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# An Overview of Chinese Patent System



CCPIT PATENT AND TRADEMARK LAW OFFICE

中国国际贸易促进委员会专利商标事务所

Princeton, N.J.

October 3, 2019

# Agenda

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- ✦ Introduction and Statistics
- ✦ Patent Filing and Examination
- ✦ Post-Grant Proceedings
- ✦ New Trend in Patent Prosecution and Protection

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# Types of Patent in China

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Type	Subject Matter	Term (Year)
Invention	Any new technical solution relating to a <b>product</b> , a <b>process</b> or improvement thereof	20
Utility Model	Any new technical solution relating to the <b>shape</b> , the <b>structure</b> , or <b>their combination</b> , of a <b>product</b> , which is fit for practical use	10
Design	Any new design of the <b>shape</b> , the <b>pattern</b> , or <b>their combination</b> , or the <b>combination of the color with shape or pattern</b> , of a <b>product</b> , which creates an aesthetic feeling and is fit for industrial application	10

# Comparison on Types of Patent

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China	U.S.A.
Invention Patent (20 years, substantive examination)	“Utility Patent” (20 years, substantive examination)
<b>Utility Model Patent</b> (10 years, preliminary examination only)	<b>No</b>
Design Patent (10 years, preliminary examination only)	Design Patent (14 years, substantive examination)
<b>No</b> (New plant variety protection certificate under New Plant Variety Protection Regulation, 20/15 year terms)	Plant Patent (20 years, substantive examination)

