



National Intellectual Property Administration, PRC

中国专利无效制度及其近期发展

The Patent Invalidation System in China and Its Recent Developments

2022年5月19日 May 19th 2022

复审和无效审理部，专利局，国家知识产权局

Reexamination and Invalidation Department of the Patent Office, CNIPA

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什么是无效宣告程序 What is the Invalidation Procedure?

专利法第45条 Article 45 of the Patent Law

自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求国务院专利行政部门宣告该专利权无效。

Where, **starting from the date** of the announcement of the grant of the patent right by the CNIPA, **any entity or individual** considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the **CNIPA** to declare the patent right invalid.



1.制度概况Invalidation System: Overview

管辖

- 国家知识产权局专利局复审和无效审理部

Jurisdiction

- Reexamination and Invalidation Department of the Patent Office, CNIPA

请求人

- 任何单位或者个人
 - “一事不再理”原则
- 不仅是利害关系人
- 包括专利权人自己

Petitioners

- Any entity or individual
 - Principle of *Res Judicata*
- Not only “interested party”
- Including Patentees themselves

时机

- 授权之后
- 没有“授权后xx月之内”的要求

When

- Starting from the date of granting
- No “within xx months”



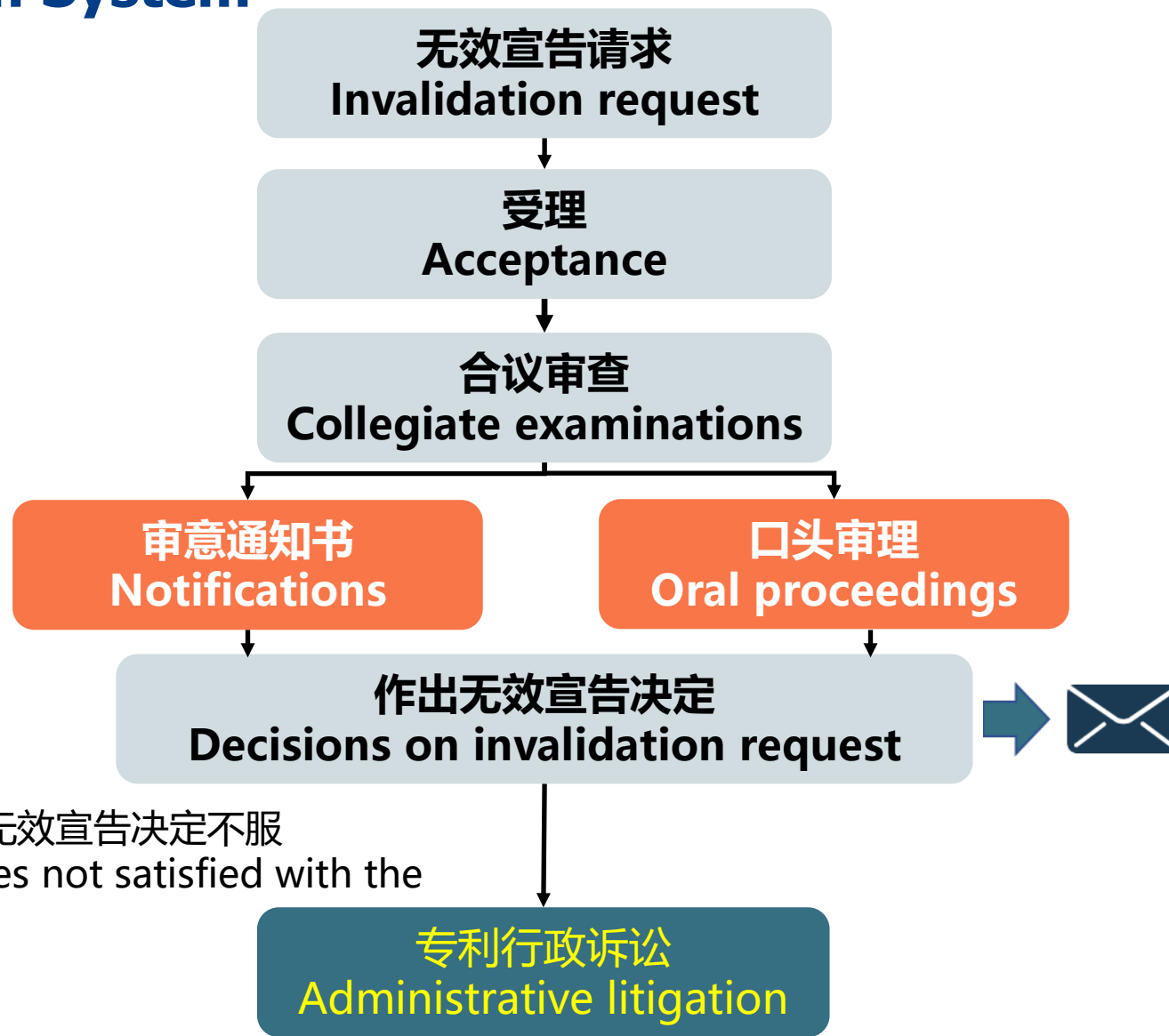
功能

- 争议解决
- 可专利性的再审查 (依请求 & 依职权)
- 修改专利权利要求

Function

- Dispute resolution
- Review the patentability (upon request & *Ex Officio*)
- Correction to patent claims

1. Invalidation System



请求人或者专利权人对无效宣告决定不服
Petitioners or Patentees not satisfied with the
Decisions

送达:

- 请求人
- 专利权人
- 人民法院或者地方知识产权局（涉及关联侵权纠纷的）

Delivered to:

- Petitioners
