AIPLA
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

January 1, 2016

宋大涵主任
国务院法制办公室
中华人民共和国

Mr. Song Dahan
Legislative Affairs Office of the State Council (LAOSC)
Peoples Republic of China

via email <zlf@chinalaw.gov.cn>

Re: Comments on Fourth Amendment to Chinese Patent Law
对专利法修订草案的意见

Dear Mr. Song,

尊敬的宋大涵先生，

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to comment on recent amendments, and attach a chart listing our detailed comments, some of which are also summarized below.

美国知识产权法律协会（AIPLA）感谢对最近一次专利法修订草案提出意见的机会。现随函附上我们的具体意见和建议（主要意见概括如下）。

AIPLA is a national bar association of approximately 14,000 members who are primarily lawyers engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

AIPLA 有约 14000 名会员的国家法律协会，协会会员主要为在私人或企业团体、政府公职以及学术机构中就职的律师。AIPLA 成员广泛而多样化的代表了不同的个人、企业及机构，其范围直接或间接涉及专利、商标、版权、商业秘密和不公平竞争法，以及会影响知识产权的的其他法律领域。我们的成员同时代表了知识产权的所有者和使用者。我们的使命包括帮助建立和维护法律和政策公平、有效，这些法律及政策在平衡公众在健康竞争、费用合理以及基本公平方面的利益的同时促进并鼓励创造发明。

AIPLA commends the inclusion in Article 2 of rights in whole or part of a design. Parts of a product design are independently protectable in many of China's trading partners and under international norms of intellectual property protection. This protection is particularly important for designs that achieve international recognition.

AIPLA 赞同在第 2 条包括整体或局部外观设计的权利。在中国的许多贸易伙伴以及在知识产权保护的国际标准中，产品局部设计是可被独立保护的。这一保护对获得国际认可的外观设计来说尤其重要。

Article 3 expands the administrative enforcement system, providing greater clarity. Administrative enforcement may be faster and simpler, nonetheless, AIPLA remains concerned that the proliferation of administrative enforcement mechanisms at the country, provincial, and municipal level may create additional conflicts and prevent the development of clear uniform rules and practice. AIPLA respectfully submits that the courts may be able to serve these goals more efficiently.

第 3 条扩展了行政执法体系，提供了更高的清晰度。行政执法可能更快捷和简便，然而 AIPLA 仍然担心行政执法机制分散于国家级、省级和市级多级可能会产生额外的矛盾，并且妨碍建立清晰统一的执法条例和实践。AIPLA 认为法院可能能够更有效地为这些目标服务。

Article 6 addresses service inventions and imposes two additional restrictions on employers' rights. Specifically, the provisions permitting employees to retain rights in inventions made using employers' resources and where the employee invents for their own benefit using the employers' resources are potentially problematic. AIPLA is concerned regarding both of these restrictions and recommends that they be further amended to preserve the employer's motivation to provide incentives for their employees to invent.

第 6 条处理了职务发明问题并且增加了两项对雇主权利的额外限制。具体而言，该条款允许雇员保留使用了雇主资源而创造的发明的权利以及出于本人利益使用雇主资源完成的发明的权利，这些条款可能构成问题。AIPLA 担忧上述两点限制，并且建议对其进一步修改以使得雇主仍有动机鼓励其雇员进行发明。

Article 14 imposed an additional requirement of good faith. As noted above with respect to the requirements regarding "social ethics" and "public interest" AIPLA is concerned that these requirements are vague and recommends that they would provide greater guidance were they amended to be clearer and more specific. AIPLA also notes that these requirements overlap to some degree the provisions of the anti-monopoly laws, creating potential conflicts between the two. AIPLA recommends that further clarification that the requirements of the two laws are compatible may moderate or eliminate this potential conflict.

第 14 条附加地要求了诚实信用原则。如上述所注意到的关于 "社会公德"和 "公共利益"要求，AIPLA 担心这些要求较为模糊并且建议将其修改得更清楚、更明确使其提供进一步的指导。AIPLA 同样留意到这些要求与反垄断法中的一些条款在一定程度上相重叠，造成两者之间可能存在矛盾。AIPLA 建议进一步明确该条款，两部法律中的要求保持一致可减少或消除可能存在的矛盾。

Article 16 adds requirements that remuneration be provided based on the scope of the application and "economic results." AIPLA is concerned that patent valuation is a highly complex endeavor, involving multiple disciplines requiring economists, scientists, engineers, and lawyers to work together. Moreover, the factors informing patent value are subject to change over time and based on technical and market considerations. Given these complexities and uncertainties, AIPLA recommends that the specifics of patent valuation be left to negotiation between employers and employees rather than the subject of amendments.

第 16 条增加了应当根据推广应用的范围和取得的"经济效益"提供报酬的规定。AIPLA 担心专利估值十分复杂，涉及多个需要经济学家、科学家、工程师和律师协作的领域。而且影响专利价值的因素会随时间变化及受技术与市场因素影响。考虑到这些复杂性和不确定性，AIPLA 建议将专利估值的细节留给雇主和雇员协商，而不在修订草案中规定。

Article 22 includes requirements of novelty and inventive step for utility models as well as utility patents and AIPLA commends these requirements. AIPLA recommends further that the same standard of inventive step be applied to both.

第 22 条包括了对实用新型专利和发明专利的新颖性和创造性的要求。AIPLA 赞同这一点，并进一步建议应该对这两种专利采用同样的创造性标准。

The prior amendment of Article 25 includes provisions for method of diagnosis or treatment of diseases in livestock and poultry. AIPLA supports the reintroduction of this term into the current Amendment.

对第 25 条的在之前的修订包括对家畜和家禽疾病的诊断和治疗方法。AIPLA 支持将该条款再次引入现修订版本。

Article 41 provides additional authority to the Patent Review Board. AIPLA commends this additional authority and recommends two further considerations. First, the criterion "other considerations" may be vague and AIPLA recommends that it be clarified and made more specific. Second, AIPLA recommends providing the applicant or patentee with an opportunity to object to additional review based on "other considerations".

第 41 条赋予了专利复审委会更大的权限。AIPLA 赞成赋予复审委更大的权限，并进一步提出两点建议。第一，对"其他情形"所包括的范围加以明确。第二，给与申请人和专利权人就是否应根据其他情形进行审查表达不同意见的申诉机会。

Article 42 amends the duration of patent rights and AIPLA commends this amendment as bringing Chinese practice more closely into alignment with that of its close trading partners and international norms.

第 42 条修改了发明专利权的期限，AIPLA 赞同这一修改，因为这一修改使中国于中国的亲密贸易伙伴和国际标准更一致。

Article 46 permits the Patent Review Board to issue new grounds of rejection and AIPLA commends this additional authority, provided the case is remanded to the examiner and Applicant is given a full and fair opportunity to respond to the new grounds.

第 46 条许可复审委就其他情形审查专利是否无效，AIPLA 赞成此权限的扩大，前提是本案应发回审查员重审，以给予申请人充分公平的机会就新无效理由进行答辩。

Article 60 strengthens local administrative enforcement mechanisms and adds provisions for addressing willful and repeat infringement. AIPLA commends these amendments as bringing the Chinese system more closely into alignment with international norms. AIPLA remains concerned, however, that multiple layers of administrative enforcement at the country, provincial, and municipal levels may create inconsistency and uncertainty. The standards for willful infringement are somewhat vague and AIPLA recommends greater clarity in their implementation. In addition, monetary penalties are available only for repeat infringement and it is not clear why these provisions would apply only in cases of repeat infringement.

第 60 条加强了地方行政执法机制并且为解决故意及重复侵权做出了规定。AIPLA 赞成这些修改，使中国体制更接近于国际标准。然而 AIPLA 仍然担心国家、省、市县多级行政执法可能导致不一致性和不确定性。故意侵权的标准较为模糊，AIPLA 建议进一步明确如何实施本款规定。此外，为何罚款仅适用于重复侵权的原因不太明白。

Article 62 includes provisions addressing indirect infringement, contributory infringement, and inducement to infringe. AIPLA commends these amendments as bringing the Chinese system more closely into alignment with international norms. AIPLA remains concerned, however, that the standards for "knowing," "purposes of

business," and "induce" may not be clear and recommends greater clarity and specificity.

第 62 条包括解决间接侵权、诱导侵权问题的规定。AIPLA 赞成这些修改，这些修改使得中国体制更接近于国际标准。然而 AIPLA 仍担心对于认定“明知”、“生产经营目的”和“诱导”可能不清楚并建议进一步详细明确。

Article 63 introduces provisions regarding internet service providers and also brings the Chinese system more closely into alignment with international norms. The scope of any "safe harbor" provided to the ISP, however, remains unclear, particularly when the alleged infringer responds to the challenge to the posted information providing evidence that it does not infringe. AIPLA recommends that greater clarity with respect to the mechanism and process as well as the scope of any safe harbor protections would benefit ISPs, content owners, and alleged infringers.

第 63 条引入了关于网络服务提供者的规定并且使得中国体制更接近于国际标准。然而，提供给网络服务提供者的“安全港”范围并不清楚，特别是当被控侵权的网络用户对发布信息的嫌疑进行答复并提供证据证明其未侵权时。AIPLA 建议进一步明确该机制与过程，因为安全港保护的范围会使网络服务提供者、（所发布的）内容的所有者以及被控侵权人获益。

Article 66 provides enhanced damages for counterfeiting and passing off. AIPLA commends these amendments as bringing the Chinese system more closely into alignment with international norms but remains concerned that additional increases may be necessary.

第 66 条对伪造假冒行为加大了罚款额度。AIPLA 赞同这些修改，该修改使得中国体制更接近国际标准，但 AIPLA 仍关注罚款额度也许需要进一步增加。

Article 67 has been amended to require cooperation by the alleged infringer with investigating authorities. AIPLA commends this amendment as enhancing the enforcement process but remains concerned that the standards when this provision may be enforced remains vague and may lead to uncertainty. AIPLA recommends more specific guidance be provided in implementing these amendments.

第 67 条要求被控侵权人与调查机构协助配合。AIPLA 赞同这一修改，因其优化了执法进程，但 AIPLA 仍担心这些规定的实施标准较为模糊，可能造成不确定性。AIPLA 建议在实施该修改时提供更详细的指导。

Article 68 addresses international infringement and provided for enhanced damages. AIPLA commends these amendments as bringing Chinese practice more closely into alignment with international norms but remains concerned that further

increases in these amounts may be necessary. Moreover, AIPLA recommends that distinctions be made between utility inventions and utility models which typically involve smaller incremental advances.

第 68 条解决了国际侵权问题并且增加了赔偿金额度。AIPLA 赞同这些修改，该修改使得中国体制更接近于国际标准，但 AIPLA 仍担心需要进一步提升这些赔偿数额。而且，AIPLA 建议区分发明和只需较小改进就可授权的实用新型。

New Articles 80-84 provide for the availability of licenses and a dispute resolution procedure. AIPLA commends these amendments but remains concerned that these provisions not supplant or foreclose private licensing activities and access to the courts for dispute resolution.

新条款 80 至 84 条规定了许可及其纠纷的解决程序。AIPLA 赞同这些修改，但仍关注这些规定不要代替或排除民间许可行为和由法院解决纠纷的途径。

Article 85 implements additional requirements regarding standards essential patents. AIPLA is concerned that multiple regulations by various Chinese Government agencies may impose inconsistent and uncertain requirements. Moreover, AIPLA recommends that any such analysis be undertaken on a claim-by-claim basis and be based on a finding by a court or administrative tribunal of competent jurisdiction that the patent claims at issue genuinely are in fact essential to the standard.

第 85 条增加了对于标准必要专利的附加要求。AIPLA 担心不同政府机构颁布的多项法规条例可能导致要求不统一不确定。此外，AIPLA 建议根据每一项权利要求进行具体分析，而且在议的权利要求要由法院或具备管辖权的行政仲裁机关的裁断确为标准必要权利要求。

We appreciate the opportunity to provide these comments on the proposed changes to the Chinese Patent Law, and we would be happy to answer any questions that our comments may raise.

