

# Implementing Regulations of the Patent Law of the People's Republic of China

Promulgated by Decree No. 306 of the State Council of the People's Republic of China on 15 June 2001;

amended for the first time on 28 December 2002 according to the Decision of the State Council on Amendments to the Implementing Regulations of the Patent Law of the People's Republic of China; and

amended for the second time on 9 January 2010 according to the Decision of the State Council on Amendments to the Implementing Regulations of the Patent Law of the People's Republic of China

## Chapter I General Provisions

**Rule 1** These Implementing Regulations have been 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 in the Patent Law and these Implementing Regulations shall be attended to 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 written in Chinese; the standard scientific and technical terms as uniformly prescribed by the State shall be used; in the absence of generally accepted translation in Chinese for a foreign name or scientific or technical term, the original name or term shall be indicated.

Where any certificate or certifying document submitted in accordance with the provisions of the Patent Law and these Implementing Regulations is written in a foreign language, the Patent Administration Department under the State Council may, when considering it necessary, require the party concerned to submit a Chinese translation of the certificate or the certifying document 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 posted to the Patent Administration Department under the State Council, the date of post indicated on the postmark shall be deemed to be the date of delivery; where the date of post indicated on the postmark is illegible, the date on which the Patent Administration Department under the State Council receives the document shall be the date of delivery unless the party concerned can otherwise prove the date of post.

Any document of the Patent Administration Department under the State Council may be served by post, by personal delivery or in other ways. Where a party concerned has appointed a patent agency, the document shall be sent to the patent agency; where no patent agency has been appointed, the document shall be sent to the liaison person indicated in the request.

Where a document is posted by the Patent Administration Department under the State Council, the sixteenth day from the date of post shall be presumed to be the date on which the party concerned receives the document.

Where any document is served by personal delivery in accordance with the provisions of the Patent Administration Department under the State Council, the date of service is the date of delivery.

Where the address on a document is not clear and the document cannot be posted, the document may be served by making an announcement. At the expiry of one month

from the date of the announcement, the document shall be deemed to have been delivered.

**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 it is counted by year or by month, the time limit shall expire on the corresponding day of the last month; in the absence of a corresponding day in that month, the time limit shall expire on the last day of that month; if it expires on an official holiday, a time limit shall expire on the first working day following the official holiday.

**Rule 6** Where a party concerned fails to meet a time limit prescribed in the Patent Law or these Implementing Regulations or otherwise specified by the Patent Administration Department under the State Council 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 or, at the latest, within two years immediately following the expiry of the time limit, request the Patent Administration Department under the State Council to restore his or its rights.

Except for the circumstance provided for in the preceding paragraph, where a party concerned fails to meet a time limit prescribed in the Patent Law or these Implementing Regulations or otherwise specified by the Patent Administration Department under the State Council 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 two of this Rule, he or it shall submit a request for restoration of his or its right, give the reasons, attach, if necessary, the relevant certifying documents, and go through the corresponding formalities which should have been gone through before the loss of the right. Where the party concerned requests restoration of his or its right according to paragraph two of this Rule, he or it shall pay the fee for requesting restoration of the right.

Where a 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, give the reasons to the Patent Administration Department under the State Council and go through the relevant formalities.

Paragraphs one and two of this Rule shall not apply to

the time limits provided for in Articles 24, 29, 42 and 68 of the Patent Law.

**Rule 7** Where any application for patent is related to the interest concerning national defense and requires to be kept secret, the application for patent shall be filed with and examined by the patent department of national defense. Where any application for a patent related to the interest concerning national defense and requiring to be kept secret is received by the Patent Administration Department under the State Council, the application shall be promptly transferred to the patent department of national defense for examination. Where no reason for rejection has been found after examination by the patent department of national defense, the Patent Administration Department under the State Council shall make a decision on grant of the national defense patent right.

Where the Patent Administration Department under the State Council finds that any received application for patent for invention or utility model is related to national security or major interest, other than the national defense, and requires to be kept secret, it shall promptly make a decision to treat the application as one for a patent that should be kept secret and notify the applicant accordingly. The special procedures for the examination and reexamination of applications for, and the invalidation of, patents as such shall be provided for by the Patent Administration Department under the State Council.

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

Where any entity or individual intends to file abroad an application for a patent for the invention or utility model made in China, it or he shall request, in one of the following manners, the Patent Administration Department under the State Council to make the secrecy examination:

(1) if it or he directly files an application for a patent abroad or file an international patent application with a relevant foreign organisation, it or he shall file a request in advance with the Patent Administration Department under the State Council and describe in detail the technical solution;

(2) if it or he intends to file an application for a patent abroad or an international patent application with a relevant foreign organisation after filing an application for patent with the Patent Administration Department under the State Council, it or he shall file a request with the Patent Administration

Department under the State Council before filing the patent application abroad or the international patent application with the relevant foreign organisation;

Where it or he files an international patent application with the Patent Administration Department under the State Council, it is deemed to have simultaneously filed a request for the secrecy examination.

**Rule 9** Where the Patent Administration Department under the State Council receives a request filed in accordance with Rule 8 of these Implementing Regulations and finds, upon examination, that the invention or utility model may involve national security or major interest and needs to be kept secret, it shall promptly issue a notification of secrecy examination to the applicant. If the applicant receives no notification of secrecy 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 abroad or an international patent application with a relevant foreign organisation.

Where the Patent Administration Department under the State Council conducts a secrecy examination as notified under the preceding paragraph, it shall promptly make a decision on whether the invention or utility model needs to be kept secret and notify the applicant accordingly. If the applicant receives no 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 abroad or an international patent application with a relevant foreign organisation.

**Rule 10** The invention-creations mentioned in Article 5 of the Patent Law as contrary to the laws shall not include those the mere exploitation of which is prohibited under the laws.

**Rule 11** The date of filing mentioned in the Patent Law, except the circumstances mentioned in Articles 28 and 42 of the Patent Law refers to the date of priority where priority is claimed.

