Annexes

PATENT LAW

OF THE PEOPLE'S REPUBLIC OF CHINA①

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12,1984

Amended the first time in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 27th Meeting on September 4,1992

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① Translated by the State Intellectual Property Office of the People's Republic of China.In case of discrepancy,the original version in Chinese shall prevail.

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① This table of contents was established for the convenience of the reader by the State Intellectual Property Office of the People"s Republic of China.The text of the Patent Law adopted by the Standing Committee of the National People"s Congress does not contain such a table.

Chapter I

General Provisions

Article 1. This Law is enacted to protect the legitimate rights of the patentee, to encourage inventions-creations,to advance the exploitation of inventions-creations, to enhance innovation capability, and to promote the progress of science and technology and the development of economy and society.

Article 2. In this Law,“inventions-creations" mean inventions,utility models and designs.

“Invention" means any new technical solution relating to a product,a process or improvement thereof.

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

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

Article 3. The patent administration department under the State Council is responsible for the patent work throughout the country.It receives and examines patent applications,and grants patent right for inventions-creations in accordance with the law.

The administrative authority for patent affairs under the people’s governments of provinces,autonomous regions and municipalities directly under the central government are responsible for the administrative work concerning patents in their respective administrative areas.

Article 4. Where an invention-creation for which a patent is applied for relates to the security or other vital interests of the State and is required to be kept secret, the application shall be treated in accordance with the relevant prescriptions of the State.

Article 5. No patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest. No patent right shall be granted for any invention-creation where acquisition or use of the genetic resources,on which the development of the invention-creation

relies,is not consistent with the provisions of the laws or administrative regulations.

Article 6. An invention-creation,made by a person in execution of the tasks of the entity to which he belongs,or made by him mainly by using the material and technical means of the entity is a service invention-creation.For a service intentioncreation, the right to apply for a patent belongs to the entity.After the application is approved,the entity shall be the patentee.

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

In respect of an invention-creation made by a person using the material and technical means of an entity to which he belongs,where the entity and the inventor or creator have entered into a contract in which the right to apply for and own a patent is provided for,such provisions shall apply.

Article 7. No entity or individual shall prevent the inventor or creator from filing an application for a patent for a non-service invention-creation.

Article 8. For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission given to it or him by another entity or individual,the right to apply for a patent belongs,unless otherwise agreed upon,to the entity or individual that made,or to the entities or individuals that jointly made,the invention-creation.After the application is approved, the entity or individual that applied for it shall be the patentee.

Article 9. For any identical invention-creation,only one patent right shall be granted.Where an applicant files on the same day applications for both patent for utility model and patent for invention relating to the identical invention-creation,and the applicant declares to abandon the patent for utility model which has been granted and does not terminate,the patent for invention may be granted.

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

Article 10. The right of patent application and the patent right may be assigned.

Any assignment,by a Chinese entity or individual,of the right of patent application, or of the patent right,to a foreigner,a foreign enterprise or any other foreign

organization shall proceed by going through the formalities as provided by the relevant laws and administrative regulations.

Where the right of patent application or the patent right is assigned,the parties shall conclude a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall announce the registration.The assignment shall take effect as of the date of registration.

Article 11. After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law,no entity or individual may, without the authorization of the patentee,exploit the patent,that is,make,use,offer to sell,sell or import the patented product,or use the patented process,and use, offer to sell,sell or import the product directly obtained by the patented process,for production or business purposes.

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

Article 12. Any entity or individua1 exploiting the patent of another shall conclude with the patentee a license contract for exploitation and pay the patentee a fee for the exploitation of the patent.The licensee has no right to authorize any entity or individual,other than that referred to in the contract,to exploit the patent.

Article 13. After the publication of the application for a patent for invention, the applicant may require the entity or individual exploiting the invention to pay an appropriate fee.

Article 14. Where any patent for invention,belonging to any state-owned enterprise or institution,is of great significance to the interest of the State or to the public interest,the competent departments concerned under the State Council and the people’s governments of provinces,autonomous regions or municipalities directly under the central government may,after approval by the State Council,decide that the patented invention be spread and applied within the approved limits,and allow designated entities to exploit that invention.The exploiting entity shall,according to the regulations of the State,pay a fee for exploitation to the patentee.

