

**4 - PRESENTATION COMPLETE DE LA
PROPRIETE INTELLECUTELLE EN CHINE**

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**Intellectual Property
Protection in China**

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Legal Basis for IP Protection

**China is now the member of below
International Conventions:**

- **Paris Convention for the Protection of Industrial Property**
- **Berne Convention for the Protection of Literary and Artistic Works**
- **Patent Cooperation Treaty**
- **Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks**

Legal Basis for IP Protection

- **Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms**
- **Madrid Agreement Concerning the International Registration of Marks**
- **Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks**
- **Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure**

Legal Bases for IP Protection

- Patent Law effective as of 1985;
- Trademark Law effective as of 1981;
- Copyright law effective as of 1990
- Computer Software Protection Regulations effective as of 1991
- Anti-unfair Competition Law effective as of 1993
- Regulations on Customs Protection on Intellectual Property effective as of 1995

Subject Matters to be Protected

In Patent Field:

- Invention and Utility Model Patents:
products, methods, software (incorporated hardware)
- Design: outside configurations, patterns and colors

Subject Matters to be Protected

In Trademark and Anti-unfair Competition
Field:

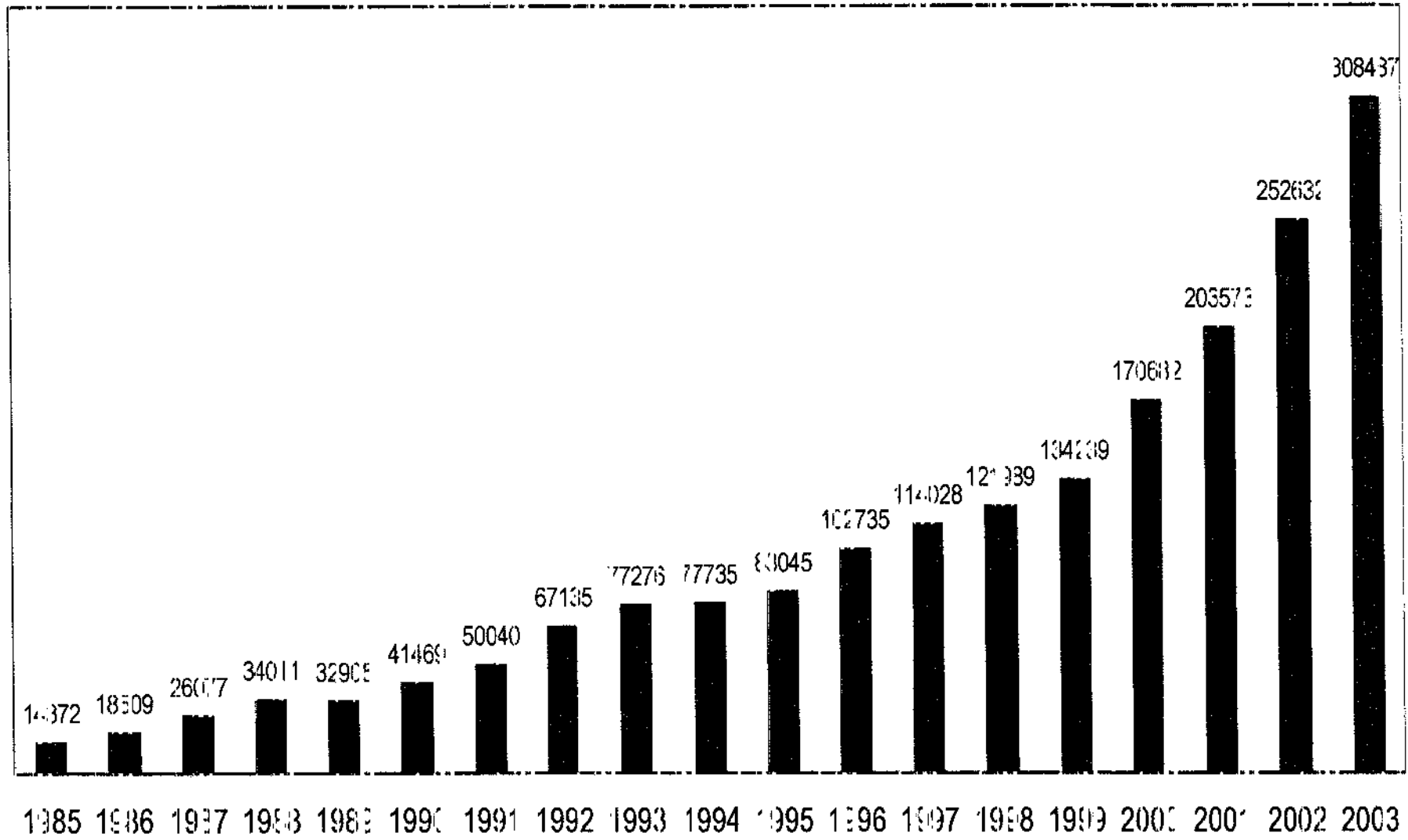
- Marks: combinations of letters and/or figures, designs, 3-D configurations, combination of colors
- Geographical Indications
- Trade names
- Trade Secrets

Subject Matters to be Protected

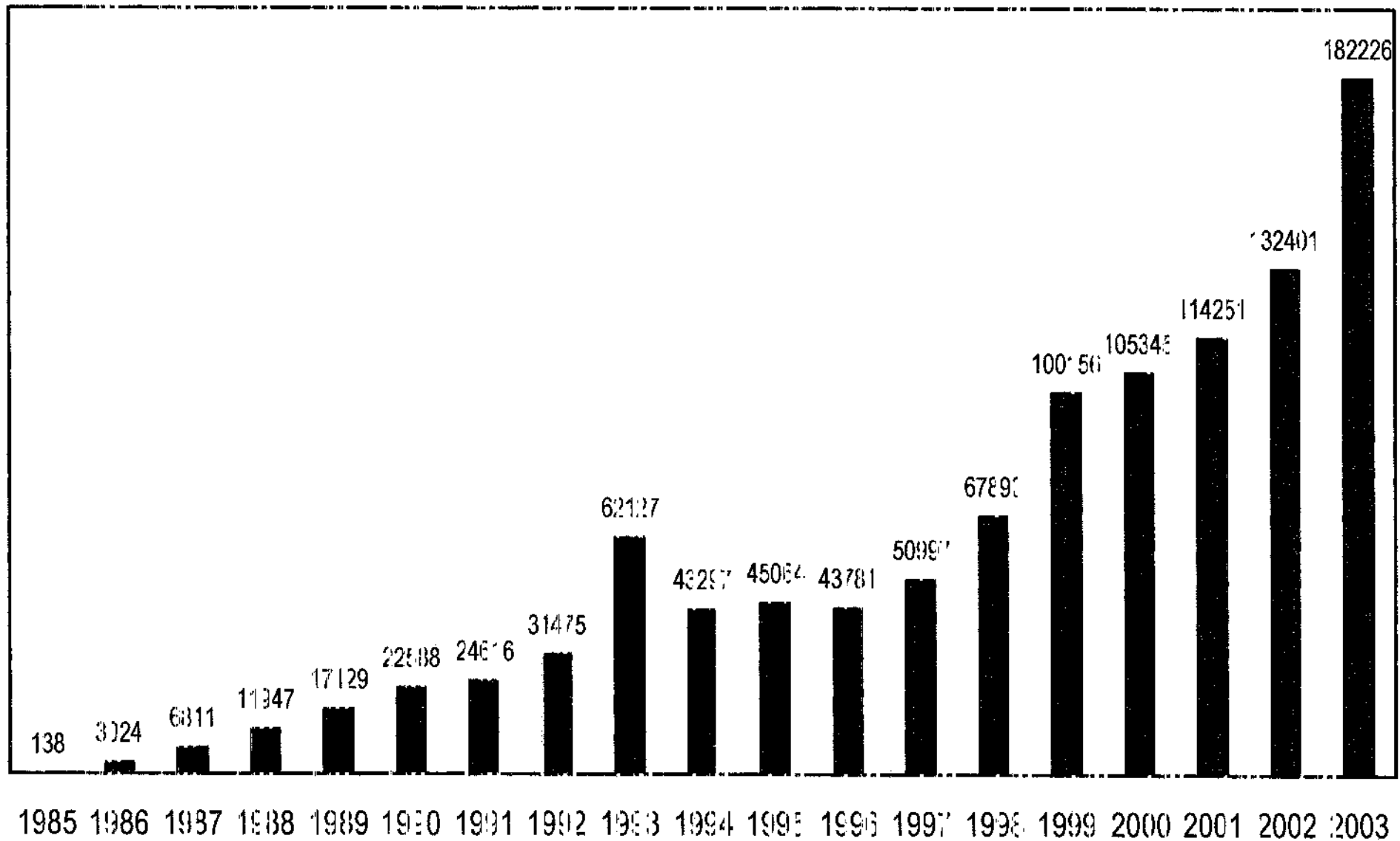
In Copyright Field:

