



Latest Change in Chinese Examination of Utility Model Patent

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In recent years, Chinese utility model patent has attracted attention of numerous domestic and foreign applicants due to low cost, rapid granting and no strict limitations as in German and Japan. The amount of patent application for utility model keeps increasing (see the following table).

Table 1: The amount of Chinese utility model patent applied in latest 5 years

Year	Total number	domestic applicant	foreign applicant
2013	892,362	885,226	7,136
2014	868,511	861,053	7,458
2015	1,127,577	1,119,714	7,863
2016	1,475,977	1,468,295	7,682
2017	1,687,593	-	-

(note: the number of utility model application filed by domestic and foreign applicant in 2017 has not been released)

However, since Patent Quality Improvement Programme Implementation Plan was enacted and enforced by the SIPO, the examination of utility model patent has undergone certain changes.

As an initial matter, there is an increase in the number of application for utility model patent which is pointed out to lack novelty.

A department in charge of utility model patent examination acquires push of related reference documents from a utility model patent retrieval report system. Meanwhile, the department also urges the examiners to increasingly enhance their retrieval ability. In terms of the result, there is an increase in the number of application for utility model which is pointed out to lack novelty.

Taking the Office Action Linda Liu & Partners received pointing out novelty defect as an example, since 2017, 21 notifications of Office Action pointing out novelty defects have been received, which is 4.5% against 470 utility model patent applications filed in the same period. In strong contrast, until 2017, only 10 notifications of Office Action pointing out novelty defects have been received, which is merely 0.5% against 1992 utility model patent applications filed in the same period.



Among the 21 notifications relating to novelty received from 2017, 2 of them are issued in the first half of 2017, 10 issued in the second half of 2017, and 9 issued in 2018. It can be seen that the amount of Office Action relating to novelty issue soared from the middle of 2017 and remains great in 2018.

It should be noted in making a response to the Office Action relating to novelty issue that, first, the examiner is not entitled to the examination of inventiveness, which leaves only the novelty issue to be worried in response to the Office Action; second, according to the practice, most examiners would give only two chances for making observations; that is, if the applicant fails to convince the examiner after two Office Actions, the examiner will directly reject the patent application for utility model.

Furthermore, the cycle of examination extends for the patent application for utility model.

According to the latest information released by the SIPO, the examination cycle for utility model patent will be extended to 7-14 months. According to the actual statistics of Linda Liu & Partners, recent granting of utility model patent indeed has an apparent delay comparing to the previous periods. Before 2017, for a utility model patent, a Notification to Grant Patent Right will be issued within 3-4 months from the filing date if there is no additional Notification of Correction or Office Action. As for the utility model granted a patent right in 2018, if without additional Notification of Correction or Office Action, the Notification to Grant Patent Right is generally issued within 5-6 months from the filing date. The granting of patent right for a utility model will be greatly postponed if a Notification of Correction or Office Action is issued by the examination department due to defects in the application document.

In addition, the departments in charge of utility model patent examination increase in number.

In China, the examiners scatter in patent offices and the 9 Examination Cooperation Centers located in Beijing, Henan, Tianjin, etc.. Previously, the examination of patent applications for utility model concentrated in Utility Model Examination Division of Examination Cooperation Center Beijing Center. As the work of utility model patent application examination increases, from the end of 2017, Examination Cooperation Center Henan Center has established a utility model patent examination division to assume a great amount of examination work of patent application for utility model. Examination Cooperation Center Tianjin Center also assumes a small amount of the examination for utility model.

Based on the issued Notification of Office Action, the examination criteria of each center are not completely consistent. For example, Beijing Center and Henan Center differs on the determination of



object of protection of utility model patent. However, it is unpredictable where a particular patent application for utility model is to be assigned for examination. Therefore, the predictability of the vision of patent granting for a utility model, in particular a utility model relating to, for example, software, would experience major decrease at least in the recent period.

All in all, based on the current situation, the gradually tightened examination for utility model patent may on one hand bring about restrictions to the applicants while on the other hand contribute to the improvement of the quality of Chinese patents by reducing the generation of low-quality utility model patent.