



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No. **387**

2024.8

立方要闻周报

Weekly News By Lifang & Partners

NO.124

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

市场监管总局发布《违反〈中华人民共和国反垄断法〉实施经营者集中行政处罚裁量权基准（征求意见稿）》

State Administration for Market Regulation Published *Criteria for Administrative Penalty Discretion in Cases of Violation of the Anti-Monopoly Law of the People's Republic of China in Implementing Concentration of Undertakings (Draft for Public Comments)*

市监总局公布数据，2022年以来，查处垄断协议、滥用市场支配地位案件60件，罚没金额超过25亿元

SAMR Released Data that since 2022, SAMR has Concluded 60 Cases of Abuse of Market Dominance and Monopolistic Agreements, with Fines Exceeding 2.5 Billion Yuan

市场监管总局公布湖南湘西自治州13家机动车检测机构达成并实施垄断协议案行政处罚决定，罚没合计超230万元

SAMR Published Administrative Penalty Decisions against Automotive Examining Institutions in Xiangxi Autonomous Prefecture of Hunan Province for Reaching and Implementing A Monopolistic Agreement, with Fines Exceeding 2.3 Million Yuan in Total

辽宁省市场监管局：2024年核查滥用市场支配地位案件两件

Liaoning Administration for Market Regulation: Investigated Two Cases of Abuse of Market Dominance in 2024

谷歌因违反美国反垄断法，或面临业务分拆

Google Faces Possible Breakup for Violating US Antitrust Laws

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



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No.387

2024.8

全国旅游标准化技术委员会就《旅游大数据安全与隐私保护要求》（征求意见稿）公开征求意见

National Tourism Standardization Technical Committee Seeks Public Comments on the *Security and Privacy Protection Requirements for Tourism Big Data*

中医药管理局、国家数据局联合印发《关于促进数字中医药发展的若干意见》

The National Administration of Traditional Chinese Medicine and the National Data Administration Have Jointly Issued the *Several Opinions on Promoting the Development of Digital Traditional Chinese Medicine*

数据资产入表保险成为新险种获批

Approval for Insurance of Data Assets to Become a New Type of Insurance

湖南省网信办发布《政务信息系统网络安全评估报告模板》

Template of Cybersecurity Assessment Report for Government Information System Issued by the Cyberspace Administration of Hunan Province

北京一男子非法获取他人信息牟取暴利获刑

Beijing Man Sentenced for Illegally Obtaining Others' Information for Exorbitant Profits

澳大利亚政府发布《政府人工智能负责任使用政策》

Responsible Choices: A New Policy for Using AI in the Australian Government

AEPD对优衣库欧洲有限公司泄漏隐私处以45万欧元罚款

AEPD Fines UNIQLO EUROPE LTD €450,000 for Privacy Breaches

知识产权 Intellectual Property

九部门联合出台《关于推进重点产业知识产权强链增效的若干措施》

Nine departments jointly issued "Several Measures on Promoting the Strengthening and Efficiency Improvement of Intellectual Property Rights in Key Industries"

国家知识产权局办公室印发《“新三样”相关技术专利分类体系（2024）》

The General Office of the State Intellectual Property Office issued "the New Three Related Technology Patent Classification System (2024)"



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No. **387**

2024.8

最高法知产庭每周一案：包含方法特征的实用新型专利新颖性、创造性判断

One Case of the Week by the Supreme Court's Intellectual Property Tribunal: Novelty and Creativity Judgment of Utility Model Patents Including Method Features

北京法院案例：SVG交互领域全国首例生效判决，135编辑器被判赔偿i排版35万元

Beijing Court Case: The first effective judgment in the field of SVG interaction in China. 135 Editor was ordered to pay i Paiban RMB 350,000

江苏法院案例：“無印良品”VS“无印良品”案二审判决

Jiangsu Court Case: MUJI wins! Second-instance judgment in the case of "MUJI" vs. "MUJI"

广州法院案例：《百鬼物语》与《阴阳师》游戏侵权案二审判决

Guangzhou Court Case: Second instance judgment on the infringement case of "One Hundred Ghosts" and "Onmyoji" games

阿斯利康推翻1.07亿美元抗癌专利药物赔偿判决

AstraZeneca overturns \$107 million cancer drug patent ruling

西部数据在一起机械硬盘专利诉讼中败诉

Western Digital loses a mechanical hard disk patent lawsuit

立方竞争法周报 Weekly Competition Law News

市场监管总局发布《违反〈中华人民共和国反垄断法〉实施经营者集中行政处罚裁量权基准（征求意见稿）》

2024年8月16日，国家市场监督管理总局发布《违反〈中华人民共和国反垄断法〉实施经营者集中行政处罚裁量权基准（征求意见稿）》（以下简称“《裁量权基准征求意见稿》”）并向社会公开征求意见，意见反馈截止日期为2024年9月14日。《裁量权基准征求意见稿》共有19条，规定了适用情形和指导原则，在明确初步罚款数额的基础上进一步明确适用从轻处罚及从重处罚的情形，并列举了最终罚款数额上调或下调的考虑因素等，具有较强的先进性。（[查看更多](#)）

