Outline

I Background of Utility Model System and Statistics

II Introduction of Utility Model System

III Significance of Utility Model System in China
1. Background of Establishment

(1) Utility model systems in world before 1984

- 1891: Germany
- 1905: Japan
- 1984: China

Italy, Spain, Brazil, Korea, France, Australia, etc.
1. Background of Establishment

(2) National economic and innovation climate in China in early 1980s

- Reform and Open door policy----Investment and technology from abroad
- Domestic innovators----Limited by financial and human resources for research and development
- Domestic innovation activities----Incremental innovations
1. Background of Establishment

(3) Patent Law enacted in China in 1984

- Invention patent
- Utility Model patent
  ---- To encourage _domestic IP innovators_ and protect small inventions
- Industrial Design patent
I  Background of Utility Model System and Statistics

2. Statistics of Utility Model

(1) The volume of applications for three kinds of patents (2007~2011)

U. M. Applications in 2011: 585,467 (408,110 granted)
1. Background of Utility Model System and Statistics

2. Statistics of Utility Model

(2) Composition of domestic and foreign applications (2011)
Background of Utility Model System and Statistics

2. Statistics of Utility Model

(3) Foreign applications for Utility Model (2007~2011)
Ⅰ Background of Utility Model System and Statistics

2. Statistics of Utility Model

(4) Foreign Applications from Major originating Countries (2007~2011)

![Graph showing foreign applications from major countries (2007-2011)]
2. Statistics of Utility Model

(5) Utility model application examination period

- Average examination period in 2011
Introduction of Utility Model System

Contents

1. Subject Matter
2. Preliminary Examination
4. Main Differences with Invention System
II Introduction of Utility Model System

1. Subject Matter

(1) Definition of utility model in CPL(A2.3)

"Utility model" means any new technical solution relating to the shape, the structure, or their combination, of a product, which is fit for practical use.

All the processes are not the subject matter

Three elements in the definition
II Introduction of Utility Model System

(1) Definition of utility model in CPL

① Only products can be granted patent for utility model

② Utility Model shall include the improvement relating to the shape, structure, or their combination of a product

③ The technical solution are adopted to solve a technical problem in observance of the laws of nature
Ⅱ Introduction of Utility Model System

- **Shape of a product**
  Certain space-shape, can be observed from the outside

Non-fixed shape possessed by a product:
Materials in powder state, liquid state, etc.
Ⅱ Introduction of Utility Model System

- **Structure of a product**
  The arrangement, organization and correlation of each part of a product

Molecular structure, component of a substance, etc.
1. Subject Matter

(2) Unpatentable subject matter according to A5

Any invention that is:

- contrary to the laws
- contrary to social morality
- detrimental to public interest
II Introduction of Utility Model System

1. Subject Matter

(3) Unpatentable subject matter according to A25

- Scientific discoveries;
- Rules and methods for mental activities;
- Methods for the diagnosis or for the treatment of diseases;
- Animal and plant varieties;
- Substance obtained by means of nuclear transformation;
- Designs of two-dimensional printing goods, .......
2. Preliminary Examination

(1) Preliminary examination

Where it is found after preliminary examination that there is no cause for rejection of the application for a utility model, ……shall make a decision to grant the patent right for utility model……
(2) Scope of Preliminary Examination

- Preliminary Examination
  - Formality exam. of application documents
  - Exam. on Obvious substantive defects
  - Formality exam. of other documents
  - Exam. On relevant fees
II  Introduction of Utility Model System

Examination on obvious substantive defects

Description
- Clarity, completeness, and enablement

Drawings
- Drawings of the shape and/or the structure of the product

Claims
- Subject matter
  - Clarity, conciseness
  - Unity
  - Support

• Practical applicability
  • Amendment
  • Divisional application
(3) Examination Procedure

General flow chart

Filing an Application → Receiving → Classification → Preliminary Examination → Grant of Pat. & Publication → Post-grant Protection → Reexamination Board

Rejected → Reexamination

Invalidation → Court
(3) Examination Procedure

Invalidation procedure

Utility model Patent

Anyone doubts the patentability

Re-examination board

Time: After the date of the publication of the grant of the patent right

Petitioner: Any entity or individual

(1) Introduction of the evaluation report

- The second revision of patent law: Search report
- The third revision of patent law: Evaluation report

(2) Time and Petitioner

**Time:** After the announcement of the decision to grant a patent for utility model

**Petitioner:** Patentee or interested party
### 3. Evaluation Report of Patent

#### (3) Contents

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<th>Evaluation report</th>
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<td>• Subject matter</td>
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<tr>
<td>• Inventiveness</td>
<td>• Novelty</td>
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<tr>
<td></td>
<td>• Inventiveness</td>
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<tr>
<td></td>
<td>• Practical applicability</td>
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<tr>
<td></td>
<td>• Support</td>
</tr>
<tr>
<td></td>
<td>• Clarity of claims</td>
</tr>
<tr>
<td></td>
<td>• Clarity, completeness, enablement of description</td>
</tr>
<tr>
<td></td>
<td>• Double patented</td>
</tr>
<tr>
<td></td>
<td>• Amendment</td>
</tr>
</tbody>
</table>
Ⅱ Introduction of Utility Model System


(4) The legal nature of an evaluation report

An evidence for hearing or handling the patent infringement dispute

(5) The Purpose of the evaluation report

- Avoiding abuse of the patent right
- Encouraging public inspection
### 4. Main Differences with Invention System

#### (1) Subject matter, Exam. system and Duration

<table>
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<tr>
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<th>Invention</th>
<th>Utility Model</th>
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</thead>
<tbody>
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<td>Subject matter</td>
<td>Product and process</td>
<td>Product only</td>
</tr>
<tr>
<td>Exam. system</td>
<td>Early publication and delayed substantive examination</td>
<td>Preliminary examination</td>
</tr>
<tr>
<td>Protection term</td>
<td>20 years</td>
<td>10 years</td>
</tr>
</tbody>
</table>
### 4. Main Differences with Invention System

**II Introduction of Utility Model System**

(2) Novelty, Inventiveness and Practical applicability

<table>
<thead>
<tr>
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<th>Invention</th>
<th>Utility Model</th>
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</thead>
<tbody>
<tr>
<td><strong>Novelty</strong></td>
<td>Absolute novelty principle</td>
<td>Absolute novelty principle</td>
</tr>
<tr>
<td><strong>Inventiveness</strong></td>
<td>Has prominent substantive Features, Represents a notable progress</td>
<td>Has substantive features, Represents progress</td>
</tr>
<tr>
<td><strong>standard</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Practical</strong></td>
<td>Can be made or used, can produce effective results</td>
<td>Can be made or used, can produce effective results</td>
</tr>
<tr>
<td><strong>applicability</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Subject Matter

<table>
<thead>
<tr>
<th>China</th>
<th>Germany</th>
<th>Japan</th>
<th>Korea</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shape, structure or their combination of products</td>
<td>Any inventions except for inventions relating to process and biotechnological inventions</td>
<td>Shape, construction, or their combination of devices</td>
<td>Shape, structure, or their combination of devices</td>
<td>Any inventions except for human beings, animals, plants and process of their generation</td>
</tr>
</tbody>
</table>
III Significance of Utility Model System in China

1. Protect the Invention-Creations

- Be a complementary patent system to invention
- Provide protection to small innovations
IV Significance of Utility Model System in China

2. Provide Fast and Low Cost Protection

- Rapid granting and fast protection due to preliminary examination
- Low cost due to cheaper patent fees
Thank you!

State Intellectual Property Office of the People's Republic of China