**Q&A**

1. **What kinds of patents can be protected by the Chinese Patent Law?**

The "invention-creations" protected by the Chinese Patent law are inventions, utility models and designs. "Invention" means any new technical solution relating to a product, a process or improvement thereof. "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 overall or partial shape, the pattern, or their combination, or the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

The invention patents and utility model patents only protect the invention-creations in the technical field, which is to say, only protect the technical solutions. Specifically, the invention patents can be divided into two categories, i.e. product invention patents and method invention patents.

The utility model patents do not protect methods, but focused on a part of product inventions, namely the products having a definite shape or structure.

What constitute a design are the design elements or their combination of a product, including the shape, pattern, color or their combination, which creates an aesthetic feeling. If a design cannot be manufactured and copied by industrial methods, it shall not be protected by the Chinese Patent Law.

1. **Can one invention-creation apply for both an invention patent and utility model patent?**

Yes. An applicant can file both an invention patent application and utility model patent application for the identical invention-creation on the same day, with a declaration made in the request form of each application that the other patent application is filed for the identical invention-creation. However, when a PCT international application enters the Chinese national phase, the applicant shall choose to apply for either invention patent or utility model patent.

Generally, the utility model application can get granted in about half a year; then during prosecution of the invention application, if the patentable claims of the invention application are found to have the same scope of protection with the granted claims of the utility model patent, the China National Intellectual Property Office (hereinafter "CNIPA") will notify the applicant to choose whether to abandon the earlier granted utility model patent for obtaining the invention patent right; if the applicant chooses to abandon the utility model patent, the invention application will be allowed, while if the applicant chooses to maintain the utility model patent, the invention application will be rejected for double-patenting issue.

It is important to notice that where the applicant chooses to declare to abandon the utility model patent, the termination of the UM patent will take effect from the grant announcement date of the invention application. That is to say, after filing the declaration to abandon the UM patent, the applicant shall still pay the annuity for the UM patent on time till the grant announcement of the invention patent, so as to guarantee patent protection continuously.

1. **What language shall be used for Chinese patent applications?**

Any document submitted with the CNIPA shall be in Chinese. In the Chinese patent application text, the standard scientific and technical terms shall be used if there is a prescribed one set forth by the State; where no generally accepted translation in Chinese can be found for a foreign name or scientific or technical term, the one in the original language can be also indicated. Therefore, if the applicant only has a set of application documents in a foreign language on hand, he shall prepare a Chinese translation before the filing due date. Beside the application text, where any certificate or certifying document submitted with the CNIPA is in a foreign language, the CNIPA may, when it deems it necessary, require a Chinese translation of the certificate or the certifying document to be submitted within a specified time limit.

1. **What kinds of invention-creations cannot be granted patent right in China?**

(1) No patent right shall be granted for any invention-creation that is contrary to the laws.

Where an invention-creation is created to contravene the laws, it cannot be granted for a patent right, for example, gambling facilities, drug-taking appliances, and apparatus for counterfeiting banknotes, official documents and historic relics.

Where an invention-creation is not contrary to the laws but its abuse may be contrary to the laws, it shall not be excluded from patent protection as above. Examples of such include the various toxicants and anesthetics used for medical treatment, and playing cards and chesses used for entertainment.

Where the laws merely restrict or limit the manufacture, sale or sue of the product of an invention-creation, the product per se and the processes of its manufacture do not belong to the invention-creations that are contrary to the laws. For example, although the manufacture, sale or use of the various weapons used for national defense are restricted by the laws, these weapons per se and its processes of manufacture are still patentable subject matters.

No patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws or administrative regulations.

(2) No patent right shall be granted for any invention-creation that is contrary to social morality.

Where an invention-creation is contrary to social morality, it shall not be granted a patent right, for example, invention-creations such as a design with drawings or photographs of violence, murder or obscenity.

(3) No patent right shall be granted for any invention-creation that is detrimental to public interest.

The expression "detrimental to public interest" means that exploitation or use of an invention-creation may cause detriment to the public or the society or may disrupt the normal order of the State and the society. Examples of such include the invention-creation employing the means of disabling or injuring a person or damaging property (such as an anti-theft device or process by causing blindness to the thief), the invention-creation may seriously pollute the environment or disrupt ecological balance, and the invention-creation having words or pictures concerning an important political event of the State or a religious belief, hurting the sentiments of the people or of an ethnic group, or advocating superstition.

However, if an invention-creation is possible detrimental to public interest in its abuse, or has certain defects despite positive effects, such as a pharmaceutical product with side effects on human body, it shall not be refused to grant a patent right on the ground that it is detrimental to public interest.

(4) No patent right shall be granted for scientific discoveries.

Scientific discoveries and scientific theories are human's understandings of the nature. Because these discovered substances, phenomena, processes, features and laws are different from the technical solutions of reforming the objective world, they are not invention-creations as referred to in the Chinese Patent Law and therefore cannot be granted patent rights.

