

IMPLEMENTING REGULATIONS 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, amended the first time on December 28, 2002 according to the Decision of the State Council on Amending the Implementing Regulations of the Patent Law of the People's Republic of China, and amended the second time on January 9, 2010 according to the Decision of the State Council on Amending the Implementing Regulations of the Patent Law of the People's Republic of China)

Chapter I General Provisions

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

Rule 2. Any formalities prescribed by the Patent Law and these Implementing Regulations shall be complied with in a written form or in any other form prescribed by the patent administration department under the State Council.

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

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

Rule 4.Where any document is sent by mail to the patent administration department under the State Council, the date of mailing indicated by the postmark on the envelope shall be deemed to be the date of filing; where the date of mailing indicated by the postmark on the envelope is illegible, the date on which the patent administration department under the State Council receives the document shall be the date of filing, except where the date of mailing is proved by the party concerned.

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

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

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

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

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

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

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

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

Where any party concerned requests to restore his or its right according to paragraph one or paragraph two of this Rule, he or it shall submit a request for restoration of his or its right, stating the reasons, attaching, if necessary, the relevant certifying documents, and go through the relevant formalities which should have been complied with before the loss of his or its right. Where the party concerned requests for restoration of his or its right according to paragraph two of this Rule, he or it shall pay the fee for request for restoration of right.

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

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

Rule 7. Where an application for a patent relates to the interests of national defense and is required to be kept secret, the application for patent shall be filed with and examined by the patent department of national defense. Where an application for patent received by the patent administration department under the State Council relates to the interests of national defense and is required to be kept secret, the application shall be promptly forwarded to the patent department of national defence to carry out the examination. Where it is found after examination by the patent department of national defence there is no cause for rejection of the application, the patent administration department under the State Council shall make a decision to grant the patent right concerning national defense.

Where the patent administration department under the State Council finds that an application for patent for invention or patent for utility model filed with it relates to national security or other vital interests other than interests concerning national defense and is required to be kept secret, it shall promptly make a decision on handling it as an application for secret patent and notify the applicant accordingly. The special procedures for the examination and reexamination of application for secret patent as well as the invalidation of

secret patent shall be provided for by the patent administration department under the State Council.

Rule 8. The invention or utility model developed in China as mentioned in Article 20 of the Patent Law refers to an invention or utility model of which the substantive contents of the technical solution were made within the territory of China.

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

(1) where any entity or individual intends to file an application for patent directly in a foreign country or an international patent application with a relevant foreign organization, it or he shall file a request for confidentiality examination in advance with the patent administration department under the State Council and describe the related technical solution in detail;

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

Where the applicant files an international patent application with the patent administration department under the State Council, it or he shall be deemed to have simultaneously filed the request for confidentiality examination.

Rule 9. Where the patent administration department under the State Council receives a request filed under Rule 8 of these Implementing Regulations and finds, upon examination, that the invention or utility model may relate to the security or vital interest of the State and is required to be kept secret, it shall promptly issue a notification of confidentiality examination to the applicant. If the applicant fails to receive the notification of confidentiality examination within four months from the date of filing its or his request, it or he may file, in respect of the invention or utility model, an application for patent in a foreign country or an international patent application with the relevant foreign organization.

Where the patent administration department under the State Council carries out a confidentiality examination in accordance with the notification prescribed in the preceding paragraph, it shall promptly make a decision on whether the

invention or utility model is required to be kept secret and notify the applicant accordingly. If the applicant fails to receive such a decision within six months from the date of filing its or his request, it or he may file, in respect of the invention or utility model, an application for patent in a foreign country or an international patent application with the relevant foreign organization.

Rule 10. Any invention-creation that is contrary to the laws referred to in Article 5 of the Patent Law shall not include the invention-creation merely because the exploitation of which is prohibited by the laws.

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

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

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

(1) in the course of performing his own duty;

(2) in execution of any task, other than his own duty, which was entrusted to him by the entity to which he belongs;

(3) within one year from his retirement, resignation or from termination of his employment or personnel relationship with the entity to which he previously belonged, where the invention-creation relates to his own duty or the other task entrusted to him by the entity to which he previously belonged.

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

Rule 13. "Inventor" or "creator" referred to in the Patent Law means any person who makes creative contributions to the substantive features of an invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organizational work, or who only offers facilities for making use of material and technical means, or who only takes part in other auxiliary functions, shall not be considered as inventor or creator.

Rule 14. Except for the assignment of the patent right in accordance with Article 10 of the Patent Law, where the patent right is transferred because of any other reason, the person or persons concerned shall, accompanied by relevant certified documents or legal papers, request the patent administration department under the State Council to register the change in the owner of the patent right.

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

Where any patent right is pledged, both the pledger and the pledgee shall jointly register the contract of pledge with the patent administration department under the State Council.

