

CHINA
Patent Regulations
as amended on June 15, 2001
ENTRY INTO FORCE: July 1, 2001

TABLE OF CONTENTS

Chapter 1 General Provisions

Rule 1
Rule 2
Rule 3
Rule 4
Rule 5
Rule 6
Rule 7
Rule 8
Rule 9
Rule 10
Rule 11
Rule 12
Rule 13
Rule 14
Rule 15

Chapter 2 Application for Patent

Rule 16
Rule 17
Rule 18
Rule 19
Rule 20
Rule 21
Rule 22
Rule 23
Rule 24
Rule 25
Rule 26
Rule 27
Rule 28
Rule 29

Rule 30
Rule 31
Rule 32
Rule 33
Rule 34
Rule 35
Rule 36
Rule 37

Chapter 3 Examination and Approval of Application for Patent

Rule 38
Rule 39
Rule 40
Rule 41
Rule 42
Rule 43
Rule 44
Rule 45
Rule 46
Rule 47
Rule 48
Rule 49
Rule 50
Rule 51
Rule 52
Rule 53
Rule 54
Rule 55
Rule 56
Rule 57

Chapter 4 Reexamination of Patent Application and Invalidation of Patent Right

Rule 58
Rule 59
Rule 60
Rule 61
Rule 62
Rule 63

Rule 64
Rule 65
Rule 66
Rule 67
Rule 68
Rule 69
Rule 70
Rule 71

Chapter 5 Compulsory License for Exploitation of Patent

Rule 72
Rule 73

Chapter 6 Rewards to Inventor or Creator of Service Invention-creation

Rule 74
Rule 75
Rule 76
Rule 77

Chapter 7 Protection of Patent Right

Rule 78
Rule 79
Rule 80
Rule 81
Rule 82
Rule 83
Rule 84
Rule 85
Rule 86
Rule 87

Chapter 8 Patent Register and Patent Gazette

Rule 88
Rule 89

Chapter 9 Fees

Rule 90
Rule 91
Rule 92
Rule 93
Rule 94
Rule 95
Rule 96
Rule 97
Rule 98

Chapter 10 Special Provisions for International Applications

Rule 99
Rule 100
Rule 101
Rule 102
Rule 103
Rule 104
Rule 105
Rule 106
Rule 107
Rule 108
Rule 109
Rule 110
Rule 111
Rule 112
Rule 113
Rule 114
Rule 115
Rule 116

Chapter 11 Supplementary Provisions

Rule 117
Rule 118
Rule 119
Rule 120
Rule 121
Rule 122

Chapter 1 General Provisions

Rule 1

These Implementing Regulations are drawn up in accordance with the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law).

Rule 2

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

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

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

Rule 3

Any proceedings provided for by the Patent Law and these Implementing Regulations shall be conducted in a written form or in any other form prescribed by the Patent Administrative Authority of the State Council.

Rule 4

Any document submitted under the Patent Law and these Implementing Regulations shall be in Chinese. The standard scientific and technical terms shall be used if there is a prescribed one set forth by the State. Where no generally accepted translation in Chinese can be found for a foreign name or scientific or technical term, the one in the original language shall be also indicated.

Where any certificate and certified document submitted in accordance with the Patent Law and these Implementing Regulations are in foreign language, and where the Patent Administrative Authority of the State Council finds it necessary, it may request a Chinese translation of the certificate and the certified document to be submitted within a specified time limit; where the translation is not submitted within the specified time limit, the certificate and certified document shall be deemed not to have been submitted.

Rule 5

For any document sent by mail to the Patent Administrative Authority of

the State Council, the date of mailing indicated by the postmark on the envelope shall be presumed to be the date of filing. If the date of mailing indicated by the postmark on the envelope is illegible, the date on which the Patent Administrative Authority of the State Council receives the document shall be the date of filing, except where the date of mailing is proved by the addresser.

Any document of the Patent Administrative Authority of the State Council may be served by mail, by personal delivery or by any other means. Where any party concerned appoints a patent agency, the document shall be sent to the patent agency; where no patent agency is appointed, the document shall be sent to the person indicated in the request.

For any document sent by mail by the Patent Administrative Authority of the State Council, the 16th day from the date of mailing shall be presumed to be the date on which the addressee receives the document.

For any document which shall be delivered personally in accordance with the prescription of the Patent Administrative Authority of the State Council, the date of delivery is the date on which the addressee receives the document.

Where the address of a document is not clear and cannot be sent by mail, the document may be served by making an announcement in the Patent Gazette. At the expiration of one month from the date of the announcement, the document shall be presumed to have been served.

Rule 6

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

Rule 7

Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the Patent Administrative Authority of the State Council is not observed because of force majeure, resulting in the loss of any right on the part of the party concerned, he or it shall, within two months from the date on which the impediment is removed, at the latest within two years immediately following the expiration of that time limit, state the reasons, together with relevant supporting documents and request the Patent Administrative Authority of the State Council to

restore his or its rights.

Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the Patent Administrative Authority of the State Council is not observed because of any justified reason, resulting in the loss of any right on the part of the party concerned, he or it shall, within two months from the date of receipt of a notification from the Patent Administrative Authority of the State Council, state the reasons and request the Patent Administrative Authority of the State Council to restore his or its rights.

Where the party concerned makes a request for an extension of a time limit specified by the Patent Administrative Authority of the State Council, he or it shall, before the time limit expires, state the reasons to the Patent Administrative Authority of the State Council and complete the relevant procedures.

The provisions of paragraphs one and two of this Rule shall not be applicable to the time limits referred to in Articles 24, 29, 42 and 62 of the Patent Law.

Rule 8

Where an application for patent for invention relates to the security of the State concerning national defense and is required to be kept secret, the application shall be filed with the patent organization of the national defense system. Where any application for patent for invention relating to the secrets of the State concerning national defense and requiring to be kept classified is received by the Patent Administrative Authority of the State Council, the Patent Administrative Authority of the State Council shall transfer the application to the said patent organization of the national defense system. The Patent Administrative Authority of the State Council shall make a decision on the basis of the observations of the examination of the application presented by the said patent organization of the national defense system.

Subject to the preceding paragraph, the Patent Administrative Authority of the State Council, after receipt of an application for patent for invention which is required to be examined for the purpose of security, shall send it to the competent department concerned of the State Council for examination. The said department shall, within four months from receipt of the application, send a report on the results of the examination to the Patent Administrative Authority of the State Council. Where the invention for which a patent is applied for is required to be kept secret, the Patent Administrative Authority of the State Council shall handle it as an application for secret patent and notify the applicant accordingly.

Rule 9

The invention-creations contrary to the laws of the State referred to in Article 5 of the Patent Law do not include invention-creations the exploitation of which is prohibited under the laws of the State.

Rule 10

The date of filing referred to in the Patent Law, except that mentioned in Articles 28 and 42, means the priority date where a right of priority is claimed.

The date of filing referred to in these Implementing Regulations means the date of filing provided for in Article 28 of the Patent Law, unless otherwise provided for.

Rule 11

"Service invention-creation made by a person in execution of the tasks of the entity to which he belongs" mentioned in Article 6 of the Patent Law refers to any invention-creation made:

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

The entity to which one belongs mentioned in Article 6 of the Patent Law includes the entity one temporarily works for; "material and/or technical means of the entity" mentioned in Article 6 of the Patent Law refers to entity's money, equipment, spare parts, raw materials, or technical data which are not to be disclosed to the public.

Rule 12

"Inventor" or "creator" mentioned in the Patent Law refers to any person who has made creative contributions to the substantive features of the invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organization work, or who offers facilities for making use of material and/or technical means, or who takes part in other auxiliary functions, shall not be considered as inventor or creator.

Rule 13

For any identical invention-creation, only one patent right shall be granted.

Two or more applicants who file, on the same day, applications for patent for the identical invention-creation, according to Article 9 of the Patent Law, shall, after receipt of a notification from the Patent Administrative Authority of the State Council, hold consultation among themselves to decide on the person or persons who shall be entitled to file the application.

Rule 14

Where a Chinese entity or individual assigns the right to apply for patent or the patent right to a foreigner, the assignment shall be approved by the competent Authority for Foreign Trade and Economic Cooperation of the State Council in conjunction with the Administrative Authority for Science and Technology of the State Council.

