



may also be included, provided such words and graphic marks and the way of marking are not misleading to the public.

**Article 6** Where a product acquired directly pursuant to a patented method or the packing or instruction manual of the product is marked as patented, the marking shall indicate in Chinese that the product is acquired directly pursuant to such method.

**Article 7** Where a product, or the packing or instruction manual or other material of the product is marked before patenting, the marking shall include the category and patent application number of the Chinese patent application and the notice “patent pending” in Chinese.

**Article 8** Where patent marking is not in compliance with the provisions of Article 5, 6 or 7 of

these Measures, the patent Administration Department shall make instructions on correction of such marking.

Where patent marking is inappropriate, constituting patent counterfeiting, the patent Administration Department shall impose punishments in accordance with the provisions of Article 63 of the Patent Law.

**Article 9** The power to interpret these Measures shall remain with the State Intellectual Property Office.

**Article 10** These Measures shall come into force as of May 1, 2012. The Provisions on Marking of Patent Marks and Patent Numbers promulgated on May 30, 2003 as the No. 29 Order of the State Intellectual Property Office shall be abolished at the same time.

## Order of State Intellectual Property Office

( No. 64 )

The Measures on Patent Compulsory Licenses, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated and shall come into force as of May 1, 2012.

Commissioner: Tian Lipu

March 15, 2012

# Measures on Patent Compulsory Licenses

## Chapter I General Provisions

**Article 1** These Measures are formulated in accordance with the Patent Law of the People's Republic of China (hereinafter referred to as the "Patent Law"), the Implementing Rules for the Patent Law of the People's Republic of China and relevant laws and regulations in order to regulate the grant, royalty adjudication and termination procedures for implementation of compulsory licenses of invention or utility model patents (hereinafter referred to as "compulsory licenses").

**Article 2** The State Intellectual Property Office (SIPO) shall be responsible for accepting and examining compulsory license requests, compulsory license royalty adjudication requests and compulsory license termination request and making decisions on the same.

**Article 3** Requests for grant of compulsory licenses, those for compulsory license royalty adjudication, and those for compulsory license termination shall be handled in Chinese in written form.

Where certificates and documents submitted pursuant to these Measures are in a foreign language, the SIPO may require the party concerned to submit the Chinese version before a specified deadline, if it deems it necessary; if no Chinese version is submitted when the time is due, it shall be deemed that no such certificates and documents have been submitted.

**Article 4** A foreign individual, enterprise or any other foreign organization that has no regular residence or business premises in China shall entrust a legally established patent agency to undergo patent compulsory license procedures for it.

A party concerned who entrusts a patent agency to undergo compulsory license procedures shall submit its letter of attorney which shall clearly specify the scope of authorization. Where a party concerned comprises more than two persons and does not entrust a patent agency, unless otherwise stated, the first party stated in the written document submitted by them shall serve as their representative.

## Chapter II Submission and Acceptance of Compulsory License Requests

**Article 5** Where a patentee fails to exploit or does not fully exploit its patent without any justifiable reason within 3 years after the date of granting of its patent and within 4 years after the date of submission

of its patent application, any organization or individual that is qualified to exploit such patent may make a request for granting of compulsory license in accordance with provisions in Article 48.1 of the Patent



Law.

Where the exploitation of any patent by a patentee is legally determined as a monopolistic act, in order to eliminate or reduce the adverse effect of such conduct on competition, any organization or individual qualified to exploit the patent may make a request for granting of compulsory license in accordance with provisions in Article 48.2 of the Patent Law.

**Article 6** In case of any national emergency or extraordinary situation, or for the purpose of public interest, the relevant competent department under the State Council may propose the grant of compulsory license by the SIPO to any designated unit that is qualified to exploit the patent concerned in accordance with provisions in Article 49 of the Patent Law.

**Article 7** For the purpose of public health, any organization that is qualified to exploit a patent may, in accordance with provisions in Article 50 of the Patent Law, make a request for granting of compulsory license for manufacturing the patented drug and exporting the same to the following countries or regions:

( I ) the least developed countries or regions;

( II ) Developed or developing members of the World Trade Organization ( WTO ) which notify the WTO of their intent to become importers in accordance with relevant international treaties.

