

# W&B IP Newsletter

—[Special Report]—

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## LATEST AMENDMENT TO THE GUIDELINES FOR PATENT EXAMINATION



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## ◀ Special Report ▶

# Announcement of the PRC National Intellectual Property Administration

No.343

It is hereby announced that the amendments to the Guidelines for Patent Examination have been made and are hereby issued for **implementation as of February 1, 2020** as an effort to thoroughly implement the decisions and arrangements of the CPC Central Committee and the State Council on enhancing protection of intellectual property rights and to meet innovators' needs for further clarified rules for patent application examination concerning new industries and realms such as artificial intelligence.

National Intellectual Property Administration of the PRC  
December 31, 2019

## Decision of the PRC National Intellectual Property Administration on Revising the Guidelines for Patent Examination

The National Intellectual Property Administration of the PRC has decided to revise the Guidelines for Patent Examination by adding Section 6 in Chapter 9, Part II read as follows:

### 6. Regulations on Examination of Invention Patent Applications Containing Features of Algorithms or Business Rules and Methods

Invention patent applications involving artificial intelligence, "Internet plus", big data, blockchain, etc. normally contain features of rules and methods for intellectual activities such as algorithms and business rules and methods. This Section aims to, in accordance with the P.R.C. Patent Law and its implementing rules, set forth regulations for examining this type of applications given its distinctiveness.

#### 6.1 Examination Benchmark

Examination should be limited to the solution to be protected, namely the solution defined in the claims. The examination should not be carried out by simply separating the technical features and the features of algorithms or business rules and methods. Instead, the examiner should consider all contents recorded in the claims as a whole and analyze the technical means, the technical problem to be solved and the technical effect achieved therein.

##### 6.1.1 Examination Based on Article 25.1.2 of the Patent Law

If the claims of a patent application only involve abstract algorithms or business rules and methods without containing any technical features, such claims pertain to rules and methods for intellectual activities as set forth in Article 25.1.2 of the Patent Law and should not be granted a patent right. For example, a mathematic modeling method based on an algorithm without containing any technical feature pertains to rules and methods for intellectual activities as prescribed in Article 25.1.2 of the Patent Law and should not be granted a patent right. Another example is a rebating method based on the amount of consumption by customers, which should not be granted a patent right because the method only contains features of business rules and methods related to rebating without any technical feature, falling within the scope of Article 25.1.2 of the Patent Law.

If the patent claims contain technical features in addition to features of algorithms or business rules and methods, such claims as a whole are not rules and methods for intellectual activities and Article 25.1.2 should not be used to rule out the possibility of such claims being granted a patent right.

#### 6.1.2 Examination Based on Article 2.2 of the Patent Law

If it turns out that the claims to be protected as a whole do not fall within the circumstances of exclusion from being granted a patent right as prescribed under Article 25.1.2 of the Patent Law, the examination should focus on whether such claims pertain to a technical solution as prescribed in Article 2.2 of the Patent Law.

When deciding whether the claims containing algorithms or business rules and methods constitute a technical solution, the examiner should consider all features recorded in the claims as a whole. If the claims have recorded technical means using the law of nature to solve the technical problem involved and a technical effect in line with the law of nature is thereby attained, the technical solution defined by such patent claims belongs to the technical solution provided in Article 2.2 of the Patent Law. By way of example, if all steps of the algorithm involved in the claims reveal close relevance to the technical problem to be solved, for instance, if the data processed by the algorithm has a concrete technical meaning in the technical field, or performance of the algorithm directly reflects the process of solving a technical problem by using the law of nature and a technical effect is therefore achieved, the examiner normally determines that the technical solution defined in the claims belongs to the technical solution defined in Article 2.2 of the Patent Law.

#### 6.1.3 Examination on Novelty and Inventive Steps

When examining the novelty of an invention patent application containing features of algorithms or business rules and methods, the examiner should consider all features recorded in the claims, including both technical features and features of algorithms or business rules and methods.

