



# NEWSLETTER

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No. **384**

2024.7

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世界知识产权组织：过去十年中国生成式AI专利申请量居全球第一

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USPTO Seeks Public Comment on Patent Experimental Use Infringement Exception

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

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### 坚持不具有市场支配地位，苹果对中国“苹果税”反垄断案向最高法提起上诉

2024年7月4日，据媒体报道，苹果已对中国“苹果税”反垄断案一审判决（“一审判决”）向最高人民法院（“最高法”）提起上诉。苹果认为一审判决对相关市场的界定和市场支配地位的认定存在错误。一审判决将相关市场界定为“iOS系统下的智能终端应用程序交易平台”，认定苹果“在该市场显然具有市场支配地位”。对此，苹果主张本案相关商品市场应包括所有平台上进行的应用交易，而限于中国苹果应用商店的应用交易，坚持苹果不具有市场支配地位。（[查看更多](#)）

### Apple Appeals to SPC against China “Apple Tax” Anti-Monopoly Case, Insists It Had No Dominant Market Position

On July 4, 2024, according to media reports, Apple appealed to the Supreme People’s Court (“SPC”) against the first instance judgement in China’s “Apple Tax” anti-monopoly case (“First Instance Judgement”). Apple argues that the First Instance Judgement erred in its definition of the relevant market and its determination of the dominant market position. The First Instance Judgement defined the relevant market as “the app transaction platform for smart terminals under the iOS system” and found that Apple “clearly had a dominant market position in this market”. In response, Apple argued that the relevant market in this case should include app transactions on all platforms and not be limited to app transactions on the App Store in China, and insisted that Apple did not have a dominant position in the market. ([More](#))

### 市场监管总局发布涉及经营者集中反垄断合规风险提示常见问题权威解答

2024年6月28日，国家市场监督管理总局（“市场监管总局”）发布涉及经营者集中反垄断合规风险（“风险提示制度”）提示常见问题权威解答，说明了风险提示制度的目的和意义以及对企业的具体要求。风险提示制度是指市场监管总局自2022年6月起指导各地市场监管部门依托经营地方主体登记注册系统，在股权变更登记和新设合营企业等环节以网页弹窗等形式对企业进行经营者集中反垄断申报提示，告知申报义务和法律责任。（[查看更多](#)）

### SAMR Issues Authoritative Answers to Frequently Asked Questions Involving Risk Warning System of Anti-Monopoly Compliance of Concentration of Business Operators

On June 28, 2024, the State Administration for Market Regulation (“SAMR”) issued the authoritative answers to frequently asked questions involving risk warning of anti-monopoly compliance of concentration of business operators (“Risk Warning System”), explaining the purpose and significance of the Risk Warning System and its specific requirements for enterprises. The Risk Warning System refers to the system where the SAMR had instructed local market regulatory departments since June 2022 to provide risk warnings to enterprises for the anti-monopoly notification of concentration of business operators, relying on the registration system for local business operators, in the aspects of equity change reg-

istration, establishment of new joint ventures, etc., in the form of webpage pop-ups and other forms to notify enterprises of the notification obligation and the legal liabilities. ([More](#))

## 最高法 最高检：研究制定技术类知识产权和反垄断案件检察和审判工作标准

2024年6月27日，最高法、最高人民检察院（“最高检”）在最高检召开第二次工作交流会商会（“会议”）。会议共讨论了12个新议题，其中包括研究制定技术类知识产权和反垄断案件检察和审判工作标准。（来源：最高检）（[查看更多](#)）

## SPC SPP: Study and Establish Procuratorial and Trial Standards for Technical Intellectual Property Rights and Anti-Monopoly Cases

On June 27, 2024, the SPC and the Supreme People's Procuratorate (“SPP”) held the second work exchange and discussion meeting (“Meeting”) at the SPP. A total of 12 new issues were discussed at the Meeting, including studying and establishing procuratorial and trial standards of technical intellectual property rights and anti-monopoly cases. ([More](#))

## 经营者集中试点审查培训班顺利举办

近日，经营者集中试点审查培训班在厦门市举办。来自北京、上海、广东、重庆、陕西5个试点省市场监督管理局（“市场监管局”）、20多个非试点省市场监管局以及市场监管总局竞争政策与评估中心的55名学员参加本期培训。市场监管总局反垄断二司就经营者集中申报和审查、违法实施经营者集中调查、企业海外反垄断应诉和合规指导等实务问题开展专题授课，并设置疑难案件交流课程，对试点省市场监管局分享的案例提供指导。（[查看更多](#)）

## Training Course on Pilot Review System of Concentration of Business Operators Successfully Held

Recently, the training course on the pilot review system of concentration of business operators was held in Xiamen. Fifty-five trainees from the Administration for Market Regulations (“AMRs”) of five pilot provinces of Beijing, Shanghai, Guangdong, Chongqing and Shaanxi, more than 20 non-pilot provincial AMRs, and the Competition Policy and Evaluation Centre of the SAMR participated in the training. The Anti-Monopoly Division II of the SAMR conducted special lectures on practical issues such as notification and review of concentration of business operators, investigation of unlawful implementation of concentration of business operators, enterprises' overseas anti-monopoly response and compliance guidance, as well as set up a course for the exchange of difficult cases, providing guidance on cases shared by the AMRs of the pilot provinces. ([More](#))

