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目 录

国内特别关注	1
最高人民法院发布《关于加强区块链司法应用的意见》	1
国家知识产权局办公室关于印发专利开放许可试点工作方案的通知	14
国外特别关注	19
美国贸易代表办公室 (USTR) 发布《2022 年知识产权保护和执法特别 301 报告》	19
世界知识产权组织 (WIPO) 发布《专利态势报告: 交通运输领域的氢燃料电池》	21
中文法学类核心期刊知识产权文章摘编	25
1. 论 FRAND 承诺下标准必要专利许可费的确定方法	25
2. 企业衍生数据的法律保护路径	25
3. 知识产权行政行为所认定事实在民事诉讼中的效力	26
4. 数据产品的界定和法律保护	26
5. 论比例原则在知识产权损害赔偿中的适用	27
6. 二次创作短视频合理使用规则的适用与完善	28
7. 专利确权的属性重释与模式选择	28
中文管理类核心期刊知识产权文章摘编	30
1. 盗版威胁下信息产品在线销售模式选择研究	30
2. 公平偏好视角下的专利联盟企业创新行为演化研究	30
3. 行业协会知识产权治理与集群企业集体维权行动——创新合法性的中介效应探索	31
外文法学类核心期刊知识产权文章摘编	33
1. Optimal licensing systems in Internet of Things ecosystems: the challenges of the exhaustion and value apportionment doctrines	33
2. Community design infringement test before the General Court-an unfortunate setback	33
3. Fair Use as Cultural Appropriation	34
4. A Fragility Theory of Trademark Functionality	35
5. Beyond Trade War: Reevaluating Intellectual Property Bilateralism in the US-China Context	36
外文管理类核心期刊知识产权文章摘编	37
1. Matching patents to compustat firms, 1980?2015: Dynamic reassignment, name changes, and ownership structures	37
2. A man is known by the company he keeps?: A structural relationship between backward citation and forward citation of patents	37
3. Six different approaches to defining and identifying promising technology through patent analysis	38

4. Who are building technical knowledge mansions? Impact of patent cooperation networks on the generic technology R&D performance of emerging enterprises	39
5. Patent Citation Network Simplification and Similarity Evaluation Based on Technological Inheritance	40
6. Bridging Trends and Patents: Combining Different Data Sources for the Evaluation of Innovation Fields in Blockchain Technology	41
南湖学人成果速递	42
吴汉东：计算机软件专利保护问题研究	42

国内特别关注

最高人民法院发布《关于加强区块链司法应用的意见》

2022年5月25日，最高人民法院发布《关于加强区块链司法应用的意见》（中英文版），全文如下。

法发〔2022〕16号

最高人民法院

关于加强区块链司法应用的意见

为深入贯彻落实习近平法治思想和习近平总书记关于积极推动区块链技术为人民群众提供更加智能、更加便捷、更加优质公共服务的重要指示精神，贯彻落实《中华人民共和国国民经济和社会发展第十四个五年规划和2035年远景目标纲要》和《“十四五”国家信息化规划》，充分发挥区块链在促进司法公信、服务社会治理、防范化解风险、推动高质量发展等方面的作用，全面深化智慧法院建设，推进审判体系和审判能力现代化，结合人民法院工作实际，制定本意见。

一、总体要求

（一）指导思想。以习近平新时代中国特色社会主义思想为指导，深入贯彻习近平法治思想和习近平总书记关于网络强国的重要思想，紧紧围绕“努力让人民群众在每一个司法案件中感受到公平正义”的目标，坚持服务大局、司法为民、公正司法，大力推动区块链技术与多元解纷、诉讼服务、审判执行和司法管理工作深度融合，积极应用区块链平台服务社会治理、优化营商环境、加强诚信体系建设、防范化解重大风险、支持构建新发展格局，努力创造更高水平的数字正义。

（二）总体目标。到2025年，建成人民法院与社会各行各业互通共享的区块链联盟，形成较为完备的区块链司法领域应用标准体系，数据核验、可信操作、智能合约、跨链协同等基础支持能力大幅提升；区块链在多元解纷、诉讼服务、审判执行和司法管理工作中得到全面应用，有效促进司法公信，提升司法效率，强化廉洁司法；司法区块链跨链联盟融入经济社会运行体系，实现与政法、工商、金融、环保、征信等多个领域跨链信息共享和协同，主动服务营商环境优化、经济社会治理、风险防范化解和产

业创新发展，助力平安中国、法治中国、数字中国和诚信中国建设，形成中国特色、世界领先的区块链司法领域应用模式，为新时代我国经济社会数字化转型和高质量发展提供坚强有力的司法服务和保障。

（三）基本原则

坚持依法统筹、注重协同联动。依法依规加强区块链基础设施统筹规划，面向经济社会发展和审判执行工作需要，开展区块链司法领域应用顶层设计，加强与各行各业跨链协同应用模式研究，促进多方数据共享和协同应用。

坚持开放共享、注重标准先行。建设与社会各行各业互通共享的区块链联盟，形成共性基础技术支持能力，建立统一、开放的区块链司法领域应用技术标准体系，为跨部门节点接入、跨行业数据共同维护和利用提供规范化服务。

坚持应用牵引、注重创新发展。以司法为民、公正司法和服务社会治理为牵引，充分发挥区块链在优化业务流程、提升协同效率、建设可信体系等方面的作用，持续推进区块链在司法领域深度应用，不断提高跨领域自动执行能力。

坚持安全可靠、注重有序推进。以安全可信为前提，着力提升上链数据和智能合约的准确可控水平，确保数据安全，保护个人信息，推动形成区块链在司法领域稳中求进、有序发展、安全可靠的应用生态。

二、人民法院区块链平台建设要求

（四）加强区块链应用顶层设计。遵照法律规范要求，按照内外部高效协同的总体思想，针对法院业务应用和服务社会治理协同应用需求，系统开展区块链在司法领域应用的场景设计。针对内、外网协同应用需求，形成全国统一、支持跨网系、跨链协同司法应用的区块链总体建设方案。

（五）持续推进跨链协同应用能力建设。针对主动服务经济社会治理和司法业务应用场景，构建基于分布式标识、互联互通、跨链互信的区块链联盟基础设施，有效整合执行区块链已有建设成果，充分发挥联盟链技术特点，加强司法区块链平台与各行业区块链平台跨链联盟建设，持续提升协同能力。

（六）提升司法区块链技术能力。联合优势力量，开展关键技术攻关，打造开放共享的全国法院司法区块链平台，提高数据核验、可信操作、智能合约、跨链协同等技术能力，支持各级人民法院基于司法链平台开展业务创新应用。

(七) 建设互联网司法区块链验证平台。基于全国司法区块链平台数据，在互联网端建设司法区块链验证平台，支持当事人等相关主体对调解数据、电子证据、诉讼文书等司法数据进行真伪核验。

(八) 建立健全标准规范体系。建立健全区块链在司法领域应用的技术标准和管理规范，为与相关领域区块链平台和节点接入互通、共享协同提供技术指引和标准接口支持。

三、充分运用区块链数据防篡改技术，进一步提升司法公信力

(九) 保障司法数据安全。推进人民法院电子卷宗、电子档案、司法统计报表、案件结案状态等司法数据上链存储，确保司法数据防篡改，提升数据安全水平。

(十) 保障电子证据可信。健全完善区块链平台证据核验功能，支持当事人和法官在线核验通过区块链存储的电子证据，推动完善区块链存证的标准和规则，提升电子证据认定的效率和质量。

(十一) 保障执行操作合规。推动执行案件信息、当事人信息、组织机构信息、执行通知、财产查控、财产处置、案款收发、信用惩戒、执法取证、执行互动、案件报结、卷宗归档等数据和操作上链存证，常态化开展执行全业务流程操作安全审计，进一步规范执行操作行为，探索开展执行查控等敏感操作在线闭环验证，确保可靠无误。

(十二) 保障司法文书权威。推动人民法院送达的诉讼文书和送达回执在司法区块链平台统一存储，支持在互联网端查验送达文书，保证送达全流程安全可靠，维护司法权威。

四、充分发挥区块链优化业务流程的重要作用，不断提高司法效率

(十三) 支持立案信息流转应用。建立立案登记材料分级分类自动流转业务规则，支持在材料提交限定期满后案件实现分级分类自动立案，巩固立案登记制改革成果，提高立案效率。

(十四) 支持调解与审判流程衔接应用。建立调解协议不履行自动触发审判立案、执行立案等业务规则和智能合约程序，增强调解程序司法权威，支持多元纠纷化解。

(十五) 支持审判与执行流程衔接联动。全面推进审判与执行办案系统信息互通和数据共享，探索建立裁判文书不履行自动触发执行立案等业务规则和联动机制，优化审

执衔接，畅通信息流转，减少重复工作，支持切实破解执行难。

（十六）支持提升执行效率。探索建立符合条件的执行案件自动发起查询、冻结、扣划以及执行案款自动发放智能合约机制，在确保程序合规的前提下简化审批环节；建立对统查财产线索足额终本案件、对不履行义务的执行和解案件，无需单独提起立案流程即可自动立案恢复执行的智能合约机制。

