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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS  
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

CHINA

The present document reproduces the text<sup>1</sup> of the revised Patent Law, as notified by China on 2 November 2010 under Article 63.2 of the Agreement (see document IP/N/1/CHN/3).

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**Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À  
LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE  
DE L'ARTICLE 63:2 DE L'ACCORD**

CHINE

Le présent document contient le texte<sup>1</sup> de la Loi révisée sur les brevets, notifiée par la Chine le 2 novembre 2010 au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/CHN/3).

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**Consejo de los Aspectos de los Derechos de Propiedad  
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA  
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD  
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

CHINA

En el presente documento se reproduce el texto<sup>1</sup> de la Ley de Patentes revisada notificado por China el 2 de noviembre de 2010 en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/CHN/3).

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<sup>1</sup> In English only. The text in the original language will be available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées pourront consulter le texte, dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

Order of the President of the People's Republic of China  
No.8

The Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China, adopted at the 6th Meeting of the Standing Committee of the Eleventh National People's Congress on December 27, 2008, is hereby promulgated and shall go into effect as of October 1, 2009.

Hu Jintao  
President of the People's Republic of China

December 27, 2008

Decision of the Standing Committee of the National People's Congress  
on Amending the Patent Law of the People's Republic of China

(Adopted at the 6th Meeting of the Standing Committee of the Eleventh National People's Congress  
on December 27, 2008)

At its 6th Meeting, the Standing Committee of the Eleventh National People's Congress decided to make the following amendments to the Patent Law of the People's Republic of China:

1. Article 1 is revised to read: "This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention-creation, promoting the application of invention-creation, enhancing innovation capability, promoting the advancement of science and technology and the economic and social development."

2. Three paragraphs are added in Article 2 as the second, third and fourth paragraph, which read:

"Inventions mean new technical solutions proposed for a product, a process or the improvement thereof.

"Utility models mean new technical solutions proposed for the shape and structure of a product, or the combination thereof, which are fit for practical use.

"Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application."

3. Article 5 is revised to read: "Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests.

"Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and administrative regulations."

4. One paragraph is added in Article 9 as the first paragraph, which reads: "Only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted."

5. The second paragraph of Article 10 is revised to read: "If a Chinese unit or individual intends to transfer the right to apply for a patent or patent rights to a foreigner, foreign enterprise or other foreign organization, it or he shall perform the procedures in accordance with the provisions of relevant laws and administrative regulations."

6. The second paragraph of Article 11 is revised to read: "After a design patent right is granted, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, offer to sell, sell or import the design patent products."

7. Article 12 is revised to read: "Any unit or individual that intends to exploit the patent of another unit or individual shall conclude a contract with the patentee for permitted exploitation and pay the royalties. The permittee shall not have the right to allow any unit or individual not specified in the contract to exploit the said patent."

8. The second paragraph of Article 14 is deleted.

9. One article is added as Article 15, which reads: "If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. where others are permitted to exploit the patent, the royalties received shall be distributed among the co-owners.

"Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners."

10. Article 15 and 17 are merged into one article as Article 17, which reads: "An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer.

"The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products."

11. The first paragraph of Article 19 is revised to read: "If a foreigner, foreign enterprise, or other foreign organization without a regular residence or business site in China intends to apply for a patent or handle other patent-related matters in China, he or it shall entrust a legally established patent agency with the application and such matters."

The second paragraph is revised to read: "If a Chinese unit or individual intends to apply for a patent or handle other patent-related matters in China, it or he may entrust a legally established patent agency with the application and such matters."

12. The first paragraph of Article 20 is revised to read: "Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished in China shall submit the matter to the patent administration department under the State Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council."

One paragraph is added as the fourth paragraph, which reads: "With regard to an invention or utility model for which an application is filed for a patent in a foreign country in violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted."

13. One paragraph is added into Article 21 as the second paragraph, which reads: "The patent administration department under the State Council shall release patent-related information in a complete, accurate and timely manner, and publish patent gazettes on a regular basis."

