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立方竞争法周报 Weekly Competition Law News

商务部：中国与东盟国家反垄断交流合作与跨境执法协作机制

2025年10月28日，中方和东盟方签署中国—东盟自贸区3.0版升级议定书，其在竞争和消费者保护领域的内容提及反垄断交流合作事宜。具体而言，双方首次在自贸协定中建立了全面涵盖企业和消费者的自贸区竞争规则的系统性框架。建立中国与东盟国家反垄断交流合作与跨境执法协作机制，进一步强化竞争立法和执法合作。相关举措有利于更好维护企业合法权益，增强消费者获得感，营造公平有序的区域市场环境，促进区域内经贸往来健康高质量发展。（查看更多）

MOFCOM: Anti-Monopoly Exchange and Cross-Border Enforcement Cooperation Mechanism Between China and ASEAN Countries

On 28 October 2025, the People's Republic of China and the Association of Southeast Asian Nations ("**ASEAN**") signed the China–ASEAN Free Trade Area (CAFTA) 3.0 Upgrade Protocol ("***the Protocol***"), and the competition and consumer-protection chapters of *the Protocol* address anti-monopoly exchanges and cooperation. Specifically, the two sides have, or the first time, embedded a systematic framework of competition rules in the free trade area that comprehensively covers companies and consumers. Establish the anti-monopoly exchange and cross-border enforcement cooperation mechanisms between China and ASEAN countries, as well as further strengthen the work on competition legislation and enforcement cooperation. Relevant measures will better safeguard the lawful rights and interests of businesses, enhance the sense of gain for consumers, foster a fair and orderly regional market environment, and promote the sound and high-quality economic and trade flows within the region. (More)

强化反垄断执法司法：中共中央关于制定国民经济和社会发展第十五个五年规划的建议

2025年10月28日，《中共中央关于制定国民经济和社会发展第十五个五年规划的建议》（"《**建议**"）获发布，其中第五大点"建设强大国内市场，加快构建新发展格局"中提到反垄断执法司法工作。具体而言，《建议》第十七条指出要规范地方政府经济促进行为，破除地方保护和市场分割；综合整治"内卷式"竞争；统一市场监管执法，加强质量监管，完善行政裁量权基准制度，强化反垄断和反不正当竞争执法司法，形成优质优价、良性竞争的市场秩序。（查看更多）

Strengthening Anti-monopoly Law Enforcement and Judicial Administration: Recommendations of the CPC Central Committee for Formulating the 15th Five-Year Plan for National Economic and Social Development

On 28 October 2025, *the Recommendations of the CPC Central Committee on Formulating the 15th Five-Year Plan for National Economic and Social Development* ("***the Recommendations***") were published. In Section V, "Building a Robust Domestic Market and Fostering a New Pattern of Develop-

ment," *the Recommendations* address antimonopoly law enforcement and judicial protection. Specifically, Article 17 of *the Recommendations* provides that local governments' economic-promotion conduct shall be standardized in order to eliminate local protectionism and market segmentation; that we should address rat race competition through holistic measures; that we should ensure unified law enforcement in market regulation, refine the standards on administrative discretion, strengthen quality supervision and judicial administration efforts to tackle monopolies and unfair competition, thereby creating a market order where good quality commands good prices and healthy competition prevails. (More)

意大利竞争管理局对大疆涉嫌固定价格行为开展调查

2025年10月29日，意大利竞争管理局（"**AGCM**"）宣布对无人机制造商大疆的欧洲分公司及其意大利分销商Nital启动调查，AGCM怀疑两被查公司在无人机销售过程中实施了纵向垄断协议，从而违反《欧盟运行条约》第101条。AGCM收到的举报内容显示，两公司监控经销商线上销售价格与Nital官网价格的差异，对存在价格差的经销商进行警告，并以停止大疆商标等的使用权、切断供货等方式进行威胁，从而在其分销网络中施加了转售价格维持的限制，进而消除了通过为消费者提供折扣和降价等形式的竞争；此外，两公司还试图限制经销商的境外采购（平行进口），从而阻止其根据境外供应商的较低定价向客户提供折扣，这可能构成核心限制行为（hardcore restriction）。在意大利金融卫队特别反垄断部门的协助下，AGCM 官员于 10 月 23 日对 Nital 和意大利境内几家大疆专业级无人机经销商的办公场所进行了现场检查。（查看更多）

Italian Competition Authority Launches an Investigation into DJI Over Suspected Price Fixing Conduct

On October 29, 2025, the Italian Competition Authority ("**AGCM**") announced that it had launched an investigation into the drones manufacturer DJI's European subsidiary and its Italian distributor Nital. The AGCM suspected that the two companies under investigation allegedly implemented vertical agreements in the sales of drones in violation of Article 101 of the Treaty on the Functioning of the European Union. Complaints received by AGCM suggested that DJI and Nital monitored discrepancies between the prices charged by resellers and those published on Nital's official website, and the two companies reportedly cautioned resellers who diverged through cease-and-desist letters over the use of DJI's trademark etc. and threats to cut off supplies; in doing so the two companies imposed resale price maintenance across their distribution network, removing any form of competition through discounts and price reductions for customers. Furthermore, the two companies also appeared to seek to restrict resellers' purchases abroad (parallel imports), thereby preventing them from offering discounts based on lower prices charged by foreign suppliers; such conduct may amount to a hardcore restriction. Inspections at the premises of Nital and several resellers of DJI enterprise drones were carried out on 23 October by the AGCM's officials, assisted by the Special Antitrust Unit of the Italian Financial Police. (More)