我们感谢有机会能对中国专利法修改草案提供意见，并且乐意解答上述意见可能带来的问题。

Sincerely,

Denise W. DeFranco
President
American Intellectual Property Law Association

中华人民共和国专利法修订草案（送审稿）

修改条文对照表及 AIPLA 对专利法修订草案的意见

Current Chinese Patent Law, Fourth Amendment for Approval (2015.12), and AIPLA Comments to Fourth Amendment

现行专利法 Current Patent Law	专利法修订草案（送审稿） Draft Amendment	AIPLA Comments to Fourth Amendment
第一章 总则 Chapter I General Provisions	第一章 总则 Chapter I General Provisions	第一章 总则 Chapter I General Provisions
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。 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 advancement of science and technology and the economic and social development.	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。 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 advancement of science and technology and the economic and social development.	
第二条 本法所称的发明创造是指发明、实用新	第二条 本法所称的发明创造是指发明、实用新	美国知识产权协会（AIPLA）支持修订草

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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。 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 combination thereof, which are fit for practical use. 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 and pattern, which are rich in	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，是指对产品的整体或者局部的形状、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。 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 combination thereof, which are fit for practical use. Designs mean, with respect to a product, new designs of the whole or partial shape, pattern, or the combination thereof, or the combination of the color with shape	案中明确承认产品局部的形状、图案或其结合中的外观设计权，我们认为产品的局部，与产品的整体一样，在满足美感和实际应用要求的前提下，应该可以单独得到外观设计的保护。 AIPLA 期待能在如何判断局部外观设计的新颖性、相似性和侵权等方面能有清楚的规定。不过我们预期这些方面将会通过本法律的实施细则和指南得以详细澄清、阐述。 AIPLA is encouraged by the amendment expressly recognizing a design right in part of a product's shape, pattern or combination thereof. AIPLA believes that parts of a product, just as much as the product as a whole, should be independently protectable as a design, assuming it meets the aesthetic appeal and practical use requirements. AIPLA welcomes clarification on how novelty, similarity and infringement of partial design are to be judged. It is anticipated that concerns will be addressed through the details provided by regulations and guidelines to be promulgated under

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an aesthetic appeal and are fit for industrial application.	and pattern, which are rich in an aesthetic appeal and are fit for industrial application.	this article.
第三条 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。 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理工作。	第三条 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，负责涉及专利的市场监督管理，查处有重大影响的专利侵权和假冒专利行为，建设专利信息公共服务体系，促进专利信息传播与利用。 地方人民政府专利行政部门负责本行政区域内的专利工作，依法开展专利行政执法，提供专利公共服务。 前款所称地方人民政府专利行政部门是指省级、设区的市级以及法律法规授权的县级人民政府专利行政部门。	AIPLA 认为，修订草案明确了行政执法体系，但对在实践中如何实施行政专利执法尚持关注态度。 我们希望执法权限的扩大能够使行政执法裁决更加快捷简便，并期待国知局制定有力的、详细的法规和指导条例来管理行政执法工作。我们还希望，相关法律法规能够清楚界定国知局和其他政府机关（如法院）之间的职责划分，并制定清楚的规定和指南以保障各机关对权利和执法判定具有一致性。我们鼓励国知局继续与国际社会合作制定有关法规和指南，并予以公布，以增进体系的透明性、统一性和可预测性。 同时，我们在此谨指出，与国知局或地方行政机关相比，中国的法院应该更适合调查、审理专利侵权行为和其处罚。大多数创新国家都是如此划分管辖权的，而中国法院审理专利案件已有三十多年的历史，积累了判定专利侵权和量行适当处罚方面的丰富经验。我们担心，由法院和行政机关特别是国家、省、市县多级行政机关分别执法 ， 也许会导致执法缺乏一致性，增加商业和市场的不可预测性，进而不利

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Article 3 The Patent Administration Department under the State Council shall be responsible for the administration of patent-related work nationwide. It shall accept and examine patent applications in a uniform way and grant patent rights in accordance with law. The departments in charge of patent-related work of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for patent administration within their respective administrative areas.	Article 3 The Patent Administration Department of the State Council shall be responsible for patent administration throughout China, accept and examine patent applications, grant patent rights in accordance with the laws, be responsible for works involving market supervision and management of patents, investigate and penalize patent infringement and counterfeit conduct that have significant impact, be responsible for the construction of patent information public service system, promote the dissemination and utilization of patent information. The patent administration department of local people's government, shall be in charge of patent administration within its own jurisdiction, engage in patent administrative enforcements, and provide patent related public services. The patent administration departments of local people's government mentioned above include provincial-level, municipal-level patent	于社会创新。 AIPLA believes the amendment adds greater clarity to the administrative enforcement system, but has some concern how administrative patent enforcement will be implemented in practice. It is hoped that the expansion of enforcement authority will result in faster, easier adjudication of rights and AIPLA looks forward to SIPO promulgating strong and specific regulations and guidelines to govern enforcement work. It is hoped that the law and regulations will clearly delineate the lines of responsibility between SIPO and other responsible authorities, such as the courts, as well as provide clear rules and guidelines for the consistent determination and enforcement of rights among these authorities. AIPLA encourages SIPO to continue to work with the international community to establish such regulations and guidelines and make this information public, thereby increasing transparency, uniformity, and

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	administration departments, as well as the country-level patent administration departments which are authorized by Law and Administrative Regulations.	predictability of the system. Nonetheless, AIPLA respectfully submits that China's courts, rather than SIPO or local administrative agencies, may be the better authority empowered to investigate and penalize patent infringement when found. This is the situation in most innovative jurisdictions, and the Chinese courts have adjudicated patent cases for over 30 years, gaining significant expertise in determining patent infringement and imposing appropriate penalties. AIPLA is concerned that dividing enforcement authority between the administrative authorities and the courts and, in particular, multiple administrative authorities at the country, provisional, and municipal levels may lead to inconsistency in such determinations, increasing unpredictability of business and the markets to the ultimate detriment to an innovative society.
第四条 申请专利的发明创造涉及国家安全或者	第四条 申请专利的发明创造涉及国家安全或者	

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重大利益需要保密的，按照国家有关规定办理。 Article 4 Where an invention-creation for the patent of which an application is filed involves national security or other major interests of the State and confidentiality needs to be maintained, the application shall be handled in accordance with the relevant regulations of the State.	重大利益需要保密的，按照国家有关规定办理。 Article 4 Where an invention-creation for the patent of which an application is filed involves national security or other major interests of the State and confidentiality needs to be maintained, the application shall be handled in accordance with the relevant regulations of the State.	
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。 Article 5 Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests. Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and administrative regulations.	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。 Article 5 Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests. Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and	

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	administrative regulations.	
第六条 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。 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。 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。	第六条 执行本单位的任务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。 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。 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；没有约定的，申请专利的权利属于发明人或者设计人。	AIPLA 担心，“本单位的任务”的定义比较模糊。因此，各单位可能需要不断的重新明确其雇佣员工的任务范围，从而给单位带来不公平的负担。本条修改之前的原文较为明确，除非订有合同，主要是利用本单位的物质技术条件所完成的发明创造应属于本单位。 另外，我们担心，如果在无合同情况下利用单位物质技术条件完成的发明创造的所有权均属于发明者，那些利用单位资源为自己谋利的发明人能不公平地获利，而单位要付出代价。 我们提请考虑两种非常可能的，按修订草案规定都不算职务发明的情况：第一， 因意外发现导致的发明，故而不明确属于最初规定任务范围之内。鉴于科学发现的不可预见性，这种情形并非罕见。第二，雇员在工作之外的时间，出于本人兴趣而完成的发明，但使用了雇主的资源。 我们建议第一段进一步澄清，“本单位的任务”包括受雇进行发明的雇员完成的所有任务，即使没有明确要求雇员针对发明的特定项目或特定领域进行发明。 此外，雇主一般都会鼓励其雇员进行发明创造，为此，雇主通常会给予其雇员在其

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		工作范围内进行发明创造或使用属于雇主的物质条件的很大自主权，以期待该等发明会归其单位所有并作为新产品推向市场。即使缺乏具体的合同约定，这种发明的所有权仍应归雇主所有。 或者，我们建议保留原文，不加修改。 AIPLA is concerned that there may be ambiguity in the meaning of “tasks of the entity” that may unfairly burden an employer with the persistent defining of the scope of work assigned to employees hired to invent. The prior language made it clear that any inventions derived mainly from the entity’s resources belonged to the entity unless otherwise agreed in a contract. Further, AIPLA is concerned that default ownership of inventions made with material and technical means of an entity to the inventor, unfairly benefits inventors who use an entity’s resources for their own benefit, at the entity’s expense. AIPLA invites the consideration of the following two very possible
Article 6 An invention-creation that is accomplished in the course of performing the duties of an employee, or mainly by using the material and technical conditions of an employer shall be deemed an employment invention-creation. For an employment invention-creation, the employer has the right to apply for a patent. After such application is granted, the employer shall be the patentee. For a non-employment invention-creation, the inventor or designer has the right to apply for a patent. After such application is granted, the said inventor or designer shall be the patentee. For an invention-creation that is accomplished by using the material and technical conditions of an employer, if the employer has	Article 6 Invention made in carrying out tasks of an entity is a service invention. The right of patent application of a service invention belongs to the entity. After the patent is granted, the entity is the patentee. For any non-service invention, the right of patent application belongs to the inventor or designer. After the application is approved, the inventor or designer shall be the patentee. For an invention made by taking advantage of the material and technical means of an entity, unless otherwise agreed by the entity and the inventor or designer with regard to the right of patent application and the ownership of the patent, the right of patent application belong to	

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concluded a contract with the inventor or designer providing the ownership of the right to apply for the patent or the ownership of the patent right, such provision shall prevail.	the inventor or designer.	scenarios where the proposed amendment would effectively exclude employment invention. First, inventions which are the result of unexpected discovery and may not fall squarely within the initial scope of a given research assignment. This scenario is not uncommon due to the unpredictable nature of scientific discoveries. Second, inventions created by employees on their own time and out of their own interest while using the resources of their employer. AIPLA recommends that the first restriction be clarified as to whether or not “tasks of an entity” include all tasks by employees hired to invent generally, even absent specific instruction to invent a specific subject matter or invent in a particular field. In addition, employers typically encourage their employees to invent. To this end, employers typically give employees great discretion to invent within their scope of employment or to use materials and means belonging

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		to the employer with the expectation that the inventions would belong to the entity for it to bring to the market as new products. The right of ownership of such inventions should remain with the employer even absent particular agreement terms. Alternatively, AIPLA recommends that the original text be retained without modifications.
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。 Article 7 No unit or individual shall prevent the inventor or designer from filing a patent application for a non-employment invention.	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。 Article 7 No unit or individual shall prevent the inventor or designer from filing a patent application for a non-employment invention.	
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。 Article 8	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。 Article 8	

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With regard to an invention-creation accomplished by two or more units or individuals in collaboration, or an invention-creation accomplished by an unit or individual under the entrustment of another unit or individual, the right to apply for a patent shall be vested in the units or individuals that have accomplished the invention-creation in collaboration or in the unit or individual that has done so under entrustment, unless it is otherwise agreed upon. After the application is granted, the applying unit(s) or individual(s) shall be deemed the patentee(s).	With regard to an invention-creation accomplished by two or more units or individuals in collaboration, or an invention-creation accomplished by an unit or individual under the entrustment of another unit or individual, the right to apply for a patent shall be vested in the units or individuals that have accomplished the invention-creation in collaboration or in the unit or individual that has done so under entrustment, unless it is otherwise agreed upon. After the application is granted, the applying unit(s) or individual(s) shall be deemed the patentee(s).	
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。 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。 Article 9	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。 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。 Article 9	

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Only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted. If two or more applicants apply for a patent for the same invention separately, the patent right shall be granted to the first applicant.	Only one patent can be granted for the same invention. However, where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted. If two or more applicants apply for a patent for the same invention separately, the patent right shall be granted to the first applicant.	
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。 Article 10 The right to apply for a patent	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。 Article 10 The right to apply for patent and	

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and patent rights may be transferred. If a Chinese unit or individual intends to transfer the right to apply for a patent or patent rights to a foreigner, foreign enterprise or other foreign organization, it or he shall perform the procedures in accordance with the provisions of relevant laws and administrative regulations. For the transfer of the right to apply for a patent or of patent rights, the parties concerned shall conclude a written contract and file for registration at the patent administration department under the State Council, and the latter shall make an announcement thereof. The transfer of the right to apply for a patent or of patent rights shall become effective as of the registration date.	patent rights may be transferred. If a Chinese unit or individual intends to transfer the right to apply for a patent or patent rights to a foreigner, foreign enterprise or other foreign organization, it or he shall perform the procedures in accordance with the provisions of relevant laws and administrative regulations. For the transfer of the right to apply for a patent or of patent rights, the parties concerned shall conclude a written contract and file for registration at the patent administration department under the State Council, and the latter shall make an announcement thereof. The transfer of the right to apply for a patent or of patent rights shall become effective as of the registration date.	
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	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	

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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。 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。 Article 11 After the patent right is granted for an invention or a utility model, unless otherwise provided for in this Law, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method. After a design patent right is granted, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, offer to sell, sell or import the design patent products.	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。 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。 Article 11 After the patent right is granted for an invention or a utility model, unless otherwise provided for in this Law, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, use, offer to sell, sell, or import the patented products, use the patented method, or use, offer to sell, sell or import the products that are developed directly through the use of the patented method. After a design patent right is granted, no unit or individual may exploit the patent without permission of the patentee, i.e., it or he may not, for production or business purposes, manufacture, offer to sell, sell or import the design patent products.	

