

## “Strawman Strategy” in Patent Invalidation Proceedings

### 1. Introduction

Article 45 of the *Patent Law of China* (hereinafter, the “*Patent Law*”) provides that “any entity or individual” may file a request for patent invalidation. In practice, this broad standing has enabled parties to challenge a competitor’s patent in the name of a third party. Such third parties are commonly referred to as “nominees” or “straw men”.

However, the latest revision of the *China Patent Examination Guidelines*, published in November 2025 and effective as of January 1, 2026, introduces a new ground for non-acceptance of invalidation requests. Specifically, Part IV, Chapter 3, Section 3.2 of the guideline provides that an invalidation request shall not be accepted if “it does not reflect the true intention of the requester.” This provision may be interpreted as disallowing invalidation requests filed in the name of another party. Against this backdrop, how the widely used “strawman strategy” will be treated under the revised framework has become a key point of focus.

Recently, the Supreme People's Court released a judgment addressing the validity of an invalidation request filed through a “strawman”. Given that the Court’s reasoning set out in this decision may also have implications for the application of the newly revised *Examination Guidelines* issued around the same time, we briefly outline the key aspects of the judgment below.

### 2. Case Overview

- Case No.: (2025) Zui Gao Fa Zhi Xing Zhong No. 71
- Decision Date: December 29, 2025
- Invalidation Requester: Mr. A (individual)
- Patentee: Company B
- Background:

In October 2023, Mr. A filed an invalidation request against Company B’s patent (No. 201710835207.4). In February 2024, the examination panel issued a decision declaring all claims of the patent invalid.

Dissatisfied with the decision, company B initiated an administrative lawsuit before the Beijing Intellectual Property Court, seeking to revoke the invalidation decision. Company B argued that:

“According to Part IV, Chapter 3, Section 3.2 of the *Examination Guidelines*, an

invalidation request should not be accepted if the requester does not have standing under civil procedure law. Under the *Civil Procedure Law of China*, only parties with a legal interest are entitled to initiate legal proceedings, and therefore Mr. A (who has no such interest—by *Shangcheng & Partners*) is not qualified to file the invalidation request.”

However, the court of first instance upheld Mr. A’s standing to file the invalidation request on the basis of Article 45 of the *Patent Law*. On appeal, the Supreme People’s Court, acting as the court of second instance, affirmed this conclusion. Furthermore, both the first and second instance courts declined to overturn the invalidation decision on substantive grounds, including with respect to inventive step.

Regarding Mr. A’s standing to file the invalidation request, the Supreme People’s Court held as follows:

“Company B argued that Mr. A lacked standing to initiate the invalidation proceeding. In response, this Court holds as follows. Under Article 45 of the *Patent Law*, from the date of the announcement of the grant of a patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the patent right is not in conformity with the provisions of this Law (*Patent Law*), it or he may request the patent administration department under the State Council to declare the patent right invalid. According to Part IV, Chapter 3, Section 3.2 of the *Patent Examination Guidelines*, an invalidation request shall not be accepted where the requester does not have standing under civil procedure law. Meanwhile, Article 51 of the *Civil Procedure Law* provides that citizens, legal persons and other organizations may act as parties to civil proceedings. In this case, Company B has not provided evidence showing that the filing of the invalidation request against the patent at issue does not reflect Mr. A’s true intention, nor has it provided evidence that Mr. A fell within any statutory circumstance that would disqualify him from filing such a request. Accordingly, the Court found no impropriety in the determination made in the challenged invalidation decision or the first-instance judgment in confirming Mr. A’s eligibility as an invalidation requester.”

In the above reasoning, the Supreme People’s Court reaffirmed that Article 45 of the *Patent Law* permits any entity or individual to file a request for patent invalidation.

The Court further noted that “Company B has not provided evidence showing that the filing of the invalidation request against the patent at issue does not reflect Mr. A’s true intention”. This suggests that the burden of proof—regarding whether a request reflects the requester’s true intention—lies with the patentee challenging the request.

Although this judgment was issued prior to the implementation of the revised *Patent Examination Guidelines*, it adopts wording consistent with the revised *Guidelines*. As

such, the Court's reasoning may provide useful guidance for the future interpretation and application of the revised *Guidelines*.

