

China Issues Action Plan on Intellectual Property in Accordance With Phase One Commitments After Initial Delay

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On April 20, China's National Intellectual Property Administration (CNIPA) released a [2020-2021 Implementation Plan](#) ("IP Action Plan"), which includes a roadmap of 133 measures to execute the [overarching Opinions on Strengthening the Protection of Intellectual Property Rights](#) by the end of 2021. While those opinions were released by the State Council last November, predating the signing of the Phase One agreement, USCBC understands the IP Action Plan to be in direct response to items that were being negotiated as part of the US-China Phase One trade deal.

It is worth noting that China missed the implementation deadline set forth in the Phase One agreement of 30 working days after February 15. USCBC understands that the National People's Congress (NPC) needed to be involved in legal changes before the document could be released. COVID-19 closures in China delayed normal NPC proceedings, thus delaying the release of the IP Action Plan. Conversations with US government officials indicate this delay was not seen as a lack of good will.

Overall, the IP Action Plan puts forward specific deadlines and work plans for fulfilling many of China's Phase One commitments on protecting IP rights. For those commitments still lacking specific deadlines, the plan points to upcoming legislative revisions that will address them.

The IP Action Plan does not provide robust measures on the issues of copyright protection and geographical indications (GIs), although these might be covered in separate developments. The NPC recently [announced](#) that a draft revision of the *Copyright Law* will be considered at the NPC Standing Committee meeting to be held from April 26-29. These revisions could be used to implement Phase One commitments on copyright protection. Regarding GIs, CNIPA recently released two separate draft documents implementing Phase One commitments: one on [determining generic names](#) GI and one on the [use of special marks](#). The IP Action Plan reaffirms that legislative measures on GI protection will be completed by the end of 2021.

**Bolded text indicate clear timelines.*

Phase One IP Commitments	IP Action Plan
Trade Secrets	
Expand the scope of actors and acts that will be held liable for trade secret misappropriation.	Item 29 states that legislative actions will be taken by the end of October 2020 to revise the Regulations on Prohibiting Behaviors of Trade Secrets Misappropriation.
Shift the burden of proof to the accused party in civil proceedings regarding trade secret misappropriation.	Not specifically mentioned.
Allow more preliminary injunctions for trade secret misappropriation.	Item 6 suggests revising the <i>Administrative License Law</i> and <i>Anti-Monopoly Law</i> based on circumstances.
Lower the thresholds for criminal enforcement against trade secret misappropriation.	Item 5 suggests revising the <i>Criminal Law</i> to refine provisions regarding trade secrets misappropriation and improve law enforcement. It also mentions that procedures for criminal proceedings, penalties, and destruction of counterfeit goods should be specified.
Expand the scope of acts to which criminal procedures and penalties will apply.	
Protect against unauthorized disclosure of confidential business information by Chinese government authorities.	Item 5 suggests specifying procedures for disclosure by government authorities. In addition, Item 30 indicates legislative action will be taken to issue guiding documents to strengthen protection of trade secrets and confidential business information in the process of administrative licensing.
Pharmaceutical-related IP	
Allow the use of supplemental data to meet requirements for patentability	Item 1 suggests revising regulations related to patent review in the <i>Patent Law</i> .

<p>Create a patent linkage system.</p>	<p>Item 8 calls for creating a system for early resolution of pharmaceutical patent conflicts by the end of October of 2020.</p>
<p>Create an effective system for patent term extension.</p>	<p>Item 1 suggests accelerating the revision of the <i>Patent Law</i>. The suggestions include introducing punitive damages, patent term extension, and enhanced protection for pharmaceutical-related patents.</p>
<p><i>Enforcement Measures Against Online Piracy</i></p>	
<p>Provide enforcement procedures that allow effective and expeditious action to be taken by rights holders against online infringements.</p>	<p>Based on item 18, a judicial interpretation will be released by the end of August 2020 on combating online infringements. Item 33 aims to develop standards used in protecting IP on ecommerce platforms while issuing other relevant documents.</p>
<p>Improve the efficacy and fairness of the notice and takedown system.</p>	<p>Item 34 suggests issuing guiding documents regarding destruction of counterfeit commodities by the end of July 2020. Item 82 and 105 intend to provide ecommerce platforms with technical advice in the areas of data sharing, notice and takedown systems, as well as intelligent detection systems against counterfeit commodities by the end of December 2021.</p>
<p>Take effective actions against ecommerce platforms that fail to take the necessary measures against online infringements, such as having their operating licenses revoked.</p>	<p>Item 7 proposes to accelerate the revision process of the E-commerce Law, holding ecommerce platforms responsible for protecting IP rights and aligning the law with relevant provisions in the Civil Code draft.</p>

