BETTER PATENT LAW FOR INTERNATIONAL COMMITMENT — THE AMENDMENT OF CHINESE PATENT LAW

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On August 25, 2000, the Chinese National People's Congress ("NPC") passed an amendment to the Chinese Patent Law. The Chinese Patent Law[1] was enacted in 1984 and first amended in 1992. This second Amendment, in August of 2000, was made in anticipation of China's accession to the World Trade Organization ("WTO") and in response to the need for protection of domestic intellectual property rights. The State Intellectual Property Office ("SIPO"), formerly known as the China Patent Office, began drafting the amendment to the Patent Law in 1998. After several drafts were discussed at three sessions of the Standing Committee of the NPC, the Committee finally passed the revised Patent Law on August 25, 2000. The Amended Patent Law will become effective on July 1, 2001. The major changes can be grouped into three categories --- new judicial and administrative protection, improved application procedures and simplified enforcement procedures.[2]

II. New Judicial and Administrative Protections

The new judicial and administrative protections provided in the New Patent Law eliminate several major differences between the old Chinese Patent Law and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs Agreement"), such as offering for sale, innocent infringement, preliminary injunction and compulsory license. In addition, patentee friendly standards are added to the statutory damages and employment patent.

A. Offering for Sale

The Amended Patent Law confers on patent owners the right to prohibit unauthorized "offering for sale." According to Article 11, "after the grant of the patent rights for an invention or utility model, except as otherwise provided by

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[1]Patent Law of the People's Republic of China, CHINALAW No. 190 (1984). The law was adopted at the Fourth Session of the Standing Committee of the Sixth National People's Congress on March 12, 1984. *Id.*

[2]P.R.C. Exec. Order No. 36 (2000) (on file with the Richmond Journal of Global Law & Business) (The President of the People's Republic of China, Jiang Zemin, signed the order on August 25, 2000.); *see also* Standing Com. Res. 9, 7th Natl. People's Cong. (P.R.C. 2000) (enacted) (on file with the author). [hereinafter Amended Patent Law].

this law, no entity or individual may, without the authorization of patentee, *exploit the patents*, which means make, use, *offer for sale* or sell the patented product, or use the patented process and use, *offer for sale* or sell the product directly obtained by the patented process."[3] Under the Current Patent Law, the right of patentee to prohibit unauthorized third parties' "offering for sale" is not protected. The Amendment eliminated the major difference between the Current Patent Law and the requirement of the TRIPs Agreement.[4]

The right of offering for sale means that, without an express authorization of the patentee, no one should offer the patented products for sale, advertise the products, or display the products in a store or in a trade fair.[5] The purpose of stipulating the illegality of offering for sale without authorization is to enable the patentees to stop the infringing act in the early stage of business transactions and prevent infringing products from marketing, subsequently to reduce injury. This remedy is rather important for the patentee whose product is suitable for private use and the manufacturer of the infringing product is not easily identifiable.

B. Statutory Damages

Article 60 of the Amended Patent Law provides that the patent infringement damages shall be determined according to the loss incurred by the patent right owner as a result of the infringement or the profit received by the infringer from the infringement.[6] When it is difficult to determine the loss or profit, the damages shall be decided by reference to reasonable multiples of the royalties of a patent licensing.[7]

The Current Patent Law does not provide the standard for determining infringement damages. In practice, the courts usually use the general tort standard of infringement remedies provided by the General Principles of Civil

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[3] Amended Patent Law, *supra* note 2 (emphasis added).

[4] Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 28, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, LEGAL INSTRUMENTS RESULTS OF THE URUGUAY ROUND vol. 31, 33 I.L.M. 81 (1994) [hereinafter TRIPs Agreement]. Article 28 provides that:

> A patent shall confer on its owner the following exclusive rights:
> a. Where the subject matter of a patent is a product, to prevent the third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;
> b. Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the acts of using the process and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

Id.

[5] Amended Patent Law, *supra* note 2.

[6] *Id.*, at art. 60.

