

Implementation Regulations for the Patent Law of the People's Republic of China

Promulgated via State Council of the People's Republic of China

Order No. 306 on 15 June 2001

First Revision Pursuant to the Decision of the State Council on
Revision of the "Implementation Regulations for the Patent Law of the
People's Republic of China" on 28 December 2002

Second Revision Pursuant to the Decision of the State Council on
Revision of the "Implementation Regulations for the Patent Law of the
People's Republic of China" on 9 January 2010

CHAPTER 1 — GENERAL PRINCIPLES

Article 1 These Implementation Regulations are formulated pursuant to the Patent Law of the People's Republic of China (hereinafter referred to as the "Patent Law").

Article 2 Various formalities stipulated in the Patent Law and these Implementation Regulations shall be completed in writing or any other format stipulated by the patent administrative authorities of the State Council.

Article 3 Various documents submitted pursuant to the provisions of the Patent Law and these Implementation Regulations shall be written in Chinese; where there are standardised technological terms stipulated by the State, the standard terms shall be used; where there

are no standardised Chinese translated terms for foreigner names, geographic names and technological terms, the original terms shall be stated.

In the event that various certificates and proof documents submitted pursuant to the provisions of the Patent Law and these

Implementation Regulations are written in a foreign language, where the patent administrative authorities of the State Council deem

necessary, they may require the parties concerned to attach a

Chinese translation within a designated period; where the parties

concerned failed to attach the Chinese translation upon expiry of the designated period, the certificates and proof documents shall be

deemed as not submitted.

Article 4 The postmark date of various documents mailed to the patent administrative authorities of the State Council shall be the date of submission; where the postmark date is unclear, unless the parties concerned are able to provide the proof, the date of receipt by the patent administrative authorities of the State Council shall be the date of submission.

Various documents of the patent administrative authorities of the State Council may be served through mail, direct delivery or any other method on the parties concerned. Where the parties concerned have entrusted a patent agency, the documents shall be served on the

patent agency; where a patent agency has not been entrusted, the documents shall be served on the contact persons listed in the letter of request.

Various documents mailed by the patent administrative authorities of the State Council shall be deemed to be received by the parties concerned on the 15th day from the date of dispatch of the documents.

For documents to be served directly pursuant to the provisions of the patent administrative authorities of the State Council, the date of delivery shall be the date of service.

Where the address for service of documents is unclear or mailing is impossible, the documents may be served on the parties concerned through public announcement. The documents shall be deemed to be served after one month from the date of public announcement.

Article 5 The first day of various periods stipulated in the Patent Law and these Implementation Regulations shall be excluded from the respective periods. Where a period is computed in years or months, the corresponding date of the last month shall be the expiry date of the period; where there is no corresponding date of that month, the last day of that month shall be the expiry date of the period; where the expiry date of the period is a statutory public holiday, the first working day after the public holiday shall be the expiry date of the period.

Article 6 Where the period stipulated in the Patent Law or these Implementation Regulations or the period designated by the patent administrative authorities of the State Council is delayed by the parties concerned due to force majeure, resulting in loss of rights of the parties concerned, the parties concerned may submit a request for reinstatement of rights to the patent administrative authorities of the State Council within two months from the date of elimination of obstacles and the submission of request shall be made not later than two years within the expiry date of the period.

Except for the circumstances stipulated in the preceding paragraph, where the period stipulated in the Patent Law or these Implementation Regulations or the period designated by the patent administrative authorities of the State Council is delayed by the parties concerned due to any other proper reason, resulting in loss of rights of the parties concerned, the parties concerned may submit a request for reinstatement of rights to the patent administrative authorities of the State Council within two months from the date of receipt of notification by the patent administrative authorities of the State Council.

Where the parties concerned request for reinstatement of rights pursuant to the provisions of the first paragraph or the second paragraph of this Article, the parties concerned shall submit a letter of request for reinstatement of rights, state the reason, attach the

relevant proof documents where necessary, and complete the corresponding formalities which shall be completed prior to loss of rights; where the parties concerned request for reinstatement of rights pursuant to the provisions of the second paragraph of this Article, the parties concerned shall pay a request fee for reinstatement of rights.

Where the parties concerned request for extension of the period designated by the patent administrative authorities of the State Council, the parties concerned shall state the reason and complete the relevant formalities with the patent administrative authorities of the State Council before expiry of the period.

The periods stipulated in Article 24, Article 29, Article 42 and Article 68 of the Patent Law shall not apply to the provisions of the first paragraph and the second paragraph of this Article.

Article 7 Where there is a need to keep confidentiality of a patent application which involves national defence interest, the national defence patent office shall accept and examine the application; where there is a need to keep confidentiality of a patent application accepted by the patent administrative authorities of the State Council which involves national defence interest, the application shall be promptly forwarded to the national defence patent office for examination.

Where the national defence patent office finds no reason to reject the application upon examination, the patent administrative authorities of

the State Council shall decide on grant of national defence patent rights.

Where the patent administrative authorities of the State Council view that there is a need to keep confidentiality of an accepted patent application for invention or utility model which involves national security or significant interest other than national defence interest, the patent administrative authorities of the State Council shall promptly decide pursuant to the provisions on handling confidential patent applications and notify the applicant. Special procedures on examination and review of confidential patent applications and declaration of invalidation of confidential patent rights shall be stipulated by the patent administrative authorities of the State Council.

Article 8 An invention or a utility model completed in China referred to in Article 20 of the Patent Law shall mean an invention or a utility model whose substantive contents of the technological plan are completed in China.

Any organisation or individual that submits a patent application in a foreign country for an invention or a utility model completed in China shall submit a request for confidentiality examination to the patent administrative authorities of the State Council pursuant to any of the following methods:

(1) Where a patent application in a foreign country is submitted directly or an international patent application is submitted directly to the relevant overseas organisation, the applicant shall submit a request in advance to the patent administrative authorities of the State Council, and state in details the technological plan; or

(2) Where an applicant which has submitted a patent application to the patent administrative authorities of the State Council intends to submit a patent application in a foreign country or submit an international patent application to the relevant overseas organisation, it shall submit a request to the patent administrative authorities of the State Council before submitting the patent application in the foreign country or submitting the international patent application to the relevant overseas organisation.

Where an international patent application is submitted to the patent administrative authorities of the State Council, a request for confidentiality examination shall be deemed to have been submitted simultaneously.

Article 9 Upon receipt of a request submitted pursuant to the provisions of Article 8 of these Implementation Regulations, the patent administrative authorities of the State Council shall, upon examination and conclusion that there is a need to keep confidentiality of the said invention or utility model for which national

security or significant interests may be involved, a notice on confidentiality examination shall be promptly issued to the applicant; where the applicant has not received a notice on confidentiality examination within four months from the date of submission of its request, it may submit a patent application in a foreign country or submit an international patent application to the relevant overseas organisation for the said invention or utility model. Where the patent administrative authorities of the State Council have carried out a confidentiality examination pursuant to the notice stipulated in the preceding paragraph, the patent administrative authorities of the State Council shall promptly decide on whether there is a need to keep confidentiality and notify the applicant. Where the applicant has not received a decision whether there is a need to keep confidentiality within six months from the date of submission of its request, it may submit a patent application in a foreign country or submit an international patent application to the relevant overseas organisation for the said invention or utility model.

Article 10 An invention which violates the law referred to in Article 5 of the Patent Law shall exclude the invention for which the only implementation thereof is prohibited by the law.

Article 11 Except for the circumstances stipulated in Article 28 and Article 42 of the Patent Law, where there are priority rights, the date of

application referred to in the Patent Law shall mean the date of priority.

The date of application referred to in these Implementation Regulations shall, unless otherwise stipulated, mean the date of application stipulated in Article 28 of the Patent Law.

Article 12 An employee invention completed in the course of performance of duties in the employer referred to in Article 6 of the Patent Law shall mean:

(1) An invention created in the course of performance of employment duties;

(2) An invention created in the course of performance of duties other than employment duties assigned by the employer; or

(3) An invention created within one year after the retirement or transfer from the original employer or the termination of employment or personnel relationship, which relates to the employment duties undertaken in the original employer or duties distributed by the original employer.

The employer referred to in Article 6 of the Patent Law shall include temporary workplace; the material and technological conditions of the employer referred to in Article 6 of the Patent Law shall mean funds, equipment, parts and raw materials of the employer or technological materials which are not made available to the public, etc.

Article 13 An inventor or a designer referred to in the Patent Law shall mean a person who has made creative contributions to the substantive characteristics of an invention. During the course of completing an invention, a person who is merely responsible for organising work or facilitating the materials and technological conditions or engaging in other ancillary work is not the inventor or designer.

Article 14 Except for transfer of patent rights pursuant to the provisions of Article 10 of the Patent Law, where patent rights are transferred due to any other reason, the parties concerned shall present the relevant proof documents or legal documents to complete formalities for transfer of patent rights with the patent administrative authorities of the State Council.

A licensing contract for patent implementation executed between a patentee and another party shall be filed with the patent administrative authorities of the State Council within three months from the date on which the contract comes into effect.

In the event of pledge of patent rights, the pledgor and the pledgee shall jointly complete pledge registration formalities with the patent administrative authorities of the State Council.

CHAPTER 2 — PATENT APPLICATION

Article 15 An applicant submitting a patent application in writing shall submit application documents in duplicate to the patent administrative authorities of the State Council.

