

中华人民共和国专利法实施细则

IMPLEMENTING REGULATIONS
OF THE PATENT LAW

of the People's Republic of China

〔中英对照〕

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特此公告。

一九八五年一月十九日

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附：专利收费标准

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Approved by the State Council and Promulgated by
the Patent Office of the People's Republic of China

Patent Documentation Publishing House

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(一九八五年一月十九日 国务院批准)

(一九八五年一月十九日 中国专利局公布)

第一章 总 则

第一条 根据《中华人民共和国专利法》(以下简称专利法)第六十八条的规定,制定本细则。

第二条 专利法所称的发明是指对产品、方法或者其改进所提出的新的技术方案。

专利法所称的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。

专利法所称的外观设计是指对产品的形状、图案、色彩或者其结合所作出的富有美感并适于工业上应用的新设计。

第三条 专利法和本细则规定的各种手续,应当以书面形式办理。

IMPLEMENTING REGULATIONS OF THE PATENT LAW

of the People's Republic of China

Approved by the State Council and Promulgated by
the Patent Office of the People's Republic of China
on January 19, 1985

CHAPTER I GENERAL PROVISIONS

Rule 1. These Implementing Regulations are drawn up in compliance with the provisions of Article 68 of the Patent Law of the People's Republic of China (hereinafter referred to as "the patent Law").

Rule 2. "Invention" in the Patent Law means any new technical solution relating to a product, a process or improvement thereof.

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

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

Rule 3. Any proceedings provided for by the patent Law and these Implementing Regulations shall be conducted in a written form.

第四条 依照专利法和本细则规定提交的各种文件应当使用中文。对于国家有统一规定的科技术语，应当采用规范词。外国人名、地名和科技术语无统一中文译文的，对当注明原文。

依照专利法和本细则规定提交的各种证件和证明文件是外文的，专利局可以要求在指定期间内附送中文译本。

第五条 专利局邮寄的各种文件，送达地是省和自治区辖市以上城市的，自文件发出之日起满七日，其他地区满十五日，推定为收件人收到文件之日。

申请人向专利局邮寄的各种文件，以寄出的邮戳日为递交日。如信封上寄出的邮戳日不清晰，除申请人能提出证明外，以专利局收到日为递交日。

第六条 专利法和本细则规定的各种期限的第一日不计算在期限内。期限以年或者月计算的，以其最后一月的相应日为期限届满日；该月无相应日的，以该月最后一日为期限届

Rule 4. Any document submitted under the Patent Law and these Implementing Regulations shall be in Chinese. The standard scientific and technical terms shall be used if there is a prescribed one set forth by the State. Where no generally accepted translation in Chinese can be found for a foreign name or scientific or technical term, the one in the original language shall be also indicated.

Where any certificate or certified document which is submitted in accordance with the Patent Law or these Implementing Regulations is in a foreign language, the Patent Office may request a Chinese translation to be also submitted within a specified time limit.

Rule 5. For any document sent by mail by the Patent Office to the addressee residing in any of the municipalities under the people's governments of provinces or autonomous regions, or above, the 8th day from the date of mailing, or to the addressee residing in any of the other places in China, the 16th day from the date of mailing, shall be presumed to be the receiving date.

For any document sent to the Patent Office by the applicant by mail in China, the date of mailing indicated by the postmark shall be the date of filing. If the date of mailing indicated by the postmark on the envelope is not readable, the date on which the Patent Office receives the document shall be presumed to be the date of filing, except where the date of mailing is proved by the applicant.

