

中华人民共和国
知识产权法律法规选编

INTELLECTUAL PROPERTY LAWS AND REGULATIONS
OF P. R. CHINA

(中英文对照)

中华人民共和国国家知识产权局 编

知识产权出版社

中华人民共和国 知识产权法律法规选编

中华人民共和国国家知识产权局 编

知识产权出版社

图书在版编目 (CIP) 数据

中华人民共和国知识产权法律法规选编/国家知识产权局编.
北京: 知识产权出版社, 2003.4

ISBN 7-80011-828-2

I. 中… II. 国… III. 知识产权-法规-汇编-中国-
汉、英 IV. D923.409

中国版本图书馆 CIP 数据核字 (2003) 第 007982 号

版权所有 侵权必究

中华人民共和国知识产权法律法规选编 (中英文对照)

中华人民共和国国家知识产权局 编

责任编辑: 李琳 段红梅 责任校对: 韩秀天

装帧设计: 段维东 责任出版: 杨宝林

知识产权出版社出版、发行

(北京海淀区蓟门桥西土城路 6 号 邮编: 100088)

<http://www.cnipr.com>

(010) 62026893 (010) 82086765 转 8252

北京华联印刷有限公司印刷

新华书店经销

2003 年 4 月第一版 2003 年 4 月第一次印刷

787mm×1092mm 1/32 印张: 11.375 字数: 310 千字

印数: 1~7 500 册

ISBN 7-80011-828-2/D·158

定 价: 60.00 元

如有印装质量问题, 本社负责调换。

目 录

中华人民共和国专利法	(229)
中华人民共和国专利法实施细则	(241)
中华人民共和国商标法	(272)
中华人民共和国商标法实施条例	(284)
中华人民共和国著作权法	(296)
中华人民共和国著作权法实施条例	(311)
计算机软件保护条例	(317)
中华人民共和国反不正当竞争法	(324)
中华人民共和国植物新品种保护条例	(331)
集成电路布图设计保护条例	(339)
奥林匹克标志保护条例	(346)
中华人民共和国知识产权海关保护条例	(350)

CONTENTS

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(1)
IMPLEMENTING REGULATIONS OF THE PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(23)
TRADEMARK LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(81)
REGULATIONS FOR THE IMPLEMENTATION OF THE TRADEMARK LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(103)
COPYRIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(126)
REGULATIONS FOR THE IMPLEMENTATION OF THE COPYRIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA	(152)
REGULATIONS ON COMPUTERS SOFTWARE PROTEC- TION	(162)
LAW OF THE PEOPLE'S REPUBLIC OF CHINA AGAINST UNFAIR COMPETITION	(173)
REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON PROTECTION OF NEW VARIETIES OF PLANTS	(184)
REGULATIONS ON THE PROTECTION OF LAYOUT - DESIGNS OF INTEGRATED CIRCUITS	(199)
REGULATIONS ON PROTECTION OF OLYMPIC SYMBOLS	(211)
REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE CUSTOMS PROTECTION OF INTELLECTUAL PROPERTY	(218)

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984 Amended in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China at its 27th Meeting on September 4, 1992 Amended again in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 17th Meeting on August 25, 2000)

CONTENTS

<i>Chapter</i>	<i>I</i>	<i>General Provisions</i>
<i>Chapter</i>	<i>II</i>	<i>Requirements for Grant of Patent Right</i>
<i>Chapter</i>	<i>III</i>	<i>Application for Patent</i>
<i>Chapter</i>	<i>IV</i>	<i>Examination and Approval of Application for Patent</i>
<i>Chapter</i>	<i>V</i>	<i>Duration, Cessation and Invalidity of Patent Right</i>
<i>Chapter</i>	<i>VI</i>	<i>Compulsory License for Exploitation of Patent</i>
<i>Chapter</i>	<i>VII</i>	<i>Protection of Patent Right</i>
<i>Chapter</i>	<i>VIII</i>	<i>Supplementary Provisions</i>

Chapter I: General Provisions

Article 1 This Law is enacted to protect patent rights for inventions-creations, to encourage invention-creation, to foster the spreading and application of inventions-creations, and to promote the development and innovation of science and technology, for meeting the needs of the construction of socialist modernization.

