

Patent Law of the People's Republic of China

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Full text

Chapter I General Provisions

Article 1

This law is enacted in order to protect the legitimate rights of patentees, encourage invention-creations, promote the application of invention-creation, enhance innovative capacity, and promote scientific progress and economic social development.

Article 2

In the present Law "invention-creation" means inventions, utility models and designs.

The term "invention" refers to a new technical solution put forward for a product, method or the improvement thereof.

The term "utility model" refers to a new practical technical solution for a product's form, structure, or the combination thereof.

The term "design" means a new design of a product's shape, pattern or the combination thereof, or the combination of its colour and shape and/or pattern, that is aesthetically pleasing and industrial applicable.

Article 3

The patent administration department under the State Council is responsible for the patent work throughout the country. It accepts and examines patent applications and grants patent rights for inventions-creations in accordance with 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.

Article 4

If an invention-creation for which a patent is applied involves national security or other vital interests of the State that require secrecy, the matter shall be treated in accordance with the relevant provisions of the State.

Article 5

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

No patent right shall be granted for any invention-creation which is completed on the basis of genetic

resources of which the acquisition or use breaches the stipulations of related laws and regulations.

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 a provision shall apply.

Article 7

No entity or individual may suppress the application of an inventor or designer for a patent in respect of an invention-creation that is not job-related.

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 applies for it shall be the patentee.

Article 9

For any identical invention-creation, only one patent right shall be granted. However, with respect to the application of a utility model patent and invention patent for the identical invention-creation filed by the same applicant on the same day, the invention patent may be granted if this utility model patent right obtained first is still in force, and the applicant declares to abandon the obtained utility model patent that has been granted.

If two or more applicants apply separately for a patent on the same invention-creation, the patent right shall be granted to the person who applied first.

Article 10

The right to apply for a patent and the patent right itself may be assigned.

Any assignment of the right to apply for a patent or of the patent right from a Chinese entity or individual

to a foreigner, foreign enterprise or other foreign organizations, shall be done in accordance with procedures in the related laws and administrative regulations.

Where the right to apply for a patent 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.

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, or 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 right for a design, no entity or individual may, without the authorization of the patentee, exploit the design, namely make, offer to sell, sell, or import the design patented product for production or business purposes

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 for exploitation, to exploit the patent.

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.

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.

Article 15 (newly added)

If the co-owners of a patent application right or patent right have an agreement on the exercise of those

rights, the agreement shall apply. If there is no such agreement, any co-owner may independently exploit or license others to exploit the patent through ordinary licenses; Any royalties obtained through licensing others to exploit the patent shall be distributed amongst all the co-owners.

Except for the situation provided in the above paragraph, the exercise of a jointly-owned patent application right or patent right shall be consented by all co-owners.

Article 16

The entity that is granted a patent right shall reward to the inventor or creator of a service invention--creation and, upon exploitation of the patented invention-creation, shall give the inventor or creator a reasonable remuneration based on the extent the invention-creation is applied and the economic benefits it yields.

Article 17 (combination of original Article 15 and 17)

The inventor or designer has the right to be named as such in the patent document.

The patentee is entitled to put patent notice on the patented product or the package thereof.

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.

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 handle in China, he or it shall entrust a patent agency legally established to act on its or his behalf.

Any Chinese entity or individual who intends to file a patent application in China or engage in any other patent related affairs could entrust any legally established patent agency to act on its or his behalf.

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.

Article 20

Any entity or individual intending to file a patent application in a foreign country for an invention-creation made in China, shall apply in advance for a confidentiality examination conducted by the patent administrative department under the State Council. The procedures and duration regarding the confidentiality examination shall be enforced in accordance with the State Council regulations.

Any Chinese entity or individual may file an international application for a patent in accordance with any international treaty concerned to which China is party. The applicant filing an international application for a 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.

Any foreign patent application that violates the provision of the first paragraph of this Article will not be granted a patent right if the patent is applied for in China.

Article 21

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

The patent administrative department under the State Council shall completely, correctly and timely publish patent information in the the 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 content secret.

Chapter II Conditions for the Grant of Patent Rights

Article 22

Any invention or utility model for which a patent right may be granted must possess the characteristics of novelty, inventiveness and usefulness.

"Novelty" means that the invention or utility model shall neither belong to the prior art, nor has any entity or individual previously filed before the date of filing with the patent administrative department under the State Council an application on an identical invention or utility model which was recorded in patent application documents or other gazetted patent documents published after the said date of filing.

