

February 2, 2026

Third Civil Division
Supreme People's Court
No. 27 Dongjiaominxiang
Dongcheng District
Beijing
Postal Code 100745

Via Email: ipdivision@court.gov.cn

RE: AIPLA Response to Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (III) (Draft for Comments) ("Draft Interpretations") released on December 20, 2025

RE: 美国知识产权律师协会对最高人民法院《关于审理专利侵权纠纷案件适用法律若干问题的解释（三）》（征求意见稿）（以下简称《解释草案》）的回应（2025年12月20日发布）

To the Supreme People's Court of the People's Republic of China:

致中华人民共和国最高人民法院：

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to offer comments in response to the above-referenced Draft Interpretations.

美国知识产权法协会（AIPLA）感谢有机会就上述《解释草案》提出意见。

Founded in 1897, AIPLA is a national bar association of approximately 6,500 members who are engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent (utility and design), trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping to establish and maintain fair and effective laws and policies that stimulate and reward invention while also balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

美国知识产权律师协会（AIPLA）成立于1897年，是一个拥有约6,500名会员的全国性律师协会，其成员活跃于私人执业、公司执业、政府服务及学术界等领域。AIPLA会员涵盖广泛多元的群体，包括直接或间接从事专利（实用新型与外观设计）、商标、著作权、

商业秘密及不正当竞争法实务的个人、企业及机构，同时涉及其他影响知识产权的法律领域。本协会成员既代表知识产权所有者，也代表知识产权使用者。我们的使命包括协助建立并维护公平有效的法律政策体系，在激励与奖励发明创造的同时，兼顾公众对健康竞争、合理成本及基本公平的权益诉求。

Overall AIPLA supports the efforts of the Supreme People's Court ("SPC") in these Draft Interpretations to clarify patent litigation practice, streamline procedures, and address abusive practices.

总体而言，美国知识产权律师协会（AIPLA）支持最高人民法院（"最高法院"）通过这些解释草案所作的努力，旨在澄清专利诉讼实践、简化程序并应对滥用行为。

To aid the SPC's finalization of its most recent judicial interpretations, AIPLA comments on specific Articles enumerated below. AIPLA hopes these comments and perspectives are helpful to the SPC via considering a full range of practitioner feedback who represent clients and work on matters now pending or in the future in China's patent courts.

为协助最高人民法院完成其最新司法解释的最终定稿，美国专利律师协会（AIPLA）就下列具体条款提出意见。AIPLA 希望这些意见和观点能通过综合考虑代表客户、处理当前或未来在中国专利法院待决案件的执业者反馈，为最高人民法院提供有益参考。

Article 2

第二条

We request clarification as to the meaning of Article 2. As currently drafted, the evidence collected by the first-instance court in a proceeding on whether there is jurisdiction will be used in a second-instance court even after the first instance court has agreed with the objection to jurisdiction. This seems counter intuitive and perhaps is a result of a mistranslation. Clarification is needed as to whether the second instance court will continue the litigation even after jurisdiction is denied and also whether then the evidence adduced by the first-instance court will be moved into the record of the second-instance court.

我们要求澄清第 2 条的含义。根据现行草案，即使初审法院已同意管辖权异议，其在管辖权诉讼中初审法院收集的证据仍将在二审法院使用。这似乎有悖常理，或许是翻译错误所致。需澄清两点：一、即使管辖权被驳回，二审法院是否仍将继续审理诉讼；二、此时一审法院提交的证据是否将转入二审法院卷宗。

If the second-instance court receives evidence that should be excluded because the complaint has been reformed by removing a party improperly pled as a defendant, we do not think the evidence

gathered for that purpose should be available to the second-instance court which has a more limited scope of jurisdiction.

若诉讼请求已因删除不适当被告而被更正，我们认为二审法院收到的针对该被撤销的不适当当事人收集的证据不应被采纳--因二审法院的审查范围更为有限。

Article 4

第四条

We support the SPC's initiative in Article 4 to require Patent Right Evaluation Reports for utility model and design patent disputes. While we agree the report is important, we respectfully submit that the failure to provide the report "without justified reasons" should not result in an automatic ruling dismissing the action.

