WANHUIDA
NEWSLETTER

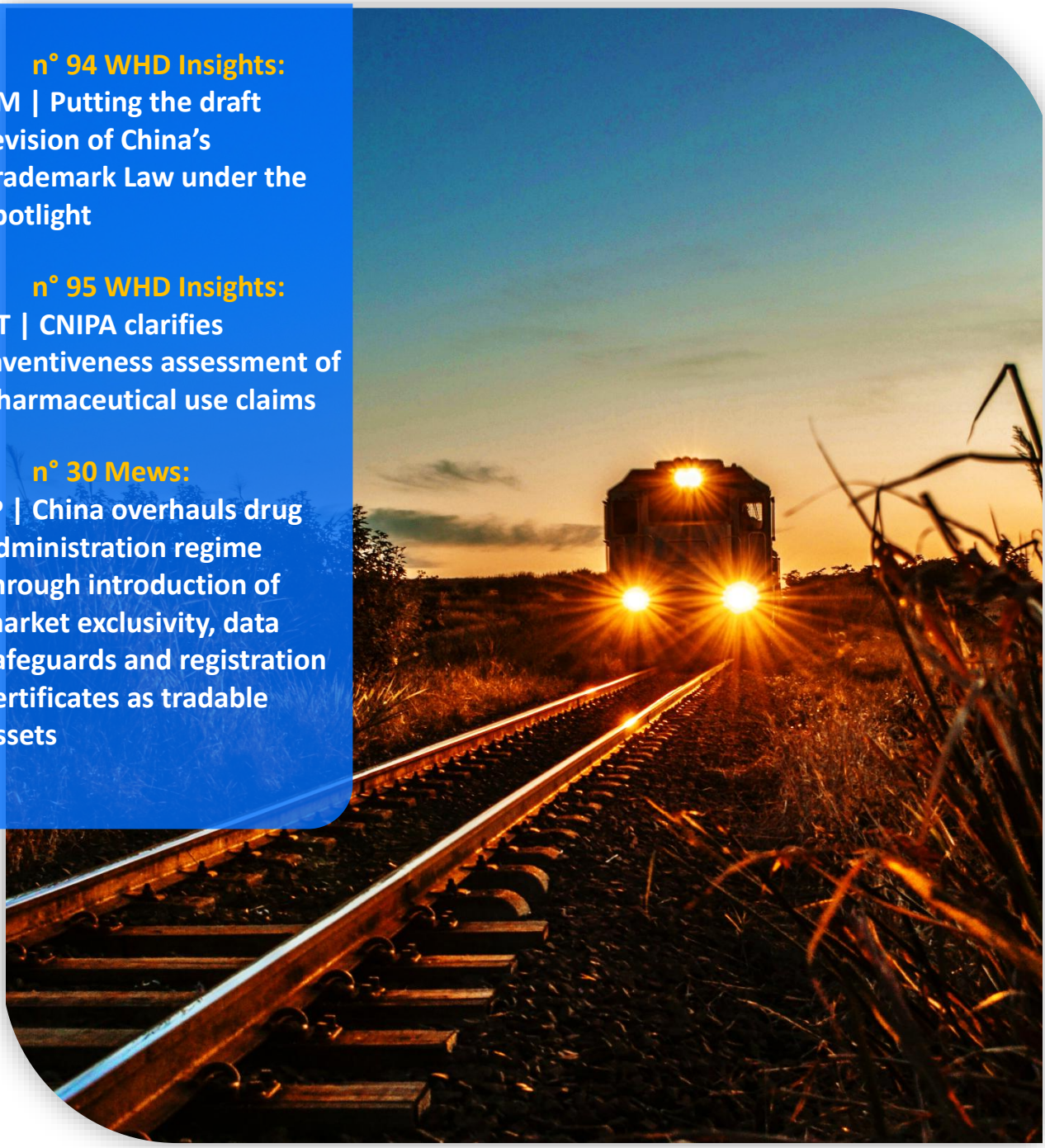
WANHUIDA
INTELLECTUAL PROPERTY

No. 2026-02

- **n° 94 WHD Insights:**
  TM | Putting the draft revision of China's Trademark Law under the spotlight

