Patent Law of the PRC

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Chapter I — General Provisions

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

Article 2 — “Inventions and creations” as used in this Law shall mean inventions, utility models and designs. “Invention” shall mean any new technical solution relating to a product, a process or an improvement thereof. “Utility model” shall mean any new technical solution relating to the shape, the structure, or a combination thereof, of a product, which is fit for practical use. “Design” shall mean, with respect to a product in whole or in part, any new design of the shape, pattern, or a combination thereof, or a 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, shall accept and examine patent applications in a unified manner, and shall 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 within their respective administrative regions.

Article 4 — Where an invention or 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 — Patent rights shall not be granted for inventions and creations that violate the law or social morality, or that are detrimental to the public interest. Patent rights shall not be granted for inventions and creations that are accomplished by relying on genetic resources obtained or used in violation of the provisions of laws and administrative regulations.

Article 6 — An invention or creation made by a person in the execution of the tasks of the entity to which the person belongs, or made by the person mainly by using the material and technical means of the entity, shall be a service invention or creation. For a service invention or 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 its service inventions and creations in accordance with the law and promote the exploitation and application of relevant inventions and creations. For a non-service invention or creation, the inventor or creator shall have the right to apply for a patent. After the application is granted, the inventor or creator shall be the patentee. For an invention or creation made by using the material and technical means of the entity, where the entity has entered into a contract with the inventor or creator stipulating the attribution of the right to apply for a patent and the patent right, such agreement shall prevail.

Article 7 — No entity or individual may suppress the application for a patent by an inventor or creator for a non-service invention or creation.

Article 8 — For an invention or creation accomplished by two or more entities or individuals in collaboration, or 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 has accomplished the invention or creation, unless otherwise agreed upon. 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 or creation. However, where the same applicant applies for both a utility model patent and an invention patent for the same invention or creation on the same day, and the previously granted utility model patent has not yet been terminated, and the applicant declares that the applicant waives the utility model patent right, the invention patent right may be granted. Where two or more applicants apply for a patent for the same invention or creation, the patent right shall be granted to the applicant who filed the application 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 it with the patent administration department under the State Council, which shall make an announcement. The assignment of the right to apply for a patent or the patent right shall take effect on the date of registration.

Article 11 — After the grant of a patent for an invention or utility model, unless otherwise provided for in this Law, no entity or individual may, without the permission of the patentee, exploit the patent, that is, make,

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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 grant of a patent for a design, no entity or individual may, without the permission of the patentee, exploit the patent, that is, make, offer for sale, sell, or import the product incorporating the patented design, for production or business purposes.

Article 12 — Any entity or individual exploiting the patent of another person shall conclude a written license contract with the patentee and pay a patent royalty to the patentee. The licensee shall have no right to authorize any entity or individual other than those provided for 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 exploiting the invention to pay an appropriate fee.

Article 14 — Where a co-owned right to apply for a patent or patent right is involved, the exploitation of the right shall be subject to the agreement among all co-owners. In the absence of such an agreement, any co-owner may independently exploit the patent or authorize others to exploit the patent by means of a general license. The royalties received from authorizing others to exploit the patent shall be distributed among all co-owners. Except under the circumstances specified in the preceding paragraph, the exercise of a co-owned right to apply for a patent or patent right shall be subject to the consent of all co-owners.

Article 15 — The entity to which a patent right is granted shall grant a reward to the inventor or creator of a service invention or creation. After the 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 derived. The State encourages the entity to which the patent right is granted to implement property rights incentives and to enable the inventor or creator to reasonably share the benefits of innovation through methods such as equity ownership, options, and dividends.

Article 16 — The inventor or creator shall have the right to be named as such in the patent document. The patentee shall have the right to have its patent mark displayed on its patented product or the packaging of such product.

Article 17 — Where a Chinese entity or individual applies for a patent in a foreign country for an invention or creation accomplished within the territory of China, it shall go through the confidentiality examination procedures in advance in accordance with the provisions. Where a Chinese entity or individual may file an international patent application under the Patent Cooperation Treaty or any other international treaty to which China is a party, the provisions of the preceding paragraph shall apply.

Chapter II — Conditions for Granting Patent Rights

Article 18 — An invention or utility model for which a patent is granted shall possess novelty, inventiveness, and practical applicability. Novelty shall mean that the invention or utility model is not an existing technology, and no entity or individual has filed an application with the patent administration department under the State Council before the date of application for the same invention or utility model and recorded in the patent application documents published or patent documents announced after the date of application. Inventiveness shall mean that, compared with the existing technology, the invention has prominent substantive features and represents a notable progress, and the utility model has substantive features and represents progress. Practical applicability shall mean that the invention or utility model can be manufactured or used and can produce positive results. “Existing technology” as used in this Law shall mean technology that has been publicly known in China or abroad before the date of application.

