

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

(Promulgated by Decree No. 306 of the State Council of the People's Republic of China on June 15, 2001, revised for the first time in accordance with the Decision of the State Council on Amending the Rules for the Implementation of the Patent Law of the People's Republic of China on December 28, 2002, and revised for the second time in accordance with the Decision of the State Council on Amending the Rules for the Implementation of the Patent Law of the People's Republic of China on January 9, 2010)

Chapter I General Provisions

Article 1 These Rules are formulated in accordance with the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law).

Article 2 Any formalities prescribed by the Patent Law and these Rules shall be performed in written form or in any other form prescribed by the patent administration department of the State Council.

Article 3 Any document submitted in accordance with the provisions of the Patent Law and these Rules shall be in Chinese; the standard scientific and technical terms shall be used if there is a prescribed one set forth by the State; where no generally accepted translation in Chinese can be found for a foreign name or scientific or technical term, the one in the original language shall be also indicated.

Where any certificate or certifying document submitted in accordance with the provisions of the Patent Law and these Rules is in a foreign language, the patent administration department of the State Council may, when it deems it necessary, require a Chinese translation of the certificate or the certifying document to be submitted within a specified time limit; where the translation is not submitted within the specified time limit, the certificate or certifying document shall be deemed not to have been submitted.

Article 4 Where any document is sent by mail to the patent administration department of the State Council, the date of mailing indicated by the

postmark on the envelope shall be deemed to be the date of filing; where the date of mailing indicated by the postmark on the envelope is illegible, the date on which the patent administration department of the State Council receives the document shall be the date of filing, except where the date of mailing is proved by the party concerned.

Any document of the patent administration department of the State Council may be served by mail, by personal delivery or by other forms. Where any party concerned appoints a patent agency, the document shall be sent to the patent agency; where no patent agency is appointed, the document shall be sent to the liaison person named in the request.

Where any document is sent by mail by the patent administration department of the State Council, the 16th day from the date of mailing shall be presumed to be the date on which the party concerned receives the document.

Where any document is delivered personally in accordance with the provisions of the patent administration department of the State Council, the date of delivery is the date on which the party concerned receives the document.

Where the address of any document is not clear and it cannot be sent by mail, the document may be served by making an announcement. At the expiration of one month from the date of the announcement, the document shall be deemed to have been served.

Article 5 The first day of any time limit prescribed in the Patent Law and these Rules shall not be counted in the time limit. Where the time limit is counted by year or by month, it shall expire on the corresponding day of the last month; if there is no corresponding day in that month, the time limit shall expire on the last day of that month; if a time limit expires on an official holiday, it shall expire on the first working day following that official holiday.

Article 6 Where a time limit prescribed in the Patent Law or these Rules or specified by the patent administration department of the State Council is not observed by a party concerned because of force majeure, resulting in loss of his or its rights, he or it may, within two months from the date on which the impediment is removed, at the latest within two years immediately following the date of the expiration of that time limit, request the patent administration department of the State Council to restore his or its rights.

Except for circumstances prescribed in the preceding paragraph, where a time limit prescribed in the Patent Law or these Rules or specified by the patent

administration department of the State Council is not observed by a party concerned because of any other justified reason, resulting in loss of his or its rights, he or it may, within two months from the date of receipt of a notification from the patent administration department of the State Council, request the patent administration department of the State Council to restore his or its rights.

Where any party concerned requests restoration of his or its rights in accordance with the provisions of the first or second paragraph of this Article, he or it shall submit a request for restoration of rights, stating the reasons and attaching, if necessary, the relevant certifying documents, and go through the relevant formalities which should have been performed before the loss of his or its rights; where the party concerned requests restoration of his or its rights in accordance with the provisions of the second paragraph of this Article, he or it shall pay the fee for requesting restoration of rights.

Where the party concerned makes a request for an extension of a time limit specified by the patent administration department of the State Council, he or it shall, before the time limit expires, state the reasons to the patent administration department of the State Council and go through the relevant formalities.

The provisions of the first and second paragraphs of this Article shall not be applicable to the time limit referred to in Articles 24, 29, 42 and 68 of the Patent Law.

Article 7 Where an application for a patent relates to the interests of national defense and is required to be kept secret, the application for patent shall be filed with and examined by the national defense patent authority; where an application for patent accepted by the patent administration department of the State Council relates to the interests of national defense and is required to be kept secret, the application shall be promptly forwarded to the national defense patent authority for examination. Where it is found after examination by the national defense patent authority that there is no ground for rejecting the application, the patent administration department of the State Council shall make a decision to grant a national defense patent right.

Where the patent administration department of the State Council finds that an application for patent for invention or patent for utility model which it accepts relates to national security or other vital interests of the State other than interests of national defense and is required to be kept secret, it shall promptly make a decision on handling it as an application for secret patent

and notify the applicant accordingly. The special procedures for the examination and reexamination of an application for secret patent as well as the invalidation of secret patent shall be provided for by the patent administration department of the State Council.

Article 8 An invention or utility model developed in China referred to in Article 20 of the Patent Law means an invention or utility model in which the substantive contents of the technical solution are made within the territory of China.

Where any entity or individual intends to file an application for patent abroad for an invention or utility model developed in China, it or he shall request, in one of the following manners, the patent administration department of the State Council to conduct confidentiality examination:

(1) where filing an application for patent directly in a foreign country or filing an international patent application directly with a relevant foreign organization, it or he shall submit a request for confidentiality examination in advance to the patent administration department of the State Council and state the related technical solution in detail;

(2) where, after filing an application for patent with the patent administration department of the State Council, it or he intends to file an application for patent in a foreign country or an international patent application with a relevant foreign organization, it or he shall submit a request for confidentiality examination to the patent administration department of the State Council before filing the application for patent in a foreign country or the international patent application with the relevant foreign organization.

Where an international patent application is filed with the patent administration department of the State Council, it shall be deemed that a request for confidentiality examination is filed simultaneously.

Article 9 Where the patent administration department of the State Council receives a request filed under Article 8 of these Rules and finds, upon examination, that the invention or utility model is likely to relate to national security or other vital interests of the State and is required to be kept secret, it shall promptly issue a notification of confidentiality examination to the applicant; if the applicant receives no notification of confidentiality examination within four months from the date of filing of his or its request, the applicant may file, in respect of the invention or utility model, an application for patent in a foreign country or an international patent

application with the relevant foreign organization.

Where the patent administration department of the State Council carries out a confidentiality examination in accordance with the notification prescribed in the preceding paragraph, it shall promptly make a decision on whether the invention or utility model is required to be kept secret and notify the applicant accordingly. If the applicant receives no such decision within six months from the date of filing of his or its request, the applicant may file, in respect of the invention or utility model, an application for patent in a foreign country or an international patent application with the relevant foreign organization.

Article 10 Invention-creations which violate the law referred to in Article 5 of the Patent Law shall not include invention-creations only the exploitation of which is prohibited by the law.

Article 11 The date of filing referred to in the Patent Law, except for those referred to in Articles 28 and 42, means the priority date where priority is claimed.

The date of filing referred to in these Rules, except as otherwise prescribed, means the date of filing prescribed in Article 28 of the Patent Law.

Article 12 A service invention-creation made by a person in execution of the tasks of the entity to which he belongs referred to in Article 6 of the Patent Law means any invention-creation made:

- (1) in the course of performing his own duty;
- (2) in execution of any task, other than his own duty, which was entrusted to him by the entity to which he belongs; or
- (3) within one year from his retirement, resignation or from termination of his employment or personnel relationship with the entity to which he previously belongs, where the invention-creation relates to his own duty or any other task entrusted to him by the entity to which he previously belongs.

The entity to which he belongs referred to in Article 6 of the Patent Law includes the entity in which the person concerned is a temporary staff member; material and technical means of the entity referred to in Article 6 of the Patent Law mean the entity's money, equipment, spare parts, raw materials or technical materials which are not available to the public, etc.

Article 13 An inventor or creator referred to in the Patent Law means any person who makes creative contributions to the substantive features of an

invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organizational work, or who only offers facilities for making use of material and technical means, or who only takes part in other auxiliary functions, shall not be considered as an inventor or creator.

Article 14 Except for the assignment of the patent right in accordance with the provisions of Article 10 of the Patent Law, where the patent right is transferred because of any other reason, the party concerned shall, based on the relevant certifying documents or legal papers, request the patent administration department of the State Council to register the transfer of the patent right.

Any license contract for exploitation of a patent which has been concluded by the patentee with an entity or individual shall, within three months from the date of entry into force of the contract, be submitted to the patent administration department of the State Council for the record.

Where any patent right is put in pledge, the pledgor and the pledgee shall jointly register the contract of pledge with the patent administration department of the State Council.

Chapter II Application for Patent

Article 15 Anyone who applies for a patent in written form shall file with the patent administration department of the State Council application documents in two copies.

Anyone who applies for a patent in other forms as provided for by the patent administration department of the State Council shall comply with the relevant provisions.

Any applicant who appoints a patent agency for applying for a patent, or for having other patent matters to attend to before the patent administration department of the State Council, shall submit at the same time a power of attorney indicating the scope of the power entrusted.

Where there are two or more applicants and no patent agency is appointed, unless otherwise stated in the request, the applicant named first in the request shall be the representative.

