

GET UPDATED ON INTELLECTUAL PROPERTY RIGHTS IN CHINA

NEWSLETTER | November 2023

品源知识产权 | BEYOND ATTORNEYS AT LAW



Statistics Published by CNIPA

(January to September, 2023)

Granted/Registered	January-September 2022	January-September 2023	Rate of Change
Invention patent	615019	698822	13.63%
Utility model patent	2143441	1596992	-25.49%
Design patent	532464	487977	-8.35%
Trademark	4853481	3138311	-35.34%
Number of PCTs Filed	53698	53106	-1.10%

During the period from January to September 2023 the total number of granted invention patents increased by 13.63% compared with the same period of time in 2022. Further figures were also released by the CNIPA shown in the table, in which registered trademarks in 2023 decreased more than one third compared with the previous year.



News & Events

The Implementing Regulations of the Patent Law (Draft Amendment) being deliberated and adopted at the Executive Meeting of the State Council

Updated: November 3, 2023

The Implementing Regulations of the Patent Law (Draft Amendment) was deliberated and adopted at the Executive Meeting of the State Council on November 3, 2023, and will be officially implemented in the near future. As an important supporting administrative regulation to guarantee the effective implementation of the newly revised Patent Law and ensure the smooth implementation of various additional systems, the revision of the Implementing Regulations of the Patent Law has been widely concerned by various sectors of the society. The revision is characterised by three aspects: Firstly, it is to further enhance the level of China's patent creation, utilization, protection, management and service. Secondly, it is to refine and improve the relevant system in accordance with the revised Patent Law. Thirdly, it is to ensure proper linkage

with relevant international treaties to which China has acceded. Specifically, the revision mainly relates to five aspects

- to improve the patent application system
- to improve the patent examination system and enhance the quality of patent examination
- to reinforce the administrative protection for patents
- to strengthen patent public services, propel the transformation and application of patents, and
- to add special provisions on international applications for industrial designs and strengthen linkage with the Hague Agreement.



Convention Abolishing the Requirement for Authentication Takes Effect in China



On March 8, 2023, China joined the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (hereinafter referred to as the Convention). On November 7, 2023, the Convention came into effect in China. Afterwards the cross-border circulation of official documents between China and the contracting countries to the Convention no longer goes through the traditional "Dual Authentication" process of "Diplomatic Department Authentication + Embassy and Consulate Authentication". Instead, a new one-step authentication model based on "Apostille" was introduced within the framework of the Convention, which will greatly save the certification time and economic costs for Chinese and foreign citizens and enterprises. For Intellectual Property-related litigations, Chinese courts' requirements for case filing documents, such as Power of Attorney, Identity Certificate of Representative, Certificate of Good Standing, and the etc. will remain unchanged. However, consular authentication of such documents is no longer required. The Apostille Certificate issued by the contracting countries where the documents come from will suffice the courts' formality requirement. By October 23, 2023, 125 countries are contracting states of the Convention, including the United States, Germany, France, Canada, Japan, the UK, Italy, the Netherlands, Republic of Korea, Australia, New Zealand. (By: Haiyan WU)

Patent Section

Provisions of Human Embryonic Stem Cell in Guideline For Patent Examination

Article 5.1 of Patent Law of China excludes some subject matter that is contrary to the laws or social morality or that is detrimental to public interest, including use of human embryos, as being ineligible for patent protection. *Guideline For Patent Examination* specifically explains the intension of Article 5.1 as following.

Section 3.1.2 of Chapter 1, Part II

"Where an invention-creation is contrary to social morality, it shall not be granted a patent right. For example use of human embryos for industrial or commercial purposes, and are contrary to social morality and thus shall not be granted patent rights. However, where an invention-creation isolates or collects stem cells from human embryos within 14 days after fertilization and without development in vivo, it shall not be rejected on the grounds of being contrary to social morality."

Section 9.1.1 of Chapter 10, Part II

"9.1.1.1 The human body, at the various stages of its formation and development, including a germ cell, an oosperm, an embryo and an entire human body shall not be granted the patent right in accordance with the provisions of Article 5.1. Human embryonic stem cells do not pertain to human body at the various stages of its formation and development."

As can be seen from the recitation, the subject matter of an embryonic stem cell of human beings and a preparing method thereof is eligible subject matter.

However, a concomitant issue is that an embryonic stem cell of human beings generally comes from human embryos, which are strictly excluded from eligible subject matter for patent protection as being contrary to Social Morality according to Article 5.1 of Patent Law of China. Nevertheless, according to the above provisions of *Guideline For Patent Examination*, if an



invention isolates or collects stem cells from human embryos within 14 days after fertilization and without development in vivo, it is not deemed as being contrary to social morality. To sum up, an embryonic stem cell of human beings (and a preparing method thereof) is eligible subject matter now, but the embryonic stem cell should be from human embryos within 14 days after fertilization and without development in vivo (or not from human embryos at all), and the fact should be recited in the specification. (By: Tao Ning)

Charming Hangzhou

Hangzhou is the capital city of Zhejiang Province, located in the northwest of the province. With a population of 12.38 million people Hangzhou ranks the second biggest city in the Yangtze River Delta after Shanghai. Its economy has been developing rapidly since its opening up in 1992. It is an industrial city with diversified manufacturing sectors such as machineries, household electrical appliance, automotive components, fine chemicals, medicine and food processing. Home to the headquarters of large global tech companies such as the Alibaba Group, Ant Group Hangzhou is also an important e-commerce hub in China and attracting many programmers from all over the country. It boasts the eighth largest GDP among all Chinese cities. Hangzhou is a major city for scientific research in the Asian-Pacific region and hosts several notable universities including Zhejiang University of Technology, Hangzhou Normal, Zhejiang University of Finance and Economics, Zhejiang Chinese Medical.



In spite of the recent developments Hangzhou still retains its cultural heritage and natural environment.

The renowned Neolithic culture of Hemudu is known to have inhabited in Yuyao, south-east of Hangzhou City. It dated as far back as seven thousand years ago. Hangzhou is listed as one of the seven ancient capitals of China. The perfect combination of long history and modernity makes the city attractive to visitors from home and abroad. Tourism is an important economic factor for

Hangzhou. One of the most popular sights is West Lake, a UNESCO World Heritage Site. The West Lake Scenic Area covers an area of 49 square kilometers and contains more than 100 scenic spots including historical pagodas, cultural sites and natural environment of the lake and hills.

Hangzhou will host the 2024 AIPPI World Congress.



BEYOND ATTORNEYS AT LAW



BEYOND ATTORNEYS AT LAW has been growing steadily since its establishment in Beijing in 2004. We provide a full range of IP services to protect our clients' Intellectual Property rights including patent, trademark, copyright, domain name, and others.

With over 800 employees, BEYOND ATTORNEYS AT LAW is now one of the leading intellectual property firms in China, helping clients' businesses thrive by combining the highest global standards with local expertise.

Authorized by the China Trademark Office, the State Intellectual Property Office, and the Beijing Bureau of Justice, the firm has a depth of legal resources across China. With liaison offices in Munich, New York and Tokyo, we have profound understandings of our foreign clients' requirements.

In an increasingly competitive business environment, we will continue to provide our clients with excellent quality of work and efficient service.

BEYOND ATTORNEYS AT LAW in Key Figures

- Over 800 employees headed by a core team of 12 partners
- Headquarters in Beijing, China
- 16 branch offices in major Chinese cities
- 3 overseas representative offices in Munich, New York and Tokyo
- Ranked one of the top 10 Chinese IP law firms.