[7] *Id.*

Law.[8] In 1992, the Supreme Court issued a Circular on Answers to Several Questions in the Trial of Patent Disputes Cases ("Supreme Court Patent Circular"), which provides that the court may calculate infringement damages based on patentee's loss, infringer's profit or reasonable royalty. Under the Amendment, priority is given to the loss/benefit methods. Only where damages cannot be determined by these methods, the court can use the royalty option. Before the Amendment, damages under the royalty method were the reasonable amount that was not lower than royalty.[9] Now, the Amended Patent Law requires the courts to determine the damages reasonably based upon multiples of the royalties when using the royalty method.[10] It is not clear to what extent, if at all, the compensation level has been raised by the Amendment. This issue will be resolved by its future implementation.

C. Innocent Infringement

Article 63 of the Amended Patent Law provides that "where, for production and business purposes, an entity or an individual uses or sells a patented product or a product directly obtained from a patented process not knowing that it was made and sold without the authorization of the patentee, such entity or individual is not liable for damages if it or he could prove that the product comes from a legitimate source."[11]

Under the Current Patent Law, the use or sale of a patent-infringing product without knowledge that the product was made and sold without the authorization of the patentee is not infringement.[12] This provision makes the enforcement of patents rights difficult, since the user or seller of patent-infringing products can always use lack of knowledge as an excuse. The amendment is important because under it any user or seller of infringing products is presumed

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[8] General Principles of the Civil Law of the Peoples Republic of China, CHINALAW No. 346, art. 111 & 112 (1986). [hereinafter General Principles of Civil Law]. The statute provides that:

> If a party fails to fulfill its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfillment or the taking of remedial measures and claim compensation for its losses. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

Id.; *see also* Amended Patent Law, *supra* note 2.

[9] General Principles of the Civil Law of the Peoples Republic of China, CHINALAW No. 346, at art. 111 & 112 (1986); *see also* Amended Patent Law, *supra* note 2.

[10] General Principles of the Civil Law of the Peoples Republic of China, CHINALAW No. 346, at art. 111 & 112 (1986); *see also* Amended Patent Law, *supra* note 2.

[11] Amended Patent Law, *supra* note 2, at art. 63.

[12] Patent Law of People's Republic of China, *supra* note 1, at art. 62 (2) ("None of the following shall be deemed an infringement of the patent right: (2) Where any person uses or sells a patented product not knowing that it was made and sold without the authorization of the patentee.").

to be an infringer. This enables the patent right owner to control the market and to stop infringement at the sales stage. Furthermore, the new provision further limits the exemption of liability making it available only to users and sellers who can prove that the product came from a legitimate source.

D. Preliminary Injunction Available

Article 61 of the Amended Patent Law provides that if the patent rights owner and the interested party can prove that the defendant is engaging (or will engage) in infringement activities, and without timely prohibition their legal rights will incur irreparable loss, they may seek an order of an injunction from the court and take measures to prevent infringement.[13]

In order to comply with the expeditious remedy requirement of the TRIPS Agreement, the amendment provides a remedy that is similar to preliminary injunction in other jurisdictions.[14] The Chinese Civil Procedure Law has the procedures of preliminary securing of proofs and property preservation, which cannot be used to stop the infringing act before a judgment is made.[15] The Current Patent Law has no provision on preliminary injunctions. The amendment is undoubtedly a significant advancement in the legislation, since it is the first time that a Chinese law provides a procedure similar to a preliminary injunction. It is also obviously beneficial to the enforcement of patent rights.

E. Stricter Standard for Compulsory License

The Amended Patent Law provides a stricter standard for compulsory license than the Current Patent Law. Under Articles 50, 52 and 55, when an invention or utility model that is granted patent rights involves an important technical advance *of considerable economic significance* compared to the prior granted patent, and the exploitation of the later invention or utility model depends

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[13] Amended Patent Law, *supra* note 2, at art. 61.

[14] TRIPs Agreement, *supra* note 4, at art 41 (1). Article 41(1) provides:

> Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards.

Id.

[15] Civil Procedure Law of the People's Republic of China, CHINALAW No. 119, at art. 92 (1982). Article 92 provides:

> If it becomes impossible or difficult to execute a judgment because of the acts of one of the parties or for other reasons, the people's court may, at the request of the other party or on its own authority, order preservative measures in litigation to be adopted. After accepting a party's application for preservative measures in litigation, if the case is urgent, the people's court must make a ruling and begin to implement it within 48 hours.