14. The second paragraph of Article 22 is revised to read: "Novelty means that the invention or utility model concerned is not an existing technology; no patent application is filed by any unit or individual for any identical invention or utility model with the patent administration department under the State Council before the date of application for patent right, and no identical invention or utility model is recorded in the patent application documents or the patent documentations which are published or announced after the date of application."

The third paragraph is revised to read: "Creativity means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements."

One paragraph is added as the fifth paragraph, which reads: "For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application."

15. Article 23 is revised to read: "A design for which the patent right is granted is not an existing design, and no application is filed by any unit or individual for any identical design with the patent administration department under the State Council before the date of application for patent right and no identical design is recorded in the patent documentations announced after the date of application.

"Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs.

"Designs for which a patent right is granted shall be ones which are not in conflict with the lawful rights acquired by others prior to the date of application.

"For the purposes of this Law, existing designs mean designs that are known to the public both domestically and abroad before the date of application."

16. One subparagraph is added into the first paragraph of Article 25 as Subparagraph (6), which reads: "designs that are mainly used for marking the pattern, color or the combination of the two of prints."

17. The second paragraph of Article 26 is revised to read: "In the written request shall be specified the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters."

The fourth paragraph is revised to read: "The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection."

One paragraph is added as the fifth paragraph, which reads: "With regard to an invention-creation accomplished by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons."

18. Article 27 is revised to read: "When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.

"In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested."

19. The second paragraph of Article 31 is revised to read: "An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application."

20. The second paragraph of Article 47 is revised to read: "The decision on declaring a patent right invalid shall have no retroactive effect on any written judgment or written mediation on patent infringement that has been made and enforced by the people's court, or on any decision concerning the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the patent or for transfer of patent rights that has been performed--prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to another person mala fides by the patentee."

The third paragraph is revised to read: "Where the patent infringement compensation, royalties, and patent right transfer fees are not refunded pursuant to the provisions of the preceding paragraph, which constitutes a blatant violation of the principle of fairness, refund shall be made fully or partly."

21. Article 48 is revised to read: "Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:

"(1) When it has been three years since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or

"(2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced."

22. One article is added as Article 50, which reads: "For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded."

23. One article is added as Article 52, which reads: "If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law."

24. One article is added as Article 53, which reads: "Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market."

25. Article 51 is revised as Article 54, which reads: "A unit or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time."

26. Article 54 is revised as Article 57, which reads: "The unit or individual that is granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has acceded. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling."

27. Article 56 is revised as Article 59, which reads: "For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed, and the written description and the pictures attached may be used to explain what is claimed.

"For the design patent right, the scope of protection shall be confined to the design of the product as shown in the drawings or pictures, and the brief description may be used to explain the said design as shown in the drawings or pictures."

28. The second paragraph of Article 57 is revised as Article 61, which reads: "If a dispute over patent infringement involves an invention patent for the method of manufacturing a new product, the unit or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.

"If a dispute over patent infringement involves a utility model patent or a design patent, the people's court or the administration department for patent-related work may require the patentee or the interested parties to present a patent right assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for trying or handling the patent infringement dispute."

29. One article is added as Article 62, which reads: "In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a patent right infringement."

30. Article 58 and 59 are merged into one article as Article 63, which reads: "A person who counterfeits the patent of another person shall, in addition to bearing civil liabilities in accordance with law, be ordered by the administration department for patent-related work to put it right, and the department shall make the matter known to the public, confiscate his unlawful gains and, in addition, impose on him a fine of not more than four times the unlawful gain; if there are no unlawful gains, a fine of not more than RMB 200,000 may be imposed on him; and if a crime is constituted, criminal responsibility shall be pursued in accordance with law."

31. One article is added as Article 64, which reads: "When the administration department for patent-related work investigates and handles the suspected counterfeiting of a patent, it may, based on evidence obtained, inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct on-the-spot inspection of the places where the suspected illegal act is committed; consult and duplicate the relevant contracts, invoices, account books and other related materials; and check the products related to the suspected illegal act and seal or detain the products that are proved to be produced by the counterfeited patent.

"When the administration department for patent-related work performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, instead of refusing to do so or creating obstacles."

