责任纠纷一案作出一审判决，判决被告立即停止侵害原告著作权的行为，并赔偿原告10000元。该判决系全球范围内首例生成式AI服务侵犯他人著作权的生效判决。

法院认为，被告Tab网站的AI绘画功能可根据用户指令生成对应的图片，部分案涉生成图片保留了作品这一美术形象的独创性表达，并在多个关键特征与作品具有极高的相似度，构成实质性相似，同时作品享有较高的知名度，可在各大视频网站进行访问、查阅及下载，在被告无相反证据的情况下，被告存在接触该特摄作品的可能性。原告所提供的、由Tab网站生成的案涉生成图片，部分或完全复制了作品这一美术形象的独创性表达。因此，被告未经许可，复制了作品，侵害了原告对作品的复制权。另外，部分案涉生成图片保留了作品的独创性表达，并在保留该独创性表达的基础上形成了新的特征，被告的行为构成对作品的改编。因此，被告未经许可，改编了作品，侵害了原告对作品的改编权。

来源：广州互联网法院

Guangdong Court Case: First Judgement in AIGC Platform Infringement Case

Recently, the Guangzhou Internet Court issued a first-instance judgement in a case of network infringement liability dispute between Shanghai Xinchuanghua Cultural Development Co., Ltd. (the plaintiff) and an AI company (the defendant). The court held the defendant to immediately stop infringing on the plaintiff's copyright, and to compensate the damages of RMB 10,000. This judgement marks the first judgment globally on the infringement of others' copyright by generative AI services.

The court held that the AI painting function of the defendant's Tab website can generate corresponding images based on user prompt. Some of the generated images in the case retained the original creative expressions of the artistic images in the works, and exhibited a high degree of similarity in multiple key features, constituting substantial similarity. Meanwhile, the works enjoy high popularity and can be accessed, viewed, and downloaded on various video websites. Given the defendant's lack of contrary evidence, there is a high probability that the defendant had access to the special photography works. The generated images provided by the plaintiff and generated by the Tab website, partially or completely replicated the original creative expressions of the artistic images in the works. Therefore, the defendant, without permission, copied the works, infringing on the plaintiff's right to reproduce the works. In addition, some of the generated images retained the original creative expressions of the works and formed new features based on those expressions, constituting an adaptation of the works by the defendant. Therefore, the defendant, infringing on the plaintiff's right to adapt the works.

Source: Guangzhou Internet Court

美国罗德岛联邦法院：任天堂起诉Switch模拟器Yuzu开发商，控诉其助长大规模盗版行为

知名游戏开发商任天堂在美国罗德岛联邦法院对Yuzu（柚子）模拟器的开发商Tropic Haze公司及其主要开发者Bunnei提起诉讼。任天堂在其41页的诉讼文件中指控，柚子非法规避任天堂Switch的多层加密技术措施，使用户能够在其他平台运行受版权保护的游戏产品。要求法院发布禁令，永久停止“yuzu-emu.org”网站的运营，并收回其域名、URL、聊天室和社交媒体账户。此外，任天堂还寻求经济赔偿（对每次违反DMCA反规避和反贩卖条款的行为罚款2500美元，对每次侵犯版权的行为罚款150000美元），并要求法院彻底销毁柚子模拟器的所有副本。

柚子是一款自2018年推出的开源任天堂Switch模拟器，允许用户在Windows PC、Linux和Android设备上运行Switch游戏。模拟器本身处于法律上的灰色地带，其开发和使用不一定违法，但用户使用模拟器运行和游玩盗版游戏可能构成违法。柚子模拟器通过内容众筹平台Patreon获得资金支持，允许用户访问早期版本的任天堂游戏产品、提供改进的技术支持、并访问其Discord频道。据悉，Patreon上的柚子项目拥有近7400名付费会员，每月收入近30000美元。Yuzu团队于去年五月发布了Android版柚子模拟器。截至目前，任天堂和Tropic Haze尚未对此诉讼发表回应。

来源：The Verge

Rhode Island Federal Court: Nintendo Sues Yuzu Emulator Developer for Contributing to Large-Scale Piracy

