Patent Law of the People's Republic of China (2020 Amendment)

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**Chapter I**

**General Provisions**

**Article 1.**This Law is enacted to protect the legitimate rights of the patentee, to encourage inventions-creations, to advance the exploitation of inventions-creations, to enhance innovation capability, and to promote the progress of science and technology and the development of economy and society.

**Article 2.**In this Law, "inventions-creations" mean inventions, utility models and designs.

“Invention” means any new technical solution relating to a product, a process or improvement thereof.

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

“Design” means any new design of the shape, the pattern, or their combination, or the combination of the color with shape or pattern, of the entirety or a portion of a product, which creates an aesthetic feeling and is fit for industrial application.

**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.

**Article 5.**No patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest. No patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws or administrative regulations.

**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.The entity may, in accordance with the law, dispose of its right to apply for the patent for the service invention-creation and the patent right, and promote the exploitation and application of the related invention-creation.

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 provisions 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.**For any identical invention-creation, only one patent right shall be granted. Where an applicant files on the same day applications for both patent for utility model and patent for invention relating to the identical invention-creation, and the applicant declares to abandon the patent for utility model which has been granted and does not terminate, the patent for invention may be granted.

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 of patent application and the patent right may be assigned.

Any assignment, by a Chinese entity or individual, of the right of patent application, or of the patent right, to a foreigner, a foreign enterprise or any other foreign organization shall proceed by going through the formalities as provided by the relevant laws and administrative regulations.

Where the right of patent application 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, offer to sell, sell or import the product incorporating its or his patented design, for production or business purposes.

**Article 12.**Any entity or individua1 exploiting the patent of another shall conclude with the patentee a 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, 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 the co-owners of a patent application or a patent have concluded an agreement on the exercising of the right, the agreement shall apply. In the absence of such agreement, any co-owner may independently exploit the patent or license another party to exploit the patent through non-exclusive license; any fee for the exploitation obtained from licensing others to exploit the patent shall be distributed among the co-owners.

Except for the circumstances as provided in the preceding paragraph, a jointly-owned patent application or patent shall be exercised with the consent of all co-owners.

**Article 15.**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.

The state encourages entities to which patent rights are granted to implement property right incentives, and enable inventors or creators to rationally share the benefits of innovation in forms such as equities, options, and dividends.

**Article 16.** The inventor or creator has the right to be named as such in the patent document.

The patentee has the right to affix a patent indication on the patented product or on the package of that product.

**Article 17.**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 sha1l 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 18.**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 legally incorporated patent agency 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 legally incorporated 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 19.** Where any entity or individual intends to file an application for patent abroad for any invention or utility model developed in China, it or he shall request in advance the patent administration department under the State Council for confidentiality examination. The procedures and duration etc. of the confidentiality examination shall be implemented in accordance with the regulations of the State Council.

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.

For an invention or utility model, if a patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article, it shall not be granted patent right while filing application for patent in China.

**Article 20.**Patent applications and the exercise of patent rights shall adhere to the principle of good faith. Patent rights shall not be abused to damage the public interest or the lawful rights and interests of any other individual.

Any abuse of patent rights to preclude or restrict competition, which constitute a monopolistic act, shall be handled in accordance with the Anti-monopoly Law of the People's Republic of China.

**Article 21.**The patent administration department under the State Council 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.

The patent administration departmentunder the State Council shall strengthen the construction of the patent information public service system, release patent information completely, correctly, and timely, provide basic patent data, publish patent gazettes periodically, and promote the dissemination and utilization of patent information.

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 confidential.

**Chapter II**

**Requirements for Grant of Patent Right**

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

Novelty means that, the invention or utility model does not form part of the prior art;nor has any entity or individual filed previously before the date of filing with the patent administration department under the State Council an application relating to the identical inventionor utility model disclosed in patent application documents published or patent documentsannounced after the said date of filing.

Inventiveness means that, as compared with the prior art, the invention has prominentsubstantive features and represents a notable progress, and that the utility model has substantivefeatures and represents progress.

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

The prior art referred to in this Law means any technology known to the public beforethe date of filing in China or abroad.

