

# Key Practical Points Regarding the Amendment to the Chinese Patent Examination Guidelines (Effective January 1, 2026)

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On November 13, 2025, the China National Intellectual Property Administration (CNIPA) announced the amendments to the "Patent Examination Guidelines." The revised Guidelines are scheduled to take effect on January 1, 2026. While there are numerous amendment points, we have narrowed it down to 7 major aspects with significant practical impact.

### 1. Summary of Amendment Points

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| ① Invalidity Proceedings                                       | ④ Plant-Related Inventions                   |
| ② Handling of Concurrent Patent and Utility Model Applications | ⑤ Artificial Intelligence-Related Inventions |
| ③ Clarification of Examination on Inventive Step Standards     | ⑥ Bitstream-Related Inventions               |
|  | ⑦ Procedural Amendments                      |

### 2. Key Amendment Points

#### **2. 1 Invalidity Proceedings**

**2.1.1 A new provision has been added stating that "invalidity requests not based on a true expression of intent will not be accepted," strengthening measures against malicious invalidity requests. This demonstrates a strict stance against the so-called "straw man" targeting patents.**

On November 15, 2025, when examining an invalidity request against an AstraZeneca-related patent, the CNIPA, for the first time, explicitly cited "the invalidity request not being based on the requester's true intent" as a ground for rejection in the Invalidity Decision (Decision No.: 589012; Relevant Patent Application No.: CN201280033773.9). In this case, the patentee argued that the invalidity Requester—who should have no connection to the pharmaceutical industry or patent practice—had filed invalidity requests against multiple pharmaceutical patents. Furthermore, a requester connected with the owner of a patent firm has filed numerous invalidation trials against the patentee and other pharmaceutical companies.

In addition, the patentee submitted a report from a handwriting expert as key evidence (indicating that the signature on the power of attorney was not genuine) and pointed out the possibility that the requester's identity had been improperly used.

After examination, the panel accepted the patentee's arguments and, in accordance with Article 45 of the Patent Law, ruled that "the invalidity request should not be accepted as

it is not based on a true expression of intent." This is the first time that an invalidation decision has explicitly stated that "an invalidation trial must be filed based on the requester's true expression of intent." This demonstrates a strict stance against "straw man" patent invalidation trials, strengthens patentee protection, and is seen as part of "strong patent protection.."

#### **2.1.2 No further invalidity requests may be filed based on **substantially** the same grounds and / or evidence.**

Building on the existing "*res judicata*" principle in the Guidelines (prohibiting parties from filing new invalidity requests based **on the same** grounds or evidence after a final decision), the amendment adds a new provision excluding acceptance of invalidity request(s) based on **substantially** the same grounds or evidence. However, this approach was already explicitly applied in the invalidity decision issued by the CNIPA on October 9, 2025 on the patent "Polycrystalline Forms of C-MET/HGFR Inhibitors" (Pfizer Products Inc., Invalidity Decision No.: 587385; Relevant Patent Application No.: CN200680045883.1).

In that case, the invalidity requester argued that the subject matter of the invention was not sufficiently disclosed by the patent specification and that claims 1-3 could not be directly and unambiguously derived from the specification. However, the decision found that the requester's grounds were substantially the same as those already considered in the previous invalidity request against the same patent (Invalidity Decision No.: 581892). Even though the new Evidence 5 was submitted, the decision stated that the requester failed to prove that this evidence sufficiently overturned the facts related to the legal elements established in the prior decision. Therefore, if a prior decision has already examined and confirmed all legal elements and relevant facts, and if new evidence submitted by the requester is insufficient to overturn such confirmation, the *res judicata* principle would still apply to the invalidity grounds. As a result, the patent was maintained as valid.

The purpose of specifying the *res judicata* principle in invalidity proceedings is to avoid inconsistencies between invalidity decisions, maintain the stability of such decisions, restrict vexatious by parties, avoid imposing unnecessary defense burdens on patentees, and prevent the waste of administrative resources.

## **2. 2 Handling of Concurrent Patent and Utility Model Applications**

Concurrent patent and utility model applications (referred to as the "dual filings") mean that the same applicant may file both a patent application and a utility model application for the same invention on the same day. Under the previous system, the applicant could obtain a patent grant by first abandoning the previously acquired utility model right, and could even maintain both the patent and the utility model right by amending the content of the patent application (see Rule 41 of the Implementing Rules). The amendment introduces a new restriction to this long-

standing Chinese system: "Regardless of whether the content of the patent application is amended, only one of the patent right or the utility model right may be granted in the case of the dual filings." In line with the original legislative intent, even if the registration requirements are met, the applicant must strictly follow the process of acquiring the patent right and abandoning the utility model. Consequently, maintaining both rights will no longer be allowed.

### 2. 3 Clarification of Inventive Step Examination Standards

Inventive step is assessed in whole based on the entire technical solution defined in the claims, **not on individual technical features in isolation**.

