Studies on Rules for Application of the Good Faith Provision in Patent Examination Procedures

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I. Introduction

The principle of good faith was introduced into the Patent Law through its fourth revision. Article 20.1 of the Patent Law (2020) reads that "the principle of good faith shall be followed when applying for patents and exercising patent rights". This provision clarifies two parts: first, patent applicants shall abide by the principle of good faith in the process of patent application, and shall not engage in improper acts such as fabrication, forgery, plagiarism and cobbling to obtain patent rights by fraudulent means, which would waste administrative resources and harm the public interest; second, patent right holders shall exercise their rights in good faith and shall not abuse patent rights or harm others' legitimate rights and interests or the public interest [1]. The aforesaid provision provides a clear and direct legal basis for regulation of patent application activities at the legislation level in principle. This article is only aimed to discuss the application of this provision in the examination of patent applications.

Although Article 11 of the Implementing Regulations of the Patent Law (hereinafter referred to as the Regulations) and the Provisions on Regulating Patent Application Activities (hereinafter referred to as the Provisions) issued by the China National Intellectual Property Administration (CNIPA) further clarify the meaning and forms of bad-faith patent application activities, difficulties still exist in examination practice. First, to avoid penalties and liability, applicants strive to avoid being labeled as "bad-faith" and choose to defend or even resist, which will inevitably increase the difficulty in finding the nature of their acts. Examiners may also have concerns during examination because of the serious consequences that may be imposed on the applicants as a result of violating the provision on good faith, and therefore be unwilling or afraid to regulate improper acts under this provision. Second, the principle of good faith is a moral requirement, and affected by factors such as cognition, region and culture. There is not a clear line between right and wrong in the application of the principle of good faith. Third, although the Provisions enumerate the forms of abnormal patent application activities, detailed operating rules are not specified, and there are no specific approaches and standards for determining acts such as fabrication, forgery and cobbling.

For the above reasons, it is necessary to explore and delve into the nature and types of abnormal patent application activities based on the legislative intent of the principle of good faith in the patent system, in a bid to find out a more practical way to apply the provision.

II. Connotation of the principle of good faith

Good faith is a moral constraint on humans, and is established as a principle in many laws so as to transform moral norms into laws. Although this principle works throughout all civil activities, its concept is actually vague with no clear connotation and denotation. As such, where there is a clear legal rule or explicit agreement in the process of resolving a civil dispute, such a rule or agreement shall generally take precedence. Only when there is no clear rule or agreement in this regard and judges cannot deal with the improper acts of a party concerned under any specific provisions, the principle of good faith will be applied to fill in the loopholes in laws. This is why this principle works as a catch-all provision.

The patent examination procedures are administrative procedures, in which the principle of good faith also ap-

plies. Nevertheless, this principle is usually a requirement imposed on administrative authorities, requiring them to exercise their administrative powers while taking the safeguard for the public interest as the starting point and ultimate goal, bearing in mind the interests of the concerned party and protecting its legitimate reliance. The administrative authorities shall pay attention to the balance between public interest and private interests when exercising their powers, so as to ensure the fairness and rationality of administrative decisions [2].

The principle of good faith applied in the patent examination procedures, as discussed herein, is a requirement imposed on the concerned party. It is special in the field of administrative law and decided by the unique nature of the patent examination. As restrained by resource and efficiency, the prevailing way of patent examination in various countries is written examination, that is to say, an applicant submits written documents and the administrative authority examines them. The written documents only need to cover the technical solution of the invention, based on which an examiner examines the patentability (primarily the degree of innovation and the scope of protection) of the technical solution. The applicant does not need to proactively file any explanation regarding the inventors' intellectual endowment and material resources, materials related to the invention process, or proof of the invention's effects. The logic underlying such a patent examination system is to trust the authenticity of the applicant's written documents and conduct examination based thereupon, for the sake of achieving the greatest benefits at the lowest social cost.

However, false written documents, if submitted, will not only waste administrative resources, but also harm others' legitimate rights and interests and the public interest, and even undermine the foundation of patent examination and patent system. This is the reason why applicants are not allowed to file false documents. In practice, since patent rights are in direct association with economic interests, the profit-seeking nature of market entities often causes patent application activities to go beyond the legal boundaries and invade into the scope of the legitimate public interest or private rights, thereby improperly giving rise to bad-faith patent applications [3]. Such bad-faith activities have been increasingly serious in recent years, such that the patent examination is exposed to the risk of imbalance and it is imperative to correct this phenomenon by means of legislation.

