

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The present document reproduces the text¹ of the Patent Law, as last amended on 24 October 2001, as notified by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, under Article 63.2 of the Agreement (see document IP/N/1/TPKM/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

TERRITOIRE DOUANIER DISTINCT DE TAIWAN, PENGHU, KINMEN ET MATSU

Le présent document contient le texte¹ de la Loi sur les brevets, modifiée en dernier lieu le 24 octobre 2001, qui a été notifiée par le Territoire douanier distinct de Taiwan, Penghu, Kinmen et Matsu au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/TPKM/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

TERRITORIO ADUANERO DISTINTO DE TAIWÁN, PENGHU, KINMEN Y MATSU

En el presente documento se reproduce el texto¹ de la Ley de Patentes, modificado por última vez el 24 de octubre de 2001, notificado por el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/TPKM/1).

¹ In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte, dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

PATENT LAW OF
THE REPUBLIC OF CHINA

As last amended on 24 October 2001

Chapter I

General Provisions

Article 1

This Law is enacted for encouraging, protecting and utilizing inventions and creations so as to spur the development of industries.

Article 2

Patents referred to in this Law are classified into the following three categories:

1. Invention patents;
2. New utility model patents; and
3. New design patents.

Article 3

The government authority in charge of patent affairs under this Law shall be the Ministry of Economic Affairs.

The Ministry shall set up a Patent Authority to handle the said patent affairs.

Article 4

A patent application filed by a foreign applicant may be rejected if the country of which the foreign applicant is a national is not a signatory of an international treaty for protection of patent right to which the Republic of China is also a signatory, or if said country has not concluded with the Republic of China a treaty or an agreement for mutual protection of patent rights, or if no patent protection agreement has ever been concluded by and between the organizations or institutions of the ROC and said foreign country, as approved by the Ministry of Economic Affairs, or if the laws of said foreign country do not accept patent applications filed by nationals of the Republic of China.

Article 5

The term "right to apply for patent" as used herein shall mean the right to file a patent application in accordance with the provisions of this Law.

Subject to the provisions otherwise provided for in this Law or in any agreement, the term "the owner of the right to apply for patent" shall mean any inventor, creator or his assignee or heir.

Article 6

The right to apply for patent and the patent right are both assignable and inheritable.

The right to apply for patent shall not be taken as the subject for creation of a pledge.

In the case of taking a patent right as the subject of a pledge, the pledgee shall not be allowed to put the patent under pledge into practice, unless otherwise provided for in an agreement.

Article 7

Where an invention or a new utility model or a new design is made by an employee in the performance of his job duties, the right to apply for patent and the patent right thereof shall be vested in his employer, and the employer shall pay the employee a reasonable remuneration, provided that if there is any provision otherwise provided in an agreement, such provision shall prevail.

The clause "an invention, or a new utility model or a new design is made in the performance of his job duties" as set forth in the preceding Paragraph shall mean the invention, new utility model or new design which is completed by an employee in performing his job duties during the period of his employment.

Where a fund-provider engages another party to conduct research and development, the ownership of the right to apply for patent and the patent right in connection with the outcome of such research and development shall be vested in the party as named in the agreement between the two parties concerned, or shall be vested in the inventor or creator if the owner is not named in such an agreement provided that in any case, the fund-provider shall be allowed to put such invention, new utility model or new design into practice.

In case the ownership of the right to apply for patent and the patent right is vested in the employer or the fund-provider under Paragraph One or Paragraph Three hereinabove, the inventor or the creator concerned shall be entitled to the right of having his name shown as the inventor or the creator.

Article 8

Where an invention, a new utility model or a new design made by an employee is irrelevant to his job duties, the right to apply for patent and the patent right concerned shall be vested in the employee provided, however, that if such invention, new utility model or new design is made

through utilization of the employer's resources or experience, the employer may, after having paid the employee a reasonable remuneration, put same invention or new utility model or new design into practice in the enterprise concerned.

Upon completion of an invention, a new utility model or a new design irrelevant to his job duties, the employee shall give his employer a notice in writing of such event and shall inform his employer of the process of the creation when necessary.

If the employer fails to raise any objection to the employee within six (6) months after his receipt of the written notice given by the employee under the preceding Paragraph, he shall not claim that such invention, new utility model or new design is made by the said employee in the performance of his job duties.

In the case of dispute arising from the amount of the remuneration set forth in Paragraph One of this Article, the Patent Authority shall coordinate with the relevant parties for possible settlement.

Article 9

An agreement reached between an employer and an employee, by which the employee is precluded from enjoying his legitimate rights and interests of his invention, new utility model or new design, shall be void.

Article 10

Where an agreement has been reached by an employer and one of its employees in respect of the dispute concerning the ownership set forth in Articles 7 and 8 of the Law, the employer or employee involved shall file an application with the Patent Authority for change of the name of the owner of the right involved, accompanied by the relevant evidential documents. The Patent Authority may, as it deems necessary, notify the parties involved to submit thereto documents relevant to any mediation, arbitration or court judgment rendered in accordance with other laws and regulations.

Article 11

The Patent Authority may, ex officio or upon request, grant an extension of the statutory time limit to any person residing abroad or in a remote area or a place difficult to access so as to complete the regulatory procedures with the Patent Authority.

Article 12

A patent applicant may designate a patent agent to act on his behalf in filing patent applications and handling patent-related matters.

A patent applicant who has no domicile or business office in the territory of the Republic of China must designate a patent agent to act on his behalf to file patent applications and handle patent-related matters.

A patent agent must have a domicile in the territory of the Republic of China. Agents who take patent agency service as their exclusive profession shall be limited to certified patent attorneys, unless otherwise provided for in the law.

Qualification and administration of certified patent attorneys shall be prescribed in a separate law. Before enactment of that separate law, the Rules Governing Patent Agents shall govern.

Article 13

Where the right to apply for patent is jointly owned by two or more persons, the patent application(s) related thereto shall be filed jointly by all joint-owners.

Where two or more persons proceed to any patent-related procedure(s) other than filing a patent application, each of them may complete such procedure(s) independently, except for the withdrawal or abandonment of the patent application, the filing of divisional applications set forth in Article 32 hereof, the division of patent rights set forth in Article 68 hereof, the conversion of the patent application or other applications otherwise required in this Law which shall be executed and filed by all joint-owners provided, however, that if a representative is designated with a mutual covenant of all joint-owners, such covenant shall prevail.

In the case of an application requiring execution of all joint-owners as set forth in the preceding two Paragraphs, one of the joint-owners shall be appointed as the recipient of service of the documents. In the absence of such an appointment of recipient, the patent authority shall name the first applicant indicated in the list of joint-applicants as the recipient of service and shall advise all other joint-owners of such matters of service.

Article 14

Where the right to apply for patent is jointly owned by two or more persons, no joint-owner may, without the consent of the other joint-owners, assign his share therein to any other person.

Article 15

In the case of an inheritance or assignment of the right to apply for patent, the assignee shall have no locus standi against any third party unless the patent application was filed in the name of the assignee when filing for patent, or an application was filed thereafter with the Patent Authority for the change of the applicant's name.

Any such name change application referred to in the preceding Paragraph, whether filed for an assignment or an inheritance, shall be accompanied by evidential documents.

Article 16

Staff personnel and patent examiners, while serving in the Patent Authority, may not apply for a patent or receive any rights and interests concerning a patent directly or indirectly, provided that this provision shall not apply to the case of inheritance.

Article 17

Staff personnel and patent examiners of the Patent Authority shall have the obligation to keep the confidentiality of the patent matters of invention, new utility model or new design, or the trade secret of a patent applicant which has become known to or been held by them in the course of performing their duties.

Article 18

When a person filing a patent application or going through any other procedures in connection with patent matters has made delay beyond any statutory or specified time limit, or has defaulted in payment of any fees by the time limit, the application or the other procedures instituted by him shall be dismissed, unless his failure involving the specified time limit or payment has been corrected before an administrative decision is rendered by the Patent Authority.

If the delay is caused by natural calamities or other causes not attributable to the applicant, the applicant may within thirty (30) days after termination of such cause(s), file a written application with the Patent Authority for reinstating the interrupted case to its original condition by giving the reasons therefor in the said application, except in the case where one (1) year has elapsed after expiration of the statutory time limit.

While applying for reinstatement of the interrupted case, the applicant shall concurrently fulfill his obligation that he should have fulfilled within the statutory time limit.

The provisions of the preceding two Paragraphs shall not apply to opposition actions.

Article 18-1

Where service of a written examination decision or any other documents can not be made, such written examination decision or document shall be published in the Patent Gazette and shall be deemed duly served after 30 days from the date of publication thereof in the Patent Gazette.

Chapter II

Invention Patent

Section 1: Prerequisites for Patent

Article 19

The term "invention" as used herein refers to a high-level creation of technical concept(s) by which natural rules are utilized.

Article 20

An invention which is industrially applicable and is free from any of the following conditions may obtain a patent therefor upon application in accordance with this Law:

1. Which, prior to applying for patent, has been published or put to public use provided, however, that this provision shall not apply where such publication or use has been made for research or experimental purposes and a patent application therefore has been filed within six (6) months from the date of publication or use; or
2. Which, prior to applying for patent, has been displayed in an exhibition provided, however, that this provision shall not apply where the invention is displayed in a government-sponsored or recognized exhibition, and a patent application has been filed therefor within six (6) months from the opening date of such exhibition.

