



Featured Article

"Supported by the Description" and "Sufficient Disclosure": An Empirical Study of the Judicial Determination Standards under Paragraphs 3 and 4 of Article 26 of the Chinese Patent Law

Paragraph 3 of Article 26 of the Chinese Patent Law (which requires that the description disclose the invention or utility model in a clear and complete manner so that a person skilled in the art can carry it out) and paragraph 4 of Article 26 (which requires that the claims be supported by the description) are formal requirements frequently challenged in patent grant and invalidation proceedings; they are also the core provisions for testing whether the patent bargain of "disclosure in exchange for protection" has been honored. Drawing on the cases collected in the Annual Reports on Intellectual Property Cases issued by the Supreme People's Court (SPC) from 2010 to 2025 and the Summaries of Adjudication Key Points of the SPC Intellectual Property Tribunal, this article examines the determination standards under the two paragraphs respectively: for paragraph 4, the core test is whether the generalization in the claims is appropriate; for paragraph 3, the core test is predictability. The article then explores the relationship between the two paragraphs and other provisions of the Patent Law, the judiciary's consistent substance-over-form approach, and the rules on the admission of supplementary experimental data, and offers practical suggestions for patent drafting and for invalidation and litigation strategies.

I. Introduction

The essence of the patent system is "disclosure in exchange for protection": the applicant discloses the technical solution to the public through the description and, in return, obtains an exclusive right commensurate with the technical contribution. Paragraph 3 of Article 26 of the Patent Law ("Article 26.3") and paragraph 4 of Article 26 ("Article 26.4") correspond respectively to the two limbs of "disclosure" and "protection":

- Article 26.3 addresses whether the disclosure is adequate — the description must disclose the invention clearly and completely so that a person skilled in the art can carry it out; otherwise the applicant has failed to perform the duty of disclosure and no patent should be granted.
- Article 26.4 addresses whether the protection claimed is excessive — the scope of protection generalized in the claims must not exceed what is disclosed in the description and the applicant's technical contribution; otherwise the applicant would obtain an undue benefit exceeding the consideration given.

In Xiangbei Wellman's "anti- β -lactamase antibiotic composition" case [Case No. (2011) Xing Ti Zi 8], the Supreme People's Court articulated this systemic positioning clearly: the technical content disclosed in the description is the basis on which the

patent authority examines the patent, and also the basis on which the public learns, disseminates and exploits the patented technology. Technical solutions and technical effects not disclosed in the description generally cannot serve as the basis for assessing whether the patent satisfies the statutory requirements for grant or validity; holding otherwise would contradict the first-to-file principle and depart from the patent right's essential nature of disclosure in exchange for protection. At the same time, sufficient disclosure is only the minimum requirement imposed on the description — having satisfied it, the applicant is entitled to decide the specific scope of what is disclosed and to keep certain technical know-how in reserve, but must also bear the possible adverse consequences.

Judging from the adjudication trends disclosed in the SPC annual reports, disputes over the two paragraphs have long concentrated in the fields of chemistry, pharmaceuticals and biotechnology, and in recent years have also arisen in parameter-defined patents. The 2015 Annual Report noted that patent administrative cases mostly involved fundamental legal issues such as whether the description was sufficiently disclosed; the 2016 Annual Report further observed that, in cases in the chemical, pharmaceutical and biological fields, whether the description is sufficiently disclosed and whether the claims are supported by the description "remain relatively prominent legal issues." This

trend continues today: in the 2023–2025 Summaries of Adjudication Key Points, the rules under the two paragraphs have kept being refined for new forms of claims such as multivariable-equation limitations, protein sequence variants and genetically engineered strains. A systematic review of the determination standards under each paragraph and their coordination in application is therefore of direct practical value for patent drafting, invalidation and litigation.

