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China's Trademark Law (Revised Draft) Now Open for Public Comment

The National People's Congress (NPC) has recently published the Draft Amendment to the Trademark Law of the People's Republic of China, opening it for public comments from December 27, 2025 to February 9, 2026.

This revision marks an important effort to update China's trademark system, aiming to improve the fairness and effectiveness of trademark protection. The changes are likely to positively influence brand planning and intellectual property management for both domestic and foreign companies operating in China.

Ministry of Justice and CNIPA Jointly Promote Arbitration Mechanism Development

The Ministry of Justice and the China National Intellectual Property Administration (CNIPA) have jointly issued the Guiding Opinions on Strengthening Arbitration for Intellectual Property Disputes (the "Opinions"), outlining a systematic strategy to enhance IP arbitration in China through greater specialization, procedural clarity, and international alignment.

Key measures introduced include:

Specialized Institutions:

Support for establishing dedicated IP arbitration bodies, developing accredited arbitrator rosters and a national referral directory, and forming expert panels on IP arbitration.

Tailored Procedures:

Promotion of specialized arbitration rules, inclusion of technical investigators in proceedings, and encouragement for industry associations to adopt arbitration clauses in their governing documents.

Broader Application:

Expanded use of arbitration to resolve IP contract disputes, patent open-license issues, standard-essential patent (SEP) licensing fee disagreements, and other related matters, supported by increased public awareness efforts.

International Engagement:

Encouragement for Chinese arbitration institutions to handle cross-border IP disputes, set up regular coordination channels with overseas IP dispute assistance centers, and deepen cooperation with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Shanghai Center to boost China's role in global IP dispute resolution.

Strengthened Framework:

Establishment of cross-departmental coordination mechanisms to better link arbitration with administrative rulings, mediation, and other channels, alongside advancing specialized research, training programs, and publishing guiding cases.

These guidelines are designed to offer innovators in China and abroad more efficient, adaptable, and professional options for resolving IP disputes, contributing to a stronger and more predictable IP protection environment.

Official release available here

China's Revised Foreign Trade Law to Take Effect in March 2026

On December 27, 2025, China's legislature passed a revision to the Foreign Trade Law, which will come into force on March 1, 2026. This update aims to align China's trade framework with global shifts and new economic forms.

The revised Foreign Trade Law, structured into 11 chapters and 83 articles, codifies recent reforms and established practices in China's foreign trade regime. Key institutionalized measures include the negative list management system for cross-border trade in services, active support for new forms and models of foreign trade, promotion of digital trade, and accelerated development of a green trade system.

To improve the trade environment, the amendment highlights enhanced protection of intellectual property rights related to foreign trade and introduces a trade adjustment assistance mechanism aimed at stabilizing industrial and supply chains. Furthermore, the update provides China with more robust legal tools to address external challenges, refines corresponding countermeasures, and clarifies related legal liabilities.

Originally enacted in 1994, the Foreign Trade Law saw its first major overhaul in 2004, with subsequent amendments in 2016 and 2022. The current revision represents its second comprehensive update.

China Unveils Regulation on Commercial Mediation to Improve Business Environment

BEIJING -- Chinese Premier Li Qiang has signed a State Council decree promulgating a regulation on commercial mediation to improve the country's business environment.

The new regulation, which will take effect on May 1, 2026, comprises 33 articles. It aims to regulate commercial mediation activities, resolve commercial disputes effectively, protect the legitimate rights and interests of parties involved, as well as promote the development of the commercial mediation industry.

It stipulates that commercial disputes that arise between parties in fields such as trade, investment, finance, transportation, real estate, engineering construction, and intellectual property rights shall be subject to commercial mediation.

The regulation clarifies the management system for commercial mediation work, with the judicial administrative department of the State Council guiding and regulating the work nationwide and formulating overall plans for the development of the sector.

Local governments at or above the county level shall be responsible for guiding and regulating commercial mediation work within their respective administrative regions through their judicial administrative departments, according to the regulation.