## 德国因纵向操纵价格对电信产品制造商AVM处以1600万欧元的罚款

2024年7月2日，德国联邦卡特尔局（Bundeskartellamt）针对AVM（AVM Computersysteme Vertriebs GmbH）与六家电子产品零售商纵向操纵价格的行为处以1600万欧元的罚款。AVM是一家制造电信和网络技术产品的德国公司，主要销售“FRITZ!”品牌的路由器和中继器以及电话和智

能家居产品。德国联邦卡特尔局于2022年2月对AVM进行了突击检查。经调查，AVM的员工经常以提价为目的，与相关电子产品零售商协调最终消费价格，在某些情形下要求最低销售价格。（[查看更多](#)）

## Germany Fines Telecom Product Manufacturer AVM EUR 16 Million for Vertical Price Fixing

On July 2, 2024, the German Federal Cartel Office (Bundeskartellamt) fined AVM (AVM Computersysteme Vertriebs GmbH) EUR 16 million for vertical price fixing with six retailers of electronic products. AVM is a German company that manufactures products for telecommunication and network technology and sells routers and repeaters as well as telephones and smart home products under the “FRITZ!” brand name. In February 2022, the German Federal Cartel Office conducted a dawn raid on AVM. The investigation revealed that AVM’s employees frequently coordinated end consumer prices with the relevant electronics retailers with the aim of raising prices, and in some cases demanded minimum sales prices. ([More](#))

## 欧盟委员会附条件批准汉莎航空收购意大利航空股份

2024年7月3日，欧盟委员会附条件批准汉莎航空（Deutsche Lufthansa AG）收购意大利航空（ITA Airways）股份的提议。欧盟委员会担忧收购会导致意大利与中欧国家之间的短途航线及意大利与美国、加拿大之间长途航线上的竞争减少，并造成或加强意大利航空在米兰利纳特机场的支配地位。对此，汉莎航空作出一系列承诺，包括向竞争对手航空公司提供资产，使其有能力运营罗马或米兰与中欧某些机场之间的直飞航班；通过联运协议或航班时刻交换（slot swaps）等方式，提高竞争对手在相关长途航线上的竞争力；转让米兰利纳特机场的起降时段等。（[查看更多](#)）

## European Commission Conditionally Approves Lufthansa’s Acquisition of Stake in ITA Airways

On July 3, 2024, the European Commission conditionally approved the proposed acquisition of stake in ITA Airways by Deutsche Lufthansa AG. The European Commission was concerned that the acquisition would lead to reduction in competition on short-haul routes between Italy and the countries of Central Europe and on long-haul routes between Italy and the United States and Canada, as well as create or strengthen ITA Airways’ dominant position at Milan Linate Airport. In response, Lufthansa made a number of commitments, including providing assets to rival airlines to enable them to operate direct flights between Rome or Milan and certain airports in Central Europe; enhancing rival competitors’ competitiveness on relevant long-haul routes, for example through interlining agreements or slot swaps; transferring take-off and landing slots at Milan Linate Airport. ([More](#))

## 法国竞争管理局将对英伟达提起反竞争指控

2024年7月1日，据媒体报道，法国竞争管理局（Autorité de la concurrence）拟对英伟达提起反竞争指控。本次指控源自2023年9月法国竞争管理局对显卡行业（也即针对英伟达）进行的突

击检查，而相关突击调查属于针对云计算行业的更大规模调查的其中一部分。2024年6月28日，法国竞争管理局发表了有关报告，表达了对人工智能领域内芯片供应商潜在滥用行为的担忧，着重关注该行业对英伟达CUDA芯片编程系统的依赖。此外，法国竞争管理局还表达了对英伟达最近投资CoreWeave等以人工智能为重点的云服务提供商行为的担忧。 ([查看更多](#))

## **French Competition Authority to Bring Anticompetitive Charges against NVIDIA**

On July 1, 2024, according to media reports, the French Competition Authority (Autorité de la concurrence) is poised to bring anti-competitive charges against NVIDIA. The charges stem from dawn raids in September 2023 by the French Competition Authority on the graphics card industry (i.e. against NVIDIA), and the relevant dawn raid was part of a larger investigation into the cloud computing industry. On June 28, 2024, the French Competition Authority published a report on the subject, expressing concerns about potential abusive behaviour by chip suppliers in the field of artificial intelligence, focusing on the industry's reliance on NVIDIA's CUDA chip programming system. In addition, the French Competition Authority expressed concerns about NVIDIA's recent investments in AI-focused cloud service providers such as CoreWeave. ([More](#))

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

### **北京市经济和信息化局对《北京市自动驾驶汽车条例（征求意见稿）》公开征集意见**

2024年6月30日，北京市经济和信息化局会同相关部门起草了《北京市自动驾驶汽车条例（征求意见稿）》（以下简称“《条例》”），现面向社会公开征求意见，公开征集意见时间为：2024年6月30日至2024年7月29日。《条例》共六章三十八条，从管理机制、产业创新发展、基础设施规划建设、创新活动规范、安全保障等方面进行法规制度设计。 ([查看更多](#))