我们支持最高人民法院在第四条中要求对实用新型和外观设计专利纠纷提交专利权评估报告的举措。虽然我们认同该报告的重要性，但谨此提议：若当事人"无正当理由"未能提交报告，不应导致法院自动作出驳回诉讼请求的裁决。

Even if dismissal of action was preserved, we respectfully request that the Court provide more clarity on what constitutes a "justified reason".

即使驳回诉讼的决定得以维持，我们仍谨请法院就何谓"正当理由"作出更明确的阐释。

Article 5

第五条

We request clarification on whether Article 5 is intended to align with recent jurisprudence from the Supreme People's Court (SPC), specifically the *Novo Nordisk v. CNIPA* (Semaglutide) precedent. In that instance, claims were initially declared invalid by the Reexamination and Invalidation Department (PRID) of the CNIPA but were ultimately upheld as valid following judicial review by the SPC.

我们要求澄清第 5 条是否旨在与最高人民法院 (SPC) 的最新判例保持一致，特别是诺和诺德诉国家知识产权局 (CNIPA) (司美格鲁肽) 的先例。在该案中，国家知识产权局复审和无效部门 (PRID) 最初宣告权利要求无效，但经最高人民法院司法审查后最终维持其有效性。

As currently drafted, Article 5 suggests that if an invalidation decision has "taken legal effect," the court shall not support the rights holder's claims. We are concerned that this may be interpreted to mean the first-instance administrative decision by the CNIPA, rather than a decision that has exhausted all levels of judicial appeal. Clarifying that "legal effect" attaches only once a validity

decision is final would preserve patentees' ability to complete administrative and judicial review before enforcement consequences attach.

根据现行草案，第 5 条暗示若无效决定已"产生法律效力"，法院不得支持权利人的主张。我们担忧此表述可能被解读为指国家知识产权局作出的初审行政决定，而非已完成各级司法复审的裁决。明确"法律效力"仅在有效性裁决终局后产生，将确保专利权人在执行后果产生前完成行政与司法复审的权利。

Linking this concept of finality in Article 5 to Articles 27 and 28 would help ensure that retroactivity and enforcement consequences arise only once patent validity has been conclusively resolved.

将第 5 条中的终局性概念与第 27 条和第 28 条相衔接，有助于确保只有在专利有效性得到最终裁决后，才会产生溯及效力及执行后果。

If a patentee—like Novo Nordisk—had ongoing infringement litigation stayed or dismissed based on an initial CNIPA invalidation decision that was later overturned by the SPC, the patentee would suffer significant, potentially irreversible losses in terms of damages and market exclusivity.

若专利权人（如诺和诺德）因国家知识产权局（CNIPA）的初步无效决定导致正在进行的侵权诉讼被中止或驳回，而该决定随后被最高人民法院（SPC）推翻，则该专利权人将在损害赔偿和市场独占权方面遭受重大且可能不可逆的损失。

Proposal:

提案:

We respectfully disagree with any position that denies enforcement based on a non-final administrative ruling. We request that the SPC clarify that:

我们谨此反对任何以非终局行政裁决为由拒绝执行的主张。我们请求最高人民法院澄清：

- Patentees should be given the opportunity to exhaust all administrative and judicial appeal remedies regarding the validity of their claims before a court denies support for those claims in an infringement proceeding.
- 专利权人应有机会在法院于侵权诉讼中驳回其权利要求之前，就权利要求的有效性用尽所有行政和司法上诉救济途径。
- The "legal effect" mentioned in Article 5 should specifically refer to a final, non-appealable judgment on validity to ensure consistency between administrative and judicial findings and to protect the substantive rights of the patentee.

- 第 5 条所指的"法律效力"应特指关于有效性的终局性、不可上诉的判决，以确保行政与司法认定的一致性，并保障专利权人的实质性权利。

Article 10

第十条

The concept of prior art defect as set out in Article 10 ignores claim scope elements and is untethered from the patented claims, expanding the current doctrine in a way that is likely to distort infringement analysis. Those charged with infringement may escape patent infringement liability simply by arguing that an alleged infringing product contains or practices prior-art deficiencies, while at the same time, still falling within the scope of patented claim language. This approach is not accepted by other judicial systems and is inconsistent with ordinary infringement principles. By shifting the analysis away from claim language and toward alleged "defects" described in the specification, this proposed article strays away from fundamental claim language scope and should not replace current doctrines.