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

**Rule 12** “The service invention-creation made by a person in execution of the tasks of the entity to which he belongs” mentioned in Article 6 of the Patent Law refers to any invention-creation made:

- (1) in the course of performing his own duty;
- (2) in execution of any task, other than his own duty,

which was assigned to him by the entity to which he belongs;

(3) within one year from his retirement, transfer from the entity to which he previously belonged or termination of his employment, where the invention-creation is related to his own duty or the other task assigned to him by the entity to which he previously belonged.

“The entity to which he belongs” mentioned in Article 6 of the Patent Law includes the entity in which the person concerned is a temporary employee. The “material and technical means of the entity” mentioned in Article 6 of the Patent Law refer to the entity’s money, equipment, spare parts, raw materials or technical data which are not made accessible to the public.

**Rule 13** The “inventor” or “creator” mentioned in the Patent Law refers to any person who makes creative contributions to the substantive features of an invention-creation. Any person who, in the course of making the invention-creation, is responsible only for organisational work, who offers facilities for making use of material and technical means, or who gives other assistance, shall not be considered as an inventor or creator.

**Rule 14** Except for the assignment of the patent right under Article 10 of the Patent Law, where the patent right is transferred for some other reason, the person or persons concerned shall, with relevant certified documents or legal instruments, go through the formalities for registration of the transfer of the patent right with the Patent Administration Department under the State Council.

Any license concluded by the patentee with an entity or individual for exploitation of a patent shall, within three months from the date of entry into effect of the license, be submitted to the Patent Administration Department under the State Council for recordal.

Where any patent right is pledged, both the pledger and pledgee shall jointly register the pledge with the Patent Administration Department under the State Council.

## Chapter II Application for Patent

**Rule 15** Anyone who applies for a patent in writing shall file the application in duplicate with the Patent Administration Department under the State Council.

Anyone who applies for a patent in other forms as provided for by the Patent Administration Department under the State Council shall act in compliance with the relevant provisions.

Any applicant who appoints a patent agency to apply for a patent, or to attend to other patent prosecution matters 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 given.

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 an application for a patent for invention, utility model or design shall present the following matters:

(1) the title of the invention, utility model or design;

(2) where the applicant is a Chinese entity or individual, its or his name, address, postal code, organisational code or resident's identification card number; where the applicant is a foreigner, a foreign enterprise or any other foreign organisation, his or its name, the nationality, or the country or region in which the applicant has been registered;

(3) the name of the inventor or designer;

(4) where the applicant has appointed a patent agency, the name of the appointed agency, the agency's organisational code and the name, the certificate number and the telephone number of the patent attorney assigned by the agency;

(5) where the priority of an earlier application is claimed, the filing date, the filing number and the name of the original receiving organisation of the patent application first filed by the applicant (hereinafter referred to as the prior application);

(6) the signature or seal of the applicant or the patent agency;

(7) a list of the documents of the application;

(8) a list of the appended documents of the application;

and

(9) any other relevant matters which need to be indicated in writing.

**Rule 17** The description of an application for a patent for invention or utility model shall present the title of the invention or utility model, and the title shall be the same as that appearing in the request. The description shall include the following:

(1) technical field: specifying the technical field of the technical solution for which protection is sought;

(2) background art: stating the background art taken as useful for the understanding, search and examination of the

invention or utility model, and, if possible, citing the documents reflecting the art;

(3) contents of the invention: describing the technical problem the invention or utility model aims to resolve 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 explaining each figure in the drawings, if any;

(5) embodiments: describing in detail the preferred mode contemplated by the applicant for carrying out the invention or utility model; where appropriate, this shall be done with examples and with reference to the drawings, if any;

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

The description of the invention or utility model shall be made using standard terms and clear wording, and shall not contain such references to the claims as: "as mentioned in claim...", nor shall it contain words for commercial advertisement.

Where an application for a patent for invention containing disclosure of one or more nucleotide and/or amino acid sequences, the description shall contain a sequence listing in compliance with the standards 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 a patent for utility model shall include the drawings showing the shape, the structure or their combination of the claimed product.

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

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

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

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

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

The technical terminology used in the claims shall be consistent with that used in the description. The claims may contain chemical or mathematical formulae, but shall not contain drawings. They shall not, unless 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 of the claims may make reference to the corresponding reference signs in the drawings of the description. Such reference signs shall follow the corresponding technical features and be placed in parentheses for ready understanding of the claim. They 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 present the essential technical features necessary for the resolution of the technical problem.

A dependent claim shall, with 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 characterising 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 the essential technical features which are common to the subject matter of the invention or utility model and the most related prior art;

(2) a characterising portion: stating, in such words as “characterised in that...” or in similar expressions, the technical features of the invention or utility model, which distinguish it from the most related prior art. These features, in combination with the features presented in the preamble portion, 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** A dependent claim of an invention or utility model shall contain a reference portion and a characterising portion, and be presented in the following manner:

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

(2) a characterising portion: presenting 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 refer to two or more claims, shall refer to the preceding one in the alternative only, and shall not serve as a basis for any other multiple dependent claims.

**Rule 23** The abstract shall outline the disclosure as contained in the application for patent for invention or utility model, indicating the title of the invention or utility model and the technical field to which the invention or utility model pertains, and specifying the technical problem, the gist of the technical solution intended to resolve the problem, and the principal use or uses of the invention or utility model.

The abstract may contain the chemical formula which best characterises the invention. In an application for a patent which contains drawings, the applicant shall provide a figure which best characterises the technical features of the invention or utility model. The scale and the distinctness of the figure shall be as such that a reproduction with a linear reduction in size to 4cm x 6cm would still make the clear recognition of all details possible. The whole text of the abstract shall contain no more than 300 words. There shall be no words for commercial advertisement in the abstract.

