

# English Translation<sup>1</sup> of CNIPA amendment of Patent Examination Guidelines November 2022

《专利审查指南》（2010年2月1日起施行）	《专利审查指南修改草案（再次征求意见稿）》（修订格式）
<p><b>Chapter 1 of Part I</b> <b>4.1.2 Inventor</b></p> <p>...</p> <p>The inventor may request the Patent Office not to publish his name. Where such request is made when the patent application,"(do not publish the name)" shall be indicated after the corresponding inventor filled in the item of "inventor" in the request. After the request for not publishing the inventor's name is made, if it is considered to be in conformity with the provisions, the Patent office shall not publish the name of the inventor in the Patent Gazette, the separate copy of the application for patent for invention application, the separate copy of</p>	<p><b>Chapter 1 of Part I</b> <b>4.1.2 Inventor</b></p> <p>...</p> <p>The inventor may request the Patent Office not to publish his or its name. Where such request is made,"(do not publish the name)" shall be indicated after the corresponding inventor filled in the item of "inventor" in the request. After the request for not publishing the inventor's name is made, if it is considered to be in conformity with the provisions after examination, the Patent office shall not publish the name of the inventor in the Patent Gazette, the separate copy of the patent application, the separate copy of the</p>

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**<sup>1</sup> THE USPTO IS PROVIDING THIS TRANSLATION SOLELY AS A CONVENIENCE TO THE ENGLISH-READING PUBLIC. WE HAVE ATTEMPTED TO PROVIDE AN ACCURATE ENGLISH TRANSLATION OF THE CHINESE DOCUMENT, BUT DUE TO THE NUANCES IN TRANSLATING FROM CHINESE TO ENGLISH, SLIGHT DIFFERENCES MAY EXIST. WE WILL MAKE EVERY EFFORT TO CORRECT ERRORS BROUGHT TO OUR ATTENTION.**

<p>patent for invention and the certificate of patent, and shall indicate the phrase "request not to publish the name" in the corresponding position. The inventor shall not request his name to be published afterwards. Where the request for not publishing the name of the inventor is made after the patent application is filed, a written declaration signed or sealed by the inventor shall be submitted. However, if such request is made after the patent application enters into the procedure of preparation for publication, it shall be deemed not to have been made. The examiner shall issue the <i>Notification that Request Deemed Not to Have Been Submitted</i>. A foreign inventor may use his initials in foreign language in the Chinese translation of his name. The initial of the first name shall be followed by a dot before the family name, such as M · Jones.</p>	<p>patent and the certificate of patent, and shall indicate the phrase "request not to publish the name" in the corresponding position. The inventor shall not request his or its name to be published afterwards. Where the request for not publishing the name of the inventor is made after the patent application is filed, a written declaration signed or sealed by the inventor shall be submitted. However, if such request is made after the patent application <u>is prepared</u> <del>enters into</del> for publication, it shall be deemed not to have been made. The examiner shall issue the <i>Notification that Request Deemed Not to Have Been Made</i>. A foreign inventor may use his or its initials in foreign language in the Chinese translation of his or its name. The initial of the first name shall be followed by a dot before the family name, such as M · Jones.</p>
<p><b>Chapter 1 of Part I</b>  <b>6.5 Request for Earlier Publication</b></p> <p>The request for earlier publication is applicable only to patent applications for invention.</p> <p>Where the applicant makes a request for earlier publication, the publication shall not be subject to any condition.</p> <p>Where any declaration of request for earlier publication is not in conformity with the provisions, the examiner shall issue the <i>Notification that Request Deemed Not to Have Been Made</i>; otherwise, the preparation of publication shall be started promptly after the patent application passes the preliminary examination. After the application enters the</p>	<p><b>Chapter 1 of Part I</b>  <b>6.5 Request for Earlier Publication</b></p> <p>The early publication declaration is applicable only to patent applications for invention.</p> <p>Where the applicant makes a request for early publication declaration, the publication shall not be subject to any condition.</p> <p>Where any early publication declaration is not in conformity with the provisions, the examiner shall issue the <i>Notification that Request Deemed Not to Have Been Made</i>; otherwise, the preparation of publication shall be started promptly after the patent application passes the preliminary examination. After the</p>

