Note: The English text in this document is an AI translation (translated by Kimi, a large language model developed by Moonshot AI) and is provided for reference only. In the interpretation of this Law, the Chinese text shall prevail.

中华人民共和国专利法（2020修正）

Patent Law of the People's Republic of China (2020 Amendment)

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第一章　总　则

Chapter I General Provisions

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

Article 1 [Purposes of Legislation] This Law is enacted for the purposes of protecting the lawful rights and interests of patentees, encouraging invention-creation, promoting the application of invention-creation, enhancing innovation capability, and promoting the advancement of science and technology and the development of the economy and society.

第二条　【受保护的发明创造】本法所称的发明创造是指发明、实用新型和外观设计。

Article 2 [Invention-Creations Eligible for Protection] For the purposes of this Law, the term "invention-creation" means an invention, a utility model or a design.

发明，是指对产品、方法或者其改进所提出的新的技术方案。

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

实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。

A "utility model" means a new technical solution, fit for practical use, proposed for the shape or structure of a product or the combination thereof.

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

A "design" means a new design, rich in aesthetic appeal and fit for industrial application, created for the shape or pattern of the whole or a part of a product or the combination thereof, as well as the combination of color with shape or pattern.

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

Article 3 [Patent Administrative System] The patent administration department under the State Council shall be responsible for the administration of patent work nationwide, uniformly accept and examine patent applications,

and grant patent rights in accordance with the law.

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

The departments in charge of patent work of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the patent administration work within their respective administrative regions.

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

Article 4 [Patent Applications for Invention-Creations Involving State Security or Major Interests Requiring Confidentiality] Where an invention-creation for which a patent is applied for involves State security or major interests and needs to be kept confidential, the matter shall be handled in accordance with relevant State provisions.

第五条　【违法发明创造不授予专利权】对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

Article 5 [No Patent Right for Illegal Invention-Creations] No patent right shall be granted for an invention-creation that violates the law, offends social morality or impairs the public interests.

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

No patent right shall be granted for an invention-creation that is accomplished on the basis of genetic resources the acquisition or utilization of which violates the provisions of laws or administrative regulations.

第六条　【职务发明创造和非职务发明创造的权利归属】执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位，申请被批准后，该单位为专利权人。该单位可以依法处置其职务发明创造申请专利的权利和专利权，促进相关发明创造的实施和运用。

Article 6 [Ownership of Rights in Service Invention-Creations and Non-Service Invention-Creations] An invention-creation accomplished by a person in the execution of the tasks of the entity to which he belongs, or accomplished mainly by exploiting the material and technical conditions of that entity, is a service invention-creation. The right to apply for a patent for a service invention-creation belongs to the entity; after the application is approved, the entity shall be the patentee. The entity may, in accordance with the law, dispose of its right to apply for a patent for the service invention-creation and the patent right, so as to promote the implementation and utilization of the relevant invention-creation.

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

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

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

For an invention-creation accomplished by exploiting the material and technical conditions of an entity, where the entity and the inventor or designer have entered into a contract providing for the ownership of the right to apply for a patent and the patent right, such agreement shall prevail.

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

Article 7 [Prohibition of Suppressing Patent Applications for Non-Service Invention-Creations] No entity or individual may suppress an inventor's or designer's patent application for a non-service invention-creation.

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

Article 8 [Ownership of Rights in Joint Invention-Creations and Commissioned Invention-Creations] For an invention-creation accomplished jointly by two or more entities or individuals, or accomplished by one entity or individual as commissioned by another entity or individual, unless otherwise agreed, the right to apply for a patent belongs to the entity or individual that accomplished it or jointly accomplished it; after the application is approved, the applicant entity or individual shall be the patentee.

第九条　【“一发明创造一专利”原则和先申请原则】同样的发明创造只能授予一项专利权。但是，同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利，先获得的实用新型专利权尚未终止，且申请人声明放弃该实用新型专利权的，可以授予发明专利权。

Article 9 [The “One Patent Right for One Invention-Creation” Principle and the First-to-File Principle] Only one patent right may be granted for the same invention-creation. However, where the same applicant files, on the same day, applications for both a utility model patent and an invention patent for the same invention-creation, and the utility model patent right granted first has not been terminated and the applicant declares the abandonment of the utility model patent right, the invention patent right may be granted.

两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

Where two or more applicants separately file patent applications for the same invention-creation, the patent right shall be granted to the person who files the application first.

第十条　【专利申请权和专利权的转让】专利申请权和专利权可以转让。

Article 10 [Assignment of the Right to Apply for a Patent and of Patent Rights] The right to apply for a patent and patent rights may be assigned.

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

Where a Chinese entity or individual assigns the right to apply for a patent or a patent right to a foreigner, a foreign enterprise or any other foreign organization, the formalities shall be completed in accordance with the provisions of relevant laws and administrative regulations.

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

To assign the right to apply for a patent or a patent right, the parties shall conclude a written contract and register it with the patent administration department under the State Council, which shall announce it. The assignment of the right to apply for a patent or of a patent right shall take effect from the date of registration.

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

Article 11 [Effect of Patent Rights] After an invention or utility model patent right is granted, unless otherwise provided by this Law, no entity or individual may, without the permission of the patentee, exploit the patent, that is, manufacture, use, offer to sell, sell or import the patented product, or use the patented process, or use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

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

After a design patent right is granted, no entity or individual may, without the permission of the patentee, exploit the patent, that is, manufacture, offer to sell, sell or import the design patented product, for production or business purposes.

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

Article 12 [License to Exploit a Patent] Any entity or individual exploiting the patent of another person shall conclude a license contract with the patentee and pay the patentee royalties. The licensee has no right to allow any entity or individual other than those provided for in the contract to exploit the patent.

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

Article 13 [Provisional Protection] After an invention patent application is published, the applicant may require the entity or individual exploiting his invention to pay an appropriate fee.

