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Division 1 of the Legal Affairs Department  
The State Intellectual Property Office of the PRC  
No. 6, Xitucheng Road  
Haidian District  
Beijing 100088, PRC

*Via e-mail: [tiaofasi@sipo.gov.cn](mailto:tiaofasi@sipo.gov.cn)*

*Via fax: 011-86-10-62086554*

2012年12月3日

中华人民共和国国家知识产权局条法司条法一处  
北京市海淀区西土城路6号  
邮政编码: 100088  
电子邮件: [tiaofasi@sipo.gov.cn](mailto:tiaofasi@sipo.gov.cn)  
传真: 011-86-10-62086554

**Re: AIPLA Comments on Proposed SIPO Service-Related Invention Regulations**

事由: 美国知识产权法协会对国家知识产权局<<职务发明条例草案(征求意见稿)>>的意见

Dear Sir or Madam:

亲爱的先生或女士:

The American Intellectual Property Law Association (“AIPLA”) is pleased to have the opportunity to present its views with respect to the Proposed Service-Related Invention Regulations presented by the State Intellectual Property Office of the People’s Republic of China (“SIPO”).

美国知识产权法协会 (“AIPLA”) 感到高兴能有机会提交对中华人民共和国国家知识产权局(“国知局”) <<职务发明条例草案(征求意见稿)>>的意见。

AIPLA is a U.S.-based national bar association whose approximately 14,000 members are primarily lawyers in private and corporate practice, government service, and the academic community. AIPLA represents a diverse spectrum of individuals, companies, and institutions involved directly and indirectly in the practice of patent, trademark, copyright, unfair competition, and trade secret law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property, including users of the

## Chinese intellectual property system.

美国知识产权法协会是基于美国的全国性法律人行业协会，其大约一万四千名会员主要是在律师事务所、公司、政府机构和司法研究机构从业的律师。美国知识产权法协会代表着各种不同的个人、公司以及研究机构，他们直接或者间接地从事着专利、商标、版权、不正当竞争和商业秘密法律方面的工作，以及从事着能够影响知识产权的其它法律领域方面的工作。我们的会员代表着知识产权的所有人和使用人，包括中国知识产权体系的使用人。

AIPLA has a robust program of activities with respect to the intellectual property system in China, as well as a significant on-going relationship with SIPO, including the personal visit of Commissioner Tian Lipu to AIPLA Headquarters in May 2010. AIPLA's Committee on Intellectual Property Practice in China conducts regular trips to China, including visits to SIPO and other Chinese agencies. AIPLA is a member of Industry IP-5 which meets annually with SIPO and other major offices, and of the SIPO-US Bar Liaison Council which will host a visit from SIPO early next year. AIPLA's AIPPI-US Division also has on-going relations with AIPPI-China, a major IP association with international focus.

美国知识产权法协会有着活跃的关于中国知识产权体系的活动项目，也和国知局有着深厚的关系，田力普局长曾于2010年5月亲自访问过美国知识产权法协会总部。美国知识产权法协会中国知识产权实践委员会经常访问中国，包括访问国知局和其他中国机构。美国知识产权法协会是“行业IP-5”的成员，每年会和国知局及其它主要专利局开会，也是“国家知识产权局/美国律师协会联络委员会”的成员，明年早些时候会接待国知局的到访。美国知识产权法协会下属的国际保护知识产权协会美国分会，也和国际保护知识产权协会中国分会有着关系，是一个具有国际聚焦的主要知识产权协会。

## INTRODUCTION

### 引言

AIPLA recognizes the progress that China has made in recent years in the improvement of its laws regarding the effective protection of intellectual property rights and the processes for enforcing those laws. The preparation of the Draft Regulations on Service Inventions, and the willingness to consider comments of the world community so as to draw on the knowledge and experience of practitioners and patent offices throughout the world, constitutes a clear demonstration of China's commitment. AIPLA would like to offer the following comments regarding this present draft.

美国知识产权法协会认识到中国最近一些年来，在完善其有效保护知识产权的法律和实施那些法律方面所取得的进步。起草职务发明条例草案，和愿意考虑国际社会的意见从而吸收世界各地的从业者和专利局的知识经验，清楚地显示了中国的承诺。关于现在的草案，美国知识产权法协会想提供下面的意见。

Detailed comments on each of the provisions of the proposed regulations can be found in the attached chart. In addition, a few general comments are provided as a preliminary matter.

对条例草案各个条款的详细意见，可在随附的表格中找到。另外，作为开场白，先说一些总体意见。

First, AIPLA appreciates the progress reflected in the present regulations, in particular for clarifying the desired implementation of Article 16 of the Patent Law, safeguarding equitable remuneration to inventors for their inventive contributions to an enterprise. The present regulations provide greater certainty for inventors and enterprises alike with respect to the implementation and boundaries of Article 16.

首先，美国知识产权法协会赞赏条例草案反映出来的进步，特别是在澄清专利法第十六条的期望实施以保障给予对单位作出发明贡献的发明人公平补偿方面。现在的条例草案，在专利法第十六条的实施和界限方面，给发明人和单位提供了更大的确定性。

AIPLA believes that the draft regulations may be effective in an environment where a product is protected by a single patent and is easily developed into a marketable product. In such a case, the portion of the commercial success of the product attributable to the inventor(s) of the patent may be more easily assessed. In other fields, particularly in fields in which a product may be covered by multiple patents, this may not be the case. For example, in the electronics field, one semiconductor product may be protected by a very large number of patents. Each of those patents may relate to only a small portion of the overall product. In such situations, the draft regulations may be difficult to apply. In these and other ways, the draft regulations may have the unintended effect of discouraging innovation in China by making it more costly, burdensome, and unpredictable.

美国知识产权法协会相信，条例草案可能在这样一种环境下有效：一个产品由一项专利保护，并且可以容易地开发成可销售的产品。在这种情况下，可能更容易评估这个产品的商业成功有多少来自于此项专利的发明人。在其它领域，特别是在一个产品可能由多项专利保护的领域，可能就不是这样了。举例来说，在电子领域，一个半导体产品可能由很多项专利保护。每个专利可能只涉及一个整体产品中很小的一个部分。在这种情况下，条例草案可能难于适用。由于这些和其他的因素，条例草案可能会带来意想不到的阻碍中国发明的效果，发明会变得更加昂贵、繁琐和不可预知。

In addition, where the technology used in any particular product implicates multiple patents, some of those patents may be cross-licensed from other companies. This may produce a complex web of overlapping rights. Responsible companies attempt to put in place fair and reasonable patent remuneration schemes that recognize the inventors' contributions to the business as a whole. To allow these schemes to flourish and to adapt to different business models, it is important that the draft regulation allow responsible companies to use their own remuneration systems, rather than a uniform solution that may bear little relation to business realities.

另外，在任何特定产品所使用的技术涉及多项专利的情况下，那些专利中的一部分可能是从其他公司交叉许可而来。这就可能产生一个复杂的权利重叠的网络。负责任的公司想要设置公平合理的专利补偿计划以表彰发明人对企业整体的贡献。为了让这些计划蓬勃发展和适用于不同的商业模式，条例草案应该允许负责任的公司使用他们自己的补偿体系，而不是采用一个可能与商业现实无多大关系的单一解决方案，就显得重要。

While the proposed regulations seem to contemplate that awards would be paid at or after the time of grant of the patent, many companies provide lump-sum payments at the time of patent filing rather than at the time of grant, which may occur four or more years later. Such systems are a strong motivator for innovation and generating patents because the award is guaranteed upon filing. In addition, the award payments are manageable for the company as it can be standardized and predictable for accounting purposes. SIPO may wish to consider these factors with respect to Articles 18 and 24.

