

Patent Law of the People's Republic of China (as Amended 2008)

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Chapter I General Provisions

Article 1 This law is enacted for the purpose of protecting the legitimate rights and interests of patentees, encouraging inventions, giving an impetus to the application of inventions, improving the innovative capabilities, and promoting scientific and technological progress as well as the economic and social development.

Article 2 The "inventions" as used in this Law means inventions, utility models and designs.

The term "invention" refers to any new technical solution relating to a product, a process or an improvement thereof.

The term "utility model" refers to any new technical solution relating to a product's shape, structure, or a combination thereof, which is fit for practical use.

The term "design" refers to any new design of a product's shape, pattern or a combination thereof, as well as the combination of the color and the shape or pattern of a product, which creates an aesthetic feeling and is fit for industrial application.

Article 3 The patent administrative department of the State Council shall be responsible for the administration of the patent work throughout China, uniformly accept and examine applications

for patents, and grant patents in accordance with the law.

The patent administrative department of the people's government of each province, autonomous region, or municipality directly under the Central Government shall take charge of the administration of patents within its own jurisdiction.

Article 4 Where the invention for which a patent is applied for relates to the security or other vital interests of the State and is required to be kept confidential, the application shall be handled in accordance with the relevant provisions of the State.

Article 5 No patent shall be granted for an invention that contravenes any law or social moral or that is detrimental to public interests.

No patent will be granted for an invention based on genetic resources if the access or utilization of the said genetic resources is in violation of any law or administrative regulation.

Article 6 An invention made by a person in the execution of the tasks of the entity for which he works or made by him by taking advantage of the material and technical means of this entity shall be a service invention. The right to apply for patenting a service invention shall remain with the entity. After the application is approved, the entity shall be the patentee.

For any non-service invention, the right to apply for a patent shall remain with the inventor or designer. After the application is approved, the inventor or designer shall be the patentee.

For an invention made by a person by taking advantage of the material and technical means of the entity where he works, if there is a contract between the entity and the inventor or designer regarding the right to apply for patent and the ownership of the patent, the contractual stipulations shall prevail.

Article 7 No entity or individual shall prevent the inventor or designer from filing an application for patenting a non service invention.

Article 8 For an invention made through the joint work of two or more entities or individuals, or made by an entity or individual upon the authorization of another entity or individual, the right to apply for a patent shall, unless it is otherwise agreed upon, remain with the entity or individual which made the invention or with the entities or individuals which jointly made the invention. After the application is approved, the entity (or entities) or individual(s) that filed the application shall be the patentee.

Article 9 One patent shall be granted to one invention. However, if a same applicant applied for both a patent for utility model and a patent for invention on a same day, if the patent for the utility model it has previously applied for has not terminated yet and if the applicant declares to waive the patent for utility model, the patent for invention can be granted.

Where two or more applicants file applications for a patent for an identical invention, the patent shall be granted to the applicant who is the first to file an application.

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

Where a Chinese entity or individual is to assign the right to apply for a patent or a patent right to a foreigner or foreign enterprise or any foreign organization, it or he shall go through the formalities under relevant laws and administrative regulations.

Where the right to apply for a patent or a patent right is assigned, the parties concerned shall conclude a written contract, and have the contract registered in the patent administrative department of the State Council. The said contract shall be announced by the patent administrative department of the State Council. The assignment of the right to apply for the patent or the patent right shall come into force as of the date of registration.

Article 11 After the granting of patent for an invention or utility model, unless it is otherwise prescribed by this Law, no entity or individual is entitled to, without permission of the patentee, exploit the patent, that is, to make, use, promise the sale of, sell or import the patented product, or use the patented process and use, promise the sale of, sell or import the product directly obtained from the patented process, for production or business purposes.

After the granting of a patent for a design, no entity or individual shall, without permission of the patentee, exploit the patent, that is to say, they shall not make, promise to sell, sell, or import the product incorporating its or his patented design, for production and business purposes.

Article 12 Where an entity or individual exploits the patent of anyone else, it or he shall conclude a licensing contract with the patentee and pay a patent royalty to the patentee. The licensee has no right to license any entity or individual other than the entity or individual as stipulated in the licensing contract to exploit the said patent.

Article 13 After the publication of an 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 owned by a state-owned enterprise or public institution is of great significance to the interests of the state or to the public interests, the relevant competent department of the State Council and the people's government of the province, autonomous region, or municipality directly under the Central Government may, upon approval of the State Council, decide to popularize and apply the patent within the approved scope, and allow designated entities to exploit the patent; and the exploiting entity shall, in accordance with the legal provisions of the state, pay royalties to the patentee.

