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PRC STATE COUNCIL BULLETIN

No. 6, 20 April 1984

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23 November 1984

CHINA REPORT
POLITICAL, SOCIOLOGICAL AND MILITARY AFFAIRS

PRC STATE COUNCIL BULLETIN

No. 6, 20 April 1984

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PATENT LAW OF THE PRC

OW160641 Beijing STATE COUNCIL BULLETIN in Chinese No 6, 20 Apr 84 pp 164-173

[Patent Law of the People's Republic of China adopted by the Fourth Session of the Standing Committee of the Sixth National People's Congress on 12 March 1984]

[Text] Chapter I: General Provisions

Article 1: This law is formulated in order to protect patent rights for inventions and creations, encourage inventions and creations, help promote their popularization and application, and accelerate the development of science and technology to meet the requirements of socialist modernization.

Article 2: "Inventions and creations" mentioned in this law mean inventions, practical new models and exterior designs.

Article 3: The Patent Bureau of the People's Republic of China accepts and examines patent applications and awards patent rights to inventions and creations which meet the provisions of this law.

Article 4: Applications for patents on inventions and creations that involve national security or major interests and which must be kept secret shall be handled according to relevant provisions of the state.

Article 5: Patent rights will not be awarded to inventions and creations which violate state laws and social morality or jeopardize public interests.

Article 6: For job-related inventions and creations accomplished while carrying out the tasks of a unit or when using the material conditions of the unit, the right to apply for a patent belongs to the unit. For nonjob-related inventions and creations, the right to apply for a patent belongs to the inventor or designer. Upon approval of an application, if the applicant is a unit owned by the people, the patent rights shall be held by that unit; if the applicant is a collectively owned unit or an individual, the patent rights shall be owned by that unit or individual.

For job-related inventions and creations accomplished by persons working for foreign enterprises or Chinese-foreign joint ventures in China, the right to apply for a patent belongs to the enterprises and joint ventures. For nonjob-

related inventions and creations, the right to apply for a patent belongs to the inventor or designer. Upon approval of an application, the patent rights shall be owned by the applicant enterprise or individual.

Holders and owners of patent rights are all referred to as patentees.

Article 7: No unit or individual may suppress the application for patents by an inventor or designer for nonjob-related inventions or creations.

Article 8: For inventions and creations accomplished by two or more cooperating units or by one unit entrusted by other units to carry out research or design tasks, the right to apply for patents belongs to the accomplishing unit or jointly accomplishing units, unless there are other agreements. Upon approval of an application, the patent rights shall be owned or held by the applicant unit or units.

Article 9: When two or more applicants separately apply for a patent on the same inventions and creations, the patent rights will be awarded to the first applicant.

Article 10: The right to apply for patents and patent rights may be transferred.

To transfer its right to apply for patents or its patent rights, a unit owned by the whole people must obtain approval by a responsible organization at a higher level.

To transfer the right to apply for patents or patent rights to foreigners, a Chinese unit or individual must obtain approval by the relevant responsible department of the State Council.

To transfer the right to apply for patents or patent rights, the parties concerned must sign a written contract, which will become effective after registration at the Patent Bureau and a public announcement.

Article 11: After patent rights for inventions and practical new models are granted, except for those provided by Article 14 of this law, no unit or individual without the permission of the patentees may apply their patents; that is, to produce, use or market their patented products for production or business purposes, or to use their patented methods.

After patent rights for exterior designs are granted, no unit or individual without the permission of the patentees may apply their patents; that is, to produce or market products of their patented exterior designs for production and business purposes.

Article 12: To apply the patents of others, except for those provided by Article 14 of this law, a unit or individual must sign a written contract with the patentees granting permission for such applications and pay patent-use fees to the patentees. The party granted permission to use a patent has no right to permit any unit or individual other than those provided for by the contract to apply that patent.

Article 13: After application for patents for inventions is announced, the applicant may demand the unit or individual applying his inventions to pay appropriate fees.

Article 14: On the basis of state plans, responsible departments concerned of the State Council and provincial, autonomous regional, and municipal people's governments have the power to decide on permitting designated units to apply the patents of important inventions and creations held by units owned by the whole people in their own system or under their jurisdiction, in which case the applying units should pay user fees to the patent-holding units according to state provisions.

Patents owned by Chinese collectively owned units or individuals, which have great significance to national or public interests and need to be popularized and applied, should be reported to the State Council by the department of the State Council responsible for approval to be handled according to the provisions of the previous article.

Article 15: Patentees have the right to indicate patent marks and numbers on patented products or their packages.

Article 16: Units owning or holding patent rights should reward the inventors or designers for job-related inventions and creations. After inventions and creations in use, the inventors and designers should be rewarded according to the scope of popularization and application and the economic results obtained.

Article 17: Inventors or designers have the right to identify themselves as the inventors or designers in patent documents.

Article 18: Foreigners, foreign enterprises, or other foreign organizations with no regular residences or offices in China who apply for patents in China should be handled according to agreements between their countries and China, or international treaties to which both their countries and China are signatories, or according to this law on the principle of mutual benefit.

Article 19: Foreigners, foreign enterprises, or other foreign organizations with no regular residences or offices in China who apply for patents and handle other patent affairs in China should entrust a patent agency designated by the State Council of the People's Republic of China to act on their behalf.

When Chinese units or individuals apply for patents and handle other patent affairs in the country, they may entrust a patent agency to act on their behalf.

Article 20: When Chinese units or individuals apply for patents in foreign countries for inventions and creations accomplished in China, they should first apply for patents at the Patent Bureau and obtain the endorsement of the responsible departments of the State Council concerned, and then entrust a patent agency designated by the State Council to act on their behalf.

Article 21: Before a patent application is published or announced, Patent Bureau staff members and other related personnel have the responsibility to keep its contents secret.

Chapter II: Conditions for Awarding Patent Rights

Article 22: To be granted patent rights, inventions and practical new models should have the characteristics of newness, originality and practicality.

Newness means that no similar invention or practical new model has been published in domestic or foreign publications or publicly used domestically, or has been made known to the public of other ways, before the date of application, and that no patent application has been submitted to the Patent Bureau by others on a similar invention or practical new model which is on record in the patent application document made public after the date of application.

Originality means that compared with the technology in existence before the date of application, the invention has outstanding and substantial distinguishing features and represents a marked improvement, and the practical new model has substantial distinguishing features and represents an improvement.

