



### **The Examination of Design Patents in China is Becoming More Stringent**

Design patent refers to a new design with aesthetic feeling and industrial applicability for the shape, pattern, and color of a product. Design plays a vital role in the sales and competitiveness of a product. Due to the relatively short examination period for design applications in China, many companies file design applications to protect their products. According to the previous design patent examination standards, if no grounds for rejection are found during the preliminary examination of the design patent application, the China National Intellectual Property Administration will decide to grant the design patent right.

On January 6, 2023, the China National Intellectual Property Administration Director's meeting was held in Beijing. It was explicitly stated that obvious creative examination would be officially introduced in the examination of Utility Model applications in 2023.

Although the meeting did not clearly indicate that the examination of design applications would become stricter, in recent work, we have noticed **an increase in the number of notices issued by Examiners regarding issues such as "unclear structural lines or indefinite structure expression" in design patent applications.** In addition, importantly, **the Examiners have begun to cite comparative designs to evaluate the novelty of design patent applications.**

For example, in the following notice, the Examiner stated that the claimed design is fundamentally similar to the overall shape and structure of a Russian design patent that has already been announced and published on April 16, 2013. The differences mentioned above are minor differences that cannot be noticed with ordinary attention, and the claimed design and cited design belong to substantially the same design. This design belongs to the prior design, and thus the present design application does not comply with the provisions of *Article 23(1) of the Patent Law* and cannot be granted a patent right.

### 第一次审查意见通知书

本通知书针对的审查文本是 2022 年 11 月 14 日提交的文件。经审查，上述专利申请的文件中存在下述缺陷：

专利法第 23 条第 1 款规定：授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利部门提出过申请，并记载在申请日以后公告的专利文件中。

在该专利申请申请日之前已有现有设计，俄罗斯的外观设计专利，申请日为 2013 年 03 月 22 日，并在 2013 年 04 月 16 日已经授权公告，公告号为 [REDACTED]。具体地说，本外观设计与对比设计的整体形状、结构基本相同，上述差异属于施以一般注意力不能察觉到的局部细微差异，二者属于实质相同的外观设计，本设计已属于现有设计，该专利申请不符合专利法第 23 条第 1 款的规定，不能授予专利权。

根据专利法实施细则第 44 条第 2 款的规定，申请人应当自收到本通知书之日起 2 个月内陈述意见。期满未答复或逾期答复的，该申请即被视为撤回；申请人陈述意见或补正后仍未克服该申请实质性缺陷的，该申请即被驳回。

Regarding changes in examination standards, we have communicated with an Examiner. **The Examiner has admitted that the examination of design applications is becoming stricter. More importantly, the Design Patent Examination Department has started to use artificial intelligence systems.** During the examination process, the artificial intelligence system automatically retrieves designs that are the same or similar to the claimed design and pushes them to the Examiner. The Examiner can judge whether these pushed designs are suitable as the prior designs relative to the claimed design.

Although the new version of the *Patent Examination Guidelines* has not been officially promulgated, it can still be foreseen that obtaining design patent rights in China will become increasingly difficult.

- What should be done if receiving a notice regarding the novelty of the design?

Firstly, it is necessary to fully understand the differences between the applicant's design and the prior design, explain the uniqueness and originality of the claimed design, and thus comply with relevant laws, regulations, and patent examination requirements. Secondly, if necessary, it can be emphasized that the claimed design has a small design space. That is to say, the degree of freedom and creative space enjoyed by designers during creation is not large, so these differences are sufficient to make the claimed design unique and have the possibility of intellectual property protection. In addition, the applicant may try to modify the design to emphasize new and original aspects and refile a design application.

In conclusion, the examination of design applications in China is becoming stricter, and the Chinese government's efforts to protect intellectual property rights are constantly increasing. For those companies that sell products in the Chinese market, protecting their design patent intellectual property rights is becoming increasingly important. This requires the companies to pay more attention to originality and aesthetic value when designing products. Only by protecting their intellectual property rights can the companies obtain better developments and opportunities in the fiercely competitive market.



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Mr. Sheng graduated from China Agricultural University with a B.S. degree in Computer Science and Application in 2004.

Mr. Sheng specializes in IP affairs related to patents and designs, including patent drafting, prosecution, re-examination and invalidation, non-litigation services such as validity opinions and free-to-operation analysis, with a profession in the fields of mechanics, electronics and designs. Especially, Mr. Sheng is very familiar with the design systems of China, Japan, US and Europe and he is well-experienced in handling design matters.

Mr. Sheng started his IP career in 2004 and joined Tee & Howe in 2007. He is qualified by the Supreme Court to appear both in civil and administrative courts.

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