- **n° 95 WHD Insights:**
  PT | CNIPA clarifies inventiveness assessment of pharmaceutical use claims

- **n° 30 Mews:**
  IP | China overhauls drug administration regime through introduction of market exclusivity, data safeguards and registration certificates as tradable assets



www.wanhuida.com

Expertise
Makes It Possible®

WANHUIDA
INTELLECTUAL PROPERTY

n° 94 WHD Insights:
TM | Putting the draft revision of China's Trademark Law under the spotlight

Paul Ranjard, Hui Huang, Zhigang Zhu, 16 April 2026, first published by MIP

The last revision of the Trademark Law of China dates back to 2019, when the legislature published a new version in which Article 4 prohibited the registration of trademarks filed "in bad faith without intention to use". In 2023, a draft revision was published containing many new propositions, some of which addressed the problem of 'trademark hoarding' in greater detail. The draft introduced an obligation for the trademark applicant to declare its trademark use, with random controls by the CNIPA, every five years. Most stakeholders disagreed with the proposed method.

The legislator published a new draft (the Draft) on December 26 2025, with a call for comments. The Draft addresses bad faith trademark applications and bad faith trademark use. It also aims to improve the protection of trademarks, by expanding their scope of protection, and strengthen the enforcement of trademarks.

This article analyses some of the changes proposed by the Draft, many of which are welcome, even if some modifications would be necessary to improve their efficiency.

Most importantly, the Draft showcases an essential difference between China and the rest of the world concerning the effect of the registration of a trademark, which is the root cause of difficulties faced by trademark holders in China.

MEASURES AGAINST BAD FAITH

Bad faith trademark applications

The current Article 4 becomes Article 18 and seems to address the issue of 'defensive trademarks'; i.e., trademarks that are filed in a certain category of goods not for the purpose of use but to prevent others from registering an identical trademark in classes of goods that have a certain proximity to a business. Securing a registration in such 'neighbouring areas' aims to improve the scope of protection of the registered trademark and, as the case may be, prepare the future expansion of business in those areas.

The wording of Article 18 ("Trademark applications that are not filed for the purpose of use and that clearly exceed normal production and business needs shall not be registered") seems to correspond to the above definition of defensive trademarks. However, it would be even more clear if the word "protection" were added, as

follows: “exceed normal production, business and protection needs”.

Article 40 provides for the possibility to suspend the examination procedure of a new trademark application that has been refused on account of a prior trademark while the new trademark applicant deals with the obstacle. Article 40, however, adds that the authority “shall generally suspend the examination or adjudication”. The word “generally” introduces a certain degree of uncertainty in a process that needs to be clear and foreseeable. It would be better to delete “generally”.

In the last paragraph of Article 40, the Draft provides that where a People’s court adjudicates an appeal against an administrative decision concerning the registration or invalidation of a trademark, it shall base its decision on the circumstances prevailing at the time when the administrative decision was made, rather than at the time when the court makes its decision. It is hard to agree with this. Indeed, if the obstacle to the registration has vanished for any reason, there is no reason why the court could not take such change of circumstances into consideration.

Article 53 of the Draft provides for sanctions (fines up to RMB 100,000) against those that file trademark applications in violation of several articles of the law (use of prohibited signs, absence of intention to use, or violation of prior rights). These sanctions should serve as a welcome deterrent, but, of course, the effects will be found in the implementation.

In addition, it should be possible to claim compensation against those that file malicious trademark applications, the removal of which needs costly oppositions and/or invalidation procedures. This could easily be accomplished by inserting “a trademark registration is applied for in bad faith” into Article 78 of the Draft before “a trademark lawsuit is maliciously instituted”.

Misleading trademark use

Article 56 deals with a wide range of situations, most of which are listed in the current Article 49. The first paragraph concerns the alteration of a trademark or changes made to the name or address of the registrant: such acts are dealt with by a simple warning, an order to rectify, and a possible fine. In this paragraph, the Draft adds one new situation where the registrant uses the registered trademark in a misleading manner.

