EIP

AI and Bitstreams at the Core of China's Patent Update

On April 30, 2025, the China National Intellectual Property Administration (CNIPA) released a draft amendment of the Patent Examination Guidelines (for public comment), proposing further revisions to the current Guidelines, which only came into effect in January 2024. The proposed amendments cover changes to formality examination, substantive examination, patent re-examination and invalidation and certain procedural matters related to patent examination.

In summary, with AI and bitstreams as focal points, CNIPA's latest proposal to further amend the Patent Examination Guidelines demonstrates China's ongoing efforts to refine and adapt its patent system in response to the needs arising from emerging technologies and its intention to encourage innovations and patent filings in the relevant industries.

Meanwhile, the newly drafted Guidelines are intended to clarify examination standards for AI-related and codec and streaming media patent applications. By clarifying eligibility, patentability and drafting requirements for these applications, the Guidelines may provide innovators and patent practitioners with practical guidance for patent filings and prosecution. If adopted, the draft amendments are expected to have significant impact on not only patenting activities in AI and streaming media sectors, but licensing practices in China in the future.

Highlights: AI and Bitstreams

Highlights of the amendments to substantive examination include further clarification of the criteria for eligibility and patentability for applications related to artificial intelligence

(AI), and the addition of a section on the examination of applications involving bitstreams.

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Notably, these amendments follow closely on the heels of the Guidance for Patent Applications for AI-Related Inventions (Trial Implementation), issued by CNIPA on December 31, 2024. This suggests that China is eager to strengthen its patent system by clarifying and adapting examination standards to address emerging technologies and some key issues of industry concerns.

AI-Related Applications: Eligibility, Ethical Rejections, and Sufficient Disclosure

In the current Guidelines, the examination of AI-related patent applications is covered under the section titled Examination of Invention Patent Applications Involving Features of Algorithms or Business Rules and Methods. Interestingly, the draft amendments propose changing the title of this section to Examination of Invention Patent Applications Relating to Artificial Intelligence, etc. This change appears to reflect an effort by CNIPA to distance AI-related inventions from business rules and methods—categories that are unpatentable—and to encourage more patent filings for AI-powered inventions in the future.

A significant proposed change is that an AI-related application may be rejected on ethical grounds. The draft amendments specify that a patent will not be granted if the invention does not comply with laws, social ethics, or public interests—especially concerning data collection, labelling management, rule setting and recommendation decision-making by AI models. Two examples are cited as unpatentable for ethical reasons: one involving an AI model that collects customers' facial information without consent and another involving an autonomous driving AI model that makes emergency decisions based on the gender and age of individuals on the road.

The draft also introduces specific requirements for sufficient disclosure of the AI algorithm or model in the application specification, addressing the "black box" nature of such systems. This may lead to more frequent objections from examiners for insufficient disclosure during examination of AI-related applications, a concern traditionally limited to chemical and pharmaceutical patent applications. Consequently, insufficient disclosure might also become a more common ground for invalidation of AI-related patents when the validity of a patent is challenged.

Bitstreams: Examination Standards and Licensing Implications in the Streaming Media Sector

The draft amendments also propose a new section outlining examination criteria for patent applications involving bitstreams, following the section on AI-related applications. This addition aims to clarify the eligibility and requirements for the specification and claims for applications for codec and streaming media technologies. It can have great impact on preparation and prosecution of patent applications for these inventions.

Regarding eligibility, the draft states that a claim involving mere bitstreams falls under rules and methods of mental activities and is thus unpatentable. To qualify for patent protection, codec and streaming media inventions must constitute a "technical solution" as defined in Article 2.2 of the Patent Law of China. This approach mirrors the examination standard for AI-related inventions.

For claims involving codec and streaming technologies, it is proposed that they may be drafted in various formats—such as a coding/decoding method for generating bitstreams, a method for storing/ transmitting the claimed bitstream, a device for implementing the claimed methods and corresponding computer-readable storage medium claims.

According to the Explanatory Notes issued with the draft amendments, these claim types are intended to align with the evolving structure of the streaming media industry and offer right holders protection for “one of the links” in the industry chain. The Explanatory Notes specifies that the aim is not to enable a right holder to assert rights across multiple links in the industry chain for licensing returns that is disproportional to its

technical contribution to the industry.

This stance reveals CNIPA's view on licensing in the codec and streaming media sector. As explained in the Explanatory Notes, the industry chain of the streaming media sector is fragmented, involving multiple parties across different layers of content creation, storage, and transmission etc. Given this, CNIPA appears to oppose the licensing practice of right holders charging multiple players in different layers of the industry chain for their using the same technology. The CNIPA's position appears to be that the licensing income obtained from various players in different layers of the industry chain is disproportional to the technical contribution of the right holder to the industry.

In doing so, CNIPA appears to address the concerns of some stakeholders in the industry about the so-called "repeated charges" for licensing fees, which may be incurred to different implementors at different levels of the industry chain including hardware manufacturers and streaming platforms, as the result of the licensing practices of some right holders and patent pools in the industry. This issue has long been a topic of debate in China. CNIPA's position may have significant implications for future licensing practices in the sector.

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