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立方竞争法周报 Weekly Competition Law News

最高法发布《关于修改〈最高人民法院关于知识产权法庭若干问题的规定〉的决定》

2023年10月27日，最高人民法院（“最高法”）《最高人民法院关于修改〈最高人民法院关于知识产权法庭若干问题的规定〉的决定》，该修正将于2023年11月1日起施行。本次修订相较于2019年1月1日施行的原《最高人民法院关于知识产权法庭若干问题的规定》（“《规定》”），扩大了最高法知识产权法庭对垄断民事和行政案件的受案范围。原《规定》中的最高法知识产权法庭的受案范围规定为“高级人民法院、知识产权法院、中级人民法院”一审的垄断民事和行政上诉案件，该修订将其扩大到包括所有垄断民事和行政上诉案件。（[查看更多](#)）

SPC Issues Decision of the SPC on Revising the Regulation of the Supreme People's Court on Several Issues Concerning Intellectual Property Court

On October 27, 2023, the Supreme People's Court (“SPC”) issues the *Decision of the SPC on Revising the Regulation of the Supreme People's Court on Several Issues Concerning Intellectual Property Court*, which will come into effect on November 1, 2023. This revision, as compared to the previous *Regulation of the Supreme People's Court on Several Issues Concerning Intellectual Property Court* (the “Regulation”), which came into effect on 1 January 2019, expands the scope of the Supreme Court's Intellectual Property Courts' acceptance of monopoly civil and administrative cases. The scope of cases accepted by the Intellectual Property Court of the Supreme People's Court in the previous *Regulation* was monopoly civil and administrative appeal cases whose first instances are held in the “High People's Courts, Intellectual Property Courts, and Intermediate People's Courts”, but the revision has expanded it to include all monopoly civil and administrative appeal cases. ([More](#))

市场监管总局印发《滥用行政权力排除、限制竞争执法约谈工作指引》

2023年10月27日，国家市场监督管理总局（“市场监管总局”）印发《滥用行政权力排除、限制竞争执法约谈工作指引》（“《指引》”）。《指引》共28条，就约谈工作相关定义、原则、主体、对象、程序、改进措施、后续工作开展等内容进行了规定。《指引》旨在更好发挥反垄断执法约谈制度作用，规范约谈工作，警示引导有关行政机关和法律、法规授权的具有管理公共事务职能的组织主动改进有关政策措施，推动及时有效解决不当干预市场竞争问题，提升滥用行政权力排除、限制竞争反垄断执法效能，维护公平竞争的市场秩序。（[查看更多](#)）

SAMR Issues Guidelines for Law Enforcement Interviews on Abuse of Administrative Power to Eliminate or Restrict Competition

On October 27, 2023, the State Administration for Market Regulation (“SAMR”) issues the *Guidelines for Law Enforcement Interviews on Abuse of Administrative Power to Eliminate or Restrict Competition* (“Guidelines for Law Enforcement Interviews”). The *Guidelines for Law Enforcement Interviews* com-

prise 28 articles, which provide definitions, principles, subjects, objects, procedures, remedies, and follow-up work in relation to the interview process. The *Guidelines for Law Enforcement Interviews* aim to give better play to the role of the anti-monopoly law enforcement interview system, regulate the work of interviews, warn and guide the relevant administrative agencies and organisations authorised by laws and regulations with the function of managing public affairs to take the initiative to improve the relevant policies and measures, promote timely and effective solutions to the problem of undue interference in market competition, enhance the effectiveness of anti-monopoly law enforcement on the abuse of administrative power to exclude or restrict competition, and safeguard the market order of fair competition. ([More](#))

上海市反垄断和公平竞争委发布《互联网平台企业竞争合规评价指引》

2023年10月25日，上海市市场监督管理局公众号发布消息，宣布上海市反垄断和公平竞争委员会办公室（“上海市市反垄断和公平竞争委”）制定了《互联网平台企业竞争合规评价指引》（“《指引》”），并正式发布《关于提升常态化监管水平指导鼓励平台企业建立竞争合规管理体系的通知》，以高水平常态化监管助力服务平台经济高质量发展。《指引》将搭建竞争监管部门与平台企业合规管理的常态化沟通交流机制，落实平台企业主体责任，突出强化公平竞争合规激励。（[查看更多](#)）

Shanghai Anti-Monopoly and Fair Competition Commission Issues *Guidelines for Competition Compliance Evaluation of Internet Platform Enterprises*

On October 25, 2023, the Shanghai Anti-Monopoly and Fair Competition Commission releases a newsletter on its public website announcing that the Office of the Shanghai Anti-Monopoly and Fair Competition Commission (“Shanghai Anti-Monopoly and Fair Competition Commission”) has formulated the *Guidelines for the Evaluation of Competitive Compliance of Internet Platform Enterprises* (“*Guidelines for the Evaluation*”) and formally issued the *Notice on improving the level of normalised supervision and guiding and encouraging platform companies to establish competition compliance management systems*, so as to help serve the high-quality development of the platform economy with a high level of normalised supervision. The *Guidelines for the Evaluation* will build a standing communication and exchange mechanism between competition regulators and platform enterprises’ compliance management, implement the main responsibility of platform enterprises, and highlight the strengthening of fair competition compliance incentives. ([More](#))