Rule 15

Where a patent right is transferred for reasons other than the assignment of a patent right as provided for in Article 10 of the Patent Law, the interested party shall perform the formalities for change of the name of the patentee with the Patent Administrative Authority of the State Council on the basis of relevant certified document or legal instrument. Any license contract for exploitation of the patent which has been concluded by the patentee with an entity or individual shall, within three months from the date of entry into force of the contract, be submitted to the Patent Administrative Authority of the State Council for recordal.

Chapter 2 Application for Patent

Rule 16

Anyone who applies for a patent in written form shall submit application documents in two copies to the Patent Administrative Authority of the State Council.

Any application filed in any other form prescribed by the Patent Administrative Authority of the State Council shall conform to the requirement.

Any applicant who appoints a patent agency for filing an application for a patent with, or for dealing with other patent matters before, the Patent Administrative Authority of the State Council, shall submit a power of attorney indicating the scope of the power entrusted.

Where there are two or more applicants of one application and where they have not appointed any patent agency, the first applicant indicated in the request shall be the representative unless otherwise stated in the request.

Rule 17

Other related matters mentioned in Article 26, paragraph two, of the Patent Law refer to:

- (1) the nationality of the applicant;
- (2) where the applicant is an enterprise or other organization, the name of the country in which the applicant has the principal business office;
- (3) where the applicant has appointed a patent agency, the relevant matters shall be indicated; where the applicant has not appointed a patent agency, the name, address, postal code and telephone number of his or its person to be contacted;
- (4) where the priority of an earlier application is claimed, the relevant matters which should be indicated;
- (5) the signature or seal of the applicant or the patent agency;
- (6) a list of the documents constituting the application;
- (7) a list of the documents appending the application;
- (8) any other related matter which needs to be indicated.

Rule 18

The description of an application for a patent for invention or utility model shall indicate the title of the invention or utility model, and the title shall be consistent with the one appearing in the request. The description shall contain:

- (1) technical field: indicating the technical field the technical solution

falls into for which protection is claimed;

(2) background art: indicating the background art which facilitates the understanding, searching and examination of the invention or utility model, and citing, if available, the documents reflecting such art;

(3) contents of invention: stating the technical problem to be solved by the invention or utility model and the technical solution adopted for solving the technical problem, and indicating the advantageous effects of the invention or utility model with reference to the prior art;

(4) Drawings: briefly explaining each of the drawings where the description is accompanied therewith;

(5) Specific mode for carrying out the invention or utility model: indicating in detail the optimum mode contemplated by the applicant for carrying out the invention or utility model; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any.

The manner and order mentioned in the preceding paragraph shall be observed by the applicant of a patent for invention or a patent for utility model and a subtitle is given at the beginning of each portion of the description, unless, because of the nature of the invention or utility model, a different manner or order would afford an accurate understanding and a more economical presentation.

The description of the invention or utility model shall be written in standard terms and straightforward sentences, and shall not contain such references to the claims as: "as described in part - of the claim", nor shall it contain commercial advertising.

Where an application for patent for invention covers one or more sequences of nucleotides or of amino acids, the description thereof shall contain a table of sequence complying with the prescription of the Patent Administrative Authority of the State Council. The applicant shall submit the table of sequence as a separate portion of the description, together with a computer-readable copy in the form prescribed by the Patent Administrative Authority of the State Council.

Rule 19

The same sheet of drawings may contain several figures of the invention or utility model, and the figures shall be numbered and arranged in numerical order consecutively as "Figure 1, Figure 2,".

The scale and the distinctness of the drawings shall be such that a reproduction with a linear reduction in size to two-thirds would still enable all details to be clearly distinguishable.

Drawing reference signs not appearing in the text of the description of

the invention or utility model shall not appear in the drawings. Drawing reference signs not appearing in the drawings shall not appear in the text of the description. Drawing reference signs for the same composite part used in an application document shall be consistent throughout. The drawings shall not contain any other explanatory notes, except words which are indispensable.

Rule 20

The claims shall define clearly and concisely the matter for which protection is sought in terms of the technical features of the invention or utility model.

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

The technical terminology used in the claims shall be consistent with that used in the description. The claims may contain chemical or mathematical formulae but no drawings. They shall not, except where absolutely necessary, contain such references to the description or drawings as: "as described in part - of the description", or "as illustrated in figure - of the drawings".

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

Rule 21

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

An independent claim shall outline the technical solution of an invention or utility model and describe the indispensable technical features necessary for solving the technical problems.

A dependent claim shall further define the claim which it refers to by additional features which it is desired to protect.

Rule 22

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

(1) a preamble portion, indicating the title of the subject matter of the technical solution of the invention or utility model for which protection is sought, and the necessary technical features common to the

invention or utility model and the closest prior art;

(2) a characterizing portion, stating, in such words as "characterized in that" or in similar expressions, the technical features of the invention or utility model, which distinguish it from the closest prior art. These features, in combination with the features stated in the preamble portion, served to define the scope of protection of the invention or utility model.

Independent claims may be presented in any other form, where it is not appropriate, according to the nature of the invention or utility model, to present them in the form prescribed in the preceding paragraph.

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

Rule 23

A dependent claim of an invention or utility model shall contain a reference portion and a characterizing portion, and be presented in the following form:

(1) a reference portion, indicating the serial number(s) of the claim(s) referred to, and the title of the subject matter;

(2) a characterizing portion, stating the additional technical features of the invention or utility model.

A dependent claim shall refer only to the preceding claim or claims. A multiple dependent claim referring to two or more preceding claims shall only refer to any one of the preceding claims, and shall not be taken as the basis of any other multiple dependent claim.

Rule 24

The abstract of the description shall outline the contents disclosed in the application for patent for invention or utility model, namely indicating the title and the technical field of the invention or utility model, and clearly stating the technical problems to be solved, the essential technical features and the major use or uses of the technical solution solving the problems.

The abstract may contain the chemical formula which best characterizes the invention. In an application for a patent which contains drawings, the applicant shall indicate and provide a drawing which best characterizes the invention or utility model. The scale and the distinctness of the drawings shall be such that a reproduction with a linear reduction in size to 4cm x 6cm would still enable all details to be clearly distinguished. The whole text of the abstract shall contain not more than 300 Chinese

characters. There shall be no commercial advertising in the abstract.

Rule 25

Where an application for a patent for invention concerns a new biological material which is not accessible to the public, and the description of which is not sufficient enough to enable skilled artisans of the art to carry out the invention, the applicant shall, in addition to fulfilling the requirements set out in the Patent Law and these Implementing Regulations, complete the following formalities.

(1) deposit a sample of the biological material with a depository institution designated by the Patent Administrative Authority of the State Council before the date of filing, or, at the latest, on the date of filing (or the priority date, where priority is claimed), and submit, at the time of filing, or, at the latest, within four months from the filing date, a receipt of deposit and the viability proof from the depository institution; where they are not submitted within the specified time limit, the sample shall be deemed not to have been deposited;

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

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

Rule 26

Where an applicant for patent for invention deposits a sample of biological material in accordance with Rule 25 of these Implementing Regulations, after the publication of the application for a patent for invention relating to a biological material, any entity which, or individual who, needs to make use of the biological material covered in the application for the purpose of experiment shall make a request to the Patent Administrative Authority of the State Council containing the following:

(1) the name and address of the entity or individual making the request;

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

(3) an undertaking to use the biological material for experimental purpose

only before the grant of the patent right.

Rule 27

The size of drawings or photographs of a design submitted in accordance with the provisions of Article 27 of the Patent Law shall not be smaller than 3cm x 8cm, nor larger than 15cm x 22cm.

Where an application for a patent for design seeking concurrent protection of colors is filed, a drawing or photograph in color, and a drawing or photograph in white and black, shall be submitted in two copies.

The applicant shall submit, in respect of the subject matter of the product incorporating the design which is in need of protection, the relevant views and stereoscopic drawings or photographs, so as to clearly show the subject matter for which protection is sought.

Rule 28

Where an application for a patent for design is filed, a brief explanation of the design shall, when necessary, be indicated.

The brief explanation of the design shall include the main design elements of the product incorporating the design, the colors for which protection is sought and the schematic view thereof. The brief explanation shall not contain any commercial advertising and shall not be used to indicate the function and the uses of the product.

