Patent Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of protecting the lawful rights and interests of patentees, encouraging invention and creation, promoting the application of inventions and creations, enhancing innovation capabilities, and promoting scientific and technological progress and economic and social development.

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Article 2 — For purposes of this Law, "invention-creation" means inventions, utility models, and designs. Invention means any new technical solution proposed for a product, a process, or the improvement thereof. Utility model means any new technical solution proposed for the shape or structure of a product, or a combination thereof, that is fit for practical use. Design means any new design of the whole or part of a product that is aesthetically appealing and fit for industrial application, as well as any combination of shape, pattern, or color.

Article 3 — The patent administration department under the State Council shall be responsible for the administration of patent work nationwide, uniformly accept and examine patent applications, and grant patent rights in accordance with the law. The patent administration departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for patent administration work within their respective administrative regions.

Article 4 — Where an invention-creation for which a patent is applied relates to national security or other material interests 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 right shall be granted for inventions-creations that violate the law, social morality, or public interest. No patent right shall be granted for inventions-creations that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and administrative regulations.

Chapter II — Conditions for the Grant of Patent Rights

Article 22 — Inventions and utility models for which patent rights are to be granted shall possess novelty, inventiveness, and practical applicability. Novelty means that the invention or utility model is not part of the prior art; no entity or individual has filed an application with the patent administration department under the State Council before the filing date for an identical invention or utility model, and such application is recorded in patent application documents published or patent documents announced after the filing date. Inventiveness means that the invention has prominent substantive features and represents notable progress, and that the utility model has substantive features and represents progress. Practical applicability means that the invention or utility model can be manufactured or used and can produce positive results.

Article 23 — A design for which a patent right is to be granted shall not be a design that has been publicly known in China or abroad before the filing date. A design for which a patent right is to be granted shall be clearly different from an existing design or a combination of design features of existing designs. No entity or individual has filed an application with the patent administration department under the State Council before the filing date for an identical design, and such application is recorded in patent documents announced after the filing date.

Article 24 — An invention-creation for which a patent application is filed shall not lose its novelty if, within six months before the filing date, any of the following circumstances occurs:

(1) where it is made public for the first time for the purpose of public interest in a state of emergency or extraordinary circumstances;

(2) where it is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese government;

(3) where it is made public for the first time at a prescribed academic or technological conference;

(4) where its contents were disclosed without the consent of the applicant.

Article 25 — No patent right shall be granted for any of the following:

(1) scientific discoveries;

(2) rules and methods for intellectual activities;

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

(4) animal and plant varieties;

(5) nuclear transformation methods and substances obtained through nuclear transformation;

(6) designs of two-dimensional printing products, which are mainly used for indicating patterns, colors, or a combination thereof.

Patent rights may be granted in accordance with the provisions of this Law for the production methods of the products listed in item (4) of the preceding paragraph.

Chapter III — Patent Applications

Article 26 — Where an application for a patent for an invention or utility model is filed, documents such as a request, a description, an abstract, and claims shall be submitted. The request shall state the name of the invention or utility model, the name of the inventor, the name and address of the applicant, and other matters. The description shall provide a clear and complete description of the invention or utility model so as to be sufficient for a person skilled in the relevant field of technology to carry it out; where necessary, drawings shall be appended. The abstract shall briefly describe the key technical points of the invention or utility model. The claims shall be based on the description and clearly and concisely define the scope of the patent protection sought.

Article 29 — Where, within 12 months from the date on which an applicant first filed an application for a patent for an invention or utility model in a foreign country, or within six months from the date on which an applicant first filed an application for a patent for a design in a foreign country, the applicant files an application for a patent in China for the same subject matter, the applicant may, in accordance with the agreement signed between the foreign country and China or the international treaty to which both countries are party, or on the principle of mutual recognition of the right of priority, enjoy the right of priority.

Article 30 — Where an applicant claims the right of priority for an invention or utility model, the applicant shall submit a written declaration at the time of filing the application and submit a copy of the first patent application documents within 16 months from the date on which the application was first filed.

