

W&B Legal Newsletter

October 2023 / Vol.36

Spotlights

THE LATEST FROM WATSON & BAND

Watson & Band Again Ranked in MIP's 2023 IP STARS

THE LATEST LEGAL DEVELOPMENTS

NPC Standing Committee Adopts the Decision on Revising the Civil Procedure Law and Other Laws

INTELLECTUAL PROPERTY

CNIPA Releases Administrative Measures for Technical Investigation Officers in the Administrative Protection of Intellectual Property Rights

CORPORATE AND COMMERCIAL

MOFCOM Invites Feedback on the Revision of Administrative Measures for the Record-filing of Commercial Franchises

CYBER-SECURITY AND DATA COMPLIANCE

NISSTC Seeks Comments on Basic Security Requirements for Generative Artificial Intelligence Service

COMPETITION AND ANTI-MONOPOLY

SAMR Issues the Anti-Monopoly Compliance Guidelines for Concentrations of Undertakings

FINANCE AND TAXATION

Four departments: Third-party Enterprises Engaged in Pollution Prevention and Control Eligible for Enterprise Income Tax at Reduced Rate of 15%

CULTURE AND ENTERTAINMENT

Two Departments to Strengthen Standardized Management of Large-scale Commercial Performance Events

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.

CONTACT US

Shanghai Office

Address: 26th Floor, The Center, No.989 Changle Road, Shanghai 200031 P.R.C.

Tel: (86-21) 5292-1111; (86-21) 6350-0777

Fax: (86-21) 5292-1001; (86-21) 6272-6366

E-mail: mail@watsonband.com ;

mail-ip@watsonband.com

Beijing Office

Address: 5C, D Block, Fuhua Mansion, No. 8 North Chaoyangmen Street, Dongcheng Dis-strict, Beijing 100027 P.R.C.

Tel: (86-10) 6625-6025 Fax: (86-10) 6445-2797

E-mail: beijing@watsonband.com;

mail-ip@watsonband.com

Harbin Office

Address: Room A2, Madi-er Shopping Center No.37 West Badao Street, Daoli District, Harbin 150010 P.R.C.

Tel: (+86) 13936251391

E-mail: harbin@watsonband.com

Gansu Office

Room 1823, Real Estate Tower, No.1 Tongwei Road, Lanzhou, Gansu Province, 730000, P.R.C.

E-mail: gansu@watsonband.com

Yantai Office

B3-703, Donghe Science and Technology Park, South Tongshi Road, Zhifu District, Yantai, Shandong, 264000

E-mail: yantai@watsonband.com

Tel: 0535-4104160

Guangzhou Office

Room 3708, Fuli Yingtong Building 30 Huaxia Road, Tianhe District, Guangzhou

E-mail: xuefeng.xie@watson-band.com.cn

Tel: +020-85647039

Zhengzhou Office

12B, Building A, Kineer IFC, East Jinshui Road, Zhengdong New District, Zhengzhou

Tel: 0371-86569881

Suzhou Office

Room 507, Building 5, No.9 Xuesen Road, Science and Technology City, High-tech District, Suzhou

Tel: 0512-68431110

Chengdu Office

Room 2001, 20F, Building 27, 269 Tianfu No.2 Avenue, High-tech District, Chengdu

Tel: +86-13398190635



Catalogue

THE LATEST FROM WATSON & BAND

Watson & Band Again Ranked in MIP's 2023 IP STARS	4
Watson & Band Again Listed in Patent Litigation and Prosecution in 2023 IAM Patent 1000	4

LATEST LEGAL DEVELOPMENTS

NPC Standing Committee Adopts the Decision on Revising the Civil Procedure Law and Other Laws	5
---	---

INTELLECTUAL PROPERTY

CNIPA Releases Administrative Measures for Technical Investigation Officers in the Administrative Protection of Intellectual Property Rights	6
CNIPA Seeks Comments on the Provisions on the Protection of Geographical Indication Products	6

CORPORATE AND COMMERCIAL

MOFCOM Invites Feedback on the Revision of Administrative Measures for the Record-filing of Commercial Franchises	7
---	---

CYBER-SECURITY AND DATA COMPLIANCE

NISSTC Seeks Comments on Basic Security Requirements for Generative Artificial Intelligence Service ...	8
MIIT to Regulate Data Security Risk Assessments in the Field of Industry and Information Technology ...	8
CAC Seeks Comments on Provisions on Regulating and Facilitating Cross-border Data Flow	9

COMPETITION AND ANTI-MONOPOLY

SAMR Issues the Anti-Monopoly Compliance Guidelines for Concentrations of Undertakings	10
--	----

