Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China

Order of the President of the People's Republic of China

No.55

The Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China, adopted at the 22th Meeting of the Standing Committee of the Thirteenth National People's Congress on October 17, 2020, is hereby promulgated and shall go into effect on June 1, 2021.

Xi Jinping

President of the People's Republic of China

October 17, 2020

Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China

(Adopted at the 22th Meeting of the Standing Committee of the Thirteenth National People's Congress on October 17, 2020)

At its 22th Meeting, the Standing Committee of the Thirteenth National People's Congress decides to make the following amendments to the Patent Law

of the People's Republic of China:

1.The fourth paragraph of Article 2 is revised to read: " 'Design'means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application."

2. The first paragraph of Article 6 is revised to read: "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, is a service invention-creation. For a service invention-creation, the right to apply for a patent belongs to the employer. After such application is approved, the employer shall be the patentee. The employer may, in accordance with the law, dispose of the right to apply for a patent for its service invention-creation and the patent right, thereby facilitating the exploitation and utilization of the relevant invention-creation."

3. Article 14 is revised to be Article 49.

4. Article 16 is revised to be Article 15, and one paragraph is added to be the second paragraph, which reads: "The State encourages the entity that is granted a patent right to implement property right incentives, by such means as offering of stocks, options, and dividends, so that the inventor or designer can reasonably share the benefits of innovation."

5. One article is added to be Article 20, which reads: "The principle of good faith shall be followed when filing a patent application and exercising patent rights. The patent rights may not be abused to harm the public interests or the lawful rights and interests of others.

"For any misuse of patent rights for eliminating or restricting competition, if it constitutes a monopolistic conduct, it shall be dealt with in accordance with the Anti-Monopoly Law of the People's Republic of China."

6. The wording "the Patent Review Board" in the first paragraph of Article 21 is deleted.

The second paragraph is revised to read: "The patent administration department under the State Council shall strengthen the construction of a public service system for patent-related information, release patent-related information in a complete, accurate, and timely manner, provide basic data of patents, and publish patent gazettes on a regular basis, in order to promote dissemination and utilization of patent information."

7. One subparagraph is added to be the Subparagraph (1) of Article 24, which reads: "(1) where it was made public for the first time for the purpose of the public interests when a state of emergency or an extraordinary situation occurred in the country."

8. Subparagraph (5) of the first paragraph of Article 25 is revised to read: "(5) nuclear transformation methods and substances obtained by means of nuclear transformation;"

9. The second paragraph of Article 29 is revised to read: "Where, within twelve months from the date on which any applicant first filed in China a patent application for an invention or utility model, or within six months from the date on which any applicant first filed in China a patent application for a design, he or it files with the patent administration department under the State Council a patent application for the same subject matter, he or it may enjoy the right of

priority."

10. Article 30 is revised to read; "If any applicant claims the right of priority for an invention patent or a utility model patent, he or it shall make a written declaration when the patent application for an invention or utility model is filed, and submit, within sixteen months from the date on which the applicant first filed the application, a copy of the patent application documents which were filed for the first time.

"If any applicant claims the right of priority for a design patent, he or it shall make a written declaration when the patent application for a design is filed, and submit, within three months, a copy of the patent application documents which were filed for the first time.

"If the applicant fails to make the written declaration or to meet the time limit for submitting the copy of the patent application documents, the claim to the right of priority shall be deemed not to have been made."

11. Article 41 is revised to read: "Where a patent applicant refuses to accept the decision of the patent administration department under the State Council on rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the patent administration department under the State Council to make a reexamination. The patent administration department under the State Council shall, after reexamination, make a decision and notify the patent applicant.

"Where the patent applicant refuses to accept the decision of the reexamination of the patent administration department under the State Council, it or he may, within three months from the date of receipt of the notification, file a lawsuit in the people's court."

12. Article 42 is revised to read: "The term of patent right for inventions shall be twenty years, the term of patent right for utility models shall be ten years, and the term of patent right for designs shall be fifteen years, all commencing from the filing date.

"Where a patent right for an invention is granted after the expiration of four years from the filing date and after the expiration of three years from the date of the request for substantive examination of the application, the patent administration department under the State Council shall, at the request of the patentee, extend the term of the patent to compensate for the unreasonable delay in the granting process of the invention, except for the unreasonable delay caused by the applicant.

"In order to compensate for the time taken for the review and approval process before the marketing of a new pharmaceutical product, the patent administration department under the State Council shall, at the request of the patentee, extend the term of the new pharmaceutical-related invention which has been approved for marketing in China. The compensation term may not be more than five years, and the total effective term of the patent right may not be more than fourteen years from the date of marketing approval."

13. The wording "the Patent Review Board" in Article 45 and 46 is revised as "the patent administration department under the State Council".

14. The name of Chapter VI is revised to read: "Special License for the Exploitation of a Patent".

15. One article is added to be Article 48, which reads: "The patent

administration department under the State Council and the departments in charge of patent affairs of the local people's government shall, in conjunction with the relevant departments at the same level, take measures to strengthen patent public services and promote the exploitation and utilization of patents."