Chapter II Application for Patent

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

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

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

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

Rule 16. The request of application for patent for invention, utility model or design, shall state the following:

- (1) the title of the invention, utility model or design;
- (2) where the applicant is a Chinese entity or individual, its or his title or name, address, postal code, the code of the organization or the citizen identification card number; where the applicant is a foreigner, a foreign enterprise or other foreign organization, his or its name or title, the nationality or the country or region in which the applicant is registered;
- (3) the name of the inventor or creator;
- (4) where the applicant has appointed a patent agency, the name of the appointed agency, the agency's organizational code and the name, the professional certificate number and the telephone number of the patent agent assigned by the agency;
- (5) where the right of priority is claimed, the filing date on which the applicant filed the application the first time (hereinafter referred to as the earlier application), the filing number of the application and the title of the authority with which the application was first filed;

- (6) the signature or seal of the applicant or the patent agency;
- (7) a list of the documents constituting the application;
- (8) a list of the documents appending the application; and
- (9) any other related matters which needs to be indicated.

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

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

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

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

Where an application for a patent for invention contains disclosure of one or more nucleotide and/or amino acid sequences, the description shall contain a

sequence listing in compliance with the standard prescribed by the patent administration department under the State Council. The sequence listing shall be submitted as a separate part of the description, and a copy of the said sequence listing in machine-readable form shall also be submitted in accordance with the provisions of the patent administration department under the State Council.

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

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

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

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

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

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

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

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

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

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

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

Rule 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 form:

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

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

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

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

Rule 22.Any dependent claim of an invention or utility model shall contain a reference portion and a characterizing portion, and be presented in the following manner:

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

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

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

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

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

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

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

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

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

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

- (1) the title or name and address of the requesting person;
- (2) an undertaking not to make the biological material available to any other person;
- (3) an undertaking to use the biological material for experimental purpose only before the grant of the patent right.

Rule 26.The genetic resources referred to in the Patent Law mean the material obtained from such as human body, animal, plant, or microorganism which contains functional units of heredity and is of actual or potential value.The invention-creation is developed relying on the genetic resources referred to in the Patent Law means that the invention-creation is developed relying on the use of the heredity function of the genetic resources.

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

Rule 27.Where an application for a patent for design seeking concurrent protection of colors is filed, drawings or photographs in color shall be submitted.

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

Rule 28.The brief explanation of application for patent for design shall indicate the title and the use of the product incorporating the design, the essential feature of the design, and designate a drawing or photograph capable of best showing the essential feature of the design.Where a view of the product incorporating the design is omitted or where concurrent protection for color is claimed, it shall be indicated in the brief explanation.

Where an application for patent for design is filed for two or more similar

designs incorporated in the same product, one of these designs shall be indicated as the main design in the brief explanation.

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

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

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

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

Where any invention-creation for which a patent is applied falls under the provisions of Article 24, subparagraph (1) or (2) of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit certifying documents issued by the entity which organized the international exhibition or academic or technological meeting, stating the fact that the invention-creation was exhibited or published and with the date of its exhibition or publication.

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

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

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

Where such one or two items as the date of filing, the filing number of the earlier application or the title of the authority with which the earlier application was filed are missing or incorrect in the request when claiming for right of priority, the patent administration department under the State Council shall notify the applicant to make rectification within the specified time limit. Where the applicant fails to make the rectification within the time limit, the right of priority shall be deemed not to have been claimed.

Where the name or title of the applicant who claims the right of priority is not the same as the one recorded in the copy of the earlier application, the applicant shall submit document certifying the assignment of right of priority. If no such document is submitted, the right of priority shall be deemed not to have been claimed.

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

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

Where an applicant claims the right of domestic priority, if the earlier application is one for a patent for invention, he or it may file an application for a patent for invention or utility model for the same subject matter; if the earlier application is one for a patent for utility model, he or it may file an application for a patent for utility model or invention for the same subject matter. However, when the later

application is filed, if the subject matter of the earlier application falls under any of the following, it may not be taken as the basis for claiming domestic priority:

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

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

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

- (1) if the applicant is an individual, a certificate concerning his nationality;
- (2) if the applicant is an enterprise or other organization, a document certifying the country or region in which it is registered;
- (3) a document certifying that the country, to which the foreigner, foreign enterprise or other foreign organization belongs, recognizes that Chinese entities and individuals are, under the same conditions as those applied to its nationals, entitled to the patent right, the right of priority and other related rights in that country.

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

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

The two or more designs belonging to the same class and sold or used in sets as referred to in Article 31, paragraph two of the Patent Law mean that, each

product incorporating the design belongs to the same class in the classification of products and is customarily sold or used at the same time, and the designs incorporated in each product have the same concept of design.