# Number of Patent Applications (million)

## Invention + Utility Model + Design

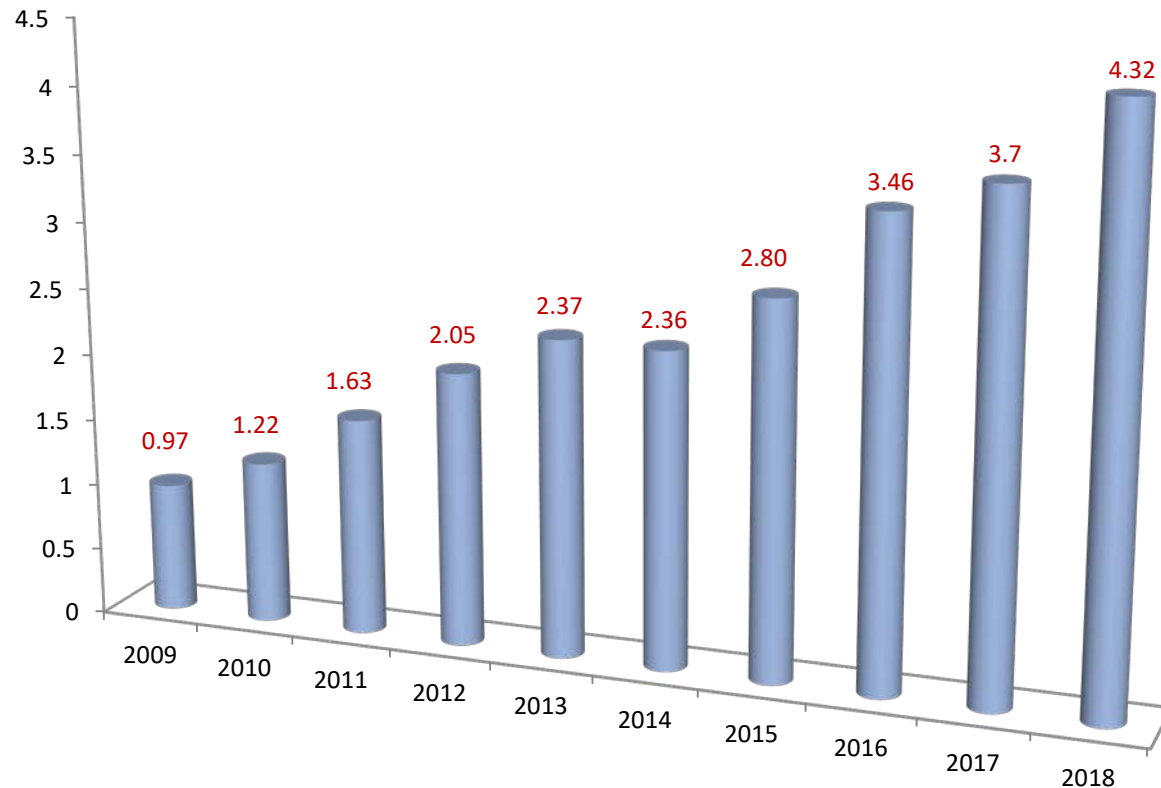
