

## 中华人民共和国专利法（2008年第三次修正版）

Patent Law of the People's Republic of China (third revised edition in 2008)

第一章 总 则  
Chapter I General Provisions

**第一条** 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。

**Article 1** This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention-creation, promoting the application of invention-creation, enhancing innovation capability, promoting the advancement of science and technology and the economic and social development.

**第二条** 本法所称的发明创造是指发明、实用新型和外观设计。

第十三届全国人民代表大会常务委员会第二十二次会议决定对《中华人民共和国专利法》作如下修改：

The 22nd Meeting of the Standing Committee of the 13th National People's Congress decided to make the following amendments to the Patent Law of the People's Republic of China

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发明，是指对产品、方法或者其改进所提出的新的技术方案。  
实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。  
外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。

Article 2 For the purposes of this Law, invention-creations mean inventions, utility models and designs.

Inventions mean new technical solutions proposed for a product, a process or the improvement thereof.

Utility models mean new technical solutions proposed for the shape and structure of a product, or the combination thereof, which are fit for practical use.

Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape and pattern, which are rich in an aesthetic appeal and are fit for industrial application.

**第三条** 国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管理工作。

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**Article 3** The Patent Administration Department under the State Council shall

shall be responsible for the administration of patent-related work nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.

The departments in charge of patent-related work of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative areas.

**第四条** 申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。

**Article 4** Where an invention-creation for the patent of which an application is filed involves national security or other major interests of the State and confidentiality needs to be maintained, the application shall be handled in accordance with the relevant regulations of the State.

**第五条** 对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。

**Article 5** Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests.

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**第六条** 执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。  
非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。  
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**Article 6** An invention-creation that is accomplished in the course of performing the duties of an employee, or mainly by using the material and technical conditions of an employer shall be deemed an employment invention-creation. For an employment invention-creation, the employer has the right to apply for a patent. After such application is granted, the employer shall be the patentee.

For a non-employment invention-creation, the inventor or designer has the right to apply for a patent. After such application is granted, the said inventor or designer shall be the patentee.

For an invention-creation that is accomplished by using the material and technical conditions of an employer, if the employer has concluded a contract with the inventor or designer providing the ownership of the right to apply for the patent or the ownership of the patent right, such provision shall prevail.

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非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。  
利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。

**Article 6** An invention-creation accomplished by a person in the course of performing the duties of the entity for which he works, or mainly by using the materials and technical conditions of the entity shall be a service invention-creation. For a service invention-creation, the right to apply for patent shall remain with the entity. After such application is approved, the entity shall be the patentee. **The entity may dispose of its right to apply for patent and patent right of its service invention-creations according to law, so as to promote the implementation and utilization of related invention-creations.**

For a non-service invention-creation, the right to apply for patent shall remain with the inventor or designer. After such application is approved, the inventor or designer shall be the patentee. For an invention-creation accomplished by a person by using the materials and technical conditions of the entity for which he works, where the entity has concluded a contract with the inventor or designer providing the right to apply for patent or the ownership of the

第七条 对发明人或者设计人的非职务发明创造专利申请,任何单位或者个人不得压制。

Article 7 No unit or individual shall prevent the inventor or designer from filing a patent application for a non-employment invention.

第八条 两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造,除另有协议的以外,申请专利的权利属于完成或者共同完成的单位或者个人;申请被批准后,申请的单位或者个人为专利权人。

Article 8 With regard to an invention-creation accomplished by two or more units or individuals in collaboration, or an invention-creation accomplished by an unit or individual under the entrustment of another unit or individual, the right to apply for a patent shall be vested in the units or individuals that have accomplished the invention-creation in collaboration or in the unit or individual that has done so under entrustment, unless it is otherwise agreed upon. After the application is granted, the applying unit(s) or individual(s) shall be deemed the patentee(s).

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第九条 同样的发明创造只能授予一项专利权。但是，同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利，先获得的实用新型专利权尚未终止，且申请人声明放弃该实用新型专利权的，可以授予发明专利权。

两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

Article 9 Only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted.

If two or more applicants apply for a patent for the same invention separately, the patent right shall be granted to the first applicant.

第十条 专利申请权和专利权可以转让。

中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。

转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。

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**Article 10** The right to apply for a patent and patent rights may be transferred.

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If a Chinese unit or individual intends to transfer the right to apply for a patent or patent rights to a foreigner, foreign enterprise or other foreign organization, it or he shall perform the procedures in accordance with the provisions of relevant laws and administrative regulations.

For the transfer of the right to apply for a patent or of patent rights, the parties concerned shall conclude a written contract and file for registration at the patent administration department under the State Council, and the latter shall make an announcement thereof. The transfer of the right to apply for a patent or of patent rights shall become effective as of the registration date.

第十一条 发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、进口依照该专利方法直接获得的产品。

外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、许诺销售、销售、进口其外观设计专利产品。

Article 11 After the patent right is granted for an invention or a utility model, unless otherwise provided for in this Law, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, use, offer to

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sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method.

After a design patent right is granted, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, offer to sell, sell or import the design patent products.

**第十二条** 任何单位或者个人实施他人专利的,应当与专利权人订立实施许可合同,向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。

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**第十三条** 发明专利申请公布后,申请人可以要求实施其发明的单位或者个人支付适当的费用。

**Article 13** After the application for an invention patent is published, the applicant may require the unit or individual that exploits the said patent to pay an appropriate amount of royalties.

import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method.

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Article 14 If an invention patent of a State-owned enterprise or institution is of great significance to national or public interests, upon approval by the State Council, the relevant competent department under the State Council or the people's government of the province, autonomous region, or municipality directly under the Central Government may decide to have the patent widely applied within an approved scope and allow the designated units to exploit the patent, and the said units shall pay royalties to the patentee in accordance with the regulations of the State.

第十五条 专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施该专利的，收取的使用费应当在共有人之间分配。  
除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。

Article 15 If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right,

（此款移至第四十九条）

(Moved to Article 49)

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the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties received shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.

第十六条 被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。

Article 16 The unit that is granted the patent right shall reward the inventor or designer of an employment invention-creation. After such patent is exploited, the inventor or designer shall be given a reasonable amount of remuneration according to the scope of application and the economic results.

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国家鼓励被授予专利权的单位实行产权激励，采取股权、期权、分红等方式，使发明人或者设计人合理分享创新收益。

**Article 15** The entity that is granted a patent right shall reward the inventor or designer of a service invention-creation and, upon exploitation of the patented invention-creation, the inventor or designer shall be given a reasonable amount of remuneration according to the scope of application and the economic results.