Practicality means that the invention or practical new model can be manufactured or used and can produce positive results.

Article 23: To be granted patent rights, an exterior design should not be identical or similar to any exterior design which has been published in domestic or foreign publications, or has been publicly used domestically before the date of application.

Article 24: Inventions and creations for which patents are being sought do not lose their newness if one of the following circumstances occurred within 6 months before the date of application:

- a. They were displayed for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- b. They were published for the first time at specific academic or technological meetings; and
- c. Their details were revealed by others without the consent of the applicants.

Article 25: The following items will not be granted patent rights:

- a. Scientific discoveries;
- b. Rules and methods of intellectual activities;
- c. Methods of diagnosis and treatment of diseases;
- d. Foodstuffs, beverages and seasonings;
- e. Medicines and materials obtained by chemical methods;
- f. Breeds and varieties of animals and plants; and
- g. Materials obtained by methods of nuclear mutation.

Patent rights may be granted to the production methods of the products listed in items d-f in the above article in accordance with provisions of this law.

Chapter III: Application for Patents

Article 26: Applicants for patents for inventions or practical new models should submit an application, a written explanation and its summary, a claim of rights, and other documents.

The application should clearly indicate the name of the invention or practical new model, the name of the inventor or designer, the name and address of the applicant, and other matters.

The written explanation should clearly and completely explain the invention or practical new model in such a way that it can be understood by technicians in related technological fields. When necessary, drawings should be attached. The summary should briefly explain the main technical points of the invention or practical new model.

The claim of rights should clearly state the scope of patent protection requested on the basis of the written explanation.

Article 27: Applicants for patents for exterior designs should submit an application, drawings or photos of the exterior design, and other documents and should clearly indicate the product which uses the exterior design and the category to which it belongs.

Article 28: The date of application is the day on which the application documents are received by the Patent Bureau. If the application documents are mailed, the date on the outgoing postal stamp is the date of application.

Article 29: A foreign applicant applying for patent in China within 12 months from the date of his first patent application in a foreign country for the same invention or practical new pattern, or within 6 months from the date of his first patent application in a foreign country for the same invention or practical new pattern, or within 6 months from the date of his first patent application in a foreign country for the same exterior design, may enjoy the right of preference; that is, to use the date of his first application in the foreign country as the date of his application in China, according to the agreement signed between his country and China or the international treaty to which both countries are signatories, or according to the principle of mutual recognition of preference right.

For the applicant claiming the right of preference, if one of the circumstances mentioned in Article 24 of this law has occurred, the time limit for preference right will be counted from the date of the occurrence of that circumstance.

Article 30: The applicant who claims preference right should submit a written statement at the time of application indicating the date of his application in a foreign country and naming the country that accepted his application, and should submit copies of the original application documents certified by the

accepting organization of that country within 3 months. Failure to submit a written statement or failure to submit the documents within the limit will be regarded as failure to claim preference right.

Article 31: One patent application or invention or practical new model should be limited to one invention or practical new model. Two or more inventions or practical new models which belong to a general inventional concept can be included in one application.

Patent application for exterior design should be limited to one exterior design used for one product. Two or more exterior designs which are used for products of the same category and sold or used in sets can be included in one application.

Article 32: An applicant may withdraw his patent application at any time before patent rights are awarded.

Article 33: An applicant may revise the documents and application for a patent, but such revision must not exceed the scope listed in the original written explanation.

Chapter IV: Examination and Approval of a Patent Application

Article 34: After receiving the application for an invention patent, and after a preliminary examination, if the Patent Bureau thinks that such application meets the requirements of this law, it should make the application public within 18 months of the date of application. The Patent Bureau may make the application public at an earlier date at the request of the applicant.

Article 35: Within 3 years from the date of application for an invention patent, the Patent Bureau may conduct a substantive examination at any time over the application at the request of the applicant. If the applicant has no valid reason for failing to file such a request for a substantive examination, this application is considered withdrawn.

If it is deemed necessary, the Patent Bureau may conduct a substantive examination of any invention patent application on its own.

Article 36: When an applicant for any invention patent applies for a substantive examination, the applicant should submit reference materials regarding his invention that are dated before the application date.

When an applicant applies for a substantive examination of an application for an invention patent which has already been applied abroad, he should submit reference materials from that nation on checking the application he filed there or other reference materials showing the results of the examination. If such materials are not submitted, for no valid reason, this application is considered withdrawn.

Article 37: If the Patent Bureau believes that after conducting a substantive examination, this application for an invention patent does not conform with the stipulations of this law, it should notify the applicant and request that the latter state his opinions within a designated time limit or revise his application. This application is considered withdrawn if for no valid reason the applicant fails to reply within the time limit.

Article 38: After the applicant states his opinions or revises his application for an invention patent, the Patent Bureau should turn down the application if it still thinks that the application does not conform with the stipulations of this law.

Article 39: If the Patent Bureau finds no reason to turn down the application for an invention patent after a substantive examination, it should notify the applicant.

Article 40: Having received an application for a practical new model or exterior design patent and having thought, after a preliminary examination, that such application meets the requirements of this law, the Patent Bureau may grant approval, make an announcement, and notify the applicant immediately without conducting a substantive examination.

Article 41: Within 3 months of the date of the announcement of the patent application, any dissident may file his objection with the Patent Bureau against this application as stipulated by this law. The Patent Bureau should send a copy of this objection to the applicant, who must give a written reply within 3 months of the date of receipt of the copy of objection. The application is considered withdrawn if for no valid reason the applicant fails to submit his written reply within the time limit.

Article 42: If the Patent Bureau thinks the objection is well founded, it should make its decision to reject the application and notify the dissident as well as the applicant.

Article 43: The Patent Bureau sets up a Patent Review Committee. Within a period of 3 months after the applicant has received the notice of rejection, any applicant who disagrees with the Patent Bureau's rejection of his application may file a request with the Patent Review Committee to reexamine the application. After reexamining the application, the Patent Review Committee makes a decision and notifies the applicant.

If an applicant for an invention patent disagrees with the Patent Review Committee's rejection, he may file a complaint with the people's court within 3 months after he receives the notice of rejection.

The Patent Review Committee's decision on an applicant's request for reexamination of a practical new model, or an exterior design, is final.

Article 44: When there is no objection to a patent application, or when the objection is found to be invalid during the reexamination, the Patent Bureau should make a decision on granting the patent, issuing the patent certificate, and registering and publicizing the related matters.