A patent application submitted in any other form stipulated by the patent administrative authorities of the State Council shall comply with the stipulated requirements.

Where an applicant entrusts a patent agency to submit a patent application and complete other patent matters with the patent administrative authorities of the State Council, a power of attorney shall be submitted simultaneously and the scope of entrustment shall be stated.

Where there are more than two applicants and a patent agency has not been entrusted, unless the letter of request states otherwise, the first applicant stated in the letter of request shall be the representative.

Article 16 A letter of request for a patent application for invention, utility model or design shall state the following matters:

- (1) The name of the invention, utility model or design;
- (2) Where the applicant is a Chinese organisation or individual, the name, address, postal code, organisation code or resident identity card number of the applicant shall be stated; where the applicant is a foreign individual, foreign enterprise or any other foreign organisation,

the name, nationality or country or region of registration shall be stated;

(3) The name of the inventor or designer;

(4) Where the applicant has entrusted a patent agency, the name and organisation code of the entrusted agency and the name, practising certificate number and contact telephone number of the patent agent designated by the agency shall be stated;

(5) Where the applicant requests for priority rights, the date of application and application number of the first-time patent application (hereinafter referred to as the "priority application") submitted by the applicant and the name of the original accepting authorities shall be stated;

(6) The signature or seal of the applicant or the patent agency;

(7) A list of application documents;

(8) A list of attached documents; and

(9) Any other relevant matters which are required to be stated.

Article 17 The manual of a patent application for invention or utility model shall state the name of the invention or utility model; the name shall match the name in the letter of request. The manual shall include the following contents:

(1) Technological domain: state the technological domain to which the technological plan required to be protected belongs;

(2) Technology background: state technology background which is useful for understanding, search and review of the invention or utility model; where possible, quote documents which reflect such technology background;

(3) Contents of invention: state technological issues to be resolved by the invention or utility model and technological plans adopted for resolution of the technological issues, and state the beneficial effects of the invention or utility model by contrasting the existing technologies;

(4) Explanations to attached drawings: where there are attached drawings in the manual, a brief explanation shall be provided for each attached drawing;

(5) Detailed implementation method: state in details the methods for realisation of invention or utility model preferred by the applicant; where necessary, examples shall be cited for explanation; where there are attached drawings, the examples shall be contrasted to the attached drawings.

A manual shall be written by an invention or utility model patent applicant pursuant to the method and sequence stipulated in the preceding paragraph, and a heading shall be stated in each part of the manual, unless any other method or sequence is used to describe the nature of the invention or utility model to shorten the length of the

manual and to enable others to understand the invention or utility model accurately.

The manual for invention or utility model shall use standardised terms and clear statements, and shall not use terms such as "as mentioned in the letter of claim" or commercial advertising terms.

Where a patent application for invention includes one or more nucleotide or amino acid sequences, the manual shall include a sequence table which complies with the provisions of the patent administrative authorities of the State Council. The applicant shall submit the sequence table as an individual part of the manual, and submit a duplicate copy of the sequence table in computer readable format pursuant to the provisions of the patent administrative authorities of the State Council.

The manual of a patent application for utility model shall include an attached drawing showing the shape, structure or composition of the product required to be protected.

Article 18 Where there are several attached drawings of an invention or a utility model, the attached drawings shall be numbered sequentially and arranged in the order of "drawing 1, drawing 2," . Symbols of attached drawings which are not mentioned in the text of the manual for invention or utility model shall not appear in the attached drawings; symbols of attached drawings which have not

appeared in the attached drawings shall not be mentioned in the text of the manual. Symbols of attached drawings in application documents which denote the same component shall be consistent. Except for terms required for an attached drawing, an attached drawing shall not include any other notes.

Article 19 A letter of claim shall record the technological characteristics of the invention or utility model.

Where a letter of claim comprises several claims, the claims shall be numbered sequentially in Arabic number format.

The technological terms used in a letter of claim shall be consistent with the technological terms used in the manual, and may include chemical formulae or mathematical equations, but shall not include illustration drawing. Except where absolutely necessary, terms such as "as mentioned in the ... part of the manual" or "as illustrated in drawing" shall not be used.

The technological characteristics in a letter of claim may cite the corresponding symbols in the attached drawings in the manual; the symbols shall be placed after the corresponding technological characteristics and inside parentheses to facilitate easy understanding of the claim. The symbols of the attached drawing shall not be interpreted as a restriction to the claim.

Article 20 A letter of claim shall have independent claims and may have subordinate claims.

An independent claim shall reflect the technological plan of an invention or a utility model as a whole, and record the requisite technological characteristics of solutions for technological issues.

A subordinate claim shall use additional technological characteristics to further define the cited claims.

Article 21 An independent claim of an invention or a utility model shall include the preface part and the characteristics part, and shall be written pursuant to the following provisions:

(1) Preface part: state the title of the technological plan of the invention or utility model required to be protected and the requisite technological characteristics common to the theme of the invention or utility model and the closest existing technology; and

(2) Characteristics part: use "its characteristics are" or similar terms, state the technological characteristics which distinguish the invention or utility model from the closest existing technology. These characteristics and the characteristics stated in the preface part shall jointly define the scope of protection requested for the invention or utility model.

Where the expression in the aforesaid paragraph is not suitable for the nature of an invention or a utility model, an independent claim may be written in other methods.

An invention or a utility model shall have one independent claim only, and the independent claim shall be written before the subordinate claims of the same invention or utility model.

Article 22 A subordinate claim of an invention or utility model shall comprise citation part and definition part, and shall be written pursuant to the following provisions:

(1) Citation part: state the serial number of the cited claim and the title; and

(2) Definition part: state the technological characteristics appended to the invention or utility model.

A subordinate claim shall only cite preceding claims. Multiple subordinate claims citing two or more claims shall choose one method to cite preceding claims and shall not serve as the basis for other one or more subordinate claims.

Article 23 The synopsis of a manual shall state the outline of publicised contents of a patent application for invention or utility model, ie state the name of invention or utility model and the technological domain it belongs, and clearly reflect the technological issues to be

solved, highlight of the technological plan for the issues to be solved and the main use.

The synopsis of a manual may include chemical formula(e) which best describe(s) the invention; in the case of a patent application with an attached drawing, the applicant shall provide an attached drawing which best describes the technological characteristics of the invention or utility model. The size and definition of the attached drawing shall ensure that various details in the drawing can still be clearly identified when the drawing is reduced to 4 mm × 6 mm. The text in the synopsis shall not exceed 300 words. The synopsis shall not use commercial advertising terms.

Article 24 Where the invention in a patent application involves a new biomaterial, and the said biomaterial is not available to the public, and the explanation on the said biomaterial is inadequate for implementation of the said invention by technological personnel in the said domain, the applicant shall complete the following formalities in addition to compliance with the relevant provisions of the Patent Law and these Implementation Regulations:

(1) Samples of the said biomaterial shall be submitted to the preservation organisation recognised by the patent administrative authorities of the State Council for preservation before the date of application or not later than the date of application (or the date of

priority if there are priority rights), and the proof of preservation and the proof of survival issued by the preservation organisation shall be submitted at the time of application or not later than four months from the date of application; where the proof is not submitted within the stipulated period, it shall be deemed that the samples have not been submitted for preservation;

(2) Materials pertaining to the characteristics of the said biomaterial shall be provided in the application documents; and

(3) A patent application involving preservation of samples of the biomaterial shall state the taxonomy (state the Latin name) of such biomaterial, name and address of organisation responsible for preservation of the samples of the said biomaterial, date of preservation and preservation serial number in the letter of request and the manual; where the information is not stated at the time of application, supplementation or correction shall be made within four months from the date of application; where supplementation or correction is not made within the stipulated period, it shall be deemed that the samples of the biomaterial have not been submitted for preservation.

Article 25 Where a patent applicant for invention has preserved samples of the biomaterial pursuant to the provisions of Article 24 of these Implementation Regulations, and any organisation or individual

needs to use the biomaterial involved in the said patent application for experiment purposes upon announcement of the patent application for invention, a request shall be submitted to the patent administrative authorities of the State Council, and the following matters shall be stated:

- (1) The name and address of the requesting party;
- (2) Undertaking that the said biomaterial will not be provided to any other person; and
- (3) Undertaking that the said biomaterial will only be used for experiment purposes before patent rights are granted.

Article 26 Genetic resources referred to in the Patent Law shall mean materials obtained from human body, animals, plants or microbes, etc which have genetic function and actual or potential value; inventions completed on reliance of genetic resources referred to in the Patent Law shall mean inventions which are completed using the genetic function of genetic resources.

An applicant making a patent application for invention completed on reliance of genetic resources shall provide an explanation in the letter of request, and fill in forms formulated by the patent administrative authorities of the State Council.

Article 27 Where an applicant requests for protection of colours, colour pictures or photographs shall be submitted.

The applicant shall submit the relevant pictures or photographs for the contents of each design's product which requires protection.

Article 28 The brief description of a design shall state the name and uses of the design's products and the design highlights of the design, and designate a picture or photograph which best describes the design highlights. Where visual pictures are omitted or the applicant requests for protection of colours, a statement shall be included in the brief description.

Where a patent application for design is made for several similar designs of the same product, one of them shall be designated as the basic design in the brief description.