An invention not subject to either one of the conditions listed in the preceding Paragraph shall still not be granted an invention patent under this law if it utilizes conventional technology or knowledge known prior to applying for patent, and can be easily accomplished by persons skilled in the art.

An applicant claiming the application of the proviso of Item 1 or Item 2, Paragraph One of this Article shall indicate the facts and the relevant dates in his application and submit evidential documents within the time limit specified by the Patent Authority.

Article 20-1

Where the contents of an invention claimed in a patent application are identical with the contents described in the specification or drawings submitted along with an application for invention or new utility model patent that is filed prior to but laid-open or published after the filing of the present patent application, no invention patent may be granted to the invention, except that the

applicant(s) of the present application is (are) the same applicant(s) of such prior invention or new utility model patent application.

Article 21

The following items shall not be granted an invention patent:

1. New varieties of animals and plants, except the cultivation and growth processes of new plant varieties;
2. Diagnostic, treatment or surgical methods for diseases afflicting humans or animals;
3. Scientific theories or mathematical methods;
4. Rules or methods of games and sports;
5. Methods or plans which can be implemented only by means of human reasoning and memory; and
6. An invention which is contrary to public order, good custom or sanitation.

Section 2: Application

Article 22

Application for an invention patent shall be made by the person entitled to file the patent application by submitting to the Patent Authority a written application, a specification, necessary drawings and an Oath.

Where the person entitled to file a patent application is an employer, assignee or heir, the name of the inventor shall be indicated in the application, and the document evidencing the employment, assignment or inheritance shall be submitted along with the application.

The specification required under Paragraph one of this Article shall also contain, in addition to the claims, the prior art, the object of invention, the technical content, characteristics and effects which would enable persons skilled in the art to understand the contents of and to practice the invention concerned.

The claims referred to in the preceding Paragraph shall substantially describe the subject matter, technical contents and characteristics of the invention.

The manner for preparing the specification, the drawings and the claims shall be prescribed in the Enforcement Rules of the Patent Law.

Article 23

When filing an invention patent application, the date on which the government fee and written application, specification and necessary drawings as required by Paragraph One of the Preceding Article are submitted to the Patent Authority shall be taken as the filing date. For the specification and/or the drawings submitted in a foreign language, the Chinese translations thereof shall be submitted within the time limit set by the Patent Authority; and the date on which the Chinese translations are submitted shall be taken as the filing date of the application, provided that the submission of Chinese translations has been made before an administrative measure is taken.

Article 24

A patent applicant, who has filed his first patent application in accordance with the relevant law in respect of an invention in a foreign country which allows ROC nationals to claim priority based on mutual principle and has filed his patent application for the same invention in the ROC within twelve (12) months from the day following the date of his first patent application in said foreign country, may claim a priority for his ROC application.

Under the provisions of the preceding Paragraph, in case an applicant claims for two or more priority rights in a single patent application, the period for priority claim shall be calculated from the day following the first priority date.

In the case of a foreign applicant, if the country of which he is a national does not maintain a relation for mutual recognition of priority rights with the Republic of China but the applicant has a domicile or business office in the territory of a mutual country, the applicant shall also be entitled to claim priority in accordance with the provisions set forth in Paragraph One under this Article.

For a patent application with a priority claim, the priority date shall be used as the reference date in the examination of the prerequisites for patent.

The priority date claimed under this Article shall not be earlier than January 23, 1994.

Article 25

An applicant claiming priority in accordance with the preceding Article shall, when applying for patent, simultaneously file a statement and declare in the written application the filing date and the application number of the corresponding foreign application as well as the foreign country in which the same application was filed. However, if the application number of such foreign application is unknown, the cause thereof shall be stated in the present written application.

The applicant shall, within three (3) months from the day following the filing date of the present application, submit the documents issued by the said foreign country evidencing its acceptance of the said prior patent application; and if the circumstance referred to in the proviso of the preceding Paragraph does exist, a document justifying the identicalness of the subject matters claimed in both the said foreign application and the present application shall be submitted at the same time.

Violation of the provisions set forth in the preceding two Paragraphs shall cause the deprivation of the priority right.

Article 25-1

Where an applicant files a further application based on a prior invention or a new utility model patent application filed by himself in the ROC, he may claim for the priority right in respect of the invention or creation described in the specification or drawings submitted along with his prior patent application, except in the following circumstances:

1. Where a period of 12 months has elapsed from the day following the filing date of the prior patent application;
2. Where a claim for priority right has been made in accordance with the provisions of Article 24 or this Article in respect of the invention or creation described in the prior patent application;
3. Where the prior patent application has been divided into separate applications in accordance with the provisions of Paragraph One, Article 32 hereof, or has been converted in accordance with the provisions of Article 101 hereof; or
4. Where the examination decision has been made in respect of the prior patent application.

The prior patent application shall be deemed having been withdrawn after 15 months from the day following the filing date of the prior application.

A priority claim based on a prior patent application may not be withdrawn after 15 months from the day following the filing date of the prior application.

Where a later application filed with priority claim in accordance with Paragraph One of this Article is withdrawn within 15 months from the day following the filing date of the prior application, the priority claim shall be deemed withdrawn at the same time.

Where an applicant claims two or more priority rights in a single application, the period for priority claim shall be calculated from the day following the earliest priority date.

For a patent application with priority claim, the priority date shall be used as the reference date in the examination of the prerequisites for patent.

A statement for priority claim in accordance with Paragraph One under this Article shall be filed concurrently while filing a patent application, and the filing date and the application number of such prior patent application shall be indicated in the written application. Failure of the applicant to file the statement or to indicate the filing date and the application number of the prior patent application shall cause the deprivation of priority right.

The priority date claimed under this Article shall not be earlier than October 4, 2001, the effective date of the amendment made to this Law.

Article 26

In applying for an invention patent involving any new species of microorganism(s) or utilization of microorganism(s), the applicant shall prior to applying for patent, deposit the microorganism(s) at a local deposit institute designated by the Patent Authority and shall indicate in the written application the name of the deposit institute, and the date and the serial number of such deposit provided, however, that the deposit is not required if the microorganism(s) involved can be easily obtained by persons skilled in the art.

The applicant shall, within three (3) months from the day following the filing date of the application, submit to the Patent Authority the document(s) evidencing the deposit. If the documents are not submitted within the time limit, the deposit shall be deemed not having been effected.

In the event the microorganism(s) involved has (have) been deposited before filing the patent application at a foreign depositary institution which is recognized by the Patent Authority and the fact of such deposit has been stated in the application, and the deposit certificates issued by both a designated local depositary institution and the foreign depositary institution have been submitted within the time limit specified in the preceding Paragraph, the requirement for local deposit before filing the application as set forth in Paragraph One of this Article may be exempted.

Regulations governing the accepting conditions, the categories, the type, and the quantity of microorganism(s) to be deposited, the deposit fee rates, and other matters in connection with the depositing operation shall be prescribed by the Patent Authority.

Article 27

When two apply separately for patent for the same invention, only the applicant whose application was filed first may be granted an invention patent, except in the case where the priority

date claimed by the applicant filing the later application is earlier than the filing date of the earlier application.

If the filing date and the priority date referred to in the preceding Paragraph are the same date, the applicants shall be requested to reach a compromise between/among themselves. If such compromise cannot be reached, none of the applicants shall be granted an invention patent.

While the applicants involved are in the process of negotiating for a compromise, the Patent Authority may notify such applicants to submit the results of such negotiation within an appropriate period of time to be set by the Patent Authority. Failure to submit the negotiation results within such time limit shall be deemed a failure to reach a compromise.

Where an invention patent application and a new utility model patent application are filed separately and simultaneously in respect of a same invention or creation, the provisions set forth in the preceding three (3) Paragraphs shall apply mutatis mutandis.

Article 28

(deleted)

Article 29

Where a reinvention is made by utilizing an invention or a new utility model of another person, an application for an invention patent may be filed for such reinvention.

The reinvention set forth in the preceding Paragraph refers to an invention accomplished by utilizing the major technical content of the invention or new utility model of another person.

Article 30

When the original inventor and another person separately apply for patent for the same reinvention on the same date, the original inventor shall be granted an invention patent.

Article 31

When applying for an invention patent, one application shall only claim one single invention. However, if two or more inventions cannot be separated in practical use, such inventions may be claimed in one application under any of the following circumstances:

1. In the case of the utilization of the major constituent features of an invention;
2. In the case of an invention covering an article, the application may simultaneously claim other inventions relating to the process of manufacturing the article, the process of utilizing the article, and the machines, devices or apparatus for manufacturing the article or other articles in which the specific feature of the article is utilized; and

3. In the case of an invention claiming a process, the application may simultaneously claim inventions relating to the machines, devices or apparatus to be directly used in practicing the process.

Article 32

In the case of a patent application which substantially involves two or more inventions, the application may, upon notice given by the Patent Authority or the request by the applicant, be divided into two or more separate divisional applications.