"Inventiveness" means that, compared with the prior art the invention has prominent and substantive distinguishing features and represents a marked improvement, or the utility model possesses

substantive distinguishing features and represents an improvement.

"Usefulness" means that the invention or utility model can be made or used and can create positive results.

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

Article 23

Any design for which a patent right may be granted must not belong to an prior design; nor has any entity or individual previously filed before the date of filing with the patent administration department under the State Council an application on an identical design which was published in patent documents published after the said date of filing.

The design for which a patent right may be granted must be substantially different from prior designs or a combination of the features of prior designs.

Any design for which a patent right may be granted must not be in conflict with any prior legal rights of any other person.

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

Article 24

Any invention-creation for which a patent is applied shall not lose its novelty if, within six months before the filing date of the application, one of the following events has occurred:

- (1) it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (2) it was made public for the first time at a prescribed academic or technical conference; or
- (3) it was disclosed by any person without the consent of the applicant.

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) two dimensional designs of images, colours or combinations of the two that mainly serve as indicators.

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

Chapter III Application for Patents

Article 26

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

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

The specification shall describe the invention or utility model in a manner sufficiently clear and complete so that a person skilled in the relevant field of technology can accurately produce it; where necessary, drawings shall be appended. The abstract shall describe briefly the technical essentials of the invention or utility model.

The patent claim shall, on the basis of the specification, clearly and briefly specify the scope of the patent protection claimed.

An applicant who files a patent application for an invention-creation completed on the basis of genetic resources shall in the patent application document indicate the direct and indirect source of the genetic resources; the applicant unable to indicate the original source of the genetic resource must provide an explanation.

Article 27

When a patent application is filed for a design, documents including a request, drawings or photographs of the design as well as a brief explanation of the design and should be submitted.

The drawings or photographs submitted by the applicant should clearly indicate the design sought to be protected by the patent.

Article 28

The date on which the patent administrative department under the State Council receives the patent application documents shall be the date of filing. If the application documents are sent by mail, the postmark date shall be the filing date of the application.

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 administrative department under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

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 documents that was first filed; if the applicant fails to make the written declaration or fails to submit a copy of the patent application documents within the time limit, the claim to the right of priority shall be deemed not to have been made.

Article 31

Each patent application for invention or utility model shall be limited to a single invention or utility model. Two or more inventions or utility models belonging to a single inventive concept may be submitted together in one application.

Each patent application for design shall be limited to a single design. Two or more similar designs used on the same product, or two or more designs used on the products belonging to a single category and sold or used in sets may be submitted together in one application.

Article 32

An applicant may withdraw the patent application at any time before the patent right is granted.

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 the disclosure contained in the initial

description and the 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.

Chapter IV Examination and Approval of Patent Applications

Article 34

Where, after receiving an application for a patent for invention, the patent administrative 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 administrative department under the State Council may publish the application earlier.

Article 35

Upon the applicant's request for an invention patent made at any time within three years from the filing date of an application, the patent administrative department under the State Council may carry out substantive examination of that application. If, without any justified reason, the applicant fails to meet the time limit for requesting such substantive examination, the application shall be deemed to have been withdrawn.

The Patent administrative department under the State Council may of its own accord carry out substantive examination of an application for an invention patent when it deems it necessary.

Article 36

When requesting substantive examination of an invention patent application, the applicant shall furnish reference materials concerning the invention that were available prior to the filing date of the application.

For an patent application for an invention that has been already filed in a foreign country, the patent administrative 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.

Article 37

Where the Patent Administrative 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.

Article 38

If after the applicant has made the observations or amendments, the patent administrative 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.

Article 39

Where it is found after examination as to substance that there is no cause for rejecting the patent application for a invention, the patent administrative 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 upon the date of the announcement.

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 administrative 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.

Article 41

The patent administrative department under the State Council shall set up a Patent Reexamination Board. Where an applicant is not satisfied with the decision to reject his or its application for patent issued by the patent administrative department under the State Council, such applicant may, within three months from the date of receiving the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the patent applicant of the decision.

Where the patent applicant who is not satisfied with the decision of the Patent Reexamination Board, the applicant could, within three months from the date of receiving the notification, bring suit before the people's court.

Chapter V Term, Termination and Invalidation of Patent Rights

Article 42

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

Article 43

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

Article 44

In either of the following cases, the patent right shall be terminated prior to the expiration of its term:

(1) if the annual fee is not paid as prescribed; or

(2) if the patentee renounces his or its patent right by a written declaration.

