

AIPLA

American Intellectual Property Law Association

February 3, 2019

全国人大常委会法制工作委员会
北京市西城区前门西大街1号
中华人民共和国
邮编：100805

The Sub-Committee of Legislative Affairs of the Standing Committee of the National People's Congress
No. 1 Qianmen Xidajie, Xicheng District,
Beijing 100805
Peoples Republic of China

**Re: Request for Comments on the People's Republic of China Patent Law
(Draft Amendment) (专利法修正案草案征求意见)**

Dear Sir or Madam,

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to comment on the People's Republic of China Patent Law (Draft Amendment)(published on Chinese National People's Congress Network January 4, 2019), and include the attached table listing our detailed comments, some of which are also summarized below.

AIPLA is a national bar association of approximately 13,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

AIPLA respectfully notes that the recent proposal of the fourth amendment to the Chinese Patent Law, in many aspects, strives to bring the Chinese patent system more closely into alignment with international norms. AIPLA warmly welcomes such effort and the incorporation of many suggestions found in AIPLA comments (submitted on January 1, 2016) to the December 2015 draft Fourth Amendment. However, AIPLA is concerned that some changes that were in the December 2015 version are either removed or scaled back.

More specifically, AIPLA notes that partial design is omitted from the definition of “designs” in Article 2 of the current amendment proposal. AIPLA believes that partial design and parts of a product, just as much as the product as a whole, should be independently protectable as a design, assuming it meets the aesthetic appeal and practical use requirements.

Article 5 prohibits granting patent rights to invention that is against the law or in violation of ethical standards. AIPLA respectfully suggests moving the good faith requirement when applying for a patent from new Article 20 to Article 5, which is a more prominent place for this important requirement.

Article 6 sets forth the provision related to the ownership and remuneration of service inventions. AIPLA commends the provision for providing clarity and more incentives for employees to contribute to invention-creation. AIPLA notes that the monetary and non-monetary award for employee invention-creation is tied only to patent filing and practice. AIPLA is concerned that such provision may encourage unnecessary or inappropriate patent filings in situations in which patents may not be the optimal protection mechanism.

New Article 20 sets forth the good faith principle in applying for patents and enforcing patent rights and the proscription against patent right misuse. AIPLA recommends moving the first part concerning good faith requirement to Article 5 and removing the second part concerning patent right misuse. AIPLA is concerned about the broad and vague language used in the second part of this new article and the potential conflict with other relevant existing legislation it may cause, e.g., Article 55 of Antimonopoly Law. The further provision relating to “public interests,” is very broad and its scope is vague and uncertain. Construed broadly, it would encompass a wide variety of public interests that would be inconsistent with international norms of intellectual property protection employed by China’s major trading partners.

Article 26 adds methods of nuclear transformation to the list of patent-ineligible subject matters. AIPLA recommends further clarification of the definition and scope of “methods of nuclear transformation,” on whether innovative apparatus or device for inducing or controlling nuclear transformation processes in the fields of medical treatment, energy production, and other commercial utilization. AIPLA also notes the removal of the proposed change in the prior draft in the term “(3) methods for the diagnosis or for the treatment of diseases, except for those concerning farmed animals;”. AIPLA had welcome such change as a favorable development that can bring Chinese law more fully consistent with international standards, and is disappointed to see that the current draft no longer includes such change.

Article 31 provides the extension of time limit to provide priority documents for invention and utility applications. AIPLA commends such change and believes that, for the same reasons, comparable and appropriate extension of time limit to provide priority documents for design patent application should also be considered.

Article 43 provides patent term extension of patents on innovative drugs to compensate for the time taken to evaluate and obtain marketing approval of such drugs. AIPLA applauds this

change but respectfully notes that clarification of several terms used in the provision, such as “innovative drugs,” may be needed.

New Article 50, 51, and 52 provide an open mechanism in which patentees can license their patents voluntarily and on their terms. AIPLA supports the principle of transparency to the extent possible but have a number of concerns regarding the mechanism described in the provisions. For example, Article 52 provides that the Chinese National Intellectual Property Administration (CNIPA) can arbitrate or adjudicate disputes that arise from such open mechanism. AIPLA believes that this new provision may discouraging voluntary negotiations between the involved parties. A party may not negotiate in good faith in the expectation that the agency may become involved and improve its bargaining position, gaming the system. Dispute resolution is an extremely complex social interaction that requires substantial experience, understanding of human and commercial behavior, and experience and skills relating uniquely to alternative dispute resolution, in contrast to other forms of dispute resolution that involve judgment or evaluation of the merits. AIPLA is concerned that, because the traditional responsibilities of CNIPA does not include mediating commercial disputes and that mediation is outside the mandated scope of the Patent Act, CNIPA may lack the experience and resources to effectively mediate commercial disputes. AIPLA respectfully submits that courts may be able to resolve such disputes more efficiently and effectively.

Article 66 provides that both parties in a patent infringement dispute can provide patentability assessment report related to the dispute. However, AIPLA is concerned that such report submitted by one party in an adversarial proceeding may be biased and self-serving, therefore suggests making such report accessible to the other party (and third parties) so that the other party is given an opportunity to review and rebut if needed.

Article 69 allows law enforcement agencies as well as patent administrative agencies to investigate, inspect, and retain evidence related to patent infringement disputes. AIPLA remains concerned that the proliferation of administrative enforcement mechanisms at the country, provincial, and municipal level may create additional conflicts and prevent the development of clear uniform rules and practice. AIPLA respectfully submits that private enforcement through the courts should be the primary enforcement mechanism and may be better able to serve these goals more efficiently.

New Article 70 provides the patent administration department under the State Council discretion to handle any dispute over patent infringement that has a significant impact throughout the country. AIPLA respectfully submits that, consistent with international norms of patent protection and the provisions of TRIPS and WTO, private enforcement should be the primary mechanism for enforcement of patent rights. Thus, China’s courts, rather than administrative agencies, may be the better authority empowered to handle patent disputes, absent agreement of all parties. AIPLA is concerned that dividing enforcement authority between the courts and administrative agencies may lead to weakening of private enforcement, inconsistency in such determinations, and increasing unpredictability of business and the markets to the ultimate detriment to an innovative society.

Article 72 increases the amount of damages available for willful infringement and provides methods to mitigate evidentiary challenges in proving damages when defendant is in control

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of the relevant evidence. AIPLA commends the revisions but remains concerned about the ambiguity that may exist in the specific wording used in the provision.

Article 75 increases the statute of limitation in bringing a patent infringement lawsuit. AIPLA welcomes such change as it moves towards international norms.

AIPLA appreciates the opportunity to provide these comments on the proposed changes to the Chinese Patent Law, and we would be happy to answer any questions that our comments may raise.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheldon H. Klein", followed by a period.

Sheldon H. Klein

President

American Intellectual Property Law Association

Enclosure: Detailed AIPLA Comments to People's Republic of China Patent Law (Draft Amendment)

中华人民共和国专利法修订草案（修正案草案）

修改条文对照表及 AIPLA 对专利法修订草案的意见

Current People's Republic of China Patent Law, Fourth Amendment for Approval (issued January 2019), and
AIPLA Comments to Draft Fourth Amendment

现行专利法 Current Patent Law	专利法(修正案草案) Chinese Patent Law (Draft Amendment) (2019.01)	AIPLA Comments
第一章 总 则 Chapter 1 General Provisions	第一章 总 则 Chapter 1 General Provisions	

<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>第一条 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。</p> <p>Article 1 This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention/creation, promoting the application of invention/creation, enhancing innovation capability, promoting the science and technology advancement and the economic and social development.</p>	<p>第一条 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。</p> <p>Article 1 This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention/creation, promoting the application of invention/creation, enhancing innovation capability, promoting the science and technology advancement and the economic and social development.</p>	

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<p>第二条</p> <p>本法所称的发明创造是指发明、实用新型和外观设计。</p> <p>发明，是指对产品、方法或者其改进所提出的新的技术方案。</p> <p>实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。</p> <p>外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。</p> <p>Article 2</p> <p>For the purposes of this Law, invention/creations mean inventions, utility models and designs.</p> <p>Inventions mean new technical solutions proposed for a product, a process or the improvement thereof.</p> <p>Utility models mean new technical solutions proposed for the shape and structure</p>	<p>第二条</p> <p>本法所称的发明创造是指发明、实用新型和外观设计。</p> <p>发明，是指对产品、方法或者其改进所提出的新的技术方案。</p> <p>实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。</p> <p>外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。</p> <p>Article 2</p> <p>For the purposes of this Law, invention/creations mean inventions, utility models and designs.</p> <p>Inventions mean new technical solutions proposed for a product, a process or the improvement thereof.</p> <p>Utility models mean new technical solutions proposed for the shape and structure</p>	<p>AIPLA respectfully notes that partial design is omitted from the definition of “designs” in Article 2 of the current amendment proposal. AIPLA believes that partial designs and parts of a product, just as much as the product as a whole, should be independently protectable as designs, assuming they meets the aesthetic appeal and practical use requirements.</p> <p>Parts of a product design are independently</p>

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<p>of a product, or the combination thereof, which are fit for practical use.</p> <p>Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape or pattern, which are rich in an aesthetic appeal and are fit for industrial application.</p>	<p>of a product, or the combination thereof, which are fit for practical use.</p> <p>Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape or pattern, which are rich in an aesthetic appeal and are fit for industrial application.</p>	<p>protectable in many of China’s trading partners and under international norms of intellectual property protection. This protection is particularly important for designs that achieve international recognition.</p> <p>AIPLA is aware of the possibility that protection for partial designs may be provided in an upcoming revision of the Examination Guidance, which AIPLA believes can signify a step toward patent law harmonization among major IP countries.</p>
<p>第三条</p> <p>国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。</p> <p>省、自治区、直辖市人民政府管理专</p>	<p>第三条</p> <p>国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。</p> <p>省、自治区、直辖市人民政府管理专</p>	

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<p>利工作的部门负责本行政区域内的专利管理工作。</p> <p>Article 3</p> <p>The patent administration department under the State Council shall be responsible for the administration of patent affairs nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.</p> <p>The departments administering patent affairs at governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative regions.</p>	<p>利工作的部门负责本行政区域内的专利管理工作。</p> <p>Article 3</p> <p>The patent administration department under the State Council shall be responsible for the administration of patent affairs nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.</p> <p>The departments administering patent affairs under governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative regions.</p>	

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<p style="text-align: center;">第四条</p> <p>申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。</p> <p>Article 4</p> <p>Any patent application of which the underlying invention/creation involves national security or other major State interests that needs to be kept confidential shall be handled in accordance with the relevant regulations of the State.</p>	<p style="text-align: center;">第四条</p> <p>申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。</p> <p>Article 4</p> <p>Any patent application of which the underlying invention/creation involves national security or other major State interests that needs to be kept confidential shall be handled in accordance with the relevant regulations of the State.</p>	
<p style="text-align: center;">第五条</p> <p>对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。</p> <p>对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。</p> <p>Article 5</p> <p>Patent right shall not be granted for any invention/creation that violates the law or social ethics, or harm public interests.</p>	<p style="text-align: center;">第五条</p> <p>对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。</p> <p>对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。</p> <p>Article 5</p> <p>Patent right shall not be granted for any invention/creation that violates the law or social ethics, or harm public interests.</p>	<p>(Please see related comments to Article 20, below)</p> <p>AIPLA respectfully suggests moving the good faith requirement when applying for a patent from Article 20 to Article 5, which is a</p>

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<p>Patent right shall not be granted for any invention/creation made by relying on genetic resources obtained or used in violation of any law and administrative regulation.</p>	<p>Patent right shall not be granted for any invention/creation made by relying on genetic resources obtained or used in violation of any law and administrative regulation.</p>	<p>more prominent place for this important requirement.</p> <p>AIPLA also suggests that paragraph 2 of Article 5 be clarified to limit restrictions against genetic resources to “genetic material,” the subject matter of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. In this way, it is unlikely that Article 5 will be interpreted to extend to additional subject matter, such as digital genetic sequence information, or to third parties that might rely on such information in research.</p>
<p>第六条</p> <p>执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。</p>	<p>第六条</p> <p>执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。该单位对职务发明创造申请</p>	