Article 15 If there is any agreement between the joint owners of the right to apply for a patent or a patent right regarding the exercise of the relevant right, the agreement shall be followed. If there is no such agreement, any of the joint owners may exploit the patent independently or license others to exploit the patent by means of ordinary license. In the case of licensing others to exploit the patent, royalties charged shall be distributed among the joint owners.

Except for the circumstance as described in the preceding paragraph, the exercise of the right to apply for a patent or a patent right shall be based on the consensus of all joint owners.

Article 16 The entity to whom a patent is granted shall give to the inventor or designer of the service invention a reward and shall, after exploitation of the patented invention, pay the inventor or designer a reasonable remuneration on the basis of the scope of popularization and application as well as the economic benefits yielded.

Article 17 An inventor or designer has the right to expressly indicate in the patent documents that he is the inventor or designer.

A patentee has the right to label the patent on its patented product or on the package of the said product.

Article 18 Where any foreigner, foreign enterprise or other foreign organization that has 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 the agreement, if any, concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are a party, or on the basis of the principle of reciprocity.

Article 19 Where a foreigner, foreign enterprise or any other foreign organization that has no habitual abode or business office in China intends to apply for a patent or handle other patent-related matters in China, he or it shall authorize a legitimately formed patent agency to act on his or its behalf.

To apply for a patent or handle other patent-related matters in China, a Chinese entity or individual may authorize a legitimately formed patent agency to act on its or his behalf.

A patent agency shall abide by the laws and administrative regulations when filing applications for patents or handling other patent affairs as entrusted by the principal. It shall also be obligated to keep confidential the contents of the principal's invention, unless the application for patent has been published or announced. The specific measures for the administration of patent agencies shall be formulated by the State Council.

Article 20 Where an entity or individual intends to file an application in a foreign country for patenting an invention or utility model accomplished in China, it or he shall report in advance to the patent administrative department of the State Council for confidentiality review. The provisions of the State Council shall be followed in regard to the procedures and time limit for the confidentiality review.

A Chinese entity or individual may, in accordance with the relevant international treaties acceded to by the People's Republic of China, file an international application for patent. An applicant who files an international application for patent shall abide by the provisions of the preceding

paragraph.

The patent administrative department of the State Council shall handle international applications for patent in accordance with the relevant international treaties acceded to by the People's Republic of China, this Law, and the relevant provisions of the State Council.

As to an invention or utility model for which a patent application is filed in a foreign country by violating the provision of paragraph 1 of this Article, no patent will be granted to it if a patent application has been filed in China.

Article 21 The patent administrative department of the State Council and the Board of Patent Appeals and Interferences shall, pursuant to the requirements of objectivity, impartiality, accuracy and timeliness, handle the relevant patent applications and appeals.

The patent administrative department of the State Council shall completely, accurately and timely announce the patent information and regularly publish patent gazettes.

Before an application for patent is published or announced, the functionaries and other relevant persons of the patent administrative department of the State Council shall keep confidential the contents therein.

Chapter II Conditions for Granting Patents

Article 22 An invention or utility model for which a patent is to be granted shall be novel, inventive and practically applicable.

Novelty means that the invention or utility model is not an existing technology, and prior to the date of application, no entity or individual has filed an application heretofore with the patent administrative department of the State Council for the identical invention or utility model and recorded it in the patent application documents or patent documents released after the said date of application.

Inventiveness means that, as compared with the technology existing before the date of application 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 term "existing technology" as mentioned in this Law refers to the technologies known to the general public both at home and abroad prior to the date of application.

Article 23 Any design for which a patent is granted shall not be attributed to the existing design, and no entity or individual has, before the date of application, filed an application with the patent

administrative department of the State Council on the identical design and recorded it in the patent documents published after the date of application.

As compared with the existing design or combination of the existing design features, the design for which a patent is granted shall have distinctive features.

The patented design may not conflict with the lawful rights that have been obtained by any other person prior to the date of application.

The term “existing design” as used in this Law refers to a design known to the general public both at home and abroad prior to the date of application.

Article 24 An invention for which a patent is applied for does not lose its novelty where, within six months before the date of application, 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; and
- (6) the design, which is used primarily for the identification of pattern, color or the combination of the two on printed flat works.

For processes used in producing products referred to in items (4) of the preceding paragraph, a patent 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.

