

RULES FOR IMPLEMENTATION OF PATENT LAW

Effective from February 1, 2010

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

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

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Chapter I General Provisions

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

Article 2 All formalities provided in the Patent Law or these Rules shall be fulfilled in a written form or another form provided by the administrative department for patents under the State Council.

Article 3 Any document to be submitted under the Patent Law or these Rules shall be in Chinese. A standard technical terminology shall be used if it is uniformly provided by the State. Where there is no uniform Chinese translation for the name of a foreigner, a foreign locality or a foreign technical terminology, the term in the original language shall be indicated.

Where any certificate or certified document which is to be submitted in accordance with the Patent Law or these Rules is in a foreign language, the administrative department for patent under the State Council may, when considered necessary, request the party concerned to submit a Chinese translation within a specified time limit; where the translation has not been submitted at the expiry of the time limit, the

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certificate or certified document shall be deemed to have not been submitted.

Article 4 For any document sent by mail to the administrative department for patent under the State Council, the date of mailing indicated by the postmark shall be regarded as the application date. If the date of mailing indicated by the postmark is illegible, the date on which the administrative department for patent under the State Council receives the document shall be regarded as the application date unless otherwise proven by the party concerned.

Any document of the administrative department for patent under the State Council may be served by mail, by personal delivery or by other means. Where any party concerned has entrusted a patent agency, the document shall be sent to the patent agency; where no patent agency has been entrusted, the document shall be sent to the contact designated in the written request.

For any document mailed by the administrative department for patent under the State Council, the 15th day from the date when the document was sent shall be presumed to be the date of the reception of the document.

For any document to be served by personal delivery as required by the provisions of

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the administrative department for patent under the State Council, the date of delivery shall be regarded as the date of service.

Where the address to which a document is to be served is not clear for the purpose of mailing, the document may be served by announcement, and shall be deemed to have been served at the expiry of one month as of the date of announcement.

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

Article 6 Where a party concerned has delayed past the time limit provided in the Patent Law or these Rules or that specified by the administrative department for patent under the State Council due to force majeure, thus resulting the loss of his/its rights, he/it may, within 2 months as of the removal of the impediment, or at the latest within 2 years as of the expiry of that time limit, request the administrative department for patent under the State Council to recover his/its rights by stating the reasons and affixing relevant supporting documents.

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Where a party concerned has delayed past the time limit provided in the Patent Law or these Rules or that specified by the administrative department for patent under the State Council due to a justified reason, thus resulting in the loss of his/its rights, he/it may, within 2 months as of the receipt of the notice from the administrative department for patent under the State Council, request the administrative department for patent under the State Council to recover his/its rights by stating the reason.

Where a party concerned petitions for recovering his/her right under Paragraph 1 or 2 of this Article, he/she shall submit a petition for the recovery of right, state the reason, attach the supporting documents when necessary, and handle the formalities that should be handled before the loss of right; where a party concerned petitions for recovering his/her right under Paragraph 2 of this Article, he/she shall also pay a petition fee for the recovery of right.

Where a party concerned requests extension of the time limit specified by the administrative department for patent under the State Council, he/it shall, before the expiry of the said time limit, state the reason to the administrative department for patent under the State Council and fulfill relevant formalities.

The provisions in Paragraph 1 and 2 of this Article shall not apply to the time limit provided in Article 24, Article 29, Article 42, or Article 68 of the Patent Law.

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Article 7 Where a patent application involves the interests of national defense and needs to be maintained confidential, it shall be accepted and examined by the institution for patent of national defense. Where a patent application which involves the interests of national defense and needs to be maintained confidential is accepted by the administrative department for patent under the State Council, it shall be transferred to the institution for patent of national defense for examination. If the institution for patent of national defense believes that there is no reason to reject it upon examination, the administrative department for patent under the State Council shall make a decision of granting the patent right of national defense.

Where the administrative department for patent under the State Council believes that a patent application of invention or utility model which has been accepted by it involves national security or vital interests other than the interests of national defense, it shall immediately make a decision of treating it as a secret patent application and notify the applicant accordingly. The examination and reexamination of a secret patent application and the announcement of patent invalidation shall be prescribed by the administrative department for patent under the State Council.

Article 8 The term 'an invention or utility model accomplished in China' mentioned in Article 20 of the Patent Law refers to an invention or utility model the material

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contents of whose technical scheme being accomplished in China.

Any entity or individual that intends to file an application in a foreign country for patenting an invention or utility model accomplished in China shall report to the administrative department for patent under the State Council for confidentiality review by either way as described below:

(1) To directly file an application for patent in a foreign country or file an international application for patent with a competent foreign institution, the entity or individual shall file a request with the administrative department for patent under the State Council beforehand, elaborating the technical scheme;

(2) To file an application for patent in a foreign country or file an international application for patent with a competent foreign institution after applying to the administrative department for patent under the State Council, the entity or individual shall file a request with the administrative department for patent under the State Council before filing an application for patent in a foreign country or filing an international application for patent with a competent foreign institution.

Where an international application for patent has been filed with the administrative department for patent under the State Council, it shall be deemed that a request for confidentiality review has been filed simultaneously.

Article 9 Where the administrative department for patent under the State Council, after receiving a request under Article 8 of these Rules, believes that the invention or utility model may involve national security or vital interests and need to be treated as confidential, it shall send a confidentiality review notice to the applicant in a timely manner; and the applicant, if failing to receive any confidentiality review notice within four months after the request is filed, may file an application for patent with a foreign country or file an international application for patent with a competent foreign institution for that invention or utility model.

The administrative department for patent under the State Council shall, after sending a confidentiality review notice under the preceding paragraph, make a decision on whether the patent shall be treated as confidential and notify the applicant in a timely manner. The applicant, if failing to receive a decision on treating the patent as confidential within six months after the request is filed, may file an application for patent with a foreign country or file an international application for patent with a competent foreign institution for that invention or utility model.

Article 10 “Invention-creation that violates the laws of the State” mentioned in Article 5 of the Patent Law shall not include the invention-creations the use of which is prohibited by the laws of the State.

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Article 11 Except for the circumstances provided in Article 28 and Article 42 of the Patent Law, the application date mentioned in the Patent Law means the priority date if there is a right of priority concerned.

Unless otherwise provided, the application date mentioned in these Rules means the one provided in Article 28 of the Patent Law.

Article 12 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 means any invention-creation made:

- (1) in the course of performing his own duty;
- (2) in execution of any task, other than his own duty, which was delivered to him by the entity to which he belongs;
- (3) within 1 year of his retirement, removal from office, or termination of the employee or personnel relationship, provided that the invention-creation relates to his own duty in the entity where he worked or relates to a task assigned to him by the entity.

“The entity to which he belongs” mentioned in Article 6 of the Patent Law may also be a temporary entity for which the person works; “material resources of the entity” mentioned in Article 6 of the Patent Law shall include the entity's money, equipment,

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spare parts, raw materials, or technical data which are not to be disclosed to the public.

Article 13 “Inventor” or “designer” as mentioned in the Patent Law means any person who has made creative contributions to the substantive features of the invention-creation. Any person who, in the process of accomplishing the invention-creation, is responsible only for organizational work, or who offers facilities for the use of material resources, or who takes part in other auxiliary functions, shall not be an inventor or designer.

Article 14 Unless a patent right is assigned in accordance with Article 10 of the Patent Law, the party concerned shall, if the patent right is devolved due to other reasons, fulfill the formalities for the change of the patent holder in the administrative department for patent under the State Council with relevant certified documents or legal instruments.

Any contract on the license for use of a patent concluded between the patent holder and another party shall, within 3 months as of the date when the contract entered into force, be submitted to the administrative department for patent under the State Council for record.

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To pledge a patent right, the pledgor and the pledgee shall jointly handle the registration of pledge at the administrative department for patent under the State Council.

Chapter II Application for Patent

Article 15 Anyone who applies for a patent in written form shall submit the application documents to the administrative department for patent under the State Council in duplicate.

Anyone who applies for a patent in any other form provided by the administrative department for patent under the State Council shall comply with the provided requirements.

Where an applicant entrusts a patent agency to file an application for a patent or to handle other patent matters in the administrative department for patent under the State Council, he/it shall meanwhile submit a power of attorney indicating the scope of the power entrusted.

Where there are two or more applicants and none of them has entrusted a patent agency, the first applicant designated in the written request shall be regarded as the representative unless otherwise declared in the written request.