（十七）支持执行干警便捷办案。运用区块链技术推动网络查控、评估拍卖、案款收发、失信限消、事项委托、电子卷宗随案生成等向移动端延伸，形成去中心化、去网系化、去系统化的数据串联，方便执行干警随时随地办理执行事务。

五、充分挖掘区块链互通联动的巨大潜力，增强司法协同能力

（十八）提高律师资质验证协同能力。针对律师资质验证需求，构建人民法院与司法行政部门跨链协同应用，支持实现参与诉讼活动的律师资质、信用报告在线查询及核验，提高核验实时性。

（十九）提高政法部门案件协同办理能力。针对减刑假释、刑事、民商事等案件跨部门协同办理和公民身份认证等需求，构建人民法院与检察、公安、司法行政等部门的跨链协同应用，提高案件在线流转效率和数据互信水平。

（二十）提高跨部门协同执行能力。针对被执行人财产查控、失信被执行人联合惩戒等需求，构建人民法院与行政执法、不动产登记、金融证券保险机构、联合信用惩戒等单位的跨链协同应用，建立自动化执行查控和信用惩戒模式，提高协同执行工作效率。

六、充分利用区块链联盟互认可信的价值属性，服务经济社会治理

（二十一）保护知识产权。构建与版权、商标、专利等知识产权区块链平台的跨链协同机制，支持对知识产权的权属、登记、转让等信息的查询核验，为知识产权案件的证据认定等提供便利，更好地服务国家创新驱动战略实施。

（二十二）支持营商环境优化。构建与市场监管、产权登记和交易平台等区块链平台的跨链协同应用机制，支持对企业基本信息、企业股权变动、企业间关联关系、不动产和动产权属状况、融资租赁、贵金属交易等权属登记和交易状况信息的查询核验，为权属认定和产权交易提供便利，促进基于数据与信用的分级分类监管体系建设，更好地服务国家营商环境建设。

(二十三) 支持数据开发利用。构建与数据权属、数据交易等区块链平台的跨链协同应用机制，支持对数据确权、数据交易等过程信息的查询核验和智能合约处置，助力数据要素市场构建和数据价值释放，更好地服务国家大数据战略实施。

(二十四) 支持金融信息流转应用。构建与金融机构区块链平台的跨链协同应用机制，支持对金融借款合同、信用卡等审批、履行、违约过程信息的查询核验和智能合约处置，更好地服务金融风险防范化解。

(二十五) 支持企业破产重组。构建与相关政府部门区块链平台的跨链协同应用机制，支持对债务人企业的经营信息和涉诉涉执行信息互通共享，支持债权申报信息在线验证质证，在保障全体债权人知情权和查阅权的同时，强化债权审核公开透明，并进一步确保网络债权人会议的表决效力，更好地服务市场主体救治和退出。

(二十六) 支持征信体系建设。构建与全国信用信息共享平台、国家企业信用信息公示系统和失信惩戒部门的跨链协同应用机制，支持对失信被执行人、限制高消费信息的查询核验和智能合约处置，确保失信信息可信产生、安全传播和合规使用，更好地发挥联合失信惩戒作用，助力健全以信用为基础的新型监管机制，服务社会信用体系建设。

七、保障措施

(二十七) 加强组织领导。各级人民法院要高度重视区块链在司法领域的建设和应用，加强统筹协调，明确任务牵头部门负责区块链应用整体推进和管理。

(二十八) 建立协同机制。各级人民法院要统筹辖区区块链应用重点，联合其他政法单位、社会机构等力量强化协同工作机制，共同推进区块链在司法领域的应用。

(二十九) 加大支持力度。各级人民法院要将区块链应用工作纳入智慧法院建设规划统筹组织实施，并与地方政府社会治理创新相结合，争取经费支持，加大推进力度。

(三十) 注重应用示范。各级人民法院要面向服务经济社会发展和人民法院业务需求，选择较为成熟的应用场景开展典型应用示范，形成可复制、可推广的创新模式。

(三十一) 确保安全可靠。各级人民法院要健全事前审核和测试评估机制，确保上链数据真实性、准确性、合规性以及链上链下数据一致性，确保智能合约的合法性、有效性、安全性和可靠性。

(三十二) 积极宣传引导。各级人民法院要加强成功案例宣传推介，面向法院干警开

展区块链技术应用培训，全面提升区块链在司法领域的应用成效。

最高人民法院

2022年5月23日

**Opinions of the Supreme People’ s Court
on Strengthening Blockchain Application
in the Judicial Field**

The Opinions are herein made for further implementation of the Xi Jinping Thought on the Rule of Law and General Secretary Xi Jinping’ s instructions on actively promoting the application of blockchain technology to provide more intelligent, convenient and superior public services for the people, and for the earnest fulfillment of the Outline of the 14th Five-Year Plan (2021-2025) for National Economic and Social Development and the Long-Range Objectives through the Year 2035 of the People’ s Republic of China and the 14th Five-Year Plan (2021-2025) for National Informatization. While taking the real work of the people’ s courts into consideration, the Opinions aim to leverage the role of blockchain in cementing judicial credibility, facilitating social governance, preventing and resolving risks, promoting high-quality development, etc., so as to reinforce the advance of smart courts on all fronts and the modernization of the judicial system and judicial capabilities.

I. Overall requirements

(1) Guiding philosophies. Concentrating on the goal of “working to ensure that the people feel fairness and justice prevails in every judicial case” , the Opinions, under the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, endeavor to thoroughly implement Xi Jinping Thought on the Rule of Law and on building China’ s strength in cyberspace, and are committed to serving the overall interests, administrating justice for the people and maintaining judicial fairness. The Opinions intend to vigorously promote in-depth integration between blockchain technology and diversified dispute resolution, litigation services, trial and enforcement and judicial administration. People’ s courts in China need to actively utilize the blockchain platform to facilitate social governance, optimize business environment, cement the development of the credit system, prevent and resolve major risks and underpin the establishment of a new development paradigm, sparing no efforts to elevate digital justice to a higher level.

(2) Overall objectives. By 2025, a blockchain alliance featuring interconnectivity and sharing between the people's courts and all social sectors will come into being and a relatively complete standard system for blockchain application in the judicial field will be in place with the capabilities for fundamental support for data verification, trusted operation, smart contract, interoperation collaboration, etc. to be dramatically improved. Moreover, diversified dispute resolution, litigation services, trial and enforcement, and judicial administration will witness the comprehensive application of blockchain technology which effectively enhances judicial credibility, efficiency and integrity. By then, the judicial blockchain interoperation alliance is to be integrated into the economic and social operation system, enabling interoperation information sharing and coordination with the political and legal, industrial and commercial, financial, environmental, social credit and other sectors, which will actively contribute to the improvement of business environment, economic and social governance, risk prevention and resolution, and industrial innovation and development, back China to become a peaceful, digital and credit-based country under the rule of law, foster a world-leading model of blockchain application in the judicial field with Chinese characteristics, providing superior judicial services and solid guarantee for China's economic and social digital transformation and high-quality development in the new era.

(3) Basic principles. Pursuing law-based coordination and emphasizing collaboration and interconnectivity. It is necessary to strengthen overall planning of blockchain infrastructure in accordance with laws and regulations and carry out top-level design of blockchain application in the judicial field in view of the needs of economic and social development as well as that of trial and enforcement. Research on interoperation collaborative application models with all walks of life should be intensified to promote data sharing and collaborative application between different parties.

Upholding openness and sharing and prioritizing standards. It is necessary to build a blockchain alliance with interconnectivity and sharing among all social sectors, develop capabilities to support common fundamental technologies, establish a unified and open technical standard system for blockchain application in the judicial field, making standardized services available to cross-departmental node access and joint maintenance and utilization of data across different industries.

Underlining application and valuing innovation-based development. Guided by the principles of administering justice for the people, maintaining judicial fairness and facilitating social governance, it is necessary to give full play to the function of the blockchain in business process optimization, operation cost reduction, collaborative

efficiency improvement, trusted system establishment, and other fields. Consistent efforts are required to promote the in-depth application of blockchain in the judicial field and to improve the performance of blockchain in cross-domain automatic enforcement.

Ensuring security and reliability and highlighting orderly progress. On the premise of security and trustworthiness, it is necessary to work hard to improve the accuracy and controllability of stored data and smart contracts on the blockchain, ensure data security, and protect personal information, in a bid to foster an environment of blockchain application in the judicial field with steady progress, orderly development, security and reliability.

II. Requirements on building the blockchain platforms of the people' s courts

(4) Strengthening top-level design of blockchain application. In accordance with laws and norms, and the overarching concept of internal and external efficient collaboration, it is required to systematically design the scenarios of blockchain application in the judicial field in response to the needs of coordinating the court work with the improvement of social governance. In view of the needs of collaboration between internal and external networks, an overall plan for building a blockchain that is unified nationwide, enables inter-network and interoperation judicial application should be developed.

(5) Constantly advancing capacity building for interoperation collaborative application. In order to actively serve the economic and social governance and application scenarios of judicial work, it is required to build the infrastructure of the blockchain alliance based on distributed identification, interconnectivity, and interoperation mutual trust, effectively integrate the enforcement blockchain construction achievements, give full play to the technical strengths of the alliance chain, and boost the development of the interoperation alliance of the judicial blockchain platform and that of all walks of life so as to constantly enhance synergy.