电信集团Orange和MasMovil计划剥离资产以应对欧盟对合并的反垄断担忧

2023年10月24日，据媒体报道，法国电信集团Orange和西班牙电信集团MasMovil计划剥离部分资产，并选择罗马尼亚公司Digi作为潜在买家，以应对欧盟委员会对两家公司西班牙业务合并的反垄断担忧。根据Orange和MasMovil制定的剥离计划，除了向Digi提供重要的基础设施资源外，还将转让频段、一家客户单位和一个品牌。目前剥离方案的具体细节尚未敲定，交易的某些内容可能还会发生变化。该合并交易正在受到密切关注，原因是该合并将使一国的移动运营商数量从四家减少到三家，反映了欧盟委员会对此类合并采取的态度。目前，欧盟委员会暂停了对该合并案的调查，等待两家公司提供更多信息。（[查看更多](#)）

Telecoms Groups Orange and MasMovil Plan to Divest Assets in Response to EU Antitrust Concerns over Merger

On October 24, 2023, according to media reports, French telecoms group Orange and Spanish telecoms group MasMovil plan to divest some of their assets and are choosing Romanian company Digi as the potential buyer, in response to antitrust concerns by the European Commission over the merger of the two companies' Spanish operations. The divestment plan laid out by Orange and MasMovil entails the sale of spectrum, a customer unit, and a brand, in addition to providing Digi with access to vital infrastructure resources. It should be noted that the specific details of this package have yet to be finalised, and certain elements of the deal may still undergo changes. The merger deal is being closely scrutinised on the grounds that it would reduce the number of mobile operators in a country from four to three, reflecting the approach taken by the European Commission to such mergers. For now, the European Commission has suspended its investigation into the merger, pending more information from the two companies. ([More](#))

韩国公平贸易委员会附条件批准博通收购VMware

2023年10月23日，据媒体报道，韩国公平贸易委员会（KFTC）宣布附条件批准美国智能手机零部件制造商博通（Broadcom Inc.）收购VMware。博通于2022年5月宣布，有意以610亿美元（约4468亿人民币）的现金和股票组合收购VMware，并承担VMware 80亿美元（约586亿人民币）的净债务。KFTC担忧云计算和虚拟化技术领域的知名企业VMware可能会利用其地位阻碍博通竞争对手生产的组件获得互操作性认证。为了解决这一担忧，KFTC要求博通在未来十年内不得降低博通以外的第三方的光纤通道主机总线适配器（HBA）驱动程序与VMware服务器虚拟化软件之间的兼容水平；上述兼容水平不得低于博通获得的兼容水平；基于竞争者的请求，在3日内提供HBA驱动程序的源代码、许可等。目前，博通有60天时间提出具体措施以应对KFTC提出的要求。（[查看更多](#)）

KFTC Conditionally Approves Broadcom's Acquisition of VMware

On October 23, 2023, according to media reports, the Korea Fair Trade Commission (KFTC) announces conditional approval for the proposed acquisition of VMware Inc., a US infrastructure software firm, by Broadcom Inc., a US smartphone components maker. The approval comes after Broadcom's announcement in May 2022 of its intention to acquire VMware for a substantial \$61 billion (CYN 446.8 billion) in a combination of cash and stock, along with the assumption of \$8 billion (CYN 58.6 billion) in net VMware debt. The KFTC is concerned that VMware, a prominent player in cloud computing and virtualisation technology, may use its position to prevent components produced by Broadcom's competitors from receiving interoperability certification. To address this concern, the KFTC has asked Broadcom not to reduce the level of compatibility between third party's Fibre Channel Host-Bus Adapter (HBA) drivers other than Broadcom's and VMware's server virtualisation software for the next ten years; the said level of compatibility shall not be lower than the level of compatibility obtained by Broadcom; and based on a request from a competitor, to provide the HBA driver's source code, licenses, etc., within three days. Currently, Broadcom has 60 days to propose specific measures to respond to the requests made by the KFTC. ([More](#))

日本公平贸易委员会对谷歌展开反垄断调查并征求第三方意见

2023年10月23日，日本公平贸易委员会（JFTC）就谷歌（Google LLC）等涉嫌违反反垄断法一事展开调查，并决定向第三方征求有关涉嫌违法行为的信息和意见。JFTC认为谷歌的下列行为涉嫌排除其竞争对手的商业活动或限制其商业活动：（1）与安卓移动设备制造商签订许可协议安装谷歌搜索、谷歌浏览器、谷歌应用商店等应用程序，并指定将上述应用图标放置在设备桌面上；（2）与安卓移动设备制造商分享搜索广告服务的收入，但要求其不得预装竞争对手的搜索应用程序。JFTC现阶段仍在征求第三方的信息和意见，尚未就谷歌是否违反反垄断法得出任何结论。意见反馈截止日期为2023年11月22日。（[查看更多](#)）

JFTC Opens Antitrust Investigation into Google and Seeks Third-Party Opinions

On October 23, 2023, The Japan Fair Trade Commission (JFTC) opens an investigation concerning the suspected violation of the Antimonopoly Act by Google LLC, etc. (“Google”) and decided to seek information and opinions from third parties regarding the alleged violations. The JFTC found that Google’s following conducts are suspected to have excluded the business activities of its competitors or to have restricted the business activities of its competitors: (1) Entering into licence agreements with Android mobile device manufacturers to make them install its applications such as Google Search, Google Chrome, and Google App Store, and designates where to place icons of such applications on screens of the devices, and (2) sharing its revenues from search advertising services with the Android mobile device manufacturers on conditions including that they do not pre-install competitors' search application. The JFTC is still soliciting third-party information and opinions at this stage and has not yet reached any conclusions as to whether Google has violated the antitrust laws. The JFTC is still seeking information and comments from third parties at this stage and has not yet reached any conclusions on whether Google has violated antitrust laws. The due date for feedback is November 22, 2023. ([More](#))

