

PATENT NEWSLETTER

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INSIGHTS

- Amendment to China Patent Examination Guidelines, Effective on January 1, 2026

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The China National Intellectual Property Administration (CNIPA) issued on November 13, 2025 the Order No. 84, announcing the amendments made to the Patent Examination Guidelines (2025 Amended Guidelines) which shall come into effect from January 1, 2026.

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I. Background and Objective of the Amendments

With the rapid development of new growth areas and business forms in China and the new progress in patent examination work, the Patent Examination Guidelines are adaptively amended with an aim to improve the patent protection systems for artificial intelligence, bitstream, and biological breeding and institutionalize proven practices in patent examination, thereby enhancing the quality of patent examination and strengthening the rule of law in intellectual property to invigorate innovation across society.

The 2025 Amendments involve substantial content of the Guidelines. Below will primarily focus on those amendments which are most relevant to applicants/patentees' rights and interests.

II. Amendments to Provisions on Preliminary Examination and Procedural Matters

These amendments cover several provisions on the preliminary examination and procedural processing, among which the most noteworthy are as follows:

1. Inventor Information in the Request and Patent Agencies' Verification Obligation

According to the 2025 Amended Guidelines (Section 4.1.2, Chapter 1, Part I), it is prohibited to falsely list an inventor; the examiners generally do not verify whether the inventor listed in the request complies with this provision, except where evidence indicates non-compliance; the inventor must be an individual, i.e., a natural person; and the identity information of all inventors shall be indicated and the authenticity of such information shall be guaranteed.

This amendment is primarily aimed at protecting the right and interest of an inventor who truly contributes to the invention creation, regulating the patent application order and enhance the patent quality.

For non-Chinese inventors, the amendment does not make a specific clarification as to whether their identity information is also required. Nonetheless, as indicated in an informal response given by CNIPA staff during a public lecture, the inventors whose nationality is not Chinese are required to furnish information proving their identity in a form acceptable to their country or region. In case of failure to furnish such information, a notice may be issued asking the applicant to make a correction.

The current amendments also impose an obligation on patent agencies to verify the correctness and authenticity of the applicant's information.

2. Examination of International Patent Application entering Chinese National Phase

For a PCT application entering Chinese national phase, primary updates are reflected on the requirement for signature/seal on a priority assignment and the rule of charging additional fees for sequence listing pages.

(1) Signature/Seal on Certification of Enjoying Right of Priority

Per the current amendment (Section 5.2.3.2, Chapter 1, Part III), if the entitlement of the applicant(s) of the later application to the priority right is based on assignment or gift of the applicant(s) of the earlier application or transfer of right in other form, unless a declaration compliant with the requirements has been made in the international phase, a certifying document which shall bear the signature/seal of ALL applicants of the earlier application is required during the Chinese national phase.

Before this amendment, it is only required that the certifying document be signed or sealed by the "assignor(s)", which is inconsistent with other parts of the Guidelines and leads to different interpretations and disputes in practice. For example, in the notable invalidation case of Patent No. 201380070567.X (PCT/US2013/074819), one contentious issue lies with whether the right of priority of this patent is established; this dispute arose from, as contended by the petitioner, the applicants of the later application did not obtain the priority assignment from ALL applicants of the earlier applications and thus could not enjoy the priority right. The CNIPA finally confirmed the establishment of the priority right of this patent, according to the pre-amended Section 5.2.3.2, Chapter 1, Part III of Guidelines, which is particularly amended this time.

After the 2025 Amendments, it is believed the requirements for the signature/seal on priority certifying document are unified and could avoid ambiguities in further patent enforcement.

(2) Additional Charges for Sequence Listing Pages

The 2025 Amended Guidelines adjust the additional fee calculation rule for sequence listing, providing that the pages of sequence listing submitted in conformity with prescribed format shall not be counted for additional charges. This amendment harmonizes with international practice for sequence listing fee calculation and saves considerable costs for PCT applications entering into Chinese national phase.

