

## New Judicial Interpretation from the Supreme People's Court of China: Clarification of Role of Patent Evaluation Reports in Utility Model or Design Patent Infringement

### 最高人民法院新司法解释：明确实用新型或外观设计专利侵权中专利权评价报告的作用

2025

#### Summary / 摘要

This article explains how the Supreme People's Court's ("**SPC's**") new judicial interpretation, **Fashi [2025] No.11<sup>1</sup>**, changes the practical use of Patent Evaluation Reports ("**PERs**") in utility model and design patent infringement disputes. While PERs remain important evidence, the new rule confirms they are not required to file a lawsuit, and negative PER conclusions cannot automatically defeat infringement claims. For companies, this means greater flexibility when enforcing such patents and a clearer pathway for defending against weak patents. The article outlines the legal framework, key points of the interpretation, and provides practical implications for patent owners, defendants, and corporate IP strategy.

本文解释最高人民法院最新司法解释（**法释〔2025〕11号**）对实用新型与外观设计专利权评价报告在侵权纠纷中的实际影响。尽管评价报告仍是重要证据，但新规明确其并非提起诉讼的前置条件，且负面结论也不导致诉讼自动失败。这意味着企业在维权和抗辩方面拥有更大灵活性。本文总结相关法律框架、司法解释要点，并重点分析其对专利权人、被控侵权人及企业知识产权策略的实际影响。

#### Background and Legal Context / 背景与法律框架

The PER system was established as a supplement to utility model and design patents, which are granted without substantive examination in China, to help assess their validity.

专利权评价报告制度是针对中国未经实质审查即可授权的实用新型和外观设计专利的补充制度，用于帮助评估专利权的稳定性。

Under the PRC Patent Law (Art. 66(2)<sup>2</sup>), in disputes involving utility models or design patents, the PRC court or the patent administrative enforcement authorities (such as local administrations for market regulation) may require the patent owner or an interested party to provide a PER. Such a report may also be submitted voluntarily by the patent owner, an interested party, or the alleged infringer.

根据《专利法》第66条第2款的规定，在涉及实用新型或外观设计专利的侵权纠纷中，人民法院或者专利行政执法部门（如地方市场监督管理部门）可以要求专利权人或利害关系人提交专利权评价报告。专利权人、利害关系人或者被控侵权人也可以主动提交该报告。

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<sup>1</sup> [Fashi \[2025\] No.11 - SPC](#)

<sup>2</sup> [Patent Law of PRC \(Amendment in 2020\)](#)

SPC Provisions on the Application of Law in Patent Dispute Cases<sup>3</sup> (Art. 4) state that if a plaintiff fails to submit a PER when required by the PRC court, the PRC court may suspend the proceedings or impose legal consequences on the plaintiff, such as adverse rulings or bearing procedural liabilities. Additionally, Art. 5 clarifies that if the defendant files an invalidation request during an infringement action, the court shall suspend the case, unless the submitted PER shows no grounds for invalidity, among other statutory exceptions.

《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》第4条规定，如果原告在被要求时未提交专利权评价报告，人民法院可以裁定中止诉讼，或者判令原告承担可能的不利后果。此外，第5条明确，若被告在侵权诉讼中提出无效宣告请求，法院应当中止诉讼，除非提交的专利权评价报告未发现无效事由以及其他法定例外情形。

On July 30, 2025, the SPC promulgated the judicial interpretation, **Fashi [2025] No.11**, which took effect on August 1, 2025. This Judicial Interpretation resolves lingering questions on how courts should treat PERs which contain negative conclusions on a patent's validity.

2025年7月30日，最高人民法院公布司法解释**法释〔2025〕11号**，自2025年8月1日起施行。本司法解释进一步明确，当评价报告出现不利结论时，法院应如何处理。

## The New Judicial Interpretation / 新司法解释要点

- **PER is evidence, not a threshold:** Courts must accept cases regardless of whether a PER is filed.  
评价报告仅为证据，而非门槛：是否提交评价报告不影响法院立案。
- **A negative PER does not automatically lead to dismissal:** Even if the PER suggests the patent lacks validity, courts cannot summarily reject the claim.  
负面报告不等于自动驳回：即便评价报告认为专利不具备授权条件，法院也不能径行驳回。
- **Case-by-case assessment:** Judges should explain the implications of PER results to the parties and decide the dispute based on the full evidence and arguments.  
结合案情综合判断：法官应对评价报告的结论进行释明，并结合全案证据依法裁判。

## Key Provisions and Principles / 主要规定与原则

1. **Neutral role of PER:** The report supports evidence-based decision-making but does not replace judicial assessment. Its conclusion is for reference only and does not determine the patent's ultimate validity.  
评价报告中立化：作为证据材料辅助法官判断，但不取代法院审查。其结论仅具参考价值，并不决定专利的最终有效性。
2. **Enhanced judicial discretion:** Judges retain flexibility to weigh PER findings together with other technical and legal evidence. The ultimate determination of patent validity remains within the purview of the administrative invalidation process and subsequent judicial review.  
司法裁量权增强：法官可结合其他证据综合衡量评价报告的价值。对专利权有效性的最终确认，仍应依据专利无效宣告程序及后续的司法审查程序作出的生效决定。
3. **Guidance for litigants:** Patent owners, accused infringers, and stakeholders should view PERs as helpful tools to demonstrate patent strength or raise doubts, but not as the "final word."  
对当事人的启示：无论是专利权人还是被控侵权人，应将评价报告视为辅助工具，而非最终结论。

