

China National Intellectual Property Administration to Give Priority to Patent Invalidation Cases Involved in Concurrent Litigation

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On June 21, 2021, the China National Intellectual Property Administration (CNIPA) issued the Letter of Reply from the CNIPA to Recommendation No. 6494 of the Fourth Session of the Thirteenth National People's Congress ([????????????????????6494????????](#)) explaining that CNIPA has a fast track channel for patent invalidation cases involved in patent infringement disputes. Currently, Chinese courts will usually not suspend a patent infringement case for a concurrent patent invalidation case.

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CNIPA explained,

First, under the existing patent system, patent infringement cases will not be suspended due to invalidation procedures. For infringement cases involving invalidation procedures, Articles 4 through 8 of the Several Provisions of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Patent Dispute Cases, as amended in 2020, provide in more detail the handling rules. Specifically, the litigation may not be suspended in a patent infringement case of invention or in a patent infringement case of utility model or design that has been examined and maintained by the patent administrative department of the State Council...Therefore, the existing rules have specified that the trial period of a patent infringement dispute case will not be suspended or delayed due to the invalidation procedure. The data showed that the proportion of patent infringement litigations suspended due to

invalidation procedures was not high. In 2017, some institutions released an analysis report on the patent infringement litigation cycle, selected 13 courts in Beijing, Shanghai, Guangzhou and other parts of the country for statistical purposes of the first-instance civil patent infringement cases concluded from 2011-2015, and analyzed the actual situation of the patent infringement litigation cycle. The report states: “The sample courts concluded 5,983 patent infringement cases during the statistical period, and only 198 cases (3.3%) were requested by the parties for suspension due to the initiation of the invalidation procedure. **Of these, only 74 (1.2%) were suspended by the Court.** Therefore, the probability of a patent infringement action resulting from the suspension of the invalidation procedure resulting in an excessively long period is extremely low.”

Secondly, in recent years, the quality and efficiency of our patent invalidation procedures have made significant progress...At present, the review period for requests for invalidation of patents in China is about 5 months, which already leads the world. **The CNIPA has established a fast processing channel for invalidation cases, giving priority to the handling of patent invalidation cases caused by patent infringement disputes,** and improving the efficiency of examination in a targeted manner.

The full text of the reply, which also addressed other issues, is available [here](#) (Chinese only).

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