Article 16 The following particulars shall be indicated in the request of application for patent for invention, utility model or design:

- (1) the title of the invention, utility model or design;
- (2) in the case of an applicant that is a Chinese entity or individual, the applicant's title or name, address, postal code, organization code or resident identity card number; in the case of an applicant that is a foreigner, a foreign enterprise or other foreign organization, the applicant's name or title, nationality or the country or region where the applicant is registered;
- (3) the name of the inventor or creator;
- (4) in the case of an applicant that has appointed a patent agency, the title of the appointed agency and its agency code, and the name, the practice certificate number and the telephone number of the patent agent assigned by the agency;
- (5) in the case that the right of priority is claimed, the date of filing on which the applicant filed his or its first application (hereinafter referred to as the earlier application), the filing number of such application and the title of the authority with which such application was first filed;
- (6) the signature or seal of the applicant or the patent agency;
- (7) a list of the documents constituting the application;
- (8) a list of the documents appending the application; and
- (9) any other related matters which needs to be indicated.

Article 17 The description of an application for a patent for invention or a patent for utility model shall state the title of the invention or utility model, which shall be the same as it appears in the request. The description shall include the following:

- (1) technical field: specifying the technical field to which the technical solution sought to be protected pertains;
- (2) background art: indicating the background art which can be regarded as useful for the understanding, searching and examination of the invention or utility model, and when possible, citing the documents reflecting such art;
- (3) contents of the invention: disclosing the technical problem the invention or utility model aims to settle and the technical solution adopted to resolve the problem, and stating, with reference to the prior art, the advantageous effects of the invention or utility model;
- (4) explanatory notes of drawings: briefly describing each figure in the drawings, if any; and
- (5) mode of carrying out the invention or utility model: describing in detail the optimally selected mode contemplated by the applicant for carrying out the invention or utility model; where appropriate, this shall be done in terms

of examples, and with reference to the drawings, if any.

The manner and order referred to in the preceding paragraph shall be followed by the applicant for a patent for invention or a patent for utility model in drafting the description and each of the parts shall be preceded by a heading, unless, because of the nature of the invention or utility model, a different manner or order would result in a more economical presentation and a better understanding.

The description of the invention or utility model shall use standard terms and be clear in wording, and shall not contain such references to the claims as: "as described in claim ...", nor shall it contain commercial advertising.

Where an application for a patent for invention contains disclosure of one or more nucleotide and/or amino acid sequences, the description shall contain a sequence listing in compliance with the standard prescribed by the patent administration department of the State Council. The sequence listing shall be submitted by the applicant as a separate part of the description, and a copy of the said sequence listing in machine-readable form shall also be submitted in accordance with the provisions of the patent administration department of the State Council.

The description of an application for a patent for utility model shall include the drawings showing the shape, structure or their combination of the product for which protection is sought.

Article 18 The drawings of an invention or utility model shall be numbered and arranged in numerical order consecutively as "Figure 1, Figure 2, ...".

Reference signs not mentioned in the text of the description of the invention or utility model shall not appear in the drawings, and reference signs not included in the drawings shall not be referred to in the text of the description. Reference signs for the same composite part shall be used consistently throughout the application document.

The drawings shall not contain any other explanatory notes, except for words which are indispensable.

Article 19 The claims shall specify the technical features of an invention or utility model.

If there are several claims, they shall be numbered consecutively in Arabic numerals.

The scientific and technical terms used in the claims shall be consistent with those used in the description, and the claims may contain chemical or

mathematical formulae but no drawings. They shall not, except where absolutely necessary, contain such references to the description or drawings as: “as described in part... of the description”, or “as illustrated in Figure... of the drawings”.

The technical features mentioned in the claims may, in order to facilitate understanding of the claims, make reference to the corresponding reference signs in the drawings of the description, and such reference signs shall follow the corresponding technical features and be placed in parentheses. The reference signs shall not be construed as limiting the claims.

Article 20 The claims shall have an independent claim, and may also contain dependent claims.

The independent claim shall outline the technical solution of an invention or utility model and state the essential technical features necessary for the solution of its technical problem.

The dependent claim shall, by additional technical features, further define the claim to which it refers.

Article 21 An independent claim of an invention or utility model shall contain a preamble portion and a characterizing portion, and be presented in the following manner:

(1) a preamble portion: indicating the title of the claimed subject matter of the technical solution of the invention or utility model, and those technical features which are necessary for the definition of the claimed subject matter but which, in combination, are part of the most related prior art; and

(2) a characterizing portion: stating, in such words as “characterized in that...” or in similar expressions, the technical features of the invention or utility model, which distinguish it from the most related prior art. Those features, in combination with the features stated in the preamble portion, serve to define the extent of protection of the invention or utility model.

Where the manner specified in the preceding paragraph is not appropriate to be followed because of the nature of the invention or utility model, an independent claim may be presented in a different manner.

An invention or utility model shall have only one independent claim, which shall precede all the dependent claims relating to the same invention or utility model.

Article 22 Any dependent claim of an invention or utility model shall contain

a reference portion and a characterizing portion, and be presented in the following manner:

- (1) a reference portion: indicating the serial number(s) of the claim(s) referred to, and the title of the subject matter; and
- (2) a characterizing portion: stating the additional technical features of the invention or utility model.

Any dependent claim shall only refer to the preceding claim or claims. A multiple dependent claim, which refers to two or more claims, shall refer to the preceding claims in the alternative only, and shall not serve as a basis for any other multiple dependent claim.

Article 23 The abstract of the description shall consist of a summary of the disclosure as contained in the application for patent for invention or utility model. The summary shall indicate the title of the invention or utility model, and the technical field to which the invention or utility model pertains, and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the technical solution to that problem, and the principal use or uses of the invention or utility model.

The abstract of the description may contain the chemical formula which best characterizes the invention; in an application for a patent which contains drawings, the applicant shall provide a figure which best characterizes the technical features of the invention or utility model. The scale and the distinctness of the figure shall be as such that a reproduction with a linear reduction in size to 4cm × 6cm would still enable all details to be clearly distinguished. The text of the abstract shall contain not more than 300 words. There shall be no commercial advertising in the abstract.

Article 24 Where an invention for which a patent is applied concerns a new biological material which is not available to the public and which cannot be described in the application in such a manner as to enable the invention to be carried out by a person skilled in the art, the applicant shall, in addition to the other requirements provided for in the Patent Law and these Rules, go through the following formalities:

- (1) depositing a sample of the biological material with a depositary institution designated by the patent administration department of the State Council before, or at the latest, on the date of filing (or the priority date where priority is claimed), and submitting at the time of filing or at the latest, within four months from the date of filing, a certificate of deposit and that of viability

from the depositary institution; where they are not submitted within the specified time limit, the sample of the biological material shall be deemed not to have been deposited;

(2) giving in the application document relevant information of the characteristics of the biological material; and

(3) indicating, where the application relates to the deposit of a sample of the biological material, in the request and the description the scientific name of the biological material (with its Latin name) and the title and address of the depositary institution, the date on which the sample of the biological material was deposited and the accession number of the deposit; where, at the time of filing, they are not indicated, they shall be supplied within four months from the date of filing; where after the expiration of the time limit they are not supplied, the sample of the biological material shall be deemed not to have been deposited.

Article 25 Where the applicant for a patent for invention has deposited a sample of biological material in accordance with the provisions of Article 24 of these Rules, and after the application for patent for invention is published, any entity or individual that intends to make use of the biological material to which the application relates, for the purpose of experiment, shall make a request to the patent administration department of the State Council, containing the following particulars:

(1) the title or name and address of the person making the request;

(2) an undertaking not to make the biological material available to any other person; and

(3) an undertaking to use the biological material for an experimental purpose only before the grant of the patent right.

Article 26 Genetic resources referred to in the Patent Law means the materials of actual or potential value which are obtained from human bodies, animals, plants and microorganisms and contain functional units of heredity; an invention-creation accomplished by relying on genetic resources referred to in the Patent Law means an invention-creation accomplished by the use of the heredity function of genetic resources.

Where an application for patent is filed for an invention-creation accomplished by relying on genetic resources, the applicant shall state that fact in the request, and fill in the forms provided by the patent administration department of the State Council.

Article 27 Where an applicant seeks the protection of colors, drawings or photographs in color shall be submitted.

The applicant shall, in respect of the subject matter of the product incorporating the design which is in need of protection, submit the relevant drawings or photographs.

Article 28 The brief explanation of a design shall indicate the title and use of the product incorporating the design and the essential feature of the design, and designate a drawing or photograph which best shows the essential feature of the design. Where the view of the product incorporating the design is omitted or where concurrent protection of colors is sought, this shall be indicated in the brief explanation.

Where an application for patent for design is filed for two or more similar designs incorporated in the same product, one of these designs shall be indicated as the main design in the brief explanation.

The brief explanation shall not contain any commercial advertising and shall not be used to indicate functions of the product.

Article 29 Where the patent administration department of the State Council deems it necessary, it may require the applicant for a patent for design to submit a sample or model of the product incorporating the design. The volume of the sample or model submitted shall not exceed 30cm × 30cm × 30cm, and its weight shall not surpass 15 kilograms. Articles which are easy to get rotten or broken or articles which are dangerous shall not be submitted as the sample or model.

