

# Intellectual Property Rights in China: Overview

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A guide to intellectual property rights law in China. The Q&A gives an overview of the protection, maintenance, and enforcement of patents, utility models, trade marks, copyright, registered designs, unregistered designs, trade secrets and confidential information, domain names, and database rights.

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## Patents

### Requirements to Obtain a Patent

1. Provide a brief definition of a patent, the key legal requirements to obtain it and the law that applies.

An invention patent refers to a new technical solution for a product, a process, or an improvement of it. An invention patent must have novelty, inventiveness, and be industrially applicable.

The Patent Law applies (newly amended in 2020).

A patent for invention is available in China. Utility models (see [Question 11](#)) are protected by utility model patents. Designs are protected by design patents (see [Question 35](#)).

Invention patents are not available for:

- Scientific discoveries.
- Rules and methods for mental activities.
- Methods for the diagnosis or treatment of diseases.
- Animal and plant varieties.
- Substances obtained by nuclear transformation.

### Registering a Patent

2. Which authority registers patents? Briefly outline the key stages and timing in obtaining a patent.

## Patent Registration Authority

The *China National Intellectual Property Administration (CNIPA)* registers patents. Its website provides *procedural guidance* on the application requirements and procedure.

An application must include:

- The applicants' name(s) and address(es).
- The inventors' name(s). When the first inventor's nationality is Chinese, their ID number must also be provided.
- The priorities to be claimed, if any.

## Process and Timing

Details of patent application fees are on the *CNIPA website*.

China recognises foreign priority for patent applications *under the Paris Convention for the Protection of Industrial Property 1883* (Paris Convention).

The CNIPA conducts an initial examination of the application.

An invention patent application is published after it passes the initial examination, after 18 months from the filing date or any earliest priority date, or earlier on the applicant's request.

The CNIPA provides a search report on the applicant's request.

The CNIPA carries out a substantive examination at the applicant's request, within three years of the filing or earliest priority date. If the CNIPA has objections to the application, it will notify the applicant through an office action to submit observations or amend the application.

Any third party can file observations on patentability after an invention patent application is published and before it is granted. No patent opposition procedure is available.

## Patent Search and Information Facilities

3. What official facilities are available to conduct searches and obtain information on patents?

Chinese published applications or registered patents can be found by searching the application number, publication number, or patent number through the [CNIPA website](#).

## Enforceable Patent Protection Term

4. When does patent protection start and how long does it last?

Invention patent protection starts from the announcement of the grant of the patent right. The protection term is 20 years from the filing date, subject to payment of annual maintenance fees after grant.

If an invention patent is granted more than four years after the application date and more than three years after the date of request for substantive examination, the patent administration department under the state council can at the patentee's request adjust the duration of the patent right to compensate for unreasonable delay during prosecution of the patent, except for unreasonable delay caused by the patentee.

A patent term extension (PTE) of up to five years (provided that the extension does not result in a total remaining patent term of more than 14 years) is available in China for product patents, preparation method patents, and medical use patents of an active pharmaceutical ingredient (API) contained in a "new drug." This is interpreted to mean innovative drugs and certain improved new drugs defined in drug regulatory laws and provisions of the National Medical Products Administration.

## Maintaining Patents

5. What steps must a patent owner take to maintain the registration and legally protectable status of its patents?

To maintain a patent, annual maintenance fees must be paid after grant to the CNIPA.

Within two months of receipt of the notification of grant, the initial annuity (the annuity for the year in which the application is granted) must be paid to have an application officially granted.

Subsequent annuity due dates are each date corresponding to the filing date every year during the patent term. Annuities are requested to be paid on or before each due date.

Fee details can be found on [CNIPA's patent information inquiry page](#) (an account must be registered before using).

If annual maintenance fees are not paid, there is a six-month grace period from the end of the period in which the annuity was due to be paid, during which late fees can be paid with an additional surcharge. The surcharge is 5% of the late annual maintenance fee, for each month of late payment.

If the fee and surcharge are still not paid in the grace period, the patent right will lapse from the end of the period in which the annuity was due to be paid.

A patent does not have to be used to maintain the validity of its registration. However, under Article 48 Chapter VI of the Patent Law, if the patentee after three years from the date of grant and four years from the filing date does not sufficiently exploit the patent without a justified reason, the patent administration department under the State Council can, on the request of any entity or individual qualified to exploit the invention or utility model, grant a compulsory licence to exploit the invention patent or utility model. However, there are no precedents of compulsory licensing so far in China, so it is not clear how and to what extent those articles will be applied.

## Patent Infringement

6. What rights does a patent give to its owner? On what grounds can a patent infringement action be brought? What are the main defences to a patent infringement action?

## Rights Granted by a Patent

The Patent Law gives a patent owner exclusive rights. The owner can stop an entity or individual from carrying out certain actions relating to the patent and claim damages from them (see below, [Grounds for Patent Infringement](#)).

## Grounds for Patent Infringement

Under Article 11 of the Patent Law, the patent owner can stop an entity or individual from doing the following, for production or business purposes and without the patent owner's authorisation:

- Invention patent:
  - manufacturing, using, offering to sell, selling, or importing the patented product; or

- using the patented process, and using, offering to sell, selling, or importing a product directly obtained by the patented process.
- Utility model patent: manufacturing, using, offering to sell, selling, or importing the patented product.
- Design patent: manufacturing, offering to sell, selling, or importing a product incorporating the patentee's patented design.