条例草案似乎打算在专利授权时或授权后支付奖励，与此相比，很多公司在专利申请时，而非专利授权时，给予一揽子付款，授权可能发生在四年或更多年之后。因为奖励在申请时有保证，所以这些体系是发明和产生专利的强烈催化剂。此外，公司容易管理这些奖励支付，这是因为从财务会计的角度，它可以标准化、可以预见。关于第十八条和第二十四条，国知局可能需要考虑这些因素。

Finally, AIPLA believes that the proposed regulations, taken as a whole, should be drafted so as not to dis-incentivize multinational companies from bringing R&D investment in China, due to increased burdens and uncertainties concerning eventual costs. For example, maximum flexibility in being able to offer reasonable early lump sum payments to inventors in lieu of later payments would be particularly important.

最后，美国知识产权法协会相信，条例草案从整体上来说不应该妨碍跨国公司将研发投资带进中国(由于增加的负担和最终成本的不确定性原因)。举例来说，应该最大弹性地允许给予发明人合理的早期一揽子付款以替代晚期付款，就特别重要。

AIPLA greatly appreciates the opportunity to present these comments to the State Intellectual Property Office of China, and looks forward to working together with SIPO to help develop an optimal intellectual property system that protects inventors and enterprises, as well as the public. If you have any questions regarding these comments, please let us know and we would be willing to discuss them further with you.

美国知识产权法协会非常感谢有机会向中国国家知识产权局陈述意见，并期待着与国知局一起合作以帮助发展保护发明人、单位和公众的最佳知识产权体系。如果您对这些意见有任何问题，敬请让我们知道，我们愿与您作进一步的讨论。

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey I.D. Lewis". The signature is written in a cursive, flowing style.

Jeffrey I.D. Lewis  
President  
American Intellectual Property Law Association

诚挚的,

(签名)

杰弗里·路易斯  
美国知识产权法协会主席

美国知识产权法协会对国家知识产权局<<职务发明条例草案（征求意见稿）>>的意见 AIPLA Comments on Proposed SIPO Service-Related Invention Regulations (For soliciting public opinion)			
第一章 总则	Chapter 1 General Provisions	AIPLA Comments (English)	美国知识产权法协会的意见(中文)
第一条	Article 1		
<p>为了保护职务发明人和单位的合法权益，充分调动职务发明人与单位的创新积极性，提高创新能力，推动职务发明及其知识产权的运用实施，促进经济社会发展，建设创新型国家和人才强国，制定本条例。</p>	<p>The Regulations are formulated for the purpose of protecting the legal rights and interests of the inventor of a service invention and the entity, fully mobilizing the enthusiasm of the inventor of the service invention and the entity, improving the ability to innovate, promoting the application and implementation of the service invention and its intellectual property right, promoting the economic and social development and constructing an innovative and talents-powerful country.</p>	<p>AIPLA appreciates the purposes of the proposed regulations to fairly compensate and motivate inventors.</p> <p>AIPLA understands that these proposed Regulations are in addition to, and do not supersede Rules 76, 77 and 78 of the 2010 Implementing Regulations of the Patent Law of the People’s Republic of China. Therefore, these Articles do not apply to entities that: (i) conclude agreements with their employee or contract inventors that provide the amount of the reward and remuneration for a service invention, or (ii) provide in their rules and regulations, the amount of the reward and remuneration for a service invention. To the extent that any of the proposed Regulations conflict with Articles</p>	<p>对于条例草案公平补偿发明人和调动发明人积极性之目的，美国知识产权法协会表示赞赏。</p> <p>根据美国知识产权法协会的理解，条例草案是对中国专利法实施细则(2010年)第七十六条、第七十七条和第七十八条的补充，而非替代。所以，这些条款并不适用于以下单位：(i)单位与其员工发明人或合同发明人就职务发明的奖励和报酬数额已有约定，或者(ii)单位的规章制度就职务发明的奖励和报酬数额已有规定。在这个意义上，根据美国知识产权法协会的理解，条例草案中任何与中国专利法第六条、第十条和第十六条，或者中国专利法实施细则(2010年)第七十六条、第七十七条和第七十八条有冲突之处，以专利法第六条、第十条和第十六条和专利法实施细则第七十六条、第七十七条和第七十八条为准。美国知识产权法协会作如下推荐：应该将以上理解在条例中予以明确，以防混淆或者误解。</p>

		6, 10 and 16 of the Chinese Patent Law, or with Rules 76, 77 and 78 of the 2010 Implementing Regulations of the Patent Law of the People's Republic of China, AIPLA understands that Articles 6, 10 and 16 and Rules 76, 77 and 78 govern. AIPLA recommends that this understanding be made explicit in the regulations in order to avoid confusion or misunderstanding.	
<b>第二条</b>	Article 2		
<p>国家鼓励职务发明及其知识产权的创造、运用、保护和管理。</p> <p>各级人民政府及其有关主管部门应当积极采取有效措施，加大职务发明制度的宣传普及力度，加强对单位和发明人执行本条例的指导和帮助，支持和促进职务发明及其知识产权的运用实施。</p>	<p>The State encourages service inventions and the creation, implementation, protection and management of their intellectual property rights.</p> <p>The people's governments at all levels and their related administrative authorities in charge shall actively take effective measures to increase the intensity of promotion and popularization of the service invention system, strengthen the guidance and assistance to entities and inventors in implementing the Regulations, support and promote application</p>	<p>AIPLA supports the proposed regulations for encouraging entities to employ these types of provisions, which are considered international best practices.</p>	<p>对于条例草案鼓励单位使用此类条款(这被认为是国际最佳实践)，美国知识产权法协会表示支持。</p>

	and implementation of service inventions and their intellectual property rights.		
<b>第三条</b>	Article 3		
<p>国务院专利行政部门、农业                  行政部门、林业行政部门                  （以下统称“知识产权主管                  部门”）、科学技术行政部                  门及劳动行政部门按照职责                  分工负责全国职务发明制度                  实施的监督管理。</p> <p>县级以上地方人民政府知识                  产权主管部门、科学技术行                  政部门、劳动行政部门按照                  职责分工负责本行政区域内                  职务发明制度实施的监督管                  理。</p>	<p>The patent administration                  department under the State                  Council, the agriculture                  administration department, the                  forestry administration                  department (hereinafter                  generally referred to as                  “Administrative Departments                  for IP Affaires”), the science                  and technology administration                  department and the labor                  administration department are                  responsible for supervision and                  administration of a country-                  wide service invention system                  in accordance with division of                  their respective responsibilities.</p> <p>Administrative department for                  IP affairs, science and                  technology administration                  departments and labor                  administration departments at                  the local people's government at                  or above the county level are                  responsible for, according to the</p>	[No comment]	[没有意见]



	<p>division of their respective responsibilities, supervision and administration of service-invention systems of the respective administrative regions.</p>		
<p><b>第四条</b></p>	<p>Article 4:</p>		
<p>本条例所称发明，是指在中华人民共和国境内完成的，属于专利权、植物新品种权、集成电路布图设计专有权或者技术秘密保护客体的智力创造成果。</p>	<p>In the Regulations, “invention” refers to the achievement of mental-creation, which is made within the territory of the People’s Republic of China and is eligible subject matter of a patent right, right of new varieties of plants, exclusive right of layout-design, or know-how.</p>	<p>The proposed Regulations apply to an "invention" as defined in Article 2 of the China Patent Law and which is the subject matter of patent rights, including new varieties of plants.</p> <p>AIPLA notes that the inclusion of “know how” and “layout-design” in the definition of “invention” may be impractical, due to the absence of the formal documentation provided by the patent application process and the lack of a standard for determining whether the know how constitutes an invention. Also, it may not be practical or possible to track “know how” and “layout-design” in order to effectively determine the identity of the inventor.</p> <p>Moreover, chip layout designs</p>	<p>条例草案适用于在中国专利法第二条中予以定义的“发明”，“发明”是专利权的客体，包括植物新品种。</p> <p>美国知识产权法协会注意到，将“技术秘密”和“集成电路布图设计”包括进“发明”的定义可能不切实际，这是因为没有专利申请过程中的正式文件和缺少标准来决定技术秘密是否构成发明。另外，很难或不可能追踪“技术秘密”和“集成电路布图设计”以有效地确定发明人的身份。</p> <p>此外，集成电路布图设计可能主要由机器产生，可能并不伴随可受专利保护的发明人具有的发明构思和智力创造成果。</p>

