

Patent Law of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Conditions for Granting Patent Rights	4
Chapter III — Patent Application	5
Chapter IV — Examination and Approval of Patent Applications	6
Chapter V — Term, Termination, and Invalidation of Patent Rights	7
Chapter VI — Special License for Exploitation of a Patent	7
Chapter VII — Protection of Patent Rights	9
Chapter VIII — Supplementary Provisions	11

Adopted at the 4th Session of the Standing Committee of the Sixth National People's Congress on March 12, 1984
Effective: April 1, 1985; first amended on September 4, 1992; second amended on August 25, 2000; third amended on December 27, 2008; fourth amended on October 17, 2020, effective June 1, 2021

Table of Contents

- Chapter I — General Provisions
- Chapter II — Conditions for Granting Patent Rights
- Chapter III — Patent Application
- Chapter IV — Examination and Approval of Patent Applications
- Chapter V — Term, Termination, and Invalidation of Patent Rights
- Chapter VI — Special License for Exploitation of a Patent
- Chapter VII — Protection of Patent Rights
- Chapter VIII — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of protecting the lawful rights and interests of patentees, encouraging invention-creations, promoting the application of invention-creations, enhancing innovation capabilities, 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 an 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 an overall or partial product, a new design of the shape, pattern, or a combination thereof, or a combination of the color with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application.

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

Article 4 — Where an invention-creation for which a patent is applied relates to state security or other vital interests and requires confidentiality, the patent application shall be handled in accordance with the relevant provisions of the state. The patent administrative department under the State Council shall examine such applications and handle them in accordance with law.

Article 5 — Patent rights shall not be granted for invention-creations that violate the law or social morality or are detrimental to public interests. Patent rights shall not be granted for invention-creations that are accomplished by relying on genetic resources that are obtained or utilized in violation of the provisions of laws and administrative regulations.

Article 6 — An invention-creation made by a person in executing the tasks of the entity to which he belongs, or made by him by mainly using the material and technical means of the entity, is a service invention-creation. For a service invention-creation, the entity shall have the right to apply for a patent. Where the right to apply for a patent belongs to the entity, the entity shall reward the inventor or creator after the patent is granted. Where an invention-creation is made by using the material and technical means of the entity, and the entity has concluded a contract with the inventor or creator providing for the ownership of the right to apply for a patent and the ownership of the patent right, such provisions shall apply.

Article 7 — No entity or individual shall prevent the inventor or creator from applying for a patent for a non-service invention-creation. For a service invention-creation, the inventor or creator shall have the right to be named as such in the patent application documents.

Article 8 — For an invention-creation accomplished by two or more entities or individuals in cooperation, or accomplished by one entity or individual under the entrustment of another entity or individual, the right to apply for a patent shall belong to the entity or individual that accomplished the invention-creation or to all co-inventors or co-creators, unless otherwise agreed by the parties. After the application is approved, 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 apply for patents for the same invention-creation separately, the patent right shall be granted to the applicant whose application was filed first.

Article 10 — The right to apply for a patent and the patent right may be assigned. Where a Chinese entity or individual assigns the right to apply for a patent or the patent right to a foreigner, foreign enterprise, or other foreign organization, it shall go through the formalities in accordance with the provisions of relevant laws and administrative regulations. For the assignment of the right to apply for a patent or the patent right, the parties shall conclude a written contract and register the same with the patent administrative department under the State Council, which shall make a public announcement of the assignment. The assignment 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 grant of a patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the permission of the patentee, exploit the patent, that is, make, use, offer to sell, sell, or import the patented product, or use the patented process, or

use, offer to sell, sell, or import the product directly obtained by the patented process, for production or business purposes. After the grant of a patent right for a design, no entity or individual may, without the permission of the patentee, exploit the patent, that is, make, offer to sell, sell, or import the product incorporating the patented design, for production or business purposes.

Article 12 — Except as otherwise specified in Article 14 of this Law, an entity or individual that exploits the patent of another person shall conclude a license contract for exploitation with the patentee and pay the patentee a royalty for exploitation. The licensee shall not have the right to authorize any entity or individual other than that referred to in the contract to exploit the patent. Where an invention-creation is completed on the basis of a genetic resource, the applicant shall state the direct source and the original source of the genetic resource in the patent application documents; where the applicant is unable to state the original source, it shall explain the reasons therefor.