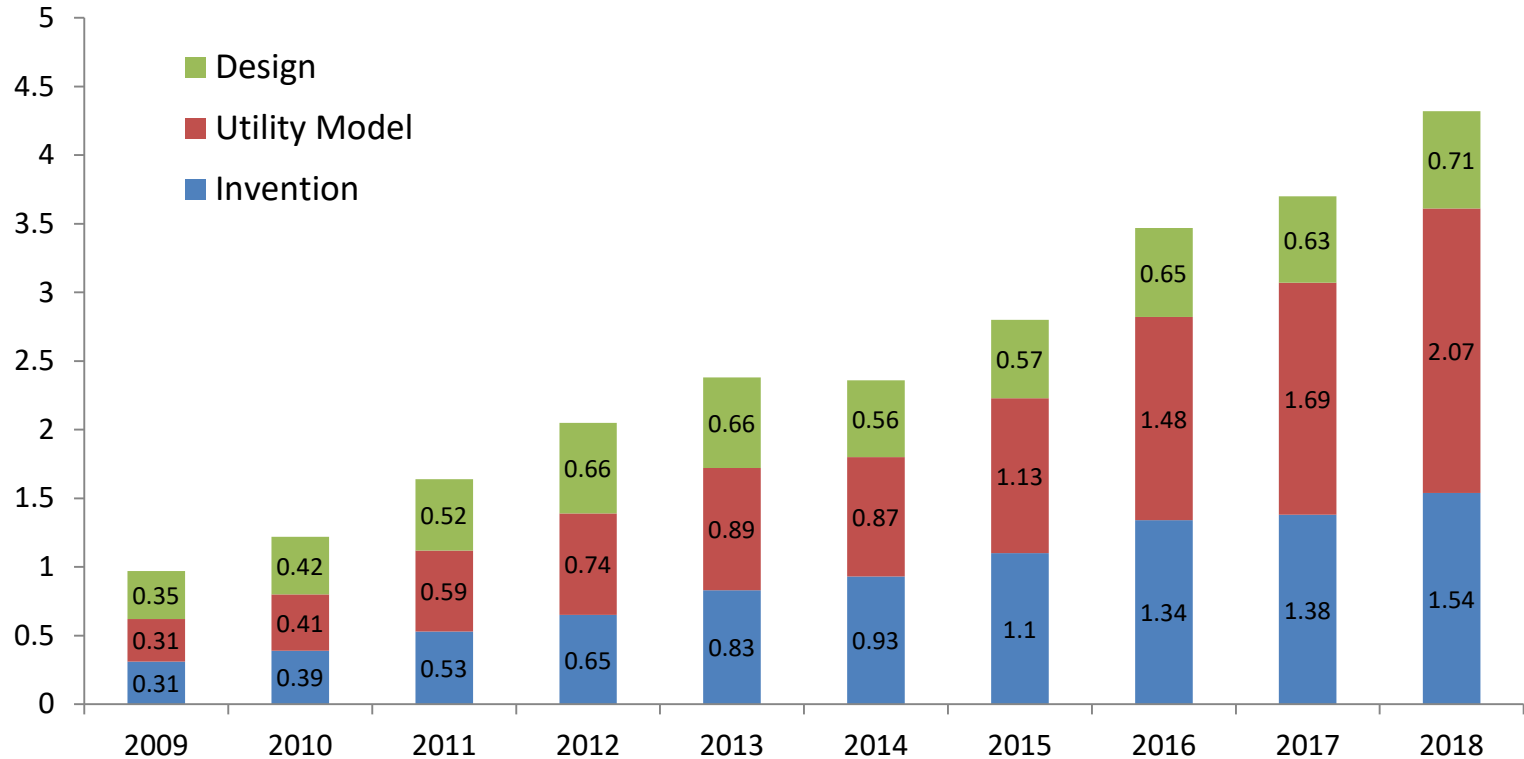
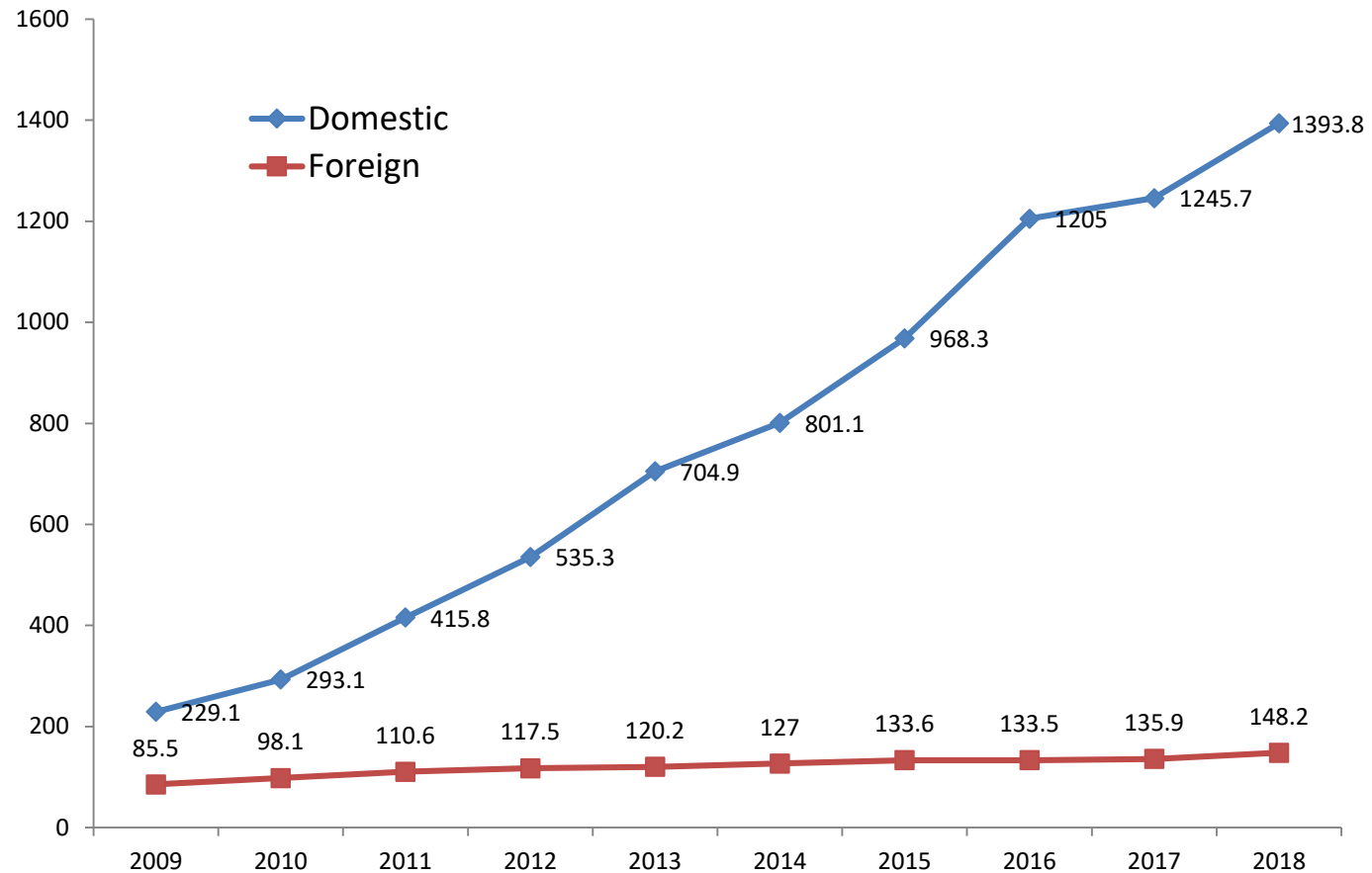