It also stresses that the country shall cultivate internationally influential commercial mediation organizations to enhance their international competitiveness and support them in carrying out cross-border commercial mediation activities, and encourage them to conduct international exchanges and cooperation.

https://chinaipr.mofcom.gov.cn/article/centralgovernment/202601/1994663.html

IP5 PPH Pilot Program Extended

According to a joint decision made by the CNIPA, the European Patent Office (EPO), the Japan Patent Office (JPO), the Ministry of Intellectual Property (MOIP) of the Republic of Korea, and the United States Patent and Trademark Office (USPTO), the IP5 Patent Prosecution Highway (PPH) pilot program will be extended for another three years, from January 6, 2026 to January 5, 2029. The requirements and procedures for applicants to file PPH requests under the pilot program will remain unchanged.

PPH is a fast track linking patent examination duties of different countries or regions, allowing patent examination authorities to speed up patent examination by work sharing. Since the initiation of the first PPH pilot program in November 2011, the CNIPA has built PPH ties with 35 patent examination authorities covering 86 countries worldwide.

https://english.cnipa.gov.cn/art/2025/12/31/art_1340_203419.html

China and Czech Republic Extend PPH Pilot Program

The CNIPA and the Industrial Property Office of the Czech Republic have jointly decided to extend their PPH pilot program for three years from January 1, 2026, to December 31, 2028. The requirements and procedures for submitting PPH requests to both offices remain unchanged.

PPH is a fast track linking patent examination duties of different countries or regions, allowing patent examination authorities to speed up patent examination by work sharing. Since the initiation of the first PPH pilot program in November 2011, the CNIPA has built PPH ties with 35 patent examination authorities covering 86 countries worldwide.

https://english.cnipa.gov.cn/art/2025/12/30/art_1340_203388.html

China Reports Rise in Patents and Stronger IP Enforcement

China has met the intellectual property targets set in its 14th Five-Year Plan (2021-25), with improvements in innovation quality and steady progress toward becoming a stronger intellectual property power, the country's top IP regulator said on Wednesday.

The CNIPA said the time needed to review invention patent applications has been cut to an average of 15 months, down from 20 months at the end of 2020. The average review time for trademark registration has been held at about four months. Both are among the shortest processing times globally, according to the administration.

From 2021 to 2025, China's number of valid domestic invention patents exceeded 5 million. The country also reported 16 high-value invention patents per 10,000 people, surpassing the targets set in the plan. High-value invention patents generally refer to patents in key technologies with strong market potential and economic value.

As applications increased, China continued to rank first worldwide in international patent filings under the WIPO's Patent Cooperation Treaty, a system that allows inventors to seek patent protection in multiple countries through a single application. China also ranked among the global leaders in international design registrations under the Hague system and trademark applications under the Madrid system, both of which simplify the process of protecting designs and brands overseas.

China has also strengthened enforcement and protection of intellectual property rights over the past five years. The administration said 129 national-level intellectual property protection centers and fast-track service stations have been established across the country, handling about 480,000 cases. These centers are designed to help innovators resolve disputes more quickly and protect their rights more effectively.

A coordination mechanism between the intellectual property administration and the Supreme People's Court has also been put in place. The cooperation has helped mediate about 450,000 disputes, providing an alternative to lengthy court proceedings.

In addition, China has set up 116 overseas intellectual property service platforms to assist companies operating abroad. These platforms have offered guidance on more than 4,200 intellectual property-related cases and helped recover losses totaling nearly 41 billion yuan ($5.87 billion), the administration said.

https://english.cnipa.gov.cn/art/2026/1/8/art_2975_203575.html

Legal Support for IPs to be Bolstered

Trademark Law and integrated circuit layout design regulations to be revised

China will bolster intellectual property protection through legislative updates and regulatory improvements, a senior official said on Wednesday.

Shen Changyu, head of the CNIPA, said the authority plans to further strengthen the legal framework supporting IP development this year, elevating protection standards to foster a more innovation-friendly environment.

Shen said the administration will push forward amendments to regulations on integrated circuit layout designs and accelerate revisions to the Trademark Law. A draft amendment to the law was

submitted to the Standing Committee of the NPC, China's top legislative body, for first review in December.

He also stressed the need for stronger IP protection in emerging sectors and for the swift establishment of rules governing data-related IPs.

