

# Paper proposal for the 40<sup>th</sup> ATRIP Congress

## 1. Title of the proposed paper

**Should TRIPS be Revisited to Accommodate the Next Global Crisis?  
- From the Perspective of Patent Law**

## 2. Abstract

### 1) Improving Exception Regulations in TRIPS Agreement

In the early stage of the outbreak of COVID-19, for announcing the isolated gene sequence of the new coronavirus to prevent and control the spread of the pandemic at the earliest possible time, some institutions failed to get patents for their relative inventions because of the loss of novelty.

To better encourage the rapid disclosure and implementation of inventions with public interest, especially in the field of public health as well as crisis of the climate, exception regulations in TRIPS Agreement (including but not limited to Article 73) need to be improved.

As a reference, a new paragraph about the exception of loss of novelty is added as Article 24(1) of the Chinese Patent Law 2020 (got into force on June 1, 2021):

*Article 24 An invention-creation for which a patent is applied for does not lose its novelty if, within six months before the date of filing, one of the following events occurred:*

*(1) where the invention creation was first disclosed for the purpose of public interest when a national emergency or extraordinary state of affairs occurs.*

### 2) Improving Licensing System in TRIPS Agreement

For the purpose of better encouraging patent implementation and facilitating the negotiation for patent licensing, regulations related to licensing in TRIPS Agreement also need to be improved.

As a reference, the Chinese Patent Law 2020 newly added the "Open license" approach in Articles 50-52. The patentee exercising an open license may grant a non-exclusive license, but not an exclusive or sole license with respect to the patent.

During the implementation of the open license, the annual patent fee paid by the patentee shall be reduced or exempted accordingly.

### 3) Promoting better implementation of <Protocol Amending the TRIPS Agreement>

The <Protocol Amending the TRIPS Agreement> is already in force since Jan. 23, 2017, and need to be better applied by improving regulations and adding doable concrete measures in TRIPS.

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