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 a patent for invention of a state-owned enterprise or institution is of great significance to state interests or public interests, the relevant competent departments under the State Council and the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government may, upon approval by the State Council, decide to have the patent widely applied within an approved scope and allow designated entities to exploit the patent; the exploiting entity shall pay royalties 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 of the patent right have agreed on the exercise of the right, such agreement shall prevail. Where there is no agreement, the co-owners may independently exploit the patent or authorize others to exploit the patent by means of a non-exclusive license; the royalties obtained from the licensing of another person to exploit the patent shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, the exercise of the co-owned right to apply for a patent or the co-owned patent right shall be subject to the consensus of all co-owners.

Article 16 — The entity that has been granted a patent right shall reward the inventor or creator of the service invention-creation; after such a patent is exploited, the entity shall give the inventor or creator a reasonable amount of remuneration based on the scope of application and the economic benefits yielded. The state encourages entities to which patent rights are granted to implement property right incentive measures and to enable inventors or creators to reasonably share the benefits of innovation through equity, options, dividends, or other means.

Article 17 — The inventor or creator shall have the right to be named as such in the patent documents. The patentee shall have the right to affix a patent mark on its patented product or on 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 in accordance with the international treaty to which both countries are parties, or in accordance with the principle of reciprocity, and shall be handled in accordance with the provisions of 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 patent agency established in accordance with the law to act on its behalf. Where a Chinese entity or individual applies for a patent or handles other patent matters in China, it may entrust a patent agency to act on its behalf. A patent agency shall abide by laws and administrative regulations and shall handle patent applications and other patent matters as entrusted by its principals. It shall also be obligated to keep

confidential the content of its principals' invention-creations, except where the patent application has been published or announced. The specific measures for the administration of patent agencies shall be provided for by the State Council.

Article 20 — Any entity or individual that files in a foreign country an application for a patent for an invention or utility model accomplished in China shall, in advance, request the patent administrative department under the State Council to conduct confidentiality examination. The procedures, time limits, and other matters for such confidentiality examination shall be in accordance with the provisions of the State Council. A Chinese entity or individual may file an international patent application in accordance with the relevant international treaties to which the PRC is a party. An applicant for an international patent application shall comply with the provisions of the preceding paragraph. The patent administrative department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which the PRC is a party, this Law, and the relevant provisions of the State Council. Where an entity or individual files an application for a patent in a foreign country in violation of the provisions of paragraph 1 of this Article and then files an application for a patent in China, the patent right shall not be granted.

Article 21 — The patent administrative department under the State Council and its Patent Reexamination Board shall handle patent applications and requests in an objective, fair, accurate, and timely manner in accordance with the law, so as to meet the requirements of this Law. Staff members of the patent administrative department under the State Council and relevant state organs shall be obligated to keep confidential the content of invention-creations, except where the patent application has been published or announced. The provisions of the preceding paragraph shall apply to the management and other staff members of patent agencies.

Chapter II — Conditions for Granting Patent Rights

Article 22 — An invention or utility model for which a patent right shall be granted shall possess the characteristics of novelty, inventiveness, and practical applicability. "Novelty" means that the invention or utility model does not form part of the prior art, that no entity or individual has, before the date of filing, filed a patent application with the patent administrative department under the State Council for the identical invention or utility model and recorded the same in the patent application documents or patent documents published after the date of filing. "Inventiveness" means that, compared with the prior art, the invention has prominent substantive features and represents a notable progress, and 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. For the purposes of this Law, "prior art" means the technology known to the public both domestically and abroad before the date of filing.

Article 23 — A design for which a patent right shall be granted shall not be a prior design, and no entity or individual has, before the date of filing, filed a patent application with the patent administrative department under the State Council for the identical design and recorded the same in the patent documents published after the date of filing. A design for which a patent right shall be granted shall be clearly distinguishable from a prior design or a combination of the features of prior designs. A design for which a patent right shall be granted shall not conflict with the lawful rights acquired by another person before the date of filing. For the purposes of this Law, "prior design" means a design known to the public both domestically and abroad before the date of filing.

