

## Administrative Revocation and Invalidation Mechanisms

### China

China currently has a system of post-grant patent invalidation. According to Article 45 of the Chinese Patent Law,<sup>1</sup> beginning from the publication of the grant of the patent, a unit or individual may request that the patent review board declare the said patent right invalid. According to Rule 64 of the Implementing Regulations of the Patent Law,<sup>2</sup> the requester shall submit a request including evidence related to the grounds of invalidation. The invalidation process is conducted *inter partes*. The Patent Review Board will send a copy of the request to the patentee and request him to present observations within a specified time. The patentee may amend the claims of the patent. The patent review board may decide, at the request of the parties or *ex officio*, to hold an oral hearing.

According to Article 46 of the Chinese Patent Act, a patent review board shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the requesting person and the patentee of its decision. The patent review board consists of technical and legal experts appointed by the patent administration.<sup>3</sup> The decision on declaring a patent right invalid shall be registered and announced by the patent administration.

Paragraph 2 of Rule 69 of the Regulations introduces the principle that good faith may serve as a ground for requesting invalidation of a patent right, i.e., the ground for requesting invalidation referred to in Paragraph 1 of Rule 69 include that the invention-creation for which a patent is granted does not conform to the provision of Rule 11 of the Regulations, which provides that “the application for a patent shall be filed with honesty and in good faith. The filing of all types of patent applications shall be based on real invention-creation activities and shall not be falsified.”

In addition, Paragraph 1 of Rule 73 of the Regulations introduces a provision for re-announcing the amended claims under corresponding circumstances in the invalidation procedures, that is, “where the patent administration department under the State Council decides to maintain the validity of the patent right or to declare part of the patent right invalid on the basis of the amended claims, such claims as amended shall be announced.”

Further, it is possible to appeal to the decision of the board. A person who is dissatisfied with the patent review board's decision on declaring a patent invalid or its decision on affirming the patent may take legal action before a People's Court, within three months from the date of receipt of the notification. The People's Court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party. If the patent right has been declared invalid, it shall be considered non-existing from the beginning, but the decision shall not have retroactive effect on previous judgments.<sup>4</sup>

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<sup>1</sup> Patent Law of the People's Republic of China, 2008.

<sup>2</sup> Rules for the Implementation of the Patent Law of the People's Republic of China.

<sup>3</sup> Rule 59 of the Implementation of the Patent Law

<sup>4</sup> Article 47 of the Chinese Patent Law.