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CENTRAL INTELLIGENCE AGENCY

REPORT

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INFORMATION FROM

FOREIGN DOCUMENTS OR RADIO BROADCASTS

CD NO.

COUNTRY China

DATE OF INFORMATION 1950

SUBJECT Economic - Patents

HOW PUBLISHED Daily newspaper

DATE DIST. 7 Nov 1950

WHERE PUBLISHED Wu-hsi

NO. OF PAGES 5

DATE PUBLISHED 17 Aug 1950

LANGUAGE Chinese

SUPPLEMENT TO REPORT NO.

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SOURCE Su-nan Jih-pao.

GOVERNMENT PROMULGATES PATENT ACT

Peiping, 16 August (Hsin-hua) -- The Committee of Finance and Economics of the Government Administration Council of the People's Republic of China has promulgated Temporary Regulations Guaranteeing Invention and Special Privilege Rights. The measure was approved by the Administration Council at its 45th meeting.

The text of the regulations is as follows:

Article 1. These regulations have been formulated for the purpose of encouraging research into productive sciences by Chinese citizens and of promoting national economic development.

Article 2. Citizens of the People's Republic of China who, either in groups or individually, produce an invention related to production shall petition the central patent control agency for review of the product. Such person or groups may, if they so desire, request invention or special privilege rights.

Article 3. To qualify as such within the intent of these regulations, an invention must create a new method of production which raises production efficiency, or must manufacture a new product which imparts an increased value to the materials used. In addition, such inventions must have a direct application to industrial fabrication or agricultural production.

Regulations affording protection to the rights of inventors of new medical procedures and to scholarly inventions having no direct relationship to production shall be promulgated separately.

Article 4. A Certificate of Invention or Certificate of Special Rights shall be issued to the petitioner after examination of the invention by the central patent control agency.

The Central Technical Skills Control Bureau of the Committee of Finance and Economics of the Government Administration Council shall be designated as the central patent control agency.

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Article 5. In accordance with the principles stipulated in Article 3 of these regulations, Certificates of Invention of Special Rights shall not be awarded in the case of products resulting from the application of chemical procedures, but may be issued in the case of new methods in the utilization of such products in manufacture.

Article 6. The following rights shall accrue to inventors holding invention rights, except in the case of inventions whose use and disposition are assumed by governmental authority:

a. Holders of invention rights shall be eligible for such honors as may be determined by national statute, including bonuses, scrolls, plaques, medals, or honorary degrees. Regulations governing such awards shall be promulgated separately.

b. Invention right may be regarded as a legacy. Persons inheriting invention rights may continue to receive monetary benefits accruing to the inventor.

c. If so desired by the inventor and approved by the central patent control agency, inventions may bear the name of the inventor or any other special designation.

Article 7. The following right shall accrue to inventors accorded special privilege rights:

a. Such inventors may use personal capital or form corporations for the purpose of utilizing their invention to engage in production

b. Special privilege rights shall be transferrable, and permission may be granted by the inventor to any agency or individual to use such inventions for personal compensation. Conditions attendant upon such transactions shall be fixed in a contract formulated by the original holder of special privilege rights and the agency or individual to whom the rights are transferred.

c. Inventions awarded special privilege rights may not be used by other persons unless authorized by the original holder of such rights. The original holder shall be given compensation for losses involved as a result of violations of this principle.

d. Special privilege rights may be regarded as a legacy. Persons inheriting such rights shall enjoy them to the same extent as the original holder.

e. Original holders of special privilege rights (or heirs), within the period during which the rights are valid, may request the central patent control agency to change the special privilege rights to invention rights if the rights have not been transferred or permission granted for use by other persons.

Article 8. Inventions which fall within one of the following categories shall be awarded Certificates of Invention, but not Certificates of Special Rights:

a. Inventions which are concerned with national defense, military science, or ordnance industries.

b. Important inventions which may quickly enhance the welfare of the majority of the people, such as medicinal substances or materials used in agriculture and animal husbandry.

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c. Inventions completed within the scope of their professional duties be persons employed in public factories, mines, scientific research centers, technical bureaus, laboratories, and other research agencies.

d. Inventions resulting from commissions by public agencies, enterprises, or social organizations and for which compensation has been given.

Article 9. The period of validity of invention and special privilege rights shall be limited to 3-15 years. The exact term shall be determined by the central patent control agency at the time the appropriate certificate is issued.