Chapter V: Time Limit, Termination and Nullification of a Patent

Article 45: The time limit for an invention patent is 15 years. The period is counted from the day an application is submitted. The time limit for a patent for a practical new model, or an exterior design, is 5 years, and the period is counted from the day an application is submitted. Before a patent expires, the patent holder may apply for an extension of 3 years.

The time limit for a patent, for which a patent holder claims the preference right, begins from the day it is applied for in China.

Article 46: A patent holder should begin to pay annual dues from the year the patent is granted.

Article 47: A patent is terminated before its expiration date if a) annual dues are not paid according to regulation; or b) the patent holder, by a written statement, gives up the patent.

The termination of a patent shall be registered and publicized by the Patent Bureau.

Article 48: After a patent is granted, any unit or individual who thinks that the granting of the patent is incompatible with the provisions of this law, may request the patent review committee to declare the patent null and void.

Article 49: The Patent Review Committee reexamines the request for declaring a patent null and void, makes a decision and notifies the requester and the patent holder. The decision to declare a patent null and void shall be registered and publicized by the Patent Bureau.

Article 50: A patent declared null and void is deemed nonexistent from the very beginning.

Chapter VI: Compulsory License for Using Patents

Article 51: A patent holder is obliged to manufacture his patented product or use his patented means in China, or permit other people to manufacture his patented product or use his patented means in China.

Article 52: If, after 3 years since the granting of a patent, a holder of a patent of an invention or practical new model fails to honor the obligations stipulated in Article 51 without a legitimate reason, the Patent Bureau may, in accordance with the request submitted by a unit capable of using the patent, grant a compulsory license to it.

Article 53: If a patented invention or a practical new model is technologically more advanced than a preceding one, and if its implementation is also based on the older one, the Patent Bureau may, in accordance with the request submitted by an applicant for the new patent, grant him a compulsory license to use the preceding invention or the preceding model.

By this same token of granting a compulsory license, the Patent Bureau may also grant a compulsory license for a newer invention or newer model in accordance with the request of the holder of the older patent.

Article 54: A unit or an individual applying for a compulsory license in accordance with this law must provide proof that a contract of using the license cannot be signed with the patent holder under rational terms.

Article 55: The Patent Bureau shall register and publicize its decision on granting a compulsory license.

Article 56: A unit or an individual having acquired a compulsory license should not monopolize the right of using it, nor is it empowered to authorize others to use it.

Article 57: A unit or an individual having acquired a compulsory license must pay a reasonable sum to the patent holder for using his patent, and the sum shall be negotiated by both parties; the Patent Bureau will arbitrate if an agreement cannot be reached.

Article 58: A patent holder who disagrees with the Patent Bureau's decision on granting a compulsory license, or its arbitration on setting the sum for the use of a compulsory license, may file a complaint with the people's court within 3 months after notification.

Chapter VII: Protection of Patent Rights

Article 59: The scope of the patent rights protection for inventions and practical new models is based on the claim of rights. The manual and its attached diagrams may be used to explain the claim of rights. The scope of the patent rights protection for an exterior design is based on the product with the patented exterior design shown in a diagram or photograph.

Article 60: The patentee or any interested party may request the patent administrative organ to deal with any action that infringes upon the patent rights without the knowledge of the patentee, and may also directly file a lawsuit with the People's Court. In handling a case, the patent administrative organ is authorized to instruct the patent violator to stop his action and pay for the losses. If the litigant refuses to accept the ruling, he may file a complaint with the People's Court within 3 months after being notified. In dealing with those who neither file a complaint before the deadline nor follow the ruling, the patent administrative organ may request the People's Court to enforce the ruling.

When a dispute concerning a patent violation arises and if the invention patent covers a manufacturing method for a product, the unit or individual that manufactures the same type of product should submit proof of the manufacturing method for its or his product.

Article 61: The time limit for filing a lawsuit for a patent violation is 2 years from the date on which the patentee or the interested party knows or ought to know about this patent violation.

Article 62: The following situations are not considered to be patent violations:

1. The use or sale of a patented product manufactured by the patentee or manufactured with the permission of the patentee;
2. The use and sale of a patented product by someone who does not know that it is manufactured or sold without the permission of the patentee;

3. The manufacture of a product or the use of a method similar to a patented product or method before the date on which the patent application is filed, or necessary preparations have already been made for the manufacture of such product or the use of such a method before that date, provided that such product will be manufactured or such method used continually as originally intended;

4. The use of a patent by a means of transportation of a foreign country in its own facilities or equipment, when it passes through China's territorial land, waters and air for a short period, according to an agreement signed between China and that foreign country or an international treaty of which both China and that country are signatories, or according to the principle of reciprocity;

5. The use of a patent only for scientific research projects and experiments.

Article 63: Any person who imitates another person's patent will be dealt with according to Article 60 of this law. In dealing with those who are involved in serious offenses or are held directly responsible for the violation, it is necessary to pursue their criminal liability in accordance with Article 127 of the Criminal Law.

Article 64: For those who apply foreign patents without authorization and give away important state secrets in violation of Article 20 of this law, the unit where they work or the responsible organ at the higher level should call them to account administratively. Action will be taken according to law to pursue the criminal liability of those who are involved in serious cases.

Article 65: Administrative disciplinary action will be taken against those who infringe upon the patent rights of inventors or designers for their nonjob-related inventions and creations and other rights and interests stipulated in this law by the unit where they work or the responsible organ at the higher level.

Article 66: Administrative disciplinary action will be taken against the staff members of the Patent Bureau and state functionaries who practice favoritism or irregularities by the Patent Bureau or the responsible organ concerned. Action will be taken in accordance with Article 188 of the Criminal Law against those who are involved in serious offenses, for their criminal liability.

Chapter VIII: Supplementary Provisions

Article 67: A fee must be paid in accordance with regulations in applying patents or going through other formalities.

Article 68: Rules for implementing this law shall be formulated by the Patent Bureau and put into effect after being approved by the State Council.

Article 69: This law shall go into effect as of 1 April 1985.

Appendix: The related articles of the "Criminal Law" quoted by the "Patent Law" are as follows:

Article 127: In any case in which any industrial or commercial enterprise violates the trademark control rules and falsely uses any trademark registered by another industrial or commercial enterprise, the person who holds direct responsibility shall be sentenced to imprisonment for not more than 3 years, penal servitude, or a fine.

