IMPLEMENTING REGULATIONS OF THE PATENT LAW OF THE PEOPLE'SREPUBLIC OF CHINA

(Revision Approved by the State Council on December 12, 1992 and Promulgated by the Patent Office of the People's Republic of China on December 21, 1992)

Important Notice:

In case of discrepancy, the original version in Chinese shall prevail.

Whole Document

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Chapter I: GENERAL PROVISIONS

Article 1.
These Implementing Regulations are drawn up in accordance with the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law).

Article 2.
"Invention" in the Patent Law means any new technical solution relating to a product, a process or improvement thereof.

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

"Design" in the Patent Law means any new design of the shape, pattern, color, or their combination, of a product, which creates an aesthetic feeling and is fit for industrial application.

Article 3.
Any proceedings provided for by the Patent Law and these Implementing Regulations shall be conducted in a written form.

Article 4.
Any document submitted under the Patent Law and these Implementing Regulations shall be in Chinese. The standard scientific and technical terms shall be used if there is a prescribed one set forth by the State. Where no generally accepted translation in Chinese can be found for a foreign name or scientific or technical term, the one in the original language shall be also indicated.

Where any certificate and certified document submitted in accordance with the Patent Law and these Implementing Regulations are in foreign languages, and where the Patent Office deems it necessary, it may request a Chinese translation of the certificate and the certified document to be submitted within a specified time limit; where the translation is not submitted within the specified time limit, the certificate and certified document shall be deemed not to have been submitted.

Article 5.
For any document sent by mail to the Patent Office, the date of mailing indicated by the postmark on the envelope shall be presumed to be the date of filing. If the date of mailing indicated by the postmark on the envelope is illegible, the date on which the Patent Office receives the document shall be the date of filing, except where the date of mailing is proved by the addressee.

Any document of the Patent Office may be served by mail, by personal delivery or by public announcement. Where any party concerned appoints a patent agency, the document shall be sent to the patent agency; where no patent agency is appointed, the document shall be sent to the person first

named in the request or to the representative. If such person refuses to accept the document, it shall be presumed to have been served.

For any document sent by mail by the Patent Office, the 15th day from the date of mailing shall be presumed to be the date on which the addressee receives the document.

For any document which shall be delivered personally in accordance with the prescription of the Patent Office, the date of delivery is the date on which the addressee receives the document.

Where the address of a document is not clear and it cannot be sent by mail, the document may be served by making an announcement in the Patent Gazette. At the expiration of one month from the date of the announcement, the document shall be presumed to have been served.

Article 6.

The first day of any time limit prescribed in the Patent Law and these Implementing Regulations shall not be counted. Where a time limit is counted by year or by month, it shall expire on the corresponding day of the last month; if there is no corresponding day in that month, the time limit shall expire on the last day of that month.

If a time limit expires on an official holiday, the time limit shall expire on the first working day after that official holiday.

Article 7.

Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the Patent Office is not observed because of force majeure, resulting the loss of any right on the part of the party concerned, he or it shall, within two months from the date on which the impediment is removed, at the latest within two years immediately following the expiration of that time limit, state the reasons, together with relevant supporting documents and request the Patent Office to restore his or its rights.

Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the Patent Office is not observed because of any justified reason, resulting the loss of any right on the part of the party concerned, he or it shall, within two months from the date of receipt of a notification from the Patent Office, state the reasons and request the Patent Office to restore his or its rights.

Where the party concerned makes a request for an extension of a time limit specified by the Patent Office, he or it shall, before the time limit expires, state the reasons to the Patent Office and complete the relevant procedures.

The provisions of paragraphs one and two of this Rule shall not be applicable to the time limits referred to in Articles 24, 29, 41, 45 and 61 of the Patent Law.

The provisions of paragraph two of this Rule shall not be applicable to the time limit referred to in Article 88 of these Implementing Regulations.

Article 8.

Where the invention for which a patent is applied for by the entity of the national defence system relates to the security of the State concerning national defence and is required to be kept secret, the application for patent shall be filed with the patent organization set up by the competent department of science and technology of national defence under the State Council. Where any application for patent for invention relating to the secrets of the State concerning national defence and requiring to be kept classified is received by the Patent Office, the Patent Office shall transfer the application to the said patent organization. The Patent Office shall make a decision on the basis of the observations of the examination of the application presented by the said patent organization.

Subject to the preceding paragraph, the Patent Office, after receipt of an application for patent for invention which is required to be examined for the purpose of security, shall send it to the competent department concerned of the State Council for examination. The said department shall, within four months from receipt of the application, send a report on the results of the examination to the Patent Office. Where the invention for which a patent is applied for is required to be kept classified, the

Patent Office shall handle it as an application for secret patent and notify the applicant accordingly.

Article 9.
The date of filing referred to in the Patent Law, except that mentioned in Articles 28 and 45, means the priority date where a right of priority is claimed.

The date of filing referred to in these Implementing Regulations means the date on which the application for patent is filed with the Patent Office.

Article 10.
"Service invention-creation made by a person in execution of the tasks of the entity to which he belongs" mentioned in Article 6 of the Patent Law refers to any invention-creation made:
(1) in the course of performing his own duty;
(2) in execution of any task, other than his own duty, which was entrusted to him by the entity to which he belongs;
(3) within one year from his resignation, retirement or change of work, where the invention-creation relates to his own duty or the other task entrusted to him by the entity to which he previously belonged.

"Material means of the entity" mentioned in Article 6 of the Patent Law refers to entity's money, equipment, spare parts, raw materials, or technical data which are not to be disclosed to the public.

Article 11.
"Inventor" or "creator" mentioned in the Patent Law refers to any person who has made creative contributions to the substantive features of the invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organization work, or who offers facilities for making use of material means, or who takes part in other auxiliary functions, shall not be considered as inventor or creator.

Article 12.
For any identical invention-creation, only one patent right shall be granted. Two or more applicants who file, on the same day, applications for patent for the identical invention-creation, as provided for in

Article 9 of the Patent Law, shall, after receipt of a notification from the Patent Office, hold consultation among themselves to decide the person or persons who shall be entitled to file the application.