32. Article 66 is revised as Article 65, which reads: "The amount of compensation for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If it is hard to determine the actual losses, the amount of compensation may be determined according to the benefits acquired by the infringer through the infringement. If it is hard to determine the losses of the patentee or the benefits acquired by the infringer, the amount of compensation may be determined according to the reasonably multiplied amount of the royalties of that patent. The amount of compensation shall include the reasonable expenses paid by the patentee for putting an end to the infringement.

"If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of compensation within the range from 10,000 yuan to 1,000,000 yuan."

33. Article 61 is revised as Article 66, which reads: "If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless being checked in time, may cause irreparable harm to his lawful rights and interests, he

may, before taking legal action, file an application to request that the people's court order to have such act ceased.

"When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected.

"The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with the ruling may file once for review, and the enforcement shall not be suspended during the period of review.

"If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.

"If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act."

34. One article is added as Article 67, which reads: "To check a patent infringement, when evidence might be lost or might be hard to acquire thereafter, the patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation."

"If the people's court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected."

"The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately."

"If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures."

35. The first paragraph of Article 63 is revised as Article 69, and Subparagraph (1) is revised to read: "After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;"

One subparagraph is added as Subparagraph (5), which reads: "Any person produces, uses, or imports patented drugs or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented drugs or patented medical apparatus and instruments especially for that person."

36. The second paragraph of Article 63 is revised as Article 70, which reads: "Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved."

This Decision shall go into effect as of October 1, 2009.

The Patent Law of the People's Republic of China shall be revised and the order of the articles shall be rearranged correspondingly in accordance with this Decision, and the Law shall be promulgated anew.



## Patent Law of the People's Republic of China

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984, amended for the first time in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China at its 27th Meeting on September 4, 1992, amended for the second time in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 17th Meeting on August 25, 2000, and amended for the third time in accordance with the Decision of the Standing Committee of the Eleventh National People's Congress on Amending the Patent Law of the People's Republic of China at its 6th Meeting on December 27, 2008)

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### **Chapter I** **General Provisions**

Article 1 This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention-creation, promoting the application of invention-creation, enhancing innovation capability, promoting the advancement of science and technology and the economic and social development.

Article 2 For the purposes of this Law, invention-creations mean inventions, utility models and designs.

Inventions mean new technical solutions proposed for a product, a process or the improvement thereof.

Utility models mean new technical solutions proposed for the shape and structure of a product, or the combination thereof, which are fit for practical use.

Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application.

Article 3 The Patent Administration Department under the State Council shall be responsible for the administration of patent-related work nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.

The departments in charge of patent-related work of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative areas.

Article 4 Where an invention-creation for the patent of which an application is filed involves national security or other major interests of the State and confidentiality needs to be maintained, the application shall be handled in accordance with the relevant regulations of the State.

Article 5 Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests.

Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and administrative regulations.

Article 6 An invention-creation that is accomplished in the course of performing the duties of an employee, or mainly by using the material and technical conditions of an employer shall be deemed an employment invention-creation. For an employment invention-creation, the employer has the right to apply for a patent. After such application is granted, the employer shall be the patentee.

For a non-employment invention-creation, the inventor or designer has the right to apply for a patent. After such application is granted, the said inventor or designer shall be the patentee.

For an invention-creation that is accomplished by using the material and technical conditions of an employer, if the employer has concluded a contract with the inventor or designer providing the ownership of the right to apply for the patent or the ownership of the patent right, such provision shall prevail.

Article 7 No unit or individual shall prevent the inventor or designer from filing a patent application for a non-employment invention.

Article 8 With regard to an invention-creation accomplished by two or more units or individuals in collaboration, or an invention-creation accomplished by an unit or individual under the entrustment of another unit or individual, the right to apply for a patent shall be vested in the units or individuals that have accomplished the invention-creation in collaboration or in the unit or individual that has done so under entrustment, unless it is otherwise agreed upon. After the application is granted, the applying unit(s) or individual(s) shall be deemed the patentee(s).

Article 9 Only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted.

If two or more applicants apply for a patent for the same invention separately, the patent right shall be granted to the first applicant.

Article 10 The right to apply for a patent and patent rights may be transferred.