<p>preparation of publication, any request made by the applicant for revoking the previous request for earlier publication shall be deemed not to have been made, and the application documents shall be published in due course.</p>	<p><del>preparation of publication</del> <u>is prepared</u>, any request made by the applicant for revoking the early publication declaration shall be deemed not to have been made, and the application documents shall be published in due course.</p>
<p><b>Chapter 1 of Part I</b>  <b>6.6 Declaration of Withdrawal of Patent Application</b></p> <p>...</p> <p>Where any declaration to withdraw a patent application is submitted after the preparation of publication, the application documents shall be published or announced as scheduled, but the examination procedures shall come to an end.</p>	<p><b>Chapter 1 of Part I</b>  <b>6.6 Declaration of Withdrawal of Patent Application</b></p> <p>...</p> <p>Where any declaration to withdraw a patent application is submitted after the publication <u>is prepared</u>, the application documents shall be published or announced as scheduled, but the examination procedures shall come to an end.</p>
	<p><b>Chapter 1 of Part I</b>  <b>6.7.5 Principle of Good Faith</b></p> <p><u>For the relevant formalities that are contrary to the principle of good faith, the examiner shall issue the <i>Notification that Application Deemed Not to Have Been Filed.</i></u></p>
<p><b>Chapter 3 of Part I</b>  <b>6.1.1 Contrary to the Laws</b></p> <p>To be "contrary to the laws" refers to that the contents of a patent application for design have violated the laws formulated and promulgated by the National People's Congress or the Standing Committee thereof according to the legislative procedure.</p> <p>For example, a design of the bed sheet containing the pattern of Renminbi shall not be granted the patent right because it is contrary to the Law of the People's Republic of China on the People's Bank of China.</p>	<p><b>Chapter 3 of Part I</b>  <b>6.1.1 Contrary to the Laws</b></p> <p>To be "contrary to the laws" refers to that the contents of a patent application for design have violated the laws formulated and promulgated by the National People's Congress or the Standing Committee thereof according to the legislative procedure.</p> <p>For example, <u>in accordance with the Criminal Law of the People's Republic of China, and the Public Security Administration Punishments Law of the</u></p>

	<p><u>People's Republic of China, gambling, drug addiction and other relevant acts are prohibited, and the designs of gambling devices and drug addiction devices shall not be granted a patent right because of their violation of laws. A design of the bed sheet containing the pattern of Renminbi shall not be granted a patent right because it breaks the Law of the People's Republic of China on the People's Bank of China. A design containing the contents of the Chinese national flag and of the Chinese national emblem shall not be granted a patent right on the grounds that it breaks the Law of the People's Republic of China on the National Flag and the Law of the People's Republic of China on the National Emblem.</u></p>
<p><b>Chapter 3 of Part I</b>  <b>6.1.3 Detrimental to Public Interest</b>  To be "detrimental to public interest" refers to that the exploitation or use of the design may harm the interests of the public or society, or may affect the normal order of the state and society.</p> <p>Where the words or patterns of the design in a patent application relate to a major national political, economical or cultural event, or religious belief and consequently is detrimental to public interest, hurts the feeling of the people or the nation, propagates feudalism and superstition, or cause detrimental political impact, no patent right shall be granted to that application.</p> <p>A design containing a famous building</p>	<p><b>Chapter 3 of Part I</b>  <b>6.1.3 Detrimental to Public Interest</b>  To be "detrimental to public interest" refers to that the exploitation or use of the design may harm the interests of the public or society, or may affect the normal order of the state and society.</p> <p><u>Such a design as the words or patterns of the design in a patent application relates to the symbol or mark of a political party, a major national political event, hurts the feeling of the people or the nation, or propagates feudalism and superstition shall not be granted a patent right. If a design involves a major national economical or cultural event, or religious belief and consequently is detrimental to public interest, no patent right shall be granted to that design. hurts the feeling of the people</u></p>

<p>(e.g., the Tian'anmen Gate) or the portrait of a national leader shall not be granted the patent right.</p> <p>Any design that takes Chinese national flag or Chinese national emblem as the pattern shall not be granted the patent right.</p>	<p><del>or the nation, propagates feudalism and superstition, or cause detrimental political impact, no patent right shall be granted to that application.</del></p> <p>A design containing a famous building such as Tian'anmen <del>(e.g., the Tian'anmen Gate)</del> or the portrait of a national leader shall not be granted a patent right.</p> <p><del>Any design that takes Chinese national flag or Chinese national emblem as the pattern shall not be granted the patent right.</del></p>
<p><b>Chapter 1 of Part II</b></p> <p><b>3.1.3 Inventions-Creations Detrimental to Public Interest</b></p> <p>...</p> <p>Where a patent application has words or pictures concerning an important political event of the state or a religious belief, hurting the sentiments of the people or of an ethnic group, or advocating superstition, it shall not be granted a parent right.</p>	<p><b>Chapter 1 of Part II</b></p> <p><b>3.1.3 Inventions-Creations Detrimental to Public Interest</b></p> <p>...</p> <p><u>Such inventions and creations as the words or patterns in a patent application relates to the symbol or mark of a political party, a major national political event, hurts the feeling of the people or the nation, or propagates feudalism and superstition shall not be granted a patent right. If any invention and creation involves a major national economical or cultural event, or religious belief, hurts the feeling of the people or the nation, or propagates feudalism and superstition, and consequently is detrimental to public interest, no patent right shall be granted to that invention and creation.</u></p> <p>...</p>
<p><b>Chapter 1 of Part IV</b></p> <p><b>6.3 Publication of an Examination Decision</b></p> <p>The whole text of an examination decision made by the Patent Reexamination Board on a request for reexamination or</p>	<p><b>Chapter 1 of Part IV</b></p> <p><b>6.3 Disclosure of an Examination Decision</b></p> <p>The whole text of an examination decision <del>made by the Patent</del></p>