Article 13.
Any license contract for exploitation of the patent which has been concluded by the patentee with an entity or individual shall, within three months from the date of entry into force of the contract, be submitted to the Patent Office for record.

Article 14.
"The patent agency" referred to in Article 19, Paragraph one, and Article 20 of the Patent Law shall, on the authorization of the State Council, be designated by the Patent Office.

Article 15.
Where any dispute arises concerning the right to apply for a patent for an invention-creation or the right to own a patent right which has been granted, any of the parties concerned may request the administrative authority for patent affairs to handle the matter or may institute legal proceedings in the people's court.

Any party to a dispute concerning the right to apply for a patent or the right to own a patent right which is pending before the administrative authority for patent affairs or the people's court, may request the Patent Office to suspend the relevant procedures.

Any party requesting suspension of the procedure before the Patent Office in accordance with the preceding paragraph, shall submit a request to the Patent Office, together with the relevant document of the administrative authority for patent affairs or the people's court before which the dispute is pending.

Chapter II: APPLICATION FOR PATENT

Article 16.
Anyone who applies for a patent shall submit application documents in two copies.

Any applicant who appoints a patent agency for filing an application for a patent with, or for dealing with other patent matters

before, the Patent Office, shall submit a power of attorney indicating the scope of the power entrusted.

Article 17.

Other related matters mentioned in Article 26, paragraph two, of the Patent Law refer to:

(1) the nationality of the applicant;

(2) where the applicant is an enterprise or other organization, the name of the country in which the applicant has the principal business office;

(3) where the applicant has appointed a patent agency, the relevant matters which should be indicated;

(4) where the priority of an earlier application is claimed, the relevant matters which should be indicated;

(5) the signature or seal of the applicant or the patent agency;

(6) a list of the documents constituting the application;

(7) a list of the documents appending the application;

(8) any other related matter which needs to be indicated.

Where there are two or more applicants and where they have not appointed a patent agency, they shall designate a representative.

Article 18.

The description of an application for a patent for invention or utility model shall be presented in the following manner and order:

(1) state the title of the invention or utility model as appearing in the request;

(2) specify the technical field to which the invention or utility model relates;

(3) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention or utility model, and cite the documents reflecting such art;

(4) specify the purpose which the invention or utility model is designed to fulfil;

(5) disclose the technical solution of the invention or utility model, as claimed, in such terms that a person having ordinary skill in the art can understand it and fulfil the purpose of the invention or utility model;

(6) state the advantageous effects of the invention or utility model, with reference to the background art;

(7) briefly describe the figures in the drawings, if any;

(8) describe in detail the best mode contemplated by the applicant for carrying out the invention or utility model; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any.

The manner and order mentioned in the preceding paragraph shall be observed by the applicant of a patent for invention or a patent for utility model, unless, because of the nature of the invention or utility model, a different manner or order would afford a better understanding and a more economical presentation.

The description of the invention or utility model shall not contain such references to the claims as: "as described in part.....of the claim", nor shall it contain commercial advertising.

Article 19.

The same sheet of drawings may contain several figures of the invention or utility model, and the drawings shall be numbered and arranged in numerical order consecutively as "Figure 1, Figure 2,.....".

The scale and the distinctness of the drawings shall be such that a reproduction with a linear reduction in size to two-thirds would still enable all details to be clearly distinguished.

Drawing reference signs not appearing in the text of the description of the invention or utility model shall not appear in the drawings. Drawing reference signs not appearing in the drawings shall not appear in the text of the description. Drawing reference signs for the same composite part used in an application document shall be consistent throughout.

The drawings shall not contain any other explanatory notes, except words which are indispensable.

Article 20.

The claims shall define clearly and concisely the matter for which protection is sought in terms of the technical features of the invention or utility model.

If there are several claims, they shall be numbered consecutively in Arabic numerals.

The technical terminology used in the claims shall be consistent with that used in the description. The claims may contain chemical or mathematical formulate but no drawings. They shall not, except where absolutely necessary, contain such references to the description or drawings as: "as described in part.....of the description", or "as illustrated in figure.....of the drawings".

The technical features mentioned in the claims may, in order to facilitate quicker understanding of the claim, make reference to the corresponding reference signs in the drawings of the description. Such reference signs shall follow the corresponding technical features and be placed between parentheses. They shall not be construed as limiting the claims.

Article 21.
The claims shall have an independent claim, and may also contain dependent claims. An independent claim shall outline the technical solution of an invention or utility model and describe the indispensable technical features necessary for fulfilling the purpose of the invention or utility model.

A dependent claim shall further define the claim which it refers to by additional features which it is desired to protect.

Article 22.
An independent claim of an invention or utility model shall contain a preamble portion and a characterizing portion, and be presented in the following form:

(1) a preamble portion, indicating the title of the claimed subject matter of the invention or utility model, and those technical features of the invention or utility model which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art;

(2) a characterizing portion, stating, in such words as "characterized in

that....." or in similar expressions, the technical features of the invention or utility model, which distinguish it from the prior art. These features, in combination with the features stated in the preamble portion, served to define the scope of protection of the invention or utility model.

Independent claims may be presented in any other form, where it is not appropriate, according to the nature of the invention or utility model, to present them in the form prescribed in the preceding paragraph.

Each invention or utility model shall have only one independent claim, which shall precede all the dependent claims relating to the same invention or utility model.

Article 23.
A dependent claim of an invention or utility model shall contain a reference portion and a characterizing portion, and be presented in the following form:

(1) a reference portion, indicating the serial number(s) of the claim(s) referred to, and the title of the subject matter;

(2) a characterizing portion, stating the additional technical features of the invention or utility model.

A dependent claim referring to one or more other claims shall refer only to the preceding claim or claims. A multiple dependent claim which refers to more than one other claim shall not serve as a basis for any other multiple dependent claim.

