

# Quantum Leap: Developments in China IP Law Over the Past Two Years

## 聚焦2019~2021中国知识产权法律的重大发展

### Part I: Patents

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May 6, 2021 (4:30-6:00 PM, Pacific Time)



1. “China’s CAFC”, the IP Tribunal of the Supreme People’s Court, was established on January 1, 2019 and has been busy issuing IP decisions and adjudication rules. *Judge Rader, IAM, May 2019.*
2. 4<sup>th</sup> Amendment to the Chinese Patent Law\* (Effective June 1, 2021). *Wang et al., IPWatchdog, December 15, 2020.*
3. Amendments to China’s Guidelines for Patent Examination, Equivalent of USPTO’s MPEP (Amended Three Times in the Past Two Years). *Wang et al., IPWatchdog, June 12, 2020.*

\*New Article 76 of the 4<sup>th</sup> Amendment provides for the establishment of a patent linkage regime for pharmaceutical patents, which is by itself a very important development and will be discussed by Mr. Paul Coletti from Johnson & Johnson.

1. **Anti-suit Injunction Issued in Three Cases Concerning Standard Essential Patents on Wireless Communication**
2. **Case on High-amount Compensation for Vanillin Technical Secret Misappropriation**
3. **Case on Punitive Damages on Carbomer Technical Secret Misappropriation**
4. **Case on Computer Software NX Copyright Infringement**
5. **Cases on Protection of Selfie Stick Utility Model Patent**
6. **Case on Invalidation of Secondary Lithium-ion Battery Invention Patent**
7. **Overlapping Civil and Administrative Cases on Method of Access Portal Website Patent**
8. **Case on Infringement on Integrated Circuit Layout Design of Lithium-ion Battery Protection Chip**
9. **Case on Reverse Act Preservation against Tmall.com**
10. **Case on Monopoly of Bricks & Tiles Association**

<http://ipc.court.gov.cn/en-us/news/view-1226.html>



**Lulin Gao, Ph.D.**

**“Founding Father of  
China Patent System”**

- Commissioner of China Patent Office (1987-1997)
- Founding Commissioner of SIPO (1997-1998)
- Senior Adviser at WIPO (1998-2000)
- Founder/Chairman at Beijing East IP (2002-present)
- Patent Attorney, Ph.D. in Engineering
- Recipient of EPO International Cooperation Medal (1995)
- Recipient of Germany Grand Star Cross (1995)
- IP Hall of Fame Inductee (2016)
- Honorary President of All China Patent Agents Association
- Vice Chairman of Internet Society of China
- Dean of China Internet Electronic Data Institute
- Adviser at International Intellectual Property Institute
- Senior Counsel at China Internet Network Information Center
- Arbitrator at ADNDRC and CIETAC
- Adjunct Professor at Tsinghua University School of Law
- Adjunct Professor at John Marshall School of Law

Chinese Patent Law and Its Amendments	Pass Date	Effective Date
1984 Patent Law	March 12, 1984	April 1, 1985
1992 First Amendment	September 4, 1992	January 1, 1993
2000 Second Amendment	August 25, 2000	July 1, 2001
2008 Third Amendment	December 27, 2008	October 1, 2009
<b>2020 Fourth Amendment</b>	<b>October 17, 2020</b>	<b>June 1, 2021</b>



Image from baidu.com

千呼万唤始出来，犹抱琵琶半遮面。

Only after our repeated calls did she appear; her face half hidden behind the pipa she held.

*For a brief overview of the 4<sup>th</sup> Amendment to the Chinese Patent Law, see [Wang et al., IPWatchdog, December 15, 2020.](#)*

- **Increasing Patent Infringement Damages to Further Deter Patent Infringement: Introducing Punitive Damages, Raising Statutory Damages, and Shifting Burden of Production for Evidence Related to Damages (Article 71)**
- **Providing Patent Term Compensation due to Certain CNIPA Prosecution Delay and Time Lapse at NMPA for New Drug's Marketing Approval (Article 42)**
- **Establishing a Patent Linkage Regime for Pharmaceutical Patents (Article 76)**
- **Improving Patent Administrative Enforcement (Article 70)**
- **Adding Good Faith Requirement During Patent Application and Enforcement and Prohibition Against the Abuse of Patent Right (Article 20)**

