




How to Seek Protection for Designs in China



China National Intellectual Property Administration
2024

Foreword

Since the implementation of Patent Law on April 1, 1985, China has recognized patents for inventions, utility models, and designs that meet the statutory criteria. China established its design patent system therewith. The law was amended in 1992, 2000, 2008, and most recently in 2020, to stimulate innovation, enhance the level of intellectual property protection, and meet the needs of socioeconomic development.

Over nearly four decades, the annual volume of design patent applications in China surged from just over 600 in 1985 to 820,361 in 2023, indicating robust growth in design innovation. On May 5, 2022, China acceded the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act), significantly energizing the Hague System. According to "Hague Yearly Review 2024" by the World Intellectual Property Organization (WIPO), China is the second largest user of the international design system with 3,758 designs in 2023, making China a key driver in the global increase in international design applications.

In recent years, the China National Intellectual Property Administration (CNIPA) has intensified its efforts to protect design innovations. These efforts include providing efficient and low-cost enforcement channels, strengthening international cooperation, and deeply integrating into the global design protection system to support high-quality development.

I. Overview of Design System

After four revisions of the Patent Law, China has established an industrial design patent system that not only embodies Chinese characteristics but also aligns with international norms. This system provides institutional protection for both domestic and international innovators to safeguard their design patent rights.

1. Principle of “first-to-file”

Where two or more applicants file patent applications for the identical invention-creation respectively, the patent right shall be granted to the applicant who filed first.

2. Subject Matter as Patentable

With respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application, may be applied for a design patent in China.

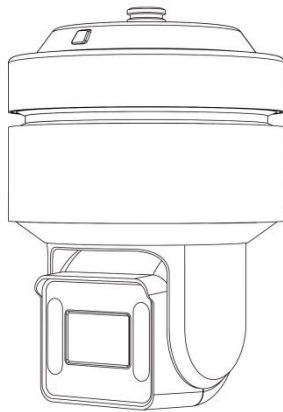


Fig. 1 Camera

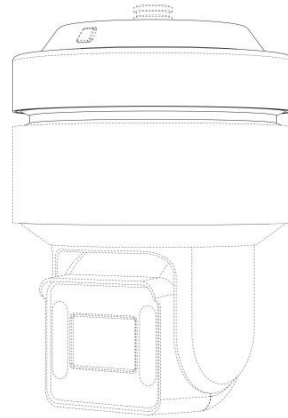


Fig. 2 Main Body of the Camera

3. Requirements for Granting Patent Rights

Any design for which a patent right is to be granted shall not be a prior design; no entity or individual has filed a patent application for the identical design with the CNIPA before the filing date and the content of the application is disclosed in patent documents announced after the filing date.

Any design for which a patent right may be granted shall significantly differ from a prior design or the combination of prior design features.

The design to be granted a patent shall meet other relevant provisions of Patent Law and Implementing Regulations of the Patent Law as well.

4. Grace Period Concerning Novelty

Within six months before the filing date, an invention-creation for which a patent application is filed does not lose its novelty under any of the following circumstances.

(1) where it was made public for the first time for the purpose of the public interests when a state of emergency or an extraordinary situation occurred in the country;



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- (2) where it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (3) where it was published for the first time at a prescribed academic or technological conference;
- (4) where its contents are divulged by another person without the consent of the applicant.

5. Right of Priority

5.1 Foreign Priority

Where, within six months from the date on which any applicant first filed abroad a design application or a patent application, he or it files in China a patent application for the same subject matter, he or it may enjoy the right of priority in accordance with the agreements concluded between the foreign country and China, or in accordance with the international treaties to which both countries are parties, or on the basis of the principle of mutual recognition of the right of priority.

5.2 Domestic Priority

Where, within six months from the date on which any applicant first filed in China a patent application, he or it files with the CNIPA a design patent application for the same subject matter, he or it may enjoy the right of priority.

6. One Design, One Application

A patent application for design shall be limited to one design. Two or more similar designs for the same product or two or more designs which are incorporated in products belonging to the

same category and sold or used in sets may be filed in one design application.

6.1 Similar Designs

Where two or more similar designs for the same product are derived from a shared design concept, the applicant may submit the similar designs in one design patent application. (Fig. 3)



Fig. 3 Scooter

6.2 Designs of Products in Set/Set of Products

In a set of products, each product belongs to the same category (Locarno Classification), and has its own independent value of use while the combination of them reflects collective value of use.