**Rule 24** Where an invention for which a patent is applied relates to 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 a person of skill in the art to carry out the invention, the applicant shall, in addition to the other provision set forth 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 issued by 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 involves deposit of the biological material, in the request and the description the scientific name (with its Latin name) and the title and address of the depository 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 they are not supplied at the expiry of the time limit, 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 file a request with the Patent Administration Department under the State Council, specifying the following:

(1) the 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 mentioned in the Patent Law refer to materials obtained from human body, animal, plant or microorganism, and having a unit of heredity function and actual or potential value. The invention-creations made depending on genetic resources mentioned in the Patent Law refer to those made by using the heredity function of the genetic resources.

Where an application for patent is filed for an invention-creation made depending on genetic resources, the applicant shall make it clear in the request, and fill it out in the form prepared by the Patent Administration Department under the State Council.

**Rule 27** Where an applicant claims colour(s), a coloured drawing or photograph shall be submitted.

The applicant shall, in respect of the subject matter of the product incorporating the design to be claimed, submit

the relevant drawings or photographs.

**Rule 28** The brief explanation of a design shall indicate the name and state the use of the product incorporating the design, and the essential portion of the design, and it shall show a drawing or photograph best showing the essential portion of the design. Where a view of the product incorporating the design is omitted or a colour is claimed, it shall be indicated in the brief explanation.

Where one application for a patent for design is filed for more similar designs incorporated in the same product, one of the designs shall be designated as the main design in the brief explanation.

The brief explanation shall contain no words of commercial advertisement, and shall not be used to show the function of the product.

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

**Rule 30** The international exhibition recognised by the Chinese Government mentioned in Article 24, subparagraph (1) of the Patent Law shall refer to the international exhibition provided for in the Convention relating to International Exhibitions and registered with or recognised by the International Exhibitions Bureau.

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

Where any invention-creation for which a patent is applied falls under the provisions of Article 24, subparagraph (1) or (2) of the Patent Law, the applicant shall, when filing the application, make a declaration and, within a time limit of two months from the date of filing, submit certifying documents issued by the entity which organised the international exhibition or academic or technological meeting, stating the fact that the invention-creation was exhibited or published and indicating the date of 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 a 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 goes through the formalities for claiming 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 competent authority of the foreign country in which the application was filed. Where, in accordance with the agreement between the Patent Administration Department under the State Council and the competent authority, the Patent Administration Department under the State Council receives a copy of the earlier application documents through electronic transmission or in other manners, the applicant is deemed to have submitted a copy of the earlier application documents certified by the competent authority. Where the domestic priority is claimed, if the applicant indicates in the request the date and number of filing of the earlier application, the copy of the earlier application documents will be deemed to have been submitted.

Where the priority is claimed but one or two items of the date of filing, the number of filing and the name of the competent authority of the earlier application are missing or incorrect in the request, the Patent Administration Department under the State Council shall notify the applicant to make amendment within the specified time limit. If no amendment is made within the time limit, the priority will be deemed not to have been claimed.

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

Where the applicant of an application for a patent for design claims a foreign priority, if the earlier application does not include any brief explanation of the design and if the brief explanation filed by the applicant in accordance with the provision of Rule 28 of these Implementing Regulations does

not go beyond the scope shown by the drawings or photographs of the earlier application documents, its or his entitlement to the priority will remain unaffected.

**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 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 the domestic priority:

- (1) where the applicant has already 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 foreign priority is claimed by an applicant who has no habitual residence or business office in China, the Patent Administration Department under the State Council may, if necessary, require the applicant to submit the following documents:

- (1) if the applicant is an individual, a proof of his nationality;
- (2) if the applicant is an enterprise or any other organisation, a document certifying the country or region in which its incorporation is registered;
- (3) a document certifying that the country to which the foreigner, foreign enterprise or any other foreign organisation belongs recognises 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 provision of Article 31, paragraph one of the Patent Law shall be technically in-

terrelated and contain one or more of the same or corresponding special technical features. The expression “special technical features” shall refer to the 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 more similar designs incorporated in the same product are filed as one application in accordance with the provision of Article 31, paragraph two of the Patent Law, the other designs of the product shall be similar to the main design designated in the brief explanation. No more than 10 similar designs shall be allowed in one application for a patent for design.

Two or more designs which are incorporated in the products belonging to the same class and are sold or used in sets mentioned in Article 31, paragraph two of the Patent Law means that each product belongs to the same class in the classification of products for designs and is customarily sold or used at the same time, and the designs incorporated in each product share the same design concept.

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, indicating the title of the invention-creation, the filing number and the date of filing.

Where a declaration to withdraw an application for a patent is submitted after the preparations for the publication of the application document have been made by the Patent Administration Department under the State Council, the application documents shall be published as scheduled. However, the declaration withdrawing the application for the patent shall be published in the future 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 at the request of a party concerned or any other inter-

ested person, be excluded from performing his function:

(1) where he is a close relative of the party concerned or the agent of the party concerned;

(2) where he is a stakeholder in the patent application or in the patent right;

(3) where he is otherwise related to the party concerned or with the agent of the party concerned, which is likely to affect impartial examination and hearing; or

(4) where a member of the Patent Reexamination Board who has involved 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 relating to a utility model) and 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 address of the applicant;

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

(6) where the class of patent application (for invention, utility model or design) is not clear and definite, or is difficult to identify.

**Rule 40** Where the description shows 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 declara-

tion for the deletion of the explanatory notes of the drawings. If the drawings are submitted later, the date of their delivery at the Patent Administration Department under the State Council shall be the date of filing of the application; if the explanatory notes of the drawings are to be deleted, the original date of filing shall be retained.

**Rule 41** Two or more applicants who respectively file, on the same day (meaning the date of filing or the date of priority if there is a priority), applicants 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 on a person or persons who shall be entitled to filing the application.

Where one applicant files on the same day (meaning the date of filing) applications for both utility model and invention for the same invention-creation, it or he shall specify respectively at the time of filing that another application for patent has been filed for the same invention-creation. If the applicant fails to do so, the matter shall be handled in accordance with the provision of Article 9, paragraph one of the Patent Law that only one patent shall be granted for the same invention-creation.