**Article 23.** Any design for which patent right may be granted shall not be a prior design,nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosedin patent documents announced after the date of filing.

Any design for which patent right may be granted shall significantly differ from priordesign or combination of prior design features.

Any design for which patent right may be granted must not be in conflict with the legitimateright obtained before the date of filing by any other person.

The prior design referred to in this Law means any design known to the public beforethe date of filing in China or abroad.

**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) itwasfirst disclosed for the purpose of the public interest, when a state of emergency or any extraordinary circumstance occurs in the country;

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

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

(4) where it was disc1osed 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) means of nuclear transformation and substances obtained by means of nuclear transformation;

(6) designs of two-dimensional printing goods, made of the pattern, the color or thecombination of the two, which serve mainly as indicators.

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, 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 define the extent of the patent protection sought for in a clear and concise manner.

Where an invention-creation is developed relying on the genetic resources, the applicantshall indicate, in the application documents, the direct and original source of such geneticresources; where the applicant fails to indicate the original source, he or it shall statethe reasons thereof.

**Article 27.**Where an application for a patent for design is filed, a request, drawingsor photographs of the design and a brief explanation of the design shall be submitted.

The relevant drawings or photographs submitted by the applicant shall clearly indicatethe design of the product for which patent protection is sought.

**Article 28.**The date on which the patent administration departmentunder the State Council receives the application shall be the date of filing. If the app1ication 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, or within six months from the date on which any applicant first filed in China an application for a patent for design, he or it files with the patent administration departmentunder the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

**Article 30.** An applicant who claims the right of priority for a patent for invention or utility model shall make a written declaration when the application is filed, and within sixteen months from the date that the application was first filed, submit a copy of the patent application document which was first filed.

An applicant who claims the right of priority for a patent for design 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.

An applicant who fails to make the written declaration or to meet the time limit for submitting the copy of 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 uti1ity 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. Two or more similardesigns for the same product or two or more designs which are incorporated in products belonging to the same class and 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 departmentunder 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 departmentunder 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 departmentunder 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 departmentunder 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 prefiling 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 departmentunder 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 departmentunder 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.**Where an applicant for patent is not satisfied with the decision of the patent administration department Under the State Council rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the patent administration departmentunder the State Council to make a reexamination. The patent administration departmentunder the State Council 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 administration departmentunder the State Council, 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 shall be ten years, and the duration of patent right for designs shall be fifteen years, counted from the date of filing.

Where a patent for an invention is granted four years from the date of applying for a patent of invention and three years from the date of filing of request for substantial examination, the patent administration departmentunder the State Council shall, at the request of the patentee, provide patent term extension for unreasonable delay in the patenting process for the patent of invention, except for unreasonable delay caused by the applicant.

For the purpose of making up the time required for the assessment and approval of the marketing of a new drug, the patent administration departmentunder the State Council may, at the request of the patentee, provide patent term extension for an invention patent relating to the new drug approved for marketing in China. The extension may not exceed five years, and the total effective term of the patent after the new drug is approved for marketing shall not exceed fourteen years.

**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 departmentunder 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 administration departmentunder the State Council to declare the patent right invalid.

**Article 46.**The patent administration departmentunder the State Council 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 administration department under the State Council 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 mediation decision 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 monetary damage for patentinfringement, the fees for exploitation of the patent or fees for the assignment of the patentright is not returned, but such non-return is obviously contrary to the principle of equity,all or part of the preceding payments shall be returned.

**Chapter VI**

**Special License for Exploitation of Patent**

**Article 48.**The patent administration department under the State Council and the departments charged with the administration of patents of the local people's governments shall, in conjunction with the relevant departments at the same level, take measures to enhance public services for patents and promote the exploitation and application of patents.

**Article 49.** Where any patent for invention owned by a state-owned enterprise or public institution is of great significance to the interests of the state or to the public interests, the relevant competent department of the State Council and the people's government of the province, autonomous region, or municipality directly under the Central Government may, upon approval of the State Council, decide to popularize and apply the patent within the approved scope, and allow designated entities to exploit the patent; and the exploiting entity shall, in accordance with the legal provisions of the state, pay royalties to the patentee.