(6) Enhancing technical capabilities of the judicial blockchain. It is required to gather superior strengths to make a breakthrough in key technologies, create an open and shared judicial blockchain platform among people' s courts nationwide, improve basic technical capabilities such as data verification, trusted operation, smart contract and interoperation collaboration, etc., and support people' s courts at all levels to engage in innovative application based on the judicial blockchain platform.

(7) Building an Internet-based judicial blockchain verification platform. Based on the data of the national judicial blockchain platform, it is required to build a judicial blockchain verification platform on the Internet, which enables parties and other relevant subjects to

verify the authenticity of mediation data, electronic evidence, litigation documents and other judicial data.

(8) Establishing and optimizing a standard system. It is required to establish and optimize the technical standards and management specification for the application of blockchain in the judicial field, and provide technical guidance and standardized access support for the interconnectivity, sharing and collaboration with blockchain platforms and nodes in relevant fields.

III. Making the most of the data tamper-proof technology of blockchain to further enhance judicial credibility

(9) Ensuring the security of judicial data. Judicial data of the people's courts, including electronic case files, electronic archives, judicial statistical reports and the status of concluding cases, are expected to be stored on the blockchain, to make sure the judicial data are tamper-proof and enhance data security.

(10) Ensuring trustworthiness of electronic evidence. It is necessary to perfect the evidence verification function of the blockchain platform, which enables parties and judges to verify the electronic evidence stored on the blockchain online, so as to contribute to setting sound standards and rules for blockchain-based storage and improve the efficiency and quality of electronic evidence identification.

(11) Ensuring compliance of enforcement operations. It is necessary to store data and operations, such as information on enforcement cases, information of parties and organizations, notice of enforcement, investigation and control of property, disposal of property, collection and distribution of money related to the cases, credit-based punishment, evidence collection, interactions of enforcement, reporting and conclusion of cases, archiving of cases on the blockchain, regularly carry out a security audit on operation of the whole process to enhance the normativity of enforcement operations, and consider the method of online closed-loop examination of sensitive operations such as investigation and control in enforcement, so as to make sure reliability and accuracy.

(12) Ensuring the authority of judicial instruments. It is necessary to uniformly store litigation documents served by the people's courts and receipts of service on the judicial blockchain platform, and allow online verification of served documents to make sure the security and reliability of the whole process of service, so as to eliminate concerns of the parties about the authenticity of served information and maintain the authority of judicial instruments being served.

IV. Giving full play of the essential role of blockchain in optimizing business processes to constantly improve judicial efficiency

(13) Enabling circulation and application of case-filing information. It is necessary to set operational rules on the classification and categorization and later automatic circulation of documents to be docketed so as to achieve the automatic docketing of cases after their classification and categorization upon the expiry of the prescribed period for submission of materials, consolidate the fruits of the reform on case-filing registration system and improve case-filing efficiency.

(14) Enabling connected application between mediation and trial procedures. It is necessary to set operational rules on automatically triggering the trial procedure or the enforcement procedure upon the failure to perform mediation agreements and launch the smart contract procedure, so as to cement judicial authority of the mediation procedure and support diversified dispute resolution.

(15) Enabling the connection between trial and enforcement procedures. It is necessary to comprehensively advance the interoperability and sharing of information and data between trial and enforcement case handling systems, and explore the possibility of making rules and linkage mechanisms on automatically triggering the enforcement procedure upon the failure to perform judicial decisions, so as to optimize the convergence from trial to enforcement, ensure the information is transformed smoothly, reduce duplicate work and solve the problems of enforcement difficulties.

(16) Enhancing the efficiency of enforcement. It is necessary to explore the possibility of establishing a smart contract mechanism to automatically investigate, freeze and seize property in eligible enforcement cases and distribute money related to the enforcement cases, so as to simplify the approval process under the premise of ensuring procedural compliance; establishing a smart contract mechanism to automatically file a case and resume enforcement without filing a separate case for cases where the enforcement procedure was suspended after the enforcement of the whole property discovered by unified investigation clues and settlement cases of enforcement for non-fulfillment of obligations.

(17) Enabling enforcement officers and police staff to handle cases more conveniently. It is necessary to utilize blockchain technology to promote the extension to mobile ends and formation of decentralized, de-networked, de-systematized data strings for online investigation and control, evaluation and auction, collection and distribution of money related to the cases, restriction of consumption for credit-related punished people, matters entrusted and electronic files generated with the case to enable enforcement officers and police staff to

handle enforcement matters more conveniently at anytime and anywhere.

V. Fully taping the tremendous potential of blockchain connectivity to enhance judicial collaboration

(18) Improving collaboration in verifying lawyers' qualifications. In response to the needs of verifying lawyers' qualifications, it is necessary to realize interoperation collaborative application between the people's courts and administrative organs, to enable online inquiry and verification of qualifications and credit reports of lawyers in litigation activities, with higher time efficiency.

(19) Improving collaboration in case handling between political and legal organs. To facilitate cross-departmental collaboration in operation involved in abatement from penalty, release on parole, criminal, civil and commercial cases and certification of citizenship, it is necessary to realize interoperation collaborative application between the people's courts and procuratorial, public security, judicial, administrative and other organs, so as to improve the efficiency of online case circulation and data mutual trust.

(20) Improving the capability of cross-departmental collaborative enforcement. To facilitate investigation and control of property subject to enforcement and cooperative punishment for judgment debtors subject to enforcement, it is necessary to realize interoperation collaborative application between the people's courts and organs involved in administrative law enforcement, immovable property registration, financial securities and insurance, or organs cooperatively imposing credit-based punishment, etc. and develop a model of automatically carrying out investigation and control in enforcement and imposing credit-based punishment, so as to improve the working efficiency of collaborative enforcement.

VI. Leveraging properties of the blockchain alliance of mutual recognition and trustworthiness to facilitate economic and social governance

(21) Protecting intellectual property. It is necessary to build an interoperation collaborative mechanism with blockchain platforms for intellectual property, such as copyrights, trademarks and patents, and enable inquiry about and verification of information related to intellectual property ownership, registration, transfer and others to facilitate the evidence identification of intellectual property cases, so as to further push forward the implementation of the national innovation-driven development strategy.

(22) Supporting the improvement of the business environment. It is necessary to build an

interoperation collaborative mechanism with blockchain platforms for market regulation, property registration, transactions and others, and enable inquiry about and verification of information related to the ownership registration and status of transactions, such as basic business profile, variation of corporate equities, correlation between businesses, ownership of immovables and movables, financial leasing, precious metal trading, to facilitate the identification of ownership and transactions of property rights, so as to intensify the development of the classified and categorized supervision system based on data and credit, and to further improve the national business environment.

(23) Underpinning data development and utilization. It is necessary to build an interoperation collaborative mechanism with blockchain platforms, such as data ownership, online data trading, etc., and enable inquiry about and verification of information related to data ownership confirmation and data trading and other processes as well as handling of smart contracts, to propel the construction of data markets and the release of data value, so as to better facilitate the implementation of the national big data strategy.

(24) Supporting circulation and application of financial information. It is necessary to build an interoperation collaborative mechanism with blockchain platforms of financial institutions, and enable inquiry about and verification of information related to approval, performance and default of financial loan contracts and credit cards as well as handling of smart contracts, so as to better contribute to preventing and resolving financial risks.

(25) Supporting bankruptcy and restructuring of enterprises. It is necessary to build an interoperation collaborative mechanism with blockchain platforms of relevant government departments, and enable interoperability and sharing of business information of debtor enterprises and information related to litigation and enforcement, and enable online verification and cross-examination of information of submission of creditor claims, strengthen open and transparent verification of creditor claims while safeguarding the right to information and access of all creditors, and further ensure the voting effectiveness of online creditors' meetings to better serve the rescue and exit of market entities.

(26) Facilitating the construction of the credit system. It is necessary to build an interoperation collaborative mechanism with the National Credit Information Sharing Platform, the National Enterprise Credit Information Publicity System, and credit-breaking punishment organs, and enable inquiry about and online verification of information of the blacklist of judgment debtors and people banned from high-spending as well as handling of smart contracts, to make sure the judgment debtors' information is generated reliably, transmitted securely and used compliantly, so as to further develop the function of cooperative punishment for credit-breaking individuals, contribute to improving the new

credit-based supervision mechanism, and push forward the construction of the social credit system.

VII. Guarantee measures

(27) Cementing organizational leadership. People's courts at all levels shall attach great importance to the development and application of blockchain in the judicial field, strengthen coordination, and specify leading departments in charge of overall progress and management of blockchain application.

(28) Establishing a collaborative mechanism. People's courts at all levels shall coordinate priorities of blockchain application in their respective jurisdictions, unite political and legal departments, social organs and other forces to strengthen the collaborative working mechanism, jointly promoting blockchain application in the judicial field.

(29) Strengthening support. People's courts at all levels shall incorporate blockchain application into the development plan of smart courts for coordinated implementation, and combine it with innovation of social governance of local governments, to seek funding support and expedite the progress.

(30) Paying attention to demonstration projects. People's courts at all levels shall choose relatively mature application scenarios to launch demonstration projects, with focus on needs of the economic and social development and the business needs of the people's courts, to form innovative models that can be reproduced and popularized.