Where the Patent Administration Department under the State Council publicises the grant of a patent for utility model, it shall publish the statement that the applicant has simultaneously filed an application for a patent for invention in accordance with the provision of paragraph two of this Rule.

Where no reason of rejection is found in the examination of an application for a patent for invention, the Patent Administration Department under the State Council shall notify the applicant to declare, within the prescribed time limit, to surrender its or his patent for utility model. If the applicant declares to surrender it, the Patent Administrative Department under the State Council shall make the decision to grant the patent for invention, and announce, when publicising the grant of the patent for invention, the declaration of the applicant for surrendering the patent for utility model. If the applicant does not agree to surrender, the Patent Administration Department under the State Council shall reject the application for the patent for invention. If the applicant fails to respond within the time limit, the application for a patent for invention shall be deemed to have been withdrawn.

The patent right for utility model ceases from the date on which grant of the patent for invention is publicised.

**Rule 42** Where an application for a patent relates to two

or more inventions, utility models or designs, the applicant may, before the expiry of the time limit provided for in Rule 54, paragraph one of these Implementing Regulations, file a divisional application with the Patent Administration Department under the State Council. 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 an application for a patent contrary to the provisions of Article 31 of the Patent Law or of Rule 34 or 35 of these Implementing Regulations, it shall invite the applicant to amend the application within a specified time limit; if the applicant fails to make a response after the expiry of the specified time limit, the application shall be deemed to have been withdrawn.

The divisional application shall not change the class 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 description contained in the initial application.

All the formalities shall be gone through in respect of the divisional application 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. The divisional application shall be filed, with a copy of the initial application; if priority goes with the initial application, a copy of the document concerning the priority of the initial application shall also be submitted.

**Rule 44** The “preliminary examination” mentioned in Articles 34 and 40 of the Patent Law means the examination 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; the examination shall be made as to the following:

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

paragraph one, or 33 of the Patent Law, or 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, whether it is not in conformity with the provisions of Article 18, 19, paragraph one, or 20, paragraph one of the Patent Law or Rules 16 to 19 or 21-23 of these Implementing Regulations, whether it is obviously not in conformity with the provisions of Article 2, paragraph three, 22, paragraph two or four, 26, paragraph three or four, 31, paragraph one, or Article 33 of the Patent Law, or Rule 20 or 43, paragraph one of these Implementing Regulations, or whether it is excluded from patentability 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 25, paragraph one (6) of the Patent Law, whether it is not in conformity with the provisions of Articles 18, 19, paragraph one of the Patent Law, or Rule 16, 27 or 28 of these Implementing Regulations, or whether it is obviously not in conformity with the provisions of Articles 2, paragraph four, 23, paragraph one, 27, paragraph two, 31, paragraph two, or 33 of the Patent Law, or Rule 43, paragraph one, of these Implementing Regulations, or whether it is precluded from patentability 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 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 make observations or correct 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 makes 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 mentioned in the preceding subparagraphs, the application shall be rejected.

**Rule 45** Except from the application for patent, any document related to the patent application which the applicant has 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 pre-

scribed 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 publication of its or his application for a patent for invention at an earlier date, 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 make the indication or correction of it.

**Rule 48** Any person may, from the date of publication of an application for a patent for invention to the date of publishing the grant of the patent right, make observations to the Patent Administration Department under the State Council, and explain the reasons therefor on the application which is not in conformity with the provisions of the Patent Law.

**Rule 49** Where the applicant for a patent for invention cannot furnish, for good reasons, the documents concerning any search or results of any examination specified in Article 36 of the Patent Law, it or he shall make a statement to the Patent Administration Department under the State Council and submit the documents when the documents are made 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** When an applicant for a patent for invention requests examination as to substance, and within the time limit of three months after receipt of a notification from the Patent Administration Department under the State Council that the application has entered into the examination as to sub-

stance, he or it may amend the application for a patent for invention on his or its own initiative.

An 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 within two months from the date of filing.

Where an applicant amends the application after receiving an office action issued upon the examination as to substance by the Patent Administration Department under the State Council, he or it shall make the amendments to rectify the defects pointed out in the office action.

The Patent Administration Department under the State Council may, on its own initiative, correct obvious clerical errors and symbol mistakes in the documents of application for a patent. Where the Patent Administration Department under the State Council makes the corrections on its own initiative, it shall notify the applicant.

**Rule 52** When an amendment, rather than alteration, additions or deletions of a few words, is made to the description or claims of the application for a patent for invention or utility model, a replacement sheet in the prescribed form shall be submitted. Where an amendment is made to the drawings or photographs of an application for a patent for design, 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 refer to the following:

(1) where the application falls under the circumstance of the provisions of Article 5 or 25 of the Patent Law, or the patent right should not be granted 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, 20, paragraph one, 22, 26, paragraph three, four or five, or 31, paragraph one of the Patent Law, or Rule 22, paragraph two of these Implementing Regulations; and

(3) where the amendments made to the application do 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 a 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 fails to go through the formalities of registration within the time limit, he or it shall be deemed to have surrendered his or its right to be granted the patent right.

**Rule 55** Where no reason of rejection has been found in examination of an application for a patent that needs to be kept secret, the Patent Administration Department under the State Council shall make a decision to grant the patent as such, issue the certificate of the patent as such, and register the matters related to the patent as such.

**Rule 56** After the announcement of the decision to grant a patent for utility model or 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 a patent evaluation report.

Where such person requests for a patent evaluation report, he shall file a request for the patent evaluation report, with the patent number indicated. Only one request shall be filed in respect of one patent right.

Where a request for patent evaluation report does not comply with the requirements as prescribed, the Patent Administration Department under the State Council shall notify the requesting person to make corrections within a specified time limit. If the requesting person fails to do so within the time limit, the request shall be deemed not to have been filed.

