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CHINA PATENT GUIDE 2024

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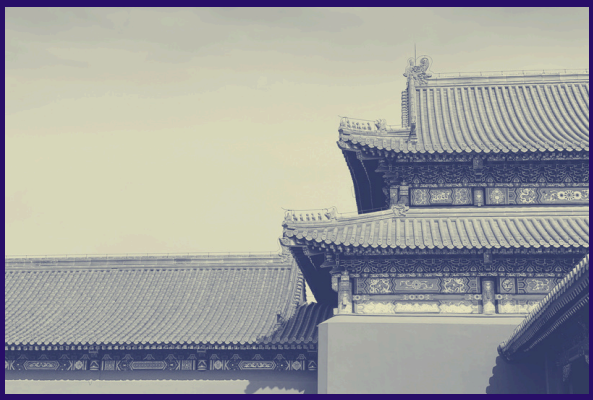
Introduction

YOUR ULTIMATE GUIDE TO CHINESE PATENT APPLICATIONS AND ENFORCEMENT



Welcome to the 2024 edition of our China Patent Guide, designed to help you navigate the evolving patent landscape in China. Building on our 2022 edition, this guide addresses key issues such as patent enforcement, prosecution, licensing, and recent developments shaping the Chinese patent system. We've also added answers to new questions that are likely to be of interest to you, ensuring you have the latest insights and practical advice. Whether you're protecting innovations or exploring licensing opportunities, this guide will serve as a valuable resource for your patent strategies in China.

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Chapter 1
Patent Enforcement

PATENT ENFORCEMENT

1.1 Before what tribunals can a patent be enforced against an infringer? Is there a choice between tribunals and what would influence a claimant's choice?

Patent cases in China are typically handled by Intermediate People's Courts, which oversee complex intellectual property (IP) cases. The competent court is determined by the defendant's domicile (where the infringer is located) or the location of the infringement.

Patentees have multiple options to file the case depending on the location and complexity of the case:

1) Specialized Intellectual Property Courts:

These courts, located in regions such as Beijing, Shanghai, Guangzhou, and the Hainan Free Trade Port, exclusively handle IP disputes, including patent infringement. They are particularly suited for invention patents, which often involve complex technical issues. Judges in these courts have significant experience in patent law and technical analysis, making them a preferred option for high-stakes cases.

2) Specialized IP Tribunals within Intermediate People's Courts:

In areas without specialized IP courts, certain Intermediate People's Courts have designated IP tribunals (or IP panels).

These tribunals are found in regions with significant economic or technological activity, such as Shenzhen, Hangzhou, and Suzhou. They handle both invention and utility model patent cases, with judges experienced in IP law.

3) Other Intermediate People's Courts:

In regions without specialized IP courts or tribunals, general Intermediate People's Courts handle patent cases. These courts may lack the technical expertise of the specialized courts, but they have jurisdiction over patent cases in their regions.

Several factors influence the choice of tribunal, including:

- **Judicial Expertise**: Specialized IP courts and tribunals typically have judges with more experience in patent law and technical matters, making them ideal for complex cases.
- **Trial Speed**: Courts with lighter caseloads can resolve cases faster. For example, the Beijing IP Court, while highly experienced, often has longer delays due to its high volume of cases.
- **Compensation Potential:** Certain courts, such as those in Beijing, are known for awarding higher compensation to patentees, but this may come with longer wait times due to caseloads.

- **Economic Considerations**: Courts in economically developed regions may award higher damages, making them attractive for patentees seeking substantial financial recovery.

1.2 Can the parties be required to undertake mediation before commencing court proceedings? Is mediation or arbitration a commonly used alternative to court proceedings?

In China, mediation and arbitration are both available as alternative dispute resolution mechanisms for patent disputes, but neither is required before filing a lawsuit.

Mediation is voluntary but often encouraged by the courts. It can occur before or during litigation. Some courts suggest pre-litigation mediation, where the parties have one to two months to negotiate before the case is formally accepted. If mediation is successful, litigation can be avoided; otherwise, the case proceeds. Mediation can also take place during litigation, and agreements reached can be formalized with the same legal effect as a judgment.

Arbitration, though less common in patent infringement cases, may be used if stipulated in a prior contract (e.g., patent licenses). Arbitration is more typical in contractual disputes related to patents and offers benefits like confidentiality and faster resolution. However, patent validity issues generally cannot be resolved through arbitration, as they fall under the jurisdiction of the China National Intellectual Property Administration (CNIPA).

1.3 Who is permitted to represent parties to a patent dispute in court?

In Chinese patent litigation, representation is not limited to licensed attorneys. Lawyers and non-lawyers can represent a party in court under certain circumstances.

1) Lawyers:

Licensed attorneys are the primary representatives in patent disputes. They must hold a valid legal license to practice law in China. While patent agents can represent parties before the CNIPA, they are less involved in courtroom litigation and focus mainly on patent applications and validity disputes.

2) Close Relatives:

Chinese civil procedure law permits close relatives (spouses, parents, adult children, or siblings) to represent a party in court.

This option is more frequently used in personal or small-scale cases but is allowed in patent litigation as well.

3) Employees of the Party:

In business-related patent disputes, an employee can represent their company in court. To qualify, the employee must provide proof of an employment contract and social security contributions to confirm their legitimate connection to the company.

4) Recommended Non-Lawyers:

Non-lawyers recommended by certain organizations can represent a party in court. These include:

- Community Representatives: Citizens recommended by the local community.
- Work Unit Representatives: Representatives recommended by work unit.
- Social Group Representatives: Citizens recommended by social groups.

These representatives do not require a legal license, but their appointment must be approved by the court. However, in complex patent disputes, courts may encourage the involvement of professional legal counsel to ensure effective representation.

The court retains discretion to accept or reject non-lawyer representatives, especially in cases requiring significant legal or technical expertise.

1.4 What has to be done to commence proceedings, what court fees have to be paid and how long does it generally take for proceedings to reach trial from commencement?

To initiate a patent infringement lawsuit in China, the following steps must be taken:

- **File a complaint**: The plaintiff must submit a written complaint to the competent court. The complaint should detail the infringement claim, the specific patents involved, and the relief sought (such as damages or injunctive relief).

- **Submit supporting evidence**: Along with the complaint, the plaintiff must provide evidence to support their claims, such as patent registration certificates, records of infringement, and expert opinions if technical aspects of the patent need explanation.

- **Power of Attorney**: If the plaintiff is represented by a lawyer, a power of attorney must also be submitted.

- **Pre-acceptance Review**: The court will conduct a preliminary review to check the completeness of the documentation and whether the case meets the formal requirements for acceptance.

Court fees in China for patent litigation are primarily based on the claim amount (the damages being sought) and are calculated on a sliding scale. These fees are governed by the *Measures for the Payment of Litigation Fees*. The main components of the costs include:

- **Case Filing Fee**: This is a percentage of the claimed amount. If the claim amount is low, a fixed base fee is applied. For example:
    - For claims under CNY 100,000, a fixed fee of around CNY 500-1,000 applies.
    - For claims exceeding CNY 100,000, the fee is a combination of a base fee plus a percentage of the excess amount, generally ranging from 0.5% to 4% depending on the total sum.
- **Other Costs:** These include appraisal fees, preservation fees (for asset freezing or evidence preservation), and service of process costs.

