PATENT LAW

OF THE PEOPLE'S REPUBLIC OF CHINA[1]

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984

Amended the first time in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 27th Meeting on September 4, 1992

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[1] Translated by the State Intellectual Property Office of the People's Republic of China. In case of discrepancy, the original version in Chinese shall prevail.

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[1] This table of contents was established for the convenience of the reader by the State Intellectual Property Office of the People's Republic of China. The text of the Patent Law adopted by the Standing Committee of the National People's Congress does not contain such a table.

Chapter I
General Provisions

Article 1. This Law is enacted to protect the legitimate rights of the patentee, to encourage inventions-creations, to advance the exploitation of inventions-creations, to enhance innovation capability, and to promote the progress of science and technology and the development of economy and society.

Article 2. In this Law, "inventions-creations" mean inventions, utility models and designs.

"Invention" means any new technical solution relating to a product, a process or improvement thereof.

"Utility model" means any new technical solution relating to the shape, the structure, or their combination, of a product, which is fit for practical use.

"Design" means any new design of the shape, the pattern, or their combination, or the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

Article 3. The patent administration department under the State Council is responsible for the patent work throughout the country. It receives and examines patent applications, and grants patent right for inventions-creations in accordance with the law.

The administrative authority for patent affairs under the people's governments of provinces, autonomous regions and municipalities directly under the central government are responsible for the administrative work concerning patents in their respective administrative areas.

Article 4. Where an invention-creation for which a patent is applied for relates to the security or other vital interests of the State and is required to be kept secret, the application shall be treated in accordance with the relevant prescriptions of the State.

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

No patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws or administrative regulations.

Article 6. An invention-creation, made by a person in execution of the tasks of the entity to which he belongs, or made by him mainly by using the material and technical means of the entity is a service invention-creation. For a service intention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

For a non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the inventor or creator shall be the patentee.

In respect of an invention-creation made by a person using the material and technical means of an entity to which he belongs, where the entity and the inventor or creator have entered into a contract in which the right to apply for and own a patent is provided for, such provisions shall apply.

Article 7. No entity or individual shall prevent the inventor or creator from filing an application for a patent for a non-service invention-creation.

Article 8. For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission given to it or him by another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual that made, or to the entities or individuals that jointly made, the invention-creation. After the application is approved, the entity or individual that applied for it shall be the patentee.

Article 9. For any identical invention-creation, only one patent right shall be granted. Where an applicant files on the same day applications for both patent for utility model and patent for invention relating to the identical invention-creation, and the applicant declares to abandon the patent for utility model which has been granted and does not terminate, the patent for invention may be granted.

Where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

Article 10. The right of patent application and the patent right may be assigned.

Any assignment, by a Chinese entity or individual, of the right of patent application, or of the patent right, to a foreigner, a foreign enterprise or any other foreign organization shall proceed by going through the formalities as provided by the relevant laws and administrative regulations.

Where the right of patent application or the patent right is assigned, the parties shall conclude a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall an-

nounce the registration. The assignment shall take effect as of the date of registration.

Article 11. After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the authorization of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product, or use the patented process, and use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

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

Article 12. Any entity or individua1 exploiting the patent of another shall conclude with the patentee a license contract for exploitation and pay the patentee a fee for the exploitation of the patent. The licensee has no right to authorize any entity or individual, other than that referred to in the contract, to exploit the patent.

Article 13. After the publication of the 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 any patent for invention, belonging to any state-owned enterprise or institution, is of great significance to the interest of the State or to the public interest, the competent departments concerned under the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the central government may, after approval by the State Council, decide that the patented invention be spread and applied within the approved limits, and allow designated entities to exploit that invention. The exploiting entity shall, according to the regulations of the State, pay a fee for exploitation to the patentee.

Article 15. Where the co-owners of a patent application or a patent have concluded an agreement on the exercising of the right, the agreement shall apply. In the absence of such agreement, any co-owner may independently exploit the patent or license another party to exploit the patent through non-exclusive license; any fee for the exploitation obtained from licensing others to exploit the patent shall be distributed among the co-owners.

Except for the circumstances as provided in the preceding paragraph, a jointly-owned patent application or patent shall be exercised with the consent of all co-owners.

