專利法中英文對照

民國 99 年 08 月 25 日修正

Patent Act

(2003.02.06 Amended)

本表中英條文資料來源：法務部全國法規資料庫 http://mojlaw.moj.gov.tw/

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注意一：本表內容如與各法規主管機關之公布文字有所不同，以各主管機關公布為準

注意二：英譯文部分，全國法規資料庫有若干缺漏或錯誤之處，本表不擔保其正確性

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第一章 總則 Chapter I General Provisions

第 1 條 **Article 1**

為鼓勵、保護、利用發明與創作，以促進產業發展，特制定本法。

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

第 2 條 **Article 2**

本法所稱專利，分為下列三種：

一、發明專利。
二、新型專利。
三、新式樣專利。

The term "patent" referred to in this Act is classified into the following three categories:
1. Invention patents;
2. Utility model patents; and
3. Design patents.

第 3 條 **Article 3**

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。

The government authority in charge of patent affairs (hereinafter referred to as the "Competent Authority") under this Act shall be the Ministry of Economic Affairs (the "MOEA").
The patent affairs shall be handled by a sole authority (hereinafter referred to as the "Patent Authority") to be appointed by the MOEA..

第 4 條 **Article 4**

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。

A patent application filed by a foreign applicant may be rejected if the home country of such foreign applicant is not a signatory of an international treaty for protection of patent right to which the Republic of China (hereinafter referred to as the "ROC") is also a signatory, or if the home country has not concluded with the ROC a treaty or an agreement for reciprocal protection of patent rights, or if no patent protection agreement has ever been concluded by and between the organizations or institutions of the ROC and said foreign country, as approved by the Competent Authority, or if the acts of said foreign country do not accept patent applications filed by nationals of the ROC.

第 5 條 **Article 5**

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、創作人或其受讓人或繼承人。

The term "right to apply for patent" shall mean the right to file a patent application in accordance with the provisions of this act.
Subject to the provisions otherwise provided for in this Act or the covenants otherwise set out in any agreement, the term "the owner of the right to apply for patent" shall mean any inventor, creator or his/her assignee or successor.

第 6 條 **Article 6**

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。

The right to apply for patent and the patent right are both assignable and inheritable.
The right to apply for patent shall not be taken as the subject for creation of a pledge.

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。

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

第 7 條

受雇人於職務上所完成之發明、新型或新式樣，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、新型或新式樣，指受雇人於僱傭關係中之工作所完成之發明、新型或新式樣。

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，屬於發明人或創作人。但出資人得實施其發明、新型或新式樣。

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，發明人或創作人享有姓名表示權。

Article 7

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

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

Where a fund-provider engages another party to conduct research and development, the ownership of the right to apply for patent and the patent right in connection with the outcome of such research and development shall be vested in the party as named by a covenant in the agreement between the two parties concerned, or shall be vested in the inventor or creator in the absence of such a covenant in the agreement provided, however, that the fund-provider shall be entitled to put such invention, utility model or design into practice.

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

第 8 條

受雇人於非職務上所完成之發明、新型或新式樣，其專利申請權及專利權屬於受雇人。但其發明、新型或新式樣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、新型或新式樣。

受雇人完成非職務上之發明、新型或新式樣，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、新型或新式樣為職務上發明、新型或新式樣。

Article 8

Where an invention, a utility model or a design made by an employee is irrelevant to his/her job duties, the right to apply for patent and the patent right concerned shall be vested in the employee provided, however, that if such invention, utility model or design is made through utilization of the employer's resources or experience, the employer may, after having paid the employee a reasonable remuneration, put the same invention or utility model or design into practice in the enterprise concerned.

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

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

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、新型或新式樣之權益者，無效。

Article 9

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

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。

Article 10

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

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；法律未制定前，代理人資格之取得、撤銷、廢止及其管理規則,由主管機關定之。

Article 11

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

A patent applicant who has no residence or business office in the territory of the ROC shall designate an agent to act on his/her behalf to file patent applications and handle patent-related matters.

An agent shall be limited to a certified patent attorney, unless otherwise provided for in the acts and regulations.

Qualification and administration of certified patent attorneys shall be prescribed in a separate act. Before enactment of that separate act, the rules for acquisition, canceling and revocation of qualification certificate and the administration of certified patent attorneys should be prescribed by the competent authority.

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。

Article 12

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

Where two or more persons proceed to any patent-related procedure(s) other than filing a patent application, each of them may complete such procedure(s) independently, except for filing an application for withdrawing or abandoning a patent application, or for dividing a patent right or converting a patent application, or for filing any application otherwise required in this Act which shall be executed and filed by all joint-owners provided, however, that if a representative is designated by a mutual covenant of all joint-owners, such covenant shall prevail.

In the case of an application requiring execution of all joint-owners as set forth in the preceding two Paragraphs, one of the joint-owners

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。

shall be appointed as the recipient of service of the documents. In the absence of such a representative, the patent authority shall name the first applicant indicated in the list of joint-applicants as the recipient of service and shall advise all other joint-owners of such matters of service.

第 13 條

專利申請權為共有時，各共有人未得其他共有人之同意，不得以其應有部分讓與他人。

Article 13

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

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。

Article 14

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

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

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。

Article 15

No staff and patent examiner, while serving in the Patent Authority, may apply for a patent or receive any rights and interests in connection with a patent directly or indirectly, except in the capacity of a successor thereto.

第 16 條

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、新型或新式樣，或申請人事業上之秘密，有保密之義務。

Article 16

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

第 17 條

凡申請人為有關專利之申請及其他程序，延誤法定或指定之期間或不依限納費者，應不受理。但延誤指定期間或不依限納費在處分前補正者，仍應受理。

申請人因天災或不可歸責於己之事由延誤法定期間者，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。但延誤法定期間已

Article 17

When a person filing a patent application or going through any other procedures in connection with patent matters has delayed beyond any statutory or given time limit, or has defaulted in payment of any fees prior to the deadline fixed therefor, the application filed or the other procedures instituted by him/her shall be dismissed, unless his/her delay to act within the given time limit or his/her failure in payment by the deadline has been corrected before an administrative decision is rendered by the Patent Authority.

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

逾一年者，不在此限。

except in the case where one (1) year has elapsed after expiration of the statutory time limit.

申請回復原狀，應同時補行期間內應為之行為。

While applying for reinstatement of the interrupted case, the applicant shall concurrently fulfill his/her obligations that should have been fulfilled by him/her within the statutory time limit.

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，自刊登公報之日起滿三十日，視為已送達。

Article 18

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

第 19 條

有關專利之申請及其他程序，得以電子方式為之；其實施日期及辦法，由主管機關定之。

Article 19

Procedures for patent application and other relevant operations may be effected by means of electronic operations; the commencement date of and the regulations governing such practices shall be prescribed by the competent authority.

第 20 條

本法有關期間之計算，其始日不計算在內。

第五十一條第三項、第一百零一條第三項及第一百十三條第三項規定之專利權期限，自申請日當日起算。

Article 20

The duration of any relevant period as specified in this Act shall not include the beginning or the commencement date thereof.

The duration of the patent rights as specified respectively in Paragraph Three, Article 51; Paragraph three, Article 101; and Paragraph Three, Article 113 of this Act shall commence from the date of application of the patent concerned.

第二章 發明專利

Chapter II Invention Patent

第一節 專利要件

Section 1: Patentability of inventions

第 21 條

發明，指利用自然法則之技術思想之創作。

Article 21

The term "invention" as used herein refers to any creation of technical concepts by utilizing the rules of nature.

第 22 條

凡可供產業上利用之發明，無下列情事之一者，得依本法申請取得發明專利：

一、申請前已見於刊物或已公開使用者。

二、申請前已為公眾所知悉者。

發明有下列情事之一，致有前項各款情事，並於其事實發生之日起六個月內申請者，不受前項各款規定之限制：

Article 22

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

1. Which, prior to applying for patent, has been published or put to public use; or

2. Which, prior to applying for patent, has become known to the public.

Where an invention is under either of the circumstances set forth in the preceding Paragraph due to any of the following causes, and a patent application has been filed within six months from the date of occurrence of fact of the foregoing causes, such invention shall be free from the restrictive conditions set forth in the preceding

Paragraph:

一、因研究、實驗者。

1. Where the invention is created as a result of research or experiment;

二、因陳列於政府主辦或認可之展覽會者。

2. Where the invention has been exhibited at an exhibition sponsored or approved by the government; or

三、非出於申請人本意而洩漏者。

3. Where the invention has been disclosed in an occasion not intended by the patent applicant.

申請人主張前項第一款、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。

An applicant claiming the application of the cause set forth in Item 1 or Item 2 of the preceding Paragraph shall indicate the facts and the relevant dates in his/her application and submit evidential documents within the time limit specified by the Patent Authority.

發明雖無第一項所列情事，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，仍不得依本法申請取得發明專利。

Notwithstanding the absence of the conditions set forth in Paragraph One of this Article, if the proposed invention can be easily accomplished by a person having ordinarily knowledge in the art based on prior art before the application for patent is filed, no invention patent should be granted for such invention under this act.

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。

Article 23

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

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、人體或動物疾病之診斷、治療或外科手術方法。

三、妨害公共秩序、善良風俗或衛生者。

Article 24

The following items shall not be granted an invention patent:

1. Animals, plants, and essentially biological processes for production of animals or plants, except the processes for producing microorganisms;

2. Diagnostic, therapeutic or surgical operation methods for the treatment of humans or animals;

3. An invention which is contrary to public order, morality or public health.

第二節 申請

Section 2: Application

第 25 條

申請發明專利，由專利申請權人備具申請書、說明書及必要圖式，向專利專責機關申請之。

申請權人為雇用人、受讓人或繼承人時，應敘明發明人姓名，並附具僱傭、受讓或繼承證明文件。

Article 25

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

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

申請發明專利，以申請書、說明書及必要圖式齊備之日為申請日。
前項說明書及必要圖式以外文本提出，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；未於指定期間內補正者，申請案不予受理。但在處分前補正者，以補正之日為申請日。

The filing date of the invention patent application shall be the day which the application, the specification and necessary drawings are fully submitted .
Where the specification and all necessary drawings submitted under the preceding Paragraph are written in a foreign language, and the Chinese translation thereof has been supplemented prior to date specified by the Patent Authority, the date on which the foreign language version of such documents are submitted shall be regarded as the filing date of such patent application. Failure to submit the Chinese translation thereof by or on the specified date shall cause the patent application to be dismissed provided, however, that if the Chinese translation has been supplemented prior to the execution of the dismissal, the date on which the Chinese translation is submitted shall be regarded as the filing date.

第 26 條

前條之說明書，應載明發明名稱、發明說明、摘要及申請專利範圍。
發明說明應明確且充分揭露，使該發明所屬技術領域中具有通常知識者，能瞭解其內容，並可據以實施。
申請專利範圍應明確記載申請專利之發明，各請求項應以簡潔之方式記載，且必須為發明說明及圖式所支持。
發明說明、申請專利範圍及圖式之揭露方式，於本法施行細則定之。

Article 26

The specification referred to in the preceding Article shall contain the title of invention, description of invention, abstract of invention, and scope of claims.
The description of invention shall contain a sufficiently clear and complete disclosure of contents of the invention so as to enable person skilled in the art to understand the contents of and to practice said invention.
The scope of claims shall indicate distinctly the invention for which the patent is claimed. Each claim shall be written in a concise manner and must be supported by the descriptions and drawings of the invention.
The manner for disclosing the description, the claims and the drawings of an invention shall be prescribed in the implementing Regulations of the Patent Act.

