Detailed Rules for the Implementation of the Patent Law of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Detailed Rules are formulated in accordance with the Patent Law of the People’s Republic of China.

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Article 2 — “Invention” as used in the Patent Law means a new technical solution proposed for a product, a process or an improvement thereof. “Utility model” means a new technical solution proposed for the shape or structure of a product, or a combination thereof, that is fit for practical use. “Design” means, in respect of a product, a new design of the shape, pattern or a combination thereof, or a combination of color with shape or pattern, which is aesthetically pleasing and fit for industrial application.

Article 3 — Any formalities prescribed by the Patent Law and these Detailed Rules shall be completed in writing or in other forms prescribed by the patent administration department under the State Council.

Article 4 — Any document submitted in accordance with the Patent Law and these Detailed Rules shall be in Chinese. Where any certificate or supporting document submitted in accordance with the Patent Law and these Detailed Rules is in a foreign language, the patent administration department under the State Council may, when it deems necessary, require a Chinese translation of the certificate or supporting document to be submitted within a specified time limit. Where no Chinese translation is submitted within the specified time limit, the certificate or supporting document shall be deemed not to have been submitted.

Article 5 — Where any document is served by post to the patent administration department under the State Council, the date of the postmark of the place of dispatch shall be the date of filing. Where the date of the postmark is illegible, the date of receipt by the patent administration department under the State Council shall be the date of filing, unless the party concerned can prove the date of the postmark. Where any document of the patent administration department under the State Council is served by post, the 16th day from the date of dispatch shall be presumed to be the date of receipt by the party concerned. Where any document of the patent administration department under the State Council is served by electronic means, the date when the document enters the specific system recognized by the party shall be the date of receipt by the party concerned.

Article 6 — The first day of any time limit prescribed by the Patent Law and these Detailed Rules shall not be counted in the time limit. Where the time limit is counted by years or months, it shall expire on the corresponding day of the last month. Where there is no corresponding day in the last month, the time limit shall expire on the last day of that month. Where the time limit expires on a statutory holiday, it may be extended to the first working day immediately following the statutory holiday.

Article 7 — Where a party fails to meet a time limit prescribed by the patent administration department under the State Council due to force majeure, resulting in the loss of its rights, the party may, within two months from the date of removal of the impediment and at the latest within two years from the date of expiration of the time limit, state the reasons and attach the relevant supporting documents to request the patent administration department under the State Council to restore its rights. Where a party fails to meet a time limit prescribed by the patent administration department under the State Council or a time limit specified in these Detailed Rules due to other justifiable reasons, resulting in the loss of its rights, the party may, within two months from the date of receipt of the notice from the patent administration department under the State Council, state the reasons and request the patent administration department under the State Council to restore its rights.

Chapter II — Filing of Patent Applications

Article 8 — An application for a patent for invention shall contain a request, a description, one or more claims, an abstract accompanied by drawings where necessary. The description shall contain a clear and complete description of the invention, sufficiently clear and complete for a person skilled in the art to carry out the invention. Where necessary, drawings shall be attached. The abstract shall briefly state the technical key points of the invention. The claims shall define the scope of protection sought for the patent, supported by the description.

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Article 9 — An application for a patent for utility model shall contain a request, a description, one or more claims, an abstract and drawings. The description shall contain a clear and complete description of the utility model with reference to the drawings, sufficiently clear and complete for a person skilled in the art to carry out the utility model.

Article 10 — An application for a patent for design shall contain a request, drawings or photographs of the design, and a brief description of the design. The drawings or photographs submitted shall clearly show the design of the product for which patent protection is sought.

Article 11 — The term “invention-creation that is completed by making use of the material and technical conditions of the employer” as used in Article 6 of the Patent Law means an invention-creation that is completed by the employee in the course of performing the duties of the employer or by primarily making use of the material and technical conditions of the employer. The “employer” includes the temporary employer where the employee is a temporary worker. “Material and technical conditions of the employer” means the capital, equipment, components, raw materials or technical materials of the employer that are not disclosed to the public.

Article 12 — The inventor or designer as used in the Patent Law means a person who has made a creative contribution to the substantive features of the invention-creation. A person who, in the process of completing the invention-creation, is only responsible for organizational work, or provides facilities for the utilization of material and technical conditions, or performs other auxiliary functions shall not be an inventor or designer.

Article 13 — Where an application for a patent for the same invention-creation is filed by two or more applicants, the patent right shall be granted to the applicant whose application is filed first.

