

# W&B Legal Newsletter

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# INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 professionals 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, 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 responsible 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 State Intellectual Property Office, China Trademark Office, National Copy-right Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.



## W&B's Patent Infringement Case Published in the Supreme People's Court's Annual Report on Intellectual Property Cases

Recently, the Supreme People's Court published its 2018 Annual Report on Intellectual Property Cases. The Annual Report selected 28 typical cases from the intellectual property and competition cases concluded in 2018, and summarized 37 issues therefrom concerning the application of law, which may serve as guidance for future cases. These cases reflect the Supreme People's Court's way of thinking and adjudication in trying new, difficult and complicated cases in the fields of intellectual property and competition law.

A patent infringement case that W&B's Partner Jianguo Huang and his team represented for the client is selected into the section concerning patent-related civil cases of the Annual Report. The Supreme People's Court comments on the guiding roles played by this case as follows:

(1) Re: the standard for identifying joint infringement

In the retrial case involving a dispute over infringement of an invention patent between the petitioner SMC Corporation and the Respondents Yueqing Zhongqi Pneumatic Technology Co., Ltd. and Tiancai Ni (hereinafter the "electromagnetic valve" patent infringement case) [(2018) SPC Civil Retrial No.199], the Supreme People's Court points out that a joint infringement must meet the following requirements: (i) the infringing party must include two or more persons; (ii) said persons must have a joint intention; (iii) objectively, said persons' must utilize, cooperate with or support each other; and (iv) the damages caused by said persons must be within the scope of their joint intention.

(2) Re: identification of contributory infringement under the Patent Law

In the said "electromagnetic valve" patent infringement case, the Supreme People's Court points out that the term "contributory infringement" prescribed under the Patent Law does not broadly refer to assistance in any form; instead, it refers to: without authorization by the patentee, the provision of articles that are specifically used for infringement to another party for manufacturing and operation purposes, so that the other party may commit infringement of the patent right.

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## Watson & Band Assists the Success of X GAMES Shanghai

On June 1st and 2nd, 2019, the extreme sports competition X GAMES in Shanghai, China ("X GAMES Shanghai"), sponsored by REnextop, was successfully held at the Shanghai International Resort. This marks the debut of ESPN's world-class extreme sports championship X GAMES arrived in China. As the legal advisor for REnextop, Watson & Band provided full legal services for X GAMES throughout the process, including television relay, venue and facility services, sponsorship investment, market development, and personnel employment.

Under the context of the "Three Year Action Plan for Making Shanghai an International Sports City," issued by the Shanghai Sports Bureau, Shanghai's development in the area of international sports will undoubtedly reach new heights. With our major strengths in intellectual property legal services and rich practical experience, Watson & Band caters to the specific needs of clients in the culture & entertainment media industry. In all areas of the industry, including radio and television, news publishing, performance brokerage, sports entertainment, advertising media, and literature & artworks transactions, our specially appointed teams are able to provide expert legal service to our clients.



## **NPC Standing Committee Amends Eight Laws Including the P.R.C. Construction Law**

The Decision on Amending Eight Laws Including the Construction Law of the People's Republic of China (the "Decision") has been deliberated and adopted as of April 23, 2019.

The Decision made changes to eight laws including the Construction Law of the People's Republic of China, the Trademark Law of the People's Republic of China, and the Anti-Unfair Competition law of the People's Republic of China, etc. The Decision revised Article 8 of the Construction Law to: "requirements needed to apply for a construction permit include..."; it also revised Article 4 (1) of the Trademark law to "When natural persons, legal persons or organizations need to acquire the exclusive right to use its trademark, they must apply to register the trademark with the Trademark Office. Malicious registration applications with no intent of use should be rejected", and revised Article 19 (3) to "When trademark agencies know or should know the trademark applied for registration by their client falls under the circumstances specified in Article 4, Article 15 or Article 32 of this Law, they should not accept the client's engagement."

The amendments made to the Trademark Law of the People's Republic of China will take effect on November 1st, 2019; all other amendments have taken effect immediately from the date of issuance.

