

Lisa Lu, 29 June 2023

# DESIGN

**Protection in China**

Session I

**Design Patent Registration in China**



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## FREE OF CHARGE!

**FACTSHEET**

- 1. THE FACTS: Business in Mainland China for EU Companies**
  - Size of Market
  - Key INDUSTRY SECTORS
- 2. IPR in Mainland China for SMEs: BACKGROUND**
  - Intellectual Property Rights for SMEs: Why is this RELEVANT to you?
  - How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?
- 3. IP Rights in Mainland China: THE BASICS**
  - A. Copyright
  - B. Patents
  - C. Trade Marks
  - D. Geographical Indications (GIs)
  - E. Trade Secrets
- 4. Using CUSTOMS to block counterfeiters**
- 5. Enforcement of rights**
  - Administrative actions
  - Civil Litigation
  - Criminal Prosecution
- 6. RELATED LINKS and Additional Information**

**IP Factsheet: Mainland China**

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**Guide**

- 1. Introduction**
- 2. Copyright**
- 3. Industrial Designs**
- 4. Trade Marks**
- 5. Trade Secrets**
- 6. Preventative Measures for IP Protection**
- 7. Take-Away Message**

**IPR Protection in China for the Creative Industries**

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# INTELLECTUAL PROPERTY ADVICE FOR YOUR BUSINESS



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**

IP Business Advisor

@ *China IP SME Helpdesk*

[Lisa.lu@china-iprhelpdesk.eu](mailto:Lisa.lu@china-iprhelpdesk.eu)

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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- 02 Registration procedures:
  - National design patent
  - International design
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- 04 Difference between the EU's and China's design protection systems
- 05 Take-away messages



# 01

## Overview of design patent protection in China

### 1.1

What to protect:  
aesthetic features (shape, pattern, colour)

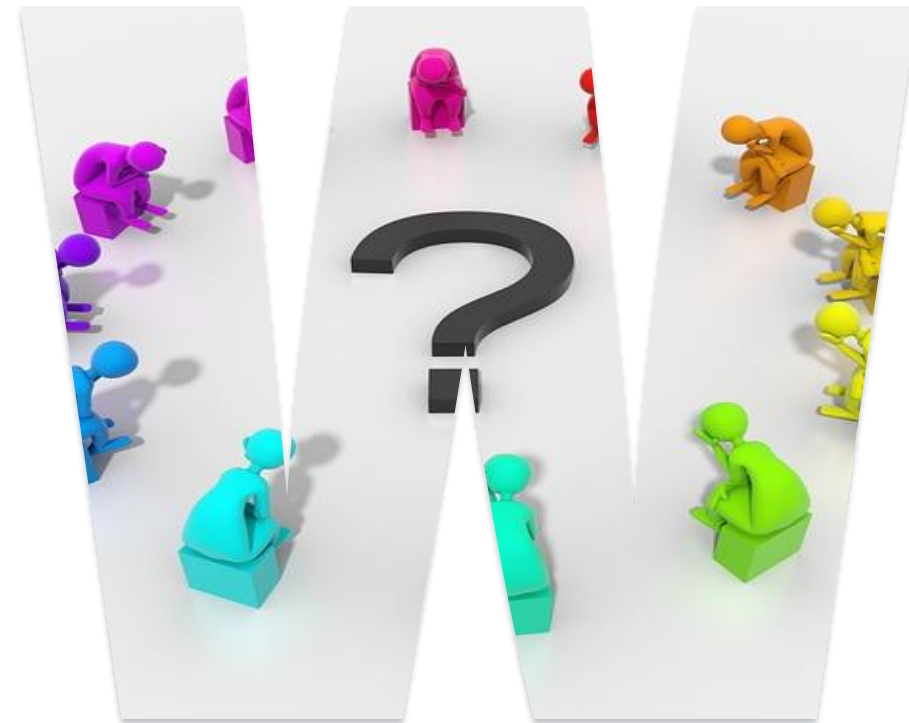
- The shape of a product
- The pattern of a product
- The shape and pattern of a product
- The shape and colour of a product
- The shape, pattern and colour of a product

*× Functional*

*× Colour alone*

*✓ Graphic user interface (GUI)*

*with/without the product  
displayed*



# 01

# Overview of design patent protection in China

## 1.2

### Design patent vs invention patents and utility models

- 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 materials/components of the chairs*  
→ Invention patents
- *The shape of the chair that can release the pain*  
→ Utility models
- *The aesthetic details of the chair*  
→ Design patents

# 01 | Overview of design patent protection in China

## 1.3

### Why to protect

- Exploiting the patent
- Enforceable
- Customs recordal: import and export

## 1.4

### Two routes

- National patent: directly with the *CNIPA*
- International design: *Hague System*



# 01 | Overview of design patent protection in China

## 1.5

### Principles

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

## 1.6

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

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



# 02 | Registration procedures - National design patent

## 2.1 Registration procedures



Average Duration of Registration Procedure: 1 year

Local Chinese patent attorney is required.