A brief description shall not use commercial advertising terms and shall not be used for explanation of product functionalities.

Article 29 The patent administrative authorities of the State Council may, where it is deemed necessary, require a patent applicant for design to submit samples or models of the design's products. The volume of a sample or model shall not exceed 30 cm × 30 cm × 30 cm, and the weight shall not exceed 15 kg. Perishables, fragile goods or dangerous goods shall be not submitted as samples or models.

Article 30 International exhibitions recognised by the Chinese Government referred to in Item (1) of Article 24 of the Patent Law shall mean international exhibitions registered with or recognised by

the Bureau International des Expositions pursuant to the provisions of the International Exhibitions Convention.

Academic conferences or technological conferences referred to in Item (2) of Article 24 of the Patent Law shall mean academic conferences or technological conferences organised and convened by the relevant administrative authorities of the State Council or national academic organisations.

Where the invention in a patent application fits the description in Item (1) or Item (2) of Article 24 of the Patent Law, the applicant shall declare so at the time of submission of the patent application, and within two months from the date of application, submit the proof documents issued by the relevant organisation which organises the international exhibition, academic conference or technological conference that the relevant invention has been exhibited or published and that denote the date of exhibition or publication.

Where the invention in a patent application fits the description in Item (3) of Article 24 of the Patent Law, the patent administrative authorities of the State Council may require the applicant to submit proof documents within a designated period where it is deemed necessary.

Where an applicant failed to make a declaration and submit proof documents pursuant to the provisions of the third paragraph of this

Article or failed to submit proof documents within the designated period pursuant to the provisions of the fourth paragraph of this Article, the provisions of Article 24 of the Patent Law shall not apply to the application.

Article 31 Where an applicant is requesting for foreign priority rights pursuant to the provisions of Article 30 of the Patent Law, the duplicate copies of the priority application documents submitted by the applicant shall be certified by the original accepting authorities.

Pursuant to the agreement executed between the patent administrative authorities of the State Council and the said accepting authorities, where the patent administrative authorities of the State Council have obtained the duplicate copies of the priority application documents through electronic exchange means, etc, it shall be deemed that the applicant has submitted the duplicate copies of the priority application documents certified by the said accepting authorities. In the case of a request for domestic priority rights, where the applicant has stated the date of application and application number of the priority application in the letter of request, it shall be deemed that the duplicate copies of the priority application documents have been submitted.

In the case of a request for priority rights, where the date of application and/or the application number of the priority application

and/or the name of the original accepting authorities is/are omitted or erroneously written in the letter of request, the patent administrative authorities of the State Council shall notify the applicant to make supplementation or correction within a designated period; where the applicant failed to make supplementation or correction within the designated period, it shall be deemed that the applicant has not requested for priority rights.

Where there is any inconsistency in the name of the applicant requesting for priority rights and the name of the applicant recorded in the duplicate copies of the priority application documents, the proof of transfer of priority rights shall be submitted; where the proof of transfer is not submitted, it shall be deemed that the applicant has not requested for priority rights.

Where the applicant of a patent application for design requests for foreign priority rights, the priority application does not include a brief description of the design, and the brief description submitted by the applicant pursuant to the provisions of Article 28 of these Implementation Regulations does not exceed the scope expressed in the picture or photograph in the priority application documents, the entitlement of priority rights shall not be affected.

Article 32 An applicant may request for one or more items of priority rights in a patent application; where an applicant requests for several

items of priority rights, the term of the priority rights of the application shall commence from the earliest date of priority.

Where the applicant requests for domestic priority application, and the priority application is a patent application for invention, the applicant may submit a patent application for invention or utility model for the same theme; where the priority application is a patent application for utility model, the applicant may submit a patent application for utility model or invention for the same theme. However, at the time of submission of the latter application, where the theme of the priority application falls under any of the following circumstances, it shall not serve as the basis for the request for domestic priority application:

- (1) A request for foreign priority rights or domestic priority rights has been submitted;
- (2) Patent rights have been granted; or
- (3) An application for case assignment has been submitted pursuant to the provisions.

Where an applicant requests for domestic priority rights, its priority application shall be deemed as withdrawn from the date of submission of the latter application.

Article 33 Where an applicant who does not have a habitual residence or business address in China submits a patent application or requests for foreign priority rights, the patent administrative

authorities of the State Council may require the applicant to provide the following documents where it is deemed necessary:

- (1) Where the applicant is an individual, the proof of nationality;
- (2) Where the applicant is an enterprise or any other organisation, proof document of the country or region of registration; and
- (3) Proof documents that the home country of the applicant recognises organisations and individuals in China may, pursuant to the same criteria of the citizens of the said country, enjoy patent rights, priority rights and other rights relating to the patent in the said country.

Article 34 Pursuant to the provisions of the first paragraph of Article 31 of the Patent Law, two or more inventions or utility models which belong to an overall invention concept and may be submitted in a patent application shall be technically interrelated, and shall include one or several same or corresponding specific technological characteristics; specific technological characteristics shall mean technological characteristics of each invention or utility model as a whole, which contribute to the existing technologies.

Article 35 Pursuant to the provisions of the second paragraph of Article 31 of the Patent Law, where an application is submitted for several similar designs of the same product, other designs of the said product shall be similar to the basic design designated in the brief

description. There shall not be more than 10 similar designs in a patent application for design.

Two or more designs of products of the same category but sold or used in a complete set referred to in the second paragraph of Article 31 of the Patent Law shall mean that all the products fall under the same major category in the classification, and are usually sold or used together at the same time, and the designs of all the products share the same design concept.

Where an application comprises two or more designs, the sequential serial number of each design shall be marked before the name of the respective picture or photograph of each design's product.

Article 36 Where an applicant withdraws a patent application, it shall make a declaration to the patent administrative authorities of the State Council, stating the name of the invention, application number and date of application.

Where a declaration of withdrawal of patent application is made after the patent administrative authorities of the State Council have completed printing preparations for announcement of patent application documents, the application documents shall be announced; however, the declaration of withdrawal of patent application shall be announced on subsequently published patent gazette.

CHAPTER 3 — EXAMINATION AND APPROVAL OF PATENT APPLICATION

Article 37 During the procedures of preliminary examination, substantive examination, review and declaration of invalidation, where an officer carrying out examination or processing falls under any of the following descriptions, the officer shall voluntarily withdraw from the examination or processing, and the parties concerned or other stakeholders may request that the officer withdraws from the examination or processing:

- (1) He/she is a close relative of a party concerned or its agent;
- (2) He/she has interests in the patent application or patent rights;
- (3) He/she is otherwise related to a party concerned or its agent and may affect fair examination or processing; or
- (4) He/she is a member of the patent review committee who has participated in examination of the original application.

Article 38 Upon receipt of a letter of request for a patent application for invention or utility model, manual (attached drawings shall be included for a utility model) and letter of claim, or a letter of request for a patent application for design, pictures or photographs of the design and brief description, the patent administrative authorities of the State Council shall specify the date of application, issue an application number and notify the applicant.

Article 39 Where a patent application document falls under any of the following descriptions, the patent administrative authorities of the State Council shall not accept the application and shall notify the applicant:

(1) Where there is no letter of request, manual (there is no attached drawing of a utility model) or letter of claim for a patent application for invention or utility model, or there is no letter of request, picture or photograph or brief description for a patent application for design;

(2) The text is not written in Chinese;

(3) The provisions of the first paragraph of Article 121 of these Implementation Regulations are not complied with;

(4) The name or address of the applicant is not stated in the letter of request;

(5) The provisions of Article 18 or the first paragraph of Article 19 of the Patent Law are evidently not complied with; or

(6) The type of patent application (invention, utility model or design) is unclear or difficult to ascertain.

Article 40 Where a manual makes reference to an attached drawing but the attached drawing is missing or partially missing, the applicant shall supplement the attached drawing or declare to cancel the reference to the attached drawing within the period designated by the patent administrative authorities of the State Council. Where the

applicant supplements the attached drawing, the date of application shall be the date of submission or mailing of the attached drawing to the patent administrative authorities of the State Council; where the applicant cancels the reference to the attached drawing, the original date of application shall be retained.

Article 41 Where two or more applicants submit a patent application for the same invention on the same day (refer to the date of application; or the date of priority where there are priority rights), the applicant shall be determined by voluntary negotiation upon receipt of the notice from the patent administrative authorities of the State Council.

Where an applicant submits a patent application for utility model as well as invention for the same invention on the same day (refer to the date of application), the applicant shall state in the respective patent application at the time of application that another patent application for the same invention has been made; where the statement is not made, the case shall be handled pursuant to the provisions of the first paragraph of Article 9 of the Patent Law pertaining to grant of only one item of patent rights for the same invention.

The public announcement on grant of utility model patent rights by the patent administrative authorities of the State Council shall include an explanation that the applicant has made a patent application for

invention concurrently pursuant to the provisions of the second paragraph of this Article.

Where a reason for rejection is not found upon examination of a patent application for invention, the patent administrative authorities of the State Council shall notify the applicant to renounce utility model patent rights within a stipulated period. Where the applicant renounces the utility model patent rights, the patent administrative authorities of the State Council shall make a decision on grant of invention patent rights, and state in the announcement of grant of invention patent rights that the applicant has renounced the utility model patent rights. Where the applicant refuses to renounce the utility model patent rights, the patent administrative authorities of the State Council shall reject the patent application for the said invention; where the applicant failed to reply within the stipulated period, the patent application for the said invention shall be deemed as withdrawn.