In addition to this direct infringement, indirect infringement such as contributory infringement and induced infringement are also actionable in China.

## **Defences to a Patent Infringement Action**

Defences are available based on challenging the validity of the patent (based on Articles 4 to 7 of the judicial interpretation, Several Provisions of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Patent Dispute Cases):

- Filing an invalidation request with the CNIPA, which can stop court proceedings, especially for a utility model patent and a design patent.
- The patent has expired.

Defences based on non-infringement are:

- The act was not done for a commercial purpose.
- The act does not fall within the scope of patent protection.
- Prior art defence.

Affirmative defences to patent infringement are:

- Patent exhaustion where the patented product has been offered for authorised sale in China or outside China.
- Prior use right.
- Temporary transportation through China.
- Experimental use.
- Drug and medical device approval.

Exemption of special liability is available for an exemption from damages or from injunctive relief.



7. Which courts have jurisdiction over patent infringement actions? Is there a fast-track and/or a small-claims procedure?

Under the general provisions of the Civil Procedure Law and judicial interpretation of patent infringement, a patent infringement lawsuit is under the jurisdiction of the people's court at the place of infringement or the place where the defendant is domiciled.

China has four specialised IP courts and 24 IP tribunals with cross-administrative regional jurisdiction.

For patent infringement cases, based on the damages claimed, the people's courts at or above the intermediate level have jurisdiction.

Summary procedures or small-value procedures are not available for patent infringement litigation.

8. What are the remedies in patent infringement actions?

A permanent injunction is a common civil remedy and usually forms part of a patent infringement claim. If an infringement is established, a permanent injunction is granted to stop the infringer from carrying out the infringing activities during the patent term.

A patent owner can claim damages from a person who violates their patent right. For wilful infringement in serious circumstances, punitive damages can be claimed. No criminal penalties are available for patent infringement.

A preliminary injunction can be granted for particular patent infringement cases. The court can consider factors such as whether:

- The patent holder's request has a factual and legal basis, including whether the validity of the relevant IPR is stable.
- The patent holder would suffer irreparable harm otherwise.
- The damage to the patent holder caused by not granting the preliminary injunction would exceed the damage caused to the defendant by the preliminary injunction.
- The injunction would not disserve the public interest.

Compensation for damages caused by an infringement of a patent right is primarily assessed based on the actual losses suffered by the right holder due to the infringement.

If actual losses are difficult to determine, compensation can be assessed based on the profits the infringer has earned due to the infringement.

If both actual losses and the infringer's profits are difficult to determine, compensation can be assessed by reference to a normal exploitation fee for the patent under a contractual licence. Compensation also includes reasonable expenses the right holder incurred to stop the infringement.

If actual losses, the infringer's profits, and a licensing fee are all difficult to determine, the court can award statutory damages of between RMB30,000 and RMB5 million, considering factors such as the type of the patent right and the nature and circumstances of the infringing act.

## Monitoring Patent Infringement

9. What steps can a party take to monitor whether another party is infringing its patents?

To monitor potential infringement by others, a business party can monitor compatible products/methods on the market and, if necessary, evaluate the technical similarity between these products/methods and their patents.

## Patent Revocation

10. On what grounds can third parties challenge a patent through invalidation, cancellation, or revocation proceedings?

In China, any party can challenge the validity of a granted patent through the post-grant invalidation proceeding with the Patent Review Board of CNIPA. The grounds to invalidate a patent include:

- Lack of novelty or inventive step.
- New matter introduced by amendments.
- Lack of support for specification of claims.
- Insufficient disclosure.
- Indefiniteness of claims or lack of indispensable technical features.

(Rule 65, Implementing Regulations of the Patent Law.)

## Utility Models

11. Is utility model protection available in your jurisdiction?

## Legal Conditions for Utility Model Protection

Utility model protection is available in China through utility model patents.

Utility model patents protect new technical solutions relating to the shape or structure (or a combination of them) of a product that is fit for practical use.

The Patent Law applies.

## Registration Authority

The CNIPA registers utility model patents (see *Question 2*, [Patent Registration Authority](#)).

## Process and Timing

See *Question 2*, [Patent Registration Authority](#). Details of utility model patent application fees are on the CNIPA website. China recognises foreign priority for utility model applications.

The CNIPA conducts an initial examination. The CNIPA does not necessarily provide a search report on a patent utility model application, depending on the examiner's assessment of whether it is necessary.

The CNIPA does not carry out a substantive examination on a patent utility model application.

A utility model application is published after the utility model application is granted.

Challenging a utility model patent application during prosecution is not possible. There is no opposition procedure for a utility model patent.

## Utility Model Search and Information Facilities

See *Question 3*.

## Enforceable Utility Model Protection Term

Utility model patent protection starts after announcement of the grant of the patent right. The protection term is ten years from the filing date, subject to payment of annual maintenance fees after grant.

## Maintaining Utility Models

See *Question 5*.