**Rule 57** The Patent Administration Department under the State Council shall issue the patent evaluation report within two months from receipt of a request for the patent evaluation report. Where two or more requesting persons request to issue a patent evaluation report in respect of one patent right for utility model or design, the Patent Administration Department under the State Council shall issue only one patent evaluation report. Any entity or individual may consult or reproduce the patent evaluation report.

**Rule 58** The Patent Administration Department under the State Council shall promptly correct the mistakes in the Patent Gazette and separate volumn of the patent documents prepared by it once they are discovered, and publish the corrections.

## 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 concurrently 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, he or it shall file a request for reexamination, give the reasons, and attach the relevant supporting documents if necessary.

Where the request for reexamination does not comply with Article 19, paragraph one or 41, paragraph one of the Patent Law, the Patent Reexamination Board shall not accept it, and shall notify the applicant in writing and give its reason.

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

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

The amendments to the application for patent shall be filed in duplicate.

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

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

tion to make observations within a specified time limit. If no response is made at the expiry of the time limit, the request for reexamination shall be deemed to have been withdrawn. Where the Patent Reexamination Board still finds that the request does not comply with the provisions of the Patent Law and these Implementing Regulations after the requesting person has made observations or amendments, the Board shall make a decision, upon re-examination, to maintain the earlier decision on rejecting the application.

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

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

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

**Rule 65** Anyone requesting invalidation of a patent right or part of it in accordance with the provisions of Article 45 of the Patent Law shall file a request for invalidation and the necessary evidence in duplicate. The request for invalidation shall present 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 as mentioned in the preceding paragraph mean that the invention-creation for which the patent right is granted does not comply with the provisions of Articles 2, 20, paragraph one, 22, 23, 26, paragraph three or four, 27, paragraph two, or 33 of the Patent Law, or Rule 20, paragraph two or 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 Rule 65 of these Implementing Regulations, the Patent Reexamination Board shall not accept it.

Where, after a decision on a request for invalidation of the patent right is made, another request is filed again for invalidation based on the same grounds and evidence, the Patent Reexamination Board shall not 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 not accept it.

Where the request for invalidation of the patent right does not filed in the prescribed form, the person making the request shall rectify it within the time limit specified by the Patent Reexamination Board. If the rectification is not 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 give more reasons or evidence within one month from the date when the request for invalidation is filed. Any additional reasons or evidence submitted after expiry of 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 him or it to make observations within a specified time limit.

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

**Rule 69** In the course of examination of the request for invalidation, the patentee of the patent for invention or utility model in suit may amend his or its claims, but shall not broaden the extent of the patent protection.

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

**Rule 70** The Patent Reexamination Board may, at the

request of a party concerned or if the case so requires, decide to hold oral hearing in respect of a request for invalidation.

Where the Patent Reexamination Board decides to hold oral hearing in respect of a request for invalidation, it shall notify the parties concerned of the date and place of the oral hearing to be held. The parties concerned shall reply in response to the notification within the specified time limit.

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

**Rule 71** In the course of 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 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. But, where the Patent Reexamination Board finds that it is able to make a decision on invalidation or invalidation, in part, of the patent right on the basis of the examination it has made, the examination shall not be terminated.

## Chapter V Compulsory License for Exploitation of Patent

**Rule 73** That the patentee has not sufficiently exploited the patent mentioned in Article 48, subparagraph (1) of the Patent Law means that the patentee and the licensee exploits the patent in a mode or on a scale that cannot satisfy the domestic demands for the patented product or patented process.

Acquisition of the patented medicament mentioned in Article 50 of the Patent Law refers to any patented product that is required for resolving a public health problem or product obtained directly by a patented process in medical

field, including any patented active ingredient required for making the product and any patented diagnostic product required for using the product.

**Rule 74** Any entity requesting to be granted a compulsory license shall submit to the Patent Administration Department under the State Council a request for compulsory license, give the reasons therefor, 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, and the patentee shall make 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 proceed to make its decision.

The Patent Administration Department under the State Council shall, before making a decision on rejecting a request for compulsory license or granting a compulsory license, notify the requesting party and the patentee of the decision to be made and give the reason.

Where the Patent Administration Department makes, in accordance with Article 50 of the Patent Law, a decision to grant a compulsory license, the grant shall be in conformity with the provision of the international treaties China has concluded or acceded to regarding grant of compulsory licenses for resolving a public health problem, except for those China has made its reservations.

**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 make a decision on the amount of the exploitation fees, he or it shall submit a request for the decision and furnish documents showing that the parties concerned have not been able to conclude an agreement in respect of the amount of the exploitation fees. The Patent Administration Department under the State Council shall make the decision 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 conclude an agreement with the inventor or creator on, or provide for, in its rules and regulations formulated according to law, the method and amount of the reward and remuneration provided for in Article 16 of the Patent Law.

The matter of reward and remuneration the enterprise or institution awards to the inventor or creator shall be handled in accordance with the provisions of the State related to the financial and accounting systems.

**Rule 77** Where the entity to which a patent right is granted has not concluded an agreement with the inventor or creator on, nor provided for, in its rules and regulations formulated according to law, the method and amount of the reward provided for in Article 16 of the Patent Law, 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 him a money prize on favorable terms.

**Rule 78** Where the entity to which a patent right is granted has not conclude an agreement with the inventor or creator on, nor provided for, in its rules and regulations according to law, the method and amount of the remuneration provided for in Article 16 of the Patent law, it shall, after exploiting the patent for invention-creation within the term of the patent right, draw each year from the business profits made from exploitation of the invention or utility model a percentage of not less than 2%, or from the business profits made from exploitation of the design a percentage of not less than 0.2%, and award it to the inventor or creator as remuneration. Alternatively, the entity may, 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 authorises any other entity or individual to exploit the 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 mentioned in the Patent Law and these Implementing Regu-

lations refers to the department responsible for the administration of patent affairs set up by the People's Government of a Province, Autonomous Region, or Municipality Directly under the Central Government, or by the People's Government of any city which consists of districts, has heavy patent administration work to attend to and has the ability to deal with the practical administration.