Id.

on the exploitation of the earlier patent, the State Patent Administrative Authority (SIPO) may, upon the request of the later patentee, grant a compulsory license to exploit the earlier patent.[16]

The compulsory license decision shall *notify the patentee* and be registered and announced.[17] The compulsory licensing decision shall specify the geographic areas and times based on the compulsory license reasons.[18] When these reasons do not exist and never happen again, upon the patentee's petition, the patent administrative authority may terminate the compulsory license decision after examination.[19]

Where the patentee or *grantee* is not satisfied with the decision of the patent administrative authority granting a compulsory license for the exploitation or with the adjudication regarding the exploitation fee payable for the exploitation, they may, within three months of the receipt of the notification, appeal to the people's court.[20]

According to the Paris Convention, each country shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise rights conferred by the patent.[21] Subject to this provision of the Paris Convention, many countries

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[16] Amended Patent Law, *supra* note 2, art. 50, 52 & 55. (emphasis added).

[17] *Id.*

[18] *Id.*

[19] *Id.* (emphasis added).

[20] *Id.* (emphasis added).

[21] *See* Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, 828 U.N.T.S. 305-388. Article 5 of the Paris Convention provides:

> A. (1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.
> (2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.
> (3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.
> (4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be

included compulsory licenses in their patent laws. The developed countries had a legitimate concern that the developing countries would grant compulsory licenses and harm the interests of their companies. Therefore, conditions limiting the use of compulsory licenses were stipulated in Article 31 of the TRIPs Agreement.[22] After the amendment, the stricter standard in the Amended Patent Law is in conformity with the TRIPs Agreement requirements.

F. Clearer Definition of Employment Invention

Under the Amended Patent Law, an employment invention is the invention made in performing the tasks of the employer or made by the employee by using the material and *technology* resources of the employer.[23] The right to apply for a patent belongs to the employer. However, if an employment agreement provides otherwise, such agreement controls.[24]

Mere use of the employer's technology could qualify the employee's invention as an employment invention which belongs to the employer. Before the Amendment, only the use of the employer's materials could qualify the employee's invention as an employment invention.[25] Therefore, the Amendment

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refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

(5) The foregoing provisions shall be applicable, mutatis mutandis, to utility models.

Id. at 321.

[22] TRIPs Agreement, *supra* note 4, at art 31. Article 31 provides:

> Where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:
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> (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
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> (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent.

Id.

[23] Amended Patent Law, *supra* note 2, at art. 6 (emphasis added).

[24] *Id.* (emphasis added).

[25] Patent Law of People's Republic of China, *supra* note 1, at art. 6. Article 6 provides that:

> For a service invention-creation, made by a person in execution of the tasks of the entity to which he belongs or made by him mainly by using the material means of that entity, the right to apply for a patent belongs to the entity. For any non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved,

is favorable to employers, especially joint-ventures such as research institutions established by multinational corporations in China, to secure more patents. This is different from the stipulation of the United States Patent Law, which provides a "shop right" to employers.[26] On the other hand, if an employment agreement provides otherwise, such agreement will control.[27] This will encourage innovation by technicians and engineers.

II. Improved Application Procedures

Foreign patent applicants had problems with the time-consuming and complicated filing requirements of procuring patents in China. The New Patent Law addresses these concerns by relaxing the filing requirements for foreign and international applicants, removing the limitations on international application by

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> if it was filed by an entity under ownership by the whole people, the patent right shall be held by the entity; if it was filed by an entity under collective ownership or by an individual, the patent right shall be owned by the entity or individual.

Id.

[26] United States v. Dubilier Condenser Corp., 289 U.S. 178, 187 (1933). The Court stated:

> One employed to make an invention, who succeeds, during his term of service, in accomplishing that task, is bound to assign to his employer any patent obtained. The reason is that he has only produced that which he was employed to invent. His invention is the precise subject of the contract of employment. A term of the agreement necessarily is that what he is paid to produce belongs to his paymaster. On the other hand, if the employment be general, albeit it covers a field of labor and effort in the performance of which the employee conceived the invention for which he obtained a patent, the contract is not so broadly construed as to require an assignment of the patent.