- Patentees
- Courts or Local IP administrative authorities (if involved infringement lawsuits)

www.cnipa.gov.cn

1.制度概况 Invalidation System



发出无效宣告审查决定
Issue an Invalidation
Decision



审查决定在发文日当天即在国家知识产权局官方网站上公布

社会公众均可以查询

The decision will be published online on the date of the issuance, and the general public can search the decision.



双方当事人可以自收到审查决定之日起三个月内，向北京知识产权法院起诉

The party who is not satisfied with the decision may institute legal proceedings in Beijing IP Court within 3 months.



当事人未在收到审查决定之日起三个月内起诉

或者人民法院生效判决维持审查决定

国家知识产权局予以公告

If the party concerned does not institute legal proceedings before the Court within 3 months from receipt of the decision, or the decision is upheld by an effective judgment of the Court, the examination decision shall be announced by the CNIPA.

1.制度概况 Invalidation System

阶段一：无效决定送达当事人

Stage I: When Issued and Served the Parties



国务院专利行政部门对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。《专利法》46.1

CNIPA shall examine the request for invalidation of the patent right promptly, make a decision on it and notify the petitioner and the patentee. *Patent Law A46.1*



无效宣告审查决定 Invalidation Decisions

请求人
Petitioner

专利权人
Patentee

人民法院或者地方知识产权局
Court or Local IP Authority



法律效果：对侵权程序

Legal Effect: to Infringement Lawsuit

• 国家知识产权局宣告涉案专利权无效的，管理专利工作的部门可以告知请求人撤回处理请求；请求人不撤回的，管理专利工作的部门应当作出驳回处理请求的决定。——《专利侵权纠纷行政裁决办案指南》

• 权利人在专利侵权诉讼中主张的权利要求被国务院专利行政部门宣告无效的，审理侵犯专利权纠纷案件的人民法院可以裁定驳回权利人基于该无效权利要求的起诉。有证据证明宣告上述权利要求无效的决定被生效的行政判决撤销的，权利人可以另行起诉。——最高人民法院 法释〔2009〕21号 第二条

