



Draft of Patent Law Amendments for Public Opinion

Dispute and IP Department

After a long wait, the National People's Congress of China (“NPC”) published the latest draft amendment of the Patent Law for public comment on January 4, 2019. According to the NPC's notice (see [link](#)), the general public are allowed to provide comments on the draft amendment via the NPC's website (see [link](#)) or by post before February 3, 2019.

The highlights in the latest draft amendment include:

- **Increased damages compensation (Amended Art. 72)** – The damages compensation for patent infringement is significantly increased in the amendment: (i) the court is allowed to award quintuple damages in cases of willful infringement; and (ii) the ceiling for statutory damages is increased from RMB 1,000,000 (USD 145,679) to RMB 5,000,000 (USD 728,215).
- **Shifted burden of proof regarding damages calculation (Amended Art. 72)** – If the right owner has exhausted its capacities to provide evidence regarding damages, the court can order the defendant to provide the relevant financial documents to ascertain the amount of the damages. If the defendant fails to comply, the court is allowed to award the damages compensations based on the claim and preliminary evidence set forth by the right owner.
- **Improved patent administrative enforcement proceedings (Amended Art. 70)** – The National Intellectual Property Administration of the PRC (“CNIPA”) is allowed to accept and examine administrative complaints for patent infringement with nation-wide significance. The local IP Administrations are also allowed to accept and examine administrative complaints for patent infringement occurred within its geographic jurisdiction.
- **Additional liabilities for ISPs (Amended Art. 71)** – The right owner can request the Internet Service Provider (“ISP”) to delete, block or disconnect the webpage links to the infringing products based on effective judicial or administrative decisions (e.g. court

verdicts, court rulings, court-ratified mediation agreement, or administrative decisions). The ISP will be subject to joint liabilities if it fails to comply with the aforesaid request within reasonable time.

- **Newly established open licensing system (Amended Art. 50 and 51)** – The patentee can grant an open license of a patent to any entity or person by registering a written declaration at the CNIPA. The conditions and means to pay the open license fee must be standardized. The patentee is allowed to withdraw the open license, but it will not impact the effectiveness any open license granted before the withdrawal. Any entity or person can obtain the open license by sending a written notice to the patentee and paying the standardized license fee. No exclusive or sole license can be granted for the same patent during the effective period of an open license.
- **Domestic priority right for design patents (Amended Art. 30)** – The applicant can claim priority right for a design patent application if it has filed another design patent application with the same subject matter in China within six month before the latter filing.
- **Extended protection period for design patents (Amended Art. 43)** – The protection period for design patent has been extended from ten years to fifteen years.
- **Highly generalized rule on abuse of patent right (Amended Art. 20)** – The patentees is forbidden to abuse its patent right to harm the public interests or the lawful interests of others, or to exclude or limit competition. More detailed provisions regarding patent right abuse are expected to be described in subsequent implementation rules or judicial interpretations.

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[Attachment 1: Explanation to the Draft Amendment to the Patent Law of the People's Republic of China;](#)

[Attachment 2: Comparison Chart for the Fourth Draft Amendment to the Patent Law of the PRC.](#)

● **Important Notice**

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