For example, discover of the photosensitive property of a silver halide under illumination cannot be granted a patent right. However, patent right may be granted for the photographic film and the process to produce the film in accordance with this discovery.

For another example, finding in the nature a previously unknown substance existing in its natural state is merely a discovery, and cannot be granted a patent right.

(5) No patent right shall be granted for rules and methods for mental activities.

"Mental activities" refer to human's thinking movements, and the rules and methods for mental activities are rules and methods governing people's thinking, expression, judgment, and memorization. Because they do not use technical means or apply the laws of nature, nor do they solve any technical problem or produce any technical effect, they do not constitute patentable technical solutions.

Examples include the methods and systems of managing organization, production, commercial activities or economy, the traffic rules and competition rules, the methods of deduction, inference or operations, the rules of classifying books and methods of searching information, the rules of editing calendar, the operating instructions of an instrument or an apparatus, the grammar of various languages and rules of coding Chinese characters, the mathematical theories and methods of conversion, the methods of teaching and training, the rules and methods of various games or entertainment, the methods of statistics, accounting or bookkeeping, the music books and food recipes, the methods of keeping fitness, and the computer programs per se.

(6) No patent right shall be granted for methods for the diagnosis or for the treatment of diseases.

"Methods for diagnosis or for treatment of diseases" refer to the processes of identifying, determining or eliminating the cause or focus of diseases which are practiced directly on living human or animal bodies. It is acknowledged that a doctor shall be given the freedom to choose any means in the course of diagnosis or treatment of diseases, and this kind of methods are not susceptible of industrial application because they are practiced directly on living human or animal bodies, and are not invention-creations in the context of the Chinese Patent Law.

However, instruments or apparatus for implementing these methods of diagnosis or treatment, or substances or materials for use in such methods are subject matters for which patent right may be granted.

(7) No patent right shall be granted for animal and plant varieties.

Animal referred to in the Chinese Patent Law refers to the life form which cannot synthesize carbohydrate and protein by itself but maintains its life only by absorbing natural carbohydrate and protein. Plant mentioned in the Patent Law refers to the life form which maintains its life by synthesizing carbohydrate and protein from the inorganics, such as water, carbon dioxide, and inorganic salt, through photosynthesis, and usually is immovable. Animal and plant varieties can be protected under other laws and regulations other than the Patent Law. For example, new plant varieties can get protection under the *Regulation on the Protection of New Varieties of Plants*.

However, patent right may be granted for processes used in producing animal and plant varieties. The processes of production herein refer to non-biological processes, and do not include those for the production of animals or plants through essentially biological processes. Whether or not a process is an "essentially biological process" depends on the degree of human technical involvement in the process. If the human technical involvement is the controlling or decisive factor for achieving the result or effect of that process, the process is not essentially biological. For example, the method of raising high yield dairy cattle through irradiation and the method of producing lean meat pigs by improving raising approach are patentable subject matters.

Microorganism inventions refer to those relating to producing a chemical substance (such as antibiotics) or decomposing a substance by means of microorganisms such as various bacteria, fungi, and viruses. Microorganisms and microbial processes are all patentable.

(8) No patent right shall be granted for nuclear transformation methods and substances obtained by nuclear transformation methods.

Methods of nuclear transformation and the substances obtained therefrom are of much concern with national interests in economy, defense, scientific research and public order, and shall not be monopolized by individuals or entities. Therefore, they cannot be granted patent rights.

Substances obtained by means of nuclear transformation mainly refer to various radioisotopes manufactured or produced by accelerators, reactors or other nuclear reaction apparatus. Such radioisotopes cannot be granted patent rights. However, use of those isotopes and the apparatus and devices used therefor are subject matters for which patent rights may be granted.

(9) No patent right shall be granted for designs of two-dimensional printing goods, made of the pattern, the color or the combination of the two, which serve mainly as indicators.

1. **What is the requirement of filing foreign patent applications (which are filed outside the China mainland, including Taiwan, Hong Kong and Macau) for inventions made in China mainland?**

Where any entity or individual intends to file an application for patent abroad with any invention or utility model developed in China, it or he shall request, by one of the following measures, the CNIPA to conduct confidentiality examination:

(1) making the request for confidentiality examination in advance with CNIPA and describing in detail the related technical solution;

(2) making the request for confidentiality examination together with or later than filing a Chinese patent application with CNIPA; or

(3) filing a PCT international application with the CNIPA.

