



# NEWSLETTER

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U.S. Universities and Corporations Joint Letter: Supporting Three Proposed Patent Law Bills.

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

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### 浙江省市场监督管理局纠正舟山市普陀区卫生健康局滥用行政权力排除、限制竞争行为

2024年9月29日，浙江省市场监督管理局（“浙江省市监局”）官网发布报道，纠正宁波市舟山市普陀区卫生健康局滥用行政权力排除、限制竞争行为。经查，浙江省市监局认为涉案行政机关规定具有支持体检数据传输或录入的卫生专网专线及系统设施设备的民营医疗机构才能申报为普陀区城乡居民基本医疗保险参保居民免费健康体检机构，排斥、限制了不具有卫生专网专线及系统设施设备的其他民营医疗机构参与当地健康体检市场竞争，构成滥用行政权力排除、限制竞争行为。（[查看更多](#)）

### Zhejiang AMR Corrects the Abuse of Administrative Power to Exclude and Restrict Competition by the Health Bureau of Putuo District, Zhoushan City

On September 29, 2024, Zhejiang Administration for Market Regulation (“Zhejiang AMR”) on its official website published a report, explaining the process of correcting the abuse of administrative power to exclude and restrict competition by the Health Bureau of Putuo District, Zhoushan City. Upon investigation, Zhejiang AMR found that the said bureau’s regulatory document, which stipulated that only private medical institutions with a dedicated health network and system facilities for supporting physical examination data transmission or entry can apply to become free health examination institutions for urban and rural residents’ basic medical insurance policyholders in Putuo District, excluded and restricted other private medical institutions without such network and system facilities from participating in the local health examination market competition, constituting an abuse of administrative power to exclude and restrict competition. ([More](#))

### 浙江省市场监督管理局纠正宁波市镇海区住房和城乡建设交通局滥用行政权力排除、限制竞争行为

2024年9月29日，浙江省市监局官网发布报道，纠正宁波市镇海区住房和城乡建设交通局滥用行政权力排除、限制竞争行为。经查，浙江省市监局认为涉案行政机关通过与特定经营主体签订《战略合作框架协议》，指定特定经营者实施相关绿化迁移工程项目，排除、限制了其他经营主体参与相关市场竞争，构成滥用行政权力排除、限制竞争行为。（[查看更多](#)）

### Zhejiang AMR Corrects the Abuse of Administrative Power by the Housing and Urban-Rural Development Bureau of Zhenhai District, Ningbo City

On September 29, 2024, Zhejiang AMR on its official website published a report, explaining the process of correcting the abuse of administrative power to exclude or restrict competition by the Housing and Urban-Rural Development Bureau of Zhenhai District, Ningbo City. Upon investigation, Zhejiang AMR found that the said bureau’s conduct, namely entering into a “Strategic Cooperation Framework Agreement” with specific business entities and designating specific companies to carry out relevant greening relocation projects, excluded and restricted other business entities from participating in the

market competition related to these projects, constituting an abuse of administrative power to exclude and restrict competition. ([More](#))

## 中国标准化研究院发布《标准必要专利发展报告（2024年）》

2024年9月27日，中国标准化研究院标准化理论战略研究所发布《标准必要专利发展报告（2024年）》，展现标准必要专利整体发展态势。该报告共分为六大部分，分别呈现了标准必要专利概念内涵与主体行为、代表性国际组织关于标准必要专利的政策与实践、主要国家（地区）标准必要专利政策情况、标准必要专利许可实践与争议解决新趋势、我国关于标准必要专利的政策与实践以及有关展望。（[查看更多](#)）

## China National Institute of Standardization Releases *Standard Essential Patents Development Report (2024)*

On September 27, 2024, the China National Institute of Standardization issued the “Standard Essential Patents Development Report (2024)”, demonstrating the overall development trend of standard essential patents (“SEPs”). The report consists of six parts, respectively illustrating SEPs’ conception, connotation and SEP-related parties’ conduct, SEP-related policies and practices of representative international organizations, SEPs policy situations in major countries (regions), new trends in SEPs licensing practices and dispute resolution, and China’s SEP policies and practices and relevant prospects. ([More](#))

## 最高人民法院知识产权庭：2024年前八个月共受理垄断案件111件，审结45件

2024年9月26日，据媒体采访最高人民法院知识产权法庭有关负责人和专家的报道，该庭自2019年1月成立至今年8月31日共受理垄断案件256件，审结191件；2024年1月1日至2024年8月31日受理垄断案件111件，审结45件。该庭每年新受理的垄断案件数量呈现逐年增长态势，涉及垄断协议纠纷和滥用市场支配地位纠纷两大案由；案件覆盖的行业广泛，涉及民生和新经济领域。该庭近年来发布了六批37件反垄断典型案例，并结合审判经验更新司法解释，破解反垄断民事诉讼难点。（[查看更多](#)）

## Intellectual Property Tribunal of the Supreme People’s Court: Has Accepted 111 Antitrust Cases and Concluded 45 Cases in the First Eight Months of 2024

On September 26, 2024, according to media interviews with relevant officials and experts of the Intellectual Property Tribunal of the Supreme People’s Court (“the Tribunal”), as of August 31, 2024, the Tribunal has accepted 256 antitrust cases since its establishment in January 2019 and has concluded 191 cases; it has accepted 111 antitrust cases from January 1, 2024 to August 31, 2024, 45 of which have been concluded. The number of the Tribunal’s newly-accepted antitrust cases each year shows a year-on-year growing trend, and the causes of actions are monopolistic agreements and the abuse of market dominance; the cases also cover a wide range of industries, involving the fields related to people’s livelihood and new economy. The Tribunal has issued six batches of typical antitrust cases (37 cases) in recent years, and it has updated judicial interpretations in light of trial experience to crack the key difficulties in antitrust civil litigations. ([More](#))

