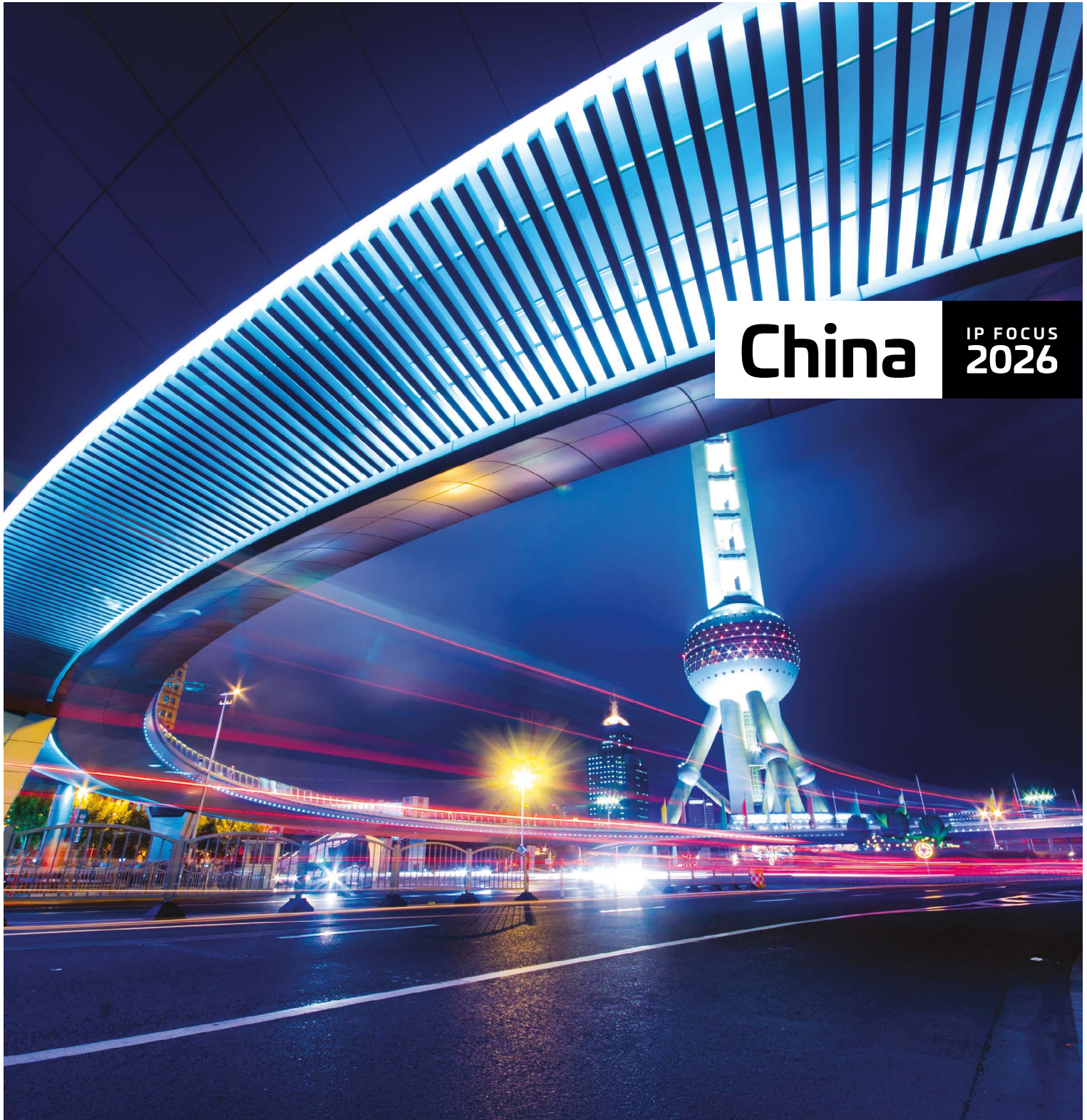




# INTELLECTUAL PROPERTY FOCUS

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# Internet IP protection in China: legislative evolution, judicial practice, and enforcement strategies

**Jie He and Mingzhao Yang of AFD China Intellectual Property Law Office** examine the country's internet intellectual property framework, judicial trends, and practical approaches for tackling cybersquatting and online copyright infringement

In the digital economy era, the internet has evolved from a mere information conduit into a critical repository for corporate assets and brand value, where domain names act as digital addresses and copyrighted content drives traffic, jointly forming the cornerstone of online intellectual property (IP). However, advancing technology has made cybersquatting and copyright infringement increasingly frequent and concealed, posing significant brand protection challenges.

This article outlines the evolution of relevant Chinese legislation and systems in recent years, analyses typical judicial practices, and provides actionable strategies grounded in corporate experience, offering guidance for industry participants.

## 1. Recent legislative trends and institutional innovations

### 1.1 Refining regulations against identifier squatting in the online environment

The revised Anti-Unfair Competition Law, implemented on October 15 2025, further strengthens the regulation of cybersquatting. Article 7 of this law explicitly identifies acts such as "unauthorised use of the main part of another person's domain name, or the website name, webpage, new media account name, application name, or icon of another person, which has certain fame" as unfair competition.

With the rise of social media, corporate accounts and app icons have become essential brand assets, with commercial value even surpassing that of traditional domain names. Therefore, including such new types of online identifiers into the protection scope effectively addresses the evolving needs of the digital economy. From a legislative technique perspective, this provision clearly outlines typical infringements while reserving space for identifying future new forms of online unfair competition.

Regarding legal effect, rights holders and the State Administration for Market Regulation (SAMR) can now directly invoke this provision to initiate legal remedies or administrative enforcement procedures without needing to circuitously apply the Trademark Law or general principles of the Anti-Unfair Competition Law. This significantly enhances the efficiency of dispute resolution and the effectiveness of administrative enforcement.

### 1.2 Strengthening platform operators' responsibility for IP protection

China's approach to governing online IP infringement prioritises prevention and addressing the root causes. Platform operators are required to take proactive responsibility for the protection of IP and the maintenance of fair competition by adopting reasonable measures to prevent and address IP infringements occurring on their platforms, according to the following laws and judicial interpretations:

- Article 41 of the E-Commerce Law of the People's Republic of China;
- Article 6.8 of the Service Norms for Third-party E-commerce Transaction Platforms;
- Article 15 of the Regulation on the Protection of the Right of Communication to the Public on Information Networks; and
- Rule 9 of the Provisions by the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Communication to the Public on Information Networks.

The aforementioned measures include:

- Establishing IP protection rules;
- Setting up convenient channels for rights holders to file complaints;
- Handling infringement complaints promptly and appropriately;
- Taking necessary actions against repeat infringers;
- Preserving relevant records; and
- Cooperating with law enforcement investigations.

Between September 2024 and February 2026, the SAMR has progressively clarified and refined the obligations of e-commerce platforms regarding merchant verification, complaint handling and resolution, and assistance in investigations, along with the legal consequences of non-compliance. This has been achieved through a series of measures, including organising 81 e-commerce platforms nationwide to sign a self-discipline convention, introducing regulations (recently published for public comments) on platform assistance in investigating infringement cases, and implementing routine "retrospective" supervision.



These measures demonstrate the SAMR's institutional innovation and determination in combating online black and grey markets and solidifying platform operators' responsibilities.

## 2. Deepening and refining judicial practice

### 2.1 Further clarification of standards for domain name protection

In July 2025, the Supreme People's Court clarified, for the first time in a typical case, the judicial protection standards for domain names as part of "prior civil rights" under Article 32 of the Trademark Law. In this case, the apex court sys-

tematically articulated the "four requirements" for a domain name to receive prior rights protection, which are:

- The domain name registration date precedes the application date of the disputed trademark;
- The domain name possesses a certain fame among the relevant public;
- The disputed trademark is identical or similar to the domain name identifier; and
- The registration and use of the disputed trademark are likely to cause confusion among the relevant public.

This case emphasises a dynamic and substantive review standard that comprehensively evaluates the domain name's actual use, the relevance between the website content and the designated goods/services of the disputed mark, the market

reputation and consumer perception of the domain name, etc. By establishing a clear legal framework for resolving conflicts between domain names and trademarks, this approach aligns with branding practices in the internet era while preventing injustices that may arise from rigid application of the law.

## 2.2 Judicial responses to new forms of online copyright infringement

In the internet age, infringing content often spreads via platforms such as short videos and live streams. To enhance user experience and traffic, platforms deeply intervene in content generation and dissemination through algorithmic recommendations, curated collections, format conversions, and other means. Their role has extended beyond a mere network service provider simply offering information storage space. In recent years, several judgments have further clarified platforms' heightened duty of care and liability boundaries in specific scenarios.

For instance, a short video platform created topics, categories, and collections for a popular TV series. Numerous infringing clips uploaded by users appeared in these sections and were readily accessible for viewing or downloading. The court found that the platform had effectively recommended the relevant content and, being in a position where it should have known about the user infringement without taking timely and effective measures to stop it, this constituted contributory infringement (Su 12 Min Zhong No. 518, 2024).

In another example, a platform technologically processed user-uploaded musical scores, converting them into a game-like animation with sound for others to use. The court found that the platform had altered the original form of the work through specific technical means, which exceeded the scope of merely providing information storage space and constituted an infringement against the right of communication through information networks (Jing 73 Min Zhong No. 941, 2024).

These cases demonstrate a shift towards stricter platform liability, which benefits rights holders. On one hand, it effectively curbs the escalation of infringement harm caused by algorithmic recommendations and technological processing. On the other hand, it provides clearer grounds for rights holders to directly hold platforms accountable. By compelling platforms to assume higher standards of review and blocking obligations, the dissemination chain of infringing content can be cut off more efficiently, simultaneously laying the groundwork for rights holders to secure more substantial damages.

## 3. Practical guidance for enterprises on rights protection and infringement prevention

While the internet has exacerbated the concealment of infringement, technological advancements and legal improve-



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ments have provided enterprises with diverse remedies. It is recommended that companies comprehensively consider the nature of the infringement, their rights protection goals, and the cost-benefit analysis to select the optimal strategy.

### 3.1 Preventing and responding to cybersquatting risks

#### 3.1.1 Domain name registration strategy

It is recommended that enterprises adopt a three-tiered strategy of 'core protection, defensive extension, and dynamic adjustment'.

Core protection should encompass domain names precisely matching the company's main brand, including essential suffixes such as .com and .cn, as well as country-code top-level domains for key business markets. Defensive registrations can target common variations, such as homophones, lookalike characters, number or letter substitutions, and hyphenated forms. Enterprises should, in terms of dynamic adjustment, promptly register new top-level domains or adjust their existing domain name structures based on evolving business needs.

#### 3.1.2 Monitoring for cybersquatting

Enterprises are advised to monitor in real-time the registration, status changes, and expiry of brand-related domain names. They should utilise multidimensional indicators such as character similarity, phonetic similarity, and semantic relevance to identify potentially infringing domain names.