### **Beijing Bureau of Economy and Information Technology Seeks Public Opinions on the Beijing Autonomous Vehicles Regulations (Draft for Comments)**

On 30 June 2024, the Beijing Bureau of Economy and Information Technology, in conjunction with relevant departments, drafted the *Beijing Autonomous Vehicles Regulations (Draft for Comments)* (the “Regulations”). Public comments shall be provided from 30 June 2024 to 29 July 2024. The Regulations consists of six chapters and thirty-eight articles, covering regulatory mechanisms, industrial innovation and development, infrastructure planning and construction, norms for innovative activities, and safety guarantees. ([More](#))

### **国家数据局：公共数据开发利用、数据产权等政策即将出台**

2024年7月2日，在2024全球数字经济大会上，国家数据局局长刘烈宏表示，国家数据局今年将陆续推出数据产权、数据流通、收益分配、安全治理、公共数据开发利用、企业数据开发利用、数字经济高质量发展、数据基础设施建设指引等8项制度文件。

2024年7月4日，国家数据局数据资源司副司长张慧星表示，公共数据方面重点是鼓励和探索公共数据授权运营，规范数据运营，相关政策很快就会出台。企业数据方面，针对市场关注的数据开发利用的权益保障，以及合规成本等重点问题，正在会同有关部门研究政策举措，相关文件力争年内出台。个人数据方面，国家数据局正在调研个人数据价值实现的可行路径，做好政策储备，难点是在保护个人信息的前提下，实现个人数据的规模化利用。

[\(查看更多\)](#)

## **National Data Administration: Policies Regarding Public Data Development, Data Property Rights, and More to be Released Soon**

On 2 July 2024, at the 2024 Global Digital Economy Conference, Liu Liehong, Director of the National Data Administration, announced that the Administration would be issuing eight policies this year. These policies will cover data property rights, data circulation, revenue distribution, security governance, public data development and utilization, enterprise data development and utilization, high-quality development of the digital economy, and guidelines for data infrastructure construction.

On 4 July 2024, Zhang Huixing, Deputy Director of the Data Resources Department of the National Data Administration, stated that the focus on public data is to encourage and explore the authorized operation of public data, standardize data operations, and related policies will be released soon. For enterprise data, policies addressing the protection of rights and interests in data development and utilization, as well as compliance costs, are being studied in conjunction with relevant departments, with the aim of issuing related documents within the year. Regarding personal data, the National Data Bureau is investigating feasible paths for realizing the value of personal data, preparing policies to balance large-scale utilization of personal data with the protection of personal information. ([More](#))

## **工信部等五部门发布《智能网联汽车“车路云一体化”应用试点城市名单》**

2024年7月1日，工业和信息化部及公安部等五部门公布智能网联汽车“车路云一体化”应用试点城市名单，北京、上海等20个城市（联合体）入选。据悉，应用试点工作以城市为主体自愿申报。此次开展试点预期达到建成低时延高可靠的网联云控基础设施、促进多场景自动驾驶规模化应用、探索形成“车路云一体化”投建运新型商业模式、形成统一的标准与测试评价体系等成果。 ([查看更多](#))

## **Ministry of Industry and Information Technology and Four Other Departments Release List of Pilot Cities for “Vehicle-Road-Cloud Integration” in Intelligent Connected Vehicles**

On 1 July 2024, the Ministry of Industry and Information Technology, along with the Ministry of Public Security and three other departments, announced the *List of Pilot Cities for “Vehicle-Road-Cloud Integration” in Intelligent Connected Vehicles*. Beijing, Shanghai, and 18 other cities (or city groups) have been selected. It is reported that the pilot application work was based on voluntary city applications. The goals of this pilot project include establishing low-latency and highly reliable networked cloud control infrastructure, promoting large-scale application of autonomous driving in various sce-

narios, exploring and forming new business models for "Vehicle-Road-Cloud Integration" investment, construction, and operation, and developing unified standards and testing evaluation systems. ([More](#))

## 我国牵头提出的国际标准《网络安全 物联网安全与隐私 家庭物联网指南》正式发布

据全国网络安全标准化技术委员会2024年7月1日消息，我国牵头提出的国际标准ISO/IEC 27403: 2024《网络安全 物联网安全与隐私 家庭物联网指南》（Cybersecurity – IoT security and privacy – Guidelines for IoT-domotics，以下简称为“《ISO/IEC 27403》”）已正式发布。ISO/IEC 27403识别了家庭物联网系统的主要相关方以及各自的生命周期阶段，分析了家庭物联网系统的安全和隐私风险，并从网络安全、人工智能安全、数据安全等方面提出了安全控制措施。该标准可指导相关方防范家庭物联网系统中的安全风险，对于提升家庭物联网安全与隐私风险防护能力，完善物联网安全标准体系具有积极作用。（[查看更多](#)）