II. The Determination Standard for Claims Being "Supported by the Description"

Although the specific rules under Article 26.4 vary with the form of the claims, the core test can be reduced to a single point: whether the generalization in the claims is appropriate, that is, whether the scope of protection defined by the claims is commensurate with the content disclosed in the description and with the applicant's technical contribution. The assessment is made from the perspective of a person skilled in the art and on the basis of the content disclosed in the description. The dividing line is this: if a person skilled in the art, using routine experiments or analytical methods on the basis of the disclosed content, can be reasonably confident that the technical solutions within the generalized scope can solve the technical problem to be solved by the invention, the generalization is appropriate; conversely, if undue burden

or broad theoretical speculation would be required to make that determination, or if there is reason to doubt that certain specific embodiments or alternatives covered by the generalization cannot solve the technical problem, the generalization is improper. The specific adjudication rules developed by the Supreme People's Court are all built around this core test.

1. Basis of assessment: the technical problem and technical effect recorded in the description

In the "electronic article surveillance marker" case [Case No. (2016) Zui Gao Fa Xing Zai 19], the Supreme People's Court held that where the scope of protection defined by a claim is so broad that it encompasses technical solutions that cannot solve the technical problem to be solved by the patent in suit or achieve the technical effect to be achieved, and a person skilled in the art, based on the sufficiently disclosed content of the description and the overall state of the prior art, still cannot reasonably identify and exclude such technical solutions, the claim should be found not "supported by the description" and thus contrary to Article 26.4 of the Patent Law. Correctly identifying the technical problem to be solved and the technical effect to be achieved by the patent in suit is therefore of great significance for determining whether the claims are supported by the description. In the same case, the Court further held that the technical problem and technical effect of the patent should be

determined in light of the defects of the background art, the object of the invention, the advantageous effects and the specific embodiments recorded in the description; the "technical problem actually solved" reconstructed in the "three-step method" for assessing inventiveness may differ from the technical problem stated by the patent itself, and cannot be directly used as the basis for determination under Article 26.4.

2. The matching requirement: commensurate with the disclosed content and the technical contribution

In the same "electronic article surveillance marker" case [Case No. (2016) Zui Gao Fa Xing Zai 19], the Supreme People's Court further made clear that the patentee is entitled to obtain a moderate scope of protection by way of reasonable generalization on the basis of the specific embodiments sufficiently disclosed in the description, and that the scope of protection defined by the claims should be commensurate with the technical contribution of the patent in suit and the scope sufficiently disclosed in the description.

3. The negative standard: "reasonable doubt" means no support

In Eli Lilly's "stereoselective glycosylation process" case [Case No. (2009) Zhi Xing Zi 3], the Supreme People's Court held that the technical solution for which a claim seeks protection must be one that a person

skilled in the art can derive or generalize from the sufficiently disclosed content of the description, and must not exceed the scope disclosed in the description; if the generalization in a claim gives a person skilled in art reason to doubt that one or more specific concepts or alternatives encompassed by the generic or parallel generalization cannot solve the technical problem to be solved by the invention and achieve the same technical effect, the claim should be found not supported by the description. In that case, 11 sets of data in the table examples of the description failed to produce β -anomer-enriched products, while claim 1 generalized "very broadly" over such conditions as the leaving group, the kind and equivalents of the nucleobase, the reaction temperature and the solvent. A person skilled in the art had reasonable grounds to believe that the generalized scope also covered numerous solutions that could not solve the technical problem, and that massive repeated experiments or undue burden would be needed to screen them out. The Supreme People's Court accordingly held that the patent should be invalidated because the claims were not supported by the description.

4. The positive standard: "reasonable confidence" means support

In the "cancer screening kit" case [Case No. (2022) Zui Gao Fa Zhi Xing Zhong 365], the Supreme People's Court stated the test in positive terms: the question is whether a person skilled in the art can be reasonably confident that the technical solution of the

claim can solve the technical problem to be solved by the invention and does not exceed the scope of the inventor's technical contribution. "Reasonable confidence" means that a person skilled in the art, using routine experiments or analytical methods rather than broad theoretical speculation on the basis of the content disclosed in the description, can reasonably generalize from the disclosed content to the scope of protection of the claim.

