

Patent Law of the People's Republic of China

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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 — This Law is enacted for the purpose of protecting the legitimate rights and interests of patentees, encouraging inventions-creations, promoting the application of inventions-creations, enhancing innovation

capability, and promoting scientific and technological progress and economic and social development.

Article 2 — For the purposes of this Law, “invention-creations” means inventions, utility models and designs.

“Invention” means a new technical solution proposed for a product, a process or the improvement thereof.

“Utility model” means a new technical solution proposed for the shape or structure of a product, or a combination thereof, which is fit for practical use.

“Design” means, with respect to a product in whole or in part, a new design of the shape, pattern, or a combination thereof, or the combination of color with shape or pattern, which is rich in aesthetic appeal and fit for industrial application.

Article 3 — The patent administration department under the State Council shall be responsible for the administration of patent work throughout the country. It shall 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 the security or other vital interests of the state and is required to be kept secret, the application shall be handled in accordance with the relevant provisions of the state.

Article 5 — No patent right shall be granted for any invention-creation that violates the law or social morality or is detrimental to the public interest.

No patent right shall be granted for any invention-creation completed by relying on genetic resources obtained or used in violation of the provisions of laws and administrative regulations.

Article 6 — An invention-creation completed by a person in the execution of the tasks of the entity to which he or she belongs, or completed mainly by using the material and technical means of the entity, shall be a service invention-creation.

For a service invention-creation, the entity shall have the right to apply for a patent. After the application is granted, the entity shall be the patentee. The entity may dispose of the right to apply for a patent and the patent right for the service invention-creation in accordance with the law, and promote the application and exploitation of the relevant invention-creation.

For a non-service invention-creation, the inventor or designer shall have the right to apply for a patent. After the application is granted, the inventor or designer shall be the patentee.

Article 7 — No entity or individual shall prevent the inventor or designer from applying for a patent for a non-service invention-creation.

Article 8 — For an invention-creation jointly completed by two or more entities or individuals, or completed by an entity or individual under the entrustment of another entity or individual, unless otherwise agreed, the entity or individual that completed the invention-creation or the entities or individuals that jointly completed the invention-creation shall have the right to apply for a patent. After the application is granted, the applying entity or individual shall be the patentee.

Article 9 — Only one patent right shall be granted for the same invention-creation. Where two or more applicants respectively apply for a patent for the same invention-creation, the patent right shall be granted to the first applicant.

Article 10 — The right to apply for a patent and the patent right may be transferred.

Where a Chinese entity or individual transfers the right to apply for a patent or the patent right to a foreigner, foreign enterprise or other foreign organization, the transferor shall complete the procedures in accordance with the provisions of relevant laws and administrative regulations.

Where the right to apply for a patent or the patent right is transferred, the parties concerned shall conclude a written contract and register it with the patent administration department under the State Council, and the patent administration department under the State Council shall make a public announcement. The transfer of the right to apply for a patent or the patent right shall take effect as of the date of registration.

Article 11 — After the patent right for an invention or utility model is granted, unless otherwise provided in this Law, no entity or individual may exploit the patent without the permission of the patentee, that is, they may not make, use, offer for sale, sell or import the patented product, or use the patented process, or use, offer for sale, sell or import the product directly obtained by the patented process, for production or business purposes.

After the patent right for a design is granted, no entity or individual may exploit the patent without the permission of the patentee, that is, they may not make, offer for sale, sell or import the patented design product for production or business purposes.

Article 12 — Any entity or individual that exploits the patent of another person shall conclude a written license contract with the patentee and pay the patentee a royalty for exploitation. The licensee shall have no right to authorize any entity or individual other than those stipulated in the contract to exploit the patent.

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

Article 14 — Where the patent right of a state-owned enterprise or institution is of great significance to the national interest or public interest, the relevant 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 by the State Council, decide to have the patent exploited within a certain scope and promote its application, and the exploiting entity shall pay a royalty to the patentee in accordance with the provisions of the state.

Article 15 — Where the co-owners of the right to apply for a patent or the patent right have an agreement on the exercise of the right, the agreement shall prevail. Where there is no agreement, the co-owners may exploit the patent independently or grant a non-exclusive license to another person to exploit the patent. Where another person is granted a non-exclusive license to exploit the patent, the royalties collected shall be distributed among the co-owners.

Except for the circumstances specified in the preceding paragraph, the exercise of the co-owned right to apply for a patent or the patent right shall be subject to the consent of all co-owners.

