Patent Law of the People's Republic of China

(Adopted at the 4th Session of the Standing Committee of the Sixth National People's Congress on 12 March 1984. Amended in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China at its 27th Session on 4 September1992. Amended for the second time in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 17th Session on 25 August 2000. Amended for the third time in accordance with the Decision of the Standing Committee of the Eleventh National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 6th Session on 27 December 2008. Amended for the fourth time in accordance with the Decision of the Standing Committee of the Thirteenth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 22nd Session on 17 October 2020.)

Table of contents

Chapter I. General Provisions

Article 1 This Law is enacted for the purpose of protecting the legitimate rights and interests of patentees, encouraging invention-creation, promoting the application of invention-creation, enhancing innovation capability, promoting the advancement of science and technology and the economic and social development.

Article 2 For the purposes of this Law, invention-creations mean inventions, utility models and designs. "Inventions" mean new technical solutions proposed for a product, a process or the improvement thereof.

"Utility models" mean new technical solutions proposed for the shape and structure of a product, or the combination thereof, which are fit for practical use.

"Designs" mean, with respect to the entirety or a part of a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application.

Article 3 The Patent Administration Department under the State Council shall be responsible for the administration of patent-related work nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.

The departments in charge of patent-related work of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative areas.

Article 4 Where an invention-creation for the patent of which an application is filed involves national security or other major interests of the State and confidentiality needs to be maintained, the application shall be handled in accordance with the relevant regulations of the State.

Article 5 Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests.

Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and 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 invention-creation, the right to apply for a patent be-

longs to the entity. After the application is approved, the entity shall be the patentee. The entity may according to law dispose of its right to apply for a patent and the patent right of its service invention-creation to promote the implementation and use of the relevant 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 a provision shall apply.

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

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

Article 9 For any identical invention-creation, only one patent right shall be granted. However, with respect to the application for a utility model patent and invention patent for the identical invention-creation filed by the same applicant on the same day, the invention patent may be granted if this utility model patent right obtained first is still in force, and the applicant declares to abandon the granted utility model patent.

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

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

Any assignment, by a Chinese entity or individual, of the right to apply for a patent, or of the patent right, to a foreigner, foreign enterprise or other foreign organizations, shall be done by going through the formalities under the related laws and administrative regulations.

Where the right to apply for a patent or the patent right is assigned, the parties shall conclude a written contract and register it with the Patent Administration Department under the State Council. The Patent Administration Department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration.

Article 11 After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the permission 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 permission 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 individual 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 for exploitation, to exploit the patent.

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

Article 14 If the co-owners of a right to apply for patent or a patent right have an agreement on the exercise of the right, the agreement shall apply. If there is no such agreement, any co-owner may independently exploit or license others to exploit the patent through ordinary licenses; any royalties obtained from licensing others to exploit the patent shall be distributed amongst all the co-owners.

Except for the circumstance provided for in the above paragraph, the exercise of a jointly-owned right to apply for patent or a patent right shall be consented by 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 the entity that is granted a patent right to implement property right incentives by means of

offering equities, options, dividend, etc. to allow inventors or creators to have a reasonable share of the benefit from the innovation.

Article 16 The inventor or designer 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 packing 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 shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are parties, 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, he or it shall appoint a legally incorporated patent agency to act on his or its behalf.

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 any 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 Any entity or individual intending to file an application for a patent in a foreign country for an invention-creation made in China shall apply in advance for a confidentiality examination conducted by the Patent Administration Department under the State Council. The procedures and duration regarding the confidentiality examination shall be enforced 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 a 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 a party, this Law and the relevant regulations of the State Council.

Any foreign patent application that violates the provision of the first paragraph of this Article will not be granted a patent right if the patent is applied for in China.

Article 20 The principle of honesty and good faith shall be followed in applying for patents and exercising patent rights. The patent rights shall not be abused to harm public interests or the legitimate rights and interests of any other person.

Any abuse of patent right, or exclusion or restriction of competition that constitutes a monopolistic act shall be dealt with according to 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 Department under the State Council shall strengthen the building of a public service system for patent information; release patent information in a complete, accurate and timely manner; provide basic patent data; publish patent gazette on a regular basis; 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 secret.

Chapter II. Conditions for the Grant of Patent Rights

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

Novelty means that the invention or utility model shall neither belong to the prior art, nor has any entity or individual previously filed before the date of filing with the Patent Administration Department under the State Council an appli-

cation which described the identical invention or utility model and was recorded in patent application documents or other gazetted patent documents published after the said date of filing.

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

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

The "prior art" mentioned in this Law refers to any technology known to the public before the filing date of the patent application in China and abroad.

