

Regulation on National Defense Patent
Promulgated by the State Council, the Central Military Commission on 2004-9-17

Chapter I General Provisions

Article 1 The present Regulation is formulated in accordance with the Patent Law of the People's Republic of China for the purposes of protecting the patent rights of the pertinent national defense inventions, safeguarding the state secrets, facilitating the popularization and application of inventions and creations, promoting the development of science and technology for national defense and meeting the demands of the modern construction of national defense.

Article 2 The "national defense patent" refers to the patent of any invention that relates to the national defense interests, which is potentially important to the national defense construction and thus should be kept confidential.

Article 3 The national defense patent institution of the state (hereinafter to the NDPI) shall be responsible for accepting and examining the applications for national defense patent. If, upon examination, the NDPI believes that an applicant meets the relevant requirements of the present Regulation, the patent administrative department of the State Council shall grant the national defense patent right to the applicant.

The administrative department of science, technology and industry for national defense of the State Council and the General Armament Department of the People's Liberation Army (hereinafter referred to as the GAD) shall be responsible for the management of national defense patents of the local system and army system respectively.

Article 4 As for an invention that relates to the national defense interests or is determined as the top secret of the state for its potential importance to national defense construction, no one may apply for determining it as a national defense patent.

Prior to declassification, the applications for national defense patent and the work of keeping national patent confidential shall be managed in accordance with the Law of the People's Republic of China on Guarding State Secrets and other relevant provisions.

Article 5 The term of protection for a national defense patent shall be 20 years. It shall be calculated from the date of filing an application.

Article 6 Within the term of protection for a national defense patent, if it is necessary to change the security classification of the national defense patent, to declassify the national defense patent or to extend term of confidentiality after the termination of the national defense patent right, the NDPI may make a relevant decision accordingly. However, if it has been determined as a state secret before an application is filed for determining it as a national defense patent, permission shall be obtained from the organ or entity that previously determines the security classification and the term of confidentiality, or from its superior organ.

An entity or individual who has been granted the right of a national defense patent (hereinafter referred to as the patentee of a national defense patent) may file a written application with the NDPI for changing the security classification, declassifying the national defense patent or extending the term of confidentiality. If the entity is a state-owned enterprise or public institution or military entity, such an application shall be accompanied by the opinions of the organ or entity that previously determines the security classification and the term of confidentiality, or by the opinions of its superior organ.

The NDPI shall publish the decision of changing the security classification, declassifying the national defense patent or extending the term of confidentiality on its Internal Bulletin for National Defense Patent, inform the patentee of the national defense patent of it, and simultaneously submit the declassified national defense patent to the patent administrative department of the State Council for changing it into a general patent. The patent administrative department of the State Council shall timely announce the declassified national defense patent to the general public.

Article 7 The right to apply for a national defense patent and the right of a national defense patent may be transferred to a Chinese entity or individual within China upon approval.

When transferring the right to apply for a national defense patent or the right of a national defense patent, one shall ensure that the state secrets won't be divulged, shall guarantee that construction of national defense and the army won't be affected and shall file a written application with the NDPI. The NDPI shall conduct a preliminary examination, and then it shall, in accordance with the functions as prescribed in the second paragraph of Article 3 of the present Regulation, timely report it to the administrative department of science, technology and industry for national defense of the State Council or the GAD for examination and approval.

The administrative department of science, technology and industry for national defense of the State Council or the GAD shall make a decision of approval or disapproval within 30 days after the NDPI accepts an application. If it makes a decision of disapproval, it shall give a written notice and an explanation therefor to the applicant.

Where an applicant is approved of transferring the right to apply for a national defense patent or the right of a national defense patent, the parties concerned shall sign a written contract and shall have it registered in the NDPI. The NDPI shall publish it on its Internal Bulletin for National Defense Patent. The right to apply for the national defense patent or the transference of the right of the national defense patent shall be valid from the registration date.

Article 8 It is prohibited to transfer the right to apply for a national defense patent or the right of a national defense patent to an entity or individual outside China, or to a foreigner or foreign institution within China.