第十四条　【行使共有的专利申请权、专利权】专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施该专利的，收取的使用费应当在共有人之间分配。

Article 14 [Exercise of Jointly Owned Right to Apply for a Patent and Patent Right] Where the co-owners of the right to apply for a patent or of a patent right have an agreement on the exercise of the right, such agreement shall prevail. In the absence of such an agreement, a co-owner may exploit the patent alone or license others to exploit the patent by way of an ordinary license; the royalties collected from licensing others to exploit the patent shall be distributed among the co-owners.

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

Except in the circumstances prescribed in the preceding paragraph, the exercise of a jointly owned right to apply for a patent or of a patent right shall be subject to the consent of all co-owners.

第十五条　【职务发明创造的奖励、报酬和激励】被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。

Article 15 [Rewards, Remuneration and Incentives for Service Invention-Creations] An entity that is granted a patent right shall reward the inventor or designer of a service invention-creation; after the patent for the invention-creation is exploited, the entity shall give the inventor or designer reasonable remuneration according to the scope of its popularization and application and the economic benefits obtained.

国家鼓励被授予专利权的单位实行产权激励，采取股权、期权、分红等方式，使发明人或者设计人合理分享创新收益。

The State encourages entities granted patent rights to implement property rights incentives, by means of equity, options, dividends and the like, so that inventors or designers may reasonably share in the proceeds of innovation.

第十六条　【发明人、设计人的署名权，专利权人的专利标识权】发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。

Article 16 [Inventor's or Designer's Right of Attribution, Patentee's Right to Mark] An inventor or designer has the right to state in the patent documents that he is the inventor or designer.

专利权人有权在其专利产品或者该产品的包装上标明专利标识。

A patentee has the right to mark the patent indication on his patented product or on the packaging of that product.

第十七条　【涉外规定】在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。

Article 17 [Foreign-Related Provisions] Where a foreigner, foreign enterprise or other foreign organization having no habitual residence or business establishment in China applies for a patent in China, the application shall be handled under this Law in accordance with the agreement concluded between the country to which the applicant belongs and China, or the international treaty to which both are parties, or in accordance with the principle of reciprocity.

第十八条　【专利代理】在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。

Article 18 [Patent Agency] Where a foreigner, foreign enterprise or other foreign organization having no habitual residence or business establishment in China applies for a patent or attends to other patent matters in China, it shall entrust a patent agency established in accordance with the law to act on its behalf.

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

A Chinese entity or individual applying for a patent or attending to other patent matters within China may entrust a patent agency established in accordance with the law to act on its behalf.

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

A patent agency shall abide by laws and administrative regulations, and handle patent applications or other patent matters as entrusted by the principal; it shall bear the responsibility of keeping confidential the content of the principal's invention-creation, unless the patent application has been published or announced. The specific administrative measures for patent agencies shall be prescribed by the State Council.

第十九条　【专利的涉外申请】任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。

Article 19 [Foreign Filing of Patents] Any entity or individual that intends to file an application for a patent in a foreign country for an invention or a utility model accomplished in China shall report in advance to the patent administration department under the State Council for a confidentiality examination. The procedures, time limit and the like of the confidentiality examination shall be implemented in accordance with the provisions of the State Council.

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

A Chinese entity or individual may file an international patent application in accordance with the relevant international treaties to which the People's Republic of China is a party. An applicant filing an international patent application shall comply with the provisions of the preceding paragraph.

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

The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which the People's Republic of China is a party, this Law and the relevant provisions of the State Council.

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

No patent right shall be granted in China for an invention or a utility model for which an application for a patent is filed in a foreign country in violation of the provisions of the first paragraph of this Article.

第二十条　【诚实信用原则、禁止滥用】申请专利和行使专利权应当遵循诚实信用原则。不得滥用专利权损害公共利益或者他人合法权益。

Article 20 [Principle of Good Faith, Prohibition of Abuse] Applications for patents and the exercise of patent rights shall follow the principle of good faith. Patent rights may not be abused to harm the public interests or the lawful rights and interests of others.

滥用专利权，排除或者限制竞争，构成垄断行为的，依照《中华人民共和国反垄断法》处理。

Where the abuse of a patent right to eliminate or restrict competition constitutes a monopolistic act, the matter shall be handled in accordance with the Anti-Monopoly Law of the People's Republic of China.

第二十一条　【专利审查要求、专利信息公共服务】国务院专利行政部门应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。

Article 21 [Requirements for Patent Examination, Public Patent Information Services] The patent administration department under the State Council shall, in accordance with the requirements of objectivity, impartiality, accuracy and timeliness, handle patent-related applications and requests in accordance with the law.

国务院专利行政部门应当加强专利信息公共服务体系建设，完整、准确、及时发布专利信息，提供专利基础数据，定期出版专利公报，促进专利信息传播与利用。

The patent administration department under the State Council shall strengthen the building of the public patent information service system, publish patent information completely, accurately and in a timely manner, provide basic patent data, regularly publish the patent gazette, and promote the dissemination and utilization of patent information.

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

Before a patent application is published or announced, the staff members of the patent administration department under the State Council and the relevant persons shall bear the responsibility of keeping its content confidential.

第二章　授予专利权的条件

Chapter II Requirements for the Grant of Patent Rights

第二十二条　【发明和实用新型的授权条件】授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

Article 22 [Requirements for Granting Invention and Utility Model Patents] An invention or utility model for which a patent right is granted shall possess novelty, inventiveness and practical applicability.

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

"Novelty" means that the invention or utility model does not belong to the prior art, and that no entity or individual has filed, before the filing date, an application with the patent administration department under the State Council for the same invention or utility model which was recorded in the patent application documents published or the patent documents announced after the filing date.

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

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

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

"Practical applicability" means that the invention or utility model can be made or used and can produce positive effects.

本法所称现有技术，是指申请日以前在国内外为公众所知的技术。

For the purposes of this Law, the term "prior art" means technology known to the public in China or abroad before the filing date.