### **China-Led International Standard *Cybersecurity – IoT Security and Privacy – Guidelines for IoT-Domotics* Officially Released**

According to the National Cybersecurity Standardization Technical Committee on 1 July 2024, the international standard ISO/IEC 27403:2024 *Cybersecurity – IoT Security and Privacy – Guidelines for IoT-Domotics* (“ISO/IEC 27403”), proposed by China, has been officially released. ISO/IEC 27403 identifies the main stakeholders of home IoT systems and their respective lifecycle stages, analyzes the security and privacy risks of home IoT systems, and proposes security control measures from the perspectives of cybersecurity, AI security, and data security. This standard can guide stakeholders in preventing security risks in home IoT systems and plays a positive role in enhancing the security and privacy risk protection capabilities of home IoT, as well as improving the IoT security standard system. ([More](#))

## 全国首例涉《数据知识产权登记证》效力认定案作出二审判决

据北京市知识产权保护中心2024年7月8日消息，数据堂（北京）科技股份有限公司与隐木（上海）科技有限公司间不正当竞争纠纷一案经北京互联网法院、北京知识产权法院审理，最终北京知识产权法院认定隐木公司侵犯数据堂公司数据权益，构成不正当竞争。该案确认了《数据知识产权登记证》司法效力，数据堂公司为了保护其数据集权益，就案涉数据集在北京知识产权保护中心登记并取得《数据知识产权登记证》。北京互联网法院、北京知识产权法院均认可在无相反证据证明的情况下，《数据知识产权登记证》可以初步证明登记人即为数据集的合法持有人，登记人有权就登记数据集的数据权益提出权利主张。（[查看更多](#)）

### **First Case in China Involving the Validity of the Data Intellectual Property Registration Certificate Concludes with Second Instance Judgment**

According to the Beijing Intellectual Property Protection Center on 8 July 2024, in the unfair competition dispute between Datatang (Beijing) Technology Co., Ltd. and Yinmu (Shanghai) Technology Co., Ltd., the Beijing Internet Court and the Beijing Intellectual Property Court ruled that Yinmu Company infringed on Datatang Company's data rights, constituting unfair competition. This case confirmed the judicial validity of the "Data Intellectual Property Registration Certificate." To protect its data set rights, Datatang Company registered the data set in question with the Beijing Intellectual Property Protection Center and obtained the Data Intellectual Property Registration Certificate. Both the Beijing Internet Court and the Beijing Intellectual Property Court acknowledged that in the absence of contrary evidence, the Data Intellectual Property Registration Certificate can preliminarily prove that the registrant is the legitimate holder of the data set and has the right to assert data rights over the registered data set. ([More](#))

## 美国《得克萨斯州数据隐私与安全法》于2024年7月1日生效

2023年，美国得克萨斯州议会正式采纳了众议院第4号法案，即《得克萨斯州数据隐私与安全法案》，该法案预定于2024年7月1日正式生效，旨在规范特定商业机构在收集、利用及处理消费者个人数据方面的行为。该立法为消费者赋予了新的权利框架，确保他们在面对数据处理时，能够自主决定是否参与（即“选择加入”）或拒绝（即“选择退出”）。同时，法案要求受监管实体在收集个人数据方面采取更为审慎的态度，限制不必要的收集行为，向数据主体清晰通报收集信息的内容，并积极响应消费者关于查看及更正其个人信息的请求，以此强化数据保护与透明度。（[查看更多](#)）

## Texas Data Privacy and Security Act Takes Effect on 1 July 2024

In 2023, the Texas State Legislature formally adopted House Bill No. 4, known as the *Texas Data Privacy and Security Act*. This legislation is set to take effect on 1 July 2024, and aims to regulate the collection, use, and processing of consumers' personal data by certain commercial entities. The law establishes a new rights framework for consumers, ensuring they can decide whether to opt-in or opt-out of data processing activities. Additionally, the act requires regulated entities to adopt a more cautious approach when collecting personal data, limiting unnecessary data collection, clearly informing data subjects about the information being collected, and actively responding to consumer requests to access and correct their personal information. These measures are intended to strengthen data protection and transparency. ([More](#))

## 知识产权 Intellectual Property

### 最高法院知识产权法庭：涉外案件年均增长近30%，我国日益成为国际知识产权诉讼优选地

最高人民法院6月27日举行"加强科技创新知识产权司法保护 助力发展新质生产力"专题座谈会。最高人民法院副院长陶凯元出席会议并讲话。

据最高法院知识产权法庭副庭长郜中林介绍，2019年成立至2024年6月26日，法庭共受理案件20338件，审结17638件。过去五年，法庭涉外国当事人案件约占新收案件总数的10%，年均增长28.6%，发明专利授权确权案件中的涉外案件更高达三分之一，且当事人均为外国主体的案件不断增多。此外，数据显示，过去五年来，法庭受理案件类型与我国科技创新、市场竞争和对外开放同频共振，涉战略性新兴产业案件占比超三成，发明专利案件年均增长30.9%，判赔超亿元案件和认定构成垄断案件不断增多。

来源：中国日报

## Intellectual Property Court of the SPC: Foreign-related Cases Have Increased by Nearly 30% Annually, and China is Increasingly Becoming the Preferred Place for International Intellectual Property Litigation

The Supreme People's Court (SPC) held a symposium on "Strengthening Judicial Protection of Scientific and Technological Innovation and Intellectual Property Rights to Help Develop New Productivity" on June 27th. Tao Kaiyuan, Vice President of the Supreme People's Court, attended the meeting and delivered a speech.