Article 15. Where the co-owners of a patent application or a patent have concluded an agreement on the exercising of the right,the agreement shall apply.In the

absence of such agreement,any co-owner may independently exploit the patent or license another party to exploit the patent through non-exclusive license; any fee for the exploitation obtained from licensing others to exploit the patent shall be distributed among the co-owners.

Except for the circumstances as provided in the preceding paragraph, a jointlyowned patent application or patent shall be exercised with the consent of all co-owners.

Article 16. The entity that is granted a patent right shall award to the inventor or creator of a service invention-creation a reward and,upon exploitation of the patented invention-creation,shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded.

Article 17. The inventor or creator has the right to be named as such in the patent document.

The patentee has the right to affix a patent indication on the patented product or on the package of that product.

Article 18. Where any foreigner,foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China,the application shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China,or in accordance with any international treaty to which both countries are party,or on the basis of the principle of reciprocity.

Article 19. Where any foreigner,foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent,or has other patent matters to attend to,in China,it or he shall appoint a legally incorporated patent agency to act as his or its agent.

Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country,it or he may appoint a legally incorporated patent agency to act as its or his agent.

The patent agency shall comply with the provisions of laws and administrative regulations,and handle patent applications and other patent matters according to the instructions of its clients.In respect of the contents of its clients' inventions-creations, except for those that have been published or announced,the agency shall bear the responsibility of keeping them confidential.The administrative regulations governing the patent agency shall be formulated by the State Council.

Article 20. Where any entity or individual intends to file an application for patent abroad for any invention or utility model developed in China,it or he shall request in advance the patent administration department under the State Council for confidentiality examination.The procedures and duration etc.of the confidentiality examination shall be implemented in accordance with the regulations of the State Council.

Any Chinese entity or individual may file an international application for patent in accordance with any international treaty concerned to which China is party.
The applicant filing an international application for patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle any international application for patent in accordance with the international treaty concerned to which China is party,this Law and the relevant regulations of the State Council.

For an invention or utility model,if a patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article,it shall not be granted patent right while filing application for patent in China.

Article 21. The patent administration department under the State Council and its Patent Reexamination Board shall handle any patent application and patent-related request according to law and in conformity with the requirements of being objective, fair,correct and timely.

The patent administration department under the State Council shall release patent information in a complete,correct,and timely manner,and publish patent gazette on a regular basis.

Until the publication or announcement of the application for a patent,staff members of the patent administration department under the State Council and other persons involved have the duty to keep its contents confidential.

Chapter II

Requirements for Grant of Patent Right

Article 22. Any invention or utility model for which patent right may be granted must possess novelty,inventiveness and practical applicability.
Novelty means that,the invention or utility model does not form part of the prior art; nor has any entity or individual filed previously before the date of filing with

the patent administration department under the State Council an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced after the said date of filing.

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

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

The prior art referred to in this Law means any technology known to the public before the date of filing in China or abroad.

Article 23. Any design for which patent right may be granted shall not be a prior design,nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing.

Any design for which patent right may be granted shall significantly differ from prior design or combination of prior design features.

Any design for which patent right may be granted must not be in conflict with the legitimate right obtained before the date of filing by any other person.

The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad.

Article 24. An invention-creation for which a patent is applied for does not lose its novelty where,within six months before the date of filing,one of the following events occurred:

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

(2) where it was first made public at a prescribed academic or technological meeting;

(3) where it was disclosed by any person without the consent of the applicant.

Article 25. For any of the following,no patent right shall be granted:

(1) scientific discoveries;

(2) rules and methods for mental activities;

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

(4) animal and plant varieties;

(5) substances obtained by means of nuclear transformation;

(6) designs of two-dimensional printing goods,made of the pattern,the colour

or the combination of the two,which serve mainly as indicators.

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

Chapter III

Application for Patent

Article 26. Where an application for a patent for invention or utility model is filed,a request,a description and its abstract,and claims shall be submitted.

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

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

The claims shall be supported by the description and shall define the extent of the patent protection sought for in a clear and concise manner.

Where an invention-creation is developed relying on the genetic resources,the applicant shall indicate,in the application documents,the direct and original source of such genetic resources; where the applicant fails to indicate the original source,he or it shall state the reasons thereof.

Article 27. Where an application for a patent for design is filed,a request, drawings or photographs of the design and a brief explanation of the design shall be submitted.

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

Article 28. The date on which the patent administration department under the State Council receives the application shall be the date of filing.If the application is sent by mail,the date of mailing indicated by the postmark shall be the date of filing.