1. **What documents are needed for filing Chinese patent applications?**
2. Request Form, to provide the type of patent application (invention, utility model or design), the name, address, registered country/citizenship of the applicant (where the applicant is a Chinese entity or individual, the Unified Social Credit Code or Citizenship Identification Card Number of the applicant shall be also provided), the name(s) of inventor(s) and the citizenship of first inventor (where the first inventor is a Chinese individual, his Citizenship Identification Card Number shall be also provided), and also the priority number, date and country if any priority is claimed.
3. Description, Claims, and Abstract.
4. If necessary, Drawings shall be also submitted, with or without designating the Drawing for Abstract.
5. If the applicant authorizes an agency to file the application, a Power of Attorney signed by the applicant shall be submitted either at the filing of application or no later than two months from receipt of the Notification to Make Rectification. The POA does not need legalization or notarization.
6. If any priority is claimed, the applicant shall further submit the Certified Copy of Priority Document, or file a DAS accessing request. The deadline for filing the Priority Document or DAS request will be no later than 16 months from the earliest priority date for invention/utility model application, and 3 months from the Chinese application date for design application.
7. If the applicant of Chinese application is different from that of the priority application, an Assignment of Priority Right signed by the assignor (or a Certificate of Name Change, if the difference is caused by name change of the applicant) shall be further required. And the deadline for filing such priority assignment is the same with the deadline for filing priority document.
8. In respect of Chinese national phase applications derived from a PCT international application, the Chinese translation of international publication shall be submitted on the entry date as the initial application text of the Chinese national phase application. Where the applicant wishes to make amendments to the application text, he can file voluntary amendments under PCT Article 19, or 34, or 28/41.
9. **What are the Formality Requirements for Chinese Patent Applications Related to Biological Material Sample Deposit?**

Under the Chinese patent rules, where an invention for which a patent is applied concerns a new biological material which is not available to the public and which cannot be described in the application in such a manner as to enable the invention to be carried out by a person skilled in the art, the applicant shall, no later than the date of filing (or the priority date where priority is claimed), deposit a sample of the biological material with a depositary institution designated by the CNIPA, namely the International Depositary Authorities (IDA) under the Budapest Treaty. There are three IDAs located in China, i.e. China General Microbiological Culture Collection Center (CGMCC) in Beijing, China Center for Type Culture Collection (CCTCC) in Wuhan, and Guangdong Microbial Culture Collection Center (GDMCC) in Guangzhou.

At the filing of an application related to the deposit of a sample of the biological material, the applicant shall indicate in the request form and the description the scientific name of the biological material (with its Latin name), the title and address of the depositary institution, the date on which the sample of the biological material was deposited and the accession number of the deposit, and also submit the certificate of deposit and that of viability from the depositary institution (where the certificates are in foreign languages, a Chinese translation will be also needed). In case the applicant fails to provide such information and certificates at the time of filing, he can make rectification within four months from the filing date.

In respect of the Chinese national phase of PCT international applications, the applicant shall furnish indications to the International Bureau for the deposit of sample of biological material before the technical preparations for international publication have been completed, make such indications in the entering statement, and submit the certificate of deposit and the certificate of viability of the biological material (and Chinese translation thereof).Where the particulars of the deposit are included in the description in a way other than the form, the applicant shall indicate, in the entering statement under the specified items, the location, i.e., the page number and number of lines of the content concerning the deposit in the Chinese description. Where the particulars of the deposit are indicated in the Indications Relating to Deposited Microorganism or Other Biological Material (i.e. Form PCT/RO/134) or other separate sheet, such form or sheet shall be included in the international publication document, and be translated into Chinese as part of the international application at the time of entry into the national phase. In case the applicant fails to provide such information and certificates at the filing of Chinese national phase application, he can make rectification within four months from the date of entry.

1. **If the applicant misses the 30-month deadline for entering a PCT international application to Chinese national phase, will he still be allowed to file the Chinese national phase application?**

Yes. Where the applicant fails to meet the 30-month entry deadline, there will be two-month grace period, which is to say, the applicant can still file the Chinese national phase application no later than 32 months from the international application date (or earliest priority date if any priority is claimed), together with payment for a grace period fee. Where the applicant wishes to utilize the grace period, no specific action is required on the 30-month entry due date.

1. **Can one Chinese design application contain multiple designs?**

Yes. Two or more similar designs for the same product, or two or more designs which are incorporated in products belonging to the same class and sold or used in sets, may be filed as one application.

1. **Is Brief Description required for filing a Chinese design application?**

Yes. Where an application for a patent for design is filed, a brief explanation of the design shall be submitted, in addition to the request form and drawings/photographs of the design.

1. **What are the formalities of an international design application?**

The Hague System for the International Registration of Industrial Designs provides services for registering up to 100 designs in 77 contracting parties covering 94 countries, through the filing of a single international application. If one is a national of a contracting party, or has a domicile/habitual residence or a real and effective industrial or commercial establishment in a contracting party, he or it can file an international design application with the International Bureau of WIPO through the e-Hague online system or via physical mail. The language of international design application can be English, French or Spanish.

1. Documents and Fees Required for International Design Applications

- Request form (i.e. Form DM/1) provides the information of applicant, entitlement to file, email address for correspondence, designated contracting parties, description, claims, number of design(s), product indication, identity of the creator, priority, publication of the international registration, exception to lack of novelty, fee calculator, signature and etc. Moreover, the following annexes may apply: Annex I "Declaration of Inventorship" in respect of a designation of the United States of America, Annex II "Documentation Concerning Exception to Lack of Novelty" in respect of designation of China, Japan or the Republic of Korea, Annex III "Statement" that identifies information known by the applicant to be material to the eligibility for protection of the design concerned for the designation of the United States of America, Annex IV "Micro Entity Certification" in order to benefit from a reduction of the individual designation fee in respect of a designation of the United States of America, and Annex V "Priority Document" when designating China, Japan or the Republic of Korea.