(31) Ensuring security and reliability. People's courts at all levels shall optimize the pre-review, testing and evaluating mechanism to make sure the authenticity, accuracy and compliance of the stored data on the blockchain as well as the consistency of data on and off the chain, and make sure the legality, effectiveness, security and reliability of smart contracts.

(32) Taking active steps towards publicity and guidance. People's courts at all levels shall intensify publicity and promotion of best practices, and provide training on blockchain application for court officers and police staff, to improve the effects of blockchain application in the judicial field on all fronts.

The Supreme People's Court

May 23, 2022

(来源: <https://www.court.gov.cn/fabu-xiangqing-360271.html>)

国家知识产权局办公室关于印发专利开放许可试点工作方案的通知

国知办函运字〔2022〕448号

各省、自治区、直辖市和新疆生产建设兵团知识产权局，四川省知识产权服务促进中心，各地方有关中心：

为深入贯彻落实中共中央、国务院印发的《知识产权强国建设纲要（2021—2035年）》和国务院印发的《“十四五”国家知识产权保护和运用规划》决策部署，确保专利开放许可制度平稳落地、高效运行，大力推动知识产权转化运用，我局组织开展专利开放许可试点工作。现将《专利开放许可试点工作方案》印发给你们，请结合当地实际，认真贯彻落实。试点过程中如有突出问题、创新做法、典型经验等，请及时反馈我局知识产权运用促进司。

特此通知。

国家知识产权局办公室

2022年5月11日

专利开放许可试点工作方案

2021年6月1日施行的《专利法》创设了专利开放许可制度。目前，《专利法实施细则》和相关配套审查规则尚在修订中。根据《关于施行修改后专利法的相关审查业务处理暂行办法》（国家知识产权局公告第四二三号），过渡期内专利开放许可声明“只收不审”，制度尚未正式运行。为贯彻落实《“十四五”国家知识产权保护和运用规划》，加快推进知识产权转化运用，充分发挥要素市场化配置在经济发展中的重要作用，现组织开展专利开放许可试点工作，为专利开放许可制度全面落地做好政策、机制、平台、项目等各方面准备，特制定如下试点工作方案。

一、总体要求

（一）工作思路。本方案中的专利开放许可试点是开展试点的省级知识产权管理部门（以下简称试点省局）参照开放许可的理念和方式，促进专利“一对多”快速许可的工作举措。有别于由国务院专利行政部门接收并公布声明的法定开放许可，试点省局按照本方案确定的原则、任务和要求，参照开放许可制度的基本理念、特征和环节，组织相关地市、企事业单位和服务平台开展试点工作，推动许可意愿和条件由专利权

人事先明确、经试点省局公开发布的快速许可，力争达到激发供需、储备项目、探索经验和完善政策等多重效果，为专利开放许可制度平稳落地、高效运行奠定坚实基础。

(二) 基本原则。一是坚持市场导向。尊重市场主体、创新主体在专利许可活动中的意思自治，遵循市场规则，有效发挥市场机制作用。二是加强服务创新。结合本地实际，开拓工作思路，创新工作方法，更好发挥政府部门引导作用，提升试点成效。三是强化政策联动。在许可供给、需求对接、金融赋能各环节综合发力，统筹做好服务支撑、需求激励、跟踪监测、平台构建等各项工作，形成协同推进的工作格局。

(三) 预期目标。一是探索模式。充分发挥地方的积极性、能动性和示范带头作用，积累并贡献经验，在政策措施等方面探索形成可复制推广的模式，吸收上升为制度机制，支持完善开放许可规则体系。二是有效推广。发动、引导专利权人，特别是高校院所、中小企业了解熟悉和初步运用开放许可制度，为制度全面实施起到推广预热的作用。三是形成成果。2022年底前，超过100所高等院校、科研组织、国有企业参与试点，达成专利许可超过1000项，专利转化专项计划相关绩效指标有效提升。

二、试点方式

北京、上海、山东、江苏、浙江、广东、湖北、陕西等专利转化专项计划首批重点支持的8个省份，以及2022年新确定的重点支持省份，要根据本方案制定具体方案，其他省份可以自行确定是否制定具体方案。鼓励各省份根据本省份专利供给与需求的不同优势，有重点地部署试点工作。各知识产权运营服务体系建设重点城市、国家知识产权试点示范高校和优势示范企业要按照试点工作方案主动配合开展试点工作，鼓励其他高校院所、中小企业等各方积极参与试点。

试点期限为本方案与各省份具体方案印发之日起，至专利开放许可制度全面落地实施。

三、试点任务

(一) 搭建许可信息发布平台

1. 明确发布格式。试点省局制定试点方案时，可结合本地实际，对许可期限最低年限等事项作出具体规定，在此基础上制定专利许可信息表（见附件1），供专利权人填写提交。专利权人应当在许可信息表中对本专利不在专利独占实施许可或者排他实施许可有效期内、保证维持专利权有效等事项作出承诺。

2. 核查发布内容。试点省局可以依托专利代办处、知识产权运营平台等具备相应能力和公信力的机构，对拟发布专利的有效性、是否存在排他许可或独占许可、是否进行了质押登记等情况进行核查；就实用新型、外观设计专利提出声明的，可以要求专利权人提供专利权评价报告或检索分析报告。对于许可使用费明显不合理的，可以提示并予以指导。

3. 发布许可信息。试点省局通过依托的核查机构或相关公信力和影响力强的信息平台，集中公开发布许可信息表。公开发布的信息应至少包括专利号、专利权人名称、发明名称、许可使用费支付方式和标准、许可期限、专利权人联系方式等数据项。在国家知识产权局统一组织下，各试点省局公布的开放许可信息以网页链接、接口调用等方式进行共享，在有意愿和条件的知识产权运营等平台上进行展示发布，扩大受众面、提升成交率。

（二）促进供需对接

1. 激励引导供需。知识产权运营体系建设重点城市、国家知识产权试点示范高校按照试点省局的部署，积极参与试点各项工作。鼓励高校院所筛选有市场化前景、应用广泛、实用性较强、适于多地实施的专利技术参与试点。引导技术消化能力强的知识产权优势示范企业、“专精特新”等中小企业根据专利权人公布的许可条件，快速达成许可。

2. 拓展对接渠道。试点省局可在分析有关专利技术领域等信息的基础上，引导相关领域企业进行精准匹配，切实推进定向推送。充分利用知识产权展会、“知识产权服务万里行”等活动形式，为供需双方搭建对接平台。试点省局应及时了解掌握许可达成情况、专利实施成效等后续情况。

（三）做好定价指导等配套服务

1. 加强定价指导。试点省局要向专利权人广泛宣传一次性付费、提成支付、入门费附加提成支付等常见的支付方式；指导专利权人参考国家知识产权局已发布的“十三五”期间专利实施许可使用费数据中的同行业平均许可金额或费率，实现合理、公允、低成本定价；指导专利权人充分考虑开放许可“一对多”特点，适当降低许可使用费标准。鼓励专利权人进行阶段性免费许可，探索先试用、后付费等方式，更好激发许可需求方积极性，以合理有效的方式扩大许可收益。

2. 做好交易保障。试点省局明确的区域范围（可不限于本省）内，任何单位和个人接受信息表中公布的许可条件的，原则上专利权人应遵守承诺，不得拒绝达成许可。试

点省局提供专利开放许可（试点）合同样例（见附件2），引导许可双方明确基本权利义务，对必要事项进行约定，保障许可交易安全，促成快速许可。双方当事人可以对许可合同内容自行协商。专利权人提交许可信息表后进行专利权转移的，应当提请试点省局撤回已公布的信息。

（四）完善激励和规范措施

1. 制定激励措施。试点省局要结合专利转化专项计划实施，联合相关部门迅速制定资金奖补、人才职称评定等激励措施，鼓励高校院所制定相应激励措施。激励措施应符合转化运用导向，在许可达成后兑现，加强奖补资金的管理和许可实施核查，防止和打击骗补行为。

2. 开展纠纷调解。试点省局要充分运用已有的专利纠纷调解机制，对试点过程中产生的纠纷依法积极做好调解工作，指导许可双方维护自身合法权益。同时，可以发挥具有知识产权纠纷人民调解职能的机构作用，引入知识产权保护中心、相关行业协会有关机构参与调解工作。

四、支持措施

（一）给予业务指导。国家知识产权局与教育、工信等相关部门加强政策协同，引导高校院所、中小企业积极参与试点；及时推广试点经验，对试点工作涉及的信息核查、评估定价、交易保障给予支持、指导与协调。

（二）与法定制度优先衔接。对各地试点中质量高、市场前景好或已达成许可意向的专利，支持其向国家知识产权局提交法定专利开放许可声明。国家知识产权局将在制度全面实施后，依法快速予以审查公告。

（三）宣传推广典型经验。适时遴选并公开发布一批试点经验或典型案例，通过国家知识产权局政务微信公众号、中国知识产权报等途径进行宣传推广。对试点成效突出的，给予通报表扬。