Article 19 — A design for which a patent is granted shall not be an existing design, and no entity or individual has filed an application with the patent administration department under the State Council before the date of application for the same design and recorded in the patent documents announced after the date of application. A design for which a patent is granted shall be clearly different from an existing design or a

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combination of features of existing designs. A design for which a patent is granted shall not conflict with any lawful right acquired by another person before the date of application. “Existing design” as used in this Law shall mean a design that has been publicly known in China or abroad before the date of application.

Article 20 — Patent rights shall not be granted for the following:

(1) Scientific discoveries;

(2) Rules and methods for intellectual activities;

(3) Methods for diagnosis or treatment of diseases;

(4) Animal and plant varieties;

(5) Nuclear transformation methods and substances obtained by means of nuclear transformation;

(6) Designs of two-dimensional printing used primarily as indicators of patterns, colors, or a combination of both.

Patent rights may, however, be granted for the production methods of the products specified in Item (4) of the preceding paragraph.

Chapter III — Application for Patents

Article 21 — When filing an application for a patent for an invention or utility model, the applicant shall submit the request, description, claims, abstract, and other documents. The request shall state the name 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 contain a clear and comprehensive description of the invention or utility model so that a person skilled in the relevant field of technology can carry it out. Where necessary, drawings shall be appended. The abstract shall briefly state the technical key points of the invention or utility model. The claims shall be supported by the description and shall define clearly and concisely the scope of the patent protection sought.

Article 22 — When filing an application for a patent for a design, the applicant shall submit the request, drawings or photographs of the design, a brief description of the design, and other documents. The relevant drawings or photographs submitted by the applicant shall clearly show the design of the product for which patent protection is sought.

Article 23 — The date of application shall be the date on which the patent administration department under the State Council receives the patent application. Where the application documents are sent by mail, the date of application shall be the date of mailing as evidenced by the postmark.

Article 24 — An invention or creation for which a patent is applied shall not lose its novelty under any of the following circumstances occurring within six months before the date of application:

(1) Where it is disclosed for the first time for the public interest when a state of emergency or any extraordinary situation occurs in the country;

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

(3) Where it is published for the first time at a prescribed academic or technological conference;

(4) Where it is disclosed by another person without the consent of the applicant.

Article 25 — An applicant may claim priority for a patent for an invention or utility model for which an application was first filed in a foreign country within 12 months, or for a patent for a design within six months, from the date on which the application was first filed in the foreign country, in accordance with an agreement concluded between the foreign country and China, an international treaty to which both countries are parties,

or the principle of mutual recognition of priority. An applicant may claim priority for a patent for an invention or utility model for which an application was first filed in China within 12 months from the date on which the application was first filed with the patent administration department under the State Council.

Article 26 — An applicant may amend the patent application documents, provided that the amendment to the description and claims of an application for a patent for an invention or utility model does not go beyond the scope of the original description and claims, and the amendment to an application for a patent for a design does not go beyond the scope of the original drawings or photographs.

Chapter IV — Examination and Approval of Patent Applications

Article 27 — Upon receipt of an application for a patent for an invention, the patent administration department under the State Council shall, after preliminary examination, find that the application conforms to the provisions of this Law, and shall publish the application promptly after 18 months from the date of application. Upon the request of the applicant, the patent administration department under the State Council may publish the application earlier.

Article 28 — Upon the request of the applicant for a patent for an invention made at any time within three years from the date of application, the patent administration department under the State Council may carry out substantive examination of the application. Where the applicant fails to request substantive examination within the prescribed time limit without justifiable reasons, the application shall be deemed withdrawn. The patent administration department under the State Council may, on its own initiative, carry out substantive examination of an application for a patent for an invention when it deems it necessary.

Article 29 — After the patent administration department under the State Council carries out substantive examination of an application for a patent for an invention, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant and require the applicant to state observations or make amendments within a specified time limit. If the applicant fails to state observations within the specified time limit without justifiable reasons, the application shall be deemed withdrawn. If, after the applicant has stated observations or made amendments, the patent administration department under the State Council still finds that the application does not conform to the provisions of this Law, the application shall be rejected.

Article 30 — For an application for a patent for a utility model or design, if no cause for rejection is found after preliminary examination, the patent administration department under the State Council shall make a decision to grant the patent right for the utility model or design, issue the corresponding patent certificate, and at the same time register and announce it.