Figure Source: CNIPA Official Statistics

# Number of Patent Applications (million)

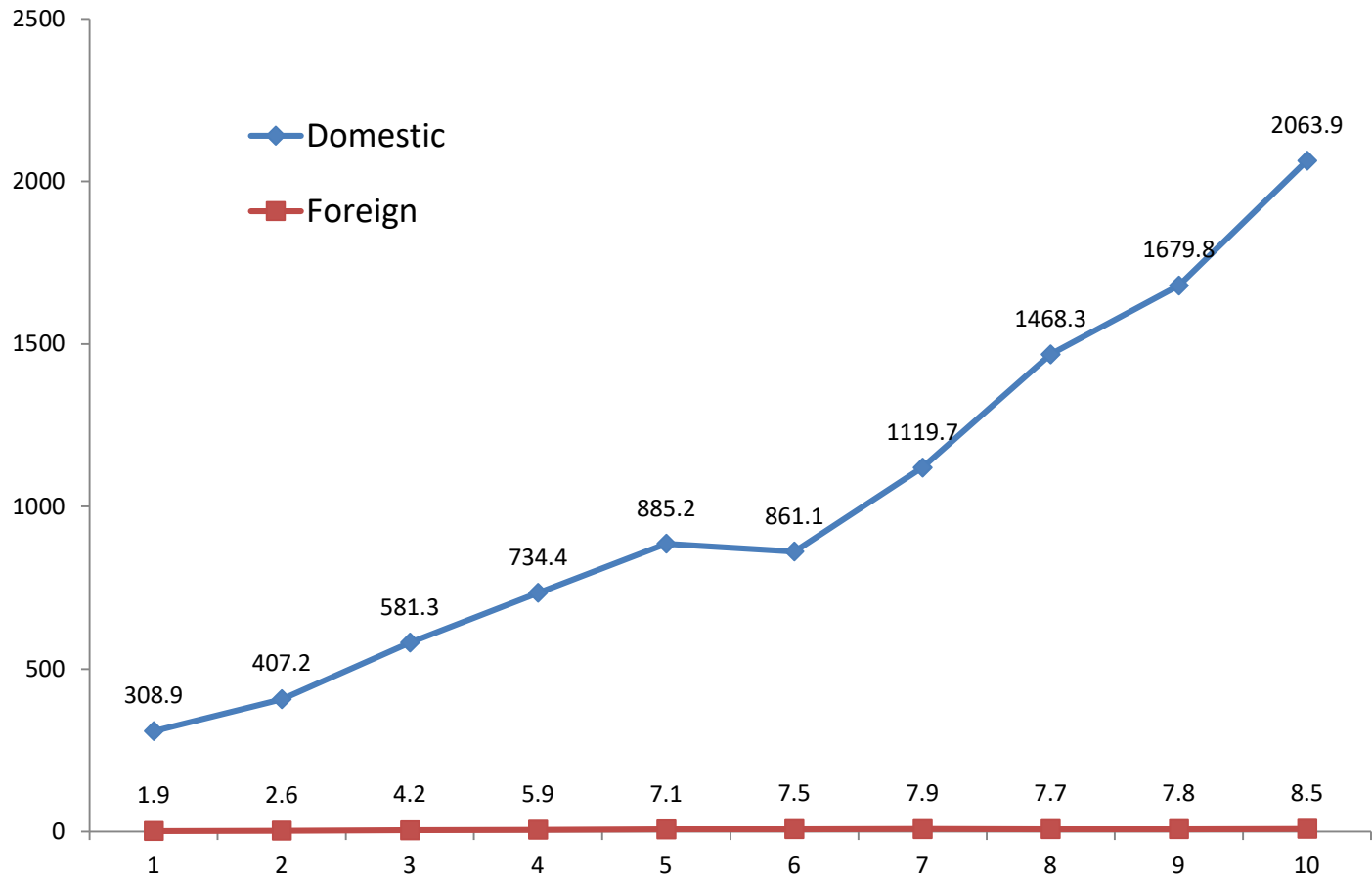


# Numbers of Applications for Invention (thousand)

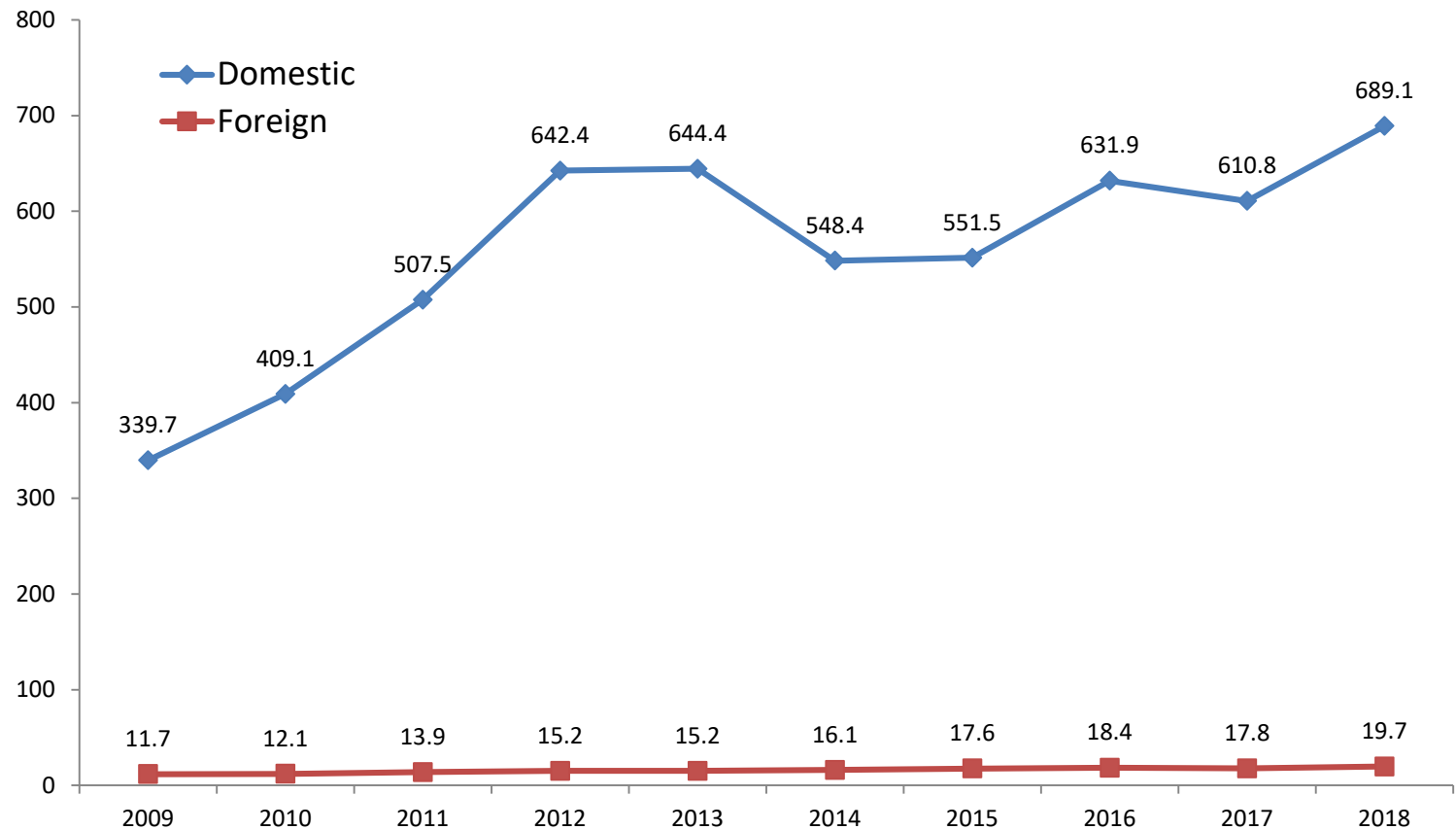




# Numbers of Applications for Utility Model (thousand)



# Numbers of Applications for Design (thousand)



# Top 10 Foreign Companies Who Get the Most Patents Granted in 2017

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Rank	Applicant	Number
1	Qualcomm	1,255
2	Toyota	1,203
3	Robert Bosch	1,201
4	Mitsubishi Electric	1,172
5	Samsung	1,168
6	Siemens	938
7	Intel	928
8	IBM	918
9	Canon	914
10	GM	912

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# Types of Invention Application

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China	U.S.A.
Invention Patent Application	“Utility” Patent Application
Divisional Application	Divisional Application
No	Continuation Application
No	Continuation-In-Part Application
No	Provisional Application

# Utility Model Application

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## ✦ Subject Matter: Products Only

- Having definite shape and structure
- Certain structures: Coating(s) on a substrate

