



How to Protect Your Intellectual Property Rights in China?

Intellectual property (IP) protection is a longstanding and critical concern for companies operating in **China**, which has also been a key point of contention in the **US-China trade war**. China has already made strides in recent years to improve IP protection as the government seeks to spur domestic Chinese innovation and improve the business environment for investment, such as revising its **IP laws** and establishing a **new national IP appeals court**. However, challenges remain, as counterfeiters and infringers are getting increasingly sophisticated. For example, infringers may take advantage of procedural loopholes and proactively seek to invalidate legitimate IP rights. Companies are thus suggested to develop a comprehensive strategy to identify and protect their IP in China. This includes enhancing internal controls and making the best use of external resources.

IP registration in China

In China, IP is defined as a proprietary right enjoyed by a holder with respect to their works, inventions, trademarks, geographical indications, trade secrets, layout design of integrated circuits, new varieties of plants, etc. Among others, **copyrights** on works, **patent rights** on inventions, utility models, and designs, and **trademark rights**, are the most common IP rights.

China follows the principle of territoriality in IP protection, meaning IP rights acquired under the laws of a country can only be valid and protected within the territory of that country unless an international convention or bilateral or multilateral agreement is in place. What that means is that enjoying IP rights in your home country will not secure your IP rights in China. A domestic IP registration/filing in China is **necessary** to effectively protect your IP in the country. Besides, China mainly applies a “first-to-file” rule for IP registration, which means that the first entity or individual who registers IP rights will hold those rights exclusively, irrelevant of the original user, with limited exceptions. Thus, the first and foremost strategy we can provide is to register/file your IP rights in China as early as possible. We summarize the registration matters for patent, copyright, and trademark in the tables below.

Patent registration in China



Patent Registration

Necessity	Patent is valid and protected in China only after proper registration
Requirement	<ul style="list-style-type: none">• Inventions and utility models for which patent rights are granted shall possess novelty, creativity and practicality.• A design for which patent rights are granted shall not fall under the existing designs.• Overseas individual or entity must engage a qualified agent to handle the registration.
Authority in charge	Patent Office of China National Intellectual Property Administration (CNIPA)
Procedure	<p>Invention patent: Preliminarily search and analyze the application availability → Prepare documents and submit filing → Application acceptance → Application fee payment → Application classification → Preliminary examination and verification → Supplement of docs per requirement (if any) → Application for substantial examination → Substantial examination (+ OA, if any) → Patent right grant → Handling Patent registration formalities and submit registration fees → Issuance of Patent certificate</p> <p>Utility model: Preliminarily search and analyze the application availability → Prepare documents and submit filing → Application acceptance → Application fee payment → Application classification → Preliminary examination and verification → Supplement of docs per requirement or Patent right grant → Handling Patent registration formalities and submit registration fees → Issuance of Patent certificate</p> <p>Design: Preliminarily search and analyze the application availability → Prepare documents and submit filing → Application acceptance → Application fee payment → Application classification → Preliminary examination and verification → Supplement of docs per requirement or Patent right grant → Handling Patent registration formalities and submit registration fees → Issuance of Patent certificate</p>
Timeline	<p>Invention: 2-3 years, for high value patent, could have chance to shorten to 1.25 years</p> <p>Utility model: 6-9 months</p> <p>Design: 6-9 months</p>
Validity*	<p>Invention: 20 years</p> <p>Utility model: 10 years</p> <p>Design: 15 years</p>

* Calculated from application date.

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Copyright registration in China



Copyright Registration

Necessity	Although copyright can be automatically gained upon creation and protected in China according to the international convention or agreements China signed, market participants who ever got their copyright registered can better defend against any infringement as the official certificate would at least save time and cost for proving the ownership. Besides, for software copyright, the registration certificate is required in software copyright transactions.
Requirement	<ul style="list-style-type: none">• The work to be registered should be original intellectual achievements in the fields of literature, art and science which can be expressed in a certain form.• Anyone who has registration needs could apply for registration. Overseas individual or entity can submit application directly, but to engage a qualified agent is suggested as Chinese documents and support is inevitable.
Authority in charge	National Copyright Administration and its local branches
Procedure	Documentation preparation → Application submitting → Acceptance of application documentation → Fee payment → Preliminary and substantive review → Issuance of registration certificate and publish on website (different type of copyright registration may differ a little bit)
Timeline*	1.5-3 months
Validity	<p>Indefinite period: Right of authorship, right of revision, right to preserve the integrity of work of an author shall not be subject to restriction.</p> <p>Entire life span of the author and 50 years following his/her death: Individual author's rights of publication, reproduction, distribution, rental, exhibition, performance, screening, broadcasting, information network transmission, filming, adaption, translation, compilation.</p> <p>50 years following the first publication of the work: Rights of publication, reproduction, distribution, rental, exhibition, performance, screening, broadcasting, information network transmission, filming, adaption, translation, compilation of works of a legal person or any other organization and works created in the course of employment in which copyright (except for right of authorship) belongs to a legal person or any other organization. (If there's no publication within 50 years from completion of the creation of the work, it shall not be protected by this Law.)</p> <p>50 years following the first publication of the work: Rights of publication, reproduction, distribution, rental, exhibition, performance, screening, broadcasting, information network transmission, filming, adaption, translation, compilation of film works, works created using methods similar to film making and photographic works. (If there's no publication within 50 years from completion of the creation of the work, it shall not be protected by this Law.)</p>