The State encourages entities that have been granted patent rights to implement property rights incentives to enable inventors and designers to share reasonable benefits from innovation by adopting equity, options dividends and other means.

第十七条 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。

专利权人有权在其专利产品或者该产品的包装上标明专利标识。

Article 17 An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer.

The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products.

第十八条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。

Article 18 Where a foreigner, foreign enterprise or other foreign organization without a regular residence or business site in China applies for a patent in China, the application shall be handled in accordance with the agreements concluded by the country he or it belongs to and China or the international treaties to which both the countries have acceded or in accordance with this Law on the principle of reciprocity.

第十九条 在中国没有经常居所或者营业所的外国人、外国企业或者

**第十六条** 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。

专利权人有权在其专利产品或者该产品的包装上标明专利标识。

**Article 16** An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer.

The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products.

**第十七条** 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。

**Article 17** Where a foreigner, foreign enterprise or other foreign organization without a regular residence or business site in China applies for a patent in China, the application shall be handled in accordance with the agreements concluded by the country he or it belongs to and China or the international treaties to which both the countries have acceded or in accordance with this Law on the principle of reciprocity.

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外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。

中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托依法设立的专利代理机构办理。

专利代理机构应当遵守法律、行政法规，按照被代理人的委托办理专利申请或者其他专利事务；对被代理人发明创造的内容，除专利申请已经公布或者公告的以外，负有保密责任。专利代理机构的具体管理办法由国务院规定。

Article 19 If a foreigner, foreign enterprise, or other foreign organization without a regular residence or business site in China intends to apply for a patent or handle other patent-related matters in China, he or it shall entrust a legally established patent agency with the application and such matters.

If a Chinese unit or individual intends to apply for a patent or handle other patent-related matters in China, it or he may entrust a legally established patent agency with the application and such matters.

A patent agency shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as entrusted by its principals. It shall also be obligated to keep confidential the contents of the inventions of its principals, unless the patent applications have been published or announced. The specific measures for administration of the patent agencies shall be formulated by the State Council.

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第二十条 任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。

中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。

国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。

对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。

Article 20 Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished in China shall submit the matter to the patent administration department under the State Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.

A Chinese unit or individual may file for international patent applications in accordance with the relevant international treaties to which China has acceded. The applicant for such patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has acceded and the relevant provisions of this Law and regulations of the State Council. With regard to an invention or utility model for which an application is filed for a

**第十九条** 任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。

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The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has acceded and the relevant provisions of this Law and regulations of the State Council. With regard to an invention or utility model for which an application is filed for a patent in a foreign country in

patent in a foreign country in violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted.

第二十一条 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。国务院专利行政部门应当完整、准确、及时发布专利信息，定期出版专利公报。  
在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。

Article 21 The patent administration department under the State Council

violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted.

**第二十条(新增)** 申请专利和行使专利权应当遵循诚实信用原则。不得滥用专利权损害公共利益或者他人合法权益。滥用专利权，排除或者限制竞争，构成垄断行为的，依照《中华人民共和国反垄断法》处理。

**Article 20(newly added)** The principle of good faith shall be followed in applying for patents and exercising patent rights. Patent rights shall not be abused to damage public interests or the legitimate rights and interests of others.

Where monopoly act is constituted by abusing patent rights to exclude or restrict competition, such act shall be dealt with in accordance with the Anti-Monopoly Law of the People's Republic of China.

**第二十一条** 国务院专利行政部门应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。  
国务院专利行政部门应当加强专利信息公共服务体系建设，完整、准确、及时发布专利信息，提供专利基础数据，定期出版专利公报，促进专利信息传播与利用。  
在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。

**Article 21** The patent administration department under the State

and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy and timeliness, handle patent applications and requests in accordance with law.

The patent administration department under the State Council shall release patent-related information in a complete, accurate and timely manner, and publish patent gazettes on a regular basis.

Before a patent application is published or announced, the staff members of the patent administration department under the State Council and the persons concerned shall be obligated to keep such application confidential.

## 第二章 授予专利权的条件

### Chapter II Conditions for Granting Patent Rights

第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。

创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

Council shall, according to the requirement of objectivity, fairness, accuracy and timeliness, handle patent applications and requests in accordance with law.

The patent administration department under the State Council shall strengthen the construction of public service system for patent information, publish patent information in a complete, accurate and timely manner, provide basic patent data, publish patent bulletins regularly, and promote the dissemination and utilization of patent information.

Before a patent application is published or announced, the staff members of the patent administration department under the State Council and the persons concerned shall be obligated to keep such application confidential.

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本法所称现有技术，是指申请日以前在国内外为公众所知的技术。

Article 22 Inventions and utility models for which patent rights are to be granted shall be ones which are novel, creative and of practical use. Novelty means that the invention or utility model concerned is not an existing technology; no patent application is filed by any unit or individual for any identical invention or utility model with the patent administration department under the State Council before the date of application for patent right, and no identical invention or utility model is recorded in the patent application documents or the patent documentations which are published or announced after the date of application.

Creativity means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.

Practical use means that the said invention or utility model can be used for production or be utilized, and may produce positive results. For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application.

**第二十三条** 授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公告的专利文件中。

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授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。

授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。

本法所称现有设计，是指申请日以前在国内外为公众所知的设计。

Article 23 A design for which the patent right is granted is not an existing design, and no application is filed by any unit or individual for any identical design with the patent administration department under the State Council before the date of application for patent right and no identical design is recorded in the patent documentations announced after the date of application.

Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs. Designs for which a patent right is granted shall be ones which are not in conflict with the lawful rights acquired by others prior to the date of application.

For the purposes of this Law, existing designs mean designs that are known to the public both domestically and abroad before the date of application.

**第二十四条** 申请专利的发明创造在申请日以前六个月内，有下列情形之一的

之一的，不丧失新颖性：

- (一) 在中国政府主办或者承认的国际展览会上首次展出的；
- (二) 在规定的学术会议或者技术会议上首次发表的；

授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。

授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。

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**第二十四条** 申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：

(一) 在国家出现紧急状态或者非常情况时，为公共利益目的首次公开的；

(二) 在中国政府主办或者承认的国际展览会上首次展出的；

(三) 他人未经申请人同意而泄露其内容的。

Article 24 Within six months before the date of application, an invention for which an application is filed for a patent does not lose its novelty under any of the following circumstances:

- (1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (2) It is published for the first time at a specified academic or technological conference; and
- (3) Its contents are divulged by others without the consent of the applicant.