The termination of a patent right shall be registered and publicly announced by the patent administrative department under the State Council.

Article 45

Where, starting from the date of the announcement of the grant of a patent right by the patent administrative 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 Re-examination Board to declare the patent right invalid.

Article 46

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

Where the patentee or the person who makes 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.

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 concerning patent infringement which has been issued and enforced by the people's court, as well as on any decision concerning disputes of patent infringement which has been enforced or compulsorily executed, or on any contract of patent license or assignment of patent right which has been performed prior to the declaration of the patent right being 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 patentee or the assignor of the patent right does not refund the damages for patent infringement, royalty fee for patent exploitation or patent assignment, which is obviously contrary to the principle of equity, the whole or part of above-mentioned fees should be refunded.

Chapter VI Compulsory Licence for Patent Exploitation

Article 48

In any of the following cases, the patent administrative department under the State Council may, upon the application of that entity or individual, grant a compulsory license to exploit the patent for the invention or utility model.

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

(2) where it has been legally determined that the enforcement of the patent right by the patentee is an act of monopoly, to avoid or to eliminate the adverse effects caused to competition.

Article 49

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

Article 50

For the purpose of public health, the patent administrative department under the State Council may grant a compulsory license to manufacture a drug which has been granted a patent right in China and to export it to the countries or regions specified in related international conventions in which China is a contracting member.

Article 51

Where the invention or utility model for which the patent right has been granted constitutes important technical advance of considerable economic significance compared with 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 administrative 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 administrative 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.

Article 52

Where the invention-creation covered by the compulsory license relates to semi-conductor technology, the exploitation under the compulsory license is limited to the use for the purpose of public interest and the conditions specified in Article 48(2).

Article 53

Except as otherwise provided for in Article 48(2) and 50 of this Law, the compulsory license is used mainly for the supply of the domestic market.

Article 54

Any entity or individual applying a compulsory license in accordance with the provisions of Article 48(1) or Article 51 of this Law, shall provide proof that it or he has made requests for a license to the patentee to exploit the patent on reasonable conditions but was not licensed within a reasonable period of time.

Article 55

The decision made by the patent administrative 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 lead to such compulsory license cease to exist and are unlikely to recur, the patent administrative department under the State Council may, upon the request of the patentee, terminate the compulsory license after examination.

Article 56

Any entity or individual that is granted a compulsory licence shall not have an exclusive right to exploit the patent in question, nor shall it or he have the right to authorize exploitation of the patent by others.

Article 57

Any entity or individual that is granted a compulsory licence shall pay the patentee a reasonable royalty fee for patent exploitation or handle the exploitation fee issue in accordance to the relevant provisions of international conventions in which China participates. The amount of the fee shall be decided by both

parties upon consultation. Where the parties fail to reach an agreement, the patent administrative department under the State Council shall make a ruling.

Article 58

Where the patentee is not satisfied with the decision issued by patent administrative department under the State Council on granting a compulsory license for patent exploitation, or where the patentee or the entity or individual that is granted the compulsory license for patent exploitation is not satisfied with the ruling made by the patent administrative department under the State Council regarding the royalty fee for exploitation, he or it may, within three months from the date upon receiving the notification, file suit to the people's court.

Chapter VII Protection of Patent rights

Article 59

The scope of protection for an invention patent or a utility model patent shall be determined on the basis of the patent claim which may be explained by use of the specification and appended drawings.

The scope of protection for a design patent shall be determined by the product's design shown in the drawings or photographs. The brief statement of the patent could be used to interpret the design of the product shown in the drawings or photographs.

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 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.

Article 61

Where any infringement dispute involves a invention patent 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 course of producing its or his product is different from the patented process.

Where the infringement relates to a utility model patent or design patent, the people's court or the patent administrative authority may require the patentee to furnish a patent evaluation report issued by the patent administrative department under the State Council after searching, analyzing and evaluating the patent which may be used as evidence to determine or settle patent disputes.

Article 62

During a patent infringement dispute, if the alleged infringer has evidence proving its or his technology or design belongs to the prior art or is a prior design, it will not constitute patent infringement.

Article 63

Where any person passes off others' patent, the infringer shall, in addition to bearing the civil liability according to law, amend his act ordered publicly by the patented related administrative authority. The illegal earnings shall be confiscated and a fine will be imposed of not more than four times of the illegal earnings; if there are no illegal earnings, the fine will not be more than RMB 200,000 yuan; where the infringement constitutes a crime, the infringer shall be liable for criminal liability.