Utility model patent rights shall be terminated from the date of public announcement on grant of invention patent rights.

Article 42 Where a patent application comprises two or more inventions, utility models or designs, the applicant may submit an application for case assignment to the patent administrative authorities of the State Council before expiry of the period stipulated

in the first paragraph of Article 54 of these Implementation Regulations; however, where the patent application is rejected or withdrawn or deemed to be withdrawn, an application for case assignment shall not be made.

Where the patent administrative authorities of the State Council deem that a patent application does not comply with the provisions of Article 31 of the Patent Law and Article 34 or Article 35 of these Implementation Regulations, the applicant shall be notified to amend the application within a designated period; where the applicant failed to reply within the designated period, the said application shall be deemed as withdrawn.

An application for case assignment shall not alter the category of the original application.

Article 43 An application for case assignment submitted pursuant to the provisions of Article 42 of these Implementation Regulations may retain the original date of application; where the original application enjoys priority rights, the date of priority may be retained, provided that the scope recorded in the original application shall not be exceeded.

The relevant formalities shall be completed pursuant to the provisions of the Patent Law and these Implementation Regulations for applications for case assignment.

A letter of request for application for case assignment shall state the application number and the date of application of the original application. At the time of submission of an application for case assignment, the applicant shall submit duplicate copies of the original application documents; where the original application enjoys priority rights, duplicate copies of the documents for priority rights in the original application shall be submitted.

Article 44 Preliminary examination referred to in Article 34 and Article 40 of the Patent Law shall mean examining whether a patent application includes the documents stipulated in Article 26 or Article 27 of the Patent Law and other necessary documents, whether these documents comply with the stipulated format, and the following items:

(1) Whether a patent application for invention evidently fits the description stipulated in Article 5 or Article 25 of the Patent Law, whether it does not comply with the provisions of Article 18, the first paragraph of Article 19 or the first paragraph of Article 20 of the Patent Law or the provisions of Article 16 or the second paragraph of Article 26 of these Implementation Regulations, whether it evidently does not comply with the provisions of the second paragraph of Article 2, the fifth paragraph of Article 26, the first paragraph of Article 31 or Article 33 of the Patent Law or the provisions of Article 17 to Article 21 of these Implementation Regulations;

(2) Whether a patent application for utility model evidently fits the description stipulated in Article 5 or Article 25 of the Patent Law, whether it does not comply with the provisions of Article 18, the first paragraph of Article 19 or the first paragraph of Article 20 of the Patent Law or the provisions of Article 16 to Article 19 or Article 21 to Article 23 of these Implementation Regulations, whether it evidently does not comply with the provisions of the third paragraph of Article 2, the second and fourth paragraphs of Article 22, the third and fourth paragraphs of Article 26, the first paragraph of Article 31 or Article 33 of the Patent Law or the provisions of Article 20 or the first paragraph of Article 43 of these Implementation Regulations, whether patent rights shall not be granted pursuant to the provisions of Article 9 of the Patent Law;

(3) Whether a patent application for design evidently fits the description stipulated in Article 5 or Item (6) of the first paragraph of Article 25 of the Patent Law, whether it does not comply with the provisions of Article 18 or the first paragraph of Article 19 of the Patent Law or the provisions of Article 16, Article 27 or Article 28 of these Implementation Regulations, whether it evidently does not comply with the provisions of the fourth paragraph of Article 2, the first paragraph of Article 23, the second paragraph of Article 27, the second paragraph of Article 31 or Article 33 of the Patent Law or the

provisions of the first paragraph of Article 43 of these Implementation Regulations, whether patent rights shall not be granted pursuant to the provisions of Article 9 of the Patent Law; and

(4) Whether the application documents comply with the provisions of Article 2 or the first paragraph of Article 3 of these Implementation Regulations.

The patent administrative authorities of the State Council shall notify the applicant of the examination opinion and require the applicant to make a representation or make supplementation or correction within a designated period; where the applicant failed to reply within the designated period, the application shall be deemed as withdrawn.

Upon representation or supplementation or correction by the applicant, where the patent administrative authorities of the State Council remain convinced that the provisions listed in the preceding paragraph are not complied with, the application shall be rejected.

Article 45 Except for patent application documents, where any other documents relating to the patent application submitted by an applicant to the patent administrative authorities of the State Council fits any of the following descriptions, it shall be deemed that such documents have not been submitted:

(1) The documents do not comply with the stipulated format or the documents are not filled in pursuant to the provisions; or

(2) The applicant failed to submit proof materials pursuant to the provisions.

The patent administrative authorities of the State Council shall notify the applicant of the examination opinion of deemed non-submission.

Article 46 Where an applicant requests for early announcement of its patent application for invention, it shall make a declaration to the patent administrative authorities of the State Council. Upon preliminary examination of the said application by the patent administrative authorities of the State Council, except where the application is rejected, an announcement of the application shall be made forthwith.

Article 47 An applicant shall state the products which use the design and their category in accordance with the product classification for designs announced by the patent administrative authorities of the State Council. Where the category of the products which use the design is not stated or the stated category is non-specific, the patent administrative authorities of the State Council may make supplementation or amendment.

Article 48 During the period from the date of announcement of a patent application for invention to the date of announcement of grant of patent rights, any person may submit an opinion to the patent administrative authorities of the State Council pertaining to the patent

application's non-compliance with the provisions of the Patent Law and state the reasons.

Article 49 Where a patent applicant for invention is unable to provide search materials or materials for examination results stipulated in Article 36 of the Patent Law due to a justifiable reason, it shall make a declaration to the patent administrative authorities of the State Council, and submit the relevant materials retrospectively.

Article 50 The patent administrative authorities of the State Council shall notify the applicant at the time of voluntary examination of a patent application pursuant to the provisions of the second paragraph of Article 35 of the Patent Law.

Article 51 An invention patent applicant may amend a patent application for invention voluntarily at the time of requesting for substantive examination and within three months from the date of receipt of notice from the patent administrative authorities of the State Council that the patent application for invention has entered into the substantive examination phase.

A utility model or design patent applicant may amend the patent application for utility model or design voluntarily within two months from the date of application.

Where an applicant amends its patent application documents upon receipt of a notice on examination opinion issued by the patent

administrative authorities of the State Council, it shall amend the defects stated in the notice.

The patent administrative authorities of the State Council may voluntarily amend evident mistakes of Chinese characters and symbols in a patent application document. Where the patent administrative authorities of the State Council make amendment voluntarily, the applicant shall be notified.

Article 52 Except for amendments, insertion or deletion of individual words, a replacement page shall be submitted in the stipulated format for amendments to the manual or letter of claim of a patent application for invention or utility model. A replacement page shall be submitted pursuant to the provisions for amendments to pictures or photographs in a patent application for design.

Article 53 Pursuant to the provisions of Article 38 of the Patent Law, circumstances under which a patent application for invention which has undergone substantive examination shall be rejected shall mean:

(1) Where an application fits the description stipulated in Article 5 or Article 25 of the Patent Law, or patent rights shall not be obtained pursuant to the provisions of Article 9 of the Patent Law;

(2) Where an application does not comply with the provisions of the second paragraph of Article 2, the first paragraph of Article 20, Article 22, the third, fourth and fifth paragraphs of Article 26 or the first

paragraph of Article 31 of the Patent Law or the provisions of the second paragraph of Article 20 of these Implementation Regulations; or

(3) Where amendments to the application do not comply with the provisions of Article 33 of the Patent Law, or an application for case assignment does not comply with the provisions of the first paragraph of Article 43 of these Implementation Regulations.

Article 54 Upon issuance of a notice on grant of patent rights by the patent administrative authorities of the State Council, the applicant shall complete registration formalities within two months from the date of receipt of the notice. Where the applicant has completed registration formalities by the deadline, the patent administrative authorities of the State Council shall grant patent rights, issue a patent certificate, and make a public announcement.

Where the applicant failed to complete registration formalities within the stipulated period, it shall be deemed to have waived its rights to obtain patent rights.

Article 55 Where a reason for rejection is not found upon examination of a confidential patent application, the patent administrative authorities of the State Council shall make a decision on grant of confidential patent rights, issue a confidential patent

certificate, and process registration of items pertaining to the confidential patent rights.

Article 56 Upon announcement of a decision on grant of utility model or design patent rights, a patentee or stakeholder stipulated in Article 60 of the Patent Law may request for a patent rights evaluation report from the patent administrative authorities of the State Council. Where a patentee or stakeholder requests for a patent rights evaluation report, it shall submit a letter of request for patent rights evaluation report and state the patent number. Each request shall be limited to one item of patent rights.

Where a letter of request for patent rights evaluation report does not comply with the provisions, the patent administrative authorities of the State Council shall notify the requesting party to make supplementation or correction within a designated period; where the requesting party failed to make supplementation or correction within the designated period, it shall be deemed that the request has not been made.

Article 57 The patent administrative authorities of the State Council shall issue a patent rights evaluation report within two months after receipt of the letter of request for patent rights evaluation report. Where there are multiple requesting parties requesting for a patent rights evaluation report for the same utility model or design patent

rights, the patent administrative authorities of the State Council shall issue only one patent rights evaluation report. Any organisation or individual may inspect or make copies of the said patent rights evaluation report.