第 27 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起十二個月內，向中華民國申請專利者，得主張優先權。

依前項規定，申請人於一申請案中主張二項以上優先權時，其優先權期間之起算日為最早之優先權日之次日。
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我國無相互承認優先權者，若於世界貿易組織會員或互惠國領域內，設有住所或營業所者，

Article 27

A patent applicant, who has filed his/her first patent application legally in respect of an invention in a member of the World Trade Organization (hereinafter referred to as the "WTO") or in a foreign country which allows ROC nationals to claim priority based on reciprocity and has filed his/her patent application for the same invention in the ROC within twelve (12) months from the filing date of his/her first patent application in said foreign country, may claim a priority for his/her ROC application.
Subject to the provisions of the preceding Paragraph, in case an applicant claims for two or more priority rights in a single patent application, the beginning date for calculation the priority period shall be the day following the earliest priority date.
If the foreign applicant is a citizen of a non-member country of the WTO and his/her home country does not maintain a relation for mutual recognition of priority rights with the ROC but the applicant has a residence or business office in a member country of the WTO or in the territory of a reciprocal country, the applicant shall also be

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。

entitled to claim priority in accordance with the provisions set forth in Paragraph One of this Article.
For a patent application claiming priority, the priority date shall be used as the reference date in the examination of the patent requirements.

第 27 條 (99 年修正)

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起十二個月內，向中華民國申請專利者,得主張優先權。
依前項規定，申請人於一申請案中主張二項以上優先權時，其優先權期間之起算日為最早之優先權日之次日。
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我國無相互承認優先權者，若於世界貿易組織會員或互惠國領域內，設有住所或營業所者，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 28 條

依前條規定主張優先權者，應於申請專利同時提出聲明，並於申請書中載明第一次申請之申請日及受理該申請之國家或世界貿易組織會員。
申請人應於申請日起四個月內，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。
違反前二項之規定者，喪失優先權。

Article 28

An applicant claiming priority in accordance with the preceding Article shall, when applying for patent, simultaneously file a statement and declare in the written application the filing date and the application number of the corresponding foreign application as well as the foreign country in which the same application was filed.
The applicant shall, within four (4) months from the filing date, submit the documents issued by the government of the foreign country declared in the preceding Paragraph evidencing the acceptance of said foreign application.
Violation of the provisions set forth in the preceding two Paragraphs shall cause the deprivation of the priority right.

第 28 條 (99 年修正)

依前條規定主張優先權者，應於申請專利同時提出聲明，並於申請書中載明第一次申請之申請日及受理該申請之國家或世界貿易組織會員。
申請人應於申請日起四個月內，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。
違反前二項之規定者，喪失優先權。

第 29 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或圖式所載之發明或創作，主張優先權。但有下列情事之一者，不得主張之：
一、自先申請案申請日起已逾十二個月者。
二、先申請案中所記載之發明或創作已經依第二十七條或本條規定主張優先權者。
三、先申請案係第三十三條第一項規定之分割案或依第一百零二條之改請案。
四、先申請案已經審定或處分者。
前項先申請案自其申請日起滿十五個月，視為撤回。

先申請案申請日起十五個月後，不得撤回優先權主張。

依第一項主張優先權之後申請案，於先申請案申請日起十五個月內撤回者，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，其優先權期間之起算日為最早之優先權日之次日。
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，應於申請專利同時提出聲明，並於申請書中載明先申請案之申請日及申請案號數，申請人未於申請時提出聲明，或未載明先申請案之申請日及申請案號數者，喪失優先權。
依本條主張之優先權日，不得早於中華民國九十年十月二十六日。

Article 29

Where an applicant files a further application based on a prior invention application or utility model application filed by himself/herself in the ROC, he/she may claim for the priority right in respect of the invention or creation described in the specification or drawings submitted along with his/her prior patent application, except under the following circumstances:
1. Where a period of twelve (12) months has elapsed from the filing date of the prior patent application;
2. Where a claim for priority right has been made in accordance with the provisions of Article 27 or this Article in respect of the invention or creation described in the prior patent application;
3. Where the prior patent application has been divided into a divisional application in accordance with the provisions of Paragraph One, Article 33, or has been converted in accordance with the provisions of Article 102;
4. Where the examination decision has been made in respect of the prior patent application.
The prior patent application referred to in the preceding Paragraph shall be deemed having been withdrawn after 15 months from its filing date.
A priority claim in respect of a prior patent application may not be withdrawn after 15 months from the filing date of the prior application.
Where a later application filed with priority claim in accordance with Paragraph One of this Article is withdrawn within fifteen (15) months from the filing date of the prior application, the priority claim shall be deemed withdrawn at the same time.
Where an applicant claims two or more priority rights in a single application, the beginning date for calculation of the priority period shall be the day following the first priority date.

For a patent application claiming priority, the priority date shall be used as the reference date during the patentability examination .
A statement for claiming priority in accordance with Paragraph One under this Article shall be filed concurrently while filing a patent application, and the filing date and the application number of such prior patent application shall be indicated in the application. Failure of the applicant to file the statement or to indicate the filing date and the application number of the prior patent application shall cause the deprivation of priority .
The claimed priority date under this Article shall not be earlier than October 26, 2001.

第 30 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，並於申請書上載明寄存機構、寄存日期及寄存號碼。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。

申請人應於申請日起三個月內檢送寄存證明文件，屆期未檢送者，視為未寄存。

申請前如已於專利專責機關認可之國外寄存機構寄存，而於申請時聲明其事實，並於前項規定之期限內，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。

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。

Article 30

In applying for an invention patent involving any biological material or the utilization of any biological material, the applicant shall, no later than the filing date, deposit the biological material at a local deposit institute designated by the Patent Authority and shall indicate in the application the name of the deposit institute, and the date and the serial number of such deposit provided, however, that the deposit is not required if the biological material involved can be easily obtained by ordinarily skilled person in the relevant art to the biological material.

The applicant shall, within three (3) months from the filing date of the application, submit to the Patent Authority the document(s) evidencing the deposit. If such evidentiary documents are not submitted before the foregoing period , the deposit shall be deemed not having been effected.

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

Regulations governing the accepting conditions, the categories, the types, and the quantity of such biological materials to be deposited, the rates of the deposit fees, and other matters in connection with the depositing operation shall be prescribed by the Competent Authority.

第 31 條

同一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。

Article 31

When two or more applications are filed for the same invention, only the application filed first may be granted an invention patent, except in the case where the priority date claimed by the later application is earlier than the filing date of the earlier application.

If the filing date and the priority date referred to in the preceding Paragraph are the same date, the applicants shall be requested to reach a compromise between themselves.

If such compromise cannot be reached, none of the applicants shall be granted an invention patent. In case the applications are filed by the same applicant, the applicant shall be requested, by a notice, to select one of such applications for filing within a given time limit; and failure of the applicant to select within the time limit shall cause the dismissal of all such applications.

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

negotiation results within the time limit shall be deemed a failure of negotiation.

同一發明或創作分別申請發明專利及新型專利者，準用前三項規定。

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

第 32 條 **Article 32**

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。

An application for a patent for invention shall be limited to one invention.

Two or more inventions belonging to a single general inventive concept may be filed as one application.

第 33 條 **Article 33**

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。

前項分割申請應於原申請案再審查審定前為之；准予分割者，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，並應就原申請案已完成之程序續行審查。

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

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

第 34 條 **Article 34**

發明為非專利申請權人請准專利，經專利申請權人於該專利案公告之日起二年內申請舉發，並於舉發撤銷確定之日起六十日內申請者，以非專利申請權人之申請日為專利申請權人之申請日。

When an invention patent is granted upon application filed by a person other than the person entitled to file such application, the filing date of the application filed by the person not entitled to file the application shall be taken as the filing date of the application filed by the person entitled to file the application, if the person entitled to file the patent application files an invalidation action against the patent application filed by the person not entitled to file the application within two (2) years from the publication date of the patent application in question, and files his/her own patent application within sixty (60) days from the day the invalidation decision becomes irrevocable.

發明專利申請權人依前項規定申請之案件，不再公告。

No publication will be given in respect of the application filed in accordance with the provisions set forth in the preceding Paragraph by the person entitled to file the invention patent application.

第三節 審查及再審查 **Section 3: Examination and Re-examination**

第 35 條 **Article 35**

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

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

審查人員審查之。
專利審查人員之資格，以法律定之。

The qualification of patent examiners shall be prescribed by a separate act.

第 36 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，自申請日起十八個月後，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者，不予公開：
一、自申請日起十五個月內撤回者。
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，如有主張優先權者，其起算日為優先權日之次日；主張二項以上優先權時，其起算日為最早之優先權日之次日。

Article 36

After receipt of the documents of an invention patent application, if the Patent Authority considers, through examination, that nothing is contrary to the formality requirements and should not be laid-open, the Patent Authority shall have such application laid-open after a period of eighteen (18) months from the filing date of such patent application.
The Patent Authority may advance the laying-open of a patent application at the request of the applicant.
Under any of the following circumstances, an invention patent application shall not be laid-open:
1. Where the patent application has been withdrawn within fifteen (15) months from the filing date of said application;
2. Where the contents of the invention involve the national defense secret or any other secret pertaining to national security; or
3. Where the contents of the invention are detrimental to morality or public health.
The period set forth in Paragraph One and the preceding Paragraph of this Article, if any priority is claimed, is calculated from the day following the priority date, or following the earliest priority date if two or more priority are claimed.

第 37 條

自發明專利申請日起三年內，任何人均得向專利專責機關申請實體審查。
依第三十三條第一項規定申請分割，或依第一百零二條規定改請為發明專利，逾前項期間者，得於申請分割或改請之日起三十日內，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。

Article 37

Any person may, within three (3) years from the filing date of an invention patent application, apply to the Patent Authority for a substantive examination.
If the divisional application under Paragraph One, Article 33 is filed, or an invention patent application is converted under Article 102, after the time frame set forth in the preceding Paragraph, the application for substantive examination may be filed within thirty (30) days from the filing date of the divisional applications or the filing date of the conversion application.
No substantive examination application filed under the preceding two Paragraphs may be withdrawn.
If substantive examination is not applied within the period specified in Paragraph One or Paragraph Two of this Article, the invention patent application shall be deemed withdrawn.

第 38 條

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

Article 38

When applying for substantive examination under the preceding Article, a application shall be submitted.
The Patent Authority shall post the fact of an application for substantive examination in the Patent Gazette.
Where the substantive examination application is filed by a person

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。
有關生物材料或利用生物材料之發明專利申請人，申請審查時，應檢送寄存機構出具之存活證明；如發明專利申請人以外之人申請審查時，專利專責機關應通知發明專利申請人於三個月內檢送存活證明。

other than the applicant of the invention patent application concerned, the Patent Authority shall inform the applicant of said invention patent application of such fact.
Where a substantive examination application is filed by the applicant of an invention patent application pertaining to a biological material or a method for utilizing any biological material, a certificate of viability issued by the deposit institution concerned shall be submitted along with the application; whereas, if such substantive examination application is filed by a person other than the applicant of the invention patent application, the Patent Authority shall notify the applicant of the invention patent application to submit such a certificate of viability within three (3) months.

