

Regulations on the Implementation of the Patent Law of the PRC

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

Contents

Table of Contents	1
Chapter I — General Provisions	2
Chapter II — Patent Applications	2
Chapter III — Examination and Approval of Patent Applications	2
Chapter IV — Reexamination and Invalidation	2
Chapter V — Compulsory Licensing	3
Chapter VI — Rewards and Remuneration for Service Invention-Creations	3
Chapter VII — Patent Protection	3
Chapter VIII — Patent Registration and Gazette	3
Chapter IX — Fees	4
Chapter X — Supplementary Provisions	4

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Patent Applications
- Chapter III — Examination and Approval of Patent Applications
- Chapter IV — Reexamination and Invalidation
- Chapter V — Compulsory Licensing
- Chapter VI — Rewards and Remuneration for Service Invention-Creations
- Chapter VII — Patent Protection
- Chapter VIII — Patent Registration and Gazette
- Chapter IX — Fees
- Chapter X — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Implementing Rules are formulated in accordance with the Patent Law of the People's Republic of China (hereinafter referred to as the "Patent Law").

Article 2 — For the purposes of the Patent Law, "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 the combination thereof, that is fit for practical use. "Design" means, with respect to a product, a new design of the shape, pattern or the combination thereof, or the combination of color with shape or pattern, that is aesthetically pleasing and fit for industrial application.

Article 3 — The various formalities prescribed by the Patent Law and these Implementing Rules shall be completed in writing or in other forms prescribed by the patent administrative department under the State Council. Any document submitted in writing shall be signed or sealed.

Chapter II — Patent Applications

Article 16 — An application for a patent for invention, utility model or design shall be filed in the manner of paper application or electronic application. Where a paper application is filed, the application documents shall be submitted to the acceptance office of the patent administrative department under the State Council or to a local patent office on behalf of the patent administrative department under the State Council.

Article 17 — The request shall specify the following: (1) the name of the invention, utility model or design; (2) the name of the applicant, the name of the inventor or designer, the name and address of the applicant, and the name and address of the agent and the power of attorney; and (3) other relevant matters.

Article 18 — The description of an invention or utility model shall include the following and shall be presented in the following order: (1) technical field; (2) background art; (3) contents of the invention; (4) description of drawings; and (5) specific mode of carrying out the invention or utility model. The description shall contain the title of the invention or utility model, which shall be consistent with the title in the request.

Article 19 — The claims shall define the extent of patent protection sought for, on the basis of the description. The claims shall state the technical features of the invention or utility model, and shall clearly and concisely define the scope of protection sought.

Article 20 — The claims shall include independent claims and may also include dependent claims that define additional technical features. Each independent claim shall define an integral technical solution.

Chapter III — Examination and Approval of Patent Applications

Article 38 — Where, after receiving an application for a patent for invention, the patent administrative department under the State Council, upon preliminary examination, finds that the application conforms to the requirements of the Patent Law, it shall publish the application promptly after the expiration of 18 months from the date of filing. The patent administrative department under the State Council may publish the application at an earlier date upon the request of the applicant.

Article 44 — The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant. Where the applicant is dissatisfied with the reexamination decision, it may file a lawsuit with the people's court within three months from the date of receipt of the notice.

Chapter IV — Reexamination and Invalidation

Article 65 — Any entity or individual may, in accordance with the provisions of the Patent Law, request the Patent Reexamination Board to declare a patent right invalid. The request shall state the grounds and submit relevant evidence. The grounds for invalidation refer to circumstances where the grant of the patent right does not comply with the relevant provisions of the Patent Law and these Implementing Rules.

Article 67 — The Patent Reexamination Board shall forward the request for invalidation and the relevant documents to the patentee and require the patentee to state its observations within a specified time limit. Where the patentee fails to respond within the time limit, the examination of the invalidation case shall not be affected.

Chapter V — Compulsory Licensing

Article 73 — Where an entity or individual requests a compulsory license in accordance with the provisions of the Patent Law, it shall submit a request for compulsory license to the patent administrative department under the State Council, stating the reasons and attaching relevant certification documents.