The principle of good faith has been explicitly incorporated into the Patent Law of China and the Implementing Regulations of the Patent Law. It has been converted from a traditional catch-all clause to a specific legal provision in term of function and status, and therefore the application thereof is clearer and more predictable. In the examination of patent applications, whether applicants' activities comply with the principle of good faith is mainly determined through the investigation and analysis of the application documents.

III. Rules for application of the good faith provision in patent examination procedures

The provision that "the principle of good faith shall be followed" in the Patent Law defines the legal boundaries of patent application activities by means of directly incorporating a general principle into law, which will have an impact on the behavior patterns of applicants [4]. The illegality of an act functions as the premise and standard for judging whether the act violates the principle of good faith. Article 11 of the Regulations stipulates that all patent applications shall be filed on the basis of real invention and creation activities. Thus, that the patent application is based on "real invention and creation activities" is the key to the application of the good faith provision.

(i) Judging criteria

To determine that an applicant has engaged in improper activities and should not obtain a patent right according to the good faith provision, at least the following two points need to be proved: first, the applicant provided no or false important information on patentability; and second, there is evidence proving that the applicant knowingly hid important information or provided false information [5]. The first point is to determine from an objective perspective whether the patent application should not be granted due to lack of important information, and the second point is to determine whether the actor has a bad-faith intent to obtain a patent right through intentional concealment or deception.

(ii) Standards of proof

Patent examination is a kind of administrative approval, during which the burden of proving the improper acts of a party is borne by the examiner authorized by the administrative approval authority. Then, which standard of proof should be adopted in the examination to establish the im-

proper acts committed by the party? The common standards of proof, ranging from lenience to severity, include the following three: the preponderance of evidence standard, the high probability standard and the beyond a reasonable doubt standard. The author is of the view that the high probability standard is more appropriate.

If the examiner is convinced that the *factum probandum* (abnormal patent application activity) is highly likely to exist, he or she can reasonably question it and fully elaborate the admitted evidence and the grounds for factual findings in an office action. Evidence can be the patent application itself, or related supporting evidence such as documents filed during the patent prosecution, other related applications and Internet evidence (such as papers and design drafts) with a definite publication time. After the issuance of the office action with reasonable questions, the party concerned shall be provided with an opportunity to make observations or clarification, in such a way to avoid improper application of the provision.

(iii) Order of application

The legal consequences of violating the good faith provision are identical to those of other provisions leading to rejection or invalidation, and the abnormal patent application activity, as long as it is determined, will affect not only a specific application or claim, but also other claims in the same application or even patents of the same family or a series of related applications. As such, the good faith provision can sufficiently and comprehensively evaluate the illegality of acts in patent prosecution, effectively reject applications or invalidate patents, and exert a greater deterrent function in administrative proceedings.

When an illegal administrative act violates several administrative provisions, and is subject to administrative penalty of one administrative authority, the issue relating to the application of law arises. When an application is determined as bad-faith, if the good faith provision and other rejection grounds such as Articles 22.2 to 4 of the Patent Law apply concurrently, Article 11 of the Regulations can be applied independently according to the principle that special laws prevail over general ones and new laws prevail over old ones. What's more, in comparison with other provisions on patentability, the good faith provision places emphasis on the acts during patent prosecution and is less related to other provisions. For this reason, in order to enhance examination efficiency, Article 11 of the Regulations may be applied together with other provisions, depending on the specific circumstances.

IV. Circumstances where the good faith provision is applicable

The Provisions shall apply to examine whether an application for invention, utility model or design complies with Article 11 of the Regulations. A few abnormal patent application activities are enumerated in the Provisions; however, such typified enumerations do not constitute an exhaustive list or limitation of the forms of abnormal patent application activities. In essence, knowingly filing an application for an unpatentable "invention" for the purpose of seeking improper benefits can be regulated by Article 11 of the Regulations. The following discussion is about how to identify the seven types of abnormal patent application activities listed in Article 3 of the Provisions in conjunction with specific cases.

(i) The inventions in multiple patent applications are obviously the same, or are essentially formed by a simple combination of features or elements of different inventions

The Interpretation of the Measures for Regulating Patent Application Activities [6] (hereinafter referred to as the Interpretation of Measures) states that this situation "means that multiple patent applications are obviously directed to the same invention or are formed through simple combination and variation". The sequence of applications, whether applications are filed in different places, and whether applicants are the same are not factors that need to be considered in the examination of the multiple patent applications. Examination shall focus on the technical solutions *per se*. Whether an application is abnormal shall be judged by deciding whether the technical solutions are identical or formed through a simple combination or variation.

