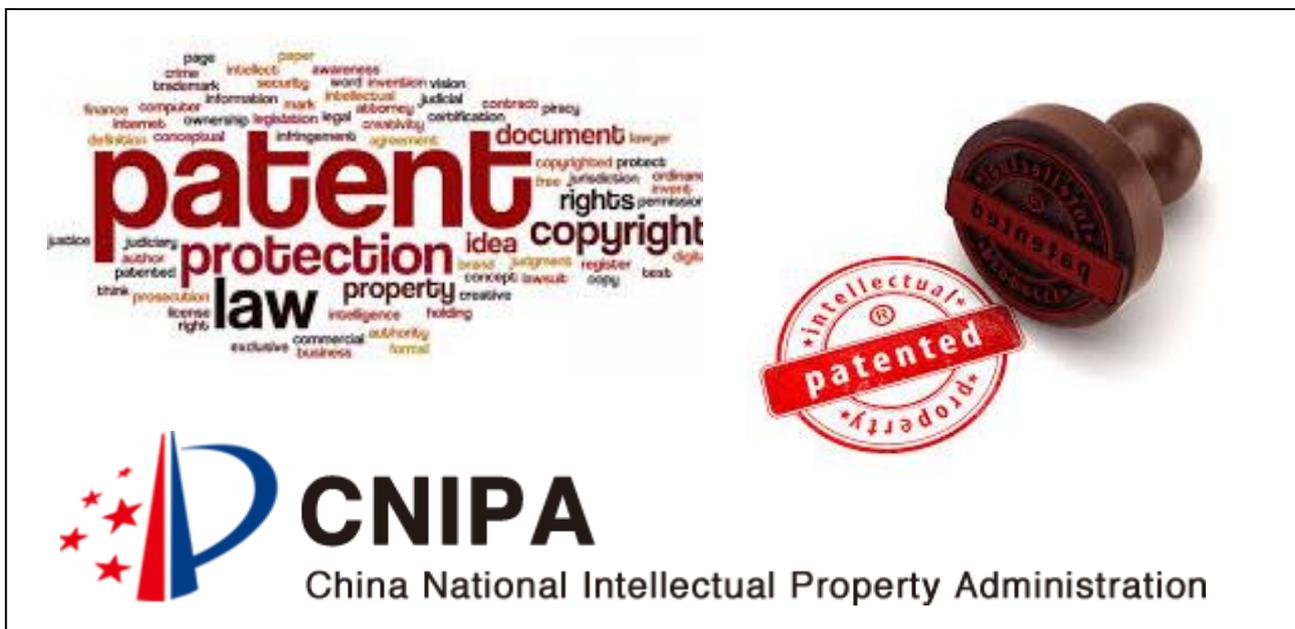


Understanding the Revised Patent Law of the PRC from 1 June 2021

- [China.direct.biz](https://china.direct.biz), by Noam David Stern and Daisy Du (2 March 2021)



When it comes to **IPR Protection in China**, it is well-known that China has gained a bad reputation for large-scale IP infringements including copying of foreign company brands and production of counterfeit goods.

But this no longer gives a fully accurate picture of the current situation and the ongoing measures taken by China to strengthen its IP laws, regulations, and courts to decisively crack down on IP infringement.

The creation of **special IP Courts** in Beijing, Shanghai and Guangzhou and 18 **provincial IP Tribunals** with cross-regional jurisdictions in China that are all headed by specialized IP judges are concrete measures implemented to ensure that IPR infringement lawsuits are handled professionally accordingly to the law. Moreover, the **Supreme People's Court of the PRC** established its own IP Tribunal on 1 January 2019.

On 17 October 2020, the revised **Patent Law of the PRC** was announced to **take effect on 1 June 2021**. This follows in the footsteps of the new **Trademark Law of the PRC** that took effect on **1 November 2019**. On 11 November 2020, the revised **Copyright Law of the PRC** was also announced to take effect on **1 June 2021**.

Current Patent Law

The first Patent Law of the PRC was adopted in 1984 and was subsequently revised in 1992, 2000 and 2008. The current Patent Law took effect on 1 October 2009 with the purpose to protect the legitimate rights and interests of patent holders and to promote inventions and their use.

In China, patents are divided into three categories: 1) Inventions, 2) Utility Models and 3) Designs with their own specific eligibility criteria and terms. This is in line with most EU countries but differs slightly from countries like Germany and Denmark where designs are protected under separate national design laws.

Revised Patent Law

In light of sustained criticism over the years from foreign companies and governments about insufficient patent protection and enforcement in China with both low fines and compensation amounts in the current Patent Law, the first draft of the revised Patent Law was published on 2 December 2015.

However, it was not until **17 October 2020**, following several amendments, that the 4th draft of the revised Patent Law was finally approved that will **take effect on 1 June 2021**.

The revised Patent Law consists of **eight chapters and 82 articles** that establish the fundamental rules for the filing, examination, granting, validity, and protection of patent rights in China.

The **Implementing Regulations** of the revised Patent Law are still pending publication.

Key Articles and Main Differences

The below table only represents a selected number of key articles of the revised Patent Law where we highlight some of the main differences with the current Patent Law. Many of the articles in the current Patent Law remain with some revised or renumbered with new articles added in the revised Patent Law.