<p>invalidation shall be published unless where the patent application involved was not published. Where an examination decision shall be published but an action has been brought by the party concerned before the court and has been accepted. The examination decision will be published along with the judgment of the People's Court after the judgment coming into effect.</p>	<p><del>Reexamination Board</del> on a request for reexamination or invalidation shall be <u>published</u> unless the patent application involved was not made public. <del>Where an examination decision shall be published but an action has been brought by the party concerned before the court and has been accepted. The examination decision will be published along with the judgment of the People's Court after the judgment coming into effect.</del></p>
<p><b>Chapter 3 of Part IV</b>  <b>4.1 Scope of Examination</b>  In the invalidation procedure, the Patent Reexamination Board usually performs examination pursuant to the scope requested by the petitioner and only on the causes and evidence submitted by the parties concerned, and bears no obligation of a comprehensive examination on the validity of the patent.  ... </p>	<p><b>Chapter 3 of Part IV</b>  <b>4.1 Scope of Examination</b>  In the invalidation procedure, the <u>collegiate group Patent Reexamination Board</u> usually performs examination on only the scope of the request for invalidation filed by the parties concerned, the causes and evidence submitted by the parties concerned, and <u>may, when necessary, examine other obvious violations of the provisions of the Patent Law of the People's Republic of China (the "Patent Law") and the Rules for the Implementation thereof (the "Rules for the Implementation") in respect of the patent right, but bear no obligation of a comprehensive examination on the validity of the patent.</u>  ... </p>
<p><b>Chapter 5 of Part V</b>  <b>3.1.1 Filing of Secrecy Request</b>  Where the applicant believes that its or his patent application for invention or for utility model relates to the security or other vital interests of the State and is required to</p>	<p><b>Chapter 5 of Part V</b>  <b>3.1.1 Filing of a Secrecy Request</b>  Where the applicant believes that his or its patent application for invention or for utility model relates to the security or other vital interests of the State, <u>except the</u></p>

<p>be kept secret, it or he shall indicate in the request to keep the application secret when filing the patent application and shall submit the application document in the form of paper. The applicant may also request to keep the application secret before the patent application for invention entering into the phase of preparation for publication, or before the patent application for utility model entering into the phase of preparation for announcement.</p> <p>Where the applicant, before submitting the secrecy request, determines that its or his application relates to the security or other vital interests of the State and is required to be kept secret, it or he shall submit relevant documents provided by the competent departments of the State in which the level of secrecy is determined.</p>	<p><u>interests of national defense</u>, and is required to be kept secret, it or he shall <u>make</u> a secrecy request in the request when filing a patent application and shall submit the application document in the form of paper. The applicant may also submit a secrecy request before the patent application for invention <u>is prepared</u> <del>entering into</del> for publication, or before the patent application for utility model <u>is prepared</u> <del>entering into</del> for announcement of the grant.</p> <p>Where the applicant, before submitting the secrecy request, determines that his or its application relates to the security or other vital interests of the State and is required to be kept secret, he or it shall submit relevant <u>secrecy evidentiary materials</u> provided by the <u>organ or entity which is entitled to determine the secrecy level</u>.</p> <p><u>The secrecy evidentiary materials shall contain the title of the invention and creation, the name of the applicant, the level, term, cause and key points of the secrecy, the person for determining the secrecy level, the contact and its telephone of such organ or entity, the confidential mailing address of the applicant, and the date of secrecy level determination. These materials shall also be affixed with the official seal of such organ or entity.</u></p>
<p><b>Chapter 8 of Part V</b>  <b>1.2.1.1 Publication of Patent Application for Invention</b>  Where a patent application for invention</p>	<p><b>Chapter 8 of Part V</b>  <b>1.2.1.1 Publication of Patent Application for Invention</b>  Where a patent application for</p>

is found to have met the requirements after the preliminary examination, the preparation for the publication of the application shall begin at the expiration of fifteen months from the date of filing (the priority date where priority is claimed), and the application shall be published at the expiration of eighteen months from the date mentioned above. Where an applicant requests his application to be published on an earlier date, before it is found to pass the preliminary examination, such preparation shall start from the date on which the application is found in conformity with the requirements after the preliminary examination, or where an applicant requests his application to be published on an earlier date after it is found to pass the preliminary examination, such preparation shall start from the date on which the statement is found in conformity with the requirements, and the application shall be published in time. At the expiration of fifteen months from the date of filing (date of priority if with right of priority), if it is found that, for various reasons, a patent application for invention is not in conformity with the requirements of the preliminary examination, the publication of the application shall be put off. For any patent application for invention which is rejected, or deemed to have been withdrawn, or withdrawn by the applicant on his own initiative before preparation of publication, or treated as a secret application in the procedures of preliminary examination, no publication shall be made to it.