Article 29. Where,within twelve months from the date on which any applicant first filed in a foreign country an application for a patent for invention or utility model,or within six months from the date on which any applicant first filed in a foreign

country an application for a patent for design,he or it files in China an application for a patent for the same subject matter,he or it may,in accordance with any agreement concluded between the said foreign country and China,or in accordance with any international treaty to which both countries are party,or on the basis of the principle of mutual recognition of the right of priority,enjoy a right of priority.

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

Article 30. Any applicant who claims the right of priority shall make a written declaration when the application is filed,and submit,within three months,a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the copy of the patent application document,the claim to the right of priority shall be deemed not to have been made.

Article 31. An application for a patent for invention or utility model shall be limited to one invention or utility model.Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

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

Article 32. An applicant may withdraw his or its application for a patent at any time before the patent right is granted.

Article 33. An applicant may amend his or its application for a patent,but the amendment to the application for a patent for invention or utility model may not go beyond the scope of disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

Chapter IV

Examination and Approval of Application for Patent

Article 34. Where,after receiving an application for a patent for invention,the patent administration department under the State Council,upon preliminary examination, finds the application to be in conformity with the requirements of this Law,it shall publish the application promptly after the expiration of eighteen months from the date of filing.Upon the request of the applicant,the patent administration department under the State Council publishes the application earlier.

Article 35. Upon the request of the applicant for a patent for invention,made at any time within three years from the date of filing,the patent administration department under the State Council will proceed to examine the application as to its substance.If,without any justified reason,the applicant fails to meet the time limit for requesting examination as to substance,the application shall be deemed to have been withdrawn.

The patent administration department under the State Council may,on its own initiative,proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

Article 36. When the applicant for a patent for invention requests examination as to substance,he or it shall furnish pre-filing date reference materials concerning the invention.

For an application for a patent for invention that has been already filed in a foreign country,the patent administration department under the State Council may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that application,or concerning the results of any examination made,in that country.If,at the expiration of the specified time limit,without any justified reason,the said documents are not furnished,the application shall be deemed to have been withdrawn.

Article 37. Where the patent administration department under the State Council, after it has made the examination as to substance of the application for a patent for invention,finds that the application is not in conformity with the provisions of this Law,it shall notify the applicant and request him or it to submit,within a specified time limit,his or its observations or to amend the application.If,without any justified reason,the time limit for making response is not met,the application shall be deemed to have been withdrawn.

Article 38. Where,after the applicant has made the observations or amendments, the patent administration department under the State Council finds that the application for a patent for invention is still not in conformity with the provisions of

this Law,the application shall be rejected.

Article 39. Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention,the patent administration department under the State Council shall make a decision to grant the patent right for invention,issue the certificate of patent for invention,and register and announce it.The patent right for invention shall take effect as of the date of the announcement.

Article 40. Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design,the patent administration department under the State Council shall make a decision to grant the patent right for utility model or the patent right for design,issue the relevant patent certificate,and register and announce it.The patent right for utility model or design shall take effect as of the date of the announcement.

Article 41. The patent administration department under the State Council shall set up a Patent Reexamination Board.Where an applicant for patent is not satisfied with the decision of the said department rejecting the application,the applicant may,within three months from the date of receipt of the notification,request the Patent Reexamination Board to make a reexamination.The Patent Reexamination Board shall,after reexamination,make a decision and notify the applicant for patent. Where the applicant for patent is not satisfied with the decision of the Patent Reexamination Board,it or he may,within three months from the date of receipt of the notification,institute legal proceedings in the people’s court.

Chapter V

Duration,Cessation and Invalidation of Patent Right

Article 42. The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years,counted from the date of filing.

Article 43. The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

Article 44. In any of the following cases,the patent right shall cease before the expiration of its duration:

(1) where an annual fee is not paid as prescribed;

(2) where the patentee abandons his or its patent right by a written declaration.

Any cessation of the patent right shall be registered and announced by the Patent administration department under the State Council.

Article 45. Where,starting from the date of the announcement of the grant of the patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law,it or he may request the Patent Reexamination Board to declare the patent right invalid.

Article 46. The Patent Reexamination Board shall examine the request for invalidation of the patent right promptly,make a decision on it and notify the person who made the request and the patentee.The decision declaring the patent right invalid shall be registered and announced by the patent administration department under the State Council.