Article 14 — The patent administration department under the State Council shall, upon receipt of an application for a patent, specify the date of filing and the application number and notify the applicant. Where an application for a patent does not meet the requirements for acceptance, the patent administration department under the State Council shall notify the applicant to make corrections within a specified time limit.

Article 15 — Where an application for a patent for invention or utility model is filed, a request, a description, claims, an abstract and drawings (where necessary) shall be submitted in duplicate. Where an application for a patent for design is filed, a request, drawings or photographs of the design and a brief description of the design shall be submitted in duplicate.

Article 16 — The right of priority as provided in the Patent Law means: (1) where an applicant files an application for a patent for invention or utility model within 12 months from the date of first filing of an application for a patent for the same invention or utility model in a foreign country, or files an application for a patent for design within six months from the date of first filing of an application for a patent for the same design in a foreign country, the applicant may enjoy the right of priority in accordance with the agreement concluded between the foreign country and China or the international treaty to which both countries are parties, or on the basis of the principle of mutual recognition of the right of priority; or (2) where an applicant files an application for a patent for invention or utility model within 12 months from the date of first filing of an application for a patent for the same invention or utility model in China, the applicant may enjoy the right of priority.

Article 17 — Where an applicant claims the right of priority, the applicant shall submit a written declaration at the time of filing the application and, within three months, submit a copy of the earlier patent application documents. Where the applicant fails to submit the written declaration or fails to submit the copy of the earlier patent application documents within the time limit, the claim to the right of priority shall be deemed not to have been made.

Article 18 — An application for a patent for invention may be filed for one invention only. Two or more inventions that belong to a single general inventive concept may be filed as one application. An application

for a patent for utility model may be filed for one utility model only. Two or more utility models that belong to a single general inventive concept may be filed as one application. An application for a patent for design may be filed for one design only. Two or more similar designs of the same product or two or more designs of products of the same class that are sold or used as a set may be filed as one application.

Article 19 — An applicant may amend the patent application documents, provided that the amendment to the application for a patent for invention or utility model shall not go beyond the scope disclosed in the original description and claims, and the amendment to the application for a patent for design shall not go beyond the scope shown in the original drawings or photographs.

Article 20 — Where an applicant files a divisional application, the applicant shall retain the original filing date. Where the divisional application goes beyond the scope disclosed in the original application, the applicant shall file a new application and may claim the right of priority.

Chapter III — Examination and Approval of Patent Applications

Article 21 — Upon receipt of an application for a patent for invention, the patent administration department under the State Council shall, after preliminary examination, publish the application promptly after the expiration of 18 months from the date of filing, unless the applicant requests earlier publication. The patent administration department under the State Council may publish the application at an earlier date upon the request of the applicant.

Article 22 — The applicant for a patent for invention may, within three years from the date of filing, request the patent administration department under the State Council to conduct a substantive examination at any time. Where the applicant fails to request a substantive examination within the time limit without justifiable reasons, the application shall be deemed to have been withdrawn. The patent administration department under the State Council may conduct a substantive examination of an application for a patent for invention on its own initiative when it deems necessary.

Article 23 — When an applicant for a patent for invention requests a substantive examination, the applicant shall submit reference materials relating to the invention that have been obtained before the date of filing. Where an application for a patent for invention has been filed in a foreign country, the patent administration department under the State Council may require the applicant to submit within a specified time limit the search reports or examination results issued by the foreign country for the examination of the application. Where the applicant fails to submit the same within the specified time limit without justifiable reasons, the application shall be deemed to have been withdrawn.

Article 24 — When the patent administration department under the State Council conducts a substantive examination of an application for a patent for invention and considers that the application does not comply with the Patent Law, it shall notify the applicant of its observations and require the applicant to state its opinions or make amendments within a specified time limit. Where the applicant fails to make a response within the specified time limit without justifiable reasons, the application shall be deemed to have been withdrawn. Where the applicant states its opinions or makes amendments and the patent administration department under the State Council still considers that the application does not comply with the Patent Law, the application shall be rejected.

Article 25 — Where no reason for rejection is found after the substantive examination of an 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 patent certificate for invention, and register and publish the same. The patent right for invention shall become effective on the date of publication.

Article 26 — Where no reason for rejection is found after the preliminary examination of an 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 design, issue the corresponding patent certificate, and

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register and publish the same. The patent right for utility model or design shall become effective on the date of publication.

Chapter IV — Invalidation of Patent Rights and Reexamination

Article 27 — Where, after the patent administration department under the State Council has published the grant of a patent right, any entity or individual considers that the grant of the patent right does not comply with the relevant provisions of the Patent Law, it may request the Patent Reexamination Board to declare the patent right invalid. The request for invalidation shall state the reasons and submit the supporting evidence.

