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LUẬT SỞ HỮU TRÍ TUỆ ĐÀI LOAN

名稱：專利法

tại Đài Bắc

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第一章 總則

第 1 條 為鼓勵、保護、利用發明、新型及設計之創作，以促進產業發展，特制定本法。

第 2 條 本法所稱專利，分為下列三種：
一、發明專利。
二、新型專利。
三、設計專利。

第 3 條 本法主管機關為經濟部。
專利業務，由經濟部指定專責機關辦理。

第 4 條 外國人所屬之國家與中華民國如未共同參加保護專利之國際條約或無相互保護專利之條約、協定或由團體、機構互訂經主管機關核准保護專利之協議，或對中華民國國民申請專利，不予受理者，其專利申請，得不予受理。

第 5 條 專利申請權，指得依本法申請專利之權利。
專利申請權人，除本法另有規定或契約另有約定外，指發明人、新型創作人、設計人或其受讓人或繼承人。

第 6 條 專利申請權及專利權，均得讓與或繼承。
專利申請權，不得為質權之標的。
以專利權為標的設定質權者，除契約另有約定外，質權人不得實施該專利權。

第 7 條 受雇人於職務上所完成之發明、新型或設計，其專利申請權及專利權屬於

雇用人，雇用人應支付受雇人適當之報酬。但契約另有約定者，從其約定。

前項所稱職務上之發明、新型或設計，指受雇人於僱傭關係中之工作所完成之發明、新型或設計。

一方出資聘請他人從事研究開發者，其專利申請權及專利權之歸屬依雙方契約約定；契約未約定者，屬於發明人、新型創作人或設計人。但出資人得實施其發明、新型或設計。

依第一項、前項之規定，專利申請權及專利權歸屬於雇用人或出資人者，發明人、新型創作人或設計人享有姓名表示權。

第 8 條

受雇人於非職務上所完成之發明、新型或設計，其專利申請權及專利權屬於受雇人。但其發明、新型或設計係利用雇用人資源或經驗者，雇用人得於支付合理報酬後，於該事業實施其發明、新型或設計。

受雇人完成非職務上之發明、新型或設計，應即以書面通知雇用人，如有必要並應告知創作之過程。

雇用人於前項書面通知到達後六個月內，未向受雇人為反對之表示者，不得主張該發明、新型或設計為職務上發明、新型或設計。

第 9 條

前條雇用人與受雇人間所訂契約，使受雇人不得享受其發明、新型或設計之權益者，無效。

第 10 條

雇用人或受雇人對第七條及第八條所定權利之歸屬有爭執而達成協議者，得附具證明文件，向專利專責機關申請變更權利人名義。專利專責機關認有必要時，得通知當事人附具依其他法令取得之調解、仲裁或判決文件。

第 11 條

申請人申請專利及辦理有關專利事項，得委任代理人辦理之。

在中華民國境內，無住所或營業所者，申請專利及辦理專利有關事項，應委任代理人辦理之。

代理人，除法令另有規定外，以專利師為限。

專利師之資格及管理，另以法律定之。

第 12 條

專利申請權為共有者，應由全體共有人提出申請。

二人以上共同為專利申請以外之專利相關程序時，除撤回或拋棄申請案、申請分割、改請或本法另有規定者，應共同連署外，其餘程序各人皆可單獨為之。但約定有代表者，從其約定。

前二項應共同連署之情形，應指定其中一人為應受送達人。未指定應受送達人者，專利專責機關應以第一順序申請人為應受送達人，並應將送達事項通知其他人。

第 13 條

專利申請權為共有時，非經共有人全體之同意，不得讓與或拋棄。

專利申請權共有人非經其他共有人之同意，不得以其應有部分讓與他人。

專利申請權共有人拋棄其應有部分時，該部分歸屬其他共有人。

第 14 條

繼受專利申請權者，如在申請時非以繼受人名義申請專利，或未在申請後

向專利專責機關申請變更名義者，不得以之對抗第三人。
為前項之變更申請者，不論受讓或繼承，均應附具證明文件。

第 15 條 專利專責機關職員及專利審查人員於任職期內，除繼承外，不得申請專利及直接、間接受有關專利之任何權益。
專利專責機關職員及專利審查人員對職務上知悉或持有關於專利之發明、新型或設計，或申請人事業上之秘密，有保密之義務，如有違反者，應負相關法律責任。
專利審查人員之資格，以法律定之。

第 16 條 專利審查人員有下列情事之一，應自行迴避：
一、本人或其配偶，為該專利案申請人、專利權人、舉發人、代理人、代理人之合夥人或與代理人有僱傭關係者。
二、現為該專利案申請人、專利權人、舉發人或代理人之四親等內血親，或三親等內姻親。
三、本人或其配偶，就該專利案與申請人、專利權人、舉發人有共同權利人、共同義務人或償還義務人之關係者。
四、現為或曾為該專利案申請人、專利權人、舉發人之法定代理人或家長家屬者。
五、現為或曾為該專利案申請人、專利權人、舉發人之訴訟代理人或輔佐人者。
六、現為或曾為該專利案之證人、鑑定人、異議人或舉發人者。
專利審查人員有應迴避而不迴避之情事者，專利專責機關得依職權或依申請撤銷其所為之處分後，另為適當之處分。

第 17 條 申請人為有關專利之申請及其他程序，遲誤法定或指定之期間者，除本法另有規定外，應不受理。但遲誤指定期間在處分前補正者，仍應受理。
申請人因天災或不可歸責於己之事由，遲誤法定期間者，於其原因消滅後三十日內，得以書面敘明理由，向專利專責機關申請回復原狀。但遲誤法定期間已逾一年者，不得申請回復原狀。
申請回復原狀，應同時補行期間內應為之行為。
前二項規定，於遲誤第二十九條第四項、第五十二條第四項、第七十條第二項、第一百二十條準用第二十九條第四項、第一百二十條準用第五十二條第四項、第一百二十條準用第七十條第二項、第一百四十二條第一項準用第二十九條第四項、第一百四十二條第一項準用第五十二條第四項、第一百四十二條第一項準用第七十條第二項規定之期間者，不適用之。

第 18 條 審定書或其他文件無從送達者，應於專利公報公告之，並於刊登公報後滿三十日，視為已送達。

第 19 條 有關專利之申請及其他程序，得以電子方式為之；其實施辦法，由主管機關定之。

第 20 條 本法有關期間之計算，其始日不計算在內。
第五十二條第三項、第一百十四條及第一百三十五條規定之專利權期限，自申請日當日起算。

第二章 發明專利

第一節 專利要件

第 21 條 發明，指利用自然法則之技術思想之創作。

第 22 條 可供產業上利用之發明，無下列情事之一，得依本法申請取得發明專利：
一、申請前已見於刊物者。
二、申請前已公開實施者。
三、申請前已為公眾所知悉者。
發明雖無前項各款所列情事，但為其所屬技術領域中具有通常知識者依申請前之先前技術所能輕易完成時，仍不得取得發明專利。
申請人有下列情事之一，並於其事實發生後六個月內申請，該事實非屬第一項各款或前項不得取得發明專利之情事：
一、因實驗而公開者。
二、因於刊物發表者。
三、因陳列於政府主辦或認可之展覽會者。
四、非出於其本意而洩漏者。
申請人主張前項第一款至第三款之情事者，應於申請時敘明其事實及其年、月、日，並應於專利專責機關指定期間內檢附證明文件。

第 23 條 申請專利之發明，與申請在先而在其申請後始公開或公告之發明或新型專利申請案所附說明書、申請專利範圍或圖式載明之內容相同者，不得取得發明專利。但其申請人與申請在先之發明或新型專利申請案之申請人相同者，不在此限。

第 24 條 下列各款，不予發明專利：
一、動、植物及生產動、植物之主要生物學方法。但微生物學之生產方法，不在此限。
二、人類或動物之診斷、治療或外科手術方法。
三、妨害公共秩序或善良風俗者。

第二節 申請

第 25 條 申請發明專利，由專利申請權人備具申請書、說明書、申請專利範圍、摘要及必要之圖式，向專利專責機關申請之。
申請發明專利，以申請書、說明書、申請專利範圍及必要之圖式齊備之日為申請日。
說明書、申請專利範圍及必要之圖式未於申請時提出中文本，而以外文本提出，且於專利專責機關指定期間內補正中文本者，以外文本提出之日為

申請日。

未於前項指定期間內補正中文本者，其申請案不予受理。但在處分前補正者，以補正之日為申請日，外文本視為未提出。

第 26 條

說明書應明確且充分揭露，使該發明所屬技術領域中具有通常知識者，能瞭解其內容，並可據以實現。

申請專利範圍應界定申請專利之發明；其得包括一項以上之請求項，各請求項應以明確、簡潔之方式記載，且必須為說明書所支持。

摘要應敘明所揭露發明內容之概要；其不得用於決定揭露是否充分，及申請專利之發明是否符合專利要件。

說明書、申請專利範圍、摘要及圖式之揭露方式，於本法施行細則定之。

第 27 條

申請生物材料或利用生物材料之發明專利，申請人最遲應於申請日將該生物材料寄存於專利專責機關指定之國內寄存機構。但該生物材料為所屬技術領域中具有通常知識者易於獲得時，不須寄存。

申請人應於申請日後四個月內檢送寄存證明文件，並載明寄存機構、寄存日期及寄存號碼；屆期未檢送者，視為未寄存。

前項期間，如依第二十八條規定主張優先權者，為最早之優先權日後十六個月內。

申請前如已於專利專責機關認可之國外寄存機構寄存，並於第二項或前項規定之期間內，檢送寄存於專利專責機關指定之國內寄存機構之證明文件及國外寄存機構出具之證明文件者，不受第一項最遲應於申請日在國內寄存之限制。

申請人在與中華民國有相互承認寄存效力之外國所指定其國內之寄存機構寄存，並於第二項或第三項規定之期間內，檢送該寄存機構出具之證明文件者，不受應在國內寄存之限制。

第一項生物材料寄存之受理要件、種類、型式、數量、收費費率及其他寄存執行之辦法，由主管機關定之。

第 28 條

申請人就相同發明在與中華民國相互承認優先權之國家或世界貿易組織會員第一次依法申請專利，並於第一次申請專利之日後十二個月內，向中華民國申請專利者，得主張優先權。

申請人於一申請案中主張二項以上優先權時，前項期間之計算以最早之優先權日為準。

外國申請人為非世界貿易組織會員之國民且其所屬國家與中華民國無相互承認優先權者，如於世界貿易組織會員或互惠國領域內，設有住所或營業所，亦得依第一項規定主張優先權。

主張優先權者，其專利要件之審查，以優先權日為準。

第 29 條

依前條規定主張優先權者，應於申請專利同時聲明下列事項：

一、第一次申請之申請日。

二、受理該申請之國家或世界貿易組織會員。

三、第一次申請之申請案號數。

申請人應於最早之優先權日後十六個月內，檢送經前項國家或世界貿易組織會員證明受理之申請文件。

違反第一項第一款、第二款或前項之規定者，視為未主張優先權。

申請人非因故意，未於申請專利同時主張優先權，或依前項規定視為未主張者，得於最早之優先權日後十六個月內，申請回復優先權主張，並繳納申請費與補行第一項及第二項規定之行為。

第 30 條

申請人基於其在中華民國先申請之發明或新型專利案再提出專利之申請者，得就先申請案申請時說明書、申請專利範圍或圖式所載之發明或新型，主張優先權。但有下列情事之一，不得主張之：

一、自先申請案申請日後已逾十二個月者。

二、先申請案中所記載之發明或新型已經依第二十八條或本條規定主張優先權者。

三、先申請案係第三十四條第一項或第一百零七條第一項規定之分割案，或第一百零八條第一項規定之改請案。

四、先申請案為發明，已經公告或不予專利審定確定者。

五、先申請案為新型，已經公告或不予專利處分確定者。

六、先申請案已經撤回或不受理者。

前項先申請案自其申請日後滿十五個月，視為撤回。

先申請案申請日後逾十五個月者，不得撤回優先權主張。

依第一項主張優先權之後申請案，於先申請案申請日後十五個月內撤回者，視為同時撤回優先權之主張。

申請人於一申請案中主張二項以上優先權時，其優先權期間之計算以最早之優先權日為準。

主張優先權者，其專利要件之審查，以優先權日為準。

依第一項主張優先權者，應於申請專利同時聲明先申請案之申請日及申請案號數；未聲明者，視為未主張優先權。

第 31 條

相同發明有二以上之專利申請案時，僅得就其最先申請者准予發明專利。但後申請者所主張之優先權日早於先申請者之申請日者，不在此限。

前項申請日、優先權日為同日者，應通知申請人協議定之；協議不成時，均不予發明專利。其申請人為同一人時，應通知申請人限期擇一申請；屆期未擇一申請者，均不予發明專利。

各申請人為協議時，專利專責機關應指定相當期間通知申請人申報協議結果；屆期未申報者，視為協議不成。

相同創作分別申請發明專利及新型專利者，除有第三十二條規定之情事外，準用前三項規定。

第 32 條

同一人就相同創作，於同日分別申請發明專利及新型專利者，應於申請時分別聲明；其發明專利核准審定前，已取得新型專利權，專利專責機關應通知申請人限期擇一；申請人未分別聲明或屆期未擇一者，不予發明專利

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申請人依前項規定選擇發明專利者，其新型專利權，自發明專利公告之日消滅。

發明專利審定前，新型專利權已當然消滅或撤銷確定者，不予專利。

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- 第 33 條** 申請發明專利，應就每一發明提出申請。
二個以上發明，屬於一個廣義發明概念者，得於一申請案中提出申請。
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- 第 34 條** 申請專利之發明，實質上為二個以上之發明時，經專利專責機關通知，或據申請人申請，得為分割之申請。
分割申請應於下列各款之期間內為之：
一、原申請案再審查審定前。
二、原申請案核准審定書送達後三十日內。但經再審查審定者，不得為之。
- 。
- 分割後之申請案，仍以原申請案之申請日為申請日；如有優先權者，仍得主張優先權。
分割後之申請案，不得超出原申請案申請時說明書、申請專利範圍或圖式所揭露之範圍。
依第二項第一款規定分割後之申請案，應就原申請案已完成之程序續行審查。
依第二項第二款規定分割後之申請案，續行原申請案核准審定前之審查程序；原申請案以核准審定時之申請專利範圍及圖式公告之。

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- 第 35 條** 發明專利權經專利申請權人或專利申請權共有人，於該專利案公告後二年內，依第七十一條第一項第三款規定提起舉發，並於舉發撤銷確定後二個月內就相同發明申請專利者，以該經撤銷確定之發明專利權之申請日為其申請日。
依前項規定申請之案件，不再公告。

第 三 節 審查及再審查

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- 第 36 條** 專利專責機關對於發明專利申請案之實體審查，應指定專利審查人員審查之。
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- 第 37 條** 專利專責機關接到發明專利申請文件後，經審查認為無不合規定程式，且無應不予公開之情事者，自申請日後經過十八個月，應將該申請案公開之。
- 專利專責機關得因申請人之申請，提早公開其申請案。
發明專利申請案有下列情事之一，不予公開：
一、自申請日後十五個月內撤回者。
二、涉及國防機密或其他國家安全之機密者。
三、妨害公共秩序或善良風俗者。
第一項、前項期間之計算，如主張優先權者，以優先權日為準；主張二項以上優先權時，以最早之優先權日為準。

<u>第 38 條</u>	發明專利申請日後三年內，任何人均得向專利專責機關申請實體審查。 依第三十四條第一項規定申請分割，或依第一百零八條第一項規定改請為發明專利，逾前項期間者，得於申請分割或改請後三十日內，向專利專責機關申請實體審查。 依前二項規定所為審查之申請，不得撤回。 未於第一項或第二項規定之期間內申請實體審查者，該發明專利申請案，視為撤回。
<u>第 39 條</u>	申請前條之審查者，應檢附申請書。 專利專責機關應將申請審查之事實，刊載於專利公報。 申請審查由發明專利申請人以外之人提起者，專利專責機關應將該項事實通知發明專利申請人。
<u>第 40 條</u>	發明專利申請案公開後，如有非專利申請人為商業上之實施者，專利專責機關得依申請優先審查之。 為前項申請者，應檢附有關證明文件。
<u>第 41 條</u>	發明專利申請人對於申請案公開後，曾經以書面通知發明專利申請內容，而於通知後公告前就該發明仍繼續為商業上實施之人，得於發明專利申請案公告後，請求適當之補償金。 對於明知發明專利申請案已經公開，於公告前就該發明仍繼續為商業上實施之人，亦得為前項之請求。 前二項規定之請求權，不影響其他權利之行使。但依本法第三十二條分別申請發明專利及新型專利，並已取得新型專利權者，僅得在請求補償金或行使新型專利權間擇一主張之。 第一項、第二項之補償金請求權，自公告之日起，二年間不行使而消滅。
<u>第 42 條</u>	專利專責機關於審查發明專利時，得依申請或依職權通知申請人限期為下列各款之行為： 一、至專利專責機關面詢。 二、為必要之實驗、補送模型或樣品。 前項第二款之實驗、補送模型或樣品，專利專責機關認有必要時，得至現場或指定地點勘驗。
<u>第 43 條</u>	專利專責機關於審查發明專利時，除本法另有規定外，得依申請或依職權通知申請人限期修正說明書、申請專利範圍或圖式。 修正，除誤譯之訂正外，不得超出申請時說明書、申請專利範圍或圖式所揭露之範圍。 專利專責機關依第四十六條第二項規定通知後，申請人僅得於通知之期間內修正。 專利專責機關經依前項規定通知後，認有必要時，得為最後通知；其經最後通知者，申請專利範圍之修正，申請人僅得於通知之期間內，就下列事項為之：

- 一、請求項之刪除。
- 二、申請專利範圍之減縮。
- 三、誤記之訂正。
- 四、不明瞭記載之釋明。

違反前二項規定者，專利專責機關得於審定書敘明其事由，逕為審定。
原申請案或分割後之申請案，有下列情事之一，專利專責機關得逕為最後通知：

- 一、對原申請案所為之通知，與分割後之申請案已通知之內容相同者。
- 二、對分割後之申請案所為之通知，與原申請案已通知之內容相同者。
- 三、對分割後之申請案所為之通知，與其他分割後之申請案已通知之內容相同者。

第 44 條 說明書、申請專利範圍及圖式，依第二十五條第三項規定，以外文本提出者，其外文本不得修正。
依第二十五條第三項規定補正之中文本，不得超出申請時外文本所揭露之範圍。
前項之中文本，其誤譯之訂正，不得超出申請時外文本所揭露之範圍。

第 45 條 發明專利申請案經審查後，應作成審定書送達申請人。
經審查不予專利者，審定書應備具理由。
審定書應由專利審查人員具名。再審查、更正、舉發、專利權期間延長及專利權期間延長舉發之審定書，亦同。

第 46 條 發明專利申請案違反第二十一條至第二十四條、第二十六條、第三十一條、第三十二條第一項、第三項、第三十三條、第三十四條第四項、第四十三條第二項、第四十四條第二項、第三項或第一百零八條第三項規定者，應為不予專利之審定。
專利專責機關為前項審定前，應通知申請人限期申復；屆期未申復者，逕為不予專利之審定。

第 47 條 申請專利之發明經審查認無不予專利之情事者，應予專利，並應將申請專利範圍及圖式公告之。
經公告之專利案，任何人均得申請閱覽、抄錄、攝影或影印其審定書、說明書、申請專利範圍、摘要、圖式及全部檔案資料。但專利專責機關依法應予保密者，不在此限。