- (1) written and oral works;
- (2) musical, dramatic, choreographic works, works of fine art and photographic works;
- (3) cinematographic, television and videographic works;
- (4) drawings of engineering designs and product designs, maps, sketches and other graphic works;
- (5) computer software;

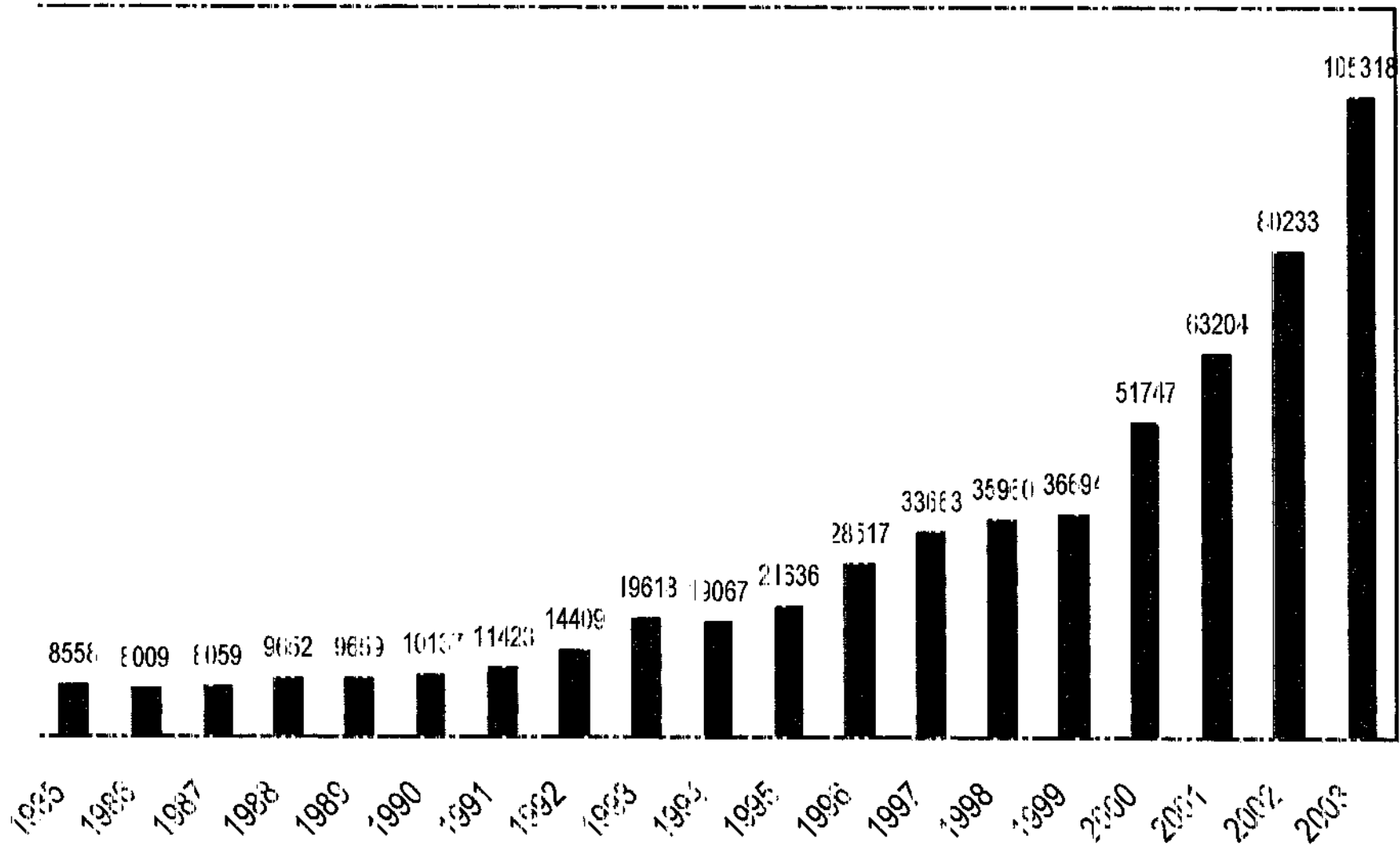
Amount of Patent Applications



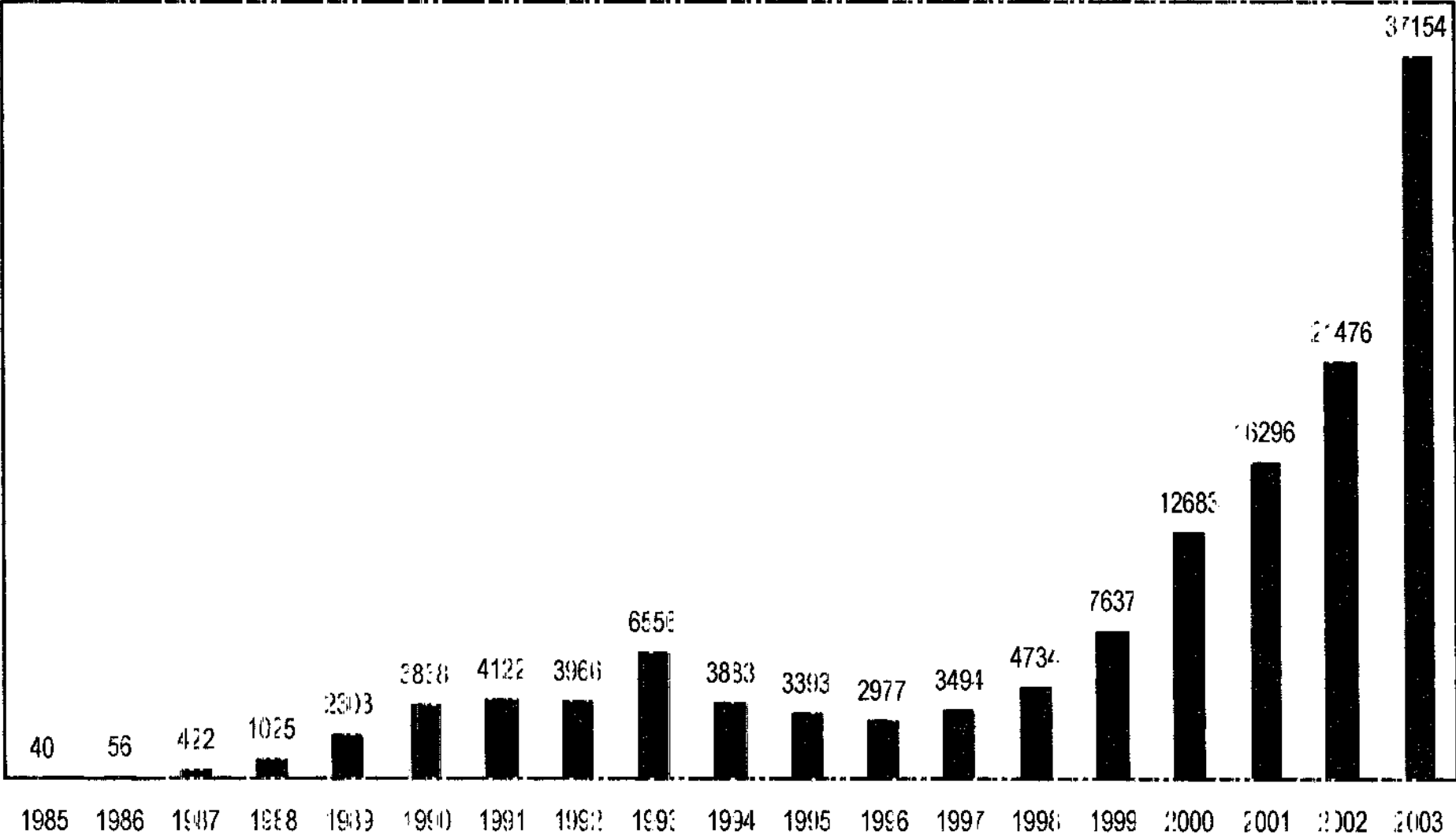
Amount of Patents Granted