Rule 29

Where the Patent Administrative Authority of the State Council finds it necessary, it may require the applicant for a patent for design to submit a sample or model of the product incorporating the design. The volume of the sample or model submitted shall not exceed 30cm x 30cm x 30cm, and its weight shall not surpass 15 kilos. Articles easy to get rotten or broken or articles that are dangerous may not be submitted as sample or model.

Rule 30

The existing technology mentioned in Article 22, paragraph three, of the Patent Law means any technology which 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, before the date of filing (or the priority date where priority is claimed), that is, prior art.

Rule 31

The academic or technological meeting mentioned in item (2) of Article 24 of the Patent Law means any academic or technological meeting organized by a competent department concerned of the State Council or by a national academic or technological association.

Where any invention-creation for which an application for a patent is filed falls under the provisions of item (1) or item (2) of Article 24 of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit a certificate issued by the entity which organizes the international exhibition or academic or technological meeting, stating that the invention-creation was in fact exhibited or made public there and also the date of its exhibition or making public.

Where any invention-creation for which an application for a patent is filed falls under the provisions of item (3) of Article 24 of the Patent Law, the Patent Administrative Authority of the State Council may, when necessary, require the applicant to submit the relevant proof within the prescribed time limit.

Where the applicant fails to make the declaration or submit the certified document pursuant to paragraph two of this Rule, or fails to submit the proof within the prescribed time limit according to paragraph three of this Rule, the provision of Article 24 of the Patent Law shall not be applicable to his or its application.

Rule 32

Where the applicant is to comply with the requirements for claiming the right of priority in accordance with Article 30 of the Patent Law, he or it shall, in his or its written declaration, indicate the date of filing and the filing number of the application which was first filed (hereinafter referred to as the earlier application) and the country in which that application was filed. If the written declaration does not contain the date of filing of the earlier application and the name of that country, the declaration shall be deemed not to have been made.

Where the foreign priority is claimed, the copy of the earlier application document submitted by the applicant shall be certified by the competent authority of the foreign country; where the name or the title of the applicant of the earlier application is not consistent with that of the applicant of the subsequent application in the certified material, a proof of the assignment of the right of priority shall be submitted; where the domestic priority is claimed, the copy of the earlier application document shall be prepared by the Patent Administrative Authority of the State Council.

Rule 33

Any applicant may claim one or more priorities for an application for a patent; where the priorities of several earlier applications are claimed, the priority period for the application shall be counted from the earliest priority date.

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

- (1) where it has claimed foreign or domestic priority;
- (2) where it has been granted a patent right;
- (3) where it is a divisional application filed as prescribed.

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

Rule 34

Where an application for a patent is filed or the right of foreign priority is claimed by any applicant having no habitual residence or business establishment in China, the Patent Administrative Authority of the State Council may, when finding it necessary, require the applicant to submit the following documents:

- (1) a certificate concerning the nationality of the applicant;
- (2) a certificate concerning the seat of the business establishment or the headquarters, if the applicant is an enterprise or any other organization;
- (3) a testimonial showing that the country, to which the applicant belongs, recognizes that Chinese entities and individuals are, under the same conditions applied to its nationals, entitled to patent right, right of priority and other related rights in that country.

Rule 35

Two or more inventions or utility models belonging to a single general inventive concept which may be filed as one application in accordance with the provision of Article 31, paragraph one, of the Patent Law shall be technically inter-related and contain one or more identical or corresponding special technical features. The expression "special

technical features" shall mean those technical features that define a contribution which each of those inventions, considered as a whole, makes over the prior art.

Rule 36

The expression "the same class" mentioned in Article 31, paragraph two of the Patent Law means that the products incorporating the designs belong to the same subclass in the classification of products for designs. The expression "be sold or used in sets" means that the products incorporating the designs have the same designing concept and are customarily sold or used at the same time.

Where two or more designs are filed as one application in accordance with the provisions of Article 31, paragraph two, of the Patent Law, the designs shall be numbered consecutively and the numbers shall be placed before the titles of the view of the product incorporating the design.

Rule 37

When withdrawing an application for a patent, the applicant shall submit to the Patent Administrative Authority of the State Council a declaration, indicating the title of the invention-creation, the filing number and the date of filing.

Where a declaration to withdraw an application for a patent is submitted after the printing preparation has been made by the Patent Administrative Authority of the State Council for publication of the application documents, the application shall be announced as scheduled; however, the declaration to withdraw an application for a patent shall be published on the Patent Gazette published later on.

Chapter 3 Examination and Approval of Application for Patent

Rule 38

In any of the following situations, any person who makes examination or hears a case in the procedures of preliminary examination, examination as to substance, reexamination, and invalidation shall, on his own initiative or upon the request of the parties concerned or any other interested person, be excluded from exercising his function:

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

Rule 39

Upon the receipt of an application for a patent for invention or utility model consisting of a request, a description (a drawing being indispensable for utility model) and one or more claims, or an application for a patent for design consisting of a request and one or more drawings or photographs showing the design, the Patent Administrative Authority of the State Council shall accord the date of filing and a filing number and notify the applicant accordingly.

Rule 40

In any of the following situations, the Patent Administrative Authority of the State Council shall declare the application unacceptable and notify the applicant accordingly:

- (1) where the application for a patent for invention or utility model does not contain a request, a description (the description of utility model does not contain drawings) or claims, or the application for a patent for design does not contain a request, drawings or photographs;
- (2) where the application is not written in Chinese;
- (3) where the application is not in conformity with the provisions of Rule 120, paragraph one, of these Implementing Regulations;
- (4) where the request does not contain the name and address of the applicant;
- (5) where the application is obviously not in conformity with the provisions of Article 18, or Article 19, paragraph one, of the Patent Law;
- (6) where the kind of protection (patent for invention, utility model or design) of the application for a patent is not clear and definite or

difficult to be discerned.

Rule 41

Where the description mentions that it contains "explanatory notes to the drawings" but the drawings or some of them are missing, the applicant shall, within the time limit specified by the Patent Administrative Authority of the State Council, either furnish the drawings or make a declaration for the deletion of the "explanatory notes to the drawings". If the drawings are submitted later, the date of their delivering at, or mailing to, the Patent Administrative Authority of the State Council shall be the date of filing of the application; if the mention of "explanatory notes to the drawings" is to be deleted, the initial date of filing shall be the date of filing of the application.

Rule 42

Where an application for a patent contains two or more inventions, utility models or designs, the applicant may, before the expiration of the time limit specified in Rule 54, paragraph one, of these Implementing Regulations, submit to the Patent Administrative Authority of the State Council a divisional application; however, where the application for a patent has been rejected, withdrawn or deemed withdrawn, the divisional application shall not be filed.

If the Patent Administrative Authority of the State Council finds that an application for a patent is not in conformity with the provisions of Article 31 of the Patent Law and Rule 35 or 36 of these Implementing Regulations, it shall invite the applicant to amend the application within the specified time limit; if the applicant does not make any response within the time limit, the application shall be deemed to have been withdrawn.

The divisional application may not change the kind of protection of the initial application.

Rule 43

A divisional application filed in accordance with Rule 42 of these Implementing Regulations may enjoy the initial date of filing and, if priority is validly claimed, the priority date of the initial application, provided that the divisional application does not go beyond the scope of disclosure contained in the initial applications.

The divisional application shall be subject to the relevant procedures in accordance with the provisions of the Patent Law and these Implementing Regulations.

The filing number and the date of filing of the initial application shall be indicated in the request of a divisional application. When submitting the divisional application, the applicant shall submit a copy of the initial application document; if priority is claimed for the initial application, the applicant shall submit a copy of the priority document of the initial application as well.