- Drawings or photographs of the design shall be in the format of JPEG or TIFF, with resolution of 300 dpi, minimum size 3cm x 3cm and maximum size 16cm x 16cm, maximum file size 2 MB, color in RGB or Grayscale, and borders between 1 and 20 pixels.

- Official filing fees (in Swiss francs) include basic fee, publication fee, standard designation fee or individual designation fee subject to the contracting party designated.

1. International Registration and Publication

The International Bureau conducts formality examination on international design applications. If any defect is found, the IB will notify the applicant to solve the irregularity within three months; while if no defect is found, the IB will issue the international registration certificate.

Unless the applicant chooses immediate publication or publication at a chosen time, the international design application will be published on the International Designs Bulletin after 12 months from the international registration date by default.

1. Chinese National Stage

After international publication, the international registration designating China will automatically enter the Chinese national procedure. If required, the applicant may need to submit the certificate for exception to lack of novelty, or file a divisional application voluntarily within 2 months from the international publication date, or to submit certified priority document, pay the priority claim fee and submit any priority assignment within 3 months from the international publication date.

After the international registration enters the Chinese national procedure, the CNIPA will conduct examination in accordance with the Chinese patent rules. If any defect is found, the CNIPA will send a Refusal to IB within 12 months from the international publication date; while if no defect is found, the CNIPA will send a Decision to Grant Protection to IB. The IB will transmit the aforementioned notices to the applicant. The applicant shall respond to the Refusal within the time limit prescribed therein. Where the applicant is a foreign entity or individual, he or it shall appoint a Chinese patent agency to file the response on his or its behalf. Where no ground for refusal is found or ground for refusal is overcome, the CNIPA will announce the grant of design patent, and the international registration will take effect in China from the grant announcement date.

1. Renewal

The international registration shall be renewed every 5 years for at least twice, subject to the design patent terms of each designated country. The IB will typically remind the applicant of renewal about 6 months in advance, and the applicant can pay the renewal fee no more than 3 months before the due date.

1. **What is the standard of novelty in China?**

The CNIPA adopts the standard of absolute novelty, that is to say, any disclosure wherever prior to the application date will affect the novelty of the patent application.

1. **Will the applicant’s own prior application constitute conflicting application against the present application?**

Yes, as long as a prior application is filed before the application date of present application and published after the application date of present application, it will constitute conflicting application against the present application.

1. **Is there any novelty grace period applicable to the disclosure before the application date?**

According to the Chinese Patent Law, an invention-creation for which a patent is applied for does not lose its novelty only where, within six months before the date of filing, one of the following events occurred: (1) where it was disclosed for the first time for the purpose of public interest when a state of emergency or an extraordinary situation occurs in the nation; (2)  where it was first exhibited at an international exhibition sponsored or recognized by the Chinese government; (3) where it was first made public at a prescribed academic or technological meeting; (4) where it was disclosed by any person without the consent of the applicant.

1. **When will the CNIPA publish an invention patent application?**

If a Chinese patent application passes preliminary examination, it will be published after 18 months from the application date (or earliest priority date, if any priority is claimed). Early publication is possible upon request to the CNIPA.

1. **What are the advantages and disadvantages of early publication?**

(1) Advantages: Where early publication is requested, the patent application will enter preparation for publication immediately upon passing preliminary examination, instead of waiting till 18 months form the application date (or earliest priority date); correspondingly, where the request for substantive examination is made, the application can enter the substantive examination proceeding early. Moreover, after publication of the application, the applicant will have the right to request any entity or individual exercising his invention to pay an appropriate fee, which is "temporary protection". The earlier the application is published, the sooner the applicant can obtain protection.

(2) Disadvantages: Early publication of the application contents will enable the others to make use of the application, and possibly jeopardize the rights of the applicant. In addition, in respect of a patent application withdrawn by the applicant, if the application text is not published, the invention can be still own by the applicant as business/technology secret, and further included in a new patent application; while if the application text is already published, the invention will be recognized as common knowledge, and the applicant cannot seek patent protection for it again.

1. **How to initiate the substantive examination of invention patent application?**

To get granted, an invention patent application shall go through the substantive examination procedure, namely the examination on novelty, inventiveness, industrial applicability and other requirements of the Patent Law. The applicant shall file the request for substantive examination within 3 years from the application date (or the earliest priority date if any priority is claimed); otherwise the application will be deemed to be withdrawn.

Where any counterpart application has been filed in other countries, the applicant can, at the filing of substantive examination request, submit the search reports or examination results issued to the counterpart application by one or two of the main patent offices (such as the European Patent Office, the United States Patent and Trademark Office, or the Japanese Patent Office).

1. **Can the applicant request for expedited examination?**

Yes. Qualified invention, utility model and design patent applications can request for Prioritized Examination.

