

# GET UPDATED ON INTELLECTUAL PROPERTY RIGHTS IN CHINA

NEWSLETTER | January 2024

品源知识产权 | BEYOND ATTORNEYS AT LAW



## Statistics Published by CNIPA

(January to November 2023)

Granted/Registered	January–November 2022	January–November 2023	Rate of Change
Invention patent	740062	849280	+14.8%
Utility model patent	2556721	1924763	-24.7%
Design patent	657728	585393	-11.0%
Trade mark	5790747	3947837	-31.8%
Number of PCTs Filed	65742	65810	+0.1%

During the period from January to November 2023 the total number of granted invention patents increased by 14.8% 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 30% compared with the previous year.

**Statement from Chinese foreign ministry on 24th November 2023:** "China has decided to apply unilateral visa-free policy to more countries on a trial basis, which involves extending visa-free treatment to travelers holding ordinary passports from six countries, namely France, Germany, Italy, the Netherlands, Spain and Malaysia." From 1st December 2023 to 30th November 2024 citizens from the named countries can stay for no more than 15 days for business, tourism, family visit and transit purposes.

## News & Events

### Highlights of the Revision of the Implementing Regulations of the Patent Law of the People's Republic of China

The Decision to revise the Implementing Regulations of the Patent Law of the People's Republic of China was issued by the State Council on December 11, 2023. The revised Implementing Regulations will come into effect on January 20, 2024. Several major changes introduced by the Implementing Regulations are summarized as follows.

#### Abolition of the 15-day grace period

An official communication issued by the CNIPA will be deemed to have been received on the date when the communication is successfully delivered to the electronic docketing system of the applicant or the agency, rather than 15 days after the issuance of the communication. This rule applies when the patent application is filed by electronic means. Thus, the time period for responding to an official communication will be somewhat shortened.

#### Protection of partial design

The revised Regulations provide detailed rules on how a partial design should be represented. In particular, if protection is sought for only a portion of an article, the portion can be identified by a combination of dotted and solid lines. Alternatively, the portion of the article to be protected can be indicated in the accompanying textual description.

With this rule, removal of dashed or dotted lines from the representations will be unnecessary when a foreign design application is extended to China.

#### Incorporation by reference

The revised Regulations provide that if the description or claims, or a part thereof, of a Chinese invention/utility model application is inadvertently missing or erroneously filed, the omitted or erroneously filed content can be supplemented or corrected within two months from the filing date, or within a time limit specified by the examiner, by means of incorporation by reference to the priority application (if any) of the subject application.

This rule does not apply when the subject application is a divisional application. If the time limit for request for incorporation by reference is missed due to reasons other than force majeure, restoration of rights cannot be requested.

Incorporation by reference will be particularly useful in case where the submitted Chinese translation of a foreign patent application contains errors or omissions.

#### Restoration of priority right; addition or correction of priority claim

The revised Regulations provide that if an invention/utility model application is filed after the expiration of the time limit for claiming a priority, restoration of priority right can be requested within two months after the expiration. In other words, the time limit for claiming priority is extended to 14 months.

In addition, the addition of or correction to a priority claim after the filing of a Chinese patent application is now possible. This applies only if a priority has been claimed when filing the application; if not, restoration of priority right shall be resorted to.

#### Domestic priority claim between invention/utility model and design

The revised Regulations provide that, a Chinese design application can enjoy the priority benefit from an earlier domestic invention or utility model application based on the drawings of the latter, provided that no patent has been granted for the earlier application and no priority has been claimed by the earlier application. Unlike the priority claiming between invention and utility model application, if a Chinese design application claims priority to an earlier invention or utility model application, the earlier application will not be deemed to be withdrawn.

Such a provision will offer the applicant a more flexible patent filing strategy.