Article 9 Anyone who needs to entrust a patent agency to apply for a national defense patent or to handle other matters related to national defense patent shall entrust a patent agency designated by the NDPI to do so. The patent agency and its personnel shall be obliged to keep confidential the state secrets they learn in handling the national defense patent application and other matters related to national defense patent.

Chapter II Application, Examination and Authorization of National Patent

Article 10 Anyone who applies for a national defense patent shall submit an application, description and its abstracts, claims and other documents to the NDPI.

The national defense applicant shall prepare the application documents according to the requirements and uniform formats as prescribed by the NDPI and shall submit them to the NDPI by personal delivery, confidential correspondence or any other secret way. The applicant may not post them by ordinary mail.

The day when the NDPI receives the national defense patent application documents shall be the date of filing an application. If the application documents are submitted by confidential correspondence, the date of mailing indicated by the postmark shall be the date of filing an application.

Article 11 The NDPI shall regularly appoint a person to examine the common patent applications in the patent administrative department of the State Council. If it finds that an application involves the interests of national defense or is of potential importance to the construction of national defense and thus it is necessary to keep it secret, then upon consent of the patent administrative department of the State Council, this application shall be changed into an application for national defense patent and the applicant shall be informed of the change.

After a common patent application has been changed into an application for national defense patent, the NDPI shall examine it in accordance with the relevant provisions of the present Regulation.

Article 12 Any invention to which the right of national defense patent may be granted must possess novelty, inventiveness and practical applicability

Novelty means that, before the date of filing an application, no identical invention has been publicly disclosed in publications within China or abroad or has been publicly used or made known to the public by any other means within China, nor has any other person previously filed an application which described the identical invention or obtains the right of national defense patent after the date of filing an application.

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

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

Article 13 Under any of the following circumstances, an invention for which a national defense patent is applied does not lose its novelty within six months before the date of filing an application:

- (1) It is, for the first time, exhibited at an internal exhibition sponsored by the corresponding administrative department of the State Council or the corresponding administrative department of the People's Liberation Army;
- (2) It is, for the first time, made public at a academic or technological conference internally held by the administrative department of the State Council or the pertinent administrative department of the People's Liberation Army; or
- (3) It is disclosed by any other person without the consent of the applicant.

Under any of the circumstances as listed in the preceding paragraph, the applicant for national defense patent shall make a statement when it files an application, and shall provide the relevant documentary evidence within 2 months from the date of filing an application.

Article 14 If, upon examination over an application for national defense patent, the NDPI considers that the application doesn't meet the requirements of the present Regulation, it shall inform the applicant for national defense patent to present an argument or revise or make supplements and corrections to its application for national defense patent within a specified time limit. If the applicant fails to make a response within the specified time limit without any reasonable ground, it shall be regarded as having withdrawn its application for national defense patent.

Within 6 months from the date of filing an application, or when the applicant for national defense patent make a response to the notice of opinions on preliminary examination, the applicant for national defense patent may, on its own initiative, requests to revise its application for national defense patent.

The revisions made by the applicant to its national defense patent application documents may not exceed the scope of disclosure contained in the initial description and claims.

Article 15 After the applicant for national defense patent has presented an argument or has revised or has made supplements and corrections to the national defense patent application documents, if the NDPI still considers that the application doesn't meet the requirements of the present Regulation, it shall dismiss the application.

Article 16 The NDPI shall set up a National Defense Patent Reexamination Board, which shall be responsible for reexamining the national defense patents and announcing invalid ones.

The National Defense Patent Reexamination Board shall consist of technical experts and legal experts. Its position of director member shall be concurrently held by the person-in-charge of the NDPI.

Article 17 If an applicant for national defense patent refuses to accept the decision of the NDPI on dismissing the application, it shall, within 3 months from receipt of the notice, ask the National Defense Patent Reexamination Board to conduct reexamination. After the National Defense Patent Reexamination Board conducts reexamination and makes a decision, it shall notify the applicant for national defense patent of the said decision.