## Utility Model Infringement

See [Question 6](#), [Question 7](#), and [Question 8](#).

## Monitoring Utility Model Infringement

See [Question 9](#).

## Trade Marks

### Legal Requirements to Obtain a Trade Mark

12. Provide a brief definition of a trade mark, the key legal requirements to obtain it and the law that applies.

Any sign capable of distinguishing the goods of a natural person, legal person, or other organisation from those of others, including a word, design, letter, numeral, three-dimensional symbol, combination of colours, and a sound, as well as a combination of these, can be a trade mark for a registration application (Article 8, Trade Mark Law).

Under the Trade Mark Law, a trade mark must:

- Be distinctive and not confusingly similar to other trade marks for the same or similar goods.
- Not conflict with other legal rights previously obtained by third parties.

### Unregistered Trade Marks

13. Is there protection for unregistered trade marks?

There is protection for unregistered trade marks. The requirements for protection are that an unregistered trade mark has done any of the following:

- Acquired a certain reputation or is well-known through prior use.

- Been pre-registered by an agent or a representative.
- Is in prior use and has been pre-registered by a party with a contractual, business, or other relationship with the trade mark owner and who knows that the unregistered trade mark exists.

(Articles 13,15, 32, and 59, Trade Mark Law).

Protection starts when any of the above requirements has been met and lasts until the disputed mark registration has been registered for five years.

Only through registration can a trade mark owner enjoy exclusive rights over the trade mark, which is then protected by law in all of China. No other person can use the registered trade mark without authorisation. In addition, registration ensures that the registrant can use the trade mark without risk of unintentional infringement of another party's mark. In contrast, protection provided by an unregistered trade mark is limited.

The protection provided by unregistered trade marks is weaker than for registered trade marks. It is more difficult to bring a claim in relation to unregistered trade marks or to prove that the defendant is liable.

## Registering a Trade Mark

14. Which authority registers trade marks? Briefly outline the key stages and timing to obtain a registered trade mark.

## Trade Mark Registration Authority

The *Trade Mark Office of the CNIPA* registers trade marks. Its website provides various procedural guidelines on the application procedure.

## Process and Timing

Details of trade mark application fees are available on the Trade Mark Office website.

China recognises foreign priority for trade mark applications (see [Question 52](#)).

The Trade Mark Office carries out an initial examination to see if the application meets the formal application requirements.

The Trade Mark Office does not provide a search report.

The Trade Mark Office conducts a substantive examination. within nine months of receipt of the application. If the Trade Mark Office approves the application, it will issue and publish a preliminary approval, about four to six months after filing if it goes smoothly.

If there is a rejection or non-registration decision, the applicant can request the Trade Mark Office to review it. The Trade Mark Office must issue a review decision within nine months (extendable by three months).

A third party can challenge a trade mark application by filing an opposition within three months after publication of the preliminary approval on certain grounds (see [Question 16](#)). It takes about nine months for an opposition to be examined. The Trade Mark Office must decide an opposition within 12 months after the end of the opposition period (extendable by six months).

If the decision on the opposition revokes the preliminary approval, the applicant can file a review of it at the Trade Mark Office. The Trade Mark Office must make a review decision within 12 months of the applicant filing (extendable by six months).

## Trade Mark Search and Information Facilities

15. What official facilities are available to conduct searches and obtain information on trade marks?

The online database of the [Trade Mark Office](#) is available to conduct searches and obtain information on trade marks.

16. On what grounds can the authority refuse to register a trade mark? On what grounds can third parties challenge a trade mark application?

## Grounds for an Authority Refusing to Register a Trade Mark

The Trade Mark Office can refuse to register a trade mark on the following grounds, under Articles 4, 10, 11, 12, and 30 of the Trade Mark Law:

- The mark is prohibited for use as a trade mark because it, for example:
  - damages public interests;
  - violates public order;
  - affects good social customs; or
  - damages national dignity, national unity, religious belief, and so on.
- The mark is prohibited for registration as a trade mark because it has the direct meaning of the name, use, function, and other characteristics of a certain kind of goods.

- The mark is similar or identical to a prior trade mark registered or applied for the same or similar goods or services.

### Third Party Grounds for Challenging a Trade Mark Application before Registration

Any third party can oppose a trade mark registration application within three months of the date on which the mark is published (see [Question 14](#)). In addition to the above official grounds for refusal, the extra grounds for an opposition are that the opposed mark is any of the following, under Articles 13, 15, 16, and 32 of the Trade Mark Law:

- The mark is identical or similar to the opponent's earlier registered well-known trade mark for non-similar goods/services, or identical or similar to the opponent's earlier unregistered well-known trade mark for similar goods/services.
- The mark was filed by an agent or a representative of the opponent without authorisation.
- The mark contains a geographic indication of the goods but the goods do not originate from the region indicated, therefore misleading the public.
- Prohibited for use as a trade mark under the Trade Mark Law.
- Conflicts with prior legitimate rights (for example, copyright, design patents, and trade dress rights).

### Enforceable Trade Mark Protection Term

17. When does trade mark protection start and how long does it last?

The term of validity of a trade mark is ten years from the publication of registration. It is renewable every ten years indefinitely on payment of renewal fees.