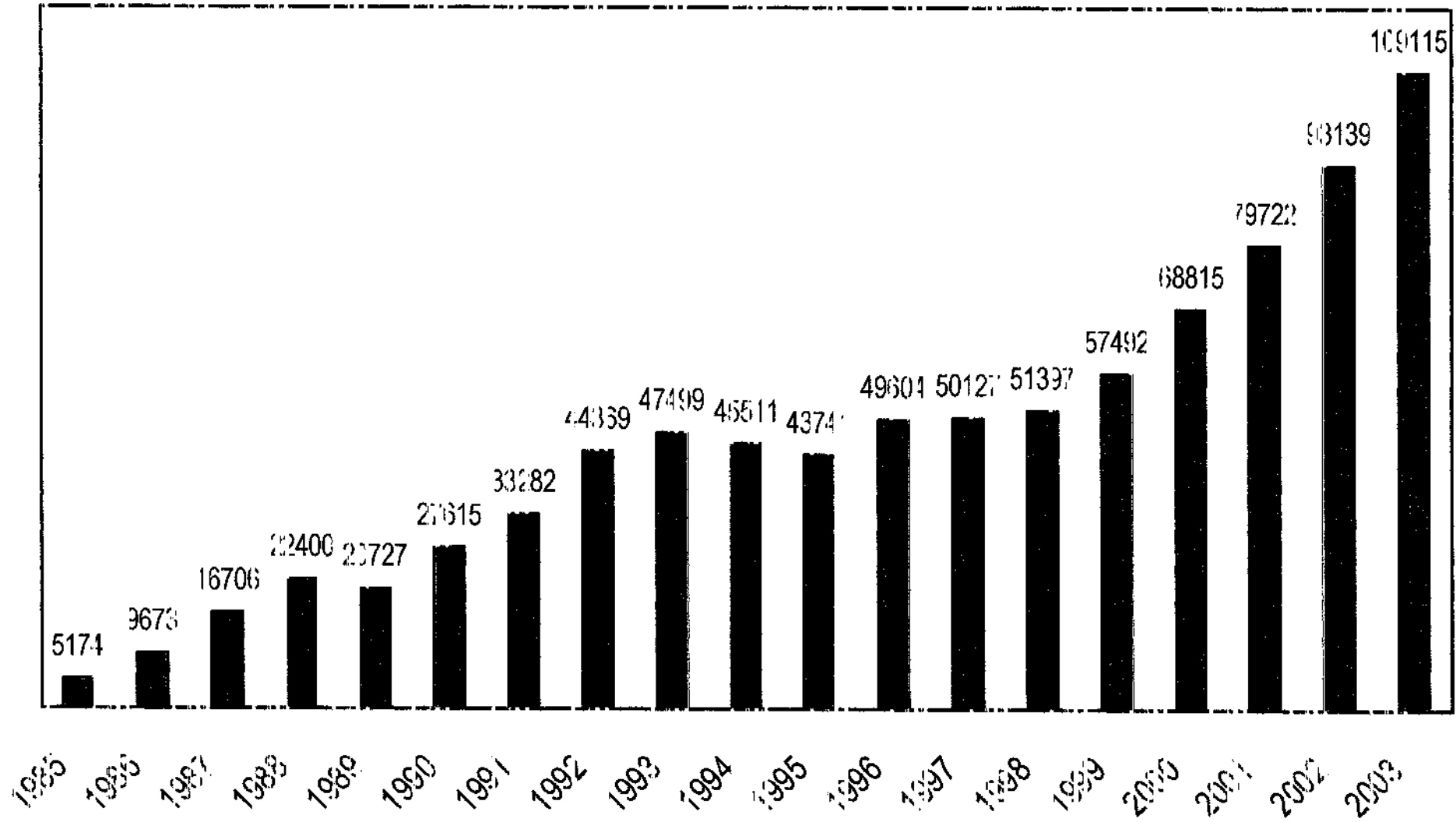
Amount of Invention Applications



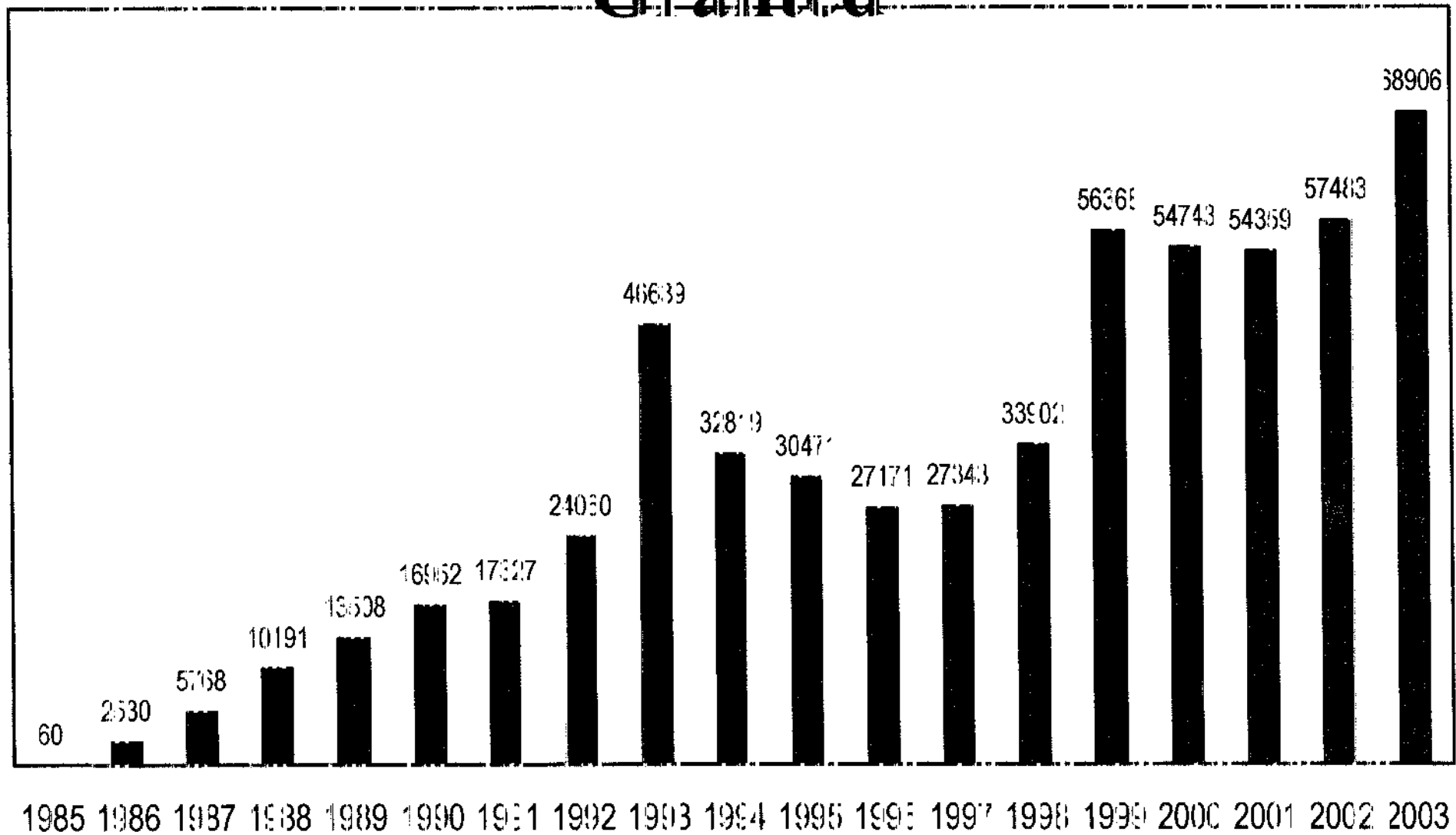
Amount of Invention Patents Granted



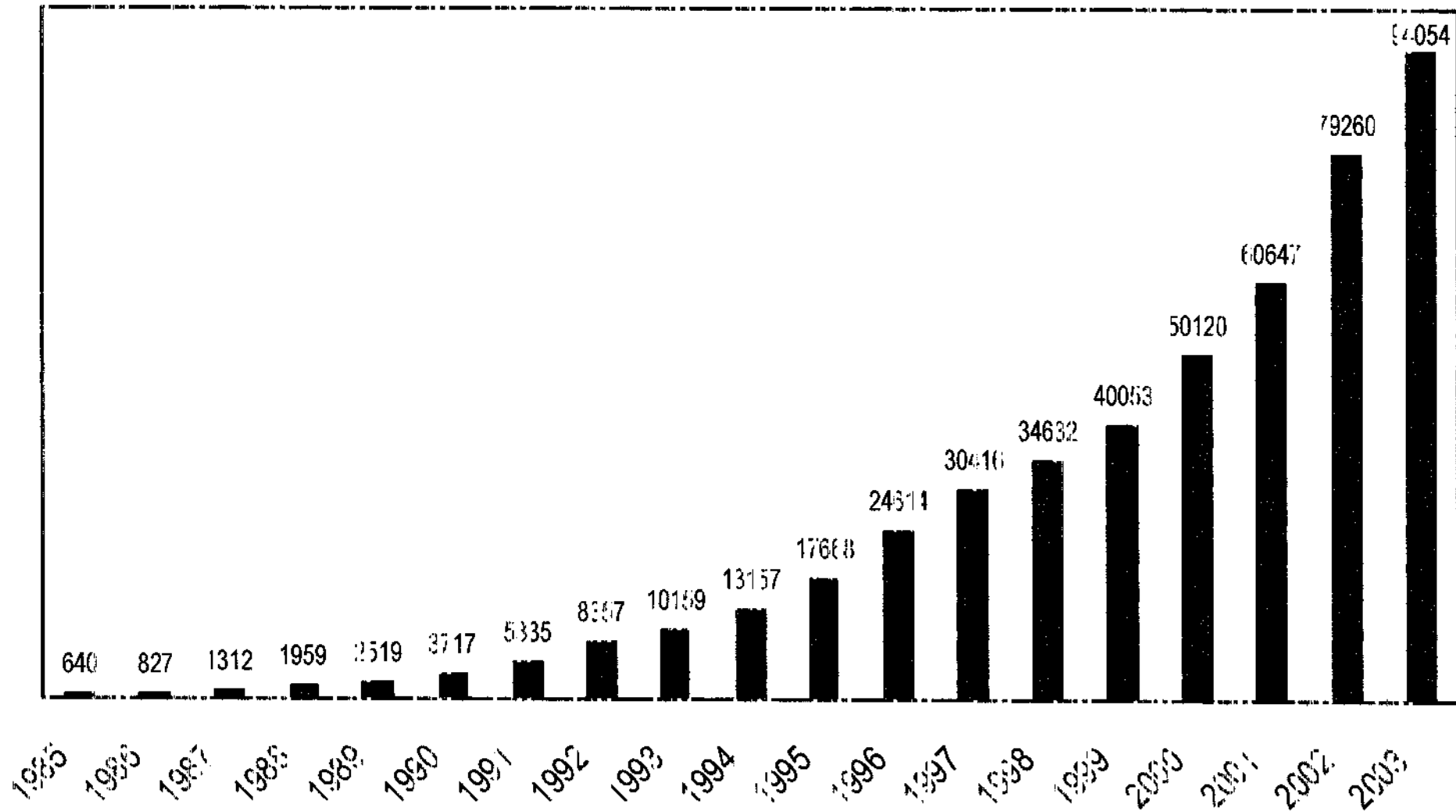
Amount of Utility Model Applications