SAMR Published Criteria for Administrative Penalty Discretion in Cases of Violation of the Anti-Monopoly Law of the People's Republic of China in Implementing Concentration of Undertakings (Draft for Public Comments)

On August 16, 2024, the State Administration for Market Regulation (“SAMR”) published “*Criteria for Administrative Penalty Discretion in Cases of Violation of the Anti-Monopoly Law of the People's Republic of China in Implementing Concentration of Undertakings (Draft for Public Comments)*” (hereinafter referred to as “the *Draft*”) and openly sought comments from the public, and the deadline for comment submission is September 14, 2024. The *Draft* consists of 19 articles; it stipulates applicable situations and guiding principles; it further clarifies the applicable scenarios for imposing lighter and heavier penalties on the basis of specifying the amount of preliminary fine; and it lists factors in considering increasing or decreasing the amount of ultimate fine, etc., all of which possess strong progressiveness. ([More](#))

市监总局公布数据，2022年以来，查处垄断协议、滥用市场支配地位案件60件，罚没金额超过25亿元

2024年8月16日，在国务院新闻办举行的“推动高质量发展”系列主题新闻发布会上，国家市场监督管理总局有关领导出席并答记者问，并介绍了市场监管总局在加强反垄断和反不正当竞争方面开展的工作。在深化重点领域反垄断监管执法方面，总局连续开展民生领域反垄断执法专项行动，2022年以来查处垄断协议、滥用市场支配地位案件60件，罚没金额超过25亿元，推动市场竞争秩序稳步向好。在做好经营者集中反垄断审查方面，总局自2022年以来审结经营者集中案件1900余件，并实行简易和非简易案件的繁简分流审查机制。在支持指导经营者加强反垄断合规建设方面，总局发布多项合规指南、指引，细化有关规则。（[查看更多](#)）

SAMR Released Data that since 2022, SAMR has Concluded 60 Cases of Abuse of Market Dominance and Monopolistic Agreements, with Fines Exceeding 2.5 Billion Yuan

On August 16, 2024, at the “Promoting High-Quality Development” series of thematic press conferences held by the State Council Information Office, relevant leaders of SAMR attended and answered

questions from reporters, and they introduced SAMR's work in strengthening anti-monopoly and anti-unfair competition. In terms of deepening anti-monopoly regulation and law enforcement in crucial areas, SAMR has carried out special actions for anti-monopoly law enforcement in the area of civil livelihood continuously; since 2022, SAMR has concluded 60 cases of monopolistic agreements and abuse of market dominance, with fines exceeding 2.5 billion yuan, which promoted the steady improvement of market competition order. In terms of improving the work in reviewing concentration of undertakings, SAMR has concluded more than 1,900 cases of concentration of undertakings since 2022, and it implemented a simplified and non-simplified case review mechanism. In terms of supporting and guiding companies to strengthen anti-monopoly compliance construction, SAMR has issued multiple compliance guidelines and directions, which detailed relevant regulations. ([More](#))

市场监管总局公布湖南湘西自治州13家机动车检测机构达成并实施垄断协议案行政处罚决定，罚没合计超230万元

2024年8月9日，国家市场监督管理总局官网发布湖南湘西自治州13家机动车检测机构达成并实施垄断协议的行政处罚决定。本案处罚作出机关是湖南省市场监督管理局，该局于2022年6月立案调查，于2024年7月作出行政处罚决定。本案中，当事人13家车检机构在湘西自治州机动车检验检测市场具有竞争关系，共同达成并实施固定机动车检测服务价格的垄断协议的行为，限制了湘西自治州机动车检验检测市场的公平竞争，使原本具有的市场竞争关系明显减弱甚至消除，干扰了公平公正的市场竞争环境，抬高了当地机动车检测服务价格，加重了群众经济负担，损害了市场公平竞争和消费者利益。 ([查看更多](#))

SAMR Published Administrative Penalty Decisions against 13 Automotive Examining Institutions in Xiangxi Autonomous Prefecture of Hunan Province for Reaching and Implementing A Monopolistic Agreement, with Fines Exceeding 2.3 Million Yuan in Total

On August 9, 2024, SAMR official website published administrative penalty decision against 13 automotive examining institutions in Xiangxi Autonomous Prefecture of Hunan province for reaching and implementing a monopolistic agreement. The penalty decision was made by Administration for Market Regulation of Hunan Province; it initiated the investigation in June 2022 and made the administrative penalty decision in July 2024. In this case, the penalized parties are 13 automotive examining institutions, and they are competitors in the automotive examining market of Xiangxi Autonomous Prefecture; their conduct of jointly reaching and implementing a monopolistic agreement to fix the price of automotive examining services restricted the fair competition of the automotive examining market of Xiangxi Autonomous Prefecture, significantly weakened or even eliminated the previously existing market competition relationship, disrupted a fair and just market competition environment, raised the price of local automotive examining services, increased the economic burden on the public and harmed the market fair competition and consumer interests. ([More](#))