### Maintaining Trade Marks

18. What steps must a trade mark registrant take to maintain the registration and legally protectable status of its trade marks?

A trade mark is renewable every ten years indefinitely on payment of renewal fees to the Trade Mark Office. Details of payment for trade mark matters are on the [CNIPA website](#).

A trade mark must be renewed within 12 months before it expires. If it is not renewed on time, there is a grace period of six months after expiry to pay late renewal fees, with an additional fee of RMB250. If the grace period is missed, the trade mark will be irrecoverably removed from the trade mark register.

After a trade mark has been registered for three years it is vulnerable to a cancellation action for non-use. Use of a trade mark means using a trade mark on goods, on the packages or containers of goods, in the trade documents of goods, or for advertisements, exhibitions, and other commercial activities for the purpose of identifying the origin of goods (Article 48, Trade Mark Law).

## Trade Mark Violations

19. What rights does a trade mark give to its owner? Identify and describe the available claims for trade mark violations? What are the main defences to trade mark actions?

## Rights Granted by a Trade Mark

A trade mark registration confers on its owner an exclusive right to use the trade mark.

## Grounds for and Elements of Trade Mark Infringement Claims

Under Article 57 of the Trademark Law, trade mark registrants or interested parties can bring a lawsuit to the people's court for any of the following acts without authorisation from the trade mark owner:

- Using a trade mark identical to a registered trade mark on identical goods.
- Using a trade mark identical or similar to a registered trade mark on identical or similar goods, so as to easily cause confusion.
- Selling goods that infringe on the right to exclusively use a registered trade mark.
- Forging or manufacturing the labels of a registered trade mark of another party, or selling forged or manufactured labels of a registered trade mark.
- Replacing a registered trade mark and putting goods with a substituted trade mark onto the market.
- Intentionally facilitating or aiding others in the infringement of exclusive rights to use a registered trade mark.
- Otherwise causing damage to the right to exclusively use a registered trade mark.

The claimant must satisfy or provide evidence that all the elements of any of the above infringing acts are met. The courts will consider whether all these elements are met.

## Other Trade Mark Causes of Action

A trade mark will not be registered and is prohibited from use if either (Article 13, Trade Mark Law):

- The trade mark is used on identical or similar goods and is a copy, imitation, or translation of a well-known trade mark of another party that is not registered in China and may easily cause confusion.
- The trade mark is used on different or dissimilar goods and is a copy, imitation, or translation of a well-known trade mark of another party that is registered in China, misleads the public, and may cause damage to the interests of the owner of the well-known trade mark.

Trade mark registration is not required for this type of claim if it relates to protecting an unregistered well-known trade mark.

Remedies include refusing or invalidating registration of the disputed mark or prohibiting its use.

Defences include that either of the above conditions in Article 13 of the Trade Mark Law are not met.

### **Defences to Trade Mark Claims**

Under the relevant articles of the Trade Mark Law as well as judicial practice, the main defences to trade mark claims include the following:

- Another party used an identical or similar trade mark with a certain reputation on identical or similar goods before the trade mark registrant applied for registration of the trade mark. In this case, the holder of the right to exclusively use the registered trade mark cannot prevent the other party from continuing to use the trade mark for its original purposes but can require the other party to add a distinctive mark.
- The holder of a right to exclusively use a registered trade mark claims damages and the alleged infringer argues that the right holder has not used the registered trade mark. A people's court can require the right holder to provide evidence of its actual use of the registered trade mark in the last three years. If the right holder cannot prove this or that it has suffered other losses from the infringement, the alleged infringer is not liable for damages.

Other defences to trade mark infringement actions include the following:

- The claimant has no legal standing to enforce the trade mark.
- There is dissimilarity between the compared trade marks.
- Common name, where an individual uses their own name as the name of their business.
- Fair use, where the mark is used to identify the trade mark holders' goods and services or is used in an ordinary, descriptive manner.
- Legitimate source, where an infringing seller:
  - did not know, and should not have known, that the product was produced and sold without the trade mark owner's permission; and
  - can prove that the product was obtained from a legitimate source.
- The limitation period for the action has expired.

- Invalidity of the trade mark registration for the reasons set out in [Question 16](#).

20. Which courts have jurisdiction over trade mark infringement actions? Is there a fast-track and/or a small-claims procedure?

According to a judicial decision, first instance cases of civil trade mark infringement disputes fall under the jurisdiction of the intermediate and higher people's courts. Each higher people's court can, in the circumstances and with the Supreme People's Court's approval, designate one or two basic people's courts in larger cities to hear first instance civil trade mark infringement dispute cases.

The trade mark owner can also approach the administrative authorities (the relevant Department for Industry and Commerce) to deal with trade mark infringement cases. Compared with litigation, an administrative investigation and treatment procedure is simple and the case is closed quickly. However, an administrative decision has no final effect. If a party is not satisfied with the administrative decision by the relevant Department for Industry and Commerce, they must bring a lawsuit before a court.

The summary procedure for fast-tracking small claims is not available in trade mark infringement litigation.