		may be largely machine-generated, which may not involve the types of inventive concepts and mental-creations by an inventor that are protectable by patent.	
<b>第五条</b>	Article 5		
<p>本条例所称发明人，是指对发明的实质性特点作出创造性贡献的人。</p> <p>在完成发明过程中，只负责组织工作、管理工作的人、为物质技术条件的利用提供方便的人或者从事其他辅助工作的人，不是发明人。</p>	<p>“Inventor” as mentioned in the Regulations means any person who makes creative contributions to the substantive features of an invention.</p> <p>Any person who, during the course of accomplishing the invention, is responsible only for organizational work, or who only offers facilities for making use of material and technical means, or who takes part in other auxiliary functions, shall not be considered as an inventor.</p>	<p>AIPLA agrees with the proposed definition of an “inventor” and, in particular, the clarification that certain activities do not make an individual an “inventor.”</p>	<p>美国知识产权法协会同意草案中关于“发明人”的定义，并且特别同意关于某些特定活动不能使个人成为“发明人”的澄清。</p>
<b>第六条</b>	Article 6		
<p>国家鼓励从事研究开发的单位建立职务发明的知识产权管理制度，设立专门机构或者指定专门人员负责知识产权管理工作，或者委托专业</p>	<p>The state encourages an entity which engages in research and development to establish an intellectual property management system for service</p>	<p>AIPLA appreciates the encouragement in this provision that enterprises take active steps to manage IP and inventor remuneration and to notify an</p>	<p>本条鼓励单位采取积极措施以管理知识产权和发明人报酬，以及通知单位员工这些措施，美国知识产权法协会对此表示赞赏。</p>

<p>机构代为管理知识产权事务。</p> <p>从事研究开发的单位应当建立发明报告制度或者与发明人约定，明确发明完成后单位与发明人之间的权利、义务与责任，及时确定发明的权益归属。</p> <p>从事研究开发的单位应当建立职务发明的奖励报酬制度或者与发明人约定奖励和报酬。</p> <p>单位在建立前述制度时，应当充分听取和吸纳相关人员的意见和建议，并将发明报告制度以及奖励报酬制度向研发人员和其他有关人员公开。</p>	<p>invention and set up a specialized department or designate specialized staff responsible for the IP management, or commission a professional agency to manage IP related affairs on behalf of the entity.</p> <p>An entity engaging in research and development shall establish an invention reporting system, or reach agreement with inventors, clearly define the entity and the inventor's rights, obligations and responsibilities upon completion of an invention, and timely determine the ownership of the rights and interests relating to the invention.</p> <p>An entity engaging in research and development shall establish an award and remuneration system for service invention or reach agreement with inventors on the award and remuneration.</p> <p>When an entity establishes the</p>	<p>entity's employees of these steps.</p> <p>AIPLA suggests that SIPO consider further requirements to establish an invention reporting system, and to publicize that it applies only in the absence of an agreement between the inventor and entity and in the absence of policies and procedures established by the entity dealing with the treatment of service inventions.</p>	<p>美国知识产权法协会建议国知局作进一步考虑如下：建立发明报告制度和公开的要求，应仅适用于单位与发明人没有约定和单位没有规章制度处理职务发明的情形。</p>
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	above systems, it shall listen to and consider the opinions and suggestions of relevant persons, and disclose the invention reporting system and the award and remuneration system to research staff and other relevant persons.		
<b>第二章 发明的权利归属</b>	<b>Chapter 2 Ownership of Invention</b>		
<b>第七条</b>	<b>Article 7:</b>		
<p>下列发明属于职务发明：</p> <p>（一）在本职工作中完成的发明；</p> <p>（二）履行单位在本职工作之外分配的任务所完成的发明；</p> <p>（三）退休、调离原单位后或者劳动、人事关系终止后一年内作出的，与其在原单位承担的本职工作或者原单位分配的任务有关的发明，但国家对植物新品种另有规定的除外；</p> <p>（四）主要利用本单位的资金、设备、零部件、原材料或者不对外公开的技术资料</p>	<p>The following inventions belong to service invention:</p> <p>1, the invention made in execution of the duties assigned by the entity to which he belongs;</p> <p>2, the invention made in execution of any task, other than his own duty, which was assigned to him by the entity to which he belongs;</p> <p>3, the invention made within one year from his retirement or resignation, or from termination of his employment or human resources relationship with the entity to which he previously</p>	[No comment]	[没有意见]

<p>等物质技术条件完成的发明，但约定返还资金或者支付使用费，或者仅在完成后利用单位的物质技术条件验证或者测试的除外。</p>	<p>belonged, where the invention relates to his own duty or other tasks assigned to him by the entity to which he previously belonged, except new varieties of plants which are subject to other provisions made by the state;</p> <p>4, the invention made mainly by using the money, equipment, spare parts, raw material or technical materials which are not disclosed to the public of the entity he belongs to; except where there is an agreement on returning funding or fees for the usage to the entity to which he belongs, or using the material technical means of the entity to which he belongs merely for verification or testing upon completion.</p>		
<p><b>第八条</b></p>	<p>Article 8:</p>		
<p>对于职务发明，单位享有申请知识产权、作为技术秘密保护或者公开的权利，发明人享有署名权以及获得奖励和报酬的权利。</p> <p>对于非职务发明，发明人享有署名权和申请知识产权或</p>	<p>For a service invention, the entity is entitled to the right of applying for an intellectual property right, protecting as know-how or publishing, and the inventor is entitled to the right of inventorship and the</p>	<p>AIPLA agrees that the right of getting the award and remuneration should be limited as proposed in these comments.</p>	<p>美国知识产权法协会同意应对获得奖励和报酬的权利作出限制，正如这些意见中所述。</p>

者作为技术秘密保护或者公开的权利。	right of getting the award and remuneration.  For a non-service invention, the inventor is entitled to the right of inventorship, the right of applying for intellectual property right, or protecting as know-how or publishing.		
<b>第九条</b>	Article 9:		
单位与发明人可以就与单位业务有关的发明申请知识产权、作为技术秘密保护或者公开的权利归属进行约定；未约定的，适用本章的规定。	The entity may enter into an agreement with the inventor on the right regarding the invention which is relevant to the business of the entity, such as the right of application for intellectual property right, or protecting as trade secret, or making public. The provisions in this Chapter of the Regulations shall apply in the absence of the above mentioned agreement.	AIPLA agrees that these proposed regulations should be applicable only in the absence of an agreement with the inventor.	美国知识产权法协会同意条例草案应该仅适用于与发明人没有约定的情形。
<b>第三章 发明的报告与申请知识产权</b>	<b>Chapter 3 Report of Invention and Application for Intellectual Property Right</b>		
<b>第十条</b>	Article 10:		
除单位另有规定或者与发明	Where the inventor makes an	AIPLA agrees that these proposed	美国知识产权法协会同意条例草案应该