3. “Reasonable Delay” in Patent Term Adjustment

Under China’s patent term adjustment system, only unreasonable delays shall be compensated to extend the patent term. According to the Implementing Regulations of the Patent Law, the delay caused by reexamination procedure in which the application documents are amended belongs to reasonable delay and should not be compensated for patent term. The 2025 Amended Guidelines further specifies a situation which should be regarded as “reasonable delay”, specifically, during the reexamination procedure, if the rejection decision is revoked based on the arguments or evidence submitted by the applicant but such arguments or evidence are never presented during the previous substantive examination, then the resulting delay shall be considered reasonable delay and not qualify for patent term adjustment.

4. Refund

Previously, there are two manners for refund, i.e., proactive refund by patent office and refund upon request by applicants or interested parties. The 2025 Amended Guidelines reduce the refund manners into one, that is, refund upon request. To be noted, for an invention patent application, a full amount of substantive examination fee can be requested for refund if the notice of entering substantive examination procedure has not been issued.

In the meantime, attention should be paid to such a fact that the request for refund of substantive examination fee might risk losing the chance to seek reinstatement of the application. Accordingly, prudence is advised in determining when to submit a refund request.

III. Amendments to Provisions on Substantive Examination

1. “Same-day Dual Filing”

The “Same-day Dual Filing” is a mechanism with Chinese characteristics and first adopted in the 2008 Chinese Patent Law, allowing applicants to file an application for utility model and an application for invention based on the same invention creation on the same day. This mechanism was established amid a severe backlog in patent examination workloads, enabling the applicants to first obtain a utility model patent of which the examination period is much shorter than an invention application, and later obtain the invention patent by either abandoning the utility model patent or amending the invention patent to a different protection scope.

With the enhancement of examination efficiency and more options for accelerated examination, the applicants can obtain patent protection more rapidly through more channels, and thus the demand for “Same-day Dual Filing” has been declining.

The 2025 Amended Guidelines eliminated the chance for the applicants to obtain the invention patent by amending it to a different protection scope than the utility model patent. As from January 1, 2026, if the invention application is found to be patentable, the only way for the applicant to obtain

the invention patent is to abandon the valid same-day filed utility model patent, regardless of whether the protection scope of the invention remains the same or is amended to be different. If the applicant refuses to abandon the utility model patent, the invention application shall be rejected. This amendment reaffirms the legislative intent that, for any identical invention-creation, only one patent right shall be granted.

Equally worth noting is that an invention patent filed under “Same-day Dual Filing” shall not be eligible for Patent Term Adjustment.

2. Improvement on Standard for Assessing Inventive Step

To continuously improve the quality and efficiency of patent examination, and foster high-level innovation, the 2025 Amended Guidelines (Section 6.4, Chapter 4, Part II) refine the standard for assessing inventive step by clarifying that *“features making no contribution to solving the technical problem, even incorporated into the claims, generally will not affect the inventive step of the technical solution”*.

This Amendment does not alter the methodology or approach for assessing inventive step, but highlights and emphasizes that the evaluation of inventive step should grasp the essence of the invention based on a holistic consideration of the technical solution, and avoid directly correlating “the number of distinguishing technical features” or “the scope of claim protection” with the presence of inventive step, so as to ensure that the granted claims match the invention’s actual contribution to the prior art.

It should be noted that the technical problem referred to in the Amendment generally means the technical problem to be actually solved by the invention as determined during examination, or the technical problem proposed in the specification that the invention aims to and can solve. When identifying features that make no contribution to solving the technical problem, the assessment should be made from the standpoint of a person skilled in the art, taking into comprehensive consideration the content of the application, the prior art, and the applicant’s arguments.

This Amendment provides guidance to applicants to avoid incorporating technical features which are irrelevant to solving the technical problem and make no contribution to the inventive step, but to place greater emphasis on articulating the inventive essence in drafting applications and answering office actions.