Article 24.
The abstract shall indicate the technical field to which the invention or utility model pertains, the technical problems to be solved, the essential technical features and the use or uses of the invention or utility model. The abstract may contain the chemical formula which best characterizes the invention. In an application for a patent which contains drawings, the applicant shall indicate and provide a drawing which best characterizes

the invention or utility model. The scale and the distinctness of the drawings shall be such that a reproduction with a linear reduction in size to 4cm*6cm would still enable all details to be clearly distinguished. The whole text of the abstract shall contain not more than 200 Chinese characters. There shall be no commercial advertising in the abstract.

Article 25.
Where an application for a patent for invention concerns a new micro-organism, a micro-biological process or a product thereof and involves the use of a micro-organism which is not available to the public, the applicant shall, in addition to the other requirements provided for in the Patent Law and these Implementing Regulations, complete the following procedures.

(1) deposit a sample of the micro-organism with a depositary institution designated by the Patent Office before the date of filing, or, at the latest, on the date of filing, and submit, at the time of filing, or, at the latest, within three months from the filing date, a receipt of deposit and the viability proof from the depository institution; where they are not submitted within the specified time limit, the sample of the micro-organism shall be deemed not to have been deposited;

(2) give in the application document relevant information of the characteristics of the micro-organism;

(3) indicate, where the application relates to the deposit of the micro-organism, in the request and the description the scientific name (with its Latin name) and the name of the depositary institution, the date on which the sample of the micro-organism was deposited and the accession number of the deposit; where, at the time of filing, they are not indicated, they shall be supplied within three months from the date of filing; where after the expiration of the time limit they are not supplied, the sample of the micro-organism shall be deemed not to have been deposited.

Article 26.
After the publication of an application for a patent for invention relating to a micro-organism, any entity or individual which or who intends to make use of the micro-organism mentioned in the application for

the purpose of experiment shall make a request to the Patent Office containing the following:

(1) the name and address of the entity or individual making the request;

(2) an undertaking not to make the micro-organism available to any other person;

(3) an undertaking to use the micro-organism for experimental purpose only before the grant of the patent right.

Article 27.
The size of drawings or photographs of a design submitted in accordance with the provisions of Article 27 of the Patent Law shall not be smaller than 3cm*8cm, nor larger than 15cm*22cm.

Where an application for a patent for design seeking concurrent protection of colors is filed, a drawing or photograph in color, and a drawing or photograph in white and black, shall be submitted.

The applicant shall submit, in respect of the subject matter of the product incorporating the design which is in need of protection, the relevant views and stereoscopic drawings or photographs, so as to clearly show the subject matter for which protection is sought.

Article 28.
Where an application for a patent for design is filed, a brief explanation of the design shall, when necessary, be indicated.
The brief explanation of the design shall include the main creative portion of the design, the colors for which protection is sought and the omission of the view of the product incorporating the design. The brief explanation shall not contain any commercial advertising and shall not be used to indicate the function and the uses of the product.

Article 29.
Where the Patent Office finds it necessary, it may require the applicant for a patent for design to submit a sample or model of the product

incorporating the design. The volume of the sample or model submitted shall not exceed 30cm*30cm*30cm, and its weight shall not surpass 15 kilos. Articles easy to get rotten or broken, or articles that are dangerous may not be submitted as sample or model.

Article 30.

The existing technology mentioned in Article 22, paragraph three, of the Patent Law means any technology which has been publicly disclose in publications in the country or abroad, or has been publicly used or made known to the public by any other means in the country, before the date of filing (or the priority date where priority is claimed), that is, prior art.

Article 31.

The academic or technological meeting mentioned in item (2) of Article 24 of the Patent Law means any academic or technological meeting organized by a competent department concerned of the State Council or by a national academic or technological association.

Where any application for a patent falls under the provisions of item (1) or item (2) of Article 24 of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit a certificate issued by the entity which organized the international exhibition or academic or technological meeting, stating that the invention-creation was in fact exhibited or made public there and also the date of its exhibition or making public.

Where any application for a patent falls under the provisions of item (3) of Article 24 of the Patent Law, the Patent Office may, when necessary, require the applicant to submit the relevant proof.

Article 32.

Where the applicant is to comply with the requirements for claiming the right of priority in accordance with Article 30 of the Patent Law, he or it shall, in his or its written declaration, indicate the date of filing and the filing number of the application which was first filed (hereinafter referred to as the earlier application) and the country in which that application was filed. If the written declaration does not contain the date of filing of the earlier application and the name of that

country, the declaration shall be deemed not to have been made.

Where the foreign priority is claimed, the copy of the earlier application document submitted by the applicant shall be certified by the competent authority of the foreign country; where the domestic priority is claimed, the copy of the earlier application document shall be prepared by the Patent Office.

Article 33.
Any applicant may claim one or more priorities for an application for a patent; where the priorities of several earlier applications are claimed, the priority period for the application shall be calculated from the earliest priority date.

Where any applicant claims the right of domestic priority, if the earlier application is one for a patent for invention, he or it may file an application for a patent for invention or utility model for the same subject matter; if the earlier application is one for a patent for utility model, he or it may file an application for a patent for utility model or invention for the same subject matter. But when the later application is filed, if the earlier application falls under any of the following, it may not be the basis of domestic priority:

(1) where it has claimed foreign or domestic priority;

(2) where it has been granted a patent right;

(3) where it is a divisional application filed as prescribed.

Where the domestic priority is claimed, the earlier application shall be deemed to be withdrawn from the date on which the later application is filed.

Article 34.
Where an application for a patent is filed or the right of foreign priority is claimed by any applicant having no habitual residence or

business office in China, the Patent Office may, when necessary, require the applicant to submit the following documents:

(1) a certificate concerning the nationality of the applicant;

(2) a certificate concerning the seat of the business office or the headquarters, if the applicant is an enterprise or other organization;

(3) a testimonial showing that the country, to which the foreigner, foreign enterprise or other foreign organization belongs, recognizes that Chinese citizens and entities are, under the same conditions applied to its nationals, entitled to patent right, right of priority and other related rights in that country.

Article 35.