Article 186: Any state official who divulges an important state secret in violation of the state security rules shall be sentenced to imprisonment for not more than 7 years, penal servitude, or deprivation of political rights if the circumstances are serious.

Any person who is not a state official and commits the crime mentioned in the last paragraph shall be punished according to the provisions in the last paragraph, but consideration shall be given to the circumstances.

Article 188: Any judicial official who practices favoritism and irregularities and causes another person to be prosecuted whom he fully knows is innocent, or intentionally covers up for another person and allows him to avoid prosecution when he fully knows that person is guilty of the offense, or intentionally confuses right and wrong and gives a decision that perverts the law, shall be sentenced to imprisonment for not more than 5 years, penal servitude, or deprivation of political rights. If the offenses are particularly serious, he shall be sentenced to imprisonment for not less than 5 years.

CSO: 4008/190

REPORT BY THE LAW COMMITTEE OF THE NPC ON THE RESULT OF EXAMINATION
OF THE "PATENT LAW OF THE PRC (DRAFT)"

Beijing STATE COUNCIL BULLETIN in Chinese No 6, 20 Apr 84 pp 173-176

[Report by the Law Committee of the NPC on the Result of Examination of the
"Patent Law of the PRC (Draft)" (23 February 1984)]

[Text] To the Standing Committee of the NPC:

The NPC Law Committee, after holding seven meetings to hear reports submitted by the Legal Work Committee on questions concerning the revision of the "Patent Law of the PRC (Draft)," had examined the draft article by article in the light of opinions expressed by members of the NPC Standing Committee and, the education, Science, Culture, and Public Health Committee, as well as the opinions of relevant central departments and the standing committees of provincial, autonomous regional, and centrally administered municipal people's congresses. It was held that in order to encourage inventions and creations, to promote the dissemination and application of these inventions and creations, to advance science and technology, and to meet the needs of socialist modernization, a patent law had to be drawn up and a patent system established. The Draft Patent Law, which had been subject to repeated deliberation and revision since it was first drawn up in 1977, was basically well deliberated and feasible. At the same time, the following major revisions were proposed:

I. On the Protection of Patents

The draft made provisions for the protection of patents. This is necessary for encouraging inventions and creations at home and for importing advanced technology from other countries. In the light of certain misgivings expressed by some foreign patentees, Article 49 of the draft which said that "any unit or individual wishing to make use of a patent must conclude a license agreement with the patentee" was given the additional provision that the licensee "has no right to authorize any unit or individual that is not a party to the agreement to make use of the patent." (Article 12 of the Revised Draft) Meanwhile, in connection with the provisions in the draft which said that the Patent Office may decide on the use of a certain patent without permission from the patentee and make a ruling regarding royalties to be paid when the parties concerned are unable to reach an agreement, it was further stipulated that "the patentee may bring the case to the People's Court within 3 months of receiving

notification if it does not accept the decision made by the Patent Office on the use of a patent without its permission or on royalties to be paid in this regard." (Article 58 of the Revised Draft)

II. On the Dissemination and Application of Domestic Patented Inventions and Creations

The draft stipulated that the use of foreign patents must be approved by the patentees. In using domestic patents, it is also necessary to consider what is best for promoting the dissemination and application of advanced technology. Thus, Article 41 of the draft, which stipulated that "units owned by the whole people which have secured patents must never refuse when other units owned by the whole people wish to make use of their patented inventions in the implementation of the state plan, but the user unit must conclude an agreement with the patent-holding unit and pay royalties in accordance with relevant state regulations," was revised to read: "In accordance with the state plan, relevant leading departments of the State Council and the people's governments of various provinces, autonomous regions, and municipalities directly under the central government have the power to make decisions that will allow designated units to use patents for important inventions and creations held by units owned by the whole people within their system or under their jurisdiction, and the units using these patents shall pay royalties to the patentees in accordance with state regulations." (Section 1, Article 14 of the Revised Draft) It was further stipulated that "patents held by units under collective ownership or by individuals in China shall be handled in accordance with the preceding provision upon approval by the State Council at the request of relevant leading departments of the State Council if they are of enormous significance to the interests of the state and the public and should be disseminated and put into application." (Section 2, Article 14 of the Revised Draft)

III. On the Ownership of Patents

Article 6 of the draft provided that with regard to functional inventions and creations by units owned by the whole people, "the right to apply for and hold patents belongs to the units concerned." This is not precise enough because ownership of patents for functional inventions and creations made by units owned by the whole people should belong to the state. Thus, this article was revised to read: "Upon approval of the application, patents applied for by units owned by the whole people belong to these units." Since patents of foreign enterprises and joint ventures using Chinese and foreign investment are different from those of units owned by the whole people in our country, it was further stipulated that "with regard to functional inventions and creations made by the staff of foreign enterprises and joint ventures using Chinese and foreign investment within the territory of China, the right to apply for the patents belong to the inventors or designers. Upon approval of the application, the patent belongs to the unit or individual that filed the application."

IV. On Legal Responsibility

Article 78 of the draft stipulated that "when a patent is infringed upon, the patentee or parties concerned may ask the infringer to stop the act of

infringement and compensate for loss, or bring the case to the People's Court." Since the handling of disputes concerning patents requires great skill, the leading administrative department, that is, the Patent Office, should have the power to handle such cases. Thus, this article was revised to read: "In the case of infringement of rights in which a patent is used without the permission of the patentee, the patentee or parties concerned may seek redress with the Patent Office or bring the case directly to the People's Court. In handling such cases, the Patent Office has the power to order the infringer to stop the act of infringement of rights and to compensate for loss. If the parties concerned do not accept the ruling, they may bring the case to the People's Court within 3 months of receiving notification; if no appeal is filed and no action taken at the end of this period, the Patent Office may ask the People's Court to order enforcement." (Article 60 of the Revised Draft) The use or sale of patented products without permission from the patentee is quite a complicated matter. In order to draw a clear distinction between what constitutes infringement of rights and what does not, it was further stipulated that the following two situations do not constitute infringement of rights: First, using or reselling patented products manufactured by the patentee or with the permission of the patentee after these have been sold; second, unknowingly using or reselling patented products which were manufactured and sold without permission from the patentee. (Items 1 and 2, Article 62 of the Revised Draft)