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

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

Where a declaration to withdraw an application for a patent is submitted after the preparations for the publication of the application document has been completed by the patent administration department under the State Council, the application document shall be published as scheduled. However, the declaration withdrawing the application for patent shall be published in the next issue of the Patent Gazette.

Chapter III Examination and Approval of Application for Patent

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

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

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

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

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

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

(5) where the application is obviously not in conformity with the provisions of Article 18, or of Article 19, paragraph one of the Patent Law;

(6) where the kind of protection (patent for invention, utility model or design) of the application for a patent is not clear and definite or cannot be ascertained.

Rule 40. Where the description states that it contains explanatory notes to the drawings but the drawings or part of them are missing, the applicant shall, within the time limit specified by the patent administration department under the State Council, either furnish the drawings or make a declaration for the deletion of the explanatory notes to the drawings. If the drawings are submitted later, the date of their delivery at, or mailing to, the patent administration department under the State Council shall be the date of filing of the application; if the explanatory notes to the drawings are to be deleted, the initial date of filing shall be retained.

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

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

Where the patent administration department under the State Council makes an announcement of the grant of patent for utility model, the statement of the applicant in accordance with the provision of paragraph two of this Rule that he has simultaneously filed an application for a patent for invention shall be announced.

Where it is found after examination that there is no cause for rejection of the application for patent for invention, the patent administration department under the State Council shall notify the applicant to declare, within the specified time limit, the abandonment of his or its patent for utility model. If the applicant so

declares, the patent administration department under the State Council shall make the decision to grant a patent for invention, and announce at the same time both the grant of the patent for invention and the declaration of the applicant to abandon his or its patent for utility model. If the applicant refuses to abandon his or its patent for utility model, the patent administration department under the State Council shall reject the application for patent for invention. If the applicant fails to respond within the time limit, the application for patent for invention shall be deemed to have been withdrawn.

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

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

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

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

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

The divisional application shall go through all the formalities in accordance with the provisions of the Patent Law and these Implementing Regulations.

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

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

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

(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, Article 19, paragraph one or Article 20, paragraph one of the Patent Law or Rules 16 to 19 or Rules 21 to 23 of these Implementing Regulations, or is obviously not in conformity with the provisions of Article 2, paragraph three, Article 22, paragraph two or four, Article 26, paragraph three or four, or of Article 31, paragraph one, or of Article 33 of the Patent Law, or of Rule 20 or Rule 43, paragraph one of these Implementing Regulations, 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 Article 25, paragraph one (6) of the Patent Law, or is not in conformity with the provisions of Article 18, Article 19, paragraph one of the Patent Law, or of Rule 16, Rule 27 or Rule 28 of these Implementing Regulations, or is obviously not in conformity with the provisions of Article 2, paragraph four, Article 23, paragraph one, Article 27, paragraph two, Article 31, paragraph two, or of Article 33 of the Patent Law, or of Rule 43, paragraph one of these Implementing Regulations, or is not entitled to a patent right in accordance with the provisions of Article 9 of the Patent Law;

(4) whether or not any application document is in conformity with the provisions of rule 2 or Rule 3, paragraph one of these Implementing Regulations.

The patent administration department under the State Council shall notify the applicant of its opinions after checking his or its application and invite him or it to state his or its observations or to rectify his or its application within the 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 he corrections, the patent administration department under the State Council still finds that the application is not in conformity with the provisions of the Articles and the Rules cited in the preceding subparagraphs, the application shall be rejected.

Rule 45. Apart from the application for patent, any document relating to the patent application which is submitted to the patent administration department under the State Council, shall, in any of the following circumstances, be deemed not to have been submitted:

(1) where the document is not presented in the prescribed form or the indications therein are not in conformity with the prescriptions;

(2) where no certifying document is submitted as prescribed.

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

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

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

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

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

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

Rule 51.At the time when a request for examination as to substance is made, and when, within the time limit of three months after the receipt of the notification of the patent administration department under the State Council on the entry into examination as to substance of the application, the applicant for a patent for invention may amend the application for a patent for invention on his or its own initiative.

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

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

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

Rule 52.When an amendment to the description or the claims in an application for a patent for invention or utility model is made, a replacement sheet in prescribed form shall be submitted, unless the amendment concerns only the alteration, insertion or deletion of a few words. Where an amendment to the drawings or photographs of an application for a patent for design is made, a replacement sheet shall be submitted as prescribed.

Rule 53.In accordance with the provisions of Article 38 of the Patent Law, the circumstances where an application for a patent for invention shall be rejected by the patent administration department under the State Council after examination as to substance are as follows:

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

(2) where the application does not comply with the provisions of Article 2, paragraph two, Article 20, paragraph one, Article 22, Article 26, paragraph three, four or five, or Article 31, paragraph one of the Patent Law, or of Rule 20, paragraph two of these Implementing Regulations;

(3) where the amendment to the application does not comply with the provisions of Article 33 of the Patent Law, or the divisional application does not comply with the provisions of Rule 43, paragraph one of these Implementing Regulations.