## ✦ Preliminary Examination

- Formality requirements: claims + description + drawings
- Obvious substantive defects: novelty

## ✦ Protection term

- 10 years

## ✦ Less pendency: generally, issued within 6 months from filing

# Utility Model Filing Strategy

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## ✦ Defensive

---Immediate need in the market; same protection strength as invention patent

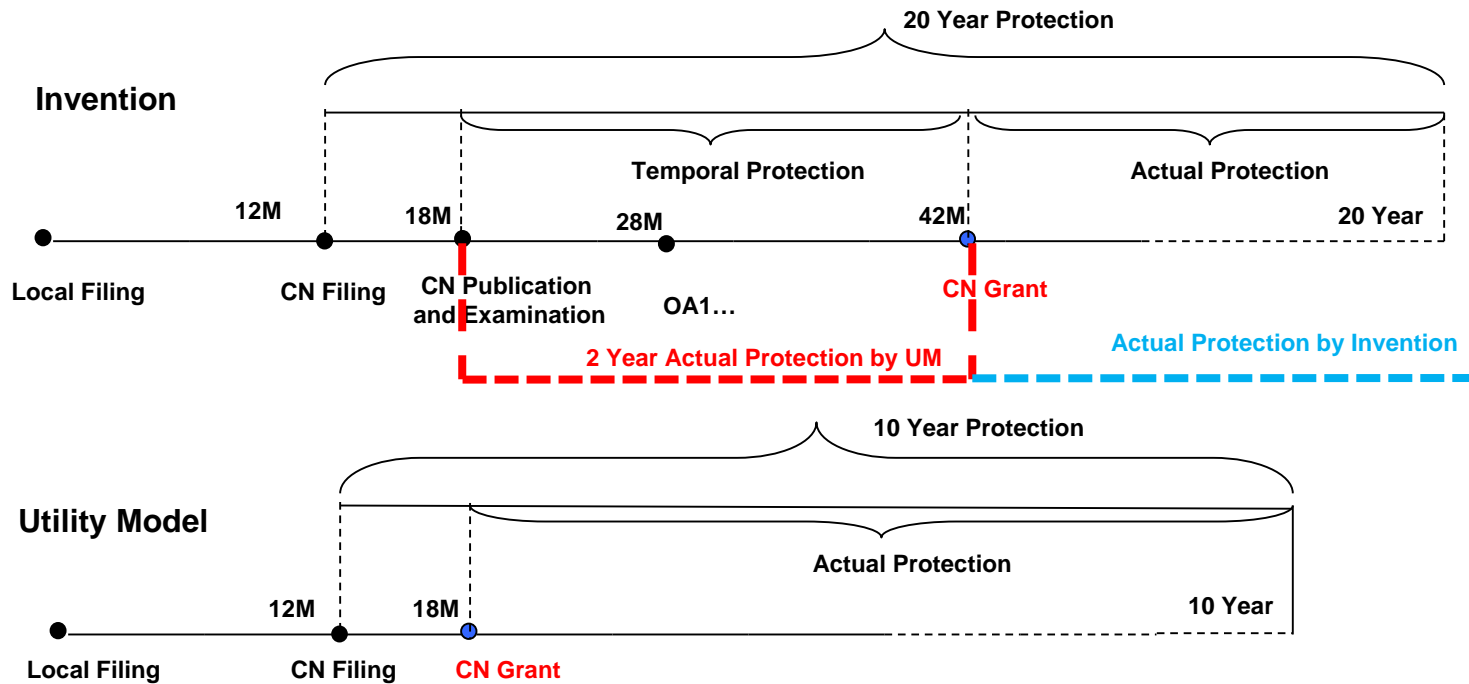
## ✦ Aggressive

---Very important inventions

- Dual filing of both an invention application and a utility model application
- Give up utility model patent when invention granted to avoid double patenting

# Dual Filing Strategy

## ★ Paris Route





# Post-Rejection Procedure

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## ✦ RCE in US

- ✦ Same examiner
- ✦ No limitation in times

## ✦ Reexamination in China

- ✦ New panel formed by 3 reexaminers (experienced examiners) in Patent Reexamination Board
- ✦ Rejection is withdrawn – back to the original Examiner
- ✦ Rejection is upheld – to the Court if not satisfied (most applicant will file a divisional application)