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

Article 23 [Requirements for Granting Design Patents] A design for which a patent right is granted shall not belong to the prior design, and no entity or individual has filed, before the filing date, an application with the patent administration department under the State Council for the same design which was recorded in the patent documents announced after the filing date.

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

A design for which a patent right is granted shall be clearly distinguishable from the prior design or a combination of features of the prior design.

授予专利权的外观设计不得与他人在申请日以前已经取得的合法权利相冲突。

A design for which a patent right is granted may not conflict with the lawful rights already acquired by others before the filing date.

本法所称现有设计，是指申请日以前在国内外为公众所知的设计。

For the purposes of this Law, the term "prior design" means a design known to the public in China or abroad before the filing date.

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

Article 24 [Circumstances Where Novelty Is Not Lost] An invention-creation for which a patent is applied for shall not lose its novelty if, within six months before the filing date, it falls under any of the following circumstances:

（一）在国家出现紧急状态或者非常情况时，为公共利益目的首次公开的；

(1) it was first disclosed for the purpose of public interests when a state of emergency or an extraordinary situation occurred in the country;

（二）在中国政府主办或者承认的国际展览会上首次展出的；

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

（三）在规定的学术会议或者技术会议上首次发表的；

(3) it was first published at a prescribed academic or technical conference;

（四）他人未经申请人同意而泄露其内容的。

(4) its content was divulged by another person without the consent of the applicant.

第二十五条　【不授予专利权的事项】对下列各项，不授予专利权：

Article 25 [Subject Matters for Which No Patent Right Is Granted] No patent right shall be granted for any of the following:

（一）科学发现；

(1) scientific discoveries;

（二）智力活动的规则和方法；

(2) rules and methods for intellectual activities;

（三）疾病的诊断和治疗方法；

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

（四）动物和植物品种；

(4) animal and plant varieties;

（五）原子核变换方法以及用原子核变换方法获得的物质；

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

（六）对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。

(6) designs that mainly serve as indications of the pattern, color or the combination of the two of plane printed matter.

对前款第（四）项所列产品的生产方法，可以依照本法规定授予专利权。

For the production methods of the products listed in item (4) of the preceding paragraph, a patent right may be granted in accordance with the provisions of this Law.

第三章　专利的申请

Chapter III Application for Patents

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

Article 26 [Application Documents for Invention or Utility Model Patents] To apply for an invention or utility model patent, the applicant shall submit documents such as a written request, a description and its abstract, and a patent claim.

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

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

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

The description shall set forth the invention or utility model in a clear and complete manner so that a person skilled in the relevant technical field can carry it out; where necessary, there shall be drawings. The abstract shall briefly state the technical essentials of the invention or utility model.

权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。

The patent claim shall, on the basis of the description, clearly and concisely define the scope of the patent protection sought.

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

For an invention-creation accomplished on the basis of genetic resources, the applicant shall state in the patent application documents the direct source and the original source of the genetic resources; where the applicant is unable to state the original source, he shall state the reasons.

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

Article 27 [Application Documents for Design Patents] To apply for a design patent, the applicant shall submit documents such as a written request, drawings or photographs of the design, and a brief description of the design.

申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。

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

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

Article 28 [Determination of the Filing Date] The date on which the patent administration department under the State Council receives the patent application documents is the filing date. If the application documents are sent by mail, the postmark date of mailing shall be the filing date.

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

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

申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，或者自外观设计在中国第一次提出专利申请之日起六个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。

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

第三十条　【优先权的要求】申请人要求发明、实用新型专利优先权的，应当在申请的时候提出书面声明，并且在第一次提出申请之日起十六个月内，提交第一次提出的专利申请文件的副本。

Article 30 [Claiming the Right of Priority] An applicant claiming the right of priority for an invention or utility model patent shall make a written declaration at the time of application and submit, within sixteen months from the date on which the first application was filed, a copy of the patent application documents of the first filing.

申请人要求外观设计专利优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本。

An applicant claiming the right of priority for a design patent shall make a written declaration at the time of application and submit, within three months, a copy of the patent application documents of the first filing.

申请人未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。

Where the applicant fails to make a written declaration or fails to submit a copy of the patent application documents within the prescribed time limit, he shall be deemed not to have claimed the right of priority.

第三十一条　【单一性原则和合并申请】一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。

Article 31 [Principle of Unity and Combined Application] An application for an invention or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

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

An application for a design patent shall be limited to one design. Two or more similar designs for the same product, or two or more designs for products of the same category that are sold or used in sets, may be filed as one application.

第三十二条　【撤回专利申请】申请人可以在被授予专利权之前随时撤回其专利申请。

Article 32 [Withdrawal of Patent Applications] An applicant may withdraw his patent application at any time before the patent right is granted.

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

Article 33 [Amendment of Patent Application Documents] An applicant may amend his patent application documents, provided that the amendment to the application documents for an invention or utility model patent may not go beyond the scope of the disclosure contained in the original description and patent claim, and the amendment to the application documents for a design patent may not go beyond the scope shown in the original drawings or photographs.

第四章　专利申请的审查和批准

Chapter IV Examination and Approval of Patent Applications

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

Article 34 [Preliminary Examination and Publication of Invention Patent Applications] After receiving an invention patent application, the patent administration department under the State Council shall, if it finds upon preliminary examination that the application conforms to the requirements of this Law, publish it upon the expiration of eighteen months from the filing date. The patent administration department under the State Council may, at the request of the applicant, publish the application earlier.

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

Article 35 [Initiation of Substantive Examination of Invention Patent Applications] Within three years from the filing date of an invention patent application, the patent administration department under the State Council may, at the request of the applicant made at any time, conduct a substantive examination of the application; where the applicant fails to request substantive examination within the time limit without justifiable reasons, the application shall be deemed withdrawn.