Article 16 A request for the patent application of an invention, utility model or design

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shall indicate:

- (1) the name of the invention, utility model or design;
- (2) if the applicant is a Chinese entity or individual, the name, address, zip code, and organizational code or resident's identify card number thereof; if the applicant is a foreigner, a foreign enterprise or any other foreign organization, the name, nationality or country or region of registration thereof;
- (3) the name of the inventor or designer;
- (4) if the applicant has entrusted a patent agency to file the application, the name and institutional code of the agency, and the name, practicing certification number and telephone number of the patent agent designated by the agency;
- (5) if priority right has been claimed, the application date and number of the first patent application filed by the applicant or the name of the acceptance organ;
- (6) the signature or seal affixed by the applicant or the patent agency;
- (7) a list of the application documents;
- (8) a list of appended documents; and
- (9) other matters that shall be specified.

Article 17 The specification of an application for a patent for invention or utility model shall indicate the title of the invention or utility model as it appears in the written request. The specification shall include:

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- (1) the field of technology: indicating the field of technology to which the technical solution under the request for protection belongs;
- (2) the background technologies: indicating the background technologies useful to the understanding, retrieval and examination of the invention or utility model; and if possible, citing the documents which reflect these background technologies;
- (3) the contents of invention: indicating the technical problems to be solved for the invention or utility model and the technical solution adopted for solving the technical problems, and indicating the beneficial effects of the invention or utility model by comparison with the technology currently available;
- (4) the statement of the appended drawings: if the specification is appended with drawings, briefly stating each appended drawing;
- (5) the specific method of use: indicating in details the best method considered by the applicant to use the invention or utility model; when necessary, illustrating with examples; and comparing with the appended drawings, if any.

An applicant for a patent for invention or utility model shall present the specification in accordance with the manner and order provided in the preceding paragraph, and shall indicate the heading in front of each portion of the specification, unless a different manner or order would afford a more economical presentation and a more accurate understanding due to the nature of the invention or utility model.

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The specification of the invention or utility model shall be written in standard terminologies and clear sentences, and shall not contain such phrases as: “as described in Part ... of the claim,” or any commercial advertising diction.

Where an application for a patent for invention contains one or more sequences of nucleotide or amino acid, the specification shall include a sequence table in conformity with the provisions of the administrative department for patent under the State Council. The applicant shall submit the sequence table as an independent portion of the specification, and submit a copy of the sequence table which can be read by the computer in accordance with the provisions of the administrative department for patent under the State Council.

The description of a patent application of utility model shall contain a drawing of the shape, structure or a combination thereof of the product requiring protection.

Article 18 The same sheet of appended 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 appended drawings shall be such that a

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reproduction with a linear reduction in size to two-thirds would still enable all details to be clearly distinguished. Appended drawing reference signs not mentioned in the text of the specification of the invention or utility model shall not appear in the appended drawings. Appended drawing reference signs not appearing in the appended drawings shall not be mentioned in the text of the specification. The appended drawing reference signs for the same composite part used in the application documents shall be consistent throughout.

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

Article 19 The patent claim shall state the technical features of the invention or utility model, and define clearly and concisely the scope of the requested protection.

Where there are several claims in the patent claim, they shall be numbered consecutively in Arabic numerals.

The technical terminology used in the patent claim shall be consistent with that used in the specification. The patent claim may contain chemical or mathematical formulas but no drawings, and shall not contain such dictions as: “as described in Part ... of the specification” or “as illustrated in Figure ...” unless such dictions are absolutely

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necessary.

The technical features mentioned in the claim may quote the corresponding reference signs in the appended drawings of the specification, and such reference signs shall follow the corresponding technical features and be placed between parentheses, so that the claim can be easily understood. The appended drawing reference signs shall not be construed as limiting the claim.

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

An independent claim shall outline the technical solution of an invention or utility model and record the technical features necessary for solving technical problems. Subordinate claims shall further define the quoted claim with additional technical features.

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

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(1) the preamble portion: indicating the subject title of the technical solution to the invention or utility model which is claimed to be protected and those essential technical features that are common to the subject of the invention or utility model and the closest technology currently available;

(2) the characterizing portion: stating, in such diction as “characterized in that ...” or in similar diction, the technical features of the invention or utility model, which distinguish it from the closest technology currently available; these features, in combination with the features indicated in the preamble portion, serve to define the scope of protection of the invention or utility model.

An independent claim may be presented in any other form if the nature of the invention or utility model is not appropriate to be expressed in the form provided in the preceding paragraph.

Each invention or utility model shall have only one independent claim, which shall precede all the subordinate claims of the same invention or utility model.

Article 22 A subordinate claim of an invention or utility model shall contain a quoting portion and a defining portion, and be presented in the following form:

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(1) the quoting portion: indicating the serial number(s) of the quoted claim(s), and the title of the subject;

(2) the defining portion: stating the additional technical features of the invention or utility model.

A subordinate claim may only quote the preceding claim or claims. A multiple subordinate claim which quotes two or more claims may only apply to the preceding claim or claim in a selected form, and shall not be regarded as the basis for another multiple subordinate claim.

Article 23 The abstract of the specification shall indicate the outline of the contents made public by the application for a patent for invention or utility model, that is, to indicate the name of the invention or utility model and the field of technology to which it belongs, and shall clearly reflect the technical problem to be solved, the essentials and main uses of the technical solution to this problem.

The abstract of the specification may contain the chemical formula which best characterizes the invention. For an application for a patent which contains appended drawings, an appended drawing which best characterizes the invention or utility

model shall also be provided. The scale and the distinctness of the appended drawing shall be such that a reproduction with a linear reduction in size to 4cm×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 diction in the abstract.

Article 24 Where an application for a patent for invention involves a new biomaterial which is not available to the public, and the specification on this biomaterial is not enough to make the technicians who belong to this field to exploit the invention, the applicant shall, in addition to complying with the relevant provisions in the Patent Law and these Rules, fulfill the following formalities:

(1) submit a sample of the biomaterial to a depository institution admitted by the administrative department for patent under the State Council before the application date, or, at the latest, on the application date (or the priority date if there is a right of priority concerned) for deposit, and submit, at the time of application, or, at the latest, within 4 months as of the application date, a receipt of deposit and the viability proof from the depository institution; where they have not been submitted at the expiry of the time limit, the sample shall be deemed to have not been deposited;

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(2) in the application, submit relevant information on the characteristics of the biomaterial;

(3) indicate, where the application involves the deposit of the sample of biomaterial, in the written request and the specification the name of its classification (with its Latin name), the name and address of the depository institution, the date on which the sample was deposited and the accession number of the deposit; where, at the time of application, they are not indicated, a rectification shall be made within 4 months as of the date of application; where no rectification has been made at the expiry of the time limit, the sample shall be deemed to have not been deposited.

Article 25 Where an applicant for a patent for invention has a sample of biomaterial deposited in accordance with Article 24 of these Rules, any entity or individual that intends to make use of the biomaterial for the purpose of experiment shall, after the application for a patent for invention has been published, make a request to the administrative department for patent under the State Council containing the following:

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

(2) a guarantee not to make the biomaterial available to any other person;

(3) a guarantee to use the biomaterial for experimental purpose only before the grant of the patent right.

Article 26 The term “generic resources” as mentioned in the Patent Law refers to the substances which are taken from human bodies, animals, plants or microorganisms, which contain hereditary units and have actual or potential values; the term invention-creations accomplished by using generic resources' as mentioned in the Patent Law refers to the invention-creations accomplished by utilizing the hereditary functions of generic resources.

A patent application of an invention-creation accomplished based on generic resources shall state the fact in the request and fill out a form made by the administrative department for patent under the State Council.

Article 27 Where an application for a patent for design seeking concurrent protection of colors is filed, the drawing or photograph in color shall be submitted in duplicate. The applicant shall submit, with respect to the contents of each design product which is in need of protection, relevant views or photographs, so as to clearly show the

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object for which protection is sought.

Article 28 The summary of a design shall contain the name and uses of the design and the design essentials and specify a drawing or photograph which best demonstrates the design essentials. The omission of the view and the colors for which protection is sought shall be specified in the summary.

A patent application for multiple similar designs of a same product shall designate in the summary one of the designs as the basic one.

The summary shall not contain any commercial advertising element or be used to indicate the functions of the product.

Article 29 The administrative department for patent under the State Council may, when considering it necessary, require the applicant for a patent for design to submit a sample or model of the product incorporating the design. The volume of the sample or model submitted shall not exceed 30cm×30cm×30cm, and its weight shall not surpass 15 kilograms. Articles that are easy to rot or become broken, or articles that are dangerous, may not be submitted as sample or model.