21. What are the remedies in trade mark infringement actions?

Under the general principles of civil law and the Trade Mark Law, the main civil remedies for trade mark infringement are orders to:

- Stop the infringement.
- Eliminate the possibility of infringement.
- Compensate the trade mark owner for their losses.

The trade mark owner can also complain to the administrative authorities and request the infringer to stop the infringement. As the administrative authorities deal with enforcement more efficiently, more than 90% of trade mark owners choose to enforce their marks this way. However, the administrative authorities can only require the infringer to stop the infringement and cannot order the infringer to pay compensation.

In serious infringement actions, the trade mark owner can report the case to the public security bodies who can impose criminal responsibility on the infringer.

Cancellation of a defendant's trade mark registration is not an available remedy.

## Challenging a Trade Mark After Registration

22. On what grounds can third parties challenge a registered trade mark through invalidation, cancellation or revocation proceedings (after registration)?

Under Articles 44 and 45 of the Trade Mark Law, third parties can challenge a registered trade mark (after registration) through invalidation, cancellation, or revocation proceedings on one of the following main grounds:

- Conflict with earlier legitimate rights (for example, earlier copyright).
- Violation of absolute grounds for trade mark registration.
- Non-use for three consecutive years.
- Becoming a generic name of goods for which it is approved to be used.

## Monitoring Trade Mark Infringement

23. What steps can a trade mark owner take to monitor whether another party is infringing its trade mark rights?

A trade mark owner can regularly check key online platforms, such as JD and Taobao, to monitor possible third-party infringements.

A trade mark owner is not specifically liable under legislation to monitor possible infringements. However, a failure to monitor or act when put on notice of a potential or actual infringement can affect the integrity or value of the trade mark. In addition to distinguishing goods, a trade mark has the value of quality assurance and recognition. Infringing acts in the market can affect the integrity or value of a trade mark.

## Copyright

### Categories of Subject Matter Eligible for Copyright Protection



24. What categories of subject matter are eligible for copyright protection?

The following categories can be protected by copyright, under Article 3 of the Copyright Law:

- Written works.
- Oral works.
- Musical, dramatic, folk arts, choreographic, and acrobatic art works.
- Works of fine art and architecture.
- Photographic works.
- Audio-visual works.
- Drawings of engineering designs and product designs, maps, sketches, and other graphic works, as well as model works.
- Computer software.
- Expressions of folklore.

## Legal Requirements to Obtain Copyright Protection

25. What are the legal requirements for a work to be protected by copyright?

Works protected by copyright law are ingenious intellectual achievements in the fields of literature, art, and science that can be presented in a certain form (Article 3, Copyright Law).

Copyright protection arises automatically on creation of such a work, regardless of whether it is published or registered.

## Copyright Registration

26. Can copyright be registered?

Copyright registration is available but not compulsory in China. Registration can benefit the copyright owner as it provides prima facie evidence of the copyright owner and any licensee's rights and interests. Registration may be required depending on how the copyright owner intends to exploit and safeguard their copyright. For example, some app stores require apps to have their computer software registered in advance to prove the copyright and to reduce risks of infringement.

The *Copyright Protection Centre of China (CPCC)* and some regional copyright authorities register copyrighted works and software copyrights. Guidance on application procedures is available on the websites of the CPCC and the regional copyright authorities.

Copyright registration certificates issued by the *National Copyright Administration* prove the prior right of the copyright owner and are generally accepted by the Chinese enforcement authorities and courts.

### Enforceable Copyright Protection Term

27. When does copyright protection start and how long does it last?

Copyright protection starts from the creation of the work. Copyright includes both personal (moral) and property rights.

If the copyright belongs to a natural person and not a legal entity, the protection period is the lifetime of the author plus 50 years after their death, expiring on 31 December of the 50th year after their death (Article 23, Copyright Law).

If the copyright belongs to a legal entity or the author is unknown, the protection period is 50 years, expiring on 31 December of the 50th year after first publication of the work. If the work is not published within 50 years of its creation, it is no longer protected.

### Maintaining Copyright

28. What steps must a copyright owner take to maintain the registration, if applicable, and legally protectable status of its copyright?

A copyrighted work enjoys copyright protection as soon as it is created, regardless of whether it is published or registered.

Copyright registration is not compulsory in China (see [Question 26](#)). Copyright registrations do not have to be renewed.

## Copyright Search and Information Facilities

29. What official facilities are available to conduct searches and obtain information on copyright?

Information searches on registered copyright can be conducted through the websites of the CPCC and the competent copyright authorities, or through their offices. The website search results on registered copyright only reveals basic information such as the name of the copyright owner, creation date, registration number, and so on. For detailed information on registered copyright, it is necessary to go to the authorities' office in person to search files.

## Monitoring Copyright Infringement

30. What steps can a copyright owner take to monitor whether another party is infringing its copyright?

A business can search and monitor the official websites of the CPCC or competent copyright authorities or on public websites for potential infringement. However, the effectiveness of these measures may be limited as many works are not registered.

## Copyright Infringement

31. What rights does copyright grant? On what grounds can a copyright infringement action be brought? What are the defences to copyright infringement actions?

## Rights Granted by Copyright

Copyright protects:

- Personal rights, which are moral rights (see [Question 34](#)).
- Property rights (similar to the other main IPRs).