<p>人另有约定外，发明人完成与单位业务有关的发明的，应当自完成发明之日起两个月内向单位报告该发明。发明由两个以上发明人完成的，由全体发明人共同向单位报告。</p>	<p>invention relevant to the business of the entity to which he belongs, he shall, except where there is an agreement or other provisions made by the entity otherwise, report the invention to the entity within two months from the date the invention is completed.</p> <p>Where the invention is made by two or more inventors, the report shall be made by the inventors jointly.</p>	<p>regulations should be applicable only in the absence of an agreement with the inventor.</p> <p>AIPLA generally agrees that inventors should report their inventions to the entity but believes that two months may be too long a period of time in certain cases, for example in highly-competitive industries. AIPLA recommends that the Regulations assure that this period be set at a commercially reasonable time.</p> <p>To the extent that the regulations include a penalty on the entity for failing to respond to the inventor (Article 12), AIPLA recommends that the inventor's failure to timely report the invention shall be deemed as the inventor's acceptance that the invention is a service invention that is owned by the entity.</p>	<p>仅适用于与发明人没有约定的情形。</p> <p>美国知识产权法协会总体上同意发明人应当向单位报告他们的发明，但是相信在某些情况下(例如，在高竞争的行业中)，两个月的时间可能太长。美国知识产权法协会作如下推荐: 条例应该保证这个时间是商业上的合理时间。</p> <p>条例包括对未给发明人答复的单位进行惩罚(第十二条)，就此而言，美国知识产权法协会作如下推荐: 发明人未及时报告发明的，应该被认为是，发明人承认发明是属于单位的职务发明。</p>
<p><b>第十一条</b></p>	<p>Article 11:</p>		
<p>发明报告应当包括下列内容:</p>	<p>An invention report shall specify the below details:</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed</p>	<p>美国知识产权法协会在第九条的前提下同意本条，第九条指出，条例草案仅适</p>

<p>(一) 发明人的姓名;                  (二) 发明的名称和内容;                  (三) 发明为职务发明还是非职务发明及其理由;                  (四) 发明人认为需要说明的其他事项。</p>	<p>1, the name of the inventor;                  2, the title and content of the invention;                  3, whether the invention is a service invention or a non-service invention and the reason thereof;                  4, the other matters which the inventor considers should be stated.</p>	<p>regulations are applicable only in the absence of an agreement with the inventor.</p>	<p>用于与发明人没有约定的情形。</p>
<p><b>第十二条</b></p>	<p>Article 12:</p>		
<p>发明人主张其报告的发明属于非职务发明的, 单位应当自收到符合第十一条规定的报告之日起两个月内给予书面答复; 单位未在前述期限内答复的, 视为认可该发明为非职务发明。</p>	<p>Where an inventor claims the invention he reports is a non-service invention, the entity shall, within two months from the receipt of the report which is in conformity with Article 11, give a written reply; failure of giving such a reply within the above mentioned time period is deemed as entity's acceptance that the invention is a non-service invention.</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with the inventor.</p>	<p>美国知识产权法协会在第九条的前提下同意本条, 第九条指出, 条例草案仅适用于与发明人没有约定的情形。</p>
<p><b>第十三条</b></p>	<p>Article 13:</p>		
<p>单位在书面答复中主张报告的非职务发明属于职务发明的, 应当说明理由。                  发明人在收到单位的答复之</p>	<p>Where the entity claims the reported non service invention to be a service invention in the written reply, it shall state the grounds.</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with</p>	<p>美国知识产权法协会在第九条的前提下同意本条, 第九条指出, 条例草案仅适用于与发明人没有约定的情形。</p>



<p>日起两个月内提出书面反对意见的，双方可以按照本条例第四十二条的规定解决争议；未提出反对意见的，视为同意该发明为职务发明。</p>	<p>Where the inventor presents a written counterclaim within two months from the receipt of the reply from the entity, the parties involved may resolve the dispute in accordance with Article 42 of the Regulations; where no counterclaim is presented, the inventor is deemed as in agreement that the invention is a service invention.</p>	<p>the inventor.</p>	
<p><b>第十四条</b></p>	<p>Article 14</p>		
<p>单位应当自发明人报告职务发明之日起六个月内决定是否在国内申请知识产权、作为技术秘密保护或者予以公开，并将决定书面通知发明人。</p> <p>单位未在前款规定期限内通知发明人的，发明人可以书面催告单位予以答复；经发明人书面催告后一个月内单位仍未答复的，视为单位已将该发明作为技术秘密保护，发明人有权根据本条例第二十五条的规定获得补偿。单位此后又就该发明在国内申请并获得知识产权</p>	<p>The entity shall, within 6 months from the service invention reporting date, decide whether to apply for an intellectual property right, protect as know-how or publish, and shall inform the inventor of the decision in a written notice.</p> <p>Where the entity fails to inform the inventor within the time limit as provided in the above paragraph, the inventor may send a written inquiry urging the entity to reply; if the entity fails to reply after 1 month of the inventor’s written inquiry,</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with the inventor.</p> <p>As noted above with respect to Article 4, AIPLA recommends that these regulations be limited to patentable inventions and not be applied to “know how,” “trade secrets,” and design-layouts.</p>	<p>美国知识产权法协会在第九条的前提下同意本条，第九条指出，条例草案仅适用于与发明人没有约定的情形。</p> <p>就象上面关于第四条所指出的那样，美国知识产权法协会作如下推荐：条例应该限于可取得专利的发明，不应适用于“技术秘密”、“商业秘密”和“集成电路布图设计”。</p>

<p>的，发明人有权获得本条例规定的奖励和报酬。</p>	<p>the invention shall be deemed to be protected as know-how by the entity, and the inventor has the right to have the compensation as provided in Article 25. If the entity afterwards applies and obtains a domestic intellectual property right of this invention, the inventor is entitled to receive award and remuneration as provided in the Regulations.</p>		
<p><b>第十五条</b></p>	<p>Article 15:</p>		
<p>单位就职务发明申请知识产权的，可以就拟提交的申请文件征求发明人的意见。发明人应当积极配合单位申请知识产权。          申请知识产权过程中，发明人有权向单位了解申请的进展情况。</p>	<p>Where the entity applies for an intellectual property right for the service invention, it may, for the application documents intend to be filed, seek the opinion of the inventor. The inventor shall actively cooperate with the entity for the application for intellectual property right.          During the application process for an intellectual property right, the inventor is entitled to request information on the progress from the entity.</p>	<p>AIPLA agrees with these provisions requiring the active cooperation of the inventor, and suggests that they be amended to specify the employee's obligation to cooperate continues even after the employee leaves the entity's employment</p>	<p>美国知识产权法协会同意这些要求发明人积极配合的条款，并且建议修改这些条款从而明确说明，即使发明人离开单位后，发明人合作的义务应该继续。</p>
<p><b>第十六条</b></p>	<p>Article 16:</p>		

<p>单位拟停止职务发明的知识产权申请程序或者放弃职务发明的知识产权的，应当提前一个月通知发明人。发明人可以通过与单位协商，有偿或者无偿获得该职务发明的知识产权申请或者知识产权。单位应当积极协助办理权利转移手续。协商不成的，可以按照本条例第四十二条的规定解决争议。</p> <p>发明人依照前款规定无偿获得有关权利后，单位享有免费实施该职务发明或者其知识产权的权利。</p>	<p>Where the entity intends to stop the process of applying for intellectual property right or abandon the intellectual property right of a service invention, it shall inform the inventor 1 month in advance. The inventor may negotiate with the entity to get the application right to the intellectual property right or the intellectual property right for a fee or free of charge. The entity shall assist the inventor actively to complete the assignment formalities. If the parties fail to reach an agreement, they may solve the disputes in accordance with the Article 42 of the Regulations.</p> <p>Where the inventor obtains the relevant right in accordance with the above paragraph free of charge, the entity is entitled to implement the service invention or its intellectual property right free of charge.</p>	<p>AIPLA recommends that this provision be limited to State Owned-Enterprises. AIPLA recommends that these decisions be left to the discretion of commercial entities, as it is not generally feasible for commercial entities to assign rights back to their employees particularly given the potential overlap in intellectual property rights. It must also be considered that the inventor's demands may increase the entity's costs, making commercial development of the product uneconomical and thereby harming both the entity and other employees of the entity. For these reasons, AIPLA recommends that the level of compensation be consistent with international best practices.</p>	<p>美国知识产权法协会作如下推荐：本条应该限于国有企业。美国知识产权法协会作如下推荐：这些决定应该留给商业单位酌情处理，这是因为一般来说让商业单位转移权利给发明人难于实施，特别是在知识产权存在潜在权利重叠的情况下。也必须考虑到发明人的要求可能会增加单位的成本，使得产品的商业开发成为不经济的，从而损害单位和单位其他员工。基于这些原因，美国知识产权法协会作如下推荐：补偿的标准应该与国际最佳实践一致。</p>
<p><b>第十七条</b></p>	<p>Article 17:</p>		
<p>发明人对其完成的职务发明</p>	<p>The inventor has a</p>	<p>[No comment]</p>	<p>[没有意见]</p>