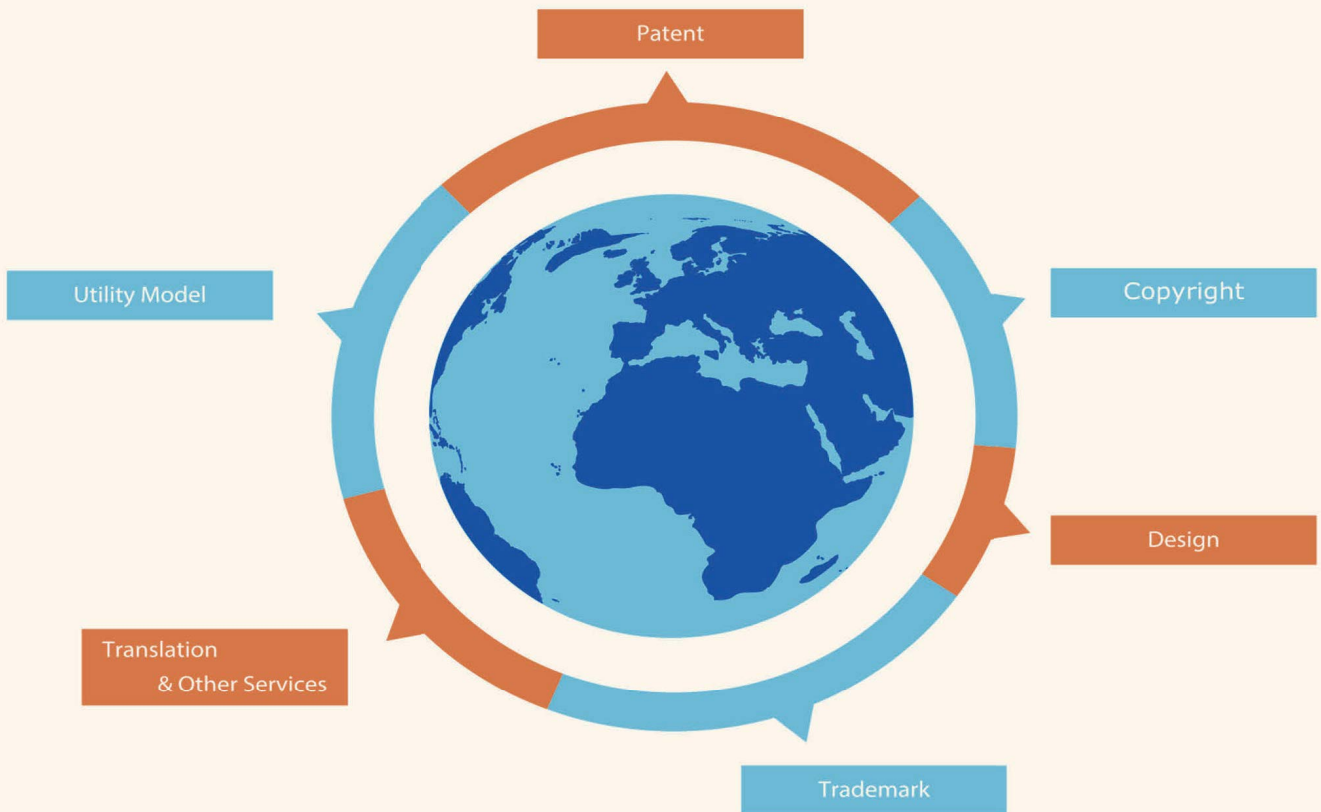
Furthermore, given that squatters often simultaneously create identically named social media accounts or launch similarly named apps after registering a confusingly similar domain name, enterprises should establish a cross-platform unified monitoring mechanism to achieve comprehensive protection of their digital assets.

#### 3.1.3 Domain name dispute resolution avenues

Domain name disputes can generally be resolved through negotiation, domain dispute resolution procedures, or judicial litigation. Among these, negotiation can help rights holders acquire the domain name quickly and at low cost, but the outcome is uncertain and carries transactional risks. Judicial litigation is more appropriate for complex cases involving other infringing or unfair competition acts where claiming damages is necessary.

In practice, the most mainstream and efficient method of domain name rights enforcement is through domain dispute resolution procedures. Depending on the domain name suffix, rights holders can file complaints under the rules of the Uniform Domain Name Dispute Resolution Policy (UDRP, which is applicable to generic top-level domains such as .com, .org, and .net) or the China ccTLD Dispute Resolution

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Policy (CNDRP, which is applicable to China's country-code top-level domains such as .cn and .中国) with dispute resolution service providers accredited by the Internet Corporation for Assigned Names and Numbers and the China Internet Network Information Center, requesting the cancellation or transfer of the domain name.

Under the CNDRP or UDRP, a complaint will be supported if it simultaneously satisfies the "three requirements" stipulated in the relevant rules (see paragraph 4(a) of the UDRP and Article 8 of the CNDRP):

- The disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights;
- The domain name registrant has no rights or legitimate interests in respect of the domain name; and
- The domain name has been registered and is being used in bad faith.

### 3.2 Preventing and enforcing rights against online copyright infringement

#### 3.2.1 Copyright asset management

To achieve efficient and secure rights management, rights holders should leverage both the China Copyright Protection Center's registration system and blockchain forensics, forming a dual rights confirmation mechanism.

The Copyright Protection Center, as a national-level copyright protection and service institution and the sole domestic body for computer software copyright registration and copyright pledge registration, offers the highest level of recognition for registrations, though processing times are longer and costs higher. Blockchain forensics, conversely, allows for instantaneous timestamp generation and certification at a lower cost, making it suitable for rapid, bulk content protection.

Furthermore, enterprises should establish comprehensive records covering the entire life cycle of a work, from creation to licensing and assignment. In cases of commissioned works, collaborative works, or works made for hire, rights ownership should be clearly defined through

**"For serious conduct suspected of constituting a crime, reports can be made to public security organs"**



## Mingzhao Yang

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Before joining AFD China, Mingzhao received systematic R&D training in an R&D company and worked as an IP legal assistant, patent engineer, department head, and assistant general director, while and after receiving training in IP rights-related laws and patent and trademark practice at the China Intellectual Property Training Center, legal training at several legal training centres, and copyright training at the China Copyright Protection Center.

written agreements. This ensures that in the event of an ownership dispute or infringement lawsuit, the legality and integrity of the rights chain can be proven swiftly and conclusively, avoiding enforcement failures due to ownership defects.

#### 3.2.2 Infringement monitoring and evidence preservation

To address the current challenges of online copyright infringement – which are characterised by rapid dissemination, minimal trace retention, and difficulties in evidence collection – rights holders can, within legal and compliant frameworks, utilise web crawlers to capture platform content and employ AI recognition technologies to compare images, music, and videos that have been altered by infringers (e.g., reshaped, recoloured, cropped, or spliced), thereby achieving real-time monitoring and in-depth analysis. Furthermore, these technical means enable a quantitative assessment of the infringement scale (including dissemination volume, duration, estimated illicit profits, and advertising revenue conversion), providing data-driven insights for calculating damages and formulating enforcement strategies.

Regarding evidence preservation, rights holders can choose flexibly based on specific circumstances. For bulk evidence where timeliness is critical, real-time blockchain forensics is preferable. For significant infringements and situations where the admissibility of evidence in foreign proceedings might later be an issue, traditional notarisation methods should be used or supplemented.

#### 3.2.3 Diversified dispute resolution mechanisms

For copyright infringement, rights holders can flexibly select from various channels based on the nature of the infringement, its impact, and their relief needs, including platform complaints, administrative reports, criminal complaints, and civil litigation.

For less severe infringements concentrated on specific platforms, platform complaints can be used first to achieve swift removal of infringing content through low-cost, convenient procedures.

For larger-scale infringements, reports can be filed with the SAMR or the competent copyright administrative department, leveraging administrative coercive power for investigation and fines, creating an effective deterrent.

For serious conduct suspected of constituting a crime, reports can be made to public security organs (i.e., the police department), utilising criminal investigation, confiscation of illegal gains, and the pursuit of criminal liability, representing the strongest legal deterrent.

For infringements with significant impact causing severe damage to the rights holder, where comprehensive relief via injunctions and damages is needed, rights holders can initiate civil litigation as a final judicial remedy.

# Chinese patent litigation and procedural issues: evidentiary requirements to obtain high damages

Ji Liu and Shaohui Yuan of CCPIT Patent and Trademark Law Office analyse evidentiary strategy in recent high-award Chinese patent infringement cases

China's patent damages landscape has undergone a fundamental transformation. A decade ago, patent holders that brought infringement suits in Chinese courts could generally expect only modest statutory awards, which were typically far below the true extent of their losses. That situation has now changed decisively.

The Intellectual Property Court of the Supreme People's Court (the SPC IP Court) has issued a series of landmark rulings in which damages reached tens of millions, and in some cases hundreds of millions, of RMB: *WAPI* (2022 SPC IP Civil Final No. 817 hereinafter, referred to as No. 817, 2022) resulted in an award of RMB 143 million, while *Melamine* (No. 1559, 2020) and *Electronic-grade Copper Oxide* (No. 1254, 2024) resulted in awards of RMB 120 million. The emergence of nine-figure awards signals that courts are both willing and equipped to calibrate damages to actual commercial harm, rather than defaulting to the statutory range.

One basic problem, however, remains: China does not have a discovery procedure. A patentee generally cannot compel the defendant to produce financial records, sales data, production records, or internal communications. In the US, by contrast, broad discovery in patent litigation allows the plaintiff to obtain much of the information needed to prove damages from the defendant's own documents. In China, the patentee often enters the proceedings with little or even no visibility into the defendant's sales, profits, or other key damages evidence. This information gap is serious, and it has long been a main reason why even strong claims resulted in awards that did not reflect commercial reality.

This article examines the evidentiary strategies and procedural tools that led to high damages awards in 16 SPC IP Court decisions, with awards ranging from RMB 10 million to RMB 143 million.

## 1. The evidence framework

In the reviewed cases, successful patentees usually developed two lines of evidence at the same time. One line was used to prove infringement. The other, and often the more important one in practice, was used to prove the scale of damages: how many products were sold, how much profit was made, how long the infringement lasted, and through how many sales channels the products were distributed.

### 1.1 Proving infringement

For product patents, the usual approach is a notarised purchase together with a technical comparison. For complicated cases, a technical comparison report issued by a judicial/technical appraisal body is preferable, as seen in *Glucoamylase* (No. 483, 2022) and *Intramedullary Nail* (No. 148, 2021).

For method patents involving large industrial systems, *Melamine* showed that administrative regulatory compliance materials can sometimes serve in place of an on-site inspection. These materials included safety assessments, environmental impact reports, and engineering design documents submitted to government authorities. The court treated them as objective third-party evidence of how the defendant's system was actually implemented.

For standard-essential patents, Ministry of Industry and Information Technology network access permit data can serve two functions at once: it shows that the accused product exists on the market, and it shows compliance with the relevant standard. This approach was used in *WAPI*.