If a Chinese unit or individual intends to transfer the right to apply for a patent or patent rights to a foreigner, foreign enterprise or other foreign organization, it or he shall perform the procedures in accordance with the provisions of relevant laws and administrative regulations.

For the transfer of the right to apply for a patent or of patent rights, the parties concerned shall conclude a written contract and file for registration at the patent administration department under the State Council, and the latter shall make an announcement thereof. The transfer of the right to apply for a patent or of patent rights shall become effective as of the registration date.

Article 11 After the patent right is granted for an invention or a utility model, unless otherwise provided for in this Law, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method.

After a design patent right is granted, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, offer to sell, sell or import the design patent products.

Article 12 Any unit or individual that intends to exploit the patent of another unit or individual shall conclude a contract with the patentee for permitted exploitation and pay the royalties. The permittee shall not have the right to allow any unit or individual not specified in the contract to exploit the said patent.

Article 13 After the application for an invention patent is published, the applicant may require the unit or individual that exploits the said patent to pay an appropriate amount of royalties.

Article 14 If an invention patent of a State-owned enterprise or institution is of great significance to national or public interests, upon approval by the State Council, the relevant competent department under the State Council or the people's government of the province, autonomous region, or municipality directly under the Central Government may decide to have the patent widely applied within an approved scope and allow the designated units to exploit the patent, and the said units shall pay royalties to the patentee in accordance with the regulations of the State.

Article 15 If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties received shall be distributed among the co-owners.

Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.

Article 16 The unit that is granted the patent right shall reward the inventor or designer of an employment invention-creation. After such patent is exploited, the inventor or designer shall be given a reasonable amount of remuneration according to the scope of application and the economic results.

Article 17 An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer.

The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products.

Article 18 Where a foreigner, foreign enterprise or other foreign organization without a regular residence or business site in China applies for a patent in China, the application shall be handled in accordance with the agreements concluded by the country he or it belongs to and China or the international treaties to which both the countries have acceded or in accordance with this Law on the principle of reciprocity.

Article 19 If a foreigner, foreign enterprise, or other foreign organization without a regular residence or business site in China intends to apply for a patent or handle other patent-related matters

in China, he or it shall entrust a legally established patent agency with the application and such matters.

If a Chinese unit or individual intends to apply for a patent or handle other patent-related matters in China, it or he may entrust a legally established patent agency with the application and such matters.

A patent agency shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as entrusted by its principals. It shall also be obligated to keep confidential the contents of the inventions of its principals, unless the patent applications have been published or announced. The specific measures for administration of the patent agencies shall be formulated by the State Council.

Article 20 Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished in China shall submit the matter to the patent administration department under the State Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.

A Chinese unit or individual may file for international patent applications in accordance with the relevant international treaties to which China has acceded. The applicant for such patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has acceded and the relevant provisions of this Law and regulations of the State Council.

With regard to an invention or utility model for which an application is filed for a patent in a foreign country in violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted.

Article 21 The patent administration department under the State Council and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy and timeliness, handle patent applications and requests in accordance with law.

The patent administration department under the State Council shall release patent-related information in a complete, accurate and timely manner, and publish patent gazettes on a regular basis.

Before a patent application is published or announced, the staff members of the patent administration department under the State Council and the persons concerned shall be obligated to keep such application confidential.

## **Chapter II**

### **Conditions for Granting Patent Rights**

Article 22 Inventions and utility models for which patent rights are to be granted shall be ones which are novel, creative and of practical use.

Novelty means that the invention or utility model concerned is not an existing technology; no patent application is filed by any unit or individual for any identical invention or utility model with the patent administration department under the State Council before the date of application for patent right, and no identical invention or utility model is recorded in the patent application documents or the patent documentations which are published or announced after the date of application.

Creativity means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.

Practical use means that the said invention or utility model can be used for production or be utilized, and may produce positive results.

For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application.

Article 23 A design for which the patent right is granted is not an existing design, and no application is filed by any unit or individual for any identical design with the patent administration department under the State Council before the date of application for patent right and no identical design is recorded in the patent documentations announced after the date of application.

Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs.