**Article 8** Where a patented invention or utility model is indicative of major technical progress of prominent economic significance as against the previous one and the exploitation of the first-mentioned patented invention or utility model is dependant on that of the previous one, the patentee of the first-mentioned invention or utility model may make a re-

quest for the granting of compulsory license for the exploitation of the previous patent in accordance with provisions in Article 51 of the Patent Law. Where the SIPO grants compulsory license for a previous patent, the patentee of the previous patent may also make a request for compulsory license for the exploitation of the second patent.

**Article 9** Anyone making a request for granting of compulsory license shall submit the compulsory license request, which shall clearly state:

( I ) Name, address, post code, contact and telephone number of the applicant;

( II ) Nationality of the applicant or the country or region in which the applicant is registered;

( III ) Name, patent number, date of application and date of grant announcement of the invention or utility model patent in respect of which a request is made for compulsory license, and name of the patentee;

( IV ) Reasons, facts and term of the compulsory license petitioned for;

( V ) Where the applicant entrusts a patent agency, the name and organization code of the entrusted agency, and the name, practice certificate number and telephone number of the agent appointed by the patent agency;

( VI ) Signature or seal of the applicant; and seal of the patent agency, if such agency is entrusted;

( VII ) List of attached documents; and

( VIII ) Other matters that should be included. The request and the documents attached thereto shall be made in duplicate.

**Article 10** Where a request for compulsory license involves two or more patentees, the number of

copies of the request submitted by the applicant and the documents attached thereto shall be as per the number of patentees.

**Article 11** Where a request is made for granting of compulsory license in accordance with provisions in Articles 48.1 or Article 51 of the Patent Law, the applicant shall provide evidence proving that it has requested the patentee for a license to exploit the patent on reasonable conditions but has failed to obtain such license within a reasonable period of time.

Where a request is made for granting of compulsory license in accordance with provisions in Article 48.2 of the Patent Law, the applicant shall submit the legally effective judgment or decision made by a judicial authority or anti-monopoly law enforcement authority identifying the exploitation of the patent by the patentee as a monopolistic act.

**Article 12** Where a competent department under the State Council proposes the grant of compulsory license in accordance with Article 49 of the Patent Law, the following shall be clearly stated:

( I ) Granting of compulsory license is necessary because of the emergency or extraordinary situation of the country or for the purpose of public interest;

( II ) Name, patent number, date of application and date of grant announcement of the invention or utility model patent in respect of which granting of compulsory license is proposed, and name of the patentee;

( III ) Term of compulsory license proposed to be granted;

( IV ) Name, address, post code, contact and telephone number of the designated unit which is qualified to exploit the patent; and

( V ) Other items that should be included.

**Article 13** Where a request is made for granting of compulsory license in accordance with provisions in Article 50 of the Patent Law, the applicant shall provide information about the importer, the drug needed and about the granting of compulsory license.

**Article 14** In any of the following circumstances, the request for granting of compulsory license will not be accepted and a notice will be given to the applicant:

( I ) The patent number of the invention or utility model patent in respect of which the request is made for granting of compulsory license is uncertain or it is difficult to determine the patent number;

( II ) The request documents are not made in Chinese;

( III ) Evident absence of the reasons for a compulsory license request; or

( IV ) The patent in respect of which the request is made for granting of compulsory license is already terminated or invalidated.

**Article 15** Where the request documents are not in compliance with provisions in Articles 4, 9 and 10 of these Measures, the applicant shall supplement and correct its documents within 15 days after receiving the notice. In case of failure to make such supplementation and correction when time is due, the request shall be deemed as having never been made.

**Article 16** After accepting a request for compulsory license, the SIPO shall forward the copy of the request to the patentee in time. Unless otherwise specified, the patentee shall, within 15 days after receiving the notice, state its opinion; if no reply is given when time is due, the decision-making by the SIPO will not be affected.