第 39 條

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。

Article 39

After an invention patent application is laid-open, if any person other than the applicant of the invention patent application puts such invention to practice for commercial purposes, the Patent Authority may effect the examination on a priority basis upon application.
For filing the application under the preceding Paragraph, relevant evidential documents shall be submitted along with the application.

第 40 條

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。
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。

Article 40

Where a person has received a written notification of the contents of an invention patent application from the applicant thereof after laying-open of such patent application and continues to put the invention to practice for commercial purpose in the interim after such notification and prior to the publication, the applicant of the invention patent application may, after the publication of his/her invention patent application, make a claim against said person for an appropriate pecuniary compensation.
The claim referred to in the preceding Paragraph may also be made against a person who knows that an invention patent application has been laid-open but still continues to put the invention to practice for commercial purpose prior to the publication of the application.
The right to claim provided for in the preceding two Paragraphs shall have no prejudice to the exercise of any other rights.
The right to claim for pecuniary compensation set forth in Paragraph One and Paragraph Two of this Article shall become extinguished if not exercised within two years from the date of publication of said invention patent application.

第 41 條

前五條規定，於中華民國九十一年十月二十六日起提出之發明專利申請案，始適用之。

Article 41

The provisions of the preceding five Articles shall be applicable only to the invention patent applications filed on or after October 26, 2002.

第 42 條

專利審查人員有下列情事之一

Article 42

Under any of the following circumstances, a patent examiner shall

者，應自行迴避：
一、本人或其配偶，為該專利案申請人、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。

exclude from exercising his/her own initiative:
1. Where the patent examiner or his/her spouse is the patent applicant, or the patent attorney, or a partner of the patent attorney or a person having an employment relation with the patent attorney of the applicant of the patent to be examined;
2. Where the patent examiner is presently related to the patent applicant or the patent attorney of the patent application to be examined by consanguinity within the fourth degree or by affinity within the third degree;
3. Where the patent examiner or his/her spouse has the relation with the patent applicant as a joint obligee, joint obligor or debt-paying obligor in respect of the patent application to be examined;
4. Where the examiner is or was the statutory representative, the head or a member of the family of the applicant of the patent application to be examined;
5. Where the examiner is or was an attorney ad litem or assistant in litigation of the applicant of the patent application to be examined; or
6. Where the examiner is or was a witness, or an expert witness, or an opposition petitioner, or an invalidation petitioner of the present patent application.
Where an examiner should but did not withdraw from exercising his/her function, the Patent Authority may, ex officio or at request, revoke the measure he/she took and take another appropriate measure instead.

第 43 條

申請案經審查後，應作成審定書送達申請人或其代理人。

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、舉發審查及專利權延長審查之審定書，亦同。

Article 43

Upon completion of examination of a patent application, a written decision shall be rendered and issued to the applicant or his/her patent attorney.
When a patent application is found not patentable, the reasons therefor shall be given in the written decision of examination.
A written decision of examination shall bear the name of the patent examiner(s). This requirement shall also apply to any written decision of re-examination, opposition action, invalidation action and patent-term extension.

第 44 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、第三十條第一項、第二項、第三十一條、第三十二條或第四十九條第四項規定者，應為不予專利之審定。

Article 44

Any invention patent application which is found to be contrary to the provisions set out in Articles 21 through 24; Article 26; Paragraph One, or Paragraph Two, Article 30; Article 31; Article 32; or Paragraph Four, Article 49 of this Act shall not be patented.

第 45 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

Article 45

Where the examination result reveals no reason to deny the patentability of an invention, such invention shall be patented, and the claims and the drawings disclosed in that patent application shall

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、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。

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

第 46 條

發明專利申請人對於不予專利之審定有不服者，得於審定書送達之日起六十日內備具理由書，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。
經再審查認為有不予專利之情事時，在審定前應先通知申請人，限期申復。

Article 46

In case of dissatisfaction with a rejection decision rendered for an invention patent application, the applicant may, within sixty (60) days from the date the rejection decision is served, apply for re-examination by submitting a statement of reasons. If the application is rejected on procedural grounds or on the ground of the ineligibility of the applicant, the applicant may directly appeal for an administrative remedy in accordance with the act.
If there is any reason to deny the patentability of an invention patent through the re-examination procedure, the Patent Authority shall, before rendering a re-examination decision, send to the applicant a notice requesting that a response be made within a specified time limit.

第 47 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。

前項再審查之審定書，應送達申請人。

Article 47

For re-examination, the Patent Authority shall designate an examiner who has not participated in the examination of the original patent application to conduct the re-examination and render a written decision.
The written re-examination decision shall be served to the applicant.

第 48 條

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，專利專責機關必要時，得至現場或指定地點實施勘驗。

Article 48

When examining an invention patent application, the Patent Authority may, ex officio or at a request, notify the patent applicant to do any of the following acts within a specified time limit:
1. To appear before the Patent Authority for an interview; or
2. To perform necessary experiment(s) or to supplement model(s) or sample(s).
The Patent Authority may, when necessary, visit the site or a designated place for inspection and observation of the experiments or models or samples as required under Item 2 of the preceding Paragraph.

第 49 條

專利專責機關於審查發明專利時，得依職權通知申請人限期補充、修正說明書或圖式。

申請人得於發明專利申請日起

Article 49

In the course of examining an invention patent application, the Patent Authority may, ex officio, notify a patent applicant to make a supplement or amendment to the specifications and/or drawings within a specified time limit.
A patent applicant may, within fifteen (15) months from the filing

十五個月內，申請補充、修正說明書或圖式；其於十五個月後申請補充、修正說明書或圖式者，仍依原申請案公開。

date of such patent application, make a supplement or amendment to the specifications and/or drawings. If the supplement or amendment to the specifications and/or drawings is filed after elapse of the fifteen (15) months, the application shall be laid-open as it was originally filed.

申請人於發明專利申請日起十五個月後，僅得於下列各款之期日或期間內補充、修正說明書或圖式：

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

一、申請實體審查之同時。

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

二、申請人以外之人申請實體審查者，於申請案進行實體審查通知送達後三個月內。

2. Within three (3) months from the service date of a notice of substantive examination issued in respect of the patent application concerned, if the substantive examination application is filed by a person other than the patent applicant;

三、專利專責機關於審定前通知申復之期間內。

3. During the time limit for response as specified in a notice given by the Patent Authority prior to its written reasons for rejection of the patent application concerned; or

四、申請再審查之同時，或得補提再審查理由書之期間內。

4. At the time of filing an application for re-examination, or during the period fixed for filing a supplemental statement of reasons for re-examination.

依前三項所為之補充、修正，不得超出申請時原說明書或圖式所揭露之範圍。

The contents of the supplement or amendment made under the preceding three Paragraphs shall not exceed the scope of the specification or drawing disclosed in the original patent application.

第二項、第三項期間，如主張優先權者，其起算日為優先權日之次日。

Where a claiming priority is made, the periods specified in Paragraph Two and Paragraph Three under this Article shall be calculated from the day following the priority date.

第 50 條 **Article 50**

發明經審查有影響國家安全之虞，應將其說明書移請國防部或國家安全相關機關諮詢意見，認有秘密之必要者，其發明不予公告，申請書件予以封存，不供閱覽，並作成審定書送達申請人、代理人及發明人。

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

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。

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

保密期間，自審定書送達申請人之日起為期一年，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

The confidential period shall last for one year from the date the written decision is served on the patent applicant and may be extended on a year-by-year basis. The Patent Authority shall, within one month prior to the expiry of the confidential period, consult with the Ministry of National Defense or the relevant national

機關，無保密之必要者，應即公告。

就保密期間申請人所受之損失，政府應給與相當之補償。

security authorities about the continuation of the confidential period. If the confidential requirement of a patent case is no longer necessary, such patent shall be published.

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

第四節 專利權

Section 4: Patent Rights

第 51 條

申請專利之發明，經核准審定後，申請人應於審定書送達後三個月內，繳納證書費及第一年年費後，始予公告；屆期未繳費者，不予公告，其專利權自始不存在。

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。

Article 51

A patent application filed in respect of an invention is approved by a written decision shall be published only after the issue fee and the first year annuity have been paid by the applicant within three (3) months after the service of the aforesaid written decision; if the foregoing fees have not been paid upon expiry of the above-given deadline, no publication shall be made, and the patent right for said invention shall not exist ab initio,.

The granted patent rights shall being on the date of publication, and a patent certificate shall be issued thereto.

The term of an invention patent right shall ends with twenty (20) years from the filing date of the patent application.

第 52 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，而於專利案公告後需時二年以上者，專利權人得申請延長專利二年至五年，並以一次為限。但核准延長之期間，不得超過向中央目的事業主管機關取得許可證所需期間，取得許可證期間超過五年者，其延長期間仍以五年為限。

前項申請應備具申請書，附具證明文件，於取得第一次許可證之日起三個月內，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。

主管機關就前項申請案，有關延長期間之核定，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。

Article 52

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

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

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

第 53 條

Article 53

專利專責機關對於發明專利權延長申請案，應指定專利審查人員審查，作成審定書送達專利權人或其代理人。

The Patent Authority shall designate examiner(s) to examine an invention patent extension application and shall make written decision which shall be served on the patentee or his/her patent attorney.

第 54 條

任何人對於經核准延長發明專利權期間，認有下列情事之一者，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、專利權為共有，而非由共有人全體申請者。

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、取得許可證所需期間未滿二年者。

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。

Article 54

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

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

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

第 55 條

專利專責機關認有前條第一項各款情事之一者，得依職權撤銷延長之發明專利權期間。

專利權延長經撤銷確定者，原核准延長之期間，視為自始不存在。但因違反前條第一項第三款、第六款規定，經撤銷確定者，就其超過之期間，視為未延長。

Article 55

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

When the revocation of the approved extension of the term of a patent right becomes irrevocable, the originally approved extension shall be deemed not in existence ab initio; however, if the irrevocable revocation is rendered as a result of violation of the provisions of Item 3 or Item 6 of Paragraph One of the preceding Article, the exceeding duration shall be deemed non-existing.

第 56 條

物品專利權人，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約、

Article 56

Unless otherwise provided for in this Act, the patentee of a patented article shall have the exclusive right to preclude other persons from manufacturing, making an offer for sale, selling, using, or importing

販賣、使用或為上述目的而進口該物品之權。

for above purposes the patented article without his/her prior consent.

方法專利權人，除本法另有規定者外，專有排除他人未經其同意而使用該方法及使用、為販賣之要約、販賣或為上述目的而進口該方法直接製成物品之權。

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

發明專利權範圍，以說明書所載之申請專利範圍為準，於解釋申請專利範圍時，並得審酌發明說明及圖式。

The scope of an invention patent right shall be determined based on the claim(s) set forth in the specification of the invention. The descriptions and drawings of the invention may be used as reference when interpreting the scope of the claims in the patent application.

