



Sonderhoff & Einsel News Update:
IP Newsletter (March 2020)

Provisions on Restoration of Patent-Related Rights Following the Pneumonia Epidemic Caused by the Novel Coronavirus in China

The outbreak of pneumonia caused by the novel coronavirus has severely affected various sectors in China. In the field of intellectual property, the restoration of patent related rights lost due to novel coronavirus-induced pneumonia is a problem that is attracting attention.

The China National Intellectual Property Administration (CNIPA) made an announcement entitled “Explanation on the relevant deadlines for patents, trademarks, and layout designs of integrated circuits during the period of epidemic of pneumonia caused by the novel coronavirus” (i.e., Bureau Announcement 350) on January 28th, 2020, an announcement entitled “Response to specific issues related to the procedure for restoration of rights related to the epidemic of pneumonia caused by the novel coronavirus” on February 3rd, 2020, an announcement on “Further explanation on the relevant deadlines for patents, trademarks, and layout designs of integrated circuits during the period of the pneumonia epidemic caused by the novel coronavirus” on February 21st, 2020, and an announcement entitled “Explanation on matters related to the payment of delinquency for patent pensions during the pneumonia epidemic caused by the novel coronavirus” on March 4th, 2020. This series of announcements explains the provisions, procedures and payments necessary to restore patent-related rights.

This article summarizes the restoration of patent-related rights that have been lost due to the pneumonia epidemic caused by the novel coronavirus. In the future, depending on the status of the infection, the government may issue further related policies and regulations, so it is necessary to obtain such information promptly in order to avoid adverse effects on your company. We recommend that you always instruct local agents in advance if you would like them to take steps to maintain the continuity of rights, thus avoiding their loss.

According to Bureau Announcement 350, if a party misses the deadlines prescribed by the Patent Law and its Implementing Rules or the deadlines specified by the CNIPA due to the epidemic, and thereby loses its rights, the provisions of Paragraph 1, Rule 6 of the Implementing Regulations of the Patent Law of China shall apply. The parties may request the restoration of their rights within 2 months from the date of removal of impediment and at the latest within 2 years from the date of expiry of the period.

Rule 6 of Implementing Regulations of the Patent Law of the People’s Republic of China is as follows.

Rule 6 of Implementing Regulations of the Patent Law of the People’s Republic of China

Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the patent administration department under the State Council is not observed by a party concerned because of force majeure, resulting in loss of his or its rights, he or it may, within two months from the date on which the impediment is removed, at the latest within two years immediately following the expiration of that time limit, request the patent administration department under the State Council to restore his or its rights.

Except for the situations specified in the preceding paragraph, where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the patent administration department under the State Council is not observed by a party concerned because of any other justified reason, resulting in loss of his or its rights, he or it may, within two months from the date of receipt of a notification from the patent administration department under the State Council, request the patent administration department under the State Council to restore his or its rights.

Where any party concerned requests to restore his or its right according to paragraph one or paragraph two of this Rule, he or it shall submit a request for restoration of his or its right, stating the reasons, attaching, if necessary, the relevant certifying documents, and go through the relevant formalities that should be done before the loss of his or its rights. Where the party concerned requests for restoration of his or its right according to paragraph two of this Rule, he or it shall pay the fee for restoration of rights.

Where the party concerned makes a request for an extension of a time limit specified by the patent administration department under the State Council, he or it shall, before the time limit expires, state the reasons to the patent administration department

under the State Council and go through the relevant formalities.

The provisions of paragraphs one and two of this Rule shall not be applicable to the time limit referred to in Articles 24, 29, 42 and 68 of the Patent Law.

Under the Patent Law of China, there are two types of restoration of rights: force majeure in Rule 6, Paragraph 1 of the Administrative Instructions on Chinese Patent Law, and right restoration for legitimate reasons in Paragraph 2 of the same Rule. It has been clarified that the outbreak of pneumonia caused by the novel coronavirus is a reason for reversible force majeure.

The procedures for requesting the restoration of rights and necessary documents based on the above Rule 6 and announcements made by CNIPA are described below.