Preliminary examination: Formalities; Novelty (application documents and the common sense of the average consumer); Notice of amendment or letter of examination opinion.



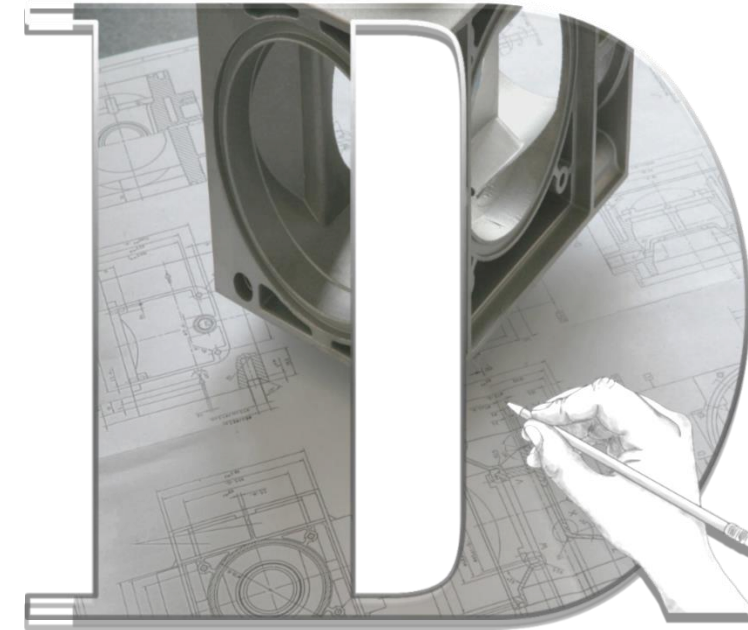
# 02

## Registration procedures - National design patent

### 2.2

#### Required documents

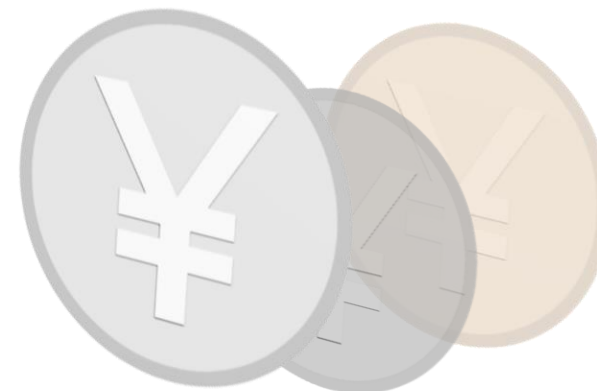
- Design application form
- Drawings or photos (where an applicant seeks protection of colours, drawings or photographs in colour shall be submitted)
- A brief description of the design (Name of the product carrying the claimed design; intended use of the product carrying the claimed design; design elements; A picture or photograph that best illustrates the main points of the design; the colours to be protected)



## 02

# Registration procedures

## - National design patent



## 2.3

## Costs

Descriptions	CNY	EURO
<b>I. Filing Fee</b>	500	64
II. Printing Fee for Publishing the Application	50	6
III. Fee for Claiming Priority (Each Claim)	80	10
IV. Annual Fee		
1-3 Years (Each Year)	600	76
4-5 Years (Each Year)	900	115
6-8 Years (Each Year)	1,200	152
9-10 Years (Each Year)	2,000	254
11-15 Years (Each Year)	3,000	380
V. Fee for Certification of Copies of Patent Document (Each Copy)	30	4

# 02

## Registration procedures - International design

### 2.4

#### Advantage of international filing:

- Filing one international application in one language, English, French or Spanish, to registered in more than 90 countries.
- Pay one set of fees in a single currency (Swiss francs)
- Renew and manage your registration directly through WIPO