## Grounds for and Elements of Copyright Infringement Claims

Under Article 52 of the Copyright Law, the main grounds for a copyright infringement action include:

- Publishing a work without permission from the copyright owner.
- Distorting works created by others.
- Plagiarising works created by others.
- Exploiting works of others without paying a licence fee.

Supporting evidence including about the infringement and damage suffered plays a key role in whether the court will uphold the claim.

## Defences to a Copyright Infringement Action

Fair use is a common defence to copyright infringement claims. Under Article 24 of the Copyright Law, a work can be exploited in some circumstances without obtaining permission and without paying remuneration if the name of the author and the title of the work are mentioned, for example:

- For the purposes of private study, research, or entertainment.
- In newspapers, periodicals, radio stations, television stations, or other media to report current events.

32. Which courts have jurisdiction over copyright infringement actions? Is there a fast-track or a small-claims procedure?

According to the Supreme Court, copyright infringement actions are subject to the jurisdiction of the intermediate court or above, but the higher courts can designate some basic level courts as first-instance courts for copyright infringement cases. A lot of basic level courts can hear first instance copyright infringement cases and are increasingly dealing with such cases. However, a copyright infringement action is subject to the jurisdiction of the court where either the:

- Infringing act occurred.
- Infringing reproductions are stored.
- Defendant has their domicile.

According to the Beijing Higher Court Rules, when a basic court hears copyright cases for infringement of the rights of alteration, reproduction, or distribution of information networks or sound and video recordings, the summary procedure for fast-tracking small claims can apply if:

- There are definite facts and clear rights and obligations.
- The amount of the claim is lower than RMB200,000.

### 33. What are the remedies in copyright infringement actions?

Under Articles 52 and 54 of the Copyright Law, remedies in copyright infringement lawsuits can include orders to:

- Pay compensation for damages caused by the infringement (generally, the most common remedy).
- Cease the infringing act.
- Eliminate negative effects.
- Make a public apology.

Compensation is calculated based on one of the following:

- The right holder's actual losses.
- The infringer's illegal profits.
- Royalties payable for the copyright.

Compensation also includes any reasonable expenses paid by the right holder to prevent the infringement.

## Moral Rights

### 34. Are moral rights protected?

Moral rights are protected by copyright in addition to property rights. Moral rights are specified personal rights that include the rights of publication, authorship, alteration, and integrity (Article 10, Copyright Law).

Generally, copyright owners who create copyrighted works automatically enjoy moral rights protected by copyright.

The rights of authorship, alteration, and integrity of an author are unlimited in time. However, the protection term of the right of publication is the same as that of other property rights derived from copyright (see [Question 27](#)).

In principle, due to the personal nature of moral rights, they cannot be assigned, licensed, waived, or inherited. Although there are no specific regulations, in practice, any agreement to assign, license, or waive moral rights derived from copyright may be held to be invalid.

## Registered Design Rights

### Basis of Registered Design Protection

### 35. Is design right protection available through registration? What are the legal conditions to obtain a registered design?

Design right protection is available through registration in China.

In China, designs are protected by design patents. To obtain a design patent, a design application must be filed with CNIPA that satisfies the formal and substantive requirements under the Patent Law for registration. Under Article 2 and Article 23 of the Patent Law, to be registered for protection, the design must be all of the following:

- A new design in a shape or pattern, or a combination of them, or a combination of a colour with a shape or pattern.
- Obviously different from any prior design or a combination of features of the prior design.
- Incorporated into a product.
- Create an aesthetic feeling.
- Fit for industrial application.

Designs of a pattern, colour, or a combination of them, on plain printed matter, mainly for the purpose of identification, are excluded from protection (Article 25, Patent Law).

## Registering a Design

36. Which authority registers designs? Briefly outline the key stages and timing in obtaining a registered design.

### Design Registration Authority

Registration is mandatory for a design right to be protected, as a design can only be protected if it is patented as a design patent.

The CNIPA registers designs. Procedural guidance on the application procedure is available on its website.

### Process and Timing

Details of design patent application fees are on the CNIPA website.

China recognises foreign priority for registered design right applications. China is a party to the *Hague System for the International Registration of Industrial Designs*.

The CNIPA conducts a preliminary examination with a possible search. The CNIPA does not provide a search report for registered design applications.

The CNIPA does not carry out a substantive examination for registered design applications.

A design right application is published after the grant of the design patent.

Challenging a design right application is not possible. There is no opposition procedure for a design patent.

After a design patent is granted, anyone can file an invalidation request against the design patent on the grounds that the design does not comply with the relevant requirements under the Patent Law.

### Design Search and Information Facilities

37. What official facilities are available to conduct searches and obtain information on design rights?

Official facilities are available to conduct searches and obtain information on design rights on the CNIPA website.

## Enforceable Registered Design Right Protection Term

38. When does registered design protection start and how long does it last?

Design protection starts from the date of grant and publication of the design patent. The protection term is 15 years from the filing date. The term cannot be extended.

## Maintaining Design Rights

39. What steps must a registered design right owner take to maintain the registration and legally protectable status of its design rights?

To maintain a design patent, annual maintenance fees must be paid after grant to the CNIPA (see [Question 5](#)).