第 57 條

Article 57

發明專利權之效力，不及於下列各款情事：

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

一、為研究、教學或試驗實施其發明，而無營利行為者。

1. Where the invention is put into practice for research, educational or experimental purposes only, with no profit-seeking acts involved therein;

二、申請前已在國內使用，或已完成必須之準備者。但在申請前六個月內，於專利申請人處得知其製造方法，並經專利申請人聲明保留其專利權者，不在此限。

2. Where, prior to filing for patent, the invention has been used in this country, or where all necessary preparations have been completed for such purpose provided, however, that this provision shall not apply where knowledge of the manufacturing process was obtained from the patent applicant within six (6) months prior to applying for patent and the patent applicant has made a statement concerning the reservation of his/her patent right therein;

三、申請前已存在國內之物品。

3. Where the article has already been in existence in this country prior to the filing of the patent application;

四、僅由國境經過之交通工具或其裝置。

4. Where the article is simply a vehicle or a device thereof that passes the territory of this country;

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使用或已完成必須之準備者。

5. Where, in the case of revocation of the patent right acquired by a person other than the one entitled thereto as a result of an invalidation action filed by the patentee, the licensee has, prior to the revocation of the patent involved, used the patent in good faith or completed all necessary preparations therefor in this country; and

六、專利權人所製造或經其同意製造之專利物品販賣後，使用或再販賣該物品者。上述製造、販賣不以國內為限。

6. Where the patented articles manufactured by the patentee or under the consent of the patentee are put to use or resold after the sale thereof. The aforesaid manufacture and sale are not limited to those committed in this country.

前項第二款及第五款之使用人，限於在其原有事業內繼續利用；第六款得為販賣之區域，由法院依事實認定之。

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

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。

The licensee of the patent right which has been revoked as a result of an invalidation action as referred to in Item 5 of the first Paragraph under this Article shall pay the patentee a reasonable amount of royalty from the date of receiving a written notification from the patentee, provided that the licensee continues to practice

the patent after the revocation of the patent.

第 58 條

混合二種以上醫藥品而製造之醫藥品或方法，其專利權效力不及於醫師之處方或依處方調劑之醫藥品。

Article 58

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

第 59 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。

Article 59

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

第 60 條

發明專利權之讓與或授權，契約約定有下列情事之一致生不公平競爭者，其約定無效：

一、禁止或限制受讓人使用某項物品或非出讓人、授權人所供給之方法者。

二、要求受讓人向出讓人購取未受專利保障之出品或原料者。

Article 60

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

1. To prohibit or restrict the assignee from using any specific article or process not furnished by the assignor or licensor; or

2. To require that the assignee purchase products or raw materials of the assignor which is not under patent protection.

第 61 條

發明專利權為共有時，除共有人自己實施外，非得共有人全體之同意，不得讓與或授權他人實施。但契約另有約定者，從其約定。

Article 61

In the case of the joint-ownership of an invention patent, other than the practice of the patent by the joint-owners themselves, the patent shall not be assigned or licensed to others for practice without the consent of all joint-owners. If, however, there is an agreement providing otherwise, such agreement shall govern.

第 62 條

發明專利權共有人未得共有人全體同意，不得以其應有部分讓與、信託他人或設定質權。

Article 62

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

第 63 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。

Article 63

An invention patentee who has suffered damages as a result of war between the ROC and a foreign country may apply for a prolongation of the term of his/her patent for five (5) to ten (10) years, and only one such prolongation shall be permitted; provided, however, that this provision shall not apply if the patentee is a national of the belligerent country.

第 64 條

發明專利權人申請更正專利說明書或圖式，僅得就下列事項

Article 64

An invention patentee may file an application for making amendment(s) to the contents of the specification and drawings only

為之：
一、申請專利範圍之減縮。
二、誤記事項之訂正。
三、不明瞭記載之釋明。
前項更正，不得超出申請時原說明書或圖式所揭露之範圍，且不得實質擴大或變更申請專利範圍。
專利專責機關於核准更正後，應將其事由刊載專利公報。
說明書、圖式經更正公告者，溯自申請日生效。

in respect of the following matters:
1. Narrowing the scope of the claims:
2. Correction of the error(s) made in the specification; or
3. Explanation of obscure description(s).
Any amendment to be made under the preceding Paragraph shall not exceed the scope of contents which were disclosed in the original specification or drawings while filing the patent application, and shall not substantially expand or alter the scope of the patent claims.
Upon the approval of the amendment(s), the Patent Authority shall publish the cause of such amendment(s) in the Patent Gazette.
The effect of the amendment(s) to the the specification and/or drawings shall, upon publication, be retroactive to the filing date of the patent application concerned.

第 65 條

發明專利權人未得被授權人或質權人之同意，不得為拋棄專利權或為前條之申請。

Article 65

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

第 66 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，自期滿之次日消滅。
二、專利權人死亡，無人主張其為繼承人者，專利權於依民法第一千一百八十五條規定歸屬國庫之日起消滅。
三、第二年以後之專利年費未於補繳期限屆滿前繳納者，自原繳費期限屆滿之次日消滅。但依第十七條第二項規定回復原狀者，不在此限。
四、專利權人拋棄時，自其書面表示之日消滅。

Article 66

An invention patent right shall extinguish ipso facto under any of the following circumstances:
1. In the case of expiry on the duration of a patent right, from the day following the expiration;
2. In the case of death of the patentee without an heir, from the date the patent right accrues to the Treasury as provided for in Article 1,185 of the Civil Code;
3. In the case of the patentee's failure of effecting the payment of a patent annuity for the second year or any year thereafter within the grace period, from the day following the expiration of the original statutory period for such payment; except for the patent right to be reinstated under Paragraph Two, Article 17 of this Act; or
4. In the case of voluntary abandonment of a patent right, from the date of the patentee's written declaration to such effect.

第 67 條

有下列情事之一者，專利專責機關應依舉發或依職權撤銷其發明專利權，並限期追繳證書，無法追回者，應公告註銷：
一、違反第十二條第一項、第二十一條至第二十四條、第二十六條、第三十一條或第四十九條第四項規定者。
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、發明專利權人為非發明專

Article 67

Under any of the following circumstances, an invention patent right shall be revoked and the patent certificate issued thereto shall be recalled within a given time limit by the Patent Authority either by an invalidation action or ex officio, and if recalling fails, a public notice for revocation of said patent certificate shall be published:
1. If the invention is found in violation of the provisions of Paragraph One, Article 12, Articles 21 through 24, Article 26, Article 31 or Paragraph Four, Article 49 of this Act;
2. If the home country of the patentee does not accept the patent applications to be filed by nationals of the ROC; or
3. If the invention patentee is found being a person other than the

利申請權人者。
以違反第十二條第一項規定或有前項第三款情事，提起舉發者，限於利害關係人；其他情事，任何人得附具證據，向專利專責機關提起舉發。

person entitled to file the invention patent application.
Where an invalidation action is filed on the ground that the patent right in question is in violation of the provisions set out in Paragraph One, Article 12 of this Act or under the circumstance set forth in Item 3 of the preceding Paragraph, the petitioner shall be limited to an interested party; whereas, in any other cases, any person shall be entitled to file to the Patent Authority an invalidation action with evidences.

舉發人補提理由及證據，應自舉發之日起一個月內為之。但在舉發審定前提出者，仍應審酌之。

Any supplemental reason and evidence from the petitioner shall be filed within one month from the date the invalidation action is initiated provided, however, that any supplemental reason and/or evidence that is submitted prior to the conclusion rendered on examination of an invalidation action shall still be examined.

舉發案經審查不成立者，任何人不得以同一事實及同一證據，再為舉發。

Once an invalidation action is dismissed after the examination, no person may file another invalidation action based on the same fact or the same evidence.

第 68 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，得於專利權期滿或當然消滅後提起舉發。

Article 68

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

第 69 條

專利專責機關接到舉發書後，應將舉發書副本送達專利權人。
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，屆期不答辯者，逕予審查。

Article 69

Upon receipt of a written petition for patent invalidation, the Patent Authority shall serve a duplicate of such written petition to the patentee of the patent challenged.
The patentee of the patent challenged shall, within one month after the service of the written petition, file a statement of defense, and the examination of the invalidation action shall proceed without further notice, if the patentee fails to file the statement of defense upon expiry of the said one-month deadline, except an extension application with good cause shown therein has been filed and approved prior to the deadline.

第 70 條

專利專責機關於舉發審查時，應指定未曾審查原案之專利審查人員審查，並作成審定書，送達專利權人及舉發人。

Article 70

For the examination of an invalidation action, the Patent Authority shall designate a patent examiner who did not participate in the examination of the original patent application and shall require that the designated examiner make a written examination decision which shall be serviced on both of the patentee and the petitioner concerned.

第 71 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

Article 71

In the process of examining a patent invalidation action, the Patent Authority shall, upon a request or ex officio, notify the patentee involved to take any of the following actions:
1. to appear before the Patent Authority for an interview;
2. to conduct necessary experiment, or to submit supplemental

或樣品。
三、依第六十四條第一項及第二項規定更正。
前項第二款之實驗、補送模型或樣品，專利專責機關必要時，得至現場或指定地點實施勘驗。
依第一項第三款規定更正專利說明書或圖式者，專利專責機關應通知舉發人。

model(s) or sample(s); and
3. to make amendment(s) in accordance with the provisions set out in Paragraph One and Paragraph Two, Article 64 of this Act.
The Patent Authority may, when necessary, visit the site or a designated place for inspection and observation of the experiment, or the model(s) or sample(s) as required in Item 2 of the preceding Paragraph.
Where amendment(s) to the specification or drawings of a patented invention is (are) required under Item 3, Paragraph One of this Article, the Patent Authority shall give the petitioner a notice of such request.

第 72 條

第五十四條延長發明專利權舉發之處理，準用第六十七條第三項、第四項及前四條規定。

第六十七條依職權撤銷專利權之處理，準用前三條規定。

Article 72

For filing an invalidation action against the invention patent term extension under Article 54 of this Act, the provisions set out in Paragraph Three and Paragraph Four of Article 67, and the preceding four Articles herein shall apply mutatis mutandis.
For revocation of a patent right ex officio under Article 67 of this Act, the provisions set out in the preceding three Articles shall apply mutatis mutandis.

第 73 條

發明專利權經撤銷後，有下列情形之一者，即為撤銷確定：
一、未依法提起行政救濟者。

二、經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，視為自始即不存在。

Article 73

Under any of the following circumstances, the revocation of an invention patent right shall become irrevocable:
1. No administrative remedy has been sought in accordance with the act; and
2. Where an irrevocable decision on dismissal of the action instituted for administrative remedy is rendered.
The effect of an irrevocably-revoked invention patent right shall be deemed non-existent ab initio.

第 74 條

發明專利權之核准、變更、延長、延展、讓與、信託、授權實施、特許實施、撤銷、消滅、設定質權及其他應公告事項，專利專責機關應刊載專利公報。

Article 74

The grant, alteration, extension, prolongation, assignment, trust, licensing, compulsory licensing, revocation, extinguishments or pledging of an invention patent right as well as other matters which should be published, the Patent Authority shall effect such publication in the Patent Gazette.

