

**中华人民共和国专利法
2008**

**PATENT LAW OF THE PEOPLE'S REPUBLIC
OF CHINA**

中华人民共和国专利法(2008)

中华人民共和国主席令

第八号

《全国人民代表大会常务委员会关于修改〈中华人民共和国专利法〉的决定》已由中华人民共和国第十一届全国人民代表大会常务委员会第六次会议于2008年12月27日通过,现予公布,自2009年10月1日起施行。

中华人民共和国主席 胡锦涛

2008年12月27日

(1984年3月12日第六届全国人民代表大会常务委员会第四次会议通过 根据1992年9月4日第七届全国人民代表大会常务委员会第二十七次会议《关于修改〈中华人民共和国专利法〉的决定》第一次修正 根据2000年8月25日第九届全国人民代表大会常务委员会第十七次会议《关于修改〈中华人民共和国专利法〉的决定》第二次修正 根据2008年12月27日第十一届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国专利法〉的决定》第三次修正)

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

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

Amended the second time in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 17th Meeting on August 25, 2000

Amended the third time in accordance with the Decision of the Standing Committee of the Eleventh National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 6th Meeting on December 27, 2008)

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

目 录

目 录	3
第一章 总 则 General Provisions	5
第一条	5
第二条	5
第三条	5
第四条	6
第五条	6
第六条	6
第七条	6
第八条	7
第九条	7
第十条	7
第十一条	8
第十二条	8
第十三条	8
第十四条	8
第十五条	9
第十六条	9
第十七条	9
第十八条	9
第二十条	10
第二十一条	11
第二章 授予专利权的条件 Requirements for Grant of Patent Right.....	12
第二十二条	12
第二十三条	12
第二十四条	13
第二十五条	13
第三章 专利的申请 Application for Patent	15
第二十六条	15
第二十七条	15
第二十八条	16
第二十九条	16
第三十条	16
第三十一条	17
第三十二条	17
第三十三条	17
第四章 专利申请的审查和批准 Examination and Approval of Application for Patent	18
第三十四条	18
第三十五条	18
第三十六条	18
第三十七条	19
第三十八条	19
第三十九条	19

第四十条	19
第四十一条	20
第五章 专利权的期限、终止和无效 Duration, Cessation and Invalidation of Patent Right.....	21
第四十二条	21
第四十三条	21
第四十四条	21
第四十五条	21
第四十六条	21
第四十七条	22
第六章 专利实施的强制许可 Compulsory License for Exploitation of Patent.....	23
第四十八条	23
第四十九条	23
第五十条	23
第五十一条	23
第五十二条	24
第五十三条	24
第五十四条	24
第五十五条	24
第五十六条	25
第五十七条	25
第五十八条	25
第七章 专利权的保护 Protection of Patent Right.....	27
第五十九条	27
第六十条	27
Article 60.	27
第六十一条	28
第六十二条	28
第六十三条	28
第六十四条	29
第六十五条	29
第六十六条	30
第六十七条	31
第六十八条	31
第六十九条	32
第七十条	33
第七十一条	33
第七十二条	33
第七十三条	33
第七十四条	34
第八章 附 则 Supplementary Provisions	35
第七十五条	35
第七十六条	35

第一章 总则 General Provisions

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

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

第二条 本法所称的发明创造是指发明、实用新型和外观设计。

发明，是指对产品、方法或者其改进所提出的新的技术方案。

实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。

外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。

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

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

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

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

第三条 国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。

省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管理工作。

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

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

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

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

第五条 对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。

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

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

第六条 执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。

非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。

利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。

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

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

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

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

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

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

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

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

两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

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

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

第十条 专利申请权和专利权可以转让。

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

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

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

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

Where the right of patent application or the patent right is assigned, the parties shall conclude a

written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration.

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

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

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

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

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

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

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

Article 13. After the publication of the application for a patent for invention, the applicant may require the entity or individual exploiting the invention to pay an appropriate fee.

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

Article 14. Where any patent for invention, belonging to any state-owned enterprise or

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

第十五条 专利申请权或者专利权的共有人对权利的行使有约定的,从其约定。没有约定的,共有人可以单独实施或者以普通许可方式许可他人实施该专利;许可他人实施该专利的,收取的使用费应当在共有人之间分配。

除前款规定的情形外,行使共有的专利申请权或者专利权应当取得全体共有人的同意。

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

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

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

Article 16. The entity that is granted a patent right shall award to the inventor or creator of a service invention-creation a reward and, upon exploitation of the patented invention-creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded.

第十七条 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。

专利权人有权在其专利产品或者该产品的包装上标明专利标识。

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

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

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

根据本法办理。

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

第十九条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。

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

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

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

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

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

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

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

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

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

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

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

The patent administration department under the State Council shall handle any international application for patent in accordance with the international treaty concerned to which China is party, this Law and the relevant regulations of the State Council.

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

第二十一条 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。

国务院专利行政部门应当完整、准确、及时发布专利信息，定期出版专利公报。

在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。

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

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

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

第二章 授予专利权的条件 Requirements for Grant of Patent Right

第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

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

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

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

本法所称现有技术，是指申请日以前在国内外为公众所知的技术。

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

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

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

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

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

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

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

授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。

本法所称现有设计，是指申请日以前在国内外为公众所知的设计。

Article 23. Any design for which patent right may be granted shall not be a prior design, nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing.