Indivior以3.85亿美元就Suboxone药品反垄断案达成和解

2023年10月22日，据媒体报道，Indivior已宣布就美国多地区Suboxone诉讼案达成和解协议，同意支付3.85亿美元（约28.2亿人民币）以解决反垄断诉讼中的最后一项索赔。该诉讼案的核心是指控Indivior为维持其市场主导地位，阻碍了阿片类成瘾治疗药品Suboxone的仿制药竞争。双方作出的和解协议为多地区的诉讼画上了句号，但还需获得美国宾夕法尼亚州东区地区法院的批准。目前原定于近期开始的相关审判已经取消。（[查看更多](#)）

Indivior Settles Suboxone Drug Antitrust Case for \$385 Million

On October 22, 2023, according to media reports, Indivior has announced a settlement agreement in a multi-district Suboxone litigation case in the United States, agreeing to pay \$385 million (CYN 2.82 billion) to resolve the final claim in the antitrust litigation. The lawsuit centred on allegations that Indivior, in an effort to maintain its dominant market position, could prevent generic competition for the opioid addiction treatment Suboxone. The settlement agreement entered into by the parties brings an end to the multi-district litigation, subject to approval by the U.S. District Court for the Eastern District of Pennsylvania. A related that was scheduled to begin in the near future has now been cancelled. ([More](#))

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

国务院公布《未成年人网络保护条例》

2023年10月24日，国务院公布《未成年人网络保护条例》（以下简称《条例》），《条例》自2024年1月1日起施行。

《条例》共七章，除总则、法律责任和附则外，包括网络素养促进、网络信息内容规范、个人信息网络保护、网络沉迷防治等制度性规定。在个人信息网络保护方面，《条例》要求个人信息处理者应当严格遵守国家网信部门和有关部门关于网络产品和服务必要个人信息范围的规定，不得强制要求未成年人或者其监护人同意非必要的个人信息处理行为，不得因为未成年人或者其监护人不同意处理未成年人非必要个人信息或者撤回同意，拒绝未成年人使用其基本功能服务。在网络沉迷防治方面，《条例》明确网络产品和服务提供者应当建立健全防沉迷机制，不得提供诱导未成年人沉迷的产品和服务。（[查看更多](#)）

The State Council Releases the Regulations to Protect Minors in Cyberspace

On 24 October 2023, the State Council released the *Regulations to Protect Minors in Cyberspace* (the “Regulations”), which will come into effect on 1 January 2024.

The *Regulations* consist of seven chapters, including institutional provisions on the promotion of Internet literacy, the regulation of Internet information content, the Internet protection of personal information, and the prevention and control of Internet addiction, in addition to the general provisions, legal liabilities and by-laws. As for the Internet protection of personal information, the *Regulations* require that processors of personal information shall strictly abide by the provisions of the cyberspace authorities and relevant authorities on the scope of necessary personal information for network products and services, shall not compel minors or their guardians to consent to the processing of non-essential personal information, and shall not refuse minors the use of services for their basic functions on the ground that the minors or their guardians do not consent to the processing of non-essential personal information of the minors, or because they have withdrawn their consent. For the prevention and control of Internet addiction, the Regulations require that providers of network products and services shall establish and improve an anti-addiction mechanism, and shall not provide products or services that may lead to addiction by minors. ([More](#))

国家网信办发布第十三批境内区块链信息服务备案编号

2023年10月24日，国务院网信办发布第十三批共204个境内区块链信息服务名称及备案编号。自2019年2月15日《区块链信息服务管理规定》（以下简称《管理规定》）正式实施，国家互联网信息办公室依法依规组织开展备案审核工作。

根据《管理规定》要求，区块链信息服务提供者应当在其对外提供服务的互联网站、应用程序等显著位置标明其备案编号。备案仅是对主体区块链信息服务相关情况的登记，不代表对其机构、产品和服务的认可，任何机构和个人不得用于任何商业目的。（[查看更多](#)）

Cyberspace Administration of China Releases the 13th Batch of Domestic Blockchain Information Service Filing Numbers

On 24 October 2023, the Cyberspace Administration of China (the “CAC”) released as the 13th batch the name and filing number of a total of 204 domestic blockchain information services. Since the *Administrative Provisions on Blockchain Information Services* (the “*Administrative Provisions*”) was formally implemented on 15 February 2019, the CAC has organized the filing and auditing work in accordance with the law.

The *Administrative Provisions* stipulate that blockchain information service providers shall prominently display their filing numbers on their Internet websites and applications that provide services to the public. The filing only represents a record of the situation related to the subject’s blockchain information service, and does not represent an endorsement of its organization, products and services, which shall not be used by any organization or individual for any commercial purpose. ([More](#))

网信部门依法查处一批涉公共政策、社会民生领域造谣传谣账号

2023年10月24日，据国家网信办官网消息，一些网络账号编造传播涉公共政策、社会民生等领域谣言信息，严重误导群众认知，造成不良社会影响。网信部门指导网站平台强化监测查证、开展排查整治，溯源关闭谣言首发账号，累计处置违法违规账号1781个。

部分典型案例如下：1. “苏锡常将设立经济特区”谣言；2. “广州地铁遭恐怖袭击”谣言；3. “上海成功申办2036年夏季奥运会”谣言；4. “国家自然科学基金委员会成立‘试点社区’”谣言；5. “中石油官员称1升汽油等于800毫升”谣言；6. “中国工程院将创办大学”谣言；7. “护照号码EL开头为失信人员”谣言；8. “国庆后老年人可半价购买火车票”谣言。（[查看更多](#)）

Cyberspace Administration of China Identifies a Number of Rumor-mongering Accounts Related to Public Policy and Social Livelihood

On 24 October 2023, according to the official website of the Cyberspace Administration of China (the “CAC”), some network accounts engaged in fabricating and disseminating rumors related to public policy, social livelihood and other areas, severely misleading the public’s perception and causing adverse social impact. Cyberspace authorities have guided the website platforms to strengthen the monitoring and verification, carry out investigation and rectification, trace back and close the rumor originated accounts, and have cumulatively disposed of a total of 1,781 accounts.