For two or more designs applied to a set of products with the same design style, the designs may be submitted in one design patent application.(Fig. 4)



Fig. 4 Tea Set

7. International Design Applications

Since China acceded the Hague System on May 5, 2022, natural persons or legal entities having a real and effective industrial or commercial establishment or a domicile in China, or Chinese citizens may file international applications to seek design protection abroad via the Hague system, and through which natural persons or legal entities having a real and effective industrial or commercial establishment or a domicile in other Contracting Parties, or being a national of one of these Contracting Parties may also seek design protection in China.

8. Patent Agency

Where any foreign individual, enterprise or other type of organization having no habitual residence or business office in China applies for a patent, requests for patent evaluation reports, reexamination, or invalidation, or handle other patent-related matters to CNIPA, he or it shall entrust a legally established patent agency with the application or such matters.

9. Examination System

9.1 Preliminary Examination

The CNIPA conducts a preliminary examination for design patent applications. The scope of the preliminary examination is as follows: formal examination of the application documents, examination of obvious substantive defects of the application documents, formal examination of other documents, as well as examination of relevant fees.

Where no grounds for rejection are found upon preliminary examination of a design patent application, the CNIPA shall make a decision to grant the patent right for design. The adoption

of preliminary examination system takes into account both examination quality and efficiency, providing convenience for innovators to obtain design patent protection in a timely manner.

9.2 Evaluation Report of Design Patent

The patentee, any interested party, or alleged infringer may request the CNIPA to issue a design patent evaluation report on a granted and published design patent. The applicant may also request when going through the formalities of registration. Upon the request, the CNIPA shall search, analyze and evaluate whether the design patent is in accordance with the provisions of the Patent Law and Implementing Regulations of the Patent Law, then issue an Evaluation Report of Design Patent.

An evaluation report of a design patent could serve as a piece of evidence for the people's courts of China or the administrative authorities for patent affairs to judge and address disputes over design patent infringement. It is widely used in commercial activities such as patent licensing and the record filling of intellectual property rights with customs. Additionally, it assists in addressing complaints related to intellectual property rights protection on e-commerce platforms and at exhibitions.

II. Patent Application for Design

1. Application Pathways

Where any foreign individual, enterprise, or other type of organization without a habitual residence or business office in China files a design patent application, he or it may either file a design patent application to the CNIPA directly according to article 17 of Patent Law of the People's Republic of China, or file an international application and designates China according to article 3 of the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act).

2. Application Formats

Applicants may submit their applications either in paper form or electronically^①. After submitting a paper application, the applicant may request to convert it into an electronic one.

3. Application Documents

Where the applicant files a patent application for design, a request, drawings or photographs of the design as well as a brief description of the design shall be submitted.

① <https://cponline.cnipa.gov.cn/>

3.1 General Requirements

3.1.1 Request

The request shall indicate the title of the product/product indication, the name of the designer and the applicant, as well as other relevant information.

3.1.2 Drawings or Photographs

Drawings or photographs serve to confine the scope of protection of design patent. Therefore, they shall clearly indicate the design applied to product for which patent protection is sought.

The applicant shall use orthographic views to indicate the design of the product.

The drawings shall refer to the national standards for technical and mechanical drawings of China, using evenly thickness solid lines to indicate the design. Standardized auxiliary lines, such as indicating lines showing the position and direction of the cutaway, may be used. (Fig. 5)