辽宁省市场监管局：2024年核查滥用市场支配地位案件两件

2024年8月9日，国家市场监督管理总局官网发布题为“辽宁项目化清单化推进共建共享全国统一大市场建设”的文章，其中提到辽宁省市场监督管理局2024年强化反垄断执法相关成果，包括开展民

生领域反垄断执法专项行动，依法纠治行业协会组织本行业经营者达成实施垄断协议等持续多发的竞争违法行为，核查滥用市场支配地位案件两件。（[查看更多](#)）

Liaoning Administration for Market Regulation: Investigated Two Cases of Abuse of Market Dominance in 2024

On August 9, 2024, SAMR official website published an article titled “*Liaoning Advances the Joint and Shared Construction of a Unified National Market through Project-based and List-based Approaches*”. The article mentioned the achievements of Liaoning Administration for Market Regulation in strengthening anti-monopoly law enforcement in 2024. The achievements include carrying out special actions regarding anti-monopoly law enforcement in the area of civil livelihood, correcting continuous and frequent conducts violating competition law such as industry associations organizing companies within their industry to reach and implement monopolistic agreements, and investigating two cases of abuse of market dominance. ([More](#))

谷歌因违反美国反垄断法，或面临业务分拆

2024年8月13日，据媒体报道，作为美国法院判决谷歌违反反垄断法的救济措施，美国司法部和各州检察长正在考虑几种方案，包括分拆谷歌核心业务（如谷歌浏览器和安卓智能手机操作系统）的可能。这些讨论虽然仍处于初期阶段，但表明政府正在严肃地对待瓦解谷歌垄断力量的工作。其他救济措施包括要求谷歌将其庞大的数据储备向竞争对手开放、或者强制谷歌放弃使其搜索引擎成为苹果手机等设备上默认选项的交易。目前提出的救济措施在激进程度上可能有所区分，但都可能对谷歌当前的商业行为构成重大挑战，甚至可能重塑竞争格局。（[查看更多](#)）

Google Faces Possible Breakup for Violating US Antitrust Laws

On August 13, 2024, according to media reports, as remedies for the court’s ruling that Google violated antitrust law, the Justice Department, along with state attorneys general, is now considering several options, including the possibility of breaking off key segments of Google’s business, such as its Chrome browser or Android smartphone operating system. These discussions, while in their early stages, indicate the seriousness with which the government is approaching the task of dismantling Google’s monopolistic power. Other proposed remedies include forcing Google to make its vast troves of data available to competitors or mandating that the company abandon deals that have made its search engine the default option on devices like the iPhone. Some remedies proposed so far might be more radical than others, but they could all represent a substantial challenge to Google’s current business practices, or even potentially reshaping the competitive landscape. ([More](#))

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

全国旅游标准化技术委员会就《旅游大数据安全与隐私保护要求》（征求意见稿）公开征求意见

2024年8月9日，全国旅游标准化技术委员会发布旅游行业标准《旅游大数据安全与隐私保护要求（征求意见稿）》（以下简称《标准》，公开征求意见，意见反馈截止至2024年10月8日。

《标准》结构大致分为八章，通过完善旅游大数据安全与隐私保护生命周期管理、与隐私保护运维管理、隐私保护监控管理及典型旅游应用场景大数据安全等方面，确保在旅游大数据的收集、处理、存储和使用过程中对个人信息安全有保障。同时，加强行业监督，使旅游数据处理单位更规范地开展旅游数据安全管理工作，预防数据安全事件的发生。（[查看更多](#)）

National Tourism Standardization Technical Committee Seeks Public Comments on the Security and Privacy Protection Requirements for Tourism Big Data

On 9 August 2024, the National Tourism Standardization Technical Committee promulgated the tourism industry standard the *Security and Privacy Protection Requirements for Tourism Big Data (Draft for Comment)* (the “Standard”), for public comments by 8 October 2024.

The *Standard* is divided into eight chapters, which ensure the security of personal information during the collection, processing, storage and use of tourism big data by improving the lifecycle management of security and privacy protection of tourism big data, operation and maintenance management of privacy protection, monitoring management of privacy protection, big data security of typical tourism application scenarios and other aspects. Meanwhile, it is required to strengthen the industry supervision and enable tourism data processing entities to carry out tourism data security management in a more compliant manner and prevent data security incidents. ([More](#))

中医药管理局、国家数据局联合印发《关于促进数字中医药发展的若干意见》

2024年8月15日，据人民网-人民日报报道，国家中医药管理局、国家数据局联合印发《关于促进数字中医药发展的若干意见》（以下简称《意见》）。《意见》关注数字化辅助中医服务、数字化助力人才培养等方面，为充分发挥中医养生保健优势，提出在3-5年时间推动大数据、人工智能等新兴数字技术逐步融入中医药传承创新发展全链条各环节，促进中医药数据的共享、流通和复用，初步实现中医药全行业、全产业链、全流程数据有效贯通，全力打造“数智中医药”年务指导，优化审批流程，实现“一次性申请、一站式审批”。（[查看更多](#)）

