

W&B Legal Newsletter

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INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 400 pro-fessionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Zhengzhou, Chengdu, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department re-sponsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

The Third Watson & Band Forum – Summit on Data Opening-up and Competition Successfully held in Shanghai

On October, 2021, the 3rd Watson & Band Forum jointly hosted by Watson & Band Law Offices, Watson & Band Intellectual Property Agent Ltd. and Data Law Research Center of East China University of Political Science and Law was successfully held in Jinjiang Hotel.

Government supervisory officers, scholars and experts from the academic and industrial circles, senior partners and patent attorneys engaging in data law practice and IP services, and general counsels of well-known companies from various industries were present at the over four hours' event, sharing thoughts on and experience in the data law area.

Meanwhile, over 150 general counsels and in-house from various industries attended the event. In addition to the keynote speeches and round table discussions by the guest speakers, they also had in-depth dialogues during the tea break time, centering on cutting-edge data compliance and anti-monopoly topics and exploring best practice for the enterprises' routine compliance and risk management work.



Watson & Band Partners Attend the 18th Shanghai Intellectual Property International Forum and Deliver a Keynote Speech

On October 19, the 18th Shanghai Intellectual Property International Forum themed on “IP Rights Protection and International Cooperation in the Digital Economy Era” had its grand curtain-up in Shanghai. The Forum is jointly organized by China National Intellectual Property Administration, World Intellectual Property Organization and Shanghai Municipal People's Government, and presented by Shanghai Intellectual Property Administration.

On the afternoon of October 20, the Sub-forum of the 18th Shanghai Intellectual Property International Forum – also the 2nd SIPSA International Summit on IP Services was successfully held in Jinjiang Hotel. Themed on “Cohering Innovation Power and Strengthening International Cooperation”, guest speakers from China and overseas countries had in-depth communications and discussions through face-to-face and virtual means.

Watson & Band's Executive Managing Partner Jean Yang and Partner Yu Yang were invited to attend said Sub-forum on that afternoon.

At the Sub-forum, Ms. Yu Yang was also invited to deliver a keynote speech themed on “Judicial Practice concerning Protection for IP Rights in the Artificial Intelligence Area”.



NDRC Seeks Comments on the Negative List for Market Access (2021 Version)

On October 9, the National Development and Reform Commission (“NDRC”) ssued the *Negative List for Market Access (2021 Version) (Draft for Comment) (the “Draft for Comment”)* to solicit public opinions.

The *Draft for Comment* proposes a total of 117 items, including six items of prohibited access and 111 items of approved access, six items less than previous year. All kinds of market players may enjoy equal access to industries, fields and business outside the List in accordance with the law. Among others, the *Draft for Comment* prohibits any illegal business activity related to finance. A non-financial institution or an enterprise not engaged in any financial activity shall not use in its registered name or business scope any finance-related word, such as “financial leasing”, “commercial factoring”, “small loan”, “finance”, “asset management”, “financial management”, “online loans”, “Internet lending”, “P2P”, “Internet insurance”, “payment”, “foreign exchange (exchange, exchange settlement, currency exchange)” and “fund management”.

(Source: National Development and Reform Commission)

SPC to Adjust Criteria for the Jurisdiction of Intermediate People's Courts over Civil Cases of First Instance

On September 26, the Supreme People’s Court (“SPC”) issued the Circular on Adjusting the *Criteria for the Jurisdiction of Intermediate People’s Courts over Civil Cases of First Instance* (the “Circular”), effective from October 1, 2021.

The *Circular* makes clear: (1) in the event that the domiciles of both parties are or are not within the provincial-level jurisdiction where the accepting court is located, the intermediate people’s court will have jurisdiction over the first-instance civil cases with the amount of subject matter of action of not less than CNY500 million; (2) in the event that the domicile of either of the parties is not within the provincial-level jurisdiction where the accepting court is located, the intermediate people’s court will have jurisdiction over the first-instance civil cases with the amount of subject matter of action of not less than CNY100 million; (3) theaters’ military courts and the military court directly under the People’s Liberation Army will have jurisdiction over the first-instance civil cases with the amount of subject matter of action of not less than CNY100 million; (4) Cases of new types, complicated cases, or cases with guiding significance in universal application of law may be tried by the people’s court at a higher level in accordance with Article 38 of the Civil Procedure Law, or by the people’s court at a lower level for upon request and approval.



(Source: Supreme People’s Court)

CNIPA Clarifies Matters Concerning the Criteria for Ascertaining "Intentional Infringement of IPRs"

Recently, the China National Intellectual Property Administration ("CNIPA") issued the Reply on Matters Concerning the Criteria for Ascertaining "Intentional Infringement of Intellectual Property Rights" (the "Reply").

The Reply clarifies that, when refining the criteria for ascertaining "intentional infringement of intellectual property rights (IPRs)", attention should be paid to strengthening the IPRs protection in accordance with the law and scientifically distinguishing "intentional" and "serious circumstances", to prevent inappropriate overlap of the two constituent elements or repeat evaluation. Also, the Reply indicates that, whether the

act of "intentional infringement of IPRs" should be included in the list of entities with seriously illegal and dishonest acts pursuant to Article 9 of the Administrative Measures for Lists of Entities with Seriously Illegal and Dishonest Acts for Market Regulatory Authorities (the "Measures"), should also be determined according to Article 2 of the Measures to ascertain whether a heavier administrative punishment is given for the act, and according to Article 12 of the Measures to ascertain where the act has perverse nature, serious circumstance, or greater social harm.



