



## Introduction to the Fourth Revision of the Chinese Patent Law (2021)

The fourth revision to the <Patent Law of the People's Republic of China> has been implemented on 1st June 2021. The revision of the Patent Law aims to strengthen the protection of the legitimate rights of patentees, to promote the implementation of patents, to improve the intellectual property protection mechanism and to increase penalties for patent infringements. The main aspects of the amendments are as follows:

1. Expand the protection for design patents
  - Extend duration of protection: The duration of protection for design patents has been extended from 10 years to 15 years, consistent with the <Hague Agreement>.
  - Define object of protection: Partial design becomes a patentable object.
  - Domestic priority: It is allowed to claim the priority of an earlier Chinese patent application, and the priority period is 6 months.
2. Extension of the duration of patent protection
  - Where a patent for invention is granted after four years from the date filing and after three years from the date of request for substantive examination due to the unreasonable delay of patent examination, a remedy of patent term extension can be requested.
  - Term extension of medicine patents: A remedy of patent term extension of not more than 5 years can be requested for invention patents related new medicines after the medicine has obtained marketing authorization in China; the total valid patent duration shall not exceed 14 years from the date the new medicine is approved.
3. Introduction of open license of patents
  - Patentee can voluntarily announce open license of his patent and set license fees; other entity can obtain patent implementation license after paying license fees to the patentee.
  - The patentee can withdraw the announcement of open license at any time; but it does not affect the validity of the prior open license.
  - During the implementation period of the open license, the patentee shall not grant others an exclusive or sole license of the patent.
  - During the implementation period of the open license, annuity shall be reduced or exempted.
4. Increase compensation for infringement and improve infringement litigation system
  - New rules on punitive damages: For intentional infringement of patent rights, where the circumstances are serious, a compensation of one to five times can be penalized.
  - Increase amount of statutory damages: The amount of compensation for patent infringement is increased to from 30,000 to 5,000,000 yuan.

- Clarify the period of limitation for legal action: The period of limitation for patent infringement is revised to three years, consistent with the provisions of Chinese Civil Laws.
- Transfer of burden of proof: In the case the patentee has tried its best to provide evidence, the Court can order the infringer to provide account books and materials related to the infringement.

#### 5. Other amendments

- Add the principle of good faith: The principle of good faith shall be followed in applying for patents and exercising patent rights. Patent rights shall not be abused to damage public interests or the legitimate rights and interests of others.
- Improve the mechanism of administrative protection: The Intellectual Property Administration is granted the right to enforce the law; the patent enforcement department has the right to handle patent counterfeit cases and patent infringement disputes.
- It is specified that the method of nuclear transformation is non patentable subject matter.

In addition, it should be noted that, in accordance with the principles of legislation, the above amendments to the Patent Law are not retroactive. That is, the 15-year protection period of design patent and application of partial design patent are only applicable to patent applications filed after 1st June 2021; the extension of the duration of patent protection due to delayed examination is only applicable to patents granted after 1st June 2021, etc. Moreover, after the amendments of the Patent Law, the <Implementation Regulations of the Patent Law> and the <Guidelines for Patent Examination> are currently in the revision procedure as well, but they have not yet been published and implemented. We will keep you duly notified once the relevant laws are enacted.

## 中国专利法 第四次修改（2021年）要点介绍

第四次修改的《中华人民共和国专利法》已于2021年6月1日起实施。本次专利法的修改旨在加强对专利权人合法权益的保护、促进专利实施和运用、加强知识产权保护机制以及加大专利侵权处罚力度。修改的主要内容如下：

### 1. 扩大外观专利的保护

- 延长保护期：外观设计专利的保护期从10年延长为15年，与《海牙协定》相一致。
- 明确保护客体：可以申请局部外观专利。
- 本国优先权：允许要求在先中国专利申请的优先权，优先权期限为6个月。

### 2. 专利保护期限的延长

- 因专利审查的不合理延迟，导致发明专利在自申请日起满四年且自实质审查请求之日起满三年授权，可以请求延长专利保护期限；具体补偿方式及审核标准有待专利法实施细则明确。

- 药品专利期限补偿：为补偿新药上市审评审批占用的时间，对在中国获得上市许可的新药相关发明专利，可以请求不超过五年的专利权期限补偿；补偿后的总有效专利权期限在新药批准上市后不超过十四年。

### 3. 引入专利开放许可制度

- 专利权人可对其专利自愿实行开放许可并设定许可费收费标准；他人在向专利权人支付许可费用后即获得专利实施许可。
- 专利权人可随时撤回开放许可声明，但不影响在先的开放许可的效力。
- 开放许可实施期间，专利权人不得就该专利给予他人独占或者排他许可。
- 开放许可实施期间，年费可获得相应减免。

### 4. 加重侵权赔偿，完善侵权诉讼制度

- 新增惩罚性赔偿制度：对故意侵犯专利权，情节严重的，可处罚一至五倍的赔偿。
- 提高法定赔偿额：将侵犯专利权的法定赔偿额提高至三万至五百万元。
- 明确诉讼时效：将侵犯专利权的诉讼时效修改为三年，与民法的相关规定保持一致。
- 举证责任转移机制：在权利人已经尽力举证的情况下，人民法院可以责令侵权人提供与侵权行为相关的帐簿、资料。

### 5. 其他修改

- 新增诚实信用原则：申请专利和行使专利权应当遵循诚实信用原则，不得滥用专利权损害公共利益或者他人合法权益。
- 完善行政保护机制：赋予国家知识产权局执法权，专利执法部门有权处理假冒专利案件和专利侵权纠纷。
- 明确原子核变换方法不授予专利权。

需要额外说明的是，根据立法的原则，专利法的以上修改不溯及既往。也即，外观专利的15年保护期和局部外观专利的申请仅适用于2021年6月1日后申请的专利；对于审查延迟的保护期延长仅适用于2021年6月1日后获得授权的专利，以此类推。

另外，在专利法的修改之后，专利法实施细则和专利审查指南也需要进行相应的修改，但是尚未公布和实施。

我所将在相关法律出台后进行进一步的介绍。



www.wenping.com.hk  
Units 1701-2 Tung Wai Comm. Bldg. 111 Gloucester Road, HONG KONG  
Tel : (852) 2511 0788 Fax : (852) 2519 3316 E-mail : info@wenping.com.hk Website : www.wenping.com.hk

INNOVATE