<sup>3</sup> [SPC Provisions on the Application of Law in Patent Dispute Case](#) (Fashi [2015] No. 11 with amendment in 2020 incorporated)

## Business Takeaways / 启示

- **For Patent Owners / 对专利权人：**

The new interpretation gives you more certainty when enforcing utility model or design patents. You may proceed with litigation even if a PER is still pending or contains mixed conclusions. If you anticipate a favourable PER, obtaining it early can strengthen your negotiating position and help accelerate the case.

新司法解释使专利权人在维权时拥有更高的确定性。即便评价报告尚未出具或结论不完全有利，仍可顺利提起诉讼。若预期评价报告结果积极，尽早申请可增强维权力度并加快诉讼进程。

- **For Alleged Infringers / 对被控侵权人：**

A negative PER remains a valuable tool for challenging patent stability, although it is not decisive. You should still rely on technical analysis, prior-art searches, and other substantive defences. If the patent appears weak, proactively requesting a PER may strengthen your defence and create additional pressure on the patent owner.

负面评价报告仍是质疑专利稳定性的重要工具，尽管不具决定性作用。仍应结合技术分析、现有技术检索等其他抗辩理由。如认为涉案专利稳定性存疑，主动申请评价报告有助于强化自身抗辩并对权利人形成施压。

- **For Corporate IP Risk managers / 对企业中的 IP 风险管理者：**

PERs should be viewed as a strategic tool in both enforcement and defence planning. It is useful for assessing litigation risk, but it does not determine the ultimate outcome of a case. Before formally requesting a PER, consider conducting an internal or external patent stability assessment to better manage expectations and avoid unexpected results.

企业在制定维权或抗辩策略时，应将评价报告视为战略性辅助工具。其有助于评估诉讼风险，但不能直接决定案件结果。企业在申请官方评价报告前，可先进行内部或外部的专利稳定性评估，以更有效地管理预期并避免潜在风险。

## Additional Notes on PERs / 关于专利权评价报告的补充说明

- **Legal Nature:** A PER constitutes an authoritative technical assessment issued by the CNIPA, rather than an administrative decision. As such, it is not subject to administrative reconsideration or litigation<sup>4</sup>. However, the requester may petition the CNIPA for correction of potential errors within two months of receiving the report.

**法律性质：**专利权评价报告是由国家知识产权局作出的技术性权威评估，而非行政决定。因此，其结论不可提起行政复议或行政诉讼。但请求人可在收到报告后两个月内，就报告可能存在的错误请求国家知识产权局进行更正。

- **Uniqueness & Public Accessibility<sup>5</sup>:** Only one PER is issued for a given patent. Once issued, the report is uploaded to the official patent database and becomes part of the public file, accessible to any member of the public.

**唯一性与公开性：**一件专利仅出具一份专利权评价报告。报告一旦作出，即被录入官方专利数据库并成为公开文件，任何公众均可查阅。

- **Application Conditions:** The right to request a PER arises only after the patent grant announcement is published. Eligible requesters include:

- The Patent Owner: May apply at any time without providing additional justification.

<sup>4</sup> China Guidelines for Patent Examination, Part V, Chapter 10, section 1 Introduction

<sup>5</sup> Rule 63 of [Implementing Regulations of the Patent Law of PRC \(Amendment in 2023\)](#)

- Interested Parties (e.g., exclusive licensees): Must submit the request along with evidence of their legal interest (e.g., a copy of the license agreement).
- Alleged Infringers: Must submit the request accompanied by preliminary evidence of a legal dispute (e.g., a court case-filing notice, a cease-and-desist letter, or a platform takedown notice).

**申请条件:** 请求作出专利权评价报告的权利仅在专利授权公告公布后产生。符合条件的请求人包括:

- 专利权人: 可在授权公告后的任何时间提出请求, 无需提供额外理由。
  - 利害关系人 (例如独占被许可人): 需提交请求书及相关证明利害关系材料 (如专利实施许可合同副本)。
  - 被控侵权人: 需提交请求书及相关证明侵权纠纷存在的材料 (例如: 法院立案通知书、权利人发出的律师警告函或电商平台投诉通知)。
- **Official Guidelines:** The specific procedures, required documentation, and fees for applying for a PER are detailed in Chapter 11 of the Guidelines to Intellectual Property Government Services, accessible at <https://ggfw.cnipa.gov.cn/portal/helper/zhinan.pdf>.

具体的申请程序、所需文件及费用规定, 详见《知识产权政务服务事项办事指南》第十一章。

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