In Case Nos. (2020) Zui Gao Fa Zhi Xing Zhong 406 and 407, the Supreme People's Court held that where the scope of protection of a claim is defined jointly by two or more numerical-range technical features of different types, the claim should be found supported by the description if a person skilled in the art, upon reading the description, can determine the correspondence among the numerical-range features, can arrive at specific embodiments consistent with the object of the invention through a limited number of experiments, and can exclude the solutions that cannot achieve the object of the invention without undue burden.

In the *Novozymes* case [Case No. (2016) Zui Gao Fa Xing Zai 85], the Supreme People's Court held that for a biological-sequence claim drafted in the form of homology plus source and function limitations, the limiting effect of features such as homology, source and function on the biological sequence should be taken into account; if those limitations render the sequences covered by the claim extremely

limited, and it can be foreseen from the content disclosed in the description that all of these extremely limited sequences can achieve the object of the invention and attain the expected technical effect, the claim is supported by the description.

In Case No. (2021) Zui Gao Fa Zhi Xing Zhong 448, the claim protected a protein consisting of a defined amino acid sequence, whereas the experimental data in the description had been obtained not with the protein itself but with a glycosylated protein. The Supreme People's Court held that whether experimental data obtained in such circumstances can support the amino acid sequence defined in the claim should be assessed comprehensively in light of the characteristics of protein inventions and the role played by glycosylation in the protein invention. Ultimately, the Court allowed, for protein patents that define only the amino acid sequence, the technical effect to be proved by experimental data obtained with glycosylated proteins expressed in different host cells, reasoning that a wholesale refusal to accept such data "would conform neither to the natural law that proteins are obtained through genetic engineering, nor to the fact that claims of this type of invention patent typically define only the amino acid sequence."

In the "detergent" case [Case No. (2025) Zui Gao Fa Zhi Xing Zhong 773], the Supreme People's Court further held that for claims involving protein sequence variants,

support by the description may be found where a person skilled in the art, based on the content disclosed in the description and in combination with the structure-effect relationships of related proteins disclosed in the prior art, can distill the regularities among the positions and numbers of the variants and their effects, and can reasonably arrive at the claim by generalization on that basis.

III. The Determination Standard for "Sufficient Disclosure" of the Description

The statutory formulation of Article 26.3 is that a person skilled in the art "can carry out" the invention, and the core of its determination can be reduced to predictability: can a person skilled in the art, with the knowledge level and cognitive ability available before the filing date and on the basis of the content disclosed in the description, predict and carry out the technical solution of the claims and solve the technical problem to be solved by the invention? The higher the predictability, the lighter the disclosure burden on the description — sufficiency may even be found without any experimental data; the lower the predictability, the more technical teaching, experimental data or verification pathways the description must provide, failing which the disclosure is insufficient.

1. Rules of examination

Object of examination: the technical solution defined by the claims. In Case No. (2020) Zui Gao Fa Zhi Xing Zhong 520, the Supreme People's Court held that whether a description is sufficiently disclosed should be assessed with the technical solution defined by the claims and the technical problem to be solved thereby as the object, and the standard is whether a person skilled in the art, after reading the description, can carry out that technical solution and solve that technical problem; content of the description unrelated thereto generally has no bearing on the sufficiency assessment. This rule prevents the practice of denying sufficient disclosure on the basis of irrelevant defects in the description.

Focus of examination: where the technical contribution lies. In Zhizhen v. Apple [Case No. (2017) Zui Gao Fa Xing Zai 34], the Supreme People's Court held that in the specific-embodiments section of the description, technical features of the closest prior art, or features common to the invention and the closest prior art, generally need not be described in detail; whether the disclosure is sufficient is judged by whether a person skilled in the art can carry out the technical solution. In other words, what the description needs to set out in detail is where the technical contribution of the invention lies; common knowledge already possessed by a person skilled in the art may be described briefly or even omitted.