Article 58 Upon discovery of a mistake in a patent announcement or patent monograph, the patent administrative authorities of the State Council shall promptly make correction and announce the correction made.

CHAPTER 4 — REVIEW OF PATENT APPLICATIONS AND DECLARATION OF INVALIDATION OF PATENT RIGHTS

Article 59 The patent review committee shall comprise technological experts and legal experts designated by the patent administrative authorities of the State Council; the person-in-charge of the patent administrative authorities of the State Council shall hold the position of chairman concurrently.

Article 60 A person requesting for a review conducted by the patent review committee pursuant to the provisions of Article 41 of the Patent Law shall submit a letter of request for review, state the reason and attach the relevant evidence where necessary.

Where a request for review does not comply with the provisions of the first paragraph of Article 19 or the first paragraph of Article 41 of the Patent Law, the patent review committee shall not accept the request

and notify the requesting party for review in writing and state the reason.

Where a letter of request for review does not comply with the stipulated format, the requesting party for review shall make supplementation or correction within the period designated by the patent review committee; where the requesting party failed to make supplementation or correction within the designated period, it shall be deemed that the request for review has not been submitted.

Article 61 A requesting party may amend patent application documents at the time of requesting for review or replying to a notice on review from the patent review committee; however, the amendments shall be limited to elimination of a defect pointed out in a decision of rejection or notice on review.

Revised patent application documents shall be submitted in duplicate.

Article 62 The patent review committee shall forward a letter of request for review accepted by the committee to the original examination authorities of the patent administrative authorities of the State Council for examination. Where the original examination authorities consent to revocation of the original decision pursuant to the request of the requesting party for review, the patent review committee shall make a review decision based on this and notify the requesting party for review.

Article 63 Upon review, where the patent review committee concludes that a request for review does not comply with the relevant provisions of the Patent Law and these Implementation Regulations, it shall notify the requesting party for review and require the requesting party for review to make representation within a designated period. Where the requesting party for review failed to reply within the designated period, it shall be deemed that the request for review has been withdrawn; upon representation or amendment, where the patent review committee still concludes that the request for review does not comply with the relevant provisions of the Patent Law and these Implementation Regulations, it shall make a review decision to uphold the original decision of rejection.

Upon review, where the patent review committee concludes that the original decision of rejection does not comply with the relevant provisions of the Patent Law and these Implementation Regulations, or concludes that the amended patent application documents have eliminated the defect pointed out in the original decision of rejection, the original decision of rejection shall be revoked, and the original examination authorities shall continue with the examination procedures.

Article 64 A requesting party for review may withdraw its request for review before the patent review committee makes a decision.

Where a requesting party for review withdraws its request for review before the patent review committee makes a decision, the review procedures shall terminate.

Article 65 Where a request for declaration of invalidation of patent rights or partial invalidation of patent rights is made pursuant to the provisions of Article 45 of the Patent Law, a letter of request for declaration of invalidation of patent rights and the requisite evidence shall be submitted in duplicate to the patent review committee. A letter of request for declaration of invalidation shall, together with all evidence submitted, provide a detailed explanation of the reasons for request for declaration of invalidation, and point out the evidence on which each reason is based.

Reasons for request for declaration of invalidation referred to in the preceding paragraph shall mean a patented invention does not comply with the provisions of Article 2, the first paragraph of Article 20, Article 22, Article 23, the third and fourth paragraphs of Article 26, the second paragraph of Article 27 or Article 33 of the Patent Law or the provisions of the second paragraph of Article 20 or the first paragraph of Article 43 of these Implementation Regulations, or the circumstances stipulated in Article 5 or Article 25 of the Patent Law, or patent rights should not be obtained pursuant to the provisions of Article 9 of the Patent Law.

Article 66 Where a request for declaration of invalidation of patent rights does not comply with the provisions of the first paragraph of Article 19 of the Patent Law or Article 65 of these Implementation Regulations, the patent review committee shall not accept the request.

After the patent review committee has made a decision on a request for declaration of invalidation, where a request for declaration of invalidation is made again on the same reasons and evidence, the patent review committee shall not accept the request.

Where a request for declaration of invalidation of design patent rights is made citing that the provisions of the third paragraph of Article 23 of the Patent Law are not complied with but the evidence for conflict of rights is not submitted, the patent review committee shall not accept the request.

Where a letter of request for declaration of invalidation of patent rights does not comply with the stipulated format, the requesting party for declaration of invalidation shall make supplementation or correction within the period designated by the patent review committee; where the requesting party failed to make supplementation or correction within the designated period, it shall be deemed that the request for declaration of invalidation has not been submitted.

Article 67 Upon acceptance of a request for declaration of invalidation by the patent review committee, the requesting party may add reason(s) or supplement evidence within a month from the date of submission of the request for declaration of invalidation. Where the requesting party failed to add reason(s) or supplement evidence within the stipulated period, the patent review committee may ignore the request.

Article 68 The patent review committee shall deliver duplicate copies of the letter of request for declaration of invalidation of patent rights and the relevant documents to the patentee and require the patentee to make representation within the designated period.

The patentee and the requesting party for declaration of invalidation shall reply to the notice on forwarding of documents or the notice on examination of request for declaration of invalidation issued by the patent review committee within the designated period; non-reply within the designated period shall have no impact on examination by the patent review committee.

Article 69 During the process of examination of the request for declaration of invalidation, the patentee of an invention or a utility model patent may amend its letter of claim, but shall not widen the scope of protection for the original patent.

The patentee of an invention or a utility model patent shall not amend the patent manual and attached drawings; the patentee of a design patent shall not amend pictures, photographs and brief description.

Article 70 The patent review committee may decide to conduct an oral hearing of a request for declaration of invalidation pursuant to the request of the parties concerned or the requirements of the case.

Where the patent review committee decides to conduct an oral hearing of a request for declaration of invalidation, it shall issue a notice on oral hearing to the parties concerned to notify them of the date and venue of the oral hearing. The parties concerned shall reply within the period designated in the notice.

Where a requesting party for declaration of invalidation failed to reply within the period designated in the notice on oral hearing issued by the patent review committee and does not participate in the oral hearing, it shall be deemed that the request for declaration of invalidation has been withdrawn; the patentee may be absent from the hearing if it opts not to participate in the oral hearing.

Article 71 During the examination procedures for a request for declaration of invalidation, the period designated by the patent review committee shall not be extended.

Article 72 A requesting party for declaration of invalidation may withdraw its request before the patent review committee makes a decision on the request for declaration of invalidation.

Where a requesting party for declaration of invalidation withdraws its request or the request for declaration of invalidation is deemed as withdrawn before the patent review committee makes a decision on the request for declaration of invalidation, the examination procedures for the request for declaration of invalidation shall be terminated.

However, where the patent review committee concludes that a decision on declaration of invalidation or partial invalidation of patent rights may be made on the basis of examination conducted, the examination procedures shall not be terminated.

CHAPTER 5 — MANDATORY LICENSING FOR PATENT

IMPLEMENTATION

Article 73 A patent has not been fully implemented referred to in Item (1) of Article 48 of the Patent Law shall mean that the method or scale of implementation of patent by the patentee and its licensee cannot satisfy the domestic needs for the patented products or patented method.

Patented drugs referred to in Article 50 of the Patent Law shall mean any patented products or products obtained directly pursuant to a patented method in the medical field required for resolving public

health issues, including patented active ingredients required for manufacturing of such products and diagnostic products required for use of such products.

Article 74 Persons requesting for mandatory licensing shall submit a written request for mandatory licensing to the patent administrative authorities of the State Council, state the reasons and attach the relevant proof documents.

The patent administrative authorities of the State Council shall serve the duplicate copy of the written request for mandatory licensing to the patentee; the patentee shall make representation within the period designated by the patent administrative authorities of the State Council; failure to reply within the designated period shall have no impact on decision-making of the patent administrative authorities of the State Council.

The patent administrative authorities of the State Council shall notify the requesting party and the patentee of the proposed decision and the reasons before making a decision on rejection of the written request for mandatory licensing or a decision on grant of mandatory licensing.

A decision on grant of mandatory licensing made by the patent administrative authorities of the State Council pursuant to the provisions of Article 50 of the Patent Law shall comply with the

provisions of the relevant international treaty to which China is a member or participant on grant of mandatory licensing for the purpose of resolving public health issues, except where China has reservations.

Article 75 Where a request is made pursuant to the provisions of Article 57 of the Patent Law to the patent administrative authorities of the State Council for a ruling on the amount of royalties, the parties concerned shall submit a written request for ruling and attach documents to prove that both parties cannot reach an agreement. The patent administrative authorities of the State Council shall make a ruling within three months from the date of receipt of the written request and notify the parties concerned.

CHAPTER 6 — REWARDS AND REMUNERATION FOR INVENTORS OR DESIGNERS OF EMPLOYEE INVENTIONS

Article 76 An organisation which has been granted may agree with the inventor or designer on the form and amount of rewards and remuneration stipulated in Article 16 of the Patent Law or may stipulate the form and amount of such rewards and remuneration in their rules and systems formulated pursuant to the law.

Rewards and remuneration granted to inventors or designers by enterprises and institutions shall be handled pursuant to the provisions of the State on finance and accounting system.

