

Patent Law of the People's Republic of China

(1984年3月12日第六届全国人民代表大会常务委员会第四次会议通过根据1992年9月4日第七届全国人民代表大会常务委员会第二十七次会议《关于修改〈中华人民共和国专利法〉的决定》第一次修正根据2000年8月25日第九届全国人民代表大会常务委员会第十七次会议《关于修改〈中华人民共和国专利法〉的决定》第二次修正)

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目录

Contents

第一章 总则

Chapter I General Provisions

第二章 授予专利权的条件

Chapter II Conditions for the Grant of Patent Rights

第三章 专利的申请

Chapter III Application for Patents

第四章 专利申请的审查和批准

Chapter IV Examination and Approval of Patent Applications

第五章 专利权的期限、终止和无效

Chapter V Term, Termination and Invalidation of Patent Rights

第六章 专利实施的强制许可

Chapter VI Compulsory Licence for exploitation of a Patent

第七章 专利权的保护

Chapter VII Protection of Patent Rights

第八章 附则

Chapter VIII Supplementary Provisions

第一章总则

Chapter I General Provisions

第一条 为了保护发明创造专利权，鼓励发明创造，有利于发明创造的推广应用，促进科学技术进步和创新，适应社会主义现代化建设的需要，特制定本法。

Article 1 This Law is enacted in order to protect patent rights for inventions-creations, encourage invention-creation, to facilitate the wide application of inventions-creations, promote the progress and innovation of science and technology, and meet the needs of the socialist modernization drive.

第二条 本法所称的发明创造是指发明、实用新型和外观设计。

Article 2 For the purpose of this Law, "invention-creation" means inventions, utility models and designs.

第三条 国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管理工作。

Article 3 The patent administration department under the State Council is responsible for the patent work throughout the country. It accepts 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.

第四条 申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。

Article 4 If an invention-creation for which a patent is applied involves national security or other vital interests of the State that require secrecy, the matter shall be treated in accordance with the relevant provisions of the State.

第五条 对违反国家法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

Article 5 No patent right shall be granted for any invention-creation that violates the laws of the State, goes against social morals or is detrimental to the public interest.

第六条 执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。

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 invention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。

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.

利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。

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.

第七条 对发明人或者设计人的非职务发明创造专利申请，任何单位或者个人不得压制。

Article 7 No entity or individual may suppress the application of an inventor or designer for a patent in respect of an invention-creation that is not job-related.

第八条 两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准后，申请的单位或者个人为专利权人。

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 applies for it shall be the patentee.

第九条 两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

Article 9 If two or more applicants apply separately for a patent on the same invention-creation, the patent right shall be granted to the person who applied first.

第十条 专利申请权和专利权可以转让。

Article 10 The right of patent application and the patent right itself may be assigned.

中国单位或者个人向外国人转让专利申请权或者专利权的，必须经国务院有关主管部门批准。

If a Chinese entity or individual wishes to assign a right of patent application or a patent right to a foreigner, it or he must obtain the approval of the relevant competent department under the State Council.

转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。

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.

第十一条 发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、进口依照该专利方法直接获得的产品。

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, or use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、销售、进口其外观设计专利产品。

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

第十二条 任何单位或者个人实施他人专利的，应当与专利权人订立书面实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。

Article 12 Except as provided for in Article 14 of this Law, any entity or individual exploiting the patent of another must conclude a written licensing contract with the patentee and pay the patentee a fee for the exploitation of its or his patent. The licensee shall not have the right to authorize any entity or individual other than that referred to in the contract to exploit the patent.

第十三条 发明专利申请公布后，申请人可以要求实施其发明的单位或者个人支付适当的费用。

Article 13 After the application for an invention patent has been publicly announced, the applicant may require the entities or individuals exploiting the invention to pay an appropriate fee.

第十四条 国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。

Article 14 Where any patent for invention, which belongs to any State-owned enterprise or institution, is of great significance to the interests of the State or the public, 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 widely 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.

中国集体所有制单位和个人的发明专利，对国家利益或者公共利益具有重大意义，需要推广应用的，参照前款规定办理。

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

第十五条 专利权人有权在其专利产品或者该产品的包装上标明专利标记和专利号。

Article 15 The patentee shall have the right to affix a patent marking and indicate

the patent number on the patented product or on the packaging of that product.