第二十五条 对下列各项，不授予专利权：

- (一) 科学发现；
  - (二) 智力活动的规则和方法；
  - (三) 疾病的诊断和治疗方法；
  - (四) 动物和植物品种；
  - (五) 用原子核变换方法获得的物质；
  - (六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。
- 对前款第(四)项所列产品的生产方法，可以依照本法规定授予专利权。

(三) 在规定的学术会议或者技术会议上首次发表的；  
(四) 他人未经申请人同意而泄露其内容的。

**Article 24** Within six months before the date of application, an invention-creation for which a patent is applied for does not lose its novelty where one of the following events occurs:

- (1) **It is first made public for the purpose of public interest in the case of national emergency or exceptional circumstance;;**
- (2) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (3) It is published for the first time at a specified academic or technological conference; and
- (4) Its contents are divulged by others without the consent of the applicant.

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  - (四) 动物和植物品种；
  - (五) **原子核变换方法以及用原子核变换方法获得的物质；**
  - (六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。
- 对前款第(四)项所列产品的生产方法，可以依照本法规定授予专利权。

Article 25 Patent rights shall not be granted for any of the following:

- (1) scientific discoveries;
- (2) rules and methods for intellectual activities;
- (3) methods for the diagnosis or treatment of diseases;
- (4) animal or plant varieties;
- (5) substances obtained by means of nuclear transformation; and
- (6) designs designsngns that are mainly used for marking the pattern, color or the combination of the two

The patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.

### 第三章 专利的申请

#### Chapter III Patent Application

**第二十六条** 申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。

请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。

说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。

权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始

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- (5) **method of nuclear transformation and substance obtained by means of nuclear transformation method;** and
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权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当

来源的，应当陈述理由。

Article 26 When a person intends to apply for an invention or utility model patent, he shall submit the relevant documents, such as a written request, a written description and its itscle 26 When a person intends In the written request shall be specified the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters. The written description shall contain a clear and comprehensive description of the invention or utility model so that a technician in the field of the relevant technology can carry it out; when necessary, pictures shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model. The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection. With regard to an invention-creation accomplished by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons.

**第二十七条** 申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。

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**第二十七条** 申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。

Article 27 When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.

In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested.

**第二十八条** 国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。

Article 28 The date when the patent administration department under the State Council receives the patent application documents is the date of application. If the application documents are delivered by post, the date of the postmark is the date of application.

**第二十九条** 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。

申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。

**Article 27** When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.

In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested.

**第二十八条** 国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。

**Article 28** The date when the patent administration department under the State Council receives the patent application documents is the date of application. If the application documents are delivered by post, the date of the postmark is the date of application.

**第二十九条** 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。

申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，**或者自外观设计在中国第一次提出专利申请之日起六个月内**，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。

Article 29 If, within twelve months from the date the applicant first files an application for an invention or utility model patent in a foreign country, or within six months from the date the applicant first files an application for a design patent in a foreign country, he files an application for a patent in China for the same subject matter, he may enjoy the right of priority in accordance with the agreements concluded between the said foreign country and China, or in accordance with the international treaties to which both countries have acceded, or on the principle of mutual recognition of the right of priority.

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

第三十条 申请人要求优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。

Article 30 An applicant who requests the right of priority shall submit a written declaration at the time of application and submit, within three

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

**第三十条** 申请人要求**发明专利、实用新型专利**优先权的，应当在申请的时候提出书面声明，**并且在第一次提出发明、实用新型专利申请之日起十六个月内**，提交第一次提出的专利申请文件的副本。  
申请人要求外观设计专利优先权的，应当在申请的时候提出书面声明，**并且在三个月内提交第一次提出的专利申请文件的副本**。  
申请人未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。

**Article 30** Any applicant who claims priority to **an application for invention or utility model** shall make a written statement at the time of filing **and submit a copy of the**



months, duplicates of the patent application documents filed for the first time. Where no written declaration is submitted or no duplicates of the patent application documents are submitted at the expiration of the specified time limit, the applicant shall be deemed to have waived the right of priority.

**第三十一条** 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。  
一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。

**Article 31** An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.

An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.

**first filed patent application documents within 16 months from the date of filing the first patent application for invention or utility model.**

**Any applicant who claims priority to an application for design shall make a written statement at the time of filing and submit a copy of the first filed patent application documents within three months.**

Where the applicant fails to make a written statement or fails to submit a copy of the patent application within the time limit, the priority shall be deemed not claimed.

**第三十一条** 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。  
一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。

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An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.

第三十二条 申请人可以在被授予专利权之前随时撤回其专利申请。

Article 32 An applicant may withdraw his patent application anytime before being granted the patent right.

第三十三条 申请人可以对其专利申请文件进行修改，但是，对发明和实用新型专利申请文件的修改不得超出原说明书和权利要求书记载的范围，对外观设计专利申请文件的修改不得超出原图片或者照片表示的范围。

Article 33 An applicant may amend his patent application documents, provided that the amendment to the invention or utility model patent application documents does not exceed the scope specified in the original written descriptions and claims, or that the amendment to the design patent application documents does not exceed the scope shown in the original drawings or pictures.

#### 第四章 专利申请的审查和批准

#### Chapter IV Examination and Approval of Patent Applications

第三十四条 国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。

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Article 34 Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may do so at an earlier date upon request of the applicant.

第三十五条 发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。

Article 35 Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application. If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn. The patent administration department under the State Council may carry out substantive examination of its own accord, as it deems it necessary.

**Article 34** Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may do so at an earlier date upon request of the applicant.

**第三十五条** 发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。

**Article 35** Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application. If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn. The patent administration department under the State Council may carry out substantive examination of its own accord, as it deems it necessary.

第三十六条 发明专利的申请人请求实质审查的时候,应当提交在申请日前与其发明有关的参考资料。

发明专利已经在外国提出过申请的,国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料;无正当理由逾期不提交的,该申请即被视为撤回。

Article 36 When an applicant for an invention patent requests substantive examination, he shall submit the reference materials relating to the invention existing prior to the date of application.

If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit, within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.

第三十七条 国务院专利行政部门对发明专利申请进行实质审查后,认为不符合本法规定的,应当通知申请人,要求其在指定的期限内陈述意见,或者对其申请进行修改;无正当理由逾期不答复的,该申请即被视为撤回。

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**第三十七条** 国务院专利行政部门对发明专利申请进行实质审查后,认为不符合本法规定的,应当通知申请人,要求其在指定的期限内陈述意见,或者对其申请进行修改;无正当理由逾期不答复的,该申请即被视为撤回。

Article 37 After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.