Where the patentee or the person who made the request for invalidation is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right,such party may,within three months from receipt of the notification of the decision,institute legal proceedings in the people’s court.The people’s court shall notify the person that is the opponent party of that party in the invalidation procedure to appear as a third party in the legal proceedings.

Article 47. Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning.

The decision declaring the patent right invalid shall have no retroactive effect on any judgment or mediation decision of patent infringement which has been pronounced and enforced by the people’s court,on any decision concerning the handling of a dispute over patent infringement which has been complied with or compulsorily executed,or on any contract of patent license or of assignment of patent right which has been performed prior to the declaration of the patent right invalid; however, the damage caused to other persons in bad faith on the part of the patentee shall be compensated.

If,pursuant to the provisions of the preceding paragraph,the monetary damage for patent infringement,the fees for exploitation of the patent or fees for the assignment

of the patent right is not returned,but such non-return is obviously contrary to the principle of equity,all or part of the preceding payments shall be returned.

Chapter VI

Compulsory License for Exploitation of Patent

Article 48. Under any of the following circumstances,the patent administration department under the State Council may,upon the request of an entity or individual which is qualified to exploit the invention or utility model,grant a compulsory license to exploit the patent for invention or utility model:

(1) where the patentee,after the expiration of three years from the date of the grant of the patent and the expiration of four years from the date of filing,does not exploit or does not sufficiently exploit the patent without any justified reason;

(2) where the exercising of the patent right by the patentee is legally determined as an act of monopoly,for the purposes of eliminating or reducing the adverse effects of the act on competition.

Article 49. Where a national emergency or any extraordinary state of affairs occurs,or where the public interest so requires,the patent administration department under the State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 50. For the purposes of public health,the patent administration department under the State Council may grant a compulsory license to manufacture a pharmaceutical product which has been granted patent right and export it to countries or regions specified in the relevant international treaties to which China is party.

Article 51. Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model,the patent administration department under the State Council may,upon the request of the later patentee,grant a compulsory license to exploit the earlier invention or utility model.

Where,according to the preceding paragraph,a compulsory license is granted, the patent administration department under the State Council may,upon the request of the earlier patentee,also grant a compulsory license to exploit the later invention

or utility model.

Article 52. Where the invention-creation involved in the compulsory license relates to the semi-conductor technology,the exploitation thereof shall be limited only for the purpose of public interest or under the condition as provided in Article 48 (2) of this Law.

Article 53. Except for compulsory licenses granted in accordance with Article 48 (2) or Article 50 of this Law,the exploitation of any compulsory license shall be executed predominately for the supply of the domestic market.

Article 54. Any entity or individual requesting,in accordance with the provisions of Article 48(1) or Article 51 of this Law,a compulsory license for exploitation shall furnish proof to show that it or he has made requests for authorization from the patentee to exploit its or his patent on reasonable terms and conditions,and such efforts have not been successful within a reasonable period of time.

Article 55. The decision made by the patent administration department under the State Council granting a compulsory license for exploitation shall be notified promptly to the patentee concerned,and shall be registered and announced.
In the decision granting the compulsory license for exploitation,the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant.If and when the circumstances which led to such compulsory license cease to exist and are unlikely to recur,the patent administration department under the State Council may,after review upon the request of the patentee,terminate the compulsory license.

Article 56. Any entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploit and shall not have the right to authorize exploitation by any others.

Article 57. The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee,or deal with the issue of exploitation fee according to relevant provisions of the international treaties to which China is party.Where the exploitation fee is paid,the amount shall be negotiated by both parties.Where the parties fail to reach an agreement,the patent administration department under the State Council shall adjudicate.

Article 58. Where the patentee is not satisfied with the decision of the patent

administration department under the State Council granting a compulsory license for exploitation,or where the patentee or the entity or individual that is granted the compulsory license for exploitation is not satisfied with the ruling made by the patent administration department under the State Council regarding the fee payable for exploitation,it or he may,within three months from the date of receipt of the notification,institute legal proceedings in the people's court.

Chapter VII

Protection of Patent Right

Article 59. The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims.The description and the appended drawings may be used to interpret the content of the claims.

The extent of protection of the patent right for design shall be determined by the design of the product as shown in the drawings or photographs.The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs.