The contents of publication for a patent

invention is found to have met the requirements after the preliminary examination, ~~the preparation for the publication of the application shall begin at the expiration of fifteen months, and~~ the application shall be published on the date following 18 months from the application date (the priority date where priority is claimed). The preparation time of printing the patent application document for publication, as prescribed in Article 41 of the Rules for the Implementation, is generally one month prior to 18 months, as prescribed in Article 34 of the Patent Law.

Where an applicant requests his or its application to be published on an earlier date, before it is found to pass the preliminary examination, such preparation shall start from the date on which the application is found in conformity with the requirements after the preliminary examination, or where an applicant requests his or its application to be published on an earlier date after it is found to pass the preliminary examination, such preparation shall start from the date on which the request for the early publication is found in conformity with the requirements. ~~and the application shall be published in time. At the expiration of fifteen months from the date of filing (date of priority if with right of priority), if it is found that, for various reasons, a patent application for invention is not in conformity with the requirements of the preliminary examination, the publication of the application shall be put off.~~

For any patent application for invention



<p>application for invention shall include the bibliographic data, the abstract and the drawing accompanying the abstract. Where there is no drawing in the description, there can be no drawing accompanying the abstract. The bibliographic data shall mainly include the symbol of International Patent Classification, application number, publication number (publishing number), date of publication, date of filing, matters concerning the right of priority, matters concerning the applicant, matters concerning the inventor, matters concerning the patent agency and the title of the invention, etc.</p>	<p>which is rejected, or deemed to have been withdrawn, or withdrawn by the applicant on his or its own initiative before preparation of publication, or treated as a secret application in the procedures of preliminary examination, no publication shall be made to it.</p> <p>The contents of publication for a patent application for invention shall include the bibliographic data, the abstract and the drawing accompanying the abstract. Where there is no drawing in the description, there can be no drawing accompanying the abstract. The bibliographic data shall mainly include the symbol of International Patent Classification, application number, publication number (publishing number), date of publication, date of filing, priority matters, matters concerning the applicant, matters concerning the inventor, matters concerning the patent agency and the title of the invention, etc.</p>
<p><b>Chapter 10 of Part V</b>  <b>1. Introduction</b></p> <p>According to Article 61 .2, where any infringement dispute relates to a patent for utility model or design, the People’s Court or the patent administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent made by the State Intellectual Property Office (herein afters IPo).</p> <p>At the request of the patentee or the interested party, SIPO shall conduct search on the relevant utility model patent or design patent, analyzing and evaluating whether the patent is in conformity with the granting</p>	<p><b>Chapter 10 of Part V</b>  <b>1. Introduction</b></p> <p>According to Article <del>61</del>6.2 of the Patent Law, where any infringement dispute relates to a patent for utility model or design, the People’s Court or the administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent rights made by the China National Intellectual Property Administration (hereinafter CNIPA). <u>The patentee, the interested party or the accused infringer may also actively provide an evaluation report of patent rights.</u></p>

<p>conditions provided in the Patent Law and its Implementing Regulations, and make an evaluation report of patent.</p> <p>An evaluation report of patent is an evidence for the People’s Court or the administrative authority for patent affairs to judge and deal with disputes over patent infringement. It is mainly used to determine whether it is necessary to suspend relevant procedures. An evaluation report of patent is not an administrative decision, so the patentee or the interested party can not apply for administrative reconsideration or institute administrative litigation in that regard.</p>	<p>According to the request <del>of the patentee or the interested party</del>, CNIPA shall conduct search on the relevant utility model patent or design patent, analyze and evaluate whether the patent is in conformity with the granting conditions provided in the Patent Law and the Rules for the Implementation thereof, and make an evaluation report of patent rights.</p> <p>An evaluation report of patent rights is an evidence for the People’s Court or the administrative authority for patent affairs to judge and deal with disputes over patent infringement. It is mainly used to determine whether it is necessary to suspend relevant procedures. An evaluation report of patent rights is not an administrative decision, so the <u>petitioner</u> <del>patentee or the interested party</del> cannot apply for administrative reconsideration or institute administrative litigation in that regard.</p> <p><u>Where the patent right of a utility model or design is used to perform the transfer, the pledging registration and the recordation of the license contract for patent exploitation, CNIPA may, when necessary, require the submission of an evaluation report of patent rights.</u></p>
<p><b>2.1 The Object of a Request for Evaluation Report of Patent</b></p> <p>The object of the request for an evaluation report of patent shall be the granted utility model patent or design patent, including those terminated or renounced. In the following circumstances, the request for an evaluation report of patent shall be</p>	<p><b><u>2.1 The Subject and Timing of a Request for Evaluation Report of Patent Rights</u></b></p> <p><u>After the decision on granting a patent right to a utility mode or design is announced, the patentee, the interested party or the accused infringer may request CNIPA to make an evaluation report of</u></p>

deemed not to have been made:

(1) where the request is made on the utility model or design patent application that has not been granted;

(2) where the request is made on the utility model or design patent which has been declared invalid in whole by the Patent Reexamination Board: or

(3) where SIPO has made an evaluation report of patent on the requested utility model patent or the design patent.