第三十八条 发明专利申请经申请人陈述意见或者进行修改后,国务院专利行政部门仍然认为不符合本法规定的,应当予以驳回。

Article 38 After the applicant states his opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.

第三十九条 发明专利申请经实质审查没有发现驳回理由的,由国务院专利行政部门作出授予发明专利权的决定,发给发明专利证书,同时予以登记和公告。发明专利权自公告之日起生效。

Article 39 If no reason for rejection is discerned after an invention patent application is substantively examined, the patent administration

**Article 37** After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.

**第三十八条** 发明专利申请经申请人陈述意见或者进行修改后,国务院专利行政部门仍然认为不符合本法规定的,应当予以驳回。

**Article 38** After the applicant states his opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.

**第三十九条** 发明专利申请经实质审查没有发现驳回理由的,由国务院专利行政部门作出授予发明专利权的决定,发给发明专利证书,同时予以登记和公告。发明专利权自公告之日起生效。

**Article 39** If no reason for rejection is discerned after an invention patent application is substantively examined, the patent administration department

department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and meanwhile register and announce the same. The invention patent right shall become effective as of the date of announcement.

第四十条 实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。

Article 40 If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and meanwhile register and announce the same. The utility model patent right and the design patent right shall become effective as of the date of announcement.

第四十一条 国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and meanwhile register and announce the same. The invention patent right shall become effective as of the date of announcement.

**第四十条** 实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。

**Article 40** If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and meanwhile register and announce the same. The utility model patent right and the design patent right shall become effective as of the date of announcement.

**第四十一条** 专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内向国务院专利行政部门请求复审。国务院专利行政部门复审后，作出决定，并通知专利申请人。专利申请人对国务院专利行政部门的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

Article 41 The patent administration department under the State Council shall establish a patent review board. If a patent applicant is dissatisfied with the decision made by the Patent Administration Department under the State Council on rejecting of the application, he may, within three months from the date of receipt of the notification, file a request with the patent review board for review. After review, the Patent Review Board shall make a decision and notify the patent applicant of the same. If the patent applicant is dissatisfied with the review decision made by the patent review board, he may take legal action before the people's court within three months from the date of receipt of the notification.

### 第五章 专利权的期限、终止和无效

#### Chapter V Duration, Termination and Invalidation of Patent Rights

第四十二条 发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，均自申请日起计算。

**Article 41** Where a patent applicant is dissatisfied with the decision of the patent administration department under the State Council rejecting the application, the applicant may, within three months from the date of receipt of the notification, request **the n department** to make a reexamination. After reexamination, the patent administration department under the State Council shall make a decision and notify the patent applicant.

Where a patent applicant is dissatisfied with the reexamination decision of **the patent administration department under the State Council**, he or it may institute legal proceedings before the people's court within three months from the date of receipt of the notification.

### 第五章 专利权的期限、终止和无效

#### Chapter V Duration, Termination and Invalidation of Patent Rights

**第四十二条** 发明专利权的期限为二十年，实用新型专利权的期限为十年，外观设计专利权的期限为十五年，均自申请日起计算。自发明专利申请日起满四年，且自实质审查请求之日起满三年后授予发明专利权的，国务院专利行政部门应专利权人的请求，就发明专利在授权过程中的不合理延迟给予专利权期限补偿，但由申请人引起的不合理延迟除外。为补偿新药上市审评审批占用的时间，对在中国获得上市许可的新药相关发明专利，国务院专利行政部门应专利权人的请求给予专利权期限补偿。补偿期限不超过五年，新药批准上市后总有效专利权期限不超过十四年。



Article 42 The duration of the invention patent right shall be 20 years and that of the utility model patent right and of the design patent right shall be ten years respectively, all commencing from the date of application.

第四十三条 专利权人应当自被授予专利权的当年开始缴纳年费。

Article 43 The patentee shall pay annual fees commencing from the year

**Article 42** The duration of a patent for invention shall be 20 years, the duration of a patent for utility model shall be 10 years, and the duration of a patent for design shall be **15 years**, all counted from the date of filing.

Where a patent for invention is granted after four years from the date of filing and after three years from the date of requesting substantive examination, the patent administration department under the State Council shall, upon the request of the patentee, provide a remedy of patent term extension due to the unreasonable delayed processing of patent applications for inventions, except for the unreasonable delay caused by the applicant.

With regard to the patent for invention related to new drugs that have been approved in China, in order to compensate the time spent on review and approval of new drugs, the patent administration department under the State Council shall, upon the request of the patentee, provide a remedy of patent term extension. The extension shall not exceed five years, and the total valid patent term after the new drug is approved shall not exceed 14 years.

**第四十三条** 专利权人应当自被授予专利权的当年开始缴纳年费。

**Article 43** The patentee shall pay annual fees commencing from the year

when the patent right is granted.

第四十四条 有下列情形之一的，专利权在期限届满前终止：

- (一) 没有按照规定缴纳年费的；
- (二) 专利权人以书面声明放弃其专利权的。

专利权在期限届满前终止的，由国务院专利行政部门登记和公告。

Article 44 Under any of the following circumstances, the patent right shall be terminated before the expiration of the duration:

- (1) failure to pay the annual fee as required; or
- (2) the patentee waiving of the patent right by a written declarationpatent;

If a patent right is terminated before the duration expires, the patent administration department under the State Council shall register and announce such termination.

第四十五条 自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求专利复审委员会宣告该专利权无效。

Article 45 Beginning from the date the patent administration department under the State Council announces the grant of a patent right, if a unit or individual believes that such grant does not conform to the relevant provisions of this Law, it or he may request that the patent review

when the patent right is granted.

**第四十四条** 有下列情形之一的，专利权在期限届满前终止：

- (一) 没有按照规定缴纳年费的；
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If a patent right is terminated before the duration expires, the patent administration department under the State Council shall register and announce such termination.

**第四十五条** 自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求国务院专利行政部门宣告该专利权无效。

**Article 45** Where, as of the announcement of granting a patent by the patent administration department under the State Council, any entity or individual believes that the granting of said patent does not conform to the relevant provisions of this Law, it or he may request that the patent administration

board declare the said patent right invalid.

第四十六条 专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。  
对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。

Article 46 The patent review board shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the requesting person and the patentee of its decision. The decision on declaring a patent right invalid shall be registered and announced by the patent administration department under the State Council.

