

# 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.

## Watson & Band Wins the 2022 CBLJ China Business Law Award in the Media, Entertainment and Sports Sector

On June 15, the world-renowned legal media China Business Law Journal (“CBLJ”) published the winners of its 2022 China Business Law Awards. Watson & Band, with its outstanding performance and good reputation within the media, entertainment and sports industry, won the 2022 China Business Law Award in this industry sector.

Watson & Band has long been dedicated to providing legal services in the culture, entertainment and sports industry, and has thereby accumulated deep insights into China’s current circumstances and environment, as well as domestic and overseas developments of the industry. We have provided comprehensive legal services to enterprises and organizations within industries such as performing arts, artist agency services and athletics. Our particular strong advantages in IP-related legal services guarantee the provision of comprehensive legal solutions that take into consideration the business features of each specific client. We have been engaging in entertainment law for years, and we are very familiar with various legal problems and the solutions thereto at different stages in the development of the entertainment industry. In recent years, Watson & Band has successfully represented a number of renowned domestic and overseas culture and entertainment companies and sports clubs by providing them with high-quality, comprehensive legal services.



## Watson & Band Again Listed in Top Tiers in 2022 ALB China IP Rankings

On May 20, the high-end legal magazine under Thomson Reuters – Asian Legal Business published its 2022 ALB China IP Rankings. Watson & Band is again recognized as a Tier 2 firm in both “Patent” and “Copyright/Trademark” areas for its professional services, good reputation and outstanding performance in the intellectual property area.



Asian Legal Business, a high-end legal journal published by the Thomson Reuters Group, is one of the most authoritative benchmarks in the legal industry. In order to publish fair and transparent IP practice rankings, ALB conducted comprehensive assessments of the candidates based on information collected from data, interviews, newspapers, periodicals and market recommendations submitted by participating law firms.

## Watson & Band Again Listed among 2022 LEGALBAND Top Ranked Law Firms/Lawyers in China

On May 17, the world renowned legal ranking agency LEGALBAND published its “2022 Top-ranked Law Firms” and “2022 Top-ranked Lawyers” in China.

On this year’s lists, Watson & Band again made great accomplishments with its long-standing excellence in the “intellectual property: litigation” area. Our Senior Founding Partner, Mr. Shenmin Xu, with his nearly 40 years of practice in the IP area, won the top ranking on the lawyers’ list.

Meanwhile, with its outstanding performance in the “bankruptcy, reorganization and liquidation” area, Watson & Band is again honored among the Top-ranked Law Firms in this area. W&B’s Partner Xiaosu Zhu, who led his team and successfully closed a great many cases over the more than a decade’s time, is also listed among the Top-ranked Lawyers for his dedication to this practice area.

LEGALBAND is a professional legal rating agency headquartered in Hong Kong under the international media company Accurate Media. The LEGALBAND survey team conducted in-depth client and peer surveys through phone calls and emails for this year’s rating; meanwhile, relying on its long-term observation and understanding of China’s legal market, LEGALBAND strives for impartial and fair authoritative rating lists.

# Latest Legal Developments

## Two Authorities Seek Comments on Catalog of Industries for Encouraged Foreign Investment (2022 Edition)

On May 11, the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly released the *Catalog of Industries for Encouraged Foreign Investment (2022 Edition) (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions.

Compared with the 2022 edition, the *Draft for Comment* adds 238, revises 114 (mainly expanding the scope of the previous items) and deletes 38 items. The *Draft for Comment* mainly proposes the following revisions: (1) Continuously encouraging foreign investment to be made in manufacturing. Such items as components, parts, and equipment manufacturing are added or expanded in the national catalog. (2) Continuously encouraging foreign investment to be made in producer services. Such items as professional design, technical service and development are added or expanded in the national catalog. (3) Continuously encouraging foreign investment to be made in central and western region and the northeast. Relevant items are added or expanded in the catalog on central and western region according to the labor force, the characteristic resources, and other advantages as well as the need for investment in each locality.

(Source: National Development and Reform Commission)

## SAMR Issues Provisions on Clear Price Marking and Prohibition of Price Fraud

On June 2, the State Administration for Market Regulation (“SAMR”) released the *Provisions on Clear Price Marking and Prohibition of Price Fraud* (the “*Provisions*”), with effect from July 1, 2022.