Order of examination: first confirm that the solution can be carried out, then confirm whether the technical problem is solved and the technical effect achieved. In the "atorvastatin" case [Case No. (2014) Xing Ti Zi 8], the Supreme People's Court held that there is a logical sequence between the reproduction of the technical solution and the assessment of whether the technical problem has been solved and the technical effect produced: one should first confirm whether a person skilled in the art can carry out the technical solution based on the content disclosed in the description, and only then confirm whether the technical problem has been solved and the technical effect achieved. In the same case, the Court held that the description of a product invention in the chemical field should record the confirmation, preparation and use of the chemical product.

2. Determination standards in the fields of chemistry, pharmaceuticals and biology

Technical effects in the fields of chemistry, pharmaceuticals and biotechnology depend heavily on experimental verification, and predictability is relatively low; these are therefore the fields where disputes under Article 26.3 are most concentrated and the rules most refined.

In the Tanabe Mitsubishi case [Case No. (2015) Zhi Xing Zi 352], the Supreme People's Court held that for a patent application for a chemical product, the use and/or use effect of the product should be

fully disclosed; if a person skilled in the art cannot predict from the prior art that the invention can achieve the stated use and/or use effect, the description should further record qualitative or quantitative experimental data sufficient to prove to a person skilled in the art that the technical solution of the invention can achieve the stated use and/or attain the expected effect. Echoing this, in the Qilu Pharmaceutical case [Case No. (2021) Zui Gao Fa Xing Zai 283], the Supreme People's Court held that where a person skilled in the art, with the knowledge level and cognitive ability available before the filing date, can predict that the invention can achieve the stated use, the requirement of sufficient disclosure of the use is satisfied even if the description does not record experimental data sufficient to prove that the invention can achieve that use. Reading the two cases together, the determination standard under Article 26.3 is fairly clear: where the result is predictable, the disclosure is sufficient even without experimental data; where it is not, the description must contain data.

The Supreme People's Court has further elaborated on what "predictability by a person skilled in the art" means in two specific fields. For patents on traditional Chinese medicine compositions, in Case No. (2021) Zui Gao Fa Zhi Xing Zhong 593, the Court held that where a TCM composition patent defines the content of its components by numerical ranges and the description proves the technical effect with clinical experimental data, sufficient

disclosure may generally be found if a person skilled in the art can reasonably expect that increases or decreases in dosage within the stated range would not alter the basic compatibility relationship and efficacy of the technical solution used in the clinical experimental data. For genetic engineering patents, in the "Sphingomonas engineered strain" case [Case No. (2024) Zui Gao Fa Zhi Xing Zhong 1241], the Court held that for an invention concerning an engineered strain obtained in the field of microbial genetic engineering by means of gene overexpression, sufficient disclosure may generally be found where the synthetic product of the strain has a clear association with existing known strains or processes, and the practicability of the technical solution can be demonstrated through such means as the deposited strain recorded in the description, gene sequences transferred from the prior art, and functional verification.

3. Sufficient disclosure of parameter-defined features

In recent years, the drafting practice of defining claims by parameters has attracted increasing attention, and the sufficient-disclosure rule is not confined to the chemical and pharmaceutical fields but has more general significance. As the relevant cases show, the determination standard for sufficient disclosure of parameter-defined features is substantially the same as that in the chemical and pharmaceutical fields.

In the "ion-exchange glass" case [Case No. (2022) Zui Gao Fa Zhi Xing Zhong 361], the Supreme People's Court held that where a product claim is defined by parameters or parameter ranges, the description satisfies the requirement of sufficient disclosure only when a person skilled in the art can determine that a product meeting the parameter conditions of the claim can be obtained on the basis of the content of the description.

In Case No. (2021) Zui Gao Fa Zhi Xing Zhong 1071, the Supreme People's Court held that where a claim contains a technical feature defined by an equation involving two or more characteristic-value technical variables, i.e., parameters, the description of the invention should clearly record the relationship between the numerical ranges selected for the equation and the technical effect obtained. Within the numerical ranges of the relevant parameters involved in the equation, all values should in principle be disclosed to such a degree that the desired technical effect can be achieved without creative labor or undue burden, so that a person skilled in the art, when carrying out the invention, knows whether the value or value interval of the parameter he or she has determined solves the technical problem and achieves the technical effect asserted in the description, rather than obtaining the corresponding technical effect only by following the values disclosed in the specific embodiments of the description. Furthermore, where the assessment of sufficient disclosure

involves the description of the method for determining a parameter, the less conventional the method, the clearer and more detailed the information that should be provided in the description. If the parameter information is unclear, such that a person skilled in the art cannot identify the necessary technical means for solving the problem of the patent on the basis of the overall disclosure and using common technical knowledge, the description can be found not to satisfy the requirement of sufficient disclosure.