A person that is dissatisfied with the patent review board's decision on declaring a patent right invalid or its decision on affirming the patent right may take legal action before a people's court, within three months from the date of receipt of the notification. The people's court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.

第四十七条 宣告无效的专利权视为自始即不存在。

department under the State Council declare said patent right invalid.

第四十六条 国务院专利行政部门对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。对国务院专利行政部门宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。

Article 46 The patent administration department under the State Council shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the petitioner and the patentee of its decision. The decision on declaring a patent right invalid shall be registered and announced by the patent administration department under the State Council. Where any party is dissatisfied with the decision of the patent administration department under the State Council on declaring a patent right invalid or upholding the patent right may file a lawsuit before the people's court within three months as of receipt of the notification. The people's court shall notify the opposite party in the invalidation procedure to participate in the litigation as the third party.

第四十七条 宣告无效的专利权视为自始即不存在。

宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。

依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。

Article 47 Any patent right that has hascle 47 Any pavalid shall be deemed to be non-existent from the beginning.

The decision on declaring a patent right invalid shall have no retroactive effect on any written judgment or written mediation on patent infringement that has been made and enforced by the people's court, or on any decision concerning the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the patent or for transfer of patent rights that has been performed--prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to another person mala fides by the patentee. Where the patent infringement compensation, royalties, and patent right transfer fees are not refunded pursuant to the provisions of the preceding paragraph, which constitutes a blatant violation of the principle of fairness, refund shall be made fully or partly.

## 第六章 专利实施的强制许可

宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。

依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。

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## 第六章 专利实施的特别许可

## Chapter VI Compulsory License for Exploitation of a Patent

## Chapter VI Special License for Exploitation of a Patent

**第四十八条（新增）** 国务院专利行政部门、地方人民政府管理专利工作的部门应当会同同级相关部门采取措施，加强专利公共服务，促进专利实施和运用。

**Article 48 (newly added)** The patent administration department under the State Council and the administrative authorities for patent affairs of the local governments shall, in conjunction with relevant departments of the same level, take measures to strengthen public services for patent and promote patent implementation and utilization.

**第四十九条（移自第十四条）** 国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。

**Article 49 (MOVE FROM ARTICLE 14):** Where the patent for invention of state-owned enterprises and institutions is of great significance to the interest of the State or to the public interest, the competent departments under the State Council and the governments of provinces, autonomous regions, and municipalities directly under the Central Government may, upon the approval of the State Council, decide to promote and apply the patent within the approved scope and permit designated entities to

exploit the invention. The designated entity shall pay royalties to the patentee in accordance with the national regulations.

**第五十条（新增）** 专利权人自愿以书面方式向国务院专利行政部门声明愿意许可任何单位或者个人实施其专利，并明确许可使用费支付方式、标准的，由国务院专利行政部门予以公告，实行开放许可。就实用新型、外观设计专利提出开放许可声明的，应当提供专利权评价报告。专利权人撤回开放许可声明的，应当以书面方式提出，并由国务院专利行政部门予以公告。开放许可声明被公告撤回的，不影响在先给予的开放许可的效力。

**Article 50 (newly added)** Where a patentee voluntarily makes a writing declaration before the patent administration department under the State Council that he is willing to license any entity or individual to exploit his patent, and specifies the means of payment and standard of license fees, an open license is established, and the patent administration department under the State Council shall make an announcement for such open license. Where an open license declaration is filed for utility model or design patents, the patent evaluation report shall be provided. Withdrawal of the open declaration shall be made in writing and shall be announced by the patent administration department under the State Council. The announcement of the withdrawal shall not affect the validity of the prior open license.

**第五十一条（新增）** 任何单位或者个人有意愿实施开放许可的专利的，以书面方式通知专利权人，并依照公告的许可使用费支付方式、标准支

付许可使用费后，即获得专利实施许可。

开放许可实施期间，对专利权人缴纳专利年费相应给予减免。

实行开放许可的专利权人可以与被许可人就许可使用费进行协商后给予普通许可，但不得就该专利给予独占或者排他许可。

**Article 51 (newly added)** Where any entity or individual intends to implement the patent by open license, he shall notify the patentee in writing, and obtain the license after paying the license fee in accordance with the means and standard specified in the announcement.

During the life of an open license, the annual fee paid by the patentee shall be reduced or exempted accordingly.

The patentee of the open license may, upon negotiation of the license fee with the licensee, grant a regular license, but shall not grant an exclusive or sole license for the patent.

**第五十二条（新增）** 当事人就实施开放许可发生纠纷的，由当事人协商解决；不愿协商或者协商不成的，可以请求国务院专利行政部门进行调解，也可以向人民法院起诉。

**Article 52 (newly added)** Where the parties have disputes over the implementation of an open license, the parties shall negotiate to resolve the disputes; where the parties are unwilling to negotiate or fail to reach an agreement, they may request mediation from the patent administration department under the State Council, or they may file a lawsuit before the people's court.



第四十八条 有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：

（一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的；

（二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。

Article 48 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:

(1) When it has been three years since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or

(2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced.

第四十九条 在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实用新型

**第五十三条** 有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：

（一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的；

（二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。

**Article 53** Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:

(1) When it has been three years since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or

(2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced.

**第五十四条** 在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实用新型专

型专利的强制许可。

Article 49 Where a national emergency or any extraordinary state of affairs occurs, or public interests so require, the patent administration department under the State Council may grant a compulsory license for exploitation of an invention patent or utility model patent.

**第五十条** 为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。

Article 50 For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded.

**第五十一条** 一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。

在依照前款规定给予实施强制许可的情形下，国务院专利行政部门

利的强制许可。

**Article 54** Where a national emergency or any extraordinary state of affairs occurs, or public interests so require, the patent administration department under the State Council may grant a compulsory license for exploitation of an invention patent or utility model patent.

**第五十五条** 为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。

**Article 55** For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded.

**第五十六条** 一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许

根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。

Article 51 If an invention or utility model, for which the patent right has been obtained, represents a major technological advancement of remarkable economic significance, compared with an earlier invention or utility model for which the patent right has already been obtained, and exploitation of the former relies on exploitation of the latter, the patent administration department under the State Council may, upon application made by the latter, grant it a compulsory license to exploit the earlier invention or utility model.

Under the circumstance where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon application made by the earlier patentee, grant it a compulsory license to exploit the later invention or utility model.