### **2.2 Eligibility as a Petitioner for Evaluation Report of Patent**

According to Rule 56.1, the patentee or the interested party may request SIPO to make an evaluation report of patent.

Wherein, the interested party refers to the person who, according to Article 60, has the right to file a lawsuit before the People's Court or requests the administrative authority for patent affairs to handle the matter. For example, the licensee of exclusive patent license contract and the licensee of common patent license contract who has been authorized right of action by the patentee.

Where the petitioner is not the patentee or the interested party, the request for an evaluation report of patent shall be deemed not to have been made. Where the utility model or design patent is owned by several patentees, the petitioner may be some of the patentees.

### **2.3 Request for Evaluation Report of Patent**

When making a request for an evaluation report of patent, the petitioner shall submit a request for an evaluation report of patent and other relevant documents.

(1) The request for an evaluation report of

patent rights. When the applicant deals with the registration formalities of the patent right, he or it may also request CNIPA to make such report.

Where the utility model or design patent is owned by several patentees, the requester may be some of the patentees.

The interested party refers to the person who, according to Article 65 of the Patent Law, has the right to file a lawsuit before the People's Court or requests the patent administrative department to handle a patent infringement dispute, for example, the licensee of the exclusive license contract for patent exploitation and the licensee of the simple license contract for patent exploitation that is granted the right of action by the patentee.

Where the aforesaid provisions are not met, the request for an evaluation report for patent shall be deemed not to have been made.

### **2.4 The Object of a Request for Evaluation Report of Patent Rights**

The object of the request for an evaluation report of patent rights shall be the granted utility model patent or design patent, including those terminated or renounced. In the following circumstances, the request for an evaluation report of patent rights shall be deemed not to have been made:

(1) where the utility model or design patent application has not been granted, unless the applicant submits request for an evaluation report of patent rights when

patent shall use the forms prescribed by SIPO. The patent number, the title of the invention -creation, the name of the petitioner and/or the patentee of the utility model or design patent shall be indicated in the request. Each request shall be limited to one utility model or design patent.

(2) The text upon which the evaluation report of patent will be made shall be stated in the request. The text shall be the published text of the utility model or design patent, or the text of utility model or design patent maintained valid in part by effective examination decision on request for invalidation. Where the text referred to by a request for an evaluation report of patent is the text maintained valid in part by effective examination decision on request for invalidation, the petitioner shall indicate the number of relevant examination decision on request for invalidation.

(3) where the petitioner is the interested party, relevant certification documents shall be submitted together with request for an evaluation report of patent. For example, where the petitioner is the licensee of exclusive patent license contract, the exclusive patent license contract signed with the patentee or its copy shall be submitted: where the petitioner is the licensee of common patent license contract authorized right of action by the patentee, the common patent license contract signed with the patentee or its copy and the certification of the authorization of right of action by the patentee shall be submitted. Where the above-mentioned patent license contract has been submitted to SIPO for record, the petitioner may not submit it, but shall

dealing with the registration formalities;

(2) where the request is made on the utility model or design patent which has been declared invalid in whole by the ~~Patent Reexamination Board~~; or

(3) where CNIPA has made an evaluation report of patent rights on the requested utility model patent or the design patent.

### ~~2.2 Eligibility as a Petitioner for Evaluation Report of Patent~~

~~According to Rule 56.1, the patentee or the interested party may request CNIPA to make an evaluation report of patent.~~

~~Wherein, the interested party refers to the person who, according to Article 60, has the right to file a lawsuit before the People's Court or requests the administrative authority for patent affairs to handle the matter. For example, the licensee of exclusive patent license contract and the licensee of common patent license contract who has been authorized right of action by the patentee.~~

~~Where the petitioner is not the patentee or the interested party, the request for an evaluation report of patent shall be deemed not to have been made. Where the utility model or design patent is owned by several patentees, the petitioner may be some of the patentees.~~

### **2.3 Request for an Evaluation Report of Patent Rights**

When making a request for an evaluation report of patent rights, the petitioner shall submit a request for an evaluation report of patent rights and other

indicate that in the request.

Where the request for an evaluation report of patent is not in conformity with the above provisions, SIPO shall notify the petitioner to make rectification within a specified time limit.

relevant documents.

(1) The request for an evaluation report of patent rights shall use the forms prescribed by CNIPA. The application number or patent number, the title of the invention-creation, the name of the applicant or the patentee or the petitioner and/or the patentee of the utility model or design patent shall be indicated in the request. Each request shall be limited to one utility model or design patent.