Article 60. Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee,that is,the infringement of the patent right of the patentee,it shall be settled through consultation by the parties.Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court,or request the administrative authority for patent affairs to handle the matter. When the administrative authority for patent affairs handling the matter considers that the infringement is established,it may order the infringer to stop the infringing act immediately.If the infringer is not satisfied with the order,he may,within 15 days from the date of receipt of the notification of the order,institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China.If,within the said time limit,such proceedings are not instituted and the order is not complied with,the administrative authority for patent affairs may approach the people's court for compulsory execution.The said authority handling the matter may,upon the request of the parties,mediate in the amount of compensation for the damage caused by the infringement of the patent right.If the mediation fails,the parties may institute legal proceedings in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 61. Where any infringement dispute relates to a patent for invention for a process for the manufacture of a new product,any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process.

Where any infringement dispute relates to a patent for utility model or design, the people's court or the administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent made by the patent administration department under the State Council after having conducted search,analysis and evaluation of the relevant utility model or design,and use it as evidence for hearing or handling the patent infringement dispute.

Article 62. In a patent infringement dispute,where the alleged infringer has evidence to prove that the technology or design exploited by it or him forms part of prior art or is prior design,such exploitation does not constitute infringement of patent right.

Article 63. Where any person passes off a patent,he shall,in addition to bearing his civil liability according to law,be ordered by the administrative authority for patent affairs to correct his act,and the order shall be announced.His illegal earnings shall be confiscated and,in addition,he may be imposed a fine of not more than four times his illegal earnings and,if there is no illegal earnings,a fine of not more than RMB 200,000 Yuan.Where the infringement constitutes a crime,he shall be prosecuted for his criminal liability.

Article 64. When investigating and prosecuting the suspected act of passing off a patent,the administrative authority for patent affairs may,based on the evidence obtained,query the parties concerned,and investigate the relevant circumstances of the suspected illegal act; carry out an on-the-spot inspection of the site where the party"s suspected illegal acts took place; review and reproduce the contracts, invoices,account books and other relevant materials related to the suspected illegal act; examine the products relevant to the suspected illegal act and may seal up or withhold the products proved to be passing off the patented product.

When the administrative authority for patent affairs performs its functions and duties specified in the preceding paragraph in accordance with the law,the interested party shall assist and cooperate and shall not refuse or interfere the performance.

Article 65. The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the actual losses suffered by

the right holder because of the infringement; where it is difficult to determine the actual losses,the amount may be assessed on the basis of the profits the infringer has earned because of the infringement.Where it is difficult to determine the losses the right holder has suffered or the profits the infringer has earned,the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under a contractual license.The amount of compensation for the damage shall also include the reasonable expenses of the right holder incurred for stopping the infringing act.

Where it is difficult to determine the losses suffered by the right holder,the profits the infringer has earned and the exploitation fee of that patent under a contractual license,the people"s court may award the damages of not less than RMB 10, 000 Yuan and not more than RMB 1,000,000 Yuan in light of such factors,as the type of the patent right,the nature and the circumstances of the infringing act.

Article 66. Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time,it is likely to cause irreparable harm to it or him,it or he may,before any legal proceedings are instituted,petition the people's court to adopt measures to stop the relevant acts.

When a petition is filed,the petitioner shall provide a security; if it or he fails to provide the security,the application shall be rejected.

The people's court shall make a ruling within 48 hours after receiving the petition. Where there are special circumstances that require a delayed ruling,the court may make a ruling within another 48 hours.If the ruling is made to stop the relevant act,the ruling shall be enforced immediately.If any interested party is not satisfied with the ruling,it or he may apply for reconsideration once; the enforcement of the ruling shall not be suspended during the reconsideration.
Where the petitioner fails to institute legal proceedings within 15 days after the people's court issued the ruling to stop the relevant act,the people's court shall lift the measures.

Where the petition is made in error,the petitioner shall compensate the respondent for the losses caused by stopping the relevant acts.

Article 67. In order to stop patent infringement,under the circumstances

where the evidence might be destroyed or where it would be difficult to obtain in the future,the patentee or the interested party may petition the people's court for evidence preservation before instituting legal proceedings.

When adopting preservation measures,the people's court may order the petitioner to provide a security for the petition; if the petitioner fails to do so,the petition

shall be rejected.

The people’s court shall make a ruling within 48 hours after receiving the petition; if the court rules to adopt preservation measures,the ruling shall be enforced immediately.