Rule 44

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

- (1) whether or not an application for a patent for invention obviously falls under Article 5 or 25 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, of the Patent Law or is obviously not in conformity with the provisions of Article 31, paragraph one, or Article 33 of the Patent Law, or Rule 2, paragraph one, Rule 18 and Rule 20 of these Implementing Regulations;
- (2) whether or not an application for a patent for utility model obviously falls under Article 5 or 25 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, of the Patent Law or is obviously not in conformity with the provisions of Article 26, paragraphs three and four, Article 31, paragraph one, or Article 33 of the Patent Law, or Rule 2, paragraph two, or Rule 13, paragraph one, or Rules 18 to 23, or Rule 43, paragraph one of these Implementing Regulations, or cannot obtain a patent right according to the provisions of Article 9 of the Patent Law;
- (3) whether or not an application for a patent for design obviously falls under Article 5 of the Patent Law, or is obviously not in conformity with the provisions of Article 18 or Article 19, paragraph one, of the Patent Law, or is obviously not in conformity with the provisions of Article 31, paragraph two, or Article 33 of the Patent Law, or Rule 2, paragraph three, or Rule 13, paragraph one, or Rule 43, paragraph one, of these Implementing Regulations, or cannot obtain a patent right according to the provisions of Article 9 of the Patent Law.

The Patent Administrative Authority of the State Council shall communicate its observations after examination of the application to the applicant and invite him or it to submit his or its observations or to correct his or its application within the specified time limit. If the applicant makes

no response within the time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made the observations or the corrections, the Patent Administrative Authority of the State Council still finds that the application is not in conformity with the provisions of the Articles and the Rules referred in the relevant preceding sub-paragraphs, the application shall be rejected.

Rule 45

In any of the following situations, any other document relating to a patent application, not including the patent application document which is submitted to the Patent Administrative Authority of the State Council, shall be deemed not to have been submitted:

- (1) where the document is not presented in the prescribed form or the indications therein are not in conformity with the prescriptions; or
- (2) where no supporting document is submitted as prescribed.

The Patent Administrative Authority of the State Council shall notify the applicant of its observation that the document is deemed not to have been submitted.

Rule 46

Where the applicant requests an earlier publication of its or his application for a patent for invention, a declaration shall be made to the Patent Administrative Authority of the State Council. The Patent Administrative Authority of the State Council shall, after preliminary examination of the application and, unless it is to be rejected, publish it immediately.

Rule 47

The applicant shall, when indicating in accordance with Article 27 of the Patent Law the product incorporating the design and the class to which that product belongs, refer to the classification of products for designs published by the Patent Administrative Authority of the State Council. Where no indication, or an incorrect indication, of the class to which the product incorporating the design belongs is made, the Patent Administrative Authority of the State Council shall supply the indication or make the correction.

Rule 48

Any person may, from the date of publication of an application for a patent for invention till the date of announcing the grant of the patent right, submit to the Patent Administrative Authority of the State Council

observations, with the reasons therefor, on the application which is not in conformity with the provisions of the Patent Law.

Rule 49

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

Rule 50

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

Rule 51

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

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

Where an applicant amends the document of its or his patent application for a patent after receipt of the notification of the observations from the Patent Administrative Authority of the State Council of the examination, the amendment shall be made according to the requirements in the notified observations.

The Patent Administrative Authority of the State Council may, on its own initiative, correct obvious lexical or graphic errors in the patent application document; where the Patent Administrative Authority of the State Council makes the corrections on its own initiative, it shall notify the applicant of the corrections.

Rule 52

When an amendment to the description or the claims in an application for a patent for invention or utility model is made, a replacement sheet in the prescribed form shall be submitted, unless the amendment concerns

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

Rule 53

According to the provisions of Article 38 of the Patent Law, the situations where after examination as to substance of an application for patent for invention shall be rejected by the Patent Administrative Authority of the State Council shall comprise the following:

- (1) where the application does not comply with the provisions of Rule 2, paragraph one, of these Implementing Regulations;
- (2) where the application falls under the provisions of Article 5 or 25 of the Patent Law; or it does not comply with the provisions of Article 22 of the Patent Law and Rule 13, paragraph one, Rule 20, paragraph one, or Rule 21, paragraph two, of these Implementing Regulations, or the applicant cannot obtain a patent right according to the provisions of Article 9 of the Patent Law;
- (3) where the application does not comply with the provisions of Article 26, paragraphs three or four, or Article 31, paragraph one, of the Patent Law;
- (4) where the amendment to the application is not in conformity with the provision of Article 33 of the Patent Law or the divisional application is not in conformity with the provision of Rule 43, paragraph one, of these Implementing Regulations.

Rule 54

After the Patent Administrative Authority of the State Council issues the notification to grant the patent right, the applicant shall go through the formalities of registration within two months from the date of receipt of the notification. If the applicant goes through the formalities of registration within the said time limit, the Patent Administrative Authority of the State Council shall grant the patent right, issue the patent certificate, and announce it.

If the time limit for going through the formalities of registration is not met, the applicant shall be deemed to have abandoned its or his right to obtain the patent right.

Rule 55

After the decision to grant the patent right for utility model is announced, the patentee of the utility model may file a request with the Patent Administrative Authority of the State Council to make a search report

for the patent for utility model.

Where the search report for a patent for utility model is requested, a request shall be filed and the patent number of the patent for utility model shall be indicated. Each request shall be limited to one patent for utility model only.

After receipt of the request for the search report for a patent for utility model, the Patent Administrative Authority of the State Council shall examine the request. If the request is not in conformity with the specified requirements, the applicant filing the request shall be notified to make corrections within the specified time limit.

Rule 56

If the request for the search report for a patent for utility model complies with the prescription upon examination, the Patent Administrative Authority of the State Council shall promptly make the report on the search of the patent for utility model.

Where, the Patent Administrative Authority of the State Council, upon the search, finds that the related patent for utility model does not comply with the provision of Article 22 of the Patent Law concerning novelty or inventiveness, reference documents shall be cited, with reasons stated, together with a copy of the cited reference documents.

Rule 57

The Patent Administrative Authority of the State Council shall promptly correct any errors in the Patent Gazette or patent documents once they are found, and announce the correction.

Chapter 4 Reexamination of Patent Application and Invalidation of Patent Right

Rule 58

The Patent Reexamination Board shall consist of experienced technical and legal experts designated by the Patent Administrative Authority of the State Council. The Head of the Patent Administrative Authority of the State Council shall be the Director of the Board.

Rule 59

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

Where the request for reexamination does not comply with the prescribed form, the person making the request shall rectify it within the time limit fixed by the Patent Reexamination Board. If the time limit for making rectification is not met, the request for reexamination shall be deemed not to have been filed.

Rule 60

When filing the request for reexamination or responding to the notification of reexamination by the Patent Reexamination Board, the person making the request may amend the patent application document; however, the amendment shall be limited to the elimination of the defects pointed out in the decision of rejection or the notification of reexamination. The amended patent application document shall be submitted in two copies.

Rule 61

The Patent Reexamination Board shall send the request for reexamination which the Board has received to the examination department of the Patent Administrative Authority of the State Council which has made the examination to make an examination. Where the examination department agrees to revoke its former decision upon the request of the person requesting reexamination, the Patent Reexamination Board shall make a decision accordingly and notify that person.

Rule 62

Where the Patent Reexamination Board finds after reexamination that the request does not comply with the relevant provisions of the Patent Law

and these Implementing Regulations, it shall invite the person requesting reexamination to submit his observations within the specified time limit. If the time limit for making response is not met, the request for reexamination shall be deemed to have been withdrawn; where after the observations or amendment, the Patent Reexamination Board still finds that the patent application document does not comply with the relevant provisions of the Patent Law and these Implementing Regulations, it shall make its reexamination decision to uphold the initial decision of rejection.

Where the Patent Reexamination Board finds after reexamination that the decision of rejection does not comply with the relevant provisions of the Patent Law and these Implementing Regulations, or finds that the amended patent application document has eliminated the defects pointed out in the decision of rejection, it shall revoke the initial decision of rejection, and the examination department which has made the examination shall proceed with the examination proceeding.

Rule 63

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

Where the person making the request for reexamination withdraws his request for reexamination before the Patent Reexamination Board makes its decisions, the reexamination proceeding terminates.

Rule 64

Anyone requesting invalidation or partial invalidation of a patent right according to the provisions of Article 45 of the Patent Law shall submit the request and the necessary evidence in two copies. The request for invalidation, together with all the evidence submitted, specifically states the reasons on which the request is based and the proofs each of the reasons is based on.