IV. Amendment to Examination Standards for AI-related Patent Applications

The CNIPA has repeatedly standardized and refined examination rules for patent applications related to Artificial Intelligence. This 2025 Amendment is the latest initiative in CNIPA’s ongoing systematic efforts to improve patent examination standards in the fields of Artificial Intelligence and Big Data, providing clear guidance for innovators and examiners through raising requirements addressing ethics, inventive step, sufficient disclosure, and other key aspects.

This Amendment targets Section 6, Chapter 9, Part II of the Guidelines, primarily encompassing the following aspects:

1. Adding Examination Standards under Paragraph 1, Article 5 of the Patent Law

It further specifies that the content of specification should be examined as necessary when evaluating the technical solution to be protected, and expressly provides that patent applications involving AI or Big Data should not violate laws, e.g., the Personal Information Protection Law, or social morality or harm public interests.

2. Further Clarifying Rules for Assessment of Inventive Step

New examples are cited to illustrate the reasoning and standards for assessing inventive step in cases where the algorithm or model remains the same but the usage scenarios are different, and where the usage scenarios are identical or similar but the algorithm or model is different.

Specifically, (1) a claimed technical solution would generally lack inventive step if the algorithm or model involved, compared with the prior art, shows no substantial difference in terms of algorithmic flow, model parameters and similar factors, even though the scenarios and processed objects are different; and (2) a claimed technical solution shall be considered inventive if substantive adjustment is made to the algorithmic flow, model parameters or other aspects, there is no prior teaching for such adjustment, a different technical problem is solved and an advantageous technical effect is achieved, even though the usage scenarios are identical or similar.

3. Standardizing the Drafting of AI-related Patent Applications

The 2025 Amendments newly provide that *“For invention applications involving AI model construction or training, the specification should clearly disclose the essential modules, layers, or connections of the model, and the specific steps, parameters and the like indispensable to training; For invention applications involving application of AI models or algorithms in specific fields or scenarios, the specification should clearly disclose how the model or algorithm is combined with the specific field or scenario, how to set the data input and output of the algorithm or model and how to demonstrate their internal correlation, etc., so as to enable a person skilled in the art to reproduce the claimed solution based on the disclosure contained in the specification.”*

These amendments specifically address two common scenarios in patent applications for AI-related inventions. Given the “black-box” nature of many AI algorithms or models, where internal structures and operational mechanisms are inherently difficult to observe, the newly added provisions further clarify specific disclosure requirements to ensure patent specifications meet the sufficient disclosure standard. This aims to enhance the quality of patent applications, ensure public accessibility to related technologies, and accelerate knowledge dissemination and innovation in the AI field.

Besides, a new sub-section is introduced, citing two new examples to explain how to evaluate whether a claimed technical solution has been sufficiently disclosed in the specification in AI-related invention patent applications.

V. Examination of Bitstream-related Patent Applications

In the 2025 Amendments, the new Section 7 is incorporated into Chapter 9 of Part II of the Guidelines, systematically regulating the examination of the subject matter and the drafting of specification and claims for invention patent applications involving bitstreams.

1. Examination of the Subject Matter

According to the 2025 Amended Guidelines:

If the subject matter of a claim relates solely to a mere bitstream, or if a claim's entire substantive limitation, excluding the subject matter title, is directed exclusively to a mere bitstream, this will fall under the rules and methods for intellectual activities as provided in Subparagraph 2, Paragraph 1, Article 25 of the Patent Law, and does not constitute patentable subject matter.

If a specific video coding method for generating a bitstream falls under the technical solutions referred to in Paragraph 2, Article 2 of the Patent Law, then the method for storing or transmitting the bitstream defined by this specific video coding method, as well as the computer-readable storage medium storing the bitstream, can achieve optimized allocation of storage or transmission resources, and therefore, the storage or transmission method defined by this specific video coding method and the computer-readable storage medium fall under the technical solutions referred to in Paragraph 2, Article 2 of the Patent Law and are patentable subject matters.