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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。 Article 12 Any unit or individual that intends to exploit the patent of another unit or individual shall conclude a contract with the patentee for permitted exploitation and pay the royalties. The permittee shall not have the right to allow any unit or individual not specified in the contract to exploit the said patent.	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。 Article 12 Any unit or individual that intends to exploit the patent of another unit or individual shall conclude a contract with the patentee for permitted exploitation and pay the royalties. The permitted shall not have the right to allow any unit or individual not specified in the contract to exploit the said patent.	AIPLA 赞同尊重民间协约开发利用专利。不过，AIPLA 注意到支付专利使用费似乎是个硬性规定。使用许可协同中可以提供使用费之外的其它报偿手段，并常常如此做。AIPLA 建议删除“向专利权人支付专利使用费”这一项。 AIPLA commends the amendment for respecting the ability of private parties to enter contracts for the exploitation of the patent rights. AIPLA notes, however, that the reference to payment of royalties appears to be mandatory. License agreements may, and often do, provide other consideration other than payment of royalties. AIPLA recommends that the reference “and pay the royalties.” be removed.
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。 Article 13 After the application for an invention patent is published, the applicant may require the unit or individual that exploits the said	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。 Article 13 After the application for an invention patent is published, the applicant may require the unit or individual that exploits the said	

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patent to pay an appropriate amount of royalties.	patent to pay an appropriate amount of royalties.	
	第十四条（新增，原条文移至第八十条） 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不合理地排除、限制竞争。 Article 14 （New;original Article 14 moved to Article 80） Applying and Exercising patent rights shall abide by the principle of good faith. It is forbidden to abuse the patent rights and harm public interests, or unreasonably exclude or restrict competition.	AIPLA 感到关切的是，增加的“诚实信用”和“公共利益”要求并不明确，并且没有给专利体制的使用者提供足够的指导使其理解这些要求的范围。 特别是，“遵循诚实信用原则”可能被解释为，例如，任何拒绝专利许可的行为都可被认定为“不诚信”，就算该行为涉及直接竞争对手。这种解读会削弱专利权作为一项“排他”以允许专利权人为其享有专利权的发明发展和服务市场的合法权利。该解读同样会削弱专利权人对许可条件进行自由谈判的能力。 同样，“不得滥用专利权损害公共利益”没有限定范围或特征，这可能使得该条款中在缺乏强有力且具体的条例及指导方针情况下，使得每个实施机构在认定滥用、损害或限制性过高问题时成为单一且独立的仲裁者，很可能导致专利体系应用缺乏一致性。 AIPLA 欢迎从现草案中删除先前提议的“不得……阻碍技术进步”措词从而消除先前提议的草案中一个造成含混不清的措辞。AIPLA 建议，鉴于反垄断法已对对付此类滥用作了详尽规定，不必在专利法中加

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		入该条款。 如要维持新第 14 条，AIPLA 建议将其修改为明确引用反垄断法第 55 条以及相关涉及解决知识产权滥用问题的条例和指导方针作为用于确定可能被认定为违反该第 14 条的行为的标准，以避免在多个法律间以及在人民政府不同机构的实施中存在矛盾。 例如：*“根据反垄断法及其相关条例和指导方针的有关限定，不得滥用专利权以及损害公共利益，或不合理地排除或限制竞争。”* 或者： *“不得违反反垄断法第 55 条滥用专利权。”* 又或将该条款修改为参照 WTO 的关于专利权实施的《与贸易有关的知识产权协议》中的一些限定，而这些限定不会与专利的正常利用产生不合理冲突，且不会不合理地损害专利持有者的合法权利。 AIPLA is concerned that the additional “good faith” and “public interest” requirements are vague and do not provide users of the patent system with sufficient

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		guidance to allow them to understand the scope of the restriction. Specifically, the phrase “shall abide by the principle of good faith” may be interpreted, for one example, so that any refusal to license a patent would be deemed “bad faith” even if it involved a direct competitor. Such an interpretation would undermine the patent right as a legitimate right to “exclude others” to allow the patentee to develop and service the market for the patented invention. Such an interpretation would also undermine the patentee’s ability to freely negotiate licensing terms. Likewise, the phrase “shall not abuse the patent rights to harm public interests” provides no boundaries or parameters which may, absent strong and specific regulations and guidelines promulgated under this article, leave each enforcement body to be the sole and independent arbiters of what they deem to be abusive, harmful or too restrictive, leading to probable

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		inconsistency in application of the patent system. AIPLA welcomes the removal from the current draft of previously proposed phrase “shall not…hinder technological advancement” thereby removing at least this source of ambiguity and uncertainty from prior proposed drafts. However, AIPLA recommends that this provision is unnecessary in the patent law in that the antimonopoly law fully provides for countering such abuses. If new Article 14 is to be maintained, AIPLA respectfully suggests amending it to specifically reference Article 55 of the Anti-monopoly Law and its associated regulations and guidelines addressing IP abuse, as the standard for determining conduct that would be deemed in violation of this Article 14, so as to avoid inconsistent laws and enforcement by different branches of the People’s Government. A possible example might be, *“It is forbidden to abuse the patent rights and harm public interests, or*

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		unreasonably exclude or restrict competition as those acts are determined under Article 55 of the Anti-monopoly Law and its associated regulations and guidelines.” Or Alternatively: *“Patent rights shall not be abused in contravention of Article 55 of the Anti-monopoly Law.”* Or alternatively this provision be otherwise amended to align with WTO’s TRIPs limitations on exercise of patent rights, which provides certain limitations that do not unreasonably conflict with normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of patent owns.
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。 除前款规定的情形外，行使共有的专利	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。 除前款规定的情形外，行使共有的专利	

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申请权或者专利权应当取得全体共有人的同意。 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 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.	申请权或者专利权应当取得全体共有人的同意。 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 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.	
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。	第十六条 职务发明创造被授予专利权后，单位应当对其发明人或者设计人给予奖励；发明创造专利实施后，单位应当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。	AIPLA 对 “根据其推广应用的范围和取得的经济效益”提供发明报酬的要求可能引起的问题感到忧虑。该条款没有作出明确规定，并且对发明人或单位而言很可能存在不同的解读。 草案试图为发明订立价值。实践中，专利

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Article 16 The unit that is granted the patent right shall reward the inventor or designer of an employment invention-creation. After such patent is exploited, the inventor or designer shall be given a reasonable amount of remuneration according to the scope of application and the economic results.	单位与发明人或者设计人根据本法第六条第四款的规定，约定发明创造申请专利的权利属于单位的，单位应当根据前款规定对发明人或者设计人给予奖励和报酬。 Article 16 After an employment invention-creation is granted a patent right, the unit shall reward the inventor or designer of the employment invention-creation. After such patent is exploited, the inventor or designer shall be given a reasonable amount of remuneration by the unit according to the scope of application and the economic results. Where the unit makes an agreement with and the inventor or designer	估值是个跨领域专业问题，要由经济学家、科学家、工程师以及律师合作完成。专利估值有很大程度的主观判断，而且颇具挑战性。例如，专利技术的价值在不同领域，不同时代会有变化。 量化“合理”报酬则更为复杂，其原因在于报酬不限于现金形式，也可以以其它形式体现，例如，带薪休假、股票、职位晋升、或加薪等。 如 ALPLA 对于发明报酬指导方针的意见所述，AIPLA 建议报酬的量化交由发明人和单位谈判确定，允许发明人和单位在雇佣关系开始时商定这些条款并且在雇佣期间可以按需修改该条款。中国民营企业在鼓励和发展创新中有领导地位。在不会受到过度监督的情况下给予民营领域足够空间与其雇员商定职务发明创造是重要的。 AIPLA is concerned that the requirement to provide invention remuneration “according to the scope of application and the economic results” is problematic. These terms are not defined and will likely have different meanings relative to the inventor or employer. The proposed amendment attempts to value an invention. In practice,

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	pursuant to Paragraph 4 in Article 6 of this Law to grant the unit the right to apply for a patent for the invention-creation, the unit shall give a reward and remuneration to the inventor or designer as stipulated in the preceding paragraph.	patent valuation is an interdisciplinary specialty in which economists, scientists and engineers and lawyers work together. Patent valuation remains a highly subjective determination that is challenged, for example, by the fact that the value of a patented technology differs from field to field and from time to time. The difficulty in quantifying “reasonable” remuneration is further complicated by the fact that the remuneration can be non-monetary such as in the forms of extra leave with pay, stocks, promotions, and general salary increase. As set forth in the AIPLA’s comments on the invention remuneration guidelines, AIPLA recommends that the quantum of remuneration be left for negotiation between the inventor and the employer and that the inventor and employer be permitted to agree on these terms at the outset of the employment relationship and to revise it as needed during the employment. Private enterprise is taking the leading role in China in encouraging

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		and developing innovation. It is important that the private sector be given adequate latitude to negotiate with their employees on employment invention-creations without undue oversight.
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。 Article 17 An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer. The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products.	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。 Article 17 An inventor or designer shall have the right to state in the patent documents that he is the inventor or designer. The patentee shall have the right to have his patent mark displayed on the patented products or the package of such products.	
第十八条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。	第十八条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。	

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Article 18 Where a foreigner, foreign enterprise or other foreign organization without a regular residence or business site in China applies for a patent in China, the application shall be handled in accordance with the agreements concluded by the country he or it belongs to and China or the international treaties to which both the countries have acceded or in accordance with this Law on the principle of reciprocity.	Article 18 Where a foreigner, foreign enterprise or other foreign organization without a regular residence or business site in China applies for a patent in China, the application shall be handled in accordance with the agreements concluded by the country he or it belongs to and China or the international treaties to which both the countries have acceded or in accordance with this Law on the principle of reciprocity.	
第十九条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。 中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托依法设立的专利代理机构办理。 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。	Article 19 Where a foreigner, foreign enterprise or any other foreign organization that has no habitual abode or business office in China intends to apply for a patent or handle other patent-related matters in China, it shall authorize a legitimately formed patent agency in accordance with the regulations to act on his or its	

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Article 19 If a foreigner, foreign enterprise, or other foreign organization without a regular residence or business site in China intends to apply for a patent or handle other patent-related matters in China, he or it shall entrust a legally established patent agency with the application and such matters. If a Chinese unit or individual intends to apply for a patent or handle other patent-related matters in China, it or he may entrust a legally established patent agency with the application and such matters. A patent agency shall abide by laws and administrative regulations and handle patent applications or other patent-related matters as entrusted by its principals. It shall also be obligated to keep confidential the contents of the inventions of its principals, unless the patent applications have been published or announced. The specific measures for administration of the patent agencies	behalf. To apply for a patent or handle other patent-related matters in China, a Chinese entity or individual may authorize a legitimately formed patent agency to act on its or his behalf. Patent agencies and patent agents shall abide by the laws and administrative regulations when filing applications for patents or handling other patent affairs as entrusted by the principal. It shall also be obligated to keep confidential the contents of the principal's invention, unless the application for patent has been published or announced. The specific measures for the administration of patent agencies and patent agents shall be formulated by the State Council.	

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shall be formulated by the State Council.		
第二十条 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。 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。 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。 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。 Article 20 Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished 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	第二十条 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。 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国际申请并获得相关保护。申请人提出国际申请的，应当遵守前款规定。 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国际申请。 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。 Article 20 Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished 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	

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procedures, time limit, etc. prescribed by the State Council. A Chinese unit or individual may file for international patent applications in accordance with the relevant international treaties to which China has acceded. The applicant for such patent shall comply with the provisions of the preceding paragraph. The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has acceded and the relevant provisions of this Law and regulations of the State Council. With regard to an invention or utility model for which an application is filed for a patent in a foreign country in violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted.	procedures, time limit, etc. prescribed by the State Council. A Chinese unit or individual may file for international patent applications and obtain related protection in accordance with the relevant international treaties to which China has acceded. The applicant for such international patent shall comply with the provisions of the preceding paragraph. The patent administration department under the State Council shall handle international patent applications in accordance with the relevant international treaties to which China has acceded and the relevant provisions of this Law and regulations of the State Council. With regard to an invention or utility model for which an application is filed for a patent in a foreign country in violation of the provisions of the first paragraph of this Article, if an application is also filed for the patent in China, patent right shall not be granted.	

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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内容负有保密责任。 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. The patent administration department under the State Council shall release patent-related information in a complete, accurate and timely manner, and publish patent gazettes on a regular basis. Before a patent application is published or announced, the staff members of the patent administration department under the State Council and the persons concerned shall be	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，提供专利信息基础数据。 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内容负有保密责任。 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. The patent administration department under the State Council shall release patent-related information in a complete, accurate and timely manner, publish patent gazettes on a regular basis, and provide basic patent data. Before a patent application is published or announced, the staff	

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obligated to keep such application confidential.	members of the patent administration department under the State Council and the persons concerned shall be obligated to keep such application confidential.	
第二章授予专利权的条件 Chapter II Conditions for Granting Patent Rights	第二章授予专利权的条件 Chapter II Conditions for Granting Patent Rights	
第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。 新颖性，是指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。 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。 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。 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。 Article 22 Inventions and utility models for	第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。 新颖性，是指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。 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。 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。 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。 Article 22 Inventions and utility models for	对于发明专利和实用新型专利的新颖性要求是相同的，但对实用新型专利的创造性要求较低。这不仅可能导致降低实用新型专利的整体质量，还会增加滥用专利体系的机会。 While requirements for novelty are the same in China for invention patents and utility model patents,

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which patent rights are to be granted shall be ones which are novel, creative and of practical use. Novelty means that the invention or utility model concerned is not an existing technology; no patent application is filed by any unit or individual for any identical invention or utility model with the patent administration department under the State Council before the date of application for patent right, and no identical invention or utility model is recorded in the patent application documents or the patent documentations which are published or announced after the date of application. Creativity means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements. Practical use means that the said invention or utility model can be used for production or be utilized, and may produce positive results.	which patent rights are to be granted shall be ones which are novel, creative and of practical use. Novelty means that the invention or utility model concerned is not an existing technology; no patent application is filed by any unit or individual for any identical invention or utility model with the patent administration department under the State Council before the date of application for patent right, and no identical invention or utility model is recorded in the patent application documents or the patent documentations which are published or announced after the date of application. Creativity means that, compared with the existing technologies, the invention possesses prominent substantive features and indicates remarkable advancements, and the utility model possesses substantive features and indicates advancements. Practical use means that the said invention or utility model can be used for production or be utilized, and may produce positive results.	the requirement for inventive step (“creativity” under Chinese law) is lower for utility model patents. This inconsistency may lead not only to lower overall quality of utility model patents, but also increases the opportunity for abuse of the patent system.