Liu Bin, a lawyer who specializes in IP disputes at Beijing Zhongwen Law Firm, welcomed the planned legislative amendments. He said emerging sectors such as artificial intelligence, data, biomedicine and new internet applications have become focal points in recent years.

Liu said key challenges include determining ownership of AI-generated content and clarifying rights related to data circulation and use. Current regulations, he said, contain gaps or ambiguities over whether and how such content should be protected, issues that require urgent legislative and judicial clarification.

"Data has become a critical production factor, but without clear rules, it risks becoming a resource everyone wants to use but no one dares to use," Liu said.

He called it urgent and essential to establish data IP protection rules, suggesting policymakers clarify legal sources of data, define permissible uses and establish benefit-sharing mechanisms.

"These steps are crucial to protecting contributors' legitimate interests and encouraging enterprises to engage in data development and innovative applications," he added.

During the 14th Five-Year Plan period (2021-25), China made notable progress in strengthening its IP framework. The administration completed revisions to the Patent Law and its supporting regulations, creating a high-standard system for punitive damages against infringement. It also updated patent review guidelines to improve examination standards for emerging fields such as AI.

Official data shows the average examination period for invention patents was reduced to 15 months from 20 months at the end of 2020. The average review period for trademark registration has stabilized at four months, among the fastest worldwide.

From 2021 to 2025, China's stock of valid domestic invention patents surpassed 5 million, and the number of high-value invention patents per 10,000 people reached 16, exceeding targets outlined in the plan, the data shows.

https://english.cnipa.gov.cn/art/2026/1/8/art_2975_203576.html

SUPPLEMENTARY ISSUE

Identification of False Litigation and Judicial Measures for Its Punishment

During an appeal hearing of a patent ownership dispute, the Supreme People's Court identified a prior concluded copyright ownership and infringement case between two involved parties. The effective civil judgment from that copyright case had directly affected the outcome of the ongoing patent dispute, though evidence suggested the copyright ruling was erroneous. The Court therefore exercised its authority to review the copyright case. Upon retrial, the court ermined that the parties in the copyright case had colluded maliciously, fabricated infringement claims, and initiated false litigation with the aim of intervening with the patent dispute and unlawfully appropriating other party's patents. This conduct seriously disrupted court proceedings and judicial order. Consequently, the Supreme People's Court revoked the original copyright judgment, imposed maximum judicial fines of 100,000 RMB on each party for false litigation, and referred criminal clues to the relevant authorities. Both fined parties have paid their penalties, and public security organs have initiated investigations. The retrial ruling elaborated on key factors for identifying false litigation and proposed judicial measures for penalizing such acts, offering significant guidance for handling similar cases in practice.

Natural person Y left Company A and joined Company B within the same month, holding the position of technical engineer at both companies. Within one month of joining Company B, Y filed a patent application in his own name for the technical drawings at the center of the dispute. Company A subsequently initiated a patent ownership lawsuit, claiming that the patent filed by Y within one year of his departure constituted a service invention, and therefore the patent should belong to Company A. Concurrently, H, a shareholder of Company B, claimed copyright ownership over the technical drawings and filed a copyright infringement suit, alleging that the drawings used in Y's patent application infringed his copyright. Following a trial by the Supreme People's Court, the retrial judgment determined that the copyright case between H and Y constituted false litigation. The court ultimately ruled that the patent belonged to Company A. The fundamental facts of the two related cases are summarized as follows:

Copyright Ownership and Infringement Dispute between H and Y

(Upon review, this case was identified by the Supreme People's Court as false litigation.)

H claimed copyright ownership over the technical drawings in question. Y, formerly employed at Company A, left Company A and joined Company B within the same month. H held a shareholder position in Company B. Shortly after joining Company B, Y contacted a patent agency regarding the application and subsequently filed the patent in his own name. H claimed that the drawings used in the patent were substantially identical or highly similar to his own and therefore initiated copyright infringement proceedings against Y. In his defense, Y stated that H was not a proper plaintiff, contending that the technical drawings constituted a service invention and that the copyright belonged to Company B. In support of his claim, H submitted a statement from Company B certifying that the drawings were his personal work, completed before his employment with Company B, not a service work.