<p>负有保密义务，未经单位同意不得公开该发明，也不得私自申请知识产权或者向第三人转让。</p> <p>单位对向其报告的非职务发明负有保密义务，未经发明人同意不得公开该发明，也不得以自己的名义申请知识产权或者向第三人转让。</p>	<p>confidentiality obligation with respect to any service invention he made, and shall not disclose it to public without the authorization of the entity, or apply for an intellectual property right or assign to any third party on his own.</p> <p>The entity has a confidentiality obligation with respect to a non-service invention disclosed thereto, and shall not disclose it to public without the authorization of the inventor, or apply for an intellectual property right or assign to any third party on its own.</p>		
<p><b>第四章 职务发明的奖励和报酬</b></p>	<p><b>Chapter 4 Award and Remuneration of Service Invention</b></p>		
<p><b>第十八条</b></p>	<p>Article 18:</p>		
<p>单位就职务发明获得知识产权的，应当及时给予发明人奖励。</p> <p>单位转让、许可他人实施或者自行实施获得知识产权的职务发明的，应当根据该发</p>	<p>Where the entity is granted the intellectual property right of a service invention, it shall grant an award to the inventor in a timely manner.</p>	<p>AIPLA supports the proposed regulations for requiring that awards be made in a timely manner.</p> <p>AIPLA further recommends that</p>	<p>美国知识产权法协会支持条例草案要求及时给予奖励。</p> <p>另外，美国知识产权法协会作如下推荐：时间应该在商业上合理，而不应该</p>

<p>明取得的经济效益、发明人的贡献程度等及时给予发明人合理的报酬。</p>	<p>Where the entity assigns, license others to exploit, or exploits on its own the service invention for which it is granted the intellectual property right, it shall pay the inventor a reasonable remuneration in time based on the economic benefits yielded and the level of contribution made by the inventor.</p>	<p>the timing be in a commercially reasonable manner and not be limited to rigid time constraints.</p> <p>With respect to reasonable remuneration, AIPLA believes that, if there is an agreement between the inventor and the employer, the agreement should control.</p>	<p>有严格的限制。</p> <p>关于合理的报酬，美国知识产权法协会相信，如果发明人和单位有约定，应该以约定为准。</p>
<p><b>第十九条</b></p>	<p>Article 19:</p>		
<p>单位可以在其依法制定的规章制度中规定或者与发明人约定给予奖励、报酬的程序、方式和数额。该规章制度或者约定应当告知发明人享有的权利、请求救济的途径，并符合本条例第二十条和第二十三条的规定。</p> <p>任何取消或者限制发明人根据本条例享有的权利的约定和规定无效。</p>	<p>The entity may enter into an agreement with the inventor, or provide in its policy formulated in accordance with the laws, on the procedure, manner and amount of the award and remuneration. The agreement or policy shall inform the inventor the right he is entitled to, the way to seek relief, and be in accordance with Articles 20 and 23 of the Regulations.</p> <p>Any agreement or policy eliminating or limiting the right to which the inventor is entitled in accordance with the</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with the inventor.</p> <p>AIPLA recommends that commercial enterprises should be encouraged and permitted to employ international best practices in their employee relations, including relations with inventors, and that the regulations clearly uphold agreements and policies mutually agreed to between entities and inventors.</p>	<p>美国知识产权法协会在第九条的前提下同意本条，第九条指出，条例草案仅适用于与发明人没有约定的情形。</p> <p>美国知识产权法协会作如下推荐：应该鼓励和允许商业单位在他们的员工关系（包括与发明人的关系）中采用国际最佳实践，并且条例应该清楚地支持单位和发明人之间相互同意的约定和规章制度。</p> <p>关于第二段和限制发明人权利，美国知识产权法协会相信，发明人受补偿的方式不应该受到限制。选择一种特定的补偿方式，而不是另外一种，可能会被解释成“限制”发明人权利。所以，我们</p>

	Regulations is invalid.	Concerning the second paragraph and the limitation of the right of the inventor, AIPLA believes that the manner in which the inventor is remunerated should not be restricted. It may be that the choice of a particular manner of remuneration over another could be construed as “limiting” the right of the inventor. Thus, we believe that the words “or limiting” should be deleted, or at least clarified.	相信应该删掉或至少澄清“或者限制”。
<b>第二十条</b>	Article 20:		
<p>单位在确定给予职务发明人的奖励和报酬的程序、方式和数额时，应当听取职务发明人的意见。</p> <p>单位自行实施、转让或者许可他人实施职务发明获得经济效益的，应当将所获得经济效益的有关情况通知给发明人。</p>	<p>When the entity decides the procedure, manner and amount of the award and remuneration given to the inventor, it shall listen to the opinions of inventors.</p> <p>The entity shall inform the inventor of the information on the economic benefit earned by the entity by exploiting, assigning, or licensing of the service invention.</p>	<p>AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with the inventor.</p> <p>AIPLA recommends that the requirement that: “The entity shall inform the inventor of the information on the economic benefit earned by the entity by</p>	<p>美国知识产权法协会在第九条的前提下同意本条，第九条指出，条例草案仅适用于与发明人没有约定的情形。</p> <p>美国知识产权法协会作如下推荐：应该删掉“单位自行实施、转让或者许可他人实施职务发明获得经济效益的，应当将所获得经济效益的有关情况通知给发明人”的要求。发明人和单位讨论这些问题的时间点，在发明的生命周期中只是开始。可得到的信息有限和充满猜测。另外，任何数额的改变将可能产生</p>

		<p>exploiting, assigning, licensing of service invention” be removed. The point in time at which the inventor and entity are discussing these issues is a preliminary in the life-cycle of the invention. The available information is limited and speculative. Moreover, any variance in the value will likely generate additional disputes.</p> <p>AIPLA also recommends that the regulation clarify that listening to the opinions of the inventors requires an open exchange of information and does not limit or constrain the entity’s discretion in reaching an agreement with the inventor.</p>	<p>额外的争议。</p> <p>此外，美国知识产权法协会作如下推荐：条例应该澄清“听取职务发明人的意见”需要公开的信息交换，而且不应该限制或制约单位在和发明人之间达成约定的自由裁量权。</p>
<p><b>第二十一条</b></p>	<p>Article 21:</p>		
<p>单位未与发明人约定也未在其依法制定的规章制度中规定职务发明的奖励的，对获得发明专利权或者植物新品种权的职务发明，给予全体发明人的奖金总额最低不少于该单位在岗职工月平均工资的两倍；对获得其他知识产权的职务发明，给予全体发明人的奖金总额最低不少</p>	<p>Where the entity has not entered into an agreement with the inventor on the award for the service invention, and has not provided the award to the service invention in its policy formulated, it shall, for the service invention granted a patent right or the right of new varieties of plants, award all of</p>	<p>AIPLA recommends that compensation be at levels that are reasonable in view of the overall compensation package for the inventor, and fair relative to other inventors in the same entity or entities in the same industry.</p>	<p>美国知识产权法协会作如下推荐：补偿应该考虑到发明人的总体薪酬而放在合理的水准上，并且相对于同一单位的其他发明人或者同一行业的其他单位的发明人而言应该公平。</p>