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<p>非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。</p> <p>利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。</p> <p>Article 6</p> <p>Any invention/creation made in the course of performing the duties of an employee for the employer entity, or primarily by using the material and technical resources of an employer entity, shall be deemed a service invention/creation.</p> <p>The right to apply for a patent on any service invention/creation shall belong to the employer entity; and the employer entity shall</p>	<p>专利的权利和专利权可以依法处置，实行产权激励，采取股权、期权、分红等方式，使发明人或者设计人合理分享创新收益，促进相关发明创造的实施和运用。</p> <p>非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。</p> <p>利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。</p> <p>Article 6</p> <p>Any invention/creation made in the course of performing the duties of an employee for the employer entity, or primarily by using the material and technical resources of an employer entity, shall be deemed a service invention/creation. The right to apply for a patent on any service invention/creation shall belong to the employer entity; and the employer entity shall be the patentee after the application is granted patent right. The employer entity is entitled to dispose the</p>	<p>AIPLA commends the provision for providing clarity and more incentives for employees to contribute to invention-creation. That is, AIPLA’s understanding is that the additional provision to Article 6 would allow employers to dispose of invention-creation (e.g., file or not file a patent application on an invention-creation, sell or transfer the rights to the invention-creation, however it so desires) and provide options other than money to compensate the employee. In other words, the newly added provision encourages non-monetary inventor remuneration schemes and such</p>

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<p>be the patentee after the application is granted patent right.</p> <p>The right to apply for a patent on any non-service invention/creation shall belong to the inventor or designer; and the inventor or designer shall be the patentee after the application is granted patent right.</p> <p>For invention/creations made by using the material and technical resources of an employer entity, if the employer entity has contracted with the inventor or designer providing the ownership of the right to apply for a patent or the ownership of the patent, such provision shall prevail.</p>	<p><u>right of patent application and the patent right of a service invention in accordance with the law, and the property right incentive mechanism such as equity, option and dividend incentive policies may be implemented to allow the inventor or designer to reasonably share the proceeds of innovation and promote the implementation and application of the relevant invention.</u></p> <p>The right to apply for a patent on any non-service invention/creation shall belong to the inventor or designer; and the inventor or designer shall be the patentee after the application is granted patent right.</p> <p>For invention/creations made by using the material and technical resources of an employer entity, if the employer entity has contracted with the inventor or designer providing the ownership of the right to apply for a patent or the ownership of the patent, such provision shall prevail.</p>	<p>schemes may for example be tied to the profits and benefits derived from the employee’s invention-creation. AIPLA supports such a change to the existing Patent law.</p> <p>AIPLA notes that the monetary and non-monetary award for employee invention-creation is tied only to patent filing and practice. AIPLA is concerned that such provision may encourage unnecessary or inappropriate patent filings in situations in which patents may not be the optimal protection mechanism.</p> <p>AIPLA further suggests that the law encourage written agreements between an entity and an employee (e.g., signed at the beginning of employment or during the course of employment) to reduce or avoid disputes or possible litigation between the employee-inventor/designer and employer as to the ownership of the service invention-creation or appropriate compensation.</p>

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<p style="text-align: center;">第七条</p> <p>对发明人或者设计人的非职务发明创造专利申请，任何单位或者个人不得压制。</p> <p>Article 7</p> <p>No employer entity or individual shall suppress an inventor’s or designer’s filing for patent application on any non-service invention/creation.</p>	<p style="text-align: center;">第七条</p> <p>对发明人或者设计人的非职务发明创造专利申请，任何单位或者个人不得压制。</p> <p>Article 7</p> <p>No employer entity or individual shall suppress an inventor’s or designer’s filing for patent application on any non-service invention/creation.</p>	<p>This limitation appears appropriate, provided it is limited to non-service inventions.</p>
<p style="text-align: center;">第八条</p> <p>两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准</p>	<p style="text-align: center;">第八条</p> <p>两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准</p>	

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<p>后, 申请的单位或者个人为专利权人。</p> <p>Article 8 With regard to an invention/creation jointly made by two or more employer entities or individuals, or an invention/creation made by an employer entity or individual under the commission of another employer entity or individual, unless otherwise agreed upon, the right to apply for a patent shall belong to the employer entity(ies) or individual(s) that has(ve) made or jointly made the invention/creation; and the applying entity(ies) or individual(s) shall be the patentee(s) after the application is granted patent right.</p>	<p>后, 申请的单位或者个人为专利权人。</p> <p>Article 8 With regard to an invention/creation jointly made by two or more employer entities or individuals, or an invention/creation made by an employer entity or individual under the commission of another employer entity or individual, unless otherwise agreed upon, the right to apply for a patent shall belong to the employer entity(ies) or individual(s) that has(ve) made or jointly made the invention/creation; and the applying entity(ies) or individual(s) shall be the patentee(s) after the application is granted patent right.</p>	
<p>第九条 同样的发明创造只能授予一项专利权。但是, 同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利, 先获得的实用新型专利权尚未终止, 且申请人声明放弃该实用新型专利权的, 可以授予发明专利权。 两个以上的申请人分别就同样的发明</p>	<p>第九条 同样的发明创造只能授予一项专利权。但是, 同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利, 先获得的实用新型专利权尚未终止, 且申请人声明放弃该实用新型专利权的, 可以授予发明专利权。 两个以上的申请人分别就同样的发明</p>	

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<p>创造申请专利的，专利权授予最先申请的人。</p> <p>Article 9</p> <p>Only one patent can be granted for the same invention/creation. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention/creation on the same day, if the utility model patent granted earlier has not expired yet and the applicant declares to waive the right to the utility model patent, the invention patent may be granted.</p> <p>If two or more applicants file for patent applications on the same invention/creation separately, the patent right shall be granted to the first filer.</p>	<p>创造申请专利的，专利权授予最先申请的人。</p> <p>Article 9</p> <p>Only one patent can be granted for the same invention/creation. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention/creation on the same day, if the utility model patent granted earlier has not expired yet and the applicant declares to waive the right to the utility model patent, the invention patent may be granted.</p> <p>If two or more applicants file for patent applications on the same invention/creation separately, the patent right shall be granted to the first filer.</p>	
<p>第十条</p> <p>专利申请权和专利权可以转让。</p> <p>中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。</p>	<p>第十条</p> <p>专利申请权和专利权可以转让。</p> <p>中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。</p>	

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<p>转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。</p> <p>Article 10</p> <p>The right to apply for a patent and patent right may be transferred.</p> <p>Any Chinese employer entity or individual transferring any right to apply for a patent or patent right to a foreign person, enterprise, or other organization shall follow the procedures set forth in the relevant laws and administrative regulations.</p> <p>Any parties transferring any right to apply for a patent or patent right shall contract in writing and record the contract at the patent administration department under the State Council. A public notice of the contract will be made by the patent administration department under the State Council. The transfer of right to apply for a patent or of</p>	<p>转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。</p> <p>Article 10</p> <p>The right to apply for a patent and patent right may be transferred.</p> <p>Any Chinese employer entity or individual transferring any right to apply for a patent or patent right to a foreign person, enterprise, or other organization shall follow the procedures set forth in the relevant laws and administrative regulations.</p> <p>Any parties transferring any right to apply for a patent or patent right shall contract in writing and record the contract at the patent administration department under the State Council. A public notice of the contract will be made by the patent administration department under the State Council. The transfer of right to apply for a patent or of patent right shall</p>	

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<p>patent right shall become effective as of the recordation date.</p>	<p>become effective as of the recordation date.</p>	
<p style="text-align: center;">第十一条</p> <p>发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、进口依照该专利方法直接获得的产品。</p> <p>外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、许诺销售、销售、进口其外观设计专利产品。</p> <p>Article 11</p> <p>After the grant of an invention or a utility model patent right, unless otherwise provided for in this Law, without the permission of the patentee, no employer entity or individual shall exploit the patent, i.e., no employer entity or individual shall, for production or business</p>	<p style="text-align: center;">第十一条</p> <p>发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、进口依照该专利方法直接获得的产品。</p> <p>外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、许诺销售、销售、进口其外观设计专利产品。</p> <p>Article 11</p> <p>After the grant of an invention or a utility model patent right, unless otherwise provided for in this Law, without the permission of the patentee, no employer entity or individual shall exploit the patent, i.e., no employer entity or individual shall, for production or business</p>	

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<p>purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell, or import products obtained directly through the use of the patented method.</p> <p>After a design patent right is granted, without the permission of the patentee, no employer entity or individual shall exploit the patent, i.e., no employer entity or individual shall, for production or business purposes, manufacture, use, offer to sell, sell, or import the design patented products.</p>	<p>purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell, or import products obtained directly through the use of the patented method.</p> <p>After a design patent right is granted, without the permission of the patentee, no employer entity or individual shall exploit the patent, i.e., no employer entity or individual shall, for production or business purposes, manufacture, use, offer to sell, sell, or import the design patented products.</p>	
<p style="text-align: center;">第十二条</p> <p>任何单位或者个人实施他人专利的，应当与专利权人订立实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。</p> <p>Article 12</p> <p>Any employer entity or individual exploiting other’s patent shall enter into a patent license contract for exploitation with the</p>	<p style="text-align: center;">第十二条</p> <p>任何单位或者个人实施他人专利的，应当与专利权人订立实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。</p> <p>Article 12</p> <p>Any employer entity or individual exploiting other’s patent shall enter into a patent license contract for exploitation with the</p>	

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<p>patentee and pay patent royalties to the patentee. The licensee shall not grant the exploitation right of such patent to any other employer entity or individual not specified in the contract.</p>	<p>patentee and pay patent royalties to the patentee. The licensee shall not grant the exploitation right of such patent to any other employer entity or individual not specified in the contract.</p>	
<p style="text-align: center;">第十三条</p> <p>发明专利申请公布后，申请人可以要求实施其发明的单位或者个人支付适当的费用。</p> <p>Article 13</p> <p>After the application for an invention patent is published, the applicant may require the employer entity or individual that exploits the said invention to pay an appropriate amount of fees.</p>	<p style="text-align: center;">第十三条</p> <p>发明专利申请公布后，申请人可以要求实施其发明的单位或者个人支付适当的费用。</p> <p>Article 13</p> <p>After the application for an invention patent is published, the applicant may require the employer entity or individual that exploits the said invention to pay an appropriate amount of fees.</p>	
<p style="text-align: center;">第十四条</p> <p>国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实</p>	<p style="text-align: center;">第十四条</p> <p>国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实</p>	

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<p>施，由实施单位按照国家规定向专利权人支付使用费。</p> <p>Article 14</p> <p>If an invention patent of a State-owned enterprise or public institution is of great significance to national or public interests, upon the approval by the State Council, the relevant administering department under the State Council or a government of province, autonomous region, or municipality directly under the Central Government may decide to promote the application of the patent within an approved scope and allow designated employer entity to exploit the patent. The exploiting employer entity shall pay royalties to the patentee in accordance with the regulations of the State.</p>	<p>施，由实施单位按照国家规定向专利权人支付使用费。</p> <p>Article 14</p> <p>If an invention patent of a State-owned enterprise or public institution is of great significance to national or public interests, upon the approval by the State Council, the relevant administering department under the State Council or a government of province, autonomous region, or municipality directly under the Central Government may decide to promote the application of the patent within an approved scope and allow designated employer entity to exploit the patent. The exploiting employer entity shall pay royalties to the patentee in accordance with the regulations of the State.</p>	
<p>第十五条</p> <p>专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施</p>	<p>第十五条</p> <p>专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施</p>	

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<p>该专利的，收取的使用费应当在共有人之间分配。</p> <p>除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。</p> <p>Article 15</p> <p>If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties received shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.</p>	<p>该专利的，收取的使用费应当在共有人之间分配。</p> <p>除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。</p> <p>Article 15</p> <p>If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties received shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.</p>	
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<p>被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。</p> <p>Article 16</p> <p>The employer entity that is granted the patent right shall reward the inventor or designer of service invention/creation. After the patent on the invention/creation is exploited, such employer entity shall give the inventor or designer a reasonable amount of remuneration according to the scope of application and the economic benefits obtained.</p>	<p>被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。</p> <p>Article 16</p> <p>The employer entity that is granted the patent right shall reward the inventor or designer of service invention/creation. After the patent on the invention/creation is exploited, such employer entity shall give the inventor or designer a reasonable amount of remuneration according to the scope of application and the economic benefits obtained.</p>	
<p>第十七条</p> <p>发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。</p> <p>专利权人有权在其专利产品或者该产</p>	<p>第十七条</p> <p>发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。</p> <p>专利权人有权在其专利产品或者该产品</p>	