The National Administration of Traditional Chinese Medicine and the National Data Administration Have Jointly Issued the Several Opinions on Promoting the Development of Digital Traditional Chinese Medicine

On August 15, 2024, according to People's Daily Online and People's Daily, the National Administration of Traditional Chinese Medicine and the National Data Administration jointly issued the *Several Opinions on Promoting the Development of Digital Traditional Chinese Medicine (the "Opinions")*. The

Opinions focus on digital auxiliary TCM (*Traditional Chinese Medicine*) services and digital facilitation of talent cultivation, etc. It aims to give full play to the advantages of TCM in health care and distribution, stating that in three to five years, emerging digital technologies, such as big data and artificial intelligence, will be gradually integrated into all links of the whole chain for the inheritance, innovation and development of TCM. *The Opinions* wish a move to facilitate the sharing, circulation and reuse of TCM data and achieve effective interconnection of data from all industries, all industry chains and all processes relating to TCM. It always focuses on developing the annual affairs guidance of "digital intelligence TCM", optimize the examination and approval procedures, and realize the "one-off application and one-stop examination and approval". ([More](#))

数据资产入表保险成为新险种获批

2024年8月15日，据济宁市人民政府发布消息，济宁市签发全国第一张数据资产入表保险单。

数据资产入表是数据要素价值化的有效途径，为进一步加速数据资产入表步伐，为企业实施数据资产入表提供全方位保障，经监管部门批准，太平科技保险推出“数据资产入表保险”这一新险种。企业数据资产入表出现入表失败或未实现预期价值时，企业将获得相应理赔，为企业实施数据资产入表装上了“安全阀”和“减震器”。“入表+保险”的创新合作模式既是对企业数据开展数据价值工作的有效保障，也是对促进数据要素价值释放、培育发展新质生产力能够起到良好的支撑作用。 ([查看更多](#))

Approval for Insurance of Data Assets to Become a New Type of Insurance

On August 15, 2024, according to the news released by the People's Government of Jining City, Jining City has issued the first insurance policy for data assets in the country.

Incorporating data assets into the balance sheet is an effective way to convert data elements into value. In order to further accelerate the pace of incorporating data assets into the balance sheet and provide all-round guarantee for enterprises implementing incorporating data assets into their balance sheet, upon approval by the regulatory authorities, Taiping Science and Technology Insurance introduces a new type of insurance called "insurance of data assets into the balance sheet". Where an enterprise's data assets fail to be incorporated into the balance sheet or the expected value fails to be realized, the enterprise will receive corresponding compensation. The insurance installs "safety valves" and "shock absorbers" for the incorporation of data assets into the balance sheet. The innovative cooperation model of "data entry plus insurance" is not only an effective guarantee for carrying out the work of data value in enterprise data, but also can play a good supporting role in promoting the release of value of data elements and the cultivation and development of new quality productivity. ([More](#))

湖南省网信办发布《政务信息系统网络安全评估报告模板》

2024年8月16日，为规范省直单位政务信息系统网络安全评估工作，湖南省委网信办印发了《关于印发<政务信息系统网络安全评估实施指南（试行）>的通知》（湘网办发〔2024〕19号），要求政务信息系统（含新建、扩建和改造升级系统）项目建设单位应按照省直单位前置

审查中网络安全联审意见及《实施指南》开展有关安全评估工作，并将评估报告提交省委网信办备案。（[查看更多](#)）

Template of Cybersecurity Assessment Report for Government Information System Issued by the Cyberspace Administration of Hunan Province

On August 16, 2024, in order to regulate the cyber security assessment of the government information system of the entities directly under the provincial government, the Cyberspace Administration of the Hunan Province issued the *Notice on Issuing the Implementation Guidelines for the Cybersecurity Assessment of the Government Information System (for Trial Implementation) (Xiang Wang Ban Fa [2024] No. 19)*, requiring project construction unit of government information system (including newly built, expanded, transformed and upgraded systems) to conduct security assessment in accordance with the opinions of the cybersecurity joint examination during the pre-examination of the entities directly under the provincial government and the Implementation Guidelines, and submit the assessment report to the Cyberspace Administration of the Hunan Province for the record. ([More](#))

北京一男子非法获取他人信息牟取暴利获刑

2024年8月15日，北京市朝阳区人民法院的一起侵犯公民个人信息案中，天某某非法获取上亿条公民个人信息，并利用境外软件提供给他人牟利。这些信息不仅包含个人的姓名、手机号、证件号以及交易信息，还包括车辆信息、用户密码等信息，部分信息较为敏感。因侵犯公民个人信息罪，天某某被判处有期徒刑五年，罚金100万元。一审判决后，被告人未上诉，判决已生效。（[查看更多](#)）

A Man in Beijing Sentenced for Illegally Obtaining Others' Information for Exorbitant Profits