Where there has already been a prior infringement judgment, proving a later round of infringement becomes much easier. In that situation, the patentee mainly needs to show that the defendant continued using the same technical solution after the earlier judgment.

### 1.2 Proving the scale of damages: four main categories of damages evidence

The first category is external and objective data. This is often the strongest type of damages evidence because it does not depend on the defendant's cooperation. Tax records were especially important in several cases. In *Bear Bile Eye Drops* (No. 2874, 2023), a Tax Enforcement Feedback Notice recorded RMB 26.68 million in infringing sales from 2014 to 2019. In *Rear-view Mirror* (No. 2892, 2022), the court obtained invoice data directly from the tax bureau. Customs export records played a similar role in *Gold-finger Circuit Board* (No. 1791, 2020), where they showed export volumes without requiring access to the defendant's internal financial materials. These forms of evidence are particularly valuable because they come from government agencies and are therefore highly credible.

The second category is the defendant's own public disclosures. This type of evidence is difficult for the defendant to deny later in litigation. In *Cavity Microwave Device* (No. 379, 2021), the plaintiff relied on the defendant's annual report together with industry profit margins to estimate the likely profit range from the infringement. In *Intramedullary Nail*, the court referred to sales data in the defendant's prospectus and then used that as part of the basis for an adverse inference after the defendant obstructed evidence production. Materials that the defendant has voluntarily submitted to regulators are usually hard to disown later in court.

The third category is multichannel sales evidence. This type of evidence helps show the scope of the infringement. A notarised purchase from only one online platform usually proves only a minimum level of sales, not the full extent of the conduct. In *Breast Pad* (No. 1124, 2023), the plaintiff carried out notarised purchases on Taobao, JD.com, and Pinduoduo, and used procurement contracts to show broader distribution. In *Toy Figurine* (No. 1282, 2020), the plaintiff went further by surveying 114 physical retail stores and combining those results with industry white paper data, thereby building a fuller record of both online and offline sales.

The fourth category is historical contracts and comparable licence agreements. In *Bear Bile Eye Drops*, a prior distribution agreement set out per-unit penalty amounts, which gave the court a concrete reference point for a very large damages claim. In *WAPI*, the patentee submitted a comparable third-party licence agreement, allowing the court to calculate damages directly on a royalty basis under Article 71 of the Patent Law. In *Electrical Connector* (No. 646, 2023), the court relied in part on the damages figure in an earlier settlement when considering the punitive damages.

## 2. Evidence obstruction: China's practical substitute for discovery

If the lack of discovery is one of the main structural difficulties for patentees in China, the rule on evidence obstruction is the tool that the courts use to address that problem, at least in part.

Article 27 of the SPC's Judicial Interpretation II on Patent Infringement Disputes allows a court to draw an adverse inference, or even to accept the patentee's damages claim, when the defendant refuses to produce financial records under its control after the court has ordered production. In practical terms, the rule shifts the consequences of missing information away from the patentee, which does not have access to the records, and on to the defendant, which has the records but chooses not to produce them.

### 2.1 Conditions for applying the rule

Four conditions generally must be met:

- The patentee must provide preliminary evidence showing the likely scale of the infringement;



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- The relevant records must be mainly in the defendant's possession;
- The court must issue a formal order requiring production; and
- The defendant must fail, without a good reason, to produce complete and reliable records.

In the reviewed cases, defendants used a range of tactics to avoid full disclosure. Some argued that internal reorganisation made production impossible, as in *Cavity Microwave Device*. Some produced only partial records, as in *Azo Dye* (No. 111, 2022). Some submitted audit reports prepared after the fact, without a method the court could verify, as in *Toy Figurine*. Others claimed that their profit margins were low but offered no supporting accounting materials, as in *Bear Bile Eye Drops*. None of these arguments succeeded.

### 2.2 Effect of obstruction and the role of preliminary evidence

Once the court finds evidence of obstruction, the information problem no longer works mainly against the patentee. Instead, it begins to work against the defendant. In *Melamine*, the defendant refused to produce records, and the court accepted the patentee's RMB 120 million damages claim even though no internal records were available. In *Cavity Microwave Device*, the court relied on annual report data and industry profit margins and awarded RMB 40 million. In *Bear Bile Eye Drops*, the court expressly stated that when a party holds relevant records but fails to produce them, it should bear the resulting adverse consequences. The final award increased

from RMB 4.53 million to RMB 10.03 million.

The strength of the court's adverse inference depends heavily on the quality of the patentee's preliminary evidence. Where the patentee had already provided objective and quantified external materials – such as a tax certificate, invoice records obtained through the court, or figures from a prospectus – the court was willing to draw a much stronger inference.

## 3. Choosing the damages basis and understanding punitive damages

Article 71 of China's Patent Law sets out a clear order for calculating damages. Courts should first look to the patentee's actual losses or the infringer's profits. If neither can be reliably calculated, the court may use a reasonable multiple of a royalty. Statutory damages come last. The SPC IP Court's decisions show that courts are willing to support patentees that remain on these higher levels of the damages framework instead of falling back on statutory damages.

In the reviewed cases, the most common method was to calculate the infringer's profits. Proving the patentee's actual losses often requires difficult analysis of market substitution and lost sales. By contrast, the infringer's profits can often be estimated more directly by combining sales volume with unit profit margin. That approach is especially workable



when the patentee can rely on external data and industry profit margins, and when the defendant refuses to produce its own records. The royalty-based method is also useful when comparable licence agreements are available. By comparison, statutory damages remain a fallback option in SPC IP Court practice.

The 2020 amendment to the Patent Law also added punitive damages under Article 71. That provision allows the court to multiply the base damages by one to five times where the infringement is both intentional and serious. In 2025 alone, Chinese courts had applied punitive damages in 505 intellectual property cases, with total punitive awards

reaching RMB 1.8 billion. The reviewed patent cases show, however, that punitive damages can increase an award; they are not necessary for obtaining a high award.

Three of the reviewed cases applied a two-times multiplier:

- *Long-chain Diacid* (No. 3178, 2023);
- *Rear-view Mirror*; and
- *Electrical Connector*.

In each of these cases, there had already been an earlier judgment finding infringement, and the defendant continued the same conduct afterwards. That made wilfulness relatively easy to establish.

At the same time, the three largest awards in the study – i.e., *Melamine* (RMB 120 million), *WAPI* (RMB 143 million), and *Copper Oxide* (RMB 120 million) – were reached without any punitive multiplier. Those awards were built instead on strong external evidence and the defendant’s obstruction of evidence production. The practical point for the plaintiff is straightforward: even without a prior judgment, it is still possible to pursue a high damages claim if the evidentiary groundwork is prepared well.

### 4. Evidence strategies for different types of cases

#### 4.1 Large industrial systems

When a patent covers a process used in a large chemical plant or other industrial facility, the usual purchase-and-test method is not workable. *Melamine* showed that materials filed with environmental and safety regulators can fill this gap. These materials, such as hazard assessment reports and engineering design documents, often record technical parameters that can be compared with the patent claims. They carry strong evidentiary weight because they were prepared to satisfy regulatory requirements rather than for use in litigation. Just as importantly, they can often be obtained from government authorities without the defendant’s cooperation.

#### 4.2 Manufacturing equipment patents

When the patent covers a production tool rather than the final product, direct inspection of the accused tool is often not possible. *Microwave Oven Mould* (No. 1584, 2022) addressed this problem through pre-litigation evidence preservation and reverse technical analysis. The experts started from the physical features of the final product and then identified the tooling features that would necessarily have produced those features.

In this type of case, the plaintiff should identify suitable technical experts early and obtain preliminary analysis before applying for evidence preservation.

#### 4.3 Brand owner liability in original equipment manufacturer arrangements

*Breast Pad* shows that a brand owner may be held jointly liable with the manufacturer in an original equipment manufacturer arrangement if the brand owner was involved in setting the product’s technical specifications or design requirements. To prove this, the patentee should look for procurement contracts containing technical specifications, communications showing the brand owner’s involvement in the design process, and evidence of sales across multiple channels. Adding the brand owner as a defendant can significantly improve the amount of any judgment and the chances of enforcement, because brand owners often have more reachable assets than contracted manufacturers.



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Shaohui focuses on drafting patent application documents, patent prosecution, patent re-examination, patent invalidation, patent validity litigation, patent infringement litigation, legal opinion on patent infringement, administrative protection of patent right, licensing/assignment of patent, patent portfolio management, freedom-to-operate opinion, and patent strategy design. His practice also covers patent registry matters in Hong Kong and Macau SAR; intellectual property litigation and dispute resolution, including negotiation, mediation, and arbitration; and consulting on intellectual property strategy.

### 5. Practical recommendations

The following actions are recommended before filing suit:

- Use administrative channels early – before filing suit, consider whether government channels can help generate damages evidence. A complaint to the tax authorities may lead to enforcement feedback identifying the defendant’s infringing sales over multiple years. Customs inquiries may also help establish export volumes by product type, without relying on the defendant’s records.
- Collect the defendant’s public disclosures in a systematic way – these may include annual reports, IPO prospectuses, regulatory filings, and marketing materials that describe sales performance. Listed companies often disclose figures publicly that can later be used against them in litigation.
- Carry out notarised purchases across multiple platforms and at different points in time – a single notarised purchase usually shows only a limited part of the infringement. By contrast, repeated notarised purchases across major e-commerce platforms, made at different times and preserving cumulative sales information, can provide a much stronger basis for proving the scale of infringement.
- Look for comparable licence agreements or earlier commercial contracts – these materials can help show the economic value of the patented technology, even if they are not formal patent licences. Any real commercial benchmark can make the damages claim less subjective and easier for the court to accept.

At filing and during litigation:

- Request the production of accounts from the outset – the request should be included in the complaint and supported by the preliminary evidence already collected. Courts are much more likely to respond to a request tied to concrete external evidence than to a general assertion that the defendant controls the relevant information.
- Apply for evidence preservation without delay where there is a real risk of destruction – if there is a genuine risk that manufacturing records, inventory records, or server data may be lost or destroyed, the plaintiff should seek pre-litigation evidence preservation as early as possible.
- Monitor compliance with production orders closely – partial disclosure, unexplained delay, or submissions with unclear methodology should be identified promptly and placed on the record. A finding of evidence obstruction is not automatic. The plaintiff must show



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## Summary of reference cases

Case reference	Name	Damages (RMB)
2022 SPC IP Civil Final No. 817	WAPI	143 million
2020 SPC IP Civil Final No. 1559	Melamine	120 million
2024 SPC IP Civil Final No. 1254	Electronic-grade Copper Oxide	120 million
2021 SPC IP Civil Final No. 379	Cavity Microwave Device	40 million
2023 SPC IP Civil Final No. 3178	Long-chain Diacid (punitive x2)	30 million
2022 SPC IP Civil Final No. 483	Glucoamylase	23.05 million
2021 SPC IP Civil Final No. 148	Intramedullary Nail	20.1 million
2021 SPC IP Civil Final No. 2480	Cellulase	20 million
2022 SPC IP Civil Final No. 111	Azo Dye	19.5 million
2023 SPC IP Civil Final No. 1124	Breast Pad	16.1 million
2020 SPC IP Civil Final No. 1282	Toy Figurine	15.5 million
2022 SPC IP Civil Final No. 2892	Rear-view Mirror Actuator (punitive x2)	12.2 million
2023 SPC IP Civil Final No. 646	Electrical Connector (punitive x2)	12.05 million
2020 SPC IP Civil Final No. 1791	Gold-finger Circuit Board	10.5 million
2022 SPC IP Civil Final No. 1584	Microwave Oven Mould	10.2 million
2023 SPC IP Civil Final No. 2874	Bear Bile Eye Drops	10.03 million

the court, with some precision, how the defendant has failed to comply.