16. One article is added to be Article 50, which reads: "Where the patentee voluntarily declares in writing to the patent administration department under the State Council that it or he is willing to license any entity or individual to exploit its or his patent, and specifies the payment method and the standard of the royalty, the patent administration department under the State Council shall make an announcement and implement an open license. Where the patentee submits an open license statement for its or his utility model and design, it or he shall attach an evaluation report of the patent.

"Where the patentee withdraws the open license statement, the withdrawal shall be submitted in writing and be announced by the patent administration department under the State Council. If the open license statement is withdrawn by announcement, the validity of the open license granted earlier shall not be affected."

17. One article is added to be Article 51, which reads: "Where an entity or individual notifies the patentee of its or his willing to implement an open-licensed patent in writing and pays the royalty in accordance with the announced payment method and standard for the royalty, it or he obtains the patent license.

"During the implementation period of the open license, the annual fee paid by the patentee shall be reduced or exempted accordingly.

"The patentee whose patent is under an open license may grant a general license after negotiating with the licensee on the royalty, however, the patentee may not grant an exclusive or sole license for that patent."

18. One article is added to be Article 52, which reads: "Where a dispute arises over the implementation of an open license, the parties shall resolve it through consultation. Where the parties are unwilling to consult with each other or where the consultation fails, they may either request the patent administration department under the State Council to mediate the matter, or file a lawsuit in the people's court."

19. Article 61 is revised to be Article 66, and the second paragraph is revised to read: "Where a patent infringement dispute involves a patent for a utility model or a design, the people's court or the department in charge of patent-related work may ask the patentee or any interested party to furnish a patent right evaluation report made by the patent administration department under the State Council after having conducted search, analysis and evaluation of the relevant utility model or design, and use it as evidence for hearing or dealing with the patent infringement dispute; the patentee or any interested party or the alleged infringer may also voluntarily furnish the patent right evaluation report."

20. Article 63 is revised to be Article 68, which reads: "Where any person counterfeits a patent of another person, he shall, in addition to bearing his civil liabilities in accordance with law, be ordered by the department in charge of patent enforcement to make rectifications, and the department shall make the matter known to the public. His illegal earnings shall be confiscated and, in addition, he may be imposed on a fine of not more than five times his illegal earnings. If there are no illegal earnings or the illegal earnings are less than RMB 50,000 Yuan, a fine of not more than RMB 250,000 Yuan may be imposed on

him. Where the infringement constitutes a crime, he shall be investigated for his criminal responsibility in accordance with law."

21. Article 64 is revised to be Article 69, which reads: "When investigating and handling the suspected act of counterfeiting a patent, the department in charge of patent enforcement shall have the right to take the following measures based on the evidence obtained:

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

"(2) To carry out an on-the-spot inspection of the site where the party's suspected illegal act is committed;

"(3) To consult and duplicate the contracts, invoices, account books and other relevant materials related to the suspected illegal act;

"(4) To examine the products related to the suspected illegal act;

"(5) To seal up or detain the products proved to be produced by the counterfeited patent.

"When dealing with the patent infringement disputes at the request of the patentee or the interested party, the department in charge of patent-related work may take measures listed in Subparagraph (1), (2) and (4) of the preceding paragraph.

"When the department in charge of patent enforcement or the department in charge of patent-related work exercises its functions and powers as stipulated in the preceding two paragraphs in accordance with law, the parties concerned shall provide assistance and cooperation and shall not refuse to do so or create obstacles."

22. One article is added to be Article 70, which reads: "The patent administration department under the State Council may, at the request of the patentee or any interested party, deal with patent infringement disputes that have a major impact throughout the country.

"When dealing with patent infringement disputes at the request of the patentee or any interested party, the department in charge of patent-related work of the local people's government may deal with the cases of infringement of the same patent right within its administrative area in a combined manner; for cases infringing the same patent right across administrative areas, it may request the department in charge of patent-related work of the local people's government at a higher level to deal with the matter."

23. Article 65 is revised to be Article 71, which reads: "The amount of compensation for patent right infringement shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement or the profits earned by the infringer as a result of the infringement. Where it is difficult to determine the losses suffered by the right holder or the profits earned by the infringer, the amount shall be reasonably determined by reference to the multiple of the amount of the royalties for the patent license. For intentional infringement of a patent right, if the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined in accordance with the above-mentioned method.

"Where it is difficult to determine the losses suffered by the right holder,

the profits earned by the infringer and the royalties for the patent license, the people's court may determine the amount of compensation, which is not less than RMB 30,000 Yuan and not more than RMB 5,000,000 Yuan, in light of such factors as the type of the patent right, the nature and the circumstances of the infringing act.

"The amount of compensation shall also include the reasonable expenses of the right holder paid for putting an end to the infringement.

