

How to File a Patent Application in China

1. What Types of Patents are Granted in China?

The Chinese Patent Law provides protection for three types of patents in China, including: patent for invention, patent for utility model and patent for design.

Terms of Patents:

Type of Patent	Term in Years
Invention	20
Utility Model	10
Design	10

* all terms counted from date of filing

2. What Cannot be Patented?

According to Articles 5 and 25 of the Chinese Patent Law, no patent right is granted to any of the followings:

- invention-creations that are contrary to the laws of the State or social morality or that is detrimental to public interest;
- invention-creations which rely on genetic resources that are obtained or exploited in violation of laws and regulations;
- scientific discoveries;
- rules and methods for mental activities;
- methods for diagnosis or for treatment of diseases;
- animal and plant varieties;
- substances obtained by means of nuclear transformation;
- two dimensional designs of images, colors or combination of the two that mainly serve as indicators.

3. Language Required for Filing Patent Application

All documents for a Chinese patent application should be prepared in Chinese language. If SIPO finds it necessary, the applicant needs to prepare within a designated time limit a Chinese translation of a certificate or a certified document in a foreign language, with the exception of priority documents.

4. Information to be Included in the Order Letter

The order letter or filing instructions should include:

- Type of patent application, invention patent, utility model patent or design patent;
- Title of invention, utility model or design;
- Full details (name, address, postal code and nationality) of the applicant(s) and inventor(s). Where the applicant is a legal entity or other type of organization in China, the organization code and the citizen identification card number of the first inventor shall be given. If the applicant(s) or inventor(s) is (are) from Japan, Korea, Hong Kong, Taiwan and other regions or areas where names can be printed in Chinese characters, his/her name in Chinese shall be provided;

- Priority claims: if a priority is to be claimed, then the filing date, the application number of the first application, the name of the authority with which the application was first filed and together with a certified copy of the priority provided by the said authority shall be submitted;
- Whether a substantive examination is to be requested upon filing: applicable to invention patent applications only, a request must be made within three years from the date of filing (or the earliest priority date), and failure to do so will render the patent application ineffective;
- Whether a registration in Hong Kong is needed;
- Any other special instructions.

5. Documents Required for a Patent Application

i. Power of Attorney

Please use our Power of Attorney or General Power of Attorney form. A Power of Attorney covers one patent application, while a General Power of Attorney can be used for all future applications.

ii. Priority Document

The priority document shall be submitted on the date of filing or within 3 months from that date.

iii. Assignment

If the applicant(s) of the previous application is (are) different from that of the Chinese patent application, an original Assignment signed by the applicant(s) of the prior application shall be submitted on the date of filing the latter Chinese patent application or within 3 months from that date. The applicant(s) can duly prepare the Assignment himself/herself, or otherwise use our Assignment form. The date when the Assignment went into force shall be earlier than the date of filing the Chinese patent application.

6. Application Documents

i. Required for patent application for invention or utility model

- the written description (including the field of invention, the background art, summary of invention/utility model, brief description of the drawings, embodying modes);
- the claims;
- the accompanying drawings (mandatory for utility model);
- the abstract and the drawings of the abstract (mandatory for utility model).

ii. Required for patent application for design:

- drawings or photographs of the product design, note that shadows or dashed lines cannot be used in the drawings or photographs;
- a brief explanation (including the title, use of the product incorporating the design, the essential features and one drawing or photograph designated to best show the essential features of the design.) to explain or define those drawings or photographs, the explanation may not neither contain any language of commercial advertisement nor show the function of the product.

For more information or details, please contact us at mail@mingsure.com.