The *Provisions* specify the rules for clear price marking in details, and supplement the criteria for identifying some price-related violations and the corresponding legal liabilities, providing legal support for better safeguarding the legitimate rights and interests of consumers and operators, regulating market price order, and building a unified domestic market that is highly efficient, rule-based, fair for competition, and open. Among others, in terms of clear price marking, the *Provisions* stipulate the main price elements to be marked and the pricing principles to be followed by a business operator when it sells commodities or provides service, and set out flexible rules on the forms of clear price marking regarding the commodities sold or services provided through the internet or by other means. Meanwhile, the local market supervision departments at or above the level of a city with district division are allowed to, on the basis of fully protecting the legitimate rights and interests of consumers and other business operators, determine the price information that should be marked for specific commodities or services, so as to better serve the economic and social development.

(Source: State Administration for Market Regulation)





## CNIPA Seeks Comments on Measures for Administration and Protection of Collective Trademarks and Certification Trademarks

On June 7, the China National Intellectual Property Administration (“CNIPA”) released the revised *Measures for Administration and Protection of Collective Trademarks and Certification Trademarks (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions by July 21, 2022.

The *Draft for Comment* mainly proposes the following revisions: (1) amending the title of the regulations and perfecting the legislative purpose; (2) further standardizing the application for registration; (3) strengthening the administrative requirements for registrants and users; (4) adding the provisions on the registration and fair use of trademarks containing geographical names; (5) promoting the use of trademarks and improving public services; and (6) improving administrative protection and intensifying punishment measures. Among others, the *Draft for Comment* refines the circumstances involving internet trademark infringement and use, and incorporates in the “conducts causing prejudice to others’ exclusive right to use its registered trademark” under Item 7 Article 57 of the Trademark Law such acts as “using any mark that is identical or similar to a collective trademark and certification trademark as domain name, network name, QR code, website or application name and its logo, and conducting relevant commodity transactions, thereby misleading the relevant public”.

(Source: China National Intellectual Property Administration)

## CNIPA Releases Work Plan for the Pilot Program of Patent Open License

On May 17, the Office of the China National Intellectual Property Administration (“CNIPA”) issued the *Work Plan for the Pilot Program of Patent Open License* (the “*Plan*”).

The *Plan* points out that the pilot program of patent open license is an initiative of provincial intellectual property authorities under the pilot program to promote the “one-to-many” fast patent licensing, with reference to the concept and method of open license. The pilot provincial bureaus of intellectual property will organize relevant prefectures and cities, enterprises and public institutions, and service platforms to participate in the pilot program, and promotes the fast licensing regime in which the patentee’s willingness and conditions of licensing are clearly defined in advance and publicly released by the pilot provincial bureaus, in an effort to achieve the purposes of stimulating supply and demand and reserving projects, and paving the way for the smooth implementation of the patent open license system. The *Plan* states that the first batch of eight provinces, including Beijing, Shanghai, Shandong and Jiangsu, that are given priority support under the special plan for patent commercialization, as well as the newly determined provinces being offered priority support in 2022, should formulate specific plans according to this Plan, and other provinces may decide on their own whether to make specific plans.

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.

(Source: China National Intellectual Property Administration)

# Network Security and Data Protection

## NISSTC Seeks Comments on the Personal Information Processing Management Guide for Apps of Smart Mobile Terminals

On June 14, the National Information Security Standardization Technical Committee (“NISSTC”) issued the *Information Security Technology—Personal Information Processing Management Guide for Apps of Smart Mobile Terminals (Draft for Comment)* (the “*Draft for Comment*”) for public comments by August 12, 2022.

The *Draft for Comment* proposes the requirements for the personal information processing activities of the Apps on mobile smart terminals, and with its primary framework designed based on the user’s personal information risk in each node of the mobile smart terminal’s life cycle, it intends to provide management measures for mobile terminals in each life cycle of the App. This standard applies to the scenario in which the management, prompting, control, and other functions are provided when the mobile terminal operating system collects and uses personal information in the App. For example, it provides a stronger reminder mechanism for sensitive personal information or the sensitive capabilities of mobile terminals, and provides users with application software call behavior records.

(Source: China National Information Security Standardization Technical Committee)

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## NISSTC Seeks Comments on Requirements of Privacy Policy of Internet Platforms, Products and Services

On May 27, the National Information Security Standardization Technical Committee (“NISSTC”) has issued the *Information Security Technology — Requirements of Privacy Policy of Internet Platforms, Products and Services (Draft for Comment)* (the “*Draft for Comment*”) for public comments by July 25, 2022.