"In order to determine the amount of compensation, under the circumstance that the right holder has tried its or his best to provide evidence, and the account books or materials related to the patent infringement are mainly at the hands of the infringer, the people's court may order the infringer to provide such account books or materials. Where the infringer refuses to provide the account books or materials, or provides false account books or materials, the people's court may determine the amount of compensation by reference to the right holder's claims and the evidence provided."

24. Article 66 is revised to be Article 72, which reads: "Where the patentee or any interested party has evidence to prove that another person is infringing or is about to infringe its or his patent right or hinders the realization of the right, which, unless being stopped in time, may cause irreparable damage to his lawful rights and interests, it or he may, before filing a lawsuit, apply to the people's court for adopting measures for property preservation, ordering to do certain acts or to prohibit certain acts in accordance with the law."

25. Article 67 is revised to be Article 73, which reads: "In order to stop patent infringement, in cases where the evidence might be destroyed or where it would be difficult to obtain in the future, the patentee or the interested party may, before filing a lawsuit, apply to the people's court for evidence preservation in accordance with the law."

26. Article 68 is revised to be Article 74, which reads: "The period of limitation for action against the infringement of a patent right is three years, beginning from the date on which the patentee or interested party knows or should have known of the infringing act and the infringer.

"Where an appropriate royalty is not paid for exploiting an invention during the period from the publication of the application to the grant of the patent right, the limitation period for taking legal action by the patentee for requesting the payment of royalties is three years, beginning from the date on which the patentee knows or should have known of the exploitation of his or its invention by another person. However, where the patentee knows or should have known of the exploitation of the invention before the patent right is granted, the period of limitation for action shall begin from the date when the patent right is granted."

27. One article is added to be Article 76, which reads: "In the review and approval process before the marketing of a pharmaceutical product, where the applicant for marketing approval of the pharmaceutical product has any disputes over the relevant patent right associated with the pharmaceutical product applied for registration with the relevant patentee or interested party, the party concerned may file a lawsuit before the People's Court and request a judgment on whether the technical solution related to the pharmaceutical product that is applied for registration falls within the protection scope of any pharmaceutical product patent right owned by others. The medical product regulatory department under the State Council may, within a prescribed time limit, make a decision on whether to suspend the marketing approval of the pharmaceutical product according to the effective judgment or written order of the People's Court.

"The applicant for marketing approval of the pharmaceutical product, the relevant patentee or the interested party may also petition the patent administration department under the State Council for an administrative adjudication on the disputes over the patent right associated with the drug applied for registration.

"The medical products regulatory department under the State Council shall, in conjunction with the patent administration department under the State Council, formulate specific cohesive measures for patent right dispute resolutions at the stages of pharmaceutical product marketing license approval and pharmaceutical product marketing license application, which shall be implemented after the approval of the State Council."

28. Article 72 is deleted.

29. Article 73 is revised to be Article 79, Article 74 is revised to be Article 80, and the wording "administrative sanctions" thereof is revised as "sanctions".

This Decision shall go into effect as of June 1, 2021.

The Patent Law of the People's Republic of China shall be revised and the order of the articles shall be rearranged correspondingly in accordance with this Decision, and the Law shall be promulgated anew.

Patent Law of the People's Republic of China

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984; amended for the first time in accordance with the Decision on Amending the Patent Law of the People's Republic of China at the 27th Meeting of the Standing Committee of the Seventh National People's Congress on September 4, 1992; amended for the second time in accordance with the Decision on Amending the Patent Law of the People's Republic of China at the 17th Meeting of the Standing Committee of the Ninth National People's Congress on August 25, 2000; amended for the third time in accordance with the Decision on Amending the Patent Law of the People's Republic of China at the 6th Meeting of the Standing Committee of the Eleventh National People's Congress on December 27, 2008; amended for the fourth time in accordance with the Decision on Amending the Patent Law of the People's Republic of China at the 22nd Meeting of the Standing Committee of the Thirteenth National People's Congress on October 17, 2020)

Contents

Chapter I

General Provisions

Article 1. This Law is enacted to protect the lawful rights and interests of patentees, to encourage invention-creation, to promote the exploitation of invention-creation, to enhance innovation capability, and to promote the advancement of science and technology and the development of economy and society.

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

"Invention" means any new technical solution proposed for a product, a process or the improvement thereof.

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

"Design" means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application.

Article 3. The patent administration department under the State Council shall be responsible for the administration of the patent-related work throughout the country. 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 affairs under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the administrative work concerning patents within their respective administrative areas.

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

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

No patent right shall be granted for any invention-creation where the acquisition or utilization of the genetic resources, on which the development of the invention-creation relies, violates the provisions of laws or administrative regulations.

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, is a service invention-creation. For a service invention-creation, the right to apply for a patent belongs to the employer. After such application is approved, the employer shall be the patentee. The employer may, in accordance with the law, dispose of the right to apply for a patent for its service invention-creation and the patent right, thereby facilitating the exploitation and utilization of the relevant invention-creation.