Comparison Table (Selected): Revised Patent Law versus Current Patent Law

Articles (Selected)	Revised Patent Law	Current Patent Law
Article 20: Good Faith, Abuse	Filed patent applications shall be based on good faith, and any monopolistic abuse of patent rights to eliminate or restrict competition shall be punished according to the Anti-monopoly Law of the PRC.	No mentioning of good faith applications and patent right abuse punished according to the Anti-monopoly law of the PRC.
Article 24 : Novelty Factor of Invention	Current three criteria remain but new item added. Novelty factor not affected for six months prior to the filed application, if the invention was first made public for the purpose of public interest during a national emergency or extraordinary state of affairs.	Includes three criteria that preserve the novelty factor for an invention for six months but not for the purpose of public interest during a national emergency or extraordinary state of affairs.
Article 42: Validity of Patents	Maximum validity of 15 years for design patent, 20 years for invention patent and 10 years for utility model patent.	Maximum validity of 10 years for design patent, 20 years for invention patent and 10 years for utility model patent.
Article 42: Compensation for Delay	Invention patent holder can request compensation from the authorities due	No reference to compensation for any unreasonable delay including for new

of Approval, Patent Right for New Drugs	to any unreasonable delay by the authorities in granting the patent right including for new drugs. The validity period of a drug patent is max. 14 years.	approved drugs, and no mentioning of a special validity period for new drug patents.
Article 68: Fines for Counterfeiting	All illegal income shall be confiscated and a fine of no more than five times the illegal income may be imposed. Where no illegal income is made or the amount of illegal income is below RMB 50,000, a fine of no more than RMB 250,000 may be imposed.	A fine no more than four times the illegal income may be imposed and if no illegal income is made, the maximum fine is RMB 200,000.
Article 70: Handling of Patent Infringement Disputes	Depending on the violation, either party to an infringement dispute can request that the case is handled on a national or local level.	No such specific requests can be made to handle patent infringements on a national or local level.
Article 71: Legal Compensation	If the patent infringement is ruled intentional and serious by a people's court, the awarded damages shall be 1-5 times the determined amount following the standard method. If the standard method is not feasible, the compensation amount is RMB 30,000 - 5 million.	No multiplier used for intentional and serious infringement. If the standard method is not feasible, the compensation amount is RMB 10,000 - 1 million.
Article 71: Burden of Proof when Awarding Damages	People's court may order the infringer to provide the related account books and materials of the infringement or else determine the compensation amount based on the claims of the patent holder and evidence provided.	No mentioning of awarding damages based on just the claims by the patent holder and provided evidence.
Articles 72-73: Preservation of Property and Evidence	Possible prior to the filing of a lawsuit to apply to a people's court for property and evidence preservation measures according to the law for the adoption of property and evidence preservation measures [Civil Procedure Law of the PRC].	Same conditions apply but no mentioning of the current law for adoption of property and evidence preservation measures.
Article 74: Time Limitation on Enforcing Rights and Claiming Royalties	Limitation of action against patent infringement is three years, and three years for claiming royalties for Inventions.	Limitation of action against patent infringement is two years and two years for claiming royalties for Inventions.
Article 76: Dispute Settlement for Marketing of Drugs	Relevant party may file a lawsuit with a people's court or request an administrative ruling in relation to the same dispute.	No specific reference to dispute settlement for the marketing of drugs.

Safeguarding Patent Rights

No matter if you consider, plan, or already sell offline and/or online in China, you are strongly advised to register your IP Rights **(patent, trademark, and copyright)** before market entry to gain protection or you risk

loss of control to outsiders through (lawful) copying and counterfeiting which can harm your company revenue, reputation, and brand in China.

With the announcement of the revised Patent Law of the PRC that will take effect on 1 June 2021, China has finally taken a crucial step to improve and strengthen the fundamental rules for the filing, examination, granting, validity, and protection of patent rights in China.

There is now a greater focus on reinforcing the public patent system to promote the use and protection of patent rights in China. Patent disputes with a nation-wide impact can be handled on a national level and inter-regional cases can be settled on a higher local level.

Moreover, the administrative fines and legal compensation amounts for patent infringements have been raised significantly, and the burden of proof when awarding damages now also rests on the infringer.

These are all important steps needed to safeguard the legal rights and interests of both domestic and foreign patent holders based on transparency and trust.

Contact

Noam David Stern, Founder

noam@china-direct.biz

Mobile: +86 136 1169 1358

www.china-direct.biz

China-direct.biz is a specialized consulting firm in Shanghai that offers practical advice and supporting services to international investors and mostly Scandinavian companies regarding market access, foreign direct investment, and operations in China. Our management team has a strong legal and business background with over 25 years of experience in assisting foreign invested companies with the **Critical Success Factors of Doing Business in China**.

©Copyright 2021 All rights reserved by China-direct.biz. The information contained herein is for general information purposes only. All the information is provided in good faith and the authors make no representation or warranty of any kind, express or implied, regarding the accuracy, adequacy, validity, reliability, availability, or completeness of any information and suggestions. Reproduction or redistribution of this material is not permitted without prior written consent by the author and China-direct.biz.