

AIPLA

American Intellectual Property Law Association

2019年2月3日

全国人大常委会法制工作委员会
北京市西城区前门西大街1号
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回复：专利法修正案草案征求意见

尊敬的先生或女士：

美国知识产权法律协会（AIPLA）感谢有机会对《中华人民共和国专利法（修正案草案）》（于2019年1月4日在中国全国人民代表大会网上公布）提出意见。附表中列出了我们的详细意见，其中一些意见也总结如下。

AIPLA 是一个全国性律师协会，约有 13,500 名成员，这些成员为从事私人或企业业务、从事政府服务和来自学术界的人士。AIPLA 成员代表了直接或间接涉及专利、商标、版权、商业秘密和反不正当竞争法的实践以及涉及影响知识产权的其他法律领域的广泛多样的个人、企业和机构。我们的成员既代表知识产权的所有者，也代表知识产权的使用者。我们的使命包括帮助建立和维持公平有效的法律和政策，在鼓励和奖励发明的同时平衡公众在健康竞争、合理成本和基本公平方面的利益。

AIPLA 恭敬地指出，最近提议的中国专利法的第四次修正案从多个方面努力使中国专利制度更紧密地与国际规范接轨。AIPLA 热烈欢迎这些努力，并且欢迎将 AIPLA 的意见（于 2016 年 1 月 1 日提交）中的许多建议纳入到 2015 年 12 月的第四次修正案草案中。然而，AIPLA 担心 2015 年 12 月的版本中的一些改动被删除或删减了。

更具体地，AIPLA 注意到，在目前的修正案提议的第二条中，对“外观设计”的定义中删除了局部设计。AIPLA 认为，产品的局部设计和产品的部分，假如满足审美效果和实际使用要求的话，就应当和产品整体一样，作为外观设计而被独立保护。

第五条禁止对违反法律和违背道德标准的发明授予专利权。AIPLA 恭敬地建议将申请专利时的诚实信用要求从新的第二十条移至第五条，对于这一重要要求来说，第五条是更为显著的位置。

第六条阐述了与职务发明的所有权和报酬相关的规定。AIPLA 赞同为员工提供透明度和更多激励以促进发明创造的规定。AIPLA 注意到，对员工的发明创造的货币奖励和非货币奖励只与专利提交和实践挂钩。AIPLA 担心，在专利可能不是最佳的保护机制的情况下，这一规定可能会助长不必要的或不适当的专利提交。

新增的第二十条阐述了在申请专利和实施专利权时的诚实信用原则，以及禁止滥用专利权的规定。AIPLA 建议将关于诚实信用要求的第一部分移至第五条，并且删除关于滥用专利权的第二部分。AIPLA 所担心的是在这一新的条款的第二部分中所使用的宽泛而模糊的语言，以及其可能造成的与其他相关现行立法，如反垄断法第五十五条，之间的潜在冲突。另一涉及“公共利益”的条款非常宽泛，并且其范围是模糊而不确定的。从广义上解释，其将包含各种各样的公共利益，而这些公共利益会与中国的主要贸易伙伴所采用的国际知识产权保护准则不一致。

第二十六条在不具备专利资格的主题的列举中增加了核转化方法。AIPLA 建议针对在医疗、能源生产和其他商业应用领域中用于诱导或控制核转化过程的创新装置或设备来进一步说明“核转化方法”的定义和范围。AIPLA 还注意到，在前次草案中的条款“(3)诊断或治疗疾病的方法，涉及养殖动物的方法除外”中提出的修改已被删除。AIPLA 对这一改动表示欢迎，认为这是可以使中国的法律更加完全符合国际标准的一项有利发展，但 AIPLA 失望地发现目前的草案不再包括这一改动。

第三十一条规定延长提供发明和实用新型申请优先权文件的期限。AIPLA 赞同这一改动，并认为，出于同样的原因，还应考虑类似地适当延长提供外观设计专利申请的优先权文件的期限。

第四十三条规定了创新药品专利的专利期限延长，以补偿此类药品的上市审评和审批所花费的时间。

AIPLA 赞同这一改动，但恭敬地指出，该条款中使用的一些术语，如“创新药品”可能需要进行阐明。

新增的第五十条、第五十一条和第五十二条规定了一种开放机制，在该开放机制中，专利权人可以按照自己的条件自愿许可其专利。AIPLA 尽可能支持透明化原则，但仍对该条款中所描述的机制有许多疑虑。例如，第五十二条规定，中国国家知识产权局（CNIPA）可以对这一开放机制所产生的纠纷进行仲裁或裁决。AIPLA 认为这项新规定可能会阻碍有关各方当事人之间的自愿谈判。一方当事人可能不会真诚地进行谈判，而期望该机构可以介入并改善其谈判地位，钻制度的空子。纠纷的解决是一项极其复杂的社会互动，需要大量的经验、对人和商业行为的理解，以及只与替代性纠纷解决机制相关，而不是涉及是非曲直的判断或评价的其他形式的纠纷解决机制的经验和技巧。AIPLA 担心的是，由于 CNIPA 的传统职责并不包括调解商业纠纷，且调解不在专利法的授权范围之内，因此 CNIPA 可能会缺乏有效调解商业纠纷的经验和资源。AIPLA 恭敬地建议，法院可能能够更高效且有效地解决此类纠纷。

第六十六条规定，专利侵权纠纷双方均可提供与该纠纷有关的专利性评估报告。但是，AIPLA 担心由一方当事人在抗辩诉讼中提交的这类报告可能是存有偏见的或自私的，因此，AIPLA 建议让另一方当事人（以及第三方）能够获得该报告，从而另一方当事人有机会检查该报告并在有需要时进行反驳。

第六十九条允许执法机构和专利行政机构调查、检查和保留与专利侵权纠纷有关的证据。AIPLA 仍然担心国家、省级和市级行政执法机构的增加可能会造成额外的冲突，并阻碍明确统一的规章制度的发展。AIPLA 恭敬地提出，通过法院的私人执法应当是主要的执法机制，其能够更好更有效地实现这些目标。

新增的第七十条规定国务院专利行政部门可以自行处理在全国产生重大影响的专利侵权纠纷。AIPLA 恭敬地指出，根据国际专利保护准则以及 TRIPS 和 WTO 的规定，私人执法应当作为专利权实施的主要机制。因此，在没有各方同意的情况下，中国的法

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院，而不是行政机构，可能是有权处理专利纠纷的更好的权力机构。AIPLA 担心，在法院和行政机构之间划分执法权限可能会导致私人执法的削弱、此类决定的不一致以及商业和市场的不可预测性增加，从而最终损害创新型社会。

第七十二条增加了可用于故意侵权的损失赔偿数额，并提供了在被告掌握了相关证据时减轻证明损失的证据挑战的方法。AIPLA 赞同这些修改，但仍担心该条款中使用的具体措辞可能存在歧义。

第七十五条延长了提起专利侵权诉讼的诉讼时效。AIPLA 很欣赏这项修改，因为它正朝着国际准则迈进。

AIPLA 感谢有机会对中国专利法的修正案提出这些意见，我们很乐意回答由我们的意见所产生的任何问题。

此致

谢尔顿 H. 克莱因

主席

美国知识产权法律协会

附件：AIPLA 对中华人民共和国专利法的详细意见（修正案草案）

中国专利法第四次修正案草案（2019年1月版本）条文对照表及 AIPLA 对专利法修正案草案的意见

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p style="text-align: center;">第一章 总 则</p> <p style="text-align: center;">Chapter 1 General Provisions</p>	<p style="text-align: center;">第一章 总 则</p> <p style="text-align: center;">Chapter 1 General Provisions</p>	
<p>第一条 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。</p> <p>Article 1 This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention/creation, promoting the application of invention/creation, enhancing innovation capability, promoting the science and technology advancement and the economic and social development.</p>	<p>第一条 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。</p> <p>Article 1 This Law is enacted for the purpose of protecting the lawful rights and interests of patentees, encouraging invention/creation, promoting the application of invention/creation, enhancing innovation capability, promoting the science and technology advancement and the economic and social development.</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>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。 发明，是指对产品、方法或者其改进所提出的新的技术方案。 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。 外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。</p> <p>Article 2 For the purposes of this Law, invention/creations mean inventions, utility models and designs. Inventions mean new technical solutions proposed for a product, a process or the improvement thereof. Utility models mean new technical solutions proposed for the shape and structure of a product, or the</p>	<p>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。 发明，是指对产品、方法或者其改进所提出的新的技术方案。 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。 外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。</p> <p>Article 2 For the purposes of this Law, invention/creations mean inventions, utility models and designs. Inventions mean new technical solutions proposed for a product, a process or the improvement thereof. Utility models mean new technical solutions proposed for the shape and structure of a product, or the</p>	<p>AIPLA 注意到，在当前的修订提议第 2 条中，在“外观设计”的定义中删除了局部设计。AIPLA 认为，产品的局部设计和产品的部分，假如满足审美效果和实际使用要求，就应当和产品整体一样，作为外观设计而被独立保护。</p> <p>产品外观设计的各部分在中国的许多贸易伙伴国家中是受到独立保护的，并且也受到国际知识产权保护准则的保护。这种保护对于获得国际认可的外观设计尤其</p>

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<p>combination thereof, which are fit for practical use.</p> <p>Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape or pattern, which are rich in an aesthetic appeal and are fit for industrial application.</p>	<p>combination thereof, which are fit for practical use.</p> <p>Designs mean, with respect to a product, new designs of the shape, pattern, or the combination thereof, or the combination of the color with shape or pattern, which are rich in an aesthetic appeal and are fit for industrial application.</p>	<p>重要。</p> <p>AIPLA 了解到，在即将修订的审查指南中，可能会对局部设计提供保护。AIPLA 认为这能够标志着向主要知识产权国家之间的专利法协调又迈出了一步。</p>
<p>第三条</p> <p>国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。</p> <p>省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管</p>	<p>第三条</p> <p>国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。</p> <p>省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管</p>	

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<p>理工作。</p> <p>Article 3</p> <p>The patent administration department under the State Council shall be responsible for the administration of patent affairs nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.</p> <p>The departments administering patent affairs at governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative regions.</p>	<p>理工作。</p> <p>Article 3</p> <p>The patent administration department under the State Council shall be responsible for the administration of patent affairs nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law.</p> <p>The departments administering patent affairs under governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative regions.</p>	
<p>第四条</p> <p>申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。</p>	<p>第四条</p> <p>申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。</p>	

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<p>Article 4 Any patent application of which the underlying invention/creation involves national security or other major State interests that needs to be kept confidential shall be handled in accordance with the relevant regulations of the State.</p>	<p>Article 4 Any patent application of which the underlying invention/creation involves national security or other major State interests that needs to be kept confidential shall be handled in accordance with the relevant regulations of the State.</p>	
<p>第五条 对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。 对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。</p> <p>Article 5 Patent right shall not be granted for any invention/creation that violates the law or social ethics, or harm public interests.</p> <p>Patent right shall not be granted for any invention/creation made by relying on genetic resources obtained or used in violation of any law and</p>	<p>第五条 对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。 对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。</p> <p>Article 5 Patent right shall not be granted for any invention/creation that violates the law or social ethics, or harm public interests.</p> <p>Patent right shall not be granted for any invention/creation made by relying on genetic resources obtained or used in violation of any law and</p>	<p>(请参见以下对第二十条的相关意见)</p> <p>AIPLA 恭敬地建议将申请专利时的诚信要求从第二十条移至第五条，对于这一重要要求来说，第五条是更为显著的位置。</p> <p>AIPLA 还建议阐明第五条第二款，将对遗传资源的限制限定为“遗传物质”，即《关于获取遗传资源和公正公平分享其</p>