An application shall expressly specify the name of the invention or utility model, name of the inventor, name and address of the applicant, and other matters.

The description shall clearly and completely describe the invention or utility model 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 clearly and concisely state the requested patent protection scope in accordance with the specifications.

For an invention based on genetic resources, the applicant shall state the direct source and the original source of the genetic resources in the application documents. If the applicant is not able to state the original source, it or he shall state the reasons.

Article 27 To apply for patenting a design, the applicant shall submit an application, pictures or photos of the design, a brief introduction to the design, and other documents.

The relevant pictures or photos submitted by the applicant shall clearly show the product's design for which the patent protection is requested.

Article 28 The date on which the patent administrative department of the State Council receives the application shall be the date of application. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of application.

Article 29 Where, within twelve months from the date on which any applicant first filed in a foreign country an application for patenting an invention or utility model, or within six months from the date on which any applicant first filed in a foreign country an application for patenting a design, he or it files in China an application for patenting the same, 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 a party, or on the basis of the principle of mutual recognition of the right to priority, enjoy the right to priority.

Where, within twelve months from the date on which any applicant first filed in China an application for patenting an invention or utility model, he or it files with the patent administrative department of the State Council an application for patenting the same, he or it may enjoy the right to priority.

Article 30 Any applicant who claims the right to 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 to priority shall be deemed as having not 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 attributed to a single general inventive concept may be filed as one application.

An application for a design patent shall be limited to one design. As to two or more similar designs for the same product or for products which fall into the same class and are sold or used in sets, an application for one design may be filed.

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 make modifications to his or its application for a patent, but the modifications 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 modifications 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 having received an application for patenting an invention, the patent administrative department of the State Council finds, upon preliminary examination, that the application is in conformity with the requirements of this Law, it shall publish the application promptly after the lapse of eighteen full months from the date of application. Upon the request of the applicant, the patent administrative department of the State Council may publish the application earlier.

Article 35 Upon the request of the invention patent applicant made at any time within three years from the date of application, the patent administrative department of the State Council will make a substantive examination on the application. If, without any justifiable reason, the applicant fails to request a substantive examination within the limit, the application shall be deemed to have been withdrawn.

The patent administrative department of the State Council may, on its own initiative, make a substantive examination on the application for a patent for invention when it deems it necessary.

Article 36 When the invention patent applicant requests a substantive examination, he or it shall furnish the reference materials of the invention that existed prior to the date of application.

Where an invention patent applicant has filed in a foreign country an application for a patent for the same invention, the patent administrative department of the State Council may require the applicant to submit within the specified time limit references retrieved for the purpose of examining that application, or the references of the examination result, in that country. If, without any justifiable reason, the said materials are not submitted within the specified time limit, the application shall be deemed to have been withdrawn.

Article 37 Where the patent administrative department of the State Council, after it has made the substantive examination on an invention patent application, finds that the application conforms to the provisions of this Law, it shall notify the applicant, requiring him or it to make a statement or revise the application within a specified time limit. If he or it fails to make a response without any justifiable reason, the application shall be deemed to have been withdrawn.

Article 38 Where, after the applicant has made a statement or revisions, the patent administrative department of the State Council finds that the invention patent application still does not conform to the provisions of this Law, the application shall be rejected.

Article 39 Where it is found after a substantive examination that there is no reason to reject the patent invention application, the patent administrative department of the State Council shall make a decision to grant a patent for the invention, issue an invention patent certificate, and register and announce it. The patent right for invention shall become effective as of the date of announcement.

Article 40 Where it is found after the preliminary examination that there is no reason to reject the application for patenting a utility model or design, the patent administrative department of the State Council shall make a decision to grant a patent for the utility model or design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall become effective as of the date of announcement.

Article 41 The patent administrative department of the State Council shall form a Patent Re-examination Board. If any patent applicant is dissatisfied with the decision of the patent administrative department of the State Council on rejecting the application, it/he may, within three months as of receipt of the notification, appeal to the Patent Re-examination Board for review. The Patent Re-examination Board shall, after the review, make a decision and notify the patent applicant.

Where a patent applicant is dissatisfied with the review decision of the Patent Re-examination Board, it/he may, within three months as of receipt of the notification, bring a lawsuit with the people's court.

Chapter V Duration, Termination and Invalidation of Patents

Article 42 The duration of an invention patent shall be twenty years, the duration of the patent for a utility model or design shall be ten years, counted from the date of application.