Some typical cases of the rumors include: 1. The cities of Suzhou, Wuxi and Changzhou will set up a special economic zone; 2. Guangzhou metro was attacked by terrorists; 3. Shanghai successfully bid to host the 2036 Summer Olympic Games; 4. The National Natural Science Foundation of China set up a “pilot community”; 5. China National Petroleum Corporation officials said that 1 liter of gasoline is equal to 800 milliliters; 6. Chinese Academy of Engineering will start a university; 7. Passport numbers beginning with EL are designated for the debt defaulters; and 8. After the National Day, the elderly can buy train tickets at half price. ([More](#))

工信部发布《工业互联网安全分类分级管理办法（公开征求意见稿）》

2023年10月24日，为加强工业互联网安全分类分级管理，落实企业网络安全主体责任，工业和信息化部发布《工业互联网安全分类分级管理办法（公开征求意见稿）》（以下简称《管理办法》），面向社会征求意见，征求截止时间为2023年11月22日。

《管理办法》共计二十一条，包括总则、企业分类分级、网络安全管理、支持与保障、附则五个部分。工业互联网安全分类分级管理以工业互联网企业为对象，企业类型主要分为三类，包括应用工业互联网的工业企业、工业互联网平台企业以及工业互联网标识解析企业。工业互联网企业应当按照工业互联网安全定级相关标准规范，结合企业规模、业务范围、应用工业互联网的程度、运营重要系统的程度、掌握重要数据的程度、对行业发展和产业链供应链安全的重要程度以及发生网络安全事件的影响后果等要素，开展自主定级。工业互联网企业级别由高到低分为三级、二级、一级。完成自主定级的工业互联网企业通过全国工业互联网安全分类分级管理平台开展信息登记。（[查看更多](#)）

Ministry of Industry and Information Technology Issues the Administrative Measures for Industrial Internet Security Categorization and Grading (Draft for Comments)

On 24 October 2023, in order to strengthen the administration of industrial Internet security classification and grading and implement the main responsibility of enterprise network security, the Ministry of Industry and Information Technology (the “MIIT”) issued the *Measures for the Administration of Industrial Internet Security Classification and Grading (Draft for Comments)* (the “*Administration Measures*”), which is open for public comments until 22 November 2023.

The *Administrative Measures* consist of a total of twenty-one articles divided into five parts: general provisions, enterprise classification and grading, cyber security management, support and guarantee, and bylaws. Industrial Internet security classification and grading management is aimed at industrial Internet enterprises, which include industrial enterprises utilizing industrial Internet, industrial Internet platform enterprises, and industrial Internet identification and resolution enterprises. Industrial Internet enterprises should carry out independent grading in accordance with the relevant standards and norms for industrial Internet security grading, taking into account the scale of the enterprise, the scope of business, the degree of application of the industrial Internet, the degree of operation of important systems, mastery of important data, importance to the development of the industry and the security of industrial chain supply chain, as well as the impact and the consequences of the occurrence of a cybersecurity event and other elements. Industrial Internet enterprises are graded into Level III, Level II and Level I from high to low. Industrial Internet enterprises that completed independent grading shall register their grading information with the national industrial Internet security classification and grading management platform. ([More](#))

工信部通报第32批侵害用户权益行为的APP（SDK）

2023年10月24日，工业和信息化部信息通信管理局发布关于侵害用户权益行为的APP（SDK）通报（2023年第6批，总第32批），通报内容显示：工信部组织第三方检测机构对群众关注的在线

影音、网上购物等移动互联网应用程序APP及第三方软件开发工具包（SDK）进行检查，发现22款APP、SDK存在侵害用户权益行为。其中，行为所涉问题主要包括：违规收集、使用个人信息，超范围收集个人信息，强制用户使用定向推送功能，APP强制、频繁、过度索取权限，欺骗、误导、强迫用户，SDK公示信息不完整等。上述APP及SDK应按有关规定进行整改，整改落实不到位的，工信部将依法依规组织开展相关处置工作。（[查看更多](#)）

Ministry of Industry and Information Technology Publicly Notifies the 32nd batch of APPs (SDKs) Infringing on Users' Rights Interests

On 24 October 2023, the Information and Communication Administration Bureau of the Ministry of Industry and Information Technology (the “MIIT”) issued a circular on APPs (SDKs) infringing on users' rights and interests (the 6th batch of 2023, the 32nd batch in total), which shows that the MIIT organized third-party testing institutions, to inspect APPs and third-party software development kits (SDKs) for mobile Internet applications of concern to the public, such as online video and audio, online shopping, etc. A total of 22 Apps or SDKs have been found to be engaged in activities infringing on users' rights and interests. The issues involved include: collecting and using personal information illegally, collecting personal information beyond the scope, forcing users to use the targeted push function, the APP forcibly, frequently and excessively requesting permissions, deceiving, misleading and forcing users, and display of incomplete information that is required to be disclosed by the SDK. The APPs and SDKs mentioned above should be rectified in accordance with the relevant regulations, and if the rectification is not completed, the MIIT will organize and carry out the relevant disposal work in accordance with the law and regulations. ([More](#))