Two or more inventions or utility models belonging to a single general inventive concept which may be filed as one application in accordance with the provision of Article 31, paragraph one, of the Patent Law shall be technically inter-related and contain one or more same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of those inventions, considered as a whole, makes over the prior art.

The claims in one application for a patent for two or more inventions which are in conformity with the provisions of the preceding paragraph may be any of the following:

(1) independent claims of the same category for two or more products or processes which cannot be included in one claim;

(2) an independent claim for a product and an independent claim for a process specially adapted for the manufacture of the product;

(3) an independent claim for a product and an independent claim for a use of the product;

(4) an independent claim for a product, an independent claim for a process

specially adapted for the manufacture of the product, and an independent claim for a use of the product;

(5) an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, an independent claim for an apparatus specially designed for carrying out the process;

(6) an independent claim for a process and an independent claim for an apparatus specially designed for carrying out the process.

The claims in one application for a patent for two or more utility models which are in conformity with the provisions of the first paragraph may be independent claims for two or more products which cannot be included in one claim.

Article 36.
The expression "the same class" mentioned in Article 31, paragraph two of the Patent law means that the products incorporating the designs belong to the same subclass in the classification of products for designs. The expression "be sold or used in sets" means that the products incorporating the designs have the same designing concept and are customarily sold or used at the same time.

Where two or more designs are filed as one application in accordance with the provisions of Article 31, paragraph two, of the Patent Law, they shall be numbered consecutively and the numbers shall be placed in front of the titles of the view of the product incorporating the design.

Article 37.
When withdrawing an application for a patent, the applicant shall submit to the Patent Office a declaration stating the title of the invention-creation, the filing number and the date of filing.

Where a declaration to withdraw an application for a patent is submitted after the printing preparation has been done by the Patent Office for publication of the application documents, the application shall be published as scheduled.

Chapter III: EXAMINATION AND APPROVAL OF APPLICATION FOR PATENT

Article 38.
In any of the following situations, any person who makes examination or hears a case in the procedures of preliminary examination, examination as to substance, reexamination, revocation and invalidation shall, on his own initiative or upon the request of the parties concerned or any other interested person, be excluded from exercising his function:

(1) where he is a close relative of the party concerned or his agent;

(2) where he has an interest in the application for patent or the patent right;

(3) where he has such other kinds of relations with the party concerned or his agent that might influence impartial examination and hearing.

Where a member of the Patent Reexamination Board has taken part in the examination of the application, the provisions of the preceding paragraph shall apply. The exclusion of persons making examination and hearing cases shall be decided by the Patent Office.

Article 39.
Upon the receipt of an application for a patent for invention or utility model consisting of a request, a description (a drawing being indispensable for utility model) and one or more claims, or an application for a patent for design consisting of a request and one or more drawings or photographs showing the design, the Patent Office shall accord the date of filing and a filing number and notify the applicant.

Article 40.
In any of the following situations, the Patent Office shall declare the application unacceptable and notify the applicant accordingly;

(1) where the application for a patent for invention or utility model does not contain a request, a description (the description of utility model

does not contain drawings) or claims, or the application for a patent for design does not contain a request, drawings or photographs;

(2) where the application is not written in Chinese;

(3) where the application is not in conformity with the provisions of Article 94, paragraph one, of these Implementing Regulations;

(4) where the request does not contain the name and address of the applicant;

(5) where the application is obviously not in conformity with the provisions of Article 18, or Article 19, paragraph one, of the Patent Law;

(6) where the kind of protection (patent for invention, utility model or design) of the application for a patent is not clear and definite or cannot be discerned.

Article 41.
Where the description mentions that it contains "explanatory notes to the drawings" but the drawings or part of them are missing, the applicant shall, within the time limit specified by the Patent Office, either furnish the drawings or make a declaration for the deletion of the "explanatory notes to the drawings". If the drawings are submitted later, the date of their delivering at, or mailing to, the Patent Office shall be the date of filing of the application; if the mention of "explanatory notes to the drawings" is to be deleted, the initial date of filing shall be the date of filing of the application.

Article 42.
Where an application for a patent contains two or more inventions, utility models or designs, the applicant may, at any time before the Patent Office sends out the notification to grant the patent right, submit to the Patent Office a divisional application.

If the Patent Office finds that an application for a patent is not in conformity with the provisions of Article 31 of the Patent Law and Article 35

of these Implementing Regulations, it shall invite the applicant to amend the application within the specified time limit; if the applicant does not make any response within the time limit, the application shall be deemed to have been withdrawn.

The divisional application may not change the kind of protection of the initial application.

Article 43.
A divisional application filed in accordance with Article 42 of these Implementing Regulations may enjoy the date of filing and, if priority is validly claimed, the priority date of the initial application, provided that the divisional application does not go beyond the scope of disclosure contained in the initial application.

The divisional application shall be subject to the procedures in accordance with the provisions of the Patent Law and these Implementing Regulations.

The filing number and the date of filing of the initial application shall be indicated in the request of a divisional application. When submitting the divisional application, the applicant shall submit a copy of the initial application document; if priority is claimed for the initial application, the applicant shall submit a copy of the priority document of the initial application as well.

Article 44.
"Preliminary examination" mentioned in Articles 34 and 40 of the Patent Law means examining an application for a patent to see whether or not it contains the documents as provided for in Articles 26 or 27 of the Patent Law and other necessary documents, and whether or not those documents are in the prescribed form; such examination shall also include the following:

(1) whether or not an application for a patent for invention obviously falls under Articles 5 or 25 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, or is obviously not in conformity with the provisions of Article 31, paragraph one, or Article 33 of the Patent Law, or Article 2, paragraph one, of these Implementing Regulations;

(2) whether or not an application for a patent for utility model obviously

falls under Articles 5 or 25 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, or is obviously not in conformity with the provisions of Article 31, paragraph 1, or Article 33 of the patent Law, or Article 2, paragraph two, or Article 12, paragraph one, or Articles 18 to 23 of these Implementing Regulations, or cannot obtain a patent right according to the provisions of Article 9 of the Patent Law;

(3) whether or not an application for a patent for design obviously falls under Article 5 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, or is obviously not in conformity with the provisions of Article 31, paragraph two, or Article 33 of the Patent Law, or Article 2, paragraph three, or Article 12, paragraph one, of these Implementing Regulations, or cannot obtain a patent right according to the provisions of Article 9 of the Patent Law.

