5 KEY TAKEAWAYS

China's Patent Dual Filing Strategy to Be Overhauled

The China National Intellectual Property Administration's (CNIPA) revised Patent Examination Guideline, set to take effect on January 1, 2026.

This revision fundamentally alters the landscape for "dual filings" (filing invention and utility model applications on the same day), a popular strategy for applicants seeking "double insurance" on their intellectual property.

1

The "Either-Or" Trap for Declared Dual Filings

Effective January 1, 2026, flexibility is removed. If a declared invention application overlaps with a granted utility model, the applicant **must** abandon the utility model to secure the invention patent. The option to maintain both by simply amending claims is effectively eliminated.

2

Loss of Amendment Rights

New rules restrict the right to amend invention claims to overcome double patenting. Applicants may face a difficult choice: abandon a utility model (10-year term) or abandon the invention application (20-year term), regardless of whether claims could technically be differentiated.

3

Strategic Shift to "Undeclared" Filings

The analysis recommends shifting to "undeclared" strategies. By **not** submitting a dual filing declaration, applications fall under standard rules (Article 9(1)), preserving the right to overcome double patenting by amending claims (e.g., adding non-essential features) rather than forced abandonment.

4

The "Utility Model + PCT" Safe Harbor

The "Utility Model + PCT" strategy remains a robust alternative. Unaffected by the revision, it allows applicants to secure a quick utility model grant and later enter the Chinese national phase via PCT (up to 30–32 months later), effectively achieving a dual filing outcome without new restrictions.

5

Uncertainty for Pending Cases

CNIPA has not yet issued transitional measures for applications pending as of January 1, 2026. Applicants with pending declared dual filings should monitor developments closely and may need to proactively amend applications now to avoid the "either-or" risk.

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