Where the petitioner fails to institute legal proceedings within 15 days after the people’s court adopted the preservation measures,the people’s court shall lift the measures.

Article 68. Prescription for instituting legal proceedings concerning the infringement of patent right is two years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the infringing act.

Where no appropriate fee for exploitation of the invention,subject of an application for patent for invention,is paid during the period from the publication of the application to the grant of patent right,prescription for instituting legal proceedings by the patentee to demand the said fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of the exploitation of his invention by another person.However,where the patentee has already obtained or should have obtained knowledge before the date of the grant of the patent right,the prescription shall be counted from the date of the grant.

Article 69. None of the following shall be deemed as infringement of the patent right:

(1) where,after the sale of a patented product or a product obtained directly by a patented process by the patentee or any entity or individual authorized by the patentee,any other person uses,offers to sell,sell,or imports that product;

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

(3) where any foreign means of transport which temporarily passes through the territory,territorial waters or territorial airspace of China uses the patent concerned, in accordance with any agreement concluded between the country to which the foreign means of transport belongs and China,or in accordance with any international treaty to which both countries are party,or on the basis of the principle of reciprocity,for its own needs,in its devices and installations;

(4) where any person uses the patent concerned solely for the purposes of scientific research and experimentation;or

(5) where for the purposes of providing information needed for the regulatory

examination and approval,any person makes,uses or imports a patented medicine or a patented medical apparatus,and where any person makes,imports the patented medicine or the patented medical apparatus exclusively for such person.

Article 70. Any person,who,for production and business purpose,uses,offers to sell or sells a patent infringement product,without knowing that it was made and sold without the authorization of the patentee,shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate channel.

Article 71. Where any person,in violation of the provisions of Article 20 of this Law,files in a foreign country an application for a patent that divulges an important secret of the State,he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority concerned at the higher level. Where a crime is established,the person concerned shall be prosecuted for his criminal liability according to the law.

Article 72. Where any person usurps the right of an inventor or creator to apply for a patent for a non-service invention-creation,or usurps any other right or interest of an inventor or creator,prescribed by this Law,he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority at the higher level.

Article 73. The administrative authority for patent affairs may not take part in recommending any patented product for sale to the public or any such commercial activities.

Where the administrative authority for patent affairs violates the provisions of the preceding paragraph,it shall be ordered by the authority at the next higher level or the supervisory authority to correct its mistakes and eliminate the bad effects. The illegal earnings,if any,shall be confiscated.Where the circumstances are serious, the persons who are directly in charge and other persons who are directly responsible shall be given disciplinary sanction in accordance with law.

Article 74. Where any State functionary working for patent administration or any other State functionary concerned neglects his duty,abuses his power,or engages in malpractice for personal gain,which constitutes a crime,shall be prosecuted for his criminal liability in accordance with law.If the case is not serious enough to constitute a crime,he shall be given disciplinary sanction in accordance with law.

Chapter VIII

Supplementary Provisions

Article 75. Any application for a patent filed with,and any other proceedings before,the patent administrative department under the State Council shall be subject to the payment of a fee as prescribed.

Article 76. This Law shall enter into force on April 1,1985.

Transitional Measures on Implementing the Amended Patent Law

(Promulgated by Order No.53 of the State Intellectual Property Office on September 27, 2009)

Rule 1. These Rules are formulated, in accordance with Article 84 of the Legislation Law, to ensure the implementation of the Decision of the Standing Committee of the Ele-venth National People's Congress on Amending the Patent Law of the People's Republic of China promulgated on December 27, 2008.

Rule 2. The provisions of the Patent Law before its amendment apply to patent applications of which the filing date is before October 1, 2009 (this day is not included, hereinafter the same), and the patent rights granted on the basis of the said applications; the provisions of the amended Patent Law apply to patent applications of which the filing date is after October 1, 2009 (this day is included, hereinafter the same), and the patent rights granted on the basis of the said applications, subject to the following special provisions of these Rules which also apply to applications of which the filing date is before October 1, 2009 and the patent rights granted on the basis of the said applications.

The filing date as referred to in the preceding paragraph shall be understood according to the relevant provisions of the Implementing Regulations of the Patent Law.

Rule 3. For any request for compulsory license for exploitation of patent filed after October 1, 2009, provisions of Chapter Ⅵ of the amended Patent Law shall apply.