**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 patent passing off and mediating patent disputes.

**Rule 81** Where any party concerned requests handling or mediating a patent infringement dispute, the case of dispute shall fall under the jurisdiction of the administrative authority for patent affairs where the respondent has his or its domicile or where the act of infringement has taken place.

Where two or more administrative authorities for patent affairs have the jurisdiction over a patent dispute, any party concerned may file his or its request with one of them to handle or mediate the case. Where requests are filed with two or more administrative authorities for patent affairs, the administrative authority for patent affairs that first accepts the request shall have the 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 an administrative authority for patent affairs to exercise the jurisdiction; in the absence of such an administrative authority for patent affairs of their common higher-level people's government, the Patent Administration Department under the State Council shall designate an administrative authority for patent affairs to exercise the jurisdiction.

**Rule 82** Where the defendant requests invalidation of the patent right and his request is accepted by the Patent Reexamination Board in the course of handling a patent infringement dispute, he or it 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 defendant for the suspension are obviously untenable, it may not suspend the handling of the matter.

**Rule 83** Where any patentee affixes a patent marking on a 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 marking is not in conformity with the provision of the preceding paragraph, the administrative authority for patent affairs shall order to make correction.

**Rule 84** Any of the following is an act of passing off patent as provided for in Article 63 of the Patent Law:

(1) affixing a patent marking on any product or the package of the product for which no patent right has been granted, continuing to affix the patent marking on the product or the package of the product after the patent right concerned was declared invalid or ceased; or without authorization, indicating the patent number of another person on any product or on any product package;

(2) selling the product as provided for in subparagraph (1) of this Rule;

(3) in the specification of a product or any other materials, passing any technology or design for which no patent right has been granted off as a patented technology or design, or passing any patent application off as patent, or without authorization, using the patent number of another person so as to mislead the public to regard the technology or design concerned as a patented technology or patented design;

(4) fabricating or altering any patent certificate, patent document or patent application document.

(5) any other act causing confusion on the part of the public so that they would mistake a technology or design to which no patent right has been granted for a patented one.

Where the patent marking is legally affixed on any patented product, product directly obtained by any patented process or the package of the product prior to the cessation of the patent right, offering for sell or selling the product after the cessation of the patent right is not an act of passing off patent.

Where any party sells without knowledge a product passed off as a patented one and can prove the legitimate source of the product, the administrative authority for patent affairs shall order the party concerned to cease selling the product, and not penalise him or it by imposing 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 a party concerned:

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

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

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

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

(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 concerned to a dispute over the ownership of the right to apply for a patent or the patent right, which is under mediation before the administrative authority for patent affairs or pending before the people's court, may request the Patent Administration Department under the State Council to suspend the relevant procedures.

Any party requesting suspension of the relevant procedures in accordance with the preceding paragraph shall file a request in writing to the Patent Administration Department under the State Council, with a copy attached of the document acknowledging the receipt of the relevant request and indicating the filing number or the patent number from the administrative authority for patent affairs or the people's court.

After the mediation award made by the administrative authority for patent affairs or the judgment rendered by the people's court takes effect, the party 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 over the ownership of the right to apply for a patent or the patent right, and it is necessary to keep on the suspension, the party that filed the request shall, within the said time limit, request to extend the suspension. If no such request for extension is filed at the expiry of the said time limit, 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 to take measures for preservation of the right to apply for a patent or the patent right, the Patent Administration Department under the State Council shall sus-

pend the relevant procedure involving the preservation of the right to apply for a patent or the patent right on the date of receiving the court ruling and the notification of assisting the enforcement of the ruling on which the filing number or the patent number is indicated. If, at the expiry of the time limit for preservation, the people's court does not make a ruling to continue the preservation, the Patent Administration Department under the State Council shall resume the relevant procedure on its own initiative.

**Rule 88** Where the Patent Administration Department under the State Council suspends, the relevant procedure in accordance with Rules 86 and 87 of these Implementing Regulations, it means suspending the procedure of preliminary examination, substantive examination or reexamination of a patent application, the procedure for the grant of the patent right or the procedure for invalidation of a patent right; and handling the procedure of surrendering, changing or transferring a patent right or the right to apply for a patent, the procedure of pledging a patent right and the procedure of cessation of a patent right prior to its expiration.

## 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 following matters relevant to a patent application or patent right shall be kept on record:

(1) any grant of the patent right;

(2) any transfer of the right to apply for a patent 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 recordal;

(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, nationality and address of the patentee.

**Rule 90** The Patent Administration Department under the State Council shall publish the Patent Gazette on a regular basis, releasing 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 surrender, restoration and transfer of an application for a patent for invention after its publication;

(4) any grant of the patent right and any bibliographic data of the patent right;

(5) the abstract of the description of a patent for invention or utility model, one drawing or photograph of a patent for design;

(6) any declassification of a national defense patent or a 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 recordal;

(11) any pledge and 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 address of the patentee;

(14) any service and publications of documents;

(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 available the patent gazettes, separate volume of applications for patent for invention and separates volume of patents for invention, utility model and design to the public for free reference.

**Rule 92** The Patent Administration Department under the State Council is responsible for exchanging, in accordance with the principle of mutual benefit, patent documents with the patent authorities or the regional patent organizations of other countries or regions.

## Chapter IX Fees

**Rule 93** When any person files an application for a patent with, or has other formalities to go through before, the Patent Administration Department under the State Council,

he or it shall pay the following fees:

(1) the filing fee, additional filing fee, printing fee for publishing application, and fee for claiming priority;

(2) the fees for substantive examination and reexamination of an application for patent for invention;

(3) the registration fee for the grant of patent right, printing fee for the announcement of grant of the patent right, and annual fee;

(4) the fee for requesting restoration of a right, and fee for requesting extension of a time limit;

(5) the fee for a change in the bibliographic data, fee for requesting patent evaluation report, and fee for requesting invalidation of a patent.

