Patent Registration in China
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-The Need of Registration

A patent gives the owner the exclusive right to prevent others from making, using or selling an invention-creation without permission during a limited period. Legal protection can only be obtained upon registration.

Patents are territorial rights. A patent registered in other countries does not automatically enjoy protection in China. Similarly, filing separately is necessary for full protection of China mainland, Hongkong, Macau and Taiwan.

-Introduction on China’s Patent

There are three kinds of patents in China, i.e. inventions, utility models and designs.

"Invention" means any new technical solution relating to a product, a process or improvement thereof. The validity of an invention patent is 20 years, calculated from the filing date.

"Utility model" means any new technical solution relating to the shape, the structure, or their combination, of a product, which is fit for practical use.

"Design" means any new design of the shape, the pattern or their combination, or the combination of the colors with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

The duration of utility model and design rights is 10 years, which is also calculated from the date of filing.

-Requirements for the Grant of Patent Right

Invention Patent and Utility Model Patent

In order to be granted a patent right, the invention or utility model must possess novelty, inventiveness and practical applicability.

Novelty means that, before the date of filing, the same invention or utility model has not been publicly used or made known to the public in China or abroad.

Inventiveness means that, as compared with the technology existing before the date of filing, the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress.
**Practical applicability** means that the invention or utility model can be made or used industrially and can produce effective results.

**Design Patent**

Any patentable design must possess novelty, i.e. it must not be identical with nor similar to any design which, before the date of filing, has been publicly disclosed inside or outside China.

**-Registration**

**Channels**

Foreign applicant may obtain Chinese granted patent by filing national application directly in China. The ad hoc authority is the State Intellectual Property Office (SIPO) in Beijing, China.

Foreign applicants can also designate China when they file a PCT (Patent Cooperation Treaty) application, with respect to the inventions and utility models.

**Procedure of National Application**

1. **Registration of Invention Patent**

The application documents consist of an application form, specification and its abstract, claims, and drawings (if any). An application for invention patent shall go through five phases, i.e., acceptance, preliminary examination, publication, substantive examination and granting. An application will normally take 2-3 years to be granted. Please refer to Affix 1 for the flowing chart.

2. **Registration of Utility Models and Designs Patent**

Comparing with invention patent, the examination for utility models and design patent are carried out much faster and simpler, because they only subject to a preliminary examination, which is only related to the documental formalities and obvious violation to the law. The substantive examination for utility models and design patents will be carried out only within an invalidation procedure, when a dispute occurs.

At present, the examination period for utility model takes 8-10 months, and about 6 months for designs.
3. Reexamination

If the application is rejected by SIPO, and the applicant is not satisfied with the decision, a request for a re-examination can be filed to the Patent Reexamination Board (PRB) within three months from the date of receipt of notification. And the decision of PRB can also be further subject to judicial review.

Priority

According to Paris Convention, of which both China and Italy are the members, the inventor can claim “priority” (12 months for invention or utility patents, 6 months for design patents). This means that after filing for a patent in Italy, the inventor may file in China with the priority date, i.e. the application date in Italy. This reduces the risk of having the novelty destroyed by publications and use.

Official Fees

The applicant has to pay the official fees timely for patent registration, such as filing fee, additional charge (if any), granting fee, etc. In order to maintain the patent, the patentee has to pay the annual fee. For the fee table, please refer to Affix 2.

-How to apply for patent registration

1. Find a competent patent attorney to assist you with filing the patent. It is not only because of the complication and the professional nature of the filling work, but also because it is stipulated by law that the foreigner without habitual residence or business place in China must entrust a qualified patent agent company to handle the filing.

2. With the help of your patent attorney, determine whether or not your technology or products meet the requirements for patent application.

3. Communicate with your patent attorney adequately, and complete the application file, so as to ensure the documents clearly define your idea and present a better basic for future protection.

4. File the patent with SIPO. The SIPO will conduct the examination. If they have any problems with your application, they will inform your agent and your patent attorney will work with them for solution.

* Reminder According to Italian law, the Italian inventor must first apply for a license with the Italian Patent and Trademark Office before filing patent application
for invention and utility model with any other country.

For more information, please contact IPR Desk-Canton at iprdesk.canton@ice.it and visit SIPO’s official website http://www.sipo.gov.cn/sipo_English/
Affix 1-Proceeding of Invention Patent Registration

1. **Filing**
2. **Acceptance**
3. **Paying the application fee**
4. **Preliminary examination**
   - qualified
   - Publication
     - (be published right after the expiration of 18 months from the application date, or be published earlier upon applicant’s request)
     - within 3 years after Application Date or Priority Date
   - Application for substantive examination; paying the application fee
     - Rejection
     - Office Action(s)
     - qualified after applicant’s response
   - Substantive examination
     - qualified
     - Grant and Registration
     - If no application for substantive examination, the patent application will be deemed to have been withdrawn
Affix 2 - Main Official fees of Patent registration in China

<table>
<thead>
<tr>
<th>1. Filing fee</th>
<th></th>
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<tbody>
<tr>
<td>Invention Patent</td>
<td>950</td>
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<tr>
<td>Utility Model</td>
<td>500</td>
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<tr>
<td>Design Patent</td>
<td>500</td>
</tr>
<tr>
<td>2. Filing request for substantive examination of invention patent</td>
<td>2500</td>
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<tr>
<td>3. Claiming for priority</td>
<td>80</td>
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<tr>
<td>4. Granting fee</td>
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<tr>
<td>Invention Patent</td>
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<tr>
<td>Utility Model</td>
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<tr>
<td>Design Patent</td>
<td>205</td>
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<td>5. Additional charge</td>
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<tr>
<td>Additional charge for claims in excess of 10, per claim</td>
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<tr>
<td>Additional charge for specification including drawings in excess of 30 pages, per page</td>
<td>50</td>
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<tr>
<td>6. Annual fee</td>
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<tr>
<td>Invention Patent</td>
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<tr>
<td>1st to 3rd year (per annum)</td>
<td>900</td>
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<tr>
<td>4th to 6th year (per annum)</td>
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<td>7th to 9th year (per annum)</td>
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<td>10th to 12th year (per annum)</td>
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<td>13th to 15th year (per annum)</td>
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<tr>
<td>16th to 20th year (per annum)</td>
<td>8000</td>
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<tr>
<td>Utility Model and Design</td>
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<tr>
<td>1st to 3rd year (per annum)</td>
<td>600</td>
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<tr>
<td>4th to 5th year (per annum)</td>
<td>900</td>
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(in RMB)
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<tbody>
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<td>6th to 8th year (per annum)</td>
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<tr>
<td>9th to 10th year (per annum)</td>
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<td>2000</td>
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</tbody>
</table>

**Note:** This table does not cover all the items of the official fees.