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<p>品的包装上标明专利标识。</p> <p>Article 17</p> <p>An inventor or designer shall have the right to state in the patent documents that he or she is the inventor or designer.</p> <p>The patentee shall have the right to have patent mark displayed on its patented product or the package of such product.</p>	<p>的包装上标明专利标识。</p> <p>Article 17</p> <p>An inventor or designer shall have the right to state in the patent documents that he or she is the inventor or designer.</p> <p>The patentee shall have the right to have patent mark displayed on its patented product or the package of such product.</p>	
<p>第十八条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。</p> <p>Article 18</p> <p>For a foreign person, enterprise, or other organization without a regular residence or business site in China who wants to apply for a patent in China, the application shall be handled in accordance with this Law, and in accordance with the agreements between the</p>	<p>第十八条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。</p> <p>Article 18</p> <p>For a foreign person, enterprise, or other organization without a regular residence or business site in China who wants to apply for a patent in China, the application shall be handled in accordance with this Law, and in accordance with the agreements between the</p>	

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<p>resident country and China or with the international treaties to which both countries have signed or on the principle of reciprocity.</p>	<p>resident country and China or with the international treaties to which both countries have signed or on the principle of reciprocity.</p>	
<p style="text-align: center;">第十九条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。</p> <p>中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托依法设立的专利代理机构办理。</p> <p>专利代理机构应当遵守法律、行政法规，按照被代理人的委托办理专利申请或者其他专利事务；对被代理人发明创造的内容，除专利申请已经公布或者公告的以外，负有保密责任。专利代理机构的具体管理办法由国务院规定。</p> <p>Article 19</p> <p>A foreign person, enterprise, or other organization without a regular residence or</p>	<p style="text-align: center;">第十九条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。</p> <p>中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托依法设立的专利代理机构办理。</p> <p>专利代理机构应当遵守法律、行政法规，按照被代理人的委托办理专利申请或者其他专利事务；对被代理人发明创造的内容，除专利申请已经公布或者公告的以外，负有保密责任。专利代理机构的具体管理办法由国务院规定。</p> <p>Article 19</p> <p>A foreign person, enterprise, or other organization without a regular residence or</p>	

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<p>business site in China who intends to apply for a patent or handle other patent-related matters in China shall commission a legally established patent agency to handle such matters.</p> <p>A Chinese employer entity or individual intending to apply for a patent or handle other patent-related matters in China may commission a legally established patent agency to handle such matters.</p> <p>Patent agencies shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as commissioned by their clients. Patent agencies have a duty of keeping contents of the invention/creation of their clients confidential, with the exception of the contents already published or publicly-notified. The specific measures for administration of patent agencies shall be formulated by the State Council.</p>	<p>business site in China who intends to apply for a patent or handle other patent-related matters in China shall commission a legally established patent agency to handle such matters.</p> <p>A Chinese employer entity or individual intending to apply for a patent or handle other patent-related matters in China may commission a legally established patent agency to handle such matters.</p> <p>Patent agencies shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as commissioned by their clients. Patent agencies have a duty of keeping contents of the invention/creation of their clients confidential, with the exception of the contents already published or publicly-notified. The specific measures for administration of patent agencies shall be formulated by the State Council.</p>	
	<p>第二十条 (新增) 申请专利和行使专利权应当遵循诚实信用原则, 不得滥用专利权损害公共利益</p>	

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	<p>或者排除、限制竞争。</p> <p>Article 20 (New)</p> <p>The application of patent and the exercise of patent right shall abide by the principle of good faith, and shall not misuse patent right to harm the public interest or exclude or restrict competitions.</p>	<p>(Please see related comment to Article 5, above)</p> <p>AIPLA recommends that the sentence “[t]he application for patent right shall abide by the principle of good faith” be retained, and recommends moving it to the beginning of Article 5 where it better fits the context.</p> <p>AIPLA respectfully recommends deleting the rest of Article 20, i.e., the text dealing with “prohibition of misuse of patent rights” for the following reasons:</p> <p>First, the “exercise of patent rights” is outside the defined mandate of China’s patent administration. (See Article 2 of Patent Law);</p> <p>Second, this text overlaps, and possibly conflicts with, other relevant existing</p>

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		<p>legislation including:</p> <ul style="list-style-type: none"> a. Article 55 of Antimonopoly Law. b. Article 329 of the Contract Law c. An SPC Judicial Interpretation that also provides that the illegal monopoly technology transfer contract is invalid. d. Article 53(2) of the Patent Law draft provides compulsory licensing as a remedy to eliminate or reduce the negative impact on competition when patentee's exercise of its a patent right has been deemed as monopoly in accordance with the laws. <p>Third, as a result, to add a very general but also vague article in the Patent Law for the prohibition of “misuse of patent rights” would bring no added value and would create confusion and potential conflict with the standards found in current specific legislation and interpretation, including the potential for a second, inconsistent determination of validity in addition and possibly in conflict</p>

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		<p>with an invalidation trial before the Patent Review Board (PRB) or its appeal since a misuse claim may have their outcome determined by the resolution of the same issues involved in an invalidation trial.</p> <p>Further, if prohibition of “misuse of patent rights” were broadly interpreted as extending beyond conduct in the prosecution, e.g. into the area of patent licensing, it could also discourage innovation and interfere with legitimate enforcement activities.</p> <p>The further provision relating to “public interests,” is very broad and its scope is vague and uncertain. Construed broadly, it would encompass a wide variety of public interests that would be inconsistent with international norms of intellectual property protection employed by China’s major trading partners.</p>

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<p style="text-align: center;">第二十条</p> <p>任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。</p> <p>中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。</p> <p>国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。</p> <p>对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。</p> <p>Article 20</p> <p>Any employer entity or individual that intends to apply for patent in a foreign country for an invention or utility model made in China shall submit the matter to the patent administration department under the State</p>	<p style="text-align: center;">第二十一条</p> <p>任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。</p> <p>中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。</p> <p>国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。</p> <p>对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。</p> <p>Article 21</p> <p>Any employer entity or individual that intends to apply for patent in a foreign country for an invention or utility model made in China shall submit the matter to the patent administration department under the State</p>	

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<p>Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.</p> <p style="padding-left: 40px;">A Chinese employer entity or individual may file for an international patent applications in accordance with the relevant international treaties to which China has signed. The applicant of such international patent application shall comply with the provisions of the preceding paragraph.</p> <p style="padding-left: 40px;">The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has signed and the relevant provisions of this Law and regulations of the State Council.</p> <p style="padding-left: 40px;">No patent right shall be granted to an application filed in China if an invention or utility model patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article.</p>	<p>Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.</p> <p style="padding-left: 40px;">A Chinese employer entity or individual may file for an international patent applications in accordance with the relevant international treaties to which China has signed. The applicant of such international patent application shall comply with the provisions of the preceding paragraph.</p> <p style="padding-left: 40px;">The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has signed and the relevant provisions of this Law and regulations of the State Council.</p> <p style="padding-left: 40px;">No patent right shall be granted to an application filed in China if an invention or utility model patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article.</p>	

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<p style="text-align: center;">第二十一条</p> <p>国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。</p> <p>国务院专利行政部门应当完整、准确、及时发布专利信息，定期出版专利公报。</p> <p>在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。</p> <p>Article 21</p> <p>The patent administration department under the State Council and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy, and timeliness, handle patent applications and requests in accordance with law.</p> <p>The patent administration department under the State Council shall release patent</p>	<p style="text-align: center;">第二十二条</p> <p>国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。</p> <p>国务院专利行政部门应当加强专利信息公共服务体系建设，定期出版专利公报，完整、准确、及时发布专利信息，提供专利信息基础数据，促进专利信息传播与利用。</p> <p>在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。</p> <p>Article 22</p> <p>The patent administration department under the State Council and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy, and timeliness, handle patent applications and requests in accordance with law.</p> <p>The patent administration department under the State Council shall strengthen the establishment of the public service system of</p>	<p>AIPLA commends these steps to bring greater transparency to the patent system while protecting confidentiality before publication, bringing China’s system into closer alignment with international norms of patent protection.</p>

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<p>information in a complete, accurate, and timely manner, and publish patent gazettes on a regular basis.</p> <p>Before a patent application is published or publically notified, the staff members of the patent administration department under the State Council and the persons concerned shall have the duty to keep such the contents of the application confidential.</p>	<p><u>patent information, publish patent gazettes on a regular basis, release patent information in a complete, accurate, and timely manner, and provide basic data of patent information, and promote the dissemination and utilization patent information</u>publish patent gazettes on a regular basis.</p> <p>Before a patent application is published or publically notified, the staff members of the patent administration department under the State Council and the persons concerned shall have the duty to keep such the contents of the application confidential.</p>	
<p>第二章 授予专利权的条件</p> <p style="text-align: center;">Chapter 2 Conditions for Granting Patent Rights</p>	<p>第二章 授予专利权的条件</p> <p style="text-align: center;">Chapter 2 Conditions for Granting Patent Rights</p>	
<p>第二十二条</p> <p>授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。</p> <p>新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人</p>	<p>第二十三条</p> <p>授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。</p> <p>新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人</p>	

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<p>就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。</p> <p>创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。</p> <p>实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。</p> <p>本法所称现有技术，是指申请日以前在国内外为公众所知的技术。</p> <p>Article 22</p> <p>Inventions and utility models with patent rights granted shall have novelty, inventiveness and utility.</p> <p>Novelty means that the invention or utility model is not prior art; no other patent application has been filed by any employer entity or individual for any identical invention or utility model with the patent administration department under the State Council before the application date and documented in a patent</p>	<p>就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。</p> <p>创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。</p> <p>实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。</p> <p>本法所称现有技术，是指申请日以前在国内外为公众所知的技术。</p> <p>Article 23</p> <p>Inventions and utility models with patent rights granted shall have novelty, inventiveness and utility.</p> <p>Novelty means that the invention or utility model is not prior art; no other patent application has been filed by any employer entity or individual for any identical invention or utility model with the patent administration department under the State Council before the application date and documented in a patent</p>	

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<p>application document published or the patent documents publically notified after the application date.</p> <p>Inventiveness means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.</p> <p>Utility means that the said invention or utility model can be used for production or be utilized, and may produce positive results.</p> <p>For the purposes of this Law, prior art means the technologies known to the public domestically and abroad before the application date.</p>	<p>application document published or the patent documents publically notified after the application date.</p> <p>Inventiveness means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.</p> <p>Utility means that the said invention or utility model can be used for production or be utilized, and may produce positive results.</p> <p>For the purposes of this Law, prior art means the technologies known to the public domestically and abroad before the application date.</p>	
<p>第二十三条</p> <p>授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利</p>	<p>第二十四条</p> <p>授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利</p>	

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<p>行政部门提出过申请，并记载在申请日以后公告的专利文件中。</p> <p>授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。</p> <p>授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。</p> <p>本法所称现有设计，是指申请日以前在国内外为公众所知的设计。</p> <p>Article 23</p> <p>A design for which patent right is granted shall not be a prior design, and no application is filed by any employer entity or individual for any identical design with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publically notified after the application date.</p> <p>Designs for which patent right is to be granted shall be distinctly different from prior designs or the combinations of the features of</p>	<p>行政部门提出过申请，并记载在申请日以后公告的专利文件中。</p> <p>授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。</p> <p>授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。</p> <p>本法所称现有设计，是指申请日以前在国内外为公众所知的设计。</p> <p>Article 24</p> <p>A design for which patent right is granted shall not be a prior design, and no application is filed by any employer entity or individual for any identical design with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publically notified after the application date.</p> <p>Designs for which patent right is to be granted shall be distinctly different from prior designs or the combinations of the features of</p>	

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<p>prior designs.</p> <p>Designs for which patent right is granted shall not in conflict with the legal rights acquired by others prior to the application date.</p> <p>For the purposes of this Law, a prior design means a design that is known to the public domestically and abroad before the application date.</p>	<p>prior designs.</p> <p>Designs for which patent right is granted shall not in conflict with the legal rights acquired by others prior to the application date.</p> <p>For the purposes of this Law, a prior design means a design that is known to the public domestically and abroad before the application date.</p>	
<p>第二十四条</p> <p>申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：</p> <p>（一） 在中国政府主办或者承认的国际展览会上首次展出的；</p> <p>（二） 在规定的学术会议或者技术会议上首次发表的；</p> <p>（三） 他人未经申请人同意而泄露其内容的。</p> <p>Article 24</p> <p>Within six months prior to the date of application, an invention/creation for which a</p>	<p>第二十五条</p> <p>申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：</p> <p>（一） 在中国政府主办或者承认的国际展览会上首次展出的；</p> <p>（二） 在规定的学术会议或者技术会议上首次发表的；</p> <p>（三） 他人未经申请人同意而泄露其内容的。</p> <p>Article 25</p> <p>Within six months prior to the date of application, an invention/creation for which a</p>	