The divisional applications set forth in the preceding Paragraph shall be filed before the re-examination decision on the original application is rendered. If divisional applications are accepted, the filing date of the original application shall still be taken as the filing date of the divisional applications, and the applicant shall remain entitled to claim priority, if any, and the Patent Authority shall proceed with the examination procedures left unfinished in the examination of the original application.

Article 33

(deleted)

Article 34

When a patent application for an invention filed by a person other than the person entitled to file such application has been rejected as a result of an opposition action, the filing date of the application filed by the person not entitled thereto shall be taken as the filing date of the application filed by the person entitled to file the patent application, if the person entitled to file such application files a patent application within sixty (60) days from the day following the date on which the opposition decision becomes irrevocable.

Article 35

When an invention patent is granted upon application filed by a person other than the person entitled to file such application, the filing date of the application filed by the person not entitled to file the application shall be taken as the filing date of the application filed by the person entitled to file the application, if the person entitled to file the patent application files a cancellation action against the patent issued from the application filed by the person not entitled to file the application within two (2) years from the issuance date of the irrevocable examination decision on the said patent application, and files his own patent application within sixty (60) days from the day following the date on which the cancellation decision becomes irrevocable.

Section 3: Examination and Re-examination

Article 36

The Patent Authority shall designate patent examiner(s) to conduct substantive examination on a patent application for an invention.

The qualification requirements of patent examiners shall be defined by a separate law.

Article 36-1

After receipt of the documents of an invention patent application, if the Patent Authority considers, through examination, that nothing is contrary to the formal requirements and nothing should not be laid-open, the Patent Authority shall have such application laid-open after a period of 18 months from the day following the filing date of such patent application.

The period set forth in the preceding Paragraph, in the event of a priority claim, is calculated from the day following the priority date, or following the earliest priority date if two or more priority rights are claimed.

The Patent Authority may advance the laying-open of a patent application at the request of the applicant.

Under any of the following circumstances, an invention patent application shall not be laid-open:

1. Where the patent application has been withdrawn within 15 months from the day following the filing date of the said application;
2. Where the contents of the invention involve the national defense secret or any secret pertaining to the security of any other country; or
3. Where the contents of the invention are detrimental to public order or good custom.

Article 36-2

Any person may, within 3 years from the day following the filing date of an invention patent application, apply to the Patent Authority for a substantive examination.

If the date for filing divisional applications under Paragraph One, Article 32 or the date for conversion into an invention patent application under Article 101 hereof falls beyond the time frame set forth in the preceding Paragraph, the application for substantive examination may be filed within 30 days from the day following the date of filing the divisional applications or the date of conversion.

No substantive examination application filed under the preceding two Paragraphs may be withdrawn.

In the absence of an application for substantive examination within the periods specified in Paragraph One or Paragraph Two of this Article, the said invention patent application shall be deemed withdrawn.

Article 36-3

When applying for substantive examination under the preceding Article, a written application shall be submitted.

The Patent Authority shall post the fact that an application is under substantive examination in the Patent Gazette.

Where the substantive examination application is filed by a person other than the applicant of the invention patent application concerned, the Patent Authority shall inform the applicant of said invention patent application of such fact.

Where a substantive examination application is filed by the applicant of an invention patent application pertaining to a new specie of micro-organism or an invention for utilizing any microorganism, a certificate of viability issued by the depositary institution concerned shall be submitted along with the application; whereas, if such substantive examination application is filed by a person other than the applicant of the invention patent application, the Patent Authority shall notify, the applicant of the invention patent application to submit such a certificate of viability within three (3) months.

Article 36-4

During the period from the laying-open of an invention patent application to the publication of the application, if persons other than the applicant of the invention patent application put such invention to practice for commercial purposes, the Patent Authority may effect the examination on a priority basis upon application.

For the application under the preceding Paragraph, relevant evidential documents shall be submitted along with the application.

Article 36-5

Where a person has received a written notification of the contents of an invention patent application from the applicant thereof after laying-open of such patent application and continues to put the invention to practice for commercial purpose in the interim after such notification and prior to the publication, the applicant of the invention patent application may, after obtaining the patent right following the allowance of his invention patent application by an irrevocable examination decision, make a claim on the said person for an appropriate pecuniary compensation.

The claim referred to in the preceding Paragraph may also be made on a person who knows that an invention patent application has been laid-open but still continues to put the invention to practice for commercial purpose prior to the publication of the application.

The right to claim provided for in the preceding two Paragraphs shall have no prejudice to the exercise of any other rights.

The right to claim for pecuniary compensation set forth in Paragraph One and Paragraph Two of this Article shall become extinguished if not exercised within two years from the day following the date of the irrevocable examination decision.

Article 36-6

The provisions of the preceding five Articles shall be applicable only to the invention patent applications which are filed after one year from October 4, 2001, the effective date of the amendment to the Patent Law.

Article 37

Under any of the following circumstances, a patent examiner shall withdraw from exercising his function:

1. The patent applicant, or the patent agent or a partner of the patent agent or a person having an employment relation with the patent agent involved in the case is the examiner himself or his (her) spouse, ex-spouse or fiancée (fiance);
2. The patent applicant or the patent agent involved in the case is related to the examiner by consanguinity within the fourth degree or by affinity within the third degree or did have such relation with the examiner;
3. The patent applicant of the case involved and the examiner or his (her) spouse, ex-spouse or fiancée (fiance) stand as joint obligees, joint obligors or debtors in respect of the same patent case;
4. The examiner is or was the legal representative, the head or a member of the family of the applicant in the case involved;
5. The examiner is or was an agent ad interim or assistant in litigation instituted by the applicant in the case involved; and
6. The examiner is or was a witness, or a verification expert, or an opposition petitioner, or a cancellation petitioner in the present case.

Where an examiner should but did not withdraw from exercising his function, the Patent Authority may, ex officio or upon request, revoke the measure he took and take another appropriate measure instead.

Article 38

Upon completion of examination of a patent application, a written decision shall be rendered and issued to the applicant or his patent agent.

When a patent application is found not patentable, the reasons therefor shall be given in the written decision of examination.

The written decisions of examination shall bear the name(s) of the patent examiner(s). This requirement shall also apply to the written decisions of re-examination cases, opposition actions, cancellation actions and patent-term extension cases.

Article 39

Where the examination results reveal no reason to deny the patentability of an invention, such invention shall be patented, and the claims and the drawings shall be published.

Any person may apply for access to the written decision of examination, specification, drawings, Oath, and the entire file and information in connection with a specific patent application which has been allowed and published so as to read or to make hand, photographic or xerox copy of the relevant information thereof, except for the information which should be kept confidential by the Patent Authority in accordance with the law.

Article 40

In case of dissatisfaction with a rejection decision rendered for a patent application for an invention, the applicant may, within thirty (30) days from the day following the date of receipt of the decision, apply for re-examination by submitting a statement of reasons. If the application is rejected on procedural grounds or on ground of the ineligibility of the applicant, the applicant may directly appeal for an administrative remedy in accordance with the law.

If there is any reason to deny the patentability of an invention through the re-examination proceedings, the Patent Authority shall, before rendering a re-examination decision, send to the applicant a notice requesting that a response be made within a specified time limit.

Article 41

Any person who asserts that a published invention has violated any of the provisions of Article 4, Articles 19 through 21, Paragraph Three or Four of Article 22, or Article 27 of this Law, or any interested party who asserts that a published invention is in contravention of the provisions of Article 5 or Article 30 of this Law may, within three (3) months from the publication date, institute an opposition action with the Patent Authority by submitting a written opposition application together with evidential documents.

Supplementary statement of reasons and evidence, if any, provided by the opposition petitioner shall be submitted within one (1) month from the date on which the opposition action is instituted.

Article 42

Upon receipt of a written opposition, the Patent Authority shall send a duplicate copy thereof to the patent applicant or his patent agent.

The applicant of the patent application being opposed shall submit a statement of defense within one (1) month from the day following the date of his receipt of the duplicate copy of the opposition. Failure to submit the statement of defense by the time limit shall cause the proceedings of opposition examination to be started without defense, unless an extension of the said time limit is granted upon request by the patent applicant with good cause shown.

Article 43

For re-examination or opposition examination, the Patent Authority shall designate an examiner who has not participated in the examination of the original application to conduct examination and issue a written decision.

The written re-examination decision shall be delivered to the applicant. A written opposition decision shall be delivered to both the patent applicant and the opposition petitioner.

Article 44

When examining an invention patent application, the Patent Authority may, ex officio or upon request, notify the patent applicant or the opposition petitioner to do any of the following acts within a specified time limit:

1. To appear before the Patent Authority for an interview; or
2. To perform necessary experiment(s) or to supplement model(s) or sample(s).

The Patent Authority may, when necessary, visit the site or a designated place for inspection and observation of the experiments or models or samples under Item 2 of the preceding Paragraph.

Article 44-1

The Patent Authority may, ex officio, notify a patent applicant to make supplement or amendment to the specifications and/or drawings within a specified time limit.

A patent applicant may, within 15 months from the day following the date of filing of such invention patent application, make supplement or amendment to the specifications and/or drawings.