Article 43 A patentee shall pay an annual fee beginning with the year in which the patent is granted.

Article 44 In any of the following cases, the patent shall be terminated before the expiration of its duration:

- (1) an annual fee is not paid under relevant provisions;
- (2) the patentee waives his or its patent by a written declaration.

Any patent which is terminated prior to the expiration of its duration shall be registered and announced by the patent administrative department of the State Council.

Article 45 Where, as of the announcement of the granting of the patent by the patent administrative department of the State Council, any entity or individual considers that the granting of the said patent does not conform to the relevant provisions of this Law, it or he may request the Board of Patent Appeals and Interferences to invalidate the patent right.

Article 46 The Patent Re-examination Board shall timely examine the request for invalidating a

patent, make a decision and notify the petitioner and the patentee. The decision on invalidating the patent shall be registered and announced by the patent administrative department of the State Council.

Where any party is dissatisfied with the decision of the Patent Re-examination Board on declaring a patent invalid or maintaining a patent, such party may, within three months as of receipt of the notification, bring a lawsuit to the people's court. The people's court shall notify the opposite party in the procedures for requesting invalidation that it or he should participate in the litigation as a third party.

Article 47 Any patent right that has been invalidated shall be deemed to be non-existent from the very beginning.

The decision on invalidating a patent shall, prior to the invalidation of the patent, have no retroactive effect on any judgment or mediation document on patent infringement which has been made and enforced by the people's court, on any implemented or compulsorily enforced decision concerning the settlement of a dispute over patent infringement, or on any performed contract for licensing a patent exploitation or for assignment of patent right. However, the patentee shall compensate for the damages it or he has maliciously caused to others.

Where, in accordance with the provisions of the preceding paragraph, the fact that no patent infringement compensation, no royalty for the exploitation of the patent or no patent assignment fee is refunded is obviously contrary to the principle of fairness, it shall be totally or partially refunded.

Chapter VI Compulsory License for Exploitation of Patents

Article 48 Under any of the following circumstances, the patent administrative department of the State Council may, upon the application of an eligible entity or individual, grant it or him a compulsory license to exploit the patent for an invention or utility model:

- (1) The patentee, after the lapse of 3 full years from the date when patent is granted and after the lapse of 4 full years from the date when a patent application is filed, fails to exploit or to fully exploit its or his patent without any justifiable reason; or
- (2) The patentee's act of exercising the patent rights is determined as a monopolizing act and it is to eliminate or reduce the adverse consequences of the said act on competition.

Article 49 Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the patent administrative department of the State Council may grant a compulsory license to exploit the patent for an invention or utility model.

Article 50 For the purpose of public health, the patent administrative department of the State Council may grant a compulsory license for a patented medicine so as to produce and export it to the country or region which conforms to the provisions of the relevant international treaty to

which the People's Republic of China has acceded.

Article 51 Where an invention or utility model for which the patent was granted has seen any major technical progress of prominent economic significance when compared with another invention or utility model for which the patent has been granted earlier, and the exploitation of the later invention or utility model depends on the exploitation of the earlier one, the patent administrative department of 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 administrative department of 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 involved in the compulsory license is a semi-conductor technology, the exploitation of the compulsory license shall be limited only to public interests and the circumstance as described in Article 48 (2) of this Law.

Article 53 Besides the circumstances as described in Article 48 (2) and Article 50 of this Law in which a compulsory license is granted, the exploitation of a compulsory license shall be implemented primarily for supplying the domestic market.

Article 54 The entity or individual requesting, in accordance with the provisions of Article 48 (1) and Article 51 of this Law, a compulsory license for exploitation shall prove that it or he has not been able to conclude with the patentee a license contract for exploitation on reasonable terms within a reasonable timeframe.

Article 55 Where the patent administrative department of the State Council decides to grant a compulsory license for exploitation, it shall notify the patentee in time, and register it and make an announcement.

A decision on granting a compulsory license for exploitation shall, on the basis of the reasons for compulsory license, specify the scope and time of exploitation. When the reasons for compulsory license have been eliminated and will no longer occur, the patent administrative department of the State Council shall, upon request of the patentee, make a decision after examination on terminating the compulsory license.

Article 56 Any entity or individual who is granted a compulsory license for exploitation shall not have exclusive right to exploit the patent and shall not have the right to authorize anyone else to exploit the patent.