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administrative regulation.	administrative regulation.	利用所产生惠益的名古屋议定书》的主题。这样一来，第五条就不太可能被理解为延伸到另外的主题，如数字遗传序列信息，或延伸到在研究中可能会依赖这些信息的第三方。
<p>第六条</p> <p>执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。</p> <p>非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。</p> <p>利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。</p>	<p>第六条</p> <p>执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。该单位对职务发明创造申请专利的权利和专利权可以依法处置，实行产权激励，采取股权、期权、分红等方式，使发明人或者设计人合理分享创新收益，促进相关发明创造的实施和运用。</p> <p>非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，该发明人或者设计人为专利权人。</p> <p>利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属</p>	<p>AIPLA 对这一条款表示称赞，因为该</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 6</p> <p>Any invention/creation made in the course of performing the duties of an employee for the employer entity, or primarily by using the material and technical resources of an employer entity, shall be deemed a service invention/creation.</p> <p>The right to apply for a patent on any service invention/creation shall belong to the employer entity; and the employer entity shall be the patentee after the application is granted patent right.</p> <p>The right to apply for a patent on any non-service invention/creation shall belong to the inventor or designer; and the inventor or designer shall be the patentee after the</p>	<p>作出约定的, 从其约定。</p> <p>Article 6</p> <p>Any invention/creation made in the course of performing the duties of an employee for the employer entity, or primarily by using the material and technical resources of an employer entity, shall be deemed a service invention/creation. The right to apply for a patent on any service invention/creation shall belong to the employer entity; and the employer entity shall be the patentee after the application is granted patent right. <u>The employer entity is entitled to dispose the right of patent application and the patent right of a service invention in accordance with the law, and the property right incentive mechanism such as equity, option and dividend incentive policies may be implemented to allow the inventor or designer to reasonably share the</u></p>	<p>条款为员工提供了透明度和更多激励以促进发明创造。也就是说, AIPLA 的理解是, 第六项中增加的规定将允许雇主来处置发明创造(例如, 根据自己的意愿提交或不提交某项发明创造的专利申请, 出售或转让该发明创造的权利), 并且为员工提供除了金钱以外的补偿选项。换句话说, 这项新增条款鼓励非货币性质的发明人酬劳方案, 该方案例如可以与员工的发明创造所带来的利润和福利挂钩。AIPLA 支持对现行的专利法作出这项修改。</p> <p>AIPLA 注意到, 对员工发明创造的货币性和非货币性奖励只与专利提交和实践挂钩。AIPLA 担心, 在专利可能不是最佳的保护机制的情况下, 这项规定可能会助长不必要的或不适当的专利提交。</p> <p>AIPLA 还建议专利法鼓励单位与员工之间签订书面协议(例如, 在雇用之初就签订协议或在雇用期间签订协议), 以减少或避免员工发明人/设计人与雇主之间因职务发明创造的所有权或适当补偿事宜发生</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>application is granted patent right.</p> <p>For invention/creations made by using the material and technical resources of an employer entity, if the employer entity has contracted with the inventor or designer providing the ownership of the right to apply for a patent or the ownership of the patent, such provision shall prevail.</p>	<p><u>proceeds of innovation and promote the implementation and application of the relevant invention.</u></p> <p>The right to apply for a patent on any non-service invention/creation shall belong to the inventor or designer; and the inventor or designer shall be the patentee after the application is granted patent right.</p> <p>For invention/creations made by using the material and technical resources of an employer entity, if the employer entity has contracted with the inventor or designer providing the ownership of the right to apply for a patent or the ownership of the patent, such provision shall prevail.</p>	<p>纠纷或可能的诉讼。</p>
<p>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。</p>	<p>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。</p>	<p>只要是限于非职务发明, 这项限定就是合适的。</p>

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<p>Article 7 No employer entity or individual shall suppress an inventor' s or designer' s filing for patent application on any non-service invention/creation.</p>	<p>Article 7 No employer entity or individual shall suppress an inventor' s or designer' s filing for patent application on any non-service invention/creation.</p>	
<p>第八条 两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准后，申请的单位或者个人为专利权人。</p> <p>Article 8 With regard to an invention/creation jointly made by two or more employer entities or individuals, or an invention/creation made by an employer entity or individual under the commission of another employer entity or individual, unless otherwise agreed upon, the right to apply for a patent shall belong to the employer</p>	<p>第八条 两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准后，申请的单位或者个人为专利权人。</p> <p>Article 8 With regard to an invention/creation jointly made by two or more employer entities or individuals, or an invention/creation made by an employer entity or individual under the commission of another employer entity or individual, unless otherwise agreed upon, the right to apply for a patent shall belong to the employer</p>	

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entity(ies) or individual(s) that has(ve) made or jointly made the invention/creation; and the applying entity(ies) or individual(s) shall be the patentee(s) after the application is granted patent right.	entity(ies) or individual(s) that has(ve) made or jointly made the invention/creation; and the applying entity(ies) or individual(s) shall be the patentee(s) after the application is granted patent right.	
<p>第九条 同样的发明创造只能授予一项专利权。但是，同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利，先获得的实用新型专利权尚未终止，且申请人声明放弃该实用新型专利权的，可以授予发明专利权。</p> <p>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。</p> <p>Article 9 Only one patent can be granted for the same invention/creation. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention/creation on the same day, if</p>	<p>第九条 同样的发明创造只能授予一项专利权。但是，同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利，先获得的实用新型专利权尚未终止，且申请人声明放弃该实用新型专利权的，可以授予发明专利权。</p> <p>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。</p> <p>Article 9 Only one patent can be granted for the same invention/creation. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention/creation on the same day, if</p>	

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<p>the utility model patent granted earlier has not expired yet and the applicant declares to waive the right to the utility model patent, the invention patent may be granted.</p> <p>If two or more applicants file for patent applications on the same invention/creation separately, the patent right shall be granted to the first filer.</p>	<p>the utility model patent granted earlier has not expired yet and the applicant declares to waive the right to the utility model patent, the invention patent may be granted.</p> <p>If two or more applicants file for patent applications on the same invention/creation separately, the patent right shall be granted to the first filer.</p>	
<p>第十条 专利申请权和专利权可以转让。 中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。 转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。</p> <p>Article 10</p>	<p>第十条 专利申请权和专利权可以转让。 中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。 转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。</p> <p>Article 10</p>	

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<p>The right to apply for a patent and patent right may be transferred.</p> <p>Any Chinese employer entity or individual transferring any right to apply for a patent or patent right to a foreign person, enterprise, or other organization shall follow the procedures set forth in the relevant laws and administrative regulations.</p> <p>Any parties transferring any right to apply for a patent or patent right shall contract in writing and record the contract at the patent administration department under the State Council. A public notice of the contract will be made by the patent administration department under the State Council. The transfer of right to apply for a patent or of patent right shall become effective as of the recordation date.</p>	<p>The right to apply for a patent and patent right may be transferred.</p> <p>Any Chinese employer entity or individual transferring any right to apply for a patent or patent right to a foreign person, enterprise, or other organization shall follow the procedures set forth in the relevant laws and administrative regulations.</p> <p>Any parties transferring any right to apply for a patent or patent right shall contract in writing and record the contract at the patent administration department under the State Council. A public notice of the contract will be made by the patent administration department under the State Council. The transfer of right to apply for a patent or of patent right shall become effective as of the recordation date.</p>	

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

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell, or import products obtained directly through the use of the patented method.</p> <p>After a design patent right is granted, without the permission of the patentee, no employer entity or individual shall exploit the patent, i. e., no employer entity or individual shall, for production or business purposes, manufacture, use, offer to sell, sell, or import the design patented products.</p>	<p>sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell, or import products obtained directly through the use of the patented method.</p> <p>After a design patent right is granted, without the permission of the patentee, no employer entity or individual shall exploit the patent, i. e., no employer entity or individual shall, for production or business purposes, manufacture, use, offer to sell, sell, or import the design patented products.</p>	
<p>第十二条 任何单位或者个人实施他人专利的，应当与专利权人订立实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。</p> <p>Article 12 Any employer entity or individual</p>	<p>第十二条 任何单位或者个人实施他人专利的，应当与专利权人订立实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。</p> <p>Article 12 Any employer entity or individual</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>exploiting other' s patent shall enter into a patent license contract for exploitation with the patentee and pay patent royalties to the patentee. The licensee shall not grant the exploitation right of such patent to any other employer entity or individual not specified in the contract.</p>	<p>exploiting other' s patent shall enter into a patent license contract for exploitation with the patentee and pay patent royalties to the patentee. The licensee shall not grant the exploitation right of such patent to any other employer entity or individual not specified in the contract.</p>	
<p>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。</p> <p>Article 13 After the application for an invention patent is published, the applicant may require the employer entity or individual that exploits the said invention to pay an appropriate amount of fees.</p>	<p>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。</p> <p>Article 13 After the application for an invention patent is published, the applicant may require the employer entity or individual that exploits the said invention to pay an appropriate amount of fees.</p>	
<p>第十四条 国有企业事业单位的发明专利，对国</p>	<p>第十四条 国有企业事业单位的发明专利，对国</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。</p> <p>Article 14</p> <p>If an invention patent of a State-owned enterprise or public institution is of great significance to national or public interests, upon the approval by the State Council, the relevant administering department under the State Council or a government of province, autonomous region, or municipality directly under the Central Government may decide to promote the application of the patent within an approved scope and allow designated employer entity to exploit the patent. The exploiting employer entity shall pay royalties to the patentee in accordance with the</p>	<p>家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。</p> <p>Article 14</p> <p>If an invention patent of a State-owned enterprise or public institution is of great significance to national or public interests, upon the approval by the State Council, the relevant administering department under the State Council or a government of province, autonomous region, or municipality directly under the Central Government may decide to promote the application of the patent within an approved scope and allow designated employer entity to exploit the patent. The exploiting employer entity shall pay royalties to the patentee in accordance with the</p>	

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regulations of the State.	regulations of the State.	
<p>第十五条 专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施该专利的，收取的使用费应当在共有人之间分配。</p> <p>除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。</p> <p>Article 15 If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties</p>	<p>第十五条 专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施该专利的，收取的使用费应当在共有人之间分配。</p> <p>除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。</p> <p>Article 15 If there are agreements regarding the exercise of rights by the co-owners of the right to apply for the patent or of the patent right, the agreements shall prevail. In the absence of such agreements, the co-owners may separately exploit the patent or may, in an ordinary manner, permit others to exploit the said patent. Where others are permitted to exploit the patent, the royalties</p>	