上海市消费者权益保护委员会和上海市汽车销售行业协会发布《上海市汽车销售行业个人信息保护合规指引》

2023年10月24日，为引导上海市汽车销售行业加强消费者个人信息保护，维护汽车销售企业和消费者双方的合法权益，上海市消费者权益保护委员会和上海市汽车销售行业协会共同制定并印发《上海市汽车销售行业个人信息保护合规指引》（以下简称《合规指引》）。

《合规指引》要求，不得以任何形式和理由强制、诱导消费者关注经营者微信公众号、注册会员、索取非必要的个人信息和权限。应当设立专门的个人信息安全管理部门或者人员，负责处理消费者个人信息保护事务，并建立投诉监督机制，方便消费者在其个人信息安全和隐私受到侵犯时进行投诉，并在规定时限内得到反馈处理结果。（[查看更多](#)）

Shanghai Consumer Council and Shanghai Automotive Trade Association Issue the *Compliance Guidelines on Personal Information Protection in Shanghai Automotive Trading Industry*

On 24 October 2023, in order to guide the automobile trading industry in Shanghai to strengthen the protection of consumers' personal information and safeguard the legitimate rights and interests of both automobile sales enterprises and consumers, the Shanghai Consumer Council and the Shanghai Automotive Trade Association jointly formulated and issued the *Compliance Guidelines on Personal Information Protection in the Shanghai Automotive Trading Industry* (the “Compliance Guidelines”).

The *Compliance Guidelines* require that consumers shall not be compelled or induced to follow the operator's WeChat subscription number, register for membership, or be requested non-essential personal information and privileges in any form or for any reason. Specialized personal information security management departments or personnel should be set up, to deal with consumer personal information protection matters, and a complaint monitoring mechanism should be established to facilitate consumers to make complaints timely when their personal information security and privacy are infringed, and to be notified of the results of the process within the required time limit. ([More](#))

北京市网信办对三家企业未履行数据安全保护义务作出行政处罚

2023年10月30日，据网信北京公众号消息，根据国家网信办移交的问题线索，北京市网信办依据《中华人民共和国数据安全法》对属地三家企业涉嫌存在网络数据安全违法行为进行调查并作出行政处罚。

经查实，三家企业违反《中华人民共和国数据安全法》第二十七条规定，未履行数据安全保护义务，部署的数据库存在未授权访问漏洞，造成部分数据泄露。北京市网信办依据《中华人民共和国数据安全法》第四十五条第一款规定，对三家企业分别作出责令改正，给予警告，并处5万元罚款的行政处罚，对直接主管人员和其他责任人员处以1万元罚款处罚。（[查看更多](#)）

Cyberspace Administration of Beijing Imposes Administrative Punishment on Three Enterprises for Not Fulfilling Data Security Protection Obligations

On 30 October 2023, according to the news of the public account of Beijing Cyberspace Administration, based on clues handed over by the CAC, the Cyberspace Administration of Beijing, in accordance with the *Data Security Law of the People's Republic of China*, investigated and imposed administrative penalties on three enterprises in the region suspected of engaging in network data security infringement activities.

It was found that the three enterprises infringed the provisions of Article 27 of the *Data Security Law of the People's Republic of China* by failing to fulfill their data security protection obligations and deploying databases with unauthorized access vulnerabilities, resulting in the leakage of part of the data. The Cyberspace Administration of Beijing, in accordance with Article 45, paragraph 1 of the *Data Security Law of the People's Republic of China*, ordered the three companies to make corrections, issued a warning and imposed a fine of RMB 50,000 of administrative penalties, and the direct supervisors and other responsible staffs were imposed a fine of RMB 10,000. ([More](#))

新加坡网络安全局为相关机构发布云安全配套指南

2023年10月17日，新加坡网络安全局（CSA）与云安全联盟（Cloud Security Alliance）共同宣布推出两份与新加坡三大云服务供应商合作开发的云安全配套指南，一份针对网络基本要素，另一份针对网络信任，旨在帮助企业更好地了解使用云服务的风险和责任，并形成国家层面的网络安全标准。

指南中明确云服务用户和云服务供应商之间的责任分工，根据云服务用户组织规模提供不同的责任模式；为三大云服务供应商提供针对性指引；解决云服务用户的主要安全问题。（[查看更多](#)）

CSA Publishes Companion Guides on Cloud Security for Organizations

On 17 October 2023, the Cyber Security Agency of Singapore (CSA), together with the Cloud Security Alliance, announced the launch of two cloud security companion guides, one for cyber essentials and another for cyber trust, aimed at helping organizations better understand the risks and responsibilities of using cloud services and achieve national cybersecurity standards.

The guides clarify the division of responsibility between organizations, as cloud users, and cloud providers, by offering different models of responsibility depending on the size of the organization; offer provider-specific guides for the three major cloud service providers; and address key security concerns for cloud users. ([More](#))

加拿大与菲律宾签署数据保护谅解备忘录

2023年10月20日，加拿大隐私专员办公室（OPC）宣布与菲律宾共和国国家隐私委员会签署了一份谅解备忘录（MoU），重点关注双方在数据保护方面的合作协议。谅解备忘录概述了以下几个合作领域，包括：

交换有关调查的信息；

相互协助调查违反隐私和数据保护法的行为；

协调跨境数据泄露联合调查；

关于隐私和数据保护趋势的知识共享和培训；以及

探索创新和实验性数据共享方法。

（[查看更多](#)）

Canada and the Philippines Sign MoU on Data Protection

On 20 October 2023, the Office of the Privacy Commissioner of Canada (OPC) announced that it had signed a Memorandum of Understanding (MoU) with the National Privacy Commission of the Republic of the Philippines focused on their agreement to cooperate for data protection.