Designs for which a patent right is granted shall be ones which are not in conflict with the lawful rights acquired by others prior to the date of application.

For the purposes of this Law, existing designs mean designs that are known to the public both domestically and abroad before the date of application.

Article 24 Within six months before the date of application, an invention for which an application is filed for a patent does not lose its novelty under any of the following circumstances:

- (1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (2) It is published for the first time at a specified academic or technological conference; and
- (3) Its contents are divulged by others without the consent of the applicant.

Article 25 Patent rights shall not be granted for any of the following:

- (1) scientific discoveries;
- (2) rules and methods for intellectual activities;
- (3) methods for the diagnosis or treatment of diseases;
- (4) animal or plant varieties;
- (5) substances obtained by means of nuclear transformation; and
- (6) designs that are mainly used for marking the pattern, color or the combination of the two of prints.

The patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.

### **Chapter III Patent Application**

Article 26 When a person intends to apply for an invention or utility model patent, he shall submit the relevant documents, such as a written request, a written description and its abstract, and a written claim.

In the written request shall be specified the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.

The written description shall contain a clear and comprehensive description of the invention or utility model so that a technician in the field of the relevant technology can carry it out; when necessary, pictures shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.

The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection.

With regard to an invention-creation accomplished by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons.

Article 27 When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.

In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested.

Article 28 The date when the patent administration department under the State Council receives the patent application documents is the date of application. If the application documents are delivered by post, the date of the postmark is the date of application.

Article 29 If, within twelve months from the date the applicant first files an application for an invention or utility model patent in a foreign country, or within six months from the date the applicant first files an application for a design patent in a foreign country, he files an application for a patent in China for the same subject matter, he may enjoy the right of priority in accordance with the agreements concluded between the said foreign country and China, or in accordance with the international treaties to which both countries have acceded, or on the principle of mutual recognition of the right of priority.

If, within twelve months from the date the applicant first files an application for an invention or utility model patent in China, he files an application for a patent with the patent administration department under the State Council for the same subject matter, the applicant may enjoy the right of priority.

Article 30 An applicant who requests the right of priority shall submit a written declaration at the time of application and submit, within three months, duplicates of the patent application documents filed for the first time. Where no written declaration is submitted or no duplicates of the patent application documents are submitted at the expiration of the specified time limit, the applicant shall be deemed to have waived the right of priority.

Article 31 An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.

An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.

Article 32 An applicant may withdraw his patent application anytime before being granted the patent right.

Article 33 An applicant may amend his patent application documents, provided that the amendment to the invention or utility model patent application documents does not exceed the scope specified in the original written descriptions and claims, or that the amendment to the design patent application documents does not exceed the scope shown in the original drawings or pictures.

#### **Chapter IV**

### **Examination and Approval of Patent Applications**

Article 34 Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may do so at an earlier date upon request of the applicant.

Article 35 Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application. If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn.

The patent administration department under the State Council may carry out substantive examination of its own accord, as it deems it necessary.

Article 36 When an applicant for an invention patent requests substantive examination, he shall submit the reference materials relating to the invention existing prior to the date of application.

If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit, within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.

Article 37 After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.

Article 38 After the applicant states his opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.

Article 39 If no reason for rejection is discerned after an invention patent application is substantively examined, the patent administration department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and meanwhile register and announce the same. The invention patent right shall become effective as of the date of announcement.

Article 40 If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and meanwhile register and announce the same. The utility model patent right and the design patent right shall become effective as of the date of announcement.

Article 41 The patent administration department under the State Council shall establish a patent review board. If a patent applicant is dissatisfied with the decision made by the Patent Administration Department under the State Council on rejecting of the application, he may, within three months from the date of receipt of the notification, file a request with the patent review board for review. After review, the Patent Review Board shall make a decision and notify the patent applicant of the same.

If the patent applicant is dissatisfied with the review decision made by the patent review board, he may take legal action before the people's court within three months from the date of receipt of the notification.

## **Chapter V**

### **Duration, Termination and Invalidation of Patent Rights**

Article 42 The duration of the invention patent right shall be 20 years and that of the utility model patent right and of the design patent right shall be ten years respectively, all commencing from the date of application.