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<p>received shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.</p>	<p>received shall be distributed among the co-owners. Except under the circumstances specified in the preceding paragraph, exercise of the co-owned right to apply for patent or of the co-owned patent right shall be subject to the consent of all the co-owners.</p>	
<p>第十六条 被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。</p> <p>Article 16 The employer entity that is granted the patent right shall reward the inventor or designer of service invention/creation. After the patent on the invention/creation is</p>	<p>第十六条 被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。</p> <p>Article 16 The employer entity that is granted the patent right shall reward the inventor or designer of service invention/creation. After the patent on the invention/creation is exploited, such employer entity shall</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>exploited, such employer entity shall give the inventor or designer a reasonable amount of remuneration according to the scope of application and the economic benefits obtained.</p>	<p>give the inventor or designer a reasonable amount of remuneration according to the scope of application and the economic benefits obtained.</p>	
<p>第十七条 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。 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识。</p> <p>Article 17 An inventor or designer shall have the right to state in the patent documents that he or she is the inventor or designer.</p> <p>The patentee shall have the right to have patent mark displayed on its patented product or the package of such product.</p>	<p>第十七条 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。 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识。</p> <p>Article 17 An inventor or designer shall have the right to state in the patent documents that he or she is the inventor or designer.</p> <p>The patentee shall have the right to have patent mark displayed on its patented product or the package of such product.</p>	
<p>第十八条 在中国没有经常居所或者营业所的外</p>	<p>第十八条 在中国没有经常居所或者营业所的外</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。</p> <p>Article 18</p> <p>For a foreign person, enterprise, or other organization without a regular residence or business site in China who wants to apply for a patent in China, the application shall be handled in accordance with this Law, and in accordance with the agreements between the resident country and China or with the international treaties to which both countries have signed or on the principle of reciprocity.</p>	<p>国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。</p> <p>Article 18</p> <p>For a foreign person, enterprise, or other organization without a regular residence or business site in China who wants to apply for a patent in China, the application shall be handled in accordance with this Law, and in accordance with the agreements between the resident country and China or with the international treaties to which both countries have signed or on the principle of reciprocity.</p>	
<p>第十九条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。</p> <p>中国单位或者个人在国内申请专利</p>	<p>第十九条</p> <p>在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。</p> <p>中国单位或者个人在国内申请专利</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>和办理其他专利事务的,可以委托依法设立的专利代理机构办理。</p> <p>专利代理机构应当遵守法律、行政法规,按照被代理人的委托办理专利申请或者其他专利事务;对被代理人发明创造的内容,除专利申请已经公布或者公告的以外,负有保密责任。专利代理机构的具体管理办法由国务院规定。</p> <p>Article 19</p> <p>A foreign person, enterprise, or other organization without a regular residence or business site in China who intends to apply for a patent or handle other patent-related matters in China shall commission a legally established patent agency to handle such matters.</p> <p>A Chinese employer entity or individual intending to apply for a patent or handle other patent-related matters in China may commission a legally established patent agency to</p>	<p>和办理其他专利事务的,可以委托依法设立的专利代理机构办理。</p> <p>专利代理机构应当遵守法律、行政法规,按照被代理人的委托办理专利申请或者其他专利事务;对被代理人发明创造的内容,除专利申请已经公布或者公告的以外,负有保密责任。专利代理机构的具体管理办法由国务院规定。</p> <p>Article 19</p> <p>A foreign person, enterprise, or other organization without a regular residence or business site in China who intends to apply for a patent or handle other patent-related matters in China shall commission a legally established patent agency to handle such matters.</p> <p>A Chinese employer entity or individual intending to apply for a patent or handle other patent-related matters in China may commission a legally established patent agency to</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>handle such matters.</p> <p>Patent agencies shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as commissioned by their clients. Patent agencies have a duty of keeping contents of the invention/creation of their clients confidential, with the exception of the contents already published or publicly-notified. The specific measures for administration of patent agencies shall be formulated by the State Council.</p>	<p>handle such matters.</p> <p>Patent agencies shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as commissioned by their clients. Patent agencies have a duty of keeping contents of the invention/creation of their clients confidential, with the exception of the contents already published or publicly-notified. The specific measures for administration of patent agencies shall be formulated by the State Council.</p>	
	<p>第二十条 (新增)</p> <p>申请专利和行使专利权应当遵循诚实信用原则, 不得滥用专利权损害公共利益或者排除、限制竞争。</p> <p>Article 20 (New)</p> <p>The application of patent and the exercise of patent right shall abide by the principle of good faith, and</p>	<p>(请见上述关于第五条的意见)</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	shall not misuse patent right to harm the public interest or exclude or restrict competitions.	<p>AIPLA 建议保留句子“<u>申请专利权应当遵守诚实信用的原则</u>”，并建议将其移至第五条的开头，以便更加符合上下文。</p> <p>AIPLA 恭敬地建议删除第二十条的其余内容，即，关于“禁止滥用专利权”的内容，理由如下：</p> <p>首先，“行使专利权”不在中国专利行政机构的明确职权范围内（参见专利法第二条）；</p> <p>其次，该内容与其他相关现有法规重复，并可能产生冲突，包括：</p> <ul style="list-style-type: none">a. 反垄断法第五十五条。b. 合同法第三百二十九条。c. 最高人民法院司法解释还规定，非法垄断技术转让合同是无效的。d. 专利法草案第五十三条第二款规

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
		<p>定, 当专利权人行使其专利权被依法认定为垄断时, 强制许可是消除或减少对竞争的不利影响的一种补救措施。</p> <p>第三, 因此, 在专利法中增加一项非常概括而又模糊的条款来禁止“滥用专利权”并不会带来任何附加价值, 并且还会与现有的具体法规和解释中的标准产生混淆和潜在冲突, 包括可能要进行再一次的、不一致的有效性确定, 以及可能会与专利审查委员会 (PRB) 的无效审判或其上诉相冲突, 因为声称滥用的后果可能是由无效审判中涉及的不同问题的解决来决定的。</p> <p>此外, 如果禁止“滥用专利权”被广泛解释为超出起诉行为, 例如, 进入专利许可领域, 则其也可能阻碍创新和干扰合法的执法活动。</p> <p>关于“公共利益”的进一步规定是</p>

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		非常广泛的，其范围模糊且不确定。从广义上解释，它将包括各种各样的公共利益，而这些公共利益与中国的主要贸易伙伴所采用的国际知识产权保护准则不一致。
<p>第二十条</p> <p>任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。</p> <p>中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。</p> <p>国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。</p> <p>对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。</p>	<p>第二十一条</p> <p>任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。</p> <p>中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。</p> <p>国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。</p> <p>对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 20</p> <p>Any employer entity or individual that intends to apply for patent in a foreign country for an invention or utility model made in China shall submit the matter to the patent administration department under the State Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.</p> <p>A Chinese employer entity or individual may file for an international patent applications in accordance with the relevant international treaties to which China has signed. The applicant of such international patent application shall comply with the provisions of the preceding paragraph.</p> <p>The patent administration department under the State Council</p>	<p>Article 21</p> <p>Any employer entity or individual that intends to apply for patent in a foreign country for an invention or utility model made in China shall submit the matter to the patent administration department under the State Council for confidentiality examination. Such examination shall be conducted in conformity with the procedures, time limit, etc. prescribed by the State Council.</p> <p>A Chinese employer entity or individual may file for an international patent applications in accordance with the relevant international treaties to which China has signed. The applicant of such international patent application shall comply with the provisions of the preceding paragraph.</p> <p>The patent administration department under the State Council</p>	

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<p>shall handle international patent applications in accordance with the relevant international treaties to which China has signed and the relevant provisions of this Law and regulations of the State Council.</p> <p>No patent right shall be granted to an application filed in China if an invention or utility model patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article.</p>	<p>shall handle international patent applications in accordance with the relevant international treaties to which China has signed and the relevant provisions of this Law and regulations of the State Council.</p> <p>No patent right shall be granted to an application filed in China if an invention or utility model patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article.</p>	
<p>第二十一条 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。 国务院专利行政部门应当完整、准确、及时发布专利信息，定期出版专利公报。 在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其</p>	<p>第二十二条 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。 国务院专利行政部门应当加强专利信息公共服务体系建设，定期出版专利公报，完整、准确、及时发布专利信息，提供专利信息基础数据，促进专利信息传播与利用。 在专利申请公布或者公告前，国务院</p>	

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<p>内容负有保密责任。</p> <p>Article 21 The patent administration department under the State Council and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy, and timeliness, handle patent applications and requests in accordance with law.</p> <p>The patent administration department under the State Council shall release patent information in a complete, accurate, and timely manner, and publish patent gazettes on a regular basis.</p> <p>Before a patent application is published or publically notified, the staff members of the patent administration department under the State Council and the persons</p>	<p>专利行政部门的工作人员及有关人员对其内容负有保密责任。</p> <p>Article 22 The patent administration department under the State Council and its Patent Review Board shall, according to the requirements of objectivity, fairness, accuracy, and timeliness, handle patent applications and requests in accordance with law.</p> <p>The patent administration department under the State Council shall <u>strengthen the establishment of the public service system of patent information, publish patent gazettes on a regular basis, release patent information in a complete, accurate, and timely manner, and provide basic data of patent information, and promote the dissemination and utilization patent information—publish patent gazettes on a regular basis.</u></p> <p>Before a patent application is</p>	<p>AIPLA 对这些步骤表示称赞，其使得专利制度更加透明化，同时在公布之前保护机密性，从而使得中国的专利制度更符合国际专利保护规范。</p>

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concerned shall have the duty to keep such the contents of the application confidential.	published or publically notified, the staff members of the patent administration department under the State Council and the persons concerned shall have the duty to keep such the contents of the application confidential.	
<p>第二章 授予专利权的条件</p> <p>Chapter 2 Conditions for Granting Patent Rights</p>	<p>第二章 授予专利权的条件</p> <p>Chapter 2 Conditions for Granting Patent Rights</p>	
<p>第二十二条</p> <p>授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。</p> <p>新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。</p> <p>创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。</p>	<p>第二十三条</p> <p>授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。</p> <p>新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。</p> <p>创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。</p>	

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<p>实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。</p> <p>本法所称现有技术，是指申请日以前在国内外为公众所知的技术。</p> <p>Article 22</p> <p>Inventions and utility models with patent rights granted shall have novelty, inventiveness and utility.</p> <p>Novelty means that the invention or utility model is not prior art; no other patent application has been filed by any employer entity or individual for any identical invention or utility model with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publically notified after the application date.</p> <p>Inventiveness means that, compared with the existing technologies, the</p>	<p>实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。</p> <p>本法所称现有技术，是指申请日以前在国内外为公众所知的技术。</p> <p>Article 23</p> <p>Inventions and utility models with patent rights granted shall have novelty, inventiveness and utility.</p> <p>Novelty means that the invention or utility model is not prior art; no other patent application has been filed by any employer entity or individual for any identical invention or utility model with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publicly notified after the application date.</p> <p>Inventiveness means that, compared with the existing technologies, the</p>	