国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。

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

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

Article 36 [Submission of Materials Related to Substantive Examination of Invention Patent Applications] An applicant for an invention patent requesting substantive examination shall submit reference materials relating to his invention that existed before the filing date.

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

Where an invention patent has already been the subject of an application filed in a foreign country, the patent administration department under the State Council may require the applicant to submit, within a specified time limit, the materials of the search conducted in that country for the purpose of examining his application or the materials of the examination results; where the applicant fails to submit them within the time limit without justifiable reasons, the application shall be deemed withdrawn.

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

Article 37 [Substantive Examination of Invention Patent Applications] Where the patent administration department under the State Council, after conducting a substantive examination of an invention patent application, finds that it does not conform to the provisions of this Law, it shall notify the applicant and require him to state his opinions or amend the application within a specified time limit; where the applicant fails to respond within the time limit without justifiable reasons, the application shall be deemed withdrawn.

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

Article 38 [Rejection of Invention Patent Applications after Substantive Examination] Where, after the applicant has stated his opinions or made amendments, the patent administration department under the State Council still finds that the invention patent application does not conform to the provisions of this Law, it shall reject the application.

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

Article 39 [Grant of Invention Patent Rights] Where no grounds for rejection are found after the substantive examination of an invention patent application, the patent administration department under the State Council shall make a decision to grant the invention patent right, issue an invention patent certificate, and at the same time register and announce it. The invention patent right shall take effect from the date of announcement.

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

Article 40 [Grant of Utility Model and Design Patent Rights] Where no grounds for rejection are found after the preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision to grant the utility model patent right or the design patent right, issue the corresponding patent certificate, and at the same time register and announce it. The utility model patent right and the design patent right shall take effect from the date of announcement.

第四十一条　【专利申请的复审】专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内向国务院专利行政部门请求复审。国务院专利行政部门复审后，作出决定，并通

知专利申请人。

Article 41 [Reexamination of Patent Applications] Where a patent applicant is not satisfied with the decision of the patent administration department under the State Council to reject the application, he may, within three months from the date of receipt of the notification, request the patent administration department under the State Council to conduct a reexamination. The patent administration department under the State Council shall, after reexamination, make a decision and notify the patent applicant.

专利申请人对国务院专利行政部门的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

Where a patent applicant is not satisfied with the reexamination decision of the patent administration department under the State Council, he may, within three months from the date of receipt of the notification, bring a suit before a people's court.

第五章　专利权的期限、终止和无效

Chapter V Duration, Termination and Invalidation of Patent Rights

第四十二条　【专利权的期限和补偿】发明专利权的期限为二十年，实用新型专利权的期限为十年，外观设计专利权的期限为十五年，均自申请日起计算。

Article 42 [Duration and Extension of Patent Rights] The duration of an invention patent right is twenty years, the duration of a utility model patent right is ten years, and the duration of a design patent right is fifteen years, all computed from the filing date.

自发明专利申请日起满四年，且自实质审查请求之日起满三年后授予发明专利权的，国务院专利行政部门应专利权人的请求，就发明专利在授权过程中的不合理延迟给予专利权期限补偿，但由申请人引起的不合理延迟除外。

Where an invention patent right is granted upon the expiration of four years from the filing date of the invention patent application and upon the expiration of three years from the date of the request for substantive examination, the patent administration department under the State Council shall, at the request of the patentee, grant an extension of the patent right duration for any unreasonable delay in the granting process of the invention patent, except for unreasonable delay caused by the applicant.

为补偿新药上市审评审批占用的时间，对在中国获得上市许可的新药相关发明专利，国务院专利行政部门应专利权人的请求给予专利权期限补偿。补偿期限不超过五年，新药批准上市后总有效专利权期限不超过十四年。

In order to compensate for the time taken up by the review and approval for the marketing of a new drug, the patent administration department under the State Council shall, at the request of the patentee, grant an extension of the patent right duration for an invention patent relating to a new drug that has obtained marketing authorization in China. The extension may not exceed five years, and the total effective patent right duration after the new drug is approved for marketing may not exceed fourteen years.

第四十三条　【专利年费】专利权人应当自被授予专利权的当年开始缴纳年费。

Article 43 [Annual Patent Fees] A patentee shall pay annual fees starting from the year in which the patent right is granted.

第四十四条　【专利权在期限届满前的终止】有下列情形之一的，专利权在期限届满前终止：

Article 44 [Termination of Patent Rights before the Expiration of the Duration] A patent right shall be terminated before the expiration of its duration in any of the following circumstances:

（一）没有按照规定缴纳年费的；

(1) the annual fees are not paid in accordance with the provisions;

（二）专利权人以书面声明放弃其专利权的。

(2) the patentee waives his patent right by a written declaration.

专利权在期限届满前终止的，由国务院专利行政部门登记和公告。

Where a patent right is terminated before the expiration of its duration, the patent administration department under the State Council shall register and announce it.

第四十五条　【宣告专利权无效的请求】自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求国务院专利行政部门宣告该专利权无效。

Article 45 [Request for Invalidation of a Patent Right] From the date on which the patent administration department under the State Council announces the grant of a patent right, any entity or individual that considers the grant of the patent right not to be in conformity with the relevant provisions of this Law may request the patent administration department under the State Council to declare the patent right invalid.

第四十六条　【宣告专利权无效请求的审查和审理】国务院专利行政部门对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。

Article 46 [Examination and Adjudication of Requests for Invalidation of Patent Rights] The patent administration department under the State Council shall promptly examine a request for invalidation of a patent right and make a decision, and notify the requester and the patentee. The decision declaring a patent right invalid shall be registered and announced by the patent administration department under the State Council.

对国务院专利行政部门宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。

Where a party is not satisfied with the decision of the patent administration department under the State Council declaring a patent right invalid or upholding a patent right, it may, within three months from the date of receipt of the notification, bring a suit before a people's court. The people's court shall notify the opposing party in the invalidation request procedure to participate in the litigation as a third party.