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

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

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

Article 9. For any identical invention-creation, only one patent right shall be granted. However, where the same applicant files applications for both a utility model patent and an invention patent with regard to the identical invention-creation on the same day, if the utility model patent granted earlier has not been terminated and the applicant declares to abandon the utility model patent, the invention patent may be granted.

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

Article 10. The right to file a patent application and a patent right may be transferred.

Where a Chinese entity or individual transfers the right to file a patent application or a patent right to a foreigner, a foreign enterprise or any other foreign organization, the transfer shall go through the formalities in accordance with the relevant laws and administrative regulations.

Where the right to file a patent application or a patent right is transferred, the parties concerned shall enter into a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall make an announcement about the registration. The transfer of the right to file a patent application or the patent right shall take effect as of the date of registration.

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

After the grant of the patent for an design, no entity or individual may, without the authorization of the patentee, exploit the patentee's patent, that is, for production or business purposes, manufacture, offer to sell, sell or import the products incorporating the patentee's patented design.

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

Article 13. After the publication of an invention patent application, the applicant may require the entity or individual exploiting the said invention to pay an appropriate amount of royalties.

Article 14. Where the co-owners of the right to file a patent application or of the patent right have reached an agreement on the exercise of the right, the agreement shall prevail. In the absence of such an agreement, any co-owner may independently exploit the patent or license another person to exploit the patent through a non-exclusive license; any royalty for the exploitation obtained from licensing others to exploit the patent shall be distributed among the co-owners.

Except for the circumstances as provided for in the preceding paragraph, the exercise of the co-owned right to file a patent application or the co-owned patent right shall be subject to the consent of all co-owners.

Article 15. The entity that is granted a patent right shall reward the inventor or designer of a service invention-creation. After such patent is exploited, the entity shall pay the inventor or designer a reasonable remuneration based on the extent of spreading and application as well as the economic benefits yielded.

The State encourages the entity that is granted a patent right to implement property right incentives, by such means as offering of stocks, options, and dividends, so that the inventor or designer can reasonably share the benefits of innovation.

Article 16. The inventor or designer shall have the right to be named as such in the patent documents.

The patentee shall have the right to have his patent indication displayed on the patented product or on the package of that product.

Article 17. Where any foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China files a patent application in China, the application shall be handled under this Law in accordance with the agreements concluded between the country to which the applicant belongs and China, or in accordance with the international treaties to which both the countries are parties, or in accordance with this Law on the basis of the principle of reciprocity.

Article 18. Where any foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China files a patent application or handles other patent-related matters in China, he or it shall entrust a legally established patent agency with the application or such matters.

Where any Chinese entity or individual files a patent application or handles other patent-related matters in China, he or it may entrust a legally established patent agency with the application or such matters.

The patent agency shall abide by laws and administrative regulations, and handle patent applications and other patent-related matters as entrusted by its principals. In respect of the contents of the principal's invention-creations, except for those that have been published or announced for patent application, the agency shall be obligated to keep them confidential. The specific measures for administration of the patent agencies shall be formulated by the State Council.

Article 19. Where any entity or individual intends to file a patent application abroad in a foreign country for any an invention or utility model accomplished in China, it or he shall submit the matter to request the patent administration department under the State Council for confidentiality examination in advance. The procedures and duration etc. of the confidentiality examination shall be carried out in accordance with the regulations of the State Council.

Any Chinese entity or individual may file for an international patent application in accordance with the relevant international treaties to which the People's Republic of China is a party. If an applicant files an international patent application, he or it shall abide by the provisions of the preceding paragraph.

The patent administration department under the State Council shall deal with international patent applications in accordance with the relevant

international treaties to which the People's Republic of China is a party, this Law and the relevant regulations of the State Council.

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

Article 20. The principle of good faith shall be followed when filing a patent application and exercising patent rights. The patent rights may not be abused to harm the public interests or the lawful rights and interests of others.

For any misuse of patent rights for eliminating or restricting competition, if it constitutes a monopolistic conduct, it shall be dealt with in accordance with the Anti-Monopoly Law of the People's Republic of China.

Article 21. The patent administration department under the State Council shall deal with any patent application and patent-related request in accordance with the law and in conformity with the requirements of objectivity, fairness, accuracy and timeliness.

The patent administration department under the State Council shall strengthen the construction of a public service system for patent-related information, release patent-related information in a complete, accurate, and timely manner, provide basic data of patents, and publish patent gazettes on a regular basis, in order to promote dissemination and utilization of patent information.

Prior to the publication or announcement of a patent application, the staff members of the patent administration department under the State Council and the related personnel shall be obligated to keep its contents confidential.

Chapter II

Requirements for Granting Patent Rights

Article 22. Any invention or utility model for which a patent right is to be granted shall meet the requirements of novelty, inventiveness and practical use.