Article 80 of the draft stipulated that "Cases of gross violation of patents which constitute crimes should be investigated to determine criminal responsibility according to law." Since the use of a patent without permission from the patentee is an infringement of civil rights for which a civil suit may be filed and compensation claimed, it is better not to make it a rule that the case must be investigated to determine criminal responsibility. As for acts of counterfeiting patented products and palming them off as genuine, they should be investigated to determine criminal responsibility in accordance with the provision in the Criminal Law for the crime of counterfeiting trademarks because they may harm consumers. Thus, this article was revised to read: "Cases of counterfeiting other people's patents should be handled in accordance with Article 60 of this law. In cases of gross violation, the persons directly responsible shall be investigated in accordance with Article 127 of the Criminal Law to determine criminal responsibility." (Article 63 of the Revised Draft)

Article 83 of the draft said: "Functionaries of the Patent Office and persons concerned who violate Article 16 of this law, or who impair the interests of the applicants due to the dereliction of duty or the practice of favoritism, shall be given disciplinary punishment. If an action constitutes a crime, it should be investigated to determine criminal responsibility according to law." Since the dereliction of duty by state functionaries may be investigated to determine criminal responsibility in accordance with relevant provisions in the Criminal Law, the Patent Law shall not make separate provisions for this purpose. As for the practice of favoritism, Article 188 of the Criminal Law only applies to those serving in the legal field. Thus, Article 83 of the draft was revised to read: "Functionaries of the Patent Office and state functionaries concerned who practice favoritism shall be given disciplinary punishment by the Patent Office or relevant leading departments. Cases of

gross violation shall be investigated to determine criminal responsibility in accordance with Article 188 of the Criminal Law." (Article 66 of the Revised Draft)

V. On Whether To Make It a Rule That Approval Must Be Obtained From the Patent Office or the Patentee When Importing Patented Products

Section 2 under Article 40 of the draft said: "When the patentee of an invention has already started to manufacture his patented product or to make use of his patented process in China, other people wishing to import this patented process from other countries must obtain approval from the Patent Office as well as endorsement from the department in charge of imports in our country." When consulted, most people expressed disagreement with this provision. Since the departments concerned were still divided over this and there was a lack of practical experience, no such provisions should be made for the time being.

Opinions have always been divided over whether the Patent Law should prescribe for the protection of three kinds of patents to cover inventions, practical new models and exterior designs, or should merely prescribe for the protection of inventions at the initial stage. Our opinion was that the provision laid down in the draft approved by the State Council should be left as it was, that is, all three kinds of patents should be protected and no further revisions should be made.

In addition, modifications and amendments were made in the structure and wording of the draft to make the Patent Law more concise and better conform to legal standards.

The Legal Committee proposed that the Standing Committee examine and adopt the Revised Draft which was revised in the light of aforesaid suggestions.

REGULATIONS ON COST MANAGEMENT IN STATE ENTERPRISES

Beijing STATE COUNCIL BULLETIN in Chinese No 6, 20 Apr 84 pp 182-189

[Regulations on Cost Management in State Enterprises Promulgated by the State Council on 5 March 1984]

(Guofa [0948 4099] 1984, No 34)

[Text] Chapter I. General

Article 1. These regulations are specially formulated for the purpose of strengthening cost management, lowering the cost of production, improving economic results, increasing the wealth of society, protecting the legitimate economic interests of enterprises and promoting socialist modernization.

Article 2. All state enterprises carrying out independent business accounting, including industrial enterprises, communications and transportation enterprises, building enterprises, agricultural enterprises, commercial enterprises, foreign trade and materials supply and marketing enterprises, currency, investment and insurance enterprises, educational and cultural enterprises, municipal public utility enterprises and all other enterprises shall comply with these regulations on cost management.

Article 3. The basic tasks of cost management shall be: by means of forecasting, planning, control, accounting, analysis, checking and assessing, to reflect the production and operation results of enterprises, tap the potentials for reducing cost of production, and strive to lower the cost of production.

Article 4. In cost management, enterprises shall abide by the financial and economic statutes and regulations and carry out the relevant guidelines and policies of the state.

Article 5. Enterprises shall carry out the cost management responsibility system. Heads of plants (including managers, heads of mines, station masters and leadership personnel of other enterprises, same below) shall bear full responsibility for the economic results of cost management of the enterprise.

The chief accountant, or the assistant chief of the plant in charge of the duties of the chief accountant, shall assist the plant chief to organize and lead cost management of the enterprise, properly carry out the production cost plan, make a correct accounting of production cost, and be responsible for the economic results of the enterprise.

The chief engineer shall, on the production and technical side, assist the plant chief to adopt effective measures to lower the cost of production and be responsible for the economic results of the enterprise.

Large and medium enterprises shall set up in their finance and accounting departments special organs responsible for cost management work; small enterprises shall designate specialized personnel to take charge of cost management.

Article 6. The Ministry of Finance shall be responsible for the cost management of all state enterprises of the country in accordance with these regulations.

Financial organs at various levels of the localities shall, in accordance with these regulations and regulations formulated and promulgated by the Ministry of Finance, be responsible for cost management of their subordinate local state-run enterprises.

Departments in charge of enterprises at various levels shall, in accordance with these regulations and regulations formulated and promulgated by the Ministry of Finance, be responsible for the cost management of their subordinate state enterprises.

Chapter II. Scope of Cost Outlay

Article 7. The following expenses and outlay of industrial enterprises shall be entered into the cost of production:

1. The original cost of, and transportation, loading and unloading and sundry charges for, various raw materials, subsidiary materials, spareparts and accessories, semifinished products purchased from outside, fuels, mobile power, packaged goods, and perishable goods of low value, actually consumed in the course of production and operation;
2. Depreciation charges for fixed assets, funds for renovation and technical transformation set aside on the basis of the output volume, rental and hire charges, and expenses for repairs;
3. Expenses for scientific research and technical development, expenses for trial production of new products that do not constitute the formation of fixed assets, and expenses incurred in the purchase of sample goods, sample machines and general experimental instruments;
4. Salaries and wages of staff members and workers, welfare funds, bonus for low consumption of coal on a per-ton basis, special ward for savings on raw

materials, and bonus for technical transformation and rational recommendations that are stipulated by the state for entry into the cost of production;

5. Union expenses set aside according to a fixed ratio and educational expenses for staff members and workers stipulated for entry into the cost of production.