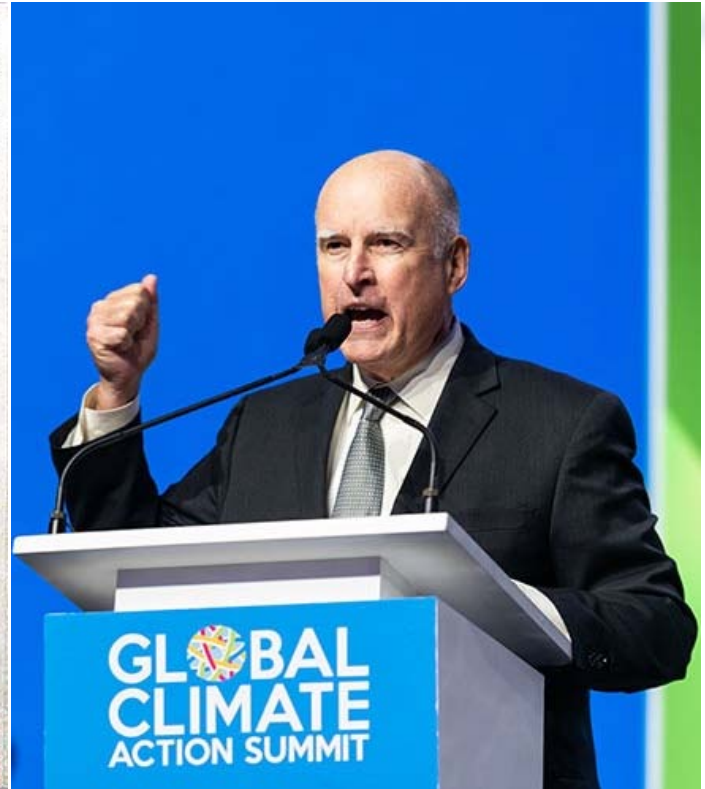
*Wang et al., IPWatchdog, December 15, 2020*

- 2013/09/16 Amendment | 2014/03/12 Amendment | 2017/02/28 Amendment
- 2019/09/23 Amendment: Effective November 1, 2019
  - Human embryonic stem cells are now patent-eligible.
- 2019/12/31 Amendment: Effective February 1, 2020
  - Clarifying examination rules for patent applications in areas such as artificial intelligence, Internet+, big data and block chain.
- 2020/12/14 Amendment: Effective January 15, 2021
  - Amending certain provisions in Part II, Chapter 10, which concerns the examination of invention applications in the Chem/Biotech field.

“To serve the need of fast-developing new technology, respond to new requests from innovation entities on patent examination rules and methods, and improve patent examination quality and efficiency, CNIPA decides to amend the Guidelines for Patent Examination.” Preamble of 2019/09/23 Amendment [Wang et al., IPWatchdog, June 12, 2020](#)



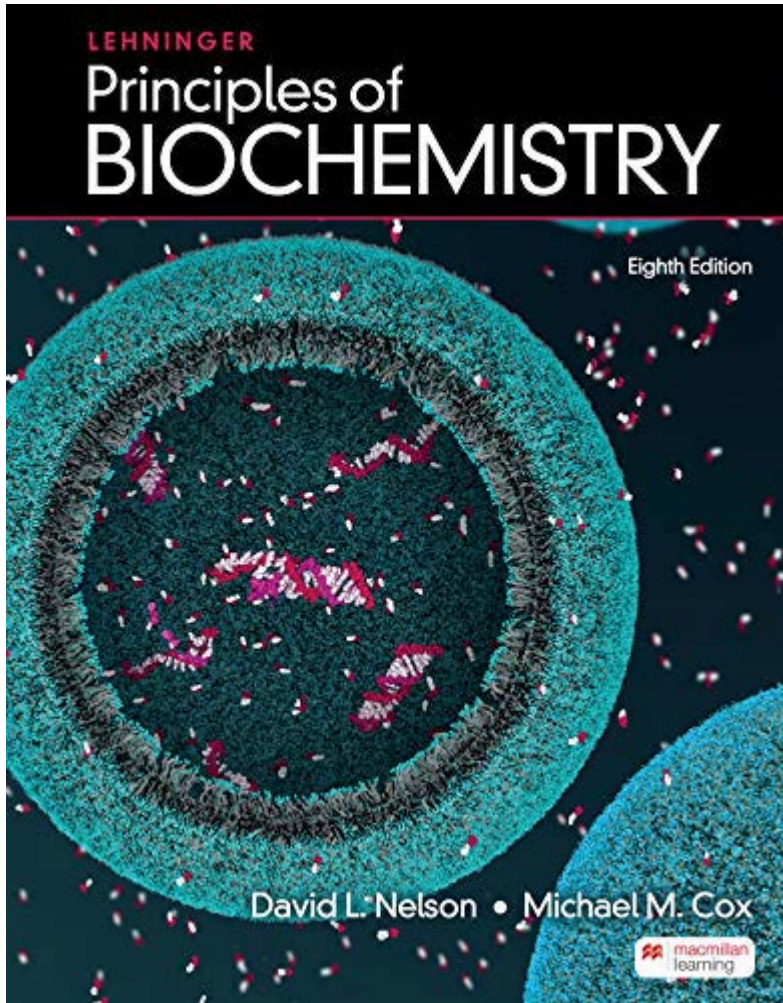
# What Do Deng Xiaoping and Jerry Brown Have in Common? Black Cat/White Cat Theorem v. Planetary Realism



“It doesn't matter whether a cat is black or white; it's a good cat as long as it catches mice.”

“We have to come together in what I call planetary realism.” “I thought of the world as being deeply interconnected. I had the sense that it wasn't just ‘us against them,’ but rather that there was connectivity among all nations across a range of issues.”

[Washington Examiner, January 27, 2021; NOEMA, February 9, 2021](#)



From a return on investment perspective, **NOW IS A BETTER TIME THAN EVER** to file for patent protection in China for your inventions made in the U.S., because of the increasing protection for patent rights in China.

# THANK YOU!

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