Rule 54.After the patent administration department under the State Council issues the notification to grant the patent right, the applicant shall go through the formalities of registration within two months from the date of receipt of the notification.If the applicant completes the formalities of registration within the said time limit, the patent administration de-partment under the State Council shall grant the patent right, issue the patent certificate and announce it.

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

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

Rule 56.After the announcement of the decision to grant a patent for utility model or a patent for design, the patentee or the interested party prescribed in Article 60 of the Patent Law may request the patent administration department under the State Council to make an evaluation report of patent.

Where such person requests for an evaluation report of patent, he shall submit a request for the evaluation report of patent, indicating the patent number.Each request shall be limited for one patent.

Where the request for the evaluation report of patent does not comply with the requirements as prescribed, the patent administration department under the State Council shall notify the requesting party to rectify the request within a specified time limit.If the requesting party fails to do so within the time limit, the request shall be deemed not to have been submitted.

Rule 57.The patent administration department under the State Council shall make the evaluation report of patent within two months from receiving of the request for the evaluation report of patent.Where two or more persons request

for the evaluation report of patent in respect of a same patent for utility model or patent for design, the patent administration department under the State Council shall make one evaluation report only. Any entity or individual may view or copy the evaluation report of patent.

Rule 58. The patent administration department under the State Council shall correct promptly the mistakes in the patent announcements and patent pamphlets issued by it once they are discovered, and the corrections shall be announced.

Chapter IV Reexamination of Patent Application and Invalidation of Patent Right

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

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

Where the request for reexamination does not comply with the provisions of Article 19, paragraph one or Article 41, Paragraph one of the Patent Law, the Patent Reexamination Board shall refuse to accept it, notify the applicant in written form and state the reasons thereof.

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

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

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

Rule 62.The Patent Reexamination Board shall remit the request for reexamination which the Board has received to the examination department of the patent administration department under the State Council which has made the examination of the application concerned to make an examination. Where that examination department agrees to revoke its former decision upon the request of the person requesting reexamination, the Patent Reexamination Board shall make a decision accordingly and notify the requesting person.

Rule 63.Where, after reexamination, the Patent Reexamination Board finds that the request does not comply with relevant provisions of the Patent Law and these Implementing Regulations, it shall invite the person requesting

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

Where, after reexamination, the Patent Reexamination Board finds that the decision rejecting the application does not comply with relevant provisions of the Patent Law and these Implementing Regulations, or that the amended application has removed the defects as pointed out by the decision rejecting the application, it shall make a decision to revoke the decision rejecting the application, and ask the examination department which has made the examination to continue the examination procedure.

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

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

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

The grounds on which the request for invalidation is based, referred to in the preceding paragraph, mean that the invention-creation for which the patent right is granted does not comply with the provisions of Article 2, Article 20, paragraph one, Article 22, Article 23, Article 26, paragraph three or four, Article 27, paragraph two, or Article 33 of the Patent Law, or of Rule 20, paragraph two or Rule 43, paragraph one of these Implementing Regulations; or the invention-creation falls under the provisions of Article 5 or 25 of the Patent Law; or the applicant is not entitled to be granted the patent right in accordance with the provisions of Article 9 of the Patent Law.

Rule 66. Where the request for invalidation does not comply with the provisions of Article 19, paragraph one of the Patent Law, or of Rule 65 of these Implementing Regulations, the Patent Reexamination Board shall refuse to

accept it.

Where, after a decision on any request for invalidation of the patent right is made, invalidation based on the same reasons and evidence is requested once again, the Patent Reexamination Board shall refuse to accept it.

Where a request for invalidation of a patent for design is filed on the ground that the patent for design does not comply with the provision of Article 23, paragraph three of the Patent Law, but no evidence is submitted to prove such conflict of rights, the Patent Reexamination Board shall refuse to accept it.

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

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

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

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

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

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

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

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

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

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

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

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

Chapter V Compulsory License for Exploitation of Patent

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

The pharmaceutical product to which patent right has been granted as mentioned in Article 50 of the Patent Law means any patented product, or product directly obtained by a patented process, of pharmaceutical sector needed to address public health problems, including the patented active ingredients necessary for the manufacture of the product and the diagnostic kits needed for its use.

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

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

Before making a decision to reject a request for compulsory license or to grant a compulsory license, the patent administration department under the State Council shall, notify the requesting person and the patentee the decision that is to be made on the request and the reasons thereof.

