

## **Patent Law of the People's Republic of China (Revised)**

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 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 Meeting on September 4, 1992

Amended again 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 27th Meeting on August 25, 2000

Amended again 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 Six Meeting on December 27, 2008)

<b>Chapter I</b>	<b>General Provisions</b>
<b>Chapter II</b>	<b>Requirements for Grant of Patent Right</b>
<b>Chapter III</b>	<b>Application for Patent</b>
<b>Chapter IV</b>	<b>Examination and Approval of Application for Patent</b>
<b>Chapter V</b>	<b>Duration, Cessation and Invalidation of Patent Right</b>
<b>Chapter VI</b>	<b>Compulsory License for Exploitation of Patent</b>
<b>Chapter VII</b>	<b>Protection of Patent Right</b>
<b>Chapter VIII</b>	<b>Supplementary Provisions</b>

### **Chapter I General Provisions**

#### Article 1

This Law is enacted to protect the legal rights of the patentee, to encourage inventions-creations, to impulse the application of inventions-creations, to enhance the capability of innovation, and to promote the advancement 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 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 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 of the State or social morality or that is detrimental to public interest.

No patent right shall be granted for any invention-creation which is accomplished depending on the genetic resources whose acquisition or use violates the relevant laws or administrative regulations of the State.

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

For a non-employee 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-employee 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, where the same applicant(s) apply for both a patent for invention and a patent for utility model for the same invention-creation on the same day, if the previously granted patent for utility model has not been expired and the applicant(s) declares to abandon the patent for utility model, then the patent right 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 to apply for a patent and the patent right may be assigned.

Any assignment of the right to apply for a patent, or of the patent right by a Chinese entity or individual to a foreigner, a foreign entity, or other foreign organization must go through formalities in accordance with provisions of 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 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 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

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

#### Article 15

Where the co-owners of a right to apply for a patent or a patent right have an agreement with respect to the exploitation of the patent, the co-owners shall follow the agreement. Otherwise, any co-owner may exploit the patent alone and grant others a non-exclusive license to exploit the patent. Where the patent is licensed to others, the exploitation fee received shall be allocated among all the co-owners.

Except as provided in the preceding paragraph, any co-owned patent application right or any co-owned patent right shall not be exploited without consent of all the co-owners.

#### Article 16

The entity that is granted a patent right shall award to the inventor or creator of an employee invention-creation a reward and, upon exploitation of the patented invention-creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded.

#### Article 17

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

The patentee has the right to affix a patent marking and to indicate the number of the patent on the patented product or on the packing of that product.

#### Article 18

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

#### Article 19

Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, it or he shall appoint a patent agency established in accordance with law to act as his or its agent.

Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a patent agency established in accordance with law to act as its or his agent.

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

#### Article 20

Where any entity or individual intends to file an application in a foreign country for a patent for invention-creation or utility model made in China, it or he shall be subject to a prior secrecy examination by the Patent Administration Department Under the State

Council. The procedure and duration of the secrecy examination are prescribed by relevant provisions 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 any invention-creation or utility model, for which an application is filed in a foreign country in contrary to the provision of the first paragraph of this Article, no patent right shall be granted for it if the patent is applied for in China.

#### Article 21

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

The Patent Administration Department Under the State Council shall disclose the patent related information completely, accurately and timely, and shall publish the Patent Gazette periodically.

Until the publication or announcement of the application for a patent, staff members of the Patent Administration Department Under the State Council and other persons involved have the duty to keep its contents secret.

## **Chapter II Requirements for Grant of Patent Right**

#### Article 22

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

Novelty means that, the invention or utility model shall neither belong to the prior art, nor has any entity or individual filed before the date of filing with the Patent Administration

Department Under the State Council an application which describes the identical invention or utility model and was published in patent application documents or disclosed in patent documents announced after 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 referred to in the Patent Law means any technology known to the public in the country or abroad before the date of filing.

#### Article 23

Any design for which patent right may be granted shall neither belong to the 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 which describes the identical design and was disclosed in a patent document announced after said date of filing.

Any design for which patent right may be granted shall be obviously different from the prior design or the combination of features of the prior design.

Any design for which patent right may be granted must not be in conflict with any legal right of any other person that was acquired before the date of filing.

The prior design referred to in the Patent Law means any design known to the public in the country or abroad before the date of filing.

#### Article 24

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

- (1) where it was first exhibited at an international exhibition sponsored or recognized by the Chinese Government;
- (2) where it was first made public at a prescribed academic or technological meeting;
- (3) where it was disclosed by any person without the consent of the applicant.

#### Article 25

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

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis or for the treatment of diseases;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation.
- (6) designs of patterns, colors or their combination, of two-dimensional printed matter, mainly for the purpose of identification.

For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

### **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 clearly and concisely the extent of the patent protection asked for.