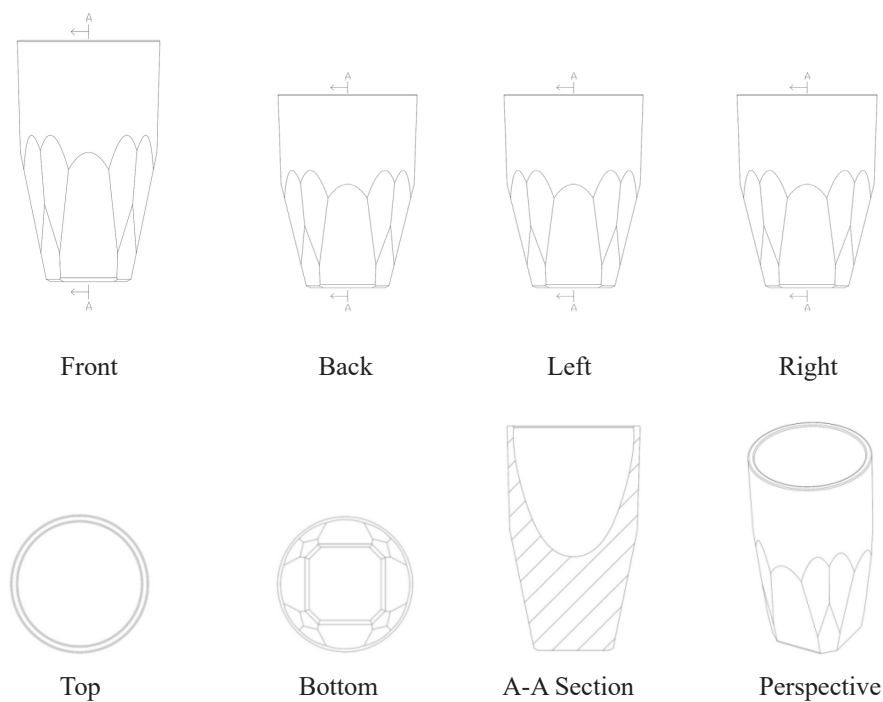


Fig. 5 Wine Glass

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Photographs shall be clear, and the background shall be plain, not including contents other than the design for which patent protection is being sought. (Fig. 6)

