

CHINA

Patent Law

as amended on August 25, 2000

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Chapter 1 General Provisions

Article 1. Purpose

This Law is enacted to protect patent rights for inventions-creations, to encourage inventions-creations, to foster the spreading and application of inventions-creations, and to promote the progress and innovation of science and technology, for meeting the needs of the construction of socialist modernization.

Article 2. Definitions

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

Article 3. Organization Competent for Grant of Patent Right

The Patent Administrative Authority of the State Council is responsible for patent related affairs throughout the country, receiving and examining patent applications and granting patent right according to the Law. The administrative authorities for patent affairs under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are in charge of patent related affairs within their administrative regions.

Article 4. Secrecy of Inventions-Creations Related to Security of the State

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

Article 5. Inventions-Creations not Granting Patent Right

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

Article 6. Ownership of Patent Right

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

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

For an invention-creation made by a person by using the material and technological means of the entity he belongs to, if a contract between the person and the entity concerning the right to apply for a patent has been concluded, the right to apply for a patent for the invention-creation referred to belongs to the party decided by the contract above mentioned.

Article 7. Prohibition of Preventing Filing Applications

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

Article 8. Ownership of Inventions-Creations Made Jointly

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

Article 9. First-to-File Rule

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

Article 10. Assignment of Patent Right

The right to apply for a patent and the patent right may be assigned. Any assignment of the right to apply for a patent or of the patent right by a Chinese entity or individual to a foreigner must be approved by the competent department of the State Council.

Where the right to apply for a patent or the patent right is assigned, the parties must conclude a written contract and register with the Patent Administrative Authority of the State Council, who shall make an announcement of it. The assignment of the right to apply for a patent or the patent right will come into force from the date of registration.

Article 11. Protection of Patent Right

After the grant of the patent right for an invention or utility model,

except as otherwise provided for in this Law, no entity or individual may, without the authority of the patentee, exploit the patent, that is make, use, offer for sell, sell or import the patented product, or use the patented process and use, offer for sell, sell or import the product directly obtained by the patent process, for production or business purposes.

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

Article 12. Patent License Contract for Exploitation

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

Article 13. Demand for Exploitation Fee after Publication of Applications

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

Article 14. Exploitation of Patents owned by State or Collectivity

Where a patent for invention owned by a state-owned enterprise or institution is of great significance to the interests of the State or to the public interests, the competent departments concerned of the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government, after approved by the State Council, have the power to decide to spread and apply the patent for invention on the authorized scale and to allow designated entities or individual to exploit that patent for invention. The exploiting entity or individual shall, according to the prescriptions of the State, pay a fee for exploitation to the patentee.

Where a patent for invention owned by a Chinese individual or an entity under collective ownership is of great significance to the interests of the State or to the public interests and is in need of spreading and application, it can be treated alike by making reference to the provisions of the preceding paragraph.

Article 15. Marking of Patent Right

The patentee has the right to affix a patent marking and to indicate the number of the patent on the patented product or on the packing of that product.

Article 16. Reward for Service Inventions, etc.

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

Article 17. Naming of Inventors

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

Article 18. Foreigners Entitled to File Applications

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

Article 19. Patent Agency

Where a foreigner, foreign enterprise or a foreign organization having no habitual residence or business office in China applies for a patent, he or it shall appoint a patent agency designated by the Patent Administrative Authority of the State Council to act as his or its agent. Where a Chinese entity or an individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a patent agency to act as its or his agent.

A patent agency shall act in accordance with law and administrative regulations, handling patent related affairs in line with the entrustment of its principal. For the contents of its principal's invention-creation, except for those that have been published or announced, the patent agent shall bear the responsibility to keep them secret. The administration of patent agencies shall comply with the regulations made by the State Council.

Article 20. Filing of Patent Application Abroad

Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in the country, it or he shall file first an application for patent with the Patent Administrative Authority of the State Council, appoint a patent agency designated by the Authority to act as its or his agent, and comply with the provisions of Article 4 of this Law.

Chinese entities or individuals may, in accordance to relevant international treaties entered into by the People's Republic of China, file an international patent application. And applicants shall comply with the provisions referred to in the preceding paragraph.

The Patent Administrative Authority of the State Council shall deal with international patent applications in accordance with relevant international treaties entered into by the P. R. China, this law and relevant regulations of the State Council.

Article 21. Secrecy of Patent Application

The Patent Administrative Authority of the State Council and its Patent Reexamination Board shall deal with patent applications and patent related request factually, fairly, precisely and timely.