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For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application.	For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application.	
第二十三条 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。 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。 授予专利权的外观设计不得与他人在申请日以前已经取得的合法权利相冲突。 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。 Article 23 A design for which the patent right is granted is not an existing design, and no application is filed by any unit or individual for any identical design with the patent administration department under the State Council before the date of application for patent right and no	第二十三条 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。 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。 授予专利权的外观设计不得与他人在申请日以前已经取得的合法权利相冲突。 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。 Article 23 A design for which the patent right is granted is not an existing design, and no application is filed by any unit or individual for any identical design with the patent administration department under the State Council before the date of application for patent right and no identical design	

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identical design is recorded in the patent documentations announced after the date of application. Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs. Designs for which a patent right is granted shall be ones which are not in conflict with the lawful rights acquired by others prior to the date of application. For the purposes of this Law, existing designs mean designs that are known to the public both domestically and abroad before the date of application.	is recorded in the patent documentations announced after the date of application. Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs. Designs for which a patent right is granted shall be ones which are not in conflict with the lawful rights acquired by others prior to the date of application. For the purposes of this Law, existing technologies mean the technologies known to the public both domestically and abroad before the date of application.	
第二十四条 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： （一）在中国政府主办或者承认的国际展览会上首次展出的； （二）在规定的学术会议或者技术会议上首次发表的； （三）他人未经申请人同意而泄露其内	第二十四条 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： （一）在中国政府主办或者承认的国际展览会上首次展出的； （二）在规定的学术会议或者技术会议上首次发表的； （三）他人未经申请人同意而泄露其内	

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容的。 Article 24 Within six months before the date of application, an invention for which an application is filed for a patent does not lose its novelty under any of the following circumstances: (1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government; (2) It is published for the first time at a specified academic or technological conference; and (3) Its contents are divulged by others without the consent of the applicant.	容的。 Article 24 Within six months before the date of application, an invention for which an application is filed for a patent does not lose its novelty under any of the following circumstances: (1) It is exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government; (2) It is published for the first time at a specified academic or technological conference; and (3) Its contents are divulged by others without the consent of the applicant.	
第二十五条 对下列各项，不授予专利权： （一）科学发现； （二）智力活动的规则和方法； （三）疾病的诊断和治疗方法； （四）动物和植物品种； （五）用原子核变换方法获得的物质； （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	第二十五条 对下列各项，不授予专利权： （一）科学发现； （二）智力活动的规则和方法； （三）疾病的诊断和治疗方法； （四）动物和植物品种； （五）原子核变换方法以及用原子核变换方法获得的物质； （六）对平面印刷品的图案、色彩或者	AIPLA 较赞同前次修改草案中对第三项的修改建议，即：“（三）疾病的诊断和治疗方法，但涉及养殖动物的除外”，因为这一修改使中国专利法与国际普遍标准更接近一致。这一修改会支持不断成长的畜牧诊断产业创新。畜牧诊断业创新对食品产业的继续创新很有影响，最终将加强食品生产力。确实，一些国家更进一步，宽松地允许人体医疗诊断的专利保护。AIPLA 支持将前述修改内容重新引入，并建议，

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计。 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。 Article 25 Patent rights shall not be granted for any of the following: (1) scientific discoveries; (2) rules and methods for intellectual activities; (3)methods for the diagnosis or treatment of diseases; (4) animal or plant varieties; (5) substances obtained by means of nuclear transformation; and (6)designs that are mainly used for marking the pattern, color or the combination of the two of prints. The 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.	二者的结合作出的主要起标识作用的设计。 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。 Article 25 Patent rights shall not be granted for any of the following: (1) scientific discoveries; (2) rules and methods for intellectual activities; (3) methods for the diagnosis or treatment of diseases; (4) animal or plant varieties; (5)substances obtained by means of nuclear transformation; (6)Designs that are mainly used for marking the pattern, color or the combination of the two of prints. The 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.	为减轻对加入这一条款的担心，可以排除兽医或医生在此条款下侵权的责任。专利权人在商业上的竞争对手，不是他们，而是进行诊断分析的商业实验室或供货给商业实验室的公司。 AIPLA had welcomed the term in the prior draft, “(3) methods for the diagnosis or for the treatment of diseases, except for those concerning farmed animals;” as a favorable development bring Chinese law more fully consistent with international standards. It would support innovation in the growing veterinarian diagnostics industry essential to continued innovation in the food industry generally, which would ultimately enhance food production. Indeed, other countries further allow more liberally for patents that protect medical diagnostics supporting human medicine as well. AIPLA supports the reintroduction of this term and suggests that perhaps concerns with such terms in relation to both farmed animals and humans could be mitigated by excluding infringement liability by the attending veterinarian or

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		physician as opposed to commercial labs running such diagnostic assays or companies producing products purchased by such labs, who would be the commercial competitors of the patentees.
第三章 专利的申请 Chapter III Patent Application	第三章 专利的申请 Chapter III Patent Application	
第二十六条 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。 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。 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。 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。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。 Article 26	第二十六条 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。 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。 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。 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。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。 Article 26	

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When a person intends to apply for an invention or utility model patent, he shall submit the relevant documents, such as a written request, a written description and its abstract, and a written claim. In the written request shall be specified 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. The written description shall contain a clear and comprehensive description of the invention or utility model so that a technician in the field of the relevant technology can carry it out; when necessary, pictures shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model. The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection. With regard to an invention-creation accomplished by relying on	When a person intends to apply for an invention or utility model patent, he shall submit the relevant documents, such as a written request, a written description and its abstract, and a written claim. In the written request shall be specified 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. The written description shall contain a clear and comprehensive description of the invention or utility model so that a technician in the field of the relevant technology can carry it out; when necessary, pictures shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model. The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection. With regard to an invention-creation accomplished by relying on	

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genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons.	genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons.	
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清楚地显示要求专利保护的产品的外观设计。 Article 27 When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents. In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested.	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清楚地显示要求专利保护的产品的外观设计。 Article 27 When a person intends to apply for a design patent, he shall submit a written request, drawings or pictures of the design, a brief description of the design, and other relevant documents. In the relevant drawings or pictures submitted by the applicant shall clearly be shown the design of the products for which patent protection is requested.	

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第二十八条 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。 Article 28 The date when the patent administration department under the State Council receives the patent application documents is the date of application. If the application documents are delivered by post, the date of the postmark is the date of application.	第二十八条 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。 Article 28 The date when the patent administration department under the State Council receives the patent application documents is the date of application. If the application documents are delivered by post, the date of the postmark is the date of application.	
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。 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。 Article 29 If, within twelve months from the	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。 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。	

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date the applicant first files an application for an invention or utility model patent in a foreign country, or within six months from the date the applicant first files an application for a design patent in a foreign country, he files an application for a patent in China for the same subject matter, he may enjoy the right of priority in accordance with the agreements concluded between the said foreign country and China, or in accordance with the international treaties to which both countries have acceded, or on the principle of mutual recognition of the right of priority. If, within twelve months form the date the applicant first files an application for an invention or utility model patent in China, he files an application for a patent with the patent administration department under the State Council for the same subject matter, the applicant may enjoy the right of priority.	Article 29 If, within twelve months from the date the applicant first files an application for an invention or utility model patent in a foreign country, or within six months from the date the applicant first files an application for a design patent in a foreign country, he files an application for a patent in China for the same subject matter, he may enjoy the right of priority in accordance with the agreements concluded between the said foreign country and China, or in accordance with the international treaties to which both countries have acceded, or on the principle of mutual recognition of the right of priority. If, within twelve months from the date the applicant first files an application for an invention or utility model patent in China or six months from the date the applicant first files an application for a design patent in China, he files an application for a patent with the patent administration department under the State Council for the same	

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	subject matter, the applicant may enjoy the right of priority.	
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。 Article 30 An applicant who requests the right of priority shall submit a written declaration at the time of application and submit, within three months, duplicates of the patent application documents filed for the first time. Where no written declaration is submitted or no duplicates of the patent application documents are submitted at the expiration of the specified time limit, the applicant shall be deemed to have waived the right of priority.	第三十条 申请人要求优先权的，应当按照规定提出书面声明，并且提供第一次提出的专利申请文件的副本；未按照规定提出书面声明或者提供专利申请文件副本的，视为未要求优先权。 Article 30 An applicant who requests the right of priority shall abide by regulations to submit a written declaration at the time of application and provide duplicates of the patent application documents filed for the first time. Where no written declaration is submitted or no duplicates of the patent application documents are provided in accordance with the regulations, the applicant shall be deemed to have waived the right of priority.	
第三十一条 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。 一件外观设计专利申请应当限于一项外	第三十一条 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。 一件外观设计专利申请应当限于一项外	

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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。 Article 31 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. 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.	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。 Article 31 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. 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.	
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。 Article 32 An applicant may withdraw his patent application anytime before being granted the patent right.	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。 Article 32 An applicant may withdraw his patent application anytime before being granted the patent right.	
第三十三条	第三十三条	

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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。 Article 33 An applicant may amend his 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 application documents does not exceed the scope shown in the original drawings or pictures.	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。 Article 33 An applicant may amend his 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 application documents does not exceed the scope shown in the original drawings or pictures.	
第四章专利申请的审查和批准 Chapter IV Examination and Approval of Patent Applications	第四章专利申请的审查和批准 Chapter IV Examination and Approval of Patent Applications	
第三十四条 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。	第三十四条 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。	

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Article 34 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 do so at an earlier date upon request of the applicant.	Article 34 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 do so at an earlier date upon request of the applicant.	
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。 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	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。 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	

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substantive examination of the application. 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.	substantive examination of the application. 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.	
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。 Article 36 When an applicant for an invention patent requests substantive examination, he shall submit the reference materials relating to the invention existing prior to the date of application.	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。 Article36 When an applicant for an invention patent requests substantive examination, he shall submit the reference materials relating to the invention existing prior to the date	

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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.	of application. 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.	
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。 Article37 After the patent administration department under the State Council has made the substantive examination of the invention patent application, if	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。 Article 37 After the patent administration department under the State Council has made the substantive examination of the invention patent application,	

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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.	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.	
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。 Article 38 After the applicant states his 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.	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。 Article 38 After the applicant states his 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.	
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	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	

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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。 Article 39 If no reason for rejection is discerned after an invention patent 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 meanwhile register and announce the same. The invention patent right shall become effective as of the date of announcement.	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。 Article 39 If no reason for rejection is discerned after an invention patent 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 meanwhile register and announce the same. The invention patent right shall become effective as of the date of announcement.	
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。 Article 40 If no reason for rejection is discerned after preliminary examination of a utility model or	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。 Article 40 If no reason for rejection is discerned after preliminary examination of a utility model or design patent application, the patent	

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design patent application, the patent administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and meanwhile register and announce the same. The utility model patent right and the design patent right shall become effective as of the date of announcement.	administration department under the State Council shall make a decision on granting of the utility model or design patent right, issue a corresponding patent certificate, and meanwhile register and announce the same. The utility model patent right and the design patent right shall become effective as of the date of announcement.	
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。 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。 Article 41 The patent administration	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。 专利复审委员会对复审请求进行审查，必要时可以对专利申请是否符合本法有关规定的其他情形进行审查，作出决定，并通知专利申请人。 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。 Article 41 The patent administration department under the State Council	AIPLA 赞成赋予专利复审委会更大的权限。虽然某些国家复审程序局限于特定的无效理由而不涉及新的驳回理由，为提高专利质量，应保证专利申请符合专利的各项条件。 尽管如此，我们觉得“其他情形”一词的范围应该进一步澄清。另外，“必要时”一词的意思也不是十分清楚。鉴于这些含糊之处，申请人或专利权人应该有机会就是否对其他情形进行审查发表不同意见。我们预期这方面将会通过本法律的实施细则和指南得以澄清。 AIPLA commends providing this additional authority to the Patent

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department under the State Council shall establish a patent review board. If a patent applicant is dissatisfied with the decision made by the Patent Administration Department under the State Council on rejecting of the application, he may, within three months from the date of receipt of the notification, file a request with the patent review board for review. After review, the Patent Review Board shall make a decision and notify the patent applicant of the same. If the patent applicant is dissatisfied with the review decision made by the patent review board, he may take legal action before the people's court within three months from the date of receipt of the notification.	shall establish a patent review board. If a patent applicant is dissatisfied with the decision made by the Patent Administration Department under the State Council on rejecting of the application, he may, within three months from the date of receipt of the notification, file a request with the patent review board for review. The patent review board shall perform the review. When necessary, it can check whether the patent application conforms to the other circumstances specified by the relevant provisions of this Law, make a decision, and notify the patent applicant of its decision. If the patent applicant is dissatisfied with the review decision made by the patent review board, he may take legal action before the people's court within three months from the date of receipt of the notification.	Review Board. Although in certain systems, the review process is limited to the specific grounds for rejection and may not extend to new grounds of rejection, it is in the interest of improved patent quality to ensure that the application conforms to all of the requirements for patentability. This observation notwithstanding, the meaning of the phrase "other circumstances" warrants clarification. In addition, the phrase "when necessary" is not well defined and, as such, the applicant or patentee should be given the opportunity to object to such additional review. It is anticipated that such concerns will be assuaged through the details provided by regulations and guidelines to be promulgated under this article.
第五章 专利权的期限、终止和无效 Chapter V Duration, Termination and	第五章 专利权的期限、终止和无效 Chapter V Duration, Termination	