COMPETITION AND ANTI-MONOPOLY

Four departments: Third-party Enterprises Engaged in Pollution Prevention and Control Eligible for Enterprise Income Tax at Reduced Rate of 15%	11
---	----

CULTURE AND ENTERTAINMENT

Two Departments to Strengthen Standardized Management of Large-scale Commercial Performance Events	12
--	----

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 Again Ranked in MIP's 2023 IP STARS

Recently, the internationally renowned IP media Managing Intellectual Property (“MIP”) fully announced its 2023 “IP STARS” lists. This year, with our longstanding professional services and outstanding performance in the field of intellectual property litigation, Watson & Band is once again top-ranked among China’s local firms in the two major areas of trademark disputes and patent disputes. This is the fourth consecutive year that Watson & Band has topped the said rankings, and our strength in the field of intellectual property has once again been recognized.

As one of the most influential award and rating agencies in the intellectual property community, *Intellectual Property Management* (MIP) published its first legal directory in 1994 and renamed it IP STARS in 2013. The publication provides an important reference for companies and individuals seeking experienced legal practitioners in the field of intellectual property. IP STARS’ research covers multiple IP domains and more than 80 jurisdictions, making it a comprehensive and widely respected guide to the IP industry.



2023年度上榜业务领域

商标纠纷（第三梯队）

Trademark Disputes (Tier 3)

专利纠纷（值得瞩目）

Patent Disputes (Other Notable)



NPC Standing Committee Adopts the Decision on Revising the Civil Procedure Law and Other Laws

On September 4, the fifth session of the 14th Standing Committee of the National People's Congress (NPC) adopted through voting the *Decision of the Standing Committee of the National People's Congress on Revising the Civil Procedure Law of the People's Republic of China* (the "Decision"), the *Administrative Reconsideration Law of the People's Republic of China (Revised in 2023)*, and the *Foreign State Immunity Law of the People's Republic of China*, all effective from January 1, 2024.

The *Decision* mainly revises and perfects the part on "special provisions on civil actions involving foreign parties", specifically (1) revising relevant rules on jurisdiction and expanding the jurisdiction of China's courts in foreign-related civil cases; (2) adding the general provisions on parallel litigation, the principle of forum non conveniens, along with other rules; (3) modifying relevant rules for foreign service; (4) improving the judicial aid system for the civil cases involving foreign parties, and adding relevant provisions on extraterritorial investigation and evidence collection; and (5) perfecting the provisions on effective judgment of foreign courts, and the basic rules for recognition of their effectiveness and execution. The *Decision* also proposes corresponding revisions to other parts, including the addition of a section regarding the cases concerning appointment of estate administrators.



(Source: www.npc.gov.cn)

CNIPA Releases Administrative Measures for Technical Investigation Officers in the Administrative Protection of Intellectual Property Rights

On September 26, the China National Intellectual Property Administration (CNIPA) released the *Administrative Measures for Technical Investigation Officers in the Administrative Protection of Intellectual Property Rights* (the “Measures”), with effect on the date of release.

The *Measures* provide regulations regarding the positioning, duties, appointment, rights and obligations, assignment and dispatch, procedures and norms, management, and supervision of technical investigation officers. According to the *Measures*, technical investigation officers perform the following duties in the handling of administrative cases related to intellectual property: providing recommendations on focal points of disputes over technical facts, as well as on the scope, sequence, and methods of investigation; participating in investigation, evidence collection, and examination; participating in questioning and oral hearings; presenting technical investigation opinions; assisting case officers in coordinating experts and professionals from relevant technical fields to provide their opinions; and attending meetings related to the handling of cases. Additionally, the *Measures* specify that technical investigation officers independently produce technical investigation opinions, and they are not subject to questioning by the parties involved during the course of case handling, should uphold objectivity and neutrality regarding the technical facts involved in the cases, and are bound by confidentiality regarding the information they become aware of. In general, they are not obliged to participate in administrative reconsideration or administrative litigation that may arise after conclusion of the cases.

(Source: China National Intellectual Property Administration)

CNIPA Seeks Comments on the Provisions on the Protection of Geographical Indication Products

On September 18, the China National Intellectual Property Administration (CNIPA) released the *Provisions on the Protection of Geographical Indication Products (Draft for Comment)* (the “Draft”), which is currently soliciting comments from various sectors of society. The deadline for receiving comments is November 2, 2023.