- The MoU outlines various areas of cooperation, including:
- exchange of information regarding investigations;
- mutual assistance in investigations for contravention of privacy and data protection laws;
- coordination of joint investigations for cross-border data breaches;

- knowledge sharing and training on privacy and data protection trends; and
- exploring innovative and experimental data-sharing approaches.

[\(More\)](#)

知识产权 Intellectual Property

最高人民法院知识产权法庭调整受案范围

2023年10月27日，最高法公布《最高人民法院关于修改〈最高人民法院关于知识产权法庭若干问题的规定〉的决定》（以下简称《决定》），自2023年11月1日起施行。

《决定》对知识产权法庭的审理范围作出了调整。审理范围修改如下：“知识产权法庭审理下列上诉案件：

- （一）专利、植物新品种、集成电路布图设计授权确权行政上诉案件；
- （二）发明专利、植物新品种、集成电路布图设计权属、侵权民事和行政上诉案件；
- （三）重大、复杂的实用新型专利、技术秘密、计算机软件权属、侵权民事和行政上诉案件；
- （四）垄断民事和行政上诉案件。

知识产权法庭审理下列其他案件：

- （一）前款规定类型的全国范围内重大、复杂的第一审民事和行政案件；
- （二）对前款规定的第一审民事和行政案件已经发生法律效力的判决、裁定、调解书依法申请再审、抗诉、再审等适用审判监督程序的案件；
- （三）前款规定的第一审民事和行政案件管辖权争议，行为保全裁定申请复议，罚款、拘留决定申请复议，报请延长审限等案件；
- （四）最高人民法院认为应当由知识产权法庭审理的其他案件。”

来源：最高人民法院

Supreme People's Court Alters the Scope of Accepting Intellectual Property Cases

On 27 October 2023, the Supreme People's Court (SPC) issued *the Decision of the Supreme People's Court on Amending the Provisions of the Supreme People's Court on Several Issues Concerning Intellectual Property Courts (the Decision)*, which shall be effective from 1 November 2023.

The Decision adjusted the scope of accepting IP cases by SPC, which is amended to read as follows: "The Intellectual Property Tribunal hears the following appeals: (i) Administrative appeals on the authorization of patents, new varieties of plants and layout designs of integrated circuits; (ii) civil and administrative appeals on the ownership and infringement of invention patents, new plant varieties and integrated circuit layout designs; (iii) Significant and complex civil and administrative appeals on the ownership and infringement of utility model patents, technical secrets and computer software; (iv) Mo-

nopoly civil and administrative appeal cases. The Intellectual Property Tribunal hears the other cases below: (i) Significant and complex civil and administrative cases of first instance nationwide of the types specified in the preceding paragraph; (ii) Cases applying trial supervision procedures such as applications for retrial, protests and retrials in accordance with the law in respect of judgements, rulings and conciliations of first instance civil and administrative cases of the types stipulated in the preceding paragraph which have already become legally effective; disputes over the jurisdiction of civil and administrative cases of the first instance, applications for reconsideration of rulings on the preservation of acts, applications for reconsideration of decisions on fines and detentions, and applications for extension of the time limit for trial, as provided for in the preceding paragraph; (iv) Other cases which the Supreme People's Court determines shall be heard by the Intellectual Property Tribunal."

Source: Supreme People's Court

最高法：临时保护期届满后继续使用方法专利构成专利侵权

近日，最高院知识产权法庭审结一起涉及临时保护期届满后方法专利侵权纠纷案，认定临时保护期届满后继续使用方法专利构成专利侵权，二审改判停止侵权并赔偿损失530余万元，最高院在该案中明确了方法专利侵权的认定标准及使用专利不适用合法来源抗辩等法律适用问题。

最高人民法院二审认为，靖江市某装备公司在涉案专利授权公告后继续使用被诉侵权产品及实施专利方法的行为构成专利侵权行为，其以合法来源抗辩主张不侵权不能成立。理由为：合法来源抗辩是免除赔偿责任的抗辩，是保护善意第三人制度在专利法中的具体体现。合法来源抗辩并不适用于使用专利方法的行为，不应突破现行法律和司法解释的规定对使用专利方法的侵权行为适用合法来源抗辩；就使用者于涉案专利临时保护期内购买专利侵权产品而言，合法来源抗辩实质上受到产品物理条件的限制，使用者并不能无限期实施专利技术方案；且合法来源抗辩不能及于以使用专利侵权产品的方式实际构成侵权使用专利方法的行为。

来源：最高人民法院知识产权法庭

SPC: Continued Use of Method Patents After Expiry of Provisional Protection Period Constitutes Patent Infringement

Recently, SPC concluded a case of dispute over infringement of a method patent after the expiry of the provisional protection period, holding that the continued use of the method patent after the expiry of the provisional protection period constituted patent infringement, SPC, in this case, clarified the criteria of infringement of method patents and clarified the legal application issues such as the method patents of use are not subject to the legitimate source defense.

SPC held in the second instance that, the continued use of the infringing products and the implementation of the patented method by the X Equipment Company of Jingjiang City, after the announcement of the authorization of the patent, constituted an infringement of the patent, and that its claim of non-infringement under the legitimate source defense could not be upheld. The reasons are as follows: the defence of the legitimate source defense of liability exemption, is the protection of the bona fide third party system in the patent law in the specific embodiment. The the legitimate source defense does not

apply to the use of patented methods, shall not break through the provisions of the existing laws and judicial interpretations of the use of patented methods, for infringing acts applying the legitimate source defence; for users who purchased the infringing products during the provisional protection period of the patent involved, the legitimate source defence is essentially limited by the physical conditions of the products, and the users are not allowed to implement the patented technical solutions indefinitely; and the legitimate source defence cannot be applied to the use of the infringing products in a way that actually constitutes an infringing use of the patented method.