## 美国司法部起诉Visa非法垄断借记卡市场

2024年9月24日，美国司法部宣布在美国纽约南区联邦地方法院针对Visa提起反垄断民事诉讼，指控Visa在借记网络市场中实施非法垄断行为，违反美国《谢尔曼反垄断法》第一条和第二条。在起诉状中，美国司法部认为60%以上的美国借记交易均通过Visa借记网络实现，Visa通过限制小型借记网络经营者和金融科技公司的经营行为、非法维持自身在相关市场的市场支配地位。针对其他小型借记网经营者，Visa与商户、银行以及借记卡发行机构签订排他性协议，对使用其他借记网络或支付系统结算的顾客施加不公平待遇，并通过施加金钱激励和惩戒性额外费用的方式将潜在竞争对手变为合作方；针对金融科技公司，Visa通过与潜在竞争对手签订协议、收买其成为合作方的方式，打击金融科技初创公司在支付产品领域的创新。（[查看更多](#)）

## US Department of Justice Sues Visa for Unlawfully Monopolizing Debit Markets

On September 24, 2024, the US Department of Justice (“DOJ”) announced that it has filed a civil anti-trust lawsuit against Visa in the U.S. District Court for the Southern District of New York, alleging that Visa unlawfully exercises monopolistic conduct in debit network markets in violation of Sections 1 and 2 of the *Sherman Act*. In the complaint, DOJ alleges that 60% of the debit transactions in the US run on Visa’s debit network, and that Visa illegally maintains its monopoly power in the relevant market by restricting business practices of smaller debit networks and fintech companies. With respect to smaller debit network operators, Visa has signed exclusionary agreements with merchants, banks and institutions that issue debit cards, which unfairly penalize customers who route transactions to a different debit network or alternative payment system; Visa also induces would-be competitors to become partners instead of entering the market as competitors by offering generous monetary incentives and threatening punitive additional fees. With respect to fintech companies, Visa hinders innovation in the field of payment products by fintech start-ups through entering into agreements to pay potential competitors to partner. ([More](#))

## 欧盟委员会突袭检查金融衍生品交易机构，后者疑涉嫌垄断协议

2024年9月23日，欧盟委员会宣布正在对欧盟两成员国金融服务业活跃的公司办公地进行反垄断突击检查，本次检查涉及的相关产品为金融衍生品。欧委会认为，被检查的公司涉嫌违反《欧盟运行条约》第101条禁止垄断协议有关规定，因此欧委会官员在检查地所在成员国的竞争监管机构的陪同下完成检查。突击检查是针对涉嫌反竞争行为的初步调查步骤。欧委会进行突击检查行为本身并不意味着有关公司确有反竞争行为，也不预示调查的结果。（[查看更多](#)）

## European Commission Carries out Unannounced Antitrust Inspections in Financial Derivatives Trading Companies Which Are Suspected of Monopolistic Agreements

On September 23, 2024, the European Commission (“the Commission”) announces that it is carrying out unannounced antitrust inspections at the premises of companies active in the financial services sector in two Member States, the product concerned by the inspections are financial derivatives. The Commission has concerns that the inspected companies may have violated Article 101 of the Treaty on

the Functioning of the European Union that prohibit monopolistic agreements, therefore the Commission officials in concluding their inspections are accompanied by their counterparts from the relevant national competition authorities of the Member States. Unannounced investigations are a preliminary investigatory step into suspected anticompetitive practices. The fact that the Commission carries out such inspections does not mean the companies are guilty of anticompetitive behavior nor does it pre-judge the outcome the investigation itself. ([More](#))

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

### 国家发展改革委等部门印发《国家数据标准体系建设指南》

2024年9月25日，国家数据局、中央网信办、工业和信息化部、财政部、国家标准委等联合印发《国家数据标准体系建设指南》（以下简称“《指南》”），《指南》明确将以数据“供得出、流得动、用得好、保安全”为指引，构建数据标准体系，以A基础通用、B数据基础设施、C数据资源、D数据技术、E数据流通、F融合应用、G安全保障等7个部分建立数据标准体系框架，建设内容包括通用基础标准、数据基础设施标准、数据资源标准、数据技术标准、数据流通标准、融合应用标准、安全保障标准等。 ([查看更多](#))

### **National Development and Reform Commission and Other Departments Issue Guidelines for the Construction of A National Data Standard System**

On 25 September 2024, the National Data Bureau, Office of the Central Cyberspace Affairs Commission, Ministry of industry and Information Technology, Ministry of Finance, National Standardization Administration jointly issued the *Guidelines for the Construction of A National Data Standard System* (“*Guidelines*”), which makes it clear that data standard system will be constructed under the guidance of data ‘supply, flow, use and security’, and the framework of the data standard system will be established in seven parts: A basic general, B data infrastructure, C data resources, D data technology, E data circulation, F convergence application, and G security, etc., and the construction contents include General basic standards, data infrastructure standards, data resource standards, data technology standards, data circulation standards, fusion application standards, safety and security standards, etc. ([More](#))