A registered design right does not have to be used to maintain the validity of its registration.

## Registered Design Right Infringement

40. What rights does a registered design give to its owner? On what grounds can a registered design infringement action be brought? What are the defences to design infringement actions?

See [Question 6](#).



41. Which courts have jurisdiction over registered design infringement actions? Is there a fast-track and/or a small-claims procedure?

The following courts deal with design patent disputes:

- The Supreme People's Court.
- The High People's Court of each province.
- The specialised IP courts of Beijing, Shanghai, and Guangzhou.
- 22 appointed intermediate people's courts.
- 20 specialised IP tribunals.

The summary procedure for fast-tracking small claims is not available for design patent infringement litigation.

42. What are the remedies in registered design infringement actions?

See [Question 8](#).

## Monitoring Design Infringement

43. What steps can a party take to monitor whether another party is infringing its design rights?

To monitor potential infringement by others, a business party can monitor products of competitors in the market and evaluate the similarity between these products and their designs.

## Unregistered Designs

44. Is there protection for unregistered designs in your jurisdiction?

Chinese law does not protect unregistered designs. In some circumstances there may be related protection under copyright (see [Question 24 to 34](#)) or the Unfair Competition Law.

## Trade Secrets and Confidential Information

45. Is there specific protection for trade secrets and confidential information in your jurisdiction?

In China, there is no specific trade secret law. Trade secrets are defined by a series of laws such as the Unfair Competition Law and the Criminal Law. Trade secrets are also different from state secrets.

The Unfair Competition Law defines trade secrets as technical, management, and other commercial information that:

- Is not known to the public.
- Has commercial value.
- Has been subject to appropriate confidentiality measures taken by the right holder.

Trade secrets are automatically generated when they are created, without registration. Registration is not required and is not carried out in most cases. Some types of trade secrets can be registered, such as through copyright or integrated circuit layout design registration.

## Maintaining Trade Secrets and Confidential Information

46. What steps must an owner of trade secrets and confidential information take to maintain the legally protectable status of their trade secrets and confidential information?

To maintain a trade secret, the right holder must prevent the trade secret from leaking to unspecified persons, otherwise it will be deemed to be known to the public. Suitable confidentiality measures should be taken in line with the nature of the trade secret.

## Monitoring Infringement of Trade Secrets and Confidential Information

47. What steps can a party with rights protecting confidential information and trade secrets take to monitor whether another party is disclosing or using its trade secrets and confidential information?

To monitor potential infringement by others, a business party can monitor infringing behaviour and evaluate the technical similarity between products/methods provided by any suspect parties and their own trade secrets. Most importantly, a party can maintain confidentiality measures to protect against potential infringement and identify their commercial information as trade secrets defined by the law.

48. What rights do trade secrets and confidential information provide? On what grounds can an action for unauthorised disclosure or use of confidential information or trade secrets be brought? What are the defences to such actions?

## **Rights Granted**

Trade secrets do not provide an exclusive right to the owner. A trade secret confers on its owner the right to prevent the information lawfully within their control from being disclosed, acquired, or used by others without their consent in a manner contrary to honest commercial practice. Trade secrets can be sold or licensed.

## **Grounds for Unauthorised Use**

Under the Unfair Competition Law, infringement of a trade secret is defined as:

- Obtaining the right holder's trade secrets by theft, bribery, fraud, coercion, electronic intrusion, or other improper means.
- Disclosure, use, or allowing others to use the trade secrets of the right holder obtained by the means in the above bullet point.
- Violating confidentiality obligations or violating the right holder's requirements for keeping trade secrets, disclosing, using, or allowing others to use the trade secrets in their possession.
- Instigating, inducing, or helping others to violate confidentiality obligations or the obligee's requirements for keeping trade secrets, and obtaining, disclosing, using, or allowing others to use the obligee's trade secrets.

An infringement claim can be brought against a business operator, individual, entity, or unincorporated organisation committing an act listed in the above bullet points.

A trade secret is violated by a third party who both:

- Knows or should have known that an employee, former employee, or other entity or individual of the trade secret right holder commits an act listed in the above bullet points.
- Still obtains, discloses, uses, or allows others to use the trade secret.

## Defences

The following defences can be used:

- The trade secrets do not exist, that is (Article 9, Anti-Unfair Competition Law):
  - they are known to the public;
  - they are not valuable and cannot give the claimant a competitive advantage; or
  - the claimant has not taken appropriate confidentiality measures for the trade secrets.
- The defendant obtained the trade secrets through independent research and development (Article 14, Judicial Interpretation of the Supreme People's Court on the Application of Law in the Trial of Civil Cases of Trade Secrets Misappropriation).
- The defendant obtained the trade secrets through reverse engineering (Article 14, Judicial Interpretation of the Supreme People's Court on the Application of Law in the Trial of Civil Cases of Trade Secrets Misappropriation).
- The defendant obtained the trade secrets through intelligence analysis.
- The right holder has disclosed or informed of the trade secrets (Article 14, Judicial Interpretation of the Supreme People's Court on the Application of Law in the Trial of Civil Cases of Trade Secrets Misappropriation).
- Accidental or erroneous disclosure of the trade secrets by their owner (Article 4, Judicial Interpretation of the Supreme People's Court on the Application of Law in the Trial of Civil Cases of Trade Secrets Misappropriation).
- The defendant lawfully obtained the trade secrets from other right holders.

