

Changes in the Chinese Patent Law

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Topics

Intellectual Property Patents

After an announcement by the Chinese Patent Office (CNIPA), the new Chinese Patent Law will come into force on June 1st, 2021. The changes in legislation resulted from the fourth amendment to the Patent Law of 1984 and have the following purposes: strengthening and giving greater importance to the intellectual property system in the country; optimizing the enforcement of patent rights; and promoting the use of patents as well as the commercialization of inventions. The last change had been made in 2008.

Although the pandemic caused by the Sars-CoV-2 has impacted many sectors on a global scale, the Chinese advances regarding intellectual property rights in this period are evident.

According to a recent publication by the World Intellectual Property Organization (WIPO)¹, China remains at the top of the list of international patent applicants via the Patent Cooperation Treaty (PCT), having filed 68.720 patent applications in 2020. Such a number represents an increase of 16,1% in new filings, in comparison to the previous year. In the same period, Brazil filed 697 patent applications via PCT, which corresponds to an increase of 8,4% in the Brazilian volume of filings.

Therefore, China's new patent law is in line with the Chinese government's efforts to further stimulate national innovation.

Among the changes in the Chinese Patent Law, the following should be highlighted:

- the application of higher punitive damages (up to five times higher) to the infringer, when patent infringement is proven, in certain situations;
- In assessing the novelty requirement, a disclosure made public for the first time (for the purpose of public interest) in light of a national emergency or other extraordinary circumstance will not be considered as part of the state of the art;
- the extension of the term of validity of industrial design registrations from 10 years to 15 years (in line with the Hague Agreement);
- the extension of the term of protection of patents, in any area, as a form of compensation for delays in their administrative processing at CNIPA or due to delays in the issuance of regulatory registration for commercialization, in the specific case of pharmaceutical patents;
- the establishment of an award mechanism for inventors of patent applications or authors of industrial designs, for the so-called service inventions, as a way to encourage employers and inventors/authors to innovate/create;
- the introduction of the principle of good faith to serve the public interest and ensure a legal basis for the Chinese authorities regarding possible abuse of patent rights; and

- the exclusion from patentability of nuclear transformation methods, in addition to substances obtained from nuclear transformation, which were already not subject to protection.

The impacts resulting from the change in the Chinese Patent Law can only be evaluated after its implementation. Nevertheless, there is no doubt that such initiative in China stands out as a way to keep up with technological evolution; ensure, more efficiently, the rights of the holders; and discourage patent violation, through more severe indemnification measures against infringers.

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¹ https://www.wipo.int/pressroom/en/articles/2021/article_0002.html