### 《网络数据安全条例》发布

2024年9月30日，《网络数据安全条例》（以下简称“《条例》”）正式发布，《条例》共计九章64条，定于2025年1月1日施行，条例适用于在中华人民共和国境内开展网络数据处理活动及其安全监督管理，以及符合《个人信息保护法》第三条第二款规定情形的在中华人民共和国境外处理中华人民共和国境内自然人个人信息的活动。《条例》对于网络数据处理者的行为作出一般规定，并设专章明确个人信息保护、重要数据保护以及网络数据跨境安全管理要求。 ([查看更多](#))

### **Regulations on Network Data Security Management Issued**

On 30 September 2024, the *Regulations on Network Data Security Management* (“**Regulations**”) were formally issued, with a total of nine chapters and 64 articles, scheduled to come into force on 1 January 2025. *Regulations* apply to network data-processing activities and their safety supervision and management within China, as well as activities outside the People's Republic of China that are consistent with the provisions of Article 3(2) of *Personal Information Protection Law* that deal with the personal information of natural persons within China. *Regulations* make general provisions on the behavior of network data processors, and set up a special chapter to clarify the requirements for the protection of personal information, the protection of important data and the cross-border security management of network data. ([More](#))

### 苏州等8个城市开展向移动支付平台企业开放信用监管数据试点工作

新华社北京10月1日电，市场监管总局、国家数据局日前联合印发《关于开展向平台企业开放信用监管数据试点推动平台经济规范健康发展的通知》，选取8个试点城市开放信用监管数据，支持移动支付平台核验个体工商户相关信息，以便捷开通网上商户、支持信用卡支付，有利于拓宽个体工商户的获客渠道，对于习惯信用卡支付的境外来华人员将进一步提升其支付便利性。通知提出在江苏苏州、浙江杭州、山东济南、湖北武汉、湖南长沙、广东深圳、四川成都和陕西西安等8个城市开展向移动支付平台企业开放信用监管数据试点工作。 ([查看更多](#))

### Suzhou and 7 Other Cities to Carry Out Pilot Work on Opening Credit Supervision Data to Mobile Payment Platform Enterprises

Beijing, Oct. 1 (Xinhuanet) -- The State Administration for Market Regulation and National Data Bureau have jointly issued the *Notice on Carrying Out the Pilot Project of Opening Credit Supervision Data to Platform Enterprises to Promote the Standardized and Healthy Development of the Platform Economy* (“**Notice**”), and selected eight pilot cities to open up their credit supervision data to support the verification of relevant information of individual businessmen by mobile payment platforms in order to facilitate the opening of online merchant accounts and the support of credit card payments, which is conducive to broadening the channels for individual. This is conducive to broadening the customer acquisition channels of individual businessmen and will further enhance the payment convenience for people coming to China from abroad who are accustomed to paying by credit card. *Notice* proposes to carry out a pilot project to open credit supervision data to mobile payment platform enterprises in eight cities, including Suzhou in Jiangsu, Hangzhou in Zhejiang, Jinan in Shandong, Wuhan in Hubei, Changsha in Hunan, Shenzhen in Guangdong, Chengdu in Sichuan and Xi'an in Shanxi. ([More](#))

### 《终端设备直连卫星服务管理规定》公开征求意见

2024年9月27日，国家互联网信息办公室发布《终端设备直连卫星服务管理规定（征求意见稿）》（以下简称“《规定》”），向社会公开征求意见，意见反馈时间截止到2024年10月27日。《规定》共五章41条，适用于向中华人民共和国境内提供终端设备直连卫星服务，以及在中华人民共和国境内生产、组装、提供、销售和使用支持直连卫星服务的终端设备的主体。 ([查看更多](#))

## Public Consultation on *Administrative Provisions on Directly Connected Satellite Services for Terminal Equipment*

On 27 September 2024, Cyberspace Administration China issued the *Administrative Provisions on Directly Connected Satellite Services for Terminal Equipment (Draft for Opinion)* (“**Provisions**”) for public consultation, with a deadline of 27 October 2024 for feedback. *Provisions* consists of five chapters and 41 articles, and are applicable to the subjects that provide terminal equipment directly connected to satellite services to the territory of China, as well as those that produce, assemble, provide, sell and use terminal equipment supporting directly connected to satellite services in the territory of China. ([More](#))

### 《工业和信息化领域数据安全合规指引（征求意见稿）》公开征求意见

2024年9月29日，中国互联网协会就《工业和信息化领域数据安全合规指引（征求意见稿）》（以下简称“《指引》”）公开征求意见，意见反馈截止于2024年10月16日。《指引》适用于工业和信息化领域数据处理者，即数据处

理活动中自主决定处理目的、处理方式的工业企业、软件和信息技术服务企业、取得电信业务经营许可证的电信业务经营者和无线电频率、台（站）使用单位等工业和信息化领域各类主体。数据处理过程中涉及工业和信息化领域数据的其他有关主体。 ([查看更多](#))

## Public Consultation on *Guidelines on Data Security Compliance in the Field of Industry and Information Technology (Exposure Draft)*

On 29 September 2024, the Internet Society of China publicly solicited comments on *Guidelines on Data Security Compliance in the Field of Industry and Information Technology (Exposure Draft)* (“**Guidelines**”), with the deadline of 16 October 2024 for feedback. *Guidelines* are applicable to data processors in the field of industry and information technology, i.e., various subjects in the field of industry and information technology, such as industrial enterprises, software and information technology service enterprises, telecommunication business operators who have obtained telecommunication business licenses, and radio frequency and station use units, which independently decide on the purpose of the processing and the mode of processing in data processing activities. Other relevant subjects in the field of industry and information technology involved in the data processing process. ([More](#))