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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。 Article 42 The duration of the invention patent right shall be 20 years and that of the utility model patent right and of the design patent right shall be ten years respectively, all commencing from the date of application.	第四十二条 发明专利权的期限为二十年，实用新型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。 Article 42 The duration of the invention patent right shall be 20 years, that of the utility model patent right shall be 10 years, and that of the design patent right shall be 15 years respectively, all commencing from the date of application.	AIPLA 赞成本条修改建议。中国的主要贸易伙伴，包括美国，对于外观设计的保护期限均为十五年。 AIPLA welcomes the revision, making Chinese practice more consistent with the term of design patent protection in other of China’s major trading partners and, in particular, the United States which also now grants a term of 15 years for design patents.
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。 Article 43 The patentee shall pay annual fees commencing from the year when the patent right is granted.	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。 Article 43 The patentee shall pay annual fees commencing from the year when the patent right is granted.	
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； （二）专利权人以书面声明放弃其专利	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； （二）专利权人以书面声明放弃其专利	

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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。 Article 44 Under any of the following circumstances, the patent right shall be terminated before the expiration of the duration: (1) failure to pay the annual fee as required; or (2) the patentee waiving of the patent right by a written declaration; If a patent right is terminated before the duration expires, the patent administration department under the State Council shall register and announce such termination.	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。 Article 44 Under any of the following circumstances, the patent right shall be terminated before the expiration of the duration: (1) failure to pay the annual fee as required; or (2) the patentee waiving of the patent right by a written declaration; If a patent right is terminated before the duration expires, the patent administration department under the State Council shall register and announce such termination.	
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。 Article 45 Beginning from the date the patent administration department	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。 Article 45 Beginning from the date the patent administration department under the	

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under the State Council announces the grant of a patent right, if a unit or individual believes that such grant does not conform to the relevant provisions of this Law, it or he may request that the patent review board declare the said patent right invalid.	State Council announces the grant of a patent right, if a unit or individual believes that such grant does not conform to the relevant provisions of this Law, it or he may request that the patent review board declare the said patent right invalid.	
第四十六条 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。 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当事人作为第三人参加诉讼。	第四十六条 专利复审委员会对宣告专利权无效的请求进行审查，必要时可以对专利权是否符合本法有关规定的其他情形进行审查，及时作出决定，并通知请求人和专利权人。 宣告专利权无效或者维持专利权的决定，由国务院专利行政部门登记和公告。 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当事人作为第三人参加诉讼。	AIPLA 赞成赋予专利复审委会更大的权限。虽然某些国家复审程序局限于特定的无效理由而不涉及新的无效理由。 AIPLA 建议，复审委会在考虑新的无效理由时，将本案发回审查员重申，给予申请人充分公平的机会就新无效理由进行答辩。或者，复审委会的复审程序仅限于处理之前已讨论过的问题。 虽然复审委会审核所有适当事项能提高专利质量，但还应给予申请人足够的机会来回应新提出的无效理由。 AIPLA 担心的是，目前的草案没有明确复审决定的登记和公告的时限。如果无效专利不及时公告（如前次修改草案所建议），社会和利害关系人将无法及早知晓。这样会对公众或第三方实施无效专利保护标第内容造成不必要的限制或延迟。这会影响到，比如，在中国经营的供应链以及销售网络。

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Article 46 The patent review board shall examine the request for declaring a patent right invalid and make a decision in a timely manner and notify the requesting person and the patentee of its decision. The decision on declaring a patent right invalid shall be registered and announced by the patent administration department under the State Council. A person that is dissatisfied with the patent review board's decision on declaring a patent right 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 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.	Article 46 The patent review board shall examine the request for declaring a patent right invalid. When necessary, it can check whether the patent right conforms to the other circumstances specified by the relevant provisions of this Law, make a decision in a timely manner, and notify the requesting person and the patentee of its decision. The decision invalidating or upholding the patent right shall be registered and announced by the patent administration department under the State Council. A person that is dissatisfied with the patent review board's decision on declaring a patent right 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 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.	AIPLA commends providing this additional authority to the Patent Review Board. Although in most international systems, the review process is limited to the specific grounds for rejection. AIPLA recommends that if new grounds are considered by the Review Board, the case be remanded to the examination process to ensure that the Applicant is given a full and fair opportunity to respond to the new grounds of rejection. In the alternative, AIPLA recommends that the review by the Patent Review Board be limited to issues previously heard and considered. Consideration of all appropriate grounds by the Review Board is in the interest of improved patent quality. Nonetheless, the process needs to incorporate sufficient opportunity for the Applicant to respond to any new objections raised. AIPLA is concerned that there is no time requirement in the current draft for the registration and announce of the decision. If invalid patents are not identified "in a

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		timely manner” as required in the previous draft, the public and interested parties would not be able to identify invalid patents as quickly as possible. This could unnecessarily limit or delay the ability of the public and other parties, such as supply chains and distribution networks in China, to practice the subject matter covered by the invalid patent.
第四十七条 宣告无效的专利权视为自始即不存在。 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。 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。 Article 47 Any patent right that has been declared invalid shall be deemed to	第四十七条 宣告无效的专利权视为自始即不存在。 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、处罚决定，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。 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。 Article 47 Any patent right that has been	

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be non-existent from the beginning. The decision on declaring a patent right invalid shall have no retroactive effect on any written judgment or written mediation on patent infringement that has been made and enforced by the people's court, or on any decision concerning the handling of a dispute over the patent infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the patent or for transfer of patent rights that has been performed--prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to another person mala fides by the patentee. Where the patent infringement compensation, royalties, and patent right transfer fees are not refunded pursuant to the provisions of the preceding paragraph, which constitutes a blatant violation of the principle of fairness, refund shall be made fully or partly.	declared invalid shall be deemed to be non-existent from the beginning. The decision on declaring a patent right invalid shall have no retroactive effect on any written judgment or written mediation on patent infringement that has been made and enforced by the people's court, or on any decision concerning the handling of or punishment for a dispute over the patent infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the patent or for transfer of patent rights that has been performed--prior to the invalidation declaration of the patent right. However, compensation shall be made for the losses caused to another person mala fides by the patentee. Where the patent infringement compensation, royalties, and patent right transfer fees are not refunded pursuant to the provisions of the preceding paragraph, which constitutes a blatant violation of the principle of fairness, refund shall be made fully or partly.	

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第六章 专利实施的强制许可 Chapter VI Compulsory License for Exploitation of a Patent	第六章 专利实施的强制许可 Chapter VI Compulsory License for Exploitation of a Patent	
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。 Article 48 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent: (1) When it has been three years	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。 Article 48 Under any of the following circumstances, the patent administration department under the State Council may, upon application made by any unit or individual that possesses the conditions for exploitation, grant a compulsory license for exploitation of an invention patent or utility model patent: (1) When it has been three years	

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since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or (2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced.	since the date the patent right is granted and four years since the date the patent application is submitted, the patentee, without legitimate reasons, fails to have the patent exploited or fully exploited; or (2) The patentee's exercise of the patent right is in accordance with law, confirmed as monopoly and its negative impact on competition needs to be eliminated or reduced.	
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。 Article 49 Where a national emergency or any extraordinary state of affairs occurs, or public interests so require, the patent administration department under the State Council may grant a compulsory license for exploitation of an invention patent or utility model patent.	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。 Article 49 Where a national emergency or any extraordinary state of affairs occurs, or public interests so require, the patent administration department under the State Council may grant a compulsory license for exploitation of an invention patent or utility model patent.	
第五十条 为了公共健康目的，对取得专利权的药	第五十条 为了公共健康目的，对取得专利权的药	

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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。 Article 50 For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded.	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。 Article 50 For the benefit of public health, the patent administration department under the State Council may grant a compulsory license for manufacture of the drug, for which a patent right has been obtained, and for its export to the countries or regions that conform to the provisions of the relevant international treaties to which the People's Republic of China has acceded.	
第五十一条 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。 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。	第五十一条 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。 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。	

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Article 51 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 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. 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.	Article 51 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 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. 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.	
第五十二条	第五十二条	

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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。 Article 52 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.	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。 Article 52 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.	
第五十三条 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。 Article 53 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.	第五十三条 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。 Article 53 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.	
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	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	

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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。 Article 54 A unit 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 or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time.	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。 Article 54 A unit 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 or he has, under reasonable terms, requests the patentee's permission for exploitation of the patent, but fails to obtain such permission within a reasonable period of time.	
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。 Article 55 The decision made by the patent administration department under the State Council on granting of a	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。 Article 55 The decision made by the patent administration department under the State Council on granting of a	

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compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and announced. In a decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, be specified the scope and duration for exploitation. When such reasons cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after examination.	compulsory license for exploitation shall be notified to the patentee in a timely manner and shall be registered and announced. In a decision on granting of the compulsory license for exploitation shall, according to the reasons justifying the compulsory license, be specified the scope and duration for exploitation. When such reasons cease to exist and are unlikely to recur, the patent administration department under the State Council shall, upon request by the patentee, make a decision to terminate the compulsory license after examination.	
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。 Article 56 Any unit or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploitation and shall not have the right to allow exploitation by others.	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。 Article 56 Any unit or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploitation and shall not have the right to allow exploitation by others.	
第五十七条	第五十七条	

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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，由国务院专利行政部门裁决。 Article 57 The unit or individual that is 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 acceded. 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.	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，由国务院专利行政部门裁决。 Article 57 The unit or individual that is 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 acceded. 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.	
第五十八条 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费	第五十八条 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费	

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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。 Article 58 If a patentee is dissatisfied 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 unit or individual that has obtained the compulsory license for exploitation is dissatisfied with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it or he may take legal action before the people's court within three months from the date of receipt of the notification of the ruling.	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。 Article 58 If a patentee is dissatisfied 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 unit or individual that has obtained the compulsory license for exploitation is dissatisfied with the ruling made by the patent administration department under the State Council regarding the royalties for the compulsorily licensed exploitation, it or he may take legal action before the people's court within three months from the date of receipt of the notification of the ruling.	
第七章 专利权的保护 Chapter VII Protection of Patent Rights	第七章 专利权的保护 Chapter VII Protection of Patent Rights	
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。 外观设计专利权的保护范围以表示在图	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。 外观设计专利权的保护范围以表示在图	

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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。 Article 59 For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed, and the written description and the pictures attached may be used to explain what is claimed. For the design patent right, the scope of protection shall be confined to the design of the product as shown in the drawings or pictures, and the brief description may be used to explain the said design as shown in the drawings or pictures.	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。 Article 59 For the patent right of an invention or a utility model, the scope of protection shall be confined to what is claimed, and the written description and the pictures attached may be used to explain what is claimed. For the design patent right, the scope of protection shall be confined to the design of the product as shown in the drawings or pictures, and the brief description may be used to explain the said design as shown in the drawings or pictures.	
第六十条 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	第六十条 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，也可以请求专利行政部门处理。专利行政部门处理时，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	AIPLA 赞赏并赞同国务院加强专利维权制度的愿望。不过， AIPLA 担心修改草案赋予地方专利行政部门过多权利处理专利侵权、处罚涉嫌侵权人，尤其鉴于地方专利行政部门也许缺乏解决复杂技术问题的资源或能力。 AIPLA 一贯认为人民法院比较适合处理专利执法工作，因此建议给予地方专利行政部门的专利执法权限应该窄小而明确，并且要与其它有交叉管辖权的部门有良好的协调配合。

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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。 Article 60 If a dispute arises as a result of exploitation of a patent without permission of the patentee, that is, 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 consult or if consultation fails, the patentee or interested party may take legal action before a people's court, and may also request the administration department for patent-related work to handle the	民法院起诉；侵权人期满不起诉又不停止侵权行为的，专利行政部门可以申请人民法院强制执行。 对群体侵权、重复侵权等扰乱市场秩序的故意侵犯专利权行为，专利行政部门可以依法查处，责令侵权人立即停止侵权行为，并可以没收侵权产品、专门用于制造侵权产品或者使用侵权方法的零部件、工具、模具、设备等。对重复侵犯专利权的行为，专利行政部门可以处以罚款，非法经营额五万元以上的,可以处非法经营额一倍以上五倍以下的罚款；没有非法经营额或者非法经营额五万元以下的,可以处二十五万元以下的罚款。 Article 60 Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties. Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the	AIPLA 担心，若不能没收涉嫌侵权者的侵权产品及生产设备，行政执法的补救措施不会太有效 。一个也许能平衡各方利益的办法是，专利行政部门等到法定上诉期限过后再没收和销毁。 AIPLA 希望这些和其它符合国际规范的类似措施能得到考虑。 AIPLA 赞赏对故意侵权问题的重视，不过如上所述还是担心地方专利行政部门权限过宽，尤其是涉及“故意”动机，扰乱市场，及重复侵权时。此外，关于故意侵权的条文似乎允许专利行政部门主动展开调查裁定侵权行为（即不需由专利权人请求或支持） 。 AIPLA 谨此提议专利行政部门的侵权调查要由专利权人启动，或至少得到专利权人的支持。例如，加入如下条文： “。。。专利行政部门在专利权人的要求或支持下，可以依法查处。。。” 本次修订草案中罚款措施仅限于重复侵权的情况，而其他情况下不再罚款。 尽管 AIPLA 对罚款总的来说存有保留意见（见下）， 但不明白为何罚款只限于重复侵权的情况，其它情况下又如何处罚。建议尽量澄清这些问题。 关于故意侵权扰乱市场的修订草案，AIPLA 赞成对故意侵权提供附加补救措施，但担心这些补救措施的实施标准比较模糊。不