It is relatively easy to judge whether the inventions are obviously identical. What needs to be noted is only that the dual filing of applications for inventions and utility models as permitted by Article 9.1 of the Patent Law shall be excluded. When determining whether a patent application is formed through a simple combination or variation, on the one hand, attention shall be paid to whether the features or elements of the patent application are a simple combination, and whether the overall technical effect is just the sum of the effects of each element or feature; and on the other hand, the severity of the applicant's improper acts shall be judged with reference to such factors as the number of relat-

ed applications. When multiple applications are filed by the same applicant, it is necessary to comprehensively judge whether each patent application is formed through a simple combination or variation in conjunction with the applicant's other acts.

For example, in Case 1, there are four related applications, wherein the technical solutions of Application 1 and Application 2 (filed by Applicant 1) and Application 3 and Application 4 (filed by Applicant 2) all involve physics teaching tools, each of which includes two parts: a demonstration device and a lifting assembly. Although the technical solutions of the applications in this case are all composed of a centrifugal mechanical demonstration structure and a lifting adjustment structure, and are technically related, it cannot be ruled out that different applicants achieved several original inventions from the prior art in consideration of the relatively small number of applications and substantial differences in the inventions of different applications. Therefore, evidence did not suffice to prove that the applicants obviously involved in abnormal patent application activities.

(ii) The patent application contains fabricated, forged or falsified contents, experimental data or technical effects of the invention, or is formed by plagiarizing, simply substituting, or cobbling together prior arts or prior designs

1. Fabrication, forgery or falsification

As stated in the Interpretation of the Measures: "the terms 'fabrication, forgery, or falsification' mainly refer to acts such as fabricating or forging fictitious inventions, experimental data, technical effects, etc.; or acts of altering and falsifying an existing technology or design and exaggerating its effects, but those effects cannot actually be achieved". Fabrication and forgery can "create" an invention out of nothing. Regardless of whether there is a basis for alternation, the fabricated content is usually false and unreasonable, and the forger attempts to make the "forgery" be mistaken for a real one. Falsification is conducted on the basis of existing technical solutions or designs (including non-prior arts or non-prior designs that are filed earlier but published later, and prior arts and prior designs). It involves adding, deleting, or altering the solution for the purpose of deceiving or misleading others."

For instance, in Case 2 (Patent Application No. 202010319701.7), the application involved and the prior art both used the same Lactobacillus rhamnosus RD-0060 and Lactobacillus gasseri RD-0046 for antibacterial activity tests on different bacteria respectively, and obtained completely identical inhibition zones with the same test method. However, according to the common knowledge in the art, when repeating an experiment with the same bacterial strain, it is highly unlikely that the experimental data are exactly the same. For the antibacterial activity tests using the same bacterial strain against different pathogenic bacteria in the present application and the prior art, it is virtually impossible to arrive at completely identical experimental data. In addition, the present application and the prior art use cynomolgus monkeys numbered differently for the test, but the measured pH values of vaginal secretions are completely the same. Likewise, according to the common knowledge in the art, even though repeated experiments are made on the same subject, the data can hardly be exactly the same, not to say data in the present application are obtained from completely different test subjects. Taking all factors into account, it can be presumed that the application involves fabricated experimental data.

For example, it has happened many times in practice that an application is identical or substantially identical (only with a different title or changes in the names of several components) to other's unpublished patent application (such as other's rejected utility model application, or other's patent application filed earlier but published later), or is formed on the basis of other's unpublished patent application through intentional fabrication or simple falsification for the purpose of circumvention. The fact that an obviously irrelevant applicant or inventor knows other's unpublished application goes against the common sense. Thus, it can be presumed that the application is not based on normal invention and creation activities.

2. Plagiarism, simple substitution and cobbling

Different from fabrication, forgery and falsification, plagiarism, simple substitution and cobbling are usually found with reference to the prior arts or prior designs. In examination practice, plagiarism and cobbling are often seen.

(1) Plagiarism

Unlike academic papers or journal articles, patent documents are subject to factors such as the applicant's drafting ability and differences in technical fields, so it is unavoidable to copy the contents of prior art documents. Therefore, when determining whether plagiarism occurs, attention shall be paid to the following two aspects:

First, it is inappropriate to directly adopt the generally recognized judging standard for plagiarism in the academic circle, that is, 50% text similarity can usually be regarded

as plagiarism. During examination, attention shall be paid to whether the applicant creates, on his own, the crucial parts or technical means of the invention, especially the essential contents of a patent application such as the summary of the invention, the description of the embodiments and experimental data. For instance, in Case 2, the experimental data were obviously plagiarized from the prior art.