After 15 months from the day following the date of filing the invention patent application, a patent applicant may make supplement or amendment to the specification and/or drawings only on the dates or during the periods as specified below:

1. At the same time of filing an application for substantive examination;

2. Within three months from the day following the service date of a notice of substantive examination issued in respect of the patent application concerned, if the substantive examination application is filed by a person other than the patent applicant;
3. During the time limit for response as specified in a notice given, by the Patent Authority, in advance of its written reasons for rejection of the patent application concerned;
4. At the time of filing an application for re-examination, or during the period fixed for filing a supplemental statement of reasons for re-examination;
5. During the period for filing a defense to an opposition; or
6. During the period for defense as specified in a notice issued by the Patent Authority while conducting an ex officio examination.

The supplement or amendment made under the preceding three Paragraphs shall not change the substance of the patent application. Supplement or amendment can be made after the relevant patent application has been allowed and published only under any of the following circumstances:

1. Where the scope of claims is too broad;
2. Where there is a mistake; or
3. Where there is any obscurity in the statements.

Where a priority claim is made under the provisions of Article 24 hereof, the period specified in Paragraph Two under this Article 44-1 shall be calculated from the day following the priority date.

Article 45

When the Patent Authority considers that it is necessary to initiate an examination, ex officio, of an allowed and published patent application for an invention patent application, a notice shall be given to the patent applicant requiring him to file a defense within one (1) month. In the absence of the defense after expiry of the said time limit, the examination shall be directly proceeded. In case the examination decision holds that the original decision shall be revoked, a written decision shall be prepared and served to the applicant or his agent.

The written decision referred to in the preceding Paragraph shall bear the name of the examiner.

Article 46

In case of dissatisfaction with the decision rendered upon re-examination, opposition action or cancellation action, the party concerned may, within thirty (30) days from the day following the date of receipt of the decision, appeal for an administrative remedy in accordance with the law.

Article 47

An examination decision rendered for an allowed and published patent application for an invention shall become irrevocable under any of the following circumstances:

1. If no opposition action is instituted upon expiry of the publication period;
2. If an opposition action has been rejected by the Patent Authority on the ground of procedural defect, and no action for administrative remedy is instituted thereafter, or the action for administrative remedy has been dismissed by an irrevocable decision; and
3. If no action for administrative remedy is instituted after the decision is rendered on an opposition action, or if an action for administrative remedy instituted thereafter has been dismissed by an irrevocable decision.

Article 48

Where an invention is considered, in the process of examination, to be likely to affect the national security, the specification of such invention shall be referred to the Ministry of National Defense for its opinions. If it is deemed necessary to keep such invention confidential, the invention shall not be published, and the documents included in the patent application package shall be sealed and kept in a secret file not accessible to the public. In addition, a written decision to such effect shall be made and served to the patent applicant, his patent agent and the inventor accordingly.

The patent applicant, his patent agent and the inventor shall keep the confidentiality of the invention of the nature as described in the preceding Paragraph. Upon violation of this confidentiality clause by any of the aforesaid parties, the right to apply for patent for such invention shall be deemed to have been waived.

The confidentiality period shall last for one year from the day following the date of service of the written decision to the patent applicant and may be prolonged on a year-by-year basis. The Patent Authority shall, one month prior to the expiry of the confidentiality period, consult with the Ministry of National Defense about the continuation of the confidentiality period. If the confidentiality requirement of a patent application is no longer necessary, such patent application shall be published.

The Government shall make appropriate compensation for any and all damages to be sustained by the patent applicant during the confidentiality period.

In the case of dissatisfaction with the decision made under Paragraph One of this Article, the applicant may appeal for an administrative remedy within thirty (30) days from the day following the date of service of the said decision.

Article 49

An invention patent application filed by the person entitled thereto in accordance with Article 34 or Article 35 of this Law shall not be published again.

Section 4: Patent Right

Article 50

The invention of a patent application is provisionally allowed a patent right after its allowance and publication.

When an examination decision rendered for an allowed and published invention patent application has become irrevocable, the applicant shall be granted the invention patent right, effective from the date of publication thereof, and the patent certificate shall be issued thereto.

An invention patent right shall endure for a term of twenty (20) years from the filing date of the patent application.

The provisional patent right allowed under Paragraph One of this Article shall be deemed non-existent ab initio, if the patent application is not rejected on account of procedural defect, or the invention is deemed unpatentable by an irrevocable examination decision rendered in an opposition action.

Article 51

In the case of invention patents covering pharmaceuticals, agrichemicals, or processes for preparing the same, a patentee may apply for an extension of his patent term for two (2) to five (5) years, if, pursuant to other laws or regulations, a prior government approval must be secured to practice such patents, for which the processing exceeds two (2) years after the publication of the patents. Only one such extension shall be permitted provided, however, that the patent term extended shall not exceed the length of time required for obtaining an approval from the central government authority in charge of the enterprises. In case the length of time required for obtaining an approval exceeds five (5) years, the term of extension shall still be limited to five (5) years.

Any application for an extension of the term of a patent right must be filed with the Patent Authority by submitting a written application together with supporting evidence within three (3) months from the date of the first government approval involved provided, however, that no extension application shall be filed within six (6) months prior to the expiration of the original patent term.

To determine the term of extension of a patent under the preceding Paragraph, the Patent Authority shall take into consideration the impact of the extension on the health of nationals in general and shall prescribe the approving rules in conjunction with the central government authority in charge of the enterprises concerned.

Article 52

The Patent Authority shall designate examiner(s) to examine an invention patent extension application and shall make a decision in writing and deliver the same to the patentee or his patent agent.

In the case of dissatisfaction with the decision made under the preceding Paragraph, the patentee may institute an appeal for administrative remedy within thirty (30) days from the day following the date of receipt of such written decision.

Article 53

(deleted)

Article 54

Under any of the following circumstances, any person may file a cancellation action together with relevant evidence with the Patent Authority against the term extension of an invention patent granted by the Patent Authority:

1. If it is not necessary to obtain a government approval for practicing the patented new invention at issue;
2. If the patentee or his licensee has not obtained a government approval as required;
3. If the approved term of extension exceeds the length of time in which the patented invention can not be practiced;
4. If the patent extension application is filed by a person other than the patentee;
5. If the patent right is jointly owned by two or more persons, and the extension application is not filed in the name of all co-owners;
6. In case the application for extension was based on the time spent in conducting experiments or testing in a foreign country, the extended term allowed by the Patent Authority exceeds the duration recognized by the patent authority of such foreign country; and
7. The time required for obtaining an approval is less than two years.

After the extinguishment of a patent for which an extension was allowed, any person who has a retroactive legal interest may still file a cancellation action against the grant of the patent term extension.

If a cancellation action against the grant of a patent term extension has become irrevocably sustained, the extended patent term originally granted shall become non-existing ab initio. However, if such cancellation action is irrevocably sustained on the grounds listed in Item (3) or Item (6) of Paragraph One, only the exceeded term shall be deemed non-existing.

Article 55

When the Patent Authority acknowledges the existence of any of the events set forth in Paragraph One of the preceding Article, it may, ex officio, revoke the extended term of the invention patent right at issue.

When the revocation of the approved extension of the term of a patent right becomes irrevocable, the originally approved extension shall be deemed not in existence ab initio; however, if the irrevocable revocation of extension is rendered as a result of violation of the provisions of Item 3 or Item 6 of Paragraph One of the preceding Article, it shall be deemed no extension for the exceeded duration.

Article 56

Unless otherwise provided for in this Law, the patentee of a patented article shall have the exclusive right to exclude other persons from manufacturing, selling, using, or importing for above purposes the patented article without his prior consent.

Unless otherwise provided for in this Law, the patentee of a patented process shall have the exclusive right to preclude others from using such process and using, selling or importing for above purposes the articles made through direct use of the said manufacturing process without his prior consent.

The scope of an invention patent right shall be determined based on the claim(s) set forth in the specification of the invention. If necessary, the specification and drawings of the invention may be used as reference.

Article 57

The effect of an invention patent right shall not extend to any of the following matters:

1. Where the invention is put into practice for research, educational or experimental purposes only, with no profit-seeking acts involved therein;
2. Where, prior to filing for patent, the invention has been used in this country, or where all necessary preparations have been completed for such purpose; provided, however, that this provision shall not apply where knowledge of the manufacturing method was obtained from the patent applicant within six (6) months prior to applying for patent and, in addition, the patent applicant has made a statement concerning the reservation of his patent right therein;
3. Where the article has already been in existence in this country prior to applying for patent;
4. Where the article is simply a vehicle or a device thereof that passes the territory of this country;

5. Where, in the case of revocation of the patent right acquired by a person other than the one entitled thereto as a result of a cancellation action filed by the patentee, the licensee has, prior to the revocation of the patent involved, used the patent in good faith or completed all necessary preparations therefor in this country; and
6. Where the patented articles manufactured by the patentee or under the consent of the patentee are put to use or resold after the sale thereof. The aforesaid manufacture and sale are not limited to those committed in this country.