Article 10. Persons holding special privilege rights shall observe the following stipulations:

a. Rights held in common may not be applied unilaterally without the consent of all persons concerned.

b. Transfers of rights or grants of permission to others to use an invention must be approved by the central patent control agency.

Article 11. Special privilege rights may be cancelled if one of the following conditions applies:

a. If, within the period of validity, the rights are privately sold abroad without permission.

b. If, after the Certificate of Special Rights has been in force 2 years, the invention has not been utilized in manufacture and application has not been made for an extension of time on the certificate.

c. If, within the period of validity of the special privilege rights, manufacture is halted for a period of 2 years without justification and without a request for approval of such action.

Article 12. Persons holding invention and special privilege rights shall be subject to payment of fines and disciplinary action if represented in one of the following conditions:

a. Those included in the provisions of Article 11, Item "a" above.

b. Those who announce an invention abroad prior to approval by the central patent control agency.

c. Those who disclose the existence or nature of an invention which the central patent control agency has designated as one not to be made public.

d. Those who plagiarize another's invention, or disclose its existence or nature prior to public announcement.

e. Those who act without authority in using public invention rights.

Article 13. At the discretion of the inventor, persons who prior to application by the inventor for patent right utilize such an invention, or make necessary preparations for such use, shall have the right to continue or have priority in the use of such inventions.

Article 14. If the central patent control agency feels that an invention which has been issued a Certificate of Special Rights should be made public property the agency may consult with the holder of the certificate and request that he yield his rights. If no agreement is reached, the Government Administration Council, which shall have final jurisdiction, may award invention rights to such certificate holders in exchange for special privilege rights and may award them a compensatory sum.

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Article 15. Inventors shall aid actively in the application of their inventions and shall continue to work on improvements.

Article 16. If an invention is not applicable to government use, the inventor who has applied for invention rights may reapply for special privilege rights or may be granted special privilege rights directly by the central patent control agency.

The central patent control agency may also issue a Certificate of Special Rights to replace a Certificate of Invention already in force if the concerned invention is not applicable to government use.

Article 17. Material assistance and the use of laboratory facilities in designated enterprises and research agencies may be granted to any citizen of the People's Republic of China who has actual invention plans and blueprints which have been judged by the central patent control agency to worthwhile and capable of successful application.

Article 18. Foreigners residing in China may apply for invention or special privilege rights in accordance with these regulations.

Article 19. Applications for invention and special privilege rights shall be subject to the following procedures:

a. The inventor shall submit to the central patent control agency a completed application form, accompanied by detailed plans, blueprints, explanatory notes, and all other materials demonstrating the aptitudes of the invention. The agency shall notify the inventor of receipt of the application within 10 days, except in the case of unusual inventions which require extended examination. In addition, the agency shall complete its examination within 3 months and notify the inventor of action to be taken.

b. If the agency considers that the application does not contain sufficient qualifying materials, it may request additional information. Secrecy shall be maintained on all material under consideration.

c. When the examination has been completed, the results shall be publicly announced by the agency. If no contrary opinion is expressed by other persons within 3 months from the date of announcement, the examination shall be considered final. Inventions representing military secrets shall be exempt from these provisions.

d. When the examination has been made final, a Certificate of Invention or Special Rights shall be issued. The effective date of such certificates shall be the date of issue.

e. If the application is not approved, the agency shall transmit to the inventor a statement of examination, which shall show detailed cause for the action. The applicant shall also have the right to request a statement of clarification which shall present all evidence producing the decision.

f. Within 45 days after receipt of the statement of examination, those whose applications have not been approved may, showing detailed cause, request a re-examination of their applications. If still dissatisfied with the results of the re-examination, applicants may, within 90 days, present a complaint in accordance with law.

Article 20. The central patent control agency shall make a public announcement whenever the period of validity of a Certificate of Invention or Certificate of Special Rights expires or is otherwise abrogated.

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Article 21. Invention or special privilege rights shall be held in common if an invention is produced by two or more persons acting together. The distribution of such rights shall be determined by the holders of the rights. If no agreement is reached on distribution of the rights, the holders may individually present evidence of their contribution toward the completion of the invention and request mediation by the central patent control agency.

Article 22. These regulations shall be promulgated and enforced by the Committee of Finance and Economics of the Government Administration Council after approval by the Government Administrative Council. Detailed rules governing application of these regulations shall be formulated by the Committee of Finance and Economics.

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