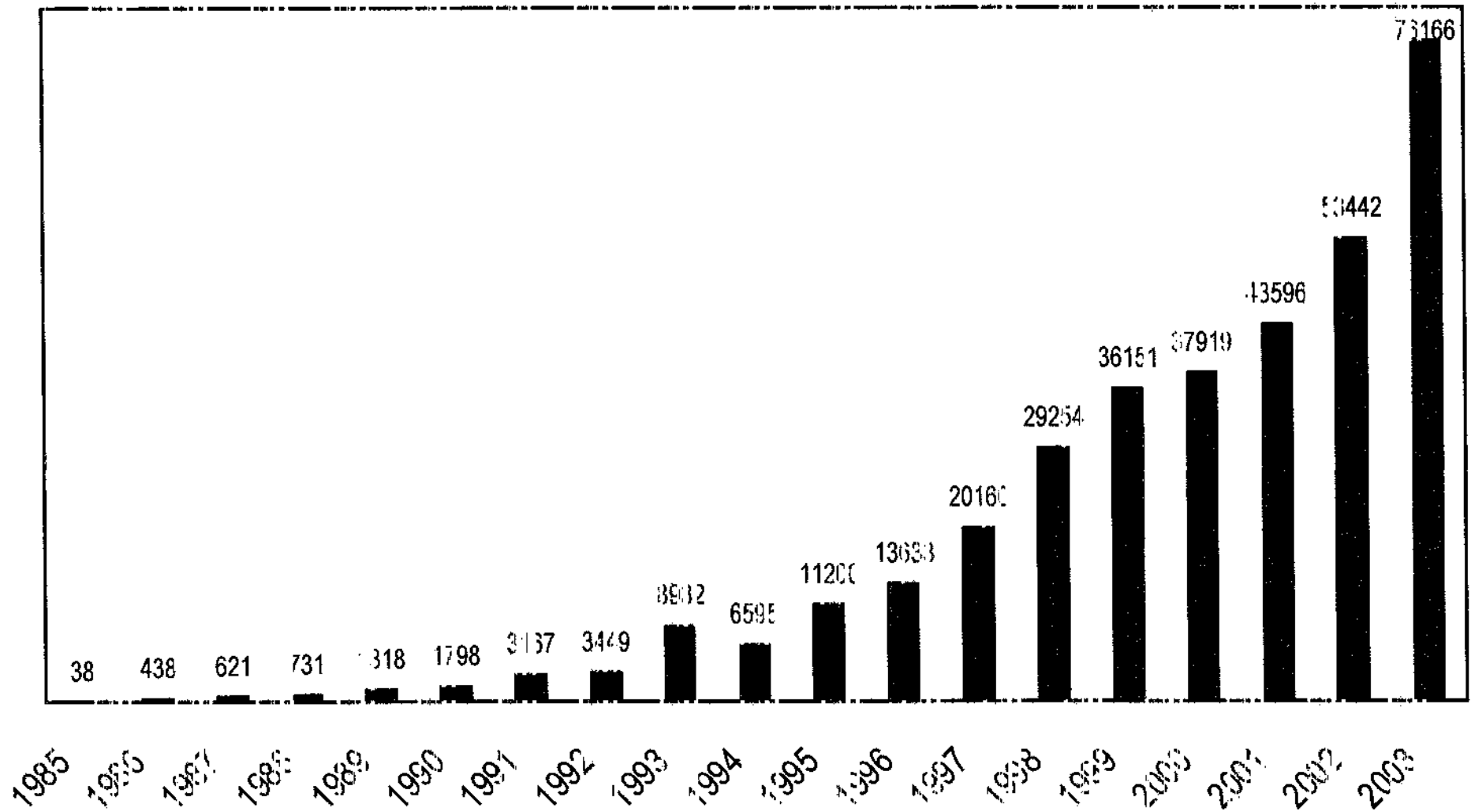
Amount of Utility Model Patents Granted



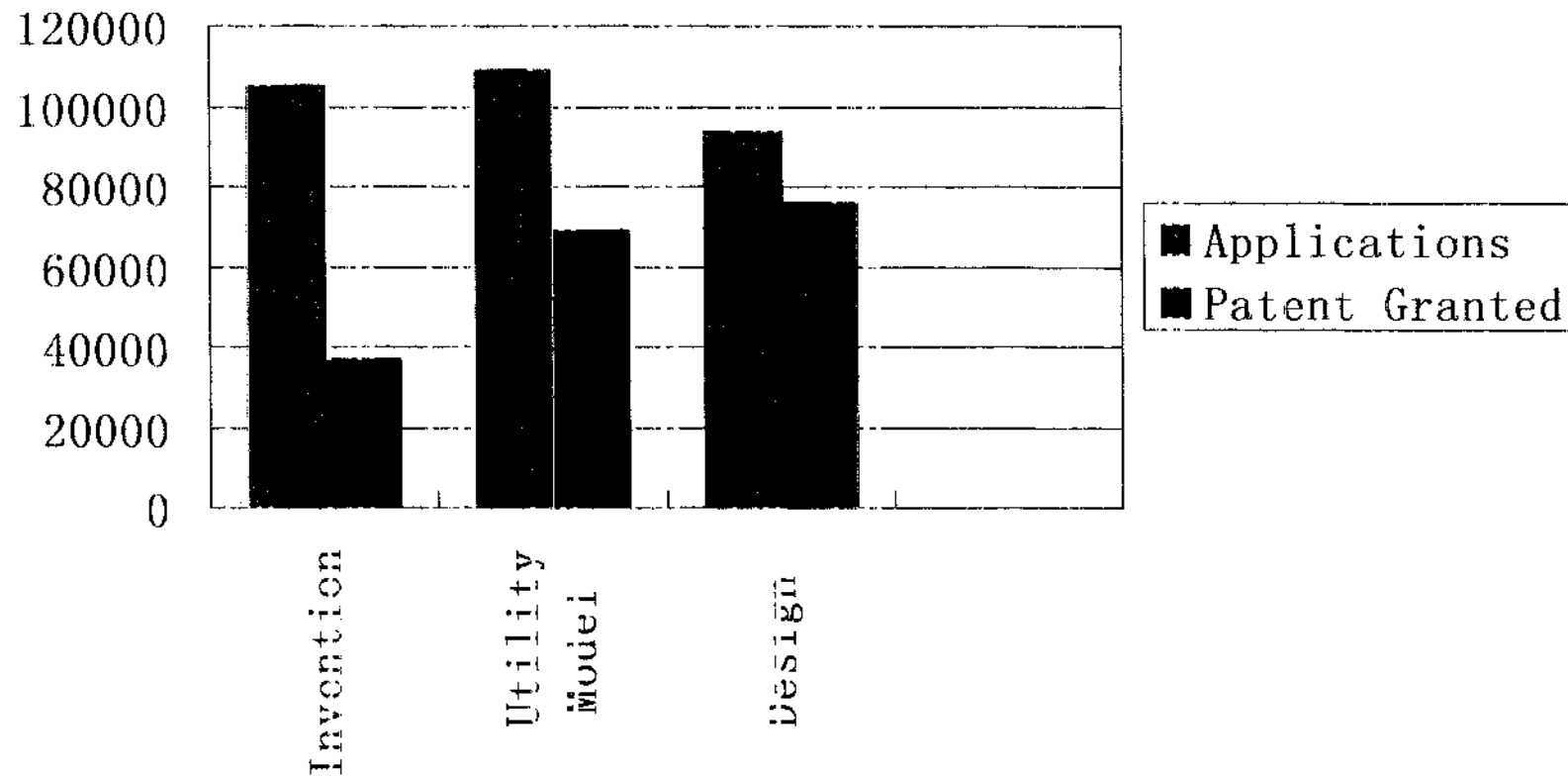
Amount of Design Applications



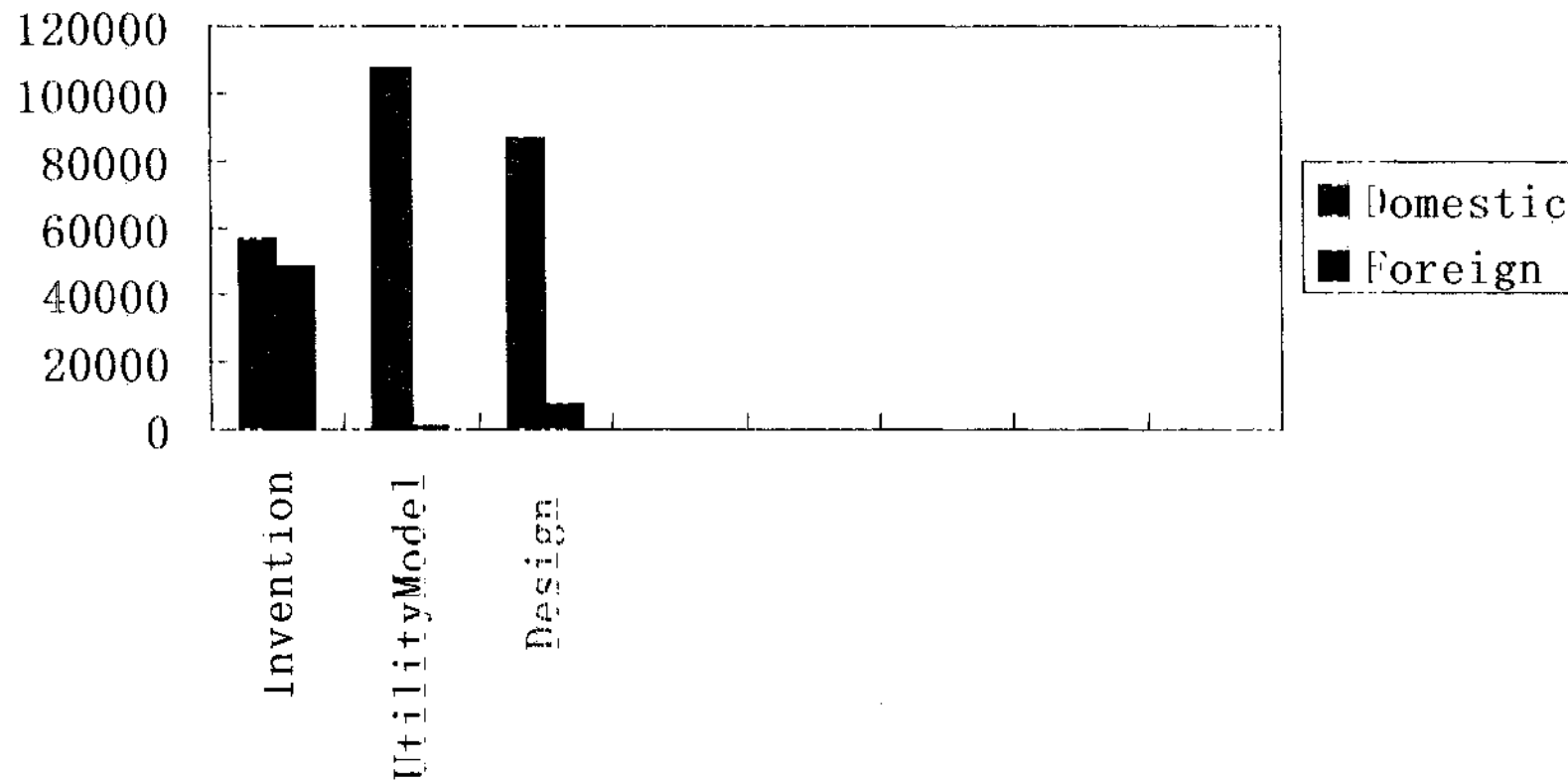