Article 18 If it is held that there is no reason to dismiss a national defense application upon examination, or it is improper to dismiss a national defense application upon reexamination, the patent administrative department of the State Council shall decide to grant the applicant the right of a national defense patent, authorize the NDPI to issue a national defense patent certificate to the applicant and simultaneously disclose the date of filing an application for the national defense patent, the date of granting the right of national defense patent and the number of the national defense patent through the patent bulletin published by the patent administrative department of the State Council. The NDPI shall register the matters relating to the national defense patent and publish them on the Internal Bulletin for National Patent.

Article 19 Where an entity or individual considers that the grant of the right of a national defense patent is not consistent with the present Regulation, it (he) may ask the National Defense Patent Reexamination Board to declare the right of the national defense patent invalid.

Article 20 After the National Defense Patent Reexamination Board examines an application for announcing a national defense patent invalid and makes a decision, it shall notify the applicant and the patentee of a national defense patent of the said decision. The NDPI shall publish the decision on declaring the right of a national defense patent invalid on the Internal Bulletin for National Patent, and the patent administrative department of the State Council shall publish it on the patent bulletin.

Chapter III The Exploitation of National Defense Patents

Article 21 The NDP shall, within 3 months from the day when it grants the applicant the right of a national defense patent, submit the duplicates of the relevant documents of the national defense patent to the corresponding administrative department of the State Council or the corresponding administrative department of the People's Liberation Army, which shall, within 4 months from the day after receipt of the duplicates of the relevant documents, put forward opinions in writing about the exploitation of the national defense patent and inform the NDPI of its opinions.

Article 22 The corresponding administrative department of the State Council or the corresponding administrative department of the People's Liberation Army may permit its designated entities to exploit the national defense patents of its own system or department. If it is necessary to designate entities to exploit a national defense patent other than those of its own system or department, it shall file a written application to the NDPI, which shall, in accordance with the functions as stipulated in the second paragraph of Article 3 of the present Regulation, report that to the administrative department of science, technology and industry for national defense of the State Council or the GAD for approval. Upon approval, the said patent may be exploited.

The NDPI shall register the information concerning the designated exploitation of national defense patents and shall publish it on the Internal Bulletin for National Defense Patent.

Article 23 An entity exploiting a national defense patent of others shall sign a written contract with the patentee of this national defense patent, shall pay fee to the patentee of the national defense patent in accordance with Article 25 of the present Regulation and shall report that to the NDPI for archival purposes. Except the entities as stipulated in the contract, the exploiting entity may not allow any other entity to exploit the national defense patent.

Article 24 Where a patentee of a national defense patent permits an overseas entity or individual to exploit its national defense patent, it shall ensure that the state secrets won't be divulged, shall guarantee that the construction of national defense and the army won't be affected and shall file a written application with the NDPI. The NDPI shall conduct a preliminary examination in pursuance of the functions as stipulated in the second paragraph of Article 3 of the present Regulation, and then timely submit it for examination and approval to the administrative department of science, technology and industry for national defense of the State Council, or the GAD.

The administrative department of science, technology and industry for national defense of the State Council, or the GAD shall, within 30 days after the NDPI accepts the application, make a decision of approval or disapproval. If it makes a decision of disapproval, it shall give a written notice and an explanation therefor to the applicant.

Article 25 Anyone who exploits the national defense patent of others shall pay the national patent exploitation fee to the patentee of a national defense patent. If the exploitation of a national defense patent, which is derived from using the scientific research funds directly allocated by the state for national defense or from the scientific research activities by using other national defense funds, is consistent with the purposes of the funds from which the national defense patent is derived, it (he) may only be required to pay the necessary national defense patent exploitation fee except there are otherwise stipulations in the scientific research contract or in the description of scientific research project.

The "national defense patent exploitation fee" as mentioned in the preceding paragraph refers to the essential expenditure incurred in the exploitation of a national defense patent for offering technical materials, training personnel and further technical development.

Article 26 The amount of the fee for exploiting or using a national defense patent shall be determined by the patentee of a national defense patent and exploiting entity through negotiation. If they fail to come to an agreement, the issue shall be arbitrated by the NDPI.