第 48 條 發明專利申請人對於不予專利之審定有不服者，得於審定書送達後二個月內備具理由書，申請再審查。但因申請程序不合法或申請人不適格而不受理或駁回者，得逕依法提起行政救濟。

第 49 條 申請案經依第四十六條第二項規定，為不予專利之審定者，其於再審查時，仍得修正說明書、申請專利範圍或圖式。
申請案經審查發給最後通知，而為不予專利之審定者，其於再審查時所為之修正，仍受第四十三條第四項各款規定之限制。但經專利專責機關再審

查認原審查程序發給最後通知為不當者，不在此限。

有下列情事之一，專利專責機關得逕為最後通知：

一、再審查理由仍有不予專利之情事者。

二、再審查時所為之修正，仍有不予專利之情事者。

三、依前項規定所為之修正，違反第四十三條第四項各款規定者。

第 50 條

再審查時，專利專責機關應指定未曾審查原案之專利審查人員審查，並作成審定書送達申請人。

第 51 條

發明經審查涉及國防機密或其他國家安全之機密者，應諮詢國防部或國家安全相關機關意見，認有保密之必要者，申請書件予以封存；其經申請實體審查者，應作成審定書送達申請人及發明人。

申請人、代理人及發明人對於前項之發明應予保密，違反者該專利申請權視為拋棄。

保密期間，自審定書送達申請人後為期一年，並得續行延展保密期間，每次一年；期間屆滿前一個月，專利專責機關應諮詢國防部或國家安全相關機關，於無保密之必要時，應即公開。

第一項之發明經核准審定者，於無保密之必要時，專利專責機關應通知申請人於三個月內繳納證書費及第一年專利年費後，始予公告；屆期未繳費者，不予公告。

就保密期間申請人所受之損失，政府應給與相當之補償。

第 四 節 專利權

第 52 條

申請專利之發明，經核准審定者，申請人應於審定書送達後三個月內，繳納證書費及第一年專利年費後，始予公告；屆期未繳費者，不予公告。

申請專利之發明，自公告之日起給予發明專利權，並發證書。

發明專利權期限，自申請日起算二十年屆滿。

申請人非因故意，未於第一項或前條第四項所定期限繳費者，得於繳費期限屆滿後六個月內，繳納證書費及二倍之第一年專利年費後，由專利專責機關公告之。

第 53 條

醫藥品、農藥品或其製造方法發明專利權之實施，依其他法律規定，應取得許可證者，其於專利案公告後取得時，專利權人得以第一次許可證申請延長專利權期間，並以一次為限，且該許可證僅得據以申請延長專利權期間一次。

前項核准延長之期間，不得超過為向中央目的事業主管機關取得許可證而無法實施發明之期間；取得許可證期間超過五年者，其延長期間仍以五年為限。

第一項所稱醫藥品，不及於動物用藥品。

第一項申請應備具申請書，附具證明文件，於取得第一次許可證後三個月內，向專利專責機關提出。但在專利權期間屆滿前六個月內，不得為之。主管機關就延長期間之核定，應考慮對國民健康之影響，並會同中央目的

事業主管機關訂定核定辦法。

第 54 條 依前條規定申請延長專利權期間者，如專利專責機關於原專利權期間屆滿時尚未審定者，其專利權期間視為已延長。但經審定不予延長者，至原專利權期間屆滿日止。

第 55 條 專利專責機關對於發明專利權期間延長申請案，應指定專利審查人員審查，作成審定書送達專利權人。

第 56 條 經專利專責機關核准延長發明專利權期間之範圍，僅及於許可證所載之有效成分及用途所限定之範圍。

第 57 條 任何人對於經核准延長發明專利權期間，認有下列情事之一，得附具證據，向專利專責機關舉發之：

- 一、發明專利之實施無取得許可證之必要者。
- 二、專利權人或被授權人並未取得許可證。
- 三、核准延長之期間超過無法實施之期間。
- 四、延長專利權期間之申請人並非專利權人。
- 五、申請延長之許可證非屬第一次許可證或該許可證曾辦理延長者。
- 六、以取得許可證所承認之外國試驗期間申請延長專利權時，核准期間超過該外國專利主管機關認許者。
- 七、核准延長專利權之醫藥品為動物用藥品。

專利權延長經舉發成立確定者，原核准延長之期間，視為自始不存在。但因違反前項第三款、第六款規定，經舉發成立確定者，就其超過之期間，視為未延長。

第 58 條 發明專利權人，除本法另有規定外，專有排除他人未經其同意而實施該發明之權。

物之發明之實施，指製造、為販賣之要約、販賣、使用或為上述目的而進口該物之行為。

方法發明之實施，指下列各款行為：

- 一、使用該方法。
- 二、使用、為販賣之要約、販賣或為上述目的而進口該方法直接製成之物。

發明專利權範圍，以申請專利範圍為準，於解釋申請專利範圍時，並得審酌說明書及圖式。

摘要不得用於解釋申請專利範圍。

第 59 條 發明專利權之效力，不及於下列各款情事：

- 一、非出於商業目的之未公開行為。
- 二、以研究或實驗為目的實施發明之必要行為。
- 三、申請前已在國內實施，或已完成必須之準備者。但於專利申請人處得知其發明後未滿六個月，並經專利申請人聲明保留其專利權者，不在此限。

- 四、僅由國境經過之交通工具或其裝置。
- 五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前，以善意在國內實施或已完成必須之準備者。
- 六、專利權人所製造或經其同意製造之專利物販賣後，使用或再販賣該物者。上述製造、販賣，不以國內為限。
- 七、專利權依第七十條第一項第三款規定消滅後，至專利權人依第七十條第二項回復專利權效力並經公告前，以善意實施或已完成必須之準備者。
- 前項第三款、第五款及第七款之實施人，限於在其原有事業目的範圍內繼續利用。
- 第一項第五款之被授權人，因該專利權經舉發而撤銷之後，仍實施時，於收到專利權人書面通知之日起，應支付專利權人合理之權利金。

第 60 條 發明專利權之效力，不及於以取得藥事法所定藥物查驗登記許可或國外藥物上市許可為目的，而從事之研究、試驗及其必要行為。

第 61 條 混合二種以上醫藥品而製造之醫藥品或方法，其發明專利權效力不及於依醫師處方箋調劑之行為及所調劑之醫藥品。

第 62 條 發明專利權人以其發明專利權讓與、信託、授權他人實施或設定質權，非經向專利專責機關登記，不得對抗第三人。

前項授權，得為專屬授權或非專屬授權。

專屬被授權人在被授權範圍內，排除發明專利權人及第三人實施該發明。

發明專利權人為擔保數債權，就同一專利權設定數質權者，其次序依登記之先後定之。

第 63 條 專屬被授權人得將其被授予之權利再授權第三人實施。但契約另有約定者，從其約定。

非專屬被授權人非經發明專利權人或專屬被授權人同意，不得將其被授予之權利再授權第三人實施。

再授權，非經向專利專責機關登記，不得對抗第三人。

第 64 條 發明專利權為共有時，除共有人自己實施外，非經共有人全體之同意，不得讓與、信託、授權他人實施、設定質權或拋棄。

第 65 條 發明專利權共有人非經其他共有人之同意，不得以其應有部分讓與、信託他人或設定質權。

發明專利權共有人拋棄其應有部分時，該部分歸屬其他共有人。

第 66 條 發明專利權人因中華民國與外國發生戰事受損失者，得申請延展專利權五年至十年，以一次為限。但屬於交戰國人之專利權，不得申請延展。

第 67 條 發明專利權人申請更正專利說明書、申請專利範圍或圖式，僅得就下列事項為之：

一、請求項之刪除。

二、申請專利範圍之減縮。

三、誤記或誤譯之訂正。

四、不明瞭記載之釋明。

更正，除誤譯之訂正外，不得超出申請時說明書、申請專利範圍或圖式所揭露之範圍。

依第二十五條第三項規定，說明書、申請專利範圍及圖式以外文本提出者，其誤譯之訂正，不得超出申請時外文本所揭露之範圍。

更正，不得實質擴大或變更公告時之申請專利範圍。

第 68 條

專利專責機關對於更正案之審查，除依第七十七條規定外，應指定專利審查人員審查之，並作成審定書送達申請人。

專利專責機關於核准更正後，應公告其事由。

說明書、申請專利範圍及圖式經更正公告者，溯自申請日生效。

第 69 條

發明專利權人非經被授權人或質權人之同意，不得拋棄專利權，或就第六十七條第一項第一款或第二款事項為更正之申請。

發明專利權為共有時，非經共有人全體之同意，不得就第六十七條第一項第一款或第二款事項為更正之申請。

第 70 條

有下列情事之一者，發明專利權當然消滅：

一、專利權期滿時，自期滿後消滅。

二、專利權人死亡而無繼承人。

三、第二年以後之專利年費未於補繳期限屆滿前繳納者，自原繳費期限屆滿後消滅。

四、專利權人拋棄時，自其書面表示之日消滅。

專利權人非因故意，未於第九十四條第一項所定期限補繳者，得於期限屆滿後一年內，申請回復專利權，並繳納三倍之專利年費後，由專利專責機關公告之。

第 71 條

發明專利權有下列情事之一，任何人得向專利專責機關提起舉發：

一、違反第二十一條至第二十四條、第二十六條、第三十一條、第三十二條第一項、第三項、第三十四條第四項、第四十三條第二項、第四十四條第二項、第三項、第六十七條第二項至第四項或第一百零八條第三項規定者。

二、專利權人所屬國家對中華民國國民申請專利不予受理者。

三、違反第十二條第一項規定或發明專利權人為非發明專利申請權人。

以前項第三款情事提起舉發者，限於利害關係人始得為之。

發明專利權得提起舉發之情事，依其核准審定時之規定。但以違反第三十四條第四項、第四十三條第二項、第六十七條第二項、第四項或第一百零八條第三項規定之情事，提起舉發者，依舉發時之規定。

第 72 條

利害關係人對於專利權之撤銷，有可回復之法律上利益者，得於專利權當然消滅後，提起舉發。

第 73 條	舉發，應備具申請書，載明舉發聲明、理由，並檢附證據。 專利權有二以上之請求項者，得就部分請求項提起舉發。 舉發聲明，提起後不得變更或追加，但得減縮。 舉發人補提理由或證據，應於舉發後一個月內為之。但在舉發審定前提出者，仍應審酌之。
第 74 條	專利專責機關接到前條申請書後，應將其副本送達專利權人。 專利權人應於副本送達後一個月內答辯；除先行申明理由，准予展期者外，屆期未答辯者，逕予審查。 舉發人補提之理由或證據有遲滯審查之虞，或其事證已臻明確者，專利專責機關得逕予審查。
第 75 條	專利專責機關於舉發審查時，在舉發聲明範圍內，得依職權審酌舉發人未提出之理由及證據，並應通知專利權人限期答辯；屆期未答辯者，逕予審查。
第 76 條	專利專責機關於舉發審查時，得依申請或依職權通知專利權人限期為下列各款之行為： 一、至專利專責機關面詢。 二、為必要之實驗、補送模型或樣品。 前項第二款之實驗、補送模型或樣品，專利專責機關認有必要時，得至現場或指定地點勘驗。
第 77 條	舉發案件審查期間，有更正案者，應合併審查及合併審定；其經專利專責機關審查認應准予更正時，應將更正說明書、申請專利範圍或圖式之副本送達舉發人。 同一舉發案審查期間，有二以上之更正案者，申請在先之更正案，視為撤回。
第 78 條	同一專利權有多件舉發案者，專利專責機關認有必要時，得合併審查。 依前項規定合併審查之舉發案，得合併審定。
第 79 條	專利專責機關於舉發審查時，應指定專利審查人員審查，並作成審定書，送達專利權人及舉發人。 舉發之審定，應就各請求項分別為之。
第 80 條	舉發人得於審定前撤回舉發申請。但專利權人已提出答辯者，應經專利權人同意。 專利專責機關應將撤回舉發之事實通知專利權人；自通知送達後十日內，專利權人未為反對之表示者，視為同意撤回。
第 81 條	有下列情事之一，任何人對同一專利權，不得就同一事實以同一證據再為舉發： 一、他舉發案曾就同一事實以同一證據提起舉發，經審查不成立者。 二、依智慧財產案件審理法第三十三條規定向智慧財產法院提出之新證據

，經審理認無理由者。

第 82 條 發明專利權經舉發審查成立者，應撤銷其專利權；其撤銷得就各請求項分別為之。
發明專利權經撤銷後，有下列情事之一，即為撤銷確定：
一、未依法提起行政救濟者。
二、提起行政救濟經駁回確定者。
發明專利權經撤銷確定者，專利權之效力，視為自始不存在。

第 83 條 第五十七條第一項延長發明專利權期間舉發之處理，準用本法有關發明專利權舉發之規定。

第 84 條 發明專利權之核准、變更、延長、延展、讓與、信託、授權、強制授權、撤銷、消滅、設定質權、舉發審定及其他應公告事項，應於專利公報公告之。

第 85 條 專利專責機關應備置專利權簿，記載核准專利、專利權異動及法令所定之一切事項。
前項專利權簿，得以電子方式為之，並供人民閱覽、抄錄、攝影或影印。

第 86 條 專利專責機關依本法應公開、公告之事項，得以電子方式為之；其實施日期，由專利專責機關定之。

第 五 節 強制授權

第 87 條 為因應國家緊急危難或其他重大緊急情況，專利專責機關應依緊急命令或中央目的事業主管機關之通知，強制授權所需專利權，並儘速通知專利權人。
有下列情事之一，而有強制授權之必要者，專利專責機關得依申請強制授權：
一、增進公益之非營利實施。
二、發明或新型專利權之實施，將不可避免侵害在前之發明或新型專利權，且較該在前之發明或新型專利權具相當經濟意義之重要技術改良。
三、專利權人有限制競爭或不公平競爭之情事，經法院判決或行政院公平交易委員會處分。
就半導體技術專利申請強制授權者，以有前項第一款或第三款之情事者為限。
專利權經依第二項第一款或第二款規定申請強制授權者，以申請人曾以合理之商業條件在相當期間內仍不能協議授權者為限。
專利權經依第二項第二款規定申請強制授權者，其專利權人得提出合理條件，請求就申請人之專利權強制授權。

第 88 條 專利專責機關於接到前條第二項及第九十條之強制授權申請後，應通知專利權人，並限期答辯；屆期未答辯者，得逕予審查。
強制授權之實施應以供應國內市場需要為主。但依前條第二項第三款規定

強制授權者，不在此限。

強制授權之審定應以書面為之，並載明其授權之理由、範圍、期間及應支付之補償金。

強制授權不妨礙原專利權人實施其專利權。

強制授權不得讓與、信託、繼承、授權或設定質權。但有下列情事之一者，不在此限：

- 一、依前條第二項第一款或第三款規定之強制授權與實施該專利有關之營業，一併讓與、信託、繼承、授權或設定質權。
- 二、依前條第二項第二款或第五項規定之強制授權與被授權人之專利權，一併讓與、信託、繼承、授權或設定質權。

第 89 條

依第八十七條第一項規定強制授權者，經中央目的事業主管機關認無強制授權之必要時，專利專責機關應依其通知廢止強制授權。

有下列各款情事之一者，專利專責機關得依申請廢止強制授權：

- 一、作成強制授權之事實變更，致無強制授權之必要。
- 二、被授權人未依授權之內容適當實施。
- 三、被授權人未依專利專責機關之審定支付補償金。

第 90 條

為協助無製藥能力或製藥能力不足之國家，取得治療愛滋病、肺結核、瘧疾或其他傳染病所需醫藥品，專利專責機關得依申請，強制授權申請人實施專利權，以供應該國家進口所需醫藥品。

依前項規定申請強制授權者，以申請人曾以合理之商業條件在相當期間內仍不能協議授權者為限。但所需醫藥品在進口國已核准強制授權者，不在此限。

進口國如為世界貿易組織會員，申請人於依第一項申請時，應檢附進口國已履行下列事項之證明文件：

- 一、已通知與貿易有關之智慧財產權理事會該國所需醫藥品之名稱及數量。
- 二、已通知與貿易有關之智慧財產權理事會該國無製藥能力或製藥能力不足，而有作為進口國之意願。但為低度開發國家者，申請人毋庸檢附證明文件。
- 三、所需醫藥品在該國無專利權，或有專利權但已核准強制授權或即將核准強制授權。

前項所稱低度開發國家，為聯合國所發布之低度開發國家。

進口國如非世界貿易組織會員，而為低度開發國家或無製藥能力或製藥能力不足之國家，申請人於依第一項申請時，應檢附進口國已履行下列事項之證明文件：

- 一、以書面向中華民國外交機關提出所需醫藥品之名稱及數量。
- 二、同意防止所需醫藥品轉出口。

第 91 條

依前條規定強制授權製造之醫藥品應全部輸往進口國，且授權製造之數量不得超過進口國通知與貿易有關之智慧財產權理事會或中華民國外交機關

所需醫藥品之數量。

依前條規定強制授權製造之醫藥品，應於其外包裝依專利專責機關指定之內容標示其授權依據；其包裝及顏色或形狀，應與專利權人或其被授權人所製造之醫藥品足以區別。

強制授權之被授權人應支付專利權人適當之補償金；補償金之數額，由專利專責機關就與所需醫藥品相關之醫藥品專利權於進口國之經濟價值，並參考聯合國所發布之人力發展指標核定之。

強制授權被授權人於出口該醫藥品前，應於網站公開該醫藥品之數量、名稱、目的地及可資區別之特徵。

依前條規定強制授權製造出口之醫藥品，其查驗登記，不受藥事法第四十條之二第二項規定之限制。

第 六 節 納 費

第 92 條 關於發明專利之各項申請，申請人於申請時，應繳納申請費。
核准專利者，發明專利權人應繳納證書費及專利年費；請准延長、延展專利權期間者，在延長、延展期間內，仍應繳納專利年費。

第 93 條 發明專利年費自公告之日起算，第一年年費，應依第五十二條第一項規定繳納；第二年以後年費，應於屆期前繳納之。
前項專利年費，得一次繳納數年；遇有年費調整時，毋庸補繳其差額。

第 94 條 發明專利第二年以後之專利年費，未於應繳納專利年費之期間內繳費者，得於期滿後六個月內補繳之。但其專利年費之繳納，除原應繳納之專利年費外，應以比率方式加繳專利年費。
前項以比率方式加繳專利年費，指依逾越應繳納專利年費之期間，按月加繳，每逾一個月加繳百分之二十，最高加繳至依規定之專利年費加倍之數額；其逾繳期間在一日以上一個月以內者，以一個月論。

第 95 條 發明專利權人為自然人、學校或中小企業者，得向專利專責機關申請減免專利年費。

第 七 節 損害賠償及訴訟

第 96 條 發明專利權人對於侵害其專利權者，得請求除去之。有侵害之虞者，得請求防止之。
發明專利權人對於因故意或過失侵害其專利權者，得請求損害賠償。
發明專利權人為第一項之請求時，對於侵害專利權之物或從事侵害行為之原料或器具，得請求銷毀或為其他必要之處置。
專屬被授權人在被授權範圍內，得為前三項之請求。但契約另有約定者，從其約定。
發明人之姓名表示權受侵害時，得請求表示發明人之姓名或為其他回復名譽之必要處分。
第二項及前項所定之請求權，自請求權人知有損害及賠償義務人時起，二