The decision of the patent administration department under the State Council on granting a compulsory license in accordance with Article 50 of the Patent Law, shall be also in conformity with the provisions of the relevant international treaties on granting compulsory license for the purposes of addressing public health issue, to which China is party, except for provisions on which China has made reservation.

Rule 75. Where any entity or individual requests, in accordance with the provisions of Article 57 of the Patent Law, the patent administration department under the State Council to adjudicate the fees for exploitation, it or he shall

submit a request for adjudication and furnish documents showing that the parties concerned have not been able to conclude an agreement in respect of the amount of the exploitation fee. The patent administration department under the State Council shall make an adjudication within three months from the date of receipt of the request and notify the parties concerned accordingly.

Chapter VI Reward and Remuneration for Inventors or Creators of Service Inventions-Creations

Rule 76. The entity to which a patent right is granted may, on the manner and amount of the reward and remuneration as prescribed in Article 16 of the Patent Law, enter into a contract with the inventor or creator, or provide it in its rules and regulations formulated in accordance with the laws.

The reward and remuneration awarded to the inventor or creator by any enterprise or institution shall be handled in accordance with the relevant provisions of the State on financial and accounting systems.

Rule 77. Where the entity to which a patent right is granted has not entered into a contract with the inventor or creator on the manner and amount of the reward as prescribed in Article 16 of the Patent Law, nor has the entity provided it in its rules and regulations formulated in accordance with the laws, it shall, within three months from the date of the announcement of the grant of the patent right, award to the inventor or creator of a service invention-creation a sum of money as prize. The sum of money prize for a patent for invention shall not be less than RMB 3, 000 Yuan; the sum of money prize for a patent for utility model or design shall not be less than RMB 1, 000 Yuan.

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

Rule 78. Where the entity to which a patent right is granted has not entered into a contract with the inventor or creator on the manner and amount of the remuneration as prescribed in Article 16 of the Patent law, nor has the entity provided it in its rules and regulations in accordance with the laws, it shall, after exploiting the patent for invention-creation within the duration of the patent right, draw each year from the profits from exploitation of the invention or utility model a percentage of not less than 2%, or from the profits from exploitation of the design a percentage of not less than 0.2%, and award it to the inventor or creator as remuneration. The entity may, as an alternative, by making reference to the said percentage, award a lump sum of money to the inventor or creator as remuneration once and for all. Where any entity to which a patent right is granted authorizes any other entity or individual to exploit its patent, it shall draw from the exploitation fee it receives a percentage of not less than 10% and award it to the inventor or creator as remuneration.

Chapter VII Protection of Patent Right

Rule 79.The administrative authority for patent affairs referred to in the Patent Law and these Implementing Regulations means the department responsible for the administrative work concerning patent affairs set up by the people's government of any province, autonomous region, or municipality directly under the Central Government, or by the people's government of any city which consists of districts, has a large amount of patent administration work to attend to and has the ability to deal with the matter.

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

Rule 81.Where any party concerned requests handling of a patent infringement dispute or mediation of a patent dispute, it shall fall under the jurisdiction of the administrative authority for patent affairs where the alleged infringer has his location or where the act of infringement has taken place.

Where two or more administrative authorities for patent affairs all have jurisdiction over a patent dispute, any party concerned may file his or its request with one of them to handle or mediate the matter. Where requests are filed with two or more administrative authorities for patent affairs with proper jurisdiction, the administrative authority for patent affairs that first accepts the request shall have jurisdiction.

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

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

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

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

Where any patent indication is not in conformity with the provision of the preceding paragraph, the administrative authority for patent affairs shall order to correct it.

Rule 84. Any of the following is an act of passing off a patent as prescribed in Article 63 of the Patent Law:

(1) affixing patent indication on a product or on the package of a product which has not been granted a patent, continuing to affix patent indication on a product or on the package of a product, after the related patent right has been declared invalid or is terminated, or affixing the patent number of another person on a product or on the package of a product without authorization;

(2) sale of the product as prescribed in subparagraph (1);

(3) indicating a technology or design to which no patent right has been granted as patented technology or patented design, indicating a patent application as patent or using the patent number of another person without authorization, in such materials as specification of product etc., which could mislead the public to regard the related technology or design as patented technology or patented design;

(4) counterfeiting or transforming any patent certificate, patent document or patent application document;

(5) any other act which might cause confusion on the part of the public, misleading them to regard a technology or design to which no patent right has been granted as patented technology or patented design.

Affixing patent indication legally on a patented product, or on a product directly obtained by a patented process, or on the package of such products before the termination of the patent right, offering for sale or sale of such products after the termination of the patent right is not an act of passing off a patent.

Where any person sells a product passing off a patent without knowing it, and

can prove that it or he obtains the product from a legitimate channel, it or he shall be ordered to stop selling the product by the administrative authority for patent affairs, but be exempted from being imposed a fine.