Id. (citations omitted).

In a more recent decision by the United States Court of Appeals for the Federal Circuit, the appellate court stated the following:

> Consistent with the presumption that the inventor owns his invention, an individual owns the patent rights even though the invention was conceived and/or reduced to practice during the course of employment. At the same time, however, the law recognizes that employers may have an interest in the creative products of their employees. For example, an employer may obtain a shop right in employee inventions where it has contributed to the development of the invention. A shop right permits the employer to use the employee's invention without liability for infringement.

Teets v. Chromalloy Gas Turbine Corp., 83 F.3d 403, 407 (Fed. Cir. 1996) (citations omitted).

[27] State Intellectual Property Office, *Outline for Propaganda of Patent Law of the People's Republic of China*, 4 (stating that "[t]he amended Patent Law introduced the contract control principle.") (on file with the author).

domestic applicants and requiring timely examination.

A. Relaxing the Filing Requirements-Prior Foreign Research Is Not A Must

Article 36 of the Amended Patent Law provides that when an applicant requests substantive examination, the SIPO *may* require the applicant who has filed an application in a foreign country for the same invention to furnish documents concerning any search made or reports of such foreign examination.[28]

Before the Amendment, a foreign applicant had to submit the documents and research reports in other countries.[29] Without these documents, the application was deemed to have been withdrawn. Since the SIPO now has adequate searching resources, this burdensome requirement has been removed. Now the applicant must submit search reports only when required by the SIPO.

1. Search Report Required for Utility Model

Under the Current Patent Law, the patent office does not conduct a substantive examination for a utility model patent application. In order to prevent a person from filing an identical application in bad faith, Article 57 of the Amended Patent Law provides that while the patentee advocates his rights, the courts or the patent administrative authorities may require the patentee to show the search report issued by the SIPO.[30] Since the research report is issued after substantive examination, the new requirement can prevent the abuse of patent rights that take advantage of the non-substantive examination.[31]

B. International Application by Chinese Entities or Individuals

According to Article 20 of the Amended Patent Law, when any Chinese entity or an individual intends to file a patent application in a foreign country for an invention made in China, the process begins by filing an application with the SIPO and appointing a patent agent designated by the SIPO to act as their agent.[32] Any Chinese entity or an individual may file an international patent application according to the these guidelines.[33]

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[28] Amended Patent Law, *supra* note 2, art. 36.

[29] Patent Law of People's Republic of China, *supra* note 1, at art. 36. Article 36 provides:

> When the applicant for a patent for invention requests examination as to substance, he or it shall furnish pre-filing date reference materials concerning the invention. The applicant for a patent for invention who has filed in a foreign country an application for a patent for the identical invention shall, at the time of requesting examination as to substance, furnish documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

Id.

[30] Amended Patent Law, *supra* note 2, at art. 57.

[31] *Id.*, at art. 56.

[32] *Id.*, at art. 20.

[33] *Id.*

Prior to the Amended Patent Law, an approval by the competent administrative authorities was required before a Chinese entity or individual was permitted to file a foreign or international patent application.[34] However, the term "competent administrative authorities" has never been clarified. In contrast, the Amended Patent Law is in conformity with the procedure requirements specified by the Paris Convention and TRIPs Agreement. Consequently, foreign investors, especially the Chinese R&D centers of multinational corporations, may be in a better position to secure more patents, both in China and abroad.

1. Agent Liability

Article 19 of the Amended Patent Law provides that the patent agents shall act according to the power of attorney authorized by the patent applicant during the patent application process. A patent agent has a duty to keep confidential all information obtained as an agent, until the application is published or granted. As such, Article 19 may provide a remedy for patentees when an agent breaches the agency duty, which has happened in the past.