- Respond to unsupported low-margin arguments with industry data and the defendant’s own statements – SPC IP Court decisions consistently refuse to accept low-profit claims that are not backed by accounting evidence. Industry-average data and the defendant’s public disclosures can be effective tools for challenging such defences.

### 6. Key takeaways

The SPC IP Court’s decisions show that courts are prepared to award substantial damages when the patentee presents an evidence record that is grounded in objective external

materials, developed through available procedures, and tied to a credible commercial basis for calculation. The absence of discovery remains a real limitation, but it is not insurmountable.

China’s evidence obstruction rules mean that a defendant’s failure to cooperate may support a substantial award, so long as the patentee has already provided enough reliable external evidence to give the court a sound basis for quantification. For that reason, damages evidence should be treated as a central part of case strategy from the earliest stage of case assessment.

A patentee that enters litigation with tax records, customs data, and the defendant’s public disclosures is already in a much stronger position to secure a meaningful award.

# Insights into Chinese patent claim construction rules in draft judicial interpretation

Wayne W J Ma of China Patent Agent (H.K.) Ltd. analyses the latest draft judicial interpretation on patent infringement disputes issued by the Supreme People's Court

As China's scientific and technological innovation advances, patent infringement disputes have become increasingly diverse and complex, posing challenges to existing judicial rules. Against this backdrop, the Draft Judicial Interpretation (III) on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (the Exposure Draft) released by the Supreme People's Court (SPC) duly addresses new demands and issues arising in patent infringement judicial practice.

Consisting of 31 articles, the Exposure Draft covers jurisdiction, standing to sue, claim construction, infringement evaluation, non-infringement defences, bad-faith litigation, damages, and other matters, aiming to unify adjudication standards and respond to emerging needs in the judicial protection of patents amid technological innovation.

The claim construction rules established in articles 10 and 11 of the Exposure Draft underscore the judicial trend towards a more refined and rigorous determination of the scope of patent protection, while also raising professional standards for patent attorneys.

Patent attorneys are expected to not only fully command patent examination rules applicable to prosecution and invalidation proceedings but also gain an in-depth understanding of claim construction rules in infringement litigation. They must proactively identify potential risks, precisely delineate the technical boundaries of inventions to be protected at the drafting stage, and balance the breadth of protection and stability of claims when making amendments and arguments at later stages. This serves to prevent the subsequent narrowing of the patent scope caused by drafting oversights or improper procedural acts.

Focusing on the pivotal issue of claim construction, this article analyses articles 10 and 11 of the Exposure Draft with reference to landmark SPC judicial cases to provide insights for industry discussion.

## Article 10 of the Exposure Draft

Article 10 stipulates: "Where the accused technical solution has the prior art defect(s) intended to be overcome by the patent as recited in the Description, the courts shall determine that the technical solution does not fall within the scope of protection of the patent right."

This provision establishes the prior art defect exclusion rule in claim construction, thereby incorporating the purpose of the patented invention as a factor in determining the scope of patent protection. It expressly excludes from the protection

scope technical solutions that replicate the prior art defect the patent seeks to overcome, to ensure that the protection aligns with the patent's actual technical contribution.

Two core conditions must be met for its application:

- The accused technical solution replicates the prior art defect recited in the Description; and
- The defect is precisely what the relevant patented technical solution aims to resolve to achieve its object.

In practice, careful determination is required as to whether the prior art defect is the one targeted and addressed by the patented solution.

Specifically, not all prior art defects recited in the Description should automatically be deemed the defect that the patented solution aims to resolve. In particular, where the Description mentions certain irrelevant prior art defects due to drafting oversights, or recites multiple prior art defects at different levels, and the patent encompasses multiple patented solutions, the correspondence between each patented solution and each prior art defect must be determined concretely by reference to the Description's disclosure regarding the prior art defects, the patented solutions, and their improvements over the prior art.

## Representative case

The above judicial logic is reflected in earlier SPC precedents. For example, in Case (2021) SPC IP Civil Final No. 860, the court held that to overcome defects in the background art, the patent adopts the improved solution of "forming a stepped deformation at the edge of the first clamping member". The court further held that the accused product still forms deformation at the edges of both clamps, which shows no substantive difference from the technical solution disclosed in the background part of the patent and exhibits the defect intended to be overcome by the patent.

The court therefore concluded that the accused technical feature does not constitute an equivalent of the corresponding feature of the patent.

## Key issues in applying Article 10

Nevertheless, in the application of Article 10, certain issues require further clarification.

First, its coordination with the all elements rule – the fundamental principle for patent infringement determination – has yet to be clarified. If it permits the courts to deny infringement solely on the ground that the accused technical solution reproduces the prior art defect the patent intends to overcome, the all elements rule may be undermined.

Second, the identification of the defect intended to be overcome by the patent involves subjectivity, and may give rise to disputes where the Description lists multiple defects that may be overcome or fails to clearly specify the defect addressed by the patent.

Third, it remains unclear whether a finding that an accused technical solution “has the prior art defect” requires its corresponding technical means to be identical or substantially identical to that of the prior art. Focusing solely on defects rather than technical means may enable abuse of the rule to circumvent patent protection, thereby undermining patent rights.

### Article 11 of the Exposure Draft

Article 11 stipulates: “Where the accused infringer can prove that a restrictive amendment or statement made by the patent applicant or patentee to the Claims, Description, or Drawings during patent prosecution or invalidation proceedings was not expressly denied, the courts shall not allow the reintroduction of the abandoned parts into the scope of protection.”

This provision, together with Article 13 of the Judicial Interpretation (II) on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (2016), refines the doctrine of prosecution history estoppel and forms a complete regulatory framework. Specifically, Article 13 of Judicial Interpretation (II) clarifies that restrictive amendments or statements expressly denied by the examination authority shall be exempt from estoppel, whereas the aforementioned Article 11 confirms that estoppel applies where such amendments or statements are not expressly denied.

Three key prerequisites govern the application of Article 11:

- The patentee has made a restrictive amendment or statement during patent prosecution or invalidation proceedings;
- The amendment or statement was not expressly denied by the examination authority, including where the examination authority tacitly accepted it, or granted the patent or maintained its validity based on such restriction; and
- The accused infringer has discharged its burden of proof with regard to the foregoing facts.

### Representative cases

The core spirit of this provision has already been reflected in prior judicial practice, and several typical cases have further clarified the boundaries for the application of the rule.

In Case (2023) SPC IP Civil Final No. 1747, the court held that the patent in suit was immediately granted after the patent applicant made a restrictive statement, and the



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A patent invalidation case he handled was selected as one of the CNIPA’s 2019 Top 10 Patent Re-examination and Invalidation Cases. An invention patent drafted by him was recognised as a 2023 National Typical Invention Patent Drafting Case.

statement was not expressly denied by the examination authority. The court therefore concluded that the statement constituted surrender of the relevant technical solution and that the patentee’s attempt to include that solution within the scope of patent protection in infringement litigation was estopped.

In Case (2017) SPC Civil Review No. 1826, the court held that to determine whether a restrictive statement has been expressly denied, it is necessary to conduct an objective and comprehensive review of the examination history of the relevant technical feature during patent prosecution and invalidation proceedings, focusing on whether the statement was accepted by the examination authority and whether it contributed to the grant of the patent or the maintenance of its validity. The court further held that if a restrictive statement made during prosecution was expressly denied and that finding was not overturned in invalidation proceedings, the statement shall be deemed not to constitute surrender of the relevant technical solution – even if the examination authority offered no comment on it during invalidation – and estoppel shall not apply.

In Case (2011) SPC Civil Retrial No. 306, the court held that estoppel applies only to technical solutions as to which the patentee has made a voluntary surrender. The court further held that where an independent claim is declared invalid and the patent is maintained valid on the basis of a dependent claim, and the patentee has not voluntarily surrendered the relevant technical solution, the criteria for finding surrender of the technical solution shall be strictly applied. If the additional technical feature defined in the dependent claim is not encompassed by the independent claim, it

shall not be presumed that all technical solutions other than the one incorporating the additional technical feature have been wholly surrendered.

Furthermore, in Case (2021) SPC IP Civil Final No. 836, the court also held that not all restrictive amendments or statements constitute surrender of a technical solution; only those made to overcome validity challenges during prosecution and invalidation proceedings – and that were not expressly denied – will give rise to estoppel.

This provision reinforces the principle of good faith in the patent system, holding patentees accountable for their acts in administrative proceedings. However, using only “not expressly denied” as the criterion for finding surrender of a technical solution may readily lead to the abuse of prosecution history estoppel in practice, prejudicing the patentee’s legitimate rights.

The primary purpose of prosecution history estoppel is to prevent the patentee from ‘having it both ways’ – obtaining a patent grant or maintaining its validity by surrendering technical solutions during prosecution



or invalidation proceedings, then reincorporating those surrendered technical solutions into the scope of patent protection under the doctrine of equivalents in infringement litigation.

For estoppel to apply, the patentee’s restrictive amendments or statements must genuinely constitute surrender of the relevant technical solutions. Such a finding requires a comprehensive assessment of the specific contents of the restrictive amendments or statements and their actual impact on patent prosecution and invalidation proceedings.

**Potential refinements to Article 11**

To better align with the essence of estoppel, further revisions to Article 11 may be necessary. A requirement that the restrictive amendments or statements have materially contributed to the grant or maintenance of the patent may be added as a prerequisite for estoppel, alongside the requirement of not being expressly denied, to ensure that estoppel applies only where the patentee has surrendered the relevant technical solution through such amendments or statements and has actually derived a benefit therefrom.

Alternatively, exceptions may be introduced – such as technical solutions unforeseeable at the time of the restrictive amendments or statements – drawing on the judicial practice of other jurisdictions, to enhance the flexibility and reasonableness of applying prosecution history estoppel.

**Key takeaways**

In summary, articles 10 and 11 of the Exposure Draft both set forth exclusion rules relating to the scope of patent protection. Article 10 takes the “prior art defect” recited in the Description as the basis for determination, focusing on the inherent technological advancement of the patent, whereas Article 11 takes the “restrictive amendments or statements” made during patent prosecution and invalidation proceedings as the basis for determination, focusing on the patentee’s procedural good-faith obligation.