### 广州知产法院发布涉数据权益知识产权司法保护典型案例

2024年9月25日，广州知识产权法院发布一批涉数据权益知识产权保护典型案例，此次共发布6个案例，涉及不同类型数据权益归属规则等数据权益保护核心问题及数据不当获取行为、数据不当使用行为、数据妨碍行为、数据污染行为等各类数据侵权形式。其中，包括全国首例认定大数据搬家软件构成不正当竞争的案例以及网络直播领域首例涉虚假实名认证服务不正当竞争纠纷案。 ([查看更多](#))

## Guangzhou Intellectual Property Court Releases Typical Cases on Judicial Protection of Intellectual Property Rights Involving Data Interests

On 25 September 2024, the Guangzhou Intellectual Property Court released a batch of typical cases on the judicial protection of intellectual property rights involving data rights and interests. A total of six cases were released, involving core issues on the protection of data rights and interests such as the rules for attribution of different types of data rights and interests, and various types of data infringement such as improper acquisition of data, improper use of data, data obstruction, and data contamination. These cases include the first case in China to rule that big data moving software constitutes unfair competition and the first case of unfair competition dispute involving false real name authentication service in the field of webcasting. ([More](#))

## 美国：AI大模型安全法遭否决

2024年9月29日，加州州长Gavin Newsom否决了《加州人工智能安全法案 SB 1047》，该法案提出的背景为：人工智能领域的前沿专家表示担心，如果不采取适当的预防措施，可能会造成严重后果，包括危及关键基础设施、网络攻击和制造新型生物武器。最近的一项调查发现，70%的人工智能研究人员认为在人工智能研究中应优先考虑安全问题，73%的人对人工智能落入危险组织之手表示“严重”或“极度”担忧。民意调查一再显示，SB 1047 在公众中获得了压倒性的两党支持。科技工作者甚至比普通民众更有可能支持该法案。SB 1047 将要求最先进的人工智能系统的开发者对其模型造成严重伤害的能力进行测试。开发者还必须设置常识性的防护栏，以帮助降低风险。该法案仅适用于最强大的人工智能系统，其训练成本超过 1 亿美元。该法案还将建立一个新的公共云计算集群 CalCompute，使初创企业、研究人员和社区团体能够参与大规模人工智能系统的负责任开发。为了推动整个人工智能生态系统取得更好的安全成果，该法案还将为前沿人工智能实验室的员工提供举报人保护。

该否决消息一出，引发了各方争议。 ([查看更多](#))

## America: Governor Newsom Vetoing Landmark AI Bill

On 29 September 2024, SACRAMENTO – Governor Newsom vetoed *the California AI safety bill, SB 1047* (“**SB 1047**”). The Background on *SB 1047* was experts at the forefront of AI have expressed concern that failure to take appropriate precautions could have severe consequences, including risks to critical infrastructure, cyberattacks, and the creation of novel biological weapons. A recent survey found 70% of AI researchers believe safety should be prioritized in AI research more while 73% expressed “substantial” or “extreme” concern AI would fall into the hands of dangerous groups. Public polling has repeatedly shown overwhelming, bipartisan support of *SB 1047* among the public. Tech workers are even more likely than members of the general public to support the bill. *SB 1047* would require developers of the most advanced AI systems to test their models for the ability to cause critical harm. Developers would also be required to put into place common-sense guardrails to help mitigate against risk. The legislation would cover only the most powerful AI systems, costing over \$100 million to train. The bill would also establish a new public cloud computing cluster, CalCompute, to enable startups, researchers, and community groups to participate in the responsible development of large-scale AI systems. In order to drive better safety outcomes across the AI ecosystem it would also create whistleblower protections for employees of frontier AI laboratories. The news of that veto sparked controversy. ([More](#))

## 肯·帕克斯顿 (Ken Paxton) 起诉 TikTok 违反德克萨斯州新的社交媒体法

2024年10月4日，德克萨斯州总检察长肯·帕克斯顿 (Ken Paxton) 起诉 TikTok 分享和出售未成年人的个人信息，违反了一项旨在保护活跃在社交媒体上的儿童的新州法律。帕克斯顿在法律文件中称，短视频应用程序 TikTok 未能遵守《通过父母赋权保护儿童在线法案》，尽管 TikTok 具有“家庭配对”功能，允许父母将他们的帐户链接到青少年的帐户并设置控件，但父母不必按照德克萨斯州法律要求使用“商业上合理的方法”来验证他们的身份。未成年人还必须同意配对。帕克斯顿还认为，TikTok 非法将未成年人的个人身份信息分享和出售给第三方，包括广告商和搜索引擎，并非法向已知的未成年人展示定向广告。TikTok 发言人否认了帕克斯顿的指控，并指出了有关包括德克萨斯州在内的某些州的父母如何联系 TikTok 要求删除其青少年帐户的在线信息。家长需要验证他们的身份，但要提交一张自己拿着政府签发的身份证的照片。根据 TikTok 的隐私政策，该公司不出售个人信息。“在适用法律限制的情况下”不会共享个人数据。（[查看更多](#)）

