

Design Patents - How do you protect your design products from copying and counterfeiting in China?

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Original Scandinavian design in demand

Around the world, Scandinavian companies within furniture, lighting, interior design, and home accessories are recognized for their **unique design tradition, craftsmanship and high-quality products**.

Although this design heritage is not commonly known in China, there is a growing interest among Chinese consumers in modern and functional design and home furnishings.

Every year, Shanghai alone hosts two major international design exhibitions, i.e., [Interior Lifestyle China](#) and [Design Shanghai](#) that gather exhibitors, purchasers, and visitors from China and overseas.

Numerous Scandinavian design brands already **sell offline** in China either through local agents or retailers or via their own established showrooms or retail shops.

Many also **sell online** via the Chinese cross-border e-commerce platforms like Tmall Global and JD Worldwide or through some of the domestic Chinese online platforms like Taobao, Tmall, and JD.

Most foreign companies understand the need to protect their trademarks in China but with design often being the **distinct feature** and **unique selling point** of many consumer products, **design patent protection** has become an increasingly important area within IPR protection in China.

Without a Chinese design patent, copying cannot be stopped

In China, you find many copies sold both **online & offline** that look like the original products but with other materials, proportions or colors that are sold under a local company name or trademark. In principle, their copies are legal if the foreign company has not registered its design patents in China.

Since a **registered design patent overseas has no legal effect in China** and thus offers no protection, foreign companies that compete on their unique product design features in the Chinese market should always prior to the launch of new products or collections anywhere in the world make sure they have applied for a **design patent in China**.

This allows foreign companies to enforce their granted patent rights in China and sends a strong signal to local companies and individuals not to infringe or face the risk of **administrative and/or legal action**.

Large fines and compensation

According to the revised **Patent Law of the PRC from 1 June 2021**, the design patent holder can file an official complaint with supporting evidence on the alleged infringement with the local patent authorities.

They can confiscate any illegal income and impose fines of up to **five times** the amount of illegal income, and where there is no illegal income or it is below RMB 50,000, the compensation amount is maximum **RMB 250,000**.

Moreover, it is possible to file a lawsuit at the People's Court including the Special IP Courts in Beijing, Shanghai and Guangzhou or provincial IP Tribunals all headed by specialized IP judges.

The courts and tribunals can award damages based on the actual losses suffered by the patent holder or according to the profits made by the infringer. If neither method is feasible, the courts may determine a compensation amount of **RMB 30,000 – 5 million**.

Act Now

No matter if you consider, plan or already sell **offline and/or online** in China, you are always strongly advised to register your key design patents before the official product launch or **risk loss of control to outsiders** through (lawful) copying which can harm your company revenue, good reputation, and brand in China.

Important Facts

- **Territorial:** Design patent are only enforceable in China with a valid Chinese design registration.
- **First-to-file System:** Whoever registers the design patent first gets the exclusive rights in China.
- **Absolute Novelty:** Design cannot previously have been disclosed, published, or commercialized anywhere in the world prior to the filing date of the design patent application in China.
- **Pre-emptive Right:** Grace period of 6 months during which the filed design patent application in China will be given first priority retroactively from the filing date of the equivalent design patent application overseas not covering China.
- **Validity:** Design patents protected for up to 10 years subject to the payment of annuity fee. According to the revised Patent Law effective from 1 June 2021, this increases to 15 years.

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