五、进度安排

（一）部署阶段。

时间：2022年5月。

内容：国家知识产权局制定试点方案，部署召开线上动员会议。首批专利转化专

项计划重点支持省份完成试点方案制定和报送工作。

(二) 发动阶段。

时间：2022年6月。

内容：首批重点支持省份做好搭平台、选项目、出政策等各项准备工作；2022年新确定的重点支持省份及时启动试点工作，制定并报送试点方案。

(三) 试验阶段。

时间：2022年7月至制度全面实施时。

内容：试点省局全面组织开展试点工作。

(四) 总结阶段。

时间：制度全面实施时（或2022年11月）。

内容：试点省局进行前期工作总结，梳理试点成效。

六、工作要求

(一) 制定具体方案。要高度重视、精心设计，根据总体要求，制定本省份试点工作具体方案，于本方案印发之日起10个工作日内报送国家知识产权局知识产权运用促进司。2022年新确定的重点支持省份在正式入选后10个工作日内报送方案。已开展试点的省局，可在前期工作的基础上进一步完善试点方案，提升试点成效。

(二) 加强组织宣传。要加强组织动员，充分调动高校院所、中小企业、运营平台等的积极性，按照时间节点完成各阶段工作。要以线上线下等多种方式组织供需对接活动。要充分利用主流媒体、政府网站、微信微博等方式，加强对开放许可相关知识的宣讲解读。

(三) 注重试点成效。要及时总结试点成效，分析存在问题，第一时间报送工作简报或政务信息，试点结束时提交全面系统、反映成效的试点总结报告。试点成效将作为专利转化专项计划绩效评价与后续支持依据的重要方面，参与试点的情况将作为国家知识产权试点示范高校和运营服务体系重点城市及相关运用工作考核评价的重点内容。

(来源：https://www.cnipa.gov.cn/art/2022/5/17/art_75_175617.html)

国外特别关注

美国贸易代表办公室 (USTR) 发布《2022年知识产权保护和执法特别301报告》

2022年特别301报告详细介绍了：USTR在进行重大研究并加强与利益相关者的接触后，对100多个贸易伙伴的调查结果。

2022年特别301报告的关键要素包括：

1.由于俄罗斯在2022年2月有预谋和无端地进一步入侵乌克兰，对乌克兰的特别301审查已被暂停。

2.美国贸易代表办公室将对保加利亚进行周期外审查，以评估保加利亚在解决其调查和起诉在线盗版案件的缺陷方面是否取得了重大进展，特别是在刑事案件中未能采用证据抽样。

3.2022年特别301审查期间发生在COVID-19大流行期间，这是一个多世纪以来最大的全球健康危机。拜登-哈里斯政府支持根据世界贸易组织（WTO）《与贸易有关的知识产权协定》（TRIPS协定）放弃对COVID-19疫苗的知识产权保护。美国贸易代表办公室正在努力促进在知识产权方面取得成果，以便在世贸组织的164个成员之间达成共识，以帮助结束大流行。作为拜登-哈里斯政府为尽快向尽可能多的人提供尽可能多的安全有效疫苗而做出的全面努力的一部分，美国将继续与世贸组织成员接触。

4.美国正在密切关注中国在履行《美中经贸协定》（第一阶段协定）下的承诺方面取得的进展。2021年，中国颁布了《专利法》、《著作权法》和《刑法》的修正案，以及其他旨在解决知识产权保护和执法问题的措施。虽然权利人对这些发展表示欢迎，但他们继续对这些措施的充分性及其有效实施以及恶意商标、假冒和网络盗版等长期存在的问题表示关切。此外，中国官员将知识产权与中国市场主导地位挂钩的声明继续引起强烈关注。

5.一些贸易伙伴继续通过实施重大法律改革和加入国际知识产权条约来推进知识产权保护和执法。例如，阿拉伯联合酋长国于2021年颁布了新的工业产权、商标、版权和网络犯罪法。智利对《工业产权法》的修订于2022年1月生效。日本的《商标法》修正案于2022年4月生效。基里巴斯、乌干达和越南加入了《世界知识产权组织

《WIPO）表演和录音制品条约》和《世界知识产权组织版权条约》，统称为《世界知识产权组织互联网条约》。

6.对欧盟积极推行其排除性地理标志（GI）政策的担忧依然存在。美国继续大力促进和保护以通用名称标识或以其他方式以先前注册商标销售的产品的美出口商进入外国市场的机会。美国还担心将大部分地理标志申请审查程序移交给欧盟成员国，并缩短反对注册地理标志的期限，该地理标志是2021年通过并于2023年生效的欧盟共同农业政策的一部分。

报告还强调了贸易伙伴在解决和解决美国关注的知识产权问题方面取得的进展：

1.科威特今年被排除在观察名单之外，因为在利益攸关方确定的知识产权执法和透明度问题上取得了持续和重大进展。例如，商业和工业部和版权局分别创建了在线门户，以简化商标和版权侵权报告的提交。科威特还通过美国-科威特贸易和投资框架协议知识产权工作组的会议加强了参与和透明度。

2.沙特阿拉伯今年从优先观察名单中删除，原因是沙特知识产权局采取措施公布其知识产权执法程序；加强对假冒和盗版商品以及在线盗版内容的执法；建立专门的知识产权执法法院，配备训练有素的法官和快速的时间表；开展强有力的知识产权意识、外联、培训和支持；成立一个集中的委员会，协调多个机构的知识产权执法行动；并在76个不同的机构培训知识产权专家，以加强政府对知识产权法律的遵守。

3.罗马尼亚今年因采取重大行动改善知识产权保护和执法而从观察名单中删除。这些行动包括任命其首位国家知识产权执法协调员，建立一个新的经济警察部门，专门处理在线盗版案件，专门增加官员进行知识产权调查，以及总检察长办公室知识产权协调部恢复协调知识产权工作组会议。

4.黎巴嫩今年从观察名单中删除。在特别301审查期间，利益攸关方没有对知识产权保护或执法提出重大关切。

（来源：<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/april/ustr-releases-2022-special-301-report-intellectual-property-protection-and-enforcement>;

报告全文：<https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>)

世界知识产权组织 (WIPO) 发布《专利态势报告：交通运输领域的氢燃料电池》

在接下来的十年里，将需要结合技术创新、政府和企业决策，以及调整客户行为的方式，改变交通运输行业，使其成为一个实现净零排放的路径。由于交通运输占燃料燃烧产生的二氧化碳直接排放量的近24%，减少交通运输的温室气体排放至关重要。本WIPO专利态势报告提供了关于运输用氢燃料电池领域专利活动的早期观察，以及来自在线新闻、新闻稿和企业财务报告的补充信息。

报告目录

- 1.致谢
- 2.主要发现和见解
- 3.介绍
 - 3.1报告的动机和方法
- 4.用于交通电气化的氢燃料电池技术
 - 4.1燃料电池的领域概况、历史和全球专利发展
 - 4.1.1运输中的氢燃料电池技术:为什么是氢，为什么是燃料电池?
 - 4.1.2燃料电池的历史
 - 4.2燃料电池技术
 - 4.2.1总体概述
 - 4.2.2聚合物电解质或质子交换膜燃料电池
 - 4.2.3固体氧化物燃料电池
 - 4.2.4直接甲醇或液氨燃料电池及重整技术
 - 4.2.5磷酸燃料电池
 - 4.2.6碱膜燃料电池
 - 4.2.7熔融碳酸盐燃料电池
 - 4.2.8燃料电池技术的专利前景

4.2.9燃料电池回收

4.2.10燃料电池运输成本分析

4.2.11燃料电池回收路线图

4.2.12燃料电池自动化生产

5.运输中的燃料电池技术

市场应用程序崩溃

创新起源的观点

按专利申请人类型划分的专利申请量

市场观点分析:燃料电池在运输领域申请专利的国家有哪些?

将分析从专利申请数量转移到活跃的专利组合

公司动态和比较分析

该领域排名前20的高校和研究机构

5.1燃料电池应用:个人和商业道路车辆

5.1.1燃料电池作为增程工具

5.2燃料电池应用:船舶和海洋车辆

5.3燃料电池应用:航空和地面车辆

5.4燃料电池应用:轨道和轨道车辆

5.5燃料电池应用:特种车辆

6.应用于交通领域的燃料电池技术的未来

6.1技术准备水平(TRL)

6.1.1专利的角度来看

6.2商业可行性

6.3客户利益和问题

6.4行动需要

6.5未来的司机

6.5.1经济驱动程序

6.5.2政治上的司机

6.6运输用氢技术路线图与市场展望

7.附件

7.1术语表

7.2专利搜索

8.参考文献

报告摘编

(报告主要发现)