年間不行使而消滅；自行為時起，逾十年者，亦同。

第 97 條

依前條請求損害賠償時，得就下列各款擇一計算其損害：

- 一、依民法第二百十六條之規定。但不能提供證據方法以證明其損害時，發明專利權人得就其實施專利權通常所可獲得之利益，減除受害後實施同一專利權所得之利益，以其差額為所受損害。
 - 二、依侵害人因侵害行為所得之利益。
 - 三、依授權實施該發明專利所得收取之合理權利金為基礎計算損害。
- 依前項規定，侵害行為如屬故意，法院得因被害人之請求，依侵害情節，酌定損害額以上之賠償。但不得超過已證明損害額之三倍。

第 97-1 條

專利權人對進口之物有侵害其專利權之虞者，得申請海關先予查扣。

前項申請，應以書面為之，並釋明侵害之事實，及提供相當於海關核估該進口物完稅價格之保證金或相當之擔保。

海關受理查扣之申請，應即通知申請人；如認符合前項規定而實施查扣時，應以書面通知申請人及被查扣人。

被查扣人得提供第二項保證金二倍之保證金或相當之擔保，請求海關廢止查扣，並依有關進口貨物通關規定辦理。

海關在不損及查扣物機密資料保護之情形下，得依申請人或被查扣人之申請，同意其檢視查扣物。

查扣物經申請人取得法院確定判決，屬侵害專利權者，被查扣人應負擔查扣物之貨櫃延滯費、倉租、裝卸費等有關費用。

第 97-2 條

有下列情形之一，海關應廢止查扣：

- 一、申請人於海關通知受理查扣之翌日起十二日內，未依第九十六條規定就查扣物為侵害物提起訴訟，並通知海關者。
- 二、申請人就查扣物為侵害物所提訴訟經法院裁判駁回確定者。
- 三、查扣物經法院確定判決，不屬侵害專利權之物者。
- 四、申請人申請廢止查扣者。
- 五、符合前條第四項規定者。

前項第一款規定之期限，海關得視需要延長十二日。

海關依第一項規定廢止查扣者，應依有關進口貨物通關規定辦理。

查扣因第一項第一款至第四款之事由廢止者，申請人應負擔查扣物之貨櫃延滯費、倉租、裝卸費等有關費用。

第 97-3 條

查扣物經法院確定判決不屬侵害專利權之物者，申請人應賠償被查扣人因查扣或提供第九十七條之一第四項規定保證金所受之損害。

申請人就第九十七條之一第四項規定之保證金，被查扣人就第九十七條之一第二項規定之保證金，與質權人有同一權利。但前條第四項及第九十七條之一第六項規定之貨櫃延滯費、倉租、裝卸費等有關費用，優先於申請人或被查扣人之損害受償。

有下列情形之一者，海關應依申請人之申請，返還第九十七條之一第二項

規定之保證金：

- 一、申請人取得勝訴之確定判決，或與被查扣人達成和解，已無繼續提供保證金之必要者。
- 二、因前條第一項第一款至第四款規定之事由廢止查扣，致被查扣人受有損害後，或被查扣人取得勝訴之確定判決後，申請人證明已定二十日以上之期間，催告被查扣人行使權利而未行使者。
- 三、被查扣人同意返還者。

有下列情形之一者，海關應依被查扣人之申請，返還第九十七條之一第四項規定之保證金：

- 一、因前條第一項第一款至第四款規定之事由廢止查扣，或被查扣人與申請人達成和解，已無繼續提供保證金之必要者。
- 二、申請人取得勝訴之確定判決後，被查扣人證明已定二十日以上之期間，催告申請人行使權利而未行使者。
- 三、申請人同意返還者。

第 97-4 條 前三條規定之申請查扣、廢止查扣、檢視查扣物、保證金或擔保之繳納、提供、返還之程序、應備文件及其他應遵行事項之辦法，由主管機關會同財政部定之。

第 98 條 專利物上應標示專利證書號數；不能於專利物上標示者，得於標籤、包裝或以其他足以引起他人認識之顯著方式標示之；其未附加標示者，於請求損害賠償時，應舉證證明侵害人明知或可得而知為專利物。

第 99 條 製造方法專利所製成之物在該製造方法申請專利前，為國內外未見者，他人製造相同之物，推定為以該專利方法所製造。
前項推定得提出反證推翻之。被告證明其製造該相同物之方法與專利方法不同者，為已提出反證。被告舉證所揭示製造及營業秘密之合法權益，應予充分保障。

第 100 條 發明專利訴訟案件，法院應以判決書正本一份送專利專責機關。

第 101 條 舉發案涉及侵權訴訟案件之審理者，專利專責機關得優先審查。

第 102 條 未經認許之外國法人或團體，就本法規定事項得提起民事訴訟。

第 103 條 法院為處理發明專利訴訟案件，得設立專業法庭或指定專人辦理。
司法院得指定侵害專利鑑定專業機構。
法院受理發明專利訴訟案件，得囑託前項機構為鑑定。

第 三 章 新型專利

第 104 條 新型，指利用自然法則之技術思想，對物品之形狀、構造或組合之創作。

- [第 105 條](#) 新型有妨害公共秩序或善良風俗者，不予新型專利。
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- [第 106 條](#) 申請新型專利，由專利申請權人備具申請書、說明書、申請專利範圍、摘要及圖式，向專利專責機關申請之。
申請新型專利，以申請書、說明書、申請專利範圍及圖式齊備之日為申請日。
說明書、申請專利範圍及圖式未於申請時提出中文本，而以外文本提出，且於專利專責機關指定期間內補正中文本者，以外文本提出之日為申請日。
未於前項指定期間內補正中文本者，其申請案不予受理。但在處分前補正者，以補正之日為申請日，外文本視為未提出。
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- [第 107 條](#) 申請專利之新型，實質上為二個以上之新型時，經專利專責機關通知，或據申請人申請，得為分割之申請。
分割申請應於原申請案處分前為之。
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- [第 108 條](#) 申請發明或設計專利後改請新型專利者，或申請新型專利後改請發明專利者，以原申請案之申請日為改請案之申請日。
改請之申請，有下列情事之一者，不得為之：
一、原申請案准予專利之審定書、處分書送達後。
二、原申請案為發明或設計，於不予專利之審定書送達後逾二個月。
三、原申請案為新型，於不予專利之處分書送達後逾三十日。
改請後之申請案，不得超出原申請案申請時說明書、申請專利範圍或圖式所揭露之範圍。
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- [第 109 條](#) 專利專責機關於形式審查新型專利時，得依申請或依職權通知申請人限期修正說明書、申請專利範圍或圖式。
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- [第 110 條](#) 說明書、申請專利範圍及圖式，依第一百零六條第三項規定，以外文本提出者，其外文本不得修正。
依第一百零六條第三項規定補正之中文本，不得超出申請時外文本所揭露之範圍。
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- [第 111 條](#) 新型專利申請案經形式審查後，應作成處分書送達申請人。
經形式審查不予專利者，處分書應備具理由。
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- [第 112 條](#) 新型專利申請案，經形式審查認有下列各款情事之一，應為不予專利之處分：
一、新型非屬物品形狀、構造或組合者。
二、違反第一百零五條規定者。
三、違反第一百二十條準用第二十六條第四項規定之揭露方式者。
四、違反第一百二十條準用第三十三條規定者。
五、說明書、申請專利範圍或圖式未揭露必要事項，或其揭露明顯不清楚者。
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六、修正，明顯超出申請時說明書、申請專利範圍或圖式所揭露之範圍者。

[第 113 條](#) 申請專利之新型，經形式審查認無不予專利之情事者，應予專利，並應將申請專利範圍及圖式公告之。

[第 114 條](#) 新型專利權期限，自申請日起算十年屆滿。

[第 115 條](#) 申請專利之新型經公告後，任何人得向專利專責機關申請新型專利技術報告。

專利專責機關應將申請新型專利技術報告之事實，刊載於專利公報。

專利專責機關應指定專利審查人員作成新型專利技術報告，並由專利審查人員具名。

專利專責機關對於第一項之申請，應就第一百二十條準用第二十二條第一項第一款、第二項、第一百二十條準用第二十三條、第一百二十條準用第三十一條規定之情事，作成新型專利技術報告。

依第一項規定申請新型專利技術報告，如敘明有非專利權人為商業上之實施，並檢附有關證明文件者，專利專責機關應於六個月內完成新型專利技術報告。

新型專利技術報告之申請，於新型專利權當然消滅後，仍得為之。

依第一項所為之申請，不得撤回。

[第 116 條](#) 新型專利權人行使新型專利權時，如未提示新型專利技術報告，不得進行警告。

[第 117 條](#) 新型專利權人之專利權遭撤銷時，就其於撤銷前，因行使專利權所致他人之損害，應負賠償責任。但其係基於新型專利技術報告之內容，且已盡相當之注意者，不在此限。

[第 118 條](#) 專利專責機關對於更正案之審查，除依第一百二十條準用第七十七條第一項規定外，應為形式審查，並作成處分書送達申請人。

更正，經形式審查認有下列各款情事之一，應為不予更正之處分：

一、有第一百十二條第一款至第五款規定之情事者。

二、明顯超出公告時之申請專利範圍或圖式所揭露之範圍者。

[第 119 條](#) 新型專利權有下列情事之一，任何人得向專利專責機關提起舉發：

一、違反第一百零四條、第一百零五條、第一百零八條第三項、第一百十條第二項、第一百二十條準用第二十二條、第一百二十條準用第二十三條、第一百二十條準用第二十六條、第一百二十條準用第三十一條、第一百二十條準用第三十四條第四項、第一百二十條準用第四十三條第二項、第一百二十條準用第四十四條第三項、第一百二十條準用第六十七條第二項至第四項規定者。

二、專利權人所屬國家對中華民國國民申請專利不予受理者。

三、違反第十二條第一項規定或新型專利權人為非新型專利申請權人者。

以前項第三款情事提起舉發者，限於利害關係人始得為之。
新型專利權得提起舉發之情事，依其核准處分時之規定。但以違反第一百零八條第三項、第一百二十條準用第三十四條第四項、第一百二十條準用第四十三條第二項或第一百二十條準用第六十七條第二項、第四項規定之情事，提起舉發者，依舉發時之規定。
舉發審定書，應由專利審查人員具名。

[第 120 條](#) 第二十二條、第二十三條、第二十六條、第二十八條至第三十一條、第三十三條、第三十四條第三項、第四項、第三十五條、第四十三條第二項、第三項、第四十四條第三項、第四十六條第二項、第四十七條第二項、第五十一條、第五十二條第一項、第二項、第四項、第五十八條第一項、第二項、第四項、第五項、第五十九條、第六十二條至第六十五條、第六十七條、第六十八條第二項、第三項、第六十九條、第七十條、第七十二條至第八十二條、第八十四條至第九十八條、第一百條至第一百零三條，於新型專利準用之。

第 四 章 設計專利

[第 121 條](#) 設計，指對物品之全部或部分之形狀、花紋、色彩或其結合，透過視覺訴求之創作。
應用於物品之電腦圖像及圖形化使用者介面，亦得依本法申請設計專利。

[第 122 條](#) 可供產業上利用之設計，無下列情事之一，得依本法申請取得設計專利：
一、申請前有相同或近似之設計，已見於刊物者。
二、申請前有相同或近似之設計，已公開實施者。
三、申請前已為公眾所知悉者。
設計雖無前項各款所列情事，但為其所屬技藝領域中具有通常知識者依申請前之先前技藝易於思及時，仍不得取得設計專利。
申請人有下列情事之一，並於其事實發生後六個月內申請，該事實非屬第一項各款或前項不得取得設計專利之情事：
一、因於刊物發表者。
二、因陳列於政府主辦或認可之展覽會者。
三、非出於其本意而洩漏者。
申請人主張前項第一款及第二款之情事者，應於申請時敘明事實及其年、月、日，並應於專利專責機關指定期間內檢附證明文件。

[第 123 條](#) 申請專利之設計，與申請在先而在其申請後始公告之設計專利申請案所附說明書或圖式之內容相同或近似者，不得取得設計專利。但其申請人與申請在先之設計專利申請案之申請人相同者，不在此限。

[第 124 條](#) 下列各款，不予設計專利：
一、純功能性之物品造形。
二、純藝術創作。
三、積體電路電路布局及電子電路布局。

四、物品妨害公共秩序或善良風俗者。

第 125 條 申請設計專利，由專利申請權人備具申請書、說明書及圖式，向專利專責機關申請之。

申請設計專利，以申請書、說明書及圖式齊備之日為申請日。

說明書及圖式未於申請時提出中文本，而以外文本提出，且於專利專責機關指定期間內補正中文本者，以外文本提出之日為申請日。

未於前項指定期間內補正中文本者，其申請案不予受理。但在處分前補正者，以補正之日為申請日，外文本視為未提出。

第 126 條 說明書及圖式應明確且充分揭露，使該設計所屬技藝領域中具有通常知識者，能瞭解其內容，並可據以實現。

說明書及圖式之揭露方式，於本法施行細則定之。

第 127 條 同一人有二個以上近似之設計，得申請設計專利及其衍生設計專利。

衍生設計之申請日，不得早於原設計之申請日。

申請衍生設計專利，於原設計專利公告後，不得為之。

同一人不得就與原設計不近似，僅與衍生設計近似之設計申請為衍生設計專利。

第 128 條 相同或近似之設計有二以上之專利申請案時，僅得就其最先申請者，准予設計專利。但後申請者所主張之優先權日早於先申請者之申請日者，不在此限。

前項申請日、優先權日為同日者，應通知申請人協議定之；協議不成時，均不予設計專利。其申請人為同一人時，應通知申請人限期擇一申請；屆期未擇一申請者，均不予設計專利。

各申請人為協議時，專利專責機關應指定相當期間通知申請人申報協議結果；屆期未申報者，視為協議不成。

前三項規定，於下列各款不適用之：

一、原設計專利申請案與衍生設計專利申請案間。

二、同一設計專利申請案有二以上衍生設計專利申請案者，該二以上衍生設計專利申請案間。

第 129 條 申請設計專利，應就每一設計提出申請。

二個以上之物品，屬於同一類別，且習慣上以成組物品販賣或使用，得以一設計提出申請。

申請設計專利，應指定所施予之物品。

第 130 條 申請專利之設計，實質上為二個以上之設計時，經專利專責機關通知，或據申請人申請，得為分割之申請。

分割申請，應於原申請案再審查審定前為之。

分割後之申請案，應就原申請案已完成之程序續行審查。

第 131 條 申請設計專利後改請衍生設計專利者，或申請衍生設計專利後改請設計專

利者，以原申請案之申請日為改請案之申請日。
改請之申請，有下列情事之一者，不得為之：
一、原申請案准予專利之審定書送達後。
二、原申請案不予專利之審定書送達後逾二個月。
改請後之設計或衍生設計，不得超出原申請案申請時說明書或圖式所揭露之範圍。

第 132 條 申請發明或新型專利後改請設計專利者，以原申請案之申請日為改請案之申請日。
改請之申請，有下列情事之一者，不得為之：
一、原申請案准予專利之審定書、處分書送達後。
二、原申請案為發明，於不予專利之審定書送達後逾二個月。
三、原申請案為新型，於不予專利之處分書送達後逾三十日。
改請後之申請案，不得超出原申請案申請時說明書、申請專利範圍或圖式所揭露之範圍。

第 133 條 說明書及圖式，依第一百二十五條第三項規定，以外文本提出者，其外文本不得修正。
第一百二十五條第三項規定補正之中文本，不得超出申請時外文本所揭露之範圍。

第 134 條 設計專利申請案違反第一百二十一條至第一百二十四條、第一百二十六條、第一百二十七條、第一百二十八條第一項至第三項、第一百二十九條第一項、第二項、第一百三十一條第三項、第一百三十二條第三項、第一百三十三條第二項、第一百四十二條第一項準用第三十四條第四項、第一百四十二條第一項準用第四十三條第二項、第一百四十二條第一項準用第四十四條第三項規定者，應為不予專利之審定。

第 135 條 設計專利權期限，自申請日起算十二年屆滿；衍生設計專利權期限與原設計專利權期限同時屆滿。

第 136 條 設計專利權人，除本法另有規定外，專有排除他人未經其同意而實施該設計或近似該設計之權。
設計專利權範圍，以圖式為準，並得審酌說明書。

第 137 條 衍生設計專利權得單獨主張，且及於近似之範圍。

第 138 條 衍生設計專利權，應與其原設計專利權一併讓與、信託、繼承、授權或設定質權。
原設計專利權依第一百四十二條第一項準用第七十條第一項第三款或第四款規定已當然消滅或撤銷確定，其衍生設計專利權有二以上仍存續者，不得單獨讓與、信託、繼承、授權或設定質權。

第 139 條 設計專利權人申請更正專利說明書或圖式，僅得就下列事項為之：

一、誤記或誤譯之訂正。
二、不明瞭記載之釋明。
更正，除誤譯之訂正外，不得超出申請時說明書或圖式所揭露之範圍。
依第一百二十五條第三項規定，說明書及圖式以外文本提出者，其誤譯之訂正，不得超出申請時外文本所揭露之範圍。
更正，不得實質擴大或變更公告時之圖式。

第 140 條 設計專利權人非經被授權人或質權人之同意，不得拋棄專利權。

第 141 條 設計專利權有下列情事之一，任何人得向專利專責機關提起舉發：

一、違反第一百二十一條至第一百二十四條、第一百二十六條、第一百二十七條、第一百二十八條第一項至第三項、第一百三十一條第三項、第一百三十二條第三項、第一百三十三條第二項、第一百三十九條第二項至第四項、第一百四十二條第一項準用第三十四條第四項、第一百四十二條第一項準用第四十三條第二項、第一百四十二條第一項準用第四十四條第三項規定者。

二、專利權人所屬國家對中華民國國民申請專利不予受理者。

三、違反第十二條第一項規定或設計專利權人為非設計專利申請權人者。

以前項第三款情事提起舉發者，限於利害關係人始得為之。

設計專利權得提起舉發之情事，依其核准審定時之規定。但以違反第一百三十一條第三項、第一百三十二條第三項、第一百三十九條第二項、第四項、第一百四十二條第一項準用第三十四條第四項或第一百四十二條第一項準用第四十三條第二項規定之情事，提起舉發者，依舉發時之規定。

第 142 條 第二十八條、第二十九條、第三十四條第三項、第四項、第三十五條、第三十六條、第四十二條、第四十三條第一項至第三項、第四十四條第三項、第四十五條、第四十六條第二項、第四十七條、第四十八條、第五十條、第五十二條第一項、第二項、第四項、第五十八條第二項、第五十九條、第六十二條至第六十五條、第六十八條、第七十條、第七十二條、第七十三條第一項、第三項、第四項、第七十四條至第七十八條、第七十九條第一項、第八十條至第八十二條、第八十四條至第八十六條、第九十二條至第九十八條、第一百條至第一百零三條規定，於設計專利準用之。

第二十八條第一項所定期間，於設計專利申請案為六個月。

第二十九條第二項及第四項所定期間，於設計專利申請案為十個月。

第 五 章 附 則

第 143 條 專利檔案中之申請書件、說明書、申請專利範圍、摘要、圖式及圖說，應由專利專責機關永久保存；其他文件之檔案，最長保存三十年。

前項專利檔案，得以微縮底片、磁碟、磁帶、光碟等方式儲存；儲存紀錄經專利專責機關確認者，視同原檔案，原紙本專利檔案得予銷毀；儲存紀錄之複製品經專利專責機關確認者，推定其為真正。

前項儲存替代物之確認、管理及使用規則，由主管機關定之。

[第 144 條](#) 主管機關為獎勵發明、新型或設計之創作，得訂定獎助辦法。

[第 145 條](#) 依第二十五條第三項、第一百零六條第三項及第一百二十五條第三項規定提出之外文本，其外文種類之限定及其他應載明事項之辦法，由主管機關定之。

[第 146 條](#) 第九十二條、第一百二十條準用第九十二條、第一百四十二條第一項準用第九十二條規定之申請費、證書費及專利年費，其收費辦法由主管機關定之。
第九十五條、第一百二十條準用第九十五條、第一百四十二條第一項準用第九十五條規定之專利年費減免，其減免條件、年限、金額及其他應遵行事項之辦法，由主管機關定之。