Novelty means that, the invention or utility model does not form part of the prior art; no entity or individual has filed a patent application for the identical invention or utility model with the patent administration department under the State Council before the filing date and the content of the application is disclosed in patent application documents published or patent documents announced after the filing date.

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

Practical use means that, the invention or utility model can be manufactured or used and can produce positive results.

For the purpose of this Law, “the prior art” refers to any technology known to the public domestically and/or abroad before the filing date of patent application.

Article 23. Any design for which a patent right is to be granted shall not be a prior design; no entity or individual has filed a patent application for the identical design with the patent administration department under the State Council before the filing date and the content of the application is disclosed in patent documents announced after the filing date.

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

Any design for which a patent right is granted must not conflict with the lawful rights acquired by any other person before the filing date.

For the purpose of this Law, “a prior design” refers to any design known to the public domestically and/or abroad before the filing date.

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

(1) where it was made public for the first time for the purpose of the public interests when a state of emergency or an extraordinary situation occurred in the country.

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

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

(4) where its contents are divulged by another person without the consent of the applicant.

Article 25. No patent right shall 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 and plant varieties;

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

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

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.

Chapter III

Applications for Patents

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

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

The description shall contain a clear and comprehensive description of the invention or utility model so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings shall be attached to it. The abstract shall state briefly the main technical points of the invention or utility model.

The claims shall be based on the description and shall define the scope of the patent protection sought for in a clear and concise manner.

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

Article 27. Where a patent application for a design is filed, documents such as a request, drawings or photographs of the design and a brief description of the design shall be submitted.

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

Article 28. The date on which the patent application documents are received by the patent administration department under the State Council shall be the filing date. If the application documents are delivered by post, the date of the postmark shall be the filing date.

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

Where, within twelve months from the date on which any applicant first filed in China a patent application for an invention or utility model, or within six

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

Article 30. If any applicant claims the right of priority for an invention patent or a utility model patent, he or it shall make a written declaration when the patent application for an invention or utility model is filed, and submit, within sixteen months from the date on which the applicant first filed the application, a copy of the patent application documents which were filed for the first time.

If any applicant claims the right of priority for a design patent, he or it shall make a written declaration when the patent application for a design is filed, and submit, within three months, a copy of the patent application documents which were filed for the first time.

If the applicant fails to make the written declaration or to meet the time limit for submitting the copy of the patent application documents, the claim to the right of priority shall be deemed not to have been made.

Article 31. A patent application for an invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

A patent application for a design shall be limited to one design. Two or more similar designs for the same product or two or more designs which are incorporated in products belonging to the same category and sold or used in sets may be filed as one application.

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

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

Chapter IV

Examination and Approval of Patent Applications

Article 34. Where, after receiving a patent application for an invention, the patent administration department under the State Council finds that the application meets the requirements of this Law after preliminary examination, it

shall publish the application promptly after the expiration of eighteen months from the filing date. Upon the request of the applicant, the patent administration department under the State Council may publish the application earlier.

Article 35. Within three years from the filing date, the patent administration department under the State Council may conduct a substantive examination of the application upon a request made by the applicant for a patent for invention at any time. If the applicant, without any justified reason, fails to request a substantive examination at the expiration of the time limit, the application shall be deemed to have been withdrawn.

When the patent administration department under the State Council deems it necessary, it may, on its own initiative, conduct a substantive examination of any patent application for an invention.

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

If a patent application for an invention that has been filed in a foreign country, the patent administration department under the State Council may ask 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 concerning the results of any examination made in that country. If, at the expiration of the specified time limit, the said materials are not submitted without any justified reason, the application shall be deemed to have been withdrawn.

Article 37. After the patent administration department under the State Council has conducted a substantive examination of the patent application for an invention, if it finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and require him or it to state opinions within a specified time limit or to amend the application. If the applicant fails to state opinions at the expiration of the specified time limit without any justified reason, the application shall be deemed to have been withdrawn.

Article 38. After the applicant states his or its opinions on or makes amendment to the patent application for an invention, the patent administration department under the State Council still finds that the patent application for an invention is not in conformity with the provisions of this Law, the application shall be rejected.

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

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

Article 41. Where a patent applicant refuses to accept the decision of the patent administration department under the State Council on rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the patent administration department under the State Council to make a reexamination. The patent administration department under the State Council shall, after reexamination, make a decision and notify the patent applicant.

Where the patent applicant refuses to accept the decision of the reexamination of the patent administration department under the State Council, it or he may, within three months from the date of receipt of the notification, file a lawsuit in the people's court.

Chapter V

Terms, Termination and Invalidation of Patent Rights

Article 42. The term of patent right for inventions shall be twenty years, the term of patent right for utility models shall be ten years, and the term of patent right for designs shall be fifteen years, all commencing from the filing date.

Where a patent right for an invention is granted after the expiration of four years from the filing date and after the expiration of three years from the date of the request for substantive examination of the application, the patent administration department under the State Council shall, at the request of the patentee, extend the term of the patent to compensate for the unreasonable delay in the granting process of the invention, except for the unreasonable delay caused by the applicant.

