

CHINE

Nouveau projet de révision de la loi sur les brevets

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*(Commentaires de Paul Ranjard, Correspondant UNIFAB Pékin)*

Article 2 : the introduction of the partial design - which had been called for a long time ago - is very welcome.

Article 14 : concerning the concept of good faith. I am personally very much against this article. It sounds like having been inspired by article 7 of the Trademark Law (trademarks should be filed and used in good faith). However, filing a trademark or using a trademark is entirely different of enforcing a patent. Furthermore, the concept of "abuse of IPR" is addressed in details by a new SAIC regulation, in the context of the anti trust laws. So, this should not even be mentioned in the patent law.

Article 16 : About the service invention. The ambiguity of the term "the unit" is still there. It should be replaced by the "employer".

Article 60 : Enforcing an invention patent or utility model requires a technical examination in order to make an assessment of whether infringement is committed (which is not so much the case for trademarks or designs). It is dangerous to allow the IPO to conduct a raid in the same way as the AIC, against trademark counterfeiters. Since, probably, it will not be possible to stop this trend (which has its advantages, if one is on the patent IP owner's side) it should be recommended to add a proper procedure put in place, in order to preserve the interests of the defendant, the confidentiality of its information, and give him a chance to argue whether infringement is committed etc.