Article 31 — Where an applicant is dissatisfied with the decision of the patent administration department under the State Council to reject the application, the applicant may, within three months from the date of receipt of the notification, request the patent 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 is dissatisfied with the reexamination decision, the applicant may, within three months from the date of receipt of the notification, file a lawsuit with the people’s court.

Chapter V — Term, Termination and Invalidation of Patent Rights

Article 32 — The term of a patent for an invention shall be 20 years, the term of a patent for a utility model shall be 10 years, and the term of a patent for a design shall be 15 years, all commencing from the date of application. Where a patent for an invention is granted four years after the date of application and three years after the date of request for substantive examination, the patent administration department under the State Council may, at the request of the patentee, extend the term of the patent to compensate for the unreasonable delay in examination. For compensation for the delay in the marketing authorization review of

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a new drug for which a patent is obtained, the patent administration department under the State Council may, at the request of the patentee, extend the term of the patent. The extension period shall not exceed five years, and the total effective patent term after marketing authorization shall not exceed 14 years.

Article 33 — After a patent right is granted, the patentee shall pay annual fees beginning from the year in which the patent is granted.

Article 34 — Under any of the following circumstances, the patent right shall terminate before the expiration of the term:

(1) The patentee fails to pay the annual fees in accordance with the provisions;

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

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

Article 35 — From the date on which the patent administration department under the State Council announces 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 administration department under the State Council to declare the patent right invalid. 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 a patent right invalid shall be registered and announced by the patent administration department under the State Council. Where a party is dissatisfied with the decision of the patent administration department under the State Council to declare a patent right invalid or to uphold the patent right, the party may, within three months from the date of receipt of the notification, file a lawsuit with the people's court.

Chapter VI — Special License for Exploitation of Patents

Article 36 — Under any of the following circumstances, the patent administration department under the State Council may, upon the application of an entity or individual that is qualified to exploit an invention or utility model, grant a compulsory license to exploit the patent for the invention or utility model:

(1) Where the patentee, after three years from the date of grant of the patent right and four years from the date of application for the patent, fails to exploit or fully exploit the patent without justifiable reasons;

(2) Where the exercise of the patent right by the patentee is determined in accordance with the law to be a monopolistic act, and the compulsory license is granted to eliminate or reduce the adverse effects of such act on competition.

Article 37 — Where a national emergency or any extraordinary situation occurs, or where the public interest so requires, the patent administration department under the State Council may grant a compulsory license to exploit a patent for an invention or utility model.

Article 38 — For the purpose of public health, the patent administration department under the State Council may grant a compulsory license to manufacture and export a patented drug to a country or region that conforms to the provisions of the relevant international treaties to which the People's Republic of China is a party.

Article 39 — Where an invention or utility model for which a patent right has been granted involves a significant technological advancement of considerable economic significance compared with an earlier invention or utility model for which a patent right has been granted, and the exploitation of the former depends on the exploitation of the latter, the patent administration department under the State Council may, upon the application of the latter patentee, grant a compulsory license to exploit the former invention or utility model. Under such circumstances, the patent administration department under the State Council may, upon

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the application of the former patentee, also grant a compulsory license to exploit the latter invention or utility model.

Article 40 — An entity or individual that applies for a compulsory license shall submit proof that it has requested the patentee to grant a license for exploitation on reasonable terms but has failed to obtain such license within a reasonable period of time.

Article 41 — The decision of the patent administration department under the State Council to grant a compulsory license for exploitation shall be registered and announced.

Article 42 — The entity or individual that obtains a compulsory license for exploitation shall not have an exclusive right to exploit the patent and shall not have the right to authorize exploitation by others. The entity or individual that obtains a compulsory license for exploitation shall pay a reasonable royalty to the patentee. The amount of the royalty shall be determined through negotiation between the parties. Where the parties fail to reach an agreement, the patent administration department under the State Council shall make a ruling.

Chapter VII — Protection of Patent Rights

Article 43 — The scope of protection of a patent 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 content of the claims. The scope of protection of a patent for a design shall be determined by the product incorporating the patented design as shown in the drawings or photographs. The brief description may be used to interpret the design as shown in the drawings or photographs.

Article 44 — Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, the parties shall resolve the dispute through negotiation. Where the parties are unwilling to negotiate or where the negotiation fails, the patentee or an interested party may file a lawsuit with the people's court or request the patent administration department to handle the matter. Where the patent administration department handling the matter determines that the infringement is established, it may order the infringer to immediately stop the infringing act. Where the party is dissatisfied with the decision, the party may, within 15 days from the date of receipt of the notification of the decision, file a lawsuit with the people's court in accordance with the Administrative Litigation Law of the People's Republic of China. Where the infringer neither files a lawsuit nor stops the infringing act upon expiration of the time limit, the patent administration department may apply to the people's court for compulsory enforcement.