第 10 条所规定的现有技术缺陷概念，既忽略了权利要求范围要素，又脱离了专利权利要求本身，这种对现有法理的扩展很可能扭曲侵权分析。被控侵权方仅需主张被控侵权产品包含或实施了现有技术缺陷，即可逃避专利侵权责任，而该产品仍可能落入专利权利要求书的字面范围。此种做法未被其他司法体系采纳，且与常规侵权原则相悖。该条款草案将分析焦点从权利要求书文字转向说明书所述的所谓"缺陷"，偏离了权利要求书范围的核心原则，不应取代现行法理。

AIPLA recommends deleting Article 10, revising the Article such that all defects recited in the specification must be present for this article to apply, or revising the Article such that the prior art defect is only one of many considerations. In the alternative, if Article 10 is retained, it should be revised to require that all expressly stated "defects" identified in the specification be present in the accused solution for the provision to apply, or that any alleged prior-art "defect" be treated as a non-dispositive consideration rather than a standalone basis for avoiding infringement.

AIPLA 建议删除第 10 条，或修订该条款规定：仅当说明书中列举的所有缺陷同时存在时方适用本条；或修订该条款规定：现有技术缺陷仅为诸多考量因素之一。若坚持保留第 10 条，则应修订为：要求被控解决方案必须同时存在说明书中明确列举的所有"缺陷"，方可适用该条款；或规定任何被指控的现有技术"缺陷"应作为非决定性考量因素，而非单独构成避开侵权的依据。

If Article 10 is maintained, it should also be clarified and harmonized with Articles 13 and 15 to ensure that the "defect" concept does not operate cumulatively to narrow claim scope when combined with functional-feature analysis or terminology-clarity rules.

若保留第 10 条，则应予以澄清并与第 13 条及第 15 条协调统一，以确保“缺陷”概念在结合功能特征分析或术语明确性规则时，不会累积作用导致权利要求范围缩小。

Article 11

第十一条

This proposed article contains several concerns. Per the article's language, if narrowing amendments are made by an applicant/patentee during prosecution/invalidity trial, these actions result in prosecution history estoppel provided the amendments/statements “were not expressly negated.”

本文草案存在若干疑虑。根据条款表述，若申请人在审查程序或无效审判期间作出缩小保护范围的修改，只要该修改或陈述“未被明确否定”，即构成审查历史禁反言。

We seek clarity regarding what types of statements, decisions, or procedural outcomes would qualify as being “expressly rejected or negated,” including how mixed or partial outcomes in grant, confirmation, or invalidation proceedings should be treated. Clarification is also needed as to whether statements made during confirmation or invalidation proceedings are intended to carry prosecution history estoppel weight. Further, clarity is appreciated as to how applicants can adequately “explicitly deny” or negate application changes during prosecution, since this standard does not currently exist. It should be appreciated that forcing this standard is likely to increase costs and time associated with applicants engaging with CNIPA Examiners.

我们希望明确说明哪些类型的陈述、决定或程序结果可被视为“明确驳回或否定”，包括在授权、确认或无效程序中出现的混合或部分结果应如何处理。同时需进一步澄清在确认或无效程序中的陈述是否具有审查历史禁反言效力。此外，鉴于当前尚无相关标准，申请人如何在审查过程中充分实现“明确否认”或否定申请文件的修改亦需明确指引。应认识到强制执行此标准可能增加申请人与 CNIPA 审查员沟通的成本与时间。

To align with the practices of other judicial systems, AIPLA further recommends that Article 11 be expressly limited to amendments or statements made to overcome novelty, inventiveness, or other patentability objections. Amendments made for clarity, drafting consistency, or strategic reasons that do not narrow claim scope for patentability should be excluded from the scope of this Article.

为与其他司法体系的实践保持一致，AIPLA 进一步建议明确将第 11 条的适用范围限定于为克服新颖性、创造性或其他可专利性异议所作的修改或陈述。因表述清晰、文本一致性或战略考量而作出的修改，若未缩小权利要求范围的可专利性，应排除在本条适用范围之外。

Likewise, it is not understood what “restrictive” is meant to include for purposes of this proposed article. “Restrictive” should be defined to include only amendments or statements that narrow

claim scope in order to secure patentability. If amendments are not associated to secure patent rights, then they should be deemed non-restrictive and this article's language does not apply. If applicants amend patent claims for clarity or strategic reasons, not associated with patentability concerns, such amendments should not be seen as restrictive, especially in scenarios where claim amendments may clarify or broaden – not decrease – claim scope.

