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"Tip of the Month"

Patenting in China

China grants 3 types of patents: invention patents, utility model patents and design patents.

The invention patent is similar to the utility patent in the U.S. The term of protection is 20 years from the filing date (or the priority date if priority is claimed).

A utility model patent protects products with new shapes, structural physical features, or a combination thereof. Methods of production or chemical compounds are not protected by a utility model patent. The term of protection is 10 years from the filing date and allowance is relatively quick compared to the invention patent.

A design patent protects the shape, pattern, and color, or a combination thereof, of a product and is similar to a design patent in the U.S. The term of protection is 10 years from the filing date (or the priority date if priority is claimed).

All patent types undergo a preliminary examination to determine if statutory filing requirements have been met. If yes, and the patent is for a utility model or a design, no further examination is conducted, and the patent is issued. If the patent is a utility invention, then the Chinese Patent Office will conduct a substantive examination after a request for examination is filed.

A utility invention application can be filed directly in the Chinese Patent Office or as a national phase application from a pending PCT international application. Beware, however, that if your company has filed a PCT application and the company also wants to file a utility model and/or a design application on the same subject matter, the utility model and/or design application must be filed in the Chinese Patent Office before publication of the PCT international application at 18 months from the filing date (or the priority date if claimed) or the PCT application will be considered prior art. Although a utility model may be filed as a national phase entry under the PCT international application, it is not recommended because doing so will prevent the company from filing a utility invention application also as a national phase application of the PCT international application. The reason is that only one national phase application can be filed based on a PCT international application.

There are reasons for filing a utility model application in addition to a PCT international application. It is especially important to do this before any offer for sale of the product for which a utility model application and a PCT international application are filed.

Furthermore, enforcement of patent rights in China is different from US patent enforcement litigation. Understanding these differences is one reason for filing both a PCT international application and a Chinese utility model application at about the same time.

If you need help in seeking protection in China for your inventive products, please do not hesitate to call the patent attorneys at Mesmer & Deleault or email us at mailbox@biz-patlaw.com.

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