



# Patent Law of the People's Republic of China (2020 Amendment)<sup>1</sup>

Authority: **Standing Committee of the National People's Congress**

Document Number: No. 55

Promulgation: October 17, 2020

Effective date: 1 June, 2021

## Patent Law of the People's Republic of China

Adopted at the Fourth Session of the Standing Committee of the Sixth National People's Congress on March 12, 1984; subsequently amended by the Decision on Amending the Patent Law of the People's Republic of China adopted at the Twenty-Seventh Session of the Standing Committee of the Seventh National People's Congress on September 4, 1992; further amended by the Decision on Amending the Patent Law of the People's Republic of China adopted at the Seventeenth Session of the Standing Committee of the Ninth National People's Congress on August 25, 2000; amended again pursuant to the Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China adopted at the Sixth Session of the Standing Committee of the Eleventh National People's Congress on December 27, 2008; and amended for the fourth time in accordance with the Decision of the Standing Committee of the National People's Congress to Amend the Patent Law of the People's Republic of China adopted at the Twenty-Second Session of the Standing Committee of the Thirteenth National People's Congress on October 17, 2020.

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<sup>1</sup> Translated by Health Law Asia – Pharmaceutical, Medical Device, and Cosmetics Law



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Chapter VIII: Supplemental Provisions



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## Chapter I: General Provisions

### Article 1

This Law is formulated for the purpose of safeguarding the lawful rights and interests of patent holders, fostering and encouraging inventive and innovative activities, promoting the exploitation and dissemination of such achievements, enhancing national capacity for innovation, and advancing scientific and technological progress as well as economic and social development.

### Article 2

For the purposes of this Law, the term “inventions and innovations” refers to inventions, utility models, and designs.

“Invention” denotes any new technical solution relating to a product, a process, or an improvement thereof.

“Utility model” denotes any new technical solution involving the shape, structure, or the combination of shape and structure of a product, which is suitable for practical use.

“Design” denotes any new design relating to the shape, pattern, or the combination of shape and pattern of a product, or the combination of colors with shape or pattern, whether applied to the whole or a portion of the product, which is aesthetically pleasing and suitable for industrial application.

### Article 3

The patent administration department under the State Council shall be responsible for the administration of patent matters nationwide. It shall centrally accept and examine patent applications, and shall grant patents in accordance with 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 the administration of patent matters within their respective jurisdictions.

### Article 4

Where an invention or innovation for which a patent is sought involves matters concerning national security or other significant interests of the State and is required to be kept confidential,



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the application shall be handled in accordance with the relevant State provisions on confidentiality.

#### Article 5

No patent shall be granted for any invention or innovation that is contrary to law, violates social morality, or is detrimental to the public interest.

No patent shall be granted for any invention or innovation based on genetic resources where the acquisition or use of such genetic resources is in violation of laws or administrative regulations.

#### Article 6

An invention or innovation completed by a person in the course of performing the tasks assigned by his or her employer, or primarily by utilizing the material and technical resources of the employer, shall be deemed a service invention or innovation. The right to apply for a patent for a service invention or innovation shall vest in the employer, and the employer shall be the patent owner upon the granting of the patent. The employer may, in accordance with law, dispose of its right to apply for such patent and its patent right, and may take measures to promote the exploitation and application of the invention or innovation.

With respect to a non-service invention or innovation, the right to apply for a patent shall belong to the inventor or designer, who shall become the patent owner upon the granting of the patent.

Where an invention or innovation is completed by a person through the use of the material and technical resources of the employer, and there exists a contractual agreement between the employer and the inventor or designer concerning the right to apply for a patent or the ownership of the patent, such contractual provisions shall prevail.

#### Article 7

No entity or individual may obstruct an inventor or designer from applying for a patent for a non-service invention or innovation.

#### Article 8



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Where an invention or innovation is accomplished jointly by two or more entities or individuals, or is accomplished by an entity or individual upon commission by another entity or individual, the right to apply for a patent shall, unless otherwise agreed, vest in the entity or individual who completed the invention or innovation, or jointly in those who jointly completed it. Upon the granting of the patent, the applicant entity or individual shall be the patent owner.

## Article 9

Only one patent may be granted for any one invention or innovation. However, where the same applicant files, on the same day, applications for both a utility model patent and an invention patent for the same subject matter, and where the previously granted utility model patent has not yet been terminated, the invention patent may be granted if the applicant declares a waiver of the utility model patent.