Article 30 An international exhibition recognized by the Chinese Government referred to in subparagraph (1) of Article 24 of the Patent Law means an international exhibition which is registered with or recognized by the International Exhibitions Bureau as stipulated by the International Exhibitions Convention.

An academic or technological meeting referred to in subparagraph (2) of Article 24 of the Patent Law means an academic or technological meeting organized by a competent department concerned of the State Council or by a national academic or technological association.

Where any invention-creation for which a patent is applied falls under the provisions of subparagraph (1) or (2) of Article 24 of the Patent Law, the

applicant shall, when filing the application, make a declaration and, within two months from the date of filing, submit certifying documents issued by the entity which organized the international exhibition or academic or technological meeting, stating the fact that the invention-creation was exhibited or published and the date of its exhibition or publication.

Where any invention-creation for which a patent is applied falls under the provisions of subparagraph (3) of Article 24 of the Patent Law, the patent administration department of the State Council may, when it deems it necessary, require the applicant to submit the relevant certifying documents within a specified time limit.

Where the applicant fails to make a declaration and submit certifying documents as required in the third paragraph of this Article, or fails to submit certifying documents within a specified time limit as required in the fourth paragraph of this Article, the provisions of Article 24 of the Patent Law shall not apply to his or its application.

Article 31 Where an applicant claims the right of foreign priority in accordance with the provisions of Article 30 of the Patent Law, the copy of the earlier application documents submitted by the applicant shall be certified by the authority with which the earlier application was filed. Where, in accordance with the agreement between the patent administration department of the State Council and the said authority, the patent administration department of the State Council obtains a copy of the earlier application documents through electronic transmission or in any other manner, the copy of the earlier application documents certified by the authority shall be deemed to have been submitted by the applicant. Where, in claiming the right of domestic priority, the applicant has indicated the date of filing and the filing number of the earlier application in the request, the copy of the earlier application documents shall be deemed to have been submitted.

Where such one or two particulars as the date of filing, the filing number of the earlier application, or the title of the authority with which the earlier application was filed are omitted or written in error in the request when the right of priority is claimed, the patent administration department of the State Council shall notify the applicant that he or it is required to make rectification within a specified time limit; where the applicant fails to make rectification within the specified time limit, the right of priority shall be deemed not to have been claimed.

Where the name or title of the applicant who claims the right of priority does

not tally with the one recorded in the copy of the earlier application, the applicant shall submit a document certifying the assignment of the right of priority. If no such document is submitted, the right of priority shall be deemed not to have been claimed.

Where any applicant claims a right of foreign priority for his or its application for patent for a design, and no brief explanation of the design was contained in the earlier application, he or it shall not be adversely affected for enjoying the right of priority if the brief explanation submitted by the applicant in accordance with the provisions of Article 28 of these Rules does not go beyond the scope as shown in the drawings or photographs of the earlier application.

Article 32 An applicant may claim one or more priorities for an application for a patent; where multiple priorities are claimed, the priority period for the application shall be calculated from the earliest priority date.

Where an applicant claims the right of domestic priority and if the earlier application is one for a patent for invention, the applicant may file an application for a patent for invention or utility model for the same subject matter; if the earlier application is one for a patent for utility model, the applicant may file an application for a patent for utility model or invention for the same subject matter. However, if the subject matter of the earlier application falls under any of the following circumstances when the later application is filed, it may not be taken as the basis for claiming the domestic priority:

- (1) where the subject matter has been served as the basis for claiming the foreign or domestic priority;
- (2) where the subject matter has been granted a patent right; or
- (3) where it is the subject matter of a divisional application filed as prescribed.

Where an applicant claims the domestic priority, the earlier application shall be deemed to be withdrawn from the date on which the later application is filed.

Article 33 Where an application for patent is filed or the right of foreign priority is claimed by an applicant having no habitual residence or business office in China, the patent administration department of the State Council may, when it deems it necessary, require the applicant to submit the following documents:

- (1) in the case of an applicant that is an individual, a certificate concerning his

nationality;

(2) in the case of an applicant that is an enterprise or other organization, a document certifying the country or region where it is registered; and

(3) a document certifying that the country, to which the applicant belongs, recognizes that Chinese entities and individuals are, under the same conditions as those applied to its nationals, entitled to the patent right, the right of priority and other related rights in that country.

Article 34 Two or more inventions or utility models belonging to a single general inventive concept which may be filed as one application in accordance with the provisions of the first paragraph of Article 31 of the Patent Law shall be technically interrelated and contain one or more of the same or corresponding special technical features. The expression special technical features shall mean those technical features which define a contribution which each of those inventions or utility models, considered as a whole, makes over the prior art.

Article 35 Where two or more similar designs of the same product are filed in one application in accordance with the provisions of the second paragraph of Article 31 of the Patent Law, the other designs of the product shall be similar to the main design indicated in the brief explanation. The number of similar designs contained in an application for patent for design shall not exceed 10.

The two or more designs of products belonging to the same class and sold or used in sets as referred to in the second paragraph of Article 31 of the Patent Law mean that, each product incorporating the design belongs to the same class in the classification of products and is customarily sold or used at the same time, and the designs incorporated in each product have the same concept of design.

Where two or more designs are filed as one application, they shall be numbered consecutively and the numbers shall precede the titles of the drawings or photographs of the product incorporating the design.

Article 36 When withdrawing an application for a patent, the applicant shall submit to the patent administration department of the State Council a declaration whereby stating the title of the invention-creation, the filing number and the date of filing.

Where a declaration to withdraw an application for a patent is submitted after

the preparations for the publication of the application documents have been completed by the patent administration department of the State Council, the application documents shall be published as scheduled. However, the declaration withdrawing the application for patent shall be published in the Patent Gazette issued later.

Chapter III Examination and Approval of Application for Patent

Article 37 Where any of the following events occurs, a person who conducts examination or hears a case in the procedures of preliminary examination, examination as to substance, reexamination or invalidation shall, on his own initiative or upon the request of the parties concerned or any other interested person, be excluded from exercising his function:

- (1) where he is a near relative of a party concerned or of such party's agent;
- (2) where he has an interest in the application for patent or the patent right;
- (3) where he has any other kinds of relations with a party concerned or with such party's agent that may influence impartial examination and hearing; or
- (4) where he is a member of the Patent Reexamination Board who has taken part in the examination of the same application.

Article 38 Upon the receipt of an application for a patent for invention or utility model consisting of a request, a description (drawings must be included in an application for a utility model) and one or more claims, or an application for a patent for design consisting of a request, one or more drawings or photographs showing the design and a brief explanation, the patent administration department of the State Council shall accord the date of filing, issue a filing number, and notify the applicant.

Article 39 In any of the following circumstances, the patent administration department of the State Council shall refuse to accept the application and notify the applicant accordingly:

- (1) where the application for a patent for invention or utility model does not contain a request, a description (the description of a utility model does not contain drawings) or claims, or the application for a patent for design does not contain a request, drawings or photographs, or a brief explanation;
- (2) where the application is not written in Chinese;
- (3) where the application is not in conformity with the provisions of the first paragraph of Article 121 of these Rules;

- (4) where the request does not contain the name or title, or address of the applicant;
- (5) where the application is obviously not in conformity with the provisions of Article 18 or of the first paragraph of Article 19 of the Patent Law; or
- (6) where the type of the application for a patent (patent for invention, utility model or design) is not clear and definite or cannot be ascertained.

Article 40 Where there are explanatory notes to the drawings in a description, but the drawings or part of the drawings are omitted, the applicant shall, within the time limit specified by the patent administration department of the State Council, either furnish the drawings or make a declaration for the deletion of the explanatory notes to the drawings. If the drawings are submitted by the applicant at a later date, the date of their submission or mailing to the patent administration department of the State Council shall be the date of filing of the application; if the explanatory notes to the drawings are deleted, the initial date of filing shall be retained.

Article 41 Where two or more applicants respectively file, on the same day (which means the date of filing or, where priority is claimed, the priority date), applications for patent for the identical invention-creation, they shall, after receipt of a notification from the patent administration department of the State Council, hold consultations among themselves to decide the person or persons who shall be entitled to file the application.

Where an applicant files on the same day (which means the date of filing) applications for both a patent for utility model and a patent for invention for the identical invention-creation, he or it shall, when filing the applications, state respectively that another patent application for the identical invention-creation has been filed by him or it; if the applicant fails to do so, the issue shall be handled in accordance with the provisions of the first paragraph of Article 9 of the Patent Law whereby only one patent right shall be granted for any identical invention-creation.

Where the patent administration department of the State Council announces the grant of a patent for utility model, it shall announce the statement made by the applicant in accordance with the provision of the second paragraph of this Article that he or it has simultaneously filed an application for a patent for invention.

Where it is found after examination that there is no ground for rejecting the application for patent for invention, the patent administration department of

the State Council shall notify the applicant that he or it is required to declare, within a specified time limit, the abandonment of his or its patent for utility model. If the applicant so declares, the patent administration department of the State Council shall make a decision to grant a patent for invention, and announce at the same time both the grant of the patent for invention and the declaration of the applicant to abandon his or its patent for utility model. If the applicant refuses to abandon his or its patent for utility model, the patent administration department of the State Council shall reject the application for patent for invention; if the applicant fails to respond within the specified time limit, the application for patent for invention shall be deemed to have been withdrawn.