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<p>invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.</p> <p>Utility means that the said invention or utility model can be used for production or be utilized, and may produce positive results.</p> <p>For the purposes of this Law, prior art means the technologies known to the public domestically and abroad before the application date.</p>	<p>invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements.</p> <p>Utility means that the said invention or utility model can be used for production or be utilized, and may produce positive results.</p> <p>For the purposes of this Law, prior art means the technologies known to the public domestically and abroad before the application date.</p>	
<p>第二十三条</p> <p>授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公告的专利文件中。</p> <p>授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。</p>	<p>第二十四条</p> <p>授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公告的专利文件中。</p> <p>授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。</p> <p>本法所称现有设计，是指申请日以前在国内外为公众所知的设计。</p> <p>Article 23</p> <p>A design for which patent right is granted shall not be a prior design, and no application is filed by any employer entity or individual for any identical design with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publically notified after the application date.</p> <p>Designs for which patent right is to be granted shall be distinctly different from prior designs or the combinations of the features of prior designs.</p> <p>Designs for which patent right is granted shall not in conflict with the</p>	<p>授予专利权的外观设计不得与他在申请日以前已经取得的合法权利相冲突。</p> <p>本法所称现有设计，是指申请日以前在国内外为公众所知的设计。</p> <p>Article 24</p> <p>A design for which patent right is granted shall not be a prior design, and no application is filed by any employer entity or individual for any identical design with the patent administration department under the State Council before the application date and documented in a patent application document published or the patent documents publically notified after the application date.</p> <p>Designs for which patent right is to be granted shall be distinctly different from prior designs or the combinations of the features of prior designs.</p> <p>Designs for which patent right is granted shall not in conflict with the</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>legal rights acquired by others prior to the application date.</p> <p>For the purposes of this Law, a prior design means a design that is known to the public domestically and abroad before the application date.</p>	<p>legal rights acquired by others prior to the application date.</p> <p>For the purposes of this Law, a prior design means a design that is known to the public domestically and abroad before the application date.</p>	
<p>第二十四条</p> <p>申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：</p> <p>（一） 在中国政府主办或者承认的国际展览会上首次展出的；</p> <p>（二） 在规定的学术会议或者技术会议上首次发表的；</p> <p>（三） 他人未经申请人同意而泄露其内容的。</p> <p>Article 24</p> <p>Within six months prior to the date of application, an invention/creation for which a patent application is filed does not lose its novelty under any of the following</p>	<p>第二十五条</p> <p>申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：</p> <p>（一） 在中国政府主办或者承认的国际展览会上首次展出的；</p> <p>（二） 在规定的学术会议或者技术会议上首次发表的；</p> <p>（三） 他人未经申请人同意而泄露其内容的。</p> <p>Article 25</p> <p>Within six months prior to the date of application, an invention/creation for which a patent application is filed does not lose its novelty under any of the following</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>circumstances:</p> <p>(1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;</p> <p>(2) It is published for the first time at a specified academic or technological conference; and</p> <p>(3) Its contents are divulged by others without the consent of the applicant.</p>	<p>circumstances:</p> <p>(1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;</p> <p>(2) It is published for the first time at a specified academic or technological conference; and</p> <p>(3) Its contents are divulged by others without the consent of the applicant.</p>	
<p>第二十五条</p> <p>对下列各项，不授予专利权：</p> <p>（一）科学发现；</p> <p>（二）智力活动的规则和方法；</p> <p>（三）疾病的诊断和治疗方法；</p> <p>（四）动物和植物品种；</p> <p>（五）用原子核变换方法获得的物质；</p>	<p>第二十六条</p> <p>对下列各项，不授予专利权：</p> <p>（一）科学发现；</p> <p>（二）智力活动的规则和方法；</p> <p>（三）疾病的诊断和治疗方法；</p> <p>（四）动物和植物品种；</p> <p>（五）原子核变换方法以及用原子核变换方法获得的物质；</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>(六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。</p> <p>对前款第(四)项所列产品的生产方法, 可以依照本法规定授予专利权。</p> <p>Article 25 Patent rights shall not be granted for any of the following subject matters:</p> <p>(1) scientific discoveries;</p> <p>(2) rules and methods for intellectual activities;</p> <p>(3) methods for the diagnosis or treatment of diseases;</p> <p>(4) animal or plant varieties;</p> <p>(5) substances obtained by means of nuclear transformation;</p> <p>(6) Designs that are mainly used for marking the pattern, color or the</p>	<p>(六) 对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。</p> <p>对前款第(四)项所列产品的生产方法, 可以依照本法规定授予专利权。</p> <p>Article 26 Patent rights shall not be granted for any of the following subject matters:</p> <p>(1) scientific discoveries;</p> <p>(2) rules and methods for intellectual activities;</p> <p>(3) methods for the diagnosis or treatment of diseases;</p> <p>(4) animal or plant varieties;</p> <p>(5) Methods of nuclear transformation and substances obtained by means of nuclear transformation;</p> <p>(6) Designs that are mainly used for marking the pattern, color or the</p>	<p>AIPLA 注意到在不具备专利资格的主题列举中增加了“核转化方法”。AIPLA 建议在专利法或审查指南中针对在医疗、能源生产和其他商业应用领域中用于诱导或控制核转化过程的创新装置或设备进行进一步阐明。</p> <p>AIPLA 很欣赏前次草案中的条款“ (3) 用于诊断或治疗疾病的方法, 涉及养殖动物的方法除外”。这是使中国专利法更加完全符合国际标准的一项有利发展。这一条款将对不断发展的兽医诊断学行业中的创新提供支持, 而这对整个食品行业的持续创新至关重要, 将最终提高食品产量。事实上, 其他国家还对保护支持人类医学的内科诊断学的专利给予了更多自由。AIPLA 支持重新引入该条款, 并建</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>combination of the two of prints.</p> <p>Patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.</p>	<p>combination of the two of prints.</p> <p>Patent right may, in accordance with the provisions of this Law, be granted for the production methods of the products specified in Subparagraph (4) of the preceding paragraph.</p>	<p>议也许可以通过排除主治兽医或医生的侵权责任来减轻对这些与养殖动物和人类相关的条款的担心，而不是排除进行此类诊断分析的商业实验室或生产卖给这些实验室的产品的公司的侵权责任，它们是专利权人的商业竞争对手。</p>
<p>专利的申请</p> <p>Chapter 3 Patent Application</p>	<p>专利的申请</p> <p>Chapter 3 Patent Application</p>	
<p>第二十六条</p> <p>申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。</p> <p>请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。</p> <p>说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。</p> <p>权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。</p>	<p>第二十七条</p> <p>申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。</p> <p>请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。</p> <p>说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。</p> <p>权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。</p> <p>Article 26</p> <p>To apply for an invention or utility model patent, one shall submit relevant documents, such as a written request, a written description and its abstract, and a list of claims.</p> <p>The written request shall specify the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.</p> <p>The written description shall contain a clear and comprehensive description of the invention or utility model so that a skilled person in the field of the relevant technology can carry it out; when necessary, drawings shall be attached</p>	<p>依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。</p> <p>Article 27</p> <p>To apply for an invention or utility model patent, one shall submit relevant documents, such as a written request, a written description and its abstract, and a list of claims.</p> <p>The written request shall specify the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.</p> <p>The written description shall contain a clear and comprehensive description of the invention or utility model so that a skilled person in the field of the relevant technology can carry it out; when necessary, drawings shall be attached</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.</p> <p>The list of claims shall, based on the written description, contains a clear and concise definition of the proposed scope of patent protection.</p> <p>With regard to an invention/creation made by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. The applicant shall state the reason if the original source cannot be indicated.</p>	<p>to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.</p> <p>The list of claims shall, based on the written description, contains a clear and concise definition of the proposed scope of patent protection.</p> <p>With regard to an invention/creation made by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. The applicant shall state the reason if the original source cannot be indicated.</p>	
<p>第二十七条 申请外观设计专利的,应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。 申请人提交的有关图片或者照片应当</p>	<p>第二十八条 申请外观设计专利的,应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。 申请人提交的有关图片或者照片应当</p>	

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<p>清楚地显示要求专利保护的产品的外观设计。</p> <p>Article 27</p> <p>To apply for a design patent, one shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.</p> <p>The relevant drawings or pictures submitted by the applicant shall clearly show the design of the products for which patent protection is requested.</p>	<p>清楚地显示要求专利保护的产品的外观设计。</p> <p>Article 28</p> <p>To apply for a design patent, one shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents.</p> <p>The relevant drawings or pictures submitted by the applicant shall clearly show the design of the products for which patent protection is requested.</p>	
<p>第二十八条</p> <p>国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。</p> <p>Article 28</p> <p>The date when the patent administration department under the State Council receives the patent</p>	<p>第二十九条</p> <p>国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。</p> <p>Article 29</p> <p>The date when the patent administration department under the State Council receives the patent</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>application documents is the application date. If the application documents are delivered by post, the date of the postmark is the application date.</p>	<p>application documents is the application date. If the application documents are delivered by post, the date of the postmark is the application date.</p>	
<p>第二十九条 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。</p> <p>申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。</p> <p>Article 29 If an applicant files an</p>	<p>第三十条 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。</p> <p>申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，或者自外观设计在中国第一次提出专利申请之日起六个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。</p> <p>Article 30 If an applicant files an</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>application for a patent in China within twelve months from the date the applicant first files an application for an invention or utility model patent on the same subject matter in a foreign country, or within six months from the date the applicant first files an application for a design patent on the same subject matter in a foreign country, the applicant may enjoy the right of priority in accordance with the agreements between the said foreign country and China, or in accordance with the international treaties to which both countries have signed, or on the principle of mutual recognition of the right of priority.</p> <p>If an applicant files an application for a patent with the patent administration department under the State Council within twelve months from the date the applicant first files an application for an invention or utility model patent in China, the</p>	<p>application for a patent in China within twelve months from the date the applicant first files an application for an invention or utility model patent on the same subject matter in a foreign country, or within six months from the date the applicant first files an application for a design patent on the same subject matter in a foreign country, the applicant may enjoy the right of priority in accordance with the agreements between the said foreign country and China, or in accordance with the international treaties to which both countries have signed, or on the principle of mutual recognition of the right of priority.</p> <p>If an applicant files an application for a patent with the patent administration department under the State Council within twelve months from the date the applicant first files an application for an invention or utility model patent in China, or</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>applicant may enjoy the right of priority.</p>	<p><u>within six months from the date the applicant first files an application for a design patent on the same subject matter in China</u>, the applicant may enjoy the right of priority.</p>	
<p>第三十条 申请人要求优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。</p>	<p>第三十一条 申请人要求优先权的，应当在申请的时候提出书面声明，并且<u>在第一次提出发明、实用新型专利申请之日起十六个月内或者在提出外观设计专利申请之日起三个月内</u>，提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 30</p> <p>An applicant requesting the right of priority shall submit a written declaration at the time of application and submit, within three months, a copy of the priority patent application document. The right or priority shall be deemed waived if no written declaration is submitted or a copy of the priority patent application document is not submitted prior to the expiration of the specified time limit.</p>	<p>利申请文件副本的，视为未要求优先权。</p> <p>Article 31</p> <p>An applicant requesting the right of priority shall submit a written declaration at the time of application and submit, within sixteen months from the date on which any applicant first filed a patent application for an invention or utility model, or within three months from the date on which any applicant first filed a patent application for an industrial design, a copy of the priority patent application document. The right or priority shall be deemed waived if no written declaration is submitted or a copy of the priority patent application document is not submitted prior to the expiration of the specified time limit.</p>	<p>AIPLA 赞成延长提供发明和实用新型申请的优先权文件的期限，并认为，出于同样的原因，还应考虑类似地适当延长提供外观设计专利申请的优先权文件的期限。</p>
<p>第三十一条</p> <p>一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总</p>	<p>第三十二条</p> <p>一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。</p> <p>一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。</p> <p>Article 31</p> <p>An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.</p> <p>An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.</p>	<p>的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。</p> <p>一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。</p> <p>Article 32</p> <p>An application for an invention patent or utility model patent shall be limited to one invention or utility model. Two or more inventions or utility models embodied in a single general invention concept may be handled with one application.</p> <p>An application for a design patent shall be limited to one design. Two or more similar designs of one and the same product or two or more designs of products of the same kind that are sold or used in sets may be handled with one application.</p>	

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

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
application documents does not exceed the scope shown in the original drawings or pictures.	application documents does not exceed the scope shown in the original drawings or pictures.	
<p>第四章 专利申请的审查和批准</p> <p>Chapter 4 Examination and Approval of Patent Applications</p>	<p>第四章 专利申请的审查和批准</p> <p>Chapter 4 Examination and Approval of Patent Applications</p>	
<p>第三十四条</p> <p>国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。</p> <p>Article 34</p> <p>Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may</p>	<p>第三十五条</p> <p>国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。</p> <p>Article 35</p> <p>Upon receipt of an invention patent application, if the patent administration department under the State Council, after preliminary examination, confirms that the application meets the requirements of this Law, it shall publish the application within 18 full months from the date of application. And it may</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
do so at an earlier date upon request of the applicant.	do so at an earlier date upon request of the applicant.	
<p>第三十五条 发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。 国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。</p> <p>Article 35 Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application.</p>	<p>第三十六条 发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。 国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审查。</p> <p>Article 36 Within three years from the date an invention patent application is filed, the patent administration department under the State Council may, upon request made by the applicant at any time, carry out substantive examination of the application.</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn. The patent administration department under the State Council may carry out substantive examination of its own accord, as it deems it necessary.</p>	<p>If the applicant, without legitimate reasons, fails to request substantive examination at the expiration of the time limit, such application shall be deemed to have been withdrawn. The patent administration department under the State Council may carry out substantive examination of its own accord, as it deems it necessary.</p>	
<p>第三十六条 发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。 发明专利已经在外国提出过申请的，国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由逾期不提交的，该申请即被视为撤回。</p> <p>Article 36 When an applicant for an invention patent requests substantive examination, the applicant shall</p>	<p>第三十七条 发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。 发明专利已经在外国提出过申请的，国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由逾期不提交的，该申请即被视为撤回。</p> <p>Article 37 When an applicant for an invention patent requests substantive examination, the applicant shall</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>submit the reference materials relating to the invention existing prior to the date of application.</p> <p>If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit, within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	<p>submit the reference materials relating to the invention existing prior to the date of application.</p> <p>If an application has been filed for an invention patent in a foreign country, the patent administration department under the State Council may require the applicant to submit, within a specified time limit, materials concerning any search made for the purpose of examining the application in that country, or materials concerning the results of any examination made in the country. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>第三十七条 国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。</p> <p>Article 37 After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	<p>第三十八条 国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。</p> <p>Article 38 After the patent administration department under the State Council has made the substantive examination of the invention patent application, if it finds that the application does not conform to the provisions of this Law, it shall notify the applicant of the need to state its opinions within a specified time limit or to make amendment to the application. In the event of the applicant's failure to comply at the expiration of the specified time limit without legitimate reasons, the application shall be deemed to be withdrawn.</p>	