<p>于该单位在岗职工的月平均工资。</p>	<p>the inventors a sum of money as prize which shall not be less than 200% of the monthly average wages of the workers in the entity; and for the service invention granted other intellectual property rights, award to all of the inventors a sum of money as prize which shall not be less than the monthly average wages of the workers in the entity.</p>		
<p><b>第二十二条</b></p>	<p>Article 22</p>		
<p>单位未与发明人约定也未在其依法制定的规章制度中规定职务发明的报酬的，单位实施知识产权后，应当向涉及的所有知识产权的全体发明人以下列方式之一支付报酬：</p> <p>（一）在知识产权有效期限内，每年从实施发明专利权或者植物新品种权的营业利润中提取不低于5%；实施其他知识产权的，从其营业利润中提取不低于3%；</p> <p>（二）在知识产权有效期限内，每年从实施发明专利权或者植物新品种权的销售收</p>	<p>Where the entity has not entered into an agreement with the inventor on the remuneration and has not provided the remuneration in its rules and Regulations, it shall, upon the exploitation of the intellectual property rights, provide the remuneration to all related inventors by one of the following ways:</p> <p>1, within the valid term of the intellectual property, extract a sum of money which shall be no less than 5% from the operating profit of exploiting the patent right or the right of</p>	<p>AIPLA recommends that compensation be at levels that are reasonable in view of the overall compensation package for the inventor, and fair relative to other inventors in the same entity or entities in the same industry.</p>	<p>美国知识产权法协会作如下推荐：补偿应该考虑到发明人的总体薪酬而放在合理的水准上，并且相对于同一单位的其他发明人或者同一行业其他单位的发明人而言应该公平。</p>



<p>入中提取不低于0.5%；实施其他知识产权的，从其销售收入中提取不低于0.3%；</p> <p>（三）在知识产权有效期内，参照前两项计算的数额，根据发明人个人工资的合理倍数确定每年应提取的报酬数额；</p> <p>（四）参照前两项计算的数额的合理倍数，确定一次性给予发明人报酬的数额。</p> <p>上述报酬累计不超过实施该知识产权的累计营业利润的50%。</p> <p>单位未与发明人约定也未在其依法制定的规章制度中规定职务发明的报酬的，单位转让或者许可他人实施其知识产权后，应当从转让或者许可所得的净收入中提取不低于20%，作为报酬给予发明人。</p>	<p>new varieties of plants, or no less than 3% from the operating profit of exploiting the other intellectual property right;</p> <p>2, within the valid term of the intellectual property, extract a sum of money which shall be no less than 0.5% from the revenue of exploiting the patent right or the right of new varieties of plants, or no less than 0.3% from the revenue of exploiting the other intellectual property right;</p> <p>3, within the valid term of the intellectual property, with reference to the amount of the above two items, determine the amount of annual remuneration in accordance with the reasonable multiple of the personal salary of the inventor;</p> <p>4, with reference to the reasonable multiple of the amount of the above items 1 and 2, determine the lump sum amount of remuneration to be paid to the inventor.</p> <p>The accumulated amount of the</p>		
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	<p>remuneration above will not be more than 50% of the accumulated operating profit of exploiting the intellectual property right.</p> <p>Where the entity has not entered into an agreement with the inventor on the remuneration and has not provided the remuneration in its policy, it shall, upon the assignment or license to a third party of the intellectual property right, extract a sum of money which shall be no less than 20% from the net income of assignment or license as a remuneration to the inventor.</p>		
<p>第二十三条</p>	<p>Article 23:</p>		
<p>单位在确定报酬数额时，应当考虑每项职务发明对整个产品或者工艺经济效益的贡献，以及每位职务发明人对每项职务发明的贡献等因素。</p>	<p>When deciding the amount of the remuneration, factors shall be considered such as the economic contribution to the entire product or process made by each service invention, and the contribution into each service invention made by every inventor, etc.</p>	<p>AIPLA appreciates the effort to identify the factors upon which the level of compensation will be based. AIPLA suggests that additional factors may include salary, benefits and bonuses paid the inventor for their services.</p>	<p>对于在指明确定补偿水准所需要考虑的因素方面所作的努力，美国知识产权法协会表示赞赏。美国知识产权法协会建议，其它的因素可包括因为发明人的服务而付给他们的工资、福利和奖金。</p>

<p><b>第二十四条</b></p>	<p>Article 24:</p>		
<p>单位未与发明人约定也未在其依法制定的规章制度中规定奖励、报酬的支付期限的，单位应当在获得知识产权之日起三个月内发放奖金；转让或者许可他人实施职务发明的知识产权的，应当在许可费、转让费到账后三个月内支付报酬；单位自行实施职务发明且以现金形式逐年支付报酬的，应当在每个会计年度结束后三个月内支付报酬。以股权形式支付报酬的，单位应当按法律法规和单位规章制度的规定予以分红。</p>	<p>Where the entity has not entered into an agreement with the inventor on the time limit for paying award and remuneration, and has not provided the time limit for paying award and remuneration in its policy formulated in accordance with the laws, it shall pay the money of prize within three months from the date of granting of the intellectual property right; where the intellectual property of a service invention is assigned or licensed to others, the entity shall pay the remuneration within three months from the date on which the assignment or license fee is received; where the entity exploits the service invention on its own and pays the remuneration yearly in cash, it shall pay the remuneration within three months from the expiration of each accounting year. Where the remuneration is paid in stock form, the entity shall pay dividend in accordance with laws and</p>	<p>[No comment]</p>	<p>[没有意见]</p>

	regulations and entity policy.		
<b>第二十五条</b>	<b>Article 25:</b>		
单位决定对职务发明作为技术秘密予以保护的，应当参照本章的规定向发明人支付合理的补偿。	Where the entity decides to protect the service invention as know-how, it shall pay a reasonable compensation to the inventor in accordance with the provisions of this Chapter.	Please see our comments in respect of Article 4.	请参看我们关于第四条的意见。
<b>第二十六条</b>	<b>Article 26:</b>		
发明人与单位的劳动、人事关系终止的，对在终止前完成的与单位业务有关的发明，发明人应当继续履行本条例第十条、第十五条、第十七条规定的义务，并继续享有署名权以及获得奖励和报酬的权利。 发明人死亡的，其继承人或者受遗赠人有权继承获得奖励和报酬的权利。	Where the employment or human resources relation between the inventor and the entity is terminated, the inventor shall fulfill the obligations for an invention completed before the termination and relevant to the business of the entity as provided in Article 10, 15, and 17 in the Regulations, while the inventor shall remain entitled to the inventorship and to receive award and remuneration.  Where the inventor is deceased, his heir or devisee is entitled to enjoy the right of receiving award and remuneration.	AIPLA agrees with this provision as a mechanism to ensure that the entity receives the inventor's cooperation, even after termination. It may also serve to prevent the inventor from improperly transferring the invention to a successor employer.	美国知识产权法协会同意将本条作为一个确保单位受到发明人合作(即使在关系终止后)的机制。它也可能有助于防止发明人把发明不当地转让给新单位。