Article 16. The entity that is granted a patent right shall award to the inventor or creator of a service invention-creation a reward and, upon exploitation of the patented inven-

tion-creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded.

Article 17. The inventor or creator has the right to be named as such in the patent document.

The patentee has the right to affix a patent indication on the patented product or on the package of that product.

Article 18. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China, the application shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity.

Article 19. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, it or he shall appoint a legally incorporated patent agency to act as his or its agent.

Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a legally incorporated patent agency to act as its or his agent.

The patent agency shall comply with the provisions of laws and administrative regulations, and handle patent applications and other patent matters according to the instructions of its clients. In respect of the contents of its clients' inventions-creations, except for those that have been published or announced, the agency shall bear the responsibility of keeping them confidential. The administrative regulations governing the patent agency shall be formulated by the State Council.

Article 20. Where any entity or individual intends to file an application for patent abroad for any invention or utility model developed in China, it or he shall request in advance the patent administration department under the State Council for confidentiality examination. The procedures and duration etc. of the confidentiality examination shall be implemented in accordance with the regulations of the State Council.

Any Chinese entity or individual may file an international application for patent in accordance with any international treaty concerned to which China is party. The applicant filing an international application for patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle any interna-

tional application for patent in accordance with the international treaty concerned to which China is party, this Law and the relevant regulations of the State Council.

For an invention or utility model, if a patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article, it shall not be granted patent right while filing application for patent in China.

Article 21. The patent administration department under the State Council and its Patent Reexamination Board shall handle any patent application and patent-related request according to law and in conformity with the requirements of being objective, fair, correct and timely.

The patent administration department under the State Council shall release patent information in a complete, correct, and timely manner, and publish patent gazette on a regular basis.

Until the publication or announcement of the application for a patent, staff members of the patent administration department under the State Council and other persons involved have the duty to keep its contents confidential.

Chapter II
Requirements for Grant of Patent Right

Article 22. Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability.

Novelty means that, the invention or utility model does not form part of the prior art; nor has any entity or individual filed previously before the date of filing with the patent administration department under the State Council an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced after the said date of filing.

Inventiveness means that, as compared with the prior art, the invention has prominent substantive features and represents a notable progress, and that the utility model has substantive features and represents progress.

Practical applicability means that, the invention or utility model can be made or used and can produce effective results.

The prior art referred to in this Law means any technology known to the public before the date of filing in China or abroad.

Article 23. Any design for which patent right may be granted shall not be a prior design, nor has any entity or individual filed before the date of filing with the patent adminis-

tration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing.

Any design for which patent right may be granted shall significantly differ from prior design or combination of prior design features.

Any design for which patent right may be granted must not be in conflict with the legitimate right obtained before the date of filing by any other person.

The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad.

Article 24. An invention-creation for which a patent is applied for does not lose its novelty where, within six months before the date of filing, one of the following events occurred:

(1) where it was first exhibited at an international exhibition sponsored or recognized by the Chinese Government;

(2) where it was first made public at a prescribed academic or technological meeting;

(3) where it was disclosed by any person without the consent of the applicant.

Article 25. For any of the following, no patent right shall be granted:

(1) scientific discoveries;

(2) rules and methods for mental activities;

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

(4) animal and plant varieties;

(5) substances obtained by means of nuclear transformation;

(6) designs of two-dimensional printing goods, made of the pattern, the colour or the combination of the two, which serve mainly as indicators.

For processes used in producing products referred to in items (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

Chapter III
Application for Patent

Article 26. Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted.

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

The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to

carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model.

The claims shall be supported by the description and shall define the extent of the patent protection sought for in a clear and concise manner.

Where an invention-creation is developed relying on the genetic resources, the applicant shall indicate, in the application documents, the direct and original source of such genetic resources; where the applicant fails to indicate the original source, he or it shall state the reasons thereof.

Article 27. Where an application for a patent for design is filed, a request, drawings or photographs of the design and a brief explanation of the design shall be submitted.

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

Article 28. The date on which the patent administration department under the State Council receives the application shall be the date of filing. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of filing.