Article 77 Where an organisation which has been granted has not agreed with the inventor or designer on the form and amount of rewards stipulated in Article 16 of the Patent Law or has not stipulated the form and amount of such rewards in their rules and systems formulated pursuant to the law, it shall pay bonus to the inventor or designer within three months from the date of announcement on patent rights. The bonus for an invention patent shall not be less than RMB3,000; the bonus for a utility model patent or design patent shall not be less than RMB1,000.

In the event that an invention which is adopted and completed by the employer due to recommendations by the inventor or designer, the organisation which has been granted shall pay bonus based on merit.

Article 78 Where an organisation which has been granted has not agreed with the inventor or designer on the form and amount of remuneration stipulated in Article 16 of the Patent Law or has not stipulated the form and amount of such remuneration in their rules and systems formulated pursuant to the law, during the validity period of the patent rights and upon implementation of an invention patent, it shall withdraw not less than 2% of the business profits from implementation of the said invention or utility model patent annually or withdraw not less than 0.2% of the business profits from implementation of the said design patent annually as remuneration for

the inventor or designer, or refer to the aforesaid percentage to grant the inventor or designer a one-off remuneration; where the organisation which has been granted patent rights licenses another organisation or individual to implement its patent, it shall withdraw not less than 10% of the royalties collected as remuneration for the inventor or designer.

CHAPTER 7 — PROTECTION OF PATENT RIGHTS

Article 79 The authorities for administration of patent matters referred to in the Patent Law and these Implementation Regulations shall mean the authorities for administration of patent matters established by the People's Governments of provinces, autonomous regions and centrally-administered municipalities, and municipal People's Governments which have districts with large patent administration workload and actual handling capacity.

Article 80 The patent administrative authorities of the State Council shall carry out business guidance on the authorities for administration of patent matters in handling patent infringement disputes, investigation and punishment of patent counterfeiting, and mediation of patent disputes.

Article 81 Where the parties concerned request for handling of patent infringement disputes or mediation of patent disputes, the authorities for administration of patent matters at the location of the

respondent or at the place where the infringement occurs shall have jurisdiction.

Where two or more authorities for administration of patent matters have jurisdiction over a patent dispute, the parties concerned may submit their request to one of the authorities for administration of patent matters; where the parties concerned have submitted their request to two or more authorities for administration of patent matters with jurisdiction, the authorities for administration of patent matters which first accept the request shall have jurisdiction.

Where the authorities for administration of patent matters have disputes over jurisdiction, the authorities for administration of patent matters of their common higher-level People's Government shall designate jurisdiction; where there are no authorities for administration of patent matters of common higher-level People's Government, the patent administrative authorities of the State Council shall designate jurisdiction.

Article 82 During the process of handling patent infringement dispute, where the respondent has submitted a request for declaration of invalidation and the request for declaration of invalidation has been accepted by the patent review committee, a request for suspension of handling may be submitted to the authorities for administration of patent matters.

Where the authorities for administration of patent matters conclude that the reason for suspension submitted by the respondent is evidently groundless, the authorities for administration of patent matters may not suspend handling.

Article 83 A patentee who affixes a patent marking on its patented products or the packaging of such products pursuant to the provisions of Article 17 of the Patent Law shall affix the markings in accordance with the method stipulated by the patent administrative authorities of the State Council.

Where a patent marking does not comply with the provisions of the preceding paragraph, the authorities for administration of patent matters shall order for correction.

Article 84 The following acts shall fall under patent counterfeiting stipulated in Article 63 of the Patent Law:

- (1) Place patent marking on products or packaging thereof which are not patented, continue to place patent marking on products or packaging thereof upon declaration of invalidation or termination of patent rights, or mark other's patent number on products or packaging thereof without licence;
- (2) Sale of products mentioned in Item (1);
- (3) Refer to technologies or designs which are not patented as patented technologies or patented designs in product manuals, etc,

refer to patent applications as patents, or use other's patent number without licence, and mislead the public into believing that the technologies or designs involved are patented technologies or patented designs;

(4) Forgery or alteration of patent certificates, patent documents or patent application documents; or

(5) Other acts which mislead the public into believing that a non-patented technology or design is a patented technology or design.

Placing of patent marking on patented products or products obtained directly pursuant to a patented method or packaging thereof pursuant to the law before termination of patent rights, or offer to sale or sale of such products after termination of patent rights shall not be deemed as patent counterfeiting.

Where a person who sells patent counterfeiting products is unaware that they are patent counterfeiting products, and is able to prove that the said products have a legitimate source, the authorities for administration of patent matters shall order the person to stop selling and may waive a fine.

Article 85 Except as stipulated in Article 60 of the Patent Law, the authorities for administration of patent matters shall conduct

mediation over the following patent disputes pursuant to the request of the parties concerned:

- (1) Dispute over patent application rights and ownership of patent rights;
- (2) Dispute over qualifications of inventor or designer;
- (3) Dispute over rewards and remuneration for the inventor or designer of an employee invention;
- (4) Dispute over use of an invention following announcement of a patent application for invention and before grant of patent rights and non-payment of appropriate fees and expenses; and
- (5) Any other patent disputes.

In the case of a dispute listed in Item (4) of the preceding paragraph, where the parties concerned request for mediation by the authorities for administration of patent matters, the request shall be made after the patent rights are granted.

Article 86 Where the parties concerned have requested mediation by the authorities for administration of patent matters or filed a lawsuit with a People's Court in respect of a dispute over patent application rights or ownership of patent rights, a request for suspension of the relevant procedures may be submitted to the patent administrative authorities of the State Council.

The requesting party for suspension of the relevant procedures pursuant to the provisions of the preceding paragraph shall submit a written request to the patent administrative authorities of the State Council, and attach duplicate copies of the relevant documents accepted by the authorities for administration of patent matters or the People's Court which state the application number or the patent number.

After the written mediation of the authorities for administration of patent matters or the ruling of the People's Court has come into effect, the parties concerned shall complete the formalities for resumption of the relevant procedures with the patent administrative authorities of the State Council. Where the case for dispute over the relevant patent application rights or ownership of patent rights cannot be closed within one year from the date of suspension of the request, and there is a need to continue suspension of the relevant procedures, the requesting party shall request for extension of suspension within the said period. Where a request for extension of suspension is not made within the stipulated period, the patent administrative authorities of the State Council shall voluntarily resume the relevant procedures.

Article 87 Where a People's Court rules that preservation measures be adopted for patent application rights or patent rights in the trial of a civil lawsuit, the patent administrative authorities of the State Council

shall suspend the relevant procedures for the preserved patent application rights or patent rights with effect from the date of receipt of the ruling which states the application number or patent number and the notice on assistance in enforcement. Upon expiry of the preservation period, where the People's Court does not rule that the preservation measures be continued to adopt, the patent administrative authorities of the State Council shall voluntarily resume the relevant procedures.

Article 88 Suspension of the relevant procedures by the patent administrative authorities of the State Council pursuant to the provisions of Article 86 and Article 87 of these Implementation Regulations shall mean suspension of preliminary examination, substantive examination or review procedures of a patent application, the procedures for grant of patent rights and the procedures for declaration of invalidation of patent rights; suspension of completion of formalities for forfeiture, variation or transfer of patent rights or patent application rights, patent rights pledge formalities and termination formalities before expiry of patent rights, etc.

CHAPTER 8 — PATENT REGISTRATION AND PATENT GAZETTE

Article 89 The patent administrative authorities of the State Council shall keep a register of patents and record the following matters in relation to patent applications and patent rights:

- (1) Grant of patent rights;
- (2) Transfer of patent application rights or patent rights;
- (3) Pledge, preservation and lifting of preservation of patent rights;
- (4) Filing of licensing contract for patent implementation;
- (5) Declaration of invalidation of patent rights;
- (6) Termination of patent rights;
- (7) Reinstatement of patent rights;
- (8) Mandatory licensing for patent implementation; and
- (9) Change of name, nationality or address of the patentee.

Article 90 The patent administrative authorities of the State Council shall publish patent gazettes on a regular basis to announce the following contents:

- (1) Bibliographic data and synopsis of the manual of a patent application for invention;
- (2) Request for substantive examination of a patent application for invention and decision of the patent administrative authorities of the State Council to conduct substantive examination of a patent application for invention;
- (3) Rejection, withdrawal, deemed as withdrawal, deemed as forfeiture, reinstatement and transfer following public announcement of a patent application for invention;
- (4) Grant of patent rights and bibliographic data of patent rights;

- (5) Synopsis of the manual of an invention patent or a utility model patent, a picture or photograph of the design patent;
- (6) Decryption of national defence patent and confidential patent;
- (7) Declaration of invalidation of patent rights;
- (8) Termination or reinstatement of patent rights;
- (9) Transfer of patent rights;
- (10) Filing of licensing contract for patent implementation;
- (11) Pledge, preservation and lifting of preservation of patent rights;
- (12) Grant of mandatory licensing for patent implementation;
- (13) Change of name or address of the patentee;
- (14) Service of public announcement of documents;
- (15) Correction made by the patent administrative authorities of the State Council; and
- (16) Any other relevant matters.

Article 91 The patent administrative authorities of the State Council shall make the patent gazette, monograph for patent applications for invention and monograph for invention patents, utility model patents and design patents available for public inspection free of charge.

