



Deferment of Examination for Chinese Design/Invention Applications and Deferment of Publication for EUIPO's Design Registration

Currently, several countries and/or regions implement the deferment of examination for patents. China National Intellectual Property Administration (CNIPA) issued a notification on June 5, 2020 amending the Patent Examination Guidelines, adding provisions relating to the deferment of examination.

According to China's Patent Examination Guidelines, an applicant may file a request for deferring examination for an invention and design patent application. The request for deferring examination for an invention patent application shall be filed by the applicant at the same time as the request for substantive examination, and shall take effect from the date of entry into force of the request for substantive examination. The request for deferring examination of a design patent application shall be filed by the applicant at the same time of filing the design application. Regardless of whether it is an invention or a design, the period of deferred examination shall be one, two or three years from the effective date of the request for deferring examination. At present, the CNIPA does not charge any fee for a request for deferring examination. By way of the deferment of examination, the applicant can postpone publication of the application or patent. It is worth noting that an invention/design application for which the

deferred examination has been requested is in a state of static placement, and whether it can be granted or not will depend on subsequent examination. In addition, once the applicant has requested the deferred examination, it cannot be withdrawn.

- So, what are the benefits for an applicant requesting "deferred examination"?

1. The applicant can adjust the patent according to the market value of the claimed product to avoid premature publication of the patent, so that other competitors in the industry could not know the applicant's direction of research and development, so as to protect its commercial interests.

2. In the process of formulating international standards, national standards and industrial standards, etc., the applicant has opportunities to adaptively modify the scope of the claims to align with the relevant standards.

3. The applicant can consider whether to continue the patent examination process based on the life cycle of the product and changes in the market situation.

Compared with China's deferment of examination system, although the EPO does not provide for deferred examination at the request of the applicant, EUIPO allows for deferred publication of design registrations. According to EUIPO, a design may, at the time of filing a registration, request that the publication of the design registration be postponed for up to 30 months from the registration date. The deferment of publication allows for the simultaneous benefits of registration and maintains the confidentiality of the design for a certain period of time. But if the publication has not been applied for after 30 months from the registration date, the registration will lapse. It is worth noting, however, that only a design registration in Europe can request for the deferment of publication, and that the design registration requesting deferred publication has eliminated all formal defects.

Both the CNIPA's deferred examination system and EUIPO's deferred publication system for design registrations are means for right holders to reasonably protect their intellectual property rights. The deferment of examination and the deferment of publication need to be used with caution although they have many advantages.



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