Article 45 — Where a patent infringement dispute involves an invention patent for the manufacturing process of a new product, the entity or individual manufacturing the same product shall provide proof that the manufacturing process of its product is different from the patented process. Where a patent infringement dispute involves a utility model patent or a design patent, the people's court or the patent administration department may require the patentee or an interested party to produce a patent right evaluation report.

Article 46 — The amount of compensation for damage caused by patent infringement shall be determined based on the actual loss suffered by the right holder as a result of the infringement or the profits derived by the infringer from the infringement. Where it is difficult to determine the loss suffered by the right holder or the profits derived by the infringer, the amount shall be reasonably determined by reference to the multiple of the royalty for the patent license. For intentional patent infringement with serious circumstances, the amount of compensation may be determined at one to five times the amount determined in accordance with the aforesaid method. Where it is difficult to determine the loss suffered by the right holder, the profits derived by the infringer, or the royalty for the patent license, the people's court may, based on factors such as the type of the patent right and the nature and circumstances of the infringement, determine the compensation amount between RMB 30,000 and RMB 5 million. The amount of compensation shall also include the reasonable expenses paid by the right holder for stopping the infringement.

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Article 47 — The patentee or an interested party may, before filing a lawsuit, apply to the people's court for measures to preserve property, order the performance of or prohibit certain acts, or preserve evidence, where the patentee or interested party has evidence to prove that another person is committing or is about to commit an act of patent infringement, and that failure to stop the act in a timely manner will cause irreparable damage to the patentee or interested party's lawful rights and interests.

Article 48 — For the purpose of stopping patent infringement, the patentee or an interested party may, before filing a lawsuit, apply to the people's court for the preservation of evidence where the evidence may be lost or become difficult to obtain afterwards.

Article 49 — The limitation period for filing a lawsuit for patent infringement shall be three years, commencing from the date on which the patentee or interested party knows or should have known of the infringement and the infringer.

Article 50 — The following shall not be deemed patent infringement:

(1) Where a patented product, or a product directly obtained by a patented process, after being sold by the patentee or with the permission of the patentee, is used, offered for sale, sold, or imported by another person;

(2) Where, before the date of application for a patent, any person who has already manufactured the same product, used the same process, or made necessary preparations for such manufacture or use continues to manufacture the product or use the process only within the original scope;

(3) Where any foreign means of transport that temporarily passes through China's territorial land, territorial waters, or territorial airspace 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, an international treaty to which both countries are parties, or 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 a patented drug or patented medical apparatus and instruments for the purpose of providing information required for administrative examination and approval, or manufactures or imports the patented drug or patented medical apparatus and instruments exclusively for others.

Article 51 — Where the exploitation or use of a patent for the manufacture, use, or offer for sale of a drug without the authorization of the patentee does not constitute patent infringement, and the drug patent dispute involves both parties during the review of marketing authorization applications, the parties may file a lawsuit with the people's court or request the patent administration department under the State Council to render an administrative ruling. The drug regulatory department under the State Council may, within a prescribed period, decide whether to suspend the marketing authorization of the relevant drug based on an effective judgment or ruling of the people's court.

Article 52 — Any person who counterfeits a patent shall, in addition to assuming civil liability, be ordered by the patent administration department to make corrections, and an announcement shall be made. 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 RMB 50,000, a fine of not more than RMB 250,000 may be imposed. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 53 — Where a dispute over patent infringement involves an invention patent for a manufacturing process, and the entity or individual manufacturing the identical product provides proof that the manufacturing process of its product is different from the patented process, the patent administration department shall handle the matter in accordance with the provisions.

Article 54 — Where any person passes off a patent of another person, the person shall, in addition to assuming civil liability in accordance with the law, be ordered by the patent administration department to make corrections and make an 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 RMB 50,000, a fine of not more than RMB 250,000 may be imposed. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 55 — Where the patent administration department under the State Council fails to refund the application fees, announcement and printing fees, annual fees, or other fees in accordance with the provisions when handling patent matters, the parties concerned may apply for administrative reconsideration or file an administrative lawsuit in accordance with the law.

Article 56 — Where any staff member of the patent administration department or any other relevant State department neglects duties, abuses power, or engages in malpractices for personal gain, and the case constitutes a crime, criminal liability shall be pursued in accordance with the law. Where the case does not constitute a crime, administrative sanctions shall be imposed in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 57 — The Rules for the Implementation of this Law shall be formulated by the patent administration department under the State Council and shall come into effect after approval by the State Council.

Article 58 — This Law shall come into effect on April 1, 1985.

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