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

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

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

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

- (一) 在中国政府主办或者承认的国际展览会上首次展出的；
- (二) 在规定的学术会议或者技术会议上首次发表的；
- (三) 他人未经申请人同意而泄露其内容的。

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

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

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

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

第二十五条 对下列各项，不授予专利权：

- (一) 科学发现；
- (二) 智力活动的规则和方法；
- (三) 疾病的诊断和治疗方法；
- (四) 动物和植物品种；
- (五) 用原子核变换方法获得的物质；
- (六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。

对前款第（四）项所列产品的生产方法，可以依照本法规定授予专利权。

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

(1) scientific discoveries;

(2) rules and methods for mental activities;

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

(4) animal and plant varieties;

(5) substances obtained by means of nuclear transformation;

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

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

第三章 专利的申请 Application for Patent

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

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

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

权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。

依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。

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

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

The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model.

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

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

第二十七条 申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。

申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的的外观设计。

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

The relevant drawings or photographs submitted by the applicant shall clearly indicate the

design of the product for which patent protection is sought.

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

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

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

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

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

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

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

Article 30. Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the copy of the patent application document, the claim to the right of priority shall be deemed not to have been made.

第三十一条 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。

一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。

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

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

第三十二条 申请人可以在被授予专利权之前随时撤回其专利申请。

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

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

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

第四章 专利申请的审查和批准 Examination and Approval of Application for Patent

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

Article 34. Where, after receiving an application for a patent for invention, the patent administration department under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of eighteen months from the date of filing. Upon the request of the applicant, the patent administration department under the State Council publishes the application earlier.

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

国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。

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

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

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

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

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

For an application for a patent for invention that has been already filed in a foreign country, the patent administration department under the State Council may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

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

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

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

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

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

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

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

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

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

专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

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

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

第五章 专利权的期限、终止和无效 Duration, Cessation and Invalidation of Patent Right

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

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

第四十三条 专利权人应当自被授予专利权的当年开始缴纳年费。

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

第四十四条 有下列情形之一的，专利权在期限届满前终止：

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

专利权在期限届满前终止的，由国务院专利行政部门登记和公告。

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

- (1) where an annual fee is not paid as prescribed;
- (2) where the patentee abandons his or its patent right by a written declaration.

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

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

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

第四十六条 专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。

对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人

参加诉讼。

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

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

第四十七条 宣告无效的专利权视为自始即不存在。

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

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

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

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

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

第六章 专利实施的强制许可 Compulsory License for Exploitation of Patent

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

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

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

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

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

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

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

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

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

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

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

许可。

在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。

Article 51. Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the patent administration department under the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

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

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

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

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

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

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

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

第五十五条 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权

人，并予以登记和公告。

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

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

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

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

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

第五十七条 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

Article 57. The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, or deal with the issue of exploitation fee according to relevant provisions of the international treaties to which China is party. Where the exploitation fee is paid, the amount shall be negotiated by both parties. Where the parties fail to reach an agreement, the patent administration department under the State Council shall adjudicate.

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

Article 58. Where the patentee is not satisfied with the decision of the patent administration department under the State Council granting a compulsory license for exploitation, or where the patentee or the entity or individual that is granted the compulsory license for exploitation is not

satisfied with the ruling made by the patent administration department under the State Council regarding the fee payable for exploitation, it or he may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

第七章 专利权的保护 Protection of Patent Right

第五十九条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。

外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的该产品的外观设计。

Article 59. The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the content of the claims.

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

第六十条 未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

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

proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution. The said authority handling the matter may, upon the request of the parties, mediate in the amount of compensation for the damage caused by the infringement of the patent right. If the mediation fails, the parties may institute legal proceedings in the people's court in accordance with *the Civil Procedure Law of the People's Republic of China*.

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

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

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

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

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

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

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

Article 63. Where any person passes off a patent, he shall, in addition to bearing his civil liability according to law, be ordered by the administrative authority for patent affairs to correct his act, and the order shall be announced. His illegal earnings shall be confiscated and, in addition, he

may be imposed a fine of not more than four times his illegal earnings and, if there is no illegal earnings, a fine of not more than RMB 200,000 Yuan. Where the infringement constitutes a crime, he shall be prosecuted for his criminal liability.

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

管理专利工作的部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。

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

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

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

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

Article 65. The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the actual losses suffered by the right holder because of the infringement; where it is difficult to determine the actual losses, the amount may be assessed on the basis of the profits the infringer has earned because of the infringement. Where it is difficult to determine the losses the right holder has suffered or the profits the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of

that patent under a contractual license. The amount of compensation for the damage shall also include the reasonable expenses of the right holder incurred for stopping the infringing act.

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

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

申请人提出申请时，应当提供担保；不提供担保的，驳回申请。

人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。

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

申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。

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

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

The people's court shall make a ruling within 48 hours after receiving the petition.

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

Where the petitioner fails to institute legal proceedings within 15 days after the people's court

issued the ruling to stop the relevant act, the people's court shall lift the measures.

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

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

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

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

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

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

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

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

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

第六十八条 侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。

发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。

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

Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, is paid during the period from the publication of the application to the grant of patent right, prescription for instituting legal proceedings by the patentee to demand the said fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of

the exploitation of his invention by another person. However, where the patentee has already obtained or should have obtained knowledge before the date of the grant of the patent right, the prescription shall be counted from the date of the grant.

第六十九条 有下列情形之一的，不视为侵犯专利权：

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

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

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

（四）专为科学研究和实验而使用有关专利的；

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

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

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

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

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

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

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

exclusively for such person.

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

Article 70. Any person, who, for production and business purpose, uses, offers to sell or sells a patent infringement product, without knowing that it was made and sold without the authorization of the patentee, shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate channel.

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

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

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

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

第七十三条 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。

管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

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

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

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

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

第八章 附 则 Supplementary Provisions

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

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

第七十六条 本法自 1985 年 4 月 1 日起施行。

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