Enforcement Measures Against Counterfeiting

<p>Take effective enforcement actions against counterfeit pharmaceutical and related products such as active pharmaceutical ingredients, bulk chemicals, and biological substances.</p>	<p>Item 50 states China will take effective enforcement actions against counterfeit pharmaceutical and biological products while enhancing international enforcement cooperation by sharing useful information with other countries.</p>
<p>Share with the United States the registration information of pharmaceutical raw material sites that have been inspected by Chinese regulatory authorities and that comply with Chinese laws and regulations.</p>	
<p>August 15, 2020: Start publishing online annually data on enforcement measures taken against counterfeit medicines.</p>	<p>Item 41 indicates that data collected on enforcement actions against counterfeit medicines should be disclosed annually starting from the end of July 2020.</p>
<p>May 15, 2020: Increase enforcement actions taken against manufacturing and distribution of counterfeit goods with health and safety risks.</p>	<p>Item 42 states relevant regulators will combat counterfeit goods with health and safety risks, increasing the frequency of enforcement measures and reporting data and information of these actions quarterly starting from the end of May 2020.</p>
<p>June 15, 2020: Publish data online on the impact of enforcement actions against counterfeit goods with health and safety risks.</p>	
<p>Destroy counterfeit or pirated products suspended from release by customs authorities.</p>	<p>Item 34 suggests issuing guiding documents regarding the destruction of counterfeit commodities by the end of July 2020.</p>
<p>Allow judicial authorities in civil judicial procedures to order destruction of pirated or counterfeit products (as well as their materials and implements) and compensation from the counterfeiter to the rights holder at the rights holder's request.</p>	<p>Items 5, 34, 45, and 48 all mention taking actions to destroy counterfeit products. It is anticipated that a specific document will be released by the end of July 2020. It is unclear which authority will be taking the lead under different scenarios.</p>
<p>Allow judicial authorities in criminal procedures to order forfeiture and destruction of pirated or counterfeit products (as well as their materials and implements), keep an inventory of such goods, and exempt such goods from destruction for the purpose of evidence preservation if right holder plans to pursue a civil or administrative case.</p>	

<p>May 15, 2020: Increase customs' border enforcement actions (e.g. detaining, seizing, forfeiture, etc.) against counterfeit and pirated goods, especially those that are exported or in transit, and publish online quarterly updates of such enforcement actions.</p>	<p>Item 39 indicates that a special campaign will be taken to enforce IP in border control, increasing the frequency of enforcement actions by the end of April 2020. An information disclosure system will also be developed on a quarterly basis.</p>
<p>November 15, 2020: Increase the training of the relevant customs enforcement personnel on executing enforcement authority against counterfeit and pirated goods.</p>	<p>Item 112 suggests increasing the ability of customs enforcement personnel to execute enforcement authority through training by the end of October 2020. This effort will be continued after this short timeline.</p>
<p>June 15, 2020: Increase enforcement actions against copyright and trademark infringement at physical markets and publish online quarterly updates of such enforcement actions.</p>	<p>Item 40 calls for enhancing enforcement measures and increasing frequency of enforcement actions at physical markets. Updates on enforcement measures will be disclosed quarterly.</p>
<p>September 15, 2020: Publish online results of annual audits performed by third parties (no government ownership or affiliation) on use of only licensed software by all government agencies and entities owned or controlled by the government.</p>	<p>Not specifically mentioned.</p>
<p><i>Judicial Enforcement and Procedure in IP Cases</i></p>	
<p>Allow transfer of administrative cases to criminal enforcement if there is "reasonable suspicion" of criminal violation of IP rights.</p>	<p>Item 15 calls for revising current regulations related to transferring administrative enforcement cases to the criminal justice system, focusing on procedures and conditions, by the end of July 2020. Item 25 states intentions for enhancing the interactions and coordination between civil, administrative, and criminal proceedings for IP cases.</p>
<p>Increase deterrence against IP infringements by imposing heavier punishments at or near the current statutory maximum.</p>	<p>Item 56 calls for taking legislative actions, improving application of punitive damage for IP infringements, imposing heavier punishments near statutory maximums, and increasing the statutory maximum itself by the end of August 2020.</p>
<p>Increase deterrence against IP infringements by increasing the range of damages, sentences of imprisonment, and monetary fines.</p>	

<p>Publish work guidelines and implementation plans on how it will ensure expeditious enforcement of judgments as well as online quarterly reports of implementation results.</p>	<p>Items 39 and 40 indicate enforcement actions taken by customs and market regulators should be disclosed quarterly starting from the end of April and May 2020, respectively. The Supreme People’s Court also recently released opinions outlining implementation.</p>
<p>Provide legal presumptions of copyright ownership and waive certain other requirements for bringing copyright infringement claims.</p>	<p>Not specifically mentioned.</p>
<p>Eliminate or streamline requirements for foreign litigants to authenticate evidence for use in Chinese courts.</p>	<p>Item 24 calls for issuing regulations related to authenticated legal documents, witnesses, testimonies, and other forms of evidence associated with civil proceedings for IP cases by the end of October 2020.</p>
<p>Provide a reasonable opportunity to present witnesses and to cross-examine opposing witnesses in civil proceedings.</p>	
<p><i>Trademark</i></p>	
<p>Ensure adequate and effective protection and enforcement of trademark rights, particularly against bad faith trademark registrations.</p>	<p>Items 3 and 14 suggest taking legislative actions to revise the <i>Trademark Law</i> and Administrative Measures Concerning the Registration of Collective Marks and Certification Marks. Item 35 specifies that standards used in determining trademark infringements will be released by the end of June 2020. Item 65 suggests establishing a credit-based pilot mechanism monitoring unusual trademark and patent registrations by the end of December 2021. Item 86 aims to improve IP service and warning systems overseas, as well as to develop a database for overseas trademark and patent disputes.</p>