49. Which courts have jurisdiction over actions for unauthorised disclosure or use of confidential information or trade secrets? Is there a fast-track and/or a small-claims procedure? What are the remedies in such actions?

## Courts

China's laws do not provide special provisions on the jurisdiction of trade secret infringement cases, and the jurisdiction rules should be consistent with those of general civil tort cases. Under the general provisions of the Civil Procedure Law,

an infringement action is under the jurisdiction of the people's court at the place of infringement or where the defendant is domiciled.

The level of jurisdiction of trade secret civil cases is mainly determined by distinguishing technical secrets and business secrets and the amount of damages claimed. For example, for technical secrets, based on the damages claimed, the people's courts at or above the intermediate level have jurisdiction. For business secrets, based on the damages claimed, the people's courts at or above the basic level have jurisdiction.

## Remedies

China provides criminal, administrative, and civil law remedies, in particular under tort, contract, and unfair competition law. A trade secret owner can claim damages for economic loss suffered from a person who violates the trade secret.

Criminal penalties are available for particular cases of trade secret violation.

## Domain Names

50. Can an action be brought to protect a domain name?

The *China Internet Network Information Centre (CNNIC)* has issued and implemented rules including the Implementing Rules of China ccTLD registration, the China ccTLD Dispute Resolution Policy, and China ccTLD Dispute Resolution Policy Rules.

Domain names are registered with CNNIC through a domain name sponsoring registrar.

Identity information verification must be completed before registering a domain name, under the PRC Cybersecurity Law and Measures for the Administration of Internet Domain names.

A domain name registration must be renewed on the expiry date on a yearly basis, by paying the renewal fee in time to the sponsoring registrar to keep the domain name registration valid.

An action to protect a domain name can be brought in the *Asian Domain Name Dispute Resolution Centre* for gTLD or the *China International Economic and Trade Arbitration Commission (CIETAC)* Online Dispute Resolution Centre (ODRC) for ccTLD. Under the CNNIC ccTLD Dispute Resolution Policy, the dispute resolution service providers do not accept a complaint about domain names with a registration term of over three years.

An action is brought on the grounds that the:

- Conflicting domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights.
- Party complained about has no rights or legitimate interests relating to the domain name.

- Conflicting domain name has been registered and is being used in bad faith.

In this administrative proceeding, the complainant must prove all the above three elements. It is similar to a trade mark infringement claim.

The party complained about must show their rights or legitimate interests to the domain name.

If the panel upholds the complaint, the registered domain name will be cancelled or transferred to the complainant.

## Database Rights

51. Is there protection for database rights?

Chinese law does not have a specific sui generis database right. Databases enjoy protection under the Copyright Law as compiled works (Article 10, Copyright Law).

A work created by compilation is a work compiled of some works, fragments of works, or data or other materials not constituting a work, the choice or layout of the contents of which is the original creation. Copyright in the compilation work is enjoyed by the compiler, provided that the exercise of the copyright does not infringe the copyright of the pre-existing works included in the compilation (Article 15, Copyright Law).

A database is defined as a collection of independent works, data, or other materials arranged in a systematic or methodical way that are individually accessible by electronic or other means (Article 15, Copyright Law).

Database right protects the collection of data, not its constituent elements. Compiling existing data and collecting them into a database and the choice or layout of the contents which embody the original creation gives rise to a database right.

Database rights are protected under copyright law and specific rules that apply to databases.

A database right is an automatic right that exists as soon as the database exists in a recorded form:

- For a natural person, the protection is the person's lifetime plus 50 years after their death, expiring on 31 December of the 50th year after their death.
- For a legal person or an unincorporated organisation, protection is 50 years, ending on 31 December of the 50th year after the first publication of the compiled database.

A database right can be registered voluntarily at the CPCC and some regional copyright authorities. Database right registration incurs a fee at the time of registration. There is no annual fee to maintain the registration.

A person infringes a database right if they extract or reuse all or a substantial part of the contents of a protected database without the owner's consent.

## International IP Treaties

52. Is your jurisdiction party to international treaties that facilitate the recognition of foreign IPRs in your jurisdiction?

China is a party to the following key international IP treaties.

### Patents

The *Patent Cooperation Treaty 1970 (PCT)* and the Paris Convention.

### Utility Models

See above, *Patents*.

### Trade Marks

The *WIPO Madrid Agreement Concerning the International Registration of Marks 1891*.

The Paris Convention.

### Copyright

China is a signatory to the:

- UN Universal Copyright Convention 1952.
- *Berne Convention for the Protection of Literary and Artistic Works* 1971 (Berne Convention).

### Design Rights

The *Hague Agreement Concerning the International Registration of Industrial Designs 1925*.

### Reform

53. Summarise any proposals for reform to the main IPR laws and any recently enacted major reforms.

It is hopeful that the amended Implementing Regulations for the Patent Law promulgated in 2021, as well as amended Guidelines of Examination, will be enacted at a later time.

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