美国司法部批准迪士尼收购运动流媒体公司Fubo

2025年10月29日，据媒体报道，经美国司法部数月反垄断审查及最终批准，迪士尼收购体育流

媒体公司Fubo控股权交易已完成交割。本次收购案最初于2025年1月公布，迪士尼将由此获得Fubo约70%股权，并计划将其服务与Hulu + Live TV进行整合；Fubo原股东将保留剩余30%股权。据公告披露，合并后的平台预计将成为美国第六大付费电视供应商。美国司法部于2025年4月启动反垄断调查，旨在评估迪士尼该项收购是否会限制体育直播流媒体市场的竞争；据报道，美国司法部最终认定不存在阻止该交易的法定理由，进而批准该交易。（查看更多）

US DOJ Approves Disney's Acquisition of Sports Streaming Company Fubo

On October 29, 2025, according to media reports, after months of antitrust scrutiny and clearance from the US Department of Justice ("**DOJ**"), Disney's purchase of a controlling interest in sports streaming company Fubo has officially closed. The acquisition was first announced in January, through which Disney would acquire roughly a 70% stake in Fubo, with plans to merge the service with Hulu+ Live TV; Fubo's existing shareholders will retain the remaining 30%. Per disclosure from a statement, the combined platform will become the sixth-largest pay-TV provider in the US. The DOJ opened its antitrust probe in April, 2025, in order to assess whether Disney's purchase could limit competition in the live sports streaming market; reportedly the DOJ ultimately found no grounds to block the transaction and therefore cleared this deal. (More)

瑞典金融科技公司Klarna起诉谷歌违反欧盟反垄断法

2025年10月28日，据媒体报道，瑞典金融科技公司Klarna已对谷歌提起反垄断诉讼，指控谷歌不公平地操纵搜索结果的行为违反了欧盟反垄断法。本诉讼由Klarna的子公司Pricerunner提起，指控谷歌的行为对在线购物比价领域的公平竞争造成了损害。Klarna在一份声明中表示，该案目前正在斯德哥尔摩专利和市场法院审理，可能导致总计约83亿美元的赔偿。Pricerunner在2022年被Klarna收购之前就提起了该诉讼，最初寻求约20亿美元的赔偿；但该公司后表示由于谷歌涉嫌违规行为的持续，其索赔金额可能会增加。本诉讼源于2021年欧盟普通法院的一项判决，该判决支持了欧盟委员会的决定，认定谷歌在其搜索结果中偏袒自家的购物比价服务构成滥用市场支配地位行为。（查看更多）

Swedish Fintech Company Klarna Sues Google for Breach of EU Antitrust Rules

On October 28, 2025, according to media reports, the Swedish fintech company Klarna has filed an antitrust lawsuit against Google, alleging that Google breached European Union antitrust laws by unfairly manipulating search results. The case was brought forward through Klarna's subsidiary Pricerunner, which claimed that Google's practices have harmed fair competition in online shopping comparisons. According to a statement from Klarna, the case is currently being heard by the Patent and Market Court in Stockholm and could result in damages totaling approximately to $8.3 billion. Pricerunner initially launched the lawsuit before acquisition by Klarna, initially seeking about $2 billion in damages; however, the company later indicated that this figure was likely to rise due to the ongoing nature of Google's alleged violations. The legal challenge follows a 2021 ruling by the European Union's General Court, which upheld the European Commission's decision that Google had abused its market dominance by favoring its own comparison shopping services in search results. (More)

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

《网络安全法》完成修改

2025年10月28日，第十四届全国人民代表大会常务委员会第十八次会议通过了关于修改《网络安全法》的决定，决定自2026年1月1日起施行。《网络安全法》修改内容包括但不限于：（1）强调党的领导和国家安全观，增加“网络安全工作坚持中国共产党的领导，贯彻总体国家安全观，统筹发展和安全，推进网络强国建设。”（2）回应人工智能的发展，增加“国家支持人工智能基础理论研究和算法等关键技术研发，推进训练数据资源、算力等基础设施建设，完善人工智能伦理规范，加强风险监测评估和安全监管，促进人工智能应用和健康发展。”（3）加重不履行网络安全保护义务的责任，大幅提高对企业和个人的罚款，并增加处罚的种类。（4）扩大域外适用情形，明确“境外的机构、组织、个人从事危害中华人民共和国网络安全的活动的，依法追究法律责任；造成严重后果的，国务院公安部门和有关部门并可以决定对该机构、组织、个人采取冻结财产或者其他必要的制裁措施。”（查看更多）

Cybersecurity Law Completes Revision

On October 28, 2025, the 18th Session of the Standing Committee of the 14th National People’s Congress adopted the decision on revising the *Cybersecurity Law*, which shall come into force on January 1, 2026. The revisions to the *Cybersecurity Law* include but are not limited to the following: (1) Emphasize the Party’s leadership and the concept of national security, and add the provision: “Cybersecurity work shall adhere to the leadership of the Communist Party of China, implement the overall national security concept, coordinate development and security, and advance the building of a cyber power.” (2) Respond to the development of AI, and add the provision: “The State supports research on basic AI theories and the R&D of key technologies such as algorithms, advances the construction of infrastructure including training data resources and computing power, improves AI ethical norms, strengthens risk monitoring, assessment and security supervision, and promotes the application and healthy development of AI.” (3) Strengthen the liability for failing to fulfill cybersecurity protection obligations, significantly increase fines imposed on enterprises and individuals, and add types of penalties. (4) Expand the scope of extraterritorial application, and clearly stipulate: "Where overseas institutions, organizations or individuals engage in activities that endanger the cybersecurity of the People’s Republic of China, they shall be held legally liable in accordance with the law; if serious consequences are caused, the public security department of the State Council and relevant departments may also decide to take measures such as freezing the property of such institutions, organizations or individuals or other necessary sanctions.” (More)