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dispute. If, when handling the dispute, the said department believes the infringement is established, it may order the infringer to cease the infringement immediately; if the infringer is dissatisfied with the order, he 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 action at the expiration of the time limit nor ceases the infringement, the said department may file an application with the people's court for compulsory enforcement. The administration department for patent-related work that handles the call shall, upon request of the parties, carry out mediation concerning the amount of compensation for the patent right infringement. If 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	patent administration department for patent affairs to handle the matter. When the patent administration department for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the party is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the patent administration department may approach the people's court for compulsory execution. The administrative authority for patent affairs has the power to investigate and punish the willful patent infringement act disrupting the market order or repeated	过，这些问题可以在制定实施条例和准则的时候处理，AIPLA 鼓励国知局继续与国际社会共同合作订立有效的法规，规则和指南。 AIPLA 同时提议，当当事人不服专利行政部门的决定时，给与当事人更多的时间向人民法院申诉（例如，上诉期从 15 天增加至 2 个月），与其他法律规定取得一致。举例来说，2015 年 5 月 1 日起生效的中华人民共和国行政诉讼法修正案规定，起诉时限从 3 个月延至 6 个月。此外， 对复杂的专利案件来说，特别是有海外当事人的案件，过短的申诉时限在实践中难以实行。 AIPLA appreciates and shares the Chinese government's desire to strengthen the patent enforcement regime in China. AIPLA remains concerned that the Amendment places too much authority in the local patent administration bureaus to determine infringement and punish alleged infringers, especially when they might not have the resources and/or capability to make well-grounded determinations in matters often involving complex technical issues. AIPLA continues to believe

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China.	infringement, as well as stop the infringement act, confiscate the infringing products, the parts, tools, modules or equipment that are used to manufacture the infringing products or implement the infringing methods. For the repeated infringement activities, [the patent administration department] shall impose a fine of more than one time and less than five times of the amount of illegal business income; for zero illegal business income or illegal business income of 50,000 yuan or less, [the patent administration department] shall impose a fine of 250,000 yuan or less.	that the People's Courts are the better forums for such enforcement work. As a general comment, AIPLA believes the scope of any such authority granted to local patent bureaus must be narrow, well-defined, and well-coordinated with other agencies having overlapping jurisdictions. AIPLA is concerned that an administrative enforcement remedy that leaves allegedly infringing products and related equipment in the hands of the alleged infringer will be ineffective. One alternative that balances these concerns is to stay execution of seizure and destruction orders until appeal periods have expired. AIPLA respectfully requests consideration of these or other like alternatives that are consistent with international norms. AIPLA also appreciates the Chinese government trying to address the problem of willful infringement, but the concern stated above regarding the scope of local patent bureaus' authority still remains, especially when determining the additional

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		elements of willfulness, market disruption and repeat infringement. Moreover, the section on willful infringement suggests that local patent bureaus can initiate investigations into and determine infringement by themselves (i.e., without a request by or even the support of the patent holder). AIPLA respectfully suggests that such investigations be limited to situations where the patent holder has actually requested or supports it, as for example by adding: "The administrative authority for patent affairs has the power, upon request by or with the support of the patent holder, to investigate and punish the willful infringement act…" The recent amendments also limit the monetary penalty provisions to situations involving repeat infringement, and thus there are no longer any penalty provisions for other situations. While AIPLA has some concerns with the penalty provisions in general (see below), we also are unclear as to why they only apply to repeat infringement and what

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		penalties can be imposed in situations not involving repeat infringement. AIPLA suggests these issues be clarified as much as possible. With respect to the amendments relating to intentional patent infringement that disrupts the market order, AIPLA commends the amendments for providing additional remedies for intentional infringement but remains concerned that the standards for applying these remedies are vague. AIPLA recognizes that these issues might be addressed in implementing regulations and guidelines, and encourages SIPO to continue to work with the international community to establish such regulations, rules, and guidelines. AIPLA also respectfully submits that a party dissatisfied with an Order be given additional time to institute legal proceedings in the People's Court (e.g., increased from 15 days to 2 months). Such a change would harmonize this Article with various other IP statutory law. For example, the Amendment to PRC

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		Administrative Procedural Law (effective May 1, 2015) extended the limitation of action against an administrative ruling from 3 months to 6 months. Moreover, AIPLA respectfully submits that the Draft Amendments to this Article fail to appreciate that such a short limitation on instituting legal proceedings in the People's Court is not feasibly for relatively complex patent-related litigation matters, particularly those involving international parties.
	第六十一条（新增） 处理专利侵权纠纷的专利行政部门，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。调解协议达成后，一方当事人拒绝履行或者未全部履行的，对方当事人可以申请人民法院确认并强制执行。 Article 61 (New) The patent administration department that settles the dispute may, upon request of the parties may hold a mediation regarding the compensation	AIPLA 欢迎关于调解的新增条例。 美国与其他很多国家都有鼓励非诉讼纠纷解决方案的政策，并发现这些方案一般来说很有帮助。 AIPLA welcomes the amendments regarding enforcement of mediation provisions. The U.S. and many other countries have policies to vigorously enforce alternative dispute resolution procedures and have found them generally to be constructive.

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	amount for infringement upon the patent right. If no agreement is reached through mediation, either party may bring the lawsuit to the people's court in accordance with the "Civil Procedural Law of the People's Republic of China. The mediation agreement reached by the parties is validated by the people's court, when one party refuses to fulfill or fails to fully fulfill [the agreement], the other party may apply to the people's court to enforce [the agreement].	
	第六十二条（新增） 明知有关产品系专门用于实施专利的原材料、中间物、零部件、设备，未经专利权人许可，为生产经营目的将该产品提供给他人实施了侵犯专利权的行为的，应当与侵权人承担连带责任。 明知有关产品、方法属于专利产品或者专利方法，未经专利权人许可，为生产经营目的诱导他人实施了侵犯该专利权的行为的，应当与侵权人承担连带责任。	AIPLA 赞赏明确规定，间接、诱导专利侵权要与侵权人承担连带责任。 这项新增条款使中国专利执法制度与其他国际体制更协调统一。 AIPLA 仍然关切"明知"，"为生产经营目的"，"诱导"等措辞没有清楚定义。AIPLA 期待制定更加清晰明确的标准，规定如何理解实施本条，并预期这将在制定专利实施条例时加以解决。 AIPLA commends the express recognition of indirect patent infringement, contributory infringement, and inducement to

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	Article 62 (New) Without the consent of patent holders, the parties who knowing the raw materials, intermedium, components, equipment are specifically designed for implementing the patents, in the purpose of business, provide the products above to the other parties infringing patents, should bear joint and severe liability. Without the consent of patent holders, the parties who knowing the relevant products or methods are patented, in the purpose of business, induce the other parties to infringe the patents, should bear joint and severe liability.	infringe. AIPLA feels this amendment brings greater harmonization of China's patent enforcement regime with other international systems. AIPLA remains concerned that "knowing," "for purposes of business," and "induce" are not adequately defined. AIPLA looks forward to the development of more clear and definite standards for how these provisions will be interpreted and applied, and anticipate that this will be addressed through the implementing regulations, etc.
	第六十三条（新增） 网络服务提供者知道或者应当知道网络用户利用其提供的网络服务侵犯专利权或者假冒专利，未及时采取删除、屏蔽、断开侵权产品链接等必要措施予以制止的，应当与该网络用户承担连带责任。 专利权人或者利害关系人有证据证明网络	AIPLA 赞赏本条款使中国与其贸易伙伴的专利系统更加协调。 AIPLA 建议进一步澄清本条的实施程序，比如仿效美国的 "千禧年数字版权法"。美国的这些程序，建立在通知和补救的基础之上，已证明确实有效，能得到网络服务商的配合，也减少他们要承担的责任。

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	用户利用网络服务侵犯其专利权或者假冒专利的，可以通知网络服务提供者采取前款所述必要措施予以制止。网络服务提供者接到合格有效的通知后未及时采取必要措施的，对损害的扩大部分与该网络用户承担连带责任。 专利行政部门认定网络用户利用网络服务侵犯专利权或者假冒专利的，应当通知网络服务提供者采取本条第一款所述必要措施予以制止，网络服务提供者未及时采取必要措施的，对损害的扩大部分与该网络用户承担连带责任。 Article 63 (New) Where the Internet service provider knows or should have known that the Internet user infringes patent rights or false patents by utilizing the Internet services provided, but fails to take necessary measures to stop infringing conduct by deleting, blocking or disconnecting the link to the infringing products, the Internet service provider shall bear joint and several liabilities with the Internet users. Where the patent right holder or the	AIPLA 担心“网络服务提供者”的含义不是十分清楚，广义的讲，可解释为包括仅仅在其网站上提到其他产品和服务的公司，或者包括其他合法经营，非侵权行为。还有一点不清楚的是，为侵权人提供产品或服务的其他单位是否也要承担连带侵权责任。 本条似乎要求专利权人或者利害关系人举证证明侵权行为。 AIPLA 注意到这一要求可能并不必要。 简单的通知然后删除程序既简洁清楚，又无需判断到底是否侵权。 另一方面，AIPLA 注意到，按本条规定，网络服务提供者收到通知和些许侵权证据后，就有承担连带责任的负担，尽管专利是否有效，是否存在侵权都还存有疑问。这样，网络服务提供者有过重的负担去调查以便采取必要措施。 AIPLA 担心本款也许未能给网络服务提供者提供足够的“安全港” ，比如，当被控侵权的网络用户答复并提供证据证明他们并未侵权。 AIPLA commends these amendments as bringing the Chinese system more closely into alignment with the systems of its trading partners. AIPLA recommends that greater clarity

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	interested party has evidence to prove that the Internet user utilized the Internet service to infringe its patent rights or false patents, it may notify the Internet service provider to adopt necessary measures as described in the preceding paragraph to stop such infringement. Where the Internet service provider fails to adopt necessary measures upon valid and effective notice, it shall be jointly and severally liable with the Internet users for the expanded portion of damages. Where patent administration department determines that the Internet user infringes or forges patents upon the patent right, it shall notify the Internet service provider to take necessary measures mentioned in the first paragraph of the article to prevent such infringement. Where the Internet service provider does not promptly take necessary measures, it shall bear joint and several liabilities with the Internet user for the expanded portion of damages.	be provided regarding the procedure, comparable to the Digital Millennium Copyright Act in the United States,. These procedures, based on notice and remedial actions, have been effective in securing the cooperation of internet service providers, while limiting liability when they act to remedy the infringement. AIPLA is concerned that the definition of “internet service provider” is unclear as to whether this term may be interpreted broadly to cover companies that merely reference other’s products and services on their own websites, or those which are involved in other legitimate non-infringing business activities. It is also unclear whether other entities, such as providers of other services used by the infringers or providers of components that are incorporated into a downstream infringing product, should also assume joint responsibilities with the users. The present amendment appears to require proof of a violation, AIPLA

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		observes that this may result in substantial additional effort in excess of that necessary to secure an appropriate level of cooperation. Rather, a simple notice and take down procedure offers the benefits of clarity and simplicity without requiring proceedings to resolve the ultimate issue of infringement. On the other hand, AIPLA observes that this amendment shifts the burden on the ISP after receiving notice and some evidence of infringement to assume joint responsibility without any adjudication of infringement or determination of validity of the patent at issue. This places a high burden on ISP to self-investigate these issues in order to respond to notice by the patentee. AIPLA has concerns that the provision may not provide a sufficient "Safe Harbor" for an ISP, as for example, when the alleged infringer responds and provides evidence that they do not infringe.

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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。 Article 61 If a dispute over patent infringement involves an invention patent for the method of manufacturing a new product, the unit 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. If a dispute over patent infringement involves a utility model patent or a design patent, the people's court or the administration	第六十四条 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外观设计专利的，人民法院或者专利行政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或者外观设计进行检索、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。双方当事人均可以主动出具上述专利权评价报告。 Article 64 Where any infringement dispute relates to a patent for invention for a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process. Where the patent infringement relates to a patent for utility model or	AIPLA 同意于本条修改，仅是担心执法过程中是否能保护商业秘密。 AIPLA agrees with this provision and only has concern that processes allow for the confidential handling of such information to protect any trade secret information during the enforcement process.