2. Requirements for Drafting of Specification and Claims

In order to achieve comprehensive protection for technical solutions related to "bitstream" and provide innovators with the option to protect both methods and products, facilitating the exercise of their rights, the 2025 Amended Guidelines clarify the drafting format and requirements for method claims related to storing/transmitting bitstreams and product claims that include bitstreams.

For claims directed to method of storing/transmitting bitstreams, the claims should be based on a specific video coding method claim that generates the bitstream, and can be drafted either by referencing the specific video coding method claim or by including all features of that specific video coding method.

For product claims which take the form of a computer-readable storage medium containing the bitstream, they should conform to the format of "medium, program/instruction, bitstream, processor executing program/instruction to implement a video encoding method to generate a bitstream".

For the specification drafting, it should provide a clear and complete description of the specific video coding method, sufficient for a person skilled in the art to implement it. If the subject matter of protection involves methods for storing or transmitting the bitstream, as well as computer-readable storage media storing the bitstream, the specification shall also provide corresponding descriptions to support the claims.

VI. Amendment to Standards of Examination of Biological Breeding-related Patent Applications

In recent years, with the large-scale application of transgenic and gene-editing technologies in the field of breeding, a large amount of intermediate materials with breeding and economic value has been produced during the breeding process. In the previous Guidelines, the scope of "plant variety" did not precisely align with the definitions of varieties in the relevant laws and regulations (Seed Law and the Regulations on the Protection of New Plant variety), so breeding intermediate materials could not obtain effective intellectual property protection.

1. Definition of "Plant Variety"

The 2025 Amended Guidelines (Section 4.4, Chapter 1, Part II) define the "plant variety" in patent law

as “a plant population that has been artificially bred, or discovered and subsequently improved, with consistent morphological and biological characteristics and relatively stable genetic traits.” This clarifies the definition of “plant variety,” establishing an effective connection between the patent protection system and the plant variety protection system to avoid gaps in intellectual property protection for innovation in the seed industry.

2. Principles for Determining “Plant Variety”

The 2025 Amended Guidelines provide that “..... plants and their propagating materials obtained through artificial selection or the improvement of discovered wild plants shall not be regarded as ‘plant varieties’ if they fail to exhibit consistent morphological characteristics, biological properties, or relatively stable genetic traits within their population.”

The current amendment clarifies the principles for determining a “plant variety.” Specifically, to determine whether the subject of protection is a “plant variety,” a substantive assessment must be made based on the technical solution defined in the claims, considering the content disclosed in the application documents. The main focus is to analyze whether the plants or their reproductive materials for which patent protection is sought exhibit consistency and stability in their main characteristics at the population level. Consistency refers to that certain traits or features among individuals in a plant population are consistent, apart from predictable natural variations. Stability refers to the maintenance of the main characteristics of a plant population after repeated propagation or at the end of a specific propagation cycle.

3. Provisions on Wild Plants Naturally Existing as Scientific Discoveries

Concerning the wild plants, the 2025 Amended Guidelines (Section 9.1.2.3, Chapter 10, Part II) stipulate that “Wild plants found in nature that are unprocessed by technology and naturally exist are considered scientific discoveries and cannot be granted a patent under Subparagraph 1, Paragraph 1, Article 25. However, when wild plants are artificially bred or improved and have industrial applicability, the plant itself does not fall within the scope of scientific discoveries.”

The amendment further clarifies that naturally existing wild plants, which have not undergone artificial selection or improvement and involve no human technological intervention, belong to scientific discoveries and are thus unpatentable subject matters.

4. Provisions on Determining Transgenic Plants as “Plant Variety”

The 2025 Amended Guidelines further clarify that only when the transgenic plants exhibit consistent morphological characteristics and biological traits within their population and possess relatively stable hereditary properties shall they be considered a “plant variety”.

VII. Amendments to Provisions on Re-examination/Invalidation

The 2025 Amendments cover several provisions on the patent re-examination and invalidation proceedings, mainly including the composition of reexamination/invalidation decisions, principle of Res Judicata, the eligibility of a petitioner for patent invalidation and the amended documents during the invalidation procedure.