For an invention-creation accomplished by depending on generic resources, the applicant shall indicate in the patent application document the direct source and original source of the generic resources. The applicant shall state the reasons if the original source of said genetic resources cannot be indicated.

#### Article 27

Where an application for a patent for design is filed, a request, drawings or photographs of the design, as well as a brief description of the design shall be submitted.

The related drawings or photographs filed by the applicant shall clearly show the design of the product which the protection is asked for.

#### Article 28

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

#### Article 29

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

Where, within twelve months from the date on which any applicant first filed in China an application for a patent for invention or utility model, he or it files with the Patent Administration Department Under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

#### Article 30

Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the patent application document, the claim to the right of priority shall be deemed not to have been made.

#### Article 31

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

An application for a patent for design shall be limited to one design incorporated in one product. Two or more than two similar designs for the same product, or more designs which are incorporated in products belonging to the same class and are sold or used in sets may be filed as one application.

#### Article 32

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

#### Article 33

An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of the disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

### **Chapter IV Examination and Approval of Application for Patent**

#### Article 34

Where, after receiving an application for a patent for invention, the Patent Administration Department Under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of eighteen months from the date of filing. Upon the request of the applicant, the Patent Administration Department Under the State Council publishes the application earlier.

#### Article 35

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

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

#### Article 36

When the applicant for a patent for invention requests examination as to substance, he or it shall furnish predate of filing reference materials concerning the invention.

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

#### Article 37

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

#### Article 38

Where, after the applicant has made the observations or amendments, the Patent Administration Department Under the State Council finds that the application for a patent

for invention is still not in conformity with the provisions of this Law, the application shall be rejected.

#### Article 39

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

#### Article 40

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

#### Article 41

The Patent Administration Department Under the State Council shall set up a Patent Reexamination Board. Where an applicant for patent is not satisfied with the decision of the said department rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant for patent.

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

### **Chapter V Duration, Cessation and Invalidation of Patent Right**

#### Article 42

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

#### Article 43

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

#### Article 44

In any of the following cases, the patent right shall cease before the expiration of its duration:

- (1) where an annual fee is not paid as prescribed;
- (2) where the patentee abandons his or its patent right by a written declaration. Any cessation of the patent right shall be registered and announced by the Patent Administration Department Under the State Council.

#### Article 45

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

#### Article 46

The Patent Reexamination Board shall examine the request for invalidation of the patent right promptly, make a decision on it and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the Patent Administration Department Under the State Council.

Where the patentee or the person who made the request for invalidation is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of

the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the person that is the opponent party of that party in the invalidation procedure to appear as a third party in the legal proceedings.

#### Article 47

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

The decision declaring the patent right invalid shall have no retroactive effect on any judgment 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 compensation for patent infringement, the exploitation of the patent, or the price for the assignment of the patent right is not repaid, which is obviously contrary to the principle of equity, the whole or part of the fee shall be repaid.

### **Chapter VI Compulsory License for Exploitation of Patent**

#### Article 48

In any of the following cases, the Patent Administration Department Under the State Council may, upon the request of an entity or individual that is qualified to exploit the invention or utility model, grant a compulsory license to exploit the patent for invention or utility model:

(1) where the patentee, after the expiration of three years from the grant of the patent right and of the expiration of four years from the filing date of patent application, has not exploited or has not sufficiently exploited its or his patent without any justified reason;

(2) To eliminate or reduce disadvantageous effect to competition, where the patentee's exercise of the patent right is determined according to relevant laws as monopolistic act.

#### Article 49

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

#### Article 50

For the sake of the public health, the Patent Administration Department Under the State Council may grant a compulsory license to manufacture and export a medication which has been granted patent rights in China to the countries or areas stipulated by relevant international treaties, which the People's Republic of China affiliated.

#### Article 51

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 52

Where the invention-creation involved in the compulsory license relates to the semi-conductor technology, the exploitation under the compulsory license shall be limited to the public interests or the reason stipulated by item (2) of Article 48 of the Patent Law.

#### Article 53

Except for the compulsory license for exploitation prescribed by item (2) of Article 48 and Article 50 of the Patent Law, the exploitation of the compulsory license shall be limited to be predominately for the supply of the domestic market.

#### Article 54

The entity or individual requesting, in accordance with the provisions of item (1) of Article 48 and Article 51 of this Law, a compulsory license for exploitation shall furnish proof that it or he has requested the patentee for a license for exploitation on reasonable conditions but was not able to obtain the license within reasonable period of time.

#### Article 55

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 56

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 57

The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, or the exploitation fee may be determined in accordance with relevant international conventions applying to the Peoples' Republic of China. The amount of the paid exploitation 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 58

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

### **Chapter VII Protection of Patent Right**

#### Article 59

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 content of 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 design of a product shown by drawings or photographs.

