
Business Model and Computer Program Will Soon Be Patentable in China

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Shen Changyu, commissioner of the State Intellectual Property Office of the People's Republic of China, has signed and issued Decree No. 74 to amend the Guidelines for Patent Examination (Guidelines). The State Intellectual Property Office (SIPO) announced revisions of the Guidelines approved in February, 2017. The newly revised Guidelines will be implemented April 1, 2017. The following is a summary of six main changes:

1. The revised Guidelines clearly state that claims involving business models *shall not be excluded* from the possibility of obtaining a patent if they contain business rules, business methods, and *technical features*. That is to say, the possibility of obtaining patent rights for a claim involving a business model exists *as long as the claim includes or uses a corresponding physical device*.

Example:

A method for using an apparatus in a shareable manner, comprising: permitting to use an apparatus, employing a mobile communication device to track the beginning and end of a period of use, and computing a fee to be billed and paid automatically from the mobile communication device.

2. The revised Guidelines further clarify that a computer program is different from an "invention involving [a] computer program" and that the Guidelines shall allow a claim to be written in the format of "media + computer program flow." The revisions have clarified that the patentable subject matter may include computer programs and that computer programs can be a constituent part of a device claim. Please note that a computer program *by itself* is still not patentable; however, a hardware device which contains or implements a computer program shall not be excluded from the possibility of obtaining a patent, and the computer program can be part of the claim.

Example:

A control device, comprising a first controller and a second controller, wherein the first controller is configured to execute the following program sequences upon activating of the second controller:.....

3. The revised Guidelines have added "The examiner shall review and consider the experimental data submitted after application has been filed. The technical effect demonstrated by such

experimental data should be that one of those skilled in the art can obtain from the disclosure of the patent application.” In the past, such supplemental experimental data was not considered, but now as long as the technical effect (as demonstrated by the patent application supplemental experimental data) can be duplicated (obtained) by someone skilled in the art, such experimental data will be considered. *Note that this provision is only applicable in the technical field of chemistry.*

4. In the Invalidation Procedures section of the revised Guidelines, *SIPO has relaxed the restrictions on amending a patent document* by allowing the rights owner to add one or more technical features from another claim or to *correct obvious errors* in the claim.

5. The scope and content of patents and patent applications that can be accessed and copied by the public has been widened.

6. The revisions have also addressed the resumption and suspension of terms and rights. The Guidelines now expressly state that when a court requires SIPO to assist in implementing property preservation procedures, SIPO should suspend relevant procedures in accordance with the period of property preservation stated in the civil ruling and notice of assistance in execution.

Because the Guidelines have been so recently revised and will be implemented April 1, 2017, the patent examination process will undergo adaptive adjustments. We will update you, in a timely manner, regarding changes to patent examination processes.

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