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<p>第三十八条 发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。</p> <p>Article 38 After the applicant states its opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.</p>	<p>第三十九条 发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。</p> <p>Article 39 After the applicant states its opinions on or makes amendment to the invention patent application, if the patent administration department under the State Council still believes the application does not conform to the provisions of this Law, it shall reject the application.</p>	
<p>第三十九条 发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。</p> <p>Article 39 If no reason for rejection is discerned after an invention patent</p>	<p>第四十条 发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。</p> <p>Article 40 If no reason for rejection is discerned after an invention patent</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>application is substantively examined, the patent administration department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and register and make public notice. The invention patent right shall become effective as of the date of public notice.</p>	<p>application is substantively examined, the patent administration department under the State Council shall make a decision on granting of the invention patent right, issue an invention patent certificate, and register and make public notice. The invention patent right shall become effective as of the date of public notice.</p>	
<p>第四十条 实用新型和外观设计专利申请经初步审查没有发现驳回理由的, 由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定, 发给相应的专利证书, 同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。</p> <p>Article 40 If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on</p>	<p>第四十一条 实用新型和外观设计专利申请经初步审查没有发现驳回理由的, 由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定, 发给相应的专利证书, 同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。</p> <p>Article 41 If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent administration department under the State Council shall make a decision on</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
granting of the utility model or design patent right, issue a corresponding patent certificate, and register and make public notice. The utility model or design patent right shall become effective as of the date of public notice.	granting of the utility model or design patent right, issue a corresponding patent certificate, and register and make public notice. The utility model or design patent right shall become effective as of the date of public notice.	
<p>第四十一条 国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。</p> <p>专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 41 The patent administration department under the State Council</p>	<p>第四十二条 国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。</p> <p>专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 42 The patent administration department under the State Council</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>shall establish a Patent Reexamination Board. If a patent applicant disagrees with the decision made by the Patent Administration department under the State Council on rejecting of the application, the applicant may, within three months from the date of receipt of the notification, file a request with the Patent Reexamination Board for reexamination. After reexamination, the Patent Reexamination Board shall make a decision and notify the patent applicant of the same.</p> <p>If the patent applicant disagrees with the reexamination decision made by the Patent Reexamination Board, the applicant may take legal action before the people's court within three months from the date of receipt of the notification.</p>	<p>shall establish a Patent Reexamination Board. If a patent applicant disagrees with the decision made by the Patent Administration department under the State Council on rejecting of the application, the applicant may, within three months from the date of receipt of the notification, file a request with the Patent Reexamination Board for reexamination. After reexamination, the Patent Reexamination Board shall make a decision and notify the patent applicant of the same.</p> <p>If the patent applicant disagrees with the reexamination decision made by the Patent Reexamination Board, the applicant may take legal action before the people's court within three months from the date of receipt of the notification.</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>第五章 专利权的期限、终止和无效 Chapter 5 Term, Termination, and Invalidation of Patent Rights</p>	<p>第五章 专利权的期限、终止和无效 Chapter 5 Term, Termination, and Invalidation of Patent Rights</p>	
<p>第四十二条 发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，均自申请日起算。</p> <p>Article 42 The term of an invention patent right shall be 20 years, and that of a utility model or design patent right shall be 10 years, all starting from the application date.</p>	<p>第四十三条 发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，外观设计专利权的期限为十五年，均自申请日起算。</p> <p>为补偿创新药品上市审评审批时间，对在中国境内与境外同步申请上市的创新药品发明专利，国务院可以决定延长专利权期限，延长期限不超过五年，创新药上市后总有效专利权期限不超过十四年。</p> <p>Article 43 The term of an invention patent right shall be 20 years, and that of a utility model or design patent right shall be 10 years, and that of a design patent shall be 15 years, all starting from the application date.</p> <p>In order to compensate for the</p>	<p>AIPLA 赞成对创新药品专利实行专利权延长，以补偿此类药物上市审评审批所花费的时间。然而，不清楚的是专利权延长是否只在同时在中国境内与境外申请上市时有效，目前的措辞表明，或者也可以在仅在中国申请上市或先在中国申请上市时有效。此外，我们建议提供过渡措施，对覆盖了我国目前已审批的药品或将获得中国上市审批的药品但没有同步</p>

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	<p>time taken for the evaluation and approval of innovative drugs, the State Council may decide to extend the duration of the patent right, for invention patents of innovative drugs for which marketing approval is applied simultaneously in China and abroad, for a period of not more than 5 years, and the total patent term of such innovative drugs after market launch shall not exceed 14 years.</p>	<p>申请在中国上市的专利准许专利期延长。最后，我们希望在实施细则中清楚地定义术语“创新药品”，从而专利持有人将理解哪些专利有资格获得期限延长。</p>
<p>第四十三条 专利权人应当自被授予专利权的当年开始缴纳年费。</p> <p>Article 43 A patentee shall start paying annuities from the year the patent right is granted.</p>	<p>第四十四条 专利权人应当自被授予专利权的当年开始缴纳年费。</p> <p>Article 44 A patentee shall start paying annuities from the year the patent right is granted.</p>	
<p>第四十四条 有下列情形之一的，专利权在期限届满前终止： （一）没有按照规定缴纳年费的；</p>	<p>第四十五条 有下列情形之一的，专利权在期限届满前终止： （一）没有按照规定缴纳年费的；</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>(二) 专利权人以书面声明放弃其专利权的。 专利权在期限届满前终止的, 由国务院专利行政部门登记和公告。</p> <p>Article 44 Under any of the following circumstances, the patent right shall be terminated before the expiration of the term:</p> <p>(1) failure to pay the annuity in accordance with the regulations; or</p> <p>(2) the patentee waives the patent right by a written declaration.</p> <p>If a patent right is terminated before the term expires, the patent administration department under the State Council shall register and make public notice of such termination.</p>	<p>(二) 专利权人以书面声明放弃其专利权的。 专利权在期限届满前终止的, 由国务院专利行政部门登记和公告。</p> <p>Article 45 Under any of the following circumstances, the patent right shall be terminated before the expiration of the term:</p> <p>(1) failure to pay the annuity in accordance with the regulations; or</p> <p>(2) the patentee waives the patent right by a written declaration.</p> <p>If a patent right is terminated before the term expires, the patent administration department under the State Council shall register and make public notice of such termination.</p>	
<p>第四十五条 自国务院专利行政部门公告授予专利权之日起, 任何单位或者个人认为该专利</p>	<p>第四十六条 自国务院专利行政部门公告授予专利权之日起, 任何单位或者个人认为该专利</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>权的授予不符合本法有关规定的，可以请求专利复审委员会宣告该专利权无效。</p> <p>Article 45</p> <p>Starting from the date the patent administration department under the State Council announces the grant of a patent right, any employer entity or individual may request the Patent Reexamination Board to declare the patent invalid if the employer entity or individual believes that the grant of patent right does not conform to the relevant provisions of this Law.</p>	<p>权的授予不符合本法有关规定的，可以请求专利复审委员会宣告该专利权无效。</p> <p>Article 46</p> <p>Starting from the date the patent administration department under the State Council announces the grant of a patent right, any employer entity or individual may request the Patent Reexamination Board to declare the patent invalid if the employer entity or individual believes that the grant of patent right does not conform to the relevant provisions of this Law.</p>	
<p>第四十六条</p> <p>专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。</p> <p>对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方</p>	<p>第四十七条</p> <p>专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。</p> <p>对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>当事人作为第三人参加诉讼。</p> <p>Article 46</p> <p>The Patent Reexamination Board shall examine the request for declaring a patent invalid and make a decision in a timely manner, and notify the requesting party and the patentee of its decision. The decision on declaring a patent invalid shall be registered and made public notice by the patent administration department under the State Council.</p> <p>A party that disagrees with the Patent Reexamination Board's decision on declaring a patent invalid or its decision on affirming the patent right may take legal action before a people's court, within three months from the date of</p>	<p>当事人作为第三人参加诉讼。</p> <p>Article 47</p> <p>The Patent Reexamination Board shall examine the request for declaring a patent invalid and make a decision in a timely manner, and notify the requesting party and the patentee of its decision. The decision on declaring a patent invalid shall be registered and made public notice by the patent administration department under the State Council.</p> <p>A party that disagrees with the Patent Reexamination Board's decision on declaring a patent invalid or its decision on affirming the patent right may take legal action before a people's court, within three months from the date of</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>receipt of the notification. The people's court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.</p>	<p>receipt of the notification. The people's court shall notify the opposite party in the invalidation procedure to participate in the litigation as a third party.</p>	
<p>第四十七条 宣告无效的专利权视为自始即不存在。</p> <p>宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。</p> <p>依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。</p> <p>Article 47 The right to any patent that has been declared invalid shall be deemed</p>	<p>第四十八条 宣告无效的专利权视为自始即不存在。</p> <p>宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。</p> <p>依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。</p> <p>Article 48 The right to any patent that has been declared invalid shall be deemed</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>to be non-existent from the beginning.</p> <p>The decision on declaring a patent invalid shall have no retroactive effect on any judgment or mediation agreement on patent infringement that has been made and enforced by the people's court, or on any decision on the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any exploitation license agreement or patent right transfer agreement that has been performed prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to others by the patentee's malicious act.</p> <p>Full or partial refund should be made if not refunding the patent infringement compensation, royalties, and patent right transfer fees pursuant to the provisions of the preceding paragraph would constitute a</p>	<p>to be non-existent from the beginning.</p> <p>The decision on declaring a patent invalid shall have no retroactive effect on any judgment or mediation agreement on patent infringement that has been made and enforced by the people's court, or on any decision on the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any exploitation license agreement or patent right transfer agreement that has been performed prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to others by the patentee's malicious act.</p> <p>Full or partial refund should be made if not refunding the patent infringement compensation, royalties, and patent right transfer fees pursuant to the provisions of the preceding paragraph would constitute a</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
blatant violation of the principle of fairness.	blatant violation of the principle of fairness.	
<p>第六章 专利实施的强制许可 Chapter 6 Compulsory License for Exploitation of a Patent</p>	<p>第六章 专利实施的强制特别许可 Chapter 6 Compulsory Special License for Exploitation of a Patent</p>	
	<p>第四十九条 国务院专利行政部门、地方人民政府管理专利工作的部门应当会同同级相关部门采取措施，加强专利公共服务，促进专利实施和运用。</p> <p>Article 49 (New) The patent administration department under the State Council and the administrative department for patent affairs under the local people's government shall, together with the relevant departments at the same level, take measures to strengthen the public service for patent and promote the implementation and application of patent.</p>	<p>AIPLA 注意到，促进专利实施和应用的政策是值得称赞的。然而，必须在专利所有人的合理商业判断以及各种各样的其他公共政策的背景下对其进行考虑。</p>