### Ken Paxton Sues TikTok for Violating New Texas Social Media Law

On 4 October 2024, Texas Attorney General Ken Paxton sued TikTok on Thursday for sharing and selling minors' personal information, violating a new state law that seeks to protect children who are active on social media. Paxton argues in the legal filing that TikTok, a short-form video app, has failed to comply with *Securing Children Online through Parental Empowerment Act*. Although TikTok has a “family pairing” feature that allows parents to link their account to their teen's account and set controls, parents don't have to verify their identity using a “commercially reasonable method,” as required by Texas law. The minor also has to consent to the pairing. Paxton also argues that TikTok unlawfully shares and sells minors' personal identifying information to third parties, including advertisers and search engines, and illegally displays targeted advertising to known minors. A TikTok spokesperson denied Paxton's allegations, pointing to online information about how parents in certain states, including Texas, can contact TikTok to request that their teen's account is deleted. Parents are asked to verify their identify but submitting a photograph of themselves holding their government-issued ID. According to TikTok's privacy policies, the company does not sell personal information. And personal data is not shared "where restricted by applicable law." ([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 and 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](#)

### **国家版权局：版权执法部门打击侵权盗版取得积极成效**

2024年，版权执法部门深入贯彻落实《知识产权强国建设纲要（2021--2035年）》，按照版权工作“十四五”规划部署，不断加大版权执法力度，组织开展院线电影版权保护集中行动、青少年版权保护季等专项行动，严厉打击各类侵权盗版行为，集中整治重点领域、重点市场版权秩序，全力维护著作权人合法权益，不断优化版权保护环境。2024年上半年，各级版权执法部门检查实体市场相关单位35.16万家（次），查办实体市场侵权盗版案件1061件。

来源：国家版权局官网

### **National Copyright Administration: Copyright Enforcement Authorities Achieve Positive Results in Combating Infringement and Piracy**

In 2024, copyright enforcement authorities have thoroughly implemented the "Outline for Building a Strong Intellectual Property Nation (2021–2035)" and have followed the "14th Five-Year Plan" for copyright work by continuously intensifying copyright enforcement efforts. Authorities have launched targeted actions, including a focused campaign on the protection of cinema film copyrights and a copyright protection season aimed at youth. These efforts have rigorously combated various forms of copyright infringement and piracy, with a particular focus on rectifying copyright order in key sectors and markets, safeguarding the legitimate rights and interests of copyright holders, and optimizing the copyright protection environment.

In the first half of 2024, copyright enforcement authorities at all levels inspected 351,600 physical market-related units (times) and investigated 1,061 cases of copyright infringement and piracy in the physical marketplace.

Source: [National Copyright Administration Official Website](#)

### **最高院案例：外观设计近似判断中对授权设计区别于现有设计的设计特征的考量**

近期，最高人民法院知识产权法庭对一起专利行政裁决行政诉讼案作出终审判决[参见（2024）最高法知行终728号判决书]，认定在对专利设计和被诉侵权设计作近似判断时，应确定授权外观设计区别于现有设计的设计特征，并将该类特征作为对外观设计整体视觉效果更有影响的部分予以考虑；当事人可以通过对现有设计进行举证或说明以明确授权外观设计区别于现有设计的设计特征；在当事人举证或者说明不充分的情况下，人民法院也应当基于一般消费者的知识水平和认知能力对此作出认定。

本案厘清了在外观设计近似判断中，首先确定授权设计区别于现有设计的设计特征，再以此作为外观设计整体视觉效果更有影响的部分予以考虑的审理思路，并明晰了对于区别于现有设计的设计特征的举证责任，对类似案件的审理具有参考价值。

来源：最高人民法院知识产权法庭

### **Supreme People's Court Case: Consideration of Design Features that Distinguish Authorized Designs from Existing Designs in Determining Design Similarity**

Recently, the Intellectual Property Tribunal of the Supreme People's Court rendered a final judgment in an administrative lawsuit concerning a patent administrative decision. The Court held that, in determining the similarity between a patented design and an allegedly infringing design, the design features that distinguish the authorized design from existing designs shall be identified. These distinguishing features shall be given greater consideration as they have a more significant impact on the overall visual effect of the design. Parties may provide evidence or explanations regarding existing designs to clarify the distinguishing features of the authorized design. If parties fail to provide sufficient evidence or explanations, the Court still make a determination based on the knowledge and perception of ordinary consumers.

This case clarified the approach in determining design similarity, where the distinguishing features of the authorized design shall first be identified and considered as the most influential part of the overall visual impression. It also clarified the burden of proof concerning the distinguishing features, providing valuable reference for similar cases.

Source: Supreme People's Court

### **最高院案例：LED显示屏底座专利，以单价×销量×贡献率10%×利润率20%计算侵权获利**

近期，最高人民法院知识产权法庭对一起侵害实用新型专利权纠纷案作出终审判决[参见（2023）最高法知民终1786号判决书]，维持一审判额，以单价×销量×贡献率10%×利润率20%计算获利。法院认为，专利法意义上的制造者并非仅指被诉侵权产品具体制造行为的实施者，无论被诉侵权底座产品是自行生产，还是委托他人生产，金某公司都属于专利法意义上的制造者，应当承担相应的侵权责任。被诉侵权产品包括LED显示屏及底座，底座是立式LED显示屏不可缺少的组成部分，即使在合同上未列明底座价格，金某公司在确定合同总价时必然会予以考虑，因此其以底座产品未赠送而未获利的上诉理由不能成立。且涉案专利权既保护单独的底

