

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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Chapter I General Provisions

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

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

Article 3. The patent administration department under the State Council is responsible for the patent work throughout the country. It receives and examines patent applications and grants patent rights for inventions-creations in accordance with law.

The administrative authority for patent affairs under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are responsible for the administrative work concerning patents in their respective administrative areas .

Article 4. Where an 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.

Articles 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.

Article 6. An 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 and technical means of the entity is a service invention-creation. For a service intention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

For a non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the inventor or creator shall be the patentee.

In respect of an invention-creation made by a person using the material and technical means of an entity to which he belongs, where the entity and the inventor or creator have entered into a contract in which the right to apply for and own a patent is provided for, such a provision shall apply.

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

Article 8. For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission given to it or him by another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual that made, or to the entities or individuals that jointly made, the invention-creation. After the application is approved, the entity or individual that applied for it shall be the patentee.

Article 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.

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

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 shall conclude a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration.

Article 11. After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the authorization of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product, or use the patented process, and use, offer to sell, sell or import 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, exploit the patent, that is, make, sell or import the product incorporating its or his patented design, for production or business purposes.

Article 12. Any entity or individual exploiting the patent of another shall 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.

Article 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.

Article 14. Where any patent for invention, belonging to any State-owned enterprise or institution, is of great significance to the interest of the State or to the public interest, the competent departments concerned under the State council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, after approval by the State Council, decide that the patented invention be spread and applied within the approved limits, and allow designated entities to exploit that invention. The exploiting entity shall, according to the regulations of the State, pay a fee for exploitation to the patentee .

Any patent for invention belonging to a Chinese individual or an entity under collective ownership, which is of great significance to the interest of the State or to the public interest and is in need of spreading and application, may be treated alike by making reference to the provisions of the preceding paragraph.

Article 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.

Article 16. The entity that is granted a 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 pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded.

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

Article 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.

Article 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, it or he shall appoint a patent agency designated by the patent administration department under the State Council 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.

The patent agency shall comply with the provisions of laws and administrative regulations, and handle patent applications and other patent matters according to the instructions of its clients. In respect of the contents of its clients' inventions-creations, except for those that have been published or announced, the agency shall bear the responsibility of keeping them confidential. The administrative regulations governing the patent agency shall be formulated by the State Council.

Article 20. Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in China, it or he shall file first an application for patent with the patent administration department under the State Council, appoint a patent agency designated by the said department to act as its or his agent, and comply with the provisions of Article 4 of this Law.

Any Chinese entity or individual may file an international application for patent in accordance with any international treaty concerned to which China is party. The applicant filing an international application for patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle any international application for patent in accordance with the international treaty concerned to which China is party, this Law and the relevant regulations of the State Council.

Article 21. The patent administration department under the State Council and its Patent Reexamination Board shall handle any patent application and patent-related request according to law and in conformity with the requirements for being objective, fair, correct and timely.

Until the publication or announcement of the application for a patent, staff members of the patent administration department under the State Council and other persons involved have the duty to keep its contents secret.

CHAPTER II REQUIREMENTS FOR GRANT OF PATENT RIGHT

Article 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 Administration Department Under the State Council 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.

Article 23. Any design for which patent right may be granted must not be identical with and 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, and must not be in conflict with any prior right of any other person.

Article 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.

Article 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 items (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

CHAPTER III APPLICATION FOR PATENT

Article 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.

Article 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.

Article 28. The date on which the Patent Administration Department Under the State Council 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.

Article 29. Where , within twelve 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 twelve 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 Administration Department Under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

Article 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.

Article 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.

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

Article 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

Article 34. Where, after receiving an application for a patent for invention, the Patent Administration Department Under the State Council, 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 eighteen months from the date of filing. Upon the request of the applicant, the Patent Administration Department Under the State Council publishes the application earlier.

Article 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 Administration Department Under the State Council 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 Administration Department Under the State Council may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

Article 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.

For an application for a patent for invention that has been already filed in a foreign country, the patent administration department under the State Council may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

Article 37. Where the Patent Administration Department Under the State Council , 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.

Article 38. Where, after the applicant has made the observations or amendments, the Patent Administration Department Under the State Council 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.

Article 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 administration department under the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall take effect as of the date of the announcement.

Article 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 administration department under the State Council 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. The patent right for utility model or design shall take effect as of the date of the announcement.

Article 41. The patent administration department under the State Council shall set up a Patent Reexamination Board. Where an applicant for patent is not satisfied with the decision of the said department rejecting the application, the applicant 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 for patent.

Where the applicant for patent is not satisfied with the decision of the Patent Reexamination Board, it or he may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

CHAPTER V DURATION, CESSATION AND INVALIDATION OF PATENT RIGHT

Article 42. The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of filing.

Article 43. The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

Article 44. 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 Administration Department Under the State Council .

Article 45. Where, starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, 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.±

Article 46. The Patent Reexamination Board shall examine the request for invalidation of the patent right promptly, make a decision on it 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 administration department under the State Council.

Where the patentee or the person who made the request for invalidation is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the person that is the opponent party of that party in the invalidation procedure to appear as a third party in the legal proceedings.