第四十七条　【宣告专利权无效决定的效力】宣告无效的专利权视为自始即不存在。

Article 47 [Effect of Decisions Declaring Patent Rights Invalid] A patent right declared invalid shall be deemed never to have existed.

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

A decision declaring a patent right invalid shall have no retroactive effect on judgments or mediation statements of patent infringement made and enforced by a people's court before the declaration of invalidation of the patent right, on decisions on the handling of patent infringement disputes that have been performed or compulsorily enforced, or on patent exploitation license contracts and patent right assignment contracts that have been performed. However, losses caused to others by the malicious intent of the patentee shall be compensated.

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

Where, in accordance with the provisions of the preceding paragraph, the failure to return patent infringement damages, patent royalties or patent right assignment fees would clearly violate the principle of fairness, they shall be returned in whole or in part.

第六章　专利实施的特别许可

Chapter VI Special Licenses for Patent Exploitation

第四十八条　【加强专利公共服务】国务院专利行政部门、地方人民政府管理专利工作的部门应当会同同级相关部门采取措施，加强专利公共服务，促进专利实施和运用。

Article 48 [Strengthening Public Patent Services] The patent administration department under the State Council and the departments in charge of patent work of local people's governments shall, in conjunction with the relevant departments at the same level, take measures to strengthen public patent services and promote the exploitation and utilization of patents.

第四十九条　【指定许可】国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。

Article 49 [Designated License] Where an invention patent of a State-owned enterprise or public institution is of great significance to the interests of the State or the public interests, the relevant competent department of the State Council and the people's government of a province, autonomous region or municipality directly under the Central Government may, upon reporting to and obtaining the approval of the State Council, decide to popularize and apply it within the approved scope and allow designated entities to exploit it, and the exploiting entities shall pay royalties to the patentee in accordance with State provisions.

第五十条　【开放许可的申请和撤回程序】专利权人自愿以书面方式向国务院专利行政部门声明愿意许可任何单位或者个人实施其专利，并明确许可使用费支付方式、标准的，由国务院专利行政部门予以公告，实行开放许可。就实用新型、外观设计专利提出开放许可声明的，应当提供专利权评价报告。

Article 50 [Procedures for Offering and Withdrawing Open Licenses] Where a patentee voluntarily declares in writing to the patent administration department under the State Council his willingness to license any entity or individual to exploit his patent and specifies the method and standard of royalty payment, the patent administration department under the State Council shall announce it and implement an open license. Where an open license declaration is made for a utility model or design patent, a patent right evaluation report shall be provided.

专利权人撤回开放许可声明的，应当以书面方式提出，并由国务院专利行政部门予以公告。开放许可声明被公告撤回的，不影响在先给予的开放许可的效力。

Where a patentee withdraws an open license declaration, he shall do so in writing, and the patent administration department under the State Council shall announce it. The announced withdrawal of an open license declaration shall not affect the effect of open licenses granted earlier.

第五十一条　【开放许可的获得和年费优惠】任何单位或者个人有意愿实施开放许可的专利的，以书面方式通知专利权人，并依照公告的许可使用费支付方式、标准支付许可使用费后，即获得专利实施许可。

Article 51 [Obtaining an Open License and Annual Fee Preferences] Any entity or individual intending to exploit a patent under an open license shall notify the patentee in writing and shall obtain the license to exploit the patent after paying the royalties in accordance with the announced royalty payment method and standard.

开放许可实施期间，对专利权人缴纳专利年费相应给予减免。

During the period of exploitation under an open license, the annual patent fees paid by the patentee shall be reduced or remitted accordingly.

实行开放许可的专利权人可以与被许可人就许可使用费进行协商后给予普通许可，但不得就该专利给予独占或者排他许可。

A patentee implementing an open license may, after consulting with the licensee on the royalties, grant an ordinary license, but may not grant an exclusive or sole license for that patent.

第五十二条　【开放许可的纠纷解决】当事人就实施开放许可发生纠纷的，由当事人协商解决；不愿协商或者协商不成的，可以请求国务院专利行政部门进行调解，也可以向人民法院起诉。

Article 52 [Dispute Resolution for Open Licenses] Where a dispute arises between the parties over the exploitation of an open license, it shall be resolved by the parties through consultation; where they are unwilling to consult or the consultation fails, they may request the patent administration department under the State Council to conduct mediation, or bring a suit before a people's court.

第五十三条　【给予强制许可的一般理由】有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：

Article 53 [General Grounds for Granting Compulsory Licenses] In any of the following circumstances, the patent administration department under the State Council may, upon the application of an entity or individual possessing the conditions for exploitation, grant a compulsory license to exploit an invention or utility model patent:

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

(1) the patentee, upon the expiration of three years from the date the patent right is granted and upon the expiration of four years from the filing date of the patent application, has failed to exploit or fully exploit his patent without justifiable reasons;

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

(2) the patentee's exercise of the patent right is determined in accordance with the law to be a monopolistic act, and the license is granted to eliminate or reduce the adverse effects of such act on competition.

第五十四条　【给予强制许可的特别理由】在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实用新型专利的强制许可。

Article 54 [Special Grounds for Granting Compulsory Licenses] When a state of emergency or an extraordinary situation occurs in the country, or for the purpose of public interests, the patent administration department under the State Council may grant a compulsory license to exploit an invention or utility model patent.

第五十五条　【出口专利药品的强制许可】为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。

Article 55 [Compulsory Licenses for Export of Patented Drugs] For the purpose of public health, the patent administration department under the State Council may, with respect to a drug for which a patent right has been obtained, grant a compulsory license to manufacture it and export it to countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China is a party.