Article 27 The state shall compensate the patentee of a national defense patent. After the NDPI issues a national defense patent certificate, it shall pay the compensation fee for national defense patent to the patentee of the national defense patent. The amount of compensation fee shall be determined by the NDPI. If the patent is for a service invention, the patentee of the national defense patent shall pay at least 50 % of the compensation fee for national defense patent to the inventor.

Chapter IV Management and Protection of National Defense Patents

Article 28 The Internal Bulletin for National Defense Patent published by the NDPI falls within the scope of state secret documents. The range of its readers shall be decided by the NDPI.

The Internal Bulletin for National Defense Patent may publish the following contents:

- (1) The items as recorded in an application for national defense patent;
- (2) The claims for a national defense patent;
- (3) The abstracts of the description of an invention;
- (4) The grant of a national defense patent;
- (5) The termination of a national defense patent;
- (6) The announcement on invalidity of a national defense patent;
- (7) The right to apply for a national defense or the transference of a national defense patent;
- (8) The designated exploitation of a national defense patent;
- (9) The records of a license contract on the use of a national defense patent;
- (10) The change of the security classification or declassification of a national defense patent;
- (11) The extension of the term for the confidentiality of a national defense patent;

(12) The change of name or address of a patentee of a national defense patent; and

(13) Other relevant items.

Article 29 After the grant of a national defense patent, one may, upon permission of the NDPI, consult the descriptions of the national defense patent under any of the following circumstances:

- (1) Requesting to declare the national defense patent invalid;
- (2) Being in the need of exploiting a national defense patent;
- (3) Occurrence of any dispute over the national defense patent; or
- (4) Due to the needs of scientific research for national defense.

A consulter shall be obliged to keep secret the state secrets he learns during the consulting.

Article 30 The corresponding administrative department of the State Council, the corresponding administrative department of the People's Liberation Army and the administrative departments of science, technology and industry for national defense of the provinces, autonomous regions, and municipalities directly under the Central Government shall each designate an institution to be responsible for the management of national defense patents and shall notify the NDPI of it. All such institutions shall be subject to the operating guidance of the NDPI.

The army entities undertaking tasks of scientific research or production for national defense or participating in armament orders, entities for which the State Council performs the obligations of the investor, and public institutions directly under the State Council shall each designate a corresponding department to manage their respective national defense patents.

Article 31 The NDPI may mediate the following disputes over national defense patent at the request of a party concerned:

- (1) Any dispute over the ownership of the right to apply for national defense patent and the national defense patent right;
- (2) Any dispute over the qualification of the inventor or creator of a national defense patent;
- (3) Any dispute over the award and remuneration of the inventor or creator of a service invention-creation; and

(4) Any dispute over the fees for using or exploiting the national defense patent.

Article 32 Except when it is otherwise provided in the Patent Law of the People's Republic of China and the present Regulation, anyone who exploits a national defense patent without the permission of the patentee of the national defense patent, it (he) infringes upon its (his) national defense patent right, the parties concerned shall solve it through negotiation if any dispute is caused. If the parties concerned refuse to negotiate, or if they fail to reach an agreement through negotiation, the patentee of a national defense patent may file a lawsuit in the people's court or require the NDPI to solve the issue.

Article 33 Anyone who divulges the state secrets in violation with the present Regulation shall be punished in pursuance of the Law of the People's Republic of China on Guarding State Secrets and other relevant provisions of the state.

Chapter V Supplementary Provisions

Article 34 Anyone who applies for a national defense patent to the NDPI and go through other formalities with it shall pay the fees according to the relevant provisions.

Article 35 The pertinent provisions in the Patent Law of the People's Republic of China and the Detailed Rules for the Implementation of the Patent Law of the People's Republic of China are applicable to the national defense patents, but the specific provisions in the present Regulation shall prevail.

Article 36 The present Regulation shall come into force as of November 1, 2004. The Regulation on the National Defense Patents approved by the State Council and the Central Military Commission on July 30, 1990 shall be simultaneously abolished.

(Source: Invest in China)