The *Draft* expands the provisions from 28 to 39 articles. It includes 15 new articles, removes 4 articles, substantially revises 19 articles, and generally retains the content of 5 existing articles. The main modifications are as follows: (1) clarifying the higher-level laws as the legal basis and departmental responsibilities; (2) defining the management responsibilities of applicants and the obligation of producers to produce according to standards; (3) improving examination standards and procedures for geographical indication products; (4) streamlining the approval process for the use of the geographical indication special marks; (5) enhancing the protection system for geographical indication products to boost utilization capabilities; and (6) strengthening the protection of geographical indication products.

(Source: China National Intellectual Property Administration)



MOFCOM Invites Feedback on the Revision of Administrative Measures for the Record-filing of Commercial Franchises

On September 21, the Ministry of Commerce (MOFCOM) drafted the *Administrative Measures for the Record-filing of Commercial Franchises (Draft Revision for Comment)* (the “Draft”), and published it for public feedback.

The objective of the revision, as outlined in the *Draft*, is to perform China’s commitments following its accession to the *Convention Abolishing the Requirement of Legalization for Foreign Public Documents*. The *Draft* proposes the deletion of the relevant content from Item 10 of Article 6 of the current Measures, which previously mandated that foreign-invested enterprises submit the *Approval Certificate for Foreign-invested Enterprises* and that the business scope therein include the item of “engagement in commercial activities by way of franchise”. Additionally, it proposes the addition of the phrase “except as otherwise provided by international treaties joined or concluded by China” into the final paragraph of Article 6, while removing the wordings “or go through the certification procedures specified in the relevant treaties concluded between the People’s Republic of China and that country.”

If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.



Frank Qian
Managing Partner, Attorney-at-law
E-mail : Frank.qian@watsonband.com



Cathy Wu
Partner, Attorney-at-law
E-mail : Cathy.wu@watsonband.com



Ze Gao
Partner, Attorney-at-law
E-mail : Ze.gao@watsonband.com

(Source: Ministry of Commerce)

NISSTC Seeks Comments on Basic Security Requirements for Generative Artificial Intelligence Service

On October 12, the National Information Security Standardization Technical Committee (NISSTC) issued the *Basic Security Requirements for Generative Artificial Intelligence Service (Draft for Comment)* (the “Draft”) to solicit public opinions.

The *Draft* identifies the basic requirements for the security of generative artificial intelligence (AI) services, covering training data, model security, security measures, and security assessment. With a view to supporting the *Interim Measures for the Management of Generative Artificial Intelligence Services*, the *Draft* requires relevant providers to carry out security assessment item by item pursuant to the requirements in this document before submitting to the competent authority the filing application for launching generative AI services, and to submit the assessment report along with the supporting materials at the time of filing. Among others, regarding the security assessment method, providers shall meet the requirements in four aspects, including “security assessment shall be conducted before the service is launched and when major changes are made, and may be carried out independently or by entrusting a third-party assessment agency”.

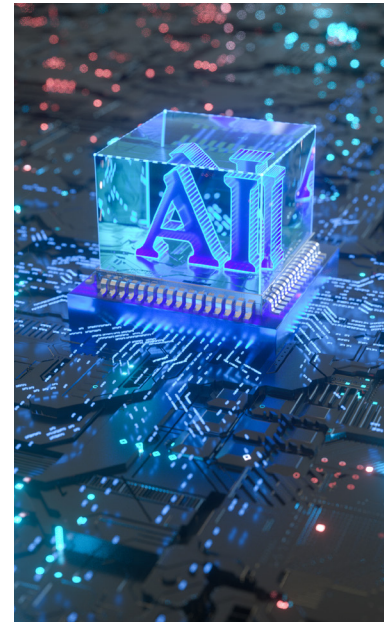
(Source: National Information Security Standardization Technical Committee)

MIIT to Regulate Data Security Risk Assessments in the Field of Industry and Information Technology

On October 9, the Ministry of Industry and Information Technology (MIIT) drafted the *Implementing Rules for Data Security Risk Assessments in the Field of Industry and Information Technology (for Trial Implementation) (Draft for Comment)* (the “Draft”), which is currently open for public comments until November 8, 2023.

The *Draft*, consisting of 17 articles, establishes a two-level work system for data security risk assessments at the ministerial and provincial levels, refines the assessment obligations of processors of important data and core data, and clarifies the mechanism and process for competent industry authorities to supervise and manage assessment activities. Its main contents include the scope of application and management responsibilities, assessment objects and contents, assessment mechanism requirements, the review, supervision and management system, and confidentiality and other requirements. Among other things, the *Draft* specifies the assessment period, circumstances for re-application of an assessment, permissible assessment methods, and regulations on commissioned assessment, assessment collaboration, risk control, and submission of assessment reports.