Amount of Design Patent Granted



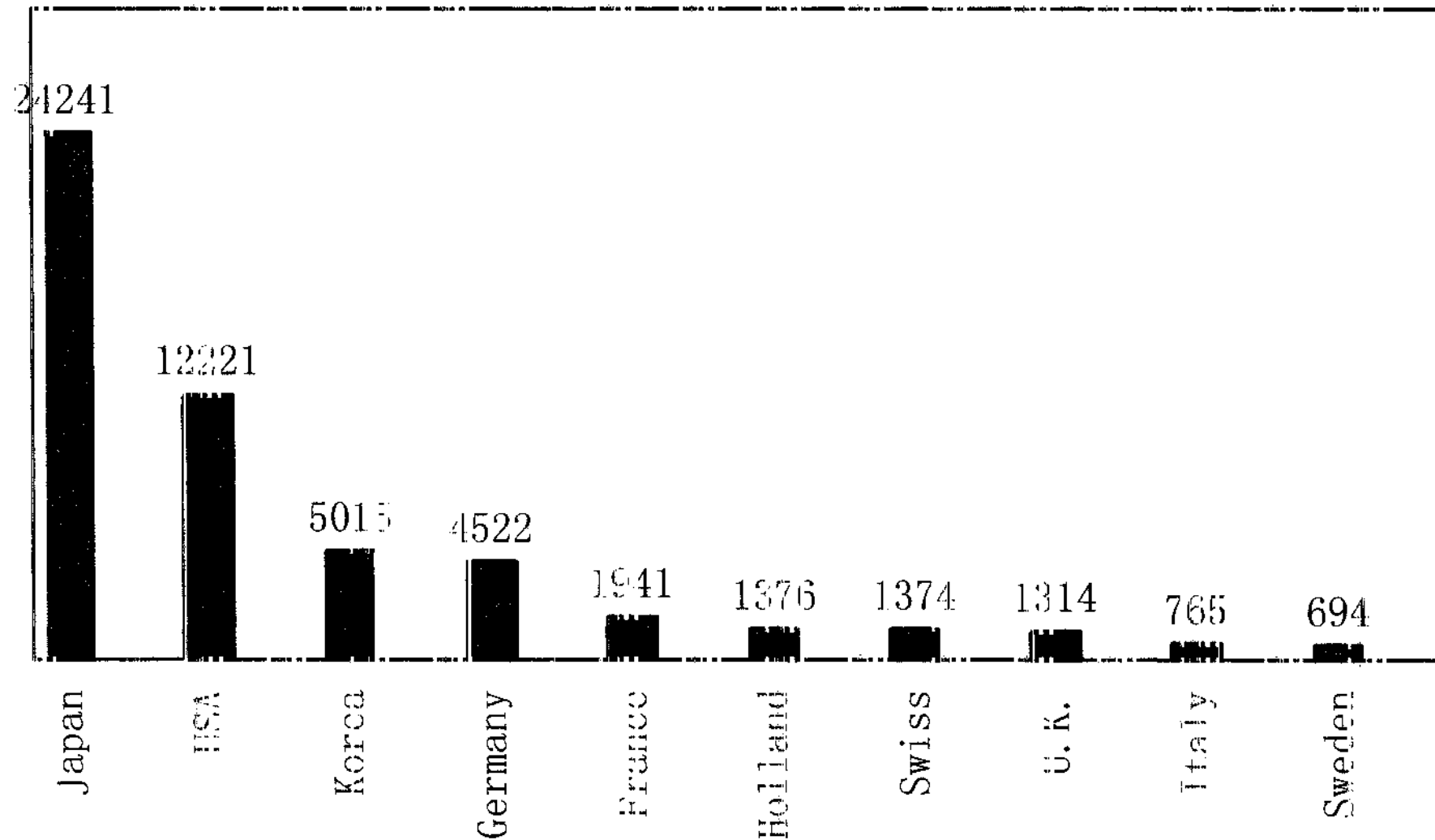
Comparison of Three Kinds of Patents in 2003



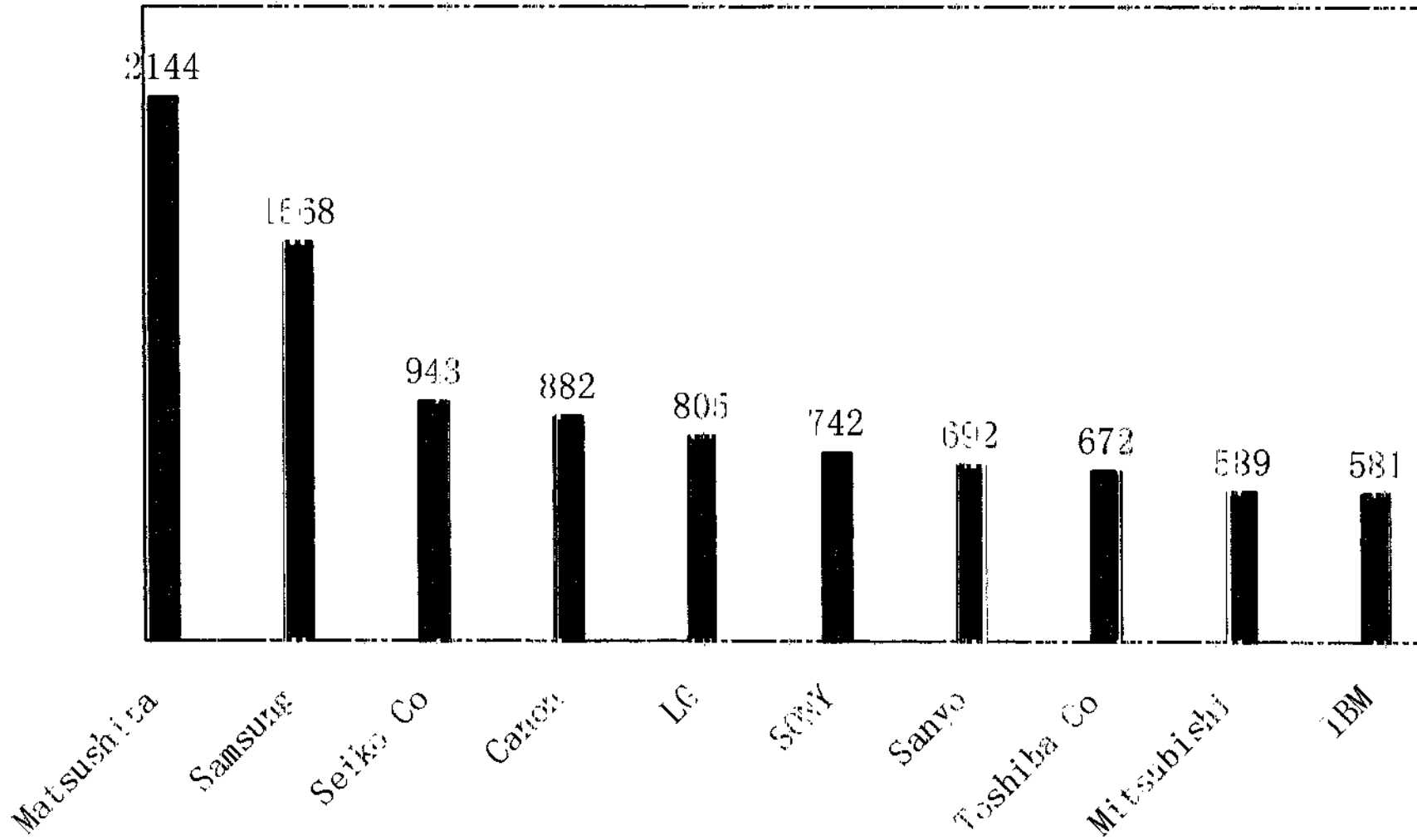
Comparison between Domestic and Foreign Applications in 2003