The time it takes for proceedings to reach trial in patent infringement cases depends on several factors, including the complexity of the case, the jurisdiction, and the court's caseload. Generally:

- **Pre-trial Review**: After the case is accepted, the court typically schedules a pre-trial hearing to examine the merits and clarify the issues. This process can take around 3 to 6 months from the date of filing.

- **Trial Date**: Most patent infringement cases will go to trial within 6 to 12 months after the lawsuit is filed, depending on the court's schedule and complexity of the case. In some IP courts with heavier caseloads, such as the Beijing IP Court, cases may take longer to reach trial, sometimes extending up to 18 months.

- **Delays**: Factors like mediation attempts, requests for technical appraisals, or the defendant filing for patent invalidation before the CNIPA can extend the timeline.

1.5 Can a party be compelled to disclose relevant documents or materials to its adversary either before or after commencing proceedings, and if so, how?

In China, broad discovery does not exist as it does in some other jurisdictions. However, recent amendments to the *Civil Procedure Law* have enhanced the court's ability to compel disclosure at various stages.

1) Before Commencing Proceedings:

Although China lacks formal pre-trial discovery, parties can request pre-litigation evidence preservation if there's a risk that key evidence may be lost or destroyed by the defendant. This tool is often used to secure technical or financial documents prior to filing a case.

2) After Commencing Proceedings:

Once litigation begins, the court can issue an Order to Produce Evidence under Article 112 of the *Civil Procedure Law* (amended in 2021). If a party refuses without valid reasons, the court can impose sanctions, including adverse inferences or ruling against the non-compliant party. Additionally, evidence preservation orders can be issued to secure documents that might otherwise be destroyed, which is particularly important in IP cases.

3) Exceptions:

Sensitive information, such as state secrets or trade secrets, may be protected under strict controls, with courts allowing only limited or redacted disclosures under confidentiality agreements.

1.6 What are the steps each party must take pre-trial? Is any technical evidence produced, and if so, how?

In Chinese patent litigation, the pre-trial process involves several key steps aimed at clarifying the issues and preparing technical evidence. Unlike some other jurisdictions, China does not have a formal claim construction process like a Markman hearing in the U.S.; instead, technical matters are usually dealt with through written submissions and expert evidence.

Both parties are required to exchange evidence before trial. This includes:

- Technical documents and expert reports explaining the patent and alleged infringement;
- Financial evidence related to damages; and
- Infringement analysis reports comparing the patented technology with the accused product or process.

Technical evidence plays a crucial role, especially for invention and utility model patents. Technical evidence is usually in the following forms:

- Expert Reports: Each party can submit technical expert opinions to explain complex aspects of the patent or to argue non-infringement.

- **Technical Appraisal**: Either party can request the court to appoint an independent expert to assess the technical issues. Courts may rely on these neutral opinions to assist in understanding the technology.

- **Technical Investigators**: Some courts have technical investigators who help the judges understand the case and may prepare reports on technical matters.

After evidence exchange, the court will typically hold one or several pre-trial conferences to:

- Narrow down the disputed issues,
- Clarify what evidence will be presented at trial, and
- Set timelines for any additional submissions.

In summary, pre-trial steps in Chinese patent litigation involve exchanging evidence, producing technical reports, and clarifying issues during the pre-trial conference. Technical evidence is crucial and may include expert opinions or court-appointed technical appraisals, but there is no formal claim construction process like the Markman hearings in the U.S.

1.7 How are arguments and evidence presented at the trial? Can a party change its pleaded arguments before and/or at trial?

In Chinese patent trials, arguments and evidence are presented through written submissions and oral hearings. The key aspects of trial presentation include:

- Written Submissions: Much of the argumentation and evidence are presented in written form, including technical reports, expert opinions, and infringement analyses. These documents are typically submitted before trial and reviewed by the court in advance.

- Oral Arguments: During the trial, parties may provide concise oral explanations of their arguments. Chinese courts often give judges significant leeway to ask questions and guide the oral presentation to focus on the most relevant issues.

- Technical Evidence: In complex patent cases, courts may rely on technical experts or technical investigators to help the judges understand the issues. Parties can present their own expert reports or call expert witnesses, although live testimony from experts is usually limited.

- Visual Aids: In recent years, presentation slides, animations, and demonstrations have become increasingly popular tools in Chinese patent litigation. These visual aids help explain complicated technical matters and assist judges in understanding the technology in dispute, especially for invention or utility model patents. Parties often use these tools during oral arguments to simplify the presentation of technical issues.

For change of pleaded arguments, parties can amend their arguments or claims before the trial begins, as long as the changes are made in a timely manner and do not prejudice the other party. The court usually sets deadlines for making such amendments.

Changing pleaded arguments during the trial is subject to stricter court control. A party must request the court's approval to modify its claims or defenses. The court may allow changes if they do not disrupt the proceedings or unfairly disadvantage the opposing party.

Introducing new evidence during trial is generally restricted, unless there is a legitimate reason for why it could not have been provided earlier (e.g., newly discovered evidence). The court has discretion to accept or reject such evidence.

1.8 How long does the trial generally last and how long is it before a judgment is made available?

The length of a patent infringement trial in China depends on factors like the complexity of the case and the court's caseload. For simple cases involving design patents, the trial typically lasts 1 to 2 days, whereas more complex cases involving invention or utility model patents can take 2 to 5 days or longer if multiple parties or technical analysis are involved. Unlike some jurisdictions, Chinese trials are usually scheduled consecutively within a short period, rather than spread out over weeks or months.

Once the trial concludes, the time to issue a judgment also varies. For simple cases, the judgment is typically issued within 1 to 2 months. In complex cases, particularly those with intricate technical issues, the court may take 3 to 6 months to deliver the judgment, with delays possible in courts with heavy caseloads like the Beijing IP Court.

Chinese courts are generally required to adhere to statutory time limits for civil cases, which differ for domestic and foreign-related cases. For patent cases involving only domestic parties, the court generally aims to issue a judgment within 6 months from the date the case is formally accepted. However, for more complicated cases, the court may apply for an extension. This extension period can be approved based on the complexity of the case, which may add several more months to the timeline.

In foreign-related cases, where one or more parties are foreign entities or individuals, there is no statutory time limit for rendering a judgment. The process can take longer due to cross-border legal issues, translation requirements, or the need to collect foreign evidence, which may prolong the overall timeline.

1.9 Is there any alternative shorter, flexible or streamlined procedure available? If so, what are the criteria for eligibility and what is the impact on procedure and overall timing to trial?

Yes, there are alternative, faster procedures available for patent infringement disputes in China, primarily through administrative enforcement handled by both the local Intellectual Property Offices (IPOs) and the CNIPA. These options offer a more streamlined process compared to court litigation.

1) Administrative Enforcement by Local IPOs:

This process typically resolves cases within 3 to 6 months, making it much faster than court litigation. Local IPOs can investigate patent infringement claims and issue injunctions to halt infringing activities but do not have the authority to award monetary compensation.

2) Administrative Enforcement by CNIPA:

For more significant or complex patent infringement disputes, the CNIPA can step in. This is particularly relevant for cases that have a broader national impact or involve complex technologies. CNIPA has enhanced its ability to handle such disputes with the 2021 *Patent Law* amendments, which further strengthen its role in addressing major patent infringement issues. CNIPA can conduct investigations and issue rulings, though, like the local IPOs, it cannot grant monetary damages.