The Patent Office shall communicate its observations after examination of the application to the applicant and invite him or it to submit his or its observations or to correct his or its application within the time limit. If the applicant makes no response within the time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made the observations or the corrections, the Patent Office still finds that the application is not in conformity with the provisions of the Articles and the Rules cited in the relevant preceding sub-paragraph, the application shall be rejected.

Article 45.
In any of the following situations, any document relating to a patent application, not including the patent application, which is submitted to the Patent Office, shall be deemed not to have been submitted:

(1) where the document is not presented in the prescribed form or the indications therein are not in conformity with the prescriptions;

(2) where no supporting document is submitted as prescribed.

The applicant shall be notified that the document is deemed not to have been submitted.

Article 46.
Where the applicant requests an earlier publication of its or his application for a patent for invention, a declaration shall be made to the Patent Office. The Patent Office shall, after preliminary examination of the application and, unless it is to be rejected, publish it immediately.

Article 47.
The applicant shall, when indicating in accordance with Article 27 of the Patent Law the product incorporating the design and the class to which that product belongs, refer to the classification of products for designs published by the Patent Office. Where no indication, or an incorrect indication, of the class to which the product incorporating the design belongs is made, the Patent Office shall supply the indication or correct it.

Article 48.
Any person may, from the date of publication of an application for a patent for invention till the date of announcing the grant of the patent right, submit to the Patent Office observations, with the reasons therefor, on the application which is not in conformity with the provisions of the Patent Law.

Article 49.
Where the applicant for a patent for invention cannot furnish, for justified reasons, the documents concerning any search or the results of any examination under Article 36 of the Patent law, it or he shall make a statement to that effect and submit them when the said documents are available.

Article 50.
The Patent Office shall, when proceeding on its own initiative to examine an application for a patent for invention in accordance with the provisions of Article 35, paragraph two, of the Patent Law, notify the applicant accordingly.

Article 51.
When a request for examination as to substance is made, or when a response is made in regard to the first communication of the observations of the

Patent Office after examination as to substance, the applicant may amend the application for a patent for invention on its or his own initiative.

Within three months from the date of filing, the applicant for a patent for utility model or design may amend the application for a patent for utility model or design on its or his own initiative.

Article 52.
When an amendment to the description or the claims in an application for a patent for invention or utility model is made, a replacement sheet in prescribed form shall be submitted, unless the amendment concerns only the alteration, insertion or deletion of a few words. Where an amendment to the drawings or photographs of an application for a patent for design is made, a replacement sheet in prescribed form shall be submitted.

Article 53.
According to the provisions of the Patent Law and these Implementing Regulations, the situations where after examination as to substance an application for patent for invention shall be rejected by the Patent Office shall comprise the following:

(1) where the application does not comply with the provisions of Article 2, paragraph one, of these Implementing Regulations;

(2) where the application falls under the provisions of Articles 5 or 25 of the Patent Law; or it does not comply with the provisions of Article 22 of the Patent Law and Article 12, paragraph one, of these Implementing Regulations, or the applicant cannot obtain a patent right according to the provisions of Article 9 of the Patent Law;

(3) where the application does not comply with the provisions of Article 26, paragraphs three or four, or Article 31, paragraph one, of the Patent Law;

(4) where the amendment to the application or the divisional application goes beyond the scope of disclosure contained in the initial description and the claims.

Article 54.
After the Patent Office issues the notification to grant the patent right, the applicant shall go through the formalities of registration within two months from the date of receipt of the notification. If the applicant goes through the formalities of registration within the said time limit, the Patent Office shall grant the patent right, issue the patent certificate, and announce it. The patent right shall come into force upon the date of issue of the patent certificate.

If the time limit for going through the formalities of registration is not met, the applicant shall be deemed to have abandoned its or his right to obtain the patent right.

Article 55.
The grounds on which a revocation may be requested under Article 41 of the Patent Law of a patent right, which is announced and granted by the Patent Office, shall comprise the following:

(1) where the invention or utility model for which the patent right is granted does not comply with the provisions of Article 22 of the Patent Law;

(2) where the design for which the patent right is granted does not comply with the provisions of Article 23 of the Patent Law.

Article 56.
Anyone requesting revocation of a patent right in accordance with the provisions of Article 41 of the Patent Law shall submit to the Patent Office a request and the relevant documents in two copies, stating the facts and reasons on which the request is based.

The person requesting revocation may withdraw his request before the Patent Office makes a decision on it.

Article 57.
After the receipt of the request for revocation of the patent right, the

Patent Office shall make an examination of it. Where the request does not conform to the prescribed requirements, the Patent Office shall notify the person making the request to rectify it within the specified time limit. If the time limit for making rectification is not met, the request for revocation shall be deemed not to have been filed.

Where, in the request for revocation of the patent right, no facts and reasons have been given to support the request or the reasons given do not conform to the provisions of Article 55 of these Implementing Regulations, the request shall be declared to be unacceptable.

The Patent Office shall send a copy of the request for revocation of the patent right and copies of the relevant documents to the patentee and invite it or him to present its or his observations within a specified time limit. The patentee may amend its or his patent specification, but may not broaden the scope of patent protection. If no response is made within the time limit, the examination procedure of the Patent office will not be affected.

Article 58.
The Patent Reexamination Board shall consist of experienced technical and legal experts designated by the Patent Office. The Director General of the Patent Office shall be the Director of the Board.

Article 59.
Where the applicant requests the Patent Reexamination Board to make a reexamination in accordance with the provisions of Article 43, paragraph one, of the Patent Law, it or he shall file a request for reexamination and state the reasons therefor, together with the relevant supporting documents. The request and the supporting documents shall be in two copies.