[第 147 條](#) 中華民國八十三年一月二十三日所提出之申請案，不得依第五十三條規定，申請延長專利權期間。

[第 148 條](#) 本法中華民國八十三年一月二十一日修正施行前，已審定公告之專利案，其專利權期限，適用修正前之規定。但發明專利案，於世界貿易組織協定在中華民國管轄區域內生效之日，專利權仍存續者，其專利權期限，適用修正施行後之規定。
本法中華民國九十二年一月三日修正之條文施行前，已審定公告之新型專利申請案，其專利權期限，適用修正前之規定。
新式樣專利案，於世界貿易組織協定在中華民國管轄區域內生效之日，專利權仍存續者，其專利權期限，適用本法中華民國八十六年五月七日修正之條文施行後之規定。

[第 149 條](#) 本法中華民國一百年十一月二十九日修正之條文施行前，尚未審定之專利申請案，除本法另有規定外，適用修正施行後之規定。
本法中華民國一百年十一月二十九日修正之條文施行前，尚未審定之更正文及舉發案，適用修正施行後之規定。

[第 150 條](#) 本法中華民國一百年十一月二十九日修正之條文施行前提出，且依修正前第二十九條規定主張優先權之發明或新型專利申請案，其先申請案尚未公告或不予專利之審定或處分尚未確定者，適用第三十條第一項規定。
本法中華民國一百年十一月二十九日修正之條文施行前已審定之發明專利申請案，未逾第三十四條第二項第二款規定之期間者，適用第三十四條第二項第二款及第六項規定。

[第 151 條](#) 第二十二條第三項第二款、第一百二十條準用第二十二條第三項第二款、第一百二十一條第一項有關物品之部分設計、第一百二十一條第二項、第一百二十二條第三項第一款、第一百二十七條、第一百二十九條第二項規定，於本法中華民國一百年十一月二十九日修正之條文施行後，提出之專

利申請案，始適用之。

第 152 條 本法中華民國一百年十一月二十九日修正之條文施行前，違反修正前第三十條第二項規定，視為未寄存之發明專利申請案，於修正施行後尚未審定者，適用第二十七條第二項之規定；其有主張優先權，自最早之優先權日起仍在十六個月內者，適用第二十七條第三項之規定。

第 153 條 本法中華民國一百年十一月二十九日修正之條文施行前，依修正前第二十八條第三項、第一百零八條準用第二十八條第三項、第一百二十九條第一項準用第二十八條第三項規定，以違反修正前第二十八條第一項、第一百零八條準用第二十八條第一項、第一百二十九條第一項準用第二十八條第一項規定喪失優先權之專利申請案，於修正施行後尚未審定或處分，且自最早之優先權日起，發明、新型專利申請案仍在十六個月內，設計專利申請案仍在十個月內者，適用第二十九條第四項、第一百二十條準用第二十九條第四項、第一百四十二條第一項準用第二十九條第四項之規定。

本法中華民國一百年十一月二十九日修正之條文施行前，依修正前第二十八條第三項、第一百零八條準用第二十八條第三項、第一百二十九條第一項準用第二十八條第三項規定，以違反修正前第二十八條第二項、第一百零八條準用第二十八條第二項、第一百二十九條第一項準用第二十八條第二項規定喪失優先權之專利申請案，於修正施行後尚未審定或處分，且自最早之優先權日起，發明、新型專利申請案仍在十六個月內，設計專利申請案仍在十個月內者，適用第二十九條第二項、第一百二十條準用第二十九條第二項、第一百四十二條第一項準用第二十九條第二項之規定。

第 154 條 本法中華民國一百年十一月二十九日修正之條文施行前，已提出之延長發明專利權期間申請案，於修正施行後尚未審定，且其發明專利權仍存續者，適用修正施行後之規定。

第 155 條 本法中華民國一百年十一月二十九日修正之條文施行前，有下列情事之一，不適用第五十二條第四項、第七十條第二項、第一百二十條準用第五十二條第四項、第一百二十條準用第七十條第二項、第一百四十二條第一項準用第五十二條第四項、第一百四十二條第一項準用第七十條第二項之規定：

- 一、依修正前第五十一條第一項、第一百零一條第一項或第一百十三條第一項規定已逾繳費期限，專利權自始不存在者。
- 二、依修正前第六十六條第三款、第一百零八條準用第六十六條第三款或第一百二十九條第一項準用第六十六條第三款規定，於本法修正施行前，專利權已當然消滅者。

第 156 條 本法中華民國一百年十一月二十九日修正之條文施行前，尚未審定之新式樣專利申請案，申請人得於修正施行後三個月內，申請改為物品之部分設計專利申請案。

第 157 條 本法中華民國一百年十一月二十九日修正之條文施行前，尚未審定之聯合新式樣專利申請案，適用修正前有關聯合新式樣專利之規定。
本法中華民國一百年十一月二十九日修正之條文施行前，尚未審定之聯合新式樣專利申請案，且於原新式樣專利公告前申請者，申請人得於修正施行後三個月內申請改為衍生設計專利申請案。

第 158 條 本法施行細則，由主管機關定之。

第 159 條 本法之施行日期，由行政院定之。
本法中華民國一百零二年五月三十一日修正之條文，自公布日施行。

Thương vụ Văn phòng Kinh tế Văn hóa Việt Nam tại

PATENT ACT

Announced Date	1944.05.29
Amended Date	2014.01.22
Update Date	2014.10.24



Chapter 1 General Provisions

Article 1	Purpose This Patent Act is formulated to encourage, protect and utilize the creations of invention, utility model and design in order to promote industrial development.
Article 2	Categories of patents The term "patent" referred to in this Act is classified into the following three types: 1. invention patent; 2. utility model patent; and 3. design patent.
Article 3	Competent authority The "competent authority" referred to in this Act is the Ministry of Economic Affairs (hereinafter referred to as "the MOEA"). Patent affairs shall be administrated by a specific agency appointed by the MOEA.
Article 4	Acceptance of foreign application A patent application filed by a foreign applicant shall not be accepted if the home country of such foreign applicant is not a signatory to an international treaty for protection of patent right to which the Republic of China (ROC) is a signatory, or if the home country does not conclude with the ROC a treaty or an agreement for reciprocal protection of patent rights, or if no patent protection agreement is concluded by and between organizations or institutions of the ROC and said foreign country and approved by the respective competent authorities, or if the laws of said foreign country do not accept patent applications filed by ROC nationals.
Article 5	Right to apply for patent The term "right to apply for a patent" shall mean the right to file a patent application in accordance with this Act. Subject to provisions of this Act otherwise prescribed or the covenants otherwise set forth in an agreement, the term "the owner of the right to apply for a patent" shall mean an inventor, a utility model creator, a designer, or the assignee or

successor thereof.

Article 6

Transference and pledge of patent

The right to apply for a patent or the patent right is both assignable and inheritable.

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

In the case of taking a patent right as the subject of a pledge, the pledgee shall not be allowed to exploit the patent right, unless it is otherwise provided for in an agreement.

Article 7

Invention made in the performance of duties

Where an invention, a utility model or a design is made by an employee in the course of performing his/her duties, the right to apply for a patent and the patent right thereof shall be vested in his/her employer and the employer shall pay the employee reasonable remuneration; where there is an agreement providing otherwise, such agreement shall prevail.

The so-called "an invention, a utility model or a design made by an employee in the course of performing his/her duties" as set forth in the preceding paragraph shall mean the invention, utility model, or design completed by an employee in the course of performing his/her duties during the period of employment.

Where a fund provider appoints another party to conduct research and development, the ownership of the right to apply for a patent and the patent right in connection with the outcome of such research and development shall be vested in the party as mutually agreed upon in an agreement between both parties, or such rights shall be vested in the inventor, utility model creator or designer in the absence of such agreement. However, the fund provider shall be entitled to exploit such invention, utility model or design.

Where the ownership of the right to apply for a patent and the patent right are vested in the employer or the fund provider pursuant to Paragraph 1 or the preceding paragraph, the inventor, utility model creator or designer concerned shall be entitled to a right to have his/her name shown as such.

Article 8

Invention irrelevant to the performance of duties

Where an invention, utility model or design made by an employee has no connection to the course of performing his/her duties, the right to apply for a patent and the patent right for such invention, utility model or design shall be vested in the employee. However, if such invention, utility model or design is made through the utilization of the employer's resources or experiences, the employer may, after paying the employee a reasonable remuneration, exploit the invention, utility model or design concerned in the enterprise.

Upon completion of an invention, utility model or design which has no connection to the course of an employee's performing his/her duties, the employee shall

give the employer a written notice regarding such event, and shall also inform the employer of the creative process, if necessary.

If the employer fails to raise any objection to the employee within six (6) months after receiving the employee's written notice under the preceding paragraph, the employer shall not claim that such invention, utility model or design was made by the said employee in the course of performing his/her duties.

Article 9	Protection of employees' legitimate rights An agreement concluded between an employer and an employee as stated in the preceding article, based on which the employee is precluded from enjoying legitimate rights and interests in respect of his/her invention, utility model, or design, shall be void.
Article 10	Agreement on ownership Where an agreement has been reached by an employer and its employee regarding a dispute over attribution of right(s) as set forth in Articles 7 and 8 of this Act, the employer or employee concerned may file a request along with relevant document(s) of proof with the Specific Patent Agency for change of ownership of the right(s) involved. The Specific Patent Agency may, as it deems necessary, notify the parties involved to submit document(s) relevant to any mediation, arbitration or court judgment rendered in accordance with other laws and regulations.
Article 11	Patent agency An applicant may designate an agent to file patent applications and handle patent-related matters on his/her behalf. An applicant who has no domicile or business establishment in the territory of the ROC shall designate an agent to file patent applications and handle patent-related matters on his/her behalf. Eligible agents shall be limited to patent attorneys, unless otherwise provided for by laws and regulations. The qualification and administration of patent attorneys shall be separately prescribed by laws.
Article 12	Joint application Where a right to apply for a patent is jointly owned, the patent application related thereto shall be filed by all the joint owner(s). Where two or more persons engage in any patent-related procedure other than filing a patent application, each of them may complete such procedure independently, except for making a withdrawal or an abandonment of a patent application, filing an application for division or conversion, or taking other actions for which this Act requires joint execution. However, if a representative is

designated by a covenant, such covenant shall prevail.

In the case of an event requiring joint execution as set forth in the preceding two paragraphs, one of the joint owners shall be appointed as the recipient of service of documents. In the absence of such recipient, the Specific Patent Agency shall name the first-listed joint owner as the recipient and shall notify other (s) of such service matters.

Article 13

Joint ownership of the right to apply for patent

Where the right to apply for a patent is jointly owned, the right to apply for the patent shall not be assigned or abandoned without the consent of all joint owners.

Where the right to apply for a patent is jointly owned by two or more persons, none of the joint owners shall assign his/her own share therein to a third party without the consent of other joint owners.

Where one of the owners of the right to apply for a patent abandons his/her own share, this share shall be vested in other joint owner(s).

Article 14

Recordation to have Locus standi against a third party: transference of right to apply for patent

In the case of an inheritance or assignment of the right to apply for a patent, the successor or the assignee shall have no locus standi against any third party unless the patent application has been filed in the name of the successor or the assignee at the time of filing, or a request has been filed thereafter with the Specific Patent Agency for altering the recordation of applicant.

The request referred to in the preceding paragraph, whether for assignment or inheritance, shall be accompanied by document(s) of proof.

Article 15

Duty of confidentiality of staff members and patent examiners

While serving in the Specific Patent Agency, staff members or patent examiners shall not apply for a patent or receive any rights or interests in connection with such patent directly or indirectly, except for inheritance.

Staff members or patent examiners of the Specific Patent Agency are obligated to keep confidential any invention, utility model, or design, or the trade secrets of an applicant which have become known to or been possessed by them in the course of performing their duties; whoever violates such obligation shall bear relevant legal responsibilities.

The qualification of patent examiners shall be prescribed separately by laws.

Article 16

Avoiding conflict of interests by patent examiners

Patent examiners shall exclude themselves from any of the following circumstances:

1. where, for a concerned patent case, the patent examiner or his/her spouse is

the patent applicant, patentee, invalidation requester, patent agent, a partner of the said patent agent or a person having employment relationship with the patent agent;

2. where, for a concerned patent case, the patent examiner is presently related to the patent applicant, patentee, invalidation requester or the patent agent by consanguinity within the fourth degree or by affinity within the third degree;

3. where, for a concerned patent case, the patent examiner or his/her spouse and the patent applicant, patentee or invalidation requester are co-obligee(s), co-obligor(s), or debt-paying co-obligor(s);

4. where, for a concerned patent case, the patent examiner is or was the legal representative, the family head or a household member of the patent applicant, patentee or invalidation requester;

5. where, for a concerned patent case, the patent examiner is or was the litigation agent or the assisting party of the patent applicant, patentee or invalidation requester; or

6. where, for a concerned patent case, the patent examiner is or was a witness, an expert witness, an opposition requester or an invalidation requester.

Where a patent examiner should have but did not exclude himself/herself from performing his/her duties, the Specific Patent Agency may, upon request or on its own authority, revoke the measure(s) already taken and adopt an alternative measure instead.

Article 17

Delay and reinstatement

Unless otherwise provided in this Act, where a person filing a patent application or taking other proceedings in connection with patent-related matters has failed to comply within a statutory or specified time period, the application filed or the proceeding initiated shall be dismissed. However, if the delay of not acting within a specified time period has been remedied before the dismissal decision is served by the Specific Patent Agency, such application or proceeding shall still be accepted.

If the delay of a statutory time period is caused by natural calamity or other cause(s) not attributable to the applicant, the applicant may, within thirty (30) days after cessation of such cause, file a written request with the Specific Patent Agency stating the cause(s) for delay and requesting for reinstatement. An application for reinstatement shall not be accepted if the delay has exceeded one (1) year after expiration of the statutory time period.

While requesting for reinstatement, the applicant shall concurrently fulfill all obligations that should have been fulfilled within the concerned time period.

The preceding two paragraphs shall not apply to a delay of the time limits as set forth in Paragraph 4 of Article 29, Paragraph 4 of Article 52, Paragraph 2 of

Article 70, Paragraph 4 of Article 29 applicable mutatis mutandis under Article 120, Paragraph 4 of Article 52 applicable mutatis mutandis under Article 120; Paragraph 2 of Article 70 applicable mutatis mutandis under Article 120; Paragraph 4 of Article 29 applicable mutatis mutandis under Paragraph 1 of Article 142; Paragraph 4 of Article 52 applicable mutatis mutandis under Paragraph 1 of Article 142, and Paragraph 2 of Article 70 applicable mutatis mutandis under Paragraph 1 of Article 142.

Article 18	Service by publication Where an examination decision or any other document(s) cannot be served, such decision or document(s) shall be published in the Patent Gazette and shall be deemed to have been served thirty (30) days after publication.
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Article 19	E-filing Application for patent and other relevant proceedings may be processed electronically; the implementation of which shall be prescribed by the competent authority.
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Article 20	Calculation of time periods The duration of relevant time periods as specified in this Act shall not include the beginning date thereof. The duration of the patent right as specified respectively in Paragraph 3 of Article 52, Article 114 and Article 135 of this Act shall start to run from the filing date of the patent application concerned.
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Chapter II Invention Patent

Section 1: Patentability

Article 21	Definition of invention "Invention" means the creation of technical ideas, utilizing the laws of nature.
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Article 22	Substantial conditions An invention which is industrially applicable may be granted a patent upon application in accordance with this Act, except for the following: 1. the invention was disclosed in a printed publication prior to the filing of the patent application; 2. the invention was publicly exploited prior to the filing of the patent application; or 3. the invention was publicly known prior to the filing of the patent application. An invention that is without the circumstances prescribed in the subparagraphs of the preceding paragraph but can be easily made by a person ordinarily skilled in the art based on prior art shall not be patented . Any of the following events shall not be deemed as one of the circumstances
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prescribed in the subparagraphs of Paragraph 1 or the preceding paragraph, which may preclude the grant of an invention patent, provided that the concerned patent application is filed within six (6) months after the date of the event's occurrence:

1. the invention concerned was publicly disclosed as a result of conducting a test;
2. the invention was disclosed in a printed publication;
3. the invention was displayed at an exhibition held or recognized by the Government; or
4. the invention was disclosed without the consent of the applicant.

An applicant claiming exemption as set forth in Subparagraph 1 through Subparagraph 3 of the preceding paragraph shall state the fact and the relevant date in the patent application at the time of filing and provide document(s) of proof within the time period specified by the Specific Patent Agency.

Article 23

Deemed as lack of novelty

Where an invention claimed in a patent application for invention is identical to an invention or utility model disclosed in the description, claim(s) or drawing(s) of an earlier-filed patent application for invention or utility model which is laid open or published after the filing of the later-filed patent application, an invention patent shall not be granted; however, this shall not apply where the applicant of the later-filed patent application is also the the applicant of the earlier-filed patent application for invention or utility model.

Article 24

Statutory exclusion

An invention patent shall not be granted in respect of any of the following:

1. animals, plants, and essential biological processes for the production of animals or plants, except for processes for producing microorganisms;
2. diagnostic, therapeutic and surgical methods for the treatment of humans or animals; or
3. inventions contrary to public order or morality.

Section 2: Application

Article 25

Filing date

A patent application for invention shall be filed with the Specific Patent Agency by the owner of the right to apply for a patent who is to provide an application form, a description, claim(s), an abstract, and the necessary drawing(s).

The filing date of a patent application for invention shall be the date on which the application form, description, claim(s), and the necessary drawing(s) are provided in full.

Where an applicant does not provide a description, claim(s) and the necessary

drawing(s) in Chinese at the time of filing, but in a foreign language, and where the Chinese translation for the said documents is provided within the time period specified by the Specific Patent Agency, the filing date shall be the date on which the foreign language version is originally provided.

Where the Chinese translation is not provided within the specified time period as stated in the preceding paragraph, the patent application shall be dismissed; however, if the Chinese translation is provided before the dismissal decision is served, the date on which the Chinese translation is provided shall be regarded as the filing date, and the foreign language version shall be deemed not to have been provided.

Article 26

Disclosure

The description shall fully disclose the invention in a manner clear and sufficient for it to be understood and carried out by a person ordinarily skilled in the art. Claim(s) shall define the claimed invention, and more than one claim may be included therein. Each claim shall be disclosed in a clear and concise manner and be supported by the description.

An abstract shall clearly contain a summary of the disclosed invention; it shall not be taken into account for the purpose of determining the sufficiency of the disclosure and the patentability of the claimed invention.

The manners of disclosure for description, claim(s), abstract, and drawing(s) shall be prescribed in the Enforcement Rules of the Patent Act.

Article 27

Deposit of biological material

When filing a patent application for invention involving a biological material or utilization of a biological material, the applicant shall, no later than the filing date, make a deposit of the biological material with a domestic depository designated by the Specific Patent Agency. No deposit is required if the biological material involved can be easily obtained by a person ordinarily skilled in the art.

An applicant shall, within four (4) months after the filing date of patent application, submit to the Specific Patent Agency a certificate of deposit, indicating the depository, date of deposit and deposit number. If such document is not submitted within the specified time period, the deposit shall be deemed not to have been made.

Where priority is claimed pursuant to Article 28, the specified time period set forth in the preceding paragraph shall be within sixteen (16) months after the priority date.