同样，本提案条款中“限制性”的具体涵盖范围亦不明确。“限制性”应仅定义为为确保可专利性而缩小权利要求范围的修改或陈述。若修改与确保专利权无关，则应视为非限制性修改，本条款规定不适用。若申请人出于表述清晰或战略考量修改专利权利要求，且该修改与可专利性无关，则不应视为限制性修改——尤其在修改可能使权利要求更加明确或扩大（而非缩小）权利要求范围的情形下。

Article 12

第十二条

Article 12, in its present form, may introduce unnecessary ambiguity – it is unclear whether this article is for direct, equivalent, or both types of infringement. While it is assumed that this article is for infringement by equivalents, if the specification intentionally excludes a technical solution, then this technical solution should not be in the claims in the first place.

第 12 条现行表述可能引入不必要的歧义—该条款究竟适用于直接侵权、等同侵权还是两者皆可，尚不明确。虽然该条款被认为适用于等同侵权，但若说明书刻意排除了某项技术方案，则该技术方案本就不应出现在权利要求书中。

AIPLA recommends deleting Article 12.

AIPLA 建议删除第 12 条。

If Article 12 is retained, it should be expressly clarified that it operates only as a limitation on infringement by equivalents and does not bar findings of direct infringement. Further, the analysis should be grounded in the claims, the description, and the file history, consistent with the framework applied in Article 11.

若保留第 12 条，应明确说明该条款仅作为对等同侵权的限制性规定，并不妨碍认定直接侵权。此外，分析应基于权利要求、说明书及文件历史，与第 11 条适用的框架保持一致。

Or if it must retained, we propose the following changes:

或者如果必须保留，我们建议进行以下修改：

If a person of ordinary skill in the art, by reading the claims, description, file history, and so on, can determine that the claims intentionally exclude a specific technical solution, and the right

holder asserts that the specific technical solution falls within the scope of protection of the patent right by equivalent, the People's Court shall not support it. Some evidence of exclusion of technical solution will be in the file history, e.g., during an office action response, the Applicant may state that the technical solution means this, not that, and therefore, not rendered non-inventive/non-novel by the cited art.

如果本领域普通技术人员通过阅读权利要求、说明书、文件历史等资料，能够确定权利要求故意排除了特定技术方案，而权利人主张该特定技术方案通过等同原则落入专利权保护范围时，人民法院不予支持。排除技术方案的证据可能存在于文件历史中，例如在答复审查意见通知书时，申请人可能声明该技术方案指的是这个而非那个，因此不会因引用的现有技术而丧失创造性/新颖性。

Article 17

第十七条

Article 17, in its current formulation, could be read as creating uncertainty as to the basis on which the scope of protection of a design patent is determined. In particular, the first sentence may be understood as permitting the scope of protection to be determined solely by reference to the brief description of the design. AIPLA respectfully submits that such an interpretation would be inconsistent with the fundamental principle that design patent protection is grounded primarily in the visual representations disclosed in the design patent, including the drawings and photographs, with the brief description serving a supplementary and clarifying role. To avoid any potential ambiguity and to more clearly reflect the central role of the visual representations in defining the scope of design patent protection,

第 17 条现行表述可能引发对外观设计专利保护范围确定依据的不确定性。特别是首句可被理解为允许仅依据外观设计的简要说明来确定保护范围。美国知识产权律师协会谨此提出，此种解释将违背设计外观专利保护的核心原则——该外观设计专利保护范围主要以外观设计专利中披露的视觉表现形式（包括图纸和照片）为准，而简要说明仅起补充说明作用。为避免潜在歧义并更清晰地体现视觉表现形式在界定设计专利保护范围中的核心地位，

AIPLA respectfully proposes the following modification to the language:

AIPLA 谨此提议对措辞进行如下修改：

“The scope of protection of a design patent shall be determined primarily by the visual representations disclosed in the design patent and may also take into account the brief description of the design.”