The patent right for utility model ceases from the date of the announcement of grant of the patent for invention.

Article 42 Where an application for a patent contains two or more inventions, utility models or designs, the applicant may, before the expiration of the time limit provided for in the first paragraph of Article 54 of these Rules, submit to the patent administration department of the State Council a divisional application; however, where an application for patent has been rejected, withdrawn or is deemed to have been withdrawn, no divisional application may be filed.

If the patent administration department of the State Council finds that an application for a patent is not in conformity with the provisions of Article 31 of the Patent Law or of Article 34 or 35 of these Rules, it shall notify the applicant that he or it is required to amend the application within a specified time limit; if the applicant fails to make any response after the expiration of the specified time limit, the application shall be deemed to have been withdrawn.

The type of the divisional application shall be the same as that of the initial application.

Article 43 A divisional application filed in accordance with the provisions of Article 42 of these Rules shall be entitled to the date of filing and, if priority is claimed, the priority date of the initial application, provided that the divisional application does not go beyond the scope of disclosure contained in the initial application.

For any divisional application the relevant formalities shall be performed as required in the Patent Law and these Rules.

The filing number and the date of filing of the initial application shall be indicated in the request of the divisional application. When the divisional application is filed, it shall be accompanied by a copy of the initial application; if priority is claimed for the initial application, a copy of the priority document of the initial application shall also be submitted by the applicant.

Article 44 Preliminary examination referred to in Articles 34 and 40 of the Patent Law means the check of an application for a patent to see whether or not it contains the documents as provided for in Article 26 or 27 of the Patent Law and other necessary documents, and whether or not those documents are in the prescribed form; such check shall also include the following:

(1) whether or not any application for a patent for invention obviously falls under Article 5 or 25 of the Patent Law, or is not in conformity with the provisions of Article 18, the first paragraph of Article 19 or the first paragraph of Article 20 of the Patent Law, or Article 16 or the second paragraph of Article 26 of these Rules, or is obviously not in conformity with the provisions of the second paragraph of Article 2, the fifth paragraph of Article 26, the first paragraph of Article 31 or Article 33 of the Patent Law, or Articles 17 to 21 of these Rules;

(2) whether or not any application for a patent for utility model obviously falls under Article 5 or 25 of the Patent Law, or is not in conformity with the provisions of Article 18, the first paragraph of Article 19 or the first paragraph of Article 20 of the Patent Law, or Articles 16 to 19 or Articles 21 to 23 of these Rules, or is obviously not in conformity with the provisions of the third paragraph of Article 2, the second or fourth paragraph of Article 22, the third or fourth paragraph of Article 26, the first paragraph of Article 31 or Article 33 of the Patent Law, or Article 20 or the first paragraph of Article 43 of these Rules, or is not entitled to a patent right in accordance with the provisions of Article 9 of the Patent Law;

(3) whether or not any application for a patent for design obviously falls under Article 5 or subparagraph (6) of the first paragraph of Article 25 of the Patent Law, or is not in conformity with the provisions of Article 18 or the first paragraph of Article 19 of the Patent Law, or Article 16, 27 or 28 of these Rules, or is obviously not in conformity with the provisions of the fourth paragraph of Article 2, the first paragraph of Article 23, the second paragraph of Article 27, the second paragraph of Article 31 or Article 33 of the Patent Law, or the first paragraph of Article 43 of these Rules, or is not entitled to a patent right in accordance with the provisions of Article 9 of the Patent Law;

and

(4) whether or not any application document is in conformity with the provisions of Article 2 or the first paragraph of Article 3 of these Rules.

The patent administration department of the State Council shall notify the applicant of its opinions after checking his or its application and require him or it to state his or its observations or to rectify his or its application within a specified time limit; if the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made his or its observations or the corrections, the patent administration department of the State Council still finds that the application is not in conformity with the provisions of the articles cited in the preceding paragraph, the application shall be rejected.

Article 45 Apart from an application for patent, any other document relating to the patent application which is submitted by the applicant to the patent administration department of the State Council shall, in any of the following circumstances, be deemed not to have been submitted:

- (1) where the document is not presented in the prescribed form or the indications therein are not in conformity with the provisions; or
- (2) where a certifying document is not submitted as prescribed.

The patent administration department of the State Council shall notify the applicant of its opinion that the document is deemed not to have been submitted after being checked.

Article 46 Where the applicant requests an earlier publication of his or its application for a patent for invention, a statement shall be made to the patent administration department of the State Council. The patent administration department of the State Council shall, after preliminary examination of the application, publish it immediately, unless it is to be rejected.

Article 47 The applicant shall, when indicating a product incorporating the design and the class to which that product belongs, refer to the classification of products for designs published by the patent administration department of the State Council. Where no indication, or an incorrect indication, of the class to which the product incorporating the design belongs is made, the patent administration department of the State Council may supply the indication or correct it.

Article 48 Any person may, from the date of publication of an application for a patent for invention till the date of announcing the grant of the patent right, submit to the patent administration department of the State Council his or its observation, with reasons therefor, on the application which is not in conformity with the provisions of the Patent Law.

Article 49 Where the applicant for a patent for invention cannot furnish, for justified reasons, the documents concerning any search or results of any examination specified in Article 36 of the Patent Law, he or it shall make a statement to the patent administration department of the State Council and submit them when the said documents are available.

Article 50 The patent administration department of the State Council shall, when proceeding on its own initiative to examine an application for a patent in accordance with the provisions of the second paragraph of Article 35 of the Patent Law, notify the applicant accordingly.

Article 51 When requesting for examination as to substance, or within three months from the date of receipt of the notification from the patent administration department of the State Council that the application has entered into examination as to substance, the applicant for a patent for invention may amend the application for a patent for invention on his or its own initiative.

Within two months from the date of filing, the applicant for a patent for utility model or design may amend the application for a patent for utility model or design on his or its own initiative.

Where the applicant amends the application after receiving the notification of opinions of examination from the patent administration department of the State Council, he or it shall make the amendment to the defects pointed out by the notification.

The patent administration department of the State Council may, on its own initiative, correct the obvious clerical mistakes and symbol mistakes in the documents of application for a patent. Where the patent administration department of the State Council corrects mistakes on its own initiative, it shall notify the applicant accordingly.

Article 52 When any amendment is made to the description or the claims in an application for a patent for invention or utility model, a replacement sheet

in prescribed form shall be submitted, unless the amendment concerns only the alteration, insertion or deletion of a few words. Where an amendment to the drawings or photographs of an application for a patent for design is made, a replacement sheet shall be submitted as prescribed.

Article 53 In accordance with the provisions of Article 38 of the Patent Law, the circumstances where an application for a patent for invention shall be rejected after examination as to substance are as follows:

- (1) where the application falls under Article 5 or 25 of the Patent Law, or the applicant is not entitled to a patent right in accordance with the provisions of Article 9 of the Patent Law;
- (2) where the application does not comply with the provisions of the second paragraph of Article 2, the first paragraph of Article 20, Article 22, the third, fourth or fifth paragraph of Article 26 or the first paragraph of Article 31 of the Patent Law, or the second paragraph of Article 20 of these Rules; or
- (3) where the amendment to the application does not comply with the provisions of Article 33 of the Patent Law, or the divisional application does not comply with the provisions of the first paragraph of Article 43 of these Rules.

Article 54 After the patent administration department of the State Council issues a notification to grant the patent right, the applicant shall go through the formalities of registration within two months from the date of receipt of the notification. If the applicant completes the formalities of registration within the said time limit, the patent administration department of the State Council shall grant the patent right, issue the patent certificate and make an announcement thereon.

If the applicant does not go through the formalities of registration within the time limit, he or it shall be deemed to have abandoned his or its right to obtain the patent right.

Article 55 Where it is found after examination that there is no ground for rejecting an application for a secret patent, the patent administration department of the State Council shall make a decision to grant a secret patent, issue the certificate of the secret patent, and register the matters relating to the secret patent.

Article 56 After the announcement of the decision to grant a patent for utility

model or a patent for design, the patentee or the interested party referred to in Article 60 of the Patent Law may request the patent administration department of the State Council to make a patent right assessment report.

Any person that requests a patent right assessment report shall submit a request therefor, indicating the patent number. Each request shall be limited for one patent.

Where the request for a patent right assessment report does not comply with the provisions, the patent administration department of the State Council shall notify the requesting party that he or it is required to rectify the request within a specified time limit; if the requesting party fails to do so within the time limit, the request shall be deemed not to have been submitted.

Article 57 The patent administration department of the State Council shall issue a patent right assessment report within two months after receipt of the request for the patent right assessment report. Where two or more persons request a patent right assessment report in respect of the same patent for utility model or design, the patent administration department of the State Council shall make one patent right assessment report only. Any entity or individual may consult or copy the patent right assessment report.

Article 58 The patent administration department of the State Council shall correct promptly the mistakes in the patent announcements and patent pamphlets once they are discovered, and the corrections shall be announced accordingly.