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>第五十条</p> <p>专利权人以书面方式向国务院专利行政部门声明愿意许可任何单位或者个人实施其专利，并明确许可使用费支付方式、标准的，由国务院专利行政部门予以公告，实行开放许可。就实用新型、外观设计专利提出开放许可声明的，应当提供专利权评价报告。</p> <p>专利权人撤回开放许可声明的，应当以书面方式提出，并由国务院专利行政部门予以公告。开放许可声明被公告撤回的，不影响在先给予的开放许可的效力。</p> <p>Article 50 (New)</p> <p>When the patentee has made a written declaration to the patent administration department under the State Council that it is willing to license any employer entity or individual to implement its patent ,and specify the payment procedure and standard for royalties, it shall be published by the patent administration</p>	<p>AIPLA 支持尽可能透明化的原则。然而，关于第五十条和第五十一条所述的机制，AIPLA 存在担忧。</p> <p>首先，规定的内容没有阐明这种“愿意[不愿意]授权给任何单位或个人”的声明应该是自愿的。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>department under the State Council as being subject to “open license.” The patentee declaring an open license of utility models or design patents shall provide the patentability assessment report.</p> <p>In case where such an open license declaration is withdrawn, the patentee shall submit a written withdrawal to the patent administration department under the State Council for publication. The withdrawal of an open license declaration shall not affect the validity of any issued open license before the withdrawal.</p>	<p>其次，规定的内容缺乏任何机制来激励这类已申报专利的用户去支付约定的费用而不是侵权。</p> <p>因此，我们建议作出如下修改：</p> <p>(1) 在“当专利权人向行政部门作出书面声明时”中增加“自愿”一词，以阐明公开许可声明是自愿的。</p> <p>(2) In line with WTO TRIPS Article 41(1) add this sentence at the end of Article 50: 根据《世界贸易组织与贸易有关的知识产权协定》第41(1)条，在第50条末尾加上这句话： “本条款下的声明的存在，不应减损专利权人对侵犯其专利的任何行为采取有效行动的权利，包括防止侵权行为的迅速救济和对进一步侵权构成威慑的救济”。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>第五十一条</p> <p>任何单位或者个人有意愿实施开放许可的专利的，以书面方式通知专利权人，并依照公告的许可使用费支付方式、标准支付许可使用费后，即获得专利实施许可。</p> <p>开放许可期间，专利权人不得就该专利给予独占或者排他许可。</p> <p>Article 51</p> <p>Any employer entity or individual willing to implement a patent subject to an open licensed may obtain a license to implement the patent by sending a written notification to the patentee and paying the license fee according to the payment procedure and standard published.</p> <p>No sole or exclusive license shall be granted by the patentee for the same</p>	<p>参见对第五十条的意见</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	patent during the effective period of an open license.	
	<p>第五十二条 当事人就实施开放许可发生纠纷的，可以请求国务院专利行政部门进行调解。</p> <p>Article 52 (New) Parties who have disputes arising from the implementation of an open license may request the patent administration department under the State Council to mediate.</p>	<p>AIPLA 理解这项新条款背后的动力，是为了友善而快速地结束商业纠纷。然而，AIPLA 认为这项新规定可能会阻碍当事人之间地自愿谈判。一方当事人可能不会真诚协商，而是希望该机构可以介入并提升其谈判地位，钻制度的空子。</p> <p>纠纷的解决是一项极其复杂的社会互动，需要足够的经验，对人和商业行为的理解，以及只与替代性纠纷解决机制相关而不是涉及是非曲直的判断或评价的其他形式的纠纷的解决的经验和技术。AIPLA 担心的是，由于 CNIPA 的传统职责并不包括调解商业纠纷且调解不在专利法的授权范围之内，因此 CNIPA 可能会缺乏有效调解商业纠纷的经验和资源。AIPLA 恭敬地建议，法院可能能够更高效且有效地解决此类纠</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
		纷。
<p>第四十八条 有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可： （一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的； （二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。</p> <p>Article 48 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any employer entity or individual that possesses the resource for exploitation, grant a compulsory license for exploitation of an</p>	<p>第五十三条 有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可： （一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的； （二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。</p> <p>Article 53 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any employer entity or individual that possesses the resource for exploitation, grant a compulsory license for exploitation of an</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>invention patent or utility model patent:</p> <p>(1) the patentee, without legitimate reasons, fails to exploit or fully exploit its patent three years since the date the patent right is granted and four years since the application date; or</p> <p>(2) if such compulsory license can eliminate or reduce the negative impact on competition when patentee's exercise of its patent right has been deemed as monopoly in accordance with the laws.</p>	<p>invention patent or utility model patent:</p> <p>(1) the patentee, without legitimate reasons, fails to exploit or fully exploit its patent three years since the date the patent right is granted and four years since the application date; or</p> <p>(2) if such compulsory license can eliminate or reduce the negative impact on competition when patentee's exercise of its patent right has been deemed as monopoly in accordance with the laws.</p>	
<p>第四十九条 在国家出现紧急状态或者非常情况时, 或者为了公共利益的目的, 国务院专利行政部门可以给予实施发明专利或者实用新型专利的强制许可。</p> <p>Article 49 When a national emergency or any extraordinary state of affairs arises,</p>	<p>第五十四条 在国家出现紧急状态或者非常情况时, 或者为了公共利益的目的, 国务院专利行政部门可以给予实施发明专利或者实用新型专利的强制许可。</p> <p>Article 54 When a national emergency or any extraordinary state of affairs arises,</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>or for public interests purposes, the patent administration department under the State Council may grant a compulsory license for the exploitation of an invention patent or utility model patent.</p>	<p>or for public interests purposes, the patent administration department under the State Council may grant a compulsory license for the exploitation of an invention patent or utility model patent.</p>	
<p>第五十条 为了公共健康目的,对取得专利权的药品,国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。</p> <p>Article 50 For the purposes of public health, the patent administration department under the State Council may grant a compulsory license on manufacturing a patented pharmaceutical and exporting it to the countries or regions that conform to the provisions of the relevant</p>	<p>第五十五条 为了公共健康目的,对取得专利权的药品,国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。</p> <p>Article 55 For the purposes of public health, the patent administration department under the State Council may grant a compulsory license on manufacturing a patented pharmaceutical and exporting it to the countries or regions that conform to the provisions of the relevant</p>	

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

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

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 52</p> <p>If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.</p>	<p>Article 57</p> <p>If an invention involved in a compulsory license is a semi-conductor technology, the exploitation thereof shall be limited to the purpose of public interests and to the circumstances as provided for in Subparagraph (2) of Article 48 of this Law.</p>	
<p>第五十三条</p> <p>除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。</p> <p>Article 53</p> <p>Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.</p>	<p>第五十八条</p> <p>除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。</p> <p>Article 58</p> <p>Except for the compulsory license granted in accordance with the provisions of Subparagraph (2) of Article 48 or Article 50 of this Law, compulsory license shall mainly be exercised for the supply to the domestic market.</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>第五十四条 依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能在合理的时间内获得许可。</p> <p>Article 54</p> <p>An employer entity or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it has, under reasonable terms, requested but failed to obtain within a reasonable period of time a license to exploit the patent from the patentee.</p>	<p>第五十九条 依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能在合理的时间内获得许可。</p> <p>Article 59</p> <p>An employer entity or individual that applies for a compulsory license in accordance with the provisions of Subparagraph (1) of Article 48 or Article 51 of this Law shall provide evidence to show that it has, under reasonable terms, requested but failed to obtain within a reasonable period of time a license to exploit the patent from the patentee.</p>	
<p>第五十五条 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。 给予实施强制许可的决定，应当根据</p>	<p>第六十条 国务院专利行政部门作出的给予实施强制许可的决定，应当及时通知专利权人，并予以登记和公告。 给予实施强制许可的决定，应当根据</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>强制许可的理由规定实施的范围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。</p> <p>Article 55</p> <p>The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and made public notice.</p> <p>A decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, specify the scope and duration for exploitation. When the reasons for compulsory license cease to exist and do not occur again, the patent administration department under the State Council shall, upon request by</p>	<p>强制许可的理由规定实施的范围和时间。强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。</p> <p>Article 60</p> <p>The decision made by the patent administration department under the State Council on granting of a compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and made public notice.</p> <p>A decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, specify the scope and duration for exploitation. When the reasons for compulsory license cease to exist and do not occur again, the patent administration department under the State Council shall, upon request by</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
the patentee, make a decision to terminate the compulsory license after a review.	the patentee, make a decision to terminate the compulsory license after a review.	
<p>第五十六条 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。</p> <p>Article 56</p> <p>Any employer entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right for exploitation and shall not have the right to license exploitation to others.</p>	<p>第六十一条 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。</p> <p>Article 61</p> <p>Any employer entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right for exploitation and shall not have the right to license exploitation to others.</p>	
<p>第五十七条 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由</p>	<p>第六十二条 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>国务院专利行政部门裁决。</p> <p>Article 57</p> <p>The employer entity or individual granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People’s Republic of China has signed. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.</p>	<p>国务院专利行政部门裁决。</p> <p>Article 62</p> <p>The employer entity or individual granted a compulsory license for exploitation shall pay reasonable royalties to the patentee, or handle the issue of royalties in accordance with the provisions of the relevant international treaties to which the People’s Republic of China has signed. The amount of royalties to be paid shall be subject to consultation between the two parties. In the event of failure to reach an agreement between the two parties, the patent administration department under the State Council shall make a ruling.</p>	
<p>第五十八条</p> <p>专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用</p>	<p>第六十三条</p> <p>专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>费的裁决不服的,可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 58</p> <p>If a patentee disagrees with the decision made by the patent administration department under the State Council on granting of the compulsory license for exploitation, or if the patentee, or the employer entity or individual that has obtained the compulsory license for exploitation disagrees with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it may take legal action before the people's court within three months from the date of receipt of the notification of the ruling.</p>	<p>费的裁决不服的,可以自收到通知之日起三个月内向人民法院起诉。</p> <p>Article 63</p> <p>If a patentee disagrees with the decision made by the patent administration department under the State Council on granting of the compulsory license for exploitation, or if the patentee, or the employer entity or individual that has obtained the compulsory license for exploitation disagrees with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it may take legal action before the people's court within three months from the date of receipt of the notification of the ruling.</p>	
第七章 专利权的保护	第七章 专利权的保护	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
Chapter 7 Protection of Patent Rights	Chapter 7 Protection of Patent Rights	
<p>第五十九条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。</p> <p>外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的该产品的外观设计。</p> <p>Article 59 The scope of protection for invention and utility model patents shall be defined by the claims, and the written description and drawings may be used to construe the claims.</p> <p>The scope of protection for design patents shall defined by the design of the product as shown in the drawings or pictures, and the brief description may be used to construe the design as shown in the drawings or pictures.</p>	<p>第六十四条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。</p> <p>外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的该产品的外观设计。</p> <p>Article 64 The scope of protection for invention and utility model patents shall be defined by the claims, and the written description and drawings may be used to construe the claims.</p> <p>The scope of protection for design patents shall defined by the design of the product as shown in the drawings or pictures, and the brief description may be used to construe the design as shown in the drawings or pictures.</p>	