Source: Intellectual Property Court of Supreme People's Court

亿纬锂能与瓦尔塔就全球诉讼达成和解

10月18日，亿纬锂能公告，2021年10月起就亿纬锂能销售的部分纽扣电池产品涉嫌侵犯 VARTA Microbattery GmbH（以下简称“瓦尔塔”）专利权事件，瓦尔塔在美国德克萨斯州的东区联邦法院提起专利侵权诉讼。亿纬锂能相应在美国专利局商标局专利审判和上诉委员会就涉案专利提起了无效申请，其中5件专利的无效申请于今年年初相继立案。

近日，公司与瓦尔塔就全球诉讼达成和解。协议约定双方在全球撤回针对彼此的所有法律程序。双方还同意拓展共同的商业机会，建立面向未来的合作互利关系。双方开始在相应法院、专利审判和上诉委员会提出撤诉、撤案申请。亿纬锂能介绍，截至本公告披露日，公司与瓦尔塔在全球范围内的所有专利诉讼程序均已终结。

来源：上海证券报

VARTA AG and EVE Energy Settle Global Legal Disputes

On 18 October 2023, EVE Energy announced that in October 2021, VARTA filed a patent infringement lawsuit in the U.S. District Court of the Eastern District of Texas for allegedly infringing on VARTA Microbattery GmbH's patents for certain button cell products sold by EVER Energy. Accordingly, EVE Energy has filed invalidation applications for the patents in question at the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office, and the invalidation of 5 of the patents were filed earlier this year.

Recently, VARTA AG and EVE Energy settled global legal disputes. The agreement provides for the parties to withdraw all legal proceedings against each other globally. The parties also agreed to develop common business opportunities and to establish a future-oriented and mutually beneficial relationship. The parties have begun to file applications for withdrawing and dismissing cases in the corresponding courts, patent trial and appeal boards. EVE Energy introduces that as of the date of disclosure of this announcement, all patent lawsuits between the EVE Energy and VARTA AG on a global scale have been finalized.

Source: The Shanghai Securities Journal

“清风”包装侵权案，权利人获赔1500万元

近日，上海知识产权法院就金红叶纸业集团有限公司（以下称“金红叶公司”）与保定市金升

纸业有限公司（以下称“金升公司”）、李某诚不正当竞争案作出二审判决，判决驳回上诉，维持原判。此前一审判决金升公司停止侵权并连带赔偿金红叶公司经济损失1500万元。

法院认为，涉案清风纸巾包装装潢具有一定知名度，属于反不正当竞争法第六条第一项规定的有一定影响的商品包装装潢。被诉侵权纸巾包装装潢与涉案清风纸巾包装装潢在整体颜色及构图、主要部分要素组合上均近似，在涉案清风纸巾包装具有知名度的情况下，容易误认被诉侵权纸巾与清风纸巾来源相同，金升公司、李某诚擅自使用与金红叶公司有一定影响的商品装潢近似的标识，构成不正当竞争。

关于赔偿数额：根据在案证据，能够得出侵权获利已经远远超过了法定赔偿最高限额500万元，故可以根据上述概括计算的结果酌情给予权利人超过法定赔偿限额的救济赔偿。最终法院综合考虑涉案清风纸巾包装装潢的知名度及显著性、被诉侵权店铺的经营者信息、金升公司的法人及股东与李某诚之间的亲属关系、金升公司及李某诚的侵权行为性质及主观过错、侵权持续期间、被诉侵权纸巾的销售数量等因素，酌情确定赔偿金额1500万元。

来源：上海知产法院

Shanghai IP Court: Damages of RMB 15 Million in "Qingfeng" Packaging Infringement Case

Recently, the Shanghai Intellectual Property Court issued a second instance judgement on unfair competition infringement between Gold Hongye Paper Group Co., Ltd. (the Plaintiff) and Baoding Jins-heng Paper Industry Co., Ltd. and others (the Defendants). The original judgement that the Defendants shall pay damages of RMB 15 million was upheld.

The court held that, the packaging and decoration of the Qingfeng tissue in the case had a certain degree of popularity, and belonged to the packaging and decoration of commodities with a certain degree of influence, as stipulated in Article 6 (1) of the Anti-Unfair Competition Law. The accused infringing tissue and the Qingfeng tissue packaging and decoration in the case are similar in the overall colour and composition, the main part of the combination of elements. When the packaging of the Qingfeng tissue is well-known, it is easy to misunderstand that the infringing tissue and the Qingfeng tissue have the same source, and the unauthorized logo used by the Defendants, which is similar to the decoration of the Plaintiff, constitutes unfair competition.

As to the amount of compensation: according to the evidence in the case, it can be concluded that the infringement profit has far exceeded the statutory compensation maximum limit of RMB 5 million, hence, it can be discretionary to grant the right holder relief compensation, in excess of the statutory compensation limit according to the results of the calculation above. Eventually, the court took into account the popularity and prominence of the packaging and decoration of the Qingfeng tissue, the operator information of the infringing shop, the kinship between the Defendants, the nature of the infringement and the subjective fault of the Defendants, the duration of the infringement, and the number of infringing products sold, to determine the amount of damages of RMB 15 million.