<b>第二十七条</b>	Article 27:		
除单位与发明人另有约定或者在其依法制定的规章制度中另有规定外，职务发明获得的知识产权被依法宣告无效或者撤销的，对宣告无效或者撤销决定生效前发明人已经获得的奖励和报酬不具有追溯力。	Except where there is an agreement between the entity and the inventor, or provisions in the entity policy which is formulated in accordance with the law, where the intellectual property right granted on a service invention is announced to be invalidated or revoked, it will not be retrospective to the award and remuneration which the inventor received.	AIPLA agrees with the provisions that clarify that the effect of an invalidity or revocation decision is not retroactive relative to inventor remuneration. These provisions underscore that the compensation must be at a level that is reasonable in view of the overall compensation package for the inventor, and fair relative to other inventors in the same entity.	美国知识产权法协会同意条款所作的澄清，即无效或者撤销决定的效应相对于发明人报酬而言不具有追溯力。这些条款强调，补偿必须考虑到发明人的总体薪酬而放在合理的水准上，并且相对于同一单位的其他发明人而言应该公平。
<b>第二十八条</b>	Article 28:		
企业给予职务发明人的奖金和报酬列入成本，其他单位给予职务发明人的奖金和报酬按照有关规定列支。	The award and remuneration given to the inventor by enterprises shall be listed into the cost of the enterprise. The award and remuneration given by other entities shall be categorized in the accounting book as provided in relevant rules.	[No comment]	[没有意见]
<b>第五章 促进职务发明的知识产权的运用实施</b>	<b>Chapter 5 Exploitation of Intellectual Property Right in Service Invention</b>		
<b>第二十九条</b>	Article 29:		

<p>单位拟转让职务发明的知识产权的，发明人享有在同等条件下优先受让的权利。</p>	<p>Where an entity intends to assign intellectual property rights of a service invention, the inventor is entitled to the right of first refusal under the same conditions.</p>	<p>AIPLA recommends that this provision be limited to State Owned Enterprises.</p>	<p>美国知识产权法协会作如下推荐: 本条应该限于国有企业。</p>
<p><b>第三十条</b></p>	<p>Article 30:</p>		
<p>国有企事业单位自职务发明获得知识产权之日起三年内，无正当理由既未自行实施或者作好实施的必要准备，也未转让和许可他人实施的，发明人在不变更职务发明权属的前提下，可以根据与单位的协议自行实施或者许可他人实施该知识产权，并按照协议享有相应的权益。</p>	<p>Where state-owned enterprises and institutions, within 3 years from obtaining the intellectual property right on a service invention, neither exploit or have taken necessary preparations for implementing without any justifiable reasons, nor assign or license others to exploit, the inventor, under the situation that the ownership of the service invention is not changed, may implement or license others to exploit the intellectual property right and enjoy the relevant benefit in accordance with the agreement with the entity.</p>	<p>[No comment]</p>	<p>[没有意见]</p>
<p><b>第三十一条</b></p>	<p>Article 31:</p>		
<p>国家对单位转化实施职务发明及其知识产权取得的收益以及发明人获得的奖励、报</p>	<p>The State adopts a preferential tax policy, regarding the income obtaining from transformation</p>	<p>[No comment]</p>	<p>[没有意见]</p>

<p>酬实行税收优惠政策，具体办法由国务院财政部门会同国务院税务部门、国务院科学技术行政部门、国务院知识产权主管部门制定。</p>	<p>and carrying out of a service invention and its intellectual property belonging to the entity, and the award and remuneration awarded to the inventor; concrete measures will be established by the financial department of the state council jointly with the tax authorities of the state council, the administrative department for science and technology of the state council, and the competent departments of intellectual property of the state council.</p>		
<p><b>第三十二条</b></p>	<p>Article 32:</p>		
<p>国家有关主管部门在制定以单位的技术或者知识产权作为考核或者评定标准的政策和措施时，应当将单位落实职务发明制度的情况作为考核或者评定因素。          国有企事业单位落实职务发明制度的情况应当纳入其负责人业绩考核范围。</p>	<p>Where the relevant competent departments of the state establish the policies and measures following the standard of examination and evaluation of the technique or intellectual property of the entity, it shall consider the implementation of a service invention made by the entity as a factor for examination or evaluation.</p> <p>The situation of establishing and managing the service</p>	<p>[No comment]</p>	<p>[没有意见]</p>

	invention system of the state-owned enterprises and institutions shall be brought into the performance assessment considerations of its leaders.		
<b>第三十三条</b>	<b>Article 33:</b>		
国家设立基金，促进利用财政性资金设立的科学技术基金项目和科学技术计划项目形成的职务发明的运用实施。	The state will establish a fund to promote the implementation of a service invention made from the projects by using the science and under technology funding and science and technology plans which are established by the fiscal fund.	[No comment]	[没有意见]
<b>第六章 监督检查与法律责任</b>	<b>Chapter 6 Supervision, Inspection and Legal Responsibility</b>		
<b>第三十四条</b>	<b>Article 34:</b>		
<p>监督管理部门依法对单位落实职务发明制度的情况进行监督检查。</p> <p>监督管理部门进行监督检查时，有权查阅与职务发明有关的劳动合同、规章制度等材料，有权对相关当事人进行询问。单位和发明人都应当如实提供有关材料和说明</p>	<p>The supervisory management supervises and inspects the implementation of the service invention system made by the entity in accordance with the laws.</p> <p>During the supervision and inspection, the supervisory</p>	[No comment]	[没有意见]



<p>有关情况。</p>	<p>management has the authority to examine the work contracts, entity policy, etc., relevant to the service invention, and inquire of the parties involved. Both the entity and the inventor shall provide the relevant materials and situation faithfully.</p>		
<p><b>第三十五条</b></p>	<p>Article 35:</p>		
<p>监督管理部门进行监督检查时，应当出示证件，依法行使职权，并应当对监督检查过程中知悉的商业秘密予以保密。</p> <p>经监督检查，发现单位未依法落实职务发明制度的，监督管理部门可以责令限期改正，并给予警告。</p>	<p>While the supervisory management is doing its supervision and inspection, it shall produce documents of certification, conduct its duties in accordance with the laws, and be confidential to the business secrets which it was informed of during the process of supervision and inspection. Where it is found in supervision and inspection that the entity does not follow the service invention system in accordance with the laws, the supervisory management may order the entity to make corrections within a time limit; if the entity fails to do so, it shall be warned.</p>	<p>AIPLA recommends that the authority of the supervisory management and the nature of the “warning” be clarified.</p>	<p>美国知识产权法协会作如下推荐：应该澄清监督管理部门的权力和“警告”的本质。</p>
<p><b>第三十六条</b></p>	<p>Article 36:</p>		

<p>发明人违反本条例的规定，对职务发明申请知识产权的，该申请产生的权利由单位享有，发明人获得的收益应当全部返还单位。</p> <p>单位违反本条例的规定，对非职务发明申请知识产权的，该申请产生的权利由发明人享有，单位获得的收益应当全部返还发明人。</p>	<p>Where the inventor violates the provisions of the Regulations and applies for intellectual property for a service invention, the entity will be entitled to the right granted under the application, and all of the benefits obtained by the inventor shall be returned to the entity. Where the entity violates the provisions of the Regulations and applies for an intellectual property right for a non-service invention, the inventor will be entitled to the right granted under the application, and all of the benefits obtained by the entity shall be returned to the inventor.</p>	<p>AIPLA recommends that these provisions be deleted. The prospect that the rights will be forfeited or assigned to another entity based on facts that are not available to the public undermines the predictability and stable ownership of intellectual property rights.</p> <p>Instead, AIPLA recommends that the courts be granted authority to enforce the provisions of the regulations.</p>	<p>美国知识产权法协会作如下推荐：应该删掉这些条款。基于不为公众所知的事实，权利将会丧失或者转让给另一个单位，这样的展望会削弱知识产权的可预见性和权利归属的稳定性。</p> <p>作为替代，美国知识产权法协会作如下推荐：应该赋予法院执行条例中这些条款的权力。</p>
<p><b>第三十七条</b></p>	<p>Article 37:</p>		
<p>下列属于侵犯发明人署名权的行为：</p> <p>（一）未将发明人作为发明人署名的；</p> <p>（二）将不是发明人的人署名为发明人的。</p>	<p>Below are deemed as infringement of the right of inventorship:</p> <p>1, failure to name the inventor as inventor</p> <p>2, naming a non-inventor as an inventor.</p>	<p>[No comment]</p>	<p>[没有意见]</p>
<p><b>第三十八条</b></p>	<p>Article 38:</p>		
<p>发明人认为其署名权被侵犯</p>	<p>Where the inventor claims that</p>	<p>AIPLA believes that the multiple</p>	<p>美国知识产权法协会相信，本条中的</p>