**Article 50.**Where a patentee voluntarily makes a written declaration with the patent administration department under the State Council, indicating its willingness to permit any entity or individual to exploit its patent and specifying the royalty payment methods and rates, the patent administration department under the State Council shall make an announcement and exploit an open license. If an open license declaration is filed for a patent of utility model or design, a patent evaluation report shall be provided.

A patentee withdrawing an open license declaration shall make the withdrawal in writing, and the patent administration department under the State Council shall make an announcement. The announced withdrawal of an open license declaration shall not affect the validity of the open license granted earlier.

**Article 51.** Any entity or individual intending to exploit a patent under an open license shall obtain the patent exploitation license immediately after notifying the patentee in writing and paying the royalty according to the announced royalty payment methods and rates.

During the period of exploitation of the open license, the patent annuity paid by the patentee shall be reduced or waived accordingly.

The patentee exploiting an open license may grant an ordinary license after negotiating with the licensee over royalties, but shall not grant a sole license or exclusive license for the patent.

**Article 52.**Where any dispute arises over the exploitation of an open license, the parties shall resolve the dispute through negotiation; and if the parties are unwilling to negotiate or negotiation fails, they may request the patent administration department under the State Councilto conduct mediation, or institute legal proceedings in the people's court.

**Article 53.**Under any of the following circumstances, the patent administration departmentunder the State Council may, upon the request of an entity or individual which isqualified to exploit the invention or utility model, grant a compulsory license to exploit thepatent for invention or utility model:

(1) where the patentee, after the expiration of three years from the date of the grant ofthe patent and the expiration of four years from the date of filing, does not exploit or doesnot sufficiently exploit the patent without any justified reason;

(2) where the exercising of the patent right by the patentee is legally determined as anact of monopoly, for the purposes of eliminating or reducing the adverse effects of the acton competition.

**Article 54.**Where a national emergency or any extraordinary state of affairs occurs,or where the public interest so requires, the patent administration department under the StateCouncil may grant a compulsory license to exploit the patent for invention or utility model.

**Article 55.**For the purposes of public health, the patent administration departmentunder the State Council may grant a compulsory license to manufacture a pharmaceuticalproduct which has been granted patent right and export it to countries or regions specifiedin the relevant international treaties to which China is party.

**Article 56.**Where the invention or utility model for which the patent right has beengranted involves important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlierand the exploitation of the later invention or utility model depends on the exploitation of theearlier invention or utility model, the patent administration department under the StateCouncil may, upon the request of the later patentee, grant a compulsory license to exploitthe 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 earlierpatentee, also grant a compulsory license to exploit the later invention or utility model.

**Article 57.**Where the invention-creation involved in the compulsory license relates tothe semi-conductor technology, the exploitation thereof shall be limited only for the purposeof public interest or under the condition as provided in Article 53(2) of this Law.

**Article 58.**Except for compulsory licenses granted in accordance with Article 53 (2)or Article 55 of this Law, the exploitation of any compulsory license shall be executed predominatelyfor the supply of the domestic market.

**Article 59.**Any entity or individual requesting, in accordance with the provisions ofArticle 53(1) or Article 56 of this Law, a compulsory license for exploitation shall furnishproof to show that it or he has made requests for authorization from the patentee to exploitits or his patent on reasonable terms and conditions, and such efforts have not been successfulwithin a reasonable period of time.

**Article 60.**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 61.**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 62.**The entity or individual that is granted a compulsory license for exploitationshall pay to the patentee a reasonable exploitation fee, or deal with the issue of exploitationfee according to relevant provisions of the international treaties to which China isparty. Where the exploitation fee is paid, the amount shall be negotiated by both parties.Where the parties fail to reach an agreement, the patent administration department under theState Council shall adjudicate.

**Article 63.**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 forexploitation is not satisfied with the ruling made by the patent administration departmentunder the State Council regarding the fee payable for exploitation, it or he may, within threemonths from the date of receipt of the notification, institute legal proceedings in thepeople's court.