Where two or more applicants file applications for a patent for the same invention or innovation, the patent shall be granted to the applicant who filed first.

## Article 10

The right to apply for a patent and the patent right may be assigned. Where a Chinese entity or individual intends to assign the right to apply for a patent or a patent right to a foreign individual, foreign enterprise, or any foreign organization, such assignment shall be conducted in accordance with the relevant laws and administrative regulations. An assignment of the right to apply for a patent or a patent right shall be effected through a written contract concluded between the parties, which must be registered with the patent administration department under the State Council. Upon registration, the patent administration department shall make the contract publicly announced. The assignment shall take effect from the date of registration.

## Article 11

Following the granting of a patent for an invention or utility model, unless otherwise provided by this Law, no entity or individual shall, without the authorization of the patent owner, exploit the patent, including by making, using, offering for sale, selling, or importing the patented product, or by using, offering for sale, selling, or importing a product directly obtained from the patented process, for production or commercial purposes. Following the granting of a patent for a design, no entity or individual shall, without the authorization of the patent owner, exploit the patent, including by making, offering for sale, selling, or importing a product incorporating the patented design, for production or commercial purposes.

## Article 12



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Any entity or individual exploiting a patent owned by another shall conclude a licensing contract with the patent owner and pay the patent royalty agreed therein. The licensee shall have no right to authorize any third party other than those expressly provided in the licensing contract to exploit the patent.

### Article 13

After the publication of an application for a patent for an invention, the applicant may require any entity or individual exploiting the invention to pay an appropriate fee.

### Article 14

Where joint owners of the right to apply for a patent or a patent right have concluded an agreement regarding the exercise of such right, the agreement shall govern. In the absence of such an agreement, any joint owner may exploit the patent independently or license others to exploit the patent under an ordinary license. In the case of licensing others to exploit the patent, the royalties collected shall be distributed among the joint owners in accordance with their respective shares. Except as otherwise provided in the preceding paragraph, the exercise of the right to apply for a patent or the patent right shall require the unanimous consent of all joint owners.

### Article 15

The entity to which a patent is granted shall provide the inventor or designer of a service invention or innovation with a reward, and, upon exploitation of the patented invention or innovation, shall pay the inventor or designer reasonable remuneration based on the scope of dissemination and application of the invention or innovation and the economic benefits derived therefrom.

The State encourages entities holding patent rights to implement property-based incentives, enabling inventors or designers to share rationally in the benefits of innovation, including through forms such as equity, stock options, and dividends.

### Article 16

An inventor or designer shall have the right to be identified as such in the patent documentation. A patent owner shall have the right to affix a patent notice on the patented product or on the packaging of such product.



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## Article 17

Where a foreign individual, foreign enterprise, or other foreign organization without habitual residence or a business office in China files an application for a patent in China, the application shall be governed by this Law in accordance with any applicable agreement concluded between the applicant's home country and China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

## Article 18

A foreign natural person, foreign enterprise, or any other foreign organization that does not maintain a habitual residence or business establishment within the territory of the People's Republic of China, yet intends to file a patent application or engage in other patent-related formalities in China, shall appoint a duly established patent agency to act as its authorized representative.

A domestic entity or individual may likewise appoint a duly established patent agency to represent it or him in filing patent applications or in handling other patent-related matters.

A patent agency, when entrusted with the filing of patent applications or the management of other patent affairs, shall comply fully with the applicable laws and administrative regulations. The agency shall also be obligated to maintain the confidentiality of the principal's invention or creation, except where the patent application has already been published or publicly announced. The specific administrative measures governing patent agencies shall be formulated by the State Council.

## Article 19

Any entity or individual intending to seek patent protection in a foreign country for an invention or utility model completed within the territory of China shall first submit the matter to the patent administrative department of the State Council for a confidentiality examination, in accordance with the procedures and time limits prescribed by the State Council.

A Chinese entity or individual may file an international patent application pursuant to the international treaties to which the People's Republic of China is a party. Applicants filing international patent applications shall adhere to the confidentiality-examination requirements set forth above.

The patent administrative department of the State Council shall process international patent applications in compliance with the relevant international treaties, this Law, and the pertinent provisions issued by the State Council.



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Where an invention or utility model is filed for patent protection in a foreign country in violation of the confidentiality-examination requirement, no patent shall be granted for such invention or utility model within China if a domestic patent application is subsequently filed.

## Article 20

Patent applications and the exercise of patent rights shall be guided by the principle of good faith. Patent rights shall not be exercised in a manner that harms the public interest or infringes upon the lawful rights and interests of others.