Article 23 Any design for which patent right may be granted shall not belong to a prior design; nor has any entity or individual previously filed before the date of filing with the Patent Administration Department under the State Council an application relating to an identical design which was presented in patent documents published after the said date of filing.

The design for which a patent right may be granted shall be substantially different from prior designs or a combination of the features of prior designs.

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

The prior design mentioned in this Law means any design known to the public before the filing date of the patent application in China and abroad.

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

(I) where it was disclosed for the first time for the purpose of public interest when a state emergency or an extraordinary situation 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 disclosed by any person without the consent of the applicant.

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

(1) scientific discoveries;

(2) rules and methods for mental activities;

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

(4) animal and plant varieties;

(5) nuclear transformation and substances obtained by means of nuclear transformation.

(6) two dimensional designs of images, colors or combinations of the two that mainly serve 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 Patents

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 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 clearly and briefly specify the scope of the patent protection claimed.

An applicant who files an application for patent for an invention - creation completed on the basis of genetic resources shall indicate, in the patent application documents, the direct and original source of the genetic resources; the applicant who is unable to indicate the original source of the genetic resource shall explain the reason.

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

The drawings or photographs submitted by the applicant should clearly indicate the design for which patent protected is sought.

Article 28 The date on which the Patent Administration Department under the State Council receives the application shall be the date of filing. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of filing.

Article 29 Where, within twelve months from the date on

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

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

Any applicant who claims the right of priority for a design application shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed.

If the applicant fails to make the written declaration or to meet the time limit for submitting the patent application document, the claim to the right of priority shall be deemed not to have been made.

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

For one design, only one application shall be filed for the patent for design. Two or more similar designs incorporated in one product, or two or more designs incorporated in the products of one category and sold or used in sets may be submitted together in 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 Patent Applications

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.

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

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

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

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

Article 37 Where the Patent Administration Department

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

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

Article 39 Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the Patent Administration Department under the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall take effect as of the date of the announcement.

Article 40 Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the Patent Administration Department under the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall take effect as of the date of the announcement.

Article 41 Where a patent applicant is not satisfied with the decision of the Patent Administration Department under the State Council on rejection of application, the applicant may, within three months from the date of receipt of the notification, request the Patent Administration Department under the State Council to make a reexamination. The Patent Administration Department under the State Council, after reexamination, shall make a decision and notify the applicant for patent.

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

Chapter V. Term, Termination and Invalidation of Patent Rights

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, the duration of patent right for designs shall be fifteen years, counted from the date of filing.

Where an invention patent application is granted after four years from the date of filing and after three years from the date of requesting substantive examination, the Patent Administration Department under the State Council shall, upon the request of the patentee, award a compensation on the term of patent for unreasonable delay in granting the patent for invention, but the compensation on patent term shall not apply to the unreasonable delay caused by the applicant.

In order to compensate the time spent on the marketing authorization of a new drug, for the patent for invention related to a new drug of which the authorization for marketing in China has been obtained, the Patent Administration Department under the State Council shall, upon the request of the patentee, award a compensation on the term of the patent. The compensated term shall not exceed five years, and the total effective term of patent right after the marketing authorization of the new drug 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 Department under the State Council.

Article 45 Where, starting from the date of the announcement of the grant of the patent right by the Patent Administration Department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Administration Department under the State Council to declare the patent right invalid.

Article 46 The Patent Administration Department under

the State Council shall examine the request for invalidation of the patent right promptly, make a decision and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the Patent 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 patentee or the assignor of the patent right makes no repayment of damages for patent infringement, the fee for the exploitation of the patent or of the price for the assignment of the patent right, which is obviously contrary to the principle of equity, the whole or part of above-mentioned fees shall be repaid.

Chapter VI. Special Licence for Patent Exploitation

Article 48 The Patent Administration Department under the State Council, and the patent administration departments under local people's governments shall, in conjunction with relevant departments at the same level, take measures to strengthen patent public service and promote the exploitation and utilization of patents.

Article 49 Where any patent for invention, belonging to any state-owned enterprise or institution, is of great significance to the interest of the State or to the public interest, the competent departments concerned under the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, after reporting to and being approved by the State Council, decide that the patented invention be promoted and applied within the approved scope, and allow designated entities to exploit that invention. The exploiting entity shall, according to the regulations of the State, pay royalties to the patentee.

Article 50 Where the patentee voluntarily states in writing to the Patent Administration Department under the State Council that it or he is willing to grant a license to any entity or individual to exploit its or his patent, and specifies the payment method and standard of the royalties for the licensing, the Patent Administration Department under the State Council shall announce the open licensing of the patent. Where the open licensing statement is made for a utility model patent or design patent, a patent evaluation report shall be provided.