Rule 6. The first day of any time limit prescribed in the Patent Law or these Implementing Regulations shall not be counted. Where a time limit is counted by year or by month, it shall expire on the corresponding day of the last month; if

满日。

期限届满日是法定节假日的，以节假日后的第一个工作日为期限届满日。

第七条 申请人、专利权人或者其他利害关系人因不可抗拒的事由或者其他正当理由而耽误专利法或者本细则规定的期限，或者专利局指定的期限的，在障碍消除后一个月内，可以说明理由，请求顺延期限。但专利法第二十四条、第二十九条、第四十一条第一句、第四十五条和第六十一条规定的期限除外。

在专利局指定的期限届满前，申请人因有正当理由要求延长期限的，应当向专利局提出请求，并附具有关的证明。

第八条 国防系统各单位申请专利的发明创造，涉及国家安全需要保密的，其专利申请由国防科技主管部门设立的专利机构受理，专利局应当根据该机构的审查意见作出决定。

第九条 除前条规定外，专利局受理专利申请后，应当将需要进行保密审查的申请转送国务院有关主管部门审查；有关主管部门应当在收到之日起四个月内，将审查结果通知专利

where is no corresponding day in that month, the time limit shall expire on the last day of that month.

If a time limit expires on an official holiday, the time limit shall expire on the first working day after that official holiday.

Rule 7. Where a time limit prescribed in the Patent Law or these Implementing Regulations or specified by the Patent Office is not met because of *force majeure* or any other justified reason, the applicant, the patentee or any other interested party may, within one month from the day on which the impediment is removed, state the reasons and request for an extension of the time limit, with the exception of the time limits prescribed in Article 24, Article 29, the first sentence of Article 41, Article 45 and Article 61 of the Patent Law.

Before the expiration of any time limit specified by the Patent Office, an applicant who, on the basis of a justified reason, wishes to have the time limit extended may make a request, accompanied with relevant proof, to the Patent Office.

Rule 8. Where the invention-creation for which a patent is applied for by the entity of the national defense system relates to the security of the State and is required to be kept secret, the application for patent shall be filed with the patent organization set up by the competent department of science and technology of national defense. The Patent Office shall make a decision on the basis of the observations on the examination of the application presented by the said patent organization.

Rule 9. Subject to the preceding Rule, the Patent Office, after receiving an application for patent which is required to be examined for the purpose of security, shall send it to the competent department concerned of the State Council for ex-

局；申请专利的发明创造需要保密的，专利局按保密专利申请处理，并且通知申请人。

第十条 专利法第六条所称执行本单位的任务所完成的职务发明创造是指：

- (一) 在本职工作中作出的发明创造；
- (二) 履行本单位交付的本职工作之外的任务所作出的发明创造；
- (三) 退职、退休或者调动工作后一年内作出的，与其在原单位承担的本职工作或者分配的任务有关的发明创造。

专利法第六条所称的本单位的物质条件是指本单位的资金、设备、零部件、原材料或者不向外公开的技术资料等。

第十一条 专利法所称的发明人或者设计人是指对发明创造的实质性特点作出了创造性贡献的人。在完成发明创造过程中，只负责组织工作的人、为物质条件的利用提供方便的人或者从事其他辅助工作的人，不应当被认为是发明人或者设计人。

第十二条 专利法第九条规定的两个以上的申请人在同一

amination. The said department shall, within four months from the receipt of the application, send a report on the results of the examination to the patent Office. Where the invention-creation for which a patent is applied for is required to be kept secret, the Patent Office shall handle it as a secret application for patent and notify the applicant accordingly.

Rule 10. "Service invention-creation, made by a person in execution of the tasks of the entity to which he belongs" in Article 6 of the Patent Law refers to any invention-creation made;

- (1) in the course of performing his own duty;
- (2) in the execution of any task, other than his own duty, which was entrusted to him by the entity to which he belongs;
- (3) within one year from his resignation, retirement or change of work, where the invention-creation relates to his own duty or the other task entrusted to him by the entity to which he previously belonged.

"Material means of the entity" in Article 6 of the Patent Law refers to the entity's money, equipment, spare parts, raw materials, or technical data which are not to be disclosed to the public.

Rule 11. "Inventor" or "creator" in the Patent Law refers to any person who has made creative contributions to the substantive features of the invention-creation. Any person who, during the course of accomplishing the invention-creation, is responsible only for organization work, or who offers facilities for making use of material means, or who takes part in other auxiliary functions, shall not be considered as inventor or creator.