Article 28 — The Patent Reexamination Board shall promptly examine the request for invalidation and make a decision, and notify the person making the request and the patentee of its decision. The decision to declare the patent right invalid shall be registered and published by the patent administration department under the State Council. Where a party is dissatisfied with the decision of the Patent Reexamination Board on the invalidation of the patent right, the party may file a lawsuit with the people's court within three months from the date of receipt of the notification.

Article 29 — Where a patent right is declared invalid, the patent right shall be deemed to have never existed. The decision to declare the patent right invalid shall have no retroactive effect on any judgment or mediation decision on patent infringement that has been rendered and enforced by the people's court, any decision on patent infringement dispute that has been implemented or compulsorily enforced, or any patent licensing contract or patent assignment contract that has been performed, before the decision on invalidation is made. However, compensation shall be made for any loss caused to another person by the bad faith of the patentee. Where, in accordance with the preceding paragraph, the patentee or the assignor of the patent right fails to return the patent royalties or the patent assignment fee to the licensee or the assignee of the patent right, which is in obvious violation of the principle of fairness, the patentee or the assignor of the patent right shall return all or part of the patent royalties or the patent assignment fee.

Article 30 — Where an applicant is dissatisfied with the decision of the patent administration department under the State Council to reject 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. After reexamination, the Patent Reexamination Board shall make a decision and notify the applicant. Where the applicant for a patent is dissatisfied with the reexamination decision of the Patent Reexamination Board, the applicant may file a lawsuit with the people's court within three months from the date of receipt of the notification.

Chapter V — Term and Termination of Patent Rights

Article 31 — The term of a patent right for invention shall be 20 years, and the term of a patent right for utility model shall be 10 years, and the term of a patent right for design shall be 15 years, all counting from the date of filing.

Article 32 — Where the patentee fails to pay the annual fee in accordance with the provisions, or expressly waives the patent right in writing, the patent right shall be terminated before the expiration of the term. Where the patentee fails to pay the annual fee, the patent right shall be terminated from the date of expiration of the time limit for payment of the annual fee.

Article 33 — The termination of a patent right shall be registered and published by the patent administration department under the State Council.

Chapter VI — Compulsory License for Exploitation of a Patent

Article 34 — In accordance with the provisions of the Patent Law, the patent administration department under the State Council may grant a compulsory license for exploitation of a patent for invention or utility

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model in any of the following circumstances: (1) where the patentee, after the expiration of three years from the date of grant of the patent right and four years from the date of filing of the patent application, fails to exploit or sufficiently exploit the patent without justifiable reasons; (2) where the exercise of the patent right by the patentee is determined as a monopolistic act in accordance with the law, and the grant of a compulsory license is to eliminate or reduce the adverse effect of such act on competition; or (3) where a national emergency or extraordinary state of affairs occurs, or the public interest so requires.

Article 35 — Any entity or individual that requests a compulsory license shall submit to the patent administration department under the State Council a request for a compulsory license, stating the reasons and attaching the relevant supporting documents. The patent administration department under the State Council shall promptly notify the patentee of the decision to grant a compulsory license and register and publish the same. The decision on the grant of a compulsory license shall specify the scope and term of the exploitation. Where the reasons for the compulsory license cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon the request of the patentee, make a decision to terminate the compulsory license after examination.

Article 36 — Any entity or individual that is granted a compulsory license shall pay a reasonable exploitation fee to the patentee. The amount of the fee shall be agreed upon by the parties through consultation. Where the parties fail to reach an agreement, the patent administration department under the State Council shall make a ruling. Where a party is dissatisfied with the ruling of the patent administration department under the State Council on the exploitation fee, the party may file a lawsuit with the people's court within three months from the date of receipt of the ruling.

Chapter VII — Protection of Patent Rights

Article 37 — The scope 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 scope of protection of the patent right for design shall be determined by the design of the product shown in the drawings or photographs, and the brief description may be used to interpret the design of the product shown in the drawings or photographs.

Article 38 — Where a patent infringement dispute involves a patent for invention for a process of manufacturing a new product, the entity or individual manufacturing the same product shall provide evidence to show that the process used in the manufacture of its or his product is different from the patented process. Where a patent infringement dispute involves a patent for utility model or a patent for design, the people's court or the patent administration department may require the patentee or the interested party to produce a patent right evaluation report made by the patent administration department under the State Council after searching, analyzing and evaluating the relevant utility model or design, as evidence for hearing or handling the patent infringement dispute.