Rule 4. For any alleged infringement of patent right occurring after October 1, 2009, handled by the administrative authority for patent affairs, provisions of Article 11, Article 62, Article 69 and Article 70 of the amended Patent Law shall apply.

Rule 5. For any investigation and prosecution carried out by the administrative authority for patent affairs on alleged acts of passing off a patent occurring after

October 1, 2009, provisions of Article 63 and Article 64 of the amended Patent Law shall apply.

Rule 6. For any affixation of patent indication carried out by the patentee after October 1, 2009, provision of Article 17 of the amended Patent Law shall apply.

Rule 7. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China appoints or changes a patent agency after October 1, 2009, provision of Article 19 of the amended Patent Law shall apply.

Rule 8. These Rules shall enter into force as of October 1, 2009.

IMPLEMENTING REGULATIONS OF THE PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA①

(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)

① Translated by the State Intellectual Property office of the People's Republic of China.In case of discrepancy,the original version in Chinese shall prevail.

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 confidentia-lity 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 mode 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 inventioncreation.

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 l,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:

(l) 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× 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 depository 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 refered 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 inventioncreation is developed relying on the genetic resources refered 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×30cm×30cm,and its weight shall not surpass l5 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 refered 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 (l) 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 3l,paragraph one of the Patent Law shall be technically interrelated 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 3l,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 3l 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 l8,Article l9,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 3l,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 l8,Article l9,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 3l, 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 l8,Article l9,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 3l,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 the 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 3l,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 department 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 patentfor 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

filling 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 request 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 filling 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. These Implementing Regulations shall enter into force on July 1, 2001.The Implementing Regulations of the Patent Law of the People’s Republic of China approved by the State Council on December 12,1992 and promulgated by the Patent Office of the People’s Republic of China on December 21,1992 shall be repealed at the same time.

Transitional Measures on Implementing the Amended Implementing Regulations of the Patent Law

(Promulgated by Order No.54 of the State Intellectual Property Office on January 21,2010)

Rule 1. These Rules are formulated,in accordance with Article 84 of the Legislation Law,to ensure the implementation of the Decision of the State Council on Amending the Implementing Regulations of the Patent Law of the People"s Republic of China promulgated on January 9,2010.

Rule 2. The provisions of the Implementing Regulations of the Patent Law before its amendment apply to the patent applications of which the filing date is before February 1,2010 (this day is not included),and the patent rights granted on the basis of the said applications; the provisions of the amended Implementing Regulations of the Patent Law apply to patent applications of which the filing date is after February 1,2010 (this day is included,hereinafter the same),and the patent rights granted on the basis of the said applications,subject to the following special provisions of these Rules which also apply to the applications of which the filing date is before February 1,2010 and the patent rights granted on the basis of the said applications.

Rule 3. For the examination of any request for invalidation of a patent for design filed after February 1,2010,based on the ground that the grant of the patent for design does not comply with the provisions of Article 23,paragraph three of the patent law ,provisions of Rule 66,paragraph three of the amended Implementing Regulations of the Patent Law shall apply.

Rule 4. For the examination of any request for invalidation of a patent right filed after February 1,2010,provisions of Rule 72,paragraph two of the amended Implementing Regulations of the Patent Law shall apply.

Rule 5. Where any applicant for PCT international application goes through the formalities for entering the Chinese national phase after February 1,2010,provisions of Chapter 10 of the amended Implementing Regulations of the Patent Law

shall apply.

Rule 6. For any request for suspension of the relevant patent procedures filed after February 1,2010 before the State Intellectual Property Office,provisions of Rule 93 and Rule 99 of the amended Implementing Regulations of the Patent Law shall apply,no fee is required for the request.

For any request filed after February 1,2010 for a refund of the patent fee which is paid in excess of the amount as prescribed,paid repeatedly or wrongly,provisions of Rule 94,paragraph four of the amended Implementing Regulations of the Patent Law shall apply.

Where the filing fee,printing fee for the publication of the application,and the necessary additional fee for filing an application for patent are paid after February 1,2001,provisions of Rule 95 of the amended Implementing Regulations of the Patent Law shall apply.

Where the applicant goes through the formalities for registration of grant of patent right after February 1,2010,provisions of Rule 93 and Rule 97 of the amended Implementing Regulations of the Patent Law shall apply,no maintenance fee for application is required.

Rule 7. These Rules shall enter into force as of February 1,2010.