**第五十二条** 强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第四十八条第（二）项规定的情形。

Article 52 If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.

可。

**Article 56** If an invention or utility model, for which the patent right has been obtained, represents a major technological advancement of remarkable economic significance, compared with an earlier invention or utility model for which the patent right has already been obtained, and exploitation of the former relies on exploitation of the latter, the patent administration department under the State Council may, upon application made by the latter, grant it a compulsory license to exploit the earlier invention or utility model. Under the circumstance where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon application made by the earlier patentee, grant it a compulsory license to exploit the later invention or utility model.

**第五十七条** 强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第四十八条第（二）项规定的情形。

**Article 57** If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.

第五十三条 除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。

Article 53 Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.

第五十四条 依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能在合理的时间内获得许可。

Article 54 A unit or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time.

第五十五条 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。  
给予实施强制许可的决定，应当根据强制许可的理由规定实施的范

**第五十八条** 除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。

**Article 58** Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.

**第五十九条** 依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能在合理的时间内获得许可。

**Article 59** A unit or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time.

**第六十条** 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。  
给予实施强制许可的决定，应当根据强制许可的理由规定实施的范围和

围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。

Article 55 The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and announced.

In a decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, be specified the scope and duration for exploitation. When such reasons cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after examination.

**第五十六条** 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

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

**第五十七条** 取得实施强制许可的单位或者个人应当付给专利权人

时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。

**Article 60** The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and announced.

In a decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, be specified the scope and duration for exploitation. When such reasons cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after examination.

**第六十一条** 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

**Article 61** Any unit or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploitation and shall not have the right to allow exploitation by others.

**第六十二条** 取得实施强制许可的单位或者个人应当付给专利权人合

合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

Article 57 The unit or individual that is granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has acceded. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.

第五十八条 专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。

Article 58 If a patentee is dissatisfied with the decision made by the patent administration department under the State Council -on granting of the compulsory license for exploitation, or if the patentee, or the unit or individual that has obtained the compulsory license for exploitation is dissatisfied with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it or he may take legal action before the people's

理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

**Article 62** The unit or individual that is granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has acceded. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.

**第六十三条** 专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。

**Article 63** If a patentee is dissatisfied with the decision made by the patent administration department under the State Council -on granting of the compulsory license for exploitation, or if the patentee, or the unit or individual that has obtained the compulsory license for exploitation is dissatisfied with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it or he may take legal action before the people's court within

court within three months from the date of receipt of the notification of the ruling.

## 第七章 专利权的保护

### Chapter VII Protection of Patent Rights

第五十九条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。  
外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的该产品的外观设计。

Article 59 For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed, and the written description and the pictures attached may be used to explain what is claimed. For the design patent right, the scope of protection shall be confined to the design of the product as shown in the drawings or pictures, and the brief description may be used to explain the said design as shown in the drawings or pictures.

第六十条 未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的

three months from the date of receipt of the notification of the ruling.

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部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

Article 60 If a dispute arises as a result of exploitation of a patent without permission of the patentee, that is, the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to consult or if consultation fails, the patentee or interested party may take legal action before a people's court, and may also request the administration department for patent-related work to handle the dispute. If, when handling the dispute, the said department believes the infringement is established, it may order the infringer to cease the infringement immediately; if the infringer is dissatisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal action at the expiration of the time limit nor ceases the infringement, the said department may file an application with the people's court for compulsory enforcement. The administration department for patent-related work that handles the call shall, upon

理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

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request of the parties, carry out mediation concerning the amount of compensation for the patent right infringement. If mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

第六十一条 专利侵权纠纷涉及新产品制造方法的发明专利的,制造同样产品的单位或者个人应当提供其产品制造方法不同于专利方法的证明。

专利侵权纠纷涉及实用新型专利或者外观设计专利的,人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型或者外观设计进行检索、分析和评价后作出的专利权评价报告,作为审理、处理专利侵权纠纷的证据。

Article 61 If a dispute over patent infringement involves an invention patent for the method of manufacturing a new product, the unit or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.

If a dispute over patent infringement involves a utility model patent or a design patent, the people's court or the administration department for patent-related work may require the patentee or the interested parties to present a patent right assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall

infringement. If mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

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**Article 66** Where a patent infringement dispute involves a patent for invention about the manufacturing method of a new product, the entity or individual manufacturing the same product shall provide evidence to show that the manufacturing method of its or his product is different from the patented method. Where a patent infringement dispute involves a utility model patent or a design patent, the people's court or the administration authorities for patent affairs may require the patentee or the interested parties to present the patent evaluation report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design. The patent evaluation report shall serve as evidence for trying or handling the patent infringement dispute. **Patentees, the**

serve as evidence for trying or handling the patent infringement dispute.

第六十二条 在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。

Article 62 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a patent right infringement.

第六十三条 假冒专利的，除依法承担民事责任外，由管理专利工作的部门责令改正并予公告，没收违法所得，可以并处违法所得四倍以下的罚款；没有违法所得的，可以处二十万元以下的罚款；构成犯罪的，依法追究刑事责任。

Article 63 A person who counterfeits the patent of another person shall, in addition to bearing civil liabilities in accordance with law, be ordered by the administration department for patent-related work to put it right, and the department shall make the matter known to the public, confiscate his unlawful gains and, in addition, impose on him a fine of

interested parties, or the accused infringers may also initiatively present the patent evaluation report.

第六十七条 在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。

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Article 68 Whoever passes off the patent of another person, , in addition to bearing civil liabilities according to law, the department responsible for patent enforcement shall order corrections and make an announcement, confiscate the illegal gains and impose a fine less than five times of the illegal gains; where there is no illegal gain or the illegal gain is less than 50,000 yuan, a fine of less than 250,000 yuan may be

not more than four times the unlawful gain; if there are no unlawful gains, a fine of not more than RMB 200,000 may be imposed on him; and if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

第六十四条 管理专利工作的部门根据已经取得的证据,对涉嫌假冒专利行为进行查处时,可以询问有关当事人,调查与涉嫌违法行为有关的情况;对当事人涉嫌违法行为的场所实施现场检查;查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料;检查与涉嫌违法行为有关的产品,对有证据证明是假冒专利的产品,可以查封或者扣押。管理专利工作的部门依法行使前款规定的职权时,当事人应当予以协助、配合,不得拒绝、阻挠。

Article 64 When the administration department for patent-related work investigates and handles the suspected counterfeiting of a patent, it may, based on evidence obtained, inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct on-the-spot inspection of the places where the suspected illegal

imposed; where a crime is constituted, criminal responsibility shall be investigated according to law.