On August 15, 2024, in a case of infringement of citizens' personal information heard by the Beijing Chaoyang District People's Court, a natural person, Tian, illegally obtained hundreds of millions of citizens' personal information, and provided it to others with overseas software for profit. The information not only included the person's name, mobile phone number, ID number, and transaction information, but also included vehicle information, user passwords, etc., some of which are relatively sensitive. Due to the crime of infringement of citizens' personal information, Tian was sentenced to fixed-term imprisonment of five years and a fine of RMB 1 million. After the judgment of first instance was pronounced, the defendant did not appeal and the judgment took effect. ([More](#))

澳大利亚政府发布《政府人工智能负责任使用政策》

2024年8月16日，澳大利亚政府发布了《政府人工智能负责任使用政策》。该政策将使澳大利亚政府成为安全、负责任地使用人工智能的典范。

该政策规定了使用人工智能的最佳实践，包括对员工进行人工智能基础知识培训，同时考虑到参与人工智能采购、开发、培训和部署的员工等角色和责任并且公开发布一份声明，概述他们采用人工智能的方法。其中包括关于遵守政策的信息，监测已部署的人工智能系统有效性的措

施，指定负责在其组织内执行政策的官员以及必须跟上不断变化的需求，因为它们会随着时间的推移而变化。该政策还规定了使用人工智能的原则，包括确保澳大利亚人受到保护免受伤害；人工智能风险缓解是相称和有针对性的以及人工智能的使用是道德的、负责任的、透明的，并且可以向公众解释。该政策于2024年9月1日生效。 ([显示更多](#))

Responsible Choices: A New Policy for Using AI in the Australian Government

On August 16, 2024, the Australian Government issued the *Government Policy on the Responsible Use of Artificial Intelligence (AI)*. The policy aims to establish the Australian Government as a model of safe and responsible use of AI.

The policy sets out best practices for the use of AI, including the training of employees on the basics of AI, taking into account the roles and responsibilities of employees involved in the procurement, development, training and deployment of AI, and the publication of a statement outlining their approach to adopting AI. This includes information on compliance with the policy, measures to monitor the effectiveness of AI systems that have been deployed, the designation of officials responsible for implementing the policy in their organization, and the need to keep pace with changing needs as they change over time. The policy also sets out the principles for the use of AI, including ensuring that Australians are protected from harm; that risk mitigation from AI is proportionate and targeted; and that use of AI is ethical, responsible, transparent, and explainable to the public. The policy comes into effect on September 1, 2024. ([More](#))

AEPD对优衣库欧洲有限公司泄漏隐私处以45万欧元罚款

2024年8月12日，西班牙数据保护局（AEPD）在诉讼中公布了其对优衣库欧洲有限公司西班牙分公司（UNIQLO）的罚款决定。

据AEPD概述说，向优衣库提供服务的投诉人接收工资单的同时收到了一份含有全部员工姓名、身份证、社会保障会员号码和银行账号等信息的文件，于是其于2023年3月31日向AEPD提交了投诉。优衣库对此解释道该违规行为是由人力资源部门内部的人为错误造成的。最终AEPD确认，员工在管理员工工资单方面的疏忽行为并不免除优衣库的责任并命令优衣库采取技术和组织措施，以保证其工作人员个人数据的安全，对其处以45万欧元初始罚款。由于优衣库自愿支付罚款并确认责任，罚款总额随后降至27万欧元。 ([显示更多](#))

AEPD Fines UNIQLO EUROPE LTD €450,000 for Privacy Breaches

On August 12, 2024, the Spanish Data Protection Authority (AEPD) published its decision to fine Uniqlo Library Europe Spain (UNIQLO) in a proceeding.

According to the AEPD, the complainant, who provided services to UNIQLO, received their payroll and received an email containing a document. The document contained information including name, surname, ID, social security membership number, and bank account number. Therefore he complainant submitted a complaint to the AEPD on March 31, 2023. UNIQLO explained that the breach was caused by a human error within the human resources department and that the notification was not done in a timely manner due to the employee in question not informing the hierarchical superior. Lastly, the

AEPD confirmed that the negligent action of the employee in the management of the employee's payroll does not exempt UNIQLO from liability and ordered UNIQLO to adopt technical and organizational measures to guarantee the security of the personal data of its workers and imposed fines of €450,000. The total amount of the fine was subsequently reduced to €270,000 on account of UNIQLO's voluntary payment of the fine and acknowledgment of responsibility. ([More](#))

知识产权 Intellectual Property

九部门联合出台《关于推进重点产业知识产权强链增效的若干措施》

日前，国家知识产权局会同八部门联合出台了《关于推进重点产业知识产权强链增效的若干措施》（下称《若干措施》），从夯实基础、提升效益、强化协同、防范风险等4个方面提出了10项重点工作任务，为增强重点产业的竞争优势、规模效益、发展环境和安全水平提供了更加明确的指引。

来源：国家知识产权局

Nine departments jointly issued "Several Measures on Promoting the Strengthening and Efficiency Improvement of Intellectual Property Rights in Key Industries"

Recently, China National Intellectual Property Administration, together with eight departments, jointly issued "Several Measures on Promoting the Strengthening of Intellectual Property Chains and Improving Efficiency in Key Industries" (hereinafter referred to as "Several Measures"), which proposed 10 key work tasks from four aspects: consolidating the foundation, improving efficiency, strengthening coordination, and preventing risks. It provides more clear guidance for enhancing the competitive advantages, scale benefits, development environment and security levels of key industries.