Any abuse of patent rights that serves to eliminate or restrict competition and constitutes a monopolistic act shall be addressed in accordance with the Anti-Monopoly Law of the People's Republic of China.

## Article 21

The patent administrative department of the State Council shall handle patent applications and related appeals in accordance with the principles of objectivity, impartiality, accuracy, and timeliness.

The patent administrative department of the State Council shall enhance the development of a public service system for patent information, ensure the complete, accurate, and timely dissemination of patent information, provide fundamental patent data, publish patent gazettes on a regular basis, and promote the dissemination and utilization of patent-related knowledge.

Prior to the publication or announcement of a patent application, the officials and other personnel of the patent administrative department of the State Council shall maintain strict confidentiality regarding its contents.

## Chapter II: Conditions for Granting Patents

## Article 22

An invention or utility model eligible for patent protection shall possess novelty, inventiveness, and practical applicability.

Novelty signifies that the invention or utility model does not belong to existing technology, and that, prior to the filing date, no entity or individual has filed an application with the patent administrative department of the State Council for an identical invention or utility model that is subsequently recorded in application documents or patent documents published after the filing date.



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Inventiveness signifies that, relative to the technology existing before the filing date, an invention exhibits prominent substantive features and constitutes a considerable advancement, and that a utility model possesses substantive features and represents progress.

Practical applicability signifies that the invention or utility model may be manufactured or utilized and is capable of producing effective results.

The term “existing technology,” as used in this Law, refers to technologies known to the public domestically or abroad prior to the filing date.

## Article 23

A design eligible for patent protection shall not fall within the scope of existing designs, and no entity or individual shall have previously filed an application with the patent administrative department of the State Council for an identical design that is subsequently recorded in patent documents published after the filing date.

A patented design shall exhibit distinctive features when compared with existing designs or with combinations of existing design features.

A patented design shall not conflict with lawful rights previously acquired by another person prior to the filing date.

The term “existing design,” as used in this Law, refers to a design known to the public domestically or abroad prior to the filing date.

## Article 24

An invention or creation for which a patent application is filed shall not be deemed to have lost its novelty if, within six months prior to the filing date, it was first disclosed under any of the following circumstances:

1-Novelty is preserved where the invention or creation was disclosed to the public in the national interest in response to an emergency or other extraordinary situation within the country;

2-where it was first exhibited at an international exhibition sponsored or acknowledged by the Chinese Government;

3- where it was first made public at an academic or technological meeting officially designated for that purpose;

4-where the disclosure occurred without the consent of the applicant.



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## Article 25

No patent shall be granted for subject matter falling within the following categories:

- 1-scientific discoveries;
- 2-rules and methods for mental activities;
- 3-methods for the diagnosis or treatment of diseases;
- 4-animal and plant varieties;
- 5-nuclear transformation methods and substances obtained through such transformation;
- 6-designs used principally for identifying patterns, colors, or their combinations on printed flat materials.

However, patent protection may be granted for processes used in producing the products referred to with respect to animal and plant varieties, in accordance with the provisions of this Law.

## Chapter III: Patent Applications

### Article 26

An applicant seeking a patent for an invention or utility model shall submit a patent request, a specification together with an abstract, and the claims.

The patent request shall explicitly set forth the title of the invention or utility model, the name of the inventor, the name and address of the applicant, and such other particulars as may be required.

The specification shall provide a clear and complete description of the invention or utility model sufficient to enable a person skilled in the relevant technical field to carry it out; drawings shall be included where necessary. The abstract shall briefly outline the principal technical features of the invention or utility model.

The claims shall define clearly and concisely the scope of protection sought, in conformity with the specification.

Where the invention or creation is developed on the basis of genetic resources, the application documents shall indicate both the direct source and the original source of such genetic resources; where the applicant is unable to indicate the original source, the reasons shall be stated.



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## Article 27

An applicant seeking a design patent shall submit a patent request, drawings or photographs depicting the design, a brief description of the design, and any other required documents.

The drawings or photographs submitted shall clearly disclose the design of the product for which patent protection is sought.

## Article 28

The filing date shall be the date on which the patent administrative department of the State Council receives the patent application documents. Where the application is submitted by mail, the filing date shall be the date indicated by the postmark.