The second paragraph concerns two situations:

- Where the trademark becomes the generic name of the goods for which it is approved; and
- Where the trademark has not been used for three consecutive years.

In both cases, Article 49 already provides that any person may file an application for revocation of the trademark.

The Draft adds a third paragraph, which gives the trademark authority the possibility to revoke a trademark ex officio in the two situations described in the second

paragraph (genericide and non-use). This additional ex officio power is very welcome as it might accelerate the 'cleaning up' of the trademark registry.

However, something is clearly missing in this Article 56. Firstly, the possibility to file a request for revocation of a trademark used in a misleading way should be available to any person, and not only be an ex officio prerogative of the administrative authority. Secondly, the first paragraph that evokes the change made to the trademark by the registrant does not address the case where, because of such change, the trademark morphs into an infringement of another trademark. It would only be fair, therefore, to provide that whenever such a confusing change is made, the owner of the infringed trademark shall also have the right to request the revocation of the transformed trademark.

EXPANDING PROTECTION

Article 14 adds to the list of protectable signs a new type of "motion signs". This addition is welcome. The revision of the law could also be an opportunity to refine the wording of this article. It would be better to replace the "etc" at the end of the list by something like "including, but not limited to", as it would clearly mean that the list of protectable signs is not exhaustive and that other types of non-conventional signs (such as a plain colour, or a 'position trademark') can also be registered, depending on the circumstances.

Article 20 brings a long-awaited improvement to the protection of unregistered well-known trademarks. Whether it is registered or unregistered, a well-known trademark shall be protected against the registration or use of an identical or similar sign, not only on the same or similar goods but also on dissimilar goods: the 'cross-class' protection.

What is regrettable is that the Draft did not maintain the proposition made in the previous draft of 2023 about the concepts of 'dilution', 'tarnishment', and 'undue profit', which originate from a judicial interpretation by the Supreme People's Court in 2009. These terms describing the different types of damage caused to a well-known trademark are more accurate than the expression "liable to mislead the public", which is still in the Draft. Furthermore, the concepts of dilution and undue profit should also apply in cases where a well-known trademark needs to be protected against a similar sign registered for the same category of goods, and not only in cases involving dissimilar goods.

STRENGTENING THE PROTECTION

Article 73 improves the scope and means of investigation available to the trademark enforcement administration, which is welcome. However, Article 71, which enumerates the powers of the administration when enforcing a trademark, omits one important word: "destroy". The administration has no power to destroy infringing goods.

Article 74 brings a most welcome precision regarding the compensation awarded by People's courts in cases of trademark infringement. The amount of compensatory

damages shall no longer include the expenses incurred by the plaintiff, and such expenses may be awarded separately.

This article also provides for the possibility to award punitive damages that can be up to five times the losses, illegal gains, or a relevant rate of royalty. The problem is that in most cases, since it is difficult to calculate precisely the losses or illegal gains, or find an adequate royalty rate, the courts apply so-called statutory damages, limited to a maximum of RMB 5 million. It has been suggested, therefore, to add in the law a possibility for the court to award punitive damages by multiplying the statutory damages up to five times.

THE "RIGHT TO USE": A PERSISTING PROBLEM

Since 1982, the year of enactment of the first version of the Trademark Law, China has opted for a definition of the trademark right that is fundamentally different from the rest of the world.

To put it simply, in most jurisdictions, the trademark laws provide for a definition of the rights granted by the registration of a sign as a trademark (prevent others from using the sign). In these jurisdictions, the trademark right is, therefore, a negative right.

The first words of Article 1 of the Chinese law provide a different picture: “This law is enacted for the purpose of protecting the exclusive right to use trademarks” [emphasis added]. Article 69 enumerates the types of use that constitute an infringement of the “exclusive right to use” conferred to the trademark registrant.

One might say that both systems are quasi-identical and that someone that has the exclusive right to use a sign is therefore the only person authorised to use it, which implies that it has the power to prevent others.

The resemblance between the two systems is only apparent. The Chinese concept of “right to use” is fundamentally mistaken. Indeed, there is no need to obtain an authorisation to use a sign to distinguish one’s goods or services. Even an unregistered trademark may become well known.

