

## CHINESE PATENT LAW 2000 And Draft Implementing Regulations

Below are brief one or two-line summaries of the major changes in the Chinese Patent Law. A more detailed analysis is available on request or can be downloaded from the "publications" page of our website: <http://www.lloydwise.com> (as of 1 July 2001).

### 1. Background

*The amendments to the Patent Law were issued on 25 August 2000, which amendments came into force on 1 July 2001. Implementing Regulations and Transitional Provisions also came into force on 1 July 2001, having been issued just a few days before that enactment date.*

*The Chinese Patent Office Handbook has also been revised.*

### 2. Novelty

*Additional novelty requirement for designs – must not conflict with any "previously existing rights", eg. registered trade marks or copyright*

### 3. Ownership of Patents

*New provisions for employee ownership of employee inventions, by agreement with the employer; assignment of State owned company patents to foreigners no longer requires approval*

### 4. Specification Format & Language

*Provisions have been made for electronic filing*

### 5. Claims

*Clarification of rules for multiple claim dependencies*

### 6. Biological Material

*Clarification of when deposit is required; longer deadline for providing evidence of deposit*

### 7. Preliminary Examination

*Additional requirements for invention and utility model patents*

.....Cont. over

**8. Examination Request**

*Search and examination reports from other countries no longer required*

**9. Rejection and Re-examination**

*Additional grounds for rejection of invention patents – codifying current examination practice*

**10. Divisional Applications**

*Divisionals may not be filed after an application has been refused*

**11. Amendment**

*Restrictions on voluntary amendments –only permitted when requesting examination unless examination is requested on filing*

**12. Maintenance Fees**

*Payable in aggregate in arrears on grant; new restoration procedure provided*

**13. Grant and Issue Fees**

*Maintenance fees paid together with issue fees*

**14. Renewal Fees**

*New restoration procedure provided*

**15. Revocation**

*Repealed*

**16. Invalidation**

*New grounds for invalidation*

**17. License Agreements**

*Exclusive licences must be recorded in order to take effect*

**18. Marking and "Passing Off"**

*"Passing off" no longer prima facie a criminal offence; new fines*

**19. Rights Conferred by Grant of a Patent**

*"Offering for sale" included*

**20. Exceptions to Infringement**

*Consumers can be infringers, but are not liable for damages*

**21. Burden of Proof**

*Burden reduced in process patent infringement cases;  
utility model patent infringement - defendants can request a search report*

**22. Statutory Limitations**

*Use of invention without permission between publication and grant subject to payment of notional royalties*

**23. Powers of the Administrative Authority for Patent Affairs**

*Authority can no longer direct infringers to pay damages*

**24. Counterclaim for Revocation or Invalidation**

*Revocation procedure repealed*