**Chapter VII**

**Protection of Patent Right**

**Article 64.**The extent of protection of the patent right for invention or utility modelshall be determined by the terms of the claims. The description and the appended drawingsmay be used to interpret the content of the claims.

The extent of protection of the patent right for design shall be determined by the designof the product as shown in the drawings or photographs. The brief explanation may beused to interpret the design of the product as shown in the drawings or photographs.

**Article 65.**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.

**Article 66.**Where any infringement dispute relates to a patent for invention for aprocess for the manufacture of a new product, any entity or individual manufacturing theidentical product shall furnish proof to show that the process used in the manufacture of itsor his product is different from the patented process.

Where any infringement dispute relates to a patent for utility model or design, thepeople's court or the administrative authority for patent affairs may ask the patentee or anyinterested party to furnish an evaluation report of patent made by the patent administration department under the State Council after having conducted search, analysis and evaluationof the relevant utility model or design, and use it as evidence for hearing or handling thepatent infringement dispute.The patentee, the interested party, or the alleged infringer may also voluntarily furnish the evaluation report of patent.

**Article 67.**In a patent infringement dispute, where the alleged infringer has evidenceto prove that the technology or design exploited by it or him forms part of prior art or isprior design, such exploitation does not constitute infringement of patent right.

**Article 68.**Where any person passes off a patent, he shall, in addition to bearing hiscivil liability according to law, be ordered by the department charged with patent law enforcement to correct his act, and the order shall be announced, his illegal earnings shall be confiscated, and he may be imposed a fine of not more than five times his illegal earnings or if there is no illegal earnings or the illegal earnings is not more than RMB 50,000 Yuan, a fine of not more than RMB 250,000 Yuan; where theinfringement constitutes a crime, he shall be prosecuted for his criminal liability.

**Article 69.**When investigating and prosecutingthe suspected act of passing off a patent, the department charged with patent law enforcement may, based on the evidence obtained, have the authority to take the following measures:

(1) query the parties concerned, and investigate the relevant circumstances of the suspected illegal act;

(2) carry out an on-the-spot inspection of the site where the party's suspected illegalacts took place;

(3) review and reproduce the contracts, invoices, account books and other relevantmaterials related to the suspected illegal act;

(4) examine the products relevant to the suspectedillegal act;

(5) seal up or withhold the products proved to be passing off the patentedproduct.

The department charged with the administration of patents may take the measures set forth in subparagraphs (1), (2) and (4) of the preceding paragraph to handle patent infringement disputes at the request of the patentee or the interested party.

When the department charged with patent law enforcement or the department charged with the administration of patents performs the functions and duties specified in the preceding two paragraphs in accordance with the law, the interested party shallassist and cooperate and shall not refuse or interfere the performance.

**Article 70.** The patent administration departmentunder the State Council may handle patent infringement disputes that have significant influence nationwide at the request of the patentee or interested party.

In handling patent infringement disputes at the request of the patentee or interested party, the department charged with the administration of patents of a local people's government may concurrently handle cases in which the same right of a patent is infringed upon within its administrative region; and may request the department charged with the administration of patents of the local people's government at a higher level to handle cases in which the same right of a patent is infringed upon across different administrative regions.

**Article 71.** The amount of compensation for the damage caused by the infringementof the patent right shall be assessed on the basis of the actual losses suffered by the rightholder because of the infringement or the profits the infringer has earned because of theinfringement. Where it is difficult to determine the losses the right holder has suffered orthe profits the infringer has earned, the amount may be assessed by reference to the appropriatemultiple of the amount of the exploitation fee of that patent under a contractual license. In the case of an intentional patent infringement with serious circumstances, the amount of compensation for the damage may be determined as not less than one nor more than five times the amount determined in the aforesaid method.

Where it is difficult to determine the losses suffered by the right holder, the profits theinfringer has earned and the exploitation fee of that patent under a contractual license, thepeople's court may award the damages of not less than RMB 30,000 Yuan and not morethan RMB 5,000,000 Yuan in light of such factors, as the type of the patent right, the natureand the circumstances of the infringing act.