Chapter IV Reexamination of Patent Application and Invalidation of Patent Right

Article 59 The Patent Reexamination Board shall consist of technical and legal experts appointed by the patent administration department of the State Council, and the responsible person of the patent administration department of the State Council shall be the Director of the Board.

Article 60 Where the applicant requests the Patent Reexamination Board to make a reexamination in accordance with the provisions of Article 41 of the Patent Law, he or it shall file a request for reexamination, state the reasons and, when necessary, attach the relevant supporting documents.

Where the request for reexamination does not comply with the provisions of

the first paragraph of Article 19 or the first paragraph of Article 41 of the Patent Law, the Patent Reexamination Board shall refuse to accept it, notify the applicant in writing and give the reasons therefor.

Where the request for reexamination does not comply with the prescribed form, the person making the request shall rectify it within the time limit specified by the Patent Reexamination Board; if the person making the request fails to do so, the request for reexamination shall be deemed not to have been filed.

Article 61 The person making the request may amend his or its patent application when he or it requests reexamination or makes responses to the notification of reexamination issued by the Patent Reexamination Board; however, the amendments shall be limited only to remove the defects pointed out in the decision of rejection of the application or in the notification of reexamination.

The amendments to the application for patent shall be in two copies.

Article 62 The Patent Reexamination Board shall remit the request for reexamination which it accepts to the original examination department of the patent administration department of the State Council for reexamination. Where the original examination department agrees to revoke its original decision based on the request of the person requesting reexamination, the Patent Reexamination Board shall make a decision accordingly and notify the person requesting reexamination.

Article 63 Where, after reexamination, the Patent Reexamination Board finds that the request for reexamination does not comply with the relevant provisions of the Patent Law and these Rules, it shall notify the person requesting reexamination and require him or it to submit his or its observation within a specified time limit. If the time limit for making a response is not met, the request for reexamination shall be deemed to have been withdrawn; where, after the person making the request has made his or its observations or amendments, the Patent Reexamination Board still finds that the request does not comply with the relevant provisions of the Patent Law and these Rules, it shall make a decision of reexamination to maintain the earlier decision rejecting the application.

Where, after reexamination, the Patent Reexamination Board finds that the decision rejecting the application does not comply with the relevant

provisions of the Patent Law and these Rules, or that the amended application has removed the defects as pointed out by the decision rejecting the application, it shall revoke the decision rejecting the application, and allow the original examination department to resume the examination procedure.

Article 64 At any time before the Patent Reexamination Board makes its decision on a request for reexamination, the person making the request may withdraw his or its request for reexamination.

Where the person requesting reexamination withdraws his or its request for reexamination before the Patent Reexamination Board makes its decision, the procedure of reexamination terminates.

Article 65 Any person requesting invalidation or part invalidation of a patent right in accordance with the provisions of Article 45 of the Patent Law shall submit a request for invalidation and the necessary evidence in two copies to the Patent Reexamination Board. The request for invalidation shall state in detail the grounds for filing the request, making reference to all the evidence as submitted, and indicate the piece of evidence on which each ground is based.

The grounds on which a request for invalidation is based, referred to in the preceding paragraph, mean that an invention-creation for which the patent right is granted does not comply with the provisions of Article 2, the first paragraph of Article 20, Article 22, Article 23, the third or fourth paragraph of Article 26, the second paragraph of Article 27 or Article 33 of the Patent Law, or the second paragraph of Article 20 or the first paragraph of Article 43 of these Rules; or the invention-creation falls under the provisions of Article 5 or 25 of the Patent Law; or the applicant is not entitled to be granted the patent right in accordance with the provisions of Article 9 of the Patent Law.

Article 66 Where a request for invalidation does not comply with the provisions of the first paragraph of Article 19 of the Patent Law or Article 65 of these Rules, the Patent Reexamination Board shall refuse to accept it.

Where, after a decision on a request for invalidation of the patent right is made by the Patent Reexamination Board, another request for invalidation based on the same grounds and evidence is raised, the Patent Reexamination Board shall refuse to accept it.

Where a request for invalidation of a patent for design is filed on the ground that the patent for design does not comply with the provisions of the third

paragraph of Article 23 of the Patent Law, but no evidence is submitted to prove such conflict of rights, the Patent Reexamination Board shall refuse to accept it.

Where a request for invalidation of the patent right does not comply with the prescribed form, the person making the request shall rectify it within the time limit specified by the Patent Reexamination Board; if the rectification fails to be made within the time limit, the request for invalidation shall be deemed not to have been made.

Article 67 After a request for invalidation is accepted by the Patent Reexamination Board, the person making the request may add grounds or supplement evidence within one month from the date when the request for invalidation is filed. Additional grounds or evidence which is submitted after the said time limit may be disregarded by the Patent Reexamination Board.

Article 68 The Patent Reexamination Board shall send a copy of the request for invalidation of the patent right and copies of the relevant documents to the patentee and require him or it to present his or its observation within a specified time limit.

The patentee and the person making the request for invalidation shall, within the specified time limit, make responses to the notification concerning transmitted documents or the notification concerning the examination of the request for invalidation sent by the Patent Reexamination Board; where no response is made within the specified time limit, the examination of the Patent Reexamination Board shall not be affected.

Article 69 In the course of the examination of a request for invalidation, the patentee for a patent for invention or utility model concerned may amend his or its claims, but he or it may not broaden the scope of protection of the original patent.

The patentee for a patent for invention or utility model concerned shall not amend his or its description or drawings, and the patentee for a patent for design concerned shall not amend his or its drawings, photographs or the brief explanation of the design.

Article 70 The Patent Reexamination Board may, at the request of the parties concerned or in accordance with the needs of the case, decide to hold an oral hearing in respect of a request for invalidation.

Where the Patent Reexamination Board decides to hold an oral hearing in respect of a request for invalidation, it shall send a notification to the parties concerned, indicating the date and place of the oral hearing to be held. The parties concerned shall make a response to the notification within the time limit specified in the notification.

Where the person requesting invalidation fails to make a response to the notification of the oral hearing sent by the Patent Reexamination Board within the specified time limit, and fails to take part in the oral hearing, the request for invalidation shall be deemed to have been withdrawn; where the patentee fails to take part in the oral hearing, the Patent Reexamination Board may proceed to examination by default.

Article 71 In the procedure of the examination of a request for invalidation, the time limit specified by the Patent Reexamination Board shall not be extended.

Article 72 The person requesting invalidation may withdraw his request before the Patent Reexamination Board makes a decision on it.

Where the person requesting invalidation withdraws his or its request or where his or its request for invalidation is deemed to have been withdrawn before the Patent Reexamination Board makes a decision thereon, the procedure of the examination of the request for invalidation terminates. However, where the Patent Reexamination Board, based on the examination work it has done, finds that a decision could be made on invalidation or invalidation in part of the patent right, it shall not terminate the examination procedure.

Chapter V Compulsory License for Exploitation of Patent

Article 73 The insufficient exploitation of patent referred to in subparagraph (1) of Article 48 of the Patent Law means that the manner or scale of the exploitation of patent by the patentee and/or the licensee authorized by him or it cannot satisfy the demands of the domestic market for the patented product or patented process.

A pharmaceutical product to which the patent right has been granted referred to in Article 50 of the Patent Law means any patented product, or product directly obtained by a patented process, in the pharmaceutical sector which is needed to address public health problems, including the patented active

ingredients necessary for the manufacture of the product and the diagnostic kits needed for its use.

Article 74 Any entity or individual requesting a compulsory license shall submit to the patent administration department of the State Council a request for compulsory license, state the reasons thereof, and attach the relevant certifying documents.

The patent administration department of the State Council shall send a copy of the request for compulsory license to the patentee, who shall make his or its observation within the time limit specified by the patent administration department of the State Council; where no response is made within the time limit, the patent administration department of the State Council shall not be affected in making its decision.

Before making a decision to reject a request for compulsory license or to grant a compulsory license, the patent administration department of the State Council shall notify the person making the request and the patentee of the decision to be made and the reasons therefor.

A decision made by the patent administration department of the State Council on granting a compulsory license in accordance with the provisions of Article 50 of the Patent Law shall, at the same time, comply with the provisions of the relevant international treaties on granting compulsory license for the purpose of addressing public health issues, which are concluded or acceded to by China, except for the provisions on which China has made reservation.

Article 75 Where a party concerned requests, in accordance with the provisions of Article 57 of the Patent Law, the patent administration department of the State Council to adjudicate the fees for exploitation, he or it shall submit a request for adjudication and furnish documents showing that the parties concerned have not concluded an agreement thereon. The patent administration department of the State Council shall make an adjudication within three months from the date of receipt of the request and notify the parties concerned accordingly.

Chapter VI Rewards and Remuneration for Inventors and Creators of Service Invention-creations

Article 76 An entity to which a patent right is granted may conclude with the inventor or creator an agreement on, or provide in its bylaws formulated in

accordance with law, the manner and amount of the rewards and remuneration referred to in Article 16 of the Patent Law.

The rewards and remuneration accorded to an inventor or creator by any enterprise or institution shall be handled in accordance with the provisions of the State on the financial and accounting system.