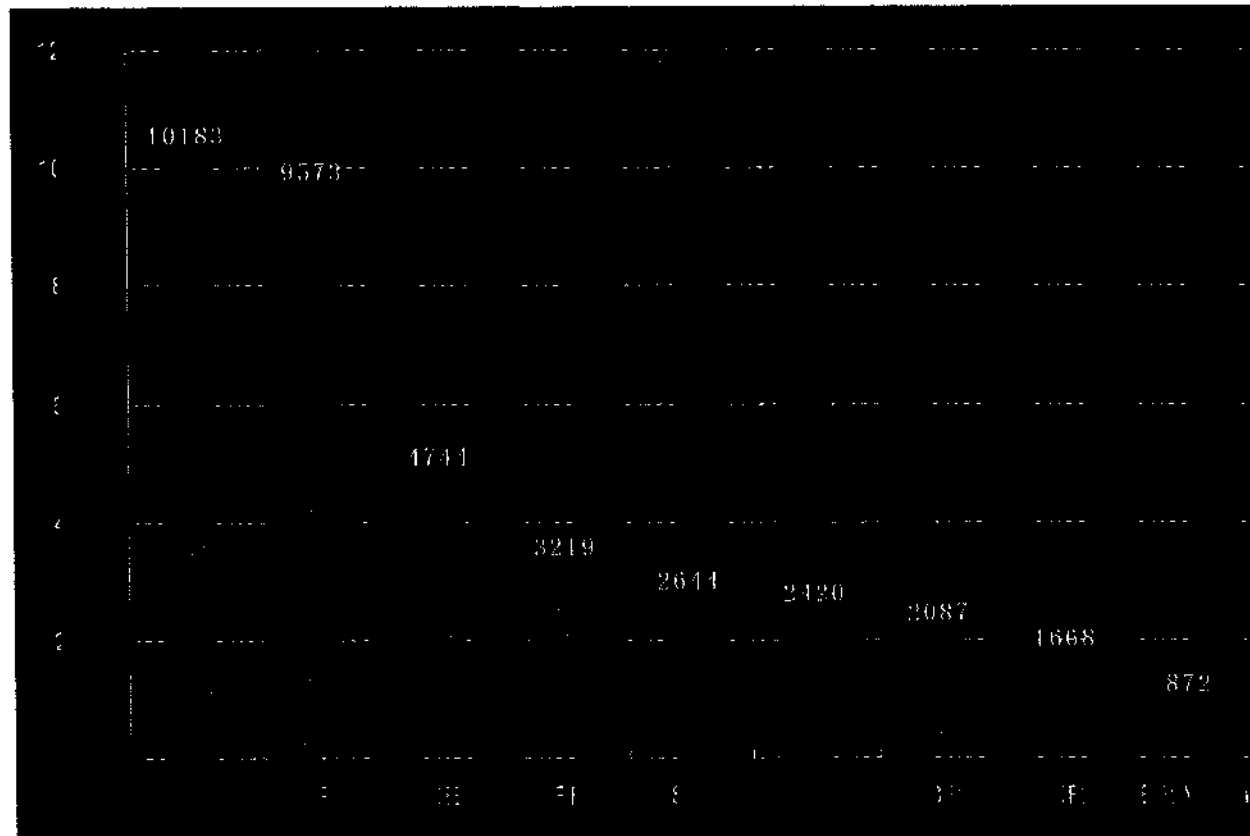
The Ranking List of Patent Applications by Countries in 2003



Ranking List of Patent Applications by Applicants in 2003



Ranking List of Trademark Applications by Countries in 2003



Protection Periods for Patents, Trademark and Copyright

- Invention Patent: 20 years
- Utility Model: 10 years
- Design: 10 years
- Trademark: forever if desired
- Copyright: 50 years after death of author

Parties Qualified to Initiate anti-infringement Action

- 1) The right holder;
- 2) The exclusive licensee;
- 3) The sole licensee on the condition that the right holder does not do the same;
- 4) The non-exclusive licensee, on the condition that he has the clear authorization from the licensor.

Liabilities of Infringement of IP

- Civil Liability
 - Administrative Liability
 - Criminal Liability
-
- In general, an infringement case is handled by a administrative authority and is switched to criminal procedures when criminal violation is found.

Basic Chinese Enforcement Structure

“Three Approaches” in China

1. Administrative enforcement (the majority of the cases including patent, trademark, copyright, trade secret, plant varieties, geographical indications, etc.)
2. Civil enforcement
3. Criminal (least common)

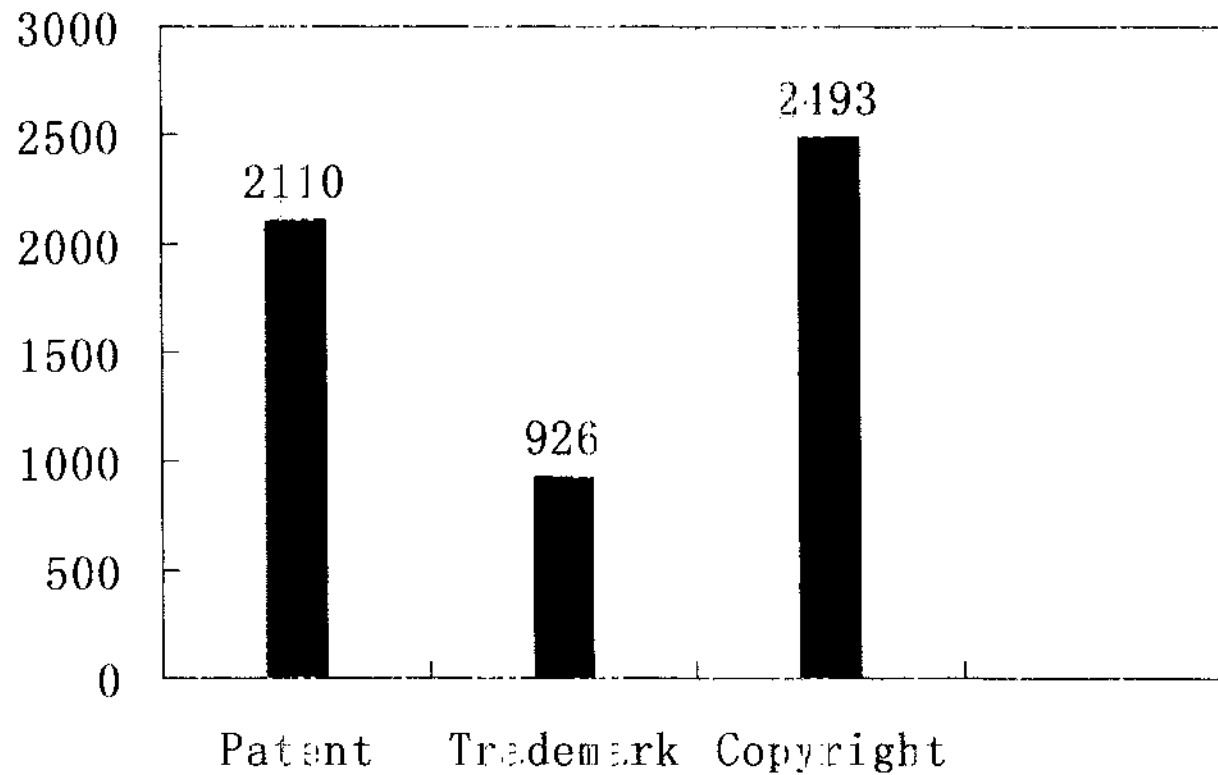
Administrative Enforcement

- Advantages: inexpensive, fast, local, injunctions are available
- Disadvantages: decision is not final, penalties usually non-deterrent, difficult to transfer to criminal prosecution, limited geographic jurisdiction.