C. Timely Examination Required

According to Articles 21 and 46 of the Amended Patent Law, the SIPO and its Patent Reexamination Board ("Board") shall examine all patent applications and petitions on an objective, fair, accurate, and timely basis.[35] Notices of any relevant decisions shall be timely made to the applicants, patent owners, and petitioners.[36]

The Amended Patent Law emphasizes the requirement of timeliness in patent examination and invalidation review, a benefit to all patent applicants. Although there is not a specified time requirement for examination and/or review, the SIPO and the Board are expected to invest their resources and coordinate their efforts to efficiently achieve this legislative requirement.[37]

III. Simplified Enforcement Procedures

The enforcement procedures are simplified under the Amended Patent Law by removing the redundant revocation procedure, providing judicial review for administrative decisions on the validity of all three types of patents, and

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[34] Patent Law of People's Republic of China, *supra* note 1, at art. 20. Article 20 provides:

> Where any Chinese entity or individual intends to file an application in a foreign country for a patent for an invention-creation made in the country, it or he shall file first an application for patent with the Patent Office and, with the sanction of the competent department concerned of the State Council, shall appoint a patent agency designated by the State Council to act as its or his agent.

Id.

[35] Amended Patent Law, *supra* note 2, art. 21 & 46.

[36] *Id.*

[37] *Id.*

strengthening and clarifying the power of the local patent enforcement authorities.[38]

A. Revocation Procedures Canceled

The Amended Patent Law removes the revocation procedures of Article 41 to avoid overlap and conflict with the invalidation procedures. Under the current Patent Law, within three months of granting the patent, anyone may challenge its validity.[39] The purpose of Article 41 is to offer an immediate remedy to the public (i.e., any entity or individual) if the patent is invalid. After six months, a similar invalidation procedure is also provided in the Amended Patent Law.[40] However, past experiences show that the revocation procedure has not only added the burden of the examination on the SIPO, but also overlaps with the invalidation procedure discussed below. The Amended Patent Law canceled the revocation procedure, which means that other interested parties can only challenge the validity of a patent through the invalidation procedure.

1. Invalidation Procedure

Articles 45 and 46 of the Amended Patent Law provide the invalidation proceedings.[41] After the patent rights are granted, any entity or individual that considers the grant of the patent rights to be out of conformity with the relevant provisions of this Law may request the Board to declare the patent rights invalid. This request can be made starting from the date of the announcement of the grant of the patent rights by the SIPO.

B. Judicial Review For Administrative Decisioning On Validity of Patent Rights

The Board must timely examine the request for invalidation of the patent rights, make a decision, and notify both the person who made the request and the patentee. The decision declaring the patent rights invalid shall be registered and announced by the SIPO. Where any party is not satisfied with the Board's decisions, such party may appeal to the People's Court within three (3) months after the receipt of the Board's decision. The People's Court shall notify the counter party of the invalidation proceeding to join the litigation as the third party.

It is a common practice for a defendant in patent litigation to challenge

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[38] *Id.*

[39] Patent Law of People's Republic of China, *supra* note 1, at art. 41. Article 41 provides:

> Within three months from the date of the announcement of the application for a patent, any person may, in accordance with the provisions of this Law, file with the Patent Office an opposition to that application. The Patent Office shall send a copy of the opposition to the applicant, to which the applicant shall respond in writing within three months from the date of its receipt; if, without any justified reason, the time limit for making the written response is not met, the application shall be deemed to have been withdrawn.

Id.

[40] Amended Patent Law, *supra* note 2, art. 48.

[41] *Id.*, at art. 45 & 46.

the validity of the plaintiff's patent rights. Since most infringement cases and invalidation cases are litigated in different courts, whether to stay the infringement proceedings until the validity of the patent is resolved becomes a critical issue. The Supreme Court Circular provides that in utility model and design patent infringement cases, if the defendant's petition for invalidity is within the time frame of submitting the answer, the infringement proceeding will stay until the validity issue is resolved. However, in the invention patent cases, the court may exercise its discretion. The difference in these approaches can be explained by procedural posture of the proceedings. While the Board's review of the validity of utility models and design patents is final, the Board's decisions on invention patents are appealable. Under the Amendment, since all the invalidity procedures, including decisions on utility models and designs patents, are subject to judicial review, it is doubtful whether the Circular is still useful. In addition, it raises a legitimate concern that litigation regarding the utility model and design patents could take more time because the judicial review is available. The Amendment does not significantly change the invention patent proceedings. If the Board is able to timely render its decisions, the Amendment remains favorable to invention patent litigation.