Article 74 — The patent administrative department under the State Council shall notify the patentee of the request for compulsory license and require the patentee to state its observations within a specified time limit. Where the patentee fails to respond within the time limit, the examination of the request for compulsory license shall not be affected.

Chapter VI — Rewards and Remuneration for Service Invention-Creations

Article 76 — Where an entity that has been granted a patent right is a state-owned enterprise or public institution, it shall, within three months from the date of announcement of the grant of the patent right, pay a reward to the inventor or designer. The minimum amount of the reward for a patent for invention shall be 3,000 yuan; the minimum amount of the reward for a patent for utility model or design shall be 1,000 yuan.

Article 78 — Where an entity that has been granted a patent right exploits the patent, it shall, within the term of validity of the patent right, draw not less than two percent of the profits derived from the exploitation of the invention or utility model as remuneration and pay it to the inventor or designer; or draw not less than 0.2 percent of the profits derived from the exploitation of the design as remuneration and pay it to the designer.

Chapter VII — Patent Protection

Article 79 — Unless otherwise provided for by law, the administrative authority for patent affairs shall handle cases relating to patent infringement disputes and disputes over the amount of remuneration for service invention-creations at the request of the parties.

Article 81 — Where a party concerned applies to the administrative authority for patent affairs for handling a patent infringement dispute, it shall submit a request and relevant evidence. The administrative authority for patent affairs shall notify the respondent and require the respondent to submit a statement of defense within a specified time limit.

Article 84 — The following acts are acts of passing off a patent: (1) marking a patent number on a product or its packaging that is manufactured or sold without a patent right being granted; (2) continuing to mark a patent number on a product or its packaging after the patent right has been declared invalid or has expired; (3) declaring or publishing information in promotional or other materials that causes others to mistake a technology or design for a patented technology or design; or (4) counterfeiting or altering a patent certificate, patent document or patent application document.

Chapter VIII — Patent Registration and Gazette

Article 89 — The patent administrative department under the State Council shall maintain a patent register in which the following matters relating to patent applications and patent rights shall be registered: (1) the grant of patent rights; (2) the transfer of patent application rights or patent rights; (3) the pledge, preservation and release of patent rights; (4) the record-filing of patent licensing contracts; (5) the invalidation of patent rights; (6) the termination of patent rights; (7) the restoration of patent rights; (8) the record-filing of compulsory licensing; and (9) changes in the name, nationality or address of the patentee.

Article 90 — The patent administrative department under the State Council shall periodically publish the Patent Gazette, which shall publish or announce matters relating to patent applications and patent rights.

Chapter IX — Fees

Article 93 — The fees payable in accordance with the provisions of the Patent Law and these Implementing Rules shall be paid directly to the patent administrative department under the State Council, or remitted by post or bank transfer, or paid by other means prescribed by the patent administrative department under the State Council.

Article 94 — An applicant for a patent or a patentee may request a reduction or postponement of payment of the following fees: (1) application fee; (2) substantive examination fee for invention; (3) reexamination fee; and (4) annual fee for the year of grant and subsequent years. Measures for the reduction and postponement of fees shall be formulated by the patent administrative department under the State Council in conjunction with the finance department and the pricing authority under the State Council.

Chapter X — Supplementary Provisions

Article 119 — Any document submitted to or served by the patent administrative department under the State Council in accordance with the provisions of the Patent Law and these Implementing Rules shall be in Chinese. Where a document is submitted in a foreign language, a Chinese translation shall be submitted; where no Chinese translation is submitted within the time limit, the document submitted in the foreign language shall be deemed not to have been submitted.

Article 122 — These Implementing Rules shall come into force on July 1, 2001. The Detailed Rules for the Implementation of the Patent Law of the People's Republic of China approved by the State Council on December 12, 1992 and promulgated by the China Patent Office on December 21, 1992 shall be repealed simultaneously.

Disclaimer: This English translation is provided for informational purposes only and is not an official translation. While every effort has been made to ensure accuracy, only the original Chinese text has legal force. For legal matters involving the Regulations on the Implementation of the Patent Law of the PRC, please consult a qualified legal professional. Dan Young Business Consultancy assumes no liability for any reliance placed on this translation.