*Different type of copyright registration may differ a little bit.

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Trademark registration in China

Trademark Registration	
Necessity	Trademark registrants enjoy exclusive rights to use trademark and are protected by the law. Due to the "first-to-file" principle in China, trademark registration should be made as early as possible.
Requirement	<ul style="list-style-type: none">• A trademark to be registered shall possess distinctive characteristics to facilitate identification, and shall not conflict with prior legitimate rights obtained by others.• Overseas individual or entity must engage a qualified agent to handle the registration.
Authority in charge	Trademark Office of CNIPA
Procedure	Registration availability pre-checking → Documentation preparation → Application submitting → Preliminary review on documentation and issuance of acceptance notice (only indicate the documentations are complied with the basic requirements) → Substantive review on registration availability → Preliminary approval and announcement notice (3 months for others to raise opposition, if any) → Final approval and registration announcement → Issuance of registration certificate
Timeline*	10-13 months
Validity	10 years

**Calculated from registration date*

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Set up a thorough internal IP protection system

IP protection is a long-term project that the China market participants must always pay attention to.

Besides registration, businesses are also suggested to establish a thorough internal IP protection system, to adopt preventive measures to protect IP, and to confront IP infringements in business operations. This system can be set up with the help of external third-party professional services, especially for businesses that are new to China and have limited knowledge of China's trademark protection situation. Among others, the below strategies serve as good starting points:

- Provide training for all employees (especially those who have access to key IP information) to ensure their actions do not compromise the organization's IP protection.
- Control and monitor employee's access to key equipment and areas and limit the likelihood that any one employee has access to all the information needed to copy IP.
- Incorporate IP protection to facility design and business's daily operational processes.
- Utilize technologies to track and protect IP.
- Be careful with business partners and include proper IP protection clauses in all contracts and agreements.
- Assign a specific team or personnel to focus on IP management, including integrating the IP related data and tracking the status of the IP protection.
- Actively monitor for infringement at industry trade shows and trade fairs, through IP



- publications, and on Internet.
- Monitor competitor's IP status to see if there is any chance to take proactive defending actions.
- Assess the registration necessity in any country/region and get the registration started as early as possible.
- Take actions to fight against any infringement by competitors and/or any other participants of the target market.

Make good use of the current IP protection measures implemented by China

China has been making substantial efforts to improve the IP protection offered in the country. Besides launching a lawsuit, a more time and cost efficient way might be to report to the competent authority directly, which can help IP rights holders achieve the following:

- Force the infringer to stop infringing immediately
- Confiscate illegal gains of infringer.
- Impose penalty on infringer.
- Require the infringer to compensate the right owner as per asked by the owner.

Filing your IP rights with China customs

For businesses engaging in import-export, they are suggested to file their patent, copyright, or trademark, with the customs authorities. This is necessary because:

- It is a prerequisite for the customs to take active IP protection measures.
- It helps customs to find infringing goods.
- It can have a deterrent effect on the infringer.

To file with customs, applicants shall either be the IP owner (for trademark and patent, its IP registration shall be done with the competent authority of China and for copyright, its country of origin should be a member of the *Berne Convention for the Protection of Literary and Artistic Works*) or a qualified agent in China. The IP customs filing takes around 1.5 months and the general procedure is as follows:

- Documentation preparation
- Application submitting
- Review of application
- Fee payment
- Filing successful

Dezan Shira & Associates can provide the most updated information and professional services concerning IP protection, and we welcome anyone who is interested in the China market turn to reach out to us for getting more information. You may email us at China@dezshira.com.

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