国家网信办发布《数据出境安全管理政策问答》

2025年10月31日，国家网信办发布了《数据出境安全管理政策问答》，旨在指导和帮助数据处理者高效合规开展数据出境活动，主要内容包括但不限于：（1）《促进和规范数据跨境流动规定》明确了“跨境购物、跨境寄递、……、考试服务等”豁免场景，其中“等”字理解为可以纳入豁免情形的，不限于以上所列情形。酒店企业在境内个人预定境内酒店时出境个人信息

不符合“为订立、履行个人作为一方当事人的合同，确需向境外提供个人信息”，故不适用豁免。（2）向境外提供员工的身份证、护照和银行账户是否适用于豁免规定“按照依法制定的劳动规章制度和依法签订的集体合同实施跨境人力资源管理，确需向境外提供员工个人信息的”范畴，需要考虑是否符合必要、目的明确、最小化处理等原则，是否与实施人力资源管理目直接相关，是否采取对个人权益影响最小的方式。（3）数据处理者被告知掌握重要数据或者掌握的数据被公开发布为重要数据后，如需继续开展相关数据出境活动的，应当在被告知或者公开发布后2个月内，通过所在地省级网信部门向国家网信部门申报数据出境安全评估。（查看更多）

CAC Issues *Policy Q&A on the Security Administration of Outbound Data Transfer*

On October 31, 2025, the Cyberspace Administration of China (CAC) issued the *Policy Q&A on the Security Administration of Outbound Data Transfer*, aiming to guide and assist data handlers in conducting outbound data transfer activities efficiently and in compliance with regulations. The main contents include but are not limited to the following: (1) The *Provisions on Promoting and Regulating Cross-border Data Flows* clarifies exempt scenarios such as “cross-border shopping, cross-border delivery, ..., examination services, etc.”. The character “etc.” here is understood to mean that exempt situations are not limited to the listed ones. For hotel enterprises, the transfer of personal information overseas when individuals book domestic hotels within China does not meet the condition of “it is really necessary to provide personal information overseas for concluding or performing a contract to which an individual is a party”, and thus is not eligible for exemption. (2) Whether the provision of employees’ identity cards, passports and bank accounts to overseas parties falls under the scope of the exemption provision “it is really necessary to provide employees’ personal information overseas for conducting cross-border human resource management in accordance with legally formulated labor rules and regulations and legally signed collective contracts” needs to consider whether it complies with the principles of necessity, purpose specification and minimal processing, whether it is directly related to the purpose of conducting human resource management, and whether the method with the least impact on personal rights and interests is adopted. (3) After a data processor is informed that it holds important data or the data it holds is publicly announced as important data, if it needs to continue conducting relevant outbound data transfer activities, it shall declare a security assessment of outbound data transfer to the CAC through the cyberspace administration department of the provincial-level region where it is located within 2 months from the date of being informed or the public announcement. (More)

全国网安标委发布《数据安全技术 数据安全保护要求（征求意见稿）》

2025年10月31日，全国网安标委发布了《数据安全技术 数据安全保护要求（征求意见稿）》（以下简称《要求》），向社会公开征求意见，意见反馈截止时间为2025年12月30日。《要求》适用于指导各行业领域、各地区、各部门和数据处理者开展数据分类分级保护工作，也可为主管（监管）部门、第三方评估机构等组织对数据安全进行监督、管理和评估提供参考。《要求》提出了数据安全保护原则、目标和框架，规定了数据安全保护的通用要求，及重要数据、核心数据安全保护的专门要求。（查看更多）

TC260 Issues Data Security Technology - Data Security Protection Requirements (Draft for Comments)

On October 31, 2025, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China (TC260) issued *Data Security Technology - Data Security Protection Requirements (Draft for comments)* (Requirements), and publicly solicited opinions from the society. The deadline for feedback is December 30, 2025. The Requirements are applicable to guiding all industry sectors, regions, departments and data handlers in carrying out data classification and grading protection work. They can also serve as a reference for competent (regulatory) authorities, third-party assessment institutions and other organizations to supervise, manage and assess data security. The Requirements put forward the principles, objectives and framework for data security protection, and specify the general requirements for data security protection as well as the special requirements for the security protection of important data and core data. (More)

国家计算机病毒应急处理中心检测发现70款违法违规收集使用个人信息的App

2025年10月30日，国家计算机病毒应急处理中心检测发现了70款违法违规收集使用个人信息的App，所涉问题包括但不限于：（1）在App首次运行时未通过弹窗等明显方式提示用户阅读隐私政策等收集使用规则；隐私政策难以访问；个人信息处理者在处理个人信息前，未以显著方式、清晰易懂的语言真实、准确、完整地向个人告知个人信息处理者的名称或者姓名、联系方式、个人信息的保存期限等。（2）隐私政策未逐一列出App（包括委托的第三方或嵌入的第三方代码、插件）收集使用个人信息的目的、方式、范围等。（3）未向用户提供撤回同意收集个人信息的途径、方式；个人信息处理者未提供便捷的撤回同意的方式。（4）未采取相应的加密、去标识化等安全技术措施。（查看更多）