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<p>patent application is filed does not lose its novelty under any of the following circumstances:</p> <p>(1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;</p> <p>(2) It is published for the first time at a specified academic or technological conference; and</p> <p>(3) Its contents are divulged by others without the consent of the applicant.</p>	<p>patent application is filed does not lose its novelty under any of the following circumstances:</p> <p>(1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;</p> <p>(2) It is published for the first time at a specified academic or technological conference; and</p> <p>(3) Its contents are divulged by others without the consent of the applicant.</p>	
<p>第二十五条</p> <p>对下列各项，不授予专利权：</p> <p>（一）科学发现；</p> <p>（二）智力活动的规则和方法；</p> <p>（三）疾病的诊断和治疗方法；</p> <p>（四）动物和植物品种；</p> <p>（五）用原子核变换方法获得的物质；</p>	<p>第二十六条</p> <p>对下列各项，不授予专利权：</p> <p>（一）科学发现；</p> <p>（二）智力活动的规则和方法；</p> <p>（三）疾病的诊断和治疗方法；</p> <p>（四）动物和植物品种；</p> <p>（五）原子核变换方法以及用原子核变换方法获得的物质；</p>	

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<p>(六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。</p> <p>对前款第(四)项所列产品的生产方法, 可以依照本法规定授予专利权。</p> <p>Article 25</p> <p>Patent rights shall not be granted for any of the following subject matters:</p> <p>(1) scientific discoveries;</p> <p>(2) rules and methods for intellectual activities;</p> <p>(3) methods for the diagnosis or treatment of diseases;</p> <p>(4) animal or plant varieties;</p> <p>(5) substances obtained by means of nuclear transformation;</p> <p>(6) Designs that are mainly used for marking the pattern, color or the combination of the two of prints.</p>	<p>(六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。</p> <p>对前款第(四)项所列产品的生产方法, 可以依照本法规定授予专利权。</p> <p>Article 26</p> <p>Patent rights shall not be granted for any of the following subject matters:</p> <p>(1) scientific discoveries;</p> <p>(2) rules and methods for intellectual activities;</p> <p>(3) methods for the diagnosis or treatment of diseases;</p> <p>(4) animal or plant varieties;</p> <p>(5) Methods of nuclear transformation and substances obtained by means of nuclear transformation;</p> <p>(6) Designs that are mainly used for marking the pattern, color or the combination</p>	<p>AIPLA notes the addition of “nuclear transformation methods” to the list of patent-ineligible subject matter. AIPLA invites further clarification in law or in examination guideline on whether innovative apparatus or device for inducing or controlling nuclear transformation processes in the fields of medical treatment, energy production, and other commercial utilization are patentable.</p> <p>AIPLA had welcomed the term in the prior draft, “(3) methods for the diagnosis or for the treatment of diseases, except for those concerning farmed animals;” as a favorable development bring Chinese law more fully consistent with international standards. It would support innovation in the growing</p>

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<p>Patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.</p>	<p>of the two of prints.</p> <p>Patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.</p>	<p>veterinarian diagnostics industry essential to continued innovation in the food industry generally, which would ultimately enhance food production. Indeed, other countries further allow more liberally for patents that protect medical diagnostics supporting human medicine as well. AIPLA supports the reintroduction of this term and suggests that perhaps concerns with such terms in relation to both farmed animals and humans could be mitigated by excluding infringement liability by the attending veterinarian or physician as opposed to commercial labs running such diagnostic assays or companies producing products purchased by such labs, who would be the commercial competitors of the patentees.</p>
<p>专利的申请</p> <p>Chapter 3 Patent Application</p>	<p>专利的申请</p> <p>Chapter 3 Patent Application</p>	

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<p style="text-align: center;">第二十六条</p> <p>申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。</p> <p>请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。</p> <p>说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。</p> <p>权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。</p> <p>依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。</p> <p>Article 26</p> <p>To apply for an invention or utility model patent, one shall submit relevant documents, such as a written request, a written description and its abstract, and a list of claims.</p>	<p style="text-align: center;">第二十七条</p> <p>申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。</p> <p>请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。</p> <p>说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。</p> <p>权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。</p> <p>依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。</p> <p>Article 27</p> <p>To apply for an invention or utility model patent, one shall submit relevant documents, such as a written request, a written description and its abstract, and a list of claims.</p>	

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<p>The written request shall specify the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.</p> <p>The written description shall contain a clear and comprehensive description of the invention or utility model so that a skilled person in the field of the relevant technology can carry it out; when necessary, drawings shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.</p> <p>The list of claims shall, based on the written description, contains a clear and concise definition of the proposed scope of patent protection.</p> <p>With regard to an invention/creation made by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original</p>	<p>The written request shall specify the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.</p> <p>The written description shall contain a clear and comprehensive description of the invention or utility model so that a skilled person in the field of the relevant technology can carry it out; when necessary, drawings shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.</p> <p>The list of claims shall, based on the written description, contains a clear and concise definition of the proposed scope of patent protection.</p> <p>With regard to an invention/creation made by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original</p>	

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<p>source of the genetic resources. The applicant shall state the reason if the original source cannot be indicated.</p>	<p>source of the genetic resources. The applicant shall state the reason if the original source cannot be indicated.</p>	
<p>第二十七条</p> <p>申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。</p> <p>申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。</p> <p>Article 27</p> <p>To apply for a design patent, one shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.</p> <p>The relevant drawings or pictures submitted by the applicant shall clearly show the design of the products for which patent protection is requested.</p>	<p>第二十八条</p> <p>申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。</p> <p>申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。</p> <p>Article 28</p> <p>To apply for a design patent, one shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.</p> <p>The relevant drawings or pictures submitted by the applicant shall clearly show the design of the products for which patent protection is requested.</p>	

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<p style="text-align: center;">第二十八条</p> <p>国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。</p> <p>Article 28</p> <p>The date when the patent administration department under the State Council receives the patent application documents is the application date. If the application documents are delivered by post, the date of the postmark is the application date.</p>	<p style="text-align: center;">第二十九条</p> <p>国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。</p> <p>Article 29</p> <p>The date when the patent administration department under the State Council receives the patent application documents is the application date. If the application documents are delivered by post, the date of the postmark is the application date.</p>	

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<p style="text-align: center;">第二十九条</p> <p>申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。</p> <p>申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。</p> <p>Article 29</p> <p>If an applicant files an application for a patent in China within twelve months from the date the applicant first files an application for an invention or utility model patent on the same subject matter in a foreign country, or within six months from the date the applicant</p>	<p style="text-align: center;">第三十条</p> <p>申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。</p> <p>申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，或者自外观设计在中国第一次提出专利申请之日起六个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。</p> <p>Article 30</p> <p>If an applicant files an application for a patent in China within twelve months from the date the applicant first files an application for an invention or utility model patent on the same subject matter in a foreign country, or within six months from the date the applicant</p>	

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<p>first files an application for a design patent on the same subject matter in a foreign country, the applicant may enjoy the right of priority in accordance with the agreements between the said foreign country and China, or in accordance with the international treaties to which both countries have signed, or on the principle of mutual recognition of the right of priority.</p> <p>If an applicant files an application for a patent with the patent administration department under the State Council within twelve months from the date the applicant first files an application for an invention or utility model patent in China, the applicant may enjoy the right of priority.</p>	<p>first files an application for a design patent on the same subject matter in a foreign country, the applicant may enjoy the right of priority in accordance with the agreements between the said foreign country and China, or in accordance with the international treaties to which both countries have signed, or on the principle of mutual recognition of the right of priority.</p> <p>If an applicant files an application for a patent with the patent administration department under the State Council within twelve months from the date the applicant first files an application for an invention or utility model patent in China, or within six months from the date the applicant first files an application for a design patent on the same subject matter in China, the applicant may enjoy the right of priority.</p>	

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<p>第三十条</p> <p>申请人要求优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。</p>	<p>第三十一条</p> <p>申请人要求优先权的，应当在申请的时候提出书面声明，并且<u>在第一次提出发明、实用新型专利申请之日起十六个月内或者在提出外观设计专利申请之日起三个月内</u>，提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专</p>	

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<p>Article 30</p> <p>An applicant requesting the right of priority shall submit a written declaration at the time of application and submit, within three months, a copy of the priority patent application document. The right or priority shall be deemed waived if no written declaration is submitted or a copy of the priority patent application document is not submitted prior to the expiration of the specified time limit.</p>	<p>利申请文件副本的，视为未要求优先权。</p> <p>Article 31</p> <p>An applicant requesting the right of priority shall submit a written declaration at the time of application and submit, within sixteen months from the date on which any applicant first filed a patent application for an invention or utility model, or within three months from the date on which any applicant first filed a patent application for an industrial design, a copy of the priority patent application document. The right or priority shall be deemed waived if no written declaration is submitted or a copy of the priority patent application document is not submitted prior to the expiration of the specified time limit.</p>	<p>AIPLA commends the extension of time limit to provide priority documents for invention and utility applications and believes that, for the same reasons, comparable and appropriate extension of time limit to provide priority documents for design patent application should also be considered.</p>
<p style="text-align: center;">第三十一条</p> <p style="text-align: center;">一件发明或者实用新型专利申请应当</p>	<p style="text-align: center;">第三十二条</p> <p style="text-align: center;">一件发明或者实用新型专利申请应当</p>	

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<p>限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。</p> <p>一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。</p> <p style="text-align: center;">Article 31</p> <p>An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.</p> <p>An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.</p>	<p>限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。</p> <p>一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。</p> <p style="text-align: center;">Article 32</p> <p>An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.</p> <p>An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p style="text-align: center;">第三十二条</p> <p>申请人可以在被授予专利权之前随时撤回其专利申请。</p> <p>Article 32</p> <p>An applicant may withdraw its patent application any time before being granted the patent right.</p>	<p style="text-align: center;">第三十三条</p> <p>申请人可以在被授予专利权之前随时撤回其专利申请。</p> <p>Article 33</p> <p>An applicant may withdraw its patent application any time before being granted the patent right.</p>	
<p style="text-align: center;">第三十三条</p> <p>申请人可以对其专利申请文件进行修改，但是，对发明和实用新型专利申请文件的修改不得超出原说明书和权利要求书记载的范围，对外观设计专利申请文件的修改不得超出原图片或者照片表示的范围。</p> <p>Article 33</p> <p>An applicant may amend its patent application documents, provided that the amendment to the invention or utility model patent application documents does not exceed the scope specified in the original written descriptions and claims, or that the amendment to the design patent application documents does not exceed the</p>	<p style="text-align: center;">第三十四条</p> <p>申请人可以对其专利申请文件进行修改，但是，对发明和实用新型专利申请文件的修改不得超出原说明书和权利要求书记载的范围，对外观设计专利申请文件的修改不得超出原图片或者照片表示的范围。</p> <p>Article 34</p> <p>An applicant may amend its patent application documents, provided that the amendment to the invention or utility model patent application documents does not exceed the scope specified in the original written descriptions and claims, or that the amendment to the design patent application documents does not exceed the</p>	

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<p>scope shown in the original drawings or pictures.</p>	<p>scope shown in the original drawings or pictures.</p>	
<p style="text-align: center;">第四章 专利申请的审查和批准</p> <p style="text-align: center;">Chapter 4 Examination and Approval of Patent Applications</p>	<p style="text-align: center;">第四章 专利申请的审查和批准</p> <p style="text-align: center;">Chapter 4 Examination and Approval of Patent Applications</p>	
<p style="text-align: center;">第三十四条</p> <p>国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。</p> <p>Article 34</p> <p>Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may do so at an earlier date upon request of the applicant.</p>	<p style="text-align: center;">第三十五条</p> <p>国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。</p> <p>Article 35</p> <p>Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may do so at an earlier date upon request of the applicant.</p>	

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<p style="text-align: center;">第三十五条</p> <p>发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。</p> <p>国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。</p> <p>Article 35</p> <p>Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application.</p> <p>If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn.</p> <p>The patent administration department under the</p>	<p style="text-align: center;">第三十六条</p> <p>发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。</p> <p>国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。</p> <p>Article 36</p> <p>Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application.</p> <p>If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn.</p> <p>The patent administration department under the</p>	

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<p>State Council may carry out substantive examination of its own accord, as it deems it necessary.</p>	<p>State Council may carry out substantive examination of its own accord, as it deems it necessary.</p>	
<p style="text-align: center;">第三十六条</p> <p>发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。</p> <p>发明专利已经在外国提出过申请的，国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由逾期不提交的，该申请即被视为撤回。</p> <p>Article 36</p> <p>When an applicant for an invention patent requests substantive examination, the applicant shall submit the reference materials relating to the invention existing prior to the date of application.</p> <p>If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit,</p>	<p style="text-align: center;">第三十七条</p> <p>发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。</p> <p>发明专利已经在外国提出过申请的，国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由逾期不提交的，该申请即被视为撤回。</p> <p>Article 37</p> <p>When an applicant for an invention patent requests substantive examination, the applicant shall submit the reference materials relating to the invention existing prior to the date of application.</p> <p>If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit,</p>	