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

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

Article 30. Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the copy of the patent application document, the claim to 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 for the same product or two or more designs which are incorporated in products belonging to the same class and sold or used in sets may be filed as one application.

Article 32. An applicant may withdraw his or its application for a patent at any time before the patent right is granted.

Article 33. An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

Chapter IV
Examination and Approval of Application for Patent

Article 34. Where, after receiving an application for a patent for invention, the patent administration 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 after the expiration of eighteen months from the date of filing. Upon the request of the applicant, the patent administration department under the State Council publishes the application earlier.

Article 35. Upon the request of the applicant for a patent for invention, made at any time within three years from the date of filing, the patent administration department under the State Council will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to substance, the application shall be deemed to have been withdrawn.

The patent administration department under the State Council may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

Article 36. When the applicant for a patent for invention requests examination as to substance, he or it shall furnish pre-filing date reference materials concerning the invention.

For an application for a patent for invention that has been already filed in a foreign country, the patent administration department under the State Council may ask the applicant

to furnish within a specified time limit documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

Article 37. Where the patent administration department under the State Council, after it has made the examination as to substance of the application for a patent for invention, finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn.

Article 38. Where, after the applicant has made the observations or amendments, the patent administration department under the State Council finds that the application for a patent for invention is still not in conformity with the provisions of this Law, the application shall be rejected.

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

Article 40. Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the patent administration department under the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall take effect as of the date of the announcement.

Article 41. The patent administration department under the State Council shall set up a Patent Reexamination Board. Where an applicant for patent is not satisfied with the decision of the said department rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant for patent.

Where the applicant for patent is not satisfied with the decision of the Patent Reexamination Board, it or he may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

Chapter V
Duration, Cessation and Invalidation of Patent Right

Article 42. The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of filing.

Article 43. The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

Article 44. In any of the following cases, the patent right shall cease before the expiration of its duration:

(1) where an annual fee is not paid as prescribed;

(2) where the patentee abandons his or its patent right by a written declaration.

Any cessation of the patent right shall be registered and announced by the Patent administration department under the State Council.

Article 45. Where, starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid.

Article 46. The Patent Reexamination Board shall examine the request for invalidation of the patent right promptly, make a decision on it and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the patent administration department under the State Council.

Where the patentee or the person who made the request for invalidation is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the person that is the opponent party of that party in the invalidation procedure to appear as a third party in the legal proceedings.

Article 47. Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning.

The decision declaring the patent right invalid shall have no retroactive effect on any judgment or mediation decision of patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of a dispute over patent infringement which has been complied with or compulsorily executed, or on any contract of patent license or of assignment of patent right which has been performed prior to the declaration of the patent right invalid; however, the damage caused to other persons in bad faith on the part of the patentee shall be compensated.

If, pursuant to the provisions of the preceding paragraph, the monetary damage for patent infringement, the fees for exploitation of the patent or fees for the assignment of the patent right is not returned, but such non-return is obviously contrary to the principle of equity, all or part of the preceding payments shall be returned.

Chapter VI
Compulsory License for Exploitation of Patent

Article 48. Under any of the following circumstances, the patent administration department under the State Council may, upon the request of an entity or individual which is qualified to exploit the invention or utility model, grant a compulsory license to exploit the patent for invention or utility model:

(1) where the patentee, after the expiration of three years from the date of the grant of the patent and the expiration of four years from the date of filing, does not exploit or does not sufficiently exploit the patent without any justified reason;

(2) where the exercising of the patent right by the patentee is legally determined as an act of monopoly, for the purposes of eliminating or reducing the adverse effects of the act on competition.

Article 49. Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the patent administration department under the State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 50. For the purposes of public health, the patent administration department under the State Council may grant a compulsory license to manufacture a pharmaceutical product which has been granted patent right and export it to countries or regions specified in the relevant international treaties to which China is party.

Article 51. Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in rela-

tion to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the patent administration department under the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Where, according to the preceding paragraph, a compulsory license is granted, the patent administration department under the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

Article 52. Where the invention-creation involved in the compulsory license relates to the semi-conductor technology, the exploitation thereof shall be limited only for the purpose of public interest or under the condition as provided in Article 48 (2) of this Law.

