

Insights: Alerts

5 Key Takeaways - China IP Update: Design Thresholds & Infringement (March 2026)

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Written by **Charles W. Gray**

The March 2026 landscape brings new challenges for design patents and critical Supreme People's Court (SPC) rulings on patent and trade secret infringement.

Notably, the CNIPA is cracking down on "commonplace" partial designs without prior art searches, while the SPC is expanding joint liability for executives involved in trade secret theft. Here are the key strategic takeaways.

1. Stricter Scrutiny on "Commonplace" Designs

Under Article 2.4, examiners are increasingly rejecting designs-especially partial designs-that rely on "commonplace geometric shapes and patterns" (e.g., standard rectangles, basic grids). Examiners can now presume a design is commonplace based on "ordinary consumer sense" without needing to conduct a formal prior art search.

2. Mitigating Design Rejections via "Joint Filing"

To avoid rejections for overbroad partial designs, applicants should use China's joint application system. By filing a "basic design" alongside multiple "defensive designs" that progressively narrow the scope of protection, applicants can spread the risk of rejection and secure at least partial coverage.

3. SPC Ruling: Equivalent Infringement & Functionality

In a recent chemical patent dispute, the SPC ruled that non-inventive features should not be interpreted too stringently. If an accused product makes minor structural changes (e.g., leaving a hole in a "closed" system) but achieves the same actual function and effect, it constitutes equivalent infringement.

4. Post-License "Prior Use" Defense Invalidated

The SPC clarified that an infringer cannot successfully claim the "right of prior use" defense if they originally obtained the patented technology through a licensing contract. Continuing to use the technology after the license expires is considered an act of bad faith, invalidating any prior use claims.

5. Executive Liability for Trade Secret Theft

If a company is established specifically to exploit stolen trade secrets, the executives or legal representatives who personally and actively participate will face joint and several liability alongside the company. The SPC recently awarded treble punitive damages against both the company and its founding executives in such a scenario.

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Charles W. Gray

t 303.405.8522

cgray@ktslaw.com