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# Patentee initiated Post Grant Proceedings

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China	U.S.A.
No	Certificate of Correction
No	Disclaimer
No	Reissue
No	Ex Parte Reexamination
No	Supplemental Examination

# Third Party initiated Post Grant Proceedings

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China	U.S.A.
Invalidation Proceeding	No
No	<i>Ex Parte</i> Reexamination
No	<i>Inter Partes</i> Reexamination (Expired on Sept. 16, 2011)
No	Post Grant Review (PGR) (First 9 Months)
No	<i>Inter Partes</i> Review (IPR)
No	Business Method Patent Review (CBM) (Expire on Sept. 16, 2020)

# Invalidation Proceeding

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## ✦ Petitioner

- ✦ Anyone; even patentee itself (novelty issue only)

## ✦ Procedure

- ✦ Request – Response & Amendments – Oral Hearing - Decision

## ✦ Timeline

- ✦ Administrative Decision @ PRB (7 months)
- ✦ 1<sup>st</sup> instance @ Beijing IP Court (1 year)
- ✦ 2<sup>nd</sup> instance @ Supreme Court (1 year, effective from Oct 2018)
- ✦ Possible Retrial @ Supreme Court (1 year)

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# New Trend in Prosecution and Protection

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- ★ Amended Examination Guideline:
  - ★ Software related invention
  - ★ Supplementary experimental data
  - ★ Allowable amendments during invalidation procedure
- ★ New amendments on Laws

# Software Related Invention

## Claim types for software-related inventions

Method	✓
Apparatus comprising: means for ...	✓
Device comprising: processor + hardware (other than memory)	✓
Device comprising: memory + processor + instructions stored in memory and executed by processor	x ----> ✓
Computer readable medium having instructions stored thereon	x ----> ✓
Computer programs	x
Signal, Data structure, Energy	x



# Supplementary Experimental Data

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Before	After
<p>Whether or not the description is sufficiently disclosed is judged on the basis of the disclosure contained in the initial description and claims, any embodiment and experimental data submitted after the filing date <b>shall not</b> be taken into consideration.</p>	<p>Whether or not the description is sufficiently disclosed is judged on the basis of the disclosure contained in the initial description and claims.</p> <p>The examiner <b>shall examine</b> experimental data supplemented after the filing date. <b>The technical effect</b> to be proved by the experimental data shall be one which can be <u>derived by a person skilled in the art from the disclosure of the patent application.</u></p>

# Supplementary Experimental Data

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## Recent PRB Decision

- “Counter-evidence 14 [the supplemental data] are consistent with the "relative humidity 90%" described in the specification, and the measured water absorption of the B crystal is less than 0.5%, which is also consistent with the result of 0.2% in the specification, consequently the effect to be proven by counter-evidence 14 is consistent with the effect described in the specification, and is not a new technical effect.”
- Supplemental data of “absorbency less than 0.5%” accepted because specification has “absorbency 0.2%.” Supplemental data necessary because the specification does not have specific examples containing experimental testing steps arriving at absorbency 0.2%. “Absorbency 0.2%” is a key feature for establishing inventiveness of the invention over the prior art.

# Allowable Amendment in Invalidation Proceedings

## Amendment to claims

Deletion of one or more claims	✓
Deletion of one of parallel technical solutions from the claims	✓
Combination of two or more claims	✓
Correction of obvious errors	x → ✓
Making further restriction to claim by adding one or more features of other claims	x → ✓
Adding features from the description only to the claims	x

# Fresh Changes in Examination Guidelines

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## To be implemented from November 2019

- ◆ Human embryonic stem cell (hES) patentable
- ◆ Invention made by using stem cell isolated or obtained from a human embryo not undergone development in vivo within 14 days after fertilization patentable
- ◆ Meeting request with the examiner flexible, video meeting available
- ◆ Delayed examination possible

# Proposed Amendments on Law

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- ★ Term of design patent extended from 10 years to **15** years (preparing for joining The Hague System)
- ★ Partial design patent available
- ★ Statutory damage award increased up to **FIVE** million RMB (comparing to the upper limit of one million in the past)
- ★ Burden of proof for patentee in infringement case eased: the burden of proof shifted to the infringer when patentee tries his best to fulfill the burden of proof

# Thanks for your attention!

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