The two provisions directly address long-standing controversies in judicial practice and further elaborate relevant adjudicative rules. Nevertheless, they require further refinement to effectively balance the interests of patentees and the public in application and to better suit the demands of patent judicial protection in an era of technological innovation.



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# Chinese partial design application practices under new rules and examination guidelines

**Yanling Zhou** of **DEQI Intellectual Property Law Corporation** explains how China's updated rules and examination guidance for partial design patents affect filings, protection, and the assessment of design similarity and unity

On June 1 2021, the fourth revised Patent Law of the People's Republic of China officially came into force, incorporating partial designs into the statutory protected objects of design patents. This institutional adjustment not only fills the gap in the protection of partial design patents in China but also provides innovative entities with a more refined path for intellectual property protection.

This article outlines typical cases in combination with the Chinese patent laws, new rules and regulations, examination guidelines, and examination practices.

## 1. Carrier requirements for partial designs

Paragraph 2 of Article 30 of the Rules for the Implementation of the Patent Law clearly stipulates that where an application for a partial design patent is filed, views of the entire product shall be submitted, and the content of the part to be protected shall be indicated by a combination of dashed and solid lines or other means.

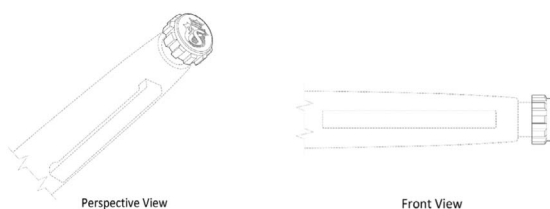
The carrier of a partial design must be a complete physical product, and only partial fragments of the product shall not be submitted. The submitted views of the entire product shall clearly present:

- The partial design to be protected;
- The specific position of the partial design in the entire product; and

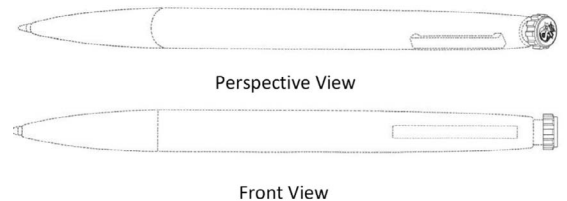
The proportional relationship between the partial design and the entire product.

### 1.1 Case analysis: protection of the press part of a ballpoint pen

In this case, the press part of the ballpoint pen is claimed for protection, and the product shown in the views below is only a part of the ballpoint pen. In such a case, the shape of the entire product – i.e., the shape of the ballpoint pen – is not fully expressed, and the position and proportional relationship of the claimed partial design in the entire product cannot be determined, which fails to meet the requirements for the object of the application and will result in the rejection of the application.



The views of the complete product are shown as follows.



As an option, if the press part is a detachable and independent component, it is possible to file an application for an overall design patent, by submitting the six views and perspective view of the press part, and the views of the complete pen body may be submitted as reference views in use state.

## 2. View requirements for partial designs

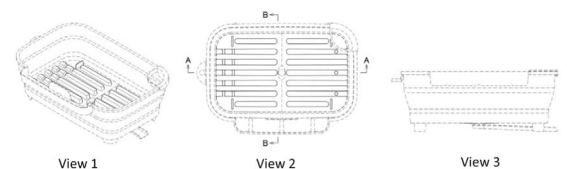
According to the new examination guidelines of 2023, if the protected partial design includes a three-dimensional shape, the application documents must include a perspective view that clearly shows the partial design. The front view shall be an orthographic projection view that reflects the protected partial design to the greatest extent, and the front view shall not be entirely composed of dashed lines, and must include the protected partial design marked with solid lines.

### 2.1 Case analysis: bottom design of a drainage basket

View 1: Perspective view clearly presenting the protected area of the bottom.

View 2: Top orthographic projection view fully covering the protected partial design, meeting the requirements for the front view.

View 3: Side orthographic projection view excluding the protected partial design, failing to clearly express the key design points.



Specifically, in this case, the claimed partial design is the bottom part of the drainage basket. View 1 is a perspective view that clearly shows the partial design, View 2 is an orthographic projection view from the top, and View 3 is an orthographic projection view from the side. View 3 does not include the claimed partial design and cannot clearly and accurately show the partial design of the product for which patent protection is claimed. Therefore, View 2 needs to be selected as the front view.

### 3. Constituent elements of partial designs

According to the new examination guidelines of 2023, shape, pattern, and colour are the three elements of a design, and the statutory constituent element of a partial design is that it “must include a shape”.

Pure patterns or combinations of patterns and colours are not protected objects of partial design patents.

The protected partial design must meet the requirements of “independent area and complete design unit”; that is, the partial design outlined by solid lines must be closed and complete, with independent visual effects and design integrity.

#### 3.1 Case analysis

In the original perspective view, the dashed lines result in an unclosed protected area and a failure to form a complete design unit. After modifying the dashed lines to solid lines, the partial design is closed and independent, complying with the element requirements for a partial design.

Specifically, in the following case, the part expressed by solid lines in the original perspective view is the partial design. However, due to the dashed lines indicated by the arrow below, the middle main part is unclosed, thus failing to form a relatively complete design unit. After modifying the dashed lines to solid lines, the middle main part forms a relatively complete design unit, thereby meeting the requirements for a partial design.



Original Perspective View



Revised Perspective View



## Zhou Yanling

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Yanling joined DEQI Intellectual Property Law Corporation over 22 years ago. She obtained an MS degree in mechatronic engineering and has about two years’ technical R&D experience.

Yanling focuses on intellectual property legal services. She has significant experience in preparing and prosecuting patents, as well as patent re-examination and invalidation in the areas of mechanics, fluid power, automatic control, and manufacturing. Yanling also has experience in advising on design patent application and protection.

She is a member of the All-China Patent Agents Association.

### 4. Unity rule for partial designs

According to the new examination guidelines of 2023, multiple similar partial designs of the same product may be filed as a single application; the unity of multiple partial designs only refers to similar designs of the same product.

Partial designs of a set of products shall not be filed in combination; that is, the protection of a set of products is limited to overall design patents.

#### 4.1 Similarity judgment standards

With the ‘basic design’ as the reference, the dual judgment dimensions are as follows:

- Whether the partial designs are similar; and
- Whether the position and proportion of the partial designs in the entire product are routine changes.

For the similarity judgment of partial designs, when comparing other designs with the basic design, it is necessary to judge not only whether the claimed partial designs are similar but also whether the position and/or proportional relationship of the partial designs in the entire product are routine changes.

#### 4.2 Typical cases

##### Case 1: Partial design of a seat

Designs 1 and 2: The shape of the seat partial design is similar, the aspect ratio has minor changes, and the position and proportion are consistent.

Design 3: The shape of the seat has significant differences.



Design 1



Design 2



Design 3

The entire product of the three partial designs in Case 1 is a seat, and the claimed partial design is the seat part of the seat, belonging to the same product. Taking Design 1 as the basic design, compared with Design 1, the shape of the partial design of the seat part in Design 2 is similar, with a minor difference in the aspect ratio, which is a minor local



change, and the two partial designs are similar. The position of Design 1 and Design 2 in the entire seat product is the upper part, and the proportion in the entire product is also similar. Therefore, Design 1 and Design 2 are similar partial designs.

Compared with Design 1, the shape of the partial design of the seat part in Design 3 is different, and the difference is not a minor local change, so the two partial designs are not similar. In this case, it is unnecessary to further judge the relationship between the claimed partial design and the entire product where it is located. Therefore, Design 1 and Design 3 are not similar partial designs. In addition, if Design 2 is taken as the basic design, compared with Design 2, the shape of the partial design of the seat part in Design 3 is different, and the difference is not a minor local change, so the two partial designs are not similar. Therefore, Design 2 and Design 3 are also not similar partial designs.

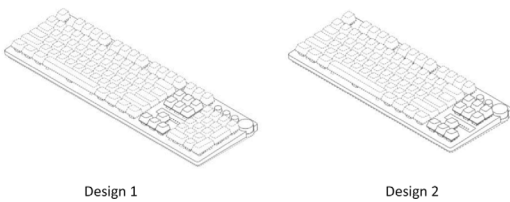
**“The principles of complete product carrier, clear view expression, shape as the core element, and statutory boundary of unity must be adhered to”**

## Case 2: Main body design of a keyboard

The shape of the keys is the same, and the position difference is a routine change.

The entire product of the two partial designs in Case 2 is a keyboard, and the claimed partial design is the main body of the keyboard (see the part indicated by solid lines), belonging to the same product.

The shape of the keyboard main body and keys expressed by the solid lines in Design 1 and Design 2 is the same. It can be seen that the position of the keys in the partial design in the entire product is different. The different positions of the keys on the main body are routine changes in the field. Therefore, Design 1 and Design 2 are similar partial designs and may be filed in one application.



Design 1

Design 2

## Case 3: Upper cover design of a mouse

### Significant differences in the protected area and proportion

The entire product of the three partial designs in Case 3 is a mouse, and the claimed partial design is the upper cover part of the mouse, belonging to the same product.

The partial design of Design 1 is the entire upper cover (including the front, rear, and lower parts), the partial design of Design 2 is the front part of the upper cover, and the partial design of Design 3 is the rear and lower parts of the upper cover. That is, the positions of the three partial designs are different. Although Design 2 and Design 3 have the same parts as the partial design of Design 1 respectively, the proportion of the same parts is significantly different. Therefore, Design 2 and Design 3 are not similar to Design 1, and Design 2 and Design 3 are not similar to each other. These three partial designs do not meet the unity requirements and cannot be filed in one application.



Design 1

Design 2

Design 3

## Case 4: Functional area design of a keyboard

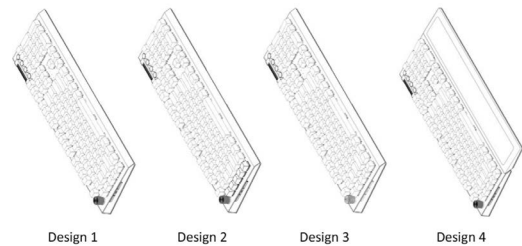
Designs 1–3: Differences in knobs and keys are minor routine changes.

Design 4: The pallet has a large proportion and significant differences in visual effects.

The entire product of the four partial designs in Case 4 is a keyboard, and the claimed partial design is the main body of the keyboard, belonging to the same product.

The shape of the keyboard main body expressed by the solid lines in Design 1, Design 2, and Design 3 is the same, with the only differences in the knobs and the keys beside the knobs. It can be seen that the proportion of the knobs and the keys beside the knobs in the partial design in the entire product is small, and the change in quantity is a routine change in the field. Therefore, Design 1, Design 2, and Design 3 are similar partial designs and may be filed in one application.

The pallet in Design 4 accounts for a large proportion in the entire product, which has a significant impact on the overall design effect of the product and is significantly different from basic Design 1, thus being dissimilar and cannot be filed in combination with designs 1–3.



Design 1

Design 2

Design 3

Design 4

## 5. Key takeaway

In the practical application of partial design patent filings, the principles of complete product carrier, clear view expression, shape as the core element, and statutory boundary of unity must be adhered to.

