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## **Patent Reexamination Board Declares Viagra Patent Invalid**

On July 5, 2004, the Patent Reexamination Board of China's State Intellectual Property Office issued a decision to invalidate Pfizer's Viagra patent. In late 2001, the China Patent Office issued an invention patent to U.S.-based Pfizer for the use of the compound sildenafil citrate, the active ingredient in Viagra, for the treatment of erectile dysfunction (ED). Shortly after issuance, 13 domestic drug manufacturers requested that the patent be declared invalid. Based on the same 3 prior art references cited by the High Court of the U.K. when the corresponding application was invalidated in the U.K., the opponents alleged that the invention did not possess non-obviousness. In addition, the opponents alleged that the description was unclear and incomplete.

In its decision, the Patent Reexamination Board held that the description of the patent failed to meet the requirements of Article 26 of the China Patent Law. Article 26, paragraph 3, requires that the description "set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out...." Based on the disclosure of the description, and in light of the teaching of the prior art, the Board is of the opinion that without creative efforts, those "skilled in the art" would not be convinced that the compounds recited in the description would have a preventive or therapeutic effect on male ED. Therefore, the Board "could not believe that the technical embodiment of the claims is sufficiently disclosed in the description, and therefore does not comply with the requirement of Article 26, paragraph 3 of the patent law." However, the Board did not address the issue of non-obviousness in its decision.

According to the China Patent Law, if any party is not satisfied with the decision made by the Patent Reexamination Board, it may initiate legal proceedings before the court within 3 months of the date that it receives notification of the decision. It is reported that Pfizer is likely to appeal the decision to the Beijing Number One Intermediate Court.