Article 77 Where an entity to which a patent right is granted fails to conclude with the inventor or creator an agreement on, and fails to provide in its bylaws formulated in accordance with law, the manner and amount of the rewards referred to in Article 16 of the Patent Law, it shall, within three months from the date of the announcement of the grant of the patent right, accord to the inventor or creator a sum of money as prize. The money prize for a patent for invention shall be a minimum of 3,000 yuan; the money prize for a patent for utility model or design shall be a minimum of 1,000 yuan.

Where an invention-creation is made on the basis of an inventor's or creator's proposal adopted by the entity to which he belongs, the entity to which a patent right is granted shall accord to him a money prize on favorable terms.

Article 78 Where an entity to which a patent right is granted fails to conclude with the inventor or creator an agreement on, and fails to provide in its bylaws formulated in accordance with law, the manner and amount of the rewards referred to in Article 16 of the Patent Law, it shall, after the patent for invention-creation is exploited within the duration of the patent right, draw each year from the profits from exploitation of the patent for the invention or utility model a percentage of not less than 2%, or from the profits from exploitation of the patent for the design a percentage of not less than 0.2%, and award it to the inventor or creator as remuneration. The entity may, as an alternative, by making reference to the said percentage, award a lump sum of money to the inventor or creator as remuneration once and for all. Where an entity to which a patent right is granted authorizes any other entity or individual to exploit its patent, it shall draw from the exploitation fee it receives a percentage of not less than 10% and award it to the inventor or creator as remuneration.

Chapter VII Protection of Patent Right

Article 79 The administrative authority for patent affairs referred to in the Patent Law and these Rules means the department responsible for the

administrative work concerning patent affairs set up by the people's government of any province, autonomous region, or municipality directly under the Central Government, or by the people's government of any city divided into districts which has a large amount of patent administration work to attend to and has the ability to deal with the matter.

Article 80 The patent administration department of the State Council shall provide professional guidance to the administrative authorities for patent affairs in handling patent infringement disputes, investigating and punishing acts of passing off patents and mediating patent disputes.

Article 81 Where any party concerned requests handling of a patent infringement dispute or mediation of a patent dispute, such dispute shall fall under the jurisdiction of the administrative authority for patent affairs of the place where the requested party has his or its location or where the act of infringement takes place.

Where two or more administrative authorities for patent affairs all have jurisdiction over a patent dispute, the party concerned may file his or its request with one of them; where requests are filed with two or more competent administrative authorities for patent affairs, the administrative authority for patent affairs which first accepts the request shall have jurisdiction.

Where administrative authorities for patent affairs have a dispute over their jurisdiction, the administrative authority for patent affairs of their common higher people's government shall designate one administrative authority for patent affairs to exercise the jurisdiction; if there is no such administrative authority for patent affairs of their common higher people's government, the patent administration department of the State Council shall designate one administrative authority for patent affairs to exercise the jurisdiction.

Article 82 Where, in the course of handling a patent infringement dispute, the alleged infringer requests invalidation of the patent right and his or its request is accepted by the Patent Reexamination Board, he or it may request the administrative authority for patent affairs concerned to suspend the handling of the matter.

If the administrative authority for patent affairs considers that the reasons set forth by the alleged infringer for the suspension are obviously untenable, it may not suspend the handling of the matter.

Article 83 Where any patentee affixes a patent indication on the patented product or on the package of that product in accordance with the provisions of Article 17 of the Patent Law, he or it shall make the affixation in the manner as prescribed by the patent administration department of the State Council.

Where any patent indication is not in conformity with the provisions of the preceding paragraph, the administrative authority for patent affairs shall order corrections to be made accordingly.

Article 84 Any of the following acts constitutes an act of passing off a patent as prescribed in Article 63 of the Patent Law:

- (1) affixing a patent indication on an unpatented product or on the package of such product, continuing to affix a patent indication on a product or on the package of such product after the related patent right is declared invalid or ceases, or affixing the patent number of another person on a product or on the package of a product without authorization;
- (2) selling a product as prescribed in subparagraph (1);
- (3) indicating an unpatented technology or design as a patented technology or design, indicating a patent application as a patent or using the patent number of another person without authorization, in such materials as specifications of a product etc., which could mislead the public to regard the related technology or design as a patented technology or design;
- (4) counterfeiting or transforming any patent certificate, patent document or patent application document; or
- (5) any other act which might mislead the public into regarding an unpatented technology or design as a patented technology or design.

Where any person affixes a patent indication legally on a patented product, or on a product directly obtained by a patented process, or on the package of such product before cessation of the patent right, and offers for sale or sells such product after cessation of the patent right, such act does not constitute an act of passing off a patent.

Where any person unknowingly sells a product passing off a patent, and can prove that he or it obtains the product from a legitimate channel, the administrative authority for patent affairs shall order him or it to stop selling the product, but exempt him or it from paying a fine.

Article 85 Subject to the provisions of Article 60 of the Patent Law, the administrative authority for patent affairs may, at the request of the parties

concerned, mediate the following patent disputes:

- (1) any dispute over the ownership of the right to apply for patent or the patent right;
- (2) any dispute over the qualification of an inventor or creator;
- (3) any dispute over the rewards and remuneration of the inventor or creator of a service invention-creation;
- (4) any dispute over the unpaid appropriate fee for the exploitation of an invention after the publication of an application for patent but before the grant of the patent right; and
- (5) any other patent dispute.

Where the party concerned requests the administrative authority for patent affairs to mediate a dispute referred to in subparagraph (4) of the preceding paragraph, the request shall be made after the grant of the patent right.

Article 86 Where any party, in respect of a dispute over the ownership of the right to apply for patent or the patent right, has already applied for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court, he or it may request the patent administration department of the State Council to suspend the relevant procedures.

Any party requesting the suspension of the relevant procedures in accordance with the preceding paragraph shall submit a request to the patent administration department of the State Council, which is accompanied by a copy of the document of the administrative authority for patent affairs or the people's court acknowledging acceptance of the case, with the filing number or the patent number concerned indicated.

After a mediation statement made by the administrative authority for patent affairs or a judgment rendered by the people's court has entered into force, the parties concerned shall go through the formalities for resuming the relevant procedures with the patent administration department of the State Council. If, within one year from the date when the request for suspension is filed, no decision is made on the dispute relating to the ownership of the right to apply for a patent or the patent right, and it is necessary to continue the suspension, the party who makes the request shall, within the said time limit, request extension of the suspension. If no such request for extension is filed at the expiration of the said time limit, the patent administration department of the State Council shall resume the procedures on its own initiative.

Article 87 Where, in hearing civil cases, the people's court has ordered the adoption of preservation measures for the right to apply for patent or the patent right, the patent administration department of the State Council shall suspend the relevant procedures concerning the patent application or patent right under preservation on the date of receipt of the order and the notice for execution assistance with the filing number or the patent number indicated. If, at the expiration of the time limit for preservation, there is no order of the people's court to continue the preservation, the patent administration department of the State Council shall resume the relevant procedures on its own initiative.

Article 88 The suspension of the relevant procedures by the patent administration department of the State Council in accordance with the provisions of Articles 86 and 87 of these Rules refers to the suspension of such procedures as preliminary examination, examination as to substance, and reexamination of a patent application, the granting of a patent right and the invalidation of a patent, and to the suspension of such procedures as the abandonment of a patent right, the change in or transfer of a patent right or a right to apply for patent, the pledge of a patent right, and the cessation of a patent right before the expiration of its duration.

Chapter VIII Patent Registration and Patent Gazette

Article 89 The patent administration department of the State Council shall keep a Patent Register in which the registration of the following matters relating to patent applications or patent rights shall be made:

- (1) any grant of the patent right;
- (2) any transfer of the right to apply for patent or the patent right;
- (3) any pledge and preservation of the patent right and their discharge;
- (4) any license contract for exploitation of a patent submitted for the record;
- (5) any invalidation of the patent right;
- (6) any cessation of the patent right;
- (7) any restoration of the patent right;
- (8) any compulsory license for exploitation of a patent; and
- (9) any change in the name or title, nationality and address of a patentee.

Article 90 The patent administration department of the State Council shall publish the Patent Gazette at regular intervals, publishing or announcing the

following:

- (1) the bibliographic data and the abstract of the description of an application for a patent for invention;
- (2) any request for examination as to substance of an application for a patent for invention and any decision made by the patent administration department of the State Council to proceed on its own initiative to examine as to substance an application for a patent for invention;
- (3) any rejection, withdrawal, deemed withdrawal, deemed abandonment, restoration and transfer of an application for a patent for invention after its publication;
- (4) any grant of the patent right and the bibliographic data of the patent right;
- (5) the abstract of the description of a patent for invention or a patent for utility model, one drawing or photograph of a patent for design;
- (6) any declassification of a national defense patent or a secret patent;
- (7) any invalidation of the patent right;
- (8) any cessation or restoration of the patent right;
- (9) any transfer of the patent right;
- (10) any license contract for exploitation of a patent submitted for the record;
- (11) any pledge or preservation of the patent right and their discharge;
- (12) any grant of a compulsory license for exploitation of a patent;
- (13) any change in the name or title and address of a patentee;
- (14) any service of documents by way of making an announcement;
- (15) any correction made by the patent administration department of the State Council; and
- (16) any other related matters.