The *Draft for Comment* stipulates the preparation procedures, specific content, and release form of the privacy policy of internet platforms, products and services, to make the privacy policy more readable and transparent, as well as the handling of disputes related to the privacy policy. This standard applies to the situation of regulating the process of formulating and publishing the privacy policy by personal information processors, and to the supervision, management and evaluation of the privacy policy by competent regulatory authorities and third-party evaluation agencies. Among them, the *Draft for Comment* proposes that the privacy policy should at least include the scope of application, summary, rules for collection and use of personal information, rules for ensuring the security of personal information, rules for protecting the rights of personal information subjects, rules for cross-border transfer of personal information, and rules for updating privacy policy, among others, and that the contact details of the personal information processors should be provided.

(Source: China National Information Security Standardization Technical Committee)

# Network Security and Data Protection

## NISSTC Seeks Comments on Specification on Authentication Technologies for Cross-border Personal Information Processing Activities

On May 5, the Secretariate of the National Information Security Standardization Technical Committee (NISSTC) issued the Practical Guide to *Cybersecurity Standards - Specification on Authentication Technologies for Cross-border Personal Information Processing Activities (Draft for Comment)* (the “*Draft for Comment*”) to seek public opinions.

The *Draft for Comment* represents the basic requirements for the authentication institutions to carry out personal information protection authentication for cross-border personal information processing activities, which shall be applicable in two circumstances, including “where the activity of cross-border personal information processing is carried out within a multinational company or the same economic or business entity”. In such circumstance, as specified in the *Draft for Comment*, the party within the territory of China may apply for authentication and shall assume the corresponding legal liability. The basic requirements involve four aspects, namely, legal constraints, organization and management, rules for cross-border personal information processing, and personal information protection impact assessment. The *Draft for Comment* also sets out the provisions on protection of rights and interests of the personal information subjects.

(Source: China National Information Security Standardization Technical Committee)





## SPC Strengthens Blockchain Application in the Judicial Field

On May 25, the Supreme People's Court ("SPC") issued the *Opinions on Strengthening Blockchain Application in the Judicial Field* (the "Opinions").

The *Opinions*, including 32 articles in seven parts, clarify the overall requirements for blockchain application in the judicial field and requirements for building the blockchain platforms of the people's courts, chart courses for four typical application scenarios where blockchain technology facilitates the enhancement of judicial credibility and other three aspects, and specify guarantee measures of blockchain application. The *Opinions* contain the following highlights: first, proposing to build a judicial blockchain alliance featuring interconnectivity and sharing; second, clarifying requirements on building the blockchain platforms of the people's courts; third, proposing to utilize data tamper-proof technology of blockchain to enhance judicial credibility; fourth, proposing to optimize business processes with blockchain application to constantly improve judicial efficiency; fifth, proposing to leverage blockchain interconnectivity to enhance judicial collaboration; and sixth, proposing to exploit the mutual trustworthiness of the blockchain alliance to facilitate economic and social governance.

(Source: Supreme People's Court)

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## SPC Clarifies Appellate Jurisdiction in Disputes over Intellectual Property Contracts Involving Invention Patents

On May 20, the Supreme People's Court ("SPC") issued the *Circular on Issues concerning Appellate Jurisdiction in Cases of Disputes over Intellectual Property Contracts Involving Invention Patents and Others* (the "Circular").

The *Circular* stipulates that, local people's courts at all levels (including all intellectual property courts) shall, from May 1, 2022, in the first-instance judgments they render regarding disputes over intellectual property contracts involving patents for inventions, utility models, new plant varieties, integrated circuit layout designs, technical secrets, and computer software, notify the parties concerned that they shall appeal to the people's courts at the next higher level if they are not satisfied with the judgements.

(Source: Supreme People's Court)

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## MOJ to Expand Pilot Program for Overseas Remote Video Notarization

On May 6, the General Office of the Ministry of Justice ("MOJ") issued the *Circular on Advancing the Pilot Program for Overseas Remote Video Notarization* (the "Circular").

A party applying for overseas remote video notarization shall be a resident of the mainland with the nationality of the People's Republic of China, who has resided for a long term in the country where the pilot embassy designated by the Ministry of Foreign Affairs is located (that is, he or she has stayed in such country for 180 consecutive days, or has obtained a permanent and long-term identity certificate in such country, or has obtained long-term visa for work, study, or otherwise). The *Circular* also specifies that matters eligible for overseas remote video notarization include: declaration, entrustment (including real estate, equity, inheritance and other property-related matters), marital status, nationality, name, birth, death, kinship, non-criminal record, experience, education, certificate (license), signature on the document, seal, text conformity, among others.

(Source: Supreme People's Court)