<p>的, 可以请求县级人民政府知识产权主管部门处理, 或者向人民法院起诉。</p> <p>县级人民政府知识产权主管部门或者人民法院认定侵犯署名权的行为成立的, 责令侵权人停止侵害、赔礼道歉、赔偿损失。知识产权授权机关或者登记机关应当根据生效决定或者判决对相关文件中记载的发明人予以纠正并公告。</p> <p>侵犯两人以上署名权或者两次以上侵犯署名权的, 由县级人民政府知识产权主管部门对侵权人处五万元以下的罚款, 并对侵权情况予以通报。</p>	<p>his authorship has been infringed, he may request the administrative department of intellectual property right of the people's government at the county level to handle it, or institute legal proceedings before the People's Court.</p> <p>Where the administrative department of intellectual property right of the people's government at the county level or People's Court finds infringement of inventorship, the infringer will be ordered to stop the infringement, apologize and compensate for loss. The authorities for granting or registering an intellectual property right shall correct the inventorship recorded in the relevant documents and make an announcement based on the effective ruling.</p> <p>Where infringement of inventorship of two or more inventors or infringement of inventorship for two or more times is found, a penalty shall</p>	<p>provisions and remedies of this section would introduce unnecessary uncertainty into the process and recommends instead that the People's Court be given authority to enforce the provisions of these regulations.</p> <p>AIPLA recommends further that injunctive relief requiring compliance with the inventor's or entity's obligations would be sufficient along with any compensatory damages that are proved, and that the penalty proposed in the regulation is excessive.</p>	<p>多项规定和救济会将不必要的不确定性引入程序, 因而推荐以下替代: 应该赋予人民法院执行条例中这些条款的权力。</p> <p>美国知识产权法协会作进一步推荐如下: 要求遵守发明人或单位义务的禁令救济, 和任何已证明的补偿性救济, 已经足够, 因而条例中建议的罚款是过度的。</p>
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	be imposed on the infringer of 50,000 RMB and the infringement shall be announced by the administrative department of intellectual property right of the people's government at the county level.		
<b>第三十九条</b>	<b>Article 39:</b>		
任何组织或者个人对侵犯发明人署名权的行为都有权向县级以上地方人民政府知识产权主管部门举报、投诉，接受举报、投诉的部门应当及时调查、处理。	Any organization or individual is entitled to report or complain over the right of authorship of the inventor to the administrative department of intellectual property right of the people's government at or above the county level, and the department receiving the report or complaint shall investigate and handle it in a timely way.	[No comment]	[没有意见]
<b>第四十条</b>	<b>Article 40:</b>		
单位的规章制度或者与发明人的约定不符合本条例第十九条第一款的规定或者依照本条例第十九条第二款的规定被确认无效，造成发明人损失的，单位应当承担赔偿责任。	Where the entity policy or the agreement entered into with inventors is not in accordance with Article 19.1 of the Regulations, or is considered to be invalid according to Article 19.2 of the Regulations, and a loss to the inventor is caused,	AIPLA observes that this provision may foster an adversarial relationship between the inventor and entity. AIPLA recommends that damages be limited to compensable damages that are proved by competent	美国知识产权法协会观察到，本条可能会培育发明人与单位之间的敌对关系。美国知识产权法协会作如下推荐：赔偿应该限于由适当证据证明的可补偿的赔偿。

	the entity shall be liable for damages.	evidence.	
<b>第四十一条</b>	Article 41:		
单位未按照规章制度的规定或者合同约定及时足额地给予发明人奖励和报酬的，由县级人民政府知识产权主管部门责令改正；造成发明人损失的，应当承担赔偿责任。	Where the entity fails to provide award and remuneration in a timely way and in full amount to the inventor in accordance with the entity policy or the agreement, it shall be ordered to make a correction by the administrative department of intellectual property right of the people's government at the county level; where a loss to the inventor is caused, the entity shall be liable for damages.	AIPLA agrees with this provision, subject to Article 9 which states that the proposed regulations are applicable only in the absence of an agreement with the inventor. AIPLA recommends that damages be limited to compensable damages that are proved by competent evidence.	美国知识产权法协会在第九条的前提下同意本条，第九条指出，条例草案仅适用于与发明人没有约定的情形。美国知识产权法协会作如下推荐：赔偿应该限于由适当证据证明的可补偿的赔偿。
<b>第四十二条</b>	Article 42:		
因发明的权利归属或者奖励和报酬发生争议的，由当事人协商解决。协商不成的，当事人可以请求县级人民政府知识产权主管部门调解，也可以向人民法院起诉或者依法申请仲裁。	Where a dispute is caused by the ownership of the right of the invention or the award and remuneration, it will be consulted and solved by concerned parties. If concerned parties fail to do so, they may request mediation from the administrative department of the intellectual property right of the people's government at the county level, or may institute legal proceedings before the	[No comment]	[没有意见]

	People’s Court, or request arbitration in accordance with the laws.		
<b>第四十三条</b>	<b>Article 43:</b>		
<p>对发明提出知识产权申请后，当事人就该发明的权利归属产生争议的，授予该知识产权的部门可以根据当事人的请求中止知识产权的有关程序。</p> <p>权利归属纠纷解决后，当事人可以持生效的法律文书请求恢复知识产权的有关程序。</p>	<p>Upon the application for an intellectual property right for the invention, where the involved parties have a dispute over the ownership of the invention, the department granting the intellectual property right may, based on the request of the concerned parties, discontinue the relevant process of the intellectual property right.</p> <p>Upon settlement of the dispute over ownership, the concerned parties may, with the effective legal instruments, request for restoration of the relevant process of the intellectual property right.</p>	<p>AIPLA recommends that administrative proceedings on the application not be delayed pending resolution of the dispute, but rather to allow that the dispute may be resolved in accordance with the provisions of these regulations contemporaneously with the determination of the intellectual property rights. The proposed regulations may permit the inventor to delay the application process and therefore exert excessive leverage. Particularly in view of the speed of the Chinese courts, the dispute should be resolved prior to proceedings on the application.</p>	<p>美国知识产权法协会作如下推荐：不应该延迟申请的行政程序以等待纠纷的解决，相反地，应该让根据条例的条款解决纠纷和决定知识产权同时进行。条例草案可能允许发明人延迟申请过程，从而施加过度的影响。特别是考虑到中国法院的速度，纠纷应该在申请程序前已解决。</p>
<b>第七章 附则</b>	<b>Chapter 7 Supplementary Articles</b>		
<b>第四十四条</b>	<b>Article 44</b>		

<p>单位与发明人就发明的权利归属或者奖励和报酬进行约定的，可以将有关合同或者规章制度向所在地的知识产权主管部门备案。</p>	<p>Where an entity makes an agreement with the inventor regarding the ownership of the invention or the award and remuneration, the entity may file the related contract and company policy for records with the local administrative department of the intellectual property right.</p>	<p>[No comment]</p>	<p>[没有意见]</p>
<p><b>第四十五条</b></p>	<p>Article 45</p>		
<p>计算机软件职务作品参照适用本条例的规定。</p>	<p>The Regulations are applicable for the service works of computer software.</p>	<p>AIPLA recommends that the regulation apply only to patentable inventions, as noted above.</p>	<p>美国知识产权法协会作如下推荐：条例应该仅适用于可取得专利的发明，如上所述。</p>
<p><b>第四十六条</b></p>	<p>Article 46</p>		
<p>本条例自 年 月 日起施行。</p>	<p>The Regulations are effective from the date of _____.</p>		