Administrative enforcement is best suited for clear-cut cases where infringement is straightforward and does not involve intricate technical analysis. For more complex matters, litigation may be the better route.

Administrative actions through IPOs or CNIPA offer faster resolutions, generally taking 3 to 6 months compared to 1-2 years for court litigation. However, because they cannot provide compensation, patentees seeking financial recovery will need to file a separate lawsuit after the administrative ruling.

It is important to note that China is actively working to strengthen IP protection through various law amendments and policy initiatives. These reforms are aimed at improving the efficiency of administrative enforcement, empowering both local IPOs and CNIPA to handle patent disputes more swiftly and effectively.

This reflects China's broader commitment to enhancing its intellectual property framework, offering patentees faster and more flexible means of protecting their rights.

1.10 Are courts obliged to follow precedents from previous similar cases as a matter of binding or persuasive authority? Are decisions of any other jurisdictions of persuasive authority?

In the Chinese legal system, court decisions do not serve as binding precedent in the same way they do in common law systems. Courts are not legally required to follow previous rulings in similar cases. However, there is an increasing trend toward promoting uniform application of the law, with courts showing greater deference to past decisions, particularly guiding cases issued by the Supreme People's Court Supreme People's Court (SPC).

Introduced by the SPC in 2010, guiding cases are selected to help ensure consistency in legal rulings. Although not formally binding, they carry significant persuasive authority and are meant to be followed by lower courts in similar cases.

In addition, courts are more frequently consulting earlier judgments and showing deference to previous rulings in order to maintain consistency in legal outcomes. This trend reflects a gradual movement toward a more standardized approach to legal interpretation.

Chinese courts do not consider foreign legal decisions as persuasive authority. Courts rely primarily on domestic law, judicial interpretations, and guiding cases. While foreign law may be referenced in specific cross-border disputes or international arbitration cases, such references are rare and case-specific.

1.11 Are there specialist judges or hearing officers, and if so, do they have a technical background?

In China, there are no specialist judges in the formal sense, but patent cases are often handled by judges who are part of specialized IP panels within the courts. These judges have extensive experience handling IP cases, making them well-equipped to manage patent disputes.

In cases involving complex patents, such as invention patents, courts may appoint technical investigators. These investigators have science or engineering backgrounds and are tasked with helping judges understand the technical aspects of the case. While technical investigators play a crucial role in explaining technical issues, they do not have decision-making authority. They provide technical analysis and assist the court by clarifying complex technologies, allowing the judges to make more informed rulings.

1.12 What interest must a party have to bring (i) infringement, (ii) revocation, and (iii) declaratory proceedings?

i) Infringement Proceedings:

To bring a patent infringement claim, the plaintiff must have a legal interest in the patent. This includes:

- Patent holder: The patentee, who holds the exclusive rights to the patent, can file an infringement lawsuit.
- Licensee: A licensee may also bring an infringement action if they hold an exclusive license. Non-exclusive licensees generally do not have the right to initiate infringement proceedings unless the license agreement specifically grants this right. The licensee must have a clear legal interest in enforcing the patent.

ii) Revocation Proceedings:

Under *Chinese Patent Law*, any party with a legitimate interest in the matter (e.g., a competitor or potential infringer) can file for revocation of a patent. This broad definition allows various stakeholders to challenge the validity of patents that may affect their business operations.

iii) Declaratory Proceedings:

Declaratory relief can be sought by interested parties under specific conditions, primarily when there is uncertainty over patent rights or the threat of litigation. According to relevant judicial interpretation, a party may bring declaratory proceedings if:

- the party receives a patent notice (e.g., a cease and desist letter) from the patentee, and;
- the party requests the patentee in writing to take further legal action, and;
- the patentee does not take action within 1 month of receiving the written request, or within 2 months of the letter being sent, if no reply is received.

Additionally, under Article 76 of the *Patent Law* (as amended on June 1, 2021), in the context of pharmaceutical patents, an applicant for drug marketing authorization can bring declaratory proceedings to resolve patent disputes. If a dispute arises during the review and approval process of a drug, either the drug marketing authorization applicant or the patent holder can request the court to determine whether the drug in question infringes existing patents before it enters the market. This provision is particularly relevant for resolving patent disputes in the pharmaceutical industry.

1.13 If declarations are available, can they (i) address non-infringement, and/or (ii) claim coverage over a technical standard or hypothetical activity?

i) Declarations of Non-Infringement:

Yes, declaratory judgments can be sought to address non-infringement. According to *Chinese Patent Law*, an interested party may request a court to issue a declaration of non-infringement if there is uncertainty over whether their activities fall within the scope of the patent in question. This typically arises when the patentee has sent a warning letter or cease-and-desist notice, and the recipient (often the alleged infringer or an entity with a potential conflict) wishes to clarify their legal position without waiting for the patentee to file a formal lawsuit.

ii) Declarations on Technical Standards or Hypothetical Activity:

In practice, Chinese courts are less likely to grant declarations related to technical standards or purely hypothetical activities.

Declarations concerning whether a patent claim covers a technical standard are typically addressed through other legal mechanisms, such as licensing negotiations or during patent infringement or invalidation proceedings. However, courts are generally cautious about issuing declarations that patent claim covers a technical standard.

Also, Chinese courts are also reluctant to issue declarations based on hypothetical activities that have not yet occurred. Declarations in China are intended to resolve actual legal disputes rather than theoretical questions. Therefore, the courts will usually require a concrete set of facts - such as an existing product or process that might be infringing - before issuing any declaration.

1.14 Can a party be liable for infringement as a secondary (as opposed to primary) infringer? Can a party infringe by supplying part of, but not all of, the infringing product or process?

Yes. *Chinese Patent Law* recognizes secondary infringement. A party can be held liable for contributing to patent infringement, such as by: 1) supplying essential parts of an infringing product or process, knowing that they will be used to infringe a patent; or 2) inducing or assisting another party to commit infringement, even without directly participating in the infringing activity.

For liability, the supplied component must be essential to the patented invention, and the party must know or should have known that their actions would lead to infringement.

1.15 Can a party be liable for infringement of a process patent by importing the product when the process is carried on outside the jurisdiction?

Yes, under *Chinese Patent Law*, a party can be held liable for infringing a process patent by importing a product made using that patented process, even if the process itself was carried out outside of China.

According to Article 11 of the *Chinese Patent Law*, using, offering for sale, or importing a product obtained directly through a patented process is considered infringement. This provision allows patent holders to protect their process patents from exploitation, even when the infringing activity occurs outside of China but the resulting product is imported into China.

1.16 Does the scope of protection of a patent claim extend to non-literal equivalents (a) in the context of challenges to validity, and (b) in relation to infringement?

a) Validity Challenges:

In China, when challenging the validity of a patent, the analysis generally focuses on the literal wording of the patent claims. Typically, the focus is on the claim language itself and its interpretation according to the claims and the specification, without extending protection to non-literal equivalents in this context. Non-literal equivalents are not typically considered when determining whether a patent is valid.

b) Infringement:

In the context of patent infringement, Chinese law does recognize the doctrine of equivalents. Under this doctrine, a product or process that does not literally fall within the scope of the patent claims may still infringe if it performs substantially the same function, in substantially the same way, to achieve substantially the same result as the patented invention.

