Patent Invalidation System in China

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CNIPA
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About PRB
1. About PRB

Main responsibility

- **Reexamination**
  - To examine requests for reviewing SIPO’s decision rejecting patent application or registration application of layout-designs of integrated circuits.

- **Invalidation**
  - To examine requests for invalidating patent right or revoking exclusive right of layout-designs of integrated circuits.

- **Litigation**
  - To appeal in court where PRB is sued against its decisions.

- **Research**
  - To research on right validation and infringement determination of patents and layout-designs of integrated circuits.

- **Consultation**
  - To provide consultation on right validation and infringement determination of patent, upon the commission of the People’s Court or the Patent Administration departments.
1. About PRB

Organization & Staff

- Director General (also the Commissioner of SIPO)
- Deputy Director General (preside over the executive work)
- Deputy Directors General

- General Office
- Party Committee Office
- Personnel & Education Division
- Examination Coordination Division
- Research Division
- Information Technology Division
- Receiving & Procedural management Division
- 17 Technical Appeal Divisions
- 3 Design Appeal Divisions
- Utility Model Appeal Division
- 2 Administrative Litigation Divisions
- Quality Assurance Division
1. **About PRB**

**Flow-Chart for Reexamination**

- Reexamination requests
  - Acceptance
  - Interlocutory examination
  - The rejection is maintained or not
    - Yes
      - Collegiate examinations
    - No
      - Official act of notifications
      - Oral proceedings
      - Decisions on reexamination request
        - Petitioner is not satisfied with the decision on reexamination request
          - Legal proceedings

**Flow - Chart for Invalidation**

- Invalidation requests
  - Acceptance
  - Collegiate examinations
  - Notifications
  - Oral proceedings
  - Decisions on invalidation request
    - Petitioner is not satisfied with the decision on invalidation request
      - Legal proceedings
1. **About PRB**

- **Submit a request for invalidation**
- **Send Notifications of acceptance And Transfer Documents**
- **Patentee**
- **Submitting the response**
  - **Allocate to the Panel**
  - **Examination in written form**
    - **Examination Decisions on Request for Invalidation**
    - **Notify the two parties**
    - **Oral Proceeding**
    - **Uphold the Decision of PRB**
    - **Revoke the Decision of PRB**
    - **Appeal to the higher people’s court of Beijing**
    - **Action in IP court of Beijing**
    - **Send to the two parties**
    - **Send to the two parties**
    - **Send to the two parties**

- **No legal proceedings**
  - **The decision of PRB becomes effective**
  - **Notify people’s court and/or regional patent administrative authority**
  - **Petitioner**
1、About PRB

- **Dual System**
  - Courts can’t commute decision of PRB
  - Courts shouldn’t consider defense of patentability

- **The Supreme Court**
  - The High Court of Beijing
  - Local Higher Courts
  - Local District Courts
  - Local IP Office

- **PRB**
  - Applicant
  - Petitioner
  - Patentee

- **CPO**
  - Patent Grant
  - Patent Confirming
  - Civil Infringement

- **Double-track System**
Examination Performance
2. Examination Performance

Reexamination Requests Accepted & Concluded

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2、Examination Performance

Invalidation Requests Accepted & Concluded

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## 2. Examination Performance

### Trends of Average Pending Period

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2、Examination Performance

Proportion of Invention, Utility Model and Design of Invalidation Cases

- Utility Model
- Design
- Invention
Amount of Lawsuits against Reexamination/Invalidation Decisions

2012 2013 2014 2015 2016 2017

- Retrail
- Last Trail
- First Trail
3、Policy Trends

Modifications to Patent law, Regulation and Guidelines for Examination

01
Modification to the authorized patent

02
Reasonably determining the scope of examination ex officio
3. Policy Trends

**Improving Examination Quality**

Establish guidance system of typical cases, publishing the book of Case-based Interpretation of China’s Patent Law: Guidelines from Typical Cases of Patent Reexamination and Invalidation.

Pay more attention to external feedback to improve examination quality.

Concentrate delivery of related cases to guarantee the unification of examination standards.

**Promoting Examination Efficiency**

Implement Short-period Program, refine segment period management, and establish user-tailored period management system.
3. Policy Trends

Examination Guidance System

Quality Assurance System

Implementation of results

Problems feedback

Feedback implementation of results
3. Policy Trends

Implement various examination modes

Set up examination mode system which comprise several kinds of examination modes such as accelerating examination, itinerant oral proceedings, video oral proceedings, public oral proceedings live on-line, merging patent validation and patent infringement trials together, announced-in-court decisions.

Expand Communication channels

Annual Innovation Entities Conference. Conference for interpreting annual typical cases of patent reexamination and invalidation.

YINGU Forum, an academic salon inviting experts to discuss hot issues.
In order to strengthen the publicity of examination information and convey the correct concept of patent cases to the public so as to promote the consistency of examination standards, the Patent Re-examination Board regularly selects cases with significant impact for public trial and accepted the supervision.
3、Policy Trends

The remote trial is a new attempt of the retrial Committee based on the “Internet plus” improving the trial efficiency of invalidation cases. The remote trial enriches the way of oral proceedings provides great convenience for the parties concerned.
3、Policy Trends

Future

- To implement the Short-period Pilot Program for patent examination.
- To improve the rate of announced-in-court decisions.
- To concentrate and examine related cases.
Thanks!