Source: China National Intellectual Property Administration

国家知识产权局办公室印发《“新三样”相关技术专利分类体系（2024）》

近日，国家知识产权局办公室印发《“新三样”相关技术专利分类体系（2024）》，适用于对“新三样”相关技术的专利进行宏观统计监测分析。

该专利分类体系以服务外贸创新发展为导向，从“新三样”产业链、供应链出发，明确了相关技术范围，涵盖出口的主流产品，构建起相关技术分支与专利衔接的分类体系，可为开展创新活动与经济活动的综合性关联性分析提供依据。该专利分类体系以国际专利分类对照为基础，采用国际专利分类与“新三样”有关技术对照的架构，可随着相关产品出口变化和 international patent classification revision实现适应性调整，以满足有关专利统计监测需求，为开展国际比较分析奠定基础。

来源：国家知识产权局

The General Office of China National Intellectual Property Administration issued the "New Three" Related Technology Patent Classification System (2024)

Recently, the General Office of China National Intellectual Property Administration issued the "Patent Classification System for the "New Three Things" Related Technologies (2024)", which is applicable to the macro-statistical monitoring and analysis of patents for the "New Three Things" related technologies.

This patent classification system is oriented to serve the innovative development of foreign trade. Starting from the industrial chain and supply chain of the "new three things", it clarifies the scope of relevant technologies, covers the mainstream products for export, and builds a classification system that connects relevant technical branches with patents, which can provide a basis for comprehensive correlation analysis between innovation activities and economic activities. This patent classification system is based on the international patent classification comparison, and adopts the framework of the international patent classification and the "new three things" related technology comparison. It can achieve adaptive adjustments with the changes in the export of related products and the revision of the international patent classification, so as to meet the needs of relevant patent statistics monitoring and lay the foundation for international comparative analysis.

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

最高法知产庭每周一案：包含方法特征的实用新型专利新颖性、创造性判断

某机械制造公司为一实用新型专利的专利权人。2019年2月26日，某纸业公司针对本专利权提出无效宣告请求。国家知识产权局认为本专利权利要求1技术方案A不具备创造性，宣告本专利权部分无效，在权利要求1技术方案B及权利要求2引用技术方案B的技术方案的基础上继续维持本专利权有效。某纸业公司不服，提起诉讼，请求撤销被诉决定，判令国家知识产权局重新作出决定。

一审法院认为：被诉决定以本专利权利要求1技术方案B具备创造性而认定权利要求2引用技术方案B时具备创造性，缺乏事实和法律依据，依法应予纠正。判决撤销国家知识产权局作出的无效宣告请求审查决定并重新作出审查决定。某机械制造公司不服，提出上诉。最高人民法院二审判决驳回上诉，维持原判。

裁判要旨：对于既包含产品形状、构造，又包含产品制造方法的实用新型专利权利要求，在判断其新颖性、创造性时，如果其方法特征能够使产品具有某种特定形状、构造，则该方法特征对实用新型专利权保护范围具有限定作用。在进行新颖性、创造性判断时，应当将该方法导致的特定形状、构造与现有技术的形状、构造进行比对，而非将该方法本身与现有技术的方法进行比对。

来源：最高人民法院

One Case of the Week by the Supreme Court's Intellectual Property Tribunal: Novelty and Creativity Judgment of Utility Model Patents Including Method Features

A machinery manufacturing company is the patentee of a utility model patent. On February 26, 2019, a paper company filed a request for invalidation of this patent right. The China National Intellectual Property Administration believes that the technical solution A of claim 1 of this patent does not have creativity, and declares that this patent right is partially invalid. The patent right continues to be valid on the basis of the technical solution of claim 1 technical solution B and claim 2 citing technical solution B. The paper company was dissatisfied and filed a lawsuit, requesting the revocation of the disputed decision and ordering the National Intellectual Property Administration to make a new decision.

The court of first instance held that the challenged decision, which determined that claim 2 was inventive when it cited technical solution B based on the inventiveness of claim 1 of the patent, lacked factual and legal basis and should be corrected in accordance with the law. The court ruled to revoke the invalidation request review decision made by the State Intellectual Property Office and make a new review decision. A machinery manufacturing company was dissatisfied and filed an appeal. The Supreme People's Court rejected the appeal in its second instance judgment and upheld the original judgment.

Judgment Summary: For utility model patent claims that include both product shape and structure and product manufacturing methods, when judging their novelty and creativity, if the method features can make the product have a certain shape and structure, then the method features have a limiting effect on the scope of protection of the utility model patent right. When judging novelty and creativity, the specific shape and structure caused by the method should be compared with the shape and structure of the prior art, rather than comparing the method itself with the method of the prior art.