The user referred to in Items 2 and 5 of the preceding Paragraph shall confine his continued use of the invention to his original enterprise exclusively. The areas in which sale can be made under Item 6 of the preceding Paragraph shall be determined based on the facts by the court.

The licensee of the patent right having been revoked as a result of a cancellation action, as referred to in Item 5 of the first Paragraph, shall pay the patentee a royalty from the date of receiving the written notification from the patentee, provided that the licensee continues to practice the patent after the revocation of patent as mentioned above.

Article 58

For medicines manufactured by concocting two or more medicines or the concocting process itself, the patent right shall not cover prescriptions made by physicians or the medicines prepared in accordance with such prescriptions.

Article 59

The assignment, entrustment or license made by the patentee of the patent right of an invention to another person to practice the invention shall not be asserted against any third party, unless it has been registered with the Patent Authority.

Article 60

An assignment or a licensing of an invention patent shall not take effect if the contract therefor contains any of the following circumstances which will give rise to unfair competition:

1. To prohibit or restrict the assignee from using any specific object or process not furnished by the assignor or licensor; and
2. To require the assignee to purchase from the assignor products or raw materials not under patent protection.

Article 61

In the case of the joint-ownership of an invention patent, other than the practice of the patent by the joint-owners themselves, the patent shall not be assigned or licensed to others for

practice without the consent of all joint-owners. If, however, there is an agreement providing otherwise, such agreement shall govern.

Article 62

A joint-owner of an invention patent shall not assign or entrust his share thereof to another person or create a pledge over the same patent, without the consent of all the other joint-owners.

Article 63

In the case of an assignment or trust of an invention patent, a written application executed by all parties concerned together with evidential documents shall be submitted to the Patent Authority for the issuance of a replacement patent certificate.

Article 64

In the case of the creation, change or extinguishment of a pledge over an invention patent, a written application executed by all parties concerned together with the evidential documents shall be submitted to the Patent Authority for recordation; there shall have no locus standi against any third party in the absence of the recordation.

Article 65

In the case of an inheritance of an invention patent, a written application together with the documentary evidence shall be submitted to the Patent Authority for the issuance of a replacement patent certificate.

Article 66

An invention patentee who has suffered damages as a result of war between the Republic of China and a foreign country may apply for a prolongation of the term of his patent for five to ten years, and only one such prolongation shall be permitted; provided, however, that this provision shall not apply if the patentee is a national of the belligerent.

Article 67

Under any of the following circumstances, an invention patentee may file an application with the Patent Authority to make correction(s) in the allowed specification and drawings, provided that such correction(s) shall cause no changes in the substance of the invention:

1. Where the scope of the claims is too broad;
2. Where there is a mistake; and
3. Where there is any obscurity in the statements.

Upon the approval of the correction(s) made in accordance with the preceding Paragraph, the Patent Authority shall publish the reasons for such correction(s) in the Patent Gazette.

The validity of the correction(s) to the scope of claims, the specification and/or drawings shall, upon publication, be retroactive to the filing date of the patent application concerned.

Article 68

An invention patentee who has filed one application covering two or more inventions and has acquired a patent therefor, may file an application with the Patent Authority for dividing the patent into separate patents.

Article 69

An invention patentee shall not abandon his patent right or file any application as provided in the preceding two Articles without the consent of the licensee or the pledgee.

Article 70

An invention patent shall extinguish ipso facto if there exists any of the circumstances prescribed below:

1. In the case of expiration of a patent term, on the day immediately following the date of its expiration;
2. In the case of death of the patentee without an heir, on the date the patent right accrues to the Treasury as provided for in Article 1,185 of the Civil Code;
3. In the case of the patentee's failure of effecting the late payment of a patent annual fee within the grace period for such payment, on the day immediately following the expiration of the original statutory period for such payment; except for the patent right to be reinstated under Paragraph Two, Article 18 of this Law; and
4. In the case of voluntary abandonment of a patent right, on the date of the patentee's written declaration to such effect.

In the case of failure to effect the payment of the first year annual fee and the patent certificate fee before the expiry of the grace period for late payment, the patent right shall be deemed non-existent ab initio.

Article 71

Under any of the following circumstances, an invention patent right shall be revoked and the patent certificate recalled within a given time limit by the Patent Authority ex officio and if recalling fails, an announcement for annulment of the patent certificate shall be published:

1. If the invention is found in violation of the provisions of Articles 19 through 21 or Article 27 of this Law;

2. If the invention patentee is found being a person other than the person entitled to file the invention patent application;
3. If there is an omission of any particulars essential for practicing the invention, or if any unnecessary particulars are made in the specification and/or the drawings, thus rendering it impractical or difficult for practicing the invention; and
4. If the descriptions made in the specification are not the true methods of the invention.

Article 72

A cancellation action based on Item 2 of the preceding Article shall be instituted only by the person entitled to file the patent application. Cancellation actions based on reasons prescribed in other Items of the preceding Article may be instituted with the Patent Authority by any person, accompanied by relevant evidence.

Where an opposition action or a cancellation action referred to in the preceding Paragraph is not sustained after examination, no person shall be allowed to institute a new cancellation action based on the same facts and the same evidence.

An interested party may institute a cancellation action after the patent has expired or extinguished ipso facto if he has reinstatable legitimate interests as a result of the revocation of the patent.

Supplemental submission of reasons and evidence by a cancellation petitioner shall be effected within one (1) month from the date of institution of cancellation action.

Article 73

Provisions of Articles 42 through 44-1 of this Law shall apply mutatis mutandis to the cancellation actions instituted under Article 54 and the preceding Article.

Article 74

Under any of the following circumstances, the revocation of an invention patent right shall become irrevocable:

1. No administrative remedy has been sought for in accordance with the law; and
2. Where an irrevocable decision on dismissal of the action instituted for administrative remedy is rendered.

The effect of an irrevocably-revoked invention patent shall be deemed non-existent ab initio.

Article 75

(deleted)

Article 76

In the case of the allowance, change, extension, prolongation, assignment, trust, licensing, compulsory licensing, revocation, extinguishments or pledging of an invention patent as well as other matters which shall be published, the Patent Authority shall effect publication in the Patent Gazette.

Article 77

The Patent Authority shall establish and maintain a register of patents, in which the title of the granted invention, the term of patent, the name and address of the patentee and his patent agent, and all other matters related to patent right and required by the law shall be registered.

The patent register set forth in the preceding Paragraph shall be made available to the public for reading and making copies by hand, photographic and xerox copy.

Section 5: Practicing

Article 78

In the case of national emergencies or of non-profit-seeking use of a patent for the enhancement of public welfare, or in the case of an applicant's failure of reaching a licensing agreement with the patentee concerned under reasonable commercial terms and conditions within a considerable period of time, the Patent Authority may, upon application by the applicant, grant a compulsory license to the applicant to put the patented invention into practice provided such practice shall be restricted mainly to the purpose of satisfying the requirements of domestic market. However, compulsory licensing of patents covering semiconductor chip technology shall be allowed only in case of a non-profit-seeking use to enhance the public benefit.

In the absence of the situations set forth in the preceding Paragraph, the Patent Authority may, upon request, grant to an applicant a compulsory licensing to practice the patent if the patentee has committed unfair competition as confirmed through a judicial judgment or by the Fair Trade Commission of the Executive Yuan.

Upon receipt of a written application for such compulsory license, the Patent Authority shall send a duplicate copy thereof to the patentee, requesting that a defense statement be filed within three (3) months. If no defense statement is filed within the specified time limit, the Patent Authority may decide the matter on its own authority.

The right of compulsory licensing shall not preclude other persons from obtaining the right to practice the same patented invention.

The grantee of the compulsory license shall pay to the patentee an appropriate compensation. In the case of dispute over the amount of such compensation, the amount shall be decided by the Patent Authority.

The right of compulsory license shall not be subject to assignment, trust, inheritance, licensing or pledge creation unless it is assigned together with the business pertaining to the compulsory license.

Upon termination of the cause for granting the compulsory licensing, the Patent Authorities may, upon request, terminate the compulsory licensing grant.

Article 79

If the person, who under the provisions of previous Article has been granted a compulsory licensing, has violated the purpose(s) for granting the compulsory licensing, the Patent Authorities may, upon request by the patentee or on its own initiative, revoke such compulsory licensing grant.

Article 80

The patentee of a reinvention as provided for in Article 29 of this Law shall not practice his patented invention without the consent of the patentee of the original invention.

Where the product manufactured in accordance with a patented manufacturing process is under a product patent granted to others, the owner of such process patent shall not put his process invention into practice without the consent of the product patentee.

The patentee of the reinvention or the process patent, as referred to in the preceding two Paragraphs, may reach with the owner of the original patent or the product patent an agreement concerning a cross licensing arrangement so as to practice the inventions involved.

If the cross licensing arrangement prescribed in the preceding Item cannot be reached, the owner of the reinvention patent and that of the original patent, or the owner of the manufacturing method patent and that of the product patent may apply for compulsory patent licensing in accordance with Article 78 of this Law. However, the owner of a reinvention patent or that of a manufacturing method patent shall be allowed only if the technologies disclosed in the reinvention patent or the manufacturing method patent must, as compared with the technology involve important technical improvements, which is with considerable economic significance.