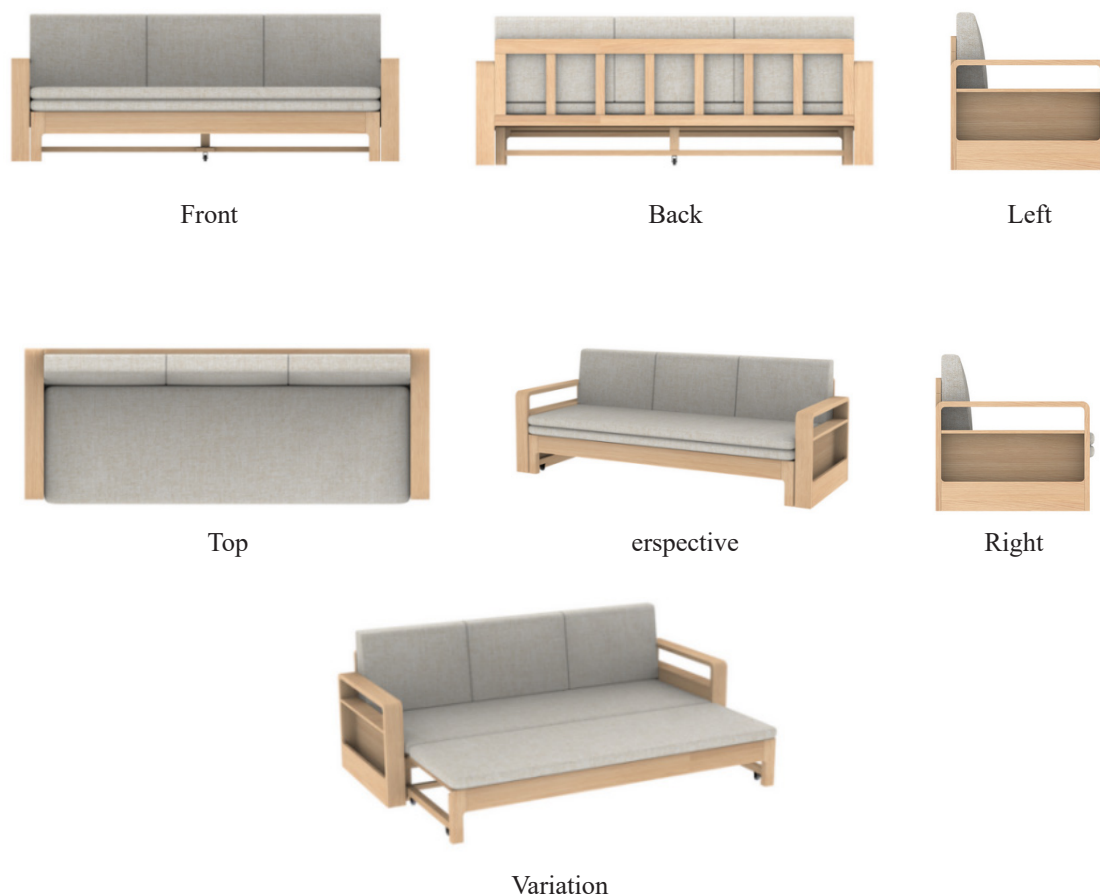


Fig. 6 Sofa Bed

3.1.3 Brief Description

A brief description may be used to interpret the design applied to product as shown in the drawings or photographs. It shall include the following contents: the title of the product incorporating the design, the use of the product incorporating the design, the essential features of the design, one drawing or photograph that best show the essential features of the design.

Where any other information shall be clarified, such as claiming protection for colour, it shall be indicated in the brief description as well.

3.2 Other Requirements

Where the designs which the applicant seek for protection are similar designs or designs of products in set/set of products, etc., the following requirements shall be met besides fulfilling the aforementioned requirements.

3.2.1 Similar Designs

Where the applicant submits a design patent application including similar designs, the following requirements shall be met:

- ① Each design shall be of the same product;
- ② No more than 10 similar designs in one application may be claimed;
- ③ One of the designs shall be designated as main design in the brief description, and the other designs shall be similar to the main design respectively.

3.2.2 Designs of Products in Set

Where the applicant submits a design patent application including designs of products in set, the following requirements shall be met:

- ① All products to which the designs are applied belong to the same class in the International Classification for Industrial Designs;
- ② Each product has its independent use value. All products to which the designs are applied are customarily sold or used together, possessing a collective use value;
- ③ All products share the same design concept, and the design style is unified.

3.2.3 Component Product

Component product refers to a single product consisting of a number of components, including assembled product with only one assembly option (e.g., an electric kettle with a detachable

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base, Fig 7), assembled product with more than one assembly option (e.g., building blocks), and assembled products needless of assembly (e.g., playing cards).

With respect of the assembled products with only one assembly option, views showing the state of combination shall be submitted; with respect of the assembled products needless of assembly or assembled products with more than one assembly option, views showing each component shall be submitted.



Fig. 7 Electric Kettle

3.2.4 Partial Design

For a partial design patent application, the title of product shall specify both the particular part for which protection is sought and the overall product to which it belongs. Examples include "Car Door" or "Mobile Phone Camera".

The drawings or photographs submitted with the application shall clearly indicate the overall product. They should distinctly differentiate between the claimed part, which is the focus of

the protection, and the disclaimed part, which is not part of the protection claim. Two main representations are as follows:

The first representation is using a combination of solid lines and dashed lines. Solid lines indicate the claimed part, while dashed lines indicate the disclaimed part. (Fig 8)