#### Article 60

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 61

Where any patent 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 patent infringement dispute relates to a patent for utility model or a patent for design, the people's court or the administrative authority for patent affairs may ask the patentee or interested party to furnish an evaluation report of patent right made by the Patent Administration Department Under the State Council after searching, analyzing and evaluating the patent for the utility model or design, so that it may be used as an evidence for the trial and handle of the infringement dispute.

#### Article 62

In a patent infringement dispute, if the accused infringer can furnish evidence to prove that the technique or design he exploited belongs to the prior art or prior design, the said exploiting act shall not be considered as constituting an infringing act.

#### Article 63

Where any person passes off the patent of another person as his own, he shall, in addition to bearing his civil liability according to law, be ordered by the administrative authority for patent affairs to amend his act, and the order shall be announced. His illegal

earnings shall be confiscated and, in addition, he may be imposed a fine of not more than four times his illegal earnings and, if there is no illegal earnings, a fine of not more than RMB 200,000 yuan. Where the infringement constitutes a crime, he shall be prosecuted for his criminal liability.

#### Article 64

When handling an act suspected to pass off the patent of another person based on the acquired evidences, the administrative authority for patent affairs has right to inquire the interested parties to investigate the facts related to the suspected illegal act, to carry out an inspection of the site where the party's illegal act took place, to inspect and duplicate the contacts, invoices, account books and other relevant data related to the suspected illegal act, to examine the products related to the suspected illegal act, and to seal up or seize the products which are proved by evidences to pass off the patent of another person.

When the administrative authority for patent affairs exercises the functions and authorities prescribed in the previous paragraph, the concerned parties shall assist and cooperate with it and shall not refuse or impede them.

#### Article 65

The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the actual losses suffered by the patentee. Where it is difficult to determine the actual losses, the amount of compensation may be assessed on the basis of the profits which the infringer has earned through the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license. The amount of compensation shall further include reasonable expenses which the patentee has incurred in order to stop the infringement act.

If it is difficult to determine the losses which the patentee has suffered, the profits which the infringer has earned, or the amount of the exploitation fee of that patent under contractual license, the people's court may decide an amount of compensation ranging

from RMB 10,000 yuan to RMB 1,000,000 yuan on the basis of the type of patent, the nature and circumstances of the infringement.

#### Article 66

Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, request the people's court to adopt measures for ordering the suspension of relevant acts.

When filing a request, the requester shall provide a bond. If the requester fails to provide a bond, the request shall be rejected.

The people's court shall render a ruling within 48 hours from the reception of the request. It may be prolonged for another 48 hours if necessary for some special reasons. If the court rules to grant the suspension of the relevant act, the execution thereof shall be started immediately. Where the interested party is not satisfied with the ruling, he can request for reconsideration once. The execution of the ruling is not suspended during the reconsideration procedure.

Where the requester fails to institute legal proceedings within 15 days after the people's court has ruled the suspension of relevant acts, the people's court shall terminate the measure.

Where the request is wrong, the requester shall pay compensation for the losses that the respondent suffered by the suspension of relevant acts.

#### Article 67

A patentee or an interested party may, in order to stop infringing act, apply to a people's court for the preservation of evidence prior to instituting legal proceedings, if such evidence might be destroyed, lost or difficult to obtain later.

When taking preservation measures, the people's court may order the requester to provide a bond. If the requester fails to provide a bond, the request shall be rejected.

The people's court must render a ruling within 48 hours of receipt of the request. The implementation of a ruling to adopt preservation measures shall commence immediately

after it is rendered.

If the requester fails to institute legal proceedings within 15 days after the people's court has adopted the preservation measures, the people's court shall terminate the preservation measures.

#### Article 68

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

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

#### Article 69

None of the following shall be deemed an infringement of the patent right:

(1) Where, after the sale of a patented product that was made or imported by the patentee or with the authorization of the patentee, or of a product that was directly obtained by using the patented process, any other person uses, offers to sell or sells that product;

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

(3) Where any foreign means of transport which temporarily passes through the territory, territorial waters or territorial airspace of China uses the patent concerned, in accordance with any agreement concluded between the country to which the foreign

means of transport belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations;

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

(5) Where a patented medication or patented medical apparatus is made, used, imported in order to provide information necessary for administrative examination and approval, and a patented medication or patented medical apparatus is made or imported particular for the same purpose.

#### Article 70

Any person who, for production and business purpose, uses, offers to sell, or sells an infringing 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 71

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

#### Article 72

Where any person usurps the right of an inventor or creator to apply for a patent for a non-service invention-creation, or usurps any other right or interest of an inventor or creator, prescribed by this Law, he shall be subject to disciplinary sanction by the entity to which he belongs or by he competent authority at the higher level.

#### Article 73

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

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

#### Article 74

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

### **Chapter VIII    Supplementary Provisions**

#### Article 75

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 76

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