第五十六条　【依存专利的强制许可】一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。

Article 56 [Compulsory Licenses for Dependent Patents] Where an invention or utility model for which a patent right has been obtained represents a major technical advance of remarkable economic significance compared with an invention or utility model for which a patent right was obtained earlier, and the exploitation of the former depends on the exploitation of the latter, the patent administration department under the State Council may, upon the application of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

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

Where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon the application of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

第五十七条　【半导体技术的强制许可】强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第五十三条第（二）项规定的情形。

Article 57 [Compulsory Licenses Involving Semiconductor Technology] Where the invention-creation involved in a compulsory license is semiconductor technology, the exploitation thereof shall be limited to the purpose of public interests and the circumstances prescribed in item (2) of Article 53 of this Law.

第五十八条　【强制许可的实施限制】除依照本法第五十三条第（二）项、第五十五条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。

Article 58 [Restrictions on Exploitation under Compulsory Licenses] Except for compulsory licenses granted in accordance with the provisions of item (2) of Article 53 and Article 55 of this Law, exploitation under a compulsory license shall be mainly for the supply of the domestic market.

第五十九条　【申请强制许可的有关证据】依照本法第五十三条第（一）项、第五十六条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能在合理的时间内获得许可。

Article 59 [Relevant Evidence for Applying for a Compulsory License] An entity or individual applying for a compulsory license in accordance with the provisions of item (1) of Article 53 and Article 56 of this Law shall provide evidence proving that it has requested the patentee to license the exploitation of the patent on reasonable terms but has failed to obtain such a license within a reasonable period of time.

第六十条　【给予强制许可的决定及其登记、公告和终止】国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。

Article 60 [Decisions Granting Compulsory Licenses and Their Registration, Announcement and Termination] A decision made by the patent administration department under the State Council granting a compulsory license for exploitation shall be promptly notified to the patentee and registered and announced.

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

A decision granting a compulsory license for exploitation shall prescribe the scope and duration of exploitation in accordance with the grounds for the compulsory license. When the grounds for the compulsory license cease to exist and do not recur, the patent administration department under the State Council shall, at the request of the patentee, make a decision to terminate the compulsory license for exploitation after examination.

第六十一条　【强制许可的实施权】取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

Article 61 [Right of Exploitation under a Compulsory License] An entity or individual that has obtained a compulsory license for exploitation shall not enjoy an exclusive right of exploitation and shall have no right to allow others to exploit.

第六十二条　【强制许可的使用费】取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

Article 62 [Royalties for Compulsory Licenses] An entity or individual that has obtained a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China is a party. Where royalties are paid, their amount shall be negotiated by both parties; where the parties cannot reach an agreement, the amount shall be adjudicated by the patent administration department under the State Council.

第六十三条　【给予强制许可决定和使用费裁决的司法救济】专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。

Article 63 [Judicial Remedies for Decisions Granting Compulsory Licenses and Royalty Adjudications] Where a patentee is not satisfied with the decision of the patent administration department under the State Council on the compulsory license for exploitation, or where the patentee or the entity or individual that has obtained the compulsory license for exploitation is not satisfied with the adjudication of the patent administration department under the State Council on the royalties for the compulsory license for exploitation, he or it may, within three months from the date of receipt of the notification, bring a suit before a people's court.

第七章　专利权的保护

Chapter VII Protection of Patent Rights

第六十四条　【专利权保护范围】发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。

Article 64 [Scope of Patent Right Protection] The scope of protection of an invention or utility model patent right shall be determined by the content of its claims, and the description and the appended drawings may be used to interpret the content of the claims.

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

The scope of protection of a design patent right shall be determined by the design of the product as shown in the drawings or photographs, and the brief description may be used to interpret the design of the product shown in the drawings or photographs.

第六十五条　【专利侵权纠纷解决方式】未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

Article 65 [Ways of Resolving Patent Infringement Disputes] Where a dispute arises from the exploitation of a patent without the permission of the patentee, that is, from the infringement of the patent right, the parties shall resolve it through consultation; where they are unwilling to consult or the consultation fails, the patentee or an interested party may bring a suit before a people's court, or request the department in charge of patent work to handle the matter. Where the department in charge of patent work, in handling the matter, finds the infringement established, it may order the infringer to immediately cease the infringing act; where a party is not satisfied, it may, within fifteen days from the date of receipt of the handling notification, bring a suit before a people's court in accordance with the Administrative Litigation Law of the People's Republic of China; where the infringer neither brings a suit nor ceases the infringing act upon the expiration of the time limit, the department in charge of patent work may apply to the people's court for compulsory enforcement. The department in charge of patent

work handling the matter may, at the request of the parties, mediate on the amount of damages for the patent infringement; where the mediation fails, the parties may bring a suit before a people's court in accordance with the Civil Procedure Law of the People's Republic of China.

第六十六条　【专利侵权纠纷中证据提供】专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或者个人应当提供其产品制造方法不同于专利方法的证明。

Article 66 [Provision of Evidence in Patent Infringement Disputes] Where a patent infringement dispute involves an invention patent for a process for manufacturing a new product, the entity or individual manufacturing the same product shall provide proof that its product manufacturing process is different from the patented process.

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

Where a patent infringement dispute involves a utility model patent or a design patent, the people's court or the department in charge of patent work may require the patentee or an interested party to produce a patent right evaluation report made by the patent administration department under the State Council after searching, analyzing and evaluating the relevant utility model or design, as evidence for trying or handling the patent infringement dispute; the patentee, an interested party or the accused infringer may also produce a patent right evaluation report on their own initiative.

第六十七条　【专利侵权纠纷中现有技术抗辩权】在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。

Article 67 [Right of Prior Art Defense in Patent Infringement Disputes] In a patent infringement dispute, where the accused infringer has evidence proving that the technology or design he exploited belongs to the prior art or the prior design, the exploitation does not constitute patent infringement.