6. Expenses incurred on goods sold with guarantee attached for repairs, for exchange for other goods, or for being returnable, expenses for restoring or remaking of rejects, or for scrapping of rejects, payment of salaries, wages, welfare funds of staff members and workers, maintenance fees of equipment, and management expenses during plant layoff periods, losses from price-cutting in competition, and losses for bad debts sanctioned to be written off by financial organs of the same grade;

7. Property and transportation insurance premiums, notarization and testimonial fees of contracts and agreements, inquiry charges, charges for use of specialized technology and dirt drainage fees that should be entered into the cost of production;

8. Interest charges on loans of circulating funds;

9. Transportation charges, packing fees, advertisement fees and management expenses incurred by marketing organs in the marketing of commodities;

10. Management and operation expenses, such as office expenses, traveling expenses, convention expenses, expenses on goods for labor safety protection, heating expenses for winter, fire prevention expenses, examination fees, warehousing expenses, trademark registration fees and exhibition expenses;

11. All other expenses examined and cleared for entry into production cost by economic and financial departments.

Article 8. The following expenses and outlay of communications and transportation enterprises shall be entered into the cost of production:

1. The original cost of, and relevant transportation, loading, unloading and sundry charges for, various kinds of raw materials, lubricants, materials, tires, wheels, warehousing materials, spare parts, fuels, mobile power, loading and unloading equipment, and perishable goods of low value actually consumed in the course of production and operation.

2. Loading and unloading fees, port charges, agency fees, road maintenance (waterway maintenance) fees, and business operation fees; and

3. All the relevant expenses and charges mentioned under items 2 to 8 and items 10 and 11 of Article 7.

Article 9. The following expenses and outlay of construction enterprises shall be entered into the cost of production:

1. The original cost of, and relevant transportation, loading, unloading, upkeep and sundry charges for, various kinds of principal materials, structural materials, accessory parts of machines, other materials, fuels, mobile power, and readily expendable goods of low value consumed in the course of construction and operation; and

2. Relevant expenses and charges enumerated under items 2 to 11 of Article 7.

Article 10. The following expenses and outlay of agricultural enterprises shall be entered into the cost of production:

1. The original cost of, and relevant transportation, loading, unloading and sundry charges for, seeds, seedling plants, young animals, feed, fertilizer, farm medicine, medicine for animals, fuels, mobile power, spare parts used in repairs, other materials and perishable goods of low value consumed in the course of production and operation;

2. Operation expenses of farm machines, animal-power running expenses, transportation charges and irrigation expenses;

3. Depreciation charges for fixed assets and economic forests, rental and hire fees, maintenance and repairs and assessments of marketing fees of animals for breeding or service purposes; and

4. Relevant expenses and charges mentioned under items 3 to 11 of Article 7.

Article 11. The following expenses and outlay of commercial, foreign trade and supply and marketing enterprises shall be entered into commodity circulation expenses:

1. Transportation and miscellaneous expenses, advertisement expenses, expenses for storage, upkeep and maintenance, inspection, organizing and change of warehouses, expenses for packing, change of packing or consolidated packing of commodities, and, within specified limits, losses due to wear and tear of commodities and such losses outside specified limits but passed and approved by departments in charge of the enterprise, incurred in the course of purchasing, storing and marketing of commodities and materials.

2. Depreciation charges of fixed assets, maintenance and repairs expenses, rental and hire expenses and installment payments of furniture and tools;

3. Agency fees for purchasing, marketing, warehousing, transporting and for general handling work; and

4. Relevant expenses mentioned in items 3 and 5 and items 7 to 11 under Article 7.

Article 12. In the case of other industries and trades not covered under Articles 7, 8, 9, 10, and 11 of these regulations, departments in charge of the enterprises under the State Council shall refer to these regulations to separately formulate regulations covering the scope of the cost of outlay of

these industries and trades, and, upon the concurrence of the Ministry of Finance, put them into effect.

Article 13. The following expenses and outlays shall not be entered into the cost of production and sales:

1. Expenses that should be paid from capital construction funds, or various kinds of special sinking funds, or other special funds;
2. Bonuses that should be paid out of the self-retained profits of the enterprises;
3. Various kinds of expenses and outlay that exceed the state's prescribed standard of expenses and outlay;
4. Interest payments on capital construction loans and special loans and penalty interest payments on loans of circulating funds;
5. Various kinds of indemnity payments, compensation payments for violation of contracts, overdue fines and fines that should be paid out of the self-retained profits of the enterprises; and
6. All other expenses not related to the production and operation activities of the enterprises.

Article 14. Enterprises shall have the right to refuse payment of various kinds of assessments or apportionments which have not been approved by the State Council.

Article 15. No organ or unit shall have the power to alter the unified scope of cost outlay and standard of outlay fixed by the state, except for the Ministry of Finance, which is empowered to make the necessary individual adjustments.

Article 16. Finance departments (bureaus) of the various provinces, autonomous regions and directly subordinate municipalities and various departments in charge of the enterprises under the State Council shall, in accordance with these regulations and in conjunction with the special features of the localities and departments, formulate supplementary regulations covering the scope of production outlay and, after being examined and approved by the Ministry of Finance, enforce them among their subordinate enterprises.

Departments in charge of the enterprises of provinces, autonomous regions and directly subordinate municipalities shall, in accordance with these regulations and the supplementary regulations of the provinces, autonomous regions and directly subordinate municipalities and in conjunction with the special features of the industries and trades, formulate concrete rules covering the scope of cost outlay, and, following examination and concurrence by the respective finance departments (bureaus) of the provinces, autonomous regions and directly subordinate municipalities, enforce them among their subordinate enterprises.

Chapter III. Accounting of Cost of Production

Article 17. Accounting of the cost of production of industrial enterprises, communications and transportation enterprises, construction enterprises and agricultural enterprises, aside from marketing expenses, shall be carried out in accordance with the principle governing the system of rights and duties and on the basis of the actual consumption and actual prices chargeable to the volume (or workload, or construction volume completed) of the finished products during the accounting period.

Accounting of the commodity circulation expenses of commercial enterprises, foreign trade and materials supply and marketing enterprises shall, in principle, be made on the actual amount incurred.

Enterprises shall not be allowed to use planned production cost, or estimated production cost, or fixed production cost, in place of actual production cost; if in the computation process, accounting of the finished products, self-made semifinished products and labor is made on the basis of the planned production cost or fixed cost, adjustment to the actual production cost shall be made within the cost accounting period specified under Article 21 of these regulations.