The reasons on which the request for invalidation is based mentioned in the preceding paragraph shall comprise that the invention-creation for which the patent right is granted does not comply with the provisions of Article 22 or 23, Article 26, paragraph three or four, or Article 33 of the Patent Law, or Rule 2, or Rule 13, paragraph one, or Rule 20, paragraph one, or Rule 21, paragraph two, of these Implementing Regulations; or it falls under the provisions of Article 5 or 25 of the Patent Law; or the person to whom the patent was granted cannot obtain a patent right according to the provisions of Article 9 of the Patent Law.

Rule 65

Where the request for invalidation of patent right does not comply with the provisions of Rule 64 of these Implementing Regulations, the Patent Reexamination Board shall not accept it.

Where the request for invalidation of a patent is submitted on the same reason and evidence after the Patent Reexamination Board makes its decision on the request for invalidation of the patent, the Patent Reexamination Board shall not accept it.

Where a request is filed for invalidation of a patent for design on the ground that the patented design collides with the legitimate right another person has acquired earlier, but no effective decision or judgement is submitted which proves the handling of the collision of rights in question, the Patent Reexamination Board shall not accept it.

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

Rule 66

After the Patent Reexamination Board receives the request for invalidation, the person making the request may give additional reasons or evidence within one month from the date of submission of the request for invalidation. Where additional reasons or evidence are given after the expiration of the time limit, the Patent Reexamination Board may disregard the reasons or evidence.

Rule 67

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

The patentee and the person making the request for invalidation shall respond to the notification of the transmittal of documents or the notification of examination of the request for invalidation from the Patent Reexamination Board within the prescribed time limit. Where no response is made within the time limit, the hearing procedure of the Patent Reexamination Board will not be affected.

Rule 68

In the process of examination of the request for invalidation, the patentee

of a patent for invention or utility model may amend its or his patent claims, but may not broaden the scope of protection of the initial patent. The patentee of a patent for invention or utility model may not amend the patent description and the drawings, and the patentee of a patent for design may not amend the drawings, photographs and brief explanations thereof.

Rule 69

The Patent Reexamination Board may, at the request of an interested party or as the facts of a case so require, decide to conduct oral hearing of the request for invalidation.

Where the Patent Reexamination Board decides to orally hear the request for invalidation, it shall send a notification of oral hearing to the interested parties, informing the date and place of the oral hearing. The interested parties shall respond within the time limit fixed in the notification.

Where the person making the request for invalidation fails to respond to the notification of the oral hearing from the Patent Reexamination Board, nor attends the oral hearing, its or his request for invalidation shall be deemed to have been withdrawn; where the patentee does not attend the oral hearing, the hearing may be held in its or his absence.

Rule 70

In the proceeding for examination of the request for invalidation, the time limit fixed by the Patent Reexamination Board shall not be extended.

Rule 71

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

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

Chapter 5 Compulsory License for Exploitation of Patent

Rule 72

After the expiration of three years from the grant of the patent right, any entity may, in accordance with the provisions of Article 48 of the Patent Law, request the Patent Administrative Authority of the State Council to grant a compulsory license.

Any entity or individual requesting a compulsory license shall submit to the Patent Administrative Authority of the State Council a request for compulsory license and state the reasons therefor, together with relevant supporting documents. The request and supporting documents shall be in two copies respectively.

The Patent Administrative Authority of the State Council shall send a copy of the request for compulsory license to the patentee. He or it shall make his or its observations within the time limit specified by the Patent Administrative Authority of the State Council. Where no response is made within the time limit, the Patent Administrative Authority of the State Council shall not be affected in making a decision to grant a compulsory license.

The decision of the Patent Administrative Authority of the State Council granting a compulsory license for exploitation shall provide that the exploitation shall be predominately for the supply of the domestic market; where the invention-creation covered by the compulsory license relates to a semi-conductor technology, the exploitation under the compulsory license is limited to public and non-commercial use or to the use in remedy of an action against unfair competition as determined by the judicial or administrative procedure.

Rule 73

Any party requesting, in accordance with the provisions of Article 54 of the Patent Law, the Patent Administrative Authority of the State Council to adjudicate the fees for exploitation, shall submit a request for adjudication and furnish documents showing that the parties have not been able to conclude an agreement in respect of the amount of the fees. The Patent Administrative Authority of the State Council shall make an adjudication within three months from the date of receipt of the request and notify the parties accordingly.

Chapter 6 Rewards to Inventor or Creator of Service Invention-creation

Rule 74

Any state-owned enterprise or institution granted a patent right shall award to the inventors or creators of the invention-creation a sum of money as prize within three months from the date of the announcement of the patent grant. The sum of money prize for a patent for invention shall not be less than 2000 RMB; the sum of money prize for a patent for utility model or design shall not be less than 500 RMB.

Where an invention-creation was made on the basis of an inventor's or creator's proposal adopted by the entity to which he belongs, the state-owned enterprise or institution granted the right shall award to him a money prize liberally.

Any enterprise holding the patent right may include the said money prize paid to such inventors or creators into its production cost; any institution holding the patent right may disburse the said money prize out of its operating expenses.

Rule 75

Any state-owned enterprise or institution granted a patent right shall, after exploiting the patent for invention-creation within the duration of the patent right, draw each year from any increase in profits after taxation a percentage of not less than 2% due to the exploitation of the said patent for invention or the utility model, or a percentage of not less than 0.2% due to the exploitation of the said patent for design, and award it to the inventor or creator as remuneration. The enterprise or institution shall, otherwise, by making reference to the said percentage, award a lump sum of money to the inventor or creator as remuneration.

Rule 76

Where any state-owned enterprise or institution granted patent right authorizes other entities or individuals to exploit its or his patent, it shall, after taxation, draw a percentage of not less than 10% from the fees for the authorization of exploitation of the said patent it received and award it to the inventor or creator as remuneration.

Rule 77

The other Chinese entities or institutions may award to the inventor or creator money prize and remuneration by making reference to the provisions in this Chapter.

Chapter 7 Protection of Patent Right

Rule 78

"The administrative authority for patent affairs" mentioned in the Patent Law and these Implementing Regulations refers to the administrative authorities for patent affairs set up by the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government and the people's governments of the other municipalities which have a lot of patent-related work to administer and are capable of handling the work.

Rule 79

Except provided for in Article 57 of the Patent Law, the administrative authorities for patent affairs may also, on the request of an interested party, make mediation of patent-related disputes as follows:

- (1) disputes over the right to apply for patent and ownership of patent right;
- (2) disputes over the qualification of inventors or creator;
- (3) disputes over the rewards and remuneration for inventors or creators of service inventions; and
- (4) disputes over the exploitation of an invention without paying appropriate fees after the publication of the applications for patents for the invention and before the grant of the patent right.

In respect of the disputes mentioned in the preceding sub-paragraph (4), any patentee requesting the administrative authority for patent affairs for a mediation shall submit its or his request after the grant of the patent right.

Rule 80

The Patent Administrative Authority of the State Council shall provide operational guidance for the administrative authorities for patent affairs to handle and mediate patent disputes.

Rule 81

Where any interested party requests for handling or mediation of a patent dispute, the request is under the jurisdiction of the administrative authority of the place which the respondent has its or his domicile or of the place where the infringing act takes place.

Where two or more administrative authorities for patent affairs have the jurisdiction over a patent dispute, an interested party may file request

with one of them; where the interested party files its or his request with two or more administrative authorities for patent affairs having the jurisdiction, the dispute is under the jurisdiction of the administrative authority for patent affairs which first receives the request.

Where a dispute arises over the jurisdiction of the administrative authorities for patent affairs, the dispute is put under the jurisdiction designated by the administrative authority for patent affairs under the people's government at their mutually next higher level; in the absence of such an administrative authority for patent affairs, the dispute is under the jurisdiction designated by the Patent Administrative Authority of the State Council.

Rule 82

Where, in the course of handling a dispute arising from patent infringement, the respondent submits a request for invalidation of the patent in question and it is received by the Patent Reexamination Board, it or he may request the administrative authority for patent affairs to suspend the handling. Where the administrative authority for patent affairs finds that the grounds raised by the respondent for the suspension are obviously untenable, it may not suspend the handling.

Rule 83

Where any patentee puts a patent indication on its or his patented product or the package thereof pursuant to the provision of Article 15 of the Patent Law, it or he shall make the indication in the manner prescribed by the Patent Administrative Authority of the State Council.