第六十八条　【假冒专利的法律责任】假冒专利的，除依法承担民事责任外，由负责专利执法的部门责令改正并予公告，没收违法所得，可以处违法所得五倍以下的罚款；没有违法所得或者违法所得在五万元以下的，可以处二十五万元以下的罚款；构成犯罪的，依法追究刑事责任。

Article 68 [Legal Liability for Passing Off Patents] Whoever passes off a patent shall, in addition to bearing civil liability in accordance with the law, be ordered by the department in charge of patent law enforcement to make corrections, which shall be announced, and the illegal gains shall be confiscated; a fine of not more than five times the illegal gains may be imposed; where there are no illegal gains or the illegal gains are 50,000 yuan or less, a fine of not more than 250,000 yuan may be imposed; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

第六十九条　【专利行政执法措施以及当事人的协助、配合义务】负责专利执法的部门根据已经取得的证据，对涉嫌假冒专利行为进行查处时，有权采取下列措施：

Article 69 [Administrative Patent Law Enforcement Measures and the Parties' Obligation to Assist and Cooperate] When a department in charge of patent law enforcement, on the basis of the evidence already obtained, investigates and handles an act of suspected passing off of a patent, it has the power to take the following measures:

（一）询问有关当事人，调查与涉嫌违法行为有关的情况；

(1) questioning the parties concerned and investigating the circumstances related to the suspected illegal act;

（二）对当事人涉嫌违法行为的场所实施现场检查；

(2) conducting on-site inspections of the premises where the parties are suspected of committing the illegal act;

（三）查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料；

(3) consulting and reproducing contracts, invoices, account books and other relevant materials related to the suspected illegal act;

（四）检查与涉嫌违法行为有关的产品；

(4) inspecting the products related to the suspected illegal act;

（五）对有证据证明是假冒专利的产品，可以查封或者扣押。

(5) sealing up or seizing products for which there is evidence of patent passing-off.

管理专利工作的部门应专利权人或者利害关系人的请求处理专利侵权纠纷时，可以采取前款第（一）项、第（二）项、第（四）项所列措施。

When a department in charge of patent work, at the request of the patentee or an interested party, handles a patent infringement dispute, it may take the measures listed in items (1), (2) and (4) of the preceding paragraph.

负责专利执法的部门、管理专利工作的部门依法行使前两款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。

When departments in charge of patent law enforcement and departments in charge of patent work exercise the functions and powers prescribed in the preceding two paragraphs in accordance with the law, the parties shall assist and cooperate and may not refuse or obstruct.

第七十条　【专利侵权纠纷行政管辖权】国务院专利行政部门可以应专利权人或者利害关系人的请求处理在全国有重大影响的专利侵权纠纷。

Article 70 [Administrative Jurisdiction over Patent Infringement Disputes] The patent administration department under the State Council may, at the request of the patentee or an interested party, handle patent infringement disputes that have a significant impact nationwide.

地方人民政府管理专利工作的部门应专利权人或者利害关系人请求处理专利侵权纠纷，对在本行政区域内侵犯其同一专利权的案件可以合并处理；对跨区域侵犯其同一专利权的案件可以请求上级地方人民政府管理专利工作的部门处理。

A department in charge of patent work of a local people's government, in handling a patent infringement dispute at the request of the patentee or an interested party, may jointly handle cases of infringement of the same patent right within its administrative region; for cases of cross-region infringement of the same patent right, it may request the department in charge of patent work of the local people's government at the next higher level to handle them.

第七十一条　【侵犯专利权赔偿数额计算方法】侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失或者侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。对故意侵犯专利权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。

Article 71 [Method of Computing the Amount of Damages for Patent Infringement] The amount of damages for patent infringement shall be determined according to the actual losses suffered by the right holder as a result of the infringement or the benefits obtained by the infringer as a result of the infringement; where the losses of the right holder or the benefits obtained by the infringer are difficult to determine, the amount shall be reasonably determined with reference to a multiple of the patent license royalties. For intentional infringement of a patent right, where the circumstances are serious, the amount of damages may be determined at not less than one time nor more than five times the amount determined in accordance with the above method.

权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予三万元以上五百万元以下的赔偿。

Where the losses of the right holder, the benefits obtained by the infringer and the patent license royalties are all difficult to determine, the people's court may, according to factors such as the type of the patent right and the nature and circumstances of the infringing act, determine damages of not less than 30,000 yuan nor more than 5,000,000 yuan.

赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

The amount of damages shall also include the reasonable expenses paid by the right holder to stop the infringing act.

人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。

For the purpose of determining the amount of damages, where the right holder has made every effort to adduce evidence and the account books and materials related to the infringing act are mainly in the possession of the infringer, the people's court may order the infringer to provide the account books and materials related to the infringing act; where the infringer fails to provide them or provides false account books or materials, the people's court may determine the amount of damages with reference to the claims of the right holder and the evidence provided by him.

第七十二条　【诉前财产保全、行为保全】专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权、妨碍其实现权利的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前依法向人民法院申请采取财产保全、责令作出一定行为或者禁止作出一定行为的措施。

Article 72 [Pre-Litigation Property Preservation and Act Preservation] Where a patentee or an interested party has evidence proving that another person is committing or is about to commit an act infringing the patent right or hindering the realization of its rights, which, if not stopped in time, will cause irreparable damage to its lawful rights and interests, it may, before bringing a suit, apply in accordance with the law to the people's court for measures of property preservation, ordering the commission of a certain act or prohibiting the commission of a certain act.

第七十三条　【诉前证据保全】为了制止专利侵权行为，在证据可能灭失或者以后难以取得的情况下，专利权人或者利害关系人可以在起诉前依法向人民法院申请保全证据。

Article 73 [Pre-Litigation Evidence Preservation] In order to stop patent infringement, where evidence may be destroyed or may be difficult to obtain later, the patentee or an interested party may, before bringing a suit, apply in accordance with the law to the people's court for evidence preservation.

第七十四条　【诉讼时效】侵犯专利权的诉讼时效为三年，自专利权人或者利害关系人知道或者应当知道侵权行为以及侵权人之日起计算。

Article 74 [Limitation of Action] The limitation of action for patent infringement is three years, computed from the date on which the patentee or the interested party knows or should have known of the infringing act and the infringer.