## Article 29

Where an applicant has first filed, in a foreign country, a patent application for an invention or utility model within the preceding twelve months, or a patent application for a design within the preceding six months, and subsequently files an application in China for the same subject matter, the applicant may claim the right of priority in accordance with an agreement concluded between that foreign country and China, an international treaty to which both states are parties, or the principle of reciprocal recognition of priority rights.

Where an applicant has first filed, in China, a patent application for an invention or utility model within the preceding twelve months, or a patent application for a design within the preceding six months, and thereafter files a subsequent application for the same subject matter with the patent administrative department of the State Council, the applicant may likewise claim the right of priority.

## Article 30

An applicant claiming the right of priority for an invention or utility model shall submit a written declaration at the time of filing and shall provide a copy of the earlier application documents within sixteen months from the filing date of the first application.

An applicant claiming the right of priority for a design shall submit a written declaration at the time of filing and shall provide a copy of the earlier application documents within three months.

Where the applicant fails to submit either the written declaration or the required copy of the earlier application documents within the prescribed time limits, the claim to priority shall be deemed not to have been made.



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## Article 31

An application for a patent for an invention or utility model shall relate to a single invention or utility model only. Two or more inventions or utility models that form a single general inventive concept may, however, be included in one application.

An application for a design patent shall relate to a single design only. Where two or more similar designs pertain to the same product, or to products belonging to the same category and intended to be sold or used as a set, they may be included in a single design application.

## Article 32

An applicant may withdraw a patent application at any time prior to the granting of the patent right.

## Article 33

An applicant may amend a patent application; however, amendments to an application for an invention or utility model shall not extend beyond the scope of the disclosure contained in the original specification and claims, and amendments to an application for a design shall not extend beyond the scope of the disclosure depicted in the original drawings or photographs.

## Chapter IV: Examination and Approval of Patent Applications

### Article 34

Where, upon preliminary examination, the patent administrative department of the State Council determines that an application for an invention complies with the requirements of this Law, the application shall be published promptly upon the expiration of eighteen full months from the filing date. Upon request by the applicant, the application may be published earlier.

### Article 35

Upon request by the applicant for an invention patent, made at any time within three years from the filing date, the patent administrative department of the State Council shall conduct a substantive examination. Where the applicant, without legitimate justification, fails to request substantive examination within the prescribed period, the application shall be deemed withdrawn.



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The patent administrative department of the State Council may, on its own initiative, conduct a substantive examination of an invention patent application when deemed necessary.

#### Article 36

When requesting substantive examination, the applicant for an invention patent shall submit prior-art reference materials relevant to the invention and known prior to the filing date.

Where an applicant has previously filed an application for the same invention in a foreign country, the patent administrative department of the State Council may require submission, within a specified time limit, of search results or examination references issued in that foreign country. If the applicant, without justifiable cause, fails to submit such materials within the prescribed period, the application shall be deemed withdrawn.

#### Article 37

Where, following substantive examination of an invention patent application, the Patent Administration Department of the State Council determines that the application complies with the provisions of this Law, it shall notify the applicant to submit a statement or amend the application within a specified time period. If the applicant fails to respond without valid justification, the application shall be deemed withdrawn.

#### Article 38

Where, after submission of a statement or amendments by the applicant, the Patent Administration Department of the State Council determines that the invention patent application still fails to comply with the provisions of this Law, the application shall be rejected.

#### Article 39

Where, following substantive examination, no grounds for rejecting an invention patent application are found, the Patent Administration Department of the State Council shall decide to grant the patent, issue the invention patent certificate, and effect registration and publication. The rights conferred by the invention patent shall take effect as of the date of publication.

#### Article 40



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Where, following preliminary examination, no grounds for rejecting an application for a utility model or design patent are found, the Patent Administration Department of the State Council shall decide to grant the patent, issue the relevant patent certificate, and effect registration and publication. The rights conferred by the utility model or design patent shall take effect as of the date of publication.

#### Article 41

A patent applicant may, within three months from the date of receipt of the notice of rejection, request a review by the Patent Administration Department of the State Council of its decision to reject the application. Upon completion of the review, the Patent Administration Department of the State Council shall render a decision and notify the applicant.

The patent applicant may, within three months from the date of receipt of the review decision, initiate judicial proceedings challenging the decision of the Patent Administration Department of the State Council.

### Chapter V: Term, Termination and Invalidation of Patents

#### Article 42

The term of a patent for an invention shall be twenty years, the term of a patent for a utility model shall be ten years, and the term of a patent for a design shall be fifteen years, all calculated from the date of filing of the application.