Rule 84

The following acts are the acts of counterfeiting patents of other persons:

- (1) indicating, without authorization, another person's patent number on the products which one manufactures or sells or on the package thereof;
- (2) using, without authorization, another person's patent number in advertisement or other promotional material, causing the related technology to be mistaken for the patented technology of another person;
- (3) using, without authorization, another person's patent number in a contract, causing the technology mentioned in the contract to be mistaken for the patented technology of another person; and
- (4) forging, or mutilating patent certificates, patent documents or patent application documents.

Rule 85

The following acts are the acts of passing off patents of other persons:

- (1) manufacturing or marketing a non-patent product marked with a patent indication;
- (2) continuing to put a patent indication on products one manufactures or sells after invalidation of the patent right;
- (3) calling a non-patented technology a patented technology in advertisement or other promotional materials;
- (4) calling a non-patented technology a patented technology in a contract ;
and
- (5) forging, or mutilating patent certificates, patent documents or patent application documents.

Rule 86

Where any interested party has requested the administrative authority for patent affairs to handle the matter of, or instituted legal proceedings in the people's court for, a dispute over the ownership of the right to apply for patent or of the patent right, it or he may request the Patent Administrative Authority of the State Council to suspend the relevant procedure.

Where any party requests for suspension of the relevant procedure in accordance with the preceding paragraph, it or he shall file the request with the Patent Administrative Authority of the State Council together with a copy of the relevant documents received by the administrative authority for patent affairs or the people's court.

After the decision made by the administrative authority for patent affairs in handling the matter or the ruling made by the people's court takes effect, the interested party shall perform the formalities at the Patent Administrative Authority of the State Council for resuming the relevant procedure. If the dispute over the ownership of the right to apply for patent or of the patent right fails to be closed within one year starting from the date of suspension and continued suspension is necessary, the person making the request shall request for the continuation of the suspension within the time limit. Where no request for continuation is submitted at the expiration of the time limit, the Patent Administrative Authority of the State Council shall automatically resume the relevant procedure.

Rule 87

Where the people's court decides to adopt measures to preserve the patent right in a civil case it is hearing, the Patent Administrative Authority

of the State Council, when assisting in the execution of these measures, suspends the procedure relevant to the patent right preserved. Where, after the expiration of the term of preservation, the people's court does not decide to continue to adopt the preservative measures, the Patent Administrative Authority of the State Council shall automatically resume the relevant procedure.

Chapter 8 Patent Register and Patent Gazette

Rule 88

The Patent Administrative Authority of the State Council shall maintain a Patent Register in which the following matters relating to patent applications and any patent right shall be recorded:

- (1) any grant of the patent right;
- (2) any transfer of the right to apply for patent, or the patent right;
- (3) any hypothecation and preservation of the patent right and their termination;
- (4) any recordal of the licensing contracts for exploitation of the patent;
- (5) any invalidation of the patent right;
- (6) any cessation of the patent right ;
- (7) any restoration of the patent right;
- (8) any compulsory license for exploitation of the patent; and
- (9) any changes in the name, the nationality and the address of the patentee.

Rule 89

The Patent Administrative Authority of the State Council shall publish the Patent Gazette at regular intervals, publishing or announcing the following:

- (1) the bibliographic data contained in patent applications;
- (2) the abstract of the description of an invention or utility model, the drawings or photographs of a design and its brief explanation;
- (3) any request for examination as to substance of an application for a patent for invention and any decision made by the Patent Administrative Authority of the State Council to proceed on its own initiative to examine as to substance an application for a patent for invention;
- (4) any declassification of secret patents;
- (5) any rejection, withdrawal and being deemed withdrawal of an application for a patent for invention after its publication;
- (6) any grant of the patent right;
- (7) any invalidation of the patent right;
- (8) any cessation of the patent right;
- (9) any transfer of the right to apply for patent, or the patent right;
- (10) any recordal of the licensing contracts for exploitation of the patent;
- (11) any hypothecation and preservation of the patent right and their termination;
- (12) any grant of compulsory license for exploitation of the patent;
- (13) any restoration of a patent application or patent right;
- (14) any change in the name or address of the patentee;

- (15) any notification to the interested party whose address is not known;
- (16) any correction made by the Patent Administrative Authority of the State Council; and
- (17) any other related matters.

The description, its drawings and the claims of an application for a patent for invention or utility model shall be published in pamphlet form by the Patent Administrative Authority of the State Council.

Chapter 9 Fees

Rule 90

When any person files an application for a patent with, or has other formalities to perform at, the Patent Administrative Authority of the State Council, he or it shall at the same time pay the following fees:

(1) filing fee, additional application fee as prescribed and application publication fee;

(2) fee for examination as to substance and fee for reexamination of application for patent for invention;

(3) patent registration fee, patent publication fee, application maintenance fee and annual fee;

(4) fee for a change in the bibliographic data, fee for claiming priority, fee for a request for restoration of right, fee for a request for extension of time limit and fee for a search report for the patent for utility model; and

(5) fee for a request for invalidation, fee for a request for suspension of a procedure, fee for a request for compulsory license and fee for a request for adjudication on exploitation fee of compulsory license.

The rates of the fees mentioned in the preceding paragraph shall be prescribed by the competent Pricing Department of the State Council in conjunction with the Patent Administrative Authority of the State Council.

Rule 91

The fees provided for in the Patent Law and in these Implementing Regulations may be paid directly to the Patent Administrative Authority of the State Council or paid by way of bank or postal remittance, or in any other manner specified by the Patent Administrative Authority of the State Council. Where fees are paid by way of bank or postal remittance, the applicant or the patentee shall indicate on the money order the filing number or the patent number, and the titles of the fees to be paid; where it or he fails to comply with this provision, the fee-payment formality is deemed not to have been performed.

Where fees are paid directly to the Patent Administrative Authority of the State Council, the very date on which the fees are paid is the date of payment. Where fees are paid by way of postal remittance, the date of the postmark showing the postal remittance of such fee shall be the date of payment. Where fees are paid by way of bank remittance, the date on which the transfer of such fee is actually ordered shall be the date of payment. However, where the time between such a date and the date of receipt of the order at the Patent Administrative Authority of the State

Council lasts more than fifteen days, unless the date of remittance is proved by the bank or the post office, the date of receipt at the Patent Administrative Authority of the State Council shall be the date of payment. Where any patent fee is paid more than as prescribed, paid once again or wrongly paid, the person making the payment may, within one year from the date of payment, request the Patent Administrative Authority of the State Council for a refund.

Rule 92

The applicant shall, after receipt of the notification of acceptance of the application, pay the filing fee, the application publication fee and the additional fee as prescribed at the latest within two months from the date of filing. If the fee is not paid or not paid in full within the time limit, the application shall be deemed to have been withdrawn. Where the applicant claims the right of priority, he or it shall pay the fee for claiming priority at the time when paying the filing fee. If the fee is not paid or not paid in full within the time limit, the claim to the right of priority shall be deemed not to have been made.

Rule 93

Where a request for an examination as to substance, a restoration of right or a reexamination of patent right is made, by the party concerned, the relevant fee shall be paid within the time limit as prescribed respectively for such requests in the Patent Law and these Implementing Regulations. If the fee is not paid or not paid in full within the time limit, the request is deemed not to have been made.

Rule 94

Where the applicant for a patent for invention has not been granted a patent right within two years from the date of filing, it or he shall pay a fee for the maintenance of the application from the third year.

Rule 95

When the applicant goes through the formalities of patent registration, it or he shall pay the patent registration fee, the patent publication fee and the annual fee of the year in which the patent right was granted. The applicant for patent for invention shall pay all the maintenance fees of the application for each year, excluding that for the year in which the patent right was granted. If such fees are not paid in the prescribed time limit, the patent registration shall be deemed not to have been made. The subsequent annual fees shall be paid in advance within the month before

the expiration of the preceding year.

Rule 96

Where the annual fee of the years after the year in which the patent was granted is not paid in due time by the patentee, or the fees are not paid in full, the Patent Administrative Authority of the State Council shall notify the patentee to pay the fee or to make up the insufficiency within six months from the expiration of the time limit within which the annual fee was to be paid, and at the same time pay a surcharge; the amount of the surcharge is computed by an addition of 5% of the total amount of the annual fee of the same year for each month lapsed after the time limit prescribed for the payment. Where the fees are not paid within the time limit, the patent right shall be deemed lapsed from the expiration of the time limit within which the annual fee should be paid.