The Draft reiterates this fundamental error by adding, into Article 55, “the trademark registrant has the right to use his own trademark”.

What challenges does this misnomer create?

According to an interpretation by the Supreme People’s Court in 2008, the registered trademark holder is not allowed to initiate a civil action against the registrant of an infringing registered trademark. An invalidation procedure must be initiated beforehand at the administrative trademark authority and it is only after such invalidation has been obtained that the civil lawsuit can be launched. This is contrary to Article 16 of the TRIPS Agreement, which stipulates: “The rights described above [e.g., exclusive right of trademark] shall not prejudice any existing prior rights [including exclusive right of prior trademark]”.

Furthermore, when an infringing trademark is invalidated, this "right to use" becomes an obstacle to the award of damages related to the infringement committed prior to the invalidation. The ex-registrant may claim that it had the right to use the trademark. The previous draft, of 2023, provided that the compensation should only be awarded if bad faith is proven. Even if the proposal is not retained in the Draft, this practice remains as recommended by the CNIPA in 2021.

To avoid such complication, it is better to use the words "trademark right" like "patent right" in the Patent Law and to amend Article 9 of the Draft as: "In applying for registration and using a trademark, and in exercising the trademark right, a person shall abide by the principle of good faith. No person may infringe upon the prior lawful rights and interests of others."

n° 95 WHD Insights:
PT | CNIPA clarifies inventiveness assessment of pharmaceutical use claims

Xiaoping Wu and Jicheng Yang, 11 March 2026, first published by MIP

On December 16 2025, the CNIPA issued Invalidation Decision No. 600371 (the Invalidation Decision), declaring Patent No. 201580081186.0 (the Patent at Issue) – titled 'Methods for treating or preventing migraine headache', owned by Amgen Inc. – invalid in its entirety.

The Patent at issue is a medical use patent, the claims of which concern the use of a known drug to treat a known disease using a new dosage regimen or new administration mode. The Invalidation Decision offers guidance as to the parameters in assessing the inventiveness of pharmaceutical use claims, particularly how technical features such as dosage and formulation limit the scope of protection of such claims.

The invalidation decision

The petitioner challenged the validity of the Patent at Issue on multiple grounds, including:

- Insufficient disclosure in the specification;
- Ambiguous scope of protection for claims 1–25;
- Lack of novelty for claims 1–11 and 14–19;
- Lack of inventiveness for claims 1–25; and
- Lack of support for claims 1–25 in the specification.

In response, the patentee amended the claims. Amended claim 1 reads as follows: "1. Use of an anti-CGRP receptor antibody in the manufacture of a medicament for preventing or reducing the occurrence of migraine in a patient in need thereof, wherein the medicament is formulated to be administered in a dosage of 70 mg to 140 mg per month, wherein the anti-CGRP receptor antibody comprises CDRH1 of the sequence of SEQ ID NO:14, CDRH2 of the sequence of SEQ ID NO:23. CDRH3 of the sequence of SEQ ID NO:34, CDRL1 of the sequence of SEQ ID NO:44, CDRL2 of the sequence of SEQ ID NO:55, and CDRL3 of the sequence of SEQ ID NO:65, wherein the anti-CGRP receptor antibody is a monoclonal IgG1 or monoclonal IgG2 antibody, and wherein the medicament is formulated to be administered subcutaneously."

The Invalidation Decision found that all claims should be invalidated for being devoid of inventiveness.

Regarding claim 1, the Invalidation Decision used Evidence 14 as the closest prior art, combined with Evidence 16 and common knowledge, to analyse its inventiveness.

The collegiate panel opined that Evidence 14 disclosed the use of an anti-CGRP receptor antibody having the structure defined in claim 1 for manufacturing a medicament for preventing or reducing the occurrence of migraine. The sole difference between claim 1 and the technical solution disclosed in Evidence 14 was that Evidence 14 did not specify that the prepared medicament formulation could be formulated for subcutaneous administration.

