

# Protecting Your Inventions in China

## — Update in Legal Changes

Lisa Lu , 12 July 2023





# China IP SME Helpdesk

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## Guide

1. Introduction
2. Types of Patents and Terms of Protection
  - A. Invention Patents
  - B. Utility Models
  - C. Design Patents
3. Application/Registration Procedure in China
4. Enforcement of Patent Rights in China
5. Open license system
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7. Take-Away Messages
- B. Related Links

# Guide to Patent Protection in China

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## GUIDE

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# Industry 4.0 and IP Protection

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Six EU-funded helpdesks offer free resources to your small or medium-sized business to help you manage your intellectual property.

<https://ec.europa.eu/ip-helpdesk>



# Speaker's Bio



## **Lisa Lu**

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Lisa Lu is the IP Business Advisor at China IP SME Helpdesk in Beijing, where she advises European SMEs on intellectual property rights matters. She holds a double master's degree in law from the China University of Political Science and Law and University of Hamburg. Before joining the China IP SME Helpdesk at the European Chamber, Lisa worked as a trademark attorney for the Ferrante Intellectual Property and Chang Tsi & Partners. She mainly focused on the fields of trademark prosecution, trademark enforcement, copyright protection and unfair competition. During her time working in both law firms, she dealt with a variety of clients including but not limited to automotive performance, media, entertainment, new energy, apparel, architecture design, data management, e-commerce, household products, HVAC, and fire & security. Her clients included a range of globally leading companies and small and medium-sized enterprises (SMEs). Lisa is fluent in Chinese and English.



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# 01 | Overview of patent protection in China

## 1.1 The importance of innovation protection in China

- IP strategy: patent, copyright, trade secret
- Exploiting the IP
- Enforceable



# 01 | Overview of patent protection in China

## 1.2

### Invention patents vs Utility models vs Design patents

- Invention patents: new technical solutions or improvements to a product or process, functionality. 20 years of protection.
- Utility models: products with new shape or structural physical features, functionality. 10 years of protection.
- Design patents: the aesthetic aspects of the product, non-functionality. 15 years of protection

- *The new method of the AR glass, such as displaying virtual information in a view of a real environment*  
→ Invention patents
- *The structure of the AR glass*  
→ Utility models
- *The aesthetic details of the AR glass*  
→ Design patents

# 01 | Overview of patent protection in China

## 1.3

### Principles

- First to file
- Territorial right
- Registration
- Absolute novelty

## 1.4

### Exemption of absolute novelty (6 months before application)

- International trade fairs sponsored or recognized by the Chinese Government
- Public interests
- Academic or technological conference
- Leakage without consent



# 02

## Patent registration in China

### 2.1

#### Two routes

- **National:** directly with the CNIPA.  
Priority claims: 12 months for invention and utility model;  
6 months for design patent
- **International:**
  - PCT: invention patent and utility model
  - Hague system: design



# 02 | Patent registration in China

## - National patent registration

### 2.2 Registration procedures: invention



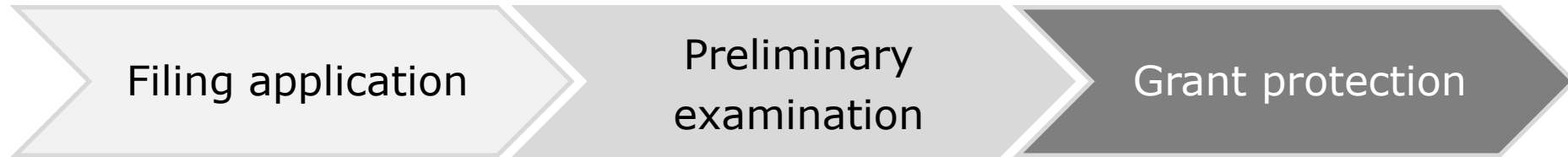
Average Duration of Registration Procedure: 3-6 years

# 02

## Patent registration in China - National patent registration

### 2.3

Registration procedures: utility model & design



Average Duration of Registration Procedure: 1 year



# 02

## Patent registration in China - National patent registration



### 2.4

#### Parallel filing of a UM and an invention patent

- parallel filing on exactly the same day, with a declaration  
→ abandon UM once the invention patent is officially granted



#### *Advantages:*

- Compensating the lack of protection while the invention patent is still pending
- Extension protection term

# 03

## Foreign Filing License (FFL) -“Made-in-China” innovation

### 3.1

#### Conditions

- “Made-in-China” innovation
- Invention or Utility model
- Patent protection in China and abroad



### 3.2

#### Options

- Requesting an FFL from the CNIPA
  - Filing the patent abroad
  - Filing a Chinese patent later
- Filing a Chinese patent
  - Requesting an FFL at the time of or after filing a Chinese patent
  - Filing the patent abroad
- Filing a PCT application via the CNIPA

# 04 | Highlights of 2020 patent law amendments

IPR *Increased the statutory damages: 5 million RMB (around 640,000 EUR)*

IPR *Punitive damages in cases of intentional patent infringement: 5 times the estimated damages*

IPR *Evidence collection: infringing party to provide financial information about the gains made from the infringement*

IPR *Design patent extension (Hague system): design patent term will be extended from 10 years to 15 years*

IPR *Partial designs: graphic user interface (GUI) without the product displayed*

IPR *Patent term extension: for delay of invention patent*

IPR *Patent Linkage system: pharmaceutical patent, regulatory approval process with the China Food and Drug Administration*

IPR *Open license system: voluntarily license and reduction of annul fees*

# 05

## Unpatentable innovation - Copyright and trade secret



### 5.1

#### Copyright protection

- Applicable innovation :
  - Software
  - Algorithms
  - Databases
  - Unpatentable industrial design
- Protection method:
  - Voluntary registration
  - Blockchain registration

### 5.2

#### Trade secrets

##### - 3 conditions

- The information/data is not public
- Commercial value
- Appropriate measures have been taken to keep the information secret

# 05

## Unpatentable innovation - Copyright and trade secret



### 5.3

#### How to protect trade secrets

- Identify and catalogue your trade secrets
- Use a combination of physical, technical and contractual barriers
- Document trade secret protection measures you take, in case of a dispute later on
- Implement a trade secret protection policy within your company, making sure your employees understand your expectations
- Consider non-disclosure agreements before entering negotiations with third parties

## 06 | Take-away messages



- ✓ Fully assess the innovation and establish your intellectual property rights protection strategy including patents, copyright, trade secrets, etc.
- ✓ Apply for the relevant patents before using your product in the China market.



- ✓ Proceed with a parallel filing of Utility Model (UM) and invention patent.
- ✓ For made-in-China innovation, request an FFL from CNIPA when filing a Chinese patent.



- ✓ Contact the China IP SME Helpdesk ***question@china-iprhelpdesk.eu***



## Questions?

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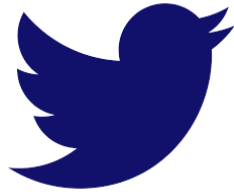


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