• If the **CNIPA declares the patent rights invalid**, the IP administrative authority may notify the requester to withdraw the request; If the requester does not withdraw the request, the administrative authority shall make a decision to **reject the request**. — *Guidelines for Handling Administrative Adjudication of Patent Infringement Disputes*

• Where the claims of a patentee in a patent infringement action is **declared invalid by the CNIPA**, the **Court may rule to dismiss the action** which is initiated based on such invalid claims. Where there is evidence proving that the decision of declaring the invalidation of the aforesaid claims is overruled by an effective judgment, the **patentee may initiate a new action**. — *Interpretation of the Supreme People's Court [2009] No.21 Article 2*

1.制度概况 Invalidation System

阶段二：无效决定程序终局 Stage II: Final and Conclusive

法律效果：《专利法》第47条 Legal Effect: Patent Law A47



无效决定送达之后 After Delivery

当事人未在收到审查决定之日起三个月内向人民法院起诉

The party does not institute a lawsuit before the Beijing IP Court within three months

或者
OR

当事人向人民法院起诉
The party institutes a lawsuit

人民法院生效判决维持无效决定
An effective judgment finally upholds the Decision

国家知识产权予以公告
The Decision is Announced by the CNIPA

- 被宣告无效的专利权视为自始即不存在。
《专利审查指南》第四部分第三章5节
- Any patent right which has been declared invalid shall be **deemed to be non-existent from the beginning.**
Guidelines for Patent Examination Part IV. Chapter 3. 5:
- 一项专利被宣告部分无效后，被宣告无效的部分应视为自始即不存在。
- Where a patent right is **declared invalid in part**, the part of the patent right so invalidated shall be deemed non-existent from the date of filing, and
- 但是被维持的部分(包括修改后的权利要求)也同时应视为自始即存在。
- the part of the patent right that are maintained valid (**including the amended claims**) shall be deemed existent from the date of filing at the same time.

2. 专利法第四次修改中涉及的变化 Changes in 4th amendment to the Patent Law



修改前: ...任何单位或者个人认为该专利权的授予不符合本法有关规定的, 可以请求**专利复审委员会**宣告该专利权无效

Before: ...any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the **Patent Reexamination Board** to declare the patent right invalid.

修改后: ...任何单位或者个人认为该专利权的授予不符合本法有关规定的, 可以请求**国务院专利行政部门**宣告该专利权无效。

After: ...any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the patent administration department under the State Council (**CNIPA**) to declare the patent right invalid.




第45条
Article 45

机构改革后的组织架构 Organization



2. 专利法第四次修改中涉及的变化 Changes in 4th amendment to the Patent Law



新条款：药品上市审评审批过程中，药品上市许可申请人与有关专利权人或者利害关系人，**因申请注册的药品相关的专利权产生纠纷的**，相关当事人可以向人民法院起诉，请求就申请注册的药品相关技术方案是否落入他人药品专利权保护范围作出判决。国务院药品监督管理部门在规定的期限内，可以根据人民法院生效裁判作出是否暂停批准相关药品上市的决定。

NEW: In the review and approval process before the marketing of a pharmaceutical product, where the applicant for marketing approval of the pharmaceutical product has any disputes over the relevant patent right associated with the pharmaceutical product applied for registration with the relevant patentee or interested party, the party concerned may file a lawsuit before the People's Court and request a judgment on whether the technical solution related to the pharmaceutical product that is applied for registration falls within the protection scope of any pharmaceutical product patent right owned by others. The medical product regulatory department under the State Council may, within a prescribed time limit, make a decision on whether to suspend the marketing approval of the pharmaceutical product according to the effective judgment or written order of the People's Court.

“药品专利链接”制度
“*Pharmaceutical patent linkage*”



第76条
Article 76

2. 专利法第四次修改中涉及的变化 Changes in 4th amendment to the Patent Law



药品上市许可申请人与有关专利权人或者利害关系人也可以就申请注册的药品相关的专利权纠纷，**向国务院专利行政部门请求行政裁决。**

The applicant for marketing approval of the pharmaceutical product, the relevant patentee or the interested party **may also petition the patent administration department under the State Council (CNIPA) for an administrative adjudication** on the disputes over the patent right associated with the drug applied for registration.