Article 16 — The entity that is granted the patent right shall reward the inventor or designer of the service invention-creation. After the patent is exploited, the entity shall, based on the scope of application and the economic benefits derived, pay the inventor or designer reasonable remuneration.

Article 17 — The inventor or designer shall have the right to be named as such in the patent documents.

The patentee shall have the right to affix a patent marking on the patented product or the packaging of the product.

Article 18 — Where a foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China applies for a patent in China, the application shall be handled in accordance with the agreement concluded between the country to which the applicant belongs and China, or the international treaty to which both countries are parties, or on the basis of the principle of reciprocity, in accordance with this Law.

Article 19 — Where a foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China applies for a patent or handles other patent matters in China, it shall entrust a legally established patent agency to do so.

Article 20 — An entity or individual may file an international patent application for an invention-creation completed in China in accordance with the international treaties to which the People's Republic of China is a party. The applicant for an international patent application shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle international patent applications in accordance with the international treaties to which the People's Republic of China is a party, this Law, and the relevant provisions of the State Council.

Chapter II — Conditions for Granting Patent Rights

Article 22 — An invention or utility model for which a patent is 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, and that prior to the date of filing, no entity or individual has filed an application for the same invention or utility model with the patent administration department under the State Council and such application is recorded in the patent application documents published or the patent documents announced after the date of filing.

“Inventiveness” means that, compared with the prior art, 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 made or used and can produce effective results.

“Prior art” means any technology known to the public in China or abroad before the date of filing.

Article 23 — A design for which a patent is granted shall not be a prior design. No entity or individual has filed an application for the same design with the patent administration department under the State Council prior to the date of filing and such application is recorded in the patent documents announced after the date of filing.

A design for which a patent is granted shall be clearly distinguishable from a prior design or a combination of prior design features.

A design for which a patent is granted shall not conflict with the lawful rights previously obtained by any other person.

“Prior design” means any design known to the public in China or abroad before the date of filing.

Article 24 — An invention-creation for which a patent is applied shall not lose its novelty where, within six months before the date of filing, any of the following circumstances has occurred:

(1) it was made public for the first time for the purpose of public interest in a state of emergency or an extraordinary situation; (2) it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government; (3) it was published for the first time at a prescribed academic or technological conference; (4) it was disclosed by another person without the consent of the applicant.

Article 25 — Patent rights shall not be granted for the following items:

(1) scientific discoveries; (2) rules and methods of intellectual activities; (3) methods for the diagnosis or treatment of diseases; (4) animal and plant varieties; (5) substances obtained by means of nuclear transformation; (6) designs of two-dimensional printing goods made primarily for the purpose of marking

patterns, colors, or a combination thereof.

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

Chapter III — Patent Application

Article 26 — To apply for a patent for an invention or utility model, a request, a description and its abstract, and a claim shall be submitted.

The request shall state the name of the invention or utility model, the name of the inventor or designer, the name and address of the applicant, and other relevant matters.

The description shall set forth the invention or utility model in a manner clear and complete enough for the technical field to carry it out. Where necessary, drawings shall be attached. The abstract shall briefly describe the main technical points of the invention or utility model.

The claim shall state the scope of patent protection sought on the basis of the description, and shall clearly and concisely define the scope of the claimed patent protection.

Article 27 — To apply for a patent for a design, a request, pictures or photographs of the design, and a brief description of the design shall be submitted.

The relevant pictures or photographs submitted by the applicant shall clearly show the design of the product for which patent protection is sought.

Article 28 — The date of filing shall be the date on which the patent administration department under the State Council receives the patent application. Where the application is sent by post, the date of filing shall be the date of the postmark.

Article 29 — Where, within 12 months from the date on which the 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 the applicant first filed an application for a patent for a design in a foreign country, the applicant files an application for a patent for the same subject matter in China, 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 the principle of mutual recognition of the right of priority.

Where, within 12 months from the date on which the applicant first filed an application for a patent for an invention or utility model in China, the applicant files an application for a patent for the same subject matter with the patent administration department under the State Council, the applicant may enjoy the right of priority.

Article 30 — An applicant claiming the right of priority shall make a written declaration at the time of filing the application and, within three months, submit a copy of the patent application document first filed. Where the applicant fails to make a written declaration or fails to submit a copy of the patent application document within the time limit, it shall be deemed that the applicant has not claimed the right of priority.

Article 31 — A patent application for an 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.

