



中华人民共和国专利法

PATENT LAW OF THE
PEOPLE'S REPUBLIC OF CHINA

〔中英对照〕

专利文献出版社

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专利文献出版社 出版
新华书店北京发行所发行
施家园印刷厂印刷

开本787×1092 1/32 印张1.5 字数28,600
1984年8月北京第一版 1984年8月北京第3次印刷
科技书目: [82—34] 统一书号: 17242.58
印数 50000—100000

定价: 0.40元

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中华人民共和国专利法

一九八四年三月十二日第六届全国人民代表
大会常务委员会第四次会议通过

第一章 总 则

第一条 为了保护发明创造专利权，鼓励发明创造，有利于发明创造的推广应用，促进科学技术的发展，适应社会主义现代化建设的需要，特制定本法。

第二条 本法所称的发明创造是指发明、实用新型和外观设计。

第三条 中华人民共和国专利局受理和审查专利申请，对符合本法规定的发明创造授予专利权。

第四条 申请专利的发明创造涉及国家安全或者重大利

PATENT LAW

of the People's Republic of China

**Adopted at the Fourth Session
of the Standing Committee
of the Sixth National People's Congress
on March 12, 1984**

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 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 Office of the People's Republic of China receives and examines patent applications and grants patent rights for inventions-creations that conform with the provisions of this Law.

Article 4. Where the invention-creation for which a patent is applied for relates to the security or other vital interests

益需要保密的，按照国家有关规定办理。

第五条 对违反国家法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

第六条 执行本单位的任务或者主要是利用本单位的物质条件所完成的职务发明创造，申请专利的权利属于该单位；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，全民所有制单位申请的，专利权归该单位持有；集体所有制单位或者个人申请的，专利权归该单位或者个人所有。

在中国境内的外资企业和中外合资经营企业的工作人员完成的职务发明创造，申请专利的权利属于该企业；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，专利权归申请的企业或者个人所有。

专利权的所有人和持有人统称专利权人。

第七条 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。

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. For a service 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 means of the entity, the right to apply for a patent belongs to the entity. For any non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, if it was filed by an entity under ownership by the whole people, the patent right shall be held by the entity; if it was filed by an entity under collective ownership or by an individual, the patent right shall be owned by the entity or individual.

For a service invention-creation made by any staff member or worker of a foreign enterprise, or of a Chinese-foreign joint venture enterprise, located in China, the right to apply for a patent belongs to the enterprise. For any non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the patent right shall be owned by the enterprise or the individual that applied for it.

The owner of the patent right and the holder of the patent right are referred to as "patentee".

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.

第八条 两个以上单位协作或者一个单位接受其他单位委托的研究、设计任务所完成的发明创造，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；申请被批准后，专利权归申请的单位所有或者持有。

第九条 两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

第十条 专利申请权和专利权可以转让。

全民所有制单位转让专利申请权或者专利权的，必须经上级主管机关批准。

中国单位或者个人向外国人转让专利申请权或者专利权的，必须经国务院有关主管部门批准。

转让专利申请权或者专利权的，当事人必须订立书面合同，经专利局登记和公告后生效。

第十一条 发明和实用新型专利权被授予后，除本法第十四条规定的以外，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、使用或者

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

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 an entity under ownership by the whole people, of the right to apply for a patent, or of the patent right, must be approved by the competent authority at the higher level. -

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 approved 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 must conclude a written contract, which will come into force after it is registered with and announced by the Patent Office.

Article 11. After the grant of the patent right for an invention or utility model, except as provided for in Article 14 of this Law, no entity or individual may, without the authorization of the patentee, exploit the patent: that is, make, use or sell the

销售其专利产品，或者使用其专利方法。

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或者销售其外观设计专利产品。

第十二条 任何单位或者个人实施他人专利的，除本法第十四条规定的以外，都必须与专利权人订立书面实施许可合同，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。

第十三条 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。

第十四条 国务院有关主管部门和省、自治区、直辖市人民政府根据国家计划，有权决定本系统内或者所管辖的全民所有制单位持有的重要发明创造专利允许指定的单位实施，由实施单位按照国家规定向持有专利权的单位支付使用费。

中国集体所有制单位和个人的专利，对国家利益或者公共利益具有重大意义，需要推广应用的，由国务院有关主管部门报国务院批准后，参照前款规定办理。

patented product, or use 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 or sell the product, incorporating the patented design, for production or business purposes.

Article 12. Any entity or individual exploiting the patent of another must, except as provided for in Article 14 of this Law, 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. The competent departments concerned of the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government have the power to decide, in accordance with the State plan, that any entity under ownership by the whole people that is within their system or directly under their administration and that holds the patent right to an important invention-creation is to allow designated entities to exploit that invention-creation; and the exploiting entity shall, according to the prescriptions of the State, pay a fee for exploitation to the entity holding the patent right.

Any patent of a Chinese individual or entity under collective ownership, which is of great significance to the interests of the State or to the public interest and is in need of spreading and

第十五条 专利权人有权在其专利产品或者该产品的包装上标明专利标记和专利号。

第十六条 专利权的所有单位或者持有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奖励。

第十七条 发明人或者设计人有在专利文件中写明自己是发明人或者设计人的权利。

第十八条 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。

第十九条 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，应当委托中华人民共和国国务院指定的专利代理机

application, may, after approval by the State Council at the solicitation of its competent department concerned, 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 owning or holding the 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 award to the inventor or creator a reward 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, he or it shall appoint a patent agency designated by the State Council of the People's Republic

构办理。

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，可以委托专利代理机构办理。

第二十条 中国单位或者个人将其在国内完成的发明创造向外国申请专利的，应当首先向专利局申请专利，并经国务院有关主管部门同意后，委托国务院指定的专利代理机构办理。

第二十一条 在专利申请公布或者公告前，专利局工作人员及有关人员对其内容负有保密责任。

第二章 授予专利权的条件

第二十二条 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。

新颖性，是指在申请日以前没有同样的发明或者实用新型在国内外出版物上公开发表过、在国内公开使用过或者以其他方式为公众所知，也没有同样的发明或者实用新型由他人向专利局提出过申请并且记载在申请日以后公布的专利申请文件中。

创造性，是指同申请日以前已有的技术相比，该发明有

of China 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.

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 the country, it or he shall file first an application for patent with the Patent Office and, with the sanction of the competent department concerned of the State Council, shall appoint a patent agency designated by the State Council to act as its or his agent.

Article 21. Until the publication or announcement of the application for a patent, staff members of the Patent Office and persons involved have the duty to keep its content 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 Office an application which described the identical invention or utility model and was published after the said date of filing.