Alternatively, according to the Patent Prosecution Highway Program (i.e. PPH) agreements made between the CNIPA and other patent offices, where part/all the claims of any counterpart application are found patentable by a PPH-contracting office, the applicant can conform the pending claims of Chinese patent application to the patentable claims of the counterpart application (provided that the amendments to the claims do not go beyond the scope of initial disclosure of the Chinese application), and then file a PPH request with the CNIPA to accelerate substantive examination of the Chinese application.

1. **How to request for Prioritized Examination?**
2. Requirements

Prioritized examination is applicable to the patent application or reexamination cases of the following six types:

- Involving national key development industries, such as energy conservation and environmental protection, new generation information technology, biology, high-end equipment manufacturing, new energy, new materials, new energy vehicles, and intelligent manufacturing;

- Involving industries that are highly encouraged by provincial and districted municipal governments;

- Involving the Internet, big data, cloud computing and other fields in which the update speed of technology or product is very quick;

- The patent applicant or the reexamination requester is ready for implementation of the invention or has started to implement the invention, or there is evidence to prove that others are implementing their inventions;

- The patent application that was firstly filed in China and filed for the same subject in another country or region; or

- Other applications that are of great significance to the national interest or public interest and required prioritized examination.

Moreover, prioritized examination is applicable to the patent invalidation cases of the following two types:

- Where the patent of the invalidation case is involved in infringement dispute, and the party has referred the dispute to the local intellectual property administration, filed an appeal with the Court, or requested an arbitration and mediation organization to make mediation; or

- Where the patent of the invalidation case is of great significance to the national interest or public interest.

1. Petitioner

The applicant is allowed to file the prioritized examination request for his patent application or reexamination case. Where the applicants are more than one, the prioritized examination request shall be made after approval of all the applicants.

The patentee or invalidation requestor is allowed to file the prioritized examination request for the patent invalidation case. Where the patentees are more than one, the prioritized examination request shall be made after approval of all the patentees. The local intellectual property administration, the Court, or the arbitration and mediation organization handling the patent infringement dispute, is also allowed to file the prioritized examination request for the patent invalidation case.

1. Formalities

To make the request for prioritized examination, the applicant shall submit a request form, information on prior technologies or designs, and relevant certificate documents. Where any invention/utility model application is filed on the same day for the same subject matter, the application number of the same-day application shall be specified in the request form. The request form for prioritized examination shall be executed and approved by the related department of State Council or the provincial intellectual property administration, except the cases of “the patent application that was firstly filed in China and filed for the same subject in another country or region”.

To make the request for prioritized examination for reexamination and invalidation cases, the party shall submit a request form, and relevant certificate documents. The request form shall be executed and approved by the related department of State Council or the provincial intellectual property administration, except the following two types of cases: the patent reexamination case where the application concerned has already gone through prioritized examination during the preliminary or substantive examination proceeding; and the patent invalidation case where the local intellectual property administration, the Court or the arbitration and mediation organization in charge of the infringement dispute requests prioritized examination by submitting a request form and relevant certificate documents, with the grounds stated.

1. Procedures

In respect of patent application cases, the CNIPA will decide and notify the applicant of whether to accept the prioritized examination request in about 3 to 5 working days from the filing date of the request. In respect of patent reexamination and invalidation cases, the CNIPA will examine, decide and notify the applicant of whether to accept the prioritized examination request in a timely manner.

Where the request for prioritized examination is accepted by CNIPA, the examination of the application shall be completed within the following time limit from the acceptance date: (1) the first office actions of invention patent applications shall be issued within 45 days, and the cases shall be closed within 1 year; (2) the utility model and design patent applications shall be closed within 2 months; (3) the reexamination cases shall be closed within 7 months; (4) the cases of invalidation for invention and utility model patents shall be closed within 5 months, and the cases of invalidation for design patents shall be closed within 4 months.

Under the prioritized examination, the time limits of responding to the office actions have been shortened to 2 months from the issue date of the office action for invention applications, and to 15 days for utility model and design patent applications; the time limits for responding to notifications of reexamination and invalidation cases stay the same with the regular cases.

1. Termination

The CNIPA will transfer a patent application from prioritized examination to regular examination with a notice to the applicant, if one of the following events occurred: the applicant makes voluntary amendments after acceptance of prioritized examination request; the applicant fails to make a response to the office action within the time limit prescribed by the Prioritized Examination Rules; the applicant submits false material in the request for prioritized examination; or the application is found to be an abnormal application.

The CNIPA will transfer a patent reexamination or invalidation case from prioritized examination to regular examination with a notice to the applicant, if one of the following events occurred: the reexamination petitioner files a request for extension of the time limit for responding to the reexamination notification; after acceptance of prioritized examination request, the invalidation petitioner supplement evidences and grounds after acceptance of prioritized examination request; after acceptance of prioritized examination request, the patentee revises the claims in a way other than deletion; the reexamination or invalidation proceeding is suspended; examination on the case replies on the examination results of other cases; or the case is acknowledged as a hard case by the director of the Reexamination and Invalidation Department of CNIPA.

