

(This text replaces the one previously published, the only change being the code number)

CHINA

Patent Law of the People's Republic of China,

**Adopted at the Fourth Session of the Standing Committee
of the Sixth National People's Congress on March 12, 1984,
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***

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Chapter I General Provisions

1. This Law is enacted to protect patent rights for inventions-creations, to encourage inventions-creations, to foster the spreading and application of inventions-creations, and to promote the development of science and technology, for meeting the needs of the construction of socialist modernization.

2. In this Law, “inventions-creations” mean inventions, utility models and designs.

3. The Patent Office of the People’s Republic of China receives and examines patent applications and grants patent rights for inventions-creations that conform with the provisions of this Law.

4. Where the invention-creation for which a patent is applied for relates to the security or other vital interests of the State and is required to be kept secret, the application shall be treated in accordance with the relevant prescriptions of the State.

5. No patent right shall be granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest.

6. For a service invention-creation, made by a person in execution of the tasks of the entity to which he belongs or made by him mainly by using the material means of the entity, the right to apply for a patent belongs to the entity. For any non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, if it was filed by an entity under ownership by the whole people, the patent right shall be held by the entity; if it was filed by an entity under collective ownership or by an individual, the patent right shall be owned by the entity or individual.

For a service invention-creation made by any staff member or worker of a foreign enterprise, or of a Chinese-foreign joint venture enterprise, located in China, the right to apply for a patent belongs to the enterprise. For any non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the patent right shall be owned by the enterprise or the individual that applied for it.

The owner of the patent right and the holder of the patent right are referred to as “patentee.”

7. No entity or individual shall prevent the inventor or creator from filing an application for a patent for a non-service invention-creation.

8. For an invention-creation made in cooperation by two or more entities, or made by an entity in execution of a commission for research or designing given to it by another entity, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity which made, or to the entities which jointly made, the invention-creation. After the application is approved, the patent right shall be owned or held by the entity or entities that applied for it.

9. Where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

10. The right to apply for a patent and the patent right may be assigned.

Any assignment, by an entity under ownership by the whole people, of the right to apply for a patent, or of the patent right, must be approved by the competent authority at the higher level.

Any assignment, by a Chinese entity or individual, of the right to apply for a patent, or of the patent right, to a foreigner must be approved by the competent department concerned of the State Council.

Where the right to apply for a patent or the patent right is assigned, the parties must conclude a written contract, which will come into force after it is registered with and announced by the Patent Office.

11. After the grant of the patent right for an invention or utility model, except as otherwise provided for in the Law, no entity or individual may, without the authorization of the patentee, make, use or sell the patented product, or use the patented process and use or sell the product directly obtained by the patented process, for production or business purposes.

After the grant of the patent right for a design, no entity or individual may, without the authorization of the patentee, make or sell the product, incorporating its or his patented design, for production or business purposes.

After the grant of the patent right, except as otherwise provided for in the law, the patentee has the right to prevent any other person from importing, without its or his authorization, the patented product, or the product directly obtained by its or his patented process, for the uses mentioned in the preceding two paragraphs.

12. Any entity or individual exploiting the patent of another must, except as provided for in Article 14 of this Law, conclude with the patentee a written license contract for exploitation and pay the patentee a fee for the exploitation of the patent. The licensee has no right to authorize any entity or individual, other than that referred to in the contract for exploitation, to exploit the patent.

13. After the publication of the application for a patent for invention, the applicant may require the entity or individual exploiting the invention to pay an appropriate fee.

14. The competent departments concerned of the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government have the power to decide, in accordance with the State plan, that any entity under ownership by the whole people that is within their system or directly under their administration and that holds the patent right to an important invention-creation is to allow designated entities to exploit that invention-creation; and the exploiting entity shall, according to the prescriptions of the State, pay a fee for exploitation to the entity holding the patent right.

Any patent of a Chinese individual or entity under collective ownership, which is of great significance to the interests of the State or to the public interest and is in need of spreading and application, may, after approval by the State Council at the solicitation of its competent department concerned, be treated alike by making reference to the provisions of the preceding paragraph.

15. The patentee has the right to affix a patent marking and to indicate the number of the patent on the patented product or on the packing of that product.