The first-instance court ruled that the technical drawings constituted a work under copyright law. Based on the CD containing the technical drawings submitted by H, chat records with a Taobao merchant for 3D printing them, and Company B's statement that the drawings were H's personal work, the court recognized H as the copyright owner. It found that Y's unauthorized use of the drawings in the patent application infringed H's copyright. The first-instance judgment ordered Y

to compensate H for economic losses and reasonable rights protection expenses totaling 15,000 yuan. Neither party appealed, so the judgment took effect directly.

Upon learning that the patent ownership dispute between Company A and Y was still pending, H applied to join that lawsuit as a third party with an independent claim. Relying on the effective copyright judgment confirming his status as copyright owner, H claimed ownership of the patent.

Patent Ownership Dispute between Company A and Y, with Third Party H

Before joining Company B, Y was an employee of Company A. He joined Company B in the same month he left and filed the patent application within one month of joining. Company A claimed the patent, applied for by Y within one year of leaving, was a service invention belonging to the company. Y argued it was his personal invention, not a service invention.

H obtained the effective copyright judgment before the patent ownership case hearing and joined the lawsuit as a third party with an independent claim, asserting ownership of the patent based on the first-instance copyright judgment. The first-instance court in the patent case ruled that the patent belonged to Company A. Both Y and H appealed.

During the appeal, the Supreme People's Court reviewed the already concluded copyright case and conducted a comprehensive examination. The Court not only corrected the first-instance court's finding that H was the copyright owner but also identified that the copyright litigation between H and Y was a false litigation.

Upon review, the Supreme People's Court found that H was unable to provide the original electronic files of the technical drawings, and the 3D printing records failed to substantiate that the drawings provided to the Taobao merchant were his original creation. These pieces of evidence lacked the capacity to mutually corroborate to prove the drawings were H's original work or establish his authorship and copyright. Moreover, after Company A initiated a patent ownership lawsuit against Y, Y and H maliciously colluded to fabricate H's status as copyright owner of the patent drawings and Y's infringement facts, filing a separate copyright lawsuit to counter Company A's claims and delay the patent case proceedings. Throughout the litigation, they collaborated to allow H to quickly obtain an effective judgment confirming his copyright ownership and successfully join the patent dispute. Their ultimate objective was to leverage the effective judgment to establish H’s copyright and Y’s infringement, thereby unlawfully appropriating the patent that should belonged to Company A. The Supreme People's Court’s retrial judgment concluded that the copyright case between H and Y constituted false litigation, based on the following facts and grounds:

First, the ties of interests between H and Y provided a clear basis for potential collusion. Having known each other for years, their relationship extended beyond mere acquaintance. Notably, Y, together with Y’s wife, H, and others, had co-founded Company C. Even during the ongoing copyright and patent disputes with Company A, Y and his wife transferred their shares in Company C to H, after which they continued to work in the company, which was now solely owned by H. This conduct clearly contradicts normal logic.

Secondly, H initiated litigation by fabricating his "copyright owner" status and inventing infringement allegations. He and Y actually engaged in malicious collusion. Key supporting points include:

1) Evidence submitted by H was not sufficient enough to prove his copyright ownership. Knowing this, he still proceeded to sue based on fabricated claims, demonstrating clear malicious intent.

2) H filed a copyright lawsuit against Y shortly after Company A initiated patent ownership proceedings against Y. In the patent ownership case, Y could not be reached for service of process, so the court issued a public notice as an alternative method of service. However, H was still able to learn about the existence of the patent ownership lawsuit in a timely and precise manner. Instead of immediately applying to intervene in the ongoing patent case before the same court, H chose to file a separate copyright infringement lawsuit in a different court. Such course of action defies common sense. Moreover, his explanation for how he was able to accurately target the specific patent details and promptly initiate the copyright lawsuit lacks persuasiveness.

3) In the copyright case, Y did not raise any substantive objections against the copyright evidence submitted by H (all of which consisted of electronic materials highly susceptible to alteration, forgery, or manipulation). In effect, Y tacitly cooperated with and supported H's litigation claims.

4) In the litigation process clearly demonstrated Y's intent to delay the patent ownership lawsuit initiated by Company A and to coordinate closely with H.