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department for patent-related work may require the patentee or the interested parties to present a patent right 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 trying or handling the patent infringement dispute.	design, the people's court or the patent administration department for patent affairs may ask the patentee or an interested party to furnish an evaluation report of patent right which is made by the Patent Administration Department Under the State Council after conducting a search, analysis and evaluation for the related utility model or design, and which is the evidence to judge or handle patent infringement disputes. Both parties could provide the evaluation reports mentioned above on their own initiatives.	
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。 Article 62 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a patent right infringement.	第六十五条 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。 Article 65 In a patent infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a patent right infringement.	

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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。 Article 63 A person who counterfeits the patent of another person shall, in addition to bearing civil liabilities in accordance with law, be ordered by the administration department for patent-related work to put it right, and the department shall make the matter known to the public, confiscate his unlawful gains and, in addition, impose on him a fine of not more than four times the unlawful gain; if there are no unlawful gains, a fine of not more than RMB200,000 may be imposed on him; and if a crime is constituted, criminal responsibility shall be pursued in accordance with law.	第六十六条 假冒专利的，除依法承担民事责任外，由专利行政部门责令改正并予公告。非法经营额五万元以上的,可以处非法经营额一倍以上五倍以下的罚款；没有非法经营额或者非法经营额五万元以下的,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。 Article 66 A person who counterfeits the patent of another person shall, in addition to bearing his civil liability according to law, be ordered by the patent administration department for patent affairs to amend his act, and the order shall be announced. His illegal earnings shall be confiscated and, in addition, he may be imposed a fine of not more than four times his illegal earnings and, if there is no illegal earnings or it is difficult to calculate the illegal earnings, a fine of not more than RMB 200,000 yuan. Where the infringement constitutes a crime, he shall be prosecuted for his criminal	与对专利侵权一样，美国知识产权法协会赞成对伪造假冒行为加大罚款额度，罚款数额与专利侵权罚款类似。但我们仍觉得可能要进一步增加，罚款数额应与具体情况相应。 AIPLA commends the provision for enhanced damages for counterfeiting and passing off. The fines are comparable to those for patent infringement. As was the case with patent infringement, AIPLA commends increasing the level of fines but remains concerned that additional increases may be necessary and that fines be in an amount appropriate to the circumstances.

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	liability.	
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。	第六十七条 专利行政部门根据已经取得的证据，对涉嫌侵犯专利权行为或者假冒专利行为进行处理或者查处时，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，对有证据证明是扰乱市场秩序的故意侵犯专利权的产品或者假冒专利的产品，可以查封或者扣押。 专利行政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。当事人拒绝、阻挠专利行政部门行使职权的，由专利行政部门予以警告；构成违反治安管理行为的，由公安机关依法给予处罚；构成犯罪的，依法追究刑事责任。	美国知识产权法协会赞成清楚规定当事人应当对专利行政部门予以协助、配合，如果拒绝、阻挠专利行政部门行使职权可能遭到制裁。这一规定很有必要，它能促使当事人配合，避免因当事人拒绝配合而阻挠专利行政部门执法。 美国知识产权法协会关注的是，什么行为构成“阻挠”、“违反治安管理行为”并无清晰规定，所以本条在实践中何时适用，尚缺乏明确标准。 美国知识产权法协会还担心，在具体实践中对制裁、处罚或刑事责任的裁定可能有随意性，缺乏一致性和可预测性。此外，还有担心企业合理的反对提供证据或要求保密可能会受到刑事制裁。因此，美国知识产权法协会建议，明确规定在最终决定上诉期未过之前，对执法当中获取的企业信息予以保密，对收缴的材料产品予以保全。
Article 64 When the administration department for patent-related work investigates and handles the suspected counterfeiting of a patent, it may, based on evidence obtained, inquire	Article 67 When investigating and prosecuting the alleged acts of patent infringement and forge the patent, the patent administration department for patent affairs may, based on the evidence obtained, inquire the	AIPLA commends the clarification that cooperation with the patent administration department is required and that failure to cooperate may result in sanctions. These provisions

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the parties concerned, and investigate the circumstances related to the suspected illegal act; it may conduct on-the-spot inspection of the places where the suspected illegal act is committed; consult and duplicate the relevant contracts, invoices, account books and other related materials; and check the products related to the suspected illegal act and seal or detain the products that are proved to be produced by the counterfeited patent. When the administration department for patent-related work performs its duties as prescribed in the preceding paragraph, the parties concerned shall provide assistance and cooperation, instead of refusing to do so or creating obstacles.	parties involved, and to investigate the facts relevant to the alleged illegal act; carry out an on-the-spot inspection of the site where the party's alleged illegal act took place; inspect and duplicate the contracts, invoices, account books and other relevant materials related to the alleged illegal act; and examine the products related to the illegal act and seal up or seize the products that are proved by evidences to willfully infringe patent rights and disturb market order or pass off a patent. The parties shall assist and cooperate with the patent administration department s in exercising the functions and authorities prescribed in the preceding paragraph in accordance with law. Where the parties refuse to be investigated or impede the administrative authority for patent affairs to perform their duty, the administrative authority for patent affairs shall give the warnings; if there is serious circumstance, the punishment in public order and	are necessary to secure cooperation and redress circumstances where the failure to cooperate would impair the patent administration department in performing its work. AIPLA is concerned that the standard of creating obstacles or violating public security regulations may be too vague to provide clear guidance when these provisions may be invoked. AIPLA is also concernedthat sanctions, punishments or criminal liability may be imposed arbitrarily, inconsistently and unpredictably. Concern is also expressed over the possibility of criminal sanctions being imposed on companies that legitimately make evidentiary or confidentiality objections. AIPLA recommends the clear provision for confidential treatment of information in these enforcement actions and for the protection of materials and products until a final, un-appealed decision has been rendered.

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	security administration shall be imposed in accordance with the law. Where the parties refuse or hamper the patent administration department to carry out its duties, the patent administration department may issue warnings; where the conduct constituted a violation of the security administration, the public security will impose penalty in accordance with the law; where [the conduct] constituted crime, [the party] shall be responsible for criminal liabilities in accordance with the law.	
第六十五条 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。 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	第六十八条 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。对于故意侵犯专利权的行为，人民法院可以根据侵权行为的情节、规模、损害后果等因素，在按照上述方法确定数额的一倍以上三倍以下确定赔偿数额。赔偿数额还应当包括权利人为制	美国知识产权法协会赞同本款修订，及对故意侵犯专利权提供更有效的补救措施.不过，我们还担心更高的赔偿才能恰当补偿侵权伤害，与之相应。此外，增加专利权人对侵权和损害的举证责任，也许会对有效的专利保护形成另一个障碍。 不过，美国知识产权法协会认为本款初步修订是建设性的，将会有助专利制度管理的改进。 美国知识产权法协会赞成补偿措施应由法院裁定，不过“故意”的定义较模糊，令人关注。因为意愿涉及侵权行为进行时

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情节等因素，确定给予一万元以上一百万元以下的赔偿。 Article 65 The amount of compensation for patent right infringement shall be determined according to the patentee's actual losses caused by the infringement. If it is hard to determine the actual losses, the amount of compensation may be determined according to the benefits acquired by the infringer through the infringement. If it is hard to determine the losses of the patentee or the benefits acquired by the	止侵权行为所支付的合理开支。 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，确定给予十万元以上五百万元以下的赔偿。 人民法院认定侵犯专利权行为成立后，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。 Article 68 The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the losses suffered by the patentee. If it is difficult to determine the losses, the amount may be assessed on the basis of the profits which the infringer has earned through the infringement. If it is difficult to determine the losses suffered by the patentee or	当事人的主观状态，很难客观确定。鉴于此，有必要建立一套统一、合理、实用的评判标准来衡量是否“故意”。 美国知识产权法协会建议实用新型和发明专利赔偿数额应区别对待。实用新型只需较小改进就可授权，因此侵权赔偿也应相应比发明专利赔偿数额小。故意专利侵权损害赔偿应只限于发明专利，因为实用新型专利较易获得，价格较低，审查周期较短，更难以评估。 AIPLA commends these amendments as well as providing a more effective level of remedy for intentional patent infringement, AIPLA remains concerned that further increases may be necessary to provide an appropriate level of damages commensurate with the injury caused by the infringement, Furthermore, the heightened burden of proof placed on the patentee to show infringement and damages presents another obstacle for effective patent enforcement in China. Nonetheless, AIPLA recognizes that these initial steps are constructive and will improve the administration

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infringer, the amount of compensation may be determined according to the reasonably multiplied amount of the royalties of that patent. The amount of compensation shall include the reasonable expenses paid by the patentee for putting an end to the infringement. 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 compensation within the range from 10,000 yuan to 1,000,000 yuan.	the profits earned by the infringer, the amount may be assessed by reference to the appropriate multiple royalties of that patent under contractual license. For willful patent infringement conduct, based on factors including circumstances, scale, consequences of damages, the people's court shall raise the amount of compensation to two to three times , based on the amount of compensation determined by the two preceding paragraphs. The amount of compensation shall further include a reasonable expense the patentee has incurred in order to stop the infringing act. Where it is difficult to determine the losses suffered by the patentee, the profits which the infringer has earned through the infringement and royalties, the people's court may set an amount of compensation of not less than RMB100,000 yuan and not more than RMB5,000,000 yuan in light of factors such as the type of the patent right, the nature of the	of the patent system. While AIPLA commends that remedy is being determined by the courts, the definition of "intentional" is vague and concerning. It is difficult to determine "intention" as it involves the subjective state of a person or enterprise when an infringing act is conducted, and therefore a set of unified, reasonable and practical criteria for determining when infringement is "intentional" is necessary. As to the amount of compensation for patent infringement, AIPLA recommends a distinction between utility model patents and invention patents. Utility model patents are granted on smaller incremental improvements, which should be subject to smaller damage awards in comparison to invention patents. Intentional patent infringement damages should only be limited to invention patents, because utility model patents are easier to obtain, cheaper to acquire, faster to issue, and harder to evaluate.

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	infringing act and the circumstances. Once the people's court concluded that an infringing conduct has been established, in order to determine the amount for compensation, under the circumstances in which the right holder has used its best efforts to present evidence, and the related account books or materials are mainly in control by the accused infringer, [the court] may order the accused infringer to provide account books and materials relating to the infringing conduct; if the accused infringer does not provide or provides false account books or materials, the people's court may refer to the right holder's claims and evidence to rule on the amount of compensation.	
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	第六十九条 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。	

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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。 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。 Article 66 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 being	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。 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。 Article 69 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 being checked in time, may cause irreparable harm to his lawful rights and interests, he may, before taking legal action, file an application to request that the people's court order to have such act ceased.	

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checked in time, may cause irreparable harm to his lawful rights and interests, he may, before taking legal action, file an application to request that the people's court order to have such act ceased. When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected. 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 special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with the ruling may file once for review, and the enforcement shall not be suspended during the period of review. 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	When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected. 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 special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with the ruling may file once for review, and the enforcement shall not be suspended during the period of review. 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. If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing	

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measures. If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.	of the relevant act.	
第六十七条 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。 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。 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。 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。 Article 67 To check a patent infringement, when evidence might be lost or might be	第七十条 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。 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。 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。 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。 Article 70 To check a patent infringement, when evidence might be lost or might be	

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hard to acquire thereafter, the patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation. If the people's court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected. 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. 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.	hard to acquire thereafter, the patentee or interested party may, before taking legal action, file an application with the people's court for evidence preservation. If the people's court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected. 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. 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.	
第六十八条 侵犯专利权的诉讼时效为二年，自专利	第七十一条	

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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。 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。 Article 68 The period of limitation for action against patent right infringement shall be two years, commencing from the date when the patentee or interested party knows or should have known of the infringement. If an appropriate royalty is not paid for using an invention during the period from the publication of the invention patent application to the grant of the patent right, the period of limitation for taking legal action by the patentee for requesting payment of royalties shall be two years, commencing from the date when	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。 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。 Article 71 The period of limitation for action against patent right infringement shall be two years, commencing from the date when the patentee or interested party knows or should have known of the infringement. If an appropriate royalty is not paid for using an invention during the period from the publication of the invention patent application to the grant of the patent right, the period of limitation for taking legal action by the patentee for requesting payment of royalties shall be two years, commencing from the date when	

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the patentee knows or should have known of the use of that patent by another person. However, the period of limitation for action shall commence from the date when the patent right is granted, if the patentee knows or should have known of the use before the patent right is granted.	the patentee knows or should have known of the use of that patent by another person. However, the period of limitation for action shall commence from the date when the patent right is granted, if the patentee knows or should have known of the use before the patent right is granted.	
第六十九条 有下列情形之一的，不视为侵犯专利权： （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； （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； （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； （四）专为科学研究和实验而使用有关专利的；	第七十二条 有下列情形之一的，不视为侵犯专利权： （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； （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； （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； （四）专为科学研究和实验而使用有关专利的；	

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（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。 Article 69 he following shall not be deemed to be patent right infringement: (1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product; (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; (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 is used in the devices and installations for its own needs, in	（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。 Article 72 The following shall not be deemed to be patent right infringement: (1) After a patented product or a product directly obtained by using the patented method is sold by the patentee or sold by any unit or individual with the permission of the patentee, any other person uses, offers to sell, sells or imports that product; (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; (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 is used in the	

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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; (4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and (5) Any person produces, uses, or imports patented drugs 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 drugs or patented medical apparatus and instruments especially for that person.	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; (4) Any person uses the relevant patent specially for the purpose of scientific research and experimentation; and (5) Any person produces, uses, or imports patented drugs 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 drugs or patented medical apparatus and instruments especially for that person.	
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	第七十三条 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	

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源的，不承担赔偿责任。 Article 70 Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved.	源的，不承担赔偿责任。 Article 73 Where any person, for the purpose of production and business operation, uses, offers to sell or sells a patent-infringing product without knowing that such product is produced and sold without permission of the patentee, he shall not be liable for compensation provided that the legitimate source of the product can be proved.	
	第七十四条（新增） 专利行政部门应当建立专利权保护信用信息档案，并纳入全国信用信息共享交换平台。 Article 74 (New) The patent administrative departments should set up the patent protection credit information profiles, and incorporate it into the national credit information exchange platforms.	美国知识产权法协会赞同给公众提供更多专利相关信息，并且允许共享有用信息。 AIPLA commends this provision by providing more patent related information to the public and allow sharing of useful information.