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<p>within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	<p>within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	
<p style="text-align: center;">第三十七条</p> <p>国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。</p> <p>Article 37</p> <p>After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it</p>	<p style="text-align: center;">第三十八条</p> <p>国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。</p> <p>Article 38</p> <p>After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it</p>	

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<p>shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	<p>shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	
<p style="text-align: center;">第三十八条</p> <p>发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。</p> <p>Article 38</p> <p>After the applicant states its opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.</p>	<p style="text-align: center;">第三十九条</p> <p>发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。</p> <p>Article 39</p> <p>After the applicant states its opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.</p>	
<p style="text-align: center;">第三十九条</p>	<p style="text-align: center;">第四十条</p>	

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<p>发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。</p> <p>Article 39</p> <p>If no reason for rejection is discerned after an invention patent application is substantively examined, the patent administration department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and register and make public notice. The invention patent right shall become effective as of the date of public notice.</p>	<p>发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。</p> <p>Article 40</p> <p>If no reason for rejection is discerned after an invention patent application is substantively examined, the patent administration department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and register and make public notice. The invention patent right shall become effective as of the date of public notice.</p>	
<p style="text-align: center;">第四十条</p> <p>实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。</p>	<p style="text-align: center;">第四十一条</p> <p>实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。</p>	

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<p>Article 40</p> <p>If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and register and make public notice. The utility model or design patent right shall become effective as of the date of public notice.</p>	<p>Article 41</p> <p>If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and register and make public notice. The utility model or design patent right shall become effective as of the date of public notice.</p>	
<p style="text-align: center;">第四十一条</p> <p>国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。</p> <p>专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。</p>	<p style="text-align: center;">第四十二条</p> <p>国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。</p> <p>专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。</p>	

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<p>Article 41</p> <p>The patent administration department under the State Council shall establish a Patent Reexamination Board. If a patent applicant disagrees with the decision made by the Patent Administration department under the State Council on rejecting of the application, the applicant may, within three months from the date of receipt of the notification, file a request with the Patent Reexamination Board for reexamination. After reexamination, the Patent Reexamination Board shall make a decision and notify the patent applicant of the same.</p> <p>If the patent applicant disagrees with the reexamination decision made by the Patent Reexamination Board, the applicant may take legal action before the people's court within three months from the date of receipt of the notification.</p>	<p>Article 42</p> <p>The patent administration department under the State Council shall establish a Patent Reexamination Board. If a patent applicant disagrees with the decision made by the Patent Administration department under the State Council on rejecting of the application, the applicant may, within three months from the date of receipt of the notification, file a request with the Patent Reexamination Board for reexamination. After reexamination, the Patent Reexamination Board shall make a decision and notify the patent applicant of the same.</p> <p>If the patent applicant disagrees with the reexamination decision made by the Patent Reexamination Board, the applicant may take legal action before the people's court within three months from the date of receipt of the notification.</p>	

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<p>第五章 专利权的期限、终止和无效</p> <p>Chapter 5 Term, Termination, and Invalidation of Patent Rights</p>	<p>第五章 专利权的期限、终止和无效</p> <p>Chapter 5 Term, Termination, and Invalidation of Patent Rights</p>	
<p>第四十二条</p> <p>发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，均自申请日起算。</p> <p>Article 42</p> <p>The term of an invention patent right shall be 20 years, and that of a utility model or</p>	<p>第四十三条</p> <p>发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，外观设计专利权的期限为十五年，均自申请日起算。</p> <p>为补偿创新药品上市审评审批时间，对在中国境内与境外同步申请上市的创新药品发明专利，国务院可以决定延长专利权期限，延长期限不超过五年，创新药上市后总有效专利权期限不超过十四年。</p> <p>Article 43</p> <p>The term of an invention patent right shall be 20 years, and that of a utility model or design patent right shall be 10 years, and that of a design patent shall be 15 years, all starting</p>	<p>AIPLA commends the patent term extension of patents on innovative drugs to compensate for the time taken to evaluate and obtain marketing approval of such drugs. However, it is not clear whether patent term extension</p>

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<p>design patent right shall be 10 years, all starting from the application date.</p>	<p>from the application date.</p> <p style="text-align: center;">In order to compensate for the time taken for the evaluation and approval of innovative drugs, the State Council may decide to extend the duration of the patent right, for invention patents of innovative drugs for which marketing approval is applied simultaneously in China and abroad, for a period of not more than 5 years, and the total patent term of such innovative drugs after market launch shall not exceed 14 years.</p>	<p>is only available when it is based on simultaneous applying for marketing approval both in China and abroad, as the current wording suggests, or also available when based on applying for marketing approval only in China, or in China first. Also, we recommend providing transitional measures to grant patent term extensions for patents covering medicines currently approved in China, or nearing Chinese marketing approval, that did not synchronously apply for market launch in China. Lastly, we anticipate the term “innovative drug” will be clearly defined in the implementing regulations, so patent holders will understand which patents will qualify for term extension.</p>
<p style="text-align: center;">第四十三条</p> <p>专利权人应当自被授予专利权的当年开始缴纳年费。</p> <p>Article 43</p>	<p style="text-align: center;">第四十四条</p> <p>专利权人应当自被授予专利权的当年开始缴纳年费。</p> <p>Article 44</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>A patentee shall start paying annuities from the year the patent right is granted.</p>	<p>A patentee shall start paying annuities from the year the patent right is granted.</p>	
<p>第四十四条</p> <p>有下列情形之一的，专利权在期限届满前终止：</p> <p>（一）没有按照规定缴纳年费的；</p> <p>（二）专利权人以书面声明放弃其专利权的。</p> <p>专利权在期限届满前终止的，由国务院专利行政部门登记和公告。</p> <p>Article 44</p> <p>Under any of the following circumstances, the patent right shall be terminated before the expiration of the term:</p> <p>(1) failure to pay the annuity in accordance with the regulations; or</p> <p>(2) the patentee waives the patent right by a written declaration.</p> <p>If a patent right is terminated before the</p>	<p>第四十五条</p> <p>有下列情形之一的，专利权在期限届满前终止：</p> <p>（一）没有按照规定缴纳年费的；</p> <p>（二）专利权人以书面声明放弃其专利权的。</p> <p>专利权在期限届满前终止的，由国务院专利行政部门登记和公告。</p> <p>Article 45</p> <p>Under any of the following circumstances, the patent right shall be terminated before the expiration of the term:</p> <p>(1) failure to pay the annuity in accordance with the regulations; or</p> <p>(2) the patentee waives the patent right by a written declaration.</p> <p>If a patent right is terminated before the</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>term expires, the patent administration department under the State Council shall register and make public notice of such termination.</p>	<p>term expires, the patent administration department under the State Council shall register and make public notice of such termination.</p>	
<p style="text-align: center;">第四十五条</p> <p>自国务院专利行政部门公告授予专利权之日起, 任何单位或者个人认为该专利权的授予不符合本法有关规定的, 可以请求专利复审委员会宣告该专利权无效。</p> <p>Article 45</p> <p>Starting from the date the patent administration department under the State Council announces the grant of a patent right, any employer entity or individual may request the Patent Reexamination Board to declare the patent invalid if the employer entity or individual believes that the grant of patent right does not conform to the relevant provisions of this Law.</p>	<p style="text-align: center;">第四十六条</p> <p>自国务院专利行政部门公告授予专利权之日起, 任何单位或者个人认为该专利权的授予不符合本法有关规定的, 可以请求专利复审委员会宣告该专利权无效。</p> <p>Article 46</p> <p>Starting from the date the patent administration department under the State Council announces the grant of a patent right, any employer entity or individual may request the Patent Reexamination Board to declare the patent invalid if the employer entity or individual believes that the grant of patent right does not conform to the relevant provisions of this Law.</p>	
<p style="text-align: center;">第四十六条</p> <p>专利复审委员会对宣告专利权无效的</p>	<p style="text-align: center;">第四十七条</p> <p>专利复审委员会对宣告专利权无效的</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。</p> <p>对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。</p> <p>Article 46</p> <p>The Patent Reexamination Board shall examine the request for declaring a patent invalid and make a decision in a timely manner, and notify the requesting party and the patentee of its decision. The decision on declaring a patent invalid shall be registered and made public notice by the patent administration department under the State Council.</p>	<p>请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。</p> <p>对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。</p> <p>Article 47</p> <p>The Patent Reexamination Board shall examine the request for declaring a patent invalid and make a decision in a timely manner, and notify the requesting party and the patentee of its decision. The decision on declaring a patent invalid shall be registered and made public notice by the patent administration department under the State Council.</p>	

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<p>A party that disagrees with the Patent Reexamination Board’s decision on declaring a patent invalid or its decision on affirming the patent right may take legal action before a people’s court, within three months from the date of receipt of the notification. The people’s court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.</p>	<p>A party that disagrees with the Patent Reexamination Board’s decision on declaring a patent invalid or its decision on affirming the patent right may take legal action before a people’s court, within three months from the date of receipt of the notification. The people’s court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.</p>	
<p>第四十七条 宣告无效的专利权视为自始即不存在。 宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。 依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。</p>	<p>第四十八条 宣告无效的专利权视为自始即不存在。 宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。 依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。</p>	

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<p>Article 47</p> <p>The right to any patent that has been declared invalid shall be deemed to be non-existent from the beginning.</p> <p>The decision on declaring a patent invalid shall have no retroactive effect on any judgment or mediation agreement on patent infringement that has been made and enforced by the people's court, or on any decision on the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any exploitation license agreement or patent right transfer agreement that has been performed prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to others by the patentee's malicious act.</p> <p>Full or partial refund should be made if not refunding the patent infringement compensation, royalties, and patent right transfer fees pursuant to the provisions of the</p>	<p>Article 48</p> <p>The right to any patent that has been declared invalid shall be deemed to be non-existent from the beginning.</p> <p>The decision on declaring a patent invalid shall have no retroactive effect on any judgment or mediation agreement on patent infringement that has been made and enforced by the people's court, or on any decision on the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any exploitation license agreement or patent right transfer agreement that has been performed prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to others by the patentee's malicious act.</p> <p>Full or partial refund should be made if not refunding the patent infringement compensation, royalties, and patent right transfer fees pursuant to the provisions of the</p>	

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<p>现行专利法</p> <p>Current Patent Law</p>	<p>专利法(修正案草案)</p> <p>Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p>AIPLA Comments</p>
<p>preceding paragraph would constitute a blatant violation of the principle of fairness.</p>	<p>preceding paragraph would constitute a blatant violation of the principle of fairness.</p>	
<p>第六章 专利实施的强制许可</p> <p>Chapter 6 Compulsory License for Exploitation of a Patent</p>	<p>第六章 专利实施的强制特别许可</p> <p>Chapter 6 Compulsory Special License for Exploitation of a Patent</p>	
	<p>第四十九条</p> <p>国务院专利行政部门、地方人民政府管理专利工作的部门应当会同同级相关部门采取措施，加强专利公共服务，促进专利实施和运用。</p> <p>Article 49 (New)</p> <p>The patent administration department under the State Council and the administrative department for patent affairs under the local people's government shall, together with the relevant departments at the same level, take measures to strengthen the public service for patent and promote the implementation and application of patent.</p>	<p>AIPLA notes that the policy of promoting the implementation and application of patents is laudable. Nonetheless, it must be considered in the context of the patent owner's reasonable business judgment as well as a wide variety of other public policies.</p>
	<p>第五十条</p> <p>专利权人以书面方式向国务院专利行</p>	

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<p>现行专利法 Current Patent Law</p>	<p>专利法(修正案草案) Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p>AIPLA Comments</p>
	<p>政部门声明愿意许可任何单位或者个人实施其专利，并明确许可使用费支付方式、标准的，由国务院专利行政部门予以公告，实行开放许可。就实用新型、外观设计专利提出开放许可声明的，应当提供专利权评价报告。</p> <p>专利权人撤回开放许可声明的，应当以书面方式提出，并由国务院专利行政部门予以公告。开放许可声明被公告撤回的，不影响在先给予的开放许可的效力。</p> <p>Article 50 (New)</p> <p>When the patentee has made a written declaration to the patent administration department under the State Council that it is willing to license any employer entity or individual to implement its patent ,and specify the payment procedure and standard for royalties, it shall be published by the patent administration department under the State Council as being subject to “open license.” The patentee declaring an open license of utility models or design patents shall provide the</p>	<p>AIPLA supports the principle of transparency to the extent possible. However, AIPLA has several concerns regarding the mechanism described in Articles 50 & 51.</p> <p>First, the text fails to clarify that such declaration of “willing[ness] to license any entity or individual” should be voluntary.</p>