Source: Supreme People's Court

北京法院案例：SVG交互领域全国首例生效判决，135编辑器被判赔偿i排版35万元

近日，北京市高级人民法院做出二审判决，驳回各方上诉，维持原判。

原告i排版认为135编辑器方面抄袭、复制了“i排版微信公众号图文SVG交互排版编辑器（即“iPaiban Pro”SVG编辑器）交互组件应用软件”中的34个组件代码，故提起诉讼。法院经审理认为，135编辑器方面侵犯了i排版涉案权利软件的信息网络传播权。据此，一审法院判决135编辑器方面停止侵权，并赔偿i排版经济损失25万元及合理开支10万元。

来源：北京市高级人民法院

Beijing Court Case: The first effective judgment in the field of SVG interaction in China. 135 Editor was ordered to pay i Paiban RMB 350,000

Recently, the Beijing High People's Court made a second-instance judgment, rejecting appeals from all parties and upholding the original judgment.

The plaintiff, i Paiban, believed that 135 Editor had plagiarized and copied 34 component codes in the "i Paiban WeChat Official Account Graphics SVG Interactive Typesetting Editor (i.e. "iPaiban Pro"

SVG Editor) Interactive Component Application Software", so it filed a lawsuit. After trial, the court held that 135 Editor had infringed on i Paiban's right to disseminate the software involved in the case through the information network. Based on this, the court of first instance ordered 135 Editor to stop the infringement and compensate i Paiban for economic losses of 250,000 yuan and reasonable expenses of 100,000 yuan.

Source: Beijing High People's Court

江苏法院案例：“無印良品”VS“无印良品”案二审判决

近日，江苏高院审结一起侵害商标权及不正当竞争纠纷二审案件。该案中，原告系“無印良品”商标权利人，主张被告行为侵害其注册商标专用权，且被告在相关产品及企业名称中使用“无印良品”等行为构成不正当竞争。法院经审理认为，在被告设立前，原告的企业字号和零售服务名称已经具有极高的知名度和市场影响力，构成驰名商标。被告将“无印良品”作为企业字号具有攀附故意和混淆与误认的客观事实，构成不正当竞争。

二审判决在论述“推销（替他人）”服务与被控侵权店铺的侵权行为之间关系时，并没有和以往的判决一样简单的论述两者属于相同还是类似服务，而是从是否造成消费者对服务内容和来源混淆误认的角度评述两者之间的关系。本案对“推销（替他人）”服务与“零售服务”之间关系的论述逻辑清晰、条理分明，对其他同类型案件有比较高的指导意义。

来源：江苏省高级人民法院

Jiangsu Court Case: Second-instance judgment in the "MUJI" VS "MUJI" case

Recently, the Jiangsu High Court concluded a second-instance case involving trademark infringement and unfair competition. In this case, the plaintiff is the trademark owner of "MUJI", and claimed that the defendant's actions infringed its exclusive right to use the registered trademark, and that the defendant's use of "MUJI" in related product and corporate names constituted unfair competition. After trial, the court held that before the defendant was established, the plaintiff's corporate name and retail service name had already had extremely high popularity and market influence, constituting a well-known trademark. The defendant's use of "MUJI" as a corporate name had the objective fact of intentional attachment and confusion and misrecognition, constituting unfair competition.

When discussing the relationship between the "sales promotion (for others)" service and the infringement of the accused infringing store, the second instance judgment did not simply discuss whether the two were the same or similar services as in previous judgments, but commented on the relationship between the two from the perspective of whether it caused consumers to confuse the content and source of the service. The discussion of the relationship between the "sales promotion (for others)" service and the "retail service" in this case is logically clear and well-organized, and has a relatively high guiding significance for other similar cases.

Source: Jiangsu High People's Court

广州法院案例：《百鬼物语》与《阴阳师》游戏侵权案二审判决

近日，广州知识产权法院对《百鬼物语》与《阴阳师》游戏侵权案作出二审判决。游戏《阴阳师》的开发方网易公司发现《百鬼物语》游戏与《阴阳师》的美术风格、角色形象等内容非常相似，且在游戏运营平台上发现部分文章中有诋毁《阴阳师》以提高《百鬼物语》形象的内容。网易公司认为《百鬼物语》游戏的开发者、运营方，以及游戏平台方侵犯其著作权，并构成不正当竞争。经审理，法院认定两款游戏类型、题材、背景均相似，《百鬼物语》的网游角色形象构成仿冒混淆不正当竞争。《百鬼物语》开发方、运营方及游戏平台构成著作权侵权和不正当竞争，被判赔《阴阳师》开发方100万元。

来源：广州知识产权法院

Guangzhou Court Case: Second instance judgment on the infringement case of "One Hundred Ghosts" and "Onmyoji" games

Recently, the Guangzhou Intellectual Property Court made a second-instance judgment on the infringement case of the games "One Hundred Demons Story" and "Onmyoji". NetEase, the developer of the game "Onmyoji", found that the art style, character image and other contents of the game "One Hundred Demons Story" are very similar to those of "Onmyoji", and found that some articles on the game operation platform contained content that slandered "Onmyoji" to improve the image of "One Hundred Demons Story". NetEase believes that the developer, operator and game platform of the game "One Hundred Demons Story" have infringed its copyright and constituted unfair competition. After trial, the court determined that the two games are similar in type, theme and background, and the online game character image of "One Hundred Demons Story" constitutes counterfeiting and confusing unfair competition. The developer, operator and game platform of "One Hundred Demons Story" constituted copyright infringement and unfair competition and were ordered to pay 1 million yuan to the developer of "Onmyoji".