5) During the first-instance proceedings, both H and Y were fully aware that Company A had already filed a patent ownership case against Y. However, they deliberately withheld this crucial information from the court, intentionally concealing facts that could significantly affect the outcome of the copyright trial, this also is a clear indication of malicious intent.

6) Following the enforcement of the first-instance judgment, Y has not yet fulfilled the awarded compensation obligations. Moreover, given that both H and Y continued to work together at Company C, H has taken no active steps to demand performance from Y, which constitutes abnormal conduct by both parties.

Finally, H and Y colluded maliciously with the aim of intervening with the outcome of Company A's patent ownership lawsuit against Y, in order to appropriate the patent belonging to Company A. The following points illustrate this:

1) Y possessed the technical capability to develop the patent in question, and the technology involved is related to the field in which he previously worked at Company A. Therefore, Y is the actual designer of the technical drawings and the true inventor of the patent. The patent in question is thus a service invention of Company A. H claimed to be the copyright owner of the technical drawings, but in terms of development capability, although H could briefly explain the working principles and inventive aspects of the patent, he was unable to answer basic technical questions in the relevant field. It is therefore difficult to conclude that H had the necessary R&D capability.

2) Y was fully aware that the patent was a service invention belonging to Company A. Nevertheless, he conspired with H with the aim of seizing the patent. To intervene with the patent ownership case, Y deliberately delayed its proceedings, concealed information about the copyright lawsuit, and cooperated with H to quickly secure an effective first-instance judgment. Their goal was to leverage the judgment to claim patent ownership and to counter Company A's legitimate claims, ultimately attempting to appropriate the patent that rightfully belong to Company A.

False litigation constitutes a form of obstruction of civil proceedings. In judicial practice, determining whether parties have engaged in false litigation typically involves assessing several key factors: 1) whether there is evidence of malicious collusion between the parties; 2) whether the parties' actions amount to fabricating facts and initiating litigation based on those falsehoods; and 3) whether the purpose of their collusion is to harm national interests, public interests, or the legitimate rights and interests of others. This includes situations where parties collude with the

intent to harm such interests through litigation or mediation, as well as instances where one party unilaterally invents the fundamental facts of a civil case and files a lawsuit with the People's Court to pursue such harmful ends.

Such behavior disrupts judicial activities, obstructs the proper administration of justice, undermines judicial authority and public trust, and misallocates judicial resources. All of these acts are considered obstruction of civil proceedings. In response, the People's Court shall reject such claims and may, depending on the severity of the circumstances, impose fines or detention. Where the conduct constitutes a criminal offense, criminal liability shall be pursued in accordance with the law.

The effective judgment of the Supreme People's Court concerning false litigation imposes severe judicial penalties, including substantial fines, on parties found to have engaged in such conduct. At the same time, given that the actions involved constitute suspected criminal offenses, the Court promptly transferred the relevant criminal clues to the competent public security authorities.

This ruling holds significant referential value for determining what constitutes false litigation and serves as an important warning to litigants involved in judicial proceedings. The firm stance and resolute measures taken by the People's Courts to rigorously combat malicious collusion and false litigation not only effectively deter potential offenders but also contribute to fostering integrity in society and reinforcing judicial authority.

(2025) Zui Gao Fa Zhi Min Zai No. 1

Judicial Determination of "Tolerance" Defense in Patent Infringement Litigation

In a judgment concerning a dispute over infringement of an invention patent, the Supreme People's Court held that the scope of protection of a patent claim shall be determined by the content of the claim. Where a numerical range feature is defined in the claim, if the corresponding numerical value of the alleged infringing product consistently falls within that range and essentially achieves the same technical effect as the patented invention, the alleged infringer's defense that the product is subject to manufacturing tolerances, and that such tolerances do not necessarily affect the numerical range feature defined in the claim, is generally not supported.

This article concerns a dispute over infringement of an invention patent, with the case summarized as follows:

The patentee of the involved invention patent (hereinafter referred to as "the patent") is Company A, which granted Company B a non-exclusive license to use, sell, offer to sell, and import any product protected by the patent in China. Companies A and B filed a lawsuit with the first-instance court, alleging that Companies C and D had manufactured, sold, and offered to sell staple cartridge products infringing the patent without authorization.

