China Closer to Granting Patent Term Extensions?

A new draft amendment to Chinese Patent Law was submitted to the National People's Congress Standing Committee on June 28, 2020. Key provisions include the establishment of patent term adjustment (PTA) caused by delays in the patent office and patent term extension (PTE). Under the new draft amendment, a Patentee could receive up to 5 years of PTE, as long as the overall patent term does not extend beyond 14 years after approval of the drug, similar to PTE available in the United States

The proposed amendments in the draft also address many other weaknesses in biopharma IP protection in China. For example, these changes include litigation reform, including stronger and more efficient patent enforcement, an increase in the statutory limit on damages (up to CNY 5,000,000), and a 6-month grace period for public disclosures made for the benefit of the public during a national emergency.

Notably, the draft also provides for a delay of marketing approval of a new drug, if that new drug is subject to patent dispute. If a lawsuit is filed by an owner of a patent listed in China's "drug patent information registration platform" within 30 days of publication of a marketing approval application, the application is stayed for up to 9 months.

If implemented, these changes would make China a more attractive jurisdiction for life science innovators and biopharmaceutical investment opportunities from around the world.

This new draft is currently available for public comment until August 16, 2020.