Rule 85.In addition to the provisions of Article 60 of the Patent Law, the administrative authority for patent affairs may also mediate in the following patent disputes at the request of the parties concerned:

(1) any dispute over the ownership of the right to apply for patent and the patent right;

(2) any dispute over the qualification of the inventor or creator;

(3) any dispute over the award and remuneration of the inventor or creator of a service invention-creation;

(4) any dispute over the appropriate fee to be paid for the exploitation of an invention after the publication of the application for patent but before the grant of patent right;

(5) any other patent dispute.

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

Rule 86.Any party involving in a dispute over the ownership of the right of patent application or patent right, who has already applied for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court, may request the patent administration department under the State Council to suspend the relevant procedures.

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

After entering into force of the mediation made by the administrative authority for patent affairs or the judgment rendered by the people's court, the parties concerned shall request the patent administration department under the State Council to resume the suspended procedure.If, within one year from the date when the request for suspension is filed, no decision is made on the dispute

relating to the ownership of the right to apply for a patent or the patent right, and it is necessary to continue the suspension, the party who made the request shall, within the said time limit, request to extend the suspension. If, at the expiration of the said time limit, no such request for extension is filed, the patent administration department under the State Council shall resume the procedure on its own initiative.

Rule 87. Where, in hearing civil cases, the people's court has ordered the adoption of preservation measures on the right of patent application or patent right, the patent administration department under the State Council shall suspend the relevant procedure concerning the patent application or patent under preservation on the date of receiving the judgment order and the notification on assisting the execution of the order indicated with the filing number or the patent number. At the expiration of the time limit for preservation, if there is no order of the people's court to continue the preservation, the patent administration department under the State Council shall resume the relevant procedure on its own initiative.

Rule 88. The suspension of relevant procedures carried out by the patent administration department under the State Council in accordance with Rule 86 and Rule 87 of these Implementing Regulations, refers to the suspension of such procedures as preliminary examination, examination as to substance, reexamination of a patent application, granting of patent right and the announcement of invalidation of patent; the suspension of the procedures on handling the abandonment of patent right, changing or transferring patent right or right of patent application, pledge of patent right and the cessation of patent right before the expiration of its duration.

Chapter VIII Patent Registration and Patent Gazette

Rule 89.The patent administration department under the State Council shall keep a Patent Register in which the registration of the following matters relating to patent application or patent right shall be made:

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

Rule 90.The patent administration department under the State Council shall publish the Patent Gazette at regular intervals, publishing or announcing the following:

- (1) the bibliographic data and the abstract of the description of an application for a patent for invention;
- (2) any request for examination as to substance of an application for a patent for invention and any decision made by the patent administration department under the State Council to proceed on its own initiative to examine as to substance an application for a patent for invention;
- (3) any rejection, withdrawal, deemed withdrawal, deemed abandonment, restoration and transfer of an application for a patent for invention after its publication;
- (4) any grant of patent right and the bibliographic data of the patent right;

- (5) the abstract of the description of a patent for invention or a patent for utility model, one drawing or photograph of a patent for design;
- (6) any declassification of national defense patent or secret patent;
- (7) any invalidation of the patent right;
- (8) any cessation or restoration of the patent right;
- (9) any transfer of the patent right;
- (10) any patent license contract for exploitation submitted for record;
- (11) any pledge or preservation of the patent right and their discharge;
- (12) any grant of compulsory license for exploitation of the patent;
- (13) any change in the name or title and address of the patentee;
- (14) any service of documents by way of making an announcement;
- (15) any correction made by the patent administration department under the State Council; and
- (16) any other related matters.

Rule 91.The patent administration department under the State Council shall make the patent gazettes, the pamphlets of the application for patent for invention and the pamphlets of patent for invention, patent for utility model and patent for design available to the public for consultation with free of charge.

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

Chapter IX Fees

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

- (1) filing fee, additional fee for filing an application, printing fee for publishing the application, and fee for claiming priority;
- (2) fee for examination as to substance for an application for patent for invention, and reexamination fee;
- (3) registration fee for the grant of patent right, printing fee for the announcement of grant of patent right, and annual fee;
- (4) fee for requesting restoration of right, and fee for requesting extension of time limit;
- (5) fee for making a change in the bibliographic data, fee for requesting for evaluation report of patent, and fee for requesting for announcement of invalidation of patent.

The amount of the fees referred to in the preceding paragraphs shall be prescribed by the price administration department and the finance administration department under the State Council in conjunction with the patent administration department under the State Council.

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

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

Where any fee is paid directly to the patent administration department under the State Council, the date on which the fee is paid shall be the date of payment; where any fee is paid by way of postal remittance, the date of remittance

indicated by the postmark shall be the date of payment; where any fee is paid by way of bank transfer, the date on which the transfer of the fee is done shall be the date of payment.