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

Article 3 The Patent Administration Department under the State Council is responsible for the patent work throughout the country. It receives and examines patent applications and grants patent rights for inventions-creations in accordance with law.

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

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

Article 5 No patent right shall be granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest.

Article 6 An invention-creation, made by a person in execution of the tasks of the entity to which he belongs, or made by him mainly by using the material and technical means of the entity is a service in-

vention-creation. For a service intention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

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

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

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

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

Article 9 Where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

Article 10 The right to apply for a patent and the patent right may be assigned.

Any assignment, by a Chinese entity or individual, of the right to apply for a patent, or of the patent right, to a foreigner must be ap-

proved by the competent department concerned of the State Council.

Where the right to apply for a patent or the patent right is assigned, the parties shall conclude a written contract and register it with the Patent Administration Department under the State Council. The Patent Administration Department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration.

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

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

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

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

Article 14 Where any patent for invention, belonging to any state-owned enterprise or institution, is of great significance to the in-

terest of the State or to the public interest, the competent departments concerned under the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the central government may, after approval by the State Council, decide that the patented invention be spread and applied within the approved limits, and allow designated entities to exploit that invention. The exploiting entity shall, according to the regulations of the State, pay a fee for exploitation to the patentee .

Any patent for invention belonging to a Chinese individual or an entity under collective ownership, which is of great significance to the interest of the State or to the public interest and is in need of spreading and application, may be treated alike by making reference to the provisions of the preceding paragraph.

Article 15 The patentee has the right to affix a patent marking and to indicate the number of the patent on the patented product or on the packing of that product.

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

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

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

party, or on the basis of the principle of reciprocity.

Article 19 Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, it or he shall appoint a patent agency designated by the Patent Administration Department under the State Council to act as his or its agent.

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

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

Article 20 Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in China, it or he shall file first an application for patent with the Patent Administration Department under the State Council, appoint a patent agency designated by the said department to act as its or his agent, and comply with the provisions of Article 4 of this Law.

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

The Patent Administration Department under the State Council

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

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

Until the publication or announcement of the application for a patent, staff members of the Patent Administration Department under the State Council and other persons involved have the duty to keep its contents secret.

Chapter II: Requirements for Grant of Patent Right

Article 22 Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability.

Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed in publications in the country or abroad or has been publicly used or made known to the public by any other means in the country, nor has any other person filed previously with the Patent Administration Department under the State Council an application which described the identical invention or utility model and was published after the said date of filing.

Inventiveness means that, as compared with the technology existing before the date of filing, the invention has prominent substantive features and represents a notable progress and that the utility

model has substantive features and represents progress.

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

Article 23 Any design for which patent right may be granted must not be identical with and similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country, and must not be in conflict with any prior right of any other person.

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

- (1) where it was first exhibited at an international exhibition sponsored or recognized by the Chinese government;
- (2) where it was first made public at a prescribed academic or technological meeting;
- (3) where it was disclosed by any person without the consent of the applicant.

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

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis or for the treatment of diseases;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation.

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

Chapter III: Application for Patent

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

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

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

The claims shall be supported by the description and shall state the extent of the patent protection asked for.

Article 27 Where an application for a patent for design is filed, a request, drawings or photographs of the design shall be submitted, and the product incorporating the design and the class to which that product belongs shall be indicated.

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

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

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

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

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

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

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

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

Article 33 An applicant may amend his or its application for a patent, but the amendment to the application for a patent for inven-

tion or utility model may not go beyond the scope of the disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

Chapter IV: Examination and Approval of Application for Patent

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

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

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

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

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

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

Article 38 Where, after the applicant has made the observations or amendments, the Patent Administration Department under the State Council finds that the application for a patent for invention is still not in conformity with the provisions of this Law, the application shall be rejected.

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

Article 40 Where it is found after preliminary examination that