In the event an enterprise, when making an accounting of the raw materials, has made use of the prices mentioned in the plan, any disparity from the actual prices shall be duly adjusted and made good within the accounting period prescribed under Article 21 of these regulations.

Article 18. In the event of lump sum payments being made, which are originally payable in installments, the amounts of the apportionment in accordance with the beneficiary period of the related expenses shall nevertheless be entered in the cost outlay. In general, the installment period shall not exceed 2 years.

Article 19. Expense items, prepaid out of production cost before their actual occurrence, shall be reported first to the department in charge of the enterprise for examination and approval and shall also be reported to financial organs of the same grade for reference. If the time involved in the prepayment is short, and the payment calls for clearance by the end of the year, clearance shall so be made in the year's final accounts, without leaving any balance. If the prepayment period is long, goes beyond a year, and an un-cleared balance must be left, explanation shall be so given in the year's final accounts and shall be submitted for examination and approval by the department in charge of the enterprise.

Article 20. Entries for charges of perishable goods of low value shall be made on a 50-50 basis at the time of requisition or procurement and when scrapped. If the amount involved is large, entries into production cost may be made in installments. If the amount involved is small, a list of the goods involved shall be submitted to the department in charge of the enterprise for approval to enter them into production cost, once and for all, at the time of their requisitioning or procurement.

Article 21. The accounting period of finished products and semifinished products shall be a month, with the exception of the planting trade and the breeding trade, when the basis accounting period shall be the production period and in the case of construction enterprises, a season of the year. Within the same accounting period, the beginning and ending date of the output volume, income and consumption shall be identical.

Article 22. In cost accounting, demarcation shall be made clear for the following and there shall be no confusion lest the accuracy of production cost be affected:

1. Production cost for this period and production cost for the next period;
2. Production cost of goods in the process of manufacturing and production cost of finished products;
3. Production cost of comparable products and production cost of noncomparable products.

Article 23. After the procedure and method of cost accounting have been determined, no changes thereon shall be made except with the approval of the relevant department in charge of the enterprise.

Chapter IV. Cost Management Responsibility System

Article 24. Under the leadership of the head of the plant, an enterprise shall carry out the cost management responsibility system covering duties according to grade and division of work.

Article 25. An enterprise shall compile a plan for production cost and for expenses and shall control and manage the production cost according to the plan. The production cost plan of an enterprise shall be examined by the relevant department in charge in accordance with the targets set by the higher level organs. The enterprise shall adopt concrete measures to ensure its fulfillment.

Article 26. In the case of industrial, communications and transportation, construction and agricultural enterprises, the state shall examine and check the rate of lowering of the planned production cost of their entire range of products in comparison with the production cost of comparable products; in the case of commercial, foreign trade and materials supply and marketing enterprises, the state shall examine and check the rate of the lowering of the circulation expenses of their commodities.

Article 27. An enterprise shall, in accordance with the special features of its production and operation as well as the regulations of the department in charge and following the principle of providing for an average level of advancement, fix its own volume of output, working time, consumption amount and amount of expenses. The targets fixed shall be rigidly enforced and subjected to periodic revision.

An enterprise shall set up a sound and perfect system covering measurement of the quantities and prices in the taking in, dispatching, requisitioning and sending back of material resources, as well as inspection and periodic stocktaking of them.

An enterprise shall keep correct and complete original records of its production and operation activities in order to provide for clear-cut responsibility.

Article 28. The financial and accounting departments of an enterprise shall have the following cost management responsibilities: formation of the cost management system of the enterprise; organization of cost accounting; compilation and enforcement of the production cost plan and budget; supervision and checking of the condition of enforcement of the production cost plan; and performance of the functions of forecasting, control and analysis of the production cost of the enterprise.

Article 29. When planning new products, adopting new craftsmanship, new technology and new materials, improving the planned quality of the products, and transforming the structure of products, an enterprise shall first carry out the necessary technical discussion work on them; only after the subject matter has been examined and approved by the head of the plant, chief engineer and chief accountant, can there be any basis for subsequent formulation, examination and approval of the projected plan.

Article 30. Leadership personnel of the enterprise and of the functional departments shall organize the relevant personnel to separately perform well the following lines of work and bear the responsibility for the cost management of the unit:

1. Formulation and enforcement of the production plan, organization of balanced production; reduction of losses due to stoppage or forced idleness in work; and ensuring the accuracy of production statistics;
2. Rational organization of production, adoption of advanced craftsmanship, advanced technology, and scientific and technical organization measures, reduction in consumption of materials and practice of economy in energy consumption.
3. Performing well the planning work on products, strengthening inspection of products, improving the quality of products and reducing losses due to substandard products and rejects.
4. Compiling plans for marketing of commodities and plans for procurement and purchase of materials; and lowering the cost of procurement and purchase and of marketing;
5. Compiling plans for the handling and operation, maintenance and upkeep, of machinery and equipment; improving the in-condition rate of equipment and their utilization rate; and reducing maintenance expenses;

6. Improving the organizational structure of labor and the labor productivity rate;

7. Formulating plans for labor protection expenses, organizing safety protection in production, and generally improving working conditions;

8. Inspection and analysis of the condition of enforcement of the cost production plan and of the various targets, filling in and making various kinds of original records and tabulations, and carrying out various kinds of work related to the forecast, control, supervision, accounting and analysis of production cost.

Chapter V. Supervision and Sanction

Article 31. Departments in charge of enterprises shall be responsible for supervising and inspecting the cost management of enterprises under their control.

Article 32. Auditing organs, and financial and taxation organs shall, within their respective spheres of duties and power, be responsible for supervising and inspecting the cost management of enterprises under their respective spheres of control.

Article 33. When under supervision and inspection, enterprises shall truthfully reflect actual conditions and supply the necessary information and materials; there shall be no falsehood, or making things difficult, or obstruction.

Article 34. Enterprises found to have violated these regulations or to have been guilty of one of the following unworthy acts shall be dealt with in accordance with the relevant regulations of the taxation and financial departments:

1. Without authorization raising the standard of outlay and expenses, or enlarging the scope of expenses;
2. Assessing and setting aside at will cost expenses and squeezing out the state's revenues;
3. Practicing fraud and falsifying records of production cost;
4. Poor management and control, causing large amounts of rejects and other serious losses or waste and thereby causing an increase in production cost;
5. Benefiting oneself at the expense of the state, lavishly spending the state's funds and increasing cost outlay.