~~(2) The text upon which the evaluation report of patent will be made shall be stated in the request. The text shall be the published text of the utility model or design patent, or the text of utility model or design patent maintained valid in part by effective examination decision on request for invalidation. Where the text referred to by a request for an evaluation report of patent is the text maintained valid in part by effective examination decision on request for invalidation, the petitioner shall indicate the number of relevant examination decision on request for invalidation.~~

~~(3)~~ Where the petitioner is the interested party, relevant certification documents shall be submitted together with request for an evaluation report of patent rights. For example, where the petitioner is the licensee of the exclusive patent license contract for patent exploitation, the exclusive license contract for patent exploitation signed with the patentee or its copy shall be submitted: where the petitioner is the licensee of the simple license contract for patent exploitation that is granted the right of action by the

	<p>patentee, the simple patent license contract signed with the patentee or its copy and the certification of the authorization of right of action by the patentee shall be submitted. Where the above-mentioned license contract has been submitted to CNIPA for record, the petitioner may not submit it, but shall indicate that in the request.</p> <p><u>(3) Where the petitioner is the accused infringer, the petitioner shall submit relevant documentary evidence along with the request for an evaluation report of patent rights, for example, the notification to docket a case or a copy thereof issued by the people’s court or by the patent administrative law enforcement department, or docketing documents or copies thereof issued by the mediation and arbitration body.</u></p> <p><u>Where an entity or individual that has received a lawyer’s letter from the patentee or a complaint notification from the e-commerce platform is the accused infringer, such entity or individual shall submit relevant documentary evidence along with the request of an evaluation of patent, for example, the lawyer’s letter or a copy thereof given by the patentee, the complaint notification or a copy thereof from the e-commerce platform.</u></p> <p>Where the request for an evaluation report of patent rights is not in conformity with the above provisions, CNIPA shall notify the petitioner to make rectification within a specified time limit.</p>
<p><b>Chapter 11 of Part V Provisions on</b></p>	<p><b><u>Chapter 11 of Part V Patent Open</u></b></p>

<p><b>Electronic Application</b></p>	<p><b><u>License</u></b></p> <p><b><u>1. Introduction</u></b></p> <p><u>This chapter is formulated in accordance with the provisions of Articles 50 and 51 of the Patent Law and Articles 85-88 of the Rules for the Implementation,</u></p> <p><u>Pursuant to the provisions of Articles 50 and 51 of the Patent Law, where a patentee voluntarily files a written declaration to CNIPA, indicating its willingness to permit any entity or individual to exploit his or its patent and specifying the royalty payment methods and rates, CNIPA shall make an announcement and implement an open license. An entity or individual intending to exploit a patent under an open license shall obtain the patent exploitation license immediately after notifying the patentee in writing and paying the royalty according to the royalty payment methods and rates announced.</u></p> <p><u>A patentee filing a license open declaration shall declare that it permits any entity or individual to exploit the patentee’s patent under an open license in the territory of China.</u></p> <p><u>CNIPA shall issue the notification of whether to permit an announcement after examining whether the open license declaration filed by the patentee is in conformity with the relevant provisions.</u></p> <p><u>This chapter sets out some provisions on the filing and withdrawal of a patent open license declaration, the registration and announcement of a patent open license,</u></p>
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	<p><u>the validity and recordation of an open license contract for patent exploitation, the performance of the fee reduction formalities during the patent exploitation under an open license, and the performance of the legal formalities concerning the patent exploitation under an open license.</u></p>
	<p><b><u>2. Principles of Open License</u></b></p> <p><u>The patent open license system is established in order to promote the implementation and use of patented technologies, announce the patent open license information through CNIPA, and assist the matchmaking of patented technologies between supply and demand parties. The procedures for the patent open license shall follow the following principles.</u></p> <p><u>(1) Principle of Voluntariness</u></p> <p><u>Under the precondition for compliance with the relevant provisions, the party concerned may establish the license conditions in the open license declaration on the basis of the principle of voluntariness.</u></p> <p><u>(2) Principle of Legitimacy</u></p> <p><u>To protect open license transactions, CNIPA announces that the patent right under an open license shall be effective.</u></p> <p><u>Where any patent right under an open license involves any circumstance as prescribed in Article 86.1 of the Rules for the Implementation, the patentee shall withdraw his or its open license declaration in time, and notify the licensee of this matter.</u></p>



	<p><u>(3) Principle of Openness</u></p> <p><u>After a patent open license declaration is announced, CNIPA may make public the contents of the open license declaration through consultation or copying or otherwise.</u></p>
	<p><b><u>3. Filing of a Patent Open License Declaration</u></b></p> <p><u>The patentee intending to implement an open license patent shall file a patent open license declaration to CNIPA. The said declaration shall, in principle, be submitted electronically. Where the patentee finds it indeed difficult to use this submission method, he or it may personally submit the relevant documents in the designated location or send them to the location.</u></p> <p><b><u>3.1 Object of a Patent Open License Declaration</u></b></p> <p><u>The object of a patent open license declaration shall be such a patent for invention, a utility model patent or a design patent as granted and announced.</u></p> <p><u>Under any of the following circumstances, the patentee shall not implement an open license on his or its patent right:</u></p> <p><u>(1) where the patent right is within the effective term of an exclusive or sole license;</u></p> <p><u>(2) where the relevant procedures are terminated due to any dispute over the ownership of the patent right or because the People’s Court has ruled that some preservation measures for the patent right are taken;</u></p>