A patent application for a design shall be limited to one design. 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 32 — An applicant may withdraw the patent application at any time before the patent right is granted.

Article 33 — An applicant may amend the patent application documents. However, the amendment to the patent application documents for an invention or utility model shall not exceed the scope described in the original description and claims, and the amendment to the patent application documents for a design shall not exceed the scope shown in the original pictures or photographs.

Chapter IV — Examination and Approval of Patent Applications

Article 34 — Upon receipt of a patent application for an invention, the patent administration department under the State Council shall, upon preliminary examination and finding the application to conform to the requirements of this Law, publish the application within 18 months from the date of filing. The patent administration department under the State Council may publish the application earlier upon the request of the applicant.

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

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

Article 36 — When requesting a substantive examination, the applicant for a patent for an invention shall submit reference materials relating to the invention that were available before the date of filing.

Article 37 — Where the patent administration department under the State Council, after conducting a substantive examination of a patent application for an invention, finds that the application does not conform to the provisions of this Law, it shall notify the applicant to state observations or amend the application within a specified time limit. Where the applicant fails to respond within the time limit without justifiable reasons, the application shall be deemed withdrawn.

Article 38 — Where after the applicant states observations or makes amendments, the patent administration department under the State Council still finds that the patent application for an invention does not conform to the provisions of this Law, it shall reject the application.

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

Article 40 — Where no cause for rejection is found after a preliminary examination of a patent application for a 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 register and publish it. The patent right for utility model or design shall take effect as of the date of publication.

Chapter V — Term, Termination and Invalidation of Patent Rights

Article 41 — Any applicant who is dissatisfied with the decision of the patent administration department under the State Council to reject the patent application may, within three months from the date of receipt of the notification, request the patent administration department under the State Council to conduct a reexamination. After reexamination, the patent administration department under the State Council shall make a decision and notify the applicant.

Where the applicant for a patent is dissatisfied with the decision of the patent administration department under the State Council on reexamination, the applicant may, within three months from the date of receipt of the notification, file a lawsuit with a people's court.

Article 42 — The term of a patent right for invention shall be 20 years, 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 calculated from the date of filing.

Where the patent right for an invention is granted after the expiration of four years from the date of filing and three years from the date of request for substantive examination, the patent administration department under the State Council may, upon the request of the patentee, extend the term of the patent right to compensate for the unreasonable delay in the examination and approval process, except for the unreasonable delay caused by the applicant.

The extension period provided for in the preceding paragraph shall be determined by the patent administration department under the State Council.

Article 43 — The patentee shall pay annual fees commencing from the year in which the patent right is granted.

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

(1) the patentee fails to pay the annual fee in accordance with the provisions; (2) the patentee waives the patent right by making a written declaration.

Where the patent right is terminated before the expiration of its term, the patent administration department under the State Council shall register and publish it.

Article 45 — Commencing from the date of the announcement of the grant of a patent right by the patent administration department under the State Council, any entity or individual that considers that the grant of the patent right does not conform to the relevant provisions of this Law may request the patent administration department under the State Council to declare the patent right invalid.

Article 46 — The patent administration department under the State Council shall examine the request for invalidation in a timely manner, make a decision, and notify the requesting party and the patentee. The decision to declare the patent right invalid shall be registered and published by the patent administration department under the State Council.

Where any party is dissatisfied with the decision of the patent administration department under the State Council to declare the patent right invalid or to uphold the patent right, the party may file a lawsuit with a people's court within three months from the date of receipt of the notification. The people's court shall notify the other party to participate in the proceedings as a third party.

Article 47 — A patent right declared invalid shall be deemed to have never existed from the beginning.

The decision to declare a patent right invalid shall have no retroactive effect on any judgment of patent infringement made and executed by a people's court, any conciliation statement on patent infringement, or any decision made and executed by the patent administration department on patent infringement disputes, or on any patent exploitation license contract or patent transfer contract performed, prior to the decision to declare the patent right invalid. However, compensation for losses caused to another person in bad faith by the patentee shall be made.

Chapter VI — Compulsory License for Exploitation of Patents

Article 48 — Where a patentee who has been granted a patent right for an invention or utility model has not exploited or has not sufficiently exploited the patent without justifiable reasons within three years from the date of grant and four years from the date of filing, the patent administration department under the State Council may, upon the application of an entity or individual that is qualified to exploit the invention or utility model, grant a compulsory license to exploit the patent.