(Source: China National Intellectual Property Administration)

Watson & Band, as one of China's oldest intellectual property service providers with the qualifications as a foreign-related patent agency, maintains a leading position in the intellectual property industry due to its extensive experience. Watson & Band's IP-related services cover agency and consulting services concerning trademarks, patents, copyrights and other new types of IP rights, enforcement and litigation services, and commercial IP-related legal services.



NISSTC Seeks Comments on Information Security Technology - Security Requirements of Vehicle Collected Data

The National Information Security Standardization Technical Committee (“NISSTC”) recently issued the national standards entitled the *Information Security Technology - Security Requirements of Vehicle Collected Data (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions by December 18, 2021.

The *Draft for Comment* specifies the security requirements on the transfer, storage, export and other disposal activities related to vehicle collected data, which shall be applicable to the vehicle design, manufacturing, sale, use, operation and maintenance by vehicle manufacturers, as well as the supervision, management and assessment of the disposal activities related to vehicle collected data conducted by competent authorities and third-party assessment agencies. Regarding the cross-border transfer of vehicle collected data, the *Draft for Comment* makes clear that data outside vehicle, cabinet data and location and route data shall not be transferred outside China; any operational data that need to be transferred outside China shall be subject to the data cross-border transfer security assessment conducted by national cyberspace authorities.

(Source: National Information Security Standardization Technical Committee)

NISSTC Seeks Comments on the Guidelines for Data Classification

On October 8, the National Information Security Standardization Technical Committee (“NISSTC”) issued the *Practical Guide on Cybersecurity Standard--Guidelines for Data Classification (Draft for Comment)* (the “*Draft for Comment*”) for public comments.

The *Draft for Comment* provides the principles, framework and rules of data classification from the perspective of national data security management. Regarding the data classification rules, the *Draft for Comment* specifies the identification and classification of personal information, public data, and legal person’s data. Regarding the classification of personal information, the *Draft for Comment* defines sensitive personal information and private personal information from different perspectives, specifically, when determining whether it is sensitive personal information, the focus should be place on: “whether the leakage or illegal use of the information per se directly infringes the personal dignity of the information subject” and other two elements; while it is considered private personal information on satisfaction of two conditions, one of which is “the information is privately owned and the owner has the right to decide whether to make the information public”.

(Source: National Information Security Standardization Technical Committee)

MIIT Seeks Comments on Administrative Measures for Data Security in the Field of Industry and Information Technology

On October 8, the Ministry of Industry and Information Technology (“MIIT”) drafted the *Administrative Measures for Data Security in the Field of Industry and Information Technology (for Trial Implementation) (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions.

The *Draft for Comment* mainly involves: (1) industry management duties; (2) data classification and grading, and important data security management; (3) security management for the full life cycle of data; (4) data security monitoring and early warning, and emergency management; (5) data security testing, evaluation and certification management; (6) supervision and inspection. The *Draft for Comment* specifies the classification and grading methods for industry and telecommunication-related data, making clear the conditions for determining general data, important data and core data. Furthermore, it is required to establish working mechanisms, with the linkage of “department-locality-enterprise”, for data classification and grading, the identification of important data and core data, and data classification protection in the field of industry and information technology; establish a filing management system for the full life cycle of industry and telecommunication-related important data and core data.

(Source: Ministry of Industry and Information Technology)

MIIT to Strengthen Network Security and Data Security of the Internet of Vehicles

On September 16, the Ministry of Industry and Information Technology (“MIIT”) issued the *Circular on Strengthening the Network Security and Data Security of the Internet of Vehicles* (hereinafter referred to as the “*Circular*”).

The *Circular* requires the performance of security responsibilities from the main responsible party. All relevant enterprises are required to establish network security and data security management systems, define the responsible persons and management bodies, and perform network security and data security protection responsibilities. The *Circular* also requires an overall strengthened security protection. All relevant enterprises are required to adopt management and technical measures to strengthen the security protection of automobiles, networks, platforms, data, etc., in compliance with the relevant standards and requirements for the network security and data security of the Internet of Vehicles (IoV), and to monitor, prevent, and promptly dispose of cybersecurity risks and threats to ensure that data remain in an effectively protected and legally used state so that the safe and stable operation of the IoV can be ensured. The *Circular* further sets forth specific requirements in terms of strengthening the security protection of intelligent connected vehicles, and strengthening the security protection of the IoV networks.



(Source: Ministry of Industry and Information Technology)

Two Authorities Launch the Pilot Arbitration Program for Securities and Futures Industry

The China Banking and Insurance Regulatory Commission (“CBIRC”) recently issued the revised *Administrative Provisions on Reinsurance Business* (the “*Provisions*”), with effect from December 1, 2021.

The *Provisions* involve the revisions in eight aspects: (1) strengthening the top-level strategic management of reinsurance; (2) strengthening the supervision of the security of reinsurance business; (3) strengthening the supervision of the management of reinsurance contracts; (4) strengthening the management of direct insurance companies who carry out sub-business; (5) strengthening the supervision of reinsurance brokers; (6) supporting the development of the direct insurance market; (7) removing any content that is inconsistent with the existing regulatory policies; and (8) streamlining the information reporting. Among others, the Opinions specify that an insurer shall formulate reinsurance strategy and define the role of reinsurance in the company’s risk and capital management strategy. As for the branch office of a foreign reinsurance company, the formulation, implementation, evaluation and adjustment of its reinsurance strategy shall be subject to the approval of its senior management.

(Source: China Banking and Insurance Regulatory Commission)