Second, attention shall be paid to whether there is an association between the applicant, inventor or creator of the patent application and those of the prior art. Although the Provisions do not explicitly set forth provisions on plagiarism of the existing technologies or prior designs of others, it is more in line with common sense that the plagiarized technologies shall belong to others, rather than those the applicant, inventor or creator of the patent application participates in.

Where the technical solution of the patent application is substantially identical to that of the prior art, the plagiarism of prior art can be determined if there is no association between the applicant, inventor or creator of the patent application and those of the prior art, or if the patent application is a simple adaptation of the prior art.

(2) Cobbling

If two or more prior art documents are plagiarized and aggregated, and the aggregated solution is obviously unclear or illogical such that the technical solution cannot be carried out, the patent application can be determined to be made by cobbling together prior art documents. When judging whether the patent application is cobbled together from prior art documents, attention shall be paid to the following two aspects:

First, similarities and differences between a cobbled invention and a combined invention. Both of them are inventions created on the basis of two or more prior art documents. When making a judgment, importance shall be attached to whether the solution made based on two or more prior arts is reasonable and clear. If the patent application is made by combining the closest prior art with other prior arts, adaptive adjustments or modifications are made by inventors during the combination, and the combined technical solution is reasonable, then the patent application falls into the category of combined inventions. On the contrary, if the description of the patent application is merely a simple, mechanical aggregation of certain technical contents of the prior art documents with no substantial changes, those skilled in the art cannot understand the logic that underlies the resulted technical solution from the disclosure of the description, and the technical contents or features of the technical solution are not mutually supported or co-related, the patent application falls into the category of cobbled inventions.

Second, similarities and differences between impossibility of carrying out a cobbled invention and insufficiency of disclosure of the invention. What they have in common is that the description fails to clearly or completely describe the invention or utility model. The underlying reasons why the solution cannot be carried out shall be found out when making a judgment. If the description merely results from a mechanical aggregation of prior art documents, the cobbled technical solution is ambiguous and unreasonable, and the unreasonableness is caused by the aggregation and cannot be overcome through supplementing technical contents, it can be presumed that the applicant did not carry out real invention and creation activities, and the patent application was cobbled together. The insufficiency of disclosure of the description usually means that the technical solution *per se* is feasible or reasonable, but the description is not complete due to lack of key or necessary technical means for carrying out the technical solution. Regardless of whether the applicant intentionally leaves out the technical means to solve the technical problem, if the lack of technical means can be overcome or remedied through supplementary explanation or observations (in other words, the description can be completed through supplementary explanation or observations, but it doesn't mean the defect of insufficiency of disclosure can be overcome by such a method), it is generally deemed that the description discloses the invention insufficiently.

For instance, in Case 3, the application involved is cobbled together from two prior art documents, and the cobbled solution is ambiguous and unreasonable. The asserted technical problem solved by the application is exactly the same as that of Reference 1, and the advantageous effects thereof are identical to the technical effects of References 1 and 2. The detailed description of the embodiments in the application is the same as that of Reference 1. Fig. 1 of the application is substantially identical to Fig. 1 of Reference 1, and Fig. 3 of the application is substantially identical to Fig. 2 of Reference 2. The description provides no information about the connection between References 1 and 2. The description exhibits confusing logic and contains multiple inconsistent terms. The cobbled solution is against and logi-

cally contradictory to the knowledge of those ordinarily skilled in the art. The defects of the aforesaid plagiarized and cobbled solution cannot be overcome by supplementing technical contents or making observations. It is a typical cobbled application.

(iii) The major parts of the invention are generated randomly by using computer technology

Computer technology refers to the technical methods and means utilized in the computer field, including hardware, software and applied technologies. The Interpretation of the Measures states that "generating a technical solution or design randomly and disorderly by a computer with no actual participation of researchers is not a true innovation activity". The key to determine whether the patent application falls within this circumstance is to examine whether the solution is randomly generated, that is to say, consideration shall be given to such factors as the extent of human involvement, whether the resulting technical solution is disordered and illogical, and the number of such applications.