1. **Can the applicant request for delayed examination?**

Yes. The applicant can request for delayed examination for invention and design patent applications. A request for delayed examination of an invention patent application shall be submitted by the applicant at the same time when he requests the substantive examination, but the request for delayed examination of the invention patent application shall become effective from the date when the request for substantive examination takes effect. A request for delayed examination of a design shall be submitted by the applicant at the same time when he files the design patent application.

The time limit for the delayed examination may be 1 year, 2 years, or 3 years as requested by the applicant. After expiration of the delayed period, the application will be subject to examination in sequence.

1. **Can a third party file an observation against a pending patent application?**

Yes. Any entity or individual may, from the date of publication of an application for a patent for invention till the date of announcing the grant of the patent right, submit to the CNIPA its or his observation, with reasons therefor, on the application which is not in conformity with the provisions of Chinese Patent Law. The examiner will take the third-party observation into consideration during substantive examination proceeding, but will not notify the third party of the results.

1. **Can a third party request the CNIPA to declare a granted patent invalid?**

Yes. Where, starting from the date of the announcement of the grant of the patent right by the CNIPA, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of Chinese Patent Law, it or he may request CNIPA to declare the patent right invalid. Any entity or individual requesting invalidation or part invalidation of a patent right shall submit a request for invalidation and the necessary evidence. The request for invalidation shall state in detail the grounds for filing the request, making reference to all the evidence as submitted, and indicate the piece of evidence on which each ground is based.

1. **When shall a divisional application be filed?**

Where an application for a patent contains two or more inventions, utility models or designs (i.e. lacks unity), the applicant may file a divisional application on his own initiative or in accordance with the examiner’s comments.

The deadlines for filing the divisional application vary as follows:

(1) If the patent application is allowed, the deadline for filing a divisional application will be no later than 2 months from receipt of the Notice of Allowance. If the patent application is a divisional application *per se*, the deadline for filing a further divisional application will be no later than 2 months from receipt of the Notice of Allowance of the initial parent application; nevertheless, if the examiner raises objection on unity of a divisional application, the deadline for filing a further divisional application will be no later than 2 months from receipt of the Notice of Allowance of the present divisional application (instead of the initial parent application).

(2) If the application is rejected, the deadline for filing a divisional application will be no later than 3 months from receipt of the Decision on Rejection; however, if the applicant requests reexamination, he will be allowed to file the divisional application during the reexamination proceeding, and if the applicants appeals to the Court for a Reexamination Decision upholding rejection, he will be allowed to file the divisional application during the lawsuit.

(3) If the application is deemed to be withdrawn, the deadline for filing a divisional application will be no later than 2 months from receipt of the Notification of Application Deemed to Be Withdrawn.

It is notable that the divisional application is filed not only for overcoming unity objection. In practice, divisional applications are frequently used to file a more desirable set of claims for the invention.

1. **When can the applicant make amendments to the application documents?**

The amendments to description, claims, drawings and other application documents are divided as follows:

1. Voluntary Amendments

When requesting substantive examination, or within 3 months from the date of receipt of the Notification of Entering Substantive Examination Proceeding, the applicant may amend the application for a patent for invention on his or its own initiative.

Within 2 months from the date of filing, the applicant may amend the application for a patent for utility model or design on his or its own initiative.

1. Passive Amendments

Where the applicant amends the application after receiving the office actions from the CNIPA, he or it shall make the amendment to the defects pointed out by the office actions, and cannot make voluntary amendments.

1. Amendments During Reexamination

The applicant may amend his or its patent application when he or it requests reexamination or makes responses to the Notification of Reexamination issued by the CNIPA; however, the amendments shall be limited only to remove the defects pointed out in the Decision on Rejection or in the Notification of Reexamination. In other words, the amendments made during the reexamination proceeding are passive amendments.

1. Amendments During Invalidation

In the course of the examination of a request for invalidation, the patentee for a patent for invention or utility model concerned may amend his or its claims, but he or it may not broaden the scope of protection of the original patent.

The patentee for a patent for invention or utility model concerned shall not amend his or its description or drawings, and the patentee for a patent for design concerned shall not amend his or its drawings, photographs or the brief explanation of the design.

(5) Amendments to Chinese National Phase Applications Derived from PCT International Applications

Where an international application is amended in the international phase and the applicant requests that the examination be based on the amended application, the applicant shall indicate the basis for examination in the written statement for entering the Chinese national phase and, within two months from the date of entry, furnish the Chinese translation of the amendments. In respect of the Chinese national phase application for invention, the applicant can make voluntary amendments when requesting substantive examination, or within 3 months from the date of receipt of the Notification of Entering Substantive Examination Proceeding. In respect of the Chinese national phase application for utility model, the applicant can make voluntary amendments within 2 months from the date of filing.

Where the applicant finds that there are mistakes in the Chinese translation of the description, the claims or the text matter in the drawings as submitted, he or it may correct the translation before allowance of the application.