1.17 Can a defense of patent invalidity be raised, and if so, how? Are there restrictions on such a defense e.g. where there is a pending opposition? Are the issues of validity and infringement heard in the same proceedings or are they bifurcated?

In China, patent invalidity cannot be raised as a direct defense in infringement proceedings. Instead, the defendant must challenge the patent's validity by filing a patent invalidation request with the CNIPA. The examination of patent validity usually takes around 6 months. During this time, the court may continue the infringement proceedings but usually will issue a final ruling based on the outcome of the invalidation process.

If the CNIPA confirms that the patent remains valid after the examination, the court will deliver its judgment based on the valid patent claim. A defendant may file a second invalidation request or file administrative litigation over the first invalidation decision, but the court is not required to wait for subsequent decisions before delivering its judgment.

1.18 Is it a defense to infringement by equivalence that the equivalent would have lacked novelty or inventive step over the prior art at the priority date of the patent (the "*Formstein* defense")?

In *Chinese Patent Law*, there is no direct equivalent to the *Formstein* defense. In cases of infringement by equivalence, the focus remains on whether the alleged infringing product or process performs substantially the same function in substantially the same way to achieve substantially the same result as the patented invention (the standard for the doctrine of equivalents). If the equivalent product or process meets these criteria, it may be considered infringing, regardless of whether the equivalent itself would have lacked novelty or inventive step.

That said, if the defendant can prove that the equivalent solution they used can be classified as prior art, they may overcome the infringement claim, as prior art is a valid defense to patent infringement. Additionally, even if the equivalent solution is not patented, the defendant may continue using their technology within the original scope if it was self-developed by the defendant and used before the patent was filed.

1.19 Other than lack of novelty and inventive step, what are the grounds for invalidity of a patent?

In addition to lack of novelty and lack of inventive step, the *Chinese Patent Law* provides for several other grounds on which a patent can be invalidated:

- Insufficient Disclosure: If the description of the invention does not sufficiently disclose the technical details, enabling a person skilled in the art to carry it out (Article 26.3). Insufficient disclosure can result in invalidation if the patent specification is vague or incomplete.

- Unclear or Unsupported Claims: If the claims are unclear or are not fully supported by the description (Article 26.4). This applies when the claims fail to define the scope of protection in a clear manner, or when the description does not sufficiently support the breadth of the claims.

- Modifications Outside Original Scope: If the claims have been amended beyond the scope of what was originally disclosed in the application (Article 33). This prevents applicants from introducing new subject matter that was not included in the initial patent application.

- Lack of Necessary Technical Features: A patent claim may be invalidated if it does not include all the necessary technical features that are essential for solving the technical problem it claims to address (Rule 23.2 of the *Implementing Regulations of the Patent Law*). This ensures that the claim encompasses all the elements necessary to achieve the intended invention.

- Lack of Good Faith: Newly introduced as of January 20, 2024, Rule 11 of the *Implementing Regulations* requires patent applicants and holders to act in good faith. A lack of good faith, such as filing patents for improper purposes or engaging in bad-faith conduct, can be grounds for invalidity. This addition strengthens the legal framework by ensuring ethical behaviour in patent filings.

1.20 Are infringement proceedings stayed pending resolution of validity in another court or the Patent Office?

In China, infringement proceedings are not automatically stayed when a patent invalidation claim is filed with the CNIPA. The court has discretion to continue with the infringement lawsuit or suspend the proceedings based on the circumstances of the case.

For invention patents, as they undergo substantive examination during the application process, courts may choose to proceed with the litigation despite the ongoing invalidation proceeding. However, if the judge deems the evidence filed in the invalidation claim to be sufficient, they may suspend the litigation and wait for the invalidation result from CNIPA.

Regarding utility model and design patents, since they do not undergo substantive examination before being granted, the judge will usually suspend the infringement proceeding once the defendant files a request of invalidation with the CNIPA. However, if the plaintiff provides a patent evaluation report or if the validity of the patent is upheld by CNIPA, the court can choose to proceed with the infringement case.

1.21 What other grounds of defense can be raised in addition to non-infringement or invalidity?

Beyond non-infringement and invalidity, the following defenses can be raised in Chinese patent cases:

- Exhaustion of Rights: Once a patented product is sold by the patentee, the patent rights are exhausted, allowing the buyer to freely use or resell the product.

- Prior Use Right: If the defendant was using the patented invention before the patent filing, they can continue use within the original scope.

- Experimental Use: Use of the patented invention for research or experimentation, not for commercial purposes, is permitted.

- Statutory/Compulsory Licensing: If a compulsory license is granted, the defendant can use the patent without being liable for infringement.

1.22 (a) Are preliminary injunctions available on (i) an *ex parte* basis, or (ii) an *inter partes* basis? In each case, what is the basis on which they are granted and is there a requirement for a bond? Is it possible to file protective letters with the court to protect against *ex parte* injunctions? (b) Are final injunctions available? (c) Is a public interest defense available to prevent the grant of injunctions where the infringed patent is for a life-saving drug or medical device?

After the latest judicial interpretation by the SPC, preliminary injunctions are no longer available on an *ex parte* basis in patent infringement cases. Both parties must be notified and given the opportunity to present their arguments before a preliminary injunction can be issued. The court evaluates whether the patentee has strong evidence of infringement and whether the injunction is necessary to prevent irreparable harm. A bond is typically required to cover potential damages if the injunction is later deemed unnecessary.

In China there are no similar procedures regarding protective letters. Filing protective letters will not affect a preliminary injunction.

Final injunctions are available in China. These are typically granted once the court has found the defendant to be infringing the patent.

Theoretically, public interest defenses are available to prevent the grant of injunction for life-saving drugs or medical devices, but this has not happened in practice.

1.23 Are damages or an account of profits assessed with the issues of infringement/validity or separately? On what basis are damages or an account of profits assessed? Are punitive/flagrancy damages available?

In Chinese patent litigation, damages or account of profits are typically assessed together with the issues of infringement. There is no separate proceeding solely for the calculation of damages. That said, recent amendments to the *Civil Procedure Law* allow Chinese courts to issue partial judgments, where the court first rules on infringement and later assesses damages or profits in a separate phase. This process is useful in cases where infringement is clear, but calculating damages requires more time or evidence, especially in complex patent cases involving expert testimony or financial assessments.

Damages in patent infringement cases are generally calculated on the basis of the actual loss suffered by the patentee, or if that is difficult to determine, the gains or profits obtained by the infringer. If neither actual losses nor infringer's gains can be ascertained, the court may award damages based on reasonable royalties. If all other methods are difficult to quantify, Chinese courts may award statutory damages, which range up to CNY 5 million, in consideration of the type of the patent right, and the circumstances of the infringing act.

Punitive damages are available in cases of willful infringement or serious misconduct. Courts may award up to 5 times the calculated damages if the infringement is deemed intentional and egregious, such as in cases where the infringer continued infringing after being notified or where the infringer acted with clear disregard for the patentee's rights.

1.24 How are orders of the court enforced (whether they be for an injunction, an award of damages or for any other relief)?