Given that subcutaneous formulations are conventional for antibody drugs and represent one of the routine formulation choices for a person skilled in the art, in combination with the technical teaching of Evidence 14 that antibodies can be prepared in parenteral composition forms for injectable use, and that of Evidence 16 that the anti-CGRP-1 monoclonal antibody AMG 334 can be administered via subcutaneous injection, a person skilled in the art would be motivated to formulate the anti-CGRP receptor antibody disclosed in Evidence 14 into a formulation that can be prepared for subcutaneous administration.

Furthermore, the panel found that the Patent at Issue failed to demonstrate that the subcutaneous formulation achieved any unexpected technical effects in terms of therapeutic efficacy, as compared to other formulations. Therefore, the panel concluded that claim 1 lacked inventiveness.

Comments

Parsing the specification of the Patent at Issue could lead to the conclusion that the superiority of the invention over the prior art lies in its verified clinical therapeutic effect and safety of the anti-CGRP antibody AMG 334 in preventing or reducing the occurrence of migraine in patients in need, with an appropriate dosage range of "70 mg to 140 mg per month" as proposed in claim 1.

However, whether such dosage features limit the protection scope of the claim depends on the circumstances. The latest Patent Examination Guidelines stipulate: "For pharmaceutical use inventions involving chemical products, the novelty

examination should consider the following aspects: [...] (iv) Whether the features related to use, such as administration subject, administration mode, route, dosage, and time interval, can limit the pharmaceutical preparation process. Distinguishing features reflected solely in the administration process cannot confer novelty to the use."

In assessing the limiting effect of the aforesaid dosage range, the panel reasoned that "[s]ince claim 1 does not limit this to a single administration dose, and paragraph [0063] of the patent specification explicitly states that 'For a dosing frequency period of one month, the monthly dose may be divided into four doses and administered on a weekly basis or divided into two doses and administered every two weeks. Any of the doses of the anti-CGRP receptor antibody or binding fragment described herein can be divided among two or more administrations,' it would be impossible to determine whether '70 mg to 140 mg' refers to the dose for a single administration. Therefore, the limitation 'the medicament is formulated to be administered in a dosage of 70 mg to 140 mg per month' in claim 1 is a limitation on the method of use of the drug, which is not necessarily associated with the pharmaceutical preparation method, and does not limit the drug specifications. Consequently, it does not limit the scope of protection of claim 1."

The panel also assessed the limiting effect of the "subcutaneous administration" mode defined by claim 1. The panel held that "this expression indicates that the medicament can be formulated for subcutaneous administration, limiting the administration process of the drug. Although it does not clearly limit the medicament prepared in claim 1 to a form that can be used directly for subcutaneous administration, it implicitly limits the drug preparation process in the sense that the prepared medicament should be capable of being formulated into a form suitable for subcutaneous administration. For example, as far as the general understanding in the art is concerned, most oral formulations containing excipients such as pigments, preservatives, or fillers cannot typically be adapted for subcutaneous administration. Thus, in terms of the medicament formulation, it at least excludes formulations such as oral dosage forms that cannot be adapted for subcutaneous administration. Therefore, the limitation 'the medicament is formulated to be administered subcutaneously' in claim 1 does limit the scope of protection of the claim."

Based on the above reasoning, the panel merely identified "the medicament is formulated to be administered subcutaneously" as the distinguishing feature, which logically leads to the determination of non-inventiveness of claim 1.

In a nutshell, claiming a pharmaceutical use of a known substance for a known indication characterised by a dosing regimen and/or administration feature could be tricky in China, as these features closely relate to methods of treating diseases, which is an unpatentable subject matter in China.

The key takeaway for patent applicants in drafting pharmaceutical use claims for such applications would be to ensure these features are directly related to the pharmaceutical preparation process. The Invalidation Decision could serve as a point of reference regarding whether such features limit the scope of protection of the claims.

n° 30 News:
IP | China overhauls drug administration regime through introduction of market exclusivity, data safeguards and registration certificates as tradable assets

Yue Guan, 18 February 2026, first published by IAM

On 27 January 2026, China's State Council promulgated the amended Implementation Regulations of the Drug Administration Law, which will come into force on 15 May 2026. This is the fourth amendment but the first overhaul since its enactment in 2002, with more than 90% of the articles amended, covering the entire lifecycle of pharmaceuticals, from R&D and registration to manufacturing, distribution and supervision.