Article 30 The term 'an international exhibition sponsored or recognized by the Chinese Government' as mentioned in Item 1 of Article 24 of the Patent Law refers to an international exhibition described in the Convention Relating to International Exhibitions and registered or approved by the Bureau of International Expositions.

The academic or technical conference mentioned in Item (2) of Article 24 of the Patent Law means any academic or technical conference organized and convened by a relevant department of the State Council or by a national academic association.

Where the invention-creation in an application for a patent falls under any of the circumstances enumerated in 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 2 months as of the application date, submit a certificate issued by the entity which organized the international exhibition or academic or technical conference, stating that the invention-creation has been exhibited or published and also submit the certified documents on the date of its exhibition or publication.

Where any invention-creation in an application for a patent falls under the circumstance enumerated in Item (3) of Article 24 of the Patent Law, the administrative department for patent under the State Council may, when considered

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necessary, require the applicant to submit a certified document within a specified time limit.

Where the applicant fails to make a declaration and submit the certified document in accordance with Paragraph 3 of this Article, or fails to submit the certified document within a specified time limit in accordance with Paragraph 4 of this Article, the application may not be subject to Article 24 of the Patent Law.

Article 31 Where anyone claims for foreign priority under Article 30 of the Patent Law, a duplicate of the prior application document submitted by the applicant shall be certified by the original acceptance organ. Pursuant to the agreement concluded by the administrative department for patent under the State Council and the acceptance organ, if the administrative department for patent under the State Council receives the duplicate of the prior application document through electronic data interchange, it shall be deemed that the applicant has submitted the duplicate of the prior application document which has been certified by the acceptance organ. Where domestic priority is claimed, if the applicant has specified the date and sequence number of the prior application in the request, it shall be deemed that the duplicate of the prior application document have been submitted.

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Where priority is claimed, if either the date, sequence number or acceptance organ of the prior application is missing or wrongly entered in the request, the administrative department for patent under the State Council shall notify the applicant to supplement or correct within a certain time limit; if the applicant fails to do so, it shall be deemed that no claim has been made for priority right.

Where the name of the applicant for priority is not identical with that recorded in the duplicate of the prior application document, a priority assignment certificate shall be provided, or it shall be deemed that no claim has been filed for priority.

Where a design patent applicant that claims for foreign priority fails to give a summary on the design in the prior application document, it shall not affect the applicant's right of priority, provided that the summary submitted by the applicant under Article 28 of these Rules meets the description of the drawing or photograph in the prior application document.

Article 32 Any applicant may claim one or more rights of priority for an application for a patent; where more than one right of priority are claimed, the priority period for the application shall be calculated from the earliest priority date.

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

- (1) where the right of foreign or domestic priority has already been claimed;
- (2) where a patent right has been granted;
- (3) where it belongs to divisional application filed as provided.

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

Article 33 Where an application for a patent is filed or the right of foreign priority is claimed by any applicant having no regular residence or business office in China, the administrative department for patent under the State Council may, when considering

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it necessary, require the applicant to submit the following documents:

- (1) a certificate concerning the nationality of the applicant;
- (2) a certificate concerning the locality of the business office or the headquarters, if the applicant is an enterprise or other organization;
- (3) a certified document 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.

Article 34 Two or more inventions or utility models belonging to a single general inventive concept which may be filed as one application in accordance with Paragraph 1 of Article 31 the Patent Law shall be technically interrelated and contain one or more same or corresponding special technical features. The expression “special technical features” means those technical features that define a contribution which each of those inventions, considered as a whole, makes over the technology currently available.

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Article 35 Pursuant to Paragraph 2 of Article 31 of the Patent Law, where a patent application is filed for two or more similar designs of an identical product, the other designs of the product shall be similar to the basic design specified in the summary. A design patent application may contain at most 10 similar designs.

The expression 'two or more similar designs for products which fall into the same class and are sold or used in sets' as mentioned in Paragraph 2 of Article 31 of the Patent Law refers to the designs of products which fall into a same category in the nomenclature, are customarily sold or used at the same time and based on the same ideas.

Where two or more designs are filed in one application, they shall be numbered consecutively and each number shall be noted before the corresponding the drawing or photograph of the product underlying the design.

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

Where a declaration to withdraw an application for a patent is made after the printing preparation has been done by the administrative department for patent under the

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State Council for publishing the application documents, the application documents shall still be published as scheduled. However, the declaration to withdraw an application for a patent shall be announced on the subsequently published Patent Gazette.

Chapter III Examination and Approval of Application for Patent

Article 37 Any person who is to examine or hear a case in the procedures of preliminary examination, substantial examination, re-examination, or invalidation shall, at his own discretion or upon the request of the party concerned or any other interested person, avoid being present in any of the following circumstances:

- (1) where he is a close relative of the party concerned or the latter's 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 the latter's agent that might affect impartial examination and hearing;
- (4) where a member of the Patent Re-examination Board has taken part in the examination of the application.

Article 38 Upon the receipt of an application for a patent for invention or utility model consisting of a written request, a specification (an appended drawing being indispensable for utility model) and one or more patent claims, or an application for a patent for design consisting of a written request and one or more drawings or photographs showing the design, the administrative department for patent under the State Council shall clarify the application date, grant an application number and notify

the applicant.

Article 39 Where a patent application document falls under any of the following circumstances, the administrative department for patent under the State Council shall not accept the application and shall notify the applicant accordingly:

(1) where the application for a patent for invention or utility model does not contain a written request, a specification (or a specification of utility model without appended drawings) or a patent claim, or the application for a patent for design does not contain a written request, drawings or photographs;

(2) where the application is not written in Chinese;

(3) where the application is not in conformity with Paragraph 1 of Article 120 of these Rules;

(4) where the written request does not contain the name or address of the applicant;

(5) where the application is obviously not in conformity with Article 18 or Paragraph 1 of Article 19 of the Patent Law;

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(6) where the category (for invention, utility model or design) of the application for a patent is not clear or is difficult to discern.

Article 40 Where the specification contains explanatory notes to the appended drawings is submitted but the appended drawings or part of them are missing, the applicant shall, within the time limit specified by the administrative department for patent under the State Council, either re-submit the appended drawings or make a declaration for the deletion of the explanatory notes to the appended drawings. Where the appended drawings are re-submitted later, the date of their delivery at, or mailing to, the administrative department for patent under the State Council, shall be regarded as the application date; where the explanatory notes to the appended drawings are deleted, the original application date shall be reserved.

Article 41 Two or more applicants who, on the same day (referring to the application date, or the priority date if there is a right of priority), file applications for patent regarding an identical invention-creation, shall, after receiving the notification from the administrative department for patent under the State Council, negotiate between themselves at their own discretion to determine who shall be entitled to file the application.

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A same applicant who files applications for patent of both utility model and for invention regarding an identical invention-creation on the same day (application date) shall specify that another patent has been applied for the same invention-creation; otherwise, the applications shall be handled according to Paragraph 1 of Article 9 which provides that only one patent right shall be granted to an identical invention-creation.

The administrative department for patent under the State Council shall, when announcing the granting of patent to a utility model, announce the statement that a patent for invention has been applied simultaneously as made by the applicant under Paragraph 2 herein.

If, upon examination, the administrative department for patent under the State Council finds no reason to reject the application for patent of invention, it shall notify the applicant to abandon the patent right of the utility model within the prescribed time. If the applicant agrees to do so, the administrative department for patent under the State Council shall make a decision on granting the patent right of invention and announce the applicant's abandonment of the patent right of utility model concurrently with the granting of the patent right of invention. If the applicant refuses to abandon the patent right of the utility model, the administrative department for

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patent under the State Council shall reject the patent application of invention. If the applicant fails to give a reply within the prescribed time, the patent application of invention shall be deemed as withdrawn.

The patent right of utility model shall terminate from the day when the patent right of invention is granted.

Article 42 Where an application for a patent contains two or more inventions, utility models or designs, the applicant may, prior to the expiry of the time limit provided in Paragraph 1 of Article 54 of these Rules, submit to the administrative department for patent under the State Council a request for division of application. However, if an application for a patent has been rejected, withdrawn or deemed to have been withdrawn, the request for division of application may not be submitted.