Article 64

The relevant patent administrative authority may, based on the evidence it obtains, query the related parties and conduct investigations concerning infringing activities when investigating the suspected passing-off matters; and may examine the place where the suspected infringement took place; view, reproduce any contracts, invoices, books and other materials related to the suspected infringement; examine the products related to suspected infringement, and may seal up or seize the products which has been proved to pass off patent rights.

The parties should neither reject nor interfere the legal performance of duty by the patent related administrative authority, and should to assist and cooperate.

Article 65

The amount of compensation for the damage caused by patent infringement shall be assessed on the basis of the loss actually suffered by the patentee, or the profits which the infringer has earned through the infringement if it is difficult to specify the above loss. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the royalty fee for patent exploitation. The amount of damage shall include the reasonable costs incurred for stopping the patent infringement.

If it is difficult to determine the losses which the patentee has suffered, the profits which the infringer has earned, or the royalty fee for patent exploitation, the people's court may award damages no less than 10,000 yuan and no more than 1,000,000 yuan depending on the type of patent right, the nature and

gravity of the infringing act etc.

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 filing a suit, apply to the people's court for an order to stop the relevant acts.

The applicant shall provide a guarantee for the above-mentioned motions; if the applicant does not provide a bond, the application shall be rejected.

Upon receiving the request, the people's court shall make a ruling within 48 hours where there are special circumstances that require extension, the court may extend the 48 hours. If a ruling is made to stop the related acts, this ruling should be enforced immediately. If the parties are not satisfied with the ruling, they could apply for a one-time review; the enforcement of the ruling will not be suspended during the course of review.

If the applicant does not file a lawsuit within 15 days after the people's court issued an order to stop related acts, the people's court shall withdraw the prior ruling.

If the application is in error, the applicant shall compensate to the opposite party for losses caused by stopping the relevant acts.

Article 67

In order to prevent infringing activities, under the circumstance that the evidence might be destroyed or later be difficult to obtain, the patentee or a related injured party may before filing a law suit apply to the people's court for evidence preservation.

The people's court may order the applicant to provide a guarantee for the application of evidence preservation, and if no guarantee is provided by the applicant, reject the application.

Upon accepting the request, the people's court shall make a ruling within 48 hours; If the court rules to preserve evidence, this ruling should be enforced immediately.

If the applicant does not file a lawsuit within 15 days after the people's court issued an order to preserve evidence, the people's court shall withdraw the prior ruling.

Article 68

The period of limitation for filing a suit concerning the infringement of a patent right shall be two years, counted from the day on which the patentee or the interested parties became aware or should have become aware of the act of infringement.

Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, during the period from the publication of the application for the patent to the grant of patent right to the said invention is paid, 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.

Article 69

None of the following shall be deemed an infringement of the patent right:

(1) Where, after the sale of a patented product or products directly obtained by using the patented process, which was made by the patentee or an entity/individual authorized by the patentee, any other person uses, offers to sell, sells or imports that product;

(2) Before the date of filing the patent application, any person who has already made the identical product, used the identical process, or made the 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 experiments.

(5) For the purpose of providing the information needed for the administrative approval, manufacture, use, import of a drug or a medical apparatus, and exclusively for such manufacture any import of a patented drug or a patented medical apparatus.

Article 70

Any person, who, for business purposes, uses, offers to sell or sells a patented product without knowing that it was made and sold without the authorization of the patentee, shall not be liable for any damages if he can prove that he obtained the product from a legitimate source.

Article 71

Anyone who, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent which divulges State secrets shall be given administrative sanction by the unit to which he belongs or by the competent department at a higher level. If the case constitutes a crime, he shall be

investigated for criminal liability in accordance with law.

Article 72

Anyone who usurps the right of an inventor or designer to apply for a patent for a non-job-related invention-creation or usurps the other rights or interests of an inventor or designer prescribed in this Law shall be given administrative sanction by the unit to which he belongs or by the competent department at a higher level.

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 the other persons who are directly responsible shall be given disciplinary sanction in accordance with law.

Article 74

Where any State functionary working for patent administration or any other 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 investigated 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.

Chapter VIII Supplementary Provisions

Article 75

Rules for the implementation of this Law shall be formulated by the patent administrative department under the State Council and submitted to the State Council for approval before they are put into effect.

Article 76

This Law shall go into effect on April 1, 1985.