



IP Insights

 Introduction to Unity of Invention in China**Article 31.1 of China Patent Law**

A patent application for an invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models **belonging to a single general inventive concept** may be filed as one application.

Rule 34 of Rules for the Implementation of the China Patent Law

Two or more inventions or utility models belonging to a single general inventive concept which may be filed as one application in accordance with the provisions of the first paragraph of Article 31 of the *Patent Law* shall be technically interrelated and contain one or more of **the same or corresponding special technical features**. The expression “special technical features” shall mean

those technical features which define a contribution which each of those inventions or utility models, considered as a whole, makes over the prior art.

The requirements for unity of invention or utility model applications are outlined in Article 31.1 and Rule 34. In Chinese patent practice, the concept of specific technical feature is crucial for determining unity.

When the examiner determines that unity lacks between two inventions, it typically falls into two scenarios. One scenario is where, after analyzing and studying the claims and description, the examiner can readily discern a lack of unity between the two inventions, which is referred to as an obvious lack of unity. Another scenario is where

a lack of unity can only be determined after conducting a search, which is called a nonobvious lack of unity.

For the above two scenarios, the examiner's handling methods are different.

In the case of an obvious lack of unity, the examiner typically postpones the search and issues *Notification to Make Divisional Application* to the applicant, notifying the applicant to modify the application within a specified two-month period.

For the scenario of non-obvious lack of unity, if after searching and examination, it is believed that the first independent claim or its dependent claims has prospect of being granted the patent right, but there is a lack of unity between other independent claims and the claim having a prospect of being granted the patent right, the examiner may put off the search and examination for the other independent claims. They will only issue observations of examination with regard to the first independent claim or its dependent claim, and invite the applicant to delete or amend other claims that lack unity in order to eliminate the defect of lacking unity.

For the scenario of non-obvious lack of unity, if

after searching and examination, it is believed that the first independent claim and its dependent claim have no prospect of being granted the patent right and there is a lack of unity between other independent claims, the examiner may put off the search and examination for the other independent claims. They will indicate in the *first Office Action* that the first independent claim and its dependent claims have no prospect of being granted the patent right, and at the same time, point out the defect of lacking unity. Alternatively, the examiner may continue to conduct the search and examination to other independent claims especially when the search fields are very close or overlap to a large extent, and meanwhile point out both the defect of lacking unity and other defects in the *first Office Action*.

From the above explanation, it is evident that there is a significant difference between the unity requirement in China and the Restriction Requirement in the United States.

Restriction is the practice of requiring an applicant to elect a single claimed invention for examination when two or more **independent inventions** and/or two or more **distinct inventions** are claimed in an application. Whether two inventions are independent and/or distinct depends on the comparison between the two inventions themselves, not involving the prior art. However, whether the

unity exists between two inventions depends on whether the two inventions have **the same or corresponding special technical feature**, which is related to the prior art.

The unity requirement in Europe is more similar, than the restriction requirement in the United States, to the unity requirement in China. However, there are two significant differences between Europe and China practices with regard to unity requirement.

The first difference is that in case of lacking unity, an European examiner will invite the applicant to

pay a further search fee for each invention other than the one first mentioned in the claims, whereas a Chinese examiner will not.

The second difference is that in European practice, the number of independent claims is limited to one independent claim per category, with exceptions defined in sub-paragraphs (a), (b) or (c) of European Rule 43(2). In contrast, in Chinese practice, the number of independent claims in each category is not limited, as long as the unity requirement is met.



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