第十六条 被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励;发明创造专利实施后,根据其推广应用的范围和取得的经济效益,对发明人或者设计人给予合理的报酬。

Article 16 The entity that is granted a patent right shall reward to the inventor or creator of a service invention-creation and, upon exploitation of the patented invention-creation, shall give the inventor or creator a reasonable remuneration based on the extent the invention-creation is applied and the economic benefits it yields.

第十七条 发明人或者设计人有在专利文件中写明自己是发明人或者设计人的权利。

Article 17 An inventor or designer shall have the right to name himself as such in the patent document.

第十八条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的,依照其所属国同中国签订的协议或者共同参加的国际条约,或者依照互惠原则,根据本法办理。

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

第十九条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的,应当委托国务院专利行政部门指定的专利代理机构办理。

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, he or it shall appoint a patent agency designated by the patent administration department under the State Council to act as his or its agent.

中国单位或者个人在国内申请专利和办理其他专利事务的,可以委托专利代理机构办理。

If any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may entrust a patent agency to act on its or his behalf.

专利代理机构应当遵守法律、行政法规，按照被代理人的委托办理专利申请或者其他专利事务；对被代理人发明创造的内容，除专利申请已经公布或者公告的以外，负有保密责任。专利代理机构的具体管理办法由国务院规定。

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 or 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.

第二十条 中国单位或者个人将其在国内完成的发明创造向外国申请专利的，应当先向国务院专利行政部门申请专利，委托其指定的专利代理机构办理，并遵守本法第四条的规定。

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.

中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。

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.

国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。

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.

第二十一条 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。

Article 21 The patent administration department under the State Council and the

Patent Reexamination Board under the department 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.

在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。

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 content secret.

第二章 授予专利权的条件

Chapter II Conditions for the Grant of Patent Rights

第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

Article 22 Any invention or utility model for which a patent right may be granted must possess the characteristics of novelty, inventiveness and usefulness.

新颖性，是指在申请日以前没有同样的发明或者实用新型在国内外出版物上公开发表过、在国内公开使用过或者以其他方式为公众所知，也没有同样的发明或者实用新型由他人向国务院专利行政部门提出过申请并且记载在申请日以后公布的专利申请文件中。

"Novelty" means that, before the filing date of the application, no identical invention or utility model has been publicly disclosed in domestic or foreign publications or has been publicly used or made known to the public by any other means in the country, nor has any other person previously filed with the patent administration department under the State Council an application describing an identical invention or utility model which was recorded in patent application documents published after the said date of filing.

创造性，是指同申请日以前已有的技术相比，该发明有突出的实质性特点和显著的进步，该实用新型有实质性特点和进步。

"Inventiveness" means that, compared with the technology existing before the filing date of the application, the invention has prominent and substantive distinguishing features and represents a marked improvement, or the utility model possesses substantive distinguishing features and represents an improvement.

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

"Usefulness" means that the invention or utility model can be made or used and can

produce positive results.

第二十三条 授予专利权的外观设计,应当同申请日以前在国内外出版物上公开发表过或者国内公开使用过的外观设计不相同和不相近似,并不得与他在先取得的合法权利相冲突。

Article 23 No design for which patent right is to be granted may 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, or be in conflict with any prior legal rights of any other person.

第二十四条 申请专利的发明创造在申请日以前六个月内,有下列情形之一的,不丧失新颖性:

Article 24 Any invention-creation for which a patent is applied shall not lose its novelty if, within six months before the filing date of the application, one of the following events has occurred:

(一) 在中国政府主办或者承认的国际展览会上首次展出的;

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

(二) 在规定的学术会议或者技术会议上首次发表的;

(2) it was made public for the first time at a prescribed academic or technical conference; or

(三) 他人未经申请人同意而泄露其内容的。

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

第二十五条 对下列各项,不授予专利权:

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

(一) 科学发现;

(1) scientific discoveries;

(二) 智力活动的规则和方法;

(2) rules and methods for mental activities;

(三) 疾病的诊断和治疗方法;

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

(四) 动物和植物品种;

(4) animal and plant varieties;

(五) 用原子核变换方法获得的物质。

(5) substances obtained by means of nuclear transformation.