The applicant or the patentee may amend its or his application, which has been rejected, or its or his patent specification, which has been revoked, at the time when it or he requests reexamination, but the amendments shall be limited only to the part to which the decision of rejection of the application or the decision of revocation of the patent right relates.

Article 60.

Where the request for reexamination does not comply with the prescribed form, the person making the request shall rectify it within the time limit fixed by the Patent Reexamination Board. If the time limit for making rectification is not met, the request for reexamination shall be deemed not to have been filed.

Article 61.
The Patent Reexamination Board shall send the request for reexamination which the Board has received to the examination department which has made the examination to make an examination. Where the examination department agrees to revoke its former decision upon the request of the person requesting reexamination, the Patent Reexamination Board shall make a decision accordingly and notify that person.

Article 62.
Where the Patent Reexamination Board finds after reexamination that the request does not comply with the provisions of the Patent Law, it shall invite the person requesting reexamination to submit his observations within the specified time limit. If the time limit for making response is not met, the request for reexamination shall be deemed to have been withdrawn.

Article 63.
At any time before the Patent Reexamination Board makes its decision on the request for reexamination, the person making the request may withdraw his request for reexamination.

Article 64.
The Patent Office may amend the obvious mistakes which it finds in the title of the invention-creation, the abstract or the request of the application, and notify the applicant.

The patent office shall correct promptly the mistakes in the Patent Gazettes and documents issued by it once they are discovered.

Chapter IV: INVALIDATION OF PATENT RIGHT

Article 65.
Anyone requesting invalidation or part invalidation of a patent right

according to the provisions of Article 48 of the Patent Law shall submit the request and the relevant documents in two copies, stating the facts and reasons on which the request is based, to the Patent Reexamination Board.

The person requesting invalidation may withdraw his request before the Patent Reexamination Board makes a decision on it.

Article 66.

Where the request for invalidation of the patent right does not comply with the prescribed form, the person making the request shall rectify it within the time limit fixed by the Patent Reexamination Board. If the rectification fails to be made within the time limit, the request for invalidation shall be deemed not to have been filed.

The grounds on which the request for invalidation may be based shall comprise that the invention-creation for which the patent right is granted does not comply with the provisions of Articles 22 or 23, Article 26, paragraphs three or four, or Article 33 of the Patent Law, or Article 2, or Article 12, paragraph one of these Implementing Regulations; or it falls under the provisions of Articles 5 or 25 of the Patent Law; or the person to whom the patent was granted cannot obtain a patent right according to the provisions of Article 9 of the Patent Law.

Where, in the request for invalidation, no facts and reasons have been given to support the request or the reasons given do not conform to the provisions of the preceding paragraph, or where invalidation is requested after the request for revocation is made but no decision on that request has yet been rendered, or where, after decision on any request for revocation or invalidation of the patent right was made, invalidation based on the same facts and reasons is requested again, the request shall be declared to be unacceptable by the Patent Reexamination Board.

Article 67.

The Patent Reexamination Board shall send a copy of the request for invalidation of the patent right and copies of the relevant documents to the patentee and invite it or him to present its or his observations within a specified time limit. The patentee may amend its or his patent specification, but may not broaden the scope of patent protection. Where

no response is made within the time limit, the hearing procedure of the Patent Reexamination Board will not be affected.

Chapter V: COMPULSORY LICENSE FOR EXPLOITATION OF PATENT

Article 68.
After the expiration of three years from the grant of the patent right, any entity may, in accordance with the provisions of Article 51 of the Patent Law, request the Patent Office to grant a compulsory license.

Any entity or individual requesting a compulsory license shall submit to the Patent Office a request for compulsory license and state the reasons therefor, together with relevant supporting documents. The request and the supporting documents shall be in two copies respectively.

The Patent Office shall send a copy of the request for compulsory license to the patentee. He or it shall make his or its observations within the time limit specified by the Patent Office. Where no response is made within the time limit, the Patent Office will not be affected in making a decision to grant a compulsory license.

Where a national emergency or any extraordinary state of affairs occurs, or in cases of public non-commercial use, the Patent Office may grant a compulsory license.

The decision of the Patent Office granting a compulsory license for exploitation shall limit the scope and duration of the exploitation on the basis of the reasons justifying the grant, and provide that the exploitation shall be predominately for the supply of the domestic market.

The decision of the Patent Office granting a compulsory license shall be notified to the patentee as soon as reasonably practicable, and shall be registered and announced by the Patent Office. If and when the circumstances which led to such compulsory license cease to exist and are unlikely to recur, the Patent Office may, upon the request of the patentee, review the continued existence of these circumstances, and terminate the compulsory license.

Article 69.
Any party requesting, in accordance with the provisions of Article 57 of the Patent Law, the Patent Office to adjudicate the fees for exploitation,

shall submit a request for adjudication and furnish documents showing that the parties have not been able to conclude an agreement in respect of the amount of the fees. The Patent Office shall make an adjudication within three months from the date of receipt of the request and notify the parties accordingly.

Chapter VI: REWARDS TO INVENTOR OR CREATOR OF SERVICE INVENTION-CREATION

Article 70.

"Rewards" mentioned in Article 16 of the Patent Law includes money prizes and remunerations which are to be awarded to inventors and creators.

Article 71.

Any entity holding a patent right shall, after the grant of the patent right, award to inventors or creators of a service invention-creation a sum of money as prize. The sum of money prize for a patent for invention shall not be less than 200 yuan; the sum of money prize for a patent for utility model or design shall not be less than 50 yuan.

Where an invention-creation was made on the basis of an inventor's or creator's proposal adopted by the entity to which he belongs, after the grant of the patent right, the entity holding it shall award to him a money prize liberally.

Any enterprise holding the patent right may include the said money prize paid to such inventors or creators into its production cost; any institution holding the patent right may disburse the said money prize out of its operating expenses.

Article 72.