Where an invention patent is granted four years from the date of filing of the application and three years from the date of filing of the request for substantive examination, the Patent Administration Department of the State Council, upon request of the patentee, shall grant a patent term extension to compensate for unreasonable delays in the patenting process, except where such delays are attributable to the applicant.

For the purpose of compensating for time required for the assessment and approval of the marketing of a new drug, the Patent Administration Department of the State Council may, upon request of the patentee, grant a patent term extension for an invention patent relating to the new drug approved for marketing in China. Such extension shall not exceed five years, and the total effective term of the patent after approval for marketing of the new drug shall not exceed fourteen years.

#### Article 43

A patent owner shall pay an annual fee commencing with the year in which the patent is granted.



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#### Article 44

A patent shall be terminated before the expiration of its term in any of the following circumstances:

- 1-Failure to pay the annual fee as required by relevant provisions;
- 2-Waiver of the patent by the patentee through a written declaration.

Any patent terminated prior to the expiration of its term shall be registered and announced by the Patent Administration Department of the State Council.

#### Article 45

From the date of announcement of a patent by the Patent Administration Department of the State Council, any entity or individual who considers that the granting of the patent does not comply with the provisions of this Law may request the Patent Administration Department of the State Council to declare the patent invalid.

#### Article 46

The Patent Administration Department of the State Council shall, in a timely manner, examine requests for the invalidation of a patent, render a decision, and notify both the petitioner and the patentee. Decisions concerning the invalidation of a patent shall be registered and announced by the Patent Administration Department of the State Council.

Where any party is dissatisfied with a decision of the Patent Administration Department of the State Council to invalidate a patent or to maintain a patent, such party may, within three months from the date of receipt of the notification, initiate legal proceedings before the people's court. The people's court shall notify the other party involved in the invalidation request of its right to participate in the litigation as a third party.

#### Article 47

A patent that has been declared invalid shall be deemed never to have existed.

However, a decision invalidating a patent shall, prior to such invalidation, not have retroactive effect on:

- 1-Any judgment or mediation concerning patent infringement that has been rendered and enforced by a people's court;



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2-Any decision concerning the settlement of a dispute over patent infringement that has been implemented or compulsorily enforced;

3-Any executed contract for the licensing or assignment of a patent right.

Notwithstanding the foregoing, the patentee shall be liable to compensate for losses maliciously caused to others.

Where, in accordance with the preceding paragraph, the absence of refund for patent infringement compensation, royalty payments for patent exploitation, or patent assignment fees is manifestly contrary to the principle of fairness, such amounts shall be refunded in whole or in part.

## **Chapter VI: Compulsory Licensing for Patent Exploitation**

### **Article 48**

The Patent Administration Department of the State Council and the patent administration departments of local people's governments shall, in coordination with relevant departments at the same level, adopt measures to strengthen public services for patents and to promote the exploitation and application of patents.

### **Article 49**

Where any invention patent owned by a state-owned enterprise or a public institution is of significant importance to the interests of the State or the public interest, the relevant competent department of the State Council, together with the people's government of the province, autonomous region, or municipality directly under the Central Government, may, upon approval by the State Council, decide to promote and apply the patent within the approved scope, and authorize designated entities to exploit the patent. The exploiting entities shall pay royalties to the patent owner in accordance with the relevant national legal provisions.

### **Article 50**

Where a patent owner voluntarily submits a written declaration to the Patent Administration Department of the State Council, indicating its willingness to permit any entity or individual to exploit its patent and specifying the methods and rates of royalty payment, the Patent Administration Department of the State Council shall publish an announcement and implement an open license. For a utility model or design patent, a patent evaluation report shall accompany the open license declaration.

A patent owner wishing to withdraw an open license declaration shall submit a written notice of withdrawal to the Patent Administration Department of the State Council, which shall publish



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an announcement thereof. The published withdrawal of an open license declaration shall not affect the validity of any open license previously granted.

#### Article 51

Any entity or individual intending to exploit a patent under an open license shall obtain the patent exploitation license immediately after notifying the patent owner in writing and paying the royalties according to the announced methods and rates.

During the period in which the open license is in effect, the patent annuity payable by the patent owner shall be reduced or waived accordingly.

The patent owner implementing an open license may grant an ordinary license after negotiation with the licensee regarding royalties, but shall not grant a sole license or an exclusive license for the patent.