第 75 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。

Article 75

The Patent Authority shall establish and maintain a register of patent rights, in which the title of the patent rights granted, the term of each patent right, the changes in patent rights, and all other matters required by the act shall be registered.
The register of patent rights set forth in the preceding Paragraph may be made and maintained by electronic means and shall be made available to the public for reading and making handwritten, photographic or reproduced copies therefrom.

第五節 實施 Section 5: Practicing

第 76 條 **Article 76**

為因應國家緊急情況或增進公益之非營利使用或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時，專利專責機關得依申請，特許該申請人實施專利權；其實施應以供應國內市場需要為主。但就半導體技術專利申請特許實施者，以增進公益之非營利使用為限。

In order to cope with the national emergencies, or to make non-profit-seeking use of a patent for enhancement of public welfare, or in the case of an applicant's failure to reach a licensing agreement with the patentee concerned under reasonable commercial terms and conditions within a considerable period of time, the Patent Authority may, upon an application, grant a right of compulsory licensing to the applicant to put the patented invention into practice; provided that such practicing shall be restricted mainly to the purpose of satisfying the requirements of the domestic market. However, if the application for compulsory licensing of a patent right covers semiconductor technology, such application may be allowed only if the proposed practicing is purposed for a non-profit-seeking use contemplated to enhance the public welfare.

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確定者，雖無前項之情形，專利專責機關亦得依申請，特許該申請人實施專利權。

In the absence of the conditions set forth in the preceding Paragraph, the Patent Authority still may, upon an application, grant to the applicant a compulsory license to practice the patented invention in the event that the patentee has imposed restrictions on competition or has committed unfair competition, as confirmed by a judgment given by a court or a disposition made by the Fair Trade Commission of the Executive Yuan.

專利專責機關接到特許實施申請書後，應將申請書副本送達專利權人，限期三個月內答辯；屆期不答辯者，得逕行處理。

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

特許實施權，不妨礙他人就同一發明專利權再取得實施權。

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

特許實施權人應給與專利權人適當之補償金，有爭執時，由專利專責機關核定之。

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

特許實施權，應與特許實施有關之營業一併轉讓、信託、繼承、授權或設定質權。

The compulsory license shall be transacted together with the business pertaining to the compulsorily licensing for assignment, trust, inheritance, licensing or pledge creation.

特許實施之原因消滅時，專利專責機關得依申請廢止其特許實施。

Upon extinguishment of the cause of compulsory licensing, the Patent Authority may terminate the compulsory license upon an application.

第 77 條 **Article 77**

依前條規定取得特許實施權人，違反特許實施之目的時，專利專責機關得依專利權人之申請或依職權廢止其特許實施。

If the person who has been granted a right of compulsory licensing under the provisions of the preceding Article has acted contrary to the purposes of the compulsory licensing, the Patent Authority may, upon an application filed by the patentee or ex offocio, annul the compulsory license.

第 78 條

再發明，指利用他人發明或新型之主要技術內容所完成之發明。

再發明專利權人未經原專利權人同意，不得實施其發明。

製造方法專利權人依其製造方法製成之物品為他人專利者，未經該他人同意，不得實施其發明。

前二項再發明專利權人與原發明專利權人，或製造方法專利權人與物品專利權人，得協議交互授權實施。

前項協議不成時，再發明專利權人與原發明專利權人或製造方法專利權人與物品專利權人得依第七十六條規定申請特許實施。但再發明或製造方法發明所表現之技術，須較原發明或物品發明具相當經濟意義之重要技術改良者，再發明或製造方法專利權人始得申請特許實施。

再發明專利權人或製造方法專利權人取得之特許實施權，應與其專利權一併轉讓、信託、繼承、授權或設定質權。

Article 78

The term "reinvention" as used herein shall mean an invention which is accomplished through use of the principal technical contents of an invention or a utility model created by another person.

The patentee of a reinvention shall not practice his/her patented invention without obtaining a prior consent from the patentee of the original invention.

Where a product manufactured in accordance with a patented manufacturing process is covered by a product patent granted to another person, the patentee of such manufacturing process patent shall not put his/her invention into practice without obtaining a prior consent of the patentee of the product patent.

The patentee of the reinvention patent and the patentee of the original invention patent, or the patentee of the manufacturing process patent and the patentee of the product patent, as referred to in the preceding two Paragraphs, may reach an agreement on cross licensing arrangement for practicing the inventions.

If the agreement on cross licensing arrangement set forth in the preceding Paragraph cannot be reached, the patentee of the reinvention patent and the patentee of the original invention patent, or the patentee of the manufacturing process patent and the patentee of the product patent may apply for compulsory licensing in accordance with Article 76 of this Act. However, such compulsory licensing application may not be filed by the patentee of the reinvention or the patentee of the manufacturing process patent unless the technology expressed by the reinvention or by the manufacturing process invention has important technical improvement(s) with considerable economic significance over the original invention or the product invention.

The compulsory license obtained by the patentee of a reinvention patent or the patentee of a manufacturing process patent shall be transacted together with the patent right of said patentee for assignment, trust, inheritance, licensing or pledge creation.

第 79 條

發明專利權人應在專利物品或其包裝上標示專利證書號數，並得要求被授權人或特許實施權人為之；其未附加標示者，不得請求損害賠償。但侵權人明知或有事實足證其可得而知為專利物品者，不在此限。

Article 79

An invention patentee shall mark the serial number of patent certificate on his/her patented article or the packaging thereof, and may require that his/her licensee or the grantee of compulsory license do the same. In case of failure to affix such marking, no claim for damages shall be allowed, except in the case that the infringer has known, or should have known as proved by facts, the existence of the patent.

第六節 納費

Section 6: Government Fees

第 80 條

關於發明專利之各項申請，申

Article 80

In respect of each application concerning invention patents, the

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、延展專利者,在延長、延展期內,仍應繳納專利年費。申請費、證書費及專利年費之金額,由主管機關定之。

applicant shall pay a fee at the time of filing the application.
For an allowed patent, the invention patentee shall pay an issue fee and annuities. In the case of an approval for an extension or prolongation of patent term, annuities shall still be paid during the extended or prolonged patent term.
The amount of the application fee, issue fee and annuities shall be prescribed by the Competent Authority.

第 81 條

發明專利年費自公告之日起算,第一年年費,應依第五十一條第一項規定繳納;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。

Article 81

The annuity for an invention patent shall be payable commencing from the publication date. Payment of the first year annuity shall be made in accordance with the provision set out in Paragraph One, Article 51 hereof, while the payment of the second year annuity and the annuities thereafter shall be made prior to the expiration of each of the current patent years.
The annuity for several years may be paid at one time. Under such circumstance, if the annuity rate is adjusted upwardly, the patentee concerned will not be required to pay the deficit.

第 82 條

發明專利第二年以後之年費,未於應繳納專利年費之期間內繳費者,得於期滿六個月內補繳之。但其年費應按規定之年費加倍繳納。

Article 82

In case the annuity payable for the second year or each year thereafter due is not paid within the regulatory period for the annuity payment, it may be paid later within six (6) months after expiry of the said regulatory period provided, however, that the amount of late payment shall be twice as much as the regular amount of the annuity.

第 83 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;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。

Article 83

Where a patentee is a natural person, school or a small and medium enterprise, he/it may file an application with the Patent Authority for a reduction or exemption of the patent annuity. Regulations governing the conditions, number of years, amount, and other matters of such reduction and exemption shall be prescribed by the Competent Authority.

第七節 損害賠償及訴訟

Section 7: Indemnity for Damages and Litigation

第 84 條

發明專利權受侵害時,專利權人得請求賠償損害,並得請求排除其侵害,有侵害之虞者,得請求防止之。
專屬被授權人亦得為前項請求。但契約另有約定者,從其約定。

發明專利權人或專屬被授權人依前二項規定為請求時,對於侵害專利權之物品或從事侵害

Article 84

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

An exclusive licensee may also make the claim or demand set forth in the preceding Paragraph, unless otherwise provided for in an agreement, and in such case, the provisions set out in the agreement shall prevail.
When an invention patentee or an exclusive licensee claims for damages pursuant to the preceding two Paragraphs, he/she may request for destruction of the infringing products or the raw

行為之原料或器具，得請求銷燬或為其他必要之處置。
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。
本條所定之請求權，自請求權人知有行為及賠償義務人時起，二年間不行使而消滅；自行為時起，逾十年者，亦同。

materials or implements used in infringing the patent, or request for other necessary disposals.
When the inventor's right to indicate his/her name is infringed, he/she may request a ruling to indicate the inventor's name or otherwise to recover his/her reputation.

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

第 85 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。於侵害人不能就其成本或必要費用舉證時，以銷售該項物品全部收入為所得利益。
除前項規定外，發明專利權人之業務上信譽，因侵害而致減損時，得另請求賠償相當金額。

依前二項規定，侵害行為如屬故意，法院得依侵害情節，酌定損害額以上之賠償。但不得超過損害額之三倍。

Article 85

To claim damages in accordance with the preceding Article, any of the following options may be adopted for calculating of the amount of damages:
1. To claim in accordance with Article 216 of the Civil Code. A patentee may, however, take the balance derived by subtracting the profit earned through the practice of his/her patent after the existence of infringement from the profit normally expected through the practice of the same patent as the amount of the damages, provided that no proving method can be presented to justify the damages;
2. To claim based on the profit earned by the infringer as a result of his/her infringement act. The entire income derived from the sale of the infringing articles shall be deemed the infringer's profit, provided that the infringer is unable to produce proof to justify his/her costs or necessary expenses.
In addition to the provisions set forth in the preceding Paragraph, the patentee may claim separately for damages at a reasonable amount in case the business reputation of the patentee has been downgraded or injured as a result of the infringement.
Subject to the provisions of the preceding two Paragraphs, if the infringement is found to be an intentional act, the court may, after considering the details of the infringement, decide the compensation in an amount higher than the amount of damages estimated, but not more than triple damages.

第 86 條

用作侵害他人發明專利權行為之物，或由其行為所生之物，得以被侵害人之請求施行假扣押，於判決賠償後，作為賠償金之全部或一部。
當事人為前條起訴及聲請本條假扣押時，法院應依民事訴訟法之規定，准予訴訟救助。

Article 86

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

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

第 87 條

製造方法專利所製成之物品在該製造方法申請專利前為國內外未見者，他人製造相同之物品，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品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。

Article 87

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

The inference made under the preceding Paragraph may be overturned by presentation of counter-evidence. A proof made by the defendant that the process used by him in manufacturing the article at issue is different from the patented process shall be deemed as presentation of counter-evidence. The legal rights and interests in the manufacture and trade secret, as disclosed by the defendant in producing such counter-evidence, shall be fully protected.

第 88 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。

Article 88

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

第 89 條

被侵害人得於勝訴判決確定後，聲請法院裁定將判決書全部或一部登報，其費用由敗訴人負擔。

Article 89

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

第 90 條

關於發明專利權之民事訴訟，在申請案、舉發案、撤銷案確定前，得停止審判。

法院依前項規定裁定停止審判時，應注意舉發案提出之正當性。

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。

Article 90

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

When rendering a ruling for suspending the trial proceedings in accordance with the provisions set out in the preceding Paragraph, the court shall look into the legitimacy of the cause of the invalidation action.