Article 57 The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable royalty or deal with the royalty issue under the relevant international treaties to which the People's Republic of China has acceded. If a royalty is to be paid, the amount of the royalty shall be decided by both parties upon negotiation. If the parties fail to reach an

agreement, the issue shall be settled by the patent administrative department of the State Council.

Article 58 Where a patentee is dissatisfied with the decision of the patent administrative department of the State Council on granting a compulsory license for exploitation, or where a patentee, or an entity or individual to whom the compulsory license for exploitation is granted is dissatisfied with the ruling of the patent administrative department of the State Council on the royalties payable for compulsorily licensed exploitation, he or it may, within three months as of receipt of the notification, bring a lawsuit to the people's court.

Chapter VII Protection of Patent Rights

Article 59 The scope of protection of the patent right for an 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 scope 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.

Article 60 In the event that a dispute arises out of any exploitation of a patent without permission of the patentee, that is, the infringement upon a patent right, the parties shall settle the dispute through negotiations. If they are not willing to negotiate or fail to reach an agreement through negotiations, the patentee or any interested party may either bring a lawsuit with the people's court, or request the patent administrative department, for settlement. If the patent administrative department ascertains at the time of settlement that infringement exists, it may order the infringer to immediately stop the infringement act. The party dissatisfied may, within 15 days as of receipt of the notification, bring a lawsuit with the people's court in accordance with the Administrative Procedural Law of the People's Republic of China. If the infringer neither brings a lawsuit within the time limit nor stops the infringement act, the patent administrative department may apply to the people's court for compulsory enforcement. The patent administrative department that settles the dispute may, upon request of the parties may hold a mediation regarding the compensation amount for infringement upon the patent right. If no agreement is reached through mediation, either party may bring a lawsuit with the people's court in accordance with the "Civil Procedural Law of the People's Republic of China.

Article 61 Where any dispute over patent infringement involves a patent for invention for the manufacturing process of a new product, the entity or individual manufacturing the identical product shall provide proof on the difference of its own process used in the manufacture of its product from the patented process.

Where any dispute over patent infringement involves a patent for utility model or design, the people's court or the patent administrative department may require the patentee or the interested parties to present a patent assessment report issued by the patent administrative department of the State Council, after the retrieval, analysis and assessment of the pertinent utility model or design, as a proof for trying and settling the dispute over patent infringement.

Article 62 In a dispute over patent infringement, if the accused infringer has evidence to prove that the technology or design it or he exploits is an existing technology or design, no patent infringement is constituted.

Article 63 Whoever counterfeits the patent of anyone else shall, in addition to bearing civil liabilities in accordance with the law, be ordered by the patent administrative department to make a correction and be announced by the patent administrative department; its or his illegal gains, if any, shall be confiscated, and it or he may be fined up to three times the illegal gains. If there is no illegal gain, it or he may be fined up to 200, 000 Yuan. If any crime is constituted, it or he shall be subject to criminal liabilities according to law.

Article 64 When the patent administrative department investigates into and deals with a suspected counterfeit patent case on the basis of the evidence it has already gathered, it may query the relevant parties so as to find the information relevant to the suspected violation, may conduct an on-site inspection over the site of party suspected of having committed the violation, may consult and copy the contracts, invoices, account books and other materials relating to the suspected violation, may check the products relating to the suspected violation, and may seal up or detain the counterfeit patented product as proved by evidence.

When the patent administrative department exercises the functions as prescribed in the preceding paragraph according to law, the parties shall assist and cooperate with it and shall not reject or hamper it.

Article 65 The amount of compensation for a patent infringement shall be determined on the basis of the actual losses incurred to the patentee as a result of the infringement. If it is difficult to determine the actual losses, the actual losses may be determined on the basis of the gains which the infringer has obtained from the infringement. If it is difficult to determine the losses incurred to the patentee or the gains obtained by the infringer, the amount shall be reasonably determined by reference to the multiple of the royalties for this patent. In addition, the compensation shall include the reasonable expenses that the patentee has paid for stopping the infringement.

If it is difficult to determine the losses incurred to the patentee, the gains obtained by the infringer as well as the royalty obtained for the patent, the people's court may, by taking into account such factors as the type of patent, nature and particulars of the infringement, etc., decide a compensation in the sum of not less than 10, 000 yuan but not more than 1 million yuan.

Article 66 Where a patentee or interested party has evidence to prove that someone else is committing or is going to commit an infringement upon the patent right, and its (his) lawful rights and interests will be damaged and are difficult to be remedied if the said infringement is not stopped in time, it or he may, prior to initiating a lawsuit, apply to the people's court for taking such measures as ordering the stop of the relevant act.