### Chapter III Examination and Determination of Compulsory License Request

**Article 17** The SIPO shall examine the reasons stated, information provided and documentary evidence submitted by the applicant and the opinion stated by the patentee; if field inspection is needed, more than two staff members shall be sent for field inspection.

**Article 18** Where the applicant or patentee asks for a hearing, the hearing will be organized by the SIPO.

The SIPO shall give a notice to the applicant, the patentee and other stakeholders 7 days before holding of the hearing.

The hearing shall be held openly, unless any national secret, trade secret or personal privacy is involved.

When a hearing is held, the applicant, patentee and other stakeholders may defend themselves and conduct cross-examination.

The hearing shall be documented into a hearing record, which shall be signed or stamped with a seal after confirmed by participants in the hearing.

The hearing procedures shall not be applicable to any proposal or request for granting of compulsory license made in accordance with provisions in Article 49 or 50 of the Patent Law.

**Article 19** Where the applicant withdraws its request before the SIPO makes a decision, the examination procedures for the compulsory license request shall be terminated.

Where the applicant and the patentee have entered into a patent license contract before the SIPO

makes its decision, a notice shall be given to the SIPO in time and the compulsory license request shall be withdrawn.

**Article 20** If through examination, the compulsory license request is deemed as being in any of the following circumstances, the SIPO shall make a decision on dismissal of the compulsory license request.

( I ) The applicant is not in compliance with provisions in Article 4, 5, 7 or 8 of these Measures;

( II ) The reasons for the compulsory license request are not in compliance with provisions in Article 48, 50 or 51 of the Patent Law;

( III ) Where the invention or creation involved in the compulsory license request is semiconductor technology, the reasons for the petition are not in compliance with provisions in Article 52 of the Patent Law;

( IV ) The compulsory license petition is not in compliance with provisions in Article 11 or 13 of these Measures; or

( V ) The reasons stated, information provided or documentary evidence submitted by the applicant is insufficient or untrue.

The SIPO shall, before making its decision on dismissal of the compulsory license request, notify the applicant of the proposed decision and the reasons for the decision. Unless otherwise specified, the applicant may state its opinion within 15 days after receiving the notice.

**Article 21** If through examination, it is determined that the request for granting of compulsory li-

license is well grounded, the SIPO shall make a decision on the grant of compulsory license. The SIPO shall, before making its decision on the grant of compulsory license, notify the applicant and the patentee of the proposed decision and the reasons for the decision. Unless otherwise specified, both parties may state their opinions within 15 days after receiving the notice.

The SIPO shall, before making its decision on the grant of compulsory license in accordance with Article 49 of the Patent Law, notify the patentee of the proposed decision and the reasons for the decision.

**Article 22** The decision on the grant of compulsory license shall clearly set out:

( I ) The name and address of the organization or individual to whom the compulsory license is granted;

( II ) The name, patent number, date of application and date of grant announcement of the invention or utility model patent in respect of which compulsory license is granted;

( III ) The term and scope of compulsory license granted;

( IV ) The reasons, facts and legal basis for the decision;

( V ) Seal of the SIPO and signature of the person in charge;

( VI ) Date of the decision; and

( VII ) Other relevant matters.

The applicant and the patentee shall be notified of the decision on grant of compulsory license within 5 days after the date of the decision.

**Article 23** Where the SIPO makes a decision on the grant of compulsory license in accordance with

Article 50 of the Patent Law, the following requirements shall be set out in the decision:

( I ) The quantity of drugs manufactured under the compulsory license shall not exceed the quantity needed by the importer and shall be fully exported to the importer;

( II ) The drug manufactured under the compulsory license shall bear a special label or mark clearly indicating that the drug is manufactured under the compulsory license; the drug shall be made into a special color or shape or be packaged with special packing material, provided that it is practicable and that the drug price will not be affected significantly;

( III ) Before shipping of the drug, the organization obtaining the compulsory license shall issue the information about the quantity of the drug to be shipped to the importer and the identification characteristics of the drug as set out in subparagraph ( II ) of this article on its website or a relevant website of the WTO.