It is to be noted that any amendment, including the abovementioned five types, may not go beyond the scope of disclosure contained in the initial application documents.

(6) Amendments to Divisional Application

In respect of the divisional application for invention, the applicant can make voluntary amendments when requesting substantive examination, or within 3 months from the date of receipt of the Notification of Entering Substantive Examination Proceeding. In respect of the divisional application for utility model or design, the applicant can make voluntary amendments within 2 months from the date of filing. In other circumstances, the applicant can only make passive amendments. It is to be noted that any amendment to the divisional application may not go beyond the scope of disclosure contained in the initial parent application documents.

1. **What if the applicant is not satisfied with the Decision on Rejection?**

Where an applicant is not satisfied with the decision of CNIPA rejecting the application, the applicant may, within three months from the date of receipt of the decision, request the Reexamination and Invalidation Department of CNIPA to make a reexamination. The applicant shall state the reasons in the request form and, when necessary, revise the application documents or attach the relevant supporting documents.

The Reexamination and Invalidation Department shall remit the request for reexamination which it accepts to the original examination department of CNIPA for reexamination. Where the original examination department agrees to revoke its original decision based on the request of the person requesting reexamination, the Reexamination and Invalidation Department shall make a decision accordingly and notify the person requesting reexamination; otherwise, the Reexamination and Invalidation Department will set up a panel to examine the case collegially. Where, after collegiate examination, the panel finds the grounds of rejection are overcome or not tenable, the Reexamination and Invalidation Department will make a decision to revoke the rejection. Where, after collegiate examination, the panel finds the grounds of rejection are not overcome, it will issue at least one Notification of Reexamination; and after the applicant makes a response to the Notification, the Reexamination and Invalidation Department will issue a Reexamination Decision to maintain or revoke the earlier decision rejecting the application.

Where the applicant is not satisfied with the Reexamination Decision, it or he may, within 3 months from the date of issue of the Decision, institute legal proceedings in the court.

**26. How long does it take from filing of patent application to grant of patent right?**

The Chinese Patent Law does not prescribe the time limit for completing examination, and the situation of each case varies, so there is no definite time frame for a patent application to get granted. Generally speaking, it will take about 3 to 4 years from filing to grant of an invention patent application, except where earlier publication or expedited examination is requested; and it will take about half a year from filing to grant of a utility model or design patent application.

**27. What is the procedure after the CNIPA issues the Notice of Allowance?**

After the CNIPA issues a notification to grant the patent right, the applicant shall go through the formalities of registration within 2 months from the date of receipt of the notification. If the applicant completes the formalities of registration within the said time limit, the CNIPA shall grant the patent right, issue the patent certificate and make an announcement thereon.

**28. How long does it take from issue of the Notice of Allowance till receipt of the Patent Certificate?**

The patent certificate will be issued about 1 month after the applicant completes the payment for the grant fee as prescribed on the Notice of Allowance.

**29. Will the CNIPA issue a new Patent Certificate after recordal of any assignment of patent right?**

The CNIPA will not issue a new patent certificate for the reasons like assignment of patent right, change of bibliographic information (e.g. inventorship), or loss of patent certificate.

**30. How can the patent ownership be certified in case of loss of patent certificate or assignment of patent right?**

The patentee can order a certified copy of patent registry from the CNIPA. The patent registry is the document where the CNIPA records the legal status and other matters of a granted patent, and has legal effect.

**31. Can the patent term be extended?**

The term of patent right for inventions shall be twenty years, the term of patent right for utility models shall be ten years, and the term of patent right for designs shall be fifteen years, counted from the date of filing.

The patent term cannot be extended, but can be compensated in the following circumstances:

- Where the invention patent is granted four years after the date of filing for a patent for invention and three years after the date of the request made for substantive examination, the CNIPA shall, at the request of the patentee, compensate the term of the patent for the unreasonable delay caused in the examination process, unless the unreasonable delay was caused on the part of the applicant.

- In order to compensate for the time used for the regulatory review and approval of a new drug for putting it on the market, the CNIPA shall, at the request of the patentee, grant compensation for the term of the patent for the new drug-related invention patents that have been approved for marketing in China. The compensated term shall not exceed five years, and the total term of the patent shall not exceed 14 years after the new drug is approved for marketing.

**32. Shall the assignment of patent application or patent right be recorded before the CNIPA?**

Where the right of patent application or the patent right is assigned, the parties shall conclude a written contract and register it with the CNIPA, and the CNIPA shall announce the registration. The assignment shall take effect as of the date of registration.

**33. Shall the license of patent application or patent right be recorded before the CNIPA?**

Any license contract for exploitation of a patent which has been concluded by the patentee with an entity or individual shall, within 3 months from the date of entry into force of the contract, be submitted to the CNIPA for the record.

Where the patentee voluntarily declares in writing to the CNIPA that he or it is willing to license any entity or individual to exploit his or its patent, and clarifies the method and standard for payment of the license fee, the CNIPA shall make an announcement and deliver open licensing. Any entity or individual that wishes to exploit an open-licensed patent shall notify the patentee in writing, and obtains the patent exploitation license after paying the license fee according to the announced licensing fee payment method and standard.