Following the amendment, **inventions consisting of mere combinations (i.e., juxtaposition) of technical features** may not be patentable. The revised Guidelines place greater emphasis on the contribution of each technical feature to solving the technical problem. In general, technical features contributing to solving the technical problem must be clearly reflected in the claims and must introduce (additional) technical effects to the claimed technical solution. Even if numerous features are added to the claims, they will not serve as a basis for finding inventive step if they do not contribute to addressing the problem to be solved. In practice, the common strategy adopted by applicants when responding to office actions—"simple enumeration of features" (i.e., asserting inventive step by adding a large number of irrelevant features to the claims)—is expected to become less effective in the future.

### 2. 4 Plant-Related Inventions

**Plants improved through biotechnology** may be patentable. Even wild plants can be subject to patent protection if they have recognized industrial application value after artificial selection or improvement.

Traditionally in China, patent protection for plant breeding-related inventions covered technologies themselves (such as novel targeted gene editing methods or efficient cross-breeding processes) under the Patent Law, while uniformly characterized and genetically stable pure plant varieties developed as final products were protected as new plant varieties under the Protection of New Varieties of Plants Regulations. However, this intellectual property protection framework only covered the early (technology development) and late (finished variety) stages of the breeding process, leaving a gap in protection for the intermediate stage (e.g., completion of unstable breeding intermediate materials).

For example, Company A, engaged in plant breeding, invents a groundbreaking breeding method and files a patent application. At the same time, it develops breeding intermediate materials with excellent traits but unstable characteristics (e.g., hybrid seeds). Company B, however, may use the breeding method disclosed in Company A's patent specification to develop a uniformly characterized and genetically stable pure plant variety ahead of Company A and obtain new plant variety rights. In such cases, Company A—having made significant R&D investment and technical contributions—faces the risk of substantial harm to its interests.

The amendment aims to protect such "process innovations" and **fills the protection gap in the intermediate stage of breeding research**. Plants that have undergone artificial selection or

improvement, but do not have consistent morphological/biological characteristics or stable genetic traits across the population, do not qualify as "plant varieties" and may be patentable. Combining patent rights with new plant variety rights will clearly pave the way for breeders to appropriately protect their achievements throughout the entire R&D chain, from technology development to market-ready products.

## 2. 5 Artificial Intelligence-Related Inventions

- Mere algorithms or mathematical models are excluded from patentability; **demonstration of specific application scenarios and technical effects is now mandatory.**

Through two contrasting examples, the revised Chinese Examination Guidelines clarify practical criteria for "demonstrating required technical effects" in patent applications involving algorithms. The first example is a patent application for a method of locating facial feature regions by appropriately integrating a Spatial Transformer Network (STN) into a known Convolutional Neural Network (CNN). Although the specific network configuration was not limited, the technology was well-known to those skilled in the art and its functionality was achievable, hence the disclosure was regarded as sufficient.

The second example is a patent application for a cancer prediction method that combines blood test data with facial image features to improve prediction accuracy. It was deemed insufficiently disclosed because it lacked explicit identification of specific indicators related to cancer prediction, proof of a causal relationship between facial features and cancer occurrence, and data verifying effectiveness. Additionally, there was no empirical evidence supporting the association or causal link between facial features and various malignant tumors, making implementation impossible to be carried out by a person skilled in the art.

This contrast highlights the core principle that for inventions involving algorithmic features—especially when using non-traditional or multimodal data—it is essential to clearly and fully disclose technical details and data relevance to an implementable extent, as well as demonstrate their effects.

- For applications involving algorithmic features or features of business models/methods, algorithm applications that **violate laws, regulations, or public order and good morals (such as data collection or decision-making) may be rejected after ethical review.**

The revised Guidelines illustrate this point with two new examples. The first is a patent application for a big data-based mattress sales support system in shopping malls that collects customers' facial information through imaging and facial recognition modules for identity verification and preference analysis to support precise merchant marketing. The second is a patent application for a method of constructing an emergency response model for autonomous vehicles, where pedestrian gender and age are used as obstacle data, and the model is trained to select protection targets and collision targets in unavoidable collision scenarios.

The former violates laws and regulations such as the Personal Information Protection Law and the Measures for the Administration of Algorithm Recommendations in Internet Information Services. The latter violates laws and regulations such as the Road Traffic Safety Law and the

Several Provisions on the Administration of Automobile Data Security, as well as ethics of equal right to life and public order and good morals. Therefore, neither is patentable.

The amendment clarifies that patent applications for algorithm applications that infringe personal privacy or harm public interests will be rejected as violating laws or public order and good morals. **Specifically, patents are prohibited for non-neutral and unreasonable algorithms**, such as: Discrimination against consumers (e.g., "price discrimination" where existing customers are offered less favorable terms than new customers); Constructing discrimination-based suspicion indices based on criminal records; Inducing users to excessive consumption or obsession; Inducing underaged individuals to develop bad habits or engage in unsafe behaviors. Furthermore, algorithms must adhere to supreme principles such as "safety first," "risk minimization," and "equality of life," with the design goal focused on "avoiding accidents." In extreme unavoidable situations, decision-making logic must be adopted to minimize overall harm. The decision-making process must not include discriminatory or utilitarian calculations based on factors such as **race, age, gender, social status, or economic conditions (e.g., algorithms addressing the so-called "trolley problem")**.