(Source: people.cn)

## **State Council Releases Legislative Work Plan for 2019**

On May 11th, the State Council released a circular detailing its legislative work plan for the year 2019. The circular specified three major categories of legislative work, comprising a total of 59 laws and policies. Among them, a total of 13 draft laws will be proposed for deliberation to the National People's Congress Standing Committee, 42 administrative regulations will be formulated and amended, and 4 additional legislative projects regarding existing laws will be carried out. According to the circular, in 2019 a draft of the Law on Pollution Prevention and Control of Solid Waste, and others, will be proposed for deliberation; regulations on non-deposit lending organizations, illegal fundraising, urban housing security, housing rental, private investment funds, etc. will be formulated; and regulations on foreign bank management, enterprise income tax law, individually-owned businesses, etc. will be amended.

(Source: <http://www.gov.cn/>)

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## **Ministry of Justice Announces Provisional Regulations on Procedure for Major Administrative Decisions to be implemented as of September 1<sup>st</sup>**

On May 16<sup>th</sup>, the State Council Information Office (SCIO) held a briefing where the Provisional Regulations on Procedure for Major Administrative Decisions (the "Regulations") were discussed. The Regulations are divided into 6 chapters and contain 44 Articles, and provide stipulations related to the scope of major administrative decision matters, the procedure of making and adjusting major administrative decisions, determining liability for major administrative decisions, etc. The Regulations will take effect on September 1<sup>st</sup>, 2019.

The Regulations place emphasis on five major legal procedures, including public participation, expert verification, risk assessment, legality review, and collective discussion and decision-making. Clarifications and specifications are added to each of these steps, which are mainly revealed in two aspects: firstly, in the drafting phase of major administrative decisions, requirements for public participation, expert verification and risk assessment were made clear. Consultation of public opinion is now required for all matters except for those that are prescribed confidential by law. Secondly, legality review is made to be an essential step of the process. Decision drafts that have not undergone legality review, or those that failed the review, will not be submitted to policy-making organizations for discussion. Collective discussion and decision-making should be accurately recorded and coupled with liability determination.

(Source: people.cn)

## China Releases 12 New Measures to Open Up Its Banking and Insurance Sectors

Recently, the China Banking and Insurance Regulatory Commission announced that it had formulated 12 new measures to open up its banking and insurance sectors to the world, in order to bring variety to market subjects and invigorate the market. These 12 measures include but are not limited to: in accordance with consistency of domestic and foreign investments, removal of the maximum shareholding ratios for single domestic banks and single foreign banks alike; removal of the \$10 billion total asset requirement for setup of foreign corporate banks in China, and the \$20 billion total asset requirement for foreign banks to open branches in China; removal of the \$1 billion total asset requirement for overseas financial institutions to invest in trust companies; permission for overseas financial institutions to invest in foreign-funded insurance companies in China; and removal of the 30 years of operation and \$200 million total asset requirements for foreign insurance brokers to operate in China.

(Source: <http://www.gov.cn/>)

## TCSC to Increase Tariffs on Certain Import Products Produced in the United States

In accordance with the Foreign Trade Law of the People's Republic of China, the Import and Export Tariff Regulations of the People's Republic of China, and basic international law principles, with approval from the CPC and the State Council, the Tariff Commission of the State Council (TCSC) announced its decision to increase tariff rates on certain products from the \$60-billion list of American products with existing tariffs. Tariff rates will be raised to 25%, 20% or 10%, while products with a previous tariff rate of 5% will remain unchanged. The policy went into effect as of June 1<sup>st</sup>, 2019.

(Source: MOF)



## MOF and SAT Announce Tax Incentive Policy for Integrated Circuit Design and Software Enterprises

Recently, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) announced a tax incentive policy for the integrated circuit (IC) design and software enterprises, with the goal of supporting their growth and development. According to the announcement, all lawfully established IC design and software enterprises that meet the requirements may calculate their preferential period starting the profit-making year before December 31st, 2018. During the first two years of the preferential period, the enterprises will be exempted from corporate income tax, and during the third to fifth years, the corporate income tax at the legal rate of 25% will be reduced by half, lasting until the preferential period ends.

Additionally, the announcement clarified that the “requirements” that the enterprises must meet are those stated in the Notice by the MOF and SAT on Corporate Income Tax Policies for the IC Design and Software Sectors to Encourage Further Development, and the Notice by the MOF, SAT, and NDRC on Corporate Income Tax Incentive Policy Matters for the IC Design and Software Sectors.