When examining the inventive steps of an invention patent application containing both technical features and features of algorithms or business rules and methods, the examiner should take into account the said technical features in combination with the features of algorithms or business rules and methods that are mutually supportive and interactive in function with such technical features. “Mutually supportive and interactive in function” refers to close integration of the features of algorithms or business rules and methods and the technical features, which jointly constitute the technical means to solve a technical problem and are able to achieve the corresponding technical effect.

For example, if, as recorded in the patent claims, an algorithm is applied to a specific technical field and is able to solve a specific technical problem, such algorithm may be deemed as mutually supportive and interactive in function with the technical features and is a constitutive part of the technical means adopted. When examining the inventive steps of the claims, the examiner should consider the contribution of the said algorithm to the technical solution.

As another example, if implementation of the features of business rules and methods recorded in the patent claims requires adjustment or improvement of the technical features, such features of business rules and methods may be deemed as mutually supportive and interactive in function with the technical feature. When examining the inventive steps of the claims, the examiner should consider the contribution of the said business rules and methods to the technical solution.

### 6.2 Examples of Examination

(N/A)

#### 6.3.2 Drafting of Patent Claims

The claims of an invention patent application containing features of algorithms or business rules and methods shall be supported by the description and shall define the scope of protection requested in a clear and concise manner. The claims shall record the technical features involved as well as the features of algorithms or business rules and methods that are mutually supportive and interactive in function with such technical feature.

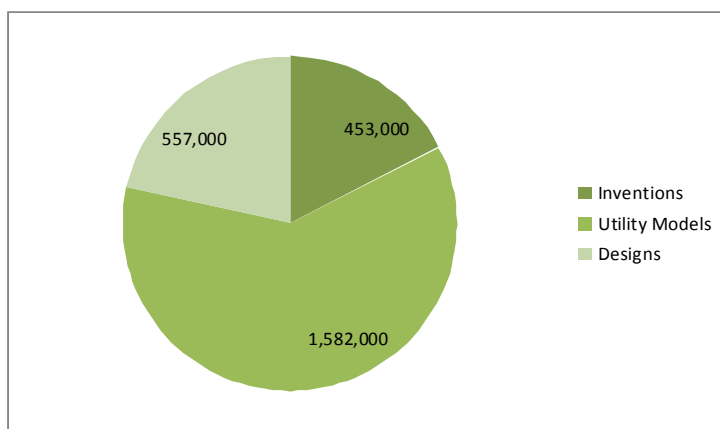
The rest of this Chapter remains unchanged.

This decision shall come into force as of February 1st, 2020

## Intellectual Property

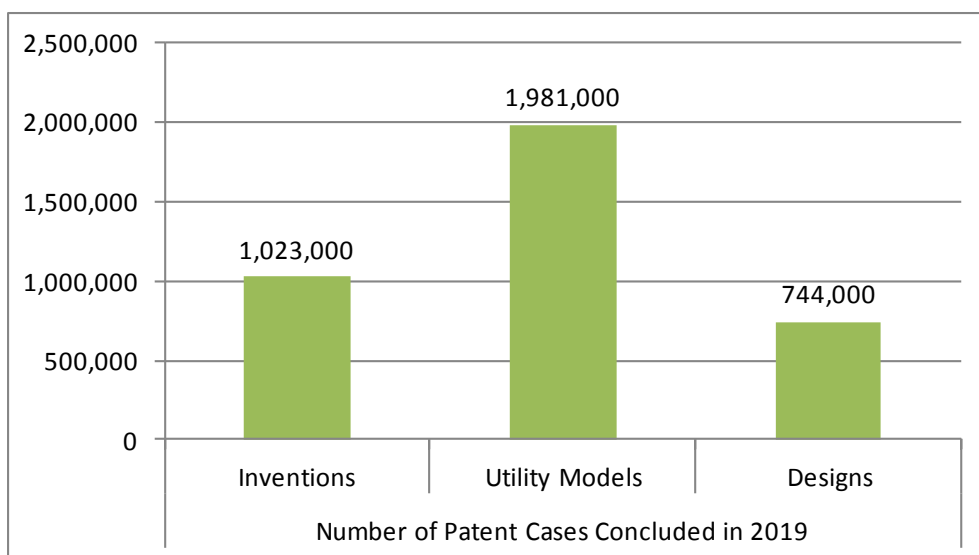
### Statistical Data re IP Rights in 2019

