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China

China Updates:

Amendments to the China Patent Law will be Effective on 1 June 2021

The Standing Committee of the Thirteenth National People's Congress of China approved the "Decision of the Standing Committee of the National People's Congress on Amending the 'Patent Law of the People's Republic of China'" on 17 October 2020. The new China Patent Law is scheduled to be implemented on 1 June 2021. In the following article, we will introduce the main changes in the latest amendment of the China Patent Law.

The major aspects to the amendment are as follows:

1. Increasing the compensation for patent infringement:

The new Patent Law has included the system of punitive damages, where the court can decide the sum of the damage awards ranging from 1 to 5 times the damage done to the patentee, the profit gained by the infringer, or the patent royalty. The amended Patent Law has further increased the statutory sum of damages to a range of RMB 30,000 to 5,000,000 (Article 71). The amendment has also clarified the provisions on the burden of proof, which shift the burden from the plaintiff to the defendant. The amendment aims at overcoming the difficulties faced by the patentee when trying to collect evidence of infringement.

2. Improving design patent protection - Allowing patent protection on partial design, extending the protection period of design patents, and establishing the system of domestic priority right on design patents:

The new Patent Law has improved the system regarding China design patents. First, protection on partial design is allowed in China (Paragraph 4, Article 2). Second, the protection period of design patents is extended to 15 years (Article 42). Third, design patents can now claim domestic priority (Paragraph 2, Article 29). Within six months of filing the first domestic design patent application, an applicant can claim priority when filing another domestic patent application for the same subject matter.

3. Including regulations concerning the term restoration of pharmaceutical patents and early-stage resolution mechanism of pharmaceutical disputes:

The new Patent Law has included regulations concerning the pharmaceutical patent term restoration, which compensates for the time taken up by the review and approval process of new drugs. For invention patents related to new drugs that have received permission in China, term restoration shall be granted in response to the request of the patentee. The extended term shall be no more than 5 years, and the total effective term of the patent after the launch of the new drug shall be no more than 14 years (Article 42).

Furthermore, the new Patent Law includes the early-stage resolution mechanism of pharmaceutical patent disputes in order to solve potential patent disputes before the launch of relevant drugs, that is, the establishment of patent linkage system in China.

Article 76 of the new Patent Law stipulates that during the process of the review and approval process of a new drug (drug to be reviewed and approved), when disputes regarding patents of the new drug occur, the applicant, the relevant patentee or other interested parties can file a complaint with the court to request a ruling on whether the new drug falls within the protection scope of patents owned by other patentees. Within the designated period, the National Medicinal Products Administration (NMPA) can decide whether the approval of relevant drugs should be suspended based on the ruling of the court. The applicant for drug permission, the relevant patentee or other interested parties can also request an administrative decision on patent related disputes regarding new drugs with the relevant authorities.

4. Stipulating the Open License System:

“Open licensing” is introduced in the new Patent Law. Article 50 of the new Patent Law stipulates that a patentee can make a declaration to the relevant authorities, stating the willingness to authorize any institution or individual the right to implement the patent, and specifying the standards of evaluating the amount of royalty and its method of payment. The relevant authorities can then announce the declaration and implement the open license. Patentees who declare the open license of a utility model patent or design patent shall provide a patent evaluation report on the validity of the patent.

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