Chapter IV — Examination and Approval of Patent Applications

Article 34 — Where, after receiving an application for a patent for an invention, the patent administration department under the State Council finds, upon preliminary examination, that the application meets the requirements of this Law, it shall publish the application promptly after the expiration of 18 months from the filing date. Upon the request of the applicant, the patent administration department under the State Council may publish the application earlier.

Article 35 — An applicant for a patent for an invention may, within three years from the filing date, request the patent administration department under the State Council to conduct a substantive examination of the application at any time. Where the applicant fails to request a substantive examination within the prescribed time limit without justifiable reasons, the application shall be deemed to have been withdrawn.

Article 39 — Where no cause for rejection of an application for a patent for an invention is found after substantive examination, the patent administration department under the State Council shall make a decision to grant the patent right for an invention, issue a patent certificate for an invention, and register and announce the same. The patent right for an invention shall take effect on the date of the announcement.

Article 40 — Where no cause for rejection of an application for a patent for a utility model or design is found after preliminary examination, the patent administration department under the State Council shall make a

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decision to grant the patent right for a utility model or design, issue the corresponding patent certificate, and register and announce the same. The patent right for a utility model or design shall take effect on the date of the announcement.

Chapter V — Duration, Termination, and Invalidation of Patent Rights

Article 42 — The duration of the patent right for an invention shall be 20 years, the duration of the patent right for a utility model shall be 10 years, and the duration of the patent right for a design shall be 15 years, all counted from the filing date. Where a patent for an invention is granted after the expiration of four years from the filing date and the expiration of three years from the date of the request for substantive examination, the patent administration department under the State Council shall, at the request of the patentee, compensate for the unreasonable delay in the examination of the invention patent, unless the unreasonable delay was caused by the applicant. To compensate for the time taken for the review and approval of the marketing authorization of a new drug that has been granted a patent right for an invention in China, the patent administration department under the State Council shall, at the request of the patentee, extend the duration of the patent right. The compensation period shall not exceed five years, and the total effective duration of the patent right after the marketing of the new drug shall not exceed 14 years.

Article 44 — Under any of the following circumstances, a patent right shall be terminated before the expiration of its duration:

(1) failure to pay the annual fee as required;

(2) the patentee waives the patent right by a written declaration.

Where a patent right is terminated before the expiration of its duration, the patent administration department under the State Council shall register and announce such termination.

Article 45 — From the date on which the patent administration department under the State Council announces the grant of a patent right, any entity or individual may request the patent administration department under the State Council to declare the patent right invalid if it is considered that the grant of the patent right does not comply with the relevant provisions of this Law.

Chapter VI — Special License for Exploitation of Patents

Article 48 — The patent administration department under the State Council and the departments authorized by local people's governments shall promote the application and exploitation of patents to support economic and social development.

Article 49 — Where a patentee of a patent for an invention or utility model, without justifiable reasons, fails to exploit or fully exploit his or her patent within three years from the date of grant of the patent right, or within four years from the filing date, the patent administration department under the State Council may, upon application by an entity or individual that is qualified to exploit the invention or utility model, grant a compulsory license for the exploitation of the patent.

Article 50 — For the purpose of public health, the patent administration department under the State Council may grant a compulsory license for the manufacture of a patented medicine and its export to a country or region that complies with the provisions of the relevant international treaties to which the People's Republic of China is a party.

Article 53 — 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 for the exploitation of a patent for an invention or utility model.

Article 55 — In order to promote the implementation of important patents, the patent administration department under the State Council may, upon application, grant a compulsory license to an entity or

individual to exploit an invention or utility model patent that represents a major technological advancement of considerable economic significance, where the exploitation of such patent is dependent on the exploitation of an earlier invention or utility model patent.

Chapter VII — Protection of Patent Rights

Article 64 — 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 contents of the claims. The scope of protection of the patent right for a design shall be determined by the design of the product as shown in the drawings or photographs, and a brief description may be used to explain the design of the product as shown in the drawings or photographs.