National Computer Virus Emergency Response Center Detects 70 Apps Illegally Collecting and Using Personal Information

On October 30, 2025, the National Computer Virus Emergency Response Center detected 70 Apps that illegally collect and use personal information. The involved issues include but are not limited to the following: (1) When the App is run for the first time, it fails to prompt users to read personal information collection and use rules such as the privacy policy through obvious means like pop-ups; the privacy policy is difficult to access; before processing personal information, the personal information handler fails to truthfully, accurately and completely inform individuals of the name of the personal information handler, contact information, retention period of personal information, etc., in a prominent manner and in clear, easy-to-understand language. (2) The privacy policy fails to list one by one the purposes, methods, scope, etc., for which the App (including entrusted third parties or embedded third-party codes and plug-ins) collects and uses personal information. (3) No channels or methods are provided for users to withdraw consent to personal information collection; the personal information handler fails to provide a convenient way to withdraw consent. (4) Corresponding security technical measures such as encryption and de-identification are not adopted. (More)

工信部通报42款App及SDK存在侵害用户权益的行为

2025年10月28日，经组织第三方检测机构进行抽查，工信部通报了42款App及SDK存在侵害用

户权益的行为，所涉问题包括：（1）隐私政策默认同意；（2）违规收集个人信息；（3）超范围收集个人信息；（4）违规使用个人信息；（5）App强制、频繁、过度索取权限；（6）强制用户使用定向推送功能；（7）信息窗口点击乱跳转；（8）信息窗口无法关闭；（9）信息窗口关闭按钮未显著展示；（10）App频繁自启动和关联启动；（11）应用分发信息未明示；（12）SDK信息公示不到位。（查看更多）

MIIT Notifies 42 Apps and SDKs of Violations Infringing on Users' Rights and Interests

On October 28, 2025, after organizing random inspections by third-party testing institutions, the Ministry of Industry and Information Technology (MIIT) notified 42 Apps and SDKs of violations infringing on users' rights and interests. The involved issues include: (1) Default consent to privacy policies. (2) Illegally collecting personal information. (3) Collecting personal information beyond the specified scope. (4) Illegally using personal information. (5) Apps compulsorily, frequently, or excessively demanding permissions. (6) Forcing users to use targeted push functions. (7) Misredirects when clicking on information windows. (8) Inability to close information windows. (9) Non-prominent display of the close button for information windows. (10) Frequent self-startup and associated startup of Apps. (11) Failure to explicitly state App distribution information. (12) Inadequate public disclosure of SDK information. (More)

欧盟：《研究人员数据访问授权法案》正式生效

2025年10月29日，依据《数字服务法》（DSA）第40条通过的《研究人员数据访问授权法案》（以下简称《法案》）正式生效。《法案》明确了超大型在线平台（VLOP）和超大型在线搜索引擎（VLOSE）向出于公共利益开展工作的授权研究人员开放数据应遵循的原则。《法案》具体规定了以下内容：（1）数据获取门户的运营规则，该门户将成为处理数据请求的核心节点。（2）平台及数字服务协调员需履行的信息提供与联络义务。（3）提交有理有据的数据获取请求的要求，包括请求的内容、形式及必须满足的标准。（4）处理个人数据及保障信息安全需遵循的原则。（5）申请流程、可能的修改程序及调解机制。（6）平台在为研究人员提供数据时，需遵守的文档记录与数据管理要求。（查看更多）

EU: *Delegated Act on Data Access for Researchers* Enters into Force

On October 29, 2025, the *Delegated Act on Data Access for Authorized Researchers* (Act), adopted pursuant to Article 40 of the *Digital Services Act* (DSA), entered into force. The Act clarifies the principles under which very large online platforms (VLOPs) and search engines (VLOSEs) should make data available to authorized researchers acting in the public interest. The Act specifies the following contents in detail: (1) The operation of the data access portal, which will be the central point for processing data requests. (2) Information and contact obligations for platforms and digital service coordinators. (3) Requirements for submitting reasoned data access requests, including their content, form, and the criteria they must meet. (4) Principles for processing personal data and ensuring information security. (5) The application process, possible modifications, and mediation. (6) Requirements for platforms regarding the documentation and management of data they make available to researchers. (More)

欧盟：EDPS发布修订版《生成式AI使用指南》

2025年10月28日，欧洲数据保护监督机构（EDPS）发布了修订版《生成式AI使用指南》（以下简称《指南》）。《指南》为生成式AI工具的负责人开发和部署提供了更清晰、更实用的指导。《指南》引入了一些关键更新，包括：（1）更清晰一致的生成式 AI 定义。（2）一套新的、以行动为导向的合规清单，帮助欧盟机构、实体、办事处及机关（EUI）评估并确保其处理活动的合法性。（3）明确的角色和责任，协助EUI确定其是否作为控制者、共同控制者或处理者行事。（4）关于生成式AI环境下的合法基础、目的限制以及处理数据主体权利的详细建议。《指南》凸显了EDPS的主动作为，即监测技术发展，并就欧盟机构如何在尊重隐私与数据保护的前提下融入创新提供建议。EDPS将持续追踪生成式AI的发展动态，并在必要时更新其指南，以应对新出现的挑战。（查看更多）