In China, enforcement of court orders requires active application by the plaintiff and is primarily handled by the Enforcement Division of the people's court. The process is initiated after the court's judgment becomes final and enforceable.

For injunctions, if the defendant does not comply with the court order, the plaintiff must apply to the court for enforcement. The court can impose penalties, such as fines or asset seizures, and the defendant may face criminal liability for continued non-compliance.

If the defendant fails to pay damages, the court may freeze their bank accounts and deduct the owed amount if funds are available. However, if the account has insufficient funds, enforcing compensation becomes more challenging. The court may also seize property or other assets, but the effectiveness depends on the defendant's asset availability.

1.25 What other form of relief can be obtained for patent infringement? Would the tribunal consider granting cross-border relief?

In addition to injunctions and damages, Chinese courts can order the destruction of infringing products and the tools used to manufacture them, ensuring they are removed from circulation.

Chinese courts generally do not grant cross-border relief for patent infringement. Their jurisdiction is limited to actions within China.

1.26 How common is settlement of infringement proceedings prior to trial?

Settlement of patent infringement proceedings in China is relatively common, as courts encourage parties to settle disputes before the trial stage. This is often achieved through court-mediated settlements or negotiations between the parties. In the case of a settlement, the plaintiff will withdraw the case after both parties sign a settlement agreement, and the judge will not issue any judgment.

1.27 After what period is a claim for patent infringement time-barred?

In China, the statute of limitations for filing a patent infringement claim is 3 years from the date the patent holder or any interested party became aware or should have become aware of the infringement and the identity of the infringer.

For cases of ongoing or repeated infringement, the patentee may claim for each instance of infringement as long as it falls within the three-year limitation period from when the claim is filed.

1.28 Is there a right of appeal from a first instance judgment, and if so, is it a right to contest all aspects of the judgment?

Yes, any party dissatisfied with the first instance judgment has the right to appeal.

The appellant can contest all points of the judgment, including findings on both infringement and damages, as well as procedural issues. The appellate court reviews both the facts and legal issues of the case, allowing for a full examination of the contested points.

1.29 What effect does an appeal have on the award of: (i) an injunction; (ii) an enquiry as to damages or an account of profits; or (iii) an order that a patent be revoked?

If an appeal is initiated, the enforcement of an injunction will be suspended pending the outcome of the appeal. Also, the infringer is not required to make payment of the damages until the final decision is made by the appellate court.

If a patent is revoked as a result of a validity challenge, and the decision is appealed, the revocation is temporarily suspended until the appeal is resolved.

During the appeal process, the patent remains in effect, but if the CNIPA has already declared the patent invalid due to lack of inventiveness, the appeal court may temporarily dismiss the infringement claim until the validity issue is fully resolved. If the invalidation decision is overturned, the patentee can refile an infringement claim.

1.30 Is an appeal by way of a review or a rehearing? Can new evidence be adduced on appeal?

In China, an appeal is conducted as a rehearing rather than a mere review. The appellate court re-examines both factual and legal issues from the first instance decision. This allows the appellant to challenge the entire decision, including both the facts established during the original trial and the application of the law.

New evidence can be introduced during the appeal if: 1) it was unavailable or unobtainable during the original trial, despite reasonable efforts to produce it; and 2) it is relevant and could potentially affect the outcome of the case.

However, the court generally prefers that all evidence be presented at the first instance, and will closely scrutinize any new evidence to determine whether it should be admitted during the appeal.

1.31 How long does it usually take for an appeal to be heard?

In general, it takes about 3 months for an appeal to be heard. If one party is a foreign entity or a foreign individual, it may take 6 months or longer for an appeal to be heard.

1.32 How many levels of appeal are there? Is there a right to a second level of appeal? How often in practice is there a second level of appeal in patent cases?

In general, there is one level of appeal in China. The judgment from the second instance is considered final and binding. While the second instance judgment is final, a dissatisfied party may file a retrial request before the Supreme People's Court. However, the retrial is discretionary and does not suspend the enforcement of the second instance judgment, unless the Supreme People's Court accepts to review the case and orders a suspension.

In practice, retrial requests are rarely granted. The SPC only reviews cases involving significant legal issues or matters of national importance, so most patent disputes are resolved after the first appeal.

1.33 What are the typical costs of proceedings to a first instance judgment on: (i) infringement; and (ii) validity? How much of such costs are recoverable from the losing party? What are the typical costs of an appeal and are they recoverable?

For infringement proceeding, the typical costs include court fees, evidence collection fees, and attorney fees. Court fees are generally calculated based on the amount of damages claimed (see Question 1.4 for details.) The official fee for an appeal is generally the same as for the first instance. Attorney fees can vary widely, depending on the complexity of the case and the region.

In patent cases, the plaintiff's reasonable costs (including attorney fees, expert fees, and other necessary litigation expenses) are recoverable if the plaintiff prevails. The court determines the reasonableness of these fees based on the complexity of the case and the efforts required.

For validity challenges, costs mainly include official fees and legal fees. If the invalidation procedure is initiated during infringement proceedings, these costs may also become part of the litigation expenses.

The official fee to file a patent invalidation request with the CNIPA is RMB 3,000 for invention patents and RMB 1,500 for utility model or design patents. Regardless of the outcome, the petitioner must bear these official fees. Even if the patent is declared invalid, the patentee is not required to reimburse the invalidation fee.

If a party is dissatisfied with CNIPA's invalidation decision, they may file an administrative litigation case before the Beijing IP Court, with an official fee of RMB 100.

1.34 What mechanisms are available for obtaining evidence from an opponent, from third parties or from outside the country for proving infringement, damages or invalidity?

In China, several mechanisms are available for collecting evidence in patent litigation cases.

To collect evidence from the opponent, there is the mechanism of Order to Produce Evidence. Courts can compel the opposing party to produce relevant evidence, such as financial or technical documents. If the opposing party fails to comply, the court may infer that the withheld evidence is unfavorable to them.

To collect evidence from third parties, the court may issue a Court Investigation Order. This allows the court to collect necessary evidence from third parties, such as suppliers or distributors, which may prove infringement or help in assessing damages.

For pre-litigation evidence preservation, the plaintiff can apply to the court to secure evidence before initiating the case. This measure is particularly useful when there is a risk that the infringer may destroy or alter crucial evidence. The court can order the seizure of infringing goods, production records, or financial documents.

When it comes to evidence from outside the country, such evidence is admissible in Chinese courts if it has been properly notarized and authenticated by the relevant foreign authorities. This ensures the evidence is legally valid for use in court proceedings in China. However, while foreign evidence can be used, it is generally more challenging to obtain compared to domestic sources.

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Chapter 2
Patent Amendment

PATENT AMENDMENT

2.1 Can a patent be amended *ex parte* after grant, and if so, how?

Patentees are only entitled to amend claims during an invalidation procedure, after the patent is granted.

2.2 Can a patent be amended in inter partes revocation / invalidity proceedings?

Yes, a patent can be amended during invalidation proceedings.

2.3 Are there any constraints upon the amendments that may be made?

During the invalidation process, amendments to the patent documents for invention or utility model patents are limited to the claims. The key constraints are:

- The subject matter of the original claims cannot be changed.
- The scope of protection of the original patent cannot be expanded beyond what was originally granted.
- Amendments must stay within the scope described in the original specification and claims.
- New technical features not included in the original claims cannot be added.

