

Administrative Revocation and Invalidation Mechanisms

China

China currently has a system of post-grant patent invalidation. According to Article 45 of the Chinese Patent Law,¹ beginning from the publication of the grant of the patent, a unit or individual may request that the patent review board declare the said patent right invalid. According to Rule 64 of the Implementing Regulations of the Patent Law,² the requester shall submit a request including evidence related to the grounds of invalidation. The invalidation process is conducted *inter partes*. The Patent Review Board will send a copy of the request to the patentee and request him to present observations within a specified time. The patentee may amend the claims of the patent. The patent review board may decide, at the request of the parties or *ex officio*, to hold an oral hearing.

According to Article 46 of the Chinese Patent Act, a patent review board shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the requesting person and the patentee of its decision. The patent review board consists of technical and legal experts appointed by the patent administration.³ The decision on declaring a patent right invalid shall be registered and announced by the patent administration.

Further, it is possible to appeal to the decision of the board. A person who is dissatisfied with the patent review board's decision on declaring a patent invalid or its decision on affirming the patent may take legal action before a People's Court, within three months from the date of receipt of the notification. The People's Court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party. If the patent right has been declared invalid, it shall be considered non-existing from the beginning, but the decision shall not have retroactive effect on previous judgments.⁴

¹ Patent Law of the People's Republic of China, 2008.

² Rules for the Implementation of the Patent Law of the People's Republic of China.

³ Rule 59 of the Implementation of the Patent Law.

⁴ Article 47 of the Chinese Patent Law.