发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为三年，自专利权人知道或者应当知道他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已知道或者应当知道的，自专利权授予之日起计算。

Where an invention is used without payment of an appropriate royalty after the publication of the invention patent application but before the grant of the patent right, the limitation of action for the patentee to demand payment of the royalty is three years, computed from the date on which the patentee knows or should have known of the use of his invention by another person; however, where the patentee already knew or should have known

before the date of grant of the patent right, the limitation shall be computed from the date of grant of the patent right.

第七十五条　【不视为侵犯专利权】有下列情形之一的，不视为侵犯专利权：

Article 75 [Acts Not Deemed to Constitute Patent Infringement] None of the following shall be deemed to constitute patent infringement:

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

(1) using, offering to sell, selling or importing a patented product or a product directly obtained by a patented process after such product is sold by the patentee or by an entity or individual licensed by him;

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

(2) having, before the patent filing date, already manufactured the same product, used the same process or made the necessary preparations for manufacture or use, and continuing to manufacture or use only within the original scope;

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

(3) using the relevant patent in the devices and equipment of a foreign means of transport temporarily passing through the territorial land, territorial waters or territorial airspace of China, for the needs of the means of transport itself, in accordance with the agreement concluded between the country to which it belongs and China or the international treaty to which both are parties, or in accordance with the principle of reciprocity;

（四）专为科学研究和实验而使用有关专利的；

(4) using the relevant patent exclusively for scientific research and experimentation;

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

(5) manufacturing, using or importing a patented drug or a patented medical device for the purpose of providing the information needed for administrative examination and approval, as well as manufacturing or importing a patented drug or a patented medical device exclusively for such purpose.

第七十六条　【药品专利纠纷早期解决机制】药品上市审评审批过程中，药品上市许可申请人与有关专利权人或者利害关系人，因申请注册的药品相关的专利权产生纠纷的，相关当事人可以向人民法院起诉，请求就申请注册的药品相关技术方案是否落入他人药品专利权保护范围作出判决。国务院药品监督管理部门在规定的期限内，可以根据人民法院生效裁判作出是否暂停批准相关药品上市的决定。

Article 76 [Early Resolution Mechanism for Drug Patent Disputes] Where, in the course of the review and approval for the marketing of a drug, a dispute over the patent right relating to the drug for which registration is applied for arises between the applicant for drug marketing authorization and the relevant patentee or interested party, the parties concerned may bring a suit before a people's court, requesting a judgment on whether the technical solution relating to the drug for which registration is applied for falls within the scope of protection of another person's drug patent right. The drug regulatory department under the State Council may, within a prescribed time limit, make a decision on whether to suspend the approval of the marketing of the relevant drug on the basis of the effective judgment of the people's court.

药品上市许可申请人与有关专利权人或者利害关系人也可以就申请注册的药品相关的专利权纠纷，向国务院专利行政部门请求行政裁决。

The applicant for drug marketing authorization and the relevant patentee or interested party may also request an administrative adjudication from the patent administration department under the State Council on the patent right dispute relating to the drug for which registration is applied for.

国务院药品监督管理部门会同国务院专利行政部门制定药品上市许可审批与药品上市许可申请阶段专利权纠纷解决的具体衔接办法，报国务院同意后实施。

The drug regulatory department under the State Council shall, in conjunction with the patent administration department under the State Council, formulate specific linking measures for the approval of drug marketing authorization and the resolution of patent right disputes at the stage of drug marketing authorization application, and implement them after reporting to and obtaining the consent of the State Council.

第七十七条　【专利侵权纠纷中合法来源抗辩】为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。

Article 77 [Lawful Source Defense in Patent Infringement Disputes] Whoever, for production or business purposes, uses, offers to sell or sells a patent-infringing product without knowing that it was manufactured and sold without the permission of the patentee shall not bear liability for compensation if he can prove the lawful source of the product.

第七十八条　【向外国申请专利泄露国家秘密的法律责任】违反本法第十九条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。

Article 78 [Legal Liability for Divulging State Secrets by Filing Patent Applications Abroad] Whoever, in violation of the provisions of Article 19 of this Law, files an application for a patent in a foreign country and divulges State secrets shall be given an administrative sanction by the entity to which he belongs or by the competent authority at the next higher level; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

第七十九条　【禁止管理专利工作的部门向社会推荐专利产品及其法律责任】管理专利工作的部门不得参与向社会推荐专利产品等经营活动。

Article 79 [Prohibition on Departments in Charge of Patent Work Recommending Patented Products to the Public and the Legal Liability Therefor] Departments in charge of patent work may not participate in business activities such as recommending patented products to the public.

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

Where a department in charge of patent work violates the provisions of the preceding paragraph, it shall be ordered by the authority at the next higher level or the supervisory organ to make corrections and eliminate the adverse effects, and the illegal income, if any, shall be confiscated; where the circumstances are serious, the directly responsible persons in charge and other directly responsible persons shall be given sanctions in accordance with the law.

第八十条　【国家机关工作人员渎职行为的法律责任】从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

Article 80 [Legal Liability for Malfeasance of Staff Members of State Organs] Where a staff member of a State organ engaged in patent administration or a staff member of any other relevant State organ neglects his duties, abuses his power or engages in malpractice for personal gain, which constitutes a crime, criminal liability shall be pursued in accordance with the law; where no crime is constituted, a sanction shall be given in accordance with the law.

第八章　附　则

Chapter VIII Supplementary Provisions

第八十一条　【专利费用】向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。

Article 81 [Patent Fees] To apply for a patent with the patent administration department under the State Council and complete other formalities, fees shall be paid in accordance with the provisions.

第八十二条　【施行日期】本法自1985年4月1日起施行。

Article 82 [Effective Date] This Law shall come into force on April 1, 1985.