#### Article 52

Where any dispute arises concerning the implementation of an open license, the parties shall attempt to resolve the dispute through consultation. If the parties are unwilling to consult or if consultation fails, they may request the Patent Administration Department of the State Council to mediate, or they may bring a lawsuit before the people's court.

#### Article 53

Under any of the following circumstances, the Patent Administration Department of the State Council may, upon the application of an eligible entity or individual, grant a compulsory license to exploit a patent for an invention or utility model:

1-The patent owner, after the expiration of three full years from the date of grant of the patent and four full years from the date of filing of the application, fails to exploit or fully exploit the patent without valid justification; or

2-The exercise of the patent rights by the patent owner is determined to constitute monopolistic conduct, and the compulsory license is necessary to eliminate or reduce the adverse consequences of such conduct on competition.

#### Article 54



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Where a national emergency or other extraordinary circumstances arise, or where the public interest so requires, the Patent Administration Department of the State Council may grant a compulsory license to exploit a patent for an invention or utility model.

#### Article 55

For the purpose of protecting public health, the Patent Administration Department of the State Council may grant a compulsory license for a patented pharmaceutical in order to produce and export it to a country or region in accordance with the relevant international treaties to which the People's Republic of China is a party.

#### Article 56

Where an invention or utility model patent has undergone major technical progress of significant economic importance compared to an earlier-granted invention or utility model patent, and the exploitation of the later invention or utility model depends on the exploitation of the earlier one, the Patent Administration Department of the State Council may, upon request of the patent owner of the later patent, grant a compulsory license to exploit the earlier patent.

Where a compulsory license is granted in accordance with the preceding paragraph, the Patent Administration Department of the State Council may, upon the request of the patent owner of the earlier patent, also grant a compulsory license to exploit the later patent.

#### Article 57

Where the invention or innovation subject to a compulsory license concerns semiconductor technology, the use of such compulsory license shall be strictly limited to purposes of safeguarding the public interest and to the circumstances set forth in Article 53(2) of this Law.

#### Article 58

Except for the circumstances provided in Article 53(2) and Article 55 of this Law under which a compulsory license may be granted, the exploitation carried out pursuant to a compulsory license shall be primarily directed toward supplying the domestic market.

#### Article 59



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Any entity or individual applying for a compulsory license pursuant to Article 53(1) or Article 56 of this Law shall bear the burden of demonstrating that it has been unable to obtain, on reasonable terms and within a reasonable period of time, a license from the patent holder for the exploitation of the patent.

#### Article 60

Where the patent administration department under the State Council decides to grant a compulsory license for exploitation, it shall promptly notify the patent holder, and shall register and publicly announce the decision.

A decision granting a compulsory license shall specify, in light of the grounds for such license, the scope and duration of the exploitation. Where the grounds for granting the compulsory license have ceased to exist and are unlikely to recur, the patent administration department under the State Council shall, upon the patent holder's request and after due examination, issue a decision terminating the compulsory license.

#### Article 61

Any entity or individual granted a compulsory license for exploitation shall neither enjoy exclusive rights to exploit the patent nor be entitled to authorize any third party to do so.

#### Article 62

An entity or individual granted a compulsory license shall pay the patent holder a reasonable royalty, or address the royalty issue in accordance with the relevant international treaties to which the People's Republic of China is a party. Where a royalty is payable, the amount shall be determined through negotiation between the parties. If the parties fail to reach an agreement, the matter shall be resolved by the patent administration department under the State Council.

#### Article 63

A patent owner who objects to a decision of the patent administration department under the State Council granting a compulsory license for exploitation, or a patent owner or licensee who objects to a ruling of said department on the royalties payable for compulsory exploitation, may file a lawsuit with the people's court within three months from the date of receiving the notification.



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## Chapter VII: Protection of Patent Rights

### Article 64

The scope of protection of a patent right for an invention or utility model shall be determined by the terms of the claims; the description and accompanying drawings may be used to interpret the claims.

The scope of protection of a design patent shall be determined by the product incorporating the patented design as depicted in the drawings or photographs.

### Article 65

Where a dispute arises from the exploitation of a patent without the authorization of the patent owner—constituting patent infringement—the parties shall first attempt to resolve the dispute through negotiation. If negotiation is not pursued or fails to produce an agreement, the patent owner or any interested party may file a lawsuit with the people's court or request the patent administration department to handle the matter.