Where an invalidation action instituted involves the trial proceedings of the patent infringement actsuit, the Patent Authority shall give the priority to the examination of the invalidation action.

第 91 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。但以條約或其本國法令、慣例，中華民國國民或團體得在該國享受同等權利者為限；其由團體或機構互訂保護專利之協議，經主管機關核准者，亦同。

Article 91

A non-recognized foreign juristic person or entity may institute a civil action in respect of the matters governed by this Act, provided, however, that the nationals or entities of the ROC are entitled to such rights in said foreign country under a treaty, or the national acts, ordinances or customary practices of said foreign country. A patent protection agreement between a ROC entity or organization and a foreign entity or organization and duly approved by the Competent Authority shall have the same effect.

第 92 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。

Article 92

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

The Judicial Yuan may appoint specific professional institution(s) to perform the expert verification work as required in patent infringement case(s).

A court which accepts and handles a actsuit pertaining to an invention patent may engage the professional institution(s) appointed under the preceding Paragraph to perform the expert verification work as required.

第三章 新型專利

Chapter III Utility Model Patents

第 93 條

新型，指利用自然法則之技術思想，對物品之形狀、構造或裝置之創作。

Article 93

The term " utility model" shall refer to any creation of technical concepts by utilizing the acts of nature, in respect of the form, construction or installation of an article.

第 94 條

凡可供產業上利用之新型，無下列情事之一者，得依本法申請取得新型專利：

一、申請前已見於刊物或已公開使用者。

二、申請前已為公眾所知悉者。

新型有下列情事之一，致有前項各款情事，並於其事實發生之日起六個月內申請者，不受前項各款規定之限制：

一、因研究、實驗者。

二、因陳列於政府主辦或認可之展覽會者。

三、非出於申請人本意而洩漏者。

申請人主張前項第一款、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。

新型雖無第一項所列情事，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顯能輕易完成時，仍不得依本法申請取得新型專利。

Article 94

Any utility model that is industrially applicable and is free from any of the following conditions may obtain a utility model patent upon an application in accordance with this Act:

1. Which, prior to filing such a patent application, has been disclosed in any publication or put into public use; or

2. Which, prior to filing such a patent application, has become known to the public.

In case either of the conditions set forth in the preceding Paragraph does exist as a result of any of the following causes, and a utility model application is filed within six (6) months from the date any of the foregoing causes occurs, said utility model shall be free from any of the restrictive conditions set out in the preceding Paragraph:

1. due to a research, or an experiment;

2. due to a display in an exhibition sponsored or approved by the government; or

3. due to a disclosure not agreed by the applicant.

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

Notwithstanding the absence of the conditions set forth in Paragraph One of this Article, no utility model patent may be applied for or granted under this Act, if the utility model can easily be accomplished by any ordinary skilled person in the relevant art based on existing prior art before the application for patent is filed.

第 95 條

申請專利之新型，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或圖式載明之內容相同者，不得取得新型專利。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。

Article 95

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

第 96 條

新型有妨害公共秩序、善良風俗或衛生者，不予新型專利。

Article 96

No utility model patent shall be granted to a utility model application which is detrimental to public order, good custom or public health.

第 97 條

申請專利之新型，經形式審查認有下列各款情事之一者，應為不予專利之處分：

一、新型非屬物品形狀、構造或裝置者。

二、違反前條規定者。

三、違反第一百零八條準用第二十六條第一項、第四項規定之揭露形式者。

四、違反第一百零八條準用第三十二條規定者。

五、說明書及圖式未揭露必要事項或其揭露明顯不清楚者。

為前項處分前，應先通知申請人限期陳述意見或補充、修正說明書或圖式。

Article 97

Where a utility model claimed in a patent application is considered, after the formality examination, to be under any of the following circumstances, a disapproval decision shall be made:

1. Where the utility model is not related to the form, construction or installation;

2. Where the new utility is contrary to the provision set out in the preceding Article;

3. Where the manner of disclosing the utility model is contrary to the requirements in Paragraphs One and/or Four of Article 26 which are applicable mutatis mutandis under Article 108 of this Act;

4. Where the utility model is in violation of the provisions set out in Article 32 which are applicable mutatis mutendis under Article 108 of this Act; or

5. Where certain essential matters have not been disclosed in the specification or drawings, or the essential matters disclosed therein are obviously unclear.

Prior to making the decision in accordance with the provisions set out in the preceding Paragraph, the applicant shall be required, by an advance notice, to make necessary statement, supplement or amendment to the specification or drawings previously filed.

第 98 條

申請專利之新型經形式審查後，認有前條規定情事者，應備具理由作成處分書，送達申請人或其代理人。

Article 98

In the event a utility model claimed in a patent application is considered, after the formality examination, to be under any of the circumstances set out in the preceding Article, a written decision with the reasons shall be made and served to the applicant or his/her attorney.

第 99 條

申請專利之新型，經形式審查認無第九十七條所定不予專利之情事者，應予專利，並應將

Article 99

Where the utility model claimed in a patent application is considered, after formality examination, not under any of the conditions of non-patentability set out in Article 97 hereof, said

申請專利範圍及圖式公告之。

utility model shall be granted a patent, and the claims and the drawings of the application therewith shall be published.

第 100 條

申請人申請補充、修正說明書或圖式者，應於申請日起二個月內為之。

依前項所為之補充、修正，不得超出申請時原說明書或圖式所揭露之範圍。

Article 100

Where a patent applicant applies for making supplement or amendment to the specification or drawings enclosed in the original application, an application for such shall be filed within two (2) months from the filing date of the original application.

Any supplement or amendment to be made under the preceding Paragraph shall not exceed the scope disclosed in the specification or drawings submitted along with the original application.

第 101 條

申請專利之新型，申請人應於准予專利之處分書送達後三個月內，繳納證書費及第一年年費後，始予公告；屆期未繳費者，不予公告，其專利權自始不存在。

申請專利之新型，自公告之日起給予新型專利權,並發證書。新型專利權期限，自申請日起算十年屆滿。

Article 101

A claimed utility model in a patent application will not be published until the applicant shall have paid the issue fee and the first year annuity within three (3) months after the applicant has received the written decision for grant of the patent as requested; if the applicant fails to make the foregoing payments upon expiry of the given deadline, no publication of said utility model will be made, and the patent right granted thereto shall not exist ab initio.

A claimed utility model in a patent application shall be granted a utility model patent right, effective from the date of publication thereof, and a patent certificate shall be issued thereto.

The duration of a utility model patent right shall be ten (10) years from the filing date of the patent application.

第 102 條

申請發明或新式樣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。但於原申請案准予專利之審定書、處分書送達後，或於原申請案不予專利之審定書、處分書送達之日起六十日後，不得改請。

Article 102

Where an application originally filed for an invention or a design patent protection is converted into a utility model patent application or where an application originally filed for a utility model is converted into an invention patent application, the filing date of the original patent application shall be taken as the filing date of the converted patent application provided, however, that no application for patent conversion may be filed after lapse of sixty (60) days from the date the written decision granting a patent or the written decision denying a patent on the original patent application is served.

第 103 條

申請專利之新型經公告後，任何人得就第九十四條第一項第一款、第二款、第四項、第九十五條或第一百零八條準用第三十一條規定之情事，向專利專責機關申請新型專利技術報告。

專利專責機關應將前項申請新型專利技術報告之事實，刊載於專利公報。

Article 103

After a utility model claimed in a patent application is published, any person may, with respect to the conditions set forth in Item 1 or Item 2, Paragraph One, or Paragraph Four of Article 94; Article 95; or Article 31 applicable mutatis mutandis under Article 108 of this Act, apply to the Patent Authority for obtaining a technical revaluation report pertaining to the proposed utility model.

The Patent Authority shall publish in the Patent Gazette the facts that an application for a technical evaluation report regarding a proposed utility model as set forth in the preceding Paragraph is

filed.

專利專責機關對於第一項之申請，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。

Upon receipt of an application for the report of Paragraph One of this Article, the Patent Authority shall appoint patent examiner(s) to prepare the technical evaluation report regarding the proposed utility model and to indicate his/their name(s) thereon.

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。

In the event the fact of a commercial practice of the proposed utility model by a person other than the patentee has been described by the applicant when filing the application for a technical evaluation report regarding the proposed utility model in accordance with the provision set out in Paragraph One of this Article, and relevant evidences has been submitted along with the application, the technical evaluation report shall be completed within six (6) months.

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。

An application for a technical evaluation report regarding a proposed utility model may still be filed after the extinguishment of the utility model patent ipso fecto.

依第一項規定所為之申請，不得撤回。

An application filed in accordance with the provisions of Paragraph One shall not be withdrawn.

第 104 條

Article 104

新型專利權人行使新型專利權時，應提示新型專利技術報告進行警告。

When exercising a utility model patent right, the patentee of that utility model right shall present the technical evaluation report regarding the utility model patent for the purpose of warning.

第 105 條

Article 105

新型專利權人之專利權遭撤銷時，就其於撤銷前，對他人因行使新型專利權所致損害，應負賠償之責。

In case the patent right of a utility model is revoked, the patentee shall be liable for the damages sustained by any other persons from the exercising of such utility model right by said patentee prior to the revocation thereof.

前項情形，如係基於新型專利技術報告之內容或已盡相當注意而行使權利者，推定為無過失。

In the case set forth in the preceding Paragraph, if the exercise of the utility model patent by the patentee is carried out based on the contents of the technical evaluation report associated with said utility model, or with due care by the patentee, it shall be presumed that the patentee has done no fault in exercising the utility model patent right.

第 106 條

Article 106

新型專利權人，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約、販賣、使用或為上述目的而進口該新型專利物品之權。

Unless otherwise provided for in this Act, the patentee of a utility model shall have the exclusive right to preclude other persons from manufacturing, offering for sale, selling, using, or importing for such purposes such patented products without his/her prior consent.

新型專利權範圍，以說明書所載之申請專利範圍為準，於解釋申請專利範圍時，並得審酌創作說明及圖式。

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

第 107 條

Article 107

有下列情事之一者，專利專責機關應依舉發撤銷其新型專利

Under any of the following circumstances, a utility model patent right shall be revoked and the patent certificate issued thereto shall

權，並限期追繳證書，無法追回者，應公告註銷：

一、違反第十二條第一項、第九十三條至第九十六條、第一百條第二項、第一百零八條準用第二十六條或第一百零八條準用第三十一條規定者。
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、新型專利權人為非新型專利申請權人者。
以違反第十二條第一項規定或有前項第三款情事，提起舉發者，限於利害關係人；其他情事，任何人得附具證據，向專利專責機關提起舉發。

舉發審定書，應由專利審查人員具名。

be recalled within a given time limit by the Patent Authority upon receipt of an invalidation action and if recalling fails, an public notice of revocation of said patent certificate shall be published:
1. If the utility model patent is found in violation of the provisions of Paragraph One, Article 12; Article 93 through Article 96; Paragraph Two, Article 100; Article 26 applicable mutatis mutandis under Article 108; or Article 31 applicable mutatis mutandis under 108 of this Act;
2. If the home country of the patentee does not accept the patent applications to be filed by nationals of the ROC; or

3. If the utility model patentee is a person other than the person entitled to file the utility model patent application.
An invalidation filed on the ground of violation on the provisions set out in Paragraph One, Article 12 of this Act or the grounds set forth in Item 3 of the preceding Paragraph of this Article shall be filed only by an interested party; whereas under any other circumstances set forth in the preceding Paragraph, any person may file to the Patent Authority an invalidation action with evidences.
The written decision to be issued in respect of an invalidation action shall be affixed with the signature of the patent examiner(s) making such decision.