(iv) An invention obviously goes against the common sense of technological improvement or design; or an invention is deteriorated or overly detailed, or the scope of protection is unnecessarily narrowed down

1. An invention obviously goes against the common sense of technological improvement or design

The Interpretation of the Measures indicates that this situation "means that, from the perspective of those skilled in the art, the applicant intentionally complicates the technical route or design, which is conventional in the art or could have been achieved through simple steps, so as to evade patentability examination; however, there are actually no improvements on technologies or designs. In particular, for a claim formed by piling up lots of subtle and non-essential technical features, its scope of protection is essentially narrowed down in an unnecessary manner." In other words, where the applicant complicates a simple solution that those skilled in the art can acquire from the prior art in a bid to evade patentability examination, thereby rendering the technical solution going against the common sense of technological improvement or design, it can be deemed that the applicant has engaged in fraudulent activities. In such a judgment, attention shall be paid to the technical solution *per se*, the development of prior art, the degree of applicant's obvious intention, and the relationship between the good faith provision and other provisions. Emphasis shall be placed on the following two aspects:

First, the difference between impossibility of carrying out an invention due to intentional complication or imcompliance with common sense and insufficiency of disclosure. As stated above, if a technical solution is inherently practical, but cannot be implemented to solve the technical problem due to ambiguous and incomplete disclosure of the description or lack of key or essential technical means to carry out the technical solution, and there are no sufficient grounds and evidence proving that the applicant deliberately altered the existing technical solution in a manner deviating from the route of technological improvement, then the invention shall be deemed to be insufficiently disclosed.

Second, the difference between an unreasonable solution going against the rationale of technological improvement and practicality. When talking about practicality, attention is drawn to whether the technical solution is in violation of natural laws, is reproducible, or is likely to be manufactured or used in industry. If no sufficient grounds or evidence proves the applicant's abnormal acts, it is an issue of practicality.

For instance, in Case 4, the application involves a logistics and transportation assessment algorithm. To solve the problem of the current logistics and transportation assessment algorithms (i.e., sample size is often neglected during calculation, leading to lengthy calculation processes), there is provided a solution which selects assessment indicators based on logistics, transportation and regional characteristics, constructs an assessment model for the indicator system, and designs an assessment algorithm based on the sample size and assessment model. Although the description provides the calculation formula H of the logistics assessment algorithm, it fails to describe the calculation or implementation methods for U1 (the set anticipated effect) and U2 (the actual effect) used for calculating H1. Nor is there a known expression for logistics effects in the prior art. In addition, the calculation methods for H2, H3, and H4 all involve the product of the assessment time and the assessment scope, but those skilled in the art cannot know the meaning of the product. The incomplete technical information on the assessment algorithm in the description renders it impossible to solve the technical problem of logistics assessment of the present application. The author opines that during the substantive examination, it is more appropriate to issue an office action under Article 26.3 of the Patent Law.

2. The invention is deteriorated or overly detailed, or

the scope of protection is unnecessarily narrowed down

"For a claim formed by piling up lots of subtle and non-essential technical features, its scope of protection is essentially narrowed down in an unnecessary manner." Such claims are drafted purely for increasing the possibility to obtain a patent, instead of protecting innovation. Whether an invention is deteriorated shall be judged in consideration of the technology itself. Whether an invention is overly detailed, or the scope of protection is unnecessarily narrowed down shall be judged on the basis of the claimed technical solution, together with the relevant depiction of the technical solution in the description. Account shall be taken of whether the claims are added with detailed features so as to achieve a certain technical effect or function, or to distinguish them from the prior art; or otherwise whether the claims are added with a large number of technical contents that are irrelevant to the technical problem to be solved in order to unnecessarily narrow down the scope of protection. In examination practice, it is very common to see claims with numerous detailed technical features due to the applicant's limited drafting skills or abilities. To determine whether an invention falls within this situation, it is required to make a comprehensive judgment on a case-by-case basis in consideration of the details of the application, other information on the applicant, and other patents and applications of the same applicant.

For instance, in Case 5, the application relates to a calibration system, wherein the dependent claim 10 seeks to protect a driving device of the system, which has a complex structure including an arc-shaped member with serrations, several gear racks, a disc, a telescopic means, a rotating column, and a spring. All of these components are connected and precisely mated for the purpose of realizing a simple function of driving the mounting seat of the calibration system into rotation. With respect to the achieved technical effect, the technical features defined in the claims are obviously redundant, which essentially narrow down the scope of protection of the claims in an unnecessary manner. Complicating functions that are conventional in the art or can be achieved through simple structures and steps definitely goes contrary to the common sense of technical improvement, and is suspected of deteriorating, piling up, and deliberately complicating the existing technologies.