Where the administrative department for patent under the State Council considers that the application for one patent as not in conformity with Article 31 of the Patent Law and Article 34 or Article 35 of these Rules, it shall notify the applicant to amend the application within a specified time limit; where the applicant has not given any response at the expiry of the time limit, the application shall be deemed to have been withdrawn.

The division of application may not change the category of the original application.

Article 43 For a division of application filed in accordance with Article 42 of these Rules, the original application date may be reserved and, if the right of priority is enjoyed, the priority date may also be reserved, provided that the division of application do not go beyond the scope of the original application already made public.

When a division of application is filed, relevant formalities shall be fulfilled in accordance with the Patent Law and these Rules.

The application number and the application date of the original application shall be indicated in the written request for the division of application. When submitting the division of application, the applicant shall submit a copy of the original application document; if the right of priority is enjoyed regarding the original application, the applicant shall submit a copy of the priority document of the original application as well.

Article 44 Preliminary examination referred to in Articles 34 and 40 of the Patent Law means the check of an application for a patent to see whether or not it contains the

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documents as provided for in Article 26 or 27 of the Patent Law and other necessary documents, and whether or not those documents are in the prescribed form; such check shall also include the following:

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

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

provisions of Article 9 of the Patent Law;

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

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

The patent administration department of the State Council shall notify the applicant of its opinions after checking his or its application and require him or it to state his or its observations or to rectify his or its application within a specified time limit; if the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made his or

its observations or the corrections, the patent administration department of the State Council still finds that the application is not in conformity with the provisions of the articles cited in the preceding paragraph, the application shall be rejected.

Article 45 In any of the following circumstances, any document relating to a patent application, not including the patent application documents, which is submitted to the administrative department for patent under the State Council, shall be deemed to have not been submitted:

(1) where the document is not presented in the provided format or the indications therein are not in conformity with relevant provisions;

(2) where no supporting document is submitted in accordance with relevant provisions.

The administrative department for patent under the State Council shall notify the applicant of its opinions from examination if a document is deemed to have not been submitted.

Article 46 Where the applicant requests an earlier publication of his/its application

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for a patent for invention, a declaration shall be made to the administrative department for patent under the State Council. The administrative department for patent under the State Council shall, after its preliminary examination of the application, publish it immediately unless it is to be rejected.

Article 47 The applicant shall, when indicating in accordance with Article 27 of the Patent Law the product incorporating the design and the category to which that product belongs, refer to the classification of products for designs published by the administrative department for patent under the State Council. Where no indication, or an incorrect indication, of the category to which the product incorporating the design belongs is made, the administrative department for patent under the State Council may supply the indication or correct it.

Article 48 Any person may, from the date of publishing an application for a patent for invention until the date of announcing the grant of the patent right, submit his opinions to the administrative department for patent under the State Council, with the reasons thereof, on the application which is not in conformity with the Patent Law.

Article 49 Where an applicant for a patent for invention cannot submit, for justified reasons, the documents concerning any retrieval or the results of any examination

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under Article 36 of the Patent Law, he/it shall make a declaration to the administrative department for patent under the State Council to that effect and submit those documents when obtained.

Article 50 The administrative department for patent under the State Council shall, when examining an application for a patent at its own discretion in accordance with Paragraph 2 of Article 35 of the Patent Law, notify the applicant accordingly.

Article 51 An applicant for a patent for invention may, when making a request for substantial examination, or within 3 months into the stage of substantial examination as of the receipt of the notification sent by the administrative department for patent under the State Council regarding the entry of the application for a patent for invention, amend the application for a patent for invention at his/its own discretion.

Within 2 months as of the application date, the applicant for a patent for utility model or design may amend the application for a patent for utility model or design on his/its own initiative.

Where the applicant amends his/its patent application documents upon his/its receipt of the notification of the opinions from the examination which is sent out by the administrative department for patent under the State Council, he/it shall make the

amendment in accordance with the requirements of the notification.

The administrative department for patent under the State Council may amend the obvious diction and symbol errors in the patent application documents at its own discretion. Where the administrative department for patent under the State Council has made such amendment at its own discretion, it shall notify the applicant.

Article 52 Where an amendment to the specification or the patent claim in an application for a patent for invention or utility model is made, a replacement sheet in the provided format 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 provided form shall be submitted.

Article 53 In accordance with Article 38 of the Patent Law, the circumstances under which an application for a patent for invention shall, after substantial examination, be rejected include:

(1) the application falls under Article 5, Article 25 of the Patent Law; or the applicant is not entitled to a patent right in accordance with Article 9 of the Patent Law;

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(2) the application is not in conformity with Paragraph 2 of Article 2, Paragraph 1 of Article 20, Article 22, Paragraph 3, Paragraph 4 and Paragraph 5 of Article 26, or Paragraph 1 of Article 31 of the Patent Law;

(3) the amendment to the application is not in conformity with Article 33 of the Patent Law, or the divisional application is not in conformity with Paragraph 1 of Article 43 of these Rules.

Article 54 After the administrative department for patent under the State Council issues the notification to grant the patent right, the applicant shall fulfill the formalities of registration within 2 months as of the date of receipt of the notification. If the applicant has fulfilled the formalities of registration within the stated time limit, the administrative department for patent under the State Council shall grant the patent right, issue the patent certificate, and announce it.

Where the formalities of registration have not been fulfilled at the expiry of the time limit, the applicant shall be deemed to have abandoned his/its right to obtain the patent right.

Article 55 Where, upon examination, there is no reason to reject a secret patent

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application, the administrative department for patent under the State Council shall make a decision to grant the secret patent right, issue a secret patent certificate and register the relevant matters of the secret patent right.

Article 56 After a decision on the granting of patent for utility model or design is announced, the patentee mentioned in Article 60 of the Patent Law or any interested party thereof may request the administrative department for patent under the State Council to make a patent right evaluation report.

To get a patent right evaluation report, a request for that purpose shall be submitted which shall bear the patent number. One request may only be made for one patent right.

If the request for a patent right evaluation report is not prepared as required, the administrative department for patent under the State Council shall ask the applicant to supplement or correct within a certain time limit; if the applicant fails to supplement or correct within the prescribed time, it shall be deemed that no request has been made.

Article 56 The administrative department of patent under the State Council shall

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make a patent right evaluation report within 2 months after receiving a written request for a patent right evaluation report. Where two or more applicants request for a patent right evaluation report with regard to the patent right of a same utility model or design, the administrative department of patent under the State Council shall make only one patent right evaluation report. All entities and individuals can consult or copy the report.

Article 58 The administrative department for patent under the State Council shall, upon discovery of any error in the patent announcement or patent document, correct it in time, and announce such a correction.

Chapter IV Re-examination of Patent Applications and Invalidation of Patent Rights

Article 59 The Patent Re-examination Board shall consist of technical and legal experts designated by the administrative department for patent under the State Council. The person in charge of the administrative department for patent under the State Council shall be the Chairman of the Board.

Article 60 Where the applicant requests the Patent Re-examination Board to make a re-examination in accordance with Article 41 of the Patent Law, he/it shall file a written request for re-examination and state the reasons therefor, and shall, when necessary, affix relevant supporting documents.

If the re-examination request fails to conform to Article 19(1) or Article 40(1) of the Patent Law, the Patent Re-examination Board shall reject it, notify the party that made the request in writing and give an explanation.

Where the written request for re-examination is not in conformity with the provided format, the person making the request shall rectify it within the time limit specified by the Patent Re-examination Board. Where no rectification has been made at the

expiry of the time limit, the request for re-examination shall be deemed to have not been filed.

Article 61 The entity or individual who makes the request may, when requesting the re-examination on or a response to the notification from the Patent Re-examination Board for re-examination, amend the patent application documents; however, such amendment shall be only limited to the elimination of the defects pointed out in the decision on rejection or the notification on re-examination.

Each of the amended patent application documents shall be in duplicate.

Article 62 The Patent Re-examination Board shall transfer the written request for re-examination which it has accepted to the original examination department of the administrative department for patent under the State Council for examination. Where the original examination department agrees to revoke its former decision upon the request of the applicant requesting re-examination, the Patent Re-examination Board shall make a re-examination decision accordingly and notify the applicant.

Article 63 Where the Patent Re-examination Board considers after re-examination that the request is not in conformity with the Patent Law or these Rules, it shall

require the person requesting re-examination to state his opinions within a specified time limit. Where no response has been made at the expiry of the time limit, the request for re-examination shall be deemed to have been withdrawn. Where, after the opinions have been stated or the rectifications have been made, the Patent Re-examination Board still considers the request as not in conformity with the Patent Law or these Rules, it shall make a re-examination decision sustaining the original decision of rejection.