	<p><u>(3) where no annuities are paid according to the relevant provision;</u></p> <p><u>(4) where the patent right is mortgaged without consent of the mortgagee;</u></p> <p><u>(5) where the patent right has terminated;</u></p> <p><u>(6) where the patent right has been announced invalid in whole;</u></p> <p><u>(7) where the utility model patent or the design patent is not issued by CNIPA an evaluation report of patent rights;</u></p> <p><u>(8) where, according to the conclusion of the evaluation report of patent rights, the patent rights of the utility model or design is not in conformity with the conditions for granting a patent right; and</u></p> <p><u>(9) Other circumstances which hinder the effective implementation of the patent right.</u></p>
	<p><b><u>3.2 Eligibility as a Petitioner</u></b></p> <p><u>In accordance with the provision of Article 85.1 of the Rules for the Implementation, a patentee may file an open license declaration to CNIPA. Where any joint owner files an open license declaration on the joint patent right, a written consent from all joint owners shall be obtained.</u></p> <p><b><u>3.3 Patent Open License Declaration</u></b></p> <p><u>In accordance with the prescribed format, a petitioner shall submit his or its patent open license declaration and other required materials. The material contents submitted by the petitioner shall be true, accurate and clear, and shall meet the</u></p>

provisions of national laws, and the requirements of social morality and public interests. Additionally, they shall not contain any commercial advertising slogan.

A patent open license declaration shall indicate the following items:

(1) the patent number;

(2) the name or title of the patentee;

(3) the royalty payment methods and rates of the patent;

(4) the patent license term;

(5) the contact information of the patentee;

(6) the patentee's commitment to compliance with the conditions for an open license declaration; and

(7) Other items to be defined.

A patentee shall submit a brief explanation of the basis for and method of calculating the royalty, which generally contains not more than 2,000 words. The patent royalty shall be based on the brief explanation. If the royalty is paid according to a fixed rate, the royalty shall generally not exceed 20 million yuan. For the royalty of more than 20 million yuan, the patentee may implement a license with a method other than that of open license, as prescribed in Article 50 of the Patent Law. Where the royalty is paid by deducting a percentage from sales, the percentage from net sales shall not generally exceed 20%, and the percentage from profits not exceed 40%.

A patent open license declaration shall

	<p><u>be signed or sealed by the patentee concerned. Where a patent right is owned by multiple patentees together, the patent open license declaration shall be signed or sealed by their representative, and be attached with such a written consent declaration on the open license as signed or sealed by the joint patentees. Where a patent agency needs to be entrusted, the patent open license declaration shall be sealed by the patent agency, and be attached with such a written consent declaration on the open license as signed or sealed by all the patentees.</u></p>
	<p><b><u>3.4 Approved Announcement and Unapproved Announcement</u></b></p> <p><u>(1) Where a patent open license declaration is found to meet the provisions after examination, it shall be announced by CNIPA .</u></p> <p><u>(2) Where, after examination, a patent open license declaration is found not to meet the provisions of Article 85 of the Rules for the Implementation or following the circumstances as set out by Article 86 of the Rules for the Implementation, it shall not be announced by CNIPA .</u></p> <p><u>(3) Where a patentee makes an open license declaration by providing false materials, concealing facts or using other means, such declaration shall be canceled by CNIPA once the above condition is found.</u></p> <p><b><u>3. 5 Execution of a Patent Open</u></b></p>

	<p><b><u>License Declaration</u></b></p> <p><u>A patent open license declaration shall come into effect as of the date of announcement.</u></p>
	<p><b><u>4. Withdrawal of a Patent Open License Declaration</u></b></p> <p><u>A patentee may, on the basis of the provision of Article 86 of the Rules for the Implementation or other good reasons, withdraw his or its open license declaration. Where any joint owner intends to withdraw its open license declaration on the joint patent right, a written consent from all the joint owners shall be obtained. To withdraw his or its open license declaration, a patentee shall make a request for the withdrawal of the open license declaration. The request in question shall be signed or sealed by the patentee. Where a patent right is owned by multiple patentees, such request may be signed or sealed by their representative, and be attached with such a written consent declaration on the withdrawal of the open license as signed or sealed by the joint patentees. Where a patent agency needs to be entrusted, a request for the withdrawal of the open license declaration shall be sealed by the patent agency, and be attached with such a written consent declaration on the withdrawal of the open license as signed or sealed by all the patentees. The withdrawal of any open license declaration shall not be subject to any condition.</u></p> <p><u>Where a request for the withdrawal of an open license declaration is found to meet the relevant provisions after</u></p>