According to He Zhonglin, vice president of the Supreme Court Intellectual Property Court, from its establishment in 2019 to June 26, 2024, the court accepted 20,338 cases and concluded 17,638 cases. Over the past five years, cases involving foreign national parties in the tribunal accounted for about 10% of the total number of new cases, with an average annual growth rate of 28.6%, and the number of cases involving foreign parties in the cases of invention patent authorization and confirmation of rights was even higher than one-third, and the cases in which the parties are all foreign subjects have been increasing. In addition, the data shows that over the past five years, the types of cases accepted by the court have resonated with China's scientific and technological innovation, market competition and opening up to the outside world, with more than 30% of cases involving strategic emerging industries, an average annual growth of 30.9% in cases involving invention patents, and an increase in the number of cases in which more than one hundred million yuan has been awarded in damages and in cases in which monopolization has been found to have been constituted.

Source: China Daily

## 上海法院案例：对于更接近新闻报导的报告文学，著作权法不保护事实但保护作者独创性表达

近日，上海知识产权法院开庭审理上诉人旗帜（上海）数字传媒有限公司因与被上诉人艾某某、原审被告许某、胡某侵害著作权纠纷一案。

该案判决对艾某某撰写《中俄国际列车大劫案揭秘》中哪些内容受著作权法保护进行了分析。法院认为，艾某某的涉案作品是更接近于新闻报导的报告文学。艾某某依据亲身经历、查阅案卷、走访当事人后创作了涉案作品，根据本案证据可以认定，《中俄国际列车大劫案揭秘》中的人物、人物之间的关系、事件、事件的发生顺序、历史背景均为事实。无论艾某某涉案作品中的事实是否系其首先向社会公众披露，其均不能垄断事实，他人可以基于艾某

某作品中的事实进行创作，不需经过艾某某的同意，亦不需向艾某某支付报酬。具体到《中俄国际列车大劫案揭秘》一文，作者采用的插叙和倒叙的叙事手法，以及其在描述人物、事件时的遣词造句，这些具体的表达可以受著作权法的保护。在艾某某的作品中，所描述的事件均属于客观发生的历史事件。虽然《莫斯科行动》与艾某某作品有相同或相似的事件，但事实不受著作权法保护，被告的《莫斯科行动》并未使用艾某某的具体表达，不构成侵权。

来源：上海知识产权法院

## Shanghai Court Case: For Reported Literature Closer to News Reporting, Copyright Law Does Not Protect Facts but Protects Authors' Original Expressions

Recently, the Shanghai Intellectual Property Court made a judgment in a copyright infringement between Mr. Ai (Plaintiff) and the Banner (Shanghai) Digital Media Co.(Defendant 1) and Mr. Xu (Defendant 2) and Mr. Hu(Defendant 3).

The decision analyzed which contents of Mr. Ai's book "*The Great China-Russia International Train Robbery Revealed*" were protected by copyright law. The court held that this book was a reportage closer to a news report. Mr. Ai based on personal experience, check the case file, visit the parties to create the work in question, according to the evidence can be determined, "*The Great China-Russia International Train Robbery Revealed*" in the characters, the relationship between the characters, events, the sequence of events, the historical background are all facts. Regardless of whether the facts in Mr. Ai's work are first disclosed to the public, it cannot monopolize the facts, and others can create works based on the facts in Mr. Ai's work without his consent or payment of remuneration to him. Specifically to the "*The Great China-Russia International Train Robbery Revealed*" article, the author of the narrative techniques of flashbacks, as well as its in the description of the characters and events of the words and phrases, these specific expressions can be protected by the copyright law. In Mr. Ai's work, the events described are all objectively occurring historical events. Although "*Operation Moscow*" had the same or similar events as Mr. Ai's work, the facts were not protected by copyright law, and the defendant's "*Operation Moscow*" did not use Mr. Ai's original expressions, and did not constitute infringement.

Source: Shanghai Intellectual Property Court

## 北京法院案例：涉影视剧人物形象摄影套系照片侵权纠纷案二审改判

近日，北京知识产权法院审理了上诉人北京华星远大文化传媒有限公司与被上诉人湖南盘子女人坊文化科技股份有限公司著作权权属、侵权纠纷案。二审判决推翻一审判决，认为北京华星远大文化传媒有限公司不构成侵犯著作权。

北京知识产权法院认为，影视剧中人物形象造型属于特定历史时期特定人群的常规造型，这些角色的人物定位为清朝妃嫔，其所穿着的服饰、头发上所佩戴的珠钗、绒花等头饰以及手中所持的扇子、手帕，一般属于根据历史资料进行的还原设计，设计过程中可能存在改动，但即便有改动，程度亦尚未达到独创性的要求，不构成著作权法意义上的作品。

