

## What's New



### Interim Measures for Examination Procedures Relating to the Implementation of the Amended Patent Law

As the amended Patent Law has come into force on June 1<sup>st</sup>, 2021, and the *Implementing Regulations of the Patent Law* is still in the process of amendment, the China National Intellectual Property Administration (CNIPA) has formulated the *Interim Measures for Examination Procedures Relating to the Implementation of the Amended Patent Law* (hereinafter referred to as “*the Measures*”) to ensure the implementation of the amended Patent Law, which has come into force on June 1<sup>st</sup>, 2021.

The following is the key points of *the Measures*:

1. As of June 1<sup>st</sup>, 2021 (this day is included, hereinafter the same), the applicant for a patent shall submit a patent application for design that requests for protection of **partial product** in paper form or by using the electronic application system (CPC).
2. For the patent application of which the filing date is after June 1<sup>st</sup>, 2021, where the applicant considers that the invention-creation was first disclosed for public interest purposes **when a national emergency or any abnormal status of affairs occurs; the applicant shall submit a request for not losing novelty** in paper form. The CNIPA shall perform examination for the above-mentioned application after the implementation of the amended *Implementing Regulations of the Patent Law*.

3. For the patent for invention that is announced being granted as of June 1<sup>st</sup>, 2021, which is **also granted after the expiration of four years from the filing date and three years from the date of the request for substantive examination**; the patentee shall, within three months from the date of announcement of grant, **submit a request for compensating the duration of patent right** in paper form, then pay relevant fees according to the Notification to Pay the Fees issued by the CNIPA. The CNIPA shall perform examination for the above-mentioned request after the implementation of the amended *Implementing Regulations of the Patent Law*.

4. As of June 1<sup>st</sup>, 2021, the patentee shall, **within three months from the date of approval of the request for new drug marketing license, submit a request for compensating the duration of patent right** in paper form, then pay relevant fees according to the Notification to Pay the Fees issued by the CNIPA. The CNIPA shall perform examination for the above-mentioned application after the implementation of the amended *Implementing Regulations of the Patent Law*.

5. As of June 1<sup>st</sup>, 2021, the patentee shall voluntarily declare that he is willing to **implement the open licensing** of his patent in paper form. The CNIPA shall perform examination for the above-mentioned declaration after the implementation of the amended *Implementing Regulations of the Patent Law*.

6. As of June 1<sup>st</sup>, 2021, the alleged infringer shall request in paper form for **an evaluation report of patent** furnished by the CNIPA.

7. The duration of patent right for design of which the filing date is before May 31<sup>st</sup>, 2021 (this day is included) shall be ten years, counted from the date of filing.

# The Measures for Administrative Adjudication of Major Patent Infringement Disputes

On May 28<sup>th</sup>, 2021, the China National Intellectual Property Administration (CNIPA) promulgated Notice No. 426, the *Measures for Administrative Adjudication of Major Patent Infringement Disputes* (hereinafter referred to as “*the Measures*”) has come into force on June 1<sup>st</sup>, 2021.

This article excerpts from *the Measures* regarding the content of the definition of the major patent infringement disputes and the conditions of requesting for administrative adjudication:

1. In one of the following circumstances, the case shall be regarded as major patent infringement disputes:

- (1) relating to major public interest;**
- (2) seriously affecting the development of the industry;**
- (3) a major case that involves cross-provincial administrative areas;**
- (4) other patent infringement disputes that may cause major impacts.**

2. Where the person requests for administrative adjudication of major patent infringement dispute, the case shall comply with the circumstances as defined in the above and meet all the following conditions:

- (1) the person who made the request shall be the patentee or the interested party;**
- (2) the person against whom request shall be clear;**
- (3) the request, specific facts and reasons shall be clear;**
- (4) the People’s Court shall have not put the subject patent infringement dispute on its trial docket.**

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