Article 24 — An invention-creation for which a patent is applied shall not lose its novelty if, within six months before the date of filing, any of the following circumstances occurs: (1) it is disclosed for the first time for public interest purposes when a state of emergency or an extraordinary situation occurs in the country; (2) it is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government; (3) it is published for the first time at a prescribed academic or technological conference; (4) its contents are divulged by another person without the consent of the applicant.

Article 25 — Patent rights shall not be granted for 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 by nuclear transformation; (6) designs of two-dimensional printing patterns, colors, or a combination thereof, serving primarily as markers. Patent rights may be granted in accordance with the provisions of this Law for the production methods of the products specified in Item (4) of the preceding paragraph.

Chapter III — Patent Application

Article 26 — For an application for a patent for an invention or utility model, documents such as a request, a description, an abstract, and a claim shall be submitted. The request shall state the title of the invention or utility model, the name of the inventor or creator, the 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 shall be appended. The abstract shall briefly state the key technical points of the invention or utility model. The claim shall be supported by the description and shall clearly and concisely define the scope of the patent protection for which protection is sought. For an invention-creation that relies on genetic resources, the applicant shall state the direct source and original source of the genetic resources in the patent application documents; where the applicant is unable to state the original source, it shall state the reasons therefor.

Article 27 — For an application for a patent for a design, documents such as a request, drawings or photographs of the design, and a brief description of the design shall be submitted. The relevant drawings 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 administrative department under the State Council receives the patent application documents. Where the application documents are delivered by post, the date of the postmark shall be the date of filing.

Article 29 — Where an applicant files an application for a patent for invention or utility model in a foreign country within 12 months from the date on which it first filed an application for a patent for the same invention or utility model in China, or files an application for a patent for design in a foreign country within six months from the date on which it first filed an application for a patent for the same design in China, it 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 in accordance with the principle of mutual recognition of the right of priority. Where an applicant files an application for a patent for invention or utility model with the patent administrative department under the State Council within 12 months from the date on which it first filed an application for a patent for the same invention or utility model in China, it 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 patent application and shall, within 16 months from the date on which it first filed the application for a patent for invention or utility model, or within three months from the date on which it first filed the application for a patent for design, submit a copy of the patent application documents filed for the first time. Where the applicant fails to make a written declaration or fails to meet the time limit for submitting a copy of the patent application documents, the claim for the right of priority shall be deemed not to have been made.

Article 31 — An application for a patent for invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application. An application for a patent for design shall be limited to one design. 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 in sets, may be filed as one application.

Article 32 — An applicant may withdraw its patent application at any time before the patent right is granted.

Article 33 — An applicant may amend its patent application documents, provided that the amendment to the invention or utility model patent application document does not go beyond the scope recorded in the original description and claims, and the amendment to the design patent application document does not go beyond the scope shown in the original drawings or photographs.

Chapter IV — Examination and Approval of Patent Applications

Article 34 — Where, after receiving an application for a patent for invention, the patent administrative department under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly within 18 months from the date of filing. Upon request of the applicant, the patent administrative department under the State Council may publish the application at an earlier date.

Article 35 — Upon the applicant's request for an application for a patent for invention, the patent administrative department under the State Council may conduct substantive examination of the application within three years from the date of filing; where, without justified reasons, the applicant fails to request substantive examination within the time limit, the application shall be deemed to have been withdrawn. The patent administrative department under the State Council may, on its own initiative, conduct substantive examination of an application for a patent for invention when it deems it necessary.

Article 36 — When requesting substantive examination, the applicant for a patent for invention shall submit reference materials relating to the invention before the date of filing. Where an application for a patent for invention has been filed in a foreign country, the patent administrative department under the State Council may require the applicant to submit, within a specified time limit, the materials from the search conducted for the purpose of examining the application in that country, or the materials from the examination results; where, without justified reason, the applicant fails to submit the same within the time limit, the application shall be deemed to have been withdrawn.

