

博钦律师事务所

Global Patent Protection for China-Originated Inventions 源于中国的发明的全球专利保护

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Why? 为何?

- RMB 50,612,400 Awarded
- 判决RMB 5061.24万
 - Wuhan Environmental Project Tech Co., Ltd. v. Fujikasui Engineering Co., Ltd.
 - 武汉晶源环境工程有限公司诉日本富士化水工业株式会社
 - Fujian High People's Court
 - 福建省高级人民法院

(Source: http://www.ciela.cn/)

(来源: http://www.ciela.cn/)

Why? 为何?

- USD\$ 1,850,000,000 Awarded
- 判决USD\$ 18亿5000万
 - Centocor Inc., et al. vs. Abbott Laboratories
 - Centocor公司等诉雅培公司
 - Case Number 07-cv-00139, U.S. District Court for the Eastern District of Texas.
 - 案件编号07-cv-00139,美国德克萨斯州东区地方法院

(Source: Law360)

(来源: Law360)

Why? 为何?

- Damages
- 赔偿金
 - Reasonable Royalty
 - 合理的使用费
 - Lost Profits
 - 损失的收益
 - Treble Damages (US)
 - 三倍赔偿金(美国)
- Injunctions
- 禁令
- Registration with Customs
- 海关登记
- Administrative Enforcement (SAIC)
- 行政执行(国家工商行政管理总局)

What is Patentable? 什么是可专利的?

- China & US:
- 中国和美国:
 - Methods of Use and Manufacture (although not business methods typically)
 - 使用和制造方法(但通常不是商业方法)
 - Machines (e.g., engines, drills, etc.)
 - 机械(例如,引擎,钻机等)
 - Chemicals/Medicines
 - 化学品/药品
 - Electronics (e.g., circuits)
 - 电子设备(例如,电路)
 - Software (under certain circumstances)
 - 软件(在一定环境下)
 - Biological Material (e.g., genes)
 - 生物材料 (例如,基因)

Requirements 要求

- China: Novelty, Inventive Step, Practical Applicability
- 中国:新颖性、创造性、实用性
- US: New, Non-Obvious, Useful
- 美国:新颖、非显而易见、适用

Deadlines to File in China 在中国递交的时限

- China: Generally Must File Before any Public Disclosure
- 中国:通常必需在任何公开之前递交
 - Exceptions 6-Month Grace Period
 - 例外-6个月的宽限期
 - First Disclosure at International Exposition
 - 在国际展览会首次展出
 - First Disclosure at Academic/Technological Conference
 - 在学术/技术会议首次发表
 - Disclosure Without Consent of Applicant
 - 未经申请人同意泄露

Types of Patents 专利类型

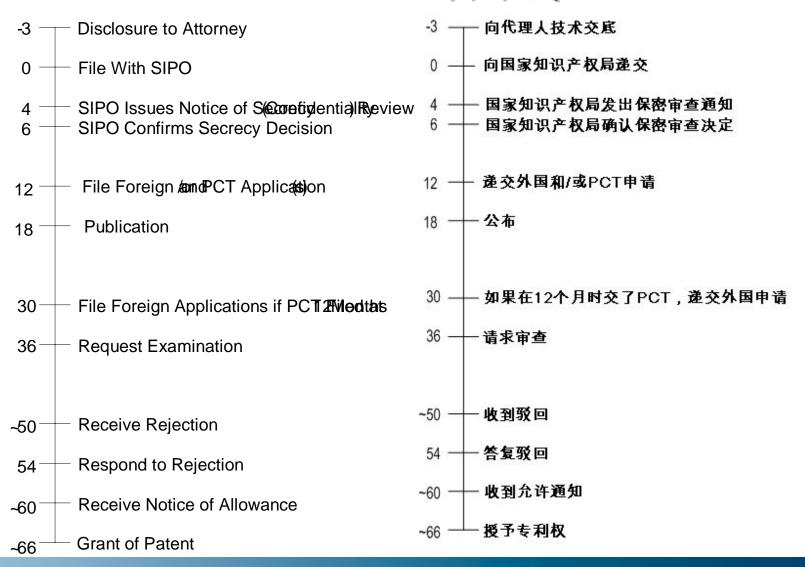
- China
- 中国
 - Invention Patent Term: 20 years from filing
 - 发明专利-期间:申请日起20年
 - Utility Model Term: 10 years from filing
 - 实用新型-期间:申请日起10年
 - Design Patent Term: 10 years from filing
 - 外观设计-期间:申请日起10年
- US
- 美国
 - Utility Patent (similar to invention patent in China) Term: 20 years from filing
 - 实用专利(类似于中国的发明专利)-期间:申请日起20年
 - Design Patent Term: 14 years from grant
 - 设计专利-期间:授权起14年
 - Plant Patent Term: 20 years from filing
 - 植物专利-期间:申请日起20年
 - invent or discover and asexually reproduce any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state
 - 发明或者发现以及无性繁殖任何特异和新颖的植物品种,包括培植的变形芽,突变体,杂交体,以及新发现的种子苗,但不包括块茎繁殖的植物或在未栽培状态下发现的植物

Filing Chinese Patent Applications Abroad

在国外递交中国专利申请

- Priority Claim
- 优先权要求
 - File foreign applications within 12 months of Chinese application to get priority claim.
 - 在中国申请的12个月内递交外国申请,以要求优先权
 - Foreign application is treated as if filed on same date as Chinese application.
 - 外国申请被视为递交于中国申请的同一天
- Two Routes:
- 两种途径:
 - Patent Cooperation Treaty (PCT) Application
 - 专利合作条约(PCT)申请
 - Gives applicant additional 18 months to foreign file.
 - 给予申请人额外的18个月时间进行外国递交
 - Directly foreign file in interested jurisdictions.
 - 直接在感兴趣的辖区内进行外国递交

Timeline时间线



Questions?

问题?