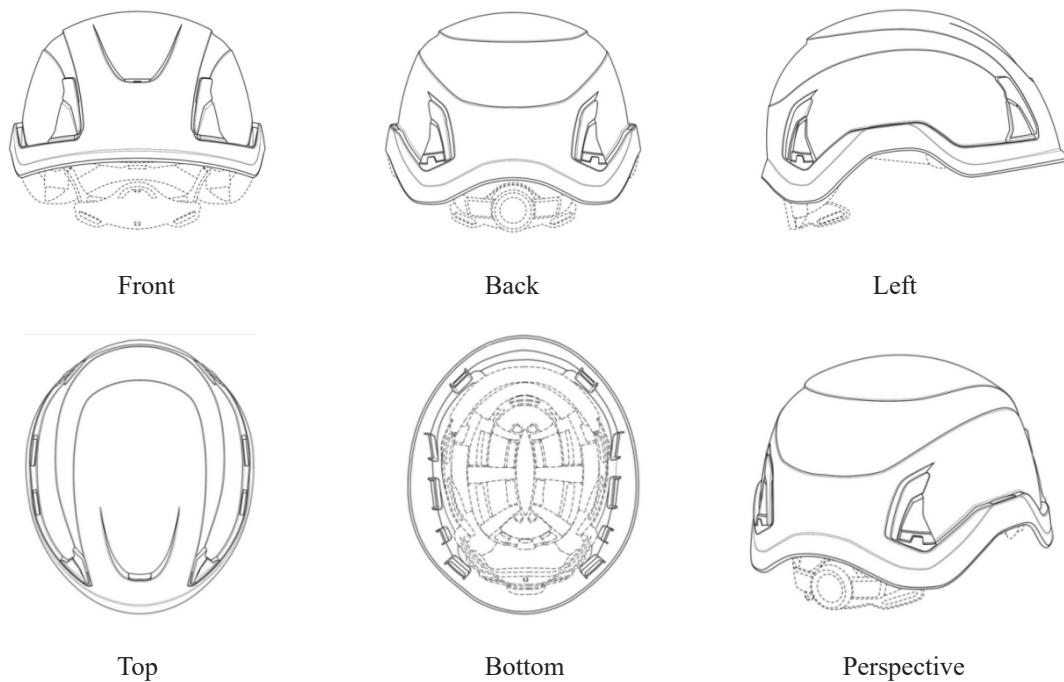


Fig. 8 Shell of Helmet

The second is to cover the disclaimed part of the design with a single-color translucent layer, and specify the claimed part in the brief description (Fig 9, the part not covered by red translucent layer is the partial design seeking protection). If the claimed part pertains to a three-dimensional product, the application must include at least one perspective view that clearly shows the claimed part.

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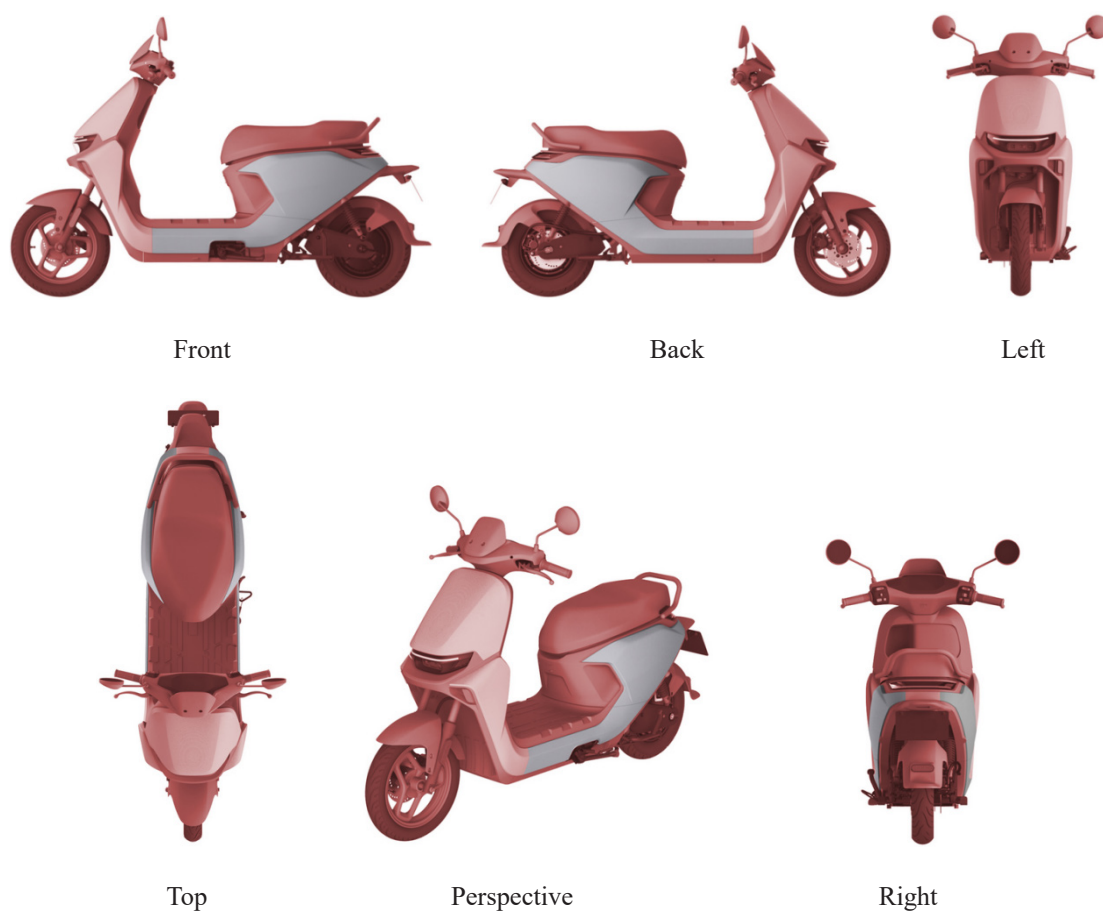


Fig. 9 Side Panels of Electric Bicycles

3.2.5 Graphical User Interface

For graphical user interface (GUI) applied to physical products, the title of the product shall include the use of GUI and the product to which it is applied, e.g., "Refrigerator with GUI for Temperature Control".