Article 37 — Where, upon substantive examination, the patent administrative department under the State Council finds that the application for a patent for invention does not conform to the provisions of this Law, it shall notify the applicant and require it to state its opinions or make amendments within a specified time limit; where, without justified reason, the applicant fails to respond within the time limit, the application shall be deemed to have been withdrawn.

Article 38 — Where, after the applicant has stated its opinions or made amendments, the patent administrative department under the State Council still finds that the application for a patent for invention does not conform to the provisions of this Law, it shall reject the application.

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

Article 40 — Where no cause for rejection of an application for a patent for utility model or design is found after preliminary examination, the patent administrative 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 announce the same. The patent right for utility model or design shall take effect as of the date of announcement.

Article 41 — Where an applicant for a patent is dissatisfied with the decision of the patent administrative department under the State Council to reject the application, the applicant may, within three months from the date of receipt of the notification, file a request for reexamination with the Patent Reexamination Board under

the patent administrative department under the State Council. After reexamination, the Patent Reexamination Board shall make a decision and notify the applicant for a patent. Where the applicant for a patent is dissatisfied with the reexamination decision of the Patent Reexamination Board, it may, within three months from the date of receipt of the notification, bring a lawsuit with the people's court.

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

Article 42 — The term of a patent right for an invention shall be 20 years, the term of a patent right for a utility model shall be 10 years, and the term of a patent right for a design shall be 15 years, all calculated from the date of filing. Where a 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 administrative department under the State Council shall, upon request of the patentee, grant compensation for the term of the patent right for the unreasonable delay in the examination procedure, unless the unreasonable delay is caused by the applicant. To compensate for the time taken for the review and approval of new drugs for marketing, the patent administrative department under the State Council shall grant compensation for the term of the patent right for an invention relating to a new drug that has obtained marketing authorization in China upon request of the patentee. The compensation term shall not exceed five years, and the total effective term of the patent right after the new drug is approved for marketing shall not exceed 14 years.

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

Article 44 — In 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 as required; (2) the patentee waives its patent right by a written declaration. Where the patent right is terminated before the expiration of the term, the patent administrative department under the State Council shall register and announce the same.

Article 45 — Commencing from the date of the announcement by the patent administrative department under the State Council of the grant of a patent right, 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 Reexamination Board to declare the patent right invalid.

Article 46 — The Patent Reexamination Board shall promptly examine and make a decision on a request for invalidation of a patent right and notify the requesting person and the patentee of its decision. Where the patentee or the requesting person is dissatisfied with the decision of the Patent Reexamination Board to declare the patent right invalid or to maintain the patent right, it may, within three months from the date of receipt of the notification of the decision, bring a lawsuit with the people's court. The people's court shall notify the opposite party in the invalidation procedure to participate in the proceedings as a third party.

Article 47 — Any patent right declared invalid shall be deemed not to have existed from the beginning. The decision to declare a patent right invalid shall have no retroactive effect on the judgments or rulings on patent infringement made and enforced by the people's court before the invalidation, the decisions on the handling of patent infringement disputes that have been performed or compulsorily enforced, and the patent exploitation license contracts and patent assignment contracts that have been performed. However, compensation shall be made for any damage caused to another person in bad faith by the patentee. Where, in accordance with the provisions of the preceding paragraph, the non-refund of compensation for patent infringement, patent exploitation royalties, or the patent assignment price is manifestly contrary to the principle of fairness, full or partial refund shall be made.

Chapter VI — Special License for Exploitation of a Patent

Article 48 — The patent administrative department under the State Council and the local people's governments shall encourage and support the wide application of patents, shall promote the application of

patents through measures such as financial support and tax incentives, and shall strengthen the protection of patent rights.

Article 49 — During the period of a state of emergency or an extraordinary situation, or for the purpose of public interest, the patent administrative department under the State Council may grant a compulsory license for the exploitation of a patent for invention or utility model.