EU: EDPS Issues Revised *Guidelines on the Use of Generative AI*

On October 28, 2025, the European Data Protection Supervisor (EDPS) issued the revised *Guidelines on the Use of Generative AI* (Guidelines). The Guidelines offer clearer and more practical instructions for the responsible development and deployment of generative AI tools. They introduce a number of key updates, including: (1) A refined definition of generative AI for greater clarity and consistency. (2) A new, action-oriented compliance checklist to help EU institutions, bodies, offices, and agencies (EUIs) assess and ensure the lawfulness of their processing activities. (3) Clarified roles and responsibilities, assisting EUIs in determining whether they act as controllers, joint controllers, or processors. (4) Detailed advice on lawful bases, purpose limitation, and the handling of data subjects' rights in the context of generative AI. The Guidelines underline the EDPS's proactive approach to monitoring technological developments and advising EU institutions on how to integrate innovation with respect for privacy and data protection. The EDPS will continue to track the evolution of generative AI and update its guidance where necessary to address emerging challenges. (More)

知识产权 Intellectual Property

最高法：仅软件改进不构成实用新型专利，一智能称重装置专利被宣告无效

近日，最高人民法院知识产权法庭审结一起实用新型专利权无效行政纠纷上诉案，二审改判认定仅涉及对计算机软件程序改进的技术方案不属于实用新型专利保护客体。

本案涉案专利为“基于计算机视觉技术的智能称重装置”，专利权人为北京某科技公司。北京某科技发展有限公司向国家知识产权局提出无效宣告请求，国家知识产权局作出决定维持专利权有效。无效请求人不服，提起行政诉讼。一审法院判决驳回无效请求人的诉讼请求后，无效请求人向最高人民法院提起上诉。

最高人民法院在判决中明确了实用新型专利保护客体的判断标准：对于既包含硬件改进，又包含计算机程序的产品权利要求，如果对现有技术的改进在硬件部分，且所涉及的计算机程序为已知的，可以认为属于实用新型专利保护的客体。如果权利要求仅涉及对计算机程序本身的改进，一般不属于实用新型专利保护的客体。

本案中，最高法院经审理认为，本专利技术方案本质是结合称重信息和视觉信息以及用户反馈确认后的商品信息作为建模平台的数据，通过机器学习来建立和优化模型，即主要是通过对计算机程序本身的限定实现发明目的。故最高人民法院二审改判认定该专利不属于实用新型专利保护的客体。

来源：最高人民法院

Supreme People's Court: Software Improvement Alone Does Not Constitute Utility Model Patent; Patent for Smart Weighing Device Declared Invalid

Recently, the Intellectual Property Tribunal of the Supreme People's Court (SPC) concluded an appeal case regarding the invalidation of a utility model patent, overturning the previous ruling and stating that technical solutions involving only improvements to computer software programs do not fall under the scope of utility model patent protection.

The patent in question is titled "Smart Weighing Device Based on Computer Vision Technology", owned by a Beijing-based technology company. Another Beijing technology development company filed an invalidation request with the China National Intellectual Property Administration, which decided to uphold the patent's validity. Dissatisfied with the decision, the requester filed an administrative lawsuit. After the first-instance court dismissed the lawsuit, the requester appealed to the SPC.

In its ruling, the SPC clarified the criteria for determining the scope of utility model patent protection: For product claims that involve both hardware improvements and computer programs, if the improvement over prior art lies in the hardware and the computer program involved is known, it may be considered within the scope of utility model patent protection. However, if the claims involve only improvements to the computer program itself, they generally do not fall under the scope of utility model patent protection.

In this case, the SPC affirmed that the patented technical solution essentially combines weighing information, visual information, and product information confirmed by user feedback as data for a modeling platform, using machine learning to establish and optimize the model. This means the invention primarily achieves its purpose by limiting the computer program itself. Therefore, the SPC overturned the previous ruling and determined that the patent does not fall within the scope of utility model patent protection.

Source: SPC

北京高院：二审改判，认定“大窑DAYAO”构成驰名商标

近日，北京高院二审改判，认定“大窑DAYAO”构成驰名商标，予以跨类保护。

大窑嘉宾饮品公司对虎冰川公司注册的“大窑DAYAO及图”商标提出无效宣告请求。法院认为，大窑公司提交的证据表明，其“大窑”品牌汽水在销售、宣传、市场占有率等方面表现突出，在诉争商标申请日前已构成驰名商标。诉争商标文字、图形与大窑商标高度近似，构成复制摹仿，且虎冰川公司存在明显模仿恶意。尽管诉争商标用于“商品包装”服务，与汽水商品类别不同，但关联性强，易误导公众并削弱引证商标显著性，违反商标法规定。故二审撤销一审判决和原裁定，要求国家知识产权局对“大窑DAYAO及图”商标提出的无效宣告请求重新作出裁定。

来源：北京市高级人民法院

Beijing High People’s Court: “DAYAO” Recognized as a Well-Known Trademark

Recently, the Beijing High Court overturned the second-instance judgment, ruling that “大窑DAYAO” constitutes a well-known trademark and granting it cross-class protection.

Dayao Guest Beverage Company filed an invalidation request against the trademark “大窑DAYAO” registered by Hu Glacier Company. The court held that the evidence submitted by Dayao Company demonstrated its “大窑” brand soda had outstanding performance in sales, promotion, and market share, and had already constituted a well-known trademark before the application date of the disputed trademark. The text and graphics of the disputed trademark were highly similar to Dayao’s trademark, constituting reproduction and imitation. Moreover, Hu Glacier Company exhibited clear malicious intent to imitate. Although the disputed trademark was used for “product packaging” services, which differ from the category of soda products, the strong association between them could easily mislead the public and weaken the distinctiveness of the cited trademark, thereby violating the *Trademark Law*. Accordingly, the second-instance court revoked the first-instance judgment and the original ruling, ordering the China National Intellectual Property Administration to re-adjudicate the invalidation request for the “大窑DAYAO” trademark.