The compulsory patent licensing right granted to the owner of a reinvention patent or the owner of a manufacturing process patent or the owner of a manufacturing process patent shall be allowed for assignment, trust, inheritance, licensing or pledge creation only when it is transacted together with the patent right.

Article 81

In the event of dissatisfaction with the granting of a compulsory license under Article 78 and revocation of a compulsory license under Article 79 of this Law, the party concerned in such case may institute an action seeking administrative remedy in accordance with the law.

Article 82

An invention patentee shall mark the serial number of patent certificate to his patented article or the packaging thereof, and may require his licensee or the grantee of compulsory license to do the same. In case of failure to affix such marking, no claim for damages shall be allowed. However, if the infringer has known, or demonstrably has means to know, of the patent, this restriction does not apply.

Article 83

An advertisement made by an invention patentee or his licensee or the grantee of compulsory license shall not go beyond the scope of the allowed claims.

For articles other than ones under patent protection or those manufactured by a patented process, no affixation of any wording or marking indicating that the article has been granted a patent, or by which the article shall be misunderstood by others as patented, can be made on the advertisements, publications articles, or packaging thereof.

Section 6: Fees

Article 84

In respect of any and all applications concerning invention patents, applicants shall pay a fee at the time of filing each of such applications.

For an allowed patent, the invention patentee shall pay a patent certificate fee and annual fees. In the case of an approval for an extension or prolongation of patent term, annual fees shall still be paid during the extended or prolonged patent term.

The amount of application fee, patent certificate fee and annual fees shall be prescribed by the Ministry of Economic Affairs.

Article 85

The annual fee for an invention patent shall be paid commencing on the publication date. The Patent Authority shall, after the decision of granting a patent right has become irrevocable, notify the applicant to pay the annual fee for the first year within a specified time limit. Payment of the annual fee for each of the following years shall be made prior to the anniversary of the publication date.

The annual fees for several years may be paid at one time. Under such circumstance, if the annual fee rate is adjusted upwardly, the patentee concerned will not be required to pay the deficit.

Article 86

Payment of the annual fee for an invention patent may be effected by any person. In case the annual fee due is not paid within the regulatory period for payment of patent annual fee, it may be paid later within six (6) months after expiry of the said regulatory period provided that the amount of late payment shall be twice as much as the regular amount of annual fee.

Article 87

Where a patentee or his heir is financially incapable to effect the patent annual fee payment, he may file an application with the Patent Authority for a reduction or exemption thereof. Regulations governing reduction and exemption of patent annual fees shall be prescribed by the Ministry of Economic Affairs.

Section 7: Indemnity for Damages and Litigation

Article 88

In the event of patent infringement on an invention patent, the patentee may claim for damages and demand the removal of the infringement and the prevention of any threat of infringement.

An exclusive licensee may also make the claim or demand set forth in the preceding Paragraph provided that the patentee elects not to make such claim or demand after having been notified, and that nothing in the license agreement precludes the licensee to do so.

When an invention patentee or exclusive licensee seeks the remedies pursuant to the preceding two Paragraphs, he may request for destruction of the infringing products or raw materials or items used in infringing the patent, or request for other necessary disposal.

The right to claim provided in this Article shall become extinguished if not exercised within two (2) years from the time the patentee is aware of the infringement act and the identity of the obligator for the damages, or within ten (10) years from the time of the infringement act.

When the inventor's right to indicate his name is infringed, he may request a ruling to indicate the inventor's name or other necessary measures to recover his reputation.

Article 89

In claiming for damages in accordance with the preceding Article, any of the following options may be adopted to calculate the amount of damages:

1. To claim in accordance with Article 216 of the Civil Code. A patentee may, however, take the balance derived by subtracting the profit earned through the practice of his patent after the existence of infringement from the profit normally expected through the practice of the same patent as the amount of the damages, provided that no proving method can be presented to justify the damages;
2. To claim based on the profit earned by the infringer as a result of his infringement act. The entire income derived from the sale of the infringing articles shall be deemed the infringer's profit, provided that the infringer is unable to produce proof to justify his costs or necessary expenses; and
3. To claim based on the amount to be estimated by the Patent Authority or a professional entrusted by the court.

In addition to the provisions set forth in the preceding Paragraph, the patentee may claim separately for damages at a reasonable amount in case the business reputation of the patentee has been detracted or harmed as a result of the infringement.

Subject to the provisions of the preceding two Paragraphs, if the infringement is found to be an intentional act, the court may, after considering the facts of the infringement, decide the compensation in an amount higher than the amount of damages estimated, but not more than triple the damages.

Article 90

Any article(s) used in an act of patent infringement or produced by such an act may, upon the application of the injured party to the court, be provisionally seized to serve as the whole or a part of compensation for the damages as may be awarded by judgment.

When the injured party instituted an action claiming for damages under the preceding Article and applying for provisional seizure, the court shall allow procedural relief in accordance with the Code of Civil Procedure.

Article 91

Where an article which is made by using a patented manufacturing process has never been seen in this country or outside of the country before the filing of a patent application for the said manufacturing process, an article(s) identical thereto made by another person shall be inferred as having been manufactured by using the said manufacturing process.

The presumption made under the preceding Paragraph may be overruled by producing rebuttal evidence. If a defendant has proved that the method used by him in manufacturing the products is different from the defendant has produced rebuttal evidence. The legal right and interests in the manufacturing process and trade secret, as disclosed by the defendant, shall be fully protected.

Article 92

With regard to a litigation involving an invention patent, the court shall send to the Patent Authority one original copy of the judgment rendered by it.

Article 93

The injured party may, after an irrevocable favorable judgment is rendered, request the court to issue a ruling for publishing in a newspaper the judgment in full or in part, at the expenses of the losing party.

Article 94

For any civil or criminal proceedings pending in court in connection with an invention patent, the court may suspend the investigation or trial process until a decision on the patent application, or opposition, cancellation, or revocation action related thereto has become irrevocable.

Article 95

A non-recognized foreign juristic person or entity may file a complaint, institute a private prosecution or institute a civil action in respect of the matters prescribed in this Law, provided, however, that the nationals or entities of the Republic of China are entitled to such rights in said foreign country under a treaty, or the national laws, ordinances or customary practices of said foreign country. A patent protection agreement between an ROC entity or organization and a foreign entity or organization and duly approved by the Ministry of Economic Affairs shall have the same effect.

Article 96

The court may set up a professional tribunal or designate specific persons to handle invention patent litigation cases.

Chapter III

New Utility Model Patent

Article 97

The term "new utility model" as used herein refers to a creation or an improvement which has been made in respect of the form, construction or fitting of an object.

Article 98

Any new utility model which is industrially applicable and is free from any of the following conditions may obtain a patent therefor upon application in accordance with this Law:

1. Which, prior to applying for patent, has been published or put into public use provided, however, that this provision shall not apply where such publication or use has been made for research or experimental purpose and application for a new utility model patent is filed therefor within six (6) months from the date of such publication or use;
2. Which, prior to applying for patent, has been displayed in an exhibition, except in the case where the new utility model is displayed in a government-sponsored or recognized exhibition, and a patent application has been filed therefor within six (6) months from the opening date of such exhibition.

A new utility model not subject to one of the conditions listed in the preceding Paragraph shall still not be granted a patent if it simply utilizes conventional technology or knowledge known prior to applying for patent, can be accomplished easily by persons skilled in the art and makes no improvement in effectiveness.

An applicant claiming the application of the proviso of Item 1 or Item 2, Paragraph one of this Article shall indicate the facts and the relevant date(s) in his application, and submit evidential documents within the time limit specified by the Patent Authority.

Article 98-1

Where the contents of a new utility model claimed in a patent application are identical with the contents described in the specification and drawings submitted along with an application for invention or new utility model patent that is filed prior to but laid-open or published after the filing of the present patent application, no new utility model patent may be granted to the new utility model, except when the applicant(s) of the present application is (are) the same applicant(s) of such prior invention or new utility model patent application.

Article 99

The following items shall not be granted new utility model patents:

1. A new utility model which is contrary to public order, good custom or sanitation;
and
2. A new utility model which is identical with or similar to that of a political party flag, the national flag, the military flags, the national emblem or any government medal.

Article 100

The new utility model of a patent application is provisionally allowed a patent right after its allowance and publication.

When an examination decision rendered for an allowed and published new utility model patent application has become irrevocable, the applicant shall be granted the new utility model patent right, effective from the date of publication thereof, and a patent certificate shall be issued thereto.

A new utility model patent right shall endure for a term of twelve (12) years from the filing date of the patent application.

The provisional patent right allowed under Paragraph One of this Article shall be deemed non-existent ab initio, if the patent application is rejected on account of procedural defect, or the new utility model is deemed not patentable by an irrevocable examination decision rendered in an opposition action.

Article 101

Where an application originally filed for an invention or a new design patent protection is converted into a new utility model patent application or where an application originally filed for a new utility model is converted into an invention patent application, the filing date of the original patent application shall be taken as the filing date of the converted patent application, provided, however, that if the application for patent conversion is filed beyond thirty (30) days from the day following the date of receipt of the written decision on the original patent application, the conversion date shall be taken as the filing date of the converted application.

