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Introduction to Patent Term Adjustment in China

PTA aims to compensate for patent term loss caused by administrative delays during the patent examination process.

In the 2020 revision of China's Patent Law, the concept of patent term compensation was formally introduced. To ensure its effective implementation, the amended Implementing Regulations and the Guidelines for Patent Examination were published in 2023 and took effect on January 20, 2024. These amendments provide detailed rules for PTA, further clarifying the provisions set forth in the Patent Law.

Article 42(2) of the Patent Law specifies: *“Where a patent for an invention is granted four years from the date of filing of application and three years from the date of filing of request for substantial examination, the patent administrative department of the State Council shall, at the request of the patentee, provide patent term extension for unreasonable delay in the patenting process for the invention, except for unreasonable delay caused by the applicant.”*

The amended Implementing Regulations (Articles 77 to 79 and Article 84) elaborate on critical aspects such as the timing of requests, calculation methods, the definition of reasonable delays, and unreasonable delay caused by the applicant. Additionally, Section 2 of Chapter 9 in Part V of the Guidelines for Patent Examination provides a more detailed interpretation of these provisions, ensuring clarity in the application of the PTA system.

With the introduction of both PTA and PTE mechanisms, China is establishing a more comprehensive and refined patent protection framework. These measures demonstrate the country's commitment to strengthening intellectual property protection and improving its application.

For businesses, understanding and effectively utilizing the PTA system is crucial for optimizing patent protection strategies and gaining a competitive edge. The PTA mechanism offers an opportunity to maximize the value of patents by ensuring they remain in force for a longer period of protection.

Relevant Link: [Introduction to Patent Term Extension in China](#)

Introduction to Patent Term Adjustment in China

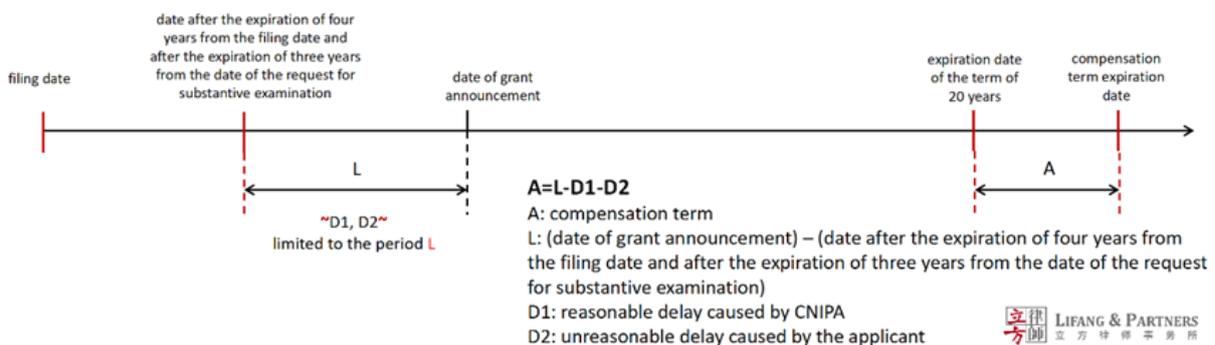
What is Patent Term Adjustment (PTA)?

The system of Patent Term Adjustment (PTA) in China was formally introduced with the fourth amendment to the China’s Patent Law, which came into effect on June 1, 2021. As detailed in the newly revised Implementing Regulations and the Guidelines for Patent Examination, these updates bring clarity and precision to the functioning of PTA in China.

Patent Term Adjustment refers to the mechanism that compensates for delays in the patent examination process. The primary goal of PTA is to compensate for the reduction in patent term caused by unreasonable delays during the patent granting process that are not attributable to the applicant, thereby better protecting the legitimate rights and interests of patent holders.

Key Features of Patent Term Adjustment in China

1. **Scope of Application:** A patent term adjustment is applicable only to an invention patent for which a patent right is granted after the expiration of four years from the filing date AND after the expiration of three years from the date of the request for substantive examination. For such patent, the Patent Office shall, at the request of the patentee, provide patent term extension for unreasonable delay in the patenting process for the invention, except for unreasonable delay caused by the applicant. It does not apply to utility model, design patents or invention patent granted by waiving the utility model patent filed on the same day based on Rule 47.4 of Implementing Regulations, unless such invention patent is granted based on a different protection scope after amendment from that of the same-date utility model patent.
2. **Request timing:** A PTA request shall be made within three months from the date of the grant announcement, and the term cannot be extended or restored.
3. **How to calculate:** The adjustment is calculated on a day-by-day basis. Specifically, Compensation term = (date of grant announcement) – (date of the expiration of four years from the filing date and the expiration of three years from the date of request for substantive examination) – (days of reasonable delay) – (days of unreasonable delay caused by the applicant)



i. Determination of the filing date and the date of the request for substantive examination

For a PCT international application entering the Chinese national phase, “the filing date” refers to the date that the PCT international application enters the Chinese national phase; and for a divisional application, “the filing date” refers to “the filing date of the divisional application”.

“The date of request for substantive examination” refers to the date on which the applicant makes the request for substantive examination and fully pays the substantive examination fee. If the date of such request is earlier than the publication date of the patent application, then “the date of request for substantive examination” shall be the publication date of the patent application.

ii. Reasonable delay in the grant process

Delay due to: reexamination procedure during which amendment is made to the patent application documents ; suspension procedures concerning a patent application involving ownership dispute or under preservation measures; other reasonable circumstances such as an administrative litigation procedure.

iii. Unreasonable delay caused by applicant includes:

(1) delay caused by failing to respond to the notice issued by the Patent Office within the designated time limit; the delayed days are from the term expiration date to the date on which the response is actually submitted.

(2) delay caused by requesting for delaying examination; the delayed days are actual days of delayed examination.

(3) delay caused by incorporation by reference; the delayed days are those caused in accordance with Rule 45 of the Implementing Regulations.

(4) delay caused by requesting the restoration of rights; the delayed days are from the original term expiration date to the issuing date of the official notification approving the recovery of rights, except for the case where it can be proved that the delay is caused by the Patent Office.

(5) delay caused by applicant’s failure to request early processing of an international application when going through the formalities of entering the Chinese national phase within 30 months from the priority date; the delayed days are from the Chinese national phase entry date to the date of the expiration of 30 months as of the priority date.

4. **Fees:** Official fee for submitting a request for PTA shall be RMB 200 per case. Annuity fee for the granted extended term shall be RMB 8,000 per year per case, which should be paid in a lump sum before the expiration of the 20-year patent term. No annuity fee is required for an extended term of less than one year.

In case of failure to pay or pay in full the annuity for the extended term before the expiration of the 20-year patent term, the patent term adjustment shall not be granted. No remedies including surcharge or restoration of right shall be available. The provisions for reduction of fees as stated in the patent fee reduction regulations do not apply to the annuity fee for the PTA compensation peri-

od. If the annual fee for the PTA compensation period is not paid or not fully paid by the due date, the PTA compensation will not be granted.

For the requests for PTA having been submitted before July 26, 2024, request fee of RMB 200 shall be paid by October 26, 2024. Failure to pay or fully pay the PTA request fee by the stated deadline will result in no grant of PTA.

5. **Making observation and/or rectification (at least one such opportunity):** Applying for administrative review before the Patent Office if not satisfied with the Decision made by the Patent Office

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