第 108 條

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

Article 108

The provisions of Articles 25 through 29, Articles 31 through 34, Paragraph Two of Article 35, Articles 42, Paragraph Two of Article 45, Article 50, Article 57, Articles 59 through 62, Articles 64 through 66, Paragraph Three and Paragraph Four of Article 67, Articles 68 through 71, Articles 73 through 75, Paragraphs One, Two and Four of Article 78, Articles 79 through 86, Articles 88 through 92 of this Act shall apply mutatis mutandis to the utility model patents.

第四章 新式樣專利

Chapter IV Design Patents

第 109 條

新式樣，指對物品之形狀、花紋、色彩或其結合，透過視覺訴求之創作。
聯合新式樣，指同一人因襲其原新式樣之創作且構成近似者。

Article 109

The term " design" shall refer to any creation made in respect of the shape, pattern, color, or combination thereof of an article through eye appeal.
The term "associated design" as used herein refers to a creation made by the same person, which is originated from and similar to his/her original design.

第 110 條

凡可供產業上利用之新式樣，無下列情事之一者，得依本法申請取得新式樣專利：

一、申請前有相同或近似之新式樣，已見於刊物或已公開使用者。

二、申請前已為公眾所知悉者。

新式樣有下列情事之一，致有前項各款情事，並於其事實發生之日起六個月內申請者，不受前項各款規定之限制：

一、因陳列於政府主辦或認可之展覽會者。

二、非出於申請人本意而洩漏者。

申請人主張前項第一款之情事者，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。

新式樣雖無第一項所列情事，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者，仍不得依本法申請取得新式樣專利。

同一人以近似之新式樣申請專利時，應申請為聯合新式樣專利，不受第一項及前項規定之限制。但於原新式樣申請前有與聯合新式樣相同或近似之新式樣已見於刊物、已公開使用或已為公眾所知悉者，仍不得依本法申請取得聯合新式樣專利。

同一人不得就與聯合新式樣近似之新式樣申請為聯合新式樣專利。

Article 110

Any design that is industrially applicable and is free from any of the following conditions may be granted a design patent upon an application filed in accordance with this Act:

1. Which, prior to applying for patent, is preceded by an identical or similar design already published or put to public use; or

2. Which, prior to applying for patent, has become known to the public.

In the event a design is under any of the conditions set out in Paragraph One of this Article as a result of either of the following events, and a patent application has been filed for said design within six (6) months from the date of such event occurs, the design shall be free from any of the restrictive condition set out in the preceding Paragraph:

1. Where it has been displayed in an exhibition sponsored or approved by the government; or

2. Where it has been disclosed in a manner not agreed by the applicant.

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

Notwithstanding the fact that a design is not under any of the conditions set out in Paragraph One of this Article, it shall still not be granted a patent under this act if it can easily be conceived by ordinarily skilled persons in the relevant art based on existing prior art before the application for patent is filed.

If the same applicant applies for a patent on a design similar to another design patent application filed by the same person, an associated design patent application shall be filed in respect of said similar design without being subject to the restrictions set out in Paragraph One and in the preceding Paragraph of this Article. However, if, prior to the filing of the original design patent application, another design identical or similar to such associated design has been published, or put to public use, or has become known to the public, no associated design patent may be applied for and granted under this Act.

No application for an associated design patent may be filed if the design involved is claimed to similar to another associated design.

第 111 條

申請專利之新式樣，與申請在先而在其申請後始公告之新式樣專利申請案所附圖說之內容相同或近似者，不得取得新式

Article 111

Where a design claimed in a patent application is identical or similar to the contents described in the specification or drawings submitted along with an application for design patent filed prior to but patented after the filing of the present patent application, no design

樣專利。但其申請人與申請在先之新式樣專利申請案之申請人相同者，不在此限。

patent may be granted to the design, except that the applicant(s) of the present application and such prior design patent is(are) the same.

第 112 條

下列各款，不予新式樣專利：
一、純功能性設計之物品造形。
二、純藝術創作或美術工藝品。
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、善良風俗或衛生者。
五、物品相同或近似於黨旗、國旗、國父遺像、國徽、軍旗、印信、勳章者。

Article 112

The following items shall not be granted design patents:
1. An article the shape of which is solely dictated by the function of the said article;
2. A pure fine arts creation or work;
3. Layout of integrated circuits and electronic circuits;
4. An article which is contrary to public order or good custom or public health; and
5. An article the shape of which is identical or similar to a political party flag, the national flag, a portrait of the Father of the ROC, the national emblem, the military flags, an official seal, or a medal awarded by the government.

第 113 條

申請專利之新式樣，經核准審定後，申請人應於審定書送達後三個月內，繳納證書費及第一年年費後，始予公告；屆期未繳費者，不予公告，其專利權自始不存在。

申請專利之新式樣，自公告之日起給予新式樣專利權，並發證書。
新式樣專利權期限，自申請日起算十二年屆滿；聯合新式樣專利權期限與原專利權期限同時屆滿。

Article 113

A design claimed in a patent application is approved after examination, it will not be published until the applicant shall have, within three (3) months after the service of the written decision, paid the issue fee and the first year annuity ; no publication shall be made if the foregoing fees is not paid upon expiry of the above-given deadline, and in this case, the patent right so granted thereto shall become non-existent ab initio.
The claimed design in a patent application shall be granted a design patent right upon the date of publication and a patent certificate shall be issued thereto.
The duration of a design patent right shall be twelve (12) years from the filing date of the patent application; and the duration of an associated design patent right shall expire simultaneously with the duration of the original design patent right.

第 114 條

申請發明或新型專利後改請新式樣專利者，以原申請案之申請日為改請案之申請日。但於原申請案准予專利之審定書、處分書送達後，或於原申請案不予專利之審定書、處分書送達之日起六十日後，不得改請。

Article 114

Where an application originally filed for an invention patent or a utility model patent is converted into a design patent application, the filing date of the original invention or utility model patent application shall be taken as the filing date of the design patent application provided, however, that no patent conversion application may be filed after sixty (60) days from the date the written decision granting a patent or the written decision rejecting a patent on the original patent application is served.

第 115 條

申請獨立新式樣專利後改請聯合新式樣專利者，或申請聯合新式樣專利後改請獨立新式樣專利者，以原申請案之申請日為改請案之申請日。但於原申

Article 115

Where an application originally filed for an independent design patent is converted into an associated design patent application, or an application originally filed for an associated design patent is converted into an independent design patent application, the filing date of the original patent application shall be taken as the filing

請案准予專利之審定書送達後，或於原申請案不予專利之審定書送達之日起六十日後，不得改請。

date of the converted patent application provided, however, that no patent conversion application may be filed, after sixty (60) days from the date the written decision granting a patent or the written decision rejecting a patent on the original patent application is served.

第 116 條

申請新式樣專利，由專利申請權人備具申請書及圖說，向專利專責機關申請之。

申請權人為雇用人、受讓人或繼承人時，應敘明創作人姓名，並附具僱傭、受讓或繼承證明文件。

申請新式樣專利，以申請書、圖說齊備之日為申請日。

前項圖說以外文本提出，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；未於指定期間內補正者，申請案不予受理。但在處分前補正者，以補正之日為申請日。

Article 116

An application for a design patent shall be filed by the person entitled to file the patent application by submitting to the Patent Authority a written application accompanied by a specification and drawings.

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

For an application for a design patent, the date on which the written application and the accompanied specification and drawings are submitted shall be the filing date of the patent application.

Where the accompanied specification and drawings initially submitted are written in a foreign language, and the Chinese version thereof are submitted within a given time limit fixed by the Patent Authority, the date of submission of the foreign language version shall be regarded as the filing date of that patent application; failure to submit the Chinese translation by the given deadline shall cause the dismissal of the patent application. However, if the Chinese version of such accompanied specification and drawings are submitted prior to the date on which an administrative measure is taken, the date of submission of the Chinese version shall be regarded as the filing date of the patent application.

第 117 條

前條之圖說應載明新式樣物品名稱、創作說明、圖面說明及圖面。

圖說應明確且充分揭露，使該新式樣所屬技藝領域中具有通常知識者，能瞭解其內容，並可據以實施。

新式樣圖說之揭露方式，於本法施行細則定之。

Article 117

The specification and drawings as required in the preceding Paragraph shall contain the title of the article embodying the design, the description of the creation, the drawings or figures and the description thereof.

The descriptions and drawings shall provide sufficiently clear and complete disclosure so as to enable the ordinarily skilled persons in the relevant art to understand the contents of, and to practice said design.

The manner to disclose the specification and drawings of a design shall be prescribed in the Enforcement Rules of the Patent Act.

第 118 條

相同或近似之新式樣有二以上之專利申請案時，僅得就其最先申請者，准予新式樣專利。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

Article 118

Where two or more patent applications are filed in respect of the same or similar designs, only the design claimed in the first application may be granted a design patent, except that the date of priority claimed in the later application is earlier than the date of application of the earlier application.

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，均不予新式樣專利；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，均不予新式樣專利。

In case the filing date and the date of priority claimed under the preceding Paragraph fall on the same day, the applicants involved shall be required, by a notice, to settle the issue by an agreement, and in the absence of such an agreement, no design patent shall be granted to any of the applicants involved; whereas, if the separate patent applications are filed by the same applicant, said applicant shall be required, by a notice, to choose one therefrom as the valid application, and no design patent shall be granted, if the applicant fails to make such choice.

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。

Where the applicants involved are required to reach a mutual agreement under this Article, the Patent Authority shall further require, by a notice, such applicants report the result of such negotiation within a given period of time; and in the absence of the report upon expiry of the given time limit shall be deemed as a failure of such negotiation.

第 119 條

申請新式樣專利，應就每一新式樣提出申請。
以新式樣申請專利，應指定所施予新式樣之物品。

Article 119

In applying for a design patent, one application shall claim one design only.
A design patent application shall designate the article to which the design is applied.

第 120 條

新式樣專利申請案違反第一百零九條至第一百十二條、第一百十七條、第一百十八條、第一百十九條第一項或第一百二十二條第三項規定者，應為不予專利之審定。

Article 120

In case a design patent application is found to be in violation of the provisions of Article 109 through Article 112, Article 117, Article 118, Paragraph One, Article 119, or Paragraph Three, Article 122 of this Act, a disapproval decision shall be made.

第 121 條

申請專利之新式樣經審查認無不予專利之情事者，應予專利，並應將圖面公告之。

Article 121

Where a claimed design in a patent application is considered, through patent examination, not un-patentable, a patent right shall be granted to the claimed design, and the drawings accompanied thereto shall be published.