北京知识产权法院认为，摄影作品的独创性体现在拍摄者对拍摄角度、距离、光线、明暗和时机等因素的选择和判断，因而摄影作品所保护的对象亦是作者上述创造性劳动。不同作者针对同一内容进行不同的光影、角度等选择可能产生不同的摄影作品。本案被诉侵权二者相似之处的选择系过于简单的安排，仅构成思想，任何摄影师均可以使用这一思想，著作权法保护的是具有独创性的表达，而非思想。鉴于被诉侵权作品与权利作品具有明显的区别，被诉侵权作品未使用原告摄影作品的独创性表达，其行为不构成侵权。

来源：北京知识产权法院

### **Beijing Court Case: Second Instance Judgment Reversed in the Case Involving the Dispute of Infringement of Photographs of Film and Television Drama Character Image Photography Sets**

Recently, the Beijing Intellectual Property Court heard the case of copyright ownership and infringement dispute between the Hunan Panzi Women's Square Culture Technology Co.(Plaintiff) and the Beijing Huaxing Yuanda Culture Media Co., Ltd.(Defendant), with Beijing Huaxing Yuanda Culture Media Co. winning the lawsuit.

The Beijing Intellectual Property Court held that the character modeling in film and television dramas belonged to the conventional modeling of specific groups of people in a specific historical period, and that the characters were positioned as concubines of the Qing Dynasty, and that the costumes they wore, the bead hairpins, pompoms and other headdresses in their hair, as well as the fans and handkerchiefs in their hands, generally belonged to the restoration of the design based on historical data, and that there might be changes in the process of design. However, even if there were changes, the extent of such changes did not meet the requirement of originality and did not constitute a work within the meaning of the Copyright Law.

The Beijing Intellectual Property Court held that the originality of a photographic work is reflected in the photographer's choice and judgment of the angle, distance, light, shade and timing of the photograph, and thus the object of protection of a photographic work is also the author's creative labor as mentioned above. Different authors may produce different photographic works by making different choices of light, shadow, angle, etc. for the same content. In this case, the selection of similarities between the accused and the infringer is too simple arrangement, only constitutes the idea, any photographer can use this idea, the copyright law protects the expression of originality, not the idea. In view of the obvious difference between the infringing work and the right work, the infringing work did not use the original expression of the plaintiff's photographic work, and its behavior did not constitute infringement.

Source: Beijing Intellectual Property Court

### **上海法院案例：被告使用被诉侵权标识先于原告受让取得之日，以受让之日起计算赔偿金额**

近日，上海知识产权法院就上诉人上海市奉贤区向客旅馆因与被上诉人青岛尚美数智科技集团有限公司侵害商标权纠纷一案作出二审判决，驳回上诉，维持原判。

本案中，向客旅馆经营者已自述其自2015年开始经营该旅馆，且自经营之初便开始使用“尚客”等被诉侵权标识，尚美公司系于2018年4月27日受让取得注册商标。一二审法院认为，应以受让之日起计算赔偿金额。本案中，现有证据不足以证明权利人因侵权行为所受到的实际损失、侵权人的侵权获利或注册商标使用许可费，综合考虑尚美公司受让商标时间、向客旅馆侵权时间及规模、网络平台评价量及客房价格、向客旅馆自认的年营业额、尚美公司注册商标的贡献度、酒店经营受疫情的影响等因素，认定尚美公司主张的经济损失。

来源：[上海知识产权法院](#)

### **Shanghai Court Case: Defendant's Use of the Infringing Logo Preceded the Plaintiff's Acquisition Date, Calculating the Amount of Compensation from the Date of Acquisition**

Recently, the Shanghai Intellectual Property Court made a judgment of trademark infringement dispute between Qingdao Shangmei Digital Intelligence Science and Technology Group Co., Ltd.(Plaintiff) and Xiangke Hotel in Fengxian District, Shanghai(Defendant), affirming the original judgment.

In this case, the operator of defendant has stated that they has been operating the hotel since 2015 and has been using the allegedly infringing logos such as "Shangke" since the beginning of his operation, Plaintiff is in April 27, 2018 to obtain the registered trademark. The Court of First and Second Instance held that the amount of compensation should be calculated from the date of acquisition. In this case, the available evidence was insufficient to prove the actual loss suffered by the right holder due to the infringement, the infringer's profit from the infringement or the license fee for the use of the registered trademark, and taking into account the time when plaintiff was assigned the trademark, the time and scale of the infringement by defendant, the amount of the evaluation of the online platforms and the price of the guest rooms, the annual turnover self-identified by the defendant, the contribution of plaintiff's registered trademark, and the hotel operation affected by the epidemi.