Where any patent fee is paid in excess of the amount as prescribed, paid repeatedly or wrongly, the party making the payment may, within three years from the date of payment, request a refund from the patent administration department under the State Council, and the patent administration department under the State Council shall return it.

Rule 95.The applicant shall pay the filing fee, the printing fee for the publication of the application and the necessary additional fee for filing an application within two months from the filing date or fifteen days from the date of receipt of the notification of acceptance of the application from the patent administration department under the State Council. If the fees are not paid or not paid in full within the time limit, the application shall be deemed to be withdrawn.

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

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

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

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

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

Rule 99.The fee for requesting restoration of right shall be paid within the relevant time limit prescribed in these Implementing Regulations.If the fee is not paid or not paid in full within the time limit, the request shall be deemed not to have been made.

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

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

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

Chapter X Special Provisions Concerning International Application

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

For any international application filed under the Patent Cooperation Treaty designating China (hereinafter referred to as the international application), the requirements and procedures for entering the phase of process conducted by the patent administration department under the State Council (hereinafter referred to as entering the Chinese national phase), the provisions prescribed in this chapter shall apply. Where no provisions are made in this chapter, the relevant provisions in the Patent Law and in any other chapters of these Implementing Regulations shall apply.

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

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

Rule 104.When the applicant goes through the formalities for entering the Chinese national phase in accordance with the provisions of Rule 103 of these Implementing Regulations, it or he shall fulfill the following requirements:

- (1) submitting in Chinese a written statement for entering the Chinese national phase, indicating the international application number and the type of patent right sought;
- (2) paying the filing fee and the printing fee for the publication of the application as provided in Rule 93, paragraph one of these Implementing Regulations, and

where necessary, the surcharge for the late entry as provided in Rule 103 of these Implementing Regulations;

(3) submitting the Chinese translation of the description and the claims of the initial international application where an international application is filed in a foreign language;

(4) indicating in the written statement for entering the Chinese national phase the title of the invention-creation, the name or title of the applicant, the address of the applicant and the name of the inventor, all of which should be in conformity with those recorded with the International Bureau under the World Intellectual Property Organization (hereafter referred to as the International Bureau). Where the inventor is not indicated in the international application, the name of the inventor shall be indicated in the said statement;

(5) where the international application is filed in a foreign language, submitting the Chinese translation of the abstract; submitting a copy of the drawings and a copy of the drawing of the abstract where there are drawings and the drawing of the abstract; the text matter in the drawings, if any, shall be replaced by the corresponding text matter in Chinese; where the international application is filed in Chinese, submitting a copy of the abstract and the drawing of the abstract as appeared in the documents of international publication;

(6) where the applicant has gone through the formalities of changing the applicant before the International Bureau in the international phase, certifying documents shall be furnished to prove the right of the applicant after the change to the international application;

(7) payment of the additional fee for application when necessary, as provided in Rule 93, subparagraph (1) of these Implementing regulations.

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

Where, after entering the Chinese national phase, it is found that an international application does not meet the requirements as set forth in subparagraphs (4) to (7), paragraph one of this Rule, the patent administration department under the State Council shall notify the applicant to make rectification within the specified time limit. If the applicant fails to do so, the application shall be deemed to have been withdrawn.

Rule 105.Where an international application has any of the following circumstances, the effect of the application in China shall cease:

(1) where in the international phase, the international application has been withdrawn or was deemed to have been withdrawn, or the designation of China of the international application has been withdrawn;

(2) where the applicant fails to go through the formalities for entry into the Chinese national phase within 32 months from the priority date in accordance with the provision of Rule 103 of these Implementing Regulations;

(3) while going through the formalities for entry into the Chinese national phase, the applicant fails to fulfill the requirements of Rule 104, subparagraphs (1) to (3) of these Implementing Regulations at the expiration of the time limit of 32 months from the date of priority.

Where the effect of an international application cease in China in accordance with the provision of the preceding paragraph, subparagraph (1), the provisions of Rule 6 of these Implementing Regulations shall not apply. Where the effect of an international application cease in China in accordance with the provision of the preceding paragraph, subparagraph (2) or (3), the provisions of Rule 6, paragraph two of these Implementing Regulations shall not apply.

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

Rule 107.Where any invention-creation to which the international application relates has one of the events referred to in Article 24, subparagraph (1) or (2) of the Patent Law and where statements have been made in this respect when the international application was filed, the applicant shall indicate it in the written statement concerning entry into the Chinese national phase, and furnish the relevant certifying documents prescribed in Rule 30, paragraph three of these Implementing Regulations within two months from the date of entry. If the applicant fails to indicate it or furnish the relevant certifying documents within the time limit, the provisions of Article 24 of the Patent Law shall not apply to its or his application.