Where the Patent Re-examination Board considers after re-examination that the original decision on rejection is not in conformity with relevant provisions in the Patent Law or these Rules, or considers that the defects pointed out in the original decision on rejection have been eliminated from the amended patent application documents, it shall revoke the original decision on rejection, and the original examination department shall continue the examination procedures.

Article 64 Before the Patent Re-examination Board makes a decision on the request for re-examination, the person making the request may withdraw his request for re-examination.

Where the person making the request withdraws his request for re-examination

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before the Patent Re-examination Board makes a decision on the request, the re-examination procedures shall be terminated.

Article 65 Anyone requesting invalidation or partial invalidation of a patent right in accordance with Article 45 of the Patent Law shall submit a written request and necessary supporting documents in duplicate to the Patent Re-examination Board. The said written request shall, in combination of all the submitted supporting documents, specifically state the reasons for the request for invalidation and designate the evidence on which each reason is based.

The reasons for the request for invalidation mentioned in the preceding paragraph refers to when the invention-creation on which the patent right is granted is not in conformity with Article 2, Paragraph 1 of Article 20, Article 22, Article 23, Paragraph 3 and Paragraph 4 of Article 26, Paragraph 2 of Article 27 and Article 33 of the Patent Law or Paragraph 2 of Article 20, Paragraph 1 of Article 43 of these Rules, or falls under Article 5, Article 25 of the Patent Law, or the applicant is not entitled to a patent right in accordance with Article 9 of the Patent Law.

Article 66 Where the written request for the invalidation of a patent right is not in conformity with Paragraph 1 of Article 19 of the Patent Law or Article 64 of these

Rules, the Patent Re-examination Board shall not accept it.

Where, after the Patent Re-examination Board has made a decision on the request for invalidation, the person making the request again requests invalidation with the same reason and evidence, the Patent Re-examination Board shall not accept it.

Where anyone requests invalidation of a patent right for design with the reason that is not conformity with the Paragraph 3 of Article 23 of the Patent Law, but fails to submit the effective disposal decision or judgment which can prove the conflict of the rights, the Patent Re-examination Board shall not accept it.

Where a written request for invalidation of a patent right is not conformity with the provided format, the person making the request shall rectify it within the time limit specified by the Patent Re-examination Board. Where no rectification has been made at the expiry of the time limit, the request for invalidation shall be deemed to have not been filed.

Article 67 After the Patent Re-examination Board has accepted the request for invalidation, the person making the request may, within 1 month as of the day when he filed the request for invalidation, increase the reasons or supplement the

evidence.

Where the reasons are increased or the evidence is supplemented after the expiry of the time limit, the Patent Re-examination Board need not take the request into account.

Article 68 The Patent Re-examination Board shall deliver the written request for the invalidation of a patent right and the copies of relevant documents to the patent holder, requiring him/it to state opinions within a specified time limit.

The patent holder and the person making the request for invalidation shall, within a specified time limit, make a response to the notification on transmitting the documents sent by the Patent Re-examination Board or the notification on examining the request for invalidation; where no response has been made at the expiry of the time limit, the hearing of the Patent Re-examination Board shall not be affected.

Article 69 The patent holder of a patent for invention or utility model may, in the process of the examination on the request for invalidation, amend his/its patent claim, provided that the protection scope of the original patent shall not be extended.

The patent holder of a patent for invention or utility model shall not amend the specification or the appended drawings of a patent, and the patent holder of patent for design shall not amend the drawings, photographs or brief explanation.

Article 70 The Patent Re-examination Board may, upon the request of the party concerned or the needs of the case, decide to hear the request for invalidation orally. Where the Patent Re-examination Board decides to hear the request for invalidation orally, it shall send a notification on the oral hearing to the party concerned, informing the date and place for holding the oral hearing. The party concerned shall make a response within the time limit specified in the notification.

Where the person making the request for invalidation has not made any response within the time limit specified in the notification on oral hearing sent by the Patent Re-examination Board, and does not participate in the oral hearing, the request for invalidation shall be deemed to have been withdrawn; where the patent holder does not participate in the oral hearing, the case may be heard by default.

Article 71 During the procedures for examination of the request for invalidation, the time limit specified by the Patent Re-examination Board shall not be extended.

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Article 72 Before the Patent Re-examination Board makes a decision on the request for invalidation, the person making the request may withdraw such a request.

Where the person requesting for invalidation withdraws his request or his request for invalidation is deemed as having been withdrawn before the Patent Re-examination Board makes the decision, the procedure for examining the request for invalidation shall be terminated. However, if the Patent Re-examination Board believes that, based on the examination already been done, it is capable to make the decision of announcing the patent right totally or partly invalid, the examination procedure shall not be terminated.

Chapter V Compulsory License for Exploitation of Patent

Article 73 The term 'fails to make full use of its or his patent' as mentioned in Article 48(1) of the Patent Law means that neither the way or scale by which the patentee or the licensee thereof uses its or his patent meets the domestic requirements on patented products or methods.

The term 'patented medicine' as mentioned in Article 50 of the Patent Law refers to a patented medical product needed for addressing public health problems or a product directly acquired by patented methods, including the patented active ingredients necessary for manufacturing this product and the patented diagnosis supplies necessary for using this product.

Article 74 Anyone who requests a compulsory license shall submit a written request for compulsory license to the administrative department for patent under the State Council and explain why, together with relevant supporting documents.

The administrative department for patent under the State Council shall send a copy of the written request for compulsory license to the patentee. The patentee shall state his/its opinions within the time limit specified by the administrative department

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for patent under the State Council. Where no response is made at the expiry of the time limit, the administrative department for patent under the State Council shall not be affected in making a decision to grant a compulsory license.

Before making a decision to reject the request for compulsory license or to grant a compulsory license, the administrative department for patent under the State Council shall notify the party making the request and the patent of the decision that is about to be made and the reasons therefor.

A decision on granting a compulsory license as made by the administrative department for patent under the State Council according to Article 50 of the Patent Law shall also conform to the provisions of any international treaty China has signed or acceded to regarding the granting of compulsory license for the purpose of addressing public health problems, except for those for which China has made a reservation.

Article 75 In accordance with Article 57 of the Patent Law, if anyone requests the administrative department for patent under the State Council to rule the amount of the exploitation fee, the party concerned shall submit the written request for a ruling,

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and affix the certified documents on both parties' failure to reach the agreement. The administrative department for patent under the State Council shall, within 3 months as of its receipt of the written request, make the ruling, and notify the party concerned.

Chapter VI Rewards and Remuneration to Inventor or Designer of Service Invention-creation

Article 76 An entity which has been granted a patent can reach an agreement with the inventor or designer or stipulate in its legally formed bylaws with regard to the form and amount of rewards remunerations as mentioned in Article 16 of the Patent Law.

The rewards and remunerations granted by enterprises and public institutions to inventors or designers shall conform to the relevant state financial and accounting rules.

Article 77 An entity which has been granted a patent shall, if it has not reached an agreement with the inventor or designer or stipulated in its legally formed bylaws with regard to the form and amount of awards as mentioned in Article 16 of the Patent Law, give the inventor or designer a monetary award within 3 months as of the announcement of the patent. The amount of monetary award for an invention patent shall be no less than 3,000 Yuan; the amount of monetary award for a patent for utility model or design shall be no less than 1,000 Yuan.

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Where an invention-creation was realized on the basis of an inventor's or designer's proposal adopted by the entity where he works, the entity which is granted the patent shall give him a higher possible monetary award.

Article 78 An entity which is granted a patent shall, if it has not reached an agreement with the inventor or designer or stipulated in its legally formed bylaws with regard to the form and amount of awards as mentioned in Article 16 of the Patent Law, after exploiting the patent for invention-creation and within the duration of the patent right, draw each year at least 2% of the profits from exploiting the patent for invention or utility model or at least 0.2% of the profits from exploiting the patent for design and give it to the inventor or designer as remuneration, or give a lump-sum of remuneration to the inventor or designer according to the aforesaid proportions; if an entity which is granted a patent right authorizes any other entity or individual to exploit the patent, it shall draw at least 10% of the royalties it has charged and give it to the inventor or designer as remuneration.

Chapter VII Protection of Patent Rights

Article 79 The department for the administration of patent work mentioned in the Patent Law and these Rules means the department established by the people's government of a province, autonomous region or municipality directly under the Central Government, or the people's government of a city divided into districts with a large amount of patent administrative work and actual ability to conduct the administration of patent work.