Source: [Shanghai Intellectual Property Court](#)

### **北京法院案例：平行进口侧重点在于本国的商标权人与本国以外地域商品的生产者之间为同一主体或存在关联关系**

近日，北京知识产权法院审理了上诉人江苏三夫户外用品有限公司因与被上诉人刘某侵害商标权纠纷案。

法院认为，平行进口一般是指他人从本国以外地域进口与本国商标权利人为同一主体或存在关联关系的主体所生产的商品，进而在本国市场予以销售的商业模式，即平行进口的侧重点在于本国的商标权人与本国以外地域商品的生产者之间为同一主体或存在关联关系。若二者并非同一主体或主体之间不存在关联关系，即便在商品来源上具有同一性，由于权利主体的差异，相关商品不能构成一般意义上的平行进口商品，未经本国商标权利人许可进口销售相关商品的行为应属侵害商标权的行为。

具体到本案，即便被上诉人销售的被控侵权商品系从国外合法进口并且与上诉人在国内销售的带有加贴中文标签的产品在产品来源上具有同一性，由于被控侵权商品的生产者瑞士公司与涉案权利商标在中国境内的商标权人北京三夫公司并非同一主体，在案亦无证据证明二者存在关联关系，即便如一审判决所认定北京三夫公司曾是 X-Bionic AG 公司代理商，亦不构成前述成立平行进口抗辩的关联关系。

来源：北京知识产权法院

### **Beijing Court Case: Parallel Importation Focuses on the Same Subject or Affiliated Relationship Between the Trademark Owner in the Home Country and the Producer of Goods in a Territory Outside the Home Country**

Recently, the Beijing Intellectual Property Court heard a dispute between the appellant, Jiangsu Sanfu Outdoor Products Co. and the appellee, Mr. Liu.

The court held that parallel importation generally refers to the business model of importing goods from outside the country that are produced by the same subject or a related subject as the trademark right holder of the country and selling them in the domestic market, i.e., parallel importation focuses on the same subject or a related subject between the trademark right holder of the country and the producer of the goods in the territory outside the country. If the two are not the same subject or the subject does not exist between the relationship, even if the source of goods have the same, due to the difference in the subject of the right, the goods can not constitute a general sense of parallel imports of goods, without the permission of the trademark right holder of the country to import and sell the relevant goods should be an infringement of trademark rights.

In this case, even if the appellee's sales of the alleged infringing goods are legally imported from abroad and with the appellant in the domestic sales of products with Chinese labels on the origin of the product has the same nature, due to the allegedly infringing goods of the producer of the Swiss company and the rights of the trademark in China in the case of the trademark right holder Beijing Sanfu company is not the same subject, there is no evidence to prove that there is a related relationship, even if the first instance judgment found that Beijing Sanfu company has the same right to sell the infringing goods. Even if Beijing Sanfu Company had been the agent of X-Bionic AG, as found in the judgment of the first instance, it did not constitute the relationship for the establishment of the defense of parallel importation as mentioned above.

Source: Beijing Intellectual Property Court

### **北京法院案例：“法检”一词在二手车鉴定评估行业作为企业字号注册并使用，缺乏正当基础**

近日，北京朝阳区法院一审开庭审理了原告北京酷车易美网络科技有限公司与被告黑龙江省法检机动车鉴定评估有限公司、被告北京华品博睿网络技术有限公司不正当竞争纠纷案。

本案的争议焦点在于将“法检”作为企业字号注册并使用是否构成不正当竞争。法院认为，基于二手车鉴定评估的行业性质和特点，将“法检”一词作为企业字号注册并使用缺乏正当基础；考量法检机动车公司的实际经营活动，“法检”一词作为其企业字号注册并使用具有可责

性；衡量消费者权益、其他经营者利益及社会公共利益，将“法检”一词作为企业字号注册并使用会产生负面影响；适用反不正当竞争法对利用企业名称实施的不正当竞争行为进行规制，并未扰乱权力边界。判决被告停止在企业名称中使用“法检”字样。

来源：北京朝阳区法院

## **Beijing Court Case: Lack of Legitimate Basis for the Registration and Use of the Term “Legal Prosecution” as a Corporate Name in the Used Car Appraisal and Evaluation Industry**

Recently, Beijing Chaoyang District Court made a judgement of an unfair competition dispute between the Beijing Kumeiyi Network Technology Co.(Plaintiff), and Heilongjiang Legal Prosecution Motor Vehicle Appraisal and Evaluation Co. (Defendant 1) Beijing Huapin Borui Network Technology Co. (Defendant 2).

The focus of the case was whether the registration and use of the name "Legal Prosecution" as an enterprise name constituted unfair competition. The court held that, based on the nature and characteristics of the used car appraisal industry, the registration and use of the term “Legal Prosecution” as an enterprise's name lacked a legitimate basis; taking into account of the act of defendant 1, he use of the term “Legal Prosecution” as the name of the enterprise is blameworthy; weighing the rights and interests of consumers, the interests of other operators and the public interest of the society, the registration and use of the term “Legal Prosecution” as the name of the enterprise will have a negative impact; and the application of the Anti-Unfair Competition Law to regulate the use of the name of the enterprise in the implementation of unfair competition does not disturb the boundaries of the power. The court ruled that the defendant should stop using the word "Legal Prosecution" in the enterprise name.