In addition, claims can be deleted; the technical solution in a claim can be deleted; and the claim's scope of protection can be narrowed.

If the applicant adds content that cannot be clearly and directly understood from the original specification by a person skilled in the art, such amendments will be considered as exceeding the allowable scope.

For voluntary amendments, applicants can amend the specification and claims, but these changes must not exceed the original scope of the specification and claims.

2.4 Other than voluntary amendment, are there any opportunities to make amendment to the patent applications? To what extent can the applications be amended?

After the voluntary amendment process, theoretically, there are no further opportunities for voluntary amendments.

However, during substantive examination, amendments are permitted as long as they address the issues pointed out by the examiner. Here are some examples:

- **Adding new dependent claims**: Introducing new dependent claims with technical solutions not present in the original claims. Some examiners will accept new dependent claims added according to the description when they are used to narrow down the patent scope, provided they are not made in response to the examiner's comments

- **Changing technical features**: Modifying technical features in an independent claim or including technical content disclosed only in the specification, even if it lacks unity with the originally claimed subject matter, is usually accepted.

- **Deleting non-essential features**: Deleting a non-essential technical feature from an independent claim or a dependent claim is generally accepted.

- **Adding new independent claims**: Adding new independent claims is possible, such as a set of use claims for a secondary medical use of a known compound, even if there is already a set of composition claims, although this is rare in China.

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Chapter 3
Patent Licensing

PATENT LICENSING

3.1 Are there any laws which limit the terms upon which parties may agree a patent license?

Yes, there are several laws and regulations in China that limit the terms on which parties may agree to a patent license. These laws are designed to prevent unfair competition, protect public interest, and ensure the validity of patent rights. Some key points include:

- Contract Law: Under China's *Civil Code*, patent license agreements must comply with general contract principles, such as fairness and mutual agreement. The agreement must not include clauses that are against public policy, illegal, or abusive of patent rights.

- Patent Law: *The Chinese Patent Law* prohibits abusive practices that may monopolize markets or restrict competition. Patent licenses must not contain provisions that extend the patent rights beyond the lawful term of the patent or impose unreasonable restrictions on the licensee's ability to compete in the market.

- Anti-Monopoly Law: *The Anti-Monopoly Law* prevents patent holders from using their rights to engage in monopolistic behavior, such as forcing the licensee to purchase other non-essential products or imposing exclusive dealing clauses without justification.

- Technology Import and Export Regulations: For technology transfer agreements involving foreign parties, the *Regulations on Technology Import and Export* require that agreements respect China's technology export/import laws, and that technology licenses do not include unfair or overly restrictive terms, such as prohibiting a licensee from improving the licensed technology.

3.2 Can a patent be the subject of a compulsory license, and if so, how are the terms settled and how common is this type of license?

According to Article 53 of the *Patent Law*, the Patent Administration Department under the State Council may grant a compulsory license to exploit a patent for an invention or utility model upon application by an entity or individual in the following cases:

- If the patentee, after 3 years from the date of granting the patent right and 4 years from the date of filing, does not exploit the patent or does not sufficiently exploit the patent without any justified reasons;

- If the patentee's enforcement of the patent right has been legally determined to be an act of monopoly, and the adverse effects of this act on competition need to be eliminated or reduced.

Article 54 of the *Patent Law*, where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the patent administrative department of the State Council may grant a compulsory license to exploit the patent for an invention or utility model.

Article 55 provides that for the purpose of public health, the patent administrative department of the State Council may grant a compulsory license for a patented medicine so as to produce and export it to the country or region which conforms to the provisions of the relevant international treaty to which the People's Republic of China ("PRC") has acceded.

Article 56, if a granted invention or utility model patent involves significant technical advancement and considerable economic significance in relation to an earlier patented invention or utility model, and the exploitation of the later patent depends on the earlier one, the Patent Administration Department under the State Council may, upon request by the later patentee, grant a compulsory license to exploit the earlier invention or utility model. Similarly, if a compulsory license is granted under these conditions, the earlier patentee may also request a compulsory license to exploit the later invention or utility model.

Article 57, if the patented invention covered by the compulsory license relates to semiconductor technology, the exploitation under the compulsory license is limited to use for the purpose of public interest and under the circumstances specified in Article 53(2).

However, while compulsory licenses are allowed in China, compulsory licenses are rare in China. The stringent conditions and the general preference for negotiated solutions have limited their use. Most patent disputes and licensing issues are resolved through voluntary negotiations or litigation rather than resorting to compulsory licensing.

3.3 Will exclusive license agreements concerning a SEP be considered as a violation of FRAND principle in China?

Yes, despite ongoing disputes over the specific application of the FRAND principle, judicial cases have already arisen where the signing of exclusive licensing agreements has been considered a violation of the FRAND principle.

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Chapter 4
Patent Term Extension

PATENT TERM EXTENSION

4.1 Can the term of a patent be extended, and if so, (i) on what grounds, and (ii) for how long?

In principle, the term of patent protection cannot be extended. However, according to Article 42 of the *Patent Law*, where an invention patent is granted four years (or later) from the date of filing an application and 3 years (or later) from the date of filing a request for substantial examination, the patent administrative department of the State Council will, at the request of the patentee, provide a patent term extension for unreasonable delay in the patenting process for the invention, except where the unreasonable delay was caused by the applicant.

For the purpose of making up the time required for the assessment and approval of the marketing of a new drug, the patent administrative department of the State Council may, at the request of the patentee, grant a patent term extension for an invention patent relating to the new drug approved for marketing in China. The extension may not exceed 5 years, and the total effective term of the patent after the new drug is approved for marketing cannot exceed 14 years.

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Chapter 5
Patent Prosecution and Opposition

PATENT PROSECUTION AND OPPOSITION

5.1 Are all types of subject matter patentable, and if not, what types are excluded?

According to Article 25 of the *Patent Law*, no patent right can be granted for any of the following subject matters:

1. scientific discoveries;
2. rules and methods for mental activities, such as pure mathematical rules, business rules, or gaming rules;
3. methods for the diagnosis or for the treatment of diseases;
4. animal and plant varieties;
5. nuclear transformation and substances obtained by means of nuclear transformation; and
6. patterns or colours or the combination of the two which are used on printed signage.

While animal and plant varieties cannot be patented, the *Patent Law* does allow for some patent rights in relation to processes used in producing animal and plant varieties.

Furthermore, an invention that violates the law or social ethics, or harms public interests, or that is accomplished by relying on genetic resources which are obtained or used in violation of any law or administrative regulation cannot be protected under Article 5 of the *Patent Law*.

5.2 Is there a duty to the Patent Office to disclose prejudicial prior disclosures or documents? If so, what are the consequences of failure to comply with the duty?

No. Although the *Implementing Regulations of the Patent Law* provide that a patent application must include a section describing the background technologies useful to understanding and examining the invention, and if possible, citing documents which reflect these background technologies, the applicants do not have a duty to disclose prejudicial prior disclosures or documents.

5.3 May the grant of a patent by the Patent Office be opposed by a third party, and if so, when can this be done?

Yes. Starting from the issue date of a patent right, any entity or individual may submit a written request and necessary supporting documents to the CNIPA to invalidate the patent right.

