

Translation



The following notice by the China National Intellectual Property Administration—which oversees Chinese patent and trademark applications—orders PRC local governments to halt all financial assistance programs that incentivize large quantities of patent applications. The Administration makes the elimination of low-quality and fraudulent patents a major priority for itself in 2021, and introduces increasingly severe punishments for those who attempt to file patents for technologies and processes that are not truly innovative.

Title

Notice of the China National Intellectual Property Administration on More Strictly Regulating Patent Applications
国家知识产权局关于进一步严格规范专利申请行为的通知

Author

China National Intellectual Property Administration (国家知识产权局)

Source

China National Intellectual Property Administration website. The Notice is dated January 27, 2021 and was posted to the website the following day, January 28, 2021.

*The Chinese source text is available online at: https://www.cnipa.gov.cn/art/2021/1/28/art_75_156439.html
An archived version of the Chinese source text is available online at: <https://perma.cc/8Z3P-6BXX>
US \$1 ≈ 6.5 Chinese Yuan Renminbi (RMB), as of February 17, 2021.*

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To the intellectual property offices of all provinces, autonomous regions, and province-level municipalities, and of the Xinjiang Production and Construction Corps; the Sichuan Intellectual Property Protection Center and the Guangdong Intellectual Property Protection Center; all departments of the China National Intellectual Property Administration, all departments of the Patent Office (专利局), and all entities and social groups directly under the China National Intellectual Property Administration:

In order to further study and implement Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, conscientiously implement the decisions and arrangements of the Chinese Communist Party (CCP) Central Committee and the State Council, and effectively promote China's transformation from a major importer of intellectual property (IP) to a major creator of IP, and its transformation from pursuing quantity to improving quality, patent quality improvement projects have been carried out across the board and in depth in recent years, and the IP departments of local governments at all levels have strengthened the regulation of supporting policies concerning patent applications, sternly cracked down on abnormal patent application practices, and played important roles in stimulating and protecting innovation and promoting the high-quality development of IP. However, there are still some local governments that pay insufficient attention to the requirements of high-quality patent development, fail to implement effectively, and blindly pursue quantitative indicators, and abnormal patent

application practices persist that fail to take protecting innovation as the goal. This seriously disrupts the order of administrative management, harms the public interest, hampers the innovation of enterprises, wastes public resources, and undermines the patent system. In order to strictly put into effect the requirements of high-quality development, further regulate patent application practices, improve the quality of patent applications, and eliminate abnormal patent application practices that fail to take protecting innovation as the goal, notice is given as follows with regard to relevant matters:

I. Clarifying work objectives

Strive to guide the quantity and quality of patent applications to conform to the level of regional economic development, the development requirements of industries, and scientific and technological (S&T) innovation capabilities; scientifically establish indicators for all tasks, reinforce the quality orientation, and effectively utilize the guiding role played by high-quality development indicators. Further adjust and refine policies on subsidies (资助), rewards, etc., fully eliminate subsidies for patent applications, and focus on increasing support for subsequent conversion and use, administrative protections, and public services. Clean up and regulate the patent application process, resolutely combat and effectively suppress abnormal patent application practices that fail to take protecting innovation as the goal, and promote the high-quality development of IP undertakings.

II. Grasping the focus of work

Those who engage in the following practices involving abnormal patent applications that fail to take protecting innovation as the goal (hereinafter referred to as the said type of application) shall be cracked down on and dealt with severely in accordance with the provisions of relevant laws, regulations and policies.

(1) The six circumstances stipulated in Article 3 of *Several Provisions on Regulating Patent Application Activities* (Order No. 75 of the China National Intellectual Property Administration);

(2) Organizations or individuals intentionally making dispersed submissions of related patent applications;

(3) Organizations or individuals submitting patent applications that are clearly inconsistent with their research and development (R&D) capabilities;

(4) Organizations or individuals engaging in speculative reselling of patent applications;

(5) Organizations or individuals submitting patent applications in which there are technical solutions that use complex structures to achieve simple functions, or adopt conventional or simple features to carry out combination or piling up, or other practices clearly inconsistent with technical improvement as commonly understood;

(6) Other practices that violate the principles of good faith stipulated in civil law, are inconsistent with relevant provisions of the "Patent Law," or disrupt the order of patent application administration.

The "organizations or individuals" above include the same natural person, legal person, or other organization and the same actual controlling person.

III. Strengthening work measures

With regard to practices involving said type of application, in addition to strictly handling submitted patent applications based on the provisions of the "Patent Law" and its detailed implementation rules, the following measures shall be adopted according to the circumstances:

(1) Deny granting a reduction of fees for the applicants. Where there has already been a reduction, require a supplemental payment of the fee reduction. Where the circumstances are serious, deny granting of fee reductions for five years beginning with the current year.