**34. Where will the utility model or design patent evaluation report be required?**

Where any infringement dispute relates to a patent for utility model or design, the court or the administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent made by the CNIPA after having conducted search, analysis and evaluation of the relevant utility model or design, and use it as evidence for hearing or handling the patent infringement dispute; the patentee, interested party or alleged infringer may also take the initiative to furnish a patent right evaluation report.

Where an open licensing statement is made for a utility model or design patent, a patent right evaluation report shall be provided.

After the announcement of the decision to grant a patent for utility model or a patent for design, the patentee or the interested party may request the CNIPA to make a patent right evaluation report. The CNIPA shall issue the patent right evaluation report within 2 months after receipt of the request for the report. Where two or more persons request a patent right evaluation report in respect of the same patent for utility model or design, the CNIPA shall make one patent right evaluation report only. Any entity or individual may consult or copy the patent right evaluation report.

**35. Can the official fees be refunded?**

Typically, once the official fees are paid to the CNIPA, the payer cannot request for refund. However, in respect of the invention patent applications under the substantive examination, where the applicant declares to withdraw the application voluntarily before the expiration of time limit for responding to the first office action (provided that no response is filed to the first office action), he or it can request for refund of 50% of the official substantive examination fee.

Moreover, for any overpayment, duplicate payment or wrong payment of official fees, the payer can request for refund within 3 years from the payment date.

**36. What if the patentee misses the deadline for paying annuity?**

After grant of patent right, the patentee will need to pay the annual fee before the expiration of the preceding year. If the patentee fails to pay or pay in full the fee within this time limit, he or it can pay the fee or to make up the insufficiency within 6 months from the date of expiration of the time limit, and at the same time pay a surcharge; the amount of the surcharge shall be, for each month of late payment, 5% of the whole amount of the annual fee due. If the annuity and the surcharge are not paid till the end of 6 months from the initial annuity due date, the CNIPA will issue a Notification of Termination of Patent Right in about 1 month, and the patentee can restore the patent right by filing a request for restoration, and paying the annuity, surcharge and restoration fee in full no later than 2 months from receipt of the Notification.

**37. Will the patent right obtained in China mainland be automatically extended to Hong Kong, Macao or Taiwan?**

It cannot be automatically extended. The applicant can file a request for extension of a China mainland invention application to Hong Kong or Macao, or file an invention, utility model (referring to the Hong Kong short-term patent and the Macau utility patent), or design patent application directly with the Hong Kong Intellectual Property Department or Macau Economic and Technological Development Bureau.

Where the applicant wishes to obtain patent protection in Taiwan, he shall file the invention, utility model or design patent application directly with the Taiwan Patent Office.

**38. Are the new varieties of plants protected in China?**

Yes. The new varieties of plants are not protected by the Patent Law, but by the Regulations on the Protection of New Varieties of Plants of People’s Republic of China, which took effect from October 1, 1997 and has been revised in 2013 and 2014. The conditions for grant of variety rights are prescribed as follows:

(1) The new variety for which a variety right has been applied for shall be under the plant genera and species included in the national list of protected plant genera and species. This list of protected plant genera and species shall be determined and announced by the examining and approving authorities.

(2) Any variety for which a variety right may be granted shall possess novelty. Novelty means that, at the date of filing of the application for a variety right, the propagating material of the new variety has not been sold, or with the authorization of the breeder, within the territory of China, earlier than 1 year before that date; in a territory other than China, earlier than 4 years, or in the case of vines, forest trees, fruit trees and ornamental plants, earlier than 6 years.

(3) Any variety for which a variety right may be granted shall possess distinctness. Distinctness means that, the variety for which a variety right is applied for must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the application.

(4) Any variety for which a variety right may be granted shall possess uniformity. Uniformity means that the variety for which a variety right is applied for is sufficiently uniform in its relevant features or characteristics after propagation, subject to variation that may be expected from the particular features of its propagation.

(5) Any variety for which variety right may be granted shall possess stability. Stability means that the variety for which a variety right is applied for keeps, its relevant features or characteristics unchanged after repeated propagation or at the end of a particular cycle of propagation.

(6) Any variety for which variety right may be granted shall have an adequate denomination, which shall be distinguish able from that for any other known variety of the same or similar plant genera or species. The denomination, after its registration, shall be the generic designation of the new variety in question.

The term of protection of a variety right, counted from the date of grant thereof, shall be 20 years for vines, forest trees, fruit trees and ornamental plants and 15 years for other plants. The variety right owner shall pay an annual fee from the year in which the variety right is granted, and shall furnish propagating material of the protected variety for the purposes of testing as required by the examining and approving authorities.

China has approved the 1978 Act of International Convention for the Protection of New Varieties of Plants, and joined the International Union for the Protection of New Varieties of Plants (UPOV) since April 23, 1999. The UPOV now has 78 members.