对前款第（四）项所列产品的生产方法，可以依照本法规定授予专利权。

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.

第三章 专利的申请

Chapter III Application for Patents

第二十六条 申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。

Article 26 When a patent application is filed for an invention or a utility model, relevant documents shall be submitted, including a written request, a specification and an abstract thereof, and a patent claim.

请求书应当写明发明或者实用新型的名称，发明人或者设计人的姓名，申请人姓名或者名称、地址，以及其他事项。

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

说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。

The specification shall describe the invention or utility model in a manner sufficiently clear and complete so that a person skilled in the relevant field of technology can accurately produce it; where necessary, drawings shall be appended. The abstract shall describe briefly the technical essentials of the invention or utility model.

权利要求书应当以说明书为依据，说明要求专利保护的范围。

The patent claim shall, in the basis of the specification, state the scope of the patent protection requested.

第二十七条 申请外观设计专利的，应当提交请求书以及该外观设计的图片或者照片等文件，并且应当写明使用该外观设计的产品及其所属的类别。

Article 27 When a patent application is filed for a design, relevant documents shall be submitted, including a written request and drawings or photographs of the design; the product on which the design is to be used and the category of that product shall

also be indicated.

第二十八条 国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。

Article 28 The date on which the patent administration department under the State Council receives the patent application documents shall be the filing date of the application. If the application documents are sent by mail, the postmark date shall be the filing date of the application.

第二十九条 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。

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.

申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。

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.

第三十条 申请人要求优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。

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 documents that was first filed; if the applicant fails to make

the written declaration or fails to submit a copy of the patent application documents within the time limit, the claim to the right of priority shall be deemed not to have been made.

第三十一条 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。

Article 31 Each patent application for invention or utility model shall be limited to a single invention or utility model. Two or more inventions or utility models belonging to a single inventive concept may be submitted together in one application.

一件外观设计专利申请应当限于一种产品所使用的一项外观设计。用于同一类别并且成套出售或者使用的产品的两项以上的外观设计，可以作为一件申请提出。

Each patent application for design shall be limited to a single design used on one type of product. Two or more designs used on products belonging to a single category and sold or used in sets may be submitted together in one application.

第三十二条 申请人可以在被授予专利权之前随时撤回其专利申请。

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

第三十三条 申请人可以对其专利申请文件进行修改，但是，对发明和实用新型专利申请文件的修改不得超出原说明书和权利要求书记载的范围，对外观设计专利申请文件的修改不得超出原图片或者照片表示的范围。

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 the 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.

第四章 专利申请的审查和批准

Chapter IV Examination and Approval of Patent Applications

第三十四条 国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。

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 may publish the application earlier.

第三十五条 发明专利申请自申请日起三年内,国务院专利行政部门可以根据申请人随时提出的请求,对其申请进行实质审查;申请人无正当理由逾期不请求实质审查的,该申请即被视为撤回。

Article 35 Upon the applicant's request for an invention patent made at any time within three years from the filing date of an application, the patent administration department under the State Council may carry out substantive examination of that application. If, without any justified reason, the applicant fails to meet the time limit for requesting such substantive examination, the application shall be deemed to have been withdrawn.

国务院专利行政部门认为必要的时候,可以自行对发明专利申请进行实质审查。

The Patent administration department under the State Council may of its own accord carry out substantive examination of an application for an invention patent when it deems it necessary.

第三十六条 发明专利的申请人请求实质审查的时候,应当提交在申请日前与其发明有关的参考资料。

Article 36 When requesting substantive examination of an invention patent application, the applicant shall furnish reference materials concerning the invention that were available prior to the filing date of the application.

发明专利已经在外国提出过申请的,国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料;无正当理由逾期不提交的,该申请即被视为撤回。

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.

第三十七条 国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。

Article 37 If, after completing the substantive examination of an invention patent application, the patent administration department under the State Council finds that the application does not conform with the provisions of this Law, it shall notify the applicant and ask him or it to state his or its observations or amend the application within a specified time limit. If, without any justified reason, the applicant fails to respond within the time limit, the application shall be deemed to have been withdrawn.