	<p><u>examination, CNIPA shall approve and announce the withdrawal of such open license declaration; otherwise, CNIPA shall reject such announcement, and explain the reason to the relevant petitioner.</u></p> <p><u>The withdrawal of an open license declaration shall come into effect as of the date of announcement.</u></p> <p><u>If a patentee should withdraw his or its patent open license declaration but does not do so in time, CNIPA shall terminate or cancel the patent open license declaration, and announce this matter.</u></p>
	<p><b><u>5. Registration and Announcement of a Patent Open License</u></b></p> <p><u>Items on a patent open license declaration shall be registered in the Patent Register and announced in the Patent Gazette.</u></p> <p><u>The items published in a patent open license declaration shall include: the main classification symbol, the patent number, the open license declaration number, the patentee, the title of the invention, the application date, the date of announcement for grant, the payment method and rate of the patent royalty, the patent license term, the contact information of the patentee, the effective date of the open license declaration.</u></p> <p><u>The items published in the withdrawal of a patent open license declaration shall include: the main classification symbol, the patent number, the open license declaration number, the patentee, the title of the</u></p>

	<p><u>invention, the withdrawal date of the open license declaration.</u></p>
	<p><b><u>6. Execution of an Open license Contract for Patent Exploitation</u></b></p> <p><u>Where any entity or individual notifies a patentee in writing of willingness to exploit the patentee’s patent under an open license, and pays the royalty according to the announcement, the open license contract for patent exploitation shall come into effect, unless otherwise specified in the relevant laws and administrative regulations.</u></p> <p><u>Where an entity or individual in the territory of China implements a patent open license, the relevant provisions of the Regulations on Technology Import and Export Administration of the People’s Republic of China and the Measures for the Administration of Registration of Technology Import and Export Contracts of the People’s Republic of China shall be complied with when a foreign person, a foreign enterprise or any other foreign organization intends to do so.</u></p> <p><u>Where an entity or individual in the territory of China implements a patent open license, the aforesaid provisions shall be used for reference when an individual, an enterprise or any other organization in Chinese Hong Kong, Macao or Taiwan region intends to do so.</u></p>
	<p><b><u>7. Recordation of an Open License Contract for Patent Exploitation</u></b></p> <p><u>Any party of the licensor and the</u></p>

licensee may, after the execution of the open license contract for patent exploitation, deal with the recordation formalities at CNIPA by virtue of a written document that can prove that the open license is reached.

In handling the recordation of the open license contract for patent exploitation, the party shall submit the following documents:

(1) the recordation application form of the license contract for patent exploitation, as signed or sealed by the petitioner;

(2) the written notice to the patentee given by the licensee;

(3) the voucher proving that the licensee has paid the royalty to the patentee (or that the patentee has received the royalty);

(4) the identification paper of the petitioner;

(5) the letter of attorney indicating the entrusted authority where an agency is entrusted;

(6) the identification paper of the operator; and

(7) Other materials to be provided.

The recordation formalities of the open license contract for patent exploitation shall be performed by reference to the Measures for the Recordation of License Contracts for Patent Exploitation.



	<p style="text-align: center;"><b><u>8. Performance of the Fee Reduction Formalities during the Implementation of a Patent Open License</u></b></p> <p><u>The period of the implementation of a patent open license refers to the period from the effective date of the open license contract for patent exploitation to the expiration of the patent license term.</u></p> <p><u>That the petitioner performs the recordation of the open license contract for patent exploitation shall be deemed that the patentee makes a request for the reduced payment of patent annuities at the same time. Where an open license contract for patent exploitation is allowed to be put on file, the patentee may, during the implementation of a patent open license, be entitled to the reduced payment of unexpired patent annuities from the date of recordation according to the provisions. Where the patentee withdraws his or its open license declaration, he or it shall, from the following patent year, not be entitled to the reduced payment of patent annuities which is due to an open license. Where the patentee meets two conditions for the reduced payment of patent annuities at the same time, the patentee shall be reduced his or its payment of patent annuities according to the condition of a higher proportion of reduced payment.</u></p> <p><u>If, upon negotiation about the royalty, such patentee as have implemented an open license and the licensee sign a common license contract, this case shall be deemed to be unrelated to an open license.</u></p>
	<p style="text-align: center;"><b><u>9. Performance of the Formalities of</u></b></p>

**the Patent under an Implemented Open License**

Prior to the performance of the following formalities of the patent under an implemented open license, the patentee shall withdraw his or its open license declaration:

(1) where a request for the change of the bibliographic data is made due to the transfer of the patent right; and

(2) where the patentee declares in writing that he or it has waived the patent right.

Where, except for the transfer of the patent right, the patentee changes due to other reasons, and continues to implement an open license, he or it shall perform the formalities of the withdrawal of the original open license declaration and the re-declaration in time, and if the changed patentee does not implement any open license any more, she or it shall deal with the formalities of the withdrawal of the original open license declaration without delay.

Where the patentee mortgages his or its patent right with an implemented open license, he or it shall, when registering the mortgage of the patent right, provide a written declaration that the mortgagee agrees to continue the implementation of the patent open license.