Article 43 The patentee shall pay annual fees commencing from the year when the patent right is granted.

Article 44 Under any of the following circumstances, the patent right shall be terminated before the expiration of the duration:

- (1) failure to pay the annual fee as required; or
- (2) the patentee waiving of the patent right by a written declaration;

If a patent right is terminated before the duration expires, the patent administration department under the State Council shall register and announce such termination.

Article 45 Beginning from the date the patent administration department under the State Council announces the grant of a patent right, if a unit or individual believes that such grant does not conform to the relevant provisions of this Law, it or he may request that the patent review board declare the said patent right invalid.

Article 46 The patent review board shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the requesting person and the patentee of its decision. The decision on declaring a patent right invalid shall be registered and announced by the patent administration department under the State Council.

A person that is dissatisfied with the patent review board's decision on declaring a patent right invalid or its decision on affirming the patent right may take legal action before a people's court, within three months from the date of receipt of the notification. The people's court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.

Article 47 Any patent right that has been declared invalid shall be deemed to be non-existent from the beginning.



The decision on declaring a patent right invalid shall have no retroactive effect on any written judgment or written mediation on patent infringement that has been made and enforced by the people's court, or on any decision concerning the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the patent or for transfer of patent rights that has been performed--prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to another person mala fides by the patentee.

Where the patent infringement compensation, royalties, and patent right transfer fees are not refunded pursuant to the provisions of the preceding paragraph, which constitutes a blatant violation of the principle of fairness, refund shall be made fully or partly.

## **Chapter VI**

### **Compulsory License for Exploitation of a Patent**

Article 48 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:

(1) When it has been three years since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or

(2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced.

Article 49 Where a national emergency or any extraordinary state of affairs occurs, or public interests so require, the patent administration department under the State Council may grant a compulsory license for exploitation of an invention patent or utility model patent.

Article 50 For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded.

Article 51 If an invention or utility model, for which the patent right has been obtained, represents a major technological advancement of remarkable economic significance, compared with an earlier invention or utility model for which the patent right has already been obtained, and exploitation of the former relies on exploitation of the latter, the patent administration department under the State Council may, upon application made by the latter, grant it a compulsory license to exploit the earlier invention or utility model.

Under the circumstance where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon application made by the earlier patentee, grant it a compulsory license to exploit the later invention or utility model.

Article 52 If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.

Article 53 Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.

Article 54 A unit or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time.

Article 55 The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and announced.

In a decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, be specified the scope and duration for exploitation. When such reasons cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after examination.

Article 56 Any unit or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploitation and shall not have the right to allow exploitation by others.

Article 57 The unit or individual that is granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has acceded. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.

Article 58 If a patentee is dissatisfied with the decision made by the patent administration department under the State Council -on granting of the compulsory license for exploitation, or if the patentee, or the unit or individual that has obtained the compulsory license for exploitation is dissatisfied with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it or he may take legal action before the people's court within three months from the date of receipt of the notification of the ruling.

## **Chapter VII** **Protection of Patent Rights**

Article 59 For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed, and the written description and the pictures attached may be used to explain what is claimed.

For the design patent right, the scope of protection shall be confined to the design of the product as shown in the drawings or pictures, and the brief description may be used to explain the said design as shown in the drawings or pictures.

Article 60 If a dispute arises as a result of exploitation of a patent without permission of the patentee, that is, the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to consult or if consultation fails, the patentee or interested party may take legal action before a people's court, and may also request the administration department for patent-related work to handle the dispute. If, when handling the dispute, the said department believes the infringement is established, it may order the infringer to cease the

infringement immediately; if the infringer is dissatisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal action at the expiration of the time limit nor ceases the infringement, the said department may file an application with the people's court for compulsory enforcement. The administration department for patent-related work that handles the call shall, upon request of the parties, carry out mediation concerning the amount of compensation for the patent right infringement. If mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 61 If a dispute over patent infringement involves an invention patent for the method of manufacturing a new product, the unit or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.

If a dispute over patent infringement involves a utility model patent or a design patent, the people's court or the administration department for patent-related work may require the patentee or the interested parties to present a patent right assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for trying or handling the patent infringement dispute.