Any entity holding a patent right shall, after exploiting the patent for invention-creation within the duration of the patent right, draw each year from any increase in profits after taxation a percentage of 0.5%-2% due to the exploitation of the invention or the utility model, or a percentage of 0.05%-0.2% due to the exploitation of the design, and award it to the inventor or creator as remuneration. The entity shall, otherwise, by making reference to the said percentage, award a lump sum of money to the inventor or creator as remuneration.

Article 73.
Where any entity holding a patent right for invention-creation authorizes other entities or individuals to exploit its or his patent, it shall, after taxation, draw a percentage of 5%-10% from the fees for exploitation it received and award it to the inventor or creator as remuneration.

Article 74.
The remuneration provided for in these Implementing Regulations shall be disbursed out of the profits derived from the making of patented products or the use of patented process and out of the fees obtained for the exploitation of the patents. The remuneration shall not be included in the amount of the normal bonuses of the entity, nor subject to the bonus tax. But the inventor or creator shall pay tax for his income.

Article 75.
The Chinese entities under collective ownership and other enterprises may award to the inventor or creator money prize and remuneration by making reference to the provisions in this chapter.

Chapter VII: ADMINISTRATIVE AUTHORITY FOR PATENT AFFAIRS

Article 76.
"The administrative authority for patent affairs" mentioned in the Patent Law and these Implementing Regulations refers to the administrative authorities for patent affairs set up by the competent departments concerned of the State Council and the people's governments in the localities.

Article 77.
Where, after the publication of an application for a patent for invention and before the grant of the patent right, any entity or individual has exploited the invention without paying appropriate fees, the patentee may, after the grant of the patent right, request the administrative authority for patent affairs to handle the matter, or may directly institute legal proceedings in the people's court. The administrative authority handling the matter shall have the power to decide that the entity or individual shall pay appropriate fees within the specified time limit. Where any of the parties concerned is not satisfied with the decision of the said

authority, it or he may institute legal proceedings in the people's court.

Where any dispute arises between any inventor or creator, and the entity to which he belongs, as to whether an invention-creation is a service invention-creation, or whether an application for a patent is to be filed in respect of a service invention-creation, or where the entity owning or holding the patent right has not according to law awarded a reward or paid remuneration to the inventor or creator of service invention-creation, the inventor or creator may request the competent department at the higher level or the administrative authority for patent affairs of the region in which the entity is located to handle the matter.

The prescription for requesting the administrative authority for patent affairs to handle patent disputes is two years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the relevant fact.

Article 78.
Pursuant to the provisions of Article 63, paragraph two, of the Patent Law, where any person passes any unpatented product off as patented product or passes any unpatented process off as patented process, the administrative authority for patent affairs may, according to the circumstances, order such person to stop the passing off, to eliminate its ill effects and, in addition, to pay a fine of 1000 yuan to 50000 yuan or a fine from 100% to 300% of the amount of his illegal income.

Article 79.
Where parties to any transdepartmental or transregional infringement dispute request the administrative authority for patent affairs to handle the matter, the said dispute shall be handled by the administrative authority for patent affairs of the region in which the infringement has taken place, or by the administrative authority for patent affairs of the higher competent department of the infringing entity.

Chapter VIII: PATENT REGISTER AND PATENT GAZETTE

Article 80.
The Patent Office shall maintain a Patent Register in which shall be recorded the following matters relating to any patent right:

(1) any grant of the patent right;
(2) any assignment and succession of the patent right;
(3) any revocation and invalidation of the patent right;
(4) any cessation of the patent right;
(5) any restoration of the patent right;
(6) any compulsory license for exploitation of the patent;
(7) any changes in the name, the nationality and the address of the patentee;

Article 81.
The Patent Office shall publish the Patent Gazette at regular intervals, publishing or announcing the following;
(1) the bibliographic data contained in patent applications;
(2) the abstract of the description of an invention or utility model, the drawings or photographs of a design and its brief explanation;
(3) any request for examination as to substance of an application for a patent for invention and any decision made by the Patent Office to proceed on its own initiative to examine as to substance an application for a patent for invention;
(4) any declassification of secret patents;
(5) any rejection, withdrawal and being deemed withdrawal of an application for a patent for invention after its publication;
(6) any assignment and succession of an application for a patent for invention after its publication;
(7) any grant of the patent right;
(8) any revocation and invalidation of the patent right;
(9) any cessation of the patent right;
(10) any assignment and succession of the patent right;
(11) any grant of compulsory license for exploitation of the patent;
(12) any restoration of a patent application or patent right;
(13) any change in the name or address of the patentee;
(14) any notification to the applicant whose address is not known;
(15) any other related matters.
The description, its drawings and the claims of an application for a patent for invention or utility model shall be published in pamphlet form.

Chapter IX: FEES

Article 82.
When any person files an application for a patent with, or has other formalities to perform in, the Patent Office, he or it shall at the same

time pay the following fees;
(1) filing fee and maintenance fee of an application;
(2) examination fee and reexamination fee;
(3) annual fee;
(4) fee for a change in the bibliographic data, fee for claiming priority, fee for a request for restoration of rights, fee for a request for revocation, fee for a request for invalidation, fee for a request for compulsory license, fee for a request for adjudication on exploitation fee of a compulsory license, fee for patent registration, and additional fees as prescribed.

The amount of the fees mentioned in the preceding paragraph shall be prescribed separately by the Patent Office in conjunction with the competent departments concerned of the State Council.

Article 83.
The fees provided for in the Patent Law and in these Implementing Regulations may be paid directly to the Patent Office or paid by way of bank or postal remittance, but not by telegraphic remittance.

Where fees are paid by way of bank or postal remittance, the applicant or the patentee shall indicate on the money order the filing number or the patent number, the name of the applicant or the patentee, the purpose of the payment and the title of the invention-creation.

Where fees are paid by way of bank or postal remittance, the date on which the transfer of such fee is ordered shall be the date of payment. Where the time between such a date and the date of receipt of the order at the Patent Office lasts more than fifteen days, unless the date of remittance is proved by the bank or the post office, the date of receipt at the Patent Office shall be the date of payment.

The payment which is not made in accordance with the provisions of the second paragraph of this Article shall be deemed not to have been made.