Article 92 The patent administrative authorities of the State Council shall be responsible for exchange of patent literature with the patent authorities of other countries and regions or regional patent organisations pursuant to the principle of reciprocity.

CHAPTER 9 — EXPENSES

Article 93 The following fees shall be paid at the time of submission of patent applications to and completing other formalities with the patent administrative authorities of the State Council:

- (1) Application fee, application fee surcharge, notice printing fee, request fee for priority rights;
- (2) Substantive examination fee for patent application for invention, review fee;
- (3) Patent registration fee, public announcement printing fee, annual fee;
- (4) Request fee for reinstatement of patent, request fee for extension of period; and
- (5) Bibliographic data amendment fee, request fee for patent rights evaluation report, request fee for declaration of invalidation.

The fee rates for payment of various expenses listed in the preceding paragraph shall be stipulated by the pricing administrative authorities and finance authorities of the State Council jointly with the patent administrative authorities of the State Council.

Article 94 Various expenses stipulated in the Patent Law and these Implementation Regulations may be paid directly to the patent administrative authorities of the State Council, or paid by remittance

through a post office or bank, or paid in any other form stipulated by the patent administrative authorities of the State Council.

Where payment is remitted through a post office or bank, the remittance slip delivered to the patent administrative authorities of the State Council shall state the correct application number or patent number and description of the expenses paid. Where the provisions of this paragraph are not complied with, it shall be deemed that payment formalities have not been completed.

Where payment of expenses is made directly to the patent administrative authorities of the State Council, the day on which payment is made shall be the date of payment; where payment of expenses is remitted through a post office, the postmark date of the remittance by the post office shall be the date of payment; where payment of expenses is remitted through a bank, the actual date of remittance by the bank shall be the date of payment.

In the event of excess payment, duplicate payment and wrong payment of patent fees, the parties concerned may submit a refund request to the patent administrative authorities of the State Council within three years from the date of payment; the patent administrative authorities of the State Council shall refund.

Article 95 An applicant shall pay application fee, notice printing fee and the requisite application fee surcharge within two months from the

date of application or within 15 days from the date of receipt of the notice of acceptance of application; where the applicant failed to make payment or failed to make full payment within the stipulated period, the application shall be deemed as withdrawn.

An applicant requesting for priority rights shall pay request fee for priority rights at the time of payment of application fee; where the applicant failed to make payment or failed to make full payment within the stipulated period, it shall be deemed that the applicant has not requested for priority rights.

Article 96 Where the parties concerned request for substantive examination or review, fee payment shall be made within the relevant period stipulated in the Patent Law and these Implementation Regulations; where the parties concerned failed to make payment or failed to make full payment within the stipulated period, it shall be deemed that the request has not been made.

Article 97 An applicant shall pay the patent registration fee, public announcement printing fee and annual fee for the year in which the patent rights are granted when completing registration formalities; where the applicant failed to make payment or failed to make full payment within the stipulated period, it shall be deemed that the registration formalities have not been completed.

Article 98 Annual fee in years following the year in which the patent rights are granted shall be paid before expiry of the deadline in the preceding year. Where the patentee failed to make payment or failed to make full payment, the patent administrative authorities of the State Council shall notify the patentee to make payment retrospectively within six months from the date of expiry of the deadline for payment of annual fee, and pay late payment fine simultaneously; the amount of late payment fine shall be computed based on 5% of the total amount of annual fee of the year for each month exceeding the stipulated time for payment; where the patentee failed to make payment within the stipulated period, the patent rights shall terminate on the deadline for payment of annual fee.

Article 99 The request fee for reinstatement of patent shall be paid within the relevant period stipulated in these Implementation Regulations; where the request fee for reinstatement of patent is not paid or not fully paid within the stipulated period, it shall be deemed that the request has not been made.

The request fee for extension of period shall be paid before expiry of the corresponding period; where the request fee for extension of period is not paid or not fully paid within the stipulated period, it shall be deemed that the request has not been made.

The bibliographic data amendment fee, request fee for patent rights evaluation report or request fee for declaration of invalidation shall be paid within one month from the date of submission of the request; where the bibliographic data amendment fee, request fee for patent rights evaluation report or request fee for declaration of invalidation is not paid or not fully paid within the stipulated period, it shall be deemed that the request has not been made.

Article 100 Where the applicant or the patentee has difficulty in paying various fees stipulated in these Implementation Regulations, it may submit a request for reduced payment or deferred payment to the patent administrative authorities of the State Council pursuant to the provisions. The measures on reduced payment or deferred payment shall be stipulated by the finance authorities of the State Council jointly with the pricing administrative authorities of the State Council and the patent administrative authorities of the State Council.

CHAPTER 10 — SPECIAL PROVISIONS ON INTERNATIONAL APPLICATIONS

Article 101 The patent administrative authorities of the State Council shall accept, pursuant to the provisions of Article 20 of the Patent Law, international patent applications submitted pursuant to the Patent Cooperation Treaty.

The provisions of this Chapter shall apply to the criteria and procedures for international patent applications which are submitted pursuant to the Patent Cooperation Treaty and designate China (hereinafter referred to as the "international application") and enter into the processing phase of the patent administrative authorities of the State Council (hereinafter referred to as "entering the Chinese national phase"); where there are no provisions in this Chapter, the relevant provisions of other chapters of the Patent Law and these Implementation Regulations shall apply.

Article 102 International applications for which the date of international application has been determined pursuant to the Patent Cooperation Treaty and which designate China shall be deemed as patent applications submitted to the patent administrative authorities of the State Council, and the date of international application shall be deemed as the date of application referred to in Article 28 of the Patent Law.

Article 103 The applicant of an international application shall complete the formalities for entry into the Chinese national phase with the patent administrative authorities of the State Council within 30 months from the date of priority referred to in Article 2 of the Patent Cooperation Treaty (referred to in this Chapter as the "date of priority"); where the applicant failed to complete the formalities within

the stipulated period, upon payment of the extension fee, the applicant may complete the formalities for entry into the Chinese national phase within 32 months from the date of priority.

Article 104 An applicant completing the formalities for entry into the Chinese national phase pursuant to the provisions of Article 103 of these Implementation Regulations shall comply with the following requirements:

- (1) Where the written declaration for entry into the Chinese national phase is written in Chinese, the international application number and the type of patent rights requested shall be stated;
- (2) Payment of the application fee and notice printing fee stipulated in the first paragraph of Article 93 of these Implementation Regulations, payment of the extension fee stipulated in Article 103 of these Implementation Regulations where necessary;
- (3) Where the international application is written in a foreign language, the Chinese translation of the manual and letter of claim of the original international application shall be submitted;
- (4) The name of invention, name and address of the applicant, address and name of the inventor shall be stated in the written declaration for entry into the Chinese national phase; the aforesaid contents shall be consistent with the records of the International Bureau of the World Intellectual Property Organisation (hereinafter

referred to as the "International Bureau"); where the name of the inventor is not stated in the international application, the name of the inventor shall be stated in the aforesaid declaration;

(5) Where the international application is written in a foreign language, the Chinese translation of the synopsis shall be submitted; where there are attached drawings and attached drawings in the synopsis, duplicate copies of the attached drawings and attached drawings in the synopsis shall be submitted; where there are text in the attached drawings, the text shall be translated into Chinese; where the international application is written in Chinese, duplicate copies of the synopsis of international announcement documents and attached drawings in the synopsis shall be submitted;

(6) Where the formalities for change of applicant have been completed with the International Bureau in the international phase, proof materials that the new applicant enjoys the application rights shall be provided; and

(7) Payment of application fee surcharge stipulated in the first paragraph of Article 93 of these Implementation Regulations where necessary.

Where an application satisfies the requirements stipulated in Item (1) to Item (3) of the first paragraph of this Article, the patent administrative authorities of the State Council shall issue an

application number, specify the date of the international application entering into the Chinese national phase (hereinafter referred to as the "date of entry"), and notify the applicant that its international application has entered into the Chinese national phase.

Where an international application has entered into the Chinese national phase, but does not satisfy the requirements stipulated in Item (4) to Item (7) of the first paragraph of this Article, the patent administrative authorities of the State Council shall notify the applicant to make supplementation or correction within the designated period; where the applicant failed to make supplementation or correction within the designated period, its application shall be deemed as withdrawn.

Article 105 Under any of the following circumstances, the validity of an international application in China shall expire:

- (1) The international application is withdrawn or deemed as withdrawn in the international phase or the designation of China in the international application is withdrawn;
- (2) The applicant failed to complete the formalities for entry into the Chinese national phase pursuant to the provisions of Article 103 of these Implementation Regulations within 32 months from the date of priority; or

(3) The applicant has completed the formalities for entry into the Chinese national phase, but the application does not satisfy the requirements stipulated in Item (1) to Item (3) of Article 104 of these Implementation Regulations upon expiry of the 32-month period from the date of priority.

Where the validity of an international application in China has expired pursuant to the provisions of Item (1) of the preceding paragraph, the provisions of Article 6 of these Implementation Regulations shall not apply; where the validity of an international application in China has expired pursuant to the provisions of Item (2) or Item (3) of the preceding paragraph, the provisions of the second paragraph of Article 6 of these Implementation Regulations shall not apply.

Article 106 Where an international application is amended in the international phase, and the applicant requests that examination be carried out based on the amended application documents, the Chinese translation of the amendments shall be submitted within two months from the date of entry. Where the Chinese translation is not submitted within the stipulated period, the patent administrative authorities of the State Council shall not consider the amendments made by the applicant in the international phase.