**第六十九条** 负责专利执法的部门根据已经取得的证据,对涉嫌假冒专利行为进行查处时,有权采取下列措施:

- (一) 询问有关当事人,调查与涉嫌违法行为有关的情况;
- (二) 对当事人涉嫌违法行为的场所实施现场检查;
- (三) 查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料;
- (四) 检查与涉嫌违法行为有关的产品;
- (五) 对有证据证明是假冒专利的产品,可以查封或者扣押。

管理专利工作的部门应专利权人或者利害关系人的请求处理专利侵权纠纷时,可以采取前款第(一)项、第(二)项、第(四)项所列措施。负责专利执法的部门、管理专利工作的部门依法行使前两款规定的职权时,当事人应当予以协助、配合,不得拒绝、阻挠。

**Article 69** The department responsible for patent enforcement shall have the right to take the following measures when investigating and dealing with suspected passing off of patent based on the obtained evidence:

- (1) inquire the parties concerned, and investigate the circumstances related to the suspected illegal act;

act is committed; consult and duplicate the relevant contracts, invoices, account books and other related materials; and check the products related to the suspected illegal act and seal or detain the products that are proved to be produced by the counterfeited patent.

When the administration department for patent-related work performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, instead of refusing to do so or creating obstacles.

- (2) conduct on-site inspection of the places where the suspected illegal act is committed;
- (3) consult and duplicate the relevant contracts, invoices, account books and other related materials; and
- (4) check the products related to the suspected illegal act; and
- (5) seal or detain the counterfeit patented products as proved by evidence.

**When the administrative authorities for patent affairs handle patent infringement disputes upon the request of the patentee or the interested parties, the administrative authorities may take the measures listed in items (1), (2), and (4) of the preceding paragraph.**

**When the department responsible for patent enforcement and the administrative authorities for patent affairs exercise the functions and powers stipulated in the preceding two paragraphs in accordance with the law, the parties concerned shall assist and cooperate, and shall not refuse or obstruct.**

**第七十条（新增）** 国务院专利行政部门可以应专利权人或者利害关系人的请求处理在全国有重大影响的专利侵权纠纷。地方人民政府管理专利工作的部门应专利权人或者利害关系人请求处理专利侵权纠纷，对在本行政区域内侵犯其同一专利权的案件可以合并处理；对跨区域侵犯其同一专利权的案件可以请求上级地方人民政府管理专利工作的部门处理。

**Article 70 (newly added)** The patent administration department under the State Council may, upon the request of the patentee or the interested parties, handle patent infringement disputes with significant nationwide impact.

第六十五条 侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百万元以下的赔偿。

Article 65 The amount of compensation for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If it is hard to determine the actual losses, the amount of compensation may be determined according to the benefits acquired

Where the administrative authorities for patent affairs of the local governments handle patent infringement disputes upon the request of the patentee or the interested parties, the cases of infringing the same patent right within the administrative region together can be handled together; for cross-regional cases of infringing the same patent right, the administrative authorities for patent affairs of the local government at a higher level can be requested for handling.

**第七十一条** 侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失或者侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。对故意侵犯专利权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。

权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予三万元以上五百万元以下的赔偿。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。

**Article 71** The amount of compensation for patent infringement shall be determined based on the right holder's actual losses caused by the infringement or the benefits acquired by the infringer through the infringement. Where the losses of the right holder or the benefits acquired by the infringer are hard to

by the infringer through the infringement. If it is hard to determine the losses of the patentee or the benefits acquired by the infringer, the amount of compensation may be determined according to the reasonably multiplied amount of the royalties of that patent. The amount of compensation shall include the reasonable expenses paid by the patentee for putting an end to the infringement.

If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of compensation within the range from 10,000 yuan to 1,000,000 yuan.

第六十六条 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。

申请人提出申请时，应当提供担保；不提供担保的，驳回申请。  
人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情

determine, the amount shall be reasonably determined by reference to the multiple of the royalties of the patent. **For intentional infringement, where the circumstances are serious, the amount of compensation shall be more than twice but less than five times of the amount calculated by the above method.**

Where the losses of the right holder, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of the patent, nature and particulars of the infringement, **determine the amount of compensation within the range from 30,000 yuan to 5,000,000 yuan.**

The amount of compensation shall include the reasonable expenses paid by the right holder for stopping the infringement.

**Where the right holder has tried his best to provide evidence and the account books and materials related to the infringement are mainly under the control of the infringer, the people's court may, in order to determine the amount of compensation, order the infringer to provide the account books and materials related to the infringement; where the infringer does not provide or provide false account books and materials, the people's court may determine the amount of compensation by reference to the right holder's claim and evidence.**

**第七十二条** 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权、妨碍其实现权利的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前**依法**向人民法院申请采取财产保全、责令作出一定行为或者禁止作出一定行为的措施。

**Article 72** Where the patentee or the interested party has evidence to prove that



况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。

申请人自人民法院采取责令停止有关行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。

申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。

Article 66 If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless being checked in time, may cause irreparable harm to his lawful rights and interests, he may, before taking legal action, file an application to request that the people's court order to have such act ceased.

When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected.

The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with the ruling may file once for review, and the enforcement shall not be suspended during the period of review.

If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the

someone else is committing or is about to commit an act that infringes the patent right or **hinders the realization of the right**, and if it is not stopped in time, it will cause irreparable damage to his legitimate rights and interests, the patentee or the interested party can apply to the people's court for such measures as **property preservation, ordering certain actions, or prohibiting certain actions** before filing a lawsuit **according to law**.

people's court shall lift such measures.

If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.

第六十七条 为了制止专利侵权行为,在证据可能灭失或者以后难以取得的情况下,专利权人或者利害关系人可以在起诉前向人民法院申请保全证据。

人民法院采取保全措施,可以责令申请人提供担保;申请人不提供担保的,驳回申请。

人民法院应当自接受申请之时起四十八小时内作出裁定;裁定采取保全措施的,应当立即执行。

申请人自人民法院采取保全措施之日起十五日内不起诉的,人民法院应当解除该措施。

Article 67 To check a patent infringement, when evidence might be lost or might be hard to acquire thereafter, the patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation.

If the people's court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected. The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.

If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.

**第七十三条** 为了制止专利侵权行为,在证据可能灭失或者以后难以取得的情况下,专利权人或者利害关系人可以在起诉前依法向人民法院申请保全证据。

**Article 73** In order to stop patent infringements, the patentee or interested parties may apply to the people's court for evidence preservation in accordance with the law before the lawsuit is filed under circumstances where the evidence may be lost or difficult to obtain in the future.

