



Intellectual Property & 3D Product Design in China

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China is an important manufacturing location for products featuring British design, including by original equipment manufacturers (OEMs) producing goods for global export. The fast-growing Chinese economy is also creating new demand for British-designed products. Whether taking advantage of manufacturing expertise or selling to the Chinese consumer, British designers and design-intensive companies should ensure they have considered the intellectual property (IP) risks presented by China.

Registered designs

A **registered design** is considered a type of patent in China. The Chinese Patent Law defines three types of patent: invention patents, utility model patents and design patents. The registered designs system in China is similar to protection elsewhere, such as in Europe. It protects the shape or pattern of a product, or the combination of colour with a shape or pattern. Design protection is suitable for the majority of 3-dimensional product designs.

It usually takes around 3-9 months to register a design patent with the China National Intellectual Property Administration (CNIPA). Registered designs are subject to a protection period of up to

ten years in China, which will become up to fifteen years for designs filed from 1 June 2021, pursuant to the fourth amendments to the Patent Law.

For a registered design to be valid in China it must be "new". A design is considered new if it "*does not belong to an existing design*" and "*is substantially different from the prior designs or combinations of the features of prior designs*". CNIPA examiners will not undergo a substantive examination of design patent applications, mainly checking that the necessary formalities have been completed. Examiners will sometimes make a cursory check of the novelty of applications but will almost never undergo a full search. The validity of registered designs may be challenged post-grant by application to the Re-examination and Invalidation Department of the CNIPA.

Designs that use an inventive approach to provide a technical solution may be protected via an **invention patent** or a **utility model patent** in China. Utility model patents require a lower level of inventive step than invention patents, which are fully examined. Like registered designs, utility model patents do not undergo substantive examination and registration usually takes less than a year.

Enforcement

A design patent is infringed when a third party manufactures, offers for sale, sells or imports a product bearing the protected design without consent from the rights holder. To establish infringement, a rights holder must establish that the accused product is of an identical or similar product type and the product conveys an identical or similar overall visual impression when compared with the registered design. This may well change following the introduction of protection for partial designs, from 1 June 2021. However, exactly how is not yet clear and will depend on how jurisprudence develops.

Registered design rights can be enforced through several channels in China. These include civil court cases, administrative enforcement (i.e., enforcement undertaken by local Administration of Market Regulation office, including during trade

fairs and exhibitions) and border detentions. Border enforcement by China Customs typically targets products being exported from China. Rights holders can work with customs officers to identify suspected infringing shipments. Cases involving complex determination of infringement will often be handled by the civil courts. More information on enforcing IP in China is included in our factsheets on [Intellectual Property in China](#) and [IP & Trade Fairs in China](#).

Chinese courts and other enforcement agencies will not fully consider the validity of a design right, though may halt infringement cases whilst the Re-examination and Invalidation Department of the Patent Office determines validity of the design in separate proceedings.



Anti Copying in Design (ACID – www.acid.co.uk) has created a *China IP Group* as a conduit for information sharing and intelligence gathering which is shared with policy makers as well as designers to raise awareness about current issues, opportunities and challenges.

China offers many opportunities for British designers. But it's good also to be aware of the IP challenges so here are ACID's top tips:

- **Protect it first!** If you think that China has any relevance to your business, protect your IP there just as you would in the UK, Europe or Japan. Do it before you expose your work in China and protect your most important assets first. Recording copyright can also be beneficial in China.
- **Remember that Hong Kong, Taiwan, Macau and mainland China are four separate IP territories.** Registration in one gives no protection in another.
- **Prepare well before jumping in.** This will take time on the ground and not just a single visit. Find out background information, try to get a trusted recommendation and visit the factory if you are partnering a manufacturing company. In many cases a good Chinese partner can be your best protection.
- **Get contracts right.** Do not be afraid to protect your IP assets through asking your supplier or manufacturer to sign a Confidentiality Agreement and to agree to social and product auditing. Always obtain acknowledgement of your IP rights in all agreements. Retain audit rights over their books and conduct regular visits, especially if agreements are terminated and keep all records.
- **Enforcement of your IP rights requires (much) more paperwork than in the UK.** Advance preparation is critical. E.g., allow a minimum of four weeks to prepare papers for trade fair enforcement.
- **Border enforcement.** China Customs can provide protection against infringing products leaving China. Border enforcement agencies in other countries can also protect against infringing products entering from China. Record trade marks and copyright with customs agencies in advance and work pro-actively with officers if you require enforcement against infringement of a registered design.

For more information on ACID activities in China please contact didsm@acid.uk.com

Other types of IP protection

Other types of IP protection can be available to designers and rights holders in China, although registered design rights usually provide the most effective method to protect and enforce rights to product designs.

Copyright protection is only currently available for a 3-dimensional product if it constitutes a “work of fine art”. To benefit from copyright protection a product design must possess both originality and artistic quality, with the latter being a more stringent requirement. Chinese courts have found chinaware, toys, decorative lamps and several other types of designs to be protected by copyright. Although not mandatory, registration of copyright with central or local government departments can help demonstrate proof of ownership during disputes. Product design files may qualify for copyright protection and this can be used to prevent unauthorised distribution of design files over the Internet.

3-dimensional trade mark registrations can be obtained from the CNIPA. However, the requirements on distinctiveness are high and successful enforcement of 3-dimensional shape mark registrations is rare.

Trade dress is defined in China as “*packaging and decoration unique to a product which enjoys a certain level of reputation*” and can be acquired by use in China and not by registration. Enforcement can be brought under the Chinese Anti-Unfair Competition Law. In recent cases, trade dress cases also include enforcement against unauthorized copies of the unique shape of the product. However, the burden of proof on the level of goodwill acquired by use is high and such use needs to inside China. The Anti-Unfair Competition Law thus provides only limited protection for **unregistered designs** in China.

3D product design and Original Equipment Manufacturers (OEMs)

Partners selected to provide contract manufacturing or other OEM services in China can be a source of IP risk. Experienced lawyers should be consulted when establishing and maintaining relationships with OEMs in China. Points to consider include:

- **Do proper due diligence.** Do background checks on partners in China as part of the selection process. Look to build longer-term relationships with partners and suppliers to reduce risk.
- **Obtain any relevant IP protection in China.** IP rights are territorial and IP rights in the UK, the EU, Hong Kong or elsewhere will not usually provide protection in China. Register trade marks, designs and other IP with the relevant Chinese authorities.
- **Get contracts right.** Chinese courts can be effective in enforcing breaches of clear, Chinese-language contracts. Offshore arbitration can be an option, but consideration needs to be made of the likely jurisdiction of disputes and location of assets of the counterparty.

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- **Monitor and take action against infringement.** Know if your rights are being infringed and consider enforcement options. Effective, proportionate and affordable options may be available.

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To arrange a discussion of particular IP cases in China contact Commercialmail.beijing@fcdo.gov.uk. More information on IP in China – including other business factsheets – can be found on our [China IP Webpage](#).

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