Article 107 Where the invention involved in an international application falls under any of the descriptions listed in Item (1) or Item

(2) of Article 24 of the Patent Law, and a declaration is made at the time of submission of an international application, the applicant shall state so in the written declaration for entry into the Chinese national phase, and submit the relevant proof documents stipulated in the third paragraph of Article 30 of these Implementation Regulations within two months from the date of entry; where a statement is not made or the proof documents are not submitted within the stipulated period, the provisions of Article 24 of the Patent Law shall not apply to the application.

Article 108 Where an applicant has provided an explanation on preservation of samples of the biomaterial pursuant to the provisions of the Patent Cooperation Treaty, it shall be deemed that the requirements in Item (3) of Article 24 of these Implementation Regulations have been satisfied. The applicant shall state the documents which record preservation of samples of the biomaterial and the specific location of the record in such documents in the declaration for entry into the Chinese national phase.

Where an applicant has recorded preservation of samples of the biomaterial in the manual of the originally submitted international application, but has not stated so in the declaration for entry into the Chinese national phase, the applicant shall make supplementation or correction within four months from the date of entry. Where the

applicant failed to make supplementation or correction within the stipulated period, it shall be deemed that the said biomaterial has not been submitted for preservation.

Where an applicant has submitted proof of preservation of samples of the biomaterial and proof of survival to the patent administrative authorities of the State Council within four months from the date of entry, it shall be deemed that the applicant has submitted the proof within the period stipulated in Item (1) of Article 24 of these Implementation Regulations.

Article 109 Where the invention involved in an international application is completed on reliance of genetic resources, the applicant shall state so in the written declaration for entry of the international application into the Chinese national phase, and fill in forms formulated by the patent administrative authorities of the State Council.

Article 110 Where an applicant has requested for one or more items of priority rights in the international phase, and the request for such priority rights remains valid at the time of entry into the Chinese national phase, it shall be deemed that a written declaration has been made pursuant to the provisions of Article 30 of the Patent Law.

An applicant shall pay request fee for priority rights within two months from the date of entry; where the applicant failed to make payment or

failed to make full payment within the stipulated period, it shall be deemed that the applicant has not requested for such priority rights. Where an applicant has submitted duplicate copies of the priority application documents in the international phase pursuant to the provisions of the Patent Cooperation Treaty, there is no need to submit duplicate copies of the priority application documents to the patent administrative authorities of the State Council when completing the formalities for entry into the Chinese national phase. Where an applicant has not submitted duplicate copies of the priority application documents in the international phase, the patent administrative authorities of the State Council may, where it is deemed necessary, notify the applicant to submit the duplicate copies retrospectively within the designated period; where the applicant failed to submit the duplicate copies retrospectively within the designated period, it shall be deemed that the applicant has not requested for the priority rights.

Article 111 Where an applicant requests, before expiry of the 30-month period from the date of priority, that the patent administrative authorities of the State Council process and examine an international application in advance, the applicant shall, in addition to completing the formalities for entry into the Chinese national phase, submit a request pursuant to the provisions of the second paragraph of Article 23 of the Patent Cooperation Treaty. Where the International

Bureau has not forwarded the international application to the patent administrative authorities of the State Council, the applicant shall submit certified duplicate copies of the international application.

Article 112 In the case of an international application requesting for obtaining utility model patent rights, the applicant may voluntarily make amendments to the patent application documents within two months from the date of entry.

In the case of an international application requesting for obtaining invention patent rights, the provisions of the first paragraph of Article 51 of these Implementation Regulations shall apply.

Article 113 An applicant may apply to make correction for an error discovered in the Chinese translation of the text of the submitted manual, letter of claim or attached drawing within the following stipulated period based on the text of the original international application:

(1) Before completion of preparatory work for announcement of the patent application for invention or announcement of utility model patent rights by the patent administrative authorities of the State Council; and

(2) Within three months from the date of receipt of the notice on the patent application for invention entering the substantive examination

phase issued by the patent administrative authorities of the State Council.

An applicant applying to make correction for a translation error shall submit a written request and pay the stipulated fee for correction of translation.

Where an applicant makes correction for the translation pursuant to the requirements of the notice from the patent administrative authorities of the State Council, the formalities stipulated in the second paragraph of this Article shall be completed within the designated period; where the stipulated formalities are not completed within the designated period, the application shall be deemed as withdrawn.

Article 114 In the case of an international application requesting for obtaining invention patent rights, where the patent administrative authorities of the State Council conclude upon preliminary examination that the relevant provisions of the Patent Law and these Implementation Regulations are complied with, an announcement shall be made on the patent gazette; where the international application is made in a language other than Chinese, the Chinese translation of the application documents shall be announced.

In the case of an international application requesting for obtaining invention patent rights for which the International Bureau has made

an international announcement in Chinese, the provisions of Article 13 of the Patent Law shall apply with effect from the date of international announcement; where the International Bureau has made an international announcement in a language other than Chinese, the provisions of Article 13 of the Patent Law shall apply with effect from the date of announcement by the patent administrative authorities of the State Council.

For international applications, announcement referred to in Article 21 and Article 22 of the Patent Law shall mean announcement stipulated in the first paragraph of this Article.

Article 115 Where an international application comprises two or more inventions or utility models, the applicant may make an application for case assignment with effect from the date of entry pursuant to the provisions of the first paragraph of Article 42 of these Implementation Regulations.

Where the international search organisation or international preliminary examination organisation concludes in the international phase that an international application does not comply with the uniformity requirement stipulated in the Patent Cooperation Treaty, and the applicant has not paid the surcharge pursuant to the provisions and as a result thereof, certain parts of the international application have not been subject to international search or

international preliminary examination, at the time of entry into the Chinese national phase, the applicant requests that the said parts be taken as the examination basis, and the patent administrative authorities of the State Council conclude that the judgment of the international search organisation or international preliminary examination organisation pertaining to uniformity of the invention is correct, the applicant shall be notified to make payment for uniformity reinstatement fee within a designated period. Where the applicant failed to make payment or failed to make full payment within the designated period, the parts in the international application which have not undergone search or international preliminary examination shall be deemed as withdrawn.

Article 116 Where the relevant international organisation refuses to grant a date of international application or announce that the international application is deemed as withdrawn in the international phase, the applicant may request that the International Bureau forwards duplicate copies of any document in the international application file to the patent administrative authorities of the State Council within two months from the date of receipt of the notice, and complete the formalities stipulated in Article 103 of these Implementation Regulations with the patent administrative authorities of the State Council within the said period; upon receipt of the

documents forwarded by the International Bureau, the patent administrative authorities of the State Council shall review whether the decision made by the international organisation is correct.

Article 117 Where an error in translation causes the scope of protection determined pursuant to the provisions of Article 59 of the Patent Law for patent rights granted to an international application to exceed the scope expressed in the original text of the international application, the scope of protection restricted pursuant to the original text shall prevail; where the error in translation causes the scope of protection to be smaller than the scope expressed in the original text of the international application, the scope of protection at the time of grant of rights shall prevail.

CHAPTER 11 — SUPPLEMENTARY PROVISIONS

Article 118 Upon consent of the patent administrative authorities of the State Council, any person may inspect or make copies of files of announced or publicised patent applications and the register of patents, and may request that the patent administrative authorities of the State Council issue a duplicate copy of the register of patents. Files of patent applications which are deemed as withdrawn, rejected and voluntarily withdrawn shall not be retained after two years from the date of expiry of the said patent application.

Files of forfeited, invalidated and terminated patent rights shall not be retained after three years from the date of expiry of the said patent rights.

Article 119 For submission of application documents to or completion of various formalities with the patent administrative authorities of the State Council, the applicant, the patentee, any other stakeholder or its representative shall sign or affix seal; where a patent agency is entrusted, the patent agency shall affix seal.

In the case of a request for change of name of the inventor, name, nationality or address of the patent applicant or the patentee, name or address of the patent agency, or name of the agent, the formalities for change of bibliographic data shall be completed with the patent administrative authorities of the State Council, and proof materials for the reason of change shall be attached.

Article 120 Registered mail shall be used for mailing of documents relating to applications or patent rights to the patent administrative authorities of the State Council; parcels shall not be used.

Except for first-time submission of patent application documents, for all documents submitted to or all formalities completed with the patent administrative authorities of the State Council, the application number or patent number, name of the invention and name of the applicant or the patentee shall be stated.

Each envelope shall only include documents for the same application.

Article 121 All application documents shall be typed or printed in black ink, be neat and clear, and shall not be altered. Attached drawings shall be drafted using mapping tools and black ink, the lines shall be clear and uniform, and shall not be altered.

Letters of request, manuals, letters of claim, attached drawings and synopses shall be numbered sequentially in Arabic number format.

The text of application documents shall be written in horizontal format.

The pages shall be single-sided.

Article 122 The patent administrative authorities of the State Council shall formulate a patent examination guide pursuant to the Patent Law and these Implementation Regulations.

Article 123 These Implementation Regulations shall be effective 1 July 2001. The Implementation Regulations for the Patent Law of the People's Republic of China approved and revised by the State Council on 12 December 1992 and promulgated by the Patent Bureau of China on 21 December 1992 shall be repealed simultaneously.