16. The entity owning or holding the patent right shall award to the inventor or creator of a service invention-creation a reward and, upon exploitation of the patented invention-creation, shall award to the inventor or creator a reward based on the extent of spreading and application and the economic benefits yielded.

17. The inventor or creator has the right to be named as such in the patent document.

18. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China, the application shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity.

19. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, he or it shall appoint a patent agency designated by the State Council of the People's Republic of China to act as his or its agent.

Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a patent agency to act as its or his agent.

20. Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in the country, it or he shall file first an application for patent with the Patent Office and, with the sanction of the competent department concerned of the State Council, shall appoint a patent agency designated by the State Council to act as its or his agent.

21. Until the publication or announcement of the application for a patent, staff members of the Patent Office and persons involved have the duty to keep its content secret.

Chapter II

Requirements for Grant of Patent Right

22. Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability.

Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed 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, nor has any other person filed previously with the Patent Office an application which described the identical invention or utility model and was published after the said date of filing.

Inventiveness means that, as compared with the technology existing before the date of filing, the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress.

Practical applicability means that the invention or utility model can be made or used and can produce effective results.

23. Any design for which patent right may be granted must not be identical with or similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country.

24. An invention-creation for which a patent is applied for does not lose its novelty where, within six months before the date of filing, one of the following events occurred:

(1) where it was first exhibited at an international exhibition sponsored or recognized by the Chinese Government;

(2) where it was first made public at a prescribed academic or technological meeting;

(3) where it was disclosed by any person without the consent of the applicant.

25. For any of the following, no patent right shall be granted:

(1) scientific discoveries;

(2) rules and methods for mental activities;

(3) methods for the diagnosis or for the treatment of diseases;

(4) animal and plant varieties;

(5) substances obtained by means of nuclear transformation.

For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

Chapter III

Application for Patent

26. Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted.

The request shall state the title of the invention or utility model, the name of the inventor or creator,

the name and the address of the applicant and other related matters.

The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model.

The claims shall be supported by the description and shall state the extent of the patent protection asked for.

27. Where an application for a patent for design is filed, a request, drawings or photographs of the design shall be submitted, and the product incorporating the design and the class to which that product belongs shall be indicated.

28. The date on which the Patent Office receives the application shall be the date of filing. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of filing.

29. Where, within 12 months from the date on which any applicant first filed in a foreign country an application for a patent for invention or utility model, or within six months from the date on which any applicant first filed in a foreign country an application for a patent for design, he or it files in China an application for a patent for the same subject matter, he or it may, in accordance with any agreement concluded between the said foreign country and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

Where, within 12 months from the date on which any applicant first filed in China an application for a patent for invention or utility model, he or it files with the Patent Office an application for a patent for the same subject matter, he or it may enjoy a right of priority.

30. Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the patent application document, the claim to the

right of priority shall be deemed not to have been made.

31. An application for a patent for invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

An application for a patent for design shall be limited to one design incorporated in one product. Two or more designs which are incorporated in products belonging to the same class and are sold or used in sets may be filed as one application.

32. An applicant may withdraw his or its application for a patent at any time before the patent right is granted.

33. An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of the disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

Chapter IV Examination and Approval of Application for Patent

34. Where, after receiving an application for a patent for invention, the Patent Office, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of 18 months from the date of filing. Upon the request of the applicant, the Patent Office publishes the application earlier.

35. Upon the request of the applicant for a patent for invention, made at any time within three years from the date of filing, the Patent Office will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to substance, the application shall be deemed to have been withdrawn.

The Patent Office may, on its own initiative, proceed to examine any application for a patent for

invention as to its substance when it deems it necessary.

36. When the applicant for a patent for invention requests examination as to substance, he or it shall furnish pre-filing date reference materials concerning the invention.

The applicant for a patent for invention who has filed in a foreign country an application for a patent for the same invention shall, at the time of requesting examination as to substance, furnish documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

37. Where the Patent Office, after it has made the examination as to substance of the application for a patent for invention, finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn.

38. Where, after the applicant has made the observations or amendments, the Patent Office finds that the application for a patent for invention is still not in conformity with the provisions of this Law, the application shall be rejected.

39. Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the Patent Office shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it.

40. Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the Patent Office shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it.

41. Where, within six months from the date of the announcement of the grant of the patent right by

the Patent Office, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Office to revoke the patent right.