The amount of compensation for the damage shall also include the reasonable disbursements of the right holder for preventing the infringement.

Where the right holder has made best efforts to adduce evidence but the account books and materials relating to the infringement act are mainly in the possession of the infringer, in order to determine the amount of compensation for the damage, the people's court may order the infringer to provide such account books and materialsrelating to the infringement act; and if the infringer fails to provide them or provides any false ones, the people's court may award the amount of compensation for the damage by reference to the claims of and the evidence provided by the right holder.

**Article 72.**Where any patentee or interested party has evidence to prove that anotherperson is infringing or will soon infringe his or itspatent right and preventing it or he to realize the patent, and that if such infringingact is not checked or prevented from occurring in time, it is likely to cause irreparable harmto it or him, it or he may, before any legal proceedings are instituted, petition the people'scourt to adopt measures for attachment of property, ordering certain conduct, or prohibiting certain conduct, in accordance with the law.

**Article 73.** In order to stop patent infringement, under the circumstances where theevidence might be destroyed or where it would be difficult to obtain in the future, the patenteeor the interested party may petition the people's court for evidence preservation beforeinstituting legal proceedings in accordance with the law.

**Article 74.**Prescription for instituting legal proceedings concerning the infringement of patent right is three years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the infringing act or the infringer.

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 three 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 75.** None of the following shall be deemed as infringement of the patentright:

(1) where, after the sale of a patented product or a product obtained directly by a patentedprocess by the patentee or any entity or individual authorized by the patentee, anyother person uses, offers to sell, sell, or imports that product;

(2) where, before the date of filing of the application for patent, any person who hasalready made the identical product, used the identical process, or made necessary preparationsfor 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 accordancewith any agreement concluded between the country to which the foreign means of transportbelongs and China, or in accordance with any international treaty to which both countriesare party, or on the basis of the principle of reciprocity, for its own needs, in its devices andinstallations;

(4) where any person uses the patent concerned solely for the purposes of scientificresearch and experimentation; or

(5) where for the purposes of providing information needed for the regulatory examinationand approval, any person makes, uses or imports a patented medicine or a patentedmedical apparatus, and where any person makes, imports the patented medicine or the patentedmedical apparatus exclusively for such person.

**Article 76.**Where, in the process of assessment and approval for the marketing of a drug, any dispute arises between the applicant for the marketing of a drug and the relevant patentee or interested party over the patent right related to the drug of which an application for registration is filed, the relevant party may institute legal proceedings in the people's court, requesting a judgment as to whether the relevant technical solution of the drug of which an application for registration is filed falls within the scope of protection of any other person's patent on a drug. The Medical Product Administration of the State Council may, within the prescribed time limit, make a decision on whether to suspend the approval of marketing of the relevant drug according to the effective judgment of the people's court.

The applicant for the marketing of a drug and the relevant patentee or interested party may also apply to the patent administration departmentunder the State Council for an administrative adjudication on any patent dispute related to the drug of which an application for registration is filed.

The Medical Product Administration of the State Council shall, in conjunction with the patent administration departmentunder the State Council, develop specific connecting measures for the resolution of patent disputes in the stages of approval of drug marketing and application for the marketing of a drug, report such measures to the State Council, and implement them upon consent of the State Council.

**Article 77.**Any person, who, for production and business purpose, uses, offers to sellor sells a patent infringement product, without knowing that it was made and sold withoutthe authorization of the patentee, shall not be liable to compensate for the damage of the patenteeif he can prove that he obtains the product from a legitimate channel.

**Article 78.**Where any person, in violation of the provisions of Article 19 of thisLaw, files in a foreign country an application for a patent that divulges an important secretof the State, he shall be subject to disciplinary sanction by the entity to which he belongs orby the competent authority concerned at the higher level. Where a crime is established, theperson concerned shall be prosecuted for his criminal liability according to the law.

**Article 79.**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 sanction in accordance with law.

**Article 80.**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 sanction in accordance with law.

**Chapter VIII**

**Supplementary Provisions**

**Article 81.**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 paymentof a fee as prescribed.

**Article 82.**This Law shall enter into force on April 1, 1985.