Until the publication or announcement of the application for a patent, staff members of the Patent Administrative Authority of the State Council and persons involved have the duty to keep its contents secret.

Chapter 2 Requirements for Grant of Patent Right

Article 22. Inventions and Utility Models

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

Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed in publications in the country or abroad or has been publicly used or made known to the public by any other means in the country, nor has any other person filed previously with the Patent Administrative Authority of the State Council an application which described the identical invention or utility model and was published after the said date of filing.

Inventiveness means that, as compared with technologies existing before the date of filing, an invention has prominent substantive features and represents a notable progress and that a utility model has substantive features and represents progress.

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

Article 23. Designs

A design for which patent right can be granted must not be identical with and similar to any design which, before the date of filing, has been disclosed in publications in the country or abroad or has been publicly used in the country; it shall not conflict with any prior legal right obtained by others.

Article 24. Exceptions to Lack of Novelty of Inventions-creations

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

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

Article 25. Subject Matters not Granting Patent Right

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

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis and for the treatment of diseases;

(4) animal and plant varieties;

(5) substances obtained by means of nuclear transformation.

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

Chapter 3 Application for Patent

Article 26. Documents Required for Filing Patent Application

Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted. The request shall state the title of the invention or utility model, the name of the inventor or creator, the name and the address of the applicant and other related matters.

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

Article 27. Filing Patent for Design Application

Where an application for a patent for design is filed, a request, drawings or photographs of the design shall be submitted, and the product incorporating the design and the class to which that product belongs shall be indicated.

Article 28. Filing Date

The date on which the Patent Administrative Authority of the State Council receives the application shall be the date of filing. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of filing.

Article 29. Right of Priority of Applications

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

an application for a patent for the same subject matter, he or it may enjoy a right of priority.

Article 30. Procedure of Claiming Right of Priority

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

Article 31. Scope of Subject Matter may be filed as One Application

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

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

Article 32. Withdrawal of Applications

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

Article 33. Amendment of Applications

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

Chapter 4 Examination and Approval of Application for Patent

Article 34. Publication of Applications

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

Article 35. Request for Examination of Applications as to Substance

Upon the request of the applicant for a patent for invention, made at any time within three years from the date of filing, the Patent Administrative Authority of the State Council will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to its substance, the application shall be deemed to have been withdrawn. The Patent Administrative Authority of the State Council may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

Article 36. Information Required for Examination as to Substance

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

Where an applicant for a patent for invention has filed in a foreign country an application for a patent for the same invention, the Patent Administrative Authority of the State Council may request the applicant to furnish, within a specified time limit, documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, without any justified reason, the said documents are not furnished within the time limit, the application shall be deemed to have been withdrawn.

Article 37. Observations after Examination as to Substance

Where the Patent Administrative Authority of the State Council, after it has made the examination as to substance of the application for invention, finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the

application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn.

Article 38. Rejection of Applications

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

Article 39. Grant of Patent Right and Announcement

Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the Patent Administrative Authority of the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall come into force upon the date of announcement.

Article 40. Registration of Utility Models and Designs, Announcement

Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the Patent Administrative Authority of the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or the patent right for design shall come into force upon the date of announcement.

Article 41. Patent Reexamination Board

The Patent Administrative Authority of the State Council shall set up a Patent Reexamination Board. Where any applicant for a patent is not satisfied with the decision of rejection to the application made by the Patent Administrative Authority of the State Council, such applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant.

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

Chapter 5 Duration, Cessation and Invalidation of Patent Right

Article 42. Duration

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

Article 43. Payment of Annual Fees

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

Article 44. Cessation of Patent Right

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

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

Any cessation of the patent right before the expiration of its duration shall be registered and announced by the Patent Administrative Authority of the State Council.

Article 45. Request for Declaring Patent Right invalid

Where, since the date of the announcement of the grant of the patent right by the Patent Administrative Authority of the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid.

Article 46. Appeals Against Decision Declaring Patent Right invalid

The Patent Reexamination Board shall timely examine the request for invalidation of the patent right, make a decision and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the Patent Administrative Authority of the State Council.

Where any party is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the opposite party in the invalidation procedure to attend the legal proceedings as a Third Party.