Rule 97

The fee for a change in the bibliographic data, fee for a search report on a patent for utility model, fee for a request for suspension of procedure, fee for a request for compulsory license, fee for a request for adjudication on exploitation fee of a compulsory license and fee for a request for invalidation shall be paid as prescribed within one month from the date on which such request is filed. The fee for a request for extension of time limit shall be paid before the date on which the corresponding time limit expires. If the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

Rule 98

Where any applicant or patentee has difficulties in paying the various fees prescribed in these Implementing Regulations, it or he may, according to prescriptions, submit a request to the Patent Administrative Authority of the State Council, asking for a reduction or postponement of the payment. The conditions for the reduction and postponement of the payment shall be prescribed by the Patent Administrative Authority of the State Council in consultation with the competent Financial Department and the competent Pricing Department of the State Council.

Chapter 10 Special Provisions for International Applications

Rule 99

In accordance with Article 20 of the Patent Law, the Patent Administrative Authority of the State Council receives international patent applications filed under the Patent Cooperation Treaty.

The Provisions of this Chapter are applicable to the requirements and procedure for international applications filed and designating China pursuant to the Patent Cooperation Treaty (hereinafter referred to as the international applications) to enter the national phase in China; where it is not provided for in this Chapter, the relevant provisions of the Patent Law and the other Chapters of these Implementing Regulations shall apply.

Rule 100

Any international application designating China as of the international filing date accorded under the Patent Cooperation Treaty is considered a patent application filed with the Patent Administrative Authority of the State Council, and the filing date of the international application is deemed the filing date referred to in Article 28 of the Patent Law. Where, in the international phase, an international application or the designation of China in an international application is withdrawn or deemed to have been withdrawn, the effect of the international application shall cease in China.

Rule 101

Any applicant of an international application shall, within twenty months from the priority date referred to in Article 2 of the Patent Cooperation Treaty (referred to as priority date in the Chapter), perform the following procedures for international application to enter the national phase in China in the Patent Administrative Authority of the State Council; where any international application elected China within 19 months from the priority date and the election remains valid, the applicant of the international application shall, within 30 months from the priority date, perform the following procedure for an international application to enter the national phase in China in the Patent Administrative Authority of the State Council:

(1) submit a declaration in writing for the international application to enter the national phase in China, in which shall be indicated the international application number, and, in Chinese, the kind of patent right to be sought, the title of the invention-creation, the name or title

of the applicant, the address of the applicant and the name of the inventor. All this information shall be consistent with the records of the International Bureau;

(2) pay the filing fee, additional application fee and application publication fee specified in Rule 90, paragraph one, of these Implementing Regulations;

(3) for any international application filed in a language other than Chinese, the Chinese translation of the description, claims, any text matter of the drawings, and the abstract of the original international application shall be submitted; where an international application is filed in Chinese, a copy of the abstract of the international publication shall be submitted; and

(4) where an international application is accompanied with drawings, a copy of the drawings shall be submitted. Where an international application is filed in Chinese, a copy of the figure for the abstract of the international publication shall be submitted.

Where any applicant fails to perform the procedure for entering the national phase in China within the time limit specified in the preceding paragraph, it or he may, after payment of the grace-period fee, do so before the expiration of the corresponding time limit of twenty-two or thirty-two months from the priority date.

Rule 102

Any applicant fails to perform the procedure for entering the national phase in China within the time limit prescribed in Rule 101, paragraph two, of these Implementing Regulations or falls under any one of the following subprovisions within the time limit, the effect of its or his international application shall cease in China:

(1) the international application number is not indicated in the declaration for entering the national phase in China;

(2) the filing fee, application publication fee prescribed in Rule 90, paragraph one and the grace-period fee prescribed in Rule 101, paragraph two, of these Implementing Regulations are not paid; or

(3) where the international application is filed in a language other than Chinese, the Chinese translation of the description and claims of the original international application is not submitted.

The provision of Rule 7, paragraph two, of these Implementing Regulations does not apply to any international application which has ceased to be valid in China.

Rule 103

Where any applicant falls under any one of the following sub-paragraphs when entering the national phase in China, the Patent Administrative Authority of the State Council shall notify the applicant to make corrections within the prescribed time limit:

- (1) where the Chinese translation or a copy of the abstract is not submitted;
- (2) where a copy of the drawings or the figure for the abstract is not submitted;
- (3) where indications are not given in Chinese in the declaration for entering the national phase in China of the title of the invention-creation, the name or title of the applicant, the address of the applicant and the name of the inventor; or
- (4) where the declaration for entering the national phase in China does not comply with the prescription in content or in form.

Where the corrections are not made within the prescribed time limit, the application is deemed to have been withdrawn.

Rule 104

Where an international application was amended in the international phase, and the applicant requests that the examination is made on the basis of the amended application document, the applicant shall submit the amended Chinese translation of the amended application document before the Patent Administrative Authority of the State Council completes the preparation for national publication. Where the Chinese translation is not submitted within the time limit, the Patent Administrative Authority of the State Council shall disregard the amendments made by the applicant in the international phase.

Rule 105

Any applicant, when performing the procedure for entering the national phase in China, shall meet the following requirements:

- (1) where the inventor is not indicated in the international application, the name of the inventor shall be indicated in the declaration for entering the national phase in China;
- (2) where a procedure is performed to change the applicant at the International Bureau in the international phase, proofs that the changed applicant enjoys the right to apply for patent shall be submitted;
- (3) where the applicant and the applicant of the earlier application on which the right of priority is based are not the same person, or the applicant changed its or his name after filing the earlier application, the proofs shall be submitted, if necessary, that the applicant enjoys the right

of priority; and

(4) where the invention-creation of the international application falls under any of the provisions of Article 24(1) or (2) of the Patent Law and a declaration thereof was made when filing the international application, a statement thereof shall be made in the declaration for entering the national phase in China, and the relevant proofs prescribed in Rule 31, paragraph two, of these Implementing Regulations shall be submitted within two months from the date of performance of the procedure for entering the national phase in China.

Where the applicant fails to meet the requirements of (1), (2) and (3) of the preceding paragraph, the Patent Administrative Authority of the State Council shall invite it or him to make correction within the prescribed time limit. Where the correction under (1) and (2) is not made, the application is deemed to have been withdrawn; where the correction under (3) is not made, the claim for the priority right is deemed not to have been made.

Where the applicant fails to meet the requirement of (4) in paragraph one of this Rule, the provision of Article 24 of the Patent Law does not apply to the application.

Rule 106

Where any applicant makes an indication of the deposit of a sample of biological material in accordance with the provisions of the Patent Cooperation Treaty, the applicant is deemed to have met the requirement under Rule 25(3) of these Implementing Regulations. The applicant shall indicate the document recording the deposit of a sample of biological material and the specific place in the declaration for entering the national phase in China.

Where the applicant records the deposit of a sample of the biological material in the description of the originally filed international application, but did not make the indication in the declaration for entering the national phase in China, it or he shall make rectification within four months from the date of performance of the procedure for entering the national phase in China. Where the correction is not made within the prescribed time limit, the biological material is deemed not to have been deposited.

Where the applicant submits the receipt of deposit and the viability proof of a sample of the biological material to the Patent Administrative Authority of the State Council within four months from the date of performance of the procedure for entering the national phase in China, the deposit is deemed to have been filed within the time limit prescribed

in Rule 25(1) of these Implementing Regulations.

Rule 107

Where the applicant claimed one or more priorities in the international phase and the right of priority remains valid when entering the national phase in China, the written declaration is deemed to have been made in accordance with the provision of Article 30 of the Patent Law.

Where the applicant finds that there are writing errors or the filing number of the earlier application is not indicated in the written declaration of the right of priority submitted in the international phase, it or he may request for correction of the errors or for indicating the filing number of the earlier application when performing the procedure for entering the national phase in China. The applicant filing a request for the correction shall pay the fee for request for correction in the claim for right of priority.