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<p>现行专利法 Current Patent Law</p>	<p>专利法(修正案草案) Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p>AIPLA Comments</p>
	<p>patentability assessment report.</p> <p>In case where such an open license declaration is withdrawn, the patentee shall submit a written withdrawal to the patent administration department under the State Council for publication. The withdrawal of an open license declaration shall not affect the validity of any issued open license before the withdrawal.</p>	<p>Second, the text lacks any mechanism to incentivize users of such declared patents to pay the agreed fee rather than to infringe.</p> <p>We therefore recommend the following revisions:</p> <p>(1) Adding “voluntary” to “when the patentee has made a written declaration to the administrative department” to clarify that the open license declaration is voluntary.</p> <p>(2) In line with WTO TRIPS Article 41(1) add this sentence at the end of Article 50: <i>“The existence of a declaration under this article shall not derogate from the patentee’s right for an effective action against any act of infringement of its patent, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.”</i></p>

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<p>现行专利法</p> <p>Current Patent Law</p>	<p>专利法(修正案草案)</p> <p>Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p>AIPLA Comments</p>
	<p>第五十一条</p> <p>任何单位或者个人有意愿实施开放许可的专利的，以书面方式通知专利权人，并依照公告的许可使用费支付方式、标准支付许可使用费后，即获得专利实施许可。</p> <p>开放许可期间，专利权人不得就该专利给予独占或者排他许可。</p> <p>Article 51</p> <p>Any employer entity or individual willing to implement a patent subject to an open licensed may obtain a license to implement the patent by sending a written notification to the patentee and paying the license fee according to the payment procedure and standard published.</p> <p>No sole or exclusive license shall be granted by the patentee for the same patent during the effective period of an open license.</p>	<p>See comments to Article 50.</p>

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	<p>第五十二条</p> <p>当事人就实施开放许可发生纠纷的， 可以请求国务院专利行政部门进行调解。</p> <p>Article 52 (New)</p> <p>Parties who have disputes arising from the implementation of an open license may request the patent administration department under the State Council to mediate.</p>	<p>AIPLA understands the impetus behind this new article, which is to bring an amicable and speedy end to commercial disputes. However, AIPLA believes that this new provision may discouraging voluntary negotiations between the involved parties. A party may not negotiate in good faith in the expectation that the agency may become involved and improve its bargaining position, gaming the system.</p> <p>Dispute resolution is an extremely complex social interaction that requires substantial experience, understanding of human and commercial behavior, and experience and skills relating uniquely to alternative dispute resolution, in contrast to other forms of dispute resolution that involve judgment or evaluation of the merits. AIPLA is concerned that, because</p>

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		<p>the traditional responsibilities of CNIPA does not include mediating commercial disputes and that mediation is outside the mandated scope of the Patent Act, CNIPA may lack the experience and resources to effectively mediate commercial disputes. AIPLA respectfully submits that courts may be able to resolve such disputes more efficiently and effectively.</p>
<p>第四十八条</p> <p>有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：</p> <p>（一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的；</p> <p>（二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。</p> <p>Article 48</p>	<p>第五十三条</p> <p>有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：</p> <p>（一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的；</p> <p>（二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。</p> <p>Article 53</p>	

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<p>Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any employer entity or individual that possesses the resource for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:</p> <p>(1) the patentee, without legitimate reasons, fails to exploit or fully exploit its patent three years since the date the patent right is granted and four years since the application date; or</p> <p>(2) if such compulsory license can eliminate or reduce the negative impact on competition when patentee's exercise of its patent right has been deemed as monopoly in accordance with the laws.</p>	<p>Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any employer entity or individual that possesses the resource for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent:</p> <p>(1) the patentee, without legitimate reasons, fails to exploit or fully exploit its patent three years since the date the patent right is granted and four years since the application date; or</p> <p>(2) if such compulsory license can eliminate or reduce the negative impact on competition when patentee's exercise of its patent right has been deemed as monopoly in accordance with the laws.</p>	
<p>第四十九条</p> <p>在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实</p>	<p>第五十四条</p> <p>在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实</p>	

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<p>用新型专利的强制许可。</p> <p>Article 49</p> <p>When a national emergency or any extraordinary state of affairs arises, or for public interests purposes, the patent administration department under the State Council may grant a compulsory license for the exploitation of an invention patent or utility model patent.</p>	<p>用新型专利的强制许可。</p> <p>Article 54</p> <p>When a national emergency or any extraordinary state of affairs arises, or for public interests purposes, the patent administration department under the State Council may grant a compulsory license for the exploitation of an invention patent or utility model patent.</p>	
<p style="text-align: center;">第五十条</p> <p>为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。</p> <p>Article 50</p> <p>For the purposes of public health, the patent administration department under the State Council may grant a compulsory license on manufacturing a patented pharmaceutical</p>	<p style="text-align: center;">第五十五条</p> <p>为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。</p> <p>Article 55</p> <p>For the purposes of public health, the patent administration department under the State Council may grant a compulsory license on manufacturing a patented pharmaceutical</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>and exporting it to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has signed.</p>	<p>and exporting it to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has signed.</p>	
<p style="text-align: center;">第五十一条</p> <p>一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。</p> <p>在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。</p> <p style="text-align: center;">Article 51</p> <p>If an invention or utility model, for which the patent right has been obtained, represents a major technological advancement of remarkable economic significance, compared with an earlier invention or utility model for</p>	<p style="text-align: center;">第五十六条</p> <p>一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。</p> <p>在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。</p> <p style="text-align: center;">Article 56</p> <p>If an invention or utility model, for which the patent right has been obtained, represents a major technological advancement of remarkable economic significance, compared with an earlier invention or utility model for</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>which the patent right has already been obtained, and exploitation of the former relies on exploitation of the latter, the patent administration department under the State Council may, upon application made by the latter, grant it a compulsory license to exploit the earlier invention or utility model.</p> <p>Under the circumstance where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon application made by the earlier patentee, grant it a compulsory license to exploit the later invention or utility model.</p>	<p>which the patent right has already been obtained, and exploitation of the former relies on exploitation of the latter, the patent administration department under the State Council may, upon application made by the latter, grant it a compulsory license to exploit the earlier invention or utility model.</p> <p>Under the circumstance where a compulsory license for exploitation is granted in accordance with the provisions of the preceding paragraph, the patent administration department under the State Council may, upon application made by the earlier patentee, grant it a compulsory license to exploit the later invention or utility model.</p>	
<p style="text-align: center;">第五十二条</p> <p>强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第四十八条第（二）项规定的情形。</p> <p style="text-align: center;">Article 52</p> <p>If an invention involved in a compulsory</p>	<p style="text-align: center;">第五十七条</p> <p>强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第四十八条第（二）项规定的情形。</p> <p style="text-align: center;">Article 57</p> <p>If an invention involved in a compulsory</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.</p>	<p>license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.</p>	
<p style="text-align: center;">第五十三条</p> <p>除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。</p> <p>Article 53</p> <p>Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.</p>	<p style="text-align: center;">第五十八条</p> <p>除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。</p> <p>Article 58</p> <p>Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.</p>	
<p style="text-align: center;">第五十四条</p> <p>依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能合</p>	<p style="text-align: center;">第五十九条</p> <p>依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能合</p>	

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<p style="text-align: center;">现行专利法</p> <p style="text-align: center;">Current Patent Law</p>	<p style="text-align: center;">专利法(修正案草案)</p> <p style="text-align: center;">Chinese Patent Law (Draft Amendment) (2019.01)</p>	<p style="text-align: center;">AIPLA Comments</p>
<p>理的时间内获得许可。</p> <p>Article 54</p> <p>An employer entity or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it has, under reasonable terms, requested but failed to obtain within a reasonable period of time a license to exploit the patent from the patentee.</p>	<p>理的时间内获得许可。</p> <p>Article 59</p> <p>An employer entity or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it has, under reasonable terms, requested but failed to obtain within a reasonable period of time a license to exploit the patent from the patentee.</p>	
<p>第五十五条</p> <p>国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。</p> <p>给予实施强制许可的决定，应当根据强制许可的理由规定实施的范围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。</p> <p>Article 55</p>	<p>第六十条</p> <p>国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。</p> <p>给予实施强制许可的决定，应当根据强制许可的理由规定实施的范围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。</p> <p>Article 60</p>	

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<p>The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and made public notice.</p> <p>A decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, specify the scope and duration for exploitation. When the reasons for compulsory license cease to exist and do not occur again, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after a review.</p>	<p>The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and made public notice.</p> <p>A decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, specify the scope and duration for exploitation. When the reasons for compulsory license cease to exist and do not occur again, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after a review.</p>	
<p style="text-align: center;">第五十六条</p> <p>取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。</p> <p style="text-align: center;">Article 56</p>	<p style="text-align: center;">第六十一条</p> <p>取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。</p> <p style="text-align: center;">Article 61</p>	

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<p>Any employer entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right for exploitation and shall not have the right to license exploitation to others.</p>	<p>Any employer entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right for exploitation and shall not have the right to license exploitation to others.</p>	
<p style="text-align: center;">第五十七条</p> <p>取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。</p> <p>Article 57</p> <p>The employer entity or individual granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has signed. The amount of royalties to be paid shall be subject to consultation</p>	<p style="text-align: center;">第六十二条</p> <p>取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。</p> <p>Article 62</p> <p>The employer entity or individual granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People's Republic of China has signed. The amount of royalties to be paid shall be subject to consultation</p>	

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<p>between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.</p>	<p>between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.</p>	
<p style="text-align: center;">第五十八条</p> <p>专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 58</p> <p>If a patentee disagrees with the decision made by the patent administration department under the State Council on granting of the compulsory license for exploitation, or if the patentee, or the employer entity or individual that has obtained the compulsory license for exploitation disagrees with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it may take</p>	<p style="text-align: center;">第六十三条</p> <p>专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 63</p> <p>If a patentee disagrees with the decision made by the patent administration department under the State Council on granting of the compulsory license for exploitation, or if the patentee, or the employer entity or individual that has obtained the compulsory license for exploitation disagrees with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it may take</p>	

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<p>legal action before the people's court within three months from the date of receipt of the notification of the ruling.</p>	<p>legal action before the people's court within three months from the date of receipt of the notification of the ruling.</p>	
<p style="text-align: center;">第七章 专利权的保护</p> <p style="text-align: center;">Chapter 7 Protection of Patent Rights</p>	<p style="text-align: center;">第七章 专利权的保护</p> <p style="text-align: center;">Chapter 7 Protection of Patent Rights</p>	
<p style="text-align: center;">第五十九条</p> <p>发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。</p> <p>外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的产品的外观设计。</p> <p>Article 59</p> <p>The scope of protection for invention and utility model patents shall be defined by the claims, and the written description and drawings may be used to construe the claims.</p> <p>The scope of protection for design patents shall defined by the design of the product as</p>	<p style="text-align: center;">第六十四条</p> <p>发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。</p> <p>外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的产品的外观设计。</p> <p>Article 64</p> <p>The scope of protection for invention and utility model patents shall be defined by the claims, and the written description and drawings may be used to construe the claims.</p> <p>The scope of protection for design patents shall defined by the design of the product as</p>	

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<p>shown in the drawings or pictures, and the brief description may be used to construe the design as shown in the drawings or pictures.</p>	<p>shown in the drawings or pictures, and the brief description may be used to construe the design as shown in the drawings or pictures.</p>	
<p>第六十条</p> <p>未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。</p>	<p>第六十五条</p> <p>未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。</p>	

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<p>Article 60</p> <p>If a dispute arises as a result of exploitation of a patent without the patentee’s permission, that is, the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to settle or if settling effort fails, the patentee or interested party may take legal action before a people's court, and may also request the department administrating patent affairs to handle the dispute. If the department administrating patent affairs, in handling a dispute, determines infringement, it can order the infringer to immediately stop the infringing act. Any party disagreeing with the order may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal action at the expiration of the time limit nor ceases the infringement, the department</p>	<p>Article 65</p> <p>If a dispute arises as a result of exploitation of a patent without the patentee’s permission, that is, the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to settle or if settling effort fails, the patentee or interested party may take legal action before a people's court, and may also request the department administrating patent affairs to handle the dispute. If the department administrating patent affairs, in handling a dispute, determines infringement, it can order the infringer to immediately stop the infringing act. Any party disagreeing with the order may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal action at the expiration of the time limit nor ceases the infringement, the department</p>	