Article 39 — Where the patent administration department determines that an infringement is established, it may order the infringer to cease the infringing act immediately. Where the infringer is dissatisfied with the order, the infringer may file a lawsuit with the people's court within 15 days from the date of receipt of the notification of the order. Where the infringer neither files a lawsuit within the time limit nor ceases the infringing act, the patent administration department may apply to the people's court for compulsory enforcement. The patent administration department that handles the case may, upon the request of the party, mediate on the amount of compensation for patent infringement. Where mediation fails, the party may file a lawsuit with the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 40 — The amount of compensation for patent infringement shall be determined based on the actual loss suffered by the patentee as a result of the infringement or the profit derived by the infringer from the infringement. Where it is difficult to determine the loss suffered by the patentee or the profit derived by the

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infringer, the amount of compensation shall be reasonably determined by reference to the multiple of the patent licensing fee. Where the infringement is willful and the circumstances are serious, the amount of compensation may be determined at not less than one time but not more than five times the amount determined in accordance with the method specified above. Where it is difficult to determine the loss suffered by the patentee, the profit derived by the infringer, and the patent licensing fee, the people's court may determine the amount of compensation at not less than RMB 30,000 but not more than RMB 5 million based on factors such as the type of the patent right and the nature and circumstances of the infringing act. The amount of compensation shall also include the reasonable expenses incurred by the patentee in ceasing the infringement.

Chapter VIII — Patent Application and Maintenance Fees

Article 41 — The applicant shall pay the relevant fees in accordance with the provisions when filing an application for a patent and going through other formalities. The items and amounts of the various fees and the time limits for payment shall be prescribed by the patent administration department under the State Council in conjunction with the price administration department under the State Council.

Article 42 — The applicant may request a reduction or postponement of payment of the fees specified in these Detailed Rules. The measures for the reduction or postponement of payment shall be prescribed by the patent administration department under the State Council in conjunction with the finance department and the price administration department under the State Council.

Chapter IX — Special Provisions on Service Invention-Creations

Article 43 — The right to apply for a patent for a service invention-creation completed by an employee of an entity in the course of performing the duties of the entity or by primarily making use of the material and technical conditions of the entity shall belong to the entity. After the patent right for the service invention-creation is granted, the entity shall reward the inventor or designer. After the patent right for the service invention-creation is exploited, the entity shall, based on the scope of popularization and application and the economic benefits obtained, pay reasonable remuneration to the inventor or designer. The entity and the inventor or designer may agree on the method and amount of the reward and remuneration, or the entity may specify the same in its rules and regulations formulated in accordance with the law.

Article 44 — Where no agreement is reached or no provisions are made in the rules and regulations of the entity, the entity shall pay the reward and remuneration to the inventor or designer in accordance with the following provisions: (1) the minimum amount of the reward for a patent for invention shall not be less than RMB 3,000, and the minimum amount of the reward for a patent for utility model or design shall not be less than RMB 1,000; and (2) the minimum amount of the remuneration for exploiting a patent for invention or utility model shall be not less than 2% of the profit derived from the exploitation of the patent for invention or utility model, or not less than 0.2% of the profit derived from the exploitation of the patent for design, or an amount that is reasonably determined by reference to the aforesaid percentages and paid in a lump sum.

Chapter X — Supplementary Provisions

Article 45 — Any person may, in accordance with the provisions of the Patent Law, inspect the patent application documents and the patent register after the publication of the patent application by the patent administration department under the State Council or after the announcement of the grant of the patent right, and may request the patent administration department under the State Council to issue a copy of the patent register. The patent application documents that have been withdrawn, deemed to have been withdrawn, rejected, or for which the patent right has been terminated shall not be made available for public inspection, unless the patent application documents for the application that has been withdrawn or deemed to have been withdrawn are made available for public inspection due to the restoration of rights.

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Article 46 — Where any patent application is filed with the patent administration department under the State Council or any other formalities are required to be completed, the relevant documents may be submitted by electronic means in accordance with the provisions of the patent administration department under the State Council.

Article 47 — The original text of the various documents required to be submitted when filing a patent application and going through other formalities shall be retained by the applicant.

Article 48 — These Detailed Rules shall come into force on July 1, 2001. The Detailed Rules for the Implementation of the Patent Law of the People's Republic of China approved by the State Council on December 12, 1992 and promulgated by the Patent Office of China on December 21, 1992 shall be repealed simultaneously. These Detailed Rules were amended in accordance with the Decision of the State Council on Amending the Detailed Rules for the Implementation of the Patent Law of the People's Republic of China on January 9, 2010.

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