Article 80 The administrative department for patent under the State Council shall provide professional guidance to the department for the administration of patent work for disposing and conciliating patent disputes.

Article 81 Where a party concerned requests disposal or conciliation of a patent dispute, such a request shall be under the jurisdiction of the department for the administration of patent work in the place where the respondent is located or where the infringement took place.

For a patent dispute over which two or more departments for the administration of patent work have jurisdiction, the party concerned may make a request to one of

them; where the party concerned requests two or more of departments for the administration of patent work with the jurisdiction, the dispute shall be handled under the jurisdiction of the department for the administration of patent work that first accepts it.

In case of a jurisdictional dispute between the departments for the administration of patent work, it shall be designated by the department for the administration of patent work under the people's government at a higher level over both jurisdictions; where there is no such department for the administration of patent work under the people's government at a higher level over both, jurisdiction shall be designated by the administrative department for patent under the State Council.

Article 82 Where, in the process of disposing a dispute on patent infringement, the respondent has made the request for invalidation and has been accepted by the Patent Re-examination Board, he/it may request the department for the administration of patent work to suspend the disposal.

Where the department for the administration of patent work considers that the reason for suspension given by the respondent is obviously untenable, it may refuse to suspend the disposal.

Article 83 Where the patent holder indicates a patent mark on the patented product or on the package of that product in accordance with Article 17 of the Patent Law, Patent | Trademark | Copyright | Litigation

he/it shall do so in accordance with the method provided by the administrative department for patent under the State Council.

If the patent mark does not conform to the preceding paragraph, the administration of patent work shall order the liable party to correct.

Article 84 Any of the following acts shall be the act of passing off the patent under Article 63 of the Patent Law:

1. labeling a patent mark on a product which has not been granted a patent or on the package thereof, continuing to label the patent mark on a product or its package after the patent right is invalidated or terminated, or using the patent number of another party on a product or on the package thereof without permission;
2. selling any product described in Item 1;
3. referring to a technology or design which has not been granted a patent right as a patented one in the product specification or any other document, referring to a patent

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application as a patent, or using the patent number of another party without permission, which results in misleading the general public into taking the said technology or design as a patented one;

4. forging or altering any patent certificate, patent documents or patent application documents; and

5. any other act of misleading the general public into taking a technology or design which has not been granted a patent as a patented one.

For patented products and products directly acquired by patented methods which carry a patent mark or have a patent mark on the package before the patent right is terminated, an act of promising to sell or selling such products after the patent right is terminated shall not be deemed an act of passing off patent.

Where any entity or individual sells any product bearing a fake patent mark but has no knowledge about it, if it/he can prove the legal source of the product, the patent administrative department shall order it/him to stop its sale, but shall waive any pecuniary penalty.

Article 85 In addition to the provisions in Article 60 of the Patent Law, the department for the administration of patent work may, upon request of the party concerned, conciliate the following patent disputes:

- (1) disputes on the ownership of the right of patent application and the patent right;
- (2) disputes on the qualification as an inventor or designer;
- (3) disputes on the rewards or remuneration to the inventor or designer of a service invention;
- (4) disputes on the use of an invention by failing to pay proper fees after the application for a patent for invention has been published but before the patent right is granted.
- (5) other patent disputes

For the disputes enumerated in Item (4) of the preceding paragraph, the patent holder shall, if requesting the department for the administration of patent work for conciliation, make such a request after the patent right is granted.

Article 86 Where a party concerned, in case of a dispute due to the ownership of a right of patent application or a patent right, has requested the department for the administration of patent work for disposal or has initiated a lawsuit to the people's court, he may request the administrative department for patent under the State Council to suspend relevant procedures.

Anyone who requests suspension of relevant procedures in accordance with the preceding paragraph shall submit the written request to the administrative department for patent under the State Council, and affix the copies of relevant acceptance documents by the department for the administration of patent work or the people's court.

After the disposal decision made by the department for the administration of patent work or the judgment made by the people's court has been enforced, the party concerned shall fulfill the formalities for recovering relevant procedures in the administrative department for patent under the State Council. Where, within 1 year as of the date of requesting suspension, a dispute relating to the ownership of the right of patent application or the patent right has still not been settled, and it is necessary to continue to suspend relevant procedures, the person making the

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request shall request an extension of the suspension within this time limit. Where he has not requested the extension at the expiry of the time limit, the administrative department for patent under the State Council shall recover relevant procedures at its own discretion.

Article 87 Where the people's court has ordered to adopt preservative measures over a patent application right or a patent right in the trial of a civil case, the administrative department for patent under the State Council shall suspend the relevant procedures for the preserved patent application right or patent right as of the day when it receives a ruling bearing the application number or patent number and the notice to assist in enforcement. Where, at the expiry of the preservation period, the people's court has not ordered to continue the preservative measures, the administrative department for patent under the State Council shall resume relevant procedures at its own discretion.

Article 88 The suspension of the relevant procedures as effected by the administrative department for patent under the State Council under Article 86 or 87 of these Rules refer to suspending the procedures for the preliminary examination, substantive examination and re-examination of patent application, the procedures for the granting of patent rights and the procedures for invalidating patent rights;

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suspending the procedures for the abandonment, alteration or devolution of patent rights or patent application rights, the procedures for the pledge of patent rights and the procedures for the termination of patent rights before expiration; etc.

Chapter VIII Patent Registration and Patent Gazette

Article 89 The administrative department for patent under the State Council shall maintain a Patent Register in which the following matters relating to a patent application and patent right shall be registered:

- (1) grant of the patent right;
- (2) devolution of the right of patent application or the patent right;
- (3) pledge, preservation and cancellation of the patent right;
- (4) record of contracts on the license for exploitation of a patent;
- (5) invalidation of the patent right;
- (6) termination of the patent right;
- (7) recovery of the patent right;

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(8) compulsory license for exploitation of the patent;

(9) changes on the name, nationality or address of the patent holder.

Article 90 The administrative department for patent under the State Council shall publish a Patent Gazette at regular intervals for publishing or announcing the following:

1. the bibliographic data contained in patent applications for invention and the abstracts of product specifications;
2. the request for substantive examination of a patent application for invention and any decision made by the administrative department for patent under the State Council to proceed at its own discretion to examine as to substance patent application for invention;
3. rejection, withdrawal, deemed withdrawal, deemed abandonment, recovery and transfer of a patent application for invention after its publication;

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4. granting of patent right and the bibliographic data contained in the patent right;
4. abstract of the specifications of an invention or utility model, and a drawing or photograph of a design;
5. declassification of national defense patents and secret patents;
6. invalidation of patent right;
7. termination and recovery of patent right;
8. transfer of patent right;
9. archiving of contracts for licensing the exploitation of patent;
10. pledge and preservation of patent right and the cancellation thereof;
11. granting of compulsory license for the exploitation of patent;
12. changes on the name and address of the patentees;

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14. announcement and service of documents;

15. rectifications made by the administrative department for patent under the State Council; and

16. other relevant matters.

Article 91 The administrative department for patent under the State Council shall provide free copies of the Patent Gazette, offprints of patent applications for inventions and offprints of the patents for inventions, utility models and designs for the free consultation of the general public.

Article 92 The administrative department for patent under the State Council shall exchange patent documents with the patent authorities of other countries or regions or regional patent organizations on the basis of reciprocity.

Chapter IX Fees

Article 93 For filing a patent application with or going through other related formalities with the administrative department for patent under the State Council, the following fees shall be paid:

1. application fee, associate application fee, publishing and printing fee, and fee for claiming priority;
2. fees for the substantive examination and re-examination of a patent application for invention;
3. patent registration fee, announcement and printing fee, and annual fee;
4. fee for requesting the recovery of right and fee for extending the time limit; and
5. fee for any change in the bibliographic data, fee for requesting a patent right evaluation report and fee for requesting invalidation.

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The charging rates of all fees enumerated in the preceding paragraph shall be stipulated by the administrative department for price and the financial department under the State Council jointly with the administrative department for patent under the State Council.

Article 94 The fees provided in the Patent Law and in these Rules may be paid directly to the administrative department for patent under the State Council or remitted by bank or post, or be paid by other means stipulated by the administrative department for patent under the State Council.

Where a fee is remitted by bank or post, the correct application number or patent number and the names of the paid fees shall be indicated in the remittance slip submitted to the administrative department for patent under the State Council. In case of any inconsistency with the provisions in this Paragraph, it shall be deemed that the payment formalities have not been fulfilled.