The first-instance court issued a civil judgment dismissing the claims of Companies A and B. The court held that the main issue in dispute was whether the alleged infringing technical solution fell within the scope of protection of the patent. The phrase "staples formed at different formed heights" as defined in Claim 1 of the patent was interpreted to include numerical limitations. In the embodiments of the patent, the difference in formed height between staples of different tip lengths exceeded 0.25 mm. The background art, embodiments of the patent, and related products in the same industry all imposed corresponding limitations on the difference in formed height between inner and outer staples to achieve the clamping effect of providing a transition from a tightly compressed hemostatic portion to a non-compressed adjacent portion of tissue.

The height difference of the staples in the alleged infringing product ranged between 0.008 mm and 0.121 mm, which was deemed reasonable due to manufacturing and usage tolerances. Furthermore, this height difference was significantly smaller than the values specified in the background art, embodiments of the patent, and related industry products for achieving the beneficial effects of the patent, making it difficult to achieve the intended advantages. Therefore, the technical solution adopted by the alleged infringing product was neither identical nor equivalent to the feature "forming the plurality of staples to have different formed heights" in Claim 1 of the patent and did not fall within the scope of protection of the patent.

Companies A and B was dissatisfied and appealed the decision.

The Supreme People's Court issued a civil judgment overturning the first-instance ruling. It ordered Companies C and D to cease the infringement, with Company C to compensate Companies A and B for economic losses amounting to RMB 2 million, and Company D to bear joint and several liability for RMB 120,000 of this amount. Companies C and D were also ordered to pay Companies A and B RMB 300,000 in reasonable expenses incurred to enforce their rights.

In its final and effective judgment, the Supreme People's Court held that the issues in dispute at the second-instance trial were whether the alleged infringing technical solution fell within the scope of protection of the amended Claim 1 of the patent and the determination of liability for infringement.

The scope of protection of a claim shall be determined by its content, and the interpretation of the claim must align with the inventive purpose of the patent. A person skilled in the art, upon reading the claims and the specification, would understand that the patent aims to achieve, through the cooperation of the staple cartridge and the anvil portion, the formation of staples with different formed heights from identical staples, thereby achieving the clamping effect of tightly compressed inner staples for hemostasis and non-compressed outer staples for clamping. Claim 1 of the patent does not specifically define the numerical difference in the formed heights of the staples. The first-instance court’s finding that the phrase "staples having different formed heights" in Claim 1 includes a numerical limitation was erroneous.

Regarding whether the alleged infringing product possesses the disputed technical feature of "the cooperation of the staple cartridge and the anvil portion causes a plurality of identical staples to be formed with different formed heights", measurement data showed that the groove depths on both sides of the anvil of the 2020 product were configured higher on the outer side and lower on the inner side. Specifically, the difference between the outer and middle groove depths exceeded 0.35 mm, with measured differences ranging from 0.359 mm to 0.375 mm. Offsetting this against the height difference of 0.3 mm in the outer-high, inner-low configuration of the staple cartridge resulted in a difference of 0.059 mm to 0.075 mm.

Based on the tolerance value of 0.05 mm confirmed by Companies A and B, the effective design difference ranged from 0.009 mm to 0.025 mm. Although Companies C and D argued that the design difference in groove depth between the inner and outer sides of their anvil was 0.3 mm, with a tolerance of ±0.1 mm, and that the measured differences of 0.359–0.375 mm fell within this tolerance range, they could not provide valid evidence to support this claim. Moreover, the effective design differences asserted by Companies A and B consistently exceeded 0.35 mm, with no instances below this value. Therefore, there was no sufficient basis to attribute the portion stably exceeding the baseline to tolerance.

Accordingly, it could be confirmed that, based on this design difference, when the alleged infringing staple cartridge was used with the 2020 product, the formed height of the outer staples consistently and stably exceeded that of the middle staples, thereby achieving the clamping effect

of providing a transition from a tightly compressed hemostatic portion to a non-compressed adjacent portion of tissue. The 2020 product of Company C, when used with the alleged infringing staple cartridge, exhibited a design difference in staple formed height, enabling the formation of different formed heights from identical staples. In light of the undisputed technical comparisons presented by both parties, the technical solution used in the alleged infringing product fell within the scope of protection of Claim 1 of the patent.