(2) Give a notification on the government website of the China National Intellectual Property Administration as well as in *China Intellectual Property News*.

(3) Deduct the numbers of said type of application from the statistics on patent application numbers.

(4) Cancel eligibility to apply to be a National IP Model or Superior Enterprise or Enterprise on File with the Intellectual Property Protection Center, as well as eligibility for applying for, participating in the judging of, or receiving, national patent awards.

(5) The IP departments of local governments at all levels shall deny granting of subsidies or rewards for the applicants and relevant agencies. Where subsidies or rewards have already been granted, recover all or part thereof. Where the circumstances are serious, deny granting of subsidies or rewards for five years beginning with the current year. In cases where the subsidies or rewards involve fraud suspected of constituting a crime, they shall be transferred in accordance with law to the relevant authorities for pursuit of criminal liability.

(6) According to the circumstances of each case, the IP departments of local governments at all levels shall intensify investigation of the patent agencies that act as agents for the said type of application or severely disrupt the order of patent work. The All-China Patent Attorneys Association shall take industry self-discipline measures against the patent agencies and patent attorneys engaging or involved in said type of application.

IV. Strengthening coordinated governance

(1) Improve the scientific basis of assessment indicators. IP departments of local governments at all levels must firmly establish the concept of high-quality development, actively coordinate with the relevant departments in further improving and refining patent work-related systems of assessment indicators, improve the scientific basis and effectiveness of assessment, review and remove evaluation indicators that do not conform to actual growth rates, and avoid taking the quantity of patent applications as the main basis for assessing the work of departments. No binding assessment or evaluation indicators shall be established based on the quantity of patents, nor shall methods such as administrative orders or administrative guidance be used to apportion quantitative patent application indicators to local governments, enterprises or agencies. There shall be no mindless competition over the numbers of patent applications (including patent applications following the *Patent Cooperation Treaty* (PCT) route). Once the above practices are discovered, eligibility to apply for national IP operation projects, or preferential policies and various titles such model city, granted by the China National Intellectual Property Administration, shall be cancelled, according to the circumstances.

(2) Adjust patent subsidy policies. Patent application phase subsidies at all levels shall be completely cancelled by the end of June 2021. All local governments shall refrain from granting any form of government funding support for patent application practices by means of grants, rewards, subsidies, etc. The scope of local governments' existing subsidies shall be limited to approved invention patents (including invention patents that have been granted overseas through the PCT route), and the post-approval subsidy form shall be adopted as the funding method. The total amount of subsidies of all levels and types received by a funding recipient shall not be more than 50% of the official fees required to obtain the patent rights, and annual fees and service fees of various intermediaries such as agents shall not be subsidized. Where patent subsidies are fraudulently obtained, the funds already appropriated shall be recovered within a set time. During the "14th Five-Year Plan" period, local governments must gradually reduce various kinds of government subsidies for patent approvals, and eliminate them completely by 2025. All local governments must do their best to optimize the management of government funds related to patent funding, strengthen the use of patent protection, and focus on increasing support for subsequent conversion and use, administrative protection, and public services.

(3) Give prominence to quality orientation in patent applications. The China National Intellectual Property Administration shall regularly communicate or publicly announce data on the high-quality patent applications of local governments and the relative proportions of said type of application. Where the relative proportion of said type of application increases in two consecutive quarters, or the proportion of high-quality patent applications decreases in two consecutive quarters, the local IP department shall be notified. Where the above phenomena continue for three consecutive quarters, the local Party committee and government shall be notified, and the relevant information shall be made public on the China National Intellectual Property Administration government website and in *China Intellectual Property News*. Where the above phenomena continue to appear for one year or more, eligibility for preferential policies and various titles such as model city, granted by the China National Intellectual Property Administration, shall be cancelled. The various kinds of rewards involving patents shall not simply take the quantity of patent applications or approvals as the main criteria.

(4) Strengthen credit supervision in the patent application field. The Patent Law's detailed implementation rules shall be revised so as to promote, in accordance with law, taking said type of application practices to be credit-reducing behaviors and including them in IP credit supervision. When IP departments at all levels formulate IP credit supervision policies, they shall give particular consideration to including said type of application practices within the scope of supervision. Coordinated governance of agencies with serious unlawful breaches of credit shall be strengthened, patent agencies that have received punishment due to acting as agent for said type of application shall be subject to linked constraints with respect to relevant reward policies, industry appraisals and rewards, etc., so as to strengthen the effectiveness of supervision.