Source: Beijing High People’s Court

浙江高院：二审维持，埃克森软著案惩罚性判赔750万

近日，浙江省高级人民法院对“埃克森软件著作权案”作出二审判决，维持了一审判决。该判决认定侵权行为成立，并判令被告赔偿经济损失750万元及合理开支11.3万元，总额达761.3万元。

埃克森公司作为涉案软件权利人，主张博科生物公司生产并销售搭载侵权软件的BK-3100型血细胞分析仪，并通过多个销售渠道在国内外市场进行推广的2行为构成侵权，故提起本案诉讼。

本案的核心在于对惩罚性赔偿制度的运用。法院在确定赔偿数额时，首先计算出了一个赔偿基数。依据在案证据，法院采纳了相关仪器产品53%的平均毛利润率，并认定涉案软件对产品利润的贡献率为31%。在此基础上，计算出侵权获利已超过一审法院最终确定的250万元赔偿基数。

在确定基数后，法院进而适用了2倍的惩罚性倍数。这一倍数的确定是基于侵权人主观故意明显、侵权行为持续时间长、情节严重等因素所作出的裁量。最终，750万元的损害赔偿额即由250万元的基数，加上2倍的惩罚性赔偿得出。

来源：浙江省高级人民法院

Zhejiang High People's Court: Exxon Software Copyright Case Awards Punitive Damages of RMB 7.5 Million

Recently, the Zhejiang High People's Court issued a second-instance judgment in the "Exxon Software Copyright Case", upholding the first-instance ruling. The court affirmed the infringement and ordered the defendant to pay RMB 7.5 million in damages for economic losses and RMB 113,000 for reasonable expenses, totaling RMB 7.613 million.

Exxon Company, as the rights holder of the software involved, claimed that Boke Biotech Company produced and sold the BK-3100 hematology analyzer equipped with the infringing software and promoted it through multiple sales channels in domestic and international markets, constituting infringement, thus initiating this lawsuit.

The core of this case lies in the application of the punitive damages system. When determining the compensation amount, the court first calculated a base amount. Based on the evidence, the court adopted a 53% average gross profit margin for the relevant instrument products and determined that the contribution rate of the involved software to the product profit was 31%. On this basis, it was calculated that the illegal gains from the infringement already exceeded the base amount of RMB 2.5 million ultimately determined by the first-instance court.

After establishing the base amount, the court then applied a punitive multiplier of two. This multiplier was determined based on factors such as the evident deliberate intent of the infringer, the prolonged duration of the infringing acts, and the serious circumstances of the infringement. Ultimately, the total damages award of RMB 7.5 million was derived from the base amount of RMB 2.5 million plus the doubled punitive damages.

Source: Zhejiang High People's Court

苏州中院：奥黛丽·赫本之子胜诉，法律守护逝者人格利益

近期，苏州中院审结一起涉及已故影星奥黛丽·赫本的死者人格权纠纷案件。法院经审理认为，苏州某餐饮公司未经权利人许可，长期在餐厅经营及宣传中使用“奥黛丽·赫本”姓名及肖像，构成对死者人格利益的侵害。

法院在判决中指出，尽管奥黛丽·赫本已故多年，但其姓名、肖像所体现的人格尊严与财产利益仍受法律保护，可由近亲属主张。餐饮公司以营利为目的持续使用“赫本”名称，易使公众误认为其与权利人存在关联，构成不当使用。即便诉讼中停止使用肖像，继续使用“赫本”作为商业标识仍具有持续性侵权影响。

法院判决该餐饮公司立即停止使用“奥黛丽·赫本”姓名、公开赔礼道歉，并赔偿经济损失20万元及合理维权费用。

来源：苏州中级人民法院

Suzhou Intermediate Court: Audrey Hepburn’s Son Prevails, Law Upholds Protection of Deceased’s Personality Rights

Recently, the Suzhou Intermediate Court concluded a case concerning the posthumous personality rights of the late film star Audrey Hepburn. The court determined that a Suzhou-based catering company had, without authorization from the rights holder, persistently used the name and portrait of “Audrey Hepburn” in its restaurant operations and promotional activities, constituting an infringement of the deceased’s personality rights.

In its ruling, the court stated that although Audrey Hepburn passed away many years ago, the personal dignity and property interests embodied in her name and portrait remain protected by law and can be asserted by her immediate family members. The catering company’s prolonged use of the “Hepburn” name for profit-making purposes was likely to mislead the public into believing an association with the rights holder, constituting improper use. Even if the company ceased using the portrait during the litigation, the continued use of “Hepburn” as a commercial identifier maintained a persistent infringing effect.

The court ordered the catering company to immediately cease using the name “Audrey Hepburn”, issue a public apology, and pay compensation of RMB 200,000 for economic losses along with reasonable litigation costs.