Article 50 — For the purpose of public health, the patent administrative department under the State Council may grant a compulsory license for the manufacture and export of a patented medicine to a country or region that conforms to the provisions of the relevant international treaties to which the PRC 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 prominent economic significance compared with an earlier invention or utility model for which a patent right has already been granted, and the exploitation of the former is dependent on the exploitation of the latter, the patent administrative department under the State Council may, upon request of the later patentee, grant a compulsory license for the exploitation of the earlier invention or utility model. Where a compulsory license is granted in accordance with the preceding paragraph, the patent administrative department under the State Council may, upon request of the earlier patentee, also grant a compulsory license for the exploitation of the later invention or utility model.

Article 52 — Where an invention-creation for which a patent is applied involves a new biological material that is not available to the public and the description of the biological material is insufficient to enable a person skilled in the art to carry out the invention-creation, the applicant shall, in addition to meeting the other requirements of this Law, complete the formalities for depositing a sample of the biological material before the date of filing or at the latest on the date of filing, and shall state in the request the name and address of the depository institution and the deposit number. Where the applicant fails to complete the deposit formalities within the specified time limit, it shall be deemed not to have made the deposit.

Article 53 — Except for a compulsory license granted in accordance with Article 48, subparagraph (2) or Article 50 of this Law, the exploitation of a compulsory license shall be mainly for the purpose of supplying the domestic market.

Article 54 — An entity or individual requesting a compulsory license in accordance with the provisions of Article 48, subparagraph (1) or Article 51 of this Law shall provide evidence to prove that it has requested the patentee to grant a license for exploitation of the patent under reasonable terms and has failed to obtain such a license within a reasonable period of time.

Article 55 — Where the patent administrative department under the State Council makes a decision to grant a compulsory license, it shall notify the patentee promptly and shall register and announce the same. The decision to grant a compulsory license shall state the scope and duration of the exploitation on the basis of the reasons for the compulsory license. Where the circumstances giving rise to the compulsory license cease to exist and are unlikely to recur, the patent administrative department under the State Council shall, upon request of the patentee, make a decision to terminate the compulsory license after examination.

Article 56 — An entity or individual that has obtained a compulsory license for exploitation shall not have an exclusive right to exploit the patent and shall not have the right to authorize another person to exploit the patent.

Article 57 — An entity or individual that has obtained a compulsory license for exploitation shall pay reasonable royalties to the patentee. The amount of royalties shall be determined through negotiation between the parties; where the parties fail to reach an agreement, the patent administrative department under the State Council shall make a ruling.

Article 58 — Where a patentee is dissatisfied with the decision of the patent administrative department under the State Council to grant a compulsory license for exploitation, or where the patentee or the entity or

individual that has obtained the compulsory license is dissatisfied with the ruling of the patent administrative department under the State Council on the royalties for the compulsory license, it may, within three months from the date of receipt of the notification, bring a lawsuit with 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 a design shall be determined by the design of the product shown in the drawings or photographs, and a brief description may be used to interpret the design of the product shown in the drawings or photographs.

Article 60 — Where a dispute arises as a result of the exploitation of a patent without the permission of the patentee, that is, infringement of the patent right, the parties shall resolve the dispute through negotiation. Where the parties are unwilling to negotiate or the negotiation fails, the patentee or an interested party may bring a lawsuit with the people's court, and may also request the patent administrative department to handle the matter. Where, in the course of handling the matter, the patent administrative department determines that the infringement is constituted, it may order the infringer to immediately cease the infringing act. Where the party is dissatisfied with the decision, it may, within 15 days from the date of receipt of the notification, bring a lawsuit with the people's court in accordance with the Administrative Procedure Law of the PRC. Where the infringer fails to bring a lawsuit and fails to cease the infringing act upon expiration of the time limit, the patent administrative department may apply to the people's court for compulsory enforcement. With respect to a request for handling, the patent administrative department that handles the matter may mediate on the amount of compensation for the patent infringement at the request of the parties. Where mediation fails, the parties may bring a lawsuit with the people's court in accordance with the Civil Procedure Law of the PRC.

Article 61 — Where a dispute over patent infringement involves a patent for an invention for a manufacturing process of a new product, the entity or individual manufacturing the identical product shall provide evidence to prove that the manufacturing process used for its product is different from the patented process. Where a dispute over patent infringement involves a patent for utility model or a patent for design, the people's court or the patent administrative department may require the patentee or an interested party to produce a patent right evaluation report made by the patent administrative department under the State Council after search, analysis, and evaluation of the relevant utility model or design, which shall serve as evidence in the trial or handling of the patent infringement dispute; the parties may also voluntarily produce a patent right evaluation report.