Article 35. In the case of enterprises found to have violated these regulations or to have been guilty of one of the unworthy acts mentioned under Article 34, auditing organs or financial organs may notify the departments in charge of the enterprises to impose on them the following administrative penalties:

1. Warning;
2. Fines not exceeding the amount of state funds unlawfully used by them.

The above-mentioned administrative penalties may be imposed singly or jointly.

Article 36. In the case of individuals found to have violated these regulations or guilty of one of the unworthy acts mentioned under Article 34, auditing organs or financial organs may recommend to the departments in charge of the enterprises to subject them to disciplinary action; relevant leadership personnel and directly responsible personnel of the enterprise may be subjected to fines not exceeding 3 months of their salaries or wages.

Article 37. Chief accountants and financial personnel, though aware of the unlawful acts but failing to abstain from or expose them, shall be held equally responsible with those directly responsible for violating these regulations.

Article 38. Those who compel or direct others to violate these regulations, lawbreakers who are at the same time protectors of law themselves, and those taking reprisal against others for having revealed or reported on their crimes, shall be severely punished.

Article 39. In the case of departments in charge of enterprises found to have done poor planning or made wrong commands, thus causing heavy economic losses to the enterprises, people's governments at various levels shall, subject to varying conditions, take disciplinary action against those persons who are directly responsible.

Article 40. Enterprises or individuals objecting to administrative penalties imposed on them by auditing organs or financial organs may, within 15 days of receipt of the penalty notice, appeal to a higher level auditing organ or financial organ for a review. Upon receipt of the appeal, the higher level organ shall, within a month, review the case and render its verdict. Those failing to make an application for review within the designated period shall have to comply with the penalty notice from the auditing organ or financial organ.

Article 41. If violations of these regulations are found to be criminal in character, they shall be referred by the auditing or financial organ to the judiciary department for prosecution according to law.

Article 42. The state shall protect those who expose crimes or report on the offenders and shall bestow on them due commendation or award according to the circumstances.

Chapter VI. Supplementary Regulations

Article 43. The Ministry of Finance shall separately formulate regulations governing the enforcement of these regulations for state enterprises located outside the territory of the PRC, or in Hong Kong, or in Macao.

In the case of special economic zones [SEZ] sanctioned by the State Council for establishment, the cost management method of their subordinate state enterprises shall be specially formulated with due reference to these regulations by the people's government of the locality wherein the SEZ is located.

Article 44. Enterprises under the system of collective ownership in cities and towns shall be governed by the relevant articles of these regulations.

Article 45. The Ministry of Finance may formulate detailed rules and regulations covering the enforcement of the articles of these regulations.

Article 46. These regulations shall be in force on the day of their promulgation. All past relevant regulations on the scope of cost outlay of various categories of state enterprises shall simultaneously become invalid.

In the event of other regulations on production cost being in conflict with these regulations, these regulations shall govern.

NOTICE OF THE MINISTRY OF LABOR AND PERSONNEL ON DOING A GOOD JOB
IN HIRING

Beijing STATE COUNCIL BULLETIN in Chinese No 6, 20 Apr 84 pp 191-192

[Notice of the Ministry of Labor and Personnel on Doing a Good Job in Hiring
(15 January 1984)]

(Lao-ren-gan [0525 0086 1626] 1984, No 8)

[Text] In their efforts to promote the four modernizations in their own localities or units, some medium and small cities and newly established units have adopted the method of inviting applications for professional and technical posts from outside in recent years and have achieved satisfactory results. The method of inviting applications for jobs is an important means of supplementing the planned assignment of jobs. It must be carried out in an organized way under appropriate leadership. Attention should also be paid to summing up experience and to discovering and solving problems in good time. Here are some proposals specially made to ensure that the work of inviting applications for jobs can proceed without a hitch:

1. On the basis of fully tapping inside potentialities, it is necessary to give full scope to the special skills of professional and technical personnel in one's own locality, department or unit and make the best use of every individual in the work of inviting applications for jobs. For posts that urgently need to be filled but for which no suitable candidates can be found within the unit, invitation should first be extended to one's own locality and department. If there are still no suitable candidates, invitation should then be extended to other localities and departments. In hiring professional and technical personnel, priority should be given to internal exchange, to be supplemented by invitation from outside.
2. The work of inviting applications for jobs should be carried out in an organized way under appropriate leadership. Those wishing to invite applications for professional and technical posts in their own province, municipality or autonomous region may do so when requests submitted by their hiring department or unit have been approved by their provincial, municipal or autonomous regional personnel department. Those wishing to invite applications for professional and technical posts from all over the country or from other provinces may do so after the leading department of the hiring locality has obtained approval from the provincial, municipal or autonomous regional personnel department and after the case has been examined and endorsed by this ministry.

3. It is necessary to strictly control the flow of cadres. Remote border provinces or autonomous regions wishing to invite applications for jobs may select their choice of localities from among inland provinces and municipalities according to their need. Inland provinces and municipalities wishing to invite applications for jobs can only do so within a given scope, chiefly from inland and coastal provinces and municipalities. They cannot invite applications from such provinces and autonomous regions as Xizang, Xinjiang, Qinghai, Ningxia, Nei Monggol, Guangxi, Yunnan, and Guizhou, from places with a weak professional and technical force, or from among professional and technical personnel working in three-line units. No locality or unit is allowed to invite applications from among professional and technical personnel working in units at or below the county level.

4. The wage for jobs advertised must be appropriate. With the exception of remote border provinces and autonomous regions, other localities are not allowed to raise the wage for jobs. Steps should be taken to guard against the practice of raising the wage at random to attract applications from professional and technical personnel.

5. It is necessary to establish the concept of taking the whole situation into account. In the work of inviting applications for jobs, all localities, departments and units should cultivate the concept of coordinating all the activities of the nation like pieces in a chess game, create favorable conditions for the development of the four modernizations and the building of the contingent of professional and technical cadres in the localities, and carry forward the communist style. Places where conditions are good should help places where conditions are poor, and inland regions should help remote border regions.

6. Personnel departments at all levels should strengthen leadership over the work of inviting applications for jobs, conscientiously manage the work well, pay attention to solving problems arising in work, promptly sum up experience, and be ready at all times to send copies of case reports to the Cadres Bureau of this ministry.

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