Source: Suzhou Intermediate Court

上海青浦法院：新反法隐性使用首案一审宣判，“混淆可能性”是核心

近期，上海市青浦区法院审结一起侵害商标权及不正当竞争纠纷案，该案争议焦点在于，被告将原告商标设置为搜索关键词进行隐性推广的行为，是否构成不正当竞争。法院指出，依据新《反不正当竞争法》第七条，判断此类行为是否违法的关键在于是否存在“混淆可能性”及造成实质损害。

法院审理认为，搜索结果页面中被告链接明确标注“广告”字样，原告官方链接紧随其后、清晰可辨。此种呈现方式使相关公众能够清楚区分信息来源，不存在混淆商品或服务来源的实质性风险。此外，被告行为虽可能具有争夺流量的意图，但在用户知情权得到保障、未实际产生混淆的情况下，单纯的流量转移不构成法律所禁止的不正当竞争。综上，法院认定被告行为不构成不正当竞争，驳回原告全部诉讼请求。

来源：上海市青浦区人民法院

Shanghai Qingpu District Court: First-instance Judgment Issued in First Case Involving Implicit Use Under New Anti-Unfair Competition Law, "Likelihood of Confusion" is Key Criterion

Recently, the Shanghai Qingpu District Court concluded a case involving trademark infringement and unfair competition disputes. The focus of the dispute was whether the defendant's act of setting the plaintiff's trademark as a search keyword for implicit promotion constituted unfair competition. The court pointed out that, according to Article 7 of the new *Anti-Unfair Competition Law*, the key to determining the illegality of such acts lies in whether there exists a "likelihood of confusion" and whether it causes substantial damage.

The court affirmed that on the search results page, the defendant's link was clearly marked with the word "Ad", while the plaintiff's official link followed immediately after and was clearly distinguishable. This presentation enabled the relevant public to clearly distinguish the source of information, and there was no substantial risk of confusion regarding the origin of the goods or services. Furthermore, although the defendant's behavior might have had the intention of competing for traffic, where users' right to know was protected and no actual confusion occurred, the mere diversion of traffic did not constitute unfair competition prohibited by law. In conclusion, the court judged that the defendant's actions did not constitute unfair competition and dismissed all of the plaintiff's claims.

Source: Shanghai Qingpu District People's Court

上海长宁法院：兜售山寨“CASETIFY”手机壳牟取暴利，店主获刑

近期，上海市长宁区法院审结一起销售假冒注册商标的商品罪案件。法院经审理认为，被告人陈某某明知是假冒“CASETIFY”注册商标的商品仍予以销售，非法经营数额达90余万元，已构成销售假冒注册商标的商品罪，且属情节特别严重。

法院在判决中指出，量刑时重点考量了被告人的主观明知状态、持续侵权行为、侵权规模以及刷单冲销量等恶意情节。同时，被告人到案后能如实供述罪行，自愿认罪认罚，在案发后积极赔偿权利人并获得谅解，且退缴了全部违法所得并预缴罚金，依法认定其具有法定和酌定从轻处罚情节。

综上，法院认定被告人犯销售假冒注册商标的商品罪，判处有期徒刑三年，缓刑三年，并处罚金人民币二万元，扣押在案的假冒商品和违法所得均予以没收。

来源：上海市长宁区人民法院

Shanghai Changning District Court: Store Owner Sentenced for Selling Counterfeit "CASETIFY" Phone Cases for Exorbitant Profits

Recently, the Shanghai Changning District Court concluded a case involving the crime of selling goods bearing counterfeit registered trademarks. The court found that the defendant, Chen XX, knowingly sold goods bearing the counterfeit "CASETIFY" registered trademark, with illegal business operations amounting to over RMB 900,000. This constituted the crime of selling goods bearing counterfeit registered trademarks and was deemed to involve particularly serious circumstances.

In its judgment, the court emphasized that the sentencing focused on key factors including the defendant's state of knowledge, the sustained nature of the infringement, the scale of the infringing activities, and malicious conduct such as creating fake transactions to inflate sales. Concurrently, the court acknowledged that after being brought to justice, the defendant truthfully confessed to the crime, voluntarily pleaded guilty and accepted punishment, actively compensated the rights holder and obtained their forgiveness after the incident, and surrendered all illegal gains and pre-paid the fine. These actions were legally recognized as statutory and discretionary circumstances warranting a lighter punishment.

In conclusion, the court found the defendant guilty of selling goods bearing counterfeit registered trademarks and sentenced them to three years in prison, suspended for three years (probation), along with a fine of RMB 20,000. All confiscated counterfeit goods and illegal gains were ordered to be forfeited.

Source: Shanghai Changning District Court

上海浦东法院：仿冒平台优惠券并实施反复挽留弹窗，构成不正当竞争

近期，上海浦东法院审结一起涉平台优惠券样式与挽留弹窗的新型不正当竞争纠纷案。法院经审理认为，被告在其运营的APP及网站中，使用与原告互联网平台优惠券样式高度近似的界面设计，并设置反复弹出、难以关闭的挽留弹窗，构成不正当竞争。

法院在判决中指出，原告平台优惠券以蓝底白框、黑色大字体等为特征，经长期使用已具备识别服务来源的显著性和市场影响力，可认定为“有一定影响的包装、装潢”。被告使用近似样式，易造成用户混淆，构成仿冒行为。同时，其实施的非必要反复弹窗，干扰用户选择，违反行业管理规定与商业道德，损害消费者与其他经营者利益，亦构成不正当竞争。最终，法院判决被告立即停止涉案不正当竞争行为，刊登声明消除影响，并连带赔偿原告经济损失。

来源：上海市浦东区人民法院

Shanghai Pudong District Court: Counterfeiting Platform Coupons and Implementing Repeated Retention Pop-ups Constitute Unfair Competition

Recently, the Shanghai Pudong District Court concluded a novel unfair competition dispute involving the imitation of a platform's coupon style and the use of retention pop-up windows. The court determined that the defendant's use of an interface design highly similar to the plaintiff's internet platform coupons in its operated APP and website, coupled with the implementation of repetitive, hard-to-close retention pop-ups, constituted unfair competition.