#### Patent term adjustment and extension

Patent term adjustment for unreasonable delay during the prosecution of an application and Patent term extension for time lost due to the regulatory approval process have been provided for the first time in the last amended Patent Law. The revised Regulations

introduced a new Chapter (Rules 77 to 84) governing the formalities for requesting Patent term adjustment and extension, the calculation of the adjusted or extended terms, the definition of the unreasonable or reasonable delay, and several restrictions to the term adjustment and extension concerning new drugs. (By: Yong Yang)





**Copyright Section**

# The First Copyright Infringement Case of AI-Generated Works in China

Updated: November 27, 2023

On November 27th, 2023, Beijing Internet Court made a judgment on the copyright infringement of AI-generated picture.

In this case, it was determined that the plaintiff who used AI to generate the picture involved was the author of the picture and enjoyed the copyright, and that the defendant's use of the picture involved without the plaintiff's permission was a copyright infringement.

Li, the plaintiff, used the open source software Stable Diffusion to generate the following picture of ladies and posted them on a famous Internet platform (Little Red Book Platform) in China, with a signature watermark printed on them. Later, the plaintiff found out that the defendant Liu used the pictures involved (without the plaintiff's signature watermark) as the picture of his original poems on another Internet platform (Baijiahao platform) without plaintiff's permission.

Specifically, the main page of the software Stable Diffusion used by the plaintiff is shown in Figure 1 below.



Figure 1

By selecting and modifying the model, entering various conditions in Prompt, such as

perfect skin, long legs, etc., and entering other conditions in Negative Prompt, such as bad hands, deformity, etc., and modifying some parameters, the plaintiff managed to generate the results as shown in Figure 3 below. The operation interface is shown in Figure 2 below.



Figure 2



Figure 3

Without changing the above parameters, the weight of a model is modified, and the generated result is shown in Figure 4.



Figure 4

Without changing the above parameters, modify the random seed, and the generated result is shown in Figure 5.



Figure 5

Without changing the above parameters, add some Prompt, and the generated result is shown in Figure 6.

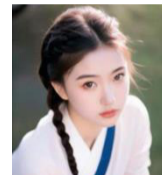


Figure 6

The plaintiff changed individual prompt words or parameters, resulting in different image results generated by them.

After examination, Beijing Internet Court judged as follows.

In this case, the plaintiff wanted to draw a close-up of a beautiful woman with photographic style under the condition of dusk light, so plaintiff entered the prompt words in the model of Stable Diffusion, set the relevant parameters, added the prompt words and adjusted the parameters according to the initially generated picture, and finally chose a picture that

plaintiff was satisfied with. From the time the plaintiff conceived the picture involved in the case to the time when the picture involved in the case was finally selected, a certain amount of intellectual input was made in the whole process, so the picture involved in the case has the elements of intellectual achievements. In addition, the above-mentioned whole adjustment and correction process also reflects the plaintiff's aesthetic choice and personality judgment, which has the elements of originality.

Therefore, the plaintiff is the author of the pictures involved and enjoys the copyright of the pictures involved.

The defendant used the pictures involved without the plaintiff's permission and cut off the signature watermark, which infringed on the plaintiff's right of signature and information network dissemination.



## Chinese New Year 2024

Chinese New Year will fall on February 10th, 2024, a year of the Dragon. The Year of the Dragon will last until January 28th, 2025. The twelve animals of the Chinese zodiac are Rat, Ox, Tiger, Rabbit, Dragon, Snake, Horse, Goat, Monkey, Rooster, Dog and Pig.

In Chinese language the Chinese New Year is commonly referred to as Spring Festival (春节) celebrating the beginning of a new year based on the traditional lunisolar Chinese calendar. The Chinese New Year is associated with several customs. It is a tradition for every family to thoroughly clean their house or flat in order to welcome good luck and fortune. Decorating doors and windows with red paper cuts and couplets

is another tradition to bring happiness, wealth and longevity. Foreigners who spent some time during the Spring Festival in mainland China must have experienced loud sound of firecrackers, especially on the New Year's Eve. According to legend the noise and red colour would scare away a mythical beast called Nian, which would eat up humans and destroy villages in the middle of the night.

Although traditions and customs may vary widely within China, the Lunar New Year's eve is the time for Chinese family members to get together for a reunion dinner. Thus, it is not uncommon to have more than 3 billion passengers/times within mainland China during the Spring Festival travels (ca. 40 days) before the pandemic.

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**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.

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