(Source: MOF)

## China to Establish “List of Unreliable Entities” System

On May 31<sup>st</sup>, Ministry of Commerce press spokesman Feng Gao announced at a special press conference that China will establish a “List of Unreliable Entities” system, in accordance with the relevant laws and regulations. Foreign companies, organizations or individuals that violate market regulations, deviate from the spirit of contract, blockade or cut supply to Chinese companies for non-commercial purposes, or seriously harm the rights and interests of Chinese businesses, will be included in the “List of Unreliable Entities.” More specific measures will be announced in the near future. (Source: <http://www.gov.cn/> )

## Draft Regulations on Marked Prices and Prohibition of Price Fraud Released for Public Comments

On May 30<sup>th</sup>, the Draft Regulations on Marked Prices and Prohibition of Price Fraud (the “Draft”) was released by the State Administration of Market Regulation (SAMR) for public comments until June 30th.

According to the Draft, business operators that provide products or services via E-commerce, telephone sales or television sales should clearly mark prices using webpages, electronic documents, voice calls, videos, or through other methods. Where sales promotions are concerned, promotional information about pricing should be clear and accurate, and should not include fraudulent or misleading language, numbers, pictures or videos. When identifying cases of price fraud, it should be considered whether or not the business operator presented fabricated claims, concealed information or used other misleading price tactics to deceive ordinary customers.

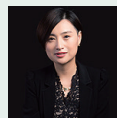
(Source: SAMR )



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.



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## National Network Information Office Seeks Public Comments on Data Security Management Measures

On May 28<sup>th</sup>, the National Network Information Office released its Draft Data Security Management Measures (the “Draft”) for public comments. The Draft states that internet business operators must not use reasons such as improvement of service quality, enhancement of user experience, directed push content or development of new products to force or mislead personal information subjects to agree to the collection of their personal data, through means such as default permissions or bundled functions, etc.

Regarding data collection, the Draft states that when internet business operators gather and utilize personal data through products such as websites and apps, rules for collection and utilization should be formulated and published. The Draft also states that when data security incidents occur, such as personal data leakages, damages or losses, or when risk of data security incidents becomes significantly higher, internet business operators should immediately take remedial action.

(Source: National Network Information Office)

## National Network Information Office Seeks Public Comments on Network Security Investigation Measures

On May 24<sup>th</sup>, the National Network Information Office released its Draft Network Security Investigation Measures (the “Draft”) for public consultation. The Draft states that when procurement activities are reported for network security investigation, business operators should use procurement documents, contracts, or other binding methods to request providers of products and services to comply with the network security investigation. Both parties should agree that the contract takes effect only after the procurement activity has passed the network security investigation.

According to the Draft, network security investigation should place emphasis on assessment of possible national security risks that procurement activities may bring. The seven main factors to be considered include: influences on the continuous, safe and stable operation of key informational infrastructure; probability of causing significant leakage, loss, destruction or border exit of personal information and important data; the controllability and transparency of products and services and safety of the supply train, etc.

(Source: National Network Information Office)



## National Market Regulation System Antitrust Conference is Held

On May 9<sup>th</sup> and 10<sup>th</sup>, the National Market Regulation System Antitrust Conference was held in Haikou, Hainan. State Administration for Market Regulation (SAMR) Deputy Director, Lin Gan, attended the conference and delivered a speech.

Gan expressed the point that currently, the domestic and foreign situations have changed drastically; therefore new requirements on antitrust work called for by the new era of socialism with Chinese characteristics must be kept in mind. The state must maintain the correct work orientation and prudently address relationships between the government and the market, the parts and the whole, the present and the future, and the local and the worldwide. Regarding antitrust work in 2019, Gan specifies five requirements: to reinforce the establishment of the antitrust law enforcement team; to strengthen the basic status of competition policies; to practically engage in antitrust law enforcement; to realistically and scientifically push forward the legislation of antitrust laws; and to create a good environment for optimal work results.