1.第三次专利申请浪潮势头强劲，运输领域燃料电池占燃料电池相关专利的四分之一。

2.专利申请活动集中于五大司法管辖区（中国、日本、美国、韩国和德国），这也是发明人的五大来源地。

3.行业中的大公司为专利领域做出了重大贡献，前30的专利申请人的专利申请占专利申请总量的40%。

4.由于高额的金融投资，专利领域正在出现新的参与者，如来自中国或者小规模的公司，但是大型公司依然主导着专利申请和活跃的专利组合。

5.专利申请情况表明，申请人对包含燃料电池在内的自动化生产的兴趣日益增长。

6.在旨在克服技术挑战的专利申请中，研究界（大学和研究机构）发挥着至关重要的作用。

7.燃料电池已经实现了高度的技术成熟，聚合物电解质膜燃料的专利申请量处于领先地位。

8.目前，中国是运输领域氢燃料电池相关专利申请的第一来源国，但是在总体活跃投资组合实力上，少有中国公司上榜。

9.相较于航空和航运，与公路运输业相关的专利申请是目前最大的技术类别。

10.随着重型汽车和公共汽车应用氢燃料电池，以延长车辆的行驶里程，公司越来越关注电池供电相关的电动汽车领域。

11. 氢燃料电池有望成为航空业实现气候目标的可行解决方案。

12. 供应链、物流脱碳的政策和企业承诺正在推动航运领域的专利活动。

13. 氢燃料电池作为柴油混合动力的替代品，用于实现铁路脱碳。

14. 氢燃料电池技术的普及取决于基础设施、可再生能源的可用性和电池技术的进步等系统性驱动因素。

（来源：<https://www.wipo.int/publications/en/details.jsp?id=4604>；

报告全文：<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1076-en-patent-landscape-report-hydrogen-fuel-cells-in-transportation.pdf>）

中文法学类核心期刊知识产权文章摘编

选刊范围：《中国社会科学》及 CSSCI（2021-2022）法学类核心期刊

1. 论 FRAND 承诺下标准必要专利许可费的确定方法

作者：郑伦幸

机构：南京理工大学知识产权学院；江苏省知识产权发展研究中心

摘要：基于私人协商定价过高的谈判成本，法院实际上承担了确定FRAND承诺下标准必要专利许可费的很多工作，“自上而下法”“自下而上法”“可比交易法”是目前各国法院适用的主要确定方法。现有标准必要专利许可费确定路径及方法的适用，在确定依据、决策预期、考量对象等方面存在不同程度的透明性、统一性及全面性问题。通过建构司法外仲裁方式，以国际商事仲裁机构作为确认主体，将标准制定组织的知识产权政策作为规定仲裁条款的规则框架，并对现有商事仲裁程序规则中的受案范围、仲裁员选任、方法适用、结果保密等方面作出相应适配性调整和设计，是突破现有FRAND承诺下标准必要专利许可费确定方法适用困境的可行路径。

关键词：FRAND承诺；标准必要专利；整体许可费；许可费堆叠；

（来源：《法学》2022年第5期）

2. 企业衍生数据的法律保护路径

作者：许娟

机构：南京信息工程大学法政学院

摘要：大数据和人工智能的结合形成了企业衍生数据财产性利益,但企业衍生数据并没有作为一种独立的数据类型获得法律保护。《个人信息保护法》从个人信息权益保护衍生到企业数据处理者的义务保护,个人信息相关数据利用制度的缺位导致现实中部分企业衍生数据的财产性利益保护不充分,企业衍生数据法律类型化有待在《个人信息保护法》的实施中予以完善。在其他保护路径都无法完全保护、无法明确其权利属性的

情形下,法院不得已采取反不正当竞争法保护路径。在《个人信息保护法》施行后,更为完善的法律保护路径是将《民法典》第127条涵盖的企业衍生数据引致到《民法典》第123条的知识产权权益保护范围,同时采用知识产权方法构建企业衍生数据基本权能的内容,进而在《个人信息保护法》的实施中加以适用。

关键词: 企业衍生数据; 知识产权方法; 财产性利益;

(来源: 《法学家》2022年第3期)

3. 知识产权行政行为所认定事实在民事诉讼中的效力

作者: 张海燕

机构: 山东大学法学院

摘要: 实务中行政行为所认定事实经常会成为后续民诉中的待证事实,但长期以来法规规范层面对于行政行为所认定事实在后诉效力之规定付之阙如,2020年11月最高人民法院施行的《知产证据规定》第6条首次明确了知识产权行政行为所认定事实在后诉中的相对免证效力。然而,该免证效之规定有待商榷,理由有二:一是知识产权行政行为所认定事实不具备成为免证事实之基本条件,二是免证效与行政行为公定力理论相冲突。知识产权行政行为所认定事实在后诉中应具证明效,这既符合行政行为公定力之理论内涵,亦有利于后诉案件事实的正确认定和当事人的程序权利保障。在证明效下,知识产权行政行为所认定事实在后诉中的性质是证据而非事实,其证据资格及证明力之评价属于后诉法官自由裁量之范畴。《知产证据规定》第6条本质上拓展了民事诉讼免证事实之范围,而该范围应被合理界定,特别警惕其不正当扩张,否则将会导致当事人之间举证责任配置失衡,损害程序主体之合法权益。

关键词: 行政行为所认定事实; 已决事实; 免证效; 证明效; 免证事实;

(来源: 《法学论坛》2022年第3期)

4. 数据产品的界定和法律保护

作者: 李晓珊

机构：上海对外经贸大学法学院

摘要：数据产品与原始数据、数据库特殊权利、著作权均不应被置于同一维度来考察。数据产品应属财产权，具有排他性和明确的权利内涵，具有占有、使用、收益和处分权能。在行为法保护路径下，反不正当竞争法对数据产品的“竞争主体”和“竞争范围”所作的扩张性解释存在泛化“一般条款”的趋势，弱化了司法的可预见性。因此，应通过赋权路径实现对数据产品的保护，但需要对以下问题保持关切：明确数据产品之财产权的内涵；数据控制者需被课以严格的再识别风险防范义务；基于数据流动、共享和增值的理念，网络平台作为数据的控制者，其限制访问的条款之正当性应受到质疑，且网络平台无权对访问者区别对待；数据产品的权利人可通过“可追溯日志”的方式来记录其对数据的增值过程；在面对公共利益的需要时，数据产品财产权应受到限制。

关键词：数据产品；财产权；权利内涵；赋权路径；

（来源：《法学论坛》2022年第3期）

5. 论比例原则在知识产权损害赔偿中的适用

作者：徐聪颖

机构：江西财经大学法学院

摘要：比例原则的基本功能在于,对彼此间存在冲突的原则进行权衡,以确定原则的合理实现程度。在知识产权侵权损害赔偿诉讼中,完全赔偿原则的遵循需要以对损害进行规范评价为基本前提。在这一评价过程中,权利人的利益救济与行为人的竞争、经营自由之间的价值碰撞决定了比例原则适用的必要性。对法官而言,比例原则在知识产权侵权损害赔偿中的适用主要围绕损害事实认定中的价值权衡与损害轻重判断中的价值权衡展开。其中,对损害事实有无的价值权衡主要体现在商标侵权领域;而对损害轻重的价值权衡主要考量涉案权利的受保护力度、行为的违法性强弱以及行为人过错轻重等因素,并通过损害的定位、赔付的标准、损害的原因力等途径得以体现。

关键词：知识产权；比例原则；侵权；损害赔偿；

（来源：《现代法学》2022年第3期）

6. 二次创作短视频合理使用规则的适用与完善

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摘要：自媒体技术的发展促进了二次创作短视频的兴起与繁荣，长视频平台与短视频平台、长视频创作者与短视频创作者之间的矛盾冲突随之产生。我国《宪法》第47条和《著作权法》第24条、鼓励短视频创作者创新以及最大化社会整体效用，分别为短视频创作者合理使用他人作品提供了规范、价值和经济分析方面的正当性。要素分析法是认定短视频创作行为是否构成合理使用的基本方法。作品性质要素、使用目的要素、替代性要素和适度引用要素在司法实践中存在认识上的分歧或误解，需要澄清。效果论和类型化有助于弥补要素法的缺陷。短视频创作中构成转化性使用需要满足在内容、目的、性质、功能方面与长视频存在实质差异，以及使用具有促进知识传播、鼓励创新的作用等条件。剪辑型短视频、解说型短视频和戏仿型短视频适用合理使用规则的可能性呈渐次增长的趋势。在弱化要素分析和扩张合理使用范围的情况下，需要建立长视频与短视频的收益共享机制。

关键词：短视频；合理使用；因素法；类型化；收益共享；

（来源：《政治与法律》2022年第5期）

7. 专利确权的属性重释与模式选择

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机构：西南政法大学民商法学院

摘要：发明创造获得专利权之后，对专利权效力的审查存在行政和司法两种确权模式，多数国家以一种模式为主，辅之另外一种模式进行矫正。我国专利确权采取的是行政模式，产生了程序冗长、关联诉讼、角色错位等问题。从申请人角度看，专利确权反映的是发明创造最终应否获得专利权的问题；从确权机构角度看，专利确权体现了行政确认的属性，具有一定的财产管理性质。就专利权而言，发明人的贡献是权利基础，国家专利行政机构的“登记”是行政确认，具有划定权利边界的功能。在管理知识产权的方法上，存在着事先管理和事后管理两种方法，不同的财产形态采取了不同的管理方法。在国家专利行政机构和司法机构之间，对专利采取哪种管理方法，重要的考