In the event that, prior to filing the patent application for invention, the biological material concerned has been deposited in a foreign depository recognized by the Specific Patent Agency, and where the certificate of deposit issued by the designated domestic depository and the foreign depository has been provided

within the time period prescribed in Paragraph 2 or the preceding paragraph, the applicant is exempted from the requirement of making a deposit no later than the filing date, as set forth in Paragraph 1.

If an applicant has deposited the biological material in a depository designated by a foreign country in its territory with which the ROC recognizes the effects of deposits based on reciprocity, and if the applicant has submitted the certificate(s) of deposit issued by the said foreign depository within the time period prescribed in Paragraph 2 or Paragraph 3, the applicant is exempted from the requirement of making a deposit in the ROC.

The competent authority shall stipulate regulations on the requirements for accession, types, forms, quantities of deposits of biological materials, deposit fees, and other matters in connection with making deposits set forth in Paragraph 1.

Article 28

Priority claim under WTO membership, etc.

Where an applicant has first applied for a patent in a foreign country, which reciprocally allows ROC nationals to claim patent priority, or with any member of the World Trade Organization (WTO), the applicant may claim priority in respect of an ROC patent application for the same invention if the ROC patent application for the same invention is filed within twelve (12) months after the filing date of the said first patent application.

Where an applicant claims two or more priorities in respect of a patent application, the period referred to in the preceding paragraph shall be on the basis of the earliest priority date.

If a foreign applicant is a citizen of a non-member of the WTO and whose home country does not mutually recognize priority with the ROC, but the applicant has domicile or business establishment in any member of the WTO or in the territory of a reciprocal country, the applicant shall also be entitled to claim priority in accordance with the provisions set forth in Paragraph 1.

For a patent application filed with priority, examination on its patentability shall be based on the priority date.

Article 29

Claim of priority

An applicant claiming priority in accordance with the preceding article shall simultaneously make a declaration with respect to the following when filing a patent application:

1. the filing date of the first patent application;
2. the country or member of WTO in which the first patent application was filed; and
3. the application number of the first patent application.

Within sixteen (16) months after the earliest priority date, the applicant shall

submit a certified copy of the first patent application issued by the foreign patent authority under the preceding paragraph.

In case of a violation of Subparagraph 1 or Subparagraph 2 of Paragraph 1 or the preceding paragraph, the priority claim shall be deemed not to have been made.

Where an applicant unintentionally fails to claim priority claim at the time of filing, or where the priority claim is deemed not to have been made as prescribed in the preceding paragraph, the applicant may, within sixteen (16) months after the earliest priority date, apply for reinstatement of priority claim, pay the required fees and undertake actions set forth in Paragraphs 1 and 2.

Article 30

Priority claim based on earlier application

An applicant filing a subsequent patent application based on an earlier patent application for invention or utility model in the ROC may make a priority claim with respect to the invention or utility model disclosed in the description, claim(s) or drawing(s) submitted for the earlier patent application. This provision shall not apply under any of the following circumstances:

1. where a period of twelve (12) months has elapsed after the filing date of the earlier patent application;
2. where priority has been claimed in accordance with the provisions of Article 28 or this article in respect of the invention or utility model disclosed in the earlier patent application;
3. where the earlier patent application is a divisional patent application prescribed under Paragraph 1 of Article 34 or Paragraph 1 of Article 107, or a converted patent application prescribed under Paragraph 1 of Article 108;
4. where the earlier patent application is a patent application for invention that has been published or has been rejected finally and bindingly;
5. where the earlier patent application is a patent application for utility model that has been published or has been rejected finally and bindingly; or
6. where the earlier patent application has been withdrawn or dismissed.

The earlier patent application referred to in the preceding paragraph shall be deemed to have been withdrawn upon an expiry of fifteen (15) months after its filing date.

Priority claimed shall not be withdrawn upon an expiry of fifteen (15) months after the filing date of the earlier patent application.

In the event that a subsequent patent application filed with priority claim in accordance with Paragraph 1 is withdrawn within fifteen (15) months after the filing date of the earlier patent application, the priority claim thus made shall be deemed to have been withdrawn at the same time.

Where an applicant claims two or more priorities for a patent application, the

calculation of priority period shall be on the basis of the earliest priority date. For a patent application filed with priority, examination on its patentability shall be based on the priority date.

Where a priority claim is made in accordance with Paragraph 1, the filing date and the application number of the earlier patent application shall be declared at the time of filing. If such declaration is not made, priority claim shall be deemed not to have been made.

Article 31

First-to-file principle

Where two or more patent applications are filed for the same invention, only the earliest application can be granted. The above shall not apply if the priority date claimed for the later-filed 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, the applicants shall be notified to reach an agreement with respect to the matter concerned. If such an agreement cannot be reached, none of the applications shall be granted. If the said patent applications are filed by the same applicant, the applicant shall be notified to select one patent application within a specified time period; failure to make a selection within the time period shall result in the rejection of all such patent applications.

While the applicants concerned are in the process of reaching an agreement, the Specific Patent Agency shall require that these applicants report the results of the negotiation within an appropriate time period. If the said report is not provided within the specified time period, it shall be deemed that an agreement has not been reached.

Where a patent application for invention and a patent application for utility model are filed separately in respect of the same creation, the provisions set forth in the preceding three paragraphs shall apply mutatis mutandis, except for the circumstances stipulated in Article 32.

Article 32

One creation applied for invention patent and utility model patent

An applicant filing a patent application for invention and a patent application for utility model for the same creation on the same date shall make respective declarations in respect of the said applications. If the patent application for utility model has been granted before an approval decision on the patent application for invention is rendered, the Specific Patent Agency shall notify the applicant to make a selection within a specified time period. The patent application for invention shall not be granted if the applicant fails to make such declarations or selection within the specified time period.

Where the applicant selects the patent application for invention according to the provision set forth in the preceding paragraph, the utility model patent right shall

become extinguished on the publication date of the invention patent.
The patent application for invention shall not be granted if the utility model patent right has become extinguished or has been revoked finally and bindingly before a decision is rendered on the patent application for invention.

Article 33	Invention Patent A patent application for invention shall relate to one invention. Two or more inventions so linked as to form a single general inventive concept may be filed in one application.
Article 34	Division of application A patent application that substantially contains two or more inventions may, upon notice by the Specific Patent Agency or upon request by the applicant, be divided into two or more divisional applications. A request for division shall be filed within any of the following time periods: 1. before a reexamination decision on the original patent application is rendered; or 2. within thirty (30) days after the date on which an approval decision for the original patent application is served. However, it shall not be filed if a reexamination decision has been rendered. The filing date of the divisional patent application shall be the same as the filing date of the original application. Where the priority claim has been made, the applicant may claim priority for the divisional patent application. The divisional patent application shall not extend beyond the scope of content disclosed in the description, claim(s), or drawing(s) of the original patent application as filed. For the divisional patent application filed in accordance with Subparagraph 1 of Paragraph 2, the examination thereof shall resume the completed examination procedure of the original patent application. For the divisional patent application filed in accordance with Subparagraph 2 of Paragraph 2, the examination thereof that has been conducted before the original patent application is approved shall be resumed; the original patent application shall be published based on the claim(s) and drawing(s) as originally approved.
Article 35	Invalidation action filed by the owner of the right to apply for a patent Where an invalidation action is filed against a granted patent by the owner of the right to apply for a patent or by the joint owner(s) of the right to apply for a patent within two (2) years after the publication date of the patent concerned in accordance with Subparagraph 3, Paragraph 1 of Article 71, and where the said person or joint owner(s) newly files a patent application for the same invention within two (2) months after the day on which the invalidation decision revoking

the patent has become final and binding, the filing date of the revoked patent shall be the filing date for the newly filed patent application.

A patent application newly filed in accordance with the preceding paragraph shall not be published again.

Section 3: Examination and Reexamination

Article 36 Assignment of a patent examiner for examination

The Specific Patent Agency shall assign a patent examiner to conduct the substantive examination of a patent application for invention.

Article 37 Early publication of patent application

After receiving application documents and determining through examination that the application conforms to stipulated formality requirement and contains no elements that may be deemed unsuitable for laying open, the Specific Patent Agency shall lay open the patent application for invention eighteen (18) months since its filing.

The Specific Patent Agency may advance the laying-open of a patent application upon the request of the applicant.

A patent application for invention shall not be laid open under any of the following circumstances:

1. where it is withdrawn within fifteen (15) months after its filing date;
2. where it involves national defense secrets or any other secrets pertaining to national security; or
3. where it is contrary to public order or morality.

Where a priority is claimed, the calculation of time period set forth in Paragraph 1 and the preceding paragraph shall be on the basis of the priority date; where two or more priorities are claimed, the calculation thereof shall be on the basis of the earliest priority date.

Article 38 Request for substantive examination

A request to the Specific Patent Agency for substantive examination of a patent application for invention may be made by any person within three (3) years after the filing date of the patent application.

Where a division request is made pursuant to Paragraph 1 of Article 34 or where a patent application is converted into a patent application for invention pursuant to Paragraph 1 of Article 108, if the time period set forth in the preceding paragraph has lapsed, a request for substantive examination may be made within thirty (30) days after such request for division or conversion.

A request for substantive examination according to the preceding two paragraphs shall not be withdrawn.

Where a request for substantive examination is not filed within the time period

prescribed in Paragraph 1 or Paragraph 2, the patent application for invention shall be deemed to have been withdrawn.

Article 39	Request procedures for substantive examination A request form for substantive examination referred to in the preceding Article shall be submitted. The Specific Patent Agency shall publish the facts regarding a request for substantive examination in the Patent Gazette. Where the substantive examination is requested by a person other than the invention patent applicant, the Specific Patent Agency shall notify the invention patent applicant of such fact.
Article 40	Prioritized examination of a patent application for invention The Specific Patent Agency may upon request conduct prioritized examination of a patent application for invention if it is commercially exploited by a person other than the applicant after it is laid open. Relevant document(s) of proof shall be submitted when filing a request referred to in the preceding paragraph.
Article 41	Effect of laying open an application An invention patent applicant may, after the publication of an invention patent application, claim appropriate compensation against the exploiter who, having been given a written notice by the applicant in respect of the contents of the invention after the laying-open of the invention patent application, continues to commercially exploit the invention after receiving the notice and prior to the publication of the said application. The claim referred to in the preceding paragraph may also be made against a person who is fully aware that the patent application for invention has been laid open but continues to commercially exploit the invention prior to its publication. The right to claim compensation as provided in the preceding two paragraphs does not affect the exercise of other rights. However, where an applicant having filed a patent application for invention and a patent application for utility model pursuant to Article 32 of this Act has been granted the utility model patent, the claim against such exploiter shall only be made based either on the right to claim compensation or on the utility model patent right. The right to claim compensation as set forth in Paragraph 1 and 2 shall become extinguished if not exercised within two (2) years after the publication date of the said invention patent.
Article 42	Interview and inspection in examination of application When examining a patent application for invention, the Specific Patent Agency may, upon request or on its own initiative, notify the applicant to conduct any of

the following actions within a specified time period:

1. to appear before the Specific Patent Agency for an interview; or
2. to perform necessary experiment(s) or submit model(s) or sample(s).

The Specific Patent Agency may, when necessary, visit the site or a designated place to carry out inspection on the experiment(s) performed or model(s) or sample(s) to be submitted pursuant to Subparagraph 2 of the preceding paragraph.

Article 43

Amendment during examination; final notice

Unless otherwise stipulated in this Act, when examining a patent application for invention, the Specific Patent Agency may, upon request or on its own initiative, notify the applicant to amend the description, claim(s), or drawings within a specified time period.

Except for correction of translation errors, any amendment shall not extend beyond the scope of content disclosed in the description, claim(s), or drawing(s) as filed.

Where the Specific Patent Agency has issued a notice pursuant to Paragraph 2 of Article 46, a patent applicant shall only make amendment(s) within the specified time period in the notice.

The Specific Patent Agency may, as it deems necessary, issue a final notice after having issued a notice prescribed in the preceding paragraph. The applicant who is to amend claim(s) after a final notice has been issued shall only make the following amendments within the time period specified therein:

1. to delete claim(s);
2. to narrow down the scope of claim(s);
3. to correct errors; or
4. to clarify ambiguous statement(s).

In case of a violation of the provisions in the preceding two paragraphs, the Specific Patent Agency shall state the reasons in a written decision and render such decision accordingly.

The Specific Patent Agency may issue a final notice accordingly if the original patent application or its divisional application meets any of the following conditions:

1. where the content of the notice issued for the original patent application is same as that of the notice issued for the divisional patent application;
2. where the content of the notice issued for the divisional patent application is same as that of the notice issued for the original patent application; or
3. where the content of the notice issued for a divisional application is same as that of the notice issued for other divisional application(s).

Article 44

Foreign language documents

Where a patent applicant submits a description, claim(s), and drawing(s) prepared in a foreign language pursuant to Paragraph 3 of Article 25, such foreign language documents shall not be amended.

The Chinese translation submitted pursuant to Paragraph 3 of Article 25 shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.

Any correction of translation errors in the Chinese version as stated in the preceding paragraph shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.

Article 45	Decision of examination Upon completion of examination of a patent application for invention, a written decision shall be rendered and served on the applicant. When a patent application is determined to be unpatentable, the reason(s) shall be given in the written decision of examination. A written decision of examination shall bear the name of the patent examiner. This requirement shall also apply to written decisions for reexamination, post-grant amendment, invalidation, patent term extension and invalidation against patent term extension.
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Article 46	Grounds for decision of rejection When a patent application for invention is in violation of the provisions set forth in Articles 21 through 24, Article 26, Article 31, Paragraphs 1 and 3 of Article 32, Article 33, Paragraph 4 of Article 34, Paragraph 2 of Article 43, Paragraphs 2 and 3 of Article 44, or Paragraph 3 of Article 108, a decision of rejection shall be rendered. Before rendering a decision in accordance with the preceding paragraph, the Specific Patent Agency shall notify the applicant to file a response within a specified time period. If the applicant fails to make a response within the time period, a decision of rejection shall be rendered accordingly.
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Article 47	Publication of patented invention and application for browsing A claimed invention shall be patented if there is no reason for negating its patentability, and the claim(s) and the drawing(s) of the patent application shall be published. Any person may apply for viewing, transcribing, photographing, or photocopying the written decision of examination, description, claim(s), abstract, drawing(s), and the file wrapper in connection with a patent application which has been published, except for the information which should be kept confidential by the Specific Patent Agency in accordance with laws.
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Article 48	Reexamination
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An invention patent applicant dissatisfied with a decision of rejection may provide reason(s) to request a reexamination within two (2) months after the date on which the decision of rejection is served. If the patent application is not accepted or dismissed for formality defects or on the ground of ineligibility of the applicant, the applicant may directly file administrative remedy actions in accordance with the laws.

Article 49

Amendment during reexamination

Where a decision of rejection is rendered pursuant to Paragraph 2 of Article 46, the applicant may amend the description, claims, or drawing(s) during the reexamination stage.

Where a final notice has been issued before the decision of rejection is rendered for a patent application, any amendment made during the reexamination stage shall still be subject to limitations set forth in each subparagraph of Paragraph 4 of Article 43. The above shall not apply to reexamination, if the Specific Patent Agency finds that the final notice issued in the original examination procedure was improper.

The Specific Patent Agency may issue a final notice accordingly under any of the following circumstances:

1. where the reason(s) for reexamination still entails grounds for unpatentability;
 2. where the amendment(s) made during the reexamination stage still entails grounds for unpatentability; or
 3. where an amendment made in accordance with the preceding paragraph is in violation of the subparagraphs of Paragraph 4 of Article 43.
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Article 50

Assignment of a patent examiner for reexamination

For reexamination, the Specific Patent Agency shall assign a patent examiner who did not participate in the examination of the concerned patent application to conduct reexamination and render a written decision to be served on the applicant.

Article 51

Confidentiality of invention involving national security

Where, through examination, an invention involves national defense secrets or any other secrets pertaining to national security, the Ministry of National Defense or relevant national security authorities shall be consulted for their comments; if it is deemed necessary to keep such invention confidential, the application documents of the said patent application shall be sealed. If a request for substantive examination has been filed for the said patent application, an examination decision shall be rendered and served to the applicant and the inventor.

The applicant, patent agent and the inventor shall keep confidential the invention referred to in the preceding paragraph; the right to apply for a patent for such

invention shall be deemed to have been abandoned if there is any violation of the confidentiality requirement.

The confidentiality period shall last for one (1) year after the date on which a written decision is served on the applicant, and such period may be extended on an annual basis. The Specific Patent Agency shall consult with the Ministry of National Defense or relevant national security authorities one (1) month prior to the expiration of the confidentiality period and, if confidentiality is no longer required, such patent application shall be laid open.

Where an invention referred to in Paragraph 1 is approved and where confidentiality is deemed unnecessary for such patent application, the Specific Patent Agency shall publish the grant of the invention patent after receiving patent certificate fee and the first-year annuity paid within three (3) months by the applicant. If the said fees are not paid prior to the time period stated above, no publication shall be made.

The Government shall pay a considerable compensation for the loss suffered by the applicant during the confidentiality period.

Section 4: Patent Rights

Article 52 Payment of fees and publication

For a patent application for invention that is approved, the grant of such patent application shall be published only when the patent certificate fee and the first-year patent annuity are paid by the applicant within three (3) months after the date on which the approval decision is served; if the fees are not paid within the said time period, no publication shall be made.

A patent right granted to a patent application for invention shall start from the publication date of the patent, and a patent certificate shall be issued thereto. The term of an invention patent shall expire after a period of twenty (20) years from the filing date of the application.

Where the applicant unintentionally fails to pay the required fees within the time period set forth in Paragraph 1 or Paragraph 4 of the preceding article, the applicant should pay the patent certificate fee and two times the first-year patent annuity within six (6) months after the period has expired. After the said payment has been made, the Specific Patent Agency shall publish the patent.

Article 53 Extension of patent term

Where a regulatory approval shall be obtained in accordance with other laws and regulations for the exploitation of an invention patent involving a pharmaceutical or agrichemical, or the manufacturing process thereof, if such regulatory approval is obtained after the publication of the concerned invention patent, the patentee may apply for one and only one extension of the patent term of said invention patent based on the first regulatory approval. The said regulatory

approval is allowed to be used only once for seeking patent term extension. The extension of the patent term approved under the preceding paragraph shall not exceed the length of time when the patent cannot be exploited because of the filing of a request for the regulatory approval with the central competent authorities in charge of the business. If the time needed to obtain the said regulatory approval exceeds five (5) years, the granted patent term extension shall still be five (5) years.

The term "pharmaceutical" as set forth in Paragraph 1 does not include any veterinary drug.

When requesting for patent term extension as provided in the Paragraph 1, a request form and document(s) of proof must be submitted to the Specific Patent Agency within three (3) months after obtaining the first regulatory approval; no request for patent term extension shall be filed within six (6) months prior to the expiry of the original patent term.

When making a decision on an application for patent term extension, the Specific Patent Agency shall take into consideration the impact on public health and shall coordinate with the central competent authorities in charge of the business to formulate the regulations concerned.