**Article 24** Where the SIPO makes a decision on the grant of compulsory license in accordance with Article 50 of the Patent Law, the competent department under the State Council shall provide the following information to the WTO:

( I ) The name and address of the organization obtaining the compulsory license;

( II ) The name and quantity of the drug for export;

( III ) The importer;

( IV ) The term of the compulsory license; and

( V ) The website as referred to in subparagraph ( III ) of Article 23 of these Measures.



## Chapter IV Examination and Adjudication of Requests for Adjudication of Compulsory License Royalties

**Article 25** Anyone who requires for adjudication of the compulsory license royalty shall submit the request for adjudication of the compulsory license royalty, which shall clearly set out:

( I ) The name and address of the applicant;

( II ) The nationality of the applicant or the country or region in which the applicant is registered;

( III ) The reference number of the decision on the grant of the compulsory license;

( IV ) The name and address of the respondent;

( V ) The reason for the petition for adjudication of the compulsory license royalty;

( VI ) Where the applicant entrusts a patent agency, the name and organization code of the entrusted agency, and the name, practice certificate number and telephone number of the agent appointed by the patent agency;

( VII ) Signature or seal of the applicant; and seal of the patent agency, if such agency is entrusted;

( VIII ) The list of attached documents; and

( IX ) Other matters that should be included.

The request and the documents attached thereto shall be made in duplicate.

**Article 26** In any of the following circumstances, the request for adjudication of the compulsory license royalty will not be accepted and a notice will be given to the applicant:

( I ) The decision on the grant of the compulsory license has not been made yet;

( II ) The applicant is neither the patentee nor

any organization or individual having obtained the compulsory license;

( III ) Both parties have not consulted with each other yet or an agreement has been reached between them through consultation.

**Article 27** After accepting a request for adjudication of the compulsory license royalty, the SIPO shall forward the copy of the request to the other party in time. Unless otherwise specified, the other party shall make a statement of its opinion within 15 days after receiving the notice; if no reply is given when time is due, the decision-making by the SIPO will not be affected.

In adjudication of the compulsory license royalty, both parties may submit their written opinions. The SIPO may hear oral opinions of both parties based on needs of the case.

**Article 28** Where the applicant withdraws its request for adjudication before the SIPO makes a decision, the adjudication procedures shall be terminated.

**Article 29** The SIPO shall make a decision on adjudication of the compulsory license royalty within 3 months after receiving the request.

**Article 30** The decision on adjudication of the compulsory license royalty shall clearly set out:

( I ) The name and address of the organization or individual obtaining the compulsory license;

( II ) The name, patent number, date of application and date of grant announcement of the invention

or utility model patent in respect of which compulsory license is granted;

( III ) The content of and reasons for adjudication;

( IV ) The seal of the SIPO and the signature of the person in charge;

( V ) The date of the decision; and

( VI ) Other relevant matters.

The decision on adjudication of the compulsory license royalty shall be notified to both parties concerned within 5 days after the decision is made.

## Chapter V Examination and Determination of Request for Termination of Compulsory License

**Article 31** A compulsory license shall be terminated automatically in any of the following circumstances:

( I ) The term of the compulsory license specified in the decision on grant of the compulsory license expires; or

( II ) The invention or utility model patent in respect of which the compulsory license granted is terminated or invalidated.

**Article 32** Where the reasons for a compulsory license disappear and will not come out again before expiration of the term of the compulsory license specified in the decision on the grant of compulsory license, the patentee may petition the SIPO for a decision on termination of the compulsory license.

Anyone who petitions for termination of compulsory license shall submit a petition for termination of compulsory license, which shall clearly state:

( I ) The name and address of the patentee;

( II ) The nationality of the patentee or the country or region in which the patentee is registered;

( III ) The reference number of the decision on grant of the compulsory license to be terminated;

( IV ) Reasons and facts for termination of the

compulsory license;

( V ) Where the patentee entrusts a patent agency, the name and organization code of the entrusted agency, and the name, practice certificate number and telephone of the agent appointed by the patent agency;

( VI ) Signature or seal of the patentee; and seal of the patent agency, if such agency is entrusted;

( VII ) List of attached documents; and

( VIII ) Other matters that should be included.