Where the applicant submitted a copy of the earlier application document in the international phase according to the provisions of the Patent Cooperation Treaty, it is not necessary to submit it to the Patent Administrative Authority of the State Council when performing the procedure for entering the national phase in China. Where the applicant did not submit it in the international phase, the Patent Administrative Authority of the State Council, when finding it necessary, may invite it or him to submit it within the specified time limit. Where the applicant fails to do so after the expiration of the time limit, its or his claim for priority right is deemed not to have been made.

Where the claim for right of priority is deemed not to have been made in the international phase, which has been announced by the International Bureau, the applicant may, with justified reasons, file a request with the Patent Administrative Authority of the State Council to restore its or his claim to the right of the priority.

Rule 108

Where any applicant requests the Patent Administrative Authority of the State Council for early processing and examining its or his international application prior to the expiration of twenty months starting from the priority date, it or he shall, in addition to performing the procedure for entering the national phase in China, file a request pursuant to Article 23(2) of the Patent Cooperation Treaty. Where the International Bureau does not transmit the international application to the Patent Administrative Authority of the State Council, the applicant shall submit a certified copy of the international application.

Rule 109

In respect of any international application for patent right for utility model, the applicant may file a request with the Patent Administrative Authority of the State Council for amending the description, the drawings and the claims within one month from the date of performing the procedure for entering the national phase in China.

To any international application for patent for invention, the provision of Rule 51, paragraph one, of these Implementing Regulations applies.

Rule 110

Where any applicant finds any error in the Chinese translation of the description, the claims or any text matter of the drawings, it or he may submit the correction based on the original text of the international application within the prescribed time limit as follows:

- (1) before the preparation for national publication is completed by the Patent Administrative Authority of the State Council; and
- (2) within three months from the date of receipt of the notification of an application for a patent for invention to enter into the substantive examination proceeding issued by the Patent Administrative Authority of the State Council.

The applicant correcting the translation errors shall file a request in writing, submit the correction sheet of the translation and pay the prescribed translation correction fee.

Where the applicant is required to correct the translation in the notification of the Patent Administrative Authority of the State Council, it or he shall perform the formality within the time limit prescribed in (2) of this Rule; where the prescribed formality is not performed within the time limit, the application is deemed to have been withdrawn.

Rule 111

If for an international application for patent for invention, the Patent Administrative Authority of the State Council, upon preliminary examination, finds it to be in conformance with the relevant provisions of the Patent Law and these Implementing Regulations, it shall publish the application in the Patent Gazette; where the international application is filed in a language other than Chinese, the Chinese translation of the application document shall be published.

For the international application for patent for invention published in Chinese internationally by the International Bureau, the provision of Article 13 of the Patent Law applies from the date of international publication; for the international application published internationally

in a language other than Chinese by the International Bureau, the same provision applies from the date of publication by the Patent Administrative Authority of the State Council.

For the purpose of international application, the publication or announcement mentioned in Articles 21 and 22 of the Patent Law means the publication specified in paragraph one of this Rule.

Rule 112

When any international application contains two or more inventions or utility models the applicant may, after performing the procedure for entering the national phase in China, file a divisional application pursuant to the provision of Rule 42, paragraph one, of these Implementing Regulations.

Where, in the international phase, the International Searching Authority or the International Preliminary Examination Authority finds that an international application does not comply with the requirement of unity under the Patent Cooperation Treaty and the applicant fails to pay the additional fee as prescribed, resulting in some part of the international application not being subjected to the international search or the international preliminary examination, or where the applicant, entering the national phase in China, requests that the said parts be taken as the basis for the examination, and the Patent Administrative Authority of the State Council finds the International Searching Authority or the International Preliminary Examination Authority is right in the judgment of the unity of the invention in question, it shall notify the applicant to pay the unity restoration fee within the prescribed time limit. If the fee is not paid or not paid in full within the time limit, the part of the international application which has not been searched or subjected to the international preliminary examination is deemed to have been withdrawn.

Rule 113

Where the applicant submits the documents and pays the fees according to the provision of Rule 101 of these Implementing Regulations, the date on which the Patent Administrative Authority of the State Council receives the documents is the submitting date and the date of receipt of the fees is the date of payment.

Where there is a delay in the postal delivery of the submitted documents and the applicant proves that the documents are sent by mail five days before the expiration of the time limit specified in Rule 101 of these Implementing Regulations within one month from the date on which the delay

is found, the documents are deemed to have been received on the date of the expiration of the time limit. However, the applicant shall not furnish the proof later than six months after the expiration of the time limit specified in Rule 101 of these Implementing Regulations.

The applicant may submit, by fax, the documents required in Rule 101 of these Implementing Regulations. Where the applicant submits them by fax, the date on which the Patent Administrative Authority of the State Council receives the fax is the submitting date. The applicant shall submit the original of the faxed documents to the Patent Administrative Authority of the State Council within fourteen days from the date of submission by fax. If the original is not submitted after the expiration of the time limit, the documents are deemed not to have been submitted.

Rule 114

Where the right of priority is claimed in the international application, the applicant shall pay the fee for claiming the right of priority when performing the procedure for entering the national phase in China; if the fee is not paid or not paid in full, the Patent Administrative Authority of the State Council shall notify the applicant to make the payment within the specified time limit; if the fee is still not paid or not paid in full after the expiration of the time limit, the claim for right of priority is deemed to have not been made.

Rule 115

Where any international application is refused by the relevant international authority to be accorded the international filing date or is declared to have been withdrawn, the applicant may, within two months from the date of receipt of the notification, request the International Bureau to transmit copies of any documents in the file of the international application to the Patent Administrative Authority of the State Council and perform the procedure as specified in Rule 101 of these Implementing Regulations in the Patent Administrative Authority of the State Council within the time limit. The Patent Administrative Authority of the State Council shall, after receipt of the documents transmitted by the International Bureau, make review as to whether the decision made by the international authority is right or not.

Rule 116

Where, owing to any translation errors, any patent right granted on the basis of an international application makes its scope of protection determined in accordance with the provision of Article 56 of the Patent

Law go beyond the scope expressed in the original text of the international application, the scope of protection limited according to the original text prevails. Where the scope of protection is made less than the scope stated in the original text of the international application, the scope of protection established when granting the right prevails.

Chapter 11 Supplementary Provisions

Rule 117

Any person may, after approval by the Patent Administrative Authority of the State Council, inspect or copy the files of the published or announced patent applications and the Patent Register. Any person may request the Patent Administrative Authority of the State Council to issue a copy of extracts from the Patent Register.

The files of patent applications which have been withdrawn or deemed to have been withdrawn or which have been rejected, shall not be preserved after expiration of two years from the date on which they cease to be valid.

Where the patent right ceases or has been abandoned or invalidated in whole, the files shall not be preserved after expiration of three years from the date on which the patent right ceases to be valid.

Rule 118

Any patent application which is filed with, and any formalities which are performed at the Patent Administrative Authority of the State Council, shall be made in the form prescribed by the Patent Administrative Authority of the State Council and signed or sealed by the applicant, the patentee, any other interested person or his or its representative. Where any patent agency is appointed, it shall be sealed by such agency.

Where a change of the name of the inventor, the name, nationality and address of the applicant or the patentee, or the name and address of the patent agency and the name of the patent agent is requested, a request for a change in the bibliographic data shall be made to the Patent Administrative Authority of the State Council, together with the relevant supporting documents.

Rule 119

The documents relating to a patent application or patent right which are mailed to the Patent Administrative Authority of the State Council shall be mailed by registered letter, not by parcel.

When any document (not including any patent application filed for the first time) is submitted to and any formalities are performed in the Patent Administrative Authority of the State Council, the filing number or the patent number, the title of the invention-creation and the name of the applicant or the patentee shall be indicated.

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

Rule 120

Any sheets constituting an application for patent shall be typed or printed. All the characters shall be in black ink, neat and clear and free from any alterations. Drawings shall be made in black ink with the aid of drafting instruments. The lines shall be uniformly thick and well-defined, and free from alterations.

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

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

Rule 121

The Patent Administrative Authority of the State Council shall formulate the Guidelines for Patent Examination in accordance with the Patent Law and these Implementing Regulations.

Rule 122

These Implementing Regulations shall enter into force on 1 July 2001. The Implementing Regulations of the Patent Law of the People's Republic of China revised with approval by the State Council on 12 December 1992 and promulgated by the Patent Administrative Authority of the State Council on 21 December the same day shall be simultaneously abolished.