Article 65 — Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, and the parties are unable to reach a settlement through negotiation, the patentee or an interested party may file a lawsuit with a people's court or request the patent administration department to handle the matter. When handling the matter, if the patent administration department determines that the infringement is established, it may order the infringer to cease the infringing act immediately. The patent administration department handling the matter may, at the request of the parties, mediate on the amount of compensation for the patent right infringement.

Article 68 — Where a dispute arises as a result of the counterfeiting of a patent, the parties may resolve the dispute through negotiation. Where the parties are unwilling to negotiate or fail to reach a settlement through negotiation, the patentee or an interested party may file a lawsuit with a people's court or request the patent administration department to handle the matter. In addition to bearing civil liability in accordance with the law, the patent administration department shall order correction and make a public announcement, confiscate illegal gains, and may impose a fine of not more than five times the illegal gains. Where there are no illegal gains or the illegal gains are less than 50,000 yuan, a fine of not more than 250,000 yuan may be imposed. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 71 — The amount of compensation for patent right infringement shall be determined based on the actual losses suffered by the right holder as a result of the infringement or the benefits gained by the infringer as a result of the infringement. Where the losses suffered by the right holder or the benefits gained by the infringer are difficult to determine, the amount of compensation shall be reasonably determined by reference to the multiples of the patent licensing fee. For intentional infringement of patent rights, if the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined according to the above method. Where the losses suffered by the right holder, the benefits gained by the infringer, or the patent licensing fee are difficult to determine, the people's court may, based on factors such as the type of patent right, the nature and circumstances of the infringing act, determine the amount of compensation at not less than 30,000 yuan and not more than 5,000,000 yuan.

Article 72 — Where a patentee or an interested party has evidence to prove that another person is committing or is about to commit an act infringing upon his or her patent right, and failure to promptly stop such act will cause irreparable damage to his or her lawful rights and interests, he or she may, before filing a lawsuit, apply to a people's court for an order to preserve property, to order the respondent to perform a certain act, or to prohibit the respondent from performing a certain act.

Article 74 — The limitation period for filing a lawsuit for patent right infringement shall be three years, calculated from the date on which the patentee or an interested party knew or should have known of the infringing act and the infringer.

Chapter VIII — Supplementary Provisions

Article 75 — The following circumstances shall not be deemed as infringement of patent rights:

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(1) where a patented product or a product directly obtained by a patented process is used, offered for sale, sold, or imported by the patentee or by an entity or individual with the permission of the patentee, and another person uses, offers for sale, sells, or imports such product;

(2) where a person has already manufactured an identical product, used an identical process, or made necessary preparations for such manufacture or use before the filing date of the patent application, and continues to manufacture or use it only within the original scope;

(3) where any means of transport that temporarily passes through the territory, territorial waters, or territorial airspace of China uses the relevant patent in its devices and installations for its own needs in accordance with an agreement signed between the country to which it belongs and China, or an international treaty to which both countries are party, or on the principle of reciprocity;

(4) where the relevant patent is used exclusively for the purposes of scientific research and experimentation;

(5) where a person manufactures, uses, or imports patented drugs or patented medical devices for the purpose of providing information required for administrative examination and approval, and another person manufactures or imports such patented drugs or patented medical devices exclusively for the aforesaid person.

Article 76 — Where the applicant for the marketing authorization of a generic drug and the relevant patentee or interested party have a dispute over the patent right relating to the drug applying for registration, the party concerned may file a lawsuit with a people's court to request a ruling on whether the technical solution of the generic drug falls within the scope of protection of the relevant patent right possessed by another person. The drug regulatory department under the State Council may, within a prescribed time limit, decide whether to suspend the marketing authorization of the generic drug based on the effective judgment or ruling of the people's court.

Article 81 — To apply for a patent or handle other patent matters with the patent administration department under the State Council, the prescribed fees shall be paid.

Article 82 — This Law shall come into force on June 1, 2021.

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