In order to compensate for the time taken for the review and approval process before the marketing of a new pharmaceutical product, the patent administration department under the State Council shall, at the request of the patentee, extend the term of the new pharmaceutical-related invention which has been approved for marketing in China. The compensation term may not be more than five years, and the total effective term of the patent right may not be more than fourteen years from the date of marketing approval.

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

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

(1) failure to pay the annual fee as required; or

(2) the patentee waiving of the patent right by a written declaration;

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

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

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

Where the party concerned refuses to accept the decision of the patent administration department under the State Council on declaring the patent right invalid or on upholding the patent right, he or it may file a lawsuit in the people's court within three months from the date of receipt of the notification of the decision. The people's court shall notify the person who is the opponent party in the invalidation procedure to participate in the litigation as a third party.

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

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

Where the monetary damage for patent infringement, the royalties for patent exploitation or the fees for the transfer of the patent right is not refunded pursuant to the provisions of the preceding paragraph, but such non-refund is obviously contrary to the principle of fairness, refund shall be made fully or partly.

Chapter VI

Special License for the Exploitation of a Patent

Article 48. The patent administration department under the State Council and the departments in charge of patent affairs of the local people's government shall, in conjunction with the relevant departments at the same level, take measures to strengthen patent public services and promote the exploitation and utilization of patents.

Article 49. Where any patent for invention of a State-owned enterprise or institution, is of great significance to the interest of the State or to the public interests, the relevant competent departments under the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, after approval by the State Council, decide that the patented invention be spread and applied within the approved scope, and allow designated entities to exploit the invention. The exploiting entity shall, in accordance with the regulations of the State, pay a royalty to the patentee.

Article 50. Where the patentee voluntarily declares in writing to the patent administration department under the State Council that it or he is willing to license any entity or individual to exploit its or his patent, and specifies the payment method and the standard of the royalty, the patent administration department under the State Council shall make an announcement and implement an open license. Where the patentee submits an open license statement for its or his utility model and design, it or he shall attach an evaluation report of the patent.

Where the patentee withdraws the open license statement, the withdrawal shall be submitted in writing and be announced by the patent administration department under the State Council. If the open license statement is withdrawn by announcement, the validity of the open license granted earlier shall not be affected.

Article 51. Where an entity or individual notifies the patentee of its or his willing to implement an open-licensed patent in writing and pays the royalty in accordance with the announced payment method and standard for the royalty, it or he obtains the patent license.

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

The patentee whose patent is under an open license may grant a general license after negotiating with the licensee on the royalty, however, the patentee may not grant an exclusive or sole license for that patent.

Article 52. Where a dispute arises over the implementation of an open license, the parties shall resolve it through consultation. Where the parties are unwilling to consult with each other or where the consultation fails, they may either request the patent administration department under the State Council to

mediate the matter, or file a lawsuit in the people's court.

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

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

(2) where the exercise of the patent right by the patentee is confirmed as a monopolistic conduct in accordance with law, and its negative impact on competition needs to be eliminated or reduced.

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

Article 55. For the purposes of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of a pharmaceutical product, for which a patent right has been granted, and for exporting it to the countries or regions that comply with the provisions of the relevant international treaties to which the People’s Republic of China is a party.

Article 56. Where the invention or utility model, for which a patent right has been granted, involves a major technological advancement of remarkable economic significance, compared with an invention or utility model for which a patent right has been granted earlier, and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the patent administration department under the State Council may, upon the request of the patentee of the later patent, grant a compulsory license to exploit the earlier invention or utility model.

In the case of granting a compulsory license in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon the request of the patentee of the earlier patent, also grant a compulsory license to exploit the later invention or utility model.

Article 57. Where the invention-creation involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of the public interests and to the circumstances as provided for in Subparagraph (2) of Article 53 of this Law.

Article 58. Except for the compulsory licenses granted in accordance with the provisions of Subparagraph (2) of Article 53 or Article 55 of this Law, compulsory licenses shall mainly be exercised for the supply to the domestic market.

Article 59. Any entity or individual applying for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 53 or Article 56 of this Law shall provide evidence to prove that it or he has made a request for a license from the patentee to exploit the patent under reasonable terms, but has failed to obtain such a license within a reasonable period of time.

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

In the decision on granting the compulsory license for exploitation, the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant. When the circumstances which led to such compulsory license cease to exist and no longer occur, the patent administration department under the State Council shall, at the request of the patentee, make a decision to terminate the compulsory license after examination.

Article 61. Any entity or individual that is granted a compulsory license for exploitation does not have an exclusive right to exploit, nor has it or he the right to allow others to exploit.

Article 62. The entity or individual that is granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or deal with the issue of royalties in accordance with the provisions of the relevant international treaties to which the People’s Republic of China is a party. Where royalties are paid, the amount of royalties shall be negotiated by both parties. Where the parties fail to reach an agreement, the patent administration department under the State Council shall make a ruling.