Where it is necessary to clearly indicate GUI's location and proportion shown on the product it applied to, and GUI's design is the unique characteristic feature of the overall design, the applicant may submit the application in the manner of a partial design application, using dashed lines to indicate the applied product. (Fig. 10)

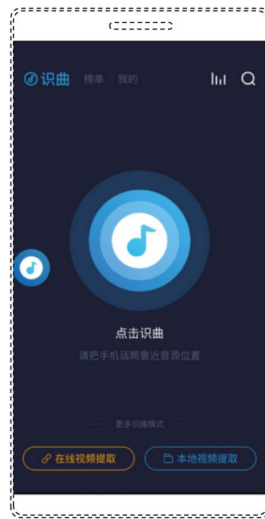


Fig. 10 GUI for Audio Recognition of Mobile Phone

If GUI may be applied to any electronic device, the title of the product to which GUI applied to may be summarized as "electronic device", e.g., "GUI for Audio Recognition of Electronic Device". Applicants could submit only drawings or photographs of GUI itself. (Fig. 11)

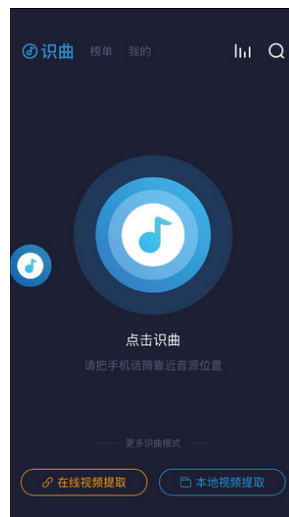
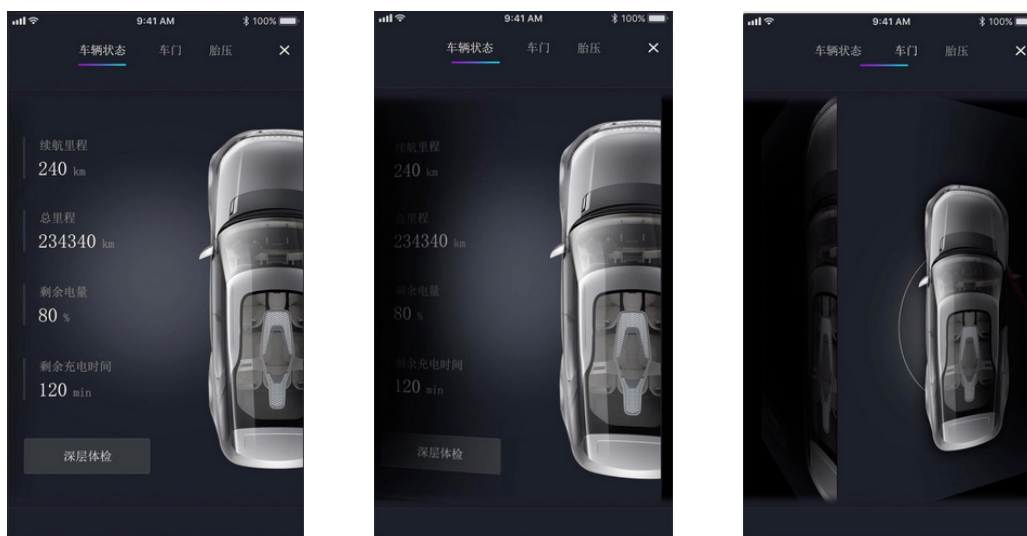


Fig. 11 GUI for Audio Recognition of Electronic Device

With respect of a dynamic GUI applied to a product, the keyword "dynamic" shall be included in the title of the product, e.g., "Electronic Device With Dynamic GUI for Parameter Settings." The drawings or photographs submitted shall uniquely indicate dynamic process of the GUI. (Fig. 12)

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Front

Variation 1

Variation 2

Fig. 12 Electronic Device with Dynamic GUI for Parameter Settings

In addition, the use of GUI shall be clearly stated in brief description, and the characteristic features shall include GUI's design, or indicate that the GUI's design is the unique characteristic feature.