If, in the course of handling the dispute, the patent administration department determines that an act of infringement exists, it may order the infringer to immediately cease the infringing conduct. A party dissatisfied with such a decision may, within 15 days from receipt of the notification, bring a lawsuit in the people's court in accordance with the *Administrative Procedural Law of the People's Republic of China*. Where the infringer neither files a lawsuit within the prescribed time limit nor ceases the infringing act, the patent administration department may apply to the people's court for compulsory enforcement. Upon request of the parties, the patent administration department handling the dispute may conduct mediation regarding the amount of compensation for patent infringement. If mediation fails to produce an agreement, either party may initiate legal proceedings in the people's court pursuant to the *Civil Procedural Law of the People's Republic of China*.

### Article 66

Where a patent infringement dispute concerns an invention patent relating to a manufacturing process for a new product, the entity or individual manufacturing an identical product shall bear the burden of proving that the process used in producing its product differs from the patented process.

Where a patent infringement dispute concerns a utility model patent or a design patent, the people's court or the competent patent administration department may require the patent owner or the interested party to submit a patent evaluation report—prepared by the patent administration department under the State Council following retrieval, analysis, and evaluation of the relevant utility model or design—as evidence for adjudication or administrative handling



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of the dispute. The patent owner, the interested party, or the alleged infringer may also voluntarily submit such a patent evaluation report.

#### Article 67

In a patent infringement dispute, where the alleged infringer can provide evidence demonstrating that the technology or design exploited is existing technology or an existing design, no patent infringement shall be deemed to exist.

#### Article 68

Any person who counterfeits a patent shall, in addition to bearing civil liability in accordance with law, be ordered by the patent law enforcement authority to take corrective action, which shall be publicly announced. Any illegal gains shall be confiscated, and a fine of up to five times the amount of such illegal gains may be imposed; where there are no illegal gains, or where such gains do not exceed RMB 50,000, a fine of no more than RMB 250,000 may be imposed. Where the conduct constitutes a criminal offence, criminal liability shall be pursued in accordance with law.

#### Article 69

In investigating and handling suspected acts of patent counterfeiting based on evidence already obtained, the patent law enforcement authorities are empowered to take the following measures:

- 1-Interview relevant parties and investigate matters pertaining to the suspected unlawful conduct;
- 2-Conduct on-site inspections of locations where the parties are suspected of engaging in unlawful conduct;
- 3-Review and copy contracts, invoices, account books, and other materials relevant to the suspected unlawful conduct;
- 4-Inspect products related to the suspected unlawful conduct;
- 5-Seal or seize products proven by evidence to bear a counterfeited patent.

Upon request of the patent owner or an interested party, the patent administration department may adopt the measures set forth in items (1), (2), and (4) of the preceding paragraph to address patent infringement disputes.



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When the patent law enforcement authorities or the patent administration department perform their legally authorized functions as provided in the preceding paragraphs, the parties shall provide assistance and cooperation and shall not refuse or obstruct such actions.

#### Article 70

The patent administration department under the State Council may, upon request of the patent owner or an interested party, handle patent infringement disputes that have a significant nationwide impact.

When handling patent infringement disputes upon the request of the patent owner or an interested party, the patent administration department of a local people's government may at the same time address cases involving infringement of the same patent occurring within its administrative region, and may request the patent administration department of the people's government at the next higher level to handle cases involving infringement of the same patent spanning multiple administrative regions.

#### Article 71

Damages for patent infringement shall be determined based on the actual losses suffered by the right holder as a result of the infringement, or the profits obtained by the infringer from the infringement. Where it is difficult to determine such losses or profits, damages shall be reasonably determined with reference to a multiple of the patent royalty. In cases of intentional infringement with serious circumstances, damages may be assessed at not less than one time and not more than five times the amount calculated according to the foregoing methods. Where it is difficult to determine the losses suffered by the right holder, the profits obtained by the infringer, and the royalty for the patent, the people's court may, taking into consideration factors such as the type of patent and the nature and circumstances of the infringement, determine damages in an amount not less than RMB 30,000 and not more than RMB 5 million. Damages shall also include the reasonable expenses incurred by the right holder to stop the infringement.

Where the right holder has fulfilled its burden of proof to the greatest extent possible, but account books and relevant materials pertaining to the infringement are primarily in the possession of the infringer, the people's court may, for the purpose of determining damages, order the infringer to produce such account books and materials. If the infringer fails to provide them or provides falsified materials, the people's court may determine damages by reference to the claims and the evidence submitted by the right holder.