Article 63. Where the patentee refuses to accept the decision of the patent administration department under the State Council on granting a compulsory license for exploitation, or where the patentee or the entity or individual that is granted the compulsory license for exploitation refuses to accept the ruling made by the patent administration department under the State Council regarding the royalties for the compulsory license for exploitation, it or he may, within three months from the date of receipt of the notification, file a lawsuit in the people's court.

Chapter VII

Protection of Patent Rights

Article 64. For the patent right of an invention or a utility model, the scope of protection shall be confined to the content of the claims. The description and the drawings attached may be used to explain the content of the claims.

For the patent right for design, the scope of protection shall be confined to the design of the product as shown in the drawings or photographs. The brief description may be used to explain the design of the product as shown in the drawings or photographs.

Article 65. Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patentee’s patent right, it shall be resolved through consultation between the parties. Where the parties are unwilling to consult with each other or where the consultation fails, the patentee or any interested party may file a lawsuit in the people's court, or request the departments in charge of patent-related work to deal with the dispute. When the department in charge of patent-related work dealing with the dispute considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer refuses to accept the order, he may, within 15 days from the date of receipt of the notification of the order, file a lawsuit in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither files a lawsuit nor stops the infringing act at the expiration of the period of time, the department in charge of patent-related work may file an application with the people's court for compulsory execution. At the request of the party concerned, the department in charge of patent-related work dealing with the dispute may carry out mediation concerning the amount of compensation for the patent right infringement. If the mediation fails, the parties may file a lawsuit in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 66. Where a patent infringement dispute involves a patent for an invention for a manufacturing process of a new product, the entity or individual manufacturing the identical product shall provide evidence to prove that the manufacturing process used in the manufacture of its or his product is different from the patented process.

Where a patent infringement dispute involves a patent for a utility model or a design, the people's court or the department in charge of patent-related work may ask the patentee or any interested party to furnish a patent right evaluation report made by the patent administration department under the State Council after having conducted search, analysis and evaluation of the relevant utility model or design, and use it as evidence for hearing or dealing with the patent infringement dispute; the patentee or any interested party or the alleged infringer may also voluntarily furnish the patent right evaluation report.

Article 67. In a patent infringement dispute, if the alleged infringer has evidence to prove that the technology or design exploited by it or him forms part of the prior art or prior design, such exploitation shall not constitute an infringement of the patent right.

Article 68. Where any person counterfeits a patent of another person, he shall, in addition to bearing his civil liabilities in accordance with law, be ordered by the department in charge of patent enforcement to make rectifications, and the department shall make the matter known to the public. His illegal earnings shall be confiscated and, in addition, he may be imposed on a fine of not more than five times his illegal earnings. If there are no illegal earnings or the illegal earnings are less than RMB 50,000 Yuan, a fine of not more than RMB 250,000 Yuan may be imposed on him. Where the infringement constitutes a crime, he shall be investigated for his criminal responsibility in accordance with law.

Article 69. When investigating and handling the suspected act of counterfeiting a patent, the department in charge of patent enforcement shall have the right to take the following measures based on the evidence obtained:

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

(2) To carry out an on-the-spot inspection of the site where the party's suspected illegal act is committed;

(3) To consult and duplicate the contracts, invoices, account books and other relevant materials related to the suspected illegal act;

(4) To examine the products related to the suspected illegal act;

(5) To seal up or detain the products proved to be produced by the counterfeited patent.

When dealing with the patent infringement disputes at the request of the patentee or the interested party, the department in charge of patent-related work may take measures listed in Subparagraph (1), (2) and (4) of the preceding paragraph.

When the department in charge of patent enforcement or the department in charge of patent-related work exercises its functions and powers as stipulated in the preceding two paragraphs in accordance with law, the parties concerned shall provide assistance and cooperation and shall not refuse to do so or create obstacles.

Article 70. The patent administration department under the State Council may, at the request of the patentee or any interested party, deal with patent infringement disputes that have a major impact throughout the country.

When dealing with patent infringement disputes at the request of the patentee or any interested party, the department in charge of patent-related work of the local people's government may deal with the cases of infringement of the same patent right within its administrative area in a combined manner; for cases infringing the same patent right across administrative areas, it may request the department in charge of patent-related work of the local people's government at a higher level to deal with the matter.

Article 71. The amount of compensation for patent right infringement shall

be determined on the basis of the actual losses suffered by the right holder as a result of the infringement or the profits earned by the infringer as a result of the infringement. Where it is difficult to determine the losses suffered by the right holder or the profits earned by the infringer, the amount shall be reasonably determined by reference to the multiple of the amount of the royalties for the patent license. For intentional infringement of a patent right, if the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined in accordance with the above-mentioned method.