5.4 Is there a right of appeal from a decision of the Patent Office, and if so, to whom?

Yes. Decisions by the examiner at the CNIPA may be appealed by submitting a re-examination request to the Patent Re-examination and Invalidation Department of the CNIPA. Decisions of the Patent Re-examination and Invalidation Department may be appealed to the Beijing IP court.

5.5 How are disputes over entitlement to priority and ownership of the invention resolved?

According to Rules 102 and 103 of the *Rules for Implementation of the Patent Law*, disputes over entitlement to priority and ownership can be resolved through administrative procedures (e.g., local IP departments or the CNIPA) or the judicial system. If the parties are not satisfied with the administrative decision, they may appeal to the courts.

Per Article 9 of the *Patent Law*, if two or more applicants independently file applications for the same invention, the patent right will be granted to the applicant who filed first. If any applicant is dissatisfied with the CNIPA's decision, they can request an administrative review with the CNIPA.

5.6 Is there a "grace period" in China, and if so, how long is it?

Yes. There is a grace period of 6 months from filing an invention-creation (inventions, utility models and designs) within which it will not be considered as lacking novelty if one of the following events occurs:

1. it was disclosed for the first time for the purpose of public interest when a state emergency or an extraordinary situation occurred in the country;
2. it was first exhibited at an international exhibition, sponsored or recognized by the Chinese government;
3. it was first made public at a prescribed academic or technological conference; and
4. it was disclosed by any person without the consent of the applicant.

5.7 What is the term of a patent?

The term of an invention patent is 20 years, the term of a utility model patent is 10 years, the term of a design patent is 15 years, all calculated from the date of filing.

5.8 Is double patenting allowed?

No. Article 9 of the *Patent Law* provides that only one patent may be granted for a single invention. In the case where an applicant files for both an invention patent and a utility model patent for the same invention on the same day, the applicant must declare to abandon its utility model patent in force in order to obtain approval on its invention patent.

5.9 Are there any ways to speed up the patent application process? And what are the success rate for these expedited procedures?

Generally, an applicant's request for expedited procedures will be allowed if the application meets the PPH requirements. For example, this includes cases where the claims of the PPH application are of the same scope or narrower than those allowed by the first Office and if the claims of the second Office's application also match or are narrower than those in the corresponding application approved by the first Office.

Alternatively, applicants may opt for prioritized examination to expedite the process. The request for prioritized examination must be endorsed by the relevant departments of the State Council or provincial-level intellectual property offices.

However, there are some limitations to prioritized examination. For example, once approved, no voluntary amendments are allowed, even within the amendment period. Additionally, the response period for an Office Action is shortened from 4 months to 2 months, otherwise the prioritized examination will be terminated.

5.10 May a patent applicant file one or more later applications to pursue additional claims to an invention disclosed in its earlier-filed application? If so, what are the applicable requirements or limitations?

If a later application is very close or similar to earlier applications, it is advisable to file it within 1 year of the earliest filing date of the earlier applications and claim (or by claiming) priority from the earlier application. This is because the CNIPA adopts absolute novelty criteria, meaning earlier applications can be used as prior art against the later application, even if they have the same applicant.

However, if the later application involves an invention that has resulted from further development and is novel and inventive over the earlier application, it can be filed at any time.

5.11 Is it possible to restore the priority right after the 12-month window?

Yes, the applicant can request the restoration of priority within 2 months after the deadline, provided they have just reasons.

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Chapter 6
Border Control Measures

BORDER CONTROL MEASURES

6.1 Is there any mechanism for seizing or preventing the importation of infringing products, and if so, how quickly are such measures resolved?

For a infringing product to be seized by Customs, the patentee would need to take the following steps: firstly, the patent must be recorded in the Customs database; secondly, the patentee needs to collect information such as the number of containers and the time of importation, and then file a complaint with Customs; thirdly, after Customs seizes the infringing product, the patentee must file civil litigation with the local court who can request that Customs preserve evidence of the infringement; and finally, whether the infringing products are released depends on the decision of the court.

6.2 What are the limitations of the IPR protection through China Customs?

Customs may investigate goods suspected of infringing registered intellectual property rights and determine whether infringement has occurred, though they lack expertise in this area. Suspected infringers can request the release of detained goods by providing a security deposit, which may be used to compensate the rights holder for any losses. In such cases, Customs may reserve some samples for infringement judgment while allowing the export of other suspected infringing products. Thus, Customs may not be able to prevent the exportation of all suspected infringing products.

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Chapter 7
Antitrust Law and Inequitable Conduct

ANTITRUST LAW AND INEQUITABLE CONDUCT

7.1 Can antitrust law be deployed to prevent relief for patent infringement being granted?

In general, the answer is no. However, the infringer may bring a counterclaim against the patentee for violation of the *Monopoly Law*. In such case, a patentee can be punished based on the *Antitrust Law*.

7.2 What limitations are put on patent licensing due to antitrust law?

Patent licensing in China is subject to antitrust law limitations under the *Anti-Monopoly Law* (AML) to prevent anti-competitive practices. Key restrictions include:

1. Monopolistic Agreements: Patent holders cannot impose anti-competitive terms such as tying arrangements or unreasonable restrictions on the licensee's use of competing technologies.
2. Exclusivity Clauses: Excessive exclusivity in licensing, which restricts competition or market access, may be prohibited.
3. Abuse of Market Dominance: A dominant patent holder must not impose unfair licensing terms, excessive royalties, or discriminatory practices.
4. Resale Price Maintenance: Setting resale prices for products using the licensed technology may violate antitrust rules.

7.3 In cases involving standard essential patents, are technical trials on patent validity and infringement heard separately from proceedings relating to the assessment of fair reasonable and non-discriminatory (FRAND) licenses? Do courts set FRAND terms (or would they do so in principle)? Do courts grant FRAND injunctions, i.e. final injunctions against patent infringement unless and until defendants enter into a FRAND license?

Determination of FRAND terms and patent infringement are separate causes of actions but are related. A patentee may demand cessation of infringement and disbursement, and not claim compensation, since they wish to negotiate with the defendant regarding the licensing terms. The potential infringer may file a lawsuit claiming the patentee does not comply with the FRAND principle, and that the court should not examine the infringement issue.

In general, courts will not establish FRAND terms unless the plaintiff specifically requests such a determination. The court will review the case and make a decision based on the plaintiff's claim. However, if the defendant raises FRAND terms as a defense, the court may take them into consideration. If the plaintiff claims infringement and such claim is supported by the court, the implementor shall be refrained from continuing any infringing activities pursuant to the judgment.

If the implementor and the patentee reach a settlement agreement such as a FRAND license agreement after the court renders its judgment, the implementor becomes a licensee of the patents-in-dispute and will then be free to sell its products.

7.4 Is the Safe Harbor Rule applicable in China? If it is, what kind of proof is needed to demonstrate compliance with its requirements?

Yes, the Safe Harbor Rule is applicable in China, but primarily in the context of pharmaceutical patent disputes. According to Article 75 of the *Patent Law*, an act shall not be considered an infringement of patent rights if it is for the purpose of providing information needed for regulatory examination and approval, or for the manufacture, use, or import of a patented drug or medical apparatus, and exclusively for such manufacture or import.

