

Abstract:

This research investigates the problems regarding the actual operating conditions of the present legal system of design in China to construct an effective design system. It is based on two investigations that are, "Features of the present design legislation degree of China and its actual operating conditions", and "Attitude survey of Chinese enterprises to the present design method". Results are as follows, (1) the patent law, the design law and the utility model laws are not as an independent legal system in China, and this factor creates difficulties in operation, (2) in China the system for the design registration is only done by examining of written information, (3) Though it is universally known in foreign countries, the design patent registration is not done with validity in China unless making them known to the public.

Key Word: Design System, Intellectual Property, China, Substantive Examination

The **Policy** of the Social Protection and the **Establishment** of the Intellectual Property Rights System of External Appearance **DESIGN**

Yingli Xiao¹, Takayuki Higuchi², Akira Ueda³, Kiyoshi Miyazaki⁴
Graduate School of Science and Technology, Chiba University¹, Chiba University^{2,3,4}

The background and the purpose of research:

The agreement formation between all states and areas will be called for about an intellectual-property-rights system in the 21st century exceeding the interest between the major nations which have advanced technology power. In order for industry to develop still more healthfully and to be on the same level as the West and Japan in China, it is indispensable to establish many systems in connection with the intellectual property which has not been improved until now.

This research analyzes the special feature of the related many systems in advanced nations including Japan about the intellectual property system in connection with a design, advances comparisons with the system of the Chinese present condition, finds out the key towards a solution of the subject what consists in a Chinese system, and aims at drawing the concrete indicator for the institution of intellectual property right regarding construction in connection with the design in China.

The method of research:

This research is composed by two components: a research on present characteristics of Chinese appearance design legislations and its application, and a survey on the Chinese enterprises' consciousness of appearance design legislations. The former part is conducted through exploring the documents of legislations, literatures, cases of disputes, and reinforced by interviewing the inspector in Japan patent office. The latter part is conducted through a questionnaire survey in the household appliance companies in Beijing and Shanghai. The conclusion is made by comprehensively reviewing the two parts.

Survey on the operations on the present legal system of design in China:

This survey is conducted through questionnaire survey on personnel who are frequently involved with design patent. The survey received 17 replies from the household appliance based in Shanghai and Beijing. The questionnaire contains 39 questions covering all issues including: basic information, copyright organization, design principles, and the procedures from application, registration, duration, and grant of design patent. Hereby we summarized the general opinions regarding design patent from Chinese enterprises based on three questions in the survey.

- 1. The duration of design patent in China is 10 years, which is shorter than in most advanced industrial countries. Most questionees' hope the duration of design patent could be prolonged.

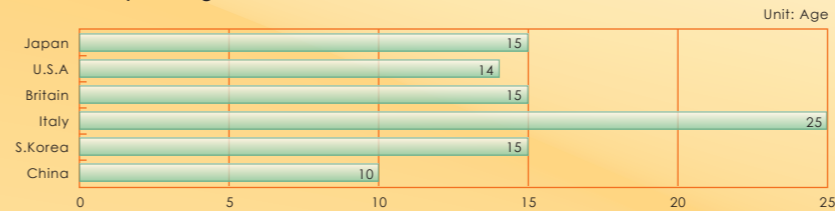


Figure 2 Term of patent right for a design

- 2. Regarding the introduction of a substantive examination system, companies expressed their opinions in various ways. Most companies believe that it is necessary to introduce substance examination because the present system could not guarantee the upholding of the patent rights even after its granting. Administrative measures are desired to acknowledge and protect the uniqueness

Table 1 Design examination standard

	Japan	U.S.A	EU	S.Korea	China
Preliminary examination	○	○	○	○	○
Substantive examination	○	○	×	○	×

- 3. Chinese Patent Law prescribes that the dissimilarity of design from the publicized design in foreign countries is the precondition of granting design patent. Many enterprises hope to increase the limiting conditions of design patent grant. They believe that copyrights are common wealth of human society, hence the acquisition of copyrights shall be internationalized. The stability of the copy rights will be enhanced by increasing the limiting conditions of acquiring the patent.

Table 2 Requirements for grant of patent right for a design

		Japan	U.S.A	Germany	France	Britain	China
Publication	Domestic	○	○	×	○	○	○
	Foreign	○	○	×	○	○	○
Announcement	Domestic	○	○	○	○	○	○
	Foreign	○	○	○	○	○	×

Consideration:

The present legal system on external appearance design in China is far from delicate. In the respective of legislature study, many sectors need improvement, but the companies involved don't have agree on that. The enterprises inquired rarely have encountered disputes on appearance design patents. Simplified application procedures, lower application cost, and shorter time lines are more emphasized on. Hence the enterprises concluded that the present legislations are applicable in the realities of Chinese industries. As China is not an isolated business circuit, it is pressingly necessary to amend and improve the legal system. For instance, many companies expect the substantive examination system which could conduct substantive examinations without prolonging the examination. The counterpart in Japan has made a good example. In Japan, from application to granting of design patent only needs 6 months. Of course, the improvement of China's legal system regarding design patents is nothing simple as introducing an advanced system from other countries. The biggest issue is how to find the measures that fit in the realities of Chinese copy-rights legal system.

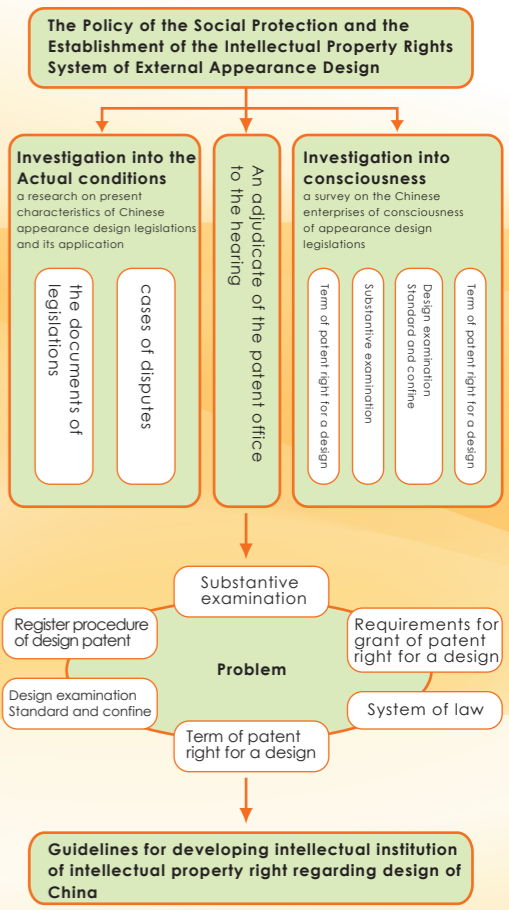


Figure 1 Research Flow



Title Picture: Smart vs er. Chinese Smart