The amount of the fees mentioned 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, by way of bank or postal remittance, or in ways 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 title of the fee paid. If the prescriptions of 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 a fee is paid by way of postal remittance, the date of remittance indicated by the postmark shall be the date of payment; and where any fee is paid by way of bank transfer, the date on which the fee is transferred shall be the date of payment.

Where any patent fee is paid in excess of the amount as prescribed, paid twice 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 the money paid.

**Rule 95** The applicant shall pay the filing fee, the printing fee for the publication of the application and the neces-

sary additional filing fee 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 have been withdrawn.

Where the applicant claims priority, he or it shall pay the fee for claiming priority when the filing fee is paid. 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 requests examination as to substance or reexamination, the relevant fee shall be paid within the time limit as prescribed respectively for such requests in the Patent Law and these Implementing Regulations. If the fee is not paid or not paid in full within the time limit, the request is deemed not to have been made.

**Rule 97** When the applicant goes through the formalities for registration of grant of the patent right, it or he shall pay a registration fee for the grant of the patent right, printing fee for the publishing the grant of the 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 following the year in which the patent is granted shall be paid before the expiry of the preceding year. If the fee is not paid, or not paid in full, by the patentee, the Patent Administration Department under the State Council shall notify the patentee to pay the fee or pay part of the fee overdue within six months from the expiry of the time limit within which the annual fee is due, and at the same time pay a surcharge at the amount 5% of the whole amount of the annual fee of the year within which the annual fee is due to be paid for each month overdue. Where the fee and the surcharge are not paid within the time limit, the patent right shall lapse from the date on which the period covered by the annual fee due expires.

**Rule 99** The fee for requesting restoration of a 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 requesting extension of a time limit shall be paid before the expiry of the said 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 making a change in the bibliographic data, fee for requesting a patent right evaluation report and fee for requesting invalidation 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 difficulty paying the various fees prescribed in these Implementing Regulations, he or it may, in accordance with the prescriptions, file a request with 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.

Where any international application filed under the Patent Cooperation Treaty designating China (hereinafter referred to as the international application) enters the phase of prosecution before the Patent Administration Department under the State Council (hereinafter referred to as entering into the Chinese national phase), the requirements and procedures prescribed in this Chapter shall apply. Where no provisions are set forth in this Chapter, the relevant provisions of the Patent Law and any other Chapters of these Implementing Regulations shall apply.

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

**Rule 103** Any applicant of international application entering the Chinese national phase shall, within thirty 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 into the Chinese national phase at the Patent Administration Department under the State Council. If the applicant fails to go through the said formalities within the said prescribed time limit, he or it may, after paying a surcharge for the late entry, go through the formalities for entering into the Chinese national phase within thirty-two 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 also fulfill the following requirements:

(1) submitting in Chinese a written statement for entry into the Chinese national phase, and indicating the international application number and the class of patent sought;

(2) paying the filing fee and the printing fee for publishing the application as provided for in Rule 93, paragraph one of these Implementing Regulations, and, if necessary, the surcharge for late entry as provided for in Rule 103 of these Implementing Regulations;

(3) where an international application is filed in a foreign language, the Chinese translation of the description and the claims of the original international application shall be filed;

(4) indicating in the written statement for entry into the Chinese national phase the title of the invention-creation, the name of the applicant, the address of the applicant and the name of the inventor. All these items shall be the same as those recorded with the International Bureau under the World Intellectual Property Organisation (hereinafter 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, the Chinese translation of the abstract shall be filed. Where there are drawings and the figure of the drawings in the abstract, a copy of the drawings and a copy of the figure of the drawings in the abstract shall be filed. Where words are included in the drawings, they shall be replaced by the corresponding Chinese equivalents. Where the international application is filed in Chinese, a copy of the abstract and the figure of the drawings in the abstract in the documents of international publication shall be filed;

(6) where the applicant has gone through the formalities for change of the applicant before the International Bureau in the international phase, the document certifying the right of the new applicant to the international application shall be filed;

(7) paying, if necessary, the additional fee for filing application as provided for in Rule 93, subparagraph (1) of these Implementing Regulations.

Where the requirements set forth in subparagraphs one (1) to (3) of this Rule are met, the Patent Administration Department under the State Council shall accord a filing number, indicate clearly the date of entry of the international application into the Chinese national phase (hereinafter referred to as the date of entry), and notify the applicant that his or its international application has entered into the Chinese national phase.

Where an international application has entered into the Chinese national phase, but it does not comply with the requirements set forth in subparagraphs one (4) to (7) of this Rule, the Patent Administration Department under the State Council shall notify the applicant to make amendments within the specified time limit. If the applicant fails to do so, the application shall be deemed to have been withdrawn.

**Rule 105** In any one of the following circumstance, the validity of an international application shall lapse in China:

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

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

(3) where the applicant goes through the formalities for entry into the Chinese national phase, but it or he still fails to fulfill the requirements of Rule 104, subparagraphs (1) to (3) of these Implementing Regulations at the expiry of the time limit of thirty-two months from the date of priority.

In accordance with the provision of the preceding paragraph, subparagraph (1), where the validity of an international application has lapsed in China, the provisions of Rule 6 of these Implementing Regulations shall not apply. In accordance with the provision of the preceding paragraph, subparagraph (2) or (3), where the validity of an international application has lapsed in China, 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 made of the amended application, the Chinese translation of the amendments shall be

filed within two months from the date of entry. Where the Chinese translation is not filed 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 falls under any one of the circumstances mentioned in Article 24, subparagraph (1) or (2) of the Patent Law, if statements were made in this respect when the international application was filed, the applicant shall explain the matter in the written statement concerning entry into the Chinese national phase, and file the relevant certifying documents prescribed in Rule 30, paragraph three, of these Implementing Regulations within two months from the date of entry; if the explanation is not made or the certifying documents are not filed within the time limit, the provision of Article 24 of the Patent Law shall not apply to the international application.