Article 62 — In a dispute over patent infringement, where the accused infringer has evidence to prove that the technology or design it exploits forms part of the prior art or prior design, the infringement shall not be constituted.

Article 63 — No entity or individual shall pass off the patent of another person. The patentee shall have the right to affix a patent mark on its patented product or on the packaging of the product. Where a person passes off the patent of another person, he shall bear civil liability in accordance with the law; in addition, the patent administrative department shall order the infringer to make rectification and make a public announcement, confiscate the 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 RMB 50,000, a fine of not more than RMB 250,000 may be imposed; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 64 — When investigating and handling suspected acts of counterfeiting a patent, the patent administrative department shall have the right, based on evidence obtained, to take the following measures: (1) questioning the parties concerned and investigating the circumstances relating to the suspected illegal

act; (2) conducting on-site inspection of the premises where the parties concerned are suspected of committing the illegal act; (3) consulting and copying the contracts, invoices, account books, and other relevant materials of the parties concerned relating to the suspected illegal act; (4) inspecting the products relating to the suspected illegal act; (5) sealing up or seizing the products for which there is evidence to prove are products of counterfeited patents. When handling patent infringement disputes, the patent administrative department shall have the right, at the request of the patentee or an interested party, to take the measures specified in Items (1), (2), and (4) of the preceding paragraph. When exercising the functions and powers specified in the preceding two paragraphs, the patent administrative department shall be accompanied by law enforcement personnel numbering not less than two, and shall produce their credentials. The parties shall cooperate and provide assistance. Where the parties refuse to cooperate or provide assistance, the patent administrative department may handle the matter with the cooperation of the public security organ.

Article 65 — Where the patent administrative department under the State Council or the patent administrative department of the local people's government shall mediate on the amount of compensation for patent infringement at the request of the parties, the mediation shall be conducted in accordance with the principle of voluntariness and lawfulness. Where mediation fails, the parties may bring a lawsuit with the people's court in accordance with the Civil Procedure Law of the PRC.

Article 66 — The amount of compensation for infringement of a patent right shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement or the profits earned by the infringer from the infringement. Where it is difficult to determine the losses suffered by the right holder or the profits earned by the infringer, the amount of compensation shall be determined by reference to a reasonable multiple of the patent license fee. For willful infringement of a patent right where 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 in accordance with the above method. Where it is difficult to determine the losses of the right holder, the profits of the infringer, or the patent license fee, the people's court may, based on factors such as the type of patent right, the nature and circumstances of the infringing act, award compensation of not less than RMB 30,000 and not more than RMB 5,000,000. The amount of compensation shall also include the reasonable expenses incurred by the right holder in stopping the infringing act. The people's court may, for the purpose of determining the amount of compensation, order the infringer to provide the account books and materials relating to the infringing act where the right holder has made its best effort to provide evidence and the relevant account books and materials are mainly in the possession of the infringer. Where the infringer refuses to provide or provides false account books and materials, the people's court may determine the amount of compensation by reference to the right holder's claims and the evidence provided.

Article 67 — Where a patentee or an interested party has evidence to prove that another person is committing or will commit an act infringing upon its patent right, and failure to promptly stop the act will cause irreparable harm to its lawful rights and interests, it may, before bringing a lawsuit, apply to the people's court for an order to stop the relevant act. In handling an application specified in the preceding paragraph, the people's court shall apply the provisions of Articles 93 through 96 and Article 99 of the Civil Procedure Law of the PRC.

Article 68 — To stop a patent infringement, the patentee or an interested party may, before bringing a lawsuit, apply to the people's court for preservation of evidence where the evidence may be destroyed or lost or become difficult to obtain later. The people's court shall make a ruling within 48 hours as to whether or not to adopt preservation measures. The applicant may be ordered to provide security; where the applicant fails to provide security, the application shall be rejected. Where the applicant fails to bring a lawsuit within 15 days after the people's court has adopted the preservation measures, the people's court shall lift the preservation measures.