Applicants should strictly follow the requirements of the Patent Law, the Rules for the Implementation of the Patent Law, and the examination guidelines, and realise the efficient right confirmation and protection of local innovative designs through standardising the submission of views, accurately defining the scope of protection and complying with the rules for combined filing.

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# Analysing China's stricter examination standards for AI-related patent applications

**Shan Xu** of **Kangxin Partners** outlines a new provision on AI-related inventions in China's recently revised Guidelines for Patent Examination

The advent of transformer decoders and breakthroughs in computational power has led to the emergence of generative AI. Leveraging vast training data sets and self-attention mechanisms, AI models enable natural language dialogue akin to human communication. AI systems based on large language models are now extensively deployed not only in industrial sectors but also across commercial domains and other facets of social life.

However, the widespread application of AI in society has raised new issues, such as potential infringements of legitimate interests in the sourcing of training data, and decision-support algorithms that may conflict with social ethics. Different countries adopt varying approaches regarding whether AI-related technological ethical issues should be addressed during patent examination procedures or resolved through litigation after grant.

The CNIPA maintains that examining the ethical dimensions of AI-related inventions within patent examination procedures is necessary to guide AI technology towards serving the public interest effectively. The revised Guidelines for Patent Examination, which came into effect on January 1 2026, explicitly state that AI ethical considerations should be incorporated into examinations conducted under Article 5 of the Patent Law.

## Previous examination practice under Article 5

Article 5 of the Patent Law stipulates that “[n]o patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest.”

This provision does not specify particular relevant laws. In previous examination practice, assessments under this clause did not consider whether inventions violated all legal provisions. The primary focus was on whether the product or manufacturing method itself constituted, or directly led to, a criminal act. Technical solutions such as counterfeit currency production, gambling machines, and methods for forging documents were explicitly classified as inventions violating the law.

Furthermore, the technical ethics of inventive solutions have also been assessed in previous examination practice; namely, whether they comply with public order and morals or serve the public interest. Technologies involving human cloning or research on human embryos, for instance, have been explicitly categorised as inventions violating public

order and morality. Such technologies directly exploit the human body for commercial gain, contravening ethical standards, and thus should not be granted exclusive rights. Similarly, technologies for products that may cause human disability are deemed ineligible for patent protection as they impede the public interest.

## Newly introduced provision for AI-related patent applications

In the latest revision, the CNIPA upholds its established examination principles regarding the ethical dimensions of AI technology, stipulating that the implementation of AI-related inventions must not be based on potential infringement of others' rights to life, privacy, or similar fundamental rights.

The revised Guidelines for Patent Examination introduce a new provision in Section 6.1.1, Chapter 9, Part II: “Examination according to Article 5(1) of the Patent Law: No patent right shall be granted for any invention patent application containing algorithmic features or business rules and method features according to Article 5(1) if their data collection, label management, rule setting, decision-support, or other processes involve content that is contrary to the laws or social morality or that is detrimental to public interest.”

To facilitate understanding, the CNIPA provides two example cases.

One concerns a sales system utilising facial data collected in public spaces. During the collection of this data, the person whose data is being collected is not asked for their agreement. Furthermore, the data is collected for commercial reasons and not for public safety purposes. Consequently, this technical solution is deemed to violate relevant provisions of the Personal Information Protection Law and is therefore ineligible for a patent.

The other example case concerns emergency decision-support for autonomous vehicles. The decision-support algorithm suggests that if the vehicle is unable to avoid obstacles such as pedestrians, the system could determine collision targets based on factors such as the pedestrian's age. Such a decision-support algorithm contravenes public order and good morals and is therefore deemed ineligible for patent protection.

These two cases demonstrate that the examination standards proposed in the revised Guidelines for Patent Examination align with the requirements of China's current legislation. The Cybersecurity Law, the Personal



Information Protection Law, and the Interim Measures for the Administration of Generative Artificial Intelligence Services stipulate that individuals possess the right to know and decide regarding the processing of their personal information, while personal information processors must establish personal information protection systems and implement security measures such as encryption and de-identification for collected personal information. Particularly for sensitive personal information, processing requires obtaining the individual's separate agreement.

Sensitive personal information comprises biometric data, religious beliefs, specific identities, medical and health records, financial accounts, location tracking information, and personal information pertaining to minors less than 14 years of age. For such information, personal

information processors must fully explain the necessity of data collection to the data subjects.

The Interim Measures for the Administration of Generative Artificial Intelligence Services stipulate that generative AI services provided shall not generate discrimination based on beliefs, nationality, gender, age, etc. Providers of generative AI services shall also furnish specific data labelling rules and mark generated content accordingly.

### Drafting suggestions

According to the revised Guidelines for Patent Examination, at least four steps of AI technology (data collection, label management, rule setting, and decision-support) must comply with the aforementioned legal provisions. This imposes new requirements on drafting AI-related patents.

As examination encompasses not only the technical solutions proposed in the claims but also the content within the specification, it is unnecessary to include all essential step details within the claims. Instead, relevant step details can be listed in the examples within the specification.

### Data collection

Regarding the data collection step, the specification shall explicitly state whether the data is obtained from a legitimate source. If the collected data constitutes personal data, the specification should detail the steps prompting users to consent to data collection and receiving the signals or input information indicating such consent from the user. Particularly for sensitive personal information – such as voice data, facial data, physiological information such as iris/fingerprint data, and medical data – users must not only be prompted but also informed of the necessity for collecting such sensitive personal information and the implications of its processing.

Where AI technology utilises data collected in public settings, the specification must state that the collection occurred following explicit public notification.

Where data originates from databases – such as the applicant’s internal databases or private web databases – though not explicitly covered in the revised Guidelines for Patent Examination, the current legislation requires clarification that the database is an internally established applicant database or that data usage has been authorised by the database owner. This prevents the data from being deemed illegally scraped and non-compliant with legal requirements.

Where collected personal information is utilised in generative AI models to generate other data, the specification must explicitly state whether the personal information underwent de-identification and desensitisation. That is, the generated data should not be traceable to sensitive personal information. In particular, biometric data, medical health information, and financial account details relating to individual users should not be employed without desensitisation when providing generative services to the public.

### Data labels

Where data labels are employed in AI-related inventions, it is preferable to avoid labels that may cause discrimination during label creation and usage. Potentially discriminatory labels include those based on age, gender, religion, region, occupation, and similar factors.

In certain specialised domains, such as medical AI or facial recognition AI services, data labelling concern-



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In 2025, Ms Xu returned to Kangxin as a patent attorney and now focuses on providing clients with comprehensive patent consulting services, including patent validity assessments, invalidation/re-examination proceedings, and high-quality patent prosecution.

ing age, gender, etc. is unavoidable. For AI models in such domains, the specification must explicitly state whether the management of various labels and associated rules complies with technical ethics. For instance, if a facial recognition AI service directly labels individuals as “suspect persons” or having “criminal tendencies” based solely on skin tone, region, or attire, this constitutes a discriminatory labelling that contravenes technical ethics. Conversely, if the AI algorithm labels an individual as “suspect” or “experiencing significant emotional change” based on detected and analysed facial muscle movement alongside database comparisons, such labelling constitutes technically derived reasoning and remains ethically compliant.

### Decision-support

In AI-related inventions, the most creative steps typically involve the AI algorithm’s rules and decision-support. These steps distinguish the invention seeking protection from existing AI algorithms.

Within these steps, discriminatory outcomes must be avoided. For instance, an AI-assisted treatment method based on treatment records generates recommendations based on patients’ perceived ability to pay, wherein the AI algorithm recommends that patients with low payment capacity should not use more effective drugs with a higher price or should receive reduced treatment levels. Such recommended decisions not only contravene technical ethics but also violate the fundamental principle of ‘healthcare equity’. Consequently, discriminatory recommendation algorithms are ineligible for patent protection.

Accordingly, when drafting the description and claims for AI-related patent applications, it is crucial to fully comply with both the Patent Law and ethical requirements, and to clearly disclose the technical means adopted to ensure fairness, non-discrimination, and compliance with public order and good morals.

### Final thoughts

The above drafting recommendations are based solely on China’s current legislation and the prevailing Guidelines for Patent Examination. As AI technology remains in a phase of rapid development, relevant laws and regulations governing AI ethical standards are continuously evolving. It is foreseeable that patent examination criteria pertaining to AI will be further refined in the future.

Kangxin Partners will continue to monitor patent examination practices within China’s AI sector, providing timely, detailed analysis and interpretation.

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# Navigating the IP minefield: risk management strategies for China's global expansion

**Wei Zhao of PurpleVine IP Group** examines how Chinese companies with growth plans in overseas markets can anticipate and manage complex intellectual property risks, from patents and trademarks to compliance, enforcement costs, and litigation

In an era marked by deepening economic globalisation and rapid technological change, global expansion has become an essential growth imperative for businesses worldwide. As the focus shifts from product exports to brand and technology exports, Chinese enterprises are facing increasingly complex intellectual property (IP) disputes in global markets – ranging from patent infringement litigation and bad-faith trademark registration to trade secret misappropriation and standard-essential patent (SEP) licensing disputes.

The environment into which Chinese enterprises are expanding has grown considerably more demanding. In mature markets such as the US and the EU, incumbent players have spent decades building interlocking patent portfolios and developing litigation strategies designed to slow new market entrants. Geopolitical tensions have added a further layer of complexity: regulatory frameworks governing technology transfer, export controls, and cross-border data flows now intersect directly with IP rights, creating compliance obligations that extend well beyond traditional patent or trademark management.

Companies that treat IP protection as an afterthought – or address it only once disputes arise – face compounding disadvantages that, by the time they surface, are often difficult and costly to reverse.

This article examines the key IP risks and context-specific challenges faced by Chinese enterprises in their globalisation efforts, and sets out practical strategies for managing them effectively.

## The IP risk landscape: common exposures and context-specific challenges

### Common IP risks

#### Loss of rights

Some enterprises prioritise market expansion over IP protection, neglecting to file in target jurisdictions before market entry. This can expose their innovations to copying or reverse engineering, resulting in the permanent loss of exclusive rights. Rights may also lapse through inadequate maintenance, such as failing to pay annuity fees, renew registrations, or respond to opposition proceedings in a timely manner. Additionally, inadequate IP protection provisions in collaboration agreements may result in the inadvertent

disclosure of core technologies and trade secrets – a risk that is particularly acute in joint venture and technology licensing arrangements.

#### Infringement risks

These primarily manifest as unintentional infringement of others' IP rights in the target market, resulting in lawsuits or trade investigations. Such risks often stem from unfamiliarity with the target market's IP framework, inadequate freedom-to-operate searches and due diligence, and an underestimation of competitors' patent portfolios. Once products are launched, these risks may be triggered, leading to protracted litigation, product sales bans, substantial damages, and reputational damage.

#### Compliance risks

IP rights are inherently territorial – and the variations in legal frameworks, protection standards, and enforcement rigour across jurisdictions are substantial. This poses significant challenges for Chinese enterprises in complying with overseas IP regulations.