### 3. Impact on the Strawman Strategy and Practical Considerations

Against this backdrop, it is worth examining whether the “strawman strategy” at the invalidation stage remains viable in practice, in light of the above-mentioned decision and other related cases.

Its implications and countermeasures should be considered from both the requester's and the patentee's perspectives.

#### Requester's Perspective

- This judgment indicates that, even after the implementation of the revised *Patent Examination Guidelines*, an invalidation request filed in the name of an individual will not automatically be deemed invalid on the ground that it does not reflect the requester's “true intention”.
- That said, the revised framework introduces additional procedural requirements to demonstrate that the request genuinely reflects the requester's intent. As a result, the procedural burden associated with filing invalidation requests through a strawman has increased. In current practice, where a request is filed in an individual's name, the authorities may issue an office action requiring either (i) the requester to appear in person before the patent office to confirm his true intent, or (ii) the submission of a notarized declaration confirming such intent. Similar evidentiary requirements may arise if the authenticity of intent is challenged during the proceedings.
- Provided that these procedural requirements are properly satisfied and supporting documentation is in order, the burden of proving that the request does not reflect the requester's true intention shifts to the patentee.
- In one case involving an action to revoke an invalidation decision, even where the invalidation request was found not to reflect the requester's true intention, this did not render the request itself invalid. In this case, a patent agent arranged for his mother to file the invalidation request in order to circumvent restrictions under the *Regulations on Patent Commissioning* prohibiting patent attorneys from filing such requests. While this conduct was found to violate the *Regulations on Patent Commissioning* and warranted separate sanctions, it did not affect the validity of the invalidation request itself. ((2022) Zui Gao Fa Zhi Xing Zhong No. 716, <https://mp.weixin.qq.com/s/LzUsE9yNiYzAzAU3DNAIWA>)
- In light of the above, the strawman strategy cannot be considered entirely obsolete.

However, the burden of substantiating “true intention” has increased compared to prior practice. Moreover, if procedural deficiencies arise, or if the China National Intellectual Property Administration or the courts apply stricter scrutiny in future cases, there remains a risk that the request could be rejected. Careful consideration is therefore advisable when considering this approach.

### **Patentee’s Perspective**

- Where it can be proven that an invalidation request does not “reflect the requester’s true intention”, it remains possible to have a strawman-filed request dismissed. However, the burden of proof rests with the patentee.
- To discharge this burden, supporting evidence is required. Notably, there are no precedents in which an invalidation request has been dismissed solely on the basis that the requester lacked technical or development capability. Rather, procedural irregularities have proven to be a more effective basis for challenging the authenticity of intent.
- In one successful case, the patentee demonstrated through handwriting analysis that the requester’s signature on the power of attorney submitted at the filing of the invalidation request differed from the signature on a notarized declaration submitted during the invalidation proceedings to demonstrate the requester’s true intent. The panel concluded that the requester’s true intent could not be confirmed and therefore dismissed the invalidation request (For further details, please refer to our article, [“Revisions to the Patent Examination Guidelines Effective as of January 1, 2026”](#)).
- In addition, where the requester is an employee of a patent agency or a related individual, Article 18 of the *Regulations on Patent Commissioning* allows the patentee to seek administrative sanctions against the agency (as also noted in the above-mentioned (2022) Zui Gao Fa Zhi Xing Zhong No. 716). That said, where the underlying patent is strong on patentability, it is unlikely to be invalidated regardless of issues concerning the requester’s true intent. Accordingly, careful drafting of claims and a high-quality specification remain critical.

### **4. Conclusion**

At the time the revised *Examination Guidelines* were issued, some commentators suggested that the strawman strategy would effectively be prohibited. However, the above judgment of the Supreme People's Court clarifies that invalidation requests filed using such a strategy are not automatically deemed invalid.

From the requester’s perspective, although the strawman strategy is now subject to increased procedural scrutiny and can no longer be used as freely as before, it is still likely to remain a viable option in invalidation proceedings.

From the patentee’s perspective, absent any amendment to Article 45 of the *Patent Law*, there is no definitive means of fully neutralizing a properly executed strawman strategy. Ultimately, regardless of who files the invalidation request, the most effective defense remains unchanged: well-crafted claim scope supported by a high-quality specification. In this sense, “mastering the fundamentals is the ultimate winning strategy.”