Renowned game developer Nintendo has filed a lawsuit against Tropic Haze, the developer of the Yuzu emulator, and its primary developer, Bunnei, in the Rhode Island Federal Court. In its 41-page complaint, Nintendo alleges that Yuzu unlawfully circumvents Nintendo Switch's multi-layer encryption technical measures, enabling users to run copyrighted game products on other platforms. Nintendo is seeking a court order to permanently shut down the "yuzu-emu.org" website, reclaim its domain name, URL, chat rooms, and social media accounts. Additionally, the company is demanding financial compensation, including fines of \$2,500 for each violation of the DMCA anti-circumvention and anti-trafficking provisions, and \$150,000 for each copyright infringement. Nintendo also wants the court to order the complete destruction of all copies of the Yuzu emulator.

Yuzu, an open-source Nintendo Switch emulator launched in 2018, allows users to run Switch games on Windows PCs, Linux, and Android devices. While the emulator itself operates in a legal gray area, its development and use are not necessarily illegal. However, users who run and play pirated games using the emulator may commit illegal acts. The Yuzu emulator is funded through the content crowdfunding platform Patreon, which allows users to access early versions of Nintendo game products, receive enhanced technical support, and access its Discord channel. According to reports, the Yuzu project on Patreon has nearly 7,400 paying members, generating a monthly income of approximately \$30,000. Last year, the Yuzu team released an Android version of the emulator. As of now, neither Nintendo nor Tropic Haze has responded to the lawsuit.

Source: The Verge

瑞士联邦最高法院：未经授权产销“个性化”定制劳力士手表判决不构成商标侵权

近日，瑞士联邦最高法院推翻了下级法院对劳力士与手表定制公司商标侵权诉讼一案的判决，裁定未经劳力士授权而提供和销售定制手表行为的合法性，并驳回了劳力士对手表定制公司的商标侵权起诉。

劳力士在2020年12月向瑞士法院提起诉讼，指控一家总部位于日内瓦的公司从事“个性化”大规模生产豪华手表的业务，这一行为改变了劳力士手表的外观和技术特征，认为被告未经授权提供带有劳力士商标的改装手表侵犯了自己的商标权。瑞士法院在2023年2月作出一审判决，并颁布销售禁令，禁止手表定制公司提供带有劳力士商标的定制手表，手表定制公司随后向瑞士联邦最高法院提出上诉。瑞士联邦最高法院在今年1月19日作出判决，推翻了一审判决，认为瑞士商标法中存在商标权用尽的情况，因此被告可以在商标权人将产品投放市场后转售该产品。同时，瑞士联邦最高法院还表示下级法院作出的判决没有正确区分手表个性化服务、改装手表的营销这两种商业活动，认为第一类服务在原则上是合法的。

来源：The Fashion Law

Swiss Federal Supreme Court: The Judgement of Unauthorized Production and Sales of "Personalized" Customized Rolex Watches Does Not Constitute Trademark Infringement

Recently, the Swiss Federal Supreme Court reversed the lower court's decision in the trademark infringement lawsuit between Rolex and a watch customization company, ruling that the provision and sale of customized watches without Rolex's authorization are lawful and rejected Rolex's claim of trademark infringement against the watch customization company.

Rolex filed a lawsuit with the Swiss court in December 2020, accusing a Geneva-based company of engaging in the business of "personalized" mass production of luxury watches, which altered the appearance and technical characteristics of Rolex watches. Rolex believed that the defendant's unauthorized provision of modified watches bearing the Rolex trademark infringed its trademark rights. In February 2023, the Swiss court issued a first-instance judgment and imposed a sales ban, prohibiting the watch customization company from providing customized watches bearing the Rolex trademark. The watch customization company subsequently appealed to the Swiss Federal Supreme Court. On January 19 of this year, the Swiss Federal Supreme Court reversed the first-instance judgment, finding that there is exhaustion of trademark rights under Swiss trademark law. Therefore, the defendant can resell the product after the trademark owner has placed it on the market. Additionally, the Swiss Federal Supreme Court stated that the lower court's judgment failed to correctly distinguish between the two types of commercial activities: watch personalization services and the marketing of modified watches. It held that the first category of services is lawful in principle.

Source: The Fashion Law

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