Some enterprises, due to unfamiliarity with the IP rules of their target markets, inadvertently violate local legal requirements during product design, production, and sales, thereby triggering compliance risks.

#### High costs of enforcement

The costs associated with overseas IP litigation – including legal fees, court costs, and expert witness fees – can be substantial, and often prohibitively high. For SMEs in particular, such costs may be unaffordable, compelling them to forgo legitimate enforcement.

Furthermore, judicial procedures vary across countries, and litigation cycles are generally long. In the meantime, the infringing party may capture the company's overseas market, resulting in irreparable losses. Chinese enterprises also face difficulties in collecting evidence and insufficient local enforcement protection when enforcing their rights overseas.

#### Pain points arising from differences in business contexts

Given the variations in operating models, revenue structures, and overseas stakeholder dynamics across different modes of global expansion, IP risk profiles vary significantly.



### **Product and supply chain strategies**

Direct exports expose companies to high-stakes risks such as US International Trade Commission Section 337 investigations, patent infringement claims, and customs seizures – actions frequently initiated by competitors or non-practising entities and capable of causing substantial financial and reputational harm. Component suppliers are prone to joint liability due to infringement by downstream manufacturers, with risks spreading rapidly.

Cross-border e-commerce is subject to dual constraints from platform rules and overseas IP laws, with frequent complaints regarding trademark and patent infringement and disputes over image and text copyright. Improper handling can directly result in store suspension and product delisting.

### **Overseas manufacturing**

The capital-intensive nature of overseas manufacturing and its deep entrenchment in local legal systems mean that IP risks are particularly difficult to mitigate and often impossible to unwind once crystallised.

Furthermore, due to significant legal differences between countries regarding the ownership of employee inventions, employees' confidentiality obligations, trade secret protection, patent grace periods, and standards for infringement damages, the IP regime of the home country cannot be directly transposed.

### **Technology and IP licensing**

In this model of international expansion where IP forms the core of the transaction, specific risks include the impact

of rights stability on the transaction foundation, disputes over the scope of licensing and ownership of improvements, and the risk of disclosure following technology transfer.

Such risks cannot be mitigated through IP filings alone but require careful contract drafting – including a clear definition of licensing scope and improvement ownership – together with a comprehensive monitoring framework covering the full agreement life cycle.

### Brand and business model export

Given that business models are inherently replicable, conventional IP strategies centred on trademarks and patents alone are rarely sufficient to address the full spectrum of risks.

### A strategic framework: prevention, tailored compliance, and proactive enforcement

An increasing number of Chinese enterprises are adopting a global IP governance philosophy built around anticipatory planning, rigorous management, and localised implementation, integrating IP management into the full process of global decision-making and operations, while establishing a protective framework that combines general risk prevention with tailored strategies.

### General prevention and control

IP-first approach:

- Formulate a sound IP strategy to ensure that innovations are protected in target markets;
- Optimise IP portfolios in line with the rules of target markets;
- Establish a coordinated protection system comprising patents, trademarks, and trade secrets;
- Prioritise the development of SEP portfolios; and
- Seek to strengthen influence in global standard-setting processes.

IP search and risk assessment:

- Prior to entering a target market, conduct a comprehensive search of the market's IP landscape to determine whether the product's technical design falls within the scope of others' IP protection, and to identify potential infringement risks; and
- If a conflicting IP is discovered, implement design-around measures promptly to mitigate infringement risks at source.

External collaboration and professional expertise:

- Build a network of domestic and international IP service providers and legal counsel;



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Ms Zhao specialises in patent prosecution, patent analysis, and patent litigation support, with a focus on optoelectronic displays, telecommunications, and new energy. She has contributed to multiple overseas litigation projects, with expertise in non-infringement analysis, patent risk assessment, counterclaim patent selection, and patent portfolio construction.

- Engage professional institutions to carry out IP searches, portfolio planning, and rights enforcement; and
- In particular, when facing IP disputes, work with specialist counsel to formulate sound response strategies and actively participate in litigation, arbitration, and other proceedings.

Proactive rights defence:

- When facing IP disputes, enterprises should move beyond a reactive stance and actively deploy available legal mechanisms to assert and protect their rights.
- First, promptly gather evidence of infringement – including infringing products, sales records, and promotional materials – to provide solid support for rights protection.
- Second, adopt appropriate methods of rights protection. Disputes may be resolved through diverse means such as negotiation, mediation, and arbitration. If negotiation and mediation prove unsuccessful, promptly file a lawsuit with the local court or apply to the relevant law enforcement agencies for investigation and enforcement to curb the infringing activities.
- Third, use IP rules in the target market strategically – such as patent invalidation proceedings in the US or opposition or invalidity proceedings in Europe – to challenge the opposing party's legal basis. Should the company face unexpected proceedings such as Section 337 investigations or customs seizures, it should form a dedicated response team to engage actively with the relevant authorities, thereby avoiding further losses due to inappropriate responses.

### Differentiated strategies

Products and supply chain:

- Clarify the boundaries of liability for infringement; and
- Conduct regular IP compliance audits of the supply chain to prevent the transmission of cascading risks.

Cross-border e-commerce:

- Implement comprehensive IP compliance checks covering trademarks, patents, and copyright before products are listed;
- Strictly control the authorised use of images, copy, and videos;
- Establish rapid-response and appeal channels for platform infringement complaints; Implement real-time monitoring for counterfeit listings; and
- Promptly pursue takedown requests and, where necessary, legal action.

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### Overseas manufacturing:

- Proactively plan for the protection of production processes, product patents, and trade secrets in the host country;
- Localise IP management practices;
- Clarify the ownership of employee inventions made overseas;
- Refine confidentiality agreements and non-competition clauses for foreign employees; and
- Develop risk contingency plans tailored to the characteristics of capital-intensive operations.

### Technology licensing:

- Clearly define the geographical scope, field of application, and extent of the licence, as well as the ownership of any technical improvements;
- Establish a full-cycle monitoring mechanism for post-licensing technology usage;
- Strictly control the risk of technology leakage; and
- Set out clear provisions for liability in the event of breach and contract termination.

### Brand and business model export:

- Advance the registration of trademarks across all categories;
- Undertake defensive registration of domain names and social media accounts, and apply for IP protection for algorithms and systems that underpin the business model;
- Standardise the boundaries of partner authorisations;
- Ensure compliance with local data and operational regulations; and
- Establish multi-dimensional safeguards encompassing brand, technology, and compliance.

### Ecosystem integration:

- Establish an IP management framework led by the core chain enterprise and involving the entire ecosystem;
- Clarify the boundaries of IP responsibilities between the chain leader and upstream/downstream member enterprises; and
- Establish a chain-based risk early warning and joint defence mechanism to prevent the transmission of infringement risks.

## Key takeaways

The IP challenges facing Chinese companies in global markets are structural, not cyclical. Closing the gap with incumbents that have built deep IP ecosystems over decades requires more than incremental improvements in filing practices – it demands a fundamental reorientation in which IP is treated not as a legal support function but as a core dimension of commercial planning.

The path forward is one of integration. IP strategy must connect with R&D planning, market entry sequencing, supply chain design, and partnership structuring. Standard-setting participation, portfolio quality over quantity, and proactive engagement with local IP ecosystems will increasingly differentiate companies that sustain global growth from those that remain perpetually reactive.

In an era when intellectual property underpins market access, commercial competition, and value creation, the companies best positioned for the long term will be those that treat IP not as a compliance obligation but as a strategic language – one they are fluent in before they step on to the global stage.

# Putting the draft revision of China's Trademark Law under the spotlight

Paul Ranjard, Huang Hui, and Zhu Zhigang of **Wanhuida Intellectual Property** explain the proposed amendments to China's Trademark Law, their ramifications, and the persisting issue surrounding the 'right to use'

The last revision of the Trademark Law of China dates back to 2019, when the legislature published a new version in which Article 4 prohibited the registration of trademarks filed "in bad faith without intention to use". In 2023, a draft revision was published containing many new propositions, some of which addressed the problem of 'trademark hoarding' in greater detail. The draft introduced an obligation for the trademark applicant to declare its trademark use, with random controls by the CNIPA, every five years. Most stakeholders disagreed with the proposed method.

The legislator published a new draft (the Draft) on December 26 2025, with a call for comments. The Draft addresses bad faith trademark applications and bad faith trademark use. It also aims to improve the protection of trademarks, by expanding their scope of protection, and strengthen the enforcement of trademarks.

This article analyses some of the changes proposed by the Draft, many of which are welcome, even if some modifications would be necessary to improve their efficiency.

Most importantly, the Draft showcases an essential difference between China and the rest of the world concerning the effect of the registration of a trademark, which is the root cause of difficulties faced by trademark holders in China.

## Measures against bad faith

### Bad faith trademark applications

The current Article 4 becomes Article 18 and seems to address the issue of 'defensive trademarks'; i.e., trademarks that are filed in a certain category of goods not for the purpose of use but to prevent others from registering an identical trademark in classes of goods that have a certain proximity to a business. Securing a registration in such 'neighbouring areas' aims to improve the scope of protection of the registered trademark and, as the case may be, prepare the future expansion of business in those areas.

The wording of Article 18 ("Trademark applications that are not filed for the purpose of use and that clearly exceed normal production and business needs shall not be registered") seems to correspond to the above definition of defensive trademarks. However, it would be even more clear if the word "protection" were added, as follows: "exceed normal production, business and protection needs".

Article 40 provides for the possibility to suspend the examination procedure of a new trademark application that

has been refused on account of a prior trademark while the new trademark applicant deals with the obstacle. Article 40, however, adds that the authority "shall generally suspend the examination or adjudication". The word "generally" introduces a certain degree of uncertainty in a process that needs to be clear and foreseeable. It would be better to delete "generally".

In the last paragraph of Article 40, the Draft provides that where a People's court adjudicates an appeal against an administrative decision concerning the registration or invalidation of a trademark, it shall base its decision on the circumstances prevailing at the time when the administrative decision was made, rather than at the time when the court makes its decision. It is hard to agree with this. Indeed, if the obstacle to the registration has vanished for any reason, there is no reason why the court could not take such change of circumstances into consideration.

Article 53 of the Draft provides for sanctions (fines up to RMB 100,000) against those that file trademark applications in violation of several articles of the law (use of prohibited signs, absence of intention to use, or violation of prior rights). These sanctions should serve as a welcome deterrent, but, of course, the effects will be found in the implementation.

In addition, it should be possible to claim compensation against those that file malicious trademark applications, the removal of which needs costly oppositions and/or invalidation procedures. This could easily be accomplished by inserting "a trademark registration is applied for in bad faith" into Article 78 of the Draft before "a trademark lawsuit is maliciously instituted".

### Misleading trademark use

Article 56 deals with a wide range of situations, most of which are listed in the current Article 49. The first paragraph concerns the alteration of a trademark or changes made to the name or address of the registrant: such acts are dealt with by a simple warning, an order to rectify, and a possible fine. In this paragraph, the Draft adds one new situation where the registrant uses the registered trademark in a misleading manner.