1. Burden of Proof

Article 57 of the Amended Patent Law provides that where a process for the manufacture of a new product is patented, any entity or individual manufacturing the identical product must furnish proof of the process used in the manufacture of its product *that could prove that it is different from the patented process.*[42]

Although it is well-established that the burden of producing the evidence shifts in the litigation involving the patented process for a new product, the Amendment imposes additional burden on the defendant to disprove that the infringement occurred. It appears this provision is similar to 35 U.S.C.A. § 295,[43] which provides a burden shifting mechanism if two conditions are met: "(1) that a substantial likelihood exists that the product was made by the patented process, and (2) that the plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine."[44] It seems that the Chinese court imposes a heavier burden of proof on the defendant, which requires the defendant to provide such evidence, while a U.S. court has some discretion in deciding the issue.[45]

2. Statute of Limitation

Article 62 of the Amended Patent Law provides that for actions concerning the reasonable royalties of using the technology covered by the

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[42] *Id.*, at art. 57.

[43] Remedies for Infringement of Patent, and Other Actions, 35 U.S.C.A. § 295 (1994).

[44] Remedies for Infringement of Patent, and Other Actions, *supra* note 43.

[45] *See* Nutrinova Nutrition Specialties & Food Ingredients GmbH v. International Trade Commission, 224 F.3d 1356, 1359-60 (Fed. Cir. 2000).

pending patent application after publication and before the grant of the patent rights, the statute of limitation is two years.[46] Such change merely reaffirms the statute of limitation found in common tort litigation as in PRC General Principles of Civil Law.[47]

C. Local Patent Administrative Authorities

The major enforcement functions of local patent authorities are further clarified under the Amended Patent Law. According to Articles 3 and 57, local patent authorities are set at the provincial governmental level. Any patent infringement dispute can be handled by the local patent authorities that have jurisdiction.[48] If the authorities find that the infringement happened, they can order the infringers to stop the infringing activity. If the alleged infringers do not agree with the administrative decision, they can appeal to the court. For those who neither appeal nor stop infringing, the authorities may request the court for compulsory enforcement of the administrative decision. However, for infringement damages, the local authorities can only mediate for a settlement between the parties, provided that the parties agree to such mediation. Any party that does not agree with mediation results may appeal to civil court against another party other than the administrative authorities.

Another major function of the local patent authorities in investigating and handling patents remains unchanged. This function is expressly stipulated in Articles 58 and 59 of the Amended Patent Law.[49] The administrative authorities may: (1) impose a fine on the infringers of RMB from 1,000 to 50,000 yuan or an amount one to three times the illegal income, (2) confiscate passing-off products, and (3) order the infringers to stop the infringing acts.[50] The punishment decisions imposed by the local patent authorities may be appealed to the People's Court within three (3) months of receipt of the decision according to Administrative Procedures Law and the Provisions for Investigation and Handling of Acts of Passing off Patent.[51]

During the legislative process, opinions were divided with respect to keeping or abolishing the local patent authorities.[52] The Amendment will preserve these authorities and grant them clearly defined powers. As administrative protection is still an important remedy for combating patent infringement and passing-off, the constant and close contact with the local patent authorities remains an important strategy in patent enforcement.

IV. Final Note-Further Amendment of Implementing Rules

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[46] Amended Patent Law, *supra* note 2, art. 62.

[47] Edward J. Epstein, *Tortious Liability for Defective Products in the People's Republic of China*, 2 J. CHINESE L. 285, 320 (1998) (referencing the draft of the People's Republic of China General Principles of Civil Law regarding statute of limitations dated March 8, 1986).

[48] Amended Patent Law, *supra* note 2, art. 3 & 57.

[49] *Id.*, at art. 58-59.

[50] *Id.*

[51] *Id.*

[52] *Id.*

Before the Amended Patent Law becomes effective on July 1, 2001, the implementing regulations and examination guidelines are expected to be amended as well. As the Amended Patent Law does not have transition clauses, it is also expected that the SIPO will make the necessary transition arrangement.