Where it is difficult to determine the losses suffered by the right holder, the profits earned by the infringer and the royalties for the patent license, the people's court may determine the amount of compensation, which is not less than RMB 30,000 Yuan and not more than RMB 5,000,000 Yuan, in light of such factors as the type of the patent right, the nature and the circumstances of the infringing act.

The amount of compensation shall also include the reasonable expenses of the right holder paid for putting an end to the infringement.

In order to determine the amount of compensation, under the circumstance that the right holder has tried its or his best to provide evidence, and the account books or materials related to the patent infringement are mainly at the hands of the infringer, the people’s court may order the infringer to provide such account books or materials. Where the infringer refuses to provide the account books or materials, or provides false account books or materials, the people’s court may determine the amount of compensation by reference to the right holder’s claims and the evidence provided.

Article 72. Where the patentee or any interested party has evidence to prove that another person is infringing or is about to infringe its or his patent right or hinders the realization of the right, which, unless being stopped in time, may cause irreparable damage to his lawful rights and interests, it or he may, before filing a lawsuit, apply to the people's court for adopting measures for property preservation, ordering to do certain acts or to prohibit certain acts in accordance with the law.

Article 73. In order to stop patent infringement, in cases where the evidence might be destroyed or where it would be difficult to obtain in the future, the patentee or the interested party may, before filing a lawsuit, apply to the people's court for evidence preservation in accordance with the law.

Article 74. The period of limitation for action against the infringement of a patent right is three years, beginning from the date on which the patentee or interested party knows or should have known of the infringing act and the infringer.

Where an appropriate royalty is not paid for exploiting an invention during the period from the publication of the application to the grant of the patent right, the limitation period for taking legal action by the patentee for requesting the payment of royalties is three years, beginning from the date on which the patentee knows or should have known of the exploitation of his or its invention by another person. However, where the patentee knows or should have known of

the exploitation of the invention before the patent right is granted, the period of limitation for action shall begin from the date when the patent right is granted.

Article 75. None of the following shall be deemed as infringement of the patent right:

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

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

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

(4) where the relevant patent is used specially for the purposes of scientific research and experimentation; or

(5) where for the purposes of providing information needed for the administrative examination and approval, any person manufactures, uses, or imports patented drugs or patented medical apparatus and instruments, or any other person manufactures or imports patented drugs or patented medical apparatus and instruments especially for that person.

Article 76. In the review and approval process before the marketing of a pharmaceutical product, where the applicant for marketing approval of the pharmaceutical product has any disputes over the relevant patent right associated with the pharmaceutical product applied for registration with the relevant patentee or interested party, the party concerned may file a lawsuit before the People's Court and request a judgment on whether the technical solution related to the pharmaceutical product that is applied for registration falls within the protection scope of any pharmaceutical product patent right owned by others. The medical product regulatory department under the State Council may, within a prescribed time limit, make a decision on whether to suspend the marketing approval of the pharmaceutical product according to the effective judgment or written order of the People's Court.

The applicant for marketing approval of the pharmaceutical product, the relevant patentee or the interested party may also petition the patent administration department under the State Council for an administrative adjudication on the disputes over the patent right associated with the drug applied for registration.

The medical products regulatory department under the State Council shall, in conjunction with the patent administration department under the State Council, formulate specific cohesive measures for patent right dispute resolutions at the stages of pharmaceutical product marketing license approval

and pharmaceutical product marketing license application, which shall be implemented after the approval of the State Council.

Article 77. Any person who, for production and business purposes, uses, offers to sell or sells a patent-infringing product, without knowing that it is manufactured and sold without the authorization of the patentee, may not be liable for compensation provided that he can prove the legitimate source of the product.

Article 78. Where any person, in violation of the provisions of Article 19 of this Law, files a patent application in a foreign country, thereby divulging a State secret, the entity to which he belongs or the competent authority at the higher level shall impose on him an administrative sanction; if a crime is established, he shall be investigated for his criminal responsibility in accordance with law.

Article 79. The departments in charge of patent-related work under the people's governments may not take part in recommending any patented product for sale to the public or any such commercial activities.

Where a department in charge of patent-related work under the people's governments violates the provisions of the preceding paragraph, it shall be ordered to make a rectification and to eliminate adverse effects by the department at the higher level or the supervisory organ. The illegal earnings, if any, shall be confiscated. Where the circumstances are serious, the principal leading person directly in charge and other persons who are directly responsible shall be given sanctions in accordance with the law.

Article 80. Where a State functionary working for patent administration or any other State functionary concerned neglects his duties, abuses his powers, or engages in malpractice for personal gain, which constitutes a crime, shall be investigated for his criminal responsibility in accordance with law. If the case is not serious enough to constitute a crime, he shall be given sanctions in accordance with law.

Chapter VIII

Supplementary Provisions

Article 81. To file a patent application or go through other formalities with the patent administrative department under the State Council, fees shall be paid as prescribed.

Article 82. This Law shall go into effect on 1 April 1985.

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