国务院药品监督管理部门会同国务院专利行政部门制定药品上市许可审批与药品上市许可申请阶段专利权纠纷解决的具体衔接办法，报国务院同意后实施。

The medical products regulatory department under the State Council shall, in conjunction with the patent administration department under the State Council, formulate specific cohesive measures for patent right dispute resolutions at the stages of pharmaceutical product marketing license approval and pharmaceutical product marketing license application, which shall be implemented after the approval of the State Council.

“药品专利链接”制度
“Pharmaceutical patent linkage”



第76条
Article 76

| 3.近期发展 Recent Developments



疫情期间，广泛开展无效宣告案件在线口头审理
Online Trials during the COVID-19 Pandemic.

2021年无效案件情况 Invalidations in 2021:

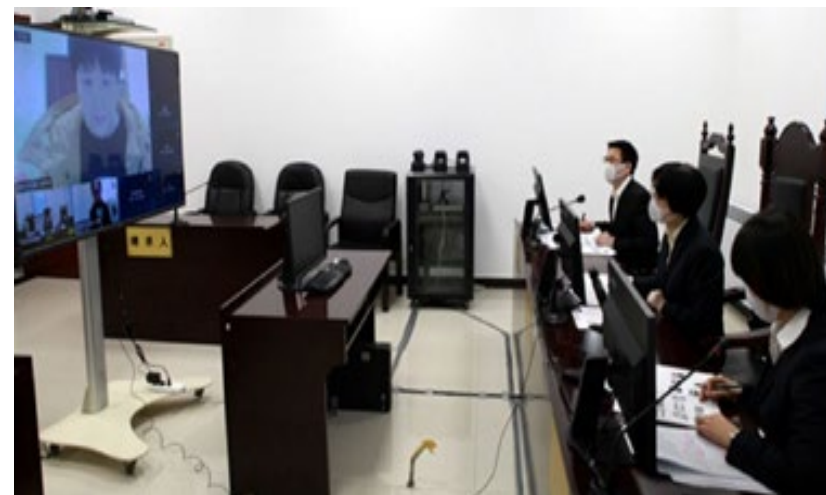
- 受理 Accepted: 7628
- 结案 Concluded: 7065
- 在线审理 Online Trials: 约6000 about 6000

在线参加一审行政诉讼(含复审和无效):

Online Trails in Administrative Litigations

First Instance (including reexaminations and invalidations):

- 2020年/In 2020 : 约1200/about 1200
- 2021年/In 2021 : 约1700/about 1700



| 3.近期发展 Recent Developments



与知识产权保护中心
远程联合审理
(无效+侵权)

Online joint trials with the Intellectual
Property Protection Center
(invalidation combine
infringement)



试点审理庭点对点远程审理
(北京、上海、南京、浙江)
Point-to-Point online trials with
Circuit Courts
(Beijing、Shanghai、Nanjing、
Zhejiang)



与广州知识产权法院远程联合审理
(无效+侵权)
Online joint trials with
Guangzhou Intellectual Property
Court
(invalidation combine
infringement)

| 3.近期发展 Recent Developments



年度十大案件解读会 (2021)

Annual Top Ten Cases Conference 2021



第七届创新主体大会 (2021)

7th Innovation Entities Conference (2021)

| 3.近期发展 Recent Developments



《以案说法——专利复审、无效典型案例指引》(2018)

进行中:

- 新案例 (2018-2021) 修订
- 英文版

Typical Cases of Patent Reexamination and Invalidity – A Case Study to Interpret the Law (2018)

in progress:

- New Cases (2018-2021) Edition
- English Edition



National Intellectual Property Administration, PRC



谢谢！
Thanks!