#### 1. Patents Granted

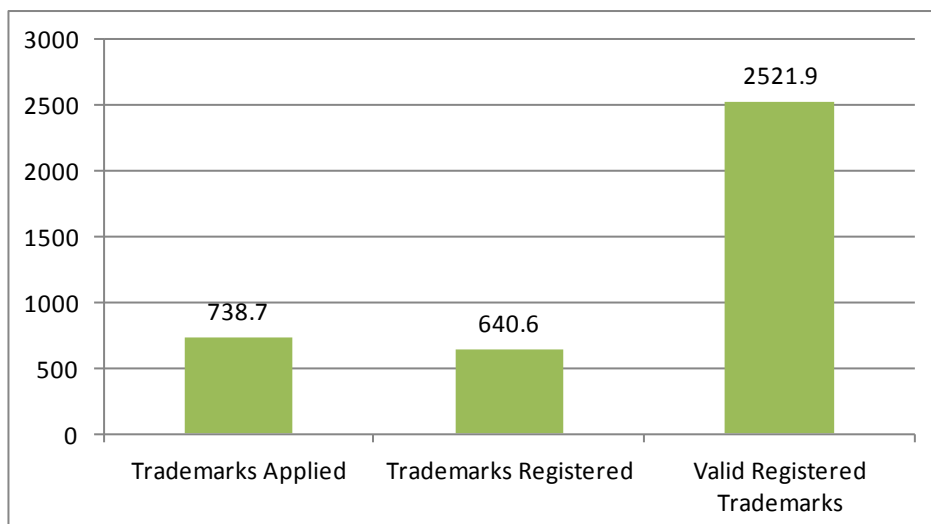


Each 10,000 persons in China own 13.3 invention patents.

#### 2. Number of Patent Cases Concluded

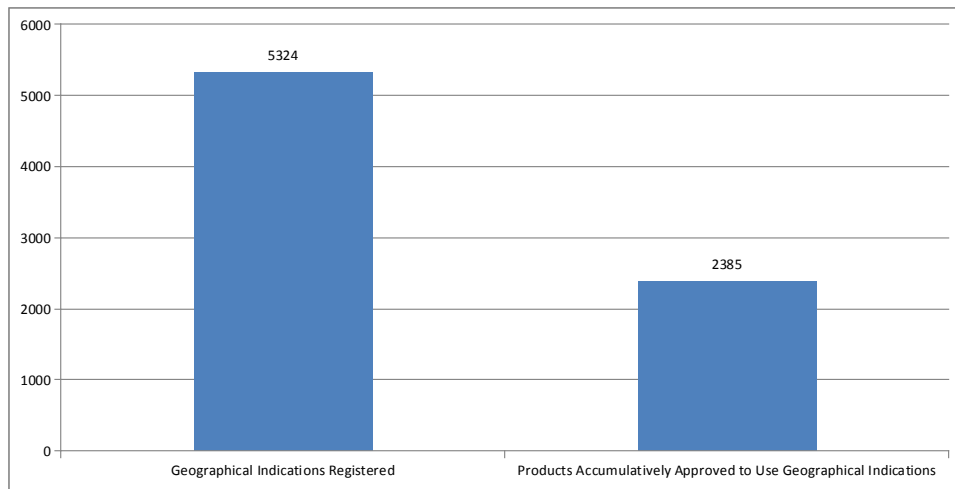


#### 3. Trademark Applications and Registrations (\*10,000)



## Intellectual Property

### 4.Registration of Geographical Indications



(Source: National Intellectual Property Administration)