III. Grant and Maintenance

Where no grounds for rejection being found upon preliminary examination of a design patent application, the CNIPA will make a decision to grant the patent right. The applicant shall go through the formalities of registration and pay the annual fee of the year in which the patent right is granted, within 2 months from the date of receiving the Notification to Grant Patent Right and the Notification to Go Through Formalities of Registration.

1. Publication of Grant of Patent Right

Where the applicant goes through the formalities of registration within the prescribed time limit, the CNIPA shall register and publish the patent. The patent right shall take effect from the date of the publication.

The applicant could view the granted and published design patents through the "Patent Publication" column^① on the CNIPA's official website.

2. Maintenance of Patent Right

To maintain the patent right, annual fees shall be paid. The annual fee of the year in which the patent right is granted shall be paid at the time of going through the formalities of registration,

① <http://epub.cnipa.gov.cn/>



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and the subsequent annual fees shall be paid before the expiration of the preceding year.

Where the patentee fails to pay the annual fee (excluding the annual fee of the year in which the patent right is granted) in time or where the fee has been paid in an insufficient amount, the patentee may pay the annual fee or make up the insufficiency, within six months from the expiration of the time limit within which the annual fee is due, and shall pay a surcharge for late payment at the same time. Where, at the expiration of surcharge period of annual fee the patentee still fails to pay or fully pay the annual fee or surcharge, the patent right shall terminate from the date on which the time limit for payment of the annual fee expires.

IV. Reexamination

Where defects exist in a design patent application after the applicant's observations or amendment upon preliminary examination, the CNIPA will issue a rejection decision.

If the applicant is dissatisfied with the rejection decision, the applicant may file a request for reexamination to the CNIPA within 3 months from the date of receipt of the rejection decision.

The petitioner (i.e. the applicant aforementioned) shall submit request for reexamination to the CNIPA. The amendments to the patent application are allowed, however the amendments shall be limited to overcoming the defects pointed out in the rejection decision. Relevant evidence and other documents may be submitted as appropriate.

If the petitioner is dissatisfied with the reexamination decision, he or it may file a lawsuit with the Beijing Intellectual Property Court within 3 months from the date of receipt of the reexamination decision.

V. Invalidation

Any entity or individual, considering that the grant of a patent right is not in conformity with the relevant provisions of Patent Law, may request the CNIPA to declare the patent right invalid.

Before filing a request for invalidation, the petitioner (i.e. any entity or individual aforementioned) shall verify the legal status of the patent intended to be declared invalid. The petitioner may log in to Public Query System^① to query the legal status of the patent (or application), or verify the legal status through a duplicate copy of the Patent Register.

The petitioner shall submit a request for invalidation to the CNIPA, in which the scope to be requested for invalidation shall be clearly indicated.

If any party concerned in invalidation procedure is dissatisfied with the decision of invalidation, the party may file a lawsuit with the Beijing Intellectual Property Court within 3 months from the date of receipt of the decision.

^① <http://cuquery.cponline.cnipa.gov.cn/user/login>

VI. Administrative Reconsideration and Administrative Litigation

Chinese citizens, legal persons, or other organizations who consider that their lawful rights and interests have been infringed upon by a specific administrative act of the CNIPA or its personnel, they shall have the right to apply for administrative reconsideration or to file an administrative suit with people's courts having jurisdiction.

Foreign nationals, stateless persons or foreign organizations that are engaged in administrative reconsideration or administrative suits in China shall have the same litigation rights and obligations as Chinese citizens and organizations.

When applying for administrative reconsideration, if the petitioner considers that the regulatory documents on which administrative acts of the CNIPA are based, are illegal, the petitioner may concurrently submit a request for incidental review of such normative documents to the CNIPA.

Citizens, legal persons or other organizations may first apply to the CNIPA for administrative reconsideration which fall within the scope of administrative adjudication of the people's court. If such citizens, legal persons or other organizations are dissatisfied with the reconsideration decision, they may file a suit with a people's court afterwards. Alternatively, they may file a suit directly with a people's court.