Article 54	Deemed to have been extended Where a request for patent term extension is filed in accordance with the preceding article, the patent term shall be deemed to have been extended if the Specific Patent Agency has yet to render a decision before the original patent term expires. However, where such request for patent term extension is not allowed, the patent term shall expire on the original expiration date.
Article 55	Assignment of a patent examiner for extension request The Specific Patent Agency shall assign a patent examiner to examine a request for patent term extension, render a written decision and serve it on the patentee.
Article 56	Scope of patent term extension The scope of a patent, of which a term extension has been granted, shall be limited to only the effective ingredients and use stated in the regulatory approval concerned.
Article 57	Invalidation of patent term extension Any person may file an invalidation action of the granted patent term extension to the Specific Patent Agency, together with document(s) of proof, under any of the following circumstances: 1. where it is unnecessary to obtain the regulatory approval to exploit the invention patent concerned; 2. where neither the patentee nor licensee has obtained the regulatory approval;

3. where the granted term of extension exceeds the period during which the patent cannot be exploited;
4. where the requester of the patent term extension is not the patentee;
5. where the regulatory approval of extension request is not the first approval, or a request for extension based on the said regulatory approval has been made;
6. where the request for extension is based on the time spent on conducting trials or tests in a foreign country, the extended term granted by the Specific Patent Agency exceeds the period approved by the foreign patent authority; or
7. where the pharmaceuticals involved in the granted patent term extension are veterinary drugs.

If an invalidation decision revoking the patent term extension has become final and binding, the granted patent term extension shall be deemed non-existent ab initio. However, if such final and binding invalidation decision of revocation is rendered due to violation of Subparagraph 3 or Subparagraph 6 of the preceding paragraph, only the exceeding period of the extension shall be deemed non-existent.

Article 58

Effects of invention patent right

Unless otherwise provided for in this Act, the patentee of an invention patent has an exclusive right to prevent others from exploiting the invention without the patentee's consent.

Where the invention is a product, exploiting of which means the acts of making, offering for sale, selling, using, or importing that product for the aforementioned purposes.

Where the invention is a process, exploiting of which means the following acts:

1. using the process; and
2. using, offering for sale, selling or importing for these purposes the product obtained directly by that process.

The extent of the protection conferred by an invention patent shall be determined by the claim(s), and the description and drawing(s) may be considered as a reference when interpreting the claim(s).

The abstract shall not be used for the purpose of interpreting claim(s).

Article 59

Limitations of patent right

The effects of an invention patent right shall not extend to the following circumstances:

1. acts done privately and for non-commercial purpose(s);
 2. necessary acts to exploit the invention for research or experimental purpose(s);
 3. acts done by a person who has been exploiting the invention or making all the necessary preparations for doing such act in this country before the filing date of
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the invention. However, this provision shall not apply where the person has learned of the invention from the patent applicant for less than six (6) months and the patent applicant has made a statement reserving his/her right to a patent being granted;

4. a vehicle merely passing through the territory of this country, or any device of such vehicle;

5. where a patent granted to a person not the owner of the right to apply for a patent is revoked as a result of an invalidation action filed by the patentee, acts done by a licensee who has, prior to invalidation, been exploiting the invention or making all the necessary preparations to do such an act in good faith;

6. where, after the sale of a patented product made by the patentee or made under consent of the patentee, using or reselling such product. The making and selling as stated above are not limited to acts done domestically; and

7. where, after an invention patent is extinguished pursuant to Subparagraph 3, Paragraph 1 of Article 70 and before it is reinstated and published pursuant to Paragraph 2 of Article 70, acts done by a person who has been exploiting the invention or making all the necessary preparations to do such an act in good faith.

The person exploiting the invention as stated in Subparagraphs 3, 5, and 7 of the preceding paragraph, may continue such exploitation within the original business purpose(s).

A licensee as stated in Subparagraph 5 of Paragraph 1, who continues to exploit the invention after the patent is revoked, shall pay the patentee a reasonable royalty from the date of receiving a written notice from the patentee.

Article 60	Limitations of patent right: research and trials of pharmaceuticals The effects of the patent right shall not extend to research and trials, including their practical requirements, necessary for obtaining registration and market approval of drugs under the Pharmaceutical Affairs Act or obtaining market approval of pharmaceuticals from a foreign country.
Article 61	Limitations of patent right: dispensation of medicines The effects of the patent right for the invention of medicines to be manufactured by mixing two or more medicines or for the invention of a process thereof shall not extend to the preparing of medicines in accordance with a prescription from a physician, or the medicines so prepared.
Article 62	Recordation to have locus standi against a third party: transference of patent right The assigning, entrusting, licensing, or establishing of a pledge on a patent right by the patentee shall have no locus standi against any third party unless it is recorded with the Specific Patent Agency.

The license as stated in the preceding paragraph may be an exclusive license or a non-exclusive license.

An exclusive licensee shall, within the scope of the license granted, exclude the patentee and third parties from exploiting the patented invention.

Where a patentee establishes multiple pledges on the same patent for the purpose of securing multiple creditors' rights, the ranks of these pledges shall be determined according to the order of their recordation.

Article 63	Sub-licensing An exclusive licensee may sub-license a third party to exploit the licensed patent unless otherwise agreed upon by contract. A non-exclusive licensee shall not be allowed to sub-license a third party to exploit the licensed patent without the consent of the invention patentee or the exclusive licensee. The sub-licensing contract shall have no locus standi against any third party unless it is recorded with the Specific Patent Agency.
Article 64	Disposal of jointly-owned patent right Where a patent right is jointly owned, except for exploitation by each of the joint owners, it shall not be assigned, entrusted, licensed, pledged, or abandoned without the consent of all the joint owner(s).
Article 65	Disposal of one's own share of jointly-owned patent right Where a patent right is jointly owned, no joint owner may assign, entrust or establish a pledge on his/her own share without the consent of all the other joint owner(s). Where a joint owner of a patent right has abandoned his/her own share, this share shall be vested in other joint owner(s).
Article 66	Prolongation of patent term Where an invention patentee has suffered loss as a result of a war between ROC and a foreign country, the patentee may request for patent term prolongation for five (5) to ten (10) years; only one such prolongation shall be permitted. However, if the patent is owned by a national from the foreign country in war with ROC, a request therefor shall not be allowed.
Article 67	Post-grant amendment of invention patent The patentee filing a request for amending the description, claim(s) or drawing(s) of a granted invention patent shall only conduct the following: 1. to delete claim(s); 2. to narrow down the scope of claim(s); 3. to correct errors or translation errors; and 4. to clarify ambiguous statement(s).

Except for correction of translation errors, a post-grant amendment shall not extend beyond the scope of content disclosed in the description, claim(s), or drawing(s) as filed.

For a patent application for invention filed by submitting the description, claim(s), and drawing(s) in a foreign language pursuant to Paragraph 3 of Article 25, the correction of translation errors shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.

An post-grant amendment shall not substantially enlarge or alter the scope of the claim(s) as published.

Article 68	Examination of post-grant amendment The Specific Patent Agency shall designate a patent examiner to conduct examination of post-grant amendment, render a decision and serve it on the patentee, except for a post-grant amendment filed in accordance with Article 77. After approving the post-grant amendment, the Specific Patent Agency shall publish the examination decision therefor. Once a description, claim(s) and drawing(s) are amended and published, such post-grant amendment shall take effect retroactively from the filing date.
Article 69	Restriction on abandoning or amending patent right A patentee shall not abandon the patent right, or apply for a post-grant amendment as stated in Subparagraph 1 or 2, Paragraph 1 of Article 67 without the consent from the licensee(s) or pledgee(s) . Where a patent right is jointly owned, no joint owner may apply for post-grant amendment as stated in Subparagraph 1 or 2, Paragraph 1 of Article 67 without the consent from all the joint owner(s).
Article 70	Extinguishment of patent right An invention patent right shall become extinguished under any of the following circumstances: 1. where the patent term has expired, and the patent shall become extinguished; 2. where the patentee has passed away without heirs; 3. where the annuity of the second or any subsequent years is not paid within the payment time period, the patent right shall become extinguished retrospectively after the expiration of the original due date; or 4. where the patentee abandoned the patent, the patent right shall be extinguished from the date the patentee makes a declaration in writing. The patentee who unintentionally fails to pay a patent annuity within the time period for late payment set forth in Paragraph 1 of Article 94 may apply for reinstatement of the patent rights within one (1) year after the expiration of the time period of late payment by paying triple the amount originally due, whereby the Specific Patent Agency shall publish with respect to the above.

Article 71	Grounds for invalidation Any person may request for an invalidation action against an invention patent with the Specific Patent Agency under any of the following circumstances: 1. where there is a violation of Articles 21 to 24, Article 26, Article 31, Paragraphs 1 and 3 of Article 32, Paragraph 4 of Article 34, Paragraph 2 of Article 43, Paragraphs 2 and 3 of Article 44, Paragraphs 2 to 4 of Article 67, or Paragraph 3 of Article 108 of this Act; 2. where the home country of the patentee does not accept the patent applications filed by ROC nationals; or 3. where there is a violation of Paragraph 1 of Article 12, or where the invention patentee is not the owner of the right to apply for an invention patent. An invalidation action based on Subparagraph 3 of the preceding paragraph shall only be filed by the interested party. With respect to the ground(s) upon which an invalidation action is based and filed against an invention patent, the provisions in effect at the time of the said patent being approved shall govern. However, if an invalidation action is filed based on the ground(s) under Paragraph 4 of Article 34, Paragraph 2 of Article 43, Paragraphs 2 and 4 of Article 67, or Paragraph 3 of Article 108, the provisions in effect at the time of filing the said action shall govern.
Article 72	Invalidation against extinguished patent Where the interested party possesses recoverable legal interests due to the revocation of a patent, such interested party may file an invalidation action after the said patent has become extinguished ipso facto.
Article 73	Invalidation action Where an invalidation action is filed, a request form containing a statement and reason(s), along with evidence shall be provided. Where a patent contains more than one claim, an invalidation action may be filed against parts of the claims. An invalidation statement shall not be modified or added after filing, but it can be narrowed. A requester of invalidation action may provide invalidation reasons or evidence within one (1) month after the date of filing the said action; however, the reasons or evidence provided prior to rendering a decision shall still be examined.
Article 74	Invalidation proceedings Upon receipt of a request form for invalidation action stated in the preceding article, the Specific Patent Agency shall send a copy thereof to the patentee. The patentee shall provide a response within one (1) month after having been served with a copy of the request form. If the patentee fails to provide such response, the invalidation proceedings shall be conducted accordingly, unless a

request for extension containing reason(s) thereof has been approved.
The Specific Patent Agency may conduct invalidation proceedings accordingly if the reason(s) or evidence provided by the requester of invalidation action is likely to delay the proceedings or if the facts and evidence provided are sufficiently clear.

Article 75 Principle of ex officio
When conducting invalidation proceedings, the Specific Patent Agency may, by ex officio, examine the reason(s) and evidence not provided by the requester of invalidation action but within the scope of the invalidation statement, and notify the patentee to respond within a specified time period. The invalidation proceedings shall be conducted accordingly if the patentee fails to respond within the time period.

Article 76 Interview and inspection in invalidation proceedings
When conducting invalidation proceedings, the Specific Patent Agency may, upon a request or ex officio, notify the patentee to take any of the following actions within a specified time period:
1. to appear at the Specific Patent Agency for interview; or
2. to conduct necessary experiment(s) or provide model(s) or sample(s).
The Specific Patent Agency may, when necessary, visit the site or a designated place to carry out inspection on the experiment(s) performed or model(s) or sample(s) to be submitted pursuant to Subparagraph 2 of the preceding paragraph.

Article 77 Consolidated proceedings of invalidation and post-grant amendment
If, during the invalidation proceedings, a request for post-grant amendment is filed, the said proceedings and post-grant amendment shall be consolidated; the decisions concerned shall be rendered jointly as well. If the Specific Patent Agency considers the said post-grant amendment approvable, it shall send a copy of the amended description, claim(s) and/or drawing(s) to the requester of invalidation action.
Where there are two or more requests for post-grant amendment filed during the proceedings of same invalidation action, the earlier-filed request(s) for post-grant amendment shall be deemed to have been withdrawn.

Article 78 Consolidated proceedings of multiple invalidation actions
Where there are multiple invalidation actions filed against the same patent, the Specific Patent Agency, when necessary, may consolidate the invalidation proceedings of the said actions.
Where the invalidation proceedings have been consolidated pursuant to the preceding paragraph, decisions concerned may also be rendered jointly.

Article 79	Assignment of a patent examiner for invalidation When conducting invalidation proceedings, the Specific Patent Agency shall assign a patent examiner to render a decision and serve it to the patentee and the requester of invalidation action. Decision on an invalidation action shall be rendered on a claim-by-claim basis.
Article 80	Withdrawal of invalidation action An invalidation action may be withdrawn by the requester before a decision concerned has been rendered. However, if the patentee has already submitted a response, such withdrawal shall be consented by the patentee. The Specific Patent Agency shall notify the patentee of the withdrawal of an invalidation action. If the patentee raises no objection within ten (10) days after the notice has been served, it shall be deemed that the patentee has consented to such withdrawal.
Article 81	Principle of ne bis in idem Under any of the following circumstances, any person shall not be allowed to separately file an invalidation action against the same patent based on the same facts and evidence: 1. where another invalidation action has been filed based on the same facts and evidence and considered groundless by a decision; or 2. where new evidence is provided to the Intellectual Property Court pursuant to Article 33 of the Intellectual Property Case Adjudication Act and considered groundless by a judgment.
Article 82	Decision of invalidation action Where an invalidation action against an invention patent is considered well grounded, the patent right shall be revoked; such revocation may be made on a claim-by-claim basis. Revocation of an invention patent right shall become final and binding under any of the following circumstances: 1. where no administrative remedy proceedings are filed in accordance with laws; or 2. where administrative remedy proceedings are filed but dismissed finally and bindingly. Where an invention patent is revoked finally and bindingly, the effect of patent right shall be deemed not to have existed.
Article 83	Procedures to be applied mutatis mutandis to invalidation action against patent term extension With respect to an invalidation action filed against patent term extension of an invention patent pursuant to Paragraph 1 of Article 57, the provisions in this Act

with respect to invalidation actions against invention patents shall apply mutatis mutandis.

Article 84	Publication in the Patent Gazette An invention patent with respect to grant, change, extension, prolongation, assignment, trust, licensing, compulsory licensing, revocation, extinguishment, pledge establishment, invalidation decisions, as well as other matters that should be published shall be published in the Patent Gazette.
Article 85	Patent Registry The Specific Patent Agency shall maintain a Patent Registry, in which the patent grants, changes of patent rights, and all other matters required by laws shall be registered. The Patent Registry set forth in the preceding paragraph may be produced electronically and shall be made available to the public for browsing, transcribing, photographing, or photocopying.
Article 86	Publication by electronic means Matters which should be laid open and published by the Specific Patent Agency in accordance with this Act may be done electronically; the date for such implementation shall be decided by the Specific Patent Agency.

Section 5 Compulsory Licensing

Article 87	Grounds for compulsory licensing In response to national emergency or other circumstances of extreme urgency, the Specific Patent Agency shall, in accordance with an emergency order or upon notice from the central government authorities in charge of the business, grant compulsory licensing of a patent needed, and notify the patentee as soon as reasonably practicable. The Specific Patent Agency may, upon request, grant compulsory licensing of a patent under any of the following circumstances for which it is deemed necessary: 1. where a patented invention is to be exploited non-commercially for the enhancement of public interest; 2. where a later invention or utility model patent cannot be exploited without infringing upon a prior invention or utility model patent, and where the later invention or utility model patent involves an important technical advancement of considerable economic significance in relation to the prior invention or utility model patent; or 3. where a patentee has committed acts restricting competition or has committed unfair competition acts, for which a judgment has been made by a court of law or a decision has been rendered by the Fair Trade Commission of the Executive
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Request for compulsory licensing of a patent involving semiconductor technology shall be filed based on the grounds set forth in Subparagraph 1 or 3 of the preceding paragraph.

Request for compulsory licensing of a patent made pursuant to Subparagraph 1 or 2 of Paragraph 2 may only be approved if the requestor has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions, and that such efforts have not been successful within a reasonable time period.

Where a request for compulsory licensing of a patent is made pursuant to Subparagraph 2 of Paragraph 2, the owner of the prior patent may propose reasonable terms and conditions and seek grant of compulsory licensing of the later patent owned by the requestor.

Article 88

Procedure and decision of compulsory licensing

After receiving a request for compulsory licensing filed pursuant to Paragraph 2 of the preceding Article or Article 90, the Specific Patent Agency shall notify and require the patentee concerned to respond within a specified time period. If no response is made within the specified time period, the Specific Patent Agency may then proceed to the examination of the compulsory licensing request.

Exploitation of a compulsory license shall be predominantly for the supply of domestic market. The above shall not apply to the compulsory license granted pursuant to Subparagraph 3, Paragraph 2 of the preceding Article.

The decision on a request for compulsory license shall be made in writing and shall indicate the reasons, scope, duration, and the required remuneration.

Granting of compulsory licensing shall not affect the exercise of patent right by the patentee concerned.

The right(s) granted under a compulsory license shall not be assigned, entrusted, inherited, licensed or pledged except for any of the following circumstances:

1. where a compulsory license is granted pursuant to Subparagraph 1 or Subparagraph 3, Paragraph 2 of the preceding Article and is assigned, entrusted, inherited, licensed or pledged with the business involving the exploitation of the patent; or
2. where a compulsory license is granted pursuant to Subparagraph 2 of Paragraph 2 or Paragraph 5 of the preceding Article and is assigned, entrusted, inherited, licensed or pledged with the patent right of the licensee.

Article 89

Repeal of a compulsory license

Where a compulsory license granted pursuant to Paragraph 1 of Article 87 is considered no longer necessary by the central government authorities in charge

of the business, the Specific Patent Agency shall repeal the compulsory license upon a notice from the said authorities.

The Specific Patent Agency may, upon request, repeal a granted compulsory license under any of the following circumstances:

1. where the fact warranting the compulsory license has been changed and compulsory licensing is no longer necessary;
2. where the licensee fails to properly exploit the patent as required in the compulsory license ; or
3. where the licensee fails to pay the remuneration as determined by the Specific Patent Agency.

Article 90

Compulsory licensing of pharmaceuticals: grounds and procedures

For purposes of assisting countries with insufficient or no manufacturing capacities in pharmaceutical sector to obtain pharmaceutical product(s) needed for treating HIV/AIDS, tuberculosis, malaria and other epidemics, the Specific Patent Agency may, upon request, grant a compulsory license to the requestor to exploit a patent concerned for the purpose of producing and importing pharmaceutical product(s) to these countries.

Request for a compulsory license made pursuant to the preceding paragraph may only be granted if the requestor has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time; however, the above shall not apply if compulsory licensing of the required pharmaceutical product(s) has been granted in the importing country.

If the importing country concerned is a WTO member, the requestor shall, when filing a request pursuant to Paragraph 1, provide document(s) proving that the importing country has fulfilled the following:

1. the Council for Trade-related Aspects of Intellectual Property Rights has been notified of the name(s) and expected quantities of the pharmaceutical product(s) needed;
2. the Council for Trade-related Aspects of Intellectual Property Rights has been notified of its intention as an importer and has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector. However, such document(s) of proof is not required if the importing country is a least-developed country; and
3. where the required pharmaceutical product(s) is not patented in the importing country, or where the pharmaceutical product(s) is patented in its territory, the importing country has granted or is about to grant a compulsory license.

The so called "least-developed countries" mentioned in the preceding paragraph refers to countries announced by the United Nations (UN) as being

least-developed countries.

Where the importing country is not a WTO member, but a least-developed country or a country with insufficient or no manufacturing capacities in the pharmaceutical sector, the requestor shall, when filing a request for compulsory licensing pursuant to Paragraph 1, provide document(s) proving that the importing country has fulfilled the following conditions:

1. the name(s) and expected quantities of the pharmaceutical product(s) needed have been filed in writing with the foreign affairs authorities of the ROC; and
2. stating that it agrees to prevent re-exportation of the pharmaceutical product(s) needed.