Where the fees are directly paid to the administrative department for patent under the State Council, the date when the payment was made shall be regarded as the payment date. Where the fees are remitted by post, the date of mailing indicated by the postmark shall be regarded as the payment date. Where the fees are remitted by

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bank, the date of actual remittance by the bank shall be regarded as the payment date; however, if the period from the remittance date to the date of receipt by the administrative department for patent under the State Council has exceeded 15 days, the date of receipt by the administrative department for patent under the State Council shall be regarded as the payment date unless the post office or the bank has issued an attestation.

Where any patent fee is over-paid, re-paid or wrongly paid, the party concerned may, within 1 year as of the payment date, claim a refund to the administrative department for patent under the State Council.

Article 95 An applicant shall pay application fees, publishing and printing fees and necessary associate application fees within 2 months as of the application date or within 15 days after receiving the acceptance notice; if the applicant fails to pay or pay in full amount within the time limit, the application shall be deemed as withdrawn. The applicant who claims the right of priority shall pay the fee for claiming the right of priority at the same time with the payment of the application fee. Where the fee has not been paid or fully paid at the expiry of the time limit, the right of priority shall be deemed to have not been claimed.

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Article 96 Where a party concerned requests substantial examination, recovery of right or re-examination, the relevant fee shall be paid within the time limit for such requests as provided respectively by the Patent Law and these Rules. Where the fee has not been paid or fully paid at the expiry of the time limit, the request shall be deemed to have not been made.

Article 97 When the applicant fulfills the formalities of patent registration, he/it shall pay a fee for patent registration, a fee for announcement and printing and the annual fee for the year in which the patent right was granted. Where such fees have not been paid at the expiry of the time limit, the formalities of patent registration shall be deemed to have not been fulfilled.

Article 98 Where the annual fee of the application or the annual fee for subsequent years after the patent has been granted is not paid in due time by the patent holder, or the fees are not fully paid, the administrative department for patent under the State Council shall notify the patent holder to rectify the insufficiency within 6 months as of the expiry of the time limit within which the annual fee was to be paid, and at the same time pay a surcharge, the amount of which to be calculated by charging an additional 5% of the total amount of the annual fee for that year for each month exceeding the provided payment date. Where the fees have not been paid at the

expiry of the time limit, the patent right shall be terminated as of the expiry of the time limit within which the annual fee should be paid.

Article 99 The fee for requesting the recovery of right shall be paid within the time limit prescribed in these Rules; if it is not paid or paid in full amount at the expiry of the said time limit, it shall be deemed that the request has not been made.

The fee for extending the time limit shall be paid before the expiry of the prescribed time limit; if it is not paid or paid in full amount at the expiry of the said time limit, it shall be deemed that the request has not been made.

The fee for a change in the bibliographic data, fee for requesting a patent right evaluation report or fee for requesting invalidation shall be paid within one month after the request is made; if it is not paid or fully paid at the expiry of the said time limit, it shall be deemed that the request has not been made.

Article 100 Where an applicant or patentee has difficulty in paying the various fees provided in these Rules, he/it may, in accordance with relevant provisions, submit a request to the administrative department for patent under the State Council, requesting reduction or postponement of payment. The measures for the reduction

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and postponement of payment shall be formulated by the financial department under the State Council together with the administrative department for price under the State Council and the administrative department for patent under the State Council.

Chapter X Special Provisions on International Application

Article 101 The administrative department for patent under the State Council shall, in accordance with Article 20 of the Patent Law, accept the international applications for patent filed in accordance with Patent Cooperation Treaty.

The conditions and procedures for international applications for patent which are filed in accordance with Patent Cooperation Treaty and designated as China (hereinafter referred to as “international application”), to enter the National Phase in China, shall be subject to the provisions in this Chapter; where there are no relevant provisions in this Chapter, they shall be subject to the relevant provisions in the Patent Law and other Chapters of these Rules.

Article 102 An international application on which the international application date has been determined in accordance with the Patent Cooperation Treaty and which has designated China shall be deemed to be an application filed to the administrative department for patent under the State Council, and the international application date shall be deemed to be the application date mentioned in Article 28 of the Patent Law.

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Article 103 The applicant of an international application shall, within 30 months as of the priority date as mentioned in Article 2 of the Patent Cooperation Treaty (which is referred to as “priority date” in this Chapter), apply for entering the National Phase in China to the administrative department for patent under the State Council; if the applicant fails to do so within the time limit, it/he may handle the formalities for entering the National Phase in China within 32 months as of the priority date after paying the fee for extending the time limit.

Article 104 The applicant shall meet the following requirements when applying for entering the National Phase in China under Article 103 of these Rules:

1. submitting a written declaration on entering the National Phase in China in Chinese language, specifying the international application number and the type of patent right requested for;
2. paying the application fees and the publishing and printing fees as mentioned in Paragraph 1 of Article 93 of these Rules, and, when necessary, paying a fee for extending time limit as mentioned in Article 103 of these Rules;
3. submitting a Chinese translation of the specifications and the patent claim of the

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international application if it is filed in a foreign language;

4. specifying in the written declaration on entering the National Phase in China the name of the invention-creation, the name and address of the applicant and the name of the inventor, which shall all be consistent with the records of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as “International Bureau”); if the name of the inventor has not been specified in the international application, it shall be specified in the said written declaration;

5. submitting a Chinese translation of the abstract if the international application is filed in a foreign language; submitting a copy of the appended drawing ,if any, in the international application or in the abstract thereof; if the appended drawing contains words, translating the words into Chinese; and submitting a copy of the abstract in the international publishing document and a copy of the appended drawing of the abstract if the international application is filed in Chinese;

6. if the applicant has been changed at the International Bureau during the International Phase, submitting a certificate on the new applicant's entitlement to the application right;

7. paying the associate application fee as mentioned in Paragraph 1 of Article 93 of

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these Rules when necessary.

If the international application meets the requirements of Items 1 through 3 of Paragraph 1 herein, the administrative department for patent under the State Council shall grant an application number, specify the date when the international application enters the National Phase in China (hereinafter referred to as the “date of entry”) and notify the applicant that its/his international application has entered the National Phase in China.

If the international application which has entered the National Phase in China fails to meet the requirements of Items 4 through 7 of Paragraph 1 herein, the administrative department for patent under the State Council shall notify the applicant to give supplements or to correct within a given time limit; if the applicant fails to do so, the application shall be deemed as withdrawn.

Article 105 Where an international application falls under any of the following circumstances, its effectiveness in China shall be terminated:

1. in the International Phase, the international application is withdrawn or deemed withdrawn, or its designation in China is withdrawn;

2. the applicant fails to handle the formalities for entering the National Phase in China under Article 103 of these Rules within 32 months as of the date of priority; or

3. when handling the formalities for entry into the National Phase in China, the applicant still fails to meet the requirements of Items 1 through 3 of Article 104 of these Rules upon expiry of 32 months from the date of priority.

Where the international application's effectiveness in China is terminated under Item 1 of the preceding paragraph, Article 6 of these Rules shall be inapplicable; where the international application's effectiveness in China is terminated under Item 2 or 3 of the preceding paragraph, Paragraph 2 of Article 6 of these Rules shall be inapplicable.

Article 106 Where an international application has been amended in the International Phase and the applicant pleads for examination on the basis of the amended application documents, the applicant shall submit the Chinese translation of the amended part within 2 months as of the date of entry. If the Chinese translation is not submitted within the said time, the administrative department for patent under the State Council shall not take the amendment made by the applicant in the International Phase into account.

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Article 107 If the invention-creation involved in an international application is under the circumstances enumerated in Item (1) or Item (2) of Article 24 of the Patent Law and a declaration thereon has been made when the international application is filed, the applicant shall make a statement in the written declaration for entering the National Phase in China and, within 2 months as of the date of entry, submit the relevant certificates as provided for in Paragraph 3 of Article 30 of these Rules; if the applicant fails to make a statement or submit certificates within the said time, Article 24 of the Patent Law shall not be applied to its/his application.

Article 108 Where the applicant has made a statement on deposit of the sample of biomaterial in accordance with the Patent Cooperation Treaty, he/it shall be deemed to have met the requirements in Item (3) of Article 24 of these Rules. The applicant shall state in the declaration for the entry of the National Phase in China the documents recording the matters on the deposit of the sample of the biomaterial and the specific location of the record in the documents.