Rule 108.Where the applicant has made indications concerning deposited

biological materials in accordance with the provisions of the Patent Cooperation Treaty, the requirements provided for in Rule 24, subparagraph (3) of these Implementing Regulations shall be deemed to have been fulfilled. In the statement concerning entry into the Chinese national phase, the applicant shall indicate the documents recording the particulars of the deposit of the biological materials, and the exact location of the record in the documents.

Where particulars concerning the deposit of the biological materials are contained in the description of the international application as initially filed, but there is no such indication in the statement concerning the entry into the Chinese national phase, the applicant shall make corrections within four months from the date of entry. If the correction is not made at the expiration of the time limit, the biological materials shall be deemed not to have been deposited.

Where, within four months from the date of entry, the applicant has submitted the certificates of the deposit and the viability of the biological materials to the patent administration department under the State Council, the deposit of biological materials shall be deemed to have been furnished within the time limit as provided for in Rule 24, subparagraph (1) of these Implementing Regulations.

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

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

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

Where the applicant has submitted a copy of the earlier application in the international phase in accordance with the provisions of the Patent Cooperation Treaty, he or it shall be exempted from submitting a copy of the earlier application to the patent administration department under the State Council at the time of going through the formalities for entering the Chinese national phase. Where the applicant has not submitted a copy of the earlier application in the international phase, and if the patent administration department under the

State Council deems necessary, it may notify the applicant to submit a copy of the earlier application within the specified time limit. If no copy is submitted at the expiration of the time limit, his or its claim for priority shall be deemed not to have been made.

Rule 111. Where, before the expiration of 30 months from the priority date, the applicant files a request with the patent administration department under the State Council for early processing and examination of his or its international application, he or it shall, in addition to going through the formalities for entering the Chinese national phase, submit a re-quest in accordance with the provisions in Article 23, paragraph two of the Patent Cooperation Treaty. Where the international application has not been transmitted by the International Bureau to the patent administration department under the State Council, the applicant shall submit a certified copy of the international application.

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

With regard to an international application for a patent for invention, the provisions of Rule 51, paragraph one of these Implementing Regulations shall apply.

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

(1) before the completion of technical preparations for publication of an application for a patent for invention or announcement of patent right for utility model by the patent administration department under the State Council;

(2) within three months from the date of receipt of the notification sent by the patent administration department under the State Council, stating that the application for a patent for invention has entered into the substantive examination phase.

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

Where the applicant makes correction of the translation in accordance with the notification of the patent administration department under the State Council, he or it shall, within the specified time limit, go through the formalities prescribed in

paragraph two of this Rule. If the prescribed formalities are not gone through at the expiration of the time limit, the international application shall be deemed to be withdrawn.

Rule 114. With regard to any international application for a patent for invention, if the patent administration department under the State Council, after preliminary examination, considers it in compliance with relevant provisions of the Patent Law and these Implementing Regulations, it shall publish it in the Patent Gazette; where the international application is filed in a language other than Chinese, the Chinese translation of the international application shall be published.

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

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

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

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

preliminary examination shall be deemed to be withdrawn.

Rule 116.Where an international application in the international phase has been refused to be accorded an international filing date or has been declared to be deemed withdrawn by an international authority concerned, the applicant may, within two months from the date on which he or it receives the notification, request the International Bureau to send the copy of any document in the file of the international application to the patent administration department under the State Council, and shall go through the formalities prescribed in Rule 103 of these Implementing Regulations within the said time limit before the patent administration department under the State Council. After receiving the documents sent by the International Bureau, the patent administration department under the State Council shall review the decision made by the international authority concerned to find whether it is correct.

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

Chapter XI Supplementary Provisions

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

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

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

Rule 119. Any patent application which is filed with, or any formality which is gone through before, the patent administration department under the State Council shall be signed or sealed by the applicant, the patentee, any other interested person or his or its representative. Where any patent agency is appointed, it shall be sealed by such agency.

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

Rule 120. The document relating to a patent application or patent right which is mailed to the patent administration department under the State Council shall be mailed by registered letter, not by parcel.

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

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

Rule 121. Various kinds of application documents shall be typed or printed. All

the characters shall be in black ink, neat and clear.They shall be free from any alterations.The drawings shall be made in black ink with the aid of drafting instruments.The lines shall be uniformly thick and well defined, and free from alterations.

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

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

Rule 122.The patent administration department under the State Council shall formulate Guidelines for Examination in accordance with the Patent Law and these Implementing Regulations.

Rule 123.The patent administration department under the State Council shall formulate Guidelines for Examination in accordance with the Patent Law and these Implementing Regulations.