Article 47. Effect of Patent Right which has been Declared Invalid

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

The decision of invalidation shall have no retroactive effect on any judgment or order on patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of patent infringement dispute which has been enforced or compulsorily enforced, and on any contract of patent license and of assignment of patent right which have been performed, prior to the decision of invalidation; however, the damages caused to other persons in bad faith on the part of the patentee shall be compensated.

If, pursuant to the provisions of the preceding paragraph, no repayment, by the patentee or the assignor of the patent right to the licensee or the assignee of the patent right, of the fee for the exploitation of the patent or the price for the assignment of the patent right is obviously contrary to the principle of equity, the patentee or the assignor of the patent right shall repay the whole or part of the fee for the exploitation of the patent or the price for the assignment of the patent right to the licensee or the assignee of the patent right.

Chapter 6 Compulsory License for Exploitation of Patent

Article 48. Compulsory License for Exploitation

Where any entity which is qualified to exploit the invention or utility model has made requests for authorization from the patentee of an invention or utility model to exploit its or his patent on reasonable terms and such efforts have not been successful within a reasonable period of time, the Patent Administrative Authority of the State Council may, upon the application of that entity, grant a compulsory license to exploit the patent for invention or utility model.

Article 49. Compulsory License for Exploitation in Case of National Emergency

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

Article 50. Compulsory License for Exploitation in Case of Patent Right has been granted Earlier

Where the invention or utility model for which the patent right was granted is an important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the Patent Administrative Authority of the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Where, according to the proceeding paragraph, a compulsory license is granted, the Patent Administrative Authority of the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

Article 51. Requirements of Request for License Contract for Exploitation

The entity or individual requesting, in accordance with the provisions of this Law, a compulsory license for exploitation shall furnish proof that it or he has not been able to conclude with the patentee a license contract for exploitation on reasonable terms.

Article 52. Registration and Announcement of Compulsory License for Exploitation

Where a decision to grant a compulsory license for exploitation is made, the Patent Administrative Authority of the State Council shall notify the patentee promptly, register and announce the decision.

A specified extent and time limit, within which the compulsory license is carried out, shall be stipulated in the decision to grant the compulsory license. When the conditions for granting the compulsory license become non-existent and will not happen again, the Patent Administrative Authority of the State Council shall, upon the request of applicants, make a cessation decision to the compulsory license after examination.

Article 53. Limitation of Rights of Compulsory License for Exploitation

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

Article 54. Exploitation Fee of Compulsory License for Exploitation

The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, the amount of which shall be fixed by both parties in consultation. Where the parties fail to reach an agreement, the Patent Administrative Authority of the State Council shall adjudicate.

Article 55. Appeals Against Decision Granting Compulsory License for Exploitation

Where the patentee is not satisfied with the decision of the Patent Administrative Authority of the State Council granting a compulsory license for exploitation, and where the patentee or the entity or individual granted a compulsory license is not satisfied with the adjudication of the Patent Administrative Authority of the State Council regarding the exploitation fee payable for exploitation, he or it may, within three months from the receipt of the notification, institute legal proceedings in the people's court.

Chapter 7 Protection of Patent Right

Article 56. Extent of Protection of Patent Right

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

The extent of protection of the patent right for design shall be determined by the product incorporating the patented design as shown in the drawings or photographs.

Article 57. Disposition against Infringing Acts of Patent Right

For any dispute arising from an exploitation of the patent without the authorization of the patentee that constitutes an infringing act, the parties may settle it through consultation. Where the parties are not willing to or fail to reach an agreement, the patentee or any interested party may directly institute legal proceedings in the people's court or request the administrative authority for patent affairs to handle the matter. The administrative authority for patent affairs may order the infringer to stop infringing, if it holds that his act constitutes an infringement. Any party dissatisfied may, within fifteen days from the receipt of the notification, institute legal proceedings in the people's court in accordance with the Administrative Proceedings Law of the People's Republic of China. If the infringer does not institute such legal proceedings within the time limit, nor does it stop infringing, the administrative authority for patent affairs may approach the people's court for compulsory execution. The administrative authority for patent affairs shall, upon the request of the interested parties, settle the dispute over infringement damages through mediation. In case a settlement is not achieved, the interested parties may institute legal proceedings in the people's court according to the Civil Proceedings Law of the People's Republic of China.

For any infringement dispute involving the patent for invention concerning a process for the manufacture of a new product, the entity or individual that produces the same product shall furnish proof showing that its or his process is different from the patented one. If a patent for utility model is involved, the people's court or the administrative authority for patent affairs may ask the patentee to furnish search reports made by the Patent Administrative Authority of the State Council.