(5) Strengthen the regulation and supervision of patent transactions. The IP departments of local governments at all levels must put into effect territorial supervision responsibilities for regulating IP transactions, and resolutely curb transfers of patent application rights and patent rights where the aim of such practices is clearly not technology innovation or implementation. They shall strengthen supervision and guidance of IP (patent) trading and operation platforms and institutions established with the support of government departments at all levels, strengthen guidance of various types of patent transaction service institutions and platforms in their jurisdictions, properly perform background checks on both sides of transactions, and strictly

prevent the cashing in or laundering of said type of application by means of transactions. The China National Intellectual Property Administration will strengthen monitoring of registration and filing data on patent transfers, licensing, etc., and work with local governments to promptly deal with abnormal patent operation practices in accordance with law.

(6) Strengthen the interdepartmental communication of information. For detailed information regarding said type of application, the IP departments of local governments at all levels must consult with the relevant departments, proactively communicate with the administrative departments for science and technology, etc., in a timely fashion, support and assist such departments in strengthening administrative management work involving patent applications, and ensure that said type of application is not used to fraudulently obtain benefits from various national preferences such as those for high-tech enterprises. With regard to where "three noes" (“三无”) shell companies—those with no employees participating in employment-based insurance, no paid-up capital, and no R&D expenses—apply for patents, relevant information must be promptly transferred to the local market supervision departments for strict supervision.

V. Refining work mechanisms

(1) Work linkage mechanisms. The China National Intellectual Property Administration will continue to monitor and identify said type of application practices, and shall promptly communicate and pass on relevant information regarding said type of application practices to local governments. Local IP departments shall strengthen administrative guidance, and require the organizations, individuals, and agencies involved to take the initiative in withdrawing relevant applications, and they may, at their discretion, exercise leniency in dealing with those who proactively withdraw them. Where the organizations, individuals, and agencies involved do not withdraw them, and also fail to appeal and provide sufficient evidence, they shall be handled by the local IP departments according to the circumstances, and relevant evidence shall be forwarded in accordance with law to the market supervision departments, public security departments, and credit supervision departments to be dealt with in accordance with law.

(2) Information screening mechanisms. Patent examination departments and units must strictly examine and reject said type of application in accordance with law, and shall discover, summarize, and report relevant evidence in a timely manner. Patent agency offices, IP protection centers, centers for rapid defense of intellectual property rights, etc., shall strictly screen said type of application, and report relevant evidence to the China National Intellectual Property Administration in a timely manner.

(3) Reporting and verification mechanisms. Organizations and individuals shall be encouraged to report said type of application practices, as well as non-compliant indicator settings and application funding policies, to the IP departments of local governments at all levels. IP departments of local governments at all levels must establish hotlines and dedicated websites for receiving reports. After a report is received, it must be examined and handled promptly, and be reported to the China National Intellectual Property Administration.

(4) Positive guidance mechanisms. Multiple forms of propaganda and coverage for improving patent application quality shall be carried out in an active fashion, and incentives for enterprises and individuals that actively invest in innovative, scientific, and rationally laid out patents shall be strengthened, so as to further raise the whole society's awareness of the strategic

layout and quality aspects of patent applications, and effectively improve the quality of patent applications.

VI. Promoting work implementation

(1) Carry out special campaigns. For all of 2021, we shall concentrate on carrying out a rectification campaign to crack down on said type of application practices. Relevant practices for which evidence has already been discovered shall be cracked down on severely. We shall strive to further regulate the patent application process by the end of 2021, with a significant reduction in said type of application and a sustained increase in the proportion of high-quality patent applications. The China National Intellectual Property Administration will deploy and carry out periodic special campaigns based on work effectiveness and relevant circumstances.

(2) Strengthen self-examination and self-correction. IP departments of local governments at all levels must focus on the objectives and key points of work, conscientiously and deeply carry out self-examination, sort out their indicator settings and funding policies across the board, find the existing inadequacies and prominent issues, propose corrective measures, formulate work programs and policy measures, report self-examination results to the China National Intellectual Property Administration on time, and promptly report major clues and key cases.

(3) Strengthen organizational leadership. The China National Intellectual Property Administration will carry out follow-up guidance and case oversight for the policy revision and case handling circumstances, etc., of all local governments. IP departments of local governments at all levels must greatly emphasize the important significance of cracking down severely on said type of application practices. They must make special reports to local people's governments, with the principal persons in charge taking responsibility, establish leadership coordination mechanisms, comprehensively study and assess their local patent application situations, define the key work priorities and goals and the key phases, formulate special work plans, identify the specific responsible persons and work contact persons, set up dedicated teams, and carry out related work on an in-depth and sustained basis.

Notice is hereby given.

China National Intellectual Property Administration

January 27, 2021