



HELPDESK UPDATE

Issue 5 - Focus on Patents

New Web site features launched online in October:

Helpdesk Launches Trade Fairs E-learning Module

The Helpdesk's second in its series of e-learning modules on IPR is now available. Written by Helpdesk experts, the module guides SMEs through preparation before the fair, best practice at the fair and follow-up after the event. The training includes interviews with IPR experts, downloadable check lists and MP3 guides.

[CLICK HERE TO ENTER THE MODULE](#)

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Patents

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A patent is a set of exclusive rights granted to the inventor of a technical solution of a product relating to its method, shape, form or design for a limited amount of time. A patent registration in China enables you to more effectively enforce your rights against possible infringers. Before any production or sales in China, your company must define what patents and other intellectual property rights (IPR) are involved and how they can be protected in China.

A patent registration in Europe does not mean that your patent is protected in China. To ensure protection, the application should be filed before the innovation is disclosed to the public, either by marketing or by selling it in China or abroad.

There are three different types of patents in China: invention patents, design patents and utility models.

Which one should you apply for?

An *invention patent* is granted for a new technical solution for a product, method or the improvement thereof. Invention patents are most relevant if the product in question has a long life cycle. It can take three to five years to be granted and includes a substantive examination. An invention patent offers stronger protection for complicated innovations because the requirements for invention patents include higher levels of invention than alternatives such as utility model patents. It also affords a longer term of protection of 20 years.

A *utility model* is granted for new practical technical solutions relating to the shape or form of a product. Utility models are generally suitable for inventions that do not reach the same level of inventiveness as invention patents. It takes about one year to be granted and the term of protection is ten years.

A *design patent* is granted for original designs relating to the shape, colour, pattern, or combination thereof of a product, which

is aesthetically pleasing and has industrial applicability. It takes about one year to be granted and the term of protection is ten years. The protection is not for the functionality of the product.

Which type of patent you choose will depend on your product, its inventiveness, usage and other factors. It is recommended that you discuss your IP and patent filing strategy with a China-experienced patent attorney.

Patent rights commence from the **date of publication in the Patent Gazette**. Although the term is counted from the filing date, you will not have protection until the patent has been publicised.

Application Process

The quality of the patent attorney and the application is critical for the value of the protective right. A Chinese patent application must be made in Chinese, and only the Chinese patent claim can determine the eventual scope of protection. **Treat your patent applications as one of your company's most valuable assets in China. A very careful translation of the application is extremely important.**

China is a first-to-file jurisdiction. If there are two patent applications filed for the same innovation, the patent is granted to **the one who filed its patent application first**. Please click here for more information about patents: <http://www.china-iprhelpdesk.eu/faqs.php>

Case Study: Design Patent Infringement

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A Scandinavian furniture manufacturer discovered that a Chinese company was manufacturing and promoting products that were copies of their Scandinavian-style designs. Despite repeated efforts to contact the Chinese company, the Scandinavian was had not been able to open a dialogue with the infringers.

The Scandinavian company contacted the Helpdesk. It was established that the company did not hold any registered IP rights in China, including design patents. The Helpdesk informed the company that:

1. Without IP registrations it would be very difficult to carry out an enforcement action against the infringer.
2. An alternative enforcement action could be based on copyrights. Copyrights are automatically granted to original intellectual and tangible creations published in China, including drawings of product designs. The main channels for filing a copyright enforcement case are either through the local Copyright Administration, which has the power to confiscate goods and impose fines, or the People's Courts, which can impose damages and order injunctions. A copyright holder could also file a criminal complaint with the Public Security Bureau or the People's Courts.

Key Lessons

- **Register your rights pro-actively.** If the Scandinavian company had owned a Design Patent or other IP rights in China, more options to enforce their rights would have been available.
- **Take a layered approach to IPR protection.** Your IPR protection strategy need not, and should not, rely on one type of IPR only. Taking a holistic approach to IPR, involving many layers of protection, including both registrable and non-registrable rights, will ensure stronger protection of your brand and products.

If you have an IPR issue and would like free, confidential advice from the Helpdesk, click [here](#) to ask a question.



EU Trade Commissioner visits the Helpdesk

On the 10th of September 2009, Trade Commissioner Catherine Ashton visited the Helpdesk during her recent trip to Beijing. The Commissioner inspected the Helpdesk's services and online tools and noted that:

"There are some important opportunities in China for small and medium sized enterprises to develop their businesses. The importance of finding out as much information as possible before going to China cannot be overstated. Our Helpdesk is here to provide you with advice and support - please take advantage of it. Their expertise is second to none. I wish you every success in your business ventures."

Upcoming Event

IPR Clinic and Networking - The Helpdesk will hold a free clinic and networking on Wednesday 2 December at Centro, in the Kerry Centre Hotel, Beijing. All SMEs who attend will have the chance to attend a free 20 minute consultation with an experienced IP lawyer to receive expert advice on their specific IP situation. Specialists are available to consult on various IP areas, including trademarks, patents and online IPR protection, and can provide first-line advice in several European languages.

To register for the event and to book your free, confidential consultation, e-mail: registration@china-iprhelpdesk.eu, including your name, company name and position.

The Helpdesk team regularly meets with SME Association representatives to discuss conducting a China IPR workshop for their network members. If you'd like to learn more about conducting a *free* China IPR workshop for the members of your network, please click [here](#) or e-mail enquiries@china-iprhelpdesk.eu.

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