Where any patent fee is paid more than as prescribed, paid once again or wrongly paid, the person making the payment may claim a refund, but the

request for such refund shall be made within one year from the date of payment.

Article 84.
The applicant shall, after receipt of the notification of acceptance of the application from the Patent Office, pay the filing fee at the latest within two months from the filing date. If the fee is not paid or not paid in full within the time limit, the application shall be deemed to have been withdrawn.

Where the applicant claims the right of priority, he or it shall pay the fee for claiming priority at the same time with the payment of the filing fee. If the fee is not paid or not paid in full within the time limit, the claim to the right of priority shall be deemed not to have been made.

Article 85.
Where a request for an examination as to substance, a restoration of right, a reexamination or revocation of patent right is made, by the party concerned, the relevant fee shall be paid within the time limit as prescribed respectively for such requests by the Patent Law. If the fee is not paid or not paid in full within the time limit, the request is deemed not to have been made.

Article 86.
Where the applicant for a patent for invention has not been granted a patent right within two years from the date of filing, it or he shall pay a fee for the maintenance of the application from the third year. The first maintenance fee shall be paid within the first month of the third year. The subsequent maintenance fees shall be paid in advance within the month before the expiration of the preceding year.

Article 87.
When the applicant goes through the formalities of patent registration, it or he shall pay a fee for patent registration, and the annual fee of the year in which the patent right was granted. Where the maintenance fee of the application of the year in which the patent right was granted has been paid, the annual fee of that year shall not be paid. If such fees are not paid in the prescribed time limit, the patent registration shall be deemed

not to have been made. The subsequent annual fees shall be paid in advance within the month before the expiration of the preceding year.

Article 88.

Where the maintenance fee of the application or the annual fee of the years after the year in which the patent was granted is not paid in due time by the applicant or the patentee, or the fees are not paid in full, the Patent Office shall notify the applicant or the patentee to pay the fee or to make up the insufficiency within six months from the expiration of the time limit within which the maintenance fee or the annual fee was to be paid, and at the same time pay a surcharge which amounts to 25% that of the maintenance fee or the annual fee. Where the fees are not paid within the time limit, the application shall be deemed to have been withdrawn or the patent right shall be deemed lapsed from the expiration of the time limit within which the maintenance fee or the annual fee should be paid.

Article 89.

The fee for a change in the bibliographic data, fee for a request for compulsory license, fee for a request for adjudication on exploitation fee of a compulsory license and fee for a request for invalidation shall be paid as prescribed within one month from the date on which such request is filed. If the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

Article 90.

Where any person filing an application for a patent or having other formalities to go through, has difficulties in paying the various fees prescribed by Article 82 of these Implementing Regulations, that person may, according to prescriptions, submit a request to the Patent Office, asking for a reduction or postponement of the payment. The conditions for the reduction and postponement of the payment shall be prescribed by the Patent Office.

Chapter X: SUPPLEMENTARY PROVISIONS

Article 91.

Any person may, after approval by the Patent Office, inspect or copy the files of the published or announced patent applications and the Patent

Register. Any person may request the Patent Office to issue a copy of extracts from the Patent Register.

The files of patent applications which have been withdrawn or deemed to have been withdrawn or which have been rejected, shall not be preserved after expiration of two years from the date on which they cease to be valid.

Where the patent right ceases or has been revoked, abandoned or invalidated, the files shall not be preserved after expiration of three years from the date on which the patent right ceases to be valid.

Article 92.
Any patent application which is filed with, and any formalities which are performed in the Patent Office, shall be made in the prescribed form of the Patent Office and signed or sealed by the applicant, the patentee, any other interested person or his or its representative. Where any patent agency is appointed, it shall be sealed by such agency.

Where a change of the name of the inventor, the name, nationality and address of the applicant or the patentee, or the name of the patent agency and patent agent is requested, a request for a change in the bibliographic data shall be made to the Patent Office, together with the relevant supporting documents.

Article 93.
The documents relating to a patent application or patent right which are mailed to the Patent Office shall be mailed by registered letter, not by parcel.

When any document (not including any patent application filed for the first time) is submitted to and any formalities are performed in the Patent Office, the filing number or the patent number, the title of the invention-creation and the name of the applicant or the patentee shall be indicated.

Only documents relating to the same application shall be included in one letter.

Article 94.
Any sheets constituting an application for patent shall be typed or printed. All the characters shall be in black ink, neat and clear. They shall be free from any alterations. Drawings shall be made in black ink with the aid of drafting instruments. The lines shall be uniformly thick and well-defined, and free from alterations.

The request, description,
claim, drawings and abstract shall be numbered separately in Arabic numerals and arranged in numerical order.

The written language shall run from left to right. Only one side of each sheet shall be used.

Article 95.
The Patent Office shall be responsible for interpreting these Implementing Regulations.

Article 96.
These Implementing Regulations shall enter into force on January 1, 1993.

The applications for patent filed before the entry into force of these Implementing Regulations and the patent rights granted on the basis of the said applications shall continue to be governed by the provisions of the Patent Law before they were amended by the Decision Regarding the Revision of the Patent Law of the People's Republic of China, adopted at the 27th Session of the Standing Committee of the Seventh National People's Congress on September 4, 1992 and the relevant provisions of the Implementing Regulations of the Patent Law of the People's Republic of China, approved by the State Council on January 19, 1985 and promulgated by the Patent Office on the same day. However, the procedures provided by the amended Articles 39 to 44 and the amended Article 48 of the Patent Law concerning the approval of applications for patent, and the revocation and invalidation of the patent right and the relevant provisions of these Implementing Regulations shall apply to the said applications which, before the entry into force of these Implementing Regulations, are not announced according to the provisions of Articles 39 and 40 of the Patent Law before they were amended.

* This Table of Contents was established for the convenience of the reader by the Patent Laws Research Institute of the Chinese Patent Office. The text of the Implementing Regulations of the Patent Law approved by the State Council does not contain such a table and the rules have no titles in the Regulations.