In its ruling, the court stated that the plaintiff's platform coupons, characterized by features such as a blue background, white border, and large black font, had acquired distinctiveness through long-term use and possessed market influence, enabling them to be recognized as “packaging or decor with a certain influence”. The defendant's use of a similar style was likely to cause user confusion and constituted counterfeiting. Furthermore, the implementation of unnecessary, repeated pop-up windows interfered with user choice, violated industry regulations and commercial ethics, and harmed the interests of consumers and other operators, also constituting unfair competition. Consequently, the court ordered the defendant to immediately cease the implicated unfair competition acts, publish a statement to eliminate the adverse effects, and jointly compensate the plaintiff for its economic losses.

Source: Shanghai Pudong District Court

双方都撤诉，费用谁来担，UPC法院首次就专利无效撤诉后费用谁承担作出裁决

2025年10月27日，欧洲统一专利法院（UPC）慕尼黑地方分院在一起专利诉讼案件中，就双方均撤诉后诉讼费用的承担问题作出首例裁决。

该案中，原告Headwater公司在与部分被告和解后，撤回了对被告Flextronics的侵权诉讼，后者也撤回了专利无效反诉，但双方就费用承担产生争议。法院认定，在侵权诉讼中，由于原告主动撤诉，未实现其诉讼目标，应被视为败诉方，承担相应诉讼费用。对于被告Flextronics撤回的专利无效反诉，法院认为其独立于侵权诉讼。根据《UPC诉讼规则》，反诉的撤回意味着被告未能实现使专利无效的诉讼目标，因此被告应承担反诉产生的全部费用。法院强调，不能因侵权诉讼的撤回而将反诉费用转由原告承担。

本案明确了UPC体系中双方均撤诉时费用分配的基本原则：分别根据各方在侵权主诉与无效反诉中的程序地位和目标实现情况，独立认定败诉方并确定费用责任。

来源：PRIP Research

Both Parties Withdraw Claims: Who Bears the Costs? UPC Court Issues First Ruling on Cost Allocation After Patent Invalidity Withdrawal

On October 27, 2025, the Munich Local Division of the Unified Patent Court (UPC) issued its first ruling regarding the allocation of legal costs after both parties withdrew their claims in a patent litigation case.

In this case, after reaching settlements with some defendants, plaintiff Headwater withdrew its infringement action against defendant Flextronics, which subsequently withdrew its counterclaim for patent invalidity. However, a dispute arose over cost allocation. The court held that in the infringement action, since the plaintiff voluntarily withdrew the suit and failed to achieve its litigation objectives, it should be deemed the unsuccessful party and bear the corresponding costs. Regarding Flextronics' withdrawn counterclaim for patent invalidity, the court considered it independent from the infringement action. According to the *UPC Rules of Procedure*, the withdrawal of the counterclaim meant the defendant failed to achieve its objective of invalidating the patent; therefore, the defendant should bear all costs arising from the counterclaim. The court emphasized that the costs of the counterclaim cannot be shifted to the plaintiff merely because the infringement action was withdrawn.

This case clarifies the fundamental principle for cost allocation in the UPC system when both parties withdraw their claims: the unsuccessful party is determined separately for the main infringement action and the invalidity counterclaim based on each party's procedural position and achievement of objectives, with cost liability assessed independently.

Source: PRIP Research

Via LA许可方在德国对亚马逊发起HEVC SEP诉讼

近日，Via LA旗下三家许可方M&K、Gensquare LLC和Tagivan II在德国杜塞尔多夫法院对亚马逊提起诉讼，指控其Fire TV等视频设备未经许可使用HEVC（H.265）标准必要专利。

HEVC是当前主流视频编码标准，广泛应用于流媒体与各类终端设备。Via LA自整合MPEG LA后，持续管理HEVC专利池，其许可方包括苹果、小米等企业。此前，相同许可方曾在德国起诉微软，最终以微软加入Via LA专利池达成和解。

此次诉讼延续了音视频技术领域的全球专利执法趋势，凸显HEVC许可在流媒体产业链中的复杂性。随着视频服务向云端延伸，实施主体日益多元，许可对象与收费模式面临挑战。亚马逊同时涉足硬件与云服务，本案结果可能影响未来HEVC在多平台生态中的许可费计算方式。

来源：IP Fray

Via LA Licensors File HEVC SEP Lawsuit Against Amazon in Germany

Recently, three Via LA licensors — M&K, Gensquare LLC, and Tagivan II — have filed a lawsuit against Amazon at the Düsseldorf Regional Court in Germany. The lawsuit alleges that Amazon's video devices, including Fire TV, use HEVC (H.265) standard-essential patents without authorization.

HEVC is a mainstream video coding standard widely adopted in streaming media and various end-user devices. Since integrating MPEG LA, Via LA has continued to manage the HEVC patent pool, with licensors including companies such as Apple and Xiaomi. Previously, the same group of licensors had sued Microsoft in Germany, which ultimately resulted in a settlement with Microsoft joining the Via LA patent pool.

This lawsuit continues the global trend of patent enforcement in the audio-visual technology sector, highlighting the complexity of HEVC licensing within the streaming media industry chain. As video services increasingly extend to the cloud, the range of implementing entities has diversified, posing challenges to licensing targets and fee models. Given Amazon's simultaneous involvement in both hardware and cloud services, the outcome of this case may influence future HEVC royalty calculation methods across multi-platform ecosystems.

Source: IP Fray

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