IV. Systemic Coordination in the Application of the Two Paragraphs

Article 26.3 and Article 26.4 do not operate in isolation. They sit within the entire system of patent grant and validity standards, connected on one side to the duty of disclosure imposed on the description and on the other side to the scope of protection of the claims, and are intertwined with such institutions as inventiveness, practical applicability, essential technical features, claim construction and the amendment of application documents — they may even bear on the determination of equivalent features and prosecution history estoppel.

1. The common judicial orientation in applying the two paragraphs

In applying the two paragraphs, the Supreme People's Court has consistently

adhered to a substance-over-form approach: formal defects in the application documents must not be mechanically magnified into fatal flaws, and formal compliance must not be allowed to mask substantive defects. Whether it is a drafting error in the claims, an erroneous record in the description, the formal dependency relationship among claims, or an amendment made in grant or invalidation proceedings, the substance must prevail — whether a person skilled in the art can uniquely determine the correct content, whether an amendment substantively abandoned a technical solution, and whether a restriction is substantively reasonable — rather than fixating on the literal wording.

Drafting errors or improprieties do not necessarily render a patent ungrantable.

In the "precision rotary compensator" case [Case No. (2011) Xing Ti Zi 13], the Supreme People's Court held that a drafting error in a claim does not necessarily mean that the claim is not supported by the description; if a person skilled in the art can determine the only correct understanding based on the description and drawings, the technical solution protected by the claim should be determined according to the corrected understanding, and support should then be assessed on that basis. In the Stäubli case [Case No. (2016) Zui Gao Fa Xing Zai 95], the Supreme People's Court held that whether a description is clear and complete should be judged by whether a person skilled in the art can understand the technical solution and carry it out; if a person skilled

in the art, when reading the disclosed content of the description, can understand, identify and correct an error therein, and such understanding and correction would not change the technical solution of the claims, a corrected understanding of the error in the description should be permitted. In the Jiahua case [Case No. (2011) Zhi Xing Zi 17], the Patent Reexamination Board declared the patent entirely invalid on the ground that the claims were not supported by the description, and refused to accept the patentee's amended text changing the dosage ratio from "1:10-30" to "1:30," the optimal dosage ratio expressly recommended in the original description. The Supreme People's Court held that the amendment neither exceeded the scope recorded in the original description and claims nor enlarged the scope of protection; if such an amendment were disallowed merely because the manner of amendment was unconventional, the restriction on amendment would "become purely a punishment for the patentee's improper drafting of the claims," which lacks reasonableness.

Joint examination and independent judgment of dependent claims. In the "coated steel strip" case [Case No. (2023) Zui Gao Fa Zhi Xing Zhong 1280], the Supreme People's Court established the rule of transmission of support defects: where a claim is not supported by the description, a dependent claim thereof is likewise not supported if its additional technical features fail to overcome the same defect;

where another claim satisfying the unity requirement incorporates that claim by reference, it is likewise not supported if its newly added technical features fail to overcome the same defect. In Case No. (2014) Xing Ti Zi 32, the Supreme People's Court held that for a claim that is formally dependent but has substantively replaced a specific technical feature of the independent claim, the scope of protection should be determined according to the substantive content of the technical solution it defines, and support by the description should be assessed on that basis.