Source: Guangzhou Intellectual Property Court

阿斯利康推翻1.07亿美元抗癌专利药物赔偿判决

今年5月，美国法院曾裁定阿斯利康（AstraZeneca）因侵犯辉瑞（Pfizer）子公司惠氏（Wyeth）的抗癌药物专利而需向其赔偿1.075亿美元。近日，美国一法院裁定，辉瑞用于指控阿斯利康（AstraZeneca）侵犯其畅销肺癌药物Tagrisso的两项专利无效。

2009年，辉瑞收购惠氏。2021年，辉瑞起诉阿斯利康，指控后者的Tagrisso侵犯了与乳腺癌药物Nerlynx相关的专利，彪马生物技术公司（Puma Biotechnology）获得了辉瑞专利的许可。

法官Kennelly在本周三作出了有利于阿斯利康的判决，认为上述裁决不成立，因为这些专利缺乏对其发明的有效书面描述，并且该领域的普通科学家无法重新创造它们。

根据美国专利法，一项专利被美国专利商标局授权后即推定为有效的权利。与中国的做法不同，美国法院有权在审理专利侵权诉讼案件中，对涉案专利的有效性作出裁决。

来源: BioSpace

AstraZeneca overturns \$107 million cancer drug patent ruling

In May this year, a US court ruled that AstraZeneca must pay Pfizer subsidiary Wyeth \$107.5 million in damages for infringing its anti-cancer drug patents. Recently, a US court ruled that two patents that Pfizer used to accuse AstraZeneca of infringing its best-selling lung cancer drug Tagrisso were invalid.

In 2009, Pfizer acquired Wyeth. In 2021, Pfizer sued AstraZeneca, accusing the latter's Tagrisso of infringing patents related to the breast cancer drug Nerlynx, and Puma Biotechnology obtained a license for Pfizer's patents.

Judge Kennelly ruled in favor of AstraZeneca on Wednesday, finding that the ruling was invalid because the patents lacked a valid written description of their inventions and that ordinary scientists in the field could not recreate them.

According to the US patent law, a patent is presumed to be valid once it is granted by the US Patent and Trademark Office. Unlike China, US courts have the power to rule on the validity of the patent involved in patent infringement lawsuits.

Source: BioSpace

西部数据在一起机械硬盘专利诉讼中败诉

美国加州一地方联邦法院近日判令西部数据公司（Western Digital）在一起涉及硬盘技术的专利诉讼中败诉，需向原告方MR Technologie公司支付超过2.623亿美元（约合人民币18.74亿元）赔偿金。

MR Technologie在诉讼中声称，西部数据自2018年以来，未经许可“大规模滥用”了维也纳大学Suess教授的专利技术，显著提升了其机械硬盘的数据存储密度。西部数据方面则坚决否认了这一指控，坚称公司采用了完全不同的技术路径来提升硬盘的存储性能，并质疑Suess教授相关专利的有效性。

该法院最终裁定西部数据存在侵权行为，需承担相应的法律责任。面对这一判决结果，西部数据在随后发布的声明中表示，将启动上诉程序，以维护公司的合法权益。

来源: BLOCKS & FILES

Western Digital loses a mechanical hard disk patent lawsuit

A local federal court in California, the United States, recently ruled that Western Digital lost a patent lawsuit involving hard disk technology and was required to pay more than US\$262.3 million (approximately RMB 1.874 billion) in compensation to the plaintiff MR Technologie.

MR Technologie claimed in the lawsuit that Western Digital has "massively abused" the patented technology of Professor Suess of the University of Vienna without permission since 2018, significantly improving the data storage density of its mechanical hard drives. Western Digital firmly denied the

accusation, insisting that the company used a completely different technical path to improve the storage performance of hard drives and questioned the validity of Professor Suess's related patents.

The court ultimately ruled that Western Digital had committed infringement and must bear the corresponding legal responsibility. In response to this ruling, Western Digital said in a subsequent statement that it would initiate an appeal process to safeguard the company's legitimate rights and interests.

Source: [BLOCKS & FILES](#)

立方律师事务所编写《立方观评》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述有关信息不应被看作是特定事务的法律意见或法律依据，上述内容仅供参考。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.



Subscribe to our WeChat community

扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 首尔

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Seoul

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +86 10 64096099

 Fax: +86 10 64096260/64096261