#### Article 72



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Where a patent owner or an interested party has evidence showing that another person is committing, or is about to commit, an act of patent infringement or an act that interferes with the exercise of the patent owner's or interested party's lawful rights—and that failure to promptly restrain such conduct will cause irreparable harm to those rights—the patent owner or interested party may, prior to initiating legal proceedings, apply to the people's court for property preservation, an order requiring certain conduct, or an order prohibiting certain conduct, in accordance with law.

### Article 73

To prevent patent infringement, where evidence is likely to be destroyed, lost, or otherwise difficult to obtain at a later time, the patent owner or interested party may, before instituting an action, apply to the people's court for evidence preservation.

### Article 74

The statute of limitations for bringing an action for patent infringement is three years, beginning on the date when the patent owner or interested party knows or should reasonably know of both the infringement and the identity of the infringer.

Where another person uses an invention after the publication of the patent application but prior to the grant of the patent, without paying appropriate royalties, the statute of limitations for the patent owner to claim payment of such royalties is three years, starting from the date when the patent owner knows or should have known of the use. However, where the patent owner knows or should have known of the use before the patent is granted, the limitation period shall start on the date of issuance of the patent.

### Article 75

None of the following circumstances shall constitute infringement of a patent right:

1-The use, offer for sale, sale, or importation of a patented product, or of a product directly obtained through a patented process, after such product has been sold by the patent owner or by an entity or individual licensed by the patent owner;

2-The manufacture of an identical product, the use of an identical process, or the making of necessary preparations for such manufacture or use prior to the filing date, and the continued manufacture or use within the original scope;

3-The use of relevant patents, for the needs of a foreign means of transport that temporarily enters the territory, territorial waters, or territorial airspace of China, in accordance with an



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agreement concluded between China and the country to which the means of transport belongs, or in accordance with an international treaty to which both countries are party, or on the basis of reciprocity, for use in its devices and installations;

4-The use of relevant patents solely for purposes of scientific research and experimentation;

5-The manufacture, use, or importation of patented medicines or patented medical equipment for the purpose of providing information required for administrative examination and approval, and the manufacture or importation of such patented medicines or equipment exclusively for the aforementioned purpose.

## Article 76

Where, during the process of drug marketing authorization evaluation and approval, a dispute arises between a drug marketing authorization applicant and the relevant patent owner or interested party concerning a patent related to the drug for which registration is sought, the relevant party may file a lawsuit with the people's court requesting a determination as to whether the technical solution of the drug being registered falls within the scope of protection of another party's drug-related patent. The medicinal product regulatory department under the State Council may, within the prescribed time limit, decide whether to suspend marketing approval for the drug based on the effective judgment of the people's court. The drug marketing authorization applicant and the relevant patent owner or interested party may also apply to the patent administration department under the State Council for administrative adjudication of a patent dispute related to the drug for which registration is sought. The medicinal product regulatory department under the State Council shall, together with the patent administration department under the State Council, formulate specific coordination mechanisms for resolving patent disputes during the processes of drug marketing authorization approval and drug marketing authorization application. Such mechanisms shall be submitted to the State Council and implemented upon its approval.

## Article 77

A person who, without knowledge that a patented product or a product directly obtained from a patented process was produced or sold without the authorization of the patent owner, uses or sells such product for purposes of production or business operation shall not be liable for compensation, provided it can be proven that the product was obtained from a lawful source.

## Article 78

Any person who, in violation of Article 19 of this Law, files a patent application abroad disclosing a state secret shall be subject to administrative sanctions by their employer or the



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competent higher authority. Where the conduct constitutes a criminal offense, the person shall be held criminally liable in accordance with the law.

#### Article 79

Patent administrative departments shall not engage in business activities, including recommending patented products to the public.

Where a patent administrative department violates the provisions of the preceding paragraph, its superior authority or oversight body shall order corrective measures and the elimination of any adverse effects. Any illegal proceeds shall be confiscated. Where the circumstances are serious, the directly responsible persons, including the person-in-charge, shall be subject to disciplinary action in accordance with the law.

#### Article 80

Where any staff member of a state organ for patent administration or any other relevant state organ neglects duties, abuses authority, or engages in falsification for personal gain, the staff member shall be held criminally liable if a criminal offense is constituted. If no crime is constituted, the staff member shall be subject to disciplinary action in accordance with the law.

### Chapter VIII: Supplemental Provisions

#### Article 81

Applicants for patents or other related formalities with the patent administration department under the State Council shall pay the prescribed fees.

#### Article 82

This Law shall take effect on April 1, 1985.



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