量要素是效率。我国《专利法》应当引入司法确权，对其权限进行合理配置，以克服行政确权的局限。

关键词：专利确权；司法确权；确权属性；财产管理；二元模式；

（来源：《中外法学》2022年第3期）

中文管理类核心期刊知识产权文章摘编

选刊范围：《中国社会科学》及国家自然科学基金委管理科学部认定 AB 类重点期刊

1. 盗版威胁下信息产品在线销售模式选择研究

作者：马敬佩 李文立

机构：大连理工大学经济管理学院

摘要：针对由信息产品制造商和在线平台组成的在线渠道供应链，将信息产品分为传统版本和数字版本，考虑数字盗版的威胁，构建了三种在线渠道合作模式：单一传统版本模式(S模式)、双版本分销模式(W模式)和双版本代销模式(A模式)，对比分析了不同模式下在线渠道参与者的利润，力图为在线渠道参与者的决策提供参考。研究发现，若正版与盗版差异较小，或盗版监管力度不足，制造商和在线平台都倾向于采取单一传统版本模式；否则，采取双版本模式更优，当佣金比例适中时，制造商和在线平台在代销模式下可达到双赢。

关键词：信息产品；在线平台；数字盗版；分销模式；代销模式；

（来源：《中国管理科学》2022年第5期）

2. 公平偏好视角下的专利联盟企业创新行为演化研究

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机构：1. 江苏大学管理学院

2. 中国计量大学经济与管理学院

摘要：专利联盟的专利交叉许可机制使专利具有了公共品属性，在无有效机制引导下，部分企业搭便车行为必然会影响其他成员持续研发的积极性，不利于联盟稳定发展。本文在公平偏好视角下，构建了专利联盟企业公共品博弈模型，通过利用费米规则在

MATLAB上模拟专利联盟企业创新行为演化过程，分析了联盟企业创新行为内在动机，并进一步引入惩罚机制，探究其对联盟企业创新行为演化过程的影响。结果表明：当嫉妒参数与羞愧参数之比低于某一阈值时，整个联盟才能呈现出稳定的高研发水平。在利己倾向的公平偏好情景下，在公共品回报乘数越高，却越会刺激搭便车；而在利他倾向的公平偏好情景下，当专利公共品回报乘数增加并超过阈值时，会促使整个联盟企业努力研发，此时许可收益增加也更有利于提高企业努力研发积极性，而且当存在联合惩罚机制时，惩罚也更有效果，但惩罚系数与惩罚成本之比必须大于某一阈值，才能抑制企业搭便车行为。最后提出了在专利联盟管理实践中促进企业积极创新的建议。

关键词：专利联盟；公共品博弈；公平偏好；联合惩罚；

（来源：《中国管理科学》2022年第5期）

3. 行业协会知识产权治理与集群企业集体维权行动——创新合法性的中介效应探索

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机构：浙江师范大学经济与管理学院

摘要：我国知识产权保护采取司法救济和行政执法相结合的双轨制保护模式。由于该模式存在着周期长、发现难和诉讼烦等不利因素，对那些以版权和外观专利为主要知识产权形式的集群企业创新保护有一定局限性。因此，一些集群中兴起了一种以地方性行业协会主导，集群企业广泛参与的集体维权行动，并成了集群内知识产权保护的重要辅助性手段。然而，行业协会何以能影响集体维权行动？它是如何影响集体维权行动进而起到保护知识产权作用的？这些问题仍未探明。为此，本文提出了行业协会知识产权治理的概念，引入创新合法性的视角，并基于案例观察与结构方程相结合的方法，对行业协会知识产权治理与集群企业集体维权行动的关系及关联机理进行了理论探讨和实证分析。结果发现：(1)行业协会实施知识产权治理活动对集群企业参与集体维权行动有显著地促进作用；(2)行业协会知识产权治理能够显著提升集群企业的创新合法性(创新规制合法性、创新规范合法性和创新认知合法性)；(3)具备创新规制合法性和创新认知合法性的集群企业参与集体维权行动的积极性越高；(4)创新规制合法性和创新

认知合法性对行业协会知识产权治理与集体维权行动的关系具有部分中介性作用，而创新规范合法性的中介效应不显著。。

关键词：行业协会；知识产权治理；创新合法性；集体维权；

（来源：《管理工程学报》2022年第3期）

外文法学类核心期刊知识产权文章摘编

选刊范围: WOS数据库SSCI外文法学期刊

1. Optimal licensing systems in Internet of Things ecosystems: the challenges of the exhaustion and value apportionment doctrines

作者: Amiee Y Liu

机构: University College London

摘要: There are four main types of licensing systems that could be optimal for standard-essential patents (SEPs) in the 5G and Internet of Things (IoT) era. The optimal system for a particular SEP may depend on: (1) the contribution of the SEP to the end-user products; (2) the need for price discrimination in the IoT market; and (3) the transaction costs at different levels of the supply chain. However, the strict application of the patent exhaustion and value apportionment doctrines can drive SEP licensors and licensees to a sub-optimal licensing system from a social welfare perspective. In order to encourage the adoption of optimal licensing systems, both the exhaustion and apportionment rules need to be applied with more flexibility.

关键词: standard-essential patents; licensing systems; patent exhaustion rules; patent

value apportionment rules; vertical supply chain; Internet of Things

(来源: [Queen Mary Journal of Intellectual Property](#). Volume12. Issue1. Page135-157. Feb 2022)

2. Community design infringement test before the General Court-an unfortunate setback

作者: Henning Hartwig

机构： Munich, Germany

摘要： On 21 April 2021, the General Court of the European Union in T-326/20 Bibita I misconstrued Article 25(1)(d) of the Community Designs Regulation which applies where a conflict exists between a later Community design and a prior international design registration extended to the EU. The latter's application was filed earlier (28 September 2016) but published only on 31 March 2017, after the date of filing of the later Community design application (13 March 2017). The case sets an unfortunate precedent for the future.

关键词： Community design; validity; scope of protection; infringement; degree of freedom of the designer; reciprocity

(来源：[Queen Mary Journal of Intellectual Property. Volume12. Issue1. Page158-163. Feb 2022](#))

3. Fair Use as Cultural Appropriation

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摘要： Over the last four decades, scholars from diverse disciplines have documented a wide variety of cultural appropriations from Indigenous peoples and the harms these have inflicted. Copyright law provides at least some protection against appropriations of Indigenous culture—particularly for copyrightable songs, dances, oral histories, and other forms of Indigenous cultural creativity. But it is admittedly an imperfect fit for combatting cultural appropriation, allowing some publicly beneficial uses of protected works without the consent of the copyright owner under certain exceptions, foremost being copyright's fair use doctrine. This Article evaluates fair use as a gatekeeping mechanism for unauthorized uses of copyrighted culture, one which empowers courts to sanction or disapprove of cultural appropriations to further copyright's goal of promoting creative production.

As codified in the 1976 Copyright Revision Act, the fair use doctrine's four-part test is supposed to help fact finders determine the reasonableness of an unauthorized appropriation. But, while the fair use test has evolved to address questions about the purpose behind an appropriation, the amount and substance of the work used, and the effects of the appropriation on the market for the work, the vital inquiry about the "nature" of the original work and the impact of unauthorized appropriation on its creative environment has been all but forgotten by lower federal courts.

Combining doctrinal analysis, settler-colonial theory, and ethnographic fieldwork involving ongoing appropriations of copyrightable Indigenous culture, this Article shows how the "forgotten factor" in the fair use analysis is key to assessing the real impacts unauthorized appropriations have on culturally diverse forms of creativity. Thus, if we are committed to the development of creativity in all of its varieties and natures, a rehabilitation of the forgotten factor is both urgent and necessary.

关键词: PROPERTY; LAW

(来源: CALIFORNIA LAW REVIEW. Volume109. Issue4. Page 1373-1442. AUG 2021)

4. A Fragility Theory of Trademark Functionality

作者: Sipe, MG (Sipe, Matthew G.)

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摘要: According to functionality doctrine, trademark protection cannot be granted for any feature that is essential to a product's use or purpose, or that affects the product's cost or quality. But because of the placebo effect, even seemingly inert names and symbols are imbued with precisely this kind of power. In fact, a wide variety of realworld phenomena challenge the prevailing understanding of trademark functionality, from the social uses of high-fashion marks to the cost reductions enabled by certification marks. More fundamentally, a valuable trademark of any kind should act to reduce search costs for consumers and improve quality through reputation. And yet, rather than leading to invalidation, all of these well-documented functionalities are apparently tolerated by trademark law-sometimes merely ignored, but often celebrated explicitly.

This Article proposes a more unified theory of functionality: fragility. Some product features affect cost, quality, use, and purpose in ways that are non-fragile-the effects would persist even if every producer were to copy the same feature. But some features affect the product in ways that are fragile-the effects would be degraded or broken through unchecked copying. In reality, only non-fragile functionalities are actually prohibited, whereas fragile functionalities are permitted and even encouraged. In a manner surprisingly similar to patent or copyright law, trademark law appears to carefully distinguish between improvements that require its protection in order to manifest, and those that do not.

This fragility theory not only better explains real-world case outcomes and the functionality doctrine's full history, but also offers a conceptual improvement that can be applied to all types of trademarks. A generic term, for example, exhibits non-fragile linguistic functionality. Moreover, fragility theory provides consistent answers to divisive boundary issues in trademark law, such as

overlapping protection under copyright, anti-dilution rights, and post-sale confusion doctrine. At the same time, recognizing this fragility pattern calls attention to potentially adverse consequences in terms of distributive justice and market competition-consequences that trademark law itself may not be able to remedy.