Article 49 — In a state of emergency or an extraordinary situation, or for the purpose of public interest, the patent administration department under the State Council may grant a compulsory license to exploit a patent for invention or utility model.

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 pharmaceutical product and its export to a country or region that conforms to the provisions of relevant international treaties to which the People's Republic of China is a party.

Article 51 — Where an invention or utility model for which a patent right has been granted represents a major technological advancement of notable economic significance compared with an earlier invention or utility model for which a patent right has already been granted, and the exploitation of the later invention or utility model depends on the exploitation of the earlier one, the patent administration department under the State Council may, upon the application of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Article 52 — Where an entity or individual requests a compulsory license, it or he shall provide evidence proving that it or he has requested the patentee to grant a license for exploitation on reasonable terms and has failed to obtain such a license within a reasonable period of time.

Article 53 — The entity or individual that is granted a compulsory license for exploitation shall pay a reasonable royalty to the patentee, or handle the royalty matter in accordance with the provisions of relevant international treaties to which the People's Republic of China is a party. Where the royalty paid cannot be agreed upon, it shall be determined by the patent administration department under the State Council.

Chapter VII — Protection of Patent Rights

Article 54 — The scope of protection of a patent right for an invention or utility model shall be determined by the content of the claim. The description and the appended drawings may be used to interpret the claim.

The scope of protection of a patent right for a design shall be determined by the design of the product as shown in the pictures or photographs, and a brief description may be used to interpret the design of the product as shown in the pictures or photographs.

Article 55 — Where a patent infringement dispute involves a patent for an invention for a manufacturing process, the product manufactured by the process is a new product, and the entity or individual manufacturing the identical product shall provide evidence to prove that the process used in manufacturing its or his product is different from the patented process.

Article 56 — In a patent infringement dispute, where the accused infringer has evidence to prove that the technology or design exploited by it or him is part of the prior art or prior design, the exploitation shall not constitute patent infringement.

Article 57 — Where a patent infringement dispute arises, the parties shall resolve the dispute through consultation. Where the parties are unwilling to consult or consultation fails, the patentee or interested party may file a lawsuit with a people's court or request the patent administration department to handle the matter.

Where the patent administration department, in handling the matter, determines that the infringement is established, it may order the infringer to immediately cease the infringement. Where the party concerned is dissatisfied with the decision, it may file a lawsuit with a people's court within 15 days from the date of receipt of the notification. Where the infringer neither files a lawsuit nor ceases the infringement within the time limit, the patent administration department may apply to the people's court for compulsory enforcement.

Article 58 — The amount of compensation for patent infringement shall be determined based on the actual losses suffered by the right holder as a result of the infringement or the profits earned by the infringer as a result of the infringement. Where the losses suffered by the right holder or the profits earned by the infringer

are difficult to determine, the amount of compensation shall be reasonably determined with reference to the multiple of the royalties for the patent license. In the case of willful infringement of a patent right where the circumstances are serious, the amount of compensation may be determined at not less than one and not more than five times the amount determined in accordance with the aforementioned method.

Where the losses suffered by the right holder, the profits earned by the infringer, and the royalties for the patent license are all difficult to determine, the people's court may, based on factors such as the type of patent right, the nature and circumstances of the infringement, render a judgment awarding compensation of not less than 30,000 RMB and not more than 5,000,000 RMB.

Article 59 — The limitation period for instituting legal proceedings concerning patent infringement shall be three years, calculated from the date on which the patentee or interested party knows or should have known of the infringement and the infringer.

Article 60 — Where any person counterfeits the patent of another person, the person shall, in addition to bearing civil liability in accordance with the law, be ordered by the patent administration department to make corrections and the patent administration department shall make a public announcement. The illegal gains shall be confiscated and a fine of not more than five times the illegal gains may be imposed. Where there are no illegal gains or the illegal gains are less than 50,000 RMB, a fine of not more than 250,000 RMB may be imposed. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 61 — Where an applicant for a patent or the patentee pays a fee in accordance with the provisions, the applicant or patentee may pay the fee in a reduced amount or request a deferment of payment as prescribed.

Article 62 — Where a dispute arises over the ownership of the right to apply for a patent or the patent right, a people's court may, upon the request of the party concerned, preserve the relevant patent application or patent right.

Article 63 — The patent administration department under the State Council shall formulate implementation regulations for this Law and submit them to the State Council for approval before implementation.

Article 64 — This Law shall take effect as of April 1, 1985.

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