Article 91 The patent administration department of the State Council shall make the patent gazettes, the pamphlets of applications for patents for invention and the pamphlets of patents for invention, patents for utility model and patents for design available to the public for consultation free of charge.

Article 92 The patent administration department of the State Council is responsible for exchanging, in accordance with the principle of reciprocity, patent documentation with the patent authorities of other countries or regions or with regional patent organizations.

Chapter IX Fees

Article 93 When any person files an application for a patent with, or has other formalities to go through at, the patent administration department of the State Council, he or it shall pay the following fees:

- (1) a filing fee, additional fee for filing an application, printing fee for publishing an application, and fee for claiming priority;
- (2) a fee for examination as to substance for an application for patent for invention, and reexamination fee;
- (3) a registration fee for the grant of a patent right, printing fee for the announcement of the grant of a patent right, and annual fee;
- (4) a fee for requesting restoration of rights, and fee for requesting extension of a time limit; and

(5) a fee for making a change in the bibliographic data, fee for requesting a patent right assessment report, and fee for requesting invalidation of a patent. The amount of the fees referred to in the preceding paragraph shall be prescribed by the price administration department and the finance department of the State Council in conjunction with the patent administration department of the State Council.

Article 94 The fees provided for in the Patent Law and these Rules may be paid directly to the patent administration department of the State Council, or paid by way of postal remittance or bank transfer, or by way of any other means as prescribed by the patent administration department of the State Council.

Where any fee is paid by way of postal remittance or bank transfer, the applicant or the patentee shall indicate on the money order sent to the patent administration department of the State Council at least the correct filing number or patent number and the title of the fee paid. If the requirements as prescribed in this paragraph are not complied with, the payment of the fee shall be deemed not to have been made.

Where any fee is paid directly to the patent administration department of the State Council, the date on which the fee is paid shall be the date of payment; where any fee is paid by way of postal remittance, the date of remittance indicated by the postmark shall be the date of payment; where any fee is paid by way of bank transfer, the date on which the transfer of the fee is done shall be the date of payment.

Where any patent fee is paid in excess of the amount as prescribed, or paid in duplication or mistakenly, the party making the payment may, within three

years from the date of payment, request a refund thereof from the patent administration department of the State Council, and the patent administration department of the State Council shall make such refund.

Article 95 The applicant shall pay the filing fee, the printing fee for publishing the application and the necessary additional fee for filing the application within two months from the date of filing or within 15 days from the date of receipt of the notification of acceptance of the application; if the fees are not paid or not paid in full within the time limit, the application shall be deemed to have been withdrawn.

Where the applicant claims priority, he or it shall pay the fee for claiming priority at the same time when paying the filing fee; if the fee for claiming priority is not paid or not paid in full within the time limit, the claim for priority shall be deemed not to have been made.

Article 96 Where the party concerned makes a request for an examination as to substance or a reexamination, the relevant fee shall be paid within the time limit as prescribed respectively for such requests by the Patent Law and these Rules; if the fee is not paid or not paid in full within the time limit, the request is deemed not to have been made.

Article 97 When the applicant goes through the formalities of registration, he or it shall pay the registration fee for the grant of the patent right, the printing fee for the announcement of the grant of the patent right, and the annual fee of the year in which the patent right is granted; if such fees are not paid or not paid in full within the time limit, the registration of the grant of the patent right shall be deemed not to have been made.

Article 98 The annual fee of a patent right after the year in which the patent is granted shall be paid before the expiration of the preceding year. If the patentee fails to pay or pay in full the fee, the patent administration department of the State Council shall notify the patentee that he or it is required to pay the fee or to make up the insufficiency within six months from the date of expiration of the time limit within which the annual fee is due to be paid, and at the same time pay a surcharge; the amount of the surcharge shall be, for each month of late payment, 5% of the whole amount of the annual fee of the year within which the annual fee is due to be paid; if the fee and the surcharge are not paid within the time limit, the patent right

shall lapse from the date of expiration of the time limit within which the annual fee should be paid.

Article 99 A fee for requesting restoration of rights shall be paid within the relevant time limit prescribed in these Rules; if the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

A fee for requesting extension of a time limit shall be paid before the date of expiration of the relevant time limit; if the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

A fee for making a change in the bibliographic data, a fee for requesting a patent right assessment report and a fee for requesting invalidation of a patent shall be paid within one month from the date on which such request is filed; if the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

Article 100 Where any applicant or patentee has difficulties in paying the various fees prescribed in these Rules, he or it may, in accordance with the provisions, submit a request to the patent administration department of the State Council for a reduction or postponement of the payment. Measures for the reduction and postponement of the payment shall be prescribed by the finance department of the State Council in conjunction with the price administration department of the State Council and the patent administration department of the State Council.

Chapter X Special Provisions Concerning International Application

Article 101 The patent administration department of the State Council receives international patent applications filed under the Patent Cooperation Treaty in accordance with the provisions of Article 20 of the Patent Law.

With regard to an international patent application filed under the Patent Cooperation Treaty designating China (hereinafter referred to as the international application), the requirements and procedures for entering the phase of process conducted by the patent administration department of the State Council (hereinafter referred to as entering the Chinese national phase) shall be subject to the provisions prescribed in this Chapter; where there are no such provisions in this Chapter, the relevant provisions in the Patent Law and in any other chapters of these Rules shall apply.

Article 102 Any international application which has been accorded an international date of filing in accordance with the Patent Cooperation Treaty and which has designated China shall be deemed as an application for patent filed with the patent administration department of the State Council, and the said international date of filing shall be deemed as the date of filing referred to in Article 28 of the Patent Law.

Article 103 Any applicant for an international application shall, within 30 months from the priority date as referred to in Article 2 of the Patent Cooperation Treaty (in this Chapter referred to as the priority date), go through the formalities for entering the Chinese national phase with the patent administration department of the State Council; if the applicant fails to go through the said formalities within the said time limit, he or it may, after paying a surcharge for the late entry, go through the formalities for entering the Chinese national phase within 32 months from the priority date.

Article 104 Where the applicant goes through the formalities for entering the Chinese national phase in accordance with the provisions of Article 103 of these Rules, he or it shall meet the following requirements:

- (1) submitting in Chinese a written statement for entering the Chinese national phase, whereby indicating the number of the international application and the type of the patent right sought;
- (2) paying the filing fee and the printing fee for publishing the application prescribed in the first paragraph of Article 93 of these Rules and, where necessary, the surcharge for the late entry prescribed in Article 103 of these Rules;
- (3) submitting the Chinese translation of the description and the claims of the initial international application where an international application is filed in a foreign language;
- (4) indicating in the written statement for entering the Chinese national phase the title of the invention-creation, the name or title of the applicant, the address of the applicant and the name of the inventor, all of which shall be in conformity with those recorded in the International Bureau under the World Intellectual Property Organization (hereinafter referred to as the International Bureau); indicating the name of the inventor in the said statement where the inventor is not indicated in the international application;
- (5) where an international application is filed in a foreign language,

submitting the Chinese translation of the abstract and submitting a copy of the drawings and a copy of the drawing of the abstract if there are drawings and the drawing of the abstract, in which the text matter of the drawings, if any, shall be replaced by the corresponding text matter in Chinese; where the international application is filed in Chinese, submitting a copy of the abstract and a copy of the drawing of the abstract which are contained in the documents of the international publication;

(6) where the formalities have been gone through with the International Bureau in the international phase in respect of a change of the applicant, submitting the documents certifying that the applicant as changed is entitled to the application; and

(7) paying the additional fee for filing the application when necessary, as prescribed in the first paragraph of Article 93 of these Rules.

Where the requirements set forth in subparagraphs (1) to (3) of the first paragraph of this Article are met, the patent administration department of the State Council shall issue the filing number, indicate clearly the date of entry of the international application into the Chinese national phase (hereinafter referred to as the date of entry), and notify the applicant that his or its international application has entered the Chinese national phase.

Where, after entering the Chinese national phase, it is found that an international application does not meet the requirements as set forth in subparagraphs (4) to (7) of the first paragraph of this Article, the patent administration department of the State Council shall notify the applicant that he or it is required to make corrections within a specified time limit; if the applicant fails to do so, the application shall be deemed to have been withdrawn.

Article 105 Where an international application falls under any of the following circumstances, the effect of the application in China shall cease:

(1) in the international phase, the international application is withdrawn or deemed withdrawn, or the designation of China of the international application is withdrawn;

(2) the applicant fails to go through the formalities for entering the Chinese national phase within 32 months from the priority date in accordance with the provisions of Article 103 of these Rules; or

(3) while going through the formalities for entering the Chinese national phase, the applicant fails to fulfill the requirements of subparagraphs (1) to (3) of Article 104 of these Rules at the expiration of the time limit of 32 months

from the date of priority.

Where the effect of an international application ceases in China in accordance with the provisions of subparagraph (1) of the preceding paragraph, the provisions of Article 6 of these Rules shall not apply; where the effect of an international application ceases in China in accordance with the provisions of subparagraph (2) or (3) of the preceding paragraph, the provisions of the second paragraph of Article 6 of these Rules shall not apply.

Article 106 Where an international application is amended in the international phase and the applicant requests that the examination be based on the amended application, the Chinese translation of the amendments shall be furnished within two months from the date of entry. Where the Chinese translation is not furnished within the said time limit, the amendments made by the applicant in the international phase shall not be taken into consideration by the patent administration department of the State Council.