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	第七十五条（新增） 设立专利代理机构或者取得专利代理师资格需经国务院专利行政部门许可。 未经国务院专利行政部门许可，任何单位或者个人不得为经营目的从事专利代理业务。违反本款规定的，由专利行政部门视其情节责令停止违法行为，没收违法所得，可以并处罚款。 Article 75 (New) It is required to acquire the administrative licensing from the national patent administration departments to set up patent agency entities or obtain patent agents qualification. Without the permission of patent administration department, any entity and individual may not engage in the patent agency business. The patent administration department shall order the violating entities or individuals	AIPLA 赞成要求所有专利从业人员均具有适当资格。 AIPLA commends these provisions by ensuring that all practitioners are suitably qualified.

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	to cease the illegal conduct, confiscate illicit gains and may impose a fine depending on the situation.	
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。 Article 71 If, in violation of the provisions of Article 20 of this Law, a person files an application for patent in a foreign country, thereby divulging national secrets, the unit where he works or the competent authority at a higher level shall impose on him an administrative sanction. If a crime is constituted, he shall be investigated for criminal responsibility according to law.	第七十六条 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。 Article 76 If, in violation of the provisions of Article 20 of this Law, a person files an application for patent in a foreign country, thereby divulging national secrets, the unit where he works or the competent authority at a higher level shall impose on him an administrative sanction. If a crime is constituted, he shall be investigated for criminal responsibility according to law.	
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。 Article 72 If a person usurps the right of an inventor or designer to	（删除） (Deleted)	

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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 unit where he works or the competent authority at a higher level.		
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。 Article 73 The administration department for patent-related work shall not be involved in recommending patented products to the public or engage in any other similar business activities. If the administration department for patent-related work violates the provisions of the preceding paragraph, its immediate superior or the supervisory authority shall order	第七十七条 专利行政部门不得参与向社会推荐专利产品等经营活动。专利行政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。 Article 77 The patent administration department shall not be involved in recommending patented products to the public or engage in any other similar business activities. If the patent administration department violates the provisions of the preceding paragraph, its immediate superior or the supervisory authority shall order it to rectify, and confiscate its unlawful gains, if	

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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 law.	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 law.	
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。 Article 74 Where a staff member of the government department engaged in administration of patent-related work or of a relevant department neglects his duty, abuses his power, or commits irregularities for personal gain, which constitutes a crime, he shall be pursued for criminal responsibility in accordance with law. If the case is not serious enough to constitute a crime, he shall be given an administrative sanction in accordance with law.	第七十八条 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。 Article 7 8 Where a staff member of the government department engaged in administration of patent-related work or of a relevant department neglects his duty, abuses his power, or commits irregularities for personal gain, which constitutes a crime, he shall be pursued for criminal responsibility in accordance with law. If the case is not serious enough to constitute a crime, he shall be given an administrative sanction in accordance with law.	

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	第八章专利的实施和运用（新增） Chapter VIII The Implementation and Use of Patents (New)	
	第七十九条（新增） 各级专利行政部门应当促进专利实施和运用，鼓励和规范专利信息市场化服务和专利运营活动。 Article 79 (New) Patent administration departments of all levels shall promote the implementation and use of patents, encourage and regulate patent information market services and patent operation activities.	
第十四条 国有企业事业单位的发明专利，对国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。 Article 14 If an invention patent of a State-	第八十条（原第十四条） 国有企业事业单位的发明专利，对国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。 Article 80 [originally Article 14] Where any patent for invention	

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owned enterprise or institution is of great significance to national or public interests, upon approval by the State Council, the relevant competent department under the State Council or the people's government of the province, autonomous region, or municipality directly under the Central Government may decide to have the patent widely applied within an approved scope and allow the designated units to exploit the patent, and the said units shall pay royalties to the patentee in accordance with the regulations of the State.]	owned by a state-owned enterprise or public institution is of great significance to the interests of the state or the public, the relevant competent department of the State Council and the people's government of the province, autonomous region, or municipality directly under the Central Government may, upon approval of the State Council, decide to popularize and apply the patent within the approved scope, and allow designated entities to exploit the patent; and the exploiting entity shall, in accordance with the laws and regulations of the state, pay royalties to the patentee.	
	第八十一条（新增） 国家设立的研究开发机构、高等院校自职务发明创造获得专利权之后，在不变更专利权属的前提下，发明人或者设计人可以与单位协商自行实施或者许可他人实施该专利，并按照协议享有相应的权益。 Article 81 (New) Where the national research and development institutions or universities obtained a patent	

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	through service invention, the inventor or designer may negotiate with the entity to self-implement or license the patent to third parties, and enjoy the corresponding rights and interests in accordance with the agreement.	
	第八十二条（新增） 专利权人以书面方式向国务院专利行政部门声明其愿意许可任何人实施其专利，并明确许可使用费的，由国务院专利行政部门予以公告，实行当然许可。 就实用新型、外观设计专利提出当然许可声明的，应当提供专利权评价报告。 撤回当然许可声明的，应当以书面方式提出，并由国务院专利行政部门予以公告。当然许可声明被撤回的，不影响在先给予的当然许可的效力。 Article 82 (New) If the patent holder declares in writing to the patent administration department that it is willing to license any party to implement its patent and specify the royalties, it shall be announced by the patent	AIPLA 支持实行当然许可,专利行政部门为促进市场发展所作的努力，但谨慎地建议这些程序不要取代或抵消私人之间的许可努力和行为。 AIPLA supports the availability of licenses and the effort of the patent administration department to foster the development of a market. AIPLA cautiously recommends that these procedures, however, not supplant or foreclose private efforts and licensing activities.

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	administration department and execute “automatic license”. If the right holder declares utility models or design patents, it shall provide patent evaluation report. In case where such declaration is withdrawn, it shall submit a written withdrawal declaration to the patent administration department for announcement. The validity of prior automatic licenses should not be affected.	
	第八十三条（新增） 任何人有意愿实施当然许可的专利的，为获得当然许可，应当以书面方式通知专利权人，并支付许可使用费。 当然许可的被许可人可以向国务院专利行政部门备案，作为获得当然许可的证明。 当然许可期间，专利权人不得就该专利给予独占或者排他许可、请求诉前临时禁令。 Article 83 Any party who is willing to	AIPLA 担心本条目前措辞过于宽泛，可能形成专利的强制许可。在我们看来，一揽子全面禁止请求诉前临时禁令并非在所有情况下都是恰当的。在某些情况下，本条款是适当的，例如，如果申报标准必要专利的专利权人未能提供公平、合理和非歧视条款。AIPLA 建议明确澄清本条款并不适用于所有被第八十条定为 “具有重大意义”的专利，只适用于那些已被法院或有管辖权的仲裁机构判定专利权人未能提供公平、合理、非歧视条款的标准必要专利。 AIPLA is concerned that the

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	implement the “automatic license” shall notify the patent holder in writing and pay royalties. The licensee of automatic license may record at the national patent administration departments and obtain the certification of automatic license. During the period of “automatic license”, the patent right holder shall not grant exclusive or sole-license to any third party, or request for preliminary injunction.	amendment as written is overly broad and could result in compulsory licensing of patents. In our view, the blanket prohibition on seeking injunctive relief may not be appropriate in all circumstances, although it may be appropriate in certain circumstances, for example the declaration of a standard essential patent that the patentee has not yet offered fair, reasonable and non-discriminatory terms. AIPLA recommends that this provision be clarified that it does not apply to all patents considered to be of “great significance” according to Article 80, but, only apply to those patents that, in fact, have been found by a court or tribunal of competent jurisdiction to be standard-essential and for which the patentee has failed to offer FRAND terms.
	第八十四条（新增） 当事人就当然许可发生纠纷的，可以请求国务院专利行政部门裁决。当事人对裁决不服的，可以自收到通知之日起十五日内向人民法院起诉。	AIPLA 赞成设立迅速有效处理这类纠纷的程序。然而，我们认为法院比行政机构，如国知局，更适于裁决关于许可的纠纷。这类纠纷往往涉及专利法的复杂问题，包括产品是否涵盖在权利要求范围之内因而需付许可费等。法院有丰富的专利纠纷审

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	Article 84 (New) Where disputes arise between the parties with regard to the "automatic license", the parties may require the national patent administration departments to adjudicate. The party who is dissatisfied with the ruling may bring the lawsuit to the people's court within fifteen days upon receipt of the adjudication decision.	理经验，因此最能胜任这种复杂纠纷的审理。 AIPLA commends establishing a procedure that would effectively resolve these disputes in a timely and cost-effective manner. However, such disputes regarding licenses should be adjudicated by the courts rather than an administrative agency such as SIPO. Such disputes often involve complex issues of patent law, including whether a product is covered by the patent claims and thus subject to license fees. The courts are best suited provided their extensive patent experience to adjudicate such complex disputes.
	八十五条（新增） 参与国家标准制定的专利权人在标准制定过程中不披露其拥有的标准必要专利的，视为其许可该标准的实施者使用其专利技术。许可使用费由双方协商；双方不能达成协议的，可以请求国务院专利行政部门裁决。当事人对裁决不服的，可以自收到通知之日起十五日内向人民法院起诉。	AIPLA 关心的是，标准必要专利的许可只限于涉及标准必要的权利要求，而不影响专利中与标准必要无关的权利要求。 有一点不是很清楚，即"国家"标准是否包括原始于其他国家而后被中国标准组织采用的"跨国"标准，仅参与原始标准制定的专利权人是否也在中国有披露义务。 AIPLA is concerned that any

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	Article 85 (New) A patent holder who does not disclose its standard essential patents during its participation in the national standard-setting process is deemed to license the implementers to use the patents. Royalties shall be negotiated by the parties, if the parties are not able to reach an agreement, the parties may require the national patent administration departments to adjudicate. If any party is dissatisfied with the ruling, the party may bring the case to the people's court within 15 days upon receipt of the adjudication.	required licensing be limited on a claim-by-claim basis so as not to involve non-essential claims within a given patent. It is also unclear if "national" standard covers a "transnational" standard that started in other country and later gets adopted by an SSO in China, which will subject such duties to parties who were not subjected to such duties in the original participation.
	第八十六条（新增） 以专利权出质的，由出质人和质权人共同向国务院专利行政部门办理出质登记，质权自登记之日起生效。 Article 86 For the pledged patent, the pledger and the pledgee shall jointly register at the patent administration department, the pledge takes effect	AIPLA 担心本条款过多干涉当事人之间事物，也许应该让出质和质权双方自行协商质权怎样生效。 AIPLA is concerned about this proposed amendment and requests that the sufficiency of the pledge be left solely to negotiation between the parties to the transaction.

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	from the date of registration.	
第八章 附则 Chapter VIII Supplementary Provisions	第九章 附则 Chapter IX Supplementary Provisions	
第七十五条 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。 Article 75 To apply for patent at the patent administrative department under the State Council or go through other formalities, fees shall be paid in accordance with relevant regulations.	第八十七条 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。 Article 87 To apply for patent at the patent administrative department under the State Council or go through other formalities, fees shall be paid in accordance with relevant regulations.	
	第八十八条（新增） 专利代理行业组织应当接受专利行政部门的指导、监督。 专利代理行业组织应当按照章程规定，严格执行吸纳会员的条件，对违反行业自律规范的会员实行惩戒；对其吸纳的会员以及对会员的惩戒情况，应当及时向社会公布。	AIPLA 赞成促进从业者提高专业水平，保证、统一质量管理标准。 AIPLA commends these amendments as fostering greater professionalism among practitioners and ensuring consistent standards of quality and discipline.

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	Article 88 Patent industry organizations should accept guidance and supervision from the patent administration department. Patent industry organizations should operate based on its articles and strictly execute the conditions for absorbing members. Itis also in charge of disciplining members who violates the professional self-discipline rules; The organization should disclose the situation of absorbing and disciplining members to the public.	
第七十六条 本法自 1985 年 4 月 1 日起施行。 Article 76 This Law shall go into effect on April 1,1985.	第八十九条 本法自 1985 年 4 月 1 日起施行。 Article 86 This Law shall go into effect on April 1, 1985.	