Where the patentee withdraws the open licensing statement, the withdrawal request shall be submitted in writing and announced by the Patent Administration Department under the State Council. The announcement of the withdrawal of an open licensing statement will not affect the validity of the open license granted prior to the announcement.

Article 51 Any entity or individual intending to exploit the patent under an open license shall notify in writing the patentee and pay the royalties according to the announced payment method and standard of the royalties to obtain the license for exploiting the patent.

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

The patentee who implements open licensing may grant a non-exclusive license after consulting with the licensee on the royalties, but shall not grant any exclusive or sole license for the patent.

Article 52 Any dispute between the interested parties over the exploitation of an open license shall be settled through consultation by the parties. Where any party is not willing to consult or where the consultation fails, he may re-

quest the Patent Administration Department under the State Council to mediate or may institute legal proceedings in the people's court.

Article 53 In any of the following cases, the Patent Administration Department under the State Council may, upon the application of that entity or individual, grant a compulsory license to exploit the patent for the invention or utility model.

(1) where the patentee after the expiration of three years from the date of granting the patent right, and the expiration of four years from the date of filing, does not exploit the patent or does not sufficiently exploit the patent without any justified reasons;

(2) where the enforcement of the patent right by the patentee has been legally determined as an act of monopoly, and adverse effects of the act on competition need to be eliminated or reduced.

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 State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 55 For the purpose of public health, the Patent Administration Department under the State Council may grant a compulsory license to manufacture a drug which has been granted a patent right in China and to export it to the countries or regions specified in related international conventions to which China is a party.

Article 56 Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the Patent Administration Department under the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Where, according to the preceding paragraph, a compulsory license is granted, the Patent Administration Department under the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

Article 57 Where the invention-creation covered by the compulsory license relates to semi-conductor technology, the exploitation under the compulsory license is limited to the use for the purpose of the public interest and under the circumstances specified in Article 53 (2).

Article 58 Except as otherwise provided for in Article 53 (2) and Article 55 of this Law, the compulsory license is executed mainly for the supply of the domestic market.

Article 59 Any entity or individual applying for a compulsory license in accordance with the provisions of Article 53 (1) or Article 56 of this Law shall provide proof that it or he has made requests for a license to the patentee to exploit the patent on reasonable conditions, but was not licensed within 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 reoccur, 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 exploitation shall pay to the patentee a reasonable exploitation fee or handle the issue of the exploitation fee in accordance with the relevant provisions of international conventions to which China is a party. The amount of the fee shall be fixed by both parties in consultations. Where the parties fail to reach an agreement, the Patent Administration Department under the State Council shall adjudicate.

Article 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 for exploitation is not satisfied with the ruling made by the Patent Administration Department under the State Council regarding the fee payable for exploitation, it or he may, within three months from the receipt of the date of notification, institute legal proceedings

in the people's court.

Chapter VII. Protection of Patent rights

Article 64 The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the claims.

The extent of protection of the patent right for design shall be determined by the product incorporating the patented design as shown in the drawings or photographs. The brief explanation may be used to interpret the product incorporating the design 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 a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process.

Where the infringement relates to a patent for utility model or design, the people's court or the administrative authority for patent affairs may ask the patentee or the interested party to furnish a patent evaluation report made by the Patent Administration Department under the State Council after searching, analyzing and evaluating the patent which may be used as evidence to determine or settle patent disputes. The patentee, the interested party or the accused infringer may also take the initiative to furnish a patent evaluation report.

Article 67 In a patent infringement dispute, if the alleged infringer has evidence proving that technology or design it or he exploited belongs to the prior art or is a prior design, the patent right is not infringed.

Article 68 Where any person passes off the patent of another person as his own, he shall, in addition to bearing his civil liability according to law, be ordered by the department in charge of patent enforcement to correct, and the order shall be announced and the illegal earning shall be confiscated and a fine of not more than five times of the illegal earning may be imposed. Where there is no illegal earning or the illegal earning is less than RMB 50,000 yuan, a fine of not more than RMB 250,000 yuan may be imposed. Where the infringement constitutes a crime, he shall be prosecuted for his criminal liability.

Article 69 When investigating and prosecuting the suspected patent passing-off, the department in charge of patent enforcement, based on the evidence it has obtained, has the power to take the following measures:

(1) query the related parties and conduct investigations concerning the suspected illegal act;

(2) conduct on-site inspection of the premises where the parties were engaged in the suspected illegal act;

(3) consult and reproduce any contracts, invoices, account books and other materials related to the suspected illegal act;

(4) examine the products related to the suspected illegal act, and

(5) may seal or seize those products that have been proved with evidence to be passing off of the patent.