Where the matters on the deposit of the sample of the biomaterial have been recorded in the specification of the international application originally filed by the applicant, but have not been stated in the declaration for the entry of the National

Phase in China, he/it shall make a rectification within 4 months as of the date when he/it fulfills the formalities for the entry of the National Phase in China. Where no rectification has been made at the expiry of the time limit, the biomaterial shall be deemed to have not been submitted for deposit.

Where the applicant submits the receipt of deposit and the viability proof on the sample of the biomaterial to the administrative department for patent under the State Council within 4 months as of the date when he/it fulfilled the formalities for the entry of the National Phase in China, he/it shall be deemed to have submitted them within the time limit provided in Item (1) of Article 24 of these Rules.

Article 109 Where the invention-creation involved in an international application is realized by using genetic resources, the applicant shall make a statement thereon in the written declaration for entering the National Phase in China and fill out a form made by the administrative department for patent under the State Council.

Article 110 Where the applicant has claimed one or more rights of priority in the International Phase, and claimed the right(s) of priority to continue to be effective at the time of entering into the National Phase in China, the written declaration shall be deemed to have been made in accordance with Article 30 of the Patent Law.

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the applicant shall pay the fee for claiming the right of priority within 2 months as of the date of entry; if the applicant fails to pay or pay in full amount the fee within the said time limit, it shall be deemed that no claim has been filed for priority.

Where the applicant has submitted the copies of the earlier application documents in the International Phase in accordance with the Patent Cooperation Treaty, he/it needs not to submit the copies of the earlier application documents to the administrative department for patent under the State Council when fulfilling the formalities for the entry of the National Phase in China. Where the applicant fails to submit the copies of the earlier application documents in the International Phase, the administrative department for patent under the State Council may, when considering it necessary, notify the applicant to supplement them within a specified time limit. Where the applicant has not supplemented them at the expiry of the time limit, his/its right of priority shall be deemed to have not been claimed.

Article 111 Where an applicant requests before the expiry of a period of 30 months as of the priority date the administrative department for patent under the State Council to dispose of and examine the international application in advance, he/it shall, in addition to fulfilling the formalities for the entry of the National Phase in China,

make the request in accordance with Paragraph 2 of Article 23 of the Patent Cooperation Treaty. Where the International Bureau has not transmitted the international application to the administrative department for patent under the State Council, the applicant shall submit a copy of the confirmed international application.

Article 112 For an international application for the patent right for utility model, the applicant may, within 2 months as of the date of entry, make a request for amending the application documents.

The international application for the patent right for invention shall be subject to Paragraph 1 of Article 51 of these Rules.

Article 113 Where the applicant discovers any diction errors in the Chinese translation of the submitted specification, patent claim or appended drawings, he/it may, within the following provided time limit, make a request for a correction in accordance with the original international application:

(1) before the administrative department for patent under the State Council has completed the preparation of national publication;

(2) within 3 months as of the receipt of the notification sent by the administrative
(3) department for patent under the State Council on the entry of the application for a patent for invention into the stage of substantial examination.

Where the applicant is to correct errors in the translation, he/it shall make a written request, submit the corrected page of the translation and pay the provided fee for correcting the translation.

Where the applicant is to correct the translation as required in the notification of the administrative department for patent under the State Council, he/it shall, within a specified time limit, fulfill the formalities provided in Paragraph 2 of this Article; where the provided formalities have not been fulfilled at the expiry of the time limit, the application shall be deemed to have been withdrawn.

Article 114 For an international application claiming the patent right for invention, the administrative department for patent under the State Council shall, if considering it to be in conformity with relevant provisions in the Patent Law and these Rules after the preliminary examination, publish it in the Patent Gazette; where the international application is filed in a language other than Chinese, the Chinese translation of the application documents shall be published.

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Where an international application claiming for the patent right for invention is internationally published by the International Bureau in Chinese, it shall be subject to Article 13 of the Patent Law as of the date of international publication; where it is published by the International Bureau in a language other than Chinese, it shall be subject to Article 13 of the Patent Law as of the date of publication by the administrative department for patent under the State Council.

For an international application, “publication” mentioned in Articles 21 and 22 of the Patent Law means the publication provided in Paragraph 1 of this Article.

Article 115 Where an international application contains two or more inventions or utility models, the applicant may, after fulfilling the formalities for the entry of the National Phase in China, file a division of application in accordance with Paragraph 1 of Article 42 of these Rules.

Where, in the International Phase, when the international retrieval entity or international preliminary examination entity considers the international application is not in conformity with the requirement of singularity provided in the Patent Cooperation Treaty, the applicant does not pay the additional fee as provided, thus causing some parts of the international application to not undergo international

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retrieval or international preliminary examination, or when entering the National Phase in China, the applicant requires the above-mentioned parts to be regarded as the basis of examination, and the administrative department for patent under the State Council considers the singularity of the invention has been well-judged by the international retrieval entity or the international preliminary examination entity, it shall notify the applicant to pay the fee for recovering singularity within a specified time limit. Where the said fee has not been paid or fully paid at the expiry of the time limit, the parts in the international application which have not undergone retrieval or international preliminary examination shall be deemed to have been withdrawn.

Article 116 Where, in the International Phase, an international application is refused by a relevant international entity to grant an international application date on it or is declared to be deemed to have been withdrawn, the applicant may, within 2 months as of his/its receipt of the notice, request the International Bureau to transfer the copy of any document in the file of the international application to the administrative department for patent under the State Council, and fulfill the formalities provided in Article 103 of these Rules in the administrative department for patent under the State Council within this period. The administrative department for patent under the State Council shall, after receiving the documents transmitted by the International Bureau,

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re-examine whether the decision made by the international entity is correct.

Article 117 Where, for the patent right granted upon the international application, the protection scope determined in accordance with Article 59 of the Patent Law has exceeded the scope expressed in the original text of the international application due to errors in the translation, the protection scope which is limited on the basis of the original text shall prevail; while if the protection scope is narrower than the scope expressed in the original text of the international application due to the same reason, the protection scope at the time of authorization shall prevail.

Chapter XI Supplementary Provisions

Article 118 Any person may, upon approval by the administrative department for patent under the State Council, inspect or copy the files of the published or announced patent applications and the Patent Register, and may request the administrative department for patent under the State Council to issue a copy of the Patent Register.

The files of patent applications which are deemed to have been withdrawn or which have been rejected or actively withdrawn, shall not be preserved after the expiry of 2 years as of the date on which such applications cease to be valid.

The files of patent rights which have been abandoned or invalidated or terminated shall not be preserved after expiry of 3 years as of the date on which such patent rights cease to be valid.

Article 119 Any application document which is submitted to, and any formalities which are fulfilled in the administrative department for patent under the State Council, shall use the unified format prepared by the administrative department for patent

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under the State Council which shall be signed or sealed by the applicant, the patent holder, any other interested person or his/its representative. Where any patent agency is entrusted, such agency shall affix its stamp.

Where a change of the name of the inventor, the name, nationality or address of the applicant or the patent holder, or the name or address of the patent agency, or the name of the patent agent is requested, a request for a change in the bibliographic data shall be made to the administrative department for patent under the State Council, and the supporting documents with reasons for the change shall be affixed.

Article 120 The documents relating to a patent application or patent right which are mailed to the administrative department for patent under the State Council shall be mailed by registered letter, not by parcel.

For any document (not including any application document submitted for the first time) submitted to and any formalities fulfilled in the administrative department for patent under the State Council, the application number or the patent number, the title of the invention-creation, and the name of the applicant or the patent holder shall be indicated.

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One letter may contain documents relating to one application only.

Article 121 Any application document shall be typed or printed. All the characters shall be in black ink, neat and clear, and none of them shall be altered. The appended drawings shall be made in black ink with the aid of drafting instruments. The lines shall be uniformly thick and well-defined, and shall not be altered.

The written request, specification, patent claim, appended drawings and abstract shall be numbered separately in Arabic numerals and arranged in numerical order. The script of application documents shall run horizontally. Only one side of each sheet shall be used.

Article 122 The administrative department for patent under the State Council shall formulate the guidelines for patent examination in accordance with the Patent Law and these Rules.

Article 123 These Rules shall come into force on July 1, 2001. The Detailed Rules for the Implementation of the Patent Law of the People's Republic of China which was revised on December 12, 1992 upon approval of the State Council and promulgated by the Patent Office of China on December 21, 1992 shall be nullified at the same time.