座结构，也保护使用了该底座结构的LED显示屏，金某公司的销售行为必然侵蚀晶泓公司涉案专利产品的市场价格，挤占涉案专利产品的市场份额。涉案专利的发明点为LED显示屏的底座结构，解决的是移动LED显示屏的技术问题，涉案专利的专利贡献率可酌定为10%。结合事实基础，参考晶泓公司主张的全套LED显示屏产品的20%合理利润率，以此计算金某公司的侵权获利应不低于60万元。

来源：最高人民法院知识产权法庭

### **Supreme People's Court Case: Calculation of Infringement Profits for LED Display Base Patent Using Unit Price × Sales Volume × Contribution Rate 10% × Profit Margin 20%**

The Intellectual Property Tribunal of the Supreme People's Court recently rendered a final judgment in a patent infringement case involving a utility model patent. The Court upheld the first-instance judgment, calculating the infringer's profits based on the formula: unit price × sales volume × contribution rate of 10% × profit margin of 20%.

The Court determined that the manufacturer in the sense of patent law shall not be limited to the entity that physically manufactures the product. Regardless of whether the allegedly infringing base product was self-produced or outsourced, Jin Company was deemed the manufacturer and thus liable for patent infringement. The infringing product consisted of an LED display and its base, and the base was considered an indispensable part of the standing LED display. Even though the contract did not list a separate price for the base, Jin Company would have factored the base into the total contract price, rendering its appeal that it made no profit from the base unfounded.

The patent covered both the base structure and the LED display using that base, and Jin Company's sales necessarily eroded the market value and share of the patented product. The inventive feature of the patent addressed the technical problem of mobility in LED displays, and the contribution rate of the patent was reasonably set at 10%. Considering the facts and the 20% profit margin of the full LED display system, Jin Company's infringement profits were calculated at no less than RMB 600,000.

Source: Supreme People's Court

### **上海法院案例：判决上海德力西开关立即停止使用含“德力西”字样的企业名称；赔偿德力西集团经济损失500万元**

近30年来，中国电气市场一直存在着“两个德力西”的怪象。其一是乐清人胡成中在温州创立的“德力西集团”，为中国电气行业龙头企业，连续23年上榜中国企业500强。其二是乐清同乡设立的“上海德力西开关”，业务范围几乎与前者一样。多年来，德力西集团多次投诉、起诉上海德力西开关及关联企业侵犯了其字号权、商标权等权益，迫使后者旗下“德力西装潢”“德力西实业”“德力西联合开关集团”等一系列企业更名或注销，但作为核心企业的上海德力西开关一直存续至今。

9月19日，上海知识产权法院以一份长达67页的终审判决书，为这桩“长跑”维权画上了句号：认定上海德力西开关以“德力西”为字号，主观上有“搭便车”的故意，客观上易导致相关公众的混淆误认，其行为构成不正当竞争。判决上海德力西开关立即停止使用含“德力西”字样的企业名称；赔偿德力西集团经济损失500万元。判决书指出，上海德力西公司侵权恶意较强；侵权时间较长；侵权形式多范围广；且企业经营规模较大；当事人之间的纠纷经历数次行政处理；以及有的涉案商品上存在单独的不正当竞争行为，有的涉案商品上同时存在不正当竞争和商标侵权行为等诸多情况。

来源：上海证券报

### **Shanghai Court Case: Shanghai Delixi Switch Ordered to Cease Using "Delixi" in Its Enterprise Name and Pay RMB 5 Million in Damages**

For nearly 30 years, China's electrical market has been faced with the peculiar situation of having "two Delixis." One is Delixi Group, founded by Hu Chengzhong in Wenzhou, a leading company in the electrical industry, which has been listed among China's Top 500 Enterprises for 23 consecutive years. The other is Shanghai Delixi Switch, established by fellow townsmen from Leqing, which operates in nearly the same business areas. Over the years, Delixi Group has filed numerous complaints and lawsuits against Shanghai Delixi Switch and its associated companies for infringing on its trade name rights and trademark rights. These actions forced the renaming or deregistration of companies under names like "Delixi Decoration," "Delixi Industry," and "Delixi United Switch Group." However, Shanghai Delixi Switch, the core entity, continued to exist.

On September 19, the Shanghai Intellectual Property Court issued a 67-page final judgment, bringing this long-running legal battle to an end. The Court found that Shanghai Delixi Switch had intentionally sought to "free ride" on Delixi Group's reputation by using the "Delixi" name. This behavior was likely to cause confusion among the public and constituted unfair competition. The Court ordered Shanghai Delixi Switch to immediately cease using "Delixi" in its corporate name and awarded Delixi Group RMB 5 million in economic damages. The judgment emphasized the strong bad faith, long duration, wide scope, and large scale of Shanghai Delixi's infringement. It also noted that the dispute had gone through several rounds of administrative handling, and in some cases, there were simultaneous acts of unfair competition and trademark infringement.