When handling a patent infringement dispute, the patent administration department, upon the request of the patentee or an interested party, may take the measures as provided in items (1), (2), (4) of the preceding paragraph.

Where the department in charge of patent enforcement or the patent administration department performs its func-

tion and exercises its power according to law specified in the preceding two paragraphs, the parties concerned shall offer assistance and cooperate with no refusal or obstruction.

Article 70 The Patent Administration Department under the State Council may, upon the request of the patentee or an interested party, handle a patent infringement dispute with significant impact nationwide.

Where a patent administration department under local people's government handles a patent infringement dispute upon the request of the patentee or an interested party, it may combine and handle the cases in which the same patent right is infringed in its administrative region, or request the patent administration department under local people's government at a higher level to handle cases involving cross-regional infringement of the same patent right.

Article 71 The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the loss actually suffered by the patentee, or the profits which the infringer has earned through the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the patent license fee. For willful patent infringement, if the circumstances are serious, the amount of the compensation may be determined at more than one time and less than five times of the amount determined according to the above methods.

If it is difficult to determine the losses which the patentee has suffered, the benefits which the infringer has earned, or the exploitation fee of patent license, the people's court may award a compensation of no less than RMB 30,000 yuan and no more than RMB 5,000,000 yuan depending on the factors, such as the type of patent right, the nature and gravity of the infringing act.

The amount of compensation shall include the reasonable costs paid by the patentee for stopping the infringement.

When determining the amount of compensation, if the right owner has exhausted every means to provide evidence but the relevant account book or information on the infringing act is mainly controlled by the infringer, the people's court may order the infringer to provide the relevant account book or information on the infringing act. If the infringer fails to provide or provides fraudulent account book or information, the people's court may award the amount of compensation by reference to the claim asserted and evidence provided by the right owner.

Article 72 Where any patentee or interested party has evidence to prove that another person is committing or is about to commit an act that infringes its or his patent right and hinders the exercise of 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 according to law, before filing a suit, make a request to the people's court for property preservation or for adopting measures to impose or forbid certain act.

Article 73 In order to curb patent infringing activities, under the circumstance where the evidence might be destroyed or would be difficult to obtain in the future, the patentee or an interested party may make a request according to law to the people's court for evidence preservation before bringing a lawsuit.

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 knows or should have known the infringing act and the infringer.

Where no appropriate fee for exploitation of the 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 knows or should have known the exploitation of his invention by another person. However, where the patentee has already known or should have known 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 an infringement of the patent right:

(I) Where, after the sale of a patented product or products directly obtained through the patented process, which was made by the patentee, an entity or individual authorized by the patentee, any other person uses, offers to sell, sells or imports that product;

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

(3) Where any foreign means of transport which temporarily passes through the territory, territorial waters or territo-

rial 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 parties, 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.

(5) For the purpose of providing the information needed for the regulatory examination and approval, manufacture, use or import of a patented drug or a patented medical apparatus, and exclusively for such manufacture or import of a patented drug or a patented medical apparatus.

Article 76 In the process of the review and approval of drug marketing, if a dispute arises between the applicant for drug marketing authorization and the relevant patentee or an interested party on account of the patent right related to the drug applied for registration, the relevant party may institute legal proceedings with the people's court and request the court to make a judgment on whether the relevant technical solution falls within the scope of protection of others' drug patents. The Medical Products Administration under the State Council may, within the prescribed time limit, make a decision on whether to suspend the approval of the marketing of relevant drug based on the effective judgment of the people's court.

Alternatively, the applicant for drug marketing authorization and the relevant patentee or the interested party may request an administrative ruling from the Patent Administration Department under the State Council in respect of the dispute over the patent right related to the drug applied for registration.

The Medical Products Administration under the State Council, in conjunction with the Patent Administration Department under the State Council, shall formulate specific measures for linking up drug marketing authorization with patent dispute resolution during the stage of application for drug listing and marketing, which shall be implemented after the approval of the State Council.

Article 77 Any party who, for production and business purposes, uses, offers to sell or sells a patented product without knowing that it was made and sold without the authorization of the patentee, shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate source.

Article 78 Where any person, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent that divulges an important secret of the State, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority concerned at the higher level. Where a crime is established, the person concerned shall be prosecuted for his criminal liability according to 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 disciplinary sanction according to law.

Article 80 Where any functionary working for patent administration or any other 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 according to law. If the circumstances are not serious enough to constitute a crime, he shall be given disciplinary sanction according to 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 payment of a fee as prescribed.

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