Article 53. Except for compulsory licenses granted in accordance with Article 48 (2) or Article 50 of this Law, the exploitation of any compulsory license shall be executed predominately for the supply of the domestic market.

Article 54. Any entity or individual requesting, in accordance with the provisions of Article 48(1) or Article 51 of this Law, a compulsory license for exploitation shall furnish proof to show that it or he has made requests for authorization from the patentee to exploit its or his patent on reasonable terms and conditions, and such efforts have not been successful within a reasonable period of time.

Article 55. The decision made by the patent administration department under the State Council granting a compulsory license for exploitation shall be notified promptly to the patentee concerned, and shall be registered and announced.

In the decision granting the compulsory license for exploitation, the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant. If and when the circumstances which led to such compulsory license cease to exist and are unlikely to recur, the patent administration department under the State Council may, after review upon the request of the patentee, terminate the compulsory license.

Article 56. Any entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploit and shall not have the right to authorize exploitation by any others.

Article 57. The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, or deal with the issue of exploitation fee according to relevant provisions of the international treaties to which China is

party. Where the exploitation fee is paid, the amount shall be negotiated by both parties. Where the parties fail to reach an agreement, the patent administration department under the State Council shall adjudicate.

Article 58. Where the patentee is not satisfied with the decision of the patent administration department under the State Council granting a compulsory license for exploitation, or where the patentee or the entity or individual that is granted the compulsory license for exploitation is not satisfied with the ruling made by the patent administration department under the State Council regarding the fee payable for exploitation, it or he may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

Chapter VII
Protection of Patent Right

Article 59. The extent of protection of the patent right for 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 extent of protection of the patent right for design shall be determined by the design of the product as shown in the drawings or photographs. The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs.

Article 60. Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties. Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the administrative authority for patent affairs to handle the matter. When the administrative authority for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution. The said authority handling the matter may, upon the request of the parties, mediate in the amount of compensation for the damage caused by the infringement of the patent right. If the mediation fails, the parties

may institute legal proceedings in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 61. Where any infringement dispute relates to a patent for invention for a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process.

Where any infringement dispute relates to a patent for utility model or design, the people's court or the administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent made by the patent administration department under the State Council after having conducted search, analysis and evaluation of the relevant utility model or design, and use it as evidence for hearing or handling the patent infringement dispute.

Article 62. In a patent infringement dispute, where the alleged infringer has evidence to prove that the technology or design exploited by it or him forms part of prior art or is prior design, such exploitation does not constitute infringement of patent right.

Article 63. Where any person passes off a patent, he shall, in addition to bearing his civil liability according to law, be ordered by the administrative authority for patent affairs to correct his act, and the order shall be announced. His illegal earnings shall be confiscated and, in addition, he may be imposed a fine of not more than four times his illegal earnings and, if there is no illegal earnings, a fine of not more than RMB 200, 000 Yuan. Where the infringement constitutes a crime, he shall be prosecuted for his criminal liability.

Article 64. When investigating and prosecuting the suspected act of passing off a patent, the administrative authority for patent affairs may, based on the evidence obtained, query the parties concerned, and investigate the relevant circumstances of the suspected illegal act; carry out an on-the-spot inspection of the site where the party' s suspected illegal acts took place; review and reproduce the contracts, invoices, account books and other relevant materials related to the suspected illegal act; examine the products relevant to the suspected illegal act and may seal up or withhold the products proved to be passing off the patented product.

When the administrative authority for patent affairs performs its functions and duties specified in the preceding paragraph in accordance with the law, the interested party shall assist and cooperate and shall not refuse or interfere the performance.

Article 65. The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the actual losses suffered by the right

holder because of the infringement; where it is difficult to determine the actual losses, the amount may be assessed on the basis of the profits the infringer has earned because of the infringement. Where it is difficult to determine the losses the right holder has suffered or the profits the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under a contractual license. The amount of compensation for the damage shall also include the reasonable expenses of the right holder incurred for stopping the infringing act.

Where it is difficult to determine the losses suffered by the right holder, the profits the infringer has earned and the exploitation fee of that patent under a contractual license, the people' s court may award the damages of not less than RMB 10, 000 Yuan and not more than RMB 1, 000, 000 Yuan in light of such factors, as the type of the patent right, the nature and the circumstances of the infringing act.