When an applicant files an application, it shall provide a guarantee. If it or he fails to do so, the

application shall be rejected.

The people's court shall make a ruling within 48 hours as of its acceptance of an application. If it is necessary to extend the time limit in a special circumstance, the time limit may be extended for up to 48 hours. If a ruling is made to stop the relevant act, it shall be executed immediately. If any party refuses to accept the ruling, it (he) may apply for one review. The execution of the ruling is not suspended during the process of review.

If the applicant fails to lodge a lawsuit within 15 days after it takes such measures as ordering the stop of the relevant act, the people's court shall lift the said measure.

Where there are errors in an application, the applicant shall compensate the party against whom an application is filed for the losses caused by the stop of the relevant act.

Article 67 To stop a patent infringement, the patentee or any interested party may apply to the people's court for preserving the evidence when such evidence is likely to be destroyed and hard to be obtained again.

The people's court may order the applicant to provide a guarantee for the preservation. If the applicant fails to do so, its or his application shall be rejected.

The people's court shall make a ruling within 48 hours after it accepts an application. If it makes a ruling on preserving the evidence, the ruling shall be executed immediately.

If the applicant fails to initiate a lawsuit within 15 days after the people's court has taken the measure of preserving the evidence, the people's court shall terminate the said measure.

Article 68 The statute of limitation on an action against an infringement upon a patent right shall be two years counted from the date on which the patentee or any interested party knows about or should have known about the infringing act.

Where anyone uses an invention after the application for a patent for this invention is published but before the patent right is granted without paying adequate royalties, the statute of limitations for the patentee to claim payment of such royalties shall be two years, commencing from the date when the patentee knows or ought to know that his invention is used by some else. However, if the patentee has known or ought to have known about this fact prior to the date when the patent right is granted, the statute of limitations shall commence from the date when the patent right is granted.

Article 69 None of the following circumstances shall be deemed an infringement upon a patent right:

- (1) using, promising to sell, selling or importing any patented product or product directly obtained under the patented process after the said product is sold by the patentee or by its (his) licensed entity or individual;
- (2) having made identical product or having used the identical process or having made necessary

preparations for making such a product or using such a process prior to the date of application, and continuing making such product or using such a process only within the original scope;

(3) for any foreign means of transport which temporarily passes through the territory, territorial waters or territorial airspace of China, its using the relevant patents in accordance with any agreement concluded between China and that country to which the foreign means of transport belongs, or in accordance with any international treaty to which both countries have acceded, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations;

(4) using relevant patents solely for the purposes of scientific research and experiment; and

(5) producing, using or importing patented medicine or patented medicinal equipment for the purpose of providing the information as required for administrative examination and approval, and producing and importing the patented medicine or patented medicinal equipment exclusively for the said purpose.

Article 70 Whoever uses or sells a patented product without knowing that the product was produced and sold without permission of the patentee or a product directly obtained from a patented process for the purpose of production and business operation is not required to bear the liabilities for compensation provided that it or he can prove that the product is obtained from a legal source.

Article 71 Whoever, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent, if it or he has divulged any state secret, he shall be subject to an administrative sanction by the entity where he works or by the competent authority at the higher level. If any crime is constituted, he shall be subject to the criminal liabilities.

Article 72 Where any person usurps the right of an inventor or designer to apply for a patent for a non-service invention, or usurps any other right or interest of an inventor or designer as prescribed in this Law, he shall be subject to an administrative sanction by the entity for which he works or by the competent authority at the higher level.

Article 73 No patent administrative department shall participate in the business activities such as recommending patented products to the public.

Where a patent administrative department violates the provisions of the preceding paragraph, it shall be ordered by its superior organ or its supervision organ to make a correction and eradicate the ill effects. The illegal proceeds, if any, shall be confiscated. If the circumstance is serious, the directly liable person-in-charge and other directly liable persons shall be subject to an administrative sanction in accordance with the law.

Article 74 Where any staff member of a state organ for patent administration or of any other relevant state organ neglects his duties, abuses his powers, practices favoritism for himself or his relative, if any crime is constituted, he shall be subject to criminal liabilities according to law. If no crime is constituted, he shall be given an administrative sanction according to law.

Chapter VIII Supplementary Provisions

Article 75 To apply for a patent or going through other formalities with the patent administrative department of the State Council, the applicant shall pay the prescribed fees.

Article 76 This Law shall enter into force on April 1, 1985.