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Updated Chinese Design Patent Law in the Health Care Device Market

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One year after China's updated patent laws went into effect, much uncertainty remains as to how protection and coverage for medical devices will look in the long term. Chinese patent laws have historically been more restrictive than those of other major countries within the health care innovation field prior to these changes. Once the nation widened its patent scope in June 2021, allowing the inclusion of partial designs and enhancing the ability of medical device companies to protect their products, it changed the way inventors may approach IP filing strategy. In so doing, China has become one of the last leading markets to consolidate its patent process.

Background

Before the Chinese Legislature updated its patent law to expand the scope of permissible design patent protection, partial designs were excluded from coverage. Companies were required to pursue protection only of the overall look and feel of the product as a whole and could not protect individual components of their designs if they were inseparable from other components or if they could not be sold or used independently.

In health care product design, this presented unique challenges for the design protection of both disposables and user interfaces. Because disposable parts of devices that are otherwise reusable are common with medical products, a limited ability to protect individual disposable components opened the door to competitors. Disposables were most likely to be copied without the reusable component due to weak protection.

Similarly, coverage for user interface design components was difficult to successfully obtain in China before June 2021.

Companies needed to cover the user interface as a whole and could not cover individual elements of the interface, which made patents particularly easy for competitors to design around by merely

rearranging some of the less important elements.

Immediate effects

The Fourth Amendment to Chinese Patent Law changed the legal definition of a design to include both the overall product and partial elements of shape, pattern, or their combination. In the context of disposables, this development allowed for design patents to be used more effectively together with utility patents, utility models, trade secrets, and technical barriers to obstruct competitors more comprehensively.

After updated patent regulation went into effect, more important aspects of interfaces were able to be covered individually, making it harder to design around more targeted coverage. The changes also enabled health care product designers to apply a more general IP coverage approach to China than before since the nation's laws were made more similar to other countries' coverage allowances. The reformed law extended the patent term to 15 years from the original filing date, permitting device manufacturers full coverage for a longer period of time. These modifications allowed for a simpler and, ideally, more cost-efficient filing process for device designers.

Looking forward

Though partial designs can be covered, the details of how they can be covered are not entirely fleshed out yet. Disclaiming parts using dotted or dashed lines is permitted, whereas shading does not appear to be permitted on design drafts. Likewise, the drawing may have to still show the product as a whole, but non-essential components may be disclaimed.

Complete examination guidelines have not been published yet, and there is uncertainty as to when they will be released. Examinations for design applications are currently being held, which include partial designs, until the examination guidelines are released. In practice, this could mean delayed protection relative to more conventional strategies. There could be some delays due to this hold.

Until complete examination guidelines are released, practitioners preparing new applications will have unresolved questions and potentially need to take some calculated risks.

Takeaways

Although the long-term impact of this change is still unclear, understanding the implications of filing an application can make for a smoother process for health care device manufacturers.

Innovators in the health care industry should consider:

- Individual elements of a product or user interface can now be protected via Chinese design patents.
- This protection can be used in tandem with other IP to create a more coherent and comprehensive barrier to competitors.
- Some uncertainty remains, so calculated risks may be needed during the transition.

For more information, contact any member of Frost Brown Todd's [Health Care Innovation](#) industry team or [Intellectual Property](#) practice group.

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