Source: Beijing Chaoyang District Court

## **世界知识产权组织：过去十年中国生成式AI专利申请量居全球第一**

当地时间2024年7月3日，世界知识产权组织发布《生成式人工智能专利态势报告》。

报告显示，2014年至2023年，中国发明人申请的生成式人工智能专利数量最多，远超美国、韩国、日本和印度等国。2014年至2023年，全球生成式人工智能相关的发明申请量达54000件，其中超过25%是在去年一年出现的。2014年至2023年间，中国的生成式人工智能发明超过3.8万件，是排名第二的美国的6倍。目前，生成式人工智能已遍及生命科学、制造、交通、安全和电信等行业。图像和视频数据在生成式人工智能专利中占主导地位，其次是文本和语音/音乐，分子、基因和蛋白质数据的生成式人工智能专利增长迅速。

来源：中国驻欧盟使团

## **WIPO: China Tops the World in Generative AI Patent Applications in the Past Decade**

On July 3, 2024, the World Intellectual Property Organization (WIPO) released the Patent Landscape Report - Generative Artificial Intelligence(GenAI)

The report shows that Chinese inventors filed the largest number of generative AI patents between 2014 and 2023, far outpacing countries such as the U.S., South Korea, Japan, and India. Between 2014 and 2023, 54,000 applications were filed globally for generative AI-related inventions, with more than 25% of them occurring in the last year. Between 2014 and 2023, China's generative AI inventions in China exceeded 38,000, six times that of the second-ranked United States. Generative AI is now spread across industries such as life sciences, manufacturing, transportation, security and telecommunications. Image and video data dominate generative AI patents, followed by text and voice/music, with generative AI patents for molecular, genetic and protein data growing rapidly.

Source: Chinese Mission to the European Union

## USPTO就专利实验使用侵权例外征求公众意见

2024年6月28日，美国专利商标局（USPTO）发布了一份通知，收集公众对于专利实验使用侵权例外情况的现状以及美国国会是否应考虑通过立法行动将实验使用例外编纂成法典的意见。

USPTO欢迎就与实验使用例外及其潜在编纂有关的任何问题发表意见，但特别征集以下问题的意见：

(1) 美国实验使用例外判例的现状如何影响技术领域的投资和/或研发，包括但不限于：量子计算；人工智能；其他与计算机有关的发明；农业；生命科学（包括处方药和医疗器械）；减缓气候变化的技术。

(2) 是否有任何技术受到美国实验使用例外判例现状的负面影响？具体有哪些技术，并解释其是如何受到影响的。

(3) 法定实验使用例外情况将对新技术的创新和商业化产生了哪些影响，包括：研究与开发；获得资助的能力；投资策略；专利许可和申请；产品开发；下游和上游销售；竞争；专利执法和诉讼。

(4) 在美国就专利申请、提交、购买、许可、销售或维持所做的决定，是否会受实验使用例外判例现状的影响？请解释原因。

(5) 美国是否应该采用法定的实验使用例外？请解释原因并提供证据和数据来支持观点。

(6) 解释应如何界定法定实验使用例外，包括确保专利权得到保护而需要的具体限制和约束。

(7) 支持维持现状或改变美国实验使用例外公共政策的原因。

(8) 关于如何更好地促进美国专利发明实验研究的其他建议。

来源：中国科学院知识产权信息

## USPTO Seeks Public Comment on Patent Experimental Use Infringement Exception

On June 28, 2024, the U.S. Patent and Trademark Office (USPTO) published a notice collecting public comments on the current status of the experimental use infringement exception to patents and whether Congress should consider codifying the experimental use exception through legislative action.

The USPTO welcomes comments on any issue related to the experimental use exception and its potential codification, but specifically solicits comments on the following issues:

1. Please explain how the current state of U.S. experimental use exception jurisprudence impacts investment and/or research and development in any field of technology, including, but not limited to: (a) quantum computing; (b) artificial intelligence; (c) other computer-related inventions; (d) agriculture; (e) life sciences (including prescription drugs and medical devices); and (f) climate-mitigation technologies.
2. Do you believe there are any technologies that are negatively affected by the current state of experimental use exception jurisprudence in the United States? If yes, please identify which technologies and explain how you believe they are affected.
3. Please explain what impact, if any, a statutory experimental use exception would have on the innovation and commercialization of new technologies including with respect to: (a) research and development; (b) ability to obtain funding; (c) investment strategy; (d) licensing of patents and patent applications; (e) product development; (f) sales, including downstream and upstream sales; (g) competition; and (h) patent enforcement and litigation.
4. Has the current state of experimental use exception jurisprudence impacted decisions you have made with respect to filing, purchasing, licensing, selling, or maintaining patent applications and patents in the United States? If yes, please explain how.
5. Please explain whether you believe the United States should adopt a statutory experimental use exception. In doing so, please identify your reasons, including by providing evidence and data to support your views.
6. Please explain how a statutory experimental use exception, if any, should be defined. Please include specific limitations and restrictions you believe would be needed to ensure that patent rights are preserved.
7. Please identify public policy reasons in support of maintaining the status quo or changing the experimental use exception in the United States.
8. Please provide any additional recommendations on how best to enhance and facilitate experimental research on patented inventions in the United States.

Source: [Intellectual Property Information of Chinese Academy of Sciences](#)

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