The amended regulations address key issues, including market exclusivity, protection of pharmaceutical trial data and the acquisition, re-registration and assignment of drug registration certificates.

Clinical-oriented innovation

Article 3 outlines the objectives and priorities of the drug watchdog – the National Medical Products Administration (NMPA) – including improving the drug innovation regime, supporting clinical-oriented drug development and innovation, encouraging R&D, clinical promotion and administration of new drugs, and facilitating the R&D and innovation of generic drugs to enhance their quality and efficacy. It explicitly underlines the overarching role of "clinical value" in driving drug development and innovation.

Market exclusivity period

Article 21 marks that the NMPA is incentivising R&D and innovation of paediatric drugs and drugs for the treatment of rare diseases by offering them market exclusivity period.

For new varieties of paediatric drugs or those in new dosage forms, of new specifications or with expanded paediatric indications, a market exclusivity period of no more than two years may be granted.

For pharmaceuticals used to treat rare diseases (ie, orphan drugs), and for which the marketing authorisation holder commits to ensuring supply, a market exclusivity period of no more than seven years may be granted. The market exclusivity period will be terminated if the holder fails to fulfill the supply commitment.

This newly introduced market exclusivity period represents a new policy initiative, which offers an alternative route in parallel to the patent protection regime that grants exclusive rights over technical solutions. While competitors could utilise a circumvention strategy via design-around of an existing patent, market exclusivity grants an ironclad monopoly to the rights holder, erecting an administrative barrier to block the market entry of a functionally similar design-around product developed by a competitor until the granted exclusivity period expires.

Innovators can leverage this practice to create a robust dual-moat strategy: patenting technical solutions during the R&D process and reinforcing it by securing regulatory exclusivity where possible. This bifurcated approach would significantly enhance the predictability of ROI for drug development in underserved areas like paediatrics and rare diseases.

Undisclosed trial data

Article 22 offers protection for undisclosed trial data and data concerning drugs that contain new chemical components or other eligible drugs. This protection can be obtained and submitted by a marketing authorisation holder on its own. It also bans unfair commercial exploitation of this data by any individual or organisation.

The regulations set a six-year protection period for this data from the date of drug registration. During this time, any registration application filed by other applicants using the protected data without the marketing authorisation holder's consent will be dismissed, except where such data is obtained by the applicants on their own.

The regulations also enjoin the NMPA from disclosing the protected data, unless such disclosure is necessitated by public interest or measures have been taken to ensure that such data will not be commercially exploited in an unfair manner.

Undisclosed and compliant trial data is a valuable asset in which pharmaceutical companies invest heavily to acquire during R&D. The data exclusivity regime thus serves as a potent weaponry the legitimate holder could wield against free riders. Similar to trade secrets, holders must take reasonable efforts to document the generation of such data, testify its legitimate ownership and maintain its confidentiality.

Holders are therefore strongly advised to exercise strict control over public access to the data assets, explicitly labelling those disclosable in papers, conferences or roadshows and those categorised as "undisclosed data for registration". It is also essential for holders to introduce safeguards and acquaint employees with data ownership, confidentiality obligations, usage and liability for breach of contract.

Drug registration certificates

Article 16 provides that the NMPA shall review and approve the drug along with the chemical active ingredients, and issue drug registration and chemical active ingredient approval certificates. The application for assigning these certificates will

be subject to NMPA approval, and its decision will be made within 20 working days from the date of accepting the application. Article 17 sets a five-year validity period for these certificates and holders are obligated to file for re-registration upon expiration.

The articles further establish the legal basis for the acquisition, re-registration and assignment of these certificates, making them an integral part of M&A transactions in the pharmaceutical field.

Key takeaways

It is a very welcome development that the newly amended regulations have overhauled the whole drug administration regime by adopting seismic changes, like market exclusivity for players in the underserved fields, safeguards for data assets and registration certificates as tradable assets. It is also worth noting that the NMPA's prioritisation of clinical value may have a far-reaching impact on its practice. Industry observers will be keeping a close eye on how these developments evolve in practice.