Through this judgment, the Supreme People's Court clarified the evidentiary threshold for the "tolerance defense," providing an operable framework for similar future cases. On one hand, it prevents infringers from evading patent protection under the guise of "tolerances"; on the other hand, it encourages patentees to define numerical ranges and tolerance boundaries more clearly when drafting claims. This ruling holds guiding significance for patent infringement determinations in the field of precision medical devices in China.

(2022) Zui Gao Fa Zhi Min Zhong No. 214

Infringement Determination on Treating External Data Generated by Supporting Software as Product Technical Features

In a patent infringement case, the Supreme People's Court established that when a product manufacturer provides software and an operation manual as essential components to achieve the functions of the accused product, any functionality achieved by importing processed data into the product following the manual’s instructions shall be regarded as technical features forming part of the accused product’s technical solution. Since the combined technical solution is knowingly and integrally supplied by the manufacturer, the technical solution comprising both the product and the software may be assessed as the accused infringing technical solution.

This article concerns a dispute over an invention patent infringement, with the case summarized as follows:

Company A, as the patentee of a patent titled “Thermal Imaging Apparatus and Thermal Imaging Method,” accused Company B of infringement and filed a lawsuit before the first-instance court.

The first-instance court ruled to dismiss Company A’s claims.

The court held that implementing the patented technical solution requires the thermal imaging apparatus to store a "reference image," which must then be selected and used to generate "reference image-related configuration data" before ultimately being displayed or synthesized with the captured infrared thermal image. However, during an on-site inspection, it was observed that the accused product only contained a "reference image" after Company A imported data processed through the PdmIR software into an SD card and inserted it into the device. In the demonstration, Company A showed how the "reference image" stored on the SD card was selected and used to generate "reference image-related configuration data." These features of the "reference image" and "reference image-related configuration data" were introduced and chosen by Company A itself after loading the data into the product. As a result, the accused infringing solution offered by Company B was found to lack the essential technical features of "reference image" and "reference image-related configuration data" as specified in the patent claims.

Dissatisfied with the first-instance judgment, Company A appealed.

The Supreme People's Court overturned the first-instance judgment and ruled that Company B must cease infringement and pay compensation.

In its second-instance decision, the Supreme People's Court identified one of the core issues as whether the accused technical solution fell within the scope of the patent claims. Regarding the nature of the accused infringing technical solution, specifically, whether importing an externally processed task-specific data package into the accused product constituted infringement, the Court explained that those skilled in the art understand that a product's functionality may vary depending on the supporting software, even when the underlying hardware is the same. If a manufacturer provides software as an accessory to the product and the purchaser uses the product in combination with that software, the resulting integrated technical solution is effectively delivered in full knowledge by the manufacturer. Therefore, the combined technical solution, comprising both the product's hardware features and the software's functional features, can be considered the accused infringing technical solution.

In this case, the software and operation manual provided by Company B not only served as a user guide but also contained essential technical instructions for achieving the product's described functions. Consequently, the functionality achieved by following the manual to import software-processed data into the product should be regarded as part of the technical solution of the accused product. Furthermore, the patent specification clarifies that the "storage unit" may include external media connected by wired or wireless means, confirming that the "configuration data" referenced in the patent encompasses data imported via such external storage. Thus, data imported through external storage media falls under the "configuration data" defined in the patent claims.

Based on demonstrations during the first and second-instance proceedings, after importing the ledger information data processed by Company B's software into an SD card and inserting the card into the accused product, the product exhibited the technical features of a "reference image" and "reference image-related configuration data" as claimed in the patent. This led the court to conclude that the accused technical solution fell within the scope of the patent's protection.

Through this ruling, the Supreme People's Court recognized the role of external software and imported data as part of the overall technical solution, thereby establishing a clearer method for patent infringement assessment. Specifically, when a manufacturer provides software and associated operational guidelines as integral components of the product, and defines how users should implement them, the functionality derived from the imported data may be treated as inherent technical features of the product itself. This judicial interpretation offers practical guidance for hardware companies performing thorough freedom-to-operate (FTO) analyses and assists innovators in drafting more precise and enforceable patents.