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<p>第六十条</p> <p>未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。</p> <p>Article 60</p> <p>If a dispute arises as a result of exploitation of a patent without the patentee's permission, that is,</p>	<p>第六十五条</p> <p>未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。</p> <p>Article 65</p> <p>If a dispute arises as a result of exploitation of a patent without the patentee's permission, that is,</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to settle or if settling effort fails, the patentee or interested party may take legal action before a people's court, and may also request the department administrating patent affairs to handle the dispute. If the department administrating patent affairs, in handling a dispute, determines infringement, it can order the infringer to immediately stop the infringing act. Any party disagreeing with the order may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal</p>	<p>the patent right of the patentee is infringed, the dispute shall be settled through consultation between the parties. If the parties are not willing to settle or if settling effort fails, the patentee or interested party may take legal action before a people's court, and may also request the department administrating patent affairs to handle the dispute. If the department administrating patent affairs, in handling a dispute, determines infringement, it can order the infringer to immediately stop the infringing act. Any party disagreeing with the order may, within 15 days from the date of receipt of the notification of the order, take legal action before a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If the infringer neither takes legal</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>action at the expiration of the time limit nor ceases the infringement, the department administrating patent affairs may file an application with the people's court for compulsory enforcement. The department administrating patent affairs may, upon request of the parties, carry out mediation concerning the amount of damage for the patent right infringement. If the mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.</p>	<p>action at the expiration of the time limit nor ceases the infringement, the department administrating patent affairs may file an application with the people's court for compulsory enforcement. The department administrating patent affairs may, upon request of the parties, carry out mediation concerning the amount of damage for the patent right infringement. If the mediation fails, the parties may take legal action before the people's court in accordance with the Civil Procedure Law of the People's Republic of China.</p>	
<p>第六十一条 专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或个人应当提供其产品制造方法不同于专利方法的证明。 专利侵权纠纷涉及实用新型专利或者</p>	<p>第六十六条 专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或个人应当提供其产品制造方法不同于专利方法的证明。 专利侵权纠纷涉及实用新型专利或者</p>	

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<p>外观设计专利的，人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型专利或者外观设计专利进行检索、分析和评价后作出的专利权评价报告，作为审理、处理专利侵权纠纷的证据。</p> <p>Article 61</p> <p>If a patent infringement dispute involves an invention patent on a new method for manufacturing a product, the employer entity or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.</p> <p>If a patent infringement dispute involves a utility model patent or a design patent, the people’s court or the department administrating patent affairs may require the patentee or the interested parties to present a</p>	<p>外观设计专利的，人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型专利或者外观设计专利进行检索、分析和评价后作出的专利权评价报告，作为审理、处理专利侵权纠纷的证据。双方当事人也可以主动出具专利权评价报告。</p> <p>Article 66</p> <p>If a patent infringement dispute involves an invention patent on a new method for manufacturing a product, the employer entity or individual manufacturing the same product shall provide evidence to show that the manufacturing method of their own product is different from the patented method.</p> <p>If a patent infringement dispute involves a utility model patent or a design patent, the people’s court or the department administrating patent affairs may require the patentee or the interested parties to present a</p>	<p>AIPLA 支持允许专利权人和被告人针对相关专利侵权纠纷获得并向法院或机构提交专利性评估报告。AIPLA 担心由一方当事人在抗辩诉讼中提交的这类报告可能是存有偏见的或自私的，因此，AIPLA 建议让另一方当事人（以及第三方）能够获得该报告，从而另一方当事人有机会检查该报告并在有需要时进行反驳。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>patentability assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for adjudicating or handling the patent infringement dispute.</p>	<p>patentability assessment report prepared by the patent administration department under the State Council through searching, analyzing, and assessing the relevant utility model or design, which shall serve as evidence for adjudicating or handling the patent infringement dispute. Either party could provide the above patentability assessment report on its own initiative.</p>	
<p>第六十二条 在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。</p> <p>Article 62 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is prior art or design, the</p>	<p>第六十七条 在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。</p> <p>Article 67 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is prior art or design, the</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>exploitation shall not constitute patent infringement.</p>	<p>exploitation shall not constitute patent infringement.</p>	
<p>第六十三条 假冒专利的，除依法承担民事责任外，由管理专利工作的部门责令改正并予公告，没收违法所得，可以并处违法所得四倍以下的罚款；没有违法所得的，可以处二十万元以下的罚款；构成犯罪的，依法追究刑事责任。</p> <p>Article 63 Anyone who passes off the patent of another shall, in addition to bearing civil liabilities in accordance with the laws, be ordered by the department administrating patent affairs to correct the act and made known to the public. The illegal business income shall be confiscated, and a fine of less than four folds of the illegal business income may be imposed. Where no unlawful business income has been generated, a fine of</p>	<p>第六十八条 假冒专利的，除依法承担民事责任外，由管理专利工作负责专利执法的部门责令改正并予公告，没收违法所得，可以并处违法所得四五倍以下的罚款；没有违法所得或者违法所得在五万元以下的，可以处二十五万元以下的罚款；构成犯罪的，依法追究刑事责任。</p> <p>Article 68 Anyone who passes off the patent of another shall, in addition to bearing civil liabilities in accordance with the laws, be ordered by the department administrating patent affairs responsible for patent enforcement to correct the act and made known to the public. The illegal business income shall be confiscated, and a fine of less than four five folds of the illegal business income may be imposed. Where no unlawful</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>less than RMB 200,000 may be imposed. If a crime is constituted, criminal liability shall be pursued in accordance with the laws.</p>	<p>business income has been generated or when the unlawful business income is less than RMB 50,000, a fine of less than RMB 2050,000 may be imposed. If a crime is constituted, criminal liability shall be pursued in accordance with the laws.</p>	
<p>第六十四条 管理专利工作的部门根据已经取得的证据,对涉嫌假冒专利行为进行查处时,可以询问有关当事人,调查与涉嫌违法行为有关的情况;对当事人涉嫌违法行为的场所实施现场检查;查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料;检查与涉嫌违法行为有关的产品,对有证据证明是假冒专利的产品,可以查封或者扣押。 管理专利工作的部门依法行使前款规定的职权时,当事人应当予以协助、配合,不得拒绝、阻挠。</p>	<p>第六十九条 管理专利工作的部门、负责专利执法的部门根据已经取得的证据,对涉嫌侵犯专利权、假冒专利行为进行处理、查处时,可以询问有关当事人,调查与涉嫌违法行为有关的情况;对当事人涉嫌违法行为的场所实施现场检查;查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料;检查与涉嫌违法行为有关的产品,对有证据证明是假冒专利的产品,可以查封或者扣押。 管理专利工作的部门、负责专利执法的部门依法行使前款规定的职权时,当事人应当予以协助、配合,不得拒绝、阻</p>	<p>AIPLA 仍担心国家、省级和市级行政执法机构的增加可能会造成额外的冲突,并阻碍明确统一的规章制度的发展。AIPLA 恭敬地提出,通过法院进行的私人执法应当是主要的执法机制,其能够更好更有效地实现这些目标。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 64</p> <p>When the department administrating patent affairs investigates and disposes a suspected act of passing off of patent based on evidence obtained, it may inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct field inspection of the places where the suspected illegal act takes place; it may review and copy the relevant contracts, invoices, accounting books, and other related materials; it may inspect the products related to the suspected illegal act, and seal or seize the</p>	<p>挠。</p> <p>Article 69</p> <p>When the department administrating patent affairs and the department responsible for patent enforcement handles, investigates and disposes a suspected act of passing off of patent or patent infringement based on evidence obtained, it may inquire the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct field inspection of the places where the suspected illegal act takes place; it may review and copy the relevant contracts, invoices, accounting books, and other related materials; it may inspect the products related to the suspected illegal act, and seal or seize the products that have been proved to be patent passing-off products.</p>	<p>AIPLA 还对调查和获取机密信息的权利有所担忧，包括调查涉嫌侵犯专利权行为过程中的商业秘密。在民事专利诉讼中，这些权利不为当事人所享有，并且会阻碍他们在中国从事制造或研发活动，因为在中国，包括商业秘密在内的相关机密信息可能会被当地部门获取。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>products that have been proved to be patent passing-off products.</p> <p>When the department administrating patent affairs performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, and shall not refuse or hinder.</p>	<p>When the department administrating patent affairs and the department responsible for patent enforcement performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, and shall not refuse or hinder.</p>	
	<p>第七十条 (新增)</p> <p>国务院专利行政部门可以应专利权人或者利害关系人的请求处理在全国有重大影响的专利侵权纠纷。</p> <p>地方人民政府管理专利工作的部门应专利权人或者利害关系人请求处理专利侵权纠纷，对在本行政区域内侵犯其同一专利权的案件可以合并处理；对跨区域侵犯其同一专利权的案件可以请求上级人民政府管理专利工作的部门处理。</p> <p>Article 70 (New)</p> <p>The patent administration department under the State Council may handle</p>	<p>AIPLA 注意到，拟议的第七十条给予国务院专利行政部门自由裁量权来处理在全国</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>patent infringement disputes that are of nationwide significance in response to the request of the patentee or interested parties.</p> <p>The department administrating patent affairs of a local people's government handles patent infringement disputes in response to the requests of patentee or interested parties, and may consolidate those cases that relate to the infringement of the same patent that occur within its administrative jurisdiction; the cases that involve the infringement of the same patent occurring in cross-jurisdictions may be requested to be handled by the department administrating patent affairs of the upper level people's government.</p>	<p>范围内有重大影响的专利侵权纠纷。</p> <p>拟议的第七十条还授予地方人民政府管理专利工作的部门自由裁量权，其应当应专利权人或任何利害关系方的请求，处理任何与专利侵权相关的纠纷，并且给予该部门自由裁量权来合并处理本行政区域内的同一专利的所有侵权案件。</p> <p>最后，第七十条给予上级人民政府管理专利工作的部门自由裁量权来处理跨区域侵犯同一专利的行为。</p> <p>AIPLA 恭敬地提出，根据国际专利保护规范和 TRIPS、WTO 的规定，专利权的实施应以私人执法为主要机制。因此，在没有各方同意的情况下，中国的法院，而不是行政机构，可能是处理专利纠纷的更好的机构。这是大多数创新型司法管辖区的情况，并且中国法院审理专利案件已有 30 多年历史，在认定专利侵权和实施适当处罚方面积累了丰富的专业知识。</p> <p>AIPLA 担心，在法院和行政机构之间划分执法权限可能会导致私人执法的削弱、此类决定的不一致以及商业和市场的不可预</p>

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		<p>测性增加，从而最终损害创新型社会。</p> <p>此外，拟议的第七十条没有说明如何解决管辖冲突，例如，不同当事人要求不同的法庭处理同一请求的情况。没有任何解决这种冲突的规则可能会导致严重的不利后果，例如，使侵权人有可能通过制造管辖权僵局来逃避后果。</p>

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>第七十一条 (新增)</p> <p>专利权人或者利害关系人可以依据人民法院生效的判决书、裁定书、调解书，或者管理专利工作的部门作出的责令停止侵权的决定，通知网络服务提供者采取删除、屏蔽、断开侵权产品链接等必要措施。网络服务提供者接到通知后未及时采取必要措施的，对损害的扩大部分与侵权网络用户承担连带责任。</p> <p>负责专利执法的部门对假冒专利作出责令改正的决定后，可以通知网络服务提供者采取删除、屏蔽、断开假冒专利产品链接等必要措施。网络服务提供者接到通知后应当及时采取必要措施。</p> <p>Article 71 (New)</p> <p>The patentee or an interested party may, based on an effective judgement, order, or mediation agreement issued by the people's court or an order for cessation of infringement made by the administrative department for patent</p>	

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	<p>affairs, notify an Internet Service Provider to take necessary measures such as deleting, blocking or disconnecting the links to the infringement products. If the Internet Service Provider fails to take necessary measures in time after receiving the notification, it shall be, together with the infringing internet user, jointly liable to any additional damage incurred.</p> <p>After the administration department responsible for patent enforcement issues a decision to order correction of patent passing off, it may notify the Internet Service Provider to take necessary measures such as deleting, blocking or disconnecting the links to the patent passing-off products. The Internet Service Provider shall take necessary measures in a timely fashion.</p>	