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

The decision declaring the patent right invalid shall have no retroactive effect on any judgement or ruling of patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of a dispute over patent infringement which has been complied with or compulsorily executed, or on any contract of patent license or of assignment of patent right which has been performed prior to the declaration of the patent right invalid; however, the damage 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, the patentee or the assignor of the patent right makes no repayment to the licensee or the assignee of the patent right of the fee for the exploitation of the patent or of the price for the assignment of the patent right, which 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 of the price for the assignment of the patent right to the licensee or the assignee of the patent right.

CHAPTER VI COMPULSORY LICENSE FOR EXPLOITATION OF THE PATENT

Article 48. 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 conditions and such efforts have not been successful within a reasonable period of time, the Patent Administration Department Under the State Council may, upon the request of that entity, grant a compulsory license to exploit the patent for invention or utility model.

Article 49. Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the Patent Administration Department Under the State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 50. Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation to 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 administration department under the State Council 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 Administration Department Under the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

Article 51. 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 and conditions.

Article 52. The decision made by the patent administration department under the State Council granting a compulsory license for exploitation shall be notified promptly to the patentee concerned, and shall be registered and announced.

In the decision granting the compulsory license for exploitation, the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant. If and when the circumstances which led to such compulsory license cease to exist and are unlikely to recur, the patent administration department under the State Council may, after review upon the request of the patentee, terminate the compulsory license.

Article 53. Any entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploit and shall not have the right to authorize exploitation by any others.

Article 54. 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 Administration Department Under the State Council shall adjudicate.

Article 55. Where the patentee is not satisfied with the decision of the patent administration department under the State Council granting a compulsory license for exploitation, or where the patentee or the entity or individual that is granted the compulsory license for exploitation is not satisfied with the ruling made by the patent administration department under the State Council regarding the fee payable for exploitation, it or he may, within three months from the receipt of the date of notification, institute legal proceedings in the people's court.

CHAPTER VII PROTECTION OF PATENT RIGHT

Article 56. 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.

Article 57. Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties. Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the administrative authority for patent affairs to handle the matter. When the administrative authority for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution. The said authority handling the matter may, upon the request of the parties, mediate in the amount of compensation for the damage caused by the infringement of the patent right. If the mediation fails, the parties may institute legal proceedings in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Where any infringement dispute relates to a patent for invention for a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process. Where the infringement relates to a patent for utility model, the people's court or the administrative authority for patent affairs may ask the patentee to furnish a search report made by the patent administration department under the State Council.

Article 58. Where any person passes off the patent of another person as his own, he shall, in addition to bearing his civil liability according to law, be ordered by the administrative authority for patent affairs to amend his act, and the order shall be announced. His illegal earnings shall be confiscated and , in addition, he may be imposed a fine of not more than three times his illegal earnings and, if there is no illegal earnings, a fine of not more than RMB 50,000 yuan. Where the infringement constitutes a crime, he shall be prosecuted for his criminal liability.

Article 59. Where any person passes any non-patented product off as patented product or passes any non-patented process off as patented process, he shall be ordered by the administrative authority for patent affairs to amend his act , and the order shall be announced, and he may be imposed a fine of no more than RMB 50,000 yuan.

Article 60. The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the losses suffered by the patentee or the profits which the infringer has earned through the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license.

Article 61. Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or

prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, request the people's court to adopt measures for ordering the suspension of relevant acts and the preservation of property.

The people's court, when dealing with the request mentioned in the preceding paragraph, shall apply the provisions of Article 93 through Article 96 and of Article 99 of the Civil Procedure Law of the People's Republic of China

Article 62. 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.

Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, is paid during the period from the publication of the application to the grant of patent right, prescription for instituting legal proceedings by the patentee to demand the said fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of the exploitation of his invention by another person. However, where the patentee has already obtained or should have obtained knowledge before the date of the grant of the patent right, the prescription shall be counted from the date of the grant.

Article 63. 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 or imported by the patentee or with the authorization of the patentee, or of a product that was directly obtained by using the patented process, any other person uses, offers to sell or sells that product;

(2) 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;

(3) 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;

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

Any person who, for production and business purposes, uses or sells a patented product or a product that was directly obtained by using a patented process, without knowing that it was made and sold without the authorization of the patentee, shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate source.

Article 64. Where any person, in violation of the provisions of Article 20 of this Law, 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. Where a crime is established, the person concerned shall be prosecuted for his criminal liability according to the law.

Article 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.

Article 66. The administrative authority for patent affairs may not take part in recommending any patented product for sale to the public or any such commercial activities.

Where the administrative authority for patent affairs violates the provisions of the preceding paragraph, it shall be ordered by the authority at the next higher level or the supervisory authority to correct its mistakes and eliminate the bad effects. The illegal earnings, if any, shall be confiscated. Where the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given disciplinary sanction in accordance with law.

Article 67. Where any State functionary working for patent administration or any other State functionary concerned neglects his duty, abuses his power, or engages in malpractice for personal gain, which constitutes a crime, shall be prosecuted for his criminal liability in accordance with law. If the case is not serious enough to constitute a crime, he shall be given disciplinary sanction in accordance with law.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 68. Any application for a patent filed with, and any other proceedings before, the Patent Administration Department Under the State Council shall be subject to the payment of a fee as prescribed.

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