1. Types of recoverable rights

Based on paragraph (5) of Rule 6, except for the period prescribed in Article 24 (period of exception of loss of novelty), Article 29 (priority period), Article 42 (Patent term), and Article 68 (period of limitation for action against patent right infringement), parties that lose their rights due to a delay during the relevant period may request a restoration of their rights.

2. Procedure for requesting restoration of rights

(1) Fill in a request for restoration of rights

To request restoration of patent-related rights, select “Reason for Force Majeure” in the column “Reason for Requesting Restoration of Rights” and explain the circumstances. Reasons include hindrances such as the party being quarantined and infected, traffic restrictions at the relevant location, or blockade of the relevant location. However, if an epidemic exists but has not affected the activities of the party, a request for restoration of rights due to the epidemic may not be submitted.

(2) Prepare relevant evidence

Materials or announcements from the government of the party concerned about the outbreak of pneumonia caused by the novel coronavirus, or evidence of the party being isolated by a coronavirus epidemic or being infected by the novel coronavirus may be used.

In order to reduce the burden on the parties, if a request is made to restore rights for a large number of applications due to the same reason, only one copy of the evidence needs to be submitted.

Furthermore, since following the outbreak, class 1 emergency response measures were taken to respond to unexpected public health incidents in a variety of locations, resulting in restrictions placed on the assembly of people, suspension of business, and delays in the restart of production activities, it is not necessary to provide any evidence when requesting restitution during the period of class 1 emergency response in which the party is involved.

(3) Perform related procedures

Submit a request for restoration of rights and corresponding evidence, and complete the procedures which should be taken care of before the loss of rights.

3. Payment of official fees

There is no need to pay an official fee for the restoration of rights due to a pneumonia epidemic caused by the novel coronavirus.

Also, if the pension payment period expires during the period of class 1 emergency response to an unexpected public health incident in the province, autonomous region, or municipality where the party is located, no pension arrears will be incurred.

It is important to note that reasons for force majeure include not only natural disasters and social disturbances occurring in China, but also those that occurred overseas. For the latter, since the

domestic situation in China will be taken into account, the standards recognized as reasons for force majeure may become stricter.

For example, when the time limit for entering PCT national phase in China was exceeded due to the Ukrainian civil war in 2014, a party located in Ukraine ordered a Ukrainian agent to perform the procedures for entering the national phase. There was, however, a temporary loss of contact between both parties and the procedure for entering national phase failed. The Ukrainian civil war was not deemed to be acceptable force majeure in this case because there was still enough time to contact an agent in China by using general communication means before the expiration of the time limit.

In the unlikely event that a party is unable to give instructions to a local agent in China due to an epidemic of pneumonia caused by the novel coronavirus outside of China and loses its rights after a certain period, it could be happen that the problem in question may not be allowed as a reason for force majeure. However, there is a possibility that the right may be restored for justifiable reasons stipulated in Paragraph 2 of the above Rule 6 of Implementing Regulations of the Patent Law of the People's Republic of China.

For your reference, the URL of the above announcements of the National Intellectual Property Administration are listed below.

1. Explanation on the relevant deadlines for patents, trademarks, and layout designs of integrated circuits during the period of epidemic of pneumonia caused by the novel coronavirus

<http://www.sipo.gov.cn/zfgg/1145684.htm>

2. Respond to specific issues on the procedure of restoration of rights related to the epidemic of pneumonia caused by the novel coronavirus

<http://www.sipo.gov.cn/zcfg/zcjd/1145775.htm>

3. Further explanation on the relevant deadlines for patents, trademarks, and layout designs of integrated circuits during the period of epidemic of pneumonia caused by the novel coronavirus

<http://www.sipo.gov.cn/zcfg/zcjd/1146183.htm>

4. Explanation on matters related to the payment of delinquency for the patent pension during the period of epidemic of pneumonia caused by the novel coronavirus

<http://www.cnipa.gov.cn/zcfg/zcjd/1146454.htm>

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