Article 107 Where an invention-creation for which an international application is filed falls under any of the circumstances prescribed in subparagraph (1) or (2) of Article 24 of the Patent Law and a statement has been made in this respect when the international application is filed, the applicant shall indicate it in the written statement for entering the Chinese national phase and, within two months from the date of entry, furnish the relevant certifying documents prescribed in the third paragraph of Article 30 of these Rules; if the applicant fails to indicate it or furnish the relevant certifying documents within the said time limit, the provisions of Article 24 of the Patent Law shall not apply to his or its application.

Article 108 Where the applicant has made indications concerning deposited biological materials in accordance with the provisions of the Patent Cooperation Treaty, the requirements provided for in subparagraph (3) of Article 24 of these Rules shall be deemed to have been fulfilled. In the statement for entering the Chinese national phase, the applicant shall indicate the documents recording the particulars of the deposit of biological materials, and the exact location of the record in the documents.

Where particulars concerning the deposit of biological materials are contained in the description of the international application as initially filed, but there is no such indication in the statement for entering the Chinese national phase, the applicant shall make corrections within four months from the date of

entry. If the applicant fails to do so at the expiration of the said time limit, the biological materials shall be deemed not to have been deposited.

Where, within four months from the date of entry, the applicant submits the certificate of deposit and that of viability of biological materials to the patent administration department of the State Council, the biological materials shall be deemed to have been deposited within the time limit as provided for in subparagraph (1) of Article 24 of these Rules.

Article 109 Where an invention-creation for which an international application is filed is accomplished relying on the use of genetic resources, the applicant shall indicate the fact in the written statement for entering the Chinese national phase, and fill in the forms provided by the patent administration department of the State Council.

Article 110 Where the applicant claims one or multiple priorities in the international phase and such claims remain valid at the time when the application enters the Chinese national phase, the applicant shall be deemed to have submitted a written declaration in accordance with the provisions of Article 30 of the Patent Law.

The applicant shall pay the fee for claiming priority within two months from the date of entry; if the fee is not paid or not paid in full within the time limit, the priority shall be deemed not to have been claimed.

Where the applicant has submitted a copy of the earlier application in the international phase in accordance with the provisions of the Patent Cooperation Treaty, he or it shall be exempted from submitting a copy of the earlier application to the patent administration department of the State Council at the time when going through the formalities for entering the Chinese national phase. Where the applicant has not submitted a copy of the earlier application in the international phase, the patent administration department of the State Council may, if it deems it necessary, notify the applicant that he or it is required to submit a copy of the earlier application within a specified time limit; if no copy is submitted at the expiration of the specified time limit, his or its claim for priority shall be deemed not to have been made.

Article 111 Where, before the expiration of 30 months from the priority date, the applicant files a request with the patent administration department of the State Council for early processing and examination of his or its international

application, he or it shall, in addition to going through the formalities for entering the Chinese national phase, submit a request in accordance with the provisions of the second paragraph of Article 23 of the Patent Cooperation Treaty. Where the international application has not been transmitted by the International Bureau to the patent administration department of the State Council, the applicant shall submit a certified copy of the international application.

Article 112 With regard to an international application for a patent for utility model, the applicant may amend the application documents on his or its own initiative within two months from the date of entry.

With regard to an international application for a patent for invention, the provisions of the first paragraph of Article 51 of these Rules shall apply.

Article 113 Where the applicant finds that there are mistakes in the Chinese translation of the description, the claims or the text matter in the drawings as submitted, he or it may correct the translation within the following time limits in accordance with the international application as filed:

- (1) before the completion of preparations for publication of an application for a patent for invention or announcement of a patent right for utility model by the patent administration department of the State Council; and
- (2) within three months from the date of receipt of the notification sent by the patent administration department of the State Council, stating that an application for a patent for invention has entered into examination as to substance.

Where the applicant intends to correct the mistakes in the translation, he or it shall file a written request and pay the prescribed fee for the correction of the translation.

Where the applicant corrects the translation as required by the notification from the patent administration department of the State Council, he or it shall, within a specified time limit, go through the formalities prescribed in the second paragraph of this Article; if the prescribed formalities are not gone through at the expiration of the time limit, the international application shall be deemed to have been withdrawn.

Article 114 Where the patent administration department of the State Council considers, after preliminary examination, that an international application for a patent for invention complies with the relevant provisions of the Patent Law

and these Rules, it shall publish the application in the Patent Gazette; where the international application is filed in a language other than Chinese, the Chinese translation of the international application shall be published.

Where the international publication of an international application for a patent for invention by the International Bureau is in Chinese, the provisions of Article 13 of the Patent Law shall apply from the date of the international publication; if the international publication by the International Bureau is in a language other than Chinese, the provisions of Article 13 of the Patent Law shall apply from the date of the publication of the Chinese translation by the patent administration department of the State Council.

With regard to an international application, the publication referred to in Articles 21 and 22 of the Patent Law means the publication referred to in the first paragraph of this Article.

Article 115 Where two or more inventions or utility models are contained in an international application, the applicant may, from the date of entry, submit a divisional application in accordance with the provisions of the first paragraph of Article 42 of these Rules.

Where, in the international phase, some parts of an international application are not the subject of international search or international preliminary examination because the International Searching Authority or the International Preliminary Examination Authority considers that the international application does not comply with the requirement of unity of invention prescribed in the Patent Cooperation Treaty, and because the applicant fails to pay the additional fee as prescribed, whereas at the time of going through the formalities for entering the Chinese national phase, the applicant requests that the said parts be the basis of examination, the patent administration department of the State Council, finding that the decision concerning unity of invention made by the International Searching Authority or the International Preliminary Examination Authority is justified, shall notify the applicant that he or it is required to pay the restoration fee for unity of invention within a specified time limit. If the fee is not paid or not paid in full at the expiration of the specified time limit, those parts of the international application which have not been searched or have not been the subject of international preliminary examination shall be deemed to have been withdrawn.

Article 116 Where an international application in the international phase has

been refused to be accorded an international date of filing or has been declared to be deemed withdrawn by an international authority concerned, the applicant may, within two months from the date of receipt of the notification, request the International Bureau to send the copy of any document in the file of the international application to the patent administration department of the State Council, and shall go through the formalities prescribed in Article 103 of these Rules with the patent administration department of the State Council within the said time limit. After receiving the documents sent by the International Bureau, the patent administration department of the State Council shall review the decision made by the international authority concerned to find whether it is correct.

Article 117 Where, with regard to a patent right granted on the basis of an international application, the scope of protection determined in accordance with the provisions of Article 59 of the Patent Law exceeds the scope of the international application in its original language because of incorrect translation, the scope of protection granted to the international application shall be determined according to what is limited in the original language of the application; where the scope of protection granted to the international application is narrower than the scope of the application in its original language, the scope of protection shall be determined according to the patent when it is granted.

Chapter XI Supplementary Provisions

Article 118 Any person may, after approval by the patent administration department of the State Council, consult or copy the files of the published or announced patent applications or the Patent Register, and any person may request the patent administration department of the State Council to issue a copy of extracts from the Patent Register.

Where a patent application is withdrawn or deemed withdrawn or is rejected, the files of the application shall not be preserved after the expiration of two years from the date on which the application ceases to be valid.

Where the patent right is abandoned, wholly invalidated or ceased, the files of the patent shall not be preserved after the expiration of three years from the date on which the patent right ceases to be valid.

Article 119 Any application which is filed with, or any formality which is

gone through with, the patent administration department of the State Council, shall be signed or sealed by the applicant, the patentee, any other interested person or his or its representative, and shall be sealed by a patent agency if such agency is appointed.

Where a change in the name of the inventor, or in the name or title, nationality and address of the applicant or the patentee, or in the title and address of the patent agency or the name of the patent agent is requested, a request for a change in the bibliographic data shall be submitted to the patent administration department of the State Council, together with the relevant certifying documents.

Article 120 Any document relating to a patent application or patent right which is to be sent by mail to the patent administration department of the State Council, shall be sent by registered letter, not by parcel.

With regard to any document which is submitted to, or any formality which is gone through with, the patent administration department of the State Council, except for a patent application filed for the first time, the filing number or the patent number, the title of the invention-creation and the name or title of the applicant or the patentee shall be indicated.

Only documents relating to the same application shall be included in one letter.

Article 121 Various kinds of application documents shall be typed or printed, and all the characters shall be in black ink, neat and clear, and free from any alterations. The drawings shall be made in black ink with the aid of drafting instruments, and the lines shall be uniformly thick and well defined, and free from any alterations.

The request, description, claims, drawings and abstract shall be numbered separately in Arabic numerals and arranged in numerical order.

The written language of an application shall run from left to right. Only one side of each sheet shall be used.

Article 122 The patent administration department of the State Council shall formulate Guidelines for Examination in accordance with the Patent Law and these Rules.

Article 123 These Rules shall be effective as of July 1, 2001. The Rules for the Implementation of the Patent Law of the People's Republic of China approved

by the State Council on December 12, 1992 and promulgated by the Patent Office of the People's Republic of China on December 21, 1992, shall be repealed simultaneously.