外观设计专利的保护范围，主要依据外观设计专利公开的视觉表现来确定，也可以考虑该设计的简要说明。

Article 18

第十八条

Article 18, as currently drafted, could be read as suggesting that an infringement determination may be based on only a subset of the views disclosed in a design patent, rather than on the design patent as claimed in its entirety. Such a reading would be inconsistent with the fundamental principle that design patent infringement should be assessed by reference to the claimed design as a whole, including all views claimed in the design patent. Further, while limited and evidence-based inferences may, in appropriate circumstances, assist in determining the appearance of unknown views of an accused product, such inferences should be grounded in evidence and should not extend to speculation or surmise. In view of these considerations,

第 18 条现行草案的表述可能被理解为：侵权判定仅需基于外观设计专利所披露的局部视图，而非以外观设计专利整体权利要求为依据。此种解读将违背外观设计专利侵权判定应参照专利主张的整体设计（包括外观设计专利要求的所有视图）的基本原则。此外，虽然在适当情况下，有限且基于证据的推断可协助确定被控产品未知视角的外观特征，但此类推断必须以证据为基础，不得延伸至主观推测或臆断。鉴于上述考量，

AIPLA respectfully proposes the following modification to the language of Article 18:

AIPLA 谨此提议对第 18 条的措辞进行如下修改：

“Where the appearance of one or more views of the accused infringing product corresponding to the views of the design patent is not known, the People’s Court may, in appropriate circumstances, consider whether ordinary consumers could reasonably infer the appearance of those unknown views based on the available views and the characteristics of the product which is the subject of the design patent. Any such inference should be grounded in evidence and should not extend to speculation or surmise. In determining infringement, the People’s Court should consider the design patent as claimed in its entirety, including all views disclosed therein, and should not base its determination solely on a subset of the views claimed in the design patent.”

当被控侵权产品的一个或多个视图与外观设计专利对应视图的外观不明确时，人民法院可在适当情况下考虑普通消费者能否根据现有视图及外观设计专利所涉产品的特征，合理推断出未知视图的外观。此类推断应有证据依据，不得延伸至主观推测或臆断。在认定侵权时，人民法院应当以设计专利权利要求书所主张的整体设计为考量，包括其公开的所有视图，不得仅依据外观设计专利中部分视图作出认定。”

Article 21

第二十一条

Re: AIPLA Comments to SPC's Third Judicial Interpretations

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AIPLA supports the non-infringement defense based on a prior application filed. However, AIPLA would like to clarify that applications filed in another jurisdiction would also be able to utilize such defense, subject to appropriate evidentiary safeguards such as submitting certified copies and accurate translations to ensure authenticity and accessibility of the relied-upon application.

美国知识产权律师协会支持基于先前申请提出的非侵权抗辩。但需澄清的是，在其他司法管辖区提交的申请同样可援引此类抗辩，前提是须采取适当的证据保障措施—例如提交经认证的副本及准确译本，以确保所依据申请的真实性与可获取性。

Proposed Amendment to Article 21

对第二十一条的拟议修正案

Where a party asserts a non-infringement defense based on a prior application filed with the Patent Administration Department under the State Council or another patent office in another jurisdiction, that has been published, and all technical features of the alleged infringing technical solution have been separately and completely disclosed by the prior application as of its filing date (or priority date, if priority is claimed), the People's Court shall determine that it does not constitute patent infringement.

第二十一条 当事人依据向国务院专利行政部门或其他地区行政部门提出的已公布的在先申请主张不侵权抗辩，被诉侵权技术方案的全部技术特征均已被该在先申请的申请日（或主张优先权时的优先权日）已单独、完整地公开的，人民法院应当认定不构成专利侵权。

Article 24

第二十四条

We choose option 2: court helps support manufacturer's cost of stopping infringer if infringer has legitimate source defense.

我们选择方案 2：若侵权人提出合法来源抗辩成立，法院将支持侵权产品制造商承担制止侵权行为的成本。

AIPLA thanks the SPC for its consideration of these comments and welcomes any further opportunity to discuss these important issues. AIPLA has enclosed this letter as translated herewith.

美国知识产权律师协会（AIPLA）感谢最高法院对这些意见的审议，并欢迎任何进一步讨论这些重要问题的机会。AIPLA 随函附上本信函的译文。

Sincerely,

Re: AIPLA Comments to SPC's Third Judicial Interpretations
February 2, 2026
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此致敬礼，



Salvatore Anastasi

President
总裁
American Intellectual Property Law Association
美国知识产权法协会