第 122 條

專利專責機關於審查新式樣專利時，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、補送模型或樣品。
三、補充、修正圖說。
前項第二款之補送模型或樣品，專利專責機關必要時，得至現場或指定地點實施勘驗。

Article 122

When examining an application for a design patent, the Patent Authority may, at a request or ex officio, notify the applicant to do the following acts within a specified time limit:

1. To appear before the Patent Authority for an interview;
2. To submit models or samples; or
3. To supplement or amend the specification or drawings.

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

依第一項第三款所為之補充、修正，不得超出申請時原圖說所揭露之範圍。

The content of supplement or amendment to be made under Item 3 of Paragraph One above shall not exceed the scope of contents as disclosed in the original specification and drawings submitted along with the patent application.

第 123 條

新式樣專利權人就其指定新式樣所施予之物品，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約、販賣、使用或為上述目的而進口該新式樣及近似新式樣專利物品之權。

新式樣專利權範圍，以圖面為準，並得審酌創作說明。

Article 123

Unless otherwise provided for in this Act, for the designated article to which a patented design is applied, the patentee of such design patent shall have the exclusive right to preclude others from manufacturing, offering for sale, selling, using or importing for above purposes the articles of the design or similar design as claimed in the design patent without his/her prior consent.

The scope of the design patent right shall be determined based on the drawings of the patented design. When interpreting the scope of claim, the descriptions of the design patent made in the specification of the creation may be used as reference.

第 124 條

聯合新式樣專利權從屬於原新式樣專利權，不得單獨主張，且不及於近似之範圍。

原新式樣專利權撤銷或消滅者，聯合新式樣專利權應一併撤銷或消滅。

Article 124

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

The patent right of an associated design shall be revoked or extinguished concurrently with the revocation or extinguishment of the patent right of the original design.

第 125 條

新式樣專利權之效力，不及於下列各款情事：

一、為研究、教學或試驗實施其新式樣，而無營利行為者。

二、申請前已在國內使用，或已完成必須之準備者。但在申請前六個月內，於專利申請人處得知其新式樣，並經專利申請人聲明保留其專利權者，不在此限。

三、申請前已存在國內之物品。

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善意在國內使用或已完成必須之準備者。

六、專利權人所製造或經其同

Article 125

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

1. Where the design is put into practice for the purposes of research, teaching or experiment without any profit-seeking actions;

2. Where, prior to the patent application, the design article has been put into use in this country, or where all necessary preparations have been completed for such purpose; with the exception that the information of the design was obtained from the patent applicant within six (6) months prior to the patent application and, that the patent applicant has made a statement to reserve its patent right therein;

3. Where the article has already been in existence in this country prior to the patent application;

4. Where the article is simply a vehicle or a device thereof that passes the territory of this country;

5. Where a licensee has used the design or has completed the necessary preparations for the use said design in good faith in this country prior to the revocation of the patent right, which is obtained by a person who is not entitled to apply for patent, as a result of a invalidation action filed by the patentee; and

6. Where the patented articles manufactured by the patentee or

意製造之專利物品販賣後，使用或再販賣該物品者。上述製造、販賣不以國內為限。

under the consent of the patentee are put to use or resold after the sale thereof. The aforesaid manufacture and sale are not limited to the manufacture and sale in this country only.

前項第二款及第五款之使用人，限於在其原有事業內繼續利用；第六款得為販賣之區域，由法院依事實認定之。

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

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。

In case the licensee set forth in Item 5, Paragraph One of this Article keeps practicing the design after the patent right over such design has been revoked due to an invalidation action, said licensee shall pay to the patentee of that design a reasonable royalty to be calculated from the date of his/her receipt of a notice of the patent right revocation given by said patentee.

第 126 條 **Article 126**

新式樣專利權人得就所指定施予之物品，以其新式樣專利權讓與、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。但聯合新式樣專利權不得單獨讓與、信託、授權或設定質權。

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

第 127 條 **Article 127**

新式樣專利權人對於專利之圖說，僅得就誤記或不明瞭之事項，向專利專責機關申請更正。專利專責機關於核准更正後，應將其事由刊載專利公報。

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

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

圖說經更正公告者，溯自申請日生效。

The correction(s) approved and made in the specification and drawings shall take effect retroactively from the filing date of said design patent application.

第 128 條 **Article 128**

有下列情事之一者，專利專責機關應依舉發或依職權撤銷其新式樣專利權，並限期追繳證書，無法追回者，應公告註銷：

Under any of the following circumstances, a design patent right shall be revoked and the patent certificate shall be recalled within a given time limit by the Patent Authority, upon the institution of an invalidation action or ex officio and if a recall fails, a public notice for revocation of the patent certificate at issue shall be published:

一、違反第十二條第一項、第一百零九條至第一百十二條、第一百十七條、第一百十八條或第一百二十二條第三項規定者。

1. If the design is in violation of the provisions of Paragraph One, Article 12, Article 109 through Article 112, Article 117, Article 118 or the provisions of Paragraph Three, Article 122 of this Act;

二、專利權人所屬國家對中華民國國民申請專利不予受理

2. If the home country of the applicant does not accept the patent applications filed therein by nationals of the ROC; or

者。
三、新式樣專利權人為非新式樣專利申請權人者。
以違反第十二條第一項規定或有前項第三款情事，提起舉發者，限於利害關係人；其他情事，任何人得附具證據，向專利專責機關提起舉發。

3. If the design patentee is not the person entitled to file the design patent application.
An invalidation action against a patented design for its violation of the provision set out in Paragraph One, Article 12 hereof or the provision set out in Item 3 of the preceding Paragraph of this Article may be instituted only by an interested party to such case; whereas under any other circumstances set out in the preceding Paragraph, an invalidation accompanied by relevant evidences may be filed with the Patent Authority by any person.

第 129 條

第二十七條、第二十八條、第三十三條至第三十五條、第四十二條、第四十三條、第四十五條第二項、第四十六條、第四十七條、第六十條至第六十二條、第六十五條、第六十六條、第六十七條第三項、第四項、第六十八條至第七十一條、第七十三條至第七十五條、第七十九條至第八十六條、第八十八條至第九十二條規定，於新式樣專利準用之。
第二十七條第一項所定期間，於新式樣專利案為六個月。

Article 129

The provisions of Article 27, Article 28, Article 33 through Article 35, Article 42, Article 43, Paragraph Two, Article 45, Article 46, Article 47, Article 60 through Article 62, Article 65, Article 66, Paragraph Three and Paragraph Four of Article 67, Article 68 through Article 71, Article 73 through Article 75, Article 79 through Article 86, and Article 88 through Article 92 shall apply mutatis mutandis to design patents.
In the case of design patent applications, the period specified in Paragraph One of Article 27 shall be six (6) months instead.

第五章 附則

Chapter V Supplemental Provisions

第 130 條

專利檔案中之申請書件、說明書、圖式及圖說，應由專利專責機關永久保存；其他文件之檔案，至少應保存三十年。

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燬；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。

Article 130

The files of application documents, specifications, figures and drawings of patent applications shall be placed in the custody of the Patent Authority on a permanent basis. The files of other documents shall be kept for a period of no less than thirty (30) years.
The patent files referred to in the preceding Paragraph may be stored by means of microfilms, magnetic discs, magnetic tapes, optical discs or other storage mediums. The files so stored, which have been confirmed by the Patent Authority, shall be deemed the original files, and the original hard copy of such patent files may be destroyed. The reproduction of the information and records of any patent file kept in the storage mediums shall be presumed as a true copy upon confirmation by the Patent Authority.
Rules governing the confirmation, administration and use of the substitutes for the files kept in storage mediums referred to in the preceding Paragraph shall be prescribed by the Competent Authority.

第 131 條

Article 131

主管機關為獎勵發明、創作，得訂定獎助辦法。

The Competent Authority may develop and publish incentive regulations for encouraging invention and creation activities.

第 132 條

中華民國八十三年一月二十三日前所提出之申請案，均不得依第五十二條規定，申請延長專利權期間。

Article 132

For the patent applications filed before January 23, 1994, no application for extension of the patent terms may be filed under Article 52 of this Act.

第 133 條

本法中華民國九十年十月二十四日修正施行前所提出之追加專利申請案，尚未審查確定者，或其追加專利權仍存續者，依修正前有關追加專利之規定辦理。

Article 133

Where an application for patent-of-addition filed before the amendment to this Act on October 24, 2001 has not been given an irrevocable examination decision, or where a patent-of-addition remains effective, when the amendment to this Act took effect, the provisions governing patent-of-addition in force before said amendment shall be applied thereto.

第 134 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，適用修正施行前之規定。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，適用修正施行前之規定。

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施行後之規定。

Article 134

For those patent cases that have been allowed and published prior to the January 21, 1994 Amendment to this Act, the duration of the patent rights granted in such cases shall be calculated in accordance with the provisions in force prior to the present amendment to this Act. However, regarding invention patents that remain effective on the date the World Trade Organization Agreement (hereinafter referred to as the "WTO Agreement) comes into force in the jurisdictional territory of the ROC, the provisions governing the duration of invention patent rights to be enforced after the present amendment to this Act shall prevail.

For the utility model patent application cases in respect of which an irrevocable decision has been made and the contents of the utility model have been published, the provisions governing the duration of utility model patent rights to be enforced before the present amendment to this Act shall prevail.

For the design patents that remain effective on the date the WTO Agreement comes into force in the jurisdictional territory of the ROC, the provisions governing the duration of design patent right this Act that have been enforced till now after the May 7, 1997 Amendment to this Act shall prevail.

第 135 條

本法中華民國九十二年一月三日修正施行前，尚未審定之專利申請案，適用修正施行後之規定。

Article 135

For the patent applications which were filed but an irrevocable examination decision has not been rendered thereto prior to the enforcement of the January 3, 2003 Amendment to this Act, the provisions governing the duration of patent rights to be enforced after the effective date of the present amendment hereof shall prevail.

第 136 條

Article 136

本法中華民國九十二年一月三日修正施行前，已提出之異議案，適用修正施行前之規定。

For the patent opposition actions that were instituted and are pending prior to the enforcement of the January 3, 2003 Amendment to this Act, the provisions in force prior to the enforcement of the present amendment shall prevail.

本法中華民國九十二年一月三日修正施行前，已審定公告之專利申請案，於修正施行後，仍得依修正施行前之規定，提起異議。

For the applications in respective of which an irrevocable examination decision has been made and the contents of the patented matters have been published prior to the enforcement of the January 3, 2003 Amendment to this Act, an opposition action may still be instituted against any of such patented matters in accordance with the provisions of this Act in force prior to the enforcement of the present amendment of this Act, even after the present amendment takes effect..

第 137 條

本法施行細則，由主管機關定之。

Article 137

The Implementing Regulations of this Act shall be prescribed by the Competent Authority.

第 138 條

本法除第十一條自公布日施行外，其餘條文之施行日期，由行政院定之。

Article 138

Except for the provision of Article 11 hereof, which shall come into force from the date of promulgation of the present amendment, the effective date of the provisions set out in all other Articles hereof shall be decided by the Executive Yuan.