(Source: SAMR)

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## SAMR Releases the 10 Major Representative Cases of Antitrust Law Enforcement in 2018

On May 9<sup>th</sup>, the National Market Regulation System Antitrust Conference was held in Haikou, Hainan. During the conference, the State Administration for Market Regulation (SAMR) released its report of the 10 major representative cases of antitrust law enforcement in 2018. The cases include: the glacial acetic acid raw material monopoly case; the Hadaqi region natural gas vertical monopoly agreement case; the Tianjin Port Yard business monopoly agreement case; the Chlorpheniramine monopoly case; the Walt Disney acquisition of 21<sup>st</sup> Century Fox case; the United Technologies acquisition of Rockwell Collins case; the merger between Essilor International and Luxentika Group case; the Public Security Bureau of Inner Mongolia Autonomous Region abuse of executive power to eliminate restricted competition case; the Beijing Public Security Bureau and Public Security Traffic Bureau abuse of executive power to eliminate restricted competition case; and the Jinan Urban and Rural Construction Committee abuse of executive power to eliminate restricted competition case.



the Public Security Bureau of Inner Mongolia Autonomous Region abuse of executive power to eliminate restricted competition case; the Beijing Public Security Bureau and Public Security Traffic Bureau abuse of executive power to eliminate restricted competition case; and the Jinan Urban and Rural Construction Committee abuse of executive power to eliminate restricted competition case.

(Source: SAMR)



## 10 Major Copyright Protection Cases of 2018 are Released

As a commemoration of World Intellectual Property Day, on April 26<sup>th</sup>, the State Copyright Bureau collaborated with the State Office for Elimination of Pornography and Illegal Publications to release the 10 major copyright protection cases of 2018. The cases include: the distribution of pirated electronic publications by Beijing Global Education & Technology case; the distribution of pirated 3D film and TV media by Shanghai's "3D BoBo VR" app case; the distribution of pirated film and TV media by the "Zishu Theater" public WeChat account in Wuxi, Jiangsu case; the sale of pirated training material by Tianjin BaiLian Education Science and Technology Group case; the Beijing "8•08" sale of pirated children's books case; the operation of internet game private servers by Long and others in Guangdong case; the distribution of pirated film and TV media by the "BT Heaven" website in Huaian, Jiangsu case; the making and sales of pirated textbooks by Wu and others in Chengdu, Sichuan case; the making and sales of pirated books by Duan and others in Jiaxing, Zhejiang case; and the making and sales of pirated textbooks by Chen and others in Yongxin, Jiangxi case.

(Source: The Legal Daily)

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## China's First Set of Regulations on Child Model Protection is Published

In order to further regulate the child model industry, and protect the legal rights of minors, the Binjiang, Hangzhou, Zhejiang People's Procuratorate Meeting collaborated with the Binjiang, Hangzhou District Market Supervision and Administration Bureau and the Binjiang, Hangzhou Communist Youth League District Committee to publish the "Guidelines on Regulating Child Model Activity and Protecting Legal Rights of Minors" (the "Guidelines"). This is the first system of regulations for child model protection in China.

The Guidelines primarily address the scope of child model activity, legal responsibilities of child models and their guardians, the work involved in functional de-

partments, etc. It places emphasis on regulation of illegal or covert use of child workers and safeguarding the right to education for minors, therein promoting child model work that complies with the physical and mental development of children. For example, in child model work, children under 10 years of age cannot be used to endorse advertisements; child models cannot work continuously for over one week or cumulatively over one month, resulting in their dropping out of school in clear or covert forms; prohibition of continuous child model work for over 4 hours, etc.

(Source: The Legal Daily)

## SPC Specifies Time Limit for Companies to Complete Profit Distribution

On April 28th, the Supreme People's Court (SPC) released the Regulations for Various Issues Related to the Company Law of the People's Republic of China (the "Regulations"), specifying rules for legal issues in dispute cases related to protection of shareholder rights.

Main points of the Regulations include: clarifying that reimbursement responsibilities for related party transactions cannot be remitted through legal procedures; specifying release without cause for directors and the corresponding compensation for leaving post; specifying the time limit for completing profit distribution after a decision to distribute profit has been made; and setting up a system for resolving major shareholder conflicts for limited liability companies, highlighting the need for courts to mediate disputes in these cases. This prompts shareholders to negotiate and settle the dispute, allowing the company to resume normal operation, and avoiding the company's dissolution.

(Source: SPC)