现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>第六十五条</p> <p>侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百万元以下的赔偿。</p>	<p>第七十二条</p> <p>侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。对故意侵犯专利权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百万元以下十万元以上五百万元以下的赔偿。</p> <p>赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。</p> <p>人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>Article 65</p> <p>The amount of damage for patent right infringement shall be determined according to the patentee’s actual losses caused by the infringement. If the actual losses is hard to determine, the amount may be determined according to the infringer’s profits through the infringement. If both the patentee’s losses and the infringer’s profits are hard to determine, the amount may be determined based on the reasonably multiplied amount of the royalties of the patent. The amount of damage</p>	<p>以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。</p> <p>Article 72</p> <p>The amount of damage for patent right infringement shall be determined according to the patentee’s actual losses caused by the infringement. If the actual losses is hard to determine, the amount may be determined according to the infringer’s profits through the infringement. If both the patentee’s losses and the infringer’s profits are hard to determine, the amount may be determined based on the reasonably multiplied amount of the royalties of the patent. <u>With respect to willful patent infringement, for serious circumstances, the damage may be set at an amount between one and five times the amount determined by the aforementioned methods.</u> The amount of</p>	<p>AIPLA 赞成这样的修正，其将增加可用于故意侵权的损害赔偿数额，并在被告人掌握了相关证据时减轻证明由侵权造成的损失的证据挑战。</p> <p>AIPLA 对第七十二条有如下担忧。</p> <p>首先，与前次草案相比，值得赞扬的是，故意侵权的损害赔偿已从 2-3 倍增加到 1-5 倍。然而，这项修正可以被理解为表示增加故意侵权的损害赔偿只适用于“严重情节”。换句话说，为了获得增加的损害赔偿，专利所有人必须证明该侵权不仅是“故意的”而且情节还很严重。</p> <p>“严重情节”的这一进一步提高的要求似乎是不适当的，并且不符合给予更多损害赔偿的国际准则。AIPLA 建议使用以下替代语言：<u>对于故意侵犯专利权的行为，损失赔偿可以设定为由上述方法确定的损失赔偿数额的 - 一到三倍，情节严重的可以进一步增加到 - 三到五倍。</u></p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>shall include the reasonable expenses paid by the patentee for stop the infringement.</p> <p>If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of damage between RMB 10,000 and 1,000,000.</p>	<p>damage shall include the reasonable expenses paid by the patentee for stop the infringement.</p> <p>If the losses of the patentee, benefits of the infringer, or royalties of the patent are all hard to determine, the people's court may, on the basis of the factors such as the type of patent right, nature of the infringement, and seriousness of the case, determine the amount of damage between RMB 100,000 and 5,000,000 10,000 to 1,000,000.</p> <p><u>The amount of damage shall include the reasonable expenses paid by the patentee for stop the infringement.</u></p> <p><u>For the purpose of determining damage amount, in the situation that patentee has made every effort to provide evidence, but the accounting books and materials related to the infringement are controlled by the accused infringer, the people's court may order the accused infringer to</u></p>	<p>此外，这项条款没有提供任何关于什么情况会被认为是“严重情节”的指导意见。这使得在触犯了这些规定的时候对商业界没有任何清楚的指导。中国实行的是不同于普通法的民法体系。因此，这项修改应当提供清楚的指导。AIPLA 建议，专利法应针对在判定故意性的过程中会考虑什么因素以及这些情况何时被认为是“严重的”提供更清楚的指导。例如，对专利的了解充分吗？，或者还需要其他因素吗？</p> <p>通过规定人民法院可以责令侵权人提供与侵权有关的会计帐簿和资料的情形，以及不这样做或提供假账簿和材料的惩罚，所提出的对第七十二条的修改使专利侵权请求人更容易确定侵权活动的范围，以证明其受到的损失，或确定计算专利许可使用费的基础。提议的语言似乎是合适的。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
	<p>provide such. If the accused infringer fails to provide the account books and materials or provides fake account books and materials, the people's court may determine the amount of damage by referencing to the patentee's claims and evidence.</p>	
<p>第六十六条 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。 申请人提出申请时，应当提供担保；不提供担保的，驳回申请。 人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。 申请人自人民法院采取责令停止有关</p>	<p>第七十三条 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。 申请人提出申请时，应当提供担保；不提供担保的，驳回申请。 人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。 申请人自人民法院采取责令停止有关</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。</p> <p>Article 66</p> <p>If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless stopped timely, may cause irreparable harm to its lawful rights and interests, it may, before taking legal action, file an application to request that the people’s court order to have such act ceased.</p> <p>When filing such an application, the applicant shall provide a bond. In the event of failure to provide a bond, the application shall be rejected.</p> <p>The people’s court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under</p>	<p>行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。</p> <p>Article 73</p> <p>If the patentee or interested party has evidence to prove that another person is committing or is about to commit a patent infringement, which, unless stopped timely, may cause irreparable harm to its lawful rights and interests, it may, before taking legal action, file an application to request that the people’s court order to have such act ceased.</p> <p>When filing such an application, the applicant shall provide a bond. In the event of failure to provide a bond, the application shall be rejected.</p> <p>The people’s court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>special circumstances, a 48-hour extension may be granted. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party disagreeing with the ruling may file once for appeal, and the enforcement shall not be suspended during the appeal.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.</p> <p>If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.</p>	<p>special circumstances, a 48-hour extension may be granted. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party disagreeing with the ruling may file once for appeal, and the enforcement shall not be suspended during the appeal.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes measures to have the relevant act ceased, the people's court shall lift such measures.</p> <p>If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.</p>	
<p>第六十七条</p> <p>为了制止专利侵权行为, 在证据可能灭失或者以后难以取得的情况下, 专利权人或者利害关系人可以在起诉前向人民法院申请保全证据。</p>	<p>第七十四条</p> <p>为了制止专利侵权行为, 在证据可能灭失或者以后难以取得的情况下, 专利权人或者利害关系人可以在起诉前依法向人民法院申请保全证据。</p>	

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>人民法院采取保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；裁定采取保全措施的，应当立即执行。</p> <p>申请人自人民法院采取保全措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>Article 67</p> <p>To stop a patent infringement act, in the situation where evidence might be lost or hard to acquire thereafter, a patentee or interested party may, before taking legal action, file an application with the people’s court for evidence preservation.</p> <p>If the people’s court takes preservation measures, it may order the applicant to provide a bond, and reject the application if the applicant fails to provide a bond.</p> <p>The people’s court shall make a ruling within 48 hours from the time</p>	<p>人民法院采取保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。</p> <p>人民法院应当自接受申请之时起四十八小时内作出裁定；裁定采取保全措施的，应当立即执行。</p> <p>申请人自人民法院采取保全措施之日起十五日内不起诉的，人民法院应当解除该措施。</p> <p>Article 74</p> <p>To stop a patent infringement act, in the situation where evidence might be lost or hard to acquire thereafter, a patentee or interested party may, before taking legal action, file an application <u>in accordance with the law</u> with the people’s court for evidence preservation.</p> <p>—If the people’s court takes preservation measures, it may order the applicant to provide a bond, and reject the application if the applicant fails to provide a bond.</p>	

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<p>of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.</p>	<p>The people's court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.</p> <p>If the applicant does not take legal action within 15 days from the date the people's court takes preservation measures, the people's court shall lift such measures.</p>	
<p>第六十八条</p> <p>侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。</p> <p>发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。</p> <p>Article 68</p>	<p>第七十五条</p> <p>侵犯专利权的诉讼时效为二三年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。</p> <p>发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二三年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。</p> <p>Article 75</p>	<p>AIPLA 赞同将提起专利侵权诉讼的时效从 2 年延长至 3 年。</p>

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现行专利法	专利法(修正案草案) (2019.01)	AIPLA 意见
<p>The statute of limitation for action against patent right infringement shall be two years, starting from the date when the patentee or interested party learns about or should have learned about the infringement.</p> <p>If an appropriate royalty is not paid for exploiting an invention during the period from the publication of an invention patent application to the grant of the patent right, the statute of limitation for the patentee to take legal action requesting payment of royalties shall be two years, starting from the date when the patentee learns about or should have learned about the exploitation of the patent by another. However, the statute of limitation for action shall start from the date when the patent right is granted, if the patentee learns about or should have learned about the exploitation before the</p>	<p>The statute of limitation for action against patent right infringement shall be two three years, starting from the date when the patentee or interested party learns about or should have learned about the infringement.</p> <p>If an appropriate royalty is not paid for exploiting an invention during the period from the publication of an invention patent application to the grant of the patent right, the statute of limitation for the patentee to take legal action requesting payment of royalties shall be two three years, starting from the date when the patentee learns about or should have learned about the exploitation of the patent by another. However, the statute of limitation for action shall start from the date when the patent right is granted, if the patentee learns about or should have learned about the exploitation before</p>	

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patent right is granted.	the patent right is granted.	
<p>第六十九条 有下列情形之一的，不视为侵犯专利权：</p> <p>（一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的；</p> <p>（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；</p> <p>（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；</p> <p>（四）专为科学研究和实验而使用有关专利的；</p> <p>（五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。</p>	<p>第七十六条 有下列情形之一的，不视为侵犯专利权：</p> <p>（一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的；</p> <p>（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；</p> <p>（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；</p> <p>（四）专为科学研究和实验而使用有关专利的；</p> <p>（五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。</p>	

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<p>Article 69</p> <p>The following acts do not constitute patent infringement:</p> <p>(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any employer entity or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;</p> <p>(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;</p> <p>(3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent</p>	<p>Article 76</p> <p>The following acts do not constitute patent infringement:</p> <p>(1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any employer entity or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product;</p> <p>(2) Before the date of patent application, any other person has already manufactured identical products, used identical method or has made necessary preparations for the manufacture or use and continues to manufacture the products or use the method within the original scope;</p> <p>(3) With respect to any foreign means of transportation that temporarily passes through the territory, territorial waters, or territorial airspace of China, the relevant patent</p>	

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

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

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

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<p>in this Law, he shall be given an administrative sanction by the employer entity or the upper level authority.</p>	<p>level authority.</p>	
<p>第七十三条 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。 管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。</p> <p>Article 73 The departments administering patent affairs shall not engage in commercial activities such as promoting patented products to the public. If a department administering patent affairs violates the provisions of the preceding paragraph, its higher</p>	<p>第七十九条 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。 管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。</p> <p>Article 79 The departments administering patent affairs shall not engage in commercial activities such as promoting patented products to the public. If a department administering patent affairs violates the provisions of the preceding paragraph, its higher</p>	

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authority or supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with the laws.	authority or supervisory authority shall order it to rectify, and confiscate its unlawful gains, if any; if the circumstances are serious, the principal leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with the laws.	
<p>第七十四条 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。</p> <p>Article 74 Any staff member of the government department engaged in administration of patent affairs or of a relevant department who neglects his or her duty, abuses his or her power, or commits irregularities for personal gain shall be pursued for criminal</p>	<p>第八十条 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。</p> <p>Article 80 Any staff member of the government department engaged in administration of patent affairs or of a relevant department who neglects his or her duty, abuses his or her power, or commits irregularities for personal gain shall be pursued for criminal</p>	

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liability in accordance with law if such act constitutes a crime. If the act does not constitute a crime, an administrative sanction should be given in accordance with the laws.	liability in accordance with law if such act constitutes a crime. If the act does not constitute a crime, an administrative sanction should be given in accordance with the laws.	
<p>第八章 附 则 Chapter 8 Supplementary Provisions</p>	<p>第八章 附 则 Chapter 8 Supplementary Provisions s</p>	
<p>第七十五条</p> <p>向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。</p> <p>Article 75</p> <p>In applying for patents or going through other procedures at the patent administrative department under the State Council, fees shall be paid in accordance with relevant regulations.</p>	<p>第八十一条</p> <p>向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。</p> <p>Article 81</p> <p>In applying for patents or going through other procedures at the patent administrative department under the State Council, fees shall be paid in accordance with relevant regulations.</p>	

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<p>第七十六条 本法自 1985 年 4 月 1 日起施行。</p> <p>Article 76</p> <p>This Law shall go into effect on April 1, 1985.</p>		