Article 62 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a patent right infringement.

Article 63 A person who counterfeits the patent of another person shall, in addition to bearing civil liabilities in accordance with law, be ordered by the administration department for patent-related work to put it right, and the department shall make the matter known to the public, confiscate his unlawful gains and, in addition, impose on him a fine of not more than four times the unlawful gain; if there are no unlawful gains, a fine of not more than RMB 200,000 may be imposed on him; and if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Article 64 When the administration department for patent-related work investigates and handles the suspected counterfeiting of a patent, it may, based on evidence obtained, inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct on-the-spot inspection of the places where the suspected illegal act is committed; consult and duplicate the relevant contracts, invoices, account books and other related materials; and check the products related to the suspected illegal act and seal or detain the products that are proved to be produced by the counterfeited patent.

When the administration department for patent-related work performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, instead of refusing to do so or creating obstacles.

Article 65 The amount of compensation for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If it is hard to determine the actual losses, the amount of compensation may be determined according to the benefits acquired by the infringer through the infringement. If it is hard to determine the losses of the patentee or the benefits acquired by the infringer, the amount of compensation may be determined according to the reasonably multiplied amount of the royalties of that patent. The amount of compensation shall include the reasonable expenses paid by the patentee for putting an end to the infringement.

If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of compensation within the range from 10,000 yuan to 1,000,000 yuan.

Article 66 If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless being checked in time, may cause irreparable harm to his lawful rights and interests, he may, before taking legal action, file an application to request that the people's court order to have such act ceased.

When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected.

The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with the ruling may file once for review, and the enforcement shall not be suspended during the period of review.

If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.

If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.

Article 67 To check a patent infringement, when evidence might be lost or might be hard to acquire thereafter, the patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation.

If the people's court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected.

The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.

If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.

Article 68 The period of limitation for action against patent right infringement shall be two years, commencing from the date when the patentee or interested party knows or should have known of the infringement.

If an appropriate royalty is not paid for using an invention during the period from the publication of the invention patent application to the grant of the patent right, the period of limitation for taking legal action by the patentee for requesting payment of royalties shall be two years, commencing from the date when the patentee knows or should have known of the use of that patent by another person. However, the period of limitation for action shall commence from the date when the patent right is granted, if the patentee knows or should have known of the use before the patent right is granted.

Article 69 The following shall not be deemed to be patent right infringement:

(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;

(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;

(3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent is used in the devices and installations for its own needs, in accordance with the agreement concluded between the country it belong to and China, or in accordance with any international treaty to which both countries have acceded, or on the principle of mutual benefit;

(4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and

(5) Any person produces, uses, or imports patented drugs or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented drugs or patented medical apparatus and instruments especially for that person.

Article 70 Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved.

Article 71 If, in violation of the provisions of Article 20 of this Law, a person files an application for patent in a foreign country, thereby divulging national secrets, the unit where he works or the competent authority at a higher level shall impose on him an administrative sanction. If a crime is constituted, he shall be investigated for criminal responsibility according to law.

Article 72 If a person usurps the right of an inventor or designer to apply for a non-employment invention patent, or usurps any other rights and interests of an inventor or designer specified in this Law, he shall be given an administrative sanction by the unit where he works or the competent authority at a higher level.

Article 73 The administration department for patent-related work shall not be involved in recommending patented products to the public or engage in any other similar business activities.

If the administration department for patent-related work violates the provisions of the preceding paragraph, its immediate superior or the supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

Article 74 Where a staff member of the government department engaged in administration of patent-related work or of a relevant department neglects his duty, abuses his power, or commits irregularities for personal gain, which constitutes a crime, he shall be pursued for criminal responsibility in accordance with law. If the case is not serious enough to constitute a crime, he shall be given an administrative sanction in accordance with law.

**Chapter VIII**  
**Supplementary Provisions**

Article 75 To apply for patent at the patent administrative department under the State Council or go through other formalities, fees shall be paid in accordance with relevant regulations.

Article 76 This Law shall go into effect on April 1, 1985.

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