Source: Shanghai IP Court

监控微信界面以实施批量营销：法院判决赔偿500万元

近日，北京知识产权法院就深圳市腾讯计算机系统有限公司（以下称“腾讯公司”）与北京联云天下科技有限公司（以下称“联云天下公司”）、南京销云天下信息技术有限公司（以下称“销云天下公司”）不正当竞争纠纷案作出二审判决，判决驳回上诉，维持原判。此前一审判决联云天下公司、销云天下公司停止侵权并共同赔偿腾讯公司经济损失500万元。

法院认为，腾讯公司对基于微信正常运行所产生的微信数据具有竞争利益。被告作为经营者，通过监控微信界面、利用模拟点击技术在微信平台上实施批量营销操作，以获取利益的行为，损害了腾讯公司的竞争利益，增加了微信平台服务的运营负担，以少数用户的便利造成对绝大多数用户的滋扰，降低了社会整体利益，不利于公平有序的良好竞争秩序，构成反不正当竞争法第十二条规定的“其他”不正当竞争行为。

来源：北京知产法院

Monitoring WeChat Interface to Implement Bulk Marketing: Awarded Damages of RMB 5 Million

Recently, the Beijing Intellectual Property Court issued a second instance judgement on unfair competition between Shenzhen Tencent Computer Systems Co., Ltd. (the Plaintiff) and Beijing Lianyuntianxia Technology Co., Ltd. and others (the Defendants). The original judgement that the Defendants shall pay damages of RMB 5 million was upheld.

The court held that the Plaintiff had a competitive interest in the data generated based on the normal operation of WeChat. The Defendants, as the operators, had harmed the Plaintiff's competitive interests by monitoring WeChat's interface and using simulated clicking technology to implement bulk marketing operations on the WeChat platform to obtain benefits, increased the operational burden of WeChat's platform services, and caused nuisance to the vast majority of users with the convenience of a small number of users and constitutes "other" acts of unfair competition as stipulated in Article 12 of the Anti-Unfair Competition Law.

Source: Beijing IP Court

以“伪装普通平台商家”方式非法获取数据构成不正当竞争

近日，北京市西城区人民法院就北京京东叁佰陆拾度电子商务有限公司诉广州鱼数科技有限公司、北京久点共创网络科技有限公司、北京奇珍异宝科技有限公司不正当竞争纠纷案作出一审判决。判决认定被告非法获取并使用“京准通-DMP”数据的行为构成不正当竞争。

法院认为，首先，原告对“京准通-DMP”数据产品采取了技术措施，仅向京东商城商家开放，属于非公开数据。其次，被告以伪装成京东商城普通商家的方式获取了“京准通-DMP”数据，后将非法获取的信息作为“京店宝”数据产品的服务内容向用户提供并收取费用，此行为具有明显“搭便车”“不劳而获”特点，省去了自身数据产品开发所需投入的资源，违反了一般商

业道德与诚实信用原则，具有不正当性。并且，“京店宝”浏览器插件的运行，在页面展示上以及其页面跳转功能，妨碍了京东商城的正常运营，构成不正当竞争，最终判决三被告连带赔偿原告经济损失及合理支出共计125.88万元。

来源：北京市西城区人民法院

Illegal Acquisition of Data by "Disguising as an Ordinary Platform Merchant" Constitutes Unfair Competition

Recently, Beijing Xicheng District People's Court issued a first instance judgement on unfair competition between Beijing Jingdong Century Commerce Co., Ltd. (the Plaintiff) and Guangzhou Yushu Technology Co., Ltd. and others (the Defendants). The court found that the defendants' unlawful acquisition and use of "Jingzhuntong-DMP" data constituted unfair competition.

The court held that, firstly, the Plaintiff had taken technical measures for the "Jingzhuntong-DMP" data product, which was only open to Jingdong Mall merchants and belonged to non-public data. Secondly, the Defendants obtained the "Jingzhuntong-DMP" data by disguising themselves as ordinary Jingdong Mall merchants, and then provided the illegally obtained information as the service content of the "Jingdianbao" data product to the users and charged them fees. Moreover, the operation of the "Jingdianbao" browser plug-in will hinder the normal operation of Jingdong Mall in terms of page display and its page jump function, constituting unfair competition.

Source: Beijing Xicheng District People's Court

Masimo专利案败诉，Apple Watch正面临潜在禁令

2023年10月26日，美国国际贸易委员会判决认定，Apple Watch 侵犯了总部位于加州的Masimo的专利。联邦机构对智能手表发布的有限进口禁令，意味着Apple Watch面临进口禁令的危险。

Masimo是一家全球性医疗技术公司，开发和生产多种行业领先的监测技术，包括创新的测量仪、传感器、患者监护仪以及自动化和互联解决方案。

美国国际贸易委员会发现Apple在自己的产品中加入了Masimo的专利光脉搏血氧测定技术，因此违反了美国法律。该禁令裁定预计在60天的总统审查期后生效。

来源：Ars Technica

Apple Watch Facing Potential Ban After Losing Masimo Patent Case

On 26 October 2023, the U.S. International Trade Commission (ITC) ruled that the Apple Watch violates patents owned by California-based Masimo. The federal agency issued a limited exclusion order for the smartwatches, meaning the Apple Watch is in jeopardy of an import ban.



Masimo is a global medical technology company that develops and produces a wide array of industry-leading monitoring technologies, including innovative measurements, sensors, and patient monitors, automation and connectivity solutions.

The U.S. International Trade Commission said Apple violated patent laws by incorporating Masimo's pulse oximetry technology into its Apple Watch. The ban is expected to take effect after a 60-day presidential review period.

Source: [Ars Technica](#)

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