关键词： BRAND ; GOODS ; CONSUMERS ; MEDICATION ; PREFERENCE ; ANTITRUST; TASTE

(来源：[UNIVERSITY OF PENNSYLVANIA LAW REVIEW](#). Volume169. Issue6. Page 1825-1899. JUN 2021)

5. Beyond Trade War: Reevaluating Intellectual Property

Bilateralism in the US-China Context

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摘要： The Economic and Trade Agreement between the USA and the People's Republic of China (hereinafter the 'Phase One Agreement') concluded in January 2020 leaves many important questions unanswered. This article goes beyond narrow textualist approaches and seeks to conceptualize the current trade tension by providing an alternative narrative with a focus on China's post-Trade War commitments to higher intellectual property rights standards. In particular, it focuses on the bilateral interaction between the USA and China during and shortly after the Trade War and how the interaction impacts China's legal changes from a transnational law perspective. It further argues that US-reinforced intellectual property rights rules have potentially paved the way for further US-China trade and investment talks. However, in order to better maintain a long-term balance between preservation of policymaking autonomy and regulation of protectionist measures, an approach better aligned with the World Trade Organization framework needs to be pursued.

关键词： 无

(来源：[JOURNAL OF INTERNATIONAL ECONOMIC LAW](#). Volume24. Issue1. Page 53-76. MAR 2021)

外文管理类核心期刊知识产权文章摘编

选刊范围: WOS数据库SSCI外文管理期刊

1. Matching patents to compustat firms, 1980?2015: Dynamic reassignment, name changes, and ownership structures

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摘要: This paper describes the methodology used to construct a new sample of patents matched to Compustat firms for the period 1980?2015. We compare our data to existing NBER data sets and underscore several methodological improvements, including dynamic matching, company name changes, and ownership structures. We examine how our improved match changes results obtained from the ?01 and ?06 NBER patent files using comparable samples. Overall, we find that improved patent assignment leads to slightly higher estimates of patent value in market value regressions, as well as to higher estimates of the R&D elasticity in patenting regressions.

关键词: Innovation; NBER patent data; R&D; Market value; Measurement error

(来源: [Research Policy](#). Volume50. Issue5. JUN 2021)

2. A man is known by the company he keeps?: A structural relationship between backward citation and forward citation of patents

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摘要： Inventing is a recombinant process that involves searching and recombining different streams of knowledge. The value of invention is associated with not only how many prior inventions are considered, but also how they are related to each other. We introduce social network analysis broadly used in the social capital theory, and extend the dimension of analysis for the evaluation of patent value. This study employs U.S. pharmaceutical patent data and investigates whether the network characteristic of backward citations have significant effect on the future patent value. The empirical results suggest that the network features of backward citations measured by constraint, cohesion, and efficiency have statistically significant implication on the value of invention in both level and depreciation rate. The study also provides empirical evidence that the exploration strategy is more significantly and positively correlated with the future value of invention compared to the exploitation strategy of inventors.

关键词： Patent value; Social network analysis; Network structure of backward citation

(来源：[Research Policy, Volume50, Issue1, JAN 2021](#))

3. Six different approaches to defining and identifying promising technology through patent analysis

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摘要： Under the rapidly changing technological environments, a significant effort has been undertaken to investigate promising technologies for the future and, accordingly, numerous studies have been conducted to develop an approach for identifying such technologies. One of the most frequently adopted approaches is patent analysis given that patent data are regarded as one of the most valuable and widely accepted sources to understand innovation activities. The term promising technology has been used in various contexts, but little effort has been made to provide a clear definition of it. As different perspectives may lead to different results, defining this concept is essential to obtain the best possible results. Thus, this study aims to develop a taxonomy of the promising technologies, and the following six perspectives along with their relevant patent analysis approaches are examined: key, outlier, vacant, emerging, new, and converging technologies. The research findings indicate that the concept of promising technology

can be defined differently from diverse viewpoints, and this can be a basis for future studies.

关键词： Promising technology; identification; definition; patent analysis

(来源： [TECHNOLOGY ANALYSIS & STRATEGIC MANAGEMENT. MAY 2021](#))

4. Who are building technical knowledge mansions? Impact of patent cooperation networks on the generic technology R&D performance of emerging enterprises

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摘要： Technological competition between firms has changed from ordinary to generic technology (hereinafter, GT) innovation with the increasing complementarity and shareability of technology in the field of emerging technologies. While facing the R&D dilemmas and market failure of GT and its R&D process, here comes the question: who are contributing to the GT R&D in the process of building emerging technology knowledge systems? Using social network analysis and a patent panel dataset of 380 strategic emerging firms, our study empirically examines how patent cooperation networks influence the R&D performance of GT, and the moderating effect of alliance heterogeneity. We found that: (1) The network scale and network centrality of patent cooperation networks have a positive and significant impact on the R&D performance of GT, and the latter one shows a greater impact, while the network density of patent cooperation networks shows a negative and significant impact on the R&D performance of GT. (2) Alliance heterogeneity plays a positive moderating role between the network scale and R&D performance of GT, while the moderating effect turns to be negative between the network density/network centrality of patent cooperation networks and R&D performance of GT. Our study contributes lay a foundation for strategic decision-making and government promotion of GT R&D.

关键词： Patent cooperation network; generic technology (GT) R&; D alliance heterogeneity; emerging firms

(来源： [TECHNOLOGY ANALYSIS & STRATEGIC MANAGEMENT. AUG 2021](#))

5. Patent Citation Network Simplification and Similarity

Evaluation Based on Technological Inheritance

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摘要: In recent years, the speed of technology development and the number of issued patents are increasing rapidly. The relationships among patents, especially citation relationship, are getting more and more complicated. Hence, how to utilize patents and their citations effectively for studying technology development and assisting innovation is a significant research topic. In this article, we propose a framework to simplify complex patent citation networks and evaluate the similarity among patents based on technological origins and claim texts. First, we adopt the term frequency-inverse document frequency technique to convert patent claims into vectors. Second, based on these vectors, we compute the claim similarity between two patents with a citation relationship as a measure of technological inheritance. Third, the citation networks are simplified from the perspective of whole and maximum technological inheritance, respectively. Fourth, we take indirect citations and claim vectors into consideration for evaluating the similarity of any two patents on the aspect of technological elements. Finally, our framework is applied to surgical robot domain to reveal the development trend of technological inheritance and evaluate the technological similarity among patents. The main scientific contributions of this article include the following: First, we simplify patent citation networks from the perspective of technology based on patents' claims and their citations, which can be adopted in important patent detection and patent clustering, etc; Second, the similarity of two patents is evaluated in a more detailed way by considering their claims and the second order citing patents.

关键词: Patents; Semantics; Indexes; Technological innovation; Medical robotics; Market research; Bibliographies; Citation network simplification; citation strength; claim text; patent similarity; term frequency-inverse document frequency (TF-IDF)

(来源: [IEEE TRANSACTIONS ON ENGINEERING MANAGEMENT. SEP 2021](#))

6. Bridging Trends and Patents: Combining Different Data Sources for the Evaluation of Innovation Fields in Blockchain Technology

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摘要: The evaluation of various innovation fields of an emerging technology as well as their potential impact on a certain market, region, industry, or target group is a part of an innovation manager's day-to-day business. Such evaluations are usually based on a combination of information from a variety of data sources, which are used to decide whether to invest in the advancement or adoption of a technology. With the aim of supporting this decision-making process, we combine different data sources to identify and evaluate innovation fields by semantically bridging trend and patent data. We apply our method in the context of blockchain technology, show how trend data can be used and operationalized to identify innovation fields, and illustrate how patent data can be used to evaluate these innovation fields. Our data reveals that trend and patent data complement each other and that hybrid or multihybrid approaches to evaluate a technology's development lead to additional insights for the systemic anticipation of future perspectives as well as research pathways of innovation fields.

关键词: Market research; Patents; Technological innovation; Blockchain; Decision making; Semantics; Market opportunities; Blockchain technology; bridging data; lane diagrams; patent data; trend data

(来源: [IEEE TRANSACTIONS ON ENGINEERING MANAGEMENT. JAN 2021](#))

南湖学人成果速递

推介范围：中南财经政法大学知识产权研究中心之研究成果

吴汉东：计算机软件专利保护问题研究

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中文摘要：关于计算机软件保护模式的制度选择,大致经历了“反专利保护——著作权保护——著作权和专利权保护”的发展历程。从近代到现代,专利授权范围以及专利排除领域的立法规定并无实质性变化,各国专利实践多采取解释论立场,通过修改《专利审查指南》,以及法律规范解释和司法判例,将包括软件在内的新技术纳入专利客体之中。软件专利制度形成的法律基础在于软件的技术功能与发明专利之间的逻辑联系,其涉及的法律问题主要是:类分软件的技术思想及其表达,区别思想内容中的抽象算法与具体算法技术方案,明确程序算法的专利性判断规则,厘清程序算法属性与方法专利类型的关系。在我国,以《专利法》第2条(可专利主题条款)和第25条(专利排除条款)规定为基础,通过设定专利审查规则和司法裁判规则,软件专利保护实现了开放性的制度转变。面对未来,软件专利保护有必要在客体地位确认、授权审查标准、信息公开义务、权利保护期限等方面进行改进和完善。

关键词：计算机软件；软件专利；可专利性；方法发明；算法；

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