The request and the documents attached thereto shall be made in duplicate.

**Article 33** In any of the following circumstances, the request for termination of compulsory license will not be accepted and a notice will be given to the applicant:

( I ) The applicant is not the patentee in respect of whose invention or utility model patent the compulsory license is granted;

( II ) The reference number of the decision on grant of the compulsory license to be terminated is not stated clearly;

( III ) The request documents are not made in Chinese; or





(IV) Evident absence of the reasons for termination of the compulsory license.

**Article 34** Where the request documents are not in compliance with provisions in Articles 32 of these Measures, the applicant shall supplement and correct its documents within 15 days after receiving the notice. In case of failure to make such supplementation and correction when time is due, the request shall be deemed as having never been made.

**Article 35** After accepting a request for termination of compulsory license, the SIPO shall forward the copy of the petition to the organization or individual obtaining the compulsory license in time. Unless otherwise specified, the organization or individual obtaining the compulsory license shall make a statement of its opinion within 15 days after receiving the notice; if no reply is given when time is due, the decision-making by the SIPO will not be affected.

**Article 36** The SIPO shall examine the reasons stated and documentary evidence provided by the patentee and the opinions stated by the organization or individual obtaining the compulsory license; if field inspection is needed, more than two staff members shall be sent for field inspection.

**Article 37** Where the patentee withdraws its request before the SIPO makes a decision, the relevant procedures shall be terminated.

**Article 38** If through examination, it is determined that the reasons for termination of compulsory license are not justifiable, the SIPO shall make a decision to dismiss the request for termination of compulsory license. Before making its decision to dismiss the petition for termination of compulsory license, the SIPO shall notify the patentee of the proposed decision

and the reasons for the decision. Unless otherwise specified, the patentee may make a statement of opinions within 15 days after receiving the notice.

**Article 39** If through examination, it is determined that the reasons for the request for termination of compulsory license are justifiable, the SIPO shall make a decision on termination of compulsory license. Before making its decision on termination of compulsory license, the SIPO shall notify the organization or individual obtaining the compulsory license of the proposed decision and the reasons for the decision. Unless otherwise specified, the organization or individual obtaining the compulsory license may make a statement of opinions within 15 days after receiving the notice.

The decision on termination of compulsory license shall clearly set out:

- ( I ) The name and address of the patentee;
- ( II ) The name and address of the organization or individual obtaining the compulsory license;
- ( III ) The name, patent number, date of application and date of grant announcement of the invention or utility model patent in respect of which the compulsory license is granted;
- ( IV ) The reference number of the decision on the grant of the compulsory license;
- ( V ) The reasons, facts and legal basis for the decision;
- ( VI ) The seal of the SIPO and the signature of the person in charge;
- ( VII ) The date of decision; and
- ( VIII ) Other relevant matters.

The decision on termination of compulsory license shall be notified to the patentee and the organi-

zation or individual obtaining the compulsory license within 5 days after the decision is made.

### Supplementary Provisions

**Article 40** The legally effective decision on the grant or termination of compulsory license, and the case of automatic termination of compulsory license shall be registered on the patent register and announced in the patent gazette.

**Article 41** Where a party concerned refuses to accept the decision made by the SIPO on compulsory license, it may apply for administrative reconsideration or institute administrative proceedings.

**Article 42** The power to interpret these Meas-

ures shall remain with the State Intellectual Property Office.

**Article 43** These Measures shall come into force as of May 1, 2012. The Measures on Compulsory Licensing for Patent Exploitation issued by No. 31 Order of the SIPO on June 13, 2003 and the Measures on Compulsory Licensing for Patent Exploitation Concerning Public Health issued by No. 37 Order of the SIPO on November 29, 2005 shall be abolished simultaneously.

## Order of State Intellectual Property Office

( No. 65 )

The Administrative Measures for Prioritized Examination of Invention Patent Applications, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated and shall come into force as of August 1, 2012.

Commissioner: Tian Lipu

June 19, 2012