Source: Shanghai Securities News

### **广州法院案例：被告抗辩涉诉产品属医疗器械非化妆品不成立，法院认定构成侵权，受托加工方共担责**

广州知识产权法院审结一起侵害商标权及不正当竞争纠纷上诉案件。本案原告日内瓦实验室有限公司，被告湖北肽某医疗科技有限公司、广州先某生物科技有限公司，均在一审判决作出后提起上诉。

本案二审法院认为，因被告加工方公司所生产的涉案涉诉产品上使用有“百洛（瑞士）药妆科技研究院”字样，被告加工方公司未能举证证实该名称属于依法成立的商事主体，也未能举证

证实其已履行作为制造商的审慎义务，该名称中“百洛”商标的文字位于前部，该使用行为易使相关公众误认为涉案被诉侵权产品跟实验室公司及其“百洛”品牌存在特定的联系，被告加工方公司的涉案被诉行为与先某公司的行为共同导致实验室公司受损害的结果。因此，一审法院认定被告加工方公司所生产的产品上使用有“百洛（瑞士）药妆科技研究院”字样构成不正当竞争并无不当，本院予以维持。

来源：知产宝

### **Guangzhou Court Case: Defendants' Argument that the Infringing Products Were Medical Devices and Not Cosmetics Rejected, Court Finds Infringement, and Contracted Manufacturer Held Jointly Liable**

The Guangzhou Intellectual Property Court concluded an appeal case involving trademark infringement and unfair competition. The plaintiff filed the lawsuit against defendant both of which appealed after the first-instance judgment.

The appellate court found that the accused products, produced by the defendant manufacturing company, bore the name "Bailuo (Swiss) Cosmeceutical Technology Research Institute." The defendant failed to provide evidence that this name belonged to a legally established commercial entity, nor could it prove that it had fulfilled its duty of diligence as a manufacturer. The word "Bailuo," which is part of the plaintiff's registered trademark, appeared prominently, and this use could easily mislead consumers into believing there was a specific connection between the accused infringing products and the plaintiff's company and its "Bailuo" brand. The acts of the defendant manufacturing company and Xianmou Company jointly led to the damages suffered by the plaintiff. Therefore, the appellate court upheld the first-instance judgment, which found that the use of "Bailuo (Swiss) Cosmeceutical Technology Research Institute" on the accused products constituted unfair competition.

Source: Zhichanbao

### **上海法院案例：35类“为他人商品作推销”服务与注册在其他商品类别后“销售商品行为”的区分**

上海知识产权法院审结一起侵害商标权及不正当竞争纠纷上诉案件，上诉人为原审被告本来生活食品（苏州）有限公司，被上诉人为原审原告上海本来生活信息科技有限公司、北京本来工坊科技有限公司。

本案二审法院认为，苏州本来生活公司在被诉侵权店铺中提供销售商品的服务与权利商标核定使用范围中的“替他人推销”属同种服务，该店铺名称使用的“本来生活”标识与权利商标的文字部分相同，构成在同一种服务上使用与权利商标相同的商标，故一审法院认定苏州本来生活公司在被诉侵权店铺名称中使用“本来生活”标识构成商标侵权，并无不当，本院予以维持。苏州本来生活公司的注册商标核定使用在第29类商品商标上，但不能将该商品商标用于店铺名称等服务，故上诉人即使享有注册的商品商标，且核准注册时间早于权利商标，亦不影响本案被诉行为构成商标侵权的认定。

来源：知产宝

## Shanghai Court Case: Distinguishing "Promotion for Others" in Class 35 from "Sales Activities" for Registered Trademarks in Other Classes

The Shanghai Intellectual Property Court concluded an appeal in a trademark infringement and unfair competition dispute.

The appellate court ruled that the services provided by the defendant in the accused infringing store, which involved selling goods, were similar to the "promotion for others" service covered by the registered trademark of the plaintiffs. The use of the "Benlai Living" mark in the store name, which was identical to the text portion of the plaintiffs' trademark, constituted trademark infringement. Thus, the court upheld the first-instance decision, finding that defendant's use of the "Benlai Living" mark in its store name constituted trademark infringement.

The court further ruled that although the defendant had a registered trademark in Class 29 for certain goods, this registration did not entitle it to use the trademark as a store name for services. Therefore, even though the defendant's registration predates the plaintiffs' trademark, it does not prevent the court from finding that the accused acts constituted trademark infringement.

Source: Zhichanbao

## 广东法院案例：枫叶商标案惩罚性赔偿改判3000万，重点在于打击侵权源头

近日，广东高院二审部分改判枫叶商标案，维持一审侵权认定，将一审判赔765万改判为全额支持3000万等。本案中，原告在0115类似群“玻璃胶”商品上享有枫叶商标专用权，被告在0102类似群组“硅胶”商品上拥有枫叶商标，实际上两家均生产经营“枫叶”玻璃胶。一审法院适用1.5倍惩罚性赔偿，认定被告应承担的赔偿经济损失数额为 850万元 (年销售额) $\times$ 30%(利润率) $\times$ 40%(商标贡献率) $\times$ 3年(赔偿期间) $\times$ 2.5(1+倍数)=765 万元。二审法院认为，为了严厉打击主观故意明显且情节严重的侵权行为，充分发挥法律的威慑作用，让侵权人付出代价，剥夺其再侵权的财产基础，有效遏制侵权行为，本案可以顶格确定倍数。经计算，补偿性赔偿数额为  $921.6+4147.2=5068.8$ 万元，鉴于上述最终赔偿数额已经超出3000万元的诉讼请求，因此全额支持。

本案确定的赔偿数额具有全局性、一揽子解决纠纷的性质，充分考虑了被诉侵权产品销售时间长、范围广的特点，重点在于打击侵权源头。本案判决生效之后，人民法院对于构成销售侵权的经销商可不再判决赔偿损失，仅责令其停止侵权行为并承担合理维权开支即可。

来源：知产库

## Guangdong Court Case: Court Rendering Punitive Damages of RMB 30 Million in the Trademark Infringement Case, With Emphasis on Striking at the Source of Infringement.