Rule 12. Two or more applicants who file, on the same

日期分别就同样的发明创造申请专利的，应当在收到专利局的通知后自行协商确定申请人。

第十三条 专利权人应当将其与他人签订的实施专利许可合同，在合同生效后三个月内向专利局备案。

第十四条 专利法第十九条第一款和第二十条所称的专利代理机构是指中国国际贸易促进委员会、上海专利事务所和中国专利代理有限公司以及国务院指定的其他专利代理机构。

第十五条 申请人委托专利代理机构向专利局申请专利和办理其他专利事务的，应当同时提交委托书，写明委托权限。

第二章 专利的申请

第十六条 申请专利应当向专利局提交申请文件一式两份。

第十七条 专利法第二十六条第二款所称的请求书中的其他事项是指：

- (一) 申请人的国籍；
- (二) 申请人是企业或者其他组织的，其总部所在的国家；

day, applications for patent for the identical invention-creation, as provided for in Article 9 of the Patent Law, shall, after receiving a notification from the Patent Office, hold consultation among themselves to decide the person or persons who shall be entitled to file the application.

Rule 13. The patentee who has concluded any license contract for exploitation of the patent with an entity or individual shall, within three months from the entry into force of the contract, submit the contract to the Patent Office for record.

Rule 14. "The patent agency" in Article 19, paragraph 1, and Article 20, of the Patent Law refers to the China Council for the Promotion of International Trade, the Shanghai Patent Agency, the China Patent Agent Ltd, and other patent agencies designated by the State Council.

Rule 15. Any applicant who appoints a patent agency for filing an application for a patent with, or for dealing with other patent matters before, the Patent Office, shall submit a power of attorney indicating the scope of the power entrusted.

CHAPTER II

APPLICATION FOR PATENT

Rule 16. Anyone who applies for a patent shall submit application documents in duplicate.

Rule 17. "Other related matters" in Article 26, paragraph 2, of the Patent Law refer to:

- (1) the nationality of the applicant;
- (2) where the applicant is an enterprise or other organization, the name of the country in which the applicant has the principal business office;

(三) 申请人委托专利代理机构的, 专利代理机构的名称、地址和专利代理人的姓名;

(四) 申请人是单位的, 代表人的姓名;

(五) 要求优先权的, 应当注明的有关事项;

(六) 申请人的签字或者盖章;

(七) 申请文件清单;

(八) 附加文件清单。

申请人有两个以上而未委托专利代理机构的, 应当指定一人为代表人; 未指定代表人的, 以第一署名人为代表人。

申请外观设计专利的, 必要时还应当写明对外观设计的简要说明。

第十八条 发明或者实用新型专利申请的说明书, 除发明或者实用新型的性质需用其他方式和顺序说明的以外, 应当按照下列顺序撰写:

(一) 发明或者实用新型的名称, 该名称应当与请求书中的名称一致;

(二) 发明或者实用新型所属技术领域;

(三) 就申请人所知, 写明对发明或者实用新型的理解、检索、审查有参考作用的现有技术, 并且引证反映该项技术的文件;

(四) 发明或者实用新型的目的;

(3) where the applicant has appointed a patent agency, the name and address of the patent agency and the name of the patent agent;

(4) where the applicant is an entity, the name of its representative;

(5) where the priority of an earlier application is claimed, the relevant matters which should be indicated;

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

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

(8) a list of the documents appending the application.

Where there are two or more applicants and where they have not appointed a patent agency, they shall designate a common representative; if no common representative is designated, the applicant first named in the request shall be considered as the common representative.

Where an application for a patent for design is filed, the request shall, when necessary, also contain a brief description of the design.

Rule 18. Except where the nature of the invention or utility model calls for a different type and order of presentation, the description of an application for a patent for invention or utility model shall, in the following order:

(1) state the title of the invention or utility model as appearing in the request;

(2) specify the technical field to which the invention or utility model relates;

(3) indicate the prior art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention or utility model, and cite the documents reflecting such art;

(4) specify the task which the invention or utility model