Article 91	Compulsory licensing of pharmaceuticals: export and remuneration Pharmaceutical product(s) produced under compulsory licensing pursuant to the preceding Article shall be exported to the importing country entirely, and the quantity of the product authorized to be produced shall not be more than the quantity required by the importing country in its notice sent to the Council for Trade-related Aspects of Intellectual Property Rights or the foreign affairs authorities of the ROC. Pharmaceutical product(s) produced under compulsory licensing granted pursuant to the preceding Article and the external packaging thereof shall be marked with the licensing basis specified by the Specific Patent Agency; the packaging, coloring or shaping of the pharmaceutical product(s) produced under compulsory licensing shall be sufficiently distinguishable from pharmaceutical product(s) produced by the patentee or his/her licensee(s). The licensee of a compulsory license shall pay appropriate remuneration to the patentee. The amount of remuneration shall be decided by the Specific Patent Agency, taking into account the economic value of the patent of the required pharmaceutical product(s) to the importing country with reference to the human development index issued by the United Nations. Before exporting the pharmaceutical product(s) produced under a compulsory license, the licensee shall post on a website the quantities, name(s) and destination(s) of such pharmaceutical product(s), as well as distinctive features thereof. Inspection and registration of the pharmaceutical product(s) produced and exported under compulsory licensing pursuant to the preceding Article shall not be bound by Paragraph 2, Article 40ter of the Pharmaceutical Affairs Act.
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Section 6: Payment of Fees

Article 92	Fees With respect to each request for patent-related matters, the requestor shall pay fees at the time of filing.
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For a granted invention patent, the patentee shall pay a patent certificate fee and patent annuities. If extension or prolongation of patent term is allowed, patent annuities shall still be paid during the extended or prolonged patent term.

Article 93	Time period for payment of annuity The annuity for an invention patent shall be paid starting from the publication date. Payment of the first-year annuity shall be made pursuant to the provision set forth in Paragraph 1, Article 52 hereof, while the payment of the second-year annuity and the annuities thereafter shall be made before the period thereof expires. The annuity for several years may be paid at one time. Under such circumstance, if the annuity rate is adjusted upward, the patentee concerned will not be required to pay the deficit.
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Article 94	Addition of annuity If the annuity for the second or any subsequent year is not paid within the specified time period, a late payment can be made within six (6) months after the original due date with a specified percentage addition. The additional annuities based on the specified percentage addition as stated in the preceding paragraph means that the additional annuity shall be paid depending on the amount of time elapsed from the original due date. For every month that has elapsed, an additional fee at a ratio of 20% shall be paid; the maximum of the additional fee shall be the same as the amount originally due. The elapsed time from one day to one month shall be deemed as one month.
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Article 95	Reduction of annuity Where the patentee of an invention patent is a natural person, school or small and medium enterprise, the patentee may request for a reduction of patent annuity with the Specific Patent Agency.
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Section 7 Damages and Litigation Action

Article 96	Right to claim in the event of patent right infringement A patentee of an invention patent may demand a person who infringes or is likely to infringe the patent right to stop or prevent such infringement. In case an infringement of invention patent occurs due to intentional act or negligence, the patentee may claim for damages suffered therefrom. When making a demand pursuant to Paragraph 1, the patentee may request for destruction of the infringing articles or the materials or implements used in the infringing act, or request for other necessary disposal. An exclusive licensee may, within the licensed scope, make demands in accordance with the preceding three paragraphs. However, if it is otherwise provided for in an agreement, such agreement shall prevail.
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Where the inventor's right to be indicated as such is infringed, the inventor may request for necessary disposition(s) to have his/her name indicated or to restore the impaired reputation.

The rights to claim as set forth in Paragraph 2 and the preceding paragraph shall become extinguished if not exercised within two (2) years after the patentee has become aware of the damage and the person liable for damages. This right shall also become extinguished if it is not exercised within ten (10) years after the time of infringement.

Article 97

Calculation of damages

The damages claimed pursuant to the preceding article may be calculated according to any of the following methods:

1. the method as set forth in Article 216 of the Civil Code; if no method of proof can be produced to prove the damages suffered, a patentee may claim damages based on the difference between the profit earned through patent exploitation after infringement and the profit normally expected through exploitation of the same patent;
2. the profit earned by the infringer as a result of patent infringement; or
3. the amount calculated on the basis of reasonable royalties that may be collected from exploiting the invention patent being licensed.

Subject to the preceding paragraph, where the infringement is found to be intentionally committed, the court may, upon request and on the basis of the severity of the infringement, award the damages greater than the loss suffered but not exceeding three (3) times of the proven loss.

Article 97-1

Border measures: detention request, security and counter security

A patentee may request Customs to detain the imported articles that are suspected of infringing the patent right(s).

The request referred to in the preceding paragraph shall be made in writing, accompanied by the preliminary showing of the facts of infringement and a security amounting to the duty-paid price of the imported articles, as assessed by Customs, or equivalent assurance.

Customs shall immediately notify the detention requester upon acceptance of the request. Having deemed such request to be in compliance with the preceding paragraph, Customs shall notify in writing both the detention requester and the owner of the detained articles when carrying out the detention.

By providing a security amounting to two times the security or equivalent assurance referred to in Paragraph 2, the owner of the detained articles may request Customs to repeal the detention and to follow the procedures under applicable regulations governing customs clearance of imported articles.

Customs may allow the detention requester or the owner of the detained articles

to examine the detained articles, provided that confidential information protection of the detained articles is not compromised.

If the detention requester obtains a court judgment deeming that the detained articles infringe the patent right(s), the owner of the detained articles shall be liable for relevant costs including demurrage, warehousing, loading, and unloading.

Article 97-2

Border measures: repeal of detention and subsequent procedures

Customs shall repeal the detention in case of any of the following:

1. customs has not been notified by the detention requester, within twelve (12) days following the date of Customs' acceptance of the request, that a litigation claiming that the detained articles infringe the patent right(s) has been initiated in accordance with Article 96;
2. a litigation initiated by the detention requester claiming that the detained articles infringe the patent right(s) has been dismissed by a final and binding court judgment;
3. a court of law in a final and binding judgment has held that the detained articles do not infringe patent right(s);
4. the detention requester has requested the repeal of detention; or
5. the condition stated in Paragraph 4 of the preceding article has been met.

If necessary, Customs may extend the time period as prescribed in Subparagraph 1 of the preceding paragraph by another twelve (12) days.

Customs repealing the detention in accordance with Paragraph 1 shall follow the procedures under applicable regulations governing customs clearance of imported articles.

If the detention is repealed in accordance with Subparagraphs 1 through 4 of Paragraph 1, the detention requester shall be liable for relevant costs including demurrage, warehousing, loading, and unloading.

Article 97-3

Border measures: compensation and return of security

If a court of law in a final and binding judgment has held that the detained articles do not infringe the patent right(s), the detention requester shall be liable to compensate the owner of the detained articles for the loss incurred from such detention or from providing the security as prescribed in Paragraph 4 of Article 97-1.

The detention requester enjoys the same right as a pledgee regarding the security as prescribed in Paragraph 4 of Article 97-1; the owner of the detained articles enjoys the same right as a pledgee regarding the security as prescribed in Paragraph 2 of Article 97-1. Notwithstanding the foregoing, the relevant costs including demurrage, warehousing, loading, and unloading as prescribed in Paragraph 4 of the preceding article and Paragraph 6 of Article 97-1 shall be

paid prior to compensation for the loss suffered by the detention requester or the owner of the detained articles.

In case of any of the following, Customs shall, upon request from the detention requester, return the security as prescribed in Paragraph 2 of Article 97-1:

1. the security is no longer required as a final and binding court judgment has been rendered in favor of the detention requester or the detention requester has reached a settlement with the owner of the detained articles;
2. where the owner of the detained articles has suffered loss due to a repeal of detention in accordance with Subparagraphs 1 through 4, Paragraph 1 of the preceding article, or where a final and binding court judgment has been rendered in favor of the owner of the detained articles, the detention requester proves that the owner of the detained articles has been notified to exercise the right within a specified time period of no less than twenty (20) days but the owner of the detained articles has yet to do so within the said period; or
3. the owner of the detained articles has agreed upon such return.

In case of any of the following, Customs shall, upon request from the owner of the detained articles, return the security as prescribed in Paragraph 4 of Article 97-1:

1. the security is no longer required as the detention has been repealed in accordance with Subparagraphs 1 through 4, Paragraph 1 of the preceding article, or a settlement has been reached between the owner of the detained articles and the detention requester;
2. where a final and binding court judgment has been rendered in favor of the detention requester, the owner of the detained articles proves that the detention requester has been notified to exercise the right within a specified time period of no less than twenty (20) days but the detention requester has yet to do so within the said period; or
3. the detention requester has agreed upon such return.

Article 97-4

Border measures: formulation of procedural regulations

The competent authority shall, in coordination with the Ministry of Finance, formulate regulations governing the request of detention, repeal of detention, examination of detained articles, the procedures involving payment, provision, and return of security or assurance, provision of required documents, and other requirements, as prescribed in the preceding three (3) articles.

Article 98

Marking of patent certificate number

The patent certificate number shall be marked on the patented article. If such marking cannot be fixed on the patented article, the patentee may make such marking on the labels or packaging, or make such marking in a distinct way sufficient to draw people's attention. Where no patent marking is made, evidence

shall be produced when claiming damages to prove that the infringer knows or has a reason to know that the said article is under patent protection.

Article 99	Presumption of manufacturing process used Where an article produced following a manufacturing process is still unknown within and outside of this country before the filing of a patent application for the manufacturing process, another article identical thereto made by another person shall be presumed to have been produced following the said manufacturing process. The presumption made under the preceding paragraph may be rebutted by providing proof to the contrary. A proof made by the defendant that the process used in manufacturing the article at issue is different from the patented process shall be deemed as proof to the contrary. The legitimate rights and interests with respect to manufacturing and trade secrets disclosed in the defendant's evidence shall be fully protected.
Article 100	Forwarding a certified copy of judgment A court of law shall forward to the Specific Patent Agency a certified copy of the judgment issued thereby for a litigation case involving invention patent.
Article 101	Acceleration of invalidation proceedings Where an invalidation action involves the trial of an infringement litigation case, the Specific Patent Agency shall give priority to such invalidation proceedings.
Article 102	Unrecognized foreign juristic person or organization An unrecognized foreign juristic person or organization may file civil suits in respect of the matters governed by this Act.
Article 103	Patent infringement assessment A court of law may form specialized tribunal(s) or assign specific staff members to take charge of invention patent litigation cases. The Judicial Yuan may designate specialized institution(s) to conduct patent infringement assessment. A court of law in processing a litigation pertaining to an invention patent may request the specialized institution(s) designated according to the preceding paragraph to conduct patent infringement assessment.
Chapter III Utility Model Patent	
Article 104	Definition "Utility model" means the creation of technical ideas relating to the shape or structure of an article or combination of articles, utilizing the laws of nature.
Article 105	Statutory exclusion A utility model patent shall not be granted if it is contrary to public order or

morality.

Article 106

Filing date

An application for a utility model patent shall be filed with the Specific Patent Agency by the owner of right to apply for a patent by providing a request form, a description, claim(s), an abstract, and drawing(s).

The filing date of a patent application for utility model shall be the date on which the request form, description, claim(s), and drawing(s) are provided in full.

Where an applicant does not provide a description, claim(s) and drawing(s) in Chinese at the time of filing, but in a foreign language, and where the Chinese translation for the said documents is provided within the time period specified by the Specific Patent Agency, the filing date shall be the date on which the foreign language version is originally provided.

Where the Chinese translation is not provided within the specified time period as stated in the preceding paragraph, the patent application shall be dismissed; however, if the Chinese translation is provided before the dismissal decision is served, the date on which the Chinese translation is provided shall be regarded as the filing date, and the foreign language version shall be deemed not to have been provided.

Article 107

Division of application

A patent application for utility model which substantially contains two or more utility models may, upon notice by the Specific Patent Agency or upon request by the applicant, be divided into two or more divisional applications.

A request for division shall be made before a decision on the original utility model application is rendered.

Article 108

Conversion of application

Where a patent application originally filed for invention or design is converted into a patent application for utility model, or where a patent application originally filed for utility model is converted into a patent application for invention, the filing date of the original patent application shall be deemed to be the filing date of the converted patent application.

A request for patent conversion shall not be made under any of the following circumstances:

1. after a written decision allowing the original patent application is served;
2. two (2) months after the date on which a written decision rejecting the original patent application for invention or design is served; or
3. thirty (30) days after the date on which a written decision rejecting the original patent application for utility model is served.

A converted patent application shall not extend beyond the scope of content disclosed in the description, claim(s), or drawing(s) of the original patent

application as filed.

Article 109

Amending patent application

When conducting formality examination of a patent application for utility model, the Specific Patent Agency may, upon request or by ex officio, notify the applicant to amend the description, claim(s) or drawings within a specified time period.

Article 110

Foreign language documents

The description, claim(s), and drawing(s) of an application for utility model that are provided in a foreign language pursuant to Paragraph 3 of Article 106 shall not be amended.

The Chinese translation provided pursuant to Paragraph 3 of Article 106 shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.

Article 111

Decision of Formality Examination

Upon completion of the formality examination of a patent application for utility model, a written decision shall be rendered and served on the applicant.

When a patent application for utility model is determined to be unpatentable after formality examination, the reason(s) therefor shall be given in the written decision.

Article 112

Formality examination

A patent application for utility model undergoing formality examination shall be rejected under any of the following circumstances:

1. where the utility model does not relate to the shape, structure of an article or combination of articles;
2. where there is a violation of Article 105;
3. where there is a violation of Paragraph 4 of Article 26, applicable mutatis mutandis under Article 120;
4. where there is a violation of Article 33, applicable mutatis mutandis under Article 120;
5. where the description, claim(s), or drawing(s) does not disclose the essential matters or the disclosure therein is obviously unclear;
6. where an amendment obviously extends beyond the scope of content disclosed in the description, claim(s) or drawing(s) as filed.

Article 113

Grant of patent; publication

A claimed utility model shall be patented if, after formality examination, there is no event negating its patentability, and the claim(s) and the drawing(s) thereof shall be published.

Article 114

Patent term

The term of a utility model patent shall expire after a period of ten (10) years starting from the filing date.

Article 115

Request for technical evaluation report

After a patent application for utility model is published, any person may file a request with the Specific Patent Agency for a technical evaluation report of utility model patent.

The Specific Patent Agency shall publish in the Patent Gazette the request for the technical evaluation report of utility model patent.

The Specific Patent Agency shall assign a patent examiner to issue the technical evaluation report of utility model patent, and the report shall bear the name of the assigned patent examiner.

In regard of the request filed pursuant to Paragraph 1, the Specific Patent Agency shall issue the technical evaluation report of utility model patent with respect to matters set forth in Subparagraph 1, Paragraph 1, Paragraph 2 of Article 22, applicable mutatis mutandis under Article 120, Article 23, applicable mutatis mutandis under Article 120, and Article 31, applicable mutatis mutandis under Article 120.

In regard of a request for the technical evaluation report of utility model patent made pursuant to Paragraph 1, if stated therein that the utility model patent is commercially exploited by a party other than the patentee and if relevant document(s) of proof is provided, the Specific Patent Agency shall issue the technical evaluation report of utility model patent within six (6) months.

Request for a technical evaluation report of utility model patent can still be filed after the utility model patent has become extinguished.

Request filed pursuant to Paragraph 1 shall not be withdrawn.

Article 116

Presentation of technical report

When exercising a utility model patent, the patentee shall not make a warning without presenting the technical evaluation report of utility model patent.

Article 117

Liability of damages; immunity

Where a utility model patent is revoked, the patentee shall be liable for the damages suffered by another person due to the patentee's exercise of utility model patent right prior to its revocation. The above shall not apply if such exercise is based on the content of the technical evaluation report of utility model patent and carried out with due care.

Article 118

Post-grant amendment of utility model patent

With respect to examining a request for post-grant amendment, except for the situation set forth in Paragraph 1 of Article 77, applicable mutatis mutandis under Article 120, the Specific Patent Agency shall conduct formality examination of the

post-grant amendment, render a written decision and serve it on the patentee. A decision rejecting the post-grant amendment shall be rendered after formality examination under any of the following circumstances:

1. where there is an event prescribed in Subparagraphs 1 to 5 of Article 112; or
2. where the post-grant amendment obviously extends beyond the scope of content disclosed in the claim(s) or drawing(s) as published.

Article 119

Grounds for invalidation action

Any person may request for an invalidation action against a utility model patent with the Specific Patent Agency under any of the following circumstances:

1. where there is a violation of Article 104, Article 105, Paragraph 3 of Article 108, Paragraph 2 of Article 110, Article 22 applicable mutatis mutandis under Article 120, Article 23 applicable mutatis mutandis under Article 120, Article 26 applicable mutatis mutandis under Article 120, Article 31 applicable mutatis mutandis under Article 120, Paragraph 4 of Article 34 applicable mutatis mutandis under Article 120, Paragraph 2 of Article 43 applicable mutatis mutandis under Article 120, Paragraph 3 of Article 44 applicable mutatis mutandis under Article 120, Paragraphs 2 to 4 of Article 67 applicable mutatis mutandis under Article 120 of this Act;
 2. where the home country of the patentee does not accept patent applications filed by ROC nationals; or
 3. where there is a violation of Paragraph 1 of Article 12, or where the utility model patentee is not the owner of the right to apply for a utility model patent.
- An invalidation action based on Subparagraph 3 of the preceding paragraph shall only be filed by the interested party.

With respect to the ground(s) for an invalidation action against a utility model patent, the provisions in effect at the time of the said patent being approved shall govern. However, if an invalidation request is filed based on violation of the ground(s) under Paragraph 3 of Article 108, Paragraph 4 of Article 34 applicable mutatis mutandis under Article 120, Paragraph 2 of Article 43 applicable mutatis mutandis under Article 120, or Paragraph 2 and paragraph 4 of Article 67 applicable mutatis mutandis under Article 120, the provisions in effect at the time of filing the said request shall govern.

A written decision on an invalidation action shall bear the names of the patent examiners.

Article 120

Provisions applied mutatis mutandis to utility model patent

Article 22, Article 23, Article 26, Articles 28 to 31, Article 33, Paragraphs 3 and 4 of Article 34, Article 35, Paragraphs 2 and 3 of Article 43, Paragraph 3 of Article 44, Paragraph 2 of Article 46, Paragraph 2 of Article 47, Article 51, Paragraphs 1, 2 and 4 of Article 52, Paragraphs 1, 2, 4 and 5 of Article 58, Article 59, Articles

62 to 65, Article 67, Paragraphs 2 and 3 of Article 68, Article 69, Article 70, Articles 72 to 82, Articles 84 to 98, and Articles 100 to 103 shall apply mutatis mutandis to utility model patent.

Chapter IV Design Patent

Article 121 **Definition of design**
"Design" means the creation made in respect of the shape, pattern, color, or any combination thereof, of an article as a whole or in part by visual appeal. For computer generated icons (Icons) and graphic user interface (GUI) applied to an article, an application may also be filed pursuant to this Act for obtaining a design patent.

Article 122 **Substantial conditions**
A design which is industrially applicable may be granted a design patent upon application in accordance with this Act, provided any of the following does not exist:

1. an identical or similar design was disclosed in a printed publication prior to the filing of the patent application;
2. an identical or similar design was publicly exploited prior to the filing of the patent application; or
3. the design was known to the public prior to the filing of the patent application.