42. The Patent Office shall examine the request for revocation of the patent right, make a decision revoking or upholding the patent right, and notify the person who made the request and the patentee. The decision revoking the patent right shall be registered and announced by the Patent Office.

43. The Patent Office shall set up a Patent Reexamination Board. Where any party is not satisfied with the decision of the Patent Office rejecting the application, or the decision of the Patent Office revoking or upholding the patent right, such party may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant, the patentee or the person who made the request for revocation of the patent right.

Where the applicant for a patent for invention, the patentee of an invention or the person who made the request for revocation of the patent right for invention is not satisfied with the decision of the Patent Reexamination Board, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

The decision of the Patent Reexamination Board in respect of any request, made by the applicant, the patentee or the person who made the request for revocation of the patent right, for reexamination concerning a utility model or design is final.

44. Any patent right which has been revoked shall be deemed to be non-existent from the beginning.

Chapter V Duration, Cessation and Invalidation of Patent Right

45. The duration of patent right for inventions shall be 20 years, the duration of patent right for utility models and patent right for designs shall be 10 years, counted from the date of filing.

46. The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

47. In any of the following cases, the patent right shall cease before the expiration of its duration:

- (1) where an annual fee is not paid as prescribed;
- (2) where the patentee abandons his or its patent right by a written declaration.

Any cessation of the patent right shall be registered and announced by the Patent Office.

48. Where, after the expiration of six months from the date of the announcement of the grant of the patent right by the Patent Office, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid.

49. The Patent Reexamination Board shall examine the request for invalidation of the patent right, make a decision and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the Patent Office.

Where any party is not satisfied with the decision of the Patent Reexamination Board declaring the patent right for invention invalid or upholding the patent right for invention, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court.

The decision of the Patent Reexamination Board in respect of a request to declare invalid the patent right for utility model or design is final.

50. Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning.

The decision of invalidation shall have no retroactive effect on any judgment or order on patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of patent infringement which has been made and enforced by the administrative authority for patent affairs, and on any contract of patent license and of assignment of patent right which have been performed, prior to the decision of invalidation; however, the damages caused to

other persons in bad faith on the part of the patentee shall be compensated.

If, pursuant to the provisions of the preceding paragraph, no repayment, by the patentee or the assignor of the patent right to the licensee or the assignee of the patent right, of the fee for the exploitation of the patent or the price for the assignment of the patent right is obviously contrary to the principle of equity, the patentee or the assignor of the patent right shall repay the whole or part of the fee for the exploitation of the patent or the price for the assignment of the patent right to the licensee or the assignee of the patent right.

The provisions of the second and third paragraphs of this Article shall apply to the patent right which has been revoked.

Chapter VI Compulsory License for Exploitation of the Patent

51. Where any entity which is qualified to exploit the invention or utility model has made requests for authorization from the patentee of an invention or utility model to exploit its or his patent on reasonable terms and such efforts have not been successful within a reasonable period of time, the Patent Office may, upon the application of that entity, grant a compulsory license to exploit the patent for invention or utility model.

52. Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the Patent Office may grant a compulsory license to exploit the patent for invention or utility model.

53. Where the invention or utility model for which the patent right was granted is technically more advanced than another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the Patent Office may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Where, according to the preceding paragraph, a compulsory license is granted, the Patent Office may, upon the request of the earlier patentee, also

grant a compulsory license to exploit the later invention or utility model.

54. The entity or individual requesting, in accordance with the provisions of this Law, a compulsory license for exploitation shall furnish proof that it or he has not been able to conclude with the patentee a license contract for exploitation on reasonable terms.

55. The decision made by the Patent Office granting a compulsory license for exploitation shall be registered and announced.

56. Any entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploit and shall not have a right to authorize exploitation by any others.

57. The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, the amount of which shall be fixed by both parties in consultations. Where the parties fail to reach an agreement, the Patent Office shall adjudicate.

58. Where the patentee is not satisfied with the decision of the Patent Office granting a compulsory license for exploitation or with the adjudication regarding the exploitation fee payable for exploitation, he or it may, within three months from the receipt of the notification, institute legal proceedings in the people's court.

Chapter VII Protection of Patent Right

59. The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the claims.

The extent of protection of the patent right for design shall be determined by the product incorporating the patented design as shown in the drawings or photographs.