Recently, the Guangdong High Court partially revised the Maple Leaf trademark case in a second-instance judgment, maintaining the first-instance finding of infringement but increasing the damages from RMB 7.65 million to RMB 30 million. In this case, the plaintiff owned the exclusive rights to the Maple Leaf trademark for products in class 0115 (glass adhesive), while the defendant held rights to the same trademark for products in class 0102 (silicone adhesive). Both parties were manufacturing and selling Maple Leaf-branded glass adhesives.

In the first instance, the court applied punitive damages at 1.5 times, calculating the compensation as RMB 850 million (annual sales)  $\times$  30% (profit margin)  $\times$  40% (trademark contribution rate)  $\times$  3 years (compensation period)  $\times$  2.5 (multiplier), arriving at a figure of RMB 7.65 million.

The appellate court, however, deemed that in order to severely crack down on intentional and serious infringement and to fully deter future violations, punitive damages shall be calculated at the maximum multiple allowed. This resulted in compensatory damages of RMB 921.6 million + RMB 4,147.2 million = RMB 5,068.8 million. However, since the final damages exceeded the plaintiff's request of RMB 30 million, the court awarded the full requested amount.

The judgment is comprehensive and aimed at resolving the dispute in its entirety, taking into account the long sales period and wide distribution of the infringing products. The focus is on addressing the root source of the infringement. After this judgment becomes effective, the court will no longer require distributors who engaged in sales infringement to compensate for damages, and they will only be ordered to stop the infringing activity and bear reasonable costs for legal enforcement.

Source: Zhichanku

## 美国服饰品牌美鹰傲飞起诉亚马逊，称亚马逊侵犯商标权

美国服饰品牌美鹰傲飞（American Eagle）当地时间9月25日起诉亚马逊公司，指控亚马逊故意引导顾客购买山寨商品，侵犯了这家服装及配饰零售商的“Aerie”和“Offline by Aerie”商标。

在向曼哈顿联邦法院提交的诉状中，美鹰傲飞表示拒绝了亚马逊要求在其平台上销售Aerie产品的请求。美鹰傲飞还说，在警告亚马逊停止引导购物者购买山寨产品和“仿冒品”之后，亚马逊“试图在侵权行为中更具创造性”，在赞助广告中使用了“Aeries”和“Aries”等拼写错误的词语。诉状中称，AEO保护其品牌，不能允许亚马逊这样的不良行为混淆和欺骗消费者，引导消费者购买劣质的山寨产品，并“利用Aerie标志的商誉、成功和知名度”。

来源：新浪财经

## American Eagle Sues Amazon for Trademark Infringement

On September 25, American Eagle Outfitters (AEO), the well-known U.S. clothing brand, filed a lawsuit against Amazon in a Manhattan federal court, accusing the e-commerce giant of intentionally directing customers to counterfeit goods, thereby infringing AEO's "Aerie" and "Offline by Aerie" trademarks.

AEO claims that it had refused Amazon's request to sell Aerie products on its platform. After issuing warnings to Amazon to stop promoting counterfeit products, AEO alleges that Amazon adopted more creative methods of infringement, such as using misspellings like "Aeries" and "Aries" in sponsored

ads. The complaint emphasizes that AEO must protect its brand from Amazon's misleading and deceptive actions, which divert consumers toward low-quality knockoffs, and exploit the goodwill and success associated with the Aerie trademarks.

Source: Sina Finance

## 美国大学与公司联名致信支持三项专利法案

2024年9月19日，美国参议院司法委员会（Senate Judiciary Committee）收到了来自美国大学、风险投资公司和初创公司的来信，表示支持三项专利法案，分别是《促进和尊重具有经济活力的美国创新领导力法案》（Promoting and Respecting Economically Vital American Innovation Leadership Act，简称PREVAIL法案）、《专利资格恢复法案》（The Patent Eligibility Restoration Act，简称PERA法案）和《促进经济发展的发明家多样性法案》（Inventor Diversity for Economic Advancement Act，简称IDEA法案）。

为支持以上法案而发表声明的组织包括：美国教育委员会（ACE）、美国大学协会（AAU）、美国公立和赠地大学协会（APLU）、美国知识产权法律协会（AIPLA）、美国大学技术经理人协会（AUTM）、创新促进委员会（C4IP）、医疗设备制造商协会（MDMA）、美国初创企业和发明家就业联盟（USIJ）等。

来源：中国科学院知识产权信息

## U.S. Universities and Companies Support Three Key Patent Bills

On September 19, 2024, the U.S. Senate Judiciary Committee received letters of support from American universities, venture capital firms, and startups for three proposed patent laws: the Promoting and Respecting Economically Vital American Innovation Leadership Act (PREVAIL Act), the Patent Eligibility Restoration Act (PERA), and the Inventor Diversity for Economic Advancement Act (IDEA).

Organizations expressing their support for these bills include the American Council on Education (ACE), the Association of American Universities (AAU), the Association of Public and Land-grant Universities (APLU), the American Intellectual Property Law Association (AIPLA), the Association of University Technology Managers (AUTM), the Council for Innovation Promotion (C4IP), the Medical Device Manufacturers Association (MDMA), and the United States Inventors and Entrepreneurs Jobs Alliance (USIJ), among others.

Source: Chinese Academy of Sciences Intellectual Property Information

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