(v) Applicants file multiple patent applications without conducting actual R&D activities and cannot make reasonable explanation

This category primarily focuses on the applicants. Whether actual R&D activities were conducted shall be judged primarily based on a comprehensive assessment of the applicant. If the applicant is a natural person, the applicant's capabilities and professional background shall be taken into account. If the applicant is a legal person, the applicant's qualification and established R&D institutions shall be considered. The Interpretation of the Measures indicates that whether this clause can be applied shall be determined in consideration of the technical relevance among the multiple patent applications and additional information beyond the applications, and whether the number or contents of the inventions are obviously beyond the actual R&D capabilities and resources of the applicant or inventor. For example, if a company, which files a great number of applications in a short time period, is found to be a shell company that has no employee with social insurances or receives no paid-in capital, it falls under this situation.

For instance, in Case 1 as stated above, although the applicant of Application 1 and Application 2 was a minor under the age of eighteen at the time of filing the applications, he was sixteen years old at that time with certain capabilities for innovation. The applications belong to the field of teaching demonstration devices, which are accessible to the applicant in his daily studies and life. The technical solutions of the applications are not so complicated that the applicant could not understand according to his knowledge at that age. For all the above reasons, Case 1 did not fall into this situation.

(vi) Multiple patent applications that are essentially associated with a specific entity, individual or address are filed separately, at different times or in different locations in bad faith

The Interpretation of the Measures states that this situation is essentially "an act of deliberately filing patent applications, which belong to the same applicant, at different times, in different locations and by different applicants through registering multiple companies, using multiple ID numbers or utilizing different company addresses, in such a way to avoid the applications from being regarded as abnormal patent applications". It can be seen that "a specific entity" refers to the applicant, and it does not matter whether patent agencies are the same. In a specific judgment, consideration shall be given to the relevance between applications in terms of number, address, etc., and whether the patent applications that belong to the same applicant are

filed separately, based on which the degree of bad faith can be evaluated.

For instance, in Case 6, the application relates to an intelligent diagnostic system, and Reference 1 relates to an intelligent power device. The application is different from Reference 1 in terms of their applicants (both are companies) and subject matters. Although their technical features are described basically in the same way and the application and Reference 1 are filed separately by the same agency, Case 6 does not fall within the circumstance of separately filing multiple patent applications in bad faith because the difference in applicants does not meet the requirement for "a specific entity", and there are only two patent applications.

(vii) Rights to apply for patents are transferred or acquired for improper purposes, or inventors or designers are changed falsely

Regarding the change of applicants, inventors or designers, the key to judge whether such a change is abnormal is to determine whether the change is made for improper purposes. For instance, the following acts can be deemed to be conducted for improper purposes: patent applications or patents are transferred in bulk for purposes other than market competition, and the assignor's business has nothing to do with the patent applications or patents, or the assignee acquires the patent applications or patents obviously not for a reasonable purpose; or someone who has not made contributions to the invention is added as an inventor or designer. Where there are multiple applicants, inventors or designers, this provision applies as long as any act falls into the above circumstances.

Article 4 of the Provisions also stipulates that "no entity or individual may represent, induce, instigate or assist others in committing any abnormal patent application activities". Several circumstances as listed in Article 3 are expanded by Article 4 to further include abnormal patent applications filed by agents. In the examination phase, if a patent application is determined to fall within the circumstances as stipulated in Article 4, it can also be subject to Article 3 which stipulates the specific abnormal patent application activities.

V. Conclusion

The patent system is originally established to encourage and protect real technological innovation and R&D activities, for the purpose of realizing the true value of patents and promoting the application of technologies, and fostering scientific and technological progresses and the healthy operation of society through disclosure in exchange for protection. Abnormal patent application activities not only harm the public interest, but also waste administrative examination resources and go against the original intention and values of the patent system. This article focuses on discussing circumstances where patent applications violate the principle of good faith and providing insights for patent application and examination, in hope of guiding the patent industry onto a healthy development track. ■

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[6] Interpretation of the Measures for Regulating Patent Application Activities, released in Announcement No. 411 of the China National Intellectual Property Administration on 11 March 2021. Although the Measures for Regulating Patent Application Activities have been repealed since 20 January 2024 according to the Measures for Regulating Patent Application Activities, the forms of abnormal patent application activities enumerated therein are valuable as a reference.