

China

The China National Intellectual Property Administration (CNIPA) offers different accelerated examination options for patent applications, which are provided under the Measures for the Administration of Prioritized Examination of Patents (“The Measures”), which came into effect on August 1, 2017.

Section 8.2, Chapter 7, Part V of the Patent Examination Guidelines makes provisions for prioritized examination, and the specific circumstances for prioritized examination are prescribed in the Administrative Measures for Prioritized Examination of Patents.¹

Objectives & Goals: The expedited examination programs offered by CNIPA seek to facilitate optimization and upgrade of industrial architecture, promote the implementation of the Chinese national intellectual property strategy and the foundation of intellectual property power, serve innovation-driven development, and improve the patent examination proceeding.

The Measures apply to the following applications: (i) patent applications for inventions in the stage of substantive examination; (ii) patent applications for utility model or design; (iii) reexamination of a patent application for invention, utility model and design; and (iv) invalidation of a patent for invention, utility model and design.

Grounds/Qualification: Only patent applications that satisfy one of the following conditions may request prioritized examination:

- (i) where key industries of China, for example, energy conservation and environmental protection, new-generation information technology, biologics, high-end equipment manufacturing, new energy, new material, new energy vehicle, intelligent manufacturing, etc., are involved;
- (ii) where key industries encouraged by provincial governments and municipal governments of districts are involved;
- (iii) where the fields of Internet, big data, cloud computing, etc., are involved or the product has a rapid update;
- (iv) where the patent applicant or petitioner has been prepared for implementation or has started implementation of the invention, or there is evidence proving that someone else is implementing the invention;
- (v) where the Chinese application is a patent application first filed in China and then filed in a different country or region on the same subject; or
- (vi) where the application is of great significance for national interest or public welfare.

Conditions & Fees: The number of the patent applications going through prioritized examination shall be determined by the CNIPA, according to the examination capacity in different special technical fields, the number of granted patents in the previous year, the number of cases to be reviewed in the current year, and other conditions.

In order for an application to be considered for expedited examination, the consent of all applicants or petitioners must be obtained. The application must be filed by electronic means.

When an applicant seeks prioritized examination of a patent application concerning an invention, utility model or design, an application for prioritized examination as well as the

¹ Details are available at: https://www.cnipa.gov.cn/art/2017/6/27/art_2790_172122.html.

materials of the prior art or the available design information and relevant certificates must be submitted. The application for prioritized examination must be signed with recommendations by the relevant department of the State Council or provincial Intellectual Property Office, except for the cases specified and prescribed in item (v), above.

When receiving a first Office Action, the applicant must make a response or rectification as soon as possible. The time limit for the applicant to respond to the Office Action for an invention patent is two months from the issuing date of the notification of the Office Action. In the case of an Office Action concerning a utility model or design patent, the time limit to respond is 15 days from the notification of the Office Action.

CNIPA may cease the prioritized examination procedures and proceed with ordinary prosecutions, having notified the applicant for prioritized examination, under one of the following circumstances:

- when the applicant submits, after the request for prioritized examination is approved, amendments to the application document under Article 51.1 and 51.2 of the Implementation Regulations of the Chinese Patent Law ;
- when the applicant responds in a period exceeding the time limits imposed by CNIPA;
- when the applicant files false materials; or
- when the application is found during the prosecution to be an abnormal patent application.

Reduced Pendency: When CNIPA approves the application for prioritized examination, the case shall be closed within the following time limit from the date of the approval: (i) for a patent application for invention, the first Office Action shall be issued within 45 days, and the case closed within a year; and (ii) for a patent application for utility model and design, the case shall be closed within two months.

In 2020, the State Administration for Market Regulation, the State Drug Administration and CNIPA jointly issued ten measures to support resumption of work and production. Those measures further clarify that patent applications related to the prevention and treatment of COVID-19 diseases shall be prioritized for examination upon request.

The Pilot Project of Patent Prosecution Highway (PPH) is currently the most extensive and dynamic pilot project of international cooperation in patent examination globally. CNIPA has shared its examination results with the patent examination authorities of 32 countries or regions, including the United States, Europe, Japan and South Korea, in order to help applicants to obtain patents as early as possible for their overseas applications.²

² Relevant information is available at: <https://www.cnipa.gov.cn/col/col46/index.html>.