Article 69 — The period of limitation for an action against infringement of a patent right shall be three years, calculated from the date on which the patentee or an interested party knows or should have known of the infringing act and the infringer. Where an appropriate royalty is not paid for exploiting an invention during the period from the publication of the application for a patent for invention to the grant of the patent right, the period of limitation for an action by the patentee to demand payment of the royalty shall be three years, calculated from the date on which the patentee knows or should have known that another person is exploiting its invention. However, where the patentee has already known or should have known before the patent is granted, the period of limitation shall be calculated from the date on which the patent is granted.

Article 70 — None of the following shall be deemed an infringement of a patent right: (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 an entity or individual authorized by the patentee, and another person uses, offers for sale, sells, or imports such product; (2) where, before the date of filing of the patent application, another person has already manufactured an identical product, used an identical process, or made necessary preparations for such manufacture or use, and continues to manufacture the product or use the process only within the original scope; (3) where a foreign means of transport temporarily passing through the territorial land, territorial waters, or territorial airspace of China uses the relevant patent in its devices and installations for its own needs in accordance with the agreement concluded between the country to which the foreign means of transport belongs and China, or the international treaty to which both countries are parties, or in accordance with the principle of reciprocity; (4) where a relevant patent is used solely for the purposes of scientific research and experimentation; (5) where, for the purpose of providing the information required for administrative examination and approval, a person manufactures, uses, or imports a patented medicine or patented medical apparatus and instrument, or any other person manufactures or imports a patented medicine or patented medical apparatus and instrument exclusively for the said person.

Article 71 — For the purpose of production and business operations, where a person uses, offers for sale, or sells a product that infringes a patent right without knowing that the product was manufactured and sold without the authorization of the patentee, and can prove that the product was obtained from a lawful source, the person shall not be liable for compensation.

Article 72 — Where a person, in violation of the provisions of Article 20 of this Law and without authorization, files a patent application in a foreign country and divulges state secrets, the entity to which he belongs or the competent authority at a higher level shall impose an administrative sanction on him; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 73 — Where any staff member of the patent administrative department under the State Council or any relevant state organ neglects his duty, abuses his power, engages in fraudulent practices for personal gain, or divulges state secrets, the entity to which he belongs or the competent authority at a higher level shall impose an administrative sanction on him; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 74 — Where any person counterfeits the patent of another person, he shall bear civil liability in accordance with the law; in addition, the patent administrative department shall order the infringer to make rectification and make a public announcement, confiscate the 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 RMB 50,000, a fine of not more than RMB 250,000 may be imposed; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 75 — Any applicant for a patent or any other person that files with the patent administrative department under the State Council the documents relating to a patent application or patent right shall pay the fees in accordance with the provisions.

Article 76 — The patent administrative department under the State Council shall publish a Patent Gazette, regularly publishing information on patent applications, the grant of patent rights, patent license contracts, and other patent-related matters.

Article 77 — Where the provisions of Articles 19 and 20 of this Law are not observed and a patent application is filed in China without authorization from the patent administrative department under the State Council of the relevant confidentiality examination, the patent administrative department under the State Council shall not process the application.

Article 78 — The implementing regulations of this Law shall be formulated by the patent administrative department under the State Council and submitted to the State Council for approval before implementation.

Article 79 — The patent administrative department under the State Council shall, in accordance with the provisions of this Law, formulate guidelines for patent examination.

Article 80 — In the case of any international application filed in accordance with the Patent Cooperation Treaty, the provisions of this Law shall apply where an international treaty provides otherwise.

Article 81 — As of January 1, 2021, patent applications for designs may seek protection for partial designs of a product.

Article 82 — This Law shall come into force on April 1, 1985.

Disclaimer: This English translation is provided for informational and reference purposes only. While every effort has been made to ensure accuracy, this translation is not an official version and may not reflect the most current amendments or authoritative interpretations of the original Chinese text. For legal purposes, the official Chinese version as published by the National People's Congress of the People's Republic of China shall prevail. Readers should consult qualified legal professionals for advice on specific legal matters. This translation does not constitute legal advice.