(Source: Ministry of Industry and Information Technology)



Cybersecurity and Data Protection

CAC Seeks Comments on Provisions on Regulating and Facilitating Cross-border Data Flow

On October 9, the Cyberspace Administration of China (CAC) drafted the *Provisions on Regulating and Facilitating Cross-Border Data Flow (Draft for Comment)* (the “Draft”) and published it for public feedback.

The *Draft* states that outbound transfers of data generated in international trade, academic cooperation, cross-border manufacturing and marketing activities, which do not contain personal information or important data, will not require applying for data transfer security assessment, establishing a standard contract for outbound cross-border transfer of personal information, or undergoing certification for the protection of personal information. According to the Draft, in cases where an outbound transfer of personal information is necessary for the purpose of entering into or performing a contract to which an individual is a party, such as cross-border shopping, cross-border remittance, air ticket or hotel booking, and visa application, or for protecting the life, health, and property safety of a natural person in cases of emergencies, it is not required to apply for a security assessment of outbound data transfer, establish a standard contract for outbound cross-border transfer of personal information, or undergo certification for the protection of personal information.

(Source: Cyberspace Administration of China)



Competition and Anti-Monopoly

SAMR Issues the Anti-Monopoly Compliance Guidelines for Concentrations of Undertakings

On September 11, the State Administration for Market Regulation (SAMR) issued the *Anti-Monopoly Compliance Guidelines for Concentrations of Undertakings* (the “*Guidelines*”).

The *Guidelines* are applicable to anti-monopoly compliance activities of undertakings during the concentrations of undertakings within and outside the territory of China. These *Guidelines* emphasize that strengthening compliance management in the context of concentrations of undertakings can help undertakings identify, assess, and control legal risks associated with such concentrations, and this can help prevent undertakings from engaging in concentrations that have or may have the effect of excluding or restricting competition, thus averting legal liability resulting from the unlawful concentrations. The *Guidelines* encompass main provisions on the review of concentrations of undertakings, major compliance risks, compliance risk management, compliance management guarantees, and more. According to the *Guidelines*, undertakings are advised to pay particular attention to concentrations of undertakings in six situations, including where “a merger involving another undertaking with a turnover in the previous fiscal year exceeding CNY400 million within the territory of China,” and undertakings are urged to fully assess anti-monopoly legal risks in these scenarios.

(Source: State Administration for Market Regulation)



Four departments: Third-party Enterprises Engaged in Pollution Prevention and Control Eligible for Enterprise Income Tax at Reduced Rate of 15%

On September 5, four departments, including the Ministry of Finance (MOF), jointly released the *Announcement on the Issues Concerning the Income Tax Policies for Third-party Enterprises Engaged in Pollution Prevention and Control* (the “*Announcement*”), with an implementation term from January 1, 2024 to December 31, 2027.

According to the *Announcement*, enterprise income tax shall be levied on eligible third-party enterprises engaged in pollution prevention and control at a reduced rate of 15%. To enjoy such policy, a third-party prevention and control enterprise shall simultaneously meet seven conditions, including “being a resident enterprise lawfully registered within the territory of China (excluding Hong Kong, Macao and Taiwan)”, and “having operation practices of treatment facilities of environmental pollution for more than one year consecutively, and being able to guarantee the normal operation of facilities”.



(Source: Ministry of Finance)

Two Departments to Strengthen Standardized Management of Large-scale Commercial Performance Events

On September 14, the Ministry of Culture and Tourism (MCT) and the Ministry of Public Security (MPS) jointly released the *Circular on Further Strengthening the Standardized Management of Large-scale Commercial Performance Events and Promoting Healthy and Orderly Development of Performance Market* (the “Circular”).

The *Circular* imposes real-name ticket purchase and entry system in large-scale commercial performance events, requiring that each identity certificate can only be used to purchase one ticket for each performance and the identity information of the ticket purchaser must be consistent with that of the person entering the venue. Performance organizers and ticket sales platforms shall strengthen the protection of consumers’ personal information, and shall prevent personal information from unauthorized access or leakage, falsification, or loss. Meanwhile, the Circular calls for further raising the proportion of ticket sales for large-scale commercial performance events, stipulating that tickets sold to the public by the performance organizers should not be less than 85 percent of the approved audience capacity. For the remaining 15 percent of the tickets, personal information needs to be bound with the tickets within 24 hours before the performance, so as to ensure “real-name entry”.

(Source: Ministry of Culture and Tourism)