1. Composition of Reexamination/Invalidation Decisions

After this 2025 Amendment, the composition of a decision will no longer be fixed, but some content can be flexibly simplified or omitted depending on the specifics of the case, with an emphasis on the resolution of substantive disputes while the standardization of decision content is ensured, thereby improving the quality and efficiency of the examination.

2. Principle of Res Judicata

When there are multiple invalidation requests for the same patent right at different times, this principle can prevent contradictions between invalidation decisions, uphold the finality of invalidation rulings, restrict the parties' right to litigation, avoid unnecessary defense burdens for patent holders, and prevent the waste of administrative resources.

The 2025 Amended Guidelines change "*the same grounds and evidence*" to "*the same or substantially the same grounds and evidence*", further clarifying the principle of Res Judicata. After this 2025 amendment, for the same patent right for which an invalidation decision has been made, if the petitioner merely makes minor formal adjustments or variations to the grounds or evidence which the previous invalidation decision is based on and files another invalidation request, then the request shall not be accepted.

This not only guides the petitioner to submit invalidation requests in a lawful and reasonable manner but also avoids unnecessary litigation burdens on the patent holder, which is conducive to overall improvement in the efficiency and quality of trial proceedings.

3. Eligibility of Invalidation Petitioner

The 2025 Amended Guidelines set forth a new requirement for the petitioner's eligibility, that is, "true intention".

A request for patent invalidation filed under Article 45 of the Patent Law must be based on a true intention of believing that the grant of the patent does not comply with the relevant legal provisions. Simply put, the petitioner must have a true intention. However, in practice, there have been cases where invalidation requests are made under another party's name, which is often accompanied by acts such as submitting a request with forged signatures or forged authorization documents. Such actions violate the principle of good faith and undermine the credibility of the patent invalidation system.

This amendment affords the patentee an opportunity to defend their patent right by challenging the true intention of the petitioner. In particular, if the patentee can present sufficiently convincing evidence, the invalidation request might be dismissed straightly. On the other hand, the Amended Guidelines do not provide specific criteria nor explain in detail how to determine whether the petitioner holds a true intention, so it is predictable that to determine the petitioner's subjective intention shall meet considerable difficulty in practice.

4. Submission of Amended Documents in Invalidation Proceedings

The 2025 Amended Guidelines expressly provide that, during the invalidation proceedings, if the claims are amended, the patentee should submit the full-text replacements and amendment comparison table, and if multiple amendment documents are submitted and all comply with relevant requirements, only the last submitted amendment documents shall be the examination basis.

In invalidation proceedings, the patentee is allowed to amend the claims, but the previous Guidelines lack specific provisions regarding the form of submission and determination rules for amended documents. This may result in some confusion in practice, leading to a lack of clear expectations between both parties regarding the examination basis and affecting the fulfillment of their rights and the efficiency of case handling. This amendment provides clearer and more informative guidance to both patentees and petitioners in connection with the submission of amended documents.

VIII. Other Amendments

1. Priority of Divisional Application

According to the 2025 Amended Guidelines, the examiner shall proactively examine the priority claim in a divisional application and, if necessary, issue a notification to grant the applicant an opportunity to restore the priority right.

2. More Tracks for On-demand Examination

The fast-track pre-filing examination is incorporated into the 2025 Amended Guidelines, constituting a comprehensive on-demand examination framework, together with prioritized examination, PPH, delayed examination and centralized examination. Therefore, the innovators can flexibly choose different examination tracks depending on their patent portfolio strategies and business plans.

It should be noted that the prioritized examination, fast-track pre-filing examination and centralized examination now only apply to Chinese applicants. For foreign applicants, they may consider taking advantage of such tracks through their affiliates registered in China.

Lifang & Partners will keep a close watch on the implementation of the 2025 Amended Guidelines and keep our clients apprised of any further updates as they occur.

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