60. For any exploitation of the patent, without the authorization of the patentee, constituting an infringing act, the patentee or any interested party may 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 for patent affairs handling the matter shall have the power to order the infringer to stop the infringing act and to compensate for the damage. Any party dissatisfied may, within three months from the receipt of the notification, institute legal proceedings in the people's court. If such proceedings are not instituted within the time limit and if the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution.

When any infringement dispute arises, if the patent for invention is a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof of the process used in the manufacture of its or his product.

61. Prescription for instituting legal proceedings concerning the infringement of patent right is two years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the infringing act.

62. None of the following shall be deemed an infringement of the patent right:

(1) where, after the sale of a patented product that was made by the patentee or with the authorization of the patentee, any other person uses or sells that product;

(2) where any person uses or sells a patented product not knowing that it was made and sold without the authorization of the patentee;

(3) where, before the date of filing of the application for patent, any person who has already made the identical product, used the identical process, or made necessary preparations for its making or using, continues to make or use it within the original scope only;

(4) where any foreign means of transport which temporarily passes through the territory, territorial waters or territorial airspace of China uses the patent concerned, in accordance with any agreement concluded between the country to which the foreign means of transport belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations;

(5) where any person uses the patent concerned solely for the purposes of scientific research and experimentation.

63. Where any person passes off the patent of another person, such passing off shall be treated in accordance with Article 60 of this Law. If the circumstances are serious, any person directly responsible shall be prosecuted, for his criminal liability, by applying *mutatis mutandis* Article 127¹ of the Criminal Law.

Where any person passes any unpatented product off as patented product or passes any unpatented process off as patented process, such person shall be ordered by the administrative authority for patent affairs to stop the passing off, correct it publicly, and pay a fine.

64. Where any person, in violation of the provisions of Article 20 of this Law, unauthorizedly files in a foreign country an application for a patent that divulges an important secret of the State, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority concerned at the higher level. If the circumstances are serious, he shall be prosecuted for his criminal liability according to the law.

65. Where any person usurps the right of an inventor or creator to apply for a patent for a non-service invention-creation, or usurps any other right or interest of an inventor or creator, prescribed by this Law, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority at the higher level.

66. Where any staff member of the Patent Office, or any staff member concerned of the State, acts wrongfully out of personal considerations or commits fraudulent acts, he shall be subject to disciplinary sanction by the Patent Office or the competent authority concerned.² If the circumstances are serious, he shall

¹ Article 127 of the Criminal Law provides as follows:

“Where any industrial or commercial enterprise, in violation of the Law and Regulations Concerning the Administrative Control of Trademarks, passes off a registered trademark of another enterprise, the person directly responsible shall be punished by imprisonment for not more than three years, penal detention or a fine.”

² In this respect, Article 186 of the Criminal Law provides as follows:

“Any staff member of the State who, in violation of the State Secret Control Regulations, divulges an important secret of the State, and if the circumstances are serious, shall be punished by imprisonment for not more than seven years, penal detention or deprivation of political rights.

he prosecuted, for his criminal liability, by applying *mutatis mutandis* Article 188 of the Criminal Law.³

Chapter VIII Supplementary Provisions

67. Any application for a patent filed with, and any other proceedings before, the Patent Office shall be subject to the payment of a fee as prescribed.

68. The Implementing Regulations of this Law shall be drawn up by the Patent Office and shall enter into force after approval by the State Council.

69. This Law shall enter into force on April 1, 1985.

* * *

This Decision shall enter into force on January 1, 1993. The applications for patent filed before the entry into force of this Decision 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 its amendment. 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 shall apply to the said applications which are not announced according to the provisions of Articles 39 and 40 of the Patent Law before its amendment. (Extract from 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.)

Any person who is not a staff member of the State and who commits a crime referred to in the preceding paragraph shall be punished according to the provisions of the preceding paragraph taking into consideration the circumstances of the case.”

³ Article 188 of the Criminal Law provides as follows:

“Any staff member of judicial departments who acts wrongfully out of personal considerations or commits fraudulent acts, knowingly prosecutes an innocent person, deliberately protects a person known to be guilty by saving him from prosecution or willfully conducts an unfair trial by confounding right and wrong, shall be punished by imprisonment for not more than five years, penal detention or deprivation of political rights; if the circumstances are particularly serious, he shall be punished by imprisonment for more than five years.”