(2023) Zui Gao Fa Zhi Min Zhong No. 2699

Judicial Determination of Whether Differences in Nomenclature Constitute Technical Distinction

In an administrative appeal case, the Supreme People's Court clarified that, in evaluating a patent against the closest prior art, if a corresponding structural element differs merely in name but not in its actual structure, function, intended use, or resulting effect, then it cannot be regarded as a distinguishing technical feature that sets the patent apart from the prior art.

This article presents a case analysis concerning a patent invalidation review. The key facts of the case are briefly summarized as follows:

The patent in question, titled "A Fixed Grate Pre-combustion Furnace Suitable for Processing Alternative Fuels in Cement Kilns," is owned by Company A. In response to an invalidation request filed by Company B, the CNIPA issued a decision declaring the patent entirely invalid.

Dissatisfied with the decision, Company A filed a lawsuit with the court of first instance. The court ruled to revoke the CNIPA's decision, holding that the closest prior art (Evidence 4) did not disclose the "pyrolysis section" or "pyrolysis section grate" claimed in the patent. The first-instance court found that CNIPA's conclusion of "the 'combustion platform' in Evidence 4 was equivalent to the 'pyrolysis section grate'" in the patent was incorrect. Consequently, the court determined that the identified distinguishing technical features and the corresponding technical problem solved were erroneous. The court instructed CNIPA to reassess the patent's inventiveness based on a redefined set of distinguishing technical features and the actual technical problem to be solved.

Both CNIPA and Company B appealed the first-instance judgment.

In the second instance, the Supreme People's Court identified the core issue as whether the CNIPA had correctly identified the distinguishing technical features between Claim 1 of the patent and Evidence 4, as well as the actual technical problem to be solved, and whether, based on that determination, Claim 1 possessed inventiveness.

The Court first reasoned that the patent specification itself indicated that the material and reaction temperature were identical in both the pyrolysis and combustion sections of the furnace. Consequently, if the same material could undergo combustion in the combustion section, it would inevitably also combust, or at least partially combust, in the pyrolysis section. Therefore, despite the structure being labeled a "pyrolysis section grate" in the patent and a "combustion platform" in Evidence 4, their fundamental working principles were the same, and the two solutions presented no substantive structural distinction.

The Court further noted that Claim 1 of the patent only defined the pyrolysis section as a horizontal platform with a width of 500–1200 mm. Beyond its horizontal orientation and specific width range, this feature showed no substantive structural difference from the combustion platform in Evidence 4. The Court emphasized that the patent specification contained no description supporting Company A's assertion that the pyrolysis section had less contact with oxygen. Additionally, Company A's argument that the pyrolysis section was wider than the combustion section was deemed by the Court to relate primarily to the scale of material processing, which is a routine design adjustment within the ordinary skill of a person in the art, and therefore did not constitute a substantive difference in purpose.

Finally, the Court concluded that, with respect to the working principles and structural configurations related to the material, reaction temperature, and air/oxygen supply, the pyrolysis section grate in the patent was functionally identical or substantially equivalent to the combustion platform in Evidence 4. The patent did not record any unexpected technical effect arising from the changing a "combustion platform" to a "pyrolysis section grate" while all other technical means remained unchanged. Moreover, Company A did not submit evidence demonstrating that the pyrolysis section grate can achieve such an effect. Consequently, the Court found no substantive distinction in either the function or the technical effect of the two structures.

In summary, the Supreme People's Court affirmed the CNIPA's decision, concluding that the combustion platform in the closest prior art effectively disclosed the pyrolysis section grate

claimed in the patent. It held that the distinguishing technical features and the technical problem to be solved identified by the CNIPA were correct. Accordingly, the Court ultimately ruled that all claims of the patent lacked inventiveness.

Through this judgment, the Supreme People's Court clarified that in patent validity assessment, terminology serves merely as a linguistic label. The true boundaries of a technology are defined by its structure, function, and effect. Both patent examination and judicial review must look beyond the veil of terminology and focus on the technical essence. This ruling serves as a clear reminder to patent owners that durable protection is built not on clever wording, but on making indispensable technical contributions.

(2024) Zui Gao Fa Zhi Xing Zhong No. 870