2. The relationship between the two paragraphs and other provisions

The various patentability conditions under the Patent Law each have their own division of labor: novelty and inventiveness answer "whether the invention qualifies"; practical applicability answers "whether the solution can be used"; the essential-technical-features rule in the Implementing Regulations answers "whether the solution is complete"; and Article 26.3 and Article 26.4 respectively answer "whether the disclosure is adequate" and "whether the generalization is proper." These provisions are independent of one another, each performing its own function; they cannot replace one another, nor may the examination under one provision absorb the examination under another. Yet they all point to the same goal — ensuring that the scope of protection of a patent

corresponds to the disclosed technical contribution — and must therefore work in coordination. The Supreme People's Court's handling of the relationships among these provisions in the following cases reflects precisely this division of labor and cooperation.

Relationship with inventiveness: separate functions, no mutual absorption. In the "electronic article surveillance marker" case [Case No. (2016) Zui Gao Fa Xing Zai 19], the Supreme People's Court held that even if a claim possesses inventiveness, whether each technical feature recorded therein — including the distinguishing features — is appropriately generalized must still be independently determined under Article 26.4. In the "binding molecule" case [Case No. (2019) Zui Gao Fa Zhi Xing Zhong 127], the Supreme People's Court emphasized that the assessment of inventiveness and the legal requirements of sufficient disclosure of the description and support of the claims by the description have different functions and follow different logics under the Patent Law; matters that in essence belong to the examination of sufficient disclosure and the like should in principle not be drawn into the inventiveness assessment, since doing so would not only overburden the inventiveness assessment, but also discourage the parties from substantively debating the issues of sufficient disclosure and support, and might even leave those legal requirements unexamined. In short, inventiveness cannot absorb or exempt the examination under Article 26.3 and Article

26.4, and issues under those two paragraphs cannot be forced into the inventiveness assessment either.

Relationship between Article 26.4 and essential technical features: dual assessment. In the "motor vehicle bracket" case [Case Nos. (2014) Xing Ti Zi 13–15], the Supreme People's Court held that where an independent claim lacks essential technical features and thus contravenes the relevant provision of the Implementing Regulations of the Patent Law, it is generally also not supported by the description and contravenes Article 26.4. The two provisions here form a "dual assessment": the same defect may simultaneously constitute two independent grounds for invalidation.

Relationship between Article 26.3 and practical applicability: different standards, no necessary connection. In the "magnetic-levitation magnetic-energy motor" case [Case No. (2016) Zui Gao Fa Xing Shen 789], the Supreme People's Court drew the line between Article 26.3 and Article 22.4 (practical applicability): "capable of being made or used" in the practical-applicability sense means that the technical solution of the invention or utility model has the possibility of being made or used in industry; "can be carried out" under Article 26.3 means whether a person skilled in the art can carry out the invention or utility model based on the content of the description. The two standards are different, and there is no necessary connection between them.

Relationship with claim construction: construction should adapt the scope of protection to the scope disclosed. In the "mercury-free alkaline button cell" case [Case No. (2012) Xing Ti Zi 29], the Supreme People's Court held that when the description and drawings are used to interpret the claims, the interpretation should be based on the description so that the scope of protection corresponds to the scope disclosed in the description. This in effect extends the requirement of Article 26.4 into the realm of claim construction: even at the level of claim construction, the scope of protection must not exceed the scope disclosed in the description.

3. Admission of supplementary experimental data

Whether experimental data filed after the filing date can be used to prove sufficient disclosure, support of the claims by the description, or even inventiveness is an evidentiary question common to Article 26.3, Article 26.4 and inventiveness. The Supreme People's Court's rules may be summarized as "liberal at the threshold, strict at the gate": Article 26.3, Article 26.4 and inventiveness all apply the same set of principles, differing mainly in the content of the fact to be proved.

At the admission threshold: data must not be rejected merely because they were filed after the filing date. The "atorvastatin" case [Case No. (2014) Xing Ti Zi 8] already made clear that experimental evidence submitted after the filing date to

prove sufficient disclosure of the description should be considered if it can prove that a person skilled in the art, with the knowledge level and cognitive ability available before the filing date, could carry out the invention through the content disclosed in the description; such evidence cannot be refused solely because it was submitted after the filing date. Case No. (2019) Zui Gao Fa Zhi Xing Zhong 33 further made clear that where a pharmaceutical patent applicant or patentee submits supplementary experimental data after the filing date, asserting that the data prove the inventiveness of the patent application or patent, or that the claims are supported by the description, the people's court should review them.