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Chapter 8
Current Developments

CURRENT DEVELOPMENT

8.1 What have been the significant developments in relation to patents in the last year?

The fourth amendment of the *Patent Law* entered into force on June 1, 2021. The amendment covers several significant changes such as the protection of partial designs, compensation for patent terms, patent linkage systems, and open licensing. These changes show China's goal of strengthening its patent protection and keeping pace with international practice. The amendment extends the protection term of design patents to 15 years; increases the compensation for patent infringement; introduces punitive damages 1 to 5 times the compensation amount for willful infringement; and adds provisions on early settlement procedures for pharmaceutical patent disputes.

Effective from January 20, 2024, the *Implementing Regulations of the Patent Law* have introduced provisions for deferred examination. The newly revised *Patent Examination Guidelines (2023)* now explicitly incorporate considerations of novelty, inventiveness, and practicality in the initial examination of utility model patents. Additionally, the principle of good faith has been explicitly included in both the *Implementing Regulations of the Patent Law* and the *Patent Examination Guidelines*, allowing it to serve as a basis for patent revocation and invalidation.

Since May 5, 2022, The Hague Agreement has officially entered into force in China. With China's accession, The Hague system now covers the market of the world's second largest economy, making it easier for foreigners to seek design protection in China.

8.2 Are there any significant developments expected in the next year?

Despite the amendments to the *Implementing Regulations of the Patent Law* and the *Patent Examination Guidelines*, the specific application and standards of the principle of good faith in patent revocation and invalidation procedures still require continuous development and clarification in practical applications.

8.3 Are there any general practice or enforcement trends that have become apparent in your jurisdiction over the last year or so?

China has been enhancing the role of administrative enforcement through local IPOs and the CNIPA. This reflects a broader trend toward faster, more efficient handling of IP disputes outside of the traditional court system, especially for straightforward infringement cases.

Recent reforms, including updates to the *Patent Law* and improved procedural tools, have empowered IPOs to address disputes more swiftly, although these mechanisms do not allow for monetary compensation.

China has also placed emphasis on curbing abnormal patent applications and enforcing good faith principles in the patent system. This crackdown is aimed at improving patent quality by reducing frivolous filings that burden the system. The government's focus has been on ensuring that patent applications are used for genuine innovation and not as tools for manipulation or anti-competitive behavior.

Another significant trend is the increased scrutiny on utility model patents, traditionally easier to obtain in China compared to invention patents. Stricter examination standards are being applied to enhance the overall quality of patents, ensuring they meet robust innovation and technical thresholds.

Furthermore, Chinese courts are actively contributing to the establishment of global measures and standards for intellectual property protection. In 2023, the Chongqing Intermediate People's Court issued a landmark decision in the dispute between OPPO and Nokia concerning royalties for standard-essential patents. This judgment marks the first instance of a Chinese court determining global royalty rates for such patents. The decision provides rationale and reference standards for jurisdiction, applicable law, and rate calculation methods related to standard-essential patents. This underscores China's internationalization efforts in intellectual property protection and demonstrates its proactive stance in advocating Chinese standards to the global community.

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Chapter 9
Authors

David Zhang
General Manager of Patent Prosecution Business

Email:
david.zhang@purplevineip.com

David has over 30 years of experience in IP industry, with a deep understanding of technology and developments within the electronic information sector. He is highly experienced in quality control systems, project management, corporate operations, and intelligent system development. Before joining PurpleVine, David held senior positions at several multinational and large enterprises, including eBay (USA), C-Cube Microsystems, Lenovo Group, and China Electronics Corporation. In 2008, he joined Kangxin Partners, P.C. in Beijing, where he was primarily responsible for the company's strategic planning.

Susy Su
Director of International Patent Prosecution

Email:
lei.su@purplevineip.com

Susy has over 15 years of comprehensive management experience in IP industry, with expertise in both corporate settings and IP agency roles. She has managed thousands of international patent prosecution cases, overseeing the entire process from filing to grant. Susy has led various patent investigation reports and successfully handled multiple patent invalidation and administrative litigation cases. She is adept in full-cycle IP management, with significant experience in patent mining, portfolio strategy, filing, authorization, and risk prevention. Before joining PurpleVine, Susy held key positions at Foxconn Technology Group, Beijing AFD IP Agency, and a prominent photovoltaic company.

Cecilia Zhang
Partner - Peiwei Law Firm
cecilia.zhang@peiweilaw.com

Cecilia is an experienced IP lawyer with over a decade of expertise in intellectual property. She specializes in patent litigation and consulting, alongside her work in trademarks, copyrights, and unfair competition. Throughout her career, Cecilia has managed a wide range of IP projects, representing leading domestic and international clients across industries such as telecom, media, biotech, medical devices, chemical engineering, automotive, and manufacturing. Her extensive experience includes resolving high-stakes, cross-border patent disputes for multinational corporations. Before joining Peiwei, Cecilia practiced at renowned firms such as King & Wood Mallesons and Fangda Partners.

Helen Zhang
Partner - Peiwei Law Firm
helen.zhang@peiweilaw.com

Helen has been working in the IP industry for over 10 years. She has extensive experience in patent invalidation, patent civil and administrative litigation. She is familiar with drafting and reviewing IP contracts, licensing and negotiation. Helen has handled hundreds of patent invalidation and litigation cases, while successfully achieving results in favour of clients. She is also experienced in freedom to operate (FTO) analysis in order to mitigate risks for clients.

Jinghuan Jia
Partner - Peiwei Law Firm
jinghuan.jia@peiweilaw.com

Jinghuan is a qualified PRC attorney with patent agent qualification. She has extensive experience in patent litigation, IP strategies and licensing in various industries. She had advised leading corporations including P&G, Pfizer, GSK, and Schneider on their patent applications and IP strategies. She is also a frequent speaker at CNIPA and China Technology Exchange. Jinghuan was a Managing Partner at Liu Shen and Associates' Shanghai office prior to joining Peiwei.

**Beijing Peiwei Law Firm is PurpleVine's strategic partner, specializing in Chinese law and registered in the PRC.*

About PurpleVine IP Group

PurpleVine IP Group, based in Shenzhen, is a China-based and internationally-oriented IP service provider dedicated to building bridges for innovation, collaboration, and the protection and monetization of intellectual property rights. We provide full-chain, one-stop IP services that include global prosecution, IP consultancy, IP transactions, licensing, enforcement, and dispute resolution.

Founded in 2018, PurpleVine currently has 11 offices worldwide with more than 450 full-time employees. Our core employees, all from industry-leading technology companies and top-notch international law firms, possess unrivaled industrial insight and professional experience.

Established in 2018

11 Offices

450+ Employees

150+ Patent engineers

including 50 specializing in cross-border cases

As an international integrated IP service provider with a sound footing in law and technology, PurpleVine provides practical solutions to effectively meet our clients' commercial needs.

PurpleVine has built a global network including IP agencies, patent and trademark firms, law firms, IP operating companies, and IP investment funds, with a presence in Shenzhen, Beijing, Shanghai, Wuhan, Chengdu, Suzhou, Nanjing, Hong Kong, Tokyo and Singapore, as well as the U.S. and Europe.

10k^{+} cases

Handled every year

20k^{+} Years

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PurpleVine IP Group 29/F, Block C, China Resources Land Building,
No. 9668 Shennan Avenue, Nanshan District, Shenzhen, China.