#### Hague System membership



# 02

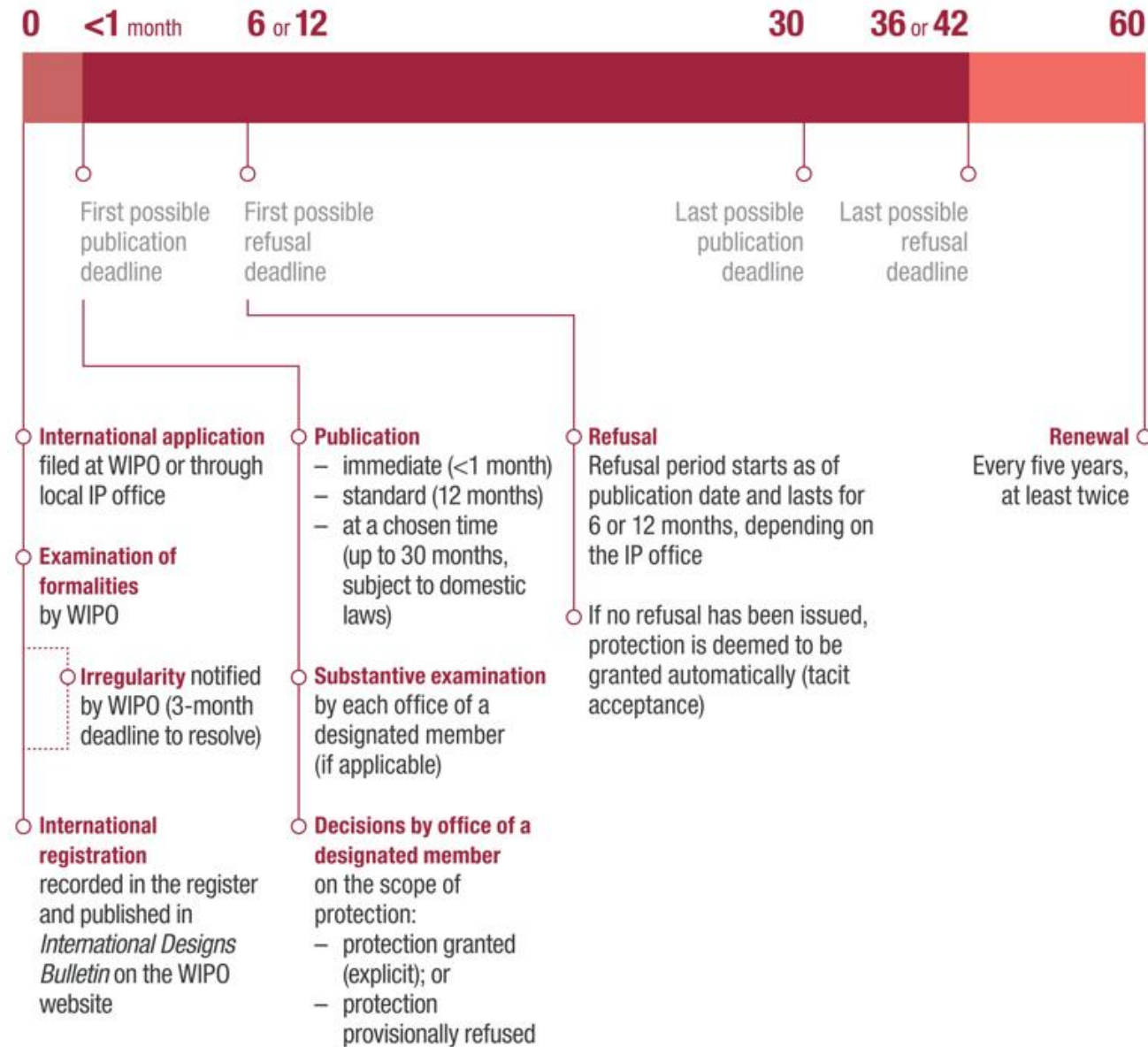
## Registration procedures

### - International design

#### 2.5

#### The Hague System procedure

- Direct filing or indirect filing with WIPO
- Examination of formalities by WIPO and irregularity
- Substantive examination by national office
- Additional application for registration certificate in Chinese



# 02 | Registration procedures - International design



## 2.6

### Costs

International registration basic fee	397
<b>China (CN)</b>	
Individual designation fee	603
<b>SUB TOTAL: Swiss francs (CHF)</b>	<b>1000</b>
Publication of reproductions (1 x 17.00)	17
<b>TOTAL: Swiss francs (CHF)</b>	<b>1017</b>

<https://www.wipo.int/hague/en/fees/calculator.jsp>



# 03 | Post-grant actions

- Protection term in China: *15 years*
- Invalidation
- Patent evaluation report
- Setting up profiles in e-commerce platforms with registration certificate
- Record with General Administration of Customs in China (GACC)



# 04

## Difference between the EU's and China's design protection systems

The rights

Community Design vs. Patent rights

Protection term

25 years/3 years vs. 15 year

Grace period

12 months vs. 6 months



**CNIPA**

China National Intellectual Property Administration



**EUIPO**

EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE

# 05 | Take-away messages



- ✓ The design patent in China protect the aesthetic features of the products, not the function.
- ✓ Register your design patent in China before it is known to public.



- ✓ If you have applied for design in EU, you can still file design patent in China within 6 months.
- ✓ Have the Chinese design patent registration certificates ready for enforcement.



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

Questions?

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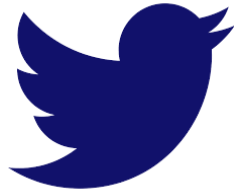


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