Article 58. Acts for Passing off Patent Right

Where any person passes off the patent of another person, such person

shall be ordered by the administrative authority for patent affairs to correct the passing off and announce it to the public, apart from being responsible for the civil liabilities. The illegal gains of the passing off shall be confiscated, and an accompanied fine of less than the amount of three times of the illegal gains may be imposed. If there is no illegal gains, a fine less than 50,000 RMB may be imposed. If the act constitutes a crime, any person directly responsible shall be prosecuted for his criminal liability.

Article 59. False Marking of Non-Patented Products, etc.

Where any person passes any non-patented product off as patented product or passes any non-patented process off as patented process, such person shall be ordered by the administrative authority for patent affairs to correct the passing off and announce it to the public, such person may also be ordered to pay a fine less than 50, 000 RMB.

Article 60. Decision of Compensation for Damages

The compensation for damages resulted from an infringement shall be decided according to the actual loss suffered by the patentee for the act of infringement or the benefit gained by the infringer for its act of infringement. When it is difficult to decide the loss suffered by the patentee or the benefit gained by the infringer, the compensation for damages shall be reasonable multiples of the royalties of a patent license.

Article 61. Measures of Property Preservation

The patentee or any interested party, who can provide evidence to prove that an infringement act has been done or will be done, and there will be irreparable damages if the infringement is not stopped immediately, he/it may apply with the people's court for an order to stop the infringement and take measures of property preservation before legal proceedings are instituted therein.

In dealing with the applications mentioned in the preceding paragraph, the people's court shall comply with the stipulations of Articles 93 to 96 and Article 99 of the Civil Proceedings Law of the People's Republic of China.

Article 62. Prescription for Instituting Legal Proceeding for Infringement of Patent Right

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

knowledge of the infringement act.

Where there is any exploitation of the invention without the payment of appropriate fee, after the publication of the application for a patent for invention, and before the grant of patent right, the prescription for the patentee to institute legal proceedings concerning the payment of exploitation fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of the exploitation act. If the patentee obtains or should have obtained knowledge of the exploitation act before the date on which the patent right is granted, the above two-year prescription should be counted from the date of the issuance of the patent right.

Article 63. Acts not deemed to be Infringement of Patent Right

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

(1) Where, after the sale of a patented product or a product directly obtained by a patented process that was made, imported by the patentee or with the authorization of the patentee, any other person uses, offers for sale or sells that product;

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

(3) Where any foreign means of transportation which temporarily pass through the territorial land, territorial waters or territorial airspace of China use the patent concerned, in accordance with any agreement concluded between the country to which the foreign means of transport belong and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity, for their own needs, in their devices and installations;

(4) Where any person uses the patent concerned solely for the purposes of scientific research and experimentation.

Where, a person uses or sells a patented product or a product directly obtained by a patented process for production and business purpose, not knowing that it was made and sold without the authorization of the patentee, he is not liable for damages if the person could prove that the product comes from legitimate sources.

Article 64. Acts of Offense against Filing of Patent Application Abroad

Where any person, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent that divulges a secret of the State, he shall be subject to disciplinary sanction by

the entity to which he belongs or by the competent authority concerned at the higher level. If the act constitutes a crime, he shall be prosecuted for his criminal liability according to the law.

Article 65. Acts for Usurpation on Rights of Patentee

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

Article 66. Commercial Activity of Administrative Authority

Administrative authority for patent affairs shall not involve in commercial activities including recommending patent products to the society. Where an administrative authority for patent related affairs violates the provision in the above paragraph, the competent authority at higher level or supervising authority shall order it to correct its act, eliminate the influence and confiscate its illegal income; if the circumstances are serious, its director or other persons directly responsible for the act shall be subject to disciplinary sanction.

Article 67. Misconduct of Officials

Where any staff member of the Patent Administrative Authority of the State Council or any staff member concerned of the State acts wrongfully out of personal considerations or commits fraudulent acts or abuses his power, and the act constitutes a crime, he shall be prosecuted for his criminal liability according to the law; if the act does not constitute a crime, he shall be subject to disciplinary sanction according to the law.

Chapter 8 Supplementary Provisions

Article 68. Fees

Any application for a patent filed with, and any other proceedings before, the Patent Administrative Authority of the State Council, shall be subject to the payment of a fee as prescribed.

Article 69. Date of Entry into Force

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