Civil Litigation

- Advantages: specialized judiciary that may be trained in IPR, availability of damages and injunctive remedies, nationwide jurisdiction, more frequently being used by patent cases, increasing transparent “judicial interpretation”.
- Disadvantages: high cost, low damages awards, long period.

Statistics of Civil Cases by Courts in 2003



Criminal Litigation

- Advantages: can be brought by police/prosecutors or injured party, deterrent damages possible (fine and imprisonment), possibility of civil damages in addition to criminal punishment.
- Disadvantages: high evidentiary standard for many criminal cases make these cases difficult to handle; depending on nature of case defendant can bring sympathy to defendant rather than the right holder. Not all IPR infringement are criminalized .

Statistics of Criminal Cases Between April 2001-March 2003

Cases Accepted: 851

Cases Concluded: 775

Persons in Jail: 725

in which:

Above five years in prison: 153

Below five years in prison: 582

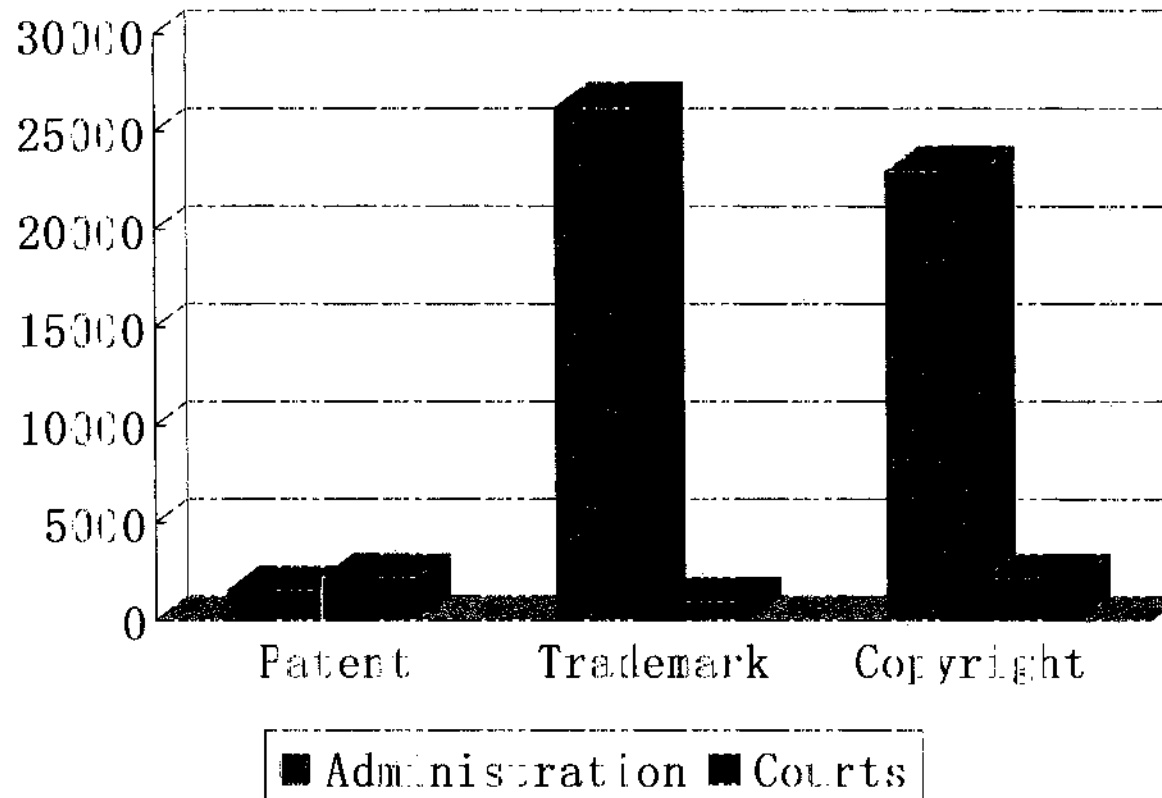
**What is Effective Way
for Foreign Companies to
Enforce IP right
in China
???**

Administrative Route !!!

Statistics of Cases by Administration and Courts in 2003

	Patents	Trademarks	Copyright
Administration	1517	26488	23013
Courts	2110	926	2493

Statistics of Cases in 2003



The Advantages of the Administration Approach

- Main Objective is to stop infringement
- Simple Proceedings
- Lower requirement of format of documents
- Injunction is available
- Fast Conclusion

Administrative Authorities for Patent Infringement

- Name: Administrative Authorities for Patent
Affair(below refer to as “APAA”)

The authorities are established in all provinces and all relatively big cities that have the jurisdiction over the patent infringement cases occurred locally. State Intellectual Property Office (Chinese Patent Office) does not handle patent infringement cases.

Administrative Authorities for Trademark Infringement

- Name: Administrative Authorities for Industry
Commerce (below refer to as “AIC”)

The authorities are established in all provinces and all cities/counties that have the jurisdiction over the trademark infringement cases occurred locally. State AIC does handle trademark infringement cases.

Administrative Authority for Trademark Infringement

(con't)

- Name: Administrative Authorities for Supervision of Quality of Product (below refer to as "TSB")

The authorities are established in all provinces and all cities/counties that have the jurisdiction over the counterfeit cases occurred locally. Passing-off cases are not under the jurisdiction of the authorities.

Administrative Authorities for Copyright Infringement

- Name: Copyright Bureau (below refer to as “CB”)

The authorities are established in all provinces and all cities/counties that have the jurisdiction over the copyright infringement cases occurred locally. State CB does not handle trademark infringement cases.

Customs Protection

- Name: Local Customs
- All customs have jurisdiction on both the patent cases and the trademark cases, either importation or exportation, by detaining the goods when infringement is found, but only make a decision of confiscating the illegal goods in case of trademark and copyright infringement.

Statistics of Cases by Customs in 2003

- Trademark: 741
- Patent: 14
- Copyright: 1

Additional Function of Administrative Approach

For the manufacturers whose products are only for exportation abroad:

1. Fix the Infringing Evidence;
2. Establish the relation between the illegal product and the illegal manufacturers.

Newly Development of IP Infringement

In Patent Field:

- Infringing parties applies and obtains utility model patents and design patents by means of copying patentee's physical products.
- Most of defendants initiate invalidate procedures during infringement litigation to postpone the courts' procedures.
- To register a design patent including the register holder's trademark.

Newly Development of IP Infringement

In Trademark and Anti-unfair Competition Field:

- The counterfeit products have so good quality as to be hard even for the right holder to distinguish the counterfeit products from the genuine ones.

Newly Development of IP Infringement

- To register the right holder's trademark as a trade name to resist the right holder's infringement claims.
- To register the right holder's trademark on the goods which are not similar to those registered by the right holder.
- Using right holder's model number, decorating color and other decoration directly in infringer's product.

Countermeasure in Trademark

- Try your best to register everything as trademark including not only words but also the designs, model numbers and all decorations, because AIC is the most powerful authority in China to handle the infringement cases;
- Initiate a criminal proceedings when criminal violation is found.

Countermeasures in Patent

- Try your best to register everything as designs

Two Reasons

- Design Patent, as a right basis, can be established in a relatively short period.
- Enforcement of a design patent is an effective approach when your main objective is to stop infringement.

Thank You for Your Attention

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