第三十八条 发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。

Article 38 If, after the applicant has stated his or its observations or made amendments, the patent administration department under the State Council still finds that the invention patent application does not conform with the provisions of this Law, it shall reject the application.

第三十九条 发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。

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 upon the date of the announcement.

第四十条 实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。

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 made 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.

第四十一条 国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。

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 patent administration department under the State Council reject his or its application for patent, such 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 of the decision.

专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

Where the applicant for patent who 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.

第五章 专利权的期限、终止和无效

Chapter V Term, Termination and Invalidation of Patent Rights

第四十二条 发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，均自申请日起计算。

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

第四十三条 专利权人应当自被授予专利权的当年开始缴纳年费。

Article 43 The patentee shall pay an annual fee beginning with the year in which his or its patent right is granted.

第四十四条 有下列情形之一的，专利权在期限届满前终止：（一）没有按照规定缴纳年费的；（二）专利权人以书面声明放弃其专利权的。

Article 44 In either of the following cases, the patent right shall be terminated

prior to the expiration of its term: (1) if the annual fee is not paid as prescribed; or (2) if the patentee renounces his or its patent right by a written declaration.

专利权在期限届满前终止的，由国务院专利行政部门登记和公告。

The termination of a patent right shall be registered and publicly announced by the patent administration department under the State Council.

第四十五条 自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求专利复审委员会宣告该专利权无效。

Article 45 Where, starting from the date of the announcement of the grant of a 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.

第四十六条 专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。

Article 46 For any request for invalidation of a patent right, the Patent Reexamination Board shall examine it promptly, make a decision on it and notify the person who makes the request and the patentee of the decision. The decision declaring the patent right invalid shall be registered and announced by the patent administration department under the State Council.

对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。

Where the patentee or the person who makes 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.

第四十七条 宣告无效的专利权视为自始即不存在。

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

宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、裁定，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。

Prior to the declaration of the patent right invalid, the decision to declare 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. However, the damage caused to other persons in bad faith on the part of the patentee shall be compensated.

如果依照前款规定，专利权人或者专利权转让人不向被许可实施专利人或者专利权受让人返还专利使用费或者专利权转让费，明显违反公平原则，专利权人或者专利权转让人应当向被许可实施专利人或者专利权受让人返还全部或者部分专利使用费或者专利权转让费。

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 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.

第六章 专利实施的强制许可

Chapter VI Compulsory Licence for Exploitation of a Patent

第四十八条 具备实施条件的单位以合理的条件请求发明或者实用新型专利权人许可实施其专利，而未能在合理长的时间内获得这种许可时，国务院专利行政部门根据该单位的申请，可以给予实施该发明专利或者实用新型专利的强制许可。

Article 48 Where any entity which is qualified to exploit the invention or utility model has made a request for authorization from the patentee of an invention or a utility model to exploit its or his patent on reasonable terms and has been unable to obtain such authorization within a reasonable period of time, the patent administration department under the State Council may, upon the application of that entity, grant a compulsory license to exploit the patent for the invention or utility model.

第四十九条 在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利

行政部门可以给予实施发明专利或者实用新型专利的强制许可。

Article 49 Where a national emergency or an 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.

第五十条 一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。

Article 50 Where the invention or utility model for which the patent right has been granted constitutes important technical advance of considerable economic significance compared with 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.

第五十一条 依照本法规定申请实施强制许可的单位或者个人，应当提出未能以合理条件与专利权人签订实施许可合同的证明。

Article 51 Any entity or individual applying for a compulsory license in accordance with the provisions of this Law shall furnish proof that it or he has not been able to conclude a licensing contract on reasonable terms with the patentee.

第五十二条 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。给予实施强制许可的决定，应当根据强制许可的理由规定实施的范围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。

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 lead to such compulsory license cease to exist and are unlikely to recur, the patent administration department under the State Council may, upon the request of the patentee, terminate the compulsory license after examination.

第五十三条 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

Article 53 Any entity or individual that is granted a compulsory licence shall not have an exclusive right to exploit the patent in question, nor shall it or he have the right to authorize exploitation of the patent by others.