At the scrutiny level: the fact to be proved must already be recorded, and the data must not cure an inherent defect. In Case No. (2019) Zui Gao Fa Zhi Xing Zhong 33, the Supreme People's Court held that where the original application documents expressly recorded or implicitly disclosed the fact to be proved that the supplementary experimental data are intended to prove directly, and the applicant is not using the supplementary data to overcome an inherent defect of the original application documents, the data may be accepted. In Case No. (2022) Zui Gao Fa Zhi Xing Zhong 15, the Supreme People's Court further refined the "fact to be proved" rule: the fact to be proved directly by supplementary experimental data must have been expressly recorded or implicitly disclosed in the original

application documents, meaning that a person skilled in the art can determine it directly and without any doubt; if the fact to be proved itself was neither expressly recorded nor implicitly disclosed in the original application documents and needs to be established by the supplementary experimental data themselves, the data should not be accepted. In the "semaglutide" case [Case No. (2023) Zui Gao Fa Zhi Xing Zhong 1282], the Supreme People's Court held that, in the assessment of inventiveness, the review of whether supplementary experimental data should be accepted concerns whether the patent applicant expressly or implicitly asserted the fact that the technical solution of the patent achieves a superior technical effect over the prior art, and whether that fact can be accepted with reasonable confidence by a person skilled in the art. If a person skilled in the art can be reasonably confident in the applicant's assertion in the original application documents, the applicant should be permitted to prove the previously asserted fact with evidence submitted after the filing, in response to the specific dispute in the inventiveness assessment.

Taking these cases together, supplementary experimental data are governed by the same set of principles under all three provisions — the fact to be proved must already have been disclosed in the original application documents, and the data must not be used to overcome an inherent defect of the original documents; the difference lies only in the content of the

fact to be proved, which varies with the regulatory direction of each provision. Under whichever provision, supplementary experimental data can only "prove" facts already disclosed in the original application documents, and cannot "supplement" content that the original application documents never disclosed — this is the uniform boundary that the first-to-file principle and the essence of "disclosure in exchange for protection" draw for after-filed evidence.

V. Practical Implications

Taken as a whole, the Supreme People's Court has developed a relatively stable set of standards for reviewing the two paragraphs: Article 26.4 looks at whether the generalization is appropriate — that is, whether a person skilled in the art, based on the content disclosed in the description and through routine experiments or analysis, can be reasonably confident that all solutions within the generalized scope can solve the technical problem, so that the scope of protection is commensurate with the technical contribution; Article 26.3 looks at predictability and feasibility — in fields of high predictability the disclosure burden is light, while in fields of low predictability the description must record the use, the effects and the experimental data. At the same time, the application of both paragraphs insists on substantive judgment without dwelling on formal defects; and for experimental data filed after the filing date, the uniform boundary is whether the fact to be proved was already

disclosed in the original application documents.

For patent drafting, the most fundamental point is to complete, on the filing date, a disclosure and a generalization commensurate with the technical contribution. The generalization of the claims should be structured in layers with fall-back positions, each layer supported by corresponding embodiments, and one should avoid broad generic generalization where the description already contains failed examples. The description should explain clearly what problem the invention solves, how it solves it, and what effects it achieves; in the chemical, pharmaceutical and biological fields in particular, the issue of predictability must be squarely addressed, and one cannot count on after-filed data to make up for defects in the application documents themselves. Where parameter-based limitations are adopted, it is all the more necessary to record the pathways for obtaining the solution and verifying the effect.

For invalidation and litigation, both the attacking and the defending side should organize their arguments and evidence around the above standards. In addition, the value of the prosecution file in grant and invalidation proceedings should not be underestimated: amendments made by the patentee to overcome a lack-of-support defect may trigger prosecution history estoppel in infringement litigation, and both sides should carefully examine the office actions and the applicant's

observations. Where supplementary experimental data are involved, the battleground should be whether the fact to be proved was expressly recorded or implicitly disclosed in the original application documents.