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<p>administrating patent affairs may file an application with the people's court for compulsory enforcement. The department administrating patent affairs may, upon request of the parties, carry out mediation concerning the amount of damage for the patent right infringement. If the mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.</p>	<p>administrating patent affairs may file an application with the people's court for compulsory enforcement. The department administrating patent affairs may, upon request of the parties, carry out mediation concerning the amount of damage for the patent right infringement. If the mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.</p>	
<p>第六十一条</p> <p>专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或个人应当提供其产品制造方法不同于专利方法的证明。</p> <p>专利侵权纠纷涉及实用新型专利或者外观设计专利的，人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型专利或者外观设计专利进行检索、</p>	<p>第六十六条</p> <p>专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或个人应当提供其产品制造方法不同于专利方法的证明。</p> <p>专利侵权纠纷涉及实用新型专利或者外观设计专利的，人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型专利或者外观设计专利进行检索、</p>	

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<p>分析和评价后作出的专利权评价报告，作为审理、处理专利侵权纠纷的证据。</p> <p>Article 61</p> <p>If a patent infringement dispute involves an invention patent on a new method for manufacturing a product, the employer entity or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.</p> <p>If a patent infringement dispute involves a utility model patent or a design patent, the people's court or the department administrating patent affairs may require the patentee or the interested parties to present a patentability assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for adjudicating or handling the patent infringement dispute.</p>	<p>分析和评价后作出的专利权评价报告，作为审理、处理专利侵权纠纷的证据。双方当事人也可以主动出具专利权评价报告。</p> <p>Article 66</p> <p>If a patent infringement dispute involves an invention patent on a new method for manufacturing a product, the employer entity or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.</p> <p>If a patent infringement dispute involves a utility model patent or a design patent, the people's court or the department administrating patent affairs may require the patentee or the interested parties to present a patentability assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for adjudicating or handling the patent infringement dispute.</p>	<p>AIPLA supports allowing both the patentee and the defendant to obtain and submit to the court or agency patentability assessment report for related patent infringement dispute. AIPLA is concerned that such report submitted by one party in an adversarial proceeding may be biased and self-serving, therefore suggests making such report accessible to the other party (and third parties) so that the other party is given an opportunity to review and to rebut it, if needed.</p>

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	<p>Either party could provide the above patentability assessment report on its own initiative.</p>	
<p>第六十二条</p> <p>在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。</p> <p>Article 62</p> <p>In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is prior art or design, the exploitation shall not constitute patent infringement.</p>	<p>第六十七条</p> <p>在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。</p> <p>Article 67</p> <p>In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is prior art or design, the exploitation shall not constitute patent infringement.</p>	

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<p style="text-align: center;">第六十三条</p> <p>假冒专利的，除依法承担民事责任外，由管理专利工作的部门责令改正并予公告，没收违法所得，可以并处违法所得四倍以下的罚款；没有违法所得的，可以处二十万元以下的罚款；构成犯罪的，依法追究刑事责任。</p> <p>Article 63</p> <p>Anyone who passes off the patent of another shall, in addition to bearing civil liabilities in accordance with the laws, be ordered by the department administrating patent affairs to correct the act and made known to the public. The illegal business income shall be confiscated, and a fine of less than four folds of the illegal business income may be imposed. Where no unlawful business income has been generated, a fine of less than RMB 200,000 may be imposed. If a crime is constituted, criminal liability shall be pursued in accordance with the laws.</p>	<p style="text-align: center;">第六十八条</p> <p>假冒专利的，除依法承担民事责任外，由管理专利工作负责专利执法的部门责令改正并予公告，没收违法所得，可以并处违法所得四五倍以下的罚款；没有违法所得或者违法所得在五万元以下的，可以处二十五万元以下的罚款；构成犯罪的，依法追究刑事责任。</p> <p>Article 68</p> <p>Anyone who passes off the patent of another shall, in addition to bearing civil liabilities in accordance with the laws, be ordered by the department administrating patent affairs responsible for patent enforcement to correct the act and made known to the public. The illegal business income shall be confiscated, and a fine of less than four five folds of the illegal business income may be imposed. Where no unlawful business income has been generated or when the unlawful business income is less than RMB 50,000, a fine of less than RMB 2050,000 may be imposed. If a crime is constituted,</p>	

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	<p>criminal liability shall be pursued in accordance with the laws.</p>	
<p>第六十四条</p> <p>管理专利工作的部门根据已经取得的证据，对涉嫌假冒专利行为进行查处时，可以询问有关当事人，调查与涉嫌违法行为有关的情况；对当事人涉嫌违法行为的场所实施现场检查；查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料；检查与涉嫌违法行为有关的产品，对有证据证明是假冒专利的产品，可以查封或者扣押。</p> <p>管理专利工作的部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。</p>	<p>第六十九条</p> <p>管理专利工作的部门、负责专利执法的部门根据已经取得的证据，对涉嫌侵犯专利权、假冒专利行为进行处理、查处时，可以询问有关当事人，调查与涉嫌违法行为有关的情况；对当事人涉嫌违法行为的场所实施现场检查；查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料；检查与涉嫌违法行为有关的产品，对有证据证明是假冒专利的产品，可以查封或者扣押。</p> <p>管理专利工作的部门、负责专利执法的部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。</p> <p>Article 69</p> <p>When the department administrating</p>	<p>AIPLA remains concerned that the</p>

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<p>Article 64</p> <p>When the department administering patent affairs investigates and disposes a suspected act of passing off of patent based on evidence obtained, it may inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct field inspection of the places where the suspected illegal act takes place; it may review and copy the relevant contracts, invoices, accounting books, and other related materials; it may inspect the products related to the suspected illegal act, and seal or seize the products that have been proved to be patent passing-off products.</p> <p>When the department administering patent affairs performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, and shall not refuse or hinder.</p>	<p>patent affairs and the department responsible for patent enforcement handles, investigates and disposes a suspected act of passing off of patent or patent infringement based on evidence obtained, it may inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct field inspection of the places where the suspected illegal act takes place; it may review and copy the relevant contracts, invoices, accounting books, and other related materials; it may inspect the products related to the suspected illegal act, and seal or seize the products that have been proved to be patent passing-off products.</p> <p>When the department administering patent affairs and the department responsible for patent enforcement performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, and shall not refuse or hinder.</p>	<p>proliferation of administrative enforcement mechanisms at the country, provincial, and municipal level may create additional conflicts and prevent the development of clear uniform rules and practice. AIPLA respectfully submits that private enforcement through the courts should be the primary enforcement mechanism and may be better able to serve these goals more efficiently.</p> <p>AIPLA also has concerns regarding the power to investigate and obtain confidential information including trade secrets in the investigation of suspected acts of patent infringement. These powers are not available to litigants in civil patent litigation and will discourage undertaking manufacturing or R&D in China where related confidential information including trade secrets would be at risk of seizure by local departments.</p>
	<p>第七十条 (新增)</p> <p>国务院专利行政部门可以应专利权人</p>	

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	<p>或者利害关系人的请求处理在全国有重大影响 影响的专利侵权纠纷。</p> <p>地方人民政府管理专利工作的部门应 专利权人或者利害关系人请求处理专利侵 权纠纷，对在本行政区域内侵犯其同一专 利权的案件可以合并处理；对跨区域侵犯 其同一专利权的案件可以请求上级人民政 府管理专利工作的部门处理。</p> <p>Article 70 (New)</p> <p>The patent administration department under the State Council may handle patent infringement disputes that are of nationwide significance in response to the request of the patentee or interested parties.</p> <p>The department administrating patent affairs of a local people’s government handles patent infringement disputes in response to the requests of patentee or interested parties, and may consolidate those cases that relate to the infringement of the same patent that occur within its administrative jurisdiction; the cases</p>	<p>AIPLA respectfully notes that the proposed Article 70 gives the patent administration department under the State Council discretion to handle any dispute over patent infringement that has a significant impact throughout the country.</p> <p>The proposed Article 70 also mandates that the department administrating patent affairs of the local people’s government discretion shall, at the request of the patentee or any interested party, handle any dispute concerning patent infringement, and gives</p>

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	<p>that involve the infringement of the same patent occurring in cross-jurisdictions may be requested to be handled by the department administrating patent affairs of the upper level people's government.</p>	<p>the department discretion to handle all cases of infringement of the same patent within its own administrative region in a consolidated manner.</p> <p>Finally, Article 70 gives a higher level of the administrative department for patent affairs of the people's government discretion to handle any cross-regional infringement of the same patent.</p> <p>AIPLA respectfully submits that, consistent with international norms of patent protection and the provisions of TRIPS and WTO, private enforcement should be the primary mechanism for enforcement of patent rights. Thus, China's courts, rather than administrative agencies, may be the better authority empowered to handle patent disputes, absent agreement of all parties. This is the situation in most innovative jurisdictions, and the Chinese courts have adjudicated patent cases for over 30 years, gaining significant expertise in determining patent infringement and imposing</p>

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		<p>appropriate penalties.</p> <p>AIPLA is concerned that dividing enforcement authority between the courts and administrative agencies may lead to weakening of private enforcement, inconsistency in such determinations, and increasing unpredictability of business and the markets to the ultimate detriment to an innovative society.</p> <p>Moreover, proposed Article 70 does not specify how to resolve jurisdictional conflicts, e.g. situations where different parties request different tribunals to handle the same claim. The omission of any rule for resolving such conflicts has potentially serious adverse consequences, e.g. by making it possible for an infringer to avoid consequences by creating a jurisdictional impasse.</p>

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	<p>第七十一条（新增） 专利权人或者利害关系人可以依据人民法院生效的判决书、裁定书、调解书，或者管理专利工作的部门作出的责令停止侵权的决定，通知网络服务提供者采取删除、屏蔽、断开侵权产品链接等必要措施。网络服务提供者接到通知后未及时采取必要措施的，对损害的扩大部分与侵权网络用户承担连带责任。 负责专利执法的部门对假冒专利作出责令改正的决定后，可以通知网络服务提</p>	

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	<p>供者采取删除、屏蔽、断开假冒专利产品链接等必要措施。网络服务提供者接到通知后应当及时采取必要措施。</p> <p>Article 71 (New)</p> <p>The patentee or an interested party may, based on an effective judgement, order, or mediation agreement issued by the people’s court or an order for cessation of infringement made by the administrative department for patent affairs, notify an Internet Service Provider to take necessary measures such as deleting, blocking or disconnecting the links to the infringement products. If the Internet Service Provider fails to take necessary measures in time after receiving the notification, it shall be, together with the infringing internet user, jointly liable to any additional damage incurred.</p> <p>After the administration department responsible for patent enforcement issues a decision to order correction of patent passing off, it may notify the Internet Service Provider</p>	

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	<p>to take necessary measures such as deleting, blocking or disconnecting the links to the patent passing-off products. The Internet Service Provider shall take necessary measures in a timely fashion.</p>	
<p>第六十五条</p> <p>侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百万元以下的赔偿。</p>	<p>第七十二条</p> <p>侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。对故意侵犯专利权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百</p>	

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<p>Article 65</p> <p>The amount of damage for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If the actual losses is hard to determine, the amount may be determined</p>	<p>万元以下十万元以上五百万元以下</p> <p>的赔偿。</p> <p>赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。</p> <p>Article 72</p> <p>The amount of damage for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If the actual losses is hard to determine, the amount may be determined according to the infringer's profits through the infringement. If both the patentee's losses and the infringer's profits are hard to determine, the amount may be determined based on the reasonably multiplied amount of the royalties</p>	<p>AIPLA commends revisions that would increase the amount of damages available for willful infringement and that would mitigate evidentiary challenges in proving damages resulting from the infringement when defendant is in control of the relevant evidence.</p> <p>AIPLA has the following concerns about the revisions in this Article 72.</p> <p>First, compared to the previous draft, the</p>