Article 66. Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, petition the people's court to adopt measures to stop the relevant acts.

When a petition is filed, the petitioner shall provide a security; if it or he fails to provide the security, the application shall be rejected.

The people's court shall make a ruling within 48 hours after receiving the petition. Where there are special circumstances that require a delayed ruling, the court may make a ruling within another 48 hours. If the ruling is made to stop the relevant act, the ruling shall be enforced immediately. If any interested party is not satisfied with the ruling, it or he may apply for reconsideration once; the enforcement of the ruling shall not be suspended during the reconsideration.

Where the petitioner fails to institute legal proceedings within 15 days after the people's court issued the ruling to stop the relevant act, the people's court shall lift the measures.

Where the petition is made in error, the petitioner shall compensate the respondent for the losses caused by stopping the relevant acts.

Article 67. In order to stop patent infringement, under the circumstances where the evidence might be destroyed or where it would be difficult to obtain in the future, the patentee or the interested party may petition the people's court for evidence preservation before instituting legal proceedings.

When adopting preservation measures, the people's court may order the petitioner to provide a security for the petition; if the petitioner fails to do so, the petition shall be rejected.

The people's court shall make a ruling within 48 hours after receiving the petition; if the court rules to adopt preservation measures, the ruling shall be enforced immediately.

Where the petitioner fails to institute legal proceedings within 15 days after the people's court adopted the preservation measures, the people's court shall lift the measures.

Article 68. Prescription for instituting legal proceedings concerning the infringement of patent right is two years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the infringing act.

Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, is paid during the period from the publication of the application to the grant of patent right, prescription for instituting legal proceedings by the patentee to demand the said fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of the exploitation of his invention by another person. However, where the patentee has already obtained or should have obtained knowledge before the date of the grant of the patent right, the prescription shall be counted from the date of the grant.

Article 69. None of the following shall be deemed as infringement of the patent right:

(1) where, after the sale of a patented product or a product obtained directly by a patented process by the patentee or any entity or individual authorized by the patentee, any other person uses, offers to sell, sell, or imports that product;

(2) where, before the date of filing of the application for patent, any person who has already made the identical product, used the identical process, or made necessary preparations for its making or using, continues to make or use it within the original scope only;

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

(4) where any person uses the patent concerned solely for the purposes of scientific research and experimentation; or

(5) where for the purposes of providing information needed for the regulatory examination and approval, any person makes, uses or imports a patented medicine or a patented medical apparatus, and where any person makes, imports the patented medicine or the patented medical apparatus exclusively for such person.

Article 70. Any person, who, for production and business purpose, uses, offers to sell or sells a patent infringement product, without knowing that it was made and sold without

the authorization of the patentee, shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate channel.

Article 71. Where any person, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent that divulges an important secret of the State, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority concerned at the higher level. Where a crime is established, the person concerned shall be prosecuted for his criminal liability according to the law.

Article 72. Where any person usurps the right of an inventor or creator to apply for a patent for a non-service invention-creation, or usurps any other right or interest of an inventor or creator, prescribed by this Law, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority at the higher level.

Article 73. The administrative authority for patent affairs may not take part in recommending any patented product for sale to the public or any such commercial activities.

Where the administrative authority for patent affairs violates the provisions of the preceding paragraph, it shall be ordered by the authority at the next higher level or the supervisory authority to correct its mistakes and eliminate the bad effects. The illegal earnings, if any, shall be confiscated. Where the circumstances are serious, the persons who are directly in charge and other persons who are directly responsible shall be given disciplinary sanction in accordance with law.

Article 74. Where any State functionary working for patent administration or any other State functionary concerned neglects his duty, abuses his power, or engages in malpractice for personal gain, which constitutes a crime, shall be prosecuted for his criminal liability in accordance with law. If the case is not serious enough to constitute a crime, he shall be given disciplinary sanction in accordance with law.

Chapter VIII
Supplementary Provisions

Article 75. Any application for a patent filed with, and any other proceedings before, the patent administrative department under the State Council shall be subject to the payment of a fee as prescribed.

Article 76. This Law shall enter into force on April 1, 1985.