Therefore, when filing patent applications related to algorithms, applicants must pay particular attention to the legality and legitimacy of data acquisition and information collection. If necessary, detailed explanations regarding the legitimacy of data sources should be included in the specification.

## **2. 6 Bitstream-Related Inventions**

- A mere bitstream itself is excluded from patentability. However, **methods for storing/transmitting bitstreams limited to specific video coding schemes, as well as storage media, may be patentable if technical effects are recognized**.

A mere bitstream itself, and methods essentially relating only to bitstreams, constitute mere digital information expressions and belong to rules and methods of intellectual activity, and thus are not patentable. Therefore, to qualify for protection, bitstreams must be linked to specific video encoding/decoding schemes.

Under the revised Guidelines, methods for storing/transmitting bitstreams limited to specific video coding schemes, as well as storage media, are now patentable. This provision provides an important protection option for patent applications in fields such as video codecs, protecting derivative technologies related to encoding schemes (e.g., storage and transport bitstreams) and adapting to the new situation of rapid development in the streaming media industry.

Additionally, the revised Guidelines clarify drafting guidelines for claims and specifications in patent applications for bitstream-related inventions. Taking video encoding-related bitstreams as an example:

Independent claims must relate to specific video coding schemes, including specific technical steps to achieve technical effects such as optimized compression ratio or improved image quality. Dependent claims may target "storage methods," "transmission methods," or "computer-readable storage media", but must incorporate all technical features of the aforementioned basic

encoding scheme through either "incorporation by reference" or "full recitation."

The specification must clearly and fully disclose the specific encoding scheme in a manner sufficiently clear and complete for it to be carried out by those skilled in the art, and explicitly state the specific technical problem to be solved (e.g., bandwidth reduction) and the technical effects achieved. Derivative subject-matter such as "storage," "transmission," and "media" must also be supported by corresponding explanations as necessary.

## **2. 7 Procedural Amendments**

### **2. 7. 1 Clarification on "Reasonable Delay" in Examination**

Article 42 of the Chinese Patent Law provides for patent term adjustment (PTA) for "unreasonable delay" (excluding delays caused by the applicant) when a patent is granted more than 4 years from the filing date or more than 3 years from the date of request for substantive examination. The amendment clarifies the handling of delays in appeal proceedings against rejection decisions. Specifically, delays arising from the appellant submitting new grounds or evidence leading to reversal of the rejection decision will be regarded as "reasonable delays." However, if the new grounds/evidence *could have been submitted* during the substantive examination stage *but were not submitted*, no patent term extension will be granted even if such delays occur in the appeal proceedings.

### **2. 7. 2 Inventor Eligibility**

Inventors are limited to **natural persons**. In this regard, legal persons, organizations, and artificial intelligence are not recognized as inventors. The application must include identity information for all inventors, which must be true.

To verify inventor identity, the application must include identity information of all inventors. Prior to the amendment, only the nationality/region and identification number of the first inventor were required. However, starting January 1, 2026, **the new application form will require nationality/region and identification number for all inventors**.

Based on the above legal provisions and prior practical experience:

For foreign applications filed via the Paris Route or PCT Route involving foreign inventors, only nationality/region was required even for the first inventor, and no identification number (e.g., passport number, resident country ID number) was needed.

For domestic Chinese applications, identification numbers were required for Chinese citizens or foreigners having residence in China.

On the other hand, following the amendment, in line with the policy of strengthening inventor identity verification, the request form requires providing nationality/region and identification number for **all inventors**. However, based on current information:

All foreign inventors will only be required to provide their nationality.

Chinese domestic inventors will be required to provide identification numbers.

### 2. 7. 3 Priority Claim in Divisional Applications

When filing a divisional application, priority information (such as the parent application number) must be included in the application form. Failure to provide such information will result in the divisional application being deemed as not having claim priority.

### 2. 7. 4 Fee Management

- Sequence listings submitted in computer-readable form will no longer be included in the page count for calculating the surcharge.
- Refunds of paid fees may be requested in the following cases:
  - i. Request for substantive examination fee: If the application (including divisional applications) is withdrawn before the notification of entry into substantive examination, and the withdrawal is approved.
  - ii. Annual patent fee: Annual patent fees paid after the patent right lapses or after the announcement of the complete invalidation decision.
  - iii. Restoration of rights request fee and related fees: If the request for rights restoration is rejected by the CNIPA after the proceedings have been initiated.

Prior to the amendment, refunds were processed automatically by the CNIPA. After the amendment, the parties must request the above refunds themselves.

For further inquiries, please feel free to contact us at [mailbox@China.patents.jp](mailto:mailbox@China.patents.jp).

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