The second paragraph concerns two situations:

- Where the trademark becomes the generic name of the goods for which it is approved; and
- Where the trademark has not been used for three consecutive years.

In both cases, Article 49 already provides that any



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Paul moved to Beijing in September 1997 and opened the representative office of the French association Unifab, specialising in the protection of intellectual property (IP). As a result, his practice in China evolved progressively towards IP matters. After the creation of the European Chamber of Commerce in 2000, Paul co-chaired the IP Working Group and has been actively involved in the drafting of the EU Chamber of Commerce in China IP position papers and its comments concerning drafts of IP legislation. Throughout his time in Beijing, he has cooperated with Wanhuida in field actions and academic research.

Paul is an active speaker at academic seminars and international conferences. He is the co-author of “What is fuelling the decline in Chinese trademark filings?”, among other articles, and is a member of the China team of MARQUES.



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Dr Huang has vigorously represented clients’ interests in a wide variety of IP matters, some of which have become landmark cases. Since joining private practice in 2002, he has fought for clients in their most intricate trademark matters.

Dr Huang is a prolific writer. He has authored or co-authored a dozen publications, including *L’impact de l’Usage sur l’Étendue de la Protection des Marques: Étude de Droit Comparé Chine – Union Européenne* (2010–18), *Trademark & Unfair Competition Cases in China*, the trademarks section of *Intellectual Property in the European Union*, *Zheng Chengsi IP Anthology – Trademark & Unfair Competition*, and *Trademark Law*. Dr Huang has been involved in the initial drafting of, and amendments to, China’s major trademark-related laws, regulations, and judicial interpretations.

person may file an application for revocation of the trademark.

The Draft adds a third paragraph, which gives the trademark authority the possibility to revoke a trademark ex officio in the two situations described in the second paragraph (genericide and non-use). This additional ex officio power is very welcome as it might accelerate the ‘cleaning up’ of the trademark registry.

However, something is clearly missing in this Article 56. Firstly, the possibility to file a request for revocation of a trademark used in a misleading way should be available to any person, and not only be an ex officio prerogative of the administrative authority. Secondly, the first paragraph that evokes the change made to the trademark by the registrant does not address the case where, because of such change, the trademark morphs into an infringement of

another trademark. It would only be fair, therefore, to provide that whenever such a confusing change is made, the owner of the infringed trademark shall also have the right to request the revocation of the transformed trademark.

### Expanding protection

Article 14 adds to the list of protectable signs a new type of “motion signs”. This addition is welcome. The revision of the law could also be an opportunity to refine the wording of this article. It would be better to replace the “etc” at the end of the list by something like “including, but not limited to”, as it would clearly mean that the list of protectable signs is not exhaustive and that other types of non-conventional signs (such as a plain colour, or a ‘position trademark’) can also be registered, depending on the circumstances.



Article 20 brings a long-awaited improvement to the protection of unregistered well-known trademarks. Whether it is registered or unregistered, a well-known trademark shall be protected against the registration or use of an identical or similar sign, not only on the same or similar goods but also on dissimilar goods: the ‘cross-class’ protection.

What is regrettable is that the Draft did not maintain the proposition made in the previous draft of 2023 about the concepts of ‘dilution’, ‘tarnishment’, and ‘undue profit’, which originate from a judicial interpretation by the Supreme People’s Court in 2009. These terms describing the different types of damage caused to a well-known trademark are more accurate than the expression “liable to mislead the public”, which is still in the Draft. Furthermore, the concepts of dilution and undue profit should also apply in cases where a well-known trademark needs

**“China has opted for a definition of the trademark right that is fundamentally different from the rest of the world”**



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Zhigang serves on the INTA China Global Advisory Council, is a member of the College of Experts of the French association Unifab, and is a certified lawyer of oriGIn (the Organization for an International Geographical Indications Network). He holds an LLB degree from the University of Poitiers in France and an MSc from the Paris Graduate School of Management (École Supérieure de Gestion).

to be protected against a similar sign registered for the same category of goods, and not only in cases involving dissimilar goods.

### Strengthening the protection

Article 73 improves the scope and means of investigation available to the trademark enforcement administration, which is welcome. However, Article 71, which enumerates the powers of the administration when enforcing a trademark, omits one important word: "destroy". The administration has no power to destroy infringing goods.

Article 74 brings a most welcome precision regarding the compensation awarded by People's courts in cases of trademark infringement. The amount of compensatory damages shall no longer include the expenses incurred by the plaintiff, and such expenses may be awarded separately.

This article also provides for the possibility to award punitive damages that can be up to five times the losses, illegal gains, or a relevant rate of royalty. The problem is that in most cases, since it is difficult to calculate precisely the losses or illegal gains, or find an adequate royalty rate, the courts apply so-called statutory damages, limited to a maximum of RMB 5 million. It has been suggested, therefore, to add in the law a possibility for the court to award punitive damages by multiplying the statutory damages up to five times.

### The 'right to use': a persisting problem

Since 1982, the year of enactment of the first version of the Trademark Law, China has opted for a definition of the trademark right that is fundamentally different from the rest of the world.

To put it simply, in most jurisdictions, the trademark laws provide for a definition of the rights granted by the registration of a sign as a trademark (prevent others from using the sign). In these jurisdictions, the trademark right is, therefore, a negative right.

The first words of Article 1 of the Chinese law provide a different picture: "This law is enacted for the purpose of protecting the exclusive right to use trademarks" [emphasis added]. Article 69 enumerates the types of use that constitute an infringement of the "exclusive right to use" conferred to the trademark registrant.

One might say that both systems are quasi-identical and that someone that has the exclusive right to use a sign is therefore the only person authorised to use it, which implies that it has the power to prevent others.

The resemblance between the two systems is only apparent. The Chinese concept of "right to use" is fundamentally mistaken. Indeed, there is no need to obtain an authorisation to use a sign to distinguish one's goods or services. Even an unregistered trademark may become well known.

The Draft reiterates this fundamental error by adding, into Article 55, "the trademark registrant has the right to use his own trademark".

What challenges does this misnomer create?

According to an interpretation by the Supreme People's Court in 2008, the registered trademark holder is not allowed to initiate a civil action against the registrant of an infringing registered trademark. An invalidation procedure must be initiated beforehand at the administrative trademark authority and it is only after such invalidation has been obtained that the civil lawsuit can be launched. This is contrary to Article 16 of the TRIPS Agreement, which stipulates: "The rights described above [e.g., exclusive right of trademark] shall not prejudice any existing prior rights [including exclusive right of prior trademark]".

Furthermore, when an infringing trademark is invalidated, this "right to use" becomes an obstacle to the award of damages related to the infringement committed prior to the invalidation. The ex-registrant may claim that it had the right to use the trademark. The previous draft, of 2023, provided that the compensation should only be awarded if bad faith is proven. Even if the proposal is not retained in the Draft, this practice remains as recommended by the CNIPA in 2021.

To avoid such complication, it is better to use the words "trademark right" like "patent right" in the Patent Law and to amend Article 9 of the Draft as: "In applying for registration and using a trademark, and in exercising the trademark right, a person shall abide by the principle of good faith. No person may infringe upon the prior lawful rights and interests of others."

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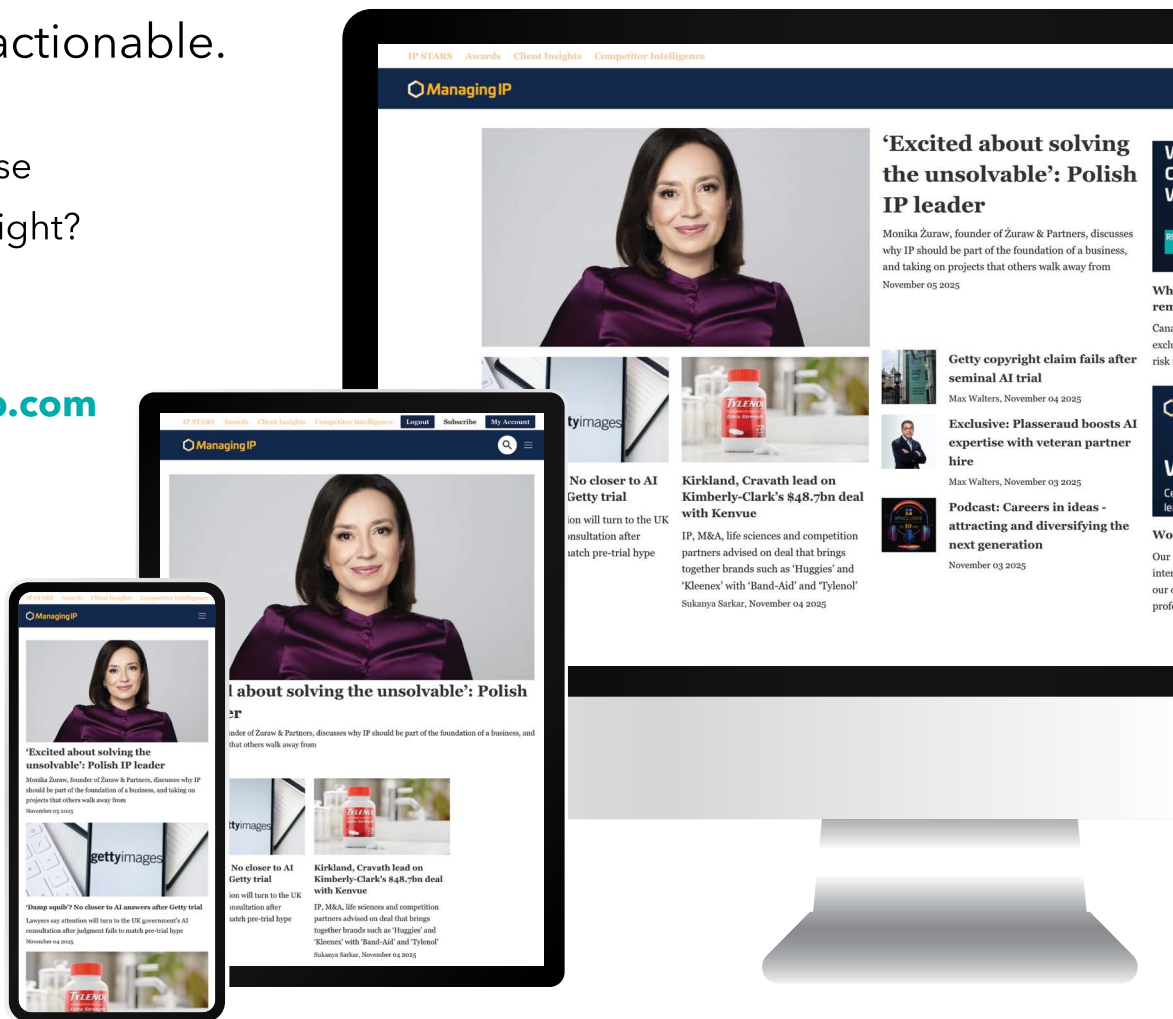


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