

China Law Update

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426,000 Patent Applications Filed in China During First Half of 2009

The Chinese government's emphasis on boosting innovation might be proving fruitful. According to the latest statistics from the State Intellectual Property Office ("SIPO"), the government entity responsible for prosecuting patents, there were 426,000 patent applications filed and 252,000 patents granted in China during the first half of 2009. Compared with the first half of 2008, patent filings are up 31.3 percent and patent grants are up 23.1 percent.

China's patent system allows for three types of patents: invention patents, utility model patents, and design patents. China invention patents are similar to utility patents in the United States. The patent term for invention patents is 20 years from the filing date. Patents for invention are substantively examined. It typically takes two to five years for an invention patent to issue.

China utility model patents may be obtained only for three-dimensional products. The United States does not have a similar patent category. The patent term for utility model patents is 10 years from the filing date. A utility model patent will normally issue much faster than an invention patent because utility model patent applications receive only a preliminary examination and not a substantive examination. A utility model patent typically issues in about 12 to 18 months.

China design patents are similar to U.S. design patents. The patent term for design patents is 10 years from the filing date. Similar to utility model patent applications, design patent applications do not receive a substantive examination. A design patent typically issues in about 12 to 18 months from filing.

Out of the 426,000 patent applications filed, 148,000 were invention patent applications (34.8%), 142,000 were utility model patent applications (33.4%), and 136,000 were design patent applications (31.8%). For the first time, invention patent applications filed by Chinese enterprises accounted for over 70 percent of the total invention patent applications filed. Also for the first time, the number of invention patents granted to Chinese enterprises surpassed those granted to foreign enterprises.

Among the 426,000 patent applications, 375,000 applications were filed by Chinese enterprises, representing 88 percent of the total number of applications filed. Out of the 375,000 applications, 54.7 percent were for service inventions, and 45.3 percent were for non-service inventions. A "service invention" is an invention by an employee of a company made in the execution of his or her tasks. A "non-service invention" is made by an individual inventor. For service inventions,

the right to apply for a patent belongs to the entity, and, after grant, the entity will be the patent holder. For a non-service invention, the right to apply for a patent belongs to the inventor, and, after grant, the individual will be the patent holder.

A key reason for the sharp increase in patent filings by Chinese enterprises is the creation of reward systems by provincial governments. For example, for enterprises and individuals located in Beijing, the Beijing government will subsidize the applicant of an invention patent application the following: (1) up to 950 RMB in application fees; (2) up to 1200 RMB in examination fees; and (3) 50 percent of other filing fees actually incurred. For invention patent applications, the official filing fee is 950 RMB and the examination fee is 2500 RMB. This means the Beijing government is subsidizing over 50 percent of the official filing fees for invention patent applications. In Beijing, the rewards for utility model patent applications and design patent applications are substantially less, with a maximum amount of 150 RMB. Provinces across China employ reward systems similar to the Beijing system.

In addition to encouraging the filing of patent applications, SIPO has been focused on creating practical measures to facilitate patent examination. Since 2002, SIPO has increased the number of patent examiners and strengthened the professional training of examiners.

Unlike Chinese enterprises, patent applications filed by foreign (non-Chinese) enterprises were down by 7.3 percent from the first half of 2008. Broken down by country, there was a 29.6 percent decrease in filings by Korean companies, a 8.4 percent decrease in filings by U.S. companies, and a 4.7 percent decrease in filings by Japanese companies. Some experts believe the decline is due to the financial crisis. Cutbacks by multinational enterprises may include the reduction of patent applications filed in China. However, in the areas of hybrid vehicle and medical devices, patent applications filed by foreign enterprises actually increased.

As of June 30, 2009, SIPO has received a total of 5.276 million patent applications and granted 2.753 million patents.

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