Where the laws (such as Administrative Reconsideration Law) and regulations provide that a party shall first apply to the CNIPA for administrative reconsideration and then file a suit



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with a people's court only if the party is dissatisfied with the reconsideration decision, such provisions shall apply. In China, the People's Courts adopt a two-instance final adjudication for administrative cases.

VII. Protection of Patent Rights

1. Term

The term of patent right for designs shall be fifteen years, commencing from the filling date.

2. Infringement

After the grant of the patent for a design, no entity or individual may exploit the patentee's patent, that is, for production or business purposes, manufacture, offer to sale, sell, or import products incorporating the patentee's patented design without the authorization of the patentee.

3. Protection Methods

Where a design patent is infringed, the patentee may seek protection through the following methods.

3.1 Administrative Protection

When discovering an infringement, the patentee may request the local intellectual property administrative authority to deal with it. The CNIPA may, at the request of the patentee or any interested party, deal with patent infringement disputes that have a major impact throughout



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China.

China prohibits the import and export of goods infringing intellectual property rights. Where a patentee discovers that goods suspected of infringement are about to be imported or exported, he or it may apply to the customs at the entry or exit point to detain the suspected infringing goods.

The patentee may also register their patent rights with the General Administration of Customs. If customs discover goods that potentially infringe on the registered patent rights, they shall immediately notify the patentee in writing.

3.2 Judicial Protection

Upon discovering patent infringement, the patentee or the interested party may file a suit with the people's court having jurisdiction, requesting the infringer(s) to cease the infringing act and compensate for the damages. In China, the People's Courts adopt a two-instance final adjudication system for patent dispute cases.

For actions involving severe cases of patent counterfeiting, the patentee or any interested party may pursue criminal prosecution to hold the offender criminally liable.

VIII. Exemplary Design Patents of China

Since the implementation of China's reform and opening-up policies, the country has emerged as one of the fastest-growing economies globally, with its design innovation booming. Numerous outstanding designs of China have enriched the world. Consequently, an increasing number of foreign innovators are seeking protection for their design in China.



Fig. 13 ZL201930002738.5 Bullet Train

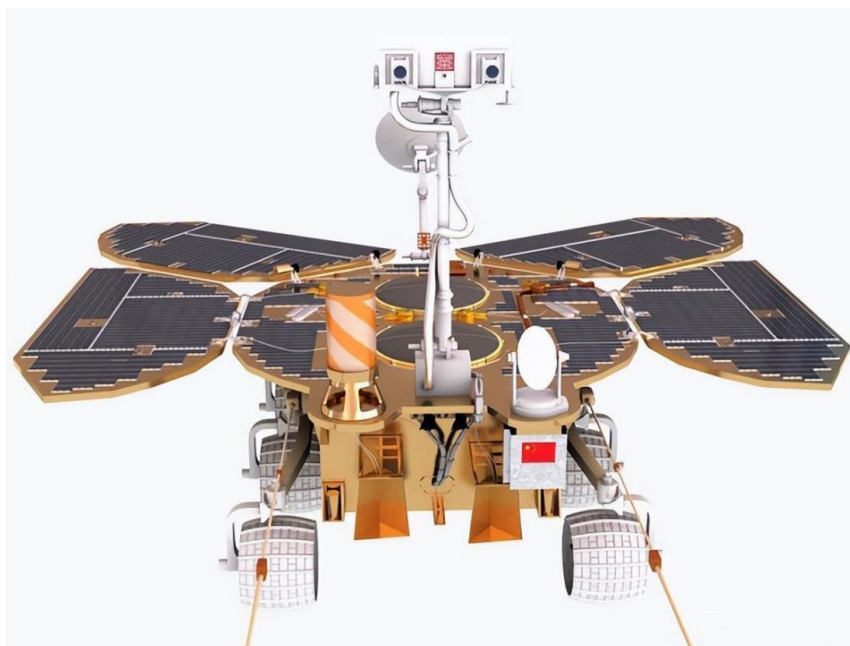


Fig. 14 ZL201530295725.3 Mars Rover



Fig. 15 ZL201730527939.8 Proton Therapy System



Fig. 16 ZL202030311070.5 Automobile



Fig. 17 ZL202030461921.4 Unmanned Aerial Vehicle



Fig. 18 ZL202030733621.7 Television



Fig. 19 ZL202330395697.7 Road Sweeper Robot



Fig. 20 ZL202130876730.9 Bending Machine