A design that is without the circumstances prescribed in the preceding paragraph but can be easily conceived by a person ordinarily skilled in the art based on prior art shall not be patented.

Any of the following events shall not be deemed as one of the circumstances prescribed in Paragraph 1 or the preceding paragraph, which may preclude the grant of a design patent, provided that the concerned patent application for design is filed within six (6) months after the date of the event's occurrence:

1. the design was disclosed in a printed publication;
2. the design was displayed at an exhibition held or recognized by the government; or
3. the design was disclosed without the consent of the applicant.

An applicant claiming the occurrence of the events as set forth in Subparagraphs 1 and 2 of the preceding paragraph shall state the fact and the relevant date in the patent application at the time of filing and provide document(s) of proof within the time period specified by the Specific Patent Agency.

Article 123 **Design deemed as lack of novelty**
Where a design claimed in a patent application for design is identical or similar to a design disclosed in the description or drawing(s) of an earlier-filed patent application for design which is published after the filing of the later-filed patent

application for design, the design patent shall not be granted; however, this shall not apply where the applicant of the later-filed patent application for design is also the applicant of the earlier-filed patent application for design.

Article 124

Statutory exclusion

A design patent shall not be granted in respect of any of the following:

1. the shape of an article solely dictated by its function;
 2. fine arts;
 3. the layout of integrated circuits and electronic circuits; or
 4. an article contrary to public order or morality.
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Article 125

Filing date

A patent application for design shall be filed with the Specific Patent Agency by the owner of the right to apply for a patent by providing a request form, description and drawing(s).

The filing date of a patent application for design shall be the day on which the request form, description and drawing(s) are provided in full.

Where an applicant does not provide a description and drawing(s) in Chinese at the time of filing, but in a foreign language, and where the Chinese translation for the said documents is provided within the time period specified by the Specific Patent Agency, the filing date shall be the date on which the foreign language version is originally provided.

Where the Chinese translation is not provided within the specified time period as stated in the preceding paragraph, the patent application for design shall be dismissed; however, if the Chinese translation is provided prior to the dismissal decision is served, the date on which the Chinese translation is provided shall be regarded as the filing date, and the foreign language version shall be deemed not to have been provided.

Article 126

Disclosure

The description and drawing(s) shall fully disclose the design in a manner clear and sufficient for it to be understood and carried out by a person ordinarily skilled in the art of the design.

The manners of disclosure for description and drawing(s) shall be prescribed in the Enforcement Rules of the Patent Act.

Article 127

Application and restriction of derivative design patent

For two or more similar designs owned by the same person, applications may be filed for a design patent and its derivative design patent(s).

The filing date of a patent application for derivative design shall not be earlier than the filing date of the original patent application for design.

A patent application for derivative design filed after the publication of the original

design patent is not acceptable.

An applicant shall not file a patent application for derivative design patent if the design therein is only similar to another derivative design patent but not to the original design patent.

Article 128

First-to-file principle

Where two or more patent applications are filed for the same or similar design(s), only the earlier-filed application can be granted. The above shall not apply if the priority date claimed for the later-filed application is earlier than the filing date of the earlier application.

Where the filing date and the priority date referred to in the preceding paragraph are the same, the applicants shall be notified to reach an agreement with respect to the matter concerned. If such an agreement cannot be reached, none of the applications shall be granted. If the said patent applications are filed by the same applicant, the applicant shall be notified to select one patent application within a specified time period; failure to make a selection within the time period shall result in the rejection of all such patent applications.

While the applicants concerned are in the process of reaching an agreement, the Specific Patent Agency shall require that these applicants report the results of the negotiation within an appropriate time period. If the said report is not provided within the specified time period, it shall be deemed that the agreement has not been reached.

The above three paragraphs shall not apply to any of the following:

1. the applications for the original design and its derivative design(s); or
2. the applications for two or more derivative designs that originate from the same design.

Article 129

Unity; design for a set of articles

An application for a design patent shall relate to one design.

Two or more articles belonging to the same class and are customarily sold or used together may be filed as one design.

A patent application for design shall indicate the article to which the design is applied.

Article 130

Division of application

A patent application for design that substantially contains two or more designs may, upon notice by the Specific Patent Agency or upon request by the applicant, be divided into two or more divisional applications.

A request for division shall be made before a reexamination decision on the original application is rendered.

Examination of a divisional patent application shall resume the completed procedure of the original patent application.

Article 131	Conversion between design patent and derivative design patent Where a patent application for design is converted into a patent application for derivative design or where a patent application for derivative design is converted into a patent application for design, the filing date of the original patent application shall be deemed to be the filing date of the converted patent application. A request for the conversion shall not be made under any of the following circumstances: 1. after a written decision allowing the original application is served; or 2. two (2) months from after the date on which a written decision rejecting the original application is served. A converted patent application for design or derivative design shall not extend beyond the scope of content disclosed in the description or drawing(s) of the original application as filed.
Article 132	Conversion into design patent Where an application originally filed for invention or utility model patent is converted into a patent application for design, the filing date of the original application shall be deemed to be the filing date of the converted patent application for design. A request for the conversion shall not be made under any of the following circumstances: 1. after a written decision allowing the original patent application is served; 2. two (2) months after the date on which a written decision rejecting the original patent application for invention is served; or 3. thirty (30) days after the date on which a written decision rejecting the original patent application for utility model is served. A converted patent application shall not extend beyond the scope of content disclosed in the description, claims, or drawings of the original patent application as filed.
Article 133	Foreign language documents The description and drawing(s) provided in a foreign language pursuant to Paragraph 3 of Article 125 shall not be amended. The Chinese translation provided pursuant to Paragraph 3 of Article 125 shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.
Article 134	Grounds for rejection decision When a patent application for design is in violation of any of the provisions set forth in Articles 121 to 124, Article 126, Article 127, Paragraphs 1 to 3 of Article 128, Paragraphs 1 and 2 of Article 129, Paragraph 3 of Article 131, Paragraph 3

of Article 132, Paragraph 2 of Article 133, Paragraph 4 of Article 34 applicable mutatis mutandis under Paragraph 1 of Article 142, Paragraph 2 of Article 43 applicable mutatis mutandis under Paragraph 1 of Article 142, and Paragraph 3 of Article 44 applicable mutatis mutandis under Paragraph 1 of Article 142 of this Act, a decision of rejection shall be rendered.

Article 135	Patent term The term of a design patent shall expire after a period of twelve (12) years from the filing date of the application. A derivative design patent shall expire simultaneously with the original design patent.
Article 136	Effects of design patent right Unless otherwise provided in this Act, the patentee of a design patent has the exclusive right to prevent others from exploiting the design or similar design(s) without the patentee's consent. The extent of the protection conferred by a design patent shall be determined by the drawing(s), and the description may be considered as a reference.
Article 137	Claim of derivative design patent The right of a derivative design patent may be claimed independently, and its effect shall be extended to the scope of similarity.
Article 138	Disposal of derivative design patent A derivative design patent right shall be assigned, entrusted, inherited, licensed or pledged along with its original design patent. Where the original design patent right becomes extinguished or is revoked finally and bindingly pursuant to Subparagraph 3 or 4, Paragraph 1 of Article 70 applicable mutatis mutandis under Paragraph 1 of Article 142, the two or more derivative design patents that are still in force shall not be separately assigned, entrusted, inherited, licensed, or pledged.
Article 139	Post-grant amendment of design patent The patentee filing a request for amending the description or drawing(s) of a granted design patent shall only conduct the following s: 1. to correct errors or translation errors; or 2. to clarify ambiguous statement. Except for correction of translation errors, a post-grant amendment shall not extend beyond the scope of content disclosed in the description or drawing(s) as filed. For a patent application for design filed by providing the description and drawing(s) in a foreign language pursuant to Paragraph 3 of Article 125, correction of translation errors shall not extend beyond the scope of content disclosed in the original foreign language documents as filed.

A post-grant amendment shall not substantially enlarge or alter the scope of drawing(s) as published.

Article 140 Restriction on abandoning design patent right
A design patentee shall not abandon his/her design patent right without consent from the licensee(s) or pledgee(s).

Article 141 Grounds for invalidation
Any person may request for an invalidation action against a design patent with the Specific Patent Agency under any of the following circumstances:
1. where there is a violation of any of the provisions set forth in Articles 121 to 124, Article 126, Article 127, Paragraphs 1 to 3 of Article 128, Paragraph 3 of Article 131, Paragraph 3 of Article 132, Paragraph 2 of Article 133, Paragraphs 2 to 4 of Article 139, Paragraph 4 of Article 34 applicable mutatis mutandis under Paragraph 1 of Article 142, Paragraph 2 of Article 43 applicable mutatis mutandis under Paragraph 1 of Article 142 and Paragraph 3 of Article 44 applicable mutatis mutandis under Paragraph 1 of Article 142;
2. where the home country of the patentee does not accept patent applications filed by ROC nationals; or
3. where there is a violation of Paragraph 1 of Article 12 or where the design patentee is not the owner of the right to apply for a design patent.
An invalidation action based on Subparagraph 3 of the preceding paragraph shall only be filed by the interested party.
With respect to the ground(s) of an invalidation action against a design patent, the provisions in effect at the time of the said patent being approved shall govern. However, if an invalidation action is filed based on the ground(s) under Paragraph 3 of Article 131, Paragraph 3 of Article 132, Paragraphs 2 and 4 of Article 139, Paragraph 4 of Article 34 applicable mutatis mutandis under Paragraph 1, Article 142, or Paragraph 2 of Article 43 applicable mutatis mutandis under Paragraph 1, Article 142 of this Act, such invalidation action shall be governed by the provisions in effect at the time of filing the said action.

Article 142 Provisions applied mutatis mutandis to design patent
The provisions of Article 28, Article 29, Paragraphs 3 and 4 of Article 34, Article 35, Article 36, Article 42, Paragraphs 1 to 3 of Article 43, Paragraph 3 of Article 44, Article 45, Paragraph 2 of Article 46, Article 47, Article 48, Article 50, Paragraphs 1, 2 and 4 of Article 52, Paragraph 2 of Article 58, Article 59, Articles 62 to 65, Article 68, Article 70, Article 72, Paragraphs 1, 3 and 4 of Article 73, Articles 74 to 78, Paragraph 1 of Article 79, Articles 80 to 82, Articles 84 to 86, Articles 92 to 98, and Articles 100 to 103 shall apply mutatis mutandis to design patent.
In the case of a patent application for design, the time period specified in

Paragraph 1 of Article 28 shall be six (6) months.

In the case of a patent application for design, the time period specified in Paragraphs 2 and 4 of Article 29 shall be ten (10) months.

Chapter V Supplementary Provisions

Article 143	Preservation of patent files Patent files such as application documents, description, claim(s), abstract, drawing(s) shall be kept permanently in the custody of the Specific Patent Agency. Other documents shall be kept for a period of no more than thirty (30) years. The patent files referred to in the preceding paragraph may be stored on microfilm, magnetic disc, magnetic tape, optical disc or other storage media. The files thus stored, whose record of storage has been confirmed by the Specific Patent Agency, shall be deemed to be the original files, and the original hard copy of such patent files may be destroyed. A reproduced copy of the stored patent file shall be deemed to be a true copy upon confirmation by the Specific Patent Agency. Regulations governing confirmation, administration, and use of the substitutes for stored files referred to in the preceding paragraph shall be prescribed by the competent authority.
Article 144	Prescription of regulations governing awards for creations The competent authority may prescribe the regulations governing awards for the creations of inventions, utility models, or designs.
Article 145	Prescription of regulations governing submission of foreign language documents With respect to foreign language documents provided pursuant to Paragraph 3 of Article 25, Paragraph 3 of Article 106, and Paragraph 3 of Article 125, the competent authority shall prescribe regulations governing the types of foreign languages and other matters.
Article 146	Prescription of regulations governing fees With respect to the application fee, patent certificate fee and annuity set forth in Article 92, Article 92 applicable mutatis mutandis under Article 120, and Article 92 applicable mutatis mutandis under Paragraph 1 of Article 142, the competent authority shall prescribe regulations governing the methods of collection therefor. With respect to the reduction or exemption of patent annuities as set forth in Article 95, Article 95 applicable mutatis mutandis under Article 120, and Article 95 applicable mutatis mutandis under Paragraph 1 of Article 142, the competent authority shall prescribe regulations governing the conditions, number of years, amount, and other matters therefor.
Article 147	Transitional provisions: patent term extension

A patent application filed before January 23, 1994 shall not apply for patent term extension under Article 53.

Article 148	Transitional provisions: patent term With respect to a patent that is published prior to the implementation of the January 21, 1994, amendment of this Act, the patent term thereof shall be calculated in accordance with the Patent Act in effect prior to the 1994 amendment. However, for an invention patent that is still in force on the date when the WTO Agreement took effect in the territory of the ROC, the patent term thereof shall be governed by the amended Act. For a utility model patent that is published prior to the implementation of the January 3, 2003, amendment of this Act, the patent term thereof shall be governed by the Patent Act in effect prior to the amendment. For a design patent that is still in force on the date when the WTO Agreement takes effect in the territory of the ROC, the patent term shall be governed by the May 7, 1997, amendment of the Patent Act.
Article 149	Transitional provisions: pending cases Unless otherwise provided for in the Act, for a patent application which is still pending at the time of the implementation of the November 29, 2011, amendment of this Act, the amended Patent Act shall govern. With respect to a request for post-grant amendment and invalidation action which is still pending at the time of the implementation of the November 29, 2011, amendment of this Act, the amended Patent Act shall govern.
Article 150	Transitional provisions: Priority claim based on earlier application; division With respect to a patent application for invention or utility model which is filed prior to the implementation of the November 29, 2011, amendment of this Act with priority claim made pursuant to the former Article 29, if the prior patent application has not been published or the decision of rejection has not become final and binding, Paragraph 1 of Article 30 shall apply. With respect to an examination decision regarding patent application for invention rendered prior to the implementation of the November 29, 2011, amendment to this Act, if the time period stated in Subparagraph 2, Paragraph 2 of Article 34 has not expired, Subparagraph 2, Paragraph 2 and Paragraph 6 of Article 34 shall apply.
Article 151	Transitional provisions: grace period; design patent Subparagraph 2, Paragraph 3 of Article 22, Subparagraph 2, Paragraph 3 of Article 22 applicable mutatis mutandis under Article 120, Paragraph 1 of Article 121, which pertains to partial design of articles, Paragraph 2 of Article 121, Subparagraph 1, Paragraph 3 of Article 122, Article 127, and Paragraph 2 of

Article 129 shall be applicable only to patent applications filed after the implementation of the November 29, 2011, amendment of this Act.

Article 152 Transitional provisions: deposit of biological material
In respect of a patent application for invention that violates the former Paragraph 2, Article 30 and the deposits therefor is deemed not to have been made before the implementation of the November 29, 2011, amendment, if the application is still pending at the time of the implementation, Paragraph 2 of Article 27 shall apply. For a patent application to which priority claim is made, if the time period of sixteen (16) month after the earliest priority date has not expired, Paragraph 3 of Article 27 shall apply.

Article 153 Transitional provisions: Priority claim under WTO membership, etc.
In respect of a patent application that, prior to the implementation of the November 29, 2011, amendment of this Act, violates the former Paragraph 1 of Article 28, Paragraph 1 of Article 28 applicable mutatis mutandis under Article 108, or Paragraph 1 of Article 28 applicable mutatis mutandis under Paragraph 1 of Article 129 of this Act, and therefore cannot claim priority pursuant to the former Paragraph 3 of Article 28, Paragraph 3 of Article 28 applicable mutatis mutandis under Article 108, or Paragraph 3 of Article 28 applicable mutatis mutandis under Paragraph 1 of Article 129 of this Act, in the event that the patent application is still pending at the time of the implementation, if, with respect to a patent application for invention and utility model, the period of sixteen (16) months after the earliest priority date has not expired, and if, with respect to a patent application for design, the period of ten (10) months after the earliest priority date has not expired, Paragraph 4 of Article 29, Paragraph 4 of Article 29 applicable mutatis mutandis under Article 120, and Paragraph 4 of Article 29 applicable mutatis mutandis under Paragraph 1 of Article 142 shall apply.
In respect of a patent application that, prior to the implementation of the November 29, 2011, amendment of this Act, violates the former Paragraph 2 of Article 28, Paragraph 2 of Article 28 applicable mutatis mutandis under Article 108, or Paragraph 2 of Article 28 applicable mutatis mutandis under Paragraph 1 of Article 129 of this Act, and therefore cannot claim priority pursuant to the former Paragraph 3 of Article 28, Paragraph 3 of Article 28 applicable mutatis mutandis under Article 108, or Paragraph 3 of Article 28 applicable mutatis mutandis under Paragraph 1 of Article 129 of this Act, in the event that the patent application is still pending at the time of the implementation, if, with respect to a patent application for invention and utility model, the period of the sixteen (16) months period after the earliest priority date has not expired, and if, with respect to a patent application for design, the period of ten (10) months after the earliest priority date has not expired, the provisions of Paragraph 2 of Article 29,

Paragraph 2 of Article 29 applicable mutatis mutandis under Article 120, and Paragraph 2 of Article 29 applicable mutatis mutandis under Paragraph 1 of Article 142 shall apply.

Article 154 Transitional provisions: request for patent term extension
In respect of a request for invention patent term extension that is filed prior to the implementation of the November 29, 2011, amendment of this Act, if the decision has not been issued for such a request and if the invention patent is still in force at the time of the implementation, the amended Act shall govern.

Article 155 Transitional provisions: no revival of extinguished patent right
If any of the following events exists at the time of the implementation of November 29, 2011, amendment of this Act, Paragraph 4 of Article 52, Paragraph 2 of Article 70, Paragraph 4 of Article 52 applicable mutatis mutandis under Article 120, Paragraph 2 of Article 70 applicable mutatis mutandis under Article 120, Paragraph 4 of Article 52 applicable mutatis mutandis under Paragraph 1 of Article 142, and Paragraph 2 of Article 70 applicable mutatis mutandis under Paragraph 1 of Article 142 shall not apply:

1. where, at the time of the said implementation, the time period for payment of annuity has expired and the patent concerned has become non-existent ab initio pursuant to the former Paragraph 1 of Article 51, Paragraph 1 of Article 101, or Paragraph 1 of Article 113 of this Act; or
2. where, at the time of the said implementation, a patent has become extinguished pursuant to the former Subparagraph 3 of Article 66, Subparagraph 3 of Article 66 applicable mutatis mutandis under Article 108, or Subparagraph 3 of Article 66 applicable mutatis mutandis under Paragraph 1, Article 129 of this Act.

Article 156 Transitional provisions: pending patent application for design
In respect of a patent application for design that is still pending at the time of the implementation of the November 29, 2011, amendment of this Act, the applicant may, within three (3) months after the implementation, file a request to convert it to a patent application for partial design.

Article 157 Transitional provisions: pending patent application for associated design
In respect of a patent application for associated design that is still pending at the time of the implementation of the November 29, 2011, amendment of this Act, the provisions of this Act prior to amendment with respect to associated design patent shall apply.
In respect of a patent application for associated design that is still pending at the time of the implementation of the November 29, 2011, amendment of this Act, if the patent application for associated design is filed prior to the publication of its

original patent application for design, the applicant may file a request to convert it to a patent application for derivative design within three (3) months after the implementation of the amended Act.

Article 158	Prescription of Enforcement Rules The Enforcement Rules of this Act shall be prescribed by the competent authority.
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Article 159	Date of implementation The date on which this Act takes effect shall be decided by the Executive Yuan. The May 31, 2013 amendment of this Act is to be implemented on the date of its promulgation.
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Nguồn:



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