VI. Conclusion

Article 26.3 and Article 26.4 of the Patent Law are the judicial enforcement of the bargain of "disclosure in exchange for protection." The Supreme People's Court's adjudication practice over the past two decades shows that: review under Article 26.3 centers on predictability — it examines not only whether the written record is complete, but closely scrutinizes whether a person skilled in the art "can carry out" the invention as a substantive review; review under Article 26.4 centers on the appropriateness of the generalization — it combines the boundary question of "whether the claims exceed the scope of disclosure" with the interest-balancing question of "whether the generalization corresponds to the technical contribution." The two paragraphs each keep their own place alongside such institutions as inventiveness, yet echo one another through the substance-over-form orientation and the unified rules on supplementary experimental data. For patentees, the truly effective response is not tactical evasion, but completing, on the filing date, a disclosure and a generalization commensurate with the technical contribution — this is precisely what these two provisions of the Patent Law are meant to achieve.

Appendix: Case Index

Case No.	Source
(2009) Zhi Xing Zi No. 3	2010 Annual Report
(2009) Min Ti Zi No. 20	2010 Annual Report
(2011) Zhi Xing Zi No. 17	2011 Annual Report
(2011) Xing Ti Zi No. 8	2011 Annual Report
(2011) Xing Ti Zi No. 13	2012 Annual Report
(2012) Xing Ti Zi No. 29	2012 Annual Report
(2014) Xing Ti Zi Nos. 13–15	2014 Annual Report
(2014) Xing Ti Zi No. 32	2015 Annual Report
(2014) Xing Ti Zi No. 8	2015 Annual Report
(2016) Zui Gao Fa Xing Zai No. 85	2016 Annual Report
(2015) Zhi Xing Zi No. 352	2016 Annual Report
(2016) Zui Gao Fa Xing Shen No. 789	2016 Annual Report
(2016) Zui Gao Fa Xing Zai No. 19	2017 Annual Report
(2016) Zui Gao Fa Xing Zai No. 95	2017 Annual Report
(2019) Zui Gao Fa Zhi Xing Zhong No. 127	2019 Annual Report / 2019 Summary of Adjudication Key Points
(2020) Zui Gao Fa Zhi Xing Zhong Nos. 406, 407	2020 Annual Report / 2020 Summary of Adjudication Key Points
(2017) Zui Gao Fa Xing Zai No. 34	2020 Annual Report
(2020) Zui Gao Fa Zhi Xing Zhong No. 520	2021 Summary of Adjudication Key Points
(2021) Zui Gao Fa Xing Zai No. 283	2022 Annual Report
(2019) Zui Gao Fa Zhi Xing Zhong No. 33	2023 Summary of Adjudication Key Points
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(2024) Zui Gao Fa Zhi Xing Zhong No. 1241	2025 Annual Report / 2025 Summary of Adjudication Key Points
(2025) Zui Gao Fa Zhi Xing Zhong No. 773	2025 Summary of Adjudication Key Points
(2023) Zui Gao Fa Zhi Xing Zhong No. 1282	2025 Summary of Adjudication Key Points

"Annual Report" refers to the Annual Report on Intellectual Property Cases of the Supreme People's Court (知识产权案件年度报告); "Summary of Adjudication Key Points" refers to the Summary of Adjudication Key Points of the Intellectual Property Tribunal of the Supreme People's Court (知识产权法庭裁判要旨摘要). Docket-number abbreviations are romanized from the Chinese: Zui Gao Fa = Supreme People's Court; Xing Zai / Xing Shen / Xing Ti Zi / Zhi Xing Zi / Zhi Xing Zhong / Min Ti Zi denote the respective docket series.

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Ms. Chen specializes in intellectual property legal services. Well-versed in patent prosecution and examination procedures, she excels in a full spectrum of IP practices, including patent infringement litigation, patent invalidation proceedings, patent-related administrative litigation, IP licensing, trade secret and non-compete matters, as well as IP strategy formulation.

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