第六十八条 侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。

Article 68 The period of limitation for action against patent right infringement shall be two years, commencing from the date when the patentee or interested party knows or should have known of the infringement.

If an appropriate royalty is not paid for using an invention during the period from the publication of the invention patent application to the grant of the patent right, the period of limitation for taking legal action by the patentee for requesting payment of royalties shall be two years, commencing from the date when the patentee knows or should have known of the use of that patent by another person. However, the period of limitation for action shall commence from the date when the patent right is granted, if the patentee knows or should have known of the use before the patent right is granted.

**第七十四条** 侵犯专利权的诉讼时效为三年，自专利权人或者利害关系人得知或者应当知道侵权行为以及侵权人之日起计算。发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为三年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。

**Article 74** The period of limitation for action against patent infringement shall be **three** years, commencing from the date when the patentee or the interested party knows or **should have known of the infringement act and the infringer**.

Where an appropriate fee is not paid for using an invention during the period from the publication date of the application till the granting of the patent right, the period of limitation for the patentee to request payment of such fee shall be **three** years, commencing from the date when the patentee knows or should have known of the use of the patent by someone else. However, the period of limitation for action shall commence from the date when the patent right is granted, where the patentee knows or should have known of the use before the patent right is granted.

第六十九条 有下列情形之一的，不视为侵犯专利权：

（一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的；

（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；

（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；

（四）专为科学研究和实验而使用有关专利的；

（五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。

Article 69 The following shall not be deemed to be patent right infringement:

(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;

(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made

**第七十五条** 有下列情形之一的，不视为侵犯专利权：

（一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的；

（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；

（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；

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**Article 75** The following shall not be deemed to be patent right infringement:

(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;

(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;

(3) With respect to any foreign means of transportation that temporarily

necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope; (3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent is used in the devices and installations for its own needs, in accordance with the agreement concluded between the country it belong to and China, or in accordance with any international treaty to which both countries have acceded, or on the principle of mutual benefit; (4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and (5) Any person produces, uses, or imports patented drugs or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented drugs or patented medical apparatus and instruments especially for that person.

passes through the territory, territorial waters, or territorial airspace of China, the relevant patent is used in the devices and installations for its own needs, in accordance with the agreement concluded between the country it belong to and China, or in accordance with any international treaty to which both countries have acceded, or on the principle of mutual benefit; (4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and (5) Any person produces, uses, or imports patented drugs or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented drugs or patented medical apparatus and instruments especially for that person.

**第七十六条（新增）**药品上市审评审批过程中，药品上市许可申请人与有关专利权人或者利害关系人，因申请注册的药品相关的专利权产生纠纷的，相关当事人可以向人民法院起诉，请求就申请注册的药品相关技术方案是否落入他人药品专利权保护范围作出判决。国务院药品监督管理部门在规定的期限内，可以根据人民法院生效裁判作出是否暂停批准相关药品上市的决定。

药品上市许可申请人与有关专利权人或者利害关系人也可以就申请注册的药品相关的专利权纠纷，向国务院专利行政部门请求行政裁决。国务院药品监督管理部门会同国务院专利行政部门制定药品上市许可审批与药品上市许可申请阶段专利权纠纷解决的具体衔接办法，报国务院同意后实施。

第七十条 为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。

Article 70 Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without

**Article 76 (newly added)** In the process of review and approval of a drug, where there is a dispute over the patent right relating to the drug between the applicant, relevant patentee or interested party, the relevant parties may file a lawsuit with the people's court to request a judgment on whether the related technical solution of the drug applied for registration falls within the patent protection scope of others' drugs. The drug regulatory authority under the State Council may, within the prescribed time limit, make a decision on whether to suspend the approval of the related drugs based on the effective judgment of the people's court.

With regard to disputes over patent rights related to the drug, applicants for drug approval and relevant patentees or interested parties may also file a request for administrative rulings before the patent administration department under the State Council

The drug regulatory department under the State Council, in conjunction with the patent administrative department under the State Council, shall formulate specific measures to resolve patent dispute at the stage of drug review and approval and drug listing application. The measures shall be implemented after the approval of the State Council.

**第七十七条** 为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。

**Article 77** Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without

knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved.

第七十一条 违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。

Article 71 If, in violation of the provisions of Article 20 of this Law, a person files an application for patent in a foreign country, thereby divulging national secrets, the unit where he works or the competent authority at a higher level shall impose on him an administrative sanction. If a crime is constituted, he shall be investigated for criminal responsibility according to law.

第七十二条 侵夺发明人或者设计人的非职务发明创造专利申请权和本法规定的其他权益的，由所在单位或者上级主管机关给予行政处分。

Article 72 If a person usurps the right of an inventor or designer to apply for a non-employment invention patent, or usurps any other rights and interests of an inventor or designer specified in this Law, he shall be given an administrative sanction by the unit where he works or the

knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved.

**第七十八条** 违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。

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competent authority at a higher level.

第七十三条 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

Article 73 The administration department for patent-related work shall not be involved in recommending patented products to the public or engage in any other similar business activities. If the administration department for patent-related work violates the provisions of the preceding paragraph, its immediate superior or the supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

第七十四条 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

Article 74 Where a staff member of the government department engaged

**第七十九条** 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予处分。

**Article 79** The administrative authorities for patent affairs shall not be involved in recommending patented products to the public or engage in any other similar business activities. If the administrative authorities for patent affairs violate the provisions of the preceding paragraph, its immediate superior or the supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given sanctions in accordance with law.

**第八十条** 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

**Article 80** Where a staff member of the government department engaged in



in administration of patent-related work or of a relevant department neglects his duty, abuses his power, or commits irregularities for personal gain, which constitutes a crime, he shall be pursued for criminal responsibility in accordance with law. If the case is not serious enough to constitute a crime, he shall be given an administrative sanction in accordance with law.

第八章 附则  
Chapter VIII Supplementary Provisions

第七十五条 向国务院专利行政部门申请专利和办理其他手续,应当按照规定缴纳费用。

Article 75 To apply for patent at the patent administrative department under the State Council or go through other formalities, fees shall be paid in accordance with relevant regulations.

第七十六条 本法自1985年4月1日起施行。

Article 69 This Law shall enter into force on April 1, 1985.

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第八十二条 本法自1985年4月1日起施行。

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