

4 KEY TAKEAWAYS

CNIPA Tightens Examination on Same-Day Dual Filings

Following the implementation of the revised Chinese Patent Examination Guidelines on January 1, 2026, the CNIPA has adopted a significantly stricter approach to “same-day dual filings” of invention and utility model applications covering related subject matter.

This abrupt policy shift is retroactively impacting pending applications and forcing applicants to make difficult choices regarding their patent rights.

Here is how to survive the new scrutiny.

1

DECLARED DUAL FILINGS: A FORCED CHOICE

For cases where dual filing is officially declared, the CNIPA is now notifying applicants that they must choose to either submit a declaration abandoning the granted utility model, or face rejection of the invention application. Crucially, applicants are forced to surrender one right **even if the claims are patentably distinct** (meaning no double patenting actually exists).

2

UNDECLARED DUAL FILINGS: IMMEDIATE REJECTION

If a dual filing was not declared but the CNIPA discovers a granted utility model filed on the same day with double patenting issues (Article 9(1)), the invention application will be **outright rejected**. Applicants are neither permitted to abandon the utility model retroactively nor allowed to amend the invention claims to resolve the overlap.

3

STRATEGIC OPTION 1: ADMINISTRATIVE LITIGATION

The CNIPA's retroactive application of the 2026 guidelines to cases filed prior to January 1, 2026, violates the principle of non-retroactivity. For pre-2026 filings, applicants can file a re-examination request followed by an administrative lawsuit at the Beijing IP Court. This strategy challenges the policy shift while delaying the required abandonment, potentially extending the utility model's term.

4

STRATEGIC OPTION 2: FILE DIVISIONAL APPLICATIONS

If forced to abandon the parent invention application, applicants retain the right to file a divisional application. By ensuring the divisional claims are patentably distinct from the granted utility model, it avoids Article 9(1) double patenting completely. This allows the applicant to keep **both** the utility model and the new divisional invention patent in force.