第五十四条 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

Article 54 Any entity or individual that is granted a compulsory licence shall pay the patentee a reasonable exploitation fee. The amount of the fee shall be decided by both parties through consultation. Where the parties fail to reach an agreement, the patent administration department under the State Council shall make a ruling.

第五十五条 专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。

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, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

第七章 专利权的保护

Chapter VII Protection of Patent Rights

第五十六条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求。外观设计专利权的保护范围以表示在图片或者照片中的该外观设计专利产品为准。

Article 56 The scope of protection in the patent right for an invention or a utility

model shall be determined by the contents of the patent claim. The specification and appended drawings may be used to interpret the patent claim. The scope of protection in the patent right for a design shall be determined by the product incorporating the patented design as shown in the drawings or photographs.

第五十七条 未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国民事诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

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, institute 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 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.

专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或者个人应当提供

其产品制造方法不同于专利方法的证明；涉及实用新型专利的，人民法院或者管理专利工作的部门可以要求专利权人出具由国务院专利行政部门作出的检索报告。

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 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.

第五十八条 假冒他人专利的，除依法承担民事责任外，由管理专利工作的部门责令改正并予以公告，没收违法所得，可以并处违法所得三倍以下的罚款，没有违法所得的，可以处五万元以下的罚款；构成犯罪的，依法追究刑事责任。

Article 58 Where any person passes the patent of another person off 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 make rectification, 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 investigated for his criminal liability.

第五十九条 以非专利产品冒充专利产品、以非专利方法冒充专利方法的，由管理专利工作的部门责令改正并予以公告，可以处五万元以下的罚款。

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 make rectification, and the order shall be announced, in addition, he may be imposed a fine of not more than RMB 50,000 yuan.

第六十条 侵犯专利权的赔偿数额，按照权利人因被侵权所受到的损失或者侵权人因侵权所获得的利益确定；被侵权人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。

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 whose right was infringed 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.

第六十一条 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯其专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为和财产保全的措施。

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.

人民法院处理前款申请，适用《中华人民共和国民事诉讼法》第九十三条至第九十六条和第九十九条的规定。

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.

第六十二条 侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。

Article 62 The period of limitation for filing a suit concerning the infringement of a patent right shall be two year, counted from the day on which patentee or the interested parties became aware or should have become aware of the act of infringement . Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, during the period from the publication of the application for the patent to the grant of patent right to the said invention is paid, 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.

第六十三条 有下列情形之一的，不视为侵犯专利权：（一）专利权人制造、进口或者经专利权人许可而制造、进口的专利产品或者依照专利方法直接获得的产品售出后，使用、许诺销售或者销售该产品的；（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；（四）专为科学研究和实验而使用有关专利的。 为生产经营目的使用或者销售不知道是未经专利权人许可而制造并售出的专利产品或者依照专利方法直接获得的产品，能证明其产品合法来源的，不承担赔偿责任。

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 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 the 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 without knowing that it was made and sold without the authorization of the patentee or that it was directly obtained by a patented process, 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.

第六十四条 违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。

Article 64 Anyone who, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent which divulges State secrets shall be given administrative sanction by the unit to which he belongs or by the competent department at a higher level. If the case constitutes a crime, he shall be investigated for criminal liability in accordance with law.

第六十五条 侵夺发明人或者设计人的非职务发明创造专利申请权和本法规定的其他权益的，由所在单位或者上级主管机关给予行政处分。

Article 65 Anyone who usurps the right of an inventor or designer to apply for a patent for a non-job-related invention-creation or usurps the other rights or interests of an inventor or designer prescribed in this Law shall be given administrative sanction by the unit to which he belongs or by the competent department at a higher level.

第六十六条 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。

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.

管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

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.

第六十七条 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

Article 67 Where any State functionary working for patent administration or any other 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 investigated 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.

第八章附则

Chapter VIII Supplementary Provisions

第六十八条 向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。

Article 68 Rules for the implementation of this Law shall be formulated by the patent administration department under the State Council and submitted to the State Council for approval before they are put into effect.

第六十九条 本法自2001年7月1日起施行。

Article 69 This Law shall go into effect on April 1, 1985.