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<p>according to the infringer’s profits through the infringement. If both the patentee’s losses and the infringer’s profits are hard to determine, the amount may be determined based on the reasonably multiplied amount of the royalties of the patent. The amount of damage shall include the reasonable expenses paid by the patentee for stop the infringement.</p> <p>If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of damage between RMB 10,000 and 1,000,000.</p>	<p>of the patent. With respect to willful patent infringement, for serious circumstances, the damage may be set at an amount between one and five times the amount determined by the aforementioned methods. The amount of damage shall include the reasonable expenses paid by the patentee for stop the infringement.</p> <p>If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of damage between RMB 100,000 and 5,000,000 10,000 to 1,000,000.</p> <p><u>The amount of damage shall include the reasonable expenses paid by the patentee for stop the infringement.</u></p> <p>For the purpose of determining damage amount, in the situation that patentee has made every effort to provide evidence, but the accounting books and materials related to the infringement are controlled by the accused infringer, the people’s court may order the</p>	<p>willful infringement damage has been laudably increased from 2-3 fold to 1-5 fold. However, the revision may be interpreted to mean that an increased damage award for willful infringement is only applicable in “serious circumstances.” In other words, to recover increased damages, a patent owner must prove that infringement was both “willful” and the circumstances were serious. This further heightened requirement for “serious circumstances” seems inappropriate and is inconsistent with international norms for awarding enhanced damages. AIPLA suggests alternate language as follows: <u>With respect to willful patent infringement, the damage may be set at an amount between one and three times the amount determined by the aforementioned methods, and further increased to an amount between three and five times in serious circumstances.</u></p> <p>Additionally, the article does not provide any guideline on what would be considered as “serious circumstances.” This leaves the business community without clear guidance</p>

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	<p>accused infringer to provide such. If the accused infringer fails to provide the accounting books and materials or provides fake accounting books and materials, the people's court may determine the amount of damage by referencing to the patentee's claims and evidence.</p>	<p>when these provisions would be triggered. China employs a civil law system, as distinct from a common law system. the Amendment, therefore, should provide clear guidance. AIPLA suggests that the Patent Law provide clearer guidance regarding what factors are considered in determining willfulness and when such circumstances are considered "serious." For example, is knowledge of the patent sufficient or are other factors required?</p> <p>By specifying the circumstances in which the people's court may order the infringer to provide the accounting books and materials relating to infringement, and penalties for failure to do so, or for providing false accounting books or materials, the proposed amendments to Article 72 laudably make it easier for the patent infringement claimant to establish the extent of infringing activity for purposes of proving his or its damages, or the basis for calculating royalties. The proposed language seems appropriate.</p>

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<p>第六十六条</p> <p>专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。</p> <p>申请人提出申请时，应当提供担保；不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。</p>	<p>第七十三条</p> <p>专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。</p> <p>申请人提出申请时，应当提供担保；不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。</p>	

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<p>申请人自人民法院采取责令停止有关行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。</p> <p>Article 66</p> <p>If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless stopped timely, may cause irreparable harm to its lawful rights and interests, it may, before taking legal action, file an application to request that the people's court order to have such act ceased.</p> <p>When filing such an application, the applicant shall provide a bond. In the event of failure to provide a bond, the application shall be rejected.</p> <p>The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be granted. If a ruling is made</p>	<p>申请人自人民法院采取责令停止有关行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。</p> <p>Article 73</p> <p>If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless stopped timely, may cause irreparable harm to its lawful rights and interests, it may, before taking legal action, file an application to request that the people's court order to have such act ceased.</p> <p>When filing such an application, the applicant shall provide a bond. In the event of failure to provide a bond, the application shall be rejected.</p> <p>The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be granted. If a ruling is made</p>	

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<p>to order to have the relevant act ceased, it shall be enforced immediately. The party disagreeing with the ruling may file once for appeal, and the enforcement shall not be suspended during the appeal.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.</p> <p>If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.</p>	<p>to order to have the relevant act ceased, it shall be enforced immediately. The party disagreeing with the ruling may file once for appeal, and the enforcement shall not be suspended during the appeal.</p> <p>—If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.</p> <p>If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.</p>	
<p>第六十七条</p> <p>为了制止专利侵权行为，在证据可能灭失或者以后难以取得的情况下，专利权人或者利害关系人可以在起诉前向人民法院申请保全证据。</p> <p>人民法院采取保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；裁定采取保全措施的，应当立即执行。</p>	<p>第七十四条</p> <p>为了制止专利侵权行为，在证据可能灭失或者以后难以取得的情况下，专利权人或者利害关系人可以在起诉前依法向人民法院申请保全证据。</p> <p>人民法院采取保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；裁定采取保全措施的，应当立即执行。</p>	

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<p>申请人自人民法院采取保全措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>Article 67</p> <p>To stop a patent infringement act, in the situation where evidence might be lost or hard to acquire thereafter, a patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation.</p> <p>If the people's court takes preservation measures, it may order the applicant to provide a bond, and reject the application if the applicant fails to provide a bond.</p> <p>The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.</p>	<p>申请人自人民法院采取保全措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>Article 74</p> <p>To stop a patent infringement act, in the situation where evidence might be lost or hard to acquire thereafter, a patentee or interested party may, before taking legal action, file an application in accordance with the law with the people's court for evidence preservation.</p> <p>—If the people's court takes preservation measures, it may order the applicant to provide a bond, and reject the application if the applicant fails to provide a bond.—</p> <p>—The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.—</p> <p>—If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.—</p>	

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<p>第六十八条</p> <p>侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。</p> <p>发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。</p> <p>Article 68</p> <p>The statute of limitation for action against patent right infringement shall be two years, starting from the date when the patentee or interested party learns about or should have learned about the infringement.</p> <p>If an appropriate royalty is not paid for exploiting an invention during the period from the publication of an invention patent application to the grant of the patent right, the statute of limitation for the patentee to take legal action requesting payment of royalties</p>	<p>第七十五条</p> <p>侵犯专利权的诉讼时效为二三年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。</p> <p>发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二三年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。</p> <p>Article 75</p> <p>The statute of limitation for action against patent right infringement shall be two <u>three</u> years, starting from the date when the patentee or interested party learns about or should have learned about the infringement.</p> <p>If an appropriate royalty is not paid for exploiting an invention during the period from the publication of an invention patent application to the grant of the patent right, the statute of limitation for the patentee to take legal action requesting payment of royalties</p>	<p>AIPLA commends the extension of the statute of limitation in bringing a patent infringement lawsuit from 2 years to 3 years.</p>

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<p>shall be two years, starting from the date when the patentee learns about or should have learned about the exploitation of the patent by another. However, the statute of limitation for action shall start from the date when the patent right is granted, if the patentee learns about or should have learned about the exploitation before the patent right is granted.</p>	<p>shall be two three years, starting from the date when the patentee learns about or should have learned about the exploitation of the patent by another. However, the statute of limitation for action shall start from the date when the patent right is granted, if the patentee learns about or should have learned about the exploitation before the patent right is granted.</p>	
<p>第六十九条 有下列情形之一的，不视为侵犯专利权： （一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的； （二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的； （三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而</p>	<p>第七十六条 有下列情形之一的，不视为侵犯专利权： （一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的； （二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的； （三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而</p>	

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<p>在其装置和设备中使用有关专利的； （四）专为科学研究和实验而使用有关专利的； （五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。</p> <p>Article 69</p> <p>The following acts do not constitute patent infringement:</p> <p>(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any employer entity or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;</p> <p>(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;</p>	<p>在其装置和设备中使用有关专利的； （四）专为科学研究和实验而使用有关专利的； （五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。</p> <p>Article 76</p> <p>The following acts do not constitute patent infringement:</p> <p>(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any employer entity or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;</p> <p>(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;</p>	

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<p>(3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent is used in the devices and installations for its own needs, in accordance with the agreement concluded between the country it belong to and China, or in accordance with any international treaty to which both countries have acceded, or on the principle of mutual benefit;</p> <p>(4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and</p> <p>(5) Any person produces, uses, or imports patented pharmaceuticals or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented pharmaceuticals or patented medical apparatus and instruments especially for that person.</p>	<p>(3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent is used in the devices and installations for its own needs, in accordance with the agreement concluded between the country it belong to and China, or in accordance with any international treaty to which both countries have acceded, or on the principle of mutual benefit;</p> <p>(4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and</p> <p>(5) Any person produces, uses, or imports patented pharmaceuticals or patented medical apparatus and instruments, for the purpose of providing information required for administrative examination and approval, or produces or any other person imports patented pharmaceuticals or patented medical apparatus and instruments especially for that person.</p>	

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<p style="text-align: center;">第七十条</p> <p>为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。</p> <p>Article 70</p> <p>Those who, for the purpose of production and business operation, use, offer to sell, or sells a patent-infringing product without knowing that such product is produced and sold without the permission of the patentee, but can prove the legitimate source of the product, shall not be liable for damages.</p>	<p style="text-align: center;">第七十七条</p> <p>为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。</p> <p>Article 77</p> <p>Those who, for the purpose of production and business operation, use, offer to sell, or sells a patent-infringing product without knowing that such product is produced and sold without the permission of the patentee, but can prove the legitimate source of the product, shall not be liable for damages.</p>	
<p style="text-align: center;">第七十一条</p> <p>违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。</p> <p>Article 71</p> <p>Anyone who files a an application for patent in a foreign country, in violation of the</p>	<p style="text-align: center;">第七十八条</p> <p>违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。</p> <p>Article 78</p> <p>Anyone who files a an application for patent in a foreign country, in violation of the</p>	

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<p>provisions of Article 20 of this Law, which results in the divulging national secrets, shall be given administrative sanction by the employer entity or the competent authority at a higher level. Criminal liability shall be pursued in accordance with the laws if such act constitutes a crime.</p>	<p>provisions of Article 20 of this Law, which results in the divulging national secrets, shall be given administrative sanction by the employer entity or the competent authority at a higher level. Criminal liability shall be pursued in accordance with the laws if such act constitutes a crime.</p>	
<p style="text-align: center;">第七十二条</p> <p>侵夺发明人或者设计人的非职务发明创造专利申请权和本法规定的其他权益的，由所在单位或者上级主管机关给予行政处分。</p> <p>Article 72</p> <p>If a person usurps the right of an inventor or designer to apply for a non-employment invention patent, or usurps any other rights and interests of an inventor or designer specified in this Law, he shall be given an administrative sanction by the employer entity or the upper level authority.</p>	<p style="text-align: center;">Original Article 72 deleted</p> <p style="text-align: center;">If a person usurps the right of an inventor or designer to apply for a non-employment invention patent, or usurps any other rights and interests of an inventor or designer specified in this Law, he shall be given an administrative sanction by the employer entity or the upper level authority.</p>	

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<p style="text-align: center;">第七十三条</p> <p>管理专利工作的部门不得参与向社会推荐专利产品等经营活动。</p> <p>管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。</p> <p>Article 73</p> <p>The departments administering patent affairs shall not engage in commercial activities such as promoting patented products to the public.</p> <p>If a department administering patent affairs violates the provisions of the preceding paragraph, its higher authority or supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with the laws.</p>	<p style="text-align: center;">第七十九条</p> <p>管理专利工作的部门不得参与向社会推荐专利产品等经营活动。</p> <p>管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。</p> <p>Article 79</p> <p>The departments administering patent affairs shall not engage in commercial activities such as promoting patented products to the public.</p> <p>If a department administering patent affairs violates the provisions of the preceding paragraph, its higher authority or supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with the laws.</p>	

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<p style="text-align: center;">第七十四条</p> <p>从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。</p> <p>Article 74</p> <p>Any staff member of the government department engaged in administration of patent affairs or of a relevant department who neglects his or her duty, abuses his or her power, or commits irregularities for personal gain shall be pursued for criminal liability in accordance with law if such act constitutes a crime. If the act does not constitute a crime, an administrative sanction should be given in accordance with the laws.</p>	<p style="text-align: center;">第八十条</p> <p>从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。</p> <p>Article 80</p> <p>Any staff member of the government department engaged in administration of patent affairs or of a relevant department who neglects his or her duty, abuses his or her power, or commits irregularities for personal gain shall be pursued for criminal liability in accordance with law if such act constitutes a crime. If the act does not constitute a crime, an administrative sanction should be given in accordance with the laws.</p>	
<p>第八章 附 则</p> <p>Chapter 8 Supplementary Provisions</p>	<p>第八章 附 则</p> <p>Chapter 8 Supplementary Provisions s</p>	

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<p style="text-align: center;">第七十五条</p> <p>向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。</p> <p>Article 75</p> <p>In applying for patents or going through other procedures at the patent administrative department under the State Council, fees shall be paid in accordance with relevant regulations.</p>	<p style="text-align: center;">第八十一条</p> <p>向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。</p> <p>Article 81</p> <p>In applying for patents or going through other procedures at the patent administrative department under the State Council, fees shall be paid in accordance with relevant regulations.</p>	
<p style="text-align: center;">第七十六条</p> <p>本法自 1985 年 4 月 1 日起施行。</p> <p>Article 76</p> <p>This Law shall go into effect on April 1, 1985.</p>		

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