**Rule 108** The applicant that has made indications concerning deposit of biological materials in accordance with the provisions of the Patent Cooperation Treaty shall be deemed to have met the requirements set forth in Rule 24, subparagraph (3) of these Implementing Regulations. 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 mentioned in the description of the international application as initially filed, but no such indication is made in the statement concerning entry into the Chinese national phase, the applicant shall make correction within four months from the date of entry. If the correction is not made at the expiry of the time limit, the biological materials shall be deemed not to have been deposited.

Where the applicant submits certificates of the deposit and the viability of the biological materials to the Patent Administration Department under the State Council within four months from the date of entry, the deposit of biological materials shall be deemed to have been made within the time limit as provided for in Rule 24, subparagraph (1) of these Implementing Regulations.

**Rule 109** Where the invention-creation to which the international application relates is made using the genetic resources, the applicant shall indicate it in the written statement concerning entry of the international application into the

Chinese national phase, and fill it in the forms prepared 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 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 the fee for claiming 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 is not required to submit a copy of the earlier application to the Patent Administration Department under the State Council when he or it goes through the formalities for entry into the Chinese national phase. Where the applicant did not submit a copy of the earlier application in the international phase, the Patent Administration Department under the State Council, when deeming it necessary, may notify the applicant to submit a copy of the earlier application within the specified time limit. If the applicant fails to do so at the expiry of the time limit, his or its claim for priority shall be deemed not to have been made.

**Rule 111** Where the applicant files, before the expiry of thirty months from the date of priority, 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 entry into the Chinese national phase, file a request in accordance with the provisions in Article 23, paragraph two of the Patent Cooperation Treaty. Where the International Bureau does not transfer the international application to the Patent Administration Department under the State Council, the applicant shall file a confirmed copy of the international application.

**Rule 112** In respect of an international application for a patent for utility model, the applicant may file a request to voluntarily amend the patent application documents within two months from the date of entry.

In respect of 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 mistranslations in the Chinese translation of the description, the claims or the drawings as filed, he or it may make corrections according to the international application as filed within the following time limits:

(1) before the Patent Administration Department under the State Council prepares for the publication of an application for a patent for invention and announcement of a patent for utility model;

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

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

Where the applicant corrects mistranslations 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 expiry of the time limit, the international application shall be deemed to have been withdrawn.

**Rule 114** With regard to any international application for a patent for invention, if the Patent Administration Department under the State Council finds, after preliminary examination, it in compliance with the provisions of the Patent Law and these Implementing Regulations, it shall publish it in the Patent Gazette; if an 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 mentioned in Articles 21 and 22 of the Patent Law refers to the publication mentioned 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, file a divisional application in

accordance with the provisions in Rule 42, paragraph one of these Implementing Regulations.

In the international phase, some parts of the international application have not been the subject matter 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 regarding unity of invention as provided for in the Patent Cooperation Treaty, and the applicant fails to pay the additional fee. When the application enters the Chinese national phase, the applicant requests that the said parts be the basis of examination, and the Patent Administration Department under the State Council finds that the decision concerning unity of invention made by the International Searching Authority or the International Preliminary Examination Authority is a correct one, it shall notify the applicant to pay the fee for the restoration of unity of invention within the specified time limit. Where the fee is not paid or not paid in full at the expiry of the prescribed time limit, the parts of the international application which have not been searched or have not been the subject matter of international preliminary examination shall be deemed to have been withdrawn.

**Rule 116** Where an international application in the international phase was refused to be accorded an international filing date or it was declared that the application was deemed to have been 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 a 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 at the Patent Administration Department under the State Council. After receiving the document from the International Bureau, the Patent Administration Department under the State Council shall review the decision made by the international authority concerned to see 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 that of the international application in its original language because of mistranslation, the extent of protection granted on the international application shall be limited according to the original language of the ap-

plication; if the extent of protection granted on the international application is narrower than that of the application in its original language, the extent of protection shall be determined according to the patent in the language when it is granted.

## Chapter XI Supplementary Provisions

**Rule 118** Any person may, with approval by the Patent Administration Department under the State Council, consult or copy 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 patent applications which have been withdrawn or deemed to have been withdrawn or which have been rejected, shall not be preserved at the expiry of two years from the date on which the applications lapsed.

Where the patent right has been surrendered, wholly invalidated or lapsed, the files shall not be preserved at the expiry of three years from the date on which the patent right lapsed.

**Rule 119** Any patent application shall be filed with, or any formality gone through at, the Patent Administration Department under the State Council, with signature put or seal affixed by the applicant, the patentee, any other interested person, or his or its representative. Where a patent agency is appointed, the seal of the agency shall be affixed.

Where a change in the name of the inventor, or in the name, nationality and address of the applicant or the patentee, or in the name 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, with relevant certifying documents filed.

**Rule 120** The documents of a patent application or patent right to be posted to the Patent Administration Department under the State Council shall be posted by registered letter, not by parcel.

Except for any patent application filed for the first time, any document shall be submitted to, and any formality gone through at, the Patent Administration Department under the State Council, with the filing number or the patent number, the title of the invention-creation and the name of the applicant or the patentee clearly indicated.

A letter shall contain documents of one application.

**Rule 121** The various 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 text of the application shall run from left to right on one side of each sheet only.

**Rule 122** The Patent Administration Department under the State Council shall formulate the Guidelines for Examination in accordance with the Patent Law and these Implementing Regulations.

**Rule 123** These Implementing Regulations shall enter into force on 1 July 2001. The Implementing Regulations of the Patent Law of the People's Republic of China, revised with the approval of the State Council on 12 December 1992 and promulgated by the Chinese Patent Office on 21 December 2002 shall be abrogated at the same time. ■