Article 102

Any person who asserts that a published new utility model has violated any of the provisions of Article 4 or the provisions of Article 105 applied mutatis mutandis to the provisions of Paragraph Three or Paragraph Four of Article 22, Article 27 or Articles 97 through 99 of this Law, or any interested party who asserts that a published new utility model is in contravention of the provisions of Article 5 or the provisions of Article 105 applied mutatis mutandis to the provisions of Article 30 of this Law, may, within three (3) months from the date of publication, institute an opposition action with the Patent Authority by submitting a written opposition application together with evidential documents.

Supplementary statement of reasons and evidence, if any, to be provided by the opposition petitioner shall be submitted within one (1) month from the date on which the opposition action is instituted.

Article 102-1

When examining a new utility model patent application, the Patent Authority may, ex officio or upon request, notify the applicant or the opposition petitioner to do any of the following acts within a specified time limit:

1. To appear before the Patent Authority for an interview;
2. To perform necessary experiments or to supplement model(s) or sample(s); or
3. To supplement or amend specification or drawings.

The Patent Authority may, when necessary, visit the site or a designated place for inspection and observation of the experiments, or models or samples under Item 2 of the preceding Paragraph.

The supplement or amendment made under Item 3 of Paragraph 1 of this Article shall not change the substance of the relevant patent application. Supplement or amendment can be made after the patent application has been allowed and published only when any of the following circumstances exists:

1. where the scope of claims is too broad;
2. where there is a mistake; or
3. where there is any obscurity in the statements.

Article 103

Unless otherwise provided for in this Law, the patentee of a new utility model shall have the exclusive right to preclude other persons from manufacturing, selling, using, or importing for above purposes the patented products without his prior consent.

The scope of a new utility model patent shall be determined based on the claim(s) set forth in the specification of the patented new utility model. If necessary, the specification and drawings of the new utility model may be used as reference.

Article 104

Under any of the following circumstances, a new utility model patent right shall be revoked and the patent certificate recalled within a given time limit by the Patent Authority ex officio and if recalling fails, an announcement for annulment of the patent certificate shall be published:

1. If the new utility model is found in violation of the provisions of Article 27 applied mutatis mutandis to Article 105 or of Articles 97 through 99 of this Law;
2. If the new utility model patentee is found being a person other than the person entitled to file the new utility model patent application; and
3. If there is an omission of any particulars essential to the practice of the new utility model, or if any unnecessary particulars are made in the specification and/or the

drawings, thus rendering it impractical or difficult to practice the new utility model.

Article 105

The provisions of Articles 22 through 25, Articles 27 through 30, Item 1 of Article 31, Articles 32 through 40, Articles 42 through 49, Article 57, Articles 59 through 65, Articles 67 through 70, and Articles 72 through 77, Paragraphs One and Three of Article 80, Articles 82 through 90, Articles 92 through 96 of this Law shall apply mutatis mutandis to new utility model patents.

Article 105-1

The provisions of Article 25-1 of this Law shall apply mutatis mutandis to new utility model patents.

The provisions of Articles 42, 43 and 102-1 of this Law shall apply mutatis mutandis to the handling of cancellation actions against new utility model patents.

The provisions of Articles 36-1 through 36-6, and Articles 44, 44-1 and 73 of this Law shall not apply mutatis mutandis to new utility model patents.

Chapter IV

New Design Patent

Article 106

The term "new design" as used herein refers to a creation made in respect of the shape, pattern, color, or their combination of an article and through appealing to eyes.

The term "associated new design" as used herein refers to a creation made by a person, which creation originated from and is similar to an original new design by the same person.

Article 107

Any new design which is industrially applicable and is free from any of the following conditions may obtain a new design patent therefor upon application in accordance with this Law:

1. Which, prior to applying for patent, is preceded by an identical or similar new design already published or put to public use, provided that this provision shall not apply where such publication or use has been made for research or experimental purposes and application for a new design patent is filed therefor within six (6) months from the date of such publication or use;

2. Which, prior to applying for patent, has been displayed in an exhibition, except in the case where the new design is displayed in a government-sponsored or recognized exhibition, and a patent application has been filed therefor within six (6) months from the opening date of such exhibition.

A new design not subject to any of the conditions listed in the preceding Paragraph shall still not be granted a new design patent under this law if it can easily be conceived by persons skilled in the art.

If one applies for a patent on a new design similar to another new design by the same person, an associated new design patent without being subject to the restrictions under the preceding two Paragraphs shall be granted, except that if, prior to the filing of the original new design patent application, another new design identical or similar to such associated new design has been published, put to public use or displayed in an exhibition, no associated new design patent should be granted under this law.

No application for an associated new design patent may be filed if the new design involved is similar to another associated new design already filed by the same person.

An applicant claiming the application of the proviso of Item 1 or Item 2, Paragraph 1 of this Article shall indicate the facts and the relevant date(s) in his/her application, and submit evidential documents within the time limit specified by the Patent Authority.

Article 107-1

Where a new design claimed in a patent application is identical with or similar to the contents described in the specification or drawings submitted along with an application for new design patent filed prior to but published after the filing of the present patent application, no new design patent may be granted to the new design, except that the applicant(s) of the present application is (are) the same applicant(s) of such prior new design patent application.

Article 108

The following items shall not be granted new design patents:

1. An article of which the design is solely dictated by the function of the said article;
2. A fine arts creation or work;
3. Layout of integrated circuits and/or electronic circuits;
4. An article which is contrary to public order or good custom or sanitation; and
5. An article of which the design is identical with or similar to that of a political party flag, the national flag, a portrait of the Father of the Republic of China, the national emblem, the military flags, an official seal or any government medal.

Article 109

The new design of a patent application is provisionally allowed a patent right after its allowance and publication.

Where an examination decision rendered for an allowed and published new design patent application has become irrevocable, the applicant shall be granted the new design patent right, effective from the date of publication thereof, and a patent certificate shall be issued thereto.

A new design patent right shall expire twelve(12) years from the filing date of the patent application; the duration of an associated new design patent shall expire simultaneously with its original new design patent.

The provisional patent right allowed under Paragraph One of this Article shall be deemed non-existent ab initio, if the patent application is rejected on account of procedural defect, or the new design is deemed not patentable by an irrevocable examination decision rendered in an opposition action.

Article 110

Where an application originally filed for new utility model patent is converted into a new design patent application, the filing date of the original new utility model patent application shall be taken as the filing date of the new design patent application, provided that if the application for patent conversion is filed beyond thirty (30) days from the day following the date of receipt of the written decision on the original patent application, the conversion date shall be taken as the filing date of the converted application.

Article 111

Where an application originally filed for independent new design patent is converted into an associated new design patent application, or an application originally filed for associated new design patent is converted into an independent new design patent application, the filing date of the original patent application shall be taken as the filing date of the converted patent application, provided that if the application for patent conversion is filed beyond thirty (30) days from the day following the date of receipt of the written decision on the original patent application, the conversion date shall be taken as the filing date of the converted patent application.

Article 112

Application for a new design patent shall be filed by the person entitled to file the patent application by submitting to the Patent Authority a written application accompanied by a specification and drawings and an Oath. The specification shall contain a claim with the scope thereof clearly defined.

Where the person entitled to file a patent application is an employer, assignee or heir, the name of the creator shall be indicated in the application, and the document evidencing the employment, assignment or inheritance shall be submitted along with the application.

The specification and drawings under Paragraph 1 of this Article shall specify the claim, the usage of articles, and characteristics of the creation of the articles to which the new design is applied so that persons skilled in the art can understand the content thereof and put it into practice.

Article 113

When filing a new design patent application, the date on which the government fee, the written application and the specification and drawings prescribed in the first Paragraph of the preceding Article are submitted to the Patent Authority shall be taken as the filing date. For the specification and drawings submitted in a foreign language, the Chinese translations thereof shall be submitted within the time limit set by the Patent Authority; and the date on which the Chinese translations are submitted shall be taken as the filing date of the application, provided that the submission of Chinese translations has been made before an administrative measure is taken.

Article 114

A new design patent application shall designate the article to which the new design is applied.

Article 115

Any person who asserts that a published new design violates the provisions of Article 4, Articles 106 through 108, Paragraph Three of Article 112, or Article 122 applied mutatis mutandis to the provisions of Article 27, or any interested party who asserts that a published new design is in contravention with the provisions of Article 5 of this Law, may, within three (3) months from the publication date, institute an opposition action with the Patent Authority by submitting a written opposition application together with evidential documents.

Supplementary statement of reasons and evidence, if any, provided by the opposition petitioner shall be submitted within one (1) month from the date on which the opposition action is instituted.

Article 116

When examining an application for a new design, the Patent Authority may, ex officio or upon request, notify the applicant or the opposition petitioner to do any of the following acts within a specified time limit:

1. To appear before the Patent Authority for an interview;
2. To submit models or samples;

3. To supplement or amend the specifications or drawings.

The Patent Authority may, when necessary, visit the site or a designated place for inspection and observation of the models or samples which are required to be submitted under Item 2 of the preceding Paragraph.

The supplement or amendment required under Item 3 of Paragraph One above shall not change the substance of the patent application. The supplement or amendment can be made after the new design patent application has been allowed and published only under any of the following circumstances:

1. Where there is a mistake; or
2. Where there is any obscurity in the statements.

Article 117

Unless otherwise provided for in this Law, the patentee of a new design patent shall have the exclusive right, in respect of the article designated by him for the application of the new design, to exclude others from manufacturing, selling, using or importing for above purposes products that are identical with or similar to the article claimed in the new design patent without his prior consent.

The scope of the new design patent right shall be determined based on the claim set forth in the specification of the new design. If necessary, the description of the new design in the specification may be used as a reference.

Article 117-1

The patent right of an associated new design is attached to that of the original new design. An associated new design shall not make any claim separately, nor shall its effect be extended to the scope of similarity.

The patent right of an associated new design shall be revoked or annulled concurrently with the revocation or annulment of the patent right of the original new design.

Article 118

The effect of a new design patent right shall not extend to any of the following matters:

1. Where the new design is put into practice for the purposes of research, teaching or experiment without any profit-seeking acts ;
2. Where, prior to the patent application, the new design article has been put into use in this country, or where all necessary preparations have been completed for such purpose; with the exception that the information of the new design was obtained from the patent applicant within six (6) months prior to the patent application and, that the patent applicant has made a statement to reserve its patent right therein;

3. Where the article has already been in existence in this country prior to the patent application;
4. Where the article is simply a vehicle or a device thereof that passes the territory of this country;
5. Where a licensee has used the new design or has completed the necessary preparations for the use in good faith in this country prior to the revocation of the patent right, which is obtained by a person who is not entitled to apply for patent, as a result of a cancellation action filed by the patentee; and
6. Where the patented articles manufactured by the patentee or under the consent of the patentee are put to use or resold after the sale thereof. The aforesaid manufacture and sale are not limited to the manufacture and sale in this country only.

The user referred to in Items 2 and 5 of the preceding Paragraph may continue using the new design only in its original enterprise. The areas in which sale can be made under Item 6 of the preceding Paragraph shall be determined based on the facts by the court.

Article 118-1

If the licensee referred to in Item 5 of Paragraph One of the preceding Article continues to put the new design into practice after the patent right is revoked as a result of the cancellation action filed by the patentee, the licensee shall pay the patentee a reasonable royalty from the date on which it receives the patentee's written notice.

Article 119

A new design patentee may assign, entrust or license the new design patent to others for putting the new design into practice in respect of the articles designated for application thereof, and such assignment, trust or licensing may not be asserted against any third party, unless having been registered with the Patent Authority. An associated new design shall not be separately assigned, entrusted or licensed.

Article 120

A patentee may file an application with the Patent Authority for correcting any mistake or obscure statement contained in the specification and drawings of the granted new design patent.

Upon the approval of the correction(s) made in accordance with the preceding Paragraph, the Patent Authority shall publish the reasons for such correction(s) in the Patent Gazette.

Article 121

Under any of the following circumstances, a new design patent right shall be revoked and the patent certificate recalled within a given time limit by the Patent Authority ex officio and if a recall fails, an announcement for annulment of the patent certificate at issue shall be published:

1. If the new design is in violation of the provisions of Article 106 through Article 108, or the provisions of Article 122 applied mutatis mutandis to the provisions of Article 27; or
2. If the new design patentee is not the person entitled to file the new design patent application.

Article 122

The provisions of Article 24, Article 25, Article 27, the forepart of Article 31, Article 32, Article 34 through Article 40, Article 42, Article 43, Article 45 through Article 47, Article 49, Article 60 through Article 65, Article 68 through Article 70, Article 72 through Article 74, Article 76, Article 77, Article 82 through Article 90, and Article 92 through Article 96 shall apply mutatis mutandis to new design patents.

The period specified in Paragraph One of Article 24 shall be six (6) months in the case of new design patent applications.

Article 122-1

The provisions of Article 42, Article 43 and Article 116 shall apply mutatis mutandis to the handling of cancellation actions against new design patents.

Article 36-1 through Article 36-6 and Article 73 shall not apply mutatis mutandis to any new design patent.

Chapter V

Penal Provisions

Article 123

(Deleted)

Article 124

(Deleted)

Article 125

Any person who manufactures an article covered by a new utility model patent without prior consent of the patentee thereof, thereby causing an infringement on the patent right, shall be punished with imprisonment, not exceeding two (2) years, or detention, or in lieu thereof or in addition thereto a fine not exceeding one hundred and fifty thousand New Taiwan Dollars (NT\$150,000).

Article 126

Any person who manufactures an article covered by a new design patent without prior consent of the patentee thereof, thereby causing an infringement on the patent right, shall be punished with imprisonment, not exceeding one (1) year, or detention, or in lieu thereof or in addition thereto a fine not exceeding sixty thousand New Taiwan Dollars (NT\$60,000).

Article 127

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Article 128

Any person who knows that an article has been manufactured without prior consent of the new utility model patentee and sells or exhibits or imports with intent to sell such an article, shall be punished with imprisonment, not exceeding six (6) months, detention, or in lieu thereof or in addition thereto a fine not exceeding thirty thousand New Taiwan Dollars (NT\$30,000).

Article 129

Any person who knows that an article has been manufactured without prior consent of the new design patentee and sells or exhibits or imports with intent to sell such an article, shall be punished with detention, or in lieu thereof or in addition thereto a fine not exceeding fifteen thousand New Taiwan Dollars (NT\$15,000).

Article 130

Any person who violates the provisions of Article 83 of this Law shall be punished with imprisonment, not exceeding six (6) months, or detention, or in lieu thereof or in addition thereto a fine not exceeding fifty thousand New Taiwan Dollars (NT\$50,000).

Article 131

Except for the crime specified in Article 130, other offenses specified in this Chapter shall be offenses prosecutable upon complaint.

A patentee who institutes a complaint under Article 125 and Article 126, shall submit along with its complaint a comparison and analysis report on the alleged infringement of his patent.

When the judge, prosecutor and judicial police have good reason to believe that it is necessary to conduct a search and seizure, they shall exercise due care regarding the reputation and property right of the defendant or the suspected offender and shall handle the case with proper measures in the principle of proportion.

Article 131-1

The Judicial Yuan and the Executive Yuan shall coordinate with each other in appointing professional institutions for infringement verification.

A court or a prosecutor that handles a legal action regarding a patent may engage the professional institutions referred to in the preceding Paragraph to conduct verification of a patent infringement.

Chapter VI

Addendum

Article 132

The files of application documents, specifications and drawings of patent applications shall be placed in the custody of the Patent Authority on a permanent basis. The files of other documents shall be kept for no less than thirty (30) years.

The patent files referred to above may be stored by means of microfilms, magnetic discs, magnetic tapes, optical discs or other storage mediums. The files so stored, which have been confirmed by the Patent Authority, shall be deemed the original files, and the original hard copy of such patent files may be destroyed. The reproduction of the information and records of any patent file kept in the storage mediums shall be inferred as a true copy upon confirmation by the Patent Authority.

Regulations concerning the confirmation, administration and use of the substitute files kept in storage mediums referred to in the preceding Paragraph shall be prescribed by the Ministry of Economic Affairs.

Article 133

The Enforcement Rules of this Law shall be prescribed by the Ministry of Economic Affairs.

Article 134

Patent cases on which examination decisions have not yet been rendered before the revision and enforcement of this Law shall be dealt with in accordance with the revised provisions insofar as the subsequent proceedings thereof is concerned.

For those patent cases that have been allowed and published before January 21, 1994 on which this Law was amended for enforcement, their patent terms shall be calculated in accordance with the provisions in force prior to the present revision of this Law. However, regarding invention patents that remain effective on the effective date of the World Trade Organization Treaty in the jurisdictional territory of the Republic of China, their patent terms shall be subject to the revised provisions of this Law for enforcement.

Regarding new design patents that remain effective on the effective date of the World Trade Organization Treaty in the jurisdictional territory of the Republic of China, their patent terms shall be subject to the provisions of this Law as revised on May 7, 1997, for enforcement .

Article 135

As to applications filed before January 23, 1994, no application for extension of patent term may be filed under Article 51.

Article 136

(Deleted)

Article 136-1

Where an application for patent-of-addition filed before the revision of this Law on October 4, 2001 has not been given an irrevocable examination decision, or where a patent-of-addition remains effective, when the revision of this Law takes effect, the provisions regarding patent-of-addition in force before the revision shall be applied thereto.

Article 137

(Deleted)

Article 138

The Ministry of Economic Affairs shall develop and publish incentive regulations for encouraging invention and creation activities.

Article 139

This Law shall take effect as from the date of promulgation.

The amendments made on May 7, 1997 to Article 21, Article 51, Article 56, Article 57, Article 78 through Article 80, Article 82, Article 88, Article 91, Article 105, Article 109, Article 117, and Article 122, and the amendments made on October 4, 2001 to Article 24 and Article 118-1 shall take effect on the date to be prescribed by the Executive Yuan.

NOTE: In case of any discrepancy between the English version and the Chinese text of the Law, the Chinese text shall prevail.
