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Towards a Pro-Patentee Regime: A Fifth Amendment to China's Patent Law

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The Chinese government has recently invested more than \$1.5 billion USD in a bid to substitute its traditional low-margin manufacturing into high-end, tech-focused industry sectors such as next-generation IT, advanced engineering, the Internet of Things, and smart appliances in order to fulfill its “Made in China 2025” strategic plan. To protect those high-value innovation sectors in its economy, China needs a robust pro-patentee regime. China's patent protection scheme is relatively new, given that the first Patent Law of PRC was enacted in 1984. Politicians hesitated and even denounced the idea of introducing patent law into China because they feared that the patent protection would promote monopoly and capitalism, which directly contradicted the prevailing communist theory existing at that time. After almost four decades, China's patent law has been amended four times, with at least the first two amendments pushed by outside forces like the Sino-US Trade Negotiation in 1989 and the accession into WTO (along with the compliance with TRIPs) in 2001. This time, on November 24, 2019, the Central Committee of the Chinese Communist Party (“CPC”) along with the State Council jointly issued a policy guideline titled “The Guideline on Strengthening Intellectual Property Rights Protection” (“The Guideline”), aiming to increase the intellectual property right (“IPR”) protection and improve the related legal systems and mechanisms. The Guideline is the first document on intellectual property (“IP”) protection of its kind issued in the name of the CPC, Central Committee, and the State Council. The action taken by the Chinese government reflects the recent outward thrust to increase the protection for China's IP owners. Born together with the guideline is the fourth amendment of The Patent Law of PRC, and the new law is changing the momentum of China's patent protection.

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