

AIPLA

American Intellectual Property Law Association

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

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

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

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.

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.

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.

Article 2

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.

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.

Article 4

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.

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

Article 5

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.

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.

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.

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.

Proposal:

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

- 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.
- 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.

Article 10

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.

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.

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.

Article 11

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."

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.

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.

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.

Article 12

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.

AIPLA recommends deleting Article 12.

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.

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

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.

Article 17